IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
WESTERN DISTRICT

DAMIEN WAYNE ECHOLS — DEFENDANT/PETITIONER

vs. — No. CR-93-450A

STATE OF ARKANSAS — PLAINTIFF/RESPONDENT

DAMIEN ECHOLS' PRE-HEARING BRIEF

This is a most unusual case. On a Spring afternoon in 1993, three young boys disappeared from their neighborhood in West Memphis around dinner time. The next day their bodies were found, naked, bound and in horrific condition, submerged in a creek in the woods. Fear and panic quickly swept through the community, along with rumor and gossip about the murders - including that a satanic cult was to blame.

Shortly thereafter, three local teenagers - Damien Echols, Jason Baldwin and Jessie Misskelley - were charged with the murders. Agreements were reached to film their trials and surrounding circumstances for a documentary, with defense lawyers, prosecutors and even the victims' families playing leading roles. Less than a year later, the three teenagers were convicted in two separate trials. Baldwin and Misskelley were sentenced to life in prison; Echols was sentenced to death. They have protested, and fought for, their innocence ever since.

Questions arose immediately about the validity of the teenagers' convictions. The evidence seemed thin, and the alleged motive was almost impossible to believe. Public release of the documentary spread those questions worldwide. As a result of new evidence, it is now "undisputed that the [DNA] results [from the crime scene] conclusively exclude[ ] Echols, Baldwin, and Misskelley as the source of the DNA evidence tested." What happens next in this troubling case is now in this Court hands.

Standard Of Proof

The Arkansas Supreme Court reversed and remanded this case "for an evidentiary hearing, at which the circuit court shall hear Echols's motion for a new trial and consider the DNA-test results 'with all other evidence in the case regardless of whether the evidence was introduced at trial' to determine if Echols has 'established by compelling evidence that a new trial would result in acquittal.'" Slip op. at 15. "In other words," as the Supreme Court put it, "the question is whether a new jury would find Echols guilty beyond a reasonable doubt." Id. at 14. That "question" ultimately turns on this Court's determination whether, in light of all of the evidence, a hypothetical new juror would have a single reasonable doubt as to Echols' guilt.

In Clark v. State of Arkansas, No. CR 07-1276, the Arkansas Supreme Court elaborated on the critical importance of this standard of proof:

> The beyond-a-reasonable standard of proof 'plays a vital role in the American scheme of criminal procedure,' because it operates to give 'concrete substance' to the presumption of innocence to ensure against unjust convictions, and to reduce the risk of factual error in criminal proceedings. Jackson v.Virginia, 443 U.S. at 315 (citing In re Winship, supra). At the same time, by impressing upon the fact-finder the need to reach a subjective state of near certitude of the guilt of the accused, the standard of proof symbolizes the significance that our society attaches to the criminal sanction and thus to liberty itself. Id.

Slip op. at 19. The reasonable doubt instruction for jurors in Arkansas provides:

> Reasonable doubt is not a mere possible or imaginary doubt. It is a doubt that arises from your consideration of the evidence and one that would cause a careful person to pause and hesitate in the graver transactions of life. A juror is satisfied beyond a reasonable doubt if after an impartial consideration of all the evidence he has an abiding conviction of the truth of the charge.

AMI Criminal 2d 110 (emphasis added). In Clark, supra, the Arkansas Supreme Court indicated that this "abiding conviction" language requires a juror to derive "a higher level of conviction" from the evidence than "near certainty." Slip op. at 21 (citing Hopt v. Utah, 120 U.S. 430, 439 (1887)).

Because the Supreme Court directed this Court to review "the DNA-test results 'with all other evidence in the case,'" slip op. at 15, this Court must necessarily conduct a searching inquiry into the cumulative effect of the evidence as a whole. Or, as the United States Supreme Court put it in House v. Bell, 547 U.S. 518, 530-539 (2006), the Court should "assess how reasonable jurors would react to the overall, newly supplemented record."[1] That inquiry is, of necessity, to be conducted against the evidence in support of the State's theory of prosecution at trial. See generally House v. Bell, supra.[2] Thus, from the defense side, the focus of this hearing will be the presentation of documents, test results, witnesses and other information compellingly evidencing the many patent doubts and uncertainties surrounding the prosecution theory on which Echols, Baldwin and Misskelley were convicted seventeen years ago now.[3]

We outline below the procedure through which we believe this evidentiary hearing ordered by the Supreme Court can be readied and then conducted. We also set forth a proposed schedule for the hearing. There are obviously a number of variables which will factor into this process and timetable, including the Court's own calendar. But there is one clear invariable: as

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[1] Accord, Kyles v. Whitley, 514 U.S. 419, 440-441 (1995)(requiring a "cumulative evaluation" of the evidence on a directly analogous post-trial motion).

[2] Analytically, it is difficult to imagine a stronger factor favoring a new trial motion based on newly discovered evidence than a prosecutor's effort to shift to a new alternative theory of the crime in response to the motion. If the prosecution can no longer support its conviction with the theory of criminality used at trial, then – at the very least - a new trial should be warranted so that a new jury can pass upon the new prosecution theory. Indeed, two different and inconsistent prosecution theories for the same crime can, in and of themselves, create grounds for relief. See United States v. Salerno, 937 F.2d 797 (2d Cir. 1991)(Section III, C "The Government's Inconsistent Positions").

[3] As a result of the nature of the inquiry to be conducted by this Court, it should logically begin its analysis by reviewing the complete transcripts of the two underlying trials: State v. Misskelley, and State v. Echols and Baldwin.

the totality of the evidence to be produced before this Court will show, the only thing truer than "near certainty" in this case is that there is so much uncertainty about virtually every aspect of it that multiple reasonable doubts necessarily abound and a new trial should surely be ordered.

Procedure

The procedure for getting this case ready for a hearing will largely be driven by the varying categories of evidence and witnesses to be presented to the Court in connection with that hearing. We set forth below an overview of the primary categories of evidence, both new and old, which we presently expect to be the focus of the hearing. We begin with the striking new DNA evidence relied upon the Arkansas Supreme Court. We then walk through – and highlight our new and old evidence rebuttals to - the different substantive areas of evidence used by the prosecution to convict Echols at the original trial: the unusual nature of the injuries to the victims and what caused those injuries, the satanic motive for the murders, the serrated knife found in the lake behind Jason Baldwin's house, Echols whereabouts on the night of the murders and Echols' alleged public "confession" about the crime to a group of teenagers at a softball game, with a police officer nearby. Finally, we close with a discussion of perhaps the most troubling thing of all in this overly troubled case: the apparent misconduct of the jury foreman in using Jessie Misskelley's inadmissible confession as a basis for convicting Echols and Baldwin.

