

1 that weighs heavily in my decision along with the
2 seriousness of the offense. Therefore, I find that he
3 is to answer to the Circuit Court as an adult.

4 Anything else?

5 MR. STIDHAM: No, your Honor.

6 OSCEOLA, ARKANSAS, FEBRUARY 9, 1994, AT 9:30 A.M.

7 THE COURT: State versus Charles Jason Baldwin.
8 CR-93-450.

9 To the film media, there's been an objection to
10 the cameras in the courtroom for this hearing. So get
11 you some file pictures and then I'm going to have to
12 ask that you -- have you waived your objection at the
13 time of trial or is it just this hearing?

14 MR. FORD: I'm objecting to it at this hearing
15 because I feel that these are evidentiary issues that
16 we are bringing up today. We're trying to do them now
17 to hopefully expedite the trial process. If we were
18 doing them at trial, they would be in-camera, outside
19 the presence of the cameras, and it would defeat the
20 purpose of my objections --

21 THE COURT: I understand that. That's been my
22 policy if either side objects. Get you some file
23 coverage for your stories and then I am going to have
24 to ask you to shut them down.

25 MR. DAVIS: Judge, one thing the Court may need

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1 to be aware of, Val may have an objection at trial to
2 cameras in the courtroom.

3 THE COURT: He indicated to me yesterday that he
4 didn't think that he would have.

5 MR. FORD: That was a discussion that had taken
6 place among all four defense attorneys. Val is the
7 only one that expressed an objection, and I didn't
8 know what their position is going to be. It's my
9 position that because these are evidentiary issues --

10 THE COURT: I talked to Scott yesterday, not Val.
11 But he seemed to --

12 MR. FORD: I think you're correct in that
13 assumption.

14 THE COURT: All right. I'm ready to proceed.

15 MR. FORD: If we go to the motions filed most
16 recently that I filed during the Jessie Misskelley
17 trial, I filed a motion in limine requesting that the
18 Court enter an order with respect to the State's
19 witnesses wearing the little lapel pins. The only one
20 that I know I saw wear one was by Miss Hutcheson.

21 THE COURT: I'm going to grant your motion to
22 prohibit any witness from wearing any kind of ribbon,
23 button, badge or any device that would indicate
24 support for the State or the defendant and that would
25 apply to all parties.

1 MR. FORD: I agree. Obviously if I'm objecting
2 to them doing it --

3 THE COURT: I don't care if the courtroom is full
4 of them either way but if they're going to be a
5 witness, then there won't be any display.

6 MR. FOGLEMAN: Your Honor, the victims' mothers
7 were wearing a piece of jewelry. Does that include
8 that? The pieces of jewelry are all identical.

9 THE COURT: You mean costume jewelry?

10 MR. FOGLEMAN: It is a piece of jewelry. It has
11 got three little angels on it.

12 THE COURT: Anything that could be considered a
13 badge or conveying a message of support for either the
14 prosecution or the defense will not be permitted while
15 the person is testifying.

16 MR. FORD: I also filed a motion that was
17 previously -- I filed it sometime back, and I believe
18 the hearing we had in Jonesboro it was addressed in
19 chambers, regarding emotional displays and behavior.
20 And during the testimony of the Medical Examiner and I
21 believe perhaps on one of the police officers who had
22 some graphic testimony as to what they observed at the
23 crime scene, that the family members would get up --

24 THE COURT: You don't need to go any further. It
25 was my intent and I attempted to prevent any display

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1 or outburst or show of emotion by anyone. And that is
2 very difficult to do, Mr. Ford, as you know,
3 particularly when the victims are small children and
4 the alleged perpetrators are teenagers. You have got
5 family. You've got strong interest. You have just a
6 great deal of emotion building up in the courtroom.

7 But I agree with you and I'm not going to allow
8 any visible display of emotion. You're talking about
9 them during testimony getting up and leaving?

10 MR. FORD: Yes, sir. I think the witness
11 exclusion rule does not apply to the parents and I
12 understand that. And there's a good reason for that.
13 But they understand now. There's the absence of the
14 unknown. Doctor Peretti's testimony is known, the
15 extent and gravity of what occurred to their children
16 is known.

17 THE COURT: I can handle that. I'm going to
18 instruct and direct both the prosecution family
19 members that are exempt from the rule and any member
20 of the defendant's families that might be present in
21 the courtroom that they are not to leave the courtroom
22 and display any emotion during the testimony of a
23 witness. If they want to leave or stay outside,
24 they'll have to do it before witnesses take the stand
25 and testify. I hate to direct that people can't get

1 up and leave.

2 MR. FORD: If someone has to get up and leave,
3 that's fine, but they made these mass exits where the
4 entire front row of the victims' families and the
5 grandparents in the second row -- they just all got up
6 and left crying. I don't feel that's appropriate.

7 MR. FOGLEMAN: I understand what Mr. Ford's
8 saying and we don't want his client's rights to be
9 prejudiced but at the same time, I don't know how you
10 tell a mother or father who's had something like this
11 done to your child, I'm sorry but you cannot be sad
12 because this happened. And I think their intent in
13 getting up and leaving was so they would not --
14 wouldn't be sitting there and sobbing and crying and
15 distracting the proceedings. Maybe as a result it was
16 something else --

17 THE COURT: I understand exactly what you're
18 saying, Mr. Fogleman, and I agree with you. And I
19 hate to direct that any person for whatever the reason
20 can't get up and leave during the proceeding and
21 generally I wouldn't do that, but for a mass exit,
22 either prosecution or defense, during testimony
23 distracts the jury's attention from the matter at
24 hand. And I am going to direct both of you to caution
25 the family that those mass exits are to be

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1 discouraged, that I don't want them to happen.

2 MR. FOGLEMAN: We can take care of that, but
3 let's say they cannot contain their emotions sitting
4 in there.

5 MR. FORD: If Mrs. Hobbs cannot contain her
6 emotions, that doesn't -- then Mr. Hobbs gets up.

7 THE COURT: If it was your wife, wouldn't you?

8 MR. FORD: Yes, sir. Your Honor, this is a
9 balancing --

10 THE COURT: I'm not going to hold anybody in
11 contempt if they cannot control their emotions and
12 they're getting up and leaving the courtroom for that
13 reason. But I don't want to see a bunch of mass exits
14 that look like a choreographed display. I'm not going
15 to allow it.

16 MR. FORD: Thank you.

17 MR. FOGLEMAN: We don't have any objection to
18 that.

19 THE COURT: If it appears there's going to be a
20 display, I'm going to call an immediate recess. That
21 goes for your people as well.

22 MR. FORD: I understand, your Honor. I will do
23 my best to control their emotions as well, best I can.

24 THE COURT: All right. That's a hard thing to
25 do. It is easier said than done.

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1 MR. FORD: I don't want to have that be a
2 condoned activity after it occurred on more than one
3 occasion in the last trial.

4 THE COURT: All right.

5 MR. FORD: I filed another motion in limine. An
6 experiment was referenced by Mr. Fogleman.

7 MR. FOGLEMAN: We don't have any problem with
8 that --

9 MR. FORD: So I can make the record clear, at
10 some point during the --

11 MR. FOGLEMAN: I'm agreeing.

12 MR. FORD: I'm making a record, John. I want it
13 made known what my request is, what the rule is, so we
14 know if there's a violation if it occurs.

15 There was a reference by Mr. Fogleman -- not an
16 attempt to make direct evidence out of the experiment
17 -- but when it was mentioned about, could you hear,
18 could you holler, how far could you hear -- Mr.
19 Fogleman made reference to, wasn't there an experiment
20 conducted if you were standing outside the woods,
21 could you hear it at the scene of the crime.

