IN THE CIRCUIT COURT OF CLAY COUNTY, ARKANSAS
ON CHANGE OF VENUE FROM
CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF/RESPONDENT,

vs.

CR-93-47 (Clay County number)
CR 93-516 through 518 (Crittenden County numbers)

JESSIE LLOYD MISSKELLEY, JR.,

DEFENDANT/PETITIONER

_____/

PETITION FOR WRIT OF HABEAS CORPUS OR OTHER RELIEF PURSUANT TO ARKANSAS CODE ANNOTATED 16-112-201 *ET SEQ.* AND MOTION FOR NEW TRIAL PURSUANT TO 16-112-208(e)(1)

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IN THE CIRCUIT COURT OF CLAY COUNTY, ARKANSAS

IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS

JESSIE LLOYD MISSKELLEY, JR., PETITIONER,

vs CR-93-47

STATE OF ARKANSAS RESPONDENT

_____/

PETITION FOR WRIT OF HABEAS CORPUS OR OTHER RELIEF PURSUANT TO ARKANSAS CODE ANNOTATED 16-112-201 *ET SEQ.* AND MOTION FOR NEW TRIAL PURSUANT TO 16-112-208(e)(1)

I. INTRODUCTION AND PARTIES

1. Jessie Lloyd Misskelley, Jr., Petitioner, is presently in the custody of the Director of the Arkansas Department of Correction ("ADC"). Following conviction of one count of first degree murder and two counts of second degree murder, Petitioner was committed to the ADC by the Circuit Court of Clay County, Arkansas, on February 4, 1994.

2. Respondent Larry Norris is the current Director of the Arkansas Department of Correction who, in that capacity, has authority over Petitioner's person and is thus subject to the issuance of a writ of habeas corpus.

3. Petitioner brings this petition under Arkansas Code Annotated section 16-

112-201. Having exhausted the remedy of direct appeal (*Misskelley v. State*, 323 Ark. 449, cert. denied, 519 U.S. 898 (1996), petitioner has been "convicted of a crime" and therefore may, under section 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...." (A.C.A. § 16-112-201(a)). As further alleged below, Petitioner is also seeking a new trial under A.C.A. §16-112-208(e).

4. Petitioner has not previously sought relief under section 16-112-201, et seq.

5. Petitioner has previously sought the Court's assistance in preserving, and ordering tested, several items of scientific evidence pertinent to Petitioner's convictions and sentence within the meaning of A.C.A. §16-112-208(e). The Court has ordered some, but not all, of the testing Petitioner has sought.

6. Petitioner satisfies the subject matter jurisdiction of section 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 below 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 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, and that his alleged confessions to said crimes are false. (See, Declaration of Jessie Misskelley, Jr., attached hereto as Exhibit Volume 5, Exh.WW).[1]

7. 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 Misskelley 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."

[1] "Exhibit Volume" refers to the joint volume of Exhibits that is being offered in support of this Petition/motion and of the Amended and Supplemental Petition For Relief Pursuant To Rule 37.1 referenced below.

8. For the convenience of the Court, and the parties, throughout this combined Petition and motion for new trial, Petitioner/moving party Jessie Misskelley, Jr. will refer to himself as Petitioner.

9. Petitioner also has pending in this Court a Petition for Relief under Rule 37 of the Arkansas Rules of Criminal Procedure, timely filed on November 11, 1996. On February 8, 2001, Petitioner filed an Amended Petition for Relief Under Rule 37. Petitioner's Amended and Supplemental Petition For Relief Pursuant To Rule 37.1 will be filed as ordered by the Court on or before June 6, 2008. To the extent that A.C.A. §16-112-201(a)(2) requires review of the evidence as a whole, Petitioner offers as grounds for relief under A.C.A. §16-112-201(a)(2) all factual allegations and exhibits that he has stated and has pending before this Court in his Rule 37 Petition and any amendments thereto. These are incorporated by reference herein as though fully set forth in this Petition. He also incorporates by reference any other petitions and motions that he has on file and subject to hearing before this Court. He further incorporates by reference Petitioner Damien Echols's Motion for New Trial and all supporting exhibits filed in support thereof filed in the Circuit Court of Craighead County in the case of Damien Echols, Petitioner v. State of Arkansas, Respondent, Case 93-450A. He further incorporates by reference Petitioner Charles Jason Baldwin's 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) and all supporting exhibits filed in support thereof filed in the

Circuit Court of Craighead County in the case of Charles Jason Baldwin, Petitioner v. State of Arkansas, Respondent, Case 93-450B. All of the foregoing petitions, motions and exhibits are incorporated by reference herein 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.

10. 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 and/or Petitioners Echols and Baldwin still have pending before the trial court portions of motions for post-conviction testing after exhaustion of appeal within the meaning of A.C.A. §16-112-202. Petitioner has heretofore joined in all such motions and reasserts that joinder here. On November 17, 2000, 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 Baldwin 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. Petitioner Misskelley has been on record as requesting the release of the hair and fiber evidence since his Motion To Preserve Evidence and for Access To Evidence For Testing was filed on November 17, 2000. He hereby joins Petitioner Baldwin in all efforts to gain access to this evidence and requests leave to file an amendment to this Petition after all requested testing has been completed.

11. 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.

12. 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).

13. 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.

14. 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).

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

16. 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 DNA and other evidence, including the discovery within the past year that DNA from 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.

17. Petitioner's November 17, 2000 motion for testing was not made solely upon Petitioner's assertions of innocence.

18. In addition, Petitioner has alleged in his November 17, 2000 motion for testing of evidence , and Petitioner Baldwin has reiterated in his April 2008 filing that new methods of technology substantially more probative than prior testing are available to conduct current testing.

19. Finally, there is good cause for the Court to issue the testing order in that Petitioner, and Petitioners Echols and Baldwin, 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 all Petitioners' claims of innocence; (b) Petitioner and Petitioners Echols and Baldwin, 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.

20. 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.

21. 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 DNA testing of material in this case.

22. 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 June 6, 2008.

23. 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).

24. 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, Michael Deguglielmo, 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. See, *Murray v. State*, 838 So.2d 1073 (Fla.2002)(Deguglielmo's DNA testing methodology was so unreliable that the Florida Supreme court reversed a capital murder conviction based on his testimony). 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. (See, Letter, Affidavit, and CV of Max Houck, attached hereto as Exhibit Volume 5, Exh. AAA, BBB, and BBB-1

(Baldwin Exhibits 2, 3 and 4.)

25. 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.

26. 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).

27. 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).

28. 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).

29. 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.

30. 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 or other 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.

31. Petitioner affirmatively alleges that because 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.

32. 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.*

33. 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.

34. 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.

35. 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.

36. 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.

37. The standard just described is different than that set forth as the basis for habeas and other 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 or other 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.

38. 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.

39. 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;

(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.*

40. 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.

41. Petitioner incorporates by reference as though fully set forth here the exhibits submitted to support this Petition/motion for new trial and his amended and supplemental petition pursuant to Rule 37.1, and the exhibits submitted to support the Petitions/motions of Petitioners Echols and Baldwin as specified above, 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 volumes.

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

42. In its ruling upholding the convictions obtained in this case, the Supreme Court of Arkansas described the facts of the crimes. Petitioner's allegations herein rely on the facts as stated by the Supreme Court of Arkansas, as well as additional facts contained in the actual record of the trial proceedings in Petitioner's case which are incorporated herein by reference. Petitioner requests this Court to take judicial notice of

all the records, documents, exhibits, and pleadings in *State v. Jesse Lloyd Misskelley*, Case No.CR-93-47, and *Misskelley v. State*, 323 Ark. 449 (1996).

43. The Supreme Court of Arkansas summarized the evidence at trial as follows:

> The Moore, Byers and Branch boys were last seen at approximately 6:00 p.m. on May 5, 1993. At least two of the boys were riding their bicycles. Their parents reported them missing at about 8:00 p.m. Police and area residents conducted a search later that evening, but the boys were not found. The search continued on May 6. The boys' bodies were discovered about 1:15 that afternoon.
>
> 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 10:00 a.m. until 2:30 p.m. At 2:44 p.m. and again at approximately 5:00 p.m., he gave statements to police in which he confessed his involvement in the murders. Both statements were tape recorded.
>
> The statements were the strongest evidence offered against the appellant at trial. In fact, they were virtually the only evidence, all other testimony and exhibits serving primarily as corroboration.
>
> The statements were obtained in a question and answer format rather than in a narrative form. However, we will set out the substance of the statements in such a way as to reveal with clarity the appellant's description of the crime:
>
> 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 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 also asked to describe what Baldwin and Echols were wearing 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 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 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.
>
> One of the interrogating officers later testified that his notes revealed the appellant told him he received a phone call from Baldwin on the night before the murders. Baldwin stated that they planned to go out and get some boys and hurt them.

Misskelley v. State, 323 Ark. 449, 459-462 (1996).

44. The Supreme Court also discussed aspects of Petitioner's statements to police and the evidence at trial that supposedly corroborated those statements:

> The appellant's statements are a confusing amalgam of times and events. Numerous inconsistencies appear, the most obvious being the various times of day the murders took place. Additionally, the boys were not tied with rope, but with black and white shoe laces. It was also revealed that the victims had not skipped school on May 5.[2] However, there were portions of the statements which were consistent with the evidence and were

[2] This same point was not lost on the trial court, who commented during Petitioner Echols's Rule 37 proceedings: "Well frankly, Jessie Misskelley's statement was full of a lot of points that were pointed out by the defense, adequately I thought, that might suggest that he didn't know what he was saying or whatever." (Echols Hearing on Rule 37 Petition, May 5, 1998, p. 38, attached hereto as Exhibit Volume 3, Exh. W.)

corroborated by the state's testimony and exhibits. The victims had been seen riding their bicycles. The medical examiner testified that the boys had been severely beaten. Two of them had injuries consistent with being hit by a large object. One of the boys had facial lacerations. The Byers boy had indeed been severely mutilated in the genital area. All the boys had injuries which were consistent with rape and forced oral sex. There was evidence that drowning contributed to the deaths of the Moore and Branch boys, but not the Byers boy. This is consistent with the appellant's statement that the Byers boy was already dead when he left the scene. The boys were in fact tied up, albeit with shoe laces rather than rope. Damien Echols was observed near the crime scene at 9:30 p.m. on May 5. He was wearing black pants and a black shirt and his clothes were muddy. A witness testified that she had attended a satanic cult meeting with Echols and the appellant. Steven Byers' mother testified that, approximately two months before the murders, her son told her that a man dressed all in black had taken his picture. There was evidence that Baldwin owned a shirt and boots of the type described by the appellant. Finally, a witness from the State Crime Lab testified that she found fibers on the victims' clothing which were microscopically similar to items in the Baldwin and Echols residences.

Misskelley v. State, 323 Ark. 449, 461-462 (1996).

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.

45. On November 17, 2000, Petitioner filed a Motion To Preserve Evidence And For Access To Evidence For Testing, specifically alleging in support thereof his actual innocence, his due process rights under the federal and Arkansas constitutions, the fact that his DNA expert had been prohibited from conducting any testing on the evidence in this case, and the fact that the DNA expert who testified at his trial had, in the opinion of Petitioner's DNA expert, employed scientifically unsound methods to detect the presence of semen in certain items of clothing recovered at the crime scene. (See, Motion to Preserve Evidence and Declaration of Marc Scott Taylor In Support of Motion, Exhibit Volume 5, Exh. XX.)The motion sought 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 Petitioners Echols and Baldwin, who subsequently filed similar Petitions/motions.

46. 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).

47. The trial court never ruled on the 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" (See, Order for DNA Testing, Exhibit Volume 5, Exh. CCC (Baldwin 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 Jason Baldwin 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 Misskelley. The Bode Technology Group, an accredited DNA testing laboratory in Springfield, Virginia, was chosen to perform the DNA testing.

48. 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.

49. 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. (See, First Amended Order for DNA Testing, Exhibit Volume 5, Exh. DDD)(Baldwin Exhibit 6)

50. After the testing of unknowns from the crime scene was completed, Petitioner and his former co-defendants Damien Echols and Jason Baldwin 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.

51. 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.

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

53. 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 (See, Bode December 30, 2005 STR Forensic Data Case Report, Exhibit Volume 5, Exh. EEE)(Baldwin Exhibit 7) and Bode December 30, 2005 Mitochondrial Forensic Data Case Report, Exhibit Volume 5, Exh. FFF)(Baldwin Exhibit 8) .

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

55. 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 Misskelley'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 Baldwin. 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 Echols, his friend Jason Baldwin, and Jessie Misskelley were all involved.

56. Significantly, identifiable mitochondrial DNA not belonging to the victims or Petitioners was found in hair strands recovered from the crime scene and this

DNA evidence was consistent with the DNA of Terry Hobbs, step-father of Steve Branch. (See, Reports of Serological Research Institute, attached hereto as Exhibit Volume 5, Exh.LLL and KKK) (Baldwin Exhibits 14, 15) and Bode Report of May 23, 2008, attached hereto as Exhibit Volume 6, Exh. KKKK (Baldwin Exhibit 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.

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

58. 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.

59. 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.

60. 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. (See, Affidavit and CV of Dan E. Krane, attached hereto as Exhibit Volume 5, Exh. UU and UU-1); Affidavit and CV of Jason Gilder, attached hereto as Exhibit Volume 5, Exh. VV and VV-1) 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.