DNA Evidence

As the Arkansas Supreme Court found in its opinion:

> [t]he results of the [DNA] testing established that neither Echols, Baldwin, nor Misskelley was the source of any biological material tested, which included a foreign allele from a penile swab of victim Steven Branch; a hair from the ligature used to bind victim Michael Moore; and a hair recovered from a tree stump, near where the bodies were recovered. In addition, the DNA material from the hair found in the ligature used to bind Moore was found to be

> consistent with Terry Hobbs, Branch's stepfather. The hair found on the tree stump was consistent with the DNA of David Jacoby, a friend of Terry Hobbs.

Slip op. at 3. The Supreme Court thus noted that "it is undisputed that the [DNA] results conclusively excluded Echols, Baldwin, and Misskelley as the source of the DNA evidence tested." Id. at 10 (emphasis added). This finding is doubly significant in this case because at Echols 1994 trial certain supposed 'hair matches' were used to convince the jury that Echols had been present at the crime scene, whereas we now know with the power of more advanced science that those hairs were no match for Echols at all.

In DNA case law, this type of DNA evidence is called "non-match" DNA. See People v. Dodds, 801 N.E.2d 63, 67-68 (Ill. 2003). Courts have recognized the "long shadow" that such non-match DNA evidence casts over the integrity of convictions obtained without its consideration. See Bedingfield v. Commonwealth, 260 S.W.3d 805, 815 (Ky. 2008)(ordering a new trial). Other courts have similarly ordered new trials on the basis of such non-match DNA evidence as well. See generally In re Bradford, 165 P.3d 31, 32 (Wash. 2007)(ordering a new trial despite defendant's alleged "confession"); State v. Pope, 80 P.3d 1232 (Mont. 2003); People v. Waters, 764 N.E.2d 1194 (Ill. 2002); Commonwealth v. Reese, 663 A.2d 206, 210 (Pa. 1995); State v. Saecker, 539 N.W.2d 336 (Wis. 1995); People v. Dabbs, 587 N.Y.S. 2d 90 (NY 1991).

There is no reason for any different result here, especially when the lead prosecutor in the Echols trial emphasized to the jury in his closing argument that there was no such evidence pointing to anyone else as the potential perpetrator of these crime.

> [T]here's no evidence out there that points to anybody else. There's no evidence that points the finger - if someone else did it, and that's their argument, you know, there's just not a whole lot of evidence out there that connects to our clients. But if someone else had committed the crime then you'd see fibers out there that didn't match, didn't come

> back to one of these people. You'd see evidence out there that didn't match either one of these. You'd see evidence that didn't connect. And you don't have that. There's just a scarcity of evidence.

Davis Rebuttal Closing (emphases added). Well now there is such evidence from the crime scene pointing toward someone else, and away from Echols, and its presence would be just as important for a new jury to consider as its absence was in the prosecutor's opinion at Echols' original trial.[4]

In addition to the existing "undisputed" DNA evidence discussed above, as the Court is aware, the Arkansas Supreme Court also remanded for this Court's consideration a pending request by Baldwin and Misskelley for DNA testing of certain hairs and animal hairs.[5] There are additional items which Echols would like to request be DNA tested, or otherwise scientifically tested, now as well. In addition to the "green vegetable-like material" referenced in footnote 7 below, those items are:

1. All of the victims' clothing, including shoes, should be DNA tested.

2. The wooden planks removed from the tree fort near the crime scene should be DNA tested.

3. The victims' shoelaces should be measured to determine which black shoelace was apparently cut in half to be used as a ligature. The remaining, non-ligature portion of that cut shoe lace should then be fiber tested for comparison to other fiber evidence in the case.

4. All remaining biological extracts held at the Arkansas State Crime Laboratory or elsewhere,[6] including 'skin cuticles' from the ligatures, should be DNA tested.

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[4] There is other post-trial "non-match" evidence now available to the defense too. In an interview with the West Memphis Police Department well after the trial, Tony Anderson – the fingerprint expert on the crime scene when the victims' bodies were discovered, confirmed an important fact not appearing in the trial record: that one print taken at the crime scene was within five to ten feet of where the first body was located and that it was located at an angle which made it clear that it had been left there by someone who had been in the water. Anderson compared this print to Echols, Baldwin and Misskelley, as well as to the victims and every police officer at the scene, and found no match. See Supreme Court Abstract, Addendum & Brief for Appellant Damien Echols ("Add.") at 550-551.

[5] Echols hereby formally joins in all testing requests made by Messrs. Baldwin and Misskelley.

[6] In addition to the Arkansas State Crime Laboratory, at various times, certain forensic evidence in this case also appears to have been in the possession of – and could still be in the possession of - the West Memphis Police Department, LabCorp (formerly known as Genetic Design), the Alabama Department of Forensic Sciences, the

5. Various items of physical evidence from the crime scene should be checked for prints and DNA tested: sheriff's badge, bike reflector lights, bicycles, ice pick, cigarette packets (or other containers) and cigarette butts, child's wallet, hook and rope, and all wooden sticks.

6. All hair retrieved from the crime scene should be DNA tested. With respect to the two auburn beard hairs recovered, we request that only one of them be tested in order to preserve the other one for future testing, if necessary.

7. The white sheets in which the victims' bodies were transported to the Medical Examiner's Office, and the white paper on which the victims' clothing was dried before being examined, should be DNA tested.

8. A number of other potential items to be addressed with the Attorney General's Office directly in the meet-and-confer session requested below.

We would hope that the Attorney General's Office would readily agree to the requested testing - at defendants' expense[7] - in the interests of justice, and would ask that the Court set a deadline date for the parties to meet-and-confer in an effort to reach agreement on testing and protocol issues. If no agreement is possible,[8] then it would obviously be most efficient for the Court to set a prompt schedule for briefing and ruling upon all pending DNA testing requests together so that any and all testing can be conducted simultaneously. Given the lead time required for such testing, it would also be best for this Court to address the outstanding testing requests as its first order of business moving forward in this case.

Southwestern Institute of Forensic Sciences, the University of North Texas health Science Center and – possibly – the FBI.

[7] During the Scheduling Conference, the Court was informed that defense counsel were unsure whether they would have the funding necessary to pay expenses associated with DNA testing, expert witnesses fees and other expenses in order to pursue the hearing most effectively for their clients. Echols' undersigned counsel hereby represents to the Court, and to co-counsel, that he believes in good faith that sufficient funds have now been raised for the defendants to do so.

