

1 A Black.

2 Q Was there anything about her pants? What was the condition
3 of the pants?

4 A It had holes above the knees.

5 Q What about the condition of the clothes of both of them?

6 A They -- they was kind of muddy.

7 Q And where did you see them?

8 A Beside Blue Beacon. They was right before you get there --
9 they was walking.

10 Q They was where now?

11 A They was right beside Blue Beacon.

12 (WITNESS EXCUSED)

13 THE COURT: All right, ladies and gentlemen, with
14 the usual admonition not to discuss the case, you may
15 stand in recess until 9:30 in the morning.

16 (ADJOURNMENT)

17 CORNING, ARKANSAS, JANUARY 28, 1994, AT 9:30 A.M.

18 THE COURT: Let me make an announcement to the
19 media. I've been informed that one of the papers
20 carried a photograph of a witness who had requested
21 not to be photographed or depicted on live coverage
22 that also included the jury. I'm considering a rather
23 substantial fine. I'm asking you not to do that
24 again. The jury is not to be photographed under any
25 circumstances, and I sure don't like it placed in the

1 newspaper. If it was, and that is what was reported to
2 me. I want you to avoid that or I will consider a
3 fine.

4 All right, you may proceed.

5 GITCHELL CROSS EXAMINATION

6 B:

7 Q

8 A

9 Q

10 Inspector Gitchell, we heard the tape yesterday of Jessie's
11 statement. Did you and Detective Ridge rehearse Jessie's story
12 before you turned the tape recorder on?

13 A No, we did not.

14 Q So basically this was a contemporaneous thing after you
15 showed the photograph and diagram and played the tape?

16 A Yes, sir.

17 Q How did Ridge know what to say and what to ask?

18 A I don't understand what you mean.

19 Q A lot of the questions, a lot of what Jessie was saying was
20 merely repeating what Ridge said to him.

21 A I believe there was a lot of repetition on Mr. Ridge's part
22 of what Jessie said.

23 Q Let's talk about the things that Jessie told you that are
24 absolutely incorrect beginning with Jessie's statement that
25 Jason Baldwin called him at 9:00 in the morning. Isn't it true
that Jason Baldwin --

1 MR. FOGLEMAN: What page are you on?

2 MR. STIDHAM: I believe it is in the very
3 beginning.

4 BY THE WITNESS:

5 A I'm sorry. You're going to have to repeat that for me.

6 Q Mr. Misskelley said he had received a phone call from
7 Jason Baldwin at 9:00 A.M.?

8 A I don't -- is that in there? Could you show that to me?

9 Q I stand corrected. That was something that Jessie told
10 Detective Ridge prior to the tape recorder being turned on.

11 Do you recall being there and being present when he said
12 that?

13 A Who said it? I've lost track now.

14 Q Jessie said he received a phone call from Jason Baldwin at
15 nine in the morning.

16 A I believe that's nine at night.

17 Q I'm going to skip over that and we'll come back to that.
18 I'll find my notes, and we will clarify that.

19 Another thing that Jessie told you, I believe this is on
20 the tape, is that Jessie was standing on the service road when
21 he saw Damien hit Christopher Byers. How far is the service
22 road from --

23 A No, sir. There's never anything mentioned of the service
24 road.

25 Q There's not?

1 A I don't recall anything.

2 MR. DAVIS: Your Honor, it is improper cross
3 examination for him to ask general questions. If he
4 wants to refer to the tape recorded statement or to
5 previous statements and say in fact this is what was
6 said, is that what took place, and why was that said,
7 that's one thing. But he's generalizing -- and it's
8 the State's position he's incorrectly generalizing
9 what is contained in the statement.

10 THE COURT: Approach the bench.

11 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
12 OUT OF THE HEARING OF THE JURY)

13 THE COURT: I'm having a problem with the way
14 that you are proceeding on cross examining him on a
15 statement made by Misskelley.

16 MR. STIDHAM: He was present in the room when the
17 questioning --

18 THE COURT: I'm going to let you do it if you
19 take the statement and refer to it page by page and
20 line by line and ask, "Was this statement made?"

21 MR. STIDHAM: Judge, I've been over that
22 statement so many times. I know what's in there. I
23 don't have the page numbers --

24 MR. FOGLEMAN: Your Honor, I think I know what's
25 in there, too, and I don't remember anything referring

1 to a service road and watching him hit --

2 MR. STIDHAM: Your Honor, I'm going to have to
3 have ten minutes or so to go through it and put the
4 page numbers down.

5 THE COURT: All right. Can you ask other
6 questions now that gets rid of the rest of your cross
7 examination?

8 MR. STIDHAM: That is what my cross examination
9 mostly consists of, your Honor.

10 (RETURN TO OPEN COURT)

11 THE COURT: We're going to take a ten minute
12 recess at this time with the usual admonition not to
13 discuss the case.

14 (RECESS)

15 CROSS EXAMINATION

16 BY MR. STIDHAM:

17 Q We are going to try this again. If I confuse you about
18 page numbers, just say so and we'll compare.

19 A Okay.

20 Q As you know, there's two different transcripts. The
21 transcript I've been looking at is a little bit different than
22 the one that was shown to the jury yesterday. If there's any
23 confusion on your part, please let me know, and we'll clarify
24 it.

25 On page three of his statement Jessie tells you that him

1 and Jason and Damien went down to the woods, that they left to
2 go down there about nine o'clock. Did you find that part yet?

3 A I see where -- nine o'clock in the morning. Is that what
4 you're in reference to?

5 Q Yes.

6 A Okay, I see that.

7 Q You confirmed that Jason Baldwin went to school that day,
8 did you not?

9 A Yes, sir.

10 Q What time does school normally begin in West Memphis?

11 A Jason I think goes to Marion. I'm not sure what time it
12 starts.

13 Q Inspector Gitchell, how far is it from the place where the
14 bodies were found to the interstate and service road?

15 A I couldn't give you an exact. It would be just a
16 guesstimate on my part -- 60, 70 yards -- something like that.
17 I'm assuming. I don't know.

18 Q On page nine of his statement, Inspector Gitchell, Jessie
19 says the murders took place around noon and when he told you
20 that, you knew at that time that that wasn't correct, did you
21 not?

22 A That's right.

23 Q How did you know that was incorrect?

24 A Because the boys -- the young boys were still in school.

25 Q Later on, on that same page he makes reference to the

1 little boys had skipped school that day.

2 A Yes, sir, he did. But I believe Jessie is getting confused
3 there. Jason Baldwin was supposed to skip school that day, and
4 they were all going to --

5 Q The little boys didn't skip school that day, did they,
6 Inspector Gitchell?

7 A The little boys did not skip school, but Jason was to skip
8 school that day.

9 Q That's not what I asked you. My question was, did the
10 little boys skip school that day?

11 A No, the little boys did not.

12 Q You knew that was incorrect when Jessie told you that?

13 A That's correct.

14 Q Thank you. How were the boys tied when the bodies were
15 discovered?

16 A They were tied by shoestrings from wrist, like right wrist
17 to the right ankle.

18 Q In Jessie's second statement that was played to the jury
19 yesterday did he tell you they were tied with a brown rope?

20 A That's correct.

21 Q These seem to be pretty important issues with regard to his
22 statement. At any time when he was telling you these things
23 that you knew were incorrect, did it ever occur to you that what
24 he was telling you was false and his entire story was false?

25 A There's always a time in a defendant's statement -- that in

1 Jessie's case I feel like he did tell us a good bit of truth,
2 but then they also lessen their activity in a statement. That's
3 just common, at least in my twenty years career.

4 Q It is common to ignore things like time of death and the
5 fact that the boys were not tied up --

6 A Well --

7 Q Let me finish my question, Inspector.

8 A I was going to answer the first part.

9 Q Is it common for the police to simply ignore those big
10 obvious problems and assume that everything else he's telling
11 you has gotta be correct?

12 A It is easy to ignore the part about the boys skipping
13 school because you simply know that's not true. Jessie simply
14 got confused. That's all.

15 Q Confused. Now, the prosecuting attorney was obviously
16 concerned about some of the things Jessie was getting wrong,
17 wasn't he?

18 A Yes, sir.

19 Q That was the purpose for the second statement?

20 A Yes, sir, right.

21 Q Why didn't you go into these issues with him when you had
22 him on the tape recorder the first time?

23 A I have a tendency if someone is in a portion of an
24 interview that they are talking that -- if you will notice
25 through the transcript, I said very little. And that is my

1 technique, is to let someone go ahead and talk.

2 So I simply allowed him to keep talking and I injected very
3 little into the interview.

4 Q But the prosecutor later told you he had some serious
5 questions about this and asked you to go back in and talk to
6 Jessie again?

7 A Right.

8 Q Inspector Gitchell, was it a big secret about what had
9 happened to these little boys and what injuries they sustained?

10 A Yes, sir.

11 Q I guess you were shocked when some of the people you were
12 bringing in off the street and questioning -- they told you what
13 had happened to the little boys?

14 A You have lost me on that. You'd have to get me some names
15 that I can refer to so I can get some files and see.

16 Q (HANDING) Do you remember the police interviewing a fellow
17 by the name of Richard Cummings on 5-12-93?

18 A This is Lieutenant Sudbury's notes. Are you mentioning
19 this, "pointed to the penis and said it was cut off"?

20 Q And that the little boys were beat up.

21 A Yes, sir.

22 Q It is obvious that Mr. Cummings knew what had happened?

23 A I believe that -- it was ran in the news media that all had
24 been sexually mutilated. If my recollection is correct, which
25 in fact was not true.

1 Q We're going to talk about that in a minute.

2 MR. STIDHAM: Do you have any problem with this?

3 MR. FOGLEMAN: Your Honor, we don't have any
4 objection to introducing the exhibit, but it's just a
5 series of what are answers to questions that were put
6 to people. and I think the questionnaire ought to be
7 attached, too.

8 MR. STIDHAM: Judge, the obvious question is what
9 happened to these little boys and this is what he told
10 them.

11 THE COURT: Well --

12 MR. STIDHAM: I don't have any problem with
13 attaching the questionnaire as a part of the exhibit.

14 THE COURT: Let me see what you're doing.

15 MR. STIDHAM: Your Honor, the purpose of the
16 exhibit is to demonstrate to the jury that this
17 information about what had happened to the little boys
18 wasn't a top secret situation. Everybody in West
19 Memphis knew about it and heard rumors about it.

20 THE COURT: Are you objecting?

21 MR. STIDHAM: No, they said they had no
22 objection, your Honor.

23 THE COURT: Well, I didn't follow. There was
24 some objection --

25 MR. FOGLEMAN: Your Honor, the only thing we said

1 is if that is going to be admitted, it is hearsay
2 because Detective Gitchell did not do it but if it's
3 going to be admitted, we think the questionnaire ought
4 to be attached as well.

5 THE COURT: Approach the bench.

6 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
7 OUT OF THE HEARING OF THE JURY)

8 THE COURT: Are you objecting to the admission of
9 this? It is hearsay and police reports are not
10 admissible.

11 MR. STIDHAM: They have already said they have no
12 objection.

13 THE COURT: It was kind of equivocal. "If it is
14 going to be admitted." I don't know if that's
15 objecting to it or not. That's what I'm asking.

16 MR. STIDHAM: I understood they had no objection.

17 THE COURT: If they don't, go ahead.

18 MR. DAVIS: We don't have an objection if the
19 questionnaire is attached to it. But if we end up with
20 --

21 THE COURT: Are we going to go through a whole
22 series of interviews of people?

23 MR. STIDHAM: We have two.

24 THE COURT: Okay. Go ahead.

25 (RETURN TO OPEN COURT)

1 THE COURT: Without objection you may proceed.
2 (DEFENDANT'S EXHIBIT ONE IS RECEIVED IN EVIDENCE)
3 MR. STIDHAM: I would like to exhibit this to the
4 jury.

5 THE COURT: All right.

6 BY MR. STIDHAM:

7 Q Inspector Gitchell, do you recognize that document?

8 A (EXAMINING) Yes, sir.

9 Q That appears to be in your handwriting?

10 A Yes, sir.

11 Q Your initials are at the bottom?

12 A Right.

13 Q This individual who was picked up for questioning, Dalton
14 Shane Kellon, also related to you that he had heard rumors of
15 castration and mutilation and the boys were beaten to death?

16 A That's correct.

17 MR. STIDHAM: Judge, we offer this as Defendant's
18 Exhibit Two.

19 THE COURT: It may be received without objection.
20 You may exhibit to the jury.

21 (DEFENDANT'S EXHIBIT TWO IS RECEIVED IN EVIDENCE)

22 BY MR. STIDHAM:

23 Q You mentioned a moment ago that the press had somehow
24 intercepted a computer message from the West Memphis Police
25 Department that was sent to other law enforcement agencies?

1 A Um-hum.

2 Q Do you recognize this document?

3 A (EXAMINING) No, sir, I do not.

4 Q Can you identify the initials, "DIS" stamped in the
5 righthand corner?

6 A No, sir, I do not know what that is.

7 MR. DAVIS: Is this the same thing he's looking
8 at?

9 MR. STIDHAM: Yes.

10 MR. FOGLEMAN: Your Honor, this is apparently
11 something I furnished to the defense. If "DIS" is on
12 there, it means that I furnished it to the defense.

13 THE COURT: Gentlemen, I don't know what you're
14 talking about.

15 MR. FOGLEMAN: It is apparently an article out of
16 the newspaper.

17 MR. STIDHAM: Your Honor, this is an Associated
18 Press article that outlines the computer message that
19 the West Memphis police sent to other law enforcement
20 agencies --

21 MR. FOGLEMAN: The judge can read. I don't think
22 --

23 THE COURT: I appreciate that show of confidence.

24 MR. FOGLEMAN: Your Honor, we don't have any
25 objection if he wants to introduce that.

1 THE COURT: If you don't have any objection, it
2 may be received.

3 (DEFENDANT'S EXHIBIT THREE IS RECEIVED IN
4 EVIDENCE)

5 BY MR. STIDHAM:

6 Q Inspector, the article said that the Associated Press says
7 that the victims' hands were tied, and their genitals had been
8 removed with a sharp instrument?

9 A Yes, sir. It says, "victims." That means more than one.

10 Q Inspector Gitchell, do you ever holler at people or get in
11 people's face when you interrogate them?

12 A Yes, sir, I have in the past.

13 REDIRECT EXAMINATION

14 BY MR. FOGLEMAN:

15 Q Did you do that with the defendant?

16 A No, sir, not at all.

17 Q There's one person you did that with in this case, isn't
18 there, at least one?

19 A May have been two.

20 Q But not the defendant?

21 A No, sir, not the defendant.

22 Q Was there any need to do that?

23 A No, sir.

24 Q On Defendant's Exhibit Two on this Dalton Shane Kellon
25 interview of June 2nd, does he mention who specifically had the

1 cuts to the face or who was castrated?

