

1 MARION, ARKANSAS, AUGUST 4, 1993, AT 9:30 A.M.

2 THE COURT: To the ladies and gentlemen of the
3 media, there has been an objection made to cameras in
4 the courtroom. So what I'm proposing to do is to
5 allow you to make a few shots and you're going to have
6 to exit the courtroom. I will allow you to remain in
7 until the defendants are brought in, and then you can
8 get those shots made, and then I'm going to ask that
9 you leave the courtroom. Those of you with still
10 cameras -- that rule -- gentlemen, are you objecting
11 to still shots?

12 MR. FOGLEMAN: Your Honor, we are objecting to
13 all of them as of right now.

14 THE COURT: As of this moment.

15 MR. FOGLEMAN: As of this moment.

16 THE COURT: I'm going to allow them to make some
17 shots in the courtroom since they're already set up.
18 Then they can have that for their file photos.

19 MR. FOGLEMAN: As long as the record shows --
20 Barbara, are you --

21 THE COURT REPORTER: Yes, sir.

22 THE COURT: The record will reflect that there's
23 been an objection made by the State.

24 REPORTER: Your Honor, could I ask for a
25 clarification?

1 THE COURT: Yes.

2 REPORTER: Do you object to the media being here
3 or just the cameras?

4 THE COURT: No, I don't have an objection to the
5 media.

6 MR. FOGLEMAN: We don't object to them either.

7 THE COURT: Nobody objects to that. This is an
8 open courtroom. The objection is to the cameras.
9 Sometimes they can be disruptive, and I understand
10 that. Sometimes people that are called upon to
11 testify are affected by the cameras, as well as the
12 attorneys and the Court.

13 Gentlemen, the reason I'm allowing them to make
14 the pictures now is because they'll just be outside
15 trying to get them as they come and go so let's get it
16 over with.

17 My ruling is based upon the objection of one of
18 the parties -- one of the lawyers involved -- the
19 cameras will be excluded from the courtroom. That
20 does not exclude the press.

21 (CAMERAS LEAVING THE COURTROOM)

22 THE COURT: The Court is ready to proceed with
23 arraignment. Have the defendants been formally
24 arraigned?

25 MR. WADLEY: No, your Honor.

1 THE COURT: Are you asking a formal reading of
2 the information?

3 MR. PRICE: Yes, Your Honor, we are.

4 THE COURT: Jessie Lloyd Misskelley. You are
5 Jessie Lloyd Misskelley, Junior?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You are charged by an information
8 filed by the prosecuting attorney's office with three
9 counts of capital murder. It being alleged that on or
10 about the fifth day of May, 1993, in Crittenden
11 County, Arkansas, you did unlawfully and feloniously
12 and with the premeditated and deliberated purpose of
13 causing the death of another person cause the death of
14 Steven Edward Branch against the peace and dignity of
15 the State of Arkansas.

16 It is also alleged in -- that information is
17 CR-93-516 A and 517 A -- a similar charge -- it being
18 alleged that on that on or about the fifth day of May,
19 1993, in Crittenden County, Arkansas, you did
20 unlawfully and feloniously and with the premeditated
21 and deliberated purpose of causing the death of
22 another person cause the death of Michael Moore
23 against the peace and dignity of the State of
24 Arkansas.

25 It is further alleged in CR-93-518 A that you

1 committed the crime of capital murder, it being
2 alleged that on or about the fifth day of May in 1993
3 in Crittenden County, Arkansas, you did unlawfully and
4 feloniously and with the premeditated and deliberated
5 purpose of causing the death of another person cause
6 the death of Christopher Byers.

7 Now that I have read the formal informations to
8 you, do you understand the nature of the charges
9 against you?

10 THE DEFENDANT: Yes.

11 THE COURT: Have your attorneys informed you of
12 the range of punishment for that charge? In other
13 words do you understand the charges against you and
14 the potential punishment?

