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THE TRUTH BEHIND *ECHOLS V. STATE*: HOW AN ALFORD GUILTY PLEA SAVED THE WEST MEMPHIS THREE

*Kaytee Vota**

After they spent eighteen years in prison for the notorious 1993 murders of three young boys, the West Memphis Three were released on August 19, 2011, after they entered Alford pleas. Under an Alford plea, a defendant can voluntarily, knowingly, and understandingly plead guilty while he simultaneously proclaims his innocence. But with little evidence linking the West Memphis Three to the crime and with recent DNA evidence likely establishing their innocence, was it appropriate for the Circuit Court of Craighead County, Arkansas, to allow the men to even plead guilty? This Comment argues that the circuit court in Echols v. State *took a step in the wrong direction when it allowed the West Memphis Three to enter Alford pleas. This Comment discusses the background of Alford pleas and examines the inherent problems with their application, particularly in cases that involve DNA evidence. Finally, this Comment suggests a method of judicial reform that urges judges to proceed with caution and conduct a stricter factual-basis inquiry in order to prevent the injustice that arises when they allow innocent defendants to plead guilty.*

* J.D. Candidate, May 2013, Loyola Law School Los Angeles; B.A., University of California, Irvine. I would like to express my sincere appreciation to Professor Laurie Levenson for her valuable guidance and insight, and to Professor Gary Craig for his continuous encouragement. I also thank the editors and staff of the *Loyola of Los Angeles Law Review*, particularly Maxwell J. Wright, D. Elliot Gonzalez, and Joshua Rich, for their hard work and dedication. Finally, I would like to extend my gratitude to my family and friends, especially David Costa, for their unconditional support and love.

I. INTRODUCTION

They listened to heavy metal, wore black clothing, and read Stephen King novels, and in the eyes of their own community, they were the enemy.[1] In 1994, Damien Echols, Jason Baldwin, and Jessie Misskelley Jr. were convicted of murdering three eight-year-old boys in West Memphis, Arkansas.[2] Echols, Baldwin, and Misskelley, collectively known by the media as the "West Memphis Three,"[3] pled innocent to the murders.[4] With very little evidence to link the three to the murders, the "satanic panic"[5] in West Memphis targeted Echols, Baldwin, and Misskelley because they "stood out from everybody else"[6]—it was a modern-day Salem witch trial.[7] Little did the West Memphis Three know at that time that, eighteen years later, they would plead guilty to the murders and walk away as "free" men.

In 2002, Echols filed a motion in the Circuit Court of Craighead County, Arkansas, for DNA testing under the state's newly approved DNA-testing statutes.[8] Under these statutes, Echols was allowed to

1. *See* PARADISE LOST: THE CHILD MURDERS AT ROBIN HOOD HILLS (HBO 1996) [hereinafter PARADISE LOST] (documentary containing actual footage of the West Memphis Three trials); *see also Piers Morgan Tonight: West Memphis Three* (CNN television broadcast Sept. 29, 2011) [hereinafter *Piers Morgan*] (television interview with Echols and Baldwin one month after their release from prison).

2. Echols v. State (*Echols I*), 936 S.W.2d 509, 517 (Ark. 1996).

3. *See* MARA LEVERITT, DEVIL'S KNOT: THE TRUE STORY OF THE WEST MEMPHIS THREE 2 (2002); *Case Introduction—Brief Overview*, EXONERATE THE W. MEMPHIS THREE SUPPORT FUND, http://www.wm3.org/CaseIntroduction/Page/BRIEF-OVERVIEW (last visited Feb. 25, 2012) [hereinafter *Overview*, EXONERATE THE WM3].

4. *Case Introduction—Chronology of Events*, EXONERATE THE W. MEMPHIS THREE SUPPORT FUND, http://www.wm3.org/CaseIntroduction/Page/CHRONOLOGY-OF-EVENTS (last visited Feb. 25, 2012) [hereinafter *Chronology*, EXONERATE THE WM3]; *see* PARADISE LOST, *supra* note 1.

5. Satanic panic was a phenomenon in the 1980s and 1990s that spread throughout the United States as a result of hysteria. *See* JEFFREY S. VICTOR, SATANIC PANIC: THE CREATION OF A CONTEMPORARY LEGEND 60–61 (1993); *see also* Mel Maguire, Op-Ed., *The Culture of Satanic Panic*, ADVOCATE.COM (Sept. 1, 2011, 1:00:00 AM), http://www.advocate.com/Politics/Commentary/Op-ed_The_Culture_of_Satanic_Panic (noting the satanic panic that gripped the town as "rumors swirled"). Baldwin's defense counsel referred to the satanic panic in his closing argument. PARADISE LOST, *supra* note 1.

6. *See* PARADISE LOST, *supra* note 1 (Echols discussing how they were the "obvious choice").

7. *See* LEVERITT, *supra* note 3, at 291 ("[Echols, Baldwin, and Misskelley] began to view what happened in West Memphis as a modern-day version of the infamous Salem witch trials, in which rumors and hysteria had supplanted reason, and resulted in executions.").

8. Echols v. State (*Echols II*), 2010 Ark. 417, at 3, 2010 Ark. LEXIS 511, at *3.

bring a motion for DNA testing because "the testing was not available at the time of the trial" and the testing had "the scientific potential to produce new noncumulative evidence materially relevant to [Echols's] assertion of actual innocence."[9] The DNA testing occurred between 2005 and 2007 and established that neither Echols nor the rest of the West Memphis Three was the source of any of the genetic material that had been gathered from the case.[10] Furthermore, some of the DNA material tested was found to be consistent with that of Terry Hobbs (one victim's stepfather) and his friend.[11] In response to these findings,[12] Echols filed a motion for a new trial, but the circuit court denied the motion, claiming that the DNA results were "inconclusive."[13]

Echols appealed the circuit court's order and on November 4, 2010, the Supreme Court of Arkansas reversed, finding that the lower court erroneously interpreted the DNA-testing statutes.[14] Additionally, the court ruled that in order for a new trial to be considered, an evidentiary hearing needed to be held to examine the DNA test results in light of the rest of the evidence presented in the case.[15]

On August 19, 2011, before the evidentiary hearing took place, the West Memphis Three pled guilty to all three murders, all while asserting their innocence.[16] Echols, Baldwin, and Misskelley each entered what is known as an "Alford plea,"[17] and the circuit judge sentenced the three men to eighteen years and seventy-eight days—

9. *See* ARK. CODE ANN. § 16-112-202 (2001) (amended 2005).

