IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

Case No. ______________
(CR 93-450B)

CHARLES JASON BALDWIN, PETITIONER,

vs.

STATE OF ARKANSAS RESPONDENT

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)

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I. INTRODUCTION AND PARTIES

1. Jason Baldwin, Petitioner, is currently in the custody of the Director, Arkansas Department of Correction. He was committed to the Department of Correction by the Circuit Court of Craighead County, Arkansas on March 19, 1994, having been convicted of three counts of capital murder in violation of Arkansas Code Annotated (hereafter A.C.A.) §5-10-101.

2. Respondent Larry Norris is the Director of the Arkansas Department of Correction. He is named here in his capacity as having authority over Petitioner's person, and thus being subject to the issuance of a Writ of Habeas Corpus.

3. This Petition is brought under A.C.A.§16-112-201(a)(1) and (2) in that Petitioner has exhausted the remedy of correct appeal, and thus, Petitioner is "...convicted

of a crime" and may, under A.C.A. §16-112-201 "... commence a proceeding to secure relief by filing a petition in the court in which the conviction was entered to vacate and set aside the Judgement and to discharge the Petitioner or to re-sentence the Petitioner or grant a new trial or correct a sentence or make other disposition as may be appropriate...." As further alleged below, Petitioner is also seeking a new trial under A.C.A. §16-112-208(e).

4. Petitioner's convictions were affirmed on direct appeal in *Echols and Baldwin v. State*, 326 Ark. 917, 936 S.W.2d 509 (1996), *cert denied* 520 U.S. 1244 (1997) [hereafter *Echols v. State*].

5. Petitioner has never previously sought relief under A.C.A. §16-112-201, *et seq*.

6. Petitioner has sought the Court's assistance in preserving, and ordering tested, a variety of scientific evidence pertinent to Petitioner's convictions and sentence within the meaning of A.C.A. §16-112-202. The Court has ordered some, but not all, of the testing Petitioner has sought.

7. Petitioner satisfies the subject matter jurisdiction of A.C.A. §16-112-201(a)(1) and (2) in that he has, and/or his lawyer has personally declared under penalty of perjury that (1) scientific evidence not available at Petitioner's trial establishes his actual innocence; and/or (2) the scientific predicate for the claim of innocence, and/or for

the claims made bearing on Petitioner's actual innocence, could not have been previously discovered through the exercise of due diligence and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would find the undersigned Petitioner guilty of the underlying offenses. In addition, Petitioner has stated in an affidavit that he did not commit the crimes which are the subject of this Petition (Exhibit 1, Petitioner Charles Jason Baldwin's affidavit).

8. Petitioner is also moving for a new trial under A.C.A. §16-112-208(e)(1), which provides that if DNA test results obtained under this sub-chapter exclude a person as the source of DNA evidence "the person may file a motion for new trial or re-sentencing." Petitioner Baldwin is thus both a Petitioner under A.C.A. §16-112-201 *et seq.*, and a moving party under A.C.A. §16-112-208(e)(1). As a party moving for new trial, Petitioner is proceeding under A.C.A. §16-112-208(e)(3) which provides that the Court "... may grant the motion of the person for a new trial... [if the DNA test results]... when considered with all other evidence in the case regardless of whether the evidence was introduced at trial, established by compelling evidence that a new trial would result in an acquittal."

9. For the convenience of the Court, and the parties, throughout this combined Petition and motion for new trial, Petitioner/moving party Jason Baldwin will refer to

himself as Petitioner.

10. Petitioner also has pending in this Court a Petition for relief under Rule 37 of the Arkansas Rules of Criminal Procedure, timely filed on March 10, 1997. This Rule 37 petition will have been amended as of May 30, 2008 as ordered by the Court, and filed as amended. To the extent that A.C.A. §16-112-201(a)(2) and §16-112-208(e)(3) require review of the evidence as a whole, Petitioner offers as grounds for relief under A.C.A. §16-112-201(a)(2) and 16-112-208(e)(3) all factual allegations that he has stated and has pending before this Court in his Rule 37 Petition and any amendments thereof. He also incorporates by reference any other petitions and motions that he has on file and subject to hearing before this Court. These are incorporated by reference here as though fully set forth in this Petition and motion for new trial

II. PETITIONER'S BASES FOR RELIEF ARE THE CONSTITUTION AND STATUTES OF THE STATE OF ARKANSAS, INCLUDING A.C.A. §16-112-201 AND 16-112-208, AS WELL AS RULINGS FROM THE UNITED STATES SUPREME COURT ESTABLISHING THE SUBSTANTIVE AND PROCEDURAL FRAMEWORK FOR CLAIMS OF INNOCENCE, AND FOR POST-CONVICTION LITIGATION OF CLAIMS THAT THERE IS INSUFFICIENT EVIDENCE THAT THE PERSON CONVICTED COMMITTED THE CRIMES.

11. Petitioner is eligible to apply for relief under A.C.A. §16-112-201(a) and §16-112-208(e). He has previously petitioned, and moved, for the testing of evidence under A.C.A. §16-112-202, and the trial court has granted him relief by ordering DNA testing to

proceed. As this Petition/motion is prepared, Petitioner still has pending before the trial court portions of his motion for post-conviction testing after exhaustion of appeal within the meaning of A.C.A. §16-112-202. On November 20, 2002, Petitioner moved for the release of evidence in the custody of the State for the purposes of: DNA testing; fingerprint examination and comparison; fiber evidence analysis and fiber comparisons; hair evidence analysis and comparisons. The State agreed to the release of specific evidence (including hairs) for DNA analysis. The Court has yet to rule on Petitioner's motion in other respects. In April, 2008, Petitioner reiterated his motion for the release of hair and fiber evidence, and appeared in the trial court on April 15, 2008 to argue for the release of that evidence for testing. At that time, the State took the position that the Court should rule on Petitioner's motion for release of hair and fiber evidence for testing so that the need for further amendment of this Petition/motion based on any further testing ordered will not be necessary. The trial court declined to follow the suggestion at that time, while indicating that it would review all pleadings and review issues with the parties on August 20, 2008.

12. Petitioner is proceeding with the filing of this Petition/motion as ordered by the trial court, notwithstanding the fact that he has not been granted all relief to which he is entitled under A.C.A. §16-112-202.

13. Petitioner has complied in every respect with A.C.A. §16-112-202 in that he

has proposed testing that is reasonable in scope, utilizes scientifically sound methods and is consistent with accepted forensic practices. A.C.A. §16-112-202(5).

14. In bringing his motions for testing under A.C.A. §16-112-202, Petitioner has also identified his theory of defense, which was that he was erroneously identified, and convicted, as a perpetrator of a triple murder in West Memphis, Arkansas. Petitioner's counsel at trial argued that there was little reliable evidence linking him to the crimes of which he was convicted.

15. Petitioner also alleges that the proposed testing of evidence not yet tested may produce new material that would support the theory of defense, and would raise the reasonable probability that he did not commit the offense within the meaning of A.C.A. §16-112-202(8)(A) and (B).

16. Petitioner has provided DNA, fingerprint, and hair samples and thus satisfies A.C.A. §16-112-202(9).

17. Petitioner's motion has been timely made within the meaning of A.C.A. §16-112-202(10) in that this motion is based in part on newly discovered hair evidence, including the discovery within the past year that a hair fitting the apparent DNA profile of the step-father (Terry Hobbs) of one of the victims hairs was found by the State investigators on one of the ligatures used to tie up one of the victims, and only in the past year was biological material acquired from the step-father to allow the identification of

the previously unknown and untested hair. This is one of several items of newly discovered evidence subject to scientific and forensic testing described in the body of this Petition/motion. (See Exhibits 14, 15, and 70–the last of which is dated May, 2008)

18. Petitioner's November 20, 2002 motion for testing (and reiteration of the motion on April 15, 2008) was not made solely upon Petitioner's assertions of innocence.

19. In addition, Petitioner has alleged in his November 20, 2002 motion for testing of evidence under A.C.A. §16-112-202, and has reiterated in his April 2008 filing that new methods of technology substantially more probative than prior testing are available to conduct current testing.

20. Finally, there is good cause for the Court to issue the testing order in that Petitioner, and his co-defendant Damien Echols, have: (a) provided the State with access to a number of their experts on forensic sciences to frankly discuss the problematic application of forensic sciences in the initial trial of this case, and to discuss the basis for Petitioner and Echols' claims of innocence; (b) Petitioner and his co-defendants, who are otherwise personally indigent, have received donations of funds over a period of time which has allowed them, as funds were available, to pay for forensic testing. In the absence of those donations Petitioner would never have been able to pay for the testing, as the State of Arkansas took the position that it could not pay for DNA and other testing sought in this case. Further, with the exception of having objected to the release of hair

and fiber evidence for the purpose of non-DNA testing, throughout the proceedings under A.C.A. §16-112-202, the State of Arkansas has taken the position that it would agree to DNA testing of an extensive number of items acquired during the course of the investigation of Petitioner/movant's case, and at no time has the State raised the issue of delay as a bar to any testing.

21. In addition, it is clear, and the State has not disputed, that since the time of this trial there have been, and continue to be, developments of new methods of testing for DNA, and new technologies currently available that are substantially more probative than those available at time of trial or during the initial years of Petitioner's post-conviction litigation. Some of the technologies applied to test DNA in this case, such as STR and mitochondrial DNA testing, were not available in the Arkansas State Crime Laboratory when Petitioner first brought his motion under A.C.A. §16-112-201/202, and even since the DNA testing started, additional DNA testing techniques have been developed that allow further refinement of test results.

22. It is in part for the reason alleged immediately above that the parties agreed that an accredited DNA laboratory outside the State of Arkansas with the ability to conduct both STR and mitochondrial DNA testing, and most recently, mini-STR testing, should be involved in the testing of material in this case.

23. Petitioner/movant affirmatively alleges, at least as to the issue of timeliness

of the bringing of motions for testing/retesting that there are no legitimate questions of timeliness to be litigated. This Petition/motion for new trial has been filed pursuant to a schedule agreed upon by the parties, and the trial court specifically ordered Petitioner to file his papers no later than May 30, 2008.

24. Petitioner alleges several statutory grounds for relief. Under A.C.A. §16-112-201(a)(1) he alleges that scientific evidence not available at his trial establishes his actual innocence. A.C.A. §16-112-201(a)(1).

25. In addition, or in the alternative, Petitioner alleges that the scientific predicate for the claims made here could not have been previously discovered through the exercise of due diligence, because of the fact that the DNA testing technologies applied in this case were not available to Petitioner at the time of trial, or during the initial phase of his appeal and post-conviction litigation. In addition, other testing technologies, such as those employed to test the DNA of animal hair, some hair identifications and some fiber testing techniques were not available to Petitioner at the time of his trial. In addition, the DNA expert employed by the State to conduct PCR testing of a limited number of items was not competent and after Petitioner's trial, that analyst left the field. Similarly the fiber and hair analysts employed by the State, including Lisa Sakevicius of the Arkansas State Crime Laboratory, exhibited a lack of proficiency and knowledge in providing testimony, and kept insufficient documentation to demonstrate that valid and reliable hair

and fiber testing was done at the time of trial. (Letter, affidavit and CV of Max Houck, Exhibits 2, 3 and 4.)

26. In addition, to the extent and degree that Petitioner's claims of innocence have depended on his access to qualified forensic pathologists, odontologists, anthropologists, and criminalists who were only recently able to review this case in light of newly acquired DNA evidence, Petitioner could not have previously discovered the predicate for claims made here.

27. In addition, because at the time of trial Petitioner's counsel chose not to employ a private investigator, as well as because counsel for Petitioner did not acquire the fruit of any investigation of this case from co-defendants, Petitioner was only able to conduct post-conviction investigation recently, and since acquiring his current post-conviction counsel. Petitioner could not have previously discovered through the exercise of due diligence the scientific predicate for at least some of the claims made here, as well as the predicate for demonstrating what evidence "as a whole" exists in this case within the meaning of A.C.A. §16-112-201(a)(2) and A.C.A. §16-112-208(e).

28. On the bases just stated, and further explained in detail below and in the supporting exhibits, Petitioner thus alleges that the scientific predicate for the claim that he is entitled to relief is proven, and when viewed in light of the evidence as a whole is sufficient to establish by clear and convincing evidence that no reasonable fact-finder

would find the Petitioner guilty of the underlying offenses within the meaning of A.C.A. §16-112-201(a)(2).

29. In addition, Petitioner/movant alleges that through the use of testing procedures permitted under A.C.A. §16-112-208, he has the results of DNA testing that exclude him as the source of DNA evidence pertinent to and relevant in this case, within the meaning of A.C.A. §16-112-208(e)(1) and (3). Petitioner/movant further alleges, in the context of his motion for a new trial, that the DNA test results when considered "... with all other evidence in the case regardless of whether the evidence was introduced at trial, established by compelling evidence that a new trial would result in an acquittal." A.C.A. §16-112-208(e)(3).

30. In making the immediately above allegation supporting the motion for new trial under A.C.A. §16-112-208(e)(3), Petitioner/movant has set forth in detail below, and in the supporting exhibits, the evidence (together with the DNA testing results) that a new trial would result in acquittal.

31. Any petition filed under this sub-chapter may contain argument or citations to authority within the meaning of A.C.A. §16-112-203(a)(1)(C). In addition to basing his claims for habeas and new trial relief on the Constitution and statutes of the State of Arkansas, Petitioner also alleges that decisions of the United States Supreme Court set forth the substantive as well as procedural framework for the litigation of claims of

innocence, miscarriage of justice, and new evidence establishing that an initial trial resulted in a miscarriage of justice such as to require relief under Federal standards.

32. Petitioner affirmatively alleges that as to his claims: of innocence; that no reasonable fact-finder would have found Petitioner guilty of the underlying offenses; and that scientific evidence not available at trial establishes a miscarriage of justice and/or the unreliability of the guilt phase verdict and/or actual innocence, this Court must apply the framework set forth in *House v. Bell*, 547 U.S. 518 (2006). *House* involved a contention that the defendant had erroneously been identified as the perpetrator, was wrongly convicted, and that DNA evidence undermined the forensic science evidence testing results introduced at trial. *House* defined the applicable standard as follows: "A petitioner's burden at the gateway stage is to demonstrate that more likely than not, in light of the new evidence, no reasonable juror would have found him guilty beyond a reasonable doubt - or, to remove the double negative, that it is more likely than not any reasonable juror would have reasonable doubt." *Id.* at 538-539. The United States Supreme Court explained that where new evidence is supplied during post-conviction litigation to support an innocence claim "... the inquiry requires the federal court to assess how reasonable jurors would react to the overall, newly supplemented record [citations omitted]." *Id.* at 539. Notwithstanding Arkansas' statutory scheme, including 16-112-201 *et seq.* and 16-112-208(e), *House* sets forth the standard of review required by the

United States Constitution.

33. In *House*, the United States Supreme Court reiterated the procedural framework that it had first described in *Schlup v. Delo,* 513 U.S. 298 (1995), which the Court stated would apply to an extraordinary case in such a way as to avoid a manifest injustice. *Id.* at 327. As the Court explained, where new evidence is used to support an innocence claim, the gateway standard to be applied is whether "... it is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt." *Ibid.*

34. Because the combination of *House, supra*, and *Schlup, supra* state the relevant Federal test, it is important to note that *House* also explained that under the Federal standard, the habeas court must consider all of the evidence, "... old and new, incriminating and exculpatory" without regard to whether it would have been admitted at trial to determine the likely impact of the new evidence on reasonable jurors. *House, supra*, at 538-539.

35. Petitioner also alleges that the U.S. Supreme Court's decision in *Herrera v. Collins*, 506 U.S. 390 (1993), while less recent than the ruling in *House, supra,* confirms that the reviewing court's inquiry, under the Federal standard, is whether (a) had the jury heard all the conflicting testimony, (b) it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt. *House, supra,* at 553-554.

36. Petitioner further alleges, and argues, that the United States Supreme Court's definition of the Federal standards should be considered and applied by the courts of the State of Arkansas, as these define the way that the evidence presented to the courts of Arkansas in Petitioner's case will be considered by the Federal courts if Petitioner is denied relief in Arkansas.

37. The State of Arkansas' statutory tests vary according to the nature of the evidence being relied upon as the basis for relief. According to the statutory scheme, where DNA test results are the basis for the relief, the standard is set forth under A.C.A. §16-112-208(e)(3), and requires consideration of the DNA test results together with all other evidence of the case regardless of its introduction at trial, and the assessment of whether there is compelling evidence that a new trial would result in acquittal.

38. The standard just described is different than that set forth as the basis for habeas relief under A.C.A. §16-112-201(a)(1) and (a)(2). The standard set forth in 201(a) appears to be a threshold standard. However, nowhere in the sub-chapter does the statutory scheme spell out a standard for relief where the claim for habeas relief brought under A.C.A. §16-112-201(a)(1) and (2) is based on other than DNA evidence on the one hand, or on DNA and other test results, on the other.

39. The State Supreme Court of Arkansas has, at various times, interpreted the sub-chapter, including in *Johnson v. State*, 356 Ark. 534; 157 S.W.3d 151 (2004). There,

the court indicated that it views the threshold standard that allows retesting under A.C.A. §16-112-202 to be different from the standard that ultimately is applicable to the review of the case once testing has been conducted.

40. Petitioner's legal arguments and points in connection with the above allegations and discussion of law are as follows:

(a) the threshold showing that permits the testing of items is less onerous than the showing that applies to granting a new trial or other relief;

(b) as to the motions to test hair and fiber and other evidence (including fingerprints) that the Court has not ruled on, the Court should apply the lesser standard and grant opportunity to test and examine as requested, especially in view of Exhibits 2-4 discussed below;

(c) even if this Court refuses Petitioner the ability to further test evidence, Petitioner alleges here, and throughout this combined Petition/motion that he is entitled to relief under A.C.A. §16-112-201 *et seq.*;

(d) where DNA evidence is central to the claim made, the test for the granting of a new trial is set forth in A.C.A. §16-112-208(e)(3);

(e) subsection 208 does not specifically describe a test or standard for

granting a new trial or other relief where DNA is combined with other evidence;

(f) Petitioner alleges, and argues, that under no circumstances can the standard/test applied by the State of Arkansas use a higher standard than that set forth by the United States Supreme Court in *House, Schlup* and *Herrera*.

41. Petitioner further alleges that regardless of the test that the Court applies, Petitioner has demonstrated the basis for habeas and/or new trial motion relief, and the Court should grant Petitioner habeas relief by ordering him freed from his convictions and from custody, in the alternative, the Court should grant a new trial.

III. INCORPORATION BY REFERENCE OF EXHIBITS.

42. Petitioner incorporates by reference as though fully set forth here the exhibits submitted to support this Petition/motion for new trial, and in doing so intends for the Court to consider all evidence, as permitted by the statutes of the State of Arkansas, and encouraged by the rulings of the United States Supreme Court, in addressing the merits of this Petition/motion for new trial. Petitioners exhibits are listed in his separate exhibit books.

IV. THE FACTS OF THE CASE AS FOUND BY THE SUPREME COURT OF ARKANSAS ARE PART OF THE BASIS FOR RELIEF AS THEY DESCRIBE THE EVIDENCE THAT PETITIONER MUST ADDRESS

43. In its ruling upholding the convictions obtained in this case, the Supreme Court of Arkansas provided a detailed description of the evidence produced at trial. *Echols v. State, supra*, 326 Ark. 917. Petitioner's allegations here are made in view of the Supreme Court of Arkansas' rulings on, and recitations of, the case facts, as well as based on the actual record of trial proceedings in Petitioner's case which is incorporated here by reference.

44. The opinion by the Honorable Robert H. Dudley, Justice of the Supreme Court of Arkansas in Petitioner's appeal begins by noting: "Damien Echols and Jason Baldwin were convicted of the capital murders of Michael Moore, Christopher Byers, and Steve Branch." *Id.* at 934-935.

45. The Supreme Court of Arkansas described the evidence produced at trial as follows:

> Michael, Christopher, and Steve were eight years old, in the second grade, in the same Cub Scout troop, and often played together in their West Memphis neighborhood. On the afternoon of May 5, 1993, after school, Michael and Steve were riding their bicycles while Chris was skateboarding. Deborah O'Tinger saw the three boys walking through her yard between 5:45 and 6:00 that afternoon. Her recollection was that they were pushing a bicycle. About 6:00 p.m. Dana Moore, Michael's mother, saw the three boys together. At that time Michael was riding his bicycle. Between 6:30 and 6:45 Brian Woody saw

four boys going into some woods known as the Robin Hood Woods. He noticed that two of the boys were pushing bicycles, one had a skateboard, and a fourth was walking just behind them. Neither Michael, Christopher, nor Steve returned to their homes. Their parents called the police, and a search was begun.

The next morning, members of the Crittenden County Search and Rescue Unit discovered a tennis shoe floating in a ditch just north of Ten Mile Bayou. The Robin Hood Woods drain into Ten Mile Bayou, and the members of the search unit knew the boys were last seen in that area. Detective Mike Allen walked along the ditch bank to the place where the tennis shoe had been found. He noticed that one area of the ditch bank was cleared of leaves, while the rest of the bank was covered with leaves and sticks. He described the cleared area on the bank as being "slick", but having "scuffs" in the cleared-off area. He got into the water, reached down to get the shoe, and felt Michael Moore's body. The corpses of Christopher Byers and Steve Branch were subsequently found about twenty-five feet downstream. Policeman John Moore, who was also there, said there was blood in the water, but none on the bank. Detective Bryn Ridge was also present and helped to recover the boys' bodies. He collected the victims' clothes, three tennis shoes, and a Cub Scout cap that was floating in the water. He found a stick stuck in the mud that had one of the boy's shirts wrapped around the end that was stuck down in the mud. He dislodged another stick as he was removing the corpse of Michael Moore.