2 A No, sir.

3 Q And is the information that he relays basically the same
4 information that was in the newspaper?

5 A Yes, sir.

6 Q Is it unusual, Detective Gitchell, when you take a
7 confession from a defendant to have some details that are wrong?

8 A That's quite common.

9 Q Do you know whether or not -- are you aware of any evidence
10 that would indicate that there had been some sort of binding
11 other than the shoestrings?

12 A Some markings of their legs.

13 MR. STIDHAM: I'm going to object to that. He's
14 not the Medical Examiner.

15 MR. FOGLEMAN: He can state what he observed.

16 THE COURT: Are you testifying from reports,
17 records or from your own personal observation?

18 THE WITNESS: From my own observation.

19 THE COURT: Overruled.

20 BY MR. FOGLEMAN:

21 Q I want to show you State's Exhibit 59B, the mark across the
22 leg here. Did you observe that?

23 A Yes, sir.

24 Q What did you observe?

25 A Well, the --

1 MR. STIDHAM: May I interpose another objection?
2 Your Honor, I think that calls for pure unadulterated
3 speculation on the part of this witness who is not
4 qualified to render such an opinion.

5 MR. FOGLEMAN: Your Honor, I asked him what he
6 observed.

7 THE COURT: I'm going to allow him to testify to
8 what he observed on the victims' bodies. I'm not
9 going to let him speculate as to the cause of the
10 observation. Your objection will be sustained in that
11 regard. He may testify to what he personally
12 observed.

13 BY MR. FOGLEMAN:

14 Q What did you observe?

15 A I observed this bruising, I believe it was on the left leg
16 stretching approximately three and a half inches of the leg.

17 Q Did you observe a pattern?

18 A Yes, sir, it appears to be of a --

19 MR. STIDHAM: Your Honor, again, that calls for
20 pure speculation. Why didn't he ask the Medical
21 Examiner yesterday when he was here? He may be
22 qualified to answer that question.

23 MR. FOGLEMAN: Your Honor, I think --

24 THE COURT: I cannot respond to why they didn't
25 ask somebody something, but I'm going to let this

1 witness testify to what he personally observed, but he
2 cannot draw conclusions on what he observed.

3 BY MR. FOGLEMAN:

4 Q Did you observe a pattern?

5 A Yes, sir.

6 Q On this piece of paper, could you draw the pattern that you
7 observed?

8 A (DRAWING)

9 Q I'm going to mark this Exhibit 105A. Is that what you
10 observed on his leg?

11 A Yes, sir.

12 MR. STIDHAM: Your Honor, may we approach the
13 bench?

14 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
15 OUT OF THE HEARING OF THE JURY)

16 MR. STIDHAM: Your Honor, this witness is not
17 qualified to render an opinion based on --

18 THE COURT: I'm not going to allow him to render
19 an opinion as to causation, but I'm going to allow him
20 to testify to what he saw.

21 MR. CROW: Can I view the photograph?

22 MR. FOGLEMAN: (HANDING)

23 MR. CROW: I think the photograph is more
24 adequate to show what he observed, your Honor.

25 MR. STIDHAM: They are trying to pass him off as

1 an expert in pathology. That's not proper.

2 MR. FOGLEMAN: Your Honor, I asked him what he
3 observed and I asked him to draw it.

4 THE COURT: I'm going to allow him --

5 MR. STIDHAM: Your Honor, that could have been
6 caused by a stick. That could have been caused by
7 anything.

8 MR. CROW: Your Honor, the photograph shows it.

9 THE COURT: You are again arguing what caused
10 those markings that he saw, which is something you can
11 argue at the end of the case. Each of you can draw
12 conclusions, and you can argue what you believe to be
13 the cause of that. The officer is going to be
14 permitted to testify to what he saw.

15 MR. STIDHAM: Will this exhibit be allowed to be
16 introduced?

17 THE COURT: Yes.

18 MR. CROW: I think the picture shows it better.

19 THE COURT: I'm going to allow it.

20 MR. CROW: Note our objection.

21 (RETURN TO OPEN COURT)

22 (STATE'S EXHIBIT 105A IS RECEIVED IN EVIDENCE)

23 BY MR. FOGLEMAN:

24 Q Again in all of these people -- first of all, approximately
25 how many people did y'all talk to?

1 A At least a hundred.

2 Q Out of all of these people that you talked to, how many
3 people besides the defendant told you about -- that this -- that
4 -- which particular person had the genitals removed, that one of
5 them had cuts to the side of the face and that there were
6 bruising to the ears?

7 MR. CROW: Object to hearsay.

8 THE COURT: Rephrase your question. I was
9 looking up something else y'all handed me.

10 BY MR. FOGLEMAN:

11 Q Out of the hundred or more people y'all talked to, are you
12 aware of anybody other than the defendant who told you that
13 there was one of the victims that had their genitals removed and
14 one of them had cuts to the side of the face and there had been
15 some grabbing of the ears?

16 THE COURT: The objection to that is hearsay?

17 MR. CROW: He's rephrased somewhat since my
18 objection.

19 THE COURT: I'm going to overrule the hearsay
20 objection and I will allow him to respond yes or no
21 without going into detail of who that person was or
22 the circumstances.

23 BY THE WITNESS:

24 A There was no one else that mentioned those particular
25 injuries and you yourself, Mr. Fogleman, you are pointing to the

1 wrong side of the cheek.

2 Q But nobody else?

3 A No one else.

4 (WITNESS EXCUSED)

5 MR. FOGLEMAN: We call Vickie Hutcheson.

6 MR. CROW: Your Honor, may we approach the bench?

7 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
8 OUT OF THE HEARING OF THE JURY)

9 MR. CROW: I may be anticipating what they are
10 going to try to elicit from this witness but I
11 anticipate she's going to testify that she saw him at
12 some alleged cult meeting after the murders. If she
13 wants to testify that she saw him with Damien, that's
14 fine, but all this cult stuff -- I don't think there's
15 been a proper foundation laid for it. It is
16 prejudicial and we would strongly object.

17 THE COURT: After -- is that what you're going to
18 do --

19 MR. FOGLEMAN: Between the murders and the
20 arrests.

21 THE COURT: But after the event.

22 MR. FOGLEMAN: That's correct.

23 MR. STIDHAM: Just because he was somewhere
24 drinking and carrying on with somebody doesn't mean
25 he's satanic --

1 THE COURT: I'm reminded of the Strobbe
2 objection, the first trial -- it wasn't Strobbe -- it
3 was the biscuit man -- where y'all persuaded me to let
4 in some evidence that happened after the time of the
5 change that indicated other criminal activity or
6 wrongdoing and the Court said you couldn't do that --
7 the Ridling trial. Is there any difference in what
8 you're trying to do here?

9 MR. FOGLEMAN: In this particular case the
10 defendant in his confession talked about this cult
11 activity. We contend that the proof is going to show
12 that within maybe a couple weeks after the murders she
13 got Jessie to introduce her to Damien, and Damien
14 invited her to an Esbat, some kind of witch or satan
15 worship deal. Damien and Jessie took her there.

16 And while there she observed the kids. Some of
17 them have their faces painted black, they begin to
18 have sex. She asked to leave and Damien took her home
19 and Jessie stayed.

20 MR. STIDHAM: We have already brought out in
21 cross examination why the police were looking -- why
22 they picked up Jessie that morning, and this is highly
23 prejudicial in that it occurred after the murders if
24 it occurred at all, and I think any probative value is
25 surely outweighed by the prejudicial effect of this.

1 MR. DAVIS: Judge, one thing that you need to
2 remember -- in their entire cross examination of the
3 officers yesterday they kept asking, "Do you have any
4 evidence that Jessie was involved in cult activity?
5 What evidence do you have?"

6 MR. CROW: It has already been discussed.

7 MR. DAVIS: We can put on witnesses to show what
8 evidence they have.

9 MR. FOGLEMAN: And they were the ones in their
10 examination of the officers who asked about, "Where
11 did you get this information about Jessie being
12 involved in with this cult stuff with Damien?"

13 THE COURT: I'm going to take a recess and think
14 about it.

15 (RETURN TO OPEN COURT)

16 THE COURT: Ladies and gentlemen, you may take a
17 ten minute recess at this time with the usual
18 admonition not to discuss the case.

19 (RECESS)

20 (THE FOLLOWING CONFERENCE TOOK PLACE IN CHAMBERS)

21 THE COURT: Let the record reflect that is a
22 hearing out of the presence of the jury. All right,
23 gentlemen, the Court is considering the testimony of
24 Vickie Hutcheson. State for the Court what your
25 theory and notion of relevance is to this testimony.

1 MR. FOGLEMAN: Your Honor, we expect that the
2 witness would testify that approximately two weeks
3 after the murders -- two to three weeks after the
4 murders -- she was introduced to the co-defendant
5 Damien Echols by the defendant and after being
6 introduced, she kind of played detective and got
7 Damien or led Damien to believe that she was
8 interested in occult activity and Damien invited her
9 to an Esbat, which I understand is some kind of witch
10 or satanic meeting.

11 That Damien and the defendant took her to this
12 meeting and that at this meeting a group of young
13 people were there. They had their faces painted black
14 and began to take off all their clothes and have sex
15 with each other.

16 Let me back up. I don't think she's -- I think
17 she's going to say she left before that actually took
18 place. They began to touch each other is what I
19 think she said. Then she asked to leave and Damien
20 took her home and the defendant stayed.

21 The theory of relevance is that the defendant in
22 his confession stated that he had been engaged in cult
23 activities with Damien Echols, and there were orgies
24 that took place, and the defense has taken the
25 position that we would not be able to prove any of

1 these cult activities or any connection with any cult,
2 and this is offered to corroborate what the defendant
3 said as far as his involvement in these activities
4 which the defendant in his statement relates to the
5 murders by his statement that there was a photograph
6 of the little boys that was passed around at one of
7 these meetings.

8 MR. CROW: Your Honor, first, the prejudicial
9 effect of this type testimony in front of your average
10 American juror is obvious. Very few members of
11 American society are anything but Judeo-Christian
12 ethic.

13 This activity allegedly occurred two weeks after
14 the murders. There's no alleged connection between
15 this event and the murders. There's nothing been put
16 forth so far in the prosecution's case or anything I'm
17 aware they're going to put on saying the actual
18 murders were cult related other than the fact that
19 these guys may have been in a cult together.

20 Jessie doesn't say in his statement it was a cult
21 killing. There's no physical evidence, to my
22 knowledge, on the scene making it cult related.

23 And the effect this thing is going to have on the
24 jury is very substantial and the probative value for
25 something that happened two weeks after the murders is

1 so limited.

2 THE COURT: I'm not going to let you do it.

3 MR. FOGLEMAN: You're preventing us from being
4 able to corroborate the things he says in his
5 statement and -- I am not arguing with the Court.

6 THE COURT: The last time I did it I restricted
7 the defense and the Court reversed saying that I --
8 but the issue there was entrapment and it was conduct
9 of the police that they wanted to demonstrate
10 afterwards.

11 MR. FOGLEMAN: That's correct.

12 THE COURT: This is a little different situation,
13 frankly. The conduct is conduct of the defendant.

14 MR. STIDHAM: But it's after the murders.

15 THE COURT: The issue is whether or not that
16 portrayal of him involved in cult activities with the
17 co-defendant would so prejudice the jury against him
18 that it would outweigh any probative value, that is,
19 the corroboration of his statement.

20 MR. STIDHAM: Your Honor, would you consider
21 this? We are not here to determine whether or not
22 Jessie was in a cult meeting in Turrell. We're here
23 to determine whether or not he was involved in a
24 homicide.

25 THE COURT: It is relevant inasmuch as you're

1 questioning and have since the outset of the trial the
2 statement itself made by Misskelley. You are alleging
3 that it was contrived, that it's false and it is
4 simply not true. So -- and basically that is the only
5 evidence that ties Misskelley directly to the
6 commission of a crime is his own statement. So it is
7 extremely important and relevant that the jury be
8 provided all evidence necessary to decide whether or
9 not that statement was voluntarily given and whether
10 it was truthful at the outset. So I certainly
11 understand the State's position. I'm trying to
12 balance the thing.

13 MR. FOGLEMAN: Your Honor if -- if you want to --

14 THE COURT: I'm more concerned about all of the
15 fact and details that occurred at the --

16 MR. FOGLEMAN: Do you want us to ask her not to
17 say about what they were doing?

18 THE COURT: What took place. I think I'm
19 inclined to let her testify that she attended,
20 whatever you called it, occult activity with Jessie
21 Misskelley and Damien Echols.

22 MR. STIDHAM: That's the prejudicial part that we
23 are objecting to.

24 THE COURT: You're not objecting to black painted
25 faces and sex?

1 MR. CROW: We're objecting to that, too.

2 THE COURT: I think it is relevant, and they're
3 entitled to show that it's true that there were cult
4 activities, based upon at least this witness'
5 representation.

6 But I'm more concerned about all the details and
7 circumstances that the witness would be prepared to
8 testify to. Those to me are more prejudicial than the
9 fact that he went to a cult activity.

10 MR. STIDHAM: Your Honor, the State is required
11 to corroborate the homicides, not corroborate that
12 maybe he was at a meeting --

13 MR. CROW: -- two weeks after the murder.

14 MR. STIDHAM: -- with teenagers drinking and
15 having an orgy --

16 MR. CROW: -- two weeks after the murder.

17 MR. STIDHAM: He's here on a homicide. That is
18 why we are here before the Court is to determine if he
19 was involved in a homicide.

20 MR. CROW: If they want to prove that he was at
21 some cult activity prior to the homicides as he says
22 he said in his statement, that's one thing. But
23 proving he was at cult activity after the homicide --
24 something he didn't discuss in his statement -- is
25 totally out of bounds.

1 MR. FOGLEMAN: It we were talking about three
2 months after, I could see the point about -- but we
3 are only talking about a few weeks. And, really, if
4 y'all were not arguing false confession, we wouldn't
5 be in a position like we are because all we would have
6 to do is corroborate that the crime occurred. But
7 with you arguing false confession, we feel compelled
8 to try to corroborate as many details as we can.

9 In fact I think your expert says that some of the
10 things that are important is whether or not you are
11 able to corroborate details unrelated that he says in
12 his statement.

13 MR. CROW: Corroborating with stuff -- his
14 activity prior to the crime, which is things he talked
15 about, is one thing. Maybe he said he was a St.
16 Louis Cardinal baseball fan and saying he went to a
17 St. Louis Cardinals game after the crime -- I just
18 don't see the -- obviously that is not prejudicial.

19 MR. STIDHAM: That's why they are wanting to hang
20 this boy and that is why the newspapers have been
21 splashing this cult stuff and that's why everybody's
22 got their mind made up about his guilt or innocence
23 because they are so petrified and horrified by this
24 cult stuff. Mr. Crow made a good point that people --

25 THE COURT: Everything they've just said are

1 certainly subject matters of cross examination if he
2 takes the stand. There's no question about that.

