

1 y'all going to have any other motions you want heard
2 on November 16th?

3 MR. PRICE: I anticipate some other motions will
4 be heard at that point, Judge. I also anticipate that
5 there will be some motions after Mr. Misskelley's
6 trial for our trial on some issues that may arise.

7 THE COURT: All right. If you have got any other
8 motions that you need to have heard, that will be
9 November 16th at one o'clock in the Osceola
10 courthouse.

11 (PROCEEDINGS CONCLUDED)

12 OSCEOLA, ARKANSAS, NOVEMBER 16, 1993, AT 1:00 P.M.

13 THE COURT: The Court is ready to proceed. Mr.
14 Ford, did you have any matters you wanted to present
15 to the Court today?

16 MR. FORD: I told the Court in chambers that I
17 did not have anything that I was aware of that I need
18 to present to the Court, but since I have walked in
19 here I would like to state on the record that we have
20 previously addressed to the Court how security was
21 going to be maintained, and they brought my client in
22 here shackled at the hands, feet and about the waist,
23 and I object to that -- bringing him in here in front
24 of the media shackled the way that the Court has
25 addressed for that not to be done.

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1 THE COURT: I understand your objection, and I
2 had advised the officers when they asked me about
3 security measures that it was fine to bring them up to
4 the courthouse or the courtroom in whatever security
5 restraints they felt necessary. Once they were
6 brought into the courtroom they were to remove all
7 restraints except leg irons. That was the Court's
8 direction, and your objection will be noted.

9 MR. FORD: He sits here right now fully shackled.

10 MR. STIDHAM: Your Honor, for the record, we'd
11 like to note our objection as well. We had discussed
12 this issue previously at the other hearings, and Mr.
13 Misskelley is presumed innocent until proven guilty,
14 and I believe this treads on that right of his.

15 THE COURT: I have had the restraints removed
16 except for the leg restraints, and in view of the
17 attention this case gets I do not feel it is
18 unreasonable. I'm going to allow the law enforcement
19 officers to carry out the security measures that are
20 not in my mind unreasonable. I don't find that to be
21 unreasonable.

22 MR. STIDHAM: For the record, I would like to ask
23 that the Court order them to remove the shackles from
24 his ankles.

25 THE COURT: When we have the trial, I will have

1 that done.

2 MR. STIDHAM: The Court is going to deny that
3 motion today?

4 THE COURT: Yes, sir. We are having to move
5 these people around, and it is very difficult to
6 coordinate those things, going to different counties,
7 different sheriff's departments, and I am going to
8 allow them to carry out what they consider to be
9 proper security. You have made your point.

10 What I just discussed with you in the back room
11 -- and it can be made a part of the record now -- that
12 the orders that the Court has previously entered -- I
13 want those orders to be approved by counsel for the
14 State and counsel for the defendant and circulated and
15 signed off on and then submitted to the Court for the
16 Court's signature. Any order that doesn't have the
17 signature of each or at least one of the attorneys for
18 the defendants and the State, then I'm not going to
19 sign them.

20 So we've discussed objections that each of you
21 might have had to a precedent prepared by either the
22 State or a defendant's lawyer, and I am going to have
23 you discuss those modifications, and you can submit
24 the order to me where each of you have signed off on.

25 MR. STIDHAM: Your Honor, for the record, I

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1 discussed my proposed precedent for September 27th
2 with Mr. Fogleman. He has no objections to that.
3 Your Honor has already signed it.

4 THE COURT: Have them sign off on it and then
5 file it.

6 MR. DAVIDSON: Your Honor, is it necessary to
7 have written orders for each of the rulings you have
8 made from the bench?

9 THE COURT: Not as far as I am concerned because
10 I think I'm going to remember, but for a clean record,
11 it probably would not hurt to have a precedent
12 prepared and have each of you sign it and let me enter
13 it.

14 MR. DAVIDSON: The rulings that have been made
15 that specifically apply to the other defendants -- do
16 those rulings also apply to Mr. Echols?

17 THE COURT: That's hard to say because I think
18 you have joined in some of those. Some of them it may
19 apply, and some of them may not. I can't tell you
20 offhand which ones did and which ones did not. I
21 think probably some of the procedural rulings would
22 apply to all the defendants.

23 MR. WADLEY : But for the motion -- objection
24 raised by Mr. Ford, we would have no other motions
25 today to present on behalf of Mr. Baldwin.

1 THE COURT: Mr. Baldwin will be remanded back to
2 the sheriff, and you are free to go.

3 MR. DAVIDSON: We do not have any specific
4 motions.

5 MR. FORD: We'd like for Mr. Baldwin to remain
6 because there may be some things stated here today
7 that could be of some benefit to him or us. I think
8 he ought to be able to stay through the entire
9 proceeding.

10 THE COURT: That's fine with me.

11 MR. DAVIDSON: Same with us, your Honor.

12 THE COURT: All right. That will be fine.

13 MR. FOGLEMAN: The record should reflect in
14 regard to Mr. Stidham's joining in Mr. Ford's
15 objection -- that Mr. Misskelley does not have the
16 waist chain or handcuffs on him.

17 THE COURT: Well, I understood that he was really
18 the only one we were to deal with today, and I
19 directed the sheriff not five minutes before we came
20 in here that he could leave the leg chains on, and I
21 see that he's removed the other restraints. Other
22 than that, I'm not going to get involved in their
23 security procedures. When we have the trial, all
24 restraints will be removed, but we are just going to
25 be here for a short period of time today.

1 I guess the first motion to take up is your
2 motion to transfer?

3 MR. CROW: Yes, your Honor. The only thing to
4 today will be the motion to transfer to Juvenile
5 Court.

6 MR. STIDHAM: Your Honor, this is a matter which
7 is going to discuss some possible -- may I approach
8 the bench, your Honor?

9 THE COURT: All right.

10 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH)

11 MR. STIDHAM: Judge, just as we did at Jonesboro
12 the other day, I assume the State is going to want to
13 introduce testimony about past juvenile history. Due
14 to the fact that the media are in court today, if they
15 report on his prior juvenile record, then any possible
16 --

17 (THE COURT AND MR. STIDHAM SPEAKING AT THE SAME TIME -
18 UNINTELLIGIBLE)

19 MR. STIDHAM: We would ask that the Court impose the
20 same restrictions that it did in Jonesboro.

21 THE COURT: What I did the other day was
22 restricted the press from testimony that involved
23 substantive facts and information about the crime
24 scene --

25 MR. FOGLEMAN: You totally excluded everybody

1 from the courtroom while the evidence was being put
2 on. Of course, I didn't think that should have been
3 done --

4 THE COURT: -- I probably shouldn't have done it.

5 MR. FOGLEMAN: -- but once it was done, I'm
6 afraid if we did it for one and not the other, I don't
7 know what it would do.

8 MR. STIDHAM: One of the witnesses I have called
9 to testify today --

10 (THE COURT AND MR. STIDHAM SPEAKING AT THE SAME
11 TIME - UNINTELLIGIBLE)

12 THE COURT: Why don't we go as far as we can and
13 if a sensitive issue comes up, I'll exclude them.

14 (RETURN TO OPEN COURT)

15 THE COURT: Gentlemen, while I'm thinking about
16 it, I need your fee statement from the time you were
17 first appointed up to the effective date of the new
18 statute and then I need from then until now just for
19 my purposes.

20 MR. PRICE: Judge, as to that point, there's a
21 brief that I'll be filing today. I have had the
22 chance to read the brief from the Attorney General's
23 Office and also the Crittenden County Attorney. The
24 only difference I have put in this argument is that
25 the Court should also consider not only the effective

1 date of the act, which is July 1, 1993, but also
2 should consider the effective date that the Capital
3 Conflicts Office would be able to accept cases.

4 It is our position that although the act was
5 effective July one, they were not functioning. They
6 were not able to take cases. Miss Sallings, who is
7 the head of that office, is still even as of today's
8 date not accepting appointments in cases. They won't
9 be accepting cases until the first of January. So we
10 think the Court should also consider that --

11 THE COURT: When the time comes to rule on those
12 matters, I will probably want testimony from her and I
13 will read your brief.

14 MR. STIDHAM: Your Honor, basically what we are
15 asking the Court to do today is transfer Mr.
16 Misskelley's case -- his three charges of capital
17 murder -- to Juvenile Court pursuant to statute
18 regarding waiver and transfer which is Arkansas Code
19 Annotated nine dash twenty-seven dash three eighteen.