All three corpses had their right hands tied to their right feet and their left hands tied to their left feet. Black shoelaces and white shoelaces were used as ligatures. Michael Moore's body had wounds to the neck, chest, and abdominal regions that appeared to have been caused by a serrated knife. There were abrasions over his scalp that could have been caused by a stick. Dr. Frank Peretti, a State medical examiner, testified that there was bruising and discoloring comparable to that frequently seen in children who are forced to perform oral sex. He testified that there were defensive wounds to the hands and arms. Moore's anal orifice was dilated, and the rectal mucosa was reddened. Dr. Peretti testified this injury could

> have come from an object being placed in the anus. Finally, Dr. Peretti testified that there was evidence that Moore was still alive when he was in the water, as there was evidence of drowning.
>
> Steve Branch's corpse had head injuries, chest injuries, and genital-anal injuries, lower extremity injuries, upper extremity injuries, and back injuries. The body had multiple, irregular, gouging wounds, which indicated that he was moving when he was stabbed. The anus was dilated. Penile injuries indicated that oral sex had been performed on him. There was also evidence that he, too, had drowned.
>
> Christopher Byers' corpse had injuries indicating that he had been forced to perform oral sex. His head had scratches, abrasions, and a punched-out area of the skin, and one eyelid had a contusion. The back of the neck had a scrape. The inner thighs had diagonal cuts on them. The back of the skull had been struck with a stick-like, broomstick-size, object. The skin of the penis had been removed, and the scrotal sac and testes were missing. There were cuts around the anus, and the hemorrhaging from those cuts indicated he was still alive when they were made. Many of the cuts were made with a serrated blade knife. Byers did not drown; he bled to death.

Id. at 934-938.

46. The Court then continued to describe the evidence in the record:

> The boys' bicycles were found nearby. On May 10, four days after the bodies were found, the police had not solved the cases. When Detective Bryn Ridge questioned Echols, he asked him how he thought the three victims died. Ridge's description of Echols' answer is abstracted as follows:
>
>> He stated that the boys had 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. The 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.

> At the time Echols made the statement, there was no public knowledge that one of the children had been mutilated more severely than the others.
>
> On June 3, or almost one month after the murders, Detective Mike Allen asked Jessie Lloyd Misskelley, Jr. about the murders. Misskelley was not a suspect at the time, but Echols was, and it was thought that Misskelley might give some valuable information about Echols. Detective Allen had been told that all three engaged in cult-like activities. Misskelley made two statements to the detective that implicated Echols and Baldwin, as well as himself. The statements can be found in *Misskelley v. State*, 323 Ark. 449, 459-61; 915 S.W.2d 702, 707-08 (1996).
>
> Misskelley, age 17, Echols, age 19, and Baldwin, age 16, were jointly charged with the capital murders of Moore, Byers, and Branch. Misskelley moved for a severance from Echols and Baldwin and the trial court granted the severance. [*Id.* at 937-939.]

47. The Court made reference to fiber evidence described during the Echols/Baldwin trial. It noted that Lisa Sakevicius, a criminalist from the State Crime Laboratory "... testified that she compared fibers found on the victims' clothes with clothing found in Echols' home and the fibers were microscopically similar." *Id.* at 939-940.

48. The Court also made specific reference to the testimony of the State's principal witness on cause of death, Dr. Frank Peretti. Dr. Peretti's testimony was summarized, indicating "... that there were serrated wound patterns on the three victims. On November 17, 1993, a diver found a knife in a lake behind Baldwin's parents'

residence. The large knife had a serrated edge... Dr. Peretti testified that many of the wounds on the victims were consistent with, and could have been caused by, that knife." *Ibid.*

V. NEWLY ACQUIRED SCIENTIFIC EVIDENCE, INCLUDING DNA TEST RESULTS, AND ADDITIONAL EVIDENCE DESCRIBED IN THIS PETITION DEMONSTRATE EITHER THAT PETITIONER WAS INNOCENT OF THE CRIME OR THAT A NEW TRIAL WOULD RESULT IN ACQUITTAL.

49. On November 20, 2002, Petitioner Baldwin filed a Petition/motion under A.C.A. §16-112-201 *et seq.*, specifically under A.C.A. §16-112-202, and under the Fifth, Sixth, and Fourteenth Amendment guarantees of equal protection and Due Process, seeking access to crime scene evidence in the custody of the State of Arkansas for the purposes of testing, including developing, DNA profiles for biological material found at the scene and comparing those profiles with known DNA from Petitioner and his co-defendants Jessie Misskelley and Damien Echols. Petitioner's co-defendants Echols and Misskelley filed similar Petitions/motions.

50. In addition, Petitioner and his co-defendants sought orders from the trial court impounding all evidence, and preserving it, so that Petitioner could pursue post-conviction relief (as could his former co-defendants, independently).

51. The trial court never ruled on the Petition/motion to release evidence as the result of a contested hearing. Rather, the parties drafted an agreed-upon initial order for

DNA testing. As a result, on June 2, 2004, the Honorable David Burnett, Judge of the Circuit Court, who had presided over Petitioner's trial, issued an "Order for DNA Testing" (Exhibit 5). This Order had been the product of negotiations between counsel for the State of Arkansas, counsel for Petitioner, and counsel for co-defendants Jessie Misskelley and Damien Echols. A list of laboratories was suggested to the parties by Arkansas State Crime Laboratory criminalist Kermit Channell, working with Circuit Prosecutor Brent Davis and with the approval of all three of the defendants/Petitioners in this case, including Petitioner Baldwin, the Bode Technology Group, an accredited DNA testing laboratory in Springfield, Virginia, was chosen to perform the DNA testing.

52. In July of 2004, Bode received numerous items of evidence from the Arkansas State Crime Laboratory, all acquired during the course of the State's investigation of this case, including but not limited to: the ligatures used to bind the three victims; clothing from the victims; hairs; other items from the scene. A number of samples taken by State authorities during the course of the post-mortem examination of the three victims were also submitted, including anal, oral, and penile swabs from each of the victims. These were submitted as well.

53. On February 23, 2005, after further negotiations between the parties, the trial court issued a "First Amended Order for DNA Testing" which specified what modifications to the list of items to be tested were to be adhered to by Bode (Exhibit 6).

54. After the testing of 'unknowns from the crime scene was completed, Petitioner and his former co-defendants Damien Echols and Jessie Misskelley agreed to have their DNA sampled so as to establish "knowns" for the testing and comparison process. The State of Arkansas also provided various biological samples for the victims, which were eventually tested to establish further "knowns". After the unknowns were tested and profiled using DNA testing technology, and initial reports issued, the knowns from the victims and from the defendants were used for comparison purposes.

55. All of the agreed-upon samples (which were specifically described in the "Order for DNA Testing") were designated to be analyzed using currently available DNA technology including Short Tandem Repeat testing (STR), and mitochondrial DNA testing.

56. It appears that Bode Technology Group followed accepted testing and reporting protocols available in most accredited DNA laboratories involved in forensic science work.

57. Bode completed the agreed-upon testing and reported to the parties, in writing, the test results, including furnishing the DNA profiles of the three victims, the defendants/Petitioners (Baldwin, Misskelley, and Echols). Bode reported separately on the STR results and the mitochondrial results (Exhibit 7, December 30, 2005 STR Forensic Data Case Report of 12/30/05 addressed to Petitioner's counsel; Exhibit 8,

Mitochondrial Forensic DNA Case Report of 12/30/05, also addressed to Petitioner's counsel).

58. After the initial results were obtained, some additional testing of material was accomplished.

59. Results in the form of complete and partial DNA profiles were obtained from numerous pieces of evidence recovered from the crime scene (exhibits specifically described below). None of Petitioner Baldwin's DNA was located in or on any of the evidence analyzed - nor was any DNA identified as having the same profile as co-defendants/Petitioners Echols and Misskelley. This is highly significant, in part because (as evidenced by the Arkansas Supreme Court's summary of the facts adduced at trial alleged in this Petition, above) this case was prosecuted on the theory that the victims were likely sexually abused by one, some, or all of the defendants, and were killed in the midst of a satanic ritual in which the State theorized (as the case evidence was argued to the jury, and as evidence was presented at trial) that Petitioner Baldwin, his friend Damien Echols, and Jessie Misskelley were all involved.

60. Significantly, identifiable DNA not belonging to the victims found at the scene and later identified was hair evidence consistent with that of Terry Hobbs, step-father of Steve Branch - in the sense that a hair containing mitochondrial DNA consistent with that of Terry Hobbs was identified. (Exhibits 14, 15, and 70) There was also a hair

consistent with the DNA profile of David Jacoby (using mitochondrial DNA testing), a friend of Terry Hobbs who reported having searched the woods for the missing boys with Hobbs on the day they were reported missing.

61. The Terry Hobbs hair was found on/in one of the ligatures. The Jacoby hair was found on a stump near the scene.

62. A Negroid hair and other hairs removed from the scene have not been identified as belonging to a specific person, except that some of the hair on hair slides pertinent to the case prepared by the Arkansas State Crime Laboratory, including at least one slide of hair and material from the crime scene contained hair determined by an analyst at Bode Technology to be animal hair. Some of the hair slides originally prepared by the Arkansas State Crime Laboratory (not all from crime scene evidence) had also contained a few identified animal hairs.

63. The fact that (according to the State Crime Laboratory) the apparent Terry Hobbs hair was found on the ligature is of importance because it evidences the fact that "foreign" DNA was found at the scene, and, where sufficient testing was done, could be identified. The animal hair from the scene establishes that non-human hair was also at the scene.

64. Foreign DNA of undetermined origin was also located on the swab taken from the victim Steve Branch's penis. This swab yielded both a DNA profile (using STR

technology) consistent with that of Steve Branch, as well as a partial DNA profile which is inconsistent with Steve Branch, the defendants/Petitioners, or with anyone else currently identified through DNA testing. In sum, human DNA of unknown origin was on the Steve Branch penile swab, thus indicating, at the very least, that foreign DNA was identified during the post-conviction testing process, and it did not belong to any of the three defendants in this case.

65. Arkansas Code Annotated §16-112-208(e)(3) provides that a new trial should be granted "if the deoxyribonucleic acid (DNA) test results, when considered with all other evidence in the case regardless of whether the evidence was introduced at trial, establish by compelling evidence that a new trial would result in an acquittal." While this standard is slightly different than standards set forth elsewhere in the Arkansas statutes dealing with results of post-conviction scientific evidence testing (including the standards and tests set forth in A.C.A. 16-112-201(a)(1) and (2), using either of the stated statutory tests, or both of them) DNA evidence in this case excludes Petitioner as the source of DNA evidence recovered from the victims and crime scene. Petitioner's specific allegations in this regard are that:

a) Bode Technology, Inc. completed an extensive analysis of items of evidence identified in the Court's "First Amended Order for DNA Testing". That analysis was complete by December 30, 2005, when the lab issued reports on the result of

both the STR and mitochondrial DNA testing. Bode issued an "STR Forensic DNA Case Report" pertinent to the STR results (Exhibit 7), and the mitochondrial results were reported in a document entitled "Mitochondrial Forensic DNA Case Report" (Exhibit 8). By the time of the December 30, 2005 reports just mentioned, because of standard laboratory practices that avoid the probability of contamination, or the possibility of analyst bias, the testing of "unknowns" (namely samples from the defendants and the three victims) had not been completed.

b) Based on further discussion between the parties, it was agreed that known samples taken from Petitioner, co-defendants Echols and Misskelley, and obtained from the victims would be transmitted to Bode Technology, Inc.

c) As a result of that procurement, on January 2, 2007, Bode Technology, Inc. issued an additional "STR Forensic DNA Case Report". This report (Exhibit 9) explains that none of the defendants in the original case, thus neither Petitioner, nor Damien Echols, nor Jessie Misskelley were identified (not 'included' as per the technical jargon) as contributors of any genetic material recovered at the crime scene or on the victims' bodies which produced a useable STR result (Exhibit 9 at pp.5-6).

d) On January 25, 2007, Bode Technology issued a "Supplemental Forensic Case Report" (Exhibit 10) providing mitochondrial DNA profiles of the Petitioner, and his former co-defendants, as well as the victims. Again, neither Petitioner nor his former

co-defendants could be identified as a contributor of the genetic material recovered from the crime scene or on the victims' bodies which had by that time been tested by Bode Technology. They were excluded as mitochondrial DNA contributors (Exhibit 10 at pp.1-2).

e) On July 19, 2007, the State filed its Reply to Petitioner Echols' second DNA Testing Status Report stating its agreement that DNA testing to date had not included Damien Echols or his co-defendant (Petitioner) and Jessie Misskelley in the biological material found at the crime scene and tested (Exhibit 11).

f) On September 27, 2007 Bode issued another "STR Forensic DNA Case Report" that formally analyzed the victim samples. In that report, Bode described the various items of evidence which had previously been subjected to STR testing, and provided an analysis of what DNA profiles matched the victims' profiles (Exhibit 12).

g) That same day, on September 27, 2007, Bode issued a "Supplemental Forensic Case Report" bearing on mitochondrial DNA testing, which disclosed the victims' profiles, and disclosed what evidence was consistent, or inconsistent, with the victims - or from which the victims could not be excluded (Exhibit 13).

h) In the course of the above testing, while Petitioner and his former co-defendants were excluded as donors of biological material found on the scene, the DNA results reported by Bode Technology indicated the presence of 'foreign' DNA that could

have come from neither the victims nor Petitioner or his former co-defendants. This was true in the case of Sample 2-04-114-10E, an extract from the swab of the victim Steve Branch's penis (September 27, 2007 STR Forensic DNA Case Report at p.7, Exhibit 12).

i) Subsequently, as a result of ongoing investigation by counsel for Petitioner Damien Echols, samples of evidence from known donors were obtained. This included the acquisition of cigarette butts taken from the residence of Terry Hobbs, stepfather of Steve Branch, and of a hair from Hobb's friend David Jacoby. Both Terry Hobbs and David Jacoby have told police that they were among the searchers for the three missing boys on May 5, 1993 and each has stated that he was in Robin Hood Woods at that time.

j) The evidence at issue was subjected to mitochondrial DNA testing, which occurred at the Serological Research Institute in Richmond, California (Exhibits 14 and 15). The items were analyzed by an experienced DNA analyst, Tom Fedor (Mr. Fedor's CV is attached as Exhibit 16).

k) According to Mr. Fedor's analysis, the mitochondrial sequence recovered from the cigarette butt closely resembled the sequence obtained in the analysis of a hair found on a ligature used to tie the hand and lower extremity of Michael Moore (Item 2S04-114-03Aa).

l) Thereafter, with the concurrence of prosecutor Brent Davis, State Crime Lab personnel were dispatched to acquire known hair samples from Terry Hobbs. These

samples were sent to Bode Technology, Inc. for profiling.

m) As of early April, 2008, Bode Technology had yet to begin testing hair samples for Mr. Hobbs. The Bode results arrived on May 23, 2008. (Exhibit 70)

n) At this juncture, as Petitioner awaits the results of Bode's further testing of the currently identified Hobbs and Jacoby hairs, Petitioner affirmatively alleges that counsel for Damien Echols interviewed Sharon Nelson of Hernando, Missouri. On the basis of the interview, Petitioner affirmatively alleges that Sharon Nelson dated Terry Hobbs for approximately six months around 2002 and 2003. She had met Hobbs through her son Andy who was romantically involved with Terry Hobbs' daughter Amanda.

o) During the course of their relationship, Nelson states that Terry Hobbs described his activities in connection with the discovery of the bodies of the three victims in this case on May 5, 1993.

p) Hobbs told Sharon Nelson that the boys often played and rode their bikes together. They knew that they were supposed to be home before Pam Hobbs, Terry Hobbs' wife at the time of the killings, came home from work. Nelson states that Hobbs told her he took his wife Pam to work, and later looked for the three boys. He stated to Nelson that he actually found the bodies of the three boys, but neither told the police nor his wife about the discovery.

q) Sharon Nelson is reported to be suffering from congestive heart failure and

chronic heart disease. Also, her son Andy was arrested and charged with an offense for beating Terry Hobbs in alleged retaliation for Hobbs' abuse of his daughter Amanda.

r) In June, 2007, after publication and airing of media coverage concerning the post-conviction investigation of this case, naming Terry Hobbs as a subject of ongoing discussion, the West Memphis Police Department, through Detective Mitchell, contacted both Mr. Hobbs and his former wife (with whom he was married at the time of the killings in May, 1993), Pam Hobbs. When Mr. Hobbs denied complicity in the homicides at that time, and indicated that he was part of the search process, neither Mr. Hobbs, nor his former wife Pam, shed light on how hair evidence from one of the searchers was associated with crime scene evidence, and specifically a ligature.

s) As this Petition is prepared, some evidence including dental plates, and knives, that Pam Hobbs obtained from her former husband Terry Hobbs, have been delivered to the State through the offices of former criminal defense lawyer (and Jessie Misskelley lawyer) Dan Stidham, now Judge Stidham. Judge Stidham took possession of the evidence at issue at a specific point in the past six years, in the presence of a law enforcement officer. The evidence was retained in a locked vault, until Judge Stidham made arrangements to turn it over to the State.

t) The evidence at issue has not yet been analyzed.

A. A description of the State's scientific evidence at trial sets the stage for evaluating scientific evidence acquired by the defense in post-conviction litigation

66. Scientific evidence not available at his trial establishes Petitioner's innocence within the meaning of A.C.A. §16-112-201(a), and DNA test results establish by compelling evidence that a new trial would result in an acquittal within the meaning of A.C.A. §16-112-208(e)(3) and *House v. Bell, supra.* The DNA evidence combined with other scientific evidence acquired by Petitioner in post-conviction litigation when reviewed under the standards set forth in A.C.A. §16-112-201 and in A.C.A §16-112-208 (e)(3) demonstrate that Petitioner is innocent, or that no reasonable fact finder would find him guilty, or that a new trial would result in acquittal, or all of the above. This evidence includes that competent and qualified pathologists, forensic odontologists, and other forensic scientists using generally accepted principles and standards applicable to the science of the detection of causes of death and mechanisms of injury, and crime scene analysis, and making reference to newly available DNA test results obtained through technologies unavailable at time of trial, have found that the significant injuries to the three victims are consistent with post-mortem animal predation, and are not evidence of punctate, lengthy, or 'pattern' wounds caused by a knife, whether serrated or not, which was the evidence at time of trial. Also, this evidence demonstrates that the three victims did not have signs or evidence of forced oral or anal sex, which was another one of the

State's argued theories at trial.

67. The recent review of the medical and pathology findings by qualified, Board-certified, pathologists (including Board-certified forensic pathologists), and odontologists are subject to review against the background of the facts presented at Petitioner's trial, which were summarized by the State Supreme Court in *Echols v. State, supra*, 326 Ark. 917. In pertinent part, these findings included:

> Dr. Frank Peretti, a State medical examiner, testified that there was bruising and discoloration [on the body of James Michael Moore] comparable to that frequently seen in children who are forced to perform oral sex. He testified that there were defensive wounds to the hands and arms. Moore's anal orifice was dilated, and the rectal mucosa was reddened. Dr. Peretti testified this injury could have come from an object being placed in the anus. [*Id.* at 934-938.]

68. As to the injuries to Steve Branch, the State Supreme Court found the evidence as follows:

> Steve Branch's corpse had head injuries, chest injuries, and genital-anal injuries, lower extremity injuries, upper extremity injuries, and back injuries. The body had multiple, irregular, gouging wounds, which indicated that he was moving when he was stabbed. The anus was dilated. Penile injuries indicated that oral sex had been performed on him....

Id.

69. As to Christopher Byers, the pertinent findings were:

> Christopher Byers' corpse had injuries indicated that he had been forced to perform oral sex. His head had scratches, abrasions,

> and a punched-out area of the skin. One eyelid had a contusion. The back of the neck had a scrape. The inner thighs had diagonal cuts on them. The back of the skull had been struck with a stick-like broomstick-size object. The skin of the penis had been removed, and the scrotal sac and testes were missing. There were cuts around the anus, and the hemorrhaging from those cuts indicated he was still alive when they were made. Many of the cuts were made with a serrated blade knife. Byers did not drown; he bled to death.

Ibid.

70. Reliable scientific evidence establishes that the forensic pathologist employed by the Arkansas State Crime Laboratory, Dr. Frank Peretti, who testified at Petitioner's trial, misidentified and misconstrued the nature, cause, and mechanism of significant injuries to the bodies of the victims.

71. In addition, the State's forensic pathologist misstated the timing of significant injuries to the three victims in relation to their deaths.

72. The currently available scientific evidence, which was not available to Petitioner at trial, establishes that the principal directly incriminating evidence linking Petitioner to the crimes, namely a set of alleged jailhouse admissions, was false (as will be further demonstrated below). The testimony at issue was summarized by the State Supreme Court as follows: "Michael Carson, who had been in juvenile detention with Baldwin, was called to testify that Baldwin told him he had killed the three boys, sucked blood from Chris Byers, and put Byers' testicles in his mouth. Carson also testified that Baldwin told him he was going to "kick Jessie Misskelley's ass" because he had "messed

everything up."" *Echols v. State*, 326 Ark. 917, 973-974.

73. Carson's testimony was that he had first been around Jason Baldwin with two kids named Beddle (actually Biddle) and Jason (actually Jason Duncan) (RT, Echols and Baldwin, trial transcript, at 1167). Carson alleged that after first denying any involvement, Petitioner admitted the crimes the next day and "he went into detail about it." (RT at 1168-1169.) Carson related that Petitioner said "He dismembered them. He sucked the blood from the penis and scrotum and put the balls in his mouth." (RT at 1116.) This testimony was relied upon in part by prosecution witness Dale Griffis, allowed to testify as an expert on cults and non-traditional groups, who answered several hypothetical questions based on the alleged admissions by Petitioner (RT at 1758-1764), noting that his testimony about Petitioner Baldwin's association with the occult was based on an individual who had said that Petitioner had "sucked the blood out of the individual's penis", and that if this evidence was incorrect, then there was nothing to connect Petitioner to the occult. (RT at 1798-1799.)

74. The scientific evidence now available to Petitioner demonstrates that Carson's evidence was unsupported by valid and reliable scientific evidence, as was the argument made by the State that its case was supported by the scientific evidence. Carson's testimony was included to demonstrate that Petitioner had admitted facts consistent with known, and accurate, findings as to the mechanisms of injury to the

victims. But Carson's testimony, like that of Dr. Frank Peretti, was mistaken and incorrect.