15 THE DEFENDANT: Yeah, I understand.

16 THE COURT: How do you plead -- guilty or not
17 guilty?

18 MR. STIDHAM: Not guilty, your Honor.

19 THE COURT: Your pleas of not guilty to all three
20 counts will be noted. You may have a seat.

21 THE COURT: Charles Jason Baldwin. You're
22 Charles Jason Baldwin?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You have been charged by three
25 separate informations filed by the prosecuting

1 attorney's office with the crime of capital murder, it
2 being alleged that on or about the fifth day of May in
3 1993 in Crittenden County, Arkansas, you did
4 unlawfully and feloniously and with the premeditated
5 and deliberated purpose of causing the death of
6 another person did cause the death of Christopher
7 Byers.

8 And a similar information charged you with
9 capital murder. On the fifth day of May in 1993 in
10 Crittenden County, Arkansas, that you did unlawfully
11 and feloniously and with the premeditated and
12 deliberated purpose of causing the death of another
13 person cause the death of Michael Moore.

14 And in a separate information, a similar charge
15 of capital murder, it being alleged that on or about
16 the same day, the fifth of May, 1993, in Crittenden
17 County, Arkansas, you did unlawfully and feloniously
18 and with the premeditated and deliberated purpose of
19 causing the death of another person cause the death of
20 Steven Edward Branch.

21 Do you understand what you're charged with?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand the range of
24 punishment?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: How do you plead to those charges --
2 guilty or not guilty?

3 MR. WADLEY: Your Honor, as to each information
4 we would enter a plea of not guilty.

5 THE COURT: Pleas of not guilty will be shown in
6 all three counts. You may have a seat.

7 Damien Wayne Echols. You're Damien Wayne Echols?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You are charged in three separate
10 informations filed by the prosecuting attorney's
11 office with the offense of capital murder, it being
12 alleged that on or about the fifth day of May in 1993
13 in Crittenden County, Arkansas, you did unlawfully and
14 feloniously and with the premeditated and deliberated
15 purpose of causing the death of another person cause
16 the death of Michael Moore.

17 A similar information charges you with capital
18 murder, it being alleged that on or about the fifth
19 day of May, 1993, in Crittenden County, Arkansas, you
20 did unlawfully and feloniously and with the
21 premeditated and deliberated purpose of causing the
22 death of another person cause the death of Steven
23 Edward Branch.

24 And a similar information charges you with
25 capital murder, it being alleged that on or about the

1 fifth day of May, 1993, you did unlawfully and
2 feloniously with the premeditated and deliberated
3 purpose of causing the death of another person cause
4 the death of Christopher Byers.

5 Do you understand what you are charged with in
6 those three charges?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has it been explained to you what the
9 possible range of punishment is for those charges?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How do you plead -- guilty or not
12 guilty?

13 THE DEFENDANT: Not guilty.

14 THE COURT: That is to all three counts?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Pleas of not guilty will be shown in
17 all three counts.

18 Let's set a date for the termination of motions
19 or a motion day and that will be the 27th day of
20 September. As of the 27th of September all motions
21 that you intend to file for severance, for
22 suppression, for change of venue -- I will expect
23 those motions to be of record of that date or not
24 filed at all. That is the cut-off date.

25 I am ready to hear -- I understand that you are

1 each ready to hear discovery motions. I think I'll
2 take the State's discovery motion first. That ought
3 to be the easiest to dispose of.

4 MR. FOGLEMAN: Your Honor, the State on June 17
5 filed motions for discovery in each of the cases.

6 In regard to Jason Baldwin the State has
7 requested that they be allowed blood, saliva, head
8 hair, body hair, pubic hair, also fingerprints,
9 footprints and handwriting specimens.

10 In regard to Mr. Misskelley, the State is
11 requesting blood, saliva, head hair, body hair, pubic
12 hair, fingerprints and footprints.

13 And in regard to Damien Echols the State is
14 requesting footprints. This is all pursuant to Rule
15 eighteen point one of the Arkansas Rules of Criminal
16 Procedure.

17 THE COURT: All right, gentlemen. One at a time.
18 Do you have any objection?

19 MR. WADLEY: Your Honor, as you're aware, myself
20 and Paul Ford represent Jason Baldwin. The State has
21 filed a motion, as Mr. Fogleman has just stated,
22 requesting certain things from the defendant. Hair,
23 saliva -- the things that the Court was just told
24 about.