61. 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, and the mitochondrial results were reported in a document entitled "Mitochondrial Forensic DNA Case Report" . 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 Baldwin, 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 (attached hereto as Exhibit Volume 5, Exh. GGG, (Baldwin Exhibit 9)) explains that none of the defendants in the original case, thus neither Petitioner, nor Damien Echols, nor Jason Baldwin 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 (Bode Report of January 2, 2007, pp.5-6).

d) On January 25, 2007, Bode Technology issued a "Supplemental Forensic Case Report" (attached hereto as Exhibit Volume 5, Exh. HHH) (Baldwin 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 (Bode Report of January 25, 2007 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 (attached hereto as Exhibit Volume 5, Exh. III)(Baldwin 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 (attached hereto as Exhibit Volume 5, Exh. JJJ) (Baldwin 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 (attached hereto as Exhibit Volume 5, Exh. KKK)(Baldwin 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). Because of the obvious relevancy of this sample to the allegation of sexual assault, Petitioner had the Bode electronic data for this sample independently analyzed and interpreted by two nationally renowned experts in DNA interpretative analysis, Dr. Dan Krane and Dr. Jason Gilder. Both experts concluded that the foreign DNA in the Branch penile swab was not an artifact, and that all defendants and victims were excluded as the source of this sample. (See, Affidavit and CV of Dan Krane, attached hereto as Exhibit Volume 5, Exh. UU and UU-1); Affidavit and CV of Jason Gilder, attached hereto as Exhibit Volume 5, Exh. VV and VV-1)

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 (Exhibit Volume 5, Exh. LLL, MMM) (Baldwin Exhibits 14 and 15). The items were analyzed by an experienced DNA analyst, Tom Fedor (See, CV of Tom Fedor, attached hereto as exhibit Volume 5, Exh. NNN)(Baldwin 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. Those results indicate that "[t]he mtDNA sequences obtained from 2SO4-114-46 [Hobbs reference

hairs] are **CONSISTENT** with the mtDNA sequence from evidence item 2SO4-114-03Aa [Moore ligature hair]; therefore Terry Hobbs **CANNOT BE EXCLUDED** as the contributor of evidence item 2SO4-114-03Aa." (See, Bode Report of May 23, 2008, attached hereto as Exhibit Volume 6, Exh. KKKK) (Baldwin Exhibit 70)(emphasis in original).

n) Independent evidence indicates that Mr. Hobbs was alone or possibly with his four- year old daughter Amanda in the area of Robin Hood Hills for approximately an hour between 5:00 and 8:00 p.m. on the night of May 5, 1993. (See, Affidavit of Donald Horgan, attached hereto as Exhibit Volume 2, Exh M; Declaration of Rachael Geiser, attached hereto as Exhibit Volume 5, Exh YY)

o) Furthermore, in an interview with a Arkansas detective Rachael Geiser in May, 2007, Jo Lynn McCaughey, the sister of Pam Hobbs, Terry Hobbs' ex-wife, Ms. McCaughey stated that in 2004, she and Pam Hobbs had entered the bedroom of Terry Hobbs residence and recovered fourteen knives from a nightstand in the bedroom, as well a s a dental plate. Ms. McCaughey further stated that her father had identified one of the knives as a pocketknife he had given to Steven Branch before Steven's death. The knives recovered from the Hobbs residence have since been transmitted to the Bode laboratory by mutual agreement of counsel for defendants and the state. (See Exhs. M and YY.)

p) Ms. Geiser also interviewed David Jacoby, a friend of Mr. Hobbs. In late May, 2007, Ms. Geiser transmitted to counsel for petitioner Echols as possible

evidentiary items (a) an envelope labeled, "David Jacoby Cheek Swabs 5-26-07" which Mr. Jacoby had voluntarily provided to Ms. Geiser during an interview she conducted with him on May 26, 2007; and (b) and envelope labeled, "David Jacoby Cigarette Butts 5-26-07 RMG" containing two cigarette butts taken by Ms. Geiser from Mr. Jacoby's front yard on the same date. (See Exh. YY)

q) Counsel for petitioner Echols maintained the cheek swabs described in paragraph p) in their offices in the envelope in which they had been transmitted by Ms. Geiser. On June 12, 2007, counsel transmitted the envelope via Federal Express to Mr. Fedor with instructions that he subject the enclosed cheek swab to mitochondrial testing for purposes of comparing the resulting DNA profile to those appearing in the December 30, 2005, Mitochondrial Forensic DNA Case Report. (See Exh. M.)

r) On October 26, 2007, Mr. Fedor issued a report concerning the mitochondrial testing of the cheek swabs and cigarette butts contained in the envelopes transmitted to him on June 12, 2007, as described above. In his conclusions stated at page 4 of the report, Mr. Fedor stated:

> The mitochrondrial sequence recovered from cigarette butt item 11 and cheek swabs item 13 differs at one nucleotide position from the sequence Bode obtained from hair 2S04-114-23, described (at Bode's page 2) as 'hair from tree stump' and (at Bode's page 11) as 'hair from scout cap.' (I have been informed by Counsel that Bode's reference to a scout cap is erroneous.) The sequence obtained from the cigarette butt and cheek swab shows an additional polymorphism (152C) that the tree stump hair does not possess. As this difference may be due to heteroplasmy, the person(s) who left DNA on the cigarette butt and cheek swab (and anyone in his/their

> maternal lineage) are not excluded as the source of the [tree stump] hair 2S04-114-23. A search of the FBI's Forensic Mitochondrial DNA database of 4839 samples (consisting of 1674 Caucasians, 686 Hispanics, 848 Asians, 326 Native Americans and 1305 Africans and African Americans) showed twelve (0.25%) to have the same mitochondrial sequence as the cigarette butt and cheek swab (items 11 and 13) and one hundred eighteen (2.44%) database samples to have a sequence differing at only one nucleotide position.

A copy of the October 26, 2007 Fedor report is attached hereto as Exhibit Volume 5, Exhibit MMM.

s) Independent evidence indicates that Mr. Jacoby was with Mr. Hobbs at Mr. Jacoby's home in the early evening of May 5, 1993. (See Exhs. M and YY)

t) There is also disturbing evidence that Hobbs admitted discovering the body of the boys "the night they were killed" and did not immediately report the discovery to the police, and that he had an awareness of the injuries inflicted on the bodies and an awareness they were "buried under water". The Affidavit of Sharon Nelson, attached hereto as Exhibit Volume 6, Exh. LLLL indicates that she used to date Mr. Hobbs, and that whenever the subject of the deaths would come up he "seemed annoyed by it or bored by it", and that he "would kind of just chuckle about it all." She continues:

> I recall a few times that Terry did talk about Stevie when terry and I were alone together. Terry told me that he discovered "the bodies" of the boys the night they were killed. He said "the bodies were buried under water." Terry told me that they were dead when he found the bodies. Terry said that he saw some bites and there were some cut-like marks. He told me

> those "bodies" were nothing I would ever want to see, when I asked what they looked like when he found them. Terry told me he found "the bodies" before he picked up Pam, his ex-wife from her job that night. Terry said he waited to tell her and the police until it was time for Pam to get off work. Each of the times Terry discussed and described the events of the night of May 5, 1993, with me, he always said things the same way and in the same order. I never understood why Terry waited to tell anyone about finding them. I have just recently learned that Terry never told the police or Pam that he found the bodies "buried under water," as he put it to me.

u) 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.

v) 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.

w) As this Petition is prepared, the evidence described in paragraph o), 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 Petitioner's trial counsel) 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.

x) 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

62. 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 the Echols/Baldwin trial.[3] 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. Finally, the speculative and misleading testimony of Kermitt Channell and Michael Geguggliemo, to the effect that certain presumptive tests for semen and a marginal reading on a DNA quantitation test indicated the presence of sperm on the pants of two of the victims, is shown to be false and misleading, both by Channell's own bench notes, which were not disclosed to the defense at trial, and by the analysis of competent DNA and serology experts which defense counsel made no attempt to consult at trial.

[3] There was no evidence of a serrated knife in Petitioner's trial. This evidence was developed in the Baldwin/Echols trial and is addressed here in the event that the state claims that this evidence is relevant to Petitioner's claim of factual innocence.

63. 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 and at the Echols/Baldwin trial, which were summarized by the State Supreme Court in *Misskelley v. State*, 323 Ark. 449, 461-462 (1996) and in *Echols and Baldwin v. State,* 326 Ark. 917 (1996). In pertinent part, the findings from the *Misskelley* appeal included the Supreme Court's statement that "there were portions of the statements which were consistent with the evidence and were corroborated by the state's testimony and exhibits", including that

> The medical examiner testified that the boys had been severely beaten. Two of them had injuries consistent with being hit by a large object. One of the boys had facial lacerations. The Byers boy had indeed been severely mutilated in the genital area. All the boys had injuries which were consistent with rape and forced oral sex. There was evidence that drowning contributed to the deaths of the Moore and Branch boys, but not the Byers boy. This is consistent with the appellant's statement that the Byers boy was already dead when he left the scene.

Misskelley v. State, 323 Ark. 449, 461

64. The Supreme Court also stated in *Misskelley* that "[t]he jury's decision to convict the appellant of a greater offense in the death of Michael Moore indicates that much importance was placed on the appellant's chasing down the boy and returning him to the scene where brutal beatings and sexual assaults were taking place", and that "the appellant's detailed knowledge of the injuries inflicted on the boys suggests that he was

in physical proximity to the activities taking place and took a much more active role than he admitted." 323 Ark. at 463-464.

65. In pertinent part, the findings from the Echols/Baldwin appeal included the statement that:

> 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.

Echols and Baldwin v. State, 326 Ark. 917, 934-937 (1996)

66. As to the injuries to Steve Branch, the State Supreme Court in *Echols/Baldwin* 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.

67. As to Christopher Byers, the pertinent findings in *Echols/Baldwin* 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.

68. 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.

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

70. The currently available scientific evidence, which either was not available to Petitioner at trial or was not presented at trial due to incompetency of counsel, establishes that "virtually the only evidence" presented against Petitioner (323 Ark. at 459), namely, his alleged confessions to law enforcement officers, was false (as will be further demonstrated below). The currently available scientific evidence pertinent to cause of death and mechanism of injury is highly relevant to the assessment of whether the primary source of information about the alleged crime in this case, Petitioner Jessie Misskelley, gave an accurate and truthful account of the true facts concerning the killings of the 3 victims. Since critical ingredients of Petitioner's statements to the police 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 or presented 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.

71. This same evidence establishes that the principal directly incriminating evidence linking Petitioner Baldwin to the crimes, namely a set of alleged jailhouse admissions, was false (as will be further demonstrated below).

72. 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 Echols' and Baldwin'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.

73. Only now, with DNA test results and DNA experts and competent, Board-certified pathologists, and competent and experienced odontologists, and serologists 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.

74. 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.

75. 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.

76. In addition, during the course of closing arguments in the Echols/Baldwin case, 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 (Echols 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 Baldwin'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 Petitioners' objection the Court allowed a demonstration with a grapefruit which further distorted the meaning of the scientific evidence allegedly linking Echols and Baldwin to this crime (Echols 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.

77. In a rejoinder to the defense argument at the echols/Baldwin trial that there was no reliable evidence linking Petitioners to the crimes, the State argued that the knife found in the lake behind Baldwin's home had been described as consistent with whatever knife made injuries of the type seen by Dr. Peretti (Echols RT at 2615). The State's rejoinder to the defense argument that there was insufficient evidence of Petitioner's guilt was that Damien Echols, Baldwin's best friend, was the link, and that Baldwin'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 the three Petitioners were convicted.

78. Petitioner affirmatively alleges that neither his counsel, nor counsel for Damien Echols or Jason Baldwin, 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, the Petitioners did not have the scientific evidence of cause of death and mechanism of injury available that they have acquired during the post-conviction investigation of this case.

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.

79. 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.

80. 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 (See, Ophoven Affidavit and CV, attached hereto as Exhibit Volume 2, Exh. J and J-1 (Baldwin Exhibits 17 and 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 J).

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 and well established 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 (See, Dr. Spitz CV, attached hereto as Exhibit Volume 2, Exh. K (Baldwin Exhibit 19); two letter reports, attached hereto as Exhibit Volume 2, Exh. L and N (Baldwin Exhibit 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 Misskelley 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 Misskelley 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. As indicated in the affidavit of Dan Stidham, Dr. Baden, as well as other renowned experts in the field of forensic entomology and forensic odontology have indicated the existence of animal predation in this case as early as February 1998. (See, Declaration of Dan Stidham and email of 2/2/98 appended thereto, attached hereto as Exhibit Volume 1, Exh. D).

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

Misskelley 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 (See, Dr. Haddix CV, attached hereto as Exhibit Volume 2, Exh. R)(Baldwin Exhibit 22); Haddix Interim Report and Haddix Supplemental Report, attached hereto as Exhibit Volume 2, Exh. S and S-1)(Baldwin 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 (Exh. J, 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, or even applying standards applicable in 1993-1994, 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. (See, Dr. Tabor's letter report and supporting affidavit, attached hereto as Exhibit Volume 6, Exh. MMMM)(Baldwin Exhibit 24); Dr. Tabor's CV, attached hereto as Exhibit Volume 6, Exh. NNNN)(Baldwin 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 (See, Dr. Souviron report, attached hereto as Exhibit Volume 2, Exh. P)(Baldwin Exhibit 26); Dr. Souviron's CV, attached hereto as Exhibit Volume 2, Exh. O)(Baldwin 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 (See, Goudge Commission Home Page and Witness List, attached hereto as Exhibit Volume 2, Exh. OOO)(Baldwin 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, attached hereto as Exhibit Volume 2, Exh. Q)(Baldwin 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, demonstrate the reliability of the above-described science, is in some instances material that was not available to Petitioner Misskelley at the time of his trial, and shows 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 Baldwin'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 Jason Baldwin 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 Baldwin wrote letters to prosecuting attorney Brent Davis in June of 2007 (attached hereto as Exhibit Volume 5, Exh. PPP)(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 PPP, p.1).