75. Much of the State's testimony about mechanisms and causes of injury and death was viewed (on appeal) as legally correctly admitted, as the Arkansas Supreme Court ruled, because Petitioner "failed to raise the issue before the trial court," (*id.* at 967), and failed to preserve for review on appeal any objection to the testimony from the State's pathologist, Dr. Peretti, that the injuries to the three victims were consistent with the performance of forced oral sex. *Echols v. State*, 326 Ark. at 967-969. The Arkansas Supreme Court also turned aside Petitioner's objection to the mechanism of injury to the victims' scalps (sticks from the scene), and to the causes of injuries attributed to the serrated knife. The State Supreme Court stated repeatedly that Dr. Peretti "... was qualified as an expert on forensic pathology, and there is no question that he was qualified to testify to the nature of the victims' wounds and the causes of the wounds." *Id.* at 969-970.

76. Only now, with DNA test results and competent, Board-certified pathologists, and competent and experienced odontologists, and after an investigation of the case including interviews of critically important witnesses, is Petitioner able to demonstrate that the Arkansas Supreme Court's conclusions should be revisited.

77. In fact, the State's pathologist and expert on causes of death and injury (Dr.

Frank Peretti) was mistaken about the mechanisms of injury and causes of death to which he testified. The mistakes occurred because of incorrect applications of pertinent scientific knowledge and the failure by Dr. Peretti to clearly state when a hypothesis contained in a lawyer's question could not be supported by reliable scientific evidence, including: the cause of death in the case of one of the victims; the mechanism of injury that caused oval indentations to one of the victims' skulls; the basis on which qualified experts determine the mechanism of injury through sexual abuse to a child's head, lips, mouth, throat; the basis on which wounds and degloving injuries to a male's penis are attributed to a knife to the exclusion of other mechanisms. These are just a few of the areas of demonstrable error in Dr. Peretti's testimony and in his post-mortem examination reports. Assuming the application of currently accepted practices for forensic pathologists, Dr. Peretti's testimony during Petitioner's 1994 trial contains invalid and unreliable opinions; statements unsupported by data; and insufficient attention to qualifying what theories explored during in court examination were supported by findings made during the post-mortem examinations.

78. In addition, however, Dr. Peretti did not have available to him when he testified now available DNA evidence that establishes that none of the defendants in this case can be reliably proven to have donated, or placed, any biological material on the victims, a significant issue since the theory of liability and prosecution was that the

defendants orally and anally sexually assaulted 2 of the 3 victims.

79. In addition, during the course of closing arguments, the prosecution was able to demonstrate, with purportedly scientific accuracy based in part on Dr. Peretti's vague and unsubstantiated testimony about pattern injuries on human tissue how pattern injuries got on the bodies of the victims. The prosecutor argued that the wounds on the bodies were consistent with the survival knife introduced in evidence, acquired from Lakeshore Trailer Park (RT at 2503). The knife was of importance because, according to the closing argument of the prosecution, it was found in the lake behind Petitioner's house (RT at 2510-2511). In order to demonstrate that the knife theory was not only correct, but that the defense's argument that the knife owned by John Mark Byers, one of the victims' step-fathers, was not the knife that wounded the victims, over the Petitioner's objection the Court allowed a demonstration with a grapefruit which further distorted the meaning of the scientific evidence allegedly linking Petitioner to this crime (RT at 2538-2540). The 'demonstration' was scientifically invalid and irregular in that the grapefruit was neither shaped like a human body, nor was the grapefruit skin consistent with human skin.

80. In a rejoinder to the defense argument at trial that there was no reliable evidence linking Petitioner to the crimes, the State argued that the knife found in the lake behind Petitioner's home had been described as consistent with whatever knife made

injuries of the type seen by Dr. Peretti (RT at 2615). The State's rejoinder to the defense argument that there was insufficient evidence of Petitioner's guilt was that Damien Echols, Petitioner's best friend, was the link, and that Petitioner's association with Damien Echols was evidence of his guilt (RT at 2623-2630). Damien Echols was described as having possessed a knife like the one found in the lake and admitted in evidence at trial. In fact, the knife found in the lake had no relationship to the crimes of which Petitioner was convicted.

81. Petitioner affirmatively alleges that neither his counsel, nor counsel for Damien Echols, consulted with any independent forensic pathologist (outside of those employed by the State of Arkansas, including Dr. Peretti) about the causes of death and mechanisms of injury, or about the reliability of the post-mortem examinations and reports by Dr. Peretti. In sum, at trial and on appeal, Petitioner did not have the scientific evidence of cause of death and mechanism of injury available that he has acquired during the post-conviction investigation of this case.

82. The currently available scientific evidence pertinent to cause of death and mechanism of injury is also relevant to the assessment of whether the primary source of information about the alleged crime in this case, co-defendant Jessie Misskelley, gave an accurate and truthful account of the true facts concerning the killings of the 3 victims. Since critical ingredients of the Misskelley statement included the allegedly accurate

admission that he was a percipient witness to the beatings of the victims, and to their being cut with a knife in his presence, and what appeared to be the beginning of a genital mutilation of one of the victims, and given that the now available reliable scientific evidence not available at trial establishes that this account is demonstrably false, then the scientific evidence of cause of death and mechanism of injury available now establishes Petitioner's actual innocence.

B. Reliable scientific evidence including DNA test results not available at trial establishes that the cause of death and mechanism of injury were inconsistent with Petitioner's guilt, and establish Petitioner's innocence, or demonstrates that no reasonable juror would have found Petitioner guilty of the underlying offense.

83. As alleged above, the starting point for understanding that the State's theory of guilt, and its supporting scientific evidence was incorrect, invalid, and unreliable, is the set of DNA results showing that none of Petitioner's DNA, or that of his co-defendants, was found at the scene. The evidence of DNA test results has been acquired by Petitioner during ongoing testing reported on beginning in 2005 and still ongoing as this Petition/motion is prepared.

84. Dr. Janice Ophoven, previously the Assistant Medical Examiner for Hennepin County, Minnesota, a Board-certified forensic pathologist (who has specialized training and experience in the assessment of cause of death in children, and in the accepted protocols of the assessment of sexual crimes such as assault and rape according

to evidence found during a post-mortem examination) is of the opinion that Dr. Frank Peretti's opinions are not supported by scientific evidence, and that scientific evidence based on current standards of forensic pathology, including consideration of the DNA testing results, demonstrates that the injuries to the faces of the boys as described by Dr. Peretti may have come from various mechanisms, including (especially in the punctate injuries, and injuries showing skin that had been pulled away) animal chewing. Dr. Ophoven believes that experienced, and currently qualified, Board-certified forensic pathologists, who have reviewed current literature pertinent not only to the examination of remains of children in sex crimes-related homicides, but also in homicides in which remains have been the subject of animal predation, would opine, to a reasonable medical certainty, that (a) the children in this case show no signs of having been sexually abused, sexually violated, raped, or subjected to forced oral sex, and (b) the testimony concerning what evidence there was of such sexual activity as given by Dr. Frank Peretti (and as argued by the prosecutors) was unscientific, and incorrectly given according to applicable professional standards (Ophoven affidavit, Exhibit 17; CV, Exhibit 18).

85. Dr. Ophoven is of the opinion that while there may be some injuries to the remains of the three victims, particularly of Christopher Byers, consistent with the dragging of the body over sharp objects, there is no evidence available in the descriptions given by Dr. Peretti, or in the autopsy photographs, consistent with the use of a knife to

remove the genitalia of Christopher, or to inflict the injuries described as cuts on his buttocks.

86. Dr. Ophoven points out that some of the injuries when looked at closely involve multiple punctures (injuries on the faces of the boys), or involve the pulling of skin in a manner that is inconsistent with the use of a knife, including the use of the point of a knife, or the serrated part of a knife. Further, Dr. Ophoven opines that the edges of the wound around the genitalia of Christopher Byers are not consistent with a cutting injury, but rather with the tearing of tissue.

87. Dr. Ophoven also notes that the currently available DNA test results corroborate at least some of her views (Dr. Ophoven affidavit, Exhibit 17).

88. Dr. Werner Spitz, another highly experienced forensic pathologist, who has headed well-known governmental pathology offices in Maryland and Michigan, and whose book "*Medico-Legal Investigation of Death*" is a standard work relied upon by forensic pathologists across the United States, has also conducted a detailed review of this case at the request of Petitioner's co-defendant Damien Echols. Dr. Spitz too has concluded by using current methods, and scientific knowledge, as well as by relying on recently completed DNA testing, that many of Dr. Peretti's critically important opinions and conclusions are incorrect. He has provided specific opinions in a written analysis of the case, noting that Christopher Byers' apparent traumatic injuries were not the result of

a knife or instrument like a knife, but rather were the result of post-mortem animal predation. He notes that there are punctate wounds on Byers' thighs and abdomen consistent with animal claw marks. There are holes and lines in these areas of Christopher Byers' body that are in patterns that are consistent with the digging of a claw or nail of an animal into flesh (Dr. Spitz CV, Exhibit 19; two letter reports, Exhibits 20 and 21).

89. Dr. Spitz has opined that the wounds on Christopher Byers do not show evidence of bleeding externally, or of carrying blood at the time of the autopsy process, indicating that they were made post-mortem.

90. Dr. Spitz also concludes that the evidence in the area of Christopher Byers' genitalia consists of a wound with irregular edges, consistent more with the pulling of the scrotum and penile skin, and not with the use of a knife. Moreover, a major ligament and tissue consistent with the human male penis are still on the body, indicating that the tissue covering the penis, and the entire scrotal area, were pulled off rather than simply cut off or amputated.

91. Dr. Spitz views marks on Christopher Byers' buttocks as consistent with claws or paws of an animal, and not as consistent with knife wounds. The edges are irregular, and not consistent with the sharpness, or consistency of a knife blade.

92. Dr. Spitz is also of the opinion that there was no basis for Dr. Peretti's

opinions that certain injuries, for example injuries to the ears of the victims, were consistent with forcible oral sex. Dr. Spitz is of the opinion that none of the injuries that he observed in the autopsy photographs were consistent with the kind of sexual activity covered by the prosecutors in their questions of Dr. Peretti.

93. Specifically as to Steve Branch, Dr. Spitz notes that there is no bruising of the ears consistent with forced oral sex, but rather likely injuries caused by animal activity.

94. The large area of irregular lacerations on Steve Branch's left cheek are inconsistent with knife wounds, but are consistent with animal predation.

95. As to Michael Moore, Dr. Spitz is of the opinion that not only are there injuries consistent with animal claws, but also the injuries on Michael Moore's nose, ear, and lip are consistent with injuries 'inflicted' post-mortem by animals. In addition, Dr. Spitz found no dilation of Michael Moore's anus, and thus no basis for Dr. Peretti's testimony in support of evidence of sexual assault or activity.

96. According to Dr. Spitz, Christopher Byers' injuries, particularly the injury in his genital area which left injured tissue where his genitals would have been, were post-mortem animal predation inconsistent with the use of a knife. Dr. Spitz opines that there are no injuries on Christopher Byers consistent with forcible sex, and no anal dilation.

97. The remains of Steve Branch and Michael Moore have claw marks in various places.

98. Dr. Spitz's opinions are reflected in his reports.

99. In addition, Petitioner Baldwin has had access to other forensic pathology experts retained by co-defendant Damien Echols (in addition to Dr. Spitz). These experts include Dr. Michael Baden, a forensic pathologist, a former Medical Examiner of New York City, New York, and also Chief Forensic Pathologist for the New York State Police. In addition, Petitioner Baldwin has, through counsel, consulted with Dr. Vincent Di Maio, the former Medical Examiner of San Antonio, Texas, and author of *Forensic Pathology*, a standard work in the field of forensic pathology.

100. Drs. Baden and Di Maio have stated to personnel at the Arkansas State Laboratory, including Dr. Frank Peretti, their views on this case at a meeting with all counsel present that took place at the Arkansas State Crime Laboratory in May of 2007. Drs. Baden and Di Maio joined in stating that most of the traumatic injuries to the skin of Steve Branch, Michael Moore, and Christopher Byers were not caused by the use of a knife, but were caused by animal predation. This includes the left cheek of Steve Branch, and the genital area of Christopher Byers.

101. In addition to the forensic pathologists just described, Petitioner Baldwin also affirmatively alleges that another forensic pathologist, Dr. Terri Haddix, a member of

the faculty at Stanford University Medical School in Palo Alto, California, who is also affiliated with Forensic Analytic Sciences, Inc., a forensic laboratory near San Francisco, California, was retained by the Echols defense during the post-conviction investigation. Dr. Haddix independently arrived at her opinion that post-mortem animal predation was the cause of most of the observed injuries to the skin of the victims, including the genital area of Christopher Byers (Dr. Haddix CV, Exhibit 22; Haddix Interim Report and Haddix Supplemental Report, Exhibit 23).

102. Dr. Haddix is of the opinion that there was no reliable evidence of forced sexual activity, or of consensual sexual activity, involving the three young victims.

103. Among the reviewing pathologists, it is primarily Dr. Janice Ophoven who in her affidavit explains that part of the reason for errors made by the State in this case is the failure to apply accepted professional standards, and scientific methodologies, to the medical aspects of the post-mortem examination. Dr. Ophoven has opined (Exhibit 17, Ophoven affidavit) that Dr. Peretti did not conform to applicable professional standards in specific ways so that accepted scientific principles known as of 1993 were not applied in important respects to the post-mortem examinations in this case. Since 1993, several organizations, including the National Association of Medical Examiners, have announced some pertinent standards. The National Association of Medical Examiners, for example, publishes "*Forensic Autopsy Performance Standards*" (2006) applicable to the autopsises

at issue here in the current context. The Forensic Pathology Committee of the College of American Pathologists publishes a *Handbook of Forensic Pathology* (2nd Edition) which is said to address the 'minimum standards' applicable to forensic pathology, and provides a basis for determining when a pathologist may require more forensic expertise than he/she may provide in a given case. The standards cover areas of endeavor involved in the medical legal death investigation process. Other organizations, including the American Academy of Forensic Sciences, also publish materials specific to the application of standards and scientific principles to the medical legal investigation of death by pathologists. Here, Petitioner alleges that the various forensic pathologists, most Board-certified in forensic pathology (which Dr. Peretti was not), who have reviewed this case are describing that a series of errors in the application of both professional and scientific principles to the investigation of the timing and causes of injuries to the victims, and to the definition of the concurrent causes of death have been demonstrated by experts' statements of the standards of professional practice supplied by Petitioner, and are corroborated by the literature pertinent to the medical legal investigation of death listed in authoritative literature such as Spitz, *Medico-Legal Investigation of Death: Guidelines for the Application of Pathology to Crime Investigation* (4th ed) and Dolinak *et al., Forensic Pathology*. Applying current standards, which take into consideration the availability of DNA technologies not available at the time of these crimes, it is clearly

established by Petitioner's evidence that Dr. Peretti's reports, and opinions stated on the stand, do not comply with standards currently used by forensic pathologists for the medical legal investigation of death, and for providing testimony about that investigation, and about factors significant to the litigation of this criminal case.

104. In addition, this case has been reviewed by Dr. Michael P. Tabor, D.D.S., a practicing dentist and Chief Forensic Odontologist for the State of Tennessee, and for the Office of the Medical Examiner, Davidson County, Tennessee. Dr. Tabor is a Diplomate of the American Board of Forensic Odontology. He is also a collaborative researcher with the University of Tennessee's Forensic Anthropology Center. Having reviewed the autopsy and case photographs, the reports prepared by Dr. Peretti, and based on his knowledge of the issues presented, Dr. Tabor is of the opinion that a number of the injuries to the three victims are bite marks and injuries consistent with animal predation. Dr. Tabor's letter report and supporting affidavit is Exhibit 24; Dr. Tabor's CV, Exhibit 25).

105. Other odontologists have reviewed this case at the behest of the Damien Echols defense during post-conviction investigation, including Dr. Richard Souviron, who has been Chief Forensic Odontologist at the Miami Dade Medical Examiner's Department. Dr. Souviron has extensive experience in the evaluation of forensic issues, and participated in a number of post-mortem investigations of cause of death for the

Miami Dade Medical Examiner's Office. Dr. Souviron has offered a detailed analysis of the injuries in this case. He has assessed the patterns and characteristics of the injuries and concludes as well that many are signs of animal predation (Dr. Souviron report, Exhibit 26; Dr. Souviron's CV, Exhibit 27).

106. In addition, Dr. Robert Wood, an odontologist and a researcher on issues of forensic odontology, who has authored many works on odontology, and has been involved in numerous post-mortem examinations of human remains has reviewed this case Dr. Wood was recently called as an expert on odontology by the Honorable Stephen Goudge, and charged with the Inquiry into Pediatric Forensic Pathology in Ontario by the government of the province of Ontario, Canada (Goudge Commission Home Page and Witness List, Exhibit 28). This inquiry was necessitated in part because of the demonstration, in pending criminal case investigations, that pathologists have been mistaken in their approaches to the causes of injury and death in cases involving children, including having mistaken animal bites and predation for knife wounds. Dr. Wood who has been involved in the review of cases of mistaken pathological diagnoses mistaking animal bites for knife wounds also set forth an extensive analysis of the injuries here, and he too concludes that they involve animal predation (Dr. Wood CV, Exhibit 29). Dr. Wood's involvement with the Goudge Commission's Inquiry in Canada is significant here, as it involved a recent inquiry into errors made during the examination of

mechanisms of injury and cause of death in children - including testimony about mistakes made in the identification as knife wounds of wounds actually caused in children by animals (Goudge Commission Inquiry, facesheet).

107. Dr. Wood, with other experts, including Drs. Souviron, Di Maio, and Baden met with the State's expert Dr. Frank Peretti in May of 2007 to present their opinions to the State's experts and all counsel.

108. Drs. Souviron and Wood agree with Dr. Tabor that the remains of Michael Moore, Steve Branch and Christopher Byers all show areas consistent with animal predation, and animal bite marks. In addition, Dr. Wood has furnished the State of Arkansas, through the Damien Echols defense, a series of citations to medical, forensic science, and other specialized literature that specifically review injuries of the type shown in the post-mortem examinations in this case, including the injuries to the genital area of Christopher Byers, which is referred to in certain literature as a "degloving" injury of the type that leaves the corpus cavernosum and the suspensory ligament (attached to the penis) in place while removing the skin of the penis, the scrotum and the testes. Degloving injuries to male genitalia, according to the above experts and the pertinent scientific literature, are consistent not with emasculation with a knife (the cutting off of the genitalia), but rather the removal of portions of the male genitalia through a tearing injury, which is consistent with animal predation rather than with the 'surgical' removal

of skin and tissues surrounding the ligament and penile tissues that was the subject of testimony in this case.

109. The references to the scientific literature that have been provided to the State, and that demonstrate the reliability of the above-described science, and is material that was not made available to Petitioner Baldwin at the time of his trial, and that otherwise show his innocence of the crimes of which he was convicted. The literature that supports the opinions currently being stated as set forth above includes:

D'Alessio, *et al,* Figure 1 "Reconstruction in Traumatic Avulsion of the Penile and Scrotal Skin." Annals of Plastic Surgery 9(2) pp.120-122, 1982.

Zanettini, *et al,* Figure 1 "Traumatic degloving lesion of penile and scrotal skin." Int Braz J Urol 31(3); 2620263, 2005.

Stephan, *et al,* Figure 3 in "Care of the Degloved Penis and Scrotum: A 25-Year Experience." Plastic and Reconstructive Surgery 104(7) pp.2074-2078, 1999.

Paraskevas, *et al*, "An extensive traumatic degloving of the penis. A case report and review of the literature." Int J Urology and Nephrology 35:523-527, 2003. In Paraskevas *et al*, see Figure 1 and the case report that describes "complete de-gloving of the penile skin and partial avulsion of the scrotal skin with total concomitant revealing of the corpus cavernosa and the corpus spongiousum was observed."

McAninch, *et al*, "Major Traumatic and Septic Genital Injuries", The Journal of

Trauma 24(4): pp.292-297. 1984.

Rashid, *et al*, "Avulsion injuries of the male external genitalia: classification and reconstruction with the customized radial free forearm flap." Brit J of Plastic Surgery 58, pp. 585-592, 2005. See in Rashid, *et al,* the quote "Although it is not uncommon for the penis alone to be totally lost, the majority of the cases have accompanying loss of the scrotum, the testis, the perineal urethra or occasionally all three."

Wilhlemson, *et al*, "Avulsion Injury of the Skin of the Male Genitalia: Presentation of Two Cases." Md State Med J. 27(4), pp. 61-66, 1978. Wilhlemson *et al* describe two patients with complete avulsion of the skin of the penis and either laceration to or almost complete avulsion of the skin of the scrotum.

There are at least three citations in the literature that documental genital injuries from animal bites, including a case report of post mortem castration by a dog.

Romain *et al*, "Post Mortem Castration by a Dog: a Case report." Med Sci Law 42(3): 269-271.

Gomes *et al*, (Figures 3 and 4a) "Genital Trauma Due to Animal Bites", the Journal of Urology 165, pp.80-83, 2000.

El-Bahnasawy *et al* "Paediatric Penile Trauma." Brit J Urol. 90:92-96, 2002.

There is little information in the literature about the purposeful cutting off of the penis but knowledge of how penises are typically cut off is available by examining two

articles:

Marneros *et al* "Self amputation of penis and tongue after use of Angel's Trumpet." Eur J Psych Clin Neurosci 256:458-459, 2006.

Stunell, H. *et al*, "Genital Self-Mutilation." Int J of Urol. 13:1358-60, 2006.

110. As alleged throughout this Petition, the implications of several aspects of this new scientific evidence are no surprise to the State of Arkansas, which has received copies of DNA reports, and has also been provided, mainly through counsel for Damien Echols, with reports from forensic pathologists and odontologists hired by the defense - though, in addition, Petitioner's counsel has provided the State, through Circuit Prosecutor Brent Davis, with copies of a letter pertinent to this case from Dr. Michael Tabor, the State of Tennessee's Chief Odontologist, as well as information from Dr. Janice Ophoven, the previously described expert on pediatric pathology who suggested to the defense in this case that the subject of animal predation should be carefully reviewed by several experts, as she was concerned that it had been overlooked by Dr. Peretti, and the State of Arkansas.

111. It is significant to the factual showing made by Petitioner here that his counsel, together with counsel representing Jessie Misskelley and Damien Echols, attended a meeting at the Arkansas State Crime Laboratory in May, 2007 at which several of the experts named above, namely Drs. Baden and Di Maio, both forensic pathologists,

and Drs. Souviron and Wood, both experienced odontologists, discussed the case with Dr. Frank Peretti, the State's Medical Examiner, who was an Assistant Medical Examiner at the time of this case, and the pathologist who actually undertook the post-mortem examinations.