[8] By letter dated January 20, 2011, with the approval of counsel for Baldwin and Misskelley, Echols counsel Stephen L. Braga wrote to Assistant Attorney General David Raupp seeking his cooperative "immediate agreement" for testing "the '2 ounces of partially digested fluid and remnants of green vegetable-like material' found in Stevie Branch's lumen during his autopsy to determine exactly what the green vegetable-like material is." See Exhibit A. Unfortunately, Assistant Attorney General Raupp has not responded to that letter request. Accordingly, we include this testing request within the scope of the scientific matters to be addressed by the Court.

Animal Predation Evidence

As noted during the Scheduling Conference and as detailed further in Jason Baldwin's brief, part of the evidence to be considered by the Court involves expert testimony that the severe injuries suffered by the victims - especially Steven Branch and Christopher Byers - were caused by post-mortem animal predation, rather than by a knife allegedly used as part of a satanic ritual killing. During the Rule 37 hearing for Baldwin and Misskelley, some of the country's best qualified forensic pathologists testified to precisely this effect.[9] We will not belabor this preliminary pleading with a detailed recitation of that testimony. For present purposes, it is sufficient to note that we believe that all of that prior expert testimony should be available for the Court's review. In addition, we expect that some of those forensic witnesses will be called back to testify briefly in rebuttal to testimony that Dr. Peretti gave subsequent to theirs at the Rule 37 hearing. Defense counsel also plan to call additional forensic pathology and other new experts to testify at the hearing as well. If this expert testimony combines to create a reasonable doubt as to the cause of the victims' injuries, then that doubt alone will require a new trial to be ordered herein.

In order to facilitate the fair and efficient presentation of these, and other, expert witnesses at the hearing, we suggest that the Court impose a deadline for the disclosure of expert witnesses sixty days before the hearing. This will avoid surprise for both sides, as well as the need for last minute continuances as a result of any such surprise.

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[9] Echols' Rule 37 hearing also included some expert forensic testimony regarding the possibility of post-mortem animal predation as a cause for these victims' wounds. As forensic pathologist Joseph Cohen testified: "Some of the wounds may actually be post-mortem. I do agree that the discoloration on the left side of [Steven Branch's] face is most likely an abrasion. I certainly would not rule out some of these markings being inflicted by an object, but I -- I certainly wouldn't pin it to a knife or a piece of glass. And, as I mentioned earlier, post-mortem marine activity is always a consideration. I've seen many cases in which victims look a lot worse than this -- and this is bad -- but a lot worse than this just from post-mortem marine activity." Echols R. 37 Tr. at 1128. We agree completely with, and join in the motion by, counsel for Baldwin and Misskelley that the records in both Rule 37 hearings should be made a part of the record before this Court in connection with this hearing.

Motive Evidence

As the United States Supreme Court has noted, "[w]hen identity is in question, motive is key." House v. Bell, 547 U.S. 518, 540 (2006). The motive associated with the State's prosecution theory at trial was clearly explained by Prosecutor Fogelman during his closing argument to the jury:

> That's the only thing that matters, in relation to motive. The testimony in this case was that these murders -- when you take the crime scene, the injuries to these kids, the testimony about sucking of blood -- and do you remember there was testimony about that -- in the satanic areas, that blood is a life force, there is a transference of power from drinking of blood -- when you take all of that together, the evidence was that this murder had the trappings of an occult murder. A satanic murder.

(Fogelman Initial Closing). We expect to introduce evidence at this hearing which will undermine these three highlighted factors, and any other "occult" evidence from the prosecutors' case at trial, as being sufficient to support the great weight the prosecution placed upon them to establish a satanic motive for murder at Echols' trial.

Prosecutor Fogelman's reference to "the crime scene" as proof of "a satanic murder" was to the fact that the crime scene was apparently wiped clean. Lots of crime scenes are cleaned every day across this country, but that does not make them the sites of satanic killings. Usually, of course, those crime scenes are cleaned by sophisticated criminals, typically more knowledgeable about the ways of the world and law enforcement than unsophisticated teenagers.

Prosecutor Fogelman's reference to "the injuries to these kids" was to the alleged knife mutilation of Christopher Byers' genitals and the alleged multiple knife wounds to the left side of Steven Branch's face. But if neither of these woundings was caused by a knife, if neither of these woundings was inflicted while these victims were alive and if both of these woundings

were the result of post-mortem animal predation, then they are meaningless in terms of establishing any satanic motive for murder.

Finally, prosecutor Fogelman's reference to the "sucking of blood" primarily came from inmate Michael Carson's dramatic recounting of statements allegedly made to him in prison by Jason Baldwin. Jailhouse snitches make notoriously unreliable witnesses and Carson will be proven to be less reliable than most. If Carson is disbelieved, then this purported proof of satanic motivation disappears completely.[10] In addition, the jury was expressly instructed that Carson's testimony was only admissible against Baldwin, so it could not properly provide any basis for a satanic motivation on Echols' behalf in any event.

We expect to introduce other evidence to undermine the prosecution's reliance on Dr. Dale Griffis as a credible expert on satanic cult behavior as well. For example, after the trial, the "university" from which Griffis received his "Masters" and "Ph.D" was shut down by the State of California as a fraudulent diploma mill. See Add. 548-549. Post-trial Griffis was also quoted in a interview as saying the following about this case: "When he got done testifying, what you didn't see on television, what you didn't see in the movie 'Paradise Lost,' was the fact that Damien Echols said, 'I got three, I had 10 more to go for my coven, but that damn cop from Ohio stopped me.'" See Tiffin Advertiser Tribune, March 11, 2007. It is hard to see this patently false statement as anything more than self-aggrandizement, but it does speak volumes about Griffis' honesty and credibility, which the prosecution fully endorsed before the trial jury.[11]

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[10] Even prosecution expert Dale Griffis agreed that if Michael Carson's evidence was false, then there was nothing to connect Baldwin to the occult. RT 1798-1799.

[11] We also submit that new jurors, now far removed from the intensity and hysteria of the time surrounding these murders, would also be far less likely to believe that the trappings of Echols goth/heavy metal/horror genre clothing, musical and literary leanings - all now much more widely recognized and accepted than in 1993 - have any evidentiary bearing on whether he is a satanic murderer or not.