22 I don't feel that meets the scientific
23 requirements. I think the State is going to agree
24 with that. I just don't want there to be reference to
25 an experiment for the jury to consider in their minds

1 that, even if I'm standing outside of the woods at
2 that pipe where it leads into the woods and I holler
3 and scream for the people, that they don't hear me.
4 That it was impossible for that to be done.

5 THE COURT: Well, I mean, what one person
6 perceives another one may not.

7 MR. FORD: To use the word "experiment," your
8 Honor, I don't believe it meets the scientific
9 requirements --

10 MR. FOGLEMAN: I promise not to use the word
11 "experiment."

12 THE COURT: I think it's possible they could
13 conduct a demonstration. They could request the Court
14 to take the jury to the scene --

15 MR. FORD: If those issues come up, they come up.
16 But as far as an experiment --

17 THE COURT: I understand what you're saying, but
18 I'm not going to bar the State from conducting such an
19 experiment as a means of a demonstration if they
20 choose to do so. That is something I would have to
21 consider at the time.

22 MR. FORD: I would agree. All I'm saying is this
23 alleged experiment before does not meet the
24 requirements --

25 THE COURT: If you're talking about him asking a

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1 witness, did you have somebody scream from the pipe
2 and could you hear them, I agree with you.

3 MR. FORD: A fourth motion that was filed during
4 the period of time of trial was in reference to the
5 use and introduction of three sticks that were found
6 at the crime scene.

7 There was no testimony to establish any link of
8 at least two of those sticks. There was testimony
9 that one of those sticks had been used to job the
10 clothing down into the mud and that he pulled a stick
11 out and an item of clothing came out. Clearly, I
12 think that has some relevance to this proceeding, if
13 it is for the proposition, I found this stick and it
14 was used to job the clothes down into the mud.

15 But, your Honor, for the State by innuendo and
16 inference to parade those pieces of wood in the
17 courtroom as three weapons, three types of injuries,
18 three defendants the way they did at the last trial,
19 there's no evidence of skin, hair or blood on any of
20 those sticks. There was no evidence of any wood
21 fragments in any of the injuries sustained by the
22 three boys.

23 They want to establish that all three boys had
24 similar types of bruising and injuries. That all
25 three of them could have been hit with a club and all

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1 three of them could have been hit with a broomstick
2 and then they had the third weapon being the knife.

3 Your Honor, there's nothing that was presented in
4 that case, nothing that has been presented to me
5 through discovery or through my personal discussions
6 with individuals at the Crime Lab, to establish in any
7 way that those sticks were weapons in this case.

8 And I am asking the Court to order in limine that
9 the State be precluded from making any evidentiary
10 reference that those sticks that were introduced at
11 the last trial are the weapons. That to introduce a
12 stick that looks like a piece of driftwood to me, your
13 Honor, and I've been out there and those sticks are
14 everywhere.

15 To introduce a stick that is about four or five
16 inches in diameter and say, this was found at the
17 crime scene, and then ask Doctor Peretti, is this
18 injury consistent with having been caused by a piece
19 of wood about -- and holding his hands up in the same
20 way again.

21 Your Honor, that makes reference that this is the
22 murder weapon. That we recovered the murder weapon.
23 But we don't have any proof of that. I feel that it
24 does not -- first of all, to show that there's two
25 sticks out there, if it is relevant and probative of

1 any proposition in the case, it's a very minor
2 proposition and it has minor relevance. But the
3 potential prejudice that can be made by the display of
4 those pieces of wood and then to allow the prosecutor
5 to argue by innuendo, those are the murder weapons,
6 when we don't have that.

7 There's no indication whatsoever that those
8 sticks were used as weapons from any physical
9 evidence, not on the victims, not on the sticks
10 themselves. To allow them to use those sticks for
11 that proposition is inappropriate. I feel that the
12 Court should order in limine that the State be
13 prohibited from the introduction of those sticks for
14 any use as argument that they are weapons used in this
15 case.

16 MR. FOGLEMAN: Your Honor, these sticks were
17 found at the crime scene. The Medical Examiner
18 testified that they were consistent with the wounds
19 caused. The victims had two separate types of head
20 injuries. The Medical Examiner testified that the
21 larger injuries were consistent with having been
22 caused by the larger sticks, and the smaller head
23 injuries were consistent with having been caused by
24 the stick that appeared to have been carved. And we
25 submit the sticks are relevant. It would be like

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1 saying if you find a hammer at the crime scene and
2 that a hammer is consistent with being a weapon, you
3 couldn't use it just because it didn't have any blood
4 or hair on it.

5 THE COURT: I'm going to overrule your motion on
6 that. As pointed out by Mr. Fogleman, the sticks --
7 one in particular -- was jobbed down into the water
8 and was used to hold clothing. That is certainly
9 relevant and admissible. The other two were found
10 near where the bodies were found, if not right at
11 where the bodies were found. And the Medical Examiner
12 did testify that the injuries to the head -- and I
13 believe there were three large contusions on one of
14 the victims and I don't recall the number on the other
15 -- but that they were consistent with a blunt trauma
16 similar to what would have been caused by a stick of
17 that type.

18 Also, they didn't appear to be just driftwood,
19 they appeared to have the bark removed in places and
20 some carving on one.

21 MR. FORD: The one that was -- Mr. Davis' term
22 was a broomstick or broom handle -- that matches the
23 title of the book.

24 THE COURT: That was the one that was jobbed in
25 the water? I don't remember.

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1 MR. DAVIS: That wasn't the one.

2 MR. FOGLEMAN: It was one of the bigger ones that
3 was jabbed in the water.

4 THE COURT: I think that it was found at the
5 crime scene and that you can make reasonable
6 inferences that they could have been the weapons that
7 inflicted the injuries and that to me is relevant, and
8 I am going to overrule your motion.

9 MR. DAVIS: I think that also the -- one of the
10 fellows from the Crime Lab -- I can't remember if it's
11 Turbyfill. Turbyfill testified in trying to test one
12 of those sticks for prints that although he was
13 unable to find latent prints, he did find positive
14 reaction for a substance -- chemical, some sort of
15 enzyme from the hands. And even though he couldn't
16 find prints, there was a positive reaction for that
17 chemical which indicated that it had been held in
18 someone's hands which would be consistent.

19 THE COURT: Those are items seized at the crime
20 scene and any reasonable argument that can be made to
21 their presence there is permissible and relevant.
22 What makes it relevant is the Medical Examiner saying
23 that the injuries could have been inflicted by a tool
24 of that type and that makes it a relevant, permissible
25 argument.

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1 MR. FORD: The next motion I would like to
2 address deals with a knife that was found sometime in
3 October, I believe. October 30th, 1993. Or maybe it
4 was the 31st. I believe it was the 31st, your Honor.
5 A knife was found by an Arkansas State Police scuba
6 diver in the lake in the trailer park where Mr.
7 Baldwin resides.

8 I would like to mark and be allowed to substitute
9 a copy -- a document that was provided to me by the
10 prosecution's office of a drawing of the --

11 THE COURT: Are you going to let me see it?

12 MR. FORD: (HANDING) -- that constitutes a plat
13 of the trailer park where Mr. Baldwin resides and that
14 will also show the number of lots that are around that
15 lake and there was a knife that was found in that
16 lake. That knife is a survival type knife, blade
17 length approximately nine inches. Apparently the
18 search was on November 17th, 1993, if this report was
19 correct.

20 THE COURT: What is your objection?

21 MR. FORD: Your Honor, that knife has been tested
22 and there's no blood on the knife. There are no
23 fingerprints on the knife. There's no testimony that
24 I have been made aware of through discovery of any
25 witness who would ever place it as a possession or

1 ownership in the -- of the defendants Echols or
2 Baldwin and particularly my concern is that of Jason
3 Baldwin.

