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August 28, 2012

VIA FEDERAL EXPRESS (870-932-1513)

The Honorable Scott Ellington
Prosecuting Attorney
Second Judicial Circuit of Arkansas
511 Union Street, Ste 342
Courthouse Annex
Jonesboro, AR 72401

**Re: *State v. Baldwin, et al.*
Updated Information Concerning the 'West Memphis Three'
Request for Consideration of New Information**

Dear Mr. Ellington:

The following information is provided to you by counsel for Jason Baldwin (Blake Hendrix and John Philipsborn). We have decided to limit this transmission to material that is specific to forensic science issues. Additional information that is not included here is fruit of ongoing investigation, including additional interviews that have been conducted to furnish further information about the whereabouts of all three of the men who have come to be known as the West Memphis Three – Damien Echols, Jessie Misskelley, and Jason Baldwin – on May 5 and 6, 1993.

Two matters were specifically reserved to Jason Baldwin by the Arkansas Supreme Court when it remanded all three cases for what was eventually scheduled to be the winter of 2011 evidentiary hearing, including a motion for release of hair and fiber evidence. After the remand, and even after the negotiation initiated by the Echols defense which led to the release of the three men, your office was highly cooperative in ensuring the release of the hair and fiber evidence to agreed upon laboratories. We are now reporting the results of the various analyses to you.

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Your office has already received information concerning at least some of the scientists involved in the pertinent analyses. These analyses include that performed by Dr. Joy Halverson, a Doctor of Veterinary Medicine who also has a Master's Degree in Veterinary Epidemiology. Dr. Halverson is the Director and Senior Scientist at Zoogen Services, a DNA laboratory that has been used by a number of parties for the forensic identification of possible animal hairs. Dr. Halverson has extensive research experience and a wide range of publications on use of forensic DNA identification of animal-derived evidence.

Dr. Halverson has provided us a three-page report to my attention. The report is dated April 30, 2012. The report includes a statement of the results of DNA analysis on a series of hairs (see page two of the report). Only those hairs that were lengthy enough to be analyzed without being entirely consumed were analyzed in this round of testing. The report indicates that a number of hairs that were tested were identified to be either canine or feline hairs. Since we had represented to you that this information would be furnished to you, we are providing Dr. Halverson's report.

We are prepared to proceed with further testing of the identified human hairs and other evidence listed at page three of Dr. Halverson's report, and would suggest that Bode Technologies or another suitable and accredited laboratory be selected for those purposes. That said, it is clear, as demonstrated by Dr. Halverson's DNA test results, that there were animal hairs recovered and provided to the laboratory.

The more significant test results, however, are those pertinent to the fibers. Here, I respectfully begin by underscoring what is emphatically supported by the three reports that are enclosed for your consideration. The fiber evidence test results that were reported to the prosecution (and delivered to the defense as discovery) by the Arkansas State Crime Laboratory as well as by the Alabama Crime Laboratory were grossly mistaken – and more regrettable, and worse, was that the evidence presented to the jury purporting to describe the fiber evidence was itself mistaken. This is the first time in the history of this case that the fiber evidence has been so thoroughly and expertly reviewed. The review has made clear the reasons for the initial errors. First, the documentation of the initial fiber evidence review was poor, and results of instrumental analyses were clearly misinterpreted. The new evidence presented to you includes evidence submitted by Dr. John Goodpaster of Purdue University/Indiana University who applied new technology, methodology, and techniques to the microscopic and instrumental analyses performed by an experienced forensic scientist, Christopher Bommarito (an alumnus of

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the Michigan State Police Crime Laboratory) and criminalist Max Houck (an alumnus of the FBI crime lab and FBI trace evidence section).

To recap information that had already been transmitted to your office, Christopher Bommarito spent 20 years with the Michigan State Police crime laboratory. He was also employed as a forensic scientist for Forensic Science Consultants, a private laboratory in the state of Michigan. Since 2007, he has been on the Scientific Working Group For Materials Analysis, a working group for trace evidence examiners sponsored by the United States Department of Justice. He is president-elect of the American Society of Trace Evidence Examiners.

