	WRIT NO. 924220-B	
EX PARTE	§	**IN THE 147TH**
	§	
	§	**DISTRICT COURT OF**
	§	
FRANCES KELLER	§	**TRAVIS COUNTY, TEXAS**

MEMORANDUM IN SUPPORT OF FRAN KELLER'S SUBSEQUENT PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW FRAN KELLER, Applicant, by and through her attorneys and petitioners, KEITH S. HAMPTON and CYNTHIA L. HAMPTON, in the above entitled and numbered cause and files this *Memorandum in Support of Subsequent Petition for Writ of Habeas Corpus*, pursuant to TEX. CODE CRIM. PROC. ANN. art. 11.07 § 4, *et seq.*, and would show this Honorable Court the following:

PRELIMINARY STATEMENT

Applicant Fran Keller was convicted of aggravated sexual assault of a child in 1992 and sentenced to 48 years' imprisonment. She is innocent. Fran Keller was convicted of the brutal sexual abuse of a 3-year-old child on the following evidence: an outcry repeatedly retracted, medical observations now repudiated, a recanting witness' false confession, child fantasies, a quack "expert" in imaginary satanic ritual abuse, false evidence from the police regarding nefarious cemetery-related events, the suppression of exculpatory evidence, and an investigation virtually certain to result in false allegations of abuse by children. Only this Court can recommend Fran Keller be granted relief.

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The Historical Context of the Fran & Dan Daycare Hysteria

Panics and hysteria are well-documented in human history. The Inquisition alone consumed about a thousand years of prosecutions and executions of people on suspicion of worshiping the Devil and sacrificing humans and animals to Satan, practicing black magic and sponsoring wild orgies involving the rape of children. A more recent widespread outbreak occurred about thirty years ago throughout the United States. In the early 1980's, shocking cases of child sexual abuse sprang up all over the country.

The McMartin Preschool case in California was among the first. One male teacher and six women at the school were charged with more than 200 counts of sexually abusing forty-two children, which included child rape and pornography, and satanic rituals. The 2-year-old boy who made the outcry related how he and other children witnessed black-robed adults with masks dance and moan in a church while one teacher killed pet rabbits, turtles and birds, and on a trip, a teacher chopped a pony to death with a long knife. He and the children were warned their parents would face the same fate if they told anyone about the events. In Minnesota, twenty-five residents of the town of Jordan were prosecuted for having "bizarre sex parties" where children were horribly abused. In Maplewood, New Jersey, a caregiver was convicted of 114 counts of assault and sexual abuse of twenty children at the Wee Care Nursery School; the 26-year-old aide had been accused of raping children "with silverware, wooden spoons, Legos and light bulbs, that she played 'Jingle Bells' on the piano while naked, taken [sic] their temperature rectally and forced them to eat excrement off the

floor.'" *Paranoid Parents, Phantom Menaces, and the Culture of Fear,* 2000 Wis.L.Rev. 519 (2000). *See also Something Not So Funny Happened on the Way to Conviction: the Pretrial Interrogation of Child Witnesses,* 35 Ariz.L.Rev. 927 (1993).

Many others were similarly prosecuted: the Gingerbread Preschool owners were charged in Brockton, Massachusetts for sexual abuse of ten children. In Chicago, the owner of the Mother Goose and Kids Stop day care centers was indicted for molesting four girls under her care. In Florida, day care owners were convicted of ritualistic sexual abuse at the Country Walk Day Care. These and many other cases were widely publicized, leaving the public with the impression that the country was experiencing an epidemic of extreme child sexual abuse at day care centers. *Something Not So Funny Happened on the Way to Conviction: the Pretrial Interrogation of Child Witnesses, supra.*

At the same time, Texas was experiencing its own hysteria involving children which resulted in various new laws often named after murdered or missing children, such as "Ashley's Laws" and "Amber's Laws," detailed in Petitioner's law journal article, *Children in the War on Crime: Texas Sex Offender Mania and the Outcasts of Reform*, 42 S. Tex. L. Rev. 781 (2001). Cumulatively, these cases generated unrelenting waves of news stories and created a public perception that child sexual abuse was ubiquitous and alarmingly on the rise, especially at day care centers. It was in this atmosphere that a troubled 3-year-old child told her equally troubled mother that she was abused at the Fran & Dan Day Care Center she had been attending for just three months.

SUMMARY TRIAL RECORD

Suzanne Guinn and Rick Chaviers Divorce

In April, 1991, the divorce of Suzanne Guinn and Rick Chaviers became final. (Vol. 8, pp. 64-65). The divorce was not amicable, and their daughter, Christy Chaviers, began seeing counselor Donna David-Campbell for emotional problems apparently related to the divorce. (Vol. 8, pp. 64-65). Christy had seen her mom and dad interacting at home and her father was a strict disciplinarian. He used extensive timeouts and a flyswatter to spank her when she was 3½ or younger, and may have also used a belt. He also had pulled her pants down and spanked her. His way of parenting caused problems between him and Suzanne. (Vol. 11, pp. 42-46); (Vol. 8, pp. 99-100).

Christy's behavioral and emotional problems began before she was enrolled at Fran's daycare, intensifying throughout the summer of 1991. Christy had been exhibiting strange behavior, such as trying to jump out of a moving vehicle, or acting like a cat or a dog. She would defecate and urinate in the back yard, eat out of a bowl, lick herself, act like a cat, and curse. (Vol. 10, pp. 10-11). She would bang herself into the floor until she was bruised. (Vol. 10, pp. 15-16). She had been biting her mother, throwing and breaking things, and hitting people. By June or July, Christy had to be wrapped in a blanket because she was so out of control. (Vol. 10, pp. 14-15). Christy threw her clothes out of her chest of drawers and ran down the street in a rage. She would also urinate on the floor in front of her mother, and take her clothes off in front of someone named Stan. (Vol. 10, pp. 16-18).

Guinn had taken Christy to Kids Playhouse about eight times in May and June. (Vol. 8, pp. 95-96). While she appeared to be doing better in June, by August, she was using profanity, and talked about peeing on other children. (Vol. 10, pp. 22). Her father had noticed similarly disturbing behavior. (Vol. 10, pp. 23-25).

Throughout this time, Guinn had been reading self-help books on sexual abuse and incest. Guinn had told David-Campbell she and her sister, Jeannie, had been sexually abused, and her daughter Jeana was almost sexually abused by an uncle. (Vol. 10, p. 13). Guinn's father was an alcoholic and she grew up in a violent and unstable household. (Vol. 13, pp. 9-17).

Christy's Enrollment at Fran and Dan's Day Care

On recommendation of two neighbors, Guinn enrolled Christy at Fran and Dan's Day Care the first week in May. (Vol. 8, pp. 64-65). When Guinn took Christy, there were always five to six, sometimes eight children present: babies and small children under two, and toddlers. Beginning in May, school-age children were there after school. Guinn also took Christy for swimming lessons with a neighbor in June. (Vol. 13, pp. 16-17). Fran and Dan would be there when Guinn dropped off Christy. Christy went to the daycare about fifteen times, the last day being Aug 15th. (Vol. 8, pp. 73-74).[1]

[1] Christy had problems throughout the summer. She would become hysterical at bath time and had difficulty eating. Guinn had to hose her down in the back yard because she would not allow her hair or body to be washed. She had night terrors and she became really angry and violent. Although she was potty-trained, (continued...)

Christy's Outcry Against Fran Keller to Her Mother: *Dan Peed/Pooped on Head*

On August 15, 1991, Guinn picked up Christy[2] from Fran's daycare to take her to Christy's counselor, Donna David-Campbell. On the drive there, Christy remarked that she didn't like Danny. According to Christy, Danny pulled down her pants and spanked her, hurt her, and "he poo'd and pee'd on my head[.]" According to David-Campbell, Christy told her that "Danny had taken a pen and put up her and it hurt her and that he had poo'd on her head and Fran had washed it off with some blue shampoo." Christy said Dan had hurt her numerous times. "She showed on herself, you know, that he inserted the pen in her vagina," and demonstrated with dolls. (Vol. 8, pp. 8-11). The dates Christy claimed the abuse occurred were a Saturday and Sunday.[3] (Vol. 11, pp. 59-60).

Christy's Outcry Against Fran Keller to David-Campbell: From "They," to Fran's Hair-Washing, to "Ate Me All Up"

During the 30-minute session with David-Campbell, Christy went on "about how they stuck her and hurt her with a pen ... and showed with the dolls and then kept going over her head. She was real upset about her hair. ... [About] pooing and peeing on her head[.]" (Vol. 8, pp. 8-11). When David-Campbell asked for details, Christy said it did not happen. (Vol. 11, pp. 54-55). Fran Keller was not specifically mentioned either on the ride or during her

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[1](...continued)
Christy would have accidents. She played behind the couch looking in her pants. She took a marble and a Crayola and tried to play with them "on the outside" but not the inside. (Vol. 8, pp. 71-73).

[2] Guinn had another daughter, Jeanie, who was 15 years old at the time.

[3] August 15,1991 was a Thursday.

session with David-Campbell. (Vol. 8, pp. 17-18).

When they returned home, Christy went to the bathroom and started crying when she was urinating. She kept saying "it hurts" but Guinn didn't see anything. Christy then pushed her vaginal lips together and said, "Look, it's a face," and "you take the pen and put it in the little girl's mouth." She said Danny taught her to do that. Christy said there was "glue" in her vagina from Danny's "pee-pee," and it was "yucky." Guinn then called the pediatrician and took Christy to Brackenridge Hospital that evening, explaining to Christy they were going to the hospital "to make sure all the glue was out." Christy cried and said Fran washed it out and didn't want to go. (Vol. 8, pp. 80-84).

Guinn spoke to officers from the Austin Police Department that night. The hospital called them and they called the sheriff. She and Christy were at Brackenridge Hospital until 3 or 4 a.m. The next day Christy wouldn't look at or speak to Guinn. They had planned to speak with Detective Roger Wade, but Christy was too upset. Guinn took Christy to David-Campbell's office to calm her down, and afterwards the three of them met with Detective Wade. Christy was videotaped with the detective, while Guinn gave a statement to the sheriff. (Vol. 8, pp. 84-86).

A week later, Christy told David-Campbell for the first time that Fran had Christy touch Fran's breasts and, according to David-Campbell, Christy said Fran "ate me all up, and her mouth was at the doll's vagina." (Vol. 8, pp.18-39).

Christy's Tales Become More Bizarre

Christy continued to see David-Campbell, and her claims about her alleged abuse at the daycare became more bizarre:

- Dan and Fran "had everyone take off their clothes and had a parrot that pecked them in the peepee." (Vol. 11, pp. 6-11).
- She rode with the Kellers in an airplane and talked about cemeteries, dirt and snakes in the cemeteries. (Vol. 11, pp. 6-11).
- Fran and Dan made her smoke a cigarette. (Vol. 11, pp. 6-11).
- Tigers licked kids and then they were killed. (Vol. 11, pp. 6-11).
- Dan and Fran came to her house with a chainsaw and cut her dog Buffy in the vagina until it bled. Another child from the daycare was also present and they cut her vagina and hit her in the nose with a hammer. (Vol. 10, pp. 31-33).
- Around Easter, Fran and Dan were shooting Easter bunnies. She saw a crying baby as it was dismembered, falling silent when its head was cut off. (Vol. 10, pp. 55-56).
- Fran and Dan put people in a hole, as well as blood, skin and bones, then ran over them. Babies were cut up, their blood put in water, while other babies drowned because, Christy explained, there were no floaties. (Vol. 11, pp. 4-5).
- Fran and Dan put a baby in a bag and then a trash can, and did the same to a dog and cat. (Vol. 10, pp. 39-41).

● Danny hit her with a belt "in front." (Vol. 10, p. 27-29).

● She talked about peeing on other kids at daycare. (Vol. 10, pp. 30-31).

● She recounted various stories about abusing cats, shooting dogs, threats to kill a horse. (Vol. 10, pp. 33-36).

● Needles were being stuck into her at daycare. (Vol. 10, pp. 36-39).

● Expressing herself with pinto beans in therapy, Christy either buried some of the beans (which were interpreted to represent children) either herself or a friend, "hiding from [her] dad or buried dad for angry feelings. She was not seeing her father very often[.]" The father died and was buried under the beans. (Vol. 10, pp. 47-48).

● She was put in a hole. (Vol. 10, pp. 39-41).

● Kenny Rogers was at Dan and Fran's house, and apparently showed up at Sunday school. Christy said she was shot in the arm and leg with a gun, that Dan and Fran dressed up like pumpkins, and would wear white robes when they hurt her. (Vol. 10, pp. 41-44).

● A baby named Rachel was killed, and Danny dug a big hole and put her in it. (Vol. 10, pp. 44-45).

● She saw various people being handcuffed. (Vol. 10, pp. 45-47).

● Christy was preoccupied with sharks around Halloween of 1992 and cutting them up. (Vol. 11, pp. 42-46).

- Christy said she was taken to a cemetery where a coffin, babies and adults were dug up. A person dressed like a policeman or sheriff was there and somebody walked by and saw what was going on. Then the sheriff pushed that person into a hole. Then Danny shot the person and cut up the body with a chainsaw. All the kids helped. They were shot up with drugs and videotaped doing sex acts to each other. (Vol. 10, pp. 53-55).
- She hit balls with a hammer during play therapy and acted like a baby crying for her mother. She undressed the anatomically correct dolls. (Vol. 11, p. 6) .
- She was put in a swimming pool with sharks that ate babies and she saw blood. (Vol. 11, pp. 6-11).
- Fran and Dan put blood in the kool-aid at daycare. (Vol. 11, pp. 6-10).
- Christy playacted with a lady who wanted to kill ponies and eat them. (Vol. 11, pp. 21-22).

The Initial Investigation, Flight and Arrest

On the morning of August 16th, Department of Protective and Regulatory Services child care investigator Amy Cichowski went to Fran and Dan's daycare and spoke with Fran, while Detective Wade met with Dan. Cichowski informed Fran generally about the abuse allegation. Fran responded by observing that child abuse allegations circulated, and false ones might be made against her daycare. She also said her husband was never alone with a

child and would never touch a child or hurt one – a response that at the time, appeared odd to Cichowski and Wade. (Vol. 8, pp. 134-137; 142-143).

Detective Wade spoke with Dan who said he was sometimes left alone with the kids for 2-2½ hours sometimes when Fran went to the store, the last time being August 5th, when Fran had several stores to go to. (Vol. 8, pp. 148-150). Dan denied abusing any children. (Vol. 8, pp. 150-151).

Karen Knox was a social worker who worked at the sheriff's office as a video specialist videotaping alleged child victims of sexual and/or physical abuse. (Vol. 8, pp. 193-195). Knox interviewed Christy on Aug 16, but Christy was very distracted and unable to verbalize. (Vol. 8, pp. 195-197). She later videotaped Christy regarding the allegations against Fran, but with similar results. (Vol. 8, pp. 197-198). Knox asked open-ended questions at first, but later asked more closed-ended questions which have a yes or no answer. Knox took two videos of Christy and on the first one she could not be qualified to tell the truth. (Vol. 9, pp. 12-13). Ultimately, three videotaped interviews were conducted with Christy. (Vol. 8, pp. 161-163). During one interview, Knox asked what "Danny did to Christy at the day care center, and [Christy] replied, 'you tell me.'" (Vol. 9, pp. 24-28).

An arrest warrant was issued against Fran and Dan Keller. Travis County Deputy Todd Radford called Revis Kanak, the Kellers' attorney, around December 2, 1991 and requested the Kellers come to his office. (Vol. 9, pp. 40-43). About a month later, Fran and Dan Keller were arrested in Las Vegas, Nevada. (Vol. 9, pp. 62-78; 118-121).

Investigation of Christy's Claims of Events at the Cemetery

Austin police officer Larry Oliver was assigned in late March, 1992 to investigate Christy's claims of abuse. He found no missing babies or missing animals or missing children. He interviewed neighbors who had seen no unusual happenings at the daycare. (Vol. 11, pp. 69-73). However, three cemeteries in the area of Fran and Dan's daycare had been recently dug. (Vol. 11, pp. 69-73).

Oliver took Christy and her mother to the Oliver Cemetery, where Christy said she had been when Dan and a friend brought her there. (Vol. 11, pp. 69-73). Christy led them unafraid through the cemetery to an area in the back of the cemetery where nobody was buried but the grass was knee-high. (Vol. 11, pp. 73-75). They passed one grave which was not hard-packed like the others in the area, which were from the 1980's. (Vol. 11, pp. 75-78). Christy stopped in front of some animal bones but she didn't say anything. As they passed by a grave, she said it looked like it had a "new rock" (tombstone) on it, with the name of Williams. When he asked Christy what was in the ground there, "she said bad things, really bad things, and dead and scary things. Also, snakes and lions and tigers under the dirt. She talked about using shovels to dig." (Vol. 11, pp. 78-80).

The jury heard testimony regarding the extensive investigation of cemeteries, locations of graves, and diagrams and exhibits were introduced as evidence. (Vol. 11, pp. 81-84). Austin Police Sergeant James Beck, who assisted with the investigation, had a hobby: "dealing with cemeteries for over 30 years." (Vol. 12, pp. 239-244). Police flew over the

cemetery in a helicopter with an infrared camera which can read body heat and infrared heat from a decomposing body that is just under the ground. (Vol. 11, pp. 84-87). Oliver remained on the ground as the police helicopter directed him to the location of "hot spots": the Williams gravesite, which was partially hot and partially cool, and one or two other sites. (Vol. 11, pp. 88-91).

Beck found some graves sunken-in, while others had apparently fresh dirt. He said the Williams grave's burial date was 1990, but remarked how it was larger than the other graves and had dirt piled on it. He stuck a metal bar into the grave and the dirt was soft about 12 inches down in the center, when in Beck's opinion, it should have been hard-packed. Two other graves were sunken in, and his metal bar went 12 inches into the dirt, which is composed of rocks and caliche. (Vol. 12, pp. 239-244).

Christy's Testimony

Christy, by now 5 years old,[4] testified she never went to Fran and Dan's school, didn't know anybody named Fran and Dan, never went to a school she didn't like and nobody ever touched her in a way she didn't like. Christy said she didn't recall talking to the prosecutor, Judy Shipway, then recalled that she did. (Vol. 9, pp. 32-37). Christy was then excused as a witness, then later recalled for a second direct examination during which she and Shipway whispered questions and answers to each other. During this second examination, Christy

[4] She turned 5 years old on November 6th.

confirmed she went to Fran and Dan's daycare, and testified that stuff happened there that she did not like. She then recanted, then again said Fran touched her, then recanted again. She denied telling anyone that they did anything to her, testified it didn't happen, but she told somebody it happened. Christy denied telling David-Campbell that Danny said anything to her ("no way, Jose"), and denied telling Shipway that Dan or Fran did anything to her.

