

Articles



**"A Little Good News"**

**Greene County Courthouse: State of the Art, User Friendly & Completely Paid For**

By: Daniel T. Stidham, Esq.

I was excited when Don Hollingsworth asked me to write this column about the new Greene County Courthouse. Don was present here in Paragould, recently, when we had the occasion to show off the facility during our celebration of Law Day and during our ceremony dedicating two of the three Courtrooms in the Courthouse. I am pleased Don asked me to share this story with the Arkansas Bar.

The citizens of Greene County and the Greene County Bar Association are very proud of our new Courthouse. To understand our pride, you must first be apprised of a little history. Our "old" Courthouse was built in 1888. It was a magnificent structure, in it's day, but as the years passed and as Greene County grew, it became both impractical and fell into in a state of disrepair. Several attempts were made to create support for the construction of a new facility, but they all fell short. Circuit Judge Charles Light, who retired from the bench in 1973, despised the old facility and it's inadequacies. Legend has it that Judge Light had jokingly issued an offer of immunity, from criminal prosecution, to any person who would burn the facility down. Judge Light's attempts to get a new Courthouse built during his lifetime failed. He died in 1982. But ironically, his death in 1982, coupled with the generosity of his widow, Margaret Anne Light, who passed away a few years later, laid the groundwork for the ultimate construction of the Courthouse.

Margaret Anne Light, in honor of her husband, in her Will, bequeathed the sum of \$100,000.00 to the citizens of Greene County. This sum, placed in Trust, was specifically earmarked to be used to furnish a Courtroom in a "new" Courthouse in Greene County. The Will had a "sunset" provision, which stated that if a new facility was not built within ten years of her death, the \$100,000.00 would go to an alternate beneficiary. This gift, when combined with the generous testamentary gift of another prominent family, Mack and Vestal West, gave Greene County almost a quarter of a million dollars to use to build a new Courthouse. Judge Light's widow passed away in November, 1987, and the clock was ticking.

The Greene County Bar Association implemented a plan designed to gain community-wide support for the construction of a new Courthouse. A Courthouse Committee was selected which contained members from a cross -section of the community as well as government leaders of the Community. This Committee gained wide support for the project, but the project seemed doomed when a dispute arose between the City and the County over allocation of the proceeds of a proposed sales tax designed to pay for the new facility.

This provided a significant challenge to the Bar if the project was to be saved. Attorney Robert F. Thompson was ready for this challenge, and single-handedly

brokered an agreement between the City and the County which led to a special election on the sales tax issue. The citizens of Greene County warmly embraced the idea of this sales tax, and the new facility was completely paid for before ground was ever broken to begin construction. Construction was completed ahead of schedule, and City, County & State offices moved into the new facility in January of this year.

The Courthouse has three (3) Courtrooms, Municipal, Circuit & Chancery. For this first time ever in the history of Greene County, this year, three different Courts were convened in the same building at the same time. All Court personnel, including the Court Clerks, Probation Officers, and even the Prosecuting Attorney are housed in the facility. We are even capable of having two jury trials occur simultaneously as the Courthouse is equipped with two jury ready Courtrooms and two jury deliberation rooms. A bank of Witness rooms are conveniently located outside the two large courtrooms which make conferring with clients and witnesses easy and confidential, an impossibility in the Old Courthouse.

By the way, we still have the Old Courthouse too. Recognizing the historic significance of the structure, the Citizens of Greene County, through private donations and grants, have saved this beautiful structure and are restoring it to it's original splendor. Once again, a member of our Bar led this project. Thanks to Randy F. Philhours, who organized the Greene County Courthouse Preservation Society, the Historic Greene County Courthouse, with it's beautifully reconstructed clock tower, remains as a symbol of our past.

As I stated earlier, Don Hollingsworth, was present when we unveiled the bronze plaques dedicating the "Charles W. Light Courtroom" and the "Mack & Vestal West Courtroom" in our new Courthouse. Don also served as our guest speaker, later that evening, at our annual Law Day Banquet, having accepted the invitation of another prominent member of our local Bar, H.T. Moore, who just happens to be the current President of the Arkansas Bar. As I listened to Don's remarks during the banquet, it was clear to me that he understood the pride in our Bar and the pride we have in our community in achieving this magnificent goal. Thanks, Don, for celebrating with us, and for giving us the opportunity to share "A Little Good News."

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## Articles

**Finding and Utilizing Forensic Experts In Criminal Trials**

By Daniel T. Stidham, Esq.

The purpose of this seminar is to discuss the multifaceted process of first locating and then utilizing Forensic Experts for criminal trials. It is self evident that this topic is a rather complex one, and covering it adequately in the context of a one hour seminar will be a formidable task. Specifically, it is hoped that this discussion will help you identify resources for locating qualified and competent experts to help you understand the nature of forensic evidence in a particular case, the importance of getting the right kind of expert for the specific circumstances of your case, and for utilizing that expert fully once his or her services are obtained.

**The Importance of Forensic Evidence**

In a nutshell, Forensic Evidence is very powerful stuff. As we all know, it can convict our clients quite easily. In order to represent our clients adequately, we must be able to recognize the importance of forensic evidence and it's power of persuasion. In order to do this, however, we must understand the nature of forensic evidence and it's underlying scientific principles. Forensic evidence can literally make or break our case therefore we must also be able to first recognize it, and then when it is necessary, enlist an expert to assist us determining it's extraordinary value. Unfortunately, physical evidence in a criminal case is seldom seen by anyone involved in the investigation as having any intrinsic value [1]. In fact, a literature review conducted by Horvath and Meesig [2] showed that physical evidence is used in less than 25% of the cases prosecuted in the United States, with the percentage in some regions dipping to less than 5%. Many of the agencies charged with investigating criminal offenses, including coroners and law enforcement agencies, are either poorly funded or poorly trained, or both, and as such, are not qualified to gather, or analyze, complex forensic evidence. Just to add to the confusion, we lawyers often rely on what we think is "good" forensic analysis by so-called experts whom we assume are either neutral, or unbiased, when in actuality nothing could be farther than the truth. We need only look to the glaring example of the recent malfeasance at the FBI Lab to realize the fallacy of this thinking. A forensic expert with whom I have discussed this very topic with recently says that it is very important to "assume nothing" when it comes to forensic analysis. This particular forensic expert believes, as do I, that the "State's expert is never your friend."

**Finding an Expert**

Sources for finding forensic experts should always include the following:

1. Direct referrals from other lawyers;

2. Referrals from other forensic experts;
3. Experts directly mentioned in reported cases and Bar journals; and
4. Professional Organizations for Forensic experts

Obviously, other lawyers are a great source of referrals for experts. These referrals are usually quite good in that most lawyers won't give you a referral to an expert that they have had a bad experience with and the lawyer will be able to save you valuable time in researching your expert. Also, experts themselves are a good source for referrals to experts in other areas or subspecialties. I have also found experts by reading cases while researching issues for trial. This gives you good insight into an expert since you are actually seeing how he or she testified in a case similar to yours.

There are several professional organizations out there for forensic scientists which are similar in purpose to the Bar Association. The American Academy of Forensic Sciences [3] is one such organization. The academy maintains a web site and has links to many other subspecialty sites. By visiting this site on the World Wide Web and the corresponding subsites you can obtain information that will send you directly to specific experts. Although the sites do not specifically list experts and their addresses and phone numbers, they do list officers and committees within the organization that have names and numbers listed. In addition, the sites contain journal articles written by specific experts in their particular fields.

#### Check Them Out

The search for an expert can involve many pitfalls. One only need to recall the plight of young Jake Brigance in John Grisham's novel *A Time to Kill* to realize that this is so. According to Turvey, [1] in a Chapter of his new book devoted to finding forensic experts:

"Charlatans, frauds, and con artists frequently grace the courtrooms with phony credentials, often for years, without being discovered. Then one day someone asks a simple question about their Curriculum Vitae, and the whole world comes crashing down around every case that the "expert" has worked on. Always check professional references, and be certain that those references and qualifications are commensurate to the questions that are going to be put to the expert." [Turvey, B., "Criminal Profiling: An Introduction to Behavioral Evidence Analysis,"

(London: Academic Press, 1999)

Always check the references of any expert you wish to retain. Professionals won't mind you checking them out, and if they do, this should be a "red flag." Keep in mind that the references listed in an expert's CV are only those references that that particular expert wants you to see. Always try to find references outside the CV if you can. Ask the expert to give you the names of lawyers with whom he has worked. When you talk to these lawyers ask them who was on the other side. The opposing lawyer can usually give you tremendous insight into the expert.

Always check to see if your potential expert is in good standing with his or her licensing board and always make sure that your expert is properly certified. Don't wait until trial to find out that your expert's Doctoral degree was from a mail order catalog or that he is on probation with his licensing board. Don't ever accept the word of your expert on these issues, document them for yourself.

Always be particularly leery of experts who seek your case out. These experts may be more interested in the notoriety of the case than in the truth of the facts of the

case. While at the annual meeting of the American Academy of Forensic Sciences in San Francisco last February, I learned of a Forensic Odontologist who had offered his services to the O.J. Simpson Defense Team claiming he had found a bitemark on Nicole Brown Simpson's back after some of the autopsy photos had been made public. He claimed that he could probably exclude O.J. as the person responsible for making the bitemark. This would have been relatively easy for him to do since the "mark" on Nicole's body was actually an indentation in her skin from the clothing she was wearing when she was murdered. O.J.'s defense would have certainly been much less effective had his defense team blindly gone with this "expert" who sought them out only to be embarrassed later on. Of course we must imagine the following colloquy to the jury: "if the bite mark don't fit, you must acquit." Likewise, experts who advertise in Bar Journals should be checked extensively for both their references and their credentials.

#### **Make Sure Your Expert Stays in Their Field of Expertise**

A good expert knows his or her limitations and the scope of their expertise. These experts know when it's time to refer you to another expert who does have that particular expertise. Some experts routinely testify about matters just outside their areas and this can really come back to haunt you if you are not careful. Not only will you look foolish when the other side shows up with a genuinely qualified expert, it will also undermine those areas where your expert was qualified to testify.

#### **Utilizing Experts in a Post Daubert World**

Many of us are frightened about qualifying experts in the post Daubert era. While I won't address the specific issue of qualifying experts in this new era, I do want to discuss the use of forensic experts whom you may not be able to qualify to testify at trial on certain topics, but who can assist you, nonetheless, in invaluable ways. An example of this type of expertise is the arena of "Criminal Profiling." Criminal Profiling, in laymen's terms, is the building of a psychological profile of a likely offender in a criminal case. While this type of evidence would be difficult, at best, to get in at trial, it is extremely useful in helping you prepare a trial strategy and identifying other forensic issues which are readily admissible. Profiling, as dramatized on Television, is not true deductive criminal profiling. If you want to hire a profiler to assist you in your case and he, or she, wants to go to the crime scene, pick up some dirt, and wait for a flashback like the profiler in T.V.'s popular Millennium series, get your self a new profiler. Likewise, if your profiler wants to simply conduct statistical analysis, i.e. "all serial killers are white males who drive VW Beetles and their mother hated them," get yourself a new profiler. A true Profiler will be trained in Forensic science and psychology and will assist you identifying issues in your case, i.e. other more viable suspects, crime scene reconstruction, identifying forensic evidence and wound pattern analysis. For an overview of Deductive Criminal Profiling see the website for Knowledge Solutions, LLC [4] and Turvey, B., [1] "Criminal Profiling: An Introduction to Behavioral Evidence Analysis.

#### **Endnotes**

1. Turvey, B., Criminal Profiling: An Introduction to Behavioral Evidence Analysis," (London: Academic Press, 1999)
2. Horvath, F. & Meesig, R., "The Criminal Investigation Process and the Role of Forensic Evidence: A Review of Empirical Findings," Journal of Forensic Sciences, November 1996; 41 (6): pp. 963-969
3. The American Academy of Forensic Sciences, website found at [www.aafs.org](http://www.aafs.org)
4. Knowledge Solutions, LLC, website found at [www.corpus-delecti.com](http://www.corpus-delecti.com)

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**005911**

## Articles

## Stidham Seeks Justice

By Kelley Risker

Northeast Arkansas Tribune Staff Writer

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It doesn't happen much around here, not in a small town. Capital murder cases happen far away, to other people. They are tried in court by other lawyers, not attorneys that we know personally, not someone we might bump into at the post office or grocery store. But this time something far-reaching and big city came uncomfortably close to home.

Though not in recent news, the case involving the deaths of three West Memphis boys almost six years ago still remains in the mind and life of a defendant's lawyer, Dan Stidham. A Paragould native, Stidham graduated from ASU in 1984 with a bachelor of science degree in Sociology. His law degree was earned in 1987, and for the last 11 years Stidham has been quietly practicing law in his office on North Second Street.

Even after being involved in a handful of murder cases, though, this one was unexpected. Appointed to the defense in 1993, Stidham admits that this particular homicide is the most complicated and biggest case he has ever been involved in. He was handed the case due to a personal conflict of the West Memphis public defender, and though the trial itself is over, the facts of the case linger.

The case itself involved the murder of three eight-year-old boys and sexual mutilation of one of the victims May 5, 1993. The boys returned home from school one by one and disappeared, never to be seen alive again. Three older boys were charged with this triple murder; enter Dan Stidham.

Stidham represents Jessie Misskelley, a then 17-year-old with a five-year-old mental capability. With an I.Q. of 72, Misskelley was diagnosed in 1993 as border line mentally retarded. An earlier test, done while Misskelley was in grade school, diagnosed Misskelley as completely retarded. A fact, Stidham believes, that enabled police to coerce his client into a false confession.

About four months after his appointment to the case, Stidham realized two things: one, there were problems with the facts, and two, Misskelley's questionable mental capabilities. "Initially I thought he was guilty," Stidham said. "It's difficult to imagine that someone would confess to something he didn't do."

Stidham is adamant about his client's innocence, though, for many reasons. Though Misskelley confessed to the crime, many aspects of his confession did not match the crime scene, said Stidham. Several pieces of his testimony were inaccurate with the details of the case. For example, Misskelley stated in his confession that the killings were at noon, whereas Misskelley and the victims were at school during that hour. He additionally "confessed" to police that the victims were bound with brown rope though they were actually tied with shoe laces. Additionally, some of the wounds on the victim's body that Misskelley described did not even exist. The most interesting aspect of the case, setting aside the conflicting issues, said Stidham, was the fact that no physical evidence linked his client to the killings—no footprints, fingerprints,





"nothing. The only link was the confession."

"It was apparent to me that there was a problem," Stidham said. We normally don't question confessions except with glaring inconsistencies."

Misskelley was "suggestible" and did not realize what to do, said Stidham. His client was given a lie detector test immediately and prior to his confession and was told by West Memphis Police that he had failed. According to Stidham's synopsis of the case, experts say that when a person of limited intellect and who is very suggestible is told they have flunked a polygraph test, they will often confess falsely as their perception of reality is changed, and they see it as their only chance to avoid getting into trouble, please their interrogators and leave the pressure of the interrogation.

Polygraph expert Warren Holmes of Miami, Fla., was retained by Stidham and reviewed the polygraph charts. According to Holmes, Misskelley had passed all of the questions about the homicides. This fact, however, was moot because lie detector tests are inadmissible in a court of law.

An additional expert, Dr. Richard Ofshe, was added to the list of Misskelley advocates. Ofshe is a Pulitzer Prize winner for his work in the Synanon Cult in California, making him all the more valuable in the case since the murders were believed to be cult related. Ofshe's second area of expertise is false confessions, and after reviewing the transcript of the confession Ofshe was convinced of Misskelley's innocence.

The jury was not allowed to hear the compelling testimonies of these two expert witnesses, even though crucial to the defense. The defendants were sentenced in February of 1994. Damien Echols was sentenced to Death Row, Jason Baldwin to life without the possibility of parole, and Misskelley to life plus forty years for the murders of James Moore, Steve Branch and Chris Byers. Although there was no acquittal, Misskelley did avoid a capital murder conviction, and thus the death penalty. Since the sentencing, Stidham has been appealing this conviction.

For a new trial, in addition to the issues previously argued on appeal, Stidham would also rely on the words and findings of the forensic analysis of and psychological profile of Brent E. Turvey, MS. This criminal profiler agreed to look at all physical evidence, autopsies, the crime scene, which had not been properly secured resulting in a loss of potential evidence. Stidham purposefully did not tell all the information to Turvey about his client's confession or who he believed was guilty because he wanted an independent analysis.

Turvey additionally identified several things on the victims bodies that were inconsistent with upholding the guilt of the suspects. The most integral was a bite mark on one of the bodies. A forensic odontologist (dentist) examined the bite mark and compared it to the dental impressions of the three suspects; none matched. "We're hopeful that this, coupled with other evidence, will lead to a new trial for these kids," said Stidham.

"anyone who looks at the facts of the case will come to the conclude that these kids are innocent," Stidham said. It has become a "personal quest for justice" for this small town lawyer. "I'm willing and eager to talk to anybody about it," he said. "I believe so much in the innocence of my client...it's a terrible injustice."



In 1998 Stidham received a call from the producers of the "Leeza" show in Los Angeles, California. Ofshe and Turvey were invited to speak and Stidham said that he was reluctant to appear because he had previously turned



down two invitations to appear on Geraldo and one on the Maury Povitch Show, because "I felt they were trying to sensationalize the case and not present actual facts," he said. Nevertheless, Stidham agreed to participate in a taping of the show. According to Stidham, the "show went real well, no surprises, the audience asked good questions. I was impressed with how it went." The program was originally slated to air January 7, 1999, but was pulled at the last minute because of concerns about airing the graphic details of the case on daytime television. Producers are editing the show for content. Stidham was told by the senior producer that the show will air eventually as it cost almost a half million dollars to produce. The Leeza Show itself is ending soon and will then be syndicated, in which case, Stidham said, the show may not air for several more months.

Stidham said that the experience of the case has "carved an impression in his life, and until appeals are completed, he will not put the case to rest.

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## Articles

## LA WEEKLY

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**The Devils' Advocates:****How Arkansas' West Memphis Three went from convicts to L.A.'s cause célèbre**  
by Stephen Lemons

Seated behind a pane of smudged Plexiglas, his white prison garb a suggestive contrast to the puke-colored walls of the dingy cubbyhole he's in, prisoner #SK931, Damien Echols, is explaining how he became Jyoti Priya Karuna, Lover of the Light Compassion.

"That's the name my teacher Reverend Karuna Dharma gave me," says Echols, his voice muffled through the wire-mesh strip along the bottom of the Plexiglas. "She's the abbess of the IBMC, the International Buddhist Meditation Center, in Los Angeles. Your teacher gives you a new name once you're a novice monk, as I am. The teacher's name becomes the student's last name."

It was Frankie Parker, another prisoner on Arkansas' death row, who introduced Echols to Zen Buddhism. Parker, known as Jusan, was executed by lethal injection on August 8, 1996, despite appeals for clemency by the Dalai Lama, Nelson Mandela and others. After Parker's death, Echols "took refuge" — was inducted as a Buddhist layperson —



with the Zen priest who had been Parker's teacher. In 2001, Echols took the first steps toward total ordination with Reverend Karuna.

"I practice zazen meditation, yoga and tai chi," says Echols, 28, his dark eyes staring out from behind wire rims that make the gaunt, raven-haired inmate look like a graduate student. "Any form of martial arts is really frowned upon here, so that's out. When I first started, I was doing up to five or six hours of meditation a day. Now it's more like an hour in the morning and an hour at night during weekdays."

Meditating is made more difficult by the chaos of Echols' surroundings. The schizophrenic next door to him is a Jesus freak and likes to watch Benny Hinn all day on the shared TV set. Also, the shouting of deranged inmates never ceases, and, from what Echols says, the majority of cross-cell confabs consist of one inmate telling another how

many times he's going to stab and/or fuck him, though not necessarily in that order. All of which is hardly conducive to spiritual pursuits.

Echols credits the discipline of Buddhism with helping him to survive being in lockdown nearly 24 hours a day, seven days a week. He's allowed a 10-minute shower three times a week, and every other day he's supposed to get an hour of exercise in the yard, though more often than not the guards "forget." In the 10 years he's been in "safe keeping" (hence the "SK" prefixed to his number), he's been the victim of the usual prison bullshit — like the time a guard planted a shank in his cell and subsequently confined him to the hole. Were it not for Buddhism and his wife, Lorri, an architect from New York who married Echols in a Buddhist ceremony in 2000 and now lives in Little Rock, his anger at being number one of the West Memphis Three — notorious convicted kid killers and causes célèbres — would have consumed him.

"I had to do something about it. Zen Buddhism has allowed me to control that rage. Without it and without Lorri, I would have given up long ago."

Shortly after he says this, a blue-shirted guard knocks on the door to the visitor's cubicle and tells us it's time. Three and a half hours have passed. Echols rises, places a hand against the glass to thank me for coming. "I actually enjoyed it," he says, seeming somewhat surprised by the admission. As I begin to follow the guard out the door, Echols bows to me Japanese style two or three times, an unexpected act of humility that both embarrasses and saddens me.

I walk out of that red-brick sore of a building, past tall steel fencing topped with razor wire, thinking of Echols returning to that 9-by-12-foot cell. As I head back through miles of farmland to the relative civilization of Little Rock, I wonder how Echols' life could possibly get any worse.

The answer comes about a week later when, under the cover of darkness and with no warning, Arkansas' Department of Corrections moves all 39 men on death row at Tucker to a so-called SuperMax facility, some 90 minutes south, where they will each be held in what is essentially solitary confinement. Echols' cell is now three concrete walls and a solid steel door with a slit through which he'll be fed. In one wall, behind glass, is a TV set over which he has no control. He cannot even listen to classical music on his small transistor radio because the prison's thick walls make reception impossible. It remains to be seen if he will have access to all of the books supporters send him via his wish list at Amazon.com.

From the cacophony of screams to the silence of an Orwellian dungeon, Echols' trials seem never-ending. He'll need all the strength he derives from his Zen exercises to endure this latest ordeal. Even then, his extreme isolation from the world is especially troubling, almost as if the prison authorities are hoping he'll commit suicide to save them the trouble of executing him.

Two thousand miles west, in an especially funky little cranny of Los Angeles' Lincoln Heights, artist Emmeric James Konrad is hard at work on a giant crucifix in the studio of his townhouse apartment. Actually, the crucifix is still mostly in his mind and in his sketchbook: stark black-and-white images of three murdered 8-year-olds that will form the head and arms of a colossal 8-by-10-foot cross.

"I've already told them I want an entire wall," says Konrad, excitedly. "I'm going to spray-paint a black outline around it. In the center will be the dead kid with the bite marks, on the bottom will be the stepfather, and below him will be the initials of the three kids, a line of red going through them, with the stepdad's initials below. You know, like a gangbanger's tags."

Konrad's creepy conception incorporates three famous photos of Christopher Byers, Stevie Branch and Michael Moore, as they were in life before their bodies were pulled from the muddy water of a drainage ditch running through a spooky patch of woods known as the Robin Hood Hills in West Memphis, Arkansas. They were found there May 6, 1993, a day after they had been reported missing, naked and tied ankle to wrist with their own shoelaces, like deer after the kill. The "stepfather" Konrad refers to is John Mark Byers, known to the viewers of the award-winning HBO documentaries *Paradise Lost: The Child Murders of Robin Hood Hills* and *Paradise Lost 2: Revelations* as the belligerent, mullet-headed oaf whose comic self-incriminations are lost on the Keystone Kops at the West Memphis Police Department.