115. In its December letter (attached hereto as Exhibit Volume 5, Exh. QQQ) (Baldwin 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 (QQQ at p.2).

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

C. 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 (attached hereto as Exhibit Volume 4, Exh. QQ) (Baldwin 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 (See, Declaration of Ryan Clark, attached hereto as Exhibit Volume 3, Exh. X)(Baldwin 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.

D. 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 Baldwin 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, 2008 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 Misskelley 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) Counsel for Petitioner consulted with counsel for co-defendant Echols nand Baldwin who were able at that time to muster resources to enlist the aid of Drs. Spitz, Baden, Di Maio, Ophoven, Souviron, and Wood.

n) Petitioner benefitted from the ability of counsel for Petitoners Echols and baldwin 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 Petitioners 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 at the Echols/Baldwin trial 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.

E. The False and Misleading DNA and Serology Evidence at Both Trials

135. At both the Misskelley and Echols/Baldwin trials the state presented the

testimony of serologist Kermitt Channell and DNA analyst Michael DeGuglielmo in an attempt to show that there was sperm on Evidence Exhibits 45 (described as blue pants) and Exhibit 48 (described as blue jeans). (Misskelley RT 1030-1050/Bates 1530-1551; Echols RT 1323-1397/Bates 2103-2180), These pants, wet and muddy, had belonged to two of the victims and had been retrieved from the drainage ditch when the bodies were discovered. (Echols RT 901-904, 920/ Bates 1681-1684, 170). In the Misskelley trial, this testimony became an important part of the state's final argument, with Mr. Fogelman arguing that

> Now if you'll recall Kermit Channell from the crime lab said that on–in his tests–on the little boy's pants that *he ran screening tests ran one screening test and it came back positive–positive for semen. He ran a second screening test–positive for semen.* He looked under a microscope and the pants are all muddy and everything and he couldn't see any sperm but he had these two positive tests for semen. So he sent those cuttings from the pants to Genetic Design in North Carolina and that was the man from North Carolina. *And what did he tell you? We boil it all down -- if I can boil it down -- he tells you that in his opinion the DNA that he found from those cuttings was from sperm.* Did he see any sperm? No. Because he doesn't look at things under the microscope. His are DNA tests. He says they ask - Mr.Stidham said, "Are you saying positively that there is sperm there?" He said, "Well, no, you can never say positively unless you look under a microscope and are able to see it. But if I had done that it would have used up part of the sample and we were trying to preserve the sample." But with his opinion, with the test that he ran, if you'll remember there's the epithelial -- what he calls the fractions -- and the male or sperm fractions. Remember the way he was describing *how you split out the two and you've got more than one suspect and you split it out so you'll be able to divide them up?* The epithelial fraction is the non-male fraction. If it's something other than sperm it's going to show up in that -- like blood. Well, when you got the DNA test back and the epithelial back, nothing. No DNA. *On the male fractions-- the sperm fractions -- it was positive for DNA and he stated that in his opinion that this indicated the presence of sperm on those pants.*

(Misskelley RT 1759- 1760/Bates 2264-2265)

136. Mr. Davis reinforced this point in rebuttal, arguing that "the DNA guy said that there was DNA consistent as coming from a source of male sperm on the pants of one of the boys." (Misskelley RT 1779/Bates 2285). The same point was made in rebuttal in the Echols/Baldwin trial, with the state arguing that "there was testimony that there was a DNA source consistent with semen found on the pants of one of the children. And Mr. Ford indicated that there was no evidence of that."

137. As is demonstrated in the attached affidavits of forensic serologist Dr. Patricia Zajac and DNA expert Dr. Donald Riley, the testimony upon which the state relied to make these arguments was false and misleading, and the arguments themselves misconstrued and distorted the false evidence that had been presented by the serology and DNA experts. (See, Affidavit and C.V. of Dr. Patricia Zajac, with attached reports and bench notes of Channel and DeGuglielmo, attached hereto as Exhibit Volume 4, Exh. EE and EE-1 and EE-2; Affidavit and C.V. of Dr. Donald Riley, attached hereto as Exhibit Volume 4, Exh. FF and FF-1. As Dr. Zajac summarizes, "[t]estimony and arguments at trial expanded and enhanced the results beyond the scientific conclusions of 'no semen was found' to state that the stains were semen and the DNA was from sperm. This was misleading to the jury and scientifically unfounded and incorrect." (Exh. EE). See also, Affidavit of Dr. Donald Riley, Exh FF ("In his closing argument (Misskelly case) the

prosecutor stated, 'Now if you'll recall Kermit Channell from the crime lab said that on-in his tests-on the little boy's pants that he ran screening tests ran one screening test and it came back positive-positive for semen. He ran a second screening test-positive for semen.' These statements misrepresent and overstate Mr. Channell's testimony. As a summary of Mr. Channell's testimony 'positive for semen' couldn't be much more misleading. This was at least a serious scientific failure.")

138. At both trials, Mr. Channell did in fact testify that he ran two presumptive tests for semen and got positive results. The two tests he identified as positive were the laser "test" and the acid phosphatase test. (Misskelley RT 1031-1033/Bates 1532-1534; Echols RT 1032/1533) However, as Dr. Zajac explains,

> "22. First, Mr. Channell stated, and closing arguments reiterated, that he conducted two (2) screening tests of the items for presence of semen: laser and Acid Phosphatase (AP). He further stated the stains were sent to Genetic Design for "more sensitive DNA" testing. This is most misleading to a jury and scientifically wrong:
>
> 22.1 Laser is not a screening "test" or presumptive test, but merely an extension of visual examination for possible locations on garments to further examine. Nowhere in the protocols is there mention that the laser is a screening test.
>
> 22.2 The AP is a presumptive test, meaning that it is a screening

"test" and not conclusive for presence of semen. There were no substrate controls analyzed on these items to indicate possible contaminants which might also cause a "positive" for AP on Item 45. This was very important, especially since this substrate control gave a positive for P30. The "very faint" AP results on Item 48 cannot be considered a positive test for semen.

22.3 There was a third test that was negative for semen: microscopic exam for spermatozoa.

22.4 There was no mention in the arguments of the specific P30 test which, although was positive on the stains, was also positive on the substrate control, meaning the stains gave a "false positive."

22.5 There was no mention in testimony that the report of Serologist Channell stated "no semen found on any items." Serologist Channell had a professional responsibility to clearly state to the court and to the jury that his tests showed "no semen."

23. Although the DNA testimony said human or higher primate DNA on these items, the fact remains that no semen was identified by the tests and the report from Genetic Design does not support this testimony or the arguments. This is not only grossly misleading to the jury, but scientifically incorrect and without scientific foundation. There were no test results to support this conclusion. In fact, to the contrary: results

showed no semen. The DNA report states that these samples "could not be amplified due to inhibition," and that there were "no results."

(Exh EE).

139. As Dr. Zajac further explains, on review of Mr. Channel's lab notes, which were not disclosed to the defense prior to trial, "the items 45 (Q-10) and 48 (Q-6) were examined visually and with laser light. Subsequently, areas on the left and right thigh of item 45, and the back and front of item 48 were tested for the possible presence of seminal stains with the presumptive test for Acid Phosphatase (AP). These stains were further examined microscopically for the presence of spermatozoa (sperm) and electrophoretically for P30 (an antigen specific to the male prostate)." (Exh. EE).

139. As Dr. Zajac further explains, "On Item 45, Serologist Channell obtained a positive AP result, negative for spermatozoa, and positive P30. However, the background control on this item also was positive for P30. *Therefore, there can be no conclusion as to possible presence of semen.*" (Exh. EE). The background control sample is identified in Mr. Channell's notes as a "false positive." (Exh EE-2). This note was never disclosed to the defense and the term "false positive" was nowhere used in Mr. Channell's testimony. See, Misskelley RT 1031/Bates 1532 ("I ran a [P30] test on these items ..., and I got a positive reaction. However, in the course of my work I also ran control samples which also gave me a similar reaction. Based on that, I concluded there

could possibly be something in the material or in the mud that was interfering with my testing. Therefore, I submitted those items also to Genetic Design where they could employ DNA testing which is a more sensitive technique."); Echols RT 1323-1397/Bates 2103-2180 ("I did have some positive controls along with my cutting samples, which indicated to me that there could be some interaction with the material that was hindering me with getting a proper answer, uh - therefore, I had to conclude that I could not determine based on my testing that semen was present and because of that reason, I then took those cuttings and submitted them also to Genetic Design where they could employ DNA testing, which is far more sensitive then my testing.")

140. As Dr. Zajac further explains, "[t]ests for AP on Item 48, 'back' were negative and this stain was not examined further. The stain on the front gave a 'very light' reaction for AP, and negative for sperm. The P30 test on this stain was positive; however, the background "control" (unstained area, indicated as "mud") also was positive for P30. *The 'very light' AP reaction is not considered a 'positive' test for semen. AP is present in low amounts in other biological materials and high amounts in semen. Therefore, there can be no conclusion as to possible presence of semen.*" (Exh. EE). Mr. Channell's notes describing the "very light" reaction on the AP test were never disclosed to the defense. Further, Mr. Channell never disclosed in his testimony that the reaction on the AP test was "very light" or the implications of this finding. Instead, he said in both trials that he got a positive reaction on his AP test. See, Misskelley RT 1033/Bates 1534

("The second part of the analysis is an acid phosphatase test, which is again a screening test to see if the item that I am testing possibly can contain semen, and that test was also positive."); Echols RT 1328/Bates 2109 ("Actually, I ran the laser screening test, and also the acid phosphatase as a screen....These reactions were positive.")

141. A further misleading aspect of Mr. Channell's serology testing and testimony is explained by Dr. Zajac as follows:

> 15. There are no notes that appropriate standards, negative reagent controls, or substrate controls (background) were analyzed along with these stains for Acid Phosphatase. This is an essential part of the testing procedure: Standards would be known semen, as well as other body fluids, to determine strength of reactions for proper interpretation. Negative reagent controls would be "blanks" of chemicals used in the tests to be sure there is no contamination. Substrate controls, as mentioned above, would be the background (mud in this case) to determine if there is contaminating or interfering substances.
>
> 16. Since the background controls on both items 45 and 48 gave positive results for P30, it is most likely that had these background controls been analyzed for AP, they also would have been positive for Acid Phosphatase, since P30 is more specific and AP is a more general presumptive test.
>
> 17. Serologist Channell correctly stated in his report of 06/01/93 that "no

semen was found on any items."

(Exh. EE)

142. Although Mr. Channell may have correctly stated in his report that "no semen was found on any items", this statement in his report was never brought to the attention of the jury through cross examination at either trial.

143. Regarding the DNA testing at Genetic Design, Mr. DeGugglelmo falsely testified at an admissibility hearing in the Misskelley case that "[t]he initial information that we were given on this was that they were, what I guess would best be phrased as potential seminal stains." (Misskelley RT 999/Bates 1499). However, the transmittal letter dated May 19, 1993 from Channell to Genetic Design (Exhibit EE-2) does not document the presence of any seminal stains, and as noted above, Channell's report of June 1, 1993 states: " "no semen was found on any items".

144. Mr. DeGugglelmo also misleadingly stated during the admissibility hearing and repeated in both trials that

> In any potential sexual assault specimen where the possibility exists for mixed specimens we use what is called a differential extraction. The purpose there is to separate sperm and nonsperm components from other material. So we can try to elucidate which type was attributed to which component...In this particular quantitation with this case those two items [Exhibits 45 and 48] show a very small, marginal amount of DNA on the

male fractions of those two items of evidence.... The ...thing I can tell you is the two fractions that come from that are what we refer to as epithelial, or nonsperm, and male, or sperm fractions, because they represent in the prototypical sexual assault case the sperm cells from a male contributor and epithelial cells from a female contributor. *What we would expect to see is anything other than sperm cells in the epithelial or nonsperm portion .*

In this particular case we detected no DNA in the epithelial or nonsperm portion of those two samples *and a very small amount of DNA in the male or sperm portion of those two samples, the interpretation from that being that there likely was a small amount of sperm present on those garments.*

Misskelley RT 999-1002/Bates 1500-1503).

145. What Mr. DeGugglelmo did not explain is what is common knowledge among all competent forensic DNA analysts. As explained in Rudin and Inman, An Introduction To Forensic DNA Analysis (2d. ed. 2002),

> The result of a differential extraction is two tubes, one containing DNA all or mostly from sperm and the other containing DNA all or mostly from the non-sperm cells. Due to the nature of the sample, seperation of the non-sperm cell DNA from sperm cell DNA may not always be complete. For example, if the sperm is in poor condition, some sperm cells may have already popped open, releasing their DNA prematurely. Because the method of seperation depends upon initially intact sperm cells, some of this free sperm DNA may show up in the final non-sperm cell fraction. *Alternatively, in a mix of many non-sperm cells and just a few sperm, some*

non-sperm cell DNA may persist among the sperm and may be detected in the final sperm fraction.