After persistent examination by Shipway, Christy testified she told Shipway and David-Campbell that Fran did something and that was the truth, but refused to say what Fran did. Christy testified she didn't "know why Fran and Danny were hurting me." Christy said she couldn't remember what they did. (Vol. 9, pp. 51-61).

Douglas Wayne Perry's Description of Christy's Sexual Abuse

Through the legal mechanism of limited use immunity, the prosecution compelled under threat of contempt (imprisonment unlimited at the time), the testimony of Douglas Wayne Perry, who had also been indicted for aggravated sexual assault of Christy at Fran's daycare. (Vol. 9, pp. 122-131). Perry had been married to Travis County Deputy Constable Janise White, and they socialized with Fran and Dan just about every weekend. (Vol. 9, pp. 161-164).

Perry testified that no children were present at the Kellers' when he and Janise visited, they never brought children when they visited, and he never went to the daycare during the day. (Vol. 9, pp. 165-167). He said he did not know whether Janise and her partner Raul

appeared at the daycare to scare the kids during the day. (Vol. 9, pp. 168-170). He testified he stopped associating with the Kellers when he heard about the allegations against them. (Vol. 9, p. 170).

There were no pornographic pictures of the children at the daycare, drinking beer with the Kellers when kids were present, or anything being done to any of the children, Perry said. (Vol. 9, pp. 171-173). The prosecution described sexual abuse allegedly occurring at the daycare, and Perry continued to deny seeing anything. (Vol. 9, pp. 174-179). The prosecution then compelled Perry to read aloud his written statement which he gave to Texas Ranger Waldrip in July, 1992:

> Approximately ... in August or September of 1991 ... Janise had a phone call from Fran Keller asking me and Janise to come over and drink beer. We went over to Dan and Fran's Day Care Center and started drinking beer. There was Danny, Fran, and two little kids. ... The little girl was white and about four or five years old and had light brown shoulder length hair. She was in the front room with Danny and Fran. Raul [Quintero] showed up. That was Janise's partner at Precinct 3, Travis County Constable's office. ... We had a few beers, and while we were drinking beer, Janise went into the back room, got both kids and brought them into the living room and told them she knew where they lived and if they told anybody, she would do to them what she was about to do to the doll. Then she tore the head off of the doll. At this time Janise was wearing a Travis County Constable's uniform, shirt and a pair of jeans.
>
> Danny and Fran started taking off the clothes of the little girl in the living room. Fran took her own clothes off. Danny took off his pants. The little girl started sucking on Fran's titties while they were sitting on the sofa. Fran had a pen and was sticking it in and out of the little girl's vagina. Fran started licking .. the little girl's vagina. Then ... she made the little girl lick her vagina. The pen that Fran used on the little girl, she licked the pen and made the little girl lick the pen. The she showed the little girl how to suck Danny's dick. Then the little girl sucked Danny's dick. Danny tried to penetrate the little girl's vagina with his penis while sitting on the sofa. Pictures were taken

by Janise from a Polaroid camera. Raul tried to put his finger inside the little girl's vagina. The little girl looked like she was enjoying it. Then the little girl came over to me and sucked my penis. The little girl then licked Janise's vagina. Then Danny and Fran put the little girl's clothes back on. Danny and Fran took the little girl to the playroom.

When they came back, they had the little boy with them. They put him in the middle of the room and ... took his clothes off. Danny got a pen and started sticking it in and out of the little boy's asshole. Fran made the little boy lick her vagina and suck her titties. The little boy went and licked Janise's vagina. Then Danny and Fran put the little boy's clothes back on and then they put their own clothes back on and took the little boy back to the play room.

The whole time, Janise was taking pictures. I saw two of the pictures. One picture of a little girl licking Fran's vagina. The other one was of Danny putting the pen in and out of the little boy's asshole. Fran took a picture of the little boy licking Janise's vagina.

Me and Janise received a phone call from Fran asking us to come by Danny and Fran's Day Care Center to drink beer. I asked Janise how many kids were still left there at the day care center. Janise told me two. I told her that I wasn't going over until the last little kid was gone. Fran called back and said the last kid was gone, so we went over. Janise and I talked about what went on at Dan and Frannie's the day before. I asked Janise how this incident took place. Janise did not answer me. I told her that I was never going back over there again. Janise did not say anything. That is when our marriage started going bad.

(Vol. 9, pp. 183-186).[5]

Perry's Prompt Repudiation

As soon as he escaped the July interrogation, Perry hired attorney Revis Kanak[6] and

[5] The indictments against Raul Quintero and Janise White were later dismissed by the Travis County District Attorney's office.

[6] This is the same attorney who counseled Fran Keller. He also counseled Dan Keller.

immediately retracted his statement to the police before Kanak and his investigator, Drew McAngus.[7] (Vol. 9, pp. 189-194; 200). Perry explained that during his 4½ hour interrogation, DPS officers told him what happened to child molesters at the joint, and threatened him about going to prison. (Vol. 9, pp. 200-204). The police also claimed to have witnesses and videotapes confirming his guilt. (Vol. 9, pp. 203-208). Perry testified he gave the statement because he was afraid based on the allegations he had read in a police report his wife, Janise, brought home one afternoon. (Vol. 9, pp. 194-197; 198-200).

It was this police report that Perry used to give a detailed statement. Perry said he was scared when he gave his statement, and that his entire story was untrue. (Vol. 9, pp. 194-197). He also told the grand jury it was not true, and told the grand jurors that Fran and Dan had never abused a child. (Vol. 9, pp. 197-198).

The Ritual Abuse Experts: David-Campbell and Noblitt

The prosecution recalled David-Campbell to inform jurors about "triggers," which she said are reminders to abused people who have forgotten their abuse experience and can trigger memories, but more importantly, control thoughts. Ice cream was a trigger for Christy, causing her to act out inappropriately and in bizarre playacting, David-Campbell explained. (Vol. 11, pp. 23-24). The behavior was Christy's way to play out what they have experienced and reenact what she had actually seen. (Vol. 11, pp. 25-26). David-Campbell

[7] This is the same investigator utilized in the initial writ application investigation.

said animal abuse may have been something she had actually seen or had done to her because children don't have cognitive ability to make up such stories unless they have actually seen such things. (Vol. 11, pp. 26-28).

David-Campbell contacted another psychologist, Kathleen Adams, who claimed specialization in treating people who have suffered ritual abuse and who had become other people or animals. (Vol. 11, pp. 27-28). David-Campbell explained how ritual abuse involves the use of handcuffs, torturing animals, ceremonies involving robes, drinking blood, and use of cemeteries. A child's apparent unwillingness to take a bath may well reflect fear of water, common to ritualistically-abused children, according to David-Campbell. According to David-Campbell, Christy's behavior matched many of the behaviors associated with ritual abuse. David-Campbell noted Fran and Dan were involved in all these ritualistic abuses, along with other people. (Vol. 11, pp. 29-33).

David-Campbell explained to the jury how Christy's strange tales were a reflection of real events. Somebody at daycare or involved with Fran and Dan dressed as police officers because ritual abusers dress up in costumes to confuse the children. (Vol. 11, pp. 38-40). Further evidence was that Christy would have problems around Halloween, which, according to David-Campbell, is"the most sacred holiday" for ritual abusers. Killing of animals and dressing in costume occurs on this and certain other ritual-abuser holidays. Finally, Christy was scared of werewolves; somebody at daycare must have dressed up in a werewolf costume during one of the ceremonies. (Vol. 11, pp. 40-41).

One of the rituals Christy described involved girls wearing pink and purple robes, while the boys wore black, brown and green ones. The "ritual" was to spread a "kitty" on its back, but as David-Campbell explained, the "kitty" was really Christy, and the ritual abusers carried her to the house and stuck things in her vagina as candles burned all around. (Vol. 11, pp. 56-58). David-Campbell concluded Christy's August outcry was the result of a "trigger" reminding her of her ritual abuse. (Vol. 11, pp. 34-37).

David-Campbell said Christy was scared to come to court because she didn't want to see Fran and Danny. She thought they would hurt her and her family and animals. David-Campbell told Christy it was important for her to tell the truth in court and that she was safe there. (Vol. 11, pp. 41-42).

David-Campbell admitted that Christy's mother told her that Christy was taking swimming lessons and enjoyed them, that Christy did not talk about costumes around Halloween, and that when she talked about people in robes, she was referring to them being at church. David-Campbell also conceded the airplane ride Christy reported could have been because she was told about police flying around in airplanes. (Vol. 11, pp. 52-54). But David-Campbell maintained that these events were triggers, reminding Christy of her ritual abuse. (Vol. 11, pp. 49-51).

David-Campbell insisted she had no reason to believe that Christy told her anything but the truth. (Vol. 11, pp. 6-7).

Christy's Rape was no Isolated Crime: Dr. Noblitt gives Context

Dallas clinical psychologist Randy Noblitt testified that many of his patients were victims of sexual abuse and ritual abuse, and suffered from dissociative disorders, including multiple personalities. (Vol. 12, pp. 110-113). Ritual abuse is a valid field in psychology with a large following in his profession, according to Noblitt. (Vol. 12, pp. 158-159). Most of his dissociative patients have reported ritual abuse. (Vol. 12, pp. 113-116). Noblitt explained that ritual abuse occurs in a ceremonial or deliberate manner, and often involves torture and sexual abuse. Most ritual abuse is done in the setting of a cult, such as satanism, which is widespread and longstanding throughout the United States, according to Noblitt. (Vol. 12, pp. 116-120).

While much of the reports of animal and human sacrifice and blood-drinking appear fantastic, Noblitt believed these memories are due to drugging the victims and simulating these acts, such as the pretended killing of another person, or a wound miraculously healed by Satan. The simulations appear real to the drugged victim, and the purpose of these routines is to create dissociation and control through fear, as well as undermine the credibility any victim seeking to report her ordeal to the police. (Vol. 12, pp. 120-127). Police participate in these events in order to frighten the children and reduce likelihood that the offenders will be caught. (Vol. 12, pp. 138-141).

After his review of the police reports and David-Campbell's records, Noblitt concluded Christy had been sexually abused at the daycare. He conceded he had not actually

interviewed Christy. Christy's abuse may have occurred in a swimming pool as well as in a cemetery, Noblitt said. (Vol. 12, pp. 136-138). Noblitt found it unsurprising that friends, relatives, or neighbors would have no knowledge of the ritualistic activities, due to their secrecy. (Vol. 12, pp. 141-142). Noblitt was especially impressed by Christy's knowledge of perverse, sadistic sex acts, which few people would know about. (Vol. 12, pp. 160-162). In his opinion, neither Christy nor her mother could have fabricated their reports. (Vol. 12, pp.134-136).

Noblitt concluded Christy's reports were corroborated by other evidence: children wearing different clothes when picked up, redness or swelling of genitals, disturbed behavior after being enrolled there. Noblitt noted that Fran's brother is a convicted child molester, Fran's daughter had mentioned incest, and testified it is well known that sexual abuse runs in families. (Vol. 12, pp. 127-133). Finally, Noblitt relied on the physical evidence discussed in Dr. Michael Mouw's medical report. (Vol. 12, pp. 133-134).

Noblitt was aware Christy's mother was sexually abused by her bipolar father, but did not know the father would chase the kids and shoot at them. Noblitt was also aware that Christy's father could read dollar bills inside people's pockets. (Vol. 12, pp. 143-146). He reaffirmed his expert opinion that no one influenced Christy into making false allegations. (Vol. 12, pp. 150-158).

Medical Proof

Brackenridge Hospital physician Dr. Michael Mouw physically examined Christy on August 15th. (Vol. 8, p. 164). Christy was alert, pleasant, cooperative, well nourished, clean, in no acute distress, and very cooperative with the exam. (Vol. 8, pp. 177-178). He noticed that while the opening to the vagina was normal, her hymen and labia minora were reddened.

Mouw also observed a tear at the opening to the vagina "and what appeared to be lacerations of the hymen at 3:00 and 9:00." The lacerations were no more than 24 hours old, in his opinion. He concluded Christy had suffered trauma to her hymen, consistent with sexual abuse. (Vol. 8, pp. 168-172).

Pediatrician Beth Nauert examined Christy about two weeks later, but testified that the tear to the hymen noted by Dr. Mouw had healed. (Vol. 8, pp. 181-187). From Mouw's report, it appeared to Nauert the injuries were fairly acute, meaning they probably had occurred within hours or days prior to Mouw's exam. (Vol. 8, pp. 181-187). Nauert concluded Christy's injury was most definitely consistent with sexual abuse, in part because there were three identified injuries around her vagina, according to Dr. Mouw's report. (Vol. 8, pp. 188-191).

Defense Expert

Clinical psychologist Dr. George Parker testified about susceptibility of children to

suggestion and vulnerability to social pressure and the creation of false memories. Authority figures powerfully influence children in ways akin to brainwashing because children seek their approval. (Vol. 13, pp. 38-42). These influences occur through suggestive or leading questions and pressure, even non-verbally from eye contact, smiling, nodding, frowning, and other facial expressions. (Vol. 13, pp. 42-44). In these ways, a therapist can unwittingly influence a child through these cues. (Vol. 13, pp. 44-50). Parker agreed that the penetration by a penis of the vagina of three-year-old girl would cause severe pain, bleeding, deep lacerations, and insertion of crayons and pencils at age 3 is extremely rare. (Vol. 13, pp. 56-59).

Parents of Other Children

Shelly Turner's 7-year-old son attended Fran and Dan's daycare for most of the day and noticed no sexual or other abuse, no blood on her son, no dead people, dead animals, no dead babies, no burial mounds or sharks in the pool. Her son was very talkative and never reported anything bad happening there. (Vol. 12, pp. 63-76). Similarly, Kathy Anglin's 5-year-old daughter also attended the daycare for two years, and saw nothing amiss. (Vol. 12, pp. 85-89). The day after the outcry, Anglin spoke with Fran about the allegation that Dan had sexually abused a child, and decided to continue to take her child there. (Vol. 12, pp. 8-11).

Registered Nurse Marian Brady took her child Cameron for about three months to the

daycare. She said Fran had claimed to be a nurse. (Vol. 12, pp. 173-177). Fran wrote her a letter saying she did not want to keep Cameron because she was crying all day. Fran was always there when she picked her up, but she didn't always see Dan. (Vol. 12, pp. 179-181).

Kelly Warren took her 4-year-old daughter Samantha to the daycare for about 5 months. Samantha had yeast infections for which she was prescribed medication to apply. She eventually would freely open her legs for the medication, behavior Warren and her husband thought was unusual. (Vol. 12, pp. 182-184). Samantha also developed a fear of a wooden spoon, apparently because someone hit her with one on her "tee-tee." She would remark about the spoon when they passed by Fran and Dan Day Care, which she referred to as "the bad guy's house." She also developed the habit of biting her own arm so hard it would leave teeth marks. (Vol. 12, pp. 184-186). Warren said her daughter became very disoriented, and would not mind her when she was with Fran. (Vol. 12, pp. 188-189).

Terry Fenley, who had referred Guinn to the daycare, took her 3-year-old and 1-year-old children, usually twice a month all day. When she picked up her son he would "almost never" be in the same clothes he had arrived in. She thought it was unusual but was told he had gotten dirty or wet through his diaper, though he hardly ever wet through his diaper at home. She recalled a time when she once went early to pick up her baby, but when she tried to open the door, it was shut back on her. Fran told her to wait a minute, and when she finally walked in, she saw Fran sitting in a chair "real flustered." She said Dan had been changing a diaper at the front door and she didn't want her to hit the child when she came

in. Fenley did not recall seeing Dan, and noted that the changing table was in the bathroom. (Vol. 1, pp. 224-227).

Bonnie Gebbert had her daughter in the daycare, and she arrived about three times when Fran was at the store. (Vol. 13, pp. 228-229).

Linda Snyder took her 2-year-old diapered daughter Ashley to the daycare for about 5 months, but she would kick and scream "not here, mommy, not here," when they arrived, and had not reacted that way with other daycare centers. (Vol. 13, pp. 165-166). After complaining about her "heinie" hurting, Snyder prepared to put vaseline on it, but Ashley resisted, and pointed to her vagina area. After a couple days and Vaseline she stopped complaining. (Vol. 13, pp. 171-172). Ashley also didn't always come home in the same clothes. (Vol. 13, pp. 167-168).

Snyder's niece Heather also stayed at the daycare. Heather got vaginal infections from taking bubble baths at daycare, according to Fran. Heather would take the clothes off her dolls and tell Ashley if they didn't listen to her she would take off all her clothes as well. Heather's behavior started when she began going there. (Vol. 13, pp. 168-171).

Laura Acklen enrolled her baby Benjamin at Fran's daycare for about a month, and never noticed anything suspicious when she went to drop off or pick up Benjamin. He could not verbally communicate but would smile when he would go there. She was very nervous at first because he was her first child so she would stay for 20-30 minutes just to see how the children were treated and she was very comfortable. (Vol. 12, pp. 157-160).

Other People who knew Fran or Visited the Daycare

Fran and Dan were tenants of Julia Dietz, who live about a quarter mile away. Dietz visited the daycare often, and would appear unexpectedly. She found the home always accessible, the lawn mowed, the house kept clean, and the children appeared happy and clean. She never saw any abuse, blood on kids, dead people, babies or animals. (Vol. 13, pp. 12-16).

Paula Burnett was the next-door neighbor who visited with the Kellers frequently. She just walked in whenever she felt like it, and the doors were never locked. (Vol. 12, pp. 198-201). She never saw any child abused, covered in blood, no dead people, burial areas, babies, animals, or sharks in the pool except blow-up toys, or any other suspicious or criminal activity at the daycare. (Vol. 12, pp. 201-204). Burnett did witness Dan taking kids for rides on a little mowing tractor. (Vol. 12, pp. 206-2010). She never saw anything suspicious or abusive. (Vol. 12, pp. 201-211).

Fran's former husband, John Thomas Newland testified that they had two children, and he never noticed Fran abuse children, nor was she interested in Satanism or the occult. She cared for other children, and no one ever complained about her. Fran attended church. (Vol. 12, pp. 151-157).

23-year-old Brenda Keele, Fran's daughter, testified her mother never abused her and saw no abuse of her siblings. Fran was not a satanist, never abused her friends, or animals. They went to a Baptist church. She has never seen Dan or Fran abuse anyone during that time

or satanic worship or animal abuse. (Vol. 13, pp. 62-66).

Various witnesses testified similarly for Dan Keller. (Vol. 13, pp. 62- 99).

Fran's Testimony

Keller testified and denied all the allegations against her. (Vol. 12, pp. 95-96). She explained that she and Dan fled to Vegas because they were scared, humiliated and hurt. (Vol. 12, pp. 96-100). She acknowledged a set of plastic handcuffs she bought at HEB were in the toybox. (Vol. 12, pp. 101-103).