Instead, the police alleged that the three children were murdered as part of some sort of sloppy satanic ritual carried out by Damien Echols, then 18, and his two cultic cohorts, Jessie Misskelley, 17, and Jason Baldwin, 16. Problem is, the cops never had any real evidence to link Echols, Baldwin and Misskelley to the slayings, which were especially brutal — Christopher Byers was emasculated. Though the boys had been mercilessly battered and mutilated, there was no blood found at the site, nor were any murder weapons recovered. This startling lack of clues encouraged the 80-member police force to look to the supernatural for an answer, and they found it in Echols, a self-described Wiccan at the time who liked to wear black, listen to heavy metal music and read Stephen King.

With the confession of the mentally handicapped Misskelley acquired through ye olde third degree and dutifully leaked to the press, and a public mood more akin to Marion Starkey's *The Devil in Massachusetts* than *Harper Valley P.T.A.*, the authorities railroaded Echols, et al., with the aid of two pliant juries. The alt-weekly *Arkansas Times* referred to them as "Witch Trials," and the phrase "satanic panic" was bandied about. Misskelley and Baldwin caught life without parole. Echols got death and has been waiting to die ever since. They're now known worldwide as the West Memphis Three.

"I wanted to bring it back to the three boys who were murdered," says Konrad, a silver-haired, motorcycle-riding ex-Marine who, in paint-splattered jeans and T-shirt, looks every inch the artist. "I don't want it to just be these guys get out of prison and it to end. I want it to be these guys get out of prison, and they get the guy who did this."

Out of the paint-and-paper chaos of Konrad's workspace emerge the faces of the dead children, rendered in charcoal, their spectral visages hovering like nightmares. In the background, Konrad's CD player is cranking out a cover of the Stones' "Paint It Black" by the L.A. band the Hyperions.

I feel a weird tingle, like a cold salamander slithering up my spine, as I look at the images. "I want it to have that feel of an icon, like the Hispanic graves where they have the picture of the deceased. It's been so hard for me to do this. Once I get going, usually I can bang stuff out, but this kills me. I have to keep walking away," says Konrad.

Konrad is but one of about 20 artists set to participate in a show at downtown's sixspace gallery September 6 through 20. "Cruel and Unusual: An Exhibition To Benefit the West Memphis Three" is meant both as a fund-raiser for the WM3's legal-defense fund, the entity that pays the legal bills associated with the appeals for the three convicts, and as a commemorative event to mark the 10th anniversary of their arrests, in June of 1993. Featured will be the artwork of Marilyn Manson, Raymond Pettibon, Exene Cervenka, Robbie Conal, Shepard Fairey, Glen E. Friedman and others. Winona Ryder will host the opening-night reception Saturday from 5 to 10 p.m., and Jello Biafra will be in house to render one of his spoken-word rants. Also present will be Arkansas journalist Mara Leveritt, signing copies of her eyeball-popping exposé *Devil's Knot: The True Story of the West Memphis Three* (Atria/Simon & Schuster), the bible for anyone interested in the crime.

The exhibit's being organized by the L.A.-based Web site [www.WM3.org](http://www.WM3.org), also known as the West Memphis Three "support group," run by a handful of Angelenos who for the past seven years have tirelessly publicized the case and helped turn it into a movement on par with the effort to free Rubin "Hurricane" Carter in the '70s. The art show is the brainchild of Chad Robertson, a painter and graphic designer with extensive contacts in L.A.'s art world. His girlfriend, Kathy Bakken, one of the founding members of the WM3 support group, introduced him to the case.

"She broke it to me on our first date," says Robertson, who with his spiked black hair looks like he'd still fit right in at the Big O skate park in Orange County where he spent his early teens. "I borrowed the *Paradise Lost* videos from her and watched the first one by myself. I was kinda like, 'Man, something's wrong, but those guys are fucking crazy.' Then I watched the second one, and I was like, 'Holy shit! These guys are so fucking innocent.'"

It's a common reaction for those who've seen both documentaries. In the first, filmmakers Joe Berlinger and Bruce Sinofsky left viewers with the niggling feeling that Echols, Misskelley and Baldwin may have had something to do with the crime, even though there appeared to be nothing of substance in the prosecution's case. However, in the sequel, Berlinger and Sinofsky go bare-knuckles with the proposition that the West Memphis Three are guilty. They focus on the drug-addled, borderline-psychotic behavior of John Mark Byers, the mysterious demise of his wife, Melissa, whose cause of death is still "undetermined," and the highly suspicious way he just happened to lose all of his teeth around the same time bite-mark evidence became a crucial issue in the appeals process. In short, it's difficult to come away from *Paradise Lost 2* and not believe that the West Memphis Three are the victims of a colossal miscarriage of justice.

Initially, Robertson planned to paint only the three men, but then he read an interview with Henry Rollins, a supporter of the WM3 who last year released *Rise Above: 24 Black Flag Songs To Benefit the West Memphis Three* and has since been doing a worldwide tour to support the album, which includes covers by Iggy Pop, Lemmy and Ice T. (According to Rollins' Web site, \$10,000 has gone to the WM3's legal-defense fund so far.) In the article, Rollins discussed the case and his activism, saying he'd run out of ideas and would like to hear from anyone who had any. The proverbial light bulb went on over Robertson's head, and "Cruel and Unusual," a particularly apt title in view of Echols' recent treatment, was born.

"Originally, I picked Raymond Pettibon just based on his artwork," says Robertson. "He's so outspoken, with an extremely interesting point of view. And I felt he would be a really great voice for what's going down — the strangeness of this matching the strangeness of his art. Then I picked some of my heroes, like Exene — X, of course, was my all-time favorite band. Then, as the show started picking up speed, Kathy brought in Matt Mahurin, and Grove brought in Floria Sigismundi. So it wasn't all just my choosing. But the original, core people were, and they were based on the punk rock values, shall we say."

Many artists in the show expressed a personal connection to the case in addition to a desire to raise awareness of the larger issues involved. For Dead Kennedys founder Jello Biafra, the idea of people being sentenced to life in prison or death row because of their appearance and their musical tastes struck a nerve.

"I was an outcast from the moment I started school," explains Biafra, "and it took me many years before I became proud of that. It still meant I wound up accused of many things I didn't do both at school and at home, and it kind of stoked a fire inside of me as far as my strong opinions of the justice system go."

Poster artist and billboard liberator Shepard Fairey, he of the ubiquitous Obey Giant images, met Robertson at Rollins' free Amoeba show back in December to promote the *Rise Above* CD. Fairey, who recalls being harassed by Southern cops for "looking funny," instantly signed on, and did a blue-and-black silk-screened poster of Rollins to benefit the WM3. Sales of the poster have so far garnered the legal-defense fund \$2,000, and Fairey's doing a two-tone silk-screen of the three young men for the show.

Punk rock Daumier Raymond Pettibon's *Remember the West Memphis Three* is a scathing, hilarious denunciation of America's backstabbing snitch culture wherein Joe Citizen is your worst Stalinist nightmare come true. Other than its title, the pen-and-ink drawing does not refer directly to the case.

"It's human nature to have concerns raised by the things you're closest to," explains Pettibon. "I think the fact that it had to do with rock music and that sort of thing probably brings a lot of attention to it from artists and musicians and so forth. That's a genuine response, but in my case, I'd be suspicious of going in that direction because this sort of thing happens, it's systemic. That's kind of the problem when there's so little attention raised to the many victims of the justice system."

In November, the support group went to Arkansas to visit the WM3 in their respective prisons. It was Robertson's first trip, the umpteenth for the other hardcore members of this late-30s-to-early-40-something Mod Squad, which includes writer and prop maestro Burk Sauls, photographer Grove Pashley, Frontier Records owner Lisa Fancher, and graphic artist Bakken. The art show was already in the planning stages, but stepping through the looking glass into the reality of the Arkansas pen motivated Robertson. Using images he captured with a digital camera, he created an oil-on-canvas triptych of the young men reminiscent of Lucian Freud and David Hockney. Titled simply *Jason, Damien, Jessie*, the men's faces are studies in fear and suffering, their features made to seem double-exposed, thus intensifying the emotions portrayed.

In comparison with the trip, organizing the show has been a whiz. "Everyone's been really great in calling me back, and everyone's said yes," Robertson says. He finally settled on gallery newcomer sixspace at 549 W. 23rd Street, downtown, whose owners generously donated their time and space. "They're a really awesome young married couple, Caryn Coleman and Sean Bonner," says Robertson. "Glen Friedman was their first show, which is pretty cool. I love his work, and I really liked the people who were showing up there. It's not like a gallery where little rich ladies go to buy paintings, like at Bergamot."

The advance buzz for the show has spread to such places as the *New York Post*, *Wired* magazine, MTV.com, People.com and Eonline.com. Robertson deserves credit for what promises to be a successful event. However, "Cruel and Unusual" is in fact just the most recent manifestation of a pop-culture phenomenon that has its ground zero in Los Angeles with Sauls, Pashley, Bakken and Fancher — the core of *www.wm3.org*. In the midst of this Big Nowhere, there are actually a few human beings lurking about, and a goodly number work in the entertainment biz, believe it or not.

"Everybody has their function," explains Fancher, who runs punk-pioneer label Frontier Records (Adolescents, Circle Jerks, Suicidal Tendencies) from her small house in Valley Village. "Kathy and Grove are real Web-savvy, graphic artists and all that kind of stuff. We're all really good friends now, which is really an amazing byproduct of this whole thing. We actually go to the movies and do non-West Memphis things together. But it's tough, we feel so attached to the guys, it's like it's happening to your family or something. When you actually go to the prisons, you're just so drawn to their plight."

Since Fancher was already familiar with mail order, she eventually slid into the role of heading up the merchandising department for the site. One of her ideas: a POW

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("Prisoner of West Memphis") bracelet modeled on the POW/MIA bracelets sold by Vietnam-vet support groups in the '80s, with the names of all three men in black, their arrest date and a blank space to fill in their eventual release date. Proceeds go to maintain the Web site and publicize the case.

Bakken, an intelligent woman with a generous smile and charming Kentucky twang, designs advertising for Fox Broadcasting, but creating movie posters has always been her passion. It was while she was working for an ad agency with a contract to do the art for HBO's *America Undercover* series that she first saw *Paradise Lost*. It was 1996, and she had taken the video home as research for the key art, which she designed. In it she recognized everything she loathed about the South, the narrow-mindedness and religious bigotry.

She shared the tape with two friends — Sauls, whom she knew from the time she was working for CNN in Atlanta, where he'd been a video-store clerk and an aspiring filmmaker, and Pashley, a commercial photographer from Ogden, Utah, whom she'd met here in L.A. They were both intrigued, though maybe Sauls more than Pashley at first.

The group hopped on the still-nascent Internet, but found only dribs and drabs. After HBO showed the film, they began discussing the case on different newsgroups. A Harvard student named Max Shaeffer built them a small, four-page Web site about a year after the film came out. He graduated, and they took it over.

Since then, it's grown to a gargantuan 850 pages and includes an extensive archive of photos, court documents, evidence, trial synopses, press accounts, interviews, the latest news on the appeals process, updates on the health and welfare of the three inmates, links, and even QuickTime footage of Baldwin and Misskelley. According to Bakken, the site averages 1,500 to 2,500 hits a day, but spiked as high as 70,000 hits a day when *Paradise Lost 2: Revelations* was shown on HBO. Their announcement-only e-mail list has 4,000 addresses, and their active discussion list includes more than 800 people. Though there are other West Memphis Three Web sites and message boards, WM3.org is the grandpappy of them all. Many, such as the fiery Arkansas Web site ARWAR.org, use information and photos culled from their cyber progenitor.

One of the more amusing bits of self-promotion on the site is the popular black T-shirt featuring mug shots of Baldwin, Echols and Misskelley and the slogan "Free the West Memphis Three" in white. Sauls designed the shirts, which sell for \$25, and they've achieved a sort of cult-icon status. *Dawson's Creek* characters have worn them, as have socially conscious celebs such as Eddie Vedder, Corey Taylor of Slipknot, Henry Rollins, *South Park* co-creator Trey Parker, Metallica's Jason Newsted, and Eddie Spaghetti of the Supersuckers. After every sighting, a photo and a news item with the exclamation "John Doe Wears the Shirt!" goes up.

And yet the support group's influence is far more profound: The Web site also raises money for the prisoners' commissary accounts, which allows them to buy such exotic items as bread, peanut butter, vitamins and toothpaste. They provide a direct link to their Amazon wish lists, usually the safest way to send the WM3 books. The attorneys for the three men keep the support group at arm's length for legal reasons, but the Web site has long opened with a letter from Lorri Davis, Damien Echols' wife, asking for donations to the WM3's legal-defense fund, an entirely separate entity, from which many of the lawyers, investigators and others laboring on the case are paid.

"What they're doing has been instrumental in keeping this case in the public eye," says Misskelley's longtime lawyer Dan Stidham, the roly-poly Atticus Finch of the *Paradise Lost* films. "Unfortunately, in a lot of these cases where a miscarriage of justice has occurred, there's no Web site, no HBO documentary. They have the tendency to get swept under the rug, especially here in the South, where the death penalty tends to be

more prevalent."

Indeed, there might never have been a *Paradise Lost 2*, or at least not one in its present form, had it not been for the support group. Much of *Paradise Lost 2* deals with the efforts of the Web-site folks to affect the case. They more or less play the part of narrators, traveling to Arkansas to witness the appeals process, interacting with unusual characters like John Mark Byers, and asking the questions that we the audience would ask if we could. Their amateur sleuthing got noted profiler Brent Turvey involved, which led to the discovery of bite marks on one of the victims. Dental impressions were taken of all three of the convicted men, and none of those impressions matched the bite marks.

Unfortunately, Judge David Burnett, the judge in both trials, who, through a quirk in Arkansas law, is allowed to rule on his own trial as a part of the appeals process, did not agree that this new evidence was significant.

"Burnett decided he was an odontologist and said they weren't bite marks, though he'd just been told they were," says a contemptuous Sauls. "The court ordered dental impressions taken from the guys in prison when they apparently figured it was worth doing. But when the results came back and they didn't match, he says, 'Oh, they aren't bite marks.'"

Another Southerner, who hails from Tallahassee, Florida, Sauls is the smart-ass of the group. His loft in the Brewery complex downtown is part fun house, part freak show, part workspace filled with items he's made for his other gig: freelance movie-prop maestro. When I visit him for the article, he's hard at work pumping out fake Nazi gold bars for the film adaptation of the *Hell Boy* comic book series. On his bookcase is a little portrait he painted of the West Memphis Police Department's Chief Inspector, Gary Gitchell, the person primarily responsible for arresting the WM3, his hands dripping blood and gore.

"My connection to it is that it's just familiar to me," Sauls remarks in what's left of his Deep South drawl. "I grew up in the Bible Belt, and I remember everyone talking about devil worshippers. I remember hearing the argument that if you don't go to church, that means you must worship Satan, because if you don't worship Jesus, then it follows automatically that you must therefore worship Satan. And if you worship Satan, what's stopping you from killing people?"

As an erstwhile son of the South, I can remember the kind of moronic, Bible-thumping totalitarianism he's describing. Most denizens of Los Angeles have no idea. You never know what's going to come out of Sauls' mouth next. In glasses, his head shaved like a homeboy's, he has this oddball sang-froid that makes him difficult to read. But he admits that his "second job" affects him.

"It's tough sometimes, especially visiting the guys in prison, which is depressing," he says. "And it's sad to think about the kids who've been murdered. There are one or two people out there who've accused us of supporting child-killers. But part of the reason we got so heavily involved in this thing is because on our first trip out there to Arkansas, we met Dan Stidham. He put a bunch of the autopsy photos in front of us. I guess he was testing us, you know. Since we were from California, he probably thought we were 'Save the Whales' kind of people. He laid these horrible pictures out, and it was shocking. Not something you see every day. But we really looked at them, and really began to realize how terrible and complicated this crime really was."

Grove Pashley recalls that moment with Stidham back in 1996 as being a real turning point for him personally. Tall and physically fit, with dirty-blond hair and blue eyes, Pashley describes himself as a "behind-the-scenes guy," who's not afraid to call up the lawyers, the press or whoever needs calling. He says Sauls and Bakken "were the first to

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jump on this," but Pashley was holding back a bit up until that point.

"It had a huge impact on us when we saw the dead children," says Pashley. "We realized for the first time, it wasn't just these three guys who are serving sentences, it's these three little children as well. And Dan said this to us — and it was so true back then — the only people around who are going to help these guys are sitting in this room right now. We'd discussed doing the support fund before, but that is when reality hit. It gave us a responsibility I almost didn't want to take on. I always feel like I didn't choose it, it chose me."

Pashley's stark, black-and-white pictures of Damien, Jessie and Jason will also be in the show. Like Sauls, Bakken and Fancher, he's usually wearing one of the POW bracelets. But he took it to the next level after the second film came out, getting WM3 tattooed in Braille on the inside of his left wrist. "For me, it's about blind justice," he says, as if he wants to help justice read. There's the sense that the WM3 have "marked" him, just as the tattooist did with needle and blue ink.

"There are times and days when I get consumed by it," he says. "And it seems to all happen at once. Most of the time when I'm working on it myself and seeing the stuff that's going on and knowing what's going on and convinced as I am that they didn't do this crime, I get really optimistic. But when I see how slow things go and I can see that the money is in such desperate need — more now than during the trial — and when I talk to people in Arkansas who say it's not going to happen on the state level, I wonder, 'God, how much more do we need?' What's it going to take to convince these people that these guys are innocent and that they got a real killer out there?"

"I just know we're right," Bakken says. "I'm just so convinced, so adamant that these guys are going to get out one of these days, and my job is to try to make their lives easy and bearable until then — giving people access to them, so their viewpoint is always focused outside prison instead of in. They're not convicts. They're not normal prisoners whose lives have become prison. They're always focused on us, on their girlfriends, or their wives. They have all of these supporters giving them all of this love. Sending them letters, money, offering to help. I like keeping them focused that way. So they're not making their life in prison, they're preparing for life outside."

"I personally can't imagine Damien ever being executed," says Pashley. "That would affect me too much. I would just be so bitter and angry."

The more I learn about the case, about the incompetence and corruption of the officials in Arkansas, the more I too am fearful of how it will all end. Mara Leveritt's book *Devil's Knot* documents in heavily footnoted detail how drug trafficking through Crittenden County — where West Memphis is located — has tainted the legal process there. She proffers evidence that John Mark Byers was a narc for the Crittenden County Drug Task Force, and she alleges a systematic pattern of preferential treatment given to Byers in a series of sometimes-violent criminal incidents before and after the murders took place. Byers, who reportedly lives in Tennessee somewhere near Memphis, could not be reached for comment, but his bizarre, antisocial behavior in both *Paradise Lost* films has done nothing to calm the speculation surrounding him. Leveritt says the West Memphis Police Department "bent over backwards" not to investigate him properly.

"If you look at the way the police questioned John Mark Byers, it does not conform to the way police in any other police department in the country I believe would look at a man with that record," Leveritt tells me. "The very fact that here is a guy whose stepson is murdered and nowhere in the police investigative file is there a mention of the fact that he was convicted of a 'terroristic threatening' of his ex-wife. It boggles the mind."

While looking into Leveritt's claims, I spoke to Victoria Hutcheson, who testified

against Jessie Misskelley and who was instrumental in helping the West Memphis Police Department pin this triple murder on the WM3. Now 40, and still in Arkansas, Hutcheson expressed profound regret for her role in the investigation and Misskelley's trial, and she claimed she was under duress from the West Memphis PD to act as she did. She said there were indirect threats by the WMPD at the time to implicate her in the crime, and possibly take her child Aaron from her. As for her testimony against Misskelley:

"Someone should have checked my blood alcohol content. It took a lot for me to get up there and say all that. I can't sit here and tell you I lied, because I don't want to go to prison for — whatever it is — perjury without an attorney present. But someone should've checked to see how many pills I'd had before I got on the stand. There were certain times I even threw Stidham some remarks, trying to steer it another way. That's a part of my life I regret, very much so. Jessie was like a little brother to me. And I had to make a choice between him and my son."

Asked specifically about the story she told, of attending some sort of witches' orgy in the West Memphis woods with Misskelley and the others, she was intentionally vague.

"That story evolved. Can we say it like that? Instead of the story was real, the story was anything, it evolved. "I thought that one day I could take it all back. I don't know how I can without it ruining me." Later, she added about the police, "Yeah, it's just their story, that's the only one that works. You don't come at them with anything else. They were running the show."

Hutcheson says she lives in fear of Byers coming after her, and says she believes Byers had something to do with the crime. Interestingly, at least one of the jurors in the Echols-Baldwin trial concurs with her suspicion of Byers, who had to testify at the trial when he gave the HBO filmmakers a hunting knife with blood on it that they subsequently turned over to the West Memphis PD (Tests showed that it could have been either Byers' blood or the blood of his murdered stepson.)

"I truly believe he was there or had something to do with it," former juror Sharon French told me regarding Byers' testimony. "But he wasn't on trial. Us jurors discussed that, that he was there, but we couldn't do anything about that because he wasn't on trial."

As for Echols, she explained her regret this way: "I'm sorry I voted to give him the death penalty. I have one son who's about their age. During the trial, everyone thought they were guilty from the start. Now I don't know. He maybe ought to have a new trial. If the DNA proves he didn't do it, I hope he gets off. Now I hope both or all three of them get a new trial, if there's new evidence and DNA."

Nevertheless, the police, the prosecutors and the judges involved remain hostile to any idea that they may have convicted the wrong men and let the real killer or killers remain free. Prosecutor Brent Davis, who bears an eerie resemblance to Brad Dourif's character in *Mississippi Burning*, says he has "not one iota" of a doubt. His former deputy John Fogleman, now a circuit-court judge, claimed he was still convinced, though he says, "There are always little nagging doubts about things, things that don't make sense, or don't add up."

Some of the things that don't add up include why in 1992 — one year before the murders — Judge Burnett formally expunged Byers' felony conviction of threatening his ex-wife with an electric shocker. There's also the fact that 10 years ago, Brent Davis declined to prosecute Byers for a scam that involved the theft of two Rolex watches from UPS, even though he had confessed to the crime, according to Leveritt's book. And there's the mysterious death of Byers' wife, Melissa, who never awoke from lying down to take a nap with her husband in March of 1996.

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The apparently "incarceration-proof" Byers finally did 15 months in prison, but only after he was nabbed for selling Xanax to undercover narcotics officers in an incident even Arkansas police couldn't ignore. But it goes higher than Arkansas. Leveritt's book discusses an incident in which Byers was arrested in Memphis in July of 1992, nearly a year before the murders, by Sheriff's deputies on charges of conspiring to sell cocaine and carrying a dangerous weapon. Sometime during the night, he was taken into the custody of the U.S. Marshals Service. The paper trail ends there.

Chief Deputy Tommy Thompson, at the U.S. Marshals Service, Western District of Tennessee, responded to a Freedom of Information Act request by stating, "We do have some records in our computer of him being in our custody in 1992." But he added, "Our headquarters will have to advise me what can be released." A few days later, the Justice Department formally rejected the FOIA request on grounds that releasing the information would be a violation of Byers' privacy. Damien Echols may be one of the best-read individuals I've ever met. In fact, he tells me he limits himself to a book every couple of days because his eyesight is getting so poor. Physically, with his pale complexion and coal-black hair, he looks like Jack White of the White Stripes. He'd fit right in at some coffeehouse in Santa Monica talking about Carl Jung or Martin Heidegger, two of his favorite authors. During our meeting, the conversation jumped all over, from his interest in tarot to *Buffy the Vampire Slayer* ("How could they cancel that show?") to the significance of certain dreams and nightmares. He tells me that his dreams are mostly about the West Memphis PD harassing him.