112. While Dr. Peretti did not state an agreement with the defense's experts, he did state that he would undertake an examination of the opinions provided, and subjects discussed with him, including the evidence of animal predation discussed, and the specific citations to literature.

113. The State has had in hand the various opinions, reports, citations to literature, and the like (with the exception of Dr. Janice Ophoven's affidavit, which is offered here) for more than a year. In advance of the May, 2007 meeting at the Arkansas State Crime Laboratory, all counsel met with Circuit Prosecutor Brent Davis in Jonesboro, Arkansas early in 2007, letting Mr. Davis know of their intention to provide the State, in advance of any hearings on this matter, various defense experts' analyses of the case, in an effort to make sure that the scientific issues in this case were addressed openly, and frankly.

114. In the aftermath of the mid-May, 2007 meeting, counsel for Petitioner wrote letters to prosecuting attorney Brent Davis in June of 2007 (Exhibit 30), and again at the end of December, 2007, inviting the State to provide "... any responses to the information

provided to [Dr. Peretti] by the defense experts, or any citations to literature, studies conducted by the Medical Examiner's office, or material assembled by the Arkansas State Crime Laboratory that, in your view, would serve to further illuminate, or undermine, the opinions expressed by defense experts in mid-May, 2007 (from Exhibit 30, p.1).

115. In its December letter (Exhibit 31) the defense made more precise reference to an analysis, that Dr. Frank Peretti stated that his office was undertaking, and to post-mortem examinations conducted by the Arkansas State Crime Laboratory Medical Examiner's office on remains found in water, or remains that may have been suspected of having been subjected to animal predation (Exhibit 31 at p.2).

116. Significantly, there has been no rejoinder, or answer, from the State of Arkansas as to these matters.

There is evidence concerning animal activity, including the presence of dogs, other mammals, amphibians and reptiles in Robin Hood Woods, and the area around West Memphis which is relevant to the assessment of the scientific evidence

117. There was considerable evidence of animal life in Robin Hood Woods, and the area of West Memphis, Arkansas, at the time of the May, 1993 killings.

118. There have been a variety of eastern Arkansas wildlife surveys conducted over a number of years, aimed at ascertaining the prevalence and distribution of various species. See for example Trauth, *et al. The Amphibians and Reptiles of Arkansas* (University of Arkansas Press, 2004); Sealander and Height, *Arkansas Mammals: Their*

Natural History, Classification, and Distribution (University of Arkansas Press, 1990).

119. In addition, personnel from Arkansas' State agencies, the University of Arkansas, Arkansas State University, and smaller academic institutions have periodically conducted focused wildlife surveys pertinent to eastern Arkansas.

120. These surveys establish that a variety of mammals, amphibians, and reptiles, are known to populate the area in and around West Memphis.

121. Equally important, and perhaps more relevant to the specifics of this case, residents of West Memphis at or near the time of the murders observed a variety of wildlife in and around West Memphis, and the Robin Hood Woods.

122. Heather Dawn Hollis, whose maiden name was Heather Cliett, a resident of West Memphis at the time of the killings (Exhibit 32) states in an affidavit that until shortly before the killings occurred, for a number of years, she and her friends who lived near Robin Hood Woods went into the woods on both sides of Ten Mile Bayou to play. Because she was interviewed by police under the name Cliett, she is referred to by that name here. Cliett notes that she saw turtles, and was told by a friend not to touch what was identified as a snapping turtle.

123. In addition, Cliett stated that over the years she had repeatedly seen a group of what she took to be wild dogs in the woods near the truck wash, on the north side of the drainage pipe crossing Ten Mile Bayou in the area that she lived in (the pipe near

which belongings of the three boys who were killed on May 5, 1993 were found).

124. Like Cliett, Ryan Clark (the brother of victim Christopher Byers) saw turtles in the ditch on the north side of the Ten Mile Bayou pipe - the ditch from which the body of his step-brother Chris Byers was found. He pulled alligator snapping turtles out of the same ditch that his brother's body was found in (Declaration of Ryan Clark, Exhibit 33).

125. As Trauth *et al.* write in *The Amphibians and Reptiles of Arkansas*, snapping turtles "... are primarily nocturnal, spending the night bottom-walking in search of food. However, there may be considerable diurnal activity in some populations. Whether actively foraging or lying in ambush, snappers are omnivorous and opportunistic (p.215)."

126. Because of the area's proximity to a large, operating, truck stop, and truck wash, and to other areas in which trash was discarded, both the ditches north of the large pipe crossing Ten Mile Bayou, and Ten Mile Bayou itself, were known to contain debris, and some trash, in addition to other food sources for mammals, amphibians, and reptiles.

The significance of the evidence concerning animal predation

127. As stated above, on May 17, 2007, counsel for the State and Petitioners attended a meeting that had been agreed upon by the parties to allow the State's Medical Examiner, Dr. Frank Peretti, to review, with some of the defense's experts on forensic

pathology and forensic odontology, the assessment of mechanisms of injury as well as causes of death. Prior to the meeting, counsel for co-defendant Damien Echols had provided the State with written materials pertinent to the opinions that would be discussed. Counsel for Petitioner had provided similar material in summarizing the opinions of Dr. Janice Ophoven, M.D. and Dr. Michael Tabor, DDS (the Chief Odontologist for the State of Tennessee).

128. The meeting was attended by Drs. Di Maio, Baden, Souviron and Wood, as well as by the State's pathologist, Dr. Frank Peretti, representatives of the Arkansas State Crime Laboratory, and counsel for the parties. Drs. Di Maio and Baden are forensic pathologists who at various points in their careers have been employed by government. Dr. Souviron has been the Chief of Odontology for the Office of the Medical Examiner, Miami Dade. Dr. Wood, who recently served as an expert on odontology for the Goudge Commission inquiry into the application of the forensic sciences to the assessment of causes of death in children (Province of Ontario, Canada), is also an odontologist who has studied a variety of bites and mechanisms of injury in laboratory settings. Dr. Wood has published extensively.

129. During the meeting the above-identified doctors discussed a variety of matters critical to the assessment of whether the testimony of Dr. Peretti, and the stated theories by State counsel, concerning the mechanism of injury and causes of death of all

three victims in this case were scientifically defensible.

130. The discussion centered on whether:

a) There was any evidence found on the heads, ears, oral cavity, genitalia, and anal area of the victims consistent with any forced or consensual sexual activity, consistent with the version of facts provided in the Misskelley statement, and at trial by the prosecution. All visiting experts, without objection from Dr. Peretti, agreed that there was no definitive evidence of forced sexual activity, and all of the visiting experts (with the exception of Dr. Peretti who did not make specific statements in this regard) opined that there was no evidence of forced oral or anal sex, or any specific findings in the post-mortem examination, or in the photographic evidence, as well as in the newly discovered DNA evidence, supporting the theory of a sexual assault involving any of the three defendants (on the latter point, information concerning the results of DNA testing was discussed in the presence of all described experts by counsel, as the pathologists and odontologists present were not concentrating on DNA evidence at the time of the May, 2007 discussion).

b) The remains of all three boys had on them in various places parallel

scratches and injuries not typical of injuries produced by a sharp-edged implement, but more typical of scratches associated with animals.

c) The injuries described by Dr. Peretti on Michael Moore, Steve Branch, and associated with the genitals and thighs (back and front) of Chris Byers which had been testified to by Dr. Peretti as consistent with knife wounds, attributed to some implement with a pattern to it like a serrated blade, were not likely to have been inflicted by a knife, particularly when the depth and shape of the injuries are considered given the flexibility and characteristics of human skin.

d) A number of the injuries to the three boys that remained unclassified in Dr. Peretti's autopsy reports, and during testimony, were, based on their appearance, and the lack of blood flowing to them, post-mortem injuries, opined by the visiting experts to be most compatible with post-mortem animal predation, or perhaps in some cases the dragging of remains.

e) The injuries to Steve Branch's nose, lips, and cheek are consistent (in part because of the pattern of injury and removal of tissue) with

having been caused by animal teeth or claws and are also not unlike injuries seen on bodies that have been in water and preyed upon by turtles or fish.

f) As to the removal of the testes, and part of the tissue of the penis of Chris Byers, and some of the connecting tissue, the visiting experts pointed out, as Dr. Spitz had in written materials submitted to the State in advance of the meeting, that the injury was inconsistent in several ways with a knife injury. First the wound area was rough, and not typical of a knife wound. Use of a knife would not explain how the corpus cavernosum (the spongy tissue inside the penis) and the suspensory ligament, which is a major connection of the penis to the other tissues of the body, were left in place. In order to achieve the result observed, the "covering" of the genital area would have to be pulled off without it having been cut through. The injury at issue, according to available scientific literature, has been observed where animals have caused injuries. The visiting experts opined that it would be highly unusual for a person wielding a knife not to cut through tissue. Here, the penis was not removed completely. Its outer skin sheath was.

g) At the time of the May 17, 2007 meeting, Dr. Peretti indicated that he would review the material tendered by the defense, including a book on odontology provided to him by Dr. Wood, and would pursue a review of human remains recovered under similar circumstances in the State of Arkansas over an approximately ten year period of time. Dr. Peretti also stated during the meeting that his work on the case had been reviewed by a colleague who agreed with it, and that he, personally, did not believe that the injuries observed would have been inflicted by turtles. He did not address the question of whether dogs or rodents might have caused the degloving injury observed.

h) Notwithstanding follow-up requests addressed to the State both by Petitioner and by co-defendant Echols, since the May 17, 2007 meeting, no response from the State's Medical Examiner, or the Arkansas State Crime Laboratory, has been furnished to Petitioner or his co-defendants. The State has not proffered any contrary opinions to date, and has not produced any reports or literature to contradict the defense experts' views.

i) In addition to the information exchanged at the meeting, which

forms only some of the basis of the allegations made by Petitioner here, as alleged elsewhere in this Petition, either through Petitioner's counsel, or principally through counsel for co-defendant Damien Echols, (before Echols filed a Petition in Federal court in October, 2007 containing many of the allegations that he is currently making in this Court, and covering the issues described in this section of this Petition) the State was provided with: summaries of defense expert opinions; statements of background and qualification of the defense experts; detailed reports and analyses tendered by forensic pathologists (Spitz, Haddox), verbal and written analyses (Di Maio), summarized analyses (Ophoven), written materials on odontology (Souviron, Tabor, Wood).

j) Other than the statements made by Dr. Peretti during the May 17, 2007 meeting, and the initial autopsy-related materials generated by the State, the testimony offered by Dr. Peretti at trial, as well as any further testimony offered in the context of Echols' Rule 37 proceeding, did not address the issues specifically being raised now.

k) The significance of the above allegations is to underscore that the development of Petitioner's scientific evidence-based claims has

been discussed with the State as the evidence for them has been investigated and gathered.

l) Counsel for Petitioner Baldwin initiated a review of Dr. Peretti's findings after the initial DNA results obtained through STR and mitochondrial DNA testing had been partially completed, and it appeared that this testing undermined some of what Dr. Peretti had testified about in his trial and Echol's post-conviction Rule 37 testimony.

m) After consulting with Dr. Janice Ophoven, M.D. (see Exhibits 17 and 18), counsel for Petitioner consulted with counsel for co-defendant Echols who were able at that time to muster resources to enlist the aid of Drs. Spitz, Baden, Di Maio, Souviron, and Wood.

n) Petitioner benefitted from the ability of counsel for co-defendant Damien Echols to obtain the services of the above-described experts in forensic sciences, and was thus able to timely follow-up on the implications of the DNA testing results.

131. In addition, competent forensic pathologists, working according to standards applicable to the practice of forensic pathology, and to the provision of opinion testimony in a criminal case, would have testified that the injuries to the victims' skulls,

including semi-circular and oval fractures to the skull of James Michael Moore, and the basal skull fractures observed elsewhere were unusual, and while they are consistent with the administration of blunt force trauma, the blunt force would not likely have been the sorts of sticks that were displayed to the jury, and theorized by the prosecution in front of the jury that convicted Petitioner Baldwin as being involved in the killings of the three boys.

132. The testimony given by Dr. Peretti in Petitioner's case which: (a) did not eliminate speculative arguments that the victims had been sexually abused; (b) agreed with the suggestion that a number of the wounds on the victims were consistent with the use of a blade point, and serrated blade top of the large survival knife admitted into evidence after it had been retrieved from Lakeshore Trailer Park; (c) and which agreed that wounds on Steve Branch and Michael Moore's bodies were consistent with knife wounds was neither reliable nor supported by literature and knowledge in the field of forensic pathology.

133. Dr. Peretti did not have STR and mitochondrial DNA test results available to him at the time of the autopsy.

134. This evidence of the lapses and errors in the medical/pathological findings and the evidence of the correct findings is not the only compelling evidence that Petitioner would not be found guilty today, and that he is, in fact, innocent. One of the

sources of evidence of guilt against Petitioner was the testimony of Michael Carson, a 'jailhouse' informant and cooperating witness. Carson was incarcerated for a short time (7 days) in the same Juvenile Detention Unit as Petitioner Baldwin.

C. Post-conviction scientific evidence demonstrates Michael Carson's lack of credibility in his testimony against Petitioner

135. During the course of Petitioner Baldwin's trial, jailhouse informant Michael Carson was called and cross-examined. He had testified as follows: Carson's testimony was that he had first been around Jason Baldwin with two kids named Beddle (actually Biddle) and Jason (actually Jason Duncan) (RT, Echols and Baldwin, trial transcript, at 1167). Carson alleged that after first denying any involvement, Petitioner admitted the crimes the next day and "he went into detail about it." (RT at 1168-1169.) Carson related that Petitioner said "He dismembered them. He sucked the blood from the penis and scrotum and put the balls in his mouth." (RT at 1116.) This testimony was relied upon in part by prosecution witness Dale Griffis, allowed to testify as an expert on cults and non-traditional groups, who answered several hypothetical questions based on the alleged admissions by Petitioner (RT at 1758-1764), noting that his testimony about Petitioner Baldwin's association with the occult was based on an individual who had said that Petitioner had "sucked the blood out of the individual's penis", and that if this evidence was incorrect, then there was nothing to connect Petitioner to the occult. (RT at 1798-1799.) This testimony was commented upon by the Arkansas Supreme Court as

evidence of Petitioner's guilt.

136. There were witnesses who would have impeached Carson's testimony. These witnesses are still available.

137. Joyce Cureton was in charge of the Juvenile Detention Unit in Jonesboro in 1993 and 1994. Petitioner Baldwin was housed in the Detention Unit during Ms. Cureton's tenure there.

138. Ms. Cureton (see affidavit of Joyce Cureton, Exhibit 34) has stated that when Petitioner was delivered to her facility, the Chief Deputy Sheriff, Dickie Howell, told her that Petitioner should never be let out of his room. While Cureton did not obey that directive during Petitioner's pre-trial incarceration, Petitioner was carefully watched when he was outside of his room, and Cureton personally kept tabs on the situation by speaking with Petitioner and all of the other juveniles about Petitioner's situation in the Detention Unit.

139. There were regularly kept records that, among other things, allowed staff members to document observations of juveniles. These records were kept both day and night. Some were relied on by prosecutors to show that Petitioner and Michael Carson were in the day room together playing cards one evening. The person who made that log entry was never interviewed until this year, when Petitioner's investigator interviewed her, as is further alleged below. The log entry is the only record of Petitioner and Carson

being together and, as alleged below, two of the other detainees present at the table, and one observing staff member, were and are available to address Carson's testimony. But no one ever interviewed the other card players, the Unit staff, or the detainees other than Carson to ascertain Carson's veracity. Petitioner now has additional evidence that, when taken together with the new scientific evidence, demonstrates that Carson's testimony was subject to impeachment - and given the evidence available about Carson, his testimony was likely false.

140. Joyce Cureton never heard of Petitioner discussing his case during his entire stay at the Detention Unit. As demonstrated below, Cureton was generally well liked by detainees, and monitored the Unit carefully during her tenure there.

141. According to Cureton, by the time she first heard of prosecutor Brent Davis' interest in Michael Carson as a witness, she had already been in touch with Michael Carson's counselor Danny Williams, who had expressed concerns about information that Carson was alleging to have in connection with Petitioner Baldwin. Williams, as alleged in further detail below, was of the opinion that he had given Carson information about Petitioner's case, and that Petitioner was lying.

142. Extraordinarily, when she was asked to testify in Petitioner's behalf on sentencing issues, Cureton was told by the Sheriff that she should not be in court. Such was the force of this instruction to her that Cureton left the Jonesboro area towards the

end of the trial, and regretted that she had made herself unavailable to the defense. But Petitioner's defense had never methodically interviewed Ms. Cureton, and never found out how far the State went to deprive Petitioner of a potential witness. Cureton kept a calendar which chronicled the course of events of her trip out of Jonesboro during Petitioner's trial. Because Cureton had viewed Petitioner as a model inmate, she was a clearly valuable source of evidence for Petitioner.

143. Ms. Cureton never learned, while Michael Carson was at her facility, that he was alleging that Petitioner Baldwin had discussed facts pertinent to the case, and had essentially admitted critical information.

144. According to Carson's testimony, it did not take long (essentially one day) for Petitioner to have first denied involvement in the murders, and then gone into detail in discussing them (RT 1168-1169), though he indicated later on cross-examination that it was about two to three days later that the details came out (RT at 1187). Carson testified that it was around noontime when 'they' started collecting playing cards in the day room that Petitioner allegedly made the incriminating statements (RT at 1197-1198). But no Detention Unit log entries corroborate Carson's testimony about the timing of the admissions. Petitioner never made the statements, and new scientific evidence demonstrates that the statements attributed to Petitioner by Carson do not support Petitioner's guilt as there is no independent, scientifically verifiable evidence to support

them.

145. Joyce Cureton was not the only Detention Unit employee who sheds light on the veracity and trustworthiness of the Carson testimony. Sue Weaver was first a Juvenile specialist, and then a Juvenile Detention worker in the Juvenile Detention Unit. She was working there in 1993 and 1994 when Petitioner was incarcerated.

146. She points out (Exhibit 35, Weaver affidavit at pp.1-2) that when Petitioner was first placed in the Detention Unit, staff were instructed to keep an eye on him.

147. Weaver usually worked the day shift. As she explains, during the course of the day (which is when Carson claims the admissions from Petitioner occurred), detainees might be allowed out in the day room between the time they receive directives to clean their rooms, and lunch which occurred a little after 11 a.m. Weaver noted that she would actually go onto the Unit, and would pay attention to the gatherings there.

148. Sue Weaver was very conscious of where Petitioner was placed, and she also states that by way of custom, staff would pay attention to new kids in the Detention Unit, watching carefully how they interacted with Petitioner (Weaver affidavit at pp.4-5). According to Weaver, had a new kid been associating with Petitioner Baldwin, that would have gotten her attention (Exhibit 35, Weaver affidavit at pp.4-5 and 7). Weaver was of the opinion that she would have noticed if a new person interacted with Petitioner.

149. Significantly, Ms. Weaver remembers that Petitioner was injured in a minor

way while on the Unit when she was on duty. She recalls that Petitioner was cut on the finger, and almost passed out at the sight of blood. The observation is critically important, since Petitioner was accused, and convicted, of a series of killings that would have required at least a tolerance for blood.

150. Based on her observations of Petitioner, and personal experiences with him over several months of supervising him as a detainee, Sue Weaver indicates that she "... did not think that he could have participated in killing anyone, and especially killing three boys in what was reported to be a brutal way." (Weaver affidavit, Exhibit 35 at p.8.)

151. Patty Burcham, who is married to a former Jonesboro area police officer, and who started working at the Juvenile Detention Unit in Jonesboro because of her connections with law enforcement, also has relevant evidence.

152. Trained to work in jail settings and Juvenile Detention Units, she recalled working the night shift (a 12-hour shift) for several days during the time that Michael Carson was incarcerated on the Unit.

153. Ms. Burcham remembers Jason Baldwin, and specifically recalled that Michael Carson was present on the Unit for a few days (Burcham affidavit at p.4, Exhibit 36).

154. While Carson reported to a law enforcement officer that he had essentially stood up for Petitioner Baldwin when Petitioner was being harassed by some black

detainees, like other staff members, Burcham does not remember Petitioner ever having specific problems with black detainees.

155. Ms. Burcham remembers that Jason Baldwin was friendly with Jason Duncan, the person with whom Unit logs show that Carson was housed for a while. As alleged below, Duncan has also been located and has given a statement.

156. Patty Burcham never recalls Petitioner having any trouble with any of the other detainees, and does not recall Petitioner as having reported problems.

157. Like other staff members including the Unit Supervisor, Joyce Cureton, Patty Burcham does not remember Petitioner ever discussing his case, or any other detainee claiming that he had.

158. As is true of other staff members (with the exception of Joyce Cureton who was asked to leave Jonesboro when Petitioner's case was going to sentencing), Patty Burcham does not recall being approached by defense counsel, or by the prosecutors, or by law enforcement officers to learn information either about Petitioner, or Michael Carson.

159. Ann Tate also worked at the Jonesboro Juvenile Detention Unit when Petitioner first arrived. She usually worked the shift between 7 p.m. and 7 a.m. Her daily routine including getting briefed on what had occurred during the day shift, checking all of the cells in the Unit, doing a count, and then maintaining the log by making entries

every 15 minutes or so. The purpose of the Unit log was to account for the whereabouts and activities of the detainees, and to provide information to staff.

160. Ms. Tate recalled that when Petitioner was first put on the Unit, the staff kept an especially close eye on him (Ann Tate affidavit, Exhibit 69). Petitioner was placed in a cell next to the staff control point. Ms. Tate observed Petitioner to be well-mannered and well-behaved. He got along with detainees of all racial backgrounds, and Ms. Tate, like other staff members and detainees, remembers no problems or reports of any threats. Ms. Tate also remembers Michael Carson. She describes him as having blondish hair, with a thick or chunky build, and not very big for his age. She also, correctly, remembered that he had been in the Juvenile Unit before.