10. *Echols II*, 2010 Ark. LEXIS 511, at *4.

11. *Id.* Additionally, after the public advocacy group Arkansas Take Action set up a confidential tip line, new evidence was uncovered, including multiple eyewitness statements that placed Hobbs with the victims immediately before they disappeared. *The West Memphis 3 Are Free*, BUS. WIRE (Aug. 19, 2011, 6:44 PM), http://www.businesswire.com/news/home/20110819005829/en/West-Memphis-3-Free.

12. Echols also submitted findings that many of the victims' injuries were inflicted postmortem and that "the jury improperly considered Misskelley's confession." *Echols II*, 2010 Ark. LEXIS 511, at *16 n.3.

13. *Id.* at *11.

14. *Id.* at *22–23.

15. *Id.* at *22.

16. *See* Max Brantley, *Prosecutor's Statement on West Memphis 3 Plea Deal*, *Arkansas Blog*, ARK. TIMES (Aug. 19, 2011, 12:11 PM), http://www.arktimes.com/ArkansasBlog/archives/2011/08/19/prosecutors-statement-on-west-memphis-3-plea-deal.

17. *See infra* Part III.

the time they had already served in prison.[18] After spending more than half their lives in jail, the West Memphis Three experienced freedom as adults for the very first time, but with the weight of admitting guilt bearing upon them.

This Comment argues that the circuit court's decision in *Echols v. State*[19] took a step in the wrong direction when it countenanced the use of an Alford plea. The court admitted that "compelling evidence" existed that would acquit the West Memphis Three in a new trial.[20] However, the Alford plea, as used in this case, allowed the State of Arkansas to appear as though it committed no wrong when it convicted and incarcerated the three boys nearly two decades ago. Part II sets forth in more detail the facts of the case and how the West Memphis Three came to use an Alford plea. Part III gives the background of Alford pleas, lays the foundation for when they are used, and discusses the inherent problems with their application. Part IV discusses the role that DNA evidence played in this case and why the use of the Alford plea was inappropriate here. Finally, Part V advocates for reform by urging judges to proceed with caution and to conduct a heightened standard of review prior to entering Alford pleas in cases involving DNA evidence.

II. THE MURDERS IN ROBIN HOOD HILLS

On May 5, 1993, Michael Moore, Christopher Byers, and Steve Branch never returned to their homes after playing together in their West Memphis neighborhood.[21] The following morning, the three boys were found dead, floating in a ditch bank in the Robin Hood Hills of West Memphis, Arkansas.[22] Detectives found all three bodies naked and hog-tied, mutilated with wounds that had been allegedly caused by a serrated knife, and bruised from what investigators deemed to be the result of sexual abuse.[23] The evidence

18. Campbell Robertson, *Rare Deal Frees 3 in '93 Arkansas Child Killings*, N.Y. TIMES, Aug. 20, 2011, at A1; *see* Order of Suspending Imposition of Sentence, and/or Judgment and Commitment at 1, Arkansas v. Echols, No. CR 1993-450P, 2011 WL 3794204 (Ark. Cir. Aug. 19, 2011).

19. 936 S.W.2d 509 (Ark. 1996).

20. Conditional Order for New Trial at 3, Arkansas v. Echols, No. CR 93-450A (Ark. Cir. Aug. 19, 2011).

21. *Echols I*, 936 S.W.2d 509, 516 (1996).

22. *Id.*

23. *Id.* at 516–17.

collected at the crime scene included the victims' clothes, their shoes, and the shoelaces that were used to bind them,[24] but there was no blood in sight.[25]

Early on in the case, the West Memphis Police decided that the murders had likely been the result of a satanic ritual.[26] The police's conclusion led to Echols becoming their prime suspect due to his self-proclaimed Wiccan practice, asymmetrical black hair, pale skin, and interest in heavy metal music.[27] Working under this assumption, the police questioned Echols's friend, Jessie Misskelley, before Misskelley was even a suspect.[28] During the four hours of interrogation, the police recorded only two fragments of the session, totaling less than an hour.[29] Misskelley then implicated himself, Echols, and Baldwin as being responsible for the murders[30] but recanted the confession later that evening.[31]

Misskelley had an IQ of seventy-two and read at a third-grade level; however, neither the police that questioned him nor the court found these to be factors that affected his capability to comprehend the voluntariness of his confession.[32] Misskelley's statements were

24. *Id.* at 516.

25. *See id.* at 519 (stating that an expert witness at trial believed the absence of blood at the scene was due to cult rituals). Defense counsel argued that the nature of the victims' injuries without any evidence of blood could have reasonably led to the conclusion that the murders did not take place at the crime scene. *See* PARADISE LOST, *supra* note 1.

26. *See* Jennifer L. Mnookin, Op-Ed., *False Convictions*, L.A. TIMES, Aug. 23, 2011, at A11; PARADISE LOST, *supra* note 1.

27. *See* Mnookin, *supra* note 26; *see also* PARADISE LOST, *supra* note 1 (Echols explained how the police had to find somebody because they were "under a lot of pressure" and "had to do something fast"). *See generally Echols I*, 936 S.W.2d at 517 (stating that detectives questioned Misskelley when Echols was a suspect because it was known that Echols, Baldwin, and Misskelley engaged in "cult-like activities").