If he gets out, Echols plans to move as far away from Arkansas as he can get, definitely to the West Coast, where many of his friends live. "Seattle sounds nice," he tells me. Also, his pal Eddie Vedder lives there. "I'd like to open a used-book store, but with really good used books. But it wouldn't just be a bookstore. We'd sell oils and incense, things like that, and give classes in yoga." He says he just wants to disappear after this is all over. He doesn't think about death, he says, or worry about his appeals process. He leaves dealing with the lawyers to Lorri, who is his bridge to the outside world.

It was through Lorri that he granted this visit at the last minute, knowing that, as he told me in a telephone interview in 2000, most people "cannot separate me from the case." Because he was seeing me against the advice of counsel, Lorri had asked me not to record our conversation or take notes. My account here, including the quotes, is taken from memory and from notes made afterward.

Last year, Echols' lawyers petitioned the Arkansas Supreme Court to retest some of the biological evidence for DNA using more sensitive tests than were available a decade ago. After granting them several delays, the Supreme Court finally ordered that Echols' defense get the testing done before a deadline that will just have expired as this paper goes to print. When I pressed Joe Margulies, Echols' top lawyer, as to why the defense was letting this valuable opportunity slip away, he hung up on me, saying coldly, "If it doesn't meet with your satisfaction, that's unfortunate."

In my rental car, passing through small towns that look like they've been trapped in amber since Eisenhower was president, I keep thinking of that line in the Dylan song about Rubin Carter: "How can the life of such a man/Be in the palm of some fool's hand?" That was off the 1975 *Desire* album, and Carter's ordeal wasn't over until a federal judge ordered him released in 1985 and prosecutors declined to retry him a third time. Echols may have a long road ahead before justice is done, if he can stay alive long enough to walk it.

**Cruel and Unusual: An Exhibition To Benefit the West Memphis Three**  
will be at sixspace gallery September 6 through 20.

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Articles



## Ryder to the rescue

*Winona headlines celebs at art show for West Memphis Three*

Arkansas Times

By Stephen Lemons

**LOS ANGELES**—Overlooking a crowd of thousands in downtown Los Angeles, Winona Ryder didn't mince words. "We believe a terrible injustice happened 10 years ago," the doe-eyed celeb, a cordon of lights illuminating her in the darkness. "An injustice that involved six young lives. Three are dead. Three are holed up in prison for crimes that we and millions across America believe they did not commit."

The audience roared its approval, and the star of "Edward Scissorhands," "Girl Interrupted" and the "Crucible" went on to condemn what she referred to as, "in my opinion, a modern-day witch-hunt." The witch-hunt in question? The prosecution of the West Memphis Three, convicted a decade ago of the murder of three young boys. Ryder was in-house last Saturday at the hip L.A. gallery "Sixspace" to host "Cruel and Unusual: An Exhibition to Benefit the West Memphis Three." Organized by the L.A.-based West Memphis Three Support group at [www.wm3.org](http://www.wm3.org), the show included mostly WM3-themed art (Ryder posed before portraits of the three men convicted of the slayings) donated by about 20 nationally known artists for the purpose of raising money for the WM3's legal defense fund.



An estimated 4,500 Angelenos turned out to see the art, and, of course the likes of Ms. Ryder. Ryder spoke for about 15 minutes to a parking lot filled with people outside the gallery, calling for new trials for Jason Baldwin, Damien Echols, and Jessie Misskelley, who were found guilty in 1993 of the homicides of three 8-year old West Memphis boys: Stevie Branch, Michael Moore, and Christopher Byers.

Authorities characterized the killings as ritualistic and cult-inspired. Misskelley and Baldwin are currently serving life sentences. Damien Echols is on Death Row. All three men are appealing their convictions.

"All we ask is that a proper, real investigation be done to find out who killed these young children," Ryder said. She encouraged the crowd to donate money so that DNA testing could be done on physical evidence taken from the crime scene. She expressed hope that such testing—not available in 1993—might exonerate Baldwin, Misskelley and Echols. Attendees apparently heeded Ryder's call. According to gallery co-owner Caryn Coleman, more than \$20,000 was raised through donations and sales of art and other merchandise, such as black T-shirts bearing the mug-shots of the prisoners and the rallying cry "Free the West Memphis." And P.O.W. (Prisoner of West Memphis) bracelets with the names of the convicts, their arrest date, and a blank space for what supporters hope will be their release date.

Coleman, along with her husband, Sean Bonner, donated their space for the exhibit, which will be up until September 20, and can be viewed at [www.sixspace.com](http://www.sixspace.com).

Other celebrities present included Doug Hutchison (*The Green Mile*) and former Dead Kennedy lead singer Jello Biafra, who gave a spoken-word performance denouncing the death penalty. Ryder was accompanied by boyfriend and rocker Page Hamilton, of the band Helmet. And there were rumors—still unconfirmed—of an appearance by "Seabiscuit Star Tobey Maguire.

Two of the most admired individuals in attendance hailed not from Hollywood, but the Natural State: Lawyer **Dan Stidham**, who represented Jessie Misskelley before Judge David Burnett in 1993 and who still represents the 28 year old; and *Arkansas Times* contributing Editor **Mara Leveritt**, author of *Devil's Knot: The True story of the West Memphis Three*. Both spoke after being introduced by Ryder.

Stidham thanked Angelenos for coming, telling them that the tide of public opinion was shifting in Arkansas to a belief that the WM3 Case deserved another look. Leveritt was even more emphatic, stating that both the Arkansas Governor and Attorney General are constantly barraged with mail about the WM3. The "ice is cracking," said Leveritt. Recently, the rights to Leveritt's book have been acquired by the *USA Network*, which is producing a two-hour drama based on it.



The event was covered by national and international media, including the *BBC*, *USA Today*, *People Magazine*, *Rolling Stone*, *Celebrity Justice* and the *Associated Press*. A lengthy story in the *L.A. Weekly*, Los Angeles' alt-news publication, previewed the art show and featured news reporting about the case, such as quotes from one witness in the Misskelley trial who alleges her testimony was coerced by the West Memphis PD, and a juror in the Echols-Baldwin trial who expressed regret for sending Echols to death row. The article, by this reporter, can be read here: <http://www.laweekly.com/ink/03/42/features-lemons.php>.

In the piece, the Federal Marshals Service in Memphis confirmed that John Mark Byers, stepfather of one of the slain children, had been in their custody in 1992, nine months prior to the murders, after being arrested by Sheriff's deputies in



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Memphis on drug and weapons charges. Byers remains a source of speculation in part because of his seemingly odd behavior in the HBO documentaries *Paradise Lost* and *Paradise Lost 2: Revelations*. Leveritt's book states Byers was drug informant for the Crittenden County Drug Task Force at the time of the murders, and documents a pattern of preferential treatment provided Byers by Arkansas officialdom.

Many at the Art Show expressed the belief that the truth of what happened 10 years ago would one day be revealed. Until then, they would agitate for justice on behalf of the WM3. "I don't consider this a cause," said Ryder, who is still on probation for her November 2002 grand theft conviction. "You don't have to be an activist to be concerned about basic human rights. This is a very sad and tragic reality.

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Articles

## PROFILE:

*A Paragould Attorney and a Second Judicial District Judge still believes in the innocence of his Client after 10 years*

By MIRANDA REMAKLUS  
Paragould Daily Press



Daniel Stidham of Paragould represented Jessie Misskelley Jr. during the West Memphis murder trial in which Misskelley, Damien Echols and Jason Baldwin were convicted of the brutal deaths of eight-year-olds Steve Branch, Christopher Byers and Michael Moore that occurred May 5, 1993 in the Robin Hood Hills area of West Memphis.

Echols was sentenced to death by lethal injection, Baldwin was sentenced to life in prison plus forty years with no possibility of parole and Misskelley received life in prison with no parole.

Stidham strongly believes in Misskelley's innocence and states, "He did not do what the prosecutors and the state alleged he has done. I made a promise to him that I would continue fighting and try to correct this injustice." I would not defend someone for 10 years if I did not fully believe he didn't kill those three boys."

Misskelley's defense team recently filed a motion to have the court retest some forensic evidence. Stidham said that when the case was tried in 1993 and 1994, DNA evidence was just beginning and now technology has changed dramatically.

He also stated that the Arkansas legislature passed a DNA statute that allows prisoners the right to have their DNA retested. "A combination of these two things makes it possible for us to ask for this (retest) and we are hopeful that some of the items of evidence may yield clues to who the real killer is."

Stidham said that negotiations are ongoing with respect to the prosecutor and the attorney general's office about what items may be retested, what laboratories will conduct the tests and who has access to the results. "There are three defendants and three separate defense teams. We are all trying to work together to see that this gets done. I am hopeful that this will prove that not only our clients did not have anything to do with this horrible crime, but perhaps lead us to the real killer."

Stidham not only believes in Misskelley's innocence but he believes Echols and Baldwin are innocent as well. "In the quantum of the case, there is actually less evidence against Echols and Baldwin than there is my client. I really do not believe that either of the three had anything to do with the case." Stidham cited the belief around the time of the case that Christopher's step-father, John Mark Byers, may have had something to do with the murders. "There are certainly a lot of innuendoes to that affect, but I am not aware of any hard evidence to this. I would submit that there is just as much evidence against Byers as there are the three in prison." With respect to Byers, Stidham went on to say that, "I am not going to stand up and say that some person did something without proof."

Stidham personally believes that a serial killer may have had something to do with

the murders. "This is my personal belief after 10 years of research, investigation and consultation with criminal profilers and others involved in the case." Stidham said that there were several things he found fundamentally unfair with the Misskelley case. Primarily that Misskelley was given a polygraph exam by the police immediately prior to his confession. A polygraph test that he actually passed, but the police told him he failed. The court refused to let (the defense team) tell the jury that he had passed his polygraph exam." Stidham continued that Misskelley confessed because he believed the officers when they told him that he had failed the polygraph test. "I always felt that it was fundamentally unfair that the police could use this machine, which is supposed to tell you whether or not you are lying, as a stick to beat over my client, who is mentally-retarded, to get him to admit to something he did not do." Stidham said that he had an expert witness that specialized in false confessions from the University of California at Berkeley. "He was never allowed to express his opinion to the jury."

Stidham also cited the massive media attention that this case received in 1993 to Misskelley, Baldwin and Echols not receiving a fair trial. "I feel that the killer is still out there. There were several other child murders at that time and all of the evidence we have seems to suggest that we may be dealing with a serial killer." Stidham attributed the amount of media attention that the West Memphis case received, in comparison to the other cases, to the fact that three children were killed. "Anytime three small children are killed at the same time - that has a tendency to generate a lot of publicity." Stidham said that triple homicides with children are very rare.

Stidham said that the case generated a lot of attention due to 'satanic panic' as well. "The West Memphis Police Department, through the assistance of other police departments - including the New York City Police Department, became convinced through some bad science and some bad punches that this was a satanic ritualistic homicide." Stidham said that at this time in history, several celebrities had stepped forward and were telling of repressed memories they were encountering in which they had been abused. He continued that a kind of witch-hunt mentality was forming. "Essentially, because of this 'satanic panic' and the fact that we were dealing with three eight-year-old children - the case had a tendency to become really sensational."

Stidham said that, at that time, he could not remember a single event in Arkansas, other than Bill Clinton being elected President, where the state garnered as much media attention. "We literally had CNN and the major networks camped in West Memphis delivering daily news briefs -- much like what you have seen recently with the Maryland sniper case and the Peterson case in California." Stidham discussed that the FBI, after researching the concept of satanic ritualistic homicide, came to the conclusion that there had never been such a thing. Stidham stated, "There has never been a single documented case of satanic ritualistic homicide discovered on this planet." He said that, "This is different from somebody in California, strangling a bunch of people and saying that the devil made them do it, or with the Son-of-Sam case in New York City where David Berkowitz said that his neighbors' dog was telling him that the devil was telling him to kill those people." Stidham went on to say, "There are certain situations where people will claim that the devil made them do things." He reiterated that there has not been a satanic cult that would kidnap children and sacrifice or mutilate them in the name of their religion.

Stidham touched back on the Laci Peterson case, in which recently Scott Peterson's defense team has suggested Laci's death was a type of satanic ritualistic homicide. "Had the lawyer done his homework, and researched this carefully, he would know that there has never been such a thing documented." Stidham said that he is still amazed with how much attention the case still receives. He said that he still receives mail, e-mail, and calls from around the world from people wondering about the case

and how they can donate funds to help. "Common everyday folks and then major celebrities will donate funds." He emphasized what an interesting ten years he has had with getting to travel the world just for this case. "I have gotten to appear on television to talk about the case and speak at seminars on the facts of this case."

Stidham's hope and prayer is that some day, "Justice will be served and the people who were wrongly convicted will be set free and that the person or persons who are responsible for killing these children, are brought to justice." Stidham stressed that this has been his prayer for ten years. "One of the three convicted (Damien Echols) is on death row. My fear is that we might not find the answers we need in time to save his life." Appeals are still left with Echols' case; therefore an execution date has not been set. "Eventually the appeals process will run its course. We are really hopeful that an appeals judge will give us another opportunity to present this case." The defense attorney said that a jury is only as good as the evidence it is presented with. "That jury (in 1994) did not get all of its information, nor did (the defense team) have access to certain information."

Stidham said that in 1997, it was discovered that a human bite mark was on the face of one of the victims. "Dental impressions were made on all of the three convicted teens," Stidham said. "None of the impressions match the bite on the victims face." He said that this information was not known until four years after the trial and stressed that this was very important information. "New evidence of alibi information has become available which (the defense team) did not have access to before," Stidham said. "People were so afraid to come forward and talk to the police for fear of being dragged into the panic and with that satanic angle, information 10 years ago that we assumed true, we discovered is not true." Stidham concluded: "We are hopeful that we can get another opportunity. I think if we had that opportunity, the results would be dramatically different."

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Articles



## Attorney: WM3 Deserve New Trial



It was in a section of trees in West Memphis where police say they found the bodies of three 8-year-old boys back in 1993. Investigators found the boys, hog-tied and beaten to death in a drainage ditch. One of the boy's genitals had been mutilated.

Police eventually decided Damien Echols, Jessie Misskelley and Jason Baldwin were to blame. In court, they were convicted of the murders.

Their attorney Daniel Stidham says, "This is a horrible case of injustice."

Thursday night in Conway, Stidham said West Memphis police built a case around the false confession of Misskelley.

Stidham contends Misskelley had the I.Q. of a 5-year-old and was told by police what to say though hours of interrogations. "It's not really difficult to get someone mentally handicapped to confess to something they didn't do," says Stidham.

Police called the murders a satanic ritualistic homicide. Stidham says Misskelley, who was labeled a Satan worshiper, didn't even know who Satan was. Stidham is calling for a new trial for his clients.

He says, "We now know there's no such thing as a satanic ritualistic homicide, we now know that false confessions do happen. Back in 1993, no one understood that."

Mara Leveritt is a former reporter and wrote a book, "Devil's Knot" about the case. Based on what she's seen, she agrees the three are innocent.

She says, "At the very least, the problems with these trials have got to be honestly looked at and honestly addressed. And I think it's important for the people of Arkansas to demand that."

Stidham says in the past 13 years, more evidence has surfaced and witnesses have retracted their statements. He believed his clients will be free if jurors can hear the case again.

Stidham says he also believes West Memphis police mishandled the crime scene and never found any forensic evidence. He also believes a serial killer murdered the boys.

Damien Echols is on death row awaiting execution. Jessie Misskelley and Jason Baldwin are both serving life sentences.

Jerod Clark, Reporter

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Articles



## Attorney investigating famous murder case to speak at FHS

Fort Hays, Kansas

Friday November 18, 2005

By: Amber Saueressig

A murder case is about to be discussed on campus. From 5 to 8 p.m. on Thursday in Rarick Hall, room 201, and from 1 to 6 p.m. on Friday in the Memorial Union Ballroom, nothing but justice studies, investigation clues, depression, anger, sexual molestation and death will be on the tip of everyone's tongue. The past shall come forth again.

In 1993 an incident occurred in West Memphis, Ark. Three boys each eight years old, were found in a ditch full of mud alongside Interstates 40 and 55. Murder was not the only incident recognized. One had been sexually mutilated and each was obviously brutally handled until their death.

For less than a month, police looked for a killer and a reason. Soon, a teenager came forward, claiming that he and two others had completed the killing in relation to a satanic cult.

Dan Stidham was the attorney of the teenager who came forward, Jessie Miskelley. He will speak about the video being shown; he will be emphasizing the twists and turns of the murder case.

Stidham is said to have consulted with many of the world's leading forensic experts throughout his 10 years of coverage of the West Memphis Three



murder case.

Stidham is said to have consulted with many of the world's leading forensic experts throughout his 10 years of coverage of the West Memphis Three murder case.

Overall, the video will be discussing a multitude of issues involved in the case, showing the viewers what pros and cons took place.

It will contain information about the case and the processes that took place throughout it. Some that will be included are false confessions, police interrogation techniques, criminal profiling, satanic panic and other legal issues.

<!--[if !vml]--><!--[endif]-->The documentary that will be shown is called Paradise Lost 2: Revelations. It, and similar shows/interviews, have been viewed on HBO (in 1996 and 2000), NBC Nightly News, MSNBC and Court TV's Prime Time Justice. Stidham's biography of the case was a cover story in 1996 in Arkansas Times magazine.

Both events are open to all students, faculty, community, people involved in any form of law enforcement and others. The question to be answered is, "Can an innocent person be convicted?" Walking out with an opinion, feelings about the incident and a better understanding for law, justice, criminal issues and more is hoped to be inevitable. The documentary was shown last night, with the discussion following on Friday.

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Articles

*University of Arkansas*  
*School of Law*

**EQUAL JUSTICE WORKS SYMPOSIUM TO  
FOCUS ON WRONGFUL CONVICTIONS**

FAYETTEVILLE, Ark. — Equal Justice Works, a legal organization at the University of Arkansas School of Law, will present "Innocence Lost: A Symposium on Wrongful Convictions" at 12:30 p.m., Tuesday March 9, in the school's courtroom.

Court TV host and commentator James Curtis, Philadelphia attorney J. Gordon Cooney and Paragould, Ark., attorney Dan Stidham, a 1987 alumnus of the School of Law, will serve as panelists for the event, which will delve into a variety of cases involving wrongful convictions.

Cooney and another partner were able to get a man off of death row and out of prison in 2003 because of DNA testing after 15 years of incarceration from a 1985 conviction. Cooney is an adjunct lecturer in law at Villanova University Law School and is in litigation practice at Morgan Lewis in Philadelphia.

Stidham was elected to the position of District Court Judge of Greene County in 2000. He was appointed to represent a member of the "West Memphis Three" defendants who were accused of killing three 8-year-old boys in 1993 in what police maintain was a satanic ritual. Stidham is the only original attorney still working the case, and for the last 10 years has been actively investigating the murder case pro bono as it moves through the appeals stage.

Equal Justice Works is a student-run organization whose purpose is to promote knowledge and interest in public interest law, to encourage students to participate in public interest internships, to broaden the scope

of their legal education, to foster outside educational experiences through such internships and judicial clerkships and to aid in a financial manner those students who might not ordinarily be able to afford voluntary and lower paid outside employment opportunities in the legal community,

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## Articles

### Satanic Killers hope to Prove Innocence

By Rob Winder

BBC

Campaigners across the US and around the world have been meeting to publicize the case of three men they believe have been wrongly convicted of a horrific triple murder. <!--[if !vml]--><!--[endif]-->More than 50 concerts, film screenings and meetings were held at the weekend to show support for Damien Echols, Jason Baldwin and Jessie Misskelley - convicted in 1994 of the killing of three Arkansas children. Events were held as far apart as Moscow and McMurdo research base, in Antarctica. The campaign has drawn high-profile support from actress Winona Ryder and rock band Metallica.



#### Ritual killings

On 6 May 1993, the bodies of three eight-year-old boys were found, one of them horribly mutilated, in woods just outside West Memphis, Arkansas. The police quickly identified and arrested three prime suspects - Echols, Baldwin and Misskelley - all teenagers at the time.

At the trial of Echols and Baldwin, the prosecution alleged the young men were members of a satanic cult and that the killings were ritualistic. The jury agreed - Baldwin received a life sentence without parole whilst Echols, as the alleged leader of the group, was sentenced to death by lethal injection.

Misskelley had already received life plus 40 years at an earlier trial.

But soon serious doubts were raised about the convictions and 12 years on, campaigners are intensifying their efforts to prove the innocence of the "West Memphis Three."

<!--[if !vml]--><!--[endif]-->'Ridiculous'

The men's lawyers believe that the police were under great pressure from the local community to find and charge the perpetrators of a terrible crime quickly. "A horrible mistake was made," says Jessie Misskelley's lawyer Dan Stidham. He argues that there was a widespread belief amongst international law enforcement agencies in the early 1990s that the satanic ritual abuse of children was far more commonplace than was actually the case.



There were many high-profile cases during the 1980s and 1990s, including the McMartin pre-school case in California and the Orkney abuse scandal in the UK, in which satanic ritual abuse was alleged but later disproved.

"All the major prosecution witnesses have also since recanted their evidence and the case seems even more ridiculous after 12 years," Mr Stidham said.

#### Witchcraft

Jessie Misskelley, 17-years-old at the time, was convicted partly on the strength of his confession to police. He has a substantial learning disability and was questioned for twelve hours without the presence of a lawyer or other adult. Only 20 minutes of this questioning were recorded and played to the court - Misskelley later claimed his confession was false and was made under intense police pressure. No murder weapons or conclusive forensic evidence linking the three to the crime scene were produced in court - and neither was a motive - apart from their alleged satanic beliefs.

Damien Echols was interested in the Wicca religion - a pagan belief system that incorporates witchcraft. But the prosecution suggested that his wearing of black clothes, listening to heavy metal music and reading Stephen King horror books were also evidence of his guilt. And it emerged during cross-examination that the police's expert on witchcraft had bought his PhD from a mail order company and not taken any classes to gain it. On top of this, the police also admitted to losing evidence that could have pointed towards alternative suspects.

A television documentary about the original trial, *Paradise Lost*, sparked interest in the case across the US and a campaigning group was set up by those sympathetic to the three.

Burk Sauls has been involved in the campaign since 1996. He believes the prosecution successfully played on the jury's fear of satanic ritual abuse instead of concentrating on the evidence. "The forensic science and the evidence were ignored and superstition and allegations of devil worshipping cults took precedence over the facts." "These guys were also dirt poor - from the trailer parks of Arkansas - and they didn't have the money to launch a proper defence."

#### **Federal appeal**

Despite the lack of evidence against them the West Memphis Three have lost all their appeals to date. The Arkansas Supreme Court found at Echols' and Baldwin's original appeal that there was "substantial evidence of their guilt" and that Echols "admitted on cross-examination that he had delved deeply into the occult and was familiar with its practice." That judgement pointed to witnesses who said they saw Echols near the crime scene and others who claim to have overheard him admitting to the murders.

The three men and their supporters now hope that DNA evidence taken from over 1,000 items at the crime scene will finally exonerate them. Echols and Baldwin have also launched a new appeal to the federal courts, although for Echols, time is running out.