(Id. Ch. 6)(emphasis added). See also Id. Ch 7 ("[S]eparation is not always entirely successful, and some non-sperm DNA may leak into the sperm fraction or some sperm DNA may end up in the non-sperm fraction.")

146. Because "some non-sperm DNA may leak into the sperm fraction" it was misleading in the extreme for DeGugglelmo to testify that because his DNA quantiation test found a "marginal" level of DNA in a "sperm" fraction it must mean that the DNA came from sperm. The testimony was especially misleading since, according to Channell's report, "no sperm

147. But DeGugglelmo's testimony is scientifically inaccurate on a more fundamental level. As explained by Dr. Zajac,

> 18. Sections of the stains from Items 45 and 48 were subsequently sent to Genetic Design, Inc., for DNA testing. In the letter dated May 9, 1993, these stains were listed as "questioned stain." *Handwritten notations next to these two items state "? Poss. Bacterial in nature."* Per the report from Genetic Design dated July 13, 1993, the test results of these two stains were stated as: "DNA isolated from the blue jeans items Q6 and Q10 could not be amplified due to inhibition." The Appendix #1 listed results of these two stains as *"no result."*

19. There were no "bench notes" (analyses notes) from Genetic Design indicating what samples were actually analyzed. There is no mention or notes that substrate controls from the items were analyzed along with the stains. Given the previous P30 false positive results on the background "mud," it was imperative that the background be tested for the DNA (it is imperative in any protocol, but even more so in this instance).

20. It is my opinion that whatever contaminant in the background gave the false P30 also gave the AP results on Item 45, the "very faint" AP results on item 48, and the weak DNA results for both items. These clearly do not indicate the presence of semen.

(Ehh. EEE).

148. Dr. Riley's affidavit supports the affidavit of Dr. Zajac and indicates a number of additional flaws in the serology and DNA testimony in this case. First, he agrees with Dr. Zajac about the misleading nature of Channell's testimony about the laser "test": "These lights can be used to locate stains on material but there are many biological and non-biological substances that will glow under these lights. Virtually all biological material including human tissues, plants and microbes contain molecules that fluoresce. To name a few, the amino acids tyrosine, tryptophan and phenylalanine, widely present in biological materials fluoresce. False positive results when using alternate light sources to search for semen have been documented. Urine, saliva and other materials will glow

under alternate light sources. Mr. Channell may have been unaware of the wide range of materials that fluoresce. In any case, he seemed aware that the alternate light source was not specific for semen. In my opinion, he resisted the implication he found semen, but failed to adequately inform the court and the jury of this fact." (Exh. FF)

149. Dr. Riley also agrees with Dr. Zajac about the misleading nature of Channell's testimony about the acid phosphatase test:

> The second screening test performed was acid phosphatase. While it is true semen has acid phosphatase, many other tissues have this enzyme including at least 16 different acid phosphatases. Microbes expected to be present in drainage water have the enzyme as well. In handwriting on his letter/report of 5-19-93 is the note: "poss. bacterial in nature." This referred to the cuttings Q6 and Q10 questioned stains from the blue jeans. This indicates to me that bacteria may have been identified during microscopic examination. Presence of bacteria and other microcrobes in muddy drainage water is certainly expected.
>
> A weak positive acid phosphatase test is by no means definitive for semen. Acid phosphatase is widely recognized as only presumptive and not confirmatory of presence of semen.

(Exh. FF)

150. Dr. Riley also agrees with Dr. Zajac about the misleading nature of Channell's testimony about the P30 test: "Another test performed was p30, sometimes referred to as PSA (prostate specific antigen). Mr. Channell indicated that his substrate control reaction was also positive. This completely nullifies results from the putative stain. No conclusions can be drawn when the substrate control is positive." (Exh. FF) He continues: "Since non-scientists are untrained in the importance of controls, false positive

results, nonspecificity and other scientific issues, Mr. Channell really needed to go the extra mile to emphasize these points in order to prevent the misunderstanding or misuse that occurred." (Id.)

151. Dr. Riley also addresses DeGugglelmo's testimony that his " marginal" finding of DNA on his quantitation test supported an inference that any DNA was present in the samples. He explains:

> At the Misskelly trial, Mr. DeGuglielmo testified that he found a very small, marginal amount of DNA in the "male fractions" from the pants. At the Echols/Baldwin trial, referring to the same samples according to my reading, he is more specific stating it was 50 picograms. According to manufacturer's recommendations for the test kit he was using this was well below margin. Confirming sample insufficiency (perhaps combined with or exacerbated by inhibition) he did not get a usable result.

152. Dr. Riley further explains on this issue, incorporating the findings of the Bode STR analysis report attached hereto as Exhibit EEE,

> The most sensitive tests applied were the microscopic examination and PCR (polymerase chain reaction)-based tests. Mr. Channell testified that a PCR-based test called DQ alpha was applied and they were unable to get a result. In still another analysis, in their report of 12-30-05, the Bode Technology group reported they obtained no result from the "SF" fraction (abbreviation for "sperm fraction" again referring to the method used not factual presence of sperm) of the pants cutting 2S04-114-25. This referred to a PCR-based test using the commercially supplied PowerPlex 16 kit. Thus, the three most sensitive tests applied, to the best of my knowledge, failed to yield any evidence of sperm or sperm DNA. Therefore, a microbial source for the very small amount of DNA in Mr. Channell's original Quantiblot test seems a more viable explanation than the presence

of sperm.
(Exh. FF)

153. Dr. Riley further explains why DeGugglelmo was scientifically inaccurate in testifying at the admissibility hearing and at both trials that his DNA quantitation test ("Quantiblot") was human or primate specific:

> Mr. DeGuglielmo also testified that the quantitation procedure he used was specific for human or primate DNA. This is simply not established. The product insert for the Quantiblot kit that he used cites non-primate species that were tested. The only microbes listed were E. coli and an unspecified yeast species. E. coli and yeast certainly do not represent the microbial world and it unreasonable to suggest they represent the microbial life present in muddy water. Moreover, the insert suggests that the Quantiblot system will give results with non-primate species they tested at the level of 0.15 nanograms or less. The 0.05 nanograms found in the instant cases is obviously less. Again, a microbial explanation is plausible.

(Exh. FF)

154. Finally, Dr. Riley exposes in detail the fallacous and misleading nature of DeGugglelmo's testimony that he found a "marginal" amount of the DNA in the "sperm" fraction, thus indicating that the DNA came from sperm:

> At the Misskelly trial, Mr. DeGuglielmo testified that he found a very small, marginal amount of DNA in the "male fractions" from the pants. At the Echols/Baldwin trial, referring to the same samples according to my reading, he is more specific stating it was 50 picograms. According to manufacturer's recommendations for the test kit he was using this was well below margin. Confirming sample insufficiency (perhaps combined with or exacerbated by inhibition) he did not get a usable result.
>
> Mr. DeGuglielmo's testimony strongly implies that since this amount (very near the vanishing point) of DNA showed up in the sperm or male fraction, that was evidence of semen. This was incorrect for several

reasons:

1. No sperm were found by microscope.
2. The term "male fraction" is a misnomer. The term refers to the method used. When no sperm are present, the term male fraction unfortunately remains the same. The term " male fraction" is highly misleading when no sperm are present. Some laboratories use less prejudicial terms such as E1 and E2 fractions to avoid misleading the jury.
3. While Mr. DeGuglielmo seemed convinced that appearance of a small amount of DNA in the "male fraction" instead of the female fraction was evidence of semen, this conclusion was unreasonable for reasons that follow.

> The male fraction preparation begins when a chemical called DTT is added to the DNA extraction procedure. This is done because the membranous-protein outer layer of sperm cells is held together in part by disulphide bonds (two sulphur atoms bonded together forming a bridge between proteins). DTT disrupts those bonds allowing the release of the sperm DNA.

Unfortunately, Mr. DeGuglielmo seemed unaware that disulphide bonds are also involved in the membranous-protein layer of diverse microbes. There are many thousands of microbial species in nature including virtually countless species of bacterial, fungi and other organisms. Microbes with disulfide laden membranes are expected to behave like sperm in the extraction procedure Mr. DeGuglielmo used. Since no sperm were observed, the microbial explanation is plausible.

155. The foregoing demonstrates beyond any doubt that the state's serology and DNA evidence and argument at both trials was false and misleading and that there is no support whatsoever for a cental tenet of the state's case against all three defendants, namely, that there was sperm or semen found on the pants of two of the victims. Further, the falsity of this evidence, coupled with the other scientific and other evidence now to be

discussed completely undermines the credibility and truthfulness of Mr. Misskelley's confessions to law enforcement.

VI. JESSIE MISSKELLEY'S STATEMENTS TO POLICE 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

A. The Arkansas Supreme Court Opinion

156. The Arkansas Supreme Court, in its opinion, rightfully credited Jessie Misskelley's confessions with being the most powerful, indeed the only, evidence against Petitioner. "The statements were the strongest evidence offered against the appellant at trial. In fact, they were virtually the only evidence, all other testimony and exhibits serving primarily as corroboration." *Misskelley v. State*, 323 Ark. at 323.

157. The Court identified in its opinion the testimony and exhibits it determined were corroborating:

> However, there were portions of the statements which were consistent with the evidence and were corroborated by the state's testimony and exhibits. The victims had been seen riding their bicycles. The medical examiner testified that the boys had been severely beaten. Two of them had injuries consistent with being hit by a large object. One of the boys had facial lacerations. The Byers boy had indeed been severely mutilated in the genital area. All the boys had injuries which were consistent with rape and forced oral sex. There was evidence that drowning contributed to the deaths of the Moore and Branch boys, but not the Byers boy. This is consistent with the appellant's statement that the Byers boy was already dead when he left the scene. The boys were in fact tied up, albeit with shoe laces rather than rope. Damien Echols was observed near the crime scene at 9:30 p.m.

> on May 5. He was wearing black pants and a black shirt and his clothes were muddy. A witness testified that she had attended a satanic cult meeting with Echols and the appellant. Steven Byers' mother testified that, approximately two months before the murders, her son told her that a man dressed all in black had taken his picture. There was evidence that Baldwin owned a shirt and boots of the type described by the appellant. Finally, a witness from the State Crime Lab testified that she found fibers on the victims' clothing which were microscopically similar to items in the Baldwin and Echols residences.

Id. at 462.

158. The key elements of the corroborating physical evidence, as identified by the Arkansas Supreme Court were:

a. Christopher Byer's penis was severely mutilated;

b. One of the boys had facial lacerations;

c. All of the boys had injuries consistent with rape and forced oral sex;

d. The victims were severely beaten and two had injuries consistent with being beaten by a large object;

e. Two of the boys were drowned but not Christopher Byers;

f. Fibers found on two of the victims' clothing was consistent with fibers found at Damien Echols' and Jason Baldwin's homes; and

g. The boys had their clothes taken off and were tied up (with shoelaces rather than brown rope as Petitioner had reported when asked in his second taped confession).

159. Much of the corroborating evidence came from the State's Medical

Examiner, Dr. Peretti. The last item came from the State's witness, Lisa Sakevicus. For the reasons described below their testimony was unreliable and cannot be used to corroborate the confession.

160. New scientific evidence and reliable scientists' reviews and analysis of then existing evidence demonstrates 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. There are no knife wounds to Steven Branch's face;

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

d. There is no evidence on any of the three boys of anal or oral sex;

e. The mechanism for the blunt force injuries cannot be determined;

f. The evidence regarding causes of death is not definitive;

g. The fiber evidence is completely unreliable; and

h. The victims were tied in a manner wholly inconsistent with Petitioner's description.

B. Christopher Byers, 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.

161. The Arkansas Supreme Court pointed to the mutilation of Christopher Byers' genital area as corroborating Petitioner's confession. The transcript of the first taped confession reveals the following interaction about this matter:

Ridge:	Alright, another boy was cut I understand, where was he cut at?
Jessie:	At the bottom.
Ridge:	On his bottom? Was he face down and he was cutting on him, or
Jessie:	He was
Gitchell:	Now you're talking about bottom, do you mean right here?
Jessie:	Yes.
Gitchell:	In his groin area?
Jessie:	Yes
Gitchell:	Okay
Ridge:	Do you know what his penis is?
Jessie:	Yeah, that's where he was cut at.

(Exhibit Volume, Exh. A at 7, 485)

162. Petitioner reported in his confession that the same knife was used to cut both Steven Branch's face and Christopher Byers' genitalia.