20 We intend to introduce evidence today reflecting
21 on the seriousness of the offense, whether violence
22 was employed by the juvenile in the commission of the
23 offense, whether there's a repetitive pattern of
24 adjudicated offenses which would determine that the
25 juvenile is beyond rehabilitation, and also we are

1 going to introduce evidence about Mr. Misskelley's
2 prior history, his character traits and his mental
3 maturity and ask the Court to transfer the cases to
4 Juvenile Court.

5 MR. FOGLEMAN: Could we approach the bench?

6 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH)

7 MR. FOGLEMAN: Your Honor, if part of this
8 hearing is to be held open, I think the whole thing
9 needs to be open.

10 MR. STIDHAM: Your Honor, with the press here, I
11 don't want them printing his prior juvenile history --

12 THE COURT: Let's go on and do it all and if we
13 get to a point where you think it's going to be a
14 problem, then raise it and I'll see what I can do.

15 MR. FOGLEMAN: Your Honor, I think it's unfair
16 for them to show one particular side to the public and
17 then close the doors and then show another side.

18 THE COURT: The reason I did it the other time
19 was because if there was a possibility at all that I
20 would transfer it to juvenile, then the juvenile
21 hearing would have been closed. I've later reflected
22 on that, and I'm not sure there's any real necessity
23 for that. Because if I transfer it to juvenile, then
24 any further proceedings will be closed.

25 MR. FOGLEMAN: That's why I say the whole thing

1 either ought to be closed or it ought to be open.

2 THE COURT: I think that's right. I'm just going
3 to leave it open.

4 MR. STIDHAM: Your Honor, what about the media
5 reporting on these incidences --

6 (THE COURT AND MR. STIDHAM SPEAKING AT THE SAME
7 TIME - UNINTELLIGIBLE)

8 THE COURT: -- anything about that.

9 MR. STIDHAM: We could have an in-camera --

10 THE COURT: -- if you win, you don't have to
11 worry about it.

12 MR. STIDHAM: Well, that's a big "if" right now,
13 your Honor. Obviously, if I win, I'm not going to be
14 concerned about it. If I don't, I'm going to be real
15 concerned about it.

16 THE COURT: Bring it up again and I'll see what I
17 can do.

18 (RETURN TO OPEN COURT)

19 DOCTOR WILLIAM WILKINS

20 having been first duly sworn to speak the truth, the whole truth
21 and nothing but the truth, then testified as follows:

22 DIRECT EXAMINATION

23 BY MR. STIDHAM:

24 Q Will you please state your name?

25 A William E. Wilkins.

1 Q What is your occupation?

2 A I'm a psychologist.

3 Q You practice in Jonesboro?

4 A Yes.

5 Q Tell the Court about your education and professional
6 experience.

7 Q I have a Bachelor's Degree in psychology from the State
8 University of New York, a Master's Degree in research methods
9 from Bucknell University and a Ph.D. in psychology from Cornell
10 University.

11 I taught for a number of years at the State University of
12 New York. I taught for the University of Houston. I've been
13 director of health at mental health centers. I have worked in
14 the mental health section of a reform school. Ah, I ran a
15 mental health section for the Native American tribes in Utah,
16 Idaho and Nevada. Was clinical director at George Jackson
17 hospital and have been in private practice in Jonesboro for five
18 years.

19 I have written fifteen or twenty articles, most recently on
20 ah, ah, false confessions, one on, ah, the recidivism in the
21 juvenile justice system -- I'm sorry. In the adult justice
22 system for the American Congress of Criminal Justice.

23 Q You have over twenty years experience as a licensed
24 psychologist?

25 A Yes.

1 Q Can you tell us about any professional groups or
2 associations that you are involved with?

3 A I'm a diplomat in the American Academy of Psychologists
4 Treating Addiction. A member of the, ah, American Congress of
5 Forensic Psychology, the American Psychological Association.

6 Q Do you have any hospital affiliations?

7 A I don't at the present time because I don't do any hospital
8 work anymore, but I have had in the past at Saint Bernard's
9 Hospital in Jonesboro, at Greenleaf Hospital in Jonesboro, and
10 in the past other hospitals throughout the United States.

11 MR. STIDHAM: We'd ask that Dr. Wilkins be
12 qualified as an expert in the field of psychology.

13 THE COURT: Do you want to take him on additional
14 voir dire?

15 MR. FOGLEMAN: Not at this time, your Honor.

16 THE COURT: You may proceed.

17 BY MR. STIDHAM:

18 Q Doctor Wilkins, can you tell the Court whether you have had
19 an opportunity to meet the defendant Jessie Lloyd Misskelley,
20 Junior?

21 A Yes, I have.

22 Q How much time have you spent with Mr. Misskelley?

23 A I met with him on, ah, first time October 15th, again
24 October 22nd and again on November 4th for a total of about 10
25 or 11 hours.

1 Q Could you tell the Court what type of tests were conducted
2 on Mr. Misskelley?

3 A We conducted tests. We also gathered a large variety of
4 past information. For example, there was about eight or nine
5 hundred pages of his school records, some previous psychological
6 evaluations from mental health centers. Ah, in addition to
7 that, myself, I did an interview, I did a mental status, I also
8 did a, ah, WAIS-R, MMPI-2, Wechsler Memory Scale, Bender
9 Gestalt, House/Tree/Person, REY Auditory Verbal Learning Test, a
10 Rorschach, a, ah, REY Auditory Verbal Learning Test -- I think I
11 mentioned that -- some tests by Lawrence Kolberg measuring moral
12 development and some tests by Goldschmidt and Bentley measuring,
13 ah, ah, cog -- cog -- cognitive thinking levels.

14 Q Did also have an opportunity to meet with Mr. Misskelley's
15 family?

16 A Yes. Mr. Misskelley, Senior and I met for two to two and a
17 half hours.

18 Q Can you tell the Court a little bit about Mr. Misskelley's
19 mother?

20 A Are you talking about his biological mother?

21 Q Yes.

22 A Jessie's biological mother left the family unit when Jessie
23 was about four years of age. Jessie had no further contact with
24 her until about a year and a half, two years ago, and at this
25 point is reasonably marginal in her action system with her --

1 with him.

2 Q Did that abandonment have any psychological impact on Mr.
3 Misskelley?

4 A Ah, my sense would -- it -- it would because being a
5 four-year-old child and mother leaving and not having any
6 further contact. In fact Jessie knows even when he first met
7 her again at age 16 that he no longer considered her his mother.
8 He did not want to go see her. He did not want any contact with
9 her. He did not view her as -- ah, psychologically as his
10 mother.

11 Q In your report you referred to a "dysfunctional child
12 rearing system." Can you tell us a little bit about that?

13 A Well, I think when -- when -- when we see a child whose
14 mother abandons at age four, that ah, Jessie's father has had a,
15 ah, alcohol problem. There have been substitute parents.

16 Jesse describes at times when he was a small child being
17 left with various baby-sitters, one of whom regularly put his
18 head in the toilet and flushed it on numerous occasions.

19 Ah, Jessie described a time, ah, of -- his school records
20 do -- of a wide variety of, ah, recommendations from the school
21 for Jessie to receive counseling because of his school problems,
22 academic problems, behavior problems in school and so on and at
23 no time was any consistent follow-up ever done with that.

24 That, ah, in fact at the time of the current crime was
25 committed, Jessie's parents were separated -- his stepmother and

1 father. They have since rejoined each other but that has been
2 over the years separations and a wide variety of stepbrothers,
3 half brothers and family systems that just would consistently
4 rotate and change with a lot of moving from place to place.

5 Q I want to talk about his brothers and other siblings. You
6 mentioned that it was recommended that Jessie receive some
7 counseling earlier. To your knowledge in any of the documents
8 that you reviewed and your discussions with Mr. and Mrs.
9 Misskelley, did he receive any of that counseling?

10 A Ah, he had, ah, I think they may have gone for one session
11 or two sessions at the mental health center in West Memphis and
12 had a couple of evaluations at different places but no ongoing
13 consistent pattern of therapy.

14 Q In any of his previous evaluations, Doctor Wilkins, was Mr.
15 Misskelley ever diagnosed as being mentally retarded?

16 A Yes, he was.

17 Q Were any other members of his family been diagnosed as
18 being mentally retarded?

19 A He has a brother who is diagnosed as mentally retarded, at
20 least that I know of. I don't know beyond that, but he has at
21 least one brother who has been.