4 The map speaks for itself as to where the
5 residence trailer of Mr. Baldwin was and the location
6 where the knife was found based upon their observing
7 where the diver came up from after he retrieved the
8 knife.

9 To allow introduction of a knife that was found
10 in a lake, although it is close to his home, it is
11 clearly -- it can be looked at in one of two ways.
12 First of all, if it is outside of his curtilage,
13 there's no physical evidence found to link it to my
14 client. Therefore, it's no different than finding a
15 knife out on the sidewalk this afternoon.

16 If it is within his curtilage, then there's the
17 expectation of privacy that would attach under the
18 Fourth Amendment, and there was no warrant obtained
19 for the search of the lake.

20 It is my argument that to allow the State of
21 Arkansas to introduce that knife and to make
22 reasonable inferences that it's the murder weapon or
23 could have been the murder weapon and it was found in
24 the location in close proximity to Baldwin's trailer,
25 is inappropriate in the absence of physical evidence

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1 to link it to him. There's no fingerprints on the
2 knife. There's no blood on the knife.

3 The knife has -- no evidence can be obtained by
4 that knife to link it to Mr. Baldwin or to the crime
5 itself and, therefore, it is no different than any
6 other knife that exists out there in the world.

7 And to allow that knife to be introduced and
8 paraded to the jury as being found outside the
9 residence of Jason Baldwin and say this could be the
10 murder weapon is inappropriate and I feel that that is
11 the purpose of Rule 403. And, first of all, I don't
12 know that it meets the definition of relevant evidence
13 since there is nothing to connect it to the defendant
14 or the crime scene.

15 MR. FOGLEMAN: Your Honor, first of all, as far
16 as it being connected to the crime scene, it is our
17 understanding that the Medical Examiner is prepared to
18 testify that this knife is consistent with some wounds
19 on the victims' bodies unlike any other knife in the
20 world, not necessarily that that makes this knife the
21 exclusive knife. He's not going to say positively
22 this is the knife.

23 It is my understanding that he will say that
24 because of the way the knife was made, there are some
25 wounds on the body that are consistent with this

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1 knife, and I would suspect he would say it was a knife
2 that had similar serrations on it that caused the
3 injuries and with that and with the fact that it's
4 found a very short distance --

5 THE COURT: How far was it found from Mister --

6 MR. FOGLEMAN: It's my recollection that it was
7 found 47 feet into the water from the bank where the
8 knife was found. And it is our position that that
9 would be similar to a public alley behind somebody's
10 house and finding the knife buried in that public
11 alley behind their house. The knife was concealed and
12 hidden and it was in an area right behind the lot
13 where he was 47 feet out into the water.

14 THE COURT: Are you talking about directly behind
15 his back --

16 MR. FOGLEMAN: Your Honor, this is the Baldwin
17 residence, this one right here and it was right on
18 that line.

19 THE COURT: I'm going to reserve a final ruling
20 on this until the time of the trial, but my impression
21 would be that the knife found 47 feet from the
22 backyard of a defendant that could be compared by the
23 Medical Examiner as a possible weapon that had
24 inflicted injuries would certainly be relevant and,
25 therefore, admissible. That would be my tentative

1 ruling. I'm going to reserve my final ruling until
2 time of trial.

3 MR. FORD: My argument would be then that before
4 that -- then I would ask in light of the fact that the
5 Court will reserve ruling that we be allowed to have a
6 hearing outside of the presence of the jury at which
7 time Doctor Peretti can testify under direct and be
8 subject to cross examination as to his opinions
9 regarding this serration pattern and this knife and if
10 it fails to meet the foundation you require --

11 THE COURT: That's why I'm reserving my ruling.
12 I'll warn you right now that if the doctor testifies
13 that this knife is similar in makeup and design as the
14 one that would have or did cause the injuries, then it
15 is going to come in because it is relevant.

16 It is just like the sticks. If the doctor says
17 it is consistent with the tool that likely caused the
18 injuries he observed, the fact that it was found 47
19 feet behind the defendant's house certainly makes it
20 relevant to me.

21 I'm going to have to hear the doctor tie it up to
22 being a possible tool that could have inflicted the
23 injuries he observed.

24 MR. FORD: You will allow that to be done
25 in-camera?

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1 THE COURT: Yes, sir. I want to avoid as many
2 in-camera hearings as we can. That is one that I
3 think I need to hear. So I'll do that.

4 MR. FORD: Your Honor, moving to the next matter,
5 there was a -- I filed a motion in limine in response
6 to the potential list of exhibits provided to me which
7 contain a blanket reference to the search warrants
8 issued for the residence of Jason Baldwin, Damien
9 Echols, Jessie Misskelley and maybe Domini Teer.

10 All those search warrants, your Honor, if they
11 were introduced, would contain, I contend, hearsay
12 allegations. They make direct reference to the
13 statement of Jessie Misskelley and that statement was
14 actually copied verbatim and attached. There was also
15 a statement by another individual, William Jones, who
16 made some incriminating statements, that that was
17 attached.

18 It is my contention that the State of Arkansas
19 may be allowed to make reference to the fact that a
20 search warrant was obtained and executed upon, but to
21 introduce the search warrant itself which contains
22 those hearsay documents and references is
23 inappropriate. Particularly in light of -- that is
24 the reason we had a severance in the beginning was
25 because of the statement of Mr. Misskelley.

1 THE COURT: Those statements were used for
2 probable cause findings and should have been removed
3 from the search warrant at the time of the search, but
4 apparently they weren't.

5 MR. FORD: They were not.

6 MR. FOGLEMAN: They were inadvertently left on.
7 Your Honor, if the Court decided it was permissible to
8 introduce the search warrant, we would remove all
9 those attachments.

10 THE COURT: A court has already found probable
11 cause existed and unless you're challenging the search
12 warrant, there wouldn't be any purpose to introduce
13 the exhibits that were attached to provide and to
14 prove probable cause.

15 MR. FORD: I'm trying to protect myself and
16 protect my client. I don't want them to be allowed to
17 introduce through the back door the statement of
18 Jessie Misskelley.

19 THE COURT: Those statements are not admissible.

20 MR. FORD: The next motion is with respect to the
21 allegation that these homicides were cult related or
22 motivated by cult activities. I'm of the opinion,
23 right or wrong, that that is an extremely inflammatory
24 issue in Craighead County, that anytime there's an
25 allegation of occult activity, that creates a certain

1 amount of panic and fear among everyone who hears
2 that.

3 I have reviewed carefully the files that have
4 been provided to us by the prosecuting attorney's
5 office in an effort to determine what competent
6 evidence there is that my client is involved in any
7 occult activities or a member of some cult.

8 The prosecution made numerous innuendoes to that
9 effect during the first trial. In fact the statement
10 of Mr. Misskelley indicates that. However, that is
11 hearsay.

12 What I'm asking the Court to do is to instruct
13 the State of Arkansas in limine to make no reference
14 to my client's involvement with the occult or cult
15 activities until such time as the Court is sure in its
16 mind that that evidence exists.

17 THE COURT: Do you want to respond?

18 MR. FOGLEMAN: I'm not quite sure how to respond.
19 What we say is not evidence. Unless we've got
20 evidence of that, I'm not exactly sure -- if there is
21 evidence -- if he's saying that we cannot put on any
22 evidence of his client's being involved in these type
23 of activities without a hearing, I'm not -- I really
24 didn't understand him to be saying that. What I'm
25 understanding him to say is he didn't want us

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1 referring to it unless there was some hearing.