Max Houck served as a physical scientist in the Trace Evidence Unit of the FBI's crime lab from 1994 to 2001. While there, he served as Chairman of the Scientific Working Group for Materials Analysis. He has a Ph.D. in applied chemistry and is a Fellow of the American Academy of Forensic Science. In addition to having been the Director of the Forensic Science Initiative at the University of West Virginia from 2001 to 2011, he served as an analyst with Analytical Services in Arlington, Virginia, and has Vice-President and Director of Forensic Services for Forensic and Intelligence Services, a firm in Arlington, Virginia that has worked with the U.S. Government.

Both Mr. Bommarito and Mr. Houck reviewed the fiber evidence. Mr. Houck had done so initially in 2004, and had submitted information that had previously been made known to your office (and to the court in Arkansas). When further fiber evidence was released to Mr. Bommarito's laboratory, Mr. Houck reviewed it in 2012. I am tendering Max Houck's three-page letter dated May 10, 2012, to you, together with the draft report addressed to Stephen Braga and myself by Mr. Bommarito – a five-page draft report dated April 30, 2012.

A third report on the fiber analysis was prepared by Dr. John Goodpaster. This report, dated May 8, 2012, is nine pages long and describes a multi-variate statistical analysis of UV-visible spectra obtained from fiber evidence collected in the case at issue.

Dr. John Goodpaster is on the faculty of the Forensic and Investigative Services Program at Indiana University/Purdue University in Indianapolis. He served as a forensic chemist with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Dr. Goodpaster has a Ph.D. in chemistry from Michigan State. Some of his work deals with the application of analytical chemistry, and multi-variate statistical analysis to data

obtained from spectra, chromatograms, and elemental data. As persons who are familiar with the application of these techniques to forensic issues are aware, the technique that Dr. Goodpaster applied here is generally viewed as a way of assessing, with greater reliability, the validity of observations reported on by one analyst based on fairly individualized criteria. The application of multi-variate statistical analyses is an attempt to apply more verifiable and objective criteria to the issues presented.

The conclusions are summarized in Mr. Houck's letter. First, all of the known fiber samples provided by the Arkansas State Crime Laboratory that could be analyzed were excluded as being sources for the questioned fibers. In 1993 and 1994, the questioned fibers, which had been retrieved from the crime scene, were said to be similar, or in more pointed testimony, to be undifferentiated from samples retrieved from the homes of Mr. Baldwin and Mr. Echols – the theory having been that garments at the Echols and Baldwin homes transferred fibers to clothing worn by Echols and Baldwin, which ended up being transferred to other items at the scene. The evidence fibers were then found at the scene.

The bottom line is that in 2012 three forensic scientists have looked at the fibers made available by the Arkansas State Crime Laboratory, and all three applied their expertise to the fiber evidence review. They demonstrate that the initial opinion expressed, which became part of the State's case, were wrong. The questioned fibers examined in 2012 should have been clearly described as unrelated to the fibers that were taken from the Echols and Baldwins residences during the investigation.

One of the serious implications of this new information is that it confirms that the testimony offered by various analysts and criminalists at the West Memphis Three trials, and especially the Echols/Baldwin trial, clearly involved a combination of: unsupportable conclusions and opinions; unreliable opinions; or unfounded opinions based on data that cannot be verified. The unfortunate testimony of the Arkansas Medical Examiner has already widely been commented on by a number of forensic pathologists, forensic odontologists, and other forensic scientists from the U.S. and Canada. The fact that the Arkansas State Crime Laboratory has chosen not to conduct an internal review or audit of the testifying physicians's opinions, failing to follow up on his offer to review the findings in ten years' worth of cases involving human remains found in water, presents, in our view, some indication that the State Crime Lab views itself as gladly rid of this case.