3 I'm going to let them develop from the witness
4 that she went with Jessie and Damien to a cult
5 activity and that -- to that extent, basically. Don't
6 go into all the circumstances of what was seen and
7 what was done and that sort of thing.

8 I think the fact that you are challenging both
9 the police activity -- overreaching of the defendant
10 in taking a confession -- the fact that the confession
11 is false, that is a fabrication on the part of Jessie
12 Misskelley, that the State should be given some
13 latitude to prove that this is not false. These are
14 the underlying facts that support the truthfulness of
15 the statement. I think just basic fairness allows him
16 to do that.

17 On the other hand, I'm trying to balance the
18 harmful effect by -- I agree to some extent if they
19 went in there and started talking about black painted
20 faces and children having sex in the woods with devil
21 signs around and all of those sorts of things, that
22 that would be prejudicial to some extent. But whether
23 or not that prejudice would outweigh its probative
24 value, I'm not certain.

25 I frankly think that maybe fairness would allow

1 it to all go in to show the circumstances immediately
2 after the crime. But I'm going to limit it to the
3 fact that she did attend with them some kind of cult
4 activity without allowing her to go into all the
5 details.

6 MR. CROW: Note our objection.

7 (RETURN TO OPEN COURT)

8 VICTORIA HUTCHESON

9 having been first duly sworn to speak the truth, the whole truth
10 and nothing but the truth, then testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FOGLEMAN:

13 Q Will you please state your name and the address where you
14 lived in May of 1993?

15 A My name is Victoria Hutcheson, and at that time I lived in
16 Highland Park in a trailer there.

17 Q Where did you live before you moved to Highland Park?

18 A I lived at 1502 East Barton in West Memphis.

19 Q Do you have children?

20 A Yes, I do. I have two boys.

21 Q How old are they?

22 A I have one that just turned eleven and one that's eight.

23 Q Your eight-year-old -- was he acquainted with Mike or Steve
24 or Chris?

25 A Yes, he was really good friends with Chris and Mike and

1 Steve, and they ran together, but Steve more or less ran with my
2 older boy.

3 Q Did they go to the same school?

4 A Steve and Aaron and Chris were all in the same class
5 together.

6 Q And Aaron is your eight-year-old?

7 A My eight-year-old, yes.

8 Q When did you move to Highland Park in relation to the
9 murders, approximately?

10 A Approximately April. Like the second week of April.

11 Q After you moved to the Highland Park area, did you become
12 acquainted with the defendant?

13 A Yes, I did.

14 Q And how did you become acquainted with him?

15 A Jessie and I became really close friends.

16 Q After the murders, were you also friends with the families
17 of any of the victims?

18 A Todd Moore, who is the Cub Scout -- leader over the Cub
19 Scouts -- both of my boys were in the Cub Scouts troop.

20 Q You were acquainted with --

21 A With Todd.

22 Q At some point after the murders, did you decide that you
23 wanted to play detective?

24 A I thought I would play detective.

25 Q And in the course of that, and without saying what you had

1 heard, had you heard some things about Damien Echols?

2 A I had heard a lot of things about Damien Echols.

3 Q What did you do to try to learn more about this person?

4 A I had Jessie Misskelley, Junior introduce us.

5 Q Are you referring to the defendant?

6 A Yes, sir.

7 Q After he introduced you to Damien, did you do any
8 particular things to try to gain Damien's confidence?

9 A I had went to the library. Don Bray, the police at Marion,
10 had given me his card to check out some satanic books because
11 they can't be checked out just by normal --

12 Q All right. You said Don Bray of the Marion Police
13 Department?

14 A Marion Police Department.

15 Q At this time was the West Memphis Police Department aware
16 of what you were doing?

17 A West Memphis knew nothing.

18 Q After these books were obtained, what did you do with them?

19 A I just like spread them out on my coffee table like it was
20 everyday reading.

21 Q For what purpose?

22 A If he was into witchcraft --

23 Q Who?

24 A Damien.

25 Q Okay.

1 A If Damien were into witchcraft, naturally he's going to be
2 curious why I have all this stuff, I thought.

3 Q At some point did Damien invite you to go to some meeting?

4 A He did. On a Wednesday night, an Esbat.

5 Q Is that E-S-B-A-T?

6 A Uh-huh.

7 Q Did you learn what that --

8 A I had to look it up but it was in one of the witch books
9 and it's an occult satanic meeting.

10 Q Okay. And did you go with him to this?

11 A Yes.

12 Q Who went with you?

13 A Jessie.

14 Q What did y'all go in, what vehicle?

15 A A red Escort.

16 Q Who was driving?

17 A Damien.

18 Q And about how many people were there?

19 A Approximately at a distance I would say ten, twelve, even
20 fifteen.

21 Q After a period of time as things developed, did you ask to
22 leave?

23 A I did.

24 Q And when you asked to leave, did somebody take you home?

25 A Yes.

1 Q Who was that?

2 A Mr. Echols.

3 Q What did the defendant do?

4 A Um, stayed.

5 Q Are you familiar with -- or aware of this tape that's been
6 played in court with the voice?

7 A Yes, sir, I am.

8 Q Do you know who that voice is?

9 A That's my child.

10 Q Was the defendant acquainted with your child?

11 A Yes, he was.

12 Q Had the defendant spent time where you were living?

13 A Jessie and I -- I thought were very close and good friends,
14 and so he did spend quite a bit of time with us.

15 Q At the time that you asked the defendant to introduce you
16 to Damien, did you have any reason to believe that he was
17 involved in the murders?

18 A Never.

19 CROSS EXAMINATION

20 BY MR. STIDHAM:

21 Q Miss Hutcheson, you say that you asked Jessie to introduce
22 you to Damien?

23 A Yes, sir.

24 Q Did he tell you that he knew him?

25 A He had told me on several occasions that he knew him.

1 Q Knew who he was from school?

2 A He was a friend of his.

3 Q Why did Don Bray, the officer from the Marion Police
4 Department, give you his library card?

5 A Don --

6 Q Let me ask you this way: How did you come in contact with
7 Mr. Bray?

8 A Through a Delta situation, which I'm not going to elaborate
9 on, but ah --

10 Q I want you to elaborate on it.

11 A Would you like for me to elaborate on it?

12 Q Yes, ma'am.

13 A There was a credit card mess up, and I was working during
14 the time that this happened and another boy. And it was a two
15 hundred dollar transaction that had been done without -- I don't
16 really know the particulars of the credit card, but there was an
17 investigation. All charges were dropped.

18 Q Why did you go see Don Bray that day?

19 A For that.

20 Q Did you go for a specific reason, to take a test or
21 anything?

22 A I did take a lie detector test.

23 Q A lie detector test was conducted?

24 A Yes, sir.

25 Q And all charges were dropped, you say?

1 A I have the file.

2 Q Have you ever been convicted of writing hot checks in this
3 state?

4 A Yes. In Arkansas I have.

5 Q Mr. Fogleman asked you if you at some point wanted to play
6 detective?

7 A Mr. Fogleman?

8 Q Um-hum.

9 A I had never met Mr. Fogleman until like a month or -- about
10 two months ago.

11 Q You testified that you were going to play detective in this
12 case?

13 A I decided that on my own. Those boys I loved, and I wanted
14 their killers caught.

15 Q Did that thirty thousand dollar reward have anything to do
16 with your decision?

17 A No. It had nothing to do with it.

18 Q Did you ever tell anybody that you were going to get that
19 reward?

20 A Not to my knowledge, no.

21 Q Mr. Fogleman asked you if you had anything to do with this
22 at the time you went to this so-called meeting?

23 A No one mentioned Jessie Misskelley's name to me whatsoever
24 until he was arrested and on TV.

25 Q Fact is he spent the night with you the night before he was

1 arrested?

2 A Exactly. To protect me.

3 Q To protect you from a prowler?

4 A From a prowler.

5 REDIRECT EXAMINATION

6 BY MR. FOGLEMAN:

7 Q This Delta situation -- were you ever charged?

8 A No, I was not.

9 Q In fact the day that you were in Mr. Bray's office -- is
10 that the day -- which day was that in relation to when the boys
11 --

12 A The boys were still missing at the time I was sitting in
13 his office, and he asked me -- I was obviously upset, and he
14 asked me why I was upset.

15 Q It was the day the boys were found?

16 A Yes, they were found Thursday.

17 Q It was that same day?

18 A Yes.

19 (WITNESS EXCUSED)

20 MELISSA BYERS

21 having been previously duly sworn to speak the truth, the whole
22 truth and nothing but the truth, then further testified as
23 follows:

24 REDIRECT EXAMINATION

25 BY MR. FOGLEMAN:

1 Q You are the same Melissa Byers that has previously
2 testified?

3 A Yes, sir.

4 Q I want to direct your attention to an incident that
5 occurred in February --

6 MR. CROW: Your Honor, may we approach the bench?

7 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
8 OUT OF THE HEARING OF THE JURY)

9 MR. CROW: Your Honor, previously the Court ruled
10 that the parents would stay out of the courtroom until
11 they testified and then let them stay. She's been in
12 the courtroom ever since.

13 THE COURT: There is a specific statute that the
14 victims' family are permitted to be in the courtroom
15 --

16 MR. CROW: The Court excluded her.

17 THE COURT: I excluded her until her testimony in
18 chief but I then let her back in, and the statute
19 provides that you can so I'm waiving the rule in that
20 regard.

21 MR. STIDHAM: I anticipate that she's going to
22 testify about a photograph that someone may have taken
23 of her child.

24 THE COURT: I don't have any idea. Are you
25 objecting?

1 MR. STIDHAM: Yes, your Honor.

2 MR. FOGLEMAN: What it is, is that about --
3 sometime between the middle of March and the middle of
4 February the Byers say that they went to the store,
5 were gone about 15, 20 minutes, came home and their
6 son Chris says, "Somebody was taking my picture."

7 He described him as having black hair and all
8 black clothes and matches Damien's description.
9 Jessie said in his statement about the picture of the
10 boys.

11 THE COURT: What is your objection?

12 MR. STIDHAM: She cannot specifically identify
13 this person and this is something that is going to be
14 highly prejudicial.

15 MR. CROW: Your Honor, Jessie's statement --
16 that's what they're relating it to -- that's the
17 relevance -- it was three boys not just one picture of
18 one boy.

19 MR. FOGLEMAN: The kid didn't say who all was
20 present. He said they took a picture.

21 MR. CROW: Then that's all they've got, your
22 Honor --

23 MR. STIDHAM: There's a lot of speculation and
24 stuff --

25 THE COURT: I'm going to overrule the objection.

1 (RETURN TO OPEN COURT)

2 BY MR. FOGLEMAN:

3 O I want to direct your attention back to mid-February to
4 mid-March. Was there an incident about a picture involving your
5 son, a photograph --

6 MR. CROW: One more objection, your Honor. I'm
7 sorry.

8 (THE FOLLOWING CONFERENCE TOOK PLACE AT THE BENCH
9 OUT OF THE HEARING OF THE JURY)

10 MR. CROW: This is hearsay, your Honor.

11 MR. FOGLEMAN: Your Honor, it meets Rule 824 --
12 present sense impression.

13 MR. CROW: Fifteen, twenty minutes later?

14 MR. STIDHAM: That's obviously hearsay.

15 MR. FOGLEMAN: Let me get the rule here. Eight
16 oh three one, your Honor, present sense impression
17 about a declarant explaining an event immediately
18 after the event.

19 MR. CROW: It was fifteen or twenty minutes.

20 MR. FOGLEMAN: As soon as they got back from the
21 store he runs up.

22 MR. CROW: If they are gone fifteen minutes, it
23 doesn't matter.

24 MR. STIDHAM: Keep in mind this is a young child
25 saying this stuff.

1 THE COURT: I don't think it qualifies as a
2 present sense --

3 MR. FOGLEMAN: Your Honor, it says, "made while
4 perceiving an event or immediately thereafter." They
5 come back --

6 THE COURT: It is usually the old concept of res
7 gestae, an event involving a crime or the
8 circumstances immediately thereafter. That is where
9 the present sense impression exception came into
10 being, circumstances involving the crime itself.

11 MR. FOGLEMAN: Can we -- it may qualify as an
12 excited utterance. The kid runs up --

13 THE COURT: That is usually contemporaneous with
14 the --

15 MR. FOGLEMAN: It is while he's under the stress,
16 stress and excitement, your Honor. "Hey, this guy is
17 taking my picture."

18 MR. DAVIS: The way she testifies preliminarily
19 is going to gauge whether it fits or not.

20 MR. FOGLEMAN: Do you want us to make a proffer
21 and see -- out of the presence of the jury?

22 THE COURT: Yeah.

23 (RETURN TO OPEN COURT)

24 THE COURT: I need the jury to step back into the
25 jury room while the Court conducts a hearing. Again,

1 you're not to discuss the case.

2 (JURY LEAVING THE COURTROOM AT THIS TIME)

3 THE COURT: All right, let the record reflect
4 that this is a proffer of proof outside the hearing of
5 the jury.

6 PROFFER OF PROOF

7 BY MR. FOGLEMAN:

8 Q Directing your attention to the last of February or the
9 first part of March of 1993, was there an incident involving
10 your son where he said something about a picture being taken of
11 him?

12 A Yes, he told us a man had taken a picture of him.

13 Q Explain the circumstances of that, where you had been and
14 how long you had been gone.

15 A My other son Ryan was home and I needed some milk and
16 cigarettes so there's a little corner store right down Barton.
17 It's about two blocks from my house.

18 So Ryan was upstairs in his room. Chris was playing in the
19 carport, and I said, "I need to run to the store right quick."

20 So I left Chris at home. Ryan was there with him. Me and
21 my husband jumped in the car, ran down to the corner store,
22 bought cigarettes and milk and came right back.

23 When we pulled up in the carport, Chris come running out of
24 the house, and he said, "Mama, there was a man here and he took
25 a picture of me."

1 I said, "What do you mean, took a picture of you?"

2 He said, "He pulled up in the driveway and he scared me so
3 I ran out in the yard so I could get away from him, and he took
4 a picture of me."

5 And I said, "What did the man look like?"

6 He said, "He had black hair. He had on a black coat, black
7 shirt, black pants and black shoes, and he drove a green car."

8 The way he described it to me -- he was only an
9 eight-year-old child -- the way he described it to me was like a
10 suit, a man in a suit. That's what I thought -- a man in a
11 suit, you know, and I didn't go any further than that.

12 Q When he ran out of the house, I mean --

13 A He was under the carport playing.

14 Q Well, when he ran out of the house to tell y'all is what
15 I'm talking about. What --

16 A He had ran back into the house and had locked the door.

17 Q Okay. And when he ran out to tell you about this, what was
18 his demeanor?

19 A He was excited. He was frightened. And Ryan was upstairs
20 and, of course, supposed to be watching his baby brother.

21 MR. FOGLEMAN: That's our proffer, your Honor.

22 THE COURT: Any cross examination?

23 MR. STIDHAM: No, your Honor. We'd just like to
24 renew our objection as to relevancy and hearsay.

25 THE COURT: As far as relevancy, I wouldn't have

1 any problem in ruling and finding that the evidence is
2 relevant.

3 MR. STIDHAM: We'd also argue that its
4 prejudicial effect outweighs any probative value. She
5 can't say who it was for sure, and the inference is
6 very prejudicial.

7 MR. FOGLEMAN: Your Honor, in Mr. Hall's book he
8 says that, "The interval between the statement and an
9 event is governed by the particular circumstances of
10 each case. The trend is toward expansion of the time
11 interval after an exciting event. Some courts are
12 more liberal in expanding the time period following an
13 exciting event when the declarant is a child."

14 In this one it says, "The morning after the event
15 is sufficient where the declarant was three years
16 old." The statement next day is admissible in this
17 *Coe versus State*, but four days later is not. "A
18 relaxed standard for young victims is appropriate."

19 THE COURT: We have eight oh three twenty-five
20 that goes to sexual contact of a child, which is an
21 exception to the hearsay rule.

22 I'm not sure it is quite applicable, but it is
23 somewhat analogous.

24 MR. FOGLEMAN: Your Honor, here's another one
25 under -- that was under excited utterance. Under

1 present sense impression Mr. Hall refers to Tucker
2 versus State where it talks about the primary
3 justification is spontaneity -- "Spontaneous statement
4 is seen as reliable since there's not been time to
5 fabricate or misrepresent. It doesn't require that
6 the event be startling, but the statement must be
7 immediate to the event." And then it says, "Immediacy
8 is not present when identification is made three days
9 after a robbery."

10 We're talking about the people go to the store,
11 come back and the child tells --

12 THE COURT: My understanding of that rule
13 previous to this is that the observation or the
14 experience that would cause an excited utterance or
15 present sense impression usually were those events
16 that occurred simultaneous to or in conjunction with a
17 crime or the event itself, part of the res gestae of
18 it, in close proximity to the event that is the
19 subject matter of the trial, but I'm not sure that
20 that's completely accurate.

21 MR. FOGLEMAN: Your Honor, the rule doesn't say
22 that.

23 THE COURT: That's what I'm saying. It could
24 very well be some other event that in itself has
25 independent relevancy to the crime itself.

1 Do you want something in the record other than
2 your objection as to hearsay?

3 MR. CROW: Your Honor, the child was no longer --
4 if the child was ever in danger. He had already been
5 inside the house. That part of the excitement's over.
6 He came out to tell mom and dad what happened. That's
7 the whole purpose of the hearsay rule is that we can't
8 cross examine. We can't bring out --

9 THE COURT: The exception is that the declarant
10 is not available. Obviously the declarant is not
11 available.

12 MR. CROW: That's why it has to be limited in
13 scope.

14 THE COURT: The issue is not whether or not there
15 was any danger at all, but the issue is whether or not
16 contemporaneous to that event, the photograph taking,
17 or very shortly thereafter he made that statement.
18 That is the question and whether or not that alone if
19 it has independent relevancy, which I am ruling it
20 does, based upon the testimony of Inspector Gitchell
21 from the statement of the accused. There was some
22 reference to a briefcase and photographs. So it has
23 relevance.

24 I'm going to rule that it's admissible, if not as
25 a present sense impression or excited utterance, that

1 it falls under the gamut of eight oh three twenty-four
2 in that the statement is more probative on the point
3 for which it's offered than any other evidence which
4 the proponent could procure through reasonable efforts
5 and that the interest of justice allows it.

6 MR. CROW: Your Honor, on that basis I would
7 strenuously point out that the statement talks about
8 one photograph of three boys. That is not what this
9 is about.

10 THE COURT: That is again a point of argument.

11 MR. CROW: I understand that, your Honor --

12 (THE COURT AND MR. CROW SPEAKING AT THE SAME TIME

13 UNINTELLIGIBLE)

14 THE COURT: You both can argue that --

15 MR. CROW: -- twenty-four argument. I think
16 that's more apropos.

17 THE COURT: The only question I've got is you
18 were aware of this potential testimony and that had
19 been made known to you prior to today?

20 MR. STIDHAM: Yes, your Honor, but its
21 reliability was certainly an issue.

22 THE COURT: I'm going to rule that it's an
23 exception to the hearsay rule, either eight oh three
24 one or two or eight oh three twenty-four.

25 (JURY RETURNING TO THE COURTROOM)

1 (RETURN TO OPEN COURT)

2 CONTINUED REDIRECT EXAMINATION

3 BY MR. FOGLEMAN:

4 Q Miss Byers, directing your attention to the end of February
5 or early part of March of 1993, was there an incident where your
6 child Chris said something about his photograph being taken?

7 A Yes, sir. He told us that a man had pulled up in the
8 driveway and had taken a picture of him.

9 Q Tell the jury the circumstances about where you had been
10 and that kind of thing.

11 A My older child Ryan was home and Chris was playing on the
12 carport. Ryan was upstairs in his bedroom. I needed milk and
13 cigarettes so me and my husband jumped in the car. There's a
14 little corner grocery that is like two blocks from the house.
15 Chris was busy and playing. We left him playing on the carport.
16 Ryan was in the house upstairs in his bedroom. Ran down to the
17 corner grocery. Got a gallon of milk and two packs of
18 cigarettes and ran right back to the house. We weren't gone
19 fifteen minutes.

20 When I came pulling up in the driveway, Chris came running
21 out of the door. He said, "Mommy, there was a man here and he
22 took a picture of me." I said, "What did the man look like?"
23 He said, "He had on a black coat, black pants, black shoes and a
24 black shirt and he was in a green car."

25 Q Did he say anything about his hair?

1 A He said he had black hair.

2 (WITNESS EXCUSED)

3 MR. FOGLEMAN: We call Glen Massengale.

4 Your Honor, I think we're going to have a
5 stipulation about this. I want to make sure what
6 exhibits I need to get a stipulation on.

7 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
8 OUT OF THE HEARING OF THE JURY)

9 MR. STIDHAM: Your Honor, I don't want to make a
10 big deal about stipulating to the chain of custody.
11 We just don't want to require him to call the officer
12 --

13 MR. FOGLEMAN: Well, I think for the record we'll
14 need a stipulation. Well, I'll just put him on.

15 MR. CROW: We don't mind stipulating for the
16 record that there's no chain of custody problem.

17 MR. DAVIS: You can do that at the bench.

18 THE COURT: Yes, if you are stipulating that you
19 waive any objection to the chain of custody, then he
20 might be able to eliminate witnesses if that's what
21 you want to do.

22 MR. CROW: Yes, your Honor.

23 THE COURT: It may be so stipulated.

24 MR. FOGLEMAN: We call Bryn Ridge.

25 BRYN RIDGE

1 having been previously sworn to speak the truth, the whole truth
2 and nothing but the truth, then further testified as follows:

3 REDIRECT EXAMINATION

4 BY MR. FOGLEMAN:

5 Q Detective Ridge, you are the same Detective Ridge that has
6 previously testified?

7 A Yes, sir.

8 Q On June third, 1993, after the defendant gave his
9 confession, were search warrants obtained?

10 A Yes, sir.

11 Q Did you participate in these searches?

12 A Yes, sir, I did.

13 Q Among other things obtained, I want to show you State's
14 Exhibit 90 and 91 and ask if you can identify those items?

15 A (EXAMINING) Yes, sir, I can identify them.

16 Q How can you identify them?

17 A It has my initials and the date.

18 Q Which one is that?

19 A Exhibit 91.

20 Q And where did you obtain that item?

21 A These are the boots worn by Damien Echols. I took 'em from
22 him at the time of the arrest.

23 MR. FOGLEMAN: Your Honor, we offer State's
24 Exhibit 91.

25 MR. STIDHAM: Your Honor, may we approach the

1 bench?

2 (THE FOLLOWING CONFERENCE TOOK PLACE AT THE BENCH
3 OUT OF THE HEARING OF THE JURY)

4 MR. CROW: This was discussed yesterday, I
5 believe. We raised an objection on this --

6 MR. STIDHAM: I don't know whether the Court made
7 a ruling or not. We want to raise it again. We
8 object to any evidence introduced to show that Damien
9 and Jason may --

10 MR. CROW: -- The Court may have already ruled on
11 it. We just want it clarified.

12 THE COURT: Yes, I think I did. I'm allowing the
13 State to produce all the events and circumstances that
14 relates to the crime itself and if that includes
15 evidence of the other two defendants in this case,
16 that is permissible because Misskelley is being tried
17 separately from them anyway.

18 MR. STIDHAM: We would like to raise our same
19 objection that we made in our motion in limine for the
20 record.

21 THE COURT: Okay.

22 (RETURN TO OPEN COURT)

23 MR. FOGLEMAN: Your Honor, we offer State's
24 Exhibit 91.

25 THE COURT: All right. It may be received.

(STATE'S EXHIBIT 91 IS RECEIVED IN EVIDENCE)

BY MR. FOGLEMAN:

Q Would you open State's Exhibit 91?

A (COMPLIES) You want them brought out?

Q Yes.

A (COMPLIES)

Q Those are the boots that you took from Damien Echols?

A Yes, sir.

Q Can you identify State's Exhibit 90?

A (EXAMINING) Yes, sir, I can.

Q How can you identify it?

A My initials and the date.

Q Where did you obtain that item?

A From Damien's house belonging to Jason Baldwin.

Q Where did you get them?

A They were given to me by Detective Lieutenant Sudbury.

MR. FOGLEMAN: We would offer for identification purposes Exhibit 90.

THE COURT: It may be received for identification.

(STATE'S EXHIBIT 90 IS RECEIVED FOR IDENTIFICATION)

BY MR. FOGLEMAN:

Q I want to show you State's Exhibit 83 and ask if you can identify that?

1 A (EXAMINING) Yes, sir, I can.

2 Q How can you identify that?

3 A Again by my initials and the date.

4 Q Where did you receive that item?

5 A It was seized consequent [sic] of a search warrant executed
6 at the residence of Damien Echols.

7 Q Who did you receive it from?

8 A It was in his bedroom.

9 Q Did somebody else secure it and give it to you?

10 A I was in the room when it was actually found and saw it and
11 I believe Kermit Channel actually picked it up and gave it to
12 me.

13 MR. FOGLEMAN: We offer that for identification
14 purposes at this time, Exhibit 83.

15 THE COURT: It may be received for
16 identification.

17 (STATE'S EXHIBIT 83 IS RECEIVED FOR
18 IDENTIFICATION)

19 BY MR. FOGLEMAN:

20 Q Back on the crime scene, I'm not sure that we made this
21 clear but what blood, if any, was found there at the crime scene
22 prior to Michael, Steve and Chris being removed?

23 A None.

24 Q None?

25 A None.

1 (WITNESS EXCUSED)

2 JAMES SUDBURY

3 having been first duly sworn to speak the truth, the whole truth
4 and nothing but the truth, then testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FOGLEMAN:

7 Q Will you please state your name and occupation?

8 A James Sudbury, lieutenant with the West Memphis Police
9 Department.

10 Q Detective Sudbury, did you participate in the investigation
11 of the homicide of Michael, Steve and Chris?

12 A Yes, sir, I did.

13 Q And in the course of your investigation did you participate
14 in the search of the residence of Damien Echols?

15 A Yes, sir.

16 Q I want to show you what has been marked for identification
17 as State's Exhibit 90 and ask if you can identify that?

18 A (EXAMINING) Yes, sir, I can. I can identify it by my
19 writing which is on this bag. "Jason Baldwin's boots at 2706
20 South Grove."

21 Q Where did you obtain those boots?

22 A At 2706 South Grove in West Memphis.

23 Q Who placed -- when you arrived at -- first of all, whose
24 residence was that at 2706 South Grove?

25 A That was where Damien Echols resided.

1 Q When you arrived, who was present?

2 A Damien Echols, Jason Baldwin, Damien's sister -- I don't
3 remember her name -- and Domini Teer.

4 Q How did you come into possession of the boots?

5 A When I arrived there, I placed both Jason and Damien under
6 arrest and when we were leaving, Jason said that those were his
7 boots, at which time I told him I was going to confiscate
8 those.

9 Q Would you open the sack?

10 A (COMPLIES)

11 Q You can replace them back in the sack.

12 A (COMPLIES)

13 MR. FOGLEMAN: I do want to offer State's Exhibit
14 90.

15 MR. STIDHAM: Your Honor, we ask that you note
16 our previous objection to relevancy.

17 THE COURT: Overruled and they may be received.

18 (STATE'S EXHIBIT 90 IS RECEIVED IN EVIDENCE)

19 (WITNESS EXCUSED)

20 (RECESS)

21 (THE FOLLOWING CONFERENCE TOOK PLACE IN CHAMBERS)

22 THE COURT: Let the record reflect this is a
23 hearing out of the presence of jury. Let the record
24 also reflect that the witness Michael DeGuglielmo is
25 present.

1 MR. CROW: Your Honor, we've been speaking with
2 the witness about the evidence he's getting ready to
3 submit. My understanding is there was some cuttings
4 from jeans of one of the victims -- one or more --

5 MR. FOGLEMAN: I think there were two pair of
6 pants that the cuttings were from.

7 MR. CROW: The witness will be testifying that
8 they have definitely found some DNA in the cutting.
9 The part I think we are going to be objecting to is
10 that he also I believe will be testifying that he
11 believes or there is a possibility -- I'll let him put
12 it in his own phraseology -- that that DNA in some way
13 indicates sperm. From my speaking to him, I'm not
14 convinced it meets the qualifications when he can make
15 that. He uses "believe" and "probably came from" and
16 that concerns me.

17 MR. STIDHAM: We'd also like to state that it
18 doesn't have any relevancy. As I understand it, the
19 fact that there is DNA there doesn't necessarily mean
20 that ties the defendant or any of the co-defendants to
21 anything, and I believe the purpose that the
22 prosecution is trying to introduce this is for the
23 fact that there may be semen or sperm on the pants,
24 and we would submit that in the event the Court feels
25 it is relevant, we would submit that it is highly

1 prejudicial and doesn't have any probative value.

2 THE COURT: Well, all evidence is prejudicial to
3 someone. The question is whether or not it is
4 probative and proper -- or extreme prejudice would be
5 a different matter. But certainly the presence of
6 sperm on the pants of the decedents would be relevant
7 evidence.

8 MR. STIDHAM: I don't think the witness can say
9 that with any degree of certainty.

10 THE COURT: I don't have any idea what he is
11 saying. If your objection is that he's unable to
12 testify as to the presence of sperm because of lack of
13 qualifications or because it is not a scientific
14 method that is recognized or a novel or new approach
15 to some scientific method, then maybe you have a valid
16 objection.

17 MR. CROW: It is not so much that the test isn't
18 recognized. I think if he had a proper sample, it
19 could be more valid.

20 THE COURT: That probably goes to the weight of
21 his testimony, and you can cross examine him on the
22 factual basis of any opinion he might render.

23 If he is prepared to testify that he has the
24 scientific knowledge and education in the field of
25 genetic comparisons and coupled with that education,

1 experience and ability he applied normally recognized
2 scientific tests to the submitted sample and based
3 upon his lab findings he is prepared to testify that
4 he has an opinion, I'm going to allow him to testify
5 as to what that opinion is.

6 You can challenge the basis of that for it. You
7 can cross examine him on it and it all goes to the
8 weight, not the admissibility of his testimony.

9 MR. CROW: I understand that position, but with
10 the amount of damage this could do with the jury, if
11 the jury were to believe this considering that he
12 says, "probably indicates, might indicate." That just
13 really concerns me. I don't know if it can be cured
14 on cross examination.

15 THE COURT: If it is couched in the proper terms
16 that he has an opinion based upon some scientific
17 basis and coupled with his education, he will be
18 permitted to draw those conclusions.

19 An opinion is a speculation to begin with.
20 That's the kind of speculation that an expert is
21 qualified and permitted to do.

22 I haven't heard what he's got to say, other than
23 that sketchy outline, whether or not it meets the test
24 of admissible evidence or not.

25 MR. STIDHAM: Your Honor, he's going to testify

1 that there's DNA present on these cuttings from the
2 pants of the victim. He cannot tell for sure if it
3 came from an ape, a gorilla, a baboon or a human. He
4 can't tell whether it came from blood or semen. He
5 says it is likely that it came from sperm. There
6 might have been sperm present, but he doesn't know
7 with any degree of certainty, and we think that is
8 highly prejudicial. If he could come in here and say,
9 "Yes, that is definitely semen," or "Yes, that is
10 definitely sperm" --

11 THE COURT: Well, wait a minute. What is it you
12 are prepared to testify to based upon your experience,
13 education and scientific findings?

14 THE WITNESS: There are a large number of
15 specimens here, the one that we are interested in --
16 there are actually two specimens, Q6 and Q10 which
17 were cuttings from some pants.

18 The initial information that we were given on
19 this was that they were, what I guess would best be
20 phrased as potential seminal stains. That's important
21 in our perspective because it determines how we'll
22 actually perform the extraction, the process of
23 removing the DNA from the material.

24 In any potential sexual assault specimen where
25 the possibility exists for mixed specimens we use what

1 is called a differential extraction. The purpose
2 there is to separate sperm and nonsperm components
3 from other material. So we can try to elucidate which
4 type was attributed to which component.

5 The first thing that is done with any PCR based
6 tests -- there are basically two types of DNA testing
7 -- and this because of the very small amount of
8 material to work with was a PCR based test. And that
9 is a process by which amplification of the material
10 occurs for the analysis. The first portion we do is a
11 quantitation of determining how much material is
12 there. First of all, if there is anything there and,
13 if so, how much is there.

14 With these two specimens as well as with -- we
15 had run a number of specimens, some of which are not
16 affiliated with this particular case in this
17 quantitation, and used that same quantitation for the
18 determination of the amount of DNA.

19 In this particular quantitation with this case
20 those two items show a very small, marginal amount of
21 DNA on the male fractions of those two items of
22 evidence.

23 What that interpretationally would mean is that
24 there was some DNA of human origin. As I explained
25 earlier, when we talk about speciation of DNA or any

1 other material, it is done within certain constraints
2 that are placed upon us by the actual relationship to
3 the organisms themselves.

4 When we talk about human, there is very little
5 differentiation, be it DNA or protein or blood markers
6 or what, between human beings and other higher
7 primates; specifically, gorillas, chimpanzees and
8 great apes.

9 There are vast differences between other
10 organisms. But because of that similarity and the
11 relationship, there are similarities in the DNA that's
12 present. And most of the probes you will find used in
13 DNA testing react both with great apes, chimpanzees as
14 well as humans.

15 What we know is there is DNA present on the
16 specimens that, a small amount, is from a higher
17 primate. I cannot tell you, as you said, that it did
18 not come from a chimpanzee or a gorilla if someone
19 would like to believe that. But what I can tell you
20 is it is from a higher primate.

21 The second thing I can tell you is the two
22 fractions that come from that are what we refer to as
23 epithelial, or nonsperm, and male, or sperm fractions,
24 because they represent in the prototypical sexual
25 assault case the sperm cells from a male contributor

1 and epithelial cells from a female contributor. What
2 we would expect to see is anything other than sperm
3 cells in the epithelial or nonsperm portion.

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

10 THE COURT: Is that a conclusion you could draw
11 based upon your experience, training and education,
12 and is it based upon recognized scientific findings?

13 THE WITNESS: Yes, I believe so.

14 THE COURT: All right, gentlemen, what else is
15 there to object to?

16 MR. STIDHAM: You told us a moment ago before we
17 went on the record that you couldn't say for sure that
18 there were sperm present.

19 THE WITNESS: That's correct, and I can't because
20 I did not personally visually see sperm. In any
21 scientific application the only definitive way that I
22 know of that people will say there are sperm is if
23 they are visually observed under a microscope. I
24 don't feel comfortable saying for sure that there are
25 until I do. The initial screening test done in this

1 case was an acid phosphatase, and that indicates the
2 presence of semen, not necessarily even guaranteeing
3 that there are sperm cells there though.

4 THE COURT: Just the hormone.

5 THE WITNESS: That and the fluid present --
6 that's correct -- the acid phosphatase. What then is
7 done if there are sufficient specimens is to take a
8 portion of that and do a microscopic examination to
9 visually see sperm cells. That is considered
10 conclusive for there being sperm cells. I did not do
11 that. I don't believe it was done by the lab here,
12 once again because of the limited specimen.

13 So I can't tell you conclusively that there are
14 sperm cells there. I can tell you that what we see is
15 indicative of that and indicative of a very small
16 amount of it and after discussing it with Kermit
17 Channel to try to make some interpretation from the
18 results, it appeared to be consistent with their
19 findings as well and the activity that he saw with the
20 acid phosphatase. I cannot give you a definitive
21 statement. All I can tell you is what my
22 interpretation would be from what I've seen.

23 THE COURT: I'm going to allow him to testify.
24 It simply goes to the weight of his testimony, not to
25 its admissibility. You can point all these things out

1 on cross examination.

2 MR. STIDHAM: We want to make sure our objections
3 are noted that we feel this could possibly confuse the
4 jury.

5 THE COURT: That's another question. In what way
6 will his testimony elucidate or benefit or assist the
7 jury?

8 MR. FOGLEMAN: The defendant in his statement
9 described sexual type acts occurring, and this is
10 another thing to corroborate what the defendant said
11 since the defense is alleging a false confession.

12 MR. STIDHAM: Judge, the Medical Examiner said
13 there was no evidence of a sexual assault.

14 MR. FOGLEMAN: He also said he was familiar with
15 literature which indicated that you could have sexual
16 abuse and no findings.

17 THE COURT: I don't think that is what he
18 testified to, that there was no evidence of sexual
19 assault. He testified about the rectum of two of them
20 being dilated --

21 MR. STIDHAM: -- Most likely caused by the water.

22 THE COURT: Again that is a question of
23 interpreting his testimony and arguing to the jury. I
24 don't think he gave an opinion that there was no
25 sexual -- he just said he couldn't tell and didn't

1 find any sperm.

2 MR. CROW: Wasn't any damage.

3 THE COURT: Wasn't any extensive damage to the
4 inside of the rectum. Although he did testify that
5 the mouths of one or two of the boys were torn up on
6 the inside.

7 MR. FOGLEMAN: Their ears were all bruised.

8 MR. STIDHAM: But he said that could have been
9 caused by --

10 THE COURT: Again that's argument. You can
11 interpret that testimony for the jury and argue it
12 either way you choose to. I'm going to allow him to
13 testify. You can point out all the things you just
14 mentioned so I guess it is some relevant evidence that
15 possibly sperm existed in trace amounts on the
16 clothing of the two victims and this is what we call
17 trace evidence.

18 MR. STIDHAM: He can't say there's sperm. He can
19 only say --

20 MR. FOGLEMAN: He said he couldn't positively say
21 there was sperm.

22 THE WITNESS: There are a lot of ways to phrase
23 things. I certainly can -- and this happens in a lot
24 of trials -- different people wanting my words to be
25 phrased in different fashions. The bottom line is,

1 no, I can't positively tell you there are sperm, but
2 that's because I didn't see them. And the only way
3 that I or anyone else I know feels comfortable with
4 saying they are there is to see them, but that doesn't
5 mean that the results don't indicate to me that there
6 could have been sperm cells there because we see DNA
7 where we would see DNA from sperm cells.

8 (RETURN TO OPEN COURT)

9 LISA SAKEVICIUS

10 having been first duly sworn to speak the truth, the whole truth
11 and nothing but the truth, then testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FOGLEMAN:

14 Q Will you please state your name and occupation?

15 A Lisa Sakevicius and I'm a criminalist at the Arkansas State
16 Crime Lab.

17 Q What education, experience and training have you had to
18 qualify you as a criminalist at the Crime Lab?

19 A I have a degree in chemistry from the University of Central
20 Arkansas. I worked as a chemist for a year at the Arkansas
21 Plant Board where I learned to use several instruments. Then I
22 started working at the lab about five and a half years ago.

23 I have been to the accelerant detection course from the
24 FBI. I've had polarized light microscopy courses from the
25 McKrohn Institute and manmade fiber identifications from McKrohn

1 Institute. I've had a hair comparison course from the
2 Association of Forensic Sciences in Selma, Alabama. I have
3 been to various workshops involving trace evidence.

4 MR. FOGLEMAN: Your Honor, we would submit Miss
5 Sakevicius as an expert in the field as a criminalist.

6 THE COURT: Do you want to question her further?

7 MR. STIDHAM: No, your Honor.

8 THE COURT: All right. You may proceed.

9 BY MR. FOGLEMAN:

10 Q In the course of your duties did you come into contact with
11 items from the West Memphis Police Department in their
12 investigation of the murders of Michael Moore, Steve Branch and
13 Chris Byers?

14 A Yes, I did.

15 Q I want to show you what I have marked and introduced as
16 State's Exhibits 82, 81 and 80 and ask if you can identify those
17 items? (HANDING)

18 A (EXAMINING) Yes. These are my initials and the date that I
19 sealed this package and this is the ligature from Michael Moore.

20 (EXAMINING) Again my initials are on here. This is the
21 ligature from Chris Byers.

22 (EXAMINING) Here are my initials again. This is the
23 ligature from Steve Branch.

24 Q In regard to those ligatures -- and I assume the ligatures
25 are the knots in the shoestrings that we're referring to?

1 A Yes.

2 Q What examinations did you make of those items?

3 A I looked at the types of knots present and examined them
4 for hairs and fibers.

5 Q Referring first to Exhibit 80 -- on Exhibit 80 those were
6 the knots on which --

7 A Michael Moore.

8 Q What were your findings as to the knots on Michael Moore?

9 A Two pieces of black shoestring, one each tied between the
10 wrist and leg on the right and left side. The knots on the
11 wrist and leg on the left side were both square knots. The knot
12 on the wrist on the right side was a series of three half
13 hitches. The knot on the left side of the right side was a
14 series of four half hitches.

15 Q On the left side what kind of knots did you have?

16 A Square knots.

17 Q And on the right side what kind of knots?

18 A You had a series of three half hitches and then a series of
19 four half hitches.

20 Q On Exhibit 81 -- if you would refer to that exhibit.

21 A That is from Steve Branch.

22 Q What were your findings as to the knots on Exhibit 81?

23 A Examination of the ligatures revealed a black shoestring on
24 the right side tied in three half hitches with an extra loop
25 around the leg to a single half hitch with a figure eight around

1 the right wrist. The left side consisted of a white shoestring
2 tied in three half hitches around the wrist to three half
3 hitches around the leg.

4 Q So on the left side on the wrist you had three half
5 hitches?

6 A Correct.

7 Q And on the ankle you had three half hitches?

8 A Correct.

9 Q On the right side on the leg you had three half hitches
10 with what?

11 A An extra loop around the right leg.

12 Q On the wrist you had?

13 A A figure eight.

14 Q With one half hitch. Is that right?

15 A Yes, sir.

16 Q Refer to Exhibit 82.

17 A That would be from Chris Byers. Examination of ligatures
18 revealed one black shoestring tied in a double half hitch around
19 the right wrist to a double half hitch around the right leg.

20 The ligature on the left side consisted of a double half
21 hitch around the wrist and leg but was tied with a white
22 shoestring.

23 Q When you say, "a double half hitch," is that the same as
24 two half hitches?

25 A Yes.

1 Q So on Exhibit 82 all of the knots on both wrists and both
2 legs are the same?

3 A Yes.

4 Q And on Exhibit 80, which was Michael Moore, on the left
5 side you had the same kind of knots both on the leg and wrist
6 which were square knots?

7 A Yes, sir.

8 Q Tell me one more time what those were on the right side,
9 please.

10 A On the right side a series of three half hitches on -- I
11 called it the wrist -- and then on the left side four half
12 hitches.

13 Q You lost me there.

14 A I think what I mean is the wrist and the leg.

15 Q You had three half hitches and four half hitches?

16 A Yes.

17 Q And then on Exhibit 81 on the left side you had both the
18 wrist and ankle with three half hitches?

19 A Three half hitches around the wrist and leg.

20 Q You had some half hitches with some differences on the
21 right side, some extra --

22 A Correct.

23 Q You said there is a loop and then a figure eight. What do
24 you mean?

25 A Instead of just being once around, it had been wrapped

1 around twice and then the knot was tied.

2 Q Also in your examination of these ligatures did you find
3 any tissue or what you thought to be tissue?

4 A Yes.

5 Q Where was that found?

6 A I remember some of it was found from the Byers ligature.
7 On Exhibit 718 that would be Byers. There were skin particles
8 removed on the left wrist.

9 Q What did you do with those skin particles?

10 A I gave those to Kermit Channel in our serology section.

11 Q I want to show you what I have introduced as Exhibit 45 and
12 ask if you can identify that? (HANDING)

13 A (EXAMINING) Yes, I can. My laboratory case number, item
14 number and my initials. That is my seal.

15 Q In the course of your duties did you come into contact with
16 that item in the Crime Lab?

17 A Yes, I did.

18 Q I also want to show you State's Exhibits 8 and 44 and ask
19 if you can identify these? (HANDING)

20 A (EXAMINING) Yes. Here's my lab case number, item number
21 and initials and my seal. And here it is on this one.

22 Q What examinations did you make of those items?

23 A I looked at them for hairs and fibers.

24 Q On or about June third, late June third or early June
25 fourth, were you requested to come to West Memphis to

1 participate in a search?

2 A Yes.

3 Q Did you go to a residence in West Memphis identified to you
4 as Damien Echols' residence?

5 A Yes.

6 Q I want to show you Exhibits 85 and 86 and ask if you can
7 identify those two items? (HANDING)

8 A (EXAMINING) Here is our lab case number and my initials.

9 (EXAMINING) Here they are on this item.

10 Q And did you -- where did you come into contact with those
11 items?

12 A E80, which would be State's Exhibit 86, is a blue shirt
13 taken from Damien Echols' residence. Exhibit 85 -- my E79 --
14 that is a blue shirt taken from Damien's residence.

15 Q In the course of your search, were you looking for anything
16 in particular?

17 A Yes. I had a number of fibers that I had seen on the tapes
18 from the clothing of the victims, and I was looking for things
19 to match those.

20 Q Did you also go to a residence identified to you as Jason
21 Baldwin's?

22 A Yes, I did.

23 Q I want to show you what is marked for identification as
24 State's Exhibit 88 and ask if you can identify that? (HANDING)

25 A (EXAMINING) Yes. Here's my case number and my initials.

1 Q Where did you come into contact with that item?

2 A Jason Baldwin's residence.

3 Q In regard to State's Exhibits 45, 44 and 8, did you recover
4 any fibers from those items? If you could, take them one at a
5 time and tell what the item is and what was recovered.

6 A Okay. E2 is a black and white shirt with a square pattern
7 on it.

8 Q Is that Exhibit 44?

9 A Yes.

10 Q What did you recover from that item?

11 A Single red rayon fiber microscopically similar to those
12 used in the construction of E99 was recovered from E2 being
13 Exhibit 88.

14 Q Exhibit 88?

15 A Yes, sir.

16 Q So from Exhibit 44 you recovered a red rayon fiber
17 microscopically similar to Exhibit 88 which is an item from
18 Jason Baldwin's home?

19 A Correct.

20 Q In regard to Exhibit 8 what, if anything, did you recover?

21 A That is my E5. That is a blue and yellow Cub Scout cap. A
22 green polyester fiber microscopically similar to those used in
23 the construction of E79, which is Exhibit 85, was recovered from
24 E5.

25 Q So from the Cub Scout hat you got a fiber that was

1 microscopically similar to Exhibit 85 which was a shirt from
2 Damien Echols?

3 A Correct.

4 Q In regard to Exhibit 44 what did you find?

5 A We have done 44. That is this one.

6 Q Okay, 45.

7 A That's E3. A single green cotton fiber microscopically
8 similar to those used in the construction of E79, again the same
9 Exhibit 85, was recovered from E3 and also a green polyester
10 fiber microscopically similar to those used in the construction
11 of E79 was recovered from E3.

12 Q From Exhibit 45 you found a cotton fiber and a polyester
13 fiber that were microscopically similar to the fibers in Exhibit
14 85?

15 A Correct.

16 Q What is the fiber content of Exhibit 85?

17 A Cotton polyester blend.

18 Q So it's a polycotton?

19 A Yes.

20 Q Describe what secondary transfer is.

21 A Primary transfer would be if I were to touch you and you
22 touch me, and fibers from our items were found cross
23 transferred. If I were you touch you and you were to touch
24 someone else and I were to find fibers from my item on the other
25 person you touched, that would be considered secondary transfer.

1 Q What types of cases do you get secondary transfers? Is
2 that from like clothes laying next to each other or coming into
3 contact with each other and then being transferred again?

4 A Correct.

5 Q So we are not saying that anybody was wearing a red
6 housecoat out at the scene.

7 MR. CROW: Object to leading.

8 THE COURT: Avoid leading.

9 MR. FOGLEMAN: I'll rephrase the question, your
10 Honor. Your Honor, we would offer Exhibits 85, 86 and
11 88.

12 MR. CROW: Subject to our previous objections,
13 your Honor.

14 THE COURT: I don't remember what they were.
15 You'll have to approach the bench.

16 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
17 OUT OF THE HEARING OF THE JURY)

18 MR. CROW: We object to evidence linking only the
19 other two defendants.

20 THE COURT: Overruled.

21 (RETURN TO OPEN COURT)

22 THE COURT: They may be received.

23 (STATE'S EXHIBITS 85, 86 AND 88 ARE RECEIVED IN
24 EVIDENCE)

25 BY MR. FOGLEMAN:

1 Q Just so we're real clear on all this, on the Cub Scout cap,
2 which is State's Exhibit 8, you found a fiber microscopically
3 similar to the fibers in State's Exhibit 85 which is a shirt
4 from Damien Echols' residence?

5 A Correct.

6 Q And then you found a fiber on the white polka-dot shirt,
7 State's Exhibit 44, which was consistent with the fiber from the
8 red housecoat from Jason Baldwin's house?

9 A That's correct.

10 Q And then you found a green polyester fiber on the pair of
11 blue pants labeled State's Exhibit 45 that was microscopically
12 similar to the same shirt from Damien Echols?

13 A Polyester and cotton.

14 Q Two fibers. One cotton, one polyester?

15 A Correct.

16 Q I noted the fibers were what color?

17 A Green.

18 Q And the shirt is blue. Explain that to me.

19 A The color that I see under the microscope isn't necessarily
20 the overall color that it might appear to you. If I have a
21 glass of water, it appears clear but if you look at the ocean,
22 it appears blue. That's the difference in my terminology from
23 what I'm seeing.

24 Q So what exactly are you looking at when you are looking at
25 -- when you're making a fiber comparison?

1 A I look at both of the fibers side by side in a comparison
2 microscope. I examine the color. I look at a property called
3 birefringence. I look at delustrants.

4 I take them to another instrument called a
5 microspectrophotometer. I examine to make sure the dyes are
6 similar. I take them if they are synthetic to another
7 instrument called a fourier transform infrared microscope and
8 examine them there to make sure the polymers are the same.

9 Q So it is not just a matter of looking at them under the
10 microscope and saying they are similar?

11 A Correct.

12 Q In regard to the fiber on the housecoat or fibers in the
13 housecoat that match the housecoat from Jason Baldwin's house
14 and the fiber found on Exhibit 44, which was the black and white
15 shirt, is that a common type fiber that you see in the lab?

16 A I don't see it as often as I do a lot of the other types.

17 CROSS EXAMINATION

18 BY MR. STIDHAM:

19 Q Can you tell the jury what microscopically similar means?

20 A That I cannot distinguish the two. They look the same to
21 me.

22 Q Does that mean it is a definite match or just similar?

23 A That means there are no distinguishable differences between
24 the two fibers.

25 Q Are you able to exclude all other possibilities between the

1 two? In other words does it definitely come from that source
2 because it's similar?

3 A It does not necessarily mean it comes from that source.
4 There could be a number of items containing that same fiber type
5 so we can never say it came from a particular source.

6 Q So we are not talking about exactness then, are we.

7 A It can be exactness in that the fibers are alike, but you
8 cannot say that it came from a particular source.

9 Q You cannot exclude all other sources?

10 A Correct.

11 Q Were any of these fibers you just mentioned -- were they
12 similar to anything else that you looked into or compared?

13 A These that we have just talked about, no.

14 Q Have you found any fibers at all that are similar to any
15 fibers that are related to Mr. Misskelley?

16 A No.

17 Q How many fibers have you examined in this case?

18 A Hundreds.

19 Q You haven't found any fiber that was microscopically
20 similar to Jessie Misskelley?

21 A No items from his household, no.

22 Q You have also analyzed hairs in this case?

23 A Yes, I have looked at hairs.

24 Q How many hairs have you looked at, would you say?

25 A I have no idea.

1500

1 Q Hundreds like the fibers?

2 A If you include the standards, yes.

3 Q Have you compared Jessie Misskelley's hairs to these known
4 hairs?

5 A Yes.

6 Q Have you found any similarities?

7 A No.

8 Q None at all?

9 A No.

10 MR. STIDHAM: Could we have a short recess?

11 THE COURT: Ladies and gentlemen, with the usual
12 admonition not to discuss the case among yourselves or
13 with anyone, you may stand in recess for about ten
14 minutes.

15 (RECESS)

16 (RETURN TO OPEN COURT)

17 CONTINUED CROSS EXAMINATION

18 BY MR. CROW:

19 Q Ma'am, I'm Greg Crow. I'm Mr. Stidham's partner. I'm
20 going to ask you a couple more questions. I believe you told
21 Mr. Stidham before there were not any hair or fiber matches for
22 Mr. Misskelley?

23 A Correct.

24 Q In covering the possibility of things coming from more than
25 one source, I believe you told Mr. Stidham it is possible that

1 fibers come from two different sources and you can't say that
2 just because there's a match that the fiber comes from this
3 particular source. Is that correct?

4 A That's correct.

5 Q In this particular case wasn't there three red fibers that
6 came from three different sources that at one time were or --
7 were found to be a match with some of Mr. Echols' clothing but
8 also turned out to be a match with Melissa Byers' clothing?

9 A Correct.

10 Q So were --

11 A Excuse me. Let me refer to that report. (EXAMINING) I
12 believe the red fibers came from the Moore household.

13 Q Oh, the Moore. I'm sorry. In any event that were certain
14 fibers that were initially -- or did match fibers -- fibers from
15 the crime scene matched something found from Damien Echols'
16 house but also ended up matching something from the Moore home?

17 A That's correct.

18 REDIRECT EXAMINATION

19 BY MR. FOGLEMAN:

20 Q So those fibers could have come from either source?

21 A That's correct.

22 Q Those were cotton fibers?

23 A Yes, they were.

24 Q Are cotton fibers more common?

25 A They are the most common type of fiber we work with.

1 Q What is the effect as far as your ability to find hair and
2 fibers on something being in water?

3 A It is very detrimental.

4 Q Mr. Stidham asked you a question about you had looked at
5 hundreds of hairs. I think you said something about including
6 -- what did you say?

7 A Including standards. The known samples.

8 Q When you say, "known samples," what do you mean by known
9 samples?

10 A The pulled samples from the different individuals labeled
11 as having come from a specific person.

12 Q A family member's hair or a potential suspect's hair?

13 A Correct.

14 Q Besides the known or standard samples and the hairs that
15 you would associate with any of the three victims, approximately
16 how many hairs did you have that you would call questioned
17 hairs?

18 A Very few.

19 RECROSS EXAMINATION

20 BY MR. STIDHAM:

21 Q What do you mean by a questioned hair?

22 A A questioned hair is a hair that is recovered off of
23 clothing that I have to determine its possible source.

24 Q Isn't it true that there was a Negroid hair found on the
25 victim Byers or was found on the body or something that was

1 covering the body?

2 A I think that was off of a sheet used to cover his body.

3 Q To your knowledge, are any of the defendants black?

4 A No.

5 REDIRECT EXAMINATION

6 BY MR. FOGLEMAN:

7 Q What was the nature of the hair you found?

8 A A single Negroid hair fragment recovered from FP10, which
9 is case number 5718, which belongs with Byers.

10 Q What was FP10?

11 A I believe it was a sheet covering his body.

12 Q Out of all the hairs you found, was that the only Negroid
13 hair?

14 A I believe so.

15 Q That wasn't found on any of the kids' clothing or anything
16 else. It was found on a sheet that had been placed on or over
17 or under the victim?

18 A Correct.

19 Q You don't know whether any of the Negro --

20 MR. CROW: Objection to leading.

21 BY MR. FOGLEMAN:

22 Q Do you know whether or not any of the black police officers
23 of the City of West Memphis were involved with that?

24 A I don't know.

25 Q You're aware that West Memphis police officers --

1 MR. STIDHAM: That calls for speculation. The
2 hair was found on the sheet that the body was wrapped
3 in. That is pure speculation.

4 THE COURT: I'm not following your objection.

5 MR. FOGLEMAN: I will withdraw the question.

6 (WITNESS EXCUSED)

7 RALPH TURBYFILL

8 having been first duly sworn to speak the truth, the whole truth
9 and nothing but the truth, then testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FOGLEMAN:

12 Q Will you please state your name and occupation?

13 A My name is Ralph Turbyfill. The last name is spelled
14 T-U-R-B-Y-F-I-L-L. I'm the chief latent fingerprints examiner
15 with the Arkansas State Crime Lab in Little Rock.

16 Q In the course of your duties with the Crime Lab did you
17 examine a number of items for the West Memphis Police Department
18 in the case of -- involving the deaths of Michael Moore, Steve
19 Branch and Chris Byers?

20 A Yes, I did.

21 Q Explain to the jury what a latent fingerprint is.

22 A The palmar surface of the hand is covered with friction
23 skin which is made up of sweat pores. On the fingerprints
24 there's different patterns, patterns formed like arches, loops
25 and whirls. Those patterns are formed of those sweat pores, and

1 then theoretically a bead of perspiration is sitting on top of
2 each of those pores at any given time.

3 When a hand comes in contact with a porous or nonporous
4 surface, a reproduction of those friction skin ridges are
5 deposited on that surface, and they are invisible.

6 That is why they are called latent. Latent is a Latin word
7 meaning invisible or hidden. And something has to be done like
8 powder applied to it or a chemical applied to that surface to
9 make that fingerprint visible. That is called a latent
10 fingerprint.

11 Q What is a fingerprint made up of?

12 A Ninety percent water and other body chemicals such as oils,
13 salts and amino acids.

14 Q In examining -- well, let me ask you this: One of the
15 items you examined -- I'm going to show you State's Exhibit 7
16 and see if you recognize that? (HANDING)

17 A (EXAMINING) Yes. It is a brown bag bearing tape that's got
18 my initials on it, bearing the lab case number. May I open it?

19 Q Yes.

20 A (OPENING) It is a toy sheriff's star. Again, my initials
21 are on the seal inside the smaller envelope. Small plastic
22 reflector, painted, and the other half of the same reflector
23 that has been painted green with red markings.

24 Q You examined those items for fingerprints?

25 A All three of these items were examined by me for latent

1 fingerprints using -- the first process I used would be to look
2 at it to see if I could see any visible prints on it.

3 I was unable to see any visible prints on these items so
4 they were placed into a tank in which Super Glue was heated to
5 develop fingerprints on it. Super Glue is the one of the
6 methods we use on hard evidence such as glass, plastic and
7 metal. The way it works is the Super Glue is heated. It turns
8 to gas and the gas attaches itself to the residue left behind by
9 fingerprints turning those fingerprints white. That was done in
10 these cases. However, no fingerprints of value for
11 identification were detected or no latent fingerprints were
12 visible.

13 Q These items were taken from the pants of one of the
14 victims?

15 A They were submitted to me in this envelope.

16 Q Where did you get it from?

17 A By the Evidence Receiving Section. They were submitted by
18 the Medical Examiner Section.

19 MR. FOGLEMAN: We would offer State's Exhibit 7.

20 MR. STIDHAM: No objection.

21 THE COURT: It may be received without objection.

22 (STATE'S EXHIBIT 7 IS RECEIVED IN EVIDENCE)

23 BY MR. FOGLEMAN:

24 Q Did you examine a number of other items in this case for
25 latent fingerprints?

1 A Yes, I did. On several occasions I received evidence.

2 Q Were you ever able to find any fingerprints suitable for
3 identification on any of the items submitted?

4 A No fingerprints of value for identification on any of the
5 items.

6 Q What would the effect of items being in water have on your
7 ability to find fingerprints?

8 A It would be very detrimental. The two most -- things that
9 are detrimental to fingerprints are -- since they are 98 percent
10 water to start with -- is water and fire. Water would
11 definitely affect the development of any prints.

12 Q I want to show you what has been introduced as State's
13 Exhibit 53. Do you recognize that? (HANDING)

14 A (EXAMINING) Yes, I do.

15 Q Did you also examine that item?

16 A I examined this item. This item was processed using a
17 chemical called ninhydrin, N-I-N-H-Y-D-R-I-N, which is an amino
18 acid indicator on paper, cardboard and unpainted wood. That
19 chemical is used and it turns the fingerprint a light purple or
20 violet. There are indications that amino acids are present on
21 this. However, there are no latent fingerprints of value for
22 identification. My initials and the case number appear on the
23 stick.

24 Q Again the same thing on the stick. Would water have an
25 effect?

1 A Absolutely. It would dissolve or dilute the fingerprints.

2 (WITNESS EXCUSED)

3 LISA SAKEVICIUS

4 having been previously duly sworn to speak the truth, the whole
5 truth and nothing but the truth, then testified as follows:

6 REDIRECT EXAMINATION

7 BY MR. FOGLEMAN:

8 Q I failed to ask you a question. When you were here in West
9 Memphis participating in the execution of the search warrants,
10 did you go in the trailer of Jason Baldwin?

11 A Yes.

12 Q Describe for the jury the defendant's room, what you
13 observed there.

14 MR. STIDHAM: Your Honor, we object. May we
15 approach the bench?

16 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
17 OUT OF THE HEARING OF THE JURY)

18 MR. STIDHAM: What relevance could that possibly
19 have?

20 THE COURT: I don't know.

21 MR. FOGLEMAN: Your Honor, it goes to that cult
22 stuff. He had all kinds of paintings on the wall.
23 Things of skulls and daggers and --

24 THE COURT: In thinking about the cult stuff I
25 might have restricted the State too much because they

1 can prove motivation, and all of those things go to
2 motivation. And all the facts and circumstances of
3 the other event might have been admissible to
4 establish motive and to the extent that -- what detail
5 are you going to go to in letting her describe this?

6 MR. DAVIS: She described there were paintings
7 and pictures in the room of dragons and it gave her a
8 very uneasy feeling about the entire way -- the room
9 was full of pictures and magazines she interpreted to
10 be satanic type.

11 MR. CROW: Judge --

12 MR. FOGLEMAN: She's not going to make an
13 interpretation.

14 MR. CROW: Okay.

15 MR. STIDHAM: It may be relevant against Jason,
16 but it is certainly not relevant against Mr.
17 Misskelley.

18 MR. CROW: We object to, for one thing, showing
19 anything about Mr. Misskelley going to some kind of
20 cult activity.

21 THE COURT: The cult activities in my opinion are
22 admissible going to possible motivation, intent.

23 MR. CROW: Nothing in the statement says anything
24 about --

25 MR. STIDHAM: No relevancy.

1578

1 THE COURT: If it is Jessie Misskelley's
2 apartment, I'm going to let her describe it. If it is
3 the other two boys, let's let it go.

4 (RETURN TO OPEN COURT)

5 (WITNESS EXCUSED)

6 KERMIT CHANNEL

7 having been first duly sworn to speak the truth, the whole truth
8 and nothing but the truth, then testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FOGLEMAN:

11 Q Will you please state your name and occupation?

12 A Kermit Channel. I'm a forensic serologist for the Arkansas
13 State Crime Lab.

14 Q Would you state your education, training, background and
15 experience to qualify you as a serologist at the Crime Lab?

16 A I received my bachelor's degree in biology and a minor in
17 chemistry from Elon College in North Carolina and I also
18 received forensic serology training from the FBI academy at
19 Quantico, Virginia.

20 MR. FOGLEMAN: Your Honor, we would submit Mr.
21 Channel as an expert in the field of serology.

22 MR. STIDHAM: No objection, your Honor.

23 THE COURT: You may proceed.

24 BY MR. FOGLEMAN:

25 Q Mr. Channel, in the course of your duties with the State

1 Crime Lab did you examine some items submitted from the West
2 Memphis Police Department in the case of the victims, Michael
3 Moore, Steve Branch and Chris Byers?

4 A Yes, I did.

5 Q As a part of that, did you receive from Lisa Sakevicius
6 some possible tissue recovered from ligatures?

7 A Yes, I did.

8 Q Did she just submit the tissue or the ligatures to you?

9 A I received the tissue from her.

10 Q What did you do with that tissue?

11 A I received the tissue on May 14th and I submitted it to
12 Genetic Designs in Greensboro, North Carolina.

13 Q What is Genetic Designs?

14 A It is a forensic DNA lab.

15 Q Did you have some identifying number on that when you
16 submitted it to Genetic Designs?

17 A Yes, I did. The items submitted was listed as my Q4,
18 possible tissue recovered from the ligature of Chris Byers, and
19 also Q39, from James Michael Moore.

20 Q Did you also examine a number of items found purported to
21 be of the victims?

22 A Yes, I did.

23 Q Did you examine State's Exhibits 45 and 48, or do you
24 recognize those? (HANDING)

25 A (EXAMINING) Yes, I do. It has my serology case number and

1 my questioned item numbers and initials on each of the bags.

2 Q Before we get to those, did you also examine the other
3 items of clothing of the victims?

4 A Yes, I did.

5 Q Did you find anything of value on those other items?

6 A No, I did not.

7 Q Specifically referring to Exhibits 45 and 48, what type of
8 tests did you run on those items?

9 A I examined these items for the presence of blood and semen.
10 I did not find any blood on each of the items. They were my Q6,
11 which were some blue jeans, and also Q10, another pair of pants,
12 were very dirty and muddy.

13 I employed a laser technique, which is an alternate light
14 source, to help determine if there were any stains I could not
15 see with the naked eye.

16 I did find some questioned stains. I further analyzed
17 these stains in a microscope to see if I could identify any
18 sperm cells present. I could not.

19 I went also and tried to determine whether there were any
20 enzymes present, specifically P30 prostatic antigen.

21 Q What do you mean by that?

22 A Prostatic antigen is a protein that is specific to the male
23 prostate that is found in semen samples.

24 I ran a test on these items for that, and I got a positive
25 reaction. However, in the course of my work I also ran control

1 samples which also gave me a similar reaction.

2 Based on that, I concluded there could possibly be
3 something in the material or in the mud that was interfering
4 with my testing.

5 Therefore, I submitted those items also to Genetic Design
6 where they could employ DNA testing which is a more sensitive
7 technique.

8 Q On these two items, Exhibits 45 and 48, are two pair of
9 pants. Is that right?

10 A That's correct.

11 Q You ran basically two tests. Well, wait a minute. Let me
12 back up. You ran a test for blood?

13 A I employed a screening test for the presence of blood.

14 Q Did that screening test indicate the presence of any blood
15 on either of the pair of pants?

16 A No, it did not.

17 Q Then you ran two screening tests for the presence of semen?

18 A That's correct.

19 Q What were the results on those tests?

20 A Actually, the first test was a laser technique. Based on
21 the condition of the garments, they were too dirty to be able to
22 visualize any type of stains with the unaided eye.

23 What the laser does is -- it picks up -- it's an alternate
24 light source. It picks up on any material that might glow. For
25 instance, there are certain items that will glow, and semen is

1 one of them. It is, however, just a basic screening test which
2 allowed me to try to first identify the stain and secondly to
3 try to continue on with my analysis.

4 The second part of the analysis is an acid phosphatase
5 test, which is again a screening test to see if the item that I
6 am testing possibly can contain semen, and that test was also
7 positive.

8 The third step is to try to visualize to see if you can see
9 any spermatozoa in the stain that I identified.

10 Q And you could not do that?

11 A That's correct.

12 Q How did you label those two items that you submitted to
13 Genetic Design -- are these the whole pants?

14 A Cuttings from the pants.

15 Q How did you label those cuttings?

16 A They're labeled as Q6 and Q10.

17 Q In the course of your duties were you requested to come to
18 West Memphis on or about June third, 1993, to participate in a
19 search?

20 A Yes.

21 Q Did you participate in the search of the home of Damien
22 Echols?

23 A Yes, I did.

24 Q I want to show you what I have marked for identification
25 purposes as State's Exhibit 83 and ask if you can identify that?

1 (HANDING)

2 A (EXAMINING) Yes, I can. It is marked as E84, which is a
3 book that came from one of the bedrooms.

4 MR. FOGLEMAN: Your Honor, we would offer State's
5 Exhibit 83.

6 MR. STIDHAM: Your Honor, may we approach the
7 bench?

8 (THE FOLLOWING CONFERENCE WAS HELD AT THE BENCH
9 OUT OF THE HEARING OF THE JURY)

10 THE COURT: What is it?

11 MR. FOGLEMAN: Specifically, it's a satanic book.

12 MR. STIDHAM: Can we go to chambers before he
13 opens that up?

14 THE COURT: Yes.

15 (RETURN TO OPEN COURT)

16 THE COURT: All right, ladies and gentlemen, it's
17 time for another recess. So with the admonition not
18 to discuss the case, you may stand in recess for ten
19 to fifteen minutes.

20 (THE FOLLOWING CONFERENCE TOOK PLACE IN CHAMBERS
21 OUT OF THE PRESENCE AND HEARING OF THE JURY)

22 THE COURT: Let the record reflect that is a
23 hearing out of the presence of the jury.

24 MR. STIDHAM: Your Honor, our objection is going
25 to be similar to the objection your Honor sustained

1 earlier with regard to the stuff found in Jason's
2 trailer. That may be relevant entirely against Mr.
3 Echols at his trial, but it certainly isn't relevant
4 against Mr. Misskelley in this trial. They have been
5 severed, and I don't see the relevancy.

6 Even if it is relevant, which we submit that it
7 is not, the prejudicial value is so high because of
8 the cult or satanic type stuff.

9 That came from the library, but they are going to
10 introduce it as being some kind of satanic cult
11 thingamabob. Basically, they may have been proving a
12 lot of things against Jason and Damien, but they still
13 have not yet proven anything against Mr. Misskelley.
14 And that doesn't corroborate anything that he might
15 have had something to do with these homicides.

16 MR. FOGLEMAN: But, your Honor, it corroborates
17 his confession. He tells the officers about Damien's
18 involvement and stuff and his own involvement in it,
19 and this corroborates Damien's involvement which
20 corroborates his own statement. He says Damien's
21 involved in it. This corroborates it.

22 MR. CROW: For one thing, your Honor, this book
23 is not about any kind of satanic stuff.

24 MR. FOGLEMAN: It's got stuff about pacts with
25 the devil in there.

1 MR. CROW: Obviously in the three minutes I have
2 been looking at this book, I haven't read the whole
3 book. It talks about -- it appears to be about
4 witchcraft which is --

5 MR. STIDHAM: Judge, they had this big march in
6 Jonesboro to tell people the difference between being
7 a witch and being a satanist so -- Judge, there's so
8 much prejudice attached to that it wouldn't be fair to
9 allow the jury to see that because they might unfairly
10 demise [sic] that Mr. Misskelley might be --

11 MR. CROW: It is not a book found at Mr.
12 Misskelley's house, your Honor.

13 MR. DAVIS: Judge, the allegation is that Mr.
14 Misskelley acted in concert and was an accomplice to
15 and acted with Damien Echols, and it's certainly a
16 part of the State's case that the motivation for this
17 act came about as a result of their cult related
18 activities which he in fact mentioned in his
19 statement, and if there are books in Damien Echols'
20 house that go to indicate rather strongly in this
21 instance that he was involved in cult related
22 activity, it would be analogous to a situation if we
23 had charged somebody with a bombing. If there are
24 books in the house that indicate how to build a bomb
25 and how to put a bomb to use, then that certainly

1 would be relevant and admissible if a person is
2 charged in a bombing.

3 In this case the State's position is that they
4 are charged with murder, and the State's position is
5 that it is a cult related murder, and one of the three
6 co-defendants is found with books in his house that
7 relate to cult activity and satanic rituals. And we
8 don't see how much more relevant --

9 MR. STIDHAM: Judge, if he's going to use that
10 analogy, where is the chapter on killing
11 eight-year-olds? This is a homicide case not a cult
12 case. And let's assume that he did eat a dog one
13 time. What does that have to do with --

14 MR. FOGLEMAN: Jessie is the one that brought it
15 up --

16 MR. STIDHAM: -- there's nothing in that
17 statement that says anything whatsoever that the
18 killings had any motivation toward satanism.

19 THE COURT: I remember some remark in the
20 statement that Jessie made to the effect that he knew
21 what they were going to do and that either Branch
22 [sic] or Echols when he had talked to him about
23 meeting him that day said something to the effect
24 that, "We are going to go out and beat up some boys."

25 MR. STIDHAM: That's not a homicide, your Honor.

1 MR. FOGLEMAN: Your Honor, he also said at one of
2 these meetings that a photograph -- at one of these
3 cult meetings -- that a photograph of the boys was
4 passed around, and then the boys end up dead. I think
5 that shows a relationship --

6 THE COURT: Your theory is that it's admissible
7 going to motivation, scheme, intent and design on the
8 part of the three defendants collectively --

9 MR. FOGLEMAN: Yes, sir.

10 THE COURT: And, therefore, whatever evidence
11 that relates to the scheme and purpose and intent on
12 the premeditation would relate also to Misskelley. Is
13 that what you're saying?

14 MR. FOGLEMAN: Yes, sir.

15 MR. STIDHAM: Your Honor, those two defendants
16 aren't on trial. Mr. Misskelley is.

17 THE COURT: He was severed and only because he
18 made a cross-implicating statement that implicated the
19 other two defendants. His statement wouldn't have
20 been admissible to the other two guys so that's why
21 he's got a separate trial.

22 MR. STIDHAM: Your Honor, let's assume for a
23 minute -- and there has been testimony to this effect
24 -- that there were rumors going around West Memphis
25 that Damien Echols was involved or is a witch or is

1 involved in a cult. That doesn't necessarily mean
2 that Jessie is, and it doesn't necessarily mean that
3 anything found in Damien's house or Jason's house
4 regarding satanic stuff is --

5 THE COURT: The whole thing is, is the cult
6 business relevant, and I believe it is relevant
7 because it goes to motivation, it goes to corroborate
8 the statement that he made that they were involved in
9 some kind of cult or club or gang or whatever you want
10 to characterize it, and that those activities involved
11 doing some of the things he testified to, like eating
12 dog leg and having orgies and things of that nature.

13 MR. STIDHAM: Is there anything in this book,
14 John or Brent, other than something about witchcraft
15 that would tend to relate this to the homicide?

16 MR. FOGLEMAN: I haven't read every page.
17 There's some stuff in there about pacts with the devil
18 and things like that.

19 MR. CROW: If you're talking about forced
20 confessions -- it's talking about courts, I think, in
21 the Dark Ages -- what they did --

22 MR. FOGLEMAN: If Mr. Stidham wants to argue from
23 that book, your Honor --

24 THE COURT: How much more evidence like this are
25 you going to introduce?

1 MR. FOGLEMAN: Your Honor, probably -- that's the
2 only other physical item. There will be a witness who
3 will testify about Damien saying -- the one we talked
4 about before about, "I did it."

5 THE COURT: You are raising an 804 objection to
6 this and the other testimony.

7 MR. CROW: Yes.

8 THE COURT: If you hadn't come on so hard in your
9 defense about it being a false confession, I might
10 have been persuaded to keep some of that out, but to
11 me you've opened the door to this kind of testimony
12 coming in to show that the confession was in fact
13 based upon circumstances that existed.

14 MR. CROW: We acknowledge that Damien's weird.

15 THE COURT: That is not the issue.

16 MR. STIDHAM: If Jessie in his statement would
17 have said this was a cult killing where we went out
18 there and built a fire and killed these little kids as
19 part of a ritualistic situation, that might be
20 different. But there is a dichotomy between the two
21 things.

22 THE COURT: The question is not what was said
23 exactly but what reasonable inferences or relationship
24 a jury could draw from what was said. They could
25 conclude that this killing was based upon a cult

1 ritual based upon his statement, and that would be
2 motivation and intent, design, scheme, premeditation,
3 all of those things. And from that kind of testimony
4 a jury could conclude that that was what occurred.
5 I'm going to let them put it in.

6 MR. CROW: Note our objection.

7 (RETURN TO OPEN COURT)

8 CONTINUED DIRECT EXAMINATION

9 BY MR. FOGLEMAN:

10 Q Referring again to State's Exhibit 83, where did you locate
11 this item?

12 A It was in the first bedroom. There was a chest or trunk of
13 some sort. If I recall, it was on top of that.

14 MR. FOGLEMAN: We offer State's Exhibit 83.

15 THE COURT: It may be received.

16 (STATE'S EXHIBIT 83 IS RECEIVED IN EVIDENCE)

17 BY MR. FOGLEMAN:

18 Q What effect, if any, would the victims being submersed in
19 water have on the possibility of finding semen in the oral
20 cavity?

21 A Even in the best of circumstances and even regular sexual
22 assault cases you rarely find semen in the oral cavity. I would
23 expect that being submerged in the water the chances of semen
24 surviving in any orifice would be greatly diminished.

25 Q Did you say any orifice?

1 A That's correct.

2 Q Besides the mouth, what were you talking about?

3 A The mouth or the rectum.

4 CROSS EXAMINATION

5 BY MR. STIDHAM:

6 Q On State's Exhibit 45 and 48, you found no blood and no
7 sperm. Is that correct?

8 A That's correct.

9 Q This is the book you found at Damien's?

10 A That's correct.

11 Q Do you know where it came from?

12 A (EXAMINING) Inscription here is, "Crittenden County
13 Library."

14 (WITNESS EXCUSED)

15 MICHAEL DEGUGLIELMO

16 having been first duly sworn to speak the truth, the whole truth
17 and nothing but the truth, then testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FOGLEMAN:

20 Q Will you please state your name and spell your last name?

21 A Michael DeGuglielmo, D-E-G-U-G-L-I-E-L-M-O.

22 Q What is your occupation?

23 A I'm employed as the director of forensic analysis for
24 Genetic Design.

25 Q What is Genetic Design?

1 A Genetic Design is a genetic testing company that
2 specializes in human identification. We test in three
3 particular areas. My forensic lab does basically criminal case
4 work such as this. A paternity lab which handles cases of
5 disputed parentage, both private and for governmental agencies,
6 and a bone marrow tissue typing lab for bone marrow transplants.

7 Q What education, training, experience and background do you
8 have to qualify you in this field?

9 A Bachelor of Science degree in biology, post baccalaureate
10 studies in biology and chemistry, Master of Science degree in
11 microbiology and genetics, continuing education in forensic DNA
12 analysis, radioisotope techniques, and statistical
13 interpretations, as well as continuing education through
14 numerous forensic agencies and organizations such as the
15 American Academy of Forensic Sciences, the FBI lab in Quantico,
16 and some of the regional forensic associations as well.

17 MR. FOGLEMAN: We would submit the witness as an
18 expert.

19 MR. STIDHAM: No objection.

20 THE COURT: You may proceed.

21 BY MR. FOGLEMAN:

22 Q In the course of your work with Genetic Design, did your
23 lab receive certain items from the Arkansas Crime Lab?

24 A Yes, sir, we did.

25 Q Were these in relation to the case involving James Michael

1 Moore, Steve Branch and Chris Byers?

2 A Yes, sir.

3 Q And specifically did you receive certain possible tissue
4 recovered from ligatures?

5 A Yes, sir.

6 Q And how were those items labeled upon receipt?

7 A There were two items listed as Q4, "possible tissue
8 recovered from ligature from Chris Byers," and Q39, "possible
9 tissue recovered from ligature from James Michael Moore."

10 Q Did you also receive some cuttings from some pants?

11 A Yes, sir.

12 Q How were those items labeled?

13 A They were labeled as Q6 "parentheses 2S parentheses,
14 cuttings from blue jeans questioned stain," and item Q10,
15 "parentheses 2S parentheses questioned stain" and item Q10,
16 "parentheses 1S parentheses cuttings from blue jeans questioned
17 stain."

18 Q In regard to the possible tissue recovered from the
19 ligatures, what tests were run on these items?

20 A Our lab does DNA analysis in all the cases that we handle.
21 There are essentially two types of DNA testing, traditional DNA
22 testing which has been done for quite some time is referred to
23 as a restriction fragment length polymorphism, or RFLP.

24 The second type of DNA testing is based upon a technique
25 called plenorase chain reaction, or PCR. The initial type of

1 testing requires a substantive quantity of DNA.

2 Q What does that mean?

3 A Well, I can tell you typically we're targeting
4 approximately four hundred nanograms of DNA.

5 Q What does that mean?

6 A A nanogram is a metric measurement used in a lot of
7 scientific discussion. The best way to explain it to you if you
8 take a dime, a dime weighs approximately one gram and a nanogram
9 is one billionth of a gram. So that's the amount of DNA that we
10 would be looking for in the actual processing.

11 While four hundred nanograms is not a lot, really, it is a
12 substantive amount that from some items of evidence in -- well,
13 in cases where there's evidence other than just specimens taken
14 from parties for control, it is difficult to obtain that much
15 DNA.

16 With PCR based testing, the sensitivity is many times below
17 one nanogram and so we're able to do testing where we couldn't
18 do it with the RFLP based testing.

19 For this particular case, the analysis we did was PCR based
20 testing because of the amount of material we had to work with.

21 Q Is that because it is more sensitive?

22 A Yes, sir.

23 Q What were the results on this Q4 and Q39, the possible
24 tissue from ligatures?

25 A In those particular items we were not able to detect any

1 DNA from the isolation. When we initially begin a test, the
2 first thing that we do is to go through whatever the material is
3 -- if it is tissue or blood -- and to remove the DNA from it so
4 we can work with it.

5 Initially we go through and we quantitate that to determine
6 how much DNA is present if it's there. We were not able to
7 recover and detect any DNA from those two items, and
8 subsequently the testing yielded no results as well.

9 Q What are the reasons for the inability to get DNA from
10 these possible tissue specimens?

11 A It can be one of several things. First of all, tissue
12 specimens even more so than bloodstains or seminal stains tend
13 to degrade, in other words, decompose and break down. The
14 reason for that -- ah, fluids that make stains dry and when they
15 dry, they are fairly well preserved and they can last for a
16 longer period of time. But tissue or any biological material
17 that is not preserved in some way will break down.

18 Tissue specimens that you're going to analyze generally are
19 best if they are frozen because that prevents them from
20 decomposing. When that decomposition occurs, the DNA breaks
21 apart and becomes in very small pieces so it is very difficult
22 if not impossible to test it.

23 The other possibility is these were very small samples, and
24 there may have been too little there to have recovered from for
25 the testing anyway.

1 Q So despite your best efforts you were unable to get any DNA
2 from those items.

3 A That's right.

4 Q In regard to the cuttings from the pants in Q6 and Q10 what
5 type of analysis was made and what were the results?

6 A All of the items that were submitted in this particular
7 case were analyzed using the same particular test. It's a PCR
8 based test called HLA DQ Alpha. The HLA stands for human
9 leucocyte antigen. It's a gene that is present in our bodies in
10 what is called a histocompatibility complex. It basically
11 recognizes self. It is what is responsible for tissue rejection
12 in transplants and for tissue typing matches. The particular
13 marker we are looking at is the D gene and a subset of that
14 called DQ Alpha.

15 In this particular case we did isolate a small amount of
16 DNA from the two questioned cuttings from the blue jeans. In
17 the initial information we were given from the Crime Lab there
18 was a possibility that these could be either mixed stains or
19 potential seminal stains.

20 With any evidence involving a possible sexual assault, we
21 use what's referred to as a differential extraction. And the
22 purpose there is to separate sperm cells from any other material
23 that might be there so we could match them to the appropriate
24 donors if there were two individuals comprising a mixed stain.

25 We refer to those as the epithelial, or nonsperm portion,

1 and the sperm, or male portion, of the sample that we have. The
2 initial step, the quantitation in this case, showed a very small
3 amount of DNA basically right at a marginal level of detection
4 for the two sperm fractions, that being items Q6 and Q10, and we
5 detected no DNA present from the nonsperm or epithelial
6 portions.

7 The physical HLA DQ Alpha analysis itself, though, there
8 was not enough material for us to get a result or the result did
9 not -- the testing did not appropriately amplify, possibly
10 because of an inhibitor. Unfortunately, blue jeans many times
11 do not provide the best substrate. There are numerous
12 references to this in literature. And it's most likely because
13 of some of the sizings or dyes that are used in producing them.
14 There's no hard and fast rule, but just some particular pairs of
15 blue jeans will not allow us to get an amplification so that we
16 can obtain results from it.

17 Q From all of that, what can we conclude about the source of
18 the DNA or probable source of the DNA in the two cuttings from
19 these pants?

20 A What I know from those two particular items, is that we did
21 obtain a small amount of DNA, basically a threshold amount for
22 our testing. The testing that we use is specific for human or
23 higher primate. By that I mean there is some cross reactivity
24 between higher primates as far as the DNA sequences. Human
25 beings, gorillas, chimpanzees and great apes will have some

1 similarity in the actual DNA sequence. Because of that, they
2 are not just human specific, but we know that the DNA that we
3 detected is from the source of a higher primate.

4 The other thing is that the small amounts of DNA we
5 detected were present in the male or sperm portions of the
6 extraction which would be indicative of the DNA having come from
7 a sperm origin.

8 CROSS EXAMINATION

9 BY MR. STIDHAM:

10 Q Those are a lot of big words, but what I gathered was that
11 you're talking about possibilities. You cannot say for certain
12 that there were sperm stains on these clothes, can you?

13 A No, sir. As we discussed earlier, in forensic science the
14 only way that people will definitively say, to my knowledge,
15 that there are sperm there is if they visually observe them
16 under a microscope. And with a very limited specimen, most of
17 the crime labs and our lab as well generally will not consume
18 material in order to do that.

19 We know that the extractions will separate male and female
20 components, and we also know that the material we're looking at
21 has to be human specific or higher primate specific to obtain a
22 result.

23 Generally speaking, that is the way the testing is handled.

24 Q Did you see any sperm?

25 A No, sir. We did not do a microscopic. We did not want to

1 consume any of the material.

2 (WITNESS EXCUSED)

3 MR. FOGLEMAN: Your Honor, that is all the
4 witnesses we have available today. We tried at noon
5 to contact some witnesses to get them here but were
6 unable to do so. So we would request a recess until
7 Monday.

8 THE COURT: All right.

9 MR. FOGLEMAN: Your Honor, we have agreed to
10 stipulate that the sunset on May 5th was at 7:49 P.M.

11 THE COURT: All right, ladies and gentlemen, a
12 stipulation is an agreed fact between the parties that
13 you may consider in evidence.

14 We're going to take our weekend adjournment at
15 this time. So with the usual admonition not to
16 discuss the case -- and of course this will be a
17 weekend recess -- we'll be recessing until Monday
18 morning at 9:30.

19 You are again reminded that there will be media
20 coverage, and you are not to view, listen to or read
21 that coverage or let anyone discuss it with you. In
22 fact it is not likely you will make any independent
23 investigation on your own this far from Crittenden
24 County, but you're not to do that as well.

25 With those reminders and the usual admonition of

IN THE CIRCUIT COURT OF CLAY COUNTY, ARKANSAS
WESTERN DISTRICT
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR-93-47

JESSIE LLOYD MISSKELLEY, JR.

DEFENDANT

PRETRIAL AND TRIAL PROCEEDINGS

CORNING, ARKANSAS

VOLUME 6

APPEARANCES

FOR THE STATE:

JOHN FOGLEMAN, ESQ.
DEP. PROS. ATTORNEY
P. O. BOX 1666
WEST MEMPHIS, AR 72303-1666

BRENT DAVIS, ESQ.
PROSECUTING ATTORNEY
P. O. BOX 491
JONESBORO, AR 72403-0491

FOR THE DEFENDANT:

DANIEL T. STIDHAM, ESQ.
GREGORY L. CROW, ESQ.
ATTORNEYS AT LAW
P. O. BOX 856
PARAGOULD, AR 72451-0856

BEFORE THE HONORABLE:

DAVID BURNETT, CIRCUIT JUDGE

BARBARA J. FISHER
OFFICIAL COURT REPORTER
P. O. BOX 521
PARAGOULD, AR 72451-0521
(501)236-8034

1 the Court not to discuss the case among yourselves or
2 with anyone, you may stand in recess until Monday
3 morning at 9:30.

4 (ADJOURNMENT)

5 CORNING, ARKANSAS, JANUARY 31, 1994, AT 9:30 A.M.

6 JERRY DRIVER

7 having been first duly sworn to speak the truth, the whole truth
8 and nothing but the truth, then testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FOGLEMAN:

11 Q Will you please state your name and occupation?

12 A Jerry Driver. I'm the chief juvenile officer of Crittenden
13 County.

14 Q Are you acquainted with the defendant?

15 A Yes, I am.

16 Q Are you also acquainted with Damien Echols?

17 A Yes, sir.

18 Q And Jason Baldwin?

19 A Yes, sir.

20 Q If you recall, when was the first time that you saw these
21 three people together?

22 A Around November 15th of '92, I believe.

23 Q Where was this?

24 A This was at Lakeshore Trailer Park.

25 Q What were you doing there?