28. Misskelley v. State, 915 S.W.2d 702, 707 (Ark. 1996).

29. *Overview*, EXONERATE THE WM3, *supra* note 3 ("[Police] subjected [Misskelley] . . . to hours of questioning without counsel or parental consent, audio-taping only two fragments totaling [forty-six] minutes."); *see* PARADISE LOST, *supra* note 1; *see also Misskelley*, 915 S.W.2d at 712, 714 (stating that Misskelley was advised of his rights over the course of four hours and that the police's failure to record the interrogation in its entirety did not invalidate the confession).

30. *Misskelley*, 915 S.W.2d at 706.

31. *Overview*, EXONERATE THE WM3, *supra* note 3; PARADISE LOST, *supra* note 1.

32. *See Misskelley*, 915 S.W.2d at 712; PARADISE LOST, *supra* note 1. Misskelley was tried separately from Echols and Baldwin. *Echols I*, 936 S.W.2d at 517. Misskelley's confession was not allowed to be used in Echols and Baldwin's trial; however, the jury knew of the confession when an officer on cross-examination "'blurted out' that Misskelley confessed." *Id.* at 542. Instead of granting the defense's motion for mistrial, the court merely instructed the jury to ignore the statement. *Id.* On appeal, the Supreme Court of Arkansas found that the trial court did not abuse its discretion by refusing to grant a mistrial. *Id.* at 542–43.

the strongest and "virtually the only evidence" offered against him at his trial,[33] yet, in the eyes of the jury, the several inconsistencies in his statements did not appear to affect his credibility.[34]

At Echols and Baldwin's trial, witnesses testified to hearing Echols admit to the killings,[35] but no tangible evidence or motive linked the West Memphis Three to the victims.[36] The prosecution brought an expert in occultism to testify that the killings closely resembled cult-like rituals, but on cross-examination, the witness's qualifications as an expert were significantly undermined.[37] Nonetheless, a panicked community and a rush to judgment were apparently strong enough to tip the scales against the West Memphis Three.[38] Accordingly, Baldwin and Misskelley were both sentenced to life in prison and Echols received the death penalty for the murders of Moore, Byers, and Branch.[39]

33. *Misskelley*, 915 S.W.2d at 707.

34. *See id.* at 708–10.

35. *Echols I*, 936 S.W.2d at 518. The witnesses were a twelve-year-old girl and a fifteen-year-old girl. *See* Chris Worthington, *Case Info—Evidence Analysis*, EXONERATE THE W. MEMPHIS THREE SUPPORT FUND, http://www.wm3.org/Evidence/Page/Evidence-Analysis (last visited Feb. 25, 2012) [hereinafter *Evidence Analysis*, EXONERATE THE WM3] (discussing Echols's overheard confession on linked pages 16 and 17). Both testified to overhearing Echols say he killed the victims, but upon cross-examination, neither witness could account for any other part of the statements heard nor the context in which she heard them. *See* PARADISE LOST, *supra* note 1; *Evidence Analysis*, EXONERATE THE WM3, *supra*.

36. *See* LEVERITT, *supra* note 3, at 337; *see also Echols I*, 936 S.W.2d at 518–19 (describing the prosecution's evidence against Echols). A knife was found in a lake behind Baldwin's home, and although there were no fingerprints or blood to connect the knife to the crime, the prosecution immediately concluded that it was reasonable to believe that the knife was the murder weapon. *Id.* at 541–42. The prosecution relied on the belief that the murders "were done in a satanic ritual" and used this as its theory of motive. *Id.* at 519. Drawings of upside-down crosses and pentagrams along with other "morbid images and references" found in Echols's room supported this theory. *Id.*

37. *See* PARADISE LOST, *supra* note 1. The witness, Dr. Dale Griffis, admitted on cross-examination that he received his doctorate from a mail-order form and did not receive any formal classroom training. *Id.*; *see* LEVERITT, *supra* note 3, at 236–37 (detailing the discovery that the prosecutor's cult expert had received his Ph.D. from a mail-order form and did not receive any formal classroom training). However, the jury found Griffis's testimony of having read 4,800 books on occultism to be a compelling reason for convicting the defendants. *See id.* at 275.

38. *See The West Memphis 3 Are Free*, *supra* note 11, at 3; *see also Overview*, EXONERATE THE WM3, *supra* note 3, at 1 ("The police and the state managed to convince the media and the juries that 'devil worshippers' were responsible, and that [Echols, Baldwin, and Misskelley] somehow fit that description. It was publicly stated by law enforcement officials and the media that the murders had been a part of a satanic ritual.").

39. *Echols I*, 936 S.W.2d at 516; *Misskelley*, 915 S.W.2d at 707.

For almost two decades, Echols, Baldwin, and Misskelley each attempted to appeal their convictions but were unsuccessful.[40] Echols was able to get his execution date postponed but still faced the uncertainty of not knowing when his final day would come.[41] Finally, in 2002, an opportunity opened up for the West Memphis Three that shed new light on the case: Arkansas enacted new DNA-testing statutes,[42] and the West Memphis Three promptly moved the court to reopen the case and test the evidence previously collected.[43] The DNA testing failed to link Echols, Baldwin, or Misskelley to any of the victims.[44] Relying primarily on these DNA testing results, Echols moved for a new trial in 2008.[45] Echols also offered other evidence that "questioned the reliability of other aspects of the State's evidence."[46] This evidence included affidavits admitting juror misconduct in the original trial[47] and the opinions of multiple forensic specialists who concluded that most of the injuries to the victims resulted from postmortem animal predation and not from a serrated knife.[48] Without holding an evidentiary hearing, the circuit court denied Echols's motion for a new trial.[49]

In 2010, the Supreme Court of Arkansas reversed the circuit court's order and found that the circuit court erred in denying Echols a new trial.[50] The supreme court found that the DNA test results should have been considered in the lower court's assessment of whether Echols presented "compelling evidence that a new trial would result in an acquittal," and it remanded for an evidentiary

40. *See* Echols v. Arkansas, 520 U.S. 1244 (1997); Misskelley v. Arkansas, 519 U.S. 898 (1996); Echols v. State (*Echols III*), 42 S.W.3d 467 (2001); *Echols I*, 936 S.W.2d 509.