2 MR. FORD: Your Honor, what I'm asking for is the
3 prosecuting attorneys not be allowed in opening, voir
4 dire or closing or any other argument or by question
5 of another witness -- intimate that my client is
6 involved in cult activities or even interested in the
7 occult without a proper foundation being laid for
8 that. To prohibit the investigating officers from
9 stating their opinions as to their concerns that it is
10 occult in nature until the time that, number one, they
11 can establish that was a cult type killing, that there
12 is any physical evidence via the injuries or the crime
13 scene itself to establish that this was an occult type
14 ritualistic killing, that it meets those things that
15 are consistent with that type of homicide.

16 And if they meet that first hurdle, secondly,
17 before they intimate it was my client, that they
18 establish that he is involved in those type
19 activities. There's no evidence that I'm aware of,
20 and if I'm wrong they'll probably correct me, but I'm
21 not aware of any witness who's been interviewed who
22 will affirmatively state that Jason Baldwin was
23 involved in any of those activities.

24 And for them to make those references and those
25 innuendoes without being evidence to support that, in

1 light of the prejudice that those accusations imply to
2 jurors and to the common person in this area -- I
3 believe is inappropriate.

4 What I'm asking and if the State intends to do
5 that, that they do that to the satisfaction of your
6 Honor outside of the hearing the jury to establish,
7 number one, that it was a cult type killing and,
8 number two, that my client is involved in the occult.

9 MR. FOGLEMAN: Your Honor, in regard to proof
10 about an occult type killing -- for instance, if we
11 had an expert testify it was an occult type killing,
12 he'd almost have to hear all the testimony as to the
13 nature of the wounds before he could give his opinion
14 so I don't know what comes first, the chicken or the
15 egg.

16 THE COURT: The State doesn't have to prove
17 motivation. They may prove motive, intent, by
18 suggesting or introducing evidence that the murders
19 could be a result of that type of activity or not
20 necessarily as a result of it but by that association
21 between the parties could be the connecting link and,
22 therefore, the possibility that those activities
23 precipitated or attributed to or led up to the
24 homicides.

25 If that evidence is merely connective of the

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1 common purposes between the three people, then it is
2 relevant and whether or not it was an actual ceremony
3 or I heard a new word, an Esbat, or whatever that was
4 in the other trial. Whether or not that type stuff
5 was involved or not, I don't know. It may be the
6 single thread that ties the three together and if
7 that's the case, the State will be permitted to
8 introduce that evidence of that connective link
9 between the defendants.

10 And also it could possibly go to motive, but I
11 will reserve the ruling on it until we can have an
12 in-camera hearing and decide just how much -- I don't
13 know if you are aware -- I guess you are aware -- I
14 prohibited a great deal of it from the last trial.

15 MR. FORD: Yes, sir. I am aware of that and that
16 is my concern and I think the Court is concerned
17 because of the magnitude of that prejudice. If that
18 common thread does exist, I would agree with you that
19 the State is allowed to introduce those types of
20 evidence to try to establish a common thread that
21 weaves all this crime together. But before they make
22 innuendoes and arguments to that common thread, I want
23 you to be certain that that common thread exists.

24 THE COURT: I understand what you're saying. The
25 point I'm trying to make is if they can show the

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1 connection between the parties by this means and
2 therefore develop a reasonable inference that that
3 could have been the motive, then it is relevant
4 evidence and appropriate.

5 I'm not ruling right now on that. I will reserve
6 that for an in-camera hearing. I'm not barring
7 testimony in those areas until I have an opportunity
8 to see where it leads.

9 MR. FORD: As my client is 16 years of age now
10 and although being charged as an adult, there's been
11 some concern in the past about his juvenile record.
12 We once had a closed hearing in Jonesboro regarding
13 that.

14 THE COURT: That's not admissible in the guilt-
15 innocence phase of his trial at all. That does not
16 mean that it may not be relevant if there is any
17 record in the punishment phase. That is something you
18 will have to have an argument on. I don't know if he
19 has a record.

20 MR. FORD: I'm not indicating that there is.
21 There have been numerous statements in the discovery
22 file and there's the subpoenaed witness, Jerry Driver,
23 who is the Crittenden County Juvenile Services
24 Director, that any knowledge that Mr. Driver obtains
25 from this individual is obtained -- if in fact he did

1 obtain any information from Mr. Baldwin or any other
2 individual as a juvenile and he obtained that as their
3 juvenile probation officer, whether it be any party
4 involved -- witness, defendant -- that that
5 information is also protected by statute that
6 prohibits the release of the juvenile record into
7 these proceedings.

8 So I would not only object to any reference to
9 the direct juvenile record of Mr. Baldwin, but any
10 information which is gathered by Mr. Driver by virtue
11 of his role as juvenile probation officer and any
12 statements made to him by those juveniles that is a
13 revelation of their juvenile record.

14 I would object to anything which Mr. Driver would
15 learn exclusively as juvenile director from any
16 witness or any defendant.

17 MR. FOGLEMAN: Your Honor, I don't remember that
18 being a motion in limine or the one that was filed.
19 That is something new to me. Was it in your motion?

20 MR. FORD: It was -- I don't believe it was
21 directly in the one I filed in the past two week
22 period, but it was in the one I filed back in
23 September.

24 THE COURT: The only thing I recall Mr. Driver
25 testifying to in the other trial was that he was at a

1 place and time in Lakeshore and that he observed one
2 of the defendants --

3 MR. FOGLEMAN: The three of them.

4 THE COURT: -- The three of them together wearing
5 black. If that is what his testimony is going to be,
6 I'm certainly going to allow that. It wouldn't be any
7 different than you or me or anybody else that happened
8 to know a person and was driving down the street and
9 saw them.

10 MR. FORD: I'm not objecting to that testimony.
11 He did not observe and obtain that testimony by virtue
12 of his exclusive role as juvenile probation officer.
13 There has been a myriad of other things that he has
14 knowledge of and he has that knowledge simply because
15 he is a juvenile officer.

16 THE COURT: Like what?

17 MR. FOGLEMAN: I don't know how we can respond to
18 that without knowing what in the world he's talking
19 about.

20 THE COURT: I'm asking him, like what? The
21 juvenile records, if any, are not admissible in the
22 principal trial on guilt or innocence. They may be
23 relevant and admissible in the punishment phase if you
24 get to it and I don't know --

25 MR. FORD: What I'm asking the Court's

1 prohibition to include at the guilt-innocence phase of
2 the trial is not only the transcript and the paper
3 docket sheets reflecting a juvenile record, but I'm
4 also asking that that prohibition include statements
5 that may or may not have been made by any of the
6 parties or witnesses to this case to Mr. Driver as
7 this probation officer. I think if basically the
8 juvenile goes in because of his -- the direction of
9 the juvenile court to go see Jerry Driver. He has to
10 go see Jerry Driver. And while he's talking to Jerry
11 Driver, he makes statements.

12 THE COURT: Give me an example.

13 MR. FORD: I didn't bring that file with me, but
14 they know that there is a large amount of information
15 that includes opinions, speculations, conclusions.
16 All of them have been gathered by his role as juvenile
17 officer.

18 THE COURT: He's not going to be permitted to
19 testify to his opinion.

20 MR. FORD: I'm asking that if there are any
21 statements that he claims have been made to him by Mr.
22 Baldwin, Mr. Echols or Mr. Misskelley while they were
23 under his direction as juvenile officer, that that be
24 excluded as well.

25 THE COURT: Do you have any statements that you

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1 plan to introduce?

2 MR. FOGLEMAN: Your Honor, frankly, I hadn't
3 thought of it until now. It might be a pretty good
4 idea. Just offhand, I can't think of any offhand by
5 Mr. Misskelley or by Mr. Baldwin. There was quite a
6 bit of information from Damien but as to whether or
7 not -- it hadn't occurred to me. Of course, that
8 would be Damien's place to raise that. Any privilege
9 would be his.