"I'm guardedly optimistic about the three's chances but we are running out of time and we need to get some justice," said Mr Stidham. "We need to get this train off the tracks if we are going to save Mr Echols."

*The BBC News website contacted both the Arkansas state prosecutor in the case, Brent Davis, and the West Memphis Police Department - both declined to comment.*

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005925

## Articles

## Life After Death

In 1994, the West Memphis Three were convicted of child murder. But troubling questions and a series of films have led many to doubt their guilt.

BY ANNETTE STARK | SEPTEMBER 21, 2006

The Robin Hood Hills child-murder crime scene has grown incredibly cold in 13 years. Even the morbidly curious college students finally stopped haunting the drainage ditch behind the Blue Beacon Truck Wash in West Memphis, Arkansas, where 8-year-olds Christopher Byers, James Michael Moore, and Steven Branch were found killed and mutilated on May 5, 1993. "We tore that old place down," says a Blue Beacon worker. He refuses to discuss the murders and won't give me his name. "It's over with, and I'm not allowed to talk about it. All these years later, I'm still trying to figure out if those three kids that got killed were the same kids we told not to play here that day because of the trucks."



When I ask him if he believes they got the guys who did it, he hangs up.

The town has moved on. But questions about the murders and subsequent convictions of three West Memphis teenagers linger, many of them raised by two HBO documentaries, *Paradise Lost: The Child Murders at Robin Hood Hills* and *Paradise Lost 2: Revelations*.

*Paradise Lost* documentarians Joe Berlinger and Bruce Sinofsky (who both also directed *Metallica: Some Kind of Monster*) first chronicled the 1994 Arkansas trials and subsequent convictions of three West Memphis teenagers -- Damien Echols, Jason Baldwin, and Jessie Misskelley -- now known as the West Memphis Three. (Baldwin and Misskelley got life. Echols got the death penalty.)

The follow-up, *Revelations*, revisits West Memphis for Echols' ill-fated state appeals and also highlights the earliest efforts of a now-worldwide network of WM3 supporters, led in the beginning by three Los Angeles advocates from the film industry: Kathy Bakken, Burk Sauls, and Grove Pashley.

And interest in the case is still growing. Sinofsky and Berlinger's *Paradise Lost 3* is slated for release sometime this year, and Dimension Films plans to release a film in 2007, which will be based on the book *Devil's Knot: The True Story of the West Memphis Three* by Arkansas-based investigative journalist Mara Leveritt.

*Paradise Lost* turned the West Memphis Three into icons. Supporters say it's impossible to watch the documentary and miss the awful sense of American justice gone wrong, that the only crime the West Memphis Three ever committed was sticking out as black-clad outsiders in 1993 in a small Southern town.

"What struck me was that I kept thinking I was watching a movie with character actors," recalls former Black Flag singer Henry Rollins. "The things the prosecution was saying, their witnesses, it was all so hopelessly stupid and sad. Justice got a black eye in those trials."

Johnny Depp, Eddie Vedder, Jello Biafra, Winona Ryder, Jack Black, Steve Earle, Trey Parker, and Metallica -- to name a few -- whose fund-raising efforts include concerts, art benefits, and compilation CDs. In 2002, Rollins released *Rise Above*, a CD of 24 Black Flag songs performed by various artists including Tom Araya (Slayer), Lemmy (Motörhead), Nick Oliveri (Queens of the Stone Age), Corey Taylor (Slipknot), and Ice-T, with all proceeds going to the West Memphis Three defense. The support Web site [wm3.org](http://wm3.org), which is run out of Los Angeles, has received more than 3,485,769 visitors as of this writing.

Today, West Memphis advertises itself as "a hometown feeling with big-city attractions," a description you can read on the town's chamber of commerce Web site or just glean by counting churches and ministries that line the residential streets. But West Memphis is also a known drug hub, where cops regularly seize illegal guns, pounds of marijuana, and kilos of cocaine at the West Memphis cargo inspection station, described by the National Drug Intelligence Center as one of the two busiest in the nation.

"I would characterize West Memphis as a place where a lot of folks travel through," says spokesperson Steve Frazier of the FBI in Little Rock. "It's a crossroads, a highly traveled city, and sometimes that brings the criminals who travel I-40."

Yet, when the bludgeoned bodies of three small children were found in a drainage ditch behind the Blue Beacon Truck Wash, local police convinced the public that three impoverished local teens were good for the killing. This was accomplished with a stunning lack of evidence, the West Memphis Three advocates say. Moreover, it was accomplished within one day.

#### **The sign of the cross**

Christopher Byers, James Moore, and Steven Branch first went missing on the evening of May 5, 1993. According to John Mark Byers, the boy's stepfather, Christopher had misbehaved at Weaver Elementary School and was sent home. "I spanked him three times with my belt with his pants up," Byers recalls. And then he told the child not to leave the house. When Byers returned home at 6 p.m., Christopher was not there. Byers first told a cop that Christopher was missing at 6:30 that night and then was the first parent to report to the West Memphis police at around 8 p.m.

The children's bodies were discovered in the ditch on the afternoon on May 6th. All three were naked and had received multiple head, limb, and torso injuries; they were hog-tied with shoelaces binding their wrists to their ankles. Steven Branch had bite marks on his face. It was determined that both James Moore and Steven Branch had drowned and suggested that Christopher Byers had drowned as well. Of the three, Christopher Byers had sustained the most violent injuries, including what appeared to be a sexual assault. He had a skull fracture at the base of his neck, stab wounds on his genitals; his penis was skinned and the killer had removed the child's testes and scrotum.

One day later, the West Memphis Police Department had a motive -- ritual child sacrifice, a profile of the killers, who they decided were probably members of a satanic cult -- and three suspects: local heavy-metal fans Damien Echols (18), Jason Baldwin (16), and Jessie Misskelley (17). At noon on the following day, they visited the Broadway Trailer Park residence of Echols and began questioning him.

Jessie Misskelley has an IQ of 72, an indicator of mild mental retardation. On June 3rd, West Memphis police investigators questioned Misskelley about his role in the heinous crimes. The interrogation lasted 12 hours. Misskelley was never provided legal counsel or allowed to call his family. Only about the last hour of this was recorded, during which Misskelley confessed, implicating

himself, Echols, and Baldwin in the murders.

The Misskelley statement was riddled with errors. He repeatedly got the timeline wrong. First he said the murders had occurred at 9 a.m., which would have been impossible as the children were all accounted for at school. Then he changed it to noon -- also impossible.

Misskelley recanted his statement almost immediately, and his public defender, Dan Stidham, said that the only reason his client confessed was because he thought he could get the \$50,000 reward. But within a day, the three teenagers were formally charged with murder.

Misskelley was tried and convicted in February 1994, but since he refused to testify against his friends, his statement was ruled inadmissible in the Baldwin/Echols trial. That commenced within the month, with Berlinger, Sinofsky, and the HBO cameras following every step of the way. "We thought we were going there to make a real-life *River's Edge* and that these kids were guilty," recalls Sinofsky. "We wanted to look into why they would commit such a heinous crime. When we realized they were innocent we went back to HBO and let them know it had gone in a different direction. We said we were kind of thinking the stepfather John Mark Byers did it. He was a fighting kind of guy, and one time he even said to us, 'Just remember, boys, it all started here.'"

In March 1994, Echols and Baldwin were convicted of triple homicide. Echols was sentenced to death by lethal injection and is on death row at the Arkansas state penitentiary in Grady, where Misskelley is serving life plus 40 and Baldwin life without parole.

There was no weapon at the scene and no blood, other than what had collected when police removed the bodies from the water and placed them on the ground, leading to speculation that the murders were committed someplace else and the bodies dragged to the ditch. The state's evidence that Echols was a Satanist amounted to an expert witness in the occult who had a mail-order degree and pentagrams Echols had scribbled in jail. The murder weapon was a clean knife that was found in a lake near Echols' home, which resembled the knife that was possibly used at the crime.

Echols' current attorney, noted San Francisco defense lawyer Dennis Riordan, was retained in 2004. He says: "The thing that led me to take this case was the startling sense that, in a death penalty case, there just wasn't any credible evidence that connected him to the crime. You can read the Arkansas State Court opinion and they list everything that was offered against them, and it's just terrifying that anyone could have been sentenced to death on any one of those six factors. A knife that was serrated? You could go into any home in Arkansas and find a serrated knife."

According to FBI's Frazier, who checked the old files, there was a request for an FBI profile on a probable killer -- at first they were looking for a "Rambo" type -- but it was not completed. "The West Memphis Police Department request for a profile was discontinued based on the fact that arrests had been made," he says.

#### **The devil wears Prada**

Damien Echols wasn't every teenager in America in 1993, but you could pretty much recognize the type. He dressed in black, wore skull earrings, and thought Guns N' Roses singer Axl Rose was God. Some say he dabbled in the occult. And he was poor -- there wasn't always enough to eat. He lived in a shabby trailer park with a mom he loved and a stepfather he was ambivalent about. So he hung out with his friends, listening to heavy metal and reading Stephen King and Anne Rice. Sometimes they'd just sit by the lake all day and throw rocks at

the water.

Echols was strange, but he didn't have a history of violence; there was one brush with the law when he was 15, and he ran away with his girlfriend after her father discovered them having sex. He was then sent for treatment for a non-specific "psychotic disorder" at Charter Hospital. Echols was prescribed the usual antidepressants available at that time. By the time he was released, the conclusion by his doctors was that he was no longer depressed.

In his muck-gray and bulletproof glass visitors' cell on death row, Echols (now 30) says, "If I had to do it all over again, I would not have stood out."

Death row inmates are allowed a two-hour no-contact visit with the media. So Echols speaks through a vent in the wall. When wife Lorri Davis comes on Fridays, she is allowed one extra hour, and she gets to sit in the fishbowl with him.

He's pale and anemic -- he lives on a diet of Froot Loops and granola bars provided by Davis. In his prison whites he blends into the walls, except for his eyes, which are big brown sockets. He explains that he has arthritic hips from spending 13 years in a nine-by-nine-foot concrete cell, getting fed through a slit in the door. There have been an estimated 30 executions since he got here -- many of the other inmates have become so desensitized to the process they don't even look up from the television.

Attorneys have come and gone in 12 years -- and there have been three failed appeals. Even though several jurors now admit to considering the inadmissible Misskelley statement, the appeals court ruled that it came too late, stating: "Echols' claim of juror misconduct has been brought over a decade after his conviction. Clearly, this is a matter which could have been brought in a motion for new trial immediately after the verdict and conviction, but the argument is now untimely."

Echols shakes his head: "Basically they are saying, 'You didn't file it on time so we're going to kill you on a technicality.'"

There is no reason to expect a different Damien Echols from the one seen in *Paradise Lost*; after all, he went straight from that documentary to death row. Many of his supporters cite his intelligence and his outspokenness and that this is what they liked about him from day one. "I'll tell you anything," he says.

During his trial, his dismissive attitude and contemptuousness hurt him on the stand. When asked to explain the difference between Wicca and Satanism (so as to exonerate himself from charges that he worshipped the devil), his exasperated voice and facial demeanor indicated to the jury that this just wasn't worth his time.

"I was in shock at my trial," he explains. "When you're innocent, you keep thinking surely somebody's gonna realize something's wrong and say, 'This has gone on long enough.'"

In the late 1990s, Echols became a Buddhist, inspired by the teachings of another Arkansas death row inmate, Jusan Frankie Parker, who was executed in 1998. He meditates -- sometimes as much as five hours a day -- wrote his autobiography, *Almost Home, Volume 1*, and has had his poetry published in *Porcupine*, a literary arts magazine. He estimates he's read 1,000 books.

"A huge deal for me is not even thinking about this place," he says. "I read from the time I get up in the morning til the time I go to bed. My cell is nine-by-nine. There's nowhere to look away."



"Damien has done an amazing job of adapting to his environment and finding a way to deal with it," Rollins observes. "He's really impressive. If he could find a way to get it across, he could be a great teacher."

So he reads catalogues and dreams about getting out -- about wearing Prada ties and a nice Brooks Brothers suit, working in a bookstore, raising children, and voting in a presidential election. He dreams about the political impact he could have on this system one day.

"I was taught -- and I believed -- that our system worked; an innocent man couldn't be convicted in America. I thought any moment now, I'm going home," says Echols.

The family that stood by Echols during the trial has scattered. His mother calls maybe once a year; his dad remarried about six years ago and has a new family. His son's mother, Domini, was around for two years after his incarceration and then married someone else. "People don't stick around when you're on death row," Echols says. "In the beginning everyone rallies around you, but you can't expect them to put their lives on hold just because yours is."

#### **Waiting for the DNA**

Mostly now it's just about his wife. Pretty and wholesome -- with long brown hair, bangs, and a bike rack on her car -- Lorri Davis' sweet voice and demeanor suggest she hasn't had a tough day in her life. Originally from Morgantown, West Virginia, Davis was living in New York and working as a landscape architect when she attended a screening in 1996 of *Paradise Lost*. It hit her about halfway through the film: "I was so horribly upset by it, and the next morning I woke up and thought, Oh my God, they didn't do it. I never saw a movie and felt compelled to do something."

She began writing Echols within a few days. One year later, she quit the New York job -- "Rue the day," she says -- and moved to Little Rock, where she gets to spend three hours every Friday visiting her husband in prison. She brings him the granola bars, strokes the fund-raising machine, shuttles supporters back and forth from the airport, packs Echols' 26 boxes of books, types his manuscripts, or sends a book he picked out to a stranger who took the time to write.

One could easily conclude that Davis is crazy. Even Stidham recalls thinking as much when he learned that Davis had married Echols. "Naturally, I made that assumption," he says. "But she's just a decent human being. And once you meet her, you realize she's very intelligent and sane. I admire and respect her."

Decent, sane, and tenacious: Last year, right before she hired Dennis Riordan, she got the cell phone numbers of several noted defense attorneys. She called and begged them until they finally asked her to stop.

"When I first moved here, I would go to court hearings and sit way in the back," she says. "I didn't want anyone to know who I was. When we got married, I thought, I'm married to this person and I've got this role."

"In the beginning, I was not convinced," Davis' mom, Lynn, remembers. "I said, 'Should he get out, I wonder if he rolls over in bed and says, 'Lorri, I did it. I beat the system.''" But we met with Damien about four times, and the first time I asked him, I said, 'Damien, did you do it?' And he said, 'I did not.' And I felt it. I just knew that he couldn't do that to those little boys. I know that every little town has its problems, and they pinpointed Damien and his buddies because he was a thorn in their side."

With nearly every state appeal exhausted, Echols hopes to be headed for federal

court, but Misskelley and Baldwin still have pending state appeals. All three are waiting for the results of DNA testing. (Baldwin and Misskelley declined through their attorneys to be interviewed for this article.)

### Tragedy makes a reality star

John Mark Byers stands by the coffee machine in the Parkway convenience store in Millington, Tennessee. He listens, visibly bored, to another man's story about being wrongfully arrested for a car theft. By anyone's standards, this isn't the most interesting tale, but to John Mark Byers, stepfather star of the two *Paradise Lost* HBO documentaries, it's gotta sound dull as dirt. So when the man finally works around to the part where he gets his car out of the police impound, Byers interrupts. "Do you recognize me?" he asks, impatiently.

The man shakes his head slowly. "I've seen you," he says. Clearly, he has not.

"Were you in this area in '93?"

He was.

"Do you remember the three 8-year-olds that were murdered in West Memphis? One of those three 8-year-olds was my son. Do you remember seeing me in the media?"

The man registers shock, but he nods politely. Uh-huh, maybe ...

"That's it," Byers says, satisfied. "People ask me for my autograph all the time," he tells me later. "There wouldn't even have been a *Paradise Lost 2* if it wasn't for me."

He repeats it a couple of times during our two-hour breakfast at the convenience store, where we chow down on eggs, bacon, biscuits, and grits. "You don't know what these are," he says, pointing to the plate heaped with grits. He's gracious, but it's a challenge: A New York liberal -- which he believes me to be -- doesn't eat grits, and John Mark Byers doesn't like New Yorkers.

A lot of people don't understand Byers, including a lot of big-city folk who believe the WM3 were victims of "hillbilly justice." He reserves special venom for the producers of *Paradise Lost*.

"Two Jew-boys from New York City took advantage of our families in this crisis to make money," he says.

Still, he's gracious. His new wife, Jackie, is a lovely person. They buy me breakfast and Byers helps me off with my jacket. He's currently working as a house painter.

Believing in the guilt of the West Memphis Three and resentful of the documentaries that stirred up questions about their innocence, the parents of James Moore and Steven Branch have mostly avoided the press. Byers, on the other hand, made quite an impression in *Paradise Lost*: In one scene he was ranting and raving about the details of the crime. In another he curses the men who killed his babies. He gave the HBO producers a knife, which turned out to have his and Christopher's blood on it. Additionally, it turns out that Byers was working for the police as a drug informant. His antics made such an impression on the HBO producers that, halfway through the filming of *Paradise Lost*, they began to believe that he might have been the killer. Byers has a long history of drug and alcohol abuse and was drunk throughout the making of both films.

"I wasn't in my right mind," he admits. "I tried to stay on medicine and

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marijuana, and they [Sinofsky and Berlinger] capitalized on that. They set me up to look like the fool."

In July 1994, Byers was arrested for contributing to the delinquency of a minor for allegedly instigating a knife fight between two youngsters. That same month, he was arrested for burglary. During that summer, neighbors filed restraining orders against Byers for allegedly whipping their sons with the metal handle of a flyswatter and firing shots at their home. Byers was on probation when he was arrested for selling Xanax to a narc in 1999. He served 18 months. His ex-wife, Melissa, who was highly visible during *Paradise*, had a longstanding heroin problem. She died of undetermined causes on March 29, 1996.

Byers made Jackie watch the documentaries the first week they met. "I watched them and I was like, dang," says Jackie Byers. "My major in college was psychology. I'm a pretty good judge of character, and if I thought for one second he did something terrible in his life I wouldn't have married him."

WM3 supporters have tried to connect Byers to the murders, but they've turned up very little in the way of hard evidence. His recollections of the crime include some inaccuracies: He claims the WM3 flunked lie detector tests when there is no evidence to support this; he claims Echols had driven by his house a few months before the murders when Echols never had a driver's license and had never driven a car.

Misskelley's lawyer, Stidham, says the case is confused because Byers and Echols both act strange: "[Echols] was a kid and not sophisticated enough to understand how he came off. And Byers still doesn't understand how his antics made him look guilty."

Byers regrets that he didn't get more money for appearing in the documentaries and swears he's not going to do another. A few minutes later, he corrects this. He might, if he has a contract and a lawyer by his side.

At the end of our interview, he asks me, "Now that you've met me and I've answered every question, do you think I'm the kind of guy who could have done such an awful thing?"

Decades of research by the FBI and hundreds of millions of dollars committed to investigating the "phenomenon" of satanic murders have not turned up a single example of a ritual child-killing in this country by any religious group -- including "Satanists" -- in the last century. As of this writing, Damien Echols has been on death row 4,796 days.

*This story originally appeared in Los Angeles CityBeat.*

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Articles

# Paradise: Still Lost

By Peg Aloï

THE BOSTON PHOENIX

On May 5, 1993, three eight-year-old boys were savagely murdered in West Memphis, Arkansas. Three teenagers, Damien Echols, Jason Baldwin, and Jessie Misskelley Jr., were accused of murdering Michael Moore, Stevie Branch, and Christopher Byers in what police deemed a ritualistic killing by a Satanic cult. Echols had clashed with the police before: in his impoverished Bible Belt community, he was viewed with suspicion because he dressed

in black, listened to heavy metal, and practiced wicca. Despite the lack of any significant physical evidence, the failure to investigate several key suspects (including the father of one of the victims), the dubious testimony of prejudicial witnesses (including an expert for the prosecution with a -order degree in occult crime), and a contradiction-riddled confession from Misskelley (who has an IQ of 72), all three were convicted. Filmmakers Bruce Sinofsky and Joe Berlinger chronicled the trial and the surrounding events in their award-winning HBO documentary *Paradise Lost: The Child Murders at Robin Hood Hills*. Now, four years later, a sequel is about to be released: *Paradise Lost 2: Revelations*.

"When HBO first approached us to do a follow-up film, we were not too keen on it, to be honest," says Sinofsky in a Manhattan café. "We could never definitively say they didn't do it, but what we could say was that there was not a fair trial and justice wasn't served." Berlinger, speaking from Baltimore, where he is filming a sequel to *The Blair Witch Project*, concurs: "From a filmmaking standpoint, it was like revisiting the same ground - plus it is just an ugly, depressing, emotionally draining story. But the important thing is that this story still needs to be told. It can't be swept under the rug."

Echols, now 24, is on Death Row. Baldwin, 21, and Misskelley, 25, are serving life sentences. But *Paradise Lost* has gained, well, a cult following: a high-profile rock-and-roll benefit CD to be released in June features tracks by Rocket from the Crypt, Willie Nelson, Tom Waits, and many others. And Los Angeles-based activists founded the West Memphis Three Support Fund, an Internet-based organization that provides detailed information on the case. The group contacted forensics specialist Brent Turvey, whose findings have highlighted evidence that was previously ignored or played down.

One of the many significant developments has been the involvement of prominent lawyers like Ed Mallett of Houston and DNA expert Barry Scheck of O.J. fame, who are offering their services to Echols *pro bono* (as is Attorney Dan Stidham, who is still defending Misskelley). Sinofsky says, "Although Barry Scheck would never admit it, the reason that these guys are involved is because of the film, because without it Damien would probably be dead right now. He [Echols] was going to give up his appeals and ask to be put to death. I think because of the support fund and the thousands of people who write to him and express concern and hope, it has made a

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big difference."

Although Echols's first appeal was denied in an Arkansas court (by the judge who sentenced him to death), a federal appeal is being filed. Says Berlinger: "This happened in a very fundamentalist, Bible-thumping part of the country where they preach every Sunday that the devil is out there. I hope this film has an effect on a national level, to wake people up to see what has happened."

*Paradise Lost 2: Revelations premieres on HBO this Monday, March 13, 2000 at 10 p.m. For more information visit [www.wm3.org](http://www.wm3.org).*

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## Articles

## Hell Hounds

How a musical moral panic destroyed three young men.

Damon Root | April 2003 reason.com

***Devil's Knot: The True Story of the West Memphis Three***, by Mara Leveritt, New York: Atria Books, 417 pages.

On the afternoon of May 6, 1993, the dead bodies of three 8-year-old boys were discovered less than half a mile from their homes in West Memphis, Arkansas. Stevie Branch, Christopher Byers, and Michael Moore were found naked, beaten, bound hand to foot with their shoelaces, and submerged in a water-filled ditch. Christopher Byers had been castrated. Four weeks later, West Memphis police announced the arrests of 18-year-old Damien Echols, 17-year-old Jessie Misskelley Jr., and 16-year-old Jason Baldwin, soon known as the West Memphis Three.



After six hours of questioning without a parent or lawyer present, Misskelley, a special education dropout with a history of behavior problems and an IQ of 72, implicated himself, Baldwin, and Echols during a rambling, factually impossible "confession" that he subsequently retracted.

"Most of his answers were vague," writes Mara Leveritt in *Devil's Knot: The True Story of the West Memphis Three*, her new book on the case. "Many were contradictory. Almost all began with a prompt by one of the detectives." The next morning, without a shred of physical evidence, the police announced they had their men. Although no one said so at the time, the official theory held the killings to be "satanic" in nature.