41. *See Piers Morgan*, *supra* note 1.

42. *See supra* text accompanying notes 8–9.

43. *See id.*

44. *See supra* text accompanying notes 10–11.

45. *Echols II*, 2010 Ark. 417, at 4, 2010 Ark. LEXIS 511, at *4.

46. David S. Mitchell, Jr., *Lock 'Em Up and Throw Away the Key: "The West Memphis Three" and Arkansas's Statute for Post-Conviction Relief Based on New Scientific Evidence*, 62 ARK. L. REV. 501, 506–07 (2009).

47. *See* Damien Echols' Brief on the Admissibility of Evidence of Juror Misconduct at 28–36, *Echols II*, 2010 Ark. LEXIS 511 (No. CR-93-450A), *available at* http://www.freewestmemphis3.org/images/stories/pdfs/finalmisconductbrief.pdf.

48. Mitchell, Jr., *supra* note 46, at 507; *see also Echols II*, 2010 Ark. LEXIS 511, at *16 n.3 (describing Echols's submission of various forensic specialists' investigative results to the circuit court); *supra* note 12 and accompanying text (describing the source of the victims' injuries).

49. *See supra* text accompanying note 13.

50. *See Echols II*, 2010 Ark. LEXIS 511, at *23.

hearing.[51] On August 19, 2011, four months before the evidentiary hearing was to take place, the West Memphis Three pled guilty to the murders with an Alford plea and were released from prison.[52]

III. ALFORD PLEAS— WHAT ARE THEY?

Pleas come in a variety of forms.[53] Under the Federal Rules of Criminal Procedure, defendants may plead not guilty, guilty, or nolo contendere.[54] Additionally, defendants may enter what is known as an Alford plea, which allows them to plead guilty while simultaneously proclaiming their innocence.[55]

In 1963, Henry Alford was indicted for first-degree murder.[56] Faced with the death penalty and with strong evidence against him, Alford avoided going to trial by pleading guilty to second-degree murder while, at the same time, refusing to admit that he was, in fact, guilty.[57] In *North Carolina v. Alford*,[58] the U.S. Supreme Court found the plea that Alford used to be constitutional, holding that a defendant may "voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if . . . [he submits] a plea containing a protestation of innocence."[59] Furthermore, the Court required a clear demonstration of a "strong factual basis" for the plea in order for it to pass constitutional muster.[60] Unable to draw any

51. *Id.* at *22.

52. *See* Suzie Parker, *After 18 Years, "West Memphis 3" Go Free on Plea Deal*, REUTERS (Aug. 19, 2011, 3:41 PM), http://www.reuters.com/article/2011/08/19/us-crime-westmemphis3-arkansas-idUSTRE77I54A20110819.

53. *See* FED. R. CRIM. P. 11(a).

54. *Id.* A nolo contendere (no contest) plea has been viewed as a "mild form of pleading guilty" and consists of a statement by the defendant that he will not contend against the charge made by the state. *See* C. T. Drechsler, Annotation, *Plea of Nolo Contendere or Non Vult Contendere*, 89 A.L.R.2d 540 (1963) (discussing the use of nolo contendere pleas and their effects and implications). Additionally, the court must consent to the use of a nolo contendere plea. FED. R. CRIM. P. 11(a)(2).

55. North Carolina v. Alford, 400 U.S. 25 (1970).

56. *Id.* at 26.

57. *Id.* at 28–29.

58. 400 U.S. 25 (1970).

59. *Id.* at 37.

60. *See id.* at 38. Normally, a court need only find that a defendant has a factual basis for his plea. FED. R. CRIM. P. 11(b)(3). Some federal courts, however, have chosen not to acknowledge a difference between Alford pleas and regular guilty pleas when it comes to finding a factual basis for the plea, requiring only a factual basis for either plea. *See, e.g.*, United States v. Tunning, 69 F.3d 107, 111 (6th Cir. 1995) (holding that there is no difference between a defendant who pleads guilty and admits to acts constituting the crime and a defendant who pleads guilty and

material difference between a nolo contendere plea and a plea containing an active protestation of innocence, the Court recognized that the admission of guilt was "not a constitutional requisite to the imposition of criminal penalty."[61]

A. The Problem with Alford Pleas

Plea bargaining is typically seen as an advantageous tool for defendants, but there are certainly drawbacks to using the Alford plea. Some courts reject Alford pleas in order to "further the correct resolution of criminal cases,"[62] while other courts simply fear the risk of inaccuracy and inconsistency.[63] Another significant concern regarding Alford pleas is the message that they send to the public. When an Alford plea is used, the concern is that it will "imply[] that the law does not care" about justice[64]—that "[t]ruth, justice, self-restraint, and respect for others take a back seat to procedural efficiency and freedom of choice."[65] The most significant problem, however, is when an actual innocent defendant uses the Alford plea.[66] How can we allow a defendant who is *actually* innocent to admit guilt in front of his attorney, the judge, and the adverse party?

In *Alford*, while the Supreme Court required a "strong factual basis" for Alford's plea, the Court also suggested that the basic standard be just a "factual basis"[67]—which is to say that a court must have *some* reason to believe that the defendant *might* be guilty.[68] However, in theory, since few defendants are arrested and charged for crimes without *some* kind of evidence against them, virtually

affirmatively protests his innocence); United States v. Morrow, 914 F.2d 608, 612 (4th Cir. 1990) ("[A]ny Rule 11 proceeding requires that a factual basis for the plea be established and we are unwilling to place more requirements in the context of an *Alford* plea.").

61. *Alford*, 400 U.S. at 37.