10 Secondly, the Juvenile Code provides that
11 information that is provided in intake may not be used
12 against him, that is given to a probation officer.
13 I'm not aware of any similar prohibition just because
14 you say something to a probation officer on the way
15 going somewhere, some conversation you have, that you
16 couldn't use that.

17 THE COURT: If there are conversations that by
18 statute are prohibited, then I will prohibit them. If
19 they were as a result of intake or as a result of a
20 juvenile proceeding, then I think they are barred. If
21 it is casual conversation in the hall of the
22 courtroom, on the streets of West Memphis, Marion or
23 Lakeshore, if it is an observation made by Mr. Driver
24 in the capacity of being someone that just happens to
25 know them, then he's permitted to make those

1 observations just like anyone else.

2 If it is as a direct result of his role as
3 juvenile probation officer in a protected area, you
4 will have to raise that objection and I'm sure I will
5 sustain it. Neither of you have given me a specific
6 example.

7 MR. FORD: It is hard for me to object before it
8 occurs, but that's part of the reason you file a
9 motion in limine to keep the skunk from getting out of
10 the box.

11 THE COURT: It is even harder to rule on it.

12 MR. FORD: I understand, your Honor. I'm just
13 trying to make a record on these things. If the
14 prosecutor goes back now -- after I've given them an
15 idea -- and they go back and review Jerry Driver's
16 file and decide, I want to use this information, and
17 it came from Jerry Driver and it may relate to one of
18 the defendants, that if they intend to elicit that
19 testimony from him, that we have that in-camera
20 determination to see if it falls within those
21 protected areas.

22 THE COURT: That does raise one issue in the
23 Court's mind. I assume -- of course, you haven't had
24 your motion to sever yet -- but if they were to be
25 tried together, there needs to be a cautionary

1 instruction that y'all agree upon that when evidence
2 is adduced that applies to only one of the jointly
3 charged defendants, that I could remind the jury on if
4 we go together. There is a stock instruction but you
5 may agree upon it --

6 MR. FORD: I think there is one.

7 THE COURT: -- That would apply to evidence
8 that's adduced as to one and not the other.

9 MR. FORD: Your Honor, there's evidence in the
10 discovery file of a knife that was found at the Marion
11 Public Schools, I'm not sure whether it was the junior
12 high or high school, and that that knife was later
13 examined by the Trace Evidence Section and there were
14 some findings that may or may not have value to the
15 prosecution's case.

16 In an effort to determine the ownership of that
17 knife there were statements taken from a Jason Crossno
18 and Richard Appellene (phonetic), both of which
19 indicate that that knife could never have been in the
20 possession or ownership of the defendant. That in
21 light of that -- those two statements, we would ask
22 for an order in limine instructing the State to make
23 no reference to that knife or to any scientific
24 testing or any results thereof.

25 MR. FOGLEMAN: Your Honor, at this time we don't

1 have any plans on introducing the knife. If we
2 decided we needed to, we would approach the Court.

3 THE COURT: I understand there were fifteen or
4 sixteen different knives.

5 MR. FOGLEMAN: Yes, sir.

6 THE COURT: I assume you're not planning on
7 parading them anyway.

8 MR. FORD: Due to the result of some of the
9 testing is the reason I have grave concerns about one
10 in particular.

11 THE COURT: If he attempts to introduce it, he'll
12 request an in-camera hearing.

13 MR. FORD: I believe previously we discussed
14 Luminol testing done by Kermit Channel.

15 THE COURT: Luminol is out. The ruling of the
16 Court in the paper day before yesterday pretty well
17 indicated unless there's some corroborative evidence,
18 Luminol is not going to be allowed. Basically our
19 Supreme Court has ruled Luminol is not admissible
20 unless there's strong corroborative evidence and they
21 ruled in that case that there wasn't any.

22 MR. FORD: Your Honor, I would also move for
23 another motion in limine regarding testimony of any of
24 the witnesses or reference to the conclusion that the
25 three young boys were sodomized.

1 There was some issue of that at the previous
2 trial. What I'd like to do is mark as Exhibit Two to
3 this hearing a copy of the transcript of a phone
4 recorded conversation I had with Doctor Peretti, who
5 is the Medical Examiner who performed the autopsies.

6 I'd like for the Court -- I have the original
7 tape here with me if the Court would like to listen to
8 it to verify the accuracy of the transcription.

9 After the Court has an opportunity to read that,
10 I would like to make an argument that to make any
11 reference to the existence of the injury of sodomy
12 would be impermissible based upon this testimony.

13 THE COURT: I'd be more concerned about his
14 testimony at the time of trial. This is subsequent to
15 the trial, isn't it?

16 MR. FORD: No, sir. This was -- I talked to him
17 --

18 THE COURT: His sworn testimony in court, as I
19 recall it, he testified that there were, I believe on
20 all three of the victims, that their anuses were
21 dilated. And he gave two or three possible reasons
22 for why their anuses' orifices could be dilated. One
23 was that it could have been penetrated by an object, a
24 stick, a finger, or a penis. Two, it could have been
25 as a result of the water. And I don't remember what

1 the third was --

2 MR. FORD: Natural process of death.

3 THE COURT: I don't remember that, but there was
4 a third reason he gave. I believe he didn't indicate
5 anything about lividity, if that's what you're
6 referring to. He indicated there were some scrapes,
7 tears, or abrasions on one of the boy's rectum but not
8 significant.

9 He also testified that he would have expected to
10 find substantial tears and injury to the rectum had
11 they been fully sodomized, I guess that's the way you
12 describe it.

13 But his testimony, as I recall it, left a
14 definite inference that they could have been
15 sodomized, although he didn't find strong medical
16 evidence to suggest it, that there was some and that's
17 the way I took his testimony.

18 MR. FOGLEMAN: Not only that but the doctor also
19 testified that he was aware of medical literature
20 where children had been sodomized and there were no
21 tears. In his experience he had not seen it but he
22 was aware of medical literature to that effect.

23 Your Honor, this conversation, in fact what the
24 doctor says here is that with what he found there
25 could have been sodomy. It is what he says in the

001200

1 tape. Says that one of three things, "Could have been
2 due to the bodies being in the water, could have been
3 done by certain objects in the rectum or a small
4 penis."

5 What the defense has done -- and this is not the
6 first time they have done this -- they overstate --
7 I'm not saying they do it intentionally -- but they
8 overstate to Doctor Peretti what I tell them that he
9 says and then he starts getting defensive.

10 THE COURT: Here's one comment he makes. In
11 response to a question by GRW: "I'm not putting you
12 there either. I'm concerned because I thought we took
13 some fairly copious notes the other day, and I thought
14 we'd fully understood what you told us and wanted to
15 make sure that I had not recorded something on paper
16 incorrectly concerning this issue of the boys being
17 sodomized."

18 The Doctor: "No, there's no evidence of any
19 anal-rectal trauma. Okay? I mean, could they have
20 put a finger there? Yes. Could they have put a dildo
21 there and not leave an injury? Yes. Could they have
22 been penetrated after death and not have any injuries?
23 That's a possibility but I would expect to see some
24 tearing. See what I'm saying?"

25 That's fairly consistent to what I recall his

001201

1 testimony. He wasn't what I would call a gangbuster
2 witness saying that they were sodomized but he did
3 leave room for argument.

4 MR. FORD: In light of the Court's
5 characterization that he was not a gangbuster witness
6 on the issue of sodomy, in light of the content of
7 that conversation, I believe this is the purpose of
8 the 403 balancing test that the probative value of his
9 testimony that these boys were sodomized is
10 substantially outweighed by the prejudice of that.