Leveritt, a contributing editor to the *Arkansas Times* and 1992's Arkansas Reporter of the Year, had a front row seat. She watched as the three were tried, dubiously linked to the occult, and convicted of murder. During the trial of Damien Echols and Jason Baldwin, the prosecuting attorney actually defined occult activity for the court as, in part, "an obsession with heavy metal music, change in forms of dress, wearing all black. And I believe the proof will show that [Baldwin] had fifteen shirts with the heavy metal thing."

Determined to find out whether "something similar to what happened at Salem had indeed occurred again," Leveritt set out in search of the truth. The result is a horrifying and infuriating look at how moral panics over youth culture can lead to the denial of justice. New ways for the young to entertain and identify themselves constantly arise, and these new ways often lead to prejudiced and absurd overreactions on the part of many authority figures.

For example, after the 1999 shootings at Colorado's Columbine High School, parents, teachers, and politicians fretted over black trench coats, video games, and

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the songs of Marilyn Manson. In 1992, when 18-year-old Wayne Lo went on a shooting spree at Simon's Rock College while wearing a shirt advertising the hardcore band Sick of It All, the group's aggressive lyrics became a part of the story. Rap star Eminem is regularly criticized -- and has been the subject of congressional hearings -- for allegedly fomenting homophobia, misogyny, and plain old violence. Congress is now equating electronic music events -- "raves" -- with depraved crackhouses, and suburban soccer moms are snooping for glow sticks.

The results of such moral panics are frequently just more additions to the history of misguided rhetoric -- though we shouldn't underestimate how hard such panics make social life and relationships with parents for kids with the demonized interests. In the case that Leveritt examines in *Devil's Knot*, the panic looks apt to cost at least one innocent youth his life.

Leveritt details a real-life horror show with six young victims: three brutally murdered, two in prison for life, and one, Damien Echols, on death row. She describes an investigation beset with problems and teeming with irregularities. The crime scene offered little physical evidence, including a complete lack of blood, a remarkable fact given the brutality involved. This scarcity of information, combined with the sensational nature of the murders, gave rise to wild speculation. "With the devil so prominent in news reports, ministers were quoted as experts," Leveritt notes. "Reporting on satanism beat skepticism, hands down."

Satanically speaking, the police actually had significant cause for skepticism. Not only did the crime scene lack blood, but there were no signs of ritual activity: no pentagrams, ceremonial candles, or the like. Although the moon had been full and the boys had been hogtied, the crime did not exactly scream Lucifer. Not until one self-styled occult expert was finished, anyway. County juvenile officer and amateur "cult cop" Jerry Driver conducted a sort of freelance investigation that, in Driver's words, immediately started "to zero in on Damien." Driver lobbied, almost single-handedly, for the occult theory of the crime, and his behind-the-scenes efforts paid off.

Police also received unorthodox contributions from Vicki Hutcheson and her 8-year-old son, Aaron. Operating with tacit police approval, Hutcheson investigated her neighbor Jessie Misskelley Jr. before he had been charged or implicated in the murders. With Jessie's help, she allegedly arranged a date with Damien Echols, during which she claimed to have attended a witches' gathering, or "esbat."

"If [police detective Donald] Bray instituted any protections for the young mother as she prepared to enter a realm that police suspected might harbor vicious murderers," Leveritt observes, "neither he nor she ever mentioned them." After the trial, Hutcheson conceded she might have been drunk that particular night and taken the "esbat" idea from the police. She consistently denied, however, that her actions were in any way influenced by the \$35,000 reward she hoped to receive for bringing the killers to justice.

Hutcheson's young son, Aaron, provided even more help. He claimed he had visited the Robin Hood Hills woods (where the bodies were discovered) with the murdered boys and seen robed men engaged in bizarre activities. Later, Aaron's story evolved into a self-contradicting eyewitness statement that eventually included an admission of his own guilt.

"Encouraged to tell and retell his story," Leveritt writes, "he embellished his account from a man with yellow teeth to scenes of orgies in the woods, and finally to lurid visions of buckets of blood." Taken together, the Hutchesons' contributions prompted police to question Jessie Misskelley Jr.



Despite leading questions and repeated prompts from the officers, Misskelley's "confession," which led directly to the arrest of Echols and Baldwin, was wrong regarding almost every significant aspect of the crime. Misskelley claimed the boys were anally raped; the medical examiner found no such evidence. He claimed they were bound with rope (not shoelaces), that only their hands were tied (it was hand to foot), and that one boy could kick his legs "up in the air." Misskelley repeatedly maintained that the killings took place in the morning and that the victims had skipped school (they were there until 2:45 p.m.). "Every detective in the room knew, even if Jessie did not," Leveritt writes, "that the statement was absurd."

As it turned out, Misskelley knew even less than the confession indicated. After a Christian group presented him with some soul-saving literature, Jessie had a question for his lawyer, Dan Stidham. "There I was, sitting in a jail cell with this confessed Satanic killer," Stidham later said, "and he's asking me who 'Satin' is."

The detectives seemed to ignore alternative avenues of investigation that will seem obvious to readers of Leveritt's book. John Mark Byers, stepfather of the castrated boy, was no stranger to law enforcement. A failed pawnbroker and jeweler, Byers was also a convicted drug dealer and undercover drug informant.

As a result, he knew several of the investigating officers personally. In 1987 Byers was convicted of terrorizing his ex-wife after threatening her with a stun gun. City attorney John Fogleman, who successfully prosecuted the West Memphis Three six years later, handled that case. Byers received a light sentence: three years of probation plus child support and gainful employment -- conditions he failed to fulfill. In 1992, without explanation, Crittenden County Circuit Judge David Burnett formally expunged Byers' record of this conviction. Burnett would go on to preside over the trial and conviction of Echols, Baldwin, and Misskelley.

Given his violent past and the killer or killers' emphasis on his stepson, John Mark Byers certainly warranted attention. "But if the West Memphis police followed up on this lead," Leveritt writes, "they entered no record of it in the file."

In fact, Byers was never pressed on several key discrepancies concerning the boys' disappearance. According to Christopher's 13-year-old brother, Ryan Clark (Byers adopted only Christopher), Ryan had searched the Robin Hood Hills woods with two friends until close to midnight, then gone home to bed. Byers, however, told police that Ryan joined him in another round of searching after midnight. Furthermore, Byers claimed to have searched the woods alone without a flashlight. Again, the police "did not press for details about the times Byers had been alone in the vicinity of where the bodies were discovered."

During an interview that appeared in the 2000 HBO documentary *Revelations: Paradise Lost 2*, Byers chillingly described how the trials brought back memories of his own "torture" as a child. "It was like they were reading off what happened to me," he stated.

Almost three years after her son's murder, Byers' wife, Melissa, also died under suspicious circumstances, a "possible homicide" that remains unsolved. Perhaps the most alarming facts arrayed against John Mark Byers, however, concern a hunting knife he gave the makers of the HBO documentary for Christmas. In December 1993, eight months after the murders, West Memphis police searched the Byers and Moore homes, an extremely unusual move with three suspects already set for trial. Conveniently, Byers presented his gift just one day before the search.

The knife, which matched police descriptions of the murder weapon, contained blood consistent with that of both the slain boy and his stepfather. Byers' statements only compounded this mystery. Although he originally told police the knife "had not

been used at all," Byers later testified that he had, probably, cut his finger on it.

In November 2000, Dan Stidham, Jessie Misskelley's lawyer, filed a motion with Judge Burnett requesting new DNA tests of several items, including Byers' bloody knife. "Additional testing with new, more sensitive, and more discriminating tests," Stidham wrote, "may help resolve previously inconclusive test results." To date, Stidham has received no response.

Ultimately, black clothes, heavy metal music, and weird beliefs outweighed improper procedures, false testimony, and reasonable doubt. "I have personally observed people wearing black fingernails, having their hair painted black, wearing black T-shirts, black dungarees," testified Dale Griffis, the prosecution's "occult expert." Although the defense argued that Griffis' mail-order Ph.D. from "Columbia Pacific University" did not qualify him as an expert, Burnett disagreed. The prosecution also introduced the cover of Metallica's *Master of Puppets* album, the fact that Echols practiced Wicca and enjoyed books by Stephen King and Anne Rice, and testimony "that eleven black T-shirts had been found in Jason's home."

The prosecutors' linkage of rock with Satanism and murder has deep roots. Rock, like its predecessor the blues, has in many ways cultivated an evil reputation. Blues legend Robert Johnson, whose songs include "Hellhound on My Trail" and "Me and the Devil Blues," is said to have sold his soul for musical skills. The Beatles placed occult icon Aleister Crowley on the cover of their seminal album *Sgt. Pepper's Lonely Hearts Club Band*. The Rolling Stones solidified their bad boy image with the 1968 hit "Sympathy for the Devil." There's a huge catalog of more explicitly Satanic classics, such as Slayer's "Altar of Sacrifice," Morbid Angel's "Fall From Grace," Iron Maiden's "The Number of the Beast," and Venom's "In League With Satan."

It goes without saying, of course, that none of these artists actually wants to murder children or bury the world in brimstone. Rather, they wish to shock and delight audiences with dynamic music and the excitement of transgressive identities.

Yet while Leveritt clearly understands this, she fails in *Devil's Knot* to fully explore the gross misinterpretation of popular music at the heart of the case. Instead, Leveritt also plays to prejudice — against Christians rather than pagans. She is all too willing to write off the police, prosecutors, and their witnesses as deluded by their religious beliefs. "The spiritual landscape was rigorously Christian," she intones, "and rigorously literal." Well, maybe. But the impulse to link young people's music and clothes with dangerous, unnatural forces is not a regional, or even religious, phenomenon. As the predictable responses to Columbine, Wayne Lo, Eminem, and raves show, such confusion is on display everywhere, and not restricted to Christians.

Of course, that such foolish, simplistic connections between music and criminality are readily drawn everywhere provides zero comfort to Echols, Baldwin, and Misskelley. But their plight has at least not gone unnoticed. In 1996 HBO broadcast the documentary *Paradise Lost: The Child Murders at Robin Hood Woods*. Featuring music from Metallica and using trial footage, TV clips, and interviews, the film convinced many that the West Memphis Three were the victims of a modern day witch hunt. Roger Ebert declared, "Everybody in the town and in the courtroom and on the jury are all blinded by their fantasies about Satanic cults." *The New York Times* called the Emmy-winning film "true crime reporting at its most bitterly revealing." The sequel followed four years later, while benefit albums with musicians including Eddie Vedder, Henry Rollins, and Hank Williams III have also hit record store shelves. Three California residents, inspired by the film, started the Web site [www.wm3.org](http://www.wm3.org). Visitors can download documents from the trials, find out the latest information, and purchase various products with the slogan "Free the West Memphis Three."

Yet as Edward Mallett, the attorney now handling Damien Echols' appeal, told *The Atlanta Journal-Constitution* last year, "I don't think judges are favorably affected by young people's groups and Web sites." Indeed, except for the efforts of their attorneys, there may be little more anybody can do for the West Memphis Three. Several appeals are pending, including motions to retest evidence and secure a new judge, and family members are accepting donations for a legal defense fund. Otherwise, the wheels of justice are grinding exceedingly slowly.

Leveritt is ultimately convinced that Salem did in fact repeat itself. Most readers will be as well. *Devil's Knot* is a powerful cautionary tale about the awesome and frequently careless power of law enforcement and the damage it can do when informed by ignorant moral panics and unchecked by rational individuals.

will be at sixspace gallery September 6 through 20.

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## **WEST MEMPHIS MURDER CASE ATTORNEY SPEAKS TO STUDENTS, PUBLIC AT INTERNATIONAL COLLEGE SEPTEMBER 14, 2002**

**DEFENSE ATTORNEY DAN STIDHAM COMES TO NAPLES DUE  
TO PERSISTENCE OF A CRIMINAL LAW AND PROCEDURE  
STUDENT**

**Naples, FL** - Attorney Dan Stidham has been thrust into the media spotlight since being appointed to represent one of the "West Memphis 3" in 1993. Stidham will share his experiences and insight on this compelling case with students and the general public at International College in North Naples at 1 p.m., September 14.

On May 6, 1993, three eight-year-old boys, were found dead in a drainage ditch in West Memphis, Arkansas. Three teens, now adults, were convicted for allegedly torturing and mutilating the boys in a Satanic ritual. Two of those teens - Jessie Misskelley, whom Stidham represents, and Charles Jason Baldwin - were sentenced to life in prison. The third, Damien Echols, is on death row. Stidham maintains his client's innocence and continues to represent Misskelley.

Stidham's journey to Naples is the result of a class project Legal Studies Professor Jack Breiden assigned to summer term students in his Saturday morning Criminal Law and Procedure class.

Instead of giving his students a dry, hypothetical case study to analyze, Breiden gave them background on the West Memphis murder case on their first day. He also showed his class the two HBO documentaries on the murder case. Guest speakers also were brought in for additional perspective.

Students say they fed off of Breiden's enthusiasm and each other's motivation. David Brinckman, 43, of Cape Coral drove more than 16 hours to visit the site where the boys were found, took photos and interviewed townspeople as part of a fact-finding mission. Another student, Celia Fellows, 42, of Naples, tracked Stidham until she was able to get him on the phone to answer questions. Fellows is now on Stidham's "buddy list."

Breiden said he is thrilled with his students' initiative and determination.

"I didn't know they'd become so involved. I feel good about being able

to spark an excitement in them," said Breiden, who has taught at the College for 10 years. "I can't believe Dan Stidham is coming to Naples to speak with my students."

Fellows, 42, of Naples, said Stidham's insight was critical to answering questions for her term paper. She admits, however, that she never expected to hear from Stidham.

"I had too many unanswered questions," Fellows said. "I looked at this case from a constitutional point of view. In my opinion, I don't think they received a fair trial."

Knowing how excited classmates were about the case, Fellows asked Stidham if he would visit the college. To her surprise, he agreed.

"Stidham has been very accessible and helpful. I'm so thrilled he's coming," she said.

Fellow student David Brinckman, of Cape Coral, 43, also is looking forward to Stidham's visit. He and another student drove half a day to West Memphis in search of their own answers. Brinckman took photos, interviewed West Memphis citizens and Memphis police. He gathered all his notes and photos and gave a first-hand Power Point presentation to the class.

"The bottom line was, I couldn't get the information from officials in West Memphis by phone or email. I needed to see what I was picturing in my mind," he said. "Professor Breiden's class really enhanced the education because we had real results."

Dan Stidham said he is eager to speak with Breiden's class and others at International College.

"Part of my motivation for speaking out about this case is the hope that I can somehow keep a similar tragedy from occurring again," he said. "I hope people can somehow take away the lesson that we can all learn from this tragedy and be inspired to work to improve our justice system, not just for the West Memphis 3, but for all the potential Jessie Misskelleys out there in the world."

As part of his interactive lecture, Stidham will cover criminal profiling, police interrogation techniques, false confessions, criminal defense strategies, juvenile and Miranda issues, forensic science issues, polygraph issues, "Satanic Panic," and media issues in a high profile case.

Law enforcement and attorneys in Lee and Collier counties have been invited to attend Stidham's lecture, Breiden said. Stidham has presented similar lectures at college campuses around the country and to professional organizations like the Arkansas Bar Association, the Arkansas Trial Lawyers Association and the Academy for Behavioral Profiling. He has made appearances on several national television

networks, including NBC Nightly News, MSNBC and Court TV's Prime Time Justice. The first HBO documentary is entitled, "Paradise Lost." The sequel is called "Paradise Lost: Revelation."

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Articles

## West Memphis murder case gains students' attention

By TOSHIBENA ROBINSON-BLAIR

*Daily News Journal*

Murfreesboro, TN (Dec. 5, 2006)



The attorney who represented a teenager convicted of killing three 8-year-old boys in West Memphis, Ark., 13 years ago told Rutherford County high school students that his client is probably innocent of the crime.

Students at Blackman High School have been studying the murder case, which grabbed national headlines in May 1993, and Blackman criminal justice instructor Richard Kimberly invited attorney Dan Stidham to the school last week to share his views about the case.

"I wanted the kids to hear what it was like going through what he (Stidham) went through to represent this young boy," said Kimberly, a retired criminal defense attorney.

Second-graders Steve Branch, Christopher Byers and Michael Moore were out riding bicycles on a Wednesday afternoon 13 years ago when they went missing. Their bodies were found the following day within 10 feet of each other in Ten Mile Bayou, the city's main drainage ditch.

Damien Echols, 18; Jason Baldwin, 16; and Jessie Misskelley, 17; known as the West Memphis 3, were convicted of the murders. Echols was the only one sentenced to death. Baldwin is serving life without parole and Misskelley was sentenced to life in prison plus 40 years.

Stidham, a Paragould, Ark., attorney, told the students that he "like everybody else, assumed my client (Misskelley) was guilty."

"There is nothing worse for a defense lawyer than to have an innocent client," Stidham said.

Misskelley admitted he was present when the murders occurred and running after and catching one of the victims, who tried to escape. But he said the other two teens carried out the killing.

It is believed that the boys were sacrificed as part of a Satanic cult ritual.

Stidham told the students that Misskelley had the mental capacity of a 5-year-old and was coerced by police into confessing. Police subjected him to 12 hours of questioning without counsel or parental consent and did not audiotape the entire conversation. Misskelley later recanted his story.

About 200 criminal justice students from across the county watched parts of a two-hour slide presentation about the case Friday.

Kimberly said he followed the case from the beginning through two television documentaries.

"It is my belief, even aside from even guilt or innocence, that the case was a poster case for miscarriage of justice," he said. "I try to steer my students away from making judgments about guilt or innocence because that's not really the point. The point is were their constitutional rights upheld? Were they violated? In this case it was a rush to judgment. Mr. Stidham calls it Satanic panic."

Blackman students participated in a mock trial of the case prior to Friday's presentation.



"I thought the presentation was good, but he (Stidham) tried to lead us into thinking that they were not guilty," said senior Matthew Hysmith. "I don't think any of the kids did it, though."

La Vergne High sophomore Keitorria Edmonds said the facts were interesting.

"I got a lot from it," said Edmonds, who is considering a career in law. "From the movie, I could tell most of the stuff was inadmissable and shouldn't have been used. It wasn't fair at all."

La Vergne junior Laura Benitez took a different view.

"It's just unbelievable what they did," she said. "They shouldn't have killed the three little boys. They didn't do anything. I think the guys were guilty. From the evidence, they looked like they did it."

Stidham, who's now a judge, said he has assumed a supporting role in the case.

"I love doing this. It gives me an opportunity to not only talk about this case, but to make sure that nothing like this ever happens again," he said.

Stidham is a strong advocate of videotaped police interrogations from beginning to end.

"It not only protects the accused, but it also protects the officers from later being accused of engaging in coercive tactics," he said.

He believes if Misskelley was given a second trial the results would be "dramatically different."

*This story originally appeared in the **Daily News Journal** in Murfreesboro, TN at: [www.dnj.com](http://www.dnj.com)*

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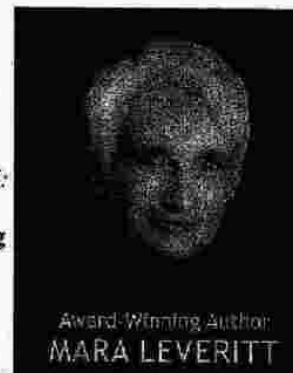
Articles

## Interview with Mara Leveritt

[www.maraleveritt.com](http://www.maraleveritt.com)

*This interview was conducted by email Nov. 29, 2006:*

**ML:** You had young sons of your own and a young law practice when you were asked to represent Jessie Misskelley, Jr. How were you brought into the case and how did it effect your personal and professional life, both in the early days and in the years since?



**DS:** My oldest son was 8 years old in 1993, the exact same age as the victims, Michael Moore, Stevie Branch and Chris Byers. My youngest son just turned 10 a few months ago. Having young children from the time of the trials until now has made my involvement in the case a little more difficult.

There were lawyers that had approached the court and volunteered to represent Damien Echols and Jason Baldwin. I did not seek the appointment in any way. Apparently no one volunteered to represent Jessie Misskelley. It may have been due to the confession, but I am not sure about this. As it turned out, Judge David Goodson, who was from Paragould, my hometown, just happened to be on the bench in West Memphis the day that the three defendants were brought before the court for their first appearances. He had the task of appointing lawyers for each of the defendants because the local public defender in Crittenden County advised the court that he had a conflict of interest with the case. I found out years later that his "conflict" was that he was a Christian and could not represent a "devil worshiper."

Judge Goodson called me at home early that morning and asked me if I would be willing to take on the task. My initial reaction was "no," but I was intrigued just enough to ask the judge if I could have a few minutes to think it over and discuss it with Greg Crow, my law partner, at the time. He only gave me a few minutes to decide, and when I could not find Mr. Crow, I had to make the call on my own. I asked my Wife, Kim, what she thought about the situation. I was surprised when she told me I should do it, so I called the judge back in Marion, and accepted the appointment.

It would be an understatement to say that the whole experience of the case turned my world upside down. The many challenges that I faced, of course, were and still are, pale in comparison to the suffering that the six families of the victims and the defendants have endured. My family made a lot of sacrifices, and put up with my absence on many occasions, including holidays, birthdays, ball games, etc. due to the many years of investigation and appeals. My oldest son asked me once if I loved Jessie Misskelley more than I loved him and his brothers and sisters. That was tough! Through it all, however, they stood beside me and encouraged me to continue the fight.

Initially, the case did create a palpable measure of contempt for Mr. Crow's and my involvement in it. Our local community really had a hard time initially coming to grips with our involvement in such a gruesome and horrible case. As the real facts of the case began to emerge, however, the public perception of our involvement began

to change. In 2000, when I was out campaigning for judge—a part-time judicial position—people here told me they admired me for sticking by my client and for doing what was right. We won the election by a wide margin.

It is no secret that serving as court-appointed counsel for Mr. Misskelley created some financial hardship for Mr. Crow and myself. I worked on this case, and really almost nothing else, for the last six months of 1993 and the first three months of 1994. Eventually, our law practice recovered. Adding insult to injury was the fact that we did not get paid for representing Mr. Misskelley for about two years after the trial was over. In addition, we had more attorney hours in the case than both the other legal teams, and yet we were awarded the lowest fee. It amounted to just \$19.00 per hour for each of the 2000 plus hours we had accumulated in the case up through the trial. The Arkansas Supreme Court awarded us a fee for the direct appeal, but I have worked pro bono on the case for the last 10 years.

For years, I worked alone on the case, all the time begging lawyers and forensic experts to assist me. My only real allies at that time were not lawyers or forensic experts, but investigative reporters from the Arkansas Times and HBO. The Arkansas Times stood alone as the only media outlet in the entire state who dared question the verdicts in this case and ask the simple but important question, "Where is the evidence?"

After the release of *Paradise Lost* on HBO in 1996, the case received a great deal of national and international attention. Lawyers (outstanding lawyers like Ed Mallett from Houston, Texas, and Barry Sheek from New York) began to appear on the scene to assist Damien Echols. I think that this was due in large measure to the fact that Damien Echols is on death row and the need to assist him was far more pressing than with the other two defendants.

Despite persisting begging, I could not find a lawyer in Arkansas, initially, who would agree to volunteer to work on the case on behalf of Jason Baldwin or Jessie Misskelley. I even assisted Jason Baldwin with his appeals because his family could not afford to hire a lawyer to work on his appeal. The time was about to run on one particular aspect of his appeals. Eventually, I was able to persuade two of the best criminal defense lawyers in Arkansas, John Wesley Hall and Jeff Rosenzweig, to help with the case. Jeff is still involved in the case today.