62. Norris v. State, 896 N.E.2d 1149, 1155 (2008) (Boehm, J., concurring).

63. *See* Stephanos Bibas, *Harmonizing Substantive-Criminal-Law Values and Criminal Procedure: The Case of Alford and Nolo Contendere Pleas*, 88 CORNELL L. REV. 1361, 1381 (2003).

64. *Id.* at 1403.

65. *Id.*

66. *Cf.* F. Andrew Hessick III & Reshma Saujani, *Plea Bargaining and Convicting the Innocent: The Role of the Prosecutor, the Defense Counsel, and the Judge*, 16 BYU J. PUB. L. 189, 197–200 (2002) (exploring different roles in the plea-bargain system).

67. *See* North Carolina v. Alford, 400 U.S. 25, 38 & n.10 (1970).

68. Albert W. Alschuler, *The Defense Attorney's Role in Plea Bargaining*, 84 YALE L.J. 1179, 1293 (1975).

every defendant in the criminal justice system *might* be guilty and, therefore, have some sort of factual basis for an Alford plea.[69]

The *Alford* Court seemed more concerned with allowing a defendant to take control of the outcome of his case by "voluntarily, knowingly, and understandingly *consent*[*ing*]" to enter a guilty plea[70] rather than with ascertaining whether a defendant *believes* that he is actually guilty. The Court reasoned that whether or not Alford realized his guilt, he used the plea because he believed that he had "absolutely nothing to gain by a trial and much to gain by pleading."[71]

The West Memphis Three appeared to follow the *Alford* Court's reasoning when they entered their Alford pleas. There is no doubt that Echols, Baldwin, and Misskelley believed that they were innocent; however, in this case, the defendants used the Alford plea not for its truth-seeking function[72] but to establish a "middle ground" in the eighteen-year battle between the prosecution and defense.[73]

B. Why Defendants Continue to Use Alford Pleas

Judges have the discretion to deny Alford pleas,[74] but most states have permitted their use.[75] Scholars have praised Alford pleas as being an "efficient, constitutional means of resolving cases" and as a way to "empower defendants within a flawed system."[76] Supporters also endorse Alford pleas as "further[ing] the interests of defendants . . . who want to avoid worse outcomes at trial,"[77] while others see the pleas as simply protecting the dignity of defendants by preventing them from having to face public humiliation.[78] The types

69. *Id.*

70. *See Alford*, 400 U.S. at 37 (emphasis added).

71. *Id.*

72. *See generally* Jenny Elayne Ronis, *The Pragmatic Plea: Expanding Use of the* Alford *Plea to Promote Traditionally Conflicting Interests of the Criminal Justice System*, 82 TEMP. L. REV. 1389, 1416 (2010) (discussing how the Alford plea's emphasis on requiring an independent factual basis promotes truth-seeking).

73. *See* Sheri Qualters, *Defender Found the Audacity to End a Stalemate*, NAT'L LAW JOURNAL (Jan. 2, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202537061339&slreturn=1 ("The thing that seemed logical, the only safe harbor, was the Alford plea.").

74. *Alford*, 400 U.S. at 38 n.11. Judges have discretion to accept or deny any type of plea. *See* FED. R. CRIM. P. 11(c)(3)(A).

75. *See* Bibas, *supra* note 63, at 1372 n.52.

76. *Id.* at 1363.

77. *Id.* at 1373.

78. *Id.* at 1374.

of cases that typically see Alford pleas include sex offenses, heinous murders, and domestic violence.[79] These cases often involve "difficult defendants" who refuse to admit to committing the crimes.[80] In those cases, Alford pleas serve as a tool to ameliorate the shame that defendants may face and to alleviate their fear that their loved ones could reject them.[81]

As the debate over the strengths and weaknesses of the Alford plea continues, there is no denying that the U.S. Supreme Court has found the plea constitutional and that thousands of criminal defendants enter Alford pleas every year.[82] However, while the requirements of the Alford plea have not changed since 1970, it is unclear whether the Court logically contemplated future technological advances in obtaining evidence and how they might fit into a court's inquiry into the "factual basis for the plea." It is likely that "the quality of the evidence that most courts . . . demand to support the plea will fall short of that required by traditional rules of evidence and due process."[83] But what if the evidence presented is scientific evidence that not only falls short of establishing guilt but also presents a compelling claim of actual innocence? Surely, when it stated in a footnote that it believed in the importance of protecting the innocent,[84] the *Alford* Court did not anticipate the development of technological advances that would provide for the scientific establishment of actual innocence, nor the part that these developments would play in meeting the "factual basis for the plea" standard.

IV. DNA EVIDENCE IN THE COURTROOM

The legal system has seen the introduction of innumerable technological advances over the years, and genetic identification is now a common tool used in the courtroom. DNA evidence has exonerated the innocent, confirmed the guilty, established paternity,

79. *Id.* at 1378–79.
80. *Id.* at 1379.
81. *See id.* at 1378.
82. *See* Anne D. Gooch, Note, *Admitting Guilt by Professing Innocence: When Sentence Enhancements Based on* Alford *Pleas Are Unconstitutional*, 63 VAND. L. REV. 1755, 1765–66 (2010).
83. Alschuler, *supra* note 68, at 1295.
84. North Carolina v. Alford, 400 U.S. 25, 38 n.10 (1970).

and allowed law enforcement to link crimes to persons who are already in their databases.[85] As with all other things, DNA technology in the courtroom has both benefits and drawbacks, which are rapidly changing the American justice system while simultaneously presenting new legal dilemmas.[86]

A. DNA Evidence in the West Memphis Three Case

At the time of the West Memphis Three trial, DNA evidence had just begun to make its debut in courtrooms across the nation.[87] In 2001, Arkansas introduced its DNA testing statutes to further "the mission of the criminal justice system . . . [and] to accommodate the advent of new technologies enhancing the ability to analyze new scientific evidence."[88] The West Memphis Three promptly moved for DNA testing under these new statutes, and the testing occurred between 2005 and 2007.[89] A penile swab from one of the victims, hairs recovered from a tree stump at the crime scene, and hairs from a shoelace used to bind the victims were among the biological material tested, but they failed to link the West Memphis Three to any of the victims.[90] Instead, the DNA was found to be consistent with one victim's stepfather and his friend.[91]

After Echols appealed to the Supreme Court of Arkansas requesting a new hearing, the court granted him an evidentiary hearing to "consider the DNA-test results 'with all other evidence in the case . . .' to determine if [it could be] 'establish[ed] by compelling evidence that a new trial would result in an acquittal.'"[92] Although the DNA test results might have been "legally

85. *See* Julie A. Singer et al., *The Impact of DNA and Other Technology on the Criminal Justice System: Improvements and Complications*, 17 ALB. L.J. SCI. & TECH. 87, 89–93 (2007).