Fran denied that anyone in her family was sexually abused, though she conceded her brother's imprisonment was for sexual abuse of a child. (Vol. 12, pp. 105-109). Fran accused Christy of being a "little liar," and expressed that opinion to Guinn after Christy bit her, within the first three weeks of attendance, and again later. (Vol. 12, pp. 110-112).

Fran said Guinn had not only told her that Christy had been sexually abused, but that her father had beaten her and she had a lot of problems and was seeing a therapist. (Vol. 12, pp. 112-113). Fran told a DHS person or sheriff deputy that one of the children (Taylor) had been acting out sexually and tried to get another child to engage in sexual play, eventually leading to her discharge from Fran's daycare. (Vol. 12, pp. 114-116).

She and Dan rented the property in April or May of 1988. She later got the idea of making it a daycare because she wanted to stay home and be around children. A co-worker at HEB (where she was working) was having a baby and that was the first infant she took in.

She opened the daycare in August of 1990 but had taken care of children for years before that. (Vol. 12, pp. 116-117).

She noted that a daycare accused of any type of abuse made headlines, leaving her preoccupied with the idea of being accused of abusing children. (Vol. 12, pp. 117-120).

She wrote a note saying they were going to Canada to avoid her brother-in-law, Jerry Keller, from knowing they were going to Las Vegas. (Vol. 12, pp. 121-123). She told the grand jury they were going to Vegas for the holidays and then were returning to Austin on January 17th, but were arrested January 14th. (Vol. 12, pp. 123-125).

Fran told almost all the parents about the allegations, including Sean Nash, the parent of Brendan Nash, and the parents of Vijay Staelin. Both children made allegations similar to the claims made by Christy. (Vol. 12, pp. 132-135). Fran believed the parents got together and planted these false ideas into their children's minds. When read parts of Perry's statement, Fran says he doesn't know who he was talking about because none of it happened. (Vol. 12, pp. 135-38).

Fran did not remember telling either Mrs. Nash or Mrs. Staelin that their kids were little liars; they were not as far as she knew. She explained she is not "putting down" Christy, just saying she is not truthful, and neither is her mother. She told the mother Christy was a liar many times. She also told investigators that Christy "fibs or tells a lie." (Vol. 12, pp. 139-140).

Fran admitted lying to Cichowski and Wade when she denied Dan was ever alone with

the kids, but said she was defending her husband. She also admitted that Dan did change some diapers. (Vol. 12, pp. 140-144).

State's Rebuttal: Brendan's Closed Circuit Testimony

In rebuttal, the prosecution called, in closed-circuit video, six-year-old Brendan Nash, who testified Fran and Dan touched Christy's vagina and anus in the living room, playroom and babies' room. Throughout his testimony, Nash sat with his teddy-bear, Boo, who, he insisted, was alive and could talk. (Vol. 13, pp. 195; 198-201; 211-214). Nash referred to daycare as "hate care." (Vol. 13, pp. 195-198).[8]

He said he saw Fran and Dan take turns touching Christy with sticks, fingers, their tongues and mouths. He witnessed Danny "pee-pee" glue on Christy's head and Fran wash it off. (Vol. 13, pp. 201-202). According to Nash, they put five sticks in her bottom a day and hurt her a lot. (Vol. 13, pp. 202-203).

Fran and Dan also forced him to touch Christy's vagina and anus, and forced her to touch his penis as well, on about five or six occasions. The abuse occurred in the living room, in the baby's room, in the playroom, outside and sometimes at some cemetery. (Vol. 13, pp. 214-219).

Brendan said God told him Fran and Dan gave him and the other children drugs they said were stomach pills, but which caused him and the other children to forget. (Vol. 13, pp.

[8] The prosecution had also called Pam Chambers, an inmate at the jail, to testify that in her opinion, Fran was not a truthful person, remarking "She is not genuine. She is phony." (Vol. 12, pp. 231-234).

203-207). He said God talks to him often, then said God only talked to him that one time. (Vol. 13, pp. 207-209).

Nash said Fran and Dan took him to a graveyard in a pickup and dug up a body. (Vol. 13, pp. 207-209). According to Nash, they forced Christy to carry all the bones they dug up. (Vol. 13, pp. 202-203). The body was dug up with a very large drilling machine used to make caves, which sucked up the dirt into an 8-foot tall bag. After he found all the bones, Dan put the machine away. (Vol. 13, pp. 211-214).

Brendan testified his parents and the prosecutors and others talked to him 21 times about the case. (Vol. 13, pp. 209-211). He said he can count to a thousand and that he saw Christy ride a horse 118 times. (Vol. 13, pp. 207-219). Brendan learned the terms "penis" and "vagina" from his counselor, Ellen Zimmerman. (Vol. 13, pp. 219-220). The video interview with Brendan Nash was then played for the jury. (Vol. 13, p. 238).

CLAIMS FOR RELIEF

CLAIM FOR RELIEF ONE: MISTAKEN EXPERT TESTIMONY DEPRIVED APPLICANT OF HER RIGHTS TO DUE PROCESS AND DUE COURSE OF LAW THROUGH THE INTRODUCTION OF INADVERTENTLY FALSE EVIDENCE.

CLAIM FOR RELIEF TWO: APPLICANT WAS DENIED DUE PROCESS BECAUSE THE POLICE FAILED TO DISCLOSE THAT THE TOUTED "HOT SPOTS" AT THE CEMETERY HAD BEEN EXPLAINED.

CLAIM FOR RELIEF THREE: DESPITE KNOWING THE EXPLANATION FOR ALL CEMETERY-RELATED EVIDENCE, THE STATE NEVERTHELESS PRESENTED MISLEADING TESTIMONY AT TRIAL AND THEREBY DENIED APPLICANT A FAIR TRIAL.

CLAIM FOR RELIEF FOUR: SIGNIFICANT RECENT STUDIES REVEALS REINFORCEMENT CAN EASILY CAUSE CHILDREN TO MAKE FANTASTICAL FALSE STATEMENTS, PRECISELY THE PHENOMENON PRESENT WITH CHRISTY CHAVIERS AND BRENDAN NASH.

CLAIM FOR RELIEF FIVE: UNRELIABLE "RITUAL ABUSE" EXPERT TESTIMONY DEPRIVED APPLICANT OF HER RIGHT TO DUE PROCESS AND DUE COURSE OF LAW.

CLAIM FOR RELIEF SIX: THE ADMISSION OF PERRY'S FALSE CONFESSION VIOLATED FRAN KELLER'S RIGHTS TO DUE PROCESS AND DUE COURSE OF LAW, LEGAL CLAIMS UNAVAILABLE TO HER ON THE DATE OF HER FILING OF HER INITIAL WRIT APPLICATION.

CLAIM FOR RELIEF SEVEN: BUT FOR THE UNCONSTITUTIONAL ADMISSION OF PERRY'S FALSE CONFESSION, NO RATIONAL JURY COULD HAVE FOUND FRAN KELLER GUILTY BEYOND A REASONABLE DOUBT.

CLAIM FOR RELIEF EIGHT: CHRISTY CHAVIERS WAS AN UNAVAILABLE WITNESS RENDERING HER OUT-OF-COURT STATEMENTS TO KAREN KNOX INADMISSIBLE, A CLAIM UNAVAILABLE TO FRAN KELLER ON THE DATE OF HER FILING OF HER INITIAL WRIT APPLICATION.

CLAIM FOR RELIEF NINE: BUT FOR THE MISTAKEN MEDICAL EXPERT TESTIMONY, THE *BRADY* VIOLATION AND USE OF FALSE TESTIMONY, THE INHERENTLY UNRELIABLE AND FALSE CONFESSION OF DOUG PERRY, CHRISTY CHAVIERS' HEARSAY EVIDENCE, AND THE UNRELIABILITY OF THE RITUAL ABUSE EXPERT TESTIMONY, NO RATIONAL JURY COULD HAVE FOUND FRAN KELLER GUILTY BEYOND A REASONABLE DOUBT.

CLAIM FOR RELIEF TEN: FRAN KELLER IS INNOCENT.

CLAIM FOR RELIEF ONE: MISTAKEN EXPERT TESTIMONY DEPRIVED APPLICANT OF HER RIGHTS TO DUE PROCESS AND DUE COURSE OF LAW THROUGH THE INTRODUCTION OF INADVERTENTLY FALSE EVIDENCE.

Dr. Mouw now confirms his trial testimony was incorrect. (Affidavit of Dr. Mouw, attached). His mistaken perception of lacerations was not only the basis for pediatrician Beth Nauert's testimony[9] but was the only physical corroborating evidence for ritual-abuse "expert" Randy Noblitt's testimony. For any juror wondering if anything at all had actually happened, medical confirmation of savage sexual abuse must have been persuasive. The other experts – Noblitt and Nauert – utilized Mouw's report, amplifying and compounding the error.

The prosecution deftly highlighted this medical testimony in final argument, reminding jurors that the severity of Christy's presumed injuries proved they had to have been the product of abuse: "What did Dr. Nauert say [based on Dr. Mouw's exam]? Dr. Nauert said this type of injury to the child, where there are these two little lacerations that Dr. Mouw drew, there is a little tear in the introitus," which no child could self-inflict. (Vol. 14, pp. 27-28). Christy's claims about pens repeatedly inserted into her vagina and anus, and Perry's description of the penetration of Christy's vagina by Dan and Raul, appeared more plausible in the collective light of these expert determinations.

Today, Dr. Mouw could not be more clear: *"I now realize my conclusion [that there was physical evidence of sexual abuse] is not scientifically or medically valid, and [] I was*

[9] Nauert found no lacerations, but assumed the correctness of Dr. Mouw's report and concluded the wounds must have healed.

mistaken." He had "minimal specific training in the are of pediatric sexual abuse," which included a strong bias in favor of identifying variants in children's vaginas as physical evidence of sexual abuse. He also noted he failed to use a culposcope during his examination, the failure of which can lead to "mistak[ing] normal variants in hymens of children for child sexual abuse," as happened in this case. (Affidavit of Dr. Mouw, attached).

Dr. Mouw soon after trial realized he was mistaken to conclude that his examination revealed lacerations consistent with sexual abuse. While his testimony is hardly perjury, its negative impact can be just as severe to the truth-seeking function of trial. *Duggan v. State*, 778 S.W.2d 465, 469 (Tex.Crim.App. 1989)("false evidence, left uncorrected, can mislead the factfinder, thereby misdirecting the due course of law and diverting due process from its intended progression toward a just and fair trial"). The error he originated was all too human, as were the assumptions, affirmations, conclusions and the rest of the investigation that led an innocent woman to prison. The Court of Criminal Appeals has recognized that the unintentional use of evidence subsequently shown to be false is a cognizeable claim under Article 11.07 of the Code of Criminal Procedure. *Ex parte Chabot*, 300 S.W.3d 768 (Tex.Crim.App. 2009); *Ex parte Henderson*, __ S.W.3d __ (Tex.Crim.App., delivered December 5, 2012); *Ex parte Chavez*, 371 S.W.3d 200 (Tex.Crim.App. 2012).

Dr. Mouw provided the only first-hand medical testimony supporting the existence of physical abuse. Nauert observed no lacerations, and based her more extensive testimony

purely on Mouw's mistaken report. His report was employed by ritual abuse "expert" Noblitt as a foundation for his more ornate "professional" opinion.

Dr. Mouw is not a lawyer and could not have anticipated his testimony would be the spigot for other expert and, as will be demonstrated *supra*, not-so-expert testimony (Noblitt). Nauert widened and deepened the impact of his mistake, while Noblitt capitalized upon it by giving false but professional-sounding context to Perry's salacious rendition of an orgy that never happened. While Dr. Mouw could not have known his pivotal role in the conviction of Fran Keller, his report nevertheless spawned the greater portion of the case against her.

Dr. Mouw's mistake negates the reliability of his identification of physical abuse. The error of mistaken perception can be likened somewhat to mistaken identification.[10] The considerations for misidentification are suggestibility and likelihood of error via the process of eyewitness identification. *See, e.g., Manson v. Brathwaite*, 432 U.S. 98, 105-06, 114 (1977)("The standard, after all, is that of fairness required by the Due Process Clause of the Fourteenth Amendment... . Reliability is the linch pin[.]"); *United States v. Wade*, 388 U.S. 218 (1967). If a mere deficiency in reliability defines a due process violation under methodology known to be merely suggestive under an objective view, a professional's own admitted crucial mistake ought to be accorded even greater weight in determining a due process violation.

This Court should recommend to the Court of Criminal Appeals to grant relief under

[10] The chief difference is between the misidentification of the wrong person responsible for a crime, and the perception of physical evidence that is mistaken for proof a crime occurred.

the Fourteenth Amendment to the United States Constitution and independently under Article I §19 of the Texas Constitution. It does not matter that Dr. Mouw's testimony was not perjurious. *Ex parte Ghahremani*, 332 S.W.3d 470, 478 (Tex.Crim.App. 2011). Nor does it matter that the prosecution was unaware of the unintentional falsity of his testimony. *Ex parte Chabot*, *supra* at 770-71. The only issue is its materiality. Dr. Mouw's recent acknowledgment that he was wrong about the existence of physical evidence of sexual abuse is not only material, but self-evidently exculpatory. Under every legal standard, materiality has been met. Fran Keller's conviction is an unjust result from a trial that, as detailed further in this *Memorandum,* was also fundamentally unfair.

CLAIM FOR RELIEF TWO: APPLICANT WAS DENIED DUE PROCESS BECAUSE THE POLICE FAILED TO DISCLOSE THAT THE TOUTED "HOT SPOTS" AT THE CEMETERY HAD BEEN EXPLAINED.

CLAIM FOR RELIEF THREE: DESPITE KNOWING THE EXPLANATION FOR ALL CEMETERY-RELATED EVIDENCE, THE STATE NEVERTHELESS PRESENTED MISLEADING TESTIMONY AT TRIAL AND THEREBY DENIED APPLICANT A FAIR TRIAL.

The prosecution presented extensive evidence regarding the cemetery. Devotion by the police of so many of its investigative resources to Christy's cemetery-related claims lent her fantasies the imprimatur of official credence. Jurors must have been impressed that law enforcement expended so much time and energy and resources to confirm the reality of satanic ritual abuse – the dug-up coffins, bodies, blood and bones, the huge cave-making drilling machine, the holes Danny dug to deposit people, the astonishing discovery of fresh dirt on a grave in a private cemetery, and the 8-foot tall bag holding all that graveyard dirt. Having already employed infrared detection from the air, it must have been embarrassing when the police conducted a more straightforward investigative technique – questioning the caretaker of the cemetery – and learned the truth about the satanic "hot spots," as detailed in Frances Balta's attached affidavit. It is no wonder they left it out of their reports and failed to inform prosecutors.

An investigating detective contacted Billy Bob Maddox and Frances Balta, the people most familiar with the Oliver cemetery, and arranged to meet them there. The detective was interested in three specific graves believed to have been disturbed. None of these graves was the Williams gravesite. One was a 20-year-old gravesite that had not been disturbed, simply

eroded. Another was the gravesite of Mr. Maddox's father, and Mr. Maddox told the detective he put fresh dirt on the gravesite. The remaining gravesite merely had a tilted headstone. There is nothing surprising that dirt can erode, or that family members will put fresh dirt on graves, or that a headstone might sink unevenly. Yet these were the supposed sites of intense investigative interest identified from the air as "hot spots" suggesting freshly disturbed graves consistent with imaginary satanic activity, which turned out from the ground to be nothing but ordinary, undisturbed graves.

None of this evidence was ever disclosed to the defense or, apparently, the prosecution. It is nowhere in the police reports. Petitioner asserts that had the District Attorney's office known its own investigation had refuted the cemetery-related allegations, prosecutors would never have presented it to the jury. Even if they had, this more complete investigation would have cast doubt on all cemetery-related evidence, including the testimony of Brendan Nash and Sergeant Beck, the self-proclaimed cemetery expert. Instead, the testimony and investigation acted at trial as official affirmation of the child fantasies.

This new evidence, then, supports two claims, both rooted independently in the state and federal constitutional due process and due course of law provisions: (1) the suppression of exculpatory evidence and (2) the use of false or misleading evidence to convict. To be clear, Petitioner contends both constitutions were offended twice under their respective provisions. Whatever other differences our two constitutions may have, both guarantee that trials – if they are to be the crucible for the determination of the truth of criminal allegations

– be fair.

The police knew there was nothing to support the cemetery claims. Yet they presented testimony to the jury as if there were. The Due Process Clause and the Due Course of Law Clause are thereby twice offended, first by suppression of evidence favorable to the accused, then again by the pretense at trial that such evidence did not exist. Each claim alone or combined – concealment of exculpatory evidence followed by knowing, misleading testimony – entitles Applicant to relief under the circumstances and the facts of this case.

The State has an affirmative duty to disclose material favorable evidence. *Ex Parte Mitchell*, 853 S.W.2d 1, 4 (Tex.Crim.App. 1993); *Thomas v. State*, 841 S.W.2d 399, 404 (Tex.Crim.App. 1992). It is well-established that the State's suppression of material evidence favorable to the accused violates the requirements of due process guaranteed by the Fourteenth Amendment to the United States Constitution. *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Agurs*, 427 U.S. 97(1976); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Banks v. Dretke,* 540 U.S. 668 (2004). *Brady* material includes impeachment evidence. *United States v. Bagley*, 473 U.S. 667 (1985); *Mitchell*, *supra* at 4; *Thomas*, *supra* at 404. Such suppression independently violates the due course of law provision under Article I §19 of the Texas Constitution. *Ex parte Adams*, 768 S.W.2d 281, 293 (Tex.Crim.App. 1989). The suppression further violates Article 2.01 of the Texas Code of Criminal Procedure.

The good faith of the prosecutors is not relevant for *Brady* purposes, nor is actual knowledge of the prosecutors dispositive for *Brady* purposes. *Ex parte Richardson*, 70

S.W.3d 865, 870 (Tex.Crim.App. 2002). Instead, the judicial focus is on the actual or constructive knowledge of the members of the "'prosecution team' which includes both investigative and prosecutorial personnel.'" *Ex parte Adams*, *supra* (quoting *United States v. Antone*, 603 F.2d 566, 569 (5th Cir. 1979)); *Ex parte Napper,* 322 S.W.3d 202, 243 (Tex.Crim.App. 2010).