In all candor, I must say that I didn't want to be a lawyer any more the day after the Arkansas Supreme Court affirmed Jessie Misskelley's conviction in 1996. For the first and only time, I actually considered walking away from both the case and my chosen profession. The way that the court refused to address one of our issues on appeal was particularly hard for me to understand. That issue, which would have required an automatic reversal of Mr. Misskelley's conviction and rendered his entire confession invalid, was not even addressed by the Supreme Court. Instead, the court ruled that the issue had not been raised in a timely fashion even though Mr. Crow and I had raised the very issue in the form of a written motion, and brief, both of which were part of the official record of the case. After licking my wounds for a few days, I decided that this setback would only serve to focus and strengthen my resolve.

The release of *Paradise Lost II: Revelations* on HBO in the Spring of 2000, brought many changes to the case. On the day after the film aired, I received 1500 emails from all over the world asking how to help. The attention to the case that the film generated resulted in the most profound acts of compassion and generosity that I have ever experienced. In addition to the many thousands of smaller donations to the WM3 legal defense fund, there have been several substantial gifts made by truly "anonymous benefactors" and from some very well known celebrities as well.

Of all people who have come forward and wanted to truly make a difference in this case, and believe there have been many, the one that stands out the most in my mind is Eddie Vedder of Pearl Jam. His contribution to the case does not stand out to me because of any particular dollar figure associated with it—(frankly I don't know how much, if any, money he has contributed to the case)—instead it stands out to me personally because of his enormous compassion for humanity in general, and justice in particular for the WM3. He is, without a doubt, the most genuine, caring and compassionate person that I have ever met. This is a man who really wants to make a difference in this world, and his list of endeavors goes far beyond helping the WM3.

**ML:** You took the unusual step of testifying on Jessie's behalf at his Rule 37 hearing, in which he claimed he had received "ineffective assistance of counsel." As I recall, the lawyers who represented Damien and Jason did not do that. What, essentially, did you tell the Court in support of Jessie's appeal?

**DS:** Actually, Mr. Misskelley's Rule 37 Petition has not yet been adjudicated by the Court. Neither has Mr. Baldwin's Rule 37 Petition. I was actually subpoenaed and testified at Mr. Echols' Rule 37 hearing in Jonesboro.

The primary reason for my being subpoenaed for Echols' Rule 37 hearing was the unique issue raised by Echols' lawyers regarding the money paid to the Defendants by HBO. The Echols team argued that the arrangement adversely affected the outcome of the Echols/Baldwin trial. I was subpoenaed to bring attention to the fact that I had handled that issue differently than did Echols and Baldwin's lawyers. I felt that it was improper for me to be involved in any negotiations with HBO back in 1993, so I helped the Misskelleys retain separate counsel to deal with that issue. I don't want to create any misconceptions about this issue. Ultimately, some of the money from HBO was used to hire experts, etc. for the Misskelley defense, just like in the Echols/Baldwin trials. The only difference was that I didn't negotiate with HBO.

Val Price, one of two lawyers who represented Damien Echols at trial, was called to testify at Echols's Rule 37 hearing. I anticipate that I will be called as witness by counsel for both Baldwin and Misskelley when their petitions are heard. My belief is that the court is waiting to see the results of the current DNA testing before ruling on these petitions.

**ML:** Is it generally the rule in the United States that claims of ineffective assistance of counsel are heard by the trial judge, or is Arkansas unique in this?

**DS:** I am only familiar with the rule in Arkansas, but I am told that it is somewhat unusual. The rationale employed by Arkansas courts on this particular issue is that the trial judge who presided over the actual trial is in a superior position to judge the effectiveness of trial counsel, which is the primary issue in a Rule 37 proceeding. The trial judge's ruling is then reviewed by the appellate court.

**ML:** You've told me that certain rulings in Jessie's case illustrate some concerns you have about the treatment of juveniles under Arkansas law, especially when the juveniles have been charged as adults. Can you explain some of those concerns?

**DS:** My concern about the law with regard to juveniles being tried as adults in the Misskelley case was centered around the fact that under the juvenile code in 1993, no juvenile in Arkansas could waive their "Miranda" rights without a parent also being present and signing off on the waiver. This did not occur in this case. Since Mr. Misskelley was 17 at the time of the alleged crimes, we argued that his

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confession should be inadmissible because the police did not get a Miranda waiver from Misskelley's father.

The Arkansas Supreme Court ruled that since Mr. Misskelley was charged by the state as an "adult," the juvenile code did not apply, thereby making his status as a juvenile inconsequential. Interestingly, had Misskelley been charged as a juvenile, with some lesser crime, he would have been entitled to the same "protections" afforded to other 17-year-olds, and his confession would have been "tossed out." Since the confession was the only evidence offered against Misskelley at trial, the case would have been over before it started.

We argued, unsuccessfully of course, that this was a violation of the "equal protection clause" of the U.S. Constitution. The issue, in a nutshell, is: shouldn't the level of constitutional safeguards for a child be the same, or greater, if that child is facing a serious punishment, or even the ultimate punishment, the death penalty? It seems to me that any juvenile should have the benefit of having their parent present under such dire circumstances. No parent would want their child questioned by police for any crime, much less one where the death penalty could be imposed, without the benefit of them being present and assisting the child with making a decision such as this.

The way the court applied the rule, the parent would have a right to be present and sign the waiver if the child had thrown a rock through someone's window, but not if they were being questioned about a "serious" crime like murder. It's not like the police didn't know what they were wanting to talk to Misskelley about, it was a murder case. They didn't follow the rule, but the court held that it didn't matter since Misskelley was charged as an "adult" instead of as "juvenile." This rule seems even less logical when you consider how and when every prosecutor determines whether or not to file a case in juvenile court. If the prosecutor knows that any confession in the case is going to be ruled inadmissible if the case is filed in juvenile court, do you think that he or she will file it there knowing that he/she will lose the case? No way!

When you add the fact that Misskelley was not only a juvenile, but he was mentally handicapped as well, the unfairness of the situation becomes even more apparent.

**ML:** Six years ago this month you filed a motion with Judge David Burnett seeking additional testing of evidence in Jessie's case. Please outline the legal process that followed and tell us where the DNA testing stands now.

**DS:** Back in 1993, DNA technology was in it's infancy. It now has evolved into a much more definite process and new DNA technology has overturned many wrongful convictions in this country and prevented many more from talking place in the first place. As I recall, I filed that motion prior to the Arkansas Legislature passing the relatively new DNA testing act that allows prisoners to conduct DNA analysis of evidence in their case. The motion was amended to include the procedures and protections that were incorporated into the DNA statute.

After the initial motion and amended motion were filed with the court, the new lawyers involved in the case took over the process of negotiating with the prosecution and establishing the proper protocol for getting certain items of evidence tested at an approved DNA testing facility. This process of negotiating and entering into an agreed order to accomplish the testing itself has taken a tremendously long period of time. It is taking even longer to complete the testing.

Despite the fact that this is a very complicated issue, I have been extremely frustrated at the length of time this all has taken. Unfortunately, I am not at liberty to

discuss the exact details and the exact status of the DNA testing, but I can say that I think that we are getting very close to the end of the process. I am extremely hopeful about the outcome of this DNA testing and I continue to hope, and pray, that it will assist us in establishing the innocence of the three convicted defendants and bring the real killer, or killers to justice.

**ML:** I know you've spoken to law groups about this case. What is the general reaction of those audiences? What questions do you hear most often?

**DS:** I began speaking about the case at bar association and trial lawyers functions almost immediately after the trials were over. Over the years, I have spoken to other professional groups, including criminal profilers and forensic specialists. I also get invited to speak about the WM3 case on college campuses. I really love to do this as it gives me a unique opportunity to discuss a case that, in many ways, has become an icon for injustice in America.

The question that I hear most is, "How could this have happened in America?" Audiences from outside the state (including lawyers, forensic experts, academics and students), are just absolutely stunned at the lack of any real, or physical, evidence against Baldwin and Echols, and the fact that a man could be on death row based on such evidence. They incorrectly assume that this kind of thing could only happen in Arkansas, or some other place in the "south." I take them through other examples of similar miscarriage of justice cases in places like California (the McMartin pre-school case) and New York (the Central Park jogger case) and they begin to realize that this kind of thing can—and does—happen everywhere.

In the beginning, it seemed that I would only get invited to speak outside of Arkansas. This began to change, however, with the release of your book, *Devil's Knot*. Suddenly, people from Arkansas began to get informed and very interested in the case. They were also very stunned at the facts of the case that were not reported in the media during the trials or that could not be compacted into the format of a 2 ½ hour HBO documentary.

Shortly after the [2002] release of *Devil's Knot*, which by the way, is unquestionably the authoritative reference source on the WM3 case, I was invited to speak at the "Equal Justice Works Symposium on Wrongful Convictions" at my alma mater, the University of Arkansas School of Law in Fayetteville. This was both an honor, and a milestone, in that it was the first time that I had been invited to speak about the "WM3" case in the state of Arkansas at an event where the case was overtly focused on as a "wrongful conviction." I had the honor of serving as a panelist with Attorney J. Gordon Clooney of Philadelphia, who has successfully exonerated a wrongfully accused man on death row in Louisiana, and Court TV host and commentator, James Curtis.

The two most recent lectures that I have given were right here in Arkansas and were before two of the largest crowds that I have spoken to. The first was earlier this year at the University of Central Arkansas in Conway and the latest was last week at Arkansas Tech University in Russellville. In addition to an overview of the case, I also speak about specific issues like "satanic panic," false confessions and criminal profiling techniques.

**ML:** Because of Damien's death sentence, much of the post-trial legal effort has centered on his case. Some of us have presumed that rulings that affect him might also affect the prospects of Jason and Jessie. Is that a valid assumption?

**DS:** I think that a "domino effect" could be likely should Echols be granted a new trial. The one issue that might not be included in this effect, of course, would be the

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confession issue since it only relates technically to Mr. Misskelley. It is conceivable that Mr. Baldwin and Mr. Echols could receive new trials and that Mr. Misskelley's conviction might stand independently due to his so-called confession. The confession issue is unique to the Misskelley case although it is now clear that the Echols/Baldwin jurors considered the Misskelley confession even though it was inadmissible in their trial and they were instructed by the court not to consider it in their deliberations. We know this because the jury had listed the Misskelley confession as the #1 reason to convict Echols and Baldwin in their notes which appeared in the jury room after the trial.

**ML: Please explain the status of all appeals at this moment.**

DS: Other than the DNA testing issues, Damien Echols has exhausted his state appeals and is now in federal court on what is considered his final "stage" of appeals. While there are other ways that he could try and mount collateral attacks on his conviction, he is essentially down to the last appeal in Federal District Court.

Misskelley and Baldwin still have not exhausted their state appeals as they both have their Rule 37 Petitions still pending before Judge David Burnett. These include the ineffective assistance of counsel claims that Echols has already litigated. They have the benefit of being able to have whatever results we get from any of the DNA testing currently in progress prior to exhausting the last of their state appeals, and as such, are in a better position procedurally than Echols. Assuming that their last state appeals are unsuccessful, they, too, would move on to their "one shot" final appeal in federal court.

**ML: You recently described your current role as mainly that of "cheerleader." What can you tell us about the legal teams that are now in place? What can we expect from them in the months ahead?**

DS: This is a hard issue for people to understand due to the way our system of justice is set up and the rather unique qualities of this particular case. Because I obviously cannot present my own "ineffectiveness of counsel" arguments on behalf of Mr. Misskelley to Judge Burnett, other lawyers have to represent Mr. Misskelley on this issue. This is why I have been trying to recruit other lawyers to represent Mr. Misskelley for a number of years so that this claim can be presented to the Court.

Because of this, and the adversarial nature of our criminal justice system, I am disqualified from being a part of the "Misskelley Defense team" when it comes to presenting evidence of my own "ineffectiveness" to the Court. I know this is a complicated issue, but I really am incapable of explaining it any better.

Yes, it is true that I am no longer "counsel of record" because of the issues set forth above. I cannot be. I am, however, counsel of "origin" so to speak, and have been on the ground since day one back in 1993. I made a promise to Jessie Misskelley almost 14 years ago that I would fight for him as long as it takes, and I have every intention of keeping that promise so long as I am not conflicted out of any particular issue on appeal, and so long as I continue to have the confidence of the Misskelley family and the consent of the other lawyers involved.

Over the years, I have seen several lawyers come and go in this case. I can tell you without any hesitation whatsoever, that Mr. Misskelley, Mr. Baldwin, and Mr. Echols are quite fortunate to have the caliber of legal talent working for them that is currently in place. These are the brightest and most qualified lawyers that I have ever encountered. While I haven't had the pleasure of meeting Mr. Echols' new lawyer, Dennis Riordan, he enjoys a fantastic reputation. I can't say enough about attorney John Phillipsborn, from San Francisco, who is now representing Jason



Baldwin. I consider him to be one of the very best criminal defense lawyers in the entire country. I have watched as his leadership has brought together an amazing team of lawyers and forensic experts from around the country to work on this case, including Attorney Michael Burt, from Los Angeles, who is now lead attorney for Mr. Misskelley.

**ML: Is there anything you'd like to add? Any confusion you've encountered with regard to this case that you'd like to clear up? Any word about Jessie's outlook—and your own—you'd like to pass along?**

DS: I would just ask that everyone continue to pray for justice in this case. Not just simply justice for the WM3, but justice for these innocent victims and their families, who deserve so much more than what they received by way of a meaningful investigation into these horrible crimes.

I would also ask everyone to remember that this miscarriage of justice occurred because of intolerance and fear. Now that we know that there is no such thing as "satanic ritualistic homicide" and that "false confessions" are real and do happen, maybe we can work together to avoid tragedies like this from ever happening again.

*To read Stidham's analysis of the murder investigation and trials, go to [Synopsis of the Case at WM3.org](#).*

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## SYNOPSIS OF THE CASE

BY DAN STIDHAM

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## Dan Stidham's Case Synopsis



*Note: The original version of this synopsis was written during Jessie Misskelley's trial in 1994. At that time Dan Stidham did not have the assistance of a forensic scientist or a criminal profiler. Mr. Stidham has written new notes to update his case synopsis for our web site in order to address newly discovered evidence and findings, to answer questions relating to his client Jessie Misskelley and to point out the important information that the jury was not permitted to see or hear. The new portions of the synopsis are shown in italics and were added by Mr. Stidham on June 27, 1999.*

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## A. Poor investigation of crime scene

1. Crime Scene not properly secured resulting in loss of potential evidence.

a. After discovery of first body, the crime scene was literally trampled, especially the creek bed.

b. Bodies were removed from the water too quickly, prior to the arrival of coroner (who was almost two hours late in arriving at crime scene) and placed on ditch bank in the sun destroying invaluable evidence regarding time of death, i.e. body temperature, rigor mortis, etc. (creek bed should have been drained leaving bodies where they were, thereby preserving potential valuable evidence).

c. Coroner's investigation was extremely substandard which led to the destruction of valuable evidence and ultimate misunderstanding of evidence by police.

d. Police did not keep the facts of the crime scene confidential, especially the injuries to the bodies. Rumors of sexual mutilation were reported in the news media and widely circulated throughout West Memphis as evidenced by the officers notes from interrogating potential suspects about what they had heard about the murders.

## B. Legitimate facts from crime scene

1. Bodies found nude, bound with own shoe strings in "hog-tie" fashion;

2. All bodies had substantial injuries to head, with one body (C. Byers) having been sexually mutilated, the testicles removed and the head of the penis removed with the shaft intact but having been "skinned". The testicles and head of the penis were not recovered; (Medical examiner testified in Echols/Baldwin trial that whoever did the mutilation had some knowledge of anatomy and was quite meticulous. The mutilation would have taken quite some time to perform even under laboratory conditions, and almost impossible to do in the water, in the dark, with thousands of mosquitoes swarming. Bodies had no insect bites.)

*Update: After consulting with forensic experts in 1997 and 1998, it was learned that Dr. Perretti's testimony at the Echols/Baldwin trial was not exactly accurate. The sexual mutilation of the victim Byers was anything but meticulous. In fact, it was quite crude. The testicles and part of the penis were literally ripped off the victim. In addition, the entire genital area of the victim Byers was covered in gouge-like wounds indicative of rage and/or punishment of this particular victim that was not present in the other victims. This has given us tremendous insight into the possible offender(s). For more specific information see Brent Turvey's Criminal Profile of this crime.*

*In addition, after consulting with a forensic entomologist, it was learned that some of the wounds to the bodies could be the result of post mortem feeding on the bodies by insects or crayfish and not wounds inflicted by the offender(s). The entomologist, along with Mr. Turvey, also gave us interesting insight on the time of death of the victims which makes the times put forth by Misskelley in his so-called confession virtually impossible.*

*Mr. Turvey, in examining the autopsy photographs of the victim, Branch, discovered*

what he believed could be a human bite mark. Upon his advise, we consulted a forensic odontologist who testified that the semi-circled mark above the victim's right eye was a human bite mark. Dental impressions were taken of the three convicted defendants, Echols, Baldwin & Misskelley, and they each were occluded as the source of the bite mark on the victim Branch.

3. Most of the boys' clothes were found in the water with the bodies. The clothes were mostly inside out, not torn. The pants were still zipped, but inside out. Two of the boys underwear briefs were not recovered; (Experts say that serial killers often keep the underwear and body parts of their victims as trophies).

*Update: Brent Turvey's investigation and criminal profile reveals that the offender(s) in this case most likely knew the victims and were from the area where the victims lived. Nothing in the facts of the case suggest that a serial type killer was responsible for this crime.*

4. Two human hairs were found on the bodies, one Caucasian, one Negroid in origin; (Hairs cannot be conclusively matched. Comparisons are done to exclude suspects.) One hair was "microscopically similar" to Echols, but it was also similar to another suspect and one of the victims' father, and as such, has no real evidentiary value. What does have evidentiary value, however, is the Negroid hair, in so much as the teenagers convicted are all Caucasian. In addition, Mr. Bojangles was a black male.

5. Several clothing fibers were found on the bodies; (Fibers, like hair, cannot be matched, only labeled microscopically similar or dissimilar. One fiber was similar to Jason's mother's housecoat, but it was also similar to one of the victims mother's sweaters.)

6. A couple of poor quality footprints were found near the bodies in the mud, one of which was a tennis shoe; (The print was not similar to any found or compared to the convicted teens).

7. No blood at all was found at the scene. Luminol testing done at the crime scene some two weeks after the discovery of the bodies revealed the presence of possible blood at the crime scene in, and on, the ditch bank where the bodies were laid by the police after they were removed from the water. Blood seeped from the bodies unto the soil where the bodies were laid. Luminol testing is not admissible in Court because it is not scientifically reliable; (The medical examiner testified at the Echols/Baldwin trial that it would be impossible for the injuries that were inflicted on those boys to be inflicted without leaving blood at the scene.) No follow up blood test was performed.

*Update: Brent Turvey's analysis reveals that most likely the boys were killed elsewhere and that they were dumped at the site where the bodies were recovered. This explains the lack of blood found at the crime scene. See Brent Turvey's profile.*

8. No weapons were found at the scene and no artifacts or anything indicating Satanic Activity were present.

*Update: Brent Turvey's investigation and profile reveals that there are no indicators of Satanic activity whatsoever. See Brent Turvey's profile.*

#### **C. Police misconceptions regarding crime scene / bodies**

1. The Autopsy reports took some time to be produced, and because there were almost no real clues, the police were eager to get the report.

2. **MISCONCEPTION:** The Autopsy reports revealed that the boys anuses were dilated which seemed to indicate that they had been sodomized, when in fact the dilation was a natural result of the bodies being in the water. Bruising and abrasions of the boys mouths and ears were interpreted by the police as forced oral sex when other explanations were just as plausible.

**FACT:** The medical examiner testified that there was NO trauma to the boys anuses, something that would virtually have to be present during a sexual assault, especially on a young child. No semen was found in any body cavity of any of the boys at the time of the autopsies.

3. **MISCONCEPTION:** The police assumed that the time of death had to be between 6:30 p.m. on May 5, 1993, the last time the boys were seen alive, and about 8:30 p.m. when a massive search of the crime scene began.

**FACT:** Before the Misskelley Trial in Corning, the medical examiner told Misskelley's attorneys that the time of death was impossible to determine because the coroner had done such a poor job in supplying the necessary data. At the Echols/Baldwin

trial in Jonesboro, the medical examiner testified that he had done further research and now placed the time of death at between 1:00 and 5:00 a.m. on May 6th, 1993.

*Update: See time of death information above.*

#### **D. Damien Echols tunnel vision / Satanic Panic**

1. The day after the bodies were discovered, the police questioned Damien Echols about the murders. Damien, although highly pressured, professed his innocence and refused to confess to the murders. He even voluntarily gave hair and blood samples to police for comparisons.

2. Police felt that Damien had to be responsible for this crime because of the following:

a. Damien Echols had a bad reputation as being strange and into the occult/Satanism/devil worshipping. The Crittenden County Juvenile Officer, Jerry Driver, was convinced that Damien was involved in the murders based on his past experiences with Damien. Damien told Driver a year before the murders that a cult would be forming in the area and Driver has heard that Damien liked to drink blood. Driver contacted the W. Memphis Police and told them of his belief.

b. The West Memphis Police began receiving tips and suggestions from concerned citizens, psychics and other police organizations, because of the "America Most Wanted" segment that was aired, that if the bodies were sexually mutilated then it was the work of "Satanists" or "Devil Worshipers." There were rumors of Devil Worshipers being in Robin Hood Woods even before the murders.

c. Police, faced with no real clues, and under intense pressure to solve the crime, had a deep rooted belief that Damien was responsible, and being unable to get Damien to confess, began rounding up anyone and everyone who knew Damien Echols.

d. Damien, being foolish, and loving the attention the police and others in West Memphis were giving him, did not deny involvement to his friends. In fact, some kids testified that he bragged about the killings, and took credit for same.

In my opinion, Damien, who by Arkansas standards was really weird in relation to his dress and attitudes, and who would never be the class president or the quarterback of the football team, and who was suffering desperately for attention, liked his newfound status as a celebrity. I don't think Damien ever stopped and considered that he might be arrested based on his own mouth, and there was really no way he could have anticipated Vicky Hutcheson or Jessie's false confession.

**NOTE:** Two things make me believe this. First, Damien voluntarily gave hair and blood samples to police, not exactly the modus operandi of a guilty person, especially not someone as intelligent as Damien.

Secondly, Damien told Ron Lax that he wasn't mad at Jessie for giving the false statement to police, because he knew Jessie was slow, and he told Ron that if the cops were as hard on Jessie as they were on him, there was no way Jessie could have withstood the pressure.

