

TABLE OF CONTENTS

	<u>Page</u>
I. INFORMATIONAL STATEMENT	xli
II. JURISDICTIONAL STATEMENT	xliv
III. POINTS ON APPEAL	xlvi
IV. TABLE OF AUTHORITIES	xlvii
V. ABSTRACT - STATUS HEARING [Rule 37 Proceedings] .	ABSTRACT 1
ABSTRACT OF PROCEEDINGS SEPT. 24, 2008	ABSTRACT 29
RULE 37 TESTIMONY ABSTRACT BEGINS: DIRECT EXAMINATION OF PAUL FORD BY JOHN PHILIPSBORN	ABSTRACT 45
CROSS EXAMINATION OF PAUL FORD BY BRENT DAVIS	ABSTRACT 61
REDIRECT EXAMINATION OF PAUL FORD BY JOHN PHILIPSBORN	ABSTRACT 62
DIRECT EXAMINATION OF RON LAX BY MICHAEL BURT	ABSTRACT 64
CROSS EXAMINATION OF RON LAX BY BRENT DAVIS	ABSTRACT 70
REDIRECT EXAMINATION BY JOHN PHILIPSBORN .	ABSTRACT 71
DIRECT EXAMINATION OF CHARLES JASON BALDWIN BY JOHN PHILIPSBORN	ABSTRACT 72

CROSS EXAMINATION OF CHARLES JASON BALDWIN BY BRENT DAVIS	ABSTRACT 80
REDIRECT EXAMINATION OF CHARLES JASON BALDWIN BY JOHN PHILIPSBORN	ABSTRACT 82
DIRECT EXAMINATION OF KERMIT CHANNELL BY MICHAEL BURT	ABSTRACT 82
DIRECT EXAMINATION OF KERMIT CHANNELL BY JOHN PHILIPSBORN	ABSTRACT 87
CROSS EXAMINATION OF KERMIT CHANNEL BY BRENT DAVIS	ABSTRACT 90
REDIRECT EXAMINATION OF KERMIT CHANNEL BY MICHAEL BURT	ABSTRACT 90
DIRECT EXAMINATION OF PATRICIA ZAJAC BY MICHAEL BURT	ABSTRACT 91
KERMIT CHANNELL RECALLED BY THE COURT ...	ABSTRACT 94
CROSS EXAMINATION OF KERMIT CHANNELL BY JOHN PHILIPSBORN	ABSTRACT 95
DIRECT EXAMINATION OF GREG CROW BY MICHAEL BURT	ABSTRACT 95
CROSS EXAMINATION OF GREG CROW BY BRENT DAVIS	ABSTRACT 100
REDIRECT EXAMINATION OF GREG CROW BY MICHAEL BURT	ABSTRACT 101
FURTHER REDIRECT EXAMINATION OF GREG CROW BY MICHAEL BURT	ABSTRACT 101

DIRECT EXAMINATION OF JOYCE CURETON BY BLAKE HENDRIX	ABSTRACT 101
CROSS EXAMINATION OF JOYCE CURETON BY BRENT DAVIS	ABSTRACT 105
DIRECT EXAMINATION OF DAN STIDHAM BY MICHAEL BURT	ABSTRACT 107
CROSS EXAMINATION OF DAN STIDHAM BY BRENT DAVIS	ABSTRACT 115
CROSS EXAMINATION OF DAN STIDHAM BY BRENT DAVIS RESUMES	ABSTRACT 118
CROSS EXAMINATION OF DAN STIDHAM BY BRENT DAVIS RESUMED AFTER THE TAPE WAS PLAYED	ABSTRACT 121
DIRECT EXAMINATION OF DAN STIDHAM BY JOHN PHILIPSBORN	ABSTRACT 124
REDIRECT EXAMINATION OF DAN STIDHAM BY MICHAEL BURT	ABSTRACT 125
DIRECT EXAMINATION OF DR. TIM DERNING BY MICHAEL BURT	ABSTRACT 126
CROSS EXAMINATION OF DR. TIM DERNING BY BRENT DAVIS	ABSTRACT 130
REDIRECT EXAMINATION OF DR. TIM DERNING BY MICHAEL BURT	ABSTRACT 133
DIRECT EXAMINATION OF DR. WERNER SPITZ BY JOHN PHILIPSBORN	ABSTRACT 133
CROSS EXAMINATION OF DAN STIDHAM RESUMED BY KENT HOLT	ABSTRACT 139

CROSS EXAMINATION OF GREG CROW BY KENT HOLT RESUMES	ABSTRACT 144
REDIRECT EXAMINATION OF GREG CROW BY JEFF ROSENZWEIG	ABSTRACT 144
CONTINUED CROSS-EXAMINATION OF DAN STIDHAM BY KENT HOLT	ABSTRACT 146
REDIRECT EXAMINATION OF DAN STIDHAM BY JEFF ROSENZWEIG	ABSTRACT 147
FURTHER REDIRECT EXAMINATION OF DAN STIDHAM BY JEFF ROSENZWEIG	ABSTRACT 148
DIRECT EXAMINATION OF DR. WERNER SPITZ RESUMED BY JOHN PHILIPSBORN	ABSTRACT 156
DIRECT EXAMINATION OF DR. WERNER SPITZ BY MICHAEL BURT	ABSTRACT 164
CROSS EXAMINATION OF DR. WERNER SPITZ BY KENT HOLT	ABSTRACT 167
REDIRECT EXAMINATION OF DR. WERNER SPITZ BY JOHN PHILIPSBORN	ABSTRACT 170
FURTHER REDIRECT EXAMINATION OF DR. WERNER SPITZ BY MICHAEL BURT	ABSTRACT 171
RECROSS EXAMINATION OF DR. WERNER SPITZ BY KENT HOLT	ABSTRACT 171
DIRECT EXAMINATION OF PHILLIP WELLS BY JEFF ROSENZWEIG	ABSTRACT 171
CROSS EXAMINATION OF PHILLIP WELLS BY KENT HOLT	ABSTRACT 172

DIRECT EXAMINATION OF DR. MICHAEL BADEN BY MICHAEL BURT	ABSTRACT 173
DIRECT EXAMINATION OF DR. MICHAEL BADEN BY JOHN PHILIPSBORN	ABSTRACT 186
CROSS EXAMINATION OF DR. MICHAEL BADEN BY KENT HOLT	ABSTRACT 188
REDIRECT EXAMINATION OF DR. MICHAEL BADEN BY MICHAEL BURT	ABSTRACT 189
DIRECT EXAMINATION OF JOHN MARK BYERS BY MICHAEL BURT	ABSTRACT 189
DIRECT EXAMINATION OF DR. RICHARD SOUVIRON BY MICHAEL BURT	ABSTRACT 190
DIRECT EXAMINATION OF DR. RICHARD SOUVIRON BY JOHN PHILIPSBORN	ABSTRACT 198
CROSS EXAMINATION OF DR. RICHARD SOUVIRON BY KENT HOLT	ABSTRACT 199
REDIRECT EXAMINATION OF DR. RICHARD SOUVIRON BY JOHN PHILIPSBORN	ABSTRACT 200
DIRECT EXAMINATION OF DR. JANICE OPHOVEN BY JOHN PHILIPSBORN	ABSTRACT 200
DIRECT EXAMINATION OF DR. JANICE OPHOVEN BY MICHAEL BURT	ABSTRACT 211
CROSS EXAMINATION OF DR. JANICE OPHOVEN BY KENT HOLT	ABSTRACT 213
REDIRECT EXAMINATION OF DR. JANICE OPHOVEN BY JOHN PHILIPSBORN	ABSTRACT 215

DIRECT EXAMINATION OF ANGELA GAIL GRINELL BY BLAKE HENDRIX	ABSTRACT 216
CROSS EXAMINATION OF ANGELA GAIL GRINELL BY KENT HOLT	ABSTRACT 221
DIRECT EXAMINATION OF NANCY PEMBERTON BY MICHAEL BURT	ABSTRACT 221
DIRECT EXAMINATION OF JOHN PHILIPSBORN BY MICHAEL BURT	ABSTRACT 222
DIRECT EXAMINATION OF SALLY WARE BY JOHN PHILIPSBORN	ABSTRACT 223
CROSS EXAMINATION OF SALLY WARE BY KENT HOLT	ABSTRACT 225
DIRECT EXAMINATION OF JOSEPH SAMUEL DWYER BY JOHN PHILIPSBORN	ABSTRACT 226
DIRECT EXAMINATION OF JOSEPH SAMUEL DWYER BY MICHAEL BURT	ABSTRACT 230
CROSS EXAMINATION OF JOSEPH SAMUEL DWYER BY KENT HOLT	ABSTRACT 230
REDIRECT EXAMINATION OF JOSEPH SAMUEL DWYER BY JOHN PHILIPSBORN	ABSTRACT 231
RECROSS EXAMINATION OF JOSEPH SAMUEL DWYER BY KENT HOLT	ABSTRACT 232
DIRECT EXAMINATION OF PAUL JASON DUNCAN BY BLAKE HENDRIX	ABSTRACT 232
CROSS EXAMINATION OF PAUL JASON DUNCAN BY KENT HOLT	ABSTRACT 235

REDIRECT EXAMINATION OF PAUL JASON DUNCAN BY BLAKE HENDRIX	ABSTRACT 236
DIRECT EXAMINATION OF JENNIFER BEARDEN BY BLAKE HENDRIX	ABSTRACT 236
CROSS EXAMINATION OF JENNIFER BEARDEN BY KENT HOLT	ABSTRACT 239
REDIRECT EXAMINATION OF JENNIFER BEARDEN BY BLAKE HENDRIX	ABSTRACT 240
DIRECT EXAMINATION OF JACK LASSITER BY JOHN PHILIPSBORN	ABSTRACT 241
DIRECT EXAMINATION OF JACK LASSITER BY MICHAEL BURT	ABSTRACT 247
CROSS EXAMINATION OF JACK LASSITER BY KENT HOLT	ABSTRACT 247
REDIRECT EXAMINATION OF JACK LASSITER BY JOHN PHILIPSBORN	ABSTRACT 248
REDIRECT EXAMINATION OF JACK LASSITER BY MICHAEL BURT	ABSTRACT 249
DIRECT EXAMINATION OF VICTORIA HUTCHESON BY MICHAEL BURT	ABSTRACT 249
DIRECT EXAMINATION OF NANCY PEMBERTON BY MICHAEL BURT	ABSTRACT 250
DIRECT EXAMINATION OF VICTORIA HUTCHESON BY MICHAEL BURT	ABSTRACT 251
CROSS EXAMINATION OF VICTORIA HUTCHESON BY KENT HOLT	ABSTRACT 251

REDIRECT EXAMINATION OF VICTORIA HUTCHISON BY MICHAEL BURT	ABSTRACT 252
DIRECT EXAMINATION OF MIKE ALLEN BY KENT HOLT	ABSTRACT 253
CROSS EXAMINATION OF MIKE ALLEN BY BLAKE HENDRIX	ABSTRACT 255
CROSS EXAMINATION OF MIKE ALLEN BY MICHAEL BURT	ABSTRACT 257
REDIRECT EXAMINATION OF MIKE ALLEN BY KENT HOLT	ABSTRACT 258
DIRECT EXAMINATION OF BRYAN RIDGE BY KENT HOLT	ABSTRACT 258
CROSS EXAMINATION OF BRYAN RIDGE BY JOHN PHILIPSBORN	ABSTRACT 260
CROSS EXAMINATION OF BRYAN RIDGE BY MICHAEL BURT	ABSTRACT 261
REDIRECT EXAMINATION OF BRYAN RIDGE BY KENT HOLT	ABSTRACT 262
DIRECT EXAMINATION OF DR. FRANK PERETTI BY KENT HOLT	ABSTRACT 262
CROSS EXAMINATION OF DR. FRANK PERETTI BY JOHN PHILIPSBORN	ABSTRACT 272
CROSS EXAMINATION OF DR. FRANK PERETTI BY MICHAEL BURT	ABSTRACT 276
REDIRECT EXAMINATION OF DR. FRANK PERETTI BY KENT HOLT	ABSTRACT 280

RECROSS EXAMINATION OF DR. FRANK PERETTI BY JOHN PHILIPSBORN	ABSTRACT 280
DIRECT EXAMINATION OF DR. WILLIAM STURNER BY KENT HOLT	ABSTRACT 280
CROSS EXAMINATION OF DR. WILLIAM STURNER BY JOHN PHILIPSBORN	ABSTRACT 284
CROSS EXAMINATION OF DR. WILLIAM STURNER BY MICHAEL BURT	ABSTRACT 287
REDIRECT EXAMINATION OF DR. WILLIAM STURNER BY KENT HOLT	ABSTRACT 288
ABSTRACT OF BALDWIN/ECHOLS CAPITAL MURDER TRIAL	ABSTRACT 289
DIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN	ABSTRACT 290
CROSS EXAMINATION OF GARY GITCHELL BY ROBIN WADLEY	ABSTRACT 290
REDIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN	ABSTRACT 292
DIRECT EXAMINATION OF DR. WILLIAM WILKINS BY DAN STIDHAM	ABSTRACT 292
CROSS EXAMINATION OF DR. WILLIAM E. WILKINS BY JOHN FOGLEMAN	ABSTRACT 297
DIRECT EXAMINATION OF DANA MOORE BY JOHN FOGLEMAN	ABSTRACT 314
CROSS EXAMINATION OF DANA MOORE BY PAUL FORD	ABSTRACT 315

DIRECT EXAMINATION OF PAM HOBBS BY JOHN FOGLEMEN	ABSTRACT 316
DIRECT EXAMINATION OF MELISSA BYERS BY JOHN FOGLEMAN	ABSTRACT 316
DIRECT EXAMINATION OF DEBORAH O'TINGER BY JOHN FOGLEMAN	ABSTRACT 318
CROSS EXAMINATION OF DEBORAH O'TINGER BY VAL PRICE	ABSTRACT 318
CROSS EXAMINATION OF DEBORAH O'TINGER BY ROBIN WADLEY	ABSTRACT 318
DIRECT EXAMINATION OF BRIAN WOODY BY JOHN FOGLEMAN	ABSTRACT 318
DIRECT EXAMINATION OF REGINA MEEK BY JOHN FOGLEMEN	ABSTRACT 319
CROSS EXAMINATION OF REGINA MEEK BY SCOTT DAVIDSON	ABSTRACT 320
CROSS EXAMINATION OF REGINA MEEK BY ROBIN WADLEY	ABSTRACT 322
DIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMAN	ABSTRACT 322
CROSS EXAMINATION OF MIKE ALLEN BY VAL PRICE	ABSTRACT 325
CROSS EXAMINATION OF MIKE ALLEN BY PAUL FORD	ABSTRACT 328
RECROSS EXAMINATION OF MIKE ALLEN BY VAL PRICE	ABSTRACT 328

RECROSS EXAMINATION OF MIKE ALLEN BY PAUL FORD	ABSTRACT 329
REDIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMEN	ABSTRACT 330
DIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMEN	ABSTRACT 330
DIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN RESUMES	ABSTRACT 341
VOIR DIRE EXAMINATION OF BRYN RIDGE BY VAL PRICE	ABSTRACT 346
CONTINUED VOIR DIRE EXAMINATION OF BRYN RIDGE BY VAL PRICE	ABSTRACT 347
VOIR DIRE EXAMINATION OF BRYN RIDGE BY ROBIN WADLEY	ABSTRACT 347
REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN	ABSTRACT 348
CROSS EXAMINATION OF BRYN RIDGE BY VAL PRICE	ABSTRACT 350
CROSS EXAMINATION OF BRYN RIDGE BY ROBIN WADLEY	ABSTRACT 356
REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMEN	ABSTRACT 361
DIRECT EXAMINATION OF DR. FRANK PERETTI BY BRENT DAVIS	ABSTRACT 362
CROSS EXAMINATION OF DR. FRANK PERETTI BY VAL PRICE	ABSTRACT 387

CROSS EXAMINATION OF DR. FRANK PERETTI BY
PAUL FORD ABSTRACT 390

REDIRECT EXAMINATION OF DR. FRANK PERETTI BY
BRENT DAVIS ABSTRACT 401

RECROSS EXAMINATION OF DR. FRANK PERETTI BY
PAUL FORD ABSTRACT 406

REDIRECT EXAMINATION OF DR. FRANK PERETTI BY
BRENT DAVIS ABSTRACT 407

REDIRECT EXAMINATION OF DR. FRANK PERETTI BY
VAL PRICE ABSTRACT 407

DIRECT EXAMINATION OF MICHAEL CARSON BY
BRENT DAVIS ABSTRACT 407

CROSS EXAMINATION OF MICHAEL CARSON BY
PAUL FORD ABSTRACT 410

REDIRECT EXAMINATION OF MICHAEL CARSON BY
BRENT DAVIS ABSTRACT 413

DIRECT EXAMINATION OF MIKE ALLEN BY JOHN
FOGLEMEN ABSTRACT 413

CROSS EXAMINATION OF MIKE ALLEN BY SCOTT
DAVIDSON ABSTRACT 416

CROSS EXAMINATION OF MIKE ALLEN BY ROBIN
WADLEY ABSTRACT 417

REDIRECT EXAMINATION OF MIKE ALLEN BY JOHN
FOGLEMEN ABSTRACT 419

RECROSS EXAMINATION OF MIKE ALLEN BY SCOTT
DAVIDSON ABSTRACT 420

RECROSS EXAMINATION OF MIKE ALLEN BY ROBIN WADLEY	ABSTRACT 421
REDIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMAN	ABSTRACT 422
DIRECT EXAMINATION OF JOEL MULLINS BY JOHN FOGLEMAN	ABSTRACT 422
CROSS EXAMINATION OF JOEL MULLINS BY SCOTT DAVIDSON	ABSTRACT 425
CROSS EXAMINATION OF JOEL MULLINS BY PAUL FORD	ABSTRACT 426
REDIRECT EXAMINATION OF JOEL MULLINS BY JOHN FOGLEMAN	ABSTRACT 426
DIRECT EXAMINATION OF SHANE GRIFFIN BY JOHN FOGLEMAN	ABSTRACT 426
CROSS EXAMINATION OF SHANE GRIFFIN BY SCOTT DAVIDSON	ABSTRACT 428
REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN	ABSTRACT 429
CROSS EXAMINATION OF BRYN RIDGE. BY PAUL FORD	ABSTRACT 430
REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN	ABSTRACT 431
DIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN	ABSTRACT 431
CROSS EXAMINATION OF GARY GITCHELL BY VAL PRICE	ABSTRACT 432

CROSS EXAMINATION OF GARY GITCHELL BY PAUL FORD	ABSTRACT 434
REDIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN	ABSTRACT 434
DIRECT EXAMINATION OF ANTHONY HOLLINGSWORTH BY JOHN FOGLEMAN	ABSTRACT 434
CROSS EXAMINATION OF ANTHONY HOLLINGSWORTH BY SCOTT DAVIDSON	ABSTRACT 435
REDIRECT EXAMINATION OF ANTHONY HOLLINGSWORTH BY JOHN FOGLEMAN	ABSTRACT 437
DIRECT EXAMINATION OF NARLENE HOLLINGSWORTH BY JOHN FOGLEMAN	ABSTRACT 437
CROSS EXAMINATION OF NARLENE HOLLINGSWORTH BY SCOTT DAVIDSON	ABSTRACT 438
REDIRECT EXAMINATION OF NARLENE HOLLINGSWORTH BY JOHN FOGLEMAN	ABSTRACT 443
DIRECT EXAMINATION OF KERMIT CHANNEL BY JOHN FOGLEMAN	ABSTRACT 444
CROSS EXAMINATION OF KERMIT CHANNEL BY VAL PRICE	ABSTRACT 448
CROSS EXAMINATION OF KERMIT CHANNEL BY PAUL FORD	ABSTRACT 449
REDIRECT EXAMINATION OF KERMIT CHANNEL BY JOHN FOGLEMAN	ABSTRACT 450
DIRECT EXAMINATION OF MICHAEL DeGUGLIELMO BY JOHN FOGLEMAN	ABSTRACT 450

CROSS EXAMINATION OF MICHAEL DeGUGLIELMO BY VAL PRICE	ABSTRACT 457
CROSS EXAMINATION OF MICHAEL DeGUGLIELMO BY PAUL FORD	ABSTRACT 458
RECROSS EXAMINATION OF MICHAEL DeGIJGLIELMO BY VAL PRICE	ABSTRACT 458
RECROSS EXAMINATION OF MICHAEL DeGUGLIELMO BY PAUL FORD	ABSTRACT 458
REDIRECT EXAMINATION OF MICHAEL DeGUGLIELMO BY JOHN FOGLEMAN	ABSTRACT 459
RECROSS EXAMINATION OF MICHAEL DeGUGLIELMO BY VAL PRICE	ABSTRACT 459
DIRECT EXAMINATION OF JERRY DRIVER BY JOHN FOGLEMAN	ABSTRACT 459
CROSS EXAMINATION OF JERRY DRIVER BY PAUL FORD	ABSTRACT 460
CROSS EXAMINATION OF JERRY DRIVER BY SCOTT DAVIDSON	ABSTRACT 460
DIRECT EXAMINATION OF JAMES SUDBURY BY JOHN FOGLEMAN	ABSTRACT 460
CROSS EXAMINATION OF JAMES SUDBURY BY VAL PRICE	ABSTRACT 461
DIRECT EXAMINATION OF LISA SAKEVICIUS BY JOHN FOGLEMAN	ABSTRACT 461

CROSS EXAMINATION OF LISA SAKEVICIUS BY VAL PRICE	ABSTRACT 467
CROSS EXAMINATION OF LISA SAKEVICIUS BY PAUL FORD	ABSTRACT 471
REDIRECT EXAMINATION OF LISA SAKEVICIUS BY JOHN FOGLEMAN	ABSTRACT 476
RECROSS EXAMINATION OF LISA SAKEVICIUS BY PAUL FORD	ABSTRACT 479
REDIRECT EXAMINATION OF LISA SAKEVICIUS BY JOHN FOGLEMAN	ABSTRACT 481
DIRECT EXAMINATION OF RALPH TURBYFILL BY JOHN FOGLEMAN	ABSTRACT 481
CROSS EXAMINATION OF RALPH TURBYFILL BY SCOTT DAVIDSON	ABSTRACT 483
DIRECT EXAMINATION OF DEANNA HOLCOMB BY JOHN FOGLEMAN	ABSTRACT 484
CROSS EXAMINATION OF DEANNA HOLCOMB BY SCOTT DAVIDSON	ABSTRACT 484
REDIRECT EXAMINATION OF DEANNA HOLCOMB BY JOHN FOGLEMAN	ABSTRACT 486
DIRECT EXAMINATION OF JAMES PARKER BY JOHN FOGLEMAN	ABSTRACT 486
CROSS EXAMINATION OF JAMES PARKER BY VAL PRICE	ABSTRACT 487
REDIRECT EXAMINATION OF JAMES PARKER BY JOHN FOGLEMAN	ABSTRACT 487

DIRECT EXAMINATION OF BILL DURHAM BY JOHN FOGLEMEN	ABSTRACT 488
CROSS EXAMINATION OF BILL DURHAM BY VAL PRICE	ABSTRACT 488
REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMEN	ABSTRACT 490
CROSS EXAMINATION OF BRYN RIDGE BY VAL PRICE	ABSTRACT 492
REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMEN	ABSTRACT 502
RECROSS EXAMINATION OF BRYN RIDGE BY VAL PRICE	ABSTRACT 503
REDIRECT EXAMINATION OF LISA SAKEVICIUS BY JOHN FOGLEMAN	ABSTRACT 505
REDIRECT EXAMINATION OF KERMIT CHANNEL BY JOHN FOGLEMAN	ABSTRACT 505
CROSS EXAMINATION OF KERMIT CHANNEL BY VAL PRICE	ABSTRACT 506
DIRECT EXAMINATION OF JOHN MURRAY BY JOHN FOGLEMEN	ABSTRACT 506
CROSS EXAMINATION OF JOHN MURRAY BY SCOTT DAVIDSON	ABSTRACT 507
DIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMEN	ABSTRACT 507
CROSS EXAMINATION OF BRYN RIDGE BY	

PAUL FORD ABSTRACT 507

DIRECT EXAMINATION OF DALE GRIFFIS BY JOHN
FOGLEMEN ABSTRACT 507

VOIR DIRE EXAMINATION OF DALE GRIFFIS BY
PAUL FORD ABSTRACT 510

DIRECT EXAMINATION OF DALE GRIFFIS BY JOHN
FOGLEMEN ABSTRACT 512

CROSS EXAMINATION OF DALE GRIFFIS BY
VAL PRICE ABSTRACT 518

CROSS EXAMINATION OF DALE GRIFFIS BY
PAUL FORD ABSTRACT 526

REDIRECT EXAMINATION OF DALE GRIFFIS BY JOHN
FOGLEMEN ABSTRACT 528

RECROSS EXAMINATION OF DALE GRIFFIS BY
VAL PRICE ABSTRACT 528

DIRECT EXAMINATION OF CHRISTY VanVICKLE BY
JOHN FOGLEMEN ABSTRACT 528

CROSS EXAMINATION OF CHRISTY VanVICKLE BY
SCOTT DAVIDSON ABSTRACT 529

REDIRECT EXAMINATION OF CHRISTY VanVICKLE
BY JOHN FOGLEMEN ABSTRACT 530

CROSS EXAMINATION OF CHRISTY VanVICKLE BY
SCOTT DAVIDSON ABSTRACT 530

DIRECT EXAMINATION OF JODY MEDFORD BY JOHN
FOGLEMEN ABSTRACT 530

CROSS EXAMINATION OF JODY MEDFORD BY SCOTT DAVIDSON	ABSTRACT 531
REDIRECT EXAMINATION OF JODY MEDFORD BY JOHN FOGLEMAN	ABSTRACT 534
RE CROSS EXAMINATION OF JODY MEDFORD BY SCOTT DAVIDSON	ABSTRACT 535
REDIRECT EXAMINATION OF JODY MEDFORD BY JOHN FOGLEMAN	ABSTRACT 535
DIRECT EXAMINATION OF DONNA MEDFORD BY JOHN FOGLEMAN	ABSTRACT 536
CROSS EXAMINATION OF DONNA MEDFORD BY SCOTT DAVIDSON	ABSTRACT 536
REDIRECT EXAMINATION OF DONNA MEDFORD BY JOHN FOGLEMAN	ABSTRACT 538
DIRECT EXAMINATION OF PAMELA HUTCHINSON BY SCOTT DAVIDSON	ABSTRACT 538
CROSS EXAMINATION OF PAMELA HUTCHINSON BY BRENT DAVIS	ABSTRACT 547
REDIRECT EXAMINATION OF PAMELA HUTCHINSON BY SCOTT DAVIDSON	ABSTRACT 553
RE CROSS EXAMINATION OF PAMELA HUTCHINSON BY BRENT DAVIS	ABSTRACT 555
DIRECT EXAMINATION OF MICHELLE ECHOLS BY SCOTT DAVIDSON	ABSTRACT 555
CROSS EXAMINATION OF MICHELLE ECHOLS BY BRENT DAVIS	ABSTRACT 558

DIRECT EXAMINATION OF DAMIEN ECHOLS BY VAL PRICE	ABSTRACT 561
CROSS EXAMINATION OF DAMIEN ECHOLS BY BRENT DAVIS	ABSTRACT 578
REDIRECT EXAMINATION OF DAMIEN ECHOLS BY VAL PRICE	ABSTRACT 593
RECROSS-EXAMINATION OF DAMIEN ECHOLS BY BRENT DAVIS	ABSTRACT 594
DIRECT EXAMINATION OF STACEY SANDERS BY SCOTT DAVIDSON	ABSTRACT 594
CROSS EXAMINATION OF STACY SANDERS BY BRENT DAVIS	ABSTRACT 595
DIRECT EXAMINATION OF JENNIFER SANDERS BY SCOTT DAVIDSON	ABSTRACT 597
CROSS EXAMINATION OF JENNIFER SANDERS BY BRENT DAVIS	ABSTRACT 598
REDIRECT EXAMINATION OF JENNIFER SANDERS BY SCOTT DAVIDSON	ABSTRACT 599
RECROSS EXAMINATION OF JENNIFER SANDERS BY BRENT DAVIS	ABSTRACT 600
DIRECT EXAMINATION OF RANDY SANDERS BY SCOTT DAVIDSON	ABSTRACT 600
CROSS EXAMINATION OF RANDY SANDERS BY BRENT DAVIS	ABSTRACT 601
DIRECT EXAMINATION OF GAYLE POINDEXTER SHARP BY SCOTT DAVIDSON	ABSTRACT 602

CROSS EXAMINATION OF GAYLE POINDEXTER BY
BRENT DAVIS ABSTRACT 602

DIRECT EXAMINATION OF GARY GITCHELL BY
SCOTT DAVIDSON ABSTRACT 603

CROSS EXAMINATION OF GARY GITCHELL BY
BRENT DAVIS ABSTRACT 613

REDIRECT EXAMINATION OF GARY GITCHELL BY
SCOTT DAVIDSON ABSTRACT 613

DIRECT EXAMINATION OF JOHN MARK BYERS BY
VAL PRICE ABSTRACT 614

DIRECT EXAMINATION OF MARTY KING BY SCOTT
DAVIDSON ABSTRACT 625

CROSS EXAMINATION OF MARTY KING BY JOHN
FOGLEMAN ABSTRACT 628

REDIRECT EXAMINATION OF MARK KING BY SCOTT
DAVIDSON ABSTRACT 630

DIRECT EXAMINATION OF ROBERT HICKS BY
VAL PRICE ABSTRACT 631

CROSS EXAMINATION OF ROBERT HICKS BY
BRENT DAVIS ABSTRACT 646

REDIRECT EXAMINATION OF ROBERT HICKS BY
VAL PRICE ABSTRACT 651

RECROSS EXAMINATION OF ROBERT HICKS BY
BRENT DAVIS ABSTRACT 651

DIRECT EXAMINATION OF CHARLES LINCH BY
PAUL FORD ABSTRACT 651

CROSS EXAMINATION OF CHARLES LINCH BY BRENT DAVIS	ABSTRACT 655
REDIRECT EXAMINATION OF CHARLES LINCH BY PAUL FORD	ABSTRACT 659
RECROSS EXAMINATION OF CHARLES LINCH BY BRENT DAVIS	ABSTRACT 661
DIRECT EXAMINATION OF PEGGY SIMMONS BY JOHN FOGLEMAN	ABSTRACT 662
CROSS EXAMINATION OF PEGGY SIMMONS BY SCOTT DAVIDSON	ABSTRACT 664
CROSS EXAMINATION OF PEGGY SIMMONS BY PAUL FORD	ABSTRACT 665
RECROSS EXAMINATION OF PEGGY SIMMONS BY SCOTT DAVIDSON	ABSTRACT 665
DIRECT EXAMINATION OF GEORGE POKORSKI BY JOHN FOGLEMAN	ABSTRACT 665
CROSS EXAMINATION OF GEORGE POKORSKI BY VAL PRICE	ABSTRACT 666
CROSS EXAMINATION OF GEORGE POKORSKI BY PAUL FORD	ABSTRACT 667
REDIRECT EXAMINATION OF GEORGE POKORSKI BY JOHN FOGLEMAN	ABSTRACT 667
DIRECT EXAMINATION OF DR. DUKE JENNINGS BY BRENT DAVIS	ABSTRACT 668
CROSS EXAMINATION DR. DUKE JENNINGS BY PAUL FORD	ABSTRACT 675

CROSS EXAMINATION DR. DUKE JENNINGS BY SCOTT DAVIDSON	ABSTRACT 680
REDIRECT EXAMINATION DR. DUKE JENNINGS BY BRENT DAVIS	ABSTRACT 681
RECROSS EXAMINATION OF DR. DUKE JENNINGS BY PAUL FORD	ABSTRACT 681
DIRECT EXAMINATION OF LISA SAKEVICIUS BY JOHN FOGLEMAN	ABSTRACT 682
CROSS EXAMINATION OF LISA SAKEVICIUS BY PAUL FORD	ABSTRACT 684
DIRECT EXAMINATION OF JOHN KILBOURN BY JOHN FOGLEMAN	ABSTRACT 686
CROSS EXAMINATION OF JOHN KILBOURN BY PAUL FORD	ABSTRACT 694
REDIRECT EXAMINATION OF JOHN KILBOURN BY JOHN FOGLEMAN	ABSTRACT 700
RECROSS EXAMINATION OF JOHN KILBOURN BY PAUL FORD	ABSTRACT 702
DIRECT EXAMINATION OF SCOTT KELIN BY JOHN FOGLEMAN	ABSTRACT 702
CROSS EXAMINATION OF SCOTT KELIN BY PAUL FORD	ABSTRACT 703
CLOSING ARGUMENTS	ABSTRACT 705
CLOSING ARGUMENT BY JOHN FOGLEMAN CONTINUES	ABSTRACT 708

ABSTRACT OF ECHOLS RULE 37 PROCEEDINGS . . . ABSTRACT 714

DIRECT EXAMINATION OF VAL PRICE BY
EDWARD MALLETT ABSTRACT 714

CROSS EXAMINATION OF VAL PRICE BY
BRENT DAVIS ABSTRACT 720

REDIRECT EXAMINATION OF VAL PRICE BY
EDWARD MALLETT ABSTRACT 728

DIRECT EXAMINATION OF BRENT TURVEY BY
EDWARD MALLETT ABSTRACT 732

CROSS EXAMINATION OF BRET TURVEY BY
BRENT DAVIS ABSTRACT 741

DIRECT EXAMINATION DR. JOSEPH COHEN BY
EDWARD MALLETT ABSTRACT 745

CROSS EXAMINATION OF DR. JOHN L. COHEN
BY BRENT DAVIS ABSTRACT 761

REDIRECT EXAMINATION OF DR. JOSEPH COHEN
BY EDWARD MALLETT ABSTRACT 768

DIRECT EXAMINATION OF MIKE ALLEN BY
BRENT DAVIS ABSTRACT 769

DIRECT EXAMINATION OF HARRY H. MINCER
BY BRENT DAVIS ABSTRACT 772

DIRECT EXAMINATION OF KEVIN DUGAN BY
BRENT DAVIS ABSTRACT 772

DIRECT EXAMINATION OF DR. WILLIAM STURNER
BY BRENT DAVIS ABSTRACT 777

VOIR DIRE PROCEEDINGS	ABSTRACT 779
ABSTRACT OF TRIAL OF JESSIE MISSKELLEY	ABSTRACT 815
DIRECT EXAMINATION OF OFFICER JERRY DRIVER BY JOHN FOGLEMAN	ABSTRACT 815
CROSS EXAMINATION OF JERRY DRIVER BY DAN STIDHAM	ABSTRACT 816
DIRECT EXAMINATION OF GHERIC BRUCE BY JOHN FOGLEMAN	ABSTRACT 817
DIRECT EXAMINATION OF JOHN MURRAY BY JOHN FOGLEMAN	ABSTRACT 817
CROSS EXAMINATION OF JOHN MURRAY BY DAN STIDHAM	ABSTRACT 818
DIRECT EXAMINATION OF OFFICER MIKE ALLEN BY JOHN FOGLEMAN	ABSTRACT 818
CROSS EXAMINATION OF MIKE ALLEN BY DAN STIDHAM	ABSTRACT 820
REDIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMAN	ABSTRACT 825
RECROSS EXAMINATION OF MIKE ALLEN BY DAN STIDHAM	ABSTRACT 825
DIRECT EXAMINATION OF OFFICER BILL DURHAM BY JOHN FOGLEMAN	ABSTRACT 825
CROSS EXAMINATION OF BILL DURHAM BY DAN STIDHAM	ABSTRACT 827

DIRECT EXAMINATION OF DETECTIVE BRYN RIDGE BY JOHN FOGLEMAN	ABSTRACT 829
CROSS EXAMINATION OF BRYN RIDGE BY DAN STIDHAM	ABSTRACT 829
REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN	ABSTRACT 836
DIRECT EXAMINATION OF INSPECTOR GARY GITCHELL BY JOHN FOGLEMAN	ABSTRACT 836
VOIR DIRE OF GARY GITCHELL BY DAN STIDHAM	ABSTRACT 838
CROSS EXAMINATION OF GARY GITCHELL BY DAN STIDHAM	ABSTRACT 838
DIRECT EXAMINATION OF DR. FRANK PERETTI BY BRENT DAVIS	ABSTRACT 841
DIRECT EXAMINATION OF OFFICER MIKE ALLEN BY JOHN FOGLEMAN	ABSTRACT 842
CROSS EXAMINATION OF MIKE ALLEN BY DAN STIDHAM	ABSTRACT 843
REDIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMAN	ABSTRACT 845
RE CROSS EXAMINATION OF MIKE ALLEN BY DAN STIDHAM	ABSTRACT 845
DIRECT EXAMINATION OF OFFICER BILL DURHAM BY JOHN FOGLEMAN	ABSTRACT 846
CROSS EXAMINATION OF BILL DURHAM BY DAN STIDHAM	ABSTRACT 846

DIRECT EXAMINATION OF DETECTIVE BRYN RIDGE BY JOHN FOGLEMAN	ABSTRACT 847
CROSS EXAMINATION OF BRYN RIDGE BY DAN STIDHAM	ABSTRACT 851
REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN	ABSTRACT 855
RE CROSS EXAMINATION OF BRYN RIDGE BY DAN STIDHAM	ABSTRACT 856
REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN	ABSTRACT 856
RE CROSS EXAMINATION OF BRYN RIDGE BY DAN STIDHAM	ABSTRACT 856
DIRECT EXAMINATION OF INSPECTOR GARY GITCHELL BY JOHN FOGLEMAN	ABSTRACT 856
FIRST STATEMENT OF JESSIE MISSKELLEY, JR. 6-3-93	ABSTRACT 859
CONTINUING DIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN	ABSTRACT 863
SECOND STATEMENT OF JESSIE MISSKELLEY, JR. 6-3-93	ABSTRACT 864
CONTINUING DIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN	ABSTRACT 865
CROSS EXAMINATION OF GARY GITCHELL BY DAN STIDHAM	ABSTRACT 866
REDIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN	ABSTRACT 868

DIRECT EXAMINATION OF VICTORIA HUTCHESON BY JOHN FOGLEMAN	ABSTRACT 869
CROSS EXAMINATION OF VICKIE HUTCHESON BY DAN STIDHAM	ABSTRACT 870
REDIRECT EXAMINATION OF VICKIE HUTCHESON BY JOHN FOGLEMAN	ABSTRACT 871
DIRECT EXAMINATION OF JOSH DARBY BY GREG CROW	ABSTRACT 871
CROSS EXAMINATION OF JOSH DARBY BY BRENT DAVIS	ABSTRACT 872
DIRECT EXAMINATION OF RICKY DEESE BY GREG CROW	ABSTRACT 872
DIRECT EXAMINATION OF SUSIE BREWER BY GREG CROW	ABSTRACT 873
CROSS EXAMINATION OF SUSIE BREWER BY BRENT DAVIS	ABSTRACT 874
REDIRECT EXAMINATION OF SUSIE BREWER BY GREG CROW	ABSTRACT 874
DIRECT EXAMINATION OF STEPHANIE DOLLAR BY GREG CROW	ABSTRACT 874
CROSS EXAMINATION OF STEPHANIE DOLLAR BY BRENT DAVIS	ABSTRACT 876
REDIRECT EXAMINATION OF STEPHANIE DOLLAR BY GREG CROW	ABSTRACT 876
DIRECT EXAMINATION OF JAMES DOLLAHITE BY DAN STIDHAM	ABSTRACT 876

CROSS EXAMINATION OF OFFICER JAMES DOLLAHITE BY JOHN FOGLEMAN	ABSTRACT 877
REDIRECT EXAMINATION OF JOSH DARBY BY GREG CROW	ABSTRACT 878
DIRECT EXAMINATION OF JENNIFER ROBERTS BY GREG CROW	ABSTRACT 878
DIRECT EXAMINATION OF CHRISTY JONES MOSS BY DAN STIDHAM	ABSTRACT 879
CROSS EXAMINATION OF CHRISTY JONES MOSS BY BRENT DAVIS	ABSTRACT 880
REDIRECT EXAMINATION OF CHRISTY JONES MOSS BY DAN STIDHAM	ABSTRACT 880
DIRECT EXAMINATION OF CHARLES ASHLEY, JR. BY GREG CROW	ABSTRACT 881
CROSS EXAMINATION OF CHARLES ASHLEY, JR. BY BRENT DAVIS	ABSTRACT 881
DIRECT EXAMINATION OF JESSIE MISSKELLEY, SR. BY DAN STIDHAM	ABSTRACT 882
DIRECT EXAMINATION OF JIM McNEASE BY DAN STIDHAM	ABSTRACT 883
DIRECT EXAMINATION OF LOUIS HOGGARD BY GREG CROW	ABSTRACT 884
DIRECT EXAMINATION OF DENNIS CARTER BY GREG CROW	ABSTRACT 886
CROSS EXAMINATION OF DENNIS CARTER BY BRENT DAVIS	ABSTRACT 886

REDIRECT EXAMINATION OF DENNIS CARTER BY GREG CROW	ABSTRACT 887
DIRECT EXAMINATION OF FRED REVELLE BY DAN STIDHAM	ABSTRACT 887
CROSS EXAMINATION OF FRED REVELLE BY BRENT DAVIS	ABSTRACT 889
REDIRECT EXAMINATION OF FRED REVELLE BY DAN STIDHAM	ABSTRACT 890
DIRECT EXAMINATION OF ROGER JONES BY GREG CROW	ABSTRACT 890
DIRECT EXAMINATION OF KEITH JOHNSON BY DAN STIDHAM	ABSTRACT 891
CROSS EXAMINATION OF KEITH JOHNSON BY JOHN FOGLEMAN	ABSTRACT 892
DIRECT EXAMINATION OF KEVIN JOHNSON BY DAN STIDHAM	ABSTRACT 892
VI. STATEMENT OF THE CASE	STATEMENT OF THE CASE 1
VII. ARGUMENT	ARGUMENT 1
Introduction	ARGUMENT 1
1. Trial court erred (1) in its interpretation of the applicable statutory provisions, (2) in denying appellant relief given the state of the record, and (3) in failing to hold any hearing on the merits of appellant's habeas claim prior to denying the petition	ARGUMENT 6
2. Given the circuit court's ruling, it was error for it to deny appellant his motion for an order permitting supplemental	

examination and testing of scientific evidence	ARGUMENT 22
3. The circuit judge should have recused	ARGUMENT 23
VIII. CONCLUSION	ARGUMENT 25
IX. CERTIFICATE OF SERVICE	ARGUMENT 26
X. INDEX TO ADDENDUM	Addendum Page No. / Vol.

A. Pleadings

1. Information, Record (“T”) 5A-5C	ADD 1-3, v. 2
2. Judgment and Commitment Order, T 5D	ADD 4, v. 2
3. Joint Status Memorandum Submitted by Non-Capital Case Petitioners Baldwin and Misskelley, T 6-13	ADD 5-12, v. 2
4. Joint Status and Case Management Memorandum Submitted by All Parties, T 14-27	ADD 13-26, v.2
5. Letter from Judge David Burnett, T 28	ADD 27, v. 2
6. Notice of Setting, T 29	ADD 28, v. 2
7. Amended Petition for Relief Under Rule 37 Et Seq., Arkansas Rules of Criminal Procedure, T 30-40	ADD 29-39, v. 2
• Exhibit 1 (Affidavit of Charles Jason Baldwin), T 46-47	ADD 45-46, v. 2
• Exhibit 2 (Letter from Max Houck), T 49-51	ADD 48-50, v. 2
• Exhibit 3 (Affidavit of Max Houck), T 53-61	ADD 52-60, v. 2

- Exhibit 4
(Max Houck CV), **T 63-67** ADD 62-66, v. 2

- Exhibit 5
(Order for DNA Testing Dated 6/2/04), **T 69-78** ADD 68-77, v. 2

- Exhibit 6
(First Amended Order for DNA Testing
Dated 2/23/05), **T 80-91** ADD 79-90, v. 2

- Exhibit 7
(Bode STR Forensic Data Case Report
Dated 12/30/05), **T 93-104** ADD 92-103, v. 2

- Exhibit 8
(Bode Mitochondrial Forensic DNA Case
Report Dated 12/30/05), **T 106-117** ADD 105-117, v. 2

- Exhibit 9
(Bode STR Forensic DNA Case Report
Dated 1/2/07), **T 119-140** ADD 118-139, v. 2

- Exhibit 10
(Bode Supplemental Forensic Case Report
Dated 1/25/07) (Exhibit has unintentionally been
omitted from the Record)

- Exhibit 11
(State’s Reply to Echols’ 2nd DNA Testing Status
Report), **T 143-145** ADD 142-144, v. 2

- Exhibit 12
(Bode STR Forensic DNA Case Report
Dated 9/27/07), **T 147-161** ADD 146-160, v. 2

- Exhibit 13
(Bode Mitochondrial Supplemental Forensic Case

Report Dated 9/27/07), **T 163-176** ADD 162-175, v. 2

- Exhibit 14
(Serological Research Institute 3rd Analytical Report
Dated 5/11/07), **T 178-180** ADD 177-179, v. 2
- Exhibit 15
(Serological Research Institute 5th Analytical Report
Undated), **T 182-183** ADD 181-182, v. 2
- Exhibit 16
(Tom Fedor’s CV), **T 185-187** ADD 184-186, v. 2
- Exhibit 17
(Affidavit of Dr. Ophoven), **T 189-204** ADD 188-203, v. 2
- Exhibit 18
(Dr. Ophoven CV), **T 206-220** ADD 205-219, v. 2
- Exhibit 19
(Dr. Spitz’s CV), **T 222-252** ADD 221-251, v. 2
- Exhibit 20
(Dr. Spitz Letter Report Dated 11/27/06),
T 254-257 ADD 253-256, v. 2
- Exhibit 21
(Dr. Spitz Letter Report Dated 10/12/07),
T 259-267 ADD 258-266, v. 2
- Exhibit 22
(Dr. Haddix CV), **T 269-274** ADD 268-273, v. 2
- Exhibit 23
(Dr. Haddix Interim Report Dated 10/22/07 and
Supplemental Report Dated 5/6/08),
T 276-291 ADD 275-290, v. 2

- Exhibit 24
(Dr. Tabor Letter Report and Affidavit),
T 293-302 ADD 292-301, v. 2-3
 - Exhibit 25
(Dr. Tabor CV), **T 304-312** ADD 303-311, v. 3
 - Exhibit 26
(Dr. Souviron Report), **T 314-332** ADD 313-331, v. 3
 - Exhibit 27
(Dr. Souviron CV), **T 334-345** ADD 333-344, v. 3
 - Exhibit 28
(Goudge Commission’s Home Page
and Witnesses), **T 347-352** ADD 346-351, v. 3
 - Exhibit 29
(Dr. Wood CV), **T 353-393** ADD 352-392, v. 3
 - Exhibit 30
(Philipsborn Letter to Brent Davis Dated 6/12/07),
T 394-395 ADD 393-394, v. 3
8. Petition for Writ of Habeas Corpus Under Arkansas
Code Annotated 16-112-201, Et. Seq. and Motion
For a New Trial Under 16-112-208(e)(1),
T 397-581 ADD 396-580, v. 3
- Exhibit 31
(Philipsborn Letter to Brent Davis Dated 12/27/07),
T 586-587 ADD 585-586, v. 4
 - Exhibit 32
(Affidavit of Heather Cliett / Heather Dawn Hollis),
T 589-596 ADD 588-595, v. 4

- Exhibit 33
(Declaration of Shaun Ryan Clark),
T 598-599 ADD 597-598, v. 4

- Exhibit 34
(Affidavit of Joyce Cureton), **T 601-607** ADD 600-606, v. 4

- Exhibit 35
(Affidavit of Sue Weaver), **T 609-616** ADD 608-615, v. 4

- Exhibit 36
(Affidavit of Patty Burcham), **T 618-623** ADD 617-622, v. 4

- Exhibit 37
(Affidavit of Daniel Biddle), **T 625-628** ADD 624-627, v. 4

- Exhibit 38
(Affidavit of Jason Duncan), **T 630-633** ADD 629-632, v. 4

- Exhibit 39
(Affidavit of Xavier Redus), **T 635-639** ADD 634-638, v. 4

- Exhibit 40
(Affidavit of Leonard Haskins), **T 641-644** ADD 640-643, v. 4

- Exhibit 41
(Affidavit of Montavious Gordon),
T 645-647 ADD 644-646, v. 4

- Exhibit 42
(Affidavit of Danny Williams), **T 653-660** ADD 652-659, v. 4

- Exhibit 43
(Affidavit of Sally Ware), **T 662-665** ADD 661-664, v. 4

- Exhibit 44

(Affidavit of Amy Mathis), **T 667-670** ADD 666-669, v. 4

- Exhibit 45
(Affidavit of Crystal Hale Duncan),
T 672-676 ADD 671-675, v. 4
- Exhibit 46
(Affidavit of Joseph Samuel Dwyer),
T 678-685 ADD 677-684, v. 4
- Exhibit 47
(Mapquest Maps), **T 687-688** ADD 686-687, v. 4
- Exhibit 48
(Affidavit of Larry Matthew Baldwin),
T 690-697 ADD 689-696, v. 4
- Exhibit 49
(Matthew Baldwin Interview), **T 699-715** ADD 698-714, v. 4
- Exhibit 50
(Angela Gail Grinnell Police Interview),
T 717-738 ADD 716-737, v. 4
- Exhibit 51
(Affidavit of Angela Gail Grinnell),
T 740-749 ADD 739-748, v. 4
- Exhibit 52
(Dennis Dent Police Interview), **T 751-779** ADD 750-778, v. 4
- Exhibit 53
(Jennifer Bearden Police Interview),
T 781-793 ADD 780-792, v. 4
- Exhibit 54
(Affidavit of Jennifer Bearden), **T 795-803** ADD 794-802, v. 4

- Exhibit 55
(Affidavit of Holly George Thorpe),
T 805-807 ADD 804-806, v. 4
- Exhibit 56
(Affidavit of Donna Medford), **T 809-810** ADD 808-809, v. 4
- Exhibit 57
(Domini Teer Police Interview), **T 812-848** ... ADD 811-847, v. 4-5
- Exhibit 58
(Affidavit of Domini Teer), **T 850-852** ADD 849-851, v. 5
- Exhibit 59
(Arkansas Times Article), **T 854-860** ADD 853-859, v. 5
- Exhibit 60
(John Douglas CV), **T 862-869** ADD 861-868, v. 5
- Exhibit 61
(John Douglas Report), **T 871-890** ADD 870-889, v. 5
- Exhibit 62
(Copies of Poster-Sized Juror Notes in
State Evidence), **T 892-898** ADD 891-897, v. 5
- Exhibit 63
(FILED UNDER SEAL)
- Exhibit 64
(Press Articles Prior to and During Trial),
T 902-935 ADD 901-934, v. 5
- Exhibit 65
(Affidavit of Dr. Halverson), **T 937-944** ADD 936-943, v. 5
- Exhibit 66

(Dr. Halverson CV), **T 946-954** ADD 945-953, v. 5

- Exhibit 67
(Article, *A Mutli-Plex Assay to Identify 19 European Mammal Species from Mixtures Using the Mitochondrial Cytochrome B Gene*,
29 Electrophoresis 340 (2008)), **T 956-963** ADD 955-962, v. 5
- Exhibit 68
(Declaration of Tom Quinn), **T 965-972** ADD 964-971, v. 5
- Exhibit 69
(Affidavit of Ann Tate), **T 974-982** ADD 973-981, v. 5
- Exhibit 70
(Bode Supplemental Mitochondrial Forensic DNA Case Report Dated 5/23/08),
T984-996 ADD 983-995, v. 5
- Exhibit 71
(Affidavit of Sharon Nelson), **T 998-1001** ADD 997-1000, v. 5
- Exhibit 72
(Affidavit of Jason R. Gilder), **T 560-565** ADD 559-564, v. 3
- Exhibit 73
(Affidavit of Dan E. Krane), **T 567-572** ADD 566-571, v. 3
- Exhibit 74
(Affidavit of Donald Riley, Ph.D.),
T 575-581 ADD 574-580, v. 3

9. Petitioner Baldwin’s Submission of Supplemental Sealed Exhibits 75-77 and Motion for Order Addressing Status of ‘Affiants’ Sealed Affidavit Filed on 5/30/08 Without Copies to the Parties,
T 1004-1010 ADD 1003-1009, v. 5

10. Third Supplemental Exhibit (#78) in Support of
Petitioner Charles Jason Baldwin’s Statutory Habeas
Corpus Petition Motion for a New Trial, Rule 37
Petition, Petition for Writ of Error,
T 1011-1022 ADD 1010-1021, v. 5
11. Formal Order, **T 1023** ADD 1022, v. 5
12. Response to Amended Petition for Relief
Under A.R.Cr.P. 37, **T 1024-1030** ADD 1023-1029, v. 5
13. Response to Petitioner Baldwin’s Petition for
Writ of Habeas Corpus Under Ark. Code Ann.
16-112-201. et. seq. and Motion for a New Trial
Under 16-112-208(e)(1), **T 1031-1155** ADD 1030-1154, v. 5-6
14. Baldwin’s Initial Reply to the State’s Response
to Amended Petition for Relief Under Arkansas
Rules of Criminal Procedure 37,
T 1156-1160 ADD 1155-1159, v. 6
15. Motion for Permission to Enlarge Petitioner’s
Amended Rule 37 Petition Filed May 29, 2008,
T 1161-1163 ADD 1160-1162, v. 6
16. Fourth Transmission of Supplemental Exhibits
(#79) in Support of Petitioner Charles Jason Baldwin’s
Statutory Habeas Corpus Petition Motion for a New
Trial, Rule 37 Petition,
Petition for Writ of Error, **T 1164-1171** ADD 1163-1170, v. 6
17. Response to Motion for Permission to Enlarge
Petitioner’s Amended Rule 37 Petition Filed
May 29, 2008, **T 1172-1175** ADD 1171-1174, v. 6
18. Petitioner Charles Jason Baldwin’s Submission
and Incorporation of Former Co-Defendant and

	Current Co-Petitioner’s Reply in Support of Motion for a New Trial, Submitted in Support of Baldwin’s Statutory Habeas Corpus Petition and Motion for a New Trial, Brought Under Ark. Code 16-112-201 et. seq., T 1176-1215	ADD 1175-1214, v. 6
19.	Response to Petitioner Baldwin’s Adoption of Echols’ Reply in Support of Motion for a New Trial, T 1216-1239	ADD 1215-1238, v. 6
20.	Notice of Unavailability of Baldwin Counsel on September 8, 2008, T 1240-1242	ADD 1239-1241, v. 6
21.	[Petitioner Baldwin’s Proposed] Order and Precedent on Baldwin’s Statutory Habeas Corpus Petition and Motion for a New Trial, Arkansas Code Sections 16-112-201 et. seq., T 1243-1266	ADD 1242-1265, v. 6
22.	Order Denying Petition for Writ of Habeas Corpus and Motion for a New Trial Under Ark. Code Ann. 16-112-201, et seq., T 1267-1276	ADD 1266-1275, v. 6
23.	Motion for Order on Scope and Scheduling of Hearing Issues, T 1277-1281	ADD 1276-1280, v. 6
24.	Notice of Appeal and Designation of the Record, T 1282-1285	ADD 1281-1284, v. 6
25.	Order of Transport, T 1286	ADD 1285, v. 6
26.	Letter from Judge David Burnett, T 1287	ADD 1286, v. 6
27.	Petitioner Charles Jason Baldwin’s Brief on the Applicability of the ABA Standards and ABA Death Penalty Guidelines to the Claims of	

	Ineffective Assistance of Counsel, T 1288-1301	ADD 1287-1300, v. 6
28.	Order of Transport, T 1302	ADD 1301, v. 6
29.	Joint Petition for Writ of Certiorari to Complete the Record and for Stay of Brief 14 Days After the Supplement is Received, T 6-10	ADD 1302-1306, v. 6B
30.	Letter from Judge Burnett Dated May 7, 2009, T 11	ADD 1307, v. 6B
31.	Affidavit of Peggy Vanhoozer Nicholson and Notes, T 13-58	ADD 1308-1350, v. 6B
32.	Affidavit of Lyndall Stout, T 57-58	ADD 1351-1352, v. 6B
33.	Affiant’s Affidavit (Document Previously Filed), T 102	ADD 1353, v. 6B
34.	Affidavit of Sharon French, T 103-106	ADD 1354-1357, v. 6B
35.	Affidavit of Thomas E. Quinn, T 107-110 ...	ADD 1358-1361, v. 6B
36.	Rule 37 Petition Exhibits	
	• Petitioner’s Exhibit #1 (Damien Echols’ File), T 002915-003027	ADD 1362-1474
	• Petitioner’s Exhibit #2 (Inquisition, Inc.), T 003029-003112	ADD 1476-1559
	• Petitioner’s Exhibit #3 (Handwritten document, 6/6/93), T 003113	ADD 1560-1562

- Petitioner’s Exhibit #4
(Angela Grinnell’s statement),
T 003115-003116 ADD 1563-1565

- Petitioner’s Exhibit #5
(Handwritten notes of Paul Ford),
T 003117-003118 ADD 1566-1567

- Petitioner’s Exhibit #6
(Billing records of Paul Ford),
T 003119-003135 ADD 1568-1584

- Petitioner’s Exhibit #7
(Memo, Re: Jason Baldwin; Danny Williams),
T 003136-003137 ADD 1585-1586

- Petitioner’s Exhibit #8
(Copies of Paul Ford’s file and transcripts),
T 003138-003150 ADD 1587-1599

- Petitioner’s Exhibit #9
(Document re: Don Namm),
T 003151-003152 ADD 1600-1601

- Petitioner’s Exhibit #10
(Interview of Heather Cliett),
T 003153-003159 ADD 1602-1608

- State Exhibit #1
(Robin Wadley’s hours),
T 003160-003166 ADD 1609-1615

- Petitioner’s Exhibit #11
(Handwritten letter of Jason Baldwin),
T 003167-003171 ADD 1616-1621

- Petitioner’s Exhibit #12

(Handwritten notes of Paul Ford),
T 003172 ADD 1622-1623

- Petitioner’s Exhibit #13
(Craighead County notes of Paul Ford),
T 003173-003174 ADD 1624-1626
- Petitioner’s Exhibit #14
(Notes re: Hair & Trace), **T 003175** ADD 1627-1628
- Petitioner’s Exhibit #15
(Letter from Ron Lax to Dan Stidham),
T 003176-003183 ADD 1629-1636
- Petitioner’s Exhibit #16
(Echols’ Rule 37 billing), **T 003184-3263** ADD 1637-1716
- Petitioner’s Exhibit #17
(Memo re: 12/28/93 meeting), **T 003264** ADD 1717
- Petitioner’s Exhibit #18
(Memo re: Addie Burks),
T 003266-003267 ADD 1719-1720
- Petitioner’s Exhibit #19
(Memo 1/8/94), **T 003268-003270** ADD 1721-1723
- Petitioner’s Exhibit #20
(Memo re: 1/11/94 Jennifer Roberts),
T 003271-003288 ADD 1724-1741
- Petitioner’s Exhibit #21
(Lab notes), **T 003289-003318** ADD 1742-1771
- Petitioner’s Exhibit #22
(Quanta Blot Kit), **T 003319-003335** ADD 1772-1788

- Petitioner’s Exhibit #23
(Acid Phosphatase notes),
T 003336-003346 ADD 1789-1799

- Petitioner’s Exhibit #24
(Handwritten notes of Lisa Sakeviceus),
T 003347-003351 ADD 1800-1804

- Petitioner’s Exhibit #25
(Photos of hair slides), **T 003352-003358** ADD 1805-1811

- Petitioner’s Exhibit #26
(5/27/08 letter from Kermit Chanell),
T 003359-003362 ADD 1812-1815

- Petitioner’s Exhibit #27
(Patricia Zajac’s affidavit & CV),
T 003363-003412 ADD 1816-1865

- Petitioner’s Exhibit #28
(ABA Standards), **T 003413-003546** ADD 1866-1999

- Petitioner’s Exhibit #29
(Billing records), **T 003548-003605** ADD 2001-2058

- Petitioner’s Exhibit #30
(Paul Ford’s Discovery), **T 003606-003614** ADD 2059-2067

- Petitioner’s Exhibit #31
(2nd Amended petition for severance),
T 003615-003618 ADD 2068-2071

- Petitioner’s Exhibit #32
(Diagram of Craighead County Detention Facility)
T 003619-003620 ADD 2072-2073

- Petitioner’s Exhibit #33

(Daily log Craighead County Detention Facility)

T 003621-003634 ADD 2074-2087

- Petitioner’s Exhibit #34
(Memo 9/24/93), **T 003635-003637** ADD 2088-2090
- Petitioner’s Exhibit #35
(Transcript of Dr. Peretti’s phone call),
T 003638-003649 ADD 2091-2102
- Petitioner’s Exhibit #36
(2/22/98 e-mail attachment),
T 003650-003653 ADD 2103-2106
- Petitioner’s Exhibit #37
(Order), **T 003654-003656** ADD 2107-2109
- Petitioner’s Exhibit #38
(Dr. Wilkins’ forensic evaluation),
T 003657-003666 ADD 2110-2119
- Petitioner’s Exhibit #39
(Dr. Darning’s affidavit),
T 003667-003700 ADD 2120-2153
- Petitioner’s Exhibit #40
(FOIA file re: Dr. Wilkins),
T 003702-003908 ADD 2155-2362
- Petitioner’s Exhibit #41
(Commercial Appeal newspaper article)
T 003911-003916 ADD 2364-2369
- Petitioner’s Exhibit #42
(Statement of Rhonda Dedman),
T 003917-003935 ADD 2370-2388

- Petitioner’s Exhibit #43
(Map of Crime scene area),
T 003936-003937 ADD 2389-2390

- State’s Exhibit #3
(Video), **T 003938-003939** ADD 2391-2392

- Petitioner’s Exhibit #44
(Examination records), **T 003940-003947** ADD 2393-2400

- Petitioner’s Exhibit #45
(Timothy Derring CV), **T 003948-003979** ADD 2401-2432

- Petitioner’s Exhibit #46
(11/7/06 letter), **T 003980-003984** ADD 2433-2437

- Petitioner’s Exhibit #47
(10/27/07 letter from Don Horgan),
T 003985-003994 ADD 2438-2447

- Petitioner’s Exhibit #48a
(Victims’ bodies in water),
T 003995-003996 ADD 2448-2449

- Petitioner’s Exhibit #48b
(Victims’ bodies located & removed),
T 003997-003998 ADD 2450-2451

- Petitioner’s Exhibit #48c
(ID number in photo), **T 003999** ADD 2452-2453

- Petitioner’s Exhibit #48d
(Close-up photo), **T 004001-004002** ADD 2454-2455

- Petitioner’s Exhibit #48e
(Mutilation photo), **T 004003-004004** ADD 2456-2457

- Petitioner’s Exhibit #48f
(Mutilation photo), **T 004005-004006** ADD 2458-2459

- Petitioner’s Exhibit #48g
(Mutilation photo), **T 004007-004008** ADD 2460-2461

- Petitioner’s Exhibit #48h
(Photo of victim’s injuries),
T 004009-004010 ADD 2462-2463

- Petitioner’s Exhibit #48i
(Photo of victim’s injuries),
T 004011-004012 ADD 2464-2465

- Petitioner’s Exhibit #48j
(Photo of victim’s injuries),
T 004013-004015 ADD 2466-2468

- Petitioner’s Exhibit #48k
(Photo of victim’s injuries),
T 004016-004017 ADD 2469-2470

- Petitioner’s Exhibit #48l
(Photo of victim’s injuries),
T 004018-004019 ADD 2471-2472

- Petitioner’s Exhibit #48m
(Photo of victim’s injuries),
T 004020-004021 ADD 2473-2474

- Petitioner’s Exhibit #48n
(Photo of victim’s injuries),
T 004022-004023 ADD 2475-2476

- Petitioner’s Exhibit #48o
(Photo of victim’s injuries),
T 004024-004025 ADD 2477-2478

- Petitioner’s Exhibit #48p
(Photo of victim’s injuries),
T 004026-004027 ADD 2479-2480

- Petitioner’s Exhibit #48q
(Photo of victim’s injuries),
T 04028-004029 ADD 2481-2482

- Petitioner’s Exhibit #48r
(Photo of victim’s injuries),
T 004030-004031 ADD 2483-2484

- Petitioner’s Exhibit #48s
(Photo of victim’s injuries),
T 004032-004033 ADD 2485-2486

- Petitioner’s Exhibit #48t
(Photo of victim’s injuries),
T 004034-004035 ADD 2487-2488

- Petitioner’s Exhibit #48u
(Photo of victim’s injuries),
T 004036-004037 ADD 2489-2490

- Petitioner’s Exhibit #48v
(Photo of victim’s injuries),
T 004038-004039 ADD 2491-2492

- Petitioner’s Exhibit #48w
(Photo of victim’s injuries),
T 004040-004041 ADD 2493-2494

- Petitioner’s Exhibit #48x
(Photo of victim’s injuries),
T 004042-004043 ADD 2495-2496

- Petitioner’s Exhibit #48y

(Photo of victim’s injuries),
T 004044-004045 ADD 2497-2498

- Petitioner’s Exhibit #48zr
(Photo of victim’s injuries),
T 004046-004047 ADD 2499-2500
- Petitioner’s Exhibit #48aa
(Photo of victim’s injuries),
T 004048-004049 ADD 2501-2502
- Petitioner’s Exhibit #48bb
(Photo of victim’s injuries),
T 004050-004051 ADD 2503-2504
- Petitioner’s Exhibit #48cc
(Photo of victim’s injuries),
T 004052-004053 ADD 2505-2506
- Petitioner’s Exhibit #48dd
(Photo of victim’s injuries),
T 004054-004055 ADD 2507-2508
- Petitioner’s Exhibit #48ee
(Photo of victim’s injuries),
T 004056-004057 ADD 2509-2510
- Petitioner’s Exhibit #48ff
(Photo of victim’s injuries),
T 004058-004059 ADD 2511-2512
- Petitioner’s Exhibit #48gg
(Photo of victim’s injuries),
T 004060-004061 ADD 2513-2514
- Petitioner’s Exhibit #48hh
(Photo of victim’s injuries),

T 004062-004063 ADD 2515-2516

- Petitioner’s Exhibit #48ii
(Photo of victim’s injuries),
T 004064-004065 ADD 2517-2518
- Petitioner’s Exhibit #48jj
(Photo of victim’s injuries),
T 004066-004067 ADD 2519-2520
- Petitioner’s Exhibit #48kk
(Photo of victim’s injuries),
T 004068-004069 ADD 2521-2523
- Petitioner’s Exhibit #48nn
(Photo of victim’s injuries),
T 004071-004075 ADD 2524-2528
- Petitioner’s Exhibit #48-oo
(First page of 5/30/08 letter from Arkansas Crime Lab to
Brent Davis re examination of bodies. References Drs.
Williams Q. Sturner and Charles Kokes),
T 004076 ADD 2529
- Petitioner’s Exhibit #49
(Letter by Dr. Peretti), **T 004078-004079** ADD 2530
- Petitioner’s Exhibit #50
(Disc of Dr. Knight), **T 004080-004081** ADD 2533-2534
- Petitioner’s Exhibit #51
(Michael Baden’s CV), **T 004082-004100** ADD 2536-2554
- Petitioner’s Exhibit #52
((2) letters from Dan Stidham),
T 004101-004102 ADD 2555-2556

- Petitioner’s Exhibit #53
(E-mail from Brent Davis),
T 004103-004108 ADD 2557-2562

- Petitioner’s Exhibit #54
(5/15/07 letter to Dr. Peretti),
T 004109-004114 ADD 2563-2568

- Petitioner’s Exhibit #55
(10/4/07 letter from Riordan),
T 004115-004118 ADD 2569-2572

- Petitioner’s Exhibit #56
(Affidavit of Heather Dawn Cliett),
T 004119-004127 ADD 2573-2581

- Petitioner’s Exhibit #57
(Declaration of Shawn Ryan Clark),
T 004128-004130 ADD 2582-2584

- Joint Exhibit #2
(Autopsy photo disc), **T 004131** ADD 2585

- Petitioner’s Exhibit #58
(Letter from D. Terri Haddix),
T 004132-004136 ADD 2586-2590

- Petitioner’s Exhibit #59
(Dr. Richard Souviron’s CV),
T 004137-004149 ADD 2591-2603

- Petitioner’s Exhibit #60
(1/17/07 letter to D. Horgan),
T 004151-004170 ADD 2605-2624

- Petitioner’s Exhibit #61
(Crime scene diagram),

T 004171-004172	ADD 2625-2626
• Petitioner’s Exhibit #62 (One-to-one photos (4) photos),	
T 004173-004175	ADD 2627-2630
• Petitioner’s Exhibit #63 (Excerpt from book),	
T 004178-004259	ADD 2631-2714
• Petitioner’s Exhibit #64 (Excerpt from books (3)),	
T 004260-004272	ADD 2715-2727
• Petitioner’s Exhibit #65 (Dr. Janice Ophoven’s CV),	
T 004273-004274	ADD 2728
• Joint Exhibit #3 (Dan Stidham files),	
T 004275-004529	ADD 2730-2984
• Petitioner’s Exhibit #66 (File folder),	
T 004530-004531	ADD 2985-2986
• Petitioner’s Exhibit #66a (Hubert Bartouche memo),	
T 004532-004533	ADD 2987-2988
• Petitioner’s Exhibit #66b (Detective Ridge’s notes),	
T 004534-004537	ADD 2989-2992
• Petitioner’s Exhibit #67 (DVD),	
T 004538-004539	ADD 2993-2994
• Petitioner’s Exhibit #68 (Transcript of DVD),	
T 004541-004665	ADD 2996-3120

- Petitioner’s Exhibit #69
 (Victoria Hutcheson notes from Box C),
T 004666-004766 ADD 3121-3222

- Petitioner’s Exhibit #70
 (Erin (Aaron) Hutchson notes from Box “C”),
T 004768-004887 ADD 3224-3344

- Petitioner’s Exhibit #71
 (Mental health records),
T 004888-004979 ADD 3345-3436

- Petitioner’s Exhibit #72
 (Internet article), **T 004980-004987** ADD 3437-3444

- State’s Exhibit #15
 (Aerial photo of East Jr. High),
T 004988-004989 ADD 3445-3446

- State’s Exhibit #16
 (Photo of Ten Mile Bayou),
T 004990-004991 ADD 3447-3448

- State’s Exhibit #17
 (Photo of retention pond), **T 004992-004993** ADD 3449

- State’s Exhibit #18
 (Photo of Ten Mile Bayou),
T 004994-004995 ADD 3450-3451

- State’s Exhibit #19
 (Photo of shoe and Boy Scout cap),
T 004996-004997 ADD 3452-3453

- State’s Exhibit #23
 (Photo of Mike Allen crossing ditch),
T 004998-004999 ADD 3454-3455

- State’s Exhibit #21
(Photo of ditch), **T 005000-005001** ADD 3456-3457

- State’s Exhibit #26
(Photo of tree), **T 005002-005003** ADD 3458-3459

- State’s Exhibit #20
(Photo of drained ditch), **T 005004-005005** ADD 3460-3461

- State’s Exhibit #25
(Photo of drained ditch), **T 005006-005007** ADD 3462-3463

- State’s Exhibit #22
(Photo of sand bagged area),
T 005008-005009 ADD 3464-3465

- State’s Exhibit #24
(Photo of Bryn Ridge, sand bags & water pump),
T 005010-005011 ADD 3466-3467

- State’s Exhibit #27
(Photo of pipe across Ten Mile Bayou),
T 005012-005013 ADD 3468-3469

- State’s Exhibit #32
(Cardboard chart), **T 005014** ADD 3470

- State’s Exhibit #73
(Scale photo of scene), **T 005015-005016** ADD 3471-3472

- State’s Exhibit #74
(Scale photo of scene), **T 005017-005018** ADD 3473-3474

- Petitioner’s Exhibit #75
(Crime scene notes), **T 005019-005025** ADD 3475-3481

- State’s Exhibit #32

(Cardboard chart), **T 005026**

- State’s Exhibit #28
(Photo of S to N of West Memphis),
T 005027-005029 ADD 3483-3485
- State’s Exhibit #29
(Aerial view of West Memphis),
T 005030-005031 ADD 3486-3487
- State’s Exhibit #31
(Photo of cleared scene), **T 005032-005033** ADD 3488
- State’s Exhibit #33
(Reference to work page 209),
T 005035-005038 ADD 3489-3492
- State’s Exhibit #34
(Overlay photo), **T 005039-005040** ADD 3493-3494
- State’s Exhibit #35
(Overlay photo), **T 005041** ADD 3495
- State’s Exhibit #36
(Close-up of overlay),
T 005042-005043 ADD 3496-3497
- State’s Exhibit #37
(Photo of ear injuries),
T 005044-005045 ADD 3498-3499
- State’s Exhibit #38
(Photo of side view of face),
T 005046-005047 ADD 3500-3501
- State’s Exhibit #39
(Overlay photo), **T 005048** ADD 3502

- State's Exhibit #40
(Overlay photo), **T 005049** ADD3503

- State's Exhibit #41
(Video of crime scene),
T 005050-005051 ADD 3504-3505

- State's Exhibit #42
(Knife), **T 005052** ADD 3506

- State's Exhibit #43
(1/29/02 publication),
T 005053-005059 ADD 3507-3513

- State's Exhibit #44
(Photo of one-to-one),
T 005060-005062 ADD 3514-3516

- Petitioner's Exhibit #76a
(Case notes of defense counsel),
T 005063-005064 ADD 3517-3518

- Petitioner's Exhibit #76b
(Case notes of defense counsel),
T 005065-005066 ADD 3519-3520

- Petitioner's Exhibit #77
(Medical examiner case notes),
T 005067-005068 ADD 3521-3522

- Petitioner's Exhibit #78
(Michael Moore autopsy notes),
T 005069-005078 ADD 3523-3532

- Petitioner's Exhibit #79
(Steve Branch autopsy notes),
T 005079-005086 ADD 3533-3540

- Petitioner’s Exhibit #80
(Christopher Byers autopsy notes),
T 005087-005095 ADD 3541-3549
- Petitioner’s Exhibit #81
(Press release), **T 005096-005163** ADD 3550-3617
- Petitioner’s Exhibit #82
(Untitled), **T 005164-005178** ADD 3618-3632
- State’s Exhibit #45
(Dr. W. Q. Sturner’s CV),
T 005179-005194 ADD 3633-3648
- Petitioner’s Exhibit #83
(Book excerpt), **T 005195-005201** ADD 3649-3655
- Joint Exhibit #2
(Medical examiner report),
T 005202-005232 ADD 3656-3686
- State’s Exhibit #2
(Memo from Ron Lax), **T 005233-005234** ADD 3687-3688
- State’s Exhibit #4
(Brown file folder), **T 005237-005460** ADD 3691-3914
- State’s Exhibit #5
(Tethering the Elephant),
T 005462-005482 ADD 3916-3936
- State’s Exhibit #6
(Misskelley index), **T 005483-005581** ADD 3937-4035
- State’s Exhibit #7
(February 21, 1994 letter to Jessie Misskelley, Jr.),
T 005582-005584 ADD 4036-4038

- State’s Exhibit #8
(Manila envelope w/letters),
T 005586-005774 ADD 4040-4229

- State’s Exhibit #9
(File containing letters),
T 005775-005786 ADD 4230-4241

- State’s Exhibit #10
(12/15/93 Misskelley interview),
T 005787-005871 ADD 4242-4326

- State’s Exhibit #14
(12/1/93 Memo), **T 005876-005877** ADD 4328-4329

- State’s Exhibit #15
(Dan Stidham’s professional profile),
T 005878-005982 ADD 4330-4537

- State’s Exhibit #11
(Misskelley Interview/Statement June 3, 1993),
T 005984-006031 ADD 4538-4586

- 36. Stipulation of Record ADD 4587-4588

- Petitioner’s Exhibit 17
(1993 Memorandum from Ron Lax) ADD 4590-4591

- Petitioner’s Exhibit 48mm
(Photo) ADD 4593

- Petitioner’s Exhibit 49
(May 30, 2008 letter from Frank Peretti) ADD 4595-4596

- Petitioner’s Exhibit 52 (Partial)
(May 25, 1998 letter from Dan Stidham to
Dr. Michael Baden) ADD 4598-4603

- Petitioner’s Exhibit 65
(Dr. Janice Ophoven’s CV) ADD 4605-4615

I. INFORMATIONAL STATEMENT

I. ANY RELATED OR PRIOR APPEAL

Echols and Baldwin v. State, 326 Ark. 917, 936 S.W.2d 509 (1996), is the direct appeal of this case. *Misskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996), is the direct appeal of the co-defendant's case.. All three defendants filed Rule 37 petitions. Echols' Rule 37 petition has been litigated and the denial of relief eventually affirmed in *Echols v. State*, 354 Ark. 530, 127 S.W.3d 486 (2003).

II. BASIS OF SUPREME COURT JURISDICTION

(___) Check here if no basis for Supreme Court Jurisdiction is being asserted, or check below all applicable grounds on which Supreme Court Jurisdiction is asserted.

- (1) ___ Construction of Constitution of Arkansas
- (2) X Death penalty, life imprisonment
- (3) X Extraordinary writs
- (4) ___ Elections and election procedures
- (5) ___ Discipline of attorneys
- (6) ___ Discipline and disability of judges
- (7) X Previous appeal in Supreme Court
- (8) ___ Appeal to the Supreme Court by law

III. NATURE OF APPEAL

- (1) ___ Administrative or regulatory action
- (2) X Rule 37
- (3) ___ Rule on Clerk

- (4) ____ Interlocutory appeal
- (5) ____ Usury
- (6) ____ Products liability
- (7) ____ Oil, gas, or mineral rights
- (8) ____ Torts
- (9) ____ Construction of deed or will
- (10) ____ Contract
- (11) X Criminal

[Write a brief statement limited to the space provided describing the case on appeal, and set out the causes of action (i.e., in a civil case, tort, contract, etc., or in a criminal case, the convicted offenses, whether felony or misdemeanor, and the punishment) underlying the judgment from which the appeal is taken.]

This is an appeal from the denial of DNA habeas relief. Appellant Baldwin is serving life sentences for convictions of three counts of Murder First Degree.

IV. IS THE ONLY ISSUE ON APPEAL WHETHER THE EVIDENCE IS SUFFICIENT TO SUPPORT THE JUDGMENT?

No

V. EXTRAORDINARY ISSUES. (Check if applicable, and discuss in PARAGRAPH 2 of the Jurisdictional Statement.)

(____) appeal presents issue of first impression,

(____) appeal involves issue upon which there is a perceived inconsistency in the decisions of the Court of Appeals or Supreme Court,

(____) appeal involves federal constitutional interpretation,

(____) appeal is of substantial public interest,

(X) appeal involves significant issue needing clarification or development of the law, or overruling of precedent.

(X) appeal involves significant issue concerning construction of statute, ordinance, rule, or regulation.

VI. CONFIDENTIAL INFORMATION

1. Does the appeal involve confidential information as defined by Sections III A (11) and VII(A) of Administrative Order 19

NO.

2. If the answer is yes, does this brief then comply with Rule 4-1(d)?

NOT APPLICABLE

II. JURISDICTIONAL STATEMENT

1. This is an appeal from the denial of habeas corpus relief under Ark. Code Ann. §16-112-201 *et seq.* The circuit court denied relief without a hearing, and a hearing on merits, on the basis that appellant did not qualify for relief because the evidence was inconclusive, therefore insufficient. Also included in the appeal is an appeal of the circuit judge's refusal to recuse.

2. This matter is assigned to the Supreme Court because it involves life imprisonment, an extraordinary writ and a previous appeal in the Supreme Court.

3. I express a belief based upon a reasoned and studied professional judgment that this appeal is jurisdictionally significant.

This case presents several interrelated issues of first impression involving a highly significant statutory scheme which is intended to permit Arkansas's courts to allow erroneous criminal convictions to be re-examined in view of advances in the forensic sciences, or because significant case evidence was not or could not be tested prior to the conviction(s) being reviewed. The circuit court interpreted and applied the statutes in question to foreclose a hearing, or any further relief, on the basis that post-conviction DNA test results must not only exclude the convicted defendant who challenges his identity as a perpetrator, but also must identify some other perpetrator in order to permit any relief. The circuit court's rulings and interpretations raise the

following questions of legal significance for jurisdictional purposes: a significant issue needing clarification of the law, and a significant issue concerning construction of a statute.

For all of these reasons, the Supreme Court should hear and decide this case.

By _____
Attorneys for Appellant Charles Jason Baldwin

III. POINTS ON APPEAL

- I. Trial court erred (1) in its interpretation of the applicable statutory provisions, (2) in denying appellant relief given the state of the record, and (3) in failing to hold any hearing on the merits of appellant's habeas claim prior to denying the petition
- II. Given the circuit court's ruling, it was error for it to deny appellant his motion for an order permitting supplemental examination and testing of scientific evidence
- III. The circuit judge should have recused.

IV. TABLE OF AUTHORITIES

A. <u>Cases</u>	<u>PAGE</u>
<i>Echols and Baldwin v. State</i> , 396 Ark. 917; 936 S.W. 2d 509 (1996)	
..... STATEMENT OF THE CASE 1, ARGUMENT 1, 2, 5, 18	
<i>Echols v. State</i> , 354 Ark. 530, 127 S.W. 3d 486	
(2003) STATEMENT OF THE CASE 1	
<i>House v. Bell</i> , 547 U.S. 518 (2006) ARGUMENT 22, 23	
<i>In Re Murchison</i> , 349 U.S. 133; 75 S.Ct. 623 (1955) ARGUMENT 33	
<i>Johnson v. State</i> , 356 Ark 534; 157 S.W. 3d 151	
(2004) ARGUMENT 8, 11, 12, 15, 16	
<i>Misskelley v. State</i> , 323 Ark. 449;	
915 S.W. 2d 702 (1996) STATEMENT OF THE CASE 1, ARGUMENT 2	
<i>Nabholz Construction Corp. v. Contractors for Public Protection Ass’n</i> ,	
371 Ark 411 (2007) ARGUMENT 20	
<i>Offud v. U.S.</i> , 348 U.S. 11; 75 S.Ct. 11 (1954) ARGUMENT 33	
<i>Patterson v. R.T.</i> , 301 Ark. 400; 784 S.W. 2d 777 (1990) ARGUMENT 32	
<i>Sanford v. Sanford</i> , 355 Ark 274; 137 S.W. 3d 391 (2003) ARGUMENT 8	
<i>Schlup v. Delo</i> , 513 U.S. 298 (1995) ARGUMENT 22	

B. Federal constitutional provisions

Fifth, Sixth and Fourteenth Amendments ARGUMENT 3, 33

C. State constitutional provisions

Arkansas Constitution (Article 2, Sections 8 and 10) ARGUMENT 33

D. Statutes

Act 1780 of 2001 ARGUMENT 2, 5

Act 2250 of 2005 ARGUMENT 5, 7

A.C.A. §5-10-101 STATEMENT OF THE CASE 1

A.C.A. §16-112-103(a) ARGUMENT 6

A.C.A. §16-112-201 *et seq* STATEMENT OF THE CASE 3, ARGUMENT 2, 3, 7

A.C.A. §16-112-201 ARGUMENT 17

A.C.A. §16-112-201(a) ARGUMENT 16

A.C.A. §16-112-201(a)(1) ARGUMENT 16, 18, 21

A.C.A. §16-112-201(a)(2) ARGUMENT 16, 18, 21, 24

A.C.A. §16-112-202 ARGUMENT 7, 9, 10, 13, 17

A.C.A. §16-112-202(8)(A) and (B) ARGUMENT 11

A.C.A. §16-112-205 ARGUMENT 17

A.C.A. §16-112-205(a) ARGUMENT 14, 16, 17, 30

A.C.A. §16-112-205(c)(5) ARGUMENT 6, 26

A.C.A. §16-112-208 ARGUMENT 14, 17

A.C.A. §16-112-208(b) ARGUMENT 7, 8, 15, 30

A.C.A. §16-112-208(e) ARGUMENT 7, 10, 11, 15, 17, 19

A.C.A. §16-112-208(e)(1) STATEMENT OF THE CASE 2, ARGUMENT 17

A.C.A. §16-112-208(e)(3) ARGUMENT 17, 18, 21, 24

A.C.A. §§16-17-1101 *et seq* ARGUMENT 32

DNA Identification Act of 1994 (Public Law No. 103-322, 1994) ARGUMENT 15

E. Rules

Arkansas Code of Judicial Conduct, Canon 2A ARGUMENT 24

Canon 3E ARGUMENT 24

Rule 37 STATEMENT OF THE CASE 1-3, ARGUMENT 3

F. Texts

Giannelli and Imwinkelreid, *Scientific Evidence* (4th ed),
Chapter 18 ARGUMENT 20

Dr. Werner Spitz, “*Medico-Legal Investigation of Death*” ARGUMENT 25

V. ABSTRACT

STATUS HEARING IN CRAIGHEAD COUNTY CIRCUIT COURT

HON. DAVID BURNETT, CIRCUIT JUDGE

August 20, 2008

ARKANSAS SUPREME COURT CASE NO. CR 09-60

(The following hearing was a joint status hearing for Appellant Charles Jason Baldwin, Damien Echols (CR 09-60), and Jessie Misskelley, Jr. (CR 08-1481), conducted as part of the proceedings from which this appeal is taken. The parties were represented as follows: For the State of Arkansas: Brent Davis, Kent Holt and David Raupp; for Appellant Baldwin: John Philipsborn and Blake Hendrix; for Damien Echols: Dennis Riordan, Don Horgan and Deborah Sallings; and for Jessie Misskelley: Michael Burt and Jeff Rosenzweig. The pages of this record are designated as "SHR", Status Hearing Record.

(Appendix 6-1303 contains the pleadings filed in this matter. SHR 1303 - 1359 is the record of the Status Hearing of August 20.)

THE COURT: This is billed as a scheduling or as a status hearing. Frankly, I'm of the opinion that I can't basically do anything without the defendants here. We

can talk about the schedule, we can talk about matters of law, strictly, but as far as taking testimony, we can't do that. So I'm here to listen to your comments about the schedule (SHR 1305)

I'm more interested right now; I've read most of the pleadings. Good lord, y'all gave me a box full, so I'm not sure I've read everything, but I take it that all of the pleadings have been filed that are going to be filed?

MR. ROSENZWEIG: We filed by fax yesterday a motion adopting pleadings that can be filed by some of the co-defendants, and of course, we had to file in Clay County. The others are filed in Craighead County. In order to avoid just cluttering up that record, we did not specifically attach the pleadings that we were adopting. We can do that, but if everyone would agree that we don't necessarily have to attach them, that might be more efficient. But we are happy to specifically attach, in the Clay County file, those pleadings if anyone deems it necessary.

THE COURT: The Court needs to know exactly what you're talking about, Jeff, because your particular client is in a different posture than Echols. You're on a Rule 37 petition, non-capital (SHR 1306). I don't even think the Act 1780 would apply to your client. It's not applicable him at this time (SHR 1307).

MR. ROSENZWEIG: To make it clear, the pleadings that we were adopting [was] Baldwin's initial reply to the State's response to the Amended Rule 37 Petition

and the motion to enlarge the Amended Rule 37 Petition. [...] and then Echols's reply is for a motion for a new trial in the DNA case (SHR 1307).

THE COURT: First of all, let me say this. I'm going to divide this into separate hearings: Misskelley and Baldwin will have a separate hearing and frankly, I believe I'd rather do that first (SHR 1307).

MR. RAUPP: Your Honor, the State's position on what we call the 1780 cases, the DNA testing cases, as to all three defendants, and as I understand the pleadings Jeff is talking about, Mr. Echols filed on August 13th what he called a reply, the State's position is that reply is essentially an amendment to his petition, which is a permissible pleading.

To my knowledge, the Court hasn't given him permission under the statute to file an additional pleading. The statute provides for a petition and response by the State, which were filed and concluded in May as to the Echols cases and then in July as to the Misskelley and Baldwin cases.

We resist the filing of any amendment to that under the statute. We think it's unnecessary and the case to be resolved on the pleadings. If, however, the Court indulges a permissive amendment, which certainly is discretionary, the State would request an opportunity to do a permissive amendment to its answer, to its response, which the statute provides for. So we'd have to resolve that. But initially, we would

resist that filing and agree with the Court that the 1780 cases can be (SHR 1308) separated out and dealt with separately and together.

And I had forgotten if there are proposed amendments for post amendments in the Rule 37 cases that are replies, but the replies having been filed there. The State doesn't resist those, but we do resist in the 1780 and the DNA testing cases (SHR 1309).

MR. ROSENZWEIG: Your Honor, in that, uh, what I was referring to and I think Mr. Raupp had referred to as well, uh, we filed, uh, Misskelly filed a, both a ten-page petition and an expanded petition for motion for permission to file the expanded petition. So the, uh, we need to obtain a ruling from the Court, uh, granting, uh, technically granting that, uh, expanded petition and allowing the expanded petition to be considered. We have a compliant ten-page petition we've also filed.

And so we ask that the Court, uh, grant our motion to file an expanded or enlarged Rule 37 petition.

THE COURT: What did you add to it?

MR. ROSENZWEIG: It was one that discussed all of the claims, instead of just listing them, because the strict draconian interpretation of Rule 37: a ten-page limit, exhibits count against the limit, uh, the only thing that may not count against the limit is the certificate of service.

So we had to, uh, we had to file, uh, something with intent, you know, within ten pages, which we did. And that is in compliance with the amended ten-page petition, but we also filed one that actually has the room to discuss all of the various claims. The Rule, if you strictly interpret it, says we can't file that without permission, so we filed contemporaneously a motion seeking the permission, uh, and we would ask that the Court grant that motion.

THE COURT: You have replied to it?

MR. RAUPP: We have replied and resisted that motion, uh, in the Misskelley case. That was filed initially with Misskelley's, uh, Misskelley filed a ten-page petition, and the additional room was an additional two hundred and sixty-six pages.

It was rather expansive and I think as the Court knows, the Arkansas Supreme Court has consistently upheld the ten-page limit, particularly in non-capital cases, as an appropriate limit on the availability of a pleading to explain to the Court.

So we do resist the expanded petition in Misskelley, and then in Baldwin as well. Baldwin asked for an expanded petition only in early August, uh, and what we, what our response is to the ten-page, the properly filed ten-page petitions, is in the pleadings explains that on their faces they can be denied because they are so conclusory, because they purport to raise upwards of scores of ineffective assistance claims.

But we would anticipate that the Court will permit particular discrete claims to be raised, and we would anticipate after a hearing that the post-hearing briefing by both parties will address a few discrete claims.

But we would resist the filing of the two hundred and sixty-six page petition and instead, ask that the Court simply require counsel in *Misskelley* and *Baldwin* to reduce their claims to something in the nature of those that can be adequately stated.

And ten pages, as the rule requires it, as the Arkansas Supreme Court has consistently upheld is appropriate.

THE COURT: Jeff, what did you add that's new, is what I asked earlier?

MR. ROSENZWEIG: Judge, what we did is discussed, we discussed the ...

THE COURT: ... but you didn't any new points, any new claims?

MR. ROSENZWEIG: Well, we, I mean, we added some from the original prose *Misskelley* thing that had been filed back years ago, uh, and that there are some things that had, in the course of our investigation, we developed.

Now the problem is that as, as you might tell, if we, if we are able to write two hundred and fifty pages to give the Court appropriate guidance to what some of the issues are, we're only going to reduce it to ten pages to reduce it down to a few syllables, uh, per claim.

And, and that's what we had to do. And so, you know, we can, we can write a few syllables to shoe-horn it into ten pages, but if the Court wishes a discussion, uh, the Arkansas Supreme court has been generally, generally, but not exclusively restrict, you restrictive to ten pages, but on any number of occasions, it hasn't been an issue because a trial has permitted the expanded petition.

And therefore, there's, uh, you know, the pendant is an appealing issue.

THE COURT: All right, I think in this case I'm going to allow you to file it and then you can file a response to it and then we'll have, uh, make sure we've got everything that you want in the record in the record. All right.

MR. ROSENZWEIG: Okay. With some trepidation, I take up another motion that we had filed, and that was the motion for your, your recusal, Your Honor.

THE COURT: Well, that's denied.

MR. ROSENZWEIG: And, uh, uh, if I could, uh, if I could respectfully inquire of the Court whether or not, uh, uh, because part of the motion was based on Your Honor's future political plans after you leave the court.

THE COURT: Well, that's something that's two years away. I don't retire until December and, and anything I might choose to do later is probably up in the air. I don't know. Speculation. So that has nothing whatsoever to do with this matter. All right. Yes sir?

MR. RIORDAN: Your Honor, Dennis Riordan, for Echols. Could I address the State's motion on the question of what we've framed as a reply brief and what they've framed as an amendment to the 1780 petition? Your Honor, my suggestion would be this. The State, in its opposition to our motion for a new trial under the DNA and new science statutes, has taken a position (SHR 1313) that the Court can and should simply deny that petition at this point. That there is nothing, either dealing directly with DNA or anything else such as new scientific evidence on animal predation, that the Court need take evidence on because, either if one assumes all of the evidence is true, it isn't sufficient to grant the petition, or alternatively, that it is not cognizable within the DNA statute. We all agree that we've got issues of first impression before the Court on the scope of the DNA statute, whatever we consider, what we've filed are a reply and amendment to the petition, I think that they've discussed that as State authority. We have provided the Court with State authority and responses to their interpretation of the petition. I think it's just going to be very helpful in a question of first impression and important case for the Court to consider that. So if we classify it as an amendment to our petition, we certainly don't object to the State replying to that, and we think that it will be very helpful to have all of that before the Court (SHR 1314).

The other thing that I would say, Your Honor, is that, because the State is taking the position that you needn't hear any evidence as to Echols, and that it's either unnecessary, because thinking it's true, it's inadequate or it's not cognizable, I would think that what we may need, want to do is have the State file our answer and have the Court rule on the scope of the statute before we commence an evidentiary hearing, simply because if the Court accepts the State's position, we're done. And any hearing that the Court would hold if it were at the end of that to conclude that that evidence didn't need to be taken would be a waste of the Court's time. So, I would submit that the Court should permit the filing and permit an answer and then, hopefully, issue an opinion or a ruling, which either, if it takes the State's position, denies the DNA petition, or says, "I'll hear evidence directly related to DNA, but nothing else; I'll hear evidence related to DNA and animal predation, but not this issue, dealing with new information on juror misconduct by the foreman," it would, I think, be enormously helpful (SHR 1315) if we had a ruling before the hearing commenced, Your Honor.

THE COURT: Well, I plan to give you a written order on what I'll hear and what I won't hear. Do you want to respond any further? What my feeling is, whatever pleadings I've got, I'm going to accept. So if you need to file a response, then how much time do you need?

MR. RAUPP: I would ask for 30 days. We filed our answer to the petition on May 30th, and this amendment came in last Wednesday, August 13th, so it's about seven days.

THE COURT: I don't guess I've seen that. Last Wednesday?

MR. RAUPP: I think that's correct. It was filed August 12th, maybe? (SHR 1316)

MR. RIORDAN: That's correct, Your Honor (SHR 1316).

THE COURT: So I've got more? I've got two boxes full of pleadings back there.

MR. RIORDAN: It was file stamped by the court on the 13th (SHR 934).

MR. RAUPP: But given that, it was about 70 days out, and if we could have about half that much time, and of course, if we could accommodate the Court, it will be in sooner (SHR 1317). But we would certainly hope to have about 30 days.

THE COURT: The problem is with giving you 30 days -- I've got two capital murder cases that I've had to sandwich in the docket to finish before December 31st. It would be almost impossible to schedule. I was thinking about giving you ten or 15 days, and even that would push the schedule, if it's September 8th.

MR. RAUPP: We'll accommodate the Court.

THE COURT: Well, all right, let's do that and then I don't want any more pleadings filed, period. Ten days, will that get us to where we can start whatever it is we're going to do on September 8th, because after I receive that, I need probably a week, I guess, or however many days that gives me before the 8th to give you a letter opinion on what I'll hear and what I won't hear, or if I adopt your theories in the last response that you read, then there won't be any need for a hearing, period (SHR 935)

MR. RAUPP: The State would be happy to provide a precedent to that effect.

THE COURT: I mean, if I do that, then there won't need to be any further hearings on Echols. Now in Misskelley, it's a different matter, and Baldwin (SHR 1318).

(SHR 1319 is omitted as irrelevant to Mr. Baldwin's appeal.)

(SHR 1320) THE COURT: All right, that will be all right. I invite all of you to draft a preliminary order, if you care to, if you want to, because it's always helpful. It'll make my time speed up. And I invite each of you to do that.

THE COURT: Is there anything else we need to discuss? (SHR 1320)

MR. HENDRIX: Judge, Blake Hendrix on behalf of petitioner Baldwin, the same stuff, we don't want to paper up the Court any more. I've got here a request to ask that Baldwin will be able to adopt Echols's reply, because it has the same legal

issues. It's a total of two paragraphs of additional reading, but it's permissive, and we didn't want to be presumptuous.

THE COURT: All right, I'll let you do that (SHR 1320) You need to understand whatever ruling I make in Echols probably also applies to those adopted pleadings.

MR. HENDRIX: Absolutely (SHR 1321).

THE COURT: So the filings would be in either, in Baldwin's case and Echols', in Craighead County, and in Misskelley, in Clay County.

MR. HENDRIX: So we only need to file in one place?

THE COURT: One place (SHR 1321).

MR. HENDRIX: Great (SHR 1321). Judge, on Baldwin's motion to enlarge, that's just a simple matter of trying not to get caught in that catch-22 when you've got a complicated case and the ten days, so we'll be happy to go either way the Court wants us to go.

THE COURT: Well, I'm not going to restrict you to the ten pages. I've already told Jeff that, and I'll, I'll allow you to amplify your brief.

MR. HENDRIX: And then this is sort of the next to the last thing is on, I think the State is resisting this. We've got all of those exhibits that are filed in the 1780, under the 1780 petition, and to be sure and have a complete record in Rule 37, we can

either adopt them by reference, or do we need to just absolutely re-file all of those exhibits as part of the Rule 37, and I think the State has taken a position on it, haven't you, David?

MR. RAUPP: Yes, Your Honor. We've resisted on the basis that it's an expanded petition over the ten pages. And I don't have - in light of the Court's ruling in Misskelley's case, I anticipate that you will grant Mr. Hendrix's motion to essentially have those exhibits be part of his ten-page petition.

THE COURT: Yes, I'll do that.

MR. RAUPP: And given that, we have the exhibits (SHR 1322) filed in Craighead County as to the 1780 case. I don't need them filed again. I don't know if the Court wants to enter an order in the 37 case.

THE COURT: The only reason I'm allowing the expanded petition is so we'll have all of the issues in the record and all of the matters will be wrapped up for a higher court to look at whatever we do. So all of it will there.

MR. HENDRIX: We're going broke on copying expenses, too (SHR 1323).

THE COURT: Well, yeah, there's no need to keep duplicating that. That will be fine. And you're going to respond to that?

MR. RAUPP: In both Baldwin and Misskelley's Rule 37, the State will reserve a response to a post-hearing pleading and the proposed order (SHR 1323).

THE COURT: Right.

MR. RAUPP: And as to the 1780 cases...

THE COURT: ...I'm inviting you to do the same thing in that.

MR. RAUPP: And we're going to reply in ten days with a proposed order, a reply and then a proposed order, as to all three cases. (SHR 1324) And I will file a separate pleading in each of those three cases, because I think their cases are proceeding under the names of each one.

THE COURT: All right, Mr. Riordan, if you want to submit a proposed precedent, I need that simultaneously.

MR. RIORDAN: Very good, Your Honor, and I again, to save paper, we might propose an order that just says that we are incorporating in our 1780 petition certain exhibits filed by co-defendants. We have copies here, but if we propose an order and the Court would just say yes, they're incorporated by reference, we've saved the clerk's office another six inches of file.

THE COURT: Yes, let's do that. There's no point in having multiple filings of the same thing (SHR 1324).

MR. HENDRIX: And Judge, just for the record, Baldwin does need to join in the recusal motion, understanding the Court's ruling.

THE COURT: I'm going to deny that motion.

MR. HENDRIX: I'm assuming this argument is not going to persuade you to go otherwise. THE COURT: I'm going to deny that motion.

MR. HENDRIX: Sure. Understood.

MR. RAUPP: Your Honor, the State would have just one more question. Anticipating that the losing party in either case, or the person losing might prosecute an appeal, it does occur to the State that the record will have to be prepared separately by the Clay County Circuit Court?

THE COURT: Yes.

MR. RAUPP: And the Craighead County Circuit Court, so it would be useful to have the separate exhibits actually filed and pleadings actually filed. We don't have a problem with them adopting, in the sense they adopted arguments, but I think it's appropriate to style pleading and filing.

MR. ROSENZWEIG: That will be fine.

THE COURT: Jeff, that would relate to your client only, because Baldwin is here anyway (SHR 1325).

MR. ROSENZWEIG: That will be fine. We will do that, Your Honor, and that won't be a problem.

MR. PHILIPSBORN: Your Honor, John Philipsborn, Baldwin's co-counsel. (SHR 1326) Just to clarify something that I may have misunderstood, I thought when

the Court was first discussing what it wanted us to discuss this morning, it indicated that the 1780 statutes would not reach the non-capital cases, but then we have been discussing the issues as though it does, and our view is that it does. But just so the record is clear... (SHR 1327)

THE COURT: ...no, I allowed you to file that and to raise those issues, but I think I've indicated that if I follow the State's theory on it, that's going to terminate those issues in Baldwin and Misskelley, as well.

MR. PHILIPSBORN: Okay.

THE COURT: I'm not saying that that's what I'm going to do, because I haven't digested it all yet, but y'all raise all kinds of stuff that is kind of interesting. No, it is a part of your pleading at this time.

MR. PHILIPSBORN: I appreciate it. Thank you (SHR 1327)

THE COURT: ... well, I think we can hear it here. Does the State have any opinion on whether to do Baldwin and Misskelley simultaneously? That's kind of the way I would rather do it...

MR. ROSENZWEIG: ... I didn't mean to interrupt, Your Honor, and my counsel, Mr. Burt, has some scheduling issues and all of us have scheduling issues, including the Court. And so as long as we are here, we probably need to get that resolved.

Mr. Burt has some, I wasn't here for the April hearing, so I'm second-hand on a lot of what the Court said, and Mr. Burt was here. And so we need to figure out so we don't have to file a motion later on.

THE COURT: Well, my thought on it would be to schedule Misskelley and Baldwin for September the 8th and hopefully, we can finish in a week, because we've got a full week; that would be the 8th through the 13th (SHR 1328).

(SHR 1329) MR. BURT: I had planned to be here on October 1st, because that's when I was told the day was that the Court was going to take up Misskelley.

And now the Court has indicated September 8th, so there is a scheduling problem there.

MR. DAVIS: Judge, when the Court asked did we think it would be appropriate for the two to go together, it's the State's position based on the responses that have filed that in terms of the Act 1780 petition that are filed by all three defendants, that the Court can rule as a matter of law, and if, depending upon what the Court's decision is in regard to that, if we are then left with Rule 37 hearings regarding the two other co-defendants, because with a ruling of that nature, that eliminates defendant Echols from any further proceedings.

Then if it's merely Rule 37 hearings regarding the two defendants, I can't see any benefit to conducting those simultaneously, because, I mean, (SHR 1329) in a two hundred and sixty-seven page petition, there have been hundreds of issues raised.

I think actually I'm optimistic that the Court will narrow those issues down when it comes time for the actual proceeding, but in any event, the more pertinent issues will be the performance or effectiveness of the two defense teams involved in representing the clients at trial.

And I don't see where combining the two together is going to achieve much in the way of benefit, because the questions that are pertinent...

THE COURT: ... I'm just raising for economy of time, I mean... (SHR 1330)
(SHR 1331 is omitted as irrelevant to Mr. Baldwin's appeal.)

THE COURT: All right. That's Misskelley. And then Baldwin, any matters that need to be heard by the Court will be on September the 8th, that week of the 8th through the 12th.

Frankly, gentlemen, the Court can rule as a matter of law on all of the issues. I can decide that an evidentiary hearing is not even necessary. So you can view it from that standpoint as well.

I'm not likely to do that, but I could. So when (SHR 1332) you draft your precedents, consider that as an option that the Court has.

MR. PHILIPSBORN: Your Honor?

THE COURT: Yes, sir?

MR. PHILIPSBORN: On the Baldwin matter, John Philipsborn, on the scheduling issue, Mr. Burt said he and I are actually both involved in the same multiple defendant homicide case; I had thought that you had actually talked about scheduling this sequentially, so I thought the week of September 8th had been reserved for Echols, if there was going to be an Echols matter.

My question to the Court, because I think our, the evidence in our case, if the Court grants us a hearing, is going to be pretty compact.

THE COURT: I'm sure of that.

MR. PHILIPSBORN: But I hear the Court in that regard. Would the Court consider allowing us to be scheduled right after Misskelley?

THE COURT: That would be fine. And I have a problem with, I think I've got a murder case tentatively set for September 15th, that I wasn't aware of, but we were going to move that anyway. The Paragould case, and I've got a pre-trial on the 15th, but I have, we could start, I guess, on - I can (SHR 1333) give you one day; the part of the 15th and the 16th and then skip to September the 24th and then go through the 29th. That's the best I can do.

Wednesday, yeah, we can go the 24th and finish that week. That would be three days, but we might have to do it like that. We'll tentatively set it for then.

MR. PHILIPSBORN: Thank you. I appreciate it, Your Honor.

THE COURT: The next time court meets, the defendants are going to have to be here, because I'm uncomfortable in doing anything but scheduling without them being present.

MR. DAVIS: Judge, one thing that just crossed my mind; Dave kind of mentioned it. One thing I did think we agreed on was that any 1780 proceedings on the new scientific evidence would be consolidated, since basically the pleadings in regard to that are pretty much similar regarding all of the defendants (SHR 1334).

THE COURT: Well, they're identical (SHR 1335).

MR. DAVIS: And so if when we talk about whether the Court would take up the issues involving Echols early on, on the 8th of September, and fill in that first few weeks with that, assuming those issues were still on the table after the Court makes its ruling. If the Court decides that we're having hearings on that issue, then those hearings will not just apply to Echols, they'll apply to all three defendants. And so that doesn't cure the problem of having scheduling conflicts with the 8th through the 24th of September, because it's not just going to be dealing with defendant Echols, it

will be dealing with all three defendants, should the Court determine that it can't rule as a matter of law (SHR 1335).

THE COURT: Jeff, your conflict was for who? Who had the conflict with September 8th?

MR. ROSENZWEIG: Any conflicts I have are solvable. Mr. Burt is the one with the more difficult conflict.

MR. PHILIPSBORN: And I have that same conflict, Your Honor.

THE COURT: Well, I thought we dealt with those.

MR. PHILIPSBORN: We did just now as Mr. Davis is pointing out that if . . . (SHR 1335)

THE COURT: Well, he's probably right. The issues are identical. Basically, you all adopted what they have filed. So on the 1780 matters, they're the same.

MR. PHILIPSBORN: I agree, Your Honor.

THE COURT: I'm going to block out the dates and those days will be available and then depending upon everyone's schedule, let's just see what we can present at that time. And depending upon how I ultimately decide, too.

There may be issues that will remain that need to be, we need to have hearings on. So that time is available and we'll do whatever we have to do at that time. Okay? So you need to keep your schedules flexible (SHR 1336).

THE COURT: (SHR 1337) And again, I'm going to be looking for proposed precedents on the 1780 rulings and the Rule 37 rulings, too.

MR. ROSENZWEIG: Looking for them before the hearings, or after the hearings?

THE COURT: On the Rule 37, after the hearings. But on the 1780, I thought we were going to schedule that for the next ten days. Anything else?

MR. DAVIS: Well, there's a couple of things that, and Dave may correct me if I'm wrong, as I probably will be on the law, but I know the Court had indicated that there was some concern about any rulings that could be made on the pleadings if the defendants weren't present. And we have looked at the statutes, specifically the particular statutory provisions under Rule 37, and under the 16-112-200, new scientific evidence, and the Court can make rulings and as a matter of law, enter orders as a matter of law on pleadings without the necessity of the defendants being present. THE COURT: I know I can do that, but I can't take testimony.

MR. DAVIS: Correct. I think it would be appropriate in that regard (SHR. 1337).

(SHR 1338 - 1347:22 is omitted as irrelevant to Mr. Baldwin's appeal.)

MR. RIORDAN: (SHR 1347:22) Just a final thing for clarification, Your Honor. As I understand it, the State will be filing an answer to what's deemed an

amended petition, we called it our reply brief, by the 30th (SHR 1347), and by that time you'd also like from us essentially a proposed... (SHR 1348)

THE COURT: ...a proposed precedent, for a finding.

MR. RIORDAN: And Your Honor, there is a pending question on sealing a declaration that is before the Court, and we'll address that in our proposed order, as well.

THE COURT: I'm sorry. I didn't follow you on that.

MR. RIORDAN: Well, we're in an unusual situation, Your Honor, in which a declaration has been filed with this Court that none of the parties has seen, and has been filed by a Little Rock lawyer on behalf of another lawyer that deals with arguably privileged conversations between that lawyer and the jury foreman in this case. And we have addressed the question of privilege. The lawyer filed it under seal; he did not give it to either of the parties; he wanted the ruling from the (SHR 1348) Court on the question of privilege before any of the parties saw it. So we will address the question of unsealing that in the proposed order.

THE COURT: Well, where did he file that? I haven't seen it.

MR. RIORDAN: It is filed in this Court, Your Honor. It's highly unusual; it's a situation in which a lawyer was retained by the jury foreman in this case. The jury foreman had conversations...

THE COURT: ...I saw some pleadings to that effect, but I haven't seen any sealed pleadings. I saw your pleadings.

MR. RIORDAN: Well, our information, the filing actually took place May 30th in the Baldwin case, a sealed envelope was filed by a Little Rock attorney containing an affidavit from another Little Rock attorney, and it was filed in the Baldwin case. And as you've seen, we have sent various things in our pleadings.

THE COURT: Yes.

MR. RIORDAN: Various things about that declaration. But I will work with the Court's office and confirm that that sealed declaration is in fact before (SHR 1349) the Court. And we'll address the unsealing of it in our proposed order by the 30th.

THE COURT: Okay.

MR. RAUPP: Your Honor, the State hasn't seen that either, and obviously would like to see it. Mr. Echols's counsel has taken the position that privilege doesn't apply, so I presume they're going to ask that it be unsealed despite not seeing it, they've gone on at length to explain what it, I guess, what they hope it represents.

THE COURT: Well, then that's what I read; your pleading.

MR. RAUPP: But it would be helpful to the State before the 30th that that be unsealed, if we're to respond to the allegations. And I take it that you're going move that it be unsealed?

MR. RIORDAN: Well, there's actually a motion pending in the Baldwin case (SHR 1350) that the Court unseal it under a protective order, so that the parties could at least see it and address it, and according to them, the Court could unseal it under a protective order before it rules on the question of privilege, so the State would have a meaningful opportunity to address the privilege question.

THE COURT: (SHR 1350) Well, yeah, I don't have any problem with that. I mean, I'd have to look at it to rule whether it was a privilege question or not, anyway. So y'all might as well get the benefit of it. So it's supposedly in the Baldwin case?

MR. RIORDAN: It is filed on May 30th, and that is the ideal thing; both parties get it under a protective order and they can certainly address the privilege question as a straight question of law, I think.

MR. RAUPP: Thank you.

THE COURT: All right, we'll do that. Is there anything else?

MR. PHILIPSBORN: Your Honor, the last thing, and I appreciate the Court's indulgence and patience. There is pending before the Court and has been for some period of time, in the context of the 1780 cases, a motion for some additional testing, and I gather that it would be appropriate to the parties to address that in the precedent that they offer, because obviously, if the Court's going to deny the hearing and

basically rule on the pleadings, I think we put the relevant facts before the Court and the Court could address that issue as well, but I didn't want it left hanging (SHR 1351).

THE COURT: What additional testing are you referring to? (SHR 1352)

MR. PHILIPSBORN: Your Honor, there were two classes of evidence that we agree to disagree about. This is in the conversations that I had with Mr. Davis; the re-testing of some fiber evidence and some testing of some specific hair evidence. And so that issue was put before the Court and the State has opposed the re-testing and it has been dealt with in the pleadings.

THE COURT: It seems like I remember y'all raising that the last time we were here.

MR. PHILIPSBORN: Yes, sir.

MR. BURT: Judge, there's one last issue which is an evidentiary issue, and we'd be glad to brief this for the Court. But I wanted to go on record as stating an objection to an exhibit that the State has attached to its response to the petition in Misskelley's DNA motion. And that is an exhibit in which the State has designated as Exhibit "E," which is a transcript (SHR 1352) of, apparently, a post-trial interrogation of Mr. Misskelley. I don't know if the Court has that in front of it.

THE COURT: It doesn't look like I have it here.

MR. BURT: I have it. This is our file, Your Honor. At the outset of this interview, Mr. Davis informs Mr. Misskelley that the statement that he is about to give will not be used against him in any proceeding whatsoever, in the future. And essentially gives him use immunity for the statement he is about to make. And it's our position that a statement given under those circumstances cannot be used in any proceeding, including this one, and that the Court ought not to consider that in making any rulings that it might make in regard to the motions that are before the Court.

THE COURT: Is that objection in your pleadings?

MR. BURT: No, it's not, and that's why I'm raising it at this point. We're adopting the pleadings of Mr. Echols, and this issue pertains to Mr. Misskelley (SHR 1353). We've not filed a separate pleading, but will be glad to brief the issue, because there is some law on this. But I just wanted, at this point, to go on record as stating that objection, and with the Court's permission, we file a brief as to the issue.

THE COURT: All right. Do you need to file a reply to that?

MR. RAUPP: I would, just briefly, the State's position is with immunity granted and authorized by the Court in case with consistent to the Arkansas statute which provides only for the use immunity, and while described in any transaction, the immunity granted would have to have been consistent with Arkansas law used in a criminal proceeding. This is no longer a criminal proceeding; it's a civil proceeding.

THE COURT: It's a civil proceeding.

MR. ROSENZWEIG: Except, Your Honor, that the courts have also held that representations made by a prosecutor are equitability enforceable.

THE COURT: Well, brief it for me.

MR. ROSENZWEIG: I will (SHR 1354).

MR. PHILIPSBORN: Your Honor, that same objection would also pertain to Baldwin, because the same item has been proffered in Baldwin's case.

THE COURT: Okay. All right. Is there anything else? (SHR 1355)

(SHR 1355-1360 is omitted as irrelevant to Mr. Baldwin's appeal.)

ABSTRACT OF PROCEEDINGS SEPT. 24, 2008

The record of proceedings on September 24, 2008, the first day of testimony in the combined Baldwin/Misskelley Rule 37 proceedings, begins with the following exchanges about the Rule 37 Petitions; amendment of the Petitions; Expansion of the Rule 37 record. The State objected that some issues are not cognizable in a Rule 37 proceeding, and the defense responded. Misskelley and Baldwin renewed their motions for the Court to be recused. The record below begins at Baldwin/Misskelley Hearing Record (hereafter BMHR) at Bates Stamp pages 000032-000033—hereafter BMHR 32-33:

MR. DAVIS: Judge, that's the court file for the Baldwin case there, and then I had Mr. Trail bring these court files from the Misskelley case in Clay County, and also the docket sheets.

THE COURT: Well, I wanted to hear that here, so let's make whatever arrangements we need to make to have it heard here.

(Pause.)

THE COURT: All right, I'm ready to start. I'm not sure where we are. There was a Baldwin file of Rule 37 petition years ago and then it's been amplified and amended at least twice since then, and I think I allowed

the expanded Rule 37 petition to be filed and the exhibits that were attached to it.

It would seem, however, that most of the allegations contained in it were also issues in the Act 1780 motion and also a habeas motion had been filed in addition to the Rule 37, and as far as the Court is concerned, that's just an expansion of the Rule 37 petition.

And that's the way I'm going to treat the habeas, as a Rule 37 petition.

Now I understand that there is some question about a number of experts being called, and just exactly what the Court's going to allow to be heard in the Rule 37 petition, so who wants to start on that?

The State has objected; I think there were six major accounts in the amended petition and the State has objected to five of those, so let me hear the State's position on *[begin BMHR 33]* the Rule 37 petition with regard to the five points that have been objected to.

MR. DAVIS: Well, Your Honor, the original petition, or the amended petition for relief filed under Rule 37 alleged basically six areas, or six specific categories, basis for relief as a result of their petition.

The State's position is that basically none of those allegations contained in the claim for relief, then items number one through four are not

cognizable under Rule 37, for reasons set forth in our response to the amended petition for relief.

And I hope the Court has read that but if it hasn't...

THE COURT: ... I've read it.

MR. DAVIS: It's set forth in there as to our reasoning and theory as to why those items are not cognizable basic relief under Rule 37.

The other item, which is item number five in their amended petition, which generally states ineffective assistance of counsel and then lists...[end
BMHR 33, begin BMHR 34]

THE COURT: ... sixteen points.

MR. DAVIS: A number of points. It's the State's position that those points are basically conclusory in nature and don't set forth specific facts sufficient to make those particular claims sufficient under a Rule 37 and request for relief under those particular provisions.

But in any event, it's the State's position that the items one through four and the items six that they claim relief under are not appropriate under Rule 37, and that if there is to be a hearing regarding the allegations or claims for relief under Rule 37, then it be limited to the specific claims under section five of the amended petition.

THE COURT: All right. Who's going to respond?

MR. PHILIPSBORN: Your Honor, I am. Good morning. For the record, John Philipsborn and Blake Hendrix on the behalf of Mr. Baldwin, and as ordered by the Court, Mr. Baldwin is present.

Your Honor, a couple of things just to begin with, and I apologize because I don't know the Court's procedure in this regard, but I would ask, unless there is a basis that the Court feels require, that Mr. Baldwin be unshackled.

THE COURT: That will be fine. *[end BMHR 34, begin BMHR 35]*

MR. PHILIPSBORN: Thank you, Your Honor. The other thing before I respond specifically to the State, Your Honor, uh, there is an issue pending that I realize may be mooted if the Court accepts the State's argument, but just because I know t hat it was a matter that we were going to take up today.

The Court had ordered an attorney's affidavit that had been lodged to the court under seal, to be released to the parties under seal. And I think for a while the affidavit had been misplaced or could not be located.

My understanding is that the affidavit was located and I was wondering if the Court would permit that affidavit, at some point during the

course of these proceedings, to be released pursuant to a protective order, so that the parties could review it?

THE COURT: Yes, I think I can do that.

MR. PHILIPSBORN: Thank you, Your Honor. So Your Honor, as to the issues presented, we, uh, I think both parties have briefed the issue.

Our position and response to the State's position was that in a series of cases, including most recently Rowbottom, R-O-W-B-O-T-T-O-M, the State Supreme Court of Arkansas has actually allowed the issues that we alleged in our amended Rule 37 petition to be *[BMHR at 35-36]* addressed in the Rule 37 setting, including fair jury claims and other claims that we've made.

And so we would submit that particular, uh, we would submit our opposition and reply to the State as the basis for asking this court to allow all six grounds to be part of, uh, part of this hearing.

THE COURT: Were the jury issues not submitted in the direct appeal?

MR. PHILIPSBORN: Your Honor, there wasn't a – the Court is correct, that there were jury issues submitted on direct appeal, but at the time the parties did not have affidavits from the jurors; the jury room notes; the

poster-size notes had not been released to the parties as of that time, so the record has been expanded in that sense.

And so the particular claim that's being made here addresses different facts than were addressed on the appeal.

And it's on that basis, Your Honor, that we are asking for, uh, the new facts to be part of the Rule 37 proceedings.

THE COURT: Well, of course, the Court could read your pleadings and make a decision based on the pleadings, and in fact, that's customarily done in many Rule 37 petitions. *[end BMHR 36, begin BMHR 37]*

However, the nature of this case and the exposure of this case is what causes the Court to be inclined to give you a hearing on the issues that are raised.

However, I'm of the opinion that the only issue that's really covered by Rule 37 is the ineffective assistance of counsel, and that's what I'm going to hold it to.

So the issues that we are going to hear will be issues involving the ineffective assistance, and the others, I'm holding and it's my ruling that they are not cognizable by Rule 37, which your pleadings are filed and those will go to the Court.

MR. PHILIPSBORN: Your Honor, I understand the Court's position and so there are just a couple of questions that I would respectfully ask of the Court, uh, just in terms of the Court's schedule.

I know the Court had written us a letter indicating that we would have three days this week, two days next week for this hearing, and the Misskelley attorneys are here.

I understand the schedule may have changed a little bit and I wanted to ask about that.

THE COURT: Well, the problem I have is I have a capital murder case scheduled for trial in Blytheville and I had to give them a pre-trial day, so that's why [*end BMHR 37, begin BMHR 38*] I removed Friday. But you have today, tomorrow, and certainly two days next week.

And I was under the impression that we were going to try to have Mr. Misskelley here tomorrow, is that correct? And I don't have any problem in having joint submissions made, if that's what you all want to do.

MR. PHILIPSBORN: I think that's what we were hoping, Your Honor.

THE COURT: I'm sure the State wouldn't object to that, necessarily, would you? I mean, it seems to me an economy of time would suggest that.

MR. DAVIS: Your Honor, as far as saving time, the State has no objection to that. But I think the question is as far as since the Court has determined that the scope of the Rule 37 hearing will be defined as ineffective assistance of counsel and since we are dealing with counsel and representing clients in two separate trials, I'm not sure...

THE COURT: ... well, we can proceed with the Baldwin issues today and then what's common for the Misskelley defense could start tomorrow.

MR. DAVIS: Okay. So I'll need to get an order to have him brought back.

THE COURT: Jeff, did you have something you wanted to say? [*end BMHR 38, begin BMHR 39*]

MR. ROSENZWEIG: Yes, sir. You made some statements and I think we need - "we" the Misskelley defense, need clarification.

THE COURT: Okay.

MR. ROSENZWEIG: First, I've been told that the current plans are to bring Mr. Misskelley to this part of the world on Sunday.

THE COURT: Where did you get that information?

MR. WALDEN: That's what the two sheriff's offices indicated yesterday, the Craighead County and Clay County.

We checked with Clay County and Clay County said they had already made arrangements to have Misskelley brought up Sunday.

MR. DAVIS: And if I could clarify, and I emailed Michael Burt yesterday and everybody else, uh, when at 11:45 yesterday I received the email that referred to the Baldwin/Misskelley Rule 37 hearings, it kind of took me by surprise because I thought that we were having the Baldwin hearing today, tomorrow and Friday.

THE COURT: Well, that's what we originally talked about.

MR. DAVIS: And that some time next week we would start the Misskelley, so at that point we started *[end BMHR 39, begin BMHR 40]* scrambling to try to figure out if we had to have Mr. Misskelley here today or not.

And what I thought was, was that the more likelihood would be that Mr. Misskelley would have to be here Monday, and that's what the plans are, that he is to be brought back Sunday and be available for Monday's hearing.

If he needs to be brought back earlier, well, I know Sheriff Cole in Clay County is the one responsible for transporting him back. He's indicated that he would go Sunday and bring him back.

We'll just have to, if we need to, just get an order and see what can be done in the interim, but I'm the one responsible for kind of assuming that we didn't need him today.

THE COURT: Well, I think I indicated that we would sort that out today. But I didn't see any problem particularly in getting him here by tomorrow.

MR. DAVIS: We may be able to.

MR. ROSENZWEIG: And Your Honor, if I could address one other thing?

THE COURT: Sure.

MR. ROSENZWEIG: This has to do with scheduling witnesses and that type of thing, as well. You made reference to the fact that, of course, you denied the *[end BMHR 40, begin BMHR 41]* DNA habeas petition, uh, and we have some issues in our case that, uh, the DNA results are relevant, as well as ineffective counsel and we're not seeking for the basis, of course, we have prejudice.

Did I understand the Court as saying we will not be able to participate; the Court was saying we will not be allowed to present the DNA evidence in our case either, or am I misunderstanding something?

THE COURT: Well, I'm not sure exactly - you're telling me that it will have some relevancy on the issue of ineffective assistance?

MR. ROSENZWEIG: Yes, sir.

THE COURT: Well, in that context I probably will allow a limited amount of it. But I'm primarily concerned with the issue of ineffective assistance and that's what I'm going to allow you to introduce proof on.

So if you think it's relevant, I'll just have to hear what you've got to say at that time. I'm not sure I know exactly what you're talking about. I assume you're saying that the lawyers should have recognized the potentiality of the DNA?

MR. ROSENZWEIG: Yes, sir.

THE COURT: Okay.

MR. ROSENZWEIG: I had understood, or the implica- [end *BMHR* 41, end *BMHR* 42] tion of what I heard was in regard to the DNA stuff as res judicata, essentially at this point.

THE COURT: Well, yeah, that point that I have already entered an opinion on under the 1780 motion, yes. I think that's been covered.

MR. ROSENZWEIG: Well, Your Honor, and for the record, the argument that we would be making is that there is a different and lesser standard of proof on Rule 37 prejudice than there is on a DNA habeas.

THE COURT: Well, I'll listen to what you have got to say and then we'll see where we go from there.

And by the way, for the record, I have read volumes of pleadings, boxes full of it, so I mean, I can't promise you that I will remember everything that has been written in this case, but I will try real hard to.

I mean, that's just one box and I've got four or five in the back that I actually have gone through.

MR. DAVIS: And I guess one thing that would be, uh, the State may request a clarification of Your Honor, or at least request the Court look into it, if the testimony regarding DNA, and I don't know exactly what testimony they may proffer, I have some idea based on the conversation with Mr. Holt this morning, but at one point I think a lot of this was the same [*end BMHR 42, begin BMHR 43*] evidence that they said required, they were entitled to have it tested because there was new scientific testing available that did not exist at the time of trial, and if the reason for introducing it at the Rule 37 is to say that the attorney was ineffective for failing to having secured this type

of testing, I mean, I think a large part of what was done as far as the Act 1780 DNA testing would have to be precluded, because it was done by agreement because it was ordered that if there was new scientific testing that was available that wasn't available at the time of trial; therefore, it would seem to preclude any evidence of that coming in as a claim of ineffective assistance of counsel, since the counsel couldn't have had it available to him in the first place.

THE COURT: Well, I don't want to hear proof, nor do I want to have to rule again on the DNA issues that were already decided in the 1780 hearing or motion, but I will allow, if it dovetails into ineffective assistance, as you pointed out, much of the allegation was that it was newly discovered scientific evidence that was not available.

If that's the case, then it can't very well mesh with ineffective assistance of counsel. But if some way the DNA is involved in decisions or actions of the *[end BMHR 43, begin BMHR 44]* attorneys, I'll hear it.

But if it is strictly the matters that I've already ruled on, I don't need to hear that again. The Court's already got that information and any appeal, it will be available there.

MR. PHILIPSBORN: Your Honor, one thing I wanted to address was the scheduling issue in view of the Court's schedule on Friday.

There's one expert witness who is a serologist, and again, whose testimony in our view would pertain narrowly to the issue of ineffective assistance, and obviously, by the time we get to the end of tomorrow, the Court will know better from having heard the testimony where we are, uh, we have, tentatively with the Misskelley defense, scheduled that person to come in on Friday.

It's my understanding she can come in on Monday but I didn't want to take the Court by surprise at the end of our hearing; I just wanted to make clear to the Court that we will be available to present her, if the Court permits it, on Monday.

THE COURT: That will be fine.

MR. PHILIPSBORN: The other thing I wanted to let the Court know is that Mr. Hendrix and I have a few questions of one of the witnesses that is a *[end BMHR 44, begin BMHR 45]* principal witness for the Misskelley team and that's now Judge Stidham, and literally a very small amount of questioning, and my understanding, and I've been in touch with him, but

I've also been in touch with Mr. Burt, is that Judge Stidham is expected to be here on Monday.

So again, not to take the Court by surprise on that issue, but that is what I've been informed.

THE COURT: If it's all right with the State, that's fine.

MR. PHILIPSBORN: That's fine.

THE COURT: I don't want it by deposition. I want him personally here, whatever his testimony is.

MR. PHILIPSBORN: And we understood that, Your Honor. And in view of that, there's only one thing I wanted to do and again, we are doing it to preserve our record, uh, and to try to be consistent on it, uh, I think both the Misskelley and Baldwin defenses would respectfully ask the Court to recuse itself from the proceedings in this matter, and I would like to renew that particular, uh, motion.

THE COURT: Well, that's been raised before and I've denied it before, and I intend to hear it through to the end, if I live long enough.

MR. PHILIPSBORN: Well, we'll try to move it [*end BMHR 45, begin BMHR 46*] along, Your Honor, and our first witness is Mr. Ford, who is present.

THE COURT: All right, all who know yourselves to be witnesses in this matter, please stand and raise your right hand.

Gentlemen, I don't know who the witnesses are; I'm sure the attorneys are, but is he the only witness present in the courtroom?

MR. PHILIPSBORN: Your Honor, most of our witnesses are not. There is a potential witness who is present, uh, Ms. Cureton, Joyce Cureton, and I was actually going to make a motion for the witnesses to be excluded.

I want to supply her as a potential witness.

MR. DAVIS: Judge, before we get started with testimony, Mr. Walden advises me that Sheriff Cole in Clay County can in fact pick up Mr. Misskelley and have him here tomorrow.

THE COURT: Well, I'd like to have him here tomorrow morning.

MR. DAVIS: We need to get an order to Clay County to that effect.

THE COURT: Yes. Mike, are you going to fix that?

MR. WALDEN: Yes, sir. *[end BMHR 46, begin BMHR 47]*

THE COURT: Okay.

(Witnesses sworn; Rule invoked.)

DIRECT EXAMINATION OF PAUL FORD BY JOHN PHILIPSBORN

[Rule 37 Vol. 2 - BMHR 47-203]

Robin Wadley and I were working with the Rees law firm and were appointed to the case. I had been practicing since September of 1987. (BMHR 48:11-19). My general recollection was that I was Lead Counsel in Baldwin's trial and Robin Wadley was my co-counsel. (BMHR 49).

As a result of case preparation and communications with Baldwin, I determined that "... the defense would be he didn't do it." (BMHR 51:17). Baldwin's assertions of innocence were "consistent with what I was viewing as the evidence." (BMHR 52:10-14). "Jason always maintained his absolute innocence in this case." (BMHR 52:1-2). I felt that I had investigated an alibi though I cannot recall specifically what I did to investigate. I believe I obtained some document that showed he was in school at that time, and I may have made contacts by phone, or maybe Wadley did. (BMHR 53-56). I met with Jason's mother several times. She may have provided me his school records.

At the time I undertook the defense of the case, I had defended one or two separate capital cases, and a third that ended up being negotiated. (BMHR 57-58). I can't recall whether I had attended any capital case training, or was aware of the

ABA Guidelines for the Appointment and Performance of Counsel in Death

Penalty Cases at the time I undertook his defense. (BMHR 58-59).

My investigation was undertaken by my speaking to persons that I could speak to or following up on leads that were brought to me by people through sources like Jason's mother or through the prosecuting attorney. (BMHR 59:9-12). I did not hire an investigator. (BMHR 59:24-25). The investigators working with co-defendant Echols was not working for me. (BMHR 60:9-11). At no time did these investigators work with us. (BMHR 60). I never asked for any specific information from the Lax investigators. (BMHR 64:24-25).

You are showing me some documents (Petitioner's Ex. 1) that were generated by investigator Lax. If they are in my file, then I would have had them at the time of trial, and if not, I would not have had them. (BMHR 65:23-66:13).

The Echols and Misskelley defense lawyers and I shared information only on a cordial basis. I was not comfortable with everything that other counsel were doing and I was not using the same defense plan. (BMHR 66:18-21).

I was not following what the Echols investigators and or what the lawyers for Misskelley and Echols were doing. Ours was a different case. Misskelley had to deal with a confession. Echols had a more significant exposure to the death penalty. I was concerned about getting Baldwin severed from Echols, and the

Judge and I went around about that. I didn't want to share documents with any of the lawyers because I was concerned about waivers of the privilege. (BMHR at 67-69). I was not concerned that other defense teams in the case had an investigator and I did not. (BMHR 68-71). The defense was that Mr. Baldwin did not do it. I had considered an alibi defense. (BMHR 70-71). The alibi as I recall would have to cover the times between 3:00 p.m. and 9:00 p.m., which was the time from the end of the school day and the time when the parents were concerned that their children were missing. (BMHR 73:1-6).

I tried to verify Baldwin's whereabouts by talking to Jason and his mother. I recall talking about an uncle whose yard Baldwin was said to have been mowing. (BMHR 73-74). I recall that at one point Baldwin was supposed to have been in the company of his younger brother. I can't remember at this point what I looked at or what I knew exactly. Now that I am looking at Exhibit 49 from the statutory habeas exhibits in case CR 09-60, I may have seen a statement taken by the State indicating that Matt Baldwin, Baldwin's brother, purported to have information about Baldwin's whereabouts. I don't recall if I looked at it back then. (BMHR 78-79). I felt that if I was unable to establish an alibi, presenting an incomplete one was more detrimental than presenting one at all. (BMHR 78). Now that you are showing me these records, I recall some discussion about Baldwin being home

with his brother, and I specifically recall discussions with Jason and Jason's mother about calling home during the evening when she was at work. (BMHR 79:7-10). I don't remember trying to get any phone records from her place of work. You have also asked me to look at a police interview with Gayle Grinnell of 6/4/93. I can't remember at this point whether I had seen that interview. I felt that the mother desperately had wanted to provide assistance by telling me where Baldwin had been, but I didn't feel that I had reliable information from her. (BMHR 80).

I agree that it might have been significant to the jury that during the course of Detective Bryan Ridge's interview of Gayle Grinnell that the Detective had indicated that if Baldwin could provide information about his whereabouts he could go free. (BMHR 83). It would have been something to ask the Detective if I was trying to present an alibi for Baldwin. I also agree that if I could have established through phone records that there was a call initiated in Memphis that reached the Baldwin home at about 7:30 a night, that would have corroborated the mother's information. (BMHR 81-84). I have a general recollection that Gayle Grinnell lived with a man named Dink Dent at the time of the event, and now that you show it to me as Ex. 3, I don't recall how I came to be in possession of a handwritten statement from Dent describing his recollection of events. I never went

to see Dent. (BMHR 86). However, I can identify some notes from my file that I had made about the case that mentioned Matt Baldwin and Dennis Dent as well. (BMHR 87-88).

I also recall that I had received information from Baldwin's uncle indicating that Baldwin had been mowing the lawn at his uncle's place on the afternoon that the children had disappeared. (BMHR 88). My notes indicate an address for the uncle of 1037 Park Drive in West Memphis. However I cannot recall ever going to the uncle's residence. (BMHR 88.) It also would not have surprised me if Gayle Grinnell had provided the police with a time-line that included, among other things, her son having gone to his uncle's house in West Memphis to mow the lawn. (BMHR 89).

