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PETITIONER'S EXHIBIT #53
e-main from Brent Davis

004103

Rosemary M. Jones Official Court Reporter #317 420 West Hale Ave. Osceola, AR 72370-2532 870-563-2007

Dennis P. Riordan

From: Dennis P. Riordan [dennis@riordan-horgan.com]

Sent: Friday, March 09, 2007 4:40 PM

To: BRENT DAVIS



Dear Brent:

I'd like to thank you for the time and attention that you gave all of the defense attorneys last week when we visited you in Jonesboro. Allow me to follow up on the chief topic of our discussion, which is the new forensic evidence that we have been gathering concerning the victims' injuries. I'd like to explain why I believe this evidence is so important and then suggest why we should, and how we can, pursue a joint search for the truth on this critical issue.

To begin, I think it clear that if — and at this juncture in our discussions I emphasize the *if* — it were to be proven that many of the injuries suffered by the victims in this case, most specifically the genital mutilation of Chris Byers and the facial wounds of Steve Branch, were the result of post-mortem predation, the reliability of the jury verdicts in the Echols-Baldwin trial would be gravely undermined. That is so for least six reasons, the last two of which also apply to the verdict against Jesse Misskelley.

1. The Knife In The Lake

State's Exhibit 77, a large serrated knife, was recovered by police divers from a lake behind the trailer home of Jason Baldwin in November of 1993, some six months after the charged crimes and five months after the arrest and incarceration of the defendants. No witness was able to identify the knife as belonging to Echols or Baldwin, although one witness did testify it looked quite similar to one that she had once seen in Echols' possession. There was no evidence offered as to when or how the knife wound up in the lake, nor as to who might have put it there. No blood or other biological material was found on State's 77.

Doctor Peretti testified that some of the injuries on the victims, in particular some of the dozens of marks on Chris Byers and a few on Michael Moore, were consistent with the pattern of a serrated knife. He could not say, however, that any particular knife, including State's 77, made the marks. In the opening phase of the state's closing, prosecutor Fogelman unequivocally maintained — based on an experiment conducted during closing argument with a grapefruit that went beyond the testimony of Peretti — that State's 77 was the weapon used to cause specific injuries to the victims. (Transcript 2501-03, 2536-42). In your rebuttal remarks, you argued that the knife in the lake was used to remove the scrotum and skin of the penis of Chris Byers and that the knife, while being used to mutilate the victim's genitalia, caused gauge marks on his thighs and buttocks. (*Id.*, at 2614-16).

The knife was the only piece of evidence offered at trial that appeared to implicate both Echols and Baldwin. Given the importance attributed to the knife in closing, were it to be established that it was not used to mutilate Byers, that fact alone would arguably merit a new trial.

2. The Carson Testimony

Michael Carson testified that, when he was a 16-year old in the same juvenile detention facility as Baldwin, Carson was told by Baldwin that "he dismembered them. He sucked the blood from the penis and scrotum and put the balls in his mouth." Although legally the evidence was admissible only against Baldwin, it was used against Echols as well, as detailed below.

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It is hard to imagine testimony more likely to irrevocably turn a jury against a defendant than that the blood curling account given by Carson. But if Byers' genital injuries were caused by animals after his death, it would necessarily follow that Carson perjured himself, a not uncommon phenomenon where jailhouse informants are concerned¹. A new trial would be justified on this ground alone.

3. The Ridge Statement

Detective Bryn Ridge testified that in an unrecorded interview he conducted for several hours on May 10, 1994 with Echols, the defendant said he understood the victims had been mutilated, with one being cut up more than the others, and that they had drowned. (RT 1566, 2349) The prosecution argued in closing that this statement was incriminating because the fact that one of the victims (Chris Byers) had been mutilated more than the other two victims was not yet in the public domain.

Echols testified that on May 10th he discussed with Ridge things he had "seen on TV, newspapers, people talking," and that when Ridge had asked him whether one victim had been hurt worse than the others, he had replied, "I guess so." The local and state press had reported on May 7, 1993, the day following the discovery of the bodies, that the victims had been bound and sexually mutilated, and that Mark Byers, the father of Chris Byers, had stated that one boy had been hit over the eye, another's jaw was injured, and the third "*was worse than that*" or "*looked worse than that*." (Commercial Appeal article of May 7, 1993; West Memphis Evening Times article of May, 7, 1993; and Democrat-Gazette article of May 8, 1993) Thus the fact that one victim had been more severely mutilated than the others was in the public domain three days before the May 10th interview. Furthermore, as Ridge himself testified, at the time of the interview there were "all kinds of rumors of how people thought they died" circulating in the community.

