

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

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

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

H. The ball game statements were never put in context

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³Tom Quinn declaration (Exhibit 68)

The police, the probation officers, and Vicki Hutcheson

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

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

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

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

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

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

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

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

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

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

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

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

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

The testimony of Anthony and Narlene Hollingsworth

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

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

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

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

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

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

The FBI, and former FBI Agent John Douglas

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

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

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

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

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

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

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

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

your findings?

Jurors: Yes.

The Court: Are each of you satisfied and can you give me your personal assurance that *you have only considered the evidence that was introduced in court by proper court procedure?*

Jurors: Yes.

The Court: Okay. Do any of you feel that there has been anything whatsoever that in any way affected your ability to deal strictly with the evidence that was produced in court?

Jurors: No.

(RT 2643-44) (emphasis added)

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

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

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

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

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

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

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

The Court: Did it have – and you didn't even discuss it in your deliberations?

[Foreman:] I think if – I think if anybody would be interested, *the only thing that was discussed during deliberations was only facts in evidence that was delivered to us and nothing else.*

(RT 2656) (emphasis added)

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

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

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

333. The Arkansas Supreme Court described the Jessie Misskelley statements as follows, noting that it was setting out "... the substance of the statements in such a way as to reveal with clarity the appellant's [Misskelley's] description of the crime...."

Misskelley v. State, 323 Ark. 449 at 559-560:

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

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

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

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

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

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

skipped school that day.

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

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

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

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

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

- a. The victims were severely beaten by two persons;
- b. Two of the victims were raped and forced to perform oral sex;
- c. It was Chris Byers and Steve Branch who had been raped;
- d. One of the victims was cut on his penis, and the others were cut in their facial areas;
- e. The boys had their clothes taken off and were tied up with brown rope;

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

- a. None of the boys was cut on his penis, and the one boy whose genital area was described as “mutilated” suffered a ‘degloving’

- injury inconsistent with the use of a knife, and consistent with the kind of degloving injury caused by animal predation;
- b. A number of the observed injuries are postmortem injuries;
 - c. There is no DNA or pathology evidence consistent with rape, or forced oral sex, and what foreign DNA there is that was identified on the penis of one of the victims does not match any of the defendants. Alone, that foreign DNA does not constitute evidence of forced sex.
 - d. None of the injuries observed on the boys is consistent with rape or forced oral sex;
 - e. The victims were tied up through the use of shoe laces;
 - f. There is no trace or other evidence consistent with the use of a brown rope to tie up the victims. This is a significant fact, since anyone observing the tying up of the victims would have viewed both the removal of shoelaces from shoes, and their subsequent use.

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

disliked and avoided Misskelley.

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

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

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

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

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

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

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

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

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

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

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

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

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

by the interrogation techniques used by law enforcement officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 20 Dr. Spitz letter report (11/27/06)
- 21 Dr. Spitz letter report (10/12/07)
- 22 Dr. Haddix CV
- 23 Dr. Haddix Interim Report (10/22/07) and Supplemental Report (5/6/08)
- 24 Dr. Tabor letter report and affidavit
- 25 Dr. Tabor CV
- 26 Dr. Souviron report
- 27 Dr. Souviron CV
- 28 Goudge Commission's Home Page and Witnesses
- 29 Dr. Wood CV
- 30 Philipsborn 6/12/07 Letter to Brent Davis
- 31 Philipsborn 12/27/07 Letter to Brent Davis
- 32 Heather Cliett / Heather Dawn Hollis affidavit
- 33 Shaun Ryan Clark Declaration
- 34 Joyce Cureton affidavit
- 35 Sue Weaver affidavit
- 36 Patty Burcham affidavit
- 37 Daniel Biddle affidavit
- 38 Jason Duncan affidavit

- 39 Xavier Redus affidavit
- 40 Leonard Haskins affidavit
- 41 Montavious Gordon affidavit
- 42 Danny Williams affidavit
- 43 Sally Ware affidavit
- 44 Amy Mathis affidavit
- 45 Crystal Hale Duncan affidavit
- 46 Joseph Samuel Dwyer affidavit
- 47 Mapquest Maps
- 48 Larry Matthew Baldwin affidavit
- 49 Matthew Baldwin interview
- 50 Angela Gail Grinnell police interview
- 51 Angela Gail Grinnell affidavit
- 52 Dennis Dent police interview
- 53 Jennifer Bearden police interview
- 54 Jennifer Bearden affidavit
- 55 Holly George Thorpe affidavit
- 56 Donna Medford affidavit
- 57 Domini Teer police interview report

- 58 Domini Teer affidavit
- 59 Arkansas Times article
- 60 John Douglas CV
- 61 John Douglas Report
- 62 Copies of poster sized juror notes in State evidence
- 63 Copies of juror notes and affidavits FILED UNDER SEAL
- 64 Press articles prior to and during trial
- 65 Dr. Joy Halverson affidavit
- 66 Dr. Joy Halverson CV
- 67 Article, *A Multi-Plex Assay to Identify 18 European Mammal Species from Mixtures Using the Mitochondrial Cytochrome B Gene*, 29 *Electrophoresis* 340 (2008)
- 68 Tom Quinn Declaration
- 69 Ann Tate Affidavit
- 70. May 23, 2008 Bode report on Terry Hobbs hair
- 71. Sharon Nelson affidavit

CONCLUSION

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

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

Respectfully Submitted,

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

Dated: May _____, 2008

J. Blake Hendrix

Dated: May _____, 2008

John T. Philipsborn
Attorneys for Jason Baldwin

VERIFICATION BY ATTORNEY

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

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

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

John T. Philipsborn
Attorney for Jason Baldwin

PROOF OF SERVICE

I, Steven Gray, declare:

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

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

Petition for Writ of Habeas Corpus under Arkansas Code Annotated 16-112-201 et Seq. And Motion for New Trial under 16-112-208(e)(1)

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

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

David Raupp
Kent Holt
Brent Gasper
Deputy Attorneys General
Office of Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201

Charles J. Baldwin
ADC #103335
2501 State Farm Road
Tucker, AR 72168

Brent Davis
Prosecuting Attorney
Second Judicial Circuit of Arkansas
1021 S. Main Street
Jonesboro, AR 72401

Michael Burt
600 Townsend Street, Suite 329E
San Francisco, CA 94103

Dennis P. Riordan
Don M. Horgan
523 Octavia Street
San Francisco, CA 94102

Jeff Rosensweig
Law Offices
300 Spring Street, Suite 310
Little Rock, Arkansas 72201

Deborah R. Sallings
Cauley Bowman Carney & Williams
35715 Sample Road
Roland, AR 72135

Blake Hendrix
Law Offices
308 South Louisiana Street
Little Rock, AR 72201

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

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

Signed: _____

Steven Gray