161. Ms. Tate reviewed records shown to her by Petitioner's investigator, including a copy of the Unit log for September 1, 1993, showing that Carson was placed in a cell with Jason Duncan, another one of the current witnesses whose affidavit is being presented to the Court, and whose recollections are part of Petitioner's allegations. Ms. Tate identified Sue Weaver's writing as being on the log for September 1. The next page of the log indicates that Carson arrived at about 1:10 a.m. on September 1. Ms. Tate also recognized an entry shown to her for September 4, 1993, in her own handwriting, with her own initials nearby. That entry pertained to an evening card game involving Petitioner and Michael Carson. This presumably was the card game at which Carson had

been with Petitioner, 'Biddle' and 'another Jason' (Carson trial testimony, RT at 1167). Jason Duncan was described in the Unit log notes as listening, and 'Daniel', who was Daniel Biddle, was also described as being present. Ms. Tate has a recollection of the events that led to the entries. She was sitting in the Unit at the time, and was looking directly at the table in front of her. Petitioner was to her right, Carson was directly facing her, and Jason Duncan and Daniel Biddle were at the table. According to Ms. Tate's further description, given that there were usually no more than 12 or 13 persons on the Unit, the card game would have had approximately a quarter of the detainees involved in it. This is the one entry that shows Petitioner in Carson's presence.

162. According to Ms. Tate, the Unit log shows Carson being released to his mother and father on September 7, 1993. She recalled being shocked when she heard that Carson was testifying against Petitioner, in view of her assessment of their personalities. She viewed Carson as someone who liked to call attention to himself, and who would have made it a point to tell other detainees if he had ever heard Petitioner talking about the crimes charged against him and making any damaging admissions (Tate affidavit at pp.5-7). By contrast, she described Petitioner as quiet, and a person who did not call attention to himself or talk about his case. Based on her experience she would have found it unusual for Carson and Petitioner to have talked about the charges, or for Petitioner to have confessed to him, as she did not believe that Petitioner had the opportunity, in a

period of 6 to 7 days, to get to know Carson well enough to trust him and confide in him. As is true of other staff members recently interviewed, Ms. Tate had never been previously approached by a law enforcement officer, prosecution lawyer, or defense lawyer about Michael Carson or Petitioner (Ann Tate affidavit, Exhibit 69).

164. Michael Carson was only incarcerated briefly in the Juvenile Detention Unit, a total of seven days. Other detainees who had been locked up with Petitioner were there far longer, and were around Petitioner much more. They are available to demonstrate that Carson's statements, allegations, and testimony were all incorrect in important part. Carson had intimated that Petitioner talked to him in part because he had served as Petitioner's protector when Petitioner was threatened by black inmates. That is what he had told a law enforcement officer in an interview prior to his testimony. Not only had no staff member heard of the problem, but also, none of the detainees had heard of it either.

165. In his testimony before the jury, Michael Carson made reference (though the name was not spelled entirely correctly by the Court Reporter) to Daniel Biddle as one of the persons in whose company he first met Petitioner Baldwin (RT, trial transcript, at 1167). There was a Daniel Biddle who was in the Juvenile Detention Unit with Petitioner for about 8 or 9 months.

166. Daniel Biddle was never interviewed or called as a witness at time of trial.

But Biddle is available, and has offered an affidavit. Biddle's recollection is that "Ms. Joyce" would make an effort to turn off any news coverage broadcast over the television about the West Memphis Three. He has also provided an affidavit. However, at one point Biddle saw some coverage about it and connected Petitioner with the case as a result (affidavit of Daniel Biddle, Exhibit 37 at p.1, para.3).

167. Biddle's recollection is that a number of detainees asked Petitioner if he did it, or if he wanted to talk about the charges against him or the crimes. Petitioner denied wanting to talk about them.

168. Like several of the detainees who have given statements, Biddle (who is white) remembers there being a few African-American detainees, and some white detainees as well in the juvenile detention facility in Jonesboro.

169. He recalled that there were a couple of tables in the day room at the Detention Unit at which people would sit and play cards.

170. His recollection was that Petitioner was viewed as laid back and relaxed, and that no persons tried to intimidate or take advantage of him - in contradiction to Carson's statements to police that he had tried to stand up for Petitioner when the latter was threatened by a black inmate. Specifically, Biddle stated that he "... never saw any of the black guys bother Baldwin." (Biddle affidavit, Exhibit 37 at p.2, para.8.)

171. Biddle states that there were only 8 or 9 people locked up in the Unit at any

given time, and there was little turnover.

172. Biddle does not remember Michael Carson, and does not recall playing spades with Carson, as Carson described - Biddle never did play spades while in the Unit. He never remembered playing cards with Petitioner Baldwin. (Biddle affidavit at p.3, paras.11 and 12).

173. Any time the subject of the charge against Petitioner came up, Petitioner would say that he did not want to talk about it, and the one time Biddle specifically remembered when Petitioner was asked if he did it or if he was involved, Petitioner "... got a little angry at the question and went back to his cell." (Biddle affidavit at p.3, para.14.)

174. Biddle's recollection was that no one ever really bothered Petitioner because of the way Petitioner handled himself while locked up (Biddle affidavit, Exhibit 37 at p.4, para.17).

175. Biddle's affidavit is significant because he is one of the persons that witness Carson described specifically enough to be identified as in a position to corroborate Carson's account.

176. Another one of the detainees who was reported by Juvenile Detention Unit staff to have been at the table at which Michael Carson was seen sitting with Petitioner the night before the 'confession' that Carson testified to at trial was Jason Duncan.

Duncan has also provided an affidavit (Jason Duncan affidavit, Exhibit 38).

177. Duncan states that he was around Petitioner for about 7 months. The two of them spent a lot of time together (Duncan affidavit at pp.1-2). Duncan, who records show was housed with Carson for at least one of Carson's 7 nights in the Detention Unit during Petitioner's stay, remembers Michael Carson. His memory was that Carson "... was kind of a chunky guy who acted as though he did not want to cause any problems. Carson never stood up for Jason [Petitioner] with the black guys on the Unit. He never talked any of them out of beating on Jason or threatening him. During the time he was there, Carson did not act like a guy who would stand up for anyone. He just got by, and got out." (Duncan affidavit at p.2, para.10.)

178. Duncan stated that it took a few weeks for him and Petitioner to get close enough that they talked beyond making small talk. According to Duncan, Petitioner never told him, or anyone else in Duncan's presence, that he had anything to do with the killings - he always denied his guilt (Duncan affidavit at p.3). Like a number of other persons, Duncan did not view Petitioner as someone "... who would just run his mouth to strangers." (Duncan affidavit at p.4.)

179. Duncan had not been interviewed by anyone concerning this case, prior to his being contacted by Petitioner's post conviction defense.

180. Xavier Redus, one of several African-American youth in the Detention Unit

with Petitioner, knew a number of the other African-American detainees as well. Redus and his friends Freddy Trice, Leonard Haskins, and Montavious Gordon were all housed in the Center when Petitioner first arrived. At first (which would have been in June and July, 1993, not when Carson arrived months later), according to Redus, some of the youth "used to mess with him" (Exhibit 39, affidavit of Xavier Redus at p.1, para. 3). They would ask Petitioner if he killed 'the kids'.

181. According to Redus, Petitioner never admitted any connection with the homicides. He never admitted any connection with the homicides even after Redus and Petitioner were locked up together on the Varner Unit of the Arkansas Department of Corrections.

182. According to Redus, there was never an occasion on which Petitioner was targeted by African-American detainees, and Redus remembers no 'white guy' standing up for Petitioner and trying to take on one of the "black guys" (Exhibit 39, Xavier Redus affidavit at p.2, para. 8).

183. Redus never remembers a white detainee who tried to tell the black detainees to back off, intimating that there would be violence if Petitioner was not left alone, which is part of what Carson reported.

184. Redus also notes that at no time did he ever hear Petitioner threaten to 'kick Misskelley's ass', as stated by Carson. Petitioner was not the kind of person who tried to

act tough.

185. Leonard Haskins was, according to Redus, the only other person detained who was facing as much time as Petitioner Baldwin. Haskins too has provided an affidavit (Exhibit 40) explaining that he was charged with a capital murder when he was incarcerated with Petitioner. He recalled that only four persons on the Juvenile Unit were charged with murder. During the several months he was incarcerated in the Juvenile Detention Unit with Petitioner, Haskins got along well with Petitioner, and the two of them talked on a number of occasions. Petitioner never told Haskins, or anyone that Haskins knew of, that he had anything to do with the killings. "He was always stressing because he said he did not have anything to do with the murders." (Exhibit 40, Haskins affidavit at p.2, para. 7.)

186. Haskins recalled playing cards from time to time with Petitioner. While Haskins was in the Detention Unit, from June to December of 1993, the detainees could only go into the day room (where the card tables were located) one at a time. Then several persons started going out together. However, when a new person would come onto the Unit, it took at least 48 hours, according to institutional practice, for that person to be involved with the others.

187. Haskins never heard Petitioner talk about being involved in the murders that he was charged with, or describing cutting people up or injuring them. "That was never

the way he talked. He never even joked about being involved." (Haskins affidavit at p.3.)

188. Moreover, Haskins never heard any of the detainees claim that Petitioner admitted to being involved in the case or in the killings, and never saw Petitioner behave in a way that made Haskins believe that he would have made such admissions.

189. Montavious Gordon was another African American detainee arrested in June of 1993 for capital murder. He too was incarcerated at the Juvenile Detention Unit with Petitioner.

190. Gordon states (Exhibit 41, affidavit of Montavious Gordon at p.1, para. 4) that at first Petitioner was quiet, and that it took time before Petitioner would talk to him for more than a few minutes.

191. Gordon indicates that when Petitioner was newly placed in the Center, he would be periodically harassed and taunted about his case. Petitioner might get visibly upset when taunted, but he never talked about his case, and would walk away.

192. While not entirely sure, Gordon believes that he recalls Michael Carson. Gordon states that no one ever picked on Petitioner physically and none of the African-American/black detainees ever threatened Petitioner.

193. According to Gordon, one of the African-American detainees likely to fight was Leonard Haskins. According to Gordon, none of the other detainees ever challenged

either him or Haskins over some problem related to Petitioner.

194. Nor did Gordon ever hear of Petitioner having allegedly admitted any involvement in the crime. "The only thing he has ever said was that he was not guilty." (Exhibit 41, Gordon affidavit at p.3:15.) Gordon also noted that he knew Joyce Cureton as the person who ran the Center. According to Gordon, the youth there felt able to talk to her about difficult situations.

195. Danny Williams worked for a youth program in Jonesboro, Arkansas in 1993 and 1994, and he too has provided an affidavit related to the Michael Carson situation (Exhibit 42, Williams affidavit). His program had regular interaction with the Craighead County Juvenile Office. He was working in Jonesboro.

196. Mr. Williams had worked with Michael Carson in 1993 in his professional capacity.

197. Prior to the Echols and Baldwin trials, Williams had been meeting with Carson, and had been trying to dissuade Carson from engaging in anti-social and illegal activities. Mr. Williams recalled specifically having warned Carson during one of their meetings that if he continued he might end up like one of the so-called West Memphis Three (Echols, Misskelley, and Baldwin), and might end up in detention with the sorts of people "who had mutilated bodies and cut the scrotums off of little boys" (Exhibit 42, Williams affidavit at p.3).

198. Williams had seen Carson on the street after Carson's release, and Carson had announced his involvement in the West Memphis murder case as a witness, Williams was shocked and concerned because, based on Williams' knowledge of him, it appeared that Michael Carson might be fabricating his alleged knowledge of the case (Exhibit 42, Williams affidavit at p.3, para. 12). As a result, Williams called Petitioner's defense counsel at trial, Paul Ford.

199. Danny Williams had contact both with Mr. Ford, and with Brent Davis, one of the prosecutors in Petitioner's case. Williams recalled that during the investigation, prior to trial, he was interviewed by the prosecution, and offered them his reasoning for believing that Michael Carson was not being truthful. Williams felt that Mr. Davis was concerned about his allegations. He explained to the prosecution "some specific matters that Michael Carson and I had talked about which I found out were not true." (Williams affidavit at p.5, para. 16.) According to Williams, he had a second meeting with prosecutor Brent Davis, during which Mr. Davis appeared to agree ".... that some of Carson's stories to people were fabrications." Williams, however, also felt that prosecutor Brent Davis felt that he (Williams) was out of line in having come forward to speak up about Carson.

200. For reasons that he does not understand, the defense never called him as a witness, and thus, Mr. Williams wrote a letter to Jason Baldwin after the convictions in

this matter expressing regret about the situation.

201. Mr. Williams' name was brought up during the trial in the record of proceedings prior to Carson's testimony (RT at 1144-1150). But Williams was never called as a witness by any party, and the information that he had was never made part of the record of these proceedings.

202. Michael Carson's history as a jailhouse informant was in its beginning stages at the time of the West Memphis Three case. Since having testified against Petitioner Baldwin, Carson moved out Arkansas, and lived in California where he continued his involvement in criminal behavior according to his record in California. He also allegedly continued to work for local law enforcement agencies as an informant, and reportedly continued fabricating information until he was discarded as an informant after continuing to be arrested.

D. Evidence of Petitioner's school attendance and attitude while in school supports the scientific evidence of Petitioner's innocence

203. The homicides in this case occurred during the course of the school year. Petitioner was a student enrolled at Marion High School at the time these crimes were committed. Marion High School is at least 6 miles away, by roads and across at least two interstate highways, from Robin Hood Woods. This evidence was never presented at trial. Petitioner attended school on May 5 and 6, 1993. No independent witnesses testified about his presence in school on May 5 and May 6, 1993 or about his school

schedule, the fact that he rode a bus to and from school (he had to be in school at 8 a.m.). No witnesses, including classmates and teachers, attested to his demeanor and behavior while in school during those days, and up to the time of Petitioner's arrest. A number of such witnesses are available. Petitioner's mother had obtained Petitioner's school attendance records and shown them to police within days of Petitioner's arrest. The jury never heard of this evidence, which was of importance to the solidity of the case against Petitioner.

204. Sally Ware (see affidavit of Sally Ware, Exhibit 43) used to be a high school art teacher at Marion High School. Petitioner had been one of her students. She recalled learning of the arrest of her student Jason Baldwin through media sources, and also recalled that the Principal at Marion High at the time stated that no school employee should talk to the media. Ms. Ware talked to her Principal at the time because "I felt that the authorities should be told that Jason had been in school on the day in question." (Exhibit 43, Ware affidavit at p.2, para.5.) The Principal responded that it would not be "much good for Jason if I were fired. My understanding was that Mr. Wood [the Principal] was letting me know that I would not have a lot of credibility if I had been fired from my job. As a result, I did not go to authorities, or to anyone else." (Exhibit 43, Ware affidavit at p.2, para. 5.)

205. Ms. Ware specifically recalled Petitioner's presence in school in the week

of the killings, and that nothing about Petitioner's behavior or appearance "... caused me any suspicion about his involvement" in the crimes (Exhibit 43, Ware affidavit at pp.2-3).

206. Ms. Ware also noted that she had been told by another teacher that co-defendant Jessie Misskelley, who had been a special education student in the school, suffered from a form of claustrophobia - a significant factor, given that evidence demonstrated (in the context of the totality of evidence against which the new scientific evidence is to be reviewed) that Misskelley had given a statement to police, approximately 30 minutes of which were taped, resulting from several hours of interrogation in a room at the West Memphis Police Department.

207. Amy Mathis, a friend of Petitioner's at the time, was in several of Petitioner's classes at Marion High School. She has also provided an affidavit (Exhibit 44, affidavit of Amy T. Mathis). Petitioner, like Damien Echols and Jessie Misskelley, were known by young persons in their age group and among Petitioner's classmates to be poor, and to come from a poor neighborhood. Ms. Mathis was from a different social group that Petitioner, but she got along well with him, and recalled him as sweet and shy. While he did have an interest in rock and roll, he was not interested in violence or satanism (Mathis affidavit at pp.2-3).

208. Crystal Hale, now Crystal Hale Duncan, was another of the many students who had gone to school with Petitioner, and who could have been called as witnesses

concerning Petitioner's behavior and actions. She recalled that Petitioner dressed like a rocker, and wore his hair long. He was one of a small group of students in school who stood out in that respect. (Crystal Hale Duncan Affidavit, Exhibit 45 at pp. 2-3).

209. Ms. Hale, like others who knew Petitioner, were aware that he was from another social group, in that he looked like someone from the local trailer parks. He was not from the more affluent neighborhoods where a number of the Marion High School students were from. (Exhibit 45 at p.3).

210. Even Petitioner was from a different social group that Ms. Hale, the two got along well, and Crystal Hale Duncan recalls Petitioner as a talented artist with whom she attended Ms. Ware's art class. She recalls Petitioner continuing to attend class after the killings, and recalls no change in his behavior after the discovery of the killings. (Exhibit 45, p. 4)

211. Joseph Samuel Dwyer lived two trailers down from Petitioner's family's trailer in the Lakeshore Trailer Park. He knew Petitioner well. The two of them spent time together. They too rode the school bus together. (Dwyer Affidavit, Exhibit 46, at p. 2).

212. Significantly, Dwyer remembers being on the school bus with Petitioner the day that the victims' bodies were found. Dwyer, who has characterized Petitioner as having a gentle and quiet demeanor, had not changed his manner that day. (Exhibit 46 at pp. 4-5) Dwyer had maintained contact with Petitioner up to the time the latter was

arrested, and he saw no changes in him during that time. Dwyer was never called as a witness.

213. Ms. Ware, Ms. Mathis, Ms Hale Duncan, and Mr. Dwyer are witnesses who could have shed light (and are now shedding light) on Petitioner's presence in school, behavior after the killings, and demeanor. One of them was prohibited from speaking out by her employer, and no one contacted Petitioner's fellow students. Therefore, no juror was ever presented with this important evidence about Petitioner.

E. Jurors were never informed of the distance from Petitioner's home in Lakeshore to the Robin Hood Woods, or from there to Marion and the high school there, and that evidence raises significant questions about Petitioner's involvement in the killings.

214. While this case was tried in Jonesboro, Arkansas, the location and layout of the area in which Petitioner lived and went to school, in relation to the town of West Memphis, Arkansas, and the Robin Hood Woods area, was never explained to them. This was a significant omission, because the crime scene is far away from Petitioner's home at the time.

215. West Memphis is approximately 6 miles away from Marion, though the Lakeshore Trailer Park area is slightly sought and west of Marion. There is no direct and concealed route from the crime scene (Robin Hood Woods) to Marion and/or to Petitioner's home (see Exhibit 47, Mapquest maps provided for illustration).

216. There was never an allegation that Petitioner, co-defendant Damien Echols,

or Jessie Misskelley, rode together in any car, truck, or mechanized transportation device to and from the crime scene, located along Interstate 40 West/Interstate 55 North and Marion which is north of West Memphis, to the east of Highway 55 North. The northern part of West Memphis is where Interstate 40 West and Interstate 55 North separate. Interstate 55 turns towards the north and Marion. The town of Marion is also bisected by a local main road, AR-77 North.

217. Petitioner lived in a trailer park which is west of the principal part of Marion. The trailer park is a large residential area consisting of several hundred trailer homes, a number of which are situated around a lake which is a principal reference point in the trailer park.

218. Petitioner's family lived in a trailer park which was not near the link to the nearest main, paved, road leading towards West Memphis. It was located to the west of the main road in the area.

219. The crime scene in Robin Hood Woods was just south of Interstates 40 and 55, next to a major truck stop, which was an around-the-clock operation at the time. Robin Hood Woods was also bordered by a truck washing operation which was also busy many hours a day. Several West Memphis police officers worked at the truck wash during their off duty time.

220. The truck stop at issue, at the time, had dozens of interstate trucks parked in

it at any given time. In addition to fuel, the truck stop offered food and a shop for miscellaneous merchandise.

221. In order to get from the crime scene to the trailer park in Lakeshore where Petitioner resided and where the school bus picked him up daily, the most direct route required Petitioner to walk along a frontage road adjoining Interstate 40 West combined with Interstate 55 North. Petitioner would have had to walk by several businesses. While it would be possible to avoid walking on portions of the interstate highways, or AR-77 North (the road into Marion from West Memphis), the alternatives would largely be to walk through fields, though at some point major roads would have to be crossed if Petitioner was to return to Lakeshore. Petitioner would surely have had to return to Lakeshore in order to catch the bus at around 7 a.m. to return to school by 8 a.m. on Thursday morning, May 6, 1993. Moreover, since Petitioner was expected to help feed his younger brothers in the morning to help get them to school as well, he was up by 6 a.m. on school days. His brother Matt rode on the Marion school bus with Petitioner. Matt told police that his brother (Petitioner) had been at home at night on May 5, 1993 (Larry Matthew Baldwin affidavit, hereafter Matt Baldwin affidavit, Exhibit 48).

222. One of the customary ways that persons from the Lakeshore trailer park walk to West Memphis is along the shoulder of Interstate 55 North, where they are highly visible to the traffic which flows 24 hours a day.

223. The Interstate highways that are located in the West Memphis and Marion area are major, well traveled roads. Interstate 40 West leaves the heart of Memphis, Tennessee heading towards the west and West Memphis while Interstate 55 crosses from Tennessee into the eastern part of Arkansas to the south of the center of Memphis, Tennessee. Interstate 55 is the only interstate highway heading north/south from Tennessee into Arkansas and vice versa in the West Memphis area. Interstate 40 is the only major highway headed east/west through West Memphis.

224. Both of these roads are traveled 24 hours a day, and the combined stretch of Interstate 55 North and Interstate 40 West which traveled by the Robin Hood Woods area of West Memphis is a densely traveled truck route.

225. There was no evidence offered to explain the widely dispersed locations involved, or how Petitioner was to have traveled, presumably muddy (according to the State's theory), with blood evidence on him, perhaps carrying a knife. He would likely having had to at least partially immerse himself in creek water in West Memphis during the commission of the crime. He would then have walked or run back to the Marion area near major roads, traveling some 6 miles away from the crime scene. After he returned to Lakeshore Trailer Park, he would have had to move through a densely populated trailer park, while passing at least 40 residences, none of them surrounded by walls or fences, back to his home in time to change, turn around, and attend school the next day in his

usual manner, attracting no suspicion.

226. The West Memphis Police Department never purported to find any clothing, or artifact, indicating that Petitioner had ever been in an area with the soil type found in Robin Hood Woods, and in the small creek bed in which the three victims' bodies were found. More significantly, there was never any explanation of how, or when, Petitioner would have returned home to calmly ride a school bus the next morning.