163. The Medical Examiner testified at Petitioner's trial regarding the genital wounds to Christopher Byers that, "Not knowing the type of instrument, you can get these types of wounds from a knife, piece of glass. Usually the knife or the object is being twisted and the victim is moving to get those irregular edges." (RT 844, Bates 1344)

164. At the trial of Damien Echols and Jason Baldwin, regarding those same

injuries to Christopher Byers, the prosecutor asked the Medical Examiner, "Doctor, is there also serration type wounds or serrated type wound patterns contained in that photograph?" to which the Medical Examiner responded, "There is a serrated type pattern here, yes." (EBRT 1067) The prosecutor then asked, "When you say 'serrated,' what do you mean?" The Medical Examiner offered, "Well, I am talking about, for example, a typical serrated knife is a steak knife, that pattern of serrations." (EBRT 1067-68) The prosecutor elicited yet more testimony on this topic: "And that (referring to three or four wounds) would be consistent with the serration of the blade that inflicted that?" The Medical Examiner replied, "Yes. To an extent, providing there is no twisting or turning." (EBRT 1068)

165. The Medical Examiner's opinion about how these injuries occurred was wrong.

166. Dr. Janice Ophoven, 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 for assessing sexual crimes according to evidence found during a post-mortem examination, is of the opinion that 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. Her view is that "the appearance of the wounds in the genital area of this boy show irregularity consistent with tissue being pulled off after having been

gnawed upon" and "evidence of chewing, biting, land likely clawing on the area of [Byers'] inner thigh." (See Affidavit of Dr. Janice Ophoven, attached hereto as Exhibit Volume 2, Exh. J, at 8-9; her curriculum vitae is attached thereto as Exhibit Volume 2, Exh. J-1)

167. Dr. Werner Spitz, one of the country's leading forensic pathologists (See Dr. Spitz's curriculum vitae attached as Exhibit Volume 2, Exh. K), conducted a thorough examination of extensive materials in this case and reached the identical conclusion (See Dr. Spitz's Report dated November 27, 2006, attached hereto as Exhibit Volume 2, Exh. L) "The remaining injuries, including emasculation of Christopher Byers [references omitted] were due to anthropophagy, i.e., inflicted postmortem by large and small animals, including marine life." (Exhibit Volume 2, Exh. L at ¶ 2)

168. Dr. Spitz' conclusion was bolstered by the victim tissue slides sent by the Arkansas crime lab to him in September 2007. (See Affidavit of Donald Horgan, attached hereto as Exhibit Volume 2, Exh. M) Dr. Spitz found on the slides disruption of tissue, bacterial growth, early decomposition, and foreign bodies of vegetal and possibly some insect origin. He concluded that, "[t]he presence of these foreign bodies in the depth of the tissues, without evidence of hemorrhage, indicates that they were introduced into the tissue after death, most likely by repeated bites by large carnivorous animals, consistent with the appearance of the injuries on the body surface as documented in the postmortem photographs." (See Supplemental Report of Werner Spitz dated

October 12, 2007, attached hereto as Exhibit Volume 2, Exh. N)

169. Similarly, Dr. Richard Souviron, Chief Forensic Odontologist at the Miami Dade Medical Examiners Department (See R. Richard Souviron's curriculum vitae, attached hereto as Exhibit Volume 2, Exh. O) also reviewed extensive material and is of the same opinion. He concluded that the mutilation to the genital area and inner thighs appeared to be post-mortem, was consistent with animal activity, and was inconsistent with being caused by a serrated knife. (See Dr. Souviron's Report dated January 11, 2007, attached hereto as Exhibit Volume 2, Exh. P)

170. Dr. Robert Wood, (See Dr. Robert Wood's curriculum vitae, attached hereto as Exhibit Volume 2, Exh. Q), also concluded that the injuries to Christopher Byers' genitalia was caused by postmortem animal activity. In a draft report extensively quoted infra at Claim VI (Exhibit Volume 2, Exh. M), Dr. Wood described the nature of the injuries to the penis and reviewed the literature regarding this type of traumatic injury. Dr. Wood found it "reasonable" that the penis was not cut off but that the penis and scrotum were degloved and found a minimum of three citations in the literature documenting genital degloving from animal bites including a case of postmortem castration by a dog. Dr. Wood concluded that is would seem highly unlikely that a knife was used to cut the penis and testicles, as the State's Medical Examiner testified.

171. Still another forensic pathologist came to the same conclusion. 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, (See Dr. Haddix's curriculum vitae, attached hereto as Exhibit Volume 2, Exh. R), was also asked to review materials from this case. She summarized her preliminary findings in a report dated October 22, 2007. (See Dr. Haddix's Report dated October 22, 2007, attached hereto as Exhibit Volume 2, Exh. S) She described the injuries to the genital region and thighs of Christopher Byers and noted "[t]hese injuries also do not have the cleanly incised edges that are typical of injuries inflicted by a sharp edged implement. Additionally the skin surrounding this area has a yellow, bloodless appearance which is typical of postmortem abrasions. I believe the genital and thigh injuries are most compatible with postmortem animal depradation." (Exhibit Volume 2, Exh. S, at 3-4)

172. Finally, Dr. Janice Ophoven, previously the Deputy Medical Examiner for Hennepin County, Minnesota, reviewed the photographs of Christopher Byers and concluded, subject to obtaining further information, "that the appearance of the wounds in the genital area of this boy show irregularity consistent with tissue being pulled off after having been gnawed upon." (Exhibit Volume 2, Exh. J, at 8)

173. Contrary to the testimony of the State Medical Examiner, the genital mutilation of Christopher Byers was not caused perimortem by a knife; it was caused postmortem by animal predation. Petitioner's confession is not corroborated by evidence of these injuries.

C. There Are No Knife Wounds to Steven Branch's Face

174. Petitioner told the police in his confession that he had seen Jason Baldwin cut one of the boys in the face "real bad." (Exhibit Volume 1, Exh. B, at 492-93) He described the knife as a folding knife with a "regular blade." (Exhibit Volume 1, Exh. B, at 493-94)

175. At Petitioner's trial, the prosecutor elicited testimony from the Medical Examiner that the injuries to Steven Branch's face, which he described as "abrasions, gouging, cutting wounds, contusions, bruising and superficial lacerations and abrasions" (RT 833) were made with "an instrument other than big object or broom handle object." (RT 834).

176. At the trial of Damian Echols and Jason Baldwin, the Medical Examiner was more specific about the instrument that made the cutting wounds on Branch's face. There, with the prosecution attempting to connect a serrated knife found in the lake near Baldwin's home to the crime, the Medical Examiner testified that the "multiple, irregular, and gouging type cutting wounds" on Steven Branch's face were "consistent with some sharp object such as a knife." (EBRT 1055) He further testified that "we generally see these type of injuries when an object such as a knife or any sharp object is put into the skin and either the person doing the stabbing is twisting and pulling the knife, or a combination of the person being stabbed – and they are not standing still, they are going to be moving around." Id. For an injury to Branch identified only by reference to the

photograph exhibit number 66B, the Medical Examiner told the jury that it "could be caused either by a serration from a knife or another type of object." (EBRT 1056).

177. In his report, Dr. Spitz noted that the right side of Steven Branch's face was virtually untouched while the left side was a bloody mass. Dr. Spitz's opinion is that the right side was covered by the left side was exposed to animal activity. "The large area with scattered irregular lacerations on Steven Branch's left cheek [reference omitted] was the result of bites by large animals and claw marks on the background of abrasion from licking off of emanating blood and tissue fluids [references omitted]." (Exhibit Volume 2, Exh. L at ¶ 6)

178. Dr. Souviron concluded that the "V-shaped cuts in the cheek, the tearing of the flesh and mutilation observed in these photographs [of the left side of Steven Branch's face] is consistent with animal activity and more likely than not in my opinion with an aquatic creature. The mutilation appears to be postmortem. Photograph #3 B shows intra oral injury to the mucobuccal fold and to the upper and lower lip area. These injuries in my opinion are perimortem. Photograph #2 B shows the right side of Steven Branch's face. There are scratches and gauges in this area consistent with animal activity...Photograph #4 B is an extreme[] close up with the words "potential bite mark evidence" written on the photograph. This is consistent with my opinion that this is postmortem bite mark activity left by animals more likely than not, turtle activity or some other aquatic animal. None of the marks on the face of Steven Branch in my opinion are

consistent with having been caused by a serrated knife." (Exhibit Volume 2, Exh. P at p.2)

179. Dr. Ophoven stated more conservatively that, although she could not state with a reasonable degree of medical certainty "whether the remains of the three boys had wounds caused by dragging the bodies over sharp objects or had any wounds caused by a knife, . . . I do believe that a number of the wounds that Dr. Peretti generally described as consistent with knife wounds are neither described sufficiently in his autopsy report to be knife wounds, and, equally significantly, do not appear on photographs to be knife wounds. . . . Some of the injuries to the remains documented in the photographs do not appear to be knife wounds at all, but, as I have explained, are injuries caused by a mechanism that left a pattern consistent with animal predation." (Exhibit Volume 2, Exh. J)

180. Dr. Haddix agreed. "Sharp force injuries are described in Branch's left facial area. I think these are postmortem injuries (possibly attributable to animal depradation), superimposed on antemortem injuries." (Exhibit Volume 2, Exh. S at 3, S-1)

181. The facial lacerations to Steven Branch's face were not caused by a knife. They do not corroborate Petitioner's confession. They contradict it.

D. There Is No Evidence on Any of the Three Boys of Anal or Oral Sex

182. Petitioner's description of the events of May 5, 1993, begins in response to

the question, "Okay, what occurred while you were there?" with "When I was there, I saw Damien hit these one boy real bad and then uh, and he started screwing them and stuff and then uh." (Exhibit Volume 1, Exh. B at 482). He later told the police, "Then they tied them up, tied their hands up, they started screwing them and stuff, cutting them and stuff, and I saw it and turned around and looked, and then I took off running, I went home . . ." (Exhibit Volume 1X, Exh. B at 484). He again described sexual activity: "They, Jason stuck his in one them's mouth and Damien was screwing one of them up the ass and stuff." (Exhibit Volume 1, Exh. B at 492)

183. In his second taped confession, taken after the magistrate had refused to issue a search warrant based on the first confession, Gitchell asked Petitioner about the sexual activity:

> Gitchell: Which, which boys were raped?
> Jessie: Byers and the Branch
> . . .
> Gitchell: Ok. Did you, did you see the Moore boy, was he raped?
> Jessie: No.
> Gitchell: Alright. Who raped those two boys?
> Jessie: Jason and Damien.
> Gitchell: Do you know which one raped which boy, or how did that happen?
> Jessie: Damien raped the Myers by hisself and Jason and Damien raped the Branch.
> . . .
> Gitchell: Did anyone have oral sex with the boys?
> Jessie: Yes, Damien and Jason.
> Gitchell: How many of them did they do that too (sic)?
> Jessie: Just two, Branch and Byers.

(Exhibit Volume 1, Exh. B-1 at 510-511)

184. Gitchell, after leaving the room and consulting with others, returned and said, "I got people that want me to ask you some other questions, uh talking about oral sex, did you see, you know we had talked earlier about how Jason and uh Damien do each other, have sex with each other did they, did they have oral sex on the boys?" (Exhibit Volume 1, Exh. B-1 at 511)

185. Gitchell then asked, "Did anyone go down on the boys or maybe sucked theirs or something?" and Petitioner responded, "Not that, I didn't seen nothing neither one of them do that." Id. After eliciting from Petitioner that he did not see any of the boys getting their penis pinched or touched roughly and again that he did not see anyone having oral sex, Gitchell left the room again. Upon his return, he asked again about oral sex. (Exhibit Volume , Exh. B-1 at 512) This time, he wanted Petitioner to describe how the boys were held during oral sex. When Petitioner responded, "One of them had holding them by the arms while the other one got behind them and stuff," (Exhibit Volume 1, Exh. B-1 at 512), Gitchell helped him along:

Gitchell:	Did he ever hold him up here or
Jessie:	Uh, the one that was holding him up there at the front grabbing him by his headlock.
Gitchell:	Had him in a headlock? Did he have him any other way?
Jessie:	He was holding him like this by his head like this and stuff (Note: was indicating the victims being held by their ears)
Gitchell:	Could he have been holding him up here like that?
Jessie:	I was too far away he ws holding him up here by his head like this (Note: showed the same as above)

Id.

186. The Medical Examiner testified at Petitioner's trial that Michael Moore had abrasions and contusions behind the ear and scattered abrasions under the scalp on the left side. (RT 823, Bates 1324) He testified that Moore had anal dilatation, abrasions and scrapes on his buttocks, and abrasions and focal areas of contusions on the anal orifice. (RT 824, Bates 1325) He further testified that he had abrasions on the nose, cuts, contusions and swelling around the upper lip, and bruising of the lower lip. (RT 825-26, Bates 1326-27) He was allowed to opine that the ear and mouth injuries were the type of injuries seen in children who had been held by their ears and forced to perform oral sex. (RT 827, Bates 1328)

187. Steve Branch was described by the Medical Examiner as having injuries to ears that were of the same nature and type as the injuries to Michael Moore's injuries and to having injuries to his mouth and lips. (RT 835, Bates 1335) When defense counsel objected to the Medical Examiner's opinion about the cause of these injuries, the court asked, "Doctor, do you have an opinion as to the cause of those injuries and, if so, is that opinion based upon a reasonable degree of medical certainty in your experience and training in the field?" The Medical Examiner responded, "Yes," and was allowed to testify that "[i]njuries noted to the ears can be caused by holding the ears, pulling the ears. The injuries involving the lips could be from having an object, any object inserted

inside the mouth or a hand placed over the mouth or a firm object placed over the mouth. It could also be from a punch also or hit with a rock. That is how you sustain those type of injuries." (RT 836, Bates 1336 (emphasis added))

188. Again, the Medical Examiner found injuries on Christopher Byers' ears and nose similar to "what [he] found with the other two" (RT 845, Bates 1345) and opined that "[t]hose injuries you normally see on areas of children who are forced to perform oral sex. You can get those types of injuries from an object placed over the mouth, a firm object, the hand or mouth. Some injuries – the contusion to the lips, the bruising, may be due to a punch." (RT 846, Bates 1346) He further found bruising to the top of the things and inner aspect of the thighs, which "we normally see in female rape victims when they are trying to spread the legs for penetration or they may be hit with an object also. It is a possibility." (RT 844, Bates 1344) The Medical Examiner testified that Byers had "anal rectal mucosa hyperemic and injected." (RT 843, Bates 1343)

189. On cross-examination, the Medical Examiner admitted that he found "no evidence of semen in the oral cavities" and detected no semen in the anal orifice and canals. (RT 850, Bates 1350) He also admitted on cross-examination that dilation of the anal orifices could be caused by the bodies being in the water (RT 850, Bates 1350) and that he would expect anal trauma if the victim had been sodomized. (RT 851, Bates 1351)

190. On re-direct, Mr. Davis elicited testimony from the Medical Examiner that

Cristopher Byers' anal orifice was "markedly" dilated, indicating it was more dilated than the orifices of the other two boys (RT 853, Bates 1353) and that if there were no penetration of the anal canal but a forceful attempt, you would have some injuries around the external aspect of the orifice, and "we had some abrasions." (RT 854-55, Bates 1354-55)

191. In fact, as is discussed below, there was no anal trauma to any of the boys because there was no rape and the bruising to the ears and mouths was caused by animal predation and perhaps blunt force but not by forced oral sex.