25 Your Honor, the State of Arkansas has already

1 obtained these things from this defendant. We have
2 filed a motion to suppress in this case. One of the
3 issues dealing with that has to do -- the original
4 search warrant requested the body of the defendant to
5 recover these things. It's our position, your Honor,
6 that these things were obtained illegally and not
7 pursuant to Arkansas law, that the search was invalid
8 and until his Honor makes a ruling on our motion to
9 suppress in this case, we feel the State's motion
10 requesting these items should not be granted until
11 that time comes.

12 If the Court makes a ruling that these items were
13 illegally obtained, the fruit of the poisonous tree
14 doctrine will apply. That evidence will not be
15 admissible and in Arkansas a violation in this manner
16 results in exclusion of the evidence at trial. That
17 is the remedy for a violation, for instance, an
18 illegal search.

19 Therefore, until the Court hears our suppression
20 motion and rules on that motion, then the State's
21 request should not be granted until the Court makes a
22 ruling on the motion to suppress.

23 We don't feel, Judge, that they should be able to
24 -- until that happens come back in and take more
25 samples.

1 MR. FOGLEMAN: I'd like to respond to that, your
2 Honor. Your Honor, it is my understanding that there
3 may have been blood and hair and saliva taken from
4 Charles Jason Baldwin at the time of the arrest.
5 There was a question raised about whether it was
6 covered sufficiently in the search warrant. Those
7 items haven't been used. They have not been sent to
8 the Crime Lab. We're asking under the rules of
9 criminal procedure for an order permitting the taking
10 of those samples. There is something that -- it
11 doesn't -- the fruit of the poisonous tree doctrine
12 does not apply because we have not used those items.
13 These are not items we would be obtaining as a result
14 of an illegal search. They would be pursuant to the
15 Court's order which we would be entitled to whether or
16 not the search warrant covered it or not.

17 THE COURT: Are you telling me those items could
18 possibly lead to substantive evidence?

19 MR. FOGLEMAN: Yes, sir.

20 THE COURT: All of them?

21 MR. FOGLEMAN: Yes, sir. And also -- the
22 fingerprints I'm sure were taken. We want a more
23 detailed set of fingerprints. Footprints haven't been
24 taken and we also want specimens of his handwriting
25 which don't have anything to do with their objection.

1 THE COURT: You don't have any objection to that?

2 MR. WADLEY: Judge, they have already taken
3 handwriting samples.

4 MR. FOGLEMAN: That's not true, your Honor.

5 MR. WADLEY: You're telling us that hasn't
6 happened?

7 MR. FOGLEMAN: No specimens of handwriting have
8 been taken other than some writing materials from the
9 defendant's home or trailer. We don't know -- until
10 we have the handwriting samples, we don't know where
11 they came from.

12 MR. WADLEY: In response to Mr. Fogleman, whether
13 or not the State intends to introduce evidence or not
14 has nothing to do, Judge, with an illegal search and
15 the results of that afterwards. That's our position.

16 THE COURT: I understand that. The motion for
17 discovery to take body fluids, hair or scrapings from
18 the fingernails and et cetera, there has to be some
19 indication that they would lead to evidence. In other
20 words if there is no basis for taking a blood sample,
21 I wouldn't order it. But apparently he's telling me
22 there is trace evidence that they need to make
23 comparisons on all of those items. Is that what
24 you're telling the Court?

25 MR. FOGLEMAN: That's correct, your Honor.

1 MR. WADLEY: Judge, we are telling the Court that
2 they have already done that and we're telling the
3 Court it was done in an improper way and the remedy is
4 exclusion of the evidence.

5 THE COURT: I'm going to overrule your motion.
6 I'm not ruling on the motion to suppress that that was
7 already taken. I'll hear that at a later time. Plus,
8 you would be entitled to raise the same objection
9 you're raising now to any discoverable evidence that
10 might be derived from these. Those are not
11 unreasonable intrusions to the body. They are
12 normally matters that the Court would routinely order
13 in cases of this nature or any other. So I'm going to
14 order the taking of those samples from the person and
15 have them submitted to the Crime Lab. You can
16 preserve any objection you had, and I'll rule on that
17 later.