F. There was no evidence that Petitioner ever was in Robin Hood Woods.

227. No one who provided statements to the police during the investigation of this matter claimed to have ever seen Petitioner in the area of Robin Hood Woods in which the bodies of the three young boys were found on May 6, 1993.

228. None of the persons known to have been in Robin Hood Woods had ever seen Petitioner there - including Heather Cliett (as she was known at the time), who went out briefly with Petitioner prior to his arrest (affidavit of Heather Cliett aka Heather Dawn Hollis, Exhibit 32 at p.3).

229. Heather Cliett had played in Robin Hood Woods for years before the killings of the three boys occurred. She had been approached by West Memphis police officers in the aftermath of the killing when the police sought to know more about Robin Hood Woods, based in part on her knowledge of the area.

230. Cliett had shown a patrol officer some of the areas that children from the

neighborhood used to go to.

231. At no time did Cliett, or any of the neighborhood children known to go into the woods ever see Petitioner in Robin Hood Woods.

232. In addition, Petitioner used to go into the woods with his friend Sammy Dwyer, whose given name is Joseph Samuel Dwyer. Dwyer was a neighbor of Petitioner's, and both boys had an interest in reptiles, particularly snakes and lizards. (Dwyer affidavit, Exhibit 46, p. 2) But the woods they frequented were in their neighborhood, in Lakeshore. Dwyer had not even heard of Robin Hood Woods in May, 1993, and he had never known Petitioner to have claimed to have gone there, or to have discussed Robin Hood Woods. (Exhibit 46, at p. 2).

G. Petitioner played no role in the killings for which he was convicted, and there was evidence about his whereabouts on May 5 and 6, 1993 that the jury never heard.

233. In addition to other evidence referenced in this Petition bearing on Petitioner's presence in school according to school personnel on the day the three victims were reported missing (May 5, 1993), and on the day they were found (May 6, 1993), there is further evidence that establishes that Petitioner was not involved in the crimes charged against him, and for which he was convicted.

234. During the course of the investigation of this case, West Memphis police officers interviewed several witnesses who accounted for Petitioner's whereabouts at the

time of the 3 homicides. For example, Petitioner's younger brother Matthew Baldwin was interviewed by police officers prior to Petitioner's trial (Exhibit 49, Matthew Baldwin police interview). Matthew Baldwin told police that he and his brother rode the school bus together, and they arrived home at about 3:40 p.m. Matthew's account was that he recalled his brother going to their uncle Hubert Bartoush's residence (several miles from Robin Hood Woods) at some point in the afternoon, at about 4:30 p.m. to mow Bartoush's lawn. (See also Matt Baldwin affidavit, Exhibit 48 at p.3). Matt Baldwin has also furnished an affidavit explaining his memory of events, including that to get to West Memphis from his family's home where Petitioner lived it was a 20 to 40 minute walk, depending on the location (Exhibit 48 at pp.5-6).

235. Shortly after the homicides occurred, Bartoush gave a statement (June 14, 1993) stating that his nephew was at his residence mowing the lawn between 4:30 p.m. and 6:30 p.m.

236. This recollection was shared by Angela "Gail" Grinnell, Petitioner's mother, with whom he resided in the Lakeshore Trailer Park. She told police in a statement given in June, 1993 that Petitioner had returned from school, and then had gone to his uncle's house (Exhibit 50, Angela Gail Grinnell police interview; Exhibit 51, Angela Gail Grinnell affidavit).

237. This same account was corroborated separately by Dennis Dent, boyfriend

of Gail Grinnell (see above) who was interviewed by police in Phoenix, Arizona, where he was in jail, in January of 1994. He recalled that Jason Baldwin spent some of the afternoon, between approximately 3:30 and 8 to 8:30 p.m. (at a later point he puts it at between 9 and 9:30 p.m.) cutting his uncle's lawn (Exhibit 52, Dent interview).

238. Several other witnesses talked to Petitioner by phone after he had returned to his mother's house that evening. Jennifer Bearden, who now admits having under-reported to police the level of her contacts with Petitioner and his friend Damien Echols when she was initially interviewed by police states that around the time of the killings she used to talk to Damien Echols every day on the phone. She had told police about some aspects of her contacts with Petitioner and Echols (Exhibit 53, Bearden police interview). Her recollection is that on May 5, 1993 she called Echols who told her he would be at Petitioner's house, and talked to both of them on May 5, 1993 (Jennifer Bearden affidavit, Exhibit 54, pp.5-8). Jennifer Bearden and her friend Holly George were critically important witnesses because they had been socializing with both Petitioner and Damien Echols during this period of time (Bearden affidavit, Exhibit 54).

239. A friend of Jennifer Bearden's at the time, Holly George (now Holly George Thorpe) recalls a practice of calling Damien Echols and Jason Baldwin. She was usually at home by 3:30 p.m. on school days. She remembers that during May of 1993 she would often be on the phone with Petitioner and Damien Echols. She specifically

remembers talking to them on the night of the killings (Holly George Thorpe affidavit, Exhibit 55).

240. Petitioner's girlfriend at the time, Heather Cliett, who lived near the Byers' residence (family of one of the victims), and was aware of Christopher Byers' disappearance and the search for him, recalled that she too called Damien Echols and Petitioner by phone on May 5, 1993 into the early morning of the next day (Heather Cliett Hollis affidavit, Exhibit 32, pp.2-4).

241. Heather Cliett acknowledges that because of the notoriety of the case, and the number of contacts she had with police at the time of the initial investigation, she may have under-represented the amount of time she had spent with Damien Echols and Petitioner Baldwin, as well as the amount of time they talked by phone. Her recollection is that she was on the phone with both Petitioner Baldwin and Damien Echols the night the victims disappeared (May 5, 1993) and into the early morning hours of May 6, 1993 (Exhibit 32 at pp.2-4).

242. None of Petitioner's school schedule (which required him to be in school in the early morning prior at 8 a.m.), nor the record of his class attendance nor his other activities of May 5 and 6, 1993, were made known to the jury. Nor was the jury made aware of the fact that West Memphis police officers investigating the homicides had found persons who had seen Petitioner, or been with him, at various times during the day

of May 5, 1993 or May 6, 1993, or talked to him by phone in the afternoon and evening of those days. Moreover, at no time were jurors told that the West Memphis police investigators had tracked Petitioner's whereabouts on May 5, 1993, and found corroborating evidence for Petitioner's cutting of his uncle's lawn, and then returning that evening to his mother's trailer in Lakeshore. Petitioner's mother told police in 1993 that when she returned from work, she would have looked in on her son. Gail Grinnell states that her son was home that night (Exhibit 51, Angela Gail Grinnell affidavit). His brother rode the school bus with Petitioner on the day the victims were reported missing and the next day, and knew of nothing unusual that would have connected his brother with the killings (Matt Baldwin affidavit, Exhibit 48, at pp.2-4).

243. In addition, there was evidence available about the whereabouts and activities of Damien Echols on May 5 and 6, 1993 bearing on whether Petitioner and Damien Echols could have been involved together in these killings. None of this evidence was introduced in Petitioner's defense.

244. Several members of Damien Echols' family had reported to police, and at least one testified, that Echols was at a doctor's appointment on May 5, 1993, and that he later returned to his family's home after being picked up at a laundromat. Had they been called as witnesses, and were they to be called today, Jennifer Bearden, Heather Cliett Hollis, and Holly George Thorpe would all provide evidence concerning their contacts

with Petitioner and Damien Echols; their knowledge of these two men who were accused of being in a cult as teenagers in 1993, and the nature of their phone conversations with them including those of May 5, 1993.

245. In addition, between June and September, 1993, West Memphis Police Department officers interviewed other witnesses who indicated that they had knowledge of Petitioner's whereabouts on May 5, 1993. For example, Damien Echols' mother, when interviewed by police on September 10, 1993, was aware that Damien Echols and his girlfriend at the time, Domini Teer, had reported having walked on May 5, 1993 to Petitioner's uncle's house, and then from there to the laundromat. Mr. Echols' mother (Pam Hutchison) also told police that she recalled her son being on the phone with various persons on the evening of May 5, including Petitioner, Jennifer [Bearden], and Holly [George].

246. Domini Teer, Echols' girlfriend, also reported to police that she recalled Petitioner going to his uncle's house to mow the lawn after school on May 5, 1993 and that both Ms. Teer and Damien Echols accompanied him. She also explained that she and Mr. Echols were then picked up by Mr. Echols' mother from the laundromat - located near the Bartoush residence (Domini Teer interview report, Exhibit 57; affidavit to be submitted as Exhibit 58 when obtained).

247. Also available at the time of trial were statements from young men who

knew Petitioner, one of whom (Garrett Schwarting) told police on June 11, 1993, that he recalled Petitioner mowing his uncle's lawn on May 5, 1993, and recalled as well being in Petitioner's presence at Petitioner's trailer home in the afternoon and evening of May 5, 1993. Other then-contemporaries of Petitioner including Kevin Lawrence (interviewed June 11, 1993), and Don Nam (interviewed December 23, 1993) stated that they had either been at Petitioner's house (Kevin Lawrence), or had seen Petitioner near Walmart in West Memphis on the evening of May 5, 1993 (Don Nam).

248. Various witnesses saw Petitioner at various times on the afternoon and evening of May 5, 1993, but it is clear that some witnesses (who are discussed here) reported to police that they had seen Petitioner Baldwin on the day of the disappearance of the three boys, and other observers (teachers, classmates) reported seeing Petitioner at school the day that the bodies of the three young boys were discovered (May 6, 1993). Some of these persons are now identified and include: Crystal Hale, Sally Ware, Amy Mathis and Sammy Dwyer.

249. While there were conclusory statements made at Petitioner's trial to the effect that he was in school on May 5 and 6 of 1993, the detailed witness information about Petitioner's whereabouts was never presented, or argued, to the jury. His school schedule, the location of the school in relation to the crime scene; Petitioner's regular demeanor at school; the distance of West Memphis from Marion, were all left out of the

trial.

250. There is significance to a number of these pieces of information about Petitioner's whereabouts. First, arguably, they provide an alibi for Petitioner, given the 'window of disappearance' of the 3 victims that places civilian (and later police) searchers as looking for the boys beginning around 6:30 p.m., and into the night of May 5, 1993. Second, the fact that several persons saw Petitioner at school, on the bus home from school, at home, walking to cut his uncle's lawn, back at his family's trailer, and also witnesses who reported talking to Petitioner, is evidence that undermines the theory that Petitioner was planning, or participating in, a crime in Robin Hood Woods, or that he had the opportunity to participate in the homicides in question. Also, several witnesses including Jennifer Bearden, Holly George, and Heather Cliett, in addition to Matt Baldwin and Gail Grinnell (all of whom have submitted affidavits) claim to have had contact with either Damien Echols or Petitioner or both on the evening and night of May 5, 1993.

251. Jennifer Bearden was witness to an incident involving Petitioner, Damien Echols, and Jessie Misskelley (the theft of a pool ball), and was also aware, based on her contacts with Petitioner and Damien Echols that prior to the homicides, Echols and Petitioner appeared to dislike Misskelley (Bearden affidavit, Exhibit 54).

252. Sammy Dwyer knew Petitioner, and lived two doors away from him in

May, 1993. He also knew Jessie Misskelley, but Misskelley had moved away. Dwyer states that he never saw Misskelley and Petitioner hanging around one another even while Misskelley still lived in the trailer park, and he states that after Misskelley left the trailer park (before the homicides) he never saw Petitioner with him either. Nor did Dwyer, who knew Damien Echols but did not like him, ever see Echols with Misskelley. (Dwyer affidavit, Exhibit 46, at pp. 3-4).

253. The statements attributed to co-defendant Damien Echols at the softball field, and introduced as evidence of his guilt, if properly put in context would not support a conviction.

254. The statutory standard under which Petitioner brings this motion calls upon him to deal with 'the totality of evidence' even if it was not introduced specifically against him.

H. The ball game statements were never put in context

255. During the course of the trial of this case, the State called three witnesses to establish that after the killings occurred, co-defendant Damien Echols had made certain admissions in public.

256. Christy Van Vickle was 12 years old at the time, and testified that while she was at the girls' softball field she heard Damien "say that he killed the three boys." She testified that this occurred while she was walking with her friend Jackie Medford, and

while Damien Echols was in the presence of Jason Baldwin (Reporter's Transcript of trial proceedings at 1812-1813). She reported that she was about 15 to 20 feet away when she heard the statement made, and that there was a crowd of people there, but that she did not know who those people were.

257. Jodee Medford, 15 years old at the time, not only heard Damien Echols say that he killed the three boys, but that before he turned himself in he was going to kill two more and that he had already picked them out. She was waiting to play in her 9 o'clock softball game when this happened. She had recognized Petitioner as being there, but not in Echols' immediate vicinity (RT at 1819-1827). She had told her mother about the event.

258. Donna Medford testified that her daughter Jodee had said that the boys were there and that they had killed the three little boys. She then clarified by stating that "Damien had said it" (RT at 1836).

259. The context of these statements was never established, and thus jurors were likely left under the impression that the statements may have been sincere and made to a specific group of persons. Had the setting been properly provided, it would have been clear that the event in question was a well attended evening softball game. A number of persons had attended local schools and knew one another. This included Petitioner Baldwin and Damien Echols who had either known, been friendly with, or had been

around many of the persons at the ball game. Persons surrounded the ball field on both sides of the foul lines. At the time the game in question was taking place, it was generally known in the community that Damien Echols had been questioned by authorities, including police officers and probation officers, about the matter. The theory that Mr. Echols was in some way the focus of the investigation was known in the community.

260. When Mr. Echols, trailed by Petitioner, approached the area of the ball field, several persons already at the public facility started calling out and taunting Mr. Echols, who answered taunting questions and comments with sarcastic statements of his own and used a loud voice in doing so. Some who were present (including Heather Cliett, who was playing in one of the ball games) heard the catcalls and exchanges between the spectators and Mr. Echols (Cliett affidavit, Exhibit 32). Some members of the public screamed out questions to Mr. Echols, asking who he was going to kill next.

261. Only after Mr. Echols was finally arrested did Donna Medford, the mother of Jodee Medford, report the ball park statements. At the time Ms. Medford first learned about them, when she was driving her daughter and others home, including Christy Van Vickle, Ms. Medford dismissed the statement entirely, and told the girls in her car to ignore it (Exhibit 56). She did not believe that it should be taken seriously given its context.

262. When the statement was presented, given the lack of context, the

implication was that Mr. Echols must have been making a significant statement, rather than engaging in sarcastic responses to hostile remarks.

Domini Teer, co-defendant Damien Echols' girlfriend at the time had told police about Petitioner's activities on May 5 and 6, 1993, and she was available to be called as a witness for Petitioner

263. In May of 1993, Petitioner's co-defendant Damien Echols had a girlfriend named Domini Teer. Ms. Teer was among the many persons interviewed in the aftermath of the killings of the three victims in this case, and she was interviewed on more than one occasion by law enforcement officials in September, 1993 after Petitioner and his co-defendant Damien Echols were charged with the murders.

264. Domini Teer was among those who confirmed that she had seen Petitioner during the day of May 5, 1993. She was aware of his presence in school that day. She also had been aware that he had gone to his uncle's place, and later had returned to the Lakeshore Trailer Park area.

265. Ms. Teer (Exhibit 57, interview report, and 58, affidavit) not only provided interviews to the police in 1993, but also she recently provided statements to the defense in this case. She confirms the information that she provided in 1993, and clearly helps account for Petitioner's whereabouts at critical times during the course of the sequence of events between the disappearance of the three boys on May 5, 1993, and the discovery of their remains on May 6, 1993.

VI. PART OF THE PROSECUTION'S THEORY, AND EVIDENCE, WAS THAT THIS CRIME HAD "TRAPPINGS OF THE OCCULT", BASED ON WHAT IS NOW PROVEN TO BE UNRELIABLE, MISLEADING, AND IRRELEVANT TESTIMONY

266. The trial court found Dale Griffis, a 26-year veteran of the Tiffin, Ohio Police Department, to be an expert on cults and non-traditional groups, based in part on his having testified once before this case as an expert on satanic activities (RT at 1744-1755). Griffis testified that the crime here had "trappings" of occultism based on hypothetical questions that integrated Michael Carson's uncorroborated statement that Petitioner Baldwin sucked the blood from the penis of one victim, that the crime occurred on May 5 or 6 of 1993 when there was a full moon, and based on the absence of blood at the scene (RT at 1758). According to Griffis, not only were these trappings of occultism, but so was the fact that the children were laid out in "display postures", blood was sucked out of them, there was water to wash with, and that persons who have their hair dyed black, wear black t-shirts and black jeans also have the trappings of the occult (RT at 1764).

267. Griffis conceded, with respect to Petitioner Baldwin, that if one assumes the evidence that Petitioner Baldwin "sucked the blood out of the individual's penis" is incorrect, then there is nothing that he, Griffis, had to connect Petitioner with the occult (RT at 1798-1799).

268. The new scientific evidence demonstrates that the Griffis testimony was

unfounded and irrelevant. For example, Griffis was asked about the significance of the scene having been "washed", notwithstanding the fact that criminalists from the Arkansas Crime Laboratory performed some chemical tests and obtained reactions that they felt were consistent with blood being at the scene in certain specific areas, though later attempts to confirm these findings did not succeed.

269. The post-conviction review of the autopsy reports, and photographic evidence, also have resulted in opinions that Dr. Peretti (the State's pathologist) misinterpreted certain findings during the autopsy process as evidencing "blanching" of internal organs, and thus the 'bleeding out' of one of the victims' blood. But this evidence is contradicted by the recent review of the scientific evidence in the case (see affidavit of Dr. Janice Ophoven, Exhibit 17. None of the autopsy findings, when carefully reviewed, supported the notion that any of the victims 'bled out').

270. The Griffis testimony must now be reviewed in light of the multiple findings by experts in various fields of the forensic sciences from the United States and Canada that there is no evidence that blood was sucked out of any of the victims' penises or bodies - and indeed, that there was no mutilation of the bodies through human agency in the manner incorporated into the hypotheticals asked of Griffis during Petitioner's trial.

271. In addition, it is now clear that Griffis, while a longtime policeman, was not an expert in the manner in which he represented himself. The Masters and doctoral

degrees that Griffis claimed to have came from a storefront 'university' in California that was shut down pursuant to action by the California Attorney General's Office.[1]

272. In addition, a number of scholars who have studied trends in the United States noted that Griffis and others capitalized on concerns about interest in the occult 'taking over' communities.[2] Further research has undermined the validity of these concerns.

273. Even one of the supporters of the investigation into satanic matters, former Assistant Probation Officer Steve Jones, has stated since his departure from Arkansas, and his resignation as a probation officer, that the satanic insinuations that characterized the case were an exaggeration, and that he cannot, in retrospect, accurately attribute to Petitioner Baldwin any professed interest in or association with the occult or satanism. Jones, who with his boss Jerry Driver pushed the investigation of Damien Echols and Petitioner, now acknowledges that he does not believe that Petitioner was involved in the homicides.[3]

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[1]*Columbia Pacific University v. Miller*, California Court of Appeal, First Appellate District, A087833 (July 7, 2000); also *Council for Private Post Secondary and Vocational Education v. Columbia Pacific University*, A089826, petition for review denied 12/13/2000.

[2]See, for example, Victor, *Satanic Panic: The Creation of a Contemporary Legend* (1993).

[3]Tom Quinn declaration (Exhibit 68)

The police, the probation officers, and Vicki Hutcheson

274. Early press coverage of the case in the immediate aftermath of the killings of the three young boys in West Memphis demonstrates that police were essentially stating that they were stumped. In the search for suspects, police officers targeted a wide variety of persons to question, and from whom to take evidence.

275. The State's files demonstrate that hundreds of contact sheets, and/or biological samples such as hair, and/or fingerprints and/or statements were taken from a wide array of persons in and around West Memphis, and elsewhere.

276. Early in the investigation, however, a few persons began to focus their attention on Damien Echols, based in part on their theory that the case involved trappings of a satanic ritual, or cult killing - trappings that were discussed during trainings that local probation officers and law enforcement officers attended.

277. The Chief Probation Officer of the area, Jerry Driver, and one of his associates, Steve Jones, spearheaded an investigation into those 'weird' kids whose interests might make them logical suspects if indeed there was a satanic or other occult basis for the killings.

278. Petitioner's post conviction defense located Steve Jones who has made it abundantly clear to at least two investigators that he believes that he participated in a witch hunt that resulted in an injustice (namely the conviction of Petitioner). Jones has

left the State of Arkansas (Tom Quinn declaration, Exhibit 68).

279. But the records indicate that it was Driver and Jones (the latter of whom supervised Petitioner on a juvenile probation case for a minor matter) who underscored to interested law enforcement officers the need to focus on Damien Echols and some of his cohorts.

280. This explains law enforcement's attempt to get a local woman named Vicki Hutcheson, a mentally unstable woman with a history of involvement in theft type offenses, to obtain statements from Damien Echols.

281. Hutcheson attempted to do so using Jessie Misskelley, Petitioner's former co-defendant, to invite Echols to a meeting. This turned out to be a fiasco, though the jury in Petitioner's case heard nothing about it. Hutcheson, however, did provide misleading information to police (and attempts were made to introduce her testimony) that Damien Echols and Jessie Misskelley had attended a satanic ritual, what Hutcheson called an "esbat".

282. Hutcheson fabricated her evidence. She later admitted as much, blaming the circumstances of her life. These included, at various times, trouble with the law.

283. Hutcheson has given at least one videotaped interview in which she confessed that her statements to police were a fabrication. Reporter Tim Hackler published statements of his interview with Hutcheson in an article entitled: *"Complete*

Fabrication: A Crucial Witness Says Her Testimony in the West Memphis 3 Case Wasn't True, But a Product of Police Pressure to Get Results in the Deaths of Three Children." [Arkansas Times, October 7, 2004, Exhibit 59.]

284. Hutcheson has given sworn statements admitting that her information was false. One of them is recorded, and will be submitted if there is any question from the State about the Hutcheson testimony.