192. In Dr. Ophoven's careful review of the autopsy reports, the photographs, and other materials, she found that "none of the specific findings essential to forced oral or anal sex were present in this case, and . . . the statement that a victim had a 'dilated anus' is itself insufficient to establish sexual assault." (Exhibit Volume 2, Exh. J at 11)

193. Dr. Haddix similarly found that the abrasions and contusions about the ears of each child, as well as the perioral/intraoral injuries, were "not in isolation, but often in proximity to other injuries. In consideration of the extensive blunt force injuries sustained elsewhere on the heads of these children, I do not think a specific mechanism (e.g., forced oral sex) can be assigned to any reasonable degree of medical certainty." (Exhibit Volume 2, Exh. S at 2) Regarding the anal dilatation found in all three children, Dr. Haddix concluded, "[T]here is no objective evidence of anal penetration in these cases." Id.

194. Dr. Wood, in his analysis, reviewed the literature associated with intra-oral injuries caused by forced or vigorous fellatio. He found no literature describing pathognomic signs of facial injuries from forced fellatio. (Exhibit Volume 2, Exh. M) Dr. Wood reviewed the injuries to each child and found that, as to each one, the evidence did not support the Medical Examiner's testimony.

195. The injury to Steven Branch's right ear is very slight compared to the injury to his left ear. He had no intra-oral lesions and he had puncture marks on his nose, lips and cheeks, none of which could be caused by a penis. The puncture marks had to be caused by something small and pointed such as animal teeth or claws. (Exhibit Volume 2, Exh. M)

196. Dr. Wood found no injury to the left ear of Michael Moore. The nose and area behind his left ear have very small linear abrasions, which are not consistent with finger marks or fingernail marks and cannot be attributed to the act of forced fellatio.

197. Christopher Byers has two small abrasions on his right ear and three very small puncture marks on his left ear. His lips appear to have cut marks that were likely caused by self-bites. He has markings on the nose and small facial cut marks. There is hemorrhage in the deep connective tissue of the buccal sulcus anteriorly in the upper and lower. None of these marks, Dr. Wood concluded, can be attributable to forced fellatio. The bruising of the lips of Christopher Byers and Michael Moore are far more likely to have occurred from an impact injury such as a slap or punch than to have been made by

an erect penis. (See infra at Claim VI; see also Exhibit Volume XX, Exh. Y)

197. The conclusion that Petitioner's confession is corroborated by proof of anal and oral sex cannot stand. There is no such objective proof.

E. The Mechanism for the Blunt Force Injuries Cannot be Determined

198. Detective Gitchell asked Petitioner, "Did you ever use, did anyone use a stick and hit the boys with?" Petitioner responded, "Damien had kinda of a big old stick when he hit that first one, after he hit him with his fist and knocked him down and got him a big old stick and hit him." Gitchell then elicits from petitioner that the stick was about the size of a baseball bat. (Exhibit Volume 1, Exh. B at 493)

199. At trial, the Medical Examiner testified that the head injuries to Michael Moore were caused by two different types of weapons: a broad surface, for example a log 2-4 inches in diameter, and a two by four or smaller stick or broom handle. (RT 822-23, Bates 1322-23) He testified that a large abrasion to the back of Steven Branch's head was consistent with a three to four inch club or log (RT 834, Bates 1334), and that the laceration on the back of Christopher Byers' scalp was consistent with a two by four. (RT 842, Bates 1342)

200. Dr. Haddix, by contrast, found that "[T]he items potentially responsible for producing the scalp contusions, abrasions and lacerations are legion and the appearance of the cutaneous injuries doesn't particularly help narrow the field. However, the curvilinear skull fractures identified during Moore's autopsy are suggestive of an object

with a similar curvilinear profile. The skull fractures in Branch and Byers autopies are not as illustrative." (Exhibit Volume 2, Exh. S at 2)

201. Dr. Spitz found that the location of skull fractures at the base of the skulls of Christopher Byers and Steven Branch is inconsistent with blows. (Exhibit Volume 2, Exh. L at 2)

202. Thus, as with the other injuries, the corroboration does not exist. For most of the blunt force injuries, the mechanism could not be determined. For some of the injuries attributable to blows, the Medical Examiner was simply wrong.

F. The Evidence Regarding Causes of Death Is Not Definitive

203. The Arkansas Supreme Court found very persuasive the fact that Petitioner reported he had seen Christopher Byers apparently die but not the two other boys and the Medical Examiner testified that Byers did not drown but the other two did.

204. Petitioner reported that Christopher Byers had been choked by a stick but that he left before the other two died. (Exhibit Volume 1, Exh. B at 499) At trial, the Medical Examiner testified that Michael Moore (RT 829, Bates 1329) and Steven Branch (RT 839, Bates 1339) died from multiple injuries with drowning but that there was no evidence of Christopher Byers having drowned. (RT 847, Bates 1347)

205. By contrast, Dr. Spitz found that all three boys "died of drowning while bound at the ankles and wrists. All 3 victims were alive when placed in the water as shown by large amounts and sometimes bloody foam emanating from the airway as

shown on photographs 00106 001 and 00570 001]. Additionally, the autopsy reports for all 3 boys de4scribes vomitus and frothy material in the lungs." (Exhibit Volume 2, Exh. L at 1)

206. Dr. Ophoven found that "[i]n the case of James Michael Moore, it appears from the photographs that the foamy purge associated with him is consistent with drowning. However, because of what can be described as an incomplete post-mortem investigation of death, it is also possible that the other victims drowned as well. The question of exactly how these young boys died cannot be ascertained based on the contents of the post-mortem examination reports generated by the Arkansas State Crime Laboratory, in part because they do not contain data necessary to establish an reliable and valid statement of cause of death." (Exhibit Volume 2, Exh. J at 10)

207. While Dr. Haddix states that she does agree with the cause of death in these cases, she notes that she has "not completed my review of the submitted materials and I reserve the right to modify my opinion/findings." (Exhibit Volume XX, Exh. PP at 3)

208. Thus, the evidence of corroboration from cause of death is, at best, weak, and at worst, non-existent. Without more, the confession cannot be corroborated with the causes of deaths.

G. The Fiber Evidence Does Not Corroborate the Confession

209. At trial, the State called Lisa Sakevicius, a criminalist with the Arkansas

State Crime Lab. The defense allowed her to be qualified as an expert without objection (RT 1007, Bates 1508). She testified without objection that a fiber found on a victim's Cub Scout cap was "similar to" fibers from a shirt from Damien Echols' residence; that a second fiber found on a victim's pants was "microscopically similar" to the same shirt; and that a third fiber found on a victim's shirt was "consistent with" a fiber from a red housecoat found at Jason Baldwin's residence. (RT 1016, Bates 1517)

210. In 2004, counsel for Jason Baldwin asked Max M. Houck, the Director of the Forensic Science Initiative at the University of West Virginia (curriculum vitae attached as Exhibit Volume 5, Exh. BBB-1)(Baldwin Exh. 4)) to review materials, including the testimony at the Echols-Baldwin trial and the laboratory bench notes from Lisa Sakevicius and opine on the "accuracy, validity, and quality, from a forensic science's viewpoint, of the hair and fiber examinations conducted by the Arkansas State Crime Laboratory" (Exhibit Volume 5, Exh. BBB) Mr. Houck concluded that "Ms. Sakevicius' testimony suggests a weak knowledge of both hair and fiber examination processes, of standards applicable to hair and fiber examination, and of the meaning of the technical vocabulary involved in the fields of hair and fiber examination." (Id. at ¶ 22) He further concluded that "[u]ltimately, the bench notes and analytical data do not support the reports insofar as the notes, etc. appear to be incomplete. The instrumentation and methods used originally are themselves appropriate for fiber analysis but it is not discernable that they were applied appropriately in these analyses. The

scattered nature of the note-taking, the spectra, and the lack of comprehensive documentation leads me to question the quality of the work performed." (Exhibit Volume 5, Exh. AAA (emphasis in original) (Houck letter)).

210. Because the evidence of fiber comparisons is so questionable, it cannot corroborate Petitioner's confession.

H. The Evidence that the Boys Were Tied Is Not Corroborative

211. The Arkansas Supreme Court identified as corroborating evidence that "the boys were in fact tied up, albeit with shoe laces rather than rope," *Misskelley v. State*, 323 Ark. at 462.

212. During Petitioner's first taped confession, Detective Ridge raises the issue of the boys being tied.

Ridge: Okay, and when you came back a little bit later, now are all three boys tied?
Jessie: Yes
Ridge: Is that right?
Jessie: Yes, and I took off and run home.
Ridge: Alright, have they got their clothes on when you saw them tied?
Jessie: No, they had them off.

. . .

Ridge: And then they tied them
Jessie: Then they tied them up, tied their hands up, they started screwing them and stuff, cutting them and stuff, and I saw it and turned around and looked, and then I took off running, I went home, then they called me and asked me, how come I didn't stay, I told them, I just couldn't.

(Exhibit Volume 1X, Exh. B at 6, 484)

Later during the first taped confession, the issue of the boys being tied arose again.

Jessie: I was there until they tied them up and then that's when I left, after they tied them up, I left.

. . .

Ridge: Okay, he had his legs up in the air, alright, what was to keep the little boys from running off, but just their hands are tied, what's to keep them from running off?

Jessie: They beat them up so bad so they can't hardly move, they had their hands tied down and he sit on them.

Ridge: You said that they had their hands tied up, tied down, were they hands tied in a fashion that they couldn't have run, you tell me.

Jessie: They could run, they just had them tied, when they knocked them down and stuff, they could move their arms and stuff, and hold them down like, wake up and raise up and the other one just put his legs up.

Ridge: Okay, so they had them under control, you were there the whole time that was taking place?

Jessie: I was there.

(Exhibit Volume 1, Exh. B at 13-14, 491-92)

213. During the second taped confession, Detective Gitchell was the first to mention the boys being tied.

Gitchell: Who tied the boys up?
Jessie: Uh, Damien.
Gitchell: Did just Damien or did anyone help Damien?
Jessie: Jason helped him.
Gitchell: What did they use to tie them up?
Jessie: A rope.
Gitchell: Okay. What color was the rope?
Jessie: Brown.

(Exhibit Volume XX, Exh. A-2 at 509)

214. In fact, however, the boys hands were not tied to each other. Each one was

hog-tied, i.e., left hand to left foot, right hand to right foot. (RT 192, 689-90) Moreover, as the Arkansas Supreme Court acknowledged, they were not tied with rope, they were tied with their own shoelaces, Id. And, the restraints were not brown, some were black and some were white. Id.

215. Moreover, contrary to Petitioner's confession, it was impossible for the boys to have "move[d] their arms and stuff" and one "put his legs up" (Exhibit Volume 1, Exh. B at 14, 492) while hog-tied.

216. The fact that Petitioner parroted back to the detectives their suggestion that the victims were tied, without being able to accurately describe what was tied (hands and feet), how they were tied (hand to foot) and what type of restraint was used (black and white shoelaces) can hardly be adequate corroboration for a confession so riddled with errors.

I. Other Extrinsic Evidence Undermining the Accuracy and Reliability of the Confessions

217. In addition to the foregoing, there is other extrinsic evidence undermining the accuracy and reliability of the Misskelley statements that bears on Petitioner's claim of innocence. Most importantly, Petitioner Misskelley retracted the confessions in a letter to his parents almost immediately after they were made. (See, Exhibit Volume 2, Exhibits U (news article of June 9, 1993 reporting retraction of confession), and U-1 (letter to parents retracting confession.). The letter states: " "I hope that y'all don't hate me because

I did not do it." The letter also indicates Petitioner's state of mind shortly after the confessions were given, stating: "I cannot stand (it) in here much longer. I will go crazy. Please try to get me out. I will die in here." The letter also states: "My stomach has been hurting me. I watch the news last night and I cry and cry." This letter bears on Petitioner's distraught state of mind during and after he gave his confessions. This letter was not introduced into evidence at trial only because of trial counsel's admitted ineffectiveness in not understanding the rules of evidence. (See, Declaration of Dan Stidham, Exhibit Volume 1, Exh. D).