Knife Evidence

With great flourish, prosecutor Fogelman performed a demonstration with a large serrated knife (State's Exhibit 77) and a grapefruit during his initial closing in order to convince the jury that this knife - or one like it - had inflicted the allegedly serrated pattern wounds on the victims' bodies. In his rebuttal closing, prosecutor Davis added that the knife had been used to effect the genital mutilation of Christopher Byers. The knife had been found in the lake behind Jason Baldwin's home, which made it all the more suspicious according to the prosecutors.

As noted above, though, many of the country's leading forensic pathologists have already testified during Baldwin and Misskelley's Rule 37 hearing that the alleged pattern wounds and the genital mutilation were not caused by a knife at all, but were caused instead by post-mortem animal predation. The prior testimonies of those experts should be made a full part of the record for this Court's review, supplemented by potential rebuttal testimony from those experts as well as new corroborating testimony from additional experts. We submit that the combined testimonies of these renowned experts would, in and of themselves, create a reasonable doubt in the mind of new jurors about whether State's Exhibit 77 was used in these murders or not. Nonetheless, we also expect to introduce before this Court other evidence indicating that this knife - a centerpiece of the prosecution's theory at trial - could not have been the murder weapon.

Night Of The Murders Evidence

The State's theory of prosecution at trial relied on testimony by Narlene and Anthony Hollingsworth that they had seen Echols and his girlfriend out walking on the night the victims disappeared, near the area where their bodies were eventually found. The witnesses placed this

sighting between 9:30 and 10:00 PM.[12] The prosecutors self-servingly dissected this testimony for the jury by accepting the witnesses' account of having seen Echols but rejecting the witnesses' account that Echols' girlfriend was with him at the time. Instead, the prosecutors maintained that it was actually Baldwin who was with Echols at the time, even though Narlene testified that Damien's companion was wearing "flowery pants" when she saw them. Evidence to be presented to the Court at the evidentiary hearing will establish, through the testimony of third-party witnesses, that Echols and Baldwin were not walking together at all at the time and place relied upon by the prosecution. Instead, they were elsewhere, separately doing other things.

For example, the affidavit of Jennifer Bearden recounts that she was talking on the phone with Echols – while he was at his home – "for at least a half an hour, beginning about 9:30 p.m. and ending around 10:00 p.m." on the night in question. Add. 550-551. We submit that the Court, when considering all of the surrounding circumstances, will find Ms. Bearden's testimony (and that of the other alibi witnesses to be presented) to be more credible than the Hollingsworths' testimony.

Moreover, unlike the time of trial, we now have substantial new evidence from three eyewitnesses establishing that Terry Hobbs, Steven Branch's stepfather, was the last adult seen with the victims on the night they disappeared, at around 6:30 P.M. on May 5th. Hobbs has always adamantly denied having seen his stepson Stevie, or the other victims, on the day they disappeared. But now these three new eyewitnesses say to the contrary.[13] This Court will have

[12] Although unknown at the time of Echols' trial, it is now known that the Hollingsworths each were in jeopardy with the law during the events related to this case, which would provide classic impeachment of the credibility of their testimony for any new juror to consider.

[13] In prior civil litigation, Hobbs' friend David Jacoby submitted a declaration also confirming that Hobbs was apparently right in front of Stevie and the other victims on the afternoon of May 5th. In pertinent part, Jacoby's declaration stated: "Sometime between 5 PM and 5:30 PM on May 5, 1993 (it could have been as late as 6 PM, but I

to determine who is telling the truth on this issue. The consequences of that credibility determination could be damning as well, since DNA testing of a hair found in the ligature used to bind Michael Moore concluded that the hair was consistent with that of Hobbs.

Echols' focus on Hobbs' actions on the night of the murders is not an effort to create a fictitious strawman to blame for these crimes. The DNA hair test result alone creates more than a good faith basis for suspicion. Evidence that another person might have committed the charged crime is "generally recognized as relevant evidence under fundamental standards." Larimore v. State, 877 S.W.2d 570, 575 (Ar. 1994).[14] In fact, a great deal of new evidence has been gathered about Hobbs since the DNA testing results were revealed about this ligature hair, and that new evidence raises significant issues indeed about his conduct surrounding these murders. Indeed, some of these those issues are so provocative that Hobbs' own wife at the time (Pam Hobbs) and one of the other victim's fathers (Mark Byers) have publicly questioned Hobbs' potential involvement in these crimes. This not just the defense team crying "wolf" here.

As a result, Echols' defense team presently expects to call Terry Hobbs, his friend David Jacoby (who is the DNA-indicated likely source of another hair recovered at the crime scene and who was with Hobbs on the day the victims disappeared), both Hobbs' and Jacoby's wives at the time and a fair number of other witnesses to testify about Hobbs' and Jacoby's actions on the night of May 5th, 1993 and the days that followed. Those actions are suspicious in the extreme. Unfortunately, the original trial jurors never heard about Hobbs' suspicious actions because he was never interviewed by the West Memphis Police Department during the course of its murder

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believe it was between 5 and 5:30 PM), Terry Hobbs came over to my house. I believe I saw Terry's step-son, Stevie Branch, ride by on his bicycle in the street in front of my house. I also believe I saw two other little boys with Stevie. One of the other boys who went by the front of my house was on a bicycle and the other boy was on a skateboard. Terry and Amanda came inside my house." July 24, 2009 Jacoby Declaration at Paras. 6-8.

[14] At any new trial of this case, of course, the defense would bear no burden to establish "substantial proof of a probability that the third person committed the act; it need only be capable of raising a reasonable doubt of defendant's guilt." People v. Hall, 41 C3d 826, 833 (CA 1986); accord, Mullis v. Commonwealth, 351 SE2d 919, 926 (VA 1987).

investigation.[15] But new jurors certainly will hear about those actions which, we submit, would cause any such impartial juror to have a reasonable doubt about whether three unsophisticated teenagers who were never seen in the presence of the three victims and whose DNA was not found at the crime scene committed these murders rather than a sophisticated adult who was the last adult seen with the victims alive and whose DNA was found at the crime scene.

False Confession Evidence

The State's theory of prosecution also relied on the testimony of two teenage girls who claimed to have overheard Echols' loudly "confess" to the murders to a group of many bystanders at a softball game, with a police officer nearby. At trial, the two girls contradicted each other on the details of what had supposedly happened at the softball game, and despite the supposedly large crowd of bystanders at the time the State called no other witnesses from that softball game to testify to any such "confession" by Echols. In addition, Echols' supposed statement contained no details whatsoever that could be compared for corroborative purposes to the factual circumstances of the crime. It was, thus, the most unreliable form of alleged "confession" imaginable.