#### **E. The Vicky Hutcheson connection**

a. Background: Vicky Hutcheson had only lived in West Memphis a short time at the time of the murders. Her son Aaron, was a playmate to the boys who were murdered. Vicky previously lived in Northwest Arkansas and basically fled to West Memphis because she had outstanding warrants for her arrest for hot checks in NW Arkansas. She left her employer in Fayetteville, a lawyer, with the impression that she had a brain tumor and was terminally ill.

b. On the day the bodies were discovered, May 6, 1993, Vicky was in the Marion Police Department for the purpose of taking a polygraph test because some money had come up missing from the cash register at her place of employment in West Memphis. She took Aaron with her, and this angered the Officer who was to conduct her polygraph exam, Don Bray. Don Bray struck up a conversation with Aaron, and Aaron told him that he knew where the missing boys were at "The playhouse." Bray called the WMPD to tell them what Aaron had said, and he was told that the bodies had been found near where Aaron had indicated. (Aaron would later take Police to the scene where the playhouse was supposed to be and no playhouse was found).

c. Aaron would later tell police that he witnessed the murders supposedly seeing men in the woods all dressed up and speaking Spanish, i.e. Devil Worshipers. Each story was dramatically different than the previous version and Aaron finally told

police that Mark Byers was there and killed the boys.

**IMPORTANT NOTE:** Aaron never identified any of the convicted teens until after Jessie's confession, and could not identify Damien or Jason in a photo lineup. This despite knowing Jessie very well because Jessie baby-sat for him. Prosecutors knew they couldn't use this evidence because Aaron had changed his story so often and they knew witnesses placed Aaron far from the crime scene at the time of the murders.

A press leak by a police officer led to a news story about Aaron witnessing the murders and created a media frenzy that severely hampered the three defendants ability to receive a fair trial. In our opinion, Aaron did in fact play in the woods with the victims probably on several occasions, but he was definitely not in the woods on the date of the murders. In an effort to try to help, and at the suggestion of his mother, Aaron probably thinks he was there or dreamed he was. None of his statements accurately reflect facts of the crime scene.

d. Vicky definitely wanted the reward money having stated so publicly before and after the trials. Around June 1, 1993, Vicky was told by the WMPD that they could help her with her legal problems if she would help them get Damien. She agreed to a "wire" of her home and she tried to get Damien to her house to get information out of him. She asked Jessie Misskelley to introduce her to Damien. Jessie's reply was, "I know who he is and I can take you to his house." Jessie, who always tries to help, because that is his nature, obliged and introduced her to Damien, although he didn't know him.

e. Vicky finally got Damien over to her house but he says nothing about the murders on the "wire." The police deny that they have any tapes of the surveillance that are audible. Vicky told us after the trials were over that she had listened to the tapes herself at the WMPD, and that they were quite audible.

f. Vicky tells police on June 2, 1993 that two weeks after the murders she, Damien and Jessie went to an "Esbat" in Turrell, AR, and that Damien drove them there. This coupled with the statement of William Winfred Jones, who told police that he had overheard Damien, in a drunken stupor brag about killing and raping the kids, led police to center their investigation as satanic homicides and on June 3, 1993, police picked up Jessie Misskelley for questioning.

**NOTE:** William Winfred Jones recanted his statement during the trial of Jessie Misskelley just hours before he was to testify, saying that he made the story up and that he had only heard that Damien had done it.

g. Vicky was never able to lead police to the "Esbat" site or identify anybody else who was present at same.

h. Vicky Hutcheson admitted after the trials were completed that she was so drunk the night of the so called "Esbat" that she woke up in her front yard and could have dreamed the whole "Esbat" thing.

#### F. False Confession

Background: Jessie Misskelley, Jr. was just four years old when his mother abandoned him, leaving him and his severely retarded brother in the care of Jessie Sr. According to Jessie's family, Jessie's brother was later institutionalized and Jessie Jr. was diagnosed himself as being retarded. Doctor's recommended that Jessie Jr. receive special education and family counseling, but this was never done. Tests conducted at our request after his arrest indicated that Jessie Misskelley, Jr. was operating at

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Whether you oppose the death penalty or not, I really am convinced that they're not guilty of anything...

-Steve Earle



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## SYNOPSIS OF THE CASE

BY DAN SUDNAM

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the level of a five year old child. His reading level was severely retarded, and his overall IQ was in the range of 72, which indicates that he is borderline mentally retarded.

a. Our research indicated that due to his mental handicap, Jessie was not able to understand any aspect of his "Miranda Rights," which require a sixth grade reading level to understand.

b. Jessie Misskelley, approximately two weeks after the murders, was hanging out with some friends near Bojangles Restaurant in West Memphis. A "bum" asked him and his friends to accompany him to his "Fort" and drink beer. Jessie and his friends refused and called police thinking that this "bum" might be the killer of the three boys. The "bum" was picked up and questioned but released. He was the son of a Crittenden County Sheriff's deputy. Jessie and his friends were told by Police that if they found the killer that they would get the reward money.

c. On June 3rd, 1993, police acting on the information from Vicky Hutcheson, re: the Esbat, picked up Jessie Misskelley, Jr. for questioning. He was taken to the police station at about 9:30 a.m., after Officer Allen told Jessie Sr. that they wanted to talk to Jessie Jr. about Damien. Allen told Jessie Sr. and Jim McNease that Jessie would get the reward money if he helped in the investigation. In response to police questioning, Jessie said that he had heard that Damien and a guy named Robert Burch had killed the boys. Jessie told police that he was roofing with Ricky Deese the day of the murders. He denied being at Turrell, AR for a devil-worshippers' meeting with Vicky and Damien, telling police that he had never even been to Turrell at all.

**NOTE:** Jessie was questioned by police despite the fact that under Arkansas law he could only be questioned if his parents consented to a waiver of his Miranda rights in writing, since he was only 17 years of age.

d. Police believing that he was lying asked Jessie if he would submit to a polygraph test. Jessie, not knowing what a polygraph test was, told police that he would take the test. Officer Allen took Jessie to get his father's written permission for the polygraph test, but still did not discuss Jessie's Miranda Rights, or their waiver in writing. Instead, when they found Jessie Sr. another discussion was had about Jessie receiving the reward money, if he helped find the killer.

e. Jessie was administered the polygraph at about noon. Jessie was asked a series of ten questions. One of the questions was "do you do drugs," which Jessie answered "NO" There were several very generic questions about the murders. Each time Jessie stated that he knew nothing about the murders. After the test was completed, Jessie was told by Officer Durham that he was "lying his ass off." Jessie admitted that he had lied about the drug question, but officer Durham said that he was lying about the murders, and even told Jessie that he knew he was lying because "Jessie's brain was telling him so."

**NOTE:** Experts tell us that when a person of limited intellect and who is very suggestible is told that they have flunked a polygraph test, they will often confess falsely as their perception of reality is changed and they see it as their only chance to avoid getting into trouble and the only way they can please their interrogators, and ultimately leave the pressure of the interrogation.

f. Jessie was then interrogated for two hours during which time he vehemently denied any role in the murders. He was denied the right to talk to his father, and was grilled repeatedly by Gitchell and Ridge. Finally, Officer Gitchell showed Jessie a picture of one of the boys bodies which terribly frightened Jessie. Then Gitchell played a tape to Jessie using Aaron's voice which said "Nobody knows what happened but me." This frightened Jessie even more.

g. Then Gitchell showed Jessie a diagram. The diagram contained a circle with three dots in it which represented Damien, Jason and Jessie. Gitchell then drew dozens of dots on the outside of the circle, and asked Jessie if he wanted to be on the outside with the police or on the inside with Damien and Jessie. This all frightened Jessie and he told Gitchell and Ridge he wanted out.



All this finally broke Jessie's will, and his mind told him that the only way out was to tell them what they wanted to hear. After rehearsing the scenario, over and over again, he finally told them that he had seen Damien and Jason rape and murder the boys. He unwittingly told police enough to cause himself to be an accomplice. Instead of allowing him to go home as police promised, he was locked up. The interrogation itself lasted almost twelve hours, but only about twenty minutes of audio tape exist regarding the confession. Immediately after the confession, when Jessie realized he wasn't going home, he recanted the entire confession, but it was too late.

**NOTE:** As part of an experiment, Dr. Wilkins and myself were able to get Jessie to confess to committing a robbery that never occurred. This was ruled inadmissible by the Court, and the jury never knew this. I often bragged that I could get Jessie to confess to killing JFK, although he wasn't even born in 1963. I am still convinced I could get him to confess to almost anything.

**NOTE #2:** Police fearing our defense of false confession, searched feverishly for a way to corroborate Jessie's story. They questioned a friend of Jessie's named Buddy Lucas. Lucas told Officers Durham and Ridge that Jessie confessed to him that he had witnessed the murders the day after the murders occurred. Lucas told the officers that he and an uncle went to Jessie's on the day of the murders and took the Misskelleys some BBQ chicken. According to Lucas, Jessie Jr. wasn't there, but Jessie Sr. told him that Jessie had went to W Memphis w/ some teenagers. Lucas then told the officers that the next day, he went over to Jessie's house and that he and Jessie got their hair cut by Stephanie Dollar. After the hair cuts, Jessie told Buddy everything. Jessie even gave Buddy the shoes he was wearing when the boys were killed which Buddy readily handed over to police.

Suddenly, the West Memphis police had the technology to video tape an Interrogation, something they couldn't do with Jessie on June 3, 1993. I went to the Police Department and watched the video of Buddy's statement. The statement seemed strange to me, a poor attempt by Mr. Lucas to give the police something to corroborate Jessie's statement. After the tape was over, Officer Ridge readily admitted to me that as soon as Buddy finished his statement, he refused to take a polygraph exam to confirm same, and even recanted everything he said on the tape. I went to Jessie Sr.'s and asked him about the chicken. He said he Buddy and his uncle never brought him any chicken. Buddy's uncle also denied delivering any chicken, and Stephanie Dollar said she did not cut Buddy's hair on May 6, 1993.

Ron Lax tracked down Buddy, and he and I took a statement from Buddy, on video tape. Buddy said the police threatened him and told him he would go to jail if he didn't tell them about Jessie doing the murders. Buddy said he made up the story to keep from going to jail and that he "hated to have to lie on Jessie" but he was scared of the cops. Buddy said Jessie had given him some tennis shoes long before the murders ever took place, and the shoes that he gave police were not even the ones Jessie had loaned him. When the police took the shoes, they gave Buddy a brand new pair of boots. Buddy told Ron and myself that he was glad to tell us the real story.

When I asked Jessie about Buddy, he said that he hadn't seen Buddy in a long time, and that Buddy was real dumb. Jessie said Buddy was in "special education" in school. If Jessie thought he was slow then you can imagine how slow he really was. We arranged for Buddy to be represented by an attorney, and he was not hassled by the police anymore. When prosecutors learned of his recantation, they did not call him to testify. In a very difficult decision, Greg and I chose not to put Buddy on the stand at trial because he was so nervous and wouldn't have made a good witness. Further, the jury might have believed Buddy's statement to police, which the prosecution surely would have used to impeach him, and this might have been all the jury needed to convict Jessie of Capital Murder something that could have cost him his life.

In addition, Buddy's testimony might be construed by the appellate court as corroboration, something we have submitted all along they did not have. In hindsight, I still think we made the right decision in not using Buddy at trial.

#### **G. Facts of Jessie's confession do not match facts of crime scene**

1. Jessie says boys skipped school May 5, 1993.

**FACT:** Boys were in school all day, so was Jason Baldwin.

2. Jessie says boys were killed at noon on May 5, 1993.

**FACT:** Boys were in school until 3:00 p.m., and were last seen alive at about 6:30 p.m. ME says time of death was 1:00 TO 5:00 a.m. on May 6th, 1993. Jessie



worked with Ricky Deese until about 12:30 p.m.

3. Jessie says boys were raped (sodomized).

**FACT:** Medical examiner says no trauma to boys anuses, something that would have been there if they were raped.

4. Jessie says Jason castrated Christopher Byers with a single swing of a knife.

**FACT:** Medical examiner says that the penis of Byers was methodically skinned by someone with extensive knowledge of anatomy and the process would have taken some time to complete even under laboratory conditions.

*Update: The mutilation was not skillful or meticulous as Peretti said. It was crudely done. This is still quite inconsistent with Misskelley's confession.*

5. Jessie says that the boys were tied up with a brown rope.

**FACT:** The boys were bound with their own shoestrings.

6. Jessie says the boys were beaten with a big ol' stick and cut with a knife.

**FACT:** No blood was found at the scene, and ME says those injuries could not be inflicted with out a great deal of blood loss. (This leads on to believe that the boys were killed elsewhere and their bodies dumped in the creek. This seems to be corroborated by the fact that search teams were combing the woods that night walked all over the spot where the bodies were recovered.)

*Update: Brent Turvey's Profile of the case corroborates our belief that the boys were killed elsewhere.*

7. Jessie says Damien choked one of the boys with a big ol' stick.

**FACT:** Medical Examiner says none of the boys had choking or strangulation injuries.

These are just a few of the most obvious inconsistencies.

#### G. What the experts tell us

1. The defense retained the services of two well known experts who are recognized as being the tops in their field, Dr. Richard Ofshe and Mr. Warren Holmes.

2. Background on retention of experts:

a. Richard Ofshe:

1. Ron Lax told us about Dr. Richard Ofshe. An attorney friend of Ron's in California recommended Ofshe to Ron for use in Damien's trial as an expert on the occult. Ofshe won a Pulitzer Prize for his work on the Synanon Cult in California. Ofshe has a second area of expertise, False Confessions, and Ron suggested we talk to Dr. Ofshe. I called Ofshe, at the University of California in Berkeley, and explained that I thought Jessie had falsely confessed to the homicides. I further explained that I was appointed by the Court and had no money with which to pay him. This did not deter Ofshe. He asked about evidence against Jessie, independent of the confession, and I informed him there was none. He agreed to look over the transcript of the confession, which I Fed-Exed him that day.

About a week later, Ofshe phoned me and informed me that Jessie's confession was the worst false confession that he had ever seen, and that he felt Jessie was innocent. Ofshe's testimony is part of the trial transcript and is very, very compelling evidence of Jessie's innocence. Ofshe, like myself is absolutely convinced of Jessie's innocence.

From almost the beginning, I wanted to have the polygraph test Jessie had on June 3, 1993, looked over by another expert. The lawyer in me was hesitant though because I was afraid I might not like the results of the independent analysis. When I discussed this with Dr. Ofshe, he told me, "Don't be afraid, Dan, your client is innocent." That's when I called Warren Holmes in Miami.

b. Warren Holmes

1. I read about Warren Holmes in a Florida case I was researching regarding recordation of interrogations. The case cited Mr. Holmes tremendous experience in the area of polygraphs which includes the following:

a. Mr. Holmes is a consultant to the FBI, the Texas Rangers, the Royal Mounted Canadian Police.

b. Mr. Holmes conducted polygraph examinations in the assassination of JFK and Martin Luther King, Jr. as well as Watergate.

c. Mr. Holmes worked on the William Kennedy Smith case, the Boston Strangler case, and the Hampton Case from Louisiana.

d. He has over 39 years experience as a homicide detective and a polygraph examiner.

2. When I called Mr. Holmes, I explained to him that I had been appointed to represent an indigent kid in Arkansas charged with killing three boys. I explained to him that I had no money to pay him, but that I really needed his help because I felt my client was innocent. Mr. Holmes finally agreed to look over the polygraph charts from Jessie's polygraph.

3. About a week later, Mr. Holmes phoned me and told me that Jessie had only showed signs of deception on one question. The drug question. Jessie had passed all the questions about the homicides, showing no signs of deception on the charts. It was clear that Officer Durham had lied to Jessie, and that Jessie had falsely confessed in large part because he thought the W. Memphis police had this machine that was telling him "his brain was lying to them." This altered Jessie's view of reality, and he felt that the only way he could get away from his interrogators was to tell them what they wanted to hear.

4. Mr. Holmes has never been paid for help in our case. The State Of Arkansas reimbursed him the two thousand dollars or so of his personal funds spent flying to Arkansas to testify.

5. Dr. Ofshe did receive some reimbursement of his travel expenses. This did not even come close to reimbursing him for all his expenses.

#### H. What the jury was not allowed to hear

##### 1. Testimony of Dr. Richard Ofshe

a. The Trial judge refused to allow Dr. Ofshe to give all of his opinions with regard to Jessie's case. In short, he was not allowed to tell the jury that, in his opinion, Jessie's confession was a product of police coercion. This despite Dr. Ofshe being allowed to testify to the same issue in Courts around the Country. We made a proffer of what his anticipated testimony would have been, so the Arkansas Supreme Court will be able to determine its admissibility on appeal. [Click here](#) to read Dr. Ofshe's testimony.

##### 2. Testimony of Warren Holmes

a. The trial judge refused to allow Mr. Holmes to testify in front of the jury about the results of Jessie's polygraph exam, stating that it was inadmissible. The Court did permit him to testify about

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Whether you oppose the death penalty or not, I really am convinced that they're not guilty of anything...

-Steve Earle



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## SYNOPSIS OF THE CASE

BY DAN STIDHAM

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Interrogation techniques in general which he did. Click [here](#) to read Warren Holmes' testimony.

This testimony was crucial to an acquittal for Jessie.

This testimony of both these experts was absolutely crucial to Jessie's defense. When the Judge refused to allow the jury to hear this, it crippled our defense severely. I am convinced that had the jury heard this testimony, Jessie would have been acquitted.

My belief is based on the following:

1. After both Holmes and Orshe testified at trial, members of the media, and other spectators told Greg and I that they felt we had won the case because their testimony was so compelling. Just think what their reaction might have been had they known everything.

2. We learned, after the trial, that the first vote the jury took in the jury room was 8 for conviction, 4 for acquittal. Despite the limitation the Court imposed on us, we were able to convince 4 jurors he was innocent. We only needed one strong willed juror for a hung-jury and ultimate mistrial, which would have been the next best thing to an acquittal. The 8 wore down the 4, however, and they reached a compromise verdict. Although, we didn't get an acquittal, we were fortunate enough to avoid a capital murder conviction, and thus the death penalty.

We are still hopeful on appeal.

**Update: Re: Criminal Profiling of the Case**

1. Before the trial in 1994, I attempted to retain a criminal profiler for this case. Limited funds made this quest impossible. Before the trial I came across a newspaper article describing how police investigators were using profile information received from the FBI. There was nothing in the discovery we received from the police and prosecutors that suggested anything about a profile from the FBI I was very interested in this profile information for two reasons. First, I wanted to see if it fit my client at all. Secondly, I wanted to see if it might lead me to the real killer(s). When I asked Inspector Gary Gitcheil for this information, he denied ever receiving anything from the FBI. After Misskelley's trial I learned that Gitcheil had lied to me and that the FBI did in fact provide an initial profile of the killer in the form of a questionnaire that police officers used to canvass the neighborhood where the boys lived and their bodies were found. The gist of the profile was that the police should be looking for a Vietnam veteran because the wounds to the victim Byers were similar to wounds inflicted on American personnel during the Vietnam War. This profile was given to the WMPD despite the fact that the FBI never visited the crime scene or examined the autopsies. In addition, this FBI profile seemed to be based entirely upon statistical data and not on crime scene data or victimology.

2. When I contacted the FBI in 1994 to ask them about the profile, they gave me the run around and said that they had closed their file since the WMPD had made arrests within a few weeks of the homicides. When I advised them that I felt a serial killer might be responsible for this crime and that he was still on the loose, they assured me that an agent would contact me regarding same. The agent never did and when I flew to Washington in September of 1994 with my case file, the FBI refused to meet with me, again assuring me that an agent would contact me. None did.

3. After several attempts to obtain the services of a criminal profiler, I finally met with success after being referred to Brent Turvey by Kathy Bakken of the WM3 Support Fund group. Turvey agreed to look at the case in 1997 on a pro bono basis since he was interviewing for a job with the Arkansas Criminal Justice Institute and wanted to avoid the possibility of any appearance of bias on his part. Turvey turned down the Arkansas position in part because he was told he could only assist law enforcement and never the defense if he took the job.

3. Brent Turvey's profile has been invaluable to me and other members of the

defense team in assisting us in obtaining new evidence and investigative direction.

### **I. JESSIE MISSELLEY'S SO-CALLED SECOND CONFESSION**

*I am often asked to explain the events surrounding my client's so-called second confession. Many people look to this "second" confession as a way of dismissing the claims by the defense that Misskelley statements were the product of coercion by police and thereby false. These people do not know the factual basis surrounding Misskelley's post trial statements. In 1994, after Misskelley's conviction and immediately prior to the Echols/Baldwin trial in Jonesboro, prosecutors were desperate for Misskelley's testimony against his co-defendants. They did not feel that they could obtain convictions against Echols and Baldwin without Misskelley's assistance. This is evident for the scene in "Paradise Lost" where prosecutors are explaining to the victims' families that the chances were slim without Misskelley's testimony and cooperation. I prepared a Motion to Dismiss based upon Prosecutorial Misconduct for Echols and Baldwin's attorneys which was denied by the trial Court. In this motion, the factual basis surrounding Misskelley's second confession is laid out. It is public record and set forth herein in its entirety:*

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

STATE OF ARKANSAS PLAINTIFF  
Vs. No.: CR93 \_\_\_\_\_

DAMIEN WAYNE ECHOLS and CHARLES JASON BALDWIN

### **DEFENDANTS MOTION**

Comes now the Defendants, by and through their Court Appointed Attorneys, and for their Motion, hereby state and allege as follows:

1. That a CoDefendant, Jessie Lloyd Misskelley, Jr., was convicted on February 4, 1994, of the offenses of one (1) count of First Degree Murder and two (2) counts of Second Degree Murder and was sentenced by the Court to life imprisonment on the First Degree Murder charge and twenty (20) years imprisonment on each count of Second Degree Murder to run consecutively. On February 4, 1994, the Court and the Prosecution was informed by counsel for Jessie Lloyd Misskelley, Jr. that said sentences were going to be appealed to the Arkansas Supreme Court. That the Court and the Prosecution was further informed by defense counsel that Jessie Lloyd Misskelley, Jr. had no intention of testifying against his codefendants Damien Wayne Echols and Charles Jason Baldwin.
2. That Damien Wayne Echols and Charles Jason Baldwin are each charged with three (3) counts of Capital Murder and their trial is set to start in Craighead County on Tuesday, February 22, 1994.
3. That the Prosecuting Attorney, his Deputies, the Clay County, Arkansas Sheriff's Department and the Craighead County, Arkansas Sheriff's Department have all known that Daniel T. Stidham and Gregory L. Crow were the duly appointed attorneys for Jessie Lloyd Misskelley, Jr. since June, 1993.
4. That on February 4, 1994, following sentencing of the Defendant, Jessie Lloyd Misskelley, Jr., as set forth above, officers of the Clay County, Arkansas Sheriff's Office transported Jessie Lloyd Misskelley, Jr. to the Arkansas Department of Corrections Diagnostic Unit in Pine Bluff, Arkansas. That during transport of Jessie Lloyd Misskelley, Jr. the officers, in violation of Jessie Lloyd Misskelley, Jr.'s Sixth Amendment right to counsel and his Fifth Amendment Right to Remain Silent, elicited a statement from the Defendant.
5. That the actions of the Clay County Sheriff's Department officers on February 4, 1994, were a willful attempt to make improper contact with the Defendant, Jessie Lloyd Misskelley, Jr., without the knowledge and consent of his Court appointed attorneys, and that said conduct on the part of the officers is imputed to the Prosecuting Attorney whether the Prosecuting Attorney had direct knowledge of said actions or not.
6. This impropriety represents a conscious, calculated and ongoing attempt by the Prosecution to interfere with the attorney/client relationship between Jessie Lloyd Misskelley, Jr. and his Courtappointed attorneys and to circumvent Jessie Lloyd Misskelley, Jr.'s Fifth and Sixth Amendment rights as guaranteed him by the U.S.

005943

Constitution.