If Chris Byers was mutilated not by his assailant but by animals after he was dead and in the water, any knowledge that Echols had of Byers's injuries came from news reports and word of mouth. The May 10th interview would have no value as proof that Echols had any unique or undisclosed knowledge of the crime.

4. The Occult Expert and The Satanic Theory

The theory of motivation for the murders argued in closing was that of religious belief: Echols believed in satanism, and the charged murders were satanic in nature, so Echols was likely to have committed them. Dale Griffis was permitted to take the stand on the ground that his testimony could assist the jury on the second component of the syllogism — that the killings were satanic in nature. The Arkansas Supreme Court described his testimony as follows:

Dr. Dale Griffis, an expert in occult killings, testified in the State's case-in-chief that the killings had the "trappings of occultism." He testified that the date of the killings, near a pagan holiday, was significant, as well as the fact that there was a full moon. He stated that young children are often sought for sacrifice because "the younger, the more innocent, the better the life force." He testified that there were three victims, and the number three had significance in occultism. Also, the victims were all eight years old, and eight is a witches' number. He testified that sacrifices are often done near water for a baptism-type rite or just to wash the blood away. The fact that the victims were tied ankle to wrist was significant because this was done to display the genitalia, *and the removal of Byers's testicles was significant because testicles are removed for the semen. He stated that the absence of blood at the scene could be significant because cult members store blood for future services in which they would drink the blood or bathe in it. He testified that the "overkill" or multiple cuts could reflect occult overtones. Dr. Griffis testified that there was significance in injuries to the left side of the victims as*

distinguished from the right side: People who practice occultism will use the midline theory, drawing straight down through the body. The right side is related to those things synonymous with Christianity while the left side is that of the practitioners of the satanic occult.

Echols and Baldwin v. State, 326 Ark. 917, 938-941, 936 S.W.2d 509, 518-519 (1996) (Emphasis added)

The hypothetical on which Griffis offered his opinion included the fact that Jason Baldwin sucked the blood from the penis of one victim. Griffis's testimony concerning the Satanic nature of the crime, which was offered chiefly against Echols, was thus firmly based on the Carson testimony.² Prosecutor Fogelman then argued in closing that these killings were yet another example of the terrible wrongs that historically have been committed in the name of religion.

There was no empirical basis for Griffis's testimony that there have been satanically-motivated killings in which testicles were removed to preserve semen, or blood was preserved to drink or bathe in, or the faces of victims were injured on the left side rather than the right based on the "midline theory." More importantly, if the perpetrators of these murders did not remove Byers's testicles, much less remove them to preserve semen, then Griffis's highly inflammatory opinion testimony was of no probative value whatsoever. The absence of blood from apparently horrendous wounds was not due to the defendants' totting it away to drink or bathe in it, but to the fact that the most egregious injuries were inflicted post-mortem by animals. And the appalling condition of the left side of Branch's face, as opposed to the right side, was due not to an expression of occult beliefs, but to animal predation.

It was the combination of these supposed facts — (1) that the victims had been so horribly mutilated by their killer or killers and (2) Griffis's claim that the wounds were motivated by occult beliefs — that enabled prosecutor Fogelman to argue that "the satanic beliefs" were "a perfect motivation" and that when "you begin to see inside Damien Echols . . . [y]ou see inside that person and you look inside there and there's not a soul in there." If this devastatingly powerful argument proves to be based on false or misleading testimony, a new trial would be in order.

5. The Misskelley "Confession"

Jesse Misskelley was tried separately from Echols and Baldwin, and the Arkansas Supreme Court has stated that "virtually the only evidence" offered against Misskelley was his own statement to the police. Under prompting from interrogators Ridge and Gitchell — Misskelley rarely if ever gave a spontaneous answer himself, but simply acceded to suggestions put to him — Misskelley stated that Jason used a knife to cut a victim in the face. When told that another boy was cut, Misskelley said that this victim was cut "at the bottom." Again under strong prompting, Misskelley agreed with the suggestions of his interrogators that the cutting was in the "groin area" and that the penis was cut, and stated that the victim was Byers. (Statement of June 3, 1993, at 2:44 p.m.) This statement was taken a month after press reports of the sexual mutilation of Byers began circulating.