18 MR. WADLEY: Thank you, Judge. Note my
19 exceptions.

20 THE COURT: Does anyone else object?

21 MR. STIDHAM: Your Honor, we object on the basis
22 of the Fourth Amendment provisions and also amendments
23 of the Arkansas Constitution. The basis for our
24 objection basically is that the taking of these
25 samples is an unnecessary and unreasonable intrusion

1 to the body of the defendant. I would like to make
2 that argument.

3 THE COURT: That argument can be noted. In many,
4 many, many cases the Court has ruled that to take hair
5 snippings, fingernail scrapings, blood samples,
6 fingerprints, footprints, saliva, involve only a minor
7 intrusion into the person and, therefore, are not
8 subject to the constitutional objections that you
9 raise and are routinely ordered by courts. I will
10 grant that discovery motion.

11 MR. STIDHAM: Note our exception.

12 MR. WADLEY: I believe the State in its motion in
13 regard to Mr. Baldwin is seeking skin samples. I
14 don't know what they mean by that. I believe that's
15 what they are asking for. I don't know, Judge. If
16 they intend on taking that, we would like to be
17 informed prior to the taking what intrusion they are
18 talking about, Judge.

19 THE COURT: I'm kind of curious, too.

20 MR. FOGLEMAN: I am, too, your Honor. I hadn't
21 seen anything in here about peeling their skin off or
22 anything like that.

23 THE COURT: Well, I wouldn't allow you to do
24 that.

25 MR. FOGLEMAN: Your Honor, it says in the motion

1 in paragraph two we are looking for samples of blood
2 and saliva, pubic hair, head hair, body hair,
3 fingerprints, footprints, and handwriting specimens.

4 THE COURT: And that will be allowed over your
5 objections. Your objections will be noted and you can
6 preserve any objections to any discoverable evidence
7 that might arise as a result of it.

8 MR. WADLEY: Thank you.

9 MR. STIDHAM: Your Honor, I believe the rule
10 provides that defense counsel will be given notice of
11 the time and place of the taking of these samples.

12 THE COURT: You can be present.

13 MR. PRICE: On behalf of Mr. Echols, the State's
14 motion for discovery -- the only physical evidence
15 they're requesting in paragraph two is his footprints.
16 We have no objection to the State taking a sample of
17 the footprints. If the State intends to take any
18 other samples and if they have taken samples in the
19 past, we have not received any kind of notice about
20 that. We certainly object to any previous samples
21 that may have been taken without our knowledge.

22 THE COURT: I couldn't tell you that. I don't
23 know.

24 MR. PRICE: As far as everything else in the
25 motion for discovery, they are requesting names of

1 witnesses, reports of any experts. We certainly don't
2 have any objection. We certainly don't have that
3 information at this time, but we will be providing
4 that material as soon as discovery is completed on
5 behalf of the State.

6 MR. STIDHAM: Is the Court going to make a ruling
7 with regard to a deadline for discovery?

8 THE COURT: Yes. I gave that deadline earlier.
9 The 27th of September.

10 MR. FOGLEMAN: Discovery was the 31st of August
11 -- for the State.

12 THE COURT: Yes. I'm sorry. That's correct. I
13 indicated that the State is to comply with your
14 discovery motions -- as far as copying the file -- by
15 the 31st of August.

16 MR. FOGLEMAN: Your Honor, I would state that to
17 date the State has provided thirteen hundred and
18 thirty-five pages to the defense.

19 MR. FORD: With respect to the State's request
20 for names of witnesses, the content and character of
21 the defense to be offered, we have a discovery cut-off
22 by the 31st of August for the State to us.

23 THE COURT: Your response time would be the 27th
24 of September by filing any motions to object.

25 MR. FORD: Are you saying that we must also file

1 our responses to their discovery requests prior to
2 September 27th as to witnesses?

3 THE COURT: If you have any additional discovery
4 motions or any other motions to be raised, I expect it
5 to be filed by the 27th.

6 MR. FOGLEMAN: Your Honor, I got a little
7 confused on that. When does the defense respond to
8 the State's discovery request?

9 THE COURT: I'm anticipating they should respond
10 by the 27th of September or give a reason why. Do you
11 have any problem with that?

12 MR. FORD: No, your Honor.

13 MR. STIDHAM: No, your Honor.

14 THE COURT: Do any of you want to present your
15 discovery motions? I think they are fairly well being
16 complied with. I've ordered him to give you a copy of
17 the entire file -- three sets of it -- by August 31st.
18 That's what you plan to do?