Fran Keller's rights under the Fifth and Fourteenth Amendments to the United States Constitution as well as Article I, §19 of the Texas Constitution were violated because favorable and material evidence was hidden from the defense, then used falsely at trial. *Ex parte Miles*, 359 S.W.3d 647 (Tex.Crim.App. 2012). As the cases cited *supra*, either failure to disclose *Brady* material or the knowing use of false information violates these constitutional provisions. *Ex parte Fierro*, 934 S.W.2d 370 (Tex.Crim.App. 1996); *Ex parte Castellano*, 863 S.W.2d 476 (Tex.Crim.App. 1993). Both mutilations of due process are not required to entitle its victim to relief. In this case, the State violated due process and due course of law in both these ways, leading to the unfair conviction of an innocent woman.

"When a habeas applicant has shown that the State knowingly used false, material testimony, and the applicant was unable to raise this claim at the trial or on appeal, we will grant relief from the judgment that was obtained by that use." *Ex parte Ghahremani*, 332 S.W.3d 470, 483 (Tex.Crim.App. 2011). In this case, the State not only suppressed witness accounts whose testimony would have effectively dissipated the aroma of cemetery-related offenses, but presented the case as if Mr. Maddox or Ms. Balta had never been interviewed

and ordinary explanations provided regarding the supposedly suspicious gravesites. The suppression of this evidence combined with the knowing use of misleading police testimony plainly deprived Fran Keller of a fair trial and contributed to her wrongful imprisonment, and she is therefore entitled to relief.

CLAIM FOR RELIEF FOUR: SIGNIFICANT RECENT STUDIES REVEAL REINFORCEMENT CAN EASILY CAUSE CHILDREN TO MAKE FANTASTICAL FALSE STATEMENTS, PRECISELY THE PHENOMENON PRESENT WITH CHRISTY CHAVIERS AND BRENDAN NASH.

The suggestive interview techniques used to elicit unreliable statements from the children was challenged in the initial writ application. While research articles on children's suggestibility were published in the late 1980's and early 1990's, the pattern and significance were primarily known only to a few specialists until two blockbuster books were published by the American Psychological Association: *Jeopardy in the Courtroom* by Ceci and Bruck (1995), and *Investigative Interviews of Children: A Guide for Helping Professionals* by Poole and Lamb (1998). Until these publications, most psychologists were unaware about the new research on suggestibility. Accordingly, Dr. Parker testified for the defense only about the generalities of children's suggestibility, and did not apply this suggestibility research to the interview techniques used in Fran Keller's case.

After trial, Vivian Lewis-Heine did make some of those applications in the limited fashion of the time. She had used these interviews as examples of how *not* to conduct child interviews, as her affidavit in initial writ application details. Although Applicant's 1997 claims were ultimately rejected by the Court of Criminal Appeals, the same factual material – affidavits, trial record, depositions, exhibits – can and should be considered by this Court today. This Court should also consider the recognized advances in research that have taken place since the initial writ application.

More recent research has revealed new information on the effects of reinforcement.

In *More than Suggestion: The Effect of Interviewing Techniques from the McMartin Preschool Case* (Garven, S., Wood, I. M., Malpass, R. S., & Shaw, J. S. (1998)), researchers employed the suggestive interview techniques from the McMartin Preschool case to determine whether false statements from children can be created in a matter of minutes (as in a single forensic interview) and to study the synergistic effects of known and combined bad interviewing techniques. In *Allegations of Wrongdoing: The Effects of Reinforcement on Children's Mundane and Fantastic Claims* (Garven, S., Wood, I. M., Malpass, R. S., & Shaw, J. S. (2000)), researchers specifically sought to determine whether certain McMartin techniques increased children's error rates and whether other techniques had a more powerful effect than others, specifically reinforcement and co-witness misinformation. Their findings surprised them.

Reinforcement consists of "giving, promising, or implying praise, approval, agreement, or other rewards to a child for saying or doing something, or indicating that the child will demonstrate desirable qualities (e.g., helpfulness, intelligence) by saying or doing something" (positive consequences technique). Reinforcement also includes the opposite technique as well – "criticizing or disagreeing with a child's statement, or otherwise indicating that the statement is incomplete, inadequate, or disappointing." *Allegations of Wrongdoing: The Effects of Reinforcement on Children's Mundane and Fantastic Claims*, *supra*. Co-witness misinformation "consists of telling the child that the interviewer has already received information from another person regarding the topics of the interview."

Researchers sought to determine whether these techniques would be more influential producing mundane or fantastical false information.

To their surprise, the researchers discovered children can be made to agree significantly more with false fantastical information (i.e., taken to a farm by helicopter) than with more mundane allegations (i.e., saw a man steal a pen), 51.61% and to 34.67%. Researchers ultimately made four significant conclusions:

> First, reinforcement dramatically increased the rate of making false allegations by children ages 5 to 7 years[.] In contrast, cowitness information yielded weak effects that were rarely significant. Second, the false allegation rate was high even when children were questioned about extremely implausible or fantastic events. Third, reinforcement had a strong carryover effect: children who made false allegations in response to reinforcement during a first interview tended to repeat the allegations during a second interview, even when no further reinforcement was given. Fourth, even when challenged, a substantial proportion of children insisted that the false allegations were based on their own personal observations.

More than the use of co-witness misinformation technique, reinforcement is far more likely to produce false and long-lasting allegations. Because the interviews with their counselors were never videotaped, it is uncertain how much reinforcement occurred with Christy or Brendan during their therapy sessions. However, the videotaped interviews can be analyzed in light of the new data.

People are generally incredulous that children are capable of generating such graphic, sexual depictions. The most-asked questions by the public is how and why any child would say such outlandish things if they did not have some basis in truth. This new research answers these questions, and ought to be included in the Court's consideration of the

reliability of this evidence and the verdict this evidence helped to produce.

The law governing the admissibility of eye-witness identification testimony provides a useful framework for determining whether tainted children's testimony violated due process. "In determining the constitutional adequacy of pretrial identification procedures and the admissibility of identification testimony, the central question is whether, under the totality of the circumstances, the identification was reliable." *Manson v. Brathwaite*, 432 U.S. 98 (1977). Similarly, the issue whether the admission of a young child's statements violated due process should likewise hinge on reliability. The taped interviews should be viewed in the same way pretrial identifications are – as a critical stage in the course of an investigation. *United States v. Wade*, 388 U.S. 218, 230 (1967)(pretrial identification is "peculiarly riddled with innumerable dangers and variable factors which might seriously, even crucially, derogate from a fair trial."). In light of settled research, interview techniques should be given great weight in light of their ability to produce false statements from children. Accordingly, children's accounts determined to be unreliable should be excluded. *See, e.g., State v. Michaels*, 642 A.2d 1372 (N.J. 1994); *English v. State*, 982 P.2d 139, 146 (Wyo. 1999). If, as in this case, the children's statements are not excluded (as either out-of-court statements or testimony), the Court should then determine whether the admission of these unreliable claims so skewed the trial's truth-seeking function as to be unforgivable under traditional notions of due process.

Not only should the suggestive techniques used in the pretrial interviews be

considered, but the Court should also ponder the totality of the children's experience. The parents of Christy and Brendon were under the conviction the children had been molested as part of an on-going ritual sexual abuse. The entirety of the influences on these children is detailed *infra* and is incorporated here by reference. Not only can children be persuaded to give false narratives about events that never occurred, but can do so in rich detail and at the disturbingly high rate of more than fifty percent. Debra A. Poole & Michael E. Lamb, *Investigative Interviews of Children, Ante* at 54, 61 (1998)(majority agreed with the false memory, "Do you remember going to the hospital with a mousetrap on your finger?"). Virtually every technique and influence which is almost certain to produce false narratives were brought to bear on these under-6-year-old children. Just as misidentification can deprive a defendant of a fair trial and likely convict an innocent person, so, too, can children's accusations of sexual abuse. The admission of the videotapes, Knox's testimony, Christy's outcry to David-Campbell's testimony, and Brendan's testimony, all introduced a strong vein of unreliability in the trial (along with the other sources of unreliability identified in this *Memorandum*), culminating with the conviction of an innocent woman.

CLAIM FOR RELIEF FIVE: UNRELIABLE "RITUAL ABUSE" EXPERT TESTIMONY DEPRIVED APPLICANT OF HER RIGHT TO DUE PROCESS AND DUE COURSE OF LAW.

The prosecution relied upon Dr. Noblitt to give expert credence to the theory that Fran Keller sexually abused children in her care. The prosecutors likely were unaware they were working with no expert, but a witness better described as a man with a doctorate and fantastical theories of reality. Noblitt was a charlatan.

Sometime during or after Applicant's conviction, Mr. Noblitt founded a new society called "Society for the Investigation, Treatment and Prevention of Ritual and Cult Abuse" (SITPRCA). In 1995, he (as the society's president) and Pamela Perskin (executive director and, later, his wife), held a conference entitled, "Cult and Ritual Abuse, Mind Control, and Dissociation: A Multidisciplinary Dialogue." The same year Noblitt published a book, *Cult and Ritual Abuse: It's [sic] History, Anthropology, and Recent Discovery in Contemporary America. See* Evan Harrington, *Conspiracy Theories and Paranoia: Notes from a Mind-Control Conference* (Skeptical Inquirer, Sept./Oct. 1996). Noblitt's book sells today on Amazon.com for $32.50.

His role in the convictions of Dan and Fran Keller seemed to advance his crusade against ritual abuse. Soon after Fran Keller's conviction, Dr. Noblitt used the case as proof of his own expertise, lecturing widely about mind-control techniques and the existence of ritual cults. The convictions of Dan and Fran Keller also confirmed for him and his followers the reality of this widespread but completely hidden phenomenon, effectively

proving beyond all reasonable doubt the nature and extent of satanic ritual abuse Noblitt had perceived all along. Fran Keller's conviction was presumably unharmful to his book sales.

Within a short time after the Keller convictions, Dr. Noblitt sponsored a conference focused on exactly the sorts of themes that occur in the realm of ritual abuse – mind control, satanism and more. Dr. Noblitt's choice for conference speakers is a revealing reflection of how his ritual abuse beliefs fit into his world view. His conference commenced with presentations by the author of *Operation Mind Control* (Walter Bowart) and Alan Scheflin who opened with a stunning revelation: the entire national mental health community had been kept "in fear and terror" by a CIA front-group created to protect the more general mind-control campaign among the populace. The audience was comprised in part by people who believed they had been mind-controlled themselves.

A luncheon lecture featured John DeCamp, a lawyer for the American militia movement, who spoke about his book, *The Franklin Cover-Up.* As DeCamp praised Lyndon LaRouche, his book offered a detailed account of the Nebraskan satanic cult and its ties to the White House. His presentation included how the FBI covered up child abuse and murder in Nebraska.

Former FBI agent Ted Gunderson informed the audience about the carnage wrought by satanic cults in New York City alone: over five hundred such cults had each averaged about eight sacrificial murders a year, for an annual total of 4,000 human sacrifices. These sacrifices had gone mysteriously unnoticed and unreported, presumably due to the satanic-

CIA mind control program's grand success. But murderous satantic activities were on-going everywhere, as Gunderson would so convincingly demonstrate.

Gunderson's best proof of the wide scope of satanic activities was nothing less than the now-infamous McMartin daycare prosecutions, which he considered outstanding confirmation of epidemic satanic child sexual abuse. He displayed photographs of a burned-down home where unknown persons[11] had spray-painted the remaining cement foundation and other rocks on the property – the very night the McMartin defendants were formally charged (the significance of this date is left to the reader). That particular home, Gunderson deduced, was the likely location where the McMartin children had been flown from the daycare, ritually abused, then safely returned to their parents. The home's structure was evidently torched in a satanically clumsy effort to destroy evidence.

Gunderson also recounted the vast child-slave auction "in which 25 to 30 vans pulled up, airplanes landed," then "bought children and took them away," with Gunderson wagering, "a blue-eyed, blond-haired eleven- or twelve-year girl would sell for" perhaps $50,000. This slave auction occurred in Las Vegas, Nevada. Foreign men sporting turbans were in attendance.

Self-proclaimed former witch and school teacher Doc Marqui revealed to the conferees how then-President Bill Clinton was in fact the "anti-Christ." Marqui lectured about the long-standing campaign of the "Protocols of the Elders of Zion," the blueprint for

[11] Bored satanic teens? The world may never know the true identities of the spray-painters.

world domination by Jews (who are also satanists). The Holocaust was a complete hoax, its falsity perpetuated by those Zion elders who have executed their Jewish/demonic plans over hundreds of years and across the globe to operate their ingenious yet inscrutable planetary programs. Soon, Marqui predicted, the Jewish/demonically-controlled United Nations would deny every American his right to own a firearm, and everyone would be enslaved through the removal of cash from all commerce, as so plainly foretold in Revelations.

The conference included not only Gunderson's detective work and Marqui's historical recitation, but perhaps more impressively, a first-hand account from a survivor: Cathy O'Brian. Freed from governmental mind control, she shared detailed accounts about the federal government's "Operation Monarch." O'Brian herself had undergone the operation, suffering unbelievably horrific torture (literally *hundreds* of invisible physical scars) which left her with a CIA-created dissociative identity disorder. Fortunately, she was ultimately cured by her therapist and future lover, Mark Phillips, who had also heroically protected her from the CIA.[12] It was Phillips who helpfully excavated O'Brian's recollection of her forced sexual acts with Jimmy Carter, George Bush, Hillary Clinton (only Hillary, not Bill), Ronald Reagan and a former president she referred to as "the neighborhood porn king," Gerald Ford. Phillips and O'Brien further revealed how famous country music stars are actually mind-controlled slaves with alter-personalities created by the government because they have great singing-voices. Numerous professional baseball personalities were identified as well,

[12] Phillips reassured conference attendees he had been "de-programming" similarly-abused people for years through his special therapy.

perhaps because they possess great skill at playing baseball.[13]

Noblitt not only participated in this crackpot conference, he sponsored it. As a reflection upon his judgment and views, it reveals him to be a true conspiracy theorist operating at the outer margins of conspiracy theories. Had anyone known Noblitt's psychological insights derive from his own delusions, he would not have been the State's star psychological expert and the trial court would surely have spared the jury of his self-generated expertise. Apparently no one knew who he really was. In 2003, Noblitt was featured on ABC's *Primetime* having a conversation with Satan who, Noblitt agreed, was actually a pretty nice guy, notwithstanding, of course, his role as the dark lord of evil.

No court and no jury should ever rely on the testimony of Dr. Noblitt. No person should be sent to prison based in any way on his fringe, self-promoting, and imaginary expertise. The admission of his quack testimony was egregious error.

Noblitt's testimony contributed to Fran Keller's wrongful conviction and imprisonment in a special way. He supplied the aura of authority and professional experience to support the idea that Fran Keller was part of a satanic cult sexually abusing children in her care. Dr. Noblitt provided the context and explanation for the wild tales of child orgies and cemetery rituals, connecting all the curious aspects of the events leading to trial through his unified theory of satanic ritual abuse. He was more than the expert on the story-line behind Fran Keller's prosecution; he was the "truth expert" for Christy, confirming

[13] O'Brian speaks extensively about her experience as a "beta sex slave" "at the Pentagon and White House level." *See, e.g., The Cathy O'Brian Story* (Utube 2011).

not only that she was in fact sexually abused, but abused as part of a much broader criminal scheme. He was at once narrator and specialist.

Habeas relief is on due process grounds warranted where a witness' bias and lies are later exposed. *Ex parte Carmona,* 185 S.W.3d 492, 496 (Tex.Crim.App. 2006). Due process is offended no less than when a supposed expert's quackery is later discovered. *Ex parte Mowbray*, 943 S.W.2d 461 (Tex.Crim.App. 1997)(conviction based on unscientific, speculative blood splatter evidence vacated). Both alone and in context of the totality of the evidence, as well as in combination of the other constitutional violations present in this case, this Court should conclude that the introduction of this wholly unreliable "expert" testimony deprived Applicant of a fair trial and recommend relief for a woman who has suffered over two decades of imprisonment.

CLAIM FOR RELIEF SIX: THE ADMISSION OF PERRY'S FALSE CONFESSION VIOLATED FRAN KELLER'S RIGHTS TO DUE PROCESS AND DUE COURSE OF LAW, LEGAL CLAIMS UNAVAILABLE TO HER ON THE DATE OF HER FILING OF HER INITIAL WRIT APPLICATION.

CLAIM FOR RELIEF SEVEN: BUT FOR THE UNCONSTITUTIONAL ADMISSION OF PERRY'S FALSE CONFESSION, NO RATIONAL JURY COULD HAVE FOUND FRAN KELLER GUILTY BEYOND A REASONABLE DOUBT.

Under oath, Doug Perry repudiated his own false out-of-court statement, yet was compelled to read it to the jury. His false confession was a highly inflammatory, graphic and damaging piece of hearsay used to convict Fran Keller. While it was least incriminating to Perry, it was decisively destructive to Fran Keller's presumption of innocence through its disgusting rendition of child sexual abuse in which she was a major participant. Its admission, in context with the other trial errors, denied Fran Keller a fair trial and destroyed all reliability in the accuracy of the verdict.

The compelled testimony of Perry violated the Due Process Clause under the Fourteenth Amendment and the Due Course of Law Clause of Article I, §19 of the Texas Constitution for two primary reasons. First, this type of hearsay is inadmissible as inherently unreliable as a matter of law under the Court of Criminal Appeals' decision in *Walter v. State*, 267 S.W.3d 883 (Tex.Crim.App. 2008) and the United States Supreme Court's decision in *Lilly v. Virginia*, 527 U.S. 116 (1999), and its admission cannot be justified under the statement-against-interest hearsay exception. Second, this hearsay was inadmissible because, under recent and significant advancements in the psychology of false confessions, it is factually unreliable hearsay. Both of these claims were unavailable to Fran Keller at the time of her

initial writ application.

The State may not call a witness it knows to be hostile to elicit otherwise inadmissible hearsay or impeachment testimony. *United States v. Hogan*, 763 F.2d 697 (5th Cir. 1985); *Ramirez v. State*, 987 S.W.2d 938, 944 (Tex. App.– Austin 1999, *no pet.*); *Pruitt v. State*, 770 S.W.2d 909, 911 (Tex. App.–Fort Worth 1989, *pet. ref'd*). The prosecution conceded it called Perry for the express purpose of introducing his lurid confession.[14] However, by insisting Perry's statement was an admissible hearsay exception (statement against penal interest),[15] the prosecution was able to win admission of the evidence under that exception, as the law at the time permitted.