22 Q Let's talk for a moment about Mr. Misskelley's IQ. Did you
23 conduct some IQ testing on Mr. Misskelley?

24 A Yes, I did.

25 Q Could you explain to the Court your findings?

1 A I conducted a WAIS-R which is a standard IQ test for
2 adults. Jessie had a full scale IQ of 72, with a verbal IQ of
3 70, performance of 75.

4 Q Why is there a difference between the verbal and the other?

5 A Ah, it's -- it's -- it's not a -- an important difference,
6 ah, in this case. Ah, the ah, the WAIS-R measures 11 different
7 things and it is designed to measure a kind of global concept of
8 what IQ is so there is a wide variety of different tasks and
9 sub-tasks that are used.

10 Ah, they are divided into categories, one called
11 performance and one called verbal. And the verbal tasks as
12 indicated include verbal type things. Ah, ah, ah, information,
13 vocabulary, arithmetic, those kinds of things.

14 Performance are in terms of block design, puzzle
15 completion, those types of tasks. And so that's -- that's the
16 rationale.

17 Q Was the IQ which you established -- were those consistent
18 with previous IQ testing done on Mr. Misskelley?

19 A Yes. In the past Jessie's had -- I think I remember three
20 or four different testings prior to mine. Ah, IQ was always in
21 the neighborhood of ah, 67, ah, 70, 73. It was a pretty
22 consistent pattern.

23 Q His IQ level -- what level of intellectual functioning does
24 that place Mr. Misskelley?

25 A Ah, according to the GSM3R he would be placed in the low

1 borderline range of intellectual functioning.

2 Q What is the average IQ level?

3 A Average intelligence level is one hundred with a normal
4 range between 84 and 116, typically.

5 Q Were you able to determine at what level Mr. Misskelley's
6 reading and arithmetic and spelling skills were?

7 A Ah, consistently throughout his educational records, Jessie
8 has reached maximum level of about the second or third grade.

9 My current testing indicated third -- beginning fourth
10 grade for those skills. He's never passed the Arkansas minimum
11 standards tests. He's never, ah -- looking at previous -- from,
12 ah, about ten different measurements over the years of a pretty
13 consistent pattern of second, third or fourth grade level.

14 Q In your report you refer to a measure of moral judgment or
15 reasoning?

16 A Yes.

17 Q Can you tell the Court at what level Mr. Misskelley is in
18 regard to this reasoning ability?

19 A The concept of moral reasoning that I developed or that I
20 used was developed by a fellow by the name of Lawrence Kolberg
21 and comes from the work of Jean Piaget.

22 And basically what Kolberg argues is that -- is that people
23 -- well, let me rephrase that. I'm -- let me do Piaget first.
24 I have to do that to make Kolberg make sense.

25 What Piaget argues is that over the years people think

1 qualitatively different. In terms of intelligence what he's
2 saying is that what we talk about in the WAIS-R and those kinds
3 of measurements is that we talk about intelligence as being a --
4 a -- a -- quantitative thing.

5 The whole Piagetian notion is that there is a qualitatively
6 different kind of thinking, that young children think
7 differently than adolescents and adolescents think differently
8 than adults think.

9 Q So what you're saying is that a three or four-year-old
10 child would have a different type of reasoning ability or
11 intellectual level than, say a twelve-year-old?

12 A Yes. And what Piaget also argues and Kolberg as well is
13 that -- is that -- it is -- it is -- it is not just being less
14 able to do what adults do but it is qualitatively different than
15 what adults do.

16 Ah, for example. Ah -- ah -- typically in adult thinking.
17 In -- in adult problem solving. Adults make hypotheses about
18 the world and then gather evidence to support or reject that
19 hypotheses. If the evidence is not supportive, they change the
20 hypotheses and file new ones.

21 In little children they make hypotheses about the world and
22 gather evidence and when the evidence doesn't fit, they change
23 the evidence to fit their hypotheses. That is, Piaget's from a
24 book is the child's conception of reality. That is, that
25 children basically construct their own reality.

1 Q Doctor, would that be similar to an adult stepping outside
2 on a cold morning and realizing it was cold and went back in to
3 get a jacket and maybe a small child stepping out on the same
4 day and, "Well, it is cold but I don't need a jacket."

5 A Ah, no. It's -- it's -- um -- um -- it's more in terms of,
6 ah, if you see a small child, three or four, and you say to
7 them, ah, ah, "Don't eat any cookies before supper," and then
8 you watch the child and he goes to the cookie jar and takes one
9 out. He starts eating them. And you say to him, "I told you
10 not to eat any cookies before supper." The child says, "I
11 didn't."

12 Well, you have just watched him go and do it, okay, so if
13 you explore that further, what the child is saying to you -- and
14 the child's perception of reality is that -- is that, "I was
15 hungry and got something to eat." And for a child, being hungry
16 and getting something to eat is logically different than,
17 "Getting cookies when you told me not to." Those are -- those
18 are independent kinds of events for a child.

19 Q Where does Mr. Misskelley fit into this?

20 A Jessie tends to fit into the child thinking category. That
21 is -- that is Jessie constructs reality on kind of about the
22 same system that a six, seven-year-old child would do. Ah,
23 that, ah, you want tests or would that be helpful to show you
24 samples?

25 Q Are you talking about some of the tests?

1 A Yes.

2 MR. STIDHAM: Would the Court permit that?

3 THE COURT: Go ahead.

4 BY THE WITNESS:

5 A Ah, ah, ah, let me bring out some little tokens here.

6 (DEMONSTRATING) If we have, ah, a small child count the number
7 of chips in each row, they'll count, "One, two, three, four,
8 five, six. One, two, three, four, five, six." Then if you ask
9 a small child, "Which one has more in it?" The child will say,
10 "This one," because it is longer.

11 If I take these out and spread them out even further -- the
12 white ones -- and have them count them again, "One, two, three,
13 four, five, six. One, two, three, four, five, six," and ask
14 which one has more in it, they'll say, "This row does now."

15 That is -- that is -- that kids think in -- little kids
16 think in terms of -- of -- of one dimension. It is longer, has
17 to have more in it. And the fact that it has the same
18 quantitative number, that is, six has no meaning to them.

19 That's what I was talking earlier about -- about -- about
20 longer has to have more in it. The fact that both rows have six
21 in them to a child is totally meaningless. They only deal with
22 it in terms of one dimension.

23 Another -- ah -- ah -- if we have -- have a small child
24 take a ball of clay (DEMONSTRATING) -- I don't know if I'll have
25 these quite equal -- but if you have them so that two of them

1 are the same equal sizes, and typically when you have little
2 kids do it, they'll play back and forth until they get precise
3 notions that they are both the same size. And then you say,
4 "Yes, those are both the same size."

5 Then you do this (DEMONSTRATING) and you ask the child,
6 "Which one is bigger now?" And they'll say, "This one," because
7 it is longer.

8 You do this again (DEMONSTRATING) and you ask them, "Are
9 they both the same size again now?"
10 They'll answer, "Yeah." (DEMONSTRATING) "Which one is bigger
11 now?" "This one."

12 Or if I do it -- flatten them out as a pancake
13 (DEMONSTRATING). "This one," because it is taller.

14 That is -- that is -- that children think in terms of one
15 dimension, single dimension, single concept. Now, when we
16 translate that into moral development, okay, moral development
17 in children then is done on that same kind of single dimension
18 criteria.

19 Ah, let me show you one of the actual tests that we did
20 with, ah --

21 Q Did you perform either of those tests --

22 A Yes, I did. I have one with two different farms and we put
23 barns and cows on them. If I can find one, I'll show you one
24 that Jessie did.

25 Q Which of the two tests that you just demonstrated did --

1 well, did Mr. Misskelley perform both of those tests or one of
2 those?

3 A He performed all of those in terms of what we would expect
4 from a five to seven-year-old child.

5 Q So he said that the --

6 MR. FOGLEMAN: I object to Mr. Stidham leading
7 the witness.

8 THE COURT: Avoid leading. He's an expert. He
9 can pretty well state his own opinions.

10 BY MR. STIDHAM:

11 Q If you could, explain to the Court the choices that were
12 made in the clay test by Mr. Misskelley?

13 A Jessie did as I -- ah, well, when I -- when I had Jessie
14 decide were these the same size, he said, "Yes," those were the
15 same size.