218. Other evidence contradicts assertions in the confession that Petitioner had a close relationship with Baldwin and Echols. As counsel for Baldwin alleges in his DNA pleading, while Baldwin had known Misskelley in the sixth grade, by the time of these crimes, Baldwin did not socialize with Misskelley, and co-defendant Damien Echols actively disliked and avoided Misskelley.

219. Baldwin's introduction to Jessie Misskelley occurred on a playground when Baldwin and Misskelley had been in the sixth grade. Misskelley had allegedly tried to beat Baldwin up, and Baldwin ran from Misskelley. While their relationship became more civil, Jessie Misskelley was not one of Baldwin's friends even when the two did socialize. By 1993, Baldwin and Misskelley saw one another on occasion, but they did not spend any time together. As Baldwin's neighbor Sammy Dwyer indicates, he had never seen Baldwin and Misskelley together (See, Dwyer affidavit, attached hereto as

exhibit Volume 4, Exh. TT (Baldwin Exhibit 46). Jennifer Bearden also never saw either Damien Echols or Baldwin associate with Misskelley, even when they were in the same vicinity (See, Bearden affidavit, Exhibit Volume 4, Exh. OO at p.3).

220. There were, and are, no witnesses to link Misskelley, Baldwin 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 Baldwin might be found together from time to time), Misskelley was known to socialize with persons other than Baldwin 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 allegedly himself had committed (Jennifer Bearden affidavit, Exhibit OO, at p.3).

221. In addition, there is extrinsic evidence, in the form of witness statements, demonstrating that both Baldwin 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.

222. 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.

223. *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.

224. 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.

225. 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).

226. 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.

227. 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). In many of these cases,

the accused falsely confessed.

228. 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. In sum, in light of all the circumstances set forth above, Misskelley's statements are now demonstrably false and do not contradict his showing of factual innocence.

VII. THE EVIDENCE PRESENTED AT THE ECHOLS/BALDWIN TRIAL DOES NOT UNDERMINE PETITIONER'S SHOWING OF FACTUAL INNOCENCE

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

229. 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. 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.

230. 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 Baldwin 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.

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

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

233. Ms. Cureton (see affidavit of Joyce Cureton, Exhibit Volume 5, Exh. RRR) has stated that when Baldwin was delivered to her facility, the Chief Deputy Sheriff, Dickie Howell, told her that Baldwin should never be let out of his room. While Cureton did not obey that directive during Baldwin's pre-trial incarceration, Baldwin was carefully watched when he was outside of his room, and Cureton personally kept tabs on the situation by speaking with Baldwin and all of the other juveniles about Baldwin's situation in the Detention Unit.

233. 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 Baldwin 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 Baldwin's investigator interviewed her, as is further alleged below. The log entry is the only record of Baldwin 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. Baldwin 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.

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

235. 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 Baldwin's case, and that Baldwin was lying.

236. Extraordinarily, when she was asked to testify in Baldwin'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 Baldwin's defense had never methodically interviewed Ms. Cureton, and never found out how far the State went to deprive Baldwin of a potential witness. Cureton kept a calendar which chronicled the course of events of her trip out of Jonesboro during Baldwin's trial. Because Cureton had viewed Baldwin as a model inmate, she was a clearly valuable source of evidence for Baldwin.

237. 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.

238. 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 Baldwin 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. Baldwin never made the statements, and new scientific evidence

demonstrates that the statements attributed to Baldwin by Carson do not support Baldwin's guilt as there is no independent, scientifically verifiable evidence to support them.

239. 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 Center. She was working there in 1993 and 1994 when Petitioner was incarcerated.

240. She points out (Exhibit Volume 5, Exh. SSS, Weaver affidavit at pp.1-2) that when Baldwin was first placed in the Detention Center, staff were instructed to keep an eye on him.

241. Weaver usually worked the day shift. As she explains, during the course of the day (which is when Carson claims the admissions from Baldwin 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.

242. Sue Weaver was very conscious of where Baldwin was placed, and she also states that by way of custom, staff would pay attention to new kids in the Detention Center, watching carefully how they interacted with Baldwin (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 Baldwin.

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

244. Based on her observations of Baldwin, 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.)

245. 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.

246. 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.

247. 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 Volume 6, Exh. TTT).

248. While Carson reported to a law enforcement officer that he had essentially

stood up for Petitioner Baldwin when Baldwin was being harassed by some black detainees, like other staff members, Burcham does not remember Baldwin ever having specific problems with black detainees.

249. 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.

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

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

252. As is true of other staff members (with the exception of Joyce Cureton who was asked to leave Jonesboro when Baldwin'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 Baldwin, or Michael Carson.

253. 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.

254. 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 Volume 6, Exh. JJJJ). 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.

255. Ms. Tate reviewed records shown to her by Baldwin'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 Baldwin'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 Baldwin and Michael Carson. This presumably was the card game at which Carson had been with Baldwin, '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. Baldwin 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 Baldwin in Carson's presence.

256. 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 Baldwin, 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 Baldwin talking about the crimes charged against him and making any damaging admissions (Tate affidavit at pp.5-7). By contrast, she described Baldwin 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 Baldwin to have confessed to him, as she did not believe that Baldwin 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 Baldwin (Ann Tate affidavit, Exhibit JJJJ).

257. Michael Carson was only incarcerated briefly in the Juvenile Detention Unit, a total of seven days. Other detainees who had been locked up with Baldwin were there far longer, and were around Baldwin 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 Baldwin's protector when Baldwin 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.

258. 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 Center with Petitioner for about 8 or 9 months.

259. 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 Volume 6, Exh UUU at p.1, para.3).

260. Biddle's recollection is that a number of detainees asked Baldwin 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.

261. 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.

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

263. His recollection was that Baldwin 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.)

264. Biddle states that there were only 8 or 9 people locked up in the Unit at any given time, and there was little turnover.

265. 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).

266. Any time the subject of the charge against Baldwin came up, Baldwin would say that he did not want to talk about it, and the one time Biddle specifically remembered when Baldwin 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.)

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

268. 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.

269. 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 Baldwin the night before the 'confession' that Carson testified to at trial was Jason Duncan. Duncan has also provided an affidavit (Jason Duncan affidavit, Exhibit Volume 6, Exh. VVV).

270. Duncan states that he was around Baldwin 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 Center during Baldwin'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 [Baldwin] 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.)

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

272. Until his 2008 interview, Duncan had not been interviewed by anyone concerning this case.

273. Xavier Redus, one of several African-American youth in the Detention Center with Baldwin, 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 Volume 6, Exh. WWW, affidavit of Xavier Redus at p.1, para. 3). They would ask Baldwin if he killed 'the kids'.

274. According to Redus, Baldwin never admitted any connection with the

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

275. According to Redus, there was never an occasion on which Baldwin 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 WWW, Xavier Redus affidavit at p.2, para. 8).

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

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

278. 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 Volume 6, Exh. XXX explaining that he was charged with a capital murder when he was incarcerated with Baldwin. 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 Center with Baldwin, Haskins got along well with Baldwin, and the two of them talked on a number of occasions. Baldwin 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 XXX, Haskins affidavit at p.2, para. 7.)

279. Haskins recalled playing cards from time to time with Baldwin. While Haskins was in the Detention Center, 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.

280. Haskins never heard Baldwin 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.)

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

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

283. Gordon states (Exhibit Volume 6, YYY, affidavit of Montavious Gordon at

p.1, para. 4) that at first Baldwin was quiet, and that it took time before Baldwin would talk to him for more than a few minutes.

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

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

286. 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 Baldwin.

287. Nor did Gordon ever hear of Baldwin 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.

288. 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 Volume 6, Exh. ZZZ, Williams affidavit). His program had regular interaction with the Craighead County Juvenile Office. He was working in Jonesboro.

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

290. 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).

291. 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 Baldwin's defense counsel at trial, Paul Ford.

292. Danny Williams had contact both with Mr. Ford, and with Brent Davis, one of the prosecutors in Baldwin'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.

293. 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.

294. 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.

295. 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.

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

296. The homicides in this case occurred during the course of the school year. Baldwin 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. Baldwin 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 Baldwin'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.

297. Sally Ware (see affidavit of Sally Ware, Exhibit Volume 4, Exh. HH) used to be a high school art teacher at Marion High School. Baldwin 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.)

298. Ms. Ware specifically recalled Baldwin'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).

299. 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.

300. 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 Volume 6, Exh. AAAA, affidavit of Amy T. Mathis). Baldwin, 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 Baldwin, 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).

301. Crystal Hale, now Crystal Hale Duncan, was another of the many students who had gone to school with Baldwin, 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 Volume 6, Exh. BBBB at pp. 2-3).

302. Ms. Hale, like others who knew Baldwin, 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 BBBB at p.3).

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

304. Joseph Samuel Dwyer lived two trailers down from Baldwin's family's trailer in the Lakeshore Trailer Park. He knew Baldwin well. The two of them spent time

together. They too rode the school bus together. (Dwyer Affidavit, Exhibit Volume 4, Exh. TT, at p. 2).

305. Significantly, Dwyer remembers being on the school bus with Baldwin the day that the victims' bodies were found. Dwyer, who has characterized Baldwin as having a gentle and quiet demeanor, had not changed his manner that day. (Exhibit TT at pp. 4-5) Dwyer had maintained contact with Baldwin 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.

306. Ms. Ware, Ms. Mathis, Ms Hale Duncan, and Mr. Dwyer are witnesses who could have shed light (and are now shedding light) on Baldwin'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 Baldwin's fellow students. Therefore, no juror was ever presented with this important evidence about Baldwin.

C. Jurors were never informed of the distance from Baldwin'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 Baldwin's involvement in the killings.

307. While the Echols/Baldwin case was tried in Jonesboro, Arkansas, the location and layout of the area in which Baldwin 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 Baldwin's home at the time.

308. 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 Baldwin's home (see Exhibit Volume 6, Exh. CCCC, Mapquest maps provided for illustration).

309. There was never an allegation that Baldwin, 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.

310. Baldwin 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.

311. Baldwin'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.

312. 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.

313. 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.

314. In order to get from the crime scene to the trailer park in Lakeshore where Baldwin resided and where the school bus picked him up daily, the most direct route required Baldwin to walk along a frontage road adjoining Interstate 40 West combined with Interstate 55 North. Baldwin 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 Baldwin was to return to Lakeshore. Baldwin 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 Baldwin 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 Baldwin. Matt told

police that his brother (Baldwin) had been at home at night on May 5, 1993 (Larry Matthew Baldwin affidavit, hereafter Matt Baldwin affidavit, Exhibit Volume 4, Exh. JJ).

315. 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.

316. 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.

317. 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.

318. There was no evidence offered to explain the widely dispersed locations involved, or how Baldwin 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.

319. The West Memphis Police Department never purported to find any clothing, or artifact, indicating that Baldwin 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, Baldwin would have returned home to calmly ride a school bus the next morning.

D. There was no evidence that Baldwin ever was in Robin Hood Woods.

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

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

321. 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.

322. Cliett had shown a patrol officer some of the areas that children from the neighborhood used to go to.

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

324. In addition, Baldwin used to go into the woods with his friend Sammy Dwyer, whose given name is Joseph Samuel Dwyer. Dwyer was a neighbor of Baldwin's, and both boys had an interest in reptiles, particularly snakes and lizards. (Dwyer affidavit, Exhibit TT, 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 Baldwin to have claimed to have gone there, or to have discussed Robin Hood Woods. (Exhibit TT, at p. 2).

E. Baldwin 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.

325. In addition to other evidence referenced in this Petition bearing on Baldwin'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 Baldwin was not involved in the crimes charged against him, and for which he was convicted.

326. During the course of the investigation of this case, West Memphis police officers interviewed several witnesses who accounted for Baldwin's whereabouts at the time of the 3 homicides. For example,Baldwin's younger brother Matthew Baldwin was interviewed by police officers prior to Baldwin's trial (Exhibit II, 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 JJ 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 JJ at pp.5-6).

327. 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.

328. 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 Baldwin had returned from school, and then had gone to his uncle's house (Exhibit KK, Angela Gail Grinnell police interview; Exhibit 51, Angela Gail Grinnell affidavit).

329. 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 MM, Dent interview).

330. Several other witnesses talked to Baldwin 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 NN, 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 OO, 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 OO).

331. 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 oftne be on the phone with Baldwin and Damien Echols. She specifically

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

332. Baldwin'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 Baldwin by phone on May 5, 1993 into the early morning of the next day (Heather Cliett Hollis affidavit, Exhibit QQ, pp.2-4).

333. 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 QQ at pp.2-4).

334. None of Baldwin'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 Baldwin, 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 Baldwin's whereabouts on May 5, 1993, and found corroborating evidence for Baldwin's cutting of his uncle's lawn, and then returning that evening to his mother's trailer in Lakeshore. Baldwin'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 LL, 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 JJ, at pp.2-4).

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

336. 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 Baldwin 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.

337. In addition, between June and September, 1993, West Memphis Police Department officers interviewed other witnesses who indicated that they had knowledge of Baldwin'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 Baldwin, Jennifer [Bearden], and Holly [George].

338. Domini Teer, Echols' girlfriend, also reported to police that she recalled Baldwin 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 affidavit, Exhibit RR).