11 It is clearly a possibility but the doctor would
12 not tell you, based upon a reasonable degree of
13 medical and scientific certainty, in my opinion these
14 boys were sodomized.

15 With that as the two options, anything is
16 possible but it is not a medical probability, that is
17 when 403 should step in and say no, you cannot make
18 that statement, you cannot make that argument, you
19 cannot elicit that testimony. That's what I'm asking
20 the Court to do.

21 THE COURT: It goes to the weight of the
22 testimony.

23 MR. FORD: Your Honor, I agree it goes to the
24 weight but once that weight is substantially
25 outweighed by the prejudice -- is the Court finding

001202

1 that the probative value of that testimony is not
2 substantially outweighed by the prejudice of the issue
3 of three young boys --

4 THE COURT: No, I am not finding that. I'm
5 finding that any testimony of someone perpetrating a
6 crime on someone raises prejudice. The question is,
7 is whether or not there's any relevant evidence. I'm
8 ruling that the evidence is relevant, that the issue
9 you are taking is a matter of cross examination and
10 goes to the weight that should be given to that
11 question.

12 MR. FORD: Is the Court ruling that the probative
13 value of that testimony is not substantially
14 outweighed by the prejudice?

15 THE COURT: No, I am not ruling that. I'm ruling
16 that it's relevant.

17 MR. FORD: That's what I'm asking the Court to
18 do.

19 THE COURT: The probative value of that -- in
20 fact I don't think it calls for me to make a ruling in
21 that regard.

22 MR. FORD: Your Honor, I'm asking that this
23 evidence be excluded under Rule 403 and Rule 403
24 requires the --

25 THE COURT: Denied.

001203

1 MR. FORD: -- Requires the Court to make a
2 determination that the probative value of the evidence
3 is not substantially outweighed by the prejudice. I'm
4 asking the Court for a ruling. Does the Court rule
5 that this testimony is not substantially outweighed by
6 the prejudice?

7 THE COURT: I'm ruling that it's relevant
8 evidence.

9 MR. FORD: I'm asking the Court to make a ruling.

10 THE COURT: I'm ruling that it's relevant
11 evidence under Rule 403 -- period.

12 MR. FORD: So you won't rule despite my asking
13 for it.

14 THE COURT: I ruled it is relevant evidence based
15 upon Rule 403 and any question about the issue goes to
16 the weight of the doctor's testimony not its
17 admissibility.

18 MR. FORD: When the motion of change of venue was
19 presented to the Court, the Court did not rule out the
20 possibility that a subsequent change of venue could
21 occur.

22 Due to the extensive coverage that was received
23 by the Misskelley trial, by virtue of the fact that
24 some of the testimony was broadcast directly from the
25 witness stand on television, I want the Court to be

001204

1 aware that we are not waiving an argument that venue
2 is proper in Craighead County, that we are going to
3 attempt to comply with the statutory procedures for
4 affidavits for change of venue from Craighead County.

5 We would also like the Court to know that we do
6 not waive that. We would also like the Court to
7 perhaps take into consideration what the potential
8 responses might be from the venire panel as to whether
9 or not there's proper venue in Craighead County.

10 I don't want the record to indicate that we
11 waived it because we may continue to raise that since
12 the statute does allow it up until the time of trial
13 itself.

14 THE COURT: I changed the venue from Crittenden
15 County on your motion.

16 MR. FORD: I know you did, your Honor. You also
17 indicated that if was necessary later, that you would
18 do so again. And we don't want that to be any
19 indication that we have waived that.

20 THE COURT: All right.

21 MR. FORD: I would like to turn now to what I
22 would categorize as a motion to suppress. There was a
23 previous ruling that there may have been items seized
24 at the residence of Mr. Baldwin which were not
25 properly categorized in the search warrant.

001205

1 There was a poem which has subsequently been
2 submitted to the Crime Lab for handwriting analysis to
3 determine if in fact it was the handwriting of Jason
4 Baldwin after submitting a known sample. And there
5 was also a cloth that had animal teeth on it. It is
6 our contention that neither one of those items were
7 identified in the search warrant, that any of the
8 content of the poem or the existence of the poem
9 itself along with those animal teeth that were
10 improperly seized should be suppressed.

11 THE COURT: Was the search warrant to search for
12 evidence of a crime?

13 MR. FOGLEMAN: It was and it also listed specific
14 things such as specific color fibers. I don't have it
15 here with me so I don't know exactly what it said.
16 But it also referred to satanic materials and also
17 referred to -- I can't remember. But it referred to
18 this crime. It also listed a number of specific
19 things.

20 THE COURT: I cannot rule on it until I know what
21 the search warrant said, a cloth with animal teeth and
22 a poem?

23 MR. FORD: That's what the search warrant return
24 says.

25 MR. FOGLEMAN: There was a cloth with what

001206

1 appeared to be a number of what appeared to be animal
2 teeth in it and I have not determined whether or not
3 that has any significance at all at this point. I
4 don't know that we would be introducing the cloth with
5 animal teeth unless we had somebody testify that that
6 had some significance in the occult or something like
7 that or if it was related to some of these dogs that
8 we've heard about.

9 And in regard to the poem, I don't have that with
10 me either, but it makes reference to, "Running away,
11 don't run away from me, why did you run away from me,"
12 and there's some kind of veiled references in the
13 poem.

14 THE COURT: I'm going to do this. That's another
15 thing you can bring up in-camera if you're going to
16 use it. We will decide that at the time of trial.

17 MR. FORD: I have asked the Court to reconsider
18 the issue of severance and like the concern of venue,
19 severance is waived if it is not continued to be
20 raised so we are stating now that we are raising again
21 the issue of severance and would like to --

22 THE COURT: What new matter are you raising at
23 this time? I have previously ruled on the motion to
24 sever.

25 MR. FORD: Your Honor, we filed a motion for

001207

1 severance originally requesting that we be severed
2 from Jessie Misskelley. That was granted. We
3 subsequently filed a motion to be severed from Damien
4 Echols and a hearing was conducted, at which time you
5 ruled that there was no antagonistic defenses and we
6 did not meet the criteria of the case law and statutes
7 to entitle us to a severance.

8 Since that time, I have filed a motion and have
9 raised Arkansas Statute Annotated 43-1802 which was
10 Section 29 of Initiated Measure Number 3 of 1936.
11 That statute was codified --

12 THE COURT: Is that the one that amended the law
13 that required a severance in capital murder?

14 MR. FORD: It gave any capital defendant the
15 right to severance.

16 THE COURT: The law you just cited was the one
17 that amended it and took away that absolute provision
18 for right of severance?

19 MR. FORD: No, sir. The statute that I cited was
20 the old Arkansas statute.

21 THE COURT: But that's since been amended and
22 rewritten.

23 MR. FORD: It is not included in the new
24 codification of the Arkansas Code. It is not listed
25 in the Arkansas Rules of Criminal Procedure.

001208

1 However, my argument is, is that -- that those
2 statutes or those rules of criminal procedure which by
3 implication have overruled Arkansas Statute 43-1802
4 are unconstitutional.

5 Amendment Seven to the Constitution of the State
6 of Arkansas requires that any initiated act must be
7 repealed by a two-thirds roll call vote of both houses
8 of the legislature of the State of Arkansas.