16 If I went to the system where I did this (DEMONSTRATING)
17 Jessie decided this one was bigger, that it was longer. If I
18 went back in the other direction and asked him were they the
19 same size again, Jessie said, "Yes." (DEMONSTRATING) "Now which
20 one is bigger?" "This one."

21 That is -- that is -- and the same is true with the cows in
22 the barn. If I did them flat (DEMONSTRATING) this way, Jessie
23 responds (DEMONSTRATING) in single -- but it's not being
24 bothered by the fact that they are the same size and then one's
25 bigger and the other one is littler and then they are the same

1 size again -- that does not bother little kids. That -- that --
2 that doesn't bother them because they only think about the world
3 in terms of a single dimension.

4 Now, in terms of moral systems, ah, we look at, ah, things
5 such as, if I, ah -- one which I did with Jessie. There's a
6 little girl who is being helpful with her father and he wants
7 her to help him and they are being -- having this good time and
8 the father asks the daughter to help him fill the fountain pen.
9 The child is helping her daddy, being really good. She happens
10 to accidentally spill the ink. It makes a spot of ink this big.
11 (INDICATING)

12 There's another little girl who is playing with the ink
13 when she's not supposed to be. She spills the milk -- I'm
14 sorry, the ink and makes a spot this big (DEMONSTRATING). Which
15 child did the worst thing?

16 And Jessie's response is, "The bigger spill." That is --
17 that is that moral decisions are made in terms of size of
18 consequence, not any kind of notion of intent-- ah, ah, ah, ah
19 -- I guess mostly in terms of intent.

20 Ah, I have a story about a man whose wife is dying of
21 cancer and, ah, a druggist invents a miracle cure. It costs the
22 druggist two hundred dollars to make a dose. He's charging two
23 thousand dollars a dose. So the man's wife goes and he can --
24 he borrows -- he goes -- he sells everything. He can get
25 together -- is able to get only one thousand dollars. He goes

1 to the druggist and says, "All I can get is a thousand dollars.
2 Can I have a dose for a thousand dollars or can I sign a
3 promissory note," and the druggist says, "No."

4 So that night the man breaks into the pharmacy and steals a
5 dose of medication for his wife and gives it to his wife.

6 Now, the question that it becomes is, is was he right or
7 wrong to do that. Obviously there are multiple levels of right
8 and wrong. That -- that one is a very, very concrete level of
9 it's wrong to take things that don't belong to you. It's a very
10 concrete level of operation. We can have ah, ah, ah, more
11 complicated ones is that people may have a -- a -- a moral
12 responsibility to share their things with other people.
13 Whereas, at a more higher universal level is that -- is that --
14 is that a human life is more important than money. You know, so
15 there are multiple levels we can kind of decide this issue.

16 Jessie tends to do all those contradictions in terms of
17 it's right and wrong. That is a -- very again child-like
18 conception of what is morally right and wrong.

19 Q How did Mr. Misskelley fare on the Minnesota Multi-Phasic
20 Personality Test?

21 A Because Jessie is unable to read terribly well, ah, I read
22 it to him so it was a complicated, long process. Basically what
23 we find with Jessie is a very small elevation on a -- on three
24 of the, ah, clinical scales. And, ah, mostly what we find with
25 Jessie is, ah, he kind of, ah, has severe inferiority complex,

1 severe insecurities, ah, has, ah -- lives in kind of a schizoid
2 world. By that I mean that he's not -- he's not out of contact
3 with reality in that sense but rather that -- that -- that -- he
4 cannot cope -- doesn't understand the world very well at times
5 and so he kind of lives in his own little world lots of times
6 because he doesn't have the wherewithal to understand the
7 outside world.

8 Ah, when, ah, Jessie is under stress he ah, ah, ah rapidly
9 ah, ah, ah reverts into, ah, fantasy and daydreaming, ah, and at
10 times can't tell the difference between fantasy and reality.

11 Q Your diagnosis as far as the axes -- what diagnosis did you
12 make with regard to Mr. Misskelley?

13 A On axis one I diagnosed him as adjustment disorder with
14 depressed mood. That diagnosis is kind of temporary given the
15 circumstances that he's under. He's having to adjust to being
16 on trial, adjust to being in prison, adjust to a whole lot of
17 things and that causes -- he's having some difficulty doing
18 that. Also has a history of psychoactive substance abuse.

19 Q What does that mean?

20 A He's -- he's -- he's used, ah, marijuana. For a couple of
21 years he huffed gasoline. He's used marijuana. He's used a lot
22 of alcohol. Ah, tried some, ah, -- experimented with white
23 crosses and other kinds of drugs as well. So that diagnosis
24 mostly says that he has multiple experiences with a variety of
25 drugs.

1 Q Are diagnoses made within axis one -- are those recognized
2 by professionals as being treatable problems?

3 A Yes. The ah -- ah -- ah DSM3 is decide with five axes
4 level. The first one is -- is -- are those illnesses that are
5 possible for us to treat or at least keep under management.

6 Q Let's talk about axis two and your diagnosis of that.

7 A Axis two the diagnosis was borderline intellectual
8 functioning. That is -- that's what we talked about earlier in
9 terms of his IQ level. That is viewed as a relatively permanent
10 stable process. It is not likely to change. You're not going
11 to get any great differences in Jessie's IQ in years assuming
12 something doesn't happen like a brain trauma. Other than that,
13 we're looking at this as being a relatively stable level of the
14 functioning and it has been up to this point.

15 Q That is reflected in his previous IQ testing?

16 A Yes.

17 Q Are there any other diagnoses?

18 A We diagnosed a developmental disorder. That is that Jessie
19 has some reading dysfunctions, some academic dysfunction and
20 finally with some personality trait dysfunctions as well,
21 primarily schizotypal, antisocial and dependent.

22 Q I notice in axis three you have no diagnosis. Could you
23 describe what axis three is?

24 A Axis three are physical diagnoses. If he had diabetes or
25 -- ah -- ah -- ah -- the blind -- or something of that sort.

1 Q In your conclusion you talk about Jessie having marked
2 deficits in judgment and memory. Could you tell the Court what
3 that means?

4 A Jessie has difficulty remembering both long-term and
5 short-term. Has deficits in judgment in that ah -- ah --
6 questions such as, ah, if you were walking down the street and
7 found an envelope was already addressed and sealed with a new
8 stamp on it, what would you do with it?

9 Jessie's response was, "Well, I'd pick it up and see who it
10 belonged to and if I knew them, I'd tried to go find them. If I
11 didn't know where they were, I probably would take it back and
12 put it where it was."

13 That is -- ah -- ah -- ah -- it is not a very effective
14 judgmental thing to do with that.

15 Q You mentioned earlier about pressure or stress and what
16 happens to Mr. Misskelley when that happens?

17 A Yes. Typically when Jessie is under stress ah -- ah -- ah
18 and because of his child-like perception of reality, when under
19 stress, Jessie reverts back to kind of constructing reality as
20 he chooses it which in one sense then makes mention of -- of --
21 of what adults would see as ah -- ah -- ah -- probably fantasy.

22 Q Could you refer to page eight of your report? In the next
23 to the last paragraph you refer to Mr. Misskelley's ability to
24 perform a complicated criminal act.

25 A With the marginal intellectual ability that Jessie has,

1 with his ah -- ah thinking processes, with his ah -- ah -- ah --
2 low level of functioning, Jessie would have a tough time
3 planning much of anything more that would last more than five or
4 ten minutes. That is, that, ah, Jessie is just not capable of
5 putting together long-term complicated plans.

6 Q Dealing with the specific concept of mental maturity, what
7 level of maturity would you place Mr. Misskelley at?

8 A I would place Jessie at the level of a child between five
9 and eight, five and nine.

10 Q The statute dealing with waiver of transfer to Circuit
11 Court refers to the possibility of rehabilitation. Of course,
12 Mr. Misskelley is innocent until proven guilty, but with the
13 problems that he has with his mental functioning levels, is he
14 someone you would refer to as could be rehabilitated?

15 A Ah, in this case rehabilitation is a complicated issue. We
16 talked about the fact that he is not going to get any more
17 intelligent than he is. So in that sense we're not going to be
18 able to rehabilitate that. Ah -- ah -- in terms of some of his
19 ah -- ah -- ah -- adjustment disorders, his personality
20 outbursts, those kinds of things, yes, those are quite amenable
21 to treatment particularly at his age.