The Lab's current Director, Kermit Channell, testified in the Baldwin/Misskelley Rule 37 proceeding and reviewed his trial testimony. He was questioned about whether his opinions concerning findings that the Laboratory (particularly with respect to whether biological material of any use to identifying perpetrators had been found on victims' clothing) were mistakenly argued to the jury by the prosecutors at trial. While Mr. Channell disagreed with our contentions that he had allowed a mistaken impression to be conveyed during the course of his testimony, he did agree that a review of his bench notes clearly established that no valid or reliable identifying evidence pertinent to given suspects including any sperm or sperm fragments could have been located on the victim's pants. When the case was initially litigated, a suggestion was made by an alleged DNA expert engaged by the State that identifiable sperm was found on victims' garments. Clearly, had Mr. Channell been called to fully address the evidence of a sperm fragment allegedly found on victims' pants, based on his Rule 37 testimony, he would have indicated that no such evidence had been identified during the course of the examination of victims' pants, and that in any event, the pants had been so contaminated that a 'clean' reading of foreign biological material was not realistic. The intimation that there was some evidence of a sexual assault of the victims contained in the record of the 1993 and 1994 proceedings has been discredited. Like the State's now questioned and discredited 'evidence' of the mutilation of the victims, the evidence of 'sexual assault' shows the lamentable effect of poor litigation of forensic science issues in criminal cases.

To date, however, other than the initial suggestion made by Mr. Houck in 2004 that the fiber evidence presented to the jury was the product of chaotic lab work (at best), counsel for the Petitioners did not yet have in hand lab results specific to the fiber evidence initially presented – in part because the fiber evidence had not been released to undersigned counsel when it was first requested. We had to wait for years until the Supreme Court Order, and until you and the Crime Labs assisted us in getting the fiber evidence, to address it. Now that at least some of that evidence has been released to us, it is clear that the concerns expressed by Mr. Houck in 2004, and by Mr. Baldwin in his statutory habeas corpus petition, were well-founded. Competent, reputable forensic scientists, using current methods, clearly disagree about the validity and reliability of the evidence presented – stating unequivocally that the suggestion and testimony that there were similarities in the fibers found during searches and at the scene of the recovery of the bodies is incorrect.

This information represents further undermining of the basis that the State has periodically relied on to try to salvage the validity of the convictions obtained. We hope

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that you and your Office will look at this evidence with interest. As has been made clear publicly, Jason Baldwin involved himself in the resolution of this case that took place in August of 2011 because of his concern that his childhood friend, Damien Echols, might otherwise remain on death row if he did not enter into the resolution agreement. Jason Baldwin has always denied his guilt. And I cannot avoid noting that during or after the Baldwin Rule 37 hearings, the State never asked the Circuit Court to find that Mr. Baldwin was untruthful in his testimony – and the Circuit Court, in the person of Judge Burnett, never volunteered or commented that Mr. Baldwin appeared to be insincere or untruthful. I believe it fair to say that persons who were present when Jason Baldwin testified during the Rule 37 proceedings were of the view that he was believable. Had the case proceeded to hearing and retrial, Jason would have testified, and his many alibi witnesses from the Rule 37 would have been re-called as would others uncovered by our on-going investigation.

We hope that these four reports generated during the course of the year 2012 are of interest and use to you. Our investigation continues, and our hope is that your office will take the steps necessary to evaluate the information presented, and communicate to other decision-makers in Arkansas government the view that Jason Baldwin was erroneously convicted in 1994, and regrettably made part of a global resolution agreement in 2011 which does not represent what the weight of the evidence demonstrates. That weight clearly points to Jason Baldwin's innocence.

Regrettably, neither Jason Baldwin nor his two undersigned counsel had the enclosed reports in hand when he was asked, under tremendous pressure, to assess whether to proceed to a hearing or to join in a global plea agreement. Equally regrettably, neither you nor the Attorney General had this evidence in 2011 either. In our view this new information underscores that the case should not have ended with *Alford* pleas.

We will continue to furnish your office with further material if further relief is not afforded to Jason in the near future. At the very least, our hope is that you will communicate with the Arkansas State Crime Laboratory to ensure that it improves its quality assurance protocols such as to avoid the kind of demonstrably unreliable testimony on forensic science issues that was offered in this case.

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Thank you, in advance, for your consideration and assistance.

Sincerely yours,

J. BLAKE HENDRIX
JOHN T. PHILIPSBORN

By: John T. Philipsborn
Attorneys for Jason Baldwin

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Enclosures