9 I would like to substitute copies and have the
10 original marked as Exhibit Three to this hearing which
11 is a letter from Kern Treat who is the director of the
12 Bureau of Legislative Research which indicates that he
13 has conducted a search of all roll call votes in the
14 State of Arkansas and finds no evidence that that
15 initiated act was repealed as required by Amendment
16 Seven to the Arkansas Constitution. That statute
17 having not been repealed and with a specific
18 requirement of the Constitution on how to repeal that,
19 it is our contention that that absolute right to a
20 separate trial in a capital case still exists and that
21 that statute can't be, that right can't be taken away
22 by implication by the passage and codification of
23 other procedures and other statutes regarding criminal
24 trials because it is unconstitutional under Amendment
25 Seven.

001209

1 MR. FOGLEMAN: We have discussed this issue
2 before.

3 MR. FORD: If you have, your Honor, it was done
4 without --

5 MR. FOGLEMAN: I thought the three of us had
6 discussed it before.

7 THE COURT: I thought we discussed it in court.

8 MR. FOGLEMAN: Anyway, your Honor, there's an
9 Arkansas Supreme Court case that considered whether or
10 not this statute still had some application.

11 THE COURT: Is that Hallman versus State?

12 MR. FOGLEMAN: It may be, your Honor, and they
13 held that the statute had been superceded by the Rules
14 of Criminal Procedure adopted by the Supreme Court.

15 MR. FORD: Your Honor, before the Court rules, I
16 would like the Court to pull that case and read that
17 case because it is not identical to the case we are
18 dealing with here today. The case addresses that
19 statute, but it is not controlling because of the
20 distinguishing nature of the cases itself.

21 THE COURT: I thought there were other cases
22 where our Supreme Court ruled that the rules of the
23 Court were the rules of the Court, the legislature
24 notwithstanding. What we are talking about is a Rule
25 of Criminal Procedure that is promulgated by the

1 Supreme Court.

2 MR. FORD: It is my contention that the Rules of
3 Criminal Procedure are rules of procedure, and the
4 Supreme Court does have the authority to promulgate
5 procedural requirements. However, it is our
6 contention that this act creates a substantive right
7 and gives it to Mr. Baldwin and that takes it outside
8 of the Supreme Court's authority to promulgate
9 procedures because once it is a substantive right, it
10 must be taken away from him as required by the
11 constitution, and that has not occurred.

12 MR. FOGLEMAN: The case specifically deals with
13 the issue of whether a capital defendant is entitled
14 to a severance and the Court in that case held they
15 were not because the Rules of Criminal Procedure
16 supersedes it.

17 THE COURT: Somebody has penned a note that there
18 were separate trials except when the death penalty was
19 waived.

20 MR. FORD: That is the distinguishing factor.
21 That is my handwritten note.

22 THE COURT: There's another case I'm talking
23 about back when they adopted other rules -- there are
24 several cases on procedural rules where our Court has
25 universally held that the Supreme Court has the right

001211

1 to promulgate the Rules of Criminal Procedure and I
2 take severance to be a rule of procedure and not a
3 substantive right.

4 MR. FORD: I'd like then for the Court to take
5 those arguments I've just made and consider them with
6 other arguments that have been previously made with
7 regard to severance because the Court is required to
8 look at all factors and adding that into it, which was
9 the legislature and the people decreed that that right
10 existed. We would like that to be a factor for the
11 Court to consider in ultimately determining whether a
12 severance is proper.

13 I would also like to mark as Defendant's Exhibit
14 Four a copy that was provided to me in discovery that
15 is an interview that was conducted with the defendant
16 Echols.

17 The first page is the questions they were asked
18 and the next pages reflect the answers that they gave.
19 If you look at number six, it said, "Do you know who
20 did this?"

21 Turn to the next page. Answer: "Jason Baldwin
22 could have. L.G. Hollingsworth."

23 It is my contention, your Honor, that is an
24 out-of-court statement that implicates my client that
25 entitles me to request a severance and requires the

001212

1 prosecutor to elect what his actions will be.

2 Let's move on farther to question number nine.

3 "How do you think they died?"

4 Answer: "Mutilation. All three were probably
5 cut up but one more than the other. Heard they
6 drowned. Probably just one person did it."

7 THE COURT: Is this an official interview or
8 questionnaire by a law enforcement officer?

9 MR. FOGLEMAN: Your Honor, that was a -- the FBI
10 had provided some assistance in trying to develop some
11 kind of psychological profile and the police
12 department is asking a large number of people these
13 identical questions, and the answers were supposed to
14 indicate something somehow. I didn't quite understand
15 it all. The only one I did understand was the
16 question about, what would you do to them, and they
17 say depending upon the response it may indicate some
18 involvement.

19 MR. FORD: It is an actual police conducted
20 questioning of the defendant Echols, and these are the
21 recorded responses. The responses directly implicate
22 my client. They also describe with striking accuracy
23 the injuries.

24 And if you'll see, this interview was conducted
25 5-10-93. "Heard they drowned." We know what the

001213

1 medical examiner's opinion had been as to the cause of
2 death for two of them, multiple injuries with
3 drowning.

4 I believe that this statement which implicates
5 Jason Baldwin is made by Mr. Echols. I'm entitled to
6 call Mr. Echols and go into this area, but I'm not if
7 we are tried together because I cannot call him to the
8 witness stand, or we asked earlier for the grant of
9 use immunity and the Court declined for there to be a
10 use immunity.

11 I think if you take that factor, I think you take
12 the arguments I have made previously regarding Domini
13 Teer and Damien Echols being seen at the crime scene
14 and that evidence being presented by Tabitha
15 Hollingsworth on the stand to place Damien at the
16 scene. Then you take the statements of Damien Echols
17 which implicate Jason Baldwin and you take these other
18 statements that have been introduced --

19 THE COURT: Are you planning on using this?

20 MR. FOGLEMAN: We may use some of these
21 statements. We will be glad to instruct the witness
22 not to respond to the question about, who do you think
23 did it, where he names Jason Baldwin.

24 MR. FORD: It is my contention that in light of
25 this evidence that to require me to go to trial with

001214

1 Damien Echols and prohibit me from discussing with him
2 his involvement when there is a witness who places him
3 at the scene, to discuss the fact that he implicates
4 Jason Baldwin and the fact that his girlfriend lives
5 close by to Jason Baldwin and that person could have
6 been where the knife wound up in the lake.

7 Those are all arguments that I'm allowed to make
8 that are reasonably concludable from the evidence.
9 The way the prosecutor is being allowed to make those
10 conclusions, I'm denied that conclusion. I'm denied
11 that argument if I have to go to trial.

12 When you take all those things and add them
13 together and you also factor the concern we have
14 regarding our peremptory challenges --

15 THE COURT: That doesn't concern me at all. That
16 is not an issue whether I grant a severance or not.

17 MR. FORD: You take the statute that gives him in
18 my opinion the substantive right. We differ, but I
19 have that legal argument. You take into consideration
20 the testimony of Tabitha Hollingsworth placing Damien
21 at the scene. You take the statements of Damien
22 Echols that refers to my client --

23 THE COURT: That can be stricken.

24 MR. FORD: If the Court "brutonizes" this
25 interview and does not allow me to delve into that,

001215

1 I'm denied the ability to draw all the reasonable
2 inferences that I can from the evidence. The fact
3 that one --

4 THE COURT: Why would you want to inquire into
5 it? Would you want to inquire --

6 MR. FORD: Let's --

7 THE COURT: -- if your client was involved?

8 MR. FORD: Let's --

9 THE COURT: If I make that statement neutral as
10 to who was involved or who may have been involved, why
11 would you want to inquire into it?

12 MR. FORD: Let's say it is my trial strategy to
13 come before the jury and say, we have Damien and
14 Domini at the scene and we can establish that not only
15 through Tabitha Hollingsworth but the other people who
16 were in that automobile, all of whom are related to
17 Domini Teer, so they would have a reason to know her
18 over any other person they might see. That they have
19 a desire to cover their own tracks so when Damien is
20 interviewed he implicates Jason. And they live out
21 there at Lakeshore. They place a knife which the
22 State may argue is the murder weapon and they place it
23 outside his house.