22 CROSS EXAMINATION

23 BY MR. FOGLEMAN:

24 Q Doctor, you have indicated that you spent some 11 hours
25 with Mr. Misskelley. Is that right?

1 A Yes.

2 Q What did those 11 hours consist of?

3 A They consisted of doing an interview.

4 Q How long did the interview last?

5 A Probably on the first day hour, hour and a half maybe. Ah,
6 then we did, ah, some other testing that day.

7 Q How long did that testing last?

8 A Ah, hour, hour and a half, I guess.

9 Q Did you do anything else that first day?

10 A Ah, that was probably all.

11 Q How about the second time on the 22nd of October?

12 A The, ah, second time we spent a lot of time, ah, doing the
13 MMPI because I had to read it all to him.

14 Q You had to read quite a bit to him?

15 A Yes.

16 Q Some five hundred and some odd --

17 A Yes, yes, uh-uh.

18 Q How long did that take?

19 A Probably hour and a half, maybe two hours. We stopped
20 along the way, you know, just kind of a break because it was
21 such a long difficult process.

22 Q What else did you do that day?

23 A We did some other testing.

24 Q What type of testing?

25 A Ah, as I recall we did the -- ah -- some -- ah -- some --

1 some of the Kolberg stuff, Lawrence Kolberg stuff, some of the
2 mental maturity stuff.

3 Q How long did that stuff last?

4 A Oh, probably about an hour.

5 Q What else did you do that day?

6 A That's probably all, I think.

7 Q How about on the fourth of November?

8 A Okay. That date we did ah -- ah -- ah -- completed the
9 mental status evaluation.

10 Q What does that consist of?

11 A Ah, that consists of a variety of questions which deal
12 with, ah, being in contact with reality, basic intelligence
13 levels. It is a standard form, ah, used to -- to assess whether
14 people are competent or not competent.

15 Q You determined he was competent?

16 A Yes.

17 Q How long did that take?

18 A It takes about a half hour to 45 minutes.

19 Q What else did you do that day?

20 A We did a, ah, measurement of ah -- ah -- ah --
21 suggestability. We did --

22 Q Go ahead --

23 A I'm sorry.

24 Q Go ahead.

25 A Ah, we reviewed some other stuff that Jessie responded to

1 and further explored some of his responses to other questions,
2 other issues.

3 Q Um-hum. How long did that last?

4 A Two and a half, three hours.

5 Q And in formulating your opinions you not only took into
6 consideration the tests and your visits, but you also indicate
7 there are available some five to six hundred pages of Jessie's
8 school records. Did you read those?

9 A Yes.

10 Q They weren't only available but you read them?

11 A Yes, I did.

12 Q There was also some of his school work that you say
13 Jessie's parents provided?

14 A Yes.

15 Q Did you talk to any of his school officials?

16 A No, I did not.

17 Q You did not. You also indicate in one place that he had
18 some minor criminal offense problems.

19 MR. STIDHAM: Your Honor, I'm going to object to
20 that.

21 THE COURT: Let's don't go into that at this
22 time.

23 MR. FOGLEMAN: Your Honor, I don't know how else
24 --

25 THE COURT: Ask him if he took them into

1 consideration.

2 MR. FOGLEMAN: I want to ask him a question about
3 that.

4 MR. STIDHAM: Your Honor, I strongly object and
5 would argue that that is not admissible, certainly not
6 in this setting. Again we are talking about issues
7 that I raised earlier at the bench and I would like to
8 approach the bench again and talk about those.

9 (THE FOLLOWING CONFERENCE TOOK PLACE AT THE
10 BENCH)

11 MR. STIDHAM: We are entitled to have a ruling on
12 the admissibility of prior offenses. I know this is a
13 hearing for transfer to --

14 THE COURT: Wait a minute. I'm not making any
15 ruling that any prior offenses are admissible. In
16 fact the strong probability is that they are not. For
17 the purposes of this hearing, they are relevant.

18 MR. STIDHAM: I agree, your Honor, and we would
19 ask that we have a closed hearing with regard to those
20 issues.

21 THE COURT: I did that the other time, and I was
22 probably wrong in doing that so I'm going to overrule
23 your motion.

24 MR. STIDHAM: We are entitled to the same rights
25 that Mr. Baldwin has, and we're also entitled to a

1 fair and impartial jury trial, and if this stuff is
2 published tomorrow, we're not going to get that right.

3 THE COURT: You cannot stop the media from
4 printing whatever they choose. I hope that they use
5 proper restraints.

6 MR. STIDHAM: My experience in the past is there
7 has been no restraints, your Honor. That's why the
8 statement was on the front page.

9 THE COURT: I read something this morning, too,
10 where you were quoted.

11 MR. STIDHAM: Matters of public record, your
12 Honor.

13 THE COURT: Well, it had to do with your trial
14 strategies and procedures. Anyway, I will overrule
15 your motion.

16 (RETURN TO OPEN COURT)

17 THE COURT: You may proceed. Overruled. And in
18 doing so I'm reversing the ruling I made in Jonesboro,
19 and I recognize that, and I think I probably was in
20 error to close that hearing. I don't think it was any
21 harmful error, however. If anybody, the State should
22 have been the one objecting, but go ahead.

23 BY MR. FOGLEMAN:

24 Q Doctor, what I was referring to, you mentioned on page four
25 of your report that, "Jessie indicates he has been involved in

1 some minor legal difficulties including a breaking of a window
2 and other relatively minor juvenile offenses."

3 A Um-hum.

4 Q Did you check with the juvenile authorities to see what
5 offenses he had?

6 A No, but Mr. Stidham had some of the juvenile records, and I
7 did check with those.

8 Q You relied on what Jessie told you and what his lawyer
9 provided to you?

10 A Yes?

11 Q All right.

12 A Legally I have no way ethically to ask Jessie's juvenile
13 probation officer any questions about --

14 THE COURT: Did you review the files involving
15 this case?

16 THE WITNESS: I reviewed Jessie's confession and
17 the Medical Examiner's office reports, and that was
18 all I saw in terms of records of this case.

19 BY MR. FOGLEMAN:

20 Q You indicate on page two of your report that the school
21 records indicated that Jessie had a variety of conflict problems
22 at school with aggressive outbursts.

23 A Yes.

24 Q What did those involve?

25 A Sometimes hitting other kids. Sometimes leaving the room

1 or leaving the locale in conflict with the teacher so he would
2 leave.

3 Q That is an aggressive outburst by leaving?

4 A Yes.

5 Q You consider that an aggressive outburst?

6 A Yes, um-hum.

7 Q You indicate that -- something about a bicycle drawing
8 test?

9 A Yes.

10 Q Tell us about a bicycle drawing test.

11 A It is a blank piece of paper. You have a person draw a
12 bicycle for you.

13 Q Isn't it true that Jessie had difficulty in remembering and
14 recalling visual information?

15 A Yes.

16 Q You also indicated that he had mild psychotic
17 characteristics?

18 A Possibility of them, yes.

19 Q Isn't it true that he also indicated a need to demonstrate
20 his masculinity?

21 A Yes.

22 Q That he had aggressive tendencies?

23 A Yes.

24 Q And you indicated a mild elevation in an F scale on MMPI-2?

25 A Yes.

1 Q Which can be viewed as attempted malingering?

2 A Yes.

3 Q That his profile type is a common profile for those
4 diagnosed as being paranoid schizophrenic?

5 A Yes.

6 THE COURT: I'm reading where you said, "There is
7 no indication Jessie does suffer from a severe
8 pathological disorder."

9 THE WITNESS: All I said with the MMPI
10 interpretation is that some people who have paranoid
11 schizophrenia have that diagnosis as do other people.
12 Just because he has that profile, it does not mean --
13 that is, the MMPI -- you cannot use it by itself.
14 That is, ah, we have to take into account all evidence
15 at one time.

16 THE COURT: I'm interested in this statement too:
17 "While Jessie shows the potential for aggressive
18 behavior on assessment instruments and a variety of
19 records indicate Jessie has indeed had aggressive
20 outbursts in the past," are you suggesting that there
21 is a psychological instrument that can predict future
22 violent behavior?

23 THE WITNESS: No, I am not.

24 THE COURT: What are you saying?

25 THE WITNESS: I'm saying that Jessie has a low

1 level of tolerance, low level of frustration, minimal
2 ah -- ah -- ah -- intellectual skills, and it is not
3 unusual for people to have that combination of things
4 who when they are in frustrating circumstances to act
5 out aggressively.