The testimony of Anthony and Narlene Hollingsworth

285. Anthony and Narlene Hollingsworth helped the State connect Damien Echols to the crime scene. Anthony, a resident of Lakeshore Trailer Park, claimed he went with his mother and others to pick up other relatives. Not quite sure when he did so, Hollingsworth stated that he was riding on Seventh Street beside the Blue Beacon and Love's (two local businesses) when he saw Damien Echols and Domini, Echols' girlfriend. They were wearing black and dirty clothing. Anthony put the date of the event somewhere around May 6 or 7 (RT at 1289).

286. Narlene Hollingsworth testified that she went to pick up a family member at a laundromat on May 5, 1993. This relative got off work at about 10 p.m. and it was 9:30 p.m. when she recalled seeing Damien Echols and his girlfriend Domini Teer. She also stated that she had seen Jessie Misskelley at some point on either Wednesday or Thursday (May 5 was a Wednesday). Hollingsworth admitted in front of the jury that she had

talked to the prosecutor quite a bit (RT at 1321).

287. Anthony Hollingsworth had been prosecuted by one of the prosecutors in the case against Petitioner, John Fogelman. He was on probation for sexual abuse of a minor at the time he testified. Narlene Hollingsworth had herself been the subject of a prosecution for an auto accident that had occurred on May 5, 1993.

288. The Hollingsworths' testimony about the timing of their observation of Damien Echols is now contradicted by affidavits from at least three persons (Jennifer Bearden, Heather Cliett Hollis, and Holly George Thorpe, Exhibits 54, 32, and 55).

289. The Hollingsworth testimony was also problematic in that impeaching evidence was not asked of them in such a way as to permit jurors to assess their credibility.

The FBI, and former FBI Agent John Douglas

290. The Federal Bureau of Investigation was involved in this matter in several different ways. First, local law enforcement agencies submitted evidence to the FBI at various points in the case for laboratory testing.

291. Also, FBI "profilers" were asked to review the case. They concluded, after the verdicts and in materials disseminated to some of the lawyers involved at the trial level, that the evidence presented to the FBI would not likely have involved three teenage killers, but rather another type of perpetrator.

292. This view was elaborated upon by John Douglas, former FBI Unit Chief of the Investigative Support Unit of the National Center for the Analysis of Violent Crime. Mr. Douglas, who was one of the developers of criminal investigative analysis, which some have shorthanded as 'profiling', reviewed this case while in contact with counsel for Damien Echols (Exhibit 60, Douglas CV; Exhibit 61, Douglas report).

293. Co-defendant Damien Echols has offered (see Echols Motion for a New Trial Under A.C.A. §16-112-201 *et seq*. at p.86) Douglas' conclusions, which are that the killings involved one perpetrator, familiar with the victims and the geography of Robin Hood Woods, who had a history of violence, and who was not a teenager (Exhibit 61).

294. Petitioner Baldwin understands that in the context of the review of scientific evidence, and the totality of the facts known about a crime, opinions of an experienced criminal investigator may be segregated from observations of a highly experienced FBI Agent, who, like Douglas, has reviewed hundreds of cases.

295. Even if the Court were to disregard the opinions of who the perpetrator is likely to be, Douglas' knowledge of criminalistics, and connection with the investigative process, is useful in that he, applying a knowledge of crime scene investigation techniques and forensic sciences, generally agrees with the view that the scientific evidence presented does not support the theory presented and argued by the State.

VII. MATERIALS PRODUCED BY JURORS, AND ACQUIRED BY PETITIONER THROUGH AN INSPECTION OF THE STATE'S PHYSICAL EVIDENCE AFTER HIS TRIAL, TOGETHER WITH RECENTLY DISCOVERED JUROR NOTES AND JUROR INTERVIEWS, ESTABLISH THAT THE JURY IN PETITIONER'S CASE WAS EXPOSED TO AND RELIED UPON EXTRA-JUDICIAL EVIDENCE THAT VIOLATED PETITIONER'S FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS, AS WELL AS HIS RIGHT TO A FAIR TRIAL UNDER THE CONSTITUTION OF THE STATE OF ARKANSAS.

Introduction

296. Among the items of evidence impounded by State authorities, and available for review with other physical evidence in the care and custody of the West Memphis Police Department and Arkansas State Crime Laboratory, were the original poster-sized notes filled out by the jury foreman and used by jurors during the course of their deliberations. The notes reflect the evidence considered in Petitioner's case. Some of the writing on the posters as they exist today has been redacted, and blacked out. The writing that was redacted concerns evidence that was highly publicized but never presented to the jurors in court (Exhibit 62, copies of juror poster-sized notes in State evidence).

297. The contents of the original jury room notes were copied by one of the jurors in the case while the jury was still empaneled, and those notes make clear that among the matters written out by the jury foreman, considered by the jury, and written in the case outline used by the jury as evidence of guilt, was the statement of Jessie

Misskelley, Petitioner's former co-defendant, whose case had been severed from that of Petitioner and Damien Echols because of Misskelley's cross-inculpatory statements to police. The redacted jury notes in the case of Petitioner's co-defendant Damien Echols read: "Jessie Misskelley Test[imony] Led to arrest". As to Petitioner, the pertinent entry read: J. Misk. State[ment] (Exhibit 63, copies of juror notes, filed under seal).

298. Jurors interviewed in the aftermath of the defense's recent discovery of these poster-sized notes confirmed their use during the course of jury deliberations, and confirm how they were prepared. These notes evidence only some of the many items of extra-judicial evidence specifically discussed by jurors.

299. The Jessie Misskelley 'testimony' or 'statement' referred to was a statement generally described as follows by the Supreme Court of Arkansas in *Misskelley v. State*, 323 Ark. 449; 915 S.W. 2d 702 (1996) in a supplemental opinion on denial of rehearing:

> On June 3, 1993, the crime having remained unsolved, Detective Sergeant Mike Allen sought the appellant out for questioning. The appellant was not considered a suspect, but it was thought he might have knowledge about Damien Echols who was a suspect. Detective Allen located the appellant and brought him back to the station, arriving at approximately 10:00 a.m. Later in this opinion we will address in detail the circumstances surrounding the appellant's interrogation. For now, it is sufficient to say that the appellant was questioned off and on over a period from 10 a.m. until 2:30 p.m. At 2:44 p.m., and again at 5:00 p.m., he gave statements to police in which he confessed his involvement in the murders. Both statements were tape-recorded.

Misskelley v. State, 323 Ark. 449 at 459-460.

300. The statement admitted at trial against Misskelley, which was the subject of extensive newspaper coverage, in part because Misskelley's trial preceded Petitioner's, included a series of admissions by Misskelley stating that he had been contacted by Petitioner, and agreed to go with Petitioner and co-defendant Damien Echols to Robin Hood Woods. There, Petitioner and Echols had allegedly called out to the victims who came to the creek and were severely beaten. Misskelley said that two of the boys were raped and forced to perform oral sex. Later, Misskelley is characterized by the Supreme Court as having added certain details about the sexual molestation (Exhibit 64, press articles).

301. Several newspaper articles published prior to the commencement of Petitioner's trial characterize the statements. For example, one article from the Arkansas Democrat-Gazette (accompanied by photographs) recounted various events in the chronology of the Misskelley trial 'at a glance' and stated that on January 27, 1994:

> Prosecutors play Misskelley's taped police statement, in which he admits his and his co-defendants' satanic cult involvement. He describes their stalking and capture of the three West Memphis boys, and the sexual assaults, mutilations, and beatings of the children. He also said one boy strangled.

302. This same article detailed testimony, including that of a witness (Victoria, aka Vicki, Hutcheson) who claimed to have been a close friend of Misskelley's, and contended that she had witnessed Petitioner and co-defendant engaging in some devil

worshiping rituals. Hutcheson has, since the trial, admitted under oath and elsewhere that this testimony was false. The evidence establishes that Hutcheson's testimony was false in several important respects. She never witnessed any incidents of devil worshiping.

303. The Jonesboro Sun on Friday, January 28, 1994 had one front page headline entitled: "Misskelley Caught Boy"; the subtitle was "Confession Played in Court". The article detailed the reporter's summary of the testimony of State pathologist Frank Peretti, together with the Misskelley 'confession'. Many other articles were published in local papers, including the Commercial Appeal, as well as the previously mentioned Arkansas Democrat-Gazette and Jonesboro Sun. There was further coverage of these matters on television.

304. All of this explains why the trial court stated when it began jury selection in Petitioner's case on February 22, 1994: "This is one of those cases where there's been a great deal of media attention to it, and it's evident here today that there will be a great deal more." (Reporters Transcript of jury selection, RT at 3.) While the court periodically admonished jurors not to consider news coverage, the jurors acknowledged their contact with the media coverage. Juror 1 stated she had heard 'an awful lot' about the case through the Jonesboro Sun, and the Arkansas Democrat. She had read articles on a daily basis, and watched television on Channels 7 and 8 (RT of jury selection, at 35, 49-50). Based on her review of the media coverage, she was of the general opinion that

Petitioner and his co-defendant were guilty, though her opinion was not 'totally fixed' (RT, jury selection, at 52).

305. Juror 2 had also received information from both the print media and television, describing the cases, one of which had been publicized 'a great deal' (RT, jury selection, 223, 245).

306. Juror 3 had heard about the case through co-workers, but also had read coverage (RT, jury selection at 292).

307. The jury foreman, Juror 4, had read the papers, and stated that the paper 'assumes they're guilty' (RT, jury selection, at 292). The foreperson was aware of coverage of the Misskelley case, and had watched some television coverage (RT, jury selection, at 308-316).

308. Juror 5 had reviewed the Jonesboro Sun, and had read 'all about' the case. She had leaned towards guilt, and had also apparently received information from 'a law enforcement officer who said that he felt like it was a pretty well open and shut case....' (RT, jury selection at 337-340.)

309. Juror 6 read about the case in newspapers, had seen television coverage, and had talked to others about it (RT, jury selection at 358).

310. Juror 7 stated that she doesn't actually read papers, but she had heard about it 'from the beginning'. She modified her answer about papers to indicate that she didn't

read them 'very much' (RT, jury selection at 367-380).

311. Juror 8 got his information from the Jonesboro Sun, and from persons known to him (RT, jury selection at 357-367).

312. Juror 9 did not indicate detailed media knowledge of the case, but Juror 10 did, noting that the general opinion was that 'everybody thinks they're guilty' (RT, jury selection at 509-510).

313. Juror 11 had heard about the case from the television, but claimed little detailed knowledge, though Juror 12 stated that she was aware of the case from newspaper and television accounts (RT at 510-528, as to Jurors 10 to 12).

314. Since the uncovering of the poster-sized deliberation charts which had been in the State's custody since the completion of the proceedings, Petitioner has received further information about the jury deliberations. The foreperson prepared the poster-sized charts, and wrote down the Misskelley statement not only because he was aware of it, but because he thought that the jurors should consider it as corroborating evidence of guilt.

315. Petitioner's investigator located Juror 7 who has a well kept, undisturbed, set of trial notes, in which she duplicated, verbatim, the poster-sized notes made by the jury foreman - and she was clear that the items on the poster-sized chart were viewed as playing a part in the case.

316. Juror 6 remembered these large poster-sized sheets as well, and how they

were used in the course of the deliberation process to write down the evidence as it applied to each of the defendants.

317. Other jurors in the case also remembered this deliberation process.

318. Misskelley's alleged admissions, the interviews of Misskelley, the contents of his two tape-recorded statements, the testimony and evidence about his statements from his own trial were not part of the evidence against Petitioner, and had not been intended to be evidence against him - the Misskelley statements formed the reason that Misskelley was granted a separate trial, in which his statement played a critical incriminating role.

319. Petitioner was tried by a jury that violated admonishments and directives from the court (several of the jurors likely underplayed knowledge of the case, including the jury foreman) and considered inadmissible, extra-judicial evidence in violation of State and Federal Constitutional principles, including the Fifth, Sixth and Fourteenth Amendments. Also, Petitioner was tried by a jury presented with little corroborated evidence about Petitioner's involvement in the case other than: his association with co-defendant Damien Echols and his alleged statement to Michael Carson. The jury's review of the Misskelley statement sealed Petitioner's fate, in part because it served as silent corroboration for the jurors, having played no 'official', judicially approved, part in the proceedings.

320. Further, as demonstrated above, much of Misskelley's 'confession' was false, including his statements about Petitioner's involvement in the crimes charged.

321. Fortunately, the State's impounding of the jurors' posters, which were, as previously alleged, redacted to excise the Misskelley statements, demonstrate part of the basis for the allegations that Petitioner's trial was unconstitutionally tainted in violation of the Fifth, Sixth, and Fourteenth Amendments. The redaction of the jury posters, according to Juror 7's verbatim notes, must have occurred after the verdicts were rendered. The posters themselves represent an admission by whoever redacted them that the Misskelley statement was out of bounds, and should have played no part in Petitioner's case.

322. The jury foreman, Juror 4, has admitted, in several different contexts, that he introduced the subject of the Misskelley statement into the deliberations. This admission was made to an attorney working with co-defendant Echols during post conviction interviews. It was also made to a television news reporter for KARK, Little Rock, Arkansas, who had contact with the foreman and his wife in April, 2005 in Jonesboro. While the foreman declined to be interviewed on camera, he talked to the reporter who has since been interviewed by defense personnel. The foreman told the reporter that the Misskelley statement had been discussed by the jury, and that it had been in the news, and that he did not see a problem in discussing it. The foreman allegedly also

discussed the matter of his discussion of the Misskelley statement during jury deliberations with other persons, whose affidavits Petitioner is seeking.

323. The foreman's injection of the Misskelley statement into the jury room; the evidence of the statement contained in juror notes; the corroborating post conviction statements of some jurors, all point to a trial process that was seriously tainted by a jury whose members did not follow the trial court's admonishments and orders. In addition, the juror posters and individual notes submitted to the Court by Petitioner as exhibits alone demonstrate that the jurors, including the jury foreman, did not accurately respond to the trial court's inquiries about the integrity of the trial–an issue that was of concern to Petitioner's trial counsel and to counsel for co-defendant Echols. The evidence is clear from the record.

324. The jurors returned their initial guilty verdicts on March 18, 1994. (RT 2634-35) The jurors were then individually polled, and each juror, as identified by number, affirmed his or her verdict. (RT 2635-37)

325. The following morning, in a session closed to the public, the jurors were polled by name, and each again affirmed his or her verdict. (RT 2641-43) The Court then asked the jurors several questions and obtained responsive answers, as follows:

The Court: Can you give me your assurances that at least to this point in this case that there has been no contacts from outside the family, media, or anyone else that would in any way influence

your findings?

Jurors: 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*?

Jurors: *Yes*.

The Court: Okay. Do any 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?

Jurors: No.

(RT 2643-44) (emphasis added)

326. Immediately afterwards, when the jury had left the courtroom and during a hearing in chambers, the Court announced that upon arrival at the courthouse that morning, defense counsel had reported an incident involving a possible death threat to one of the jurors' relatives. (RT 2644) Specifically, the Court stated, counsel for defendant Echols had described receipt of information indicating that the daughter of the jury foreman had received a death threat purportedly connected with defendant Echols, and that such threat had been shared during deliberations with the other jurors. (RT 2644-45) In response, the Court observed that it had made the general inquiries quoted above in order to allay any concern about improper outside contacts, said that it was

satisfied with those responses, and expressed its reluctance to ask any further questions about matters involving the deliberations. (RT 2645)

327. Petitioner's counsel generally complained that the inquiries conducted by the Court had been inadequate. Petitioner's counsel also noted that at the morning conference concerning improper jury contacts, the parties had also discussed threats that had reportedly been made to another juror during the trial. Specifically, counsel described his receipt of information indicating that juror J.D. had received threatening phone calls after being selected for the jury; that the Ms. D. had reported the incidents to the Court; that the Court had advised Ms. D. to put a trap on her phone; and that none of the information relating to Ms. D. had previously been communicated to defense counsel. (RT 2648-49)

328. In response, the Court gave its account of its exchanges with juror D. The Court affirmed that during the trial, Ms. D. had informed the Court about having received an "unidentified abusive phone call;" that the Court had inquired whether the incident would affect Ms. D.; that she had responded it would not; that the Court told Ms. D. a trap could be placed on her phone and Ms. D. declined the offer; that the Court had urged Ms. D. to report any further incidents; and that Court believed the incident had merely involved a crank call that, in fact, had not affected Ms. D. (RT 2649-50)

329. In the wake of the above discussions, defendant Baldwin's counsel noted

that during the morning conference, the defense had sought further on the record inquiry by the Court concerning the alleged improper contacts with the foreman's daughter and Ms. D. and concerning any juror discussions relating to those contacts. (RT 2651) Counsel for both defendants thereafter reiterated a request to make further such inquires with the foreman, and the Court agreed to do so on a limited basis. (RT 2651-52)

330. The jury foreman then entered chambers. Responding to the Court's initial question, the foreman stated that no one in his family had ever "directly" received a threat that could be attributable to the defendants or anyone associated with them. (RT 2654) He assured the court that even the indirect suggestion of a threat had not affected his ability to be a fair minded juror. (RT 2655) The foreman further stated that he had discussed the incident during a ten second conversation with other jurors in the jury room about two weeks earlier, before deliberations had begun; that it had not been discussed during deliberations; and that it had not affected the foreman's decision. (RT 2655-56) The colloquy with the foreman concluded with the following exchange:

> The Court: Did it have – and you didn't even discuss it in your deliberations?
>
> [Foreman:] I think if – I think if anybody would be interested, *the only thing that was discussed during deliberations was only facts in evidence that was delivered to us and nothing else.*

(RT 2656) (emphasis added)

331. The evidence is that Petitioner and his co-defendant Echols were tried by a jury that was, in retrospect, lawless in its approach to the case, and unwilling, as a group, to adhere to the trial court's instructions and admonishments, and unwilling to truthfully inform the trial court of its actions. The foreperson can be focused upon as clearly unwilling to adhere to Court orders, and as having trumped the trial court's inquiry, and the concerns of defense counsel, by misleading the trial court as to what actually occurred during deliberations.

332. Petitioner and his co-defendant were deprived of their right to trial by jury within the meaning of the Fifth, Sixth, and Fourteenth Amendments, and under the jury trial right preserved in the Arkansas Constitution.

VIII. JESSIE MISSKELLEY'S STATEMENTS TO POLICE ARE PART OF THE EVIDENCE IN THIS CASE WHICH CAN NOW BE DEMONSTRATED TO BE UNRELIABLE AND UNTRUTHFUL IN VIEW OF THE CURRENT STATE OF THE SCIENTIFIC EVIDENCE, GIVEN POST-CONVICTION EVIDENCE TESTING AND REVIEW.

333. The Arkansas Supreme Court described the Jessie Misskelley statements as follows, noting that it was setting out "... the substance of the statements in such a way as to reveal with clarity the appellant's [Misskelley's] description of the crime...." *Misskelley v. State*, 323 Ark. 449 at 559-560:

> In the early morning hours of May 5, 1993, the appellant received a phone call from Jason Baldwin. Baldwin asked the appellant to accompany him and Damien Echols to the Robin

Hood area. The appellant agreed to go. They went to the area, which has a creek, and were in the creek when the victims rode up on their bicycles. Baldwin and Echols called to the boys who came to the creek. The boys were severely beaten by Baldwin and Echols. At least two of the boys were raped and forced to perform oral sex on Baldwin and Echols. According to appellant, he was merely an observer.

While these events were taking place, Michael Moore tried to escape and began running. The appellant chased him down and returned him to Baldwin and Echols. The appellant also stated that Baldwin had used a knife to cut the boys in the facial area and that the Byers boy was cut on his penis. Echols used a large stick to hit one of the boys. All three boys had their clothes taken off and were tied up.

According to the appellant, he ran away from the scene at some point after the boys were tied up. He did observe that the Byers boy was dead when he left. Sometime after the appellant arrived home, Baldwin called him saying, "We done it" and "What are we going to do if somebody saw us." Echols could be heard in the background. The appellant was asked about his involvement in a cult. He said he had been involved for about three months. The participants would typically meet in the woods. They engaged in orgies and, as an initiation rite, killing and eating dogs. He noted that at one cult meeting, he saw a picture that Echols had taken of the three boys. He stated that Echols had been watching the boys.

The appellant was asked to describe what Baldwin and Echols were wearing on the day of the murders. Baldwin was wearing blue jeans, black lace-up boots and a T-shirt with a rendering of a skull and the name of the group Metallica on it. Echols was wearing black pants, boots, and a black T-shirt.

The appellant initially stated that the events took place at about 9:00 a.m. on May 5. Later in the statement, he changed that time to 12:00 noon. He admitted that his time periods might not be exactly right. He explained the presence of the young boys by saying that they had

> skipped school that day.
>
> The first tape-recorded statement concluded at 3:18 p.m. At approximately 5:00 p.m. another statement was recorded. This time, the appellant said he, Echols and Baldwin had come to the Robin Hood area between 5:00 and 6:00 p.m. Upon prompting by the officer, he changed that to 7:00 or 8:00 p.m. He finally settled on saying that his group arrived at 6:00 p.m. while the victims arrived near dark. He went into further detail about the sexual molestation of the victims. At least one of the boys had been held by the head and ears while being accosted. Both the Byers boy and the Branch boy had been raped. All the boys, he said, were tied up with brown rope.

Misskelley v. State, 323 Ark. 449, 559-561.

334. The only narrative description of the crime of which Petitioner was convicted that came from a self-described percipient witness was the description given by Jessie Misskelley. While Petitioner was not "officially" convicted as the result of Misskelley's statement, as demonstrated above, it is clear that the jury in this case considered it, and did so based on a combination of news coverage, community rumors passed from one person to another, and juror exchanges about their understanding of the Misskelley statements and of the evidence at the Misskelley trial. Since A.C.A. §16-112-201(a) and §16-112-208(e) set forth varying tests for the establishment of the right to relief via new scientific evidence, the Misskelley statement presents an important factual question in relation to Petitioner's claim of actual innocence, since a court reviewing newly discovered scientific evidence establishing innocence (or the scientific predicate

for the claim of actual innocence) reviews the scientific contributions "... in light of the evidence as a whole...." (A.C.A. §16-112-201(a)(1) and (2).)