7. That on Tuesday, February 8, 1994, and again on Tuesday, February 15, 1994, the Defendant, Jessie Lloyd Misskelley, Jr.'s court appointed attorney, Daniel T. Stidham, visited with the Defendant, Jessie Lloyd Misskelley, Jr., at the request of the Prosecution.

8. That on Tuesday, February 15, 1994, Daniel T. Stidham, in person, again, notified the Prosecuting Attorney's Office that Jessie Lloyd Misskelley, Jr. had no desire to testify against his codefendants, Damien Wayne Echols and Charles Jason Baldwin, and would not be testifying against said codefendants.

9. That on Wednesday, February 16, 1994, Deputy Prosecuting Attorney John Fogleman contacted the Defendant, Jessie Lloyd Misskelley, Jr.'s father, Jessie Lloyd Misskelley, Sr., and requested that he talk his son into testifying against his codefendants in exchange for a forty (40) year sentence. Mr. Misskelley, Sr., again, informed the Prosecution that Jessie Lloyd Misskelley, Jr. would not be testifying against his codefendants in their upcoming trial in Craighead County.

10. That also on Wednesday, February 16, 1994, the Prosecuting Attorney, Brent Davis, requested permission from Jessie Lloyd Misskelley, Jr.'s attorneys to interview Jessie Lloyd Misskelley, Jr. Said permission was not granted.

11. Further, on Wednesday, February 16, 1994, the Prosecution obtained an ex parte Order from the Court to transport Jessie Lloyd Misskelley, Jr. to Craighead County to testify against his codefendants. This Order was obtained without the knowledge and consent of the Defendant, Jessie Lloyd Misskelley, Jr. and his attorneys despite repeated statements to the Prosecution that Jessie Lloyd Misskelley, Jr. would not be testifying against his codefendants. The fact that Jessie Lloyd Misskelley, Jr. was being transported to Craighead County to testify as a witness was communicated to the Media and a copy of the Order transporting him was even shown on television. To this date, Jessie Lloyd Misskelley, Jr.'s attorneys have yet to see said Order.

12. That at approximately 6:15 p.m. on Thursday, February 17, 1994, the attorneys for Jessie Lloyd Misskelley, Jr. received a phone call from C. Joseph Calvin, Deputy Prosecuting Attorney for Clay County, Arkansas who stated that Jessie Lloyd Misskelley, Jr. was present in his office and desired to make a statement. Mr. Calvin was informed by both of Jessie Lloyd Misskelley's attorneys that he was not to take any statement from their client, Jessie.

13. That the CoDefendant, Jessie Lloyd Misskelley, Jr. was transported to Rector, Arkansas on February 17, 1994, by a member of the Craighead County Sheriff's Office. That during transport of Jessie Lloyd Misskelley, Jr. the officer, in violation of Jessie Lloyd Misskelley, Jr.'s Sixth Amendment right to counsel and his Fifth Amendment Right to Remain Silent, elicited statements from the Defendant and encouraged Jessie Lloyd Misskelley to testify against his Co Defendants. Said officer even promised to bring Jessie Lloyd's girlfriend to the Jail to visit him.

14. That the actions of the Craighead County Sheriff's Department officer on February 17, 1994, were a willful attempt to make improper contact with the Defendant, Jessie Lloyd Misskelley, Jr., without the knowledge and consent of his Court appointed attorneys, and that said conduct on the part of the officers is imputed to the Prosecuting Attorney whether the Prosecuting Attorney had direct knowledge of said actions or not.

15. This impropriety represents a conscious, calculated and ongoing attempt by the Prosecution to interfere with the attorney/client relationship between Jessie Lloyd Misskelley, Jr. and his Courtappointed attorneys and to circumvent Jessie Lloyd Misskelley, Jr.'s Fifth and Sixth Amendment rights as guaranteed him by the U.S. Constitution.

16. That Daniel T. Stidham and Gregory L. Crow arrived in Rector, Arkansas at approximately 7:00 p.m. and discovered that Prosecuting Attorney Brent Davis was also present at the office of Joe Calvin and that prosecutors had already communicated with their client without their knowledge and consent. That said attorneys were allowed to communicate with their client, Jessie Lloyd Misskelley, Jr., for only approximately fifteen minutes when Prosecutors Davis and Calvin burst into the conference room and demanded to take a statement from Jessie Lloyd Misskelley, Jr. Stidham and Crow objected to the interference and informed prosecutors that they wished to visit with their client uninterrupted. Prosecutors then expressed their fear, in the presence of Jessie Lloyd Misskelley, Jr., that Defense Attorneys would convince Jessie Lloyd Misskelley, Jr. to decline to make a statement to them. Jessie Lloyd Misskelley, Jr. then stood up and announced that he wished to make a statement in spite of the advise and counsel of his attorneys, and exited the conference room and refused to talk to his attorneys further.

17. That the Honorable Judge David Burnett was telephoned at which time Mr. Stidham voiced his objections to his client being present in the prosecutors office in the first place, that his presence at the prosecutor's office was a violation of his client's Constitutional rights, that Mr. Misskelley had requested psychiatric care on Tuesday, February 15, 1994, that he questioned Jessie Lloyd Misskelley, Jr's current mental competency and requested a mental evaluation, and that Jessie Lloyd Misskelley, Jr. had informed him on Tuesday, February 15, 1994 that he did not wish to testify against his codefendant's. The Court denied the objections and request for a mental evaluation by Mr. Stidham and permitted the Prosecution to offer use immunity to Jessie Lloyd Misskelley, Jr. and take his statement over said objections.

18. After taking his statement, the Prosecution transported Jessie Lloyd Misskelley, Jr. to the Clay County Detention Center. Jessie Lloyd Misskelley, Sr. traveled to Clay County to talk to his son but was denied access to his son by Clay County Officials.

19. That the Prosecution, the Court and attorneys for Damien Wayne Echols and Jason Baldwin were notified on February 18, 1994, that the attorneys for Jessie Lloyd Misskelley were "outraged" at the conduct of the prosecution and that the Prosecution was to have no further contact with the Defendant, Jessie Lloyd Misskelley, as reflected in Defendants Exhibit "A" attached hereto.

20. That Prosecutors, again, visited with Jessie Lloyd Misskelley, Jr. without the knowledge and consent of his attorneys on Friday, February 18, 1994, Saturday, February 19, 1994 and on Sunday, February 20, 1994 in direct violation of his Fifth and Sixth Amendment Rights as guaranteed him by the U.S. Constitution.

21. That the abovementioned conduct and actions of the Prosecution are a willful and deliberate attempt to make improper contact with the Defendant, Jessie Lloyd Misskelley, Jr., and said actions and conduct are a conscious and calculated attempt to circumvent the Fifth and Sixth Amendment rights of the Defendant, Jessie Lloyd Misskelley, Jr. Further, said actions and conduct were a calculated and deliberate attempt to interfere with the attorney/client relationship between Jessie Lloyd Misskelley, Jr. and his Court appointed attorneys.

22. Arkansas Law does not permit the prosecutor to call a codefendant as a witness against other codefendants when he has knowledge that the codefendant would be advised to assert his Fifth Amendment privilege against self incrimination. Here counsel for Jessie Lloyd Misskelley, Jr. had repeatedly advised the Prosecution that Jessie Lloyd Misskelley, Jr. would not be testifying against his co defendants, and as such, the Prosecution cannot claim that it was not aware of this fact.

23. That the abovementioned conduct and actions of the Prosecution are a willful and deliberate attempt to circumvent, and make a mockery of, the law as set forth in paragraph twentytwo (22) above, and to violate the Constitutional Rights of the defendants, Damien Wayne Echols and Charles Jason Baldwin. Said actions and conduct on the part of the Prosecution are a conscious and calculated attempt to circumvent the due process rights of said defendants, their right to receive a fair and impartial trial and their right to confront the witnesses against them.

24. That said conduct on the part of the Prosecution, regardless of whether or not Jessie Lloyd Misskelley, Jr. actually testifies against his codefendants, seriously undermines and impairs, or could actually makes it impossible, for Damien Wayne Echols or Charles Jason Baldwin to receive a fair and impartial jury trial due to the fact that said conduct on the part of the prosecution constitutes a "grandstand play"

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It could happen to me, it could happen to you.

-Jello Biafra





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## SYNOPSIS OF THE CASE

BY DAN STIDHAM

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which has improperly drew attention to Jessie Lloyd Misskelley, Jr.'s alleged confession which he submitted throughout the course of his trial was coerced. Potential jurors will now place emphasis on this improper "grandstand play" by the Prosecutor due to pretrial publicity.

25. That due to the misconduct of the Prosecution as set forth herein, the Defendant's request the following relief:

- a. dismissal of all the charges against the defendants with prejudice;
- b. suppression of any and all statements made by the Defendant, Jessie Lloyd Misskelley, Jr., including any and all references to same;
- c. that the prosecution be Ordered to not have any contact whatsoever, directly or indirectly, with any of the defendants herein, including Jessie Lloyd Misskelley, Jr.;
- d. that the Prosecution be forbidden to call Jessie Misskelley, Jr. as a witness, or make any further reference to him being a witness, at the trial of Damien Wayne Echols and Charles Jason Baldwin;
- e. that the Prosecution be held in contempt of Court for it's alleged misconduct and punished accordingly; and
- f. that a Special Prosecutor be appointed to investigate the allegations set forth herein, preferably one from outside the Second Judicial District.

WHEREFORE, premises considered the defendants pray that this Honorable Court grant their Motion and grant the relief requested herein, and for all other relief to which they may appear entitled.

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CHARLES JASON BALDWIN, DEFENDANT

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## BRIEF IN SUPPORT

The prosecutor's role is identified in *Floyd v. State*, 278 Ark. 342, 645 S.W.2d 690, 693 (1983) wherein the Court stated: "...State's attorney acts in a quasi-judicial capacity and it is his duty to use fair, honorable, reasonable and lawful means to secure a conviction in a fair and impartial trial."

The prosecution overreached its duties in making improper contact with the defendant, Jessie Lloyd Misskelley, Jr., in violation of his Fifth and Sixth Amendment rights. The Prosecution was informed in clear and unequivocal terms that Jessie Lloyd Misskelley, Jr. was not going to testify against his codefendants, Damien Wayne Echols and Charles Jason Baldwin, thereby invoking his Fifth Amendment right to remain silent.

The Prosecution, having this knowledge, is not even permitted to subpoena, or call Jessie Lloyd Misskelley, Jr. as a witness in the trial of his codefendants. In the case of *Foster v. State*, 285 Ark. 363, 687 S.W. 2d 829 (1985), the Arkansas Supreme Court stated that "The Court erred...when it permitted the prosecutor to call Pat Hendrickson, the wife of the deceased, who was charged with capital felony murder, as a witness even though both the Court and the prosecutor knew that Mrs. Hendrickson would be advised to plead her fifth amendment privilege against self incrimination."

Thus, the Prosecution committed misconduct in obtaining an *ex parte* Order from the Court moving the defendant, Jessie Lloyd Misskelley, Jr., out of the Arkansas Department of Corrections to Craighead County to serve as a witness in the trial of Damien Wayne Echols and Charles Jason Baldwin, having been advised by Mr. Stidham that Jessie Lloyd Misskelley, Jr. would not be testifying in the trial. The Court in *Foster*, supra, and the Arkansas Court of Appeals in *Sims v. State*, 4 Ark. App. 303, 631 S.W. 2d 14 (1982) explained the rationale of forbidding the prosecution from calling a witness to the stand that the prosecutor knows will invoke their fifth amendment privilege. The Arkansas Supreme Court in *Foster*, supra, quoting language from *Sims*, supra and *Douglas v. Alabama*, 380 U.S. 415, 419, 85 S.Ct. 1074 [1077], 13 L.Ed.2d 934, 937 (1965) stated:

"The evil in the nontestimony of such a witness is not the mere calling of the witness, but the obvious inferences drawn by a jury to a series of questions, to all of which the witness refuses to answer on fifth amendment grounds. In that case the questions themselves "may well be the equivalent in the jury's mind of testimony.

"Such improper questioning, not technically being testimony at all, deprives an accused of his right to cross-examine the witnesses against him as guaranteed by the Confrontation Clause of the Sixth Amendment to the Federal Constitution."

In *Namet v. United States*, 373 U.S. 179, 83 S.Ct. 1151, 10 L.Ed.2d 278 (1963) the U.S. Supreme Court held that "...the forbidden conduct is the conscious and flagrant attempt to build its case out of inferences arising from use of the testimonial privilege." The Arkansas Supreme Court in *Foster*, supra, characterized the prosecutions conduct as a "grandstand play," with the prosecutor trying to "build the state's case out of inferences arising from [the witnesses] assertion of her fifth amendment privilege."

In the case at bar, the Prosecutor's motive in obtaining an Order transporting Jessie Lloyd Misskelley, Jr. to Craighead County "to testify" is quite clear. Having been informed by Mr. Stidham that his client was not going to testify against Mr. Echols and Mr. Baldwin, he sought to bolster his weak case by drawing inferences in the minds of potential jurors in Craighead County that Jessie Lloyd Misskelley, Jr. "might" testify. This move gave the prosecutor an opportunity to accomplish another improper goal. To coerce Jessie Lloyd Misskelley, Jr. into testifying against his codefendants despite being informed by Mr. Stidham to the contrary. This improper conduct is evidenced by the fact that after being informed by counsel for Jessie Lloyd Misskelley, Jr. and by Mr. Misskelley's father that he would not be testifying, the prosecution obtained the Order transporting Jessie Lloyd Misskelley, Jr. some five days prior to jury selection, and almost two weeks prior to his being needed at trial. While it is not uncommon for prisoners from the ADC to be moved to a county jail to testify, it is quite uncommon for a State prisoner to be moved this far in advance. This "advance time" gave the prosecution an opportunity to work on Jessie Lloyd Misskelley, Jr. by violating his Fifth and Sixth Amendment Rights. The Craighead County Sheriff's Deputy advising Jessie Lloyd Misskelley, Jr. on February 17, 1994, that he "should testify" in the trial of his codefendants and his promise that the Court would "drop [some] charges" if he did testify demonstrates a conscious and calculated attempt to circumvent the Fifth and Sixth Amendment Rights of Jessie Lloyd Misskelley, Jr. Said conduct is certainly imputed to the Prosecuting Attorney whether or not he actually knew it or not.

Two things indicate that the Prosecutor had actual knowledge of the misconduct. First, Jessie Lloyd Misskelley, Jr. was taken directly to Deputy Prosecutor Joe Calvin's office in Rector despite defense counsel objections. Secondly, the Prosecuting Attorney, himself, Mr. Brent Davis, was present in Mr. Calvin's office when Mr. Misskelley arrived at the office. The Prosecutions deliberate conduct in circumventing Jessie Lloyd Misskelley Jr.'s Fifth and Sixth Amendment Rights are

further demonstrated by the fact that when Mr. Stidham and Mr. Crow arrived in Rector, Arkansas at approximately 7:00 p.m. they discovered that Prosecuting Attorney Brent Davis and Deputy Prosecutor Joe Calvin had already communicated with their client without their knowledge and consent. That said attorneys were allowed to communicate with their client, Jessie Lloyd Misskelley, Jr., for only approximately fifteen minutes when Prosecutors Davis and Calvin burst into the conference room and demanded to take a statement from Jessie Lloyd Misskelley, Jr. Stidham and Crow objected to the interference and informed prosecutors that they wished to visit with their client uninterrupted. Prosecutors then expressed their fear, in the presence of Jessie Lloyd Misskelley, Jr., that Defense Attorneys would convince Jessie Lloyd Misskelley, Jr. to decline to make a statement to them. Jessie Lloyd Misskelley, Jr. then stood up and announced that he wished to make a statement in spite of the advise and counsel of his attorneys, and exited the conference room and refused to talk to his attorneys further. The Honorable Judge David Burnett was telephoned at which time Mr. Stidham voiced his objections to his client being present in the prosecutors office in the first place, that his presence at the prosecutor's office was a violation of his client's Constitutional rights, that Mr. Misskelley had requested psychiatric care on Tuesday, February 15, 1994, that he questioned Jessie Lloyd Misskelley, Jr.'s current mental competency and requested a mental evaluation, and that Jessie Lloyd Misskelley, Jr. had informed him on Tuesday, February 15, 1994 that he did not wish to testify against his codefendants. The Court denied the objections and request for a mental evaluation by Mr. Stidham and permitted the Prosecution to offer use immunity to Jessie Lloyd Misskelley, Jr. and take his statement over said objections. The Prosecutors meeting with Jessie Lloyd Misskelley, Jr. on Friday, Saturday and Sunday without the knowledge and consent of his attorneys is a gross instance of misconduct. The Defendants anticipate that the Prosecution will argue that they did not violate Jessie Lloyd Misskelley, Jr.'s Fifth Amendment Rights because they granted him "use immunity" before taking a statement from him, and therefore nothing he says can be used against him. The Defendant's submit that the Court should analyze how this grant of immunity was effectuated. The grant of immunity was obtained by prosecutorial misconduct, i.e. violation of Jessie Lloyd Misskelley, Jr.'s Sixth Amendment rights. Had the prosecutor acted properly he would have never been in a position to even offer the immunity to Jessie Lloyd Misskelley, Jr. The "but for" test the prosecutors deployed in closing arguments at the trial of Jessie Lloyd Misskelley, Jr. is applicable here. In other words, "but for" the prosecutor violating Jessie Lloyd Misskelley, Jr.'s Sixth Amendment rights, he would have never been in a position to even offer use immunity to Jessie Lloyd Misskelley, Jr. The Prosecution should not be allowed, and this Court should not condone, the violation of one codefendant's rights to the extreme detriment of the other codefendants. In fact, the Courts have long condemned the violation of the defendant's right in any respect. This leads us to the next anticipated line of defense the Prosecution will deploy to explain their conduct, the standing of the defendants to argue this motion.

The Defendants, Damien Wayne Echols and Charles Jason Baldwin, have standing to argue this Motion because the prosecutor's misconduct did not just violate Jessie Lloyd Misskelley, Jr.'s rights but their own as well. In violating Jessie Misskelley's rights the Prosecution also violated the rights of Damien Wayne Echols and Charles Jason Baldwin. That the abovementioned conduct and actions of the Prosecution are a willful and deliberate attempt to circumvent, and make a mockery of, the law as set forth in paragraph twentytwo (22) of the Defendant's Motion, and to circumvent the due process rights of said defendants, their right to receive a fair and impartial trial and their right to confront the witnesses against them. That said conduct on the part of the Prosecution, regardless of whether or not Jessie Lloyd Misskelley, Jr. actually testifies against his codefendants, seriously undermines and impairs, or could actually makes it impossible, for Damien Wayne Echols or Charles Jason Baldwin to receive a fair and impartial jury trial due to the fact that said conduct on the part of the prosecution constitutes a "grandstand play" which has improperly drew attention to Jessie Lloyd Misskelley, Jr.'s alleged confession which he submitted throughout the course of his trial was coerced. Potential jurors will now place emphasis on this improper "grandstand play" by the Prosecutor due to pretrial publicity. In summary, the prosecutor's role identified in *Floyd, supra*, clearly state that the Prosecutor has a duty to use fair and honorable means to secure a conviction and to promote a fair and impartial trial. The Defendants submit that nothing in the conduct of the Prosecution set forth herein is fair or honorable, and it certainly does not promote a fair and impartial trial.

The Court states in *United States v. Serubo*, 604 F.2d 807, 817 (3d Cir. 1979):

"For while in theory a trial provides the defendant with a full opportunity to contest and disprove of the charge against him, in practice, the handling of an indictment will often have a devastating personal and professional impact that a later dismissal or acquittal can never undo. Where the potential for abuse is so great, and consequences of a mistaken indictment so serious, the ethical responsibilities of the prosecutor and obligation of the judiciary to protect against the appearance of

unfairness are correspondingly heightened...We suspect that dismissal of an indictment may be virtually the only effective way to encourage compliance with these ethical standards, and to protect defendants from abuse of the grand jury process."

The matter at hand is not a grand jury indictment, however, the difference should not lessen the ethical responsibilities of the prosecutor to protect against unfairness in promotion of a fair and impartial trial and the basic fundamental concept of "presumption of innocence until proven guilty."

Further, the ethical responsibility of protecting Jessie Lloyd Misskelley's Sixth Amendment right to assistance of counsel as afforded by the United States constitution cannot be overlooked. In addition, the impropriety of the prosecution has invaded and compromised these Defendants' constitutional rights by mocking ethical considerations and acceptable protocol. The State has caused aggravated circumstances prejudicing these Defendants resulting in prosecutorial misconduct and/or overreaching. As stated in United States v. Kessler, 530 F.2d 1246, 1256 (5th Cir. 1976):

"To find 'prosecutorial overreaching,' the government must have through 'gross negligence or intentional misconduct' caused aggravated circumstances to develop which 'seriously prejudiced a defendant' causing him to 'reasonably conclude that a continuation of the tainted proceeding would result in a conviction,'" citing United States v. Dinitz, 424 U.S. 600, 96 S.Ct. at 1080, 47 L.Ed.2d at 274, 44 U.S.L.W. at 4312. See also United States v. Bizzard, 493 F.Supp. 1084 (1980).

In order to deter the prosecutorial misconduct and/or overreaching, this matter should be dismissed to preserve fairness, as noted in United States v. Carrasco, 786 F.2d 1452 (9th Cir. 1986) wherein the Court stated:

"The purpose of a dismissal may be to preserve fairness to the individual defendant, to deter prosecutorial misconduct, or to protect judicial integrity."

The Defendants pray that the Court grant their Motion.

Respectfully submitted,

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#### CERTIFICATE OF SERVICE

We, Val Price, and George Wadley Court appointed Attorneys for the Defendants herein, do hereby certify that I have served a copy of the foregoing pleading upon Brent Davis, Prosecuting Attorney, by personally delivering same to him this \_\_\_\_\_ day of February, 1994.  
Val Price [signed]  
George Wadley [signed]

*As you can see, the atmosphere in which Misskelley gave this statement were not exactly Constitutional or free from coercion. An Officer from the Craighead County Sheriff's office had convinced Misskelley that his lawyers (me) had sold him out and that if he would testify against Echols & Baldwin he would get out of prison. He was promised sex and alcohol in exchange for his testimony by this same officer. Misskelley later told me that prosecutors had bought him cigarettes by the carton when they met with him secretly. After denying the motion set forth above, the Court, citing that it felt that I had lost my objectivity in the case, appointed another lawyer to meet with Misskelley to make sure he didn't want to testify against his co-defendants. Misskelley again stated that he would not testify. In fact, Misskelley told us that he couldn't testify because to say what prosecutors wanted him to say would*

be a lie.

*Absolutely nothing Misskelley told the officers or prosecutors would ever be admissible against him. Prosecutors would only give up harassing Misskelley for his testimony when I threatened to hold a press conference and disclose their efforts to entice his testimony. As I stated previously, Mr. Misskelley is a mentally handicapped person who is quite suggestible. It doesn't take much effort to get him to say or do anything at all.*

-- Dan Stidham June 27, 1999



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The films are remarkable, and it is certainly an interesting -- and troubling -- case.

-President Bill Clinton



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This is a really f\*cked up situation.

-Jack Black, at the Hollywood Improv Comedy Benefit





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- Write Arkansas Officials
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Whether you oppose the death penalty or not, I really am convinced that they're not guilty of anything...

-Steve Earle



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We would like to see Damien Jason and Jessie given new trials - this time based on concrete...

-Winona Ryder



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-President Bill Clinton