Today, the admission of this type of hearsay through the statement-against-penal-interest exception is precluded by the Court of Criminal Appeals' decisions in *Walter* and

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[14] As the Court of Appeals noted, "It is apparent from the record that the State called Perry as a witness knowing that he would deny having any information relevant to theses causes and intending to thereafter adduce his inconsistent out-of-court statement. The State does not deny this [.]" *Keller v. State*, No. 3-92-604-CR, slip op. at 11. The prosecution also insisted that the statement from Perry was not offered to impeach his in-court testimony, thereby avoiding another rule of exclusion. *See, e.g., United States v. Peterman*, 841 F.2d 1474, 1479 (10th Cir. 1988), *cert. denied*, 488 U.S. 1004, (1989)(internal quotations omitted); *United States v. Webster*, 734 F.2d 1191, 1192 (7th Cir. 1984) (internal quotations omitted)(Impeachment evidence is not permitted where it is "employed as a guise for submitting to the jury substantive evidence that is otherwise unavailable.").

[15] Rule 803(24) of the Texas Rules of Evidence provides:

> Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in declarant's position would not have made the statement unless believing it to be true. In criminal cases, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Guidry v. State, 267 S.W.3d 883 (Tex.Crim.App. 1999)(which exclude hearsay like Perry's statements, and under *Lilly* (which demands a particularized guarantee of trustworthiness wholly absent in this case). These decisions were unavailable at the time of Applicant's initial writ application and would have denied the State its stratagem for the admission of Perry's statement.

At the time of the initial writ application in 1997, the law was unsettled regarding the admission of out-of-court statements against interest which did more than merely inculpate the declarant. *Walter, supra* (detailing the evolving jurisprudence on this issue). In 1999, the United States Supreme Court held that accomplice confessions which incriminate an accused person are "inherently unreliable" as a species of evidence. *Lilly, supra* at 131.[16] In 2008, the Court of Criminal Appeals held "only those statements that are directly against the speaker's penal interest (including "blame-sharing" statements) are admissible under Rule 803(24). Self-exculpatory statements that shift blame to another must be excluded." *Walter, supra* at 886. Under these decisions, Perry's out-of-court statement would not have been admitted.

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[16] There is a significant distinction between *Lilly* and the present case, Petitioner concedes. The witness in *Lilly* asserted his Fifth Amendment privilege and though literally present and on the witness stand, he was nevertheless considered "unavailable" under the Confrontation Clause. *Crawford*, 541 U.S. at 40 (wife asserted marital privilege, hence unavailable). Perry, on the other hand, had an even more privileged assertion for not testifying (the Fifth Amendment) removed from him through a grant of immunity, and, under compulsion, did testify and hence became "available" under the Confrontation Clause. The difference is problematic because the right to a fair trial was ensured in Lilly's trial through vindication of his right to confrontation, yet denied to Fran Keller through enforcement of the State's power to compel otherwise constitutionally-precluded testimony.

According to Perry's confession,[17] he drank beer with Janise White and Raul Quintero and Fran and Dan Keller. He saw Janise retrieve the children, threaten them with death, then saw Fran, Dan and the kids take off all their clothes. Perry then witnessed an orgy involving Fran and Dan, the two children, and White and Quintero. Perry only observed the orgy until he saw how much the little girl liked the sexual activity; then, with no other explication, he decided to permit the child to suck his penis, which was somehow made available to her. The rest of Perry's recitation involve White snapping her Polaroid at obscene scenes of various child sexual abuse, none of which included Perry. In short, Perry claimed himself to be a mere witness to a supposed orgy he joined only in a brief and limited fashion. Had Perry minimized his conduct any further, he would have been a bystander under his description of events.

He shared no blame whatsoever for Fran's supposed sexual contact with Christy (or, for that matter, Dan's sexual contact, the efforts by Raul and Dan to penetrate the girl's vagina, the penetration of Brendan's anus with a pen, or Janise's encouraging photography). Had Perry not endorsed the invented scenario of his minimal complicity, his self-serving portrait of these imaginary events would have left him nothing more than a spectator. It is difficult to imagine a less "blame-sharing" or more "blame-shifting" confession, and one which is worse than the scenarios in *Walter* or *Guidry*. The admission of Perry's out-of-court

[17] To be clear, Petitioner in no way concedes the truth of anything in Perry's out-of-court statement. None of it is true. It is addressed as if it were true only to advance the legal claim that its admission deprived Fran Keller of a fair trial.

statement under the theory it was against his own interest was an error as bad as the others which deprived Applicant of a fair trial.

Perry's Confession is False and Unreliable

Odd that no child ever mentioned Perry. Odd that Perry should say nothing about ritual abuse. His stilted confession is specific yet incomplete. It seems constructed to confirm a belief in ritual abuse and the evolving stories of Brendan, Christy and Vijay. It has the feel of filtered affirmations to preconceived factual events. To put it bluntly, his confession appears to have been written by authors interested in some very nuanced facts, authors that judges know are police.

Perry's interrogators were no more immune from the hysteria than the other investigators, therapists and the parents. His false confession was the product of the same determination to uncover ritual abuse that drove the rest of the investigation. False confessions are not new to the law, but the research on how they are produced by law enforcement has taken significant strides since Applicant filed her writ application in 1997.

From the police reports, it can be gleaned how Perry entered the storyline of ritual abuse. His entry began during the search for the identities of the bad sheriffs. Brendan Nash had identified Janise White as the "bad police lady" ("Pam").[18] Oliver picked up a picture of Deputy Roger Wade and asked, "Who is this guy?" Brendan said, "Her wife. It's her

[18] According to Oliver's report, Brendan picked out her photograph, saying, "Hey, that's the same one. But this is the one I picked out for Nancy [Houston, the FBI agent]".

husband." Oliver noted his own conclusion: "*meaning White's husband [Perry]*." White had been married to Doug Perry. Because Deputy Wade could not be the culprit, Oliver reasoned, a far easier target – Perry – entered the center stage of investigation. Despite the fact that Brendan actually picked Wade's photograph, Wade morphed into Perry through Oliver's interpretation of Brendan's statement.

Although Brendan insisted that Wade and White made a bunch of presumably pornographic movies together, Doug Perry was substituted as the husband. Once in that role, Perry became the focalpoint for exposing the suspected nest of satanic activities at the daycare. As best he could, Perry confessed to the unspeakable raping and abusing of children. But his confession was false and unreal.

Memorable examples of how innocent persons can confess to the worst crimes can be found in Travis County. Christopher Ochoa, college-educated (now a lawyer), falsely confessed in 1988 to the horrific rape and murder of Nancy DePriest and sentenced to life imprisonment before he was ultimately exonerated on February 6, 2002.[19] In 1990, Billy Gene Davis twice failed a polygraph before falsely confessing to murdering his ex-girlfriend – she was discovered alive in Tucson, Arizona. Jim Phillips, *Man Who Said He Killed Friend Gets Probation for Scaring Her*, Austin Am. Statesman, Nov. 9, 1990, at B3. False confessions, including confessions to crimes that never actually occurred, are a persistent and unfortunate feature of the criminal justice system, and researchers have devoted much study

[19] A detailed account of Ochoa's false confession and ultimate exoneration is included as an appendix to this *Memorandum*.

in recent years to its recurrence. DNA exonerations, which irreproachably demonstrate that innocent people do confess to crimes which never happened or for which they have no involvement whatsoever, has fueled new insights into false confessions.

How an innocent person can be persuaded to endorse guilt as a rapist, murderer or child molester is better know today than at the time Perry read his orgy story to the jurors considering whether Fran Keller was guilty, and better still at the time of her initial writ application. Today, researchers know how false confessions are produced, and that they can not only be produced, but perfected in stunning detail.

Perry's false confession is likely the type constructed through a persuasive interplay of demands and rewards. A person who is placed in a stressful situation and offered a way out to escape it, or avoid further feared penalties, or assured future promised rewards, may endorse a false statement to obtain the reward, avoid greater punishment and extricate himself from the situation. The person may believe that others will later easily appreciate the falsity of his confession and assume no long-term consequences will therefore occur; or the person may just want to extricate himself from the stress of continued interrogation by signing his name, or some combination thereof. *See, e.g.,* Kassin S. & Gudjonsson, G., *The Psychology of Confessions: A Review of the Literature and Issues*, 5 Psychol.Sci.Pub.Int. 33, 35 (2004).

Perry's statement bears all the hallmarks of a false confession. Were a video of the Perry interrogation available for analysis, experts who study confessions could be able to

give an opinion about the voluntariness of Perry's confession and the likelihood of its falsity.[20] Unfortunately, Fran Keller can only insist the confession is false because she knows it to be so.

A confession has long been recognized as "among the most effectual proofs in the law." *Hopt v. Utah*, 110 U.S. 574, 584-85 (1888). As Justice Brennan observed, triers of fact accord confessions such heavy weight, they often make other aspects of trial appear superfluous. *Colorado v. Connelly*, 479 U.S. 157, 182 (1986)(Brennan, J., dissenting). For jurors in doubt about the believability of Christy's outcry, Perry's confession must have been powerfully persuasive proof of guilt. But for its admission against Fran Keller, no rational juror would have found her guilty.

Admission of Perry's False Confession Deprived Fran Keller of Due Process and Due Course of Law

If hearsay like Perry's statement threatens the fairness of a trial and the justness of its result because it is inherently unreliable even when true, it surely does more damage to this constitutional guarantee when it is also actually false. Perry's confession, memorialized to written form and admitted as an exhibit for the jurors to read and re-read, was undoubtedly a dominating force throughout Fran Keller's prosecution. The Supreme Court has explicitly recognized and appreciated its inherent persuasiveness. *See, e.g., Bruton v. United States*,

[20] Despite the secrecy of the interrogation, courts have long known what likely happens when police doggedly pursue a confession. *See, e.g.*, *Culombe v. Connecticut*, 367 U.S. 568 (1961).

391 U.S. 120 (1968)(admission of co-defendant's confession against accused so prejudicial even court instructions to the jury can't cure).[21] To understate it, it can at the very least be said Perry's confession was an important piece of evidence used to support Fran Keller's conviction.[22]

"[E]rroneous evidentiary rulings can, in combination, rise to the level of a due process violation." *Montana v. Egelhoff*, 518 U.S. 37, 53 (1996)(citing *Chambers v. Mississippi*, 410 U.S. 284 (1973) and *Green v. Georgia*, 442 U.S. 95 (1979)). One of those rulings – by itself – is the admission of an accused's own unreliable confession against himself, long held to violate due process as a matter of law. *Withrow v. Williams*, 507 U.S. 680, 688, 693 (1993). The admission of an unreliable confession against another person is even more offensive to due process because the likelihood of its falsity is increased: a person can be led to falsely incriminate himself solely, but much more easily when he can be led to incriminate another while contrasting his own criminal acts in the best blame-shifting, self-minimizing light possible (a reality the Supreme Court explicitly recognized in *Lilly*). If admissions in evidence of unreliable self-confessions violate the Due Process Clause *against the confessor himself*, admissions in evidence of unreliable confessions *against others*, which are even less

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[21] The Court recognized the admission of such evidence logically was even more prejudicial when offered through an alleged accomplice implicating the accused. *Bruton, supra*, at 130 (citation omitted).

[22] Relief is always warranted whenever a trial error is "so unduly prejudicial that it renders the trial fundamentally unfair" or "so infected the trial with unfairness as to make the resulting conviction a denial of due process," or its resulting conviction was derived from an unreliable process producing the unconstitutional infection. *Payne v. Tennessee*, 501 U.S. 808, 825 (1991)*; Darden v. Wainwright*, 477 U.S. 168, 181 (1986)(citation omitted); *Neil v. Biggers*, 409 U.S. 188. 196 (1972).

reliable, must also necessarily violate the Due Process Clause. The egregious error in the admission of Perry's false confession against Fran Keller, alone and in the context of the other errors of her trial, entitles her to relief.

CLAIM FOR RELIEF EIGHT: CHRISTY CHAVIERS WAS AN UNAVAILABLE WITNESS RENDERING HER OUT-OF-COURT STATEMENTS TO KAREN KNOX INADMISSIBLE, A CLAIM UNAVAILABLE TO FRAN KELLER ON THE DATE OF HER FILING OF HER INITIAL WRIT APPLICATION.

Under *Crawford v. Washington*, 541 U.S. 36, 52 (2004), all testimonial statements not previously subject to adversarial testing are inadmissible if the declarant is unavailable. Christy's statements to Knox, a Travis County sheriff employee, were testimonial under *Crawford*. *See, e.g., Wall v. State,* 184 S.W.3d 730 (Tex.Crim.App. 2006)(statements are testimonial when made under circumstances in which an objective person would reasonably believe that the statement would be available for use at a later trial)(quoting *Crawford*). *See also State v. Hooper*, 176 P.3d 911 (Idaho 2007)(statements to forensic nurse examiner were testimonial); *State v. Henderson*, 160 P.3d 776 (Kan. 2007)(taped interview with child by a social worker and a detective was testimonial); *State v. Justus*, 205 S.W.3d 872, 880 (Mo. 2006)(interview with social worker testimonial because "the circumstances indicate that their primary purpose was to establish or prove past events potentially relevant to later criminal prosecution."). The remaining question under Confrontation Clause analysis is whether Christy was also "available," as that term of art is understood.

Christy did testify, but she either was unable to recall anything about the events ascribed to her, was unable to testify about the events for some reason, or she consciously refused to address the matters relevant to the case. The Texas Rules of Evidence provides a non-exclusive list of scenarios in which the declarant is considered "unavailable" as a witness even though they are literally present or on the stand or testify to some extent. They

include situations where the witness asserts a privilege, refuses to testify at all, or "testifies to a lack of memory of the subject matter of the declarant's statement," among other scenarios. Tex.R.Evid. 804(a). A testifying witness can also be considered "unavailable" when some other mental condition prevented the witness from answering relevant questions. Thus, the fact that Christy did provide some testimony does not end the inquiry whether she was "available" under the Confrontation Clause.

The meaning of "unavailability" for Confrontation Clause purposes has not been fully defined. *Crawford* states in a footnote that the Clause does not bar admission of a statement so long as the declarant is "present at trial to defend or explain it." *Crawford v. Washington*, 541 U.S. 36, 59 n.9 (2004). A testifying witness' mere inability to recall certain events does not necessarily render the witness unavailable under the Confrontation Clause. *United States v. Owens*, 484 U.S. 554 (1988). However, if the witness is unable to recall or convey information to the extent that she is virtually incompetent to testify to relevant matters,[23] the accused is deprived of the core of the Confrontation guarantee – the right to "meaningfully" examine the witness.

Christy's distracted, meandering, vague and self-contradictory answers reflected at the very least a barely 5-year-old child who wanted to be somewhere else, uninterested in

[23] A child-witness might well be competent to testify because she can demonstrate she knows the difference between truth and a lie, yet, due to suggestion and other influences, be unable to distinguish between real events from fantasies, due to her stage of development. Some jurisdictions address this problem by determining whether suggestive techniques tainted the child, and if so, the child is thereby deemed incompetent to testify because she believes her own false memories. *Commonwealth v. Delbridge*, 855 A.2d 27 (Pa. 2003).

answering questions, truthful or otherwise, after a year's worth of well-meaning interrogations by so many people, over and again. Yet she did not "defend or explain" her accusation against the Kellers; in fact, she exhibited all the signs of an incompetent witness with all the force of a witness asserting a privilege. Under these facts, she should be considered unavailable within the meaning of the Confrontation Clause. Consequently, Knox's hearsay testimony and the videotapes of Christy were inadmissible for this reason as well.

Petitioner is aware of the decisions by the Court of Criminal Appeals in *Ex parte Keith*, 202 S.W.3d 767 (Tex.Crim.App. 2006) and *Ex parte Lave*, 257 S.W.3d 7235 (Tex.Crim.App. 2008), wherein that Court held that *Crawford* claims are not retroactive under *Teague v. Lane*, 489 U.S. 288 (1989), and thus not cognizeable. Here, Petitioner makes the claim, notwithstanding *Teague*, that this *Crawford* issue is not barred according to statute, i.e., Section 4 of Article 11.07 of the Code of Criminal Procedure. Under that provision, claims brought in a subsequent writ application can be considered and relief granted if those claims and issues could not have been presented previously because they were unavailable at the time of the initial writ application. A legal basis of a claim is considered "unavailable" under these circumstances only if it "was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court."

The Supreme Court completely reformulated Confrontation Clause claims in 2004 in

Crawford. When the decision was published, federal courts recognized it as a significant and unexpected development in constitutional law. *United States v. Saget*, 377 F.3d 223, 226 (2nd Cir. 2004)("redefines the scope and effect of the Confrontation Clause"). State court reaction across the country demonstrated the unanticipated seismic shift in Confrontation Clause analysis. *See, e.g.*, *State v. Grace*, 111 P.3d 28, 36 (Haw.App. 2005)("a sea change in our understanding of the Confrontation Clause"); *People v. Victors*, 819 N.E.2d 311, 323 (Ill.App. 2004)("Copernican shift in federal constitutional law"); *People v. Pantoja*, 18 Cal.Rptr. 3d 492, 498 (Cal.App. 2004)("revolutionary"). *Crawford* is precisely the sort of previously unavailable legal basis for subsequent writ claims which may be considered and remedied by the courts under the plain wording of Section 4 of Article 11.07. The Court of Criminal Appeals recognizes *Crawford*'s significance and said as much in *Coronado v. State*, 351 S.W.3d 315 (Tex.Crim.App. 2011).

This Court should hold that Christy was an unavailable witness and that her statements to Knox were testimonial. Under *Crawford*, these statements were inadmissible under the Confrontation Clause. Accordingly, Fran Keller was deprived of her Sixth Amendment right to confrontation and the admission of her out-of-court statements harmed Applicant.

CLAIM FOR RELIEF NINE: BUT FOR THE MISTAKEN MEDICAL EXPERT TESTIMONY, THE *BRADY* VIOLATION AND USE OF FALSE TESTIMONY, THE INHERENTLY UNRELIABLE AND FALSE CONFESSION OF DOUG PERRY, CHRISTY CHAVIERS' HEARSAY EVIDENCE, AND THE UNRELIABILITY OF THE RITUAL ABUSE EXPERT TESTIMONY, NO RATIONAL JURY COULD HAVE FOUND FRAN KELLER GUILTY BEYOND A REASONABLE DOUBT.

There is no physical evidence that Christy was ever sexually abused. She did not have lacerations. Her hymen was normal. The people who operated the cemetery explained to the police that their "hot spots" were nothing more than fresh dirt, a sinking headstone and erosion. Without this physical evidence, there is no objective basis upon which to reliably determine anything at all, most especially a finding of guilt.[24]

The exclusion of Perry's confession powerfully diminishes the likelihood any rational jury could have found Fran guilty. The inadmissibility of the ritual abuse testimony deprives the narrative of its more sinister character and would have left the jury with little else than Christy's doubtful outcry. And without Knox's videotapes and testimony, the case for sexual abuse of a child looks more like the circumstance it was – a case of a child deeply troubled by the divorce of her parents, and an unfortunate participant in her mother's hysteria.