19 MR. FOGLEMAN: Yes, sir.

20 MR. FORD: Your Honor, the only thing we would
21 like to have stated on the record that was discussed
22 in chambers was that in addition to the copy of the
23 entire file, the State also provide us with a list of
24 witnesses, a list of all documentary evidence which
25 they intend to introduce and a list of all tangible

1 evidence which they intend to introduce.

2 THE COURT: I don't have any problem with that,
3 do you?

4 MR. FOGLEMAN: Your Honor, the only problem there
5 that I see -- the list of witnesses -- I don't have
6 any problem with. The tangible documents and things
7 -- that is something that as we prepare for trial, we
8 will be deciding on one thing and changing our mind on
9 another and it will come and go. They'll have
10 everything that we've got. I don't think the State
11 should be required to tell them, "Witness A is going
12 to put in Document B" --

13 THE COURT: I'm not going to require you to do
14 that. I think what he is asking for is a list of
15 witnesses, which you don't have any problem with, and
16 a list of the physical items, physical evidence that
17 you might choose to introduce.

18 MR. FOGLEMAN: They'll have that through the
19 discovery process.

20 MR. FORD: Your Honor, I think I'm speaking -- I
21 know I'm speaking for Mr. Baldwin -- and I'm probably
22 speaking for all of us. Mr. Fogleman said he has
23 given us some thirteen hundred pages. A lot of that
24 information is dry runs that the investigators in this
25 case investigated every conceivable lead. They have

1 document after document after document that relate to
2 those things. If he's going to say, "I may introduce
3 any of those thirteen hundred pages," I don't feel
4 that's a reasonable response to our request for
5 discovery.

6 I feel that he's going to know within reasonable
7 certainty the certain number of documents out of that
8 two thousand plus pages that may ultimately arrive,
9 that he's going to know which one of those pages he's
10 going to use and he's going to know that the great
11 majority of it he has no intention to introduce. If
12 that is the case, then we shouldn't have to be
13 spending all our time and effort reviewing all those
14 documents for the conceivable possibility they may be
15 introduced into evidence.

16 MR. FOGLEMAN: Your Honor, the rule does not
17 require us to tell the defense what evidence we are
18 going to use and not going to use.

19 THE COURT: I understand you're giving them
20 everything that is in the file.

21 MR. FOGLEMAN: That's correct, your Honor. By
22 the 31st of August they will have seen every
23 photograph. They will have seen all of the physical
24 evidence, except for things that haven't gotten to us
25 yet from the other sources.

1 THE COURT: Such as lab reports.

2 MR. FOGLEMAN: Yes, sir.

3 THE COURT: I understand that.

4 MR. FORD: One last note and then I'll let the
5 Court rule. We have thirteen some hundred odd pages.
6 Mr. Fogleman is not personally doing the copying. We
7 get to trial and he comes to a witness and says, "Can
8 you identify this document?" And all of us lawyers
9 will erupt saying, "We've never seen that."

10 And he says, "I gave it to you. It was in all
11 those two thousand pages."

12 THE COURT: Then he's going to have to show me
13 where it was.

14 MR. FORD: But he won't have what we actually
15 got. He'll have what he has, but he won't have what
16 was sent to us in those files like you saw this
17 morning. He won't know whether something got omitted
18 or not. If he has a list of documents that he intends
19 to introduce and says, "These are a list of items that
20 we may introduce," then we can double-check what we
21 have and make sure we actually have it as opposed to
22 coming to trial and it being one of those three page
23 documents that got lost in the shuffle of some two
24 thousand pages.

25 THE COURT: It will be to your advantage. If

1 it's something that you were not provided, I would not
2 allow its introduction.

3 MR. FORD: Your Honor, it would be in the Court's
4 sound discretion whether or not it would be. He would
5 have one officer of the Court telling him he didn't
6 get it, and one officer of the Court telling him he
7 did get it, and we don't have anything to resolve that
8 dilemma except for you requiring today the State to
9 give us a list.

10 THE COURT: How much trouble is it for them to
11 have a date and time and place where they can go and
12 look at the physical evidence?