Since the trial, however, Donna Medford - the mother of one of the girls who testified – has given a declaration which further contradicts the details of the two girls testimonies at trial. In addition, Mrs. Medford's declaration states that when she heard Echols' statement described she told the girls to forget about it because she "did not believe it possible that Damien was actually confessing to the crime in front of so many people, but was instead simply trying to

[15] This failure to interview Hobbs is surprising given the lead investigator Gary Gitchell's ready acknowledgement in prior civil litigation that parents are typically the first subjects interviewed in cases like these.

draw attention to himself."[16] It was for that reason that Mrs. Medford did not report the girls' statements to the police that night, just as the girls themselves did not report Echols' alleged statement to the police officer at the softball field.

At the hearing, we expect to introduce other factual evidence as well which will further undermine the credibility of this "softball girls' testimony."

Juror Misconduct Evidence

The State's theory of prosecution arose out of the alleged "confession" given to law enforcement authorities by Jessie Misskelley. Misskelley's confession alleged that he, Echols and Baldwin had attacked, raped and murdered Branch, Byers and Moore, with their fists, a knife and sticks. Misskelley was tried and convicted first, with evidence that - according to lead prosecutor Brent Davis - "was centered completely around his confession." Echols R. 37 Tr. at 568.

Misskelley's "confession" was not supposed to be considered by the jury at the Echols and Baldwin trial. Indeed, the trials were severed by the trial judge for the express purpose of protecting Echols' and Baldwin's constitutional rights to a fair trial by keeping Misskelley's "confession" out of their separate trial. See generally Bruton v. United States, 391 U.S. 123, 129 (1968). Unfortunately, Misskelley's "confession" was nonetheless brought before, and considered by, the Echols and Baldwin jury in reaching its verdicts. The effect of that jury misconduct on their verdicts was indisputably, see Colorado v. Connelly, 479 U.S. 157, 182 (1986), as the jurors' own charts and notes readily reveal.[17]

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[16] Mrs. Medford's immediate common sense instinct about these statements allegedly made by Echols at the softball game seem all the more reasonable when one knows, as any new juror would, that Echols had previously spent hours being interrogated by Detective Ridge without making any "admissions" whatsoever.

[17] Echols hereby joins Baldwin's request for renewed recognition that the Bruton rule constitutionally prohibits Misskelley's alleged "confession" statements from being admitted, or used, against him in any way.

In its opinion in this case, the Arkansas Supreme Court recognized that Echols' motion for a new trial had also presented such "evidence of juror misconduct" during his trial. Slip op. at 13 n.4. The Supreme Court indicated that such "evidence . . . may or may not be relevant under section 208(e)(3) to a determination of whether a new trial would result in acquittal." Id.[18] With that indication, the Supreme Court effectively assigned the evaluation of this "evidence" to this Court's sound discretion.[19] "[S]uch discretionary choices are not left to a court's 'inclination, but to its judgment, and its judgment is to be guided by sound legal principles.'" Albemarle Paper Co. v. Moody, 422 U.S. 405, 415-416 (1975). To be able to exercise such judgment, it is first essential to develop the evidentiary record on this issue. See Gross v. State of Arkansas, 242 Ark. 142, 147, 412 S.W.2d 279, 283 (Ark. 1967)("In order for the court to determine whether the motion was made in good faith and the probability of a different result upon a new trial, it was proper for the court to hear witnesses."). In other words, the Court needs to know what the facts are before it can properly decide how those facts might relate to the legal issues before the Court.

In this precise context of weighing evidence on new trial motions, numerous other courts have recognized that jury notes should be "take[n] seriously . . . in assessing the impact of certain evidence on their deliberative process." Arrington v. State, 983 A.2d 1071, 1087-1088 (Md. 2009)(ordering a new trial based on non-match DNA evidence); accord, Hunter v. State, 919 A.2d 63, 72-73 (Md. 2007)(examining jury notes as a tool to gauge the impact that evidence had

[18] The Supreme Court deliberately employed the term "evidence" in this regard apparently to distinguish the situation from the State's objection that no independent "claim" based on juror misconduct could be raised by Echols at this point in the proceedings because of prior case history. Thus, for purposes of this hearing, we will address the jury misconduct issue strictly for its development of evidence pertinent to the factual new trial motion determination to be made by this Court.

[19] Cf. United States v. Bolinger, 837 F.2d 436, 439 (11th Cir. 1988)(juror misconduct is a form of newly discovered evidence); United States v. Stacy, 2009 WL 2195796 (11th Cir. 2009)(same).

on the jury).[20] There is no principled distinction, for these purposes, between formal jury notes, other informal jury data and/or juror testimony. In each instance, the "jury information" provides a telling insight into how the jurors credited or discredited the evidence presented to them at trial. This insight, in turn, helps to inform the reviewing Court's evaluation of how a hypothetical new juror might consider that evidence in light of the record supplemented by new evidence.

The record already contains some evidence showing that jurors, and in particular, the jury foreman, improperly considered and discussed the "confession" by Jessie Misskelley in finally deciding on their verdict against Echols and Baldwin. See Add. 552-575; 778-790. In addition, the record contains a sealed affidavit from a prominent local attorney containing previously unavailable evidence of misconduct by the jury foreman both before and during the trial. In the course of conversations with the attorney-affiant, the jury foreman apparently disclosed his intense interest in the Misskelley confession and the manner in which he would place his knowledge of that forbidden matter before other jurors in order to ensure that the defendants were convicted at trial. The jury foreman apparently did so because the prosecution's proof at trial was "scanty" and "extremely circumstantial." Add. 584.

This is also precisely the type of evidence that the Court should, indeed must, consider as part of its overall determination of whether the newly supplemented record before the Court would necessarily leave an impartial new juror with a reasonable doubt as to Echols' guilt. That determination necessarily involves a balancing of the strength of the evidence which convicted Echols at trial against the entire new mix of evidence presently before the Court. It would be

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[20] See also Whiteaker v. Fred's Stores of Tennessee, Inc., 2011 WL 475012 at *5 n.1 (N.D.Miss. 2011); People v. Gray, 2010 WL 5292610 at *6 (Ill.App. 1 Dist 2010); Hogan v. City of New York, 2010 WL 4069800 at *2 (2d Cir. 2010); United States v. Rush-Richardson, 574 F.3d 906, 912-913 (8th Cir. 2009); People v. Francis, 58 A.D.3d 1015, 1016 (N.Y. App. 2009).

ignoring reality not to consider evidence already in the public forum about how the Echols' trial jurors evaluated and misevaluated the items of evidence they considered. Thus, here when the jury foreman, in post-trial proceedings, characterized the evidence that the State had introduced as "scanty" and "extremely circumstantial," (Add. 584), that provides some insight for the Court into the strength – or in this instance, the weakness – of the State's case against Echols. It is, of course, correspondingly easier for the Court to find reasonable doubts against guilt in the mind of a new juror in a weaker case than in a stronger case, so these are comments of some moment.