6 BY MR. FOGLEMAN:

7 Q Doctor, were you aware that in April -- on April 12th of
8 this year that Jessie was placed on probation in Juvenile Court
9 for a third degree battery on a thirteen-year-old girl?

10 A Yes.

11 Q You were aware of that?

12 A Yes.

13 Q And that in January he had also appeared in Juvenile Court
14 and was found to be a delinquent on a charge of criminal
15 mischief, first degree?

16 A Was that when he broke the windows?

17 Q On a railroad.

18 A (NODS HEAD)

19 THE COURT: You are nodding in the affirmative.
20 Is that what your nod is for?

21 THE WITNESS: Ah -- that -- ah -- ah -- I'm not
22 sure I'm aware of the January charges. I don't know
23 the dates is all. I'm aware of the difficulties.

24 THE COURT: Well, the court reporter can't pick
25 up a nod.

THE WITNESS: I'm sorry. I was processing information.

BY MR. FOGLEMAN:

Q Doctor, on your diagnosis I note that you do not make a diagnosis that he's mentally retarded?

A Right.

THE COURT: Did I also understand you to say unequivocally that he is competent to proceed in these proceedings?

THE WITNESS: Yes.

THE COURT: And that he understands the traditional legal notion of right and wrong?

THE WITNESS: Yes.

THE COURT: What was his chronological age at the time of the event?

THE WITNESS: Ah, that was in May?

THE COURT: I believe so.

THE WITNESS: He would have been seventeen.

THE COURT: And when you examined him?

THE WITNESS: He was eighteen. He had just turned eighteen.

THE COURT: Does one with an IQ of 72 as they progress in age, do they develop what we call, or what I call -- and I'm not sure what your term for it would be -- "street smarts?"

1 THE WITNESS: It is possible, yes.

2 THE COURT: Did you in your interview with him
3 determine whether or not he had what I'm calling
4 "street smarts" -- and I think you know what I mean.

5 THE WITNESS: If you're saying of a -- of a --

6 THE COURT: -- Even though his intelligence
7 capacity is borderline, did he not function in society
8 well?

9 THE WITNESS: He did not function well. He
10 functioned marginally.

11 THE COURT: All right.

12 BY MR. FOGLEMAN:

13 Q On your diagnosis under axis two, number three oh one point
14 nine, or ninety, you say, "Personality disorder NOS with
15 schizotypal, antisocial and dependent characteristics."

16 A Yes.

17 Q Could you explain what that means?

18 A Ah, on axis two G diagnoses that are viewed as being
19 relatively stable, permanent or rather all encompassing. In
20 terms of the personality diagnosis, people who have personality
21 disorders you're going to find an all encompassing thing they
22 kind of live in terms of.

23 Now, there are several different ones. There is a paranoid
24 personality disorder, antisocial personality disorder,
25 schizotypal and others, and each one of them has a set of

1 criteria that makes you one of those.

2 In Jessie's case he had none of -- he did not have a
3 sufficient number of symptoms in any one of the distinct
4 categories to be one of those, but he did have a couple of
5 characteristics of the antisocial, a couple of the schizotypal
6 and a couple of the dependent. It's kind of -- his -- his
7 personality but in kind of a mixed package.

8 Q In the schizotypal area what were the characteristics
9 there?

10 A Ah -- the -- ah -- ah -- ah -- kind of a strange digressive
11 style of interaction without any loosening of association, just
12 kind of a nebulous, digressive kind of a pattern of interaction.

13 Ah, the tendency to ah -- ah -- ah -- slide into fantasy at
14 times or to have difficulty separating fantasy from reality at
15 times. The ten -- tendency to be fairly withdrawn from many
16 intimate social interaction systems.

17 Q On the antisocial part of it, would that be his aggressive
18 tendencies toward others?

19 A Right.

20 THE COURT: Doctor, were you -- well -- did you
21 have anything else?

22 MR. STIDHAM: No, your Honor.

23 THE COURT: You may stand down. Why don't you
24 remain in the courtroom for a few minutes in case we
25 have something further.

1 THE WITNESS: I'll be glad to, your Honor.

2 (WITNESS EXCUSED)

3 MR. STIDHAM: Your Honor, that's all we have,
4 save rebuttal.

5 MR. FOGLEMAN: I was -- we can go through it
6 again, I suppose -- I was going to offer the same
7 photographs and the same testimony that was offered at
8 the hearing on Jason Baldwin. If we need to go
9 through that testimony again --

10 THE COURT: I can recall them unless you
11 gentlemen want them to offer them again.

12 MR. STIDHAM: Your Honor, may I approach the
13 bench?

14 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH)

15 THE COURT: I wanted to ask him if he was able to
16 in his profile of Misskelley to determine whether or
17 not he was a leader or a follower and how he would
18 have reacted to a strong --

19 MR. STIDHAM: -- I think he --

20 THE COURT: Appeal from a --

21 MR. STIDHAM: -- answered that question.

22 THE COURT: I'm not sure he did in my mind, but
23 I'm going to let you do it if you want to instead of
24 me doing it. If you don't want to do it, fine. I'm
25 just telling you that that was in my mind.

1 MR. STIDHAM: I don't see any reason to. I don't
2 want to raise that particular issue.

3 THE COURT: All right. Go ahead.

4 MR. STIDHAM: Your Honor, I don't have any
5 problem with the Court taking into consideration the
6 same photographs and without him having to go through
7 the process again.

8 I would like to point out -- and if the
9 prosecution has no objection -- I would like the Court
10 to point out that despite the fact that we vehemently
11 oppose the reliability of the statement that Mr.
12 Misskelley -- both statements that he made to the
13 police on June third -- we would point out that in the
14 statement itself does not say anything about any
15 violence employed by Mr. Misskelley in the statement
16 and one of the factors in the code section dealing
17 with transfer is whether or not there was violence
18 employed by this particular juvenile -- not whether
19 the other two did that but whether he did that -- and
20 we would like the Court to take judicial notice of
21 that if the prosecution has no objection, and I
22 wouldn't have any objection to them -- or the Court
23 considering the photographs and other. I think we
24 went through the juvenile --

25 MR. FOGLEMAN: I don't have any objection to the

1 Court taking judicial notice that Jessie said he
2 didn't do any of the cutting.

3 THE COURT: I will consider his statement.

4 MR. CROW: I think it is a matter of law but the
5 statement is coming in for the purposes of this
6 hearing --

7 THE COURT: For the purposes of this hearing I'm
8 going to consider it --

9 (THE COURT AND MR. CROW SPEAKING AT THE SAME TIME
10 UNINTELLIGIBLE)

11 THE COURT: As I recall the only involvement he
12 indicated he directly participated in was that he ran
13 down and restrained one of the victims that was
14 escaping and by that he made himself an accomplice --

15 MR. FOGLEMAN: Of course, that is what he says he
16 did.

17 MR. STIDHAM: We don't want to stipulate that
18 that made him an accomplice but I would ask the Court
19 to give -- for the purpose of this hearing only -- not
20 for admissibility in trial.

21 THE COURT: That's what I'm doing. I'm not
22 giving it any undue weight anyway.

23 MR. FOGLEMAN: We can make a part of the record
24 on this hearing the hearing that was held on Jason
25 Baldwin as far as the proof I put on.

1 MR. STIDHAM: We will stipulate that the Court
2 can take into consideration the photographs --

3 MR. FOGLEMAN: And the officer's testimony --

4 THE COURT: Weren't there two or three previous
5 juvenile --

6 MR. FOGLEMAN: I will have to put on his juvenile
7 stuff because I haven't done that.

8 MR. STIDHAM: Your Honor, we will even stipulate
9 that this was a violent crime. Anybody with half a
10 brain can look at the photographs and determine that.
11 The point we're trying to make and what we want the
12 Court to take notice of is the fact that even though
13 we dispute the admissibility and the liability of the
14 statement Mr. Misskelley made to the police, in his
15 statement he does not make any mention of him
16 personally using or deploying violence.

17 THE COURT: Other than restraining one of them.
18 Okay.

19 (RETURN TO OPEN COURT)

20 JERRY DRIVER

21 having been first duly sworn to speak the truth, the whole truth
22 and nothing but the truth, then testified as follows:

23 DIRECT EXAMINATION

24
25 BY MR. FOGLEMAN:

1 Q Will you please state your name and occupation?

2 A Jerry Driver. I'm the chief juvenile officer in Crittenden
3 County.

4 Q In the exercise of your duties as the chief juvenile officer
5 in Crittenden County, do you have possession of records
6 involving juveniles in Crittenden County?