335. Adopting the Supreme Court's formulation of Misskelley's 'description of the crime' since the issue here is not to demonstrate the unreliability of the Misskelley statements based on the police techniques used, but rather its unreliability based on the scientific evidence now available, the key elements of the statements admitted are as follows:

a. The victims were severely beaten by two persons;

b. Two of the victims were raped and forced to perform oral sex;

c. It was Chris Byers and Steve Branch who had been raped;

d. One of the victims was cut on his penis, and the others were cut in their facial areas;

e. The boys had their clothes taken off and were tied up with brown rope;

336. New scientific evidence, and current reliable scientists' reviews of the physical evidence, mechanism of injury and cause of death expertise disclose the following:

a. None of the boys was cut on his penis, and the one boy whose genital area was described as "mutilated" suffered a 'degloving'

injury inconsistent with the use of a knife, and consistent with the kind of degloving injury caused by animal predation;

b. A number of the observed injuries are postmortem injuries;

c. There is no DNA or pathology evidence consistent with rape, or forced oral sex, and what foreign DNA there is that was identified on the penis of one of the victims does not match any of the defendants. Alone, that foreign DNA does not constitute evidence of forced sex.

d. None of the injuries observed on the boys is consistent with rape or forced oral sex;

e. The victims were tied up through the use of shoe laces;

f. There is no trace or other evidence consistent with the use of a brown rope to tie up the victims. This is a significant fact, since anyone observing the tying up of the victims would have viewed both the removal of shoelaces from shoes, and their subsequent use.

337. In addition, there is extrinsic evidence undermining the accuracy and reliability of the Misskelley statement that bears on Petitioner's claim of innocence. While Petitioner had known Misskelley in the sixth grade, by the time of these crimes, Petitioner did not socialize with Misskelley, and co-defendant Damien Echols actively

disliked and avoided Misskelley.

338. Petitioner's introduction to Jessie Misskelley occurred on a playground when Petitioner and Misskelley had been in the sixth grade. Misskelley had tried to beat Petitioner up, and Petitioner ran from Misskelley. While their relationship became more civil, Jessie Misskelley was not one of Petitioner's friends even when the two did socialize. By 1993, Petitioner and Misskelley saw one another on occasion, but they did not spend any time together. As Petitioner's neighbor Sammy Dwyer indicates, he had never seen petitioner and Misskelley together (Dwyer affidavit, Exhibit 46). Jennifer Bearden also never saw either Damien Echols or Petitioner associate with Misskelley, even when they were in the same vicinity (Bearden affidavit, Exhibit 54 at p.3).

339. There were, and are, no witnesses to link Misskelley, Petitioner and Damien Echols together in the months before, or in the month after the killings at issue preceding Petitioner's arrest. And while Misskelley, as was true of a number of young persons in West Memphis and Marion, went to places like the West Memphis skating rink (where Echols and Petitioner might be found together from time to time), Misskelley was known to socialize with persons other than Petitioner and Damien Echols. He was also known to have publically taken positions adversarial to Echols, blaming Echols, even before his interrogation in this case, for the theft of a pool ball that Misskelley himself had committed (Jennifer Bearden affidavit, Exhibit 54, at p.3).

340. In addition, there is extrinsic evidence, in the form of witness statements, demonstrating that both Petitioner and Damien Echols were home, and on the phone with identified girls who were their contemporaries, on the night of May 5, 1993. This fact makes Misskelley's contention that the three of them were in Robin Hood Woods participating in an assault on the three victims a highly dubious claim.

341. The claim is rendered even more dubious when the actual content of Misskelley's statement is examined. Most particularly, the statement becomes unreliable when examined under the principal paradigm, and model, of law enforcement interrogation, the 'Reid method' designed by John Reid and Fred Inbau. Mr. Reid and Professor Inbau were later joined by Joseph Buckley in the publication of what, near the time of these crimes, was the authoritative book on law enforcement interrogation techniques, *Criminal Interrogation and Confessions*. This book was sufficiently significant that it was one of the source materials relied on by the U.S. Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966) to describe the law enforcement methods that the Court examined. *Id*. at 448-449. The United States Supreme Court made specific reference to Inbau and Reid, *Criminal Interrogation and Confessions* (1962) as well as its predecessor volumes. "The authors and their associates are officers of the Chicago Police Scientific Crime Detection Laboratory and have had extensive experience in writing, lecturing and speaking to law enforcement authorities over a 20-year period. They say

that the techniques portrayed in their manual reflect their experiences and are the most effective psychological stratagems to employ during interrogations." *Id.* at 448-9, fn.9. Since the decision in *Miranda*, the 'Reid Method' of interrogation has been taught to numerous police officers. It provides a specific methodology and provides that after the use of specified strategies and manipulations to obtain an admission, the interrogators should obtain a specific record of the defendant's admissions, as was the case here.

342. *Miranda* itself describes some of the strategies set out for law enforcement interrogations, which are described as orchestrated meetings between a suspect, witness, or person of interest and law enforcement officers. A number of techniques are outlined for use by police, several of which were used by Detective Gitchell, and his colleagues in the course of the Misskelley interrogation.

343. At the time of the litigation in this case, the existing version of the Reid training materials, and most police training materials, including those used in Arkansas, were based on Inbau, Reid, and Buckley's *Criminal Interrogation and Confessions*, 3d ed. The model used was a multi-step process, beginning with confrontation, which allows the interrogators to "run" the interrogation. The interrogators are taught (after confronting the suspect and telling him that he is involved in the crime) to develop a theme with the suspect, including possibly blaming someone else (Inbau and Reid, beginning at p.79). This permits the interrogators to handle any denials by the suspect,

overcoming objections to why the accusation is wrong, and present the scenario as the interrogators close in on an unequivocal admission of guilt by giving the suspect an 'alternative question', making it clear to the suspect that the evidence points to his involvement, but telling the suspect that the interrogator was now searching for the appropriate alternative explanation for what happened. It is at that point, after getting a detailed description of the offense that the interrogator is told to reduce it to a written, typed, or electronically-recorded form. Part of the reason for this is that recording at this point in the interrogation presents and preserves the ultimate admission. From a court's viewpoint, however, it prevents the court, and parties to a criminal case litigation, from knowing how the admission was obtained.

344. At the time of the trial of this case, the court and jury heard from Dr. Richard Ofshe (specifically in the Misskelley case) about the interrogation process. However, in 1993, there had not been as much research into the obtaining of false confessions as there has been since the application of DNA technology to criminal cases that have resulted in conviction. See, generally, Drizin and Leo, *The Problem of False Confessions in the Post-DNA World*, 82 North Carolina Law Review, 891 (2004); Cohen, *The Wrong Men: America's Epidemic of Wrongful Death Row Convictions* (2003). See also Leo, *Police Interrogation and American Justice* (2008).

345. Petitioner acknowledges that the Supreme Court of Arkansas found, on

direct appeal of Misskelley's case, and notwithstanding evidence offered by the defense that Misskelley's was a false confession, there was sufficient evidence to support Misskelley's conviction.

346. As has been demonstrated in the litigation of cases since the development of DNA technology, and since its regular application in post-conviction litigation, there have been numerous cases of convictions upheld by courts notwithstanding later proof that the accused was erroneously convicted. See, generally, Scheck, Neufeld and Dwyer, *Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted* (2000); Gross, Jacoby, *et al., Exonerations in the United States, 1989 through 2003*, 95 Journal of Criminal Law and Criminology, 523 (2005).

347. Part of the problem in Misskelley's case is that, regrettably, Misskelley's lawyer, Dan Stidham, was handling the defense of his first homicide case. He engaged a psychologist to assist him who had credential problems, and whose workup of Misskelley was inadequate. Additional evidence has been assembled by Misskelley's post-conviction lawyers, which demonstrates that Misskelley was clearly psychologically disabled, and functioned at a level of mild mental retardation - and thus functioned psychologically and cognitively at a more impaired level than 98 percent of the population. It is precisely persons at this level of impairment, as demonstrated in relevant literature, who are most prone to being coerced into a false statement and/or conviction

by the interrogation techniques used by law enforcement officers.

348. Misskelley's confession did not "officially" enter into Petitioner's trial - though the evidence set forth here demonstrates that Petitioner's jury based its conviction of Petitioner in significant part on the belief that Misskelley had confessed, that the confession was valid and legally obtained, and that this was evidence corroborating Petitioner's guilt.

349. The problem was that Misskelley's "confession" was erroneous in its entirety, which Misskelley's defense was unable to explain in a methodical way to the Misskelley jury. The key ingredients: the uses of a knife to cut the victims; the sexual assault of two of the victims; the tying up of the victims with a rope; the time of the killings (which he kept changing); the involvement of Petitioner and Echols and Misskelley himself were all mistaken confessions and admissions by Misskelley.

350. Since the statutes relevant to the post-conviction review of Petitioner's case require the Court to look at the totality of the evidence, Petitioner understands that the Court will likely review Misskelley's statements in addition to all other relevant evidence. Misskelley's statements, however, are now demonstrably false.

IX. AS ALLEGED ABOVE, PETITIONER HAS MOVED FOR ADDITIONAL TESTING, INCLUDING DNA, FIBER, FINGERPRINT, AND ANIMAL HAIR TESTING, THAT MAY NOT BE FINISHED BY THE TIME THE COURT PROCEEDS WITH THE HEARING ON THIS MATTER, WHICH DEPRIVES PETITIONER OF HIS RIGHTS UNDER §16-112-201.

351. At the beginning of this Petition, Petitioner offered his analysis of the state of the law as it applies here. He pointed out that he availed himself of the opportunity to seek relief by filing a Petition under A.C.A. §16-112-201, and in doing so, Petitioner complied with A.C.A. §16-112-208.

352. As previously alleged, in April, 2008, Petitioner reiterated his November 20, 2002 motion insofar as it sought to reach fiber and hair evidence.

353. Petitioner has submitted to the Court evidence specific to fibers. See Exhibits 2 and 3. As this Petition was being completed, Petitioner received additional supporting evidence in the form of an affidavit and scientific references.

354. Among the exhibits supporting this Petition is the affidavit of Dr. Joy Halverson (Exhibit 65). Dr. Halverson is a Doctor of Veterinary Medicine, who has received post-doctoral training, and a post-doctoral degree (Exhibit 66, Dr. Joy Halverson CV).

355. As reflected in her affidavit, Dr. Halverson has qualified to testify about the identification of animal hairs in the context of criminal cases. Among the hairs that were transmitted for review by Bode Technology, Inc. is hair that was labeled animal hair by

the Arkansas State Crime Laboratory, and some additional hair that was identified as animal hair by analysts at Bode Technology.

356. Dr. Halverson points out in her affidavit that current DNA technologies allow the identification of mammal and other species from hair. She notes that there is a data base maintained by the government of the United States which allows easy comparison of unknown DNA to known profiles. Specifically, the identification of species is undertaken by developing a profile for the unknown hair's mitochondrial cytochrome B gene, and comparing it to known profiles developed focusing on that gene. See, generally, Tobe and Linacre, *A Multi-Plex Assay to Identify 18 European Mammal Species from Mixtures Using the Mitochondrial Cytochrome B Gene*, 29 Electrophoresis 340 (2008) (Exhibit 67). This is one of several works relied upon for the purpose at issue. See also Bellis *et al., A Molecular Genetic Approach for Forensic Animal Species Identification*, 134 Forensic Science International 99 (2003).

357. Dr. Halverson's information demonstrates that Petitioner has informed this Court on scientific developments that have occurred since the trial of this case that could demonstrate the reliability of Petitioner's allegations as rooted in currently accepted science. Petitioner still has pending before the Court a motion for release of hair and fiber evidence. Dr. Halverson's affidavit and supporting information indicate that DNA testing of animal hairs would establish the species of animals whose hairs were found near the

crime scene and which may have been involved in the predation on the victims as described above.

358. In addition, as referenced earlier in this Petition, Max Houck, formerly a criminalist with the Medical Examiner's Office in Tarrant County, Texas, and later a physical scientist with the Federal Bureau of Investigation, who served as Chairman of the Scientific Working Group for Materials Analysis, has submitted an affidavit stating that it is not possible to attribute to the record of this case an adequate foundation for the State's testimony about fibers. (Exhibits 2, 3, 4, Houck materials, including Houck affidavit, Exhibit 4, at pp. 7-9). The documentation prepared by the Arkansas State Crime Laboratory at the time this case was tried did not reflect a basis for the expert opinions about the fiber evidence–a critical problem because of the use of the fibers as a basis of confirming the identification of Petitioner and co-defendant Echols as having been involved in the crimes. In the absence of further testing, and production of scientifically and professionally adequate documentation, it is not possible, on the current record, to deem the testimony about fiber evidence as reliable, valid, relevant, and thus properly admitted under the Fifth, Sixth, and Fourteenth Amendments, and under the Arkansas Constitution, Article 2.

X. EVEN IF THE COURT DENIES PETITIONER PERMISSION TO FURTHER EXAMINE AND TEST HAIR AND FIBER EVIDENCE, THE SCIENTIFIC OPINIONS AND EVIDENCE CURRENTLY IN THE RECORD UNDERMINE THE BASES FOR THE CONVICTIONS AND DEMONSTRATE THE INADEQUACY OF THE ORIGINAL EXPERT EVIDENCE ON HAIR AND FIBERS

359. In its case in chief and in rebuttal to the defense (and to the only expert called by the Petitioner), the State introduced evidence of hair and fiber examinations, and of 'similarities' in consistency and appearance between fibers found at the scene (on the victims' clothing) and fibers from two items of evidence - one a shirt found in Damien Echols' home (not one of Echols' garments) and the other a woman's red bathrobe found in Petitioner's family home. (RT at 1468-1474, case in chief). On rebuttal, after the testimony of defense fiber expert Charles Linch, Arkansas State Crime Laboratory criminalist Lisa Sakevicius testified that the questioned threads and those from the 'known' items including the red bathrobe taken from Petitioner's family house were the same (RT at 2382-83). Ms. Sakevicius noted that she had done additional graphs based on the use of technologies available at the Crime Laboratory prior to testifying in rebuttal. This testimony was then seconded by that of John Kilbourn from the Alabama Department of Forensic Science. (RT at 2399).

360. Neither Ms. Sakevicus nor Mr. Kilbourn were asked to elaborate on hair and fiber issues, thus neither the State nor the defense presented to the jury evidence that (as has been established during post-conviction evidence review and testing) there was

unknown hair, including animal hair, found at the crime scene - and that at least one human hair was found in one of the ligatures used to bind the victims. (The reference here is to the hair found in one of the ligatures that bound Michael Moore, which is discussed above).

361. Because mitchondrial DNA testing was not available at the time of trial, the discovery of this hair evidence at the time of trial would not likely have been as significant as it is today. Nonetheless, had the defense been attentive to the various scientific evidence issues present in this case, and obtained all of the State's laboratory related bench notes, the significance of the hair in the ligature would have been evident. As alleged above, and demonstrated in the supporting exhibits, this hair is consistent in its mitochondrial DNA with the hair of Terry Hobbs, step-father of Steve Branch. The hair evidence at issue is exculpatory.

362. The fiber evidence, by contrast, was used by the State to provide circumstantial evidence identifying Petitioner and his co-defendant Damien Echols as the perpetrators. But the fiber evidence presented was without proper foundation, and the methodology used by the State's criminalists to prepare the fibers for examination and to actually examine them were neither accepted in the relevant scientific community, nor reliable nor valid. Equally significant was the absence of adequate documentation in the State's files and records that the work testified to was done on the fibers that were the

subject of the testimony. (Houck affidavit at pp. 5-9, Exhibit 3)

363. While the defense did offer some contrary testimony through Mr. Linch, he had not reviewed the State's documentation, or all of the materials prepared by Ms. Sakevicius for her rebuttal testimony.

364. As the Court reviews the totality of the evidence in this case, the fiber evidence may need to be addressed, and for the reasons stated, in the absence of a demonstrably correct application of accepted forensic science principles and methods to the fiber examination and comparison, the expert testimony offered by the State at trial should be disregarded as scientifically unreliable and invalid. This state of affairs can be further addressed by subjecting the fiber evidence to currently accepted methods of testing and analysis. Robertson and Grieve, eds., *Forensic Examination of Fibres* (2d ed., 1999); Stefan *et al., Capillary Electrophoresis/Mass Spectrometry for the Forensic Analysis of Dyes Extracted from Fibers*, February, 2006, Proceedings of the American Academy of Forensic Sciences.

EXHIBITS IN SUPPORT OF THIS PETITION/MOTION AND PETITIONER'S RULE 37 PETITION INCORPORATED BY REFERENCE

365. The Exhibits that Petitioner is submitting to support this Petition and Motion, as well as his Rule 37 Petition, all of which are incorporated by reference into this Petition, are, in numerical order:

1. Affidavit of Charles Jason Baldwin
2. Letter from Max Houck
3. Affidavit of Max Houck
4. Houck CV
5. Order for DNA Testing 6/2/04
6. First Amended Order for DNA Testing 2/23/05
7. Bode STR Forensic Data Case Report 12/30/05
8. Bode Mitochondrial Forensic DNA Case Report 12/30/05
9. Bode STR Forensic DNA Case Report 1/2/07
10. Bode Supplemental Forensic Case Report 1/25/07
11. State's Reply to Echols' 2nd DNA Testing Status Report
12. Bode STR Forensic DNA Case Report 9/27/07
13. Bode Supplemental Mitochondrial Forensic Case Report 9/27/07
14. Serological Research Institute 3rd Analytical Report (5/11/07)
15. Serological Research Institute 5th Analytical Report (no date)
16. Tom Fedor's CV
17. Dr. Ophoven affidavit
18. Dr. Ophoven CV
19. Dr. Spitz CV

20 Dr. Spitz letter report (11/27/06)

21 Dr. Spitz letter report (10/12/07)

22 Dr. Haddix CV

23 Dr. Haddix Interim Report (10/22/07) and Supplemental Report (5/6/08)

24 Dr. Tabor letter report and affidavit

25 Dr. Tabor CV

26 Dr. Souviron report

27 Dr. Souviron CV

28 Goudge Commission's Home Page and Witnesses

29 Dr. Wood CV

30 Philipsborn 6/12/07 Letter to Brent Davis

31 Philipsborn 12/27/07 Letter to Brent Davis

32 Heather Cliett / Heather Dawn Hollis affidavit

33 Shaun Ryan Clark Declaration

34 Joyce Cureton affidavit

35 Sue Weaver affidavit

36 Patty Burcham affidavit

37 Daniel Biddle affidavit

38 Jason Duncan affidavit

39 Xavier Redus affidavit

40 Leonard Haskins affidavit

41 Montavious Gordon affidavit

42 Danny Williams affidavit

43 Sally Ware affidavit

44 Amy Mathis affidavit

45 Crystal Hale Duncan affidavit

46 Joseph Samuel Dwyer affidavit

47 Mapquest Maps

48 Larry Matthew Baldwin affidavit

49 Matthew Baldwin interview

50 Angela Gail Grinnell police interview

51 Angela Gail Grinnell affidavit

52 Dennis Dent police interview

53 Jennifer Bearden police interview

54 Jennifer Bearden affidavit

55 Holly George Thorpe affidavit

56 Donna Medford affidavit

57 Domini Teer police interview report

58 Domini Teer affidavit

59 Arkansas Times article

60 John Douglas CV

61 John Douglas Report

62 Copies of poster sized juror notes in State evidence

63 Copies of juror notes and affidavits FILED UNDER SEAL

64 Press articles prior to and during trial

65 Dr. Joy Halverson affidavit

66 Dr. Joy Halverson CV

67 Article, *A Multi-Plex Assay to Identify 18 European Mammal Species from Mixtures Using the Mitochondrial Cytochrome B Gene*, 29 Electrophoresis 340 (2008)

68 Tom Quinn Declaration

69 Ann Tate Affidavit

70. May 23, 2008 Bode report on Terry Hobbs hair

71. Sharon Nelson affidavit

CONCLUSION

366. For the reasons stated here, Petitioner is entitled to relief based on evidence that establishes his actual innocence, or based on the contention that the scientific predicate for the claims made could not have been previously discovered through the exercise of due diligence and that the facts underlying the claims made here, given the

proof produced, and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would find the Petitioner guilty of the underlying offense within the meaning of A.C.A. §16-112-201(a). In addition, Petitioner submits that the DNA test results incorporated into this Petition and stated in the supporting exhibits, when considered with all other evidence in the case regardless of whether the evidence was introduced at trial, establishes by compelling evidence that a new trial would result in an acquittal within the meaning of A.C.A. §16-112-208. In addition, Petitioner alleges under the pertinent Federal tests, including those summarized in *House v. Bell, supra*, that he has tendered evidence of his innocence and is entitled to relief under the Federal tests as well.

Respectfully Submitted,

J. Blake Hendrix, Esq.
John T. Philipsborn, Esq.

Dated: May _____, 2008 ______________________________
J. Blake Hendrix

Dated: May _____, 2008 ______________________________
John T. Philipsborn
Attorneys for Jason Baldwin

VERIFICATION BY ATTORNEY

I, John T. Philipsborn, am one of the lawyers of and for Petitioner Charles Jason Baldwin in this matter. The factual allegations contained in this Petition are true and correct to the best of my knowledge and belief. I have signed a verification because Petitioner is not in the position to verify all allegations in this matter, particularly insofar as this Petition depends on allegations made on the basis of consultation with experts, and other persons, with whom Petitioner has not personally met and conferred.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this ______ day of May, 2008, at San Francisco, California.

____

John T. Philipsborn
Attorney for Jason Baldwin

PROOF OF SERVICE

I, Steven Gray, declare:

That I am over the age of 18, employed in the County of San Francisco, California, and not a party to the within action; my business address is 507 Polk Street, Suite 350, San Francisco, California 94102.

On today's date, I served the within document entitled:

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)

(x) By Federal Express at San Francisco, California, addressed as set forth below;
( ) By electronically transmitting a true copy thereof;
( ) By serving a true copy by facsimile

The Honorable David Burnett
Circuit Judge
Courthouse Annex
511 South Union Street, Suite 424
Jonesboro, Arkansas 72403

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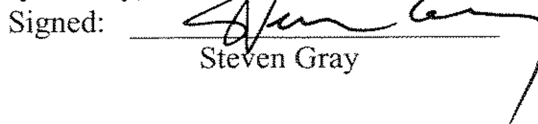
Roland, AR 72135

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 28th day of May, 2008, at San Francisco, California.



Signed: ______________________
Steven Gray