

Reasonable Doubt: A real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence, or lack of evidence, in a case.

“There was a remarkable lack of evidence against anybody.” — Prosecutor John Fogleman

The following is a step-by-step analysis of the evidence used to convicted Damien Echols, Jason Baldwin, and Jessie Misskelley. The information was taken directly from the wm3.org site, which is a wealth of information itself. I felt that the following analysis presented a clearer picture than I could paint of just how skewed the case really was.

Who's right?

Decide for yourself. This site will take a critical look at the evidence which put -- and keeps -
-The West Memphis Three in prison for The Robin Hood Hills Murders. We will use The Supreme Court of Arkansas Opinions affirming their convictions as the source for that evidence. There will be no doctoring of how the Opinions describe the evidence, and none of what they mention directly involving Damien Echols, Jason Baldwin, or Jessie Misskelley, Jr. will be omitted. We will examine the evidence the same way the juries at the original trials were supposed to. Is there any reason not to believe it? How relevant is it? Is it at all conclusive? In addition, we will consider whether information the juries were not allowed to hear and new evidence which has recently come to light might have changed their viewpoint. Excerpts from the Supreme Court Opinion will be represented in bold type. When we are finished, you can decide if there is a case against The West Memphis Three. This is a different way to think of this site. Most of the Free The WM3 website tries to explain the real reasons Damien was sentenced to death and Jason and Jessie to life in prison by Arkansas . . . Satanic panic . . . a rush to judgment . . . narrow-minded prejudice...

This page will show you how the prosecution got away with it

1) JESSIE MISSKELLEY'S CONFESSION

A) EVIDENCE JESSIE MISSKELLEY HAD CRIME KNOWLEDGE UNAVAILABLE TO PUBLIC

B) DAMIEN ECHOLS SPOTTED NEAR CRIME SCENE

C) EVIDENCE MISSKELLEY ATTENDED ESBATS WITH ACCOMPLICES

D) EVIDENCE ONE VICTIM HAD BEEN STALKED

E) JESSIE MISSKELLEY CORRECTLY IDENTIFIES BALDWIN'S CLOTHING

F) FIBER EVIDENCE LINKING ACCOMPLICES TO CRIME

The Supreme Court of Arkansas Opinion in the Misskelley case runs 24 pages, addressing 41 separate articles of appeal filed by Jessie's lawyers, Daniel Stidham and Gregory Crow. The majority of these appeals revolve around legal issues which are beyond the scope of this page. They include arguments under the categories of Evidence, Criminal Law, Criminal Procedure, Appeal and Error (referring to in-trial appeals), Search and Seizure, Witness Qualification, Constitutional Law, Juvenile Law -- Applicable Codes, and Jury Instruction. We can largely confine this survey to evidentiary appeals, especially the one relating to whether the verdict is supported by substantial evidence, which the court defines as evidence which would have allowed the jury to reach its conclusion without resorting to speculation or conjecture. This -- as opposed to the better known concept of guilt beyond a reasonable doubt -- is the standard by which appellate courts, at least in Arkansas, are guided in rendering their opinions. Many of the evidentiary appeals need not be discussed, as they merely mention in the context of larger legal issues evidence which is more fully developed elsewhere in the Opinion, or because they appeal in regards to evidence bearing upon alternate suspect to the crimes; or because they appeal in regards to evidence bearing upon Echols or Baldwin, whose case evidence will be covered in Part Two.

Finally, it is important to keep in mind that the Court is not evaluating any of this evidence as to its worth or veracity -- they repeatedly remind readers that weighing evidence was solely the jury's job. The Court's only concern is whether these items of evidence were admitted properly and if they could have been of substantial aid to the jurors in the job of reaching their verdicts.

THE SUBSTANTIAL EVIDENCE MATERIAL It is during the Supreme Court's review of whether Judge Burnett was correct in not ordering a directed verdict of Not Guilty at the close of the state's case that the Opinion addresses the question of whether the state had met its burden of presenting substantial evidence of the defendant's guilt. Boldface type indicates the text is taken directly from the Opinion.

1) **JESSIE MISSKELLEY'S CONFESSION** From page 10 - 12 Misskelley Opinion, all contiguous: The statements [in Jessie Misskelley's confession] were the strongest evidence offered against the appellant at trial. In fact, they were virtually the only evidence, all other testimony and exhibits serving primarily as corroboration.

The above statement is very important to keep in mind. The statements were obtained in a question-and-answer format rather than in a narrative form. However, we will set out the substance of the statements in such a way as to reveal with clarity the appellant's description of the crime:

In the early morning hours of May 5, 1993, the appellant received a phone call from Jason Baldwin. Baldwin asked the appellant to accompany him and Damien Echols to the Robin Hood area. The appellant agreed to go. They went to the area, which has a creek, and were in the creek when the victims rode up on their bicycles. Baldwin and Echols called to the boys, who came to the creek. The boys were severely beaten by Baldwin and Echols. At least two

of the boys were raped and forced to perform oral sex on Baldwin and Echols. According to appellant, he was merely an observer.

While these events were taking place, Michael Moore tried to escape and began running. The appellant chased him down and returned him to Baldwin and Echols. The appellant also stated that Baldwin had used a knife to cut the boys in the facial area and that the Byers boy was cut on his penis. Echols used a large stick to hit one of the boys. All three boys had their clothes taken off and were tied up. According to the appellant, he ran away from the scene at some point after the boys were tied up. He did observe that the Byers boy was dead when he left. Sometime after the appellant arrived home, Baldwin called saying, "we done it" and "what are we going to do if somebody saw us." Echols could be heard in the background. The appellant was asked about his involvement in a cult. He said he had been involved for about three months. The participants would typically meet in the woods. They engaged in orgies and, as an initiation rite, killing and eating dogs. He noted that at one cult meeting, he saw a picture that Echols had taken of the three boys. He stated that Echols had been watching the boys. The appellant was also asked to describe what Baldwin and Echols were wearing the day of the murders. Baldwin was wearing blue jeans, black lace-up boots and a T-shirt with a rendering of a skull and the name of the group Metallica on it. Echols was wearing black pants, boots and a black T-shirt. The appellant initially stated that the events took place about 9:00 a.m. on May 5. Later in the statement, he changed that time to 12:00 noon. He admitted that his time periods might not be exactly right. He explained the presence of the young boys by saying they had skipped school that day.

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

One of the interrogating officers later testified that his notes revealed the appellant told him he received a phone call from Baldwin on the night before the murders. Baldwin stated that they planned to go out and get some boys and hurt them.

The appellant's statements are a confusing amalgam of times and events. Numerous inconsistencies appear, the most obvious being the various times of day the murders took place. Additionally, the boys were not tied with rope, but with black and white shoe laces. It was also revealed that the victims had not skipped school on May 5. Problems with the evidence: CREDIBILITY, EVIDENCE WITHHELD, NEW EVIDENCE REFUTES As even the Arkansas Supreme Court admits, there are serious problems with this evidence. Jessie's statement lacks CREDIBILITY for a two-pronged reason. One, structural clues that it was not a sincere confession but rather the coerced compliant variety of a false confession (1),

and, two, evidence its contents conflict with known facts, indicating it is not a credible source of information about the crimes it pertains to. For a thorough explanation of how Jessie may have come to give police a false confession, it is strongly recommended that you read his attorney Dan Stidham's Synopsis of the Case. Here is a brief outline of support for its claim of false confession.

a) There is a pattern of intimidation and threats evident in juvenile interrogations conducted by The West Memphis Police Department. One-time suspect Bob Loomis' experience being grilled by Gary Gitchell are detailed in *The Blood Of Innocents* (page 150). The Commercial Appeal reports that Kenneth Clyde Watkins, then 17, told private investigator Ron Lax that police browbeat him into saying Echols had confessed to him about killing the boys. Buddy Sidney Lucas says police "yelled and screamed" until he falsely told them that Misskelley had admitted helping Echols and Baldwin hurt someone. (2).

b) Polygraph expert Warren Holmes' analysis of Jessie's test tapes indicate that Jessie was lied to about its results in order to scare him into confessing. This portion of his testimony was WITHHELD from the jury by Judge Burnett on the grounds that polygraph test results are not admissible evidence. He did however, offer the defense a compromise. He would allow them to tell jury that Jessie Misskelley had been told he had failed a polygraph, as long as no other detail was added. (3)

c) The expert opinion of Dr. William E. Wilkins who, despite being under disciplinary review by the Arkansas Board of Examiners in Psychology was an accredited psychologist, testified that Jessie had an IQ of around 72 and was of a highly suggestible personality. (4)

d) The expert opinion of Dr. Richard Ofshe, a professor of Social Psychology at Berkely, that Jessie's confession was a coercive compliant confession. This, too, was WITHHELD from the jury. Judge Burnett ruled that the law allows no expert witness to testify about anything which "speaks to the core of the issue", which is whether a defendant is innocent or guilty. This is despite the fact that Ofshe had been allowed to offer similar testimony in other courts without the judges so ruling. Ofshe also pointed out many instances of coaching about the proper timing of events in the forty minutes of tape Jessie's statement is recorded on, as well as instances where he is coached about the identity of the victim who'd been emasculated, and attempted coaching about what materials were used to bind the victims. Nearly three hours of the interrogation which led to the taping were never recorded. (1) The errors of fact in Jessie's statement can also be used to support a claim that it is a false confession, but they are an issue unto themselves in regards to the CREDIBILITY the statement should be given allowance for.

At the time of his 1994 trial, it conflicted with at least six known issues of fact.

a) Placing the victims and Jason Baldwin out of school at times they were demonstrably in school.

- b) Stating victims were bound with rope whereas they were found tied with their own shoelaces.
- c) Stating one boy was choked into unconsciousness with a stick whereas the medical examiner could detect nothing to indicate this.
- d) Stating boys were "screwed," implying anal rape, whereas medical examiner could find no signs of the expected anal abrasions or other evidence which would back this up.
- e) Describing traumatic beatings issued to the boys which would have left more sign of blood in the soil of reputed crime scene than tests ever indicated.
- f) Describing Chris Byers' emasculation as accomplice with a single swing of a knife whereas medical examiner testified it would take a great deal of precision and skill. (5)

Ironically, both Jessie and the medical examiner turn out to be wrong about the last point. NEW EVIDENCE in the form of a Forensic Analysis and Psychological Profile by Forensic Scientist Brent Turvey, concludes the emasculation was a crude, imprecise act, yet one which was not accomplished with one swing of a blade. (6) This is only a tiny part of Turvey's findings, which represent the first true scientific look by a qualified professional at the crime materials.

In Turvey's opinion, Robin Hood Hills Woods was only the the dump site for a crime committed elsewhere, indicated only in part by a) The nature and extent of Byers' wounds especially required adequate lighting conditions, time and privacy. From beginning to end crime would have taken two hours. (6)

- b) The injuries on all boys would likely have resulted in great deal of screaming. If crime were committed when and where state proposed it was, then this noise, not to mention the span of time the crime required, would have been occurring during a time searchers were already in the woods looking for the boys. (6)
- c) Lack of blood at dump site indicates assaults committed elsewhere. (6)
- d) Lack of mosquito bites on victims indicates they were no longer alive when bodies were taken to the stream for dumping. (7) Through forensic odontology, it will be possible to match a set of teeth to who made these bites. Jessie Misskelley never mentioned biting as part of the assault he witnessed or took part in.

Moreover, Turvey has created a psychological profile of the offender based, in part, on factors such as the following:

- * Due to the sudden violent nature of the attack and the limited resistance displayed by the victims, it is likely the offender is someone they knew and trusted. (6)

* The likelihood that emasculation of one victim in particular has a sexual meaning to offender but not necessarily for sexual gratification.. (6)

* The level of attention paid to victim's faces, in terms of depersonalization and rage, is further indicative of familiarity. (6)

* The punishment orientation of act, as opposed to being one of an erotic sexual nature. (6) *
The method would need access to a vehicle as means of transportation. (6)

Turvey's analysis invalidates every detail of Jessie Misskelley's confession, impeaching it in total, thereby robbing the state of the entirety of its case against Jessie Misskelley, and the entirety of the West Memphis Police theory of the crime, as well.

2 CORROBORATION OF MATERIALS IN CONFESSION:

A) EVIDENCE JESSIE MISSKELLEY HAD CRIME KNOWLEDGE UNKNOWN TO PUBLIC

From page 12 of Misskelley Opinion, all contiguous: However, there were portions of the statements which were consistent with the evidence and were corroborated by the state's testimony and exhibits. The victims had been seen riding their bicycles. Problems with Evidence: RELEVANCE It was certainly no secret that the victims were last publicly seen riding their bicycles in vicinity of the woods May 5th. This is from the lead paragraph of the first article about the murders which appeared in The Commercial Appeal, May 7, 1993, written by Richard Kelley: Neighbors last saw Weaver Elementary School second-graders Steve Branch, Christopher Byers and Michael Moore riding bicycles between 5:15 and 6PM Wednesday.

The medical examiner testified that the boys had been severely beaten Problem:

RELEVANCE There is compelling evidence to believe that many if not most details about what condition the bodies were in when found were widely known by the time Jessie gave his statement June 3rd, 1993. By this time, most of what the police knew about the deaths had been released to the press, and rumors were circling about what little was left out. The rumors were very easy to come by. A great many local volunteers had aided in the search for the boys, and were still on hand when they were found and carried onto the stream bank. The condition of the boys' bodies could easily be expected, through this circumstance, to become a topic of gossip. The information released to the press that the boys were found in water could naturally lead to some speculation the boys had drowned. The Saturday after the bodies were found, The Commercial Appeal reported on its front page that on Thursday, May 6th, Arkansas State Police radio had broadcast a report that the WMPD was investigating the abduction and mutilation of three boys. (8) There exists in a police report dated May 27th documentation that a 16 year old high school student named Bob Loomis heard a rumor the very day the bodies were found that "at least" one boy had been castrated. (9). The next stage

of a rumor progression logically would be to expect to see the "at least" dropped, transforming it into simply, one boy had been castrated.

Two of them had injuries consistent with being hit by a large object. One of the boys had facial lacerations. The Byers boy had indeed been severely mutilated in the genital area. Problems: CREDIBILITY, RELEVANCE Jessie's apparent knowledge of Chris Byers' mutilation could easily have been attained by the same gossip process as outlined above. In fact, all three boys suffered blows to the head, not just two. (8) Misskelley states that Baldwin used a knife to cut Stevie Branch in the facial area. What is known now is that some of these cuts are in fact human bitemarks, not knife wounds, a fact which Dr. Peretti totally misjudged (6).

All the boys had injuries which were consistent with rape and forced oral sex.

Problems: INCONCLUSIVE This is a very misleading statement. Dr. Peretti testified in both trials, in fact, that any conclusive evidence of sexual assault was absent. The anal dilation police had initially assumed meant the boys had been raped was explainable due to normal postmortem relaxation plus the fact that the bodies had been submerged in water for several hours. (10) It is a measure of the WMPD's inexperience that no one on hand at the dump site realized this. The best the state could get Peretti to testify to was that it was marginally possible that the boys may have been sexually assaulted without there being left behind any of the expected anal/rectal tissue damage extremely common in such cases. The issue of whether there is corroborative evidence one or more of the boys were forced to perform oral sex is, frankly, less simple to resolve. The question is repeated to Dr. Peretti at the Echols/Baldwin trial, and as the Opinion for that case goes into greater detail giving background about it, we will look at it there instead of in the Misskelley Opinion.

From page 42 of Echols/Baldwin Opinion, all contiguous: Dr. Peretti testified that Michael Moore had injuries to the ears and the mouth and that he generally sees this type of injuries in children who are forced to perform oral sex. However . . . He also said that the injuries to the mouth could be caused by a punch or a slap. He noted that Steve Branch's injuries to his ears and mouth were similar to Michael Moore's, as were Christopher Byers'. Despite this caveat, Dr. Peretti hedges his bets further still: On cross-examination, he testified that the boys could have the external injuries, with no internal injuries or presence of sperm, and still have been forced to perform oral sex. He opined that if the oral sex was forceful enough to cause the bruises to the outside of the mouth, he would think that there would be bruising to the inside of the mouth as well.

When asked to comment on what the evidence in this issue most clearly shows, Forensic Scientist Brent Turvey declined to answer on the grounds it breached the confidentiality of a client. However, he did offer one general comment about the pathology report Dr. Peretti had prepared and drew his comments from while testifying: "I will say this, however: that report you reference is completely without insight or foundation on the issue you reference. And "consistent with" is a term that means many things. (11) It is obvious from Dr. Peretti's

observations alone, whether they have any foundation or not, that ANY reference made by the state at either trial that the boys had been sexually assaulted was purely conjecture based on highly inconclusive evidence and complicated by vague, leading language.

From page 12 of the Misskelley Opinion, all contiguous: There was evidence that drowning contributed to the deaths of the Moore and Branch boys, but not the Byers boy. This is consistent with the appellant's statement that the Byers boy was already dead when he left the scene. Problems: RELEVANCE Since when did Jessie Misskelley become a licensed medical examiner, qualified to form an opinion about a time of death? All Jessie's statement really says when you extract opinion is that when he left Chris Byers was still on the bank.

The boys were in fact tied up, albeit with shoe laces rather than rope. Problems: RELEVANCE The general comments about all insider knowledge apply here. All that needs to be added is to say that the state never entirely got over the hurdle of clearing up the discrepancy between Jessie's consistent description that rope had been used and the truth, which was that the boys' own shoe laces had been used -- although the jury may have thought they came close. Gary Gitchell testified that while at the dump site it looked to him like one of the wounds on Chris Byers was a rope burn. Defense objected on the ground that to allow Gitchell to testify to this was improper since he was not a qualified medical examiner, (and in fact, Dr. Peretti did not testify about any possible ligatures except shoelaces). But Stidham and Crow were overruled by Judge Burnett, who said it was proper for a detective to give his professional impressions of a crime scene. (12)

B) DAMIEN ECHOLS SPOTTED NEAR CRIME SCENE

Damien Echols was observed near the crime scene at 9:30 p.m. on May 5. He was wearing black pants and a black shirt and his clothes were muddy. Problems: CREDIBILITY This statement is derived from the testimony of Tabitha Hollingsworth, and is in essence the same story her mother and brother would tell on the witness stand later in the Echols/Baldwin trial. As Tabitha was a minor child of Narlene Hollingsworth, it is fair to question whether she was testifying under the influence of her mother, a woman with tremendous credibility issues. Narlene's testimony is covered in Part II.

C) EVIDENCE MISSKELLEY ATTENDED ESBATS WITH ACCOMPLICES A witness testified that she had attended a satanic cult meeting with Echols and the appellant. Problem: CREDIBILITY This is derived from the testimony of Vicki Hutcheson, who claimed that approximately two weeks after the murders she, while playing detective, attended an esbat or cult meeting with Damien Echols and Jessie Misskelley. This supposedly occurred in an empty field in Turrell, Arkansas. Interestingly, she claimed to have been driven there by Damien in his red Ford Fiesta. Damien had no driver's license and no car, nor did the state ever put on a witness who could demonstrate Damien had access through a friend or relative to a car of that description. For a complete synopsis of the MANY other credibility issues which be raised in regards to Vicki Hutcheson, including evidence she testified in hope of receiving a reward, and/or in the hopes of seeking consideration for criminal charges pending

against her in another case, read Dan Stidham's case synopsis, previously cited. (5) All that needs to be recapped here is the one most damaging issue which can ever be raised about a witness at a trial. Her own admission that what she was testifying to was probably not true, something she dreamed up after a night guzzling a couple of bottles of Wild Turkey and popping prozac (on top of her regular doses of Xanax) stretched out on the grass of her parents' front lawn. (13)

D) EVIDENCE ONE VICTIM HAD BEEN STALKED Steven Byers's mother testified that, approximately two months before the murders, her son told her that a man dressed all in black had taken his picture. Problems: **CREDIBILITY** Melissa Byers' testimony in regards to her son Chris, not Steven, was unsubstantiated hearsay of something allegedly told to her six weeks before his death by Chris. Despite the fact that hearsay is traditionally recognized as inherently unreliable and disallowed in court, Judge Burnett granted an exception in this case. (14) IF a true account -- and not just a restatement of an old and widespread urban legend Melissa Byers may have decided to take advantage of in order to help secure convictions for the defendants -- there is still no substantiating whether the man in black was indeed Damien Echols. The credibility of assuming it must be is undermined by the same car problems found in Vicki's testimony, at the very least. Furthermore, it is fair to wonder why the prosecution elected not to have her repeat this testimony at the Echols/Baldwin trial, where it would seem to have been far more germane.

E) JESSIE MISSKELLEY CORRECTLY IDENTIFIES BALDWIN'S CLOTHING There was evidence that Baldwin owned a shirt and boots of the type described by the appellant. Problems: **INCONCLUSIVE** As Jessie Misskelley was acquainted with Jason Baldwin, it can be assumed he was familiar with the kinds of clothes Jason liked to wear, including his favorite T shirts and boots. It is especially true that most teenagers wear the same shoes (or in this case boots) every day.

F) FIBER EVIDENCE LINKING ACCOMPLICES TO CRIME Finally, a witness from the State Crime Lab testified that she found fibers on the victims' clothing which were microscopically similar to items in the Echols and Baldwin residences. Problems: **INCONCLUSIVE** The fiber evidence was introduced merely to help tie alleged accomplices Damien and Jason in with the crime. There was no fiber evidence introduced in either trial concerning Jessie. See the section on The Fiber Evidence in Part II.

OTHER EVIDENCE MENTIONED IN THE OPINION From page 15 of Misskelley opinion: Detective Bryn Ridge and Inspector Gary Gitchell began another interrogation of the appellant at about 12:40 p.m. They employed a number of techniques designed to elicit a response from the appellant. A circle diagram was drawn and the appellant was told that the persons who committed the murders were inside the circle and that those trying to solve the crime were on the outside. He was asked whether he was going to be inside the circle or outside. He apparently had no response. He was then shown a picture of one of the victims and had a strong reaction to it. According to Gitchell, the appellant sank back into his chair, grasped the picture and would not take his eyes off it. Problems: **CREDIBILITY** In an

October 1996 interview conducted by The Free the WM3 Support Fund, Jessie disputes that this is an accurate account of his reaction. Jessie disputes the accuracy of almost everything witnesses Gitchell and Ridge said about that interrogation -- this is given merely as an example. Jessie states that when the picture was placed in front of him, there was no reason for him to have any particular reaction to it at all. He wasn't even sure what it was suppose to mean. To him it looked like merely a photo of a sleeping child. He denies ever displaying the strong reactions which were later attributed to him.

From page 22 The final evidentiary issues can be discussed together. The appellant argues that the following evidence was erroneously admitted because it was either irrelevant, or its probative value was outweighed by its unfairly prejudicial effect: 1) a picture of Jason Baldwin wearing a black T-shirt with a skull and the name of the group Metallica on it; 2) testimony of a witness that she attended a cult meeting with the appellant and Echols; 3) a book on witchcraft found in Echols' home; 4) the testimony of Melissa Byers that her son told her that a man wearing black had taken his picture; 5) fiber evidence linking Baldwin and Echols to the crime; 6) boots worn by Echols and Baldwin 7) testimony that Echols was observed near the crime scene on the night of the murder. Problems: RELEVANCE Of the seven above, five have already been dealt with. Only parts of 1 and 6 contain are new mentions of evidence. Damien reputedly, from all available sources, wore boots almost all the time in public, and the earlier comments about Jessie identifying Jason's apparel still apply. Furthermore, it must be repeated that, though Jessie was able to correctly identify articles of clothing Jason owned, there is nothing to prove Jason happened to be wearing these May 5, 1993. The book on witchcraft, Never on a Broomstick, is addressed in Part II under Other Evidence Mentioned in the Opinion.

A) THE SUBSTANTIAL EVIDENCE

1. DAMIEN ECHOLS SPOTTED NEAR CRIME SCENE
2. DAMIEN ECHOLS' OVERHEARD CONFESSION
3. THE FIBER EVIDENCE
4. KNIFE FOUND IN LAKE BEHIND JASON BALDWIN'S HOME
5. EVIDENCE DAMIEN ECHOLS OWNED SIMILAR KNIFE
6. EVIDENCE THAT DAMIEN ECHOLS DELVED INTO OCCULT
7. EVIDENCE CRIME SCENE BORE TRAPPINGS OF OCCULTISM
8. EVIDENCE CHRIS BYERS' SHIRT HAD CANDLE WAX STAIN
9. EVIDENCE DAMIEN ECHOLS HAD CRIME KNOWLEDGE UNKNOWN TO PUBLIC
10. JASON BALDWIN'S JAILHOUSE CONFESSION

B) EVIDENCE OF ECHOLS PRIOR HISTORY OF CRIMINAL ACTIVITY

C) EVIDENCE MENTIONED IN SUPPRESSION OF EVIDENCE ARGUMENTS

D) MISCELLANEOUS EVIDENCE CONTAINED IN THE OPINION

a) TIME OF DEATH EVIDENCE

b) THE GRAPEFRUIT DEMONSTRATION

c) EVIDENCE DEMONSTRATING ACCOMPLICES -- MULTIPLE TYPES OF ROPE KNOTS

d) EVIDENCE OF BLOOD ON NECKLACE

The Supreme Court of Arkansas Opinion in the Echols/Baldwin case runs 63 pages, addressing 82 separate articles appeal filed by either Damien Echols' lawyers Val Price and Scott Davidson; Jason Baldwin's lawyers Paul Ford and George Robin Wadley; or in several instances both. The same explanations and restrictions apply to this section as were described at the beginning the Misskelley Opinion.

A) THE SUBSTANTIAL EVIDENCE MATERIAL It is during the Opinion's review of whether the state meets the substantial evidence burden that most of the trial's evidence is detailed. It is outlined briefly in article 3 of the appeals, but developed more fully in a section entitled Sufficiency of Evidence Arguments, included in the text after the reasons why each article of appeal is denied by the Arkansas Supreme Court are summarized. The Opinion breaks down the state's substantial case into ten separate areas of evidence. Each will be individually presented and then commented upon. Boldface type indicates the text is taken directly from the Court Opinion.

From pages 21-23 of Echols/Baldwin Opinion, all contiguous: The substantial evidence of Echols's guilt is as follows.

1. DAMIEN ECHOLS SPOTTED NEAR CRIME SCENE Anthony and Narlene Hollingsworth were well acquainted with Echols and testified that they saw Echols and his girlfriend, Domini Teer, walking after 9:30 on the night of the murders near the Blue Beacon Truck Stop, which is near Robin Hood woods where the bodies were found. The witnesses testified that Echols had on a dark-colored shirt and that his clothes were dirty. This evidence placed Echols in dirty clothes near the scene at a time close to the murders. Although not material to this point, other evidence established that Domini Teer might be confused with Baldwin as both had long hair and were of slight build. Problems: CREDIBILITY, RELEVANCE Of the seven passengers in that car, only Narlene and two of her children would ever state they saw Damien Echols and Domini Teer along the side of the road that night. Narlene's husband Ricky, for instance, stated he could not make out who the figures were. Anthony Hollingsworth, a convicted sex offender, contradicted his mother's testimony on the stand while attempting to corroborate it by placing the sighting at an hour later. (15)

Narlene stated that the time of the sighting coincided with the beginnings of feeling "sick to her stomach" while driving, which could place her judgments about what she was seeing at such a time into question. (16) The truthfulness of the Hollingsworth family members' testimony is highly open to argument. According to the Various relatives describe Narlene as a notorious gossip and a liar, and even the friend she was on her way to pick up that night, Dixie Hubbard, says she "will exaggerate." (15) When Narlene first told her story to the police May 11th, 1993, Damien Echols had already been questioned once by the police and

was considered a suspect. Narlene -- who was Damien's girlfriend Domini Teer's distant relative and close neighbor -- was aware of this situation, according to her nephew L.G. Hollingsworth. (17) Her detailed statement to the police was as much concerned with providing many specific reasons for the police to suspect her nephew L.G. was involved as it was with providing a sighting of Damien near the crime scene.

The information she gave about L.G., however, did not pan out under investigation. According to relatives of both Narlene and L.G., she had a strong motive for wishing to get her nephew into trouble. By falsely tying L.G. into the crime, they suggest she was seeking revenge against L.G.'s father, with whom she had gone through a bitter divorce. (18)

To quote the opinion of the authors of *The Blood of Innocents*, page 242, "If she was wrong about L.G., then couldn't she be wrong about Damien, too?"

Equally open to doubt is how the state tried to use the Hollingsworths' identifications. The prosecution tried to suggest that they had mistaken Jason Baldwin for Domini Teer, ignoring the obvious implication that, if they were incorrect about one of the people they were seeing, they might be incorrect about the other. The idea that they were mistaking Domini for Jason is undermined by the fact that they specifically described a pair of black pants with stitched-on white floral patches which Domini sometimes wore (19). The prosecution tried to counter this by saying what they were actually seeing was a pair of gray jeans Jason owned which had holes in the knees. (20) Another inconsistency is that Domini is described by one witness as wearing a multicolored shirt that day, whereas Jessie described Jason as wearing either a black Metallica or Megadeath T-shirt. (21) The credibility of her statement that she could tell Damien was dirty in a brief glimpse from a moving car at night is made even more doubtful by the fact they reputed him to wearing dark clothing to begin with.

2. DAMIEN ECHOLS' OVERHEARD CONFESSION Twelve-year-old Christy VanVickle testified that she heard Echols say he "killed the three boys." Fifteen-year-old Jackie Medford testified that she heard Echols say, "I killed the three little boys and before I turn myself in, I'm going to kill two more, and I already have one of them picked out." The testimony of these two independent witnesses was direct evidence of the statement by Echols. These witnesses were cross-examined by Echols's counsel, and it was the jury's province to weigh their credibility. Problems: CREDIBILITY, RELEVANCE One wonders what kind of scale the jury was using. The credibility -- even the relevance -- of the girls' accounts are vulnerable to attack on virtually every front. They allege to have overheard these remarks the first of several occasions Damien Echols attended games at the local softball field starting sometime in May. (22).

They only came to believe the man they saw was Damien Echols after seeing television news reports days about his arrest, at which point Jody Medford's mother contacted the authorities. Till then, the mother had not taken the girls' stories seriously enough to take this measure. Neither girl could account for why it was physically possible that they could hear Damien

Echols make this statement, yet nothing else Damien may have said, nor anything being said by any of the people he was allegedly in conversation with.

Neither could they describe any of these persons' appearance. By the lack of context provided for their quote, its meaning is thrown into question. Even if the story was not something the girls invented to draw attention to themselves, even if their memory of the words was accurate after the month which had elapsed before reporting them, and even if the man who made them was indeed Damien Echols, this can be asked: Was it said in a serious manner, meant to be taken literally, or was it perhaps a sarcastic, facetious parody of what Damien knew other people were saying about him, made by him in the casual company of friends with whom he felt he could joke around? Given the outlandish nature of the remarks, this is ironically not a possibility which can be dismissed outright even if one were to presume that Damien is guilty.

3. THE FIBER EVIDENCE Lisa Sakevicius, a criminalist from the State Crime Laboratory, testified that she compared fibers found on the victim's clothes with clothing found in Echols's home, and the fibers were microscopically similar. Problems: INCONCLUSIVE By Sakevicius' own admission the fiber evidence was inconclusive. The best that she could testify to was that her lab found a total of four fibers in the homes of Damien and Jason (though none in Jessie Misskelley's) which were microscopically similar to fibers found at the crime scene. (22)

One red rayon fiber found on Jason Baldwin's mother's robe was similar to fibers from Michael Moore's shirt; a green polyester fiber from Michael's cap was similar in structure to ones from a blue cotton-polyester blend shirt found in Damien's trailer (but which actually belonged to a child relative), and finally one cotton and one polyester fiber found on Michael's blue pants were also structurally similar to fibers from that same shirt.

All but the red rayon can logically be dismissed. And even with the rayon fiber, the defense put on its own fiber expert, Charles Linch of the Southwestern Institute of Forensic Sciences in Dallas, to dispute its microscopic similarity to the rayon crime-scene fiber. (23) The clout of fiber evidence has taken on considerable prestige in the public's mind in recent years, but, ironically, professional law enforcement personnel, who ought to know, are not as impressed. For instance, the FBI has elected in the last decade to include on all bureau fiber evidence reports a standard disclaimer about its inherent unreliability (22) . Fibers are not comparable to fingerprints -- or dental imprints, for that matter. Moreover, in order for a probable match to have significance in a case like this, it must be shown that the fibers being tested have an exclusive source -- as opposed to so common a source that any match is meaningless.

This is the test the state's single potentially decent piece of scientific evidence failed. The red rayon fiber -- found not on Jason Baldwin's clothing but on his mother's robe (though to be fair it could have been transferred there in the process of laundering) -- is traceable to the type of material used to make most of the variety of jerseys for sale at the local Walmart, which, by virtue of being the only large retail store in the West Memphis/Marion area, was

frequented by nearly every local resident (22). The same fibers were also found in the Moore home. (24)

4. KNIFE FOUND IN LAKE BEHIND JASON BALDWIN'S HOME Dr. Frank Peretti, a State Medical Examiner, testified that there were serrated wound patterns on the three victims. On November 17, 1993, a diver found a knife in a lake behind Baldwin's parents' residence. The large knife had a serrated edge and had the words 'Special Forces Survival Roman Numeral Two' on the blade. Dr. Peretti testified that many of the wounds on the victims were consistent with, and could have been caused by, that knife. Problems: INCONCLUSIVE, RELEVANCE Police divers searched only a small portion of the large lake in the center of Lakeshore Estates Trailer Park, used by residents as a place to fish from pier or boat and equally, it seems, as a handy spot to dump old junk too big for curbside trash pickup. The defense correctly pointed out that there is no telling how many other possible murder weapons which might have been found if all of the lake had been searched instead of just one grid behind Jason's trailer (22).

The state could elicit no testimony from Dr. Peretti -- nor from any expert -- that this knife was the murder weapon. All Peretti would say was that in his opinion it's serrated edge could have produced some of the wounds he saw on the boys. But so could the Byers' knife, he admitted. The state attached great importance to the testimony it elicited from Peretti that the secretions on the lake knife, being wider apart than those on the Byers knife (a 3 inch lock-blade knife belonging to Chris Byers' stepfather, John Mark Byers), are closer (but not exact) to the size of the cut-dash-cut-dash pattern visible on two of the victims. On cross the defense got him to concede that the stretching and contracting skin goes through during a physical struggle could account for serration marks appearing larger on the flesh in death than a knife's saw-teeth actually are.

However, new scientific analysis of these wounds from autopsy reports and photos conducted by Forensic Scientist and Criminal Profiler Brent Turvey virtually makes all of Dr. Peretti's opinions -- and the entirety of his testimony for the state -- outdated and irrelevant. (6) Amongst his findings are: The cut-dash-cut-dash patterns Peretti refers to were NOT made by a serrated knife as Peretti incorrectly assumed, but are adult human bite marks. These findings make the significance of finding a knife behind Jason Baldwin's trailer almost completely nil.

5. EVIDENCE DAMIEN ECHOLS OWNED SIMILAR KNIFE Deanna Holcomb testified that she had seen Echols carrying a similar knife, except that the one she saw had a compass on the end. James Parker, owner of Parker's Knife Collector Service in Chattanooga, Tennessee, testified that a company distributed this type of knife from 1985-87. A 1987 catalog from the company was shown to the jury, and it had a picture of a knife like the knife found behind Baldwin's residence. The knife in the catalogue had a compass on the end, and it had the words 'Special Forces Survival Roman Numeral Two' on the blade. The jury could have made a determination whether the compass had been unscrewed, and, in assessing the probativeness of the location of the knife introduced at trial, heard ample evidence that

Echols and Baldwin spent much time together. Therefore, it could have reasonably concluded that Echols or Baldwin disposed of the knife in the lake. Problems: RELEVANCE, CREDIBILITY In light of the lake knife's apparent non-relevance as shown above, point 5 almost does not need addressing. Regardless of Brent Turvey's new findings, however, Damien Echols never attempted to deny that he had once owned a knife similar to 'The Special Forces Survival II' lake knife. He testified in court that to the best of his memory his had been a different color, however. He also testified that he had traded or sold it along with several other knives from his collection at some point during his stay in Oregon the summer of 1992. This stay began after the latest date Deanna, a girl Damien had broken up with a year before the murders, testified it was possible she had seen the knife. (22)

6. EVIDENCE DAMIEN ECHOLS DELVED DEEPLY INTO OCCULT The State's theory of motive was that the killings were done in a satanic ritual. On cross-examination, Echols admitted that he has delved deeply into the occult and was familiar with its practices. Problems (for all points): RELEVANCE, INCONCLUSIVE Damien's non-criminal interest in the occult was never contested by the defense and is no proof murderous intent.. Various items were found in his room, including a funeral register upon which he had drawn a pentagram and upside-down crosses and had copied spells. It was confiscated from Damien in May of 1992 in connection with a criminal investigation Damien was ultimately cleared of. (25)

An upright pentagram is a "white witchcraft" or wiccan symbol, yet upside-down crosses are a symbol associated with black witchcraft, according to Dr. Dale Griffis. (22) What the jury did not hear, however, is Damien's claim that he had loaned out this funeral register (which he had transformed into a grimoire, or Book Of Shadows, a book where witches keep record of their spells) to a former girlfriend, also into the occult, who added the crosses to the cover. Damien was displeased with the mixing of symbols and, apparently sensing something bad might come from it, thought about getting rid of the cover. But at the time he was very emotionally involved with this girl, and so decided to keep it (26).

These points will be very important to keep in mind later when discussing the use the prosecution attempted to make of Damien's poem In the Middle. The spells within include one to improve the memory, a love charm, improve your chances at success, a cure for worms, and a cure for cramps. Only one spell has any sinister implications, Sacrifice Addressed to Hecate. Fogelman, naturally, chose this one to read to the jury, ignoring the rest. (22)

A journal was introduced, and it contained morbid images and references to dead children. This handwritten journal contains an eclectic hodgepodge of quotations from the likes of Metallica songs and Shakespeare, mixed in with Damien's own moody 'teenage angst' style poetry. An obvious counter-argument to the state is that to present any writer's material -- whether he or she is a professional or novice, or it's poetry or fiction -- as something which necessarily has a one-on-one relationship to how the author conducts himself out in society, is groundless.

The Opinion did not find the following to constitute substantial evidence, but there was additional evidence presented by the state or elicited from witnesses intending to show that Damien Echols delved deeply into the occult, specifically Satanism:

- * The fact that he'd read books by Anton LaVey (the founder of the modern Church of Satan, which does NOT advocate human sacrifice), horror novelist Stephen King, and one tome called Cotton Mather on Witchcraft which is decidedly ANTI-witchcraft.

- * Det. Bryn Ridge's expert testimony that these kinds of reading materials are 'strange' in a teenager.
- * The fact that he was at least familiar via secondhand research with the theories of Aleister Crowley, a turn of the century occultist/magician whose writings seem to advocate -- arguably in a tongue-in-cheek manner, according to scholars -- human sacrifice but are more likely sexual references.

- * The fact that he had a Wiccan pentagram and an Egyptian ankh tattooed on his chest. The E - V - I - L tattoo across the fingers of one hand was something the defense brought up voluntarily. (22)

Echols testified that he wore a long black trench coat even when it was warm. One witness had seen Echols, Baldwin, and Misskelley together six months before the murders, wearing long black coats and carrying long staffs. The witness who testified to seeing them was Jerry Driver, the Juvenile Probation Officer who by his own admission made it a practice to interrogate Damien every time there was an unsolved crime (including things like train robberies and homicides which occurred over a hundred miles away) in the year period before the murders. This was in spite of the fact that Damien's only criminal blemish was a charge of breaking and entering into an abandoned house with an underage girlfriend in the spring of 1992. Driver had been obsessed by the idea that Damien was at the forefront of a large satanic cult in West Memphis ever since he had first questioned him after the housebreaking incident. Damien admits that he fed him ideas like that as a means of playing games with Driver's mind and for his own amusement. Apparently Driver took him very seriously. (27)

It was Driver's partner, Steve Jones, who first proposed Damien as a suspect the very afternoon the bodies were first discovered on May 6th, 199 before any investigation had been done. (28)

Driver's personal distaste and distrust of Damien are transparent, and could reflect on the credibility he brings to the witness stand reporting for the benefit of the state the only known sighting of all three of the suspects together on record. Driver's credibility is further undermined by embezzlement charges he is currently facing. He resigned from the probation office in February of 1997, the same month allegations of financial misconduct first came to light. (29)

Dr. Peretti testified that some of the head wounds to the boys were consistent with the size of the two sticks that were recovered by the police. The sticks the state introduced were not recovered from the woods until two months after the murders, making their positive identification as the actual sticks first discovered pinning articles of the boys' clothes to the stream-bed on May 5th highly questionable. (22) Moreover, there were no wood splinters or fibers in the boys' wounds.

As no narrative evidence was introduced at the Echols/Baldwin trial to suggest that the murders were committed with clubs or sticks, and it cannot be demonstrated forensically, any attempt to suggest that sticks were used is pure speculation. It was perhaps an allusion for the jurors to the parts of Jessie Misskelley's 'confession' which mentioned sticks being used to beat the victims. If so, this tactic represents a grave misconduct on the part of the state, at least ethically -- an attempt to covertly remind jurors of evidence ruled inadmissible in the case being tried.

7) EVIDENCE CRIME SCENE BORE TRAPPINGS OF OCCULTISM Dr. Dale Griffis, an expert in occult killings, testified in the State's case-in-chief that the killings had the 'trappings of occultism.' He testified that the date of the killings, near a pagan holiday, was significant, as well as the fact that there was a full moon. . . . the significance of any holiday to a date four days later in a week is questionable.

He stated that young children are often sought for sacrifice because 'the younger, the more innocent, the better the life force.' . . . They are also sought by pedophiles.

He testified that there were three victims, and the number three had significance in occultism. . . . the number three has a much greater significance in Christianity. Also, the victims were all eight years old, and eight is a witches' number. . . . only in that there are eight seasonal days of celebration in the Wiccan calendar.

He testified that sacrifices are often done near water for a baptism-type rite or just to wash the blood away. . . . Baptism is primarily a Christian ritual . . . choosing a location near water so you might wash crime evidence away is an example of reasoning most non-Satanists would be capable of as well, especially if well-versed in police procedure.

The fact that the victims were tied ankle to wrist was significant because this was done to display the genitalia, and the removal of Byers's testicles was significant because testicles are removed for the semen. . . . again, evidence also of a sadistic sex crime.

He stated that the absence of blood at the scene could be significant because cult members store blood for future services in which . They would drink the blood or bathe in it. . . . no trace evidence of this blood was ever found anywhere The West Memphis Three frequented, let alone their bathtubs.

He testified that the overkill or multiple cuts could reflect occult overtones. . . . or an enraged killer or punitive anger.

Dr. Griffis testified that there was significance in injuries to the left side of the victims as distinguished from the right side: People who practice occultism will use the midline theory, drawing straight down through the body. The right side is related to those things synonymous with Christianity while the left side is that of the practitioners of the satanic occult. . . . a leftover belief from 16th century anti-pagan propaganda and more likely the result of a right-handed offender.

He testified that the clear place on the bank could be consistent with a ceremony. . . . or consistent with any criminal wishing to wipe footprints away after he'd just finished dumping bodies into the water. Also an indication of a police procedure savvy offender. In sum, Dr. Griffis testified there was significant evidence of satanic ritual killings. Problems (for all): CREDIBILITY, RELEVANCE, INCONCLUSIVE With a case almost totally lacking in physical evidence, it was vital for the state to give the jury a strong reason to convict Echols and Baldwin. . They elected to prove motive. Yet in order to bring into record the fact that Damien was interested in Wicca and the occult -- and indeed, to bring in elements of the very satanic rumors which attracted them to him as a suspect in the first place -- it was necessary to prove this sort of information relevant . In other words, . They needed to physically tie the facts of crime scene and the victims to their theory of motive. This is what the testimony of Dr. Dale Griffis attempted to achieve for them.

He succeeded in the minds of 12 Arkansas jurors, perhaps, but not to The Ontario Consultants on Religious Tolerance. It is strongly urged that you read their essay about the errors in Dale Griffis's arguments located [HERE](#). Little needs to be added to what this essay says about Griffis' "evidence", except a few points which further undermine his credibility :

* 'Dr.' Dale Griffis received his doctorate from a mail-order University.

* When asked if the opposite of many of the conditions in which the boys had been found had been what the state had asked him to analyze (for instance, if the victims had not been found near water, had not been tied ankle to wrist), Dr. Griffis answered that those conditions could also be related to satanic activity.

* Dr. Griffis conceded on the stand that he decided to use as testimony the blood traits only after learning that very morning about Michael Carson's statement, in which he alleges Jason Baldwin confessed to him of sucking blood from Chris Byers' penis. Cult Cop Griffis scholarly theories about what constitute a satanic crime perhaps do not exist outside of the specifics of what he's currently being asked to certify as satanic for the police . all (22)

To quote the Ontario Consultants on Religious Tolerance's essay, "His 'expert' testimony was in fact a jumble of fantasy, hoaxes, and religious intolerance. It must have adversely affected the jury by filling their minds with misinformation."

8) EVIDENCE CHRIS BYERS' SHIRT HAD CANDLE WAX STAIN Lisa Sakevicius, the criminalist who testified about the fibers, stated that Byers' white polka-dot shirt had blue wax on it and that the wax was consistent with candle wax. Problems: INCONCLUSIVE This evidence is significant because candles was one of the items Damien answered the police when . They asked him hypothetically what . They should be looking for at a crime scene involving Satanism. From popular stereotypes alone, candles have a very commonplace association with anything occult or gothic, and certainly most people could have eventually come up with it as one of their answers if asked the same question. No testimony was offered to show the stain had not been on Chris Byers' shirt prior to the night of his death. Sakevicius did not, in fact, state it was candle wax, only a small bit of wax-like substance. (30)

9) EVIDENCE DAMIEN ECHOLS HAD CRIME KNOWLEDGE UNKNOWN TO THE PUBLIC Detective Bryn Ridge testified that Echols said he understood the victims had been mutilated, with one being cut up more than the others, and that . They had drowned. Ridge testified that when Echols made the statement, the fact that Christopher Byers had been mutilated more than the other two victims was not known by the public. The jury could have reasonably concluded that Echols would not have known this fact unless he were involved in some manner. See the comments regarding Jessie Misskelley had knowledge unknown to public in Part I.

Echols took the witness stand, and his testimony contained additional evidence of guilt. When asked about his statement that one victim was mutilated more than the others, he said he learned the fact from newspaper accounts. His attorney showed him the newspaper articles about the murders. On cross-examination, Echols admitted that the articles did not mention one victim being mutilated more than the others, and he admitted that he did not read such a fact in a newspaper. Problems: CREDIBILITY, RELEVANCE What Damien supposedly said to Det. Bryn Ridge during his day-long, lawyer-less police interrogation May 11th provides the basis for allegations he had insider knowledge of the crime. The Opinion's summary is true as far as it goes, but it leaves out that Damien offered the newspaper idea only as a guess. He implied that it was difficult to recall where or from whom he had first heard many of the stories circulating about the deaths in that period.

The Opinion also neglects to mention the fact that Damien testified about two other sources where he had come by the mutilation rumor. Juvenile Probation Officer Steve Jones, who was on hand when the victims bodies were recovered, had questioned Damien May 8th at his trailer, mentioning mutilation (31).

On May 11th Detective Ridge himself passed on the fact of one boy being mutilated the worst while asking a leading questions, "Do you think one of the kids was hurt worse than the rest of them?" to which Damien answered "Yeah, I guess." However, Damien claims Ridge entered the question into his notes as an attributed statement of Damien's, and not as something Ridge had posed to him. (22)

Ridge denied asking any leading questions. Like Jessie Misskelley's interrogation, no recording of the session was made. The foregoing, together, constitutes substantial evidence of the guilt of Damien Echols.

10) JASON BALDWIN'S JAILHOUSE CONFESSION Jason Baldwin does not contend that there was insufficient evidence of his guilt. This is, perhaps, in part, because of the testimony of Michael Carson, who testified that he talked to Baldwin about the murders. Carson's testimony, in pertinent part, was abstracted as follows: I said, just between me and you, did you do it. I won't say a word. He said yes and he went into detail about it. It was just me and Jason [Baldwin]. He told me he dismembered the kids, or I don't know exactly how many kids. He just said he dismembered them. He sucked the blood from the penis and scrotum and put the balls in his mouth. Problems: CREDIBILITY, EVIDENCE WITHHELD Questions about Carson's credibility abound. The jury was not allowed to hear several important pieces of information which may have helped them better judge Carson's story. Carson was medically-diagnosed LSD addict. (32) This information was denied the jury because Judge Burnett ruled that substance abuse was not sufficient grounds to argue the probativeness of a witness's truthfulness. (33) Danny Williams, a juvenile detention counselor at a detention center Jason Baldwin was held after his arrest, admitted in communications to both the prosecution and the defense near the beginning of the trial that he had discussed this case with Michael Carson, who was an inmate at the center for a brief overlap with Jason Baldwin. In the counselor's opinion, Carson was about to perjure himself by testifying in court to the many crime rumors he himself told Williams, passing them off as though . They were a confession coming out of Baldwin's mouth. (34) Judge Burnett apparently chose not to let the jury hear his testimony because he felt it would violate Carson's right to patient-counselor confidentiality. (35) Although Carson was able to testify that he was not receiving any upcoming legal consideration in return for his testimony, he neglected to mention that shortly before the trial he had been granted parole. (36) It has never been proven Carson and Jason ever came in contact with each other while in the center.

OTHER EVIDENCE OF GUILT CONTAINED IN THE APPEAL SUBSTANTIAL EVIDENCE OF ECHOLS'S HISTORY OF PRIOR CRIMINAL ACTIVITY From page 24 of ECHOLS/Baldwin Opinion, all contiguous: Echols admitted on cross-examination in the penalty phase of the trial that he had an altercation with his father in which a knife was involved and the police were called. He admitted he was hospitalized that same day, and when his father came to the hospital, "I told him I would eat him alive." Problems: INCONCLUSIVE Whether this incident should be characterized as 'criminal activity' is at best a judgment call. The mention of a knife was in fact in relation to threats Damien was making about injuring himself not his father. It is important to keep in mind that Damien never attempted to lay a hand on the man. It should also be noted that, despite these kinds of outbursts, Damien would later reconcile with his father. (25) The incidents in question occurred many months before the Robin Hood Hills murders, and resulted in the first of several occasions where Damien would briefly hospitalized for depression, which he admits he has suffered from at many points in his life.

He admitted he tried 'to claw the eyes out' of a student. Following a bitter, yet temporary, breakup with the mysterious girlfriend whom Damien claims is the one actually responsible for drawing the upside down crosses on his grimoire -- a self-styled 'black witch.' According to her statements to other teens (37) -- Damien got into a fight with her new boyfriend. (38) As it was the only noteworthy physical altercation the state could find to bring up against him in court, this appears to be a fact rather remarkable in and of itself given the environment he was raised in.

Perhaps the most compelling testimony on this point came from the cross-examination of Dr. James Money Penny, a psychologist who testified for Echols. Dr. Money Penny admitted that Echols had 'an all powerful Godlike image of himself' and that his parents were concerned with his Satanism, or devil worship. Dr. Money Penny admitted that Echols's medical records contained the following notations of statements by Echols: I want to go where the monsters go. Pretty much hate the human race. Relates that he feels people are in two classes, sheep and wolves. Wolves eat sheep. Echols explains that he obtains his powers by drinking blood of others. He typically drinks the blood of a sexual partner or a ruling partner. This is achieved by biting or cutting. It makes me feel like a god. Echols describes drinking blood as giving him more power and strength ... He has also agreed to continue to discuss his issues with power and control as related to his practice of rituals. "I just put it all inside." Describes this as more than just anger like rage. Sometimes he does 'blow up.' Relates that when this happens, the only solution is to hurt someone. Echols reports being told in the hospital that he would be another Charles Manson or Ted Bundy. When questioned on his feelings he states, "I know I'm going to influence the world. People will remember me." The jury, having heard the foregoing, did not arbitrarily refuse to find that Echols had no significant history of criminal activity.

Problems: RELEVANCE Apparently, the Arkansas Supreme Court finds evidence of unpopular, perhaps egotistical thoughts tantamount to evidence of prior criminal activity. Dr. Money Penny strongly cautioned against drawing conclusions from a small sampling of Damien's statements selected because of their ostensibly hostile, blood-oriented content. He argued that . They needed to be placed into their context to be understood, and that the overall conclusions he drew about the subject were quite different than one might make by studying only these. (22) Damien's own claim is that the most he ever did was 'lick' a little blood from a few people, mostly just for shock value. (25)

B) EVIDENCE MENTIONED IN SUPPRESSION OF EVIDENCE ARGUMENTS From page 29 of Echols/Baldwin Opinion, all contiguous:

a) JASON'S ITEMS--SEIZED JUNE 3RD, 1993 A red robe, fifteen black t-shirts, and a white t-shirt were seized from Baldwin's house. Problems: INCONCLUSIVE Little needs to be said. The red robe was seized because the state was looking for garments to match its red rayon fiber to. See the section on The Fiber Evidence. Nothing is known about the white T-shirt (except in relation to the next point, as it proves in and of itself that Jason owned more than just black T-shirts).

The fifteen black T-shirts were offered into evidence by the state on the basis that teen Satanists, According to Dr. Dale Griffis, often favor black apparel and T-shirts. It supposedly follows that if you own some black T-shirts you might be a Satanist. Jason states in his video-recorded WM3 Support Fund interview, (copyrighted by Burk Sauls) that these black T shirts were mostly rock-band T shirts, something he had collected for many years.

b) DAMIEN'S ITEMS -- SEIZED JUNE 3RD, 1993 Two notebooks that appeared to have Satanic or cult writings in them, a red T-shirt, blue jeans, and boots were taken from Echols's residence. There is some confusion about what is meant by the two notebooks. One, containing his collection of poetry and quotations, was introduced into court. The other, if it is not somehow related to the first, (as suggested by an example: when first booked on June 3rd, his arrest report listed amongst his personal effects a pair of shoelaces, neglecting to point out that . They were the shoelaces laced into his boots, not something separate), remains a mystery. Perhaps it was something eventually found to be irrelevant. The known notebook is discussed under Evidence Damien Echols Delved Deeply Into The Occult. The red T-shirt was taken for the same reason as Baldwin's robe. Other than in relation to the testimony of the Hollingsworth's that Damien was wearing dark clothes on the Service road May 5th, and Fogelman's assertion during his close for the state that black attire, though there was nothing necessarily wrong with it in and of itself, was bad when you put it into a mix which includes heavy metal much and an interest in the occult, the state did not try to make any evidentiary use of these clothes.

From page 34 of Echols/Baldwin Opinion, all contiguous: Echols makes several relevancy arguments regarding physical evidence of occult activity. The trial court allowed the State to introduce into evidence a journal that contained matters handwritten and drawn by Echols. The entries contain numerous images of death, as well as references to rotting flesh and dead children. The State focused upon an entry that said "I want to be in the middle. In neither the black nor the white. In neither the wrong nor the right." The State offered the statement to explain the confusion expressed by the occult expert, Dr. Griffis, that some of the symbols in one of Echols's books were from the Wiccan, or 'white magic' religion, and others from Satanism., or 'black magic,' and the two are not consistent. Problems: INCONCLUSIVE, RELEVANCE, EVIDENCE WITHHELD John Fogelman read Damien's poem In the Middle twice for the jury, once during testimony, and once during the closing, where he cited its significance as a key to understanding Damien's character. "He can go to the good side or bad side, however it suits his purpose." (22) As 'evidence' that the poem was not just a literary exercise, but in fact a key to Damien's character, he referred the jurors to the handwritten cover of Damien's Book Of Shadows, where a Wiccan pentagram is mixed in with depictions of upside down crosses, allegedly satanic symbols. Perhaps if Val Price had anticipated this argument coming up in closing, he would have had Damien testify during direct examination about the origin of the crosses on the grimoire's cover. See also Evidence Damien Echols Delved Deeply Into The Occult.

c) DAMIEN'S ITEMS -- SEIZED IN MAY OF 1992 The trial court also allowed in evidence, over Echols's objection, items taken from Echols's room in a juvenile court proceeding in 1992. The items had been kept in his juvenile court file. These items included a dog's skull; a manual; a funeral register upon which Echols had drawn a pentagram and upside-down crosses and had copied various spells; a heavy-metal poster depicting graveyards; a skateboard magazine; and pictures of various posters. Problems: RELEVANCE The dog's skull is something Damien found walking with his step-dad in a field one day and kept because he thought it was "pretty cool", According to his testimony. What is meant by the description "a manual" is unknown. However, it is known that a book called *Never On A Broomstick* was seized that night. As it is a historical overview of witchcraft, perhaps that made it a manual in the court's eyes. Damien purchased it for a dime at a Library rummage sale. The funeral register, or *Book of Shadows* has already been discussed in the section Evidence Damien Echols Delved Deeply Into The Occult. The poster was from a skateboarding magazine called *Thrasher* and depicted a demon or demons in a cemetery. All (22)

C) MISCELLANEOUS EVIDENCE DISCUSSED IN THE OPINION

a) TIME OF DEATH EVIDENCE From page 50 of Echols/Baldwin Opinion: Echols and Baldwin, in their next argument involving evidentiary rulings, contend that the trial court erred in allowing the State to call Dr. Duke Jennings, a pathologist, to testify about the time of the deaths. The argument comes about as follows. Dr. Peretti, the forensic pathologist first called by the State, testified on direct examination that "I did not deal with the issue of time of death or mention that in my autopsy report." However, on cross-examination, he testified that, based upon what he knew about the case, and the rigor mortis of the bodies, the time of the deaths was between 1:00 a.m. and 5:00 a.m. on May 6, 1993. This was different from the testimony he had given on direct and different from the testimony he gave in the Misskelley trial, and the testimony was a surprise to the State. On redirect by the State, he noted that rigor mortis can be delayed by cool temperatures, such as from being immersed in cool water for twenty-four to thirty-six hours. The real significance of the time of death estimate Baldwin's attorney Paul Ford managed to wrestle from Dr. Peretti was never explained to the jury -- nor could it have been, since any mention of testimony occurring during the Misskelley trial was prohibited. The state's case in the Misskelley trial rested on Jessie's confession, and the time it finally arrived at (after a great deal of coaching captured on audio tape) for the time of the murders was around 7:30 PM on the evening of May 5th. Dr. Peretti's new time of death estimate essentially invalidated Misskelley's confession, the basis upon which Echols and Baldwin were indicted for the Robin Hood Hills murders in the first place.

There can be little question many jurors could have known and remembered the timeline from the Misskelley confession testified about at his trial, especially since it had ended only two weeks before the Echols/Baldwin trial began. At the very least . They knew Misskelley had made a statement, if one can take Judge Burnett himself as an authority. He opined from

the bench after Det. Bryn Ridge let slip a mention of it, "I'm sure there's not a man or woman in this courtroom who doesn't know Misskelley made a statement."

However, the state had been careful during the Echols/Baldwin trial not to talk about what time the deaths may have occurred, and so . They justifiably commented that their case was not tied down to a specific time of death.

If the jurors were going to grant Peretti's revised opinion relevance, . They would have had to infer it on their own volition. Correctly or incorrectly, . They chose not to. To be fair, it must be pointed out that Dr. Peretti testified that he had only a few factors available to form the opinion -- lividity, air temperature, time the bodies were found and time . They disappeared -- and that these did form not an ideal basis on which to conclude any time of death. The jurors subsequently heard Dr. Jennings testify that any time of death derived from lividity not in conjunction with measures of core body temperature and rigor mortis was essentially worthless, and contrary to principles well established in the field of forensic pathology. (22)

Jessie's attorneys used Dr. Peretti's testimony as a basis for one of their appeals, citing it as new evidence, but the Supreme Court denied him a new trial on its basis, stating that it would not likely have impacted the outcome of the original trial. (22)

b) THE GRAPEFRUIT DEMONSTRATION From Echols/Baldwin Opinion page 47:

Echols's next argument is that the trial court erred in allowing the State to make two cuts in a grapefruit during closing argument. The prosecuting attorney made one cut in a grapefruit with the serrated knife that the State recovered from behind Baldwin's residence, and then made another cut with the knife that defense counsel implied was used to cut the victims. The second knife had a regular blade. The prosecuting attorney compared the cuts in arguing that the cuts on Byers were like those made by the knife the State had introduced. Problems: RELEVANCE, SINCE DISPROVEN EVIDENCE From The WM3 FAQ by Burk Sauls: òThe prosecution's point with the grapefruit demonstration was to show how that particular knife was more likely to have caused the cut, clear space, cut, clear space, cut type of wounds, than the Byers knife. This demonstration is only valuable as long as you're lightly tapping the surface of something with skin that has the same elasticity, texture and rigidity as a grapefruit's. Obviously, human skin has qualities that grapefruit skin does not. Even a non-serrated knife can cause wounds that appear (to the average person) to have been made by a jagged or serrated blade.

The big black survival knife appeared to be nothing more than a prop to frighten the jury with. The Lake Knife, by the way, was allegedly found behind Baldwin's home, in a lake that is a known junk dump, after only approximately one hour of searching. Nothing connects this knife to the murders. It should also be pointed out that the serration patterns attributed to the lake knife are now primarily held by Brent Turvey to be, in fact, human bite marks, making the demonstration more irrelevant than ever.

c) EVIDENCE DEMONSTRATING ACCOMPLICES -- MULTIPLE TYPES OF ROPE KNOTS From the Echols/Baldwin Opinion, page 53: Both Echols and Baldwin objected to the trial court giving the accomplice instruction. . . The trial court correctly gave the instruction because . . . two different types of knots were used to tie the victims; there were three victims, and there was sufficient evidence from which a jury could have concluded that the murders were not committed by one person. Problems: INCONCLUSIVE Which still is not physical evidence that these three particular boys were the ones who tied these knots.

f) EVIDENCE OF BLOOD ON NECKLACE From Echols/Baldwin Opinion page 61 Baldwin next contends that the trial court erred in granting an ex parte continuance to the State. The argument is based on the following facts. During Baldwin's defense, the prosecutor informed the trial court that he found a necklace that Echols was wearing when arrested, noticed some red spots on it, and sent it to the crime laboratory for testing, which confirmed that the spots were blood. After the State's rebuttal, the prosecutor stated that he wanted to reserve the right to reopen the next day if the testing was complete. The court reconvened two days later, on a Thursday, and the prosecutor reported that the laboratory had found that one spot of blood was consistent with the blood of Echols, one was consistent with Baldwin, and one was consistent with Steve Branch. Problems: INCONCLUSIVE This statement contains another misleading wording by the Court, demonstrably throwing off the meaning of what the actual evidence shows. On March 10, 1994, while the trial was in progress, scientists from Genetic Design identified microscopic blood spots on a pendant in the possession of Damien Echols the night of his arrest. It was not until the state had technically closed its case that the lab concluded its tests on the spots. Nothing more identifiable than common blood types could be determined due to the minute quantities of genetic material present.

One spot was consistent with the blood type of Damien, and a second spot was consistent with the blood type shared by both Jason and Steven Branch -- as well as 11% of the rest of the human population.

Ultimately, Burnett offered the state the chance to reopen its case and present the evidence if it would agree to a severance for Jason Baldwin from the state's case against Echols -- in effect, a mistrial for Jason. As hypothetically the necklace could be used by either party to implicate the other, in what is called an 'antagonistic defense,' it was no longer legally acceptable for the defendants to be tried together.

The state elected instead not to present the evidence and to proceed to closing arguments. (22) The pendant -- made from an Indian artifact rather than anything pertaining to Wicca -- was something Damien and Jason often traded back and forth to wear, According to a source close to one of them in the WM3 list group.

<http://vanessawest.tripod.com/wm3evidence.html>