So too when the jury foreman here apparently stressed his need to illegally introduce evidence of Misskelley's confession in order to obtain convictions of Echols and Baldwin, that provides insight into the effective failure of the prosecution's proof and theory at trial. In such a circumstance, the Court could go a long way - perhaps all the way - to finding ground for a reasonable doubt in the minds of a new juror simply through the removal of the outcome determinative illegal confession from the new jury's consideration. For example, suppose hypothetically, that all twelve trial jurors testified that the only reason they convicted Echols and Baldwin was because they had learned of Misskelley's "confession" and that without it they each would have found reasonable doubts sufficient to acquit the defendants. In evaluating how a new juror would view the evidence at a future trial, the Court would have to conclude that those new jurors too would find reasonable doubt without the undue influence of that improper "confession."

Under either scenario, the jury misconduct evidence is critical and telling for this Court's reasonable doubt analysis. It is also vitally important to enabling this Court to gauge properly the weight and meaning to be accorded the prior jury verdict in its analysis. The State will argue, as States always do, that a jury conviction is sacrosanct and that the finality associated with such

a verdict should not be overturned except in the most extraordinary of cases. This is that "most extraordinary of cases," and if the jury misconduct evidence is established as we expect at this hearing, then the inescapable conclusion is that this jury verdict was tainted by impropriety. As such, the verdict should not be accorded any special weight and it would not warrant any systemic protection in this proceeding.

Miscellaneous Issues

In addition to the future categories of hearing evidence identified above, Echols' counsel has already engaged in some informal discovery efforts in preparation for the hearing. Unfortunately, counsel's efforts to obtain certain information from the Arkansas State Crime Laboratory have been rebuffed. Accordingly, as detailed below, we will apparently need the Court's assistance in obtaining this information.

Freedom Of Information Act Request

By letter dated December 23, 2010, counsel for Echols (Stephen L. Braga) – on behalf of Echols' wife Lorri Davis of Little Rock – made a Freedom of Information Act request to the Arkansas State Medical Examiner's Office for "records identifying the number and dates of autopsies performed by Dr. Frank Peretti for the Arkansas State Medical Examiner's Office" in 1992, 1993 and 1994. See Exhibit B. In response to this request, counsel for Echols received a telephone call from Rick Gallagher, the Custodian of Records at the Arkansas State Crime Laboratory, informing counsel that the Attorney General's Office had advised Mr. Gallagher that the requested records were confidential under Arkansas law and, thus, could not be produced. Counsel for Echols then informed Mr. Gallagher that he did not want any of the confidential details of any of these autopsies, he merely wanted the number of autopsies performed by Dr.

Peretti during the time periods requested.[21] Mr. Gallagher helpfully indicated that he would speak with the Attorney General's Office about the limited and revised nature of this FOIA request.

On January 28, 2011, counsel for Echols received a letter from Mr. Gallagher stating as follows:

> I have been advised by our legal counsel in the Office of the Attorney General, State of Arkansas, that the Crime Laboratory cannot honor your FOI request. I have been advised that you should ask for a hearing in this matter since they believe the request would violate A.C.A. 12-12-312 as it applies to the release of records.
>
> If the circuit court in the 2nd Judicial District believes you are entitled to this information the Crime Laboratory will be happy to provide the information you have requested.

See Exhibit B.

Arkansas Code Annotated Section 12-12-312 provides in pertinent part that "[t]he records, files, and information kept, obtained, or retained by the State Crime Laboratory under the provisions of this subchapter shall be privileged and confidential." It is hard to see any reason why the simple number of autopsies performed by an Assistant Medical Examiner should be "privileged and confidential" under this statute, as opposed to the content of those autopsy reports which clearly should be. In any event, as applicable here, Section 12-12-312 also provides that "[t]he records, files and information shall be released only under and by the direction of a court of competent jurisdiction [or] the prosecuting attorney having criminal jurisdiction over the case . . .." Since the Attorney General's Office has already apparently decided not to authorize the release of this information to Echols' counsel, Echols hereby asks this Court to do so.

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[21] In his conversation with Mr. Gallagher, Echols counsel also modified the time period requested for 1994 to January through March of that year, rather than the entire year.

Direct Information Request

On April 21, 2010, counsel for Echols (Stephen L. Braga) wrote to Dr. Charles Kokes, Chief Medical Examiner at the Arkansas Crime Laboratory, with the following request:

> I am a new attorney representing Damien Echols, one of the defendants in the so-called West Memphis Three case. On behalf of Mr. Echols. I write to request copies of all autopsy reports, photographs, toxicology reports, written notes (including bench notes), field investigator reports, police reports, phone logs and/or communication sheets in the Medical Examiner's Office file(s) from May 1993 to date relating to the ME Office's work on the autopsies of the victims in this case. I would be happy to pay the costs of copying these documents and shipping them to me.

See Exhibit C. Having received no response, on January 5, 2011, counsel for Echols again wrote to Dr. Kokes as follows, attaching his April 21 letter:

> On April 21, 2010, I sent you the accompanying letter requesting copies of certain records in the possession of your office. To date, I have not received any response from you to that letter. Can you please let me know whether you will provide me with access to these materials voluntarily or not?

Id. Dr. Kokes has yet to respond to the January 5 letter either.

Ten months seems a little long for counsel to have to wait for a response from Dr. Kokes, who must be very busy. It cannot be argued that the records requested from Dr. Kokes are somehow "confidential and privileged" as claimed in response to the Freedom of Information Act request above for different records. Indeed, the very same section of the Arkansas Code Annotated discussed above specifically states with respect to State Crime Laboratory records that:

> (B)(i) Nothing in this section shall be construed to diminish the right of a defendant or his or her attorney to full access to all records pertaining to the case.

> (ii) The laboratory shall disclose to a defendant or his or her attorney all evidence in the defendant's case.

Ark. Code Ann. Section 12-12-312. Accordingly, Echols now asks this Court to order Dr. Kokes to obtain and to provide him with prompt access to the requested records, so that those records may be effectively used by his counsel in preparing for the hearing before this Court.

Schedule

Messrs. Echols, Baldwin and Misskelley presently still believe it would be desirable to have a joint hearing for all of them together. They also believe that it would be most efficient to have that hearing conducted in one continuous period before the Court, if possible, rather than being broken up over disconnected, days, weeks and months.[22] Due to the varying schedules of counsel for Echols, Baldwin and Misskelley, it appears that October of this year would be the best of the available times identified by the Court for holding such a hearing.[23]

As the Supreme Court noted in its opinion in this case, at the evidentiary hearing, this Court may flexibly "receive evidence in the form of affidavit, deposition, or oral testimony." Echols slip op. at 15 (citing Ark. Code Ann. Section 16-112-205(b)(5)). Assuming reasonable cooperation among all parties in the flexible and efficient presentation of evidence, Echols' counsel believes that the hearing will take approximately three weeks to complete. During our Scheduling Conference with the Court, the parties also discussed the possibility of using prior expert testimony from the Rule 37 hearings as evidence at the hearing before this Court, rather

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[22] If the Court sees a need to break the hearing into different sessions, it would be fairly easy to separate out the jury misconduct aspect of the hearing for initial handling. This part of the hearing will involve no expert or scientific evidence, and will likely involve relatively few witnesses. It will require an initial two witness examination to determine whether the attorney-client privilege is applicable to any portion of the conversations between the lawyer and the jury foreman. We submit that it is not. All in all, two days should probably be sufficient to cover this point.

[23] Because of Echols' more desperate situation on death row than Baldwin and Misskelley, however, he cannot agree to any further continuance or adjournment of the hearing date that might push its conclusion into next year.

than recalling all of those experts to testify anew.[24] The similar use of prior trial testimony where possible should be accommodated as well.

Technology

Counsel for Echols expects to use some computerized courtroom technology to facilitate the presentation to this Court of certain video evidence from the prior trials, from prior witness depositions and from other sources The technology will also be useful for certain demonstrative presentations as well. Counsel will make arrangements to ensure that such technology is available and is used in complete coordination with the Court's staff and regular practices.

Conclusion

In the HBO documentary "Paradise Lost," prosecutors Davis and Fogleman are filmed - and captured for posterity - discussing with the victims' families why they want to offer Jessie Misskelley a deal to testify against Echols and Baldwin at their upcoming trial.[25] Both Davis and Fogleman make the case to those families that they "need" Misskelley's testimony because they have very little other evidence against Echols and Baldwin. Davis tells the victims' families directly that they need Misskelley's "testimony real bad," and that the odds of convicting Echols and Baldwin without Misskelley's testimony are "not too good" only "50-50." Fogelman readily agrees that if Misskelley does not testify, the prosecution's "odds are reduced significantly." The State's case against Echols and Baldwin was, thus, razor-thin as it went to the trial jury for decision, as virtually everyone - including the jury foreman - recognized at the time.

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[24] For example, defense counsel have now agreed – despite the fact that Echols was not represented at Baldwin and Misskelley's Rule 37 hearing and that Baldwin and Misskelley were not represented at Echols' Rule 37 hearing – that the prior testimonies of various experts from the Rule 37 hearings can be presented to this Court without the need for recalling those experts to testify in full again. Instead, those experts might only be called to testify live in reply or rebuttal to Dr. Peretti's testimony subsequent to theirs at those hearings. Counsel for Echols will also need to re-call Dr. Peretti to testify so that he can be cross-examined by Echols, who was not present during the Baldwin and Misskelley Rule 37 hearing when Peretti testified. As the Court is undoubtedly aware, Peretti was the Assistant Medical Examiner who performed the autopsies in this case; his expertise and credibility are important issues for review.

[25] See http:www.youtube.com/watch?v=Gz10LtYz4-0&feature=related.

This Court will have to balance against that razor-thin State case an array of new and old evidence that is truly astonishing in its breadth. Indeed, there is hardly an aspect of the State's original prosecution theory that will not be challenged, confronted and called into question in this process. Most importantly, of course, this Court will now have before it the "undisputed" crime scene evidence indicating "that the [DNA] results conclusively excluded Echols, Baldwin, and Misskelley as the source of the DNA evidence tested," Arkansas Supreme Court slip op. at 10 (emphasis added), as well as the parallel evidence indicating who those DNA test results do NOT exclude - Terry Hobbs. The totality of this new evidence will have to be considered cumulatively by this Court as well in conducting its reasonable doubt evaluation.

Since May 1993, the fates of Damien, Echols, Jason Baldwin and Jessie Misskelley have been inextricably linked as a result of the investigation and prosecution of these murders. Now they are inextricably linked on this new trial motion as well. Because of the nature of the State's prosecution theory so clearly tying these three men together in the commission of these crimes, a reasonable doubt as to any one of them implicates doubt for all of them. Either they committed these crimes together, as the State contends, or they did not commit these crimes at all, as the defense is sure.

As the Court noted during our initial Scheduling Conference, the nature of the task assigned to it by the Arkansas Supreme Court is simple: to determine if a "reasonable doubt" as to the defendants' guilt would now necessarily arise in the mind of a hypothetical new juror. The accomplishment of that task is made difficult only by the wealth of evidence - new and old - that has been generated in this celebrated case over the years because of persistent public doubts about the integrity of the original jury verdicts. If the evidence develops before this Court as Echols expects, we believe that this Court will clearly conclude that no "new jury would find

Echols guilty beyond a reasonable doubt" of these murders, slip op. at 14;[26] instead, any new and impartial juror would find reasonable doubts aplenty to acquit him. As a result, a new trial should certainly be ordered in this most extraordinary case, where even two of the victims' parents - Pam Hobbs and Mark Byers - have previously recognized the wisdom of holding a new trial to remove the many lingering – and eminently reasonable – doubts about the verdicts.

Respectfully submitted,

Dennis Riordan (SLB)

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(CA SBN 121547)
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(202) 508-4655

Deborah R. Sallings (SLB)

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(AR SBN 80127)
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Roland, AR 72135
(501) 330-2686

Counsel for Damien Wayne Echols

[26] Cf. Ark. Code Ann. Section 16-112-201(a) (requiring evidence that "no reasonable fact-finder would find the petitioner guilty of the underlying offense").

EXHIBIT A

ROPES & GRAY LLP
ONE METRO CENTER
700 12TH STREET, NW, SUITE 900
WASHINGTON, DC 20005-3948
WWW.ROPESGRAY.COM

January 20, 2011

David R. Raupp
Assistant Attorney General
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, Ark. 72201

RE: State v. Echols

Dear David:

I write to introduce myself a little less formally than through a Court Scheduling Conference as one of the new counsel for Damien Echols in the proceeding pending before Judge Laser. I can be reached at 202-508-4655, or Stephen.braga@ropesgray.com, if you need to speak with me. I look forward to working through the issues in this case with you.

One of those issues, as discussed in our conference with the Court, will undoubtedly be additional testing of evidence in the case. I propose that we try to schedule a Conference Call among the lawyers for all parties shortly after our briefs are due in order to see if we can reach any agreement(s) on such additional testing. I would be happy to set up the call, if you agree.

In the meantime, there is one item of evidence on which I would like to seek your immediate agreement for testing, even before that Conference Call. It is not a DNA issue, and thus does not involve the complications that such testing can involve. I would like the ability to test the "2 ounces of partially digested fluid and remnants of green vegetable-like material" found in Stevie Branch's lumen during his autopsy to determine exactly what the green vegetable-like material is. Assuming that evidence still exists, can we agree to have such testing done?

I look forward to hearing from you.

Sincerely,

Stephen L. Braga

EXHIBIT B

ROPES & GRAY LLP
ONE METRO CENTER
700 12TH STREET, NW, SUITE 900
WASHINGTON, DC 20005-3948
WWW.ROPESGRAY.COM

December 23, 2010

Arkansas State Medical Examiner's Office
3 Natural Resources Drive
Little Rock, AR 72205

RE: Freedom Of Information Act Request

Dear Sir or Madam:

Pursuant to the Arkansas Freedom of Information Act, and on behalf of my client Lorri Davis of Little Rock, I hereby request that you provide me with copies of the following public records:

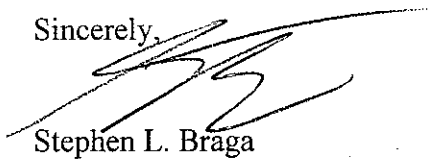
1) records identifying the number and dates of autopsies performed by Dr. Frank Peretti for the Arkansas State Medical Examiner's Office in 1992;

2) records identifying the number and dates of autopsies performed by Dr. Frank Peretti for the Arkansas State Medical Examiner's Office in 1993; and

3) records identifying the number and dates of autopsies performed by Dr. Frank Peretti for the Arkansas State Medical Examiner's Office in 1994.

I am happy to pay for any costs that might be associated with retrieving and/or copying these records for me. If you have any questions concerning this request, please call me at 202-508-4655. Otherwise, I look forward to receiving these records from you as soon as possible.

Sincerely,



Stephen L. Braga

ARKANSAS STATE CRIME LABORATORY

Mike Beebe
Governor

Kermit B. Channell, II
Executive Director

January 28, 2011

Stephen L. Braga
Ropes & Gray LLP
One Metro Center, 700 12th Street NW, Suite 900
Washington, DC 20005-3948

RE: FOI request for Dr. Peretti's Autopsies

Dear Mr. Braga,

I have been advised by our legal counsel in the Office of the Attorney General, State of Arkansas, that the Crime Laboratory can not honor your FOI request. I have been advised that you should ask for a hearing in this matter since they believe the request would violate A.C.A. 12-12-312 as it applies to the release of records.

If the circuit court in the 2nd Judicial District believes you are entitled to this information the Crime Laboratory will be happy to provide the information you have requested.

I am sorry that I am unable to help you at this time.

Sincerely,

Richard J. Gallagher
Assistant Director
Custodian of Records

#3 Natural Resources Drive • P.O. Box 8500 • Little Rock, Arkansas 72215
Fax 501-227-0713
Phone 501-227-5747
Laboratory Services

Fax 501-221-1653
Phone 501-227-5936
Medical Examiner

EXHIBIT C

ROPES & GRAY LLP
ONE METRO CENTER
700 12TH STREET, NW, SUITE 900
WASHINGTON, DC 20005-3948
WWW.ROPESGRAY.COM

April 21, 2010

Dr. Charles Kokes
Chief Medical Examiner
Arkansas Crime Laboratory
P.O. Box 8500
Little Rock, Arkansas 72215

RE: Damien Echols

Dear Dr. Kokes:

I am a new attorney representing Damien Echols, one of the defendants in the so-called West Memphis Three case. On behalf of Mr. Echols, I write to request copies of all autopsy reports, photographs, toxicology reports, written notes (including bench notes), fi[illegible] investigator reports, police reports, phone logs and/or communication sheets in the Medical Examiner's Office file(s) from May 1993 to date relating to the ME Office's work on the autopsies of the victims in this case. I would be happy to pay the costs of copying these documents and shipping them to me.

Thank you in advance for your assistance with this request. If you have any questions concerning it, please do not hesitate to contact me regarding the same.

Sincerely,

Stephen L. Braga

ROPES & GRAY LLP
ONE METRO CENTER
700 12TH STREET, NW, SUITE 900
WASHINGTON, DC 20005-3948
WWW.ROPESGRAY.COM

January 5, 2011

Dr. Charles Kokes
Chief Medical Examiner
Arkansas State Medical Examiner's Office
3 Natural Resources Drive
Little Rock, AR 72205

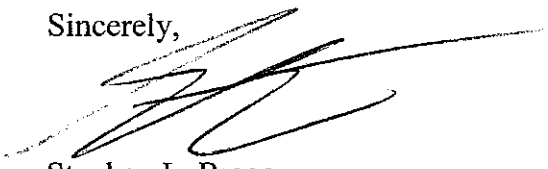
RE: Damien Echols

Dear Dr. Kokes:

On April 21, 2010, I sent you the accompanying letter requesting copies of certain records in the possession of your office. To date, I have not received any response from you to that letter. Can you please let me know whether you will provide me with access to these materials voluntarily or not?

Thank you.

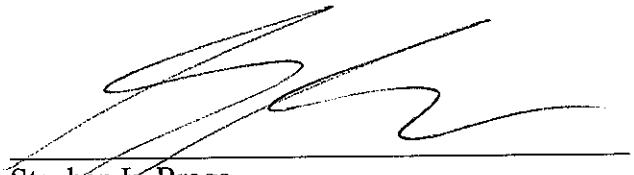
Sincerely,



Stephen L. Braga

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, and/or sent electronic, copies of Damien Echols' Pre-Hearing Brief and the Exhibits thereto to the Hon. David N. Laser, c/o Craighead County Courthouse, Jonesboro, AR; Dustin McDaniel, Attorney General; David Raupp, Senior Assistant Attorney General; Kent Holt, Deputy Attorney General, 323 Center Street, Little Rock, AR 72201; Michael Walden, Circuit Prosecutor, Jonesboro; and counsel of record for all co-defendants, this 18th day of February, 2011.



Stephen L. Braga