I do not recall whether I received information that Baldwin had been having phone contact with some girls on the night of May 5 when the three young boys had disappeared. I have a hazy recollection of Jason and I discussing them. I can't recall if I had a police transcript of an interview of any of them, including Jennifer Bearden. (BMHR 90) I also recall Baldwin telling me that he had a girlfriend named Heather. If there is a Heather Cliett interview with the police that was in my file, I would hope that either my co-counsel or I had reviewed it, and that we discussed it. (BMHR 89-91).

Now that I am asked about it, it would have been significant if my client had caught a school bus at 7:30 a.m. near his home after supposedly having been involved in a homicide several miles away from his trailer park only hours before the bus ride, and that no one noticed anything unusual about him. (BMHR 93-94)

I don't recall right now whether I was aware of a police interview with Echols' girlfriend Domini Teer, who had given an explanation of where Echols and Baldwin had been on May 5, 1993, but I generally recall that she had talked about those things. (BMHR 94).

I also recall that there had been some conversation from Baldwin about his walking to a Walmart on the day of the killings after school and playing a video game. I don't recall a Don Namm, or information about his having said that Baldwin had been at Walmart, or Kenny Watkins telling the police that he had been told that Baldwin had been by his uncle's place that afternoon. If it was in police reports that were in my file, then I "should have reviewed it". (BMHR 94-96).

The State had been changing the range of the time of death. I felt it was better for me to try to poke holes in the State's case and in their estimate of time of death than to try to call alibi witnesses. (BMHR 96-97).

I believed my client at the time, and I still do. I found him to be believable. (BMHR 97).

As I was preparing for trial, one thing that happened was that the State produced a jailhouse statement attributed to Baldwin by Michael Carson, who had been in the detention unit with him. Also, I had been unsuccessful in getting a severance from Echols. I also had some understanding that Echols was going to present some kind of affirmative defense. And shortly before he did so, I was made aware that Echols was going to testify. (BMHR 98-99).

My strategy didn't change because of these things. My approach was: "My client didn't do it and the State must prove he did it, and my job is to raise reasonable doubt. And reasonable doubt pokes a hole in their balloon". (BMHR 99: 5-8). "My strategy began to be that's just another avenue that I need to try to poke a pin in". (BMHR 99).

The State was trying to show that Echols and Baldwin were friends and were connected with one another. When we were in trial I realized that Echols' alibi defense was "not very, very strong...". It was like a house of cards. (BMHR 98-101). It did not do Baldwin any good that Echols' defense was disintegrating. "I don't think [Echols'] defense did him any favors". (BMHR 101). It also didn't do my client any favors, which is why I had asked for severance.

Looking back at it, there were a number of differences between Baldwin and Echols. Baldwin went to school. There were people like teachers and other young people from Baldwin's school who would have known him and about him. (BMHR 74-75). "I thought he was a mild mannered young man that did not seem to me to fit the suit of someone who would commit the horrific crime." (BMHR 102-103).

I don't recall whether it had even crossed my mind to assess whether there was evidence of Baldwin behaving in some kind of an unusual manner the day after the killing, or whether I thought of whether there might be people who could have testified that he acted and looked normal after the killings were reported. I can't tell you whether it crossed my mind that people from Baldwin's school could have provided a baseline about my client's behavior and physical appearance within hours of when the State said he had committed capital murders. (BMHR 103-104).

I had to deal with evidence of a knife that had been recovered that was attempted by the State to be linked to the homicides. (BMHR 104-105). My thought was to discredit this theory, and that this would be a way to make their case fall apart. (BMHR 106). I had a number of discussions with the State's pathologist, Dr. Peretti. I tried to address matters like time of death and

mechanism of injury with him. (BMHR 105-107). I recall that at one point in one of our discussions Peretti told me "... I believe it was the cheek of one of the young boys may have been bitten by a turtle, or some of those were turtle bites." (BMHR 108:10-13). He may have said 'could have been'. (BMHR 109). But I made the decision that I was not interested in post mortem injuries. "I was more concerned about who the State, did the State's evidence prove that Jason Baldwin did anything." (BMHR 110). I was trying to show that the State's case didn't add up. I felt that the turtle bites didn't factor in to that.

I recall that Misskelley had given a statement that said something about sexual assault, and my recollection was that the autopsy findings were inconsistent with that. (BMHR 113). I can't recall doing any specific research about what kind of evidence, like DNA, might still be present, but I thought it would have washed away. I may have read about that, but I don't know about DNA and what might wash it away. (BMHR 115).

I remember that the State had a DNA expert. I can't recall exactly what he was called to testify about. I also can't recall whether the State had tried to establish that there was some kind of evidence of sexual activity on the victims' pants. I didn't do any research on how you might detect semen or other fluids on

textiles. I also didn't do any research on whether you could identify sperm fragments using the methods that had been offered by the State. (BMHR 117).

I can't recall if I ever obtained all the lab bench notes, lab notebooks, and lab test results that had been produced. If they are in my file, I had them, if not, I didn't get them. (BMHR 117-118). I do have a memory of talking to Kermit Channel at the Crime Lab. He had some notebooks with him. (BMHR 120-121). I don't have a clear recollection of doing that with Ms. Sakevicius. I don't recall ever seeing any copies of hair slides, or particularly a copy of a slide of a hair taken from one of the ligatures used to bind the victims. (BMHR 121-122). I would have been interested in getting information about that hair "[i]f the hair spoke, so to speak, I might have thought it was important." (BMHR 122:14-15). It might have figured into the cards I might have played.

I never had a criminalist in this case other than Charles Lynch who assisted us with fiber evidence. I didn't have a criminalist go to the Crime Lab with me. (BMHR 123-124). I didn't consult any pathologist other than Dr. Peretti. (BMHR 126). My billing records will give you some idea of what I did in this case, but I am not the best of record keepers. Petitioner's Ex 6 are those records. (BMHR at 124-126).

I remember being more involved in dealing with Dr. Peretti than in preparing to deal with the jailhouse informant Carson. But I did get a call from a counselor named Danny Williams who told me that what Carson told the authorities was “less than accurate”. BMHR 128. “I thought he would be essential in my defense.” (BMHR 128:24). In the end, I didn’t call him because he wanted to cover himself, and would not agree to testify consistently with what he told me. Williams had been working for some sort of screener for programs for juveniles. (BMHR at 129-130). I think that Williams may have also met with prosecutor Fogelman.

I felt that I consulted my client about the decisions we were making, including the decision not to call Williams. (BMHR 1132-133).

Baldwin “was willing to testify” in his defense. (BMHR 133). He did not insist on testifying, although he was only 16 years old at the time.

My co-counsel Robin Wadley had been in the area longer than I had. He knew more people than I did. I think he talked to Joyce Cureton who supervised the juvenile detention unit. I don’t know if he talked to anyone else. (BMHR 134-35). I can’t recall if we made any efforts to interview other juveniles at the detention unit about the jailhouse informant Carson. It is true that I was going to

be arguing the case, and I would have needed to be on top of the evidence including Carson's information. (BMHR 136-137).

I also was aware from Baldwin and his mother, and maybe from Echols' defense lawyers, that Baldwin and Echols were friends. I was made aware that the two of them were not really friends with Misskelley. (BMHR 138). I can't remember ever interviewing any of the youngsters who lived near Baldwin to see what they knew about his connection with Echols. I also can't remember interviewing anyone about whether they had seen Baldwin getting rid of evidence like clothing, shoes or other evidence. I didn't interview anyone about what they may have known about comings and goings from the Baldwin trailer near the times that I understood were pertinent to the killings. (BMHR138-139).

I don't know of any evidence that Baldwin had ever been to Robin Hood Woods: "I don't believe there is any evidence that he has ever been there". (BMHR 139).

I also recall that certain statements attributed to Echols had allegedly been made at a ball game that Echols and Baldwin were said to have attended. I had asked for severance. I am not sure what was done with the witnesses to the statements, as my co-counsel was handling them. But because I was arguing the case, it was my responsibility to figure out what spin to put on them. (BMHR 142-

143). We had consulted with a child psychologist on jury issues, and we had his suggestions about how to deal with the young ladies' information about what the statements made at the ball game. (BMHR 143-144).

I remember being aware that Echols was "essentially acting as an, an anchor to weigh down Mr. Baldwin..." (BMHR 144). We talked about that a lot. You better believe that was one of our concerns. The worse it got for Echols, the more concerned our defense had to be.

We also knew, after jury selection that we had to be concerned that our jurors had gotten information about the Misskelley case, which was tried before ours.

I am not passing the buck in telling you that I relied on a jury consultant in assessing the elephant in the room, which was the Misskelley confession and the Misskelley conviction, and also the Echols defense, which I was concerned about. "But it was what it was and I had to be concerned with it, just as you have suggested, and I was". (BMHR 146).

I tried to determine how to deal with those factors, and my concerns about how my alibi witnesses would hold up under cross examination. I also recall that "...Damien's testimony hurt him significantly...and therefore, it hurt my case too." (BMHR 147). I was aware that the negative impression created by Echols would

effect Baldwin. I thought that even though Echols had called 7 or 8 witnesses, and testified, and dealt with fiber evidence, I could rely on reasonable doubt in my defense. (BMHR 147-48). "...I believe there was a lot of doubt in that case, and still do." (BMHR 148:2-3).

I would agree that we hoped that the jury would concentrate on Echols as a major participant and view Baldwin as a minor participant. In that sense we acted in some regard on a 'stealth defense'. (BMHR 149).

I thought that the Echols defense alienated the jury. I had real "reservations about some of their strategies..." (BMHR 149). I thought it was very dangerous of them to point the finger at one of the victims' fathers. (BMHR 149). But I felt "confidence" in my ability and felt that if I did a good job, "he would have a good chance of winning." (BMHR 150). But I did think that Echols's defense "hurt them." (BMHR 151-152).

The information that Baldwin's Uncle Hubert could have supplied only covered Baldwin to about 4:30 PM on the day the kids disappeared. The statement from Dink Dent would have covered him to about 7:30 or 8 PM. (BMHR 152). I agree that this evidence would have tended to indicate that Baldwin did not have the opportunity to plan a murder that night. (BMHR 152). "[I]f you could provide an alibi from 3 PM to 9PM...it would cover a lot of ills." (BMHR 153:16-18).

Establishing such an alibi would have involved members of Baldwin's household, and the girls from the evening phone calls. (BMHR 153-154).

A defense based only on reasonable doubt arguments places a lot of responsibility on the lawyer's shoulders, since he has to argue the case and needs to have established his credibility during the trial. I agree that you also assume the risk, when you present no evidence in the defense, that jurors may conclude that there is no evidence that the defendant didn't do the crime—since he presented no evidence in his behalf. (BMHR 155).

Looking at Exhibit 7, I recognize it as a memo from my file. It is dated January 24, it memorializes a contact I had with counselor Danny Williams on the 21st. I also recognize a police interview of Ken Watkins by Detective Ridge that mentions a Walmart. Exhibit 8; (BMHR 161). These are from my file. I don't remember them. I also don't remember Exhibit 9, which was a police interview with Don Namm who purported to have contact with Baldwin on May 5, 1993. I don't remember interviewing either of them. I don't know if my co-counsel did. (BMHR 161-162). Exhibit 10 is a police report of an interview with Heather Cliett. I kept the witness files in alphabetical order. Heather Cliett had said that she talked to Echols on the evening the children disappeared, which is evidence that would have exculpated Echols and benefitted Baldwin. (BMHR 164).

I don't recall ever trying to see if we could provide an alibi for Echols in an effort to benefit Baldwin. I didn't think Echols's alibi worked well. But I never considered whether I might try to establish his whereabouts to benefit my client. I never looked at the reports in the case that way. (BMHR 165-166).

I did think that I needed to assess whether Echols could provide a defense because we made "a conscious decision...to pull our antenna in." (BMHR167:15). That was my strategy. It may not have been effective. I urged the co-defendant's counsel not to put Echols on the stand, and I was concerned about being tied to Echols and his pulling us down. (BMHR 167-168).

Whether it was reasonable for me not to have an investigator is "for someone else to decide." (BMHR 169). There were many witnesses in the case. There was a lot of work that I put in to the case. "So could I, in hindsight, have benefitted from an investigator. Yes." (BMHR 170:16-17). I did the best I could at the time.

I agree that we did not present any penalty evidence in Jason's behalf. I agree that we assumed a risk in not presenting any evidence. (BMHR 172).

My approach to this case was that I could argue the case well enough to have the jury give my client a light sentence. And it's fair to say that a lot of the approach to the defense of this case was built around my confidence in my ability

to argue persuasively to the jury. (BMHR 172). I felt that I could argue that in “the absence of any evidence that he did it and the State’s absolutely void of proof”, that was my evaluation. (BMHR 173).

I agree that I could not use impeaching information about Anthony Hollingsworth if I never received it. (BMHR at 175).

[The State reserved an agreement on whether Mr. Ford’s entire file was available BMHR 148. Baldwin’s attorney J. Blake Hendrix represented that the Attorney General’s Office made a copy of the entire file, and that the file was available in the trunk of his car, as well. BMHR 176]

CROSS EXAMINATION OF PAUL FORD BY BRENT DAVIS

I recall observing the Misskelley trial. The Misskelley alibi about wrestling, or something like that, had unraveled. (BMHR 178-178).

It seemed to me that Baldwin and I had an agreement that we were doing what we thought was best when he did not testify. He was a young man, and I don’t want to put words in his mouth. I felt I discussed the issue of Baldwin’s testimony with him. I arrived at the decision not to have him testify after we talked about it, and considered it. “...[A]nd I hope that [Baldwin] doesn’t disagree with that.” (BMHR 181:5-6). I also feel the same thing about our decision not to put on alibi witnesses, and I hope he doesn’t disagree with that, either.

REDIRECT EXAMINATION OF PAUL FORD BY JOHN PHILIPSBORN

I agree that I had a letter in my file that was in Baldwin's hand that I looked at and it made reference to persons who could provide an alibi for him. (BMHR 188-189). I also agree that my file contained information (Exhibit 12) indicating that my client's mother had attempted to funnel witness names and numbers to me. (BMHR 191). I also had a set of notes from Uncle Hubert that had likely been passed to me that showed what information he had about Baldwin's whereabouts. (BMHR 192-193).

I had some notes in my handwriting with the names Kenneth Watkins, Garrett Schwarting and Don Namm. It might have been that these notes were made when I met with Baldwin's mother Gayle. (BMHR 193-194)

I also have a note in my handwriting that made reference to a head hair in the ligatures on the victim Byers, indicating that someone at the Crime Lab told me that there was a head hair in the Byers ligature. (BMHR 195-196). I don't recall following up on that. (BMHR 195).

I don't recall whether I ever memorialized any of my discussions with Baldwin, even though there are a number of notes from me in my file.

One of the bits of advice that I had received from my trial psychologist was that when Echols testified, that would be devastating to the defense. (BMHR 198).

We were trying to keep our ship from going down after their ship had been hit. (BMHR 198). We really didn't pay attention to our psychologist's views about Echols.

I thought that Baldwin was truthful. (BMHR 198:25). And I felt that the decision for him not to testify was made on a difficult day. I recall that an HBO camera crew had been present at the time of the interaction between Baldwin and me. I agree that if it was shown on the HBO film that I had told Baldwin that the State had not introduced enough evidence to convict him, then that's what I told him.

RE-CROSS EXAMINATION OF PAUL FORD BY KENT HOLT

I took my files to Mr. Hendrix's office in Little Rock. I couldn't tell you if anything was missing from my files. (BMHR 202).

[This concluded the testimony taken on September 24, 2008]

The proceedings of September 25, 2008 begin at BMHR 204. The record reflects that after the above testimony was presented, Baldwin's counsel stated on the record that the files and records of trial counsel were acquired and maintained at the offices of J. Blake Hendrix, counsel for Baldwin, in the condition that they

were delivered in. The Court stated that it accepted counsel's statement, and would allow the inventory of trial counsels' files to be made part of the record.

BMHR 207.

DIRECT EXAMINATION OF RON LAX BY JOHN PHILIPSBORN

[Vol. 2 - BMHR 208-321]

I am a private investigator who owns a business called Inquisitor, Inc. (BMHR 208-209). In 1993, our firm had offices in Knoxville, Nashville, and Memphis. We worked on both civil and criminal cases. By 1993, we had been involved in twenty to thirty capital cases. (BMHR 210). We had begun our work in capital cases with the Capital Resource Center in Nashville. I received training in working on capital cases through seminars and training programs put on by the National Association of Criminal Defense Lawyers, the Tennessee Association of Defense Lawyers, and through CACJ, a defender organization in California. I was aware of the professional standards for capital defense put out by the ABA around 1989. Tennessee also had standards for capital defense. (BMHR 211).

I had volunteered my firm's services after reading about the case. I had contacted Judge Rainey in West Memphis. I eventually got a call from Val Price. (BMHR 212). I then met with Val Price and Scott Davidson. At first, those were the only lawyers we were working with. I first met the other lawyers in the case

when there was some talk about an HBO television special on the case—Val, Scott, Dan Stidham and I met with the HBO producers. Stidham and Paul Ford had already agreed to do the movie special. I also remember being approached by Dan Stidham about a false confession expert, and then I had more meetings and conversations with him. I had one meeting with Paul Ford in his office. (BMHR 213).

Our job was to investigate the Echols case. We received the discovery in installments, organized and summarized it. This was one of the biggest cases the Echols lawyers had ever handled. They had evidently not worked a lot with investigators before. They had no investigative plan. The investigator would usually determine the direction of the investigation, and they would make occasional suggestions. (BMHR 215). There was no actual theory of defense. We made recommendations as to what might be done. (BMHR 216).

There was an agreement that we could share information with the Misskelley defense. There was no agreement to do any work for the Baldwin lawyers. We were never asked to locate or interview a witness by the Baldwin lawyers. They never asked us to investigate any part of their defense. (BMHR 217). The only indication we had about what their defense might be came from hearings in which it was said that Baldwin's defense would be antagonistic to Echols'. (BMHR 217-

218). We never gave any documents to Baldwin's counsel, with the exception of a background check on one of the State's experts, Dr. Griffis. They got that through one of the Echols lawyers. (BMHR 218-219).

Defense Exhibit 1 is a document that we created that had in it the names of all of the individuals whose names had either surfaced in the discovery or during our investigation.

In 1993, we would have had the facilities to search for witnesses, like Kenny Watkins or Don Namm. We had data bases we could search. (BMHR 220-221).

Exhibit 3 is a time line of the case. When we work on a case, we develop a time line of the day by day information about the case. We also develop a mitigation time line that shows a client's background and social history. It is a document that is updated often. (BMHR 221-222). The time line we created for this case had no information from the Baldwin defense. We never interviewed Baldwin, and his lawyers shared no documents with us. (BMHR 222). I was given access to Misskelley, and had unlimited access to Echols. (BMHR 222-223).

When we investigate and interview a potential witness, we write up a memorandum of interview. When we do a mitigation investigation we document events in that individual's life. We interview neighbors, friends, teachers, family

members. We get background records like school, medical, mental health records. We put together a social history. (BMHR 223-224).

We were never asked to get the distance of the various alternative routes from Baldwin's house to Robin Hood Woods, or to figure out what the routes of travel were. I was never asked to get any phone records in connection with the case. (BMHR 225). I did talk to Baldwin's mother Gail Grinnell. (BMHR 227-228). I interviewed her once, and she called me several times. She knew I was working for Echols.

I did do some investigation about Michael Carson, but that was after the trial. (BMHR 229-230).

I never acquired any Arkansas Crime Lab records. (BMHR 230-231). I was aware of the 'phone girls' and interviewed them. (BMHR 231).

I was aware that Misskelley had told the police that he had and Baldwin had talked by phone on the morning of the killings, but I was never asked to locate any phone records dealing with that issue. (BMHR 231-232).

Part of our investigation for Echols was to try to document his whereabouts. We understood that he was with Baldwin part of the day the children disappeared. We were able to get a time line of where Baldwin was. We had interviewed his brother, and I'm pretty sure we spoke with his uncle. Baldwin had cut his uncle's

lawn at some point that afternoon. He and Echols had also been on the phone with the 'phone girls' that evening. (BMHR 233-234). We were able to construct a time line for Baldwin on May 5 into the early morning of May 6, 1993. He had played games at Wal-mart; cut his uncle's lawn; been at home with his brother when his mother called. (BMHR 234). There had been some teenagers who could account for his whereabouts, as well as his mother and uncle.

At one point we had tried to get interviews of the 'softball girls' who had heard Echols make statements at a softball game when he was around Baldwin after the killings in this case. They would not cooperate with us. (BMHR 209).

It was evident that though Baldwin and Echols were close, Misskelley was not in the same circle. (BMHR 237).

On further direct examination by counsel for Misskelley:

Echols was my client. I didn't talk to Misskelley until after his trial. I didn't talk to Baldwin at all. (BMHR 239).

My confidential relationship was with Echols. There was also an information sharing process involving the Echols and Misskelley defenses. (BMHR 240). This was unusual. Also, the defense teams never sat down and worked out any sort of information sharing arrangement. (BMHR 241). We began working for Echols in June 1993. We starting working with Attorney Stidham shortly before the

Misskelley trial. (BMHR 242). I first started billing on that case on December 28, 1993. (BMHR 243-244).

I spent 1,513.4 hours working on the Echols case, which is not unusual in a capital case. (BMHR 246). There were still “numerous witnesses which we had identified but never had the opportunity to talk to....” (BMHR 247).

We chose to work with the Echols defense because they were “the only one[s] who called us back” after we offered to work on the cases. (BMHR 250). We ended up doing work for both Echols and Misskelley, but the lawyer for Echols was our client. (BMHR 251). The lawyer for Misskelley asked us to interview the manager at the Bojangles Restaurant, and to locate and interview several other witnesses. (BMHR 253). Some of these people were possible alibi witnesses, though they did not provide an alibi for the right date. (BMHR 257). We had explained that to Mr. Stidham. (BMHR 258).

We had also worked on investigating Vickie Hutcheson, a woman who pertained to both the Echols and Misskelley cases. (BMHR 258-259). She had been under investigation in another matter, and reported that her son’s three friends were missing. The police had used her to try to get wired statements from Echols. (BMHR 259).

We had also been asked to look into an altercation at the Misskelley trailer park that evening which could have been an alibi. (BMHR 263).

We had also written to a pathologist, Dr. Sperry, to try to get advice on time of death information. (BMHR 263-264).

CROSS EXAMINATION OF RON LAX BY BRENT DAVIS

I never thought that we would be working for all three defendants. (BMHR 268-269). We figured that we would be working for one.

There were some things that we should have done that we didn't do—for example, getting phone records. (BMHR 273). We also failed to talk to people from the ballpark. (BMHR 275-276).

I am no longer employed by any of the defendants on this case. I was never retained by either Baldwin or Misskelley. I did some work for Echols over the years up until ten or eleven months ago. (BMHR 288-289).

I don't know if Baldwin's defense had any knowledge of my efforts to develop an alibi for Echols, or the contacts with the phone girls, because I had no related contacts with the Baldwin defense. (BMHR 288-290).

I remember that there were discussions with the Echols team about hiring a pathologist, but they said it was a funding issue, and they didn't do it. BMHR 295.

REDIRECT EXAMINATION OF RON LAX BY JOHN PHILIPSBORN

Baldwin's post conviction defense did not want me involved in the case because they felt I would be a witness in post conviction proceedings. (BMHR 296-297).

There was no trial level billing that we generated in Baldwin's case because we never did any work for his defense. (BMHR 297).

My memory is that the ABA *Guidelines* required the use of two lawyers and an investigator in the defense of a capital case as of 1989. (BMHR 298-299).

As for the Echols alibi, part of the problem was Echols's own testimony about the alibi. (BMHR 301).

Part of the reason that I am saying that it was an omission on my part to have failed to get the phone records in the case is that if I had gotten them, we could have established exactly when the phone calls were initiated and how long they lasted, including the calls with the phone girls. (BMHR 301-302). And we could have determined whether it was true that Misskelley had called Baldwin in connection with the case. (BMHR 302).

Based on the anecdotal information we had, Baldwin was at his home on the evening of May 5, 1993. (BMHR 305-306).

DIRECT EXAMINATION OF CHARLES JASON BALDWIN
BY JOHN PHILIPSBORN

[Vols. 2 and 3 - BMHR 294-380]

I am now 31 years old. (BMHR 322). My mother's name is Angela Gail Grinnell, and my father's name is Charles Larry Baldwin. I have two younger brothers, Larry Matthew Baldwin and Terry Ray Grinnell. My father was not living with the rest of the family members in 1993. (BMHR 322-323). My family lived in the Lake Shore Trailer Park in Marion, Arkansas, which is north of West Memphis. The trailer park had a few hundred trailers in it.

My mother was working in May, 1993. At the time, she had a live-in boyfriend named Dennis "Dink" Dent. He had been living there for a month or two. (BMHR 324).

My mother worked the late shift which started at 2:30 or 3 p.m., and she got home at 10:30 to 11:30.

Either Dink Dent or myself were responsible for watching the children. My recollection was that Dent left our home permanently on May 6, 1993 after I returned from school. (BMHR 325-326). I remember that day because it was when the boys' bodies were found. My Mom told me to stay at home with my brothers. Plus her and Dink had been in an argument the night before, and she

kicked him out, so she wanted to make sure that we knew what she wanted us to do.

My normal routine in the household was for me and my brothers to get ready for school, and to catch the school bus in the morning. (BMHR 326-327). At the time I was going to Marion Senior High School. The bus stopped three or four trailers down from my trailer, and the bus would usually get there between 7:30 and 8. Normally I would get up to get ready for school at 6 in the morning. (BMHR 327).

It took about 30 minutes for the bus to get us to school.

In May of 1993, I was in the 10th grade, but I was smaller than other persons in my age group. I weighed about 112 pounds. (BMHR 328). I was not a fighter. The only fight I remember being in around that time, I got licked. I was not into violence.

My school day ran from 8:15 to 3:15 in the afternoon. (BMHR 329).

I was not involved in the killing of the three boys in West Memphis on May 5, 1993. I have never been involved in the killing of anyone. I deny any involvement with Damien Echols and Jessie Misskelley in the killing of the three boys. (BMHR 329).

My experience with the court system and lawyers before 1993 was in the juvenile system when I was around eleven. I had been placed on probation when I was 11 years old. (BMHR 303). However, my first real attorney-client relationship was with Paul Ford and co-counsel Robin Wadley. (BMHR 331).

I recall seeing my lawyers once or twice a month prior to trial, though there would be times I did not see them at all. During trial I saw them almost every evening. (BMHR 331-332).

When I met with my lawyers, they did most of the talking—Paul did most of the talking for the lawyers. At age 16, I was fairly passive. (BMHR 332-333).

I do not recall the lawyers asking me much about my family background, or seeking information about the family that would allow them to go out and conduct interviews. (BMHR 333-334). They never talked to me about how my case was being put together, or how a capital case works. (BMHR 334).

I told my lawyers I was innocent. I told them I had people who knew where I was on the day of the murders, and the day after. (BMHR 334). Most of the questions they asked me “were about Damien”. It seemed to me that Paul Ford may have thought that Damien was guilty. They also talked about where I was on May 5 and 6. (BMHR 334). I thought I gave my lawyers the information they needed. I talked to my lawyers about friends and neighbors in part because I realized it was

being said that I was a Satanist and a devil worshiper. I felt that there were people who could talk about me like Mrs. Littleton, our neighbor, who knew me. (BMHR 335-336). I don't recall the lawyers spending time with me to discuss my background, school and community history, or what helpful information persons might have about me. (BMHR 335-336).

I recall telling my lawyers that on May 5 I got my brothers up for school. After school I recall returning to my house and seeing Damien and Domini sitting on the hood of an unusable car that was sitting in the front yard. Ken Watkins, another friend, came over. (BMHR 336-337). We were playing Super Nintendo.

I told the lawyers that Dink was there. Dink told me that I had a call from my uncle who wanted to know if I was going to go over and cut his grass. (BMHR 337-338). I told the lawyers that my uncle was Hubert Bartoush. My uncle lived in West Memphis close to the Boy's Club. (BMHR 337-338). I told the lawyers that Echols, Domini and I walked from Lakeshore to my uncle's house. I described our route of travel over the overpass, through the Walmart parking lot and past Kroger's straight to my uncle's house. By the time I cut the front lawn at my uncle's house, Echols and Domini had left. Echols had relayed word through Ken Watkins that he had to go call his mother. (BMHR 338).

After Watkins told me that, I finished mowing the lawn. My uncle paid me ten dollars. Ken Watkins and I had returned to a Walmart, and we ran into an Asian guy named Kim. Ken Watkins and I played a video game called "Street Fighter 2". Watkins stayed there, I returned to Lakeshore. I went home.

When I returned home, Dennis "Dink" Dent was still there, as were my brothers. I said I was in my home for a while before I went to Adam's house. (BMHR 340).

At the time my mother would call home from work. I knew that I had to be home or else I would get grounded. (BMHR 340-341).

I recall that day that I had tried to purchase a tape recording from Adam, who lived next door to me. I had gotten money from my uncle, and I used some of that to buy a music tape from Adam. I went back home after that. I recall eating supper, and talking on the phone to Holly and to Heather, my girlfriend at the time. I remember also talking by phone to Damien, and to Jennifer. I also recall talking to Dink Dent at home that evening. We watched TV before I went to bed. (BMHR 342).

My lawyers did not ask me about who my teachers were, or what classmates I was friendly with on May 5-6, 1993. I don't recall being asked whether any of

my school mates might have seen my physical condition on May 6, the day after the killing of the three boys. (BMHR 343).

I never practiced testifying with either one or both of my lawyers. (BMHR 343-344). The lawyers never brought in other counsel to help prepare me to testify. I think my lawyer is confusing my case with someone else's. (BMHR 344).

My recollection of the discussions that my lawyers and I had concerning my testimony was that Ford would ask me daily whether there had been anything presented in court that would make me think that the jury would find me guilty. (BMHR 344).

I remember that the lawyers and I talked about whether it might be a good idea to present witnesses who could establish my whereabouts at the important times, but I could not get my lawyers to tell me whether they had actually talked to anyone. It seemed to me that I had to tell them over and over again what happened "without any results". (BMHR 345).

I don't recall the lawyers telling me that they had talked to my uncle or been provided written statements from my uncle and from Dink Dent. (BMHR 345-346).

We didn't talk about the options we had about calling witnesses or not. I would tell them about people who knew where I was that day. (BMHR 346).

I recall that I was writing letters to my girlfriend Heather during that time concerning persons who might be able to help me establish that I was not guilty. (BMHR 346-347).

I also told my lawyers about my Mom's phone records, because of her calls. I told them to check on calls that night.

I was not really sure at the time of my trial who makes the decision whether the defendant takes the stand in his defense. (BMHR 347-348). Paul would just ask me if I had heard anything that made me think they would find me guilty. (BMHR 347-348).

I felt I had to testify because the jurors did not know "... who I was. No one was up there to tell them who I really am, you know, or what I was doing that day. They didn't hear anything from me or from my family or anybody that I was around that day." (BMHR 348:19-22). But Ford would kind of shrug me off, and would ask if I had heard anything that made me think they would find me guilty. (BMHR 349). I remember that there is a part of the HBO film where Ford is shown talking to me and that is the way he used to talk to me during the case.

I needed glasses to see clearly. During the trial I did not have glasses, and could not see the faces of witnesses from where I was sitting. When Michael Carson was called, I didn't recognize him at all. (BMHR 350).

I never made any statements while in the Detention Unit in Jonesboro about being guilty. I never told anyone that I had sucked blood out of people or had put someone's genitals in my mouth and bit them off. (BMHR 350-351). The first time Paul told me anything about Carson testifying was when Carson was walking to the witness stand. I couldn't see him, and I couldn't recognize him. My recollection was that after Carson testified, attorney Ford told me that nobody would ever believe Carson. (BMHR 352).

I had wanted to take the witness stand. I was shocked that I wasn't called to testify. I was shocked that no one from my family was called as a witness. (BMHR 352). My Mom was heartbroken because she had been excluded from the trial because she was a witness. Ford never called her. (BMHR 352).

I also did not recall any discussion during which Ford told me he felt that the Echols defense alibi, or that Echols' testimony, had not assisted either Echols or me in our defenses. (BMHR 353-354).

CROSS EXAMINATION OF CHARLES JASON BALDWIN
BY BRENT DAVIS

I was arrested in early June, 1993. I told a dark haired Detective what I told you there today.

My lawyers worked on my case actively and consulted with me during the course of trial. (BMHR 356). I remember that the lawyers had talked to me about jury instructions and lesser included offenses. (BMHR 356-357). I advised my lawyers I did not want any instructions on lesser included offenses. (BMHR 357).

I never demanded to be permitted to testify. (BMHR 359). But I asked to testify and would be told that this was not the time to do so. (BMHR 359).

I recall telling my lawyers during jury deliberations that I had wished that I had been called as a witness, and that my mother and others had been called as well. (BMHR 360). Ford never told me that my family and friends would unravel on the witness stand. (BMHR 361). He had said that witnesses could become confused and that it might possibly hurt the case, but Ford never told me that any specific witness would unravel. (BMHR 361-362).

Ford never discussed the pros and cons of putting on my alibi witnesses. (BMHR 362). I didn't realize the my lawyers weren't calling any witnesses for me until the jury was deliberating. (BMHR 363).

I acknowledge that I had been locked up with Michael Carson, and that at no time did I take the stand to challenge Carson's testimony. (BMHR 363-364).

The necklace that had been acquired by Damien Echols at the time of his arrest was one that I believe my girlfriend Heather had given me. (BMHR 364-365). I don't recall specifically how the necklace had come into Echols' possession. I did recall the subject of the necklace and possible blood evidence being discussed towards the end of the trial. (BMHR 365-366).

My mother had some emotional difficulties. (BMHR 369).

As to the phone calls that I had the night of May 5, 1993, we were calling to one another serially. One of us would call the other. Damien Echols was not at my house during the phone calls. There was no three-way communication. (BMHR 370-371).

I was never made aware of any concerns that Ford had about alibi witnesses. We never practiced my testimony. I told him everything I did that day. (BMHR 374). I knew I had a right to testify. (BMHR 374). I did not realize however that my failure to testify would have been called a waiver of my right to testify. (BMHR 374-375). "I thought I would" be called to testify. (BMHR 375). I recall asking Paul Ford when I was going to take the stand after Echols testified. (BMHR 376-377). I never agreed not to testify. (BMHR 378).

REDIRECT EXAMINATION OF CHARLES JASON BALDWIN
BY JOHN PHILIPSBORN

When I was asked, by Judge Burnett, if I had anything to say before he pronounced sentence, I said I was innocent. (BMHR 379). I acknowledge that I had told the trial court that I had been satisfied with my lawyers at trial. But also, I was not advised that I had a right to have my family testify and the right to testify myself during the punishment phase. (BMHR 379-380).

DIRECT EXAMINATION OF KERMIT CHANNELL BY MICHAEL BURT

[Vol. 3 - BMHR 383-470–September 29, 2008]

I am a 19 year veteran of the Arkansas State Crime Laboratory, now its Executive Director. I hold a bachelor's degree in biology, and completed graduate work in statistical genetics at the University of Central Florida. My background is in DNA and serology. I have had training in DNA from several private businesses involved in DNA work, and from the FBI Lab in Quantico. (BMHR 384-385).

I did some serology work on this case when it arose. Our Lab did not do the original DNA work in the case, because we did not do DNA testing in 1993. The original DNA work was done by Genetic Design. My original lab notes in the case have been admitted as Exhibit 21.

Items Q6 and Q10 were samples taken from two pairs of pants. I took cuttings from each of the pants. I then administered an acid phosphatase screening

test. The test is a presumptive test for the presence of semen. The theory is that the test reacts with acid phosphatase which is known to be present in semen in large quantities. (BMHR 389-390). The test is also known to react to the presence of both biological and non-biological material. That is part of the reason it is a presumptive and not a confirmatory test.

In testing one of the two samples from the pants labeled Q6, I obtained a weak reaction in one of the two samples. I then completed a microscopic examination. Microscopic examination of a sample for sperm is a way of confirming the presence of semen. In looking at the sample that gave the reaction, I saw no sperm. I then went on to do a P30 test. P30 is an antigen that is found in the prostate gland of males, which would react to the presence of ejaculate in a sample. At the same time, I performed control tests to enable me to assess whether I was getting conclusive testing. (BMHR 387-392).

I also ran a substrate control, which is a test on the jeans themselves to see whether something in the garment itself was causing any reaction that was observed. (BMHR 393).

I found no blood in either Q6 or Q10.

I also noted that the blue jeans Q6 were described as dirty, and soiled, which was significant because I would assume that there would be bacteria on the pants

because they had been found in water at the scene. (BMHR 395). The same was true with respect to the pants labeled as Q10 as well.

The reported result on the P30 test was positive, but in my lab notes I stated that it was a false positive. Because I had also obtained a positive reaction to the test in my substrate control, I determined that the test was invalid. I wrote in my notes that I had obtained “false positive results”. (BMHR 395). There were no valid results because when you get a positive result in your substrate control, that means that you cannot get valid results on the test sample you are running.

I had also taken a laser to try to see if I could identify any stains. That test is not specific to the identification of semen. I was getting positive readings from the pants, which invalidated the tests I had done. (BMHR 399).

I had also obtained a reaction on one of the chemical tests used on Q10, but I again looked for sperm microscopically, and did not find any sperm. I once again obtained a positive reaction on my substrate control. I also noted in that set of notes that I obtained a false positive. (BMHR 392-400).

I don't recall either Mr. Stidham or counsel for Mr. Baldwin sitting down with me and reviewing the lab notes and what these results meant. (BMHR 401: 7-10).

Eventually, I sent the cuttings from the jeans (Q6 and Q10), a sample of possible tissue from a knife (Q37), and tissue recovered from the ligature from James Moore (Q39) to Genetic Design which was a DNA lab. I transmitted the material covered by a letter that I had authored, in which I did not indicate that I had any positive result on the P30 tests.

After sending materials off, I spoke by phone with John Rader, a representative from Genetic Design. I made notes of the conversation, noting specifically that the DNA lab reported no amplification on three of the items. With respect to the samples from Q6 and Q10 I had written that there was some DNA found but it was possibly bacterial in nature. (BMHR 404-405).

I later testified in the Misskelley case concerning items Q6 and Q10. I did testify that on the P30 test, I got a positive reaction. I also testified that I had run a control that gave a similar reaction. I said that there may have been something in the mud that interfered with my test. I also said that I submitted the cuttings to Genetic Design so that they could use a more sensitive technique. I would agree that DNA testing is not a more sensitive technique for the detecting the presence of sperm. (BMHR 407-408).

At trial, when questioned about other techniques I used, I described the laser as a test to identify stains including sperm. However, I would now agree that a

laser is not a test. It is a tool to visualize a stain, it is not a test like acid phosphatase. (BMHR 409).

I agree that based on the P30 test I could not say whether there was semen present on the pants. I also agree that I did not identify semen using microscopy. I further confirm that in filling out my lab notes I indicated that there was “no semen found on any items.” (BMHR 411: 15). I am not sure whether that was clearly brought out before the jury in the trials.

Reviewing the testimony of the State’s DNA expert, Michael DeGuglielmo, and based on my training in DNA technologies, I disagree with his testimony that implied that the DNA readings from the cuttings suggested the presence of DNA for human or higher primates. I agree that you could not rely on the type of quantitation available in this case to make that statement. I also agree that the DeGuglielmo testimony indicating that small amounts of DNA detected had been present in male or sperm portions of the extraction was incorrect in the context of this case. (BMHR 423).

Deguglielmo also, in my view, incorrectly testified that the Arkansas Crime Laboratory had not ascertained microscopically whether there was sperm in the cuttings.

It was also incorrect for Mr. Deguglielmo to have stated on cross-examination that the extractions done in the case would have separated male and female biological components.

I agree that the testimony offered by Deguglielmo could have been followed up by questions pointing out that I had performed a sperm analysis and had found no sperm, and further that I had written a report dated June 1, 1993 indicating that there was no sperm found on Q6 and Q10, and that there was no valid positive P30 result. (BMHR 425-428). Also, DeGuglielmo mistakenly testified that the testing done in this case would have separated male from female components—which was an error. (BMHR 426-427).

It would have been reasonable for counsel to have followed up the questions asked at trial to point out that I had written a report stating that there was no sperm found, and pointing out that I had a note of a conversation with a representative of Genetic Design stating that some of the reaction for DNA might have been bacterial, and that the DNA levels shown in the testing indicated that as well. (BMHR 427-428).

DIRECT EXAMINATION OF KERMIT CHANNELL
BY JOHN PHILIPSBORN

At the time this case occurred, I was involved in forensic serology and processing of evidence at the Arkansas Crime Lab. (BMHR 430). I got involved in

the case about 24 hours after the bodies were discovered. During the processing of case evidence there had been some question as to which clothing belonged to what boy. I viewed that matter as the responsibility of the Medical Examiner's Office, which is one of the components of the Crime Lab. When a case comes in through the Medical Examiner's office it is given an ME number and then it will be given an associated lab number. According to my review of evidence, the number associated with Mark Byers was 93-05718; the number 93-05717 was Mr. Branch's case, and Michael Moore's was 93-05716.

I remember that ligatures were associated with the bodies of the boys. They would have been looked at by my colleague Lisa Sakevicius, a criminalist who specialized in trace evidence. I looked at them too. (BMHR 435-436).

The Lab kept both a file and a set of notebooks on the case. They were part of the official record of the case. The Lab notes indicate that item FP6 were the ligatures associated with James Michael Moore. Had one of the trial lawyers wanted to do so, that lawyer could have reviewed the laboratory notes with an analyst prior to trial.

Our Lab has given post-conviction defense counsel copies of the notes, and allowed post-conviction counsel to go through all of the evidence at the Lab. They

had criminalists look at the evidence as well. Trial counsel could also have engaged in the same process had they asked. (BMHR 440-441).

Had someone asked to review the photo logs used by the lab, and hair slides generated by the Lab, someone would have been able to tell that there were questioned hairs associated with ligature FP6, which was associated with the victim Michael Moore. One of them was a red beard hair. (BMHR 443-444). There were notations on the slide itself from Lisa Sakevicius. Defense counsel could have actually looked at those hairs. On the slide from the Moore ligature there was an indication of a red hair fragment and a beard hair fragment.

While I recall having met with Paul Ford, I never recall telling Ford that some hair had been found on one of the ligatures. (BMHR 444-445). I did not know how Ford would have come about the information concerning the ligature, though the hair were found in the Moore and not the Byers ligature. That kind of information would have typically come from Lisa Sakevicius.

[The Court also clarified that multiple animal hairs were also found in the evidence. (BMHR 445-446). Counsel clarified that the hair in the ligature was recently identified as a human hair. (BMHR 447)]

CROSS EXAMINATION OF KERMIT CHANNELL BY BRENT DAVIS

Lisa Sakevicius passed away in 2000. Her notes indicated that one of the two shoe strings might have been cut in two. (BMHR 447-448. I don't feel that I misled the Misskelley jury on the issue of whether sperm was found on the cuttings. I said that none was. (BMHR 450). If the lawyers had been interested in trace evidence, it is more likely that they would have talked to Lisa Sakevicius than to me.

REDIRECT EXAMINATION OF KERMIT CHANNELL BY MICHAEL BURT

The prosecutor's closing argument read to me from the Misskelley case does indicate that the pants that I had looked at under the microscope were muddy and that I could not see any sperm. In fact, my vision was not obscured under the microscope. Normally when a stain is processed in the laboratory, there would have been an extraction that would have resulted in the separation of mud and potential sperm such that any sperm would have been clearly visible had there been some.

Given the damp and wet conditions that the jeans and other pants were found in, my opinion is that it would have been difficult to find interpretable DNA on the pants. (BMHR 461)

DIRECT EXAMINATION OF PATRICIA ZAJAC BY MICHAEL BURT

[Vol. 3: (BMHR 470-505)]

I am a professor of criminal justice and Chair of the Criminal Justice Department at California State University at Hayward. Prior to that I was a criminalist in the Alameda County Crime Laboratory for almost 12 years, from 1970 to 1982. I specialized in forensic serology. I developed the Lab's basic testing procedures. I had experience with the ABO antigens system, and also enzymes systems. (BMHR 471).

I have a BS in criminalistics; Masters in forensic science; Masters degree in public administration, and a Doctorate in public administration. I currently teach courses in physical evidence to students who include law enforcement officers and forensic science students. This teaching requires me to keep up with literature in criminalistics, including forensic serology.

I have qualified on the subject of forensic serology several hundred times. Over my career I testified mostly for the Government. I have published in the field of biological fluid analysis. (BMHR 474).

I reviewed the testimony of Kermit Channell and Michael Deguglielmo as well as the portions of the closing arguments that dealt with scientific evidence. I

also reviewed lab notes referenced by Kermit Channell in his testimony. I also reviewed the available lab notes from Mr. Channell. (BMHR 475).

I reviewed a number of protocols including the Arkansas Crime Lab serology protocol, FBI serology protocols, and the protocol from QuantiBlot.

In 1993, there were forensic serologists available to testify for the defense. I had been involved in cases in which I was asked by counsel to review serology issues. If I had been contacted at that time, I would have advised counsel to get the bench notes, testing protocols, and any other materials that pertain to the case. The bench notes are useful to see whether the tests described in any report were actually performed and whether the tests supported the results stated in the report. (BMHR 476-478).

I reviewed Mr. Channell's lab notes, concerning samples Q6 and Q10, with the exception of the actual gels for the P30 test. The notes he produced did not describe how the tests were conducted, and where the controls were. I would characterize Mr. Channell's notes as having an average amount of detail in them.

Based on the results that he reported in his notes, I would not have described the results on the acid phosphatase test as 'positive'. (BMHR 480-481). A slight or 'weak' reaction is not positive for seminal fluid because there is acid phosphatase in a number of biological materials. Moreover, he should have used a substrate

control for this test, just as he did with the P30 test. One would have done that under the circumstances because the very weak acid phosphatase reaction should have spurred the retesting of substrate to see if there was acid phosphatase in the mud. Moreover, the DNA Lab that the State used didn't use a substrate control either. (BMHR 483-484).

Had the defense consulted with a forensic serologist, it could have then explained that the weak test results on screening tests as essentially irrelevant in identifying semen. An experienced serologist would have pointed out that a reaction for semen would have been a very strong reaction, had there been semen present. Also, the analyst could have explained that you don't visualize semen using a laser light. A defense serologist could have explained that.

Based on the some total of the results in this case there would have been no basis for concluding that there was any semen. (BMHR 486).

In my opinion, Mr. Channell's acid phosphatase test was not run with the proper controls. (BMHR 489). It is also my opinion that the statements in the FBI laboratory manual concerning acid phosphatase being used a presumptive means of detecting semen would be the same in 1993 as it was in the 2002 FBI formulation. In order to identify semen you either need a positive P30 or identification of spermatozoa. In this case there was neither.

I feel that a number of aspects of Mr. Channell's testimony had been accurate, however, I feel that he should have explained to the jurors that the mixed results he had obtained with some of the presumptive tests were attributable to the mud, and also he should not have indicated that the submission of material to a DNA laboratory would have been a way to obtain more sensitive testing, as DNA tests are not additional tests for semen.

Had I been approached on the case by a lawyer who had received some of the typewritten reports in this matter, I would have recommended that the lawyer make every effort to obtain the bench notes and the documentation that she had been using to review the evidence in the case post-conviction. (BMHR 504-505).

KERMIT CHANNELL RECALLED BY THE COURT

[Vol. 3: BMHR 506-513]

I examined a necklace during the trial. (BMHR 506). The item had blood on it. I sent it to Genetic Design for DNA testing. The testing detected a mixture of DNA using testing in existence at that time. (BMHR 506). The findings consistent with Damien Echols' biological material, that of victim Steven Branch, and that of Jason Baldwin. (BMHR 506-507).

CROSS EXAMINATION OF KERMIT CHANNELL
BY JOHN PHILIPSBORN

During the recess today, Judge Burnett asked me to obtain some information about the DNA testing. However, in 1993 the preferred method to try to identify blood were some clinical tests to screen and then to confirm. You could then do ABO typing and PCR-DNA. (BMHR 508-509).

Had a qualified scientist been accessed to deal with the DNA issues, that scientist might have been able to refute some of the results being offered after having reviewed the details of the examination. The way that would happen was by a request for documentation.

To further explain the DNA tests done on the necklace in 1993: the technology available then would have allowed identification of alleles pertinent to chromosomes of the donors. The results using that technology would have shown allele pairings consistent with Steve Branch, and possibly consistent with Jason Baldwin also. But those pairings would also apply to a large percentage of the population. The person who understood the technology properly would have been able to address the issues. (BMHR 512-513).

DIRECT EXAMINATION OF GREG CROW BY MICHAEL BURT

[Vol. 3: BMHR 514-613]

I was a lawyer in 1993, affiliated with Dan Stidham. We were appointed to represent Jessie Misskelley in June of 1993. At that point, I had done no prior death penalty work. I had worked as a public defender. I had only tried one felony case, and had tried misdemeanors, though they were always bench trials. I had never tried a jury trial. I had tried four civil jury trials. At the time I handled the Misskelley case I would have not tried my first felony case, and had never handled anything like a homicide. (BMHR 515-516). I had never had to question the kind of expert you get in a homicide case.

I had no training in death penalty litigation. After I took the case, I did not get any training on the handling of a death penalty case. We dealt with issues as they came up.

Because he was more experienced, Dan Stidham was Lead Counsel. Stidham made the strategic decisions. I was the research and brief writer for the most part.

At first we presumed Misskelley was guilty. There had been a confession. (BMHR 520). We weren't concerned about alibi witnesses early on. We wanted to get the best deal possible.

We experienced difficulties with our client Jessie Misskelley, who could not tell the same story twice. It was also evident that Mr. Misskelley had mental issues. (BMHR 521-522).

We were trying to get a plea agreement that had a commitment in it beforehand. But we never worked out a deal.

The situation changed around September of 1993. Misskelley had met with his father and the father had called us and he was upset. As a result, we went to see Jessie, and he said emphatically that he was not guilty. (BMHR 523-524). One of the problems had been a bloody t-shirt that Jessie was supposed to have had and at first it had been identified as having blood that had matched one of the victims. (BMHR 525). But during a hearing in Marion, there was a statement made by another lawyer that the prosecutor Fogelman had said the DNA or serology was not going to be used, and that the blood on the t-shirt had actually matched Jessie Misskelley. Up to that point in the case, which would have been around September 27, 1993, I had presumed Mr. Misskelley to be guilty. (BMHR 525-526).

I knew we had things to investigate, but I didn't think that getting an investigator was an option. At some point I recalled that Ron Lax, an investigator working with the Echols defense, had volunteered to assist the Misskelley defense as well.

I had taken part in interviewing third parties, alibi witnesses, and police officers. (BMHR 531-532). I also recall that we used some experts, including experts on confessions. Dan Stidham would have been making the decisions about what evidence to present. We were trying to interview alibi witnesses, and given them touchstones to remember.

I recall that at the time, Arkansas criminal procedure had Rule 2.3 which required that a potential witness or potential defendant had to be told by police that he or she was free to go at any time. In bringing the motion to suppress Misskelley's statement, we had not raised that issue, first because they could not get Misskelley to tell them what had occurred, nor would any of the police officers.

At one point, review of the jailhouse statements issue had caused Stidham and me to tell Misskelley that he had an excellent chance on appeal because of the Rule 2.3 issue. However, the Arkansas Supreme Court indicated that the issue had not been raised properly, and had been defaulted. There was no strategic reason for us to have failed to raise it properly.

Also, I recall that we had to at least attempt to impeach the accuracy of the Misskelley confession and that some of that would involve demonstrating that the physical evidence was inconsistent with certain parts of the confession. That would also involve expert witnesses. (BMHR 539-540).

I recall that Mr. Stidham and I had thought that we could not obtain ancillary funding for serology or DNA experts.

I do not recall whether we had attempted to get any of the bench notes from the crime lab. I don't know if I had known enough at the time to interpret the notes, however some of the statements in them would have required follow through, such as some of the positive tests for DNA being bacterial in nature. (BMHR 543-545).

I don't remember our getting, or trying to get, any assistance from a pathologist. We had no strategic reason for not doing these things.

I was concerned that Misskelley could not assist us, and could not understand his legal situation. I remember that we got Dr. Wilkins involved to assess his competency and to deal with IQ. Wilkins eventually opined that he was competent, but I really didn't think he was competent to help us. (BMHR 552). He was certainly not competent to be put on the stand. It was evident that Misskelley could not say the same thing twice, and it did not look as though there was any way "... he could even handle direct-examination, much less cross." (BMHR 552).

I recall that something had come up during deliberations, a comment from the Judge which made it appear as though the defense was going to lose the case. I do not know why the Misskelley defense had not asked for a mistrial at that point. (BMHR 556-557).

It was up to me to handle Misskelley's penalty trial. There was compelling evidence in mitigation. (BMHR 558). My intention if the case had gone to penalty was to put on a psychologist. I did not plan on calling any other witnesses in mitigation. However, I acknowledge that what I learned through Dr. Wilkin was compelling mitigation. We didn't know that there were some serious problems with Wilkins. (BMHR 561).

I don't agree with Paul Ford that presenting a bad alibi was worse than presenting no alibi at all. Though the alibis weren't perfect, we had good, strong witnesses and I felt that we were right in trying to put on the alibi witnesses. I would call our alibi witnesses again. (BMHR 563).

CROSS EXAMINATION OF GREG CROW BY BRENT DAVIS

The alibis had been that he was at a trailer park, and also that he had been at a wrestling event.

I vaguely recall a meeting with the Court and prosecutors that had taken place at the Holiday Inn. The meeting had been to discuss publicity, but during the meeting, there had been some discussion about Misskelley testifying against the other two young men. I vaguely remember that we had discussed aspects of the potential testimony—but I think that may have been at another meeting. (BMHR 565-566).

After the meeting, Jessie Misskelley Sr. had given an interview in which he had professed his son's innocence. (BMHR 568).

I had done a fair amount of investigation on the case as had Dan Stidham. It was me who was doing most of the alibi investigation. During the process, Ron Lax had come forward to ask if he could help us. He did so.

Some of the experts that we called in Misskelley's defense were highly qualified, including Dr. Ofshe, and Warren Holmes. (BMHR 576-577).

In retrospect, I feel that Misskelley's main issue on appeal would be the Rule 2.3 issue.

REDIRECT EXAMINATION OF GREG CROW BY MICHAEL BURT

I had never known of the *ABA Death Penalty Guidelines*.

FURTHER REDIRECT EXAMINATION OF GREG CROW
BY MICHAEL BURT

I indicate that the time records that I and Mr. Stidham had kept indicated that after September 1993 we had made efforts to interview witnesses.

September 30, 2008 Session

DIRECT EXAMINATION OF JOYCE CURETON BY BLAKE HENDRIX

[Vol. 3 & 4: (BMHR 620-672)]

I was the Director of the Juvenile Detention Facility in 1993 and 1994. I worked there for about 10 years. (BMHR 621).

My job consisted of my keeping up with Juvenile law, training staff, handling problems that other staff could not handle, and substituting for other staff when people got sick.

I would usually work from 8 to 5, but sometimes would need to respond to calls from the facility. I was on call 24/7.

I have drawn a map of the boys' side of the facility a couple of days ago. There was a side for the boys and a side for the girls. The boys were housed in 10 cells right opposite my office. There was a plexiglass, glassed-in, pod from which staff members could monitor what was going on in the block. (BMHR 622-623). (Exhibit 32 entered at BMHR 626). At the end of the block there was an area where there were tables. The juveniles there were under constant surveillance in part because there were cameras. Staff members rotated on a 12-hour shift basis

We maintained a daily unit log that showed where the inmates were housed. (BMHR 626). Jason Baldwin was housed right opposite the pod most of the time he was there. He never had a cell mate. I was aware of Jason Baldwin's presence in the facility. He was the subject of a notorious case. We monitored him closely. Staff members had been given a directive to keep a keen eye out. (BMHR 625-629). [*Volume 3 ends at BMHR 627; Volume 4 begins at BMHR 628*]

Jason was a good kid. He never complained. He wasn't demanding. He was kind of reserved with the others. I never heard about Jason talking to the other kids about his case. (BMHR 630).

There was a great deal of documentation kept concerning the movements and whereabouts of the juveniles in the facility. There were psychological and medical logs, as well as incident logs. Each juvenile also had a separate file. There were also visitor logs. Any acts of violence or fights would be documented. (BMHR 633). There were a number of 'CYA' type records. I would review the records every morning to see what happened the night before.

I recall that we had an inmate named Michael Carson. He had been in and out of the institution. When kids were newly admitted they would be put in lock down in a special cell for three days. They had no contact with other juveniles. (BMHR 635). According to the records, Carson was in the Unit from September 1 through September 7, 1993—a total of six to seven days. (BMHR 634-635). The records of the unit show where Carson was housed in relation to Baldwin, and what his movements and activities were. (BMHR 636-637, referencing Exhibits 32-34).

I did not testify in the trial of the case. I was outside of court when Michael Carson testified. I have no independent recollection of whether Carson, Baldwin, a

kid named Biddle and another juvenile named Jason played cards together. The juveniles played cards quite often, which would have been reflected in the records.

Carson apparently told a State Trooper during an interview that Baldwin had been threatened by black inmates. If that had happened, there would have been a record of it. I have no recollection of black inmates ever threatening Baldwin. (BMHR 639-640).

The only contact that I recall having with Baldwin's attorneys Paul Ford and Robin Wadley was in connection with an HBO filming that took place in the Juvenile Facility. Some people had lost their jobs over it.

Ford called me at home one Friday night, but that was after the trial. (BMHR 641). Baldwin's lawyers did not contact me about Michael Carson. (BMHR 641-642). Ford's contact after the trial was to ask me what kind of a kid Baldwin had been while he was incarcerated there. But the contact was not about Carson or allegations made by Carson. Nor was I asked if I had any records or if my staff had any records that could be useful to address the Michael Carson allegations. To my knowledge, the Baldwin defense team never tried to identify any of the kids who were involved in the alleged card game with Carson. Nor did any of the black inmates who were in the facility get interviewed by the Baldwin defense lawyers. (BMHR 643-644).

There was a log kept for professional visitors, and that there was no indication that Paul Ford ever came to the jail trying to interview anyone in connection with Carson.

I was asked to show up to testify about Baldwin as a person. I never did testify, however, because I was told to get out of the county and stay away until they had sentenced the boys ((BMHR 646:15-16).

Looking at records of September 4 and 5, 1993, I can identify Anne Tate and Patty Bircham as staff members at the Detention Center. Exhibit 33 (BMHR 648). Xavier Reedus, Leonard Haskins, and Daniel Biddle were all inmates who were there at that time.

CROSS EXAMINATION OF JOYCE CURETON BY BRENT DAVIS

Now that you show me this map of the facility again, there was a hospital cell that should have been drawn in between cells 8 and 9. The cell rosters show that most of the juveniles were double celled, one on the top bunk and the other on the lower. So, the record you're showing me shows Carson being celled with Jason Duncan. (BMHR 652).

I was eventually fired by the Sheriff for taking a county car out of the county.

There was an occasion on which one juvenile had been discovered to have committed suicide, but the juvenile's death had not been ascertained before several hours had passed. (BMHR 654-655). So there were times when things happened that the staff did not monitor.

Baldwin, to my knowledge, did not have problems with black inmates. They liked him. (BMHR 657-658).

I also recall that Carson had been in the Jonesboro alternative school where there were administrators and instructors who knew his reputation and his behavior.

It was the Sheriff who asked me to leave the county after Paul Ford had asked me to be available to testify at the sentencing hearing. (BMHR 663).

I cannot recall ever seeing Michael Carson with Jason Baldwin. Baldwin stayed to himself. He was a quiet kid who avoided trouble. He did interact with some of the African-American inmates.

If Carson and Baldwin had talked during the night, it would have been written down by the staff. (BMHR 665-666). Carson never told me that Baldwin had said anything damaging about his case. (BMHR 669).

My viewpoint is that Michael Carson was a smart-ass and a troublemaker. (BMHR 671-672).

DIRECT EXAMINATION OF DAN STIDHAM BY MICHAEL BURT

[Vols. 4 - 6: BMHR 674-1264]

I am Greene County District Judge. I was in private practice as a lawyer in the 1990's. I was a part-time Public Defender for Greene County as well. I graduated from law school in 1987, and clerked for a lawyer before going into private practice, and eventually taking on Greg Crow as an associate. (BMHR 674-675). I got the public defender job in around 1992, just about when Mr. Crow arrived. While a public defender in Greene County I handled primarily misdemeanor cases, and juvenile cases. We handled about two hundred to two hundred and fifty felony cases a year. I had never tried a jury trial as an indigent accused criminal defense lawyer.

I was appointed to represent Jessie Misskelley in early June, 1993 because of a conflict. The public defender who was originally appointed was a Christian and could not represent someone charged with a satanic crime. I was appointed even though I was from another county. Paul Ford and Val Price had already approached Judge Goodson to volunteer their services. I had indicated that I would accept any criminal appointment to help me gain experience. (BMHR 678).

At the time, I had not heard of the *ABA Guidelines for the Appointment and Performance of Counsel in a Death Penalty Case*. I did not have the jury trial

experience to meet the requirements under the *Guidelines*. (BMHR 678-679). I was not familiar with death penalty cases. I had never prepared an expert witness, nor was I familiar with the presentation of experts at trial. I had not had any training in DNA and other areas like serology, pathology, crime scene reconstruction. I did eventually borrow Dr. Spitzer's [sic-Dr. Spitz's] book. (BMHR 679-682).

Soon after I was appointed, I contacted the Arkansas Death Penalty Resource Center. I asked for assistance and learned that the Center was in no position to offer it. (BMHR 684-685. I reached out to some other attorneys as well. I didn't think that I was qualified to handle the defense of the case. (BMHR 686).

Initially, I had acquired a copy of a local newspaper and had read about my client's confession. Eventually I began acquiring discovery in the form of typed police reports and other material. It was slow in coming. They promised to start sending the stuff over as quickly as possible. (BMHR 687). They gave us voluminous stuff, but it was disorganized—seven or eight file boxes worth of information. (BMHR 688).

I eventually received some profiler information that the Police Department had received from the FBI. I recall receiving some information from the crime

laboratory and the state Medical Examiner. I do not recall obtaining any laboratory bench notes and the like. (BMHR 690).

I was stunned when I saw some of the files that had been obtained in post-conviction litigation, including notations that some reactions obtained on samples taken from some blue jeans were possibly bacterial in nature. That would have been a red flag had I seen them in preparing for trial. (BMHR 692-693). I never saw Mr. Channel's notes about the false positive reactions. I feel that it would have helped me to undermine testimony that there had been semen found on the cuttings from the blue jeans.

At one point during the pre-trial phase of the case, on September 27, 1993, the Court had granted a request from the defense allowing the defense to receive state crime lab reports and to view the physical evidence. However, I did nothing to follow up on that order. (BMHR 694).

At first, because of the confession and the publicity surrounding it, I thought that my role was to prepare my client to testify against the co-defendants. The situation changed around September 24, 1993. I was frustrated because Misskelley always got the story wrong. Then Misskelley told me he was innocent. We also received word that blood on Misskelley's shirt which I had been told was the victim's blood was actually Misskelley's. Also, Misskelley's father had been

making public statements that his son had not committed the crimes. It was September 23 when prosecutor Fogelman told me that there had been a mistake with the DNA Lab, and I wrote a memo the next day explaining that Misskelley had told me that he was not guilty—which had happened three days before.

Misskelley gave a sequence of events that occurred on May 5, 1993 that included his whereabouts and contacts with persons. That caused me to begin to look into interviewing alibi witnesses.

I felt from the beginning that Misskelley had not been able to run down the facts of the case in detail, even when he was claiming to have been involved. Also, I came to understand that Misskelley did not understand what a criminal defense lawyer was, and that Misskelley felt that his lawyers were with the police. That's why he would tell his father that he was not guilty but not me. (BMHR 708).

I also had some conversations with Misskelley in which I asked him who Satan was, and I was stunned to find out my client did not know who Satan or the devil was, given what he had been accused of doing. He referred to "Satin", did not know who the President of the United States was, even though it was Bill Clinton from Arkansas. I began to realize that I didn't have enough experience in dealing with a person who was mentally handicapped. (BMHR 713-714).

In retrospect, I am of the view that I had not educated myself well enough on the issues in the case, including the scientific evidence to try to impact the jury's assessment of the reliability of the confession.

I didn't ask the Court to fund experts in a number of different fields of forensic science because of a combination of factors, even though the Court did offer to issue funding orders. My focus ended up being on the confession. I didn't understand how to attack the corroborating evidence. I feel in retrospect that I had done a cursory job with forensic science experts. (BMHR 725).

I obtained a transcript of the tape recorded phone conversation that Dr. Peretti, the State Pathologist, had with attorney Paul Ford, during which Ford had obtained some information indicating that there was a lack of objective evidence of sexual assault. (BMHR 728-729). That tended to directly contradict Misskelley's statement to the police. I did not use the Ford transcript effectively in establishing that there was no evidence of sexual assault, ejaculation or sodomy found—I never actually referred to it. . The transcript of the Ford/Wadley conversation with Dr. Peretti had the latter stating that he did not feel that a prosecutor could stand in front of the jury and in good faith say that the boys were sodomized. (BMHR 733-734). That would have been good impeachment, but I never used it.

I recognize from my file that I had copies of photographs from Dr. Spitz's book showing animal predation. The injuries to the victims looked like the photos from the book. But then I failed to follow up with the information from the book. It did not occur to me however to confer with a pathologist to see if any of the injuries observed could have been caused by predation. (BMHR 735). I got that information later, after the trial. At the time, it did not occur to me to connect the dots.

In 1998, after the trials, I met with Dr. Michael Baden and had shown him some photographs, and had been told by Dr. Baden that there were injuries depicted that were consistent with animal predation. This caused me to talk to Neil Haskell, a well known forensic entomologist, also in 1998. (BMHR 742).

I view the approach that I had taken to the Misskelley confession as a 'shotgun' approach. We failed to raise a Rule 2.3 violation during the motion to suppress, and having failed to address certain factual issues as well. In dealing with the legal issues, I had thought I had effectively preserved claims, however the Arkansas Supreme Court said I had not.

My client could not assist me in defending the case in a meaningful way. And the psychologist who volunteered to assist me had problems that led to disastrous results. ((BMHR 760:11)

I had been working with Misskelley for a number of months and found I couldn't communicate with him sufficiently to prepare him to testify against the co-defendants. (BMHR 767). Even though our expert found Misskelley competent, I didn't think he was. I failed to consider the portions of Dr. Wilkins' report that informed me about factors in mitigation. I failed to understand all of the evidence that demonstrated Misskelley's incompetence.

Also, I had failed to look into the background of my psychological expert, Dr. Wilkins. He had been the subject of some serious complaints. When the case was in post-conviction litigation, I received a recommendation that I contact a doctor with expertise in the assessment of a person with competency, and mental retardation issues.

It was Mr. Davis who had brought to my attention, during trial, that there was damaging information available on Dr. Wilkins. (BMHR 779-780). I found out about the information the night before Wilkins testified. The information ended up being discussed with the press. There had been some effort by a newspaper to get information on Dr. Wilkins. I did not do any independent investigation of him. (BMHR 797-799. I ended up seeing a part of the investigative file when Mr. Davis showed it to me.

We also failed to use a statement that Misskelley had written to impeach his statements to the police. (BMHR 806-807). I also failed to properly interpret the Rules of Evidence when I had an opportunity to impeach the testimony of Vickie Hutchison. We had access to a witness, Jennifer Roberts, who could have impeached her. The impeachment indicated that Hutchison had been motivated by the reward money. (BMHR 814-815).

Right before trial, I asked for investigator Ron Lax's assistance. At that point, I had come to believe that what was good for Echols was also good for us. But I was leery of privilege and other issues, so I didn't just ask him to investigate for us. I didn't consider him to be our investigator. (BMHR 823-824).

Mr. Crow and I did next to nothing to prepare for the penalty trial. (BMHR 803).

I concede that I had been provided access to investigative and other reports that could have helped him in the presentation of his case.

The Baldwin defense had not shared the view that the investigation conducted for Misskelley and Echols would be useful in part because they did not subscribe to the view that what was good for Misskelley and Echols was also good for Baldwin. (BMHR 824).

I feel that I failed to recognize useful information that was in the discovery, and failed to recognize the utility of previous mental health reports pertinent to the case.

[BMHR 836-837. The Baldwin defense seeks to clarify the schedule, and the need for it to call witnesses in the hearing. The Court notes that]:

THE COURT : I think it's probably sufficient for you to just to demonstrate that there were other potential alibi witnesses that they either knew of or didn't know of, or if they did know of them and didn't call them, that should be sufficient for this hearing. (BMHR 836: 17-21).

[The September 30, 2008 proceedings concluded, and the hearing does not resume until November 19, 2008. BMHR 842]

November 19, 2008–Hearing Resumes. BMHR 843

The parties discuss the review of the Misskelley defense trial file. The Court acknowledges receipt and consideration of a brief, filed by Baldwin, on the ABA Standards/Guidelines. BMHR 846:14-16.

CROSS EXAMINATION OF DAN STIDHAM BY BRENT DAVIS

I may have said at the Echols Rule 37 hearing that I didn't know the source of the conflict that caused the public defender not to represent Misskelley. I imagine that the information I received was hearsay. (BMHR 850). Looking back

on it, I also now recall that I had learned about Dr. Wilkins when I had worked on a criminal case involving a juvenile. (BMHR 857-858).

When I first came into the case, I did know what the charges were. Judge Goodson had said to me that the case would probably not go to trial. (BMHR 859-860).

I am aware that my client had confessed. Also, I am aware that I taped conversations with my client. I have not had custody of my file for quite a while. I also made some notes of some of my conversations with my client. I remember taping a conversation with him when we first got a settlement offer in August, 1993. I taped him again at some point after the trial, on February 8, 1994. (BMHR 874). There were other tapes made as well. Dr. Ofshe made some audio tapes of him.

After the trial, we had conversations. I remember talking to him once when I asked for a Bible. I recorded that conversation. On that day he was saying that he had been involved in the crime, but his statement then was not like his original statement about his involvement.

I also do have some recollection of the sequence of events that were related to Mr. Misskelley Sr.'s statements to the press, which occurred after we had

approached the prosecutors in an effort to settle the matter. It was later, and after those statements, that Misskelley then admitted involvement in the killings.

There was also a December 10th tape made that I believe demonstrates, in retrospect, that we had discovered that our client did not understand the *Miranda* warning.

The Court then received a tape recording of an interview involving Dr. Wilkins.

Volume 4 ends at RT 899–Volume 5 begins at 929

[Continued cross-examination of Mr. Stidham; a tape of Mr. Stidham and Misskelley is being played beginning at BMHR 931.]

I was asking him questions, at this point in the tape, about the sequence of events around the time he was picked up by Mike Allen for questioning. (BMHR 946)

[playing of the tape then continues, BMHR 946]

[Playing of this tape ends at BMHR 988 and is followed by a discussion between the Court and counsel about how the evidence tape was made by transferring the original VHS tape to a new format]

CROSS EXAMINATION OF DAN STIDHAM BY BRENT DAVIS RESUMES

The tape we just heard was from my meeting with Dr. Wilkins and Misskelley on December 10, 1993. We heard the circumstances that surrounded the polygraph examination. I found Misskelley's statements dramatically different from the ones he had made before. We had also made up a robbery incident to ask him about using the Gudjonsson suggestibility scale. And it was clear to me that you could lead Misskelley to say what you wanted if you asking him leading questions and put pressure on him. (BMHR 992).

I do recall dealing with the Misskelley statement motion and the 2.3 issue. I didn't intentionally prepare a precedent in the hope of avoiding the prosecution's re-opening their case. I thought I had preserved the issue, but I hadn't.

Misskelley was eventually convicted of first degree murder and two counts of second degree murder, which was a better result that the other two defendants got. (BMHR 1000-1001).

I don't recall the testimony of Deborah Sallings, who had been appointed director of the Public Defender system, on the needs and payments of attorney fees in the case, other than remembering that she testified against our interests on some of those issues. I would disagree with her if she testified that she felt we did not need investigative help on the case . (BMHR 1017-1020).

We did put on alibi witnesses. Alibi was our strategy. (BMHR 1026-1027). We called a number of alibi witnesses. Mr. Crow and I, and to an extent Mr. Lax interviewed the witnesses. We called at least 16 witnesses. We also called investigator Lax, and the manager from the Bojangles restaurant. We did call experts including Mr. Holmes.

It is my view that Misskelley deserves a new trial. (BMHR 1048). I have spoken about the case since the trial in a number of places.

[The proceedings of November 19, 2008 end and the November 20, 2008 session begins at BMHR 1055, cross-examination of Dan Stidham continues.]

Problems were being caused in our approach to the case because Mr. Misskelley, Sr. was making statements to the press, and we were geared towards negotiating a plea. (BMHR 1072-1073). The records I reviewed prior to my testimony including some of the tapes indicate that in August, I was talking to Misskelley about an offer to waive the death penalty, and how I preferred a specific term of years. (BMHR 1074).

I did have an 'epiphany' around the time I found out that his DNA was not on the T-shirt, which was some time in late September. *[The Court then hears an audio tape of the August 19, 1993 meeting between Mr. Stidham and his client Mr. Misskelley]*. Misskelley relayed in that conversation that he had never seen the

victims before, and never saw them riding their bikes. (BMHR 1077-1078). He then said that he had seen one bike. He never did anything with their bikes. He had left walking by the Blue Beacon.

On the tape, Misskelley said that he did not recall a stick in the creek. Echols carried a carved stick, but Misskelley did not remember if he had it with him that day.

When he left, the boys' clothes were piled up by the creek. Baldwin had a pocket knife, a Buck knife. (BMHR 1081). Baldwin's knife was one he sometimes carried with him.

Misskelley denied knowing anything about cult activities, and peoples' faces painted in a manner described by Vickie Hutchison. He said he went to wrestling, not to cult meetings. Misskelley also described his being at Hutchison's house once with Damien.

Misskelley explained he had been there when the police came to get him. Misskelley explained that Mike Allen had picked him up. They then had a lie detector test. He had then spoken with the detectives, one of whom was Detective Gitchell. They had showed him a picture of one of the boys. He had started crying. One of them had later said that they would see him executed. That was after Misskelley explained 'what happened'. (BMHR 1091-1092).

Misskelley explained that he had a white T-shirt on that day, and that he often cut himself. He did not have any blood on him that day.

Misskelley explained that there was a lot of blood at the scene where all the hitting and cutting took place.

I described my conversation with the prosecutor, and relayed to Misskelley that the prosecutor might recommend life, and that a decision would need to be made soon. If the prosecutor did make a recommendation of years, it would be something like 40 years. The prosecutor might insist on a life sentence. Misskelley responds by stating that he does not want to spent “almost all of my life in jail.” (BMHR 1098). Misskelley then indicates that he would be willing to consider a sentence in the 40 to 50 year range.

CROSS EXAMINATION OF DAN STIDHAM BY BRENT DAVIS RESUMED
AFTER THE TAPE WAS PLAYED

The conversation just heard took place in the big room of the Clay County detention facility.

While it is true that on that tape he answered my question about blood on the T-shirt by indicating that there was none, every day I talked to him, I would get different answers. I was frustrated by the interaction.

I didn't record every conversation. His version of events would change. (BMHR 1110-1111). When I had the conversation with him that we just heard, my

concern was that he could not testify. I hadn't yet figured out that he was giving me a false confession. I didn't understand the dynamics of false confessions.

I recall the occasion where I went to Pine Bluff with the prosecutors in February, four days after Misskelley was convicted. That was the day I requested a Bible. I taped that statement.

[The Court permitted this tape to be played over Misskelley's objection that it post-dated the conviction. Baldwin also objected to the evidence, and the Court rules that "it's certainly directed towards the defense of Misskelley, not Baldwin. BMHR 1120]

As far as I know the tapes that produced the CD that we're going to be hearing are my original tapes. They may have been placed on the CD out of order.

[The tape of the February 8, 1994 session then begins. BMHR at 1127, and ends at BMHR 1193]

The Court then heard a further part of the February 8, 1994 recording.
[Beginning at BMHR 1194, ending at 1201. Cross-examination of Mr. Stidham resumes]

The persons heard on the February 8, 1994 tape were Misskelley and myself. There were no law enforcement officers present. A Bible had been brought in, and Misskelley had his hand on it.

I filed a discovery motion in the case as standard procedure. I later filed a motion objecting to the taking of bodily fluids from my client to protect his rights. (BMHR 1203-1204). We filed a motion for change of venue because we felt our client needed a fair and impartial jury. We also filed some motions that I obtained from attorney Bobbie McDaniel. We also joined in some of Baldwin's motions. (BMHR 1211-1213).

I also did litigate other motions. I don't feel that I pursued DNA evidence effectively, because I didn't understand it well enough at the time. I did file motions and get hearings on matters like the motion to suppress my client's statements and on the issue of my client's mental retardation.

[Transcript Volume 5 ends at BMHR 1228, and Volume 6 begins at RT 1230]

Up to and through our conversation with Misskelley on August 19, 1993, Misskelley did not understand what a lawyer was, and he thought that Mr. Crow and I were police officers. I also acknowledge that I believe that our client told us things that were not true.

DIRECT EXAMINATION OF DAN STIDHAM BY JOHN PHILIPSBORN

There was no information sharing agreement with Baldwin's lawyers Paul Ford and Robin Wadley. They refused to work with the Echols lawyers and with Mr. Crow and myself. (BMHR 1239).

The only thing they did do is to provide me a transcript of the conversation that Paul Ford had with Dr. Peretti. But otherwise they were unwilling to participate in a joint defense.

Once the Echols defense allowed us use of Mr. Lax's services, we did not share any of Lax's work product, or that of his investigators, with Ford or Wadley. (BMHR 1240).

In my view Mr. Ford was not clear in asking for severance. I recall telling him to ask for severance, but he ignored me.

I never discussed the tapes that have been played in this hearing with anyone.

I recall trying to track down the phone records of the call Misskelley said he had with Baldwin. They were not available. I don't recall either Ford or Wadley approaching me about those records.

Ford and Wadley never approached me to ask me if I had any alibi information that I could share with them. (BMHR 1244).

I don't recall receiving any information to the effect that a hair had been found in the ligatures used to bind one of the boys. (BMHR 1244).

REDIRECT EXAMINATION OF DAN STIDHAM BY MICHAEL BURT

At first, it was my understanding that Misskelley was guilty and that my job was to try to work out a plea agreement for him. In speaking with him, I was trying to get a version of events that corresponded with what he had told the police. I felt that my role at that point was to prepare him to testify against the others. (BMHR 1247). I kept getting inconsistent statements.

Misskelley's father started complaining about his son's innocence, and then Misskelley said that he was innocent, and my approach changed. He maintained his innocence until the conversation on February 8, 1994 after the trial. (BMHR 1248). Then he again said that he was involved. Even after that, there was another tape recorded interview on February 17th. That one was made with their recorder. That happened when Joe Calvin, the Clay County Prosecutor called to tell me that Misskelley was in his office and was going to give a statement. Then after that, there was another conversation, this one that occurred around March 2, 1994. It was recorded with a microcassette. In this last recording, Misskelley is explaining that he was not involved, but that people were pressuring him, and telling him how he could get out of prison.

When I talked to Misskelley on February 8, I got a copy of the crime scene map, which I still have. It is Exhibit 43 (BMHR 1255). It was clear to me when we were talking that he had no idea where the crime scene was. He also talked about water being over his head. He talked about the pipe going across 10 Mile Bayou as being as thick as his thigh when it was four or five feet across. In his original statement, he had said nothing about sperm on pants, but now, having heard the testimony and arguments at trial, he is referencing sperm on pants.

End of session at RT 1264. The November 21, 2008 session begins on that same page. The Misskelley defense called Dr. Tim Dering.

DIRECT EXAMINATION OF DR. TIM DERNING BY MICHAEL BURT

[Vol. 6: RT 1269-1422]

I am a licensed psychologist with a bachelor's degree in psychology, master's degree in clinical psychology, and a PhD in clinical psychology. I received my PhD in 1987. I worked in a school for adjudicated adolescents in Rockford, Illinois, and later worked as a test administrator in the Federal Bureau of Prisons while finishing my doctoral training. After finishing that training I worked as a staff psychologist at the Stockton Developmental Center in California. It was an institution that housed people with developmental disabilities and involved forensic practice as well. I was working with people with mental retardation, and

evaluating and testifying about matters like competency to stand trial. (BMHR 1272). I worked there for seven year in total. I also worked in other settings as well. (BMHR 1269-1274).

I was licensed in 1990. I did additional training after my doctoral training, in neuropsychology. (BMHR 1274-1275). Once I went into private practice, the emphasis was on patients with neuro-cognitive disabilities. I worked with children and families. After doing that, I was contacted at one point about court-related cases in Arizona, and I did my first forensic evaluation in private practice. I continued to develop expertise in dealing with patients who are mentally retarded as well as those who have brain defects that affect cognitive functioning. These could include autism, fetal alcohol syndrom, or other types of developmental disabilities.

There are special issues that arise with persons who are developmentally disabled. You have to be aware of pertinent normative data; appropriate tests; how to communicate with them. This is a growing field. When I first came in to it, I was one of the few people who had expertise in mental retardation in the forensic context. (BMHR 1279).

I am familiar with the American Association of Mental Retardation which had been around for some period of time. I am also familiar with the manual on mental retardation that the Association published in 1992.

[Dr. Darning was offered as an expert on neuro-cognitive and neuro-behavioral disabilities, including learning disabilities and mental retardation.

BMHR 1279. The Court ruled that he could testify as such BMHR 1280]

I was contacted by Mr. Stidham in 2000. (BMHR 1280). It was after the trial. He had concerns about Misskelley and wanted me to evaluate him. Nothing happened for a while. I was then contacted again in 2004. At that point I was asked to look at his *Miranda* waiver and to see if he was competent to stand trial. I was sent and reviewed a series of materials including Dr. Wilkins's testimony. (BMHR 1286).

Exhibit 44 lists records that I reviewed, and also provides some scores of testing that had been done on Misskelley throughout his life. I also reviewed trial transcripts, and the disciplinary hearing involving Dr. Wilkins. I also reviewed tapes of Misskelley talking to his lawyer and to Dr. Wilkins.

I administered a series of tests to Mr. Misskelley, including achievement tests, malingering assessments, functional skills tests, a test of nonverbal intelligence, and some forensic competency assessments. (BMHR 1287-1288). I

also administered instruments addressing competence to waive *Miranda* and competence to stand trial. I used instruments that were validated and reliable.

In my opinion, Misskelley was not competent either at the time of his arrest or at the time of his trial. Misskelley's *Miranda* waiver was not given knowingly and intelligently. It is my opinion that his post conviction statements were influenced by inducements and intimidation. I cannot opine whether he was induced during the pre-trial interrogation itself. Misskelley did not understand the process. (BMHR 1289-1290).

Asked to review Dr. Wilkin's testimony, I disagree that a mental status examination could produce data specific to competency. It's a screening instrument, though some of the responses that Misskelley had given explained his difficulty with abstract reasoning (BMHR 1294-1295). In my opinion, Misskelley is mentally retarded. (BMHR 1296).

In reviewing the Wilkins disciplinary file, I examined the evaluation by Dr. Hazelwood who noted that Wilkins was holding himself out as an expert in fields in which he was not qualified, and was using non-standardized procedures. He was holding himself out as a neuropsychologist, though he did not have appropriate training. In this case he was testifying about his use of tests that should not have been given. The MMPI is not appropriate to this population of patient. (BMHR

1204-1305). Also, the MMPI is a test that assesses psychopathology, and it is not designed to assess cognitive functioning.

In assessing mental retardation, part of what you are looking at is a longitudinal study of the data available. You are looking for a person's strengths and weaknesses demonstrated over time.

In the tests I gave Misskelley, I found that he did not malingering. Looking at his record of academic achievement, it was very poor. He would have been subject to manipulation.

Looking at the *Miranda* waiver situation, Misskelley could not read something that long and complicated and respond to it with comprehension.

I also evaluated his trial competency, and it is my opinion that he could not understand language well enough to track proceedings. He could not do it in 2004 when I evaluated him, and looking at his 1993 tapes, he couldn't track the language back then either.

CROSS EXAMINATION OF DR. TIM DERNING BY BRENT DAVIS

Part of the work I did at the Stockton facility was to assess competence and to assist in restoring competency. At the time, we did not have very good instruments to assess competency. We used the Georgia Court Competency Test, and some other instruments.

Mentally retarded people can be competent to stand trial. (BMHR 1348).
When you assess their ability to assist counsel, part of what you look for is their ability to contribute to the process. (BMHR 1350).

Providing information about a time line, or about an alibi, is part of providing assistance. You are showing me some additional information here in court from his file that I did not have. Knowing about it, while I would have preferred to have seen it before, does not change my opinion about Misskelley's competence. I viewed about 8 chapters of a DVD showing interaction between Misskelley, his counsel, and Dr. Wilkins about two days ago. I did not listen to any further audio tapes, except one tape explaining that Misskelley had his hand on a Bible. (BMHR 1369-1370). What I heard on the tape was not unlike what I had heard before, it was counsel structuring questions, probing, and Misskelley rarely spontaneously saying anything.

I provide information for the Court to make a decision on competency. *[The Court remarks that "Just from my memory, you're a far better witness than Dr. Wilkins was. BMHR 1344]*

Misskelley's IQ scores on a WAIS III were: full scale IQ 72; verbal 71; performance 77. (BMHR 1376).

His history of huffing and drinking may have impacted his performance.

Misskelley is a concrete thinker, which does not mean that he isn't capable of making things up, or in being convincing about things that did not happen. (BMHR 1386-1387).

The Court asked Dr. Deming whether someone with Misskelley's IQ and concrete thinking would be able to provide varying accounts of the scenario of the crimes charged in this case, and to describe specific details to his counsel or others as did Misskelley. Dr. Deming explained that he is not surprised by the sequence of events, or that certain parts of Misskelley's accounts hung together better than others, while parts of them did not conform to known information. Dr. Deming concluded by explaining that: "And to come up with some of these facts, I really don't find that very surprising, since he's been exposed to quite a bit of information." (BMHR 1394)

I did not assess the voluntariness of Misskelley's statement to police. I did assess his functioning, and under the current definitions of mental retardation, including sub-average functioning, Misskelley fits that definition. I also sought to assess his adaptive functioning, which had also been done when he was 10 years old.

If you considered the Flynn effect or rising IQ scores, at the time of the trial of this case, Misskelley's full scale IQ would have been less than 70.

REDIRECT EXAMINATION OF DR. TIM DERNING BY MICHAEL BURT

I also made inquiry about Misskelley's understanding of the current proceedings. He has little understanding of what it is for, or why his counsel was called to testify. That provided some corroboration for my opinion that he was not competent at the time of his trial.

Misskelley's stories kept changing, even at the point at which it appeared that his goal was to make some kind of deal. His approach was consistent with his impairments.

DIRECT EXAMINATION OF DR. WERNER SPITZ BY JOHN PHILIPSBORN

[Vols. 6, 7 & 8 - BMHR 1425-1870 beginning on November 21, 2008 in Volume 6]

In response to the Court's inquiry about the relevance of this testimony in a Rule 37 proceeding, Baldwin's counsel stated that Dr. Spitz was practicing in 1993 and 1994, he is an author and the editor of a standard work on forensic pathology which one counsel in the case, Mr. Stidham, said he obtained material from. Since Baldwin's trial counsel did not consult with a pathologist, seek advice from one, or consult the pertinent literature, the testimony addressed those omissions. BMHR 1423. The Court permitted the testimony. BMHR 1423

I am a medical doctor specializing in pathology and forensic pathology. I teach at Wayne State University, and at the University of Windsor in Canada. I do

private consulting now, having retired as Chief Medical Examiner in Wayne County, which is Detroit and the surroundings. I worked as well in Macomb County as Chief Medical Examiner, and retired in 2004. (BMHR 1425).

I have been a physician since 1953. After working in the Department of Legal Medicine in West Berlin, beginning in 1959, I worked at the Office of the Chief Medical Examiner in the State of Maryland. (BMHR 1426).

I have published 95 scientific articles, most in peer reviewed publications. I have published a textbook in forensic pathology which has worldwide circulation.

I am certified by the American Board of Pathology and have been certified since 1965 in pathology. (BMHR 1427-1428). I have testified in all states of the United States, before the Congress of the U.S in the investigation into the death of President Kennedy.

Pathologists are trained through a teaching program in a board accredited institution. Candidates can be certified in anatomic pathology. One can also be board certified in forensic pathology. For a while, I was in charge of the training program for forensic pathologists in the Office of the Chief Medical Examiner for the State of Maryland. (BMHR 1429-1430). A forensic pathologist will have gone to medical school, completed a residency in anatomic pathology, and then another year in forensic pathology. The American Board of Forensic Pathology offers

examinations once or twice a year depending on the nature of the certificate sought.

Normally, forensic pathologists first undergo training, after medical school, in hospital-type pathology, with an additional year in forensic pathology.

The third edition of my book, *Medicolegal Investigation of Death—Guidelines for the Application of Pathology to Crime Investigation* had come out in 1993. The first and second editions had come out in 1972 and 1980 respectively. (BMHR 1432-1433). A number of other books in the field had been published by the early 1990s including Bernard Knight's book, and several others. There are also journals related to forensic pathology, including international journals. (BMHR 1434).

It is customary for pathologists to consult with other colleagues or to review pertinent literature.

I have published on issues surrounding drowning, and authored a book chapter about it as well.

It would have been customary for a pathologist in one part of the country to consult with another elsewhere. Forensic pathologists do that all the time.

You ask me about a physician who left medical school, spent four years training in anatomic pathology, and another year in forensic pathology. That

physician's training is not complete until he has taken the supervised training and has documented his ability to pass the test. (BMHR 1438). It would be a red flag if you were told that such a person had not passed his board exams. It is a red flag that someone practicing forensic pathology is not board certified. (BMHR 1439).

I know Williams Sturner, and knew him when he was the Chief Medical Examiner in Arkansas. I heard of Dr. Frank Perretti before. I think he wrote me to ask if he could come train with me. (BMHR 1440).

As a pathologist, it is recommended that you do only about 250 autopsies a year. We do more. I have done autopsies on people who drowned - I testified in the drowning death of Mary-Joe Kepechne in the matter of Senator Ted Kennedy. Pathologists seeking help in looking into drowning deaths might look at the literature, and then call a colleague. (BMHR 1441).

In my review of the present case, I reviewed materials that I received from the Dennis Riordan Office. This included photographs of 3 eight year olds. After reviewing the case, I sent a letter out to Mr. Riordan (Exhibit 46) (BMHR 1443). After I wrote that letter, I obtained and reviewed some tissue slices from the remains, and I then prepared the second letter (exhibit 47) that you are showing me. (BMHR 1443).

The information that I received in this case would have been of benefit to me had I been consulted on the case in 1993 or 1994. It is common for a pathologist to be asked to review a case, and to consult. It would have been accepted at that time to review a case based on photographs, and it still is. (BMHR 1444).

Reviewing a series of photographs beginning with 48 A and proceeding in order, I arrived at an understanding of where the bodies were found. I also recall that each of the boys was given a separate number by the Medical Examiner's Office. I normally ask for as much information as possible, including the photos. I have reviewed the information pertinent to this case, and I have opinions on what the mechanism of injury was. (BMHR 1447).

Looking at photo 48 E, I see remains that show mutilation of the genital area. The scrotal sac has been torn off. It is not cut off. Looking at photo 48 F, I see areas where the skin has been rubbed off. 48 G shows the same phenomenon, and you can see where there is a tearing off of the scrotum. You see three marks on the posterior, parallel marks. You can see where the skin is discolored, and drying.

Had a lawyer come to me with these photos in the 1990s, I would have asked for distant and close up shots, and then I would have looked at the close ups, like 48 G, and I would have said that this is post mortem animal mutilation. (BMHR 1451-2). If you look at the missing area of the scrotum, and of the gouge marks,

and areas where the upper surface of the skin is missing, and looking at the linear scrapes and other marks on the extremities, large animals, dogs for example, do this kind of thing. The scrotum is loose. I can show you a picture like this from a publication. The scratches that you see are left by an animal like a dog. The scratches all go in the same direction. (BMHR 1453).

Counsel then were asked to review their schedules, and a new date was agreed on. Dr. Spitz's testimony was temporarily halted. A date in January, 2009 was picked. The Court also asked counsel to prepare 'a precedent that fits your theory of the case'. BMHR 1454. Testimony resumed on April 2, 2009. It was then announced that the testimony of attorneys Stidham and Crow would be concluded. BMHR 1455. During the further discussion which included Misskelley's lawyer Jeff Rosenzweig, and State counsel Kent Holt, the presence of the Misskelley trial file, and the existence of an index were discussed. The State offered the index as State Exhibit 6. BMHR 1457-8.

The Court and counsel also discussed the June 3, 1993 statement to police by Misskelley, and agreed that it was played at trial. The transcript of the statement was received at BMHR 1459. The defense preserved its original objections to the statement. The state then asked to introduce the December 10, 1993 interview of Misskelley by Mr. Stidham and Dr. Wilkins. BHMR 1460-1. The

State also introduced Misskelley's post conviction February 8, 1994 statement made at Pine Bluff, and another Misskelley statement also from Pine Bluff of February 15, 1994. BMHR 1461-2. This was followed by a February 17th statement, which Misskelley objected to as having been subject to a grant of immunity. BMHR 1462. The transcript was introduced, as were two taped Misskelley statements of February 23, 1994, one involving attorney Phillip Wells, and the other Misskelley and attorney Stidham. This was followed by a brief tape of March 2, 1994 involving Misskelley and Stidham.

The State also referenced the Stidham billing records as Exhibit 29. BMHR 1463-4. Judge Stidham was then recalled for cross-examination. BMHR 1465.

Witness Dan Stidham recalled at Volume 7, BMHR 1465, on cross-examination. Cross-examination is resumed by Kent Holt, Esq. with the Attorney General's office. Also identified are David Raupp, Esq., and Mike Walden, County Prosecutor. Mr. Holt resumed the examination. BMHR 1465.

CROSS EXAMINATION OF DAN STIDHAM BY KENT HOLT RESUMED

My billing records are an accurate reflection of my participation in the defense of Misskelley's case. The notations being pointed out are an accurate log of what I was doing in the case. The billings I am being shown reflect both my activities and those of Mr. Crow. (BMHR 1470).

I do not dispute that we first met Misskelley around June 8. He didn't seem to understand who we were. I don't recall if I taped or noted that conversation. I would have left everything in the files I provided to the new lawyers. I think the index of the files was probably prepared by them. (BMHR 1476).

Going over the memoranda in my file, including the one of September 24, I recall Misskelley not being particularly accurate. Misskelley had said until my epiphany in September that he had been there. His accounts changed. I had been influenced by information that the blood on Misskelley's shirt was inconclusive and could not be matched with his. It is also true that Jessie had maintained that he had never gotten any blood on him. (BMHR 1487).

I probably was first made aware of Misskelley's statement on June 10, according to an entry in my billings. (BMHR 1490).

Now that you are showing me some notes, I recognize that we have some file memos, some of which are legible and others are not. (BMHR 1498). There are some notes from an interview with Misskelley in my file. The interview was June 11, 1993. It was marked as State's Exhibit 12E. It describes what he is telling me, which is that he had seen pictures of the three boys a week before the murder at a cult meeting, the notes continue that the three teens were in the water. Damien hollered at them. Jason hid in the weeds. The boys started fighting with

Damien, Jason started fighting with them. Damien stuck his penis in one boy's mouth, Misskelley hit one of the boys. Jason 'screwed' the blond boy in the mouth and in the butt. Misskelley realized it was time to stop. Misskelley helped one of the boys up. Damien screwed the Boy Scout. Jason stabbed one of the boys in the face. Misskelley choked the Boy Scout. Damien and Jason threw them in the water. They were kicking around. All of this was on June 11, 1993. (BMHR 1508).

I knew I had to ask him questions because the blond boy wasn't the one who was castrated, but that is what Misskelley was saying. He was back and forth on what had happened. Misskelley simply couldn't give me a narrative. (BMHR 1510).

I did eventually, once I found out that there was no clear DNA match, meet Mr. Lax. I think it was that day that I had lunch with him. (BMHR 1519). Lax said he would mail me an article that had appeared in a magazine about Richard Ofshe.

I had been trying to prepare him (Misskelley) to testify, so when you ask me about my concerns that he kept saying they were tied up with a brown rope, I would ask him if he wasn't actually talking about shoe laces. (BMHR 1526-1527).

[Volume 6 ends at BMHR 1527.]

[Volume 7 begins at BMHR 1528, Stidham testimony continuing at BMHR 1529.]

At that point, I was trying to do the same thing the police had been doing, to give him some options. I was trying to prepare him to testify. I was concerned that he would be impeached because he could not get the story straight.

I may have screened Misskelley's correspondence. I don't recall. But I may have been concerned that he was very suggestible.

It is true that I have sent material, since the conviction, to some people who operate a website. (BMHR 1540-1541). I get a fair number of inquiries about the case. [Misskelley objects to questioning about the website, and its relevance. The Court rules that it is relevant as demonstrating Mr. Stidham's performance. The Court limits use of third party hearsay from the websites. (BMHR 1546-47)]

The tape of the August 19, 1993 session shows that I am trying to explain to Misskelley the options that he had, and the plea offers.

As I testified before, I also prepared a number of motions. I asked other lawyers for motions. I received no assistance from the Death Penalty Resource Center.

When you ask me further about communications with Misskelley, it was not until I saw how Dr. Richard Ofshe conducted his interview with Misskelley that I

began to understand that there was a better way to communicate with him than I did. I did not understand how to deal with a client with his handicaps. (BMHR 1557).

In reviewing the statements that Misskelley gave me, it was my view that if I had witnessed a traumatic event, I would at least know what time the killings occurred, and get certain of the information that I was concerned about right.

On the issue of sexual assault on the boys, Misskelley was all over the place, including after he heard the Medical Examiner testify about it. I think he was all over the map with things that would have been obvious to anyone who was actually there. (BMHR 1564-65).

As you take me through the detail of my billing records, they are consistent with my recollection that while I was working steadily on the case from June through the middle or latter part of September, it was not until the later part of September that I received the information from Mr. Fogelman about the DNA, and we started then organizing ourselves differently. Once I had the epiphany, we started cataloging everything we just kind of ignored. (BMHR 1589). We had started communicating with experts on false confessions, and were dealing with additional suppression of statement matters.

In October I did participate in some interviews of witnesses, including potential alibi witnesses.

April 2, 2009 session ends with Judge Stidham still on the stand. BMHR 1612; on April 3, 2009, BMHR 1613,

CROSS EXAMINATION OF GREG CROW BY KENT HOLT RESUMES

I recognize a letter from me to Jessie Misskelley dated February 21, 1994. The letter discusses the pluses and minuses of his testifying, in return for some kind of reduction in sentence. I recall this coming up before the trial started. Joe Calvin made the offer. (BMHR 1614-1615). The offer was 50 years. I discussed the plea offer with him.

[The Court then heard a tape of a conversation between Misskelley and attorney Crow. Starts at BMHR 1617. The tape ends at BMHR 1604.]

I do have some recollection of there being discussions about Misskelley testifying that do appear to be reflected in our billing records. My recollection is that Misskelley got aggravated at Dan Stidham around the time that there was discussion about the possibility of his making a deal and testifying.

REDIRECT EXAMINATION OF GREG CROW BY JEFF ROSENZWEIG

Dan recorded a lot of things. I did not. If we are talking about a recorded call, then it would have been something that Dan had.

The conversation that was being referenced towards the end of my cross-examination occurred after Misskelley had given a statement without any defense lawyers being there, and then at some later point we were there. That statement would have been the one on February 21, 1994. This would have been before attorney Wells got involved.

My experience was that Misskelley had a very hard time giving a narrative version of events. (BMHR 1640-1641).

I too had a type of conversion on how to approach Misskelley's case. It was in September when both Misskelley and his father had gotten mad. At that point, Misskelley was insisting that he was innocent. I recall thinking about the evidence, and I think it was around that time that the prosecutor had indicated that the bloody t-shirt would not be used because it was not a match. (BMHR 1641-42). The blood had been identified as consistent with both the victim's and Misskelley's, and he had stated that his blood would have been on the shirt because he had injured himself.

Misskelley maintained his innocence during trial. Then, after the trial, he was talked to without lawyers being present, and it appears that they made some promises to him, and he made a statement. Ultimately he decided he would not testify. (BMHR 1642).

CONTINUED CROSS EXAMINATION OF DAN STIDHAM
BY KENT HOLT

We prepared a time line of Misskelley's alibi before the trial. It is part of Exhibit 12.

It is likely correct that Dr. Ofshe asked Misskelley about things that were in one of the officer's notes. I am sure I provided those notes.

We also were able to have Mr. Holmes as an expert. He had volunteered. He testified in a pre-trial and at trial. He had also given a polygraph examination. (BMHR 1654-1655).

On being further asked about the sequence of events, I was incorrect about my prior recollection. It appears we did receive an offer in Brent Davis' office in August. Then right before trial Mr. Calvin came in and made an offer. The Court inquired of Mr. Misskelley in chambers.

We did work steadily through the end of the year and into January, preparing the case.

There were, as reflected in my billing records, activities after the trial, including meetings with Misskelley, apparently a meeting with Dr. Ofshe that I did not recall. In early March we were drafting a motion for a new trial. (BMHR 1672-1673).

I also acknowledge that I was invoiced by some experts, including Dr. Ofshe, Dr. Wilkins, and Dr. Berry, who was a jury selection expert.

There are items in my file folder that I received in corresponding with experts on false confessions even after I concluded my representation of Mr. Misskelley. [*These were admitted for the limited purpose of showing Mr. Stidham's interest in representing his client. BMHR 1679-1680*]

REDIRECT EXAMINATION OF DAN STIDHAM BY JEFF ROSENZWEIG

On the eve of the Baldwin and Echols trial, Mr. Lax and I went to visit Misskelley. The prosecutors and the Craighead County Sheriff as well as the Clay County Sheriff were still approaching Misskelley at the time. We went to Pine Bluff, the diagnostic center. As a result of that interview, I concluded that Misskelley's position was that he had nothing to do with the crimes and saw none of the other people there. (BMHR 1691-1692).

Reviewing the sequence of Misskelley's various statements again, he would provide varying information, and at least twice, including once after the trial, referenced the brown ropes as being the ligatures, though he explained at one point that he had said that to throw them off. (BMHR 1693-94). I do view this back and forth on the ligatures as an example of his suggestibility.

Even after the trial when there was a discussion of having him be a witness against the other two, it was my opinion, after going over the crime scene map with him in early February, 1994, that he was unable to describe the crime scene correctly, and that he was wrong about it in several significant ways. (BMHR 1696-97). He also was incorrect about where the bodies were thrown. He was inconsistent in describing sodomy by Echols, the mutilation by Baldwin. In the statement after the trial he talked about an older man who told Damien to do it, which was the first time that issue surfaced. (BMHR 1698). He was also inconsistent in the description of what Baldwin and Echols were supposed to have been wearing, and after the trial told the prosecutor he did not remember what they were wearing. (BMHR 1699-1700).

FURTHER REDIRECT EXAMINATION OF DAN STIDHAM
BY JEFF ROSENZWEIG

To explain the conversation in which Misskelley got angry with me, I recall getting a call that Misskelley was at a prosecuting attorney's office and about to give a statement to the prosecutor. I was stunned. I had no idea that Misskelley was there. When I got there, Misskelley would not talk to me. The tape indicates that he did talk to Mr. Crow. Apparently Misskelley had been told that I was not a good lawyer and that I had only handled a DWI case and was not capable of

representing him. He needed to listen to them if he ever wanted to get out of prison. That is why he did not talk to me. (BMHR 1707).

[The April 3, 2009 proceedings concluded until August 10, 2009. BMHR 1709. The transcript of the beginning of the session on that day appears in full below, as Misskelley and Baldwin renewed their motions to recuse.]

THE COURT: All right, I can't remember where we left off. Who was our last witness?

MR. ROSENZWEIG: Good morning, Judge.

THE COURT: Good morning.

MR. ROSENZWEIG: Your Honor, the last time we were here, was to finish the Stidham cross-examination.

THE COURT: Did we finish that?

MR. ROSENZWEIG: I believe so.

MR. HOLT: Almost, but for purposes of that false confession issues and his connection to the professionals.

MR. ROSENZWEIG: Yes. The last time we were here, Your Honor, uh, Mr. Baldwin was not here at all. We did two days with Mr. Stidham, but the Baldwin team was not here at all.

Before we start, Your Honor, I think it's appropriate at the beginning of these proceedings. A year ago, we had moved for Your Honor's recusal on several grounds, and of course, were denied it.

We need to, uh, I think it would be appropriate to renew that, and largely because of the, well, at least from the reports in the newspaper that Your Honor is running for the Arkansas state senate next year.

And so I would renew that motion. I assume the reports are accurate, that you are running? And if they are accurate, it would be our position...

THE COURT: ... well, that would be the reason for recusal? You're talking about something that will happen in the future.

MR. ROSENZWEIG: Yes, sir.

THE COURT: I'm still a judge.

MR. ROSENZWEIG: That's correct, Your Honor. It is not, as I read the rules in the Canons of Judicial Conduct, because you're sitting as a special judge, it would not be, it's not a violation of the Code of Judicial Conduct; however, that doesn't resolve the problem, because as we perceive it that Your Honor is a candidate for a partisan political office and it would be our position that it would violate the spirit, if not the letter, of Amendment 80.

You have every right to run for office, there's no question about that, uh, as a retired judge, as would be the right of any citizen, including yourself.

But the issue is whether or not it is appropriate under the violation of due process of the federal and state constitution.

THE COURT: How would it violate due process?

MR. ROSENZWEIG: Because, uh, you would be sitting concurrently as a judge, but also as a candidate for a partisan political office; not a nonpartisan office such as the Supreme Court or circuit court, or something like that.

And that's the basis for it, because it is a partisan political office and it is our position that those two roles are inconsistent.

Amendment 80 basically holds that, uh, Amendment 80 which says that if a person files, which you can't do until...

THE COURT: ... you can't do it until next year.

MR. ROSENZWEIG: That's right.

THE COURT: If I do.

MR. ROSENZWEIG: But at least the newspaper is indicating you have announced for that position.

THE COURT: I announced that I am looking at it and intend to, yes. I have done that.

MR. ROSENZWEIG: And so although it's not a violation, technically, of Amendment 80, it would be, our submission is it would be a violation of the spirit of the Amendment, under the circumstances.

THE COURT: Well, I don't follow it. What's the state's position on that?

MR. RAUPP: Well, Your Honor, our position is the same as briefed in the Arkansas Supreme Court. The parties, uh, have briefed this in the Arkansas Supreme Court, uh, you may know that there is a pending motion to have this case remanded for fact-finding on whether or not you should recuse, uh, the bottom line is, we chose recusal to rest on the conscious of the Court.

THE COURT: Well, I'm having a hard time finding where it would - I mean, I guess you've got a legal argument, but I certainly don't feel any compulsion to recuse the case.

I mean, frankly, I'd love to drop it in somebody's lap, but I feel like it's my burden to bear. I'm the one that tried the case originally; I'm the one

that has the familiarity with a case that's been going on for fifteen or sixteen years, and I think it's appropriate that I finish it.

MR. RAUPP: Certainly, case authority is that the trial judge can sit in a Rule 37, ordinarily, the Court rules they can. A matter of bias or recusal in case of discretion can be reviewed on direct appeal.

THE COURT: I think if I were a filed candidate for office, your motion would be well-taken. I am not, and there are several months before that occurs, if it does occur. So I'm going to deny the motion.

MR. ROSENZWEIG: Well, we've made our record, and for the record, it would be our position that this would violate the spirit of Amendment 80, and federal and state constitutional rights of due process.

THE COURT: How does it violate due process?

MR. ROSENZWEIG: *Tooney vs. Ohio; Ward vs. Eddie Monroe*, and there are a number of other cases like that, that specifically talk about the circumstances in which a, uh, that bias, uh, that bias, either explicit, or even implied bias, uh, could...

THE COURT: ... well, where would bias be implied?

MR. ROSENZWEIG: Because, Your Honor, is a candidate for a partisan political office.

THE COURT: And what would that have to do with it?

MR. ROSENZWEIG: Because, because, uh, you are, as any candidate would be who is wanting to appeal to the votes of at least the majority of his electorate, which is a totally different motivation from attempting to apply the law.

And that's why certain matters are regarded as implied or structural bias, and do not need to look into the head or the character of the particular, uh, of the particular judge, just as in the same way you can't sit on your first cousin's case, uh, because even though you may not have talked to your first cousin for a hundred years, you can't do it because the law says there are certain structures.

And it's our position this would be one of those structures.

THE COURT: Well, I don't have any biases, and your motion is denied. I'm going to hear it through to the end.

MR. PHILIPSBORN: Your Honor, on behalf of Mr. Baldwin, we have made a similar argument, uh, before the Supreme Court.

We've joined in the Misskelley motion before and we respectfully ask the Court to show us as having joined in the motion.

THE COURT: Sure. No problem.

MR. PHILIPSBORN: Thank you.

MR. RAUPP: Your Honor, if I could make a brief point to the due process argument. The state's position is pleaded both in this court and the Arkansas Supreme Court, but it would be, uh, among other reasons that the due process claim, I think, is founded on a concern that a party have a factfinder who is not interested in the outcome.

And the parties are the financial interests or personal lives in the outcome, and the suggestion that a candidate for office at this stage of the game, whether it's a judicial candidate or a house or senate candidate, has an interest in the outcome to sway voters, and I think it's speculative, at best. Certainly, that's the state's position, and it certainly wouldn't - it would certainly undermine the notion that elected circuit judges at all could sit in cases because they're going to come up for election.

And at least taken to the extreme, a due-process argument suggests that all judicial candidates have an interest in the outcome of the case.

MR. ROSENZWEIG: If I can respond briefly to that, uh, there is a difference between a nonpartisan election as circuit judgeships are, and a partisan election.

And a judge for a judicial candidate has certain restrictions, uh, some of which may or may not be constitutional, but has certain strictures on what they can and cannot say and do in a way that a candidate for a partisan political office does not.

THE COURT: Is that it?

MR. ROSENZWEIG: Yes, sir.

THE COURT: All right. Call your next witness.

DIRECT EXAMINATION OF DR. WERNER SPITZ RESUMED
BY JOHN PHILIPSBORN

[At the end of the above motion hearing, testimony resumed with Dr. Werner Spitz. BMHR 1716]

Before you become certified as a forensic pathologist, you must be certified with the American Board of Pathology in either anatomic or clinical pathology. Most people are accredited in both. I did search to see if Dr. Peretti was listed by the American Board of Pathology as having been certified in forensic pathology. He was not. (BMHR 1717).

Looking at the body of Michael Moore (Exhibit 48Q) I see a pattern on the right shoulder. The pattern is shown in other photographs including 48I. The pattern is all part of one event. It is inconsistent with a tool like a serrated knife.

This seems to look like the paw of a large animal. (BMHR 1721-22). There are also scratches that look to me like animal mutilation.

Photograph 48I also shows the left upper eyelid, the left nostril, and the ridge of the nose, all of which show injuries reminiscent of animal predation. They are not consistent with beatings with fists or sticks. (BMHR 1722-23).

The subject of animal predation was covered in the 1993 and 2006 editions of my book. What you have here is characteristic of animal predation.

Looking at further autopsy photographs pertinent to the victim Moore, I do not see the kinds of injuries consistent with beating with a stick, or with fists. What I see is consistent with the kind of environment that they were found in.

In the 48 series exhibit, photographs 48M and 48L do show areas of the skull that are fractured. The bony part of the skull is indented. 48N shows that as well. Looking at the types of fractures, particularly where one meets the other, you can see where one fracture was stopped by the other, and there are marks that are consistent with tooth marks. I can show them better with a pen. (BMHR 1733-34). These injuries are not like those that might be caused by a hammer.

Moreover, an 8-year old's skull is a lot more resilient and has a lot more fibrous tissue in it than that of an older person. Where you see fractures in a skull like this, there is an element of tearing. You would not see that in an older person. (BMHR

1735-36). If you look at the injuries that are on the body, you see claw marks from some kind of a large animal that might be able to go into the water. To better understand that, you have to look at the overlying skin, and I am showing the Judge the totality of the injuries to the head to demonstrate my point.

My opinion is that all three boys died of drowning. (BMHR 1738).

The process of drowning involves among other things the absorption of water in the blood stream. The absorption of water dilutes the blood stream, and there is an imbalance of the chemicals in the blood. There is more pressure in the blood stream as a result of that, and a drowning victim often bleeds more from the same injury than someone who was injured similarly but died of a different cause. (BMHR 1739-40).

My view is that the fractures that I found on the skull are likely post-mortem, because the skin that is associated with them did not bleed significantly.

Looking at the injuries to the victim Moore's face, my opinion is that he shows a number of injuries, including those to the left eyelid and other areas that are consistent with the kinds of injuries that are inflicted by aquatic or marine animals. (BMHR 1741). A number of types of animals will do this.

Autopsy No. 330 is related to further photographs in Exhibit 48 beginning with 48R. Just looking at the initial photograph, you can see the artifacts of

drowning when water mixes with protein in the airways which causes foam. There are nibbles on both eyelids and what I take to be biting on the left cheek. There is a rough area on the left cheek which is from an animal biting that area and licking it with a rough tongue. Dogs and cats have those kinds of tongues, perhaps other animals as well. (BMHR 1744). These injuries to the eyelid of Autopsy 330, which is Mr. Branch's number, are similar to those of Mr. Moore.

Looking at the injuries, which in my opinion you need to look at as a group, I view the injuries to the lips as consistent with those that would have been caused by an animal. (BMHR 1745). I don't see injuries looking at what you are showing me, including 48R, that is consistent with a beating and a knifing. (BMHR 1745).

There is a close-up of the left cheek, which is Photograph 48T. These are not knife wounds. Looking at other photographs in this series, including 48U which shows the body further down and 48V which shows the left side of the face, all of these are injuries sustained after death. I am not sure about superficial scratches, but the significant injuries, gouging type and bites, are not bloody. These look like tooth marks from an animal. (BMHR 1748-49).

Animals that would have claws or nails of some sort, dog, perhaps a turtle, I don't know that I can distinguish the type of animal would have likely made these injuries.

It is possible that some of the injuries may have occurred, particularly those to the lips, when there was still some blood pressure.

Looking at the totality of the evidence, I see no chipped teeth or defects that would be consistent with a punch to the lip or mouth area.

Looking at the area in the back of Mr. Branch's head near the spinal column, I do see evidence of some degree of force, some kind of solid object that caused a bruise. The abrasion that covers the area is irregular, and it is rough. It is not entirely consistent with a tree branch, particularly because right next to this area is where some kind of animal both bit and licked the tissues. (BMHR 1755-56).

Looking at some of the injuries to the top of the head, I do not see evidence of a significant blow to the head. I do see what in my opinion, especially when the scalp is reflected, as shown in Exhibit 48AA, what appear to me to be tooth marks. This is not a post-mortem injury. It does have a hemorrhage underneath it. It could have been sustained when this person was in the process of dying. (BMHR 1758-59).

It is possible that a person who dies by drowning would have been rendered unconscious before drowning.

There is an area of the skull that shows a fracture, but it is unusual. It is not consistent with strangulation or with some kind of a fall. There are no related

injuries. (BMHR 1762-63). The area that is fractured here is very difficult to reach. It is very deep, and it is concealed from the surface of the body.

Looking at another picture of this same person, Photograph 48CC shows the left side of the chin. I do not see a stab wound, a cut or a gouging here. It is hard to tell exactly when this would have occurred, but there is no bruise discoloration. However, there is also no cut in the tissue made during the autopsy that would assist us in identifying a hemorrhage. (BMHR 1765).

I agree with Dr. Peretti's signing off Mr. Branch as a drowning death. I don't believe that I see any injuries that I would associate with a loss of consciousness. I do not see a wide array of man-made injuries here. (BMHR 1766).

Dr. Peretti did not find any hemorrhage in the area of the ligatures which would tend to mean that the victim was not fighting against the bindings. (BMHR 1769).

Photograph 48DD corresponds with Medical Examiner No. 331 (Mr. Byers). This person's face shows injuries on the tip and bridge of the nose, and superficial scrapings in the left upper eyelid. There are some triangular shaped bite marks. Some of the injuries are like those found in Mr. Branch. The photographs show evidence consistent with drowning. Photograph 48E shows an area of mutilation, a

tearing of the genitalia. This was not done by a knife. It shows claw marks.

(BMHR 1770-71).

Looking at these further photographs I do not find any evidence that he was beaten. I do see evidence that he was mutilated after death, including the edges of the scrotum and penis, in what would appear to be claw marks. (BMHR 1770-71).

Looking at the close-up shots, including 48FF and 48F, I see no evidence of knife wounds. I see claw marks, and irregular wounds that are inconsistent with what a knife would do. A knife would leave a sharp surface. Looking at the photograph you can see that the skin was pulled off of the penis and you see the tearing of the tissue, and numerous claw marks, tooth marks, and bite marks around this whole area.

Having handled knives and cutting instruments with around 60,000 bodies, I can tell you that this is not caused by a sharp instrument like knife or scissors.

(BMHR 1772-73). I see some puncture wounds in the crotch area.

I cannot tell you whether a grapefruit gives a proper illustration of how a body would be affected by a knife. I have never used one. I have used pig skin or pig bones for reconstruction. I would not use a grapefruit. (BMHR 1774-75).

Photograph 48LL shows some claw marks, some scraping marks, which are also shown in 48MM and 48G. You can see where some of the epidermis is missing. These are all post-mortem injuries. (BMHR 1777).

Looking at the injury to the top of this person's head, 48GG, I do not believe that shows a stab wound. First, it does not go into the bone. Second, the skin on the top of the head is extremely thin. It does not look like a cut, it looks like a tear.

Autopsy number 331 is Mr. Byers. He is the person we are talking about. His face, which is depicted in Photographs 48C and D, does not appear to me to have been the subject of a beating. (BMHR 1779). I don't see anything here that is consistent with a knife wound.

To me the injuries that I see are not consistent with the application of a full force blow by somebody who is 16 or older. (BMHR 1782-83). I see injuries that to me are consistent with bodies being addressed by animals that may be moving them around.

There are some fractures here that we have previously discussed, in the skull. One of them is a radiating fracture. (BMHR 1786-87). It was caused by some kind of blunt trauma. But I have no evidence of injury to the brain or to the membranes of the brain. To me it seems like a post-mortem injury. (BMHR 1787). Mr. Byers died of drowning in my opinion. All three boys died of

drowning. (BMHR 1789). I disagree with Dr. Peretti's view that he died of multiple injuries. (BMHR 1790).

I also disagree that there is any evidence of sexual assault on these young men by a male. There is no evidence of sodomy. I don't see any abnormal dimensions.

In my view, a qualified forensic pathologist would not have found a valid scientific basis for evidence of sexual assault here. (BMHR 1792-93).

In addition to the book I edit, there would have been other American books available in 1993 and 1994, including Dr. Adelson's *The Pathology of Homicide*. Bernard Knight would also be an expert whose works were available.

DIRECT EXAMINATION OF DR. WERNER SPITZ BY MICHAEL BURT

I am aware that Dr. Peretti has written a letter dated May 30, 2008 [Exhibit 49] that references me as a defense pathologist. I am aware of the contents of the letter.

It is true generally that as a normal part of an autopsy process tissue samples are taken from various wound sites. (BMHR 1796). In a case like this, you would take representative sections. You would then prepare a microscopic slide. You look at the tissue and you can assess whether there is hemorrhage. That helps you understand whether the wound was inflicted before or after death. (BMHR 1797-

98). According to Dr. Peretti's report in the Moore autopsy, his microscopic slides were prepared from tissue in the area of the ligatures, the wrists and ankles. With Mr. Moore he found no hemorrhage around the right wrist, but he did find hemorrhage around the right ankle. Similarly, he found some hemorrhaging in the left ankle. He found none in the anus and rectum. However, he took no slides from any of the injuries that could be characterized as animal predation. (BMHR 1801-1803).

Similarly, in the Branch autopsy, he found no hemorrhage in either the right ankle or right wrist, or in the left ankle or left wrist, under the ligatures. There was no slide taken for any potential animal predation injuries in Mr. Branch.

With Mr. Byers, there are no hemorrhages found in the microscopic slides. There were some bacterial colonies found in the slide of the penis (where there was a degloving injury). There were no slides taken of the other areas of injury. Thus, when Dr. Peretti wrote in his letter that the samples demonstrated hemorrhaging indicative of ante-mortem injury and not post-mortem injuries, the autopsy reports do not indicate the preparation of any microscopic slides that would corroborate that statement. The statement makes no sense in view of the content of the autopsy report. (BMHR 1807-08).

I examined the tissue slides made available to me and none of them changes my opinions regarding the animal predation.

As to Dr. Peretti's third criticism concerning his physical examination of the genital area injuries to Mr. Byers, and a description of bridging of the soft tissue, and wounds indicating the use of a sharp instrument, is an interpretation I disagree with. First, his statement is incorrect. In part this is because Dr. Peretti is incorrect that you do not necessarily have bridging in circumstances of a bite wound by an animal. In order to have bridging you need crushing of the skin as well. (BMHR 1809-1812).

Reviewing page 833 of the Misskelley trial transcript, I disagree that this is some kind of knife wound. You see that there is skin missing on the left cheek, there is tissue torn out. It is animal predation. (BMHR 1811-1812).

In the Byers autopsy where Dr. Peretti opines that there are multiple gouging injuries, I believe that this is consistent with predation. The scrotum has been pulled away. A knife does not leave a ragged edge like that. There is a picture in Dr. Knight's book that I can show that depicts a scrotum that is bitten off like the one here. (BMHR 1813-1814). Having heard Dr. Peretti's testimony in response to a series of questions about a child being grabbed by both ears in relation to Mr. Branch, I am disturbed by the fact that there are no injuries on both ears. Also, the

entire left side of the face was involved in trauma from biting and licking. The opinion he gave sounds “like voodoo”. (BMHR 1816). I recall first seeing these photographs, I was told nothing about them, and was told to call back with my views. I called back without hesitation and said these were animal predation. (BMHR 1817).

I also disagree with Dr. Peretti’s description of there being contusions associated with abrasions of the upper extremities of Michael Moore. The microscopy shows that there are no contusions or bruising. (BMHR 1817). I also disagree with testimony that Dr. Peretti offered that at page 824 of the Misskelley trial that the wounds we saw were defensive. Looking at the other injuries here I don’t think that you could say they necessarily are defensive. I think that is a misleading way to describe them. (BMHR 1819).

Had counsel approached me and asked me about the case, or the illustrations in my book, I would have been able to consult and testify if asked to do so. (BMHR 1821).

CROSS EXAMINATION OF DR. WERNER SPITZ BY KENT HOLT

Normally I do not do microscopy, or microscopic examination, until I have done the actual autopsy. I might ask for a technician to prepare autopsy slides.

While it is correct that it helps to have actually attended an autopsy, it is not correct to say that there is no substitute for doing so. (BMHR 1826).

In going back into the material I had, I did have the autopsy reports; tissue slides; photographs of various kinds, including some crime scene photographs.

[End Volume 7, BMHR 1827, begin Volume 8, BMHR 1828.] I don't remember whether I had crime scene reports. (BMHR 1829).

I have never discussed the autopsy with Dr. Peretti. (BMHR 1830).

Reviewing photographs of an autopsy helps me review a pathologist's opinions. (BMHR 1831).

I view forensic pathology as being part science and part art. It also involves knowledge of the subject matter. (BMHR 1832-1833).

I do not believe that animal predation would have masked other injuries like a stab wound, but I do not think that is the case here. (BMHR 1833-34). My view is that it is indisputable that the three boys died of drowning. My view is that they did not die of injuries, but died of drowning. (BMHR 1834-1836). I do not know whether they were conscious when they entered the water. (BMHR 1836).

My interpretation of the injuries to the head was that first, there is no evidence of bleeding in the brain. (BMHR 1838). My interpretation is that they

may have been handled by large animals, shaken around. I agree that the boys were tied up, but I do not know who did that. (BMHR 1839-1840).

I cannot tell you what circumstances they were tied up under, and whether or not they were subdued. The injuries that I saw are entirely consistent and compatible with animal predation and the shaking of the bodies by an animal. The injuries to the face, to the head, the degloving of the penis, the tearing off of the scrotum, those injuries are not man-made. I cannot tell you where they occurred. The penis was not removed, it was degloved. Degloving or mutilation of the genital area by certain animals is not that unusual. I have an exemplar of it with me in one of the books I referenced. (BMHR 1842-1843).

Looking again at the picture of Michael Moore in the series of photographs marked Exhibit 48(o), you can see two semi-lunar injuries that are closely associated. I do not see any sign that this child died as a result of some kind of brain injury. The heart continues beating when someone dies of head injuries. There is no blood consistent with that kind of activity here. (BMHR 1849-1850).

I agree that biting injuries can look like knife wounds, but many of the wounds here are triangular, some of them are straight. Some of the wounds are round or semi-round, and irregular shaped. To me they look like the kinds of

wounds you would see inflicted by some kind of carnivorous animal. (BMHR 1853-1855).

REDIRECT EXAMINATION OF DR. WERNER SPITZ
BY JOHN PHILIPSBORN

I can explain to you how I eliminated human involvement in a number of these injuries. The child who had an abraded cheek on the left side. If you look, there is no clear pattern to the marks. There is no specific kind of distribution. But they do have certain kinds of shapes. Some look triangular. Even looking at some of the areas around the head or under the head, there is no evidence of anything specific that would have caused those kinds of injuries. (BMHR 1859-1861). In my comments about the injuries to the skulls, I would note that because of the age of these victims, the skulls are thin. You can see that in the picture. (BMHR 1861).

I agree with the statement, which was written by Dr. Perpher in my book that post-mortem injuries by various kinds of animal life can cause injuries that simulate pre-mortem trauma. (BMHR 1862-64). (Whereupon the Court received Exhibits 46 through 48, including all of the photographs shown to Dr. Spitz (BMHR 1864).

FURTHER REDIRECT EXAMINATION OF DR. WERNER SPITZ
BY MICHAEL BURT

Dr. Knight's book contains a photograph showing a degloving injury of the type found here.

RE CROSS EXAMINATION OF DR. WERNER SPITZ BY KENT HOLT

I never had the opportunity to talk to Dr. Peretti or to Dr. Sturner about this case.

DIRECT EXAMINATION OF PHILLIP WELLS BY JEFF ROSENZWEIG

My name is Phillip Wells. I am an attorney in Jonesboro, practicing with the firm of McDaniel & Wells. The current Attorney General of Arkansas practiced with our firm until 2006 when he was elected to office. The Attorney General was not involved in our firm when it was involved in this case.

I became involved in the case when Judge Burnett appointed me as an attorney *ad litem* for Mr. Misskelley. It was my understanding that Mr. Misskelley had expressed some interest in testifying in a trial of two other defendants. It was my duty to provide advice so that he could make a choice independently. (BMHR at 1872-73).

I had a conference with Misskelley and his lawyer Mr. Stidham. Stidham was of the view that Misskelley had an excellent chance on appeal and that he should not testify. (BMHR at 1873).

I also spent time with Misskelley. I met him first at the Craighead County Courthouse. I later met him at the Craighead County Detention Center. I spent three to four hours with him. I recall that when I was at the Detention facility the Deputy Sheriffs were being friendly to him. They were giving him Cokes and pizzas. I think he was going along with their recommendation that he consider testifying. My recollection was that Misskelley seemed confused about his lawyer Stidham's view that he had good grounds for an appeal. I also recall that before he made any final decision he had wanted to talk to his parents. It was after he talked to his parents that he made the decision not to testify. In short, my view was that Misskelley was capable of being influenced by others. (BMHR at 1873-1874).

CROSS EXAMINATION OF PHILLIP WELLS BY KENT HOLT

I was unaware that any tape-recording was made of the meeting at which I was present with Misskelley and Stidham.

I had no knowledge of whether Misskelley had talked to his attorney Stidham at the Department of Correction before I spoke with him at the Detention Center.

I do not recall any discussion of a specific kind of plea offer. I was still gathering information when I was communicating with Misskelley, and I never got to the point of making a specific recommendation to him. Based on my

observations of him I felt that he was slow intellectually. He was slow in processing everything that was going on. (BMHR 1869). He never discussed the facts of his case with me. (BMHR 1870).

[The following testimony was given beginning on August 11, 2009]

DIRECT EXAMINATION OF DR. MICHAEL BADEN BY MICHAEL BURT

[Vol. 8: BMHR 1880-1996]

I received a medical degree from New York University School of Medicine in 1959 after receiving a bachelor's degree in science from the City College of New York in 1951. I am a physician and a forensic pathologist who has practiced as a forensic pathologist for 44 years.

I interned and then did a residency at Bellevue Hospital Medical Center in New York, and began working as a part-time assistant Medical Examiner for the City of New York. I completed my training in 1965 and became a full-time Medical Examiner. I stayed on with the Office of the Medical Examiner in New York, and held various positions, including that of the Chief Medical Examiner.

In 1985 I became the Chief Forensic Pathologist for the New York State Police, a position that allows me a private practice as well. I am testifying here as a private forensic pathologist. As the Chief Pathologist for the State Police, I have

statewide jurisdiction, and cover the 62 counties of New York State. (BMHR 1881-1882).

My CV lists my publications and presentations.

To be Board certified means that you have received and demonstrated the pertinent training, and that you have passed the examinations. There is a better chance that physicians are good if they have passed the relevant boards. (BMHR 1884).

There are sub-specialties in pathology that include clinical and anatomical pathology. Forensic pathology is another sub speciality. A forensic pathologist has training beyond a hospital pathologist. I passed the boards in anatomical, clinical, and forensic pathology. (BMHR 1884-1885).

I have taught at the New York University School of Medicine, the Albert Einstein School of Medicine, the Albany Medical Center, the John Jay School of Criminal Justice and the New York Law School.

I have consulted with a number of government offices, including Attorney General and District Attorney offices, homicide investigators, the FBI, the Dept. of Justice, DEA, ATF, as well as with defense counsel. (BMHR 1887-88).

I have consulted with both plaintiff and defense counsel, prosecutors and the defense.

I was the Chief Forensic Pathologist for the U.S. Select Committee on Assassinations back in the 1970's, which investigated the deaths of President John F. Kennedy and Dr. Martin Luther King. (BMHR 1888).

I have also been called upon to provide consultation outside of the U.S. in a number of countries. I have qualified as a forensic pathologist over a thousand times.

The reason that you need independent pathologists in cases is because law enforcement related forensic pathologists can make mistakes. A recent report from the National Academy of Sciences pointed out that crime laboratories and Medical Examiners have a prosecution bias. When I work for the State Police, I welcome the presence of an independent pathologist. (BMHR 1890-1892).

When I was a young Medical Examiner, I was encouraged by the head of my office to consult with the defense in addition to working for the Office of the Medical Examiner to get a better perspective on why a Medical Examiner should be independent.

I have been involved in a number of cases in which persons have been found in water. (BMHR 1892-1893).

My involvement with this case dates back to 1998 when I was a presenter at a meeting of the American Academy of Forensic Sciences. I was approached by

somebody who showed me some photographs. My recollection is that I looked at photographs and it looked like necrophagia, or the eating of tissue from dead bodies by animals. (BMHR 1894-1895). I was subsequently sent a letter by attorney Dan Stidham. Exhibit 52; (BMHR 1895). Mr. Stidham might have sent me some additional materials at a later time. I then received another letter from Mr. Stidham dated May 25, 1998 which enclosed affidavits from a dentist, and an entomologist. I was asked if I could testify at a hearing that was two weeks away, and was provided with no further information. (BMHR 1896-1867). I recall that one of the declarations was from a “bug guy, Dr. Neil Haskell, a well-known entomologist.” Dr. Haskell had opined that various animals had caused marks on Steve Branch’s face, and the suggestion was that these might be some kind of arthropods or freshwater fish. (BMHR 1898-1900).

I did not recall any further contacts in the case until 2003 or thereafter. At that time, Dr. Spitz had shown me some photographs, and I recall that I felt they showed animal necrophagia. After the meeting with Dr. Spitz, I was formally retained by counsel for Damien Echols. (BMHR 1899-1901).

By then, I had received some material about the case. I understood that some of the evidence in the case involved the notion of cults, and the cutting off of body parts. I attended a meeting in Little Rock that was also attended by Dr.

Perretti. I recall as well that Dr. Vincent Di Maio, the recently retired Chief Medical Examiner in San Antonio, Texas, who has written a number of good books on forensic pathology, as has Dr. Spitz, had separately and independently come to the same conclusion about necrophagia. (BMHR 1900-1901).

Both Dr. Di Maio and Dr. Spitz are renowned in the field of forensic pathology.

Attorney Riordan had sent me the autopsy reports; many photographs, and Dr. Peretti's testimony. I was of the view, having reviewed the material, that the testimony about the cutting off of the penis and scrotum by a human being was "just wrong." (BMHR 1901). I explained that it sounded as though the finding by the pathologist in this case had been seized upon to go along with the theory that the case involved satanic cult activity. (BMHR 1901-1903). My opinion was that while there were a number of injuries to the victims, some of the injuries had a lot of blood around them and some of them had none. That indicated to me that some of the injuries were post-mortem. (BMHR 1902). There was also an indication that there were skull fractures and damage to the brain that was likely to have rendered all three boys unconscious. (BMHR 1903-1904).

In my opinion, the cause of death would have been multiple injuries and drowning. My view was that the three boys were most probably not conscious at

the time they were immersed in the water. In looking at this case, I was concerned that a “proper forensic pathologist” should know the difference between post-mortem and pre-mortem injuries. (BMHR 1904). It was in part for that reason, as well as because of my views about the animal caused injuries, that I suggested to defense counsel Riordan a meeting with Drs. Peretti and Sturner in a non-adversarial situation. (BMHR 1904).

A meeting was arranged and a number of experts were present with the exception of Dr. Spitz, who had a prior commitment elsewhere. A series of letters was written, including one by me to Dr. Peretti indicating that the meeting would take place on May 17, 2007. The prosecutors were present. So was Dr. Di Maio who had known Dr. Peretti. I had contacted Dr. Sturner, with whom I had previously worked in New York. Dr. Sturner was then retired, and according to my recollection he did not remember that much about the case and would not be at the May, 2007 meeting. (BMHR 11895-1897). Dr. Souviron, a forensic dentist was there, and so was Dr. Robert Wood, another forensic dentist, from Canada. Dr. Di Maio and I talked to Dr. Peretti at the beginning of the meeting, and thanked him for being accommodating. My recollection was that Dr. Peretti’s response having heard the opinions about animal predation was that he thought he had previously seen examples of animal predation but that “... he was or was going to

do a study about the last 10 years in all drowning cases in Arkansas...” to see what kinds of injuries would have been found in those cases. (BMHR 1909-1910).

Dr. Peretti had agreed to get back to the other doctors about a couple of things, but never did. He hadn't told any of us at the meeting his opinions. He had stated that he would consider what we had discussed. (BMHR 1911-1912). I know that some letters were written after the meeting. I had thought that Dr. Peretti was eventually going to provide the information about his experience with post-mortem injuries to bodies by animal activity and other activities. The prosecutor did write a letter.

Eventually, Dr. Peretti provided a written response in the form of a letter on the Arkansas State Crime Lab letterhead dated May 30, 2008 in which he referenced a finding by a local dentist who had indicated that there had been no human bite marks on the bodies which I agreed with. (BMHR 1912-13). The letter also indicated that microscopic samples demonstrated the presence of hemorrhage meaning that these were ante-mortem injuries and not post-mortem. In my opinion this was “just plain wrong.” (BMHR 1913). The only tissue samples taken had been from under the tie marks around the wrists and ankles, and around the testes of one of the boys. Otherwise, there were no sections or slides made

from any of the other tissues, including those where there may have been animal predation. (BMHR 11913-1914).

I was concerned that Dr. Peretti's letter stated things that were not true, in that not only had there been no microscopic slides taken that would have refuted the theory of animal predation, but there were no samples of the penetrating wounds either. (BMHR 1914-1915).

I also disagree with the statement in the Peretti letter that some of the wounds had incised edges indicative of having been caused by a sharp instrument. I am of the view that all of the wounds to the boys' heads had been caused by "blunt force trauma." There were tears in the skin and not sharp cuts. (BMHR 1915-1916).

In some of the photographs, you can see areas where the skin has been rubbed away from the left side, plus penetrating wounds that are very shallow that are consistent with animal activity, not wounds caused by a knife. (BMHR 1916-1917). Steve Branch had wounds to his face that showed small punctures and abrasions. A number of the wounds show no bleeding into the tissues which would be post-mortem predation or necrophagia. I have seen injuries like this in my own practice. (BMHR 1917-1918).

I cannot be specific about what animal might have caused the injury, but my view is that the injuries I saw were consistent with animal activity. I did review the affidavits of Shawn Ryan Clark and Heather Hollis, who explained that they had been swimming in the ditch and had seen alligator snapping turtles in it. Exhibit 32; (BMHR 1920-1921).

I would not purport to identify specific animals that might have inflicted the injuries. I would defer to forensic veterinarians. They could have been turtle injuries, there were scrape marks that might look like turtle claw marks, and there might have been dogs or other animals. Some of the injuries on the bodies are triangular and consistent with my experience with the sorts of triangular injuries caused by snapping turtles. (BMHR 1921-1923).

In my view, the knife that was depicted as the murder weapon, which is shown in Exhibit 48N did not inflict any of the injuries that I observed. Also, the use of a grapefruit in closing argument to mimic the skin of a body was “awful”. (BMHR 1924). The most common way to mimic human skin in a replication is the use of pig skin. (BMHR 1925-1926).

Reviewing the injuries to Michael Moore, it appears to me that the injuries to the area around the ear, and elsewhere that did not hemorrhage or bleed were post mortem. In reviewing the actual photographs used at trial, I can see certain

punctate or puncture wounds. These wounds were not the subject of microscopic slides. The trial photos show punctate wounds around the lips and nose. There is no bleeding from them. They are postmortem. (BMHR 1933). Having heard Dr. Perretti's opinion testimony about injuries consistent with sexual assault, it is my opinion that there is absolutely no evidence of such injuries here. He is simply speculating. I have never run across the kind of opinions Dr. Perretti gave in this trial in the literature, or in my experience. (BMHR 1935-1936). I would "one hundred per-cent disagree with making the diagnosis of forced fellatio on this evidence." (BMHR 1936). I opine that there is no evidence of sexual assault in the anal area, or around the ears. I explain that Dr. Peretti's account of ear injuries in forced fellatio of children was incorrect. I state I have not seen it in my experience or in the literature. (BMHR 1935-36). There were a lot of pathologists who could have evaluated these opinions at the time of these trials

I disagree with the testimony and opinions about the significance of injuries to the ears, as well as that opinion testimony that there are any defensive wounds on Michael Moore near his hands, or elsewhere. (BMHR 1937-1938).

Dr. DiMaio agreed with me that there was no evidence of sexual assault on the basis of the findings of anal dilation. We had thought that Dr. Peretti, who had

heard our views on the subject, was going to provide us his further thoughts on the subject, but he never did. (BMHR 1939-1940).

The photographs of Steve Branch shown to Dr. Peretti at trial do not indicate to me any cutting wounds made with a knife. (BMHR 1940-41). My opinion is that these are injuries inflicted by postmortem animal activity. In considering the testimony from the Misskelley trial at RT 841, I agree that there are gouging wounds here with the skin pulled away together with some irregular puncture wounds, but these are not bleeding injuries, and unless they were caused by someone sitting there with a weapon and ‘constantly puncturing’, these irregular wounds are some kind of animal activity. (BMHR 1942-43). The same observation can be made about the scrape wounds on his ear, and in that area of the body. The redness on Mr. Branch’s cheek as seen on the photos is not caused by hemorrhage or bleeding. Something has rubbed off the skin, and it has dried and turned brownish. (BMHR 1943-44).

There are no injuries to the ears, or to the anus, of Mr. Moore or Mr. Branch that are consistent with forced sexual activity of the type described by Dr. Peretti. (BMHR 1945). And these are postmortem injuries. (BMHR 1946).

The discoloration of the penis which Dr. Peretti had testified could have occurred during oral sex looked more like some kind of animal activity. The kind

of “banding” you see here is not characteristic of oral sex, and to say otherwise is pure speculation. (BMHR 1947). There should have been a microscopic section taken and there was none.

With respect to Mr. Byers, the kind of discoloration that you see here is not characteristic of a fresh hemorrhage. It looks like a postmortem injury, perhaps caused by snails - snails inflict that kind of injury. Other abrasions might have been caused by a very small fingernail, but more likely by the scraping of animals. (BMHR 1949-1950).

There are no injuries shown in the photos of Mr. Byers that are suggestive of sexual assault. With respect to testimony given by Dr. Peretti concerning the appearance of injuries around the anus and genital area of Mr. Byers, I disagree with the opinions stated. First, I believe that the appearance of the anus was normal. Second, the absence of bleeding in the genital area causes me to opine that the wounds there were post-mortem. There is no cutting. They are likely from animal activity. They are not serrations from a knife. (BMHR 1951).

There were no stab wounds or cutting wounds inflicted prior to death in the genital area. The area in question is “very vascular,” and that there is no bleeding at all in the area, and the edges of the wound are irregular. None of the injuries I see are wounds caused by an instrument while the victim was alive. (BMHR

1952). I also disagree with the testimony given that what you see here are some wounds resulting from the twisting of a knife when the victim was moving.

I was asked to review the report concerning the autopsy of Mr. Branch, which indicates that there was a tissue slide made of the injury on Steve Branch's penis. I had not remembered that. But the report states that the tissue slide showed no hemorrhage. (BMHR 1954-55).

None of the microscopic slides of tissue taken from the anal area of the 3 boys showed the kind of hemorrhaging that you would expect to see if there had been forced sexual activity, such as penile insertion, while the victims were alive. (BMHR 1955).

I also disagree with the testimony that there are injuries here consistent with what you see with rape victims. You don't see these sorts of superficial abrasions where the victim is raped while still alive. You would see black and blue marks. (BMHR 1957).

I also disagree with Dr. Peretti's testimony that the injuries to Mr. Byer's mouth and ears were similar to those of the other children and are "normally" seen in children who are forced to perform oral sex. Also, if there had been oral sex, they should have been able to find evidence of it through mouth swabs and swabs taken of the back of the larynx. (BMHR 1959-60).

In my opinion, this case absolutely warranted the involvement of an independent forensic pathology evaluation at the time. (BMHR 1960).

During the noon recess, the father of one of the victims, Mr. Byers told me that the bodies were found in an area that had some snapping turtles in it. I also am aware that there were animal hairs removed from the bodies that were later examined by the Crime Lab. (BMHR 1961-62).

I recall that during the May 2007 meeting the subject of turtle bites had been brought up, but Dr. Peretti had opined that he did not believe that there were turtle bites as he had raised turtles. (BMHR 1963).

DIRECT EXAMINATION OF DR. MICHAEL BADEN
BY JOHN PHILIPSBORN

I have reviewed testimony given by Dr. Peretti at a post conviction hearing in which he testified that he had passed the examination in forensic pathology. He apparently did not pass the anatomic pathology portion of the examination, and thus was not board-certified. (BMHR 1964-65).

The meeting in Little Rock that I referenced included two pathologists and two odontologists consulting with the defense, as well as Dr. Peretti, other Crime Lab staff, and other persons. (BMHR 1965-66).

Any opinion testimony that Dr. Peretti has given in either the first or the second of the trials that there was evidence of sexual assault on any of the remains

of the three boys is incorrect in my opinion. Also, Dr. Peretti never distinguished correctly between pre-mortem, peri-mortem, and post-mortem injuries. (BMHR 1966-1967).

Had the children been alive, conscious and struggling against their restraints, one would have expected bruising and hemorrhage under the skin. Only Mr. Moore has some hemorrhage in the tissue under ligatures, which means that his heart was beating when the ligatures were put on, though the lack of hemorrhage around the wrists suggests that he was not struggling. (BMHR 1968-1969).

There is no forensic evidence that supports an anecdote that an individual bit off the testicles of one of the victims and sucked out his blood. (BMHR 1969-1970).

There is no evidence that supports a statement that an individual had observed the three children being stabbed. I opine that none of the boys was stabbed. There is some evidence that supports a scenario involving a small number of blows with a blunt instrument that resulted in head injuries. There is no evidence that they were beaten with fists. (BMHR 1970-1971).

There were no injuries consistent with the victims having been injured by a survival knife consistent with the one displayed in the Baldwin trial, which is Exhibit 48 NN in this hearing. (BMHR 1972).

There was no evidence of forced fellatio or of anal sex of any kind. (BMHR 1972-1973).

There were continuing education courses provided to criminal defense lawyers in 1993 that covered forensic pathology. There were also board-certified forensic pathologists the defense could have consulted with in 1993. There were also some authoritative texts like those produced by Spitz and Fisher, Bernard Knight, and others that were available to review. There would have been some journal articles about drowning. (BMHR 1973-1974).

Assuming that the same photographs were used in the Misskelley and Baldwin trials, my testimony and opinions about the pathology related opinions given in Misskelley's trial would have also applied to Baldwin's trial. (BMHR 1975).

CROSS EXAMINATION OF DR. MICHAEL BADEN BY KENT HOLT

I have no disagreement with the autopsy protocols used, or with the reports produced. My disagreements are with the interpretation of the injuries. (BMHR 1978).

Drowning hastened the death in this case, and there were also other life threatening injuries. (BMHR 1978). If the drowning had not occurred, these individuals may have survived.

I do not agree with an opinion rendered by another pathologist named Terry Haddix that postmortem animal predation injuries on Steve Branch's face may have been superimposed on ante-mortem injuries. It's possible, but I think it's more likely that all of these injuries occurred after death. (BMHR 1982-1983).

I believe there were ante-mortem injuries to the head, brain and skull of each of the three boys. There might be a question of whether there was a dragging type injury to the face of one of the boys that could have been pre-mortem, but I believe it was post-mortem. (BMHR 1984-1985).

REDIRECT EXAMINATION OF DR. MICHAEL BADEN BY MICHAEL BURT

I think that Dr. Peretti did a proper job of documenting the injuries. I think he did a partial job of taking tissue samples. (BMHR 1989).

I did review the 2007 report by Dr. Terry Haddix that you are showing me. I agree with several of her opinions. I am aware that Dr. Haddix, Dr. Spitz, Dr. DiMaio, Dr. Souviron, Dr. Wood and I all agree about postmortem animal depredation. My disagreement with Dr. Haddix is over the possibility of there being some ante-mortem injuries to Mr. Branch's cheek. (BMHR 1993).

[End of Testimony BMHR 1996]

DIRECT EXAMINATION OF JOHN MARK BYERS BY MICHAEL BURT

[Vol. 8: (BMHR 1996-1969)].

I told Dr. Baden out in the hallway that I could tell when the children had been playing out in the woods, because they put turtles they found into the pool. The smaller ones would likely have been found by my son Chris and his buddies. They would be six to eight inches in diameter. The larger ones would be twelve inches in diameter and larger. I would dump the turtles into the nearby drain.

Whenever I would see the turtles in my pool, I would ask the kids where they got them, and they would tell me that they had been playing in the Robin Hood area, and that's where they had found them. (BMHR 1997-1998). I lived a couple of blocks from Robin Hood Hills at that time.

Some of these were red eared sliders, and others were logger head or alligator turtles. (BMHR 1998:13-17).

Chris Byers was my adopted son. Michael Moore lived right across the street. Steve Branch lived over on the next street. (BMHR 1998).

[Session of August 11 ends, and session of August 12, 2009 begins at (BMHR 1999)]

DIRECT EXAMINATION OF DR. RICHARD SOUVIRON
BY MICHAEL BURT

I am a dentist who has specialized in the field of forensic dentistry as a forensic odontologist. I do all of the work for the Miami-Dade Medical Examiner's office. (BMHR 2001). I assist in the identification of deceaseds in plane crash and

other disaster situations. I also review pattern injuries. I am a practicing dentist as well. (BMHR 2002).

In addition, I consult with law enforcement officers throughout the State of Florida, in cases around the country, as well as in Canada and the Bahamas. I have also consulted with criminal defense lawyers. I would say that most of my work is done for law enforcement - about 70 to 75 percent.

I attended dental school at Emory University in Atlanta, and received my dental degree from there. Since, I am have taken in forensic dentistry at the University of Texas, at Bellevue in New York, in Connecticut, and the Medical Examiner's in Miami-Dade. My primary means of training is hands on work. (BMHR 2005).

I have often worked on cases involving drownings. I have worked on thousands of cases since I started doing forensic odontology in 1967.

For many years I was the forensic odontologist at the Miami-Dade Medical Examiner's office. In the 1980s, I started training other people. There is now a deputy chief odontologist. Both of us are board certified. (BMHR 2007). We have at least 30 other individuals who have trained with them. (BMHR 2007).

To get certified as a forensic odontologist one has to take a three-day examination in addition to four to five years work with a medical examination.

The organization that certifies forensic odontologists is the American Board of Odontology. I have been the President of the American Board of Forensic Odontology, and served on the Ethics Committee as well. I have taught forensic dentistry at the University of Miami Medical School. (BMHR 2010). I regularly lecture to law enforcement groups. I have also published in the field of forensic dentistry, including a 2009 book called *Dental Autopsy*.

One of the book chapters I have is on animal bite marks, and another is on how bite marks and pattern injuries can mimic one another. (BMHR 2012). I have also authored a section in Dr. Spitz's book.

In 1993 there were persons in the field who were writing on forensic odontology. My CV lists the jurisdictions that I have qualified in, though I don't think that it lists Arkansas, and I have qualified here before. I did some work for the FBI in Arkansas, and worked on another case. I have qualified in a number of other jurisdictions as well. (BMHR 2014).

I had dealt with animal bite marks on a number of occasions before I was contacted about this case. I was first contacted in this case in 2006. He was eventually contacted by attorney Horgan from San Francisco. He sent me a letter—Exhibit 60. I was sent approximately 1500 photographs (BMHR 2017), the autopsy reports, from other law enforcement reports. Today, there is a protocol for

documenting bite marks. In 1993, I did it by taking my own photographs. I would make notes. I would assess the pattern, whether it is a human bite mark or not.

In this case, I was confused about Dr. Peretti's explanation, given in 1999, of what he did at the time. At the time of the autopsy, he called in a dentist because he thought there were bite marks. He then said that none were found, so that he did nothing. But where you see a pattern injury, you should work it up. (BMHR 2022). The fact that didn't happen, that there was no documentation of what had apparently been thought to be possible bite marks, meant that Dr. Dougan, the dental consultant was not following protocol.

There are a number of injuries that can be made by animals, and I have brought a number of exemplars along. This included exemplars of dog; shark; dog activity that looks like something else; knife wounds that are erroneously identified because the actual mechanism of injury was a dog (BMHR 2028).

I brought along an exemplar from my collection which I believe resembles the injuries to Chris Byers—you can see these pattern injuries from the paw marks. (BMHR 2030-2032). It had been suspected that a serrated knife had inflicted the injuries, but the odontologist who had reviewed the findings in the case was of the view that in fact it was a dog, which is what was demonstrated. It is common to see injuries caused by dogs in the genital area. (BMHR 2032).

I can also show you this Mississippi case in which it had been suspected that there were human bite marks, but it turned out that the marks had been inflicted by big red ants. (BMHR 2033). I also testified in another Mississippi case about bites that were identified as human, but I said they weren't. We were able to show that the body, which was found in a swampy area, had been eaten at by crayfish. (BMHR 2037-38).

I have looked at the record of this case, and have reviewed the testimony of officers at the scene in this case who described their walking through the water. Based on my review of the testimony, and of the map of the area, I would not have expected to see actual wildlife in the ditch where the bodies were found after Detective Ridge had walked in the ditch. (BMHR 2042-2043).

The area seems to be to be where you might expect to find some degree of wild life there. (BMHR 2043). I don't know where the bodies were when they were set on by animals. In my opinion, there was a combination of animals involved. I would say turtles would have been likely, as would have a coon or a dog. (BMHR 2048-49).

Looking at the injury to the right shoulder of this young man, in autopsy 329, you see parallel lines consistent with claw marks. There was a question about whether this was done by the Rambo knife. I prepared an acetate tracing of the

knife using a one to one measurement, and did the same with respect to the injury. When you place the acetate of the knife over the injury, you can see that it doesn't fit. This is a common technique that we use in odontology to compare a known to an unknown. (BMHR 2051). This is Exhibit 62.

In answer to the Judge's question, it may be possible that one of the cuts on the body in the area of the scrapes I was talking about could have been made by a knife, but the scratch marks were not, because you can't get them to match up with the knife. (BMHR 2056-7). I can't tell you what kind of an animal exactly. I have read a book on the *Amphibians and Reptiles of Arkansas*. I also consulted a book called *Arkansas Mammals*. There are a lot of possible candidates for inflicting these injuries. My first choice would be a turtle or maybe a turtle and a crayfish. There are a number of animals in the books I reviewed that eat dead animals, and that might have been involved. I am aware of two affidavits covering the presence of wild dogs in the area.

Looking again at photos of Mr. Moore, autopsy number 329, I am of the opinion that those are animals. I see some blunt force trauma, but other areas of animal activity. (BMHR 2061).

Mr. Branch had injuries to his face that look like dogs licked the area. I have seen injuries like that. I also see some injuries that were triangular, like they were

made by a turtle. This is post-mortem mutilation. There is no way that a knife could have caused those injuries. (BMHR 2064).

You are showing me what was identified as a human bite mark by Dr. David, and I agree with other doctors who have testified that this is not a human bite mark. But I don't understand Dr. Perretti's identification of indications of bite marks on the cheek, and his lack of consideration of these as animal bite marks. The areas of what Dr. Perretti describes as gouge marks are animal activity. (BMHR 2068). You can see irregular borders of the wounds. There are little half mooned shapes. These are classic bite marks.

The wounds to the genital area are also post mortem animal bite marks. The de-gloving of the penis is characteristic of an animal bite mark. (BMHR 2070). That would have been recognized in 1993. Today, you would have swabbed the area for DNA, and human saliva.

The other thing to consider if you assume that these are knife wounds is that there would likely have been some injury to the bones. I don't think that they looked at the bones. (BMHR 2072-73). I used an acetate of the knife on these marks near the genital injury, and they could not have been made by this knife. (BMHR 2073).

I strongly disagree with Dr. Perretti's testimony in the Misskelley case that 'a knife' or in Baldwin/Echols 'a particular knife' caused the injuries I am reviewing. I think that someone with the kind of training I have would have testified in 1993/4 as I am testifying now. These days, there is a recommendation that experts in our area be certified every five years.

We attempted to share our findings with Dr. Perretti. We met with him. Dr. Di Maeo was there, I think Dr. Baden was there. Dr. Perretti was congenial. He said he was going to go back in his records to review cases over the last ten years that involved animal mutilation. I don't know that he ever did. (BMHR 2078). I reviewed Dr. Perretti's letter from after this meeting. It is Exhibit 48. I agree with him that there are no human bite marks. But then he says that there are no bite marks, including animal bite marks, which contradicts what he wrote.

There are several books that were available in 1993 that cover animal bite marks, including Dr. Helpem's book (Exhibit 64); Dr. Spitz's book and Dr. Adelson's book, all of which were available back at the time of trial. (BMHR 2082).

DIRECT EXAMINATION OF DR. RICHARD SOUVIRON
BY JOHN PHILIPSBORN

There were protocols used by Medical Examiners offices in 1993 where pattern injuries were concerned. There was also pertinent literature that could have been reviewed at that time. There was actually an inquiry in Canada about deaths said to have been caused by sharp objects like scissors that turned out to be animal bites. One of the persons present at the meeting with Dr. Perretti was an odontologist from Canada who was a part of that inquiry. He gave Dr. Perretti a copy of his book on forensic odontology.

I am now looking at a series of photos which have been marked Exhibit 48. Looking at photo 48 T, Mr. Branch, I see nothing but animal mutilation on his left cheek. Photo 48 CC shows some claw marks. 48 MM is the genital area where I see the de-gloving injury, there is animal predation. I don't see anything that indicates that the victim's heart was beating or that there was blood pressure. (BMHR 2092).

Looking at the photo that was said to show a line around one of the victims' penises, which was exhibit 64B at trial, I don't see anything that looks like human teeth marks there. (BMHR. 2094).

CROSS EXAMINATION OF DR. RICHARD SOUVIRON BY KENT HOLT

I have seen testimony from other experts who addressed the human bite mark issue in another proceeding. I did not get the testimony of Dr. David. He is a friend of mine, but in this case, he was flat wrong.

I have opined that the injuries on Mr. Branch's face, the injuries to Mr. Byers' genital area, and the area of Mr. Moore's right shoulder all have animal injuries on them (BMHR 2097-8).

I do want to know all I can about a case, particularly about where the bodies were found. I am interested in what the officers on the scene saw. I would want to have gone through all of the information. I think that I only have some of the information about the scene. I addressed the issue of the Rambo knife, the grapefruit and those matters.

I agree with Dr. Haddix who discussed animal mutilation sur-imposed on pre-existing injuries. There were drag marks. Blood attracted the animals. There was also urine.

I see evidence of turtle bites, areas that are likely to have been licked by a dog, which would have attracted turtles. I don't have a degree in zoology, by I do dentistry on zoo animals, and I have much more expertise on animal teeth than the average dentist. (BMHR 2105).

The testimony that someone bit off the scrotum and penis as part of a satanic ritual was outrageous. (BMHR 2109).

Animals could have been attracted to an area that had been wounded by a knife.

REDIRECT EXAMINATION OF DR. RICHARD SOUVIRON
BY JOHN PHILIPSBORN

I see nothing in the photos of Mr. Byers that indicate that his scrotum and testes were bitten off by a human.

The proceedings on August 12, 2009 were concluded. BMHR 2124. The testimony resumed the next day, August 13, 2009

DIRECT EXAMINATION OF DR. JANICE OPHOVEN
BY JOHN PHILIPSBORN

I am a forensic pathologist with special training in pediatrics and pediatric pathology. My focus has been on pediatric pathology. (BMHR 2125). I am aware that in 1993 and 1994 there were physicians who, like me, had specialty training and specialty emphasis in the field of pediatric pathology. There had been board certification available for training in pediatric pathology for some years as of that point in time. A number of well-known children's hospitals had pediatric pathologists. (BMHR 2125).

I went to school at the University of Minnesota, and completed my medical training there. This was in the late 1960's. I encouraged the University to assist me in constructing a training program in pediatric pathology. By the mid-1970's, I was able to study in a combined program of pediatrics and pathology. I did a Fellowship at the Hennepin County Medical Examiner's Office in 1980 to complete all my training. I began practicing in 1981.

I undertook training as a pathologist as well as a forensic pathologist. I also obtained training as a pediatrician, and I practiced in a Children's Hospital for about ten years, running the laboratory, with the focus on pediatric pathology. *[End of Volume 8. Begin Volume 9. Volume 9 begins at BMHR 2130.]*

Pediatric pathologists perform autopsies, and also interpret laboratory results. There are a number of issues specific to the pathology of children that call for specialization. I sat for the boards in forensic and anatomical pathology. I did not sit for the boards in pediatric pathology because I had been out of training more than ten years at the point at which those boards would have been available, but I maintained professional relationships, memberships in pertinent organizations, continuing education, and teaching in the field of pediatric forensic science and sexual abuse since 1981.

After I completed my training at the Hennepin County Medical Examiner's Office, I continued as a Deputy Medical Examiner dealing mainly with child fatalities. I trained residents from the Hennepin County Medical Center on issues of pediatric pathology.

Since that time, I maintained an informal relationship with Medical Examiners around Minnesota. (BMHR 2133).

Hennepin County covers the twin cities of St. Paul and Minneapolis. It covers seven different counties.

I have consulted for a number of offices and agencies involved in the investigation of child abuse. Included in that has been my familiarization with the issues of child sexual assaults and sexual injuries, which are manifested very differently in children than in adults. (BMHR 2134-35).

I have consulted with both law enforcement agencies and with criminal defense counsel. For the first 15 to 20 years of my practice my work was primarily for law enforcement and for agencies prosecuting childhood injuries and fatalities. In the last ten years, I have been involved increasingly with defense work. I do still get calls to review cases for prosecutors and law enforcement. (BMHR 2135).

I have been involved in the writing of text books on pediatric pathology, including one on *Pediatric Forensic Pathology*. They cover what is intended in the

field. I have also been invited to write chapters for a series on head trauma and children. I have been asked to discuss and lecture on both sexual homicide as well as abusive trauma in children. (BMHR 2136). [*Dr. Ophoven was offered as an expert in forensic pathology with a special emphasis in pediatric pathology without objection. BMHR 2137*]

In my work on this case I reviewed transcripts and testimony, investigative materials, crime scene analysis and diagrams; trace evidence materials; voluminous photographs, autopsy reports and the like. I have reviewed testimony concerning the cause and manner of death by Dr. Peretti. (BMHR 2137).

As far as I am concerned, there were standards applicable to the post-mortem examination of eight-year olds, whose deaths were being investigated in relation to some form of sexual abuse. There were standards of practice for pediatric pathology that any physician who is trained and understands the nature of the practice would know. You get to know that kind of information as you are becoming qualified as a forensic pathologist and as you prepare for the board certification. There is no specific recipe that attends an autopsy, but you need to be aware of the unique or unusual circumstances. If you have not been exposed to them, you ask for advice. That was an established standard in 1993.

It may be that a pathologist is able to do an autopsy and collect the evidence, but may not be in a position to render opinions based on the unique nature of the case. (BMHR 2139).

The recommendation of consultation with others was well known in the medical field as of 1993.

I have reviewed the reports on the deaths of Mr. Moore, Mr. Branch, and Mr. Byers. The reports did not include a number of things that I would have expected. They looked to have been prepared according to a fairly basic template. The connection between the conclusions and actual findings are often not evident. (BMHR 2140).

By 1993 and 1994, there was a general consensus in the field that you needed to take tissue samples where there was a suspicion of a death of a child involving a sexual assault or sexual abuse. In this case, the tissue sampling was limited.

I am of the opinion that the testimony offered by Dr. Peretti linking the findings that he made to opinions about forced fellatio or some kind of anal penetration of the victims was not within generally accepted professional norms in that he did not link the data available and the opinions rendered.

My reasoning for testifying this way is that the findings of sexual abuse, penetration, and injury are very concrete. They depend in part on understanding the context and the conditions under which the body was found. In my opinion, Dr. Peretti's testimony was predominantly speculative. The testimony regarding fellatio and forced oral sex was speculative. With respect to anal dilation, the photographs show very normal anal anatomy. Anal dilation is not something considered abnormal during an autopsy. There is no apparent abnormality of the anal skin.

My concern was that what was communicated to the jury is highly speculative. (BMHR 2142-43).

I agree with the beginning of Dr. Peretti's testimony from the Echols/Baldwin trial that a post-mortem examination is done in a context. If you have even a basic suspicion of a sexual assault, for example, you would work up the case and collect potential evidence of this. Listening to the testimony that Dr. Peretti gave about the findings in the case of Mr. Moore, particularly around the mouth, and looking at the photographic evidence, there is nothing that would raise as inflammatory a thing as forced oral sex. I view the testimony as a violation of professional responsibility.

With respect to the testimony that Dr. Peretti gave concerning the reddening or congestion of the mucosa which is the internal lining of the anus, I also viewed the testimony given as shocking. The suggestion that there could have been evidence of sexual abuse is the problem. There is not a shred of evidence that there is any damage to the anus and rectum, so suggesting evidence of sexual penetration is improper. (BMHR 2148).

Similarly, the photographs that are being displayed which reference State exhibits 64B and 65B showing the undersurface of the penis of Mr. Branch, and specifically where Dr. Peretti said that you see this kind of injury when an object like a belt is wound tightly around the penis of a child, or where young children have oral sex, is not scientifically valid. Dr. Peretti's testimony first of all references what I think was a post-mortem alteration. It does not look like a sexual injury at all. (BMHR 2150).

With respect to the injuries to Christopher Byers and photographs shown at trial that were described as a close-up of where the penis and scrotal sac and testes should be, in my opinion the response that agreed that this was an area of mutilation was wrong. This is not a close scientific question. This injury did not result from the use of a sharp tool. If you look at the area depicted, you can see that the tissue has been torn. It has not been removed through the use of a sharp

object. You can also see little puncture wounds where there is no blood. You can see a number of punctate wounds. Looking at other exhibits that show the close-up of the area as it was shown during the course of the trial, the way the testimony at trial came out the area is described as showing indications of organs that have been carved out, and have cutting and gouging wounds. If you look, you see scalloped edges. This has been torn off. This is pretty basic pathology. (BMHR 2153).

You can see that there has been some pulling away of the tissue. It has been torn out. There is no blood in the tissue area and you can see that this is clearly post-mortem. The testimony at trial that there was no evidence of animal activity or insect bites is wrong. This is evidence of animal activity. (BMHR 2154).

It's a basic tenet of forensic pathology that you go to the scene in a case, particularly one where there are serious implications. I am aware that in his testimony Dr. Peretti has said that since he has been in the State of Arkansas nobody has ever called him to go to a crime scene. (BMHR 2155).

I am also aware that Dr. Peretti testified that he was not present when the remains of the three boys were taken out of the area of the drainage ditch and removed from the scene. It is important to see the bodies in the situation and the actual place where they are found. It is a fairly common practice for a Medical Examiner to be summoned in those situations.

I am also aware of Dr. Peretti's testimony when he was cross-examined by the lawyer for Mr. Baldwin, and asked about the mouth injuries and how consistent they are with the injuries you see in children who have been forced to perform oral sex. In my opinion, there is no professional literature that would have supported the testimony given by Dr. Peretti on this issue. First, there is no pattern of injury here that indicates some form of sexual injury. Second, there is no evidence associated with patterns of fellatio such as bruises to the palate, or bruises to the back of the throat. The pattern of injuries has nothing to do with oral sex. (BMHR 2157). The statement that these sorts of injuries were not present because the teeth were clenched makes no sense.

The testimony about injuries to the ear being characteristic of oral sex with children is absolutely inappropriate. I saw no evidence that any of these children were grabbed by an ear or held by an ear. (BMHR 2158-59).

There were no injuries consistent with any of these three young boys being forced to perform oral sex.

The only pattern to the injuries was a pattern of vermin predation. I didn't see any pattern associated with a serrated knife or with a tool of any kind. (BMHR 2159).

I disagree with Dr. Peretti's testimony in the Echols/Baldwin trial that a weapon such as a sharp knife was involved. There is no evidence consistent with that finding. (BMHR 2160).

Looking at one of the close-up photos of Mr. Byers, which is Exhibit 48MM in this hearing, my view is that there are teeth marks, puncture lacerations, torn tissue, and possibly claw marks. These are clearly not human in origin.

With respect to Mr. Branch, my view is that the injuries to the cheek or to the face where there are perforations, gouges and lacerations is like the photo of the predation to the genitals. This is not related to some form of sexual crime. These appear to be post-mortem, at least from the photos. (BMHR 2162-63).

The photos of Mr. Branch in the 48 series show the same kind of damage from different angles.

I have looked at the photographs of Mr. Byers, ME331, and there is no indication of the use of a sharp object. The marks that were pointed out in photograph 48LL are claw marks.

The knife depicted in 48NN was not involved in anything that happened with these three boys. (BMHR 2165).

There have been a number of publications about common (and uncommon) mistakes that are made in the diagnostic process and in post-mortem review where

mistakes are made because of a failure of adequate training and experience. The Goudge Commission Report involved cases in Ontario where a particular theory of pathology which was flawed was applied in a number of cases, including a pediatric case where a woman was charged with murder for having killed her baby when it was determined that the child had been mauled to death by a dog.

Looking at this case, I cannot understand how thoughtful consideration and differential diagnosis would have led to the conclusion that these children had been sexually assaulted, or subject to sharp force trauma. (BMHR 2169-70). Observable injuries to the lip would not have been the hallmark of sexual assault, and at the time of these cases there was information available on how to properly diagnose sexual injury in children.

The appropriate methodology that one should use when suspecting or diagnosing a sexual penetration of the mouth is whether any of the elements typically seen in sexual abuse are present. You have to have a pattern of injury that is scientifically verifiable and consistent with sexual abuse. (BMHR 2171-72). There is none of that in this case.

Second, if you have the presence of ejaculate in a child where ejaculate shouldn't be, then you have evidence of sexual contact. The third sign of sexual activity is the presence of a form of sexually transmitted disease. All of these

things are relatively straightforward. If you do not have any of these things in a given case, then the forensic pathologist does not have anything to contribute on the question of sexual activity. (BMHR 2172).

It is not unusual in my profession to be asked to provide a source of opinion. Sometimes it is based on experience, and sometimes on specific literature. One needs to know the definition of sexual injury, and what is known about predation injuries, drowning and so forth. (BMHR 2173).

I do not recall Dr. Peretti being asked any questions about what literature he was relying on to render his opinions about sexual assault, or even what experience he was basing his reference on in stating his opinions about injuries to ears and mouths and sexual assault.

If I had announced to a meeting of fellow professionals that I would be reviewing and producing information on cases involving remains recovered from water to assess signs of predation, I would have provided the sources of my opinions. (BMHR 2176)

DIRECT EXAMINATION OF DR. JANICE OPHOVEN BY MICHAEL BURT

_____ There are multiple organizations that set forth standards that are pertinent to the work of the forensic pathologist. We practice medicine. Our basic tenet is to do

no harm and to make sure our ethical principals as physicians are adhered to.

(BMHR 2178)

For Dr. Peretti to have testified that injuries to the ear and lips signify oral sex is not an appropriate way to testify. A pathologist like any other doctor offers a differential diagnosis. One needs to have suitably narrowed the analysis to be able to express an opinion, or to state that one does not know.

Refusing to answer a question yes or no, or allowing the unsubstantiated suggestion that a certain state of affairs exists, is not ethical. I was taught that forensic pathologists wield too much influence on a jury to opine about matters on which there is no scientific evidence. For example, on the question of the evidence of sexual assault, the answer would be yes or no, based on the physical evidence. Even if you are presented with a confession, however dubious, as in your hypothetical, the role of the forensic pathologist is to determine whether there is evidence of sexual assault. Using a statement by an accused as the basis for a pathologist's opinion is inappropriate. (BMHR 2183-84). While I ask for all available information as a pathologist, including statements of that kind, I do not base my opinion on what a witness says. I match what the witness says to what I found at autopsy and then give an opinion. (BMHR 2184).

Going back to the photographs of the anal orifice, the photograph you are showing me is normal. There is nothing that suggests this child has been sodomized. As to Exhibit 71C, a photograph of Mr. Byers' genital and buttock area, there is nothing shown here that supports the testimony that there was capillary dilation, or cutting wounds. (BMHR 2186). Similarly, with respect to the testimony of Dr. Peretti concerning Mr. Moore, the kind of trauma to a child's mouth that is seen here is not consistent with fellatio. (BMHR 2188-89).

CROSS EXAMINATION OF DR. JANICE OPHOVEN BY KENT HOLT

In the past five years I have done around 200 autopsies. In the past two years I have done fewer than a hundred, including three or four autopsies on children. (BMHR 2193-94). I am a member of the Society of Pediatric Pathology, as well as of the National Association of Medical Examiners.

I have taken a number of courses, including courses at the Body Farm in Tennessee (which works with the FBI) that deal with animal predation. I have worked with law enforcement organizations on cases in which predation was suspected. I keep up with the literature on this topic. (BMHR 2194-95).

I have not consulted with any of the other pathologists in this case, though I may have seen some of their reports. If Dr. Baden indicated that the manner of homicide was blunt force injury to the head and drowning, I would agree with that.

(BMHR 2196-97). In my view, there were pre-mortem skull fractures. The remainder of the injuries to the boys' bodies in my view were entirely post-mortem. (BMHR 2197-98).

Limiting my testimony to questions of sexual violence or mutilation, I see no evidence of pre-mortem injury.

If I were trying to assess what kind of animal was involved and I were with a crime laboratory, I would suggest that evidence be collected to help assess that, or I would consult with people who might know the answer. I can say, looking at some of the injuries here, that they are claw marks. (BMHR 2202).

In my view, you need to differentiate between the way a forensic pathologist would look at evidence of sexual assault, and the way a court might do so. For me either there is an injury or there is not; either there is ejaculate or there's not; either there is a sexually transmitted disease or not. Circumstantial evidence that is legal is a matter for the courts, not for me. (BMHR 2205).

I believe I have been paid something in the neighborhood of \$3000 for my work on this case. I have been involved in the case since 2006. My office will be charging for my testimony. I charge between \$300 and \$400 an hour. (BMHR 2210).

I did work on a case involving a person named Jeremy Marshall. I signed the case off as a natural cause of death, and 18 years later the mother came forward and said she had suffocated her child. (BMHR 2211).

REDIRECT EXAMINATION OF DR. JANICE OPHOVEN
BY JOHN PHILIPSBORN

I agree that you always want to try to get the best information you can about a case, and as indicated on cross-examination, there are times when additional information helps refine an opinion. Additional information from colleagues might cause me to change my interpretation.

Looking at the remains of Mr. Byers (ME331), I see no evidence in the area of the removal of genitalia that this child's heart was still beating at that time. (BMHR 2215-16).

During further examination today I did opine that the timing of the placement of ligatures is of significance. Part of the concern, as the FBI puts it, is to differentiate between a staged event and an actual legitimate crime scene. One of the questions that I would seek to address is whether there was an indication that a person was dead at the time ligatures were applied. There is no way to verify scientifically, based on the evidence here, that the ligatures were placed on either a conscious person or a person who was alive. (BMHR 2218-19). [*Dr. Ophoven was excused at BMHR 2222*].

DIRECT EXAMINATION OF ANGELA GAIL GRINELL
BY BLAKE HENDRIX

_____My name is Angela Gail Grinell, I am Jason Baldwin's mother. Jason's biological father is Charles Larry Baldwin. We were divorced and I later married Terry Ray Grinell when Jason was about four. (BMHR 2223).

Jason is my oldest child. The next is Larry Matthew, and my third son is Terry Grinell. Terry Grinell passed away.

In 1993 we were living at the Lakeshore Trailer Park. That is located between West Memphis and Marion. (BMHR 2224). My three boys lived with me. Terry Grinell was living in the house off and on. On May 5 and 6, 1993, my three boys and I were living in our trailer, as was Dennis Dent. (BMHR 2225-6). He was around at that time, though I later asked him to leave.

Jason was 16 at the time. He was going to Marion High School. He would ride the bus to school, as would my second son Matthew. Jason and Matthew rode the same bus. Terry was between 8 and 9 and would have gone to elementary school. (BMHR 2227-8).

Jason was not the kind of kid who skipped school.

When he was not at school he would play Nintendo. He liked to go fishing. He had a TV in his room. We had a VCR. At the time Jason was really small,

barely my height. He was not the kind of kid who would get into fights or pick on people.

I knew of nothing that would have indicated that my son was involved or interested in witchcraft or satanism. (BMHR 2229).

Jason did not have a car at the time. I was trying to get him one, but he did not have one.

At the time I was working in Memphis at a business called Customized Transportation, Inc. I had been working there for a number of years. It was a trucking company. (BMHR 2230-31).

I would always call my boys from work.

In 1993, I was working between 3 p.m. and 11 p.m. It would usually take me about 30 minutes to get home. May 5 and 6 of 1993 were in the middle of the week. My boys would usually get home from school after I had left to go to work. I would check in with them by phone. (BMHR 2232-33). I would call and talk to my kids and ask them how they were doing.

When I got home I would check on my kids. I normally left dinner for them and all they had to do was heat it up in the microwave. Jason's job was to make sure that the younger ones got fed. The boys were always in bed when I got home. (BMHR 2234-35).

After I got home, I would prepare myself some dinner and watch TV for a while. It would take me a while to wind down from work. I would usually fall asleep on the couch at about 3 or 4 in the morning. (BMHR 2235-36). I did have another place to sleep, but I would fall asleep on the couch two to three days a week.

Jason would get up at 6 to 6:30 in the morning. He had to be at school by 8. He would help his younger brothers get ready. (BMHR 2236-37).

We had some heavy construction plastic that had been stapled over our windows, so the only way to get in and out of the trailer was through the doors. Jason would not go anywhere. He did not go out at night. For them to do that, they would have to sneak by me after I came home from work. (BMHR 2239).

I remember the day they found those three boys dead. I know that Jason had gone to school on May 5 of 1993, the day before, because I got his school records. The police had told me that if I got his school records they would let him go. He was a punctual student. He did not miss school. I remember I went to the principal's office and I said I needed my son's school records. (BMHR 2240-41).

Jason was arrested one night and I went the next day. I went back to the school the day after he was arrested. (BMHR 2242-43).

The records show that Jason was in school on May 6, 1993 as well. I remember I called the Chief of Police the night of the arrest and he's the one who told me that if I brought Jason's school records they would let him go. (BMHR 2243-44). I talked to the officer and I brought him the school records.

After they didn't let him go, I tried to find out where Jason had been those days. I talked to my uncle, and my uncle said that Jason had come over and mowed his lawn in West Memphis. My uncle's name was Hubert. Jason had also gone to Walmart and played some video games. My uncle's name is Hubert Bartoush. Also, he had been with Ken Watkins, I think, playing video games. (BMHR 2245-46).

I had also talked to Dennis Dent, who said that Jason was home on the night of May 5, 1993. I remember that I had called home that night and I confirmed that he was at home. I do not remember exactly whether I talked to him or not. (BMHR 2245-46).

I never found any bloody clothing at my house. (BMHR 2247).

Jason did not change after the killings. I remember that we were worried after those children died. We were all hoping that someone would be caught. I never dreamed that they would arrest Jason for this crime. Before he was arrested,

I had told him to watch his younger brothers because nobody knew who had done it. (BMHR 2248).

I had no reason to suspect that Jason was involved. He said he didn't know anything about it. He did not even know the people who were killed.

Jason, Damien, and Jessie were not all friends. At one point they had been friends, but at some point there had been some problems with t-shirts, and then Jessie had tried to steal a necklace of Jason's. In May of 1993, Jessie was not one of Jason's friends. He didn't come by to our house, except once right before the murders he came to our house and said he had just come back from California. (BMHR 2250-51). Jason and Damien did hang out together.

When Jason got arrested, I did give the police the information about my son being in school. I remember that the night he was arrested he had gone to spend the night at Damien's house.

I also told the police about Jason playing video games at Walmart, and about his being at my uncle's place. (BMHR 2253).

I also told them about Jason baby-sitting for his younger brothers. (BMHR 2254).

After Jason was appointed lawyers I did meet with Paul Ford a lot of times. I did not meet with Robin Wadley much. I told them about Uncle Hubert and the

mowing of the lawn. Hubert gave them a statement. I also think I told them about Jason playing video games. I gave them names of witnesses. I also talked to them about my calling the house. I told them exactly what happened that night. (BMHR 2256-57).

I was never called as a witness in the case. I have no idea what was presented in my son's trial, I was never allowed in the courtroom. (BMHR 2259).

This whole event placed a lot of stress on me. It caused me emotional problems. I ended up losing my job, and I had a lot of distress and anxiety. I needed medication, and I had to go to the hospital. But at the time of Jason's arrest I had a good job and I was a very good employee, and then things fell apart. It was so traumatizing for me to see my son like that. (BMHR 2262).

CROSS EXAMINATION OF ANGELA GAIL GRINELL BY KENT HOLT

I did meet with my son's lawyers. I told them what I knew about the situation. I told them about my son's whereabouts as far as I knew them.

[Testimony of Angela Gail Grinell ends at BMHR 2264].

DIRECT EXAMINATION OF NANCY PEMBERTON
BY MICHAEL BURT

I am a licensed investigator and a licensed lawyer. I have been working on the Misskelley case since 2004. I went to Dan Stidham's office and obtained his

files and had them shipped. The files were shipped to California. I believe that there were 17 boxes.

State's Exhibit 6 is an index that my office prepared of the Dan Stidham trial boxes. There were actually 14 such boxes. There was a post-conviction box. (BMHR 2269-70).

I am aware that at one point you and Mr. Philipsborn obtained lab notes. I went through the Dan Stidham file to see if I could locate them. I was never able to locate lab notes of that kind in the Dan Stidham file. (BMHR 2271-72).

DIRECT EXAMINATION OF JOHN PHILIPSBORN BY MICHAEL BURT

_____I was involved in securing copies of the laboratory's notebooks. Counsel for Echols, Misskelley, and Baldwin met with police personnel, with Kermit Channell of the Crime Laboratory, Circuit Prosecutor Brent Davis, and other persons in a conference room at the West Memphis Police Department. We reviewed a number of binders that were identified as notes of criminalist Lisa Sakevicius. Afterwards, we went to the Arkansas Crime Laboratory. Mr. Channell had arranged to lay out all the Crime Laboratory material that he was producing, including notes from the Medical Examiner's Office and other laboratory notes. At some later point in time, my office received a box of materials from the Arkansas Crime Laboratory identifying the materials as copies of laboratory notebooks, including hair slides

and other materials that we had been shown in those two days. I arranged to have the material copied for other counsel. (BMHR 2274). *[End of session of August 13, 2009, BMHR 2275. The beginning of the session of August 14, 2009 is on the same page.]*

DIRECT EXAMINATION OF SALLY WARE BY JOHN PHILIPSBORN

I am a retired teacher and current artist. I taught for 23 years at Marion High School, two years at East Tennessee State University, and several years elsewhere as well. (BMHR 2276-77).

I was at Marion High School from 1979 to 2002. I was working there full-time in 1992 and 1993. I taught high school art.

Marion High School had about 600 students there at that time. The school day was organized into 7 periods. It started at 8:05 and ran until 3:15. Each class period was 50 to 55 minutes.

I taught 6 of the 7 periods. One of the students I had in my class in the spring of 1993 was Jason Baldwin. I recognize him here in the courtroom. He was in my sixth period class, which met from around 1:20 to 2:15. I took attendance every day by calling a student's name. The attendance record was in the grade book. If anyone had wanted to check a student's attendance, you could have gone

to a teacher's book and have seen whether or not a particular class was attended. (BMHR 2279).

Jason had been in other classes of mine in the two prior years. I remember Jason as well-mannered, very polite, always respectful, nice and kind. Jason was a regular attendee of my class. I would say he was there 85 to 90 percent of the time.

I remember hearing about the killings of the three boys in West Memphis. I was in the art room at Marion High School teaching a night class. I recall a discussion about the killings that night. (BMHR 2280).

I recall that Jason continued to attend school after the killings. I remember the week in which the matters occurred. There had been an art exhibit on May 2nd, and he was in class Monday, May 3rd and throughout the week. He was there every day "without a doubt and without question." (BMHR 2281). He helped me take down the art exhibit that Monday. He was happy because he had received an award.

I never observed anything unusual about Jason's behavior after the killings. His behavior did not change in any way.

Jason continued to attend my class regularly until the end of the school year. (BMHR 2282).

I recall that the information I had received about the three boys was that they had been bound and murdered in Robin Hood Woods and that one of them had been mutilated.

I recall no reason to suspect that any of my students had been involved. At one point I recall that they made an announcement of the people who had been arrested. There was a public announcement that Jason Baldwin was one of the people arrested.

After that I was never contacted by any law enforcement personnel. I was never contacted by any of the defense lawyers either. I knew other teachers who had had contact with Jason. As far as I know, none of the other teachers had any contact with law enforcement or with the defense lawyers either. (BMHR 2285-86).

Anyone who had contacted these people could have gotten attendance records, and could have found out about Jason's behavior.

CROSS EXAMINATION OF SALLY WARE BY KENT HOLT

As far as I know, Jason lived in a trailer park. His family did not have a lot of the same kinds of opportunities that my other students had. I was always impressed with him because of his manners and the way he treated other people. I never had to use any discipline with him.

I knew who he hung out with as far as my classes were concerned. I also knew that he was interested in painting and that he listened to music. (BMHR 2288).

Jason was a smart guy. He could figure things out. I was unaware that he had a Juvenile record.

DIRECT EXAMINATION OF JOSEPH SAMUEL DWYER
BY JOHN PHILIPSBORN

My name is Samuel Joseph Dwyer. I am 30 years old and I live in West Memphis. In 1993, I lived in the Lakeshore Trailer Park with my mother. We lived in the middle of the trailer park near a big lake. We had been living there for about four years by 1993.

I recognize Jason Baldwin who is here today as having lived in the same area two trailers down. (BMHR 2293). He lived with his mother, his step-father, and two brothers. His brothers' names were Matthew Baldwin and Terry Baldwin.

I am about two years younger than Jason. His brother Matthew was about my age and his younger brother Terry was a few years younger. (BMHR 2294).

I was friendly with both Jason and Matthew in 1993. We were pretty good friends by then. I used to go over to Jason's home. It was just like the other trailers. It had a living room, three bedrooms, and a kitchen. There were video games set up in the far bedroom. When we went to Jason's we would play video

games, and sometimes we lifted weights. Then we would go to my house and we would play basketball.

I attended Marion High School. We used to get there by bus. You would catch the bus right down the street. We were usually at the bus stop around 7:30 or so. I rode the same bus as Jason. So did his brother Matthew.

We used to get out of school at 3:15. We would ride the bus home. We would get home at about 4:00 p.m.

Jason was quiet. He used to keep to himself. He liked to draw a lot. We used to ride bikes around. I never remember our going to an area called Robin Hood Woods or Robin Hood Hills. I know where that area is. As far as I know, Jason never went there. When we would ride, we would go to a set of woods between the Lakeshore Trailer Park and the I-55 interstate. There were bike trails there. We would look at different snakes and stuff. (BMHR 2297).

I remember his mother. She was attentive.

I do remember at times that his younger brother Matthew and I would sneak out at night. I never recall Jason doing that.

Everybody knew everybody else out there. I knew that Jason used to hang out with Carl Smith, Jeremy Smith, and his younger brother. He would also hang out with Adam Phillips. We would all hang out together. (BMHR 2299).

I remember being in school and hearing about the three boys who had been killed. It was definitely a shocking thing. I remember hearing about Jason's arrest on the radio. I was totally surprised.

I had seen Jason several times between the time the three boys got killed and when Jason was arrested. He continued to ride the bus with us.

The police never interviewed me. I'm not sure about some of the others. I know they spoke with Adam Phillips.

I was never contacted by anybody who was working for Jason's defense. I never heard of any lawyer working for Jason or anyone else working for him coming and talking to the people at Lakeshore. (BMHR 2301-02).

I did know Jessie Misskelley. He liked to ride bikes like the rest of us. His step-mother lived on the same street as Jason and I. Jason was living with his dad in Highland, and sometimes he would stay in Lakeshore. I don't recall his being there that often. I used to hang out with Jason very regularly. I don't recall Jessie being there at all.

Jason was not a guy that I thought of as being a fighter. Same with Jessie. I remember Jessie breaking up a fight. (BMHR 2303).

I knew Damien Echols. He was older than we were. He lived around the corner. Damien didn't fit in at all. All of us liked to play basketball and swim and stuff. He didn't do any of those things. He used to dress all in black.

Jason never did anything that caused me to believe that he had been involved in killing anyone. He was always the same guy. (BMHR 2304).

I remember the scuba diver who found a knife out in back in the lake. I also remember that it was Jason's mother who threw the knife in the lake. She did not want him to have any knives. She had found one and she threw it out there out of anger. I am sure that this happened before the three boys were killed.

Jason sometimes carried a pocket knife, but that was about it. All of us did. Everybody had kind of a collection, "... we kind of collected them." (BMHR 2306).

Baldwin's mother was very protective. Once his younger brother and I had snuck out and his mother found us. She was always looking after them. (BMHR 2307).

I do not recall Jessie Misskelley and Damien Echols hanging out together. Nor do I recall ever seeing Echols, Baldwin, and Misskelley together. I would see Baldwin and Echols together, but not the three of them. Nobody I know in my age group would have said they ever saw them together. (BMHR 2308).

We would often go play the video games out in front of the local Walmart in West Memphis. That would happen after school.

DIRECT EXAMINATION OF JOSEPH SAMUEL DWYER
BY MICHAEL BURT

I don't recall any attorney for Misskelley trying to contact me. I didn't hang out with him a lot, but my impression of him was that he was a good guy. He broke up a fight once. I thought he had a sense of compassion that was incompatible with these charges.

CROSS EXAMINATION OF JOSEPH SAMUEL DWYER BY KENT HOLT

I think that Echols' mother lived not too far from us. I knew that Misskelley's step-mother lived in Lakeshore and that from time-to-time he would come over and stay there.

I had lived in Lakeshore since I was about 11 years old. I was 14 at the time of this incident. I did sign an affidavit indicating that I did not like Echols. He had a certain way of talking and holding himself that I didn't like. He would do things to get attention (BMHR 2314). I did not like hanging around Damien Echols and so I would not hang around with Jason Baldwin when he was with Echols. I did hang around with Baldwin at Baldwin's house though (BMHR 2316).

I acknowledge that I was aware of when they found the knife in the lake. I did not come forward to indicate that I had seen Baldwin's mother throw the knife

in the lake before that. But I can explain why that happened. We were all terrified because we were being profiled because of our rock and roll t-shirts and our long hair. Everybody thought that we were part of a cult thing. It was totally made up, but we all felt that we could have been picked out as suspects. News channels were out there trying to film us walking down the street. But I would have talked to an investigator had one come to talk to me. (BMHR 2318).

I cannot say that the knife that was thrown in the lake is the one that was retrieved by the law enforcement divers. I recall his mother having thrown the knife into the lake, and his being upset at her. I thought he might have other knives, but we all collected knives at the time.

Baldwin never talked to me about having been involved in the crime, and there was never even mention of it. We never heard about Robin Hood Hills. I know the area now, but I had never been there before. We would not go out in that area. We would go to other locations, but not as far as Robin Hood Woods. (BMHR 2320).

I saw Jason Baldwin in a fight once. He got in a fight with somebody who was younger than he was, and Jason was punched in the nose.

REDIRECT EXAMINATION OF JOSEPH SAMUEL DWYER
BY JOHN PHILIPSBORN

Baldwin never expressed any interest in satanism or witchcraft.

RECROSS EXAMINATION OF JOSEPH SAMUEL DWYER BY KENT HOLT

I remember that Baldwin, like others, had a trench coat. It was a fashion thing. I know he also drew rock and roll-related drawings. He was really good at drawing. There wasn't any kind of cult or satanism talk. (BMHR 2324).

DIRECT EXAMINATION OF PAUL JASON DUNCAN BY BLAKE HENDRIX

_____I reside in Etowah, Arkansas. (BMHR 2325). I know Jason Baldwin from having been locked up with him in the Craighead County Detention Center for about seven months. I got to the Center on July 13 of 1993 and got out around January 24 of 1994. I was there for a burglary. I eventually went to the Arkansas Department of Correction and to a boot camp. (BMHR 2326). I haven't been convicted any felonies since. I work for a company that does irrigation. I'm divorced, and have three children.

When a new guy got admitted to the Detention Center, he would be locked up for 24 to 48 hours with no one else around.(BMHR 2327) There are usually 8 to 12 juveniles in the Center at one time. There were around eight cells. People would usually be locked up two to a cell. There was a day room where people would play cards and socialize. There was a command center too, where we would be closely monitored by staff. (BMHR 2328) Jason Baldwin was there when I got

there. He was there for the whole time I was there, about 7 months. (BMHR 2328).

We got to be friends. We talked pretty much every day. Jason was quiet, polite, and not a troublemaker. I never saw him get in trouble. He was the kind of guy that it took some time to warm up to. I thought I got close to him. It took a couple of weeks before we could talk together pretty well.

Baldwin didn't talk about his case a lot. He would talk about having talked to his lawyer. He saw his mother and his lawyer while he was at the Center. Jason was saying that the stuff that was being broadcast on TV about the case was not true, that it was crazy what they were saying about his case. (BMHR 2330-1). He never confessed his involvement to me, and never said anything that made me suspicious he was involved. (BMHR 2331)

I remember Michael Carson. He was there maybe a week or two. Carson did a lot of talking. He was one of those guys who does things to be accepted. I basically tried to avoid him. I recall Carson being a bigger kid than I was at the time—a red haired guy. By the time Carson got there, Baldwin and I were getting along well. I didn't see Carson and Baldwin get close. I didn't see them interact much at all. (BMHR 2332)

There were black inmates on the Unit, but I never heard anything about any of them becoming hostile towards Baldwin, or try to fight with him. I remember a couple of those guys by name. I never saw Baldwin have a problem with any of them, and I never saw Carson in a position where he was standing up for Baldwin against the threats of other inmates, including the African-American inmates.

(BMHR 2333-4)

I was at boot camp when Jason Baldwin's case was in trial. I did not know about Carson's testimony until after the trial when I saw a video about it. I remember something about Carson saying that they had been in a cell together. I don't remember him saying something about being the muscle for Baldwin. I do remember that Carson was supposed to have testified that Baldwin confessed to him, and that he said in detail that he had emasculated one of the boys. (BMHR 2336) That sounded like a lie to me. I don't believe that Baldwin would have talked to Carson. (BMHR 2336-7) We didn't like Carson that well. I had thought that Carson was a troublemaker and Baldwin agreed. (BMHR 2337) Carson had only been in the place for a short time, and Baldwin didn't warm up to people that fast. Carson's testimony sounded false to me.

I was never approached about being a witness in Jason's trial. Nobody talked to me about being a witness until a guy named Tom Quinn came to see me.

(BMHR 2338-9). I heard of Baldwin's lawyer Paul Ford, but I never saw him on the Unit. He never talked to me. If he had, I would have told him what I'm telling you now.

Most of the time I was there, I had my own cell. Some times guys were housed with me. Carson may have been for a day or two. (BMHR 2339)

CROSS EXAMINATION OF PAUL JASON DUNCAN BY KENT HOLT

I remember Carson, but I can't remember whether he was housed with me. I had formed my impression about him from seeing him in the Day Room. We used to play cards and watch TV there. We played Spades—Carson did too. (BMHR 2341)

I got in trouble for burglarizing cars. I did that with Jimmy Patterson. Both of us had done that kind of stuff before. We hadn't been caught until I ended up at the Detention Center. I was there until January 1994, and then eventually I paroled out. (BMHR 2342-3).

It would not change my opinion about Carson's lying if I was told that he has passed a polygraph test.

REDIRECT EXAMINATION OF PAUL JASON DUNCAN
BY BLAKE HENDRIX

_____ I was seventeen when I was arrested on the burglary case. I remember when I was arrested because my birthday is July 12, and I got drunk that night. I ended paying for that. (BMHR 2344-5)

DIRECT EXAMINATION OF JENNIFER BEARDEN BY BLAKE HENDRIX

I am now 29 years old. I knew Damien Echols, Jason Baldwin, and Jessie Misskelley in 1993. I was living in Bartlett, Tennessee at the time. I was 12 years old and going to school at Ellendale Elementary. (BMHR 2346) Currently, I still live in Arkansas, and I am a paralegal for the Ellings Law Firm in Little Rock. I graduated from the University of Arkansas, Little Rock, with a bachelor's degree in criminal justice. I am studying to take the law school entrance examination.

I met Damien and Jason at a skating rink in West Memphis. I usually went there with Holly George. I believe I met Jason and Damien in February, 1993. From that point on we spoke almost daily by phone until they got arrested in June of 1993. (BMHR 2348). Back in 1993, we would see them at the skating rink. I remember we also saw them once at Lakeshore and once at the Esperanza Bonanza. That would happen on weekends.

We talked by phone pretty much every day. Sometimes it was Holly and me who called them. Sometimes all of us were on the phone, sometimes it was just me

and Damien. They did not have my phone number. (BMHR 2349). Holly and I would talk to Jason. Sometimes Damien and I talked. I usually talked to Jason when Holly was on the phone. Holly would talk to Damien, but usually not without me on the phone. We would initiate the calls because I never gave out my phone number. If Damien wanted to talk to me he usually called Holly. Also, Holly had three-way calling. (BMHR 2349-50).

Usually when I spoke to Damien he was at his house, though sometimes he was at Jason's. Holly talked to Jason a lot at Jason's house.

I thought that Damien was a nice guy though he was kind of vain. Jason was very nice, kind of quiet, and very sweet. I didn't see any evidence of either of them being interested in Satanism or witchcraft or anything like that.

I knew Jessie Misskelley a little bit. My sense is that Jessie did not hang out with Jason and Damien. Jessie was louder than they were. He liked to cause more trouble. (BMHR 2351). I remember there was an incident where he stole an 8-ball from the skating rink and Jason and Damien ended up being blamed for that and kicked out. I never saw them interact other than that.

Normally I used to get home from school at 3:15 or 3:30. I was supposed to be off the phone until about 9:30, though sometimes I stayed on it up to 10 PM.

(BMHR 2352-3). My parents didn't know that I was talking to those guys on the phone.

I remember May 5, 1993—that was a traumatic time for me. I remember that Holly had called me and she had gotten home and we called Damien. We had to get off the phone because Holly's Mom needed it. (BMHR 2353-4) Damien told me to call him later at Jason's. I called over to Jason's at about 4:30 or 5 pm and Jason answered. I also spoke with Damien who said that he and Jason had to go to Jason's uncle's. Later on, around 8:30 I called Damien's house. It was busy once, and the next time, I spoke with his grandmother. He was not there. I called at about 9:20 and reached Damien at his house. Jason wasn't there. Damien and I talked until about 10 p.m. There was nothing unusual about the call. (BMHR 2357). He didn't say anything about having been with Jason and Jessie.

I spoke to Damien the next day, May 6. I don't remember talking about what had happened to those three boys. After that, I ended up talking to the police about the matter. Nobody from Baldwin's defense team spoke with me. Nobody from Misskelley's defense team talked to me either, though I was on the witness list for Jessie's trial. I never testified. (BMHR 2359)

Between May 6 and the date that Damien and Jason were arrested we continued to talk by phone every day just the way we had been talking to that

point. We would still see them on the weekends. I didn't recall anything unusual coming up that caused me concerns or suspicions. (BMHR 2359)

If I had been called as a witness, I would have testified truthfully, and consistently with what I am testifying now.

I also knew Heather Cliett. Heather and I would talk by phone. Heather had a girlfriend type interest in Jason Baldwin. (BMHR 2360-61).

The Esperanza Bonanza happened in May. It was kind of a festival. The skating rink we have been talking about was called Skate World. About once a month, they would have all night skating there. I remember being at one all nighter with Damien and Jason.

As far as I know, neither Holly nor Heather was ever called as a witness either. (BMHR 2362)

CROSS EXAMINATION OF JENNIFER BEARDEN BY KENT HOLT

I never testified in any proceedings in this case before, either trials or hearings. I had been supposed to testify at a hearing in October of 1998, but I was never called. (BMHR 2362-63). I recall that time because it was very traumatic for me. I recall a lot about it.

The calls continued until Damien and Jason were arrested, which was about another month after the 3 boys were killed. My parents were not aware that I was

talking to Damien and Jason. I was 12 years old at the time. I didn't tell them anything when Damien and Jason were arrested. I only told my parents when the police asked to talk to us. (BMHR 2364).

I used to get driven to the skating rink in West Memphis by my mother when we lived in Bartlett.

We didn't talk to them about religion, or horror movies or things like that. We had a common interest in music. We knew some people in common. We were trying to set Holly up with Jason.

Holly was 13 at the time.

I have never visited Jason Baldwin in prison, or in the jail. (BMHR 2366)

REDIRECT EXAMINATION OF JENNIFER BEARDEN
BY BLAKE HENDRIX

I remember the phone calls on May 5, 1993 because that time had a profound impact on me. It was traumatic. I lost a lot of friends because of it. (BMHR 2366) People heard that I was supposed to be a witness at Jessie's trial. Some of my friends' parents read that, and some of my friends were forbidden to speak to me, because people were convinced they were all evil. The whole experience solidified my desire to work in the criminal justice system. (BMHR 2366-7).

I do remember being interviewed by a private investigator named Ron Lax in 1994. I gave both he and the police information about the phone calls. (BMHR 2367)

DIRECT EXAMINATION OF JACK LASSISTER BY JOHN PHILIPSBORN

I am a lawyer admitted to practice in the State of Arkansas in 1973. I was asked by counsel for Baldwin to review a series of files that I had been provided by counsel for Baldwin. The files had been brought to the hearing.

I clerked for the Arkansas Supreme Court after leaving law school. I then worked for the Office of the Attorney General for two and a half years, and thereafter beginning in 1977 entered private practice where I have done almost exclusively criminal defense work. (BMHR 2370) I have been a member of the Arkansas Association of Criminal Defense Lawyers, and in the mid-1980's was the Chair of the Criminal Defense Section of the Arkansas Bar Association. I was also the first Chair of the Criminal Defense Section of the Arkansas Trial Lawyers Association. I served on a Supreme Court committee on model criminal jury instructions, and am currently on the Arkansas Supreme Court's Committee for Criminal Practice. I have been the Bar Association representative to the Arkansas Crime Information Center for almost 30 years. (BMHR 2371)

My practice has included a wide variety of criminal cases in State and Federal courts. I have argued before the Arkansas Supreme Court, in the Eighth Circuit, and before the U.S. Supreme Court twice.

I have been involved in a wide range of trial work in both state and federal cases, and the preparation of the defense of criminal trials during my entire career as a criminal defense lawyer. (BMHR 2372)

I have previously qualified as an expert witness on the standards of practice applicable to criminal defense. I have done so in Craighead County. I am familiar with the standards of practice applicable to the criminal defense function in Arkansas in 1993 and 1994. The basic standard for effective representation is the one set forth in *Strickland v. Washington*. (BMHR 2373) *Strickland* references the *ABA Standards*. Back at that time, there wasn't the kind of information easily available to lawyers on the internet as there is now. You would obtain a sense of what standards of practice were based on my contact with other lawyers from around the state. (BMHR 2374)

I was also familiar with the relevant standards as applied in the early 1990's based on my involvement in *Starr v. Lockhart* , a case that involved questions of effectiveness of counsel. I was very familiar with the pertinent law at that time. (BMHR 2374) [*Whereupon the Court was asked to accept Mr. Lassister as an*

expert on the standards of practice applicable to the criminal defense function in 1974—and it did. BMHR 2374]

I have reviewed attorney Paul Ford's trial file on several occasions (BMHR 2375). The file consisted of three boxes. In the boxes, I located a series of files with witness names on them containing interviews of police, files pertaining to witnesses from the crime lab and some newspaper articles. There is a large stack of suspect interviews conducted by the police department and some pleadings.

In reviewing the file, I found no photographs of the crime scene or of the postmortem examination. There were no photographs in the file. (BMHR 2376)

There were no reports from any private investigators. Specific documents from Ron Lax, investigator for Echols, were not in the Baldwin file.

There was no evidence of consultation with an independent pathologist. No evidence of consultation with an independent serologist. No evidence of consultation with a DNA expert. There were transcripts of interviews with Dr. Peretti.

In my opinion it was expected, under the standards of practice at the time of this trial, that the defense would have consulted with the State's Medical Examiner.

The consultation would have included obtaining information about various findings, and evidence retrieved, during the post mortem examination process.

In reviewing the file in the matter, I also read the opening and closing statements in the case, Dr. Peretti's testimony and affidavits of a couple of forensic pathologists concerning the mutilations that had been seen.

If defense counsel had been told, in advance of trial in this case, that there were turtle bites on one of the victims, then that counsel did not comply with *Strickland v. Washington* in failing to research and consult with experts concerning wounds to the victim, and particularly Christopher Byers. If you have a pathologist saying that the wounds are attributable to a knife, and since the source of the injuries is not readily apparent, as in this case, then counsel should have done research, and consulted with a pathologist about Dr. Peretti's findings. (BMHR 2381-82)

Having reviewed Baldwin's Exhibit 14, a handwritten note from Paul Ford, indicating a head hair in the ligatures on Christopher Byers, I can recall no photographs of Lab slides of hairs in Ford's file. In my opinion, a reasonably effective criminal defense lawyer would have followed up on the information contained in the note you just showed me and asked if the hair had been submitted

for further identification and analysis. Counsel should also have asked whether the origin of the hair could be determined. (BMHR 2384)

In my review of the defense files I found a number of files containing interviews by a State investigator. There were sometimes handwritten pieces of paper with points that it appeared defense counsel was making with respect to the witness interviews. Given the facts of the case, it was the duty of counsel, especially given information that certain witnesses had evidence concerning Baldwin's whereabouts at critical times, to determine where the client was during that period of time. If the defendant was denying his guilt, and if there were some witnesses like his mother and brother and others available as sources of information, then any competent lawyer would have collected contact information and taken steps to locate and interview witnesses. You would want to nail down the client's whereabouts with the client as best possible—what classes he was in, what teachers he had in class, who was in the class. Among other things, I noted counsel would have collected school records and would have verified what contacts the client had with teachers and the like.

I did see some information in the file about individuals who had talked to the defendants during that period of time. It would have been within counsel's duty to

investigate to follow up with persons who claimed to have been on the phone with Baldwin or a co-defendant (BMHR 2388)

In the files I reviewed, I did not see defense interview notes of witnesses. I did see a memorandum from defense counsel reflecting an interview of Baldwin's mother, as well as a handwritten statement from his uncle Hubert Bartoush purporting to cover Bartoush's contact with Baldwin on the afternoon of May 5, 1993 between 4:30 and 6:30 PM. The statement is Plaintiff's Exhibit 12. I believe that there is also a police interview of Bartoush in the file. This too is information that I would have expected counsel to follow up on. (BMHR 2389) The Bartoush file from the Ford trial file is now Plaintiff's 66. It contains a statement given to Detective Ridge by Bartoush.

In addition, the file has in it a handwritten statement of Heather Cliett dated June 8, 1993 concerning her contact with Jason Baldwin about the 5th of May. A lawyer would have had a duty to follow up with this since it shows what the client was telling his girlfriend about his whereabouts, and it confirms what Bartoush said as well.

In cases involving jailhouse informants, it is the duty of criminal defense counsel to investigate the credibility of the jailhouse informant, and to find anything that can effect the informant's credibility, including institutional records,

and other sources of information. This would include reviewing jail records and the like. You need to investigate inducements. (BMHR 2394-5) You need to find out what the correctional officers thought about the informant as an inmate. You could pick up the phone and find out that he is deceptive and dishonest with staff. (BMHR 2397).

In my opinion, the failure to retain or consult with an independent pathologist, or to conduct research on his own on the injuries observed here was a breach of duty. (BMHR 2398)

It is my opinion that counsel breached the duty to investigate in a case like this, particularly where the accused was claiming his innocence and there was independent evidence of an alibi. (BMHR 2399)

DIRECT EXAMINATION OF JACK LASSITER BY MICHAEL BURT

It is my opinion that the failure to retain a forensic pathologist and a forensic serologist in a case like this would be applicable to Baldwin's lawyer or to any other lawyer involved in the case. (BMHR 2399)

CROSS EXAMINATION OF JACK LASSITER BY KENT HOLT

In my opinion you need more than a license to practice law and *Strickland* to effectively defend criminal cases in Arkansas.

In this case, I reviewed Paul Ford's file; some of the transcripts including the opening and closings; Dr. Peretti's testimony; some affidavits. I re-read some cases. I did not read the entire record of the case. (BMHR 2402). I did not read the co-counsel's file. I did not speak with Mr. Ford.

I did not review attorney Paul Ford's testimony.

Ford's having handled a prior capital murder trial would not affect my opinions about his omissions to investigate the pathology issues. (BMHR 2404). The failure to follow up the hair evidence, if it had been delivered to the Lab would make you inquire into the results.

There were some entries in the file indicating that Ford and his co-counsel met with West Memphis police investigators. (BMHR 2408)

REDIRECT EXAMINATION OF JACK LASSITER BY JOHN PHILIPSBORN

_____I agree with the statement from the digest of *Strickland* that the reasonableness of counsel's actions may be substantially determined by the defendant's own statements. The reasonableness of engaging a pathologist or consulting one in a case like this is also premised on the prosecution's theory of the case, which here was described by the Arkansas Supreme Court as part of a Satanic ritual. (BMHR 2411).

I am aware that defense counsel could have sought to identify the source of any hair evidence found at the scene. And where the client was in school on the day the bodies were recovered and where the client showed no signs of changed behavior or demeanor, or signs of injury, you would have expected follow up interviews.

Ultimately, the decision about whether the client should testify belongs to the client. (BMHR 2414-5)

REDIRECT EXAMINATION OF JACK LASSITER BY MICHAEL BURT

_____ If a case was tried on the theory of Satanic abuse as the motive, you would want to do everything you could to refute the notion that there was such a motive. (BMHR 2416)

DIRECT EXAMINATION OF VICTORIA HUTCHESON
BY MICHAEL BURT

_____ I testified in the Misskelley trial, but not the Baldwin/Echols trial. I have been advised that I would be asked about statements I gave to investigator Nancy Pemberton in June, 2004. (BMHR 2418-9). You did tell me that you would be asking me about statements that I made to the effect that I lied under oath.

[This testimony was followed by a reported discussion on the statute of limitations for perjury. Counsel for Misskelley agreed that the witness was likely subject to prosecution, and asked for a grant of immunity. BMHR 2423. Bill

Howard, an attorney with the Craighead County Public Defender, appeared as counsel and conferred with the witness. BMHR 2425. He indicated that under the circumstances the witness would likely decline to testify. Mr. Holt stated that the State would not provide immunity. BMHR 2425. Based on that state of the record, counsel for Baldwin moved her statement to investigator Pemberton into evidence as a statement against penal interest, and the DVD of it was marked as Exhibit 67; the transcript was marked as Exhibit 68. The transcript was then admitted. BMHR 2327. Ms. Hutcheson's mental health records were also received as Exhibit 70. Counsel's trial file box pertinent to Ms. Hutcheson was received as well, as Exhibit 71]

DIRECT EXAMINATION OF NANCY PEMBERTON
BY MICHAEL BURT

I retrieved the previously marked Exhibit 69 from Mr. Stidham's trial file. (BMHR 2429) [*This testimony ends Volume 9 of the hearing testimony. The testimony continues in Volume 10 at BMHR 2431]*

I interviewed Ms. Hutcheson after she contacted Dan Stidham through her attorney. I had read her testimony at trial. She made statements to me indicating that she had lied in the trial. She was also telling other people that she had lied at trial. There were articles available on the internet indicating that she was saying that she had lied at trial. BMHR 2433.

I then collected some of those articles. These included an article in the Arkansas Times dated October 3, 2004, Exhibit 72, that depicted Ms. Hutcheson on the cover, and indicated that she had lied at trial.

Misskelley's trial records had some records concerning Hutcheson's background. I obtained her East Arkansas Mental Health Records—she was taking a number of powerful anti-psychotic drugs. Misskelley's trial file had a notation that she had gone to seek emergency services at East Arkansas Mental Health in April, 1993. (BMHR 2435) Ms. Hutcheson indicated to me that she was waiting for Mr. Stidham to expose her as a liar. Hutcheson explained that while the police reached out to her, the defense never did. The police coerced her in certain ways. She said that the police and the law enforcement investigators knew of her drug usage.

DIRECT EXAMINATION OF VICTORIA HUTCHESON
BY MICHAEL BURT

_____The State's theory of ritual murder was used in both trials [*In the aftermath of this testimony, Mr. Hendrix moved, without objection from the State, for admission of the evidence pertinent to Ms. Hutcheson in the Baldwin hearing, on grounds that Hutcheson could have been relevant to the Baldwin defense. The Court admitted Exhibits 69 and 70 as to Baldwin. BMHR 2441*]

CROSS EXAMINATION OF VICTORIA HUTCHESON BY KENT HOLT

_____I don't know whether she was on anti-psychotics in 2004.

REDIRECT EXAMINATION OF VICTORIA HUTCHISON
BY MICHAEL BURT

_____ There is an entry about her use of medication in February of 1994. She says that she was nervous during the trial and was taking Xanax at that time. She took it just before taking the witness stand.

[This testimony was followed by an extensive discussion about scheduling. The State requested time to bring its experts. At Mr. Burt's request, the Court ordered the State to produce its expert and other disclosures 15 days prior to October 1, when the hearing would resume. The proceedings of August 14, 2009 conclude at BMHR 2457. The session of October 1, 2009, begins on that same page]

[At the outset of the October 1, 2009 session, Mr. Holt informed the Court that during the processing of the evidence prior to trial, Lisa Sakevicius had looked at the 6 shoe laces that were the ligatures. The State had contacted Bode Technologies, the DNA Lab agreed upon by the parties during post-conviction litigation, who had been told that Echols's lawyer Mr. Horgan had instructed Bode to forward the ligatures to Micro Trace, some other Lab, which was outside the agreement and Order for DNA testing.

The Court heard the offer of proof and ordered the ligatures returned to Body Technologies. BMHR 2461. Counsel for Baldwin joined in expressing

concerns about the removal of evidence from a the Court ordered Lab, and joined in the stipulation that the evidence should be returned. BMHR 2463

Counsel for Baldwin then asked for disclosure of material generated by the State, including any witness interviews, or information bearing on witness credibility. The Court indicated that the State should be aware of its obligation to make exculpatory evidence available. BMHR 2465]

DIRECT EXAMINATION OF MIKE ALLEN BY KENT HOLT

I was employed as a Sergeant in the Criminal Investigation Division in 1993. (BMHR 2466) I first heard of the disappearance of the boys on the morning of May 6. I went out and looked through several neighborhoods.

[The testimony was interrupted by Mr. Holt's observation that under the Drymon case, trial records are part of the records of a Rule 37 proceeding. The State wanted to make sure that maps of the area used in the trial were part of the current record. There was no objection from Misskelley. BMHR 2468]

These maps show the area around the interstate and Ten Mile Bayou. State's Exhibit 16 is a photograph of that area. It shows a utility pipe and the area called Robin Hood Hills or Woods.

It was not a formally named area. RT 14-15. Exhibit 17 shows the retention pond, and the Blue Beacon. You can see the Interstate.

I had been searching around houses in the northeast ward, checking vacant houses, when I heard from Crittendon Search and Rescue, asking that an officer respond. (BMHR 2475) Other agencies had also been enlisted in the search. I drove to the dead-end and and looked in this ditch and I saw a tennis shoe that had been located by Crittendon County Search and Rescue. Looking at State's Exhibits 19 and 23, you can see the area. I noticed that the bank of the ditch was scuffed up, but it didn't have a lot of leaf debris on it. (BMHR 2479) State Exhibit 22 shows the area in question, and the tress that were in it. I tried to cross the bank, and fell into the water, and climbed back on the bank. I was in the process of recovering the tennis show when I felt something in the water. The water was kind of murky there. I felt the first body. The water was somewhere between my crotch and knee area. By the time I arrived at the scene, I located no wild life. All of this would have happened at roughly 1:30 PM (BMHR 2482)

The water in there was pretty calm. It's more of a ditch, not a stream. I am marking State's Exhibit 26 with an 'X' where I found the tennis shoe. It was after that I located the body of Michael Moore. (BMHR 2485) Detective Ridge then got into the water. He located the two other bodies and walked the length of the ditch. We actually then took the bodies out of the water and placed them on the bank. Detective Ridge found some clothing that was down in the mud. (BMHR 2487)

The area was then sandbagged and drained. Screens were used on the pump hoses. State Exhibits 20 and 25 show the bottom of the creek. I didn't see any marine life in the bottom of that ditch.

We were out there from 1:30 to about 7 or 8 at night.

The next day there was a grid search of the area. It is not a big area. You can see it depicted in State's Exhibit 17. (BMHR 2494)

CROSS EXAMINATION OF MIKE ALLEN BY BLAKE HENDRIX

When I first got to the wooded area, I was greeted by Denver Reid from Search and Rescue and a juvenile officer named Steve Jones. Lt. Hester may have been around as well. I was the first person to cross the ditch.

Exhibits 73 and 74 are crime scene diagrams and related notes. When I fell into the water, I made a splash.

I started out in law enforcement in Johnson County for less than a year. I then went to the Crittenden County Sheriff's Office and worked there on the radio and as a jailer for about 3 years. I then became a criminal investigator in 1984. That was the year I had done to the Training Academy. (BMHR 2508). At that time, the Department had investigated approximately 10 to 12 homicides a year. I had done some prior investigations and a lot of on the job training. I cannot recall

precisely my training. I had no training in homicides where bodies had been recovered from water.

I recall Detective Ridge being out there; Detective Bill Durham; Detective Tony Anderson, who was a retired officer; Detective Burch; Lt Hester; Captain Miller. Shane Griffin was out here. There were probably about 10 people out at the scene.

Only Detective Ridge and I assisted in removing the bodies from the water. Both Captain Ridge and I were in the water when the victims were found. (BMHR 2512)

The second and third bodies were found downstream, towards Ten Mile Bayou, from the first one. The bodies were located between 2:45 and approx. 3 pm, but they were not removed right away. A decision was then made to sandbag the ditch and pump it out. Utility workers came up to help out with that. The coroner arrived at the scene just before 4, though I could not remember if the pumping had started by that time.

I would say that about 50 yards of the area was cordoned off. Detective Ridge placed the sandbags. The utility workers were throwing the bags down to him. The pump they had was a generator type pump.

I had seen turtles and other animals in ditch banks before. It might not be plausible, what with my falling in, and things, for there to have been marine life here.

I also have no idea why our diagrams label this area Turtle Hill. (BMHR 2524)

I was not aware that the Arkansas Crime Lab had identified animal hairs being at the scene.

We never came across pieces of flesh out there.

CROSS EXAMINATION OF MIKE ALLEN BY MICHAEL BURT

I do not recall my testimony at the Misskelley trial about how the grass on the bank near the drainage ditch as being smushed down. My observation was that the area had been kind of scruffed up, but I could not distinguish between animal and human activity. (BMHR 2527)

I was unaware that the police log says that Detective Ridge was riding around the area on his three wheeler that morning.

According to the log, I located the first body at about 1:30 or 1:45 pm, though it was not removed until 2:45. From 1:45 to 2:45 Captain Ridge had been in the water moving from north to south.

I was concerned about running into snakes in the water. I don't recall seeing any snapping turtles either. BMHR 2536 At first, when I was in the water, I could not see beneath the surface. (BMHR 2537)

REDIRECT EXAMINATION OF MIKE ALLEN BY KENT HOLT

_____ I don't recall seeing any type of fish in the ditch. I didn't remember seeing any when I testified in the Echols Rule 37 hearing.

It was the southeast bank that was scuffed up. (BMHR 2539)

DIRECT EXAMINATION OF BRYAN RIDGE BY KENT HOLT

I am currently a Captain with the West Memphis Police Department. I was employed by the Department in May of 1993. (BMHR 2540).

On the day the three boys went missing, I got to work at around 8 a.m. After receiving the information of the missing boys, I searched the area they were last known to be in, then went home and got a three-wheeler and expanded my search. I probably first searched the Robin Hood Woods at around 8 a.m. I can show you where I went on State's Exhibit 32, a map of the area. (BMHR 2543). I can identify the areas we are talking about, including the Woods, and the Blue Beacon on State's Exhibits 15 through 29, which are photographs of the area. [*The photographs were received at BMHR 2547*].

I was contacted by radio and asked to return to Robin Hood Woods. I met with Chief Allen and received information that a body had been found. (BMHR 2547). I entered the water, saw evidence such as clothing, shoes and other matters and went to the body and picked it up. The first body removed was that of Michael Moore. I then walked down the ditch towards the south and retrieved the bodies of the other two victims. I searched the bed of the drainage ditch, hand feeling, where the bodies were found. I walked all the way down the ditch until the water was about neck height. (BMHR 2548) After that search, a segment of the drainage ditch was sandbagged and drained. The ditch at that point was about 3 ½ to 4 feet deep. (BMHR 2549)

I have been fishing and hunting all of my life. When I was searching I was concerned about snakes. I saw no kind of movement in the water and saw no wild life. I was aware that one area in this Wood was called Turtle Hill. (BMHR 2550).

The area of the bank to my left when I entered the water was smooth. There were no leaves on it. It has scuff marks. State's Exhibit 30 shows that area. (BMHR 2551)

State's Exhibits 30 and 31 show the scene as it was found. The video that is being displayed shows the scene beginning with Michael Moore's remains. You can then see the other two bodies. You can see where we piled up the sandbags.

You couldn't see too far down into the water of the ditch. When I came up to Steve Branch, I looked down and could see the color of his skin. There were flies in the area. The bodies were removed and placed on the bank of the drainage ditch, it took around 20 minutes for the Coroner to get sheets and bags, and some more time before the bodies could be wrapped.

The flow of water in the drainage ditch was very slow. (BMHR 2559) Once the drainage ditch was drained, I saw no sign of aquatic life. I am familiar with wild life in the West Memphis area, and had seen snapping turtles and a calf soft shell turtle in the area prior to that. (BMHR 2561)

CROSS EXAMINATION OF BRYAN RIDGE BY JOHN PHILIPSBORN

Exhibit 75 appears to be a set of notes that I identified as having been taken by one of the officers at the scene. The notes show certain times in them, but I can't be sure when each of the bodies was found. I know that we were there beginning at around noon. (BMHR 2563)

Mike Allen, Detective Gitchell and I were discussing how the ditch should be searched. I recall no discussion of getting the Arkansas State Crime Laboratory or someone from the Medical Examiner's office to the scene before we searched the ditch. That would have been someone else's decision. (BMHR 2565-66)

When the sandbagging and pumping started there were law enforcement officers at the scene, and utility workers from the street department. We were talking back and forth. It took some time for the pump that was being used to spring into action and remain in operation. It was an engine-driven pump. Normally when you hunt, you don't have that level of activity in the area.(BMHR 2569)

I had not talked to people about the wild life that was in the area. RT 32-33. I was unaware of any follow-up done by the laboratory on animal hairs that had been recovered at the scene. I did not know that the Arkansas State Crime Laboratory had found animal hairs at the scene (BMHR 2570) and had made slides from evidence that had been taken from the scene at the time of its processing.

There was a truck stop operating in the vicinity of Robin Hood Woods, and there was another business called the Blue Beacon that was in operation 24 hours a day, 7 days a week at that time. (BMHR 2572)

CROSS EXAMINATION OF BRYAN RIDGE BY MICHAEL BURT

There were other people that I ran across who were out searching. My prior testimony was that I had seen up to 15 people searching. (BMHR 2574) Later, I went back to the scene. This would have been at around 1:30. At that point, there were two search activities that I undertook. First, I went into the water and

searched by going north to south, sweeping my hands on the bottom of the ditch.

Second, the ditch was drained. (BMHR 2576)

The second body that was retrieved was that of Steve Branch who I had originally called Byers. The second victim that I picked up was the one who had wounds to his face. (BMHR 2577) The wounds looked as though someone had been pecking at the skin. It looked like a knife had done it, but I don't have training to distinguish knife wounds from animal predation. (BMHR 2578)

REDIRECT EXAMINATION OF BRYAN RIDGE BY KENT HOLT

_____ I thought that a person had cleaned off the bank of the ditch.

Both the 76 Truck Stop and the Blue Beacon were 24 hour-a-day businesses at the time. The Voss truck stop was also a 24-hour facility near the Wood, and it was floodlit. (BMHR 2582)

DIRECT EXAMINATION OF DR. FRANK PERETTI BY KENT HOLT

I am currently the associate Medical Examiner at the Arkansas Crime Laboratory. I perform autopsies there. I have been employed there for 17 years. (BMHR 2583). I was employed at the Lab in May of 1993. I conducted the autopsies on Michael Moore, Steven Branch, and Christopher Byers. I testified in two trials pertinent to the case and then a Rule 37 hearing. I graduated from medical school in 1984, did training at Brown University in anatomical pathology.

I then spent some time in Florida and returned to Rhode Island for additional training. I did some specialty training in forensic pathology in the Office of the Chief Medical Examiner in Baltimore, Maryland. I then moved to Arkansas in 1992. While in Rhode Island I had first done training in hospital pathology and then did some training in forensics. I was a part-time Medical Examiner for the State of Rhode Island. Rhode Island had few homicides, but Baltimore had considerably more. (BMHR 2584-86) In Arkansas I worked under the supervision of Dr. Sturner.

I do about 250 autopsies a year. I have seen bodies in a number of conditions, including a few bodies subject to animal predation. I have qualified to testify as an expert about 25 to 30 times a year in Arkansas. (BMHR 2587) [*Dr. Peretti was qualified as an expert at BMHR 2588*]

I am an animal lover who has bred turtles and tortoises. This is a kind of avocation for me. (BMHR 2589) I have consulted with various personnel involved in wild life in Arkansas, and have consulted with Arkansas Fish and Game about turtles. I have been involved in efforts to protect certain endangered species of turtles in Arkansas.

We had a general protocol that was used in the Arkansas Crime Lab during a post mortem examination process, including the taking of measurements, of initial

photographs, taking specimens, the processing of evidence depending on the type of cases, the cleaning of the body, the external then internal examinations. (BMHR 2594) In this case, the autopsy reports are in a notebook that I have brought to court.

I have with me the autopsy reports that I produced. I recently watched for the first time in the case the crime scene video - prior to my testimony at the instant hearing. The scene and the presence of flies in the video explains the fly larvae I found during the first autopsy. The first autopsy I reviewed was that of James Michael Moore I noted abrasions to the lips; swelling of the lips There were various injuries to the scalp. There were injuries to the ears that were consistent with what I had heard about at a lecture by Dr. Joseph Rupp many years ago on sex crimes. He said these are common in cases of sexual assault. (BMHR 2604). The bruising was similar to that found on the two other victims.

I was of the opinion that some of the injuries to the scalp and to the head were prior to death. (BMHR 2605) My view was that they were caused by blunt force trauma and showed some bleeding into the tissues. I noted skull fractures in the base of the skull. (BMHR 2608-09) There were linear abrasions on the right shoulder area. (BMHR 2611)

I also noted contusions associated with bindings. I found some signs of hemorrhage where the bindings had been placed, indicating that the child was alive at the time. (BMHR 2616) There was some superficial lacerations on the hands which I believed were defensive wounds. (BMHR 2618) There were bite marks on the tongue. There were findings characteristic of drowning. (BMHR 2620)

My view was that there was some degree of pallor caused by blood loss. (BMHR 2621) The victim in his view may or may not have been conscious though he was alive when placed in the water. (BMHR 2622) There was also anal dilation which may be due to post mortem changes. (BMHR 2624)

Steven Branch, ME number 330-93, was also tied with ligatures and had a number of injuries, including a black eye, and a large abrasion over the right mandible. The abrasion was bell shaped. My view was that his was an injury inflicted prior to death by some implement. (BMHR 2628) There was injury to the gums caused while the victim was still alive. (BMHR 2629-30)

I had contacted Dr. Dugan, a dentist, just to make sure that a pattern injury above the right eyebrow was not a human bite mark. (BMHR 2630-1) Dr. Sturner was also brought in to look at the bodies. I wanted someone else to look at the bodies. (BMHR 2631). At some later point, during the Echols Rule 37 proceedings, Dr. Mincer also agreed there were no human bite marks here. (BMHR 2632-33)

There were contusions of the ears and injuries that I noted to be, irregular gouging wounds, cutting wounds on the left side of the face. I characterized them as gouged in that the tissue was torn and pulled. State Exhibits 34 and 35 show the pattern injury to the top of the face. State Exhibits 36 and 37 show the bell shaped injury and the injury to the ears. I did not section these injuries. There was a pattern injury that I concluded might have been a belt buckle.

There was a hemorrhage in the posterior neck muscles. (BMHR 2641)
There were some fractures toward the back of the skull where the neck joins the head. The injury occurred when Mr. Branch was alive. (BMHR 2643) In my view this was not animal caused damage. There are a lot of patterns here, and I think it's some kind of implement. (BMHR 2645)

There was no unusual injury to the anal area. But because of the the combination of the bodies being found nude and being hogtied together with some of the other injuries suggested 'at least in some part' a sexual assault. (BMHR 2647)

There were scratches on the penis. I noted a 'line of demarcation' around the penis and some injuries to the legs, including post-mortem scratches. Those could have happened by the body being dragged. (BMHR 2650)

On the back of the hands there was bruising consistent with defensive-type wounds which occurred prior to death. They looked like the wounds on his face.

(BMHR 2652) *[A recess was taken from October 1 to October 2, 2009]*

[At the beginning of the October 2, 2009 session, the Court was again asked by counsel for Misskelley asked about the merging of the trial and Rule 37 records. The Court observed: "Well, I thought we agreed early on that both of them would be merged for Rule 37 purposes, if that's what you're asking?" (BMHR 2658). The State indicated no opposition and the Court replied: "All right". (BMHR 2658) After discussing the length of time (up to 60 days) in which counsel would have to propose their precedents, the Court also noted: "And I guess for the record, the record in Echols and his Rule 37, all of the pleadings and documents will also apply in this case...As well as the two original trials." Counsel for the State, Mr. Holt added: "...and Mr. Baldwin was at Mr. Echols' trial, and there were a number of reliances on Echols' Rule 37 proceedings as well". (BMHR 2660) Baldwin's counsel asked that the Order pertinent to Misskelley be applied to Baldwin, and the Court stated in pertinent part: "...yes, Sir. Sure. That's what I meant. It would apply to all three." (BMHR 2661) The testimony of Dr. Peretti then resumed beginning at BMHR 2664]

I found that Christopher Byers died of multiple injuries, though because of the nature of the injuries, I sought to describe them more generically so as to not release graphic information to the press. (BMHR 2665)

State Exhibit 42 is a knife that I first saw at some point at either the first or second trial. (BMHR 2666-67) I was asked to render certain opinions about it.

Mr. Byers had been bound as well and showed signs of having been in the water. There were some injuries to the nose, lips, and ears. Some superficial bite marks present on the mucosal surfaces of the cheeks. I saw no signs of animal predation on the eyelids. (BMHR 2668-74) There were injuries to the scalp, and skull fractures to the base and back of the skull. (BMHR 2677)

The skin of the penis, the scrotal sac and testis were missing and there was a large defect in the area. (BMHR 2679) There were multiple wounds in the inner thighs. In my view all of the wounds occurred prior to death. Though I wrote that the wounds looked post-mortem, you could see hemorrhage in the tissues.

There were some injuries to the buttocks and what I described as superficial cutting wounds in parallel lines. There was some drying of the tissues. I don't know any kind of animal that would have caused this kind of pattern of wounds. (BMHR 2683) There were a number of contusions found elsewhere on the body.

I found diffuse pallor caused by the loss of blood. He had bled out. (BMHR 2691) There were ghost cells found on the penis slides. (BMHR 2692-93) These indicated the leaching of blood.

The serrated knife that you have here could have inflicted the pattern wounds on the skin. (BMHR 2695) I found that the knife shown to me by the State (State's Exhibit 42) had patterns consistent with linear gouges on the remains of Mr. Byers.

I characterize certain contusions in the thigh area as defensive wounds. RT 115-116.

Reviewing further photographs of the area of injury in the crotch area I some appear to have been inflicted prior to death, and some after death.

There were no bite marks on the body. (BMHR 2702)

I attended a meeting held at the request of post-conviction defense counsel at which forensic pathology consultants of the defense had indicated their view that there had been injuries inflicted by animals on the bodies. (BMHR 2702-3) They mentioned a number of possible animals. I requested documentation concerning the types of injuries that the defense consultants described to me, and though I obtained a book on penile injuries given to me by one of the experts from Canada.

I know turtles. I see them eat during the summer. Turtles have long claws that are razor sharp and triangular jaws. Snapping turtles tend to crush the food they eat, and then rip it. (BMHR 2705-6).

Microscopic slides of tissues taken during autopsies had been provided to the defense. (BMHR 2708)

I recall certain injuries to Steve Branch's face as having been described by at least one of the defense consultants, a dentist, as being an animal bite. I was annoyed by this, in part because I was criticized before for missing a human bite mark, and now they were saying they were animal predation. (BMHR 2710).

The injuries to Mr. Byers, to me, are "all antemortem" (BMHR 2711), though in my view they had the appearance of being postmortem. (BMHR 2712)

I agree that I previously testified that certain wounds were consistent with the blade of the knife, and consistent with a particular knife. (BMHR 2713-13)

I disagree that there were animal caused injuries. A sharp instrument had been used. I stated that the knife is "consistent. You can't do it with that knife." (BMHR 2716) I could not opine whether the injuries to Mr. Branch were consistent with satanic ritual I never tested the survival knife to see if it made the kind of pattern on a grapefruit that it would have made on human flesh. Grapefruit and skin are different in texture. (BMHR 2717)

I deny having said that the boys were sodomized. I acknowledge that I had raised the possibility of conducting a study amassing autopsies conducted by the Arkansas State Crime Lab that had never been followed up on. We elected not to do it. The computer system in my office 'back then' was archaic. Also the majority of bodies received at the Crime Lab would have been subject to animal predation in land-based cases. (BMHR 2718-19)

I disagree with the text of the letter that summarized conclusion of the experts described by Echols' lawyer as working with the defense. (BMHR 2724-25)

It was my further opinion that the victims were alive before they were put in the water.

I would have disagreed with the defense opinions in 1993 when I did the autopsies, and 1994 when I testified. *[Volume 10 of the testimony ends at BMHR 2729. Dr. Peretti is still on direct examination. The testimony continues in Volume 11, beginning at BMHR 2731]*

It is my opinion, to a reasonable degree of medical certainty that there is no physical evidence of animal predation here. (BMHR 2733) There are no turtle bites. I wrote a letter with Dr. Kokes dated May 30, 2008 (Exhibit 48). It explains my viewpoint.

CROSS EXAMINATION OF DR. FRANK PERETTI BY JOHN PHILIPSBORN

I have been annoyed by the questioning of my opinions. I would not change the opinions that expressed. I would not have changed what I did in connection with the case. (BMHR 2738)

I was not successful in passing the examination for board certification, and therefore am not board certified as a forensic pathologist. (BMHR 2741-2)

The policies in place in Arkansas require that the Medical Examiner obtain permission from a prosecuting attorney before releasing material and information to defense counsel. We have no problem releasing information to the defense, we just need permission from the prosecutor.

Reviewing exhibits 76 A and B, I noted that the exhibits were copies of records that I generated in this case during my contacts with Baldwin defense counsel. The crime lab would have kept records of the defense's contacts with the crime lab. If a lawyer had requested a full set of autopsy photographs that would have been documented in the file as well. (BMHR 2748-9)

The meeting that I referred to that occurred at the Arkansas Crime Lab in May of 2007 had involved Dr. DeMaio, Dr. Souviron, Dr. Baden, and a forensic odontologist from Canada, Dr. Wood, who had provided me with his book. Dr. Spitz was not present at that meeting. I knew Dr. Di Maio before the 2007

meeting. He is the author of a book on pathology. I have referenced the portion of his book that covers lividity. I had also done a little training at Miami-Dade, which is where Dr. Souviron is from.

I did not know about Dr. Souviron's overlays of the knife. Exhibit 77. This exhibit shows notations that the prosecuting agency requested transparent overlays of the knife. I didn't. The notation on the exhibit says that the prosecutor wants to know about the overlays. I don't recall that. [*Exhibit 77 was received at 2758*] I felt that the knife that I was shown by the prosecution matched up to the Byers' boy's wounds in the genital area, but I did not do the overlays. I believe it matches, though I am aware that the Court has received some photos with an overlay of the knife. (BMHR 2762)

I did testify earlier on that we did not review the cases in our office for instances of predation because of the logistical difficulties—the computer system is old. I admit that I am the co-author of an article entitled *Incidence of Autopsy Findings In Unexpected Deaths of Children and Adolescents* in which we reported on 439 cases between 1997 and 1999 from the Arkansas Crime Laboratory. We had students who assisted us with that research. I did not have that kind of help on this case. (BMHR 2765)

I acknowledge that the meeting proposed in May of 2007 was unusual. I had never had such a meeting proposed before. I agree that competent pathologists can disagree about a case. (BMHR 2766-67). I am aware that the case has been reviewed by a number of experts including Drs. Demaio and Spitz, who have authored textbooks on forensic pathology, and Dr. Baden, Dr. Ophoven, Drs. Haddix and Souviron, Dr. Tabor. I have not talked to any other doctors about the case, notwithstanding my view that discussions of forensic pathology issues are common among fellow professionals.

I was not aware that during the Echols Rule 37 a pathologist from the New York Medical Examiner's office named Dr. Cohen, and another expert named Dr. Davis, had testified that there appeared to be animal bite marks on the left cheek of Mr. Branch. (BMHR 2771-72)

There were autopsy diagrams and notes pertinent to each of the victims prepared during the autopsy process, thereafter, I went through the examination and dictated my report. I obtained a rough copy of the autopsy report, and then reviewed it to make sure it covered everything. The notes and diagrams that I make during the autopsy are important to understanding my observations. (BMHR 2775-6)

With respect to documentation of the autopsies, I was unaware of any record of Dr. Sturner's presence at any one of the examinations in this case, or that of Dr. Dugan. I can't tell you when Dr. Sturner saw the bodies.

I would have called Dr. Dugan to an autopsy if I thought "there was a suspicious bite mark", and in this case because "there's a lot of markings on them...." (BMHR 2780)

I often went to crime scenes in Rhode Island, but in Arkansas the procedure is different. I would have liked to have gone to this crime scene but no one asked me to go. (BMHR 2782)

I became aware that the trace evidence section had found animal hairs in this case, though I did not know what kind of animal. (BMHR 2783)

Now that you have read me testimony from Paul Ford saying that I told him there were bites on one of the victims that could have been turtle bites from September 24, 2008, session, I am telling you that's a lie. (BMHR 2785)

I felt I included enough documentation in these cases, including the photos that other pathologists could rely on them to draw independent conclusions. Also, my notes would have been of the type that could be reviewed by a qualified and trained professional in my field of formulated independent judgment. (BMHR 2788—notes received in evidence) I was aware that no one purported to have found

any of the skin or other tissues from the genital injury to the victim Byers. I also acknowledged that as of 1994 I had never seen a degloving injury involving the removal of the skin of the penis and scrotum. I also never said that this knife is the one, I said that it could have been.

CROSS EXAMINATION OF DR. FRANK PERETTI BY MICHAEL BURT

People in my profession can reasonably disagree. (BMHR 2793) Forensic pathologists can disagree on cause and manner of death, and the timing of injuries and the like. Equally qualified forensic pathologists can disagree on visual observation of hemorrhaging, and whether microscopic slides show hemorrhaging as well. Disagreements among such experts are up to the jurors to decide.

I dictate the reports as I am doing the autopsies. I cannot recall exactly when Dr. Dugan had come in, and I remember that Dr. Sturner was out of town on the first day of the autopsies, May 7. I had wanted Dr. Dugan to focus on the facial injury on Steve Branch. I then directed Dr. Dugan to look for human bite marks. There was no talk about looking for animal bite marks. (BMHR 2799)

I don't know precisely what Dr. Dugan had done, or what kind of documentation had been generated. I just directed him to look on the cheek wounds (BMHR 2801) I didn't direct him to look at the bite marks that I had found

inside the mouths of the kids. I don't know that Dr. Sturner looked at all of the bite marks in their mouths. He looked at the outside wounds. (BMHR 2804)

As to the injury to Steve Branch's cheek, my observations were that they were incised, gouging away wounds, looking like someone had torn away the tissue.

I acknowledge that on May 7 (1993) I had drafted a press release because of the relentless autopsies, and that I stated there that all three children had died of multiple injuries. I stated that to get the press off my back.

The Moore report had been typed and finalized on May 25, the Branch report on May 24, and the Byers report on May 28. In the Medical Examiner's file there was also a letter dated May 26 from Inspector Gitchell indicating that the West Memphis Police Dept. felt that it was not getting sufficient information from the Crime Lab. (BMHR 2812)

I agreed that I saw no trauma to the anal area of any of the three boys, and I would have expected to see some form of injury in the microscopic sections I took, but there was no evidence of injury. I was not aware that I had been tape-recorded in a conversation with Mr. Wadley, stating that the prosecutor could not represent in good faith that the boys were sodomized. (BMHR 2820) I don't know what I could do to correct a mis-impression left by the statement of a prosecutor.

I can't a single peer-reviewed article that supports the proposition that injuries to one or both ears plus injuries to the lips suggests sexual assault, but I have had cases where females were gang raped and I saw those kinds of injuries, though there were also injuries in the oral cavity. (BMHR 2827)

I had not meant to indicate that the boys had forced oral sex. Moreover, had I been questioned based on his schematics, a defense lawyer could have demonstrated that Michael Moore had no injuries to the left ear, which was not consistent with my testimony that injuries to both ears might be consistent with sexual assault. (BMHR 2830)

According to a review of my records, it appears defense counsel Stidham had contacted me four times prior to trial. He could have pointed out that there was a note in the file saying no evidence of sodomy. (BMHR 2833) The only time that Mr. Stidham asked for my file was after the trial.

I can't explain what happened about the transparencies that the prosecutors wanted at trial concerning the knife. That was up to the Trace section. I don't recall having any conversations with the prosecutors about the knife or the transparencies. (BMHR 2835)

I also agree that shortly after the record of a contact between me and prosecutor Fogelman, there had been questions about the injuries to the victim and

to Steve Branch specifically which resulted in testimony that I did not know what had caused the injuries, though it would not have been animals in my opinion.

(BMHR 2836)

You have shown me a statement I made in an article on histologic evidence of blunt trauma, I agree that tissue slides should be taken from injuries where you have possible superimposed new injuries. (BMHR 2839-40)

I had begun to review the evidence presented by defense experts which I viewed in part as a personal attack on me. I agree that nobody had previously asked me about whether there had been animal bites and no one had challenged me on that point at trial.

I disagree with part of Dr. Spitz's book on differentiating pre-mortem from postmortem injuries. I do not know why there was a difference between my opinions and all of the defense experts on the hemorrhaging. I can't explain it.

(BMHR 2845)

I have never seen the overlay prepared by Dr. Souviron, and further indicated that I felt honored that it was taking six people to review my work and prove him wrong. No one gave me anything to look at it.

I disagree with the statement of the National Research Council that basic competence in forensic pathology is demonstrated by board certification. (BMHR 2854) I agree that I failed the boards.

REDIRECT EXAMINATION OF DR. FRANK PERETTI BY KENT HOLT

My opinion is that all of the bruising occurred prior to death. There may have been some contusions that had a sharp force overlay. I disagree that there is any evidence of animal predation. Paul Ford lied when he said I mentioned a possible animal bite to him.

RECROSS EXAMINATION OF DR. FRANK PERETTI
BY JOHN PHILIPSBORN

_____ There were records of only two contacts between myself and Baldwin's defense counsel.

DIRECT EXAMINATION OF DR. WILLIAM STURNER BY KENT HOLT

I am a retired physician and forensic pathologist. I was active in those fields for forty years. (BMHR 2824). I retired as Chief Medical Examiner for the State of Arkansas in the end of June, 2004.

I graduated from medical school in 1959. I had a fellowship in legal medicine and toxicology in Kentucky for a year. I then was with the Medical Examiner's office in New York for 2 ½ years. I then was in Chicago as a deputy coroner's pathologist. After that, I was in Dallas County as an Associate Medical

Examiner. I then served as Chief Medical Examiner in Rhode Island for 17 years. That was followed by 13 years as Chief Medical Examiner for Arkansas. (BMHR 2825)

I trained with Dr. Michael Baden in New York when Dr. Milton Helpern was the Chief of Pathology. I also have known Dr. Vince Dimaio for many years. I knew his father when I was in Dallas. I also have been acquainted with Dr. Werner Spitz and had contributed a chapter to his most recent book. (BMHR 2866)

I worked under the tutelage of Dr. Charles Petty in Dallas at the Medical Examiner's office in Dallas. They had new facilities there I was there. I also know Dr. Bernard Knight, and have lectured with him. (BMHR 2867) I have qualified as an expert in pathology in all of the jurisdictions that I worked in. [*Dr. Sturner was qualified as an expert at BMHR 2868*]

At the time of the report that the three victims in this case had been taken to the crime lab for autopsy, I was in Memphis as an Examiner for the National Association of Medical Examiners. My recollection is that I returned to Little Rock, and had seen the three victims on autopsy gurneys and had gone through "at least the significant injuries" on each body. (BMHR 2869-70) I don't recall exactly what stage of the process Dr. Peretti was in at the time. I don't know that he had anything written at that time. I did a gross assessment of the injuries on the

three bodies. I don't recall seeing the microscopic slides. I signed off on the final reports.

I did review Dr. Baden's testimony in this case. His autopsies were properly done, in part because we both had a good teacher. We used to go to homicide scenes in New York, because environment is very important. (BMHR 2871-2). You know more at autopsy when you do that.

I dealt with the issue of animal predation when he had been in New York City. We used to get bodies that has been the subject of predation by dog and cats, and other animals as well. There were cases of rat bites. In Dallas I saw wild animal bites.

I do remember that at one point the subject of a possible human bite mark had come up in this case.

My understanding of the time line of death here is that the victims were last seen about twelve hours before their remains were found. So, they were killed somewhere in that window.

I know that the subject matter of animal predation has come up in connection with these Rule 37 hearings. I was not at the meeting that Dr. Peretti attended with the various defense experts before this hearing. I had some contact with Dr. Baden at one point. We discussed personal matters, and then we discussed

that injuries to all three boys in this case could have been animal predation, and not pre-mortem stab wounds. (BMHR 2875).

At the time, I recalled the autopsies. I knew that one of them had been signed off as death due to multiple injuries, and the other two as death by drowning. I agreed with that. (BMHR 2875) Mr. Byers did not show signs of drowning, but he had multiple skull fractures and other injuries. I had come to these conclusions based on my own observations.

You could argue the point of taking tissue samples from the wounds, like that to the face of Steve Branch, either way. It was not necessary to determine cause of death, but it might have been beneficial. It might have helped with the issue of time of death. The histology studies that we had indicated that some wounds may have been cause around time of death, and some after. (BMHR 2877)

To me, the injuries to Mr. Byer's inner thighs had some fresh blood in them, and that would qualify them as antemortem or perimortem injuries. I reviewed the histological slides of Mr. Byers penis, and there was fresh hemorrhage, and also some ghost cells of bacteria there. The fresh blood cells are indicative of antemortem or perimortem injuries. (BMHR 2880)

The injuries to Steve Branch's face, around the mouth seemed to me to be perimortem or antemortem as well. I thought that there was evidence of more than one impact to him, given the findings at autopsy.

I think that I heard about the discussion about the possible bite mark with Dr. Dougan after the fact. My opinion was that the injury to Steven Branch's cheek came from some kind of cylinder, something that was could be used to pound. I did not view those injuries as animal predation. (BMHR 2884) The findings about his pallor were important because they reflected blood loss.

As to the injuries to Christopher Byers, I did review the testimony that they had a "serrated...quality" to them. (BMHR 2885) My opinion was that the injuries to him are not characteristic of animal predation. They look like incised, gouged, penetrating wounds. Some are antemortem wounds that may have leached out in the water - perimortem might also be correct. (BMHR 2887)

CROSS EXAMINATION OF DR. WILLIAM STURNER
BY JOHN PHILIPSBORN

I have co-authored a paper with Dr. Michael Baden. He is an excellent forensic pathologist. I know Dr. Spitz as a well-known authority in the field. The same is true of Dr. Di Maio. I would consider all of their opinions to see where they stood in relation to my own. Experts can have differences of opinion. (BMHR 2890)

I am not familiar with Dr. Joseph Cohen, or that he had testified in the Echols Rule 37 , and that he was a New York Assistant Medical Examiner. It is my opinion that pathologists in that office would have seen cases of animal predation in his professional experience.

I do not believe that I made any notes in connection with my examination of the bodies. I did a kind of “curb-side consult” (BMHR-un-numbered page between 2891 and 2892) It was Dr. Peretti’s case.

Had I been asked to testify at trial, I would have expressed the view that it was a cylindrical tool that had left an imprint on the left cheek of Mr. Branch. I don’t recall ever being approached by a defense lawyer in the case about that subject. (BMHR 2892) My view was that the lesions on Mr. Branch’s face were of an unusual shape and I thought it was some kind of a pipe that made them.

I agree that it is helpful for a forensic pathologist to consult with a certified forensic odontologist. They are usually on staff in major offices. (BMHR 2893-4)

In my own professional experience, it has been very unusual to have seen a removal of genitalia as in Mr. Byers’ case. I might have seen only one other case in Chicago.

I agree that it is a reasonable practice in a case for qualified forensic pathologists to review autopsy reports, histological slides, photographs of the scene

and photographs of the autopsy to arrive at opinions about the case. It's done all the time. I have done private consultation. It is not uncommon in my experience for the defense to have hired its own pathologist to review a case.

In the eastern jurisdictions that I worked in, the law required a pathologist to go to the scene, and in New York we were on call to do so. There are advantages for the pathologist on a case to go to the scene prior to rendering the ultimate opinion in a case, and in a number of states it is a regular procedure. (BMHR 2896)

I don't recall having been told of the lab's identification of animal hairs as having been found on the bodies by Dr. Peretti at the time, but I have heard about it. It might have been helpful for me to know that before signing off on the autopsies. (BMHR 2897)

I have encountered some bumps as an administrator in Rhode Island, and I would have expected to be asked as a witness about my supervision issues. Also, had I been asked, I would have confirmed that at one point I stated that I performed an autopsy when it had actually been performed by someone else. (BMHR 2898)

Back on the autopsies in this case, Dr. Peretti and I thought there might have been an element of sexual assault in the matter. To me, it was more likely there was no sexual assault. (BMHR 2899)

I agree that it is important for pathologists to be clear on what they could opine with reasonable certainty and what is merely possible. (BMHR 2900)

CROSS EXAMINATION OF DR. WILLIAM STURNER
BY MICHAEL BURT

I think I spent about an hour looking at the bodies. I performed no procedures. I don't think I looked at all of the injuries. I would not have seen all injuries, but would have looked at 'regional injuries'. I don't recall having been asked to look to see if there was any human bite mark on the bodies. (BMHR 1901) I don't recall looking to see if there were bite marks on the inside of the mouths.

I looked at the slides that were prepared and at the re-cuts. In the Moore case, I agree that there were no microscopic signs of hemorrhaging. In the Branch autopsy, there was also no sign of hemorrhaging. Only one of the five or six slides had fresh hemorrhaging, although I know that Dr. Spitz disagrees with that view. (BMHR 2906)

I was one of the authors of a publication entitled *Common Errors In Pediatric Pathology*. (BMHR 2906) I recall that we referenced a work by Dr. Janice Ophoven from 1992. (BMHR 2907). The publication addressed post mortem issues in victims of this general age. Dr. Ophoven is an excellent pathologist.

I was never asked to critique the testimony of defense pathologists given in this hearing. I reviewed a couple of bits of their testimony. I didn't see anyone who was bent on making personal attacks on Dr. Peretti. I agree that the article of mine that you mentioned notes that you have to be careful not to misinterpret findings to be evidence of sexual assault. (BMHR 2909) I also agree that in the article I note that pathologists should employ iron staining on old and new wounds so as not to misinterpret them. (BMHR 2910) Someone who does not have pediatric forensic training may misinterpret findings. (BMHR 2911)

REDIRECT EXAMINATION OF DR. WILLIAM STURNER BY KENT HOLT

I would have told Dr. Peretti if I had seen a particular pattern to the injuries. I did not see evidence of animal predation. (BMHR 2912)

(Pursuant to Ark. Sup. Ct. R. 4-2(a)(5)(2008), the following is a condensation of the pertinent portions of records filed in prior appeals in this matter.)

ABSTRACT OF BALDWIN/ECHOLS CAPITAL MURDER TRIAL

Beginning February 4, 1994

ARKANSAS SUPREME COURT CASE NO. CR 94-928

(Abstracter's Note: The parties were represented as follows: John Fogleman and Brent Davis, prosecuting attorneys; Paul Ford and George Robin Wadley, Jr., attorneys for Jason Baldwin; Val Price and Scott Davidson, attorneys for Damien Echols. The pages of this record are designated as "BETR [Baldwin Echols Trial Record] ____."

BETR 1-778 contains the pleadings filed in the case. BETR 779-892 contains pretrial proceedings and hearings and other matters that are irrelevant to Mr. Baldwin's appeal. The following testimony, however, was given during a pre-trial hearing regarding the defendants' motion to suppress evidence obtained by an allegedly invalid search warrant (BETR 892). The search warrant was based, in part, on the statements given to the police by Mr. Baldwin's and Mr. Echols's co-defendant, Jessie Misskelley, Jr. (BETR 895) This issue is not before the Court

in Mr. Baldwin's appeal but certain testimony is relevant to the issues presented herein and those portions of the record are abstracted.)

(BETR 895-965 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN

I am an inspector with the West Memphis Police Department. On June 3, 1993, I participated in the questioning of Jessie Misskelley, Jr. The transcribed portion of that statement, which is attached to the Affidavit for Search Warrant, indicates that the interview ended at 3:18 p.m. (BETR 966).

(BETR 967-969 is omitted as irrelevant to the issues in Mr. Baldwin's appeal)

CROSS EXAMINATION OF GARY GITCHELL BY ROBIN WADLEY

I don't understand your question about whether I heard Judge Rainey say, "I have a question concerning what appeared to be some obvious discrepancy in time based upon the information provided me tonight concerning the investigation." I was there when the judge was talking. (BETR 970). I was in Judge Rainey's chambers and I recall this going on. It is right here. He had some concerns about discrepancies.

I have been involved in this investigation from day one. I am the person in charge of this investigation. Prior to June 3, 1993, I knew the manner in which

these boys were bound. I also knew the type material that was used to bind them, which was shoestrings. They were different colors. Black, white. (BETR 971)
That's all I can recall at this time.

I am also the person who conducted the first and second interview with Mr. Misskelley. The one we have introduced as Defendant's Exhibit 1 is the second interview. In the second interview, Mr. Misskelley describes the material used to tie these boys up as being a brown rope.

I believe there was a discrepancy on time that concerned Judge Rainey. I did not know he was looking at those things. I did not know when I was down there that there were statements this man had given concerning rope that were not accurate. (BETR 972) I was present at Judge Rainey's chambers and I was there trying to get a search warrant to search the trailer of Jason Baldwin. I have been in those situations before. I know that a magistrate is going to look at it to make an informed decision to issue a search warrant. Mr. Misskelley had described in the second statement that the boys had been bound with a brown rope. I don't know that all of that's not true. That is what he stated. (BETR 973).

Who knows that they are not tied with shoestring and rope. I don't know that. They could have been previously tied. I do not know that. So you're trying to get me to answer something I do not know. What I observed was that the boys

were tied up with black and white shoestrings. I did not observe how they were previously. I don't know. I knew what I saw. The person who was presenting that was Detective Ridge. (BETR 974).

(BETR 975 is omitted as irrelevant to Mr. Baldwin's appeal.)

REDIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN

When I talked to Jessie Misskelley and concluded the recorded statement, he told me specifically which boy was cut in the genital area. That was the same person I had observed and knew to have been cut. Just one boy was cut in the genital area. Jessie Misskelley named just one boy as being cut in the genital area. He also gave me information about one of the boys being cut in the face. Just one boy was substantially cut in the face. (BETR 976) Jessie Misskelley said just one boy was cut badly in the face. That is in the recorded statement that is attached as an exhibit. This information about the specific nature of these injuries had not been released to the public. (BETR 977).

(BETR 978-1117 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF DR. WILLIAM WILKINS BY DAN STIDHAM

My name is William E. Wilkins. (BETR 1118) I am a psychologist and I practice in Jonesboro. I have a Bachelor's Degree in psychology from the State

University of New York, a Master's Degree in research methods from Bucknell University and a Ph.D. in psychology from Cornell University.

I taught for a number of years at the State University of New York. I taught for the University of Houston. I have been director of health at mental health centers. I have worked in the mental health section of a reform school. I also ran a mental health section for the Native American tribes in Utah, Idaho and Nevada. I was clinical director at George Jackson hospital and I have been in private practice in Jonesboro for five years.

I have written fifteen or twenty articles, most recently on false confessions. I have over twenty years experience as a licensed psychologist. (BETR 1118) I have had past hospital affiliations with Saint Bernard's Regional Medical Center in Jonesboro, Greenleaf Hospital in Jonesboro and other hospital throughout the United States.

I have met the defendant Jessie Lloyd Misskelley, Jr. I have spent about 10 or 11 hours with Mr. Misskelley. (BETR 1119) I gathered a large variety of information on Mr. Misskelley, eight or nine hundred pages of his school records and previous psychological evaluations. In addition, I interviewed him and conducted the following tests: WAIS-R, MMPI-2, Wechsler Memory Scale, Bender Gestalt, House/Tree/Person, REY Auditory Verbal Learning Test, a

Rorschach, and some tests by Lawrence Kolberg measuring moral development. I also conducted some tests on Mr. Misskelley by Goldschmidt and Bently which measured his cognitive thinking levels.

I also meet with Mr. Misskelley's father and stepmother. Jessie's biological mother left the family unit when Jessie was about four years of age. Jessie had no further contact with her until about a year and a half ago and at this point she is reasonably marginal in her action system with him. (BETR 1120)

This abandonment had a psychological impact on Mr. Misskelley as did Jessie's father's alcohol problem. Jessie described to me that at times when he was a small child he was left with various baby-sitters, one of whom regularly put his head in the toilet and flushed it on numerous occasions.

Jessie received recommendations from the school to receive counseling because of his school problems, academic problems, and behavior problems and at no time was any consistent follow-up ever done with that (BETR 1121). At the time that the crime was committed, Jessie's parents were separated, his stepmother and father have since rejoined but over the years there have been separations and a wide variety of stepbrothers, half brothers and family systems that just would consistently rotate and change with a lot of moving from place to place.

It was recommended by school counselors that Jessie receive counseling but he did not receive any of that counseling other than one or two sessions at the mental health center in West Memphis. In his previous mental evaluations he was diagnosed as being mentally retarded. He has a brother who has been diagnosed as mentally retarded. (BETR 1122)

I conducted a standard IQ test for adults. Jessie has a full scale IQ of 72, with a verbal IQ of 70, performance of 75. The difference between his verbal and the other score is not an important difference in this case. These IQ results were consistent with previous testing done on Mr. Misskelley. (BETR 1123) His IQ scores place him in the low borderline range of intellectual functioning. Average intelligence level 100 with a normal range between 84 and 116. Jessie has reached a maximum level of about the second or third grade. Jessie has never passed the Arkansas minimum standards tests. Looking at previous, from about ten different measurements over the years of a pretty consistent pattern of second, third or fourth grade level. (BETR 1124)

(BETR 1125 is omitted as irrelevant to Mr. Baldwin's appeal.)

Jessie Misskelley constructs reality on about the same system that a six- or seven-year old child would. (BETR 1126)

(BETR 1127-1130 is omitted as irrelevant to Mr. Baldwin's appeal.)

Because Jessie Misskelley is unable to read well I read the Minnesota Multi-Phasic Personality Test to him. Jessie has a very small elevation on three of the clinical scales (BETR 1131). He has a severe inferiority complex and severe insecurities. He lives in kind of a schizoid world. He is not out of contact with reality but he cannot cope, does not understand the world very well. He lives in his own little world lots of times because he does not understand the outside world. When Jessie is under stress he rapidly reverts into fantasy and daydreaming, and at times he can not tell the difference between fantasy and reality. I diagnosed Mr. Misskelley with an adjustment disorder with depressed mood. That diagnosis is temporary given the circumstances that he is under.

Mr. Misskelley has a history of psychoactive substance abuse. He has used marijuana and huffed gasoline. He has also experimented with white crosses and other kinds of drugs. This diagnosis mostly says that he has multiple experiences with a variety of drugs. (BETR 1132)

Jessie's Axis II diagnosis is borderline intellectual functioning. That relates to his IQ level. This is not likely to change. I also diagnosed Jessie as having a developmental disorder. Jessie has some reading dysfunctions, academic dysfunctions and some personality trait dysfunctions, primarily schizotypal, antisocial and dependent. (BETR 1133)

Jessie Misskelley has difficulty remembering both long- term and short-term. He has deficits in judgment.

When Jessie is under stress, because of his child-like perception of reality, he reverts back to kind of constructing reality as he chooses it. What adults would see as probably fantasy. (BETR 1134)

With Jessie's marginal intellectual ability he would have a tough time planning anything that would last for more than five or ten minutes. He is not capable of putting together long-term complicated plans. With regards to mental maturity, I would place Jessie Misskelley at the level of a child between five and eight or five and nine. (BETR 1135)

CROSS EXAMINATION OF DR. WILLIAM E. WILKINS
BY JOHN FOGLEMAN

(BETR 1136 is omitted as irrelevant to Mr. Baldwin's appeal.)

On November 4, we completed the mental status evaluation. That consists of a variety of questions which deal with being in contact with reality, basic intelligence levels. It is a standard form used to assess whether people are competent or not competent. I determined he was competent. (BETR 1137)

(BETR 1138-1140 is omitted as irrelevant to Mr. Baldwin's appeal.)

Jessie had some minor legal difficulties with the law including breaking of a window and some other relatively minor juvenile offenses. I did not check with

the juvenile authorities to see what offenses he had but Mr. Stidham had some of the juvenile records and I did check those. (BETR 1141) Jessie did have a variety of conflict problems at school with aggressive outbursts. Sometimes he hit other kids and sometimes he left the classroom and had conflicts with his teacher. Jessie has mild psychotic characteristics which indicated the need for him to demonstrate his masculinity. He has had aggressive tendencies. (BETR 1142)

He had a mild elevation in an F scale on MMPI-2 which could be viewed as an attempt at malingering. His profile type is a common profile for those diagnosed as being paranoid schizophrenic. (BETR 1143)

In April of this year Jessie was placed on probation in Juvenile Court for third degree battery on a thirteen year old girl. He also appeared in Juvenile Court in January of this year and was found to be a delinquent on a charge of criminal mischief in the first degree where he broke some windows on a railroad car. I am not aware of the dates in so much as I am aware of the difficulties. (BETR 1144)

Mr. Misskelley is not mentally retarded. He is competent to proceed in these proceedings. He understands the traditional legal notion of right and wrong. He was 17 years old at the time of the offense. He was 18 when I tested him. (BETR 1145) His intelligence capacity is borderline, he does not function in society well, he functioned marginally.

I diagnosed under Axis II, number three, "Personality disorder NOS with schizotypal, antisocial and dependent characteristics." (BETR 1146) There is a paranoid personality disorder, antisocial personality disorder, schizotypal and others, and each one of them has a set of criteria that makes you one of those. He did not have a sufficient number of symptoms in any one of the distinct categories to be one of those, but he did have a couple of characteristics of the antisocial, a couple of the schizotypal and a couple of the dependent. His personality is in kind of a mixed package. He has a tendency to slide into fantasy at times or to have difficulty separating fantasy at times. He also has a tendency to be fairly withdrawn from many intimate social interaction systems. (BETR 1147)

(BETR 1148-1290 is omitted as irrelevant to Mr. Baldwin's appeal.)

(The Baldwin/Echols record at BETR 1290-1458 contains portions of the jury voir dire proceedings, except for the actual questioning of the prospective jurors. For Mr. Echols's Rule 37 hearing, however, the voir dire of the prospective jurors was made an exhibit to those proceedings. Similarly, the voir dire was made an exhibit in Mr. Baldwin's ongoing Rule 37 proceedings. The portion of the voir dire included in the Echols record is included in this abstract infra. The following abstract contains relevant issues raised during the voir dire proceedings that are included in the Baldwin/Echols record.)

MR. STIDHAM [ATTORNEY FOR JESSIE MISSKELLEY,
ADDRESSING A MOTION HE HAD FILED ON BEHALF OF MR.
MISSKELLEY]: It has come to my attention that Mr. Misskelley was brought
from the Arkansas Department of Correction. Mr. [Greg] Crow and I are attorneys
of record for Mr. Misskelley and our representation and the scope of the
representation extends beyond his conviction on February 4. We are attorneys of
record. Everyone involved, including the prosecutors, the Craighead County's
Sheriff's Office, has known that Mr. Crow and I represent Mr. Misskelley since we
were appointed by the Court on June 7, 1993. (BETR 1290)

We have never had an opportunity to object because the order was presented
to the Court *ex parte*, but we object to Mr. Misskelley being transported from the
Department of Correction to Mr. Calvin's office. We understand that it is not
unusual for a prisoner to be transferred from the Department of Correction in order
to testify at trial, but two circumstances warrant what I believe rises to a level of
prosecutorial misconduct in this matter.

The prosecution knew in no uncertain terms that Mr. Misskelley was not
going to be testifying against his co-defendants, Mr. Echols and Mr. Baldwin. I
notified the prosecutor's office of that. I made two trips to Pine Bluff to talk to my
client regarding an offer that had been made by the prosecution. He rejected the

offer and instructed me to pursue the appeal and that he would not be testifying against his co-defendants. That brings us back to him being transported from the Arkansas Department of Correction.

Under Arkansas law, the prosecution can't even call Mr. Misskelley once they've been notified that he would assert his Fifth Amendment privilege. They had no right whatsoever to pick him up at the Department of Correction and transport him anyplace, much less the prosecuting attorney's office in Rector, Arkansas. (BETR 1291)

Mr. Misskelley has informed Mr. Crow and me of the conversations that took place between the Craighead County Sheriff's deputy and him. Basically they strong-armed him into believing that it was in his best interests to testify. They even promised to bring his girlfriend to see him at the jail, and I think that is the most abhorrent, ridiculous, flagrant violation of my client's rights that I have ever seen.

I also believe that they poisoned his mind against his attorneys and I think that is a flagrant violation of his constitutional rights. I received a phone call at approximately 6:15. Mr. Crow notified me that Mr. Calvin had Mr. Misskelley in his office.

Upon receiving this word, I called Mr. Calvin, who also told me Mr. Misskelley was in his office -- this was on February 17. I instructed him that he was not to talk to my client and that I was on my way to Rector. (BETR 1292)

Mr. Crow and I arrived in Rector. We were allowed to talk to Mr. Misskelley in Joe Calvin's conference room. Mr. Misskelley was very reluctant to talk to us. Approximately 15 minutes into our conference with our client, Mr. Davis and Mr. Calvin announced they were tired of waiting, that they were going to take a statement from our client.

I informed the prosecutors that they were violating my client's constitutional rights and I objected to him being there in the first place and demanding to take a statement from my client. They were kind enough to leave momentarily and again they entered the room and demanded in the presence of my client to take his statement and also stated in the presence of Mr. Misskelley that they were concerned that Mr. Crow and I would talk him out of giving them a statement.

At that point Mr. Misskelley stood up in the conference room and said, "I'm giving a statement," and walked out and declined to further discuss the matter with us. (BETR 1293)

At that time Your Honor was called and apprised of the situation. The Court permitted that an offer of use immunity be granted to Mr. Misskelley and he was permitted to give a statement despite Mr. Crow's and my adamant objection.

The statement was given. In conversations I have had with Mr. Misskelley, Sr., he traveled from West Memphis to Piggott to talk to his son and he was denied access to him.

Yesterday Mr. Misskelley contacted Mr. Crow at our office and informed him that he had talked to the prosecutors Sunday. Without our knowledge or consent the meeting took place.

Mr. Crow learned yesterday from Mr. Davis that they had also talked to him on Saturday and also on Friday. (BETR 1294). We informed the prosecutor again in no uncertain terms of Friday, February 18, that they were not to have any contact whatsoever with our client. They have refused to obey this request. (BETR 1295).

(BETR 1296-1335 is omitted as irrelevant to the issues in this appeal.)

THE COURT: The issue that y'all are making is that his Sixth Amendment rights to an attorney have been abridged by this action. The whole concept and notion of use immunity is one where the State may use it as a tool to obtain testimony that would not have otherwise been available to them by granting that

use immunity and only after leave of the Court to do so, and they are totally protected under a situation like that.

Attorneys were present. The defendant was advised of his rights and that it was their best judgment that he should not make a statement and that he elected to do so anyway. (BETR 1336)

I suggest, how would a prosecuting attorney go to a defendant who had been convicted and tried before a jury and request his testimony against co-defendants if they didn't have access to him or have the opportunity to offer that grant of immunity to him either through attorneys or directly?

It seemed to me that a smart prosecutor would be doing everything they could to obtain that person's testimony in a subsequent trial against co-defendants. And I'm not sure there's any misconduct on the part of the prosecuting attorney to do his job and that is to try to obtain testimony.

The only issue I see of any significance is whether or not Jessie Misskelley is willing voluntarily to make a statement -- perhaps, too -- it has been suggested in the other trial that he was a suggestive type person -- to whether or not that free will has been yanked around either to get him not to testify or to get him to testify. (BETR 1337) And I can't be sure from the facts that are before the Court.

So for those reasons I'm going to find an independent attorney that does criminal practice to visit with Mr. Misskelley and inquire of him what use immunity means and whether or not it is his desire and whether or not anyone has overridden his will and I'm going to take that report from the attorney and go from there. (BETR 1338)

I granted use immunity that night. There wasn't any question about it in my mind, if a statement was going to be made. (BETR 1339).

(BETR 1340 is omitted as irrelevant to Mr. Baldwin's appeal.)

MR. STIDMAN: Your Honor, just one point. The Court should analyze how the contact took place with Mr. Misskelley after February 15th when the prosecutor was notified that he would testify. The circumstances surrounding the contact should be what the Court is analyzing to determine whether or not there was misconduct of him getting use immunity in the first place. That is the crux of our agreement --

THE COURT: I understand that. That's what I've just done. As of Wednesday, Mr. Davis has testified he indicated to your partner and Jessie's co-counsel that, "If I bring him back, will you be willing to go to him and see if he's willing to make a statement," or words to -- whatever he testified to.

MR. STIDMAN: Did Mr. Crow ever tell you he would be willing to do that? (BETR 1344)

MR. DAVIS: He said, "I would be inclined to do so if you bring him back."

MR. STIDMAN: Did you tell him that you were going to be bringing him up from the Department of Correction? Did you tell him that that was going to happen?

MR. DAVIS: No. I didn't tell him.

MR. STIDMAN: Did he consent to that?

MR. DAVIS: In my opinion he didn't have to consent to him being brought back.

THE COURT: I don't have any problem with bringing prisoners back. (BETR 1342).

(BETR 1343-1352 is omitted as irrelevant to Mr. Baldwin's appeal.)

MR. STIDMAN: I understand the Court's ruling that an independent attorney is going to discuss with Mr. Misskelley whether he understands the concept of use immunity and the appeal process and all that information, and I formally would object to that. Mr. Misskelley is my client, and I would like the opportunity to visit with him. (BETR 1353)

THE COURT: In view of this unusual circumstances and the dispute between the prosecutor and the defense attorneys, the Court has taken it upon itself to call Phillip Wells, a lawyer of some reputation, to make an inquiry of your client and to make a report to the Court. I don't plan to be here. (BETR 1354) I want him to independently interview him in your presence and in the presence of the prosecutor to determine whether or not he understands what use immunity means, what the consequences are and all those things we've gone over.

The prosecutors won't be present then.

MR. STIDMAN: Mr. Wells can report to the Court his findings and even though I object to him going in in the first place, I understand the Court's ruling and I would ask that he make a full and complete report to the Court.

THE COURT: There's several reasons for it. One is that there is a potentiality that -- based on your statement that you believe it to be perjury -- that you would have to be relieved from the case and at that point I would have to have another attorney appointed. So there are other reasons that I think an independent attorney needs to evaluate Mr. Misskelley's willingness to testify and I am going to allow that to be done in your presence. (BETR 1355)

MR. WELLS: For the record, I was brought in as an independent attorney to make a determination as to whether or not Jessie Misskelley was aware of the offer

that had been previously made by the prosecuting attorney to offer him use immunity in exchange so that his testimony should he desire and choose to take the stand would not be used against him in any subsequent proceedings or be used against him in his appeal.

My first determination had to be made as to whether or not Jessie Misskelley was aware of the offer that had been previously made by the prosecuting attorney to offer him use immunity in exchange so that his testimony should he desire and choose to take the stand would not be used against him in any subsequent proceeding or be used against him in his appeal.

My first determination had to be made, is he mentally competent to be able to understand what was going on. (BETR 1356) Was he aware of the consequences of making a decision either way, and it is my opinion that Jessie Misskelley is mentally competent and does understand the circumstances of what his choice is to be.

It is my understanding and my impression that Jessie Misskelley, although not an educated person and does not understand a lot of the words that we lawyers use in our normal discussions in legal circumstances, does understand that he has a decision to make as to whether or not he chooses to take the stand or whether or not he chooses not to take the stand.

I feel he understands what the consequences of either of those decisions would be. I feel that he understands what an appeal is, that he understands that his case is now on appeal, and he understands that if he chooses not to testify, that he can continue with his appeal.

I believe that he also understands that if he chooses to testify under the use immunity situation, that he can continue his appeal.

I have attempted with the assistance of his attorneys to explain to him the technical defense that he has in terms of the fact that he signed a statement when he was 17 years of age and I believe Mr. Misskelley understands that that is an appellate argument that can be raised. (BETR 1357)

As any criminal defense attorney has in a circumstance like this, Mr. Misskelley has a very difficult decision to make and as it stands right now, he understands that the prosecuting attorney is of the opinion and is under the impression that the statement that he gave to the prosecuting attorneys is a truthful statement and that they are attempting to have him testify in open court as to the statement he gave against the other two defendants.

I specifically asked him not to go into any facts or circumstances so that I wouldn't be involved in whether or not he has provided truthful testimony, or made a truthful statement, but what I wanted to make sure that Jessie Misskelley

understood is that if he took the stand, that he needed to provide truthful testimony under oath and if he had some kind of negotiations, that it would demand that he provide truthful testimony.

The other decision he has to make is which decision he should make. It is my impression that he is faced with the decision of not testifying and even though he is granted use immunity, he had indicated to me that that may be one of his decisions. But before he makes that decision, he would like to talk to his mother and father and get their parental guidance as to which decision he makes. (BETR 1358)

He has made that specific request and I also told him and I think his defense lawyers told him before this trial commences, both the defense lawyers and the prosecuting attorneys want to know what his decision is because the voir dire and the trial is going to depend on that. And he understands that he has to make a decision as to whether or not he should testify, whether or not he would be granted more than use immunity. And as a criminal defense lawyer, I have indicated to him that if he makes a decision that he is willing to testify, that before he makes that decision, he needs to have his criminal defense lawyer try to find out what type of negotiated plead they are willing to offer and only at that decision should Jessie

Misskelley decide whether or not to give up his appellate rights and his opportunity not to testify in exchange for finding out what kind of negotiated plea that is.

I don't believe that at the present time Jessie Misskelley is going to make a decision until he talks to his parents. I have asked defense lawyer whether or not your Honor would allow him to talk to his parents. I feel it is a very unbelievably difficult decision that he has to make, and I would ask that he be given that opportunity. (BETR 1359)

Then, I believe that he will be willing to make a decision as to whether or not he should testify or whether or not he should choose not to testify and depend on the appeal and understanding -- and I believe he understands if he chooses if he chooses not to testify and the appeal is unsuccessful, that his sentence will remain as life imprisonment plus to twenty-year sentence.

THE COURT: I will permit him to talk to his parents. (BETR 1360)

(BETR 1361-1383 is omitted as irrelevant to Mr. Baldwin's appeal)

THE COURT: I'm not going to forbid the State to call Jessie Misskelley as a witness or to make any reference to him at the trial. His statement that he previously had given and any statement that has been taken and recorded is not admissible, and I think all of you know that, and I shouldn't have to make any ruling on that. It's simply not admissible. (BETR 1384)

However, if Misskelley is willing to come forward and give testimony at the time of trial, the State will not be prohibited from calling him as a witness and soliciting that testimony.

There's no reason or justification to hold anyone in contempt of Court on this and so a special prosecutor would be absurd and that is the extent of it.

The way I see it, if Mr. Misskelley is willing to testify then he will be permitted to do so. (BETR 1385) So I am going to give him an opportunity to visit with his parents. I'm going to start this trial tomorrow morning and after I finish voir diring that next batch of jurors, we're going to start picking a jury. So you can do whatever you want with regard to your voir dire questions, each of you, the State and the defendants, because I think you will be on fairly equal footing as to whether you surmise whether he'll testify.

Hopefully, he will be able to give an answer tomorrow or this evening as to whether or not he's desirous in giving his statement, or his testimony. His statements don't mean a thing. They're hearsay. The only way Jessie Misskelley is going to be able to do anything is if he physically takes the stand. (BETR 1386)

(BETR 1387-1395 is omitted as irrelevant to Mr. Baldwin's appeal.)

THE COURT: Let the record reflect that this is a hearing in chambers for the purpose of announcing an agreement between the prosecuting attorney and the attorneys for Mr. Misskelley. (BETR 1396)

MR. DAVIS: There's been an agreement reached between the prosecuting attorney and the attorneys for Jessie Misskelley that no contact or effort will be made to contact him by the prosecution without first contacting Mr. Crow.

MR. PRICE: Can you state what the results of Mr. Wells' conversation was with Mr. Misskelley?

THE COURT: It has been reported to the Court by Mr. Stidman and Mr. Wells that at this time Mr. Misskelley does not intend to testify. (BETR 1397)

(BETR 1398-1450 is omitted as irrelevant to Mr. Baldwin's appeal.)

(Out of the presence of the prospective jurors, the following occurred:)

MR. FORD: One thing I want to make a record on, and we can make an argument about it later when we have a chance to fully develop it.

There were some statements that were made by Mr. Wells to the media that I viewed on television last night that I cannot accurately set out, but the general content of his statements were alarming to me by virtue of him being in a peculiar

capacity of not representing one of the parties and really, in my opinion, standing as a liaison of the Court and that some of his comments I felt were inappropriate.

THE COURT: You'll have to be specific. I read the Jonesboro Sun and I didn't find any problem with what he was quoted as saying in there. He said he had been asked by the Court to be an impartial intermediary and to listen to what Mr. Misskelley's views were as to his thoughts about his rights.

MR. FORD: On a Channel 8 news report last night he said that Jessie had not made up his mind. He was going back and forth whether he would testify, whether he would not testify. He was talking to his daddy. But he also said that he has decided if he will testify, he will testify to the truth. (BETR 1451). And I feel like that statement coming from that impartial capacity means that it's almost the Court indicating that if he testifies, he will be testifying to the truth, and that I feel is inappropriate.

THE COURT: All right. You've made your record. (BETR 1452)

(BETR 1453-1495 is omitted as irrelevant to Mr. Baldwin's appeal.

(The following is an abstract of the relevant portions of Mr. Baldwin's trial.)

DIRECT EXAMINATION OF DANA MOORE BY JOHN FOGLEMAN

I am Michael Moore's mother. He was eight years old. Michael, Steve Branch, and Chris Byers were acquainted in the same Boy Scout troop. On May 5,

1993, after school, I saw Michael about 3:10. School is out at three o'clock.

(BETR 1496) In the afternoon, I saw Michael occasionally in and out. He was with Steve Branch. I last saw Michael at 6:00 that evening, going down 14th Street with Steve and Christopher on their bikes. (BETR 1497)

(BETR 1498-1499 is omitted as irrelevant to Mr. Baldwin's appeal)

The direction where I last saw Michael was north of my house. Michael was supposed to be home around supper. I sent my daughter after him to bring him home. She returned, Michael did not return. (BETR 1500)

I later reported to the police that my son was missing about 8:00 p.m. I reported it over at the Byers' house right across the street from my home. I later made an official report to Officer Meek, the same officer that was at the Byers' home. (BETR 1501)

CROSS EXAMINATION OF DANA MOORE BY PAUL FORD

(BETR 1502-1503 is omitted as irrelevant to the issue on appeal.)

I reported this to the police at 8:10 and I had been looking before that. I looked all around in just the general area, then over there by Pam Hobbs' house (BETR 1504). We stopped looking that night about 1:00 or 2:00 in the morning. We started again at approximately 5:00 the next morning. (BETR 1505).

DIRECT EXAMINATION OF PAM HOBBS BY JOHN FOGLEMAN

I'm Steve Branch's mother. He was eight and he went to school at Weaver Elementary. (BETR 1506) Prior to my leaving to go to work, I picked Steve up from school, we walked home from school, and Michael came over to the house and asked could he come over to his house. He went over to play with Michael. That was the last time I saw him. I discovered that he was missing. I told him to be home by 4:30 because I had to go to work that night. So I left early to go by Michael's to see if he was at Michael's because he wasn't home at 4:30. I did not see him at Michael's. I didn't know he was missing until 9:25 that night when I was at work. (BETR1507)

(BETR 1508 is omitted as irrelevant to Mr. Baldwin's appeal)

After I found out at 9:20 or so that he was missing, I made a formal report to the police. After I got off from work, we went into what they call Robin Hood and searched the area around there until the next morning when they were found.

(BETR 1509)

(BETR 1510-1511 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF MELISSA BYERS BY JOHN FOGLEMAN

My son, Chris, was eight years old and went to school at Weaver Elementary, where he was in Ms. Jones' room. On May 5, 1993, after school was

out was when I first saw Christopher around 5:30. I was working in Memphis. I got home around 5:20. My husband came and picked me up from work. After I got home, my husband told me that they couldn't find Christopher. (BETR 1512)

He found Christopher on 14th. My husband I brought him home. He found him in the middle of 14th on a skateboard going down the middle of the street. Chris got into trouble when he got home. He was spanked. (BETR 1513) He got a good talking to and got three swats with a belt because he could have been run over.

I was talking on the phone and I peeked out the window and it seems like it was just a little bit before 6:00 and he was still on the carport. That was the last time I saw my son alive. (R 1514)

(BETR 1515-1516 is omitted as irrelevant to Mr. Baldwin's appeal)

Officer Meek came over while I was reporting Christopher missing. Ms. Moore came over. (BETR 1517) She said they're together. She said that Michael, Steven and Christopher are together. She told us that she'd seen them around 6:00 down at the end of the street. (BETR 1518)

(BETR 1519-125 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF DEBORAH O'TINGER BY JOHN FOGLEMAN

I was acquainted with the victims, Michael Moore, Stevie Branch, Chris Byers. I didn't know them very well, but I knew who they were. On May 5th, I saw those boys that afternoon. (BETR 1526) It was about 5:45, close to 6:00. I saw them in my yard. Two of them were in the yard, two little boys in the yard and one little boy was out to the side, just walking and playing. (BETR 1527)

CROSS EXAMINATION OF DEBORAH O'TINGER BY VAL PRICE

There was no doubt in my mind that it was Michael Moore, Steven Branch, or Christopher Byers. Those were the only three boys that I saw together at that time. (BETR 1528)

CROSS EXAMINATION OF DEBORAH O'TINGER BY ROBIN WADLEY

They were passing through my yard. One was on a bike and one -- they were walking. Steven Branch was walking through on the other side of my yard, right there at the sidewalk by the fire hydrant. I just saw one bicycle. (BETR 1529)

(BETR 1530 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF BRIAN WOODY BY JOHN FOGLEMAN

I was not acquainted with Stevie Branch in May of 1993. I got off work at 6:30 that day. After I got off work, I approached 14th Street on Goodwin, and I saw four kids going into Robin Hood, right there where the road dead-ends. There

was two of them that was pushing a bike, one that was carrying a skateboard, and there was one that was walking. (BETR 1531)

(BETR 1532-1539 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF REGINA MEEK BY JOHN FOGLEMAN

I am a patrolman for the West Memphis Police Department. I was on duty on May 5, 1993, at approximately 8:00 p.m. I was dispatched to 1400 East Barton. I made contact with Mr. and Mrs. Byers at their residence at 1400 East Barton and they told me that their son was missing. I arrived at 8:10 p.m. (BETR 1540) While I was there, I was advised by Ms. Moore that her son was missing, too, and that she had seen three boys going down 14th Street. After I took the report at the Byers' residence and after I left that residence, I searched part of the neighborhood and started looking for the boys. (BETR 1541)

There was supposed to be three boys and two bicycles from what I was told. So, I checked the area to see if I could locate them. I first searched the neighborhood area around them and I asked several people that were standing out if they saw them. (BETR 1542)

I started checking empty houses in the neighborhoods, and I started going into this wooded area. I got over to the pipe, and I stopped. I didn't believe that three eight-year-old boys were going to be out there at that time of night. I went to

the area where the pipe is at the dead-end of McAuley. I stopped looking in the woods area. The mosquitoes were so bad in the wooded area that you were breathing them. I didn't think three eight-year-old boys were going to be out in a wooded area with mosquitos that bad. And that's why didn't go further in the wooded area because the further in you'd go, the worse it got. (BETR 1543)

(BETR 1544-1547 is omitted as irrelevant to Mr. Baldwin's appeal)

CROSS EXAMINATION OF REGINA MEEK BY SCOTT DAVIDSON

On Missouri Street there was a particular chicken restaurant called Bojangles. I was called away from looking and searching for these three missing children to go over to Bojangles Restaurant. (BETR 1548) There was supposed to have been a male that was bleeding in the area and left the restaurant, possibly injured. They gave me a brief description, but I could not recall it without looking at the paperwork. The paperwork shows the call came in at 8:40. I was dispatched at 8:42 and arrived on the scene at 8:50. The description I received was a black male with a white cap, blue shirt, white pants, had a cast on his right arm and supposed to be bleeding. (BETR 1549)

I went and made contact with an employee and spoke to him for a moment. I went to the drive through and that's where I made contact with an employee. When a person's bleeding I make the quickest route to make contact to try to locate the

person. I did not go into the restaurant. After I made contact with that individual, the employee told me that he saw him walking toward Delta Express, which is just south of Bojangles. And I went toward that direction and started looking for a black man. I looked behind the businesses and looked in a field back there, checking for the subject. I never did locate him. I did not go back to Bojangles Restaurant and tell anybody there to not clean up the blood or anything of that nature. (BETR 1550)

I did not go back to get a further description from them and I do not have any report that I made regarding this incident. The extent of my contact with Bojangles Restaurant is my driving through the drive through and asking where this person went. I stopped to see what the subject looked like and in what area that he was bleeding. I asked if he thought that he was injured or if it was some other type of blood. And he said he didn't really know, but the blood was really wet, and he thought he might be bleeding. I don't recall going back the next day to Bojangles Restaurant. I did not go back anytime after that to Bojangles Restaurant to investigate this. I never found this bleeding black man. I cannot recall how long I was there at the restaurant in the drive through. (BETR 1551) I cannot recall the exact amount of minutes I searched for the bleeding man. I broadcast over the radio what further information I had obtained. There were other officers in the same area,

also, but we weren't able to find anything, any evidence of the person. I don't think the other officers went into the restaurant and looked at the blood and the mud there. (BETR 1552)

(BETR 1553 is omitted as irrelevant to Mr. Baldwin's appeal)

I was called over to the northwest part of town for that call on Bojangles, which was out of my ward because that officer was apparently busy. I'm sure the log sheet will show that also. Roy Pugh is right around the same area as the other. It's the same neighborhoods that I had already been looking for the boys. I left my search for the three missing boys, and I left my search for the bleeding black man, and I went to Roy Pugh. The purpose of going to Roy Pugh was for a criminal mischief complaint, an egged house. (BETR 1554)

(BETR 1555 is omitted as irrelevant to Mr. Baldwin's appeal)

CROSS EXAMINATION OF REGINA MEEKS BY ROBIN WADLEY

I would say that it is about a mile or more from Robin Hood Woods to Bojangles Restaurant, but I couldn't be exact. (BETR 1556)

(BETR 1557-1575 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMAN

I'm a detective sergeant with the West Memphis Police Department. I participated in the search for Michael Moore, Stevie Branch and Chris Byers on

May 6,1993. (BETR 1576) Upon leaving the station, I started my search at approximately 8:00. (BETR 1577)

(BETR 1578 is omitted as irrelevant to Mr. Baldwin's appeal)

At some point during my search, I went to the area called Robin Hood, the wooded area of the Blue Beacon about 1:30. When I arrived at that area, I was directed by an officer of the Crittenden County Search and Rescue that they had found a tennis shoe floating in a ditch which was past the woods north of the Ten Mile Bayou, and I went to that location. I observed a tennis shoe floating in the top of the water. State's Exhibit Nine fairly and accurately portrays the scene as it appeared to me at that time. (BETR 1579) State's Exhibits 10, 11, 12 and 31 fairly and accurately portray the scene as it appeared to me at that time. (BETR 1580)

(BETR 1581 is omitted as irrelevant to Mr. Baldwin's appeal)

The next photograph is State's Exhibit Ten. (BETR 1582) This is the wooded area of Robin Hood Hill. There's a ditch within this woods that runs down this way that goes into the Ten Mile Bayou. This photograph reflects me crossing this ditch to get to the other side. There's a cliff right here, and it was where I had to go down to cross to get on the other side to get closer where I observed the tennis shoe. That is prior to discovering any of the victims. This is when I first got into this area. I was not able to make it across without getting into the water. I fell in to the water

here, in Exhibit 11, and came up the bank here and around over to the area where the tennis shoe was with this here.

Exhibit 12 represents the location where I found the first body. (BETR 1583) After I went over to that tree here and got back in the water, I walked up around the tree and right down this bank here and stepped off then into the water here and was reaching for the tennis shoe and with my feet I could feel an object and I raised up and discovered this body. This photograph was taken when Detective Ridge got to the scene. In State's Exhibit 31 I am pointing at the location. This photograph was probably taken before that photograph, but this is the photograph where I located the first body. I am pointing to the area where the body is in the water. At this point I had already discovered the body and got back up on this bank, here. The body, at the time this photograph was taken, was still submerged under water.(BETR 1584)

The victim was Michael Moore. Stevie and Chris were discovered downstream from Michael Moore. I noticed a difference of the surface of the water in the area where Michael Moore was discovered as opposed to downstream in the area where Stevie and Chris was found. The area of water that Michael Moore was located was the surface of the water was cleaner in a sense that it was murky as far as muddy water, but the debris on top, floating on top of the water, there was a lot

more debris in the location where the other two boys were found. In the general area where I was standing in Exhibit 31 and pointing into the water, I noted the condition of the bank. The bank was slick, but it was like scuffs in the bank. The surface, no leaves, absence of leaves in an area just over. (BETR 1585) And in a lot of the other areas, there were leaves and things of that nature. This area looked a lot cleaner than the other area.

CROSS EXAMINATION OF MIKE ALLEN BY VAL PRICE

At the crime scene, we did not find any boot prints on the bank that were 18 inches out of the water, three feet to the north of the first body. We did take a cast of some type of footprint or shoe print out at the scene. It appeared to me it may be a tennis shoe type print. We used some kind of plaster of Paris and made a cast out of that particular print. (BETR 1586)

I did not do that, but we did have a crime scene officer do that. Bryn Ridge, and Tony Anderson assisted with that. They took this cast of this tennis shoe print on May 6th, the day that we found the bodies. Besides that tennis shoe print, we did not take a cast of other footprints at that particular scene, the Robin Hood area. Nothing was visible as far as impressions in the slicked-off area, a lot of scuffing. Nothing, no visible impressions that were still there when we got there. I don't recall that we ever found a barefoot print out at the scene. I have hearsay

knowledge but I don't know that barefoot samples were taken of Damien Echols' foot during this investigation. To my knowledge, the barefoot print was taken of Damien Echols. (BETR 1587)

I'm not an expert on latent prints, but there were not enough ridge characteristics to have matched up where a person could positively say whether or not that was any particular person's print. There was some type of print that was found in the mud that we made some kind of a box around. There weren't two different impressions. I'm talking about the same impression. It was unknown whether it was made by footprint, fingerprint, whatever. (BETR 1588)

I left after 8:00 that evening, between 8:00 and 8:30. Approximately 9:00 p.m. Detective Ridge and I went to Bojangles Restaurant. We talked to the manager of the Bojangles Restaurant, Marty King. This was in reference to a report that Regina Meek had taken the night before about a black man going to Bojangles with blood on him. I don't recall any sunglasses given to us by Mr. King. I remember him telling about some sunglasses that the man had left, but to my knowledge, we did not receive any sunglasses from him. I believe Officer Ridge took blood samples from the ladies' bathroom at the Bojangles Restaurant. I recall I or Officer Ridge asked Mr. King if we could take the pair of sunglasses that was left by the bleeding black man. (BETR 1589)

I think he said that he cleaned the blood up and that the sunglasses were trashed. I don't know who he said cleaned the blood up and trashed the sunglasses. I think he said the guy was dirty, I don't know. I do not recall asking the manager of Bojangles if the person had mud on him similar to the mud that I had on my pants or shoes.

At the crime scene, we never found any goats' heads. (BETR 1590) To my knowledge, we did not find any animal carcasses. There had been some fires out there where the bodies were found in the past from some signs that we could see. I do not recall finding any beer bottles where the bodies were found in that wooded area. Nothing as far as any fresh beer cans or anything. Everything that was out there looked like it had been out in the sun for a long time. I'm not familiar with a bag, some kind of a duffle bag, overnight bag, which may have had some items in it that were found, somewhere near the crime scene. Nothing that stuck out at me as any evidence of a circle in that area. (BETR 1591)

There was no visible blood on the ground. There was lots of it in the water, but none on the ground. Detective Ridge took the children's clothes and bagged them up and sent them to the lab. To my knowledge there were no knives found at the crime scene where the bodies were located. To my knowledge, as to any fingerprints found at the crime scene where the bodies were located, other than the

impression, might have been sent to a fingerprint expert (BETR 1592) . There was an impression that was left, but to my knowledge it was uncomparable. (BETR 1593)

(BETR 1594-1599 is omitted as irrelevant to Mr. Baldwin's appeal)

CROSS EXAMINATION OF MIKE ALLEN BY PAUL FORD

Denver Reed, who is a deputy sheriff and also on the Crittenden County Search and Rescue, was coming out of the woods. I met him going into the woods. Steve Jones, who is a juvenile officer, was at the location that observed the shoe, he and Denver were in that area at that time searching. I think Denver was leaving as we were coming in. Diane Hester had came in about that time when I found the first body, George Phillips was still there, and Steve Jones was there. Now, when I found the first body, Steve Jones left in a rather hurried fashion, sick. George Phillips, the uniformed officer, got back. I know that. They were up on the hillside and he got back. Detective Hester got on the radio and contacted Inspector Gitchell. (BETR 1600)

(BETR 1601-1607 is omitted as irrelevant to Mr. Baldwin's appeal)

RECROSS EXAMINATION OF MIKE ALLEN BY VAL PRICE

I recall Sergeant Hester's notes of the crime scene indicate that I recovered a partial shoe print on the west side of the bank where the second body was located.

That was the one that they cast later on that day. That's the same print I was talking about earlier. Soon after we located the first body, someone put some kind of crime scene evidence around the whole area there at the Robin Hood, to keep anybody from coming in there. (BETR 1608)

When I brought evidence out that evening, they had crime scene tape around. I wasn't there doing that. That was someone else. We came back to the crime scene the next day, which would have been May the 7th and we did a grid search. And for the next three or four days, other officers came back to the crime scene looking for different types of evidence. (BETR 1609)

(BETR 1610-1614 is omitted as irrelevant to Mr. Baldwin's appeal)

RE-CROSS EXAMINATION OF MIKE ALLEN BY PAUL FORD

That steep bank is not the same steep bank that's cleared off. It's like a cliff. It's almost as straight down as this right here other than it's about, I would say about 15 foot or so high, straight down. It's a side of a straight down hill. That's not the bank that I was referring to that was all cleaned off. The cliff area bank that I'm talking about is on the west side. The flat plateau area is on the east side of the ditch. I crossed over to the plateau area from I guess the south side of this little area where I could cross downward. (BETR 1615) The bank that was cleaned off is on the east side of that ditch. And the south here would be where I crossed over. The

first body was found here. The other two bodies were found south of here, right here. I believe 27. The first body was found I would say in the water right here.

(BETR 1616)

(BETR 1617 is omitted as irrelevant to Mr. Baldwin's appeal)

REDIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMAN

Referring to State's Exhibit 13, this is the woods. Here is what I'm calling the west bank. I crossed to the south of this high bank where there was a little bit of a bank here, came around through this flat plateau where the tennis shoe was found. The flat plateau is that area that's in white in there and the green and blue. That would be because I remember they spray painted this tree right here that was on this side, spray painted it as a reference point for measurements. (BETR 1618)

DIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN

I am a detective for the West Memphis Police Department. On May 6, 1993, a Thursday, I participated in the investigation of the disappearance of Michael Moore, Stevie Branch and Chris Byers. (BETR 1619). My part was in the search itself and the crime scene. About 7:30 that morning, I began searching for the kids myself.

I went to the Robin Hood area, searched that area on foot. I went into that area, walking through the area. Upon arriving in that area, the first person I saw

was Steven Branch, Stevie's father, who was along the ditch. He was in the area near Mayfair Apartments. (BETR 1620).

(BETR 1621-1622 is omitted as irrelevant to Mr. Baldwin's appeal)

It's sort of uneven terrain. Probably an estimate, but there is probably a five to six foot drop from the pipe to the level ground. You will start immediately going up the far bank. And go up to the top of Turtle Hill which would be another five or six foot above that. Of course, the trail, once you get up to the level of the surrounding land, then this trail would pretty well flatten out and go into the bank of Blue Beacon. Then you had the trail that went over the top of Turtle Hill and goes into this area which is flattened out.

Looking at State's Exhibit 10, I walked through these trails to the Ten Mile Bayou. Then I walked the trails down through here, which these are just 36 to 40 inches wide. It varies in width, but they're trails that a three-wheeler or four-wheeler can easily maneuver through and walked to this area. (BETR 1623)

(BETR 1624 is omitted as irrelevant to Mr. Baldwin's appeal)

After I searched, I received word that I needed to return to the woods by Blue Beacon. (BETR 1625). State's Exhibit 14, 15 and 16 fairly and accurately portray the scene as it appeared to me at that time. Exhibits 14, 15 and 16 are an

aerial photograph of the area known as the crime scene, Robin Hood Woods. It's from the north looking to the south. (BETR 1626)

(BETR 1627 is omitted as irrelevant to Mr. Baldwin's appeal)

After arriving, I was informed of some shoes that were found floating in the water, and that Mike Allen had gotten into the water to see about the retrieval of those shoes to see if they were those of the victims. And while he was doing so, he found the body of one of the victims. (BETR 1628)

(BETR 1629-1648 is omitted as irrelevant to Mr. Baldwin's appeal)

I can identify State's Exhibits 39, 36, 20, 35, 24 and 17. Those photographs fairly and accurately portray the victims Michael Moore, Stevie Branch and Chris Byers during the process of recovery and immediately after recovery. This is Exhibit 39. The photograph is that of myself, Detective Ridge, and Detective Sergeant Mike Allen removing the body of Michael Moore from the ditch where he was located. This item here is a stick that when Sergeant Allen told me he had located the body and pointed out the area where the body had been located. I was up on the west bank which is a high bank, and I proceeded to the north to come down into the creek. (BETR 1649).

I began walking down through the creek and searching that creek. In searching the creek, I would start at the waterline on one side, rake all the way

through and come back on the other side to see if anything was there before I would walk through that area thus possibly destroying any evidence. I had walked approximately ten feet and gotten almost to that body when this stick was dislodged. And when it came floating up out of the water, this shirt was discovered. And the shirt was wrapped around the end of the stick and all of that was jabbed down into the mud in the bottom of the ditch. I saw the end of the stick sticking up out of the water. I was searching the ditch as I was going, inch by inch. The ditch being approximately just over knee deep in that area, I would take at the water line and rake my hand all the way around the mud, just keeping my hand at the edge of the mud all the way through from one side to the other. (BETR 1650)

When that was completed, I would do the same thing and go back to the other side being careful to overlap the same area so that nothing was missed. When I would go through this, I went through approximately ten feet before coming to the body of Michael Moore. After I discovered Michael Moore, the body was placed on the east bank just above where he was located and then we began the process of removing those items that were floating in the water, including the shirt, pants, shoes, that type activity. The search continued in the same manner all the way down through the creek going through.

There was a limb lying over in the creek, shoes were floating and had come up against the limb. In flowing water, when something comes up against the limb or debris or whatever, that's where it would stop, and that's the way we found these shoes. The flow of the water was very slow. Above this area is a trickle. (BETR 1651)

Near the body, where Michael Moore was found, the water was devoid of any debris floating in that particular area. There was very little, if any, in that area. As you got lower in the stream, there was more debris, including the shoes floating, the clothes floating, the Boy Scout cap. The further you went, the more debris you ran into going downstream. As I got further downstream, 27 feet below the body of Michael Moore, I found the body of Stevie Branch. (BETR1652).

Exhibit 36 is me discovering the body of Stevie Branch. In the water, you can see the obvious debris, how much more debris there is here than there was in the picture where Michael Moore was located. I'm raising him up out of the water at that point. State's Exhibit 20 is me actually removing the body from the water and preparing to move him to the bank and lay him on the bank above where he was located. Again, in the water, you can see the debris.

State's Exhibit 17 is me laying the body of Stevie Branch on the bank above where he was located. This area of the bank here, there's an absence of leaves as in

the surrounding area. You can see leaves, sticks and grass. In that particular area, the west bank, there was an area of where an absence of leaves. (BETR 1653) As opposed to where Michael Moore was which was on the east bank.

After recovering Stevie and putting him on the bank, observing the injuries on Stevie, as he was removed from the water and I laid him on the bank, he had some severe cuts to the facial area on the left side. He was tied with ligatures, right hand to right foot, left hand to left foot. His penis had a dark reddish bruise-like color to it. I continued to search downstream from that area as in the previous search. I found the body of Christopher Byers.

State Exhibit 35 is me recovering the body of Christopher Byers from the water. Again, in the creek, you could see all the debris in this area. I found him tied as the other two victims had been tied.

State's Exhibit 24 is the body of Christopher Byers. I placed it up on the bank. The injuries to the genital area. The penis had been removed. There were stab marks all around the area. Bruising to his body and injuries to his head.

(BETR 1654)

I can identify the photographs which are State's Exhibits 25, 18, 33, 34, 37A, 40 and 41. Those photographs fairly and accurately portray the scene as it appeared to me that day.

Exhibit 25 is a photograph of the crime scene from the north looking to the south. Just at the bottom of this picture would be the area where Michael Moore was located, traveling downstream, would be toward the top of the picture. The body of Stevie Branch was located in an area just behind this tree. (BETR 1655). And the body of Christopher Byers was located downstream.

State's Exhibit 11 is this picture here. In this picture also, you can see the debris, the body of Michael Moore was located here. The debris is floating in the stream downstream of where his body was located. This is the limb that was in the water. Exhibit 18 is a photograph of the shoes. There are two shoes, actually three shoes floating in the water, a white tennis shoe here, a white tennis shoe here, the cub scout cap, and a black tennis shoe. (BETR 1656)

And this is a photograph of those items where they were recovered. Here's the stick with the shirt wrapped around it that was dislodged and floated to the top as I was coming to the body of Michael Moore. Also, a pair of pants that was located in the mud just beside the body of Michael Moore. It was down at the bottom of the creek, and I recovered them as I was recovering the body of Michael Moore from the water. You can see the shoe that's in the previous that's floating here. The Cub Scout cap was right here in this area above that.

This is a picture of me removing those shoes from the water. These pictures are those items that were just below the body of Michael Moore. I was removing the Cub Scout cap. It was in this area here as I'm coming through; it becomes dislodged and would start to move in moving the shoes, I went ahead and pulled it out and recovered that cap. It's Exhibit 37A, the Cub Scout cap being recovered. The one before was 34. Exhibit 40 is me recovering the second pair of pants that was in the area where the body of Michael Moore was located. This is a photograph of me recovering one of the shoes that was in the water where Michael Moore was located. (BETR 1657)

State's Exhibit 22, 23, 26, 37B, 27 and 28 fairly and accurately portray the scene as it appeared to me at that time. (BETR 1658) On the east bank, there was an absence of leaves in that area. There were scuff marks, slicked off areas, the grass had move over the top of it. The stems were actually bent over into the mud. And the absence of leaves, wet looking, shiny looking, it looked different from the surrounding area which had a lot of leaves and a lot of vegetation sticking up. State's Exhibit 37B is the east bank. It's a very dark picture, but it's fairly obvious when you look at it, this is the slicked off area that the grass has been pushed down into the mud. There are scuff marks. (BETR 1659)

Exhibit 27 is in that picture that you just looked at you see me bending over taking some plaster casts which that plaster cast is an area just north of the bank that has been slicked off, cleaned, or absence of leaves. This is a picture of that area. There's the creek in front. Here and here, is where those plaster casts were taken. At the top of this picture is the very edge of that area that is slicked off in that picture, absence of leaves. Exhibit 22 is, as I'm placing it, the body of Michael Moore on the bank. The picture will denote a couple of things. The ligature, the way that Michael Moore was tied, right hand to right foot, left hand to left foot; some injuries to his head; the bleeding from the nostrils and other wounds. This also is an area that is where the grass has got mud over the top of it. It's been bent over and pushed down into the mud, an absence of leaves in this area. That was the condition the bank was in when I first arrived. Exhibit 23 is just a different angle of the body of Michael Moore. And this is the area where you can see the scuff marks, the absence of leaves. The grass has been pushed down. It's not vegetated as the surrounding area is. (BETR 1661)

Exhibit 26 which this is, again, the body of Michael Moore here, and the bank that's there you can see where the grass is broken over, pushed down; the slicks; the scuffed off areas. That's a closer picture of that.

State's Exhibit 28. This is the west bank area. These pictures are of the east bank. This is the area where Stevie Branch was located, Christopher Byers was located. This is the bank to the west of where they were located on the west side of that ditch. There's an absence of leaves in this area. Even in the picture you can see the leaves and vegetation is everywhere else except in that area. Actually, this photograph was taken after the ditch had been pumped dry. (BETR 1662)

(BETR 1663-1666 is omitted as irrelevant to Mr. Baldwin's appeal.)

(Prior to the start of testimony on the next day of trial, the following took place outside the presence of the jury.)

MR. PRICE: Just a few moments ago before you came in the courtroom, Phillip Wells is acting, I guess, as the Court's liaison, was giving statements to the press, I anticipate about Mr. Misskelley's testimony or not. I'd like to know the substance of those conversations, and I'd like to know what the status of that negotiation was.

THE COURT: I can tell you what Mr. Wells told me. When I asked him to perform that service that you're aware of earlier, he's just kind of been stuck with it, is what it amounts to. (BETR 1667). He informed me that he met with Greg Crow, one of the attorneys for Mr. Misskelley. I don't recall whether Dan Stidham was there. I don't believe he was, according to what Phillip Wells told me. And

that they discussed with him the possibility of his testimony and that nothing has been resolved at this time with regard to his potential testimony. I understand that they are talking. That's the best I can tell you.

MR. FORD: Your Honor, in light of the fact that Mr. Wells stands in the peculiar position of being the Court's liaison, which I believe is the term he is using to the press, we feel for him to be making remarks to the press about what's going on with respect to witnesses is as if you yourself were making those remarks, Your Honor, and therefore are impermissible remarks of the Court.

THE COURT: I'll tell Mr. Wells to refrain from making any comments to the press in the future. I agree with you that --

MR. FORD: Your Honor, we'd also ask that the remark that he made this morning, he basically stood at the rail and held a press conference. (BETR 1668) And we would ask that there be an order issued not to have those items printed because they--

THE COURT: Well, I can't do that.

MR. FORD: Your Honor, we just make the record -- we feel that those remarks if printed or aired are comments by the Court on the evidence in this case.

MR. PRICE: We join in the motion, Your Honor.

THE COURT: I don't go that far, Mr. Ford, at all. In fact, I wasn't aware that Mr. Wells had made a press conference. I'll certainly tell him that he's not to do that in the future. Whether he's a liaison with the Court, those are probably an inappropriate choice of words. He was asked by the Court, as you well know, to perform a specific function, and I can understand how he's become involved in it at this point. Because what it amounts to is --

MR. FORD: Is a liaison.

THE COURT: Well, he's not a liaison with the Court. I guess a better word would be a second counsel for Mr. Misskelley by direction of the Court.

MR. FORD: If he is counsel for Misskelley, we contend that his remarks are prohibited by the ethical restrictions of talking to the press. (BETR 1669)

THE COURT: He speculated on whether or not the man will testify, is what I understand. I just announced what he told me, and I assume it's the same thing he told them. And that's quite a bit different from commenting on testimony. (BETR 1670).

(The guilt phase of Mr. Baldwin's trial resumed.)

DIRECT EXAMINATION OF BRYN RIDGE
BY JOHN FOGLEMAN RESUMES

State's Exhibit 13 describes for the jury McAuley Drive and west, up here is the trail off the end of that street which is a dead end street that goes to the pipe

across Ten Mile Bayou. Here is the trail that goes to the back of the Blue Beacon. (BETR 1671) There's a trail that comes off of here and goes across Turtle Hill, and you cross this little gully type area. And water would have been at this 38 and 42 I can identify. This is the area that is the crime scene where the bodies were found at the bottom of this ditch. It is a cross section or detail of the pipe. Here in this white area is where this bank had the scuff marks, the absence of leaves, the slicked over smeared area that was above the body of Michael Moore. The high bank level is the ground actually that's the norm for this area. At the point of the crime scene, the high bank average was 215 feet above the mean sea level, or average sea level. The shelf level was approximately 210 feet above average sea level, and that is five feet below the surrounding bank area. (BETR 1672)

The flow line, or this ditch is actually a ditch within a ditch. There are a long sloping bank and then at the bottom of that sloping bank is an area that holds water and the water flows in unless there's a very heavy rain and then there will be another bank that goes up on the other side. This smaller area in the center between these two lines in the center is that lower ditch. And the low bank level is 209 feet to 210 on the average above sea level. The flow line, the very bottom of that ditch is 207 and a half feet above sea level. The difference being between 215 from 207

is live seven and a half feet straight down from the top bank all the way to the bottom of the ditch.

On this flat level, the shelf that had the scuff marks and slicked off area, there is a tree at the north side of that area and that tree was used as a reference point for measuring where specific items from the body were located at the crime scene. Up directly across the creek on the upper bank there is another tree, and that tree was also used as a reference point. The body of the victim Michael Moore, close to the creek there is a group of three trees and those trees are reference points also for those measurements. And just below those three trees is where the bodies of Stevie Branch and Christopher Byers were located. (BETR 1673)

As you can see from my drawing, Michael Moore was discovered in this area right here. Head to the north, he was laying on his left side, the body coming down at an angle, his knees forming a square, then his arms tied to his knees. He was facing east towards Memphis from this area. The body of Stevie Branch, the head was downstream. You have the body and the shoulders and then arms toward the feet. And then you had the torso and then the other two legs. The body of Christopher Byers was in a like manner to that. The head downstream or toward the south, then the arms tied to the feet. Again, downstream in that manner. Stevie

Branch was face down, tied in the same manner and Chris Byers was face down.

(BETR 1674)

There are photographs of some clothing as it was removed from the creek. State's Exhibits 47A and 47B are a black tennis shoe with purple interior and a black tennis shoe with purple interior. The tennis shoes recovered in the ditch.

(BETR 1675)

(BETR 1676-1677 is omitted as irrelevant to Mr. Baldwin's appeal)

State's Exhibits 51A and 51B were recovered in the water at the bayou. Exhibit 51B is a black tennis shoe. Exhibit 51A is a black tennis shoe and one sock. (BETR 1678) The pants that are in the sack, I took them directly out of the water and placed them in that sack. When I pulled them out of the water, they were dripping. (BETR 1688)

Two of the pair of pants were inside out. I'm not certain which pairs. I placed them in there the way I took them out of the water. (BETR 1689) State's Exhibit Eight I recovered that item in the water. It is a blue and yellow Cub Scout cap. It is the same Cub Scout cap that can be seen in some of the photographs floating in the water. I took the cap out of the water. (BETR 1690)

(BETR 1691 is omitted as irrelevant to Mr. Baldwin's appeal)

State's Exhibit 50, I recovered that item in the water. It is a pair of child's underwear. After removing it from the water, I placed it in the bag. (BETR 1692)

(BETR 1693-1964 is omitted as irrelevant to Mr. Baldwin's appeal)

State's Exhibit 43, I recovered that item in the water at the crime scene. It a Cub Scout shirt. It is the same Cub Scout shirt that I pulled out of the water and put in that sack. (BETR 1695)

(BETR 1696 is omitted as irrelevant to Mr. Baldwin's appeal)

State's Exhibit 44, I recovered that item in the water at the crime scene. It is a white shirt, the polka dot pattern is on the inside as it's turned. That item was wet when I got it out of the water and was wet when I put it in the sack. (BETR 1697)

(BETR 1698 is omitted as irrelevant to Mr. Baldwin's appeal)

State's Exhibit 49, is the striped shirt. I recovered that item in the water at the crime scene. In the sack is a striped T-shirt, stripes are on the inside. (BETR 1699) State's Exhibit 45 is a pair of blue pants, I recovered that item in the water at the crime scene. (BETR 1700)

There was a stick in the water that had the shirt around the end of it and that shirt was jabbed down into the mud with the stick. State's Exhibit 55, I recovered that item from the water. The stick portrayed in the picture is the stick that the shirt was wrapped around the end of and stuck in the mud (BETR 1701).

VOIR DIRE EXAMINATION OF BRYN RIDGE BY VAL PRICE

The E number on this stick is 139. The E represents the number I assigned to this stick on July 1, 1993. I went back to the crime scene and found E139. It is the stick that was at the crime scene. I did not take that stick into evidence at the time that I recovered the bodies. (BETR 1702) I didn't take the stick into evidence until the statement of Jessie Misskelley (R. 1703).

(Mr. Baldwin's motion for mistrial and renewed motion for severance were both denied (BETR. 1706-1711). In denying the motion, the court stated:)

THE COURT: If it was even error. I suggest, gentlemen, that there isn't a soul up on that jury or in this courtroom that doesn't know Mr. Misskelley gave a statement. Now the contents of the statement certainly would be prejudicial. And the contents of the statement, this Court will not allow, and that was the reason for the severance in the first place. (BETR 1710) I'll give the cautionary instruction that they're to disregard the last answer given by Officer Ridge. (BETR 1711)

(BETR 1712-1713 is omitted as irrelevant to Mr. Baldwin's appeal)

THE COURT: Ladies and gentlemen, you are instructed and told at this time that you are to disregard and not consider the last response made by Detective Ridge to a question from Mr. Price and if you can remember it you're to strike it from your mind and not give it any consideration (BETR 1714).

CONTINUED VOIR DIRE EXAMINATION OF BRYN RIDGE BY VAL PRICE

July 1, 1993, was the date that I got that stick and placed it into evidence.

(BETR 1715)

VOIR DIRE EXAMINATION OF BRYN RIDGE BY ROBIN WADLEY

I was conducting a search of the area looking for items. I was in the water looking for evidence. I recovered this stick. It was stuck in the mud with the shirt wrapped around the end of it. The stick became dislodged as I was moving to the body of Michael Moore. I was out in this area, and looking for anything I could find. I was being careful when I was looking for evidence making sure I didn't miss anything. (BETR 1716)

When I took this stick out of the water, I placed it on the east bank. I did not mark that stick when I placed it on the bank. I did not make any markings whatsoever on this stick. I was looking for items with blood on it. I was looking for items that may have skin tissue. I was looking for things that may have fingerprints on them. I left the stick at the scene. On that day, nothing went through my mind that there may be some evidentiary value in that stick. (BETR 1717) It never dawned on me.

REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN

There was some information developed later that made the light bulb go off in my head.

State's Exhibit 53, I recovered that stick on May 6. It was the same day that the victims were recovered. I recovered that item floating in the water. It is shown in the photographs. (BETR 1718)

State's Exhibits 42, 38, 32 and 19 , these photographs fairly and accurately portray the scene as it appeared to you that day. (BETR 1719)

This is a picture of me at the crime scene. It is exhibit 32. This is the long stick exhibiting as Exhibit 53 L with my number E17, and it was found floating in the water and removed by me.

Exhibit 19, I'm in the water removing items. You can see Exhibit 53 or E17 is this stick as it floats in the creek just below my position.

This is Exhibit 42. This is the crime scene. This is the area here where the body of Michael Moore was located. This is E139 that had the shirt wrapped around it and it was jabbed into the water. Exhibit 38 is a photograph of me as I'm removing the shirt from the end of that stick, E139.

At the scene that day, other efforts I made to secure additional evidence were that the ditch was searched by me until I came to a point that was over my head,

and Ten Mile Bayou was done in the same manner just as far as I could reach in the water with my hands and searching. On Exhibit 13 I actually came into the ditch in this area and started the search with the sweeping of my hand, searching for anything that was in the ditch. (BETR 1720) I got to about this area when it was too deep for me to reach and keep my head above the water. I just continued to search with my feet, just searching all the way until I got to near Ten Mile Bayou where it was over my head and I had to retreat.

We took sandbags and dammed up the creek below where the bodies were found below where the secondary creek that you can see goes to the west comes into the creek. It was dammed off with sandbags above that area where the bodies were found, and all the water was pumped out of that area.

When the water was pumped out, there was a screen over the hose to see that nothing that possibly could have been suspended in the water may have been pumped out by the pump.

State's Exhibits 29 and 30 fairly and accurately portray the scene as it appeared to me that day (BETR 1721)

(State's Exhibits 29 and 30 are received in evidence.)

In both 29 and 30 the sandbags are reflected. In relation to the sandbags in the picture, I'm standing over the sandbags holding the hose and screen to see that

nothing passes through. Efforts also were made to search the Ten Mile Bayou. We asked search and rescue to come in and -search with grappling hooks in Ten Mile Bayou to see if they could find anything, and bikes were located near the pipe where it crosses Ten Mile Bayou. An additional search was conducted with magnets to determine if any metal objects could be found in the flow of water of Ten Mile Bayou and the mouth of the creek where the bodies were found. (BETR 1722) Other than the bikes, nothing of significance was found in ten Mile Bayou.

CROSS EXAMINATION OF BRYN RIDGE BY VAL PRICE

On May 6, 1993, Detective Allen and I went to the Bojangles Restaurant. We talked with the manager, Marty King. He told that a black man with blood on him had been at the restaurant the evening before. I don't remember a pair of sunglasses Marty King gave me. I found some trace remains, possibly blood in the ladies' bathroom. I don't think I took blood scrapings from inside the door to the woman's bathroom. I don't think I took blood samples from the entrance hall in the bathroom or the sitting area at Bojangles. (BETR 1723) That area had been cleaned to the best of my knowledge. Detective Allen was talking with the manager as I was looking through the area. The blood scrapings were never sent off to the Crime Lab to be analyzed. The blood samples are lost. If they were blood, they are lost. I took samples of something and the purpose was to send them to the Crime Lab.

(BETR 1724) They are just lost. That's my mistake. I lost a piece of evidence (BETR 1725).

(BETR 1726-1735 is omitted as irrelevant to Mr. Baldwin's appeal)

Three pairs of pants that were found at the scene. They are State's Exhibit 48, State's Exhibit 45 and State's Exhibit 52. (BETR 1736) The Boy Scout uniform pants were that of Michael Moore. It's my understanding that the shirt right here would have been Michael Moore's shirt. Near the collar there was a cutting that was taken and was sent off to another lab for testing. The Crime Lab took care of those cuttings, and I suspect that they maybe sent something off, but I don't know that. On the rest of the shirt I did not detect any type of tearing done to the Boy Scout shirt. To my knowledge, no buttons were pulled off, indicating any type of struggle with the Boy Scout shirt. (BETR 1737)

It's my understanding that if they think there's some evidence in a certain area, the Crime Lab actually cuts it with a knife or scissors or something and remove a chunk of cloth. Whether it be for evidence that may be on that piece or if it is a sample of a fiber they may have saved for future reference. Other than that, there is no evidence of this Boy Scout shirt being cut or sliced or anything of that nature.

Item number 49, the striped shirt. On this shirt in the back there's what appears to be a cutout area, I think it says 57, this would have been something that the Crime Lab would have cut out. Besides that particular cutting I did not notice any other evidence of this shirt either being torn or ripped or in a struggle. I did not notice any blood on this particular shirt. I'm not certain if the striped shirt was inside out when I found it. (BETR 1738) I'm not certain if any of the shirts were inside out. This T-shirt is a pullover. State's Exhibit 44 appears to have a hole in this area which has some numbering by it. I assume this would be something the Crime Lab would have done. There was no evidence of any type of knife wounds to this particular shirt or any evidence of anything being torn or ripped from this T-shirt. I'm not aware of any evidence of any blood on this T-shirt.

State's Exhibit 48 is a pair of blue jeans. (BETR 1739) Two of the pair of pants were inside out and buttoned up. I do not recall which of the two pair of pants that was. I do not recall which of the boys the pants belonged to that were inside out. There appears to be an area cut out on the knee, looks like the right knee. I'm not sure, but I guess that can be true. There does appear a hole where the knee is by the side there are some Crime Lab markings and this would have been another one of the cuttings. In the back portion there also appears to be a hole or cut with another number marked. There appears to be, looks like some initials and

some additional numbering to the right pocket. I did not see any evidence of any kind of cutting on these blue jeans. (BETR 1740) I did not see any evidence of any kind of tear besides the hole in the right knee. I do not recall seeing any type of blood on these pants.

I was not looking for any evidence when I looked at the pants. My main purpose was to preserve any fibers, trace, anything that may be on the clothing and put it in that sack. Once they were placed in the sack somebody from the Crime Lab would have taken a look at the pants in closer detail than I did. (BETR 1741)

I don't recall offhand if State's Exhibit 45 was one of the two pairs that were inside out when I recovered them at the crime scene. I remember two pair of the pants were inside-out and one pair was right side out. I did not notice any type of tears on these pants as I had pulled them out of the water. I did not notice any blood on these pants when I pulled them out of the water. State's Exhibit 52 is blue jean pants. (BETR 1742)

I'm not aware of any type of tears either by the waist or tears by the bottom part of the cuffs of the pants, no visible blood on the pants that I can recall. I'm not certain if the buttons themselves actually worked. They were placed in the sack exactly as I removed them from the water. I didn't work any of the buttons or zippers. (BETR 1743)

The Exhibit, Echols 2, was a particular footprint that I had left at the crime scene. It is my footprint. While I was at the crime scene, I took a cast of a possible footprint or shoe print. State's Exhibit 378 is a photograph of me making some type of plaster of Paris cast of a potential print that was found at the crime scene. It appeared to be a shoe type print. (BETR 1744) Both of the pictures do not show the same cast. There was more than one cast taken at the crime scene. The one introduced in evidence, that was a shoe print. This one in my hand is some kind of latent ridged print. It could have been a fingerprint. We are talking about two different possible prints. (BETR 1745)

We were unable to match up this particular print with anyone's print in connection with this case. We obtained fingerprints of Damien Echols. In searching Damien's house, we got some boots belonging to Damien Echols. Besides the two items we just talked about, there were two plaster casts of footprints made at the scene. (BETR 1746)

There are a series of footprints here at the scene of photographs that were taken. I have a couple of pictures in my hand which have two different prints in them. They do show some different prints. Also, these are prints that were found in a different area, not the crime scene, but of the creek, and in the area where the bodies were found. (BETR 1747)

(BETR 1748-1749 is omitted as irrelevant to Mr. Baldwin's appeal)

Defendant Echols Exhibit Four, is one print. Exhibit Five A, B, C and D is a different print than the one you just looked at. These are pictures of that before the plaster cast took place. Some of these are duplicates of each other. (BETR 1750)

Five A and B is one print. Four A, B, C, D, and E is all of one print. The prints that we made the cast out of were also one cast was made out of this shoe print and one out of this shoe print. Four A and that group of photographs, were found in relation to where the bodies were found. Just north of the body of Michael Moore and on the east bank. The flattened area, if you will go just a little bit further to the north it turns into a steeper slope. On those two photographs, if you would envision these prints are side by side about a space like this. (BETR 1751)

They do not appear to be made by the same shoe. They did appear to be of a tennis shoe print. The pictures in Four and also in Five appeared to be the same style of sole of the tennis shoe. It appeared one was a left and one was a right.

We seized evidence from Damien Echols' house. I was not able to find any match of any footprints at Damien Echols' house with those prints. I was never able to obtain a match with anyone's footwear between the photographs in Exhibit Five and Exhibit Four. (BETR 1752) I never found any shoe imprints matching the

shoes that the victims were wearing. State's Exhibit 46A and B which is a pair of white tennis shoes, there was no match of these tennis shoes out there where the bodies were located. No match by either a cast imprint or by a photograph. 47A and 47 B, there was no match matching the black tennis shoes out there at the crime scene 51A and 51B, I never found shoe imprints at the crime scene either by a cast or by photographs of the black tennis shoe prints. (BETR 1753) I never got a report from the Crime Lab as to what the shoe size of those imprints were. (BETR 1754)

(BETR 1755 is omitted as irrelevant to Mr. Baldwin's appeal)

CROSS EXAMINATION OF BRYN RIDGE BY ROBIN WADLEY

The search of the area that I described to the jury on May 6th was Thursday. On the 6th I gathered evidence up until it got dark. (BETR 1756) The last evidence that was gathered that I'm aware of is those plaster casts. The boys were found on May 6th. On May 6th, the primary area of concern was the crime scene itself and that area surrounding where the bodies were found. I searched the ditch. I searched both banks. I visually searched. I looked for anything that may be of evidence. The ditch was drained down. The water was drained from that portion. It was a confined area. It was not a large area that was searched at that particular time. (BETR 1757)

Either the next day or day after that, we went out there with all of the detective units and all of the narcotics units. We spread out hand-to-hand and we covered the entire area of Robin Hood Woods. That area east of the area all the way to the expressway, north of the area to the expressway and both sides of the ditch. We would have officers lined up side-by-side. We were searching the whole area. We were paying attention to detail and were looking for anything we could find. It would be important to try to find anything we could find out there. (BETR 1758)

On the 6th of May, we searched from the time the bodies was recovered at 1:30 until we left which was probably 7:45 or 8:00 that night, about six hours that particular day. On that particular day I was looking at a very small area. On the 7th, we searched that day for probably about three hours. On the 8th, I'm not exactly sure which day it was. The grid search took place on the 7th or 8th. It occurred within a couple of days after I found the bodies. I spent probably 20 to 25 hours out there looking. There were other officers looking for the same amount of time. (BETR 1759)

Those items I seized I took possession of them. There were some other officers out there taking possession of items. I took possession of it when some of those officers gave me that evidence, but they may have taken items at the scene

and then they gave it to me. I was responsible for being in charge of gathering these items. (BETR 1760) If someone found something, they would bring it to me on almost all occasions. The clothes that you have were recovered on the 6th. I got down in the water. I was not the only one in the water when we were making this search. Sergeant Allen was in the water with me. He was in the water near the body as I was making my way to the body. The water was pumped out of there at a later time. I sandbagged it, pumped it out. I was looking for anything obvious. (PR 1761)

Earlier in the day I had a pair of dress shoes on. At the crime scene I was wearing a pair of rubber boots. I had on long pants. My pants ended up stuffed down in my rubber boots. My pants were muddy and my shoes were muddy. Of the sacks that I looked at, I didn't see any watermarks on them. (BETR 1762)

I was walking in the water and this is the stick that I found. It was stuck down in the water in the bottom of the creek and was a free standing stick. The water was just above my knees, probably 28 to 30 inches. The stick was 10 to 12 inches out of the water. It was holding a shirt that was wrapped around the end of the stick. (BETR 1763)

All I can say is the shirt was wrapped around the end of the stick. I had to actually remove it. I would not say the shirt was stuck to it. I just grabbed it and

pulled it off. I didn't pull the stick out of the mud. It became dislodged as I made my way along. I don't know if a wave was enough to knock it over or what, but it became dislodged and floated up. I was 3 or 4 feet in when it dislodged and floated up. (BETR 1764) I was making progress toward that stick and right before I got to it, it just came up. I didn't immediately remove it, I went ahead and removed the body. When I first took the stick out of the water, we took pictures of the stick with the shirt wrapped around it. I took the shirt off of it and laid the stick on the bank. (BETR 1765)

I looked at the stick. The reason I did that was because it is important. It is important to see if anything was on the stick that may have been of importance. I found nothing on it. I laid the stick on the bank on the east bank. When I was out there and laid it on the bank, I didn't make any markings on the stick or put my initials on it. (BETR 1766)

I didn't make any markings. I inspected the stick. I looked at it. I looked at both sticks. That stick was just floating in the water, too. That stick didn't have any clothes attached to it.

When I say "slicked off," I mean absence of leaves as the surrounding area had. (BETR 1767) Scuff marks, grass was bent over, mud over the top of it. Residual leaves from the trees from the previous fall or whatever vegetation would

have been in the area, dead leaves. In the spring green leaves normally fall and you'll see green leaves on the ground. I described the scuff marks. It looks as though somebody may have taken their hand and rubbed the bank. I was not in this area on May 1. (BETR 1768) I was not in the area on May 2, May 3, May 4 or on May 5. I don't know the condition of the area was on those days. I was out there making that observation on the 6th. I'm giving this definition of slicked off. I am not speculating on that. I'm describing the area as I saw it. It looked like someone had taken their hand and pulled it down. I was out there about a month previous to that. (BETR 1769)

I am telling this jury that someone scraped it off based on my observations out there on the 6th. I didn't find a droop of blood where this was slicked off. I checked that very carefully. I was looking for anything I could find on that ground. (BETR 1770)

If there had been partial debris on that area that I described, I would expect that some blood might have missed some of the twigs and leaves and soaked down in the ground. I didn't find a drop of blood. There were a number of twigs and leaves and debris that were further down in the water. I did not take possession of any of those twigs or leaves or debris for testing or gather any of those. I just left them out there just like I left this stick. There were items that I found out there

which I did not send off for testing. (BETR 1771) Rusted nails, aluminum cans, small pieces of metal, wire that was under the mud. I did not find any disposable razors out there. I think a razor was included in a package of clothing that was found away from that area. It was found across the pipe on the south side of the Ten Mile Bayou. (BETR 1772) It was sent to the Arkansas State Crime Lab to the best of my knowledge.

On May 13, 1993, I assisted in a neighborhood survey of vacant houses in that area. The crime scene where the bodies were found is in close proximity to truck stops. (BETR 1773) To the actual truck stop itself is 250 to 300 yards from where the bodies were found. The truck wash is about 100 yards from where the boys were found. (BETR 1774)

As of the 6th day of May, 1993, there was not a fence between the truck wash and the area where the boys were found.

REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN

State's Exhibit 48 has dried mud on it. That print did not match with anybody that I know of in the whole world. (BETR 1775) When we talked about footprints, they appeared to be shoe prints. On the visual search on the 6th and in my grid search later I found no other shoe prints besides those two shoe prints. When I first went there to those woods on May 6th, it was about 7:45 in the

morning. Four people were in that immediate area in the woods. At the dead end of McAuley before you cross the pipe, I met Steve Branch, the father of Stevie Branch. When I crossed the creek, I found the bike and the young man out in the woods hollering and searching. When I looked to the east in the field that's on the east side of this little ditch, there were two young men hollering and searching.(BETR 1776)

When Michael Moore, Steve Branch and Chris Byers were coming out of the water, there was no blood. After they had been out of the water a short period of time, blood would start coming out from their wounds. (BETR 1777) Water has an effect on the ability to locate blood and fingerprints. Blood would be washed away by water. I was checking any and all possibilities. (BETR 1778)

(BETR 1779-1812 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF DR. FRANK PERETTI BY BRENT DAVIS

I am a medical examiner for the State of Arkansas. (BETR 1813) I received some specialized training in the field of forensic pathology. Forensic pathology is a subspecialty that deals with pathology. And pathology is the study of disease. A forensic pathologist is someone who has had training in anatomical pathology but specializes in interpretation of patterns of injuries in determining cause and manner

of death. What I do on a day-to-day basis is perform medical legal autopsies, generate autopsy reports, and testify in court. (BETR 1814)

I performed autopsies on the bodies of Michael Moore, Stevie Branch, and Chris Byers. The first thing we do is we take the height and weight. Then what we do is we take photographs as the body comes in. Depending on the type of case it is, what we do is we take the as is photographs of the body as it presents. After we have documented by the photography, we clean the body off, clean the body up, and we take additional clean photographs. We document any and each of the injuries situated on the body. After that, we do an external examination. (BETR 1815)

I followed the general procedure for autopsies in performing autopsies on Michael Moore, Stevie Branch and Christopher Byers (BETR. 1816). As a part of that procedure, I took photographs as I went through the process of performing the autopsy in order to preserve the evidence that I found in conducting the autopsies (BETR 1817). State's Exhibits Nos. 59A, 61A, 62A, 63A, 64A, 65A, 66A, 67A, 70A, 71A, 72A, 73A, 68A, 60A and 86 are photographs of James Michael Moore. These photographs are true and accurate representations of the body of Michael Moore at the time I performed the autopsy in May 1993. (BETR 1818).

(State's Exhibit Nos. 59A, 61A, 62A, 63A, 64A, 65A, 66A, 67A, 70A, 71A, 72A, 73A, 68A, 60A and 86 are admitted into evidence without objection.)

State's Exhibit Nos. 70B, 72B, 71B, 69B, 66BB, 67B, 65B, 64B, 63B, 62B, 61B, 60B, 59B and 78 are the photographs of Steven Branch. (BETR 1819) Those photographs are fair and accurate representations of the condition of the body of Steven Branch at the time I performed the autopsy.

(State's Exhibit Nos. 70B, 72B, 71B, 69B, 66BB, 67B, 65B, 64B, 63B, 62B, 61B, 60B, 59B and 78 are admitted into evidence without objection.) (BETR 1820)

State's Exhibit Nos. 59C, 62C, 61C, 63C, 64C, 65C, 66C, 67C, 68C, 69C, 72C, 70 and 71C and 73C are photographs of Christopher Byers. They are fair and accurate representations of the body of Christopher Byers at the time I performed the autopsy.

(State's Exhibit Nos. 59C, 62C, 61C, 63C, 64C, 65C, 66C, 67C, 68C, 69C, 72C, 70 and 71C and 73C are admitted into evidence without objection.) (BETR 1821)

I performed the autopsy on Michael Moore on May 7, 1993. Michael Moore weighed 55 pounds and was 49 1/2 inches in height. As for the injuries I observed on the body, I have these divided up into head injuries; neck, chest and abdominal

injuries; anal-genital region; lower extremities; back injuries; upper extremity injuries; internal evidence of injury; and evidence of trauma. (BETR 1822).

States Exhibit 65A shows a frontal view of Michael Moore. Here we can see different injuries. We have a laceration on the scalp region here. We have an abrasion or laceration -- most people think of a laceration as a cut. Here, we have an abrasion. When I use the word "abrasion," I mean a scrape. When I use the word "contusion," I mean a bruise, like a black and blue. So I will try to use laymen terminology. (BETR 1823)

We have an abrasion on the top of the right side of the scalp. On the left, we have a laceration. Here on the face, on the nose, we have a lot of abrasions and scrapes. And on the lips, we have some injuries which you can see in an additional photograph closeup. On the side of chest, we have some abrasions. We have a pattern of serration on the front of the chest near the right clavicle region. On State's Exhibit 61A, we have two impact sites or abrasions, scrapes.

State's Exhibit 62A is showing three lacerations over the scalp region. In this photograph, we can see some abrasions on the left side of the face and the nose, or scrapes, where I have my finger pointed. I can tell what differences between the type of injuries we see in 61A and the lacerations on the side of the head that as seen in 62A, what could cause the difference in the type of injuries. On State's

Exhibit 61A, we have an injury that consistently being caused by an object with a broad surface area, an irregular surface area. (BETR1824) On 62A, we have a laceration in here. These type of injuries could be caused by an object with a small surface area, such as maybe the handle of a broom or a piece of wood or a two-by-four or an edge of a log. That is why we have the difference in the type of injuries. There's two different patterns of injuries.

In photograph 62A that would be caused, either by some item that's smaller in circumference, in the surface area. The injury in 61A would be caused by a broader surface, an object with a larger surface area. Based on my experience and expertise and training, I would say that two different weapons or two different items caused these injuries.

State's Exhibit 63A is showing the ear. Down here we can see some abrasions, a faint area of contusion over the forehead region towards the back of the ear. We can see some abrasions or scrapes. State's Exhibit No. 64A is a closeup of the ear showing the abrasion, contusion or bruising behind the ear, and this abrasion situated on the scalp. (BETR 1825)

State's Exhibit 65A is showing on the upper inner aspect of the lip which is contused and has overlying superficial cuts. The dark discoloration is the bruising. State's Exhibit 66A is showing the lower lip and the bridge in the nose, the bridge

of the nose. The bridge of the nose, we can see the abrasion, scrapes in here on the lower lip. If you look very carefully you can see that discoloration there, that faint discoloration, that is bruising or a contusion.

In my experience as a medical examiner, those types of injuries to the ears and mouth we generally see in children who are forced to perform oral sex. The punctate scratches to the nose and to the upper ribs, you can get the lip injuries by putting an object inside the mouth. You can get those type of injuries also from a punch or a slap, or you can get those type of injuries from the hand over the mouth and pressing the hands very tightly up against the mouth. (BETR 1826)

State's Exhibit 67A shows the hog-tying fashion of the hands that are hog-tied to the feet behind the back. This is the photograph showing the shoelaces. State's Exhibit 70A and 71A show abrasions. 71A shows abrasions or scrapes over the back region. State's Exhibit 71A shows an abrasion or scrape on the side of the neck. 72A shows the washerwoman wrinkling of the hands. By washerwoman wrinkling, when the hands are submersed in water, you put your hands in the water, you know how your hands wrinkle. That indicates the bodies were in water for a prolonged period of time. State's Exhibit 73A also shows the hands, but on the left finger, left second finger, you can see the cut here on the hand. (BETR 1827) Generally when we see injuries on the hands and on the forearms, those are

the type of wounds we call defense type wounds, when people try to defend themselves. If someone is coming at you with an object, your reflex would be, the first thing you do is you to put your hand up; or if you are on the ground, you put your feet up. You want to try and protect your body.

I found defense wounds in regard to Michael Moore; he had defense injuries of the hands. State's Exhibit 68A is a photograph of an abrasion that's padded and has a serrated appearance to it, and that is 68A.

State's Exhibit 60A is a photograph of the body before it has been cleaned up. The blackish-brown material on the front of the body is mud and debris. But up here are abrasions and apparently serrations here on the front of the chest. You can see some injuries to the face and to the lips. State's Exhibit 86 is a photograph of the back of the arm showing abrasions or scrapes. (BETR 1828)

The autopsy does reflect kind of a list of my findings as far as injuries are concerned on Michael Moore. My findings were multiple injuries with evidence of drowning. So the multiple injuries consisted of the head injuries, which consisted of the multiple facial abrasions or scrapes, contusions or bruising. We have multiple scrapes and contusions of the lips. Multiple scalp lacerations and contusions.

There were multifocal subgaleal contusions and edema. By "subgaleal," at the time of autopsy, we reflect the scalp back. We are looking at the scalp from the inside out. And underneath it, we found edema or swelling, and hemorrhaging. Also there are multiple fractures of the caladium. That is the top of the skull and the base of the skull. There was subarachnoid hemorrhage and contusions or bruising involving the entire brain. The skull fractures, in conjunction with those obvious outward signs of head injuries seen in the photographs. (BETR 1829)

Underneath those injuries that I pointed out earlier were skull fractures. Then the other findings including binding of the wrists and ankles in a hog-tied fashion. There were multiple bruises, scrapes, and lacerations of the torso and extremities. We have the defense type injuries of the hands. There was also anal dilatation with hyperemia, hyperemia or redness of the anal-rectal mucosa. "Anal dilatation," in laymen's terms means that the, anal orifice was dilated. Hyperemia of the anal-rectal mucosa, in laymen's terms means reddening or congestion of the mucosa. That is the internal lining of the anus and rectum. Dilation of the anus and reddening of the rectal mucosa could be from putting an object in the anus. It could be due to the fact that postmortem relaxation and the fact that the body was in water. And that would alter things, also. (BETR 1830)

We have evidence of drowning. And we have the wrinkling, the washerwoman wrinkling of the hands and feet. We had petechial hemorrhages of the heart, lungs and thymus. There are little hemorrhages that are caused by lack of oxygen that may be seen on most people who die. It is truly a nonspecific finding. But we do find this in drowning victims. Pulmonary edema and congestion. In laymen's terms, the lungs are filled with fluid, water. We have aspiration of water into the sphenoid sinus. The sphenoid sinus is a little cavity at the base of skull. When he was in the water, he was breathing, and he sucked water up through his nose into the sinus area.

There was no evidence of any disease which would have contributed to death. There was evidence of terminal aspiration. Terminal aspiration is when you have regurgitation of the stomach contents due to postmortem relaxation of the esophagus. (BETR 1831)

Instead of the bowel working correctly, at the time of death, it loosens and gastric contents back flow into the esophagus and other passages. That's a very common finding in most people who die. The aspiration indicates that Michael Moore was still breathing at the time he was placed in the water.

As part of my job, I formulate an opinion as to the cause of death of the individuals I do an autopsy on. My opinion as-to the cause of death of Michael

Moore was multiple injuries with drowning. The head injuries that he sustained alone, would have been life threatening and would have caused his death had he not drowned. (BETR 1832)

I also performed an autopsy on the body of Steven Branch. (BETR 1833) Steven weighed 65 pounds and was 50 inches in height. When his body was presented to me at the crime lab, it was still bound in the same fashion as it was when the body had been recovered. The body was bound right hand to the right ankle with a black shoelace. The left hand was bound to the left ankle with a white shoelace. In my visual examination of the body of Steven Branch, I discovered head injuries. There were chest injuries. There was genital-anal injuries, lower extremity injuries, upper extremity injuries, and evidence of submerging.

State's Exhibit 70B shows abrasions or scrapes overlying the facial area, the eye, the lips and the chin. (BETR 1834). The injuries in 70B are to the right side of the face of Steven Branch. Also Exhibit 72B shows a confluent area of abrasion, scraping involving the face. Also overlying this area, we have multiple irregular and gouging type cutting wounds. Those cut marks would be consistent with some sharp object such as a knife.

We generally see these type of injuries when an object such as a knife or glass or any sharp object is put into the skin and either the person doing the

stabbing is twisting and pulling the knife or a combination of the person being stabbed -- and they are not standing still, they are going to be moving around. So, as they are moving, the knife is going to twist. And as the knife is being pulled out, it's going to pull out all the soft tissues, the fat, in the cheek region. And also in this photograph, you can see that the ear is abraded and it is contused, like it was scraped, the bruising and its overlying scratches. And we can also see abrasions and superficial cuts involving the scalp region. (BETR 1835)

State's Exhibit 71B is a close-up. In this photograph, you can see the scraping and we can see the gouging type injuries here. What is important to note is that on the forehead region, we have an abrasion or scrape that left a pattern. Inside the pattern it's almost like a dome shape. It has this little area of square abrasion inside here, right on top of the forehead.

That injury is typical of a belt injury. The belt has a little buckle. That buckle has that little one that goes back and forth, left and right, and the base of the latch. That type of injury we typically see with belts. Also, if you look very closely, you can see on the face overlying the area of the abrasions, you notice a pattern here, but a lot of them are obscured by the scraping.

State's 69B is showing some scrapes on the lower extremity and the binding abrasions from the ligatures, this darkened area at the ankles where the ligature was fastened.

State's 66B is showing an injury that could be caused either by a serration from a knife or another type of object.

Exhibits 68B and 67B show the washerwoman wrinkling of the hands. (BETR 1836). On 67B, you can also see the wrinkling of the hands. But you can note the abrasions from the ligatures being tied to his wrist. That is the area of dark discoloration on the wrist here.

Exhibits 65B and 64B show a penile injury. Here on Exhibit 65B, all we can see is we have a photograph of the head of the penis and mid-shaft of the penis. You can note here, the dark discoloration is bruising. Overlying the area of bruising, if you look very closely, you can see a small area of bruising and fine linear scratches.

State's 64B is showing the under surface of the penis. Here we can see the injury and part of the head and shaft of the penis. What is important to note is that we have a clear line of demarcation here. Where we have this area which is involved and we have this nice circumferential band going around the penis, which you can also see on the front of the penis, the anterior part of the penis, this

line of demarcation which is separating the injury from the uninvolved skin.

(BETR 1837)

You can see those type of injuries in two situations. One, if an object, like a belt, for example, is wrapped tightly around the penis. Or those type of injuries are more characteristic when you see young children who have oral sex performed on them because the little scratches are the teeth marks.

In Exhibits 63B, you can see all the abrasions or scrapes. You can see the darkened discoloration. That is the bruising of the ear. If you look very, very closely, you can see the fine little scratches, which are fingernail marks. Exhibit 62B is showing the back of the ear showing the bruising and the abrasions and the fine linear scratches.

The bruising to the ears and mouth injuries that I described in Michael Moore's case are similar in this situation. (BETR 1838) On 61B, the photograph of the back of the head on the Moore child, there was a similar type injury to the back of the head, a big area of abrasion type of injuries that you see inflicted with an object with a broad surface area. In association with that, the base of the skull, the back of the skull, showed a three and 1/2 inch fracture that had multiple extension fractures.

In layman's terms, if you have ever dropped an egg, and you see how you have the fractures of the egg, that is basically what happened. Also the brain showed multiple focal areas of hemorrhage, contusions and bruising. You need a lot of force to cause skull fractures and brain hemorrhage. State's 60B is a photograph showing the back of the neck, showing an area of abrasion, irregular type abrasion and scraping of the back of the neck.

Exhibit 59B is an area of the inner aspect of the thigh, where we see a band. You have a pattern here of a band. (BETR 1839) It is diagonal, and you have these two areas and you can see a darkened area, the contusion, and an area of pallor or paleness, inside. That indicates some sort of object.

If you get your finger and keep it up on the wrists, what happens is, as soon as you pull your finger off, you are going to see an area of blanching. On the sides, you're going to see the redness when the blood is pushed out of the vessels. So this the general principle that we see here where an object has left this pattern.

Exhibit 78 is a photograph of the back which shows a small area of abrasion or scraping.

The anus was dilated. There were no injuries noted on the anal and rectal mucosa. The lining of the rectal and anus showed mild hyperemia or reddening.

But not other evidence of injury was noted. There were no injuries noted to the testes or the internal aspects of the scrotal sac.

I found evidence of drowning in regard to Steven Branch. The hands and feet showed the wrinkling. There was fluid in the lungs or the pulmonary edema, congestion. (BETR. 1840) There was lots of bloody, frothy fluid; that is the fluid in the lungs that has no place to go. So what would happen, it just backs up into the trachea or windpipe. We have the watery fluid was aspirated into the sphenoid sinus.

The cuts to the left side of Steven Branch's face would be consistent with some knife or sharp object. The skull fractures to the back of his head would be consistent with a larger blunt type object.

My opinion of the cause of death of Steven Branch was that he died of multiple injuries with drowning. The head injuries, in and of itself, had he not been submerged in water, would have caused death. (BETR 1841)

I also performed an autopsy on Christopher Byers. Christopher weighed 52 pounds, was 48 inches tall. He was also bound at the time I performed the autopsy. The right wrist was bound to the right ankle with a black shoelace, and the left wrist was bound to the left ankle with a white shoelace.

Christopher also had head injuries, neck injuries, genital-anal injuries, right leg injuries, left leg injuries, back injuries, right arm injuries and left arm injuries. (BETR. 1842) 59C is a facial photograph. Here you see there are abrasions. But also note that you can see here and here you have a pattern type injury. See this curvy linear or half moon, these little round areas right here. These round areas have the appearance of like a stud on a buckle, one of those round studs, and sort of bell shaped here under the nose. State's Exhibit 62C is a closeup photograph of an injury I just described. It is very faint. You can see it here, in this photograph this little round area this little punched out area on the skin. State's Exhibit 63C is showing injuries to the ear, the scratches, the bruising of the ear. But also you can note the eyelid here that has a contusion or black eye.

State's Exhibit 61C is showing a little abrasion or scrape, a small one to the back of the neck. State's Exhibit 64C is showing the ear again. It is the right ear showing the bruising and scrapes and little, overlying scratches. (BETR 1843) Those were injuries to the ear in regard to Chris Byers and those similar to the injuries that I found to the ears of Michael Moore and Steven Branch. He also have the comparable injuries to the outside of his mouth and the mouth area that the other two had.

State's Exhibit 65C is a photograph of the inner aspect of the thigh. And here these areas, this darkened area here, all the bruising, contusions on the outer thigh. We have injuries that are antemortem, injuries before death. We have perimortem injuries, injuries around the time of death; and you have postmortem injuries. A lot of the injuries that you see, the hemorrhaging that means your heart is pumping, your heart is beating and you are able to bruise. Some of the injuries have the yellow discoloration to them and a lack of hemorrhage. (BETR 1844) And those injuries are injuries that we normally see in the postmortem period, after death.

Then you have the perimortem injuries. Those injuries when you look at the underlying fatty tissue there is a slight amount of hemorrhage. That means that the heart is still pumping blood, but it's not pumping to full capacity.

There are postmortem injuries. State's Exhibit 66C shows the inner aspect of the upper lip. And you can see all the bruising and dark discolorations inside the lip. State's Exhibit 67C is showing the lower lip. And here you can see there is a laceration with the hemorrhage. There is hemorrhage around the gum line.

State's Exhibit 68C is a photograph showing the back of the skull. We have a laceration right here. That type injury to the back of the scalp, could be consistent with the broad blunt object that you described in regard to the other injuries to the

other boys. (BETR 1845) But, it's more consistent with an object that is narrower. And sometimes we see this type of injuries, for example, like a piece of wood like this railing here, the sharp edge can give that type of injury. Or an injury with an object such as a broomstick could cause that type of injury.

State's Exhibit 69C is a photograph of the genital region showing genital mutilation. Here it is important to note here that you can see where the, there is a closeup photograph of that. Here's where the penis and scrotal sac and testes should be here. We have all these gouging type injuries that have been described similar to the one that we saw in the face. But also it is important to note here that we have contusions and bruising of the inner aspect of the thighs. These type of injuries we commonly see in the female rape victim. And also there you will note on the feet, you can see some bruising, contusions on the ankle, and you can see where the ligature was tied, these marks here.

State's Exhibit 72C is also showing the back, the side of the left thigh and the right thigh. Here is a pattern here and it's a diagonal. Here we have all this bruising. Here we have gouging type wounds, and we have these cuts around the anus. (BETR 1846)

State's Exhibit 70C is a close up of the genital region. Here we can see that the skin of the penis has been literally removed or carved off. And what we have

here is the shaft of the penis without the skin on it. And all around it, we have all these cutting, gouging wounds. The scrotal sac and testes are missing.

State's Exhibit 71C is showing the anal orifice which is dilated. And below, we can see cutting wounds here on this side and this side here. We can see, if you look very closely, you can see all the hemorrhage indicating that he was alive at the time. You have all this bleeding here in the soft tissues.

State's Exhibit 73C is a closeup view of the injuries, the gouging type wounds, cutting wounds that we have in the inner aspects of the thigh. This red area here that we can see is the shaft of the penis. There is a serrated type pattern here. (BETR 1847) When I say , "serrated," I mean, for example, a typical serrated knife is a steak knife, that pattern of serrations. And in this case, the items that I marked there seems to be, those three or four wounds, there is a distance between those wounds. And that would be consistent with the serration of the blade that inflicted that wound, providing there is no twisting and turning. The surface that we are looking at where I circled the indications of serrated injury, that is the inner aspect of the thigh; so, it is curved. When you look at the thigh, it's rounded. It's not completely flat.

The top of the skull, there were no fractures. The caladium is the top of the skull. However, the base of the skull, back of the head here, the base of the skull,

that showed a fracture that measured three and one-half inches in length. (BETR 1848) And extending from this fracture are multiple smaller fractures which involved the entire base of the skull.

So, it goes back to what I explained earlier. It is like you have an egg and you drop it. You see those fracture lines. And that is what has happened to the base of the skull. And associated with this., we have hemorrhage of the brain, contusions, bruising of the brain. But also on the left posterior medial cranial portion -- the base of the skull is divided into regions. We have the anterior portion where our eyes are. We have the middle portion basically where the ears are attached. And we have the posterior portion, or the back of the skull. So if you divide it up, the symmetrical right side and left side. So on the left posterior side medial -- by "medial," I mean toward the midline, towards the spinal column not away from the spinal column, we have a one-quarter inch ovoid punched out fracture. That fracture was punched out. It was round, measured a quarter of an inch and was punched out into the brain. (BETR 1849)

I have indicated in my testimony regarding more than one of the boys that there were injuries to their scalp that was consistent with an object approximately the size of a broom handle. Looking State's Exhibit Number 53, an object this size and this diameter be consistent with those injuries I noted were consistent with a

broom handle type object. An object of this type is capable of causing those type of injuries. (BETR 1850)

(BETR 1851-1852 is omitted as irrelevant to Mr. Baldwin's appeal)

(State's Exhibit 53 is received in evidence.)

In my testimony regarding the three victims, I indicated that certain of the head injuries were caused by what I described as a larger surfaced blunt object. An object of this nature would be consistent with that. (BETR 1853)

(State's Exhibit 55 is received in evidence.)

State's Exhibit No. 77, I have had a chance to look at that knife and examine that knife. I referred in my testimony to wound patterns on the three victims that were serrated in nature. There are injuries consistent with a type of serrated pattern. (BETR 1854)

State's Exhibits 82, 81, and 80, the sacks indicate they are the ligatures. I removed the ligatures from the body, the shoelaces off the bodies of the three victims when I performed the autopsy. And then I sent those items to another area of the crime lab for further analysis. There is a process that I follow whereby I make sure that it's identified by case number and the proper chain of custody is maintained. I did that in this case. (BETR 1855)

In performing the autopsies on these three victims, there was no evidence of animal activity, insect bites. If an insect such as mosquitos, those types of things, if the children had received insect bites prior to the time of their death, then, you should see them prior to death. That would be different if insect bites were received after death. After death I don't think you would see them for the simple reason you need to be alive to have the reaction so it can swell and itch. I did not find anything, any insect bites on any of the three victims that I did autopsies on. (BETR 1856)

I did not deal with the issue of time of death or mention that in my autopsy report. Determining the time of death is more of an art, not a science. I mean, on TV, they can tell you someone died at 2:30. Realistically it is not possible unless you were there and witnessed the person who died. So what we do is you have to give ranges, intervals to the time of death. And even then when one gives, ranges or intervals, it is basically an estimate. There are a lot of factors, but one that is most important is you need to know when the person was last in the light and when the person was found dead. (BETR 1857) So you have the postmortem window period. And in that window period, there are many other factors that come into effect such as, for example, the temperature outside, humidity, if the bodies were

found buried underground, if they are on top of the ground, or if the bodies are in the water.

These are all factors. The modality in which, the way in which a person who died is also in point. Now, if a person, for example, loses a lot of blood, it puts a different interpretation on it as if someone was just to die walking down the street and collapse.

All of these factors, most of them are environmental factors that need to be taken into consideration. I was not at the scene when the bodies were found. Arkansas has a coroner system. And the coroner of Crittenden County went to the scene. He pronounced the three boys, and he issued his report, based on his findings when he arrived at the scene. (BETR 1858) And in order to make an estimation as to time of death, I would need to know the temperature of the water that the children were submerged in. And I would need to know what type of clothing, if any, they had on. And I would need to have a rectal temperature taken. You can use body temperature, but it's not as accurate as people make it to be, but that's one of the factors that are taken into consideration.

All of those things are information that I would need in being able to give an estimate, along with the rigor mortis, the rigidity of the body. In this particular case, the factors that were provided to me was the lividity when the coroner arrived

at the scene. Now, there are some I would like to explain so the jury will understand what I am talking about. There are some terms. You have rigor mortis which is a stiffening of the body. (BETR 1859) We have livor mortis or lividity. Lividity is the postmortem settling of the blood into the capillaries or blood vessels which have lost their tone after death. So that happens on everybody. When we die, we all go through rigor mortis. We all develop lividity. There are factors that I take into consideration when trying to give an estimate or a range for the time of death. Lividity is one of the major criteria to see if the body has been moved. Now, one thing I think didn't explain and I would like to clarify. Lividity goes through different stages. We have lividity which is called unfixed. Then we have lividity that is fixing and lividity that is fixed. Unfixed lividity means up to a certain period of time if someone dies on their back up to normal environmental conditions, if I was to die in this room right now and I was lying on this floor eight to ten hours, all my blood would settle to the back of the body. Now, if you were to examine my body two hours after I die, the lividity, if you were to touch it with your finger, it would blanch. (BETR 1860) In other words, you would be able to push the blood out of the blood vessels. So it is called blanching. But if I was to still be the floor and around eight hours you would come in and you would press the lividity, you would see it's fixing. It is in that stage where it is beginning to fix and unfix. And

fixed lividity is when you go there and no matter how much you press it, it is going to stay in that one spot. So we use lividity, for example, if someone was to die, if you would find someone in the field and he's found on his back, and all the lividity is fixed on the front of the body, we know that the person died in some other location and was dumped there because the lividity is not consistent with lying on its back.

The time at which lividity becomes fixed is dependent upon environmental factors. Environmental factors and the state of health of the individual is very important also. The degree of the fixed, or the degree that the lividity is fixed is based on also the extent to which the body has remained in a single position.

(BETR 1861) The cooling, if the body is quickly cooled such as being submerged in water, that would retard the fixing of lividity.

I said that part of my job is to prepare an autopsy report. In this particular case, I was particularly cautious about who I released that information to and when I released it. What we do in the crime lab is the day we do the autopsy we issue a sheet. It is called a "Cause of Death" sheet. This sheet automatically goes to the prosecutor of the county of death, the coroner, and the investigative agencies handling the death investigation. We do that so they will have immediate feedback. Because a lot of times they don't, the agencies don't have the time to call us back to

get the autopsy results. So what we do, as soon as we do the autopsy, that day, we fill out the sheet, and it is mailed to those three agencies. I changed that procedure a little bit in this case in order to insure that the information obtained in the autopsy report wasn't disseminated in the general public. (BETR 1862)

But because this case generated, such intense media coverage, and there was rumors, a lot of rumors, people calling for all of these circumstances, I elected on the cause of death sheet just to put the causes of death on the sheet. I did not say anything about any of the injuries. I didn't tell the prosecutor. I didn't tell the police, and I didn't tell the coroner. I just kept it to myself. And with an ongoing investigation, it was important that only as few people as possible had access to that type of information. I didn't want to disseminate that information to the media and the community. (BETR 1863)

(BETR 1864 is omitted as irrelevant to Mr. Baldwin's appeal)

CROSS EXAMINATION OF DR. FRANK PERETTI BY VAL PRICE

Defense Exhibit Number E6 is a Kershaw knife. This appears to be a lock blade folding knife. (BETR 1865) I made a comparison with this knife E6, and compared that with some of the wounds that I found on Chris Byers. This is a serrated knife. Some of the wounds that have the smallest serrated patterns could have been inflicted with a knife having this type of serration. This particular knife

may have caused some of the small wounds on the buttocks of Chris Byers shown in Exhibit No. 71. (BETR 1866)

This picture is of the buttocks region. Law enforcement officers ask the crime lab to perform certain tests on pieces of evidence. I received that particular lock knife from the Genetic Designs Laboratory in North Carolina. It was mailed to me directly. There were instructions by Detective Gitchell of the West Memphis Police Department to compare that knife with some of the wounds. There appears to be some type of red fabric inside that knife. (BETR 1867)

I opened it up, and I noted that there was a piece of red fabric in there, and I properly submitted it to the appropriate section of the crime lab. There were items that I took at the time of autopsy that I sent to the appropriate sections of the crime lab. (BETR 1868)

On the autopsy of James Michael Moore, on page 2, in the paragraph of description of injuries, the last sentence indicates that a strand of fabric-like material was clenched in the left hand. (BETR 1869) To my knowledge, this fiber was sent it Lisa Sakevicius who is with the trace evidence section of the Crime Lab. FP1 was the number that was assigned by the trace section to this particular fabric I took out of the hand of Michael Moore. (BETR 1870). Based on my

autopsy of Michael Moore, this is the only fabric that was sent to them. It was received by Trace Evidence on May 7, 1993.

When the bodies were sent to the crime lab, they were wrapped in a white sheet. A laboratory case number was assigned to all three of the bodies.

Christopher Byers' laboratory case number was 93-05618. (BETR 1871). On May 11 the white sheet that Christopher Byers was wrapped in was sent to the trace evidence section. Trace evidence assigned the number FP-10 to the white sheet.

I found several old scars on the body of Christopher Byers. A three-quarter inch old scar was present on the right forehead region, generally in this area here. (BETR 1872) A one-quarter inch old scar was present adjacent to the bridge of the nose, generally in this direction here. An old hypo-pigmented scar was present on the front of the chest. It's on the midline of the chest. These were the only old scars.

As for whether there was any evidence that I could tell from my examination if there were bruises or abrasions on the buttocks area that may have been caused by some type of spanking that he received that day, on the injuries on the back of the left buttocks was one-half by one-quarter inch bruise, or contusion. And there was a one and three-quarter inch linear abrasion, or scrape. Either of those could possibly have been consistent with a belt spanking.

On the back of the right buttocks, there were two very faint contusions or bruises that measured about one-half by one-half inch. (BETR 1873).

(BETR 1874 is omitted as irrelevant to Mr. Baldwin's appeal.)

CROSS EXAMINATION OF DR. FRANK PERETTI BY PAUL FORD

In my career I have performed well over 2500 autopsies. Some of those autopsies are on children. The majority were adults. Some of those adults had been victims of beatings, similar to the beatings that occurred in this case. Some of those autopsies have been for abusive or sexual assault. (BETR 1875).

Since I have been in Arkansas, no one has ever called me to go to a crime scene. I am routinely called upon and I am qualified to render opinions as to the manner of death. I am routinely called upon to give opinions as to the cause of death and is a part of my normal job, on a daily or weekly basis. There was no evidence of strangulation. If you were to find evidence of strangulation you would expect to find injuries to the strap muscles, of the neck, the muscles of the neck and the larynx, hyoid bone. (BETR 1876) A hyoid bone is a little bone called the hyoid bone, and it is shaped like a "u," and that sits above the larynx, and it is connected to the larynx by muscles. I found no damage to the hyoid bone. No damage to the larynx and no damage to the strap muscles. I found no exterior

evidence on the neck of strangulation. There were a few little abrasions, or scrapes, on the neck, but no evidence of strangulation.

I made an attempt to determine whether or not there were sperm cells present. I did a rape kit in an attempt to determine whether there had been oral sex or anal sex. (BETR 1877) When we do a rape kit, we take the swabs, we swab the inside of the mouth, the lips, and the back of the mouth. Then we swab on the female, the vaginal area; and on the male, the anal area. We try to get all around the lips and as far back as we can to swab up against the linings of the mouth. And in the anus, we try to go up as far as we can around the anal orifice region to make sure that we pick up any material that was there. We make a glass slide, and we send it to the serology section of the laboratory. And they look for the presence of sperm. It was done in this case. (BETR 1878)

There was no sperm detected. I may be wrong, we would have to check with a serologist, that if it is positive for sperm, they will run the P30. P30 is looking for the antigen for the sperm to see if there is any detection of any sperm or acid phosphatase. I don't know if P30 was run. I would have to check with the serology report.

Injuries to the mouth of three boys could be caused by a punch or by slap or by something firmly being placed over the mouth. (BETR 1879) The contusions,

the superficial cuts inside the lips may be caused by a gag, but not the cutting wounds on the outside of the lips. A gag would cause those type of injuries to the inside of their lips. Sometimes you may see damage to the tongue. Other times the tongue, you may not. If the penis or object was inserted into the mouth and it was forceful, I would expect to see some injuries. If the penis was inserted way back into the back of the mouth, I would expect that you should find some injuries.

(BETR 1880)

(BETR 1881 is omitted as irrelevant to Mr. Baldwin's appeal)

But then again, you may not. There are a lot of factors involved, the size of the penis, how forceful the sex is, and things of that sort. If the oral sex was forceful enough to cause those bruises on the outside of the mouth, I would think you would expect them to also cause them on the inside of the mouth. The only damage I found inside their mouths was some superficial bite marks on one of the boys inside the cheeks. But there was no injuries noted to the back of the mouth.

Based on what I have seen in my examination of these boys, and based on my experience and my training, and based upon a reasonable degree of medical certainty, it is difficult to give an opinion that these boys were not forced to perform oral sex. They have injuries that are consistent with that, you know. They had the ear injuries. They had the mouth injuries. It could be another modality how

those injuries were sustained, but we see those type of injuries in people who are forced to perform oral sex. But then again, there are no injuries to the back of the mouth. And one way you can explain that is that the mouth wasn't totally opened, the teeth were clenched.

They had injuries that we normally see in people, especially children, especially the ear injuries, who are forced to perform oral sex. Injuries to the ear, they can also be caused if those boys are tied up in the fashion that they are and if someone wants to grab them and pull or pick them up, that can cause those same type of injuries. (BETR 1882)

I submitted it to the serology section of the laboratory, and they examine them and they issue a report and no semen was identified in all three boys. In my experience, someone who is forcibly sodomized, I have always seen injuries to the anal and vaginal regions and you expect to find lacerations, contusions and abrasions. Hyperemia is reddening of the mucosa, congestion. If a capillary is filled with blood, that would be hyperemia, more blood than normal. It's that the vessels are filled with blood. Part of that depends on its position. (BETR 1883)

A hemorrhage is when those small microscopic capillaries break. I examined them and made microscopic efforts to determine whether or not there was hemorrhage to the anal areas. On the slides I took, there was no hemorrhage

identified. So if one did conclude that there was any -- there was not enough force to break and damage a microscopic capillary. There was no injury noted to the anal-rectal mucosa. And in my experience and in my training, if someone was sodomized, I would expect to find injuries. In a child, definitely, and that was not found. I found the injuries on the ankles and the feet to which the ligatures, where they were tied. I found no evidence of being tied with a rope. (BETR 1884)

There was some abrasions there, maybe -- I can't put a pattern to them. There were no foreign fragments such as wood fragments, glass or debris in the wounds. If someone were to be hit with a stick like this that had bark that just crumbled and it comes apart, I would expect there to be some evidence of that left behind in the wounds. Unless it was washed off being in the water. I think I would expect to find some fragments. I found no fragments on any of the three boys. I testified that some of these injuries could be caused by being hit with an object of this size. (BETR 1885)

The same injuries also be caused by a baseball bat. A baseball bat would have a different type of pattern of injury, but you could get a similar pattern. A baseball bat could clearly cause a skull fracture and could clearly causes a bruise to the top of the head. So could a rolling pin or a flat part of a shovel. There are hundreds of items that could be wielded as a weapon to cause these types of

injuries. A piece of wood, a two-by-four could have done it. (BETR 1886) Or a broom handle, a mop handle, a shovel handle, or objects similar to that appearance, such as a tire iron. Even possibly a jack handle or flashlight. There is any number of items, hundreds of items located in almost any household that could be wielded as a weapon to cause the types of injuries I saw. I am not telling this jury in my opinion those are the murder weapons. Objects such as this type are consistent with causing those type of injuries. I never said these objects caused those injuries.

(BETR 1887)

These sticks went directly to the trace section of the laboratory. And after they were through looking for trace evidence, they were submitted to me; so, all the analysis on these sticks were done by the trace section of the lab, not me. Both of the knives have serrated edges. The only way a serrated knife can leave a pattern is if it is rubbed across the skin. If you have two knives, this knife, for example, and this knife here, and you would stab someone, by looking at the stab wounds, the both, both knives go in straight down, you cannot tell the difference if a straight-edged knife did it or a serrated knife did it because they both have similar appearance. The only way you can tell a serrated knife has been used is by looking for the serrations that rub across the skin. (BETR 1888)

If that serrated knife was used, the elasticity of the skin, the angle that the blade is being used, and the reaction of the body that's being scraped, all three of those factors can make the abrasion pattern different from the actual serrated pattern of the knife. If the serrated pattern of one knife has a one-eighth gap, and then a one-quarter inch, one-eighth and then one-quarter inches or three-eighths inch and a half an inch, whatever the pattern is, those three factors could make two knives with obviously different serrated patterns cause the same type of injury. Any serrated knife could cause these kinds of injuries that you saw, but if you have a larger serration, you usually differentiate that more from a smaller serration. But, if the bodies do move, there will be distortion on the skin. (BETR 1889)

I hate to use the word "speculation," but you can see the pattern. You can tell the difference between a small serration and a large serration. And sure, there are distortions when the skin is moved like the elasticity of the skin. I never said that knife caused those injuries. I said a knife of this type, of these types are consistent with causing those types of injuries. But I never said that these two knives sitting here caused those injuries. Any number of knives that have serrated patterns could cause these injuries. Any number of items that have these diameters could cause those other injuries. (BETR 1890)

State's Exhibit 70C is the genital region. Here on the thighs, you can see all the superficial gouging type wounds and some of them are deep. They go into the soft tissues. This is all this area around here on the thighs. Now, here, this red area here. This is the shaft of the penis, and here is where the scrotal sac and testes should be. So, what we have is that the skin overlying the penis, the head of the penis, has been carved off. It's gone. It's not there.

Around here, this large opening here, are multiple cuts. Here's the large cutting wound around here to cut this out. This is the cutting here, and the red is the shaft of the penis. (R 1891) His penis has been not cut off, the skin has been taken off the penis. A man's penis has glands in it, and those are contained in the shaft of the penis. When you get to the head of the penis, the glands stop. And in this case, the skin off the penis was actually dissected off. The glands in the shaft of the penis are relatively intact. I would think it would take some skill and precision to do that. Well, I don't know if it would take someone who had some medical knowledge. (BETR 1892)

Someone who had some knowledge of anatomy. If this was to be done, this dissection where the skin is cut off, that would take a very sharp instrument, such as a razor or sharp knife. If I were asked to do this back in medical school in gross anatomy, it is not something I think I could do in five or ten minutes. I would think

it would take me longer than five or ten minutes in my lab with a scalpel. (BETR 1893) It would be difficult to do it in the dark. It would take longer than if you were doing it in your lab under ideal conditions. It would be very difficult to do in the water. If I were in the water and it was dark, it would take even longer. If I were doing it in the dark, in the water, with mosquitos all around me, that would make it even much more difficult. I would think it would really be a tedious task to do it in the dark, in the water, with mosquitos all around. It would be a very tedious task for a skilled pathologist. (BETR 1894)

The boy who was mutilated who has just been described bled to death, he exsanguinated. He bled to death along with his other injuries. My autopsy reflects that the internal organs were pale. They become pale when the blood is gone. People have a little bit more than five pints of blood. If you pour out five pints of blood out here on the floor, it would make a big mess. (BETR 1895) You could clean it up, but not very easily. It's not easy to clean blood. Blood soaks into the ground, blood soaks into wood. The homicide we are talking about I would agree that this could have happened in one of three ways, in the water, on the bank there by the side of the ditch, or it could have happened somewhere else. I agree those are the three possibilities of how this could have happened. It would be very difficult for it to happen in the water. (BETR 1896)

I don't know the absorption rate of blood at the scene and in soil. But I just would like to clarify one fact for the Court, that I am not a prosecution witness. The crime lab is an independent agency. We don't work for the defense. (BETR 1897) We don't work for the prosecution. We are an independent agency; so, I'd just like to clarify that.

Based on my skills, my education, my training as a forensic pathologist, the experience that I have had over the years, with my knowledge of the amount of blood that was lost from not only Chris Byers but these other boys -- they will bleed as well. With the amount of blood that you would expect from those injuries, it would be quite difficult to clean up that amount of blood at a scene in the dark. (BETR 1898)

So of the three possibilities that I agreed with you on, in the water, on the bank, or somewhere else, the most plausible is it happened somewhere else, of those three. What I understand, the scene is bloodless, the information that was provided to me. I don't know if I am interpreting that information correctly. I just think it is difficult to have injuries of this nature without having any blood. I would question that about the blood unless it happened in the water or it happened at some other place. I stated that I couldn't do this in the water personally. I have had an opportunity to review the coroner's reports and read them. (BETR 1899)

I examined the bodies and made my findings. I remember the prosecutor asked me about generalities about the time of death yesterday. We have had multiple discussions. I can't pinpoint a number. A half a dozen would be fair. Based on my skill, and my training, and my experience, and my review of the bodies themselves, the information contained in the coroner's report, taking in all of the factors of the environment, manner of death, I can give you an estimate of a range. (BETR 1900)

With the bodies being in the water it makes it much more difficult, especially with the fact that the lividity fixing, being fixed compared to being unfixed, you know. Based, I assume you are asking me to base my opinion just on that one factor in the coroner's report.

Well, given a very wide open range for the fixation of the lividity, calculating back, it is very, very difficult to do just based on lividity alone. But, based on the other factors that I would have to take into consideration, you could say that the lividity was fixed up to 12 to 15 hours. It could be longer, and it could be shorter. (BETR 1901)

In my opinion based on what I have read, my opinion as to the time of death, it would be a very broad range between 1:00 a.m. to 5:00 a.m., Thursday, May 6. That opinion is based upon the facts that I know. Determination of the time of

death is more of an art and not a science. And it's very subjective. And I am going by one fact that was put in the report. I wasn't at the scene. I didn't have the opportunity to review, to examine the bodies at the scene. But, based on the information that I have, it could be a little shorter. It could be a little longer. That's my opinion, in that range. (BETR 1902)

REDIRECT EXAMINATION OF DR. FRANK PERETTI BY BRENT DAVIS

I told Mr. Fogleman when he came to my office that it would be difficult to give an accurate estimation as to the time of death. I said the best thing to do would be to have the coroner, based on what he has in his report. I told you at that time that I could not give an accurate estimation as to time of death based on one factor alone. In that coroner's report, the only factor I had was one. That one factor was lividity. I am familiar with an author, Vincent DeMayo. Vince and I are on a first name basis. (BETR 1903)

This book on forensic pathology is an accepted text in the field. I have read that portion of Dr. DeMayo's book regarding the estimation of the time of death. He is a noted forensic pathologist. There is a portion that indicates how significant lividity is in making a determination at the time of death. I will read the sentence regarding the single factor of lividity in terms of estimating time of death. There are two sentences. It says, "Fixation can occur before eight to 12 hours if

decomposition is accelerated, or at 24 to 36 hours if delayed by cool temperatures.

(BETR 1904)

Thus, the statement that rigor mortis becomes fixed at eight to 12 hours, is really just "a vague generalization." Dr. DeMayo, a renowned forensic pathologist, indicates that eight- to 12-hour time period is just a generalization. One of the factors which would throw that off would be the cooling of the body. The estimate of the water temperature was approximately 60 degrees. I don't know if that would mean that if the bodies were immediately submerged in water, that they would cool by degrees just like that; but they would cool. We would see a significant cooling simultaneously with their bodies, or nearly simultaneously with their bodies being submerged. (BETR 1905)

The book says livor mortis is not very important in determining the time of death. Livor mortis is more important in determining the position of a body. When determining time of death, you look for two other factors, or you need two other factors to even make an estimate, algor mortis and livor mortis, which is body temperature and body stiffness. Without the three factors or information regarding three, any estimation would be very difficult to estimate. The coroner's report reflects he didn't make any determinations as to rigor. The reason was because to

do that would require him to manipulate or mess up the bindings that were binding the children. (BETR 1906)

For the rigor mortis in the extremities. So he couldn't make that determination as to that factor, in the extremities. To determine algor mortis, you would need, the best thing would be to take a rectal livid temperature. To take a rectal temperature could possibly affect evidence of a sexual or sodomization of the children. I didn't have that information to work with. I did indicate yesterday that there were no mosquito bites or any such bites on the children. The sexual mutilation, basically, the skin was peeled off the penis and the head of the penis was removed, along with the scrotal sac and testes. (BETR 1907)

I believe I saw a photograph of where the crime scene occurred as far as the configuration of the ditch bank, what the ditch bank is like, what the creek banks are like near the water. There was one weapon used on these three boys that was a sharp object such as a knife. One weapon that would be consistent with the size of a broom handle (BETR 1908).

Another injury caused by a weapon that is large and blunt. My testimony is not that these two particular items caused the injuries, but I found injuries consistent with three different type weapons. No sperm was detected either in the anal area or the mouth of the children. The effect of the bodies being submerged

in water, number 1, and anal dilation of the anus, the water would enter into the body cavities, and it could wash the sperm away (BETR 1909).

When we talk about serrations, we are basically talking about the same thing as saw teeth, like on a saw. If you take a saw, you move it back and forth, you are not going to be able to tell that that is a serrated injury. It's just going to be a straight-line cut. If you take a saw and slap it down across your arm, you are able to see where the teeth or the points of that saw come in contact with the skin. The injuries that I determined were serrated, those are no injuries where the blade moved. They are injuries of the blade rubbing against the skin. One way that you would see serrated patterns would be if the serrations were dragged crossways across the skin. And if the serrations were slapped down on the skin, then you would also see a serrated pattern. (BETR 1910) But if the serrations are moved, you end up with a straight line. The smaller the serration or the distance between points, then the less distance you have to move that knife to end up with a straight-line incision.

I am familiar with medical literature regarding injuries from sodomy to small children which indicates that there may not be any lacerations inside the anal area. There is literature to that effect. The injuries that you look for inside the anal

area would be consistent if there was forced penetration of a large object. (BETR 1911)

With attempted anal penetration, you would not expect to find the lacerations unless the object did not enter into the anus. Lack of sperm both in the anal area and the mouth, would indicate ejaculation. There could be sexual assault and sexual attack without the presence the sperm. The lacerations and the degree of trauma to the anal area would be based on the size of the penis or object if the person was sexually attacked.

One of the boys that I indicated yesterday had a round type circular abrasion to the forehead that looked like another abrasion in the center was consistent with a belt buckle type injury. (BETR 1912) It was to the boy's forehead. As to the time of death, that was based on when they were last seen, when they were found dead, and what was found, the lividity when the coroner arrived at the scene. My opinion was not based on all those factors. It was based on the lividity and the two factors that I just mentioned I would have to take into consideration. They couldn't have died before they were last seen or after they were found. And the only medical factor that I based it on was lividity, which was information I obtained out of the coroner's report. (BETR 1913)

In day-to-day business as a forensic pathologist, presented with the one factor of lividity and no other information in terms of body temperature, amount of rigor, anything of that nature, I wouldn't be too comfortable with just that one factor, lividity; making estimations regarding time of death. The coroner's report wasn't written to the standards that it should have been written to. After I received the bodies, the coroner contact me requesting information concerning my conclusion that he had failed to get the information that a coroner would normally get prior to sending the bodies to your office. (BETR 1914)

(BETR 1915-1917 is omitted as irrelevant to Mr. Baldwin's appeal)

RECROSS EXAMINATION OF DR. FRANK PERETTI BY PAUL FORD

The coroner report indicates what the temperature of the water was, approximately 60 degrees. I was aware of that fact when I gave my opinion here today and I took that into consideration. I took that into consideration, my experience, and knowledge that I have gained over the years of being a pathologist. I took into consideration factors like how hot it was that day, the ambient temperature, and the air temperature. (BETR 1918) I took into account the water temperature, when they disappeared, when they were found, the cause of death, and the manner of death. I also indicated that I had two other doctors that work

with me. I discussed my opinion with them. They were in agreement with my opinion. (BETR 1919)

REDIRECT EXAMINATION OF DR. FRANK PERETTI BY BRENT DAVIS

In the coroner's report that I referred to which provided the one factor upon which my opinion is based, indicated no differentiation between the lividity in either of the three boys. The coroner's report states lividity, blanches with pressure. It doesn't mention the amount of lividity, where the lividity is. We are building a house starting with the roof and -not with the foundation.

It just says lividity, blanches with pressure. I don't know where he is measuring that from, what part of the body. I have no idea. It would be best to ask him. (BETR 1920)

REDIRECT EXAMINATION OF DR. FRANK PERETTI BY VAL PRICE

I believe, I would assume you would find blood on the clothing if the boys had been beaten with their clothes on. (BETR 1921)

(BETR 1922-1945 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF MICHAEL CARSON BY BRENT DAVIS

I am sixteen years old and attend the alternative school. I am in the ninth grade. I live in the Jonesboro area. Back in August of last year, I was in the Craighead County Juvenile Detention Facility for burglary. While I was there,

Jason Baldwin was in the Juvenile Detention Facility at the same time. I see him in the courtroom, sitting right there. (BETR 1946)

(BETR 1947 is omitted as irrelevant to Mr. Baldwin's appeal)

The first two days I was in lock down. After the first two days, I was allowed to leave my cell and associate with the other people in there. During that time, I had occasion to associate with Jason Baldwin. I would usually watch TV but one evening they needed somebody to play spades with, and I told them I don't know how to play, and they said they would teach me. Me and Jason, Beddle and another Jason were involved in that. (BETR 1948)

While I was playing cards or in contact with this Jason Baldwin, he mentioned his involvement in the murders of the three eight-year-olds. The first time I asked him if he did it, he denied it in front of Jason and Beddle.

We were sitting there playing spades. I wanted to get to know everybody else in there. I just wanted to get to know them, and I just straight out asked him if he did it, and he denied it the first time. The other fellows were around at that time when I asked him. I had an occasion again while I was in the detention facility to ask him was he involved in the murders of the three eight-year-olds. This occurred when me and Jason Baldwin were scraping up the cards to go into our cells for lunch because they make us go into our cells for lunch. We was scraping up the

cards. I said, just between me and you, did you do it. I won't say a word. He said yes and he went into detail about it. (BETR 1949) It was just me and Jason. He told me how he dismembered the kids, or I don't exactly how many kids. He just said he dismembered them. He sucked the blood from the penis and scrotum and put the balls in his mouth. He acted pretty serious about it. I put my hands on the table and I just pushed back and I left him there with the cards and I went to my cell. (BETR 1950)

I testified under oath that Jason Baldwin told me this while I was in the detention facility. I believe I came forward with this information. I'm not really sure, but I believe it was a couple months later. I was walking from my room into the living room -- I was in my room listening to the radio -- I was walking into the living room. My dad was watching something on the case on TV. They showed Jason's face and I told him that was who I was in there with, and I told him about it, about the stuff I knew.

I told my father what I had heard while I was in the detention facility. I did not communicate that to anybody besides my father. (BETR 1951)

At that point, I didn't tell anybody when I first got out of the detention facility or when I first saw him on TV and recognized and recalled what happened. Because I didn't want to get involved with it. I mean, I had just got out of jail. I

didn't want no more to do with the court system. At the beginning of the previous trial that I first made contact with law enforcement officers. The first night of the last trial I called you. I came forward because I saw the family on TV and saw how broken hearted they were about their children being missing. And I have got a soft heart. I couldn't take it. (BETR 1952) After I came forward and talked with you, I then talked with and gave a statement to Officer Charlie Beau. I was not offered anything as far as a reward or anything of that nature, and if I was, I would deny it. I never requested or asked for special treatment in order for me to give this statement. (BETR 1954)

(BETR 1955-1956 is omitted as irrelevant to Mr. Baldwin's appeal)

CROSS EXAMINATION OF MICHAEL CARSON BY PAUL FORD

Then the third day I am there, I ask him and he tells me no. The fourth day I am there I ask him and he says yes. He told me all these other details the same time when I asked him the second time on the fourth day. (BETR 1957)

I had known him for about 24 hours and he told me this. I am certain that the day he told me he did it was when he gave me the details. (BETR 1958)

(BETR 1959 is omitted as irrelevant to Mr. Baldwin's appeal)

I am not telling you this statement is written down wrong. It's written down correctly. You are probably reading it the way it was typed but when he asked me

the question, he asked me the next day, I thought at that time he was asking the next day after the first time he denied it. The next day after he denied was the day he told me that he did it and the day he admitted everything. Most likely I misunderstood his question that day. (BETR 1960)

The alternative school is a school for kids who have problems keeping up or trouble makers. I'm not a trouble maker but that's where I go to school. I can't say that I'm a good kid. I'm not the best kid. I'm just average. I have been in trouble. I have been convicted of some crimes. I am 16. The time I was in jail I was in jail for burglary. I can tell you where the home was that I burglarized but I don't remember the name. (BETR 1961) It was to steal guns. I have burglarized someone else's home. I have been convicted of burglary of another residence. (BETR 1962) I brok into the lake cabin on Lake Charles of Kenneth and Juanita Chrisman. (BETR 1963) I am guilty of burglarizing the home of Kenneth and Juanita Chrisman and destroying their property inside. That's in Lawrence County. I am also guilty of burglary in Craighead County. The Craighead County burglary is the reason I was in jail in August. I was there for five days.

October is when I told my daddy. I don't remember the day that I first met with Mr. Davis and gave a statement. (BETR1964) I went from October to February of '94 without telling anyone other than my father. And then in February

my soft heart got to me. I have had one conversation about this matter with Danny Williams. I have had a conversation with Danny Williams about what I know about this after I talked to Brent Davis. (BETR 1965)

When I went to jail in August of '93, I did not know anything about this matter. All I knew is that they were supposed to have killed these three boys. That was it. The first time I saw him in jail I know that's why he was there. (BETR 1966)

(BETR 1967 is omitted as irrelevant to Mr. Baldwin's appeal)

It was two or three days later before I got to talk to Charlie Beall when I gave him the details. The day he told me he did it is the day he told me the details, at that exact moment. (BETR 1968)

When I was cleaning up the cards ready to go in for lunch. The conversation, I'm not certain, probably was about two or three minutes. I remained silent from August to February because I did not want to get involved. (BETR 1969)

(At BETR 1970-1975, Mr. Davis questioned the witness by reading from a statement he gave to the police in order to make his answers concise (BETR 1970).

Redirect examination continued as follows:)

REDIRECT EXAMINATION OF MICHAEL CARSON BY BRENT DAVIS

Jason made the statement that Jessie Misskelley messed everything up. Jason did not tell me how Jessie Misskelley messed everything up. He said he was going to kick his ass. He said he was going to walk scot-free. Nothing was going to happen to him. I am telling the truth here(BETR 1975)

(BETR 1976-1979 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMAN

I am the same Detective Allen that has previously testified. (BETR 1979) I was asked to make contact with some property owners at Lakeshore Trailer Park and also get with the Arkansas State Police dive team. I took some action in relation to this case on November 17th, 1993, with Sergeant Tommy Wicker of the Arkansas State Police and numerous other members of the dive team, including Joel Mullins and Lieutenant Yancey was also assisting them with the Shelby county Sheriff's Office. After meeting with Tommy Wicker and the other members of the dive team, we went to the area of Lakeshore lake and we had two particular areas that the divers were gonna check the southwest corner of the lake. I can identify State's Exhibit 79. This is a map that was done of the area that we searched the lake. (BETR 1980)

(State's Exhibit 79 is received in evidence.)

(MARKING) This is the lake area here. These are the property lines through here and the lake front. This would be the property lines and this would be the lake itself here.

(MARKING) And this up here is water, too. The lake is almost square. I am familiar with the location of the residence where Jason Baldwin resided at the time he was arrested. (BETR 1981)

After going to that area, we assembled with the team of divers at two locations in the lake. The one team of divers went through lot number 244 which is the lot to the west, one lot next to the Baldwin residence. They went through this lot here to the bank and dove in this area. Half of the divers dived over in this corner which was a vacant lot on this side of the lake that should be lot 37 and 36 here. I can take that pen and draw in general the area that was searched in proximity to lot 36 in general. (BETR 1982) I know if items were recovered. (BETR 1984) I obtained the knife, State's Exhibit 17, from Joel Mullins. At the bank, which would be lot 244, which would be next to this. I received it from Mullins here around these grouping of trees. I was on the bank. He was coming out. There's a group of three trees here which is right next to the chain link fence at the property line from the Baldwin residence and lot 244 which is a residence we used to make entry into the lake. I got the knife marked for identification as State's

Exhibit 77 from Joel Mullins. After receiving the knife, I took it there and Lieutenant Yancey with the Shelby County Sheriff's Department advised me that I needed to put it in something that would hold water to keep it preserved. So I got a container and put some lake water in the container and placed the knife in there and transported it. (BETR 1985)

I was the recorder of the measurements and was present at that time. The grouping of trees that is in the property line between the Baldwin residence and the lot there -- there is a grouping of trees and a satellite dish which is on the next permanent structure we could find was used to measure from the satellite dish which was one property over that was mounted. I recorded the distance from the trees to the location forty-seven foot from the grouping of trees, from the outside of it - to the location that the diver located the knife here. It one hundred feet, six inches. Somebody gave me a degree of the angle and advised me to write down a 30 degree heading. I can identify photographs marked for identification as State's Exhibit 75 and 76. (BETR 1986)

They fairly and accurately portray the scene as it appeared to me.

(State's Exhibits 75 and 76 are received in evidence)

The trailer here is the Baldwin trailer, and this item right here is a fishing pier. This is the grouping of trees. You can see there is a chain link fence and the

grouping of trees right there. This is the grouping of the trees that is the point of measure here. (BETR 1987)

In this photograph the satellite dish is visible here beside this white fence on the back of this lot. I am circling the satellite dish. Pointing, the Baldwin residence is the trailer here with the gray car parked out here and this one would be here with the fishing pier directly behind it. State's Exhibit 76 is taken from a different angle. In this photograph this would be the fishing pier which was referred to in the other photograph and here would be in the other side of the bank that the divers also searched in this vacant lot here. This would be the trailer that was referred to circled where the guy lives on this lot here. Circling the pier behind Jason Baldwin's residence. Pointing, here is the grouping of trees as you see in those photographs that I have circled. (BETR 1988)

In this diagram here the fishing pier is not there but it comes off right in this area right here and comes out, and the satellite dish is drawn in here, a hundred foot six inches from the satellite dish to the location and from the grouping of trees, forty-seven feet. Marking, that location where the knife was located.

CROSS EXAMINATION OF MIKE ALLEN BY SCOTT DAVIDSON

State's Number 79 is just of a part of the lake, the southwest corner of the lake. The lake is actually much bigger than the portion depicted on this exhibit. I

have no idea how many trailer lots are there out there. I'd be guessing about how many docks are out there.. Probably thirty. I've been in Crittenden County since '81, and I have never seen a boat on that lake. I don't believe there are any boat ramps. (BETR 1989)

In this photograph there is a boat ramp. This drawing is one they set up when they first incorporated this area. I have no earthly idea how many trailers and how many lots. The pictures that I just introduced, is just showing a small portion of that area. I do not know how many people live out there. We dragged two certain portions of that lake. After we discovered something, they continued to look in that given area from around where the knife was located. (BETR 1990) Mr. Echols was charged with this crime on June 3. (BETR 1991)

CROSS EXAMINATION OF MIKE ALLEN BY ROBIN WADLEY

I can draw where the knife was found on State's Exhibit 75. It was a hundred foot, six inches to this location and forty- seven foot. I can show them where, on this photograph where I believe it to be. (BETR 1992)

Roughly this is the area. The Baldwin trailer is right here. This is the fishing pier right here. I have no idea the depth of that water where the knife was found. A man could not walk out there and look. I was out there. A person couldn't walk out there, retrieve it and walk back out. (BETR 1993)

We had to have a diver. The search took place on 11-17-93 and this photograph was not taken on the same day. It was taken after 11-17-93, and Lieutenant Sudbury took that photograph in a Memphis helicopter. We took photographs out there the day. I am not telling this jury that this knife is the murder weapon. I don't know if this lake is open to anyone. I don't know what their rules are out there. I do not know if they have any rules as to where they can fish or who can go there or whatever. (BETR 1994)

I do not know how many people out there fish. I did not go door-to-door at this trailer park and ask people if they fish. I assume they go fishing from their back pier. I did not go door-to-door and ask people whether or not they owned knives like this. I did not go door-to-door and ask them, we are conducting an investigation. Have you lost a serrated knife out there. I never made that inquiry at all.

I was very careful on how I took care of that knife once it was handed to me. (BETR 1995) The reason I was very careful was because I wanted to make sure if there was anything on that knife it would be sent off to the Crime Lab. I hand carried it to the Crime Lab. There were no fingerprints found on that knife. There was no blood found on that knife. There was nothing found on that knife. I would assume other tests were performed on this knife. (BETR 1996)

I don't know when it was made in Japan. I did not do any metallurgy tests on this knife. Best of my knowledge it was made in like I told you '85 or '86. I do not know how long that lake has been where it is. It has been there as long as I have lived in Crittenden County. I do not know who lived in that trailer before Jason lived there. (BETR 1997)

I am not trying to tell this jury that the only person who had access down there to where this knife was found was Jason Baldwin. The knife was distributed in '85, '86 from what I have been able to run down on it. (BETR 1998)

I would assume that the knife could have been in that lake back in 1986. I don't know if it could have been in that lake the day before you went out there. (BETR 1999) After this knife was brought out of the lake, they concentrated the search from the other area over into that area - Yancey was there and he came over there and dove in that area. They saturated more in that area at that time. Besides the other area of the vacant lot, no other place was looked at.

REDIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMAN

Charles Jason Baldwin was the only defendant that lived in Lakeshore. (BETR 2000)

The area near the vacant lot was searched because it was an accessible point to a girlfriend of Damien Echols, who was Domini Teer, who lived across down

from that location. On West Lake Drive. That is the only accessible vacant lot that we searched because of the connection with the residence of Domini Teer. State's Exhibit 79 was drawn by an engineer. The measurements are exact. They are done by an engineer. My marking on the photograph is more of a guesstimate. The tree that was used as a reference point, was a grouping of like three trees. I don't know how tall it was. It would be, I would just be guessing, it would be to the ceiling here in the courtroom. (BETR 2001) The fishing pier behind the Baldwin residence was closest to where the knife was found.

RECROSS EXAMINATION OF MIKE ALLEN BY SCOTT DAVIDSON

I have no idea who may have been on that fishing pier in June of '93, July of '93 or August of '93. I'm handing you again a sheet that I believe you looked at. I assume the sheet shows all of the lots as you know them to be out there in the trailer park rather than just a few in a small corner. The area was searched. I don't know how many feet or how far they went out. They made these circular motions with their ropes. They would be more apt to be able to tell you under water how far they went out there and what they searched. (BETR 2002)

I have no idea how long the ropes were. I guess they were a hundred foot, six inches they measured with those ropes. I can mark on there roughly the area that was searched. The divers are under water, and I don't know where they are

going. There's not like a bubble trail or whatever. I don't know exactly where they searched and how much they searched. I saw them when they came up in different areas.

(Defendant Echols Exhibit 7 is received in evidence)

I talked to personally myself a handful in this investigation live at Lakeshore Trailer Park. (BETR 2003)

I don't have a number of other people that we talked to regarding who lived there. I don't really know how many other suspects live out there.

RECROSS EXAMINATION OF MIKE ALLEN BY ROBIN WADLEY

Prosecutor Fogleman showed me this photograph and asked me about the pier behind the Baldwin trailer. If this knife was thrown, I would say it would have been thrown from an area on that side within a given, whatever a person had on his arm reach. (BETR 2004) I said that if it was thrown, then that area on that side of the lake would be an area which I would say with common sense would show --

I am not saying the only place that that knife could have been placed in the water or the only way that knife could have I would not agree with that knife could have been put in that water from anywhere. I would make common sense that the knife if it was dropped out of a boat, if it was thrown -- but as far as when you said

a while ago would that knife have been thrown from just the Baldwin residence, I said it would make good sense that side of the bank -- (BETR 2005)

It would be too far from any other sides of the bank. This is not the only place that knife could have been placed in. I don't know how the knife got to that location. I don't know if it was thrown. I don't know how it got there. That's exactly right. That's what we know. We got out there around 10:30 that morning, and I guess we were out there roughly two, two and a half hours that day. (BETR 2006) I got out there around 10:30 A.M. From memory I'm thinking 10:30 A.M. was about the time they got suited up and started to look. They located the knife at 11:35 A.M., about an hour.

REDIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMAN

After they found the knife, they pulled up numerous items from the lake. Old shoes, bowling ball, all kind of things. Mattress springs, a lot of stuff in the water. They found no other knives. So Exhibit 77 for identification is the only knife found of any kind. The search was made at the direction Inspector Gitchell. He instructed me to get with Tommy Wicker of the state police. (BETR 2007)

DIRECT EXAMINATION OF JOEL MULLINS BY JOHN FOGLEMAN

I'm a corporal with the Arkansas State Police. On November 17, 1993, I participated in a dive in Crittenden County. The team was organized almost ten

years ago for a need for underwater search and recovery for evidence and crime scenes and stolen property, body searches, recovery of stolen vehicles, and for the past ten years our team has assisted other departments in doing those type searches. I came to be in Crittenden County on November 17th due to a normal request from the investigators in West Memphis to come and search the lake in the trailer park there in West Memphis. (BETR 2008)

When we came to Crittenden County and went to Lakeshore, and once we arrived there, the three of us that were available at this time and two of the divers went over to an area, we were in the same corner. I don't know lot numbers but they went over and searched in one area, and I began to search off of a pier that ran straight out in the water from the shoreline right behind the Baldwin trailer. In State's Exhibit 75, I see the pier in that photograph. I began trying the metal detector and there was too much other debris, too many metal objects and things, so I abandoned that. We just began an inch by inch --the way we conducted this particular search -- a subject held a line, a small nylon line, and then I worked on an arc out from that line. I'm holding the spool line in my hand and I would search right next to the shoreline. Then I would move out about a foot and a half and then I'd make another pass and move out a foot and a half and we ended up in this

particular search like 55 feet out from the shoreline, in my particular search.

(BETR 2009)

That would be a radius of 55 feet. It would have gone 55 feet down the bank from where I started and then make the arc. Once I got out past the pier, then the man on the shore would signal me with the tug on the rope that I had reached that point and to turn around and start back. I didn't want the rope to get tangled up onto the pier itself. On the other side, we went pretty much the same distance. Didn't go all the way to the shoreline, the water would be pretty shallow over there. So I would go, say, four foot deep and then he would signal again. We were just trying to keep it uniform and cover everything we can. I can identify State's Exhibit. I found this straight out from the pier that we were searching in front of. When I located the knife, I marked the spot where the knife was with a marker buoy. (BETR 2010)

I swam the knife to shore and handed it to Investigator Mike Allen. The purpose of the marker buoy is to locate in it in reference to other objects, how far away it was from the pier and try and triangulate it.

(State's Exhibit 77 is received in evidence)

The knife was stuck in the mud and I'm feeling around along with my right hand, and my right hand came up and hit it. State's Exhibit 84 is me and my diving

equipment and they asked me to hold the knife up as I was swimming to shore.

(BETR 2011)

It fairly and accurately portrays me after I recovered this knife.

(State's Exhibit 84 is received in evidence)

In relation to the pier it runs pretty much at a ninety degree angle straight away from the shoreline out to the water and then if you just extended that straight on out another, I guess it would be thirty, thirty-five feet out from the end of the pier straight on out, is where the knife was.

CROSS EXAMINATION OF JOEL MULLINS BY SCOTT DAVIDSON

I had a metal detector out there. I did not continue with the metal detector because there were lots of metal items in the lake. (BETR 2012)

The area of the lake that I searched was a small portion of the lake. After I found this particular item, I did not search the rest of the lake. I don't know what items may have been in the rest of the lake. No one asked me go over and search the pond by the Blue Beacon. I found a bunch of other items other than just the knife. I don't recall what we actually pulled out. There were rotted tennis shoes, beer cans, broken glass, old mattress springs that had rotted out, lawn chairs, seemed like an old table, metal sheeting, a bowling ball. (BETR 2013)

All that I just named was like within a ten foot radius of the pier and once I got out of the junkyard, that's where I came across. The knife was farther out. It was in a position like someone would have thrown it rather than dropped it off a pier. All sorts of things have been thrown off that pier.

CROSS EXAMINATION OF JOEL MULLINS BY PAUL FORD

The water where the, knife was found was approximately eight feet. Deep enough for a boat to navigate. I make no effort to determine how that knife would suspend itself down into the water, whether it would go straight down, float down. This knife was actually sticking in the mud, blade first. (BETR 2014)

REDIRECT EXAMINATION OF JOEL MULLINS BY JOHN FOGLEMAN

I found no other knives.

DIRECT EXAMINATION OF SHANE GRIFFIN BY JOHN FOGLEMAN

I am a narcotics detective for the West Memphis Police Department. On May 6, 1993, I was with narcotics at that time. That morning around eight o'clock we were notified that there were three young juveniles that were missing. As soon as I arrived at work, I started searching for the juveniles. In an area that they thought they were possibly seen more to the interstate, and it is a wooded area there, and I was searching that area mainly on foot. (BETR 2015)

My search was interrupted by having to go serve a search warrant unrelated to this case. Just as we were finishing up the search, Inspector Gitchell called my captain and informed us that they had found the bodies of the victims. In response, we were asked to arrive at the scene to assist the detectives on the crime scene. I played some part in the recovery of the children's bikes. Those bikes were recovered at Ten Mile Bayou and there's a little pipeline that crosses there. They were recovered on the east side of the little pipe. I am circling where the pipe is and marking my initials. (BETR 2016)

(State's Exhibits 56, 57 and 58 are received in evidence)

I have looked at those photographs and I recognize them. What is depicted in 56 is there was a group of search and rescue guys that had a pole. They were dragging the bayou at the east side of the pipe. They felt something in the ditch with the pipe they had and handed it to me at the time they pulled it up out of there, and it was one of the bikes that was on the end of the hook. (BETR 2017)

This one shows the other bike that was found right close to it on the east side of the pipe. It was already pulled out and laid up on --this was the pipeline that they were found beside. This is the same pipeline I circled on State's Exhibit 101. This one shows both of the bikes pulled out with myself and the search and rescue gentlemen there with the bikes laying on the pipeline. I recognize those bikes.

Those are the two bikes I pulled out of the bayou. Myself and Detective Durham took measurements of the location where we found the three victims in the bayou. We used particular reference points to assist in taking those measurements. There was a tree on the west side of the bank and a tree on the east side of the bank. (BETR 2018)

In State's Exhibit Thirteen, the two trees are this one on the west side and this one on the east side. In relation to the trees the body of Michael Moore found was found ten feet six inches east of the tree on the east bank, and it was found fourteen foot seven inches southwest of the tree on the east bank. The second victim was found twenty-seven foot south of the first victim. Victim number three was found thirty-two foot south of victim number one. (BETR 2019)

CROSS EXAMINATION OF SHANE GRIFFIN BY SCOTT DAVIDSON

I am the officer that actually pulled the bikes out of the water. The search and rescue team felt something under the water, and I came over and actually took the hooks and pulled them up out of the water. I had leather gloves on. I'm not familiar with what fingerprints were found on that bike. I just took custody of them from the scene. (BETR 2020)

(BETR 2021-2024 is omitted as irrelevant to Mr. Baldwin's appeal)

REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN

I am the same Detective Ridge who's previously testified. On June the third, 1993, I had a conversation with Jessie Misskelley, Junior. Subsequent to that, I obtained search warrants for the residences of Damien Echols and Jason Baldwin. The Crime Lab was called and assistance was requested in collecting evidence at the scene of those searches. The officers were divided into teams. We secured those residences. Myself, Lieutenant Sudbury and personnel from the Arkansas State Crime' Lab searched those residences. At the first scene, it was myself, Lieutenant Sudbury and a uniformed officer that secured the residence of Damien Echols. Then myself, Lieutenant Sudbury and the Crime Lab personnel searched that residence. (BETR 2025)

Another team was securing another residence, and there were two residences that were secured and searched at the same time. The residence of Jason Baldwin, Domini Teer and Jessie Misskelley, Junior. Myself, Lisa Sakevicius of the Arkansas State Crime Lab and Kermit Channel of the Arkansas State Crime Lab went to the residence of Damien Echols. That residence was located at 2706 South Grove in West Memphis, Arkansas. The residence of Jason Baldwin was at 245 South Lake Drive West in Lakeshore Trailer Park out in the county. Damien

Echols, Jason Baldwin, Michelle Echols and Domini Teer were at the residence of Damien Echols when we went to execute the search warrant. (BETR 2026)

Michelle Echols is the sister of Damien Echols. She is approximately fifteen, to the best of my knowledge. Living in the residence at that time was Damien Echols, Michelle Echols, Joe Hutchinson, the father of Damien Echols. Pam Hutchinson, the mother of Damien Echols, and Frances Goza. She is the grandmother of Damien Echols. From the Crime Lab was Lisa Sakevicius and Kermit Channel. We did, an area besides the wooded area. (BETR 2027)

That located was between the field and the ditch and including part of the field and then this area between this ditch and the field and including-part of that field, wheat field. The condition of the ground at that time when I did that grid search was smooth. There was grass, wheat growing in the area. I searched no automobile tracks, truck tracks.

CROSS EXAMINATION OF BRYN RIDGE BY PAUL FORD

This is the field. This is the crime scene here. We spread out and came this way all the way around the edge to the expressway and came back and came through this area again, covering part of the woods and the field. (BETR 2028)

The area here searched was the edges. This edge down in this area, and we walked back together down through here. We were spread out, but it wasn't what

you would call a grid pattern coming back. And then when we got to here, we came across in a grid-like pattern, this way. We did not grid search the wooded area here. We did a grid search this area here. The wooded section here and this area here was where the grid search occurred.

REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN

There were twelve of us walking from the wooded area down the edge of Ten Mile Bayou and then swinging around and coming back and going alongside in the field. We were an arm's length apart. (BETR 2029)

About six foot. I searched Damien Echols' residence, a black overcoat was not found. (BETR 2030)

(BETR 2031-2032 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN

I am an inspector of the criminal investigative division of the West Memphis Police Department. I decided to search the lake based upon a suggestion that Mr. Fogleman made if I had thought to do that or not. And based on his suggestion, we did that. But, it was not based on any crimestopper's tip. (BETR 2033)

Defendants Exhibit Six, I recognize it. I am familiar with this knife. I received that knife January the 8, 1994. And upon receiving that knife I in turn sent this knife to Genetic Design. Located in North Carolina. (BETR 2034) I deviated

from the normal procedure in this case because I saw what I thought to be some type of substance on the knife, I did not know what it was. It has been our practice during this case to send items to Genetic Design, so instead of going to the Crime Lab, I just sent it directly to Genetic. We were just talking about a matter of days because we were waiting for an analysis report on the knife before the court trial. It usually, it took several weeks to get information back we needed this information before the Misskelley trial. And it was on the 26th that I was able to talk with Mr. Byers about the knife. I received it from Joe, and the people with HBO. (BETR 2035)

(BETR 2036-2055 is omitted as irrelevant to Mr. Baldwin's appeal)

CROSS EXAMINATION OF GARY GITCHELL BY VAL PRICE

The knife that I referred to which has been marked for identification purposes as Defendant's Exhibit Number E-6, is approximately eight and three-quarters inches total in length.

That's the knife that I sent to Genetic Design Laboratory to do some testing. It appeared that there was a substance on the knife I sent to Genetic Design it appeared to be possible blood. It actually says that it appears to be possible blood, and another unknown substance on it and in the portion of the knife where the

knife is in a closed position. I also asked Genetic Design to determine if the (BETR 2056) substance on the knife, if it is animal or human blood.

On January 26th, 1994 I questioned John Mark Byers and read Mr. Byers a standard rights form and at the bottom of that, he waived those rights, and agreed to give a statement to me, and he signed the bottom of the form. According to this form it indicates that I read his rights at 9:45 a.m. on January 26, 1994, in Clay County, Arkansas. (BETR 2057)

I considered him to be a possible suspect in these homicides. The interview with Mr. Byers was tape recorded and has been transcribed. It began at approximately 9:45, and concluded about 10:10 a.m.

That is a standard process, that's a standard form that we use when we talk to individuals. There have been hundreds of people we have talked to in regards to this case, so this was a standard investigative process that we used at that time. Not each and every time that the West Memphis police Department talked to an individual about this case did I read them their rights prior to questioning. On some occasions I would start talking to an individual, and then at some point during the conversation read them their rights, and continue taking conversations. (BETR 2059)

CROSS EXAMINATION OF GARY GITCHELL BY PAUL FORD

I have been the head honcho of this entire investigation, I have overseen, and have been in charge of it from the time the bodies were found up until the present moment.

REDIRECT EXAMINATION OF GARY GITCHELL BY JOHN FOGLEMAN

This took place at the Clay County, during the trial of Jessie Misskelley. In the Courthouse. (BETR 2060)

(BETR 2061 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF ANTHONY HOLLINGSWORTH
BY JOHN FOGLEMAN

I live at Route 2, Box 1428 Sycamore in Marion. I live in Lakeshore Trailer Park. On Wednesday night, May 5, 1993. I went with my mother and others to pick up my aunt, grandmother, at the laundromat. I went with my brother, my sister, mom and dad, and my little brother's girlfriend. She worked at the laundromat. I don't know the name of the street. It is next to the dog track. On the opposite side of the interstate is the opposite side of the dog track. A Flash Market is right beside it. (BETR 2062) We went down on the service road going to Seventh Street. It's right beside the Blue Bacon and Love's. And on the way going that way to get to my grandmother we saw Damien and Dominique. Damien is in the courtroom, the black headed one. (BETR 2063) Dominique has red hair,

she is about 5-4, real thick, middle length hair. They were all wearing black, they looked what you would call dirty. After going by there, I picked up my grandmother. (BETR 2064)

CROSS EXAMINATION OF ANTHONY HOLLINGSWORTH
BY SCOTT DAVIDSON

We were on the service road and saw Dominique and Damien. In the car was my whole family plus another girl. This consisted of my father, Ricky Hollingsworth, Narlene Hollingsworth, Tabitha Hollingsworth, Tabitha is my sister. Mary Hollingsworth my oldest sister and Little Rick, my brother, (BETR 2065) and his girlfriend Sombra were in the car. I don't know Sombra's last name. We were going to pick up my grandmother from work. Grandmother got off work at 10:30. (BETR 2066) I don't remember what time I went down the service road. We were in a red Ford Escort station wagon. There are two seats plus in the back. There's two front seats, then yet have a back seat, and a spare or something like that and that's where most the kids were sitting in the back. Rick, Sombra, and Mary. My grandmother was going to be in the car too. I am sure I was on the service road. (BETR 2067) I was seated in the middle seat. Next to my grandmother when she got in. Sitting there was Tabitha, me, and which my dad was sitting in the front with Bo, which is Richard. There was enough room for her so she could get in. My mom Narlene was driving the car. I was on the passenger

side where the door is. I was sitting on the right. We haven't talked much about this around the house. Just off and on, not very often. I went to the Police station and made a statement (BETR 2068) regarding this the next day. I saw that Damien was wearing black pants with sort of a black shirt. The shirt wasn't black but the pants had white flowers on them. I'm sure that the people I mentioned were the ones in the car with me that night.

I went the very next day. When I talked with the Police I did not give them a statement. I did not write anything down the next day. The Police did write down that I signed that next (BETR 2069) day. I talked with Gary Gitchell. Whether it was the next day after the event, I don't have the slightest idea, that's been a year ago. I saw these people May 5th. On May 6th I talked to Gary Gitchell about this. I didn't give him a statement until May 7th, I think it was a Friday. I did not talk with any officer any after that. (BETR 2070) This is my signature at the bottom of this page. And I can read those dates. May 13th, the 25th day of May, Thursday. I also talked with them on May 25th. It could have been that's when I talked with them rather than these other times. I made my statement May 3rd, or May 25th. May 25th is when I talked to them. So it wasn't the next day. That's the only time that I've talked with them since then. The only time I talked with them was on a Friday, May 25th. (BETR 2071)

REDIRECT EXAMINATION OF ANTHONY HOLLINGSWORTH
BY JOHN FOGLEMAN

This is the statement that I gave to the Police. And it was on May 25th. Looking over that statement it helped to refresh my memory as to the time it was when I saw them. I told them what time I saw them and about what time I went to pick 'up my grandmother. It was 9:30. (BETR 2072) I said something about the condition of their clothes, other than they were just dirty. They was muddy. (BETR 2073)

DIRECT EXAMINATION OF NARLENE HOLLINGSWORTH
BY JOHN FOGLEMAN

I live at Lakeshore Estates. On May 5, 1993, I and two of my family members went to pick up Dixie at the Laundromat. It is on Ingram. We spent most of the day together, and she asked me that day would I come back and pick her up. Well, she got off at ten, but we got there a little earlier. We left home to go get her at exactly 9:30. All my children were with me. Mary, Rick, Tabitha and Anthony, and my ex- husband. (BETR 2074) Also a little girl name Sombra. Rick was thirteen at the time. Mary was ten. Anthony was 21. And Tabitha was 15. I think Sombra was 11 at the time. We went straight down the service road, went past Love's and all the way to the end, and then made that little curve which takes you from Second to Ingram. Approaching Love's and Blue Beacon. I saw Damien and

Dominique. Damien is in the courtroom, in the purple shirt. (BETR 2075) The black headed one.

I was driving the car. Damien had on a pair of black pants, and a dark shirt. Dominique had on a pair of tight pants, and she had flowers on her pants. I know they were her clothes because two or three days before I saw her with the same clothes on. (BETR 2076)

When I saw Damien and Dominique on the service road, I turned the lights on bright to make sure it was them. (BETR 2077) I didn't realize how many I had in the car with me and I was going to offer them a ride, but, I didn't have any room and only had a few minutes to get to the Laundromat. I remember Detective Dabbs and Diane Hester coming to talk to me. I gave a tape recorded statement to them. That was on May 10th. (BETR 2078)

CROSS EXAMINATION OF NARLENE HOLLINGSWORTH
BY SCOTT DAVIDSON

I talked with the Police about this May 7th. I talked to them many other times. about this. I don't know how many times. I didn't think it was anything unusual because the kids were on the street all the time anyway. I left at 9:30 to go get my ex-husband's stepmother. (BETR 2079) I was going to the Laundromat to pick her up. She got off around ten o'clock. We went down the service road all the way to the end until we got to Ingram. We were on the service road the entire time

until we got off at Ingram. Ingram is past were I saw Dominique and Darnien. I wanted to stop and pick them up, and give them a ride so Dominique wouldn't be on the streets. I don't think young children ought to be on the street after dark.

Dominique was only 14. There was another reason that I felt like I ought to stop.

(BETR 2080) I felt like I was getting sick. I felt like I wanted to throw up. That's when I passed them. We got down the street, stopped where I could throw up.

Stopped for a second, I was driving, but I slowed down a little bit because I was feeling sick, and I sure didn't want to throw up in the car. (BETR 2081)

I didn't want to stop at Robin Hood. It was in front of Love's that I wanted to stop. (BETR 2082) But I just started getting sick. I was driving an '82 Ford escort, red. I did not have a dream about that. I knew something was wrong because the children were missing, earlier. I knew that wasn't right for three eight year olds to be missing like that, it was getting late. I had seen these three children earlier that day. I saw them going down Weaver, in front of Weaver School on bicycles.

(BETR 2083) I saw three bicycles. I saw one little heavy set boy on a red one with black on it on this side, and he's the one I almost ran over. I like to have hit him. He came out in front of me all at once, and I almost ran over him. On May 5th at about 5 or 5:10. The reason why I know that it was those little boys is because Sombra was in the car with me again because. I couldn't find her mother to

put her with her. When I was going down the road, the little boy just whipped right out in (BETR 2084) front of me. He was in a big hurry to get somewhere. And the other little boy on the other bicycle was a little blonde headed boy with his little hair sticking up. Sombra raised up in the back seat and she said, I know them. I said you don't know them. She said, that's Steve Branch, I play with him everyday. We went on, and I slowed down and stopped and said something to the little boy. I said ya'll need to get on off the street and go home, I didn't know where they lived. They said, well were gonna play a little while and then we are gonna go home. That was about ten minutes after five. I don't know exactly. I was with all my children. (BETR 2085) Anthony lives on my land. I wouldn't say he lives out in the yard. He lives in a camper. He eats with me but he stays in the camper, he has to.

MR. FOGLEMAN: I don't see why this has anything to do with --

THE COURT: I'm having a little bit of trouble following your line of thought as far as where it's relevant.

THE WITNESS: Well, he didn't kill nobody.

THE COURT: Wait just a minute. You answer questions. Are you objecting to relevancy?

MR. FOGLEMAN: I'm objecting to the relevance.

THE COURT: Sustained. (BETR 2086).

(The witness continues:) I know where Highland's Trailer Court is. I went over there. Well, my daughter and her husband was into it, and she asked me earlier that day, would I go over there and check on a place to live for her, and talk to a man named David Dees that rents out mobile homes. I told her if I had the time I would. (BETR 2087)

(BETR 2088 is omitted as irrelevant to Mr. Baldwin's appeal)

When I went over at Highland Trailer Park, I was not there when there was a group of people out there. I didn't see Jessie Misskelley that day. I saw him Thursday. We came over there for a little while on that Wednesday, but it was a Thursday when I saw him, and I hollered at him three times before he turned around and answered me. I said, (BETR 2089) Jessie are you mad at me. No ma'am, I could never be mad at you. He said, I just didn't hear you, I'm sorry.

The night that I say that I saw Dominique and Damien, Damien was wearing black. I don't remember the shirt because it was dark, but I do remember the pants. And it wasn't real tight pants, it was kind of baggy. He didn't have a hat on. I didn't notice his shoes. (BETR 2090)

L.G. is my ex-husband's son. I'm his aunt by marriage, just by marriage. He's my ex-husband's son. L.G.'s last name is Hollingsworth (BETR 2091) I had been

out with him that day, that is correct. I know he has talked to the police once. He's probably been a suspect in this crime. (BETR 2092)

(BETR 2093-2096 is omitted as irrelevant to Mr. Baldwin's appeal.)

When I saw the three boys that afternoon over at Weaver, it was about 5:15. I went home after that. When I was home, I talked to a neighbor. Sheila Joy came over to my house. I found the boys were missing as soon as I got back home. I took L.G. home. Sheila Joy came over there and she told me the boys were missing. (BETR 2097). That had to be around 6:30.

I recall writing a letter to Jessie Misskelley, Sr. I told him that I had seen Jessie that Wednesday evening at 6:30, toward 7:00, somewhere in that time. It only takes me about 10 minutes to get to my house, but I was wrong because I had gone over there Thursday. I don't remember the date I wrote this letter. I went over there and talked to him. I don't recall about what month or year that was. (BETR. 2098). As I decided that maybe wasn't the truth when I thought about each day, and what I did on those days, and the children refreshed my memory, too. It was a long time after the prosecutory talked with me about this.

I wrote the letter after Jessie Misskelley, Jr. had already been picked up. I don't remember when he was picked up. I really wanted to help and I was thinking

that it was Wednesday that I saw him. My family and I got together and talked about this and I realized it was Thursday, too. (BETR 2099)

I know when I gave statements to the police. I know it was on a Friday, probably around the 9th or 10th of May. That is some time before Jessie Misskelley was arrested. I talked with them later, too. I didn't go to Mr. Fogleman's office and talk with him about it. The police came to me most times.

My Ford Escort is red. Domini and Damien didn't wave at me when I passed them. (BETR 2100). They probably would have recognized the car because Domini lives in the same park that I did. Domini sees me in that car every day. I'm about the only one around there with a red Ford Escort that I know of. (BETR 2101).

It was probably in June when I changed my mind because I didn't know the boys were even involved in anything like that until June. Damien has never driven my car.

REDIRECT EXAMINATION OF NARLENE HOLLINGSWORTH
BY JOHN FOGLEMAN

I've had a lot of conversations with you over the phone. I've not told you anything about Jessie. Your questions have always been about Damien.

(BETR2102) Mr. Lax has talked to me a couple of times. (BETR 2103).

DIRECT EXAMINATION OF KERMIT CHANNEL BY JOHN FOGLEMAN

I'm a forensic serologist. A forensic serologist is someone who examines evidence for the presence of bodily fluids such as blood, semen, or saliva which may have been transferred from one individual to another, or from one individual to an object.

In the course of my duties with the Arkansas State Crime laboratory, I examined a number of items at the request of the West Memphis Police Department in the case where the victims were. Michael Moore, Steve Branch, (BETR 2104) and Chris Byers. State's Exhibit 80 is listed as ligature/ shoestring, medical case examiner case number 32993. This item is Q44 which is also marked as ligature shoestrings, Christopher Mark Byers. These items were submitted to me for examination in the course of your duties at the Crime Laboratory. After examining these two items, I received a possible tissue recovered from both Q-4 and Q-39 (BETR 2105) These items were submitted to Genetic Design Laboratories in Greenville, North Carolina.

State's Exhibits 45, and 48, I can identify these items. It has my case number, and it's marked as my item Q-10, which is a pair of pants. This item also has my serology case number, my Q-5 and Q-6 which consist of a wallet, and Q-6 is blue jeans. Q-6 is Exhibit Number 48. And my Q-10 is Exhibit Number 45. I examined

both sets of pants for the presence of blood and semen. For the blood we use a screening test called phenolphthalein. I took the items of clothing with a swab and went over them carefully, and tried to determine if there could be blood on these items. On both sets of pants, (BETR 2106) the items were negative. I could not determine if there was any blood present. The effect of these items being wet, especially being submerged in water or even being dirty or soiled, has a very detrimental effect on any type of biological materials that you might find. Being in water can make it virtually impossible at times to identify any type of material. Regardless of water temperature still it will deteriorate the sample.

I examined these items for the presence of semen. The first test that I used was basically a screening tool. I laid the clothing out, and because of the nature of the (BETR 2107) clothing being very dirty and soiled, I used a laser which emits an ultraviolet light which helps to pick up any possible stains that you might not be able to see with the unaided eye. I did find some areas, I made cuttings of those areas, and further tested them for the presence of acid phosphatase. Acid phosphatase is the enzyme which is found in semen. It is also found in other items for instance.

However, it's not in the same quantity. We can not quantitate the amount of acid phosphatase present. Therefore, we use it again as a screening tool to tell you

whether or not there could be semen present. I then took those cutting, and looked microscopically to see if I could identify any sperm cells present, which I could not from either pair.

And I further examined those cuttings for the presence of what is termed p30, which is prostatic antigen which is specific to the male prostate. In this examination, I did have some positive controls along with my cutting samples which indicated to me that there could be some interaction with the material that was hindering me getting a proper answer.

Therefore, I had to conclude that I could not determine based on my testing that semen was present. And because of that reason, I then took these cuttings, and submitted them also to Genetic Design where they could employ DNA testing which is far more sensitive than my testing. (BETR 2108)

I ran the laser screening test, and also the acid phosphatase as a screen and these reactions were positive. For those specific screening test. If one screening test is positive, that lets us continue with our testing. If it was however, negative, then we would stop the analysis at that point. Both test were positive as a screening test for the presence of semen.

On my P30 test, I had a positive reaction upon my samples. However when I did further work

with controlled areas which were just as dirty or slightly soiled as the other questioned areas, I received a reaction in my opinion which could be considered consistent with a positive control--with a positive P30. (BETR 2109) I couldn't tell whether semen was present or not present. Because of that I submitted it to Genetic Design where they could run more sensitive test. Areas cut from the pants. Each area that I've circled areas oh the blue jeans, and cut out those specific areas, and that was what I submitted. the effect o of the body being submerged in water would have a very detrimental effect. With the water, it'll have a tendency to flush out anything that could be there, and very well hinder any identification that we could make. State's Exhibit 87, I can identify. It has my serology case number, and my Q-85 which is listed as State's Exhibit 87. (BETR 2111)

(BETR 2112-2119 is omitted as irrelevant to Mr. Baldwin's appeal.)

Exhibit 45 labeled E-3, pair of blue pants. (BETR 2120)

Here is the area of the cuttings for my control samples here. And inside the left side, reflects my E number and laboratory case number. The circled area here is part of my cuttings here. And here's my second cutting. These cuttings that were submitted to Genetic Design. My questioned item number here reflects my control sample cuttings here. One on the back side is the one that Lisa Sakevicious did. It reflects her initials. The one that I took and submitted to Genetic Design that the

screening tested positive for was this cutting from this area. This is my questioned area here. I looked under the microscope to see if I could (BETR 2121) see sperm cells. As part of my duties in this case, I went out to the crime scene.

CROSS EXAMINATION OF KERMIT CHANNEL BY VAL PRICE

On the report dated June 1, 1993 certain items were sent to Crime Lab to my serology section, and there were various tests that were requested by the West Memphis Police Department with your section on these (BETR 2122) items. Some items that we got directly from the medical examiner's office, and there were some miscellaneous clothing items, and some other items that came from different individuals. The items that were initially received in the lab on May 7, 1993.

On the items received from the medical examiner's office, and the West Memphis Police Department. This particular report would have been dated June 1, 1993. (BETR 2123)

(BETR 2124-2160 is omitted as irrelevant to Mr. Baldwin's appeal)

This knife right here which has been listed as E-169 and the exhibit sticker is Exhibit 77. I performed an analysis for blood on that knife and assigned it a different number, a Q-133. (BETR 2161) This is a photocopy of a report that I performed on this knife in which I concluded that no blood was found on Q-133. So this knife right here, Q-133, is my Q number. That's correct. (The report was

introduced as Defendant Echols' Exhibit 10 without objection.) On May 26, 1993, I received a 3 page letter from Gitchell of the West Memphis Police Department requesting answers to questions he had about certain pieces of evidence. (BETR 2162) Question 14 states, "Is there anything which would indicate a black male involvement?"

CROSS EXAMINATION OF KERMIT CHANNEL BY PAUL FORD

The third page of that letter dated 5-26-93 states: "Anything you can think to give us would be greatly appreciated. We need information from the Crime Lab desperately. Today is the third week the boys are missing. Tomorrow, 2-27-93, will be the actual third week. We feel like we have not gotten sufficient information from the Crime Lab. (BETR 2163) We realize that you have other cases coming in and must go to court on other matters. However, this case has received national recognition and without the Crime Lab's information, our hands are tied. The efforts of everyone in the Crime Lab is greatly appreciated. The officers investigating this matter and myself need this information. We feel as though we are walking blindfolded throughout the case at this moment. Please answer the above questions as soon as possible and fax it to my attention." With respect to the tests that I conducted, I did not find one thing to link Baldwin to this crime.

REDIRECT EXAMINATION OF KERMIT CHANNEL BY JOHN FOGLEMAN

With the limited amount of evidence, I did not find anything to link anybody. Gitchell also was asking questions to Peretti about not having any information on time of death. The ability to find blood on the knife, State's Exhibit 77, would be effected if it was submersed in water. (BETR 2164) The submersion of a knife in water would be detrimental to any blood that could possibly be on a knife along with the surface tension of the blade itself. I would find it highly unlikely on any object like that being submerged in water, whether it is a knife or basically any item. Surface tension is the area of the knife. I would not expect to find any blood if it were submersed. There was nothing that I did that indicated the involvement of a black male. (BETR 2165)

DIRECT EXAMINATION OF MICHAEL DeGUGLIELMO
BY JOHN FOGLEMAN

I am a director of forensic analysis for Genetic Design. Genetic Design is a genetic testing company that specializes in human identification. We do testing primarily in three areas. I am responsible for a forensic lab which tests primarily criminal cases and some cases involving parentage where there are deceased individuals. We also have a parentage testing lab which does primarily parentage testing for Social Security for the agencies and also we do bone marrow tissue typing for transplants. (BETR 2166)

In the course of my duties with Genetic Design I received a number of items from either the Arkansas State Crime Lab or the West Memphis Police Department for analysis. Among those items I received samples of the victims' blood which would be James Michael Moore, Chris Byers, Steven Branch. I also received what were labeled by the Crime Lab as Q-4 and Q-39 - as possible tissue from some ligatures. Our lab does DNA testing specifically in criminal cases, and there are two basic types of DNA testing. Those two types of testing are decided based upon the evidence in any given case and the amount of evidence that we actually have to work with. (BETR 2167)

The first type is what is referred to as restriction fragment length polymorphisms or RFLP, and that's the more conventional DNA testing that as things stand right now we would prefer to do in every case because we can gain more information from it. However, we require a certain amount of DNA in order to be able to do that test. In this case these items in particular contain very, very small quantities of DNA, if any detectable DNA.

Because of that, we used the second type of DNA testing called PCR analysis. It works where there are small minute amounts to work with, but unfortunately it is not quite as informative as the traditional type testing. In this

case we performed two separate PCR based tests to try to differentiate between the various items of evidence.

There are results of the tests performed on the items Q-4 and Q-39, the possible tissue from the ligatures. Those two items failed to reveal the presence of any detectable amounts of DNA. The first portion of the analysis is for us to remove the DNA from the items and to try to get an idea of how much is there that we have to work with. The quantitation that we do is a rough approximation. It gives us a general idea, but in this particular case there was no detectable DNA there from those items. (BETR 2168)

There was no detectable DNA from this possible tissue which means several things. First, it might not have been a human specimen. It might have been any number of things that you would find on items of evidence that are exposed to the environment, or it could have been human tissue that was either too small and degraded so that we were not able to obtain DNA from it. Unfortunately, any biological material when exposed to various conditions will start to decompose and degrade, and the DNA contained in it will decompose and degrade as well. And if that occurs, especially in very small specimens, sometimes it's not possible to detect anything that would have been there.

We also examined some cuttings submitted by Channel which were labeled as Q6, which came from Exhibit 48, and Q-10 coming from Exhibit 45, some pants or jeans. We performed the same type of tests on those items that you did on the possible tissue. Those two particular items were submitted to us as what we considered questioned stains. (BETR 2169) In evidentiary specimens when we're dealing with questioned stains, we do a slightly different procedure because many times in cases those, stains will contain a mixture of seminal material and other potential biological evidence so we do a differential extraction. The purpose of a differential extraction is to separate sperm cells from any other biological material that might be there. To give you the best example, in a typical sexual assault case the evidence will most likely be an item of clothing or vaginal swabs from a female victim. The material contained there will be comprised of two things, epithelial cells from the victim and sperm cells from a potential perpetrator in the case. Our goal would be to separate those two types of cells, and that can be accomplished by taking advantage of certain physical properties of sperm cells that make them different from other cells. In doing so it enables us to more accurately compare those specimens to the various people we are going to test down the road.

We performed the tests on cuttings from the pants. The results of the tests showed that we did recover a small amount of human DNA from those two items.

(BETR 2170) Particularly, when we do this differential extraction, we separate them into sperm and nonsperm components, and in this test detected small amounts of DNA in the sperm or male component of the two specimens we were testing. It was what we considered to be a marginal amount, meaning it was basically at the threshold of what we might be able to detect using the analysis, but it was definitely DNA that was there. From that we would proceed then with the remainder of the PCR based testing to try to get a type from those particular specimens. Unfortunately, with those items, we were not able to do that. Blue jeans in particular contain, depending on the variety of brands, a number of sizings and different dyes that roughly half and half times will interfere with the enzymatic activity that is required to do the test and when that occurs and we are not able to remove that material from the blue jean that we've gotten the cutting from, what happens is that we are able to get no result from it. Even though the DNA is there, it becomes impossible for what we refer to as amplification to occur because the enzyme can't function in the presence of those inhibitors.

When we run these tests, we end up with two what are called fractions.

(BETR 2171) Epithelial fraction and the sperm fraction. When we ran the tests, we did not find any DNA in the epithelial or nonmale fraction. What I found in the sperm fraction was a small amount of DNA. By a small amount, to be specific, the

threshold of limitation for this particular quantitation or measurement of how much DNA there is, is set at what is 50 picograms of DNA. Now, to give you an idea, a picogram is part of a metric measurement, just like meters or kilometers or kilograms, and the best way to envision this is that the basic unit of measurement is a gram. That is approximately the size of a dime. When we're talking about DNA, we measure it in micrograms or nanograms or picograms. And a picogram is approximately one trillionth of a gram. The threshold for detection in this test is 50 picograms, or fifty trillionths of a gram. It is an extremely small quantity, but you have to consider that that has to fit inside the individual cells in our body so it by necessity has to be small. (BETR 2172)

Based on those tests, I have an opinion of the source of the DNA based on the parameters involved in the extraction process. Most likely that the DNA that we were detecting did come from sperm cells, because it showed up in the portion of the analysis where we would expect DNA from sperm cells to show up.

Defendant's Exhibit 6 is in one of my boxes. I recognize this knife, because my lab ran tests on that knife. I ran tests on material that we recovered from the knife that looked like this knife that we packed in a box like that. When the knife was received by my firm, we looked at the substance before it was removed. When we received the material on this knife, it was related to us that there was a small

amount of what appeared to be blood that was dried or tissue in a crevice in the knife where the knife folds when it locks, and there was definitely a material there. I can't personally say it was blood or tissue or that it was dirt from actually looking at it. (BETR 2173) Somehow we removed the substance and then we ran some tests on it. There was DNA present on the knife and that we were able to get a type using a test called HLA DQ Alpha from that particular specimen. The DQ Alpha is the most sensitive test that we run. When we are using PCR based testing, HLA DQ Alpha is the first PCR based test that we use and because it is more or less a threshold. It sets a sensitivity level for us as far as what we can detect. We made an attempt to run a test called D-1S-8O. We were not able to obtain a result from the specimen when we ran that test on the knife. The DQ Alpha type on the blood from the knife was 1.1,4. (BETR 2174) We also have a blood sample from Melissa Byers, Ryan Clark, John Mark Byers, James Michael Moore, and Chris Byers. John Mark Byers had the same DQ Alpha type that was detected from the specimen from the knife. The DQ Alpha type for Chris Byers was also the same type. As far as the DQ Alpha analysis, the blood on the knife and Chris Byers' blood..and John Mark Byers' blood all had the same DQ Alpha type.

CROSS EXAMINATION OF MICHAEL DeGUGLIELMO BY VAL PRICE

On my July 13, 1993, report it stated that May 24, 1993, we received 10 items of evidence. (BETR 2175) Item four, was a blood sample from Echols. We performed an liLA DQ Alpha on the blood sample of Echols and he had a 2,3 HLA DQ Alpha type which is different than the 1 . 1 , 4 that I mentioned earlier. The January 27, 1994, report states that on January 10, 1994, we received the knife that I referred to a few moments ago. The number that was previously assigned to that knife was E-178. That was a number that the Arkansas Crime Lab assigned to it before I received this knife directly from Gitchell. My lab did not assign the E-178 to it. (BETR 2176) The knife that I referred to came out of this bag which has previously been marked for identification purposes Echols as E-6. The knife that I looked at is the knife when I testified on direct examination that I examined. The box that we returned has been opened so I am under the assumption that is the same knife. It is like the one we packaged. *(The State stipulates it is the same knife.)*

I testified that the small amount of what I thought was either blood or tissue was found on the hinge of the knife. (BETR 2177) When the blade is closed, there is a recessed portion of the knife back where the blade actually makes contact with the casing portion of the knife, and the portion that we removed was from that

recessed part of the knife where the two come together. We did not find any substance that we tested on the blade of the knife. When we test the items for the DNA testing, that is use specific for human or higher primates. It's generally accepted that it's specific for humans. All the probes are actually specific to higher primates. Based on the test that we did, the item that we found on the knife would not have come from an animal such as a deer.

CROSS EXAMINATION OF MICHAEL DeGUGLIELMO BY PAUL FORD

We did not find one thing to connect Baldwin to this homicide. Baldwin was a 1.2,4. (BETR 2178)

RECROSS EXAMINATION OF MICHAEL DeGIJGLIELMO BY VAL PRICE

My lab charges a certain amount for each test that is performed. We performed 13 tests the initial time. On May 24th and mine 7th. The total bill of the lab would have been \$4,550.00. There were some other items we sent throughout the rest of the investigation, and the bill for the remaining items was about \$3,800.00. Besides those amounts, I charge for testifying in court.

RECROSS EXAMINATION OF MICHAEL DeGUGLIELMO BY PAUL FORD

After all that \$7,000.00 of reports, we found nothing to connect Baldwin to this crime. None of the things I tested matched Baldwin. (BETR 2179)

REDIRECT EXAMINATION OF MICHAEL DeGUGLIELMO
BY JOHN FOGLEMAN

None of the things matched anybody else's blood type that was submitted other than the item on the knife matching both the victim and John Mark Byers other than a tee shirt that is not involved in this case. There were 2 other items, two different shirts, Q-52 and Q-85, that matched other people. That is the tee shirt not involved in this case. I do not know whose shirt, Q-52, the blood matched. Other than those things, nothing matched anybody, until the knife and the hair specimen.

RECROSS EXAMINATION OF MICHAEL DeGUGLIELMO BY VAL PRICE

None of the items I tested matched Echols. (BETR 2180)

(BETR 2181-2183 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF JERRY DRIVER BY JOHN FOGLEMAN

I am the chief juvenile officer in Crittenden County. Since I have been in Crittenden County, I am acquainted with Echols, Baldwin, and Misskelley. On November 15, 1992, I was in Lakeshore Trailer Park. I was out there on a normal drive through and happened to stop with a car that we suspected of having a drunk driver. (BETR 2184) While we were out at that car, we saw Echols, Misskelley and Baldwin walk by. They were dressed in black with long coats and had long sticks or staffs in their hands. I am pointing to Baldwin and Echols are in the courtroom I have seen them together on several occasions since that date. (BETR 2185)

Between November 15th and June 3rd, 1993, I saw them maybe two or three times. Twice at Wal-Mart and once out in the trailer park. About three times I saw the three together. Several more times than that I have seen Damien and Jason together dressed in black.

CROSS EXAMINATION OF JERRY DRIVER BY PAUL FORD

There is nothing wrong with a defense attorney wearing a black suit or a judge wearing a black robe. Nothing is wrong with three people together wearing black.

CROSS EXAMINATION OF JERRY DRIVER BY SCOTT DAVIDSON

I don't recall if I saw Echols on May 5th, 1993. (BETR 2186)

(BETR 2187 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF JAMES SUDBURY BY JOHN FOGLEMAN

I'm a lieutenant with the West Memphis Police Department. On June 3, 1993, I accompanied other officers to the residence of Echols. When I arrived Baldwin, Echols, Domini Teer and maybe Damien's sister were there. *(A photograph of Baldwin the night of his arrest is entered as State's Exhibit 99 without objection.)* That is how Baldwin appeared on the evening of his arrest. (BETR 2188) *(A photograph of Echols as he appeared on the night of his arrest is*

entered as State's Exhibit 100 without objection.) I took that Polaroid photograph which has been blown up.

CROSS EXAMINATION OF JAMES SUDBURY BY VAL PRICE

The black shirt Echols is wearing has some type of writing on it with a basketball in the middle of the shirt. It has "Blazers" on the top of the basketball. I am aware that the Portland Trailblazers' colors of the professional NBA basketball league are black. (BETR 2189)

(BETR 2190-2240 is omitted as irrelevant to points on appeal)

DIRECT EXAMINATION OF LISA SAKEVICIUS BY JOHN FOGLEMAN

I work at the Arkansas State Crime Lab. I'm a criminalist at the Arkansas State Crime Lab and I do hair and fiber comparisons. (BETR 2241) I am an expert in my field. I received items from the Medical Examiner's Office for examination. State's Exhibits 80 is the ligature from Michael Moore. (BETR 2242) State's Exhibit 82 is the ligature from Chris Byers. State's Exhibit 81 is the ligature from Steve Branch. I examined the ligatures for the knots for hairs and for fibers. State's Exhibit 80 is the Michael Moore ligature. The left wrist consisted of a square knot, and I also removed a skin tag from inside the loop off the left leg. The right leg knot was a series of four half hitches, and the right wrist knot was a series of three half hitches. (BETR 2243) On the left wrist of Michael Moore, we had a square

knot and on the left ankle of Michael Moore there was a square knot. The right wrist had three half hitches. The right ankle had four half hitches. The left side had a particular type of knot, square knot, and on the right side was a different knot. The only difference between the wrist and ankle was an additional half hitch.

On State's Exhibit 81 of Steve Branch, the right leg knot was a series of three half hitches and a loop around the leg was tied twice. The right wrist was a half hitch with a figure eight. The left leg knot was a series of three half hitches. The left wrist knot was a series of three half hitches. On Steve Branch on the left wrist we had three half hitches. (BETR 2244)

On the left ankle we had three half hitches. On the right wrist we had a half hitch with a figure eight. Then on the right ankle we had three half hitches with an extra loop around the leg. On the left side on the left wrist we had one type of knot and on the left ankle you have the exact same knot. There were three half hitches in both places. On the right side on the wrist we had one half hitch with a figure eight. On the ankle we had three half hitches with a loop on the leg. On the right side we had something a little different. (BETR 2245)

State's Exhibit 82 of Chris Byers on the left the knots were a series of two half hitches on the wrist. On both the left and right ankle and wrist you had double half hitches on all~knots. On Chris Byers, every knot was the same.

In my duties with the Crime Lab I also test for fibers. Generally we have two sets of clothing, sometimes involving bedding. I will use a piece of tape to collect fibers from these items, and I will attach the tape to a glass slide. I'll clip a standard from all the applicable items, ones that have good colors or fiber types in them. I will take this standard and smear it across a glass slide also, and then I will compare my questioned slides with the standard to see if I can find any that are like that. (BETR 2246) After I find something that looks good, I will take it off the slide and do a microscopic on it to make sure it looks similar and it looks like the basic fiber type involved. If it passes this test, then I put it on a microspectrophotometer. Here I look to see that they have the same curves. If they pass this test and they are a synthetic type fiber, then I will put them under an instrument called a fourier transform infrared spectrophotometer. Here I see if the basic polymers that make up the fibers are the same. Polymers are synthetic material usually made out of petroleum products, like plastic. Primary transfer is if I touched one of you and then did a tape lift and I found fibers from my item on you, that would be considered a primary transfer. A secondary transfer would be if you touch someone else and then tape lifts were done on that person and fibers from me were found on that person, that would be considered a secondary transfer. You get secondary transfers when you have got clothes hanging together in the

closet. I examined some items that were submitted by the West Memphis Police Department. (BETR 2247) State's Exhibit 45 is clothing that I examined. In the lab we examine our, items on clean sheets of white paper, and then we fold them back up and put them back in the sack. I have noted on the condition of the clothing items when I received them at the lab. E-3, Exhibit 45, is a pair of blue jeans. They were found inside out and they were heavily soiled. They were still, slightly damp because we took all the items out and left them on white paper, and we covered them with white paper for them to dry over the weekend before I started my analysis. (BETR 2248) The same sacks were used that they were received in. I examined that' clothing, E-3, State's Exhibit 45, for fibers. I examined Exhibit 8 and Exhibit 44. I examined all those items of evidence.

On June 3, 1993, Kermit Channel and I helped search Echols residences. (BETR 2249) As a result of my prior examination of fibers found on the victims' clothing, there were particular fiber types that I was looking for I had examined the slides from the victims and trying to find similarities in fiber types which could have come from the constituents of the clothing they were wearing -- which could have come possibly from an assailant. I had in my mind a number of fiber types that I had seen. I recovered the item in State's Exhibit 85 from Echols' residence. State's Exhibit 88 is a bag. I recovered that item from Baldwin's residence.

After those items were recovered, I made a comparison with items from the victim's clothing. (BETR 2250) I used these items as the standard and I compared them against the slides of the victim. When I found fibers that looked similar, I took them off and did the microscopic examination and then I did the microspectrophotometer examination. Then I did the fourier transform for thread analysis.

On Exhibit 45, the blue pants, I found a green polyester fiber from E-79 which would be Exhibit 85. They were similar fibers not that it came from them. E-5, State's Exhibit 8, is the Cub Scout cap. A green polyester that was microscopically similar to the fibers used in the construction of E-79, a shirt. The shirt that was recovered from the Echols' residence. (BETR 2251)

State's Exhibit 92 is a photograph of this shirt. I recovered the shirt. The fiber content of that shirt is cotton polyester blend. On State's Exhibit 8, the Cub Scout cap, I found one green polyester fiber which was microscopically similar to this shirt. (BETR 2252) On State's Exhibit 45, E-3, I found a green cotton and a green polyester fiber microscopically similar to this same item. On the pair of blue pants, State's Exhibit 45, I found one cotton and one polyester which were microscopically similar to the fibers contained in the same shirt. I participated in the search of Baldwin's residence. State's Exhibit 88, a bathrobe, was found at the

Baldwin residence. I am not suggesting that Echols wore this little shirt or that Baldwin wore the bathrobe. (BETR 2253) This is where secondary transfer may come into play.

I found a single red rayon fiber on Exhibit 44, which is E-2, microscopically similar to that used in the construction of the robe, State's Exhibit 88. Being submerged in water is very detrimental to the recovery of fibers, hairs, and other trace evidence.

There was a single Negroid hair recovered off of a sheet used to cover the Byers child. (BETR 2254) There were no other Negroid hairs recovered.

The fibers in State's Exhibit 88, were found on E-2 which was a black and white shirt which is State's Exhibit 44. After I recover something on the tape, I use a stereoscopic examination. This magnifies the fibers 20 times their normal size. If I feel they look similar to the standard, I recover them off the slide and do a microscopic examination. Here my examinations were run from 100 times to even 400 times magnification of their normal size. I will look at the diameters, the shape of the fiber, their color, I will see if there are delustrants there. A delustrant is a compound called titanium dioxide. They are small particles that are placed into the polymer before the fibers are made and these will cause the fiber to have a duller appearance. (BETR 2255) They won't be so bright in the garment when it is

finished. I also look at optical properties of the fibers. Under cross polarized light, the background that I will see in the fiber will be black. The fiber itself if it has any birefringence characteristics at all, it will have a color to it. It should be different for different generic fiber types such as rayon, polyester, nylon. I'll study the sign of inlongation. The sign of inlongation is another optical property that some low birefringence fibers have.

If the fibers pass all the tests and are similar in all these manners, then I will take them and do a microspectrophotometer analysis. We'll look at the dye characteristics and where the dyes absorb light and it will give me a curve. If these curves from the standard and the unknown match and if they are synthetic types, then I will go ahead and do the fourier transform analysis. If the polymers match, then I consider the fibers similar. We don't do the fourier transform infrared analysis on the one cotton because cotton is cotton. (BE TR 2256) On the other 3 fibers, the results were the same or similar.

CROSS EXAMINATION OF LISA SAKEVICIUS BY VAL PRICE

My June 29, 1993, report contains a paragraph that states:

It is pointed out that fibers do not possess a sufficient number of unique individual microscopic characteristics to be positively identified as having originated from a particular item to the exclusion all others.

This means that if you were to go to Wal-Mart, you'd see a rack of clothing and all the clothing on it is the same. It could be that all these fibers were made at the same time, and they'll have the same characteristics. (BETR 2257) And any number of people might have that garment in their house. So if I find a fiber similar to another item, then it doesn't necessarily mean it came from that item. It could have come from one of these other items that was hanging on that same rack. All fiber reports contain this statement. The FBI recommends that this paragraph be included in reports. I am familiar with a book, "Forensic Science Handbook" by Richard Saferstein. I suggested that the defense attorney purchase this book to pick up some additional information about hair and fiber comparisons. This is an accepted text in the field. (BETR 2258) On page 211 of his book it states:

The limits of human hair comparison should be explained to the jury even though the questioned hairs even though the questioned hairs may be similar in all respects to the questioned hair and dissimilar to most other hair, the forensic examiner can never say with certainty that there might not be another individual who possesses similar hair.

Although this is a paragraph on human hair comparisons it also applies to fibers as well. The two are similar in nature although hair is a different analysis. That book recommends that the limits of hair analysis should be explained to the jury. So the same concept should apply with fiber evidence. Although this deals with hair, the same general information applies to fiber evidence.

There was the one green cotton fiber and this was recovered somewhere on E-3, the pants of Moore. (BETR 2259) The E-3 item, the pair of blue pants were inside out. This was microscopically similar to item number 79, the blue shirt that was recovered at Echols' house. This is a size 6 Geranimals shirt. There were 2 green polyester fibers that were recovered from the Cub Scout hat. (BETR 2260) One was recovered from the E-3, the pants, and one was from E-5, Moore's Cub Scout hat. These were microscopically similar to the polyester fibers that make up that Geranimals shirt. If there is any type of Geranimal shirt that has the same cotton/poly blend, the same colors, the same company, the same dye lots, it would also be microscopically similar to this shirt. If there were other clothing made by the same company by the same dye lots of a different size, then that also could be microscopically similar to the questioned fibers. (BETR 2261)

Three red cotton fibers microscopically similar to those used in the construction of E-92, a tee shirt found at Echols' house, were recovered from E-1, the Boy Scout shirt, E-3, the same pair of pants, and BR-1, a bag found out at the crime scene. My notes indicate that there were several items found in this bag including a pair of blue jeans, a black thermal undershirt, pair of white socks, two BIC razors, one plastic bag and one tan short sleeve shirt. (BETR 2262)

On June 3, 1993, the day Echols was arrested, I went to his house and searched for fibers. After I performed tests and issued my report on June 29th, I discovered that these 3 red cotton fibers were microscopically similar to the red tee shirt that I found at the home of Echols on June 3, 1993. It is not common practice for me to the homes of the victims to see if there is any items there that might possibly match questioned hairs and fibers that I find. Actually, none of this. case has been common practice for me. This is the first time I ever participated in a search of Defendants' or victims' homes.

I indicated that on June 3, well, the report was issued on June 29th. On December 20, 1993, I went to the former homes of the victims, Byers and Moore. At that time, I took possession of an item at the Moore home, MM-1, which would have, been one red shirt, this is listed in my January 17, 1994, report. (BETR 2263) I tested the fibers found on the red shirt MM-1 and compared these to the 3 questioned cotton fibers that I referred to earlier. They were also similar to the questioned fibers. I cannot exclude MM-1 as the source of those red fibers. The red tee shirt found at Echols' house and the red shirt found at Moore's house and these three red cotton fibers that were found at the crime scene are all microscopically similar. If there are other red cotton fibers in which the dyes are similar that are out there, they could also be 'microscopically similar.

I do not know if the West Memphis Police Department ever asked me to check any possible fibers that may have been on a Kershaw knife. I have examined a lot of knives. If my initials are not on this particular knife then I probably did not examine it. (BETR 2264)

In addition, there was one Negroid hair that I came in contact with in connection with this case. This hair came from FP-10 which was a white sheet that was used to cover the body of Byers. When I received that particular Negro type hair, I have not been able to compare it with any other hairs that I might have been sent during this examination. Sometimes in performing hair comparisons I receive a hair that belongs to a police officer that might be out at the crime scene to rule out that particular police officer as the source of a particular hair. I did in this case. I never received any Negro type hairs from any West Memphis police officers to compare with this questioned hair. (BETR 2265)

CROSS EXAMINATION OF LISA SAKEVICIUS BY PAUL FORD

State's Exhibit 44, E-2, is a polka-dotted shirt. When I received that shirt, it was inside out. I do not recall where I recovered the fiber from. I do not know whether it was on the inside, outside, front, back, sleeve. I don't label my tapes as to the exact area only that they came from a particular item. With respect to the pair of pants that I testified about the fiber, it could have come from inside the

pocket. I don't believe I pulled the pockets inside out. I just taped the outsides of the garment. I previously gave to Baldwin's attorneys the slides that I prepared and that another examiner prepared. (BETR 2266) I can identify the markings that are on slides E-2 and E-99. It has a case number, the item number, the fact that it is a questioned fiber. It is a red rayon, and I have it labeled as a match with E-99 which is the fiber that you found on this shirt. I believe that this is the entire fiber. (The fiber was introduced as Defendant Baldwin's Exhibit 1 without objection.) (BETR 2267)

I can identify this next slide by the case number, the item number, the fact that it is a known fiber from the item that is listed. It is identified as red rayon and I have it mounted in permount. That is one of the slides that I prepared after taking fibers from this bathrobe. I took some of the fibers off of the robe and mounted them under this slide. (The slide was introduced as Defendant Baldwin's Exhibit 2 without objection.) Where the 2 circles are on the end is where you actually need to look. (BETR 2268) So those exhibit stickers will not affect the ability to look at them.

A comparison microscope is two microscopes that are bridged together with another optical instrument that has mirrors. It takes the image from each microscope and puts them in the same field of view so that you can examine the

fibers side by side so that you can look at them at the same time. When I compare these two fibers together, I would slide one end on one side and one end on the other side and you can look through the eyepieces of the microscope and see both fibers at the same time. When I did that in this case, they looked the same to me. At that point I am looking at their color and their diameter. I don't believe there is a pattern of delustrants in these. (BETR 2269)

Titanium dioxide is something that you add to the fiber to take some of the sheen out of it. I did not see any of those in these fibers. If they were there, the pattern that they would have in the fiber, would be important. Sometimes you can see differences in pattern. I'd have to look at a great number of the standards to determine if there is a followable pattern.

If there had been testimony in this case that someone went to a grocery store and got a whole bunch of grocery paper bags and people started putting clothing directly from the water and into these bags at the scene, I do not know if there is any way to determine if there is a fiber inside the bag that could attach to the clothing. I do not know about the manufacturing process or packaging of grocery bags. We use a clean piece of white paper to put the clothes back in. I want to make sure that the paper does not place any fibers on to the garment itself. (BETR 2270) The Crime Lab takes great care to make sure that that-paper is not a source

of evidence. Nothing was done by me or my lab to make sure there was nothing inside the paper sack itself. All evidence submitted to the lab is in paper sacks like this. We take it for granted that they are clean.

When I looked at the hairs under the visual medium of the comparison microscope, where I could see them both at the same time, they looked the same. At that time, I looked at the qualities of color, shape, and striations that made them seem the same to me. In this particular fiber the cross section is not completely round. It is sort of cloud or daisy shaped, and under the microscope this will look like lines or striations. Both fiber types were striated. (BETR 2271) It is that sort of like if I took one little piece of carpet from a rug and I could untwist it then there are several different things twisted around it to make one piece. It is more like looking at a six-sided pencil lengthways and you can see lines going down it. I will see these lines that when you look at the end you can see that the pencil is not completely round. It has got sides to it. The way that is done with a manmade fiber is by putting it through some type of extrudent where they press it through little bitty holes, and the shape of the hole will affect the shape of the string. On rayon the drying process also imparts some of the striations to the fiber.

I altered both fabrics during my testing. What I do when I do my fourier transform infrared analysis, I flattened the fiber. This causes my spectrum that I

get to be much cleaner. It helps me to see the peaks a lot better. I do this process to the standard and to the questioned fiber. I used a scalpel to flatten them. (BETR 2272) I placed the fiber on a glass slide, and I squished it. Baldwin's Exhibit 1, was the questioned fiber. We do not have one that is unsquished. The only one we have left is one that I altered. After I used the comparison microscope and I saw they had the same shape, the color and striations. Then I put them under the microspectrophotometer, and examined the color in more detail to see if the dye is blue or red. That is polarized light. You can make it polarized, but that is not the purpose of that instrument. I used the microscope where you can put the slide and turn it around, where the slide spins. That test is covered in the microscopy. (BETR 2273)

I used polarized light. I used polarized light to look at the birefringence and the sign of inlongation. When I put the questioned fiber on the microscope that spins, I don't recall if the fiber changed color. Every time I put two slides of fibers on the microscope and spin them both around to see if they change color because it is standard procedure. I took both of these slides and put them on a microscope that uses that type of light, spun them around to make sure they change color. In this case that was exact. They changed colors in the same pattern. (BETR 2274)

I put the fiber through two processes to draw a graph. In order for them to be similar, you would want to find a graph pattern like that. I can draw the type of graph one would expect to find if they had the same dyes and colors. I have the infrared graph and microspectrograph I did. The top one is E-2, the standard, while the bottom one is the questioned. In my opinion, they are identical. This one is after I altered the fiber. This other one is before. I am not testifying that the fiber that I found on this shirt came from this robe. (BETR 2275)

I went to the crime scene and saw the ditch. There was no water in the ditch at the time I was there. I would not agree that water itself, with the stuff that floats in water, could be the source of this red fiber. I can't say what the source of the red fiber is. I can not say it's from this robe. Only that they are similar.

I do not have any evidence that Baldwin tied those knots. I do not have any evidence of who tied those knots. I'm not saying that I found a fiber on this shirt that came from this robe. (BETR 2276)

REDIRECT EXAMINATION OF LISA SAKEVICIUS
BY JOHN FOGLEMAN

The graph before I flattened the fiber is marked as Exhibit 93. The after graph is marked as Exhibit 94. These are two different analyses and two different tests. The microspectrophotometer is the particular type of analysis here which is for the dye analysis. I can write "after" infrared analysis on State's Exhibit 94. That

is for the polymer, not polymer in this case, but the chemical structure of the fiber. If the fiber is not flat, sometimes it can scatter the beam as it goes through the fiber, and it gives you a noisy spectra. It's easier to read and you get a crisper spectra if you flatten it. (BETR 2277)

On State's Exhibits 94, the top graph relates to the fiber from the standard. "KF" stands for known fiber. "QF" stands- for questioned fiber. The bottom is the questioned fiber which I got off of this shirt which is State's Exhibit 44. I don't recall if I flattened the whole fiber or just a portion of it. When I flattened the fiber, it lightened the color because you spread the color out sort of like a glass of water versus the ocean. The more color that you put in one spot the more you can see it. When I flattened it, that spreads it out making the color thinner or lighter.

I am not saying that Baldwin tied those knots. (BETR 2279) I am not saying that he didn't tie the knots.

There was a question asked about the cotton fiber and the match and then also about some red cotton fibers found that match not only a shirt from Damien but also a garment from the Moore's house. There's not a difference in the ability of a match of cotton fibers as opposed to a synthetic fiber but there's less significance of the match. There is less significance in a match of cotton fibers. Cotton is much

more common. In fact there are some types of cotton very light colors or blue denim we don't examine or analyze for, because they are too common.

A fiber like that found in State's Exhibit 88 the robe, is not as common in my experience in examinations in the lab as cotton fibers. On the known slide that has been introduced in evidence, you can see a little red spot which contains more than one fiber. (BETR 2279) Baldwin's Exhibit 1 contains fiber.

I came to West Memphis at the request of the police department to get some fibers for comparison from the victims' homes. I got those from the Moore's house and the Byers' house. I did not get any from the Branch's house. I believe their residence was not intact anymore or they were not in town. The disposable razors and a number of items were listed as BR-1. According to my notes, I have one razor, has a broken head. All items packaged together in a brown paper bag. No attempt was made to discriminate where the fibers originated, meaning which particular item, because they were all packaged together. They were wet and moldy. This clothing in BR-1 was moldy. (BETR 2280) None of the victims' clothing that I got was moldy. The red cotton fibers originally reported matched the garment from Echols' home but after further investigation I concluded that it also matched the garments from the Moore's home. I can not say which home that came from.

The microscopic characteristics are similar. The red cotton fibers were similar in characteristics to a garment from Echols' house. (BETR 2281) After further investigation I found that those fibers could also have come from a garment from the Moore's house. In looking at the fibers from clothing from the Baldwin's house, the Echols' house, the Misskelley's house, the Moore's house and the Byers' house, I did not find any other garments with fibers that were similar in characteristics to Exhibit 88, the robe. I did not find any other fibers that were similar in characteristics to the shirt.

RECROSS EXAMINATION OF LISA SAKEVICIUS BY PAUL FORD

There were two partially broken razors in the bag. I don't recall if the bottom part of the guard or the handle was broken off.

I work in Little Rock. (BETR 2282) I drove from Little Rock to West Memphis to two homes but I didn't drive to Blytheville to check the residence of another home. I never went to Blytheville to look in the home that Branch lived in. I never did go to the residence of Branch's father, whose mom and dad are divorced, who still lived in West Memphis. I only went to two of the four residences of the victims' families. There are two Branch households. This is a woman's robe. I think I found that robe in a closet in the bedroom. (BETR 2283) I do not know if it was hanging, folded, laying on the floor. I believe Baldwin's

Exhibit 1 is the entire fiber. Although I flattened part of it, this is it in its entirety. I never looked to determine if there was a red fiber in this knife that might be microscopically similar to the one you found in this shirt. I have not labeled that item as being looked at. If there had been testimony previously that there had been a red fiber visible in that knife then I never looked at that red fiber to see if it matched the fiber in Baldwin's Exhibit 1. If it was visible to the naked eye, it probably did not match, but I did not look. (BETR 2284)

In the secondary transfer of fibers, when clothes are washed together fibers are redistributed around. That is another way of getting secondary transfer of fibers to wash the clothes together and then get fibers from another. If I had a fiber from some other of my clothing that got on this shirt and came in contact with someone else it could transfer. (BETR 2285)

It is also possible that the red fiber could have been on that young man's shirt that morning when he put it on and went to school because it could have gotten in the dryer from some other source in his own household. I can not say what the source is of the fiber. That shirt being washed and dried with another shirt could be the very source of the red fiber transfer depending upon which household was that from. They never identified what shirt that came from.

Washing and drying could be the source of the fiber, and he could have had the red

fiber on that shirt. Some of the households were examined for this fiber type. If this is one of the households examined for that fiber type, I would say it didn't come from washing his clothes there. If it came from the other household, it could have. Then that could be the source. If that person was from one of those households.

(BETR 2286)

REDIRECT EXAMINATION OF LISA SAKEVICIUS BY JOHN FOGLEMAN

State's Exhibit 95 contains my item BR-1 which is clothing that was recovered from the pipe near the scene. That is the clothing that I talked about that had some disposable BIC razors that were moldy. The handle is broken on the BIC razor. When I examined them before, it had these guards on them. (BETR 2287)

Doctor Peretti had testified about a blue fiber in Moore's hands. I compared it to the fibers that I collected from the mortuary from a blanket. I did the same test that I did on the other items. The nylon fiber from the hand was microscopically similar to the fibers from the blanket that came from the funeral home. (BETR 2288)

DIRECT EXAMINATION OF RALPH TURBYFILL BY JOHN FOGLEMAN

I'm the chief latent fingerprints examiner for the Arkansas State Crime Lab in Little Rock. I examined a number of items in this case. State's Exhibit 7 is an envelope bearing the lab case number and the exhibit numbers, two pieces of plastic painted green, formerly one piece of plastic which was a bike reflector and a

small toy sheriff's star that says "Mike" on it. I examined those items and other items for latent fingerprints. (BETR 2289) The items that I examined contained no latent fingerprints of value for identification and in most cases there were no latent fingerprints detected at all. (The envelope and contents were introduced into evidence as State's Exhibit 7.)

Latent fingerprints is a composite of the chemistry that comes through the sweat pores on the hand which is 98% water, 2% fat, salt and other body chemistry. So latent fingerprints which are invisible are 98% water and if you put that 98% water in water, it dilutes it where it is not detectable.

State's Exhibit 77 is a knife that was submitted by the police department which bears my case number and initials. I examined that item. No latent fingerprint impressions at all. If it had been submersed in water, I would not have expected to find fingerprints. (BETR 2290)

State's Exhibit 53 also has my initials on it, the case number and it is a stick. I processed this for latent fingerprints and again there were no latent fingerprints at all. On all these items I performed more than one test in an attempt to detect latent impressions. I did a visual examination and then to expose them to Super Glue to develop any invisible latents and chemical processing after which laser was used to detect prints. No latent prints were detected. I also performed a test related to

amino acids which is a chemical test on wood, unpainted wood, cardboard items. That's an amino acid indicator. We exposed the stick to the chemical, and again no prints were developed. I had a pink reaction as far as amino acids. What you see on the wood is the, reaction, which can be caused from amino acid from whatever source, which could be the chemicals in the water. If there is any amino acid there, it will show up pink. (BETR 2291) I had a chemical reaction to amino acid. It was a color reaction but no defined friction skin ridges. The body has amino acids in it, and one of the chemicals we use reacts or colors that particular amino acid. This pink reaction is the result of the coloring of that amino acid, which fingerprints has got amino acid in them, paper, unpainted wood and cardboard. We can detect fingerprints using that chemical. Just because there's a reaction doesn't mean it was handled or a fingerprint. It could mean it was handled or it could be from something in the water.

CROSS EXAMINATION OF RALPH TURBYFILL BY SCOTT DAVIDSON

I did not find any fingerprints that matched the fingerprints of Echols or anyone. (BETR 2292) With the amino acid test that I ran, I could not determine what human being that may have come from, just that that stick may have had some contact with some human being. (BETR 2293)

DIRECT EXAMINATION OF DEANNA HOLCOMB BY JOHN FOGLEMAN

I live in Marion, Arkansas with my parents. (BETR 2294) On August or September of 1991, I went with Echols for 9 months. During that time I was with him fairly often at school. Echols wore all black. He wore a trench coat and a leather jacket. During the time I went with Echols, his particular friends were Jason Baldwin, Jessie Misskelley, Joe Lancaster and other people. During the time that I went with him, Echols carried knives. (BETR 2295) State's Exhibit 77 is a knife that I have been before in his trench coat pocket. I went to put my arms around his waist and it was there. I took it out to look at it. It was a knife similar to that. The knife that I pulled out of Echols' pocket had a compass on the end. I can identify Echols as the person who had a knife like that. (BETR 2296)

CROSS EXAMINATION OF DEANNA HOLCOMB BY SCOTT DAVIDSON

I went with Echols from beginning of school 1991 to the end of school, May 1992. I have not been around Echols since May of '92. (BETR 2297) When Echols wore black clothes I wore black clothes. When I was going with Echols, he had a knife collection with lots of different knives. He even had a large knife with a compass on it. Echols and his family moved with their belongings to Oregon around May or soon thereafter of 1992. I might have seen him out, but I haven't

been anywhere to talk with him. I knew that the family later moved back to Arkansas from Oregon. (BETR 2298)

I do not know if Echols moved his knife collection out there or if he brought it back. I am not testifying that this is Echols' knife but it may look something like that. The knife that Echols had was about that long but I don't know the brand name. I do not remember if I saw it on more than that one occasion. One time that I put my arms around him I felt the knife. Echols knife was similar. (BETR 2299)

The only other markings on that knife that I saw that would distinguish it other than the compass on the end was the jagged edge. There was no writing on there.

The first time I saw this particular knife that was introduced into evidence was in Fogleman's office a week or two ago, February 14, 1994. I wrote out a statement and said that it reminds me of a knife that Echols had. Fogleman showed me about 5 knives. The other 5 knives looked similar to Echols' knives. This one did not look similar to one of Echols' knives. I can describe the other knives that looked similar to one of Echols knives. I saw the large knife in his trench coat pocket. I discovered it when I hugged him. (BETR 2301) It was not tied on or in a sheath. The knife was in his pocket.

REDIRECT EXAMINATION OF DEANNA HOLCOMB
BY JOHN FOGLEMAN

It was not unusual for Echols to have a knife. Echols never told me anything about why he carried the knives. Echols said he didn't feel safe. Echols and Baldwin talked to each other except when I was there. Usually when I would walk up, Baldwin would stop talking. The knife that I described had a golden handle. (BETR 2302) It was like a dagger. Besides the folding knife that Davidson showed me, Fogleman showed me another folding knife but Echols usually didn't carry folding knives.

DIRECT EXAMINATION OF JAMES PARKER BY JOHN FOGLEMAN

I operate a knife company named Parker's Knife Collector Service in Chattanooga, Tennessee. Parker Eagle Brand Cutlery was a business that my father owned but he filed bankruptcy in 1990. I worked in that business as well. (BETR 2303) I have seen knives like this, State's Exhibit 77, before. It says on the blade, "Special Forces Survival Rontan Two." That knife is similar to a knife that my father's company distributed around 1985 to 1987, during the big Rambo craze. Other companies had made them just like that. It is a generic type knife. My company distributed one like this. There is a hollow part on the end of this knife. On the knife that we distributed, a compass went on the end. State's Exhibit 96 is a catalog from Parker Cutlery's, the defunct company's catalog 1987. (BETR 2304)

On the page marked, the item 3 634 is a picture of a knife like this and it indicates that a compass accompanies it. In the catalog, item J 634 and on this knife it states "Special Forces Survival II."

CROSS EXAMINATION OF JAMES PARKER BY VAL PRICE

My records do not indicate how many of this particular knife were sold between 1985 and 1987. (BETR 2305) Parker Cutlery, the company that had this knife manufactured, or one like it, is out of business now. They distributed a knife like that one. They might not have even distributed that same one. It is a generic style knife. It was manufactured in Japan. They would have manufactured this knife and also other knives similar to that. I have no knowledge as to how many of these particular knives were manufactured. Parker Cutlery was not the only distributors of this knife in the United States. Other companies also distributed the knife. I do not know the exact number of how many other companies distributed this particular type of knife but it was about 5 or 6 companies. My records do not indicate that I ever sold this knife or a similar knife to Echols. (BETR 2306)

REDIRECT EXAMINATION OF JAMES PARKER BY JOHN FOGLEMAN

I do not have records showing who each individual knife was sold to.

DIRECT EXAMINATION OF BILL DURHAM BY JOHN FOGLEMAN

I'm a detective with the West Memphis Police Department. (BETR 2307) On May 10th of 1993 I interrogated Echols. Prior to having that conversation, I advised him of his rights. State's Exhibit 97 is an advice of rights form which I filled out on May 10th, 1993, at 1:40 P.M. signed by the defendant and witnessed my myself. I did not use any force, promises, threats or coercion to get him to place his initial by each right or get him to sign the form. (BETR 2308) During the course of your conversation with the defendant, he initially denied any involvement in these murders. At some point later he said "I will tell you all about it if you will let me talk to my mother." He was allowed to talk to his mother. After talking to his mother, nothing of substance was obtained after that.

CROSS EXAMINATION OF BILL DURHAM BY VAL PRICE

I talked to Echols for a total of approximately 2 hours. The rights form indicates I first started talking with him at 1:40 P.M. Prior to my talking with him at 1:40 P.M. I have no personal knowledge if he talked to Ridge and Sudbury. During the time that he talked to me, he denied having been in Robin Hood Woods on Wednesday, May 5th. (BETR 2309) He denied being present when the victims were killed. He denied killing any of the victims. After I continued to talk with him, he still denied any involvement in the crime. During the time that I talked

with him, I did not have a tape or videotape recorder going at anytime. After he said "I will tell you all about it if you will let me talk to my mother," he talked with his mother. At the end of that conversation, he continued to deny his involvement in the murders.

I don't recall if on May 29th, I showed a group of photographs to an Andrew Harris and a Y. Jackson who worked at the Blue Beacon truck wash. I'll have to refresh my memory about the notes. (BETR 2310)

These are my notes and report. I vaguely recall talking with these two, but I talked to so many people. These were the men working at the Blue Beacon truck wash. These two gentlemen were each shown the ten photo spread of possible suspects by me on May 29th. (BETR 2311)

I do not know if my report lists who the 10 individuals in the 10 photographs are. I don't have the report with me. It maybe in the evidence. I didn't know you were going to ask me, or I would have researched it. In the evidence I would have listed the 10 photographs that I showed these 2 men. I'm certain there is a listing of the 10 photographs but I don't know where it is. (BETR 2312)

(BETR 2313-2333 is omitted as irrelevant to Mr. Baldwin's appeal)

REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN

When I asked him his name, he said his name was Damien Wayne Echols, also known as Michael Wayne Hutchinson. (BETR 2334) He told me his nickname was "Icky" and date of birth 12-11-74. He lived at 2706 South Grove, Broadway Trailer Park, West Memphis. He was 5'8" tall and weighed 175 lbs. He had a tattoo of "Domini" on his right arm, a cross between his thumb and first finger, an Egyptian ankh, and a pentagram on his chest, two earrings in his left ear and one earring in his right ear. This Egyptian ankh is a circle that looks like a stick figure with a cross below that. A pentagram was on his chest. I do not remember which hand the cross was on but it was between the index finger and the thumb. He was ambidextrous. (BETR 2335) He said his stepfather Jack Echols lived in Lakeshore Trailer Park. During my interrogation of Echols, I asked him who did he think did it and why would someone do that. According to my notes, I asked him if he had an opinion as to who could have committed the murders. He said it could have been someone sick and that it was some type of thrill kill. He also said the penis was the symbol in his religion known as Wicca. He also stated that the number three was a sacred number in the Wiccan belief. I am referring to my typed report. (BETR 2336)

(BETR 2337-2348 is omitted as irrelevant to Mr. Baldwin's appeal.)

As for him telling me anything of how he believed that the children died, he stated that they probably died of mutilation, some guy had cut the bodies up, heard that they were in the water, they may have drowned. He said at least one was cut up more than the others. Purpose of the killing may have been to scare someone. He believed that it was only one person for fear of squealing by another involved. (BETR 2349)

I asked him about the fact of water being present. He said water was a demon type symbolism. I asked him about demonic forces. He said that all people have a demonic force in them, and a person would have no control over the demonic force. (BETR 2350) I asked him how he thought the person felt who would be doing this. He said the person would probably feel good. I asked him about the victims age. He said that the younger the children the more innocent they would be, and in turn the more innocent that person would be the more power that would be derived by that killing. I asked him about how evil returns. Doing evil would be returned 3 times since evil done would be returned in revenge 3 times back to the doer. He said the Book of Revelations was his favorite book of the Bible.

I'm not certain if he said if he was familiar with the Robin Hood Hills area. (BETR 2351) The third page of my notes state when asking him how someone

would have gotten the kids to that area, he replied that the person probably knew the kids were out there or knew the kids and asked them to come out there. He said that the children were not big, were not smart and would be easy to control. He said that the person who did the murders would not be worried about the screaming due to being in the woods and near the expressway where all the cover of sound would be there. He said he probably wanted to hear the screaming. He, the person doing the murder.

I asked him about how the person who did it felt. He said that the person who did the murder probably thinks it is funny, didn't care if he would get caught and probably would not get caught. I asked him what you might expect to find in the area. He said we would be looking for stones, candles, a knife or crystals. I asked him where the person might be from. He thinks it would probably be someone local and that person would not run or flee from the area. (BETR 2352) I asked him who his favorite authors were. Anton LaVey, it is a satanist book, and he likes Steven King novels because they are scary.

CROSS EXAMINATION OF BRYN RIDGE BY VAL PRICE

On May 10, 1993, when I was talking with Echols, he was a suspect in these murders. There was a series of 32 questions that we prepared and he gave responses to. I don't have those 32 questions with me right now. (BETR 2353)

The set of 32 questions were asked to a number of suspects or witnesses in this case. I do not recall the date that we first prepared this questionnaire because Sudbury prepared the questionnaire I did not. (BETR 2354) I think the questionnaire was initially written out prior to May 10th. I do not know if there were other individuals that I asked the same 32 questions before I questioned Echols. Most of the time I did not use the sheet but Sudbury did. As the interview continued, he would look at those questions and if a response applied to a question, he would check it off. There is a typed up version that has numbers. That did not appear to have all 32 questions listed. It looks like there's a lot of them missing. Some of them skip around. During the questioning of Echols, if we would cover a certain question then if he would give an answer related to that question, Sudbury would write something down. We did not go down all 32 questions in chronological order. We asked almost everybody we interviewed "how do you think they died?" (BETR 2355)

During the 2 hour interrogation of Echols, we never audio or video taped our conversation. We never went back after we had our written notes and asked Echols to read them over and sign them at the bottom agreeing that this is what he said. The four pages on legal size paper contained the notes I was writing as we went along. Later we went back and wrote out on an investigative report form, that

contained lines on it, about 3 pages condensing his responses in outline form. I went back and had it typed up. But basically all 3 of these relate to essentially the 2 hour period of time I questioned Echols. (BETR 2356)

At the time I questioned Echols on May 10, 1993, I thought there was a possibility that this was a cult related killing and/or a sex killing. I asked Echols all the individuals that I interviewed if they believed in God or the devil. I did not go down the full set of questions with everyone. I never used the questions per se. I asked Echols if he believed in white or black magic. When I was questioning Echols on May 10, 1993, he was a possible suspect. (BETR 2357) On my typewritten report, it states "Echols was not considered to be a suspect and only general knowledge questions were being asked." It is my testimony when I was talking with Echols on May 10th, he was not a suspect but the report indicates that Echols was not considered to be a suspect. In talking with him the knowledge he had, the responses he gave to the questions, my belief was he turned that tide to be a suspect. After I questioned Echols on May 10th, then he became a suspect.

After the time that the entire interrogation was completed that evening, Echols was allowed to go home. (BETR 2358) I didn't do any surveillance on Echols. I do not know if the West Memphis Police Department did surveillance on Echols anytime after May 10, 1993.

There was one day in which I think there was some surveillance done in order to see if Echols showed up at a skating rink place. I'm not certain if it was on May 28th but that's pretty close. The West Memphis Police Department did surveillance at the skating rink on May 28th to see if Echols showed up. To my knowledge Echols did show up. I asked Echols question #27 if he believed in white or black magic. I asked Echols if he had or owned a Bible. (BETR 2359)

During the entire 2 hour interrogation that I conducted Echols denied involvement in these murders. There was many more than 200 other people that we questioned using this same 32 page questionnaire form.

I'm not certain if there was an article published in the West Memphis newspaper speculating on what the manner and details of the death were. Rumors were running rampant in West Memphis during this time in May about what happened at the crime scene. Some of these rumors included some of the same things Echols told me during the interrogation, specifically as to question 9 about how I think they died. There were all kind of rumors of how people thought they died. Echols was not the only person that told me the kids probably died of mutilation. (BETR 2360)

Echols said he heard that the victims were in the water. He stated that there would probably be stones in the area and that would be something to look for.

When I looked at the crime scene during the 2 or 3 times I was out there, I never found any stones. He said there might be candles at the crime scene but I never saw any candles there. He said there would be knives at the crime scene but I did not see any knives there. He said there would be crystals at the crime scene but I did not see any crystals there.

When I am conducting interviews, I would get a better record and a much more accurate listing of what questions I asked and what answers a suspect gives if it is tape recorded. On May 10, 1993, the West Memphis Police Department had a tape recorder. (BETR 2361) During this investigation there were lots of times when the West Memphis Police Department would tape record interviews of various individuals. The West Memphis Police Department had a photograph of Damien Echols which they obtained within a day or two of the murders. This was when Officer Steve Jones and Sudbury went out to Echols' house and took a photograph of him. One of the purposes of the photograph was for us to be able to have his photograph included amongst a group of photographs so that when you're showing a photographic lineup to possible witnesses, his photograph would be one of the ones included.

During this investigation, there were some photographic lineups with certain witnesses. It is not my procedure when doing a photographic lineup to write down

who all the photographs are that are shown to a witness. (BETR 2362) I would have a much better idea of knowing what photographs I show a witness if I were to write down what photographs I showed them. It is not the policy or general procedure of the West Memphis Police Department when doing a photographic lineup not to write down what photographs were shown to a witness. I have never written a list of the names on photographs shown to a witness. I haven't done that unless an identification is made. If photographs are shown to a witness and they do not identify a photograph, I do not write down how many photographs that witness is shown. (BETR 2363)

One reason that I show a photographic lineup to a witness is so they can identify a particular person. It could be important if I show them a photographic lineup and they don't identify anybody, to have that information written down. I know of one occasion in August or September that I conducted photographic lineups where Echols' photograph was included. The witness did not identify Echols. When I conducted this particular photographic lineup in August or September, and showed that witness, I wrote down a statement that the witness did not identify Echols. On the occasion that I showed the individual a photograph of Echols and some other individuals, I did not have reason to believe that that individual was an eyewitness to these murders. (BETR 2364) Whenever we take

the next recess, I will find my notes or a report concerning that particular photographic lineup and provide it to the attorneys.

Going back to an area we discussed sometime last week. I talked to Kim Williams and asked her if she saw an individual between 5:30 and 6:00 P.M. on May 5th. In my report, I included a statement that it has been mentioned that during cult activity some members blacken their faces. That is in Gitchell's report. My report would be the written portion behind that. I interviewed the witness Williams. The handwritten interview indicates May 8th. (BETR 2365) Once that information was typed up, the additional comments that I just read would have been something Gitchell would have added.

At the crime scene there were no drawings found on the ground or in the trees. The initials, "M.E.", were found on a tree near the crime scene. The Defendant, Echols', birth name was Michael Hutchinson and he later changed his name to Damien Echols. The initials "M.E." could not stand for the Defendant, Echols, because he has never gone by "M.E." I do not know what the initials stood for. We did not run any kind of tests on the tree to see how long the initials "M.E." had been on the tree. (BETR 2366)

When I examined the crime scene, I did not find any items laid out in a pattern. It was not also unknown to me if any cult activity had been reported in the

area where the bodies were found on previous occasions. I had reports of where people said occult activity had taken place out there. I do not recall writing a report stating, it is unknown to me if any occult activity has been reported in the area on previous occasions, but I will look at it. Now that I have looked at my report, the statement that I just read is not contained in the report.

There were logs found in the area. I am referring to the sticks that have been previously introduced into evidence. It is a wooded area. There are logs in the area. (BETR 2367) In my report I wrote no slab or log was found to be in the area but you need to take the response in context to the question. Question #6, "Were there any indicators of a slab or log device present at the scene?" Answer by Ridge: "No slab or log was found at the scene." There were other sticks like the sticks that were introduced into evidence. I know of one more there at the crime scene.

On July 1, 1993, I went back out to the crime scene. That stick and the other stick were there on July 1, 1993. There were not other sticks similar to that stick at the crime scene but they were in the woods. (BETR 2368)

When I asked a lot of the questions on May 10th, I was trying to find out what Echols' beliefs are. He began offering information about what his beliefs were. He stated that water was a demonic symbol, and I wrote that down. I asked him why the penis would have been cut off, or he believed it was cut off, and he

said that it was satanic in nature. I did not tell him at that time that the penis was not cut off. I noted question #19, "Have you ever wondered what it would be like to kill someone even if you didn't go through with it?" The answer was, "Only out of anger to beat someone up. Whatever you do comes back to you three times. So does good." I remember that portion, but I don't have that typed response to that question.

Sudbury asked him 2 different versions of question #29. "Why would his fingerprints be out at the scene?" (BETR 2369) Neither Sudbury nor I told Echols that we did not find any fingerprints out at the crime scene.

I am not certain if Echols indicated that he had never been out in the Turtle Hill Woods. Sudbury typed up "he had never been in the woods." Question #12 states "Where were you on Wednesday, May 5th, 1993, between 6:00 P.M. and 10:00 P.M." I asked Echols where he was after 10:00 P.M. On the first page of the handwritten notes it begins with Tuesday. These are the questions as I asked him. I asked his recollection of where he was Tuesday, where he was on Wednesday and he explains to me that shortly after he returned from the Sanders' on a visit he had gotten on the phone with Holly George and talked with her until 11:30 P.M. and was there the rest of the night. Specifically as far as the question, it is typewritten, where were you on Wednesday, May 5th, between 6:00 P.M. and 10:00 P.M.

(BETR 2370) That was a time period that I asked most of the suspects that we interviewed during this investigation. I didn't use that questionnaire. I don't remember asking anybody where they were between 1:00 A.M. and 5:00 or 6:00 A.M. on May 6, 1993.

I asked him what his favorite book of the Bible was and he told me Revelations. I don't remember asking that question of any suspect or anybody else. I don't know if Sudbury asked those same 32 questions of Echols on May 9, 1993. Echols was interrogated somewhere else besides at the police department on May 9, 1993. (BETR 2371)

I asked Echols what type of books did he enjoy reading and he told me Anton LaVey and Stephen King. In my opinion there was something unusual about those being the type of books Echols likes to read. Anton LaVey is a book of satanic rules and involvement. Stephen King seems to be horror movies, horror books and if you're asking if I felt that was strange, yes, sir, I did.

As part of our investigation, we had a search warrant executed on the Crittenden County Library to find out what kind of books Echols has been reading. I do not know if it was that part of my theory to see if this was a cult related killing. It was an effort to find out what kind of books Echols had been reading. This was not something suggested to me by the expert we consulted in this case. I

had an Affidavit for Search Warrant was executed before Judge Pal Rainey for the books. (BETR 2372) I signed an affidavit stating "the murders appear to have been influenced by cult beliefs or religion." It is my opinion that the murders appear to have been influenced by cult beliefs or religion but there was something found at the crime scene indicating this had been a cult killing. You want me to say what I found out at the crime scene that indicated this was a cult related killing. (BETR 2373)

(BETR 2374-2400 is omitted as irrelevant to Mr. Baldwin's appeal)

REDIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN

Yesterday Mr. Price that asked me about where Echols had said that he was on May 5, 1993. He said that he had been at Lakeshore Trailer Park, gotten with his girlfriend, Domini Teer, and gone to a location near Center Street where a yard had been mowed. Later between 3:00 and 5:00 P.M. he went to Randy and Susan Sanders' residence. Then he said he went home after his mom had picked him up from Alexander's Laundry on Missouri Street. (BETR 2402) From there when he went home, he got on the telephone with Holly George. He explained that he talked with Holly George from that time when he got home until 11:30 P.M. He said he was at Randy and Susan Sanders was sometime between 3:00 P.M. and 5:00 P.M. I showed that lineup to Amanda Stokes. She allegedly saw some people at North

Seventh Street at the north service road of the 40/55 expressway, which is on the north side of the interstate as the Blue Beacon. (BETR 2403) She did not identify anybody. (BETR 2404)

RECROSS EXAMINATION OF BRYN RIDGE BY VAL PRICE

On May 27, 1993, at about 5:17 P.M. I conducted a photographic lineup with Aaron Hutcheson. I do not have a report that lists the 10 photographs that were shown to him on that date. I believe there were 10 photographs. If we took a brief recess, I would not be able to find the report of the 10 photographs that I showed Hutcheson on that date. I showed a person who is a potential witness to these murders a photographic lineup, but I did not write a report. I did not write down the 10 photographs that I showed him. The reason I did not write down the photographs was that during that period of time, we were very busy. There were several interviews taking place. (BETR 2405)

Those photographs were kept together in the office until the arrest was made. When the arrest was made, unknown to me the photograph display was taken apart. There was not one photographic display that was shown to several different witnesses. We had a board in which we can take different photographs in and take different pictures out. There were not that many photographs displayed to anybody. That is one of very few times that photos were displayed.

On that date, I showed Hutcheson 10 photographs. Murray Farris and Chris Littrell were some of the 10 photographs I showed him. I'm not certain if Echols was one of the photographs. At this time Echols was a suspect. Based on information I had, Hutcheson was allegedly an eyewitness. I do not remember if I showed Hutcheson a picture of Echols. (BETR 2406)

Hutcheson was not an eyewitness to the murders at that time. We had no indication on May 27, 1993 that Hutcheson was an eyewitness to the murders. I showed him pictures of people that he may have seen on previous occasions. I do not remember if I showed Hutcheson Echols' photograph. I believe another person in the photographs would be James Kenny Martin. I'm not certain about a Michael or David Wynn, one of the twins. I'm not sure. There are several others and I don't remember all the names. It was some photos I put together.

I placed the photographs on the board. There were numbers 1 - 10 on each photograph. (BETR 2407) During this photographic lineup, I discovered that another police officer, Chief Don Bray of the Marion Police Department, had shown Hutcheson a photographic lineup the day before. I was informed that another officer had shown some photographs, but I don't know the results of that photo lineup. I do not have any knowledge if Bray wrote up a report concerning the photographic lineup that he showed Hutcheson. (BETR 2408)

(BETR 2409-2511 is omitted as to irrelevant to Mr. Baldwin's appeal)

MR. FOGLEMAN: State's Exhibits 121 and 122 were introduced as a joint exhibit with the defendants. (BETR 2512) It has got sunrise and sunset for various dates and various months and the local climatological data.

REDIRECT EXAMINATION OF LISA SAKEVICIUS BY JOHN FOGLEMAN

After I left, some mention came up about whether or not there was any evidence of candles at the scene. I did find evidence of candle wax in ray examinations. On the item, my E-2 item, State's Exhibit 44, which was a white polka-dot shirt, I did find a blue wax which was consistent with candle wax.

(BETR 2513)

REDIRECT EXAMINATION OF KERMIT CHANNEL BY JOHN FOGLEMAN

I participated in the execution of the search warrants at the home of Echols. State's Exhibit 83 has my serology case number, my initials and my QI number on' the bag. (BETR 2515) State's Exhibit ui ià a photograph that fairly and accurately portray the item as it appeared to me that night. This is a photograph of the location of where I recovered State's Exhibit 83 in the home of Echols. (BETR 2516)

(After a discussion, State's Exhibit 83 is received in evidence. BETR 2517-2518.)

CROSS EXAMINATION OF KERMIT CHANNEL BY VAL PRICE

On June 3, 1993, when I was executing the search warrant at your client's house, I did not seize a copy of the Holy Bible. I did not see one to my recollection.

DIRECT EXAMINATION OF JOHN MURRAY BY JOHN FOGLEMAN

I am a Criminal Investigator, Crittenden County Sheriff's Department. On May 19, 1992 I had an occasion to have some conversations with the defendant Echols. (BETR 2518) As a result of those conversations, I went to his home in Lakeshore Trailer Park and asked for permission of his mother to search his room. As a result of that search, I took certain items from his room. State's Exhibits 115 and 116 are photographs that fairly and accurately portray the items as they appeared to me at that time. (BETR 2519)

(State's Exhibits 110, 115 and 116 are received in evidence)

In relation to State's Exhibit 110 I notice in the photograph there are some items on the photograph that aren't on 110 at this time. Those items that are shown in the photograph, were on exhibit 110 at the time I took them. State's Exhibit 116 is a dog skull that I got from Echols' residence. (BETR 2521) State's Exhibits 111 was laying on a table and 112 was on the wall in Echols' home. There were other items on the table. (BETR 2522)

(State's Exhibits 113 and 114 are admitted into evidence)

These are poster type photographs of items that were in Damien Echols' room.

CROSS EXAMINATION OF JOHN MURRAY BY SCOTT DAVIDSON

I went to Echols' home May 22, 1992. One year before his arrest. (BETR 2523) I did not know that State's Exhibit 111, was a picture that came from a skating magazine. I did not do any research on that. (BETR 2524)

DIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN

I helped search of the home of Baldwin on June 3, 1993 and recovered State's Exhibit 118, 11 black tee shirts with different designs. (BETR 2525) State's Exhibit 119 were 4 black shirts, one green rain jacket recovered from Baldwin's residence. (BETR 2526)

CROSS EXAMINATION OF BRYN RIDGE BY PAUL FORD

I did not take any white tee shirts because I didn't see any. I can not recall any gray tee shirts. I can not recall a single white tee shirt. (BETR 2527)

DIRECT EXAMINATION OF DALE GRIFFIS BY JOHN FOGLEMAN

I consult to criminal justice educators, mental health people, in the area of nontraditional groups. I have been married for 35 years and have 3 adult children. Prior to becoming a consultant, I worked for 26 years in the Tiffin, Ohio Police

Department at which time I was retired as a captain. (BETR 2528) I worked at the L.A. Police Department for 2 weeks, San Francisco Police Department for 2 weeks, and I worked with other agencies in the area of cults, occult and nontraditional groups. I graduated from high school, have an associate degree in police science, a bachelor's degree in psychology, master's degree in criminal justice and dissertation in criminal justice. The master's degree in criminal justice and where I did my dissertation, was from Columbia Pacific University in San Rafael, California which is a school without walls. Much of my work was by correspondence. I started my course work at Columbia Pacific University in 1980. My course work had some relationship to nontraditional group activity. My master's work was working in intelligence work with small agencies and my doctoral dissertation was on mind control cults and the effects on the objectives of law enforcement. (BETR 2529) Nontraditional groups are. I taught people to look at the group activities from a malevolent side. Everybody has got the right to believe what they wish. I teach them to look at these groups for what they are, whether it be a cult or an occult group or a gang member or a type of cult that has malevolent tendencies. Malevolent tendencies are bad because they break laws.

In 1968, when we started seeing some of these groups that were cause orientated on the campuses raising some havoc. After developing this interest, I

contacted schools with walls to try to pursue that study. I was going through those type of schools until 1976. I was going through Terra Technical College in Fremont, Ohio, and then I graduated with a degree in psychology from Heidelberg College. I ran into a case in 1976 which threw me for a loop. I tried to get the lateral transfers and realized that wouldn't work. (BE TR 2530) Then, I went to schools with walls to get additional help. Those schools with walls, did not offer the type of studies in this nontraditional group activity. I started in the late 1960's working cause orientated groups that have a purpose or interest they are out there to further. The Students United for Freedom and Peace are things we commonly saw on campus in the 1960's.

I come from a small town in Ohio. We started hearing some cases involving cults. I started checking on that. I just couldn't believe why people would leave town and give up their money. I studied it and did anything that I could get a hold of. (BETR 2531) As a result of the interests that I developed, I was in Los Angeles and San Francisco to further that interest. I tried to be proselytized by these groups, to see how they worked, see what their sales pitch was. I went to the American Church of Satan but I was not a member. I went to where they held their meetings and looked at how their rooms were set up. I went to their book stores. At that time I didn't know what a book of shadows was. Learned from the street what the

different groups was. I also interviewed people involved in this activity. Over the years, when I was doing my dissertation. That is where I attended ISP or independent study project. Part of my dissertation was the results of that review. I talked to 500 of them. At the present time, I receive about 65 calls a week in regard to nontraditional, groups. (BETR 2532) About 80% of those calls are related to satanism. I have previously qualified as an expert in both state and federal court.

VOIR DIRE EXAMINATION OF DALE GRIFFIS BY PAUL FORD

I went to Columbia Pacific University. That's not a mail-order college, where you can send in information and get a degree. That is not how that place works. (BETR 2533) I graduated from high school in 1955. The first time I went to college was 1956. I went to Delbert College, associated with Western Missouri. I did not get a degree from there. I got a technical degree from a community college. It was in 1974, 1975. It was an associate degree in political science. I had to go to classes, take tests, get grades, have a transcript. I later went to a four-year college. (BETR 2534) I was actually going to both at the same time. I was working at the Tiffin Police Department, I believe, at the rank of lieutenant at that time. I was a full-time police officer enrolled as a full-time college student in two different colleges.

I got two degrees. One in a technical college and one a four-year degree. That was a B.A, magna cum laude. That was in 1976. I had to go to classes, I had professors, I took tests, got grades and had a transcript. (BETR 2535)

When I went out to Columbia Pacific University, I took no classes. I took tests, predominantly written. Objective questions. While I was enrolled at this college in California, I lived in Tiffin, Ohio. I took no classes. I started that school around 1980. I got a master's degree. It took me two years. It was a combined master/doctoral program. The total program lasted three years. (BETR 2536). So, in three years I got a master's and a Ph.D. I was at the campus a couple of times, but I did not attend classes. They don't have classes at this campus. This was in 1980 and schools like Harvard, Stanford, Ohio State, Michigan State didn't offer classes that dealt with the psychology of nontraditional groups, because I went and asked for it. In 1980, I couldn't go to Stanford or Michigan State and take a class on the psychology of nontraditional groups, not and work as a full time police officer. (BETR 2537)

I went to Bowling Green, Toledo University, Marion campus, Ohio State, the campus at Bowling Green, Ohio State, Ohio University. I could not even get a weekend program. I could not get a full-time program in the area I wanted. At this

time, I had to go to this kind of college. You can get it at Toledo U now. I was in L.S. and San Francisco for two weeks each.

These 65 to 75 calls I receive, of which 80% relate to Satanism, I follow up on those. I give information out and/or give them people in their area to follow up with. This is all I do for a living, do consulting work. Not just with police departments. I testified earlier it's with mental health educators and besides doing consulting, I do give lectures. (BETR 2538) It is all in this area.

I have testified in a couple hundred criminal trials. Of those, I have testified as an expert in satanic activities in one. That was in Michigan. I don't remember his name. His first name is Jeff and he is in Ionia State Prison. That was in about 1987. I have testified in hundreds of trial. (BETR 2539)

(BETR 2540 is omitted as irrelevant to Mr. Baldwin's appeal.)

I have been in business as a consultant since 1986. I have testified as an expert on this stuff three times. One of those was criminal. I know what I'm talking about. (BETR 2541).

DIRECT EXAMINATION OF DALE GRIFFIS BY JOHN FOGLEMAN

I have reviewed autopsy reports, autopsy photographs and crime scene photbgraphs for Branch, Byers and Moore. (BETR 2542) Based on those items that I reviewed and if you assume that the testimony showed that Baldwin sucked the

blood from the penis of one of the victims, that this crime occurred on May 5th or 6th of 1993, that there was a full moon and there was the absence of evidence of blood at the scene, I would have an opinion as to whether or not the murder of the 3 boys were occult inspired or the occult is involved. It is my opinion that they were using the trappings of occultism during this event.

By stating "the trappings of occultism" I mean you have got dates, time of the moon phase, you have the removal of blood. Occultists when we are discussing this in general like any other religious groups have certain holidays that they worship. Walpersnaucht is on April 30th and it is based at the changing of the seasons. Beltane is on May 1st and it is a fire festival. Generally, that is a holiday. In occultism it is used by both pagan and satanic beliefs. The occult is like an esoteric secret science religion. There are different types to it. There's paganism, which is white witchcraft, there's satanism which is black witchcraft. (BETR 2543) Some shamanism has been put in there which is Indian folklore occultism. They go back in the area of paganism prior to Christianity.

The manner in which the children were tied, has an effect. They were tied in a display fashion in which their ankles were tied to their wrists, exposing their genitalia, and they would either put them on their face or on their back. The types of injuries have significance because predominantly there was the removal of sex

organs. Some books on occultism will talk about sex organs, removing the testicles for the semen, a group called Crytos.

Torture is not done by occult cults. There is a difference between traditional cult groups and occult cult groups. Traditional occultists follow, rules set out by various prescribed manuals for services. An occult cult group usually follows that of the leader, and it could be anything. In occult cults they make their own rules. (BETR 2544) The fact of the manner in which the types of injuries in the sense of the variety of injuries does not have significance in my opinion -- as far as the head injuries to one, plus injuries to the face in regard to the – there is significance in water because usually water is there to wash up with. In some cases in traditional occult groups it is there to do baptism just as well as in Christianity. The significance of the sucking of blood is that blood is the life force. Usually they prefer to have a child that is very young, and the younger, the more innocent, the better the life force. I'm not sure if there is any significance to the absence of evidence of blood at the scene. (BETR 2545) In occultism they will take it, store it, bathe in it or drink it. The drinking of the blood was supposed to give power and transference of life force.

In occultism there is significance to the right and left side. In satanism, they usually take the midline of the body and they will refer to the right-hand path as

that for Christianity and the left-hand path would be for satanism. In actual practice there are attempts to classify the persons who are involved in occultism into different categories to the extent of which they are practicing occult behavior.

In cases where there is suspected criminal activity we would look at the various levels or classification. For example, we could have a follower, a leader, a traditional member or a victim. (BETR 2546) Traditional member would be somebody who belongs to a satanic church which is recognized in the state where they have filed corporate papers or following traditional satanic beliefs such as the American Church of Satan founded by Anton LaVey. LaVey established Walpersnaucht in 1966. I am familiar with the books that he's written such as The Satanic Bible, The Satanic Ritual Book and The Complete Witch. They are black witchcraft. There are self-styled satanists. Different types of groups which would start out with an experimenter, usually one who practices alone in an unorganized manner, a self-styled occultist -- and we are talking here only in the field of satanism. This person has some kind of problems in life and they use the trappings of occultism to get along. Then we have an occult cult group, and this has a little charismatic leader and some followers. sometimes they have a name and sometimes they don't. They also use the trappings of occultism. (BETR 2547)

Then you have a traditional church that uses the traditional books on occultism. The ones using the trappings have a particular type of dress, jewelry or body markings. I have personally observed people wearing black fingernails, having their hair painted black, wearing black tee shirts, black dungarees, that type of thing. Sometimes they will tattoo themselves. It starts out with ink. They are liable to put it on the left as well as the right. Then they'll use some earrings which have occult symbols that you can buy through the mail. Tattoos may be on the middle finger of the left hand or in the web here of the hand between the thumb and the index finger of the left hand. (BETR 2548) The practitioners of satanism keep records or books of things, spells or things like that. Most occultists do but it depends upon how sophisticated they are.

State's Exhibit 110 appears to be a partial book of shadows. The drawing on the front is a Wiccan or white witchcraft pentagram. (BETR 2549) The front page of the book confuses me because we've got a white witchcraft pentagram and upside down crosses which comes from black witchcraft, another type of occultism. That is at the stations the five points. Usually in satanism they'll have various activities take place at the five points or figures.

In white witchcraft or Wiccan we do not have upside down crosses. State's Exhibit 115 is a photograph that appears to be of that except there are a couple of

other items on the front. On the front of the book of shadows, there's overlaying because this pentagram there's an upside down cross. In black witchcraft that is a 180 degrees to Christianity. Then we have a flying skull. (PR 2550) State's Exhibit 112 is a picture with the body on top of an altar is a head and it is a Ephias Levi. It is Bontamet, or a satanic goat head, and below that is a person in a robe, and these robes I have seen sold in occult shops on the East Coast and West Coast. This is not Wicca. This is black witchcraft.

State's Exhibit 111 is just something gory. In people involved in occultism I see artwork involving necromancy or love of death. State's Exhibit 116 is a picture that contains the altar that is here. (BETR 2551) Several times I have had the opportunity to review pictures where they will have an animal's head on an altar or they usually have a candle on it. I've worked cases where they dug up human heads. I have worked cases and seen books of shadows where they will have different names in them. These names are used inside the cult or their little group. Those items that I have just looked at are black witchcraft. I have not seen Wicca people use that. This one confuses me because I have seen people in Wicca with potions and elixirs. Wiccans do not use upside down crosses.

State's Exhibit 83 is a book that has Wicca and Satanism. (BETR 2552) There is a chapter in here called, "Rising Devil," and it is underlined in red. Often I

get a look at books and the spinals are not broken on the back. You'll notice on this, one it is not broken back, which to me indicates somebody hasn't read that part, and that part starts off with "Witch Hunt Mania." There has been evidence that Echols said "The younger the victim, the more innocent. The more innocent, the more power which was used by an author, Mister Crowley. He's a gentleman from England, who came to the United States and started a group called Ochio. He started the Solar Lodge in California. (BETR 2553) He called it Soto. His beliefs involve black witchcraft and Satanism.

I am not familiar with Crowley's position on human sacrifice.

CROSS EXAMINATION OF DALE GRIFFIS BY VAL PRICE

I am not saying that this picture, State's Exhibit 111, is one of the bases of my opinion that the murders had trappings of occultism. (BETR 2554) This picture was something that the Crittenden Sheriff's Office has had in their possession at least a year prior to these murders so it would have no value in connection with my opinion. The goat's head and altar, State's Exhibit 112, which also has been in the Crittenden County Juvenile Office or the Sheriff's Department for the past year. This picture is not a basis of part of my opinion that these murders had trappings of occultism. This picture has not been in Echols' house for a year prior to the murders. This picture has nothing to do with the murders. (BETR 2555)

This picture is one of the things I considered in determining whether occultism occurred as part of the motive in the murders. I was not aware that this picture has not been in Echols' home for the past year prior to the murders. That fact does not change my opinion unless his activities changed. (BETR 2556) This picture in and of itself has a basis for my opinion that the motive of the killing was cult related because it depicts an occult satanic scene. This picture has been introduced in this trial against your client, but -has been out of Echols' house 12 months prior to the murders. (BETR 2557)

The book of shadows, State's Exhibit 110, contains the first writings in this book talk about, "The rites are performed in a nine foot circle." There was no evidence at the crime scene of a nine foot circle. It also says that, "Incense was used in all witchcraft ceremonies" but there was no evidence of any incense at the crime scene, so this page does not have anything to do with my opinion that the motive for the murders had trappings of occultism. The next thing this book talks about is improving the memory, but that spell does not have anything to do with the crime scene. (BETR 2558) The following spells a love charm, "to improve the chances of success," "a cure for worms," and "a cure for cramps" do not have any evidence at the crime scene. I have no knowledge of who underlined page in this particular book. This book has several different chapters. Chapter one "Horned

Gods and Mother God," Chapter two "The Evolution of Witchcraft Magic," Chapter three "Witch's Brews and Broomsticks," Chapter four "Pagan Witches," Chapter five "The Rise of the Devil," Chapter six "The Witch Hunt Mania," Chapter seven "Juvenile Witch Hunters," Chapter eight "The Resurrection of the Crab." (BETR 2559) The only thing in this book that is my basis of the opinion that the motive for these murders had trappings of occultism is the fact that the only thing that was underlined in that dealt with devil worship and there was a couple sentences in there with reference to blood and its life force. There is nothing dealing with how to commit murders or how to kill somebody. It is not a black manual.

In analyzing this crime, I did not take some Satanist beliefs, some Wiccan beliefs, some occult beliefs and mix them all together. I am saying this is a Satanist crime. I have testified about the different types of occult activity. From what I could see, the trappings were that of devil worship. (BETR 2560)

April 30th and May 1st are dates of some importance. They have what is referred to as ethsabbaths which are higher holidays and those two dates are higher holidays. They are the whole broad spectrum of occultists. Echols was on that particular book that you brought to my attention. I found it interesting that Echols underlined only the things that had to do with devil worship but I did not know

who underlined that. I do not know if Echols is a member of the occult. (BETR 2561) Whoever underlined this book had an interest in the trappings of satanic occultism.

In my opinion there is a difference between a crime that has trappings of occultism and a cult related crime. I do not know if I can draw a distinction between those two concepts. A cult is something we have seen with David Koresh. An occult group is Satanism. When you mix them together, when you have an occult cult group, you are liable to have whatever the leader may want. In my opinion Echols has an interest in the occult but I do not know if he was a member of an occult group or a cult group.

Is it possible to have an interest but not be an actual member of an occult group. I have priests and ministers will call me and ask me what does this mean but that doesn't mean they are occultists. On the other hand, they don't have books that somebody has underlined with that either. (BETR 2562)

A main factor that I am considering is that Echols possessed that book. April 30th and May 1st were key dates but these murders took place May 5th or 6th. April 30th is Walpersnaucht and May 1st is Beltane. The fact that there was a full moon, is a key factor that I am considering. In my opinion, it would lower the degrees that this is a Satanist killing if the murders would have taken place when

there was no moon. If the murders took place when it was a half moon, that might lower it halfway but you're getting into semantics. (BETR 2563)

The manner in which the victims were tied was in a display fashion but it could be a sex crime and not a crime with trappings of occultism. I have never investigated a case in which the victims were tied in this manner which turned out that case also had trappings of occultism. I have only had them where they have been displayed. The type of injury was another factor that I considered about the trappings of occultism but the fact that the genitalia were removed could also mean that this was possibly a sex crime. It could not be a serial killing because serial killers usually leave something or take something from the scene.

The type of torture was another factor based on my opinion. The case in Warwick, Rhode Island had trappings of occultism in which torture was a factor. (BETR 2564) A female was killed inside a pentagram. She was raped and hit with, slashed with a knife a couple times and after she was incapacitated, they burned her up, set her on fire. In that case they found a pentagram. The officers in this case never found a pentagram or a nine foot circle. In the Rhode Island case that they burned up the victim, so fire another factor that I look at to determine if the case has trappings of occultism. However, in this case there was no evidence of fire.

Another factor I testified to was about the presence of water but the bodies could have been placed in water in order to drown them because that is what the Medical Examiner said. (BETR 2565) The bodies could also have been placed in water. to help avoid detection. The fact that the bodies were found near the presence of water, that in and of itself does not make this the trappings of a cult related killing. However, usually in occult cases they will be around a water source. The case in Michigan where the boy is now in Ionia prison is one that I investigated and in which there was a determination that it had trappings of an occult related killing which was around a water source.

That the sucking of blood was a factor to consider, blood is a life force, and usually they will take the blood. I discussed the amount of loss of blood of all three victims. I looked at the autopsy photographs and read the autopsies. I do not have an opinion as to where all the blood went. (BETR 2566) The absence of blood at the crime scene could also mean the victims were killed elsewhere and deposited at the crime scene.

I testified about the significance of the left side of the face and the right side of the face, with the left side having reference to Satanism and the right side to Christians. Since one of the victims had more injuries on the left side of the face, that is an insignificant factor that this case had trappings of occultism. I found it of

interest. If a victim received facial injuries, there is a 50% chance they'd receive injuries to the left side and a 50% chance to the right side.

I have read the Satanic Bible by LaVey. This was in preparation of the research that I was doing to help me be better able to consult with law enforcement officers. (BETR 2567) I met Anton LaVey. The factors of dress, the wearing of black, jewelry and tattoos could be a factor that I consider in determining if this was cult related.

The State has introduced 15 black tee shirts that they seized at the home of Baldwin. If any person wears a black tee shirt, that is a factor that I would consider in determining if this case has trappings of occultism. The prior dress code that the individual uses is an indicator. I am not aware that our local university's colors are black and red and Jonesboro High's colors are black and gold. I have gone on record saying that just because they wear a shirt like that doesn't make them a Satanist.

I cannot give you a specific number of cases that I have investigated in which the determination was made that they had trappings of occultism in which the defendants wore black tee shirts. (BETR 2568) I get asked that question and people send me pictures privately. I was not award State's Exhibit 111, was a picture that came from a skating magazine. I did not look at the back of this

photograph to read "Skater parks. Your 1991 tour guide" nor was I given the note inside.

Earlier I testified about a quote from Alister Crowley dealing with younger victims. (BETR 2569) I am not aware that the West Memphis Police Department asked Echols and about 200 other individuals how they thought the murders might have occurred. If the bodies were placed in a pattern, that would be a factor I would consider. By the way they were tied up, I can only suspect that the crime scene indicated that the boys were laid up in a line or in a unique manner. I specifically asked Ridge that question on January 27, 1994, and he answered, "No pattern to the placement of the bodies except the placement in the water." I also ask Ridge, "Was there any natural substance in any way laid out in a pattern?" (BETR 2570) I am aware that Ridge's answer was that from his examination of the crime scene, "I could not find any items laid out in any pattern." Question 6 was "Were there any indicators of a slab or a log or device present at the scene?" and he answered "No slab or log was found to be in the area." The fact that there were 3 victims was not a factor that I considered in reaching my conclusion. I just looked at the base number three. There was an initial group of 11 questions. In looking at some of the scene photos and data from the coroner, some primary indicators focused number five. I looked at the crime scene photos and not Medical

Examiner photos, and I thought all three boys were traumatized in the area of the penis. That's wrong. I was able to correct that once I looked at the autopsy photos.

(BETR 2571)

CROSS EXAMINATION OF DALE GRIFFIS BY PAUL FORD

None of the stuff that I told this jury has been based on things I learned out at college. For the course, I was required to read several occult books. I did not learn someone else's opinion in a book. One of my reasons for my opinion was because I saw a book and said the person who had this book had an interest in the occult. I have read 4,800 books on the occult. I have got a lot of interest in the occult but I am not a member of the occult. (BETR 2572) Having an interest in the occult doesn't make you a participant in it. I would have to have the answer to several questions before stating this be a serial killer. Everything I have testified is not a guesstimate because it is based on training and work. Although I cannot rule out that it's a serial killer, I am not guessing that it's an occult killing. The trappings are there. In a serial killer there are things you look for. I do not have enough information to truly form a complete opinion on serial killing. (BETR 2573)

I have not been or walked out to this crime scene. They sent me a picture of all four sides of the crime scene. In looking at occult cases I look at the points of a compass as an indicator. Part of my opinion is based upon the fact that this

happened in a secluded area. This is a secluded area right near these homes, near this truck wash and near this truck stop. (BETR 2574) I can pick out the crime scene is on that photograph. The crime scene is a secluded area but I never been there before. I do not know how far it is from where these bodies were found to the nearest home. If I was trying to make a determination of it being in a secluded area is important, it doesn't stand to reason that I would want to know how close I am to a home or a business. In Boston it was right beside a church or a school, but they never saw it either. (BETR 2575) It is important in determining whether you're in a secluded area to know how close the nearest residence or the nearest business but I don't know that. It was in Ridge's report, but I do not know. I do not have an opinion about where the blood went because they have not told me. (BETR 2576)

(BETR 2577-2581 is omitted as irrelevant to Mr. Baldwin's appeal)

I would have to know where it happened at to make an opinion that this was an occult killing if this homicide occurred somewhere else other than in these woods. If the homicides did occur somewhere else, I would have to have a different set of facts. My comment is the same. I would have to know some more facts. The likelihood could go up or down if the homicides occurred somewhere else. The evidence that I have to link Baldwin to the occult was that he was the individual who sucked the blood out of the individual's penis. (BETR 2582) If that

evidence is wrong, I do not have any other evidence to connect Baldwin to the occult. I have not seen the reports to know if other people said he was present or not.

REDIRECT EXAMINATION OF DALE GRIFFIS BY JOHN FOGLEMAN

In my experience serial killers act alone and do not or run in packs. Of all the cases I have read about, there's only been two of them that ran with another individual.

RE CROSS EXAMINATION OF DALE GRIFFIS BY VAL PRICE

I recall an article in the Capital Magazine out of Columbus, Ohio, on July 15, 1984, and about me. The title is, "Sympathy for the Devil," and it talked about my research, consulting and activities in this area. (BETR 2583) I was with the department, and I was being asked from other departments. The following quote is attributed to me that is contained in this article:

You have got to remember there's a lot of sheriffs and a lot of police chiefs under a hell of a lot of pressure when I get there. I'm there to help my brother police officers. I report to them, not the public. (BETR 2584)

(BETR 2585-2596 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF CHRISTY VanVICKLE BY JOHN FOGLEMAN

I am 12 years old and I go to school at Richland Elementary in West Memphis. After the murders of the three little boys and during the month of May, I

was at the girl's softball field one day. I heard somebody say something about the murder of three little boys. I heard Echols say that he killed the three boys. (BETR 2597) I was walking by with my friend Jackie Medford. I am pointing to Echols in the courtroom. After I heard him say this, I went and told my mom. Jason Baldwin was also present when that statement was made and I can point him out for the jury. (BETR 2598) Other people were around when Echols made this statement.

CROSS EXAMINATION OF CHRISTY VanVICKLE BY SCOTT DAVIDSON

I do not remember what day it was when I heard this. I do not know what day of the week it was. My mom, Ann VanVickle, took me to the ballpark. I was with Jackie Medford at the ballpark. Jackie and I were walking together. (BETR 2599) We were walking back from the concession stand. I don't know if I had anything with me. I had been to the concession stand and I walked by Echols and Baldwin. There was a whole crowd of people over there, but I don't know who they were and I could not point to them if I saw them. I remember who Baldwin and Echols but I did not know them. I had never seen them before. (BETR 2600) That was the first time I had ever saw them in my life. I had seen those other people that were supposedly there with them but I can not remember who they were. They play up at the girl's club, but I don't know who they were. There were about ten people in that group. Echols was talking to all the people there. That's all I heard him say

because it scared me so I ran off. I can't remember if I went on, or ran off. I don't know what he said before I heard him say that he killed those three boys. I don't know what he said after that. (BETR 2602) I wasn't close to him. I don't know he screamed or yelled. I do not know how close I was to him. There was a police officer out there that night. After I heard this, I did not walk over to the police officer and tell him this. I told my mom about it. She was at the ballpark that night. My mom did not take me over to tell the police, officer. I finally told somebody about this a few weeks after I heard it. It was after Echols had been arrested. I saw it in the newspaper. (BETR 2603) That's when I went and told someone. I don't know what time was it that you heard this. My sister was playing softball that day sometime in the afternoon. (BETR 2604)

REDIRECT EXAMINATION OF CHRISTY VanVICKLE
BY JOHN FOGLEMAN

I was maybe 15 or 20 feet away when I heard Echols. That night I left the ballpark with Jackie Medford's mom Donna Medford. Jackie is 11 years old.

CROSS EXAMINATION OF CHRISTY VanVICKLE BY SCOTT DAVIDSON

I am 12 years old now but was 11 years old then. (BETR 2605)

DIRECT EXAMINATION OF JODY MEDFORD BY JOHN FOGLEMAN

I go to school at West Memphis West Junior High and I am 15 years old. I have two sisters, Jessica and Jackie Medford. In May of 1993 after the murders of

the three little boys I was at the softball field and I heard a comment in regard to the murders. I heard Echols say that he killed the three little boys and before he turned himself in that he was going to kill two more and he already had one of them picked out. I was not with my sister Jackie at that time. (BETR 2606) I was walking around the corner of the concession stand from where he was standing talking with a group. Before this happened, I did not know who Echols was. When I heard this comment, I went and told my mom. I am pointing out Echols, the person who made this statement in the courtroom. When I heard this comment, I don't know how far from him I was but I was not very far. (BETR 2607) It was light in the evening.

CROSS EXAMINATION OF JODY MEDFORD BY SCOTT DAVIDSON

I was playing softball that night. My game started about 9:00 o'clock. It was dark when I played my game. (BETR 2608) I got to the ballpark about 5:30 because my sisters, Jackie and Jessica Medford, had ball games. My mom took me to the ballpark. I had not been to the concession stand. I was walking around the corner going to go talk to some of my friends, when I saw and heard him. Nobody was with me. I was not with Miss VanVickle who just testified. She is a friend of mine. She came home with us that night. I did not see her when this was said. I saw her telling my mom when I went to tell my mom. (BETR 2609)

When I heard this conversation, I did not see Christy. She was not around. I was by myself. There were a lot of people out there at the ballfield. Lots of people came walking by and stuff. I was around the concession stand which is in the middle of all the ballfields. The fields are all the way around it and the concession stand's in the middle. Lot of people were in there at the concession stand. Games were going on at the time. (BETR 2610)

People were yelling at the games but I could still hear him say it. I was by myself when I walked by and saw Echols. I don't know who was with him. It was just a bunch of people that he was talking to that their backs were turned to me. He was facing me and everybody else was facing the other way. There were 6 or 7 people with him but I don't know them at all. I could not pick them out today if they were in the courtroom.

I have never met Echols before. I did not know who he was. (BETR 2611) I had never seen him before. This was the first time I ever saw him. I hadn't seen him since except on TV. I have been watching it pretty much every day this week. I know what has and hasn't been said.

I heard this statement about 6:30 p.m. I do not know what day this was. I have never seen him since that time. (BETR 2612) I was by myself. I gave a statement before to Diane Hester of the West Memphis Police Department. I wrote

out and signed one statement and she wrote out the other statement. In the statement I said I had never seen Echols before. I recall telling the officer, "I don't know him. I just know of him." I knew that he had been at the girl's club that night and when I saw him, they told me who he was. A group of girls told me who he was. There were a lot of people talking about him. I didn't recognize anybody else that was with him except Baldwin who was standing by where you buy the food at. (BETR 2613) I just saw the two of them.

In my earlier statement I said that Heather was there standing right by him. She was standing right by him. I am now remembering that. I did not talk with Heather about this but I don't know her. I was by myself. In my earlier written statement I said that I was with your sister Jackie. I wasn't with her. But when I walked around, I saw them at the corner talking with my mom. When I made this earlier statement, this wasn't right. (BETR 2614) I was not with her. I also said that I was with her friend, Christy VanVickle. That is not right either. They were talking to my mom at the corner, when I heard this, I was not with them.

I heard people talking about Echols before this. I thought Echols was kind of weird because he was dressed all in black and his hair was jet black, long and shaved on the side. I had never seen him before that night. I had never heard people

call him "Edward Scissorhands." I was about 25 feet away from Echols when I heard this conversation. (BETR 2615)

I don't know what he said before he said that he killed them. I was walking around, and I just heard him. He said that he killed the three little boys, and I turned around because that didn't sound right, and then he finished what he was saying. He said, "I killed the three little boys and before I turn myself in, I'm going to kill two more, and I already have one of them picked out." I do not know what else he said. I went off and told my mom. My mom is Donna Medford. I can't remember if there was a police officer out there that night.

My mom and I did not go to the police station that night. I went to the police station the day she wrote it. That would have been on June 7th. (BETR 2616) That is not after I saw this on TV. I was like babysitting and I saw him on TV and I called my mom and told her that was him and she said okay. Only after I saw something on TV did I contact the police. But I told my mom. My mom and I had not talked with the police before then.

REDIRECT EXAMINATION JODY MEDFORD BY JOHN FOGLEMAN

I was asked on cross examination about this statement about my saying that I do not know him, I just know of him, and that this was the first time you had ever seen him. At the bottom of the same statement, I told the police. "That was the first

time I had ever seen Damien and he was there too the next night." (BETR 2617) I told the police that was the first time I had seen Echols. There is no doubt in my mind who it was I said I heard. I went to the ballpark that night with my mom, Jessica, Jackie and Christy.

RECROSS EXAMINATION JODY MEDFORD BY SCOTT DAVIDSON

Earlier I said that's the only time I had seen Echols and now that is the way I remember it. In the statement that I gave the police I said, "That was the first time I ever seen Damien and the next night he was there, too". I saw him that next night. (BETR 2618) I did not see him more than once. The first time I saw him was the night he said that. Earlier in my testimony, I said that is the only time I had ever seen him. It was the first time I seen him, but not the only time. At the girl's club Jessica, Jackie and Christy and my mom were with me. Katy Hendrix is my cousin. She was there, too, but we didn't bring her or anything. I did not hear Echols say anything the next night. I wasn't around him.

REDIRECT EXAMINATION JODY MEDFORD BY JOHN FOGLEMAN

Of those six or seven people who you can't remember who they were standing around Echols, none of them said they killed the three little boys. (BETR 2619)

(A sheet showing the weather conditions on May the 5th with the phase of the moon, sunrise, sunset information was introduced into evidence as State's Exhibit 124 without objection.) (BETR 2620)

DIRECT EXAMINATION DONNA MEDFORD BY JOHN FOGLEMAN

I have a son and three daughters. My husband's name is Eugene. In May 1993 after the murders of the three little boys, I was at the girl's club one night when my daughter Jody told me some information about what somebody had said. When I first remember her saying anything to me was when we got to the car ready to leave. (BETR 2621)

Jody said that the boys that were there --I knew because I had seen them there -- that they had said that they had killed the three little boys and Echols had said it. She described him as the weird looking boy that was there that night dressed in black. This is my signature on this. (BETR 2622) I remember in my statement that she described him as "The weird looking boy with the black hair that was there." She said that he said that he had killed the three little boys and before he got arrested he was gonna kill two more and that he had one picked out already.

CROSS EXAMINATION DONNA MEDFORD BY SCOTT DAVIDSON

We went to the ballpark about 6:00. I have got two girls that play ball, and we are there just about every night I have never met Echols. I just saw him that

night when he came in right behind me. She did not tell me his name. I did not see him talking with anybody since I was watching the ball game. (BETR 2623) My daughter described him as the weird black--haired boy. I knew immediately who she was talking about. My daughter told me in the car as we were going home. I don't know what time our games were over, but it was dark. She told me when I got in the car. She did not come over and tell me this earlier. She had a ball game. When she told me this, there was not a police officer out there that night. I did not see a police officer. I do not think that they normally have a police officer patrolling the girl's club because it is a secure, safe area. I was watching the ball game. I did not see a police officer there. (BETR 2624) I did not take my daughter down to the police station. I believe it was a Thursday night. before Memorial Day because we also talked about it on our trip, we talked about it that weekend. I didn't actually notify the police. I notified the director of the girl's club the day he was arrested. I did not notify the police. I was at work and my daughter saw it on TV and she called me and said, "Mom, it is really him. It is the boy that said that at the girl's club." And, I said, "I'm going to have to wait until I see that for myself." I never took my daughter to the police station until afterwards. I did not see this conversation taking place. (BETR 2625)

REDIRECT EXAMINATION DONNA MEDFORD BY JOHN FOGLEMAN

After I reported this to the director of the girl's club, the police later contacted me. I did not seek out to be a witness.

MR. FOGLEMAN: Offer State's Exhibit 123, Echols black book. (BETR 2626)

(State's Exhibit 123 is received in evidence)

MR. FOGLEMAN: The State would ask permission to read the portion of State's Exhibit 123 that we offered previously. (BETR 2628)

MR. FOGLEMAN:

In the middle. I want to be in the middle in neither the black nor the white, in' neither the wrong nor the right, to stand right on the line. To be able to go to either side with a moment's notice. I have always been in the black and in the wrong. I tried to get into the white but almost destroyed it because the black tried to follow me. This time I won't let it. I will be in the middle.

MR. FOGLEMAN: The State rests save for possible rebuttal. (TB 2629)

(BETR 2630-2631 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF PAMELA HUTCHINSON
BY SCOTT DAVIDSON

I'm residing with a friend at Lakeshore. (BETR 2632) I am Damien's mother. I am married to Joe Hutchinson. I have lived at Lakeshore about two weeks. we just moved there. On May 5, 1993, we lived at Broadway Trailer Park in west

Memphis. We did not live near Lakeshore or Highland Trailer Park. We lived there a little over a year. During May 1993, my husband, Joe Hutchinson, myself, my mother, Damien and my daughter, Michelle Echols, were living in my household. (BETR 2633)

During May of 1993, I was living with my husband, Joe Hutchinson, who is Damien's natural father. I have not always been married to Joe Hutchinson. Joe Hutchison and I married in 1973 and Damien (BETR 2634) After we divorced, I married Jack Echols. Mr. Echols actually adopted Damien but his name was not changed immediately. His legal name right now is Damien Wayne Echols but his given name at birth was Michael Wayne Hutchinson. Damien was about 16 when this occurred. We discussed reasons for changing the name to Echols. I was agreeable in allowing him to be able to do that. (BETR 2635) I divorced Jack Echols in April 1992. In May 1993.

I remarried Joe Hutchinson, my first husband. Joe Hutchinson was living there in May 1993. Damien did not have his own room there because we did not have enough room for him. He usually slept in his sister's bedroom. She would sleep on the couch. It was in the front of the trailer. The bedroom where Damien slept was in the middle of the trailer. My mother slept in the front bedroom. (BETR 2636), Joe and I would sleep in the back bedroom. Damien was able to keep some

of his things in Michelle's room. He liked to listen to the radio, read and watched TV. He liked to listen to rock music. As any teenager, he talked on the phone a lot. Sometimes that got aggravating. He would talk with Domini Teer and friends. Domini was his girlfriend. (BETR 2637)

During the last of April or the first of May, 1993, I did not detect anything unusual with Damien. His demeanor was pretty well the same as it had been several months before that. In the morning of May 5, 1993, I got him up because Damien had a doctor's appointment that day so I believe it was around 10:00 a.m. when I got him up. He had to go to the doctor around 10:30 or 11:00. I took him to the doctor, and it was about twenty minutes to one before we got out of there. Then I carried him out to Lakeshore at Domini Teer's house and dropped him off about 1:00. Before I dropped him off, I had dropped off a prescription at the pharmacy at Marion. (BETR 2638) This is a prescription that I received at the doctor's appointment. I did not wait on the prescription. They were busy that day. I dropped him off and I went back home. And I stayed home until around 4:00.

I received a phone call from Damien and I went to pick him up at the laundromat on Missouri Street. Joe and Michelle went with me. This phone call came around 4:00 p.m. (BETR 2639) Michelle, Joe and I went over to the laundromat and when I arrived at the laundromat, Damien and Domini were there.

They got in the car and we left and went back to Marion to pick up his prescription. Before we picked up his prescription, we dropped Domini off at home at Lakeshore which is kind of on the way to Marion. Lakeshore is between West Memphis and Marion. There's two different ways to go towards Marion. We usually go the service road and the trailer park is sitting between West Memphis and Marion.

After we dropped Domini off, we went to pick up his prescription at Marion Discount Pharmacy drugstore. (BETR 2640) It was probably around 4:30, between 4:00 and 4:30. After leaving Marion, we went back home. We were at the pharmacy about 10 minutes. It took us about 10 or 15 minutes to get home. Upon arrival at my house, I probably cooked supper like I usually do. I recall Damien being there. Damien did not leave after I got home. We ate supper and went to visit some friends. I am not sure what I cooked. We were at the house until around 7:00 p.m. Then we went to visit some friends. (BETR 2641) When I say "we," I am talking about Joe, Michelle, Damien and myself.

We were going on Balfour in West Memphis to visit the Sanders family. Balfour is about a mile and a half from where we lived. It didn't take us very long to get over there. We all got out of the car and went inside the Sanders' house and nobody was there but their daughter. Mr. and Mrs. Sanders were not at home. The

Sanders are close friends of ours. (BETR 2642) We have known them for a while. Jennifer Sanders, their 12 year old daughter was there. We talked with Jennifer. I wrote a note and left it for her mother and dad. I don't remember what Jennifer was doing when you got there. I wrote the note to tell her we had been by and she had asked us over earlier and we were not planning on going. We weren't planning on going but we just changed our mind and decided to go over there and visit for a while to get out of the house. It was not something unusual for us to go over there or for them to come to our house. When we were there, I left a note.

Then all of us went back to the car and went back home. We were over at the Sanders' house not more than 30 minutes. Joe, Michelle and Damien went home with me. When we got back to our house our regular routine was usually watch TV or sit in the bedroom and visit with my mother for a while. I do not recall anything about the TV.

Damien did not leave that night. Damien spent most of the rest of the evening up until around 10:30 or 11:00, on the phone. (BETR 2644) I can remember that's about when it stopped because Damien and Domini had an argument around 10:30 or 11:00 p.m. I went to bed around 12:00 a.m. Damien went to bed around 11:00 p.m. He was in bed when I went to bed. I would have

known if he had gone out that evening. I could hear in that house if someone left.

Damien did not leave that night.

I usually would get up around 8:00 a.m. On May 6th when I got up, Damien was there. He was in the middle bedroom still asleep. (BETR 2645) I bought and washed his clothes. I know what clothes he has and doesn't have. I do not know if he had any clothes missing around that time. I did not wash any of his clothes that had lots of mud or blood on them around that period of time. Damien usually wore army boots like he is wearing in Court. (BETR 2646) Those are not the same shoes because the police took the other pair. I am not sure if Damien or I had any contact with the police on May 6th or the 7th. I recall seeing it on TV when the boys were found over in Robin Hood. (BETR 2647)

I remember the police coming and talking with Damien. The first person that came to the house to talk with Damien was Steve Jones, a juvenile officer. I was present at home when that occurred but he didn't talk to him in front of me. Jones would not talk with Damien in front of me.

This conversation took place in Michelle's bedroom. Jones did not ask me to come back there. (BETR 2648) I had asked what they were talking about but he did not answer me. Some kind of officer was with Jones but I don't know who he was. He did not identify himself. When they knocked on the door, I opened the door to

see what they wanted, and they said they needed to talk to Damien so I invited them into the living room. Damien was in the living room. Jones asked Damien if there was someplace they could go talk and Damien led them into the bedroom. I do not know what happened during that conversation. (BETR 2649)

The next further contact with the police after that would have been May 8. Damien was carried in for questioning by two gentlemen in a red Bronco type vehicle. I was at home when they came to get him. They took me with him. I believe this was the time that they took me with them. We were you down there probably a couple hours. Then after that, there was further contact with the police just a day or two after. The police came to our house. Damien was at my house. I went with them at that time. (BETR 2650) They did not allow me to be in there when they were questioning Damien that time or the previous time also. I'm not sure how long we were there the first or second time. I was sitting outside in the hallway at the police station when they questioned Damien on that last occasion.

He was carried in several times. There was a couple times that he was only there a couple hours and the last time he was kept for about 8 hours. I was not in there with him when they were talking with him. At one point they came and allowed me to talk with Damien. (BETR 2651) I was feeling pretty upset at this point. He had been carried in, and they were constantly coming to the house, like

day after day. We would leave, pull out of the driveway and we were followed. The police officers and task force came by and took pictures of my house. They would follow me even if Damien was not with me. (BETR 2652) This started going on about two days after the murders. They would sit out there and watch the house. I was upset when I was up there. I was upset because he was carried in and kept so long. I didn't mind them questioning him for that long period of time. (BETR 2653)

Officer Durham had came out and talked to me at one time and I told him Damien had not had anything to eat or drink before he left home, and he said he would get him something. Mike Allen asked me about talking with Damien. I talked with Damien that day. I asked him if he knew anything about the murders. I told him not to say anything else, that we had alibis, and I would get in touch with an attorney. (BETR 2654) Officers were present when I talked to him. I did contact a lawyer, Mike Everett. Mike Everett came down there that day. He was not able to talk with Damien. Someone came to the door did not let him in to see Damien, his client. (BETR 2655)

(BETR 2658-2669 is omitted as irrelevant to Mr. Baldwin's appeal)

My family moved to Oregon about May of 1991. Prior to moving to Oregon, Damien had a girlfriend named Deanna Holcomb. We lived in Oregon about nine

months. We moved our belongings to Oregon. Damien lived with me in Oregon about two months. He came back to live with Jack Echols, his father by adoption. (BETR 2670) We came back to Arkansas in February or March of 1992. Damien had a knife collection in Oregon. He no longer has that knife collection. Joe Hutchinson sold it whenever we moved back here. He likes to wear black. He started wearing black at the time he was seeing Deanna because she also liked the color black. He also wore real baggy jeans and baggy shirts and strange looking tennis shoes. Every little fad that came along Damien had to try to dress like they were. His dressing in black was one of his later fads or phases. The shoes that we earlier looked at were like the shoes or his boots, he wore quite a bit. That was like the only pair of boots he had. (BETR 2671)

He likes horror movies, Stephen King books, scary books, scary movies. He reads quite a bit. Damien was a little bit different than the rest of the children because of the way he dressed, but basically as far as the way he acted he was pretty normal. He listen to rock music. When we moved back to Arkansas, Damien came and lived with me at that time. He lived with me continuously up through the date he was arrested. State's Exhibit 85 looks like my stepson's shirt that was located in my house. (BETR 2672) It would have been located in Michelle's closet. I have never seen a knife like this State's Exhibit 77. Damien

had something similar to that. It was not in his knife collection. It has been about four years since I had seen the similar knife. Damien liked to write. Sometimes he would show me his writings. He just had a notebook that he kept his writings in.

(BETR 2673)

CROSS EXAMINATION OF PAMELA HUTCHINSON BY BRENT DAVIS

Damien and Jason Baldwin's relationship was very close friends. In a statement to the police officers I described them as very best friends and said they would spend 3 to 4 hours together every day. I have talked about what occurred on May 5th. I gave a statement to police officers on May 12th, just one week after these little boys disappeared. May 12th was after all this that I testified to about my son being questioned. That would be after I had already told my son at the police station not to say anything else because we had alibis. (BETR 2674) On May 12th, I do not remember giving a statement to Ridge and Sudbury at the police station regarding the events of May 5th. I remember talking to Sudbury, but I thought it was Durham that was with him. The document I have that has the date highlighted appears to be a subject information form that was filled out on May 12, 1993, regarding myself. I was at the police station and gave a statement to Ridge and Sudbury on that date. That would have been less than one week since the boys had been discovered. They were discovered on May 6th and this was on May 12th. In

that statement Ridge asked me, "Had there been anything unusual going on the week of May 5, the 4th, 5th, and 6th." (BETR 2675) I told him that on that week I separated from my husband and he packed up and moved out. I told him that happened on May 4th.

On May 4th my husband, Joe Hutchinson, and I got into an argument and within a span of a couple of hours he packed his stuff up and moved back to his mother's. I said that Damien was present that night when that occurred. Mr. Davidson asked me if Damien had been acting unusual during that time period. I told Ridge on that evening, May 4, 1993, Damien got very emotional. (BETR 2676) I took him to his doctor's appointment at Regional Mental Health Service on May 5th. Damien has been a patient there for a while and was treated for depression. I don't know if he has any other diagnoses. He takes medication. He had been crying on May 4th and then I took him in for an examination on May 5th.

I told the officers that my husband and I were separated for some two-week period. He packed all his stuff up and moved out. I have indicated that my husband was there the next day and was living at the house on May 5th. (BETR 2677) He was living there. He did not bring all his stuff back on the fifth. He did not move out on May 4th but that was something that I told the officers on May 12th. I told the officer on May 12th that it occurred on the evening of May 4th but that was

wrong. He moved out on May 9th. Just three days before I told the police May 12th. (BETR 2678) I talked to the police officer the one day, and when I went back the next time, I told him it was the 9th. The next time I came back and told him it was the 9th, that was in September, 1993. But in May, some seven days after this incident, I told him that I separated from my husband on May 4.

Sometime between May and September is when I changed my story. Something happened during that time period that crystallized or clarified my memory better than what it had been just 7 days after this incident. (BETR 2679) I had talked to some other people, but that's not why I remembered. My husband's birthday cake sitting on the table spurred my memory. When I first told the officers that my husband wasn't there because he had moved out, I didn't remember his birthday cake and I didn't remember it was three days before and not 10 days before.

Damien's dress was just one of those little fads that comes along. I never saw him do anything that had to do with witchcraft. I am sure I read some of the books he kept in his room. I don't know if I read the one on witchcraft and satanic worship. I had seen his book of shadows, the one with the pentagram on it and the various incantations in there. (BETR 2680)

His dress had changed about two years before this incident. Before the murders, this big, long, black trench coat was that something he was frequently seen in. He was not wearing all black as a usual attire or daily attire. He wore mostly black. His dress changed over these two years leading up to the time he was arrested. He moved back from Oregon before we did. I do not know if we moved back as a result of him being hospitalized in Oregon. (BETR 2681) The police were called in regard to that in Oregon for which he was hospitalized.

September or October of 1992 was when Damien moved back to Arkansas and we stayed in Oregon. There were some problems as far as the relationship between Damien and my husband at that time or the person you were living with -- I guess Mr. Hutchinson -- that caused Damien to move back to Arkansas. We stayed there and he came back. (BETR 2683)

Damien woke up the morning of May 5. Damien slept that Tuesday night in the middle bedroom, Michelle's. Michelle slept in Michelle's bedroom once in a while. That bedroom had mostly Michelle's stuff in there. When my husband worked nights, Damien would sleep in my bed or on the couch. On the evening of May 5th, Michelle didn't stay in Michelle's bedroom. Michelle stayed on the couch, and Damien stayed in Michelle's bedroom. (BETR 2684) That is what happened

also on Tuesday night, May 4th and probably Thursday night, the 6th. Damien stayed in Michelle's bedroom most of the time.

I did not know a whole lot about Damien's practice of witchcraft. I knew he was looking into witchcraft for a number of years. Damien looking into witchcraft, changing his dress, and reading these books in his room, was a two-year long passing fad.

There was nothing unusual about going to visit the Sanders. (BETR 2685) The Sanders are mine and my husband's best friends. We lived with them for significant periods of time over the course of my life. When we moved back from Oregon we moved in with the Sanders. We stayed at the Sanders no more than 30 minutes. I talked with Ridge and Sudbury on May 12th but I do not remember if I told them that we went to the Sanders' around 5:30 or 6:00 p.m. At the bottom of page 14 of my statement, Ridge says, "When did that occur," referring to my going to the Sanders' house. I told him around 5:30 or 6:00. (BETR 2686) That was a time about seven days after this incident. We went around 5:30 or 6:00 and didn't stay for anymore than 30 minutes.

That day I went by the pharmacy to pick up Damien's medication. I dropped off a prescription and went back that afternoon and picked up his medication. I do not remember telling Ridge and Sudbury just a week after this that I picked up that

medication Thursday morning, and after I let Domini off, I took Damien home and then I didn't go back to the pharmacy. My statement states that is what I told Ridge and Sudbury. Damien changed his last name because that was his adoptive father's last name when he was about 16. (BETR 2687)

Damien wanted to become a Catholic priest when he was about 16. That was a fad that lasted quite a while. He continued his hopes for becoming a priest for 3 or 4 months. During that 3 or 4 months his tastes did not turn to the black clothing and that sort of thing. I had not seen a knife like this in about 4 years. We moved to Oregon in May of 1992. He did not have a knife collection when we moved to Oregon. He didn't start a knife collection until he was in Oregon. He never had a knife collection in Arkansas. (BETR 2688)

He started a knife collection in Oregon; and then it was sold after we moved back. I brought the knife collection back with me and sold it. I was not personally involved in that. I am familiar with what was in his knife collection and what knives he traded and had. My husband kept it in our bedroom. My husband kept Damien's knife collection most of the time. That did not start after the incident out in Oregon. He did not add to and trade to his knife collection in Oregon. I think he sold the knives through an auction. I wasn't there when they were sold. (BETR

2689) I do not have any receipts. It was all left up to Joe. It was an auction and there's no receipts.

When I talked with Ridge and on May 12, one of the things I used as kind of a focal point to determine what had occurred on May 5 was this event of separation with my husband on May 4. Sometime in September I told the officers it wasn't really May 4, it was May 9.

REDIRECT EXAMINATION OF PAMELA HUTCHINSON
BY SCOTT DAVIDSON

I remember it was May 9 rather than May 4 because I remembered the birthday cake. Joe's birthday cake. His birthday is May 9, and that is the day we separated. I celebrated it on May 9. (BETR 2690) Joe's mother and I got into an argument and the cake was there. When I later saw that cake, that caused me to remember. Just the fact that the cake was there because I don't normally have a birthday cake there.

When we went to pick up a prescription, I later went and got a copy of his pharmaceutical records. This document is the record of his prescriptions that was obtained at Marion Discount Pharmacy. We went to Marion Discount Pharmacy on May 5, 1993. (BETR 2691) That record reflects a prescription on May 5, 1993. (BETR 2692)

(BETR 2693-2694 is omitted as irrelevant to Mr. Baldwin's appeal)

When we went over to the Sanders' that evening, Mr. Davis asked me about it earlier saying that it may have been earlier in the evening. The kids watching "Beverly Hills 90210" made me remember what time it was. That made me think it was a later time than what I had earlier said. (BETR 2695) I do not recall that out of my own memory. I arrived at the kids watching that because they said they were watching that at 7:00 p.m.

There is a difference between Wicca and witchcraft. Damien talked to me about it a little bit. Wicca was just supposed to be a love of nature. Damien was into Wicca, but my understanding is that it's a religion. When Damien changed his name to Damien Echols, it was when he was aspiring to be a priest. We discussed it. (BETR 2696) Damien was going to school to become a Catholic priest and he was baptized in the name of Father Damien, who was a priest who took care of lepers until he died with the disease himself. He seemed impressed with that. He was going to school and studying to be a priest. I am not a Catholic. This was something he did on his own. He had books about it at the time. He kept books in his room about that at the time. At the time I did not feel like that was one of his phases. However, looking back on it now, it was just one of his phases. (BETR 2697)

RECROSS EXAMINATION OF PAMELA HUTCHINSON BY BRENT DAVIS

During the time between the time the children disappeared and the time Damien was arrested, he had certain tattoos across his knuckles which spelled E-V-I-L across his hand. I did not know he had a pentagram tattooed right on his chest. I hadn't ever seen that. If in the police report at the time they did a subject description and they mark on there, "A pentagram on the chest area," I never observed that on my son. I knew he had a tattoo between his index finger and his thumb on his hand. He did that after he was studying to be a priest. The "Evil" tattoo across his knuckles came after he quit doing the study to be a priest. The way I remember that it was May 9 and not May 4 was because of this birthday cake. (BETR 2698) When I talked to Ridge on May 12, I never mentioned anything about my husband having a birthday on May 9 or about any birthday cake that was there on that night, the same day I separated from your husband.

DIRECT EXAMINATION OF MICHELLE ECHOLS BY SCOTT DAVIDSON

My name is Constance Michelle Echols. I am 16 years old. I'm Damien Echols' sister. Pam Hutchinson is my mother. I live in Lakeshore. (BETR 2699) In May 1993 I lived in Broadway Trailer Park in West Memphis. I lived there about 5 months. In May 1993, my dad, Joe Hutchinson, my mother, my brother and my grandmother lived there. My grandmother slept in the front bedroom, which was

right outside the living room. My brother slept in the middle bedroom, and my parents slept in the back bedroom, and most of the time I slept in the living room. I kept my belongings in the middle bedroom but Damien slept there. He had some of his belongings at the trailer and he had some at his girlfriend's house. (BETR 2700) His girlfriend's name was Domini Teer.

I recall May 5, 1993. My mother took my brother to the doctor, and I stayed home. I got up that morning around 9:00 a.m. I don't remember if Damien was still there that morning. After I got up, I ate and I took a shower and I stayed home until about 4:00 p.m. My mother took Damien to his doctor's appointment on that day. I did not see them leave. (BETR 2701)

Around 4:00 we went to get my brother and his girlfriend Domini from the laundromat close to McDonald's in West Memphis. He had been over at Jason Baldwin's uncle's house, and we were supposed to meet them there to pick them up. My mother, dad, Joe Hutchinson, and I went over to the laundromat. I was also adopted by Jack Echols which is why my last name was Echols. My natural father is Joe Hutchinson. (BETR 2702)

Damien and Domini were at the laundromat. I cannot remember if anyone else was there. When we picked them up, they got into the car. We went to the pharmacy to pick up Damien's medicine or to give them the prescription. Then we

went to Lakeshore to take Domini home. Domini stayed there at Lakeshore then. (BETR 2703) Me; my mother, my dad and Damien, went back home. Damien went home with us. We stayed home until 6:40 p.m.

Then we went over to Randy and Susan Sanders' house. It took us about 10 to 15 minutes to get over there. We went inside and no one was there except for Jennifer, their daughter. We stayed there around 30 minutes. We talked to Jennifer for a few minutes and the TV show "90210" came on at 7:00 p.m. It is a kind of like a soap opera for teenagers. (BETR 2704) I was watching some of the show. Me, my mother, my dad and my brother left before it was over and went home.

When we got home, I used the phone and then Damien used the phone until about 10:00 or 10:30 p.m. People started calling Damien. Damien talked on the phone a lot. I remember Damien talking on the phone that evening. I remember girls calling. I would give him the phone, and he would take it in the bedroom and talk to them. I would get on to him about using the phone that evening because I wanted to use it. (BETR 2705)

I went to bed around 10:30 or 11:00. After the last phone call which was around 10:30, he ate some ice cream and then he went to bed. I slept on the couch that evening. That room is where the front door to the trailer is located. I did not see or hear Damien leave that night. I'm a very light sleeper. I recall waking up the

next day around 9:00 or 10:00 a.m. and Damien was there. (BETR 2706) Damien was still in bed.

CROSS EXAMINATION OF MICHELLE ECHOLS BY BRENT DAVIS

I haven't talked about my testimony or about the case. I discussed the facts or the circumstances surrounding May 5 with my parents. I have not discussed what my parents and I remember about that evening. I can not remember discussing it with anyone else. (BETR 2707) I do not know how many times my parents and I discussed these facts about which I have testified here today. I would say around 4 or 5 times. The first time I recall sitting down discussing the facts of what happened on May 5 was the first day they took Damien in for questioning. At that time my mother, my dad and I discussed it. I can not recall discussing it with anyone else.

In the early part of May 1993, my brother dressed pretty distinctively. You could pick him out of a crowd because of the way he dressed. (BETR 2708) He usually wore this long, dark trench coat. I think we still have that trench coat. I do not know if that trench coat was left at the house or moved to another location. That trench coat was long, black and it had a split in the back of it. It would come below the knee. He wore this coat pretty much all the time. I have seen it since the time of his arrest. I think it was moved from the trailer to the apartment that we

moved in. I saw it at the trailer hanging in my closet after his arrest. (BETR 2709) It was in my bedroom. Damien has his clothes in that closet. He does not have drawers with clothes in them. Even though it is called Michelle's bedroom, I didn't stay or sleep in there very often. The night before the 5th, I do not remember if I slept in that bedroom that night, May 4, 1993. I don't think I slept in that bedroom May 5, 1993. Damien slept in that bedroom on the 4th. I don't know if he slept there on the 3rd. (BETR 2710) I don't know if he slept there on the 6th. I did not discuss with my folks about where Damien was on those dates.

There wasn't anything unusual about going over to the Sanders'. We frequently went over to the Sanders' home. We went over to the Sanders' for a visit. We did not received any phone calls to come to the Sanders' inviting us to come over to visit because they don't have a phone. When we went inside it was apparent that they weren't there. Their daughter told us where they had gone. On September 5, 1993, I remember giving a statement to Fogleman about my recollection of what took place on May 5, 1993. (BETR 2711) I remember stating that we stayed there for 30 minutes waiting for Susan and Randy to get back. If on this occasion when we got there and found out they are gone out of state even, we waited 30 minutes for them to get back to see if they would come back soon. She said when they left. but I don't recall the time.

The last time prior to that we had been to the Sanders' residence a couple of days before. We lived with the Sanders' when we moved back from Oregon. Prior to that, we lived for periods of up to a year at a time in the same household with the Sanders'. We would go visit them after we moved back from Oregon once, twice or three times a week. (BETR 2712)

I knew about Damien's religious preferences and beliefs. I hadn't paid any attention to his tattoos. I had tattoos on his chest. It looks like some sort of like a stick woman or something. I don't know what a pentagram looks like. I do not know if there's one of my brother's books with a drawing on the front of a star shape in a circle. To me it reminded me of like a woman or a stick figure. There was a circle at the top with a stick thing down. (BETR 2713) I did not notice any of the other tattoos.

We are not pretty close. Most of his stuff was at the trailer. We went to the pharmacy. Then we took Domini home. Then we went home and then we went to the Sanders'. I remember my parents separating during this time period. I remember Fogleman asking me if I knew when they separated. (BETR 2714) I told Fogleman I was not sure when that happened. They were separated about 2 to 3 weeks. There was an argument that led up to their separation. I recall that occurring, but I don't know when it was.

DIRECT EXAMINATION OF DAMIEN ECHOLS BY VAL PRICE

My name is Damien Wayne Echols and I was born in West Memphis, Arkansas. (BETR 2715) I have moved all around the United States, but I have moved back to West Memphis each time. I was too young to remember the first move I made. We moved to Oregon in 1992. I came back from Oregon in September or October. After I moved to Oregon, I never went to school and when I came back to Arkansas, I never started back. When I came back to Arkansas, I was 11 years old. (BETR 2716) My birthday is December 11, 1974, and the name I was born with was Michael Wayne Hutchinson. Pamela Joyce Hutchinson and Edward Joe Hutchinson are my natural mother and father.

There was a certain period of time that my father left and my mom married Jack Echols. I changed my name when I was adopted by Jack Echols. At the time of the adoption, I was very involved in the Catholic Church, and we was going over the names of the saints. Saint Michael's is where I went to church. We heard about Father Damien, this guy from the Hawaiian Islands, that took care of lepers until he finally caught the disease himself and died. That was the reason I chose Damien as my first name. My choosing the name Damien did not have anything to do with any type of horror movies, Satanism, cultism, anything of that nature. (BETR 2717)

For a few years I really enjoyed skateboarding. I like movies, about any type of books, talking on the phone, watching TV. I read books about anything but my favorites were Stephen King, Dean Kuntz and Anne Rice. During this time period in my latter teenage years, I developed an interest in different types of religions, or what beliefs were you studying. I have read about all different types of religions because I've always wondered like how, do we know we've got the right one, how do we know we are not messing up.

Before I studied the Catholic religion, there was not another religion that I really concentrated or focused on. After the time period I were really into the Catholic religion, I focused on the Wicca religion. (PR 2718) The Wicca religion acknowledges a goddess in a high regard as a god because people have always said we are all God's children and men cannot have children. It involves a close involvement with nature. I did a lot of reading about the Wicca religion primarily a book by Buckland. About 2 years ago before the murder I started reading about the Wicca religion. (BETR 2719) Exhibit 123 was a notebook that I wrote some of the things in there from early 1991 to early 1992. The reason why I kept writings in a booklet was because I wrote a lot before and just never saved it. People started to tell me it was good and I should keep it so I started keeping it. There was a time

in school that I had some type of writing project or were supposed to keep a journal. This was like my home journal. I had done for school and one for home.

On the inside of the front cover there appears to be a couple of quotes there. One reads: "Life is but a walking shadow. It is a tale told by an idiot full of sound and fury signifying nothing." That's from "A Midsummer Night's Dream" by William Shakespeare. "Pure black looking clear. My work is done here. Try getting back from me that which used to be." That is off a Metallica tape called, "Injustice for All." It's about how warped the court systems are and stuff like that. The other one was from a "Twilight Zone." "I kicked open a lot of doors in my time, and I am willing to wait for this one to open and when it does I'll be waiting." (BETR 2720)

I did not write all the items that were in the inside portion. Every time Jason or I would get a tape that the other one didn't have we would make copies of it for each other and copy the lyrics down. The name of that particular song is "Fade to Black" by the rock group Metallica. I listen to Metallica quite a bit. There were other times you would listen to other music and write down the lyrics. Most of the other writings appear to be in poem type form. Earlier there was one of them, that Fogleman read to the jury which was something that I wrote. (BETR 2721) Most of these I wrote around the same time period, and most of them were when I was going through one of my manic depressive phases.

Each of the things that were in there are poems which I wrote. The writing of those poems did not have anything to do with the murders that took place on May 5, 1993. These were written a year or two before any of that ever happened. State's Exhibit 114 is a poster from the tape cover of Metallica, "Master of Puppets." We used to get copies of them on copy machines and get them enlarged bigger and have them for decorations in our rooms. I had a poster in my room. State's Exhibit 112 is a picture that I had in my room a couple of years ago. (BETR 2722) It was given to me by a girlfriend that I was very fond of at the time. I do not know who drew that picture, the meaning or the background of it. It did not have anything to do with my being a Satanist.

State's Exhibit 113 is a poster which is a cover to a bootleg Metallica tape that most people didn't even know existed called, "Garage Days Revisited." State's Exhibit 116 is a skull that Jack Echols and I had found. I thought it was kind of cool. Before he gave it to me, he bleached it out and made sure there wasn't any germs on it. (BETR 2723) That skull did not have any type of satanic cult or occult meaning. We did not kill this. It was like that when we found it. State's Exhibit 111 is a picture called, "Pushead," published in Thrasher Magazine, which is a skateboarding magazine I used to buy all the time. That picture did not have any religious or cult significance.

State's Exhibit 110 is a book of different parts from books that were published, all in different books, which I took little parts from each one and copied them down into this one. (BETR 2724) There appears to be some type of cure for worms which was on something during the Salem persecution era. It contains different spells of some kind or potions. Besides writing those things down in my booklet there, I never practice any of those spells. I never used any of that material to conjure up any evil or anything of that nature. The State has also introduced a picture of the same book with what looks like some kind of pin. The symbol is on the front of the book. It is a gold skull with wings. It was a Harley Davidson emblem that I had, but I broke the clasp that held the skull to the chain so I just stuck it to the front of the book. The design is in black on the cover of the book is a pentagram pointing up. There is not a particular reason why I drew a pentagram on that book. It does not have any type of satanic meaning. (BETR 2725) In some of the items that I have read there is a difference between a pentagram with the point up and a pentagram with the point down. A pentagram that points up is from the Wicca religion because it symbolizes a man or a woman with arms and legs outstretched. The one that points down is from Satanism because it symbolizes a goat's head.

The State has introduced a book, Never On A Broomstick, which I bought at a book sale at the library in Crittenden County, Marion. There's a couple of pages that have been underlined by somebody else in red, referencing the devil. (BETR 2726) I think it was somebody that had a report to do because all through the book there's like little notes and certain dates. The book is about several different phases that witchcraft and other religions. From the beginning of the 1600's when people were put to death and they were tortured until they confessed to be witches and then they were killed. The different religions like the Druids, things like that. It had a chapter or two on Satanism and the different branches. The last part of it was on modern day witches. The book is a history of witchcraft and how it has developed over the ages.

Wicca is also called witchcraft. The word Wicca as bastardized. It originally meant wise one. There was testimony that I had some kind of tattoo that has a circle with a stick man. (BETR 2727) I have a tattoo on my chest of an Egyptian ankh which symbolizes eternal life. I put the tattoo put on because I thought it was cool at the time. I also had a pentagram tattooed on my chest because I just thought it was cool. It was not a Satanist pentagram. It was pointing up. It is faded out now. I had a tattoo of a cross on the web part of your hand. It is still there.

There were a lot of people at school that were getting tattoos so I got one. (BETR 2728) I used to have the word, "Evil" tattooed on my fingers.

I had this tee shirt with a hand holding a hammer. It was for the "Injustice For All" tape. Some of the group members like Metallica have "Hate, Fear, Evil" across their hand and that was on one of my tee shirts. I thought it was cool so I did that.

On June 3, 1994, the date that I was arrested and the police executed a search warrant and seized the book, *Never On A Broomstick*, I had other books at my house. I'm not sure if there were some religious books. I remember books by Stephen King and Dean Kuntz. Stephen King is my favorite author. I have read most of his works. I also read Dean Kuntz and Anne Rice books. Some were just different books that I bought and picked up from different places. (BETR 2729) There were some periods of time when I would go through that I really wanted to read a book on a certain subject and then move on to something else. If I would get interested in it, I would read it. The Crittenden County juvenile office seized the book with the different spells in there, the couple of pictures, those items there about a year before the murders took place. None of these items/this spell book, any of these pictures, or any of this material right here, had anything to do with the murders that took place on May 5, 1993.

I like to wear black colored clothing. I was told that I looked good in black and I am real self-conscious about the way I dress. (BETR 2730) If I'm not dressed the way I like, it will give me a headache because I worry about it all the time. When I was dressed in black, I didn't have to worry about it because I looked the same every day. Other people at school looked at me because of the way I dressed in black all the time. They thought it was kind of weird at first, stayed away, but then after a while a few of them started doing it, too. I was not a very popular person in school. I was different in other ways as well. I have never had a lot of the same interests that other people like sports, things like that. It helped me deal with other people to be kind of standoffish and back away from me. It was a defense mechanism to make people think I am weird. (BETR 2731)

I used to have a lot of Metallica and a lot of rock 'n' roll tee shirts. As part of the investigation, the West Memphis Police Department executed a search warrant on the Crittenden County Library and the search warrant indicates there was a book by Cotton Mather titled *On Witchcraft*. I checked that book out. I checked that book out to read it. Most people would look at the cover and think it was a witchcraft book. It's really an anti-witchcraft book written by a Puritan minister. It was on different ways that during the persecution era they used to find ways to torture people or keep them locked up until finally they would say "I'm a witch"

and then they would kill them. In addition the West Memphis Police Department seized a book on magic that I checked out in the past. That was an interesting book because it was about everything in the history of magic from other religions like Hinduism, Buddhism, some things from Christianity like exorcisms. (BETR 2732)

I do not recall exactly what happened on May 5, 1993. I know some of the things I did, but I can't remember any of the times or anything. Back then on a typical day I would get up anywhere from 10:00 a.m. until 1:00 p.m. and get dressed. Sometimes I go to Domini's and sometimes she would come over. After school, I usually went over to Jason's house when he was home. Jason Baldwin and I were best of friends. Back then we liked to walk around a lot with no place particular in mind. I do not have a driver's license. I never drive a car. I walked around West Memphis quite a bit in the different trailer parks. (BETR 2733) I had 3 black trench coats. The black boots that I am wearing today were purchased after I was arrested. I had a pair of boots exactly like that before. That was the pair that the police seized during the search warrant.

I recall the events that took place on May 5th. I got up, went to the doctor's office for an appointment because an ex-stepsister, Carol Ashmore, Jack Echols' daughter, was there. (BETR 2734) My appointment was late morning. My mom testified that she picked me up at the laundromat around 4:00 to 4:30 p.m. I was

with Domini when we were picked up by my family. The Sanders' are close friends with my parents. We lived with the Sanders' in the past. Many times we would go to see the Sanders'. Sometimes 3 or 4 times a week. I remember going to the Sanders' on May 5th but I don't remember what time it was. (BETR 2735)

I recall talking with Ridge in the middle part of May, and I might have told him we were over at the Sanders' between 3:00 to 5:00 p.m. but I don't remember it. The only person who was over there was Jennifer Sanders who is their 11 year old daughter. She was laying there watching TV. I do not remember what show she was watching. My sister, my parents and I went over to the Sanders' that time. We stayed there a few minutes, not long. I do not remember talking to anybody else at the Sanders' house. Mrs. McKay, Susan Sanders' sister, lives across the street from the Sanders'. (BETR 2736) At some point during the day we dropped off the prescription at the pharmacy. I don't remember what time I picked up the prescription on the 5th or on the 6th. My mom, Joe, Michelle and I left the Sanders'. The 4 of us left at that time. I'm not sure if that's the day we picked up the medicine or not, but I think we just went home. (BETR 2737)

Once we went home, I spent most of the night on the phone. I talked to Holly George, Jennifer Bearden, Domini Teer and Heather Cliett. Domini and I got into an argument. We were dating quite a bit during this time period. We have been

dating a year or year and a half. Prior to dating Domini, I dated Deanna Holcomb for 9 months before we moved to Oregon.

I did not leave the house on the evening of May 5th. (BETR 2738) On May 5th, I did not kill Michael Moore, Stevie Branch, or Chris Byers. I did not have anything to do with their death. I never even heard of the boys before I saw it on the news. I do not have any knowledge of who may have killed them. I have never been to the Robin Hood Woods area. The first time that I was aware about missing boys being found was, either on May 6th or 7th. That would have been a TV report. The rest of my activities on May 6th, was basically what I did the other days.

I don't remember the first time that the West Memphis Police Department talked with me about these murders but I remember when they came. (BETR 2739) I think it was the same day I saw it on the news. Jones and Sudbury were the first officers who came to see me. Jones was formerly a juvenile officer. He knew me from the past. I had never met Sudbury before that day. They came to my house to talk to me about the murders. They asked me if I knew who did it, why did I think they did it, and things like that. Both of those two officers told me a couple of details about the murders on that occasion. Jones asked me why would they be in the water. I said, "I don't know. I guess they tried to hide them or something."

(BETR 2740) He said, "Is it possible they were pushed into the water to flush the urine out of their system?" "Yeah, I guess so." They talked to me about other details about what happened to the bodies or how they died, the position the bodies were in. They asked me how I thought they died and I heard mutilated. I thought it was like all chopped up or something. I figured there wouldn't be like a whole body or anything. Rumors had started already about what happened to the boys. Everybody in West Memphis was talking about it.

Those officers took a picture of me on that date. I was wearing a pair of bluejeans and a tie-dyed tee shirt. There was a photograph introduced earlier about a Portland Trailblazers basketball. I was wearing that the second time they took a picture. I'm not sure if they came back on May 9th and talked with me. (BETR 2741) I think they came back and talked to me on two other days back-to-back. The eight hour time period was when they took me to the station. The two hour time period was the day before. Only I remember is Ridge and Sudbury, but I'm not sure. They asked me a set of 32 questions twice, once when they came to my house and once when I went in to the station. That was on two different days. They asked me the same set of questions two days apart.

Some of those questions related to "How do you think the boys were killed?" (BETR 2742) Some of those questions were "Who do you think might have done

this?" They also asked me some questions, "Where were you between 5:00 and 10:00 P.M. on May the 5th?" On May 10th, I was at the police station about 8 hours. I talked to Ridge and another officer that first 2 hour time period. I heard Ridge testify earlier about conversations that I had with him on that date. During the conversation with Ridge, I denied any participation in these murders. Ridge asked me about some Wiccan beliefs. During the entire time that the West Memphis Police Department talked to me on May 10th, they never had a tape recorder running. (BETR 2743) They had one in the office, but they didn't turn it on.

At the conclusion of the interviews they never had me look at their notes and have me sign saying, yes, I agree, this is everything I said. I recall part of a conversation with Ridge about the significance of water. Ridge said water was somekind of demonic force or something like that. I guess I told Ridge that water was demonic force. Most of the questions he asked me were like yes or no questions. When I would say no, he would start, do you suppose, something like that. Yeah, I guess so. He asked me a lot of leading questions. He asked me, "Do you think one of the kids was hurt worse than the rest of them?" "Yeah, I guess." I never had any independent knowledge of any of the details of what happened to the boys, just what was public knowledge on TV. (BETR 2744) By this time there

were articles in the West Memphis paper and. the Memphis Commercial Appeal every day about the murders. This was a topic that everybody was talking about.

After talking with Ridge, I talked to Durham. During my conversation with Durham, I denied any involvement in the murders.

I recall the type of questions that Durham asked me during my interview. (BETR 2745) He asked me mostly variations of the 32 questions. They would just change a couple of words or something. I do not recall my exact answers but I know pretty much what I said. I told Ridge that I will tell you everything I know if you let me talk to my mother." I talked to my mother. I said that because it was the only way he would let me talk to my mother. They kept asking me, saying, "Even if you did not do it, we know that you know something about it." So I said, "I will tell you everything I know after you let me talk to my mom." After I talked to my mom, he said, "All right, now tell us everything you know." I said, "I don't know nothing," and they got mad. (BETR 2746)

He asked me what I was afraid of but I do not recall what my answer was. I recall looking at the one page sheet summarizing the two hour conversation that says he asked me what was I afraid of and I said, "The electric chair." That's on the sheet that he has. I never told him I was afraid of the electric chair. Durham did not

let me look at any notes he was taking to write down my name and confirm, this is what I told him on this date.

After talking with Durham, the whole police department came in one at a time to talk with me. I don't know the exact words, but I know pretty much what I said during the last part of your interrogation. They asked me if I had anything to do with the murders and. I told them, no, I did not. They asked me did I know anybody that had anything to do with the murders. I told them, no, I did not.

(BETR 2747) They didn't like that so they kept asking it over again and again.

Between that date which would have been May 10th and the date I was arrested was June 3rd, the police never came back and talked to me any other times. During this time period I went to a girl's club softball game once. I was there at the softball game with a bunch of people, but we never discussed the murders. I never discussed the murders with anybody at a softball game. Jason and I talked about the murders. We wondered why they were wanting us so bad, and why they kept questioning us over and over again. (BETR 2748)

During this investigation, the police got blood and hair samples from me twice. They have taken my fingerprints 5 or 6 times. They take my barefoot print impressions. I had a black trench coat but I think my parents have it now. The last time I saw it was the night I was arrested laying in the floor. I was there the first

few minutes when the police seized items from my house. I never saw any specific items the police took from my house. (BETR 2749)

Some of what Griffis testified was okay, but he didn't stop to differentiate between different groups. He just lumped them all together into one big group that he called, cults. Griffis testified about water having some type of significance. In some of the things I have read water has some type of significance. I have never heard of it like a demonic force like Ridge did. I heard about it as a giver of life because all things need water to survive. Nothing can live without water. When Ridge was asking me, I probably told him that water was a demonic force. That was the time Ridge was asking me the 32 leading questions. Several of those questions were religious questions. (BETR 2750)

Griffis testified about several things that are satanism beliefs, but those things are not really my personal beliefs. Some things I might have in common such as some satanists may be arrogant, conceited, self-important. I might be that, but I'm not a satanist. I don't believe in human sacrifices or anything like that. I have never participated in any type of human sacrifice.

I used to have a knife collection. I've been buying knives for a long time. I had 1 to 3 knives in Arkansas, but it wasn't anything important. When I went to Oregon, I started buying them a lot when I was working. They had this knife shop,

and I used to go up there all the time. Then when I moved back to Arkansas, they were still there with my parents. I didn't bring them back with me. (BETR 2751) I have never seen, State's Exhibit 77, this particular knife until it was introduced into evidence at this trial. I have seen a knife similar to this knife. I had one sort of like that, but mine didn't have a black handle. The handle on mine was camouflaged, and it had the camouflage case. The blade on mine was black. It wasn't silver like that. I had a bunch of those. I don't know whatever happened to my knives. They were like real cheap. I used to buy them all the time. Knives similar to these were called Rambo knives. My knife was a Rambo type knife. I never saw Baldwin with that knife, State's Exhibit 77. He had a similar knife. Baldwin's knife did not have a jagged edge like that. It was straight and in the middle of the handle there was a little purple, a diamond, ruby or something in the handle of it.

I have been in jail almost nine months. (BETR 2752) I am aware that I have been charged with these three murders. (BETR 2753)

I have felt different ways on different days the past year after being charged with these three murders. When I see stuff on TV sometimes angry, sometimes sad, sometimes scared. There has been a reference made at one time that I licked my lips after a earlier proceeding in this case. That is when I went to court in one of the other places. I do stuff like that sometimes. I just lost my temper because it was

like when I went outside, everybody was out there, standing there calling me names, screaming at me, things like that. And I guess it just made me upset when I did that. I did not kill any of these three boys. (BETR 2754)

CROSS EXAMINATION OF DAMIEN ECHOLS BY BRENT DAVIS

I am taking medication at this time. I am on Imipramine which is for manic depression. It has a calming effect, makes me sleepy and sedates me. I am on that medication today. My girlfriend's name is Domini Teer. She is related by marriage to the Hollingsworths who testified in court. Narlene and Anthony Hollingsworth are familiar with Domini and related. Domini is very thin and red headed. (BETR 2755) I have a very distinctive look about me. I have seen Narlene Hollingsworth before and she's seen me. She knew that I dated Domini. I heard her testify that on that night she came off that service road, she flashed her bright lights and there was Domini Teer and I on the service road down from the Blue Beacon. One reason why she would make up that story was maybe she thought she did. (PR 2756) Her son Anthony is also related to Domini and I am familiar with him. He was also in the car and he was absolutely certain that he saw me there that night.

The night of May 4th, I was either at my parents' house or Domini's house. I think it was my parents because I had a doctor's appointment. I have a problem with my memory as far as specific times. My mother testified that when I was at

the police station, one of the things she told me was, we've got some alibis. My mom or my sister testified that the same day the police talked to me, that is when I first started discussing among the family about the details of those alibis. (BETR 2757)

When the police talked with me on May 10, I told them from 3:00 to 5:00 p.m. was when we were at the Sanders'. That was 5 days after the boys turned up missing. I probably told him that if it's in the report. When my mom tells him something, it is about 5:00 to 6:30 p.m. As the time period that is in question becomes later that evening the visit to the Sanders' becomes later that evening. The story kind of changes to fit the facts we need to cover.

This book with the upside down crosses, all this insignia and the trappings of satanic beliefs and this photograph with the person up on the altar with the goat's head is not that white magic type stuff. I had this framed and hanging in my room. (BETR 2758) I am pretty knowledgeable about this stuff. The reason I had this picture on the wall was because it was a present from Deanna Holcomb. After that, I studied and looked into the satanic side of the occult. I'm familiar with about every aspect of the occult. I am familiar with a man named Alister Crowley who is a noted author in the field of satanic worship. I know who he is, but I have never seen any of his books. I am not a follower of his. I would have read his books if I

had seen them. Crowley is a guy that based on his writings believes in human sacrifice, but he also believed he was God. He also had writings that indicated that children were the best type of human sacrifice. Crowley does not have any particular significance to me. (BETR 2759) I know who he is. I have read a little bit about him, but I have never read anything by him.

This is a paper I had on different alphabets or like translations where you could write things that nobody could read. I had that sometime before I was arrested I guess. I don't know. I might have written this since I was arrested while I have been staying in the jail. I do not know if that is some sort of Wiccan alphabet. I don't remember in particular what this one is. Jason's, my son's, and my name is on one that says Alister Crowley. This might be a document that I have written while I have been waiting in jail for trial. (BETR 2760) That is my writing. I do not really recall when I wrote it. There's five more that I don't know what is there. From the way it looks here, I was practicing trying to writing out and memorize various names in different type alphabets. This is a coincidence that I used Alister Crowley. It is the same book that I had with the different alphabets and it also had stuff about him. This is from what I remembered myself. I was practicing, trying to memorize, getting it all in my head. I was going over it

working on it in my head and I wrote all this down from memory. I have never studied Alister's book pretty carefully. (BETR 2761)

The two girls that testified said that they saw me out at the softball park. I have only been there once. I was not there the next night. The girls were not honest about that. I kind of stand out in a crowd. The girl that testified that she saw me the next night, too, was not telling the truth. Baldwin was out there with me the one night I was there. I was there when a group of people that I knew were standing around. (BETR 2762) I know why the VanVickle girl would have a reason to fabricate a story. There have been Damien sightings since I can remember. (BETR 2763) People were calling the police department saying they saw me marching around through Marion carrying black candles while I was all the way on the other side of the country. It is the same principle as a fake sighting. I was not there the second night. I was there the first night when she said I made the statement. My group was standing around me. I had on the big black coat and long black hair and Jason was there. Little kids say that kind of stuff all the time to get attention. (BETR 2764)

The Medford girl, would say that probably because she mentioned something like that to her mom, and her mom carried it too far so she had no other

choice other than to talk about it. Mrs. Medford testified because her daughters probably told her that.

Mr. Price asked me a lot of questions about May 5th and I said that I cannot remember times. I am not sure where I spent the night on May 4, 5 or 6. On may 3, I spent the night either at Domini's or my parents'. We did not sit down and try to discuss the details and alibis about those other dates. They never really discussed it with me. They just said, we knew you were here so we know they can't prove anything because we know you didn't do it. I have not talked with them about the specifics of their testimony since I have been arrested. (BETR 2765)

Mr. Lax, the private investigator they hired, has provided me with details about what the State's witnesses were saying. Lax asked me what I told the police, what times, things like that. I can't remember now. That was a year ago. Lax has not discussed with me testimony of my other witnesses. He did not tell me what they were going to say, but who was going to testify. Lax has not gone over with me the details and facts of what witnesses were going to say. My attorneys have not discussed with me details and facts about what was going to be said. Nobody prior to this trial has discussed with me the details of the facts that they expected to hear in testimony from other witnesses. All they told me is Joe Blow is going to testify but never discussed any of the details of his testimony. (BETR 2766)

I have not lied about a single thing. Jason and I used to walk around West Memphis all the time. We mostly walked around Wal-Mart, Krogers, not the area where the boys were found. Neither Jason nor I have been walking in the neighborhood near where Robin Hood Hills was in that residential area. I used to live over there when I was young in kindergarten. In the year prior to my arrest neither Jason nor I or anyone else walked around in that neighborhood near Robin Hood Hills. (BETR 2767)

I put the pentagram tattoo on my chest myself with India ink, a razorblade, and a needle. I dipped it in the ink and cut the top layer of skin. That is how I tattooed "Evil" on my knuckles. That's why they don't stay. They're never deep enough. When I tattooed "Evil" on my knuckles, that is not significant in Wiccan religion. The belief that evil brings you power is not a primary premise of the satanic beliefs. From what I have read, most of the satanic beliefs involve around self-indulgence. (BETR 2768) I tattooed evil and the pentagram because I thought it looked cool. I had another tattoo up on the shoulder. I carved it, too. I carved the one on my hand.

This knife wasn't like any knife I ever had in the colors or anything. I had a bunch of knives similar to that 3 years ago. I carried a knife a lot of times but not always. I kept most of the knives in my house, but some of them were traded off.

Some of them were daggers. I didn't hide the knives in my boots, but I had some that were for that purpose. (BETR 2769) I had a knife in my possession most of the time when I was out walking before I got arrested. I testified that a lot about officers putting words in my mouth.

On May 10, 1993, I told the officers that the children were mutilated. The autopsy was done on May 7th so we are talking about 4 days after the bodies were recovered. He asked me if one cut up more than the other. I said yes, they were, probably. I indicated I heard they were mutilated. When the officer put down in his response to that question, "Heard that they drowned," he made that up, too.

That is not true, they made up a lot of stuff so far. (BETR 2770) The officer just put that in on his own. When he put in there, regarding whoever committed these crimes, "Probably thinks it is funny and that he won't get caught and won't care one way or the other if he did." I said that. I told the officer that I thought the person who did it would think it was funny and would probably not care if he got caught.

Price asked me about my feelings about being arrested. I have good days and bad days. It was a bad day the day after I was arrested when I blew a kiss to the victims' families. That was one of the times I lost my temper. (BETR 2771) I told the officer, "I will tell you everything I know if you let me talk to my mother." If

he says in his report that I said, "I will tell you all about it if you let me talk to my mother," that is another of his lies.

I was just interested in Wiccan religion and nothing involving the black witchcraft or satanic practices. I read it, but I don't practice it. These books where I have handwritten certain symbols on the books and my reference to Alister Crowley, the person that is a supporter of human sacrifice, that writing that I made while in the jail is only a result of my interest in black magic, not the practice of it. No I do not have any satanic incantations in jail while I am bored. Anton LaVey, the person that I told officers was a person that I read a lot, is not Wiccan or white magic. (BETR 2772) .

I cannot testify specifically as to times. I do not know what happened the day before or the day after. One reason why Ms. Hollingsworth, Anthony and those two girls would testify about stories that aren't true would be that I have been in several arguments with the Hollingsworths. Ms. Hollingsworth has seen me frequently. Maybe two or three times a week she would drive by me or the house, and we would be out in the front yard. Anthony has seen me a lot. I wrote this sheet while I was in jail but I don't know when I wrote it. (BETR 2773) That's another part where my memory has gone bad. The people are listed on the sheet that has my name on it.

Jason Baldwin is my best friend. Damien Seth Ezeriah Echols is my son. The only other name on this document besides myself, my best friend and my son is Alister Crowley. The only ones in English. There are other names here. Since the date of my arrest, I haven't been released.

Damien Seth Ezeriah Echols, my son, was not born until after I was placed in jail. (BETR 2774) If I have his name listed on this document, then it had to have been written after he was born. This is something that I have written since I have been in jail awaiting trial. (BETR 2775)

(BETR 2776-2799 is omitted as irrelevant to Mr. Baldwin's appeal)

By looking at the map Jason and I frequently walked in the neighborhood, Market Street, Goodwin, east of 14th Street and south of the service road and the interstate where the 3 victims lived. We walked in that area maybe twice a week for about two years.

When I testified yesterday that we had not been over in the residential area near Robin Hood Hills, I was not thinking. I didn't know what neighborhood you were talking about. (BETR 2800) I had to walk through there to get from my house to Jason's house, or to get from my house to Domini's house or anywhere in Marion.

At the time I was arrested I was living at Broadway Trailer Park. I stopped living south of Broadway when I was arrested. (BETR 2801)

The only reason to walk through here and use that path would be to go to and from Jason's residence. That's the path me and Jason would take up through here and over there on an average of 2 or 3 times a week. I did not visit anybody else in that neighborhood. I had to go through there to get to Lakeshore.

I did not tell Ridge in my statement that I had been a member of a white witch group for five years. I told him that I had been a wiccan or white witch for five years. (BETR 2802) I have never been a member of any group. If he put that in his report then that is inaccurate.

I testified yesterday that I take Imipramine medication. I took it last night. It is an antidepressant. I have been taking it for a couple of years. I can't tell that I am any calmer whenever I take it, but I just sleep real easy. I take it because I am a manic depressive. (BETR 2803) When I don't take my medication and go into a manic state, I cry. I stay by myself most of the time closed up. If I don't take the medicine, I get headaches, nauseous, just generally depressed. A manic depressive is somebody who has big highs and big lows. Sometimes I get big highs where I feel nearly invincible. That's what you get when your medication gets out of level.

(BETR 2804) That is a feeling that I am invincible, that there's nothing I can't accomplish. (BETR 2805)

(BETR 2086-2810 is omitted as irrelevant to Mr. Baldwin's appeal)

When I have these mood swings and my medication is out of balance, I only get violent towards myself. It makes me suicidal. My medication doesn't affect how I deal with other people. (BETR 2811)

(BETR 2812 is omitted as irrelevant to Mr. Baldwin's appeal)

I came back from Oregon before my parents did because I was homesick. (BETR 2813) I had an altercation with my father right before I came back and the police were called. They called the police because I was locking myself in my room and was about to commit suicide. I had some knives in there with me. When my father came in at the hospital, I told him I would eat him alive. During this time period my medication was not out of balance. I had been drinking that night, and as a result of that, I was hospitalized. (BETR 2814)

As soon as I got out of the hospital, I got shipped back to Arkansas. They took those knives away from including a boot knife. I had a couple of others. They asked me for the knives, and I gave it to them. The police did not take me into custody.

I testified yesterday about the questions that were asked to me on the questionnaire by Ridge. He asked me, "Why would someone do this?" (BETR 2815) He asked me was it possible if they could be a satanist and I said, "Yeah, I guess." I didn't say that the person was sick or a satanist. Ridge made those statements. Ridge was talking about a satanist, not me. On question 9 he asked me how I thought they died. I told him, "Mutilation, cut up all three, heard they were in the water drowning, cut up one more than the others" because that is what I saw on TV, newspapers, and heard from people talking. I knew they were in the water, but I didn't know that they drowned. Whenever they were asking me about mutilation, I thought different from mutilation. (BETR 2816) What I call mutilation was different from what I saw here. He asked me if it was possible that I was cut up more than the others. He said, "Do you think I was hurt worse than the others?" I said, "Yeah, I guess." If Ridge didn't get the answer he liked, he would go back and try to get me to say something else. I wasn't the one who said I was cut up more than the other. I agreed with Ridge when he said that. Question 11, "How do you think the person feels that did this?" The answer was, "Probably makes them feel good, gives them power." (BETR 2817) I used common sense on that. If someone was doing it, then they must have wanted to. If they were doing something they wanted to, it must have made them happy. I don't think they were

doing it because someone forced them to or because they didn't want to. Whoever did it, it must have felt good about killing these three kids. It gives them power. That's also another common sense perspective from me. When I say, "gives them power," that is not based on what I have read in these books, just the crime itself. They probably thought killing 3 eight-year-olds gives you power like overcoming other humans or something. Question 19, he you, "Had you ever wondered what it would be like to kill someone even if you didn't go through with it?" I answered, "Gosh, I never thought about killing anybody." (BETR 2828) I don't remember telling him I never thought about killing people.

I responded to him that whatever you do can come back to you three times over as bad or as good. That is not something that I learned when I was practicing to be a Catholic. I don't remember when I picked that up. I guess I've just heard it all my life. (BETR 2819)

He asked me what did I think could be the possible motivation and I said a thrill kill or a satanic act. It says in here that there was a number of three victims, and it was symbolic because three is a special number in some of these religions. I wondered what three had to do with it because he made a big deal out of me wearing three earrings. He was making a big deal out of anything with the number three. I agreed with Ridge so he would leave me alone. But the significance of the

three victims and that sort of thing, Ridge back on May 10th was the one who made that connection. (BETR 2820)

I believe every person has a good side and a bad side. He asked me if I thought there were some people that could not control their demonic side and I guess there is. I don't know if it was him or me who used the word "demonic."

That is not really something I have read about in some books and literature. It's common sense. I told Ridge that the younger of the victims would be more innocent and in turn more power would be given the person doing the killing. It sounds like Crowley, the guy we talked about yesterday. (BETR 2821) I did not pick that up when I was studying to be a Catholic.

Ridge asked me if the killer knew the kids went out there and asked the kids to meet them out there, and I said, "Yes." I wouldn't put it past Ridge to lie about it. I told him that the 3 eight-year-olds would be not big, or smart, and would be easy to control. (BETR 2822)

He asked me if I thought that they were worried about the screams or if they tried to stop them from screaming. And I said, "No," and he asked me, "Why not?" And I said "Well, they were out in the woods; so, I don't guess there would be anybody there to hear them scream; so, why would he be worried about it." I told him if he got off on killing people, he probably would like to hear them scream. I

figured they must have, whoever kills eight-year-olds would have liked to hear them scream. I told him that the person was probably someone local, and that they probably wouldn't try to leave town. He also asked me about what books I liked to read, and I told him Steven King. I haven't read anything by Anton LaVey, but I know who he is. He looked through the Steven King books in my room. (BETR 2824) Anton LaVey is the head of the satanist church.

He asked me about what type of things you would expect to find at the scene where these 3 boys were murdered if it was a satanic killing and I told him candles. I heard the testimony from Lisa Sakevicius from the state crime lab that there was candle wax on the shirt of 1 of the victims. Up until the middle of May, at the softball park when it was hot I wore my full-length, black trench coat on. I don't think I wore it that night, but I wore it most all the time. Even when it was hot. I liked to wear black and I liked that coat. (BETR 2826) That coat was at my house laying on the floor in my sister's bedroom where I kept my clothes the night that I was arrested. The clothes I wore would come out of that closet.

I don't know why there was candle wax on that little victim's shirt. It could have been whoever killed him did it, but he could have got it before he left home.

REDIRECT EXAMINATION OF DAMIEN ECHOLS BY VAL PRICE

I was asked earlier about the question that Ridge asked me concerning how did I think the murders took place. (BETR 2827) I answered, "Mutilation, all three were probably cut up, one more than the other, heard they drowned. Probably just one person did it." He asked me why did I know that, and I said because I heard it on TV and read it in the newspaper, and other people were talking about it.

I recall the Commercial Appeal newspaper article on May 7, 1993, with the headline "Mutilated bodies of three boys found in bayou." And I have got another part that is also marked here in, I guess, purple or whatever color that is, pink, I guess the color. (BETR 2828)

(BETR 2829-2831 is omitted as irrelevant to Mr. Baldwin's appeal)

I was asked about the one on May 7th. It is the one about mutilated bodies found in the bayou. The second article in the Commercial Appeal May 8, 1993 states:

"Autopsy showed three boys died of multiple blows to the head. The West Memphis boys found dead Thursday in a slow-moving creek were killed by multiple head blows, police's lead investigator said Friday."

The State asked me earlier about an incident or a fight that I got into with a gentleman trying to claw his eyes out or something. (BETR 2832) I am not sure what year or month it was, but I think it was when I was in ninth grade.

(BETR 2833-2834 is omitted as irrelevant to Mr. Baldwin's appeal)

RECROSS EXAMINATION OF DAMIEN ECHOLS BY BRENT DAVIS

I did not read the Commercial Appeal every morning. I am not sure if I read those specific articles, but I have read several of them. Those articles said something about mutilated bodies. Those articles didn't say any thing about one person being cut up worse than the other. I didn't get that out of the newspaper.

(BETR 2835)

(BETR 2836-2890 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF STACEY SANDERS BY SCOTT DAVIDSON

In May of 1993, I lived at 505 Balfour, West Memphis. I am 19 years old. I recall the evening of May 5, 1993. I was directly across the street at my cousin's house, and we were watching TV. (BETR 2891) My little sister, Jennifer, was home. My parents were not there. They went to Splash casino in Tunica. I went across the street to my cousin's around 6:00 p.m. (BETR 2892) From 6:00 to 6:30 p.m. we watched Family Feud. At 7:00 p.m. we watched 90210, a show that I like to watch. I was watching TV and my cousin, Meredith, looked out the-window and

said, "Pam and Joe are at your house." So I looked out there, and I saw Pam and Joe and Damien at my house. I just kept watching and turned back and started watching TV. (BETR 2893)

From where I was I could see across the street and see the driveway. I looked back out about 7:15 p.m., and they were leaving. I saw 4 people in the car. I saw 4 heads. I assumed it was Pam, Joe, Damien and his sister, Michelle. When they went in, I didn't see Michelle. I just saw Pam, Joe, and Damien. I know Damien and I am pointing him out in court. (BETR 2894)

I know that this was May 5, 1993 because it was the first time my parents went to Splash, and it was on a Wednesday night because 90210 was on. I have been questioned about this before by Fogleman when they called me in West Memphis.

CROSS EXAMINATION OF STACY SANDERS BY BRENT DAVIS

I saw three people go in the house and three people come out of the house. The Hutchinsons and their children would come over to visit at my parents' house all the time. (BETR 2895) If they didn't come over to our house one day, we would go over there. We saw them every day just about. My parents and their parents have been close for years. Since they had moved back here from Oregon, they came over to the house, 2, 3, or 4 times a week. When they first came back,

they lived with us for a little while. Prior to them moving back here, sometime when I was growing up, we lived in the same house for a year. Their children were like brothers and sisters to me. (BETR 2896)

I told Fogleman it was two days later after I saw this incident when Echols was arrested. Echols wasn't arrested until in June. I don't remember when I talked to Fogleman, September 2, 1993 if I told him because I remember, I think it was two days later they went again, and that's when Damien got arrested. I think that was then.

I talked to my mom and my cousin, Meredith about what took place on May 5. We did not go back and get together and sit down and go over the facts or what I remember. (BETR 2897) I have not discussed it with anyone else including a private investigator, Mr. Lax. The defense attorneys said that I would be subpoenaed to come in and talk because he was at my house that night.

They have asked me questions about the facts or details of my statement. They didn't tell me what to say. They just asked me questions, and then I answered them. The Hutchinsons came over to the house on other Wednesday nights prior to and after that. (BETR 2898)

My folks go to the Splash casino on other occasions. I was present on an occasion sometime around there when Damien, Jason, and another individual came

over to the house around 9:00 p.m. when they were walking in the neighborhood. They did that quite a few times. It wasn't unusual for them to come over there on a Wednesday evening. They left by 7:15 p.m. (BETR2899)

DIRECT EXAMINATION OF JENNIFER SANDERS BY SCOTT DAVIDSON

I am 12 and I live in Turrell. During the last of May, 1993 I lived in West Memphis with my parents and my sister. My parents are Susan and Randy Sanders. My sisters are Stacey Sanders and Cindy Sanders. (BETR 2900)

On the night of May 5, 1993, I was sitting at home. About 7:00 p.m. Damien and his parents and sister came over to the house and stayed about 20 or 30 minutes. No one else was there. My parents went to Splash casino. My sister was not at home. She was across the street at my aunt's.

That evening I was watching the TV show 90210 which comes on at 7:00 p.m. (BETR 2901) Damien and Michelle Echols and Pam and Joe Hutchison came over to my house. They were at the house about 20 or 30 minutes. They came in and asked where my mom and dad was, and I told them. And Pam wrote my mom and dad a letter to tell them that they came by. And they sat there and watched TV and talked, and they left. (BETR 2902) We did not have a phone at the time.

I know this occurred on May 5, 1993 because the night after that, I went to my boyfriend's band concert. I have been questioned about this before by Fogleman and Gitchell. I told the jury the same thing I told them. (BETR 2903)

CROSS EXAMINATION OF JENNIFER SANDERS BY BRENT DAVIS

The Hutchinsons were friends with my parents when I was born. We lived together for three years. I did not talk with anyone regarding the facts of what happened on the 5th. This morning I told about them coming over. They didn't tell me what to say or anything. I talked about the facts I was going to testify to. (BETR 2904) I have not discussed it with my mother or sister or the McKays across the street. Nobody in Damien's family discussed this with me. I remember giving Fogleman a statement. It was not unusual for Echols to come over to our house. (BETR 2905) His family come over there frequently.

I told Fogleman that right around this time period Echols had been over there with two of his friends around 9:00 p.m. one night. Baldwin and a boy named Ken was with him when he came over that night. When I talked with Fogleman, I wasn't sure what time or date it was that that occurred. I don't remember whether I told him a date or whether I knew when that had happened.

My statement reflects that what I told him was that I couldn't remember a date but I thought it was before the boys were missing. I don't remember if that would be accurate. (BETR 2906)

I am reading on page 23 of the transcript of my statement. It states: "I forgot it was on a Friday, that's all I remember -- well, I mean, it was, it was in the last year, or yes. Okay. It was before or under this, these words --this dates before, probably in about April."

I told Fogleman that they had come by before the murders occurred and that was the night that my parents were at Splash. I told Fogleman that on this incident prior to May 5 when the boys came over that my parents were at Splash. (BETR 2907) It was'around 9:00 or 10:00 p.m. It was Echols, Baldwin and Ken. Echols dressed that night in all black when those 3 boys came over. That was pretty usual for Echols. There was nothing unusual about me watching 90210 on Wednesday night. One way I was certain that this was on the 5th was because my boyfriend was playing in a school band spring concert up by the hospital. My boyfriend's name is Nick Gorza. (BETR 2908)

REDIRECT EXAMINATION OF JENNIFER SANDERS
BY SCOTT DAVIDSON

There is no doubt in my mind that on May 5, 1993 that I saw Echols come to my house.

RE-CROSS EXAMINATION OF JENNIFER SANDERS BY BRENT DAVIS

The way I remember that is because the next night was when the band concert was. (BETR 2909)

DIRECT EXAMINATION OF RANDY SANDERS BY SCOTT DAVIDSON

I now live in Heafer near Turrell. On May 5, 1993 I lived at 505 Balfour in West Memphis with my wife, Susan Sanders, and two daughters, Jennifer Sanders and Stacey Sanders. We all lived there on Balfour in May, 1993. (BETR 2910) My brother-in-law, Ricky and Debra McKay, Meredith McKay, and John McKay lived across the street from me. We moved from there about a month ago. We lived there continuously up until last month.

I am an auctioneer and I owned my own business in May, 1993. Mr. Dewitt was an acquaintance of mine that I met through the auction that owned the secondhand store in West Memphis. I have known him for about 7 months. (BETR 2911) He was my accountant. My wife and I went with Mr. Dewitt and his wife, Rose, to Splash Casino. I do not remember the date or the day of the week that we went. It would not have been on a weekend (BETR 2912) The day or the night that we went to Splash, his store was open and he is not open on weekends.

I have an auction sale all day on Sunday. By the time I am through with it, I don't go anywhere. Before going to Splash I worked with Mr. Dewitt that day. He

needed help moving some things around in the store. He was going to buy some stoves, and I offered to help. I stuck around the store that day and helped him work. This the only time I had gone with Mr. Dewitt to Splash. I have been to Splash on other occasions. I recall this time because of the amount of money the Dewitts lost. (BETR 2913) That evening I saw Gayle Sharp at Splash when she won \$10,000 on the slot machine. My children were at home that evening. (BETR 2914) She was real excited about that. I do not know what day of the week it was. (BETR 2915) Mr. Dewitt had used his credit card after he ran out of cash but had left it in a machine, we had to go back to the office and ask them if anyone had turned it in. He was lucky, he got it back. All of this happened on that same occasion. My children were at home. (BETR 2916)

CROSS EXAMINATION OF RANDY SANDERS BY BRENT DAVIS

I went to Splash probably 3 or 4 times. I had not gone to Splash before this particular night. If my daughter testified that on a night prior to this that we all were at Splash and that Echols and Baldwin came by the house around 9:00 or 10:00 p.m., then that wouldn't be correct.

I did not sign in when I went in. Unless you have a gold card, and then ever who is carrying the gold card signs you in. Mr. Dewitt had a gold card. When you

sign in you put how many guests are with you. There were 4 of us together that night. (BETR 2917)

DIRECT EXAMINATION OF GAYLE POINDEXTER SHARP
BY SCOTT DAVIDSON

I have lived at 1208 Lancaster, west Memphis, Arkansas for 20 years. I have known Randy and Susan Sanders about 16 years.

I went to Splash Casino on May 5, 1993 and saw Randy and Susan Sanders. (BETR 2919) They walked right up to me. I played \$20 and won \$10,000. I am sure that was on May 5, 1993 because I filed it on my taxes. I went back and filed that on my taxes like amendment, because Echols' attorney called and asked me if I was at Splash. I had it on my W2's that they fill out Mississippi taxes where they hold out money. My winnings were \$22,400. (BETR 2920) I recall that date of May 5, 1993, because Susan walked up to me and said, "You are the one that won this?" I said, "I sure am." The Sanders were there with another couple that night, but I don't know who they was.

CROSS EXAMINATION OF GAYLE POINDEXTER BY BRENT DAVIS

Echols' attorney called me and got me to file my taxes. He scared me. He mentioned the Social Security. It was a couple of weeks ago. Some lady called me wanting my social security number and I told her no. (BETR 2921) I talked to

Echols' attorney about this twice, but this was within the last month. It was in February.

When the lady got on the phone and I wouldn't talk to her, she switched it over to Echols' attorney. I did not talk to Fogleman on the phone. (BETR 2922)

I live at 1208 Lancaster. I hadn't talked to anybody with law enforcement or the prosecutor's office in relation to this.

(BETR 2923-2924 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF GARY GITCHELL BY SCOTT DAVIDSON

I work for the West Memphis Police Department. (BETR 2925) I am an inspector. I am over the criminal investigative division and I was in charge of this investigation regarding three homicides. I was the person that the other officers would report to in this investigation. It was my responsibility to take care of this entire investigation, but I had a lot of help.

The West Memphis Police Department has a police manual that has procedures, but those procedures that the police department follows in conducting their criminal investigations is not included. (BETR 2926) There is no manual or a step by step guide, in how you will do certain things in an investigation. We do not have set procedures regarding the interviewing of witnesses.

It is our procedure to tape-record some interviews of witnesses and not tape-record other witnesses. The West Memphis Police Department has tape recorders and a video camera. (BETR 2927)

On May 5, 1993, the West Memphis Police Department had a video camera. Some of these interviews during this investigation were videotaped. We never videotaped or taped recorded any interviews with Echols. (BETR 2928) I can't recall if I did or not. There may have been some other officers that did.

I am not the custodian of the records of the West Memphis Police Department. I am the person that takes care of this investigation, and I am aware of the records that have been compiled in this case. I have lived with them for about 10 months. As far as every item in there, there is no way humanly possible I can keep up with all of it.

I don't know if anybody ever turned on a tape recorder and pushed that record button when anybody talked with Echols. (BETR 2929) I believe Ridge, Durham and Sudbury were all the people that talked with the him. I don't know if any of those conversations were recorded. I talked to Echols for a short time. I don't recall if there are any notes of my conversation with him. I did not record that.

It is not our procedure in the West Memphis Police Department for interviews of suspects in a crime to be taped. (BETR 2930) If I would have done that I would have recorded Echols' interrogation and would know exactly what the officers said and exactly what Echols said.

We have talked with several hundred people during this investigation. It was not possible to do a recording of everyone. It is just a manpower, personnel trying to get everything transcribed. It is impossible to do. We rely a lot on our personal notes. It does not take a longer time for you to put a tape in a tape recorder and hit that button. These tapes cost about \$4.00.

The West Memphis Police Department has a minicassette and a large regular cassette tape. (BETR 2931) It would not have cost much for the West Memphis Police Department to tape-record conversations with Echols. There really aren't any procedures for tape-recording interviews. That is up to an individual investigator.

The West Memphis Police Department has different procedures for showing a photo lineup. We have a manila folder that has got these squares cut out. It is possibly in another vehicle that we brought all the evidence with us. (BETR 2932) We also lay out pictures and put a number on the front of the picture. There is also a method of using our 15-20 mug shot books, which contain several hundred

photographs. We have a lot of single photographs. It is a procedure of the West Memphis Police Department for us to write down the names of the pictures that we show to someone in a photo lineup if an identification is made. (BETR 2933) If there is no identification made, then we do not write down the names of the people, but it would be good to do that. It could be exculpatory to someone who was accused of a crime to know that they weren't identified in a photo lineup. It would depend on what that photo lineup is for. Sometimes it is for identification purposes in this crime, or for another reason. There were possibly two photo lineups shown in this crime. (BETR 2934) I do not know if Echols' picture was included in those photo lineups. I have an officer who is trying to recall if there was one or not. I was present at the time, and I think that his picture was in that lineup.

We did not write it down, and I don't remember either way. Echols' picture was shown but it was not picked out. (BETR 2935) His picture was shown to an 8 year old boy who was giving us information in regards to cult activity that he states that he had witnessed. The people were described as having all blackened out faces. We didn't think that he would pick anyone out if their face was totally black. It was a shot in the dark. Nobody was picked out. There is a set procedure that the West Memphis Police Department has for the handling of evidence collected in this case. Ridge, for the most part, took custody of evidence and prepared it to go

to the crime lab. We tried to have one officer take items to the crime lab to cut down on the amount of officers that would be subpoenaed to court. (BETR 2936)

When someone collects evidence, the procedure is to use paper bags we purchase from grocery stores in town. I used a separate office to keep the evidence in. Once the evidence comes in and is placed in the evidence locker or the closets, if it is going to be sent to the crime lab there is a form labeled an evidence submission form that belongs to the state crime lab which we fill out. (BETR 2937) We attach it to the bag. When you pick a piece of evidence up, you write down, what type of -- if you give me a bag, I can show you. In this case, this one was marked E-78, a black T-shirt from Echols; date, 6-3 of '93; the officer's initials; the case file number on it. The different people that handle it, may put other marks on it.

Ridge did not bring me evidence collected at Bojangle's Restaurant. No evidence submission sheet was ever completed sending anything to the Arkansas Crime Lab from evidence collected at the Bojangle's Restaurant. There was never a form filled out. You have seen my office during this case, my table was full of different papers and documents. We first discovered that the Bojangle's blood evidence had been lost when it came up in Corning at the Misskelley trial. We

were not awaiting that evidence to come back from the crime lab. Our procedures for collecting evidence in this case was to put it on the table in my office.

The West Memphis Police Department has procedures for audio and video surveillance. We would get permission from the individual if we were in someone's home in order to do that. (BETR 2939) We did have audio and video surveillance in this case. We did one at Vickie Hutcheson's residence, and at the skating rink parking lot in West Memphis.

At Vickie Hutcheson's house we used a transmitting device which was connected to an outdoor repeater. This signal would be transmitted with that repeater and could be received by us with walkie-talkies and also a recording device.

One of those receivers was not in my office. There are several walkie-talkie radios with that channel affixed in the radio that you can receive that particular frequency on at the police station. (BETR 2940) We had equipment where it would be placed in a home and you could listen in at the police station. Initially Vickie Hutcheson was not working for the West Memphis Police Department in this investigation. We were not even aware of her. Hutcheson worked with the West Memphis Police Department in this investigation. We had the audio surveillance in

Vicki Hutcheson's home. The purpose of this audio surveillance was to try to catch Echols saying something that we could use against him. (BE TR 2941)

We had a hook device at Hutcheson's house. The actual use time was one day or one evening. I couldn't tell the actual date it was placed in her house. It would have been placed in possibly one evening and then actually utilized the next evening.

Sudbury has notes saying that equipment was put in there, when it was put in there, when it was taken out. He was the officer that handled that. I am not familiar but I think there are notes saying that when this equipment was put in, what was put in, and when it was taken out. There should be a form which we had gotten permission from Hutcheson to do this. I am not aware of the exact dates. (BETR 2942)

I never oversaw his placing this surveillance in there. This equipment costs more than audio tapes. I do not know how long this surveillance was out there, but I know it was in use for several hours. We got to a point that we turned it off. I do not know if Echols was on this surveillance. It was impossible to transcribe all of this. (BETR 2943) We normally transcribe statements if they are audible and understandable.

We often work with other police departments in investigation of crimes. In this case we worked with the Marion Police Department. Don Bray works for the Marion Police Department. Bray provided us with a couple of tapes which we have transcribed and given to appellant. I don't recall if Bray provided us any handwritten notes.

There has been a knife that has been marked for identification purposes as E-6. Since we have started the trial, this evidence was locked in vehicles at night. During earlier testimony, when I opened the exhibit, E-6, I did not mention a red fiber that was in the hinge of the knife at that time.

No red fiber. This particular knife has been in the possession of the West Memphis Police Department at night. (BETR 2946) I was not aware of Dr. Peretti's testimony regarding a red fiber being in the hinge of that knife because I have been in the witness room. If Echols' attorney told me that Dr. Peretti looked in the hinge of the knife and saw a red fiber, I would not agree that there was a red fiber in there unless I saw it. I never saw a red fiber in that knife before I sent it off to Genetic Design. That is where DeGuglielmo testified. We sent the knife to Genetic Design and paid them \$7300. We asked for any testing on anything that may be in the hinge of that knife. I do not recall any reports regarding a red fiber in that knife, red fiber, no, sir. I did not see a red fiber in that knife when I saw it.

When it was returned, there was a red fiber. When you send a knife off to a lab and there is no red fiber on it and they do testing, then there is an assumption on my part that they cleaned that knife. That was evidently a cleaning rag. I never inquired of him regarding this red fiber. I never asked Dr. Peretti or Lisa Sakevicius about the red fiber on this knife. I did not ask then about the red fiber since a red fiber was not on that knife when I sent it to Genetic Design.

The crime lab sent the knife to Genetic Design. If the knife was at the crime lab for fibers, I do not know. I requested the knife to be tested for the substance that I saw on the knife. My submission sheets said to Genetic Design said, "Check for blood and other substances," which is common terminology. That knife was never tested for fibers. I came in possession of this knife through Federal Express from the gentlemen sitting there doing the HBO recording from Creative Thinking. (BETR 2949) One of their camera personnel received the knife from Mark Byers. I questioned Mark Byers regarding this knife on January 26 or 27, 1994, while we were in Corning during the Miskelley trial.

I sent that knife off for blood testing and to see what was on the knife to determine if anything is on the knife. I do not know if there was blood on the knife. I questioned Mr. Byers regarding the blood on the knife. (BETR 2950)

(Echols' Ex. E-6 is received into evidence without objection.)

I did not send it to Dr. Peretti. (BETR 2951) it has the address of Genetic Design, Greensboro, North Carolina, shipping date, January 18, 1994, to Dr. Peretti of the Arkansas Crime Lab. My testimony earlier was that the child, during the photo lineup, mentioned something about black face. I don't recall if I showed him the photo lineup prior to any of that being mentioned. Prior to the time I showed the photo lineup, there had been one other lineup shown to this child. (BETR 2952) I do not know if anyone else showed this child any pictures before I talked to him. I do not know if Don Bray had done that prior to the time that this child was talked to.

I never sent the surveillance tapes made at Vickie Hutchinson's off for voice identification. I do not know if you can send tapes to clean up and identify the voices. I do not think we have done that in drug cases. I understand that can be sent to a laboratory to clean those tapes up and take out the background. (BETR 2953)

I will try to find the permission slip where Vickie Hutcheson signed a permission slip allowing the surveillance to be put in her home. (BETR 2954)

(BETR 2955-2957 is omitted as irrelevant to Mr. Baldwin's appeal)

CROSS EXAMINATION OF GARY GITCHELL BY BRENT DAVIS

I couldn't tell what date it was. This surveillance that he asked about at Vickie Hutcheson's, was after May 10, 1993 when Ridge talked to Echols. The police first had contact with Vickie Hutcheson several weeks after the murder occurred. Echols was last talked to by the police on May 10, 1993. The surveillance was done after May 10, 1993. It was impossible to transcribe this tape from the surveillance. You just couldn't understand it. The quality was of such, the noise, the music in the background, you just couldn't understand any of the voices.
(BETR 2958)

When something is brought to your attention, such as questioning Mr. Byers about the knife, that may or may not have some relevance to the case, isn't it is my duty as a police officer to run down every possible lead regardless of what my personal feelings are about it.

Jessie Misskelley's lawyer requested that I interview Mr. Byers.

REDIRECT EXAMINATION OF GARY GITCHELL BY SCOTT DAVIDSON

In this case we ran down every possible lead. (BETR 2959)

(BETR 2960-2968 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF JOHN MARK BYERS BY VAL PRICE

Defense E-6 is a folding, lock blade Kershaw knife that belonged to me.

(BETR 2969) I wouldn't have any knowledge if Chris ever played with it or not. It is possible that Chris could have gotten it and played with it. I first received the knife for Christmas three years ago. For a few weeks it was in the living room on a little end table by my recliner and then it was put in my bedroom on a dresser. I never used that knife while deer hunting.

On January 26 in Corning, Arkansas, Gitchell of the West Memphis Police Department asked me about that knife. (BETR 2970) Prior to doing that, he read a rights form to me. He asked me what type of knives I had.

On January 26, 1994, I had a Case double edge knife that was given to me by my brother when I was about 12 or 13. Then just kitchen knives that are in the house. I used that knife before to trim my toenails with. (BETR 2971) I had attempted to trim on some venison around Thanksgiving, 1993. I never took that knife hunting.

I don't remember all the questions Gitchell asked me. I do not remember that question, had you ever taken that knife hunting or used it recently just prior to giving it to, what did you say his name was? He asked me a lot of questions.

I don't recall giving Gitchell the answer, I think, Cook, no, that knife had not been used at all. It had just been kept up, put in my dresser and I didn't use it and the reason why was because of the serrated edges. I'm sure his question wouldn't have been asked like your question was. (BETR 2972)

Now that I have had a chance to refresh my recollection by looking at the question and the answer, I recall giving that answer to Gitchell on January 26. That transcription accurately reflects my answer.

I do not have any independent recollection that I may have answered that question differently. I don't remember if Gitchell ever asked me did I ever hunt with it or did I ever use it for any other purpose like you asked me. (BETR 2973) I do not know if that knife has ever been out in the woods. I mean to specifically say I took it hunting or something like that, not that I know of.

I recall telling Gitchell on January 26, (READING) But, no, it had not been out in the woods or anything. Do you recall giving that answer? I was not aware if any member of my family ever injured themselves on that knife. (BETR 2974)

As far as I knew, my sons did not play with that Kershaw knife, but they could have got it and played with it and me not known it. I recall being asked (READING) Did any of your sons ever play with the knife? Christopher never

played with the knife that I knew about or saw. One time Ryan's grandfather bought him a pocket knife in a flea market.

Seems like my response would have been, no one had been cut with it that I would have known about. He was referring to my 2 sons or my wife, I guess. A few moments ago I was asked if I ever used the knife and I answered that on one occasion I attempted to trim some venison. I remember being asked that by Gitchell, on page 4.

I never used the knife. I would have used it. Hopefully, I was going to use it for deer hunting. That's all I do is deer hunt, but I never had an opportunity to use it on a deer.

I don't remember all the questions he asked me.

At the bottom of page 4 that's the question asked and that is the specific answer I gave to Gitchell. (BETR 2976)

(READING) Did you use the knife? Byers: I never used it. I would have used it. Hopefully I was going to use it for deer hunting. That's all I do is deer hunt, but I never had an opportunity to use it on a deer. That was the answer that I gave.

I never used it on a deer because I never hunted with it. It didn't mean that at some time I didn't try to cut some venison in my home. He was not asking me that.

I don't remember if I told him that I attempted to trim venison with that knife. When I was trying to use the knife in cutting some venison to make beef jerky with it, I cut my thumb with it. I don't remember the exact date. It was during the Thanksgiving holidays. (BETR 2977)

On January 26, 1994, I told Gitchell that I cut my thumb with that particular knife. Yes, sir, it seems like during the course of the day I did tell him that. I don't remember if that was during the taped conversation or after. (BETR 2978)

To knowledge blood was found on the knife. What's been brought out in court, they said there was. I don't remember if on January 26 Gitchell told me there was blood on the knife.

Now that I have had a chance to refresh my recollection Gitchell told me, we have found blood on this knife. (BETR 2980) I don't remember if Gitchell told me that the blood on the knife was Chris' blood. It might be in here that he said that. I know the answers after that question that Gitchell asked me. (BETR 2981)

I told Gitchell that I had no idea how Chris' blood could be on that knife. I would not have any idea. If his blood was on the knife, I would not know how it got on there. I have an idea how human blood was on that knife. I cut my thumb.

MR. PRICE: In order to impeach the witness by him making the statement that he'd cut his thumb and that is how blood got on there, I'm now entitled to ask him the questions that Gitchell asked concerning this specific topic. (BETR 2982)

Gitchell asked me on page 7 (READING) The problem is we've sent this knife off. We had it examined, and it has the blood type of Chris on it.

There is several questions he asked and several answers I gave. The answer (READING) Gary, I don't have any idea how it could be on there. Then Gitchell asked (READING) That's our problem. Then I answered again, (READING) I have no idea how it's on there. Then Gitchell asked again (READING) Why would this knife have blood on it? And you said (READING) I have no idea, Gary. When he was referring to why would this knife have any blood on it, I was under the assumption that he was talking about Chris's blood on it which I said I didn't have any idea. (BETR 2983) He didn't ask me was there any other way any other type of blood or red substance could have been on there because just a paragraph or two up before that I told him where I was trying to cut the venison with it.

On the top of page 8 I recall being asked the question (READING) I have no idea, no idea how it could have any human blood on it.

I recall stating (READING) I don't even remember nicking myself with it, cutting the deer meat or anything.

At the time when he was questioning me, I might not ever remember. We were getting ready to go into a trial.

I might not have remembered it at that time when he was questioning me cutting or not cutting myself on the venison, but I could have remembered it later on in the day and talked to him about it. (BETR 2984)

After I said that I cut myself on the deer meat, I recall Gitchell telling you (READING) We had it checked and it is not animal's blood. It is what we call a higher ape, in other words of the ape/human family or category. I recall him making that statement.

At that time I did not tell him I had no idea when Chris could have ever touched it. I don't have any idea if he ever played with it, or he could have, but I didn't have any knowledge of it. I searched for the boys on the night that the boys were missing. When I got home from the courtroom in West Memphis, I went to search for Chris.

My son Ryan had been in court testifying as a witness in traffic court. I spent part of the time in court with him waiting for him to testify, wearing shorts. (BETR 2985) The first time that I was aware that Chris was missing was when I returned home with Ryan from the court at about 6:00 p.m. I gave Chris a whipping with a

belt around 5:30 p.m. I spanked him 2 or 3 times on his behind. He had on blue jeans.

After I got home with my son Ryan, we had planned on going to eat supper and as I got into the house, my wife was there. I asked her where Chris was. She thought he was playing under the carport and picking up the paper and things like that under the carport, which we hollered around for him outside and there wasn't any answer. (BETR 2986) We hollered upstairs to see if he was in his room, and there wasn't any answer. So I would say we started looking for him shortly after getting home from court with Ryan between 6:15 and 6:30 p.m.

First of all, we hollered over the fence to see if he was playing with the neighbor's children. Then we stood in the yard and hollered his name, and we didn't get a response. Then Ryan, my wife, and myself got in our car and started riding around the neighborhood to some of his friends' houses to see if he might be there.

I talked to police officers a couple of occasions. The first police officer I spoke to would have been before 7:00 p.m. at the Flash Market on Ingram. We drove up Ingram towards Broadway. The Ingram Baptist Church has some playground equipment. (BETR 2987) We thought he might be playing on the playground equipment. We saw a police officer at the Dollar General Store around

7:30 p.m. and we asked him what to do, since we couldn't find our son. At that point we did not get out of our vehicle and start looking on foot for Christopher. I called both the sheriff's department or the police department around 8:00 p.m. I made a formal missing person's report. Officer Regina Meek came out to the house to talk with me. Her police report has 8:10 p.m. written on it, but it was a few minutes after that before she left. She arrived a few minutes before 8:10 p.m. (BETR 2988)

As Meeks was starting to leave, Ms. Moore, our neighbor across the street, knocked on our door and talked to us. Ryan and I started walking down the street seeing if any neighbor had seen Chris around 8:30 p.m. This time Mrs. Byers stayed at the house. I had my shorts on at that time, but I did not take a flashlight. It was getting dusk, but barely enough light to see. (BETR 2989) It wasn't pitch black dark, but it wasn't daylight. I do not remember at 8:30 p.m. if the mosquitos were getting real bad.

I haven't looked at this map very close. I recall the area that we searched. We headed down Fourteenth Street towards Goodwin Circle. (BETR 2990) The only part of the woods that I searched in was down on this end right where the concrete is pushed in. You could park right there and I walked into that field, and the wooded area down on this end is where I searched with Moore.

On Wednesday evening, we did not go to the area on either side of the pipe. I didn't say it was 8:30 p.m. when I searched the area with Moore. We searched that area with Moore a little after 9:00 p.m. because he had just taken a report from Terry Hobbs at Catfish Island. After Moore showed up, Terry Hobbs pulled up. It would have been after 9:00 p.m. after he took Mr. Hobbs' report. (BETR 2991)

Meek came to the house and she was there around 8:10-8:20 p.m. Then I left about 8:30 p.m. and went walking. I returned to the house again before going out with Moore. It seemed like my son Ryan stayed out looking. When we left our house around 8:30 p.m., Ryan and I headed down the street. Mrs. Moore told us she had seen a skateboard about halfway down the street.

When I left at 8:30p.m. I went to the area of the bayou. I told Sudbury on May 19. This is bottom of page 3 top of page 4. I talked about leaving about 8:30 p.m. At the time I left about 8:30 p.m., it was getting dark. (BETR 2992)

It had got dark. At the time I left at 8:30 and it had already gotten dark, I did not take a flashlight with me. I went back to the house later to look for a flashlight, but I don't remember exactly what time it was because Ryan and I worked our way down the street, worked our way down Fourteenth looking for our son, Ryan and I.

We had been told that they were seen down by where the concrete is pushed in in the ditch. We went down and looked down on this end. I don't know what you would consider the area of the bayou. The bayou is 10 miles long. (BETR 2993)

I gave an answer on May 19 to Sudbury I left at 8:30 p.m. It had got dark. We were looking in that area of the bayou.

Q Do you recall being -- backing up --the whole answer would be on the bottom of page 3. (READING)

"The kids and I will get to that later on Thursday. I'll get to that in a minute. Oh, we started looking and looked in that area. It is now probably 8:30. It had got dark and Terry said he was going to spread out down, you know, towards where they were found. I don't know how far down that way he went but he was going to go look that way. My son Ryan and I and Richie Masters -- somehow Richie Masters showed up to help. My son Ryan and I and I think Brett Smith. Richie Masters goes with Brett Smith's sister. So that's how they were kind of together. So we're looking in that area kind of where the loop is, you know, there's an open field there just kind of a circle around it out there. We were looking in that area of the bayou and, ah, well, I had a pair of shorts and a pair of flip-flops so I run back to the house and I changed clothes and put me on dome coveralls and boots and I probably had that on for the next 2 or 3 days. (BETR 2994) I went back out there. I made a pass. I went all the way back to the back and walked up to the gully where it makes a real wash down. You can see there's where the water washes into the bayou. I didn't have a flashlight or anything with me. I thought, well, I'm going to go borrow a flashlight from Robert Fountain. I knew he lived down the street from me. I knew I could borrow a flashlight from somebody so I came back out. I see a police car pull up and it was Officer Moore, I believe, and he did say, did you find something. I said no, but I don't have a light. Will you help me look. He said, yeah, I will help you look. So he got his light out and we

walked back to that trail and then we cut back up to this side which run into the ditch that has got that rope hanging down from a tree."

I gave that answer. It was probably 8:30 and it had gotten dark. When I left the house with Ryan and his other friends, I was still wearing shorts and flip-flops.

(BETR 2995) At no time did I have a flashlight. Seems like after I came back, when I was down there with Ryan and the other people that showed up, I looked a little ways just right there as you go in. The trail goes straight back to the bayou back on this end where that road is that Officer Moore was talking about.

There is a little ditch that runs in the bayou here. That little rope that we found was over on this little ditch. I do not recall the mosquitoes getting worse later on that night. I do not remember if on May 19, 1993, Ridge told me he might have information that I had something to do with the disappearance of the boys.

(BETR 2996) I remember him talking with me when I went down to the police station. They asked me when they were bringing people down there to question about it.

On page 30, (READING) what I want to say right now, what I'm going to say is that I may have information. This information suggests strongly that you have something to do with the disappearance of the boys and ultimately the murder.

When he asked me that on May 19, 1993, I got very upset and distraught and he told me he had to ask me that question to get my reaction. I probably said I don't

have any idea where you would have got that information or where that would have come from. Officer Ridge indicated to me that he just said that to me, like I just said, to get my reaction. That he really didn't have that information. He was just saying that to get my response. (BETR 2997)

DIRECT EXAMINATION OF MARTY KING BY SCOTT DAVIDSON

On May 5 and 6, 1993, I was managing the BoJangles Restaurant on North Missouri Street in West Memphis. It is less than a half a mile from the interstate. (BETR 2998) I was working at BoJangles Restaurant on the evening of May 5, 1993. Something unusual occurred at the restaurant that night. About 9:30 p.m., a lady and her daughter came in to order supper. The lady said that she needed to take her daughter to the restroom. So I told her it was right around the corner. She immediately came back around, and I asked her if there was a problem. She said there was a gentleman in the women's restroom. I found a black gentleman sitting in the women's restroom on the commode with his head in his lap. He was about 5'8" or 5'9", 165 lbs., real thin man. He had his head in his lap and there was blood dripping off of his forearm. There was blood on the wall where he had leaned up against the wall, maybe staggered in. (BETR 2999) He had mud on his feet, and he seemed to be disarrayed when I talked to him. He raised up and kind of slurred that he was all right. I gave him a few more minutes to come out, and he

never did so I went back to check on him and I called the police. I asked them to come out there.

A female West Memphis Police officer pulled on the BoJangles Restaurant parking lot, and I saw her coming so I went to the front door. She went to the drive-through window. She never came to look inside the restaurant for the West Memphis Police Department. She pulled on the lot, and I saw her coming so I went to the front door. She kept coming around. She went to the drive-through window. I told her what the problem was and that the gentleman had previously left the restaurant walking, and she got a description and left. She did not come back to the restaurant that evening. I have never talked with her since then.

(BETR 3000) I just know her by sight.

I went back into the lady's restroom that evening. We had to clean it up. There was blood, mud. The gentleman had wasted a whole roll of toilet tissue by soaking up blood or grabbing for it. He had used the restroom all over himself and sat in it. I assume he was trying to clean himself up, but it had blood all over the toilet paper.

The toilet paper roll was saturated all the way down to the cardboard roll. I just threw it in the garbage. There was a pair of sun glasses that he had tried to

flush down the commode. I fished those sun glasses out and threw them in the garbage.

There was quite a bit of mud on the floor, we cleaned this up with a water hose around and washed it out. (BETR 3001) This was not the normal way for you doing that. Normally it would be swept and mopped, but there was a large amount of mud on his feet, and that was on the floor so we just washed it down the drain. There was some blood above the commode and on the wall maybe where he had leaned up against the wall, and made the impression of a forearm. There was some blood on the floor beside the commode, some on the doorknob and in the hallway where he had left. We never saw this man again. No other officer came out that evening.

I opened that morning on May 6, 1993. On that day, an off duty officer named Billy Covington, a friend of mine, came in and I was told him about the event that had happened the night before. It struck him in a strange way. (BETR 3002) He said, "Don't clean that blood off the door handles or the wall, and I will get back with you in a little while."

Later on that afternoon 2 detectives, Ridge and Allen, came out and took a report as far as what I had seen, description of the gentleman, and then they took

blood scrapings off the wall in the women's restroom, off the men's door in the hallway and off the wall in the hallway.

I found out they had been at the crime scene and had been wading in mud and water up to their knees. One of them asked me, "Did the man appear to have muddy feet like mine because we have been out there all morning long in the water and mud." And asked if his looked like the gentleman I had seen, and I said, "Yes, sir, they were muddy like that also."

I had told Detectives Ridge and Allen about the sun glasses, and they asked me what I did with them, and I told them I threw them in the garbage. We fished them out and they took them with them. (BETR 3003) They said they didn't need the toilet paper that had been soaked down to the core with the blood. They said just discard that. I have not heard from Ridge or Allen or any other person about this since then.

CROSS EXAMINATION OF MARTY KING BY JOHN FOGLEMAN

I am marking on the map, State's Ex. #2: the interstate system, the railroad track, Balf our Street, and Missouri Street. Here is BoJangles. Behind my business there is a ditch there by the railroad tracks. (BETR 3004) There is a small ditch on our side which would be facing Missouri and you'd have to go through it to cross over the railroad tracks. On the other side of the railroad tracks, there could be a

big ditch that runs through there. I haven't seen that when you've driven down the service road. I never paid any attention to what was behind there other than open field. There is a ditch, and there is a railroad track right behind my business. This area is all open field going back to the trailer park. Right in behind my business I have got a ditch, railroad track and a strip of trees along the railroad track. (BETR 3005)

I cannot say if the mud on the shoes came from the same place. Muddy shoes are muddy shoes to me. I don't know where it came from, or where he came from that night. I didn't see him come into the restaurant. I don't even know that those sunglasses are his. I did not see him wearing them. I found him in the women's restroom. He appeared to be disarrayed. When I spoke to him, he raised up like he didn't know where he was at and was slurred and disoriented. He left blood and mud all over the restroom. He left it on the wall, the floor, door knob, and hall. (BETR 3006) It was on the hall wall where he might have staggered. We cleaned that up. We tried to clean it all up before Detective Allen and Ridge arrived. We made efforts to clean it up before they ever came because they came the next night.

When Meek came to the drive-in window, I was not aware that she was trying to find 3 missing 8-year-old boys. When she came there, this person wasn't

there anymore. He had already left. After that man left, we had got blood and mud all over the place. (BETR 3007)

REDIRECT EXAMINATION OF MARK KING BY SCOTT DAVIDSON

If this is the pipe that goes across the Ten Mile Bayou, and this is the Blue Beacon, and these are the woods, Missouri Street would be back over in here running parallel with this street. The field that Mr. Fogleman referred to right – okay. Missouri Street --this is Missouri Street. He was pointing to, is the field right here. That's the Missouri Pacific railroad track. Here's the interstate and Missouri Street.

BoJangles would be this dot right here in front of the interstate. This field is between Seventh Street. (BETR 3008) There is one field here between Missouri Street where BoJangles is, and Seventh Street and the railroad track. Behind the apartment complex there's another one. Behind the apartment complex, there is a field here, and there are woods. From Blue Beacon to the truck stop and then this is where the field begins that goes to Missouri Street.

Even though I tried to clean it up, Ridge tried to take scrapings. He took a pocket knife and scraped it into an envelope. I tried to give him the toilet paper roll that was soaked to the core, but he didn't take that. They did not take any soil samples out of the drain. I saw the man leave on foot. (BETR 3009) He went

toward the back of the building which would be going toward the ditch, but then left on foot down Missouri Street. (BETR 3010)

(BETR 3011-3012 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF ROBERT HICKS BY VAL PRICE

I have worked as a law enforcement specialist with the State of Virginia and in the Department of Criminal Justice Services which is the state agency which oversees training and hiring standards for law enforcement officers. (BETR 3013) I've been with that agency a little over 8 years now. My primary work is to help local law enforcement administrators manage their departments better, both sheriffs and police departments. I help them on a broad range of management problems, to develop good sound written policy.

Before that I have had a variety of jobs both in and closely aligned with law enforcement. I've been a police officer with the Tucson, Arizona Police Department. Also an administrator with the Pima County, Arizona Sheriff's Department. I was also a U. S. Navy cryptological officer. I have done some private consulting as well. (BETR 3014)

I have published in certain fields of law enforcement concerning the connection between anthropology and law enforcement programs. Most recently dealing with the topic of so-called occult or satanic crime and involvement with

law enforcement in that topic. I have written a book on that and several articles w'ith a piece of another book as well.

I have a chapter in the book called, "The Satanism Scare" edited by 3 sociologists, Joel Best, Jim Richardson and David Romney. It is slated for the academic book market which is part of a series of sociological studies.

There are probably a dozen other articles that I published on whether or not satanic crimes actually exist or do not exist. They are short articles for various bulletins and newsletters, the titles of which I can't remember at the moment. There were two articles for a publication called The Skeptical Inquirer. Another publication for the American Library Association Journal. There are also some public talks transcribed and circulated. (BETR 3015)

I have also published in the area of astronomy. The name of my book is In Pursuit of Satan: The Police and the Occult. I formulated policies and procedures of police departments. One of the areas that I cover is learning about different types of trends in law enforcement. Part of my responsibilities at the Department of Criminal Justice Services to keep abreast of professional trends in law enforcement. My book was an outgrowth of that, keeping up with some of those trends.

In 1986, we began noticing rising numbers of professional seminars for and by law enforcement officers on this broad topic of satanic crime, occult crime, cult related crime. (BETR 3016) It went by several different names. As part of my process to monitor and help interpret new professional trends, I began to attend some of the •seminars, particularly those that were for law enforcement to gather what was going on, how significant a problem it was. As I began to attend the seminars, I began to form a suspicion that some of the information presented was not accurate enough for police practice. I thought some was unconstitutional and some was downright illegal.

So as I began to research this, I formed the idea of doing some writing to present some skeptical viewpoints about this and so I therefore wrote the articles, and that eventually led to the book which is a study of law enforcement response to this phenomenon.

The phenomenon is in response to existence or non-existence of occult type crimes. Specifically, the fear that had developed and was communicated through law enforcement seminars that a belief in satanism was on the increase, however that was defined. And that a belief in satanism or certain occult subjects was indicative of criminal behavior as well and that people found to be practicing these other religious behaviors might also be engaged in crime. That was the central

ideology of these occult seminars and as a result of that belief, various check lists were circulated, presented as lists of indicators of what one might look for to uncover this kind of crime. (BETR 3017)

My book challenged the premise that there is any rising criminal problem with this. It also challenges the idea that it enforcement requires any particular resources or new investigative strategies to get at this.

MR. PRICE: Your Honor, at this time I'd like to submit Mr. Hicks as an expert in the field of police policies and procedures particularly as dealing with the trend of whether or not cult related crimes actually occur. (BETR 3018)

(BETR 3019-3031 is omitted as irrelevant to Mr. Baldwin's appeal)

I have done research in this area and used empirical data to do this research. The beginning of the research was attending the actual seminars given to police audiences by police officers who claim to have enough investigative expertise to know more than everybody else in the room. That is how a lot of police training actually operates. These, are courses that are offered for in-service credit in Virginia so officers can retain their certification.

In attending these seminars a number of claims were made including that this satanic problem in the country involved 4 levels of activity all of which impinge on criminality in some way. At one end the seminars posited dabblers as

teenagers, young adults listen to a lot of heavy metal music, sport emblems, symbols from that or from quote/unquote occult literature.

At the other end, officers are saying you have satanists that are underground in society. Visibly they're responsible people like everyone in this courtroom but by night they practice satanic rituals, which involve murder, kidnapping or mutilation. (BETR 3032)

I wanted to chase down the criminal aspects of this because my primary interest is what is in this for law enforcement, what should be a matter of law enforcement policy, what should be a matter of law enforcement training. The more seminars I attended, the more investigators I talked to, I began finding that the most alarming claims made did not come from field experience but rather secondhand information.

I set out to try to track down this information, the claims made, to the source if I could. The outcome of that was not only the book but many conversations both with investigators, academics, even legislators, since this came to the interest of our state general assembly. It came to talking to people who even proclaimed to be involved with satanic worship, quite a few people. The upshot of the research was that the most alarming claims appeared to have no validity in fact. We have no evidence at all to support the idea that there's this underground cult that kills

upwards of 50,000 people a year, which is a figure by the way that Griffis has claimed in his own teaching, which I have heard directly.

He and other cult cops, as they are popularly called both in and out of the profession, have maintained that as well as maintaining on the other end of the scale listening to certain kinds of music, dressing in certain ways, wearing certain kinds of jewelry, is one step closer to being enslaved by a satanic cult which is going to make you commit crime, very violent crime. (BETR 3033)

In doing the research on my book, I studied the methods, materials, and writings of Griffis. I started with Griffis' talks both in public and for law enforcement. I obtained information about his doctorate dissertation. (BETR 3034)

Griffis gave, the opinion that this crime had the trappings of a satanic crime and that as it goes to whether or not that was a particular motivation. There are certain factors that Griffis used to base his opinion on. (BETR 3036) I am familiar with certain types of lists which some cult cops use to analyze whether or not a crime fits into a quote satanic crime.

These are checklists that are circulated at the training sessions, offered for the officers to take away, stash away, until they think they see any of these elements. Then they pull out the lists and try to compile a picture. The elements on these lists are things to look for to alert the officer that he might be dealing with

either a satanic group or some other identified group - satanist, occult groups. These characteristics include a wide variety of phenomena. You look to see if a crime occurred on a specific date that may correspond with a pagan holiday to there may be alphabet signs and symbols which the officer is encouraged to look for. The lists would number into the thousands of characteristics.

There has been testimony that the satanic cult awareness pamphlet was one that was used by the investigators in this particular case. (BETR 3037)

(BETR 3038-3040 is omitted as irrelevant to Mr. Baldwin's appeal)

In regards to the first figure about the dates as being significant of occultism, there's testimony that May 1 was Beltane and April 30 was Walpersnaucht. Those dates frequently show up on these checklists we've been talking about as indicators of a possible cult in the neighborhood, to look for activity that cult cops occurs in those times.

There is not any empirical data on whether or not a particular crime that's been committed has been a cult related crime based on these particular dates. I can only think of one study which only examines the common assumption that lots of crime happens at the full moon.

Griffis testified, according to his calendar, there were 13 satanic dates of which he focuses in on to determine whether or not a crime occurs on those dates. I

am familiar with a kind of calendar list such as that. (BETR 3042) Griffis testified if it fell within a week of a particular satanic date, then that was a factor to be considered. There's a new system out called Instant Based Reporting of Crime Around the Country which gives us a lot of information we didn't have before.

I, on the few inquiries I've made about this nationally, see no influence of these dates on the prevalence or absence of violent crime one way or the other in Virginia. Another factor that Griffis discussed was the manner in which the victims were tied "in a display fashion." I looked at some of the crime scene photographs which showed the manner in which the 3 victims were tied. (BETR 3043)

There is not empirical data concerning the manner in which the victim is tied if that relates to whether it is a satanic or occult type crime. There's no data that finding a body bound in that fashion is any clue to a religious ideology that I know of.

In the field of law enforcement, there are other explanations as to why a body could be tied in that manner besides a cult-related killing. Law enforcement agencies everywhere have found adults bound in strange fashions and found dead. Some of those are termed autoerotic deaths, that is, you bring on some strangulation to help simulate nearness of death to get some sort of sexual

satisfaction. Since this case involves children, obviously I would not offer that up as an explanation. I have investigated when I was a police officer sex crimes that involved tying of victims and killing them.

Another factor used by Griff is in making his opinion was the type of injury, particularly the removal of the testicles and the manner in which the penis of Byers was carved upon, the skin being removed and the head being removed but the shaft still being there. (BETR 3044) Griffis used the word crytos.

I have never seen any empirical data or studies to support the idea that a body was mutilated in that manner incident to a religious ritual or a cult related crime.

Griffis testified about the torture and the beatings that the victims received.

As far as any empirical data or studies that show that the particular manner in which the children were beaten was as the result of an occult crime. I only know of one example where heads were beaten incident to a religious ritual which occurred 3,000 years ago. (BETR 3045) Griffis testified about a Rhode Island case that he testified he was involved in but he didn't remember the date or location in which a pentagram was actually found at the crime scene, and the body was tortured and later burned. I am not aware of the Rhode Island case. I have heard of an incident in California 10 years ago.

I have a small problem with part of your question when you say "cult crime." (BETR 3046) Part of the reason I wrote my book is because of the loose terminology. A crime is a crime and to put the word cult in front of it simply adds a big cloud of smoke and the term loses precision.

Another factor he testified to was the absence of blood relating to the presence of water. I'm not aware about any empirical data or studies, if that is a factor that is used in an opinion whether or not a crime has the trappings of occultism.

Well, I will answer the question, but again trappings of occultism to me is a meaningless phrase. I'm not aware of a body of water playing a significant role in any religiously motivated serious crime. I have studied different types of satanist, Wiccan, and other religious beliefs.

In my book I discuss the different religions before discussing the cult phenomenon itself. (BETR 3047) Water probably figures significantly in Wiccan beliefs. I'm probably not the person to be a spokesman for that religious viewpoint. Since Wicca is a religion that claims an origin that precedes Christianity and involves goddesses, spirits that infuse living things, obviously water is a living thing to them and is a powerful symbol but a very favorable, benign one at least.

I have looked at State's Ex. 28, the photograph. Hypothetically, if there was testimony from the law enforcement officers that appeared on the scene that that portion on the side of the bank there appeared to be cleaned up and looked like it had scuff marks, that there was no leaves, and Ridge and Allen testified that that was a clean area; and another factor that Griffis referred to was that that was a cleaned up area. Whether I am aware of any specific empirical data that a clean crime scene has any kind of indications of an occult type crime (BETR 3048), it is claimed by Griffis and other seminars that when the underground satanic cult conduct their rituals and murders, they dispose of the bodies and they clean up all traces of the ritual. We have no examples of any of these things. The claim goes so far as to say the fact that they clean it up so well is evidence of their success. So if you find a crime scene with nothing there, that could also mean satanists certainly used the spot.

There are other opinions in law enforcement that a crime scene that looks the way that one does, described by the other officers. There are other explanations in law enforcement of what a cleaned up crime scene could mean besides it is a satanic crime. (BETR 3049)

I assume that this is the crime scene and do I assume it has been cleaned up before casting my opinion of other things it could that be. I would say that's like

most crime scenes I investigated as a police officer where somebody tried to hide the evidence or hide evidence that they had been there and done the deed. (BETR 3050)

By looking at that same picture for the hypothetical, if I assume that the bodies were found in the water but nothing was cleaned up, that could mean any number of possibilities. If the crime scene had not been cleaned up and bodies were in the water, there still might not be any more evidence than I see in this picture.

I'm aware of no empirical data to tie victims injuries on one side of the face or the other to any religious ritual.

State's Ex. #123 there has been testimony that that document was an item that Echols wrote that item at least 2 years prior to the murders which occurred May, 1993. There is nothing of particular religious significance by looking at that document. (BETR 3051)

It appears to be a notebook, some random thoughts, quotations. I have seen other similar notebooks. In addition, in the back there's some lyrics to a heavy metal Metallica song.

Cult cops look at heavy metal rock groups making their opinion that a particular crime could be a satanic or cult crime. In fact cult cops, have

recommended at seminars to other officers that they find ways to go into rooms in homes where the teenagers live, find out what music they listen to, see what books they're reading, and see if they are keeping notebooks like this.

I have seen State's Ex. #112, a photograph from a skating magazine.

State's Ex. #110 (BETR 3052) which was State's Ex. #113 and 114 were posters in Echols' room and State's Ex. #116 which looks like an animal skull.

This is much debated and there are many people who will attest that this type of material will lead to darker thoughts and actions. There's no empirical evidence to suggest that where the Metallica music is concerned, we have empirical evidence to suggest that the music does not cause the kind of harm that is imputed to it, or that it will lead people to commit crimes.

The item on top of the book appears to have spells or potions or something of that nature. If the testimony was that those writings were written a year prior to the murders, there are no significant studies I am aware of that if anyone writes or has a book that contains that type of material that is any type of motivation for a particular crime. (BETR 3053)

I am aware of no empirical study that links either as a causative factor or any other way, this sort of writing with the commission of crime. In my studies I am

aware of the writings of Ken Lanning with the FBI and what his opinion on the subject is. (BETR 3054)

(BETR 3055-3056 is omitted as irrelevant to Mr. Baldwin's appeal)

The material the defense sent me contained a 2-page questionnaire of Griffis and then the answers. He sent that to Ridge and then Ridge responded to that and sent the answers back to Griffis which he used to base his opinion on. (BETR 3057)

(BETR 3058 is omitted as irrelevant to Mr. Baldwin's appeal)

When Griffis testified in his opinion that this particular crime which occurred in West Memphis on May 5, 1993, had the trappings of occultism. In my opinion to apply that phrase, "has the trappings of the occult," is absolutely meaningless in considering any kind of violent crime. An issue I have had with these police training seminars has been that usually in a very nebulous way those who are disposed to thinking along these cult lines will say, such and such a crime was linked to the occult or had trappings of the occult or was related to the occult. (BETR 3059)

I've found that it's a meaningless statement because for investigative purposes it means nothing, and has no bearing on anything. The term "occult" has no fixed meaning anyway. In most people's minds it usually refers to certain kinds

of practice, certain symbols and signs, that we don't observe and practice, but other people do, people who do nasty things, is usually the way that connotes in the popular mind. To say the word "trappings" again is simply to imbue the whole crime with the tint of something evil. For some police officers that almost gets into a Christian moral fight. Some officers who teach Griffis' point of view teach that you have to be spiritually armed when you investigate these offenses which in my view gets outside of what law enforcement is here to do.

So I object to that kind of statement and in the teaching that I have done on the subject, I emphasize keeping that kind of language out of the investigation.

In all of those cases I was asked to testify for the defense on a matter of standard police practice or policy. I help agencies develop good, sound written policies. I have created a manual on law enforcement policies and procedures which is widely used not only in Virginia but elsewhere. (BETR 3060)

Occasionally law enforcement agencies are sued and a question arises on a matter of policy, whether an officer, say, made a wrongful arrest, wrongful imprisonment or maybe even wrongfully killed somebody. That is the allegation pursuant to acting according to a written or unwritten department policy, and it's usually the defense that's quick to ask my help to come in to testify about what law

enforcement policy is, how it should be created, how it should be used as a standard for training and discipline.

In those instances I was asked to testify against the police departments because the allegation was the police departments either had no written policy or had a policy which may have been out of date, illegal or even unconstitutional.

CROSS EXAMINATION OF ROBERT HICKS BY BRENT DAVIS

In the past I was there to speak against the, law enforcement agencies. I was subpoenaed through the defense to testify.

I am not saying in my opinion is that a crime is a crime and whether religious beliefs were involved or influenced that crime is really of no significance. (BETR 3061)

I am saying that police have tried and true methods of criminal investigation, and they ought to adhere to them. If through the investigation they find that somebody committed a crime incident to a religious ritual, obviously they shouldn't ignore it, and it could play a part in the investigation.

My concern is that the belief system or looking at it from strictly an occult or satanic point of view might narrow the focus of the police officer's investigation too much.

Those terms have been bandied about in the cult seminars we discussed earlier. I think it is given undue focus to generalized fears rather than specific investigative elements.

If those elements were elements of a certain religious belief that became apparent through an investigation, it would be the officer's duty to investigate that aspect of the crime.

I mentioned to the State while we talked before court about a case involving Richard Rarnirez, the guy they call the "Night Stalker." (BETR 3062) He had stalked, sexually assaulted and murdered quite a few women and was tried and has been in prison for that.

Although I do not agree with the words "trappings of satanic activity," he had some insignia or some identification with certain satanic symbols. He would enter the courtroom with a pentagram drawn on his hand, and he would show it to the jury and say, "Hail Satan," when he walked in the courtroom. It is not my opinion precisely that case would not have the trappings of a satanic murder in the cases in which he was involved. As far as I'm concerned, the man was investigated on suspicion of abducting, sexually assaulting and murdering women, and he was tried and convicted of those. The investigation was in my mind a fairly textbook investigation on how we do those things. The fact that books were found, pictures,

other bits and pieces that either came from the very public Church of Satan, in my opinion this made no difference to the investigation. You have a fairly wide encompassing investigation but what made that case was not looking at satanism, it was looking at other kinds of evidence. (BETR 3063)

As I understand from the investigators who testified; they did not tag him a satanist as such, but Ramirez told them he professed to certain beliefs which did involve Satan and satanic power.

I considered the belief system of Ramirez, that individually played a relatively insignificant role in that investigation. Therefore, I would not call that a crime with trappings of satanic or the occult. I just call it a crime.

As I understand Ramirez, the professed religious beliefs of the person were not significant in the commission of those crimes.

Determining what is the motive of a crime is something a law enforcement officer should look into. When you have a very unusual crime, one that falls outside the ordinary everyday type of criminal activity, you would oftentimes look for a motive that might be unusual. Normal crimes do not have normal motives. (BETR 3064) Abnormal, unusual, bizarre crimes such as this, sometimes have bizarre motives. If evidence uncovered by law enforcement officers indicated that

possible motives related to a set of religious beliefs, then that would be their duty to investigate that.

In my research and teachings in this area I have looked into some of the authors on some of the occult or satanic writings. I am familiar with Anton LaVey. Anton LaVey founded the Church of Satan in San Francisco in 1966.

Alister Crowley was English and lived at the turn of the century. (BETR 3065)

I have read some of Crowley's philosophies and writings. I have mixed feelings that some of his philosophies center around human sacrifice as a method of worship or a method of his religious beliefs. Crowley did not specifically sanction or otherwise condone human sacrifice. I am familiar with Crowley's work Magic in Theory and Practice. (BETR 3067)

The last time I opened Crowley was 4 years ago so I can't recall. I have read a good number of the texts you have. Portions of this writing refer to the power of blood as the source of life and refers to bloody sacrifices.

Part of it refers to that the greatest sacrifice is a male child of innocence. The high intelligence is the most satisfactory and suitable victim. If a person that followed ideas such as that, it could be a motivating factor in causing them to commit crime. If somebody had read some of the statements, focusing on those and

not the broader context, someone could read that as condoning human sacrifice.

(BETR 3068) It is possible that could contribute to their activity or actions in the commission of a crime.

I have not gone over the investigation in this case in a piece-by-piece fashion. In fact the very limited documents and photos referred to are the only documents I am familiar with. I looked at the books up here on the stand. I do not know what statements have been taken from witnesses in this case other than those I saw.

I do not know what the police did in regard to their investigation. I do not know who they interviewed, how many people they interviewed or what was said in those interviews. (BETR 3069)

I am not giving an opinion as to the motivation for this crime.

What I have said is that I disagree with those who give opinions that crimes are motivated based on religious belief systems. I think the issue has to be handled very carefully with precise language. I'm certainly not maintaining that such crimes cannot and never have happened. I do not know if it could or did happen in this circumstance.

REDIRECT EXAMINATION OF ROBERT HICKS BY VAL PRICE

I am familiar with the writings of Kenneth Lanning of the FBI. (BETR 3070) I agree with the quote from Kenneth Lanning which is contained in the last page of my book which is, "Bizarre crime and evil can occur without organized satanic activity." (BETR 3071) The law enforcement perspective requires that we distinguish between what we know and what we are not sure of."

RECROSS EXAMINATION OF ROBERT HICKS BY BRENT DAVIS

Bizarre and evil activity can occur with it or without it. (BETR 3072)

(BETR 3073-3089 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF CHARLES LINCH BY PAUL FORD

I am currently employed as a trace evidence analyst at the Southwestern Institute for Forensic Sciences in Dallas. I have been working in trace evidence for the last seven years. I have a Bachelor of Science from the University of Houston. I have attended the FBI hair and fiber school, the FBI forensic serology school and the FBI DNA analysis school. I've worked at the Southwestern Medical School as a research electron microscopist. I served a 1 year apprenticeship in hairs and fibers in the Institute of Forensic Sciences in Dallas. 80-90% of my work is the identification and comparison of hairs and fibers in criminal and civil matters. (BETR 3091)

I have testified on behalf of the State of Texas or any other governmental agency in a criminal case between 200 and 300 hundred times. I have been recognized as an expert in the field of trace evidence and fiber comparisons. I have testified on behalf of a defendant in a criminal case 2 other times.

In those 2 prior cases I was recognized as an expert in the field of trace evidence and fiber comparisons. I have you ever worked in conjunction with the FBI in four cases. (BETR 3092)

I have conducted individual fiber comparisons through the microscope would be many hundreds, perhaps thousands in criminal cases.

I had an opportunity to compare a red fiber which was found on a shirt with red fibers that came from a red robe. State's Ex. #88 is the robe and sack that I examined on February 19th, 1994 at the Forensic Sciences Building in Dallas. My initials and evidence tape are on that sack. (BETR 3093)

I recognize the microscope slides in Defendant Baldwin's Ex. #1 and 2. They were provided to me. My testimony regarding my fiber comparison, are based on my observation of these two slides and some additional slides that I made up.

The questioned fiber which is located in Baldwin's Ex. #1 is the single fiber fragment located about the top center of the bubble that exists in the circular region. That is the entire fragment which I examined.

When conducting a forensic fiber comparison, the two most important criteria the fiber examiner uses are color and actual fiber shape. (BETR 3094) The various differences that I can find in color from 1 fiber to another. There are over 7,000 dyes currently being used in the United States to make up the different colors from colorless to black fibers and all colors in between. The human eye is not able to discern 7,000 different colors but we have instrumentation that aids us in making that determination. There are various differences I can see in man-made fibers. Man-made fibers have distinctive cross-sectional shapes. When the fibers are produced, the molten fiber is pushed through an extruder which will give the fiber its cross-sectional shape. Cotton fibers are usually tri-lobal, that is, it looks like 3 dumbbells together. Fibers may be multi-lobed, fibers may be perfectly circular, they may be ovoid, they may be star-shaped. There are many different possible cross-sectional shapes that you might find in a man-made fiber.

In my opinion the questioned fiber originated from that woman's red bathrobe. I found sufficient microscopic differences in the fiber from the black and white shirt to exclude the red robe as being a possible source of the fiber. So, I observed differences that leads me to the conclusion that those fibers are dissimilar. (BETR 3095)

Initially I placed the 2 slides on the comparison microscope. A comparison microscope is two microscopes that are connected by a bridge, and the examiner is able to look at both fibers at the same time. Initially under the comparison scope I saw differences in color and in shape. In the exercise of caution, I went beyond the initial determination of color and shape. I concluded that these fibers were dissimilar.

After using the Comparison light microscope, I looked at the fibers with a polarized light microscopy. I then used a fluorescent microscope to look at the properties of the fibers. I also used a microspectrophotometer to get an instrumental reading of what color combinations were present in the fibers from the shirt and the fibers from the robe. The photometer test generates a graph from these two fibers from those two slides. (BETR 3096) Colors correspond to a specific wavelength of light measured in nanometers. The microspectrophotometer runs through a series of specific wavelengths of light and measures how much absorbance that fiber has for a particular color. The color we see from a fiber is a color that is reflected, and all other colors are absorbed. The fibers from the red robe had a spectrum which roughly looked like a smooth peak at the top, almost perfectly smooth. I then ran the single fiber from the black and white plaid shirt and its characteristic dye fingerprint or color had a peak, had a flattened region in it

and the slopes intersected with the spectrum of the known robe. This indicates that the dyes used in the robe and dyes used in the single fiber had different color combinations.

If you took a red fiber and flattened it until it looked pink but they were from the same source. (BETR 3097) You flattened it to pinkness. It may look like this, but that is still a match because you do not have intersection of graphs and the peaks are the same in conformity at the apex.

This spectrum data supported my initial light microscopic observation that the fibers were indeed of different color. In my opinion the questioned fiber did not come from that red bathrobe. It is possible for that fiber fragment to have been placed on the shirt after it was recovered from the water.

CROSS EXAMINATION OF CHARLES LINCH BY BRENT DAVIS

When I first saw the questioned fiber which is the fiber found at the scene, I did you know that Lisa Sakevicius with the Arkansas Crime Lab had flattened that fibers. I could tell microscopically that one end of it had been flattened. I heard later, after I made my observations, that she said she was the one who flattened it. (BETR 3098)

After I indicated that I couldn't flatten one of those fibers, but I have done additional tests since then. Initially when I did my examination and talked to

Fogleman and told him the results, I said the most important factor was the difference in shape between the two fibers.

At that time it was my understanding that I couldn't flatten one of these fibers with tweezers or by rubbing two microscope slides together or with a hammer, but I was later able to flatten it by other methods.

She examined the questioned fiber and compared it with the known fiber in its original state before it was flattened. She was able to do comparisons with it like that and I didn't have that opportunity. She flattened the fiber before she did certain infrared testing on it. (BETR 3099) That is an accepted practice in the field.

It is usually a good idea to photograph it before you damage it with the microspectrophotometer, but that is an accepted practice. I don't know if she tested it before it was flattened. State's Lx. #93 is spectrogram graph of visible spectrophotometry but this data does not indicate a match. This is the first time I've seen this. It's written "microspectrophotometry before flattening" on State's Ex. #93.

These graphs both show the intersection at the same apex. The same shape of the apex at the graph. (BETR 3100) On the drawing that I did for the jury, you would expect with different fibers you would have different shapes at the apex, one

might be flat while the other one might be curved. The shape at the apex on these are consistent. They are mostly consistent but there's an inconsistency.

I have the result of the graphs of my tests. I did not also do an infrared test. As a final step in doing a fiber comparison, I would do an FTIR. But in this instance since the fibers could be excluded at the first step, that wasn't necessary.

Infrared testing is done to determine precisely which type of polymer you're dealing with. (BETR 3101) With a polarized light microscope you can determine if it's nylon or polyester or rayon and so on. But with the IR you can determine if it is a nylon 6, if both fibers fit the same subclass of the general fiber category. I see differences on that graph that was provided by Sakevicius.

State's 94 has spectro data that indicates that these 2 polymer types are very closely related. This is a test that I didn't perform. These graphs were marked as composite State's Ex. #125.

This graph is not homemade. It is generated by a very expensive computer and printer from the microspectrophotometer. Those little red dots and the dark line are provided by a computer. (BETR 3102)

Flattening of a fiber changes the color characteristics, as seen under the light microscope, but in doing the spectral analysis you still have the same color

combinations. You can change the shape of a fiber by flattening or crushing it and taking forceps and pinching it.

The main difference that I noted and remember when you talked with Fogleman he asked you what in your opinion was the basis for the difference and you indicated to him that the main difference was the shape and color of the fiber. The main one was the shape.

At that time I was not surprised to find out that the questioned fiber had had its shape altered by being flattened. There remained enough of the questioned fiber that was relatively intact to do a comparison. If I was not surprised to find out, how come I asked Fogleman and Allen, how Sakavich managed to get this fiber flattened. (BETR 3103) I was wondering if I could duplicate what I had seen on the questioned fiber slide.

The effect of flattening would not affect the spectra data, but it would affect any conclusion I made regarding the cross-section in the deformed region of the fiber. In the region of the fiber that is relatively undeformed, then you can still make certain judgments about the structure of the fiber, the shape of the fiber. Rayon fibers aren't that common. Cottons and polyesters are probably the most common.

REDIRECT EXAMINATION OF CHARLES LINCH BY PAUL FORD

One end of the fiber was flattened and one end was relatively intact. The comparison as to shape is that based on the unflattened end. I took fibers from the robe itself independently and attempt to flatten them. (BETR 3104)

I tried to flatten it by using methods of squeezing with forceps, squeezing with a scalpel blade, beating with a hammer. I was unable to duplicate the appearance of the fiber from the shirt. Using what is known as a Carver press applying 2000 pounds per square inch to the fibers, I was able to flatten them, but they still did not flatten in the exact same way as the questioned fiber.

The information and evidence about this fiber being flattened does not change my opinion as to whether or not these two fibers came from the same source. I was aware of the possibility that it had been flattened prior to getting on that witness stand here today. It certainly microscopically appears to have been flattened. You can tell that by looking through the microscope, one end of it. The very first day I attempted to make this fiber comparison, I attempted to flatten it before I ever talked with anybody from the prosecution.

I am looking at State's Ex. #93, which is a microspectrophotometry before flattening, which was done by Sakevicius. (BETR 3105)

Her own test does not indicate that they are a match. The data points represented in State's Ex. #93 of the two different curves does not meet my criteria to call these two fibers a match. I am marking on that exhibit each place on that graph which you rely upon and say they are not matches. I will sketch a very rough representation of what is in State's Ex. #93 which represents the spectra data from two different fibers before flattening.

Excuse the representation here, but it illustrates the point that in the apex region there is a certain amount of agreement. That means the color combinations are in agreement. There is a difference at this point, and there are differences in this region. If this had been meeting my criteria for a match, one curve would look like this and the other curve would be under it exactly the same spacings. It is the points of intersection that indicate that the colors as analyzed by the spectrophotometer are different. (BETR 3106)

If the color is different, they cannot have the same source. Within a source you can have many different fiber types in a carpet, but specifically a source such as the red robe in this case, the rayon fibers that make up the outer shell of the robe are for the most part uniform, and I found no fibers from the robe that were similar in color or shape to the fiber from the black and white plaid shirt.

Some garments and types of material, are more likely to create a transfer than other garments. It is important that the garment be able to shed its fibers on to another garment in order for a transfer to occur.

Shredability is an important factor in regard to fiber transfer. I examined this robe for its shredability. Rayon fibers are not easily released from the robe, which would make it difficult for a transfer to occur.

In order for a transfer to occur I had to pinch it with my fingers and lift and pull the fibers out. They are not easily shed as maybe a sweater or a loosely held carpet fiber would be. This is not the type of garment that would shed a fiber merely by brushing up against it in a closet. (BETR 3107)

RECROSS EXAMINATION OF CHARLES LINCH BY BRENT DAVIS

Generally speaking, rayon fibers aren't easily shed, and are less likely to shed than others. The fiber was found at the crime scene on the clothing of one of the victims so it was shed from somewhere.

Originally, in my opinion to Fogleman, I indicated that the reason I found a difference between the questioned fibers and the known sample was because the questioned fibers were flat on one end and the known samples were not crimped.

That wasn't the only thing. The flattened end is very obvious to anybody looking through the microscope. The flat end was a characteristic which I couldn't

find on fibers from the robe and, therefore, that was one of the bases that I used to say they came from different sources. (BETR 3108) That wasn't the main basis. I consider all the factors of my observations.

The fact that 1 fiber was flattened and the fibers from the robe weren't flattened were one indication that they came from different sources. I was told that the flattening of the fiber was something that was done after it was taken into evidence.

I don't recall if I told Fogleman that the fibers from the robe are all perfectly circular. I said that the fibers from the robe had very pronounced striations. I don't know if I used the words, "perfectly circular," but they were in general circular.

Part of the reason was that I had the flat fiber that was the questioned fiber and the circular fibers from the robe, and that is part of the reason I said they didn't match. (BETR 3109) I told him that the main reason for my analysis was the shape of the fibers.

THE DEFENSE RESTED. (BETR 3110)

(BETR 3111-3121 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF PEGGY SIMMONS BY JOHN FOGLEMAN

My name is Peggy Simmons, and I am the Director of the J.W. Griffith Girls' Club, which is an organization for girls to play ball and have a place to go.

Echols has testified that he had only been to the softball field on one occasion. I am aware of that he has been to the softball field more than once. The first night the girls at the gate came to me.

I went to the gate with the girls. I saw him coming in the gate with, the other two, Baldwin and Misskelley. The person that I have referred to as Echols is in the courtroom, and I am pointing him out. (BETR 3122) The person I referred to as Baldwin is in the courtroom. (BETR 3123)

We started pictures on the 24th, 25th and on the 27th, 28th, through to June 3rd. They were individual pictures of the ball teams. I was also at the girl's club the next night.

The next night I just saw Echols and Baldwin, the two I identified here in court. They were coming in the gate at the girl's club. We were having pictures again that night. There was also ball games going on. We did not have games on Memorial Day. (BETR 3124)

On Tuesday following Memorial Day, I saw the two identified, Baldwin and Echols. They were coming in the gate. I stayed out there with the girls because they were scared.

CROSS EXAMINATION OF PEGGY SIMMONS BY SCOTT DAVIDSON

The first time I ever saw Echols was on May 27, 1993. I never saw him before. He was with Baldwin and Misskelley. (BETR 3125) That's the only three I remember that night. When I saw them, I was at the gate. I saw them walking in the gate going toward the ball fields. I did not see them with anybody else that night. I remember this particular night because the two girls got mixed up that were supposed to keep the gate, and both of them stayed home. I saw Echols again on a different night.

The second time you said I saw him in my life was on Friday, May 28. On May 28, 1993, there was not a policeman out there that evening. A policeman was out there on the following Thursday, June 3, 1993. (BETR 3126) That is one of the dates that I saw Echols. I saw Echols on June 3, 1993. I saw Echols four times. (BETR 3127)

I gave a statement to the police after they were arrested. This is my signature at the bottom of the page. I saw him write this out.

On the statement, on that last date, June 3, 1993, I did not write that I saw Echols. I didn't put that in the police statement just a few days after this happened. I may not have written it, but I did see him four times. I gave the police an inaccurate statement.

I remember the date that the policeman was out there because I asked him if he would kind of watch the grounds for me. He was a deputy sheriff for Crittenden County, Paul Weaver. (BETR 3128) He was in plain clothes, since he was up there to have his daughter's picture made. I asked him to be out there as a police officer. He said he would help me patrol the grounds.

CROSS EXAMINATION OF PEGGY SIMMONS BY PAUL FORD

I knew that Baldwin's girlfriend played on one of those softball teams. I don't remember a uniformed police officer present on the ball field at any of the four times I mentioned today. We do not have a policy of having a police officer there at anytime. We have not had any trouble.

RECROSS EXAMINATION OF PEGGY SIMMONS BY SCOTT DAVIDSON

If someone had been in this courtroom and testified that a police officer was there, I couldn't say if they would they be wrong. (BETR 3129) I do not remember a police officer in uniform. There was several there that was in uniform. Their girls played on the team. Paul's the only one I asked to kind of patrol the grounds.

DIRECT EXAMINATION OF GEORGE POKORSKI BY JOHN FOGLEMAN

I'm currently the assistant band director and junior high band director in Marion. Last year I was head band director in Marion School District. Last year Nick Garza was in my band. We had a school spring concert on Monday night May

17, in the West Memphis Civic Auditorium. We did not have any other practices or concerts in May of last year in West Memphis. (BETR 3130)

CROSS EXAMINATION OF GEORGE POKORSKI BY VAL PRICE

I did not have any other concerts in May, 1993. We had a rehearsal or two prior to the concerts where we got the beginning band together that Nick was in, but this was in the band room in Marion. This was not one of those things that was open to the public or anything. Just a rehearsal. Nick was in the 7th grade. That would have been the beginning band.

There was a contest on April 23 or 24, but that was in Forrest City. (BETR 3131) And that also was not a concert. That was a solo ensemble competition where students went on an individual basis. It wasn't a group performance. Beginning band students would have played in that. We did not have any performances on May 9, 1993.

That was possibly graduation, which came after our spring concert. Graduation was five days after the spring concert which was on May 17. May 14 would have been a Friday. Most likely, we probably had a rehearsal on that day in the Marion band room. There was no concert on that date. Just a rehearsal. That was rehearsal at the regular band room in Marion.

CROSS EXAMINATION OF GEORGE POKORSKI BY PAUL FORD

Jason was in the 7th grade beginning band. He started to play trumpet and never acquired a trumpet. He went nine weeks without the horn, and I called him to my office, stuck a pair of drumsticks in his hand and asked him to play a couple of things. He did a pretty good job. If I remember correctly, I said, "Maybe one of these days you might want to reconsider joining the band on drums."

He was okay in my class. (BETR 3132) This was years ago. He was not a troublemaker. I remember telling Paul Ford on the phone that I was a little surprised that Baldwin was involved in this. If I said shocked, you might remember it better than I did. I think I used the word shocked when I found out I was called as a witness, because I didn't know what I was called for. It just didn't fit his demeanor. Baldwin was an all right kid in my band.

REDIRECT EXAMINATION OF GEORGE POKORSKI
BY JOHN FOGLEMAN

I think I had him in the fall of 1988. (BETR 3133) I only had him for nine weeks, and he couldn't get the horn and I said maybe he might come back next year to try drums. But the next time I saw Baldwin was walking around the campus.

In 1988 he did not wear all black all the time. He didn't have any outstanding characteristics that I remember. I think I probably would remember something like that if he walked into the band room wearing all black all the time. (BETR 3134)

(BETR 3135-3136 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF DR. DUKE JENNINGS BY BRENT DAVIS

I'm in a private practice of pathology in Jonesboro. I practice with Doctors Pathology Service in Jonesboro. I finished medical school in 1969 at Arkansas. I finished a period in the Air Force in 1973 as a flight surgeon. Began my pathology residency in Portland, Oregon. Concluded that in 1977, and at that point came back to Arkansas and practiced 6 ½ years in El Dorado and for the last 10 years in Jonesboro. (BETR 3137)

Private practice pathologists and forensic pathologists begin with essentially the same 4-5 years training. I did three months of forensic pathology training in Oregon under a prominent forensic pathologist, whereas someone who elects to do full time forensic pathology would ordinarily do about one year of fellowship after his general pathology training.

I spent some time doing forensic pathology for the State of Arkansas and also in Oregon. During the time I participated in about 50 forensic autopsies. After moving to El Dorado, we were still under the system where I was a deputy medical examiner. During that time I did 150-200 forensic autopsies before the system was changed to our current central medical examiner system.

I have familiarized myself and looked at and done some extensive, research in the area of estimation of time of death that pathologists are asked to do at times. (BETR 3138)

I indicated that I have read and researched extensively into the area regarding estimate of time of death.

As far as any changes in the criteria used in estimating time of death, I would answer that as a two-part answer. First, I sense that in reading recent review articles establishing time of death and recent textbooks that they would wish for a new parameter to measure. (BETR 3140)

Second, there's nothing meaningful that has come forth that helps in establishing time of death. There is nothing that is very good, and it has not changed in this period of time.

I reviewed all of the current forensic pathology textbooks I could find available, which was 3 or 4 different volumes. I also had some material faxed to me from recent textbooks from the University of Mississippi School of Medicine, Forensic Pathology Department. I have read 10 to 12 review articles concerning time of death. Frequently on issues of this nature, I consult with my mentor, Dr. Brady that I worked under in Oregon. I did consult with him. (BETR 3141)

(BETR 3142-3144 is omitted as irrelevant to Mr. Baldwin's appeal)

The governor has appointed me to be on the State Crime Lab Board, which oversees the operations and functions of the Arkansas State Crime Lab, of which the State Medical Examiner is a part. (BETR 3145)

The items I was provided, as far as examining in terms of Dr. Peretti's testimony regarding estimation of time of death, were Dr. Peretti's testimony, the coroner's report, and the autopsy reports. I am aware of Dr. Peretti's testimony regarding that estimate or range as to time of death of the 3 victims. (BETR 3146)

In Dr. Peretti's testimony he says that he's being asked to estimate the time of death based solely on the presence of lividity as stated in the coroner's report. I have reviewed that coroner's report, particularly the portion regarding, "lividity blanches with pressure," and talked with the coroner. (BETR 3147)

There is no meaningful information contained in that coroner's report upon which you could base a meaningful estimate as to the time of death. There were factors indicated in that report regarding the last time the children were seen and when they were found.

The last time they were seen and when the bodies were physically found are one of the parameters that you would look at in estimating or forming a range as to the time of death. There could be meaningful estimate of time of death based on

the statements regarding lividity contained in that coroner's report. There can be no meaningful estimate. (BETR 3148)

Of all the many findings that you see in an examination after death, lividity is the least reliable. In this case it is less than worthless, because the bodies were discovered unclothed in water. We don't know the position they were found in the water. The coroner arrived four hours later.

The key thing that would tell me that lividity is of no usefulness is that the coroner stated that when he arrived 3 or 4 hours after the bodies were discovered, that the bodies had all been placed on their back on the ditch bank. The fact that the coroner stated that there was lividity and was blanching is meaningless because the positions of the bodies changed. There could be redistribution. Also the fact that they were in the water unclothed greatly retards the development of any of these signs after death. Rigor, lividity, are all things you would find if they're in water, but would be slower to develop when the body was changed in position. (BETR 3149)

Under the best of conditions, lividity would not be a meaningful factor in making an accurate estimate as to time of death.

The general opinion of pathologists and sources I have consulted of all possible parameters has been phrased the baddest of the bad. If you have every

parameter possible, if temperature has been taken, if rigor has been assessed, if all these things are done and you have lividity, even then you are hard pressed to make a meaningful estimate. If you have lividity alone which is the only one and if it has been compromised by being in water, it is of no value. I brought with me a copy of an article from the most recent text you could find regarding the area of lividity and its usefulness in determining time of death.

The textbook is Forensic Pathology and the author is Bernard Knight.

(BETR 3150) I have confirmed by talking to the various state medical examiners in the last few days including the Medical Examiner from the State of Mississippi who says this is indeed an authoritative, frequently used text, and is the publishing date on that. I can read those portions regarding lividity and its usefulness or lack of usefulness in estimating the time of death.

This general section commences on page 51. The heading is "Hypostasis," or discoloration, which are synonyms for lividity. The subheading is, "Timing and Permanence of Hypostasis."

Too much has been claimed in the past for the usefulness of hypostasis as an indicator of time of death and postmortem disturbance of the body. The phenomenon appears at a variable time after death and indeed it may not appear at all. Hypostasis can appear within a half an hour of death, or it may be delayed for many hours. (BETR 3151) Its variability is such that it is useless for any estimation of the time since death.

In my research into this area I have discovered that there are cases in which lividity never fixes at all. That is mentioned in the text. The immersion in water of an unclothed body effects the fixing of lividity.

The general statement in the textbooks is that if a body is immersed in water naked that the cooling occurs twice as fast as on land and the marked effect is the retarding of all these things, including the retarding of development of fixation and lividity.

There are other factors, besides lividity, that you need in order to make an estimation or time range as to time of death. To begin with, in the assessing of lividity itself we want to know how many places the coroner checked on the body, how hard did he press with his thumb, how quickly did it refill, how quickly did the color come back, were there photographs of that taking place.

In addition to lividity since it is the weakest of all, of course we would want the ambient temperature of the air from the time the boys had disappeared until they were discovered in the water. (BETR 3152) You would want to know the temperatures of the bodies immediately upon discovering those bodies. You'd want to know the temperature of the water precisely and you would want to know had rigor developed. And these findings are simply not part of the record. None of that

information was contained in that coroner's report, and he told me he did not do those.

After these bodies were removed, if the autopsy was performed the next day after the bodies had been refrigerated and stored at the Crime Lab, a pathologist would not be able to gain any meaningful information as to an estimate of time of death.

I think by external examination the opportunity is lost at that time. Being refrigerated, perhaps having changed posture several times, there's no meaningful information to be gained from an external examination of the body.

The most important factor is the body temperature, when it was recovered. The next day when the Medical Examiner performed his examination, whatever the body temperature is at that time would be relatively meaningless. (BETR 3153) The degree of rigor the next day, after this amount of time has elapsed, would be of limited benefit, and it would be impossible to establish time of death with that.

Based on my review of the coroner's report, the only legitimate time frame as far as the range of death is the 6:00-6:30 p.m. period when one report indicates they were last seen and 1:15 p.m. when the bodies were recovered.

I would say that the only meaningful information, when they were last seen alive and when they were discovered, given the documentation and lack of documentation of these findings in this case.

CROSS EXAMINATION DR. DUKE JENNINGS BY PAUL FORD

I'm on the State Crime Lab Board, which oversees the quality of personnel that are there conducting those day-to-day tasks. (BETR 3154)

I have not been asked to pass on credentials. The people sitting in those positions now were in those positions when I came on board. It is my job as a board member to make sure the people who are down there doing the day-to-day job are competent.

Dr. Peretti is 1 of those doctors. There are two other forensic pathologists there. That's overstating what I read in the testimony to say Dr. Peretti indicated in his testimony that he conferred with the other two, and they all three agreed on the time of death. He did say he conferred with the other two doctors. I am not saying that all three forensic pathologists at the State of Arkansas Crime Lab are incompetent when they come to court and give their opinion that the time of death was between 1-5 a.m. (BETR 3155) Dr. Peretti is a competent pathologist by all indicators that I have.

Dr. Peretti said multiple times in his testimony, you cannot determine this, you cannot determine this, you cannot determine this. At some point he said 1 sentence more, and it is baffling as to why. I would not say he's incompetent. His associates are not incompetent. I think they were severely disadvantaged in this case as well .as the coroner in that they had nothing on which to base the estimate.

This is the coroner's report for Chris Byers. (BETR 3156) It says, "water which is approximately sixty degrees in temperature." Approximately is not good enough in this kind of situation. The estimate as to water temperature appears on each of those three coroners' reports.

I take into consideration the following factors: air temperature, water temperature, body temperature, rigor, the time they were last seen, and the time they were found. (BETR 3157)

When looking at lividity, you would take into consideration where he pressed for lividity, how hard he pressed, how many places he checked, and whether he took any photographs.

Lividity is the one and only thing you had here. I said under the best of circumstances, it is the worst. We have less than the worst here. It was not meaningfully assessed. I read from a textbook that lividity was worthless when it came to determining time of death. If it is worthless, you still have about 5 or 6

different things you want to know about lividity when you give your list for determining time of death.

The reason is that Dr. Peretti in his testimony says that that is all that he had to base his opinion on was the coroner's written account. I have nothing else to investigate. They did not do body temperatures. I was asked independently what factors I need to determine time of death. (BETR 3158) I listed 4 or 5 things about lividity that you would want to know. Even though lividity is worthless, I still want to know anything about it because it is all that we had. It is almost worthless and sometimes stated as being worthless, but it is the only thing we have here. I didn't say that's not. That's what the most recent text says.

I won't say that I don't agree with that text. It is important to know certain things about lividity. You want to know where it is, how hard you press, how many places you check. You want to know a lot about lividity.

You're trying to put words in my mouth. You don't turn down any information that is available. I have read what the general assessment is as to its importance.

That textbook was given to me by Dr. Bebbin, who trains forensic pathologists in the State of Mississippi and by Emily Ward, who is the State Medical Examiner in the State of Mississippi. (BETR 3159)

I talked to people about your opinions in this case from Mississippi, Tennessee and Oregon. I didn't go down to Little Rock to any of those 3 guys. They were uncomfortable in testifying or stating their opinions against their colleague. I did not ask them that and never called them.

I didn't read the coroner's or Dr. Peretti's testimony where he said they all agreed until this morning. I talked with Attorney Ford about my opinions and my testimony Sunday night. (BETR 3160)

I had not already formulated my opinions. In fact many things were expanded and amplified since that time. I had a number of contacts out. I had a number of articles requested, a number of textbooks requested that did not in fact come in until after our conversation. I naturally would not quit exploring until the time that I arrived here.

On Sunday night I said that it was impossible for Dr. Peretti to give a meaningful opinion as to time of death, and that's what I am telling us here today. I had already formed that opinion, but I hadn't yet looked at his autopsies. I had been furnished the coroner's report. I looked at his autopsies indirectly when I formed my opinion. I did not read his autopsies before forming my opinion. (BETR 3161) My opinion was not firmly and finally formed Sunday night. I certainly didn't turn off my brain at that time when I talked to you. I had already formed a working

opinion that I couldn't give a meaningful opinion as to time of death Sunday night.

I continued to think and continued to study.

I do not recall if Dr. Peretti said he took into account water temperature or air temperature. I recall him saying he based it only on lividity and the coroner's report. I do not remember if Attorney Ford asked him questions about air temperature and water temperature. (BETR 3163)

Air temperature and water temperature are of no value in this case because they never took the body temperatures. The reason they would be of importance is to establish a gradient of temperature if the temperature fell in the body. Since no temperature was ever made of the body, the air temperature and the ambient temperature and the temperature of the water actually are meaningless. The 3 factors I said I would take into account air temperature, water temperature, and lividity are worthless.

Neither Dr. Peretti nor I was on the scene. He did not have the opportunity to take temperatures, or examine the bodies when they were recovered. No one measured those things.

I have 5 partners in my private practice. (BETR 3163) I don't know if Dr. Vollman is the father-in-law of Mike Walden, deputy prosecuting attorney who used to be a law partner with Brent Davis.

I was aware that the prosecutors submitted Dr. Peretti as an expert in forensic pathology. Dr. Peretti conducts autopsies regularly as a part of his job. I no longer perform forensic autopsies.

CROSS EXAMINATION DR. DUKE JENNINGS BY SCOTT DAVIDSON

It would have been important to have how many times the body had been pressed, where the body was pressed, and all those factors. (BETR 3164) Even though lividity is weak, it was not assessed very extensively. The coroner's report didn't have a lot of the information I would liked to have had. It would have been good if pictures had been taken at the time so you would be able to make a more definite opinion. The statement I made about photographs was in regard to the refilling time of the lividity, where the lividity was, and what the blanching looked like in photographs. I'm just trying to build any kind of strength for lividity, and I can't find it.

I have not talked with Ridge or Gitchell regarding this case. I have not looked at a crime scene video. (BETR 3165)

If there is a video or photograph prior to the body being touched, it would be important to be able to determine the position of the bodies. A body in water is not static in position and it could move and rock. The body temperature could have been critically important. You have to take that body temperature immediately on

discovering or retrieving the body. That evidence is just lost now. We don't have that because it wasn't taken.

This investigation didn't have the factors that anyone would need to establish a time of death. I am not here saying a different time of death than Dr. Peretti. I am just saying I can't tell. (BETR 3166) By and large I'm agreeing with Dr. Peretti with what he said throughout, over and over again, you cannot tell. I'm baffled as to why after saying what he said that he ever would give a range unless he felt badgered. I really cannot. I have not talked with him about it. These factors are lost and we can never get them again.

REDIRECT EXAMINATION DR. DUKE JENNINGS BY BRENT DAVIS

The fact that Dr. Vollman is a partner in my association would not in any way affect my opinion. The only thing that might do is since I respect him, I would want to do my homework and do a good and truthful job. (BETR 3167)

If Dr. Vollman had a contrary opinion, it would not affect my opinion. Dr. Vollman has given no opinion contrary to the State under oath in a criminal matter in this district.

RECROSS EXAMINATION DR. DUKE JENNINGS BY PAUL FORD

I read segments of Dr. Peretti's testimony carefully more than once. (BETR 3168) I read the ones pertaining to time of death. I don't recall if the prosecutor

ever asked Dr. Peretti if he had an opinion as to the time of death. Did he ever ask that question. Attorney Ford asked that question. I do not know if the prosecutor would or would not ask the time of death question.

DIRECT EXAMINATION OF LISA SAKEVICIUS BY JOHN FOGLEMAN

I ran some additional graphs on known fibers that came from the robe which is Ex. #88. (BETR 3169) State's Ex. 93 is the graph I previously testified that was part of the basis of my opinion that the fibers were microscopically similar.

Linch testified that in his opinion that showed that they were dissimilar, but I disagree. I took 2 known fibers from the robe and ran a graph. State's Ex. #126 is the graph I ran on 2 separate fibers from the same robe that shows differences between 2 known fibers.

There are differences from the same garment. You might have slight color variations and slight diameter variations. This garment contains viscose rayon which is a multi-lobed or cloud looking section that varies along the length of the fiber and between different fibers. (BETR 3170) These can all introduce small variations in the spectra.

The 2 known fibers and State's Ex. 126 show a similar pattern as State's Ex. #93. When you say on State's Ex #126, "2 separate fibers from same standard." I am talking about 2 separate fibers from Ex. #88.

State's Ex. 125 is a graph that Lynch did, and I examined. (BETR 3171) I took 2 fibers from State's Ex. #88, the robe, and did an additional graph on those 2 fibers. I noticed on Mr. Lynch's graph which he shows that those 2 fibers come from a different source, he's got X's marked where a couple of intersecting points are near the top.

I am taking this pink marker on what I have marked for identification as State's Ex. #127 to mark on the graph the similar points of intersection on State's Ex. #127. There's 2 separate known fibers from the same standard. This robe is from State's Ex. #88.

I ran those graphs yesterday. (BETR 3172) In running this particular graph, I tried to duplicate the known fiber and the questioned fiber. I left 1 fiber in its original state, and I flattened the other fiber.

Lynch said my graph, State's Ex. #127, and his graph of State's Ex. #125 were dissimilar. However, the fibers on State's Ex. #127 are from the same robe. Lynch ran the known fiber and the questioned fiber. The points of intersection are approximately the same on both graphs.

As a result of my comparisons of the questioned fiber found on the black and white polka-dot shirt and the fibers from State's Ex. #88 are similar and could have a common source. (BETR 3173)

CROSS EXAMINATION OF LISA SAKEVICIUS BY PAUL FORD

I said something about viscose rayon. There are probably several processes used to make rayon. I'm not familiar with both of the 2 major processes used to make rayon.

I've read about pupronium rayon, but I don't know that much about it. The textbooks on fiber identification say that it's important to distinguish between viscose rayon and pupronium rayon because they are made in different ways. However, this robe is viscose rayon. Both fibers are viscose rayon. (BETR 3174) That is my opinion.

I did not run CC mass spec on the questioned fiber. I do not know if a CC mass spec is a test that you run to determine whether or not rayon is pupronium or viscose. I'm familiar with GC mass spec. This is an instrument mainly used by drug analysts. It is not an instrument that is commonly used in fiber analysis in my opinion. I don't know if you can tell whether it's pupronium rayon or viscose rayon with that process. (BETR 3175)

All these new graphs I ran are on the standard fiber, not the questioned fiber. That questioned fiber is the whole thing I found. I flattened part of it, but it may all be flattened. I looked at it under the microscope after I flattened it. I believe it is

nearly all flat. My photograph doesn't show the entire fiber. It only shows about half of it.

I did not take a photograph of the non-flattened end. (BETR 3176) It is hard to get the whole thing in the photograph. I can move my slide down in the microscope and take a picture of the unflattened end, but I just took one photograph. I was trying to show the color.

I flattened it with a scalpel. The fiber was laying on a glass slide. I pressed with a scalpel, sort of like a precision knife blade, like a surgeon would use. I just pressed on part of that fiber on the glass slide and then sealed it with the liquid that sets up. I don't remember how hard I pushed. (BETR 3177)

I flattened these fibers yesterday the same way. I was able to take fibers off this robe, to press on them with a scalpel, and to flatten them. However, Linch could not get them to flatten with a hammer. I don't know what his problem was.

He testified that he couldn't get it to flatten with a hammer, with a scalpel, or by pressing two glass slides. He was only able to flatten it with putting 2000 pounds of pressure on it. I was able to flatten the fibers with the scalpel, and I found it a very simple procedure.

I would suspect somebody who couldn't flatten a fiber a scalpel. I'm not going to go say that he's incompetent. (BETR 3178) I'm not going to say that since

he can't flatten a fiber, he must not be as qualified as I am. I have been doing this fiber work for three years. I have a UAMS microspectrometer which is about two years old.

When you run graphs of these fibers, the lines need to follow the same general curves and have the same peaks and valleys in order to say that they are a match. If they intersect, they are not following the same track with the same peaks and valleys because if they do, they won't intersect. (BETR 3179) When you're comparing them, if they follow the same parallel course, they should not intersect.

All of these graphs intersect. My graphs and Charlie's graphs all intersect. Even the graphs of the known fibers intersect. You have to take into account the entire graph. The end points are not as important.

Assuming that Lynch is a qualified and competent fiber analyst and I am a qualified competent fiber analyst and we all looked at the same things and disagree, I can't place the meaning on this. (BETR 3180)

DIRECT EXAMINATION OF JOHN KILBOURN BY JOHN FOGLEMAN

I am a forensic scientist employed by the State of Alabama, Department of Forensic Science. I am in my 25th year with the department. I supervise trace evidence or microanalysis section in the Huntsville Laboratory in Huntsville, Alabama. The responsibilities of both doing case work on the examination of hairs

and fibers, explosive residues, paint analysis, as well as supervising other examiners in that area.

I have the responsibilities in the State of Alabama as the Chief Forensic Microscopist and to deal with problems and do training in the area of microscopy for examiners throughout the state.

I have a degree from Auburn University in pharmacy and I have done graduate work at the University of Alabama.

I have taught or attended schools throughout the country dealing with forensic sciences including at the F.B.I. Academy. (BETR 3182) I have taught a number of courses in the microscopic aspect of forensic sciences in the examination of hairs and fibers.

There is a certification process with the American Board of Criminalistics. (BETR 3183) I have been certified under that program. At this time there is less than 200 nationwide. I am also a member of several professional organizations. I have testified in Court before. (BETR 3184)

I have testified over 500 times. There have been hundreds of cases composed of thousands of fibers that have been examined in the past 25 years.

In fiber analysis several procedures are followed in preparing the fiber. In a comparison we are dealing with a comparison of a questioned fiber with a known

fiber to determine whether or not they could have had common origins. Different scientists will go through different routines to make this identification. We look at basic characteristics that anyone could look at and do this with the aid of a microscope where we see characteristics such as color and if at any time in our examination of these characteristics are obviously different, we stop our examination. (BETR 3185) If one fiber is blue and the other one is red, there's no need of closing the examination.

The first thing we do is look at the color and see if the color is identical or such that you can't differentiate with your eye, or through a microscope, and we use a comparison microscope which is two microscopes built into 1 so that we can look at the known fiber and the questioned fiber at the same time to see if the color is the same.

We look at the shape of the fiber. If one of the fibers is round and the other is flat, such as cotton might be or round like polyester, if we find that these characteristics are identical, then we continue our examination making these microscopic examinations. Depending on the examiner, there are a wide variety of measurements that can be made under the microscope. We look at it for delustrants, which is a compound pigment that is put in the fibers to make a fiber dull rather than shiny.

We might look at the cross section. (BETR 3186) If you took a fiber just like a loaf of bread and took a slice of that bread and laid it down on your plate, if you take a similar slice of fiber and laid it down flat on the microscope slide, what is the shape of it? Is it round? Is it trilobal –have three lobes like a nylon carpet fiber might have. Is it very irregular in appearance?

We make all of the microscopic observations and then if at any point in time these two are different, we stop the examination. A fiber match examiner can run instrumental analysis. There are instruments that will tell you what generic type the fiber is, whether it is rayon, or nylon or polyester. There are instruments that can be used to observe the color of the fiber and tell whether the color is similar between the known and the questioned.

Basically, this is step-wise procedure that most forensic examiners go through.

In this particular case at the request of the prosecuting attorney or the West Memphis Police Department, I examined what's labeled as E-2 questioned fiber which has been introduced as Defendant's Ex. #1, and also fibers from a garment which is State's Ex. 1/88 labeled red garment as 3-5. (BETR 3187)

I did a microscopic examination of the questioned and the known fiber, making observations as well as some instrumental analysis of the fibers.

In my opinion the questioned fiber was consistent with the known fibers with the measurements I performed. I am looking at State's Ex. #128 and #129. I can identify those and they fairly and accurately portray the questioned fiber and the known fiber as it appeared at the time I examined it.

(These items were offered into evidence without objection.) (BETR 3188)

State's Ex. #128 is the known fiber, and #129 is the questioned fiber. The questioned fiber you can see is a lot wider than the known fiber. You may notice that in this end where it is much wider, it also appears to be somewhat lighter in color than the questioned fiber. This is due to the fact that Ms. Sakevicius from the Arkansas Crime Laboratory when she did her examination in order to perform one of her tests which is called micro infrared spectroscopy to determine the generic type of fiber, she had to flatten the fiber and she took a scalpel blade or some type of roller and actually rolled it onto the fiber to flatten it out and this is necessary to do those tests. (BETR 3189)

That is the reason that you see a slight color difference and the width if you looked at it up close, you can see that it looks quite a bit different than the known fiber. This is because it has been substantially flattened out. It's very, very thin so that light from the instrument can get through the fibers.

At one point Charles Lynch testified that the fiber was round. This particular type of fiber isn't round. Rayon fibers are never round. I will make a drawing.

(BETR 3190)

There are different types of fibers and different shapes that you can see. We have two classifications of fibers. We have natural fibers and we have man-made fibers or synthetic fibers. Natural fiber is what most people are familiar with like cotton fibers, flax, hemp, and jute. All of these are natural fibers that come from plants.

On the other hand, we have man-made fibers and these are synthetic fibers that most garments and materials are made of. There are different types of synthetic fibers like nylon, polyester and acrylic fibers. Brand names like Orlon most people are familiar with. There are mod acrylics. There are acetates. There are triacetates and rayons and a few other fairly rare synthetics, but those are the major fibers.

In the manufacturing process fibers will take on different shapes. The way that most fibers are made is that they begin as a liquid and through some kind of process, for instance with nylon, they actually take nylon chips and melt them. So now the nylon is a liquid but to make fibers of that nylon they take a disc that's called a spinneret and in this spinneret there are literally thousands of very, very

tiny holes. (BETR 3191) If we look at the holes through the microscope we would see that one of these holes looks like what we call trilobal. These thousands of spinnerets, each one of them have that shape.

This liquid polymer is forced through this spinneret and then the fibers are cooled as they come through and they take on this shape and we call that a trilobal nylon. Most of the carpets that you have in your home or in this courtroom, if you look at it under the microscope you will find that they have this shape.

Most of your polyesters make up out clothing and upholstery. They are perfectly round and once again by the method that they are manufactured, this is the way they appear.

There are a few fibers that are neither round nor have this trilobal and one of them is rayon. Rayon starts out as a liquid but when it passes through these spinnerets it goes from one liquid state into another liquid that is acidic. When this liquid passes into that acid, the fibers are formed. By this process that we call the wet spinning method, when they go through they are round. (BETR 3192) When they coagulate in that acid bath, they take on a very irregular shape and we call this a striated type appearance. This is what we look at under the cross section, striated, trilobal and round.

Every rayon fiber that you look at will be a little bit different. You could say that their shape is round or circular and that it's more circular than it would be square or in this case you could say this is a triangle, but they aren't actually round. They have this very irregular appearance. When you look at a fiber you can tell that because if you look at it on a microscope slide and have your fibers mounted on there with magnification, this fiber actually has these striations or grooves running down it and we call that a striated fiber.

What is happening is that if we just project these back we have hills and valleys caused by this irregular cross section and when we look down at the fibers that's exactly what we see.

Those are striations illustrated in State's Ex. #128 and #129. (BETR 3193)

If you look at the fiber up close you will be able to see that within the borders here there are a number of these striations. And if you look at the questioned fiber down on this end where it's not flattened you can still see those striations and where it's flattened they become even more prominent. You can see where those striations are.

When you make that observation and see those striations that we have here, you know that the cross section is not going to be round, but it's going to be irregular as you have in a rayon type fiber.

I have seen State's Ex. #39 before. This is a graph that was run by Ms. Sakevicius. (BETR 3194) That graph run by her on the fiber from the shirt and the known fiber from the robe, I have an opinion if the graph illustrates the similarities in microscopic characteristics as far as color. Although the curves differ very slightly, they are within the limits, they have the same color. Sometimes in the same garment, taking known fibers, you have differences in the fibers from the same item. When we have these microspectrophotometers we see minor differences primarily in the intensity and not so much significant shifting of the location of the peaks. The intensity will vary and not only from fiber to fiber but actually at different locations on the fiber you can get slight differences on the curve. Depending on what portion of the fiber you run the test on, you might see slight differences even on the same fiber. (BETR 3195)

CROSS EXAMINATION JOHN KILBOURN BY PAUL FORD

You and I talked over the phone about my observations and my findings. I told you that in my opinion you should not say the questioned fiber came from that robe. Despite everything we have heard I still as a matter of fact cannot say the questioned fiber came from that robe. When I flattened the fiber the striations would not necessarily disappear. It would depend on the degree of flattening. In this particular one I think that we can still see where the striations lead from the

non—flattened area directly into the flattened area. (BETR 3196) They appear in those photographs to be still present at least to some degree.

I am looking at the slides which is the fiber Sakevicius says was recovered from one of the shirts. It appears to be the same slide I saw. There have been some notations. When I received the slide from the crime lab I did not take it apart and remount it. I used the one they already had.

The microscope slide bearing the fiber 93-05716 which was Q-14 on page 4 is the same number that is on the slide in front of me. (BETR 3197) I am talking about the lab case number, not the exhibit number. The slide has Q-F and I have in my report Q-K. It shows to be different. Other than the K and the F, the rest of the numbers are the same.

I looked at that very slide. I can't testify absolutely because I put some markings on the slide when I sent it back to the crime lab and those are not there. I don't know as a matter of fact if indeed this the same slide. Just because it has the same numbers on it as my report, doesn't mean anything to me.

I know for certain that I looked at the same fiber Lisa looked at because I took the fiber in her presence when I was at the crime lab. (BETR 3198) I examined some of the fibers in her presence and took them back to Huntsville with me. These are the questioned fibers of her slide.

When I saw it it was not in the original condition. It has been flattened. I didn't see it before she flattened it. My testimony is based upon a fiber that had been partially altered. In the photograph the unflattened is the original condition. This end is exactly the way it would have been if it had not been flattened. (BETR 3199)

Based on what she told me that she did not flatten that and I don't know simply from what she told me, as a matter of fact, I don't know because I didn't handle the fiber. She told me she did not flatten the end. If she told the jury that she flattened the whole thing she would have told them something she didn't tell me. As I recall from what she said, she didn't flatten the left part of the fiber. These fiber photographs were taken under the same magnification. If we held the unflattened end up to the photograph that is the damaged fiber, they should have a match on one edge. They don't necessarily have the same diameter. Diameter is important but fibers will vary. They will vary in diameter and it's obvious from the known red rayon fiber. You can see along the length of the fiber that it varies in its diameter. That photograph was not taken to illustrate similarities in diameter. They don't have the same diameter down there at the end. The untrained eye could see that they don't have the same diameter. I didn't say that two of the most important

factors were color and size. That was not in any kind of order. The color and shape that's important. (BETR 3201)

The diameter varies along the length of some fibers and this situation with rayon, sometimes the diameter along the length of the fiber will vary and that's what we have here. The unflattened end is the smallest and as it goes that way it only gets bigger. We don't know since we don't have another one. We don't know whether that's the narrowest point and there's no way that they've got the same diameter. We can't tell because they're damaged.

We examined not just a single rayon fiber as far as the known. There were several others that had a greater diameter than that one that's illustrated in the photograph. That photograph was taken as a representation of the examinations that was made and not for comparative purpose. These photographs were not made as a fair and accurate representation of the fibers examined so that this jury could understand and my testimony. (BETR 3202) They were taken for my record. They go in my case folder for me to recall what the fibers look like. I did not take them so that the jury could say they don't have the same size. That wasn't my purpose. If I want them to think they are from the same place when they don't match up, I say that's not important. I am not here to testify that they came from the same place. I

am here to testify that the fibers are consistent, the questioned fiber and the known fiber.

Those little dots on State's Ex. #129 are not titanium dioxide, delustrants. That's dust and dirt. (BETR 3203) There are no delustrants in this photograph, State's Ex. #128. There are no delustrants in either one. The little stripes that I see inside State's Ex. #128 that run down this fiber, they are kind of black in color or darker than the red, those are the striations that I am referring to. You look at the little stripes inside the fiber. If they are similar in nature you will expect to see the same sort of striations. But we had an unflattened fiber to observe than a very, very small amount I would expect to see identical striations. There would be striations there. (BETR 3204) Rayon is going to vary from rayon fiber to rayon fiber with respect to the striations. You can't line them up like you can lines on a bullet because we don't have enough fiber. You can see the striations but you can't match them.

In State's Ex. #128, the striations run from one length of the fiber all the way to the other. In State's Ex. #129 there are striations visible in the unflattened end. You see striations the same way in the photograph. They are not as visible as they are in that one but the striations are present. One set of striations is more

pronounced than the other. Even in the flattened end, they are not as pronounced as they are in this one. The striations are not identical. (BETR 3205)

You do not have to flatten that fiber to run a color print. If Lisa testified that she had to flatten it to do a color print on it through the microspectrophotometer, that's what gives you the color chart. You don't have to flatten it to get that chart. You can run it on the undamaged fiber. When you run these graphs and the peaks and valleys you want to see parallel lines. When they are parallel that indicates your are looking at something from the same source of microscopically similar or consistent. That indicates to me that they are the same color. If they cross that indicates they are a different color. It depends on how much they cross. (BETR 3206) All of these graphs do not cross. I have not seen but one. The one I saw crosses very slightly at one area. At one area there is a little difference in peak intensity, but that's the only place.

People in my field do not always agree. Two people who are qualified can look and the same fiber and disagree. We don't know which one is right. When they disagree, one says they are inconsistent and one says they are consistent. One of them is right. They don't always agree. Obviously in this particular case there were disagreements, but not always. I made my first observation and looked at these things on October, 17th, 1993. (BETR 3207)

REDIRECT EXAMINATION JOHN KILBOURN BY JOHN FOGLEMAN

There was a mention of delustrants. When you look at a fiber under a microscope and there are delustrants you see tiny black dots. In these pictures I see some darker dots. Delustrants appear that are different to the untrained eye and the inexperienced examiner, it would look very similar to this. What you would note here is that unlike with delustrants there is no even pattern.

Titanium dioxide is what you use for delustrant. It's a white pigment and you take liquid polymer that you're going to make your fiber and pour in some of this titanium, dioxide and then you stir it up and so when it is extruded and makes a fiber, the titanium, dioxide is uniform assuming that the mixture is well mixed before the fiber is made. You expect it throughout the fiber that you would see evenness. The same amount of titanium, dioxide on the edges as well as in the middle. (BETR 3208) A person who is not a fiber examiner, if based on this information if they will look at, this fiber they will see these little black dots are random in nature. If they are not uniform throughout the fiber and if you examine it with a microscope and put reflecting light so that light comes in and hits the fibers, you can see that these particles are not within the fiber but actually setting on top of the fiber and for that reason I think that is dirt.

That is the same for both fibers, the known and the questioned. You can see a few black dots on the known fiber but that is just soiled areas of direct and there is no evidence of titanium dioxide on it either.

There are reasons to flatten fibers. Lisa did two types of instrumental analysis. One was for the color and that's what Ford was speaking of, microspectrophotometer, and for that purpose you do not need to flatten the fiber. (BETR 3209)

To do infrared spectroscopy which allows an examiner to identify the type of fiber. That it is a rayon versus a nylon. In order to do that you have to flatten the fiber so that you can get a good spectrum and this is the reason Sakevicius flatten the fiber. That is on a different type of test, not the color test.

The striations are not identical in the known and questioned fibers. In every rayon fiber would not expect to find the identical striations. The striations would not be identical from the standpoint that you could take the two fibers and line them up so that all the striations would perfectly match the other one such as my fingers.

The basic number of striations may be the same as far as number, but some are going to be off-set over others. You may not see as many striations because the

manufacturing process of these striations are unique. They will vary from fiber to fiber. (BETR 3210)

RECROSS EXAMINATION JOHN KILBOURN BY PAUL FORD

As far as lining that up perfectly because since they are totally random the way that 'these resulting manufacturing process, it's very doubtful that you would ever be able to take two rayon fibers and have the striations line up perfectly the same. No two rayon fibers would ever line up exactly. I am just saying that's random striations. They can match them up but the fact that they don't match up does not mean that these 2 rayons did not come from the same garment. (BETR 3211)

It does not necessarily mean that when they don't match up I am saying that they could match. When I say the striations don't line up that means it might be, might not be. It has absolutely nothing to do with whether it came from the same source or not. The bottom line is I am not here to tell the jury the fiber came from that to be. I am up here to say that they are consistent.

DIRECT EXAMINATION OF SCOTT KELIN BY JOHN FOGLEMAN

I am the manager of the Blue Beacon Truck Wash that the bodies were found behind. (BETR 3212) On May 5, 1993, the hours of operation of the Blue Beacon is 24 hours a day except for Thanksgiving, Christmas and New Year's we

do close. At any give time we have between 8 and 10 employees. During the midnight to 8:00 shift we only have two employees on at that time. Up until midnight we have 8 to 10. We do all the services for the truckers. The truckers don't wash the trucks.

The lighting conditions around the Blue Beacon are we have some lights supplied by the city. We have other lights that we now rent from them which are 400 watt flood lights and since this incident we have added. We have had two on the west side of the building, maybe two in the back, and four in front. (BETR 3213)

CROSS EXAMINATION OF SCOTT KELIN BY PAUL FORD

I am looking at a map and I am marking with a little blue marker and circling the business. On May 5th I will put a little "X" or dot where there is a flood light. On May 5th there was not a fence that separated the parking lot and the woods. (BETR 3214)

There is a drive-through and there was no fence from here to here. I was working on May 5th. I left around my normal time of 5:00 or 6:00 p.m. although I did have to come back to do some equipment maintenance. I came back at 7:00 p.m. and left again between 9:00 and 10:00 p.m. That night we had two employees. I have records of how many vehicles or trucks were washed that night between

those hours. (BETR 3216) I don't have that information with me. I do not know at this time. It takes both employees to wash a truck. If a truck is being washing between 12:00 a.m. to sunrise the following morning, both employees would be inside washing the truck.

We do not have security guards. No one is out there patrolling the premises to see if there is anybody else up there. (BETR 3216)

(The State rested in regards to rebuttal) (BETR 3217)

(BETR 3218-3267 is omitted as irrelevant to Mr. Baldwin's appeal.

(Before instructing the jury, the court made the following comments to the jury.)

THE COURT: Ladies and gentlemen, the Court has been requested and in fact thist that it's appropriate. In view of the length of this trial and the fact that we've had recess periods over the weekend and that there has been a multitude of media attention to this trial, to inquire of you if any of you have read the newspaper, watched TV, or listened to the radio, or through any other source, gained any outside information from those sources or any other about this case?

JURORS: No.

THE COURT: Have you followed the admonition of the Court as best as humanly possible?

JURORS: Yes.

THE COURT: Particularly with regard to the continuance yesterday. I believe there was an announcement placed on Channel 8 TV advising jurors not to report until this morning. (BETR 3267) Did any of you learn of any reason why that continuance was necessary?

JURORS: No.

THE COURT: Can you give the Court the assurance that you have lived up to the warning and admonition of the Court and your duty as jurors in that respect?

JURORS: Yes. (BETR 3268)

(BETR 3269-3287 is omitted as irrelevant to Mr. Baldwin's appeal.)

CLOSING ARGUMENTS

(During the State's first closing argument the following occurred.)

MR. FOGLEMAN: I don't think any one of you could forget Anthony and Narlene's testimony. I got to thinking about it and, we all laughed. We laughed. The defense attorneys laughed. Everybody laughed. They were dead serious. And you don't pick your witnesses and because they're simple and they're not highly educated, that should be no reason to discount anything they said. Think about what they said and really how they said it. I submit to you you'll find that they

were highly credible and that they did see Damien Echols on this service road between 9:30 and 10:00 on May 5, 1993 (BETR 3288).

Now, who was with him? Draw your own conclusions. They say it was his girlfriend and they describe her as having red hair and long. You've got a picture of Jason Baldwin at the time of the arrest. Nothing wrong with having long hair, and his picture is in there not to show that he's a bad person because he's got long hair. Think about that. Think about who Damien was with on May 5th. (BETR 3289)

(BETR 3290-3300 is omitted as irrelevant to Mr. Baldwin's appeal.)

MR. FOGLEMAN: We submit that when you look at all of the evidence as a whole you'll find that this circumstantial evidence says that these defendants committed these murders and proves beyond a reasonable doubt these defendants committed this murder. (BETR 3300-3301)

(BETR 3302-3324 is omitted as irrelevant to Mr. Baldwin's appeal.)

MR. FOGLEMAN: Now I want to talk to you about these knives.

(Bench conference) MR. FORD: The grapefruit demonstration is not evidence. That grapefruit is not in evidence. This demonstration is not in evidence. (BETR 3325) It's not scientific, or reliable.

MR. FOGLEMAN: I am going to show the jury the marks that this knife makes when it strikes something.

MR. DAVIDSON: That's improper.

MR. FORD: That's improper.

MR. FOGLEMAN: This is for demonstrative purposes.

THE COURT: What is your reason for it being improper? I think you can use a demonstrative evidence.

MR. FORD: You can make demonstrations and experiments in front of the jury. Those have to be under A.R.E. Rule 700 series experiments. He's conducting an experiment.

MR. FOGLEMAN: It is not an experiment. It's not even evidence.

MR. FORD: This is improper. We ask that he be restricted from doing it.

(BETR 3326)

MR. FOGLEMAN: It's argument.

THE COURT: Tell me again what you are going to do so I'll know.

MR. FORD: Don't do it, just go ahead and make your point where the jury hears you before the judge tells you it's improper.

MR. FOGLEMAN: I am going to show the types of marks that this knife makes and that knife makes.

MR. FORD: That is a demonstration and experiment.

THE COURT: Overruled. I am going to allow it.

CLOSING ARGUMENT BY JOHN FOGLEMAN CONTINUES

I told you I'd be getting back to this knife and this is one of those deals where you all are going to take these photographs and you may even have to study some of them back in the jury room. (BETR. 3327) Referring to Exhibit 77, if you'll look at those photographs, there are marks on Christopher Byers where you've got like a dash where it's cut, cut, open space, cut, and an open space. And if you take this knife and do that (INDICATING) then if you look closely you can see it leaves a cut and an open space, cut and an open space.

Now if you take Defense Exhibit 6 and even with the slightest pressure it makes a straight line. If you just press enough to break the skin of the grapefruit, it makes a straight line - a curvy straight line.

If you take it and just barely move it, it makes something like that, but the spaces in between are very short. Use your common sense. Look at these two knives. Are you going to expect to find similar markings from those two knives. You don't have to be an expert to see that. That this knife is going to make markedly different marks than this knife.

This is a picture. The area is circled. Dash, dash, dash, dash. Now keep in mind one thing. When you go back to the jury room, get you - this is not to scale right here. Now I'm going to be fair. If I lay this up here, what do you think? Well, it's sharp. It just matches practically perfectly.

But now, listen a minute. This is not a one to one. (BETR 3328) Keep in mind, this is a rounded leg, so there's a bit of distortion, but if you take this another piece of paper, get you a rule back there and measure the spaces on here, you're going to find that in between each of these blades is a quarter inch, and the blade itself is three-sixteenths. Take a little piece of paper and on this scale right here - not on your ruler, but on this scale, go three-sixteenths and a quarter and three-sixteenths and a quarter, and where your three-sixteenths are, look at the straight line, just like this would be. (INDICATING.) And then on the flat part right here (INDICATING), these two that are larger, if you think about it's rounded, this stripe around the surface - the ones on the ends are going to only have part of a blade. Take that and you lay it on these two large cuts and you're going to find that they match. The fit. That is one example of how this knife matches, not just a little bit, but so much more than that knife or any other serrated knife.

Now, I'm saying that that shows that this exact knife caused it. I submit the proof shows this knife caused it. Well, true, it could be another knife like this, but

I submit to you the proof, the circumstantial evidence, shows that this knife, State's Exhibit 77, caused those injuries right there (INDICATING). (BETR 3329)

Now, if you look at those, they're similar injuries right here.

(INDICATING.) If you can look at the gap between that cut and that cut.

(INDICATING.) Now, you're going to have a harder time on this particular one.

See in the picture how the rule is bent. They've got it pushed down so you're going to have distortion in the measurement.

But look at this one, and then there's another one on here. It's almost as telling as these and those on that picture. This is State's Exhibit 71C. See this wound right here. See how wide and jagged and gouged that wound is? Well, you take this knife and drag it across with the serrated edge, and boy, you've got a straight line. Take this knife and drag it and it rips and tears just like that in the picture.

When you go back there, look at those pictures and as Mr. Davis asked you in jury selection, look at those pictures closely. There's another way that these knives can make marks and that's scrapes, and you'll see that this knife has a vastly different pattern if it's scraped against the skin than this knife. And it's obvious just by looking at it. You've got a larger gap then you've got two narrow gaps. (BETR 3329) Two narrow gaps, large gap, two narrow gaps, large gap.

For this one you've got, it's still pretty uniform, and you've got a quarter inch, three-sixteenths, quarter inch - it's uniform all the way down. Where this one you would have a large gap, the you've got the blade which is smaller, and then the larger gap. This one you've got a number of different blade patterns and it's going to make a completely different scrape than this knife. (BETR 3330)

(BETR 3331-3401 is omitted as irrelevant to Mr. Baldwin's appeal.)

(The following occurred in the State's second closing argument:)

MR. DAVIS: Mr. Ford said, "They don't have anything to connect my client." He told you and this is another of his word games he likes to play. He said all of our witnesses said this couldn't be the murder weapon. This wasn't the weapon. Incorrect. Okay, and think about it, did our witnesses say this wasn't the murder weapon? (BETR 3402) What Dr. Peretti said was, "The injuries are consistent with a serrated edge of this type." And I ask you, like Mr. Fogleman, did, please go back and compare and look at these.

The other thing to keep in mind, and John didn't mention this, but remember this knife has two cutting surfaces. It's going one here and it's got this serrated portion back here. (INDICATING).

Now, the ripping type injuries you see on the children are on the inside of the thighs, and the back of the thighs, and inside the buttocks. When this surface is

being used to remove the genitals and the knife is worked in and they're trying to remove the genitals, this back surface is what's going to be coming in contact with the inside of the thighs and the back of the buttocks (BETR 3403).

(BETR 3404-3428 is omitted as irrelevant to Mr. Baldwin's appeal.

(On March 19, 1994, there was a hearing at the request of the attorneys in the jury room with the jury present out of the presence of the spectators for the purpose of polling the jury by name. (BETR 3429) All 12 jurors were polled and asked if this was their verdict and each of them answered yes. (BETR 3430)

THE COURT: One other question that the Court has. I have given you an admonition practically every time we've recessed or anything that you are not to discuss the case with anyone and I take it that none of you have discussed this case other than as a deliberating jury body. Is that correct?

The jurors answered yes.

THE COURT: To your knowledge, do any of you know of any family member, or associate, or contact, or person that you may be acquainted with that has attempted in any way to discuss this case with you or influence you in any way? Have any of you had that occur?

The jurors answered no.

THE COURT: Can you give me your assurances that at least to this point in this case that there has been no contacts from the outside by family, media, or anyone else that would in any influence your findings?

The jurors answered yes.

THE COURT: Are each of you satisfied and can you give me your personal assurance that you have only considered the evidence that was introduced in court by proper court procedure.

The jurors answered yes. (BETR 3432)

THE COURT: Do you of you feel that there has been anything whatsoever that in any way affected your ability to deal strictly with the evidence that was produced in court?

The jurors answered no. (BETR 3433)

(The remainder of the record, BETR 3434-3572, is omitted as irrelevant to Mr. Baldwin's appeal)

ABSTRACT OF RULE 37 PROCEEDINGS
CR 99-1060
CRAIGHEAD COUNTY CIRCUIT COURT
HON. DAVID BURNETT, CIRCUIT JUDGE
Beginning May 5, 1998
ARKANSAS SUPREME COURT CASE NO. CR 99-1060

(Abstracter's Note: The record of the Rule 37 proceedings in the case of co-defendant Damien Echols was incorporated into appellant's record on appellant's motion in the Circuit Court. The parties in Echols's Rule 37 were represented as follows: Brent Davis, Prosecuting Attorney, David Robb and Todd Newton, Assistant Attorneys General, for the State of Arkansas; Alvin Schay, Edward Mallett and Melissa Martin, Attorneys for Damien Echols. The Rule 37 proceedings will be referred to as "37TR ____." 37TR 1-63 is irrelevant to the issues in Mr. Baldwin's appeal. 37TR 64-69 is the order denying Rule 37 relief. 37TR 70-364 is omitted as irrelevant to the issues in Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF VAL PRICE BY EDWARD MALLET

(The witness is being questioned about jury selection.)

I see the exchange of the question and answers where the prosecutors asked Mr. Stowe what sources he had seen or heard about this case and he said, "I get three newspapers" and Mr. Stowe continued, "You probably should have moved it to another state if you wanted to - I mean this is still too close." (37TR 365)

Mr. Arnold then is indicating that he is concerned about anonymity and the possibility of publicity on the case which says, "You probably should have moved it to another state if you wanted it - I mean, this is still too close."

I don't believe that any time after the commencement of jury selection I asked the Court to reconsider having venue in Jonesboro. If it's not in the record, it's not there. It was specific tactical decision to help the defendant when I decided to accept Mr. Arnold as a juror, who is of the opinion that the case should have been moved to another part of the state. As to how that helped Mr. Echols we were limited on the number of strikes. We had to make judgment calls on who we struck and (37TR 366) who didn't strike. We had a chance to listen to what the other jurors were saying and in a trial you make decisions and go with it, and that's what we did with Mr. Arnold. I don't think (37TR 367) there is any prejudice, and I don't necessary believe that there was any prejudice on seating this particular juror. (37TR 368)

(37TR 369-375 is omitted as irrelevant to Mr. Baldwin's appeal)

The fact that some of the jurors had heard things from the media about the case, and the fact that the prospective jurors had heard things about Mr. Misskelley's case, our case was different. There were several different factors that were different in our trial than Mr. Misskelley's trial. (37TR 376)

(37TR 377-380 is omitted as irrelevant to Mr. Baldwin's appeal)

As to what are the other reasons I didn't ask the jurors, what do you know, because even if the jurors have heard information about the case, our case is different than what had been in the media prior to the trial. And our case was different than Mr. Misskelley's case. We had different witnesses than were used in the Misskelley's case. The State had different evidence that they were going to put forth our case, some of it similar, some of it different. And the fact that jurors had heard some of the things about the case prior to the trial - I mean, our case would be different. And I don't think the fact that they had heard several things prior to the trial would necessarily - it won't - once they heard the information in our trial, things were different and think they would change their mind. And I think they would change their mind and not necessarily go with what they had heard as opposed to what the evidence came out. I am saying I made a strategic decision that I would not ask the jurors what they knew first because they'd lie to me and second because the evidence record could be potentially different than the evidence they already heard. (37TR 381)

MR. MALLETT: For example a juror could say, what I heard was that Misskelley confessed and these three boys committed this murder together and--

THE WITNESS: And the confession was not admissible at our trial.

MR. MALLETT: The confession wouldn't come into evidence and so you'd get a not guilty verdict because they'd be disappointed about not hearing the confession and they'd probably come out and say, we found him NOT guilty because we hear didn't hear the Misskelley confession. Was that you're thinking?

THE WITNESS: I mean about being disappointed about not hearing-- I wouldn't assert--

MR. MALLETT: And your thinking was that whatever they had heard and you didn't know what it was, your evidence might be different?

THE WITNESS: And it was different. (37TR 382)

(37TR 383-402 is omitted as irrelevant to Mr. Baldwin's appeal)

I recall we talked about the pathologist in Atlanta who was sent the autopsy and coroner's report. The defense employed a criminal investigator, which was Mr. Lax. The defense did not employ a criminologist, a medical expert, a fluid analysis expert, a trace evidence expert, (37TR 403) with the respect to comparison's involving hair.

Mr. Baldwin's attorneys used a gentleman out of Dallas regarding the hair evidence and he prepared a report that I read at some point and he testified at the trial. I did not request this person from Dallas to conduct any analysis of evidence that I supplied him. (37TR 404)

(37TR 405-407 is omitted as irrelevant to Mr. Baldwin's appeal)

I did not file this motion for funds for expert witnesses.

It was a truthful statement of what I knew about what the state was doing when I wrote on page II of the motion, "The State has already paid Genetic Design Laboratory, Inc. \$4,500 dollars for DNA test. The State has hired members of the Alabama State Crime Lab to perform additional tests on physical evidence that was previously tested by the Arkansas State Crime Lab. All these tests have not been completed and the Defendant estimates that they charge \$100 per hour."

I wrote the following because I believed it was true: "The Defense is making a meaningful attempt to cut down the cost of litigation keeping in mind State and County budgeting concerns. However, in reviewing the over 4,000 pages of discovery generated by the State so far it is obvious that the State's investigation primarily by the West Memphis Police Department and other agencies has been supported by unlimited financial resources." (37TR 408)

I wrote and believed that part of the motion that stated, "The fact that at least two criminologists from the State Crime Lab Trace Evidence Section were present at the time of the execution the search warrants on the defendants' homes looking for hair and fiber evidence is very unprecedented and costly."

I was confronted at the time that I was holding the motion with an unprecedented offense, and an unprecedented investigation by State authorities, with apparently unlimited resources, or at least no limitation of the resources that the State had that I could see. (37TR 409)

I was a Public Defender in Craighead County taking an out of county case by Court appointment, preparing a motion to ask the Court to give me an assurance that I would have some help and didn't want to go broke on the case. I could go broke on this case and still spend a lot less money than the prosecution was spending to gather up evidence.

I wanted to have all the sorts of experts that I listed in the motion as the type of experts the State were using. I wanted someone knowledgeable about serology, blood typing. I knew from a previous case that I had that the science of odontology was admissible in Arkansas. (37TR 410)

I said in my motion I was not qualified to decide precisely what experts might be helpful or relevant to proving Mr Echols denial of guilt. I wanted experts to help me make the decision about where to take the investigation.

I wanted people who were familiar with extraordinary and unprecedented crimes in which a defendant was denying his guilt who could tell me where to take

my investigation and these people lost a lot of money, which I did not have. (37TR 411)

(37TR 412-583 is omitted as irrelevant to Mr. Baldwin's appeal)

CROSS EXAMINATION OF VAL PRICE BY BRENT DAVIS

We had access to a forensic pathologist that reviewed certain materials, a Dr. Sperry. One of the issues we wanted Dr. Sperry to look at was time of death because that might or might not become an issue at trial. Mr. Baldwin's lawyers, one of their key issues in their defense was trying to establish that the time of death did not occur between - this is kind of general - 6:00 and 10:00 p.m. time period on the day of the murders. (37TR 584) Their theory was it took place sometime after midnight, around 2:00 to 4:00 a.m. in that time period. That was one of the things that Dr. Sperry had looked at for us to see if he could determine the time of death and determine which of those windows it could fit in. His conclusion was it would not have been the 2:00 to 4:00 a.m. time period, that it would have been between 6:00 and 10:00 p.m. on the days the boys were missing. That time period would have been consistent with the state's theory of the case, so we kind of kept that tight to our vest and didn't reveal it because it was not helpful to our client. (37TR 585)

In the motion I prepared but did not file, Defense Exhibit 31, regarding experts we wanted, I list a number of things the state had access to. The first was a forensic pathologist. (37TR 586). That was Dr. Peretti, who testified in this case. We had access to Dr. Chris Sperry. We sent him information and we received input from him. That input was not favorable so we didn't use him.

The next expert was a criminologist. It's my understanding a criminologist is kind of a general or generic type term for someone that searches for evidence, reviews evidence, that is not in a specified category. (37TR 587) As far as the evidence admissible against Mr. Echols in regard to trace evidence, the only evidence that was really damaging was there was some evidence about some red cotton fibers that were found on one of the bodies that was consistent with red cotton fibers that came from Mr. Echols' clothing in his closet in the house. It was an important aspect of the state's case.

Our strategy on the red cotton fibers was that all the evidence was that the red cotton fibers were similar or consistent with - the red cotton fibers from Mr. Echols' closet - with ones found on one of the bodies. But a red cotton fiber is a red cotton fiber, and you could go down to Wal-Mart and look at 100 red cotton T-shirts - Razorback T-shirts - they would all be red cotton fibers. You can't further look at cotton and break it down any further, and the fact that it was consistent with

being a red cotton fiber, it doesn't really narrow it down with Mr. Echols. (37TR 588)

(37TR 589-590 is omitted as irrelevant to Mr. Baldwin's appeal.)

Our list also included a serologist as one of the things the State had access to, a fluid analysis expert. As to whether there was any fluid analysis expert that was damaging to Mr Echols, there was no evidence of any type of semen or blood or any other fluids of that nature linking Mr. Echols to the murders. Part of our defense was to underline the fact that there was a lack of physical evidence at what State was contended was the scene of the crime. The state's theory of the case was - and this is primarily through Griffis - that it was a Satanic killing but the Satanists cleaned everything up and that's why there was no physical evidence at the crime scene.

We dealt with that thinking that sounded like a preposterous belief and it wouldn't have happened that way, but there wasn't any fluid analysis or serology type evidence found at the crime scene linking Mr. Echols. (37TR 591)

The theory about additional tests that might have been performed on this necklace that came up toward the end of the trial, I cannot come up with a theory how additional tests would have provided anything exculpatory for Mr. Echols. As a matter of fact, that necklace at one time had been worn by Jason Baldwin. And

one of the police photographs shows Jason wearing that particular necklace, and I believe that Jason Baldwin's DNA blood typing and, I think, Michael Moore's was consistent.

I know there was - because on some of the other areas where they had done some testing about blood on the T-shirt - I don't know if that was admitted at our trial or not - but because there was blood that was on the necklace that Jason was wearing was consistent with Jason's blood, we didn't think that hurt Mr. Echols at all and actually was a good explanation to it. There was nothing that I saw, if additional testimony had been requested, that would have been anything exculpatory to Mr. Echols. If it turned out to be somebody else's blood, that doesn't help Mr. Echols. If it turned out to be one of the children's blood, it certainly doesn't help Mr. Echols. (37TR 592) If it turned out to be one of the other co-defendants' blood, that doesn't help him or hurt him, either way.

I am familiar with a case where a forensic odontologist was used. It was another murder case and I was opposing you. The state put on a forensic odontologist, I thought he was kind of a quack. (37TR 593). I talked to jurors about it afterwards, and they said that they didn't put any stock in his testimony at all. After hearing his testimony, that kind of left a bad taste in my mouth regarding

forensic odontology. I think we looked at it as a possibility in this case. (37TR 594)

(37TR 595 is omitted as irrelevant to Mr. Baldwin's appeal.)

I have never used a profiler. In my 16 years of experience, I have never seen a profiler testify under oath that in their opinion a certain type of individual must have committed this crime. I have been aware of cases where on side tries to use a profiler where they've been kept out by the court. (37TR 596) We did not consider using a profiler in this case. I do not think testimony of that nature would have been admissible, in my opinion. (37TR 597)

(37TR 598-600 is omitted as irrelevant to Mr. Baldwin's appeal.)

Paragraph 12 of the unfiled motions (Exhibit 31) states the defendant is in need of the following experts to aid the attorneys in the investigation and preparation of the case:

- (a) Examination of blood samples, hair samples, fiber samples, saliva samples, DNA samples, semen samples and fingerprints.

We got a copy of a form petition from some other attorney and we added or made some changes to it. Some of the things is just generic language. There was no latent fingerprint evidence associated with this crime. (37TR 601) As the trial approached we decided we didn't need the experts that we had listed in paragraph 12 of this motion. Looking in hindsight and evaluating the testimony that came

forth in the case, the only expert listed in paragraph 12 that may have been beneficial is DNA samples. The last two or three days of the trial when evidence about possible DNA evidence on the necklace came up, there was a recess. We made some calls to a DNA expert in Miami to see if he would be available but then we made the decision not use him because the DNA sample, we concluded, did not hurt us. (37TR602)

(37TR 603-605 is omitted as irrelevant to Mr. Baldwin's appeal)

The defense at trial was that Echols or Baldwin did not do the crime. We were interested in jurors who could consider whether Mr. Echols was innocent or not based on the evidence. I believe the jury we picked was fair and impartial in their ability to consider the evidence and make a determination.

I did not rely solely on the advice of the expert hired by Ford and Wadley to make my jury selection decisions. Mr. Davidson and I conversed. I think Mr. Lax and maybe even Ms. Shettles may have been there during part of that. (37TR 607) We also had conversations with Mr. Echols during the voir dire process to get his feedback on individuals. (37TR 608)

(37TR 609 is omitted as irrelevant to Mr. Baldwin's appeal.)

I do not feel that if a juror makes a statement in front of another juror about witchcraft being involved that necessarily taints that juror. In our case there was a

lot of pre-trial publicity, and the press was covering stories and trying to seek different angles. Of course the first month of it was about the crimes themselves. (37TR 610) Then after that about our clients. There was a lot of negative stuff out there, but much of the stuff that was out there we couldn't really respond to until the trial. We're not trained to battle in the press to win our case there. We're trying to win in the courtroom.

That's why it's important - just because people have heard things through the media or through rumors, if what they've heard does not comport with what they hear at trial, sometimes it can actually be an advantage to the defendant.

In a way, we really didn't want it - we had a general idea what had been out there, and we knew a lot of our case had not been reported in the press. The fact that we were intending to use an alternate theory of defense about the Bojangles incident - that was something that hadn't surfaced much.. It may have come up in the Misskelley trial, but there hadn't been a lot of articles about that, a lot of TV reports about that, prior to that.

I think at one time there was a report about sticks or clubs being found which turned out that didn't have anything to do with the evidence in this case. So just the fact that people had heard things in the media wasn't necessarily bad for us. (37TR 611)

Another alternate theory involved the gentleman who went to California, Chris Morgan, and made a confession. That was something that people were not aware of, and I think it was favorable. (37TR 612)

(37TR 613-616 is omitted as irrelevant to Mr. Baldwin's appeal.)

I remember the statement of Mr. Arnold during *voir dire* that we probably should have moved the trial to another state. That comment recognizes concerns about a defendant's ability to receive a fair trial and that comment appears to reflect that person would be a favorable juror in listening and deciding my client's fate. Mr. Arnold indicated he had hardly even followed the Misskelley trial. (37TR 617)

(37TR 618-647 is omitted as irrelevant to Mr. Baldwin's appeal)

I would say it would be a critical decision whether to go to trial two weeks after a co-defendant had been convicted - when everyone knew that Mr. Misskelley had made a statement against penal interest that the murders had been committed as charged. I think it's an important decision, nothing to be done casually, where a fully informed defendant is making a decision to go to trial. I don't think that's the client's call whether to go to trial. I think that's the lawyer's call. (37TR 648)

(37TR 649-748 is omitted as irrelevant to Mr. Baldwin's appeal)

REDIRECT EXAMINATION OF VAL PRICE BY EDWARD MALLET

Referring to page four of your amended petition at paragraph 9, I remember the statement, relating to the testimony of Officer Ridge about Mr. Misskelley's statement that everyone available for jury service knew that Misskelley had made a statement against penal interest.

MR. MALLET: Very briefly to put this passage into context - beginning at the bottom of page 922 (trial transcript) - which is volume 5 - you were questioning and there is a conversation about a stick. You asked on line 20, "so that stick was not the stick that was at the crime scene?" Officer Ridge answers, yes, it is the stick that was at the crime scene.

"Question I guess I am confused at the time you did not take that stick into evidence at the time that you all recovered the bodies."

Ridge answers, "No, sir. I didn't take fit article into evidence until the statement of Jessie MissKelley in which he said" - and at that point you object - you moved for a mistrial and that was denied and you approached the bench. Ultimately the Court gives a limiting instruction I believe at page 934. (37TR 750)

(Witness continues) I was aware that Officer Ridge was in violation of a motion *in limine* restricting him in making any reference to the fact that there had been a statement against penal interest by Jessie Misskelley. (37TR 751)

(37TR 752-866 is omitted as irrelevant to Mr. Baldwin's appeal)

I believe I told Mr. Davis that if I knew what newspapers a prospective juror read I would know what information they could have been exposed to. As to how I would know what stories they'd read, because the primary newspapers that were covering this were the Commercial Appeal from Memphis, the Arkansas Democrat Gazette, the Jonesboro Sun and the West Memphis Times. (37TF 867)

As to whether by knowing that a prospective juror had read any one of those publications that I know which story they had read that there were trappings of Satanism, that Misskelley confessed, that Damien Echols wore black - I read all those stories. I did not know if the jurors had read any specific stories. I only know what information they might have been exposed to. I did not ask them to tell me the time periods of the information they had previously received about the case. I was not saying I wanted to have a jury that knew everything about the Misskelley trial, in answering Mr. Davis' questions about the jury anticipating more evidence of the satanic than was presented. (37TR 868) I didn't say it was as though I believed that the more prejudiced in favor of these boys being the murders of those three little boys - the more prejudiced they were in that favor at the beginning of the trial the better off we were because your case would be a different case than the Misskelley case. As to what I intended to communicate when I was saying I believe the jury anticipated a very strong State's case in this area and it wasn't so

strong, I was trying to say the jury thought there would be more evidence of the crime itself and that Satanism and the occult and what type of evidence, and that evidence didn't come forward.

MR MALLET: And so you had a jury that already had all that accusation, the Misskelley trial, the Misskelley confession, the Misskelley conviction, you wanted that as part of your theory of defense in the trial that started two weeks after the Misskelley verdict?

A: Misskelley didn't have that much evidence about the occult. In the confession of Misskelley, the evidence of the occult, but there's not that much other evidence in Misskelley's trial about this being a satanic, cult-related killing. (37TR 869)

As to whether I wanted a jury that knew all about the Misskelley trial, well, they did know about it. As to whether it was our strategy that I wanted a jury that was fully informed about the Misskelley trial so our jury would see our trial was different, that was one of our strategies. We did not necessarily want a jury that was going to remember everything they had heard and then know that our case was different. I did not want the jury to know the details of the Misskelley confession and they didn't know about from our trial. It didn't come in our trial. The Misskelley confession was certainly reported by all the media, widely spread and

widely reported. (37TR 870) One of the factors we looked at was we wanted a jury, not that would set aside what they had heard from the Misskelley trial, but which would remember the evidence from the Misskelley trial and then compare it to the evidence adduced in Mr. Echols' trial. There were other witnesses in Misskelley's trial that didn't testify at our trial So, no that's not a complete answer. It was one of our desires. (37TR 871)

I was asking a question that could be answered yes or no when I asked Officer Ridge, "I guess, I'm confused - at the time - you did not take that stick into evidence at the time you all recovered the bodies." Officer Ridge was then under authority of Judge Burnett pursuant a Motion in Limine not make reference to the Misskelley confession. (37TR 872) Ridge had given a complete answer when he said, "No, sir." At the time he said, no sir, I didn't have any regret about asking that question. (37TR 873)

Our question was a perfectly good question calling for a yes or no answer. The regret is to the second part of the answer he gave. That part was not responsive to my question. (37TR 874) It was contrary to a direct order from the judge or an indirect order from the State.

It was not one question too many, it was one illegal answer too many - an answer not permitted under the rules and not required to answer the question. I didn't think I did anything wrong in that regard. (37TR 875)

(37TR 876-884 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF BRENT TURVEY BY EDWARD MALLETT

I am Brent Edward Turvey of San Leandro, California. I am one of three partners in a company called Knowledge Solutions and am employed as forensic scientist and criminal profiler. In Knowledge Solutions we essentially run on-line educational initiatives in forensic science. We do case work as well. (37TR 885).

(37TR 886-889 is omitted as irrelevant to Mr. Baldwin's appeal)

I am here today to testify to the materials that I have examined in this case the suggestions for investigation (37TR 890) I made based on that examination. (37TR 891)

(37TR 892 is omitted as irrelevant to Mr. Baldwin's appeal)

I was subsequently contacted by Attorney Dan Stidham attorney for Jessie Misskelley. Mr. Stidham asked me if I would be interested in looking at the case and giving it my opinion. I agreed to that and the next thing I did was requested from him case material so I could make a firsthand evaluation of materials myself (37TR 893) Yes, he provided materials of the class, character or nature of the kind

that I requested. Mr. Stidham sent me crime scene and autopsy photos, a copy of the crime a scene video, investigators reports, some of the witness statements, the initial persons reports, one of the victim's medical and neurological history and the results of some of the forensic analyses that were performed in the case.

Ultimately I asked for additional materials. (37TR 894)

I reviewed all the materials that he sent me. I scanned in all of the photographs that I received digitally and made an analysis of them in an up close fashion. I put the autopsy photos in the memory of a computer. (37TR 895) This way they could be reproduced on something that is portable such as a hard disk. As well as reviewing the materials Mr Stidham sent me, I consulted with other experts. A time came when I wrote a report. My approach to evaluating a case depends on the case. Obviously, each case is completely different with its own peculiarities and its own evidence. And the evidence itself dictates how I (37TR 896) approach the case. The first thing I do is a forensic analysis and by that I mean I sit down and look at all the physical evidence; all the results of all of the forensic analyses and I try to understand what it is they said and what weight can be given in terms of reconstructing what took place. I also look for things that did not get examined or did not get documented, or did not get collected. I look for evidence that may have been missed or overlooked.

The second step involves reviewing the history of the victims. In this case I only received the victim history of one individual, Christopher Byers. Although I requested material on the victim history of the other two victims, I did not get that. (37TR 897)

The purpose of reviewing victim history is to do two things. It is to establish who the victim was and what brought them to that crime scene and subsequently led to their death or the event that took place, and it allows me to make a risk assessment. By that I mean I assess the victim's vulnerability to crime and that helps me assess how much effort and how many blockades the offender had to penetrate to acquire that victim.

The third step is establishing the crime scene characteristics. These included things like the location type - indoor, outdoor, vehicle - and the crime scene type which means whether that's a primary scene, a secondary scene, a disposal site, an intermediary scene, things of this nature. It also includes establishing things like the method of the offender's approach to the victim, how they acquired the victim, the methods of control, evidence in a crime - any use of force in establishing how that played (37TR 898) into things. There's a long laundry list of crime scene characteristics that we get into.

I studied police reports of observations at the crime scene, still photographs of the crime scene, moving pictures of the crime scene and I went to the crime scene itself. The importance of establishing what happened at the crime scene - the whole purpose of the first three phases of what I do is to establish the nature of the interaction between the victim and the offender, their behavior, and that's the basis for any subsequent opinions that I may have about the character of the offender. So the whole purpose is to establish behavior. (37TR 899)

Mr. Stidham asked me to do a profile of the likely offender characteristics of the person or persons responsible for these crimes. He did not ask me to make any determination with reference to the guilt or innocence of Mr. Echols, Mr. Misskelley, or Mr. Baldwin. He asked me to address whether I felt this was a primary (murder) scene or a disposal site only, whether I felt there was a satanic element in the crime, and whether I felt this might be the result of a serial murderer.

I felt comfortable based on my training and experience forming opinions in response to those questions. (37TR 900) My opinion was that I found no evidence whatsoever of any sort of satanic ritual or element in the crime scene. My opinion was that the primary scene and the disposal site were not the same place. The primary scene where the majority of the interaction between the victim and the

offender took place - where the majority of the assault or the attack upon the victim took place. A disposal site is where the body is found. (37TR 901)

As to why I felt the primary scene and the disposal site were different places, in this case we had an emasculation of one of the victims and as a result of that there would be a lot of blood, and there was no blood at the crime scene - other than that found in the water. I considered the possibility of the offender cleaning up the blood after the crime. (37TR 902) I believe it would have been very difficult to clean up the amount of blood that would have been a result of that particular type - if the boys were missing at 6:30 - starting at 6:30 we have limited visibility in that area. And they would not have been able to see it all to clean it up in my opinion.

I was asked to determine if there was a possibility of a serial murderer. A serial murderer is someone who kills essentially two more or individuals on two separate dates with a cooling off period in between (37TR 903) I would clarify my answer to say that Mr Stidham was interested in whether or not it was a serial murderer who was perhaps passing through, or working in a broad area throughout the state, as opposed to a serial murderer who goes after victims he or she knows.

My opinion was I believed it was not the work of the type of serial killer that Mr. Stidham was inquiring about. The first reason I have for that opinion is that the

disposal site itself was constantly being searched that evening so it would not be wise for a serial murderer to dispose of the victims in that area. Second, the victims themselves were very high risk for an offender to acquire because children are on schedules and they are missed very quickly and search would begin for them immediately. The final reason is that it would be very difficult for one or even two offenders to acquire three victims without attracting a lot of attention. (37TR 904)

As to what the most significant evidentiary fact I found as I reviewed the evidence presented me, the first thing I saw when I opened the material was the autopsy photographs. The very first box that I opened had a picture on top that when I looked at it I felt that this was the result of a bite mark activity. And I thought, well, at least they have bite marks. So I immediately called Mr. Stidham and asked him about it and he told me that they had never considered the possibility that there was any bite mark evidence in this case.

Another significant evidentiary fact that was very significant to me was the history of Christopher Byers. He was being treated for conduct disorder. He was an eight-year-old child (37TR 905) and he had a neurologist. He's been diagnosed with conduct disorder, with attention deficit disorder. He's taking psychotropic medication and he's got a history of antisocial behavior. Those things just immediately stuck out to me.

As to whether I saw any evidence or lack of evidence in the way of predatory animals, insects or non-human activities at the scene, I am not a forensic odontologist. I saw what I thought could be bite marks of some kind and the first thing I suggested to Mr. Stidham was that he get a forensic odontologist who is qualified to make those interpretation. I did not see any evidence of other animal activity or insect activity other than what I pointed out to Mr. Stidham. I would have expected to see some of this because they were found outdoors in a woodland area (37TR 906) I would expect to see some animal predation.

I profile behavior, I don't create profiles of specific individuals. When I create a profile it is to give insight into the general characteristics of the type of person that would commit a crime, not to suggest a specific person. When police or a private individual brings me a new case I do not find myself brought in for purposes of preparing for courtroom testimony, most often it's investigative.

As to what contributions I make to an investigation, I give direction, let them know what physical evidence hasn't been fully exploited but potentially has been missed, what investigative work ought to be done. If it is an unsolved case we will have meetings to generate competent suspects, those sort of things. (37TR 907) Yes, that includes involving making suggestions about what other specialists might be retained or contacted or utilized to assist in the investigation.

I am not a medical doctor, a zoologist, an entomologist, or an odontologist. I reviewed the Coroner's report and the Medical Examiner's report as to the nature and cause of death. To my knowledge the defense never contacted or contracted with a pathologist to look at all the evidence from a defense standpoint.

In reviewing the evidence I saw what could be belt lacerations. (37TR 908) They were on Christopher Byers' posterior left thigh. The significance of that was that I was told that he was given a spanking by his stepfather shortly before his disappearance. The markings I saw were consistent with that.

Stevie Branch was the victim where I saw what might be evidence of a bite mark or bite marks, animal or human. The potential bite mark evidence was on the left side of his face above his eye. I didn't know what I was looking at. I knew it was potentially bite mark evidence.

I made three primary suggestions. First they should have a qualified board certified forensic pathologist look at all the wounds in the case to help them with their time of death estimate and to help them in making firm interpretations as to the wound patterns (37TR 909) involved because there were so many in this case.

The second thing I told them they ought to have a forensic odontologist look at the potential bite mark evidence. And the third thing - actually there are four - I

said we ought to have a forensic entomologist look at the potential entomologic evidence in this case.

The fourth thing I suggested was that they have an expert in child sexual abuse take a look at the victim history and the wound patterns in the case as well. As a forensic scientist I have had an occasion to work with pathologists and I have spoken to an odontologist. I am familiar with literature in which entomologists or zoologists are enlisted in the investigation of criminal offenses. Specialists in child sex abuse are turned to for help by forensic scientists in examining criminal cases. (37TR 910) As to whether I have ever worked on a case in which a prosecution based on circumstantial evidence was brought involving a murder of three young boys under horrible and violent situations, no not like this. I've never been involved in a case which is based on circumstantial evidence where three teenagers were held responsible for a multiple homicide.

I would not always recommend the specialist I mentioned but in any case I would recommend that a forensic pathologist look at the findings of death. I do not have any reason to believe that that was done by defense counsel in this case.

(37TR 911)

(37TR 912-982 is omitted as irrelevant to Mr. Baldwin's appeal)

CROSS EXAMINATION OF BRET TURVEY BY BRENT DAVIS

In my opinion their efforts to consult a forensic pathologist and to provide all relevant information fell short of what was necessary. That was based on my degree in forensic sciences and my 15 months experience at that time. (37TR 983)

(37TR984-993 is omitted as irrelevant to Mr. Baldwin's appeal.)

I see page 14 of my report under "Wound Pattern Analysis" referring to the Branch victim. I testified that pictures of Steve Branch were some of the first ones I examined when I received the material. (37TR 994) With an explanation, I said based on my experience and knowledge and training, as soon as I looked at it, the thought "bite mark" jumped in my mind. My explanation being that I am not qualified to determine the difference between a human bite mark and an animal bite mark which is why I immediately said, "Okay, hopefully a forensic odontologist had looked at these." I was looking at the entire area They were several areas that could have been injuries that were the result of bite marks. I found areas I thought were bite marks on the other victims, at least suspected. I put in the report that I was concerned that this was evidence that the medical examiner may have overlooked, it's possible (37TR 995)

As to whether I was aware of any effort by the medical examiner's office to ascertain if there were any injuries consistent with bite marks, I saw a mention of

tooth impressions on the inside of the victims mouths as a result of their own lips being pressed against their teeth. Outside of that however I have no knowledge of any efforts made by the medical examiner in this case to analyze the bodies for foreign bite marks.

When I looked at the photographs of Steve Branch immediately I said in my head that we may have bite marks here. (37TR 996) As to whether I would expect a forensic pathologist looking at these same photographs to have the same reaction, yes, but within an explanation. My experience is that sometimes they see them and sometimes they don't. I would want to initially send those photographs to a forensic pathologist in the hope that he could tell me if he thought there were any bite marks there. So if a defense attorney sends the autopsy photographs to a forensic pathologist and says if you see anything here that you think is of importance, let me know, I'm not aware of that happening in this case, but yes. That would be a thing to do. (37TR 997) *(37TR 998 is omitted as irrelevant to Mr. Baldwin's appeal)*

As to whether one of the first steps I would take if I suspected bite marks is to send it to a forensic pathologist to determine if they concur with my opinion, no that would not be my first step. I would go directly to the odontologist. (37TR 999) As to whether I would not send the photographs for examination by a forensic

pathologist, if he was also a board certified forensic odontologist, then I'd be happy to send them to him. You find a forensic certified odontologist by going through the American Board of Forensic Odontology.

I said when I viewed the pictures of Steve Branch I noted more than one area that I felt were bite marks. (37TR 1000) That was just on his face. I noticed what I believed to be bite marks on other areas of the bodies of the other victims. As to whether that entered into some of the opinions I formulated that there were bite marks on multiple victims, potential bite marks, yes. To answer the question, so if that turns out not be accurate in terms of any testimony presented, then that would have effect on some of the ultimate conclusions and opinions that I drew, if that turns out not to be a fact, yes, that would have an effect. (37TR 1001)

(37TR 1002-1027 is omitted as irrelevant to Mr. Baldwin's appeal)

I said disposal of the bodies in the water is a precautionary act, because the water is a great medium for dispensing of trace evidence. You lose fiber evidence, semen or sperm evidence, potentially lose anything that may have transferred from the perpetrator to the victim. Evidence of that nature could have been destroyed or altered as a result of those acts. Destruction of the victims' clothing and related evidence is another precautionary act. It is correct that all that conclusion is, is that whoever did this took those steps in order to prevent apprehension and discovery.

(37TR 1028) Whether that would be consistent with somebody focusing a search on the area where they had gone to those steps to destroy or alter or remove evidence, not in this case. (37TR 1029)

If I was giving this report before trial I would be telling defense counsel, based on my evaluation, there's more than one person involved in this. As to whether there could have been as many as three, I would not tell them to exclude the possibility of three, four, or five. Nor would I have told them to exclude the possibility of male or female offenders either.

I referred under subsection 3 about the nature, quality and extent of the injuries to Chris Byers and Steve Branch. I did not make certain factual determinations (37TR1030) based on the bite marks Chris Byers appears to have suffered. I spoke to a need to have a forensic odontologist take a look at those opine as to whether or not they may be ecchymotic suction marks that are consistent with a sexualized bite mark. I believe it was a sexually oriented attack. One reason I drew significance to that was because the bite marks he appeared to have suffered were of the suck-mark type which is more sexually oriented. There's also the fact that his penis was removed. (37TR. 1031) As far as jumping from the front of my report where I say I don't know if these are bite marks or not to the back of the report where I refer to the bite marks he appears to have suffered are of

this variety and then draw conclusions from that, assuming that those facts are true-- and this is, again to provide investigative direction I don't think it would have been a waste of time if it turns out those facts aren't true. But the theory would not be valid if those were not true. (37TR 1032)

(37TR 1033-1171 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION DR. JOSEPH COHEN BY EDWARD MALLETT

I am Joseph Cohen, a Medical Examiner in New York City. I am one of about thirty medical examiners that works for the Office of the Chief Medical Examiner in New York City.

My duties include performance of autopsies on a day-to-day basis to certify the cause and manner of death on death certificates on victims of violent crimes and also suspicious deaths that fall under the jurisdiction of the medical examiner.

I have performed a number of autopsies on bodies that were recovered from water, such as local rivers and the near by ocean areas. I performed autopsies of the TWA (37TR 1172) 800 disaster, over 200 bodies were retrieved from the water in that situation. (37TR 1173)

(37TR 1174-1184 is omitted as irrelevant to Mr. Baldwin's appeal)

MR. MALLETT: (Reading from page 1058 from trial testimony): "On State's 63B, 62B shown here, now here is all you can see – on 63-B you can see all

the scrapes and abrasions. You can see this darken discoloration. That is, the bruising of the ear. (37TR 1184) But if you look very closely you can see the fine little scratches which are fingernail marks"

A: As to whether within a reasonable degree of medical certainty I see fingernail marks on those ears, I see marks on and around the ear. I would never - again, I think it's speculation. That could be caused by fingernail marks, but there are many things that could cause these types of injuries. I agree they are scrapes and abrasions. I don't see any contused area or area of contusion which would be a bruise. Most of what I see here is abrasion or scrapes, some of the small abrasions are a quarter of an inch or less. They are small. Occasionally they are curvilinear, they are not straight. But there is so much variation and there are so many types of objects that could cause these types of injuries. No I could not say within a reasonable degree of medical certainty what caused those injuries. (37TR 1185) Testimony that those were caused by human fingernails would be mere speculation in my professional judgement. (37TR 1186)

THE COURT: When you testify from time to time are you not asked to speculate if you will or give some educated opinion as to the type of device or cause of a particular injury?

THE WITNESS: Yes, Your honor. Frequently we are asked questions regarding a specific object and the injury.

THE COURT: All right, have you not been asked the question, well, Doctor, do you have an opinion as to what might have caused that or could have caused that?

THE WITNESS: Yes, and very frequently the answer is many things could cause this type of injury, then I would list several examples and go from there.

THE COURT: As for example the injury described to the penis that could have I guess reasonably have been caused by any type of ligature.

THE WITNESS: That's possible. The appearance from that exhibit almost looks like that finding would be chronic - something that has been there for a while. I could not be certain of that. It could be a number of things. It could be something wrapped around the penis, and there are (37TR 1187) many other types of scenarios that one could consider for that.

MR. MALLET: The Judge inadvertently, I am sure, led you a little bit when he made the reference to some type of ligature. Did you mean to be adopting the suggestion, there was some type of ligature?

THE WITNESS: Absolutely not.

THE COURT: I guess I did lead.

(Witness continues) It is correct that within a reasonable degree medical certainty I would not express the opinion that any type of ligature or any specific origin at all caused that mark.

THE COURT: Well my question was based on the description that both you and the doctor in the original trial made that the injuries circumscribed the entire penis which would suggest some kind of device or object or whatever such as a ligature. (37TR 1188)

(Witness continuing) Well it could and I am sure there would be a number of natural disease processes that could cause a similar discoloration on the penis. I am not a dermatologist and I did see a short description by Dr. Peretti of the microscopic appearance of that region which he described as being hyperemic or blood vessels that are engorged with blood. That is not a bruise. That is more of a congestion of the tissue which means more blood than usual in that area.

I did not say congenital, I did say a natural disease process. I am not a dermatologist and there are natural processes that can cause reddish or reddish purple discoloration. Again, I would not want to mislead anybody by stating that this finding is consistent with specific object or scenario. Just to be more complete and in all fairness, sucking (37TR 1189) pinching of the area could perhaps cause

something similar to that. But there are many, many things that could cause discoloration. (37TR 1190)

I've seen what is trial Exhibit 66A. (37TR 1191)

MR. MALLETT: (Reading from page 1046, "State's Exhibit 56 a is showing the lower lip and the bridge of the nose:) "The bridge of the nose - now, the bridge of the nose, we can see the abrasion scrapes on the lower lip. If you look very carefully you can see that discoloration there - that faint discoloration that is (37TR 1192) bruising or a contusion.

"Question: Doctor in your experience as a medical examiner have you ever seen instances or are you familiar with cases in which there are injuries and bruising to the ears and also injuries to the mouths of the victims?

"Answer: Well those types of injuries we generally see in children who are forced to perform oral sex."

A: I would comment on that testimony. I do agree that the finding on the inner aspect of the lower lip is faint and I do agree that it is most likely a subtle contusion or a bruise. I do find it rather absurd that one would speculate or offer some sort of opinion on the mechanism by which this subtle small injury on the inner lip was sustained and certainly by forced oral sex.

MR. MALLETT: On cross examination, Dr. Peretti testifies on page 1100: "Doctor on what you have seen on your examination on these boys and based on

your experience in your training, based on a reasonable degree of medical certainty, isn't it your opinion that these boys were not forced to perform oral sex?

(37TR 1193)

"Answer: Well that's difficult. They have injuries that are consistent with that. They have the ear injuries. They have the mouth injuries. Like I said before, it could be another modality how those injuries were sustained, but we see those types of injuries in people who are forced to perform oral sex. But then again, there are no injuries to the back of the mouth, and one way that you can explain that is that the mouth wasn't totally opened. The teeth was clinched.

"Question: Are you telling the jury that in your opinion based on a reasonable degree of medical certainty that these boys were forced to perform oral sex?

"Answer: No, I am saying they had injuries that we normally see in people who are - especially children, especially the ear injuries, who are forced to perform oral sex."

A: I do not hear in there Dr. Peretti expressing an opinion with an reasonable degree of medical certainty. (37TR 1194)

In response to your question whether I have in my experience as a pathologist, review of cases in which a finding was made that there was forced oral sex in the absence of internal injury to the mouth was because the teeth were clinched; could I imagine there existing such a case throughout all the literature that I've read and the experience that I have had and all the doctors that I've talked to, I've never seen that.

As to my evaluation of that proposition, I think it is misleading. Injuries are injuries, and generally we describe them and we document them, and then we are frequently asked to render an opinion regarding a cause/effect relationship between the inflicting object and the injury. Many times we can say with a fairly high degree of medical certainty that something matches. Most of the time we can't, but certainly in this situation you couldn't. These are very nondescript injuries that could have been inflicted by a number of mechanisms including slapping, punching, falling. Some of them maybe postmortem injuries. In fact, I think there is a very high degree of certainty that some of the injuries we see on the victims are postmortem. Post-mortem would be findings or markings on the body that occur after the time of death. They could be from marine or animal activity, from decomposition, from being dragged in the wooded area for example. There are many many types of ways to sustain post-mortem inflictions. (37TR 1195)

Post-mortem would be finding or markings on the body that occur after the time of death. They could be from marine or animal activity, from decomposition, from being dragged in the wooded area for example. There are many, many types of ways to sustain post-mortem injuries. (37TR 1195).

Looking at what is in evidence as 46 in these proceedings and trial Exhibit 71B, generally referred to as the Branch autopsy photographs do I see any evidence

in there that all the injuries sustained to that poor victim were caused by the perpetrator of the offense directly, not necessarily.

As to what other causes I see as possibilities within a reasonable degree of medical possibilities, the injuries on the left side of the face of Steven Branch do show some markings that involve the soft tissue underneath the skin. At this magnification it is difficult to ascertain what they, are. From this magnification I would simply say they are defects in the skin or markings in the skin that involve the soft tissues. They are very non-descript. They could be from postmortem marine activity. It is possible given that the children were found in water. I am looking at trial-Exhibit 72B. (37TR 1196)

MR. MALLETT': (Reading from page 55 of the trial transcript:) "Also, in State's Exhibit 72B shows multiple - shows a confluent area of abrasions, scrapping involving the face. Also overlaying this area we have multiple irregular and gouging type cutting wounds. These little irregular areas.

"Question: Doctor, would those cut marks be consistent with some sharp object such as a knife?

Answer: Yes.

Question: When you say irregular gauge marks what causes would cause irregular marks such as that?

Answer: We generally see these types of injuries when an object such as a knife to a glass, or any sharp object is put into the skin and

either the person during the stabbing is twisting and pulling the knife or a combination of the person being stabbed and they are not standing still, they are going to be moving around. So as they are moving the knife is going to twist and as the knife is being pulled out it's going to pull out all the so all issues, the fat and cheek region, and in the photograph you can see that the ear was abraded and it is contused like the scrape, the bruising and it's overlaying scratches, and we can also see abrasions and the superficial cuts involving the scalp region"

A: As to whether I see in that photograph marks that I would call marks from a stabbing or from a knife, this photograph is even at lower magnification; I find it very difficult to find a cause/effect relationship between a specific object and the findings on the left side of the face (37TR 1197) of Steven Branch.

There are markings that do involve the subcutaneous tissues. There is a lot of information in that question, but with regard to the gouging or cutting nature of these findings, I just can't say with any certainty at all that a knife could have caused some of these wounds. Some of the wounds may actually be post-mortem. I do agree that the discoloration on the left side of the face is most likely an abrasion. I certainly would not rule out some of these markings being inflicted by an object, but I would certainly not pin it to a knife or a piece of glass. As I mentioned earlier, post-mortem marine activity is always a consideration. I've seen many cases in which victims look a lot worse than this - and this is bad - but a lot worse than this just from post-mortem marine activity.

MR. MALLET: In referring to trial Exhibit 69C, on page 66, is a discussion of the autopsy on John Christopher Byers. From the following testimony appears: "We have all these gouging type injuries that have been described similar to the one we saw in the face. (37TR 1198) But it is important to note here that we have contusions and bruising of the inner aspect of the thighs. These types of injuries we commonly see in female rape victim. Also there you will note on the feet you can see some bruising contusion on the ankle, and you can see where the ligature was tied. These marks here."

A: As to whether I see injuries in 69C that I commonly see in a female rape victim, I do see significant discoloration in the inner thighs and the genital region. I've seen many victims of alleged sexual assault which many of them have no markings at all on the body including the inner thighs, Some have injuries, but I certainly don't see it commonly, and I don't think that many people do see findings such as this commonly in a female rape victim. (37TR 1199) Specifying a female rape victim implies coitus - insertion of the penis into the vagina and I think it's misleading.

MR. MALLET: Regarding trial Exhibit 73C, in reading from page 1067: "State's Exhibit 73 is a close-up view of the injuries, the gouging type wounds, cutting wounds that we have in the inner aspect of the thigh. This red area here that

we can see is the shaft of the penis. Doctor, is there also serration type wounds, serrated type wound patterns contained in that photograph?"

Answer: There is a serrated type pattern here yes.

Question: Could you take my pen and circle that area the ones that you denote are serrated. When you say serrated what do you mean?

Answer: Well, I am talking about for example a typical serrated knife is a steak knife — that pattern of serration.

Question: In this case the items that you've marked there seems to be those three or four wounds, there is a distance between those wounds, is that correct?

Answer: That's correct.

Question: That would be consistent with the serration of (37TR 1200) the blade that inflicted that?

Answer: Yes to an extent providing there is no twisting or turning.

A: There is a portion of 73C that is in fact circled in ink. As to whether that indicates a serrated knife pattern, I use the term serrated usually to refer to a knife and not to an injury on the body. The injuries I describe as what they are in terms of the size and orientation of the injuries. But to say that this is a serrated pattern is very misleading.

What we have here are three small marks on the skin which do penetrate slightly into the skin and through the skin, but there are many, many similar and

non descript markings all around that area, and I would simply refer to those as defects or markings. Many of these would qualify or I would have the suspicion that some of these are postmortem. There is no reaction around the wound. There is no blood in the wound. They look dry, and they are not red. I can't exclude antemortem but they are suspicious for postmortem. There is no real pattern. They are haphazardly arranged on the inner thigh. (37TR 1201)

MR. MALLETT: On page 1076 it states: "Doctor, in performing the autopsies on three victims, did you note anywhere in your report or indicate any insect bites or mosquito bites on the three children? Answer: There's no evidence of animal activity, insect bites."

A: I reviewed that testimony. Regarding the question whether there is within a reasonable degree of medical certainty evidence of animal activity on these three victims, I don't think I can say with a reasonable degree of medical certainty that these are postmortem; however, I do feel that there is a degree of suspicion that they may be. I am referring to the markings on the inner thigh. (37TR 1202)

I do see areas that are suspicious for animal activity. As to what sort of animal activity I have observed in bodies that were recovered from the water, we see a number of - the result of fish and other marine life as they interact with a

dead body post-mortem in the water, and I'm not a specialist on fish, but we see many, many types of nondescript defects or markings due to marine activity.

I observed in my study of the report that the bodies of these two boys were removed from the water and laid on the bank before the time the coroner arrived to perform his statutory duties. That is not the normal procedure with which I am familiar. Usually, the bodies are left in the positions that they're found until the coroner, an investigator or medical examiner arrives to do the investigation. The reason is so as not to disturb the scene and, specifically, not to (37TR 1203) disturb the relationship between the bodies and the environment.

I believe there was a period of delay of about two to two and a half hours between the discovery of the bodies and the arrival of the coroner. As to my comments on the consequences of this delay, I can't say much. It's preferable to have the medical examiner or representative on the site much sooner than that-- within an hour, hour and a half.

I did not find in the coroner's report or the autopsy report a description of the relative orientation of the bodies as they were found in the water. The significance of that is, disturbing the relationship between the bodies and the environment can prevent the pathologist from rendering opinions such as whether or not marine activity could have been responsible for certain wounds in other words, if the

bodies were in water, what parts of the body were in the water and what parts were out of the water. (37TR 1204) That kind of information could be helpful.

I did not find in the autopsy report or the coroner's report a description of the bottom of the creek in which the bodies were recovered. The significance of such a description would be, anytime bodies are found in water, there's always a chance and a very good chance that movement of the bodies either against the bottom of the water, from the bottom of the water - body of water - or the side of the edge of the water - those mechanisms could cause post-mortem injury. They frequently do.

I did not find in my study of the autopsy report or the coroner's report an indication that the pathologist requested that clothes to be provided to him to be examined in connection with performing his autopsy. It is best on homicide cases for that pathologist to request the clothing so that he can with his own eyes look at the clothing if see if there are any defects; blood or any trace evidence, anything that may be helpful to him in rendering opinions regarding the scenario or possible scenario by which injuries could have been inflicted. (37TR 1205) I did not find any indications that the pathologist in evaluating the nature and cause of death examined the clothing for any stains or any damage It would be of evidentiary value to have as much information as possible.

I saw a reference in the autopsy report that larvae of insects were found on the young boy named Moore. The significance of that is to me as a pathologist is the finding of fly larvae on the body could suggest a certain time interval following death which would be variable depending on what type of larvae there were.

As a pathologist it is my custom and practice, and that of pathologist and others in my field as I know it upon the discovery of insects or insect larvae upon the body being examined, to document it and photograph the evidence, the presence of any eggs or larvae on the body. The purpose is for later viewing those photographs and documentation to help with rendering opinions regarding time of (37TR 1206) death.

A forensic entomologist may or may not be helpful to a pathologist in determining whether the presence of larvae, the age of the larvae, the presence of the eggs, the size of the eggs, the stage of the larvae would be of assistance in establishing time of death. I did not see any indication when I reading the testimony and reports in this case that Dr Pereui attended the crime scene in connection with preparing his autopsy report.

It is the custom in the jurisdiction where I am for a pathologist to rely on medical-legal investigators from the medical examiner's office who are trained to

document and photograph scenes of death. We don't rely on ordinary uniformed officers and members of the police department.

I noticed in his pathological findings that Dr. Peretti found as a matter of pathology that two of the victims (37TR 1207) died from drowning. As to whether I find the descriptions in his autopsy support the findings that they died from the pathology of drowning, there were features or findings that could support drowning, but they're nonspecific. The features are quite nonspecific and can be found in just about any type of death, including natural deaths and deaths due to head trauma and so forth. It is important to distinguish between bodies that died as a result of drowning, and bodies in the water where other manners of death occurred. (37TR 1208)

Definitely on all three victims there were indications that there were blows to the head that were lethal in nature. As to whether drowning is a diagnosis that would be exclusive of other causes of death, drowning itself is a diagnosis of exclusion. Generally, it relies heavily on the clinical or historical information, witness accounts - but drowning is a diagnosis of exclusion because the findings are quite nonspecific, it's very important to exclude other mechanisms or manners of death prior to labeling a death as drowning. It would be important to me, particularly in New York City, to include or exclude drowning as the cause of

death because drowning implies that the death occurred in the water. And excluding drowning can place the death elsewhere, be it ten feet away from the water or a hundred miles away from the water.

I recall a discussion in some of the testimony giving the implication that there might have been some evidence of anal sodomy in connection with the death of these three children. (37TR 1209) I also read the autopsy reports. I did not find the indicators confirming such a finding. I could not exclude it myself, but I certainly did not find any findings that would be suggestive of sodomy.

The fact of a dilated anal orifice is absolutely not indicative of sodomy. A dilated anus is seen frequently in the postmortem interval due to relaxation of the anal sphincter. In most deaths we see relaxation or dilation of the anus.

If I as a board certified forensic pathologist would find a dead person with a dilated anus and no marks, abrasions, tears, lacerations, blood or other injury, would I speculate to a jury that there was anal sodomy in the death of the person under consideration, I would not. (37TR 1210)

CROSS EXAMINATION OF DR. JOHN L. COHEN BY BRENT DAVIS

I've been a practicing forensic pathologist for four and a half years. (37TR 1211)

(37TR 1212-1233 is omitted as irrelevant to Mr. Baldwin's appeal)

I don't recall that I testified I could say within a reasonable degree of medical possibility that injuries to the side of the face of Stevie Branch could have been caused by animals. If I said it like that I would like to retract it. I don't know if I could say that with that degree of certainty. I think that's just within a reasonable degree of medical possibility. (37TR 1234) As to what standard I would say that the likelihood of animal marks in this case are I really couldn't put a percentage on it. I think it's less than a reasonable degree of medical certainty. I am not sure. I am saying, it certainly could be. As to whether certainty means anything more than could be, it's at a higher standard, it's a little bit higher than could be. I said it could be caused by marine activity, fish. If there were not any fish or aquatic life in the water the bodies were submerged in that could change my opinion. (37TR 1235) If I suspected post-mortem marine activity I probably wouldn't defer to any expert unless there was some question as to whether they could be human bite marks, in which case I would go with a forensic odontologist. If I was sure of my finding or suspicion of post-mortem marine activity I may put it on the diagnosis list of my autopsy just to alert the reader that I considered it. As to this case I was not sure of it I would not have put it in my report based on the examination of the photographs I've seen, (37TR 1236) I would have described the

defects in the body of my autopsy report but I probably would not have committed to any mechanism by which they may or may not have occurred.

As to whether Dr. Peretti described the defects in the bodies in his autopsy report, he described them as gouge type cutting defects or wounds. There were several different ways he described them. He described them with an overlaying area of abrasion. I agree with the overlaying area of abrasion most likely, based on what I've seen on the photographs. I am not sure about the gouging and cutting description that he employed in his text. As to whether I wouldn't have mentioned in my report about the marine activity, I would have simply described the injury and not deferred to anyone for further examination, I probably would not defer to anybody. I would simply address the questions as I am doing right now.

(37TR1237) If I felt within a reasonable degree of medical certainty that there were marine activity involved in some of these injuries I would testify to that. As to how that might have affected the outcome of the case I don't know because I would have to know the whole body of evidence to speculate, we are looking at pieces of a large amount of information here. As to whether I recall Dr. Peretti referring to injuries to the left side of the Branch face as being consistent with knife wounds, I can't remember exactly how he described them, but I believed gouging type, or gouging and cutting wounds or something to that effect. As to whether I find fault

with him referring to a knife and I said it would be difficult to ascertain exactly what type of object, I disagree with the wording gouging and also cutting. Cutting implies using either a knife or an instrument similar to a knife or something similar to a scalpel where you can inflict an incision or an incised wound or a stab wound. (37TR 1238) Cutting wounds encompass both stab and incised wounds, gouging I am not sure what that means. To me, gouging is when you physically exert your energy and effort behind some instrument to inflict a defect on something else. To me it's more of an act than a finding. I've never used it to my knowledge in describing injuries or findings in my autopsy reports.

Assuming they are ante-mortem injuries I would agree that wounds differ in their patterns based on the movement of the injuries that's causing the wound and the movement of the person that is having the wound inflicted upon them it would be speculation to try and differentiate between post-mortem and ante-mortem injuries if there is no appearance that the victim was moving. (37TR 1239) As to whether you don't have well define easily identifiable cut marks like one would see if the object is not moving or the victim is not moving, I would expect, "cut marks" with, say a knife or something similar. As to whether my testimony was whether I couldn't rule out some of these injuries being identified with a knife, I couldn't. The findings are atypical. Those defects or marks on the face are nondescript based on

the photographs I've seen. My testimony would be that I could not tell what caused those. it is exactly correct that my disagreement with Dr. Peretti is I think he went too far in speculating about the possible use of a knife causing these injuries. As to whether I am saying that it is not that the knife couldn't have caused these injuries, but I think he rendered an opinion that went further than I would have, the injuries don't look like the ones that I would (37TR 1240) expect to see with a knife, and the reason I can't exclude a knife is that in the post-mortem interval there may be changes in the appearance of the wound that would obscure the initial appearance of it, such as post-mortem marine activity or dragging on the bottom of a creek or on the side of a creek. If it was a mud bottom creek I wouldn't expect the mud to cause much injury.

It is correct that I testified earlier that I had a degree of suspicion that some of the injuries to the side of Stevie Branch's face may have, been post-mortem. A degree of suspicion is less than a degree of medical certainty. It's possible. (37TR 1241) As to whether that is something that I would put in my report, that I had a degree of suspicion that these were post mortem injuries, again I don't address mechanisms in my report. I simply state and document the findings and leave the mechanisms to the courtroom. (37TR 1242)

No I do not know if the bodies were totally submerged when they were found. Yes, it sure could make a difference as far as a forensic pathologist to have that information available. Yes, if the bodies were part in or part out of the water it could affect how the bodies were decomposed or the rate of decomposition, things of that nature (37TR 1243)

I said that the clothes should be examined by a forensic pathologist on homicide cases. That's because you would like to see if there is any blood, trace evidence, defects in the clothing. Whether there are any rips or cuts, tears in the clothing, many different things. It's preferable to have it. We don't always get it but it is preferable in our office we have a serology lab that determines if there is blood or semen stains. If we got clothes we suspect had stains, we would forward them to our lab to do that. I don't necessarily see anything wrong with clothes going to trace evidence for a serology trace evidence testing. (37TR 1244) As to whether in terms of the pathologist not examining the clothes first I don't have a problem with that protocol in terms of getting those items to the proper trace evidence serology section, so they can do their examination, that's okay, but the pathologist should have some idea when he testifies in court as to the nature and any information regarding clothing that may be beneficial. I don't know if he had that in this case or not. I didn't see anything in the testimony that would lead me to believe that he

had it. The forensic pathologist doesn't examine for stains if there are other experts in the lab that could do the same thing if that were done in this case, I think it would be an appropriate procedure. (37TR 1245)

There was reference in one of the autopsy report that larvae was observed in the eye. I did not say that as a forensic pathologist that could have been removed and tested. It should only be documented and perhaps photographed In this case it was documented. I said documented and perhaps photographed and Peretti did what I would have done. The only element that I question is whether they were fly larvae or fly eggs. The larvae are actual moving maggots and the eggs are small very tiny little eggs that appear similar to finely grated cheese and he didn't describe that. I questioned whether it was indeed larva or whether they were maggot eggs - fly eggs. The significance of that finding - I would expect eggs - if there are maggots, I would expect eggs also. He described the finding of larva but not the finding of eggs which I would (37TR 1246) question and that may help with time of death issue I was aware that the bodies were removed from the water and remained on the ditch bank for a period of time. As to whether in that period of time, if they were exposed to fly and insect activity, then, obviously, fly eggs and larva could have been deposited during that period, not larvae. Fly eggs could have been. Fly eggs turn into larva but it takes hours for that.

I believe that the autopsies were done the following day after the bodies were on the ditch. Yes, hours elapsed between those two time periods but only two and one half hours from the time the bodies were moved from the water to the bank until the time the coroner arrived. I am not sure when the bodies were actually (37TR 1247) put into bags. That time interval while the bodies were on the creek bank, fly eggs could have been deposited. With that fact in mind, it could make the significance of that finding even less. (37TR 1248)

(37TR 1249-1252 is omitted as irrelevant to Mr. Baldwin's appeal.)

REDIRECT EXAMINATION OF DR. JOSEPH COHEN
BY EDWARD MALLET

I recall the prosecutor questioning me about the insect larvae reported in autopsy and my testimony that it should have been documented and photographed. That is away to document the evidence and be able to look at it at later date, perhaps months or years later to see exactly what it was. The materials I have been provided do not include any kind of photography showing visually what was described in the autopsy report. (37TR 1253)

In regard to a question Judge Burnett raised about consideration of aquatic features in this creek; I understand the creek was generally a runoff area, a relatively shallow creek based on runoff and in a wooded area. As to whether in a wooded area with a relatively shallow creek based on runoff it is common or

uncommon to have ambient wildlife like turtles, crayfish, raccoons, is that common or uncommon. (37TR 1254)

As to whether it is within my general knowledge that wildlife which is not aquatic feeds, drinks at freestanding waters, that's possible. (37TR 1255)

(37TR 1256-1434 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF MIKE ALLEN BY BRENT DAVIS

I am a criminal investigator with the West Memphis Police Department. I was working in that capacity in May 1993 (37TR 1435). I was involved in the investigation surrounding the disappearance of three eight-year-old boys, Chris Byers, Steve Branch and Michael Moore. I was at the scene in the wood lot next to the Blue Beacon when the bodies were discovered. As the bodies were removed from the water, they were placed on the embankment out of the water. This would have occurred at approximately 1:00 or shortly thereafter. When the bodies were placed on the bank, they were not placed in any body bags or anything of that sort. I stayed out there for a substantial period of time (37TR 1436). I stayed out there until the coroner arrived. It was after 4:00 when the coroner arrived. At first, there was no attempt to cover the bodies as they lay on the bank, but later that day they were covered with, I believe, some sort of plastic. It was just something laid over

the bodies, not something that would completely seal the bodies from insects or outside elements (37TR 1437).

State's Exhibit 4 depicts the removal of the body from the water. I am in the ditch here. This is Detective Bryn Ridge that placed the body on the bank. The body remained in that relative location, as far as being uncovered during daylight hours, for a period of time that afternoon (37TR 1438). I would say from a little after 1:00 to until well after 4:00 that afternoon.

State's Exhibit 3 is another one of the bodies and later that afternoon the black plastic that they covered the bodies in. This picture would have been taken when the coroner arrived. The black plastic we see in there is the covering that was used to cover the bodies.

State's Exhibit 6 appears to be similar to the other photographs, with the same thing.

I don't honestly remember if there were flies in the woods or in the area during that time. We were in a wooded area; I'm sure there were but I don't know (37TR 1439).

We sandbagged this particular ditch back southwest from where the bodies were located and pumped the water out of the ditch to see if there was any other evidence that we could find beneath the water surface. We sandbagged the stream

downstream where the ditch flowed into the bayou. The brought in a pump to pump the water up over the sandbags into the ditch that ran into the bayou. We had them affix something so that no evidence would be lost through that. The did attach some type of screen to the opening of the pipe that pumped the water out (37TR 1440).

After the pumping was done, not a lot of water remained in the ditch area where the bodies were found. It was muddy but we got the majority of the water out. We were able to visualize the bottom of the ditch once we had pumped it down to that point. I don't recall seeing any crawfish, any fish flopping on the ground, any aquatic animals. No crawdads scurrying across the bottom or fish flopping on the bottom of the ditch. I was in a position to have observed that if they had in fact been there at the bottom of the ditch. The reason we pumped this out and went through the process with the screen was we were looking for any type of weapons. We did have a child that was dismembered, looking for that and weapons (37TR 1441). During the time I was present, I didn't observe any type of aquatic animals, either dead or alive, in the bottom of the ditch. The screen would have caught any aquatic animals, fish, crawdads, or other biting type water animal (37TR 1442).

(37TR 1443-1454 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF HARRY H. MINCER BY BRENT DAVIS

I'm a dentist. I have a Ph.D. in pathology. I'm the forensic odontology consultant to the medical examiner of Shelby County, Tennessee (37TR 1455).

(37TR 1456-1457 is omitted as irrelevant to Mr. Baldwin's appeal.)

In August 1998 I was called by Dr. Kevin Dugan of Little Rock who said he was going to send me some material to look at. On August 26 I received three 5x7 color photographs and a letter asking me to determine if I thought any of the wounds on this young white boy were human bite marks. I didn't know who the photographs represented until later (37TR 1458).

(37TR 1459 is omitted as irrelevant to Mr. Baldwin's appeal.)

I examined all the injuries and wounds and made one-to-one, life-size reproductions. The most obvious wound that appeared at first glance to maybe be a bite mark was a heart-shaped mark over the left eyebrow on the forehead. After examining all three photographs and all the wounds, I came to the conclusion with reasonable certainty that it was not a human bite mark (37TR 1460).

(37TR 1461-1481 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF KEVIN DUGAN BY BRENT DAVIS

My specialty is general dentistry (37TR 1482). In my work I have also gained some experience and been involved in forensic dentistry and forensic

odontology (37TR 1483). I have testified and qualified as an expert in these fields and testified in court on four occasions. Some of those have been in regard to bite mark evidence (37TR 1484).

In May 1993, I was called in to assist in the examination of the bodies of three eight-year-olds that were found dead in Crittenden County (37TR 1485). When I went there, in the downstairs area in the morgue when I entered the building, there were three young children who had been murdered and the three bodies were on the table for viewing.

Dr. Peretti was there when I arrived. He wanted me to view the three bodies individually and see if I saw anything that resembled a bite mark on any of the three bodies (37TR 1486). The face of the one individual had many marks on it that were circular that they particularly wanted me to view. When I was looking at that body in particular, there were many circular marks that were present all over the neck, chin, cheek, above the eye, etc. They all seemed to me to have been made by a circular object, a hollow pipe or something that would have made such a mark on the face.

I was asked to look at the other two boys and I didn't see anything that appeared to have any characteristics that would be bite marks. After I conducted my examination and viewed the bodies personally, they asked me if I saw anything

that looked like a bite mark to me (37TR 1487). I told them, no, that I didn't see anything that looked like a bite mark.

In terms of being able to make calls as to whether something is a bite mark or not, I feel that it is better to have the body to examine, rather than just a photograph. That is because you're able to see the three-dimensional aspect a whole lot better because photographs, of course, are two-dimensional. And you're able to move the body around and see it from all angles, how this mark could have been made and what could have made it. I had that opportunity in examining the bodies of these three children. My opinion to the doctors there, upon that initial examination, was that I didn't think there was anything there that would constitute a bite mark. That opinion was within a reasonable degree of medical certainty as applied in my field (37TR 1488).

(37TR 1489-1490 is omitted as irrelevant to Mr. Baldwin's appeal.)

The reason that, in my examination of the facial injuries to Stevie Branch, these are not bite marks is, the main thing that struck me when I viewed the remains was the fact that there were numerous circular marks present on the face. What I've done with these photographs is to take this clear plastic to place over the photograph and then to look at these back and forth and make a mark where I saw what appeared to be a circular mark that would have been made by whatever object

made these marks (37TR 1491). I am referring to Exhibit 19D, a frontal shot of the face of Stevie Branch. I just made the circular marks to show that there's numerous similar marks present on the face that seem to have been made by the same object that made the mark over the eye that we seem to be interested in.

I did the same thing with 20D, the side photo, and once again did the same exercise and looked for circular patterns that would be present and then outlined them here to show that there are numerous similar patterns that are present on the face that would seem to have been made by the same instrument.

Then I also did the same with 21D, and there are numerous marks on the neck and on the chin that also can be shown to have that same circular pattern present with them (37TR 1492).

Then, on 22D, which is the one-to-one of the mark above the eyebrow, what is the most interesting to me about that particular mark is the fact that if you look closely, you can see that there is a line that starts here and continues all the way around and continues on over to here. And the reason that I feel that this cannot be a bite mark is because human teeth don't make a continuous line. They'll make an interrupted circular pattern rather than just one straight line that is practically pencil thin that has been made on the forehead in this instance. I would expect to see with human teeth marks an interrupted line where there's interruption for the

spacing between the teeth. What I described on that exhibit is that it is an uninterrupted longer, thinner line than what I would expect in human teeth. Also, the fact that the line begins to make a circle and actually starts to come back around on itself, and human teeth don't do that. They have a circular shape, but it's going to be, maybe, a fourth of a circle, whereas this starts to be a half of a circle, and human teeth don't make half circles (37TR 1493).

When you have teeth present that are going to be making these marks, the anterior teeth, the upper and lower incisors are going to make rectangular shapes that are somewhat individualized where you can see a mark by the individual teeth. And when you get over to where the eyeteeth are, you're going to have a slightly triangular shape to those. I don't see any of those distinctive representations of triangular shapes and rectangular shapes that human teeth would be making.

My opinion now that these are not bite marks is even stronger than it was when I first viewed the body. My opinion is based on the highest degree of medical certainty that I have that this is not a bite mark (37TR 1494).

After I reached those conclusions, I sent some of the photographs to Dr. Harry Mincer to get a second opinion from him. When I sent them, I did not in any way indicate or represent to him what my decision had been regarding the photographs. I expressed no opinion whatsoever when I sent those photographs to

him. I received from him an opinion that was consistent with the one I reached (37TR 1495).

(37TR 1496-1528 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF DR. WILLIAM STURNER BY BRENT DAVIS

I am the Chief Medical Examiner for the State of Arkansas (37TR 1529).

(37TR 1530-1531 is omitted as irrelevant to Mr. Baldwin's appeal.)

After receiving the call from the Medical Examiner's Office that these bodies had been sent down for an autopsy, I drove back to Little Rock to the Medical Examiner's Office and reviewed the bodies with Dr. Peretti. Dr. Peretti was the ME that was assigned to perform the autopsies and write the reports. I viewed all three bodies while Dr. Peretti went over the findings with each individual body (37TR 1532). The fact that there was nothing in any of his reports referring to anything that appeared to be a bite mark or that might be a bite mark was consistent with what I saw when I looked at those bodies. It was perfectly consistent with what I saw. I saw nothing there that would alert me to think that some injury on the bodies of these three young men were bite marks.

I am familiar with Dr. Kevin Dugan. He's a forensic odontologist, or dentist, and performs identification procedures and other dental work on a consultant basis for the State Crime Lab. We would refer to him when where we

need some added expertise in the area of possible bite mark or bite mark identification (37TR 1533).

(The remainder of the record, 37TR 1534-1544, is omitted as irrelevant to Mr. Baldwin's appeal.)

VOIR DIRE PROCEEDINGS

(The voir dire proceedings were not included in Mr. Baldwin's appeal record, CR 94-928. However, in co-defendant Echols's A.R.Cr.P. Rule 37 proceedings, the voir dire proceedings were made a part of the record at the hearing and on appeal in CR 99-1060, as Echols's Exhibit 30. What follows is the abstract of relevant portions of the voir dire proceedings, from the record filed in this Court in Case No. CR 99-1060, and incorporated into appellant's record on appellant's motion. Page references will be to "VDRT [Voir Dire Reporter's Transcript] ____.") Every attempt has been made to comply with the requirement that colloquies not be in question-answer form, but some questions and the responses required some verbatim abstracting.

(VDRT 1-2 is omitted as irrelevant to Mr. Baldwin's appeal. The following was directed toward all prospective jurors.)

THE COURT: Ladies and gentlemen, since you have been sworn in as potential jurors, it's extremely important at this time that you not read any news coverage of this trial. This is one of those cases where there's been a great deal of news media attention to it, and it's evident here today that there will be a great deal more.

You should not let any news article or conversation across the back fence, conversation at the church socials, barber shops, beauty shops - places where people gather - influence you in any way. It doesn't mean you cannot read your newspaper or watch news on TV, but when something about this trial comes up, you are instructed and told that you should immediately leave the room, turn it off or not let your mind be influenced by it. Oftentimes the slant or spin that's put on the new article will influence you, where you had been in court and heard it all, you might have had a totally different perspective of it.

So the spin that's sometimes put on news stories will affect your mind. So you should only allow your judgment to be affected by what you hear in the courtroom (VDRT 3).

A great deal of our *voir dire* will probably deal with what you might have already learned about this case and whether you can be fair and impartial. Of course, it's extremely important that you have the state of mind that you can tell the Court and the attorneys that you will not be influenced by any information that you might have already gleaned from newspaper coverage or media coverage. So certainly from this point forward, you're not to pay any attention to it and explicitly avoid it.

Be searching your mind right now as to whether you can disregard what might already be placed in your mind by way of conversation or any outside source (VDRT 4).

(VDRT 5-7 is omitted as irrelevant to Mr. Baldwin's appeal. The court clerk then called 18 prospective jurors to be questioned generally and then three at a time would be questioned in chambers. (VDRT 8-9.) VDRT 10-14 is omitted as irrelevant to Mr. Baldwin's appeal. The following occurred in the presence of the jury panel summoned for jury selection.)

THE COURT: In a criminal case, we have what we call the presumption of innocence. That is, as you sit in the jury box right now and throughout the trial, if you look over at either of these defendants that I have identified you should have in your mind the presumption of innocence (VDRT 15). That is, they are innocent or should be innocent in your mind unless and until you are convinced by the evidence of their guilt and beyond a reasonable doubt. Do each of you understand the concept of presumption of innocence?

A: (No audible response.)

THE COURT: Can each of you give the defendants the benefit of that presumption?

A: (No audible response.)

THE COURT: Do you understand the importance of it? Yes, sir.

A: Your Honor, I have a very strong opinion formed.

THE COURT: I'm getting ready to get to that. The very next issue is, of course this case has received a considerable amount of attention and probably will for the months to come.

The fact that it's been in the news paper and on the TV and on the radio - and I mentioned it earlier - of course, we don't expect you to be ignorant of what's taking place in your community and in the areas that you live in. But we do expect that you can and will set out of your mind anything that you might have read in the paper, anything you might have seen on the TV or anything that you might have heard on the radio or any conversation that you might have had in the workplace, or any place where people congregate, about this case (VDTR 16). Let me just ask it this way. Is there anyone that has vague or general or no information at all about this case?

A: (No audible response.)

THE COURT: I take it that each of you have some information from --

A: (No audible response.)

THE COURT: Are there others beside the one that's indicated that have already formed an opinion so fixed in your mind that it would take evidence to

remove or that you could not consider and view the evidence independent from what you might have read, seen or heard?

A: (No audible response.)

THE COURT: The two of you, are you telling me that you've already formed an opinion based upon the news accounts of this trial that you simply couldn't set out of your mind? Is that what you're saying, each of you?

A: I remember in the early summer when the detective in West Memphis made the announcement to the press. The confidence that he had made his statement with pretty... has been rooted in my memory.

THE COURT: Well, it's necessary that you set that aside. Are you telling me that you simply can't set that aside and let your decision in this case be dictated by the evidence that you hear in the courtroom? (VDRT 17).

A: I can assure you, Your Honor, that I can't.

(The court excused this prospective juror.)

THE COURT: In the back, sir?

A: Sir, I don't feel I can set it aside. I have some strong convictions.

(The court excused this prospective juror.)

THE COURT: We're asking you to disregard what you've read, seen and heard. As you sit there, you're the only ones that know whether you can do that.

It's important that a person have a fair and impartial trial and that your mind should not be made up from outside influences.

In fact, you will be told by the court today that you are not to read any news account, listen to any radio account or watch TV or let anyone - family members, brothers, sisters, spouses, children - anyone else influence your opinion in this case from this day forward (VDRT 18). Do each of you understand that?

A: (No audible response.)

THE COURT: Do each of you feel that you are prepared to listen to the evidence and let your decision in this case be determined by what you hear in the courtroom and the law given to you by the court? Will each of you do that?

A: (No audible response.) (VDRT 19).

(VDRT 20-24 is omitted as irrelevant to Mr. Baldwin's appeal. The following occurred in camera, in the presence of three prospective jurors. (VDRT 25) VDRT 26-34 is omitted as irrelevant to Mr. Baldwin's appeal. During the voir dire by the prosecuting attorney of Juror No. 1, the following occurred.)

Q: [BY PROSECUTING ATTORNEY]: There's been all sorts of pre-trial publicity. Ms. Roebuck, where have you heard about this case from, what media sources?

A: Jonesboro Sun, Arkansas Democrat and television.

Q: There's one thing that the judge has said - it's probably very important in this case - is that anything that you've read or heard or seen you would not be allowed to consider. Because of that, it's going to be tough for us to find 12 people that have the ability to block out what they've heard and make a decision based on what they hear in the courtroom. So you think you're in as good a position as anybody else to do that, and do you think you can do that if asked to serve as a juror? (VDRT 35)

A: Yes.

(VDRT 36-48 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY ATTORNEY FOR JASON BALDWIN]: What about you, Ms. Roebuck, what is the source of your -

A: The Jonesboro Sun and the Gazette and Channel 7 and Channel 8. I have heard the name Stan Mitchell, but I don't know him. I only get the Sunday Gazette. My husband takes it to work so I only get the Sunday one. I read the Jonesboro Sun pretty much on a daily basis. (VDRT 49) I don't always watch the Channel 8 news broadcasts on a daily basis, but pretty much, more than half.

Q: [BY ATTORNEY FOR JASON BALDWIN]: So based on the fact that you've indicated that you read the newspaper every day and you watch the news

most days, it's fair for me to conclude that you've heard an awful lot or read an awful lot about this trial?

A: Yes. I would agree with you that there have been articles almost on a daily basis about this trial, at least the last two months. I would agree that it's been on Channel 8 quite often.

Q: Did either of you watch the Channel 8 broadcast back in January, the night before the trial of another defendant was to begin in this case?

A: [Prospective Juror Not Identified]: I don't remember if I watched it or not.

Q: When you picked up the Jonesboro Sun every day, if there was an article about this trial, did you generally read it?

A [Prospective Juror Not Identified]: Um-hum. (VDRT 50)

Q: And if it required you to flip from page one to another part of the paper, did you generally do that and read it to its conclusion?

A: [Prospective Juror Not Identified]: Most of the time.

Q: At any time, Ms. Tate, in reading those articles did you form an opinion as to whether or not Jason Baldwin was guilty of the crime that he's charged with? Or based on a number of articles, any time through this process, did you ever reach a conclusion in your mind, he's guilty?

A: Yes, I did. I don't think I have ever ready anything since that time to change that opinion.

THE COURT: Ms. Tate, can you totally and completely set aside that opinion and be prepared to hear and listen to the evidence and formulate a decision based upon the evidence that you hear in the courtroom and not what you've read in the newspaper? (VDRT 51)

A: Sir, I don't think so. I think that what I have read is going to stick in my mind, also.

(This prospective juror was excused by the court.)

Q: [BY ATTORNEY FOR JASON BALDWIN]: Ms. Roebuck, same question. At any point in time as you proceeded to read those articles and to watch those television programs, did you form an opinion that Jason Baldwin was guilty?

A: Well, I think that anyone under these circumstances would form an opinion but I don't feel like my opinion is totally fixed. I feel like I can listen to the evidence. The opinion that I formed was that he was guilty. I have read something since the time I formed that opinion that changed my mind. I don't remember what it was. Like I said, I read the paper every day, and some things just made me begin to wonder. (VDRT 52).

(VDRT 53-67 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY ATTORNEY FOR DAMIEN ECHOLS]: If there is evidence that develops at the trial that is different than what you have heard about in the past through media coverage, would you agree to base your decision on the evidence that is brought forth in court?

A: Yes. I also would agree to set aside any rumors that other people have told me or discussions I may have had with other individuals about this particular case. (VDRT 68).

(Ms. Roebuck was seated as Juror No. 1.) (VDRT 69)

(VDRT 70-131 is omitted as irrelevant to Mr. Baldwin's appeal. The following occurred during the voir dire of the next three prospective jurors in camera.)

Q: [BY ATTORNEY FOR JASON BALDWIN]: Each of you indicated that you read newspapers and watched TV, at any point in that process along the way, did you ever form an opinion that [Jason Baldwin] was guilty?

A: [BY PROSPECTIVE JUROR EASON] I would say at times, yes.

A: [BY PROSPECTIVE JUROR HANER] I just think it's a terrible thing. I don't know who's guilty of doing it. I think it's a terrible crime, but as far as knowing who did it, I don't know. I agree that it would be a horrible thing to punish someone who didn't do this. (VDRT 132)

A: [BY PROSPECTIVE JUROR STALLINGS] I don't know if Jason is guilty or not. I know all the evidence I hear is stacked against him, but that's just what I read or hear. Sure I can be fair to this young man. I would try to set all that aside. I think I could. You know, I don't know that much about the case because it didn't interest me. Something that brutal I don't like to get involved or read about or get that much into it. To me, that's sick.

Q: [BY ATTORNEY FOR JASON BALDWIN] Was a lot of this stuff that you read and saw on TV, was that in relationship to another trial of another defendant in this matter?

A: [BY PROSPECTIVE JUROR STALLINGS]: Partly.

A: [BY PROSPECTIVE JUROR HANER]: Part. (VDRT 133)

(VDRT 134-158 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY ATTORNEY FOR JASON BALDWIN]: Mr. Eaton, is there a feeling that you have that you have brought in here today?

A: No, sir. (VDRT 159) To explain what I mean when I say one half of me feels one way and one half of me feels the other way, like I say, I don't even know if I can. I don't feel like they're guilty - I'm not saying that, I guess. I didn't mean it to sound that way, I guess, is what I'm trying to say. If you just watch the news or read the news and watch the television, they to me portray people as being

guilty. I don't believe what they portray. I also said I believe that there are a lot of cases where innocent people are sent to prison, also. The things I've read in the newspaper or seen on TV have not caused me to form an opinion as to the guilt of Mr. Baldwin. (VDRT 160).

(VDRT 161 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY ATTORNEY FOR JASON BALDWIN]: Mr. Stallings, what was your reaction when you would read those things in the newspaper or hear them on TV? (VDRT 162)

A: I think the word you used, "feeling," probably would be better than the word "opinion." I didn't have an opinion. I definitely had a feeling. Once you sit across the table from these guys, then I think we start even. The feelings were evidently they're guilty. Everything you read in the newspapers. But like I said, I can set that aside when I sit down and look these guys in the eye. That's gone. That's over with.

Q: So until you came in this room, when you were sitting out there until you came in this room, did you have that feeling, Mr. Stallings, that they were guilty?

A: No, not today. I lost that feeling that they were guilty recently. I can't tell you an exact time I had a feeling. I really think looking at the guys might have changed my feelings a little bit. You know, a lot of times until you look at a guy -

maybe that sounds weird but - I think today was the first time, maybe. Up until I came into the room, I had a feeling that maybe they're guilty. (VDRT 163)

(These three prospective jurors were excused. Three new prospective jurors were called to be questioned. (VDRT 164-165). VDRT 166-174 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY PROSECUTING ATTORNEY]: Will each of you assure me that you will resist the temptation if it occurs to kind of get caught up in the media hype and you will apply your common sense to any decision you're asked to make? (VDRT 174)

A: [PROSPECTIVE JUROR MONTGOMERY]: I believe I have seen too much of it on television and read it in the paper to do that because I have seen it all and read it all.

THE COURT: Are you saying that you've already got your mind made up?

JUROR: Just about it. I'm pretty - nearly a hundred percent sure.

Q [BY PROSECUTING ATTORNEY]: The key, Mr. Montgomery, is if you've formulated an opinion, could you do as much as humanly possible to set that opinion aside and make any decisions in this case based on the facts and evidence you hear in the court room?

A: I don't know whether I could or not. (VDRT 175)

(VDRT 176-187 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY ATTORNEY FOR JASON BALDWIN]: Ms. King, you've read quite a bit or watched quite a bit?

A: Yes, sir. What I read and saw made me think it was awful. It was a terrible crime. I did not have any feelings at all about Jason. I don't know if he did it or not. (VDRT 188).

Q: Did you at any time in reading or watching form an opinion that he was guilty of these crimes?

A: The media, yeah, it tends to make it look that way. But as I stated earlier, once you're called in here, you're not so sure any more. A month or a week ago, before I received my summons, it was my opinion that he was guilty. There has been nothing that I've read or watched that caused me to change that opinion. Being called in for jury duty. It made me stop and - I mean, if it was me, I would not want someone coming in here and already have their mind made up. It's different when you're called in here and it is up to you to decide. I can honestly tell you that I have set aside that preconceived notion of guilt and I can give you a fair trial. (VDRT 189).

(VDRT 190-194 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY ATTORNEY FOR JASON BALDWIN]: It's also important that you recognize there are two trials going on at the same time. . . . And that you won't get caught up in guilt by association. That you won't allow the evidence against Mr. Echols to trickle into your consideration of the evidence against Jason.

A: [PROSPECTIVE JUROR KING]: I'm not sure if I could do that. I mean, you're going to have them placed together. Well, I'm basing that on what I have read and what I have heard. I told you earlier that I could set what I had read and heard aside. (VDRT 195). Now, I'm telling you, I see this two different ways. You asked me about what I had read and what I had heard. And now you're asking me if I'm having trouble with both of them together. In all honesty, yeah, I do associate them being together. So, yeah, I guess that does go back to what I have read and heard. In all honesty, yeah, I think I would have a problem separating them. I honestly couldn't say that I could not fairly differentiate the evidence against Mr. Echols and the evidence against Jason. (VDRT 196).

(VDRT 197-199 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY ATTORNEY FOR JASON BALDWIN]: Ms. King, you told us there are things in your mind about this case that you already think you know the truth of it in this case. Is that right?

A: No, I did not - no.

Q: You just told us a minute ago that one of those things is of the defendants being together. What is that opinion based upon?

A: What I read in the newspaper and on TV. I do not know if that is a true fact. What has caused me not to know is being called here today. I'm just going to go by all the evidence. You don't have to prove anything. All I'm saying is I do have a hard time separating the two as far as the crime goes. (VDRT 200). But if they prove that one did something that the - you know, whatever the evidence - but right now, yeah, I see them as being together.

(This juror was excused for cause.) (VDRT 201).

(VDRT 202-210 is omitted as irrelevant to Mr. Baldwin's appeal. Three more prospective jurors were called. (VDRT 211). VDRT 212-222 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY PROSECUTING ATTORNEY]: What source through the media have you received your information?

A: [PROSPECTIVE JUROR SPRINKLE]: Good old television and newspaper. I haven't really formulated an opinion one way or the other because I know over the years, and everybody else does, too, that when you read the paper you really have to really read it because it's always made to look bigger than what it really is. At least that's the way I look at it. Everybody may not feel that way,

but I do. (VDRT 223) And I can look at these two boys now and find it hard to believe. I'd have to see the evidence, really, to make me believe that they could do that to someone. (VDRT 224).

(VDRT 225-232 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q [BY ATTORNEY FOR JASON BALDWIN]: Ms. Pankey, let me go first to the things that you had some trouble about, okay? (VDRT 233)

(The following occurred outside the presence of the other two prospective jurors. (VDRT 234).)

A: I just know a few months ago that my sister-in-law told me that a boy and a girl came into the church, sat down on the back row. (VDRT 234) They were both all dressed in black, and during the course of the service they didn't sing. When everybody would stand, they did not stand or anything.

After church was over, the pastor talked to him, and he said, you think you're Satan and he said if you think you're Satan - he said, you're not afraid of me are you. And the pastor said no, I am not afraid of you.

The person having the conversation with the preacher was Damien. I guess the preacher had heard that Damien changed - the way I understand it - I don't watch movies with Damien so I don't even know - I just heard like Omen and Damien and so forth and so on was related to devil worship and so forth. (VDRT

235). And said that he changed his [name to] Damien which means Satan. I don't know that to be a fact, but they told us in church and he just looked at the pastor and he talked to him afterwards. I guess he thought maybe he could get him saved and get him to accept Christ as his savior so he would go to heaven some day. (VDRT 236).

(This prospective juror assured the court that she could put this out of her mind.)

Q: [BY ATTORNEY FOR JASON BALDWIN]: How did that information make you feel about Damien?

A: I thought he was evil. But with what Judge Burnett said yesterday, I know just from everything a person is innocent until proven guilty and I have got to realize that these people are innocent until proven guilty. What I'm saying is that nothing has happened since then to make me change my opinion that Damien is evil. I think he's innocent until proven guilty, but I think he's evil. (VDRT 237)

(This prospective juror was excused. The other two prospective jurors reentered the voir dire examination. (VDRT 238). VDRT 239-244 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY ATTORNEY FOR JASON BALDWIN]: Ms. Sprinkle, I believe you had both TV and newspaper. How did you feel about it after you read that and acquired that knowledge?

A: When it first happened, of course, I'm sure everybody felt the same way. You just want to see whoever did it caught. But right now I try not to read - I mean it's in the headlines. You'll see the headlines, but I don't really read it all. I didn't - the is even before now. It's kind of sickening, and they do publicize it a great deal, and so I just try to read around it. I read the headlines. I won't deny it. I do read the headlines, and I listen to the news, but I don't sit down and read the stories about it. After acquiring this knowledge, I do not have any feelings about the guilt or innocence of Jason. (VDRT 245).

(VDRT 246-260 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: [BY ATTORNEY FOR DAMIEN ECHOLS]: In addition the media coverage obviously has been tremendous. Do each of you feel at this point that Mr. Echols could get a fair trial as we begin this process?

A: [PROSPECTIVE JUROR SPRINKLE]: Yes, I do, in spite of the media coverage. Because we read the headlines, but that doesn't necessarily mean we read all the paper. We hear the news, but that doesn't necessarily mean we're going to listen or believe everything we hear. (VDRT 261).

(VDRT 262 is omitted as irrelevant to Mr. Baldwin's appeal. Prospective Juror Sprinkle was seated as Juror No. 2. (VDRT 263) VDRT 264-288 is irrelevant to Mr. Baldwin's appeal. Three prospective jurors were being examined in chambers. (VDRT 283))

Q [BY PROSECUTING ATTORNEY]: Mr. Arnold, if I was to ask you for the traits that you would look for in a good juror, what would your answer be?

A [PROSPECTIVE JUROR ARNOLD]: To be honest with you, I have never been around much law or lawyers or jurors or juries or trials, but I would assume it's a bunch of people that are relatively impartial to it. I mean, I just heard this over and over. I would assume that you would have to assume - and there is a law - that everybody is innocent until proven guilty. I think you would have to assume that. I think everybody - whoever does it - would have to assume that. If they couldn't assume that, they certainly couldn't be a juror. (VDRT 289). I don't know what traits. I'd say a mixed bunch of traits. (VDRT 290)

(VDRT 291 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q [BY PROSECUTING ATTORNEY]: You've seen the pre-trial publicity. Mr. Arnold, what source have you heard or seen about this case?

A: I get three newspapers. I read it but I really don't know that much about it. I didn't follow the Misskelly trial In fact someone came rushing in and said

Misskelley was - whatever he was - and I said, he was? I didn't realize the importance of what was going on. I think you probably should've had this trial - you moved it to here. You probably should have moved it to another state if you wanted to get - I mean this is still too close. (VDRT 291)

Q: Have either of you formulated an opinion on guilt or innocence that you could not set aside and render an opinion based on the evidence you see in the courtroom?

A [BY PROSPECTIVE JUROR ARNOLD]: Just what you hear in the paper. I think the paper assumes they are guilty. (VDRT 292) I guess if you pick me as a juror I would have to set aside whatever I read in the paper and base my decision of whatever I hear in the courtroom.

Q: Would each of you agree that if selected you will bring your common sense back to the jury room in deciding whether they're guilty or innocent?

A: (No audible response)

Q: With all the cameras and media hype, would each of you assure me that you won't let that affect your common sense perception of the case - won't let it get caught up kind of in the media circus, is what I call it?

A [PROSPECTIVE JUROR ARNOLD]: You think it's gonna get worse that what it is?

Q: Let's assume it does. Would each of you do your best to shut that aspect of it out and do what jurors are supposed to do?

A: Are they gonna say something about not photographing the jury?

BY THE COURT: They're not be permitted to photograph -

JUROR: They're taking names. (VDRT 293) The photographers are taking names and I'm a little concerned about it - the anonymity of it. I don't particularly want to be -

BY THE COURT: We will try to stop that, too. That's exactly what I made a point about.

Q [BY PROSECUTING ATTORNEY]: Mr. Stoll, is there anything about the defendants' ages that you think would affect your ability to determine whether they're guilty or innocent. Mr. Arnold?

A: (No audible response)

Q: Would each of you hold us to the burden of proving guilty beyond a reasonable doubt, and not make it any higher?

A: (No audible response) (VDRT 294)

[PROSPECTIVE JUROR ARNOLD]: As to whether I watch any of the law shows on TV, I would like to start up a crime channel though. Everybody loves it.

Q: One of the things that concerns me is that people get a lot of theft information about what goes on in courtrooms from TV, and oftentimes what you see depicted on TV is not accurate. On TV shows, questions come up at the beginning of the program, and at the end all those questions have been answered in a nice neat package. This is real life, and I can assure you on the front end all the questions are not going to be answered. But if we prove to you beyond a reasonable doubt the elements of the offense of capital murder, could you return a verdict of guilty? (VDRT 295)

A [PROSPECTIVE JUROR ARNOLD: Is that the requirement? Reasonable doubt? Yes I could. (VDRT 296).

Q [BY ATTORNEY FOR JASON BALDWIN]: Mr. Arnold, you indicated that you take these papers and probably scan the headlines. Did you normally see a headline regarding this case in the paper?

A: I think so. It's normally on the front page. I didn't read many of those articles. As to how the ones I did read make me feel, I don't know. I don't think about feelings. Did that make me feel anything about Jason? I didn't know if Jason did anything. Did it not create any feeling at all? It was very sensational. Any more every other headline says somebody killed somebody or stabbed

somebody or somebody was burned to death or some car crash, and I'm pretty numb actually. (VDRT 297)

I agree a hundred percent that everything you see in the paper or hear on TV is not the correct information. I am the Kent Arnold that builds houses. With the interest rates now I'm going on all cylinders. (VDRT 298)

Q: You've expressed some concern about anonymity. Is that important to you in this case? Would you mind telling me why? (VDRT 299)

A: Well, because, I mean it's a very publicized case. If this case were not -- if there were not 90 cameras out there and there weren't four dishes sitting out on the street and the possibility of - and the judge has said they will not take the jurors' pictures but they took pictures in Corning and they splashed them I guess in this paper - and these dishes are going around the world. And I am a name that somebody might can find. If this was a case where there wasn't all this splashing, I think I would feel much more comfortable. But anonymity would be important in this particular case. (VDRT 300).

(VDRT 301-306 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q: Mr. Arnold, did you read about what the verdict was in the Misskelley case?

A: I didn't read about it, no. I heard about it. I really didn't have much feeling about Misskelley because I didn't - I don't know enough about the three of them. Damien, I assume, is the most popular, if there is a popularity contest going here. I don't know anything. I couldn't tell you anything about Misskelley except that I understand that he was convicted of something, and I couldn't even tell you of what, but I don't think he got the death penalty. If there is something - I didn't hear that. Did he?

Q: No. But other than the knowledge that you acquired, any feeling?

(VDRT 307)

A: My feeling was that if they were tried on the 10:00 news and guilty then that's a statement of it that was confirmed. That was about it. That did not give me any feelings about the trial that was next.

I personally think that I'm a fair guy. I think if you've got to throw out everything I have heard at this point and start from scratch and he is going to deliver evidence against him and you're going to deliver evidence for him. I mean, I'm sure I would look at that. I mean, I'm sure I would look at that based on that.

(VDRT 308)

(VDRT 309-315 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q [BY ATTORNEY FOR DAMIEN ECHOLS]: Is there anything about the fact that he's named Damien that conjures up any sort of evil to you or anything of that nature?

A [BY PROSPECTIVE JUROR ARNOLD]: Is his name Damien? Is that your real given name, Damien? I mean, your dad and mom gave you that name.

THE COURT: It's his legal name.

A: Okay. That doesn't cause me any problems. But what does Damien mean? Does Damien mean something? I mean, I don't know what I should say here, but is that Satanic? Is the name itself Satanic? (VDRT 316) I don't know how I feel about it. I guess I better go look it up before I give you an answer. (VDRT 317).

(VDRT 318-319 is omitted as irrelevant to Mr. Baldwin's appeal.

Prospective jurors Stoll and Arnold were seated as Juror No. 3 and 4, respectively.

(VDRT 320) VDRT 321 is omitted as irrelevant to Mr. Baldwin's appeal. Three more prospective jurors were called for examination . VDRT 322-336 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q [BY ATTORNEY FOR JASON BALDWIN]: Ms. White, have you read about this trial?

A [PROSPECTIVE JUROR WHITE]: I read the newspaper every day and I usually watch the 6:00 news. I read the Jonesboro Sun and watch KAIT TV. I generally have gotten my information from the Jonesboro media. I read all about it until I got my jury summons. I tried to avoid it after that. I got my summons the day that the Misskelley trial ended. I was watching that when I got my summons. (VDRT 337).

Based on all that information - TV, newspaper - my general feeling about who committed this crime was probably the defendants. You know, not for absolutely sure, but I was leaning that way.

Q: Has there been anything to change that? Have you read anything, seen anything, done anything to change that feeling at all?

A: No. I feel like that I could start the trial believing they're completely innocent even with what I have read because I don't believe that the media is the absolute end-all to the truth.

Q: But since you indicated that you felt like the defendants did it, what about what you read caused you to feel that way? (VDRT 338)

A: I believe it was whenever the - I can't remember who it was - it was a law enforcement officer said that he felt like it was a pretty well open-and-shut case, that they had enough evidence.

Q: Has there been anything to change your feelings to say that it's anything other than an open-and-shut case?

A: No. I don't know. I'm not sure exactly how to express what I'm trying to tell you. I want to be fair. I think I can be fair, but I cannot honestly say that if I was not in the jury panel, that I would not feel the same way. I just feel like because I'm here, I have to wipe everything out - before this day, I have to wipe everything out. Right now you would not have to present any evidence to me to establish that Jason is not guilty, because you start out with the presumption of innocence. So right now before the evidence comes in, he's innocent. (VDRT 339)

(VDRT 340-350 is omitted as irrelevant to Mr. Baldwin's appeal.

Prospective Juror White was seated as Juror No. 5. (VDRT 351). Four more prospective jurors were called for voir dire. (VDRT 352). VDRT 353-356 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q [BY PROSECUTING ATTORNEY]: I assume all of you have read or heard something about this case before you came here. Mr. McNatt, where did you get your information from?

A [PROSPECTIVE JUROR McNATT]: Conversation of people around me and through the newspaper. I don't watch TV very much, but we do get the

newspaper. I read the headlines. Mainly I read the sports. I do read some of the news articles. I got information from people around me, just causal talk. There was no one who purported to have some inside information or knowledge of the case. (VDRT 357).

A [PROSPECTIVE JUROR VANHOOZER]: I heard about the case mostly just back in the very beginning in the news media. I'm not a very good political person. I don't actually read the papers and watch the news that often but I did hear, you know, from the beginning. I haven't kept up with it that closely.

A [PROSPECTIVE JUROR BRUNO]: I heard it when they first announced it on the radio, I heard that. I work in an insurance office, and I heard people talk about it every once in awhile, but I really didn't pay a lot of attention.

A [PROSPECTIVE JUROR FRENCH]: I got my information from the newspapers and television and friends that talk - gossip. (VDRT 358)

(VDRT 359-365 is omitted as irrelevant to Mr. Baldwin's appeal.)

A [BY PROSPECTIVE JUROR McNATT TO QUESTIONS FROM ATTORNEY FOR JASON BALDWIN]: I didn't get very much of my information about this case from television. Newspapers and conversation. I read the Jonesboro Sun. I have visited with people at work about this. I don't know what the general feeling is about the case. It's just conversation about how things

happened and so forth. People say how bad it is that some eight-year-old kids got killed and things of that nature. (VDRT 366). Nothing about who did it. Just that someone is charged with it. Some people were charged with it. Because I don't have all the facts I certainly would not make a judgment on who committed this crime. I never reached an opinion.

A [BY PROSPECTIVE JUROR VANHOOZER]: My source of information in the beginning was the news media. I haven't read the paper very much. I don't really have time. Where I work we don't have time to talk about anything. As for my general feeling about who committed this crime, naturally I think it's a terrible crime but I don't have any feeling about who committed it. As far as the accuracy of what I read in the paper, what I heard the police say, I thought it was like everything else you read in the paper. You can draw whatever conclusion you wanted to from it. The conclusion I drew was that there's more to be said than what is in the paper. (VDRT 367).

A [BY PROSPECTIVE JUROR BRUNO]: I got my information from radio and general talk around the office, customers coming in and out. The information was pretty much I was listening in. I was busy doing paperwork, but I listened to my bosses and some of the customers talking. Generally, the way everybody talked, nobody talked like the defendants were innocent. I mean, everybody just

talked like they were guilty. They did it, is the way they talked. And I really didn't think about it a whole lot. I mean, I just got to the point where it was common conversation so was like everyday stuff. It was different when I came into the courtroom. I realized there was a lot more to it than everybody was talking like. I mean, when the judge started discussing what is going to be the jury's responsibility and actually seeing the defendants and realizing they're real people, that they're not just people you see on TV or hear about on the radio or everybody's talking about. I realize there is a lot more to it. (VDRT 368). I did not reach an opinion myself that I recall. Like I said, it had gotten to the point where I had heard so much that I had gotten to the point where I was starting to tune it out. I guess you could say I got to the point where I didn't care one way or the other, which probably sounds pretty cold, but that's about the way that I got.

A [PROSPECTIVE JUROR FRENCH]: I got my information from the media, the TV and newspaper and of course my friends talked about it. Of course, they felt like they were guilty. I feel like they're innocent until they are proven guilty. That was my opinion to them whenever this was brought up. (VDRT 369)

(VDRT 370-389 is omitted as irrelevant to Mr. Baldwin's appeal.

Prospective Jurors French, Vanhoozer and McNatt were seated as Jurors No. 6, 7

and 8. (VDRT 390-391.) Four more prospective jurors were called for voir dire. (VDRT 392.) VDRT 393-410 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q [BY ATTORNEY FOR JASON BALDWIN]: Ms. Childress, tell me again what you heard other people say about this case.

A [PROSPECTIVE JUROR CHILDRESS]: That there were sexual mutilations involved, witchcraft was involved. I've forgotten. As far as who did it, they thought it was some young boys that had committed it. As far as names or anything, that didn't stick in my mind. (VDRT 411).

A [PROSPECTIVE JUROR BENNETT]; Probably the first media that I heard it from was television, and at first I remember hearing that it was probably a transient traveling on I-40 or whatever interstate is. And wasn't it like two or three weeks later that evidence came out or they think evidence came out that pinpointed the three boys. Since the arrest, I have not followed this real close. I mean, you can't help but - like you say, when you pick up the paper and it's on the front page or you turn on Channel 8 and there it is. I'm a headliner and the first two or three paragraphs, but I did hear that there was witchcraft involved. I'm a Christian and I don't believe in witchcraft. (VDRT 412) But keeping an open mind, I have no evidence that there was any witchcraft involved. I've only got what the newspapers and the television and what I've heard.

My mind is not really made up now. But the facts that I've gotten from the media, you know, they kind of form an opinion in your mind but - the opinion I have formed is from just what I've heard, that they did it. But I'm not going to know until I know all the facts and all of the evidence. I haven't really formed an opinion as to their guilt. I have not formed an opinion as to who did it, because I've heard so many different things. (VDRT 413).

A [BY PROSPECTIVE JUROR GNADE]: I don't remember where I heard it first. But first I heard that it was three boys from West Memphis, killed and mutilated and everything. That was in West Memphis. It's not right here so it doesn't bother me. So I don't pay that much attention to it. And as it kept on, well, you kept hearing more. So you started trying to maybe pay a little bit more attention to it. I paid a little bit more attention but not a whole lot. I'm a headline reader. I don't go into all the little bitty stuff they print in the middle there. I pretty well just read the headlines, and seems like the day they found them I was cutting grass or something. Some doctor came by and asked me if I had heard they had caught the boys, and I said, no, I hadn't really heard. (VDRT 414). When I heard that they had caught the boys, I did not form any opinion that they had caught the right boys. (VDRT 415).

(VDRT 416-435 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q [BY ATTORNEY FOR DAMIEN ECHOLS]: Mr. Billingsley, who are those people you indicated were friends in law enforcement?

A [PROSPECTIVE JUROR BILLINGSLEY]: My biological father is police commissioner down in Helena, Arkansas. So whenever I get in trouble I don't get in trouble. I haven't talked to him about this particular case. I just told him I was in town and he said he'd be up here. (VDRT 436). Not to talk about this but just to visit. I don't know if he worked on murder cases such as this. He's police commissioner and a psychotherapist. That's all I know of his work. (VDRT 437).

(VDRT 438-439 is omitted as irrelevant to Mr. Baldwin's appeal. Juror Billingsley was seated as Juror No. 9. (VDRT 440). VDRT 441 is omitted as irrelevant to Mr. Baldwin's appeal. Eighteen prospective jurors were called for general voir dire. VDRT 442-449 is omitted as irrelevant to Mr. Baldwin's appeal. Three prospective jurors were called for voir dire. VDRT 460-508 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q [BY ATTORNEY FOR JASON BALDWIN]: Ms. Dacus, have you followed the trial closely?

A: Not at all. (VDRT 509) When I did learn of things involved in this matter, the source, I guess when it happened - I'm not sure even when it was on

television - the three boys - I think I heard about it on television. And then I didn't hear about it for a long time, I guess just real recent, until the last trial. I did not follow that at all. I usually don't. I don't really have a reason why. I don't really watch television that much. We get the Sunday paper. That's all.

Q: Mr. Throgmorton, what has been your general source of that information?

A: Just like I said earlier, when it did come out, when it happened and stuff. I'm on the go a lot so I really don't get to see the TV much and rarely do I pick up a paper. So just people's opinions, you know, people talking around. Seems to be the general opinion is that everybody thinks they're guilty. But, you know, my ownself feel like everyone is innocent until proven guilty, and so I've just pretty much taken what everybody else says with a grain of salt, really. (VDRT 510).

(VDRT 511-518 is omitted as irrelevant to Mr. Baldwin's appeal.

Prospective Jurors Throgmorton and Dacus were seated as Juror Nos. 10 and 11 respectively. (VDRT 519). VDRT 520-523 is omitted as irrelevant to Mr.

Baldwin's appeal. Three prospective jurors were called for voir dire examination. (VDRT 524). (VDRT 525-527 is omitted as irrelevant to Mr. Baldwin's appeal.)

Q [BY PROSECUTING ATTORNEY]: Ms. Dooley, where have you gotten most of your information from?

A: Newspaper and TV. (VDRT 528).

(VDRT 529-552 is omitted as irrelevant to Mr. Baldwin's appeal.

(Prospective Juror Dooley was seated as Juror No. 12. VDRT 553.)

(The remainder of the record, VDRT 554-598, is omitted as irrelevant to Mr. Baldwin's appeal.)

ABSTRACT OF TRIAL OF JESSIE MISSKELLEY
CIRCUIT COURT OF CLAY COUNTY
THE HONORABLE DAVID BURNETT, CIRCUIT JUDGE
Beginning January 19, 1994
ARKANSAS SUPREME COURT CASE NO. CR 94-848

(Appellant moved the Circuit Court for an Order permitting co-defendant Echols's and Misskelley's exhibits and records to be made part of appellant's record, and the Circuit Court allowed the incorporation. Misskelley's trial record bears on the issues presented by this appeal. The parties were represented as follows: John Fogleman and Brent Davis, prosecuting attorneys; Daniel Stidham and Gregory Crow, attorneys for Jessie Misskelley, Jr. The pages of this record are designated as MTR [Misskelley Trial Record] ____.

(MTR 1-943 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF OFFICER JERRY DRIVER
BY JOHN FOGLEMAN

I'm the chief juvenile officer for Crittenden County, Arkansas (MTR 943). In the course of my duties as the chief I have come into contact with the defendant, Jessie Misskelley, Jr.

I have with me today a juvenile file that is relevant to Jessie Misskelley, Jr. On an unrelated matter, on March 31, 1993, I advised Mr. Misskelley of his rights. (BETR 944) I read him a rights statement and asked him if he understood each one. I had him read them over, initial the rights and sign a statement that he wished to

talk to me. Also his father signed it. State's Exhibit One is the rights form that was signed on March 31, 1993. (MTR 945) After I read each right to him, I asked him if he understood that particular right, and he indicated that he did. (MTR 946)

I did not employ any force, promise, threat, or coercion when I advised him of his rights on March 31, 1993. I also had an occasion to advise Mr. Misskelley, Jr., of his rights on October 28, 1992. (MTR 947) I used the same type of form and followed the same procedure advising him of each of his rights. He indicated to me that he understood his rights and he read over it before he signed it. His father signed it. (MTR 948) It appeared that he did he read over the form. He did not ask any questions. His father did not have any questions. He given an opportunity to read it in each case.

CROSS EXAMINATION OF JERRY DRIVER BY DAN STIDHAM:

Mr. Misskelley's signature on that form was not in cursive. This did not bother me because he indicated to me that he could read and right. I asked him if he had any questions about the form and we went over each one of them. He said that he had no questions and that he understood it. He appeared to be read it and then signed it. We always have the parents sign the rights waiver form in juvenile intake. (MTR 950)

DIRECT EXAMINATION OF GHERIC BRUCE BY JOHN FOGLEMAN

In 1988 I was employed with the East Arkansas Juvenile Services in Marion, Arkansas. I was the intake officer, probation officer, and parole officer. During my employment I came into contact with Jessie Misskelley, Jr. State's Exhibit 3 is a rights form which I went over with the defendant. I advised him that he had the right to remain silent and I read the form to him. (MTR 95 1) Before I asked him to sign, I also asked if he understood. He told me that he understood his rights and he signed the form. I did not use any force, promises, threats or coercion to get him to sign the form. His father was present when I advised him of his rights. (MTR 952)

DIRECT EXAMINATION OF JOHN MURRAY BY JOHN FOGLEMAN

My name is John Murray and I am an investigator with the Crittenden County Sheriff's Department. In an unrelated matter on the 23rd day of October, 1992, I advised him of his rights by reading him a rights form and having him place the word "yes" next to each right. He indicated to me that he understood each right. I did not use any force, promises, threats or coercion to get him to place his initials on the form. (R 954)

CROSS EXAMINATION OF JOHN MURRAY BY DAN STIDHAM

I am familiar with Jessie Misskelley, Jr. and I know that he is slow. I asked him whether he understood each one of the rights and I asked him to tell me if he did not understand. It was my opinion that he understood. Jessie's signature is printed instead of being handwritten but this did not bother me. Each time I've talked to him in the past and whenever he has signed, he always printed. Mr. Misskelley never made any attempt to invoke any of his constitutional rights. (MTR 956) Jessie Misskelley, Jr.'s father did not sign the rights waiver form. (MTR 957)

DIRECT EXAMINATION OF OFFICER MIKE ALLEN BY JOHN FOGLEMAN

I'm a detective sergeant with the West Memphis Police Department. During our morning meeting on June 3 I was advised by Inspector Gitchell (MTR 958) that Jessie Misskelley, Jr., was one of the people that we needed to talk to in reference to this investigation. As I knew Jessie Misskelley, Sr. I was assigned to contact Jessie Misskelley, Jr., and bring him to the station. I drove to Highland Trailer Park and went to the residence of Jessie Misskelley, Sr. A lady named Lee Rush came to the door and told me that Jessie Misskelley, Jr., was not there. (MTR 958) She told me that Jessie Misskelley, Sr. , was at work. I drove to Jim's

Diesel Service and contacted Jessie Misskelley, Sr., and asked him about the whereabouts of Jessie Misskelley, Jr. (MTR 959)

Jessie Misskelley, Sr., went and picked up Jessie Misskelley, Jr., and brought him back. At that time I asked Jessie Misskelley, Jr., if he would come with me to the police department because I needed to talk to him in reference to this case. Mr. Misskelley, Jr.'s response was sure he would go. I then accompanied to the police department. He was placed in the front seat and was not handcuffed.

Upon arriving at the police department I filled out a standard subject description form (MTR 960) and talked with him. The subject description form was filled out around ten that morning. I filled out this form from information which I obtained from Jessie Misskelley, Jr. While I was filling out the form, Detective Bryn Ridge was present. I did not advise Jessie Misskelley, Jr., of his rights at that point. He was not a suspect at that time. (MTR 961)

After talking to him for about an hour, I advised him of his rights. Detective Bryn Ridge was present when I advised him of his rights. State's Exhibit Nine is the rights form that was used. (MTR 962) I verbally advised him of his rights and went over the rights form with him. He indicated that he understood each right. I did not use any force, promises, threats or coercion either to get him to sign the

form. Later we talked to him about taking a polygraph exam. (MTR 963) We took notes, he was not a suspect at that time, we were talking to him about another individual that was a suspect at that time. We advised him of his rights at about 11:00. I advised him of his rights because several things that he denied something another person had told us. We asked him if he would take a polygraph exam and he said yes. (MTR 964) Officer Durham, the West Memphis polygraph examiner, informed that I needed to get permission from Misskelley, Sr., before the polygraph exam could be given because the State law. Jessie and I went to find his father to get his permission for the polygraph. He rode in the front seat with me and he was not handcuffed. We found Jessie Misskelley, Sr., at about 11:10. (MTR 965) I talked to Misskelley, Sr., about the polygraph, then Jessie, Sr., signed the form. I did not use any force, promises, threats or coercion to get Mr. Misskelley, Sr., to sign the form. (MTR 967)

CROSS EXAMINATION OF MIKE ALLEN BY DAN STIDHAM

Each morning during the investigation of these homicides the detectives meet at the West Memphis Police Department to discuss what we were doing that particular day. Jessie's name was brought up by a person that said he was associated with Damien Echols. (MTR 969) Damien Echols was a suspect in the very beginning in this case. Echols was a suspect on June 3, 1993. I was told that

Damien Echols and Jessie Misskelley were members of a satanic cult. It had been brought up at the meeting that these murders were a satanic cult killing. (MTR 970) I was told to talk to Misskelley and find out if he had any knowledge about Damien Echols. (MTR 971)

I advised Jessie, Sr., that I needed to talk to Jessie, Jr., with regard to this homicide investigation and about some so called friends of his that lived in the Lake Shore area. (MTR 972) A couple a weeks or so prior to June 3, 1993, Jessie Misskelley, Jr., had given me some information about someone he though might be involved in the homicides, a Tracey Laxton. There was someone else present when I spoke to Jessie Misskelley, Sr., at Jim's Repair Shop and he was trying to listen to what Jessie, Sr., and I were talking about. I would assume it was Jim McNease, the owner of the shop. (MTR 972) Mr. McNease kept trying to hear what we were talking about. I do not know whether he overheard. I do not remember any mention about the \$30,000.00 reward that was available. I do not recall whether McNease and Misskelley, Sr., and I discussed that. Jessie, Sr., and McNease may have asked me what the reward was (MTR 973) or something to that effect, but I do not particularly remember that part of the conversation.

When I obtained Jessie, Sr.'s signature on the polygraph release, later in the morning, I do not remember talking about the reward money. The Misskelleys may

have asked me what the reward was. (MTR 973) I do not remember that part of the conversation. I do not recall Jessie, Jr., saying, "If I get that \$30,000.00, I am going to buy my daddy a new truck."

I did not read Jessie Misskelley, Jr., his rights until about an hour after I had questioned him at the police department. I did advise him of his rights prior to asking him whether or not he wanted to take a polygraph exam. When I went out to the repair shop that morning to pick Jessie Jr. up there was never a discussion about his rights. At that time he was not a suspect. (MTR 974) He was just a possible witness or someone that might have had some information.

When I arrived at the shop, I asked Jessie, Jr., if he would mind coming to the police department to answer some questions about some boys that lived out at Lake Shore. I did not talk about his rights at that point, he was not a suspect at that time. He voluntarily agreed to accompany me to the police department. The subject of his rights never came up. I knew Jessie, Sr., prior to June 3, 1993, but I did not know Jessie, Jr., except that I knew who he was. (MTR 975)

In my opinion, Jessie Misskelley, Jr., could understand everything I was telling him and he was responding back and did not appear to be slow. (MTR 976)

I asked Jessie about Damien and he told me that he had heard a rumor that Damien and a subject by the name of Robert Burch had committed the homicides. (MTR 978) At this particular time he was not a suspect. (MTR 979) At 11:00 a.m. on June 3, 1993, Jessie Misskelley, Jr., was not a suspect. (MTR 980) At that time I was not questioning Jessie Misskelley, Jr., in the line of a suspect but that as of a potential witness. (MTR 982)

The department had been told from another source that Jessie was a friend or whatever of Damien Echols. This source said Jessie had attended some kind of satanic ceremony with Damien Echols. (MTR 983) I did not talk to Misskelley, Sr., about Jessie Misskelley, Jr.'s constitutional rights, his right to remain silent, or his other Miranda warnings. I did not get Jessie, Sr.'s signature on the rights waiver form while I was obtaining his signature on the polygraph form. I did not at that time obtain information from his father other than to give me permission to talk to Jessie, Jr. His Miranda warnings were not discussed with his father. (MTR 985) I had been advised that I did not have to obtain parents signature on the rights waiver form on a case of this type.

Jessie stated that the week of the homicide he had worked that Tuesday, Wednesday and Thursday (MTR 986) and that on May 5th, he got off work at 5:00 p.m. After I completed my notes, I did not participate in the interrogation of

Jessie Misskelley, Jr. any more. Jessie told me that he had never been to Robin Hood Hills before. (MTR987)

We had information that he had been at some satanic worship ceremony after the murders with Damien Echols. Jessie stated that he was not in any such group. We set up the polygraph test to determine whether the information he was giving us was the truth. (MTR 988)

I helped determine the questions to be asked on the polygraph test. My notes reflect only highlights of things that Misskelley told me. They reflect some of things that I felt were important. (MTR 989) I did not write down everything. I do not remember word for word everything that we talked about. I did not record the interview because he was not a suspect at that time and we were trying to find out if he had any knowledge of Damien Echols or of this homicide. We have the capabilities to record interrogations and had our conversation gotten to the point where he said, "I know all about it," I would have tape recorded it. (MTR 990)

On June 3, 1993, I did not make any attempt to call Mr. Deese or verify the fact that Misskelley was working on May 5, 1993, the date of the homicides. His story was not checked on that day, but was checked on later. (MTR 994)

REDIRECT EXAMINATION OF MIKE ALLEN BY JOHN FOGLEMAN:

I did not bring up the subject of the \$30,000.00 reward with either the defendant or his father.

RECROSS EXAMINATION OF MIKE ALLEN BY DAN STIDHAM

I did not bring up anything up about the \$30,000.00 reward. However, it is possible that the Misskelleys did bring that subject up on that day. (MTR 995) If someone would have asked me, I probably would have told them what the reward was. (MTR 996)

DIRECT EXAMINATION OF OFFICER BILL DURHAM
BY JOHN FOGLEMAN

My name is Bill Durham, detective, West Memphis Police Department. (MTR 998) I talked to the defendant at 11:15. I advised him of his rights by means of an Advice of Rights form outlining his rights. He appeared to read the form. I also explained what each of the rights meant. He initialed each of the rights individually and then signed a waiver of rights. State's Exhibit 11 is a photocopy of the rights form signed by Jessie Misskelley Junior on June 3, 1993, at 11:30 a.m. (MTR 999) I did not use any force, promises, threats, or coercions to get him to place his initials by each of his rights. (MTR 1000)

The consent for the polygraph with Jessie Misskelley, Jr. had already been signed by his father. I went over this polygraph release form with him and

explained some of the words I thought he might have a problem with. He said he understood. He signed. I did not use any force, promises, threats or coercion to get him to sign the form or to take the polygraph test. The defendant was with me for approximately an hour for the polygraph exam. (MTR 1001) During the course of my involvement with the defendant I did not use any force, promises, threats or coercion.

After the completion of the polygraph examination, I asked Jessie Misskelley, Jr. to sign his polygraph sheet, which he did. I advised him of the test results. I attempted to conduct a post-test interview, but he refused to answer any questions. When I told him the results, he remained silent and slumped down in the chair with his head turned toward the opposite wall and he refused to answer any more questions. (MTR 1002)

When I saw he was not going to respond to my questions, I left my office, advised Inspector Gitchell and Officer Ridge of the polygraph test results and explained to them that Misskelley would not talk to me and perhaps someone should try to question him.

CROSS EXAMINATION OF BILL DURHAM BY DAN STIDHAM

There were three charts done on the polygraph test administered to Misskelley. Each chart would last approximately two minutes. I asked a series of 10 questions, and I must wait a minimum of 10 seconds between the subject's answer before I ask the next question. There were six minutes of the charts total for the entire polygraph examination. The other 54 minutes was spent going over the advise of rights form with him, and I spent at least 20 minutes with him explaining how the test works, the conduct of the test and what I expected him to do as far as cooperation of the test itself. (MTR 1004)

(MTR 1005-1009 is omitted as irrelevant to Mr. Baldwin's appeal.)

In my opinion Mr. Misskelley was being deceptive to the relevant questions dealing with his involvement in this homicide. My report only reflects the relevant questions dealing with the matter at hand. The other questions on the polygraph exam were used for different purposes. They do not deal with the matter at hand per se. In the pre-test interview I explained to Jessie Misskelley what a polygraph test was. (MTR 1010) After I informed Mr. Misskelley that he had flunked the polygraph exam he slumped in his chair, turned to his right, faced the opposite wall and made no response. In my opinion Mr. Misskelley was lying in his responses to

the other questions as well. (MTR 1011) He was being truthful in the very first question only. (MTR 1012)

It important to mix in control questions with relevant questions. If you ask relevant question directly in a row, then you are not running a zone of comparison polygraph test. You are doing a peak of tension test. It does not matter whether the questions were related. At the time I ran this test Jessie Misskelley, Jr. was not a suspect. We thought he was probably a reluctant witness. The purpose of the test was to basically see if he had information that might be helpful to us in the investigation of this matter and questions dealing with his involvement or knowledge or questions to determine whether he was involved in the murder itself. (MTR 1012) Had he been a suspect, I would have asked a different series of questions that would have been more specific and more direct.

(MTR 1013-1014 is omitted as irrelevant to Mr. Baldwin's appeal.)

I graduated from the Zahn Institute of Polygraph in Miami, Florida in December of 1981. I became licensed in the state of Tennessee in early 1982 through the Memphis Police Department.

Had I determined that Misskelley had been telling the truth and was not being deceptive on the questions, it would not have been my place to turn someone loose or incarcerate them. (MTR 1015)

DIRECT EXAMINATION OF BRYN RIDGE BY JOHN FOGLEMAN:

My name is Detective Bryn Ridge of the West Memphis Police Department. I was present when Detective Allen advised Misskelley of his rights and I signed the form as a witness. Detective Allen read the form to Misskelley. (MTR 1017) The defendant indicated that he understood these rights. I did not use any force, promises, threats or coercion to get him to place his initials by each of these rights. (MTR 1018) It was determined that we would request a polygraph examination. After the polygraph examination was completed, myself and Inspector Gitchell did the interrogation.

When he said he had received a phone call, that seemed to be important to the case to me. That is when I left the room. I was gone from the room for about a minute and Inspector Gitchell came out of the room and we decided we would tape the entire conversation from that point forward. (MTR 1020) This was at about 2:20 p.m. the tape was concluded at 3:18 p.m. During the entire time of the tape, there was no force, promises, threats or coercion used to get the defendant to say anything.

CROSS EXAMINATION OF BRYN RIDGE BY DAN STIDHAM

We did not tape record the entire interview with Misskelley. (MTR 1023) Misskelley's name came up in the investigation as having been possibly an

acquaintance of Damien Echols. It was further discussed that he may be part of a satanic group. Another witness had told us that she had seen Damien and Jessie at an occult meeting in Turrell, Arkansas. (MTR 1024) That witness took us to a spot at Turrell but we did not find any artifacts or other things involving satanism. No one else has been identified who might have been present at this meeting. On June 3, 1993, Jessie Misskelley, Jr. was not a suspect in these homicides. (MTR 1025) We did not have probable cause to pick him up and arrest him, he wasn't picked up to be arrested. We had determined that he may have been an acquaintance of Damien Echols and may have been involved in satanic activities. The purpose of bringing Misskelley down to the police station was to ask him about Damien Echols and where he was on May 5 and to find out if he had any information about the homicides. (MTR 1026)

Prior to the polygraph Misskelley told me that he believed that Damien was responsible for the homicides. This was not that unusual because there were rumors going around West Memphis on June 3 that Damien was involved. Misskelley denied that he had been to an occult meeting with Damien Echols. The polygraph test was just an investigative tool in order to help make a determination as to whether the interview would continue. (MTR 1027) Before the polygraph test, Misskelley told me that he was roofing on the day of the murders. I believed

him when he told me that. (MTR 1028) I informed Officer Durham of some of the points of the interview. He formulated the questions for the polygraph test, I did not. (MTR 1029) My notes reflect that Officer Durham came out of the polygraph test and told me that Mr. Misskelley was lying his ass off. (MTR 1030)

I probably would have questioned Misskelley further had officer Durham informed me that Misskelley was not being deceptive in the polygraph examination. We have had several post-polygraph examination interviews. If I determined that he was not a suspect before the polygraph, and he passed the polygraph, there still might have been reason to hold him. (MTR 1033)

I did not attempt to write down and preserve every question that I asked and every answer that was given by Misskelley. (MTR 1034) I did not write down that Jessie told me that the boys were killed at noon, because it is on the tape. That was the first time he told me what time it happened. The discrepancy as to time was not questioned at the time of the first statement by Misskelley, it was questioned later by Inspector Gitchell, (MTR 1036) during the second taped session. The time frames were not discussed with him prior to the tape recorder being turned on.

Misskelley told us prior to the tape recording part of the interrogation that there were several people in this occult. We tracked some of these people down

and talked to them and they denied being members. (MTR 1037) We've never been able to confirm that any of these people were in this cult. (MTR 1038)

In his recorded statement Jessie said that he, Damien and Jason walked to Robin Hood Woods at 9:00 in the morning. Everyone knows that is not what happened. The boys were in school that day. The victims were accounted for in school up until about 2:45 or 3 p.m. I knew that Misskelley's time frame was incorrect we he stated it. It did not occur to me at that point that I was getting a false confession. Later on in the tape Jessie told me that the boys skipped school. I knew that was wrong. (MTR 1038) That statement alerted me that something was wrong.

Later on in the statement he's telling me this stuff occurred at noon and the next question I asked him is, "Tell me what else happened that night," and Jessie immediately says it happened at night. Then on page 12 Jessie says, "My dad woke me up this morning", and I said, "Well, your time period may not be exactly right in what your saying," and Jessie says, "Right". Then I say, "I have gotten some real confusion with the times you're telling me. Now this 9:00 in the evening call you got." Now Jessie says, "All this stuff happened at night." I didn't do anything to make him change his mind. I don't think I suggested to him it was at night. (MTR 1039)

Misskelley told Detective Gitchell and me that he had received a telephone call from Jason and he heard Damien in the background. That was after Inspector Gitchell and I showed Misskelley a picture of one of the victims' bodies. This was also after we drew a diagram of a circle and put Misskelley, Damien and Jason in that circle. The sequences of those events were the diagram, then the photograph of the body, and then I left the room. (MTR 1040)

Gitchell showed the photograph to him. Jessie's reaction was to fixate on this picture. He kept looking at it. We were asking him questions and he was not answering, he just kept looking at the photograph. Gitchell was the one who drew the diagram on the piece of paper. The purpose of the diagram was to show that who ever committed this murder is inside the circle. Misskelley was asked "Are you going to be a witness or defendant or where are you going to be at in this circle? We want to know who was in the circle?" (MTR 1041) The dots on the outside of the circle represented witnesses, police, and who ever was not involved in the murders who may have had information. We were asking Jessie where he wanted to be on the diagram. We asked him whether he was in the circle or outside the circle. (MTR 1042)

After Misskelley was shown the picture of the body and the diagram we asked him continuing questions such as what do you know about this, do you know

anything about this, it just continued. I asked Misskelley if he would take a polygraph concerning his new statement and he responded that he would have to think that over. (MTR 1043)

The diagram is not mentioned in my notes because everything is not written down in my notes. After I left the room, Jessie informed Gitchell that he was present during the murders. We decided to record everything after that. Jessie never asked to go home and he never asked us to call his father. (MTR 1044) His father was up there later on that afternoon and I am not certain what time it was. I am not sure whether he asked to see his son. At this point I considered him under arrest. (MTR 1045) I knew at the end of the first tape that there was several things about the information that Misskelley had given us that was wrong. We did not try to clear this information up while the tape was on the first time, because there are times you take what you can get. When you have got a person talking, you let him talk. When you start contradicting them, they stop talking. (MTR 1048) This is the information he came forward with. Portions of that information proved to be correct. (MTR 1049)

We had tape recorders available to take a recorded statement. We had video cameras, but we were not capable of video recording the interrogation. We did not have the equipment set up. At the time of the statement I did not think Jessie was

of limited intelligence. He seems like any other 17-year-old in as far as my judgment. I had to explain to him what a penis was because that is not a term that is normally used by everybody. A 17-year-old should know what a penis is. He was pointing at his penis and saying he was cut on the bottom. We were trying to clarify what it is he was talking about. (MTR 1051)

In the recorded statement Jessie was asked if he would be willing to go to the crime scene and let him point things out to us. We did not do that because of time. We did not give him a confirmation polygraph test. I can not tell you why. We were busy that night. I thought it was very important for us to get arrests done and searches done.

I know that portions of the statement are false. No attempt was made at that time to look into Jessie's alibi. When Jason Baldwin's parents talked to me June 4, 1993, I told them we would check into Jason's alibi and determine if it was true. I may have said, "All we want to do is talk to Jason and if he tells us where he was and his alibi checks out, he's a free man." (MTR 1053)

I am not familiar with portion of the Police Officer's Bill of Rights that requires that anytime the police officer is interrogated that only one officer can interrogate him at one time, or the provision that states anytime a police officer is interrogated the entire interrogation has to be recorded from beginning to end.

I was not in the building when Jessie Misskelley's polygraph test was administered, I had gone to lunch. (MTR 1055)

REDIRECT EXAMINATION OF BRYN RIDGE
BY JOHN FOGLEMAN

I did ultimately talk to Misskelley's employer and determined that Jessie was wrong when he told us that he was working that day. (MTR 1057) Misskelley told us that he had gotten a phone call from Jason and that he had gotten a telephone call at night. He said, "I went home about noon. Then they called me at 9:00 that night. They called me." (MTR 1058)

DIRECT EXAMINATION OF INSPECTOR GARY GITCHELL
BY JOHN FOGLEMAN

My name is Gary Gitchell and I am the Inspector for the West Memphis Police Department Criminal Investigation Division. Ridge and I interviewed Misskelley. During the interview I did not use any force, promises, threats, or coercion to get the defendant to do anything or make any statement. When we first began interviewing him, that portion of the interview was not taped. (MTR 1059) We did not know what would come out of the interview. The reason for us bringing him in was that we thought he could give us some assistance in the case. During the course of the interview, I walked out of the room for a moment to get a picture and a cassette recorder and a tape that I put into the recorder. I first wanted

to show him this picture just to see what kind of response I would get. The picture I am referring to is State's Exhibit 12 depicting one of the victims' body. (MTR 1060) Upon viewing the photograph, Misskelley immediately went back into the chair, and he just grasped the picture and kept holding it. He would not let go of the picture. This occurred perhaps an hour and a half or two hours after we began the interview. (MTR 1061)

After I showed him the picture, I played this portion of the tape for him

BY MR. FOGLEMAN: The tape says, "Nobody knows what happened but me".

(The witness continues:) After I played that short portion of the tape, the defendant immediately said, "I want out. I want to tell you everything." Detective Ridge left the room shortly after that to get a recording device. Jessie then mentioned that he was in the woods and that he started crying in the woods. This was not the day of the murders, but this was a couple of weeks afterwards. (MTR 1064)

Misskelley then told us that he was present when the murders occur. There were no force, promises, threats or coercion used to get Misskelley to say this. We then advised him of his rights a third time and begin the tape. (MTR 1065) The taped interview ended at 3:18 p.m. Subsequently I went back and obtained some

further information from the defendant. It was about 5:00 p.m. when the second statement was made. I was going back and forth to clear up some questions from the original interview. (MTR 1066)

VOIR DIRE OF GARY GITCHELL BY DAN STIDHAM

There is not a gap in the tape, the sound you hear is (MTR 1069) the tape being turned off. I turned it off and walked out of the room. I walked back and forth in the room because I was conferring with Mr. Fogleman then returning. The tape was turned off every time I went outside the room. I was outside the room probably just minutes. (MTR 1070)

CROSS EXAMINATION OF GARY GITCHELL
BY DAN STIDHAM

I did not show Mr. Misskelley any other photograph then the one I mentioned previously in direct examination. (MTR 1071) I am not positive exactly what time we began recording the second tape I think it was about 5:00 p.m. I did not talk with him until I went back in on the second tape to ask some specific questions after conferring with the prosecutor. That is the only time I went back to talk to him. After those questions were answered, I never went back and talked to him again. Sometime after 3:18 p.m., I meet with John Fogleman, the Prosecuting Attorney. (MTR 1072) Each time that I turned the tape recorder off during the second interview I went outside the room and talked to Mr. Fogleman.

Mr. Fogleman may have told me that there were some questions that we needed to get cleared up. This was at about 5:00 p.m. (MTR 1074) There are three gaps in the second tape.

In the first taped interview, I was not really shocked when Jessie told me that the boys were tied up with a brown rope. We found them tied with shoe strings. It did bother me that Misskelley got this information wrong, but they could have been tied another way before they were tied that way. (MTR 1075) When Misskelley told me that they were tied up with a brown rope I did not show any concern in my voice, I glossed over it like it was no big deal. (MTR 1076)

There is a picture of the victims with their names underneath their photographs on the wall in the office. Jessie pointed out on this picture which victims he was referring to. That is my writing on the top of the picture. (R 1076)

I did not take any notes during the first taped interrogation. I wanted to concentrate on what Jessie was doing or saying. I am not sure whether I played the tape where the little boy says, "I'm the only one who knows what happened," first or showed Jessie the circle with the dots. I think the sequence was the diagram, then the picture of the body, and then the tape. After looking at the picture, and the diagram and hearing the tape Misskelley said that he wanted out. (MTR 1077) It was a circle with people on the inside and police outside. (MTR 1078) I do not

believe that I put three dots in the circle and said this is you, Damien and Jason. I could have done it that way but I do not recall doing it that way. The dots on the outside of the circle indicate police officers.

The second taped statement starts out with me saying, "You told me earlier that this happened at 7 or 8 p.m." I believe that he told me this earlier during the first taped statement. (MTR 1082)

I do not know exactly when it was that he and I had talked about this earlier. I was thinking it was during the time we interviewed him. If we did not talk about it during the first taped interview then it must have been prior to the taped statement that Ridge and I did, the first taped statement. I do not know when for sure when we talked about it earlier. I am not sure whether we talked about it between the first recorded statement and the second tape recorded statement. To answer that honestly, I am not sure. (MTR 1083)

I did not take Jessie out to the crime scene because I was afraid the news media may see him. We did not want Jason and Damien to know what was going on. It was a security risk to us. I did not think to leave the tape recorder on at the end of the first interview and clear up the inconsistencies in his statement. (MTR 1085) It was not until I talked to Mr. Fogleman later that I realized that I needed to clear up some things. (MTR 1086)

(MTR 1087-1312 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF DR. FRANK PERETTI BY BRENT DAVIS

My name is Dr. Frank Peretti, Associate Medical Examiner for the State of Arkansas. I am a forensic pathologist. I perform medical legal autopsies for the State of Arkansas to determine cause and manner of death. (MTR 1313)

I performed autopsies on the bodies of Michael Moore, Steve Branch and Chris Byers. I took photographs of the bodies as part of my customary procedure to document the injuries. (MTR 1316) The body of Michael Moore was bound, at the time of the autopsy in a hog-tied fashion with shoelaces. The wrists were bound to the ankles bilaterally with black shoelaces on both sides. (MTR 1320) Michael Moore sustained multiple injuries. We have head injuries. We also have neck, chest and abdominal injuries. We have lower extremity injuries and back injuries, upper extremity injuries and injuries to the inside of the body plus evidence of submersion. (MTR 1321) The injuries exhibited in State's Exhibit 61A were inflicted by an object with a broad surface, which could possibly be a log approximately three to four inches in diameter. (MTR 1323) The injuries depicted in State's Exhibit 62A were inflicted with an object of smaller diameter, such as a piece of wood, a two by four, a stick or broom handle are capable of inflicting these types of injuries that you see. (MTR 1323)

With regard to my examination of the anal area of Michael Moore, I found that there was anal dilatation, which means a loosening or slackening of the muscles surrounding the anal area. There was also some abrasions, scrapes and the postmortem lividity, which is a settling out of the blood vessels after death. (MTR 1324)

(MTR 1325-1357 is omitted as irrelevant to Mr. Baldwin's appeal)

DIRECT EXAMINATION OF OFFICER MIKE ALLEN BY JOHN FOGLEMAN

I am the same Officer Mike Allen who testified earlier in this trial. On June 3, 1993, I was assigned the task of making contact with Jessie Misskelley, Jr. Mr. Misskelley was not a suspect at that time; we wanted to ask him questions about Damien Echols. I went to the home of Jessie Misskelley, Jr. I was told that Jessie Misskelley, Jr. was not there. (MTR 1358) I contacted Jessie Misskelley, Sr. and inquired as to the whereabouts of Jessie Misskelley, Jr. (MTR 1359)

Jessie Misskelley, Sr. went and picked up Jessie Misskelley, Jr. and brought him back to the repair shop. I asked Jessie Misskelley, Jr. if he would come to the West Memphis Police Department to talk to me about two individuals that lived down in Lake Shore. To be as specific and precise about exactly what I said to him, I asked him, "Would you mind coming up to the police department to talk to me about some friends of your out at Lake Shore?" He said, "Sure." (MTR 1360)

He rode with me in the front seat and was not handcuffed. We arrived back at the police department around 10:00. I filled out a subject description form. (MTR 1361)

After completing the subject description form, I talked to the defendant, and Detective Ridge was also present. (MTR 1362) After a while into the interview, I felt that everything he was telling me was not the truth, and I advised him of his Miranda rights. I did not use any force, promises, threats or coercion to get him to sign the rights form, or make any statement. (MTR 1363)

(MTR 1364-1365 is omitted as irrelevant to Mr. Baldwin's appeal.)

The defendant and I left the police department to get a permission form signed by his father. We found his father, who signed the permission form, and we returned to the police department. (MTR 1366) After returning to the police department, I had no further involvement with the defendant. (MTR 1367)

CROSS EXAMINATION OF MIKE ALLEN BY DAN STIDHAM

The reason by Inspector Gitchell asked me to make contact with the defendant was because his name had come up as a person that was a friend of Damien Echols. On the morning of June 3, Mr. Misskelley, Jr. was not a suspect. (MTR 1368) After I filled out the subject description form, I talked to the defendant about Damien Echols, as far as his friendship with him. He told me that

he knew who Damien was. The defendant told me some things about Damien Echols, but he told me that he didn't know anything about the murders. (MTR 1369)

I asked him his whereabouts on the day of the murders and he told me that on the date of the murders he worked with Ricky Dees. He told me that he worked Tuesday, Wednesday and Thursday and that he worked until 5:00 each evening that week. From the information that I had received from the other officers, some of the things that he was saying did not agree with what they had said, and I didn't know at that point who was telling the truth. I did not make any attempt on June 3, 1993, to call Mr. Dees and see if in fact if Mr. Misskelley was working with him that day. (MTR 1370)

I was not aware of the fact that Mr. Misskelley has a mental handicap. I have dealt with mentally handicapped people before, but I did not know that he was mentally handicapped at the time or if he is mentally handicapped now.

The police department had received some information that Mr. Misskelley had been to a cult meeting with Damien Echols. (MTR 1371)

At a previous hearing, I testified that Damien Echols was a suspect from the beginning of this case. On June 3, 1993, I do not specifically remember having a conversation with Jessie, Jr. or Jessie, Sr. or about the \$30,000 reward. If it was

brought up, I would probably have said something about it, but I do not specifically remember it. If someone had asked me on that day I would have told them what the reward was, I would have told him that there was a reward available. I also testified previously that I couldn't remember exactly all the questions that I had asked Mr. Misskelley on the morning of June 3, 1993. My notes do not reflect everything that was asked, just the highlights of the conversation. (MTR 1372)

REDIRECT EXAMINATION OF MIKE ALLEN
BY JOHN FOGLEMAN

On June 3, 1993, during my conversations with both Mr. Misskelleys, I did not bring up anything about the reward. They may have brought it up. (MTR 1373)

RECROSS EXAMINATION OF MIKE ALLEN BY DAN STIDHAM

Damien Echols was certainly one of our top three suspects on June 3, 1993. I knew that Jessie Misskelley, Jr. was 17 years old on June 3, 1993. I did not in any time get his father's permission to waive his Miranda Warnings. (MTR 1374)

DIRECT EXAMINATION OF OFFICER BILL DURHAM
BY JOHN FOGLEMAN

My name is Bill Durham, detective and polygraph examiner for the West Memphis, Arkansas Police Department. (MTR 1374) On June 3, 1993, I interviewed Jessie Misskelley, Jr. I advised him of his rights, and filled out a rights form with him which he signed. (MTR 1375)

I did not use any force, promises, threats or coercion to get him to place his initials by each right or to have him sign the form. After advising the defendant of his rights, I had a hour-long conversation with him. During the course of this conversation he did not provide me with any information or details about the murders. (MTR 1376)

CROSS EXAMINATION OF BILL DURHAM BY DAN STIDHAM

I do not have any special training in dealing with people who are mentally handicapped. During the hour long conversation that I had with Mr. Misskelley on June 3, he denied all involvement in these murders. (MTR 1377)

(MTR 1378-1382 is omitted as irrelevant to Mr. Baldwin's appeal)

During the time that I questioned Mr. Misskelley, I was not questioning him about his involvement in the murders the entire time. The main focus of my questioning was whether he was an associate of another person that we were looking at as a possible suspect, whether he was involved in any of these alleged

cults that we had heard about. (MTR 1383) I also asked him whether he knew who may have possibly been responsible for this crime. I was not satisfied with the responses I was getting from the defendant. (MTR 1384)

DIRECT EXAMINATION OF DETECTIVE BRYN RIDGE
BY JOHN FOGLEMAN

I am the same Bryn Ridge who previously testified herein. On June 3, 1993, I participated in some questioning of the defendant Jessie Misskelley, Jr. (MTR 1385) Going back to the day the bodies were found, we made efforts to keep bystanders away from the crime scene and to keep them from seeing the victims and the injuries they suffered. Going back to June 3, after Detective Durham talked to the defendant, I questioned the defendant along with Inspector Gary Gitchell. During the questioning of the defendant by Gitchell and myself we did not use any force, promises, threats or coercion to get him to make any statements to us. We began our interrogation of the defendant at approximately 12:40 P.M. (MTR 1386)

At the beginning of the interrogation the defendant was not considered a suspect, but later on it was determined that he was a suspect and we began to tape record the interrogation. Before we turned on the tape recorder, he told us that he had attended some kind of Satanic cult meeting, and that he was a member of a Satanic cult. He told us that they had meet in various parts of the state, generally

on a Wednesday, generally late in the evening, and even into the night. He stated that boys along with girls would attend and that there would be sessions of sex and that dogs and animals had been killed, and in fact portions of those animals had been eaten by the members. (MTR 1387)

He also talked about some phone calls that he had received from Jason Baldwin in which he could hear the voice of Damien Echols in the back ground. He said that he had received three phone calls. One was on the day before the murders, one was on the morning of the murders and the last one was the night after the murders. With regard to the phone call he'd received the day before the murders, he something to the effect that they were going to go somewhere and get some girls the next day or something to that effect. This information is contained in my notes of the interrogation. One page one of my notes it reflects that the defendant stated that he had received a phone call from Jason Baldwin the night before the murders. (MTR 1388)

My notes reflects that Jason Baldwin told the defendant that they were going to go out and get some boys and hurt them. The defendant stated that he could hear Damien in the background. Jessie said he knew what they were going to do the next day. Jessie also told us about a briefcase that showed up at some of these meeting they would have. The briefcase contained a couple of guns, some

marijuana, and some cocaine. Mr. Misskelley told us that there was a picture in a briefcase that he saw before the boys were killed. Mr. Misskelley told us that there was a picture in the briefcase of the boys that were killed. He further told us that Damien had been stalking these boys and watching them. (MTR 1389)

Mr. Misskelley told us that he had received a phone call after dark after the murders in which he could hear Damien in the background saying, "We did it, we did it. What are we going to do now? What are we going to do if somebody saw us?" During the course of the interrogation, Inspector Gitchell showed him a picture of one of the victims. The picture is State's Exhibit 76 and depicted the body of Chris Byers. (MTR 1390)

The circumstances in which the photograph was shown to the defendant was that he had gotten to a point where he had almost not been talking. He slowed down in giving us any information, at which time Inspector Gitchell left the office and came back with this picture. (MTR 1391)

The defendant picked up the picture and sat back in his seat and became fixated on the picture. I could tell he was tense, and he just intensely looked at this picture. We took the picture away from him and laid it on the desk and he just continued to look at the picture. Inspector Gitchell then moved the picture out of his sight and we continued to talk to him. Then Gitchell played a tape where a few

words were said by a young person. The person's voice was somebody that the defendant was acquainted with. (MTR 1392)

After we showed Jessie the picture of the body and played the tape, Jessie said something to the effect that he wanted out, and he wanted to tell us everything at which time we started asking him some more questions. We asked about this third telephone call he had received and I felt this was extremely good information and that we were on the verge of getting a good witness. I decided it was time to take a break, and I wanted to inform Sergeant Allen of this information. At this point I did not have any reason to suspect that the defendant was involved. Our demeanor in how we were questioning him was just mostly we were just as nice as we could be. We were not hollering. We were not loud. It was just as though I'm talking to you right now. (MTR 1393) There was not anything except the incident with the picture where you could see stress on the defendant.

After the incident with the tape recorder, the defendant stated "I want out of this. I want to tell you everything." In addition, before I left the room, Gitchell showed Mr. Misskelley a diagram of a circle. This is an interrogation technique that Gitchell used. It is basically a circle that will be drawn on a piece of paper. There were dots all over the paper. The defendant was asked where he was in the

diagram. "We asked him are you a witness, or are you a defendant?" That is when I left the room.

Gitchell also came out and informed me that the defendant had just told him that he was there when the boys were killed. Everything that was said from that point on was tape recorded. (MTR 1394)

During the conversation that was tape recorded, the defendant told us he had a pair of blue and white Adidas tennis shoes. He said that he wore these shoes on the night of the murders, and that he had given those shoes to a subject by the name of Buddy Lucas. State's Exhibit 95 are the shoes that were recovered from Buddy Lucas. (MTR 1395)

CROSS EXAMINATION OF BRYN RIDGE BY DAN STIDHAM

These tennis shoes, State's Exhibit 95, were sent to a Crime Lab for analysis. Nothing with regard to the tennis shoes linked Mr. Misskelley to the scene of the crime. Prior to the tape recorder being turned on, I asked Mr. Misskelley questions about his participation in a cult and his whereabouts on May 5. At this point, I did not consider Mr. Misskelley a suspect. (MTR 1396)

We had received some information that a cult like group existed and that Jessie Misskelley had been to one of these meetings. This meeting was held somewhere in the area of Turrell, Arkansas. I was taken to a spot by a witness

where the meeting was supposed to have taken place. (MTR 1397) I did not find anything that would suggest that a cult meeting had taken place there. In Jessie's statement, he tells us several people that are in this cult with him. We were never able to confirm that any of these people were members of this cult. (MTR 1398)

We were investigating this as a cult killing. Damien Echols was one of several suspects that we were investigating as being responsible for these murders. (MTR 1399) There were rumors in West Memphis that Damien was involved in these murders. (MTR 1400)

Gitchell and I did not consider Mr. Misskelley a suspect until he told us that he was present at the time of the murders. That is when we decided it was important to record all of the interrogation from that point on. I did not write down everything and every question that I asked him prior to turning on the tape recorder. My notes do not reflect everything that was discussed. I cannot remember everything that was asked and answered during the interrogation, prior to the tape recorder being turned on. Initially Mr. Misskelley denied any involvement whatsoever in the murders. He told us that he was roofing with Ricky Dee's on the day of the murders. I did not make any attempt on June 3, 1993, to verify this information. (MTR 1401)

The diagram of the circle with the dots in the middle and the dots in on the outside happened right before the defendant told us that he was present when the boys were killed. The tape recorded message with the little boys voice on it was played to the defendant just a few minutes before he was shown the diagram.

(MTR 1402)

The purpose for showing Jessie the photograph of the body, playing the tape of the little boys voice and showing him the diagram was that there were times during questioning when Jessie would not talk. He was getting slower with the information. He's telling us the same thing over and over. Those techniques were used to evoke a response. It did not occur to me on that day that Mr. Misskelley had a mental handicap. I did not have any special training in dealing with people with mental handicaps. I don't know whether showing him a picture of the body scared him. I guess you are scared into making a statement. (MTR 1403)

I did not think it would scare him when Gitchell drew this circle and made the diagram. I thought that probably the tape recorded statement with the little boys eerie voice would scare him if he was involved. Gitchell did that to invoke a response from the defendant. The circle diagram was just a circle drawn on a piece of paper. There were dots drawn on the piece of paper. It was shown to Mr. Misskelley and we asked him where he was on this diagram. Was he inside the

circle with the people that everybody was looking for, or was he on the outside of the circle. We asked him where he was, and he replied, "I want out."

I testified earlier that when the defendant looked at the picture of the boys body he was fixated. He was kind of frozen and just sat there and looked at it. (MTR 1404) I think that would be indicative of fear. Misskelley was at the station house from 9:30 that morning up until the time that he was placed under arrest. As far as I was concerned, he was under arrest when he confessed to the crimes.

There was a window of opportunity when the murders could have occurred, which we found between 6:30 on May 5 until approximately 1:30 the next day on May 6 when the bodies were recovered. I was shocked when Jessie told us on the tape that the little boys were killed at noon, because I didn't feel that the murders took place at that time. (MTR 1405)

I knew that the little boys were in school that day and I also knew that there were eyewitnesses that placed them near their homes at 6:00 or 6:30 P.M. on May 5th. Jessie was not asked about the time of the killing again until the second tape which was conducted by Inspector Gitchell. I was also shocked when Jessie told us on the tape that the boys were tied up with a brown rope. (MTR 1406)

At some point they may have been tied up with a brown rope, but that is not the way we found the bodies. There was a lot of pressure on the police department to solve this crime. (MTR 1407)

REDIRECT EXAMINATION OF BRYN RIDGE
BY JOHN FOGLEMAN

During Jessie's tape recorded statement, I did not interrupt him in the middle of his confession and question what he was telling us because we wanted him to keep talking. I did check with the person that he was working with on May 5th and found out that Jessie wasn't telling us the truth about how long he had been working that day. I discovered that he had gotten off work about 12:30 that afternoon. (MTR 1408)

In regard to the circle diagram, there were dots all over the paper. I do not remember how many dots were inside the circle.

We discovered sites near Highland Park and Lake Shore where animal carcasses were found and graffiti was discovered. There were pentagrams, upside down crosses and writings such as AC/DC, heavy metal rock music type stuff. (MTR 1409)

RECROSS EXAMINATION OF BRYN RIDGE
BY DAN STIDHAM

With regard to the graffiti, it's possible that this could have been a bunch of kids just getting together and playing loud music and drinking beer. (MTR 1410)

REDIRECT EXAMINATION OF BRYN RIDGE
BY JOHN FOGLEMAN

I would not expect to find a bunch of animal carcasses around if it was just a bunch of kids drinking beer and playing loud music. I would not expect any of the people that Jessie Misskelley identified as being possible members of this cult, to admit their involvement in the cult or that they had been eating dogs.

RECROSS EXAMINATION OF BRYN RIDGE
BY DAN STIDHAM

I cannot prove that any of those people that Jessie named were in a cult.
(MTR 1411)

DIRECT EXAMINATION OF INSPECTOR GARY GITCHELL
BY JOHN FOGLEMAN

My name is Gary Gitchell and I'm the Inspector for the West Memphis Police Department Criminal Investigation Division. (MTR 1412) On June 3, 1993, I had a conversation with the defendant. I began talking to the defendant, along with Detective Ridge, at approximately 12:40 P.M. Initially, we were not making any attempts to preserve the conversation. Detective Ridge may have been

taking some notes. I do not take notes when I talk with someone because I want to be able to listen and have my complete attention on the conversation. During the course of my conversation with Mr. Misskelley, I showed a photograph of one of the victims bodies to the defendant. (MTR 1413) I also played a small portion of a tape for the defendant.

During our conversation with Mr. Misskelley, I also showed the defendant a diagram. I cannot specifically remember, but I think I showed the defendant the diagram first. Then some time passed and then there was the picture. Next, I played the tape recorded statement of the little boy. In describing the diagram, I was asking him to quit straddling the fence and be on one side or the other. I drew a circle, and I had several dots within the circle and several dots outside the circle. I then asked Mr. Misskelley, "Which side is he going to be on. On the outside or inside?" No one in particular was on the inside of the circle, no one was named. But I did indicate to the defendant that law enforcement was on the outside of the circle. The ones that were on the inside of the circle were the ones responsible for these crimes.

When I showed the diagram to Mr. Misskelley, he immediately said he wanted to be on the outside of the circle with the law enforcement officers. A short time later is when I stepped out of the room and obtained the picture of the

body. I also got a recording of a phrase that I wanted to play the defendant. (MTR 1415) I knew that the defendant knew who the boy's voice would be. State's Exhibit 76 is the photograph of the victims body that I showed the defendant. When I showed it to the defendant, he took it into his hand and he just went back into his chair. He looked in on it and became fixed on the photograph. I took the photograph from his hand and placed it on the table where we were working. A few minutes later, I played the tape for him. (MTR 1416)

The voice on the tape said, "Nobody knows what happened but me." After I played the tape the defendant immediately stated that he wanted to tell us about the homicides. At some point thereafter, Detective Ridge left the room. After Detective Ridge left the room, Jessie indicated to me that he was present during the time that the boys were murdered. (MTR 1417) At some point the defendant said that he had gone back to the scene, but I do not know whether that was before or after he admitted being there when the murders took place. It gets confusing even for me to remember the exact events. He said that he went out to the woods where the murders occurred and said down and cried. (MTR 1418)

Jessie was crying. We never yelled at him or were mean to him or threatened him or promised him anything. I went out of the room and instructed

Detective Ridge to get a tape recorder. After the tape recorder was brought into the room, we advised him of his rights for the third time that day. (MTR 1419)

(The court admitted the first of the statements of the defendant as follows:)

FIRST STATEMENT OF JESSIE MISSKELLEY, JR. 6-3-93

My name is Jessie Misskelley, Jr. On May 5, 1993, I received a phone call from Jason Baldwin early in the morning. He called me and asked if I wanted to go to West Memphis with him, and I told him no, that I had to work and stuff. He then told me that he had to go to West Memphis with Damien Echols. They went to West Memphis and I went with them. Yes, it was about 9:00 a.m.

We walked to Robin Hood Woods behind Blue Beacon Truck Wash. When I was there I saw Damien hit this one boy real bad, and then he started screwing them and stuff. Michael Moore was the boy that Damien hit. No, (looking at newspaper photos of boys provided by police) I mean Chris Byers. Damien hit him in the head with his fists and bruised him up real bad. Then Jason turned around and hit Steven Branch.

Then the other boy, Michael Moore, took off running, so I chased him and grabbed him until Damien and Jason got there, and then I left. When all three boys were back together, I was standing up there by the service road. I was in the woods when Damien hit the first boy. All three boys were tied, they had their clothes off

when they were tied. Damien and Jason took their clothes off after they beat them up. After they took their clothes off, they tied up their hands and then they (Damien and Jason) started screwing them and stuff, cutting them and stuff. I saw this, then I took off running, and went home. They called me later and asked me why I didn't stay, I told them I just couldn't. I couldn't stand to see what they were doing to them.

I saw Jason cut one of the little boys with a knife. He cut one of them in the face and another one at the bottom. Yes, I mean in the groin area. Yes, I know what a penis is, that is where he was cut at. Yes, (looking at police photo of the Byers boy) that's the boy that was cut at the bottom. I seen Jason cutting him real close to his penis, I seen some blood, and that's when I took off. Yes, I was close to the creek at that point.

It was noon when the boys were killed. The boys skipped school that day. They were going to catch their bus and stuff, and then they were on their bikes.

Damien had been watching the little boys before the day they were killed. Damien had a group picture of the boys in their houses. I seen this one picture at a cult meeting.

Yes, the little boys skipped school that day. Damien and them left before I did, I met them down there and stuff early in the morning. I got there about nine in the morning.

I left and went home about noon, and they called me about nine that night. They asked me why I left so early and stuff, and I told them I couldn't stay there and watch that no more. Jason was the one that called me. I could hear Damien hollering in the background saying, we done it, what are we going to do if somebody saw us?

I was there until they tied them up, then I left. They laid the knife down beside them and I saw them tie them up. That's when I left. The boys were unconscious. After I left, they done more to the boys. They started screwing them again.

When I saw them, Jason was sticking his thing in one little boys mouth, and Damien was screwing one of them up the ass and stuff.

Yes, only their hands were tied, they couldn't run off because they were beat up so bad they could hardly move.

Yes, Damien did hit the first one with a big old stick. Yes, Jason's knife was about six inches long, and it was a folding knife. No, Damien did not have a knife

or a briefcase that day. I did see them with a briefcase before out at Lakeshore.

Yes, I saw that picture in the briefcase, I think when we had that Cult.

I have been in that cult for about three months. We go out and kill dogs and stuff, and then we carry girls out there to have sex. We have an orgy. We usually skin the dogs and make a bonfire and then eat the dogs, the meat off their legs. If you don't eat the meat, you don't get in the cult. There was never any violence at the meetings.

The day the boys were killed, we were playing in the water. The boys didn't get into the water. Damien seen them and he hollered for them to come over there.

I don't think I would have no problem out of it. (Going to the scene to point out where these things took place) I didn't hit or rape any of these boys. I didn't kill any of the boys. I (pointing to the police picture) saw Byers get killed. Damien choked him real bad with a big old stick. Yes, he choked him until he was like dead. I don't know if the other boys were actually killed while I was there or not. On the way home, I was running. I got sick and threw up.

I didn't get close to the boys, and did not have any blood on my clothes. Jason was wearing blue jeans and army like boots. Jason was wearing a "Metallica" shirt. Damien had on black pants, boots and a black shirt. Jason's blue

jeans had holes in the knees. I was wearing my Adidas tennis shoes and a white tee shirt.

I was home about 30 minutes or an hour when I got the phone call from Jason. Jason and Damien have not talked to me since this happened. Damien did not know about the guy I seen behind the Goodyear place, that I told the police about.

I think they (Damien and Jason) are sick, they out to be put away for awhile. I didn't come forward with this information because I was scared.

CONTINUING DIRECT EXAMINATION OF GARY GITCHELL
BY JOHN FOGLEMAN

In the defendant's statement, there was some reference to pictures from a newspaper. The defendant was attempting to name the boys as far as the injuries and we used a picture. (MTR 1421) The defendant was pointing out what damage was done to the boys. Detective Ridge read the caption underneath the picture at the time. At one point the defendant named one boy but he named the incorrect boy. He picked out the right boy who was castrated but he called him by the wrong name. (MTR 1422)

At times he was pointing to himself. That is why we mentioned, on the tape, "Are you speaking of the groin area?" That is where the defendant stated, "At the bottom". The first tape recorded session ended at 3:18 P.M. Later on I did a

follow up interview that was tape recorded. I did not have any conversation with the defendant in between the two tape recorded sessions. (MTR 1424)

We had made some reference to him going out to the crime scene with a camera and showing us things. This was not done because of the media coverage of this case. Many times when we would go out to the crime scene we were followed by the media. We did not want to hinder any arrest of the other suspects. (MTR 1425)

The defendant mentioned Jason Baldwin in his statement, and the clothes that he was wearing at the time of the murders.

(MTR 1426-1435 is omitted as irrelevant to Mr. Baldwin's appeal.)

After Mr. Fogleman arrived at the department, he requested that I have some further conversation with the defendant, which I did. This conversation was tape recorded as well. (MTR 1436)

(The court admitted the second of the statements of the defendant as follows:)

SECOND STATEMENT OF JESSIE MISSKELLEY, JR. 6-3-93

I would say it was about five, or six when the little boys came up to the woods. I didn't have my watch on at the time. Yes, I told you earlier it was seven or eight. It was starting to get dark. Damien and Jason and I got there about six.

I was wearing a white shirt with a basketball deal on it. I had some Adidas tennis shoes. Buddy Lucas has these shoes now.

Damien tied the boys up and Jason helped him. They used a brown rope to tie up the boys.

The Byers and the Branch boys were raped by Damien and Jason. Damien raped the "Byers" boy and Jason raped the Branch boy. Damien and Jason had oral sex with the boys, Branch and Byers.

They kept the boys quiet by putting their hands over their mouths and sticking Damien's shirt in their mouths. They also stuck their things in their mouths. I didn't see Damien or Jason suck the little boys things. No, I didn't see them pinch the little boys penis. Yes, they were putting their things in the two boys' mouths and holding them by their ears.

CONTINUING DIRECT EXAMINATION OF
GARY GITCHELL BY JOHN FOGLEMAN

In this statement Jessie was demonstrating to me how the co-defendants were holding the boys by their ears and forcing oral sex. There are places during this recorded statement where I stopped the tape recorder and walked out of the room to confer with Mr. Fogleman. (MTR 1437)

We did not talk to the defendant in between the first taped statement and the second taped statement. (MTR 1438)

(MTR 1439-1442 is omitted as irrelevant to Mr. Baldwin's appeal.)

CROSS EXAMINATION OF GARY GITCHELL
BY DAN STIDHAM

Detective Ridge and I did not rehearse Jessie's story before we turned the tape recorder on. His statement was a contemporaneous thing after we showed him a photograph, the diagram of the circle and played him the tape. I believe there was a lot of repetition on Mr. Ridge's part of what Jessie had said. (MTR 1443)

(MTR 1444 -1446 is omitted as irrelevant to Mr. Baldwin's appeal.)

Jessie told us in his first taped statement that he, Jason and Damien went down to the woods and that they got down there about 9:00 in the morning. We confirmed that Jason Baldwin went to school that day, May 5, 1993. On page 9 of transcript of the defendant's statement, Jessie says that the murders took place around noon. I knew this had to be incorrect because the victims were still in school at noon on that day. (MTR 1447)

On the same page of the transcript, he makes reference to the fact that the little boys had skipped school that day. The little boys did not skip school that day, but Jason was to skip school that day, he did not. In Jessie's second taped statement, he told us that the little boys were tied up with a brown rope. I believe that the defendant did tell us a good bit of the truth, but sometimes defendants try to lessen their activity in a statement. That's common. Jessie simple got confused.

The Prosecuting Attorney was obviously concerned about some of the things that Jessie was getting wrong, and that was the purpose of the second recorded statement. (MTR 1449) I did not attempt to stop him during the first taped statement because I wanted him to go ahead and talk.

Mr. Fogleman later told me that he had some serious questions about the first statement and he asked me to go back in and talk to the defendant again. We kept it a secret as to what happened to these little boys and what injuries they sustained. (MTR 1450)

(MTR 1451-1452 is omitted as irrelevant to Mr. Baldwin's appeal.)

Dalton Shane Kellon was picked up for questioning. He related to me that he had heard rumors of castration and mutilation and the boys were beaten to death. Defendant's Exhibit Two are my notes concerning my questioning of Dalton Shane Kellon. (MTR 1453)

Defendant's Exhibit Three is an article by the Associated Press says that the victims' hands were tied and their genitals had been removed with a sharp instrument. The Associated Press apparently intercepted this message from a computer printout that was generated by the West Memphis Police Department and intended for other law enforcement agencies.

I have yelled at people and got in their face when I have interrogated them in the past (MTR 1454).

REDIRECT EXAMINATION OF GARY GITCHELL
BY JOHN FOGLEMAN

I did not yell or get in the defendant's face when I interrogated him on June 3rd, 1993. I did holler and get in peoples face on at least two occasions with suspects that I interrogated in this case, but I did not do this to the defendant. (MTR 1455)

The information on defendant's exhibit two, from Dalton Shane Kellon, does not mention specifically which victim had the cuts to the face or who was castrated. This is the information that basically was contained in the newspaper. It is not unusual, when you take a confession from a defendant, for him to have some details that are wrong.

As to whether I am aware of evidence that would indicate that there had been some sort of binding other than the shoestrings, some markings of their legs. I am testifying from my own personal observation. In State's Exhibit 59B, I observed the mark across the leg here. (MTR 1456) I observed this bruising, I believe it was on the left leg stretching approximately three and a half inches of the leg. (MTR 1457) I observed a pattern. (Witness drawing pattern.) Exhibit 105A

is what I observed on his leg. (MTR 1458) (State's Exhibit 105A is received in evidence.) (MTR 1459)

I am not aware of anybody other than the defendant who told us that there was only one of the victims that had their genitals removed and that one of them had a cut to the side of the face, and that there had been some grabbing of the ears. (MTR 1460)

(MTR 1461-1470 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF VICTORIA HUTCHESON
BY JOHN FOGLEMAN

My eight year old son was really good friends with Chris and Mike and Steve (MTR 1471), and they ran together, but Steve more or less ran with my older boy. Steve, Aaron and Chris were all in the same class together. While living in the Highland Park area I became acquainted with the defendant, Jessie Misskelley, Jr. We really became close friends. At some point after the murders, I decided that I wanted to play detective. (MTR 1472)

I had heard some things about Damien Echols and I wanted to try to learn more about him. I had Jessie Misskelley introduce me to Damien. Don Bray of the Marion Police Department gave me his library card and I went and checked out some satanic books. At this time the West Memphis Police Department was not aware of what I was doing. I took these books on Satanism and spread them out on

my coffee table like it was everyday reading. (MTR 1473)

Later Damien invited me to go an Esbat meeting. An Esbat is an occult satanic meeting. I went to this meeting with Damien and Jessie Misskelley, Jr. went with us. We drove in a red Escort that Damien was driving. There were approximately 12 or 15 people at this meeting. Shortly after we arrived at the meeting, I asked Damien to take me home, which he did. (MTR 1474) Jessie Misskelley stayed at the meeting. (MTR 1475)

The tape that has been played with the voice that says, "Nobody knows what happened but me." That is my child Aaron, and the defendant is acquainted with Aaron. The defendant and I were very close and good friends, and he spent quite a bit of time with us. At the time that I asked him to introduce me to Damien, I had no reason to believe that he was involved in the murders. (MTR 1475)

CROSS EXAMINATION OF VICKIE HUTCHESON BY DAN STIDHAM

Jessie Misskelley, Jr., told me that Damien was a friend of his. I came into contact with Don Bray, the officer from the Marion Police Department, because of a credit card mess up at my place of employment. There was a \$200 transaction that was being investigated. All the charges against me were dropped. (MTR 1476)

I have been convicted of writing hot checks in the State of Arkansas. The

\$30,000 reward had nothing to do with me wanting to play detective and to try to catch the killers. To my knowledge, I never told anybody that I was going to get the reward money. (MTR 1477) The night before Jessie Misskelley was arrested, and I had no idea that he was going to be arrested, he spent the night with me to protect me from a prowler. (MTR 1478)

REDIRECT EXAMINATION OF VICKIE HUTCHESON
BY JOHN FOGLEMAN

There were never any charges filed against me with regard to the investigation of the credit card problem at my place of employment. (MTR 1479)

DIRECT EXAMINATION OF JOSH DARBY BY GREG CROW

I am 18 years old. (MTR 1604) I live in the Highland Trailer Park, and I have known Jessie Misskelley, Jr. since we were about nine years old. On Tuesday, May 4, 1993, Jessie came over to my house and spent the night with me that night. The next morning, we got up and went roofing with Ricky Deese. (MTR 1605) Ricky picked us up on the morning of May 5, 1993, at about 9:00 in the morning. We went from my mom's house to go on a roof job. Jessie did not receive a phone call that morning because we did not have the phone in our trailer. (MTR 1606)

Jessie and I worked with Ricky Deese till about 12:30 or 1:00 p.m. At that point, Ricky dropped us off at Jessie's house in Highland Trailer Park. Jessie told

me that he was going to get him something to eat and I went home. I saw Jessie shortly thereafter with his girlfriend. (MTR 1607) This was about 4:00 P.M., on May 5, 1993.

I have lived in Highland Trailer Park, off and on, for about 15 years. I am not familiar with any type of cult activity. I have never known Jessie Misskelley, Jr., to be involved in any kind of cult activity. To my knowledge, Jessie did not hang around with Jason or Damien. (MTR 1608)

CROSS EXAMINATION OF JOSH DARBY BY BRENT DAVIS

I gave a statement to the police with regard to Jessie Misskelley's whereabouts on or about the 5th of May. I believe I did tell the police that Jessie spent the night at my house on Tuesday, May 4, 1993. I did give the police a handwritten statement on the 18th of June. I don't think I put anything in my statement regarding the fact that Jessie spent the night with me on May 4, 1993. (MTR 1609)

DIRECT EXAMINATION OF RICKY DEESE BY GREG CROW

In May of 1993, I was a roofer. (MTR 1613) I have known Jessie Misskelley, Jr., since his was a baby. I remember on May 5, 1993, Jessie Misskelley worked with me roofing in West Memphis. That morning I went and got him at Little's Trailer Park with Josh Darby. I picked up Mr. Misskelley and

Josh Darby at about 9:00. (MTR 1614) Jessie worked with me on that Wednesday, a half of day. I dropped him off at his dad's at about 1:00 P.M. The house that Josh and Jessie were staying at on the night of May 4 did not have a telephone in it. (MTR 1615)

DIRECT EXAMINATION OF SUSIE BREWER BY GREG CROW

My name is Susie Brewer, I am fifteen years old, and I go to school at Marion Junior High. I live in Highland Trailer Park in Marion, Arkansas. (MTR 1617) I am Jessie Misskelley's girlfriend. I remember the day of May 5, 1993. I went to school that day, and after school was out I walked home. (MTR 1618) I got home about 3:30 P.M. and I went to Stephanie Dollar's house. That's where Jessie Misskelley was because he was babysitting Stephanie's kids and she got back around 4:00 and Jessie and I went walking. While we were walking, we went to Johnny Hamilton's trailer, this was about 4:15 P.M. Jessie was with me most of the rest of the afternoon. I was with him when he spoke to Jim McNease, and I was with him when he talked to Louis Hoggard. (MTR 1619)

Jessie was talking to Louis Hoggard about 6:30 P.M. that afternoon. After Jessie got though talking to Louis Hoggard, he went back to his house to get his wrestling mask and he was letting some of the little kids in the neighbor try it on. (MTR 1620) The last time that I saw Jessie Misskelley that night was about 7:00.

At about 7:00 P.M., Jessie told me that he was going wrestling in Dyess, Arkansas and I did not see him the rest of the night. (MTR 1621)

CROSS EXAMINATION OF SUSIE BREWER BY BRENT DAVIS

I have been Jessie Misskelley's girlfriend for a year and two weeks. We first started seeing each other on January 16, 1993. (MTR 1622) I have talked with other people about times and places that Jessie was on May 5, 1993. (MTR 1624) Fred Revelle was the first person who mentioned that Jessie was in Dyess, Arkansas, wrestling on this particular night. (MTR 1624)

REDIRECT EXAMINATION OF SUSIE BREWER BY GREG CROW

After Jessie was arrested for this crime, May 5, 1993, became an important day to me and a lot of other people in the Trailer Park. We all got together and tried to figure out what happened, and what we remember about that particular day. (MTR 1625)

DIRECT EXAMINATION OF STEPHANIE DOLLAR BY GREG CROW

The first time I saw Jessie on May 5, 1993, was at about 2:00 P.M. I asked him if he could watch my children till I got back from a parent-teacher conference. It was not unusual for Jessie Misskelley to babysit for me, he did so at least four times a week. (MTR 1626)

I returned home at about 4:00 P.M. When I arrived home, Susie Brewer was there with Jessie. Susie and Jessie stayed for a few minutes, then they left and went down the street to a Johnny Dedman's house. I went to Johnny Dedman's house and when I got there, my husband told me that Connie Molden had slapped my son off his bike. I called the police. (MTR 1627)

It was around 5:00 when I called the police. We waited for around and they didn't show up and then when they did, they went down to my house instead of coming to Johnny Dedman's. I saw them leaving the Trailer Park so I went back into the house and called the police and the dispatcher. The dispatcher told me to meet the officer at the four-way stop sign, which I did. I told the officer that Connie had slapped Cody off of his bike. The officer's name was Dollahite. (MTR 1628)

After the officer left, I walked back to Johnny Dedman's house. Jessie Misskelley was standing at the corner on a bicycle. I thought my husband and Connie's husband were beginning to get into a fight. (MTR 1629) I went back in the house and called the police again. This time three police cars came back within just a few minutes. They pulled up at Connie Molden's house and talked to her for a few minutes and then they left. The whole time this was happening, Jessie Misskelley was standing next to the street at the four-way stop.

After the police left, I had a conversation with Jessie. (MTR 1630) The police officer arrived at 6:30 P.M. The last time that I saw Jessie was at about 6:45 P.M. (MTR 1631)

CROSS EXAMINATION OF STEPHANIE DOLLAR BY BRENT DAVIS

In my statement to the police, I indicated that Jessie was standing close to the police car when the officer was there investigating the fight. (MTR 1632)

Jessie Misskelley babysat for me at least four times a week. (MTR 1634) On May 5th when the police were in Highland Trailer Park, Jessie Misskelley was no more than five yards from the police car. (MTR 1635)

REDIRECT EXAMINATION OF STEPHANIE DOLLAR BY GREG CROW

My child had never been slapped by Connie Molden before this incident on May 5, 1993. Nor has Connie Molden slapped my child since this date. This particular night, my husband and Mr. Molden got into a fight over Connie slapping my child, that is why I remember this date. (MTR 1637)

DIRECT EXAMINATION OF JAMES DOLLAHITE BY DAN STIDHAM

I am employed by the Crittenden County Sheriff's Department. I was on duty May 5, 1993. I remember being dispatched to the Highland Trailer Park that evening at 6:30 P.M. According to the radio log of the Sheriff's Department that day, it shows that I was out at the Dedman residence in reference to a complaint

from the Dollars. I received a call, but I was not out at the Dollar residence.

(MTR 1638)

When I arrived at the Trailer Park the first time, I met with the complainants, a Bobby Dollar and Stephanie Dollar, in reference to a complaint that he was making on a subject by the name of Connie Molden. Ms. Molden had allegedly pulled their son's hair and pulled him off his bicycle. I never went to the Dollar trailer. (MTR 1639)

The second time we were at the trailer park, myself and along with two Marion Police Department units were at the scene. (MTR 1640) Jessie Misskelley was not at Highland Trailer Park while I was there investigating this particular incident on May 5, 1993. (MTR 1641) I am not saying he was not in Highland Trailer Park, I am saying he was not where I was at in Highland Trailer Park. (MTR 1642)

CROSS EXAMINATION OF JAMES DOLLAHITE
BY JOHN FOGLEMAN

The first time that I went out to Highland Trailer Park on May 5, 1993, I arrived on the scene at 6:27 P.M. (MTR 1643) After taking the complaint from the Dollars, I received a second call at 6:31 P.M. We received a third call at 6:43 P.M., and I arrived at Highland Trailer Park again at 6:47 P.M. I never saw Jessie

Misskelley Junior at the Trailer Park that night. (MTR 1647) That day I never went to Stephanie Dollars residence.(R 1648)

REDIRECT EXAMINATION OF JOSH DARBY BY GREG CROW

I am the same Josh Darby that testified earlier this morning. (MTR 1649) Jessie Misskelley spent the night with me on the night of May 4, 1993, at Little's Trailer Park where my mom lives. There is no phone in my mom's trailer, and there was not one that night. (MTR 1650)

DIRECT EXAMINATION OF JENNIFER ROBERTS BY GREG CROW

I'm sixteen years old, and I attend school at Marion High School. I have known Jessie Misskelley, Jr. for one year and a month. (MTR 1651) I have lived in Highland Trailer Park for a year and two months. During this time period I have not been aware of any kind of cult activity. I saw Jessie Misskelley at the Trailer Park on May 5, 1993. I was at Johnny Hamilton's house about 4:00 or 4:30 and Susie Brewer and Jessie Misskelley walked up. (MTR 1652) I saw him later that afternoon sitting on his front porch with Christy Jones. Later that night Roger Jones, my cousin and Jessie came to my house after they got back from Dyess wrestling. This was at about 11:00 P.M. Jessie stayed at my house until just a couple minutes before midnight. I know it was just a couple minutes before midnight because that is when my mother was supposed to be home. Jessie liked

to leave my house before my mother got home. (MTR 1653) I am sure that this was May 5th, because of the incident with Cody being pulled off his bike. (MTR 1654)

(MTR 1655-1662 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF CHRISTY JONES MOSS BY DAN STIDHAM

I have been friends with Jessie Misskelley for almost two years. On May 5, 1993, Jessie Misskelley, Jr. was at his house with me and I remember him being with Susie Brewer earlier in the day when the cops were called to the Trailer Park. They were called to the Trailer Park because Connie had pulled Stephanie's little boy off his bicycle. This is how I can remember May 5, 1993. (MTR 1663)

The first time I saw Jessie on May 5th was at about 4:30. We were over at Johnny Hamilton's house and he and Susie came in. Later on Susie and Jessie left and they went to Jessie's house. I went over there and we were all sitting out on his front porch. Stephanie Dollar pulled up in her car and Jessie went out to the street to talk to her, and they were talking about what happened with the cops. After that Jessie and I left, and went to Johnny Hamilton's. A few minutes after 7:00 P.M., Jessie, Marty, Roger, Fred and a guy named Bill left to go wrestling in Dyess, Arkansas. (MTR 1664) I actually saw them get in the car and leave. (MTR 1665)

CROSS EXAMINATION OF CHRISTY JONES MOSS BY BRENT DA VIS

I gave the handwritten statement to officer Bryn Ridge back in October 1993. In my statement to Officer Ridge, I did not mention that I had seen Jessie on the afternoon or evening of May 5, 1993. (MTR 1667) The reason that I gave the statement to the police in October 1993 is because they wanted me to come to the police department because I was suppose to be in a cult. That's all they said. Every time I tried to tell the police something about Little Jessie, they didn't act like they were listening. They changed the subject. They wanted to know if I had time to go to cult activities in the evenings. (MTR 1669)

The night of May 5, 1993, when the police were in the Trailer Park investigating the incident where the child was pulled off the bike, I saw Jessie and Susie talking to the police officer. (MTR 1670) What crystallizes my memory about this being May 5th is the fact that I remember Stephanie Dollar pulling up in front of Jessie's house and they were talking about the incident that had just happened with the police. (MTR 1672)

REDIRECT EXAMINATION OF CHRISTY JONES MOSS BY DAN STIDHAM

When I talked to the police in October 1993, they wanted to know about a cult. They told me that Jessie said I was a part of a cult. I have never been in a cult and I have never known Jessie to be part of a cult. (MTR 1673) Every time I

tried to tell the police what I knew about May 5th and seeing Jessie, they would change the subject. They would start talking to me about this cult. I talked to Mr. Crow in September 1993 about the events of May 5, 1993. I told him basically what I testified to here today. (MTR 1674)

DIRECT EXAMINATION OF CHARLES ASHLEY, JR. BY GREG CROW

My name is Charles Ashley, Jr., but I go by the nickname Bubba. (MTR 1674) I live in Highland Trailer Park about three or four trailers down from Jessie Misskelley. I am 17 years old and I am in tenth grade at Marion High School. I have known Jessie Misskelley, Jr. all my life because he's my cousin. (MTR 1675)

I remember an incident in May 1993 where the police were called to the Trailer Park about a fight involving Connie Molden and Cody Dollar. The police came in response to this incident, there were three or four police cars present. I was present when this occurred, and so was Jessie Misskelley, Jr. (MTR 1676)

CROSS EXAMINATION OF CHARLES ASHLEY, JR. BY BRENT DAVIS

It was not my impression that [reviewing Officer Dollahite's police report concerning the slapping incident] was done so that I could refer to [it] in trying to place this incident on May 5th. (MTR 1677) I just glanced at the police report. I didn't pick it up and read it. (MTR 1678)

I am also familiar with Jason Baldwin. (MTR 1680) He and Jessie used to hang out together a whole bunch.

DIRECT EXAMINATION OF JESSIE MISSKELLEY, SR. BY DAN STIDHAM

Jessie Lloyd Misskelley, Jr. is my son. We live in Marion, Arkansas at Highland Trailer Park. I am currently employed by Jim McNease Repair Service and I was so employed there back in May of 1993. I remember the events that took place on May 5, 1993, because that was my first day of DWI school. I had to go to DWI school to get my driver's license back. (MTR 1682)

I left Jim's Repair Shop at about 5:30 because they wanted me to be there early to make the \$50 payment for the class. The class started at 6:00 P.M. It was supposed to have lasted until 8:00 P.M. but the lady let us out at 7:00. At 7:00 P.M. I came straight home, and I got home about 7:15. When I arrived at the Trailer Park I saw all those police cars leaving as I was coming into the Trailer Park. I got scared they were going they were going to get me for driving on suspended license so I hurried up and went home.

After I got home Jessie, Jr. came in and I asked him what was going on. (R 1683) He told me that the police were out there because Connie Molden had pulled Stephanie's little boy Cody off of his bicycle by the hair of the head and slapped him. He also said that when Bobby Dollar came home, Stephanie's

husband, he and Melvin, Connie's husband, got into a fight and the police were called back out there again.

Jessie, Jr. left about 7:30 P.M. to go the Dyess, Arkansas to wrestle. He went with Johnny Hamilton, Fred Revelle, Josh Darby, Dennis Carter and some other guy named Bill something or other.

I also remember the day that Jessie got arrested. I had a conversation with Jessie, Jr. and Officer Allen about the reward money. (MTR 1684) Mike Allen and Jessie, Jr. were joking about the reward money, the \$40,000.00 reward.

Officer Mike Allen said that if they get a conviction out of this, Jessie will get the \$40,000.00 reward, and Jessie, Jr. told me he was going to buy me a new truck.

(MTR 1685)

(MTR 1686 -1689 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF JIM McNEASE BY DAN STIDHAM

I lived in West Memphis, Arkansas. I am a mechanic and I also work for Union Pacific Railroad in Little Rock. I remember May 5, 1993, because I had to close my own shop and it upset me a little bit. Jessie Misskelley, Sr. had worked for me for three or four years and he always opened and closed for me. I had to stay that day and close the shop because he had to go the DWI School. At 5:30

p.m. he left the shop and I had to close down. I closed the shop down about 6:15 P.M. (MTR 1690)

I saw the defendant Jessie Misskelley, Jr. that afternoon down on the corner where I lived in Highland Trailer Park. He and Dennis Carter were walking down the road. The last time that I saw Jessie, Jr. that evening was about 6:30 P.M. He was down at the end of the street talking to the deputy sheriff. (MTR 1691)

When he and Dennis Carter were walking down the street, I walked out to the street and was picking at them. I said what are you fixing to do, and Jessie told me that he was going wrestling. I told him that he was not big enough to go wrestling. I told him that he wasn't big enough to fight the gnats off his ass much less go wrestling, and that is exactly what I said to him. (MTR 1692)

DIRECT EXAMINATION OF LOUIS HOGGARD BY GREG CROW

I am an 18-wheeler owner-operator. I drive my own truck, over the road. I live in Highland Trailer Park in Crittenden County, next door to Jessie Misskelley. I have lived in the Trailer Park since August of 1987. All the time that I have lived in the Trailer Park, I have never seen or been advised of any kind of cult activity. (MTR 1696)

I was in Highland Trailer Park on May 5, 1993. I know this because I have examined my logs for my trip at that time period, and because of the police report

that I looked at. Defendant's Exhibit 6A, 6B and 6C, are the logs of the trips that I made on those days. (MTR 1697)

On May 5th I arrived in West Memphis, Arkansas, at 4:45 P.M. and unloaded until about 5:00 P.M. From 5:00 P.M. until 5:16 P.M. I drove to Memphis, Tennessee and performed a post-trip inspection. I was off duty by 5:30 P.M. and was off the rest of the day.

When I got off work at 5:30, on May 5, 1993 I went home to my residence in Highland Trailer Park. I was not in West Memphis on May 6, 1993. (MTR 1699)

On May 5, 1993, I saw Jessie Misskelley, Jr. in front of my house and at my neighbor's house across the street. This neighbor is Stephanie Dollar. It was 6:00 or 6:30 P.M. on May 5, 1993, when I saw him. I came home from work that day and started mowing my yard. While I was mowing my yard, I observed a police officer going into Stephanie Dollar's yard and saw Jessie approach the police car. I assumed they were talking but I could not hear them. (MTR 1700)

The police car left and shortly after that Jessie started walking toward his house down the street. I stopped and asked him what he was talking to the officer about. Jessie, Jr. told me that somebody down the street had slapped one of Stephanie's sons. (MTR 1702)

(MTR 1703-1713 is omitted as irrelevant to Mr. Baldwin's appeal.)

DIRECT EXAMINATION OF DENNIS CARTER BY GREG CROW

I am 15 years old and in the ninth grade at Marion Junior High. I live in Highland Trailer Park, right across the street from Jessie Misskelley's house. I remember seeing Jessie Misskelley Junior on the afternoon of May 5, 1993. After school he and I walked up and down the road for a while. (MTR 1714)

I remember having a conversation with Jim McNease while Jessie Misskelley, Jr. was present. (MTR 1715) The nature of the conversation was about wrestling. I went wrestling that night with Jessie Misskelley, Jr., Freddie, and Johnny. There could have been some more people, but I don't remember. I remember going wrestling that day because of my conversation with Jim McNease. (MTR 1716)

I remember giving a statement to the police on June 22 and on June 9, 1993. The information that I gave to the police on those dates was not correct. I understand that I am under oath here today and I am testifying truthfully. (MTR 1717)

CROSS EXAMINATION OF DENNIS CARTER BY BRENT DAVIS

I am the Dennis Carter that talked with Officer Diane Hester of the West Memphis Police Department on June 9, 1993. This was six days after Jessie

Misskelley's arrest. (MTR 1718) In my statement to Officer Hester I did not mention that I was with Jessie Misskelley on the day these murders occurred. I signed that statement but I did not read everything on it. I just skimmed though it. (MTR 1721) I did not mention to the Officers that Jessie Misskelley was with me on Wednesday afternoon, May 5, 1993. I told the officer that I went to Dyess one or two times to wrestle with Jessie, but it was after the three little boys were murdered. As I testified to earlier, I was mistaken when I gave this statement to the police. I wrote in my statement dated June 22 that I had never been with Jessie to Dyess. (MTR 1722)

REDIRECT EXAMINATION OF DENNIS CARTER BY GREG CROW

I understand that I am under oath here today. I am telling the truth today. (MTR 1725)

DIRECT EXAMINATION OF FRED REVELLE BY DAN STIDHAM

On May 5, 1993 I lived in Lakeshore Trailer Park. I remember the day of May 5, 1993, because Kevin Johnson, one of the guys that went to wrestle with us, was at a search and rescue meeting that night and he did not get to go wrestle with us. (MTR 1725) Also Kevin's brother Keith went with us that night to go wrestling in Dyess, and that is the only night that he ever went with us to go wrestling. Also the fact that May 2 is my birthday and that helps me remember

that particular time frame. Also I remember hearing about them finding the little boys on May 6th.

Back during that time, we were going to Dyess on a regular basis. We were going to this particular place in Dyess because they have a wrestling ring there. That is where I trained to wrestle. My father trained me there and I knew the ring was there. I was buying the wrestling ring from Charles Stone. (MTR 1726)

I remember seeing Jessie Lloyd Misskelley, Jr. on May 5, 1993. We all met at Kevin's house, because Kevin's house was a central location where everyone lived that went with us. Jessie Misskelley was there and he rode with us that night. We met Keith, Kevin's brother at the old Exxon station on Highway 63. It was getting dark when we left Highland Trailer Park. (MTR 1727)

We met Keith Johnson at the old Exxon station at the intersection of Interstate 55 and Highway 63. Bill Cox did not trust his car to drive all the way to Dyess, so he parked his car and we changed vehicles. Roger Jones and Jessie Misskelley got out of the car with Zella Adams and Johnny Hamilton and got in the car with Keith. Bill Cox, Dennis Carter, Johnny Hamilton and Zella and I rode in the other car. After we left the Exxon station, we went straight to Dyess. This was the only night that Keith went with us wrestling. (MTR 1728)

After we got to Dyess, Bill Cox threw Jessie Misskelley in the ring and

Jessie hit his head on the side of the ring, which put a big not on his head. We all got back to West Memphis around 11:30 P.M. From the time we left the Trailer Park about dark, and until we got back to the Trailer Park about 11:30, Jessie Misskelley, Jr. was with me the entire time.

I gave a previous statement to the police in which I told them that particular night I had paid some money to Charles Stone; later I found out that this was not true. (MTR 1729) I thought I had given Mr. Stone some money that night but later I found out that was not the night.

CROSS EXAMINATION OF FRED REVELLE BY BRENT DAVIS

I sought the police out to tell them that I knew for certain that Jessie Misskelley was with me on May 5th. (MTR 1730) I told the police that the reason I was certain was because I had paid \$300 and had signed a contract that day with Charles Stone. When I had talked to the police I had gone down to talk to Mr. Stone and confirmed with him that we had exchanged money with regard to the wrestling ring on that date. (MTR 1731)

The fact of the matter is that I paid the \$300 to Mr. Stone a week before the night of the murders, April 27, 1993. (MTR 1734) Charles Stone informed me that we gave him the money on May 5, 1993. (MTR 1737)

REDIRECT EXAMINATION OF FRED REVELLE BY DAN STIDHAM

There is no doubt in my mind that Jessie Misskelley was with me in Dyess, Arkansas wrestling on May 5, 1993. (MTR 1742)

DIRECT EXAMINATION OF ROGER JONES BY GREG CROW

I am 19 years old, and I live at Highland Trailer Park. (MTR 1742) I lived with my aunt in Highland Trailer Park on May 5, 1993, about five or six trailers down from Jessie Misskelley. I remember the date of May 5, 1993 because we went wrestling in Dyess that night. (MTR 1743)

The first time that I saw Jessie Misskelley on May 5th was at about 5:30 P.M. The next time that I saw him was at 7:00 P.M. when he came down to my aunt's house. (MTR 1744)

When Jessie got there, we sat and talked for a little bit and then we went down to Johnny Hamilton's house. We were waiting at Johnny Hamilton's house for Bill to get there. Myself, Little Jessie, Fred Revelle, Keith Johnson, Bill Cox, Janice Carter, Zella and Johnny Hamilton all went to Dyess and went wrestling on May 5, 1993. We met Keith Johnson at the Tyronza/Jonesboro exit at that old Exxon station. Jessie and I rode with Keith in his car. (MTR 1745)

Dennis Carter, Fred Revelle, Bill and Zella and Johnny rode in Johnny's car. Bill's car was left at the Exxon station. We left Highland Trailer Park somewhere

between 7:15 and 7:30 P.M., and we arrived back from Dyess at the Trailer Park at about 11:15 P.M. (MTR 1746)

When we got back to the Trailer Park Jessie Junior and I went to my house. We sat down there and talked to my cousin until about midnight and then Jessie went home. He went home at a little before midnight because my aunt always comes home at midnight. (MTR 1747)

DIRECT EXAMINATION OF KEITH JOHNSON BY DAN STIDHAM

My name is Keith Johnson and I live in Marked Tree, Arkansas. I do not remember the exact date, but I made plans to go with my brother Kevin Johnson to go wrestling. He told me to meet him at Lake David, that old Exxon station at about 6:00. I arrived at the Exxon station at about 6:00, and I had to wait because nobody showed up. It was getting dark by the time everybody showed up. I do not remember all the people's names that showed up that night because it was the first time that I had met these people. The only one that I had met before, was Johnny Hamilton. The defendant, Mr. Misskelley, was there that night. (MTR 1753)

After the people arrived, they asked me if a few of the guys could ride with me. I only had room for two because I had some big speakers in the back and could not get anybody in the back seat. So Jessie Misskelley and another guy, I do not remember his name, got in the front seat with me. We left the Exxon station

and drove straight to Dyess. While we were in Dyess wrestling, somebody tried to throw Mr. Misskelley back in the ring and he hit his head on the ring. After that he sat out wrestling the rest of the night. I do not know exactly what time we left Dyess, but I got back to my house in Marked Tree a little after 10:00 that night. (MTR 1754)

I cannot remember specifically what date this occurred, but I do remember hearing about the little boys after that date. I have only been to Dyess wrestling on one occasion. (MTR 1755)

CROSS EXAMINATION OF KEITH JOHNSON BY JOHN FOGLEMAN

I do not know the exact night that I went wrestling with Mr. Misskelley, but my brother called me, he was supposed to show up and he did not show up because he was at a search and rescue meeting that night. (MTR 1755)

DIRECT EXAMINATION OF KEVIN JOHNSON BY DAN STIDHAM

I reside in Highland Trailer Park in Marion, Arkansas. (MTR 1756) I am familiar with the defendant, Jessie Misskelley, Jr. because we live right next door to each other. I remember May 5, 1993, because I was at a search and rescue meeting. I was suppose to have gone wrestling that night, but I did not make it because I went to the meeting. (MTR 1757)

Shortly after the murders took place, I had a conversation with Jessie Misskelley, Jr. (MTR 1758) I told Mr. Misskelley that one of the boys was beaten and castrated. I also told him that they were tied up with shoestrings. I got this information from other members of the search and rescue team. (MTR 1759)

(The remainder of MTR is omitted as irrelevant to Mr. Baldwin's appeal.)

VI. STATEMENT OF THE CASE

Appellant Charles Jason Baldwin, and his co-defendants Jessie Misskelley and Damien Echols, were charged with three counts of capital murder in violation of A.C.A. §5-10-101. The killings occurred in May of 1993. The bodies of the victims were recovered on May 6. Appellant and his co-defendant Damien Echols were tried by jury before the Honorable David Burnett, Circuit Judge, in Craighead County. Co-defendant Misskelley, who had given a statement to law enforcement investigators inculcating himself and both appellant and Echols, was tried first in a separate case. He was granted a change of venue to Clay County. Misskelley was convicted of one count of first degree murder, and two counts of second degree murder.

Appellant was convicted of three counts of capital murder and sentenced to life without parole. His co-defendant Damien Echols was also convicted of three counts of capital murder, and he was sentenced to death. The convictions and sentences were affirmed on direct appeal. *Echols and Baldwin v. State*, 326 Ark. 917, 936 S.W.2d 509 (1996); *Misskelley v. State*, 323 Ark. 449, 915 S.W. 2d 702 (1996).

Baldwin timely filed his Rule 37 petition on March 10, 1997. Misskelley and Echols also filed Rule 37 petitions. Appellant's original Rule 37 petition was unintentionally omitted from the record. His amended Rule 37 petition is in the record. T.30-40, Add. 29-39. Appellant's co-defendant Damien Echols separately litigated a Rule 37 petition and was denied relief in the circuit court. He was denied relief on appeal of that ruling in *Echols v. State*, 354 Ark. 530, 127 S.W. 3d 486 (2003).

Appellant Baldwin's November, 2002 petition for preservation and access to evidence for testing and for habeas corpus relief has unintentionally been omitted from the record.

In May of 2008, appellant timely filed a statutory Petition for Writ of Habeas Corpus. That petition appears in the record at T. 397-581, Add. 396-580. The DNA testing results which are discussed in the petition were the result of two

orders permitting the testing of case evidence. The first testing order is at T. 69-78, Add. 68-77. The second is at T.80-91, Add.79-90.

When the parties first appeared before the circuit court for status and scheduling hearings, the circuit court scheduled proceedings in such a way as to allow for a consolidated hearing on matters common to all three defendants, and separate hearings for Misskelley and appellant on their separate Rule 37 petitions. After at least one further status conference and scheduling hearing, the circuit court denied the DNA habeas petition without a hearing [Order, T. 1267-1276, Add. 1266-1275]. It is that Order which is being appealed here.

Appellant's Rule 37 petition, and amended Rule 37 petition, are still pending. An evidentiary hearing is ongoing. Appellant filed a motion in this Court to hold this appeal in abeyance while the Rule 37 petition remained in the circuit court in hearings. That motion was denied.

On March 10, 2009, appellant and his co-defendants filed a Joint Petition for Writ of Certiorari to complete the record. The writ was granted on April 9, 2009. The writ was returned on May 15, 2009. Substituted briefing commenced on May 18, 2009.

Several issues are presented to this Court for decision, including whether the circuit court erred in denying appellant Baldwin any relief, without a hearing, on his DNA habeas petition. Also before the Court are two other issues: whether the circuit court should have granted a further scientific testing motion specific to animal hairs and fibers, and whether that same court should have recused itself because Misskelley's trial counsel, Dan Stidham, is a witness for both Misskelley and appellant on Rule 37 issues.

The abstract contains Baldwin's trial. It also contains relevant references to Misskelley's trial, and to Echols' Rule 37 petition, which were incorporated into the jointly assembled record, and referenced by the habeas corpus petitioners. The abstract also references the one hearing during which appellant scheduled further proceedings, and raised the issue of recusal, before the circuit court ruled on the DNA habeas petitions. This was a hearing on August 20, 2008. The Rule 37 and DNA/scientific evidence-related habeas corpus pleadings amount to hundreds of pages of joint exhibits. Appellant has endeavored to submit to the Court in this addendum the exhibits specifically related to the DNA habeas litigation.

As noted above, appellant's original November, 2002 Motion for Preservation of Evidence, and Petition for Statutory and Constitutionally-Based Habeas Corpus Relief is not in the record. That petition is referenced in the Petition for Writ of Habeas Corpus under Arkansas Code Annotated 16-112-201 *et seq.*, and motion for new trial under 16-112-208(e)(1), filed in May, 2008, which appears at T.397-581, Add. 396-580. The petitioner referenced, and reiterated, appellant's motions for further DNA testing and for fiber evidence testing. The May, 2008 petition was responded to by the State at T.1031-1155, Add. 1030-1154. Appellant's reply to the State's response incorporated that of co-defendant Echols. T.1176-1215, Add. 1175-1214. The State responded to appellant's adoption of Echols' reply. T.1216-1239, Add. 1215-1238. The Circuit Court's order denying the Petition for Writ of Habeas Corpus appears at T.1267-1276, Add. 1266-1275.

The exhibits filed by the Circuit Court for consideration both with respect to the Petition for Writ of Habeas Corpus filed in May, 2008, and with respect to the Amended Petition for Relief under Rule 37, appear as follows. They consist of Exhibits 1 through 74 (74 appears at T.575-581, Add. 574-580). Exhibits 1 through 74 appear in consecutive order between T.46 and T.581, Add. 45-580. Petitioner's supplemental exhibits 75 through 78 are at T.1004-1022, Add. 1003-1021.

As noted above, appellant filed an Amended Petition for Relief Under Rule 37 (T.30-40, Add. 29-39). The State responded to this amended petition. T.1024-1030, Add. 1023-1029). Petitioner filed an initial reply to this response. T.1156-1160, Add. 1155-1159. He also filed a motion for permission to enlarge his Rule 37 petition. T.1161-1163, Add. 1160-1162. Rule 37 proceedings are ongoing.

Appellant has made inquiries of the Circuit Court in an effort to locate those pleadings related to this appeal which the Circuit Court did not transmit, and which are mentioned in the pleadings in the record of the appeal.

VII. ARGUMENT AND AUTHORITIES

Introduction

This Court outlined the evidence produced at trial when appellant's case was decided on direct appeal of his convictions. *Echols and Baldwin v. State*, 396 Ark. 917, 934-935; 936 S.W. 2d 509 (1996) [hereafter *Baldwin*]. Three eight-year old boys were reported missing by their parents on the evening of May 5, 1993. The next day, their bodies were found in a small creek running off of the Ten Mile Bayou. The victims had injuries which were said by the State's pathologist Dr. Frank Perretti to be consistent with having been stabbed, including injuries "... that appeared to have been caused by a serrated knife", multiple and varied wounds, including diagonal cuts, gouges, and the like. *Id.* at 935-936. Also, according to Dr. Perretti, all three victims had injuries consistent with forceable sex. One victim had penile injuries suggesting to Dr. Perretti that oral sex had been performed. Another victim's scrotum, testes and penile skin were missing, from what Dr. Perretti described to be a knife wound.

The major break in the case occurred on June 3, 1993, just under a month after the killings, when Jessie Misskelley, a local minor, "... made two statements to [Detective Mike Allen] that implicated Echols and Baldwin, as well as himself."

Id. at 937-938. Because of the statements, Misskelley's case was severed from those of Echols and Baldwin. He was tried separately in the first of the two trials of the case. *Misskelley v. State*, 323 Ark. 449; 915 S.W. 2d 702 (1996).

Some generic red fibers, described as similar to those from appellant's mother's bathrobe, were the only items of physical evidence linking him to the scene (*Baldwin, supra*, at 982). DNA/serological evidence (mistaken as it turns out) was introduced to suggest that there was semen on a cutting from the pants of one of the victims. The main evidence against appellant was his association with co-defendant Echols, and the testimony of a jailhouse witness named Michael Carson who claimed that Baldwin had confessed to him that: "He dismembered the kids... he just said he dismembered them. He sucked the blood from the penis and scrotum and put the balls in his mouth." *Id.* at 941-942.

Appellant, his trial co-defendant Echols, and Misskelley in his separate trial, were all convicted. Their convictions have been upheld on appeal. Echols has been denied Rule 37 relief, and was before the circuit court on the basis of orders from this Court, and a federal court, which permitted him to pursue statutory habeas corpus relief based on scientific evidence. Appellant and Misskelley were before the circuit court pursuing statutory habeas corpus and Rule 37 relief. The circuit court denied statutory habeas corpus relief, resulting in this appeal. As this brief is

prepared, the circuit court has scheduled further hearings on appellant's amended Rule 37 petition, which contains allegations regarding the reliability and accuracy of the scientific evidence used to convict him.

The procedural history of the order that has brought appellant to this Court is significant. On November 20, 2002, in the aftermath of the enactment of Act 1780 of 2001, while his timely filed Rule 37 petition was pending in the circuit court, Baldwin filed an initial petition under A.C.A. §§16-112-201 *et seq.*, as well as under the Fifth, Sixth and Fourteenth Amendments seeking habeas corpus relief, including access to crime scene evidence in the custody of the State for purposes of DNA and other scientific laboratory testing. Appellant also sought orders from the trial court, in two separate motions, impounding all evidence and preserving it.

Because of a consensus among all parties that DNA testing was warranted, the parties negotiated rather than litigated their access to the pertinent evidence. The parties designated an accredited out-of-state DNA laboratory acceptable to the Arkansas State Laboratory, the Bode Technology Group, to do DNA testing of evidence. It was agreed that Bode would conduct testing and permit all parties access to the results without reservations. It was further agreed that the defense would pay for the testing, and would be reserved the right to seek reimbursement from the State. An initial group of evidence items was designated for testing by

the parties, and on June 2, 2004, the circuit court issued the first “Order for DNA Testing” [T. 69-78, Add. 68-77]. Arrangements were made to send the more than 30 categories of evidence items to Bode. Bode subsequently notified the parties of the need to obtain known DNA from the victims and defendants, and some further items were designated for testing. To address those matters, the circuit court issued a further order entitled “First Amended Order for DNA Testing” on February 23, 2005.

Two different DNA testing methodologies were used by agreement of the parties. One was the widely used Short Tandem Repeat (STR) technique associated with Polymerase Chain Reaction (PCR). The other was mitochondrial DNA testing, which was conducted because of its highly discriminatory results and because of the number of hairs from the scene which are more easily identifiable using mitochondrial DNA testing.

Bode issued several reports of DNA test results which demonstrated that: no evidence item from the scene, the victims, the clothing of the victims, or submitted for testing, contained any DNA linked to Baldwin or his two former co-defendants. Some of the DNA found in the evidence items was identified as having come from the three victims [Ex. 7, T.93-104, Add. 92-103; Ex. 8, T.106-117, Add. 105-117; Ex. 9, T.119-140, Add. 118-139; Ex. 10; Ex. 12, T.147-161, Add. 146-160; Ex. 13,

T.163-176, Add. 162-175; Ex. 70, T.984-996, Add. 983-995]. After further mitochondrial DNA testing, a hair found in one of the ligatures that had bound victim Michael Moore was found to be consistent with the DNA profile of Terry Hobbs, step-father of one of the victims. A second hair, found on a stump near the scene, was found to be consistent with the DNA profile of a friend of the step-father, David Jacoby. In addition, the post-conviction DNA testing revealed that foreign DNA of undetermined origin was located on a swab taken from the victim Steve Branch's penis. This was a significant result, given that the bodies had been recovered in water. It demonstrated that foreign DNA could still be detected on the bodies [Ex. 12, 14, 15; T.158, 178-183; Add. 157, 177-182].

Bode does not have the technology to test animal hair, which was of concern to appellant. As demonstrated in his petition, he had learned through consultation with pathologists and odontologists that animal predation, rather than serrated knives or any other kind of knife, had caused most of the previously identified 'knife injuries', including the 'degloving' injury to the penile area of Chris Byers, the gouging and linear wounds on Steve Branch, and the alleged stab wounds to Michael Moore. This was significant since the evidence at trial had convinced this Court that: "Many of the cuts were made with a serrated knife blade." *Baldwin*, 326 Ark. at 937. As a result, appellant moved for an order permitting further DNA

testing, to include the testing of hairs that Arkansas Crime Lab, or Bode, technicians identified as animal hairs. Also, since fibers from the crime scene were described as ‘similar to’ fibers found in appellant’s mother’s home, and because a former FBI hair and trace evidence expert working for appellant’s counsel had found the State’s fiber analysis unverifiable, appellant sought the release of the fibers for further testing using correctly applied and updated testing techniques. The circuit court denied that motion [Order, T.1276, Add. 1275].

As the testing processes were being completed, upon order of the circuit court, appellant filed his amended habeas petition under Act 1780, and the amendments to it brought about by Act 2250 of 2005 [Order, T. 1267, Add. 1266]. In (and with) the petition, in addition to setting forth the DNA results that excluded him from any linkage to the crimes of which he was convicted, appellant submitted extensive evidence in the form of affidavits from expert and lay witnesses, court and other records, and reports from several forensic scientists, to undermine the reliability of the evidence used by the State to convict him. This is evidence, including the affidavits, which could be used at any hearing on his petition. A.C.A. §16-112-103(a); §16-112-205(c)(5). Appellant never testified at his trial, and none of his alibi or other witnesses was ever called to testify. He was defended through cross-examination,

argument, and the presentation of a defense fiber expert, who, it turns out, had a series of compromising professional problems that appellant's counsel discovered too late.

In his statutory habeas petition, appellant demonstrated that he had an alibi and a means of challenging his identification as a perpetrator, beginning with his presence on a school bus on the day of the victims' disappearances (May 5, 1993), and confirming his whereabouts on the afternoon and night of May 5, and the next school day when the bodies were found. In addition, as a result of post-conviction testing, he had DNA and other forms of scientific evidence to completely undermine the State's evidence against him. Thus, appellant has marshaled a combination of DNA and other evidence to demonstrate his entitlement to relief. A.C.A. §§16-112-201 *et seq.*

Regrettably, this appeal is not the appeal of the result of a full hearing aimed at addressing the merits of this case. The circuit court denied appellant any hearing based on its acceptance of the State's erroneous arguments that appellant's 'inconclusive' test results have halted him at the gateway provision of A.C.A. §16-112-208(b), and that appellant's current showing is insufficient to obtain relief under §208(e), or even for an order permitting post-conviction scientific testing under the current A.C.A. §16-112-202 [Order, T.1270, Add. 1269].

The case before the Court presents several questions of statutory interpretation, and of post-conviction habeas corpus procedure, including whether DNA exclusion

evidence is insufficient as a basis for relief if the petitioner cannot identify the guilty party. The circuit court reads the statutes as requiring appellant not only to demonstrate the likelihood that a jury would not have convicted him, but also to require him to present evidence “dispositive of the identity of the killer.” [Order, T.1272, Add. 1271]. None of the pertinent statutes, nor the pertinent case law, supports this interpretation. The circuit court’s Order must be reversed. Petitioner is entitled to habeas relief, especially given the evidence that the jury that tried him considered extra-judicial evidence in violation of court orders.

Also, the circuit court should have allowed further testing if results were inconclusive under A.C.A. §16-112-208(b). The circuit court should have recused itself.

- 1. Trial court erred (1) in its interpretation of the applicable statutory provisions, (2) in denying appellant relief given the state of the record, and (3) in failing to hold any hearing on the merits of appellant’s habeas claim prior to denying the petition**

Standard of review: Denial of relief without a hearing and/or denial of a hearing has been determined to be a question of law. *Sanford v. Sanford*, 355 Ark 274; 137 S.W. 3d 391 (2003). However, with respect to the statutory scheme at issue in this case as it existed prior to 2005, in *Johnson v. State*, 356 Ark 534, 546-548; 157 S.W. 3d 151 (2004), this Court rendered a determination on retesting of evidence based on its determination of the facts.

Argument: In its Order denying appellant’s petition [T. 1267-1276, Add. 1266-1275], the circuit court emphasized that appellant had acquired the ability to have the items examined and tested by the agreed-upon DNA lab through a less stringent standard than would have existed after the amendment to A.C.A. §§16-112-202 *et seq.* brought about by Act 2250 of 2005 [Order, T. 1268, Add. 1267]. Erroneously describing the results of the testing as involving a “handful of biological material”, the circuit court describes it as “not dispositive of the identity of a killer” [Order, T. 1272; Add. 1271]. This one sentence underscores the basis for the circuit court’s errors. First, the testing here involved more than 30 separate pieces of evidence, many of which had several sub-parts and identifiable biological material - but only 3 of which could be defined as having come from a person other than a victim. This is not a case involving the testing of only a few items of case-related evidence. Second, and much more critical to the issues at hand, the circuit court was not applying a statutory scheme that requires an individual who seeks post-conviction relief based on scientific evidence to identify the actual perpetrator.

There are other problems with the circuit court’s application of the statutory scheme. These include the court’s interpretation of the burden placed on a petitioner who seeks access to case evidence for testing. The circuit court was of the view that appellant could not have satisfied the burden under the 2005 revisions of the statutes

[Order, T. 1268, 1270 Add. 1267, 1269]. Its position is that there is a gateway to obtaining an order permitting scientific testing of evidence embodied in A.C.A. §16-112-202, which requires that a petitioner “... raise a reasonable probability that he did not commit the offenses...” [Order, T.1270, Add. 1269]. The circuit court notes that this is a lesser standard than the one embodied in §16-112-208(e), which is the ultimate test for a new trial order based on DNA evidence. The circuit court found that appellant cannot satisfy either requirement, finding that: “While Petitioner has invoked the new version of the statute (§16-112-208(e)) in asking for a new trial in light of his DNA-testing results and other claims, he has not separately demonstrated that the testing could be ordered under the new version of the statute (§16-112-202) in the first place” [Order, T.1268, Add.1267]. While the circuit court then conceded that this was not a critical point, it nonetheless found significant that the testing had been ordered under a lesser standard than exists today. The circuit court was in error in accepting this argument by the State as having any bearing on this case. In stating its findings and conclusions, the circuit court demonstrated its unwillingness to apply the Arkansas statutory scheme as it exists.

The burden placed on an individual convicted of a crime for which testing is sought is not so high as to deny individuals who have contested their identification as the perpetrator, through persuasive supporting evidence, access to evidence including

biological material which, if tested, has the reasonable probability of excluding that person as a suspect. A.C.A. §16-112-202(8)(A) and (B). While this Court’s ruling in *Johnson v. State, supra*, 356 Ark. 534; 157 S.W. 3d 151 was rendered in 2004, and thus before the 2005 amendments to the habeas corpus statute at issue, the Court employed an analysis of the evidence items sought to be tested that illuminates the issue presented here. If the prospective habeas corpus petitioner makes the case that given evidence could “exclude” him, then such evidence “could significantly advance his claim of innocence.” *Id.* at 549-551. The *Johnson* analysis is consistent with the wording of A.C.A. §16-112-208(e) which conditions relief based on DNA testing on evidence that “exclude[s] the person as a source.” It makes sense that evidence that has a reasonable probability of yielding DNA results that exclude a petitioner claiming innocence should be made available for testing.

The circuit court’s approach would not dignify this Court’s analysis of the value of evidence that excludes an individual. To the degree that *Johnson* explains the significance of ‘exclusion’, the circuit court rejects it, either as a basis for gaining access to evidence for testing, or as a basis for relief. Yet, evidence that excludes the defendant as a donor of hair or bodily fluids in a crime of violence that allegedly involved a sexual assault is obviously significant, as the Court pointed out in *Johnson*

when it remanded the case for further consideration of the value of testing Negroid hairs in that case.

It is true, as the circuit court points out, that appellant obtained access to evidence prior to 2005, and thus did not bring an action in the aftermath of the 2005 amendments to the post-conviction DNA testing statutes. However, the record is clear that appellant, his former co-defendants, and the State all exhibited an interest in having the evidence in this case tested. Nothing in the statutory scheme precludes interested parties from agreeing or stipulating to a testing order. Moreover, as shown below, there was ample evidence to allow appellant access to it for testing.

Ironically, given the circuit court's Order, which implies that there was a small amount of case evidence selected for testing with DNA testing techniques that were only available post-conviction, a far greater amount of evidence than would normally be tested in a 'typical' indigent's post-conviction litigation was submitted for testing. In *Johnson v. State, supra*, 356 Ark. 534, the evidence sought to be retested were two types of hairs (one Caucasian, the other Negroid) and a cigarette butt. *Id.* at 546-547. In this case, a wide variety of items of clothing; several ligatures; swabs taken during the post-mortem examination processes; evidence retrieved from the scene; a variety of hairs; evidence retrieved from the defendants; and other possibly identifying evidence were all agreed to be the subject of testing.

The State was well aware that each of the defendants who had been convicted of the crimes at issue here, including appellant, contested his identity as a perpetrator. Since the circuit court never required a statutory showing prior to the commencement of testing, none was made. But the petition and supporting exhibits filed by appellant demonstrate the showing that he could have made if required to do so. Appellant more than amply satisfied the 2001 and 2005 thresholds for gaining access to the evidence in this case. He could have filed all of the materials produced by the State's law enforcement investigators, and affidavits from many witnesses (as he did with the petition), that established that he had an alibi supporting his defense that he was not a perpetrator. He obtained information from qualified experts that opened to question the State's case on the mechanism of injuries testified to at trial. DNA experts who reviewed the trial evidence prior to the parties' agreement(s) to test described the evidence that might yield useful DNA test results. All of this raised a reasonable probability that appellant was not the perpetrator, and that DNA testing was likely to identify known and unknown DNA if it was there (which it did). The evidence would have justified his access to case evidence for testing under either version of A.C.A. §16-112-202, whether prior to 2005 or thereafter. But more importantly, given the State's agreement, there was no need to assess what his initial showing might have

been, given that appellant's May, 2008 petition made reference to DNA test results, and to other case evidence bearing on the salient issues.

The second gateway for relief referred to by the circuit court is embodied in various provisions of A.C.A. §16-112-208. That statute is specific to the consideration of the merits of a post-conviction petition based on the results of post-conviction DNA testing specifically. It is not, however, the statute that sets out the standard on whether to grant a hearing based on the petition and response, nor is it the statute that provides the gateway for a ruling *on the pleadings*, which is what the circuit court did here.

That statute is A.C.A. §16-112-205(a) which provides:

Unless the petition and the files and records of the proceedings conclusively show that the petitioner is entitled to no relief, the court shall promptly set an early hearing on the petition and response, promptly determine the issues, make findings of fact and conclusions of law, and either deny the petition or enter an order granting the appropriate relief.

The circuit court never applied this standard to appellant's case because of its primary determination that appellant could never prevail on the merits because of the 'inconclusiveness' of his evidence [Order, T 1269-1271, Add.1268-1270]. The circuit court was persuaded by the State's argument that there was nothing that appellant was offering, or could offer, by way of evidence that would entitle him to relief. For that reason, the circuit court decided that it should use the 'ultimate' standard for the

granting of relief based on DNA testing [§208(e)], and use it to deny a hearing, further testing, a new trial, or discharge.

In considering a post-conviction petition brought under the statutory scheme, a court can, as specified in §208(b), determine that the merits cannot be ruled upon yet because the DNA results are inconclusive, and thus order additional testing, or deny relief. Thus §208(b) provides a specific type of ‘determination of the issues’ (to borrow from §205(a)) when DNA testing has been employed and the results are deemed ‘inconclusive’. That determination, however, allows a case to be held in abeyance to allow further testing. ‘Inconclusive’, as indicated by the analysis in *Johnson v. State*, does not mean insufficient to identify a new perpetrator. It means insufficient to exclude the petitioner. ‘Inconclusive’ can also mean that the testing processes did not yield conclusive results, and that further testing, or the employment of a different testing technique (say, mitochondrial DNA as opposed to some form of PCR) might yield a more sensitive DNA profile, and thus a more conclusive result. Thus, the statute allows a court to order further testing in §208(b). Unless Arkansas is going to establish a new frontier in post-conviction testing jurisprudence, the §208(b) gateway limitation on inconclusive results is not meant for an individual whose DNA test results exclude him, but fail to identify another specific individual as the

perpetrator. Such an interpretation would be contrary to this Court’s discussion in *Johnson v. State*.

Arkansas’ habeas corpus statutes allow various forms of relief according to A.C.A. §16-112-201(a), based on new scientific evidence, including the discharging of the petitioner, his re-sentencing, the granting of a new trial, correction of a sentence, or other disposition as deemed appropriate. The showing required under §201(a)(1) is the establishment of innocence based on scientific evidence not available at trial, or under §201(a)(2) the allegation that the scientific evidence supporting a post-conviction claim could not have previously been discovered, but now exists, and would establish “by clear and convincing evidence that no reasonable fact-finder would find the petitioner guilty of the underlying offense.” §16-112-201(a)(2).

The test found in §16-112-205(a) is clearly intended to be applied once pleadings have been filed, and the court has before it a threshold showing. By requiring that a court ‘conclusively’ find prior to a denial that the papers before it provide no basis for relief, the statutory scheme provides an adjudication standard that eliminates cases involving no new scientific evidence of innocence, and encourages a hearing and decision on the merits for cases with evidence of innocence based on post-conviction scientific testing and examination.

The test found in §16-112-208(e) is not phrased in exactly the same way as that found in §201 or §205. Additionally, §208 is specific to DNA test results rather than other forms of scientific evidence. (This is in contrast to A.C.A. §16-112-202 discussing fingerprinting, DNA testing, “or other tests which may become available through advances in technology...”). For the individual relying in whole or in part on DNA test results, §208(e)(1) permits post-conviction relief if such results “exclude [the] person as the source...” of the DNA evidence. Where that happens, the court may grant relief if the DNA test results “when considered with all other evidence regardless of whether the evidence was introduced at trial” establish by compelling evidence that a new trial would result in an acquittal [see §208(e)(3)]. The circuit court failed to consider the uncontradicted evidentiary showing made by appellant in the pleadings (in violation of §205 (a)), and failed to consider the plain language of §208(e) as well. The circuit court’s failure in this regard was apparently due to its mistaken conclusion that the statutory scheme “...does not permit re-weighing of the trial evidence. The adequacy of that evidence to demonstrate his guilt is fixed...” [Order, T. 1272, Add. 1271]

This startling statement bears scrutiny, given a statutory scheme that conditions relief on the implications of (a) evidence not available (or not made available) at trial, (b) new evidence which is to be “viewed in light of the evidence as a whole”

[reference to §201 (a) (1) and (2)], or (c) the results of post conviction DNA testing “considered with all other evidence in the case regardless of whether the evidence was introduced at trial” [§208 (e) (3)]. In fact, the statutory scheme clearly allows re-weighing the evidence in light of the results of post-conviction scientific evidence testing. This is not a matter of statutory interpretation so much as statutory application. The circuit court erred not only in its interpretation of the statutes, but also in its failure to apply them as written.

This Court found that it was appellant’s relationship with co-defendant Echols, and the testimony of a jailhouse informant “... who testified that he talked to Baldwin about the murders...” that formed the heart of the case against appellant, when added to the other evidence in the case. *Baldwin, supra* at 941-942. The jailhouse informant attributed to appellant admissions of: dismembering the victims, sucking the blood from the penis and scrotum, and putting the testes in his mouth. Misskelly had confessed to witnessing sexual assaults and violence directed at the victims. Appellant undertook to demonstrate that this anecdotal evidence was wrong, and had no scientific evidence supporting it. He has done so.

Clearly, given that this Court found evidence of sexual misconduct with all three victims, if none of appellant’s DNA or that of his co-defendants was on the victims or their clothing or at the scene, and none of their hair was found there either, then that

“... would raise a reasonable probability that he did not commit the offenses at the time that testing was ordered in 2004,” to borrow the circuit court’s phrasing of the threshold statutory habeas corpus provision at issue [T. 1270, Add. 1269].¹

The circuit court determined that “his exclusion as the source of a handful of biological material that is not dispositive of the identity of the killer” renders the test results inconclusive [T. 1272, Add.1271]. This ‘finding’ was made notwithstanding the further finding that the: “... DNA-testing results exclude the Petitioner as a source of most of the biological material tested to date...” [Order, T.1271 , Add.1270]. Under A.C.A. §16-112-208(e) the finding of exclusion was, and is, critical. It also ignored the number and significance of items tested, which would be unlikely to be involved in a case in which the State bore the expense.

Even the State conceded there was *no* DNA linking appellant to the victims or to the scene. The DNA that was detected is consistent with that of two persons who admitted being at the scene during the search for the children (Hobbs and Jacoby), and identified a foreign DNA allele on the penile swab taken from the body of one of the victims [T. 1271, Add. 1270].

¹ The question of whether the State’s argument on this point, and the circuit court’s adoption of it, are both correct remains to be determined by this Court. Arguably, this Court’s ruling in *Johnson v. State, supra*, 356 Ark 534, which considered at some length the interpretation of post-conviction scientific evidence testing statutes from a variety of jurisdictions embodies an interpretation of the statutory scheme that could be linked to the issues presented here, regardless of which statute, the original or the 2005 version, was rejected by the circuit court.

The statutory scheme at issue here does not use the word “inconclusive” [§208(b)] to mean that if a statutory habeas corpus petitioner does not produce an airtight case against a new, and different, suspect, he loses. Rather, as argued above, *inconclusive* in this context is a term that has to be interpreted according to “... a common-sense approach”. *Nabholz Construction Corp. v. Contractors for Public Protection Ass’n*, 371 Ark 411, 418-419 (2007). The results here are conclusive. They exclude appellant, which when added to additional evidence tendered by appellant establishes by compelling evidence that appellant is entitled to relief.

Forensic science laboratories like Bode use a generally accepted system of DNA identification that has been standardized for national use. See, generally, Giannelli and Imwinkelreid, *Scientific Evidence* (4th ed), Chapter 18; see also the DNA Identification Act of 1994 (Public Law No. 103-322, 1994). There are DNA interpretation guidelines that require qualified scientists to apply nationally recognized guidelines such as those of the Scientific Working Group on DNA Analysis (SWGDM). These guidelines, added to those developed by DNA testing technology manufacturers, and accredited laboratories like Bode, permit the reliable interpretation of results. The test results here were interpreted by Bode to be conclusive as to appellant. Those results should be credited.

With the State having successfully pursued a case against appellant based almost exclusively on the dubious statements of two persons (Misskelley and the jailhouse informant Carson, whose evidence has been undone by appellant's evidence), there is no rational basis for discounting the complete absence of any DNA linking appellant and his co-defendants to a scene that yielded DNA results that identify other persons. The lack of appellant's DNA debunks the evidence offered by the State at the time of trial that appellant (or anyone else) sexually assaulted the victims, and engaged in other grotesque activities that would have deposited his DNA on the remains of the victims.

The individual who demonstrates actual innocence through post-conviction testing may be entitled to discharge or other relief under §16-112-201(a)(1). Appellant has done that. The individual who demonstrates that newly developed evidence establishes that no reasonable fact-finder would find the petitioner guilty of the underlying offense [§16-112-201(a)(2)] has the right to relief as well. Appellant has done that too. Appellant can also claim entitlement to a new trial given the DNA test results, which when considered against all other evidence regardless of whether it was introduced at trial, establish by compelling evidence that a new trial would result in an acquittal under §16-112-208(e)(3). In denying appellant any relief, the circuit court failed to exhibit any consideration of these three alternative gateways. In failing

to consider the substance of appellant's evidentiary showing, the circuit court, while not mentioning it in any detail, also failed to apply the dictates of §16-112-205 - since nothing in the pleadings established that appellant was not entitled to relief.

Appellant's evidence was uncontradicted.

The circuit court ruled that appellant should be denied relief even under the analyses offered in some of the federal cases that set out the federal habeas corpus test for an innocence claim [Order, T.1275, Add. 1274]. Appellant had argued that in *House v. Bell*, 547 U.S. 518 (2006), the U.S. Supreme Court interpreted a gateway that would have resulted in a new trial in such a way as can inform the analysis that might be employed here. In both *House* and a prior case, *Schlup v. Delo*, 513 U.S. 298 (1995), the U.S. Supreme Court considered what standard would need to be met where the accused was claiming a miscarriage of justice, had been denied state relief, and was now seeking federal habeas corpus relief. The *House* Court engaged in an analysis that demonstrated how DNA evidence (obtained through technology unavailable at the time of trial) produced results that undermined the State's case, while failing to conclusively exclude the defendant as the perpetrator.

In *House*, the State explained how the circumstantial evidence at trial supported its theory that House was guilty. It argued that blood stains and semen were both devastating evidence of guilt at trial. The serological results turned out to be

inaccurate and the semen found on the victim's nightgown and undergarments was identified during post-conviction testing as having come from the victim's husband, and not from the accused. *Id.* at 540. The Supreme Court's analysis demonstrates how DNA testing results acquired after conviction would likely change how a jury would consider the evidence as a whole on retrial:

By contrast a jury acting without the assumption that the semen could have come from House would have found it necessary to establish some different motive, or, if the same motive, an intent more speculative. When the only direct evidence of sexual assault drops out of the case, so, too, does a central theme in the state's narrative linking House to the crime.

Id. at 540-541.

The Court then reviewed evidence supporting both guilt and innocence, noting that evidence pointing to an alternate suspect "... is by no means conclusive." *Id.* at 552-553. But the Court then found that the consideration of all of the evidence undermined the identification of House as the perpetrator, which, when added to his lack of motive, and to other evidence pointing to the alternative suspect "... likely would reinforce other doubts as to House's guilt." *Id.* at 552-553. Here, the circuit court paid lip service to such a post-conviction review, but failed to undertake it.

House is relevant in that it demonstrates a federal due process-based analysis where the accused is claiming a miscarriage of justice, but is unable to demonstrate his

conclusive exoneration as a result of the post-conviction scientific evidence testing. *Id.* at 553-554.

Given appellant's post-conviction evidence, the State's case is completely undermined. He has satisfied the clear and convincing evidence standard attached to A.C.A. §16-112-201(a)(2), and the "... compelling evidence that a new trial would result in an acquittal" standard incorporated into A.C.A. §16-112-208(e)(3) in his petition and exhibits. The State's responsive 'evidence' consisted of a letter from the State's pathologist at trial, endorsed by his new boss. Appellant, far more than the aforementioned House, demonstrated that there was evidence that would clearly exonerate him in a retrial.

The new DNA test results undermine the testimony of the State's pathologist who at both the Misskelley and Baldwin trials stated there was evidence of sexual assault. In 1993 the State introduced primitive DNA evidence suggesting that semen was found on a cutting from the pair of victim's pants, but the Bode DNA test results established that the cuttings yielded no identification of the defendants in this case, and further evidence demonstrates that the State's DNA expert was incorrect in his assertions about the presence of semen. There was none. None of the more than 30 items of evidence tested is consistent with or implicates any of the three defendants, though some items did yield identifiable results pertaining to other people.

The new DNA evidence was considered by highly experienced, board-certified forensic pathologists and experienced forensic odontologists who have opined that not only did the State's pathologist misinterpret the alleged evidence of sexual assault, he also mistook animal predation for knife wounds. The defense offered opinions from Dr. Janice Ophoven, an experienced pediatric pathologist; from Dr. Werner Spitz, whose several editions of the work "*Medico-Legal Investigation of Death*" are considered standard works for reference used by forensic pathologists; from former New York City Chief Medical Examiner Michael Baden, now Chief Forensic Pathologist for the New York State Police; from former San Antonio, Texas Medical Examiner Vincent Di Maio; from Dr. Terri Haddix, a forensic pathologist on the adjunct faculty of the Stanford Medical School [Ex. 17-23; T.189-291, Add. 188-290].

Their opinions are supported by the Chief Odontologist at the Miami Dade Medical Examiner's Department, Dr. Richard Souviron; and by Dr. Michael Tabor, an experienced forensic odontologist who has served as the President of the American Board of Forensic Odontology, and as Chief Forensic Odontologist for the Office of the State Medical Examiner in Nashville, Tennessee. In addition, these scientific views were echoed by Dr. Robert Wood, a dentist who has a doctorate in forensic odontology, and has consulted with governmental bodies on standards to be applied in pediatric pathology cases [Ex. 24-30; T.293-395, Add. 292-394].

All of these experts opine that the majority of the injuries to the victims identified as knife gouges, or cuts, are in reality the result of animal predation. The DNA test results corroborate these opinions, and *visa versa*. Petitioner had filed with the circuit court a series of exhibits consisting of affidavits, reports and records, anticipating that the court would receive these at a hearing conducted under A.C.A. §16-112-205(c)(5). He had both expert and lay witness affidavits supporting his showing.

Appellant also tendered expert scientific evidence demonstrating the problems with the handling of fiber evidence [Exhibits 1 - 4, T. 46-67, Add. 45-66]. Appellant presented seven separate DNA reports [T.69-78, Add. 68-182]. He submitted other voluminous materials, including the CV's and affidavits of his experts, particularly medical experts, together with their reports [T. 185-187, Add. 184-392].

The lay witness statements supporting the petition began with appellant's affidavit denying any guilt or complicity in the case. Appellant presented affidavits from persons who had ridden to school with him on the school bus on the day the three boys were murdered [Sam Dwyer - T. 678-685, Add. 677-684; Matthew Baldwin - T. 699-715, Add. 698-714]. He presented affidavits from school classmates and a teacher concerning his demeanor, attitude, and actions on the day of the killings at issue, and the following day when the bodies were found [Sally Ware, teacher - T.

662-665, Add. 661-664; Amy Mathis, school mate - T. 667-670, Add. 666-669; Crystal Hale Duncan, school mate - T. 672-676, Add. 671-675; Sam Dwyer, T. 678-685, Add. 677-684].

Appellant presented information verifying his whereabouts on May 5 and 6, 1993, in addition to having been in school. His mother Angela Gayle Grinnell had told police, and was prepared to testify, about leaving appellant in charge of his two brothers on the night of the murders, and checking on him when she returned from work [T. 717-738, Add. 716-737]. She had called him from work. In addition, appellant's brother in his statements to police, and appellant's mother's boyfriend, indicated they could both account for his whereabouts during the time in question (Matthew Baldwin affidavit, T. 690-697, Add. 689-696; Matthew Baldwin police interview, T.699-715, Add. 698-714; Dennis Dent police interview, T. 751-779, Add. 750-778].

Also, appellant had been in the habit of engaging in lengthy phone calls in the evening with his girlfriend, Heather Cliett, and two other young women, Jennifer Bearden and Holly George. All of these young women professed to have talked to appellant and/or to Echols during the time period pertinent to the disappearance of the victims. They too provided information in the form of Cliett's affidavit [T.589-596, Add. 588-595]; Bearden's police interview [T. 781-793, Add. 780-792]; her affidavit

[T. 795-803, Add. 794-802]; Holly George Thorpe's affidavit [T. 805-807, Add. 804-806]. Their information was especially compelling because appellant had been in school the day the victims disappeared, and the next day when their remains were recovered. They vouched for his whereabouts on at least part of the pertinent evening.

Insofar as the alleged jailhouse confession was concerned, appellant submitted affidavits from staff members at the Juvenile Detention Unit in Jonesboro, including the Unit's supervisor Joyce Cureton, and line staff members Sue Weaver, Patty Burcham, and Ann Tate [affidavit index, in just stated order, at T.601-607; 609-616; 618-623; 974-982; Add. 600-606; 608-615; 617-622; 973-981]. In addition, appellant presented affidavits from several of the young men incarcerated with him, including the African-American men with whom the jailhouse informant Carson claimed appellant had confrontations that he (Carson) helped rectify. His claims were undermined. Biddle affidavit [T. 625-628, Add. 624-627]; Jason Duncan affidavit [T. 630-633, Add. 629-632]; Redus affidavit [T. 635-639, Add. 634-638]; Haskins affidavit [T. 641-644, Add. 640-643]; Gordon affidavit [T. 645-647, Add. 644-646]. Two of the incarcerated men, Daniel Biddle and Jason Duncan, were logged in as having seen Petitioner and the jailhouse informant Carson playing cards. Even they undermined Carson's account. None of Carson's account was supported by anyone in the Juvenile Detention Unit, except for the fact that a card game did occur. Staff

members noted that Carson would not have been in a position to ‘socialize’ with appellant under the circumstances that he claimed, much less assist him in racial conflicts of which there is no evidence in this case.

Carson’s counselor, Danny Williams, tendered an affidavit noting that he was available as a trial witness, and stating his view that Carson was not a credible source for a number of reasons [T. 653-660, Add. 652-659]. Williams has indicated that he was likely the one who supplied Carson with details of the offenses which Carson then gave to police.

To support the information and evidence that he set forth through experts, appellant also presented evidence that there was predatory wild life, including turtles, present in the woods where the victims were found [Cliett affidavit, T.589-596, Add. 588-595; Shaun Ryan Clark declaration, T. 598-599, Add. 597-598. Clark was related to one of the victims].

Had she been called as a witness, Domini Teer, the then-girlfriend of appellant’s former co-defendant Echols, would have testified that she was with appellant during the afternoon and early evening of the day of the boys’ disappearance, and had watched appellant cut his uncle’s lawn after school [Teer interview, T.812-848, Add. 811-847; affidavit T. 850-852, Add. 848-851].

Appellant also presented evidence that the jury who tried him was unconstitutionally tainted by outside evidence, and by violations of court orders prohibiting consideration of extra-judicial information [T.1004-1010, Add. 1003-1009].

In sum, appellant presented the circuit court with the kind of showing, from exonerating DNA results through supporting and corroborating evidence of innocence, that should have resulted in relief. The circuit court clearly misinterpreted and misapplied the controlling statutes.

2. Given the circuit court’s ruling, it was error for it to deny appellant his motion for an order permitting supplemental examination and testing of scientific evidence

A.C.A. §16-112-205(a) contemplates that a court will review the petition, files and records of a proceeding to assess whether the habeas petitioner is entitled to relief, with or without a hearing. If there is a hearing, the statutory scheme contemplates that the court may receive “... evidence in the form of affidavit, deposition, or oral testimony.” A.C.A. §16-112-205. When a court ascertains that DNA test results are inconclusive, “... the court may order additional testing or deny further relief to the person who is requesting the testing.” A.C.A. §16-112-208(b).

Prior to filing his petition, appellant moved for further testing of fiber and hair evidence. The fiber evidence was sought to be tested in part because appellant had

obtained an opinion from a former trace evidence analyst at the FBI's laboratory, now a forensic scientist in private practice [Max Houck letter, T. 49-51, Add. 48-50; Houck affidavit, Add. T.53-611, Add. 52-60], indicating that the State's fiber testing documentation did not support evidence presented at appellant's trial. As explained by Mr. Houck, the State's records were in such disarray that an independent scientist could not follow the track of fiber evidence from acquisition through testing.

In addition, appellant had consulted with an expert on the DNA analysis of animal hairs who explained that there are laboratory procedures, and qualified laboratories, that permit the identification of animal hair [Exhibit 67, T. 956-963, Add. 955-962]. Appellant offered supporting documentation in the form of an affidavit from Dr. Joy Halverson, an expert on animal hair testing [T. 937-944, Add. 936-943]. On at least two separate occasions the circuit court denied appellant's motion for retesting of fiber evidence, and for DNA testing of animal hair evidence - animal hairs which could demonstrate the species of the animal donors of the hairs, and explain the likely origins of the animal predation evidence found on the remains of the three victims. If the circuit court is correct that the testing to date was inconclusive, it should have ordered further testing.

3. The circuit judge should have recused.

Prior to the submission of the parties' statutory habeas corpus pleadings, appellant's former co-defendant Misskelley had sought the circuit court's recusal. He had done so on the basis that the court, in the person of Judge Burnett, had filed a complaint against Misskelley's trial counsel, Dan Stidham, which was eventually dismissed by the Judicial Discipline Commission. Misskelley's counsel was, as the hearings began, (and is) the District Judge of Greene County, Arkansas, and this separate issue raised a separate basis for recusal, since Judge Burnett (who is now retired) was, at the time the recusal motion was brought, one of the three circuit judges who had supervisory responsibilities over Judge Stidham, and assigned cases to him under the pilot program established under A.C.A. §§16-17-1101 *et seq.* Misskelley had also raised what he contended was Judge Burnett's announcement of intent to seek a seat in the State Senate in the 2010 election after his retirement from the bench as a source of potential bias, given that a ruling against relief in this case might be a political asset.

Misskelley alleged that Judge Burnett's complaint against Judge Stidham suggested a bias against Judge Stidham, lending an appearance of partiality in violation of Arkansas Code of Judicial Conduct, Canon 2A, and providing a basis for disqualification under Canon 3E. The concern was for an appearance of bias, which this Court noted in *Patterson v. R.T.*, 301 Ark. 400, 402; 784 S.W. 2d 777 (1990) may

cause reversal of a case. Misskelley's position was that Judge Burnett's complaint against Judge Stidham was unsubstantiated, and eventually dropped. Appellant joined Misskelley's recusal motion [RT 1324], and his motion was summarily denied. Appellant's concern specifically was that Judge Stidham would be (and indeed is) a witness in proceedings involving appellant, and thus that the objections lodged by Misskelley provided a basis for recusal in appellant's case.

It is a violation of the due process and fair trial guarantees of both the United States Constitution, under the Fifth, Sixth, and Fourteenth Amendments, and of the Arkansas Constitution (Article 2, Sections 8 and 10), to litigate in front of a less than impartial judicial officer. *In Re Murchison*, 349 U.S. 133, 136-137; 75 S.Ct. 623 (1955); *Offud v. U.S.*, 348 U.S. 11, 13-15; 75 S.Ct. 11 (1954).

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VIII. CONCLUSION

Appellant is entitled to relief from the decision of the circuit court, and prays that this Court grants him a remedy.

Dated: February ____, 2011

Respectfully Submitted by

PETITIONER CHARLES JASON BALDWIN

J. BLAKE HENDRIX

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IX. CERTIFICATE OF SERVICE

I hereby certify that I have mailed copies of the Abstract, Brief and Addendum to the Hon. David Burnett, c/o Craighead County Courthouse, Jonesboro, AR, and Dustin McDaniel, Attorney General, 323 Center St., Little Rock, AR 72201 and counsel of record to the co-defendants, Deborah Sallings for Echols and Jeff Rosenzweig for Misskelley this _____ day of February, 2011.

JOHN T. PHILIPSBORN