

February 28, 1994

**DAVIDSON:** Good morning, ladies and gentlemen, again my name is Scott Davidson and Val Price and I are representing Damien Echols in this case. Now, I had the opportunity to talk with some of you during the voire dire process and Val talked with some of you and uhm, we both agree that uh, we believe that you are a jury that will hold the prosecutor to his burden of proof beyond a reasonable doubt. Now this uh now that we're through with the voire dire process, this is as both the lawyers have already explained to you is opening statements where we can give you a birds eye-view of what we expect the evidence to show. Now, uh, after the opening statements here, we will begin our testimony, the prosecutor will be able to put his testimony on first. Now, I ask that each of you remember that the cross examination or the testimony that we will be able to elicit after they have put their witnesses on, we will be able to question each witness and that cross examination is just as much evidence and is just as much testimony that you can consider and we ask that you remember that. Not only that, also, the prosecutor will be able to put on his entire case before we have an opportunity to uhm, put anybody on. So I ask that you just keep an open mind and as you promised earlier in voire dire, to wait until all of the testimony is in before making up your mind. Wait until you've seen all of the evidence and been instructed by the court and go back and deliberate before you make up your mind in this case. Now this is the, uhm, opportunity that we have to tell you what we expect the evidence to show. Uh, to be truthful with you, this is a little bit of an unusual case, in that there are, we got a list of maybe 150 witnesses, potential witnesses, and I could sit here and go through what we expect each witness may say, uhm, but we'd be here uh, for a long period of time. So rather than doing that and going through each one of those witnesses and uh, giving you a preview, what I'm going to do is to give you four different themes that I think that you will see from the testimony that is elicited, both during opening, uh, or during the direct examination of the case of the uh, prosecutor and the case that we will put on. Four different themes that I think that you will see. And the first thing...

[Davidson writes on a board] 1. Police Ineptitude.

The first thing that I think that you will see from the testimony that is elicited is police ineptitude. In other words, I think that what you will see will be sloppy police work. I think as you see the case progress, you will see things that the police decided not to do, you will see evidence they decided not to send into the crime lab, you will see leads that they chose not to follow, you will see people they chose not to talk to and I think this is a theme. I don't know if the bailiff gave you uh uh uh pads, but I suggest if you didn't get one, start marking these down. I think you will see that from the testimony that comes out, it will be very evident to you. Number one, police ineptitude. The second theme that I think you will see from the evidence that is presented, is what I call...

[Davidson writes on the board again] 2. Damien Echols Tunnel Vision.

I think that you will see from the testimony that when they couldn't find anybody, uh, any truckers, when they couldn't find the transients, they couldn't find the V.A. vet, they began looking for somebody to pin this crime on. They began looking for someone, in the community, who can we put this thing on? And I think that you will see that they began having Damien Echols tunnel vision where they start taking all the evidence that comes and trying' to, as Mr. Ford said, fit it into their little puzzle, fit in to their little picture. Now, I anticipate, that you'll also see that basically these will fit together and those are basically the same thing. Now, as we look at this, I think that you'll see that there are again, people that they didn't talk to, and that's just as important as the ones that they talked that we submit. And, now, there is a by-product to this. You're also going to see that our client Damien Echols, uh, well, I'll be honest with you... he's not the All American boy, uhm, he's kind of weird. He's not the same uh, uh, as maybe you and I might be. Uhm, that'll be evident. But I think you will also see that there's simply not evidence that he murdered these three kids. So number 1, police ineptitude, number 2, Damien Echols tunnel vision. I think the third thing, and the third theme that you will see from the witnesses, is that Damien Echols simply was not there. And I'm gonna...

[Davidson writes on a board] 3. Damien was not there.

Again, wait until all the testimony is on. It may be a long time before you see this, but I think that you will see it. We will put witnesses on, and these witnesses will be able to tell you, Damien Echols was not there. We'll have family and friends saying he was not there, this is where was on the afternoon of May 5th of 1993, this is where he was on the evening of May 5th of 1993. So wait. Take notes of these things also. That's the third theme that I think that you will see. Now, the 4th theme that I think that you will see...

[Davidson writes on the board again] 4. Prosecutor has not proven guilt beyond a reasonable doubt.

And this really, includes all of them and says that the prosecutor has not proven guilt beyond a reasonable doubt. And I think that those are four themes that you can look for as you look at all the testimony that comes, uh, comes out. At this point, you may be asking yourself, "Why did they put me on this jury? Why am I here? Why am I sitting here?" Well the reason, ladies and gentlemen, is that each of you are the barrier. You are the barrier, you, individually and collectively are the barrier, you're the, you're the ones that require the prosecutor to prove guilt beyond a reasonable doubt. You're the ones that upheld the oath, you're the ones that answered the questions back there that you would do so. And, there's a number of things that you impliedly said when you swore in as a juror. And the first one is that you would follow the law, as the judge gives it to you, whether you, like it or not, that you would follow the law. The second one is, you promise to try Damien Echols on the testimony that is elicited from the witness stand and from the exhibits that are produced at trial. Not upon suspicion, not upon guess work, not upon innuendo, and not upon anything you may have heard or read in the press. But solely upon what comes from the witness stand. And the third thing that you impliedly said that you would do, that

you'd listen to the testimony. That when someone gets up on that stand, that you'd look at 'em in the eye...

**DAVIS:** [somewhat inaudible, but sounds like: Your honor, excuse me Mr. Davidson, I hate to interrupt you] Your honor, it's not that the state disagrees necessarily with what Mr. Davidson is saying but it seems that that's appropriate for closing argument, and it's certainly is not outlining what he intends the evidence to show. [becomes inaudible because multiple people start talking]

**BURNETT:** Avoid argument, ah...

**DAVIDSON:** I will. That you would look at them in the eye and you are, will be the judges of the credibility of the witnesses, and you will be the ones to say whether or not they're telling the truth or not. Now, that's what we're here for. As Mr. Ford already said, it's a search for the truth. And you're the ones that are here to determine what that truth is. And we believe that uh, you will give our client a fair and honest evaluation. I believe that as the testimony comes on that you will be able to look at it and decide what is credible and what is not. What... what things the police department has said, you can say whether that is credible or not. Look at its, consider its source, consider the motive, consider the logical and factual inconsistencies and at the end of the case, we're gonna ask you to come back and weigh these inconsistencies and the source and the motive against that heavy burden of guilt beyond a reasonable doubt and we think that when you do, and that when you go back and deliberate that you'll come back with the only possible verdict and that's a verdict of not guilty. Thank you.