In a case already infused with reasonable doubt, there is precious little proof remaining to support a theory of guilt. The leftovers – Christy's recanted outcry and Fran

[24] Nash's testimony cannot as a matter of law form the basis for Fran Keller's conviction because the evidence was offered to rebut Fran Keller's remark made during her testimony, "We have been humiliated and hurt by one little girl who has a problem. ... Or a mother." "Evidence of an extraneous act that tends to rebut such testimony may be admissible to impeach the defendant. When such evidence is admitted, however, the jury may not consider it as substantive evidence of the charged offense, but only as evidence that the defendant misrepresented [herself]." *Daggett v. State*, 187 S.W.3d 444, 452-453 (Tex.Crim.App. 2005).

Keller's flight to Las Vegas – are insufficient as a matter of law for a rational jury to find Fran Keller guilty of sexually abusing Christy Chaviers.

Christy's In-Court Recantation under Oath

At trial, Christy, under oath, recanted that outcry as much as a 5-year-old can, under the circumstances. She had told her therapist on the very day of her outcry, "It didn't happen." This evidence cannot support a guilty verdict. On the contrary, it is positive proof of innocence. *See, e.g., Ex parte Harmon; Ex parte Zapata; Ex parte Calderon infra.* A recanted outcry cannot rationally or logically form the basis of a criminal conviction.

Flight

The law recognizes that people flee for reasons other than consciousness of guilt. Flight can be the product of bad or misunderstood advice from a lawyer, or panic or fear of being subjected to an unfair trial. Fran Keller explained she and Dan fled to Nevada because they were scared, humiliated and hurt. (Vol. 12, pp. 96-100).

Evidence of flight as proof of a guilty conscience is only proper when: "(1) the defendant's conduct constituted flight; (2) the defendant's flight was the result of consciousness of guilt; (3) the defendant's guilt related to the crime with which he was charged; and, (4) the defendant felt guilty about the crime charged because he, in fact,

committed the crime." *United States v. Carillo*, 660 F.3d 914, 926 (5th Cir. 2011).[25]

Fran Keller knew she was in the midst of localized hysteria. Police and prosecutors actually believed the mushrooming allegations of satanic ritual abuse. The media attention was intense. Others were being accused as well. The allegations grew more lurid and gruesome. Perry had even provided a false confession implicating her. Under these circumstances, Fran Keller had many reasons other than a guilty conscience to remove herself from the atmosphere of irrationality that came to dominate the investigation of Christy's outcry. Attorney Revis Kanak's attached affidavit confirms that Fran Keller fled for reasons having nothing whatsoever to do with a consciousness of guilt.

Denial by the accuser and evidence of flight cannot sustain any verdict. But for all the other violations of Fran Keller's constitutional rights, no rational jury would ever have

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[25] Jurors in federal cases are specifically instructed:

> You have heard testimony in this trial that the defendant[] fled from law enforcement officers. Intentional flight immediately after a crime has been committed, and/or while a crime is ongoing, is not, of course, sufficient in itself to establish his guilt but is a fact which, if proved, may be considered by you, in light of all the evidence in this case, in determining guilt or innocence. Whether the defendant's conduct in this case constituted flight is exclusively for you to determine. If you do so determine, whether or not that flight showed a consciousness of guilt on the defendant's part and the significance to be attached to that evidence are also matters exclusively within your province.
>
> In your consideration of any evidence of flight, if you should find that there was any, you should also consider that there may be reasons for this that are fully consistent with innocence. There may be many reasons for a person to be reluctant to be interviewed by police officers that are perfectly innocent reasons and that in no way show consciousness of guilt on the part of that person. Also, a feeling of guilt does not necessarily reflect actual guilt of the alleged crimes under your consideration. You should always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

United States v. Williams, 775 F.2d 1295, 1299-1300 (5th Cir. 1985).

found her guilty. As discussed *infra* under her actual innocence claim, had the jury understood how Christy would make an outcry and how that outcry would blossom and infect other children, their parents, their therapists and the police, a rational jury would not have merely acquitted Fran Keller, but exonerated her.

CLAIMS ADVANCED INDEPENDENTLY UNDER ARTICLE I §19 OF THE TEXAS CONSTITUTION

Petitioner has based some of the claims under this state's Due Course of Law provision and urges this Court to make favorable conclusions of law under our state constitution. The Court of Criminal Appeals appears to require both the petitioner and the district court to engage in the exercise of independent state constitutional analysis. The extent of the analysis is not clear – perhaps the discretionary court expects counsel to memorialize a sort of appellate brief, and expects this Court to issue a sort of appellate decision on the merits of a state constitutional claim. *Pena v. State*, 191 S.W.3d 133 (Tex.Crim.App. 2006). Assuming this description of this state of affairs to be true, Petitioner specifies the issues in this subsequent application which, it is contended, should be the subject of independent state constitutional analysis.

The Court of Criminal Appeals and the Texas Supreme Court have affirmed the independence of our own state constitution. *Heitman v. State*, 815 S.W.2d 681 (Tex.Crim.App. 1991)("our state constitution is a doctrine independent of the federal constitution and its guarantees are not dependent upon those in the federal constitution");

Sherman v. Henry, 928 S.W.2d 464, 472-473 (Tex. 1996)("the Texas Constitution has been recognized to possess independent vitality, separate and apart from the guarantees provided by the United States Constitution"). *See also R Communications, Inc. v. Sharp*, 875 S.W.2d 314, 315 (Tex. 1994)("we look first to the Texas Constitution" in the face of alleged violations of both the state and federal constitutions)(quoting *Davenport v. Garcia*, 834 S.W.2d 4, 17 (Tex. 1992)).

Article I §19 has been interpreted in a manner independent from the federal view by both the Court of Criminal Appeals and the Texas Supreme Court. *See Ex Parte Patterson*, 740 S.W.2d 766, 770 (Tex.Crim.App. 1987), *overruled on other grounds*, *Ex parte Beck*, 769 S.W.2d 525 (Tex.Crim.App. 1989)("We need not define 'liberty' for purposes of due course of law analysis under Article I, §19 of the Texas Constitution in accordance with the 'entitlement' doctrine that has developed in federal due process jurisprudence, and we decline to define it in those terms"); *Dobard v. State*, 149 Tex. 332, 233 S.W.2d 435 (Tex. 1950)("we conclude that the serious restriction of individual liberty ... which the present law imposes ...render it inconsistent with due process under our state constitution, whatever be its effect under the federal constitution"). Thus, Article I §19 is clearly independent of its federal analogue.

While federal Due Process Clause interpretations constitute a default policy for the Texas Supreme Court, it is equally true the Court rejects any lock-step approach. At the same time it follows the rationale for the federal provision, the Texas Supreme Court underscores

the constitutional independence of the Texas Due Course of Law guarantee: *Tex. Workers' Comp. Comm'n v. Patient Advocates of Tex.*, 136 S.W.3d 643, 658 (Tex. 2004)("We *generally* construe the due course clause in the same way as its federal counterpart.")(emphasis added); *United States Gov't v. Marks*, 949 S.W.2d 320, 326 (Tex. 1997)("We have *traditionally* followed contemporary federal due process interpretations of procedural due process issues in applying our state constitutional guarantee of due course of law.")(emphasis added). Clearly, the Texas Supreme Court contemplates exceptions to its general rule; otherwise there would be no need for express qualification.

The Texas Supreme Court did observe that "[w]hile the Texas Constitution is textually different in that it refers to 'due course' rather than 'due process', we regard these terms as without meaningful distinction." *University of Tex. Medical Sch. v. Than*, 901 S.W.2d 926, 929 (Tex. 1995). This remark merely means that textual distinctiveness alone does not compel an independent interpretation, not that the due course of law provision is dependent upon the federal court view of the Due Process Clause. Textual differences otherwise militate in favor of independent interpretation, as both the United States Supreme Court and the Texas Supreme Court have indicated. *See, e.g., City of Mesquite v. Aladdin's Castle*, 455 U.S. 283, 293 (1982)(noting differences and the propriety of state independent analysis); *LeCroy v. Hanlon*, 713 S.W.2d 335, 340-41 (Tex. 1986)(observing that the Texas provision is textually different from federal provision); *Sax v. Votteler*, 648 S.W.2d 661, 664 (Tex. 1983)(observing due course of law is guaranteed twice in the state constitution).

Likewise, the interpretative commentary for Article I §19 merely stands for the proposition that our state constitutional provision restricts legislative acts in the same way as its federal counterpart – hardly a declaration that Section 19 cannot be interpreted differently than the Supreme Court interprets the Fourteenth Amendment. The decisions by the Texas Supreme Court can be reconciled by recognizing that the state constitutional provisions may be interpreted independently by the appellate courts of this state, and not that they are invariably required to interpret it either independently or in accordance with the federal interpretation of the federal constitution. This salutary approach ensures maximum flexibility in state constitutional analysis without squelching independence from poorly-decided or inadequate opinions from the federal Supreme Court. Thus, the question is not whether this Court can interpret Article I §19 of the Texas Constitution differently, but whether it should be read differently in light of the unique or "a novel and difficult issue for the criminal-justice system" confronting the judiciary. *Ex parte Robbins*, 360 S.W.3d 446, 468 (Tex.Crim.App. 2011)(Cochran, J., dissenting).

Petitioner makes four independent state constitutional claims that the Due Course of Law provision of the Texas Constitution was violated: (1) the key expert mistakenly identified a normal hymen for one that had been lacerated; (2) the psychological expert provided unreliable testimony; (3) significant social science developments, like recent studies which confirm how the children involved in this case were likely induced to make false claims and to adopt false beliefs based on suggestion and reinforcement, can reveal a trial

thought to be fair to be ridden with error, and thereby constitute a due course of law violation, and (4) Perry's inadmissible statement was so egregious it deprived Applicant of a fair trial. All claims are to be considered in light of each other.

This Court should legally conclude that each of these claims are vindicated by the Due Course of Law provision. The Court of Criminal Appeals has already held that inadvertently false evidence can form the basis for relief, and Dr. Mouw's mistaken testimony fits within that category of cognizeable claims. *Ex parte Chabot, supra*. Likewise, the Court of Criminal Appeals has found that expert testimony later determined to be unreliable can also form the basis of relief. *Ex parte Mowbray, supra*. The Court of Criminal Appeals has also found that new developments in science which discredit methodologies or scientific conclusions can create the basis for a claim for relief; recent insight into the nature and extent of children's recollections due to suggestive questioning and reinforcement falls within this category of relief. *Ex parte Henderson, supra.* Finally, the claim regarding the admission of Perry's false statement is rooted in Texas law and, accordingly, should be addressed under this state's own due course of law guarantee. *See Pena v. State*, 166 S.W.3d 274 (Tex.App.– Waco 2005), *vacated on other grounds*, 191 S.W.3d 133 (Tex.Crim.App. 2006) *and Pena v. State*, 226 S.W.3d 634 (Tex.App.– Waco 2007), *reversed and remanded*, 285 S.W.3d 459 (Tex.Crim.App. 2009). Petitioner welcomes any further briefing requirements.

CLAIM FOR RELIEF TEN: FRAN KELLER IS INNOCENT.

With no constitutional violations alleged, an applicant asserting innocence is entitled to relief if she shows that the new evidence unquestionably establishes her innocence, which means that she must prove by clear and convincing evidence that no reasonable juror would have convicted her in light of the newly discovered or available evidence. *Ex parte Elizondo*, 947 S.W.2d 202, 205-206 (Tex.Crim.App. 1996). *See also Herrera v. Collins*, 506 U.S. 390 (1993). If the claim of innocence is tied to constitutional error at trial, then she must show that it is more likely than not that no reasonable juror would have convicted her in light of the newly discovered or available evidence. *Elizondo* at 208-209. *See also Ex parte Franklin*, 72 S.W.3d 671, 675 (Tex.Crim.App. 2002)(citing *Schlup v. Delo*, 513 U.S. 298 (1995)). The court must weigh the evidence of guilt against the new evidence of her innocence in order to decide whether she has met her burden, assessing "the probable impact of the newly available evidence upon the persuasiveness of the State's case as a whole[.]" *Id*. at 206-207.

The newly discovered available evidence presented in this writ application removes the only physical proof offered against Fran Keller. There were no lacerations to Christy's hymen and no disturbed gravesites. Without Dr. Mouw's report, Dr. Nauert has no report upon which to base her testimony, and Dr. Noblitt's testimony is denied any medical support. Evidence regarding the cemetery is negated by what the police knew all along, that nothing untoward happened in the Oliver Cemetery. Perry's recanted false confession has no reliable

corroboration. There is no physical evidence of abuse.

Christy's recanted out-of-court statements can no more support Fran Keller's conviction than Perry's recanted false confession. Recantations are affirmative proof of innocence. *Ex parte Calderon*, 309 S.W.3d 64 (Tex.Crim.App. 2010); *Ex parte Zapata*, 235 S.W.3d 794 (Tex.Crim.App. 2007); *Ex parte Calderon*, 153 S.W.3d 417 (Tex.Crim.App. 2005); *Ex parte Harmon*, 116 S.W.3d 778 (Tex.Crim.App. 2003); *Ex parte Tuley*, 109 S.W.3d 388 (Tex.Crim.App. 2005). Unlike the out-of-court statements, these recantations were made in court and under oath by witnesses subject to cross-examination. As a matter of law, they are more reliable than their out-of-court remarks. Christy's testimony, then, together with her other denials, provides positive evidence of Fran Keller's innocence.

The various out-of-court inculpatory statements elicited from Christy and Brendan are completely unreliable, not only because they were the product of suggestion, but reenforcement as well. This state of the evidence (Christy's outcry to her mother and her therapist) leaves scant and legally inadequate proof anyone was ever sexually abused at all. As will be detailed *infra*, contextual evidence further establishes that Fran Keller was the unfortunate victim of hysteria, originating from a troubled child, fueled by a troubled mother and credulous therapists, all of which would eventually contaminate the entire investigation and lead to various, extensive investigations and false accusations against many other innocent people.

HOW PANIC SPROUTED FROM A CHILD'S OUTCRY

This Court is free to consider what other facts were developed after Fran Keller was convicted, as developed in her initial writ application. The last witness the jury offered to the jury was Brendon Nash and his account of sexual abuse, with specific claims eerily similar to Christy's outcry and Perry's detailed confession. Isolated from context, he appeared to be the boy who was involved in the shocking orgy described by Perry and that included Janise White and Raul Quintero.

The jury did not know the full history of events leading to Christy's outcry, Perry's false confession and ultimately, Nash's testimony.[26] A review of this history and the post-trial events reveals that the idea of satanic sexual abuse began soon after Christy's outcry, and became the central theme that would drive the investigation and expand the circumference of accusations and suspects.

Christy's Behavioral Problems

While jurors were told that Christy's behavioral and emotional problems began long before she ever met Fran Keller, they were not informed of the conclusions of two different psychologists, Dr. Fogelman or Dr. Poole. In a June 14, 1991 psychological examination of Christy's mother, Dr. Poole wrote: "I think that Christy, [is] being unconsciously used by the mother to express her own angry feelings toward the father, and that this probably

[26] This narrative is based on the available police reports, therapist notes, and the detailed chronology of events summarized by Drew McAngus and made part of the record of the initial writ application.

constituted a pattern in her own family of upbringing, that she has carried forward to this situation." In a letter dated May 16, 1991, Dr. Fogelman, who was treating Christy, accurately observed she exhibits anger towards adults as a coping mechanism for her previous abuse, apparently at the hands of her father. He also wrote with some prescience, "I do suspect frightening metaphors will begin to be generated in the playroom, and my suspicion is that Christy will be begin to also exhibit metaphors, in the playroom, of the need to be protected and the need to be 'safe.'"

The dates of Christy's attendance at the daycare were: May 8th, 14th, and 23rd ; June 19th and 21st; July 9th, 17th, 19th, 22nd; August 5th, 9th, 14th and 15th.

The week before Christy's outcry against Dan Keller, she had seen her father, Rick Chaviers, at the Kids Exchange. Christy had spread her legs and said the ice cream place is open and wanted her father to drive a car between her legs to get the ice cream. For the past several visits with her father, she had taken down her pants, shown her vagina, played with herself, and looked for things to stick into her vagina. He wondered whether Christy's cousins could have anything to do with her behavior, according to Rick Chaviers. He said she had exhibited "loving" behaviors for him before he left the house which had continued. Christy had been hiding behind the couch and tried to stick things in her vagina, according her mother, Suzanne. This sexual behavior seemed to increase when Christy stayed with her grandmother while Suzanne was in California.

David-Campbell Counseled Both Christy and Vijay

As Christy's August 15th outcry against Dan Keller led to a medical examination in which she was mistakenly declared to have been recently sexually assaulted, David-Campbell was counseling both Christy and another child, Vijay Staelin.[27] David-Campbell's August 15th notes reveal that on the same day Christy made her outcry, Christy also said, "It did not happen." On Monday, August 19th, Christy tried to feel David-Campbell's breasts and talked about having to feel Fran Keller's breasts. On this same day, David-Campbell also saw Vijay Staelin, who attended Fran's daycare, but Vijay made no mention of abuse.

On Wednesday, August 21st, David-Campbell again saw both Vijay and Christy. Christy told her Fran had kissed her front hole, "ate me all up," and demonstrated with dolls. She said she had to kiss Fran's bottom, feel her breasts and kiss her vagina.

Christy also mentioned Vijay (and another child named "Chris") during her outcry about Fran. Carol Staelin, Vijay's mother, told David-Campbell that Fran said Vijay had been trying to feel her breasts and vagina over her clothes. His father, Earl Staelin, told Deputy Wade his son had been acting strangely, crawling around on the floor with his clothes off, acting like a baby and trying to touch the private parts of his parents. Still, Vijay himself made no allegation of abuse. On September 5th, Carol Staelin took Vijay for an examination, but he was uncooperative. She asked him if Fran and Dan tickled him too much, and he said

[27] Christy's mother had referred the Staelins on August 19th, right after Christy had made her outcries.

yes. The rest of the month passed with no outcry from Vijay.[28]

Vijay's Belated Outcry

On October 5th, Carol Staelin called the sheriff's office and reported that the day before, Vijay had said someone had peed in his hair, and she asked, *"Was it Danny?"* It was. According to Vijay, Dan Keller had peed on his hair, put a rope around the necks of all the children and warned Vijay that he would cut off his head with a knife if he ever told any secrets.

On the basis of this outcry, Vela interviewed Vijay. He told her Dan had put his finger in his bottom and hit him on his head with a belt, and Fran had put her [??] penis in Christy's mouth. Vijay told Vela he "doesn't do secrets," and that Fran told him it was okay to tell. He said Fran was at the store when Dan put his finger up his anus. Vijay also said that Fran touched the anuses of the other children. Dan touched Vijay's penis six times, and both Fran and Dan touched all the other children in this way, including the babies. Fran would ask Dan what else he wanted her to do to the children, according to Vijay during this interview.