13 MR. FOGLEMAN: We are going to do it by the 31st.
14 In principle I don't have a problem with what Mr. Ford
15 has now said but by the 31st of August -- I do have a
16 problem with that. We won't be prepared for trial by
17 the 31st of August. We can give them a list like that
18 prior to trial.

19 MR. FORD: If he'll give us that list ten days
20 prior to trial, that's sufficient time for us to go
21 through it.

22 THE COURT: You ought to be able to give him that
23 list ten days prior to trial.

24 MR. FORD: That satisfies my concern. If he'll
25 give us everything and then ten days prior to trial if

1 he will give us a list of items he'll introduce --

2 THE COURT: I'm going to rule that that be done.
3 On the other hand, if you are given the entire file,
4 you can read through it, too.

5 MR. FORD: I agree with that, your Honor.

6 MR. PRICE: One other matter to bring up that we
7 discussed in chambers. I had requested and I think
8 you said you would grant an order allowing us to go
9 directly to the Crime Lab to make copies of the entire
10 Crime Lab file.

11 THE COURT: Yes. You need to prepare a written
12 order and that order should include that you be given
13 copies of any report that the State Crime Lab might
14 prepare and that you be permitted to view the physical
15 evidence and the report in the presence of the Crime
16 Lab representative.

17 MR. PRICE: Would that order also allow us going
18 directly to the Crittenden County or West Memphis
19 Police Department to look at the physical evidence?

20 THE COURT: That is what I said. I want a date,
21 time and place established where you can do that.

22 MR. FOGLEMAN: I just said we were going to be
23 doing that by the 31st of August.

24 MR. PRICE: We will go to the police department
25 by the 31st of August then?

1 THE COURT: I anticipate prior to the 31st that
2 they'll say, "You can come view the physical
3 evidence."

4 MR. PRICE: That's fine.

5 THE COURT: Do you have a problem giving them a
6 time?

7 MR. FOGLEMAN: I cannot do that right now.

8 THE COURT: I understand that. Anything else we
9 can discuss now? What about your severance motion?

10 MR. WADLEY: Your Honor, I believe it was
11 discussed in chambers earlier that the State with
12 respect to our motion for severance as to Mr. Baldwin
13 and Mr. Misskelley, the State is not objecting to our
14 motion to sever the trial of those two defendants.

15 MR. FOGLEMAN: Your Honor, as a result of -- I
16 believe it is Rule twenty-two point three -- I think
17 they would be entitled to a severance of the defendant
18 Misskelley because of his statement and we don't have
19 any objection as to the severance as to the defendant
20 Misskelley.

21 THE COURT: That will be granted.

22 MR. WADLEY: We have not filed but will file
23 within the Court's deadline a motion to sever as
24 between Mr. Baldwin and Mr. Echols and will do that
25 timely, your Honor.

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1 THE COURT: All right. But the motion to sever
2 Misskelley from Baldwin and Echols will be granted.

3 MR. DAVIDSON: I have an order for the Crime Lab
4 to release the information.

5 THE COURT: Did it provide like I said --

6 MR. DAVIDSON: "It is therefore ordered that the
7 State Medical Examiner release copies of all
8 photographs and notes in the case of Michael Wayne
9 Echols to defendant's attorneys, Val P. Price and
10 Scott Davidson, to talk with them or the investigators
11 of their office concerning the results of the autopsy
12 and release other Crime Lab reports." I think that
13 will be sufficient.

14 THE COURT: Are you asking for the autopsy
15 protocol or lab notes?

16 MR. PRICE: Everything in the autopsy.

17 MR. DAVIDSON: Everything they have. I believe
18 they would have notes also.

19 THE COURT: I don't have any problem with that,
20 do you, Mr. Fogleman?

21 MR. FOGLEMAN: Your Honor, I think it would be
22 better to have an order that covered all the
23 defendants and all the attorneys. Also, this has a
24 provision that requires the people in the State
25 Medical Examiner's Office to talk with the defense

1 attorneys or their investigators and although if the
2 people at the Crime Lab want to talk with them, we
3 certainly have no objection. I don't think it is
4 appropriate to order them to talk to them if they
5 don't choose to.

6 THE COURT: I think they'll talk to you.

7 MR. FOGLEMAN: I think they will, too, but I
8 don't think it's appropriate to order them to.

9 THE COURT: Let's redo the order that includes
10 all three defendants and omit the portion ordering
11 them to discuss the case with you although I'm quite
12 certain they will.

13 MR. FOGLEMAN: Your Honor, it also says that the
14 attorneys will pay for the photographs. As a
15 practical matter, we know that the attorneys won't be
16 paying for the photographs. I would just as soon the
17 State pay for the photographs.

18 THE COURT: Put it in there the State will be
19 required to pay for the duplicating costs of the
20 photographs, reports, autopsy protocol. Anything
21 else?

22 MR. STIDHAM: We filed a motion asking that we be
23 allowed separate and individual questioning of jurors
24 at the time of voir dire. Do you want to take that up
25 now?

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1 THE COURT: It might be appropriate to do it
2 closer to any trial date, but right now I'm kind of
3 indifferent about it. I have allowed that in the
4 past. It would depend upon how the cases were tried.
5 If we try one separately, all or all three separately,
6 I'd probably allow individual voir dire. I have in
7 the past. If we try two together, if I allow
8 individual voir dire, I'm not going to allow both
9 defense attorneys to go through a whole raft of
10 questions that are identical or close to identical.
11 Each of you would be allowed to ask specific questions
12 as to your defendant as long as they are not
13 repetitive. I think it would be better to rule
14 specifically on that later.

15 MR. STIDHAM: We also filed a motion for --

16 THE COURT: -- Complete stenographic coverage and
17 that will be granted. You asked for -- what else?

18 MR. STIDHAM: Asked that the jury charge be
19 reduced to writing.

20 THE COURT: That will be done anyway for sure.
21 I've never done a case that I haven't.

22 MR. STIDHAM: That's all I have.

23 THE COURT: Mr. Ford.

24 MR. FORD: Your Honor, I would like to address
25 one thing to the Court. It has to do with money.

1 Usually attorneys are interested in that. We are
2 prepared today to file a motion for attorney's fees
3 and I think the Court is well aware of the recent
4 decision the Court is well aware of -- the State of
5 Arkansas versus Independence County.

6 THE COURT: I think I have heard of it.

7 MR. FORD: Dealing with the fact that the State
8 of Arkansas is required to bear the expense of Court
9 appointed counsel as well as any investigative cost,
10 any cost of testing physical evidence, et cetera. It
11 goes without saying that the amount of time that will
12 be required to be expended by counsel will be
13 enormous. It was that very reason that led Judge
14 Goodson to appoint co-counsel in each case due to the
15 amount of time that would be involved.

16 THE COURT: Why was the public defender's office
17 not given one of the cases?

18 MR. FORD: The public defender's office in the
19 initial appearance in Municipal Court advised Judge
20 Raney as to a basis why there was a conflict of
21 interest. I was not at the bench when that
22 conversation took place, but I did speak to Mr.
23 Montgomery about that and without -- I don't feel it
24 is appropriate to state what that conflict was.
25 However, Judge Raney felt there was a conflict that

1 would prohibit him from representing any of these
2 parties, and that decision has been entered.

3 THE COURT: The reason I asked is because in that
4 Independence County case the county had no public
5 defender. It was following the procedure that many
6 counties in this state followed that the Court would
7 appoint local counsel and local counsel would be paid
8 a fee established by statute and a hundred dollars for
9 expenses. There was no public defender. The
10 objection was of course that to require attorneys to
11 basically serve the county -- to self-finance major
12 cases.

13 Here we had a public defender. The public
14 defender also had funds budgeted and allocated to hire
15 attorneys where there were conflicts. Obviously there
16 wouldn't be enough budgeted in this case.

17 All I can say is the Court will certainly take up
18 and consider your request for attorney's fees, and I
19 will order attorney's fees that are appropriate and
20 within the law.

21 MR. FORD: In addition to asking that the Court
22 order attorney's fees to be paid by the State, but
23 that the Court also order that any expenses incurred
24 to be reimbursed.

25 The question I have to the Court today is that we

1 do not feel that we should have to self-finance this
2 case until it is completed and then have all of our
3 expenses reimbursed after we have already paid them or
4 to spend the amount of time that we are going to have
5 to spend and then be paid at one time.

6 We feel that it would be appropriate for the
7 Court to entertain motions on a monthly basis and
8 allow us to submit to the Court the amount of time and
9 expenses that we have invested in this case, have the
10 Court enter an order that those be paid on a monthly
11 basis as opposed to proceeding on this case for the
12 next six months and requiring us to self-finance that.

13 THE COURT: I understand your motion. Does the
14 State have any position on that?

15 MR. FOGLEMAN: Your Honor, the only response that
16 the State has -- there's two problems I see. The
17 Attorney General's Office may need to be joined. I'm
18 deputy prosecutor for Crittenden County, and I think
19 the State ought to be paying it, too, rather than the
20 county. Even though there's a public defender's
21 office, the public defender did have a conflict. It's
22 routine that the Court appoint attorneys just like
23 there wasn't a public defender's office when there are
24 conflicts and it is my position the State ought to be
25 paying it.

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1 THE COURT: There is a specific statute that I
2 ruled on in the Independence County case but in that
3 case that fund was to defray extraordinary costs of
4 counties and it is not -- they didn't keep much money
5 in it.

6 MR. FOGLEMAN: I think the Attorney General may
7 need to become involved to represent the interests of
8 the State because I think the county's position is
9 going to be more consistent with Mr. Ford. The county
10 shouldn't be paying it. The State should.

11 THE COURT: That was the same issue raised in
12 Batesville. It was the county versus the State. I
13 guess it has to be resolved. File a petition bringing
14 in the Attorney General's Office and let them respond
15 to it. I want briefs on that if you want to bring the
16 Attorney General's Office in.

17 In the meantime you gentlemen prepare monthly
18 statements of your time and I want detailed time
19 records. I want it to where I can look at it and see
20 what you did and what you're saying you did on it.
21 I'm talking about detailed. So you keep your time
22 records, telephone calls.

23 Also, I meant to tell you gentlemen this. It is
24 not a gag order, but I don't think that the lawyers
25 for the State or defendant need to be carrying on

1 direct conversations with the media about the case or
2 about the presentation of the case, and you are each
3 reminded of the Code of Ethics in that regard. If you
4 stay within the Code of Ethics, I won't have any
5 problem with it. If you get away from it, I'm going
6 to get mad.

7 MR. FORD: I also wanted to put in the record
8 that we are requesting monthly reimbursement of our
9 time and expenses.

10 THE COURT: I'll look into that. I understand
11 your problem. I just don't know who's going to pay
12 you yet.

13 Anything else we can do now? The question that
14 I'm sure -- we have discussed briefly in chambers --
15 that everyone wants to know is change of venue. I
16 understand that nobody is ready for the Court to hear
17 those at this time so I expect if you're going to
18 request a change of venue, that that motion be filed
19 prior to the cut-off date -- the 27th.

20 MR. FORD: Can we all also agree that we
21 definitely be prepared to hear the motion on that
22 date?

23 THE COURT: If you're asking for a change of
24 venue, it's got to be filed by then and it is going to
25 be heard then -- either granted or denied.

1 MR. DAVIS: Could you set a date earlier than the
2 27th?

3 MR. FORD: How about a week prior to that, your
4 Honor?

5 THE COURT: If you are requesting a change of
6 venue, file it by the 17th of September or not at all.
7 There's one motion for change of venue now?

8 MR. CROW: Yes, sir.

9 THE COURT: You all mentioned to me out of the
10 judicial district. I would look at that, but you're
11 going to have to -- I want that briefed and we all
12 know the Swindler case, and I suggest that those
13 circumstances were different than these.

14 Anyway, I will listen to that and consider it if
15 you are seriously contending that. Anything else?

16 MR. FOGLEMAN: Not on behalf of the State.

17 MR. STIDHAM: Nothing further.

18 MR. PRICE: Nothing further, your Honor.

19 MR. WADLEY: Nothing further.

20 (PROCEEDINGS CONCLUDED)

21 MARION, ARKANSAS, SEPTEMBER 27, 1993, AT 9:30 A.M.

22 THE COURT: This is the State of Arkansas versus
23 Jessie Lloyd Misskelley, Junior, Charles Jason Baldwin
24 and Michael Damien Wayne Echols.

25 The cameras and still photography will have to