7 A Yes, sir.

8 Q In the performance --

9 MR. STIDHAM: For the record, again, I know the
10 Court's ruled on this at the bench, but I would like
11 to incorporate our objections dealing with the
12 admissibility of the statement with regard to the --

13 THE COURT: Your objection is that you want a
14 closed hearing on it, not the admissibility of it,
15 because it is clearly relevant and admissible and
16 previously I had allowed the hearing to be in-camera
17 because of the possibility I could transfer it to
18 juvenile. On reflection on that, I probably shouldn't
19 have done that so I'm going to allow it all out.

20 As far as the admissibility of the information
21 during the trial, however, I'm certainly not ruling on
22 that. In all probability it is not admissible at
23 trial. But for the purposes of this hearing it is.
24 Your objection specifically was that you couldn't
25 trust the press not to print it and I can't stop them.

1 I don't blame you for that.

2 BY MR. FOGLEMAN:

3 Q In the performance of your duties have you come in contact
4 with the defendant, Jessie Lloyd Misskelley, Junior?

5 A Yes, sir.

6 Q Are you familiar with his appearances in Juvenile Court?

7 A Yes, I am.

8 Q When was his first appearance?

9 A First appearance was in May of 1987.

10 Q What was the charge and disposition?

11 A First time he was in court was on a FINS petition, which is
12 a family in need of services. The next occasion was in August
13 of '88. Warrant was issued at that time on a theft of property
14 charge.

15 Q What was the disposition of that charge?

16 A Probation.

17 Q What was his next appearance in Juvenile Court?

18 A Next appearance in Juvenile Court was '92. 12-21 of '92.

19 Q What was the charge there?

20 A Battery and violation of probation.

21 Q His next appearance after the theft?

22 A Yes.

23 Q Would you look at the petition?

24 A (EXAMINING) I take that back. I'm looking at the wrong
25 one. Criminal mischief.

1 THE COURT: What year?

2 THE WITNESS: '92.

3 BY MR. FOGLEMAN:

4 Q That was the date the petition was filed?

5 A Um-hum.

6 Q What was the disposition of that case?

7 A Probation.

8 Q Any other provisions?

9 A Drug testing.

10 Q Is that all?

11 A That's all on this one.

12 Q Is his next appearance -- when was the disposition on that
13 one?

14 A Disposition was the fourth of January of '93.

15 Q And then the next appearance?

16 A Next appearance was April of '93.

17 Q What was the charge there?

18 A Violation of probation and battery third.

19 Q What was the disposition in that case?

20 A Probation and order to get a GED.

21 Q And was that the case where it involved the battery of a
22 thirteen-year-old girl?

23 A Yes, sir.

24 Q Were there any other court appearances besides those three?

25 A I show four court appearances. But I think the last two

1 are combined. They were continued. There's another battery in
2 here.

3 Q That's been disposed of?

4 A It is attached to that second where the flags are.

5 MR. STIDHAM: Your Honor, anything that hasn't
6 been disposed of we object to.

7 THE COURT: I will sustain the objection to that.
8 You are only talking about adjudicated matters.

9 MR. FOGLEMAN: So far. Yes, sir.

10 BY MR. FOGLEMAN:

11 Q As a part of the record in CRJ-88-154, is this a report
12 from the East Arkansas Regional Mental Health Center?

13 A Yes, it is.

14 Q Is that a part of the Juvenile Court file?

15 A Yes, sir.

16 Q Is that kept in the ordinary course of business of the
17 Juvenile Court?

18 A Yes, it is.

19 MR. FOGLEMAN: We would like to offer a copy of
20 this report as a part of the record in this hearing.

21 MR. STIDHAM: The only objection I would have is
22 that the person who conducted this evaluation is not
23 here and I think that would probably be the most
24 appropriate way to introduce that into evidence. I
25 don't think there's been a foundation to allow that.

1 It may be placed in his juvenile file but that doesn't
2 mean that it's admissible even for purposes of this
3 hearing.

4 THE COURT: I will sustain the objection.

5 CROSS EXAMINATION

6 BY MR. STIDHAM:

7 Q The dispositions of each of these juvenile offenses has
8 been probation?

9 A Yes.

10 Q Does that indicate that none of these were serious enough
11 to impose a stay at the training school?

12 A Not necessarily. That just means that we felt at the time
13 it might be appropriate to try probation with him.

14 Q So you didn't think it was appropriate to take him off the
15 streets then?

16 A I have only had dealings with him one time. The other two
17 occurred before I got there.

18 Q To your knowledge he's never been to the training school?

19 A No, sir.

20 (WITNESS EXCUSED)

21 BRYN RIDGE

22 having been first duly sworn to speak the truth, the whole truth
23 and nothing but the truth, then testified as follows:

24 DIRECT EXAMINATION

25 BY MR. FOGLEMAN:

1 Q Will you please state your name and occupation?

2 A Bryn Ridge, detective for the West Memphis police
3 department.

4 Q Did you participate in the investigation of the
5 disappearance of the three murder victims on May the 5th, 1993?

6 A Yes, I did.

7 Q Were you present when the three victims were discovered?

8 A Yes.

9 Q If you would, describe briefly to the Court the condition
10 of the bodies, where they were found and the manner in which
11 they were found?

12 A The bodies were found in a wooded area known as Robin Hood
13 which is on the northern limits of West Memphis between a
14 residential neighborhood and the expressway -- I-40.

15 Q Is it in a wooded area?

16 A Yes, it is.

17 Q Specifically where were they found?

18 A In a ditch in water.

19 Q They were found in water in a ditch?

20 A Yes.

21 Q Approximately how deep was the water?

22 A Two to two and a half feet deep.

23 Q Were the bodies of the victims visible from out of the
24 water?

25 A No, sir.

1 Q How were they discovered?

2 A A shoe was found floating in the water and a boy scout cap
3 was found floating in the water. As officer Mike Allen
4 approached those items that were floating in the water, he found
5 -- he had struck something with his foot.

6 Q In the water?

7 A Yes, sir. When he raised his foot, the naked body of the
8 first victim was located.

9 Q Were the three victims then removed from the water?

10 A Yes.

11 Q Were they clothed?

12 A No, sir.

13 Q Did any of them have any clothing on?

14 A No clothing except the shoestrings they were tied with.

15 Q How were they tied?

16 A Hand to foot on each side. The right hand was tied to the
17 right foot at the ankle. The left hand was tied to the left
18 foot at the ankle.

19 Q Was there any evidence of violence?

20 A Yes.

21 Q Describe for the judge the evidence of the violence.

22 A All of the victims showed wounds to the head, face. There
23 were lacerations, contusions. There was bleeding from the nose
24 and the ear of the first victim. There was cuts to the side of
25 the face of the second victim.

1 Q When you say "cuts," what do you mean? Just a few little
2 pick marks, or what do you mean?

3 A No, sir. It was serious cuts that were five to five and a
4 half inches long which just exposed part of what I call the
5 jawbone, in that area. One of the victims was as if his penis
6 had been removed. My terms, the penis was removed. There were
7 pick marks all over the bodies.

8 Q When you talk about "pick marks," what are you talking
9 about?

10 A It appears like a double edge knife will be used to
11 repeatedly stab -- peck at the skin of the victims with entry
12 having been gained to the flesh.

13 Q Where were those little stab wounds?

14 A Well, on the one with the cutting to his face, it was like
15 all away around the wound. He had marks on his eyelids. The
16 one that the penis was removed was all the way around -- was
17 about a foot in diameter around the genital area.

18 Q Are you talking about just three or four of these stab
19 wounds?

20 A No, sir. I would call it hundreds.

21 Q Did you bring photographs of the scene there?

22 A Yes, I did.

23 Q Did you at my request have those photographs with you?

24 A Yes.

25 MR. FOGLEMAN: Your Honor, we will mark these as

1 one exhibit.

2 THE COURT: They may be received for purposes of
3 this hearing.

4 (STATE'S EXHIBIT SIX IS RECEIVED FOR PURPOSES OF
5 THIS HEARING)

6 BY MR. FOGLEMAN:

7 Q I know they have been received but do they fairly and
8 accurately portray the victims as they appeared to you that day?