339. Also available at the time of trial were statements from young men who knew Baldwin, one of whom (Garrett Schwarting) told police on June 11, 1993, that he recalled Baldwin mowing his uncle's lawn on May 5, 1993, and recalled as well being in Baldwin's presence at Baldwin's trailer home in the afternoon and evening of May 5, 1993. Other then-contemporaries of Baldwin including Kevin Lawrence (interviewed

June 11, 1993), and Don Nam (interviewed December 23, 1993) stated that they had either been at Baldwin's house (Kevin Lawrence), or had seen Baldwin near Walmart in West Memphis on the evening of May 5, 1993 (Don Nam).

340. Various witnesses saw Baldwin 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 Baldwin 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.

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

342. There is significance to a number of these pieces of information about Baldwin's whereabouts. First, arguably, they provide an alibi for Baldwin, 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 Baldwin 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 Baldwin, is evidence that undermines the theory that Baldwin 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 Baldwin or both on the evening and night of May 5, 1993.

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

344. Sammy Dwyer knew Baldwin, and 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 Baldwin 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 Baldwin with him either. Nor did Dwyer, who knew Damien Echols but did not like him, ever see Echols with Misskelley. (Dwyer affidavit, Exhibit TT, at pp. 3-4).

345. 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.

346. 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.

F. The ball game statements were never put in context

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

348. 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.

349. 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 Baldwin as being there, but not in Echols' immediate vicinity (RT at 1819-1827). She had told her mother about the event.

350. 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).

351. 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 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.

352. When Mr. Echols, trailed by Baldwin, 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 QQ). Some members of the public screamed out questions to Mr. Echols, asking who he was going to kill next.

353. 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 DDDD). She did not believe that it should be taken seriously given its context.

354. 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.

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

355. In May of 1993,Baldwin'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 Baldwin and his co-defendant Damien Echols were charged with the murders.

356. Domini Teer was among those who confirmed that she had seen Baldwin 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.

357. Ms. Teer (Exhibit RR, interview report, and SS, 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 Baldwin's and Echol'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

358. In the Echols/Baldwin case, the trial court found Dale Griffis, a 26-year veteran of the Tiffin, OhioPolice 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).

359. 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 Baldwin with the occult (RT at 1798-1799).

360. 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.

361. 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 J. None of the autopsy findings, when carefully reviewed, supported the notion that any of the victims 'bled out').

362. 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 the Exhols/Baldwin trial.

363. 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.[4]

364. 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.[5] Further research has undermined the validity of these concerns.

365. Even one of the supporters of the investigation into satanic matters, former

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[4]*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.

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

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 pushed the investigation of Damien Echols and Baldwin, now acknowledges that he does not believe that Baldwin was involved in the homicides.[6]

A. The police, the probation officers, and Vicki Hutcheson

[6]Tom Quinn declaration (Exhibit IIII)

366. 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.

367. 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.

368. 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.

369. 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.

370. Baldwin's investigators have 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 Baldwin). Jones has left the State of Arkansas (Tom Quinn declaration, Exhibit IIII).

371. 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.

372. 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.

373. Hutcheson attempted to do so using Jessie Misskelley to invite Echols to a meeting. This turned out to be a fiasco, though the jury in the Echols/Baldwin 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, and "esbat". Such testimony was provided in the Misskelley case.

374. Hutcheson fabricated her evidence. She later admitted as much under oath, blaming the circumstances of her life. These included, at various times, trouble with the law. (See, Transcript of Sworn Statement of Victoria Hutcheson, attached hereto as Exhibit Volume 1, Exh. C).

375. Hutcheson has given at least one videotaped interview to the press 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 EEEE.]

376. Hutcheson's testimony that she fabricated her testimony at Petitioner's trial, like the DNA and serology evidence discussed above, shows that Petitioner's conviction is grounded in false and misleading evidence. The other eveidence discussed herein shows that he is factually innocent.

B. The testimony of Anthony and Narlene Hollingsworth

377. 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 (Echols RT at 1289).

378. 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 (Echols RT at 1321).

379. Anthony Hollingsworth had been prosecuted by one of the prosecutors in the case against Petitioners, 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.

380. 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 OO, QQ, and PP).

381. 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.

C. The FBI, and former FBI Agent John Douglas

382. 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.

383. 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.

384. 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 CC, Douglas CV; Exhibit DD, Douglas report).

385. 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 in the geography of Robin Hood Woods, who had a history of violence, and who was not a teenager (Exhibit DD).

387. Petitioner Miskelley 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.

388. 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.

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.

390. 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.

391. As previously alleged, in April, 2008, Petitioner Baldwin reiterated his November 20, 2002 motion insofar as it sought to reach fiber and hair evidence. Petitioner Misskelley had requested this testing as early as November 2000.

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

393. Among the exhibits supporting this Petition is the affidavit of Dr. Joy Halverson (Exhibit GGGG). Dr. Halverson is a Doctor of Veterinary Medicine, who has received post-doctoral training, and a post-doctoral degree (Exhibit GGGG-1, Dr. Joy Halverson CV).

394. 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.

395. 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 HHHH). 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).

396. 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.

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

397. 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 alphabetical order:

A Article entitled "Question of Wrongful Convictions Raises Questions Beyond DNA"

B Transcript of Petitioner's Statement to Police on June 3, 1993

B-1 Transcript of Petitioner's Statement to Police on June 6, 1993 (B-2)

B-2 Corrected Transcript of Petitioner's Statement to Police on June 6, 1993

C Transcript of Sworn Statement of Victoria Hutcheson on June 24,

2004

C-2 Declaration of Nancy Pemberton

D Declaration of Daniel T. Stidham

D-1 Correspondence from Dan Stidham to Ed Mallett dated February 22, 1998

D-2 Transcript of Sworn Statement of Jennifer M. Roberts

D-3 Curriculum Vitae of Dr. Richard Ofshe

E Declaration of Gregory Crow

F Order re: Motion and Amended Motion to Suppress dated January 20, 1994

G Forensic Evaluation of Dr. William E. Wilkins dated November 8, 1993

H Declaration of Dr. Timothy J. Derning.

H-1 Curriculum Vitae of Dr. Timothy J. Derning

H-2 Chart of Materials Reviewed by Dr. Timothy J. Derning

I Declaration of Richard A. Leo, Ph.D., J.D.

I-1 Curriculum Vitae of Richard A. Leo, Ph.D., J.D.

J Affidavit of Janice Jean Ophoven, M.D.

J-1 Curriculum Vitae of Janice Jean Ophoven, M.D. (J-1)

K Curriculum Vitae of Dr. Werner U. Spitz

L Dr. Werner U. Spitz's Written Report dated November 27, 2006

M Affidavit of Donald M. Horgan

M-1 Correspondence from Amy Jeanguenat to Donald Horgan dated August 16, 2007 (D-3)

N	Dr. Werner U. Spitz, M. D.'s Supplemental Report dated October 12, 2007
O	Curriculum Vitae of Dr. Richard Rafael Souviron
P	Dr. Richard Rafael Souviron's Report dated January 11, 2007
Q	Curriculum Vitae of Dr. Robert Wood
R	Curriculum Vitae of Terri L. Haddix, M.D.
S	Terri L. Haddix, M.D.'s Interim Report dated October 22, 2007
S-1	Terri L. Haddix, M.D.'s Supplemental Report dated May 6, 2008 (S-1)
T	Merckelbach, Harald, "The Gudjonsson suggestibility scale"
U	Memphis Commercial Appeal June 9, 1993
U-1	Letter from Jessie Misskelley, Jr. to Jessie Misskelley, Sr.

V Memphis Commercial Appeal March 17, 1994

W Partial Transcript of Hearing on Rule 37 Petition in State of Arkansas vs. Damien Echols: Testimony of Dan Stidham dated May 5, 1998

W-2 Partial Transcript of Hearing on Rule 37 Petition in State of Arkansas vs. Damien Echols: Testimony of Ron Lax dated October 28, 1998 (W-1)

W-3 Memorandum from Ronald Lax to Michael Echols File date February 23, 1994 (W-2)

X Declaration of Shaun Ryan Clark

Y Letter from Echols's Attorneys to Brent Davis dated March 12, 2007

Z Letter from Michael Burt to Frank Peretti dated May 15, 2007

AA	Letter from Echols' Attorneys to Brent Davis dated July 10, 2007
BB	Letter from Echols' Attorneys to Frank Peretti dated October 4, 2007
CC	Curriculum Vitae of John Douglas
DD	John Douglas' Analysis of the Case dated May 5, 1993
EE	Affidavit of Dr. Patricia Zajac
EE-1	Curriculum Vitae of Dr. Patricia Zajac
EE-2	Bench Notes
FF	Affidavit Donald Riley, Ph.D.
FF-1	Curriculum Vitae of Donald Riley, Ph.D.
GG	Excerpts From Abstract and Brief for Cross-appellants in State v.

GG-1 Invoice by Ronald L. Lax for Misskelley Investigative Services dated March 25, 1994

GG-2 Invoice by Ronald L. Lax for Echols Investigative Services dated March 28, 1994

HH Affidavit of Sally Ware

II Transcript of Interview of Matthew Baldwin dated September 23, 1992

JJ Affidavit of Matthew Baldwin

KK Transcript of Interview of Angela Gail Grinnell dated June 4, 1993

LL Affidavit of Angela Gail Grinnell

MM Transcript of Interview of Dennis Lee Dent dated January 7, 1994

NN	Transcript of Interview of Jennifer Elizabeth Bearden dated September 10, 1993
OO	Affidavit of Jennifer Elizabeth Bearden
PP	Affidavit of Holly George Thorpe
QQ	Affidavit of Heather Dawn Hollis
RR	Transcript of Interview of Domini Teer dated September 10, 1993
SS	Affidavit of Domini Teer
TT	Affidavit of Joseph Samuel Dwyer
UU	Affidavit Dan E. Krane
UU-1	Curriculum Vitae of Dan E. Krane
VV	Affidavit of Jason R. Gilder

VV-1 Curriculum Vitae of Jason R. Gilder

WW Declaration of Jessie Misskelley

XX Motion to Preserve Evidence and for Access to Evidence for Testing file-stamped November 17, 2000

YY Declaration of Rachael Geiser

ZZ Affidavit of Charles Jason Baldwin

AAA Letter from Max Houck dated February 2, 2004

BBB Affidavit of Max Houck

BBB-1 Curriculum Vitae of Max Houck

CCC Order for DNA Testing dated June 2, 2004

DDD First Amended Order for DNA Testing dated February 23, 2005

EEE Bode STR Forensic Data Case Report dated December 30, 2005

FFF Bode Mitochondrial Forensic DNA Case Report dated December 30, 2005

GGG Bode STR Forensic DNA Case Report dated January 2, 2007

HHH Bode Supplemental Forensic Case Report dated January 25, 2007

III State's Reply to Echols' 2nd DNA Testing Status Report (undated)

JJJ Bode STR Forensic DNA Case Report dated September 27, 2007

KKK Bode Mitochondrial Supplemental Forensic Case Report dated September 27, 2007

LLL Serological Research Institute 3rd Analytical Report dated May 11, 2007

MMM Serological Research Institute 5th Analytical Report, dated October 26, 2007

NNN Curriculum Vitae of Tom Fedor

OOO Goudge Commission's Home Page and Witnesses

PPP Letter from John Philipsborn to Brent Davis dated June 12, 2007

QQQ Letter from John Philipsborn to Brent Davis dated December 27, 2007

RRR Affidavit of Joyce Cureton

SSS Affidavit of Sue Weaver

TTT Affidavit of Patty Burcham

UUU Affidavit of Daniel Biddle

VVV Affidavit of Jason Duncan

WWW Affidavit of Xavier Redus

XXX Affidavit of Leonard Haskins

YYY Affidavit of Montavious Gordon

ZZZ Affidavit of Danny Williams

AAAA Affidavit of Amy Mathis

BBBB Affidavit of Crystal Hale Duncan

CCCC Mapquest Maps

DDDD Affidavit of Donna Medford

EEEE Arkansas Times Article

FFFF Press Articles prior to and during trial

GGGG Affidavit of Dr. Joy Halverson

GGGG-1 Curriculum Vitae of Dr. Joy Halverson

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

IIII Declaration of Tom Quinn

JJJJ Affidavit of Ann Tate

KKKK Bode Supplemental Mitochondrial Forensic DNA Case Report dated May 23, 2008

LLLL Affidavit of Sharon Nelson

MMMM Dr. Tabor Letter Report and Affidavit dated May 10, 2007

NNNN Curriculum Vitae of Dr. Tabor

CONCLUSION

398. 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,

Michael N. Burt, Esq.

Jeff Rosenzweig, Esq.

Dated: June 5, 2008

_____

Michael N. Burt

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Dated: June 5, 2008

JEFF ROSENZWEIG
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AFFIDAVIT

The petitioner states under oath that he has read the foregoing petition for postconviction relief and that the facts true, correct, and complete to the best of petitioner's knowledge and belief.

JESSIE LOYD MISSKELLEY

STATE OF ARKANSAS

COUNTY of _____

Subscribed and sworn to before me the undersigned officer this _____ day of May, 2008.

_____
NOTARY PUBLIC.

PROOF OF SERVICE

I, Jeff Rosenzweig, declare:

That I am over the age of 18, and not a party to the within action; my business address is :

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)

() By Federal Express , 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
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of June, 2008, at Little Rock, Arkansas.

Signed: _____
Jeff Rosenzweig