24 Then I'm not allowed to truly cross examine them
25 on these issues if I have to go to trial and can't

1 call Damien Echols to the stand to disclose a possible
2 cover-up that those two people may have participated
3 in to implicate my client.

4 MR. FOGLEMAN: He's saying that his best friend
5 --

6 MR. FORD: I don't know he's his best friend. Do
7 you?

8 MR. FOGLEMAN: Sure.

9 MR. FORD: The jury doesn't.

10 MR. FOGLEMAN: It will. Your Honor, there's
11 nothing to preclude Mr. Ford from bringing this forth
12 about Damien and Domini, from all the Hollingsworths,
13 all eight of them or however many of them were in the
14 car. There's nothing to preclude him from developing
15 that. There's nothing precluding him from putting
16 Domini on the stand and questioning her about it. I
17 don't see what he would want to ask Damien about.

18 MR. FORD: Your Honor, I do. And I feel that
19 that creates -- I think that entitles my client to a
20 severance.

21 THE COURT: You want to call Damien as a witness
22 for your client.

23 MR. FORD: I don't have to commit myself at any
24 time to say, I am going to call a witness, because I
25 don't know exactly what the State's case will be, and

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1 obviously my case is going to evolve as their case
2 comes forward.

3 THE COURT: I'm just trying to find where there's
4 an inconsistency in the defenses. I don't see any
5 inconsistency in you saying, the witnesses say that it
6 was Damien's girlfriend.

7 MR. FORD: That Damien Echols is trying to
8 implicate that my client did it.

9 THE COURT: I am going to strike that.

10 MR. FORD: I can't put that evidence on
11 completely and fully.

12 THE COURT: Why would you want to put on a
13 witness' statement that your client did it?

14 MR. FORD: If I can try to establish a scheme to
15 implicate my client that was done by one of the actual
16 perpetrators, it helps to exonerate him.

17 THE COURT: There's no way you can possibly want
18 to put on testimony from an alleged co-defendant that
19 your client did it. Now, that's absurd.

20 I can understand your wanting to argue, it wasn't
21 my client. It was Domini Teer because that's who the
22 witnesses say it was. I certainly can understand
23 that.

24 MR. FORD: And Damien.

25 THE COURT: Well, and Damien.

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FORD: If I want to -- I think what you're
me is I cannot have certain trial strategies
you're not going to separate these trials, and
going to limit what my trial strategy is, what
potential ability to do on cross examination is
we have to have a joint trial.

THE COURT: I'm trying to see why it would be --
would be a contrary offense to anything by
n. I assume his defense is -- I mean Echols'
is going to be, I didn't do it. I wasn't
So what's the inconsistency?

MR. FORD: That's not the only factor that the
consider as to whether they have
onistic defenses. There are other factors for
court to consider and I'm raising those arguments
ll.

THE COURT: I'm also concerned about judicial
m, where I cannot see a real reason to separate
and to have a tremendous additional cost of time
energy of the Court and the parties.

I understand that his right to a fair and
trial trial probably outweighs every other
ble consideration. I'm fully aware of that.

MR. FORD: You're not aware of all of the facts
I'm aware of. You're not privy to the State's

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privy to my conversations

e telling me something

'm trying to tell you

stening.

to tell you some of the

For me to be denied
is a witness to help
don't have that possible
you cannot have that
trial with him because I

stand it, Mr. Ford's
id Jason Baldwin, that
me to put it on Mr.

he officer's personal
ion was. All I saw was
you gave him?

ave.

otes of the officers
ys Jason Baldwin, is

1 not talking about this Jason Baldwin. He's talking
2 about another Jason Baldwin in West Memphis that
3 weighs two hundred and eighty pounds or something.

4 MR. FORD: Well, I have these notes here that are
5 attached from Mr. Durham and I don't see that.

6 MR. FOGLEMAN: It is Sudbury's notes. He was the
7 one asking the questions. Durham was with him.

8 MR. FORD: I don't have the opportunity to cross
9 examine that either. He's trying to say there's
10 another Jason Baldwin that did it. It is not this
11 Jason Baldwin. I have the right to call Damien and
12 ask him what he thought about this heavy set Jason
13 Baldwin doing it. I have the right to inquire about
14 why he thinks that may have happened.

15 MR. FOGLEMAN: There are a hundred people that
16 were questioned with these same questionnaires where
17 they said, who do you think did it. And we've got all
18 kinds of names coming out of the woodwork. Is he
19 going to be allowed to call any one of these and say,
20 well, you said it might have been this one. Why did
21 you say that.

22 MR. FORD: I sure could. I certainly can.

23 MR. FOGLEMAN: To put on hearsay evidence --

24 MR. FORD: It's not hearsay if they are saying it
25 on the witness stand.

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1 MR. FOGLEMAN: But you're talking about rumors.
2 The basis of their information is rumors.

3 MR. FORD: It may not be. It may not be.

4 MR. FOGLEMAN: Well, then get out and
5 investigate.

6 MR. FORD: I'm trying to.

7 THE COURT: All right. That's enough of that.
8 I'm going to take the severance under advisement.

9 Would y'all like to give me some additional
10 briefing on severance, and I'm more concerned about
11 whether or not it's a substantive or procedural rule.
12 That's what I want to know. There are other cases
13 where the Supreme Court has ruled on an identical --

14 MR. FORD: There's a medical malpractice issue
15 that dealt with that.

16 THE COURT: Yes, a medical malpractice one, but
17 there have been others where they clearly held that
18 procedural rules are a matter for the Supreme Court.

19 MR. FOGLEMAN: Your Honor, if the Supreme Court
20 has already considered whether this statute has effect
21 as opposed to the Rules of Criminal Procedure and has
22 held these Rules of Criminal Procedure --

23 THE COURT: I want to read the Hallman case plus
24 I want to consider this last thing you all gave me.
25 That's the first time I've ever heard that, the

C01222

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR-93-450
NO. CR-93-450A

DAMIEN WAYNE ECHOLS
CHARLES JASON BALDWIN

DEFENDANTS

PRETRIAL HEARINGS AND TRIAL PROCEEDINGS
ON THREE CHARGES OF CAPITAL MURDER

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BEFORE THE HONORABLE:

DAVID BURNETT, JUDGE

VOLUME 3

BARBARA J. FISHER, C.C.R.
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1 interview of Damien Echols. I didn't know he had ever
2 been interviewed.

3 MR. FORD: I think he was interviewed three
4 times, your Honor.

5 THE COURT: Did he make any other statements
6 against interest or against Mr. Baldwin?

7 MR. FORD: That's the only one where I'm aware
8 where he directly mentions my client by name.

9 THE COURT: All right. I'll think it over. I'll
10 let you know by Friday morning.

11 (PROCEEDINGS CONCLUDED)

12 JONESBORO, ARKANSAS, FEBRUARY 16, 1994, AT 9:30 A.M.

13 THE COURT: This is in the case of State of
14 Arkansas versus Charles Jason Baldwin, number
15 CR-93-450, motion to quash prosecuting attorney's
16 subpoena.

17 MR. MILLER: I'm appearing for the State of
18 Arkansas.

19 MR. ANDERSON: I am Philip Anderson of Williams
20 and Anderson. I represent Home Box Office and Bruce
21 Sinofsky and Joe Burlinger and Creative Thinking
22 International, Incorporated. And we are the moving
23 party to quash the subpoena that was issued by the
24 prosecuting attorney and served on Creative Thinking
25 seeking to obtain audiotapes of an interview with Mr.

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