9 A Yes, sir.

10 Q The victims were how old?

11 A Eight years old.

12 (WITNESS EXCUSED)

13 MR. FOGLEMAN: With Mr. Driver's testimony and
14 Officer Ridge's testimony being made a part of the
15 record from the prior hearing on Jason Baldwin and
16 asking the Court to take into consideration the
17 photographs introduced at that hearing, the State has
18 nothing further at this time.

19 THE COURT: Anything else? Any statement?

20 MR. STIDHAM: Your Honor, I'd like to make a real
21 brief closing.

22 THE COURT: All right.

23 MR. STIDHAM: The factors set forth in the
24 statute with regard to waiver and transfer to Juvenile
25 Court provide three sets of factors that the Court is

1 to determine on whether or not the case should be
2 transferred to Juvenile Court.

3 The first one is the seriousness of the alleged
4 offense and whether or not violence was employed. We
5 talked about that earlier at the bench and I asked the
6 Court to take notice of the contents of the statement
7 that was previously introduced at Mr. Baldwin's
8 transfer hearing.

9 Again, there's no doubt that this alleged offense
10 is a very serious offense, and I don't think anyone
11 could stand up and say that it's not. But we would
12 like the Court to look at the contents of this alleged
13 statement and without going into the issues of
14 admissibility or reliability, would like to point out
15 and submit that there was no violence employed by this
16 juvenile in this case.

17 The second set of factors is a repetitive pattern
18 of adjudicated offenses which would determine his
19 abilities to rehabilitate, and I would like to point
20 out to the Court that is evidenced by past efforts to
21 treat this juvenile. The information submitted to the
22 Court was that there was four juvenile adjudications,
23 all of which resulted in probationary sentences.
24 Never was he sentenced to the training school. And I
25 would submit to the Court that none of these offenses

1 were serious enough that they demanded anything other
2 than probation. That is the evidence before the
3 Court.

4 There is evidence before the Court that Jessie
5 Misskelley did not receive the counseling that he
6 needed, did not receive the help that he needed and
7 the system failed miserably in providing these
8 services. And we submit he's never had a chance to
9 rehabilitate because nothing has ever been tried.

10 The third set of factors, the prior history,
11 character traits, mental maturity and other factors
12 related to rehabilitation. I would point out to the
13 Court Mr. Misskelley is operating at a low borderline
14 range of intellectual functioning. He has a very low
15 IQ. His mother abandoned him at age four which caused
16 him a significant amount of stress. He's been
17 diagnosed several times as being mentally retarded,
18 came from a dysfunctional family, he was in urgent
19 need of individual or family counseling that he never
20 received. He reads and writes at a third grade level.
21 His moral judgment as pointed out by Dr. Wilkins is
22 that of a five to seven-year-old.

23 In Doctor Wilkins' report he stated that Mr.
24 Misskelley lacks the intellectual wherewithal to
25 develop a complicated criminal act, and he lacks the

1 psychological characteristics we would assume would be
2 part of a premeditated complicated criminal activity.

3 For all of these reasons we would submit that the
4 Court should transfer this case to Juvenile Court, and
5 we would ask that Mr. Misskelley be treated as a
6 juvenile.

7 MR. FOGLEMAN: Your Honor, in considering the
8 defense's motion in this case the first factor to be
9 considered as Mr. Stidham has indicated is to take
10 into consideration the seriousness of the offense and
11 whether violence was employed by the juvenile in
12 commission of the offense. I don't think anybody can
13 argue with the proposition that in this particular
14 case there has not been a more serious offense
15 committed in this judicial district ever than taking
16 the life of the three eight-year-old boys.

17 Now, Mr. Stidham says in the defendant's
18 statement he says he didn't do anything other than run
19 down one of the boys and capture him and bring him
20 back to the place where these three young kids
21 ultimately died. That is what he says that the
22 defendant says. Because he says it doesn't make it
23 so.

24 Secondly, the Court is to look at whether the
25 offense is a part of a repetitive pattern of

1 adjudicated offenses which would lead to a
2 determination that the juvenile is beyond
3 rehabilitation.

4 Well, in this case we do have a series of
5 adjudicated offenses, delinquent offenses, that this
6 juvenile has committed leading up to this offense.
7 Dr. Wilkins himself finds that he's got an antisocial
8 personality, that he has characteristics of his
9 personality which would indicate an aggressive person.
10 In the past he's had aggressive outbursts. He's been
11 a heavy gas huffer. He smokes marijuana, drank a
12 large amount of alcohol. He's got a life-long problem
13 with getting very angry. That he's got mild psychotic
14 characteristics. That there's some evidence of
15 malingering and finally again that he has this
16 antisocial personality characteristic exhibited by his
17 aggressive nature.

18 Your Honor, we submit that because of the
19 seriousness of the crime, his past record as a
20 juvenile, the prior history and character traits of
21 this juvenile, that this case should remain in Circuit
22 Court, should not be transferred to Juvenile Court and
23 should be heard by a jury of twelve and decided by
24 that jury.

25 THE COURT: Anything else?

1 MR. STIDHAM: No, your Honor.

2 THE COURT: The Court will make the following
3 findings: That Mr. Misskelley is competent to proceed
4 based upon Dr. Wilkins' testimony, and I am going to
5 reserve any ruling on your most recent filed motion --
6 the one filed today -- until the State can respond,
7 and that is something we can hear at a later date as
8 to the application of the death penalty if it becomes
9 an issue.

10 As far as your motion to transfer to juvenile,
11 the Court would point out that our Supreme Court has
12 held that there's no requirement that every element or
13 factor that we've been discussing in this particular
14 statute be given equal weight. Holland versus State,
15 311 Ark. 494, a 1993 case, where our Supreme Court
16 held that the serious and violent nature of the
17 offense is sufficient basis for trying a juvenile as
18 an adult.

19 Further, Walker versus State, 304 Ark. 393, a
20 1991 case, where a similar finding was made by the
21 Court that the information itself with no additional
22 evidence was sufficient basis for a finding that the
23 clear and convincing evidence test under the statute
24 Section F was met as to holding a juvenile to answer
25 to an adult crime.

1 Clearly on the facts of this case there's no
2 question whatsoever that it is a most serious crime --
3 three eight-year-old boys and the factual evidence
4 indicated by the photographs as to what happened to
5 them -- is clear and convincing evidence to this Court
6 that the accused juvenile should be tried as an adult.

7 Further, the defendant Misskelley has a juvenile
8 history involving assault and battery on another
9 juvenile. Dr. Wilkins' testimony also indicated there
10 was some proclivity or chance based upon the character
11 traits that Misskelley demonstrated to him that
12 aggressive behavior could occur again.

13 It is unclear to the Court, although I have a
14 strong belief and suspicion from what I have heard and
15 seen, that there's little or no prospect of
16 rehabilitation and would so find.

17 And, therefore, my finding is that Mr. Misskelley
18 in view -- also an additional factor that the Court
19 can consider under the Walker case is that he was
20 seventeen years of age at the time of the offense,
21 that that also weighs heavily that he should answer as
22 an adult for any criminal charge brought against him.
23 In fact he's eighteen today so he was approximately
24 seventeen and a half at the time of the occurrence and
25 that weighs heavily in my decision along with the

1 seriousness of the offense. Therefore, I find that he
2 is to answer to the Circuit Court as an adult.

3 Anything else?

4 MR. STIDHAM: No, your Honor.

5 OSCEOLA, ARKANSAS, DECEMBER 21, 1993, AT 9:30 A.M.

6 MR. STIDHAM: Your Honor, may I approach the
7 bench?

8 (THE FOLLOWING CONFERENCE TOOK PLACE AT THE
9 BENCH)

10 MR. STIDHAM: There's a couple of issues dealing
11 with -- other than the main issue we're dealing with
12 today. We'd like to take that up in chambers. Would
13 you prefer to do that now or after --

14 MR. FOGLEMAN: It's more to just talk about some
15 things than oral motions and arguments.

16 THE COURT: Let's do it afterwards. I don't
17 really know whether you can waive your client's
18 presence or not. I suppose you can.

19 MR. STIDHAM: I'll state that on the record, your
20 Honor.

21 THE COURT: This is also probably a motion I
22 could have ruled on just on briefs and then he
23 wouldn't necessarily have been there. It bothers me a
24 little bit.

25 MR. STIDHAM: I discussed it with his family. I