86. *See id.* at 117–23.

87. *See generally* EDWARD CONNORS ET AL., NAT'L INST. OF JUSTICE, CONVICTED BY JURIES, EXONERATED BY SCIENCE: CASE STUDIES IN THE USE OF DNA EVIDENCE TO ESTABLISH INNOCENCE AFTER TRIAL 4–7 (1996), *available at* https://www.ncjrs.gov/pdffiles/dnaevid.pdf (discussing the increase in acceptance of DNA technology in the courts); George Bundy Smith & Janet A. Gordon, *The Admission of DNA Evidence in State and Federal Courts*, 65 FORDHAM L. REV. 2465, 2481–86 (1997) (discussing the history of DNA evidence in the United States).

88. *Echols II*, 2010 Ark. 417, at 5–6, 2010 Ark. LEXIS 511, at *5–6 (quoting Act of Apr. 19, 2001, No. 1780, 2001 Ark. Acts 7736 (codified at ARK. CODE ANN. § 116-112-201 to -207 (Supp. 2001) (amended 2005))).

89. *See supra* text accompanying notes 8–10.

90. *Echols II*, 2010 Ark. LEXIS 511, at *4.

91. *Id.*

92. *Id.* at *22.

inconclusive,"[93] they were "scientifically conclusive" because they showed that the West Memphis Three could not have been the source of the material tested.[94] Additionally, not only did the DNA test results exclude Echols, Baldwin, and Misskelley as sources of "several pieces of biological material that [had] differing connections to the crime scene . . . [but the results also failed to] exclude other persons connected to one of the victims."[95]

At the outset of the case, then-prosecutor John Fogleman admitted that the crime scene was "spotless" and that "[t]here was a remarkable lack of physical evidence against anybody."[96] The fact that the newly presented DNA evidence significantly undermined the little—yet only—evidence that convicted the West Memphis Three would likely cast reasonable doubt in the minds of any juror. Indeed, the Supreme Court of Arkansas correctly found that a new trial would likely result in an acquittal in light of this compelling new DNA evidence.

B. DNA Evidence in General

For the past twenty years, the introduction of DNA evidence into the courtroom has continued to shake the criminal justice system.[97] DNA evidence has proven actual innocence in cases where individuals have been convicted based on otherwise "solid and substantial evidence."[98] To this day, more than 280 people have been exonerated due to postconviction DNA relief.[99] This solid and substantial evidence on which courts had relied before DNA evidence included eyewitness testimony, coerced confessions,

93. *See id.* at *13 ("[I]t is unclear to this court how DNA test results alone could ever produce legally-conclusive evidence of innocence . . . .").

94. *Id.* at *14.

95. *Id.* at *16.

96. M.V. Moorhead, *The Lost Boys: Metalhead Murder Trial Exhumed in Documentary Paradise Lost*, PHOENIX NEW TIMES, Nov. 14, 1996.

97. *See* Walter F. Rowe, *Foreword* to EDWARD CONNORS ET AL., *supra* note 87, at xv; Rockne Harmon, *Foreword* to EDWARD CONNORS ET AL., *supra* note 87, at xix; *see also* Singer et al., *supra* note 85, at 96–97 (discussing how the most important technological advance benefitting the criminal justice system has been DNA testing).

98. *See* Seth F. Kreimer & David Rudovsky, *Double Helix, Double Bind: Factual Innocence and Postconviction DNA Testing*, 151 U. PA. L. REV. 547, 595 (2002).

99. *About—Mission Statement*, INNOCENCE PROJECT, http://www.innocenceproject.org/about/Mission-Statement.php (last visited Oct. 19, 2011).

government conduct, and other forms of forensic science.[100] Unfortunately, in many cases, eyewitness testimony has been shown to be highly unreliable, confessions have been false, and government conduct and other forms of forensic science have been improper.[101]

With the gradual movement of Innocence Projects[102] securing the release of innocent individuals from prison, "legislators [have] recognized the importance of DNA testing postconviction."[103] DNA testing statutes have been implemented in almost all fifty states,[104] and the federal government has sought to establish a guideline for states to improve and expand on postconviction DNA testing procedures.[105] The U.S. Supreme Court has even acknowledged that "DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty."[106] DNA evidence has the capability to be dispositive—while it does not have the capability to prove an individual "innocent in the eyes of the law," it does have the power to *scientifically* prove an individual's innocence.[107] Indeed, this powerful claim of actual innocence has a unique force in our criminal justice system that can tip the scales of justice in a defendant's favor.

100. *See Understand the Causes*, INNOCENCE PROJECT, http://www.innocenceproject.org/understand/ (last visited Oct. 19, 2011); *see also* EDWARD CONNORS ET AL., *supra* note 87, at 15, 18–20 (discussing evidence used in trials that led to wrongful convictions); Peter Neufeld & Barry C. Scheck, *Foreword* to EDWARD CONNORS ET AL., *supra* note 87, at xxx ("Mistaken eyewitness identification, coerced confessions, unreliable forensic laboratory work, law enforcement misconduct, and ineffective representation . . . remain the leading causes of wrongful convictions.").

101. *See generally* CONNORS ET AL., *supra* note 87, at 24–25 (discussing the unreliability of eyewitness testimony and non-DNA analyses of forensic evidence); *Priority Issues: Eyewitness Identification*, THE INNOCENCE PROJECT, http://www.innocenceproject.org/fix/Eyewitness-Identification.php (last visited Oct. 16, 2011) ("The most common element in all wrongful convictions later overturned by DNA evidence has been eyewitness misidentification.").

102. "The Innocence Project is a national . . . organization dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system . . . ." INNOCENCE PROJECT, http://www.innocenceproject.org (last visited Oct. 16, 2011).

103. Brandon L. Garrett, *DNA and Due Process*, 78 FORDHAM L. REV. 2919, 2921–22 (2010).

104. *Id.* at 2922.

105. *See* Justice for All Act of 2004, H.R. 5107, 108th Cong. (2nd Sess. 2004); U.S. DEPT. OF JUSTICE, OFFICE FOR VICTIMS OF CRIMES (OVC) FACT SHEET, THE JUSTICE FOR ALL ACT 1 (2006), *available at* http://www.ojp.usdoj.gov/ovc/publications/factshts/justforall/fs000311.pdf.

106. Dist. Attorney's Office for Third Judicial Dist. v. Osborne, 129 S. Ct. 2308, 2312 (2009).

107. *See* Kreimer & Rudovsky, *supra* note 98, at 599 (quoting United States v. Herrera, 506 U.S. 390, 419 (1993) (O'Connor, J., concurring)).

C. Should There Be More Scrutiny Before Courts Accept Alford Pleas in DNA Cases?

At the time when *Alford* was decided, DNA evidence did not yet exist in the courtroom,[108] and it is difficult to know whether the Supreme Court actually anticipated the forthcoming revolution in forensic science. The *Alford* Court rendered it constitutional for a defendant to plead guilty while concurrently maintaining his innocence when there is a clear demonstration of a "strong factual basis for the plea."[109] But can there actually be a strong factual basis—or even just a plain factual basis—for guilt if scientific evidence proves otherwise?

As discussed above, DNA findings have definitively resulted in establishing innocence.[110] If DNA evidence is powerful enough to prove an individual's actual innocence, then a court must carefully examine this evidence to determine if there is a factual basis for an Alford plea. Not doing so would only open the doors of injustice and allow innocent defendants to slide right past the judges and into our prisons.

Furthermore, the *Alford* Court held that an Alford plea is constitutional as long as the plea consists of "a voluntary and intelligent choice among the alternative courses of action."[111] It would be difficult to imagine a defendant with compelling DNA evidence that established his innocence *voluntarily* and *intelligently* admitting guilt unless, of course, there were no other alternative courses of action to choose from. In order for a defendant to avoid such a dilemma, it is important for courts to apply a standard of strict scrutiny before they accept Alford pleas in these instances. Only such a detailed and probing inquiry can help provide an additional safeguard to the innocent defendant.

108. *Alford*, decided in 1970, preceded the DNA revolution that hit the courtrooms in the late 1980s. *See* Garrett, *supra* note 103, at 2921.

109. North Carolina v. Alford, 400 U.S. 25, 37–38 (1970).

110. *See supra* text accompanying notes 98–100; *see also* Jay D. Aronson & Simon A. Cole, *Science and the Death Penalty: DNA, Innocence, and the Debate over Capital Punishment in the United States*, 34 LAW & SOC. INQUIRY 603, 617 (2009) (explaining how DNA evidence can provide epistemological closure for disputed convictions).

111. *Alford*, 400 U.S. at 31.

V. THE NEED FOR REFORM

The Circuit Court of Craighead County, Arkansas, should have dismissed the West Memphis Three case rather than let the defendants enter Alford pleas. The court failed to focus on the evidence in the case and thus allowed the defendants to plead guilty when a guilty plea clearly should not have been used. Indeed, although the West Memphis Three fought an eighteen-year battle to achieve their freedom, an Alford plea was the wrong vehicle to administer this achievement. In the end, what the West Memphis Three obtained was defective freedom.

At the heart of our criminal justice system lie the constitutional goals of providing fairness and protection of individual rights for all.[112] The system is not perfect. Economic pressures leading to a deficiency in resources, overcriminalization, faulty procedures and practices, and wrongful convictions of innocent individuals are just a few of the problems contributing to this broken system.[113] With these imperfections in mind, it is essential to address the challenges and aim to further the progression and improvement of our criminal justice system.

Here, the underlying issue is whether a court should countenance the use of an Alford plea when evidence exists—especially DNA evidence—proving that the person is in fact innocent of the crime charged. The answer is simple: no.

The West Memphis Three entered Alford pleas because they "felt it was in their 'best interest'" to do so.[114] Upon his release from prison, Echols stated: "Sometimes justice is neither pretty nor is it perfect, but it was important to take this opportunity to be free."[115] It is no surprise that the West Memphis Three believed that it was in their "best interest" to plead guilty. With Echols's looming execution date or the potential of another drawn-out trial, the Alford plea

112. *See* PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 138–39, 154 (1967).

113. *See* THE SMART ON CRIME COALITION, SMART ON CRIME: RECOMMENDATIONS FOR THE ADMINISTRATION AND CONGRESS, at xi–iii (2011), http://www.besmartoncrime.org/pdf/Executive_Summary.pdf.

114. Kenneth Heard et al., *3 Plead Guilty to Murders, Are Set Free*, ARK. DEMOCRATIC GAZETTE, Aug. 20, 2011, at 6A.

115. *The West Memphis 3 Are Free*, *supra* note 11.

appeared to be the best option.[116] Although, as mentioned above, there are reasons why individuals find Alford pleas to be beneficial, it is doubtful that this case illustrates the rationalization for those benefits.

Nonetheless, the West Memphis Three cannot be grouped into the same category as innocent individuals who plead guilty to crimes that they did not commit merely to avoid harsher punishments[117] or "recidivist innocent defendants" who simply want to avoid the costs of taking a case to trial.[118] Echols, Baldwin, and Misskelley presented the court with scientifically conclusive evidence indicating their innocence—not even procedural efficiency can justify such an unsubstantiated guilty plea here or ignore the importance of innocence and fairness.[119]

In our criminal justice system, all elements necessary to constitute the crime charged must be established *beyond a reasonable doubt*[120]—which is consistent with the requirements of due process.[121] If that standard is not met, the defendant must be acquitted.[122] To say that reasonable doubt is not cast upon the mind of a reasonable person when the existence of DNA evidence shows an individual's innocence is nonsensical.

Here, the finger must not be pointed at the "reasonable person" but instead at the judge. Judges must take seriously their independent responsibility to ensure that they can support an Alford plea with a true, factual basis.[123] Judges must not abuse their discretion when they confront an Alford plea;[124] they must not "fall[] prey to the

116. *See Piers Morgan*, *supra* note 1.

117. Gooch, *supra* note 82, at 1761–62; *see also* Laurie L. Levenson, *Unnerving the Judges: Judicial Responsibility for the Rampart Scandal*, 34 LOY. L.A. L. REV. 787, 819 (2001) (observing that defendants facing life imprisonment under California's Three Strikes Law may feel pressured to forego the right to trial).

118. Josh Bowers, *Punishing the Innocent*, 156 U. PA. L. REV. 1117, 1130–36 (2008) (discussing the benefits for innocent defendants in low-stakes cases to plea bargain in order to avoid the high costs of trial).

119. *See* Bibas, *supra* note 63, at 1408.

120. 1A FED. JURY PRAC. & INSTR. § 12:10 (5th ed.) ("Proof beyond a reasonable doubt must . . . be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.").

121. 2A FED. PRAC. & PROC. CRIM. § 403 (4th ed.) ("The requirement that the prosecution has the burden of proof beyond a reasonable doubt is required by due process.").

122. Laura Alexander, *Proof Issues*, 35 GEO. L.J. ANN. REV. CRIM. PROC. 641, 641–42 (2006).

123. Levenson, *supra* note 117, at 815–18.

124. *See supra* note 74 and accompanying text.

practice of routinely skipping over the factual basis" inquiry.[125] In other words, judges must not sit idly by and let innocent defendants plead guilty when evidence proves otherwise.

When a judge is confronted with compelling evidence of actual innocence, he or she can either (1) allow the innocent defendant to plead guilty, which would be a complete misuse of justice and a bastardization of our criminal justice system; or (2) dismiss the case. A guilty plea is not only an admission of conduct, it is a conviction.[126] Therefore, judges must provide an additional safeguard for these defendants and not condone such a lax examination of factual basis. When the evidence shows innocence, the court simply should not accept the guilty plea.

The circuit court found "*compelling* evidence" that a new trial would result in an acquittal, yet it consented to Echols, Baldwin, and Misskelley signing on record that they each caused the deaths of the three boys and knew or had reason to know that the victims were particularly vulnerable.[127] Considering the wide media attention that this case received and the enhanced criticism of the way in which the trial was conducted, the circuit court should have taken a more cautious approach by examining the evidence presented with strict scrutiny rather than quickly acting to make the case disappear.

Under this heightened standard of review, courts cannot evade the central purposes of the Alford plea by allowing one to be entered prior to conducting a close assessment of all the facts at hand. Efficiency should not come at the price of unfair adjudication.[128] In order to ensure a higher quality of justice, judges cannot remain passive. Rather, they should make every effort to take responsibility to fulfill their constitutional obligations and "contribute to the improvement of . . . the administration of justice."[129]

Here, the circuit court failed to take on that responsibility and missed an opportunity to identify and redress one of the many problems in our justice system. Consequently, the injustice that

125. Levenson, *supra* note 117, at 817.

126. *Id.* at 798.

127. Conditional Order For New Trial at 3, Arkansas v. Echols, No. CR 93-450 (Ark. Cir. Aug. 19, 2011) (emphasis added); Prosecutor's Short Report of Circumstances at 1, Echols v. State, 2010 Ark. 417, 2010 Ark. LEXIS 511 (No. CR-93-450A).

128. Levenson, *supra* note 117, at 819.

129. *See id.* at 803 (quoting MODEL CODE OF JUDICIAL CONDUCT Canon 4B (2000)).

occurred resulted in the West Memphis Three acquiring their freedom at the cost of their innocence.

VI. CONCLUSION

The circuit court's decision in *Echols v. State* was an immense step backward in the progression of our criminal justice system. Courts should not accept guilty pleas when enough compelling evidence exists that clearly shows that an individual is not linked to the crime for which he or she has been charged. Judges must not sit back with their hands tied; instead, they must take the responsibility to conduct a factual-basis inquiry with strict scrutiny in order to prevent the injustice of allowing an innocent defendant to plead guilty. The *Echols* court's allowance of an Alford plea was inappropriate because there was enough evidence to establish the West Memphis Three's innocence but not enough of a factual basis for the Alford plea. As a result, the West Memphis Three have to bear the weight of admitting guilt while scientific evidence lurks within the shadows of doubt that could ultimately lift that weight off.

If Arkansas truly seeks to carry out "the mission of the criminal justice system . . . and accommodate the advent of new technologies . . . [and] new scientific evidence,"[130] then the court should have viewed the DNA results from this case as being compelling evidence of factual innocence and dismissed this case.

West Memphis Three supporters spent eighteen years and seventy-eight days asking the court to "Free the West Memphis Three."[131] And while Echols, Baldwin, and Misskelley are surely "free" from sitting behind bars for the rest of their lives, the Alford plea has certainly not freed them from guilt.

130. *See supra* text accompanying note 88.

131. *See, e.g.*, EXONERATE THE WEST MEMPHIS THREE SUPPORT FUND, http://wm3.org (last visited Feb. 25, 2012); FREE WEST MEMPHIS 3, http://www.freewestmemphis3.org (last visited Oct. 17, 2011).