By October 14th, David-Campbell had become convinced that ritual abuse had been occurring at the daycare, and so informed Wade. Suzanne appeared to have become

[28] Wade had received a call from a parent (Laura Alden) who told him the Kellers were innocent, and another call from Terri Fenley, who was familiar with the daycare and did not believe the allegations of abuse.

convinced as well, telling Wade her belief the children had been drugged. Carol Staelin had also concluded the daycare was rife with ritual abuse. With the therapist and the two mothers having already made their conclusions, it is unsurprising certain imagery would soon be conjured by Vijay and Christy – candles, robes, animal torture, etc. Within days, David-Campbell again contacted Wade to report even more signs of ritual abuse. Ten minutes after David-Campbell's call, Vijay's mother called Wade to report that Dan Keller had killed the dog, Sissy (Wade had just seen the dog, which was very much alive).

On November 19th, David-Campbell testified for two hours before the grand jury concerning Christy and Vijay, and later contacted Dr. Kathleen Adams, a clinical psychologist specializing in ritual sexual abuse.

From Christy's OutCry to Vijay and Beyond

Wade learned on October 8th that Suzanne had called all the other parents at some point and informed them of Christy's abuse. When Suzanne made these calls and who she called is not clear, but as early as September 11th, Sandra Nash (Brendan Nash's mother) was conducting her own investigation, calling Wade to tell him Gary Roach's daughter "Frankie" attended the daycare and she suspected sexual abuse (the girl was ultimately examined and there were no signs of abuse). While Wade told Suzanne to stop calling other witnesses, the parents may have held a meeting in December to discuss the satanic abuse of Christy and Vijay.

Brendan Nash's "Secrets"

Throughout the time Christy and Vijay were making outcries to David-Campbell, Brendan Nash was seeing therapist Ellen Zimmerman, though he had made no allegations of abuse. Brendan's mother, Sandra Nash, told Zimmerman about Christy's allegations. Zimmerman suspected Brendan had been molested and used a "Danny" doll to help get Brendan to talk. By late August, Brendan had still made no sexual abuse allegations, but vaguely mentioned his interest in "secrets" to her. Based on this revelation, Sandra called the police who set up an interview with Brendan.[29]

On September 5th, Brendan was videotaped with Vela. He said Dan Keller had hurt Christy and Vijay, and the two children had to be taken to the hospital. He could give no details, but said that Vijay had a scratch on his leg, and that he had other secrets he couldn't recall. Brendan denied he had been hurt, said no one had touched his private parts and that he didn't have to touch anyone else's private parts. Then he said there was some touching, but could not remember. Finally, he claimed Dan Keller told him he shot the pit bulls. On September 19th and October 4th, Brendan met with Zimmerman and still made no allegations of abuse.

On October 8th, Sandra Nash told Zimmerman about Vijay's sexual abuse allegations

[29] Sandra Nash was apparently convinced sexual abuse had occurred at the daycare. On September 11th, she called Wade to tell him that Gary Roach's daughter had been abused there. A medical report later that month revealed no abuse to Roach's daughter.

he made four days earlier,[30] and for Zimmerman to tell Brendan about them and to keep no secrets. But Brendan still reported no abuse. Two days later, Zimmerman counseled Brendan and told him to remember everything that happened at the daycare and again, to keep no more secrets. Brendan drew a picture with Dan Keller lying down with another child ("Blake") on top while Brendan played with Christy. On October 17th, Brendan told Zimmerman that Christy, Vijay and another child were put in a box, yet still reported no sexual abuse.

On November 9th, Zimmerman told Sean Nash (Brendan's father) that Brendan was fine and did not want to return to therapy. Ten days later, David-Campbell would help persuade a grand jury to indict the Kellers, and for the next month and a half, the media would report the disappearance of the Kellers and the efforts to arrest them. It is difficult to imagine that these events went unnnoticed by the Staelins, Nashes or by Suzanne Chaviers.

On February 6, 1992, Brendan told Zimmerman that Dan would shoot him with a bow and arrow if he told, and said nothing else beyond this vague remark. By this time, Brendan had been repeatedly questioned about events at the daycare over several months by various adults and had repeatedly denied any abuse. While David-Campbell became convinced of ritual abuse at some early point during her therapy sessions with Christy and Vijay, it is unknown when Zimmerman became similarly convinced that Brendan was a victim as well.

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[30] On October 4, Vijay told his mother that Dan peed in his hair, which led to an October 7th interview with Vela during which he related how he, Christy, Brendan and all the kids at the daycare were sexually abused by the Kellers. He mentioned a book, *No More Secrets for Me*, and Wade determined that David-Campbell also had a copy of that book.

If the parents of these three children and the two therapists had been reenforcing the idea of ritual abuse, even unintentionally, Brendan's eventual transformation into a victim and witness of the same abuse should hardly be surprising. In time, Brendan would be conjuring Satan in therapy.

Brendan's Outcry and the Beginning of the Sheriff Motif

On February 22nd, David-Campbell noted in her records the participation of the police in the abuse: *Christy's mother had talked to Vijay's mother, and that Brendan had begun to talk a lot and said people in police uniforms would come to the daycare and partake in the activities.* The idea of police complicity which would eventually envelope Raul Quintero and Janise White was born somewhere in the communications that were occurring among the parents of the children and their two therapists sometime before March. The contamination among these three families and their therapists had been occurring at least since early September, 1991. By the time of the November, 1992 trial and long thereafter, they all supported the same belief system of ritual sexual abuse and all the familiar characteristics – secrecy, mind control, sexual abuse, drugged children, satanic rituals, and police complicity. Brendan had now finally made an outcry and it included policemen.

By March, the FBI had entered the picture. Brendan was now talking about a "bad sheriff" who had golden hair and drove Brendan in his sheriff car, "pushed the pedal and made the siren go." Zimmerman was protectively delaying any interview with Brendon by

prosecutor Judy Shipway for weeks until she could "prepare" him for Shipway. On March 3rd, Brendan finally asserted sexual abuse: Dan made Brendan and the other children watch the sun, and when they watched TV, Dan abused Brendan's penis, and he saw Dan make glue come out of his own penis. Later that month, the original investigating authority, the Travis County Sheriff's Office, turned over the remainder of the cases to the Austin Police Department. Cemetery expert Sergeant Beck and ritual-abuse believer Detective Oliver would now lead the investigation. By March 26th, Brendan was telling Zimmerman, "I know how to bring in Satan."[31]

Enter Detective Oliver

Within days of receiving the case in late March, Oliver declared his top priority to be the identification of other victims. Christy's mother told David-Campbell that Brendan and Vijay said they had been taken to a cemetery where a coffin was dug up, babies and adults removed from the ground, *and a sheriff or policeman had accompanied them*. A bystander witnessed the event, so one of the apparently uniformed officers pushed him into a hole, shot him, then took his body back to the daycare where his corpse was cut up with a chainsaw with the help of the other children. Christy's mother also conveyed how the kids were shot and videotaped while they committed sexual acts against each other.

For any believer in ritual abuse, these reports confirmed and reenforced apparent

[31] At some point, Zimmerman, too, had joined the hysteria, claiming that when Brendan called forth Satan, her room became dark and the temperature dropped 50 degrees. (Initial writ application, p. 250).

recognition of one of its most evil tell-tale signs – the involvement of constables and deputies. By the end of March, Oliver had collected the names of everyone at the daycare center and opened new fronts of investigation into the potential abuse of all these non-reporting families. April of 1992 would yield even more fertile proof of ritual abuse.

April, 1992: **Unhinged into Wonderland**

Oliver and Beck went to Burnet County to check out Fran's brother's possible involvement (there was none), then onto Gary Roach's residence, and though they discovered nothing, insisted that Vickie Tyre (Roach's wife) return to APD to give a sworn statement to that effect. From a tip about "badge 26," Oliver investigated the Sheriff's office and determined the badge number could be attributed to deputies Iffla, Weaver or Gruetzner, none of whom were evenly remotely connected with any of the children or any allegation of sexual abuse.

Meanwhile, Christy's mother and David-Campbell had discussed a meeting with ritual abuse expert, Dr. Kathleen Adams, to determine whether Christy had been mind-controlled. By this time, Christy was talking about baby decapitations, kidnappings, blood-drinking, and holes for murdered babies, buried by Brendan, then dug up.

By mid-April, Brendan's descriptions of abuse had become as imaginative as his fellow patient, Christy. Sissy the dog was dead (again), there had been truck and airplane rides, apparent murder, more murky police involvement and shadowy cemetery happenings.

By this time, Brendan Nash had been taken repeatedly to the Austin Police Department for ever-more questioning.

Oliver Investigates the Police

On May 4th, the Nashes told FBI Agent Houston that Brendan had revealed that several police officers came to the daycare when the kids were abused, and identified two of them as "Pam" and "Lee." "Lee" had badge number 26. Houston got all of the photos of officers with that name and badge number, including APD officer Tallier, who just happened to live across the street from the daycare.

On May 5th, Brendan, his parents, and Zimmerman met with Agent Houston to pick out these bad policemen from approximately 100 photos. But Brendan did not pick out Tallier. Instead, Brendan picked out constable Janise White and Jimmy Davenport, an Austin police captain.[32] Brendan called them "Pam and Lee," identified tattoos on them, said they were married and had something to do with adult movies. According to Brendan, they frequented the daycare, arriving in a brown police car and a black van with a star on it, and filmed the kids.[33]

The same day, Oliver interviewed Vijay's mother, Carol Staelin, who had experienced

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[32] Oddly, Houston attempted to dissuade him from choosing Davenport.

[33] Whatever else happened on May 5th, only the notes may tell. But just days later the U.S. Attorney's office ended their investigation and removed the FBI from the investigation of the case, while the APD investigation intensified.

a variety of suspicious encounters. She had showed up one time and the kids were watching a Ninja Turtle movie, yet the children seemed suspiciously quiet. One time, Dan could not look her in the eye. Fran once stopped Vijay from putting a rope around his neck at the slide.

During this time, Vijay was a fountainhead of information for demonic events. He had become very interested in army stuff and Camp Mabry, and told her that Dan pulled on Vijay's penis, stuck needles in the babies, made movies, jammed drill bits into his penis and anus, and pushed on his testicles. Fran and Dan trained the children to laugh hysterically when they were killing animals and people, and, yet again, Sissy the dog had been killed, this time through strangulation, and the dog's head removed.

On May 20th, Oliver interviewed Christy at her home and gave her the same photo line-up given to Brendan. She failed to recognize anyone at first, but eventually picked out Billy Johnson (whose name, Christy said, was "Sissy"), and said he had hurt her 88 times with a black pen he used to abuse the babies. Suzanne had previously shown Christy pictures of people who had attended the Keller court hearings, and she picked out Paula Burnett as another assailant.

The next day, Oliver and Bryant interviewed police captain Davenport who denied any involvement and told them to get their investigation over as soon as possible. A polygraph examination was arranged for May 27th, which he passed.

Oliver gave Brendan another try at identifying "the bad sheriff" on June 15th. He picked out Janise White again as "Pam." Unfortunately Brendan also chose none other than

Roger Wade, the original deputy who investigated the case against Fran and Dan Keller, as "Lee." Wade made 20 movies, according to Brendan.

New Abuse Sites and the Cemetery is Found

During her May 5th interview with Oliver, Staelin mentioned that Vijay also identified the house at 7815 Thomas Springs Road where women with long dresses and men with swords cooked things in a big pot, while singing and clapping their hands. This revelation would lead to trips to this home and many others, and a multiplication of new suspects.

During this same time, Sandra Nash had been driving Brendan around looking for sites where he was abused. She had obtained a map of the area and taken Brendan to the cemeteries to see if he had previously been to any of them. On the first trip to the Oliver Cemetery, Brendan would not get out of the car, but did by the second trip. He also picked out the Oak Hill Gymnastics Academy and 8721 Mountain Crest as places where he had been abducted and abused. She relayed these new clues to Oliver just days after Oliver interviewed Vijay at his home on May 25th.

During his interview, Vijay didn't want to look at pictures, so Oliver took him and his mother to Thomas Springs Road.[34] Vijay picked out the Lamar Angel house where he had been kidnapped. He also pointed out Gary Roach's garage (where Vijay had nails stuck up

[34] Vijay would later say he thought Dan had put a germ in him that would grow within him and hurt him if he talked. His mother took him to the hospital to have her son x-rayed. No growths, satanic nor non-satanic, were discovered.

his anus). Near the Oak Hill Gymnastics Academy, Vijay pointed out John Trigg's two-story home at 8721 Mountain Crest where he, Christy and Brendan had been taken and placed in separate rooms. He remembered a junk car and a shack. Oliver then took Vijay to a trail, and Vijay said Danny had taken him on that trail. With first Brendan, and now Vijay, locating their abuse sites, it was Christy's turn.[35]

On May 31st, Oliver took Suzanne and Christy to the same area. Christy identified "numerous" homes[36] where they had been abducted. Oliver had more luck by taking Christy to the Oliver cemetery. Christy said she had been there before (as had all the children, according to Christy). As she roamed the graveyard, Christy said that under the dirt were dead things. They came upon animal bones. Christy said Fran and Dan had killed people there, as well as a baby tiger. They also dug up a dead baby in a container and took it back to the daycare.

The next day, Oliver and Bryant returned to collect the animal bones and photograph the cemetery. At some point, they discovered dirt on a grave. The State would selectively choose this part of Oliver's intrepid investigation to highlight at the November trial.

Oliver returned yet again to the same area, this time with Brendan and his mother.

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[35] Carole Staelin was still driving Vijay around. She drove him to a cemetery in Dripping Springs where he had been abducted and where Dan had put flags on the graves. Dan and Fran then drove Vijay, Christy and Brendan to the airport in a blue van, and ultimately transported them by plane to Camp Mabry. At some point, a cat was killed and the kids were put in a hole.

[36] Strangely, these homes were not identified in the police report. Oliver wrote: "I had hoped that Christi would reveal other things that happened to her and indicate if she had been taken to any other places in the neighborhood. She pointed out numerous other homes saying that they went to each, but did not elaborate on what happened." (Oliver's Report, p. 39).

Brendan identified the Oak Hill Gymnastics Academy (as he had for his mother), as well as homes at 6303 Mountain Shadows and 8721 Mountain Crest as the places he had been abducted and abused. Brendan picked out an unmarked cemetery on Old Bee Caves Road where he and Oliver roamed around. Brendan picked out the Sebastian Bassford grave and told Oliver, "Follow the blue flags." Vijay would later identify 11183 Circle Drive as yet another abuse site.

There were yet more abductions, some through the air. Vijay told his mother that Dan took him to Camp Mabry to ride airplanes, to an airport where they ate a meal, then to a hotel where they took a nap. The pilot wore a black police uniform, and Vijay and the other kids hid naked under the seats so the stewardesses would not see them. He and Dan later bought a coffin from a man. Vijay also went to Zilker Park where they got a baby gorilla, cut off its finger and drained blood into a water can.

It is clear by this time that these three families, their therapists and two investigators shared the same narrative of widespread ritual abuse. But others were also not immune from the hysteria. Around this time, Oliver and Bryant called in Texas Rangers Waldrip, Coffman and Ratliff, and the five of them met and seriously discussed satanic ritual abuse.

More Cemeteries

Now that the cemetery had been identified, Oliver returned on June 11th with Brendan and his mother. Oliver videotaped Brendan as he showed the graves where bodies, some

animals and a baby had been dug up, after Dan shot and buried them. The next day, Oliver returned again (5th time) with Beck and quizzed Caroline Spence who lived next to the cemetery. She was unhelpful – she had seen nothing unusual there.

Suzanne in the meantime had taken Christy back to the Thomas Springs Road area to choose places where she had been abducted and abused. She picked out the Angel House and 7804-A Thomas Springs Road. She picked out an unmarked cemetery on Old Bee Caves Road with enthusiasm, as well as the Oak Hill Cemetery where Dan and Fran had killed and dismembered babies, kittens and puppies. While Suzanne was locating abuse sites in that area of town, Carol was taking Vijay to a cemetery at the intersection of I-35 and Manor Road where he said he and other children had been taken.

On June 25th, Oliver again returned to the Oliver cemetery to videotape Vijay.[37] Vijay took Oliver to the Williams headstone, the same headstone Christy and Brendan had chosen.[38] Vijay told Oliver that he, Christy and Brendan had been hurt at this cemetery. Next was a trip to the Old Bee Caves Road cemetery where Vijay said he had been taken twice. His mother Carol, along for the ride, told Oliver that Vijay had previously mentioned the name on the middle grave, Sebastian Bassford. The names of new assailants emerged: Virginia Brown (who Vijay said was Sebastian Bassford), Jerry Keller, John Trigg, and

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[37] By the relatively late date of June 30th, Oliver finally determined the dates on which Vijay was ever at the Keller daycare: 17 specific times between June and August, 1991, with 3-hours appearances between July 6-19.

[38] This is the same headstone Oliver skipped when he investigated other graves with the overseer of the Oliver cemetery, an event Oliver never documented.

Lamar Angel.

Meanwhile, the parents were continuing to conduct their own investigations. According to Gary Cartwright's *The Innocent and the Damned* (Texas Monthly)(April 1994), Brendan's father, Sean Nash, was "jotting down license numbers of vehicles at homes or businesses where the kids told of being abused and taking pictures of suspected Satanists during pretrial hearings. Exploring the woods behind the day care center, Nash discovered what he considered evidence of Satanic activity – fire circles, a doll with the arms and legs ripped off, and some bones of small animals, which he had analyzed at the Balconies Research Center."

Vijay's mother, Carol Staelin, had made the ultimate discovery in the course of her investigation: Travis County District Attorney Ronnie Earle was satanic. According to Cartwright's article:

> Unable to get Earle's home address from the DA's office, [Staelin] looked it up in the county clerk's records. She discovered that he lived on Hamilton Pool Road, not far from Fran's Day Care. On her way to check out Earle's home, she passed a large goat farm. "Goats are used in Satanic ceremonial rituals," she observed – then came to the walled compound of county buildings that included a sheriff substation and the Precinct 3 road maintenance headquarters, places where her son said the kids had been taken.
>
> "Imagine my shock when I saw that cozy little arrangement," she [said]. "But that was nothing compared to what happened next. I backed out of the driveway and continued down the road, and to my shock, the first driveway I came to was his – Mr. District Attorney himself. I literally started shaking all over."

By early July, the investigation helped identify the role of the Oliver Cemetery as at

least one of the more accurate sites for abuse: Vijay had told his mother that Dan had taken a bow and arrow as well as a sling-shot and killed people with these weapons, cut them up with a chainsaw, skinned them, then taken the remaining bones to another cemetery. At this point, however, Oliver had produced little else than accusations, claims of abuse, and a plethora of child abuse sites. He had also sought permission to dig up graves, but was declined. The Texas Ranger breakthrough would change the course of the stalled investigation.