If neither Byers nor either of the other two victims was cut with a knife, the Misskelley confession, which contains many other flaws,³ would be further and crucially undermined.⁴ While the Misskelley statement was not introduced against Echols and Baldwin, we know that their jurors were aware of it and discussed it during deliberations. Echols has raised this as a basis for relief in his pending federal habeas petition.

6. The Prosecution Counter To The Man at Bojangles

The prosecution used the absence of blood at the crime scene to rebut the defense argument that

a likely suspect was "Mr. Bojangles," a black man who walked into the Bojangles restaurant, located a half mile from the crime scene, at 8:30 p.m. on the night of May 5th, within two hours of the victims' disappearance. This man was incoherent and dripping blood; entered the women's room at the restaurant and spread blood and feces on the wall; and then left. The police collected samples of the wall smearings the next day, only to lose them. A hair of an African-American located at the crime scene has been subjected to DNA mitochondrial testing.

You argued to the jury in closing that this unstable man "who's unsteady on his feet" could not have been responsible for these crimes because "whoever did it was so careful that there's not any blood in the area." Proof of largely post-mortem injuries would wholly undercut the argument of a necessarily cleaned up crime scene.

Obviously, the fact that the incidence of animal predation would be very important in this case, as demonstrated above, does not constitute evidence such predation occurred, and I would not expect you to accept the proposition on anything but convincing proof. I believe that such proof can be presented to you. As I said in Arkansas, the opinions of the experts have driven this theory, rather than the lawyers' theory driving the expert opinions. My initial reason for seeking a pathological work-up was that I doubted that a knife as large and dull as State's 77 could have been used to skin the penis of Chris Byers, but I never expected to be told that his genital injuries and those on Branch's face were not man-made. After listening to the opinions of these well-credentialed experts, I now firmly believe that is the case.

We will be prepared to present our new forensic evidence in court, but, because we do truly believe in the accuracy of these medical opinions, we would like to present that evidence to you in a consultative rather than adversarial process. You have asked, with a not inappropriate note of skepticism, whether we are prepared to lay all our cards on the table, disclosing all opinions we receive, rather than merely ones that are supportive of our position. I am prepared to do so provided that we receive a simple quid pro quo: an assurance that you and any experts that you utilize will approach the subject without an adversarial agenda, letting the science take you where it will. We are also more than willing to cooperate in developing a process for further evaluation of this issue by mutually agreed upon experts.

Again, I thank you for your time and look forward to discussing these matters with you in the near future.

Sincerely,

Dennis Riordan

¹A recent study linked nearly half of recent wrongful capital convictions in this country to the uncorroborated testimony of a jailhouse informant. Gross, et. al., Exonerations In The United States, 1989 through 2003, Journal of Criminal Law and Criminology Vol. 95, No. 2 (2005).

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Griffis agreed that if the Carson evidence was incorrect, there was nothing to connect Baldwin to the occult. (RT 1798-99)

³ Misskelley's initial statement described him walking to meet Damien and Jason in Robin Hood Woods in the early morning hours of May 5th, 1993, and then watching the victims be abducted on their way to school, beaten, and sexually assaulted. Misskelley said he then returned home before noon. The three boys in fact attended school all that day, as did Jason Baldwin, and they did not go missing until after 6

p.m. on May 5th. The Arkansas Supreme Court stated that "upon prompting by the officer," Misskelley changed the time of the assault "to 7:00 or 8:00 p.m." *Misskelley v. State*, 323 Ark. 449, 464-66, 915 S.W.2d 702 (1996)

Misskelley was unable during hours of questioning, despite vigorous police prompting, to describe the most obvious aspects of the crimes, most notably the shocking manner in which the victims were hog-tied with their own shoelaces. Rather than describing the hog-tying with shoelaces, Misskelley said only that the victims' hands were tied, and that was done with brown rope. Finally, Detective Ridge flatly asked "were they [sic] hands tied in a fashion that they couldn't have run, can you tell me?" Misskelley replied: "They could run..."

⁴A recent academic study of well established wrongful convictions found that 51 of 340, or fifteen percent, involved a false confession. Gross, et. al., *Exonerations In The United States*, 1989 through 2003, *supra* (note 1).