The Big Texas Ranger Breakthrough – Perry Confesses

Investigators had confronted Janise White who declined to take a polygraph. They had interviewed Fran's brother, Billy Johnson, who was in prison, and he did not know anything about any of the allegations regarding the daycare. On July 2nd, Ratliff and Waldrip had interrogated Doug Perry at his home, then at police headquarters. They brought up a person named "Mary Perry" who Doug Perry denied knowing. But Perry confessed that Dan had access to a highway department Polaroid camera. He also said Janise White had a police report regarding Fran Keller which he had seen. He agreed to take a polygraph.[39]

On July 6th, the Rangers interrogated Raul Quintero. The next day, they interrogated Perry again and obtained the most compelling proof to date that Christy was molested – Perry's

[39] On the same day of their interrogation of Perry, the Rangers also investigated the Oak Hill Gymnastics Academy abuse site by interviewing a person with knowledge about the Academy, Patti Swenson. She confirmed the Kellers had never been there, nor had any of the children at their daycare by showing the enrollment records.

signature on a written confession implicating Fran Keller, Dan Keller, Janise White, and Raul Quintero in salacious group debauchery against innocent children. It was a Friday, sometime in August or September of 1991, according to the confession.[40] Vijay was not specifically mentioned. Arrest warrants were issued that day for Janise White and Raul Quintero. The next day, Oliver (and Shipway) were informed Perry failed his polygraph.

Ratliff and officer Sally Whitley took part in the arrest of Janise White at her home, where she was found sleeping with her niece. She refused consent for the police to search her home, the Rangers noted. Ratliff and Whitley together arrested Doug Perry as well. They interrogated Gary Roach (apparently discounting Roach's previously passed polygraph), and Paula Burnet and Jan Meeks as well. As the trial neared, the Ratliff-Whitley team would serve a subpoena to Doug Perry for his court appearance against Fran Keller.

More Interrogations, Fly-By's, a Line-Up, No Break-Throughs

The Rangers had made the big break. In the "often competitive enterprise of ferreting out crime,"[41] Oliver would attempt to match it by having Vijay, Christy, and Brendan participate in two line-ups on July 8th, one with women and the other with men. Janise White was in the women's line-up, and Raul Quintero was in the men's. None of the children could choose anyone in the men's line-up. In the women's line-up, Brendan picked Janise White

[40] Christy's original outcry was that the abuse occurred on a weekend.

[41] *Johnson v. United States*, 333 U.S. 10, 14 (1948).

(she was number 3) and called her "Pam."[42] Christy picked all four women in the line-up. After Oliver reassured Christy, she, too, then picked Janise White. But then Christy picked another woman as well. Vijay was given another try and he picked the women at positions 1 and 4. The men's line-up was prepared again, and this time Christy picked Raul Quintero at position 4, then chose the man at position number 1 as well, and said they both had abused her.

Ranger Ratliff had teamed up with FBI Agent Houston (somehow reappearing in the reports, though the FBI had closed its case) to track down John Trigg. They interviewed a former roommate. They hunted Trigg, found him and demanded a polygraph examination to which Trigg agreed and passed. They interrogated Vickie Tyre, Gary Roach and APD Sergeant Mike Lummus. They found Virginia Brown, who provided nothing useful. Ratliff himself interrogated Jerry Keller and his boss, Gary Damouth, while officers searched Jerry Keller's home, finding evidence unspecified by Oliver's report. Ratliff then flew over the daycare area in a helicopter armed with forward-looking-infra-red (FLIR) technology in search of suspicious cemeteries.

The Search for Airports

Inspired by Vijay's tip about airplane abductions, Oliver delved into the transportation aspect of the allegations. In mid-June, Brendan had mentioned how Dan had flown him to

[42] It should be noted that he had repeatedly been shown photos of her.

Mexico on a "blue and possibly gray" jet, purchased a toy soldier and bought a dog named "Rocky." With Vijay also talking about airplane trips, Oliver solicited more information from him. Vijay said he had been on two airplane trips and everyone was there: Christy, Brendon, Fran and Dan and possibly Kathleen. This nose-propeller plane was gold with red on top, and Vijay could see the wings, but on the first trip, they only flew around then landed in the same place they took off.

About ten days after this revelation, Vijay's mother called Oliver to tell him that Vijay was tormented and that in fact, there were three plane trips. On the first trip, the red-topped gold plane took off from a cemetery where they had just killed cats, and Vijay was chained during the flight. They returned to the daycare in time for no one to notice their absence. On the second trip, the plane was red with gold specks, and this was the trip where the kids hid naked from stewardesses. They were also tied with ropes and chains as Fran and Dan fondled them. Upon arrival, they all went to a hotel with a stove, and everyone ate Kentucky Fried Chicken. The third flight was on a blue plane piloted with a man with no mustache or beard, but wore that black policeman's uniform.

Now Brendan recalled three plane trips as well. The first one was unforgettable – it was May 23rd, Brendan's birthday. The kids were fed Mexican food and sodas, then dessert before being imprisoned in boxes in a windowless plane, then returned. In his report, Oliver surmised the plane to be a six-seater, at least one with seats and chairs in back. But the accounts of aerial abductions became more clouded and confused.

One of the trips involved arrival to a structure with lots of trophies and people wearing army medals. The plane transported them from atop a red-steeple church whose members got them Happy Meals from McDonald's. Flights commenced from parking lots with planes filled with turtles, snakes and rabbits, mice and reptiles, and other creatures. Helicopters and other small planes entered the picture, and piles of money. Brendan and Vijay had gone shopping after their abduction to Mexico where they were sexually abused by Mexican Army personnel. Dan threw $20 bills around for payment for the trip and gifts. It was Brendan who bought the toy soldier, while Vijay bought an army truck. Dan went shopping, apparently by himself, returning with boxes of stuff: a box of police "'com's" and about ninety presents. The other children involved were Kendria, Kathleen, Justin, Blakely, and so on, and so on.

Oliver went to suspected landing areas in Burnet, New Braunfels, Lampasas, Seguin, Horseshoe Bay, Lockhart, and San Marcos. He went to Bergstrom to rummage Air Force records. He looked for those gold-red jets and planes, and records of departures and arrivals.[43] Whatever other law enforcement resource was employed, it is clear that every airport in Travis County and the Hill Country was exhaustively investigated.

[43] It is unknown whether investigators also went to parking lots throughout Travis County where planes or jets could so busily transport children to and from satanic sexual abuse sites as to be unnoticed, untraceable and, in light of their dependable international on-time air travel, so completely unappreciated.

Influence from the Ritual Abuse Network

Interestingly, Randy Noblitt's wife Pam had at some point recommended to Carol Staelin a book, *The FrankIin Cover-Up: Child Abuse, Satanism, and Murder in Nebraska*, which according to Gary Cartwright's Texas Monthly article:

> [The book] makes wild and unsubstantiated claims that some of Omaha's top business, academic, and political leaders conspired in a network of pornography and ritual murder. Girls and boys were flown to a number of cities, including Austin, where they were subjected to unspeakable sexual abuses by devil-worshiping old men in Satanic hoods and then murdered during the sex act while a camera man filmed and Hunter S. Thompson directed.

(Cartwright's article, attached). This connection is disturbing because they suggest Noblitt's early involvement and influence on the investigation.

Noblitt's Society and conferences continue.[44] At his 1998 conference (described on the website as "the first annual" one), Noblitt featured survivors of mind control and ritual abuse. Lynne Moss-Sharman spoke on the satanic links among the CIA, MKULTRA and secret societies, while deJoy LaBrier lectured on military involvement in satanic abuse. There was also a talk on the "developmental history of mind control." Conferees pay to hear these lectures, and they have a general, paranoid, and interactive theme, arguably harmless but for its focus on the criminal justice system.

The 2003 conference included a guide on how to get suspected satanists prosecuted. In "How to Build a Case for Civil/Criminal Prosecution," Jeannette Westbrook explained

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[44] *See* Ritualabuse.us (last visited January 1, 2013).

how she had some training from an FBI agent, and urged the audience, "One of the first things that you got to do is, remember, that YOU are going to investigate your own case. Start looking at yourself as your own detective. You will be in charge of gathering ALL of the evidence."

Westbrook urged a "collaboration" strategy: "Asking other relatives, asking your childhood friends, teachers, coaches. Ah, posting blind ads. The more survivors and victims you have of a particular perpetrator, the greater your case. Strength in numbers, okay?" She also recommended trying to locate a "cult cop" within law enforcement, evidently an investigator who shares their belief system or who can be made to be sympathetic to their cause.

Society members with psychiatric history were told, "And if people ask you if you have some kind of 'DSM 2345' label,[45] it's none of their business. Let their attorneys try to get that information – don't give it up. Make them fight for it, because these psychiatric diagnoses are used against the victim in the criminal justice system. So you 'don't know nothing!'" In a belief system where authority figures could so easily be satanic, it is not hard to infer that the lecturer is encouraging alliance with sympathetic police, collaboration with other believers, and concealment of information, including from prosecutors, as tactics to bring satanic suspects to justice.

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[45] "DSM" refers to the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association, which categorizes mental disorders and is used by psychiatrists and psychologists.

Westbrook's 2003 lecture included her insight and advice about interfacing with those empowered to bring prosecutions:

> Now, when you're looking at building a case, victims need to remember this: you are nothing but a witness for the state. That's a hard one to swallow. You're a witness for the state. They don't even look at you as the crime victim. It is the district attorney that is going to bring the charges on behalf of the state against your perpetrator. And you are a witness for the DA.
>
> [SLIDE]
>
> Now: who, what, when, where, and why. This is what law enforcement in investigative capacity wants to know. Who did it, what did they do, when did they do it, where did they do it, and last of all, they want to know why. Victims, I find, come with "why?" first, okay? But they don't want to know that first. They want to know all these other things first. And when they mean WHO? They want the first name and last name, the date of birth and if possible, the social security number.
>
> WHAT? They want to know–what they mean by "what happened to you?"–they want to know under what statute, in which state, it happened. What is it that happened? Was it first felony degree rape? Felony degree assault*? "Officer, it was psychotic ritual abuse."* Yeah, there's no statute. In my state there's no statute of ritual abuse but there is one for first degree felony rape, there is one for incest, there is one for assault.[46]
>
> WHERE? Better have that address where it happened.
>
> And WHEN? Was that 9 a.m. or 9 p.m.? Was it 3 o'clock in the morning? What month of the year was it? Now, don't be discouraged by that. If you can get some parameters of seasonal, that's good. If you can get down to the year, that's good. What I'm saying is try to narrow that as much as you can.
>
> And then, WHY? Make your 'why' very simple. "There's a sadistic pedophile." The rest of the stuff's going to come out. *But start with something*

[46] The speaker discouraged reporting sexual abuse as incest, and instead encouraged people to couch their accusations in terms of sexual assault, noting its advantages – greater penalties, the absence of statutes of limitations, producing the greater ease of persuasion to the authorities the accusations are true.

that they can understand. Detectives, law enforcement, judges, attorneys don't have a clue about a lot of this. Their eyes glaze over like a lot of peoples' do when you bring up mind control, ritual abuse, torture.

[SLIDE]

This is a list of some of the things that you should be gathering for your case: medical records, school records, church or religious records, criminal records, psychiatric records, marriage records, divorce records. It's very important that you know what the defense attorney for the perpetrator is going to know, because they're looking for the same information. They WILL get access to your psychiatric records. They will, for sure, run a criminal background check on you.

If the self-perceived victim of satanic abuse avoids the use of the phrase "psychotic ritual abuse" as the crime, pinpoints a period of time a discreet sexual assault might plausibly have occurred, then the reporting victim can give law enforcement something "they can understand." Truth – "mind control, ritual abuse, torture" – is something beyond the comprehension of deputies, prosecutors and judges. Accordingly, the case against a suspected satanist must, in part, be prepared for law enforcement and prosecutors, with deliberate omission of things these well-meaning authorities just can't understand.

These presentations and many others made at the annual "Ritual Abuse, Secretive Organizations and Mind Control" conferences contain material rich in paranoia and delusions. The material is similar enough to the fantasies that fueled Fran Keller's prosecution to raise the possibility that the techniques on display at the conferences were at work as early as 1991. While there is no mention of Noblitt in the available police reports, the parents were certainly conducting their own investigation just as Noblitt's speakers

recommend. There was communication at some point between Noblitt and Staelin and between Noblitt and David-Campbell. It is at least plausible Noblitt may have influenced the prosecution of Fran Keller beyond his testimony.

No Evidence of Ritual Abuse

Investigators continued to seek evidence to support the theory of ritual and surely satanic sexual child abuse at the daycare. They flew yet more flights over cemeteries and interviewed yet more parents of children at the daycare. The aerial surveillance offered nothing new, and the interviews with the other parents positively refuted the accounts of the Vijay/Christy/Brendan trilogy of abuse that was supposed to have involved all the other children.

Other apparent leads went nowhere. Oliver asked the Ranger-FBI team of Ratliff and Houston to check whether anyone at Mr. Trigg's home had ever worn a cast, whether his wife had his son, and to get the ages of the next-door neighbors' children. Oliver learned the kids were about 7 or 8 years old, but whatever theory Oliver was operating under, it apparently was either refuted or never confirmed. At least two other extraneous abuse allegations also failed to pan out. Scott Parker stated his skepticism about Janise White's alleged sexual abuse of children. A pet store manager was interviewed, but had nothing substantive to relate.[47]

[47] Interestingly, the Travis County District Attorney's office requested drug-screening to be (continued...)

The Ratliff-Houston team talked to Gina White about Dan Keller. White had worked a couple of days at the daycare, and she conveyed information the investigators evidently didn't believe. Paul Rowell and Elmer Joseph were interviewed. They interviewed Hillary Davis and David Davis. None were helpful.

More significantly, the Ratliff-Houston duo interrogated T.J. Shank and James Hyde about Doug Perry in late September. Shank described Perry as a worm. Hyde said he was a low life drug addict and liar. Their prize piece of evidence – Perry's confession – was now twice impeached. The descriptions from Shank and Hyde matched exactly the traits expected of a person who would falsely confess and shift blame to other innocent people, which is exactly what Perry did, despite his own best efforts to renounce his signature afterwards.

The Other Children and the Lawsuit

Throughout April, May, June, July, August, and September, Oliver and other police investigators had interviewed Sandra (Steven's mother), Jill (Nicole's mother), Laura (Ben's mother), Joni (Blake's mother), Teresa Chambers (Gary, Jr. and Annie's mother), Rick Chaviers, Marion and Gary Brady (Cameron's parents), Sonya (Janaya's mother), Teresa (Gary's mother), Marlene Roote (Nadia's mother), Erin (Taylor's mother), Kenneth Reading (Kendria's father), Cindy Resta (Dario's mother), Diana (Donovan's mother), Kathleen (Erin's mother), Vicki Tyree (Frankie's mother). None reported any abuse. Other children

[47](...continued)
performed on Kathleen Nash's hair on September 16th.

were specifically identified as having been abused – Seth, Amy, Chris, Blake, Justin and Kathleen – but there was no proof they had ever been abused.

The Nash family sued Fran and Dan Keller, the Keller's landlord Julia Dietz, Janise White, Raul Quintero, Doug Perry, Marilyn Cobb (owner of the Hillside Bar), the Oak Hills Gymnastics Academy, Billy Johnson, Clarence and Joyce Buckelew, Paula Burnett, John Trigg, the Department of Human Services, Sheriff Doyne Bailey and the Travis County Sheriff's office for $2.5 million dollars. The suit was finally dismissed in 2006.

The indictments against Raul Quintero and Janise White were later dismissed.

The Origins of the Satanic Ritual Motifs

By reviewing the chronology for the first mention of the satanic ritual abuse, it can be gleaned when and how the idea began and eventually spun out of control. It can also be seen how the other motifs – specifically, the cemetery and the "bad sheriff" themes – sprung from this original narrative.

On the day of the August 15th outcry, Christy was on her way to a child psychologist to talk about her physical abuse at the hands of her father. She told Suzanne at around 1:30 that afternoon that Dan Keller pulled her pants down and spanked her. Christy next revealed to David-Campbell that Dan had repeatedly stuck a pen into her vagina and peed and pooped on her head. It is not clear how many hours Suzanne and Christy spent with David-Campbell that day, but they returned home at 9 p.m. Christy told Suzanne her vagina hurt, and Suzanne

caught Christy taking her panties off behind the couch. Sometime between 9 and 11 p.m., Christy told Suzanne that Dan had shown her how to make a face out of her vagina, that he had peed in her vagina, gotten glue in it, and Fran washed it out. At David-Campbell's suggestion, Suzanne took Christy to Brackenridge Hospital. At this early point, there is no theme of satanic abuse, but in light of the widespread belief at the time that daycares were centers of sinister abuse of children, it is not unreasonable to infer that Christy's therapist and mother suspected ritual sexual abuse.

By August 21st, David-Campbell had elicited even more abuse: Christy told her she had also been anally raped by Dan, and included every sexual act that could be performed against a child by adults, now implicating two other children as victims as well (which included Vijay). By the 26th, it was Fran who had peed in (yes, "in") her, fingered her anally and put things in her. On the 27th, Brendan has been taken to Zimmerman by his parents who were suspicious that he'd been molested in some way. The next day, Brendan's mother called Zimmerman to report that Christy has alleged sexual abuse by Dan and that he has been charged with sexually abusing Christy. This call is significant because it demonstrates that Suzanne, even before the end of August, had been telling people about Christy's allegations, including Sandra Nash. Because Christy had specified Vijay as another victim, it would hardly be surprising that Suzanne and the Staelins were also talking – and they had the same counselor, David-Campbell.

During his September 5th interview with Vela, Brendan said that Dan told him he shot

pit bulls. This remark is the first mention of any animals being killed. But not much else is developed during September. It is mid-October when the satanic imagery finally emerged.

On October 3rd, Christy said Dan and Fran came to her house with a chain saw, cut down a tree and cut B.G. (a five-year-old at the daycare) in the vagina and made it bleed, then hit this other child in the nose with a hammer. These scenes appear to be the first violent imagery that David-Campbell elicited. Four days later, Vijay told David-Campbell about various sex acts with himself, Brendan, Christy, Fran and Dan, but the only violent imagery is Vijay's claim Dan hit him on his head with his belt. On October 8th, Zimmerman and Sandra talked about Vijay's revelations, a conversation underscoring that Suzanne, the Nashes and Staelins were sharing information about their children's allegations. By October 9th, Christy told Suzanne Fran and Dan chased cats with a big gun, and chased and hurt her. Two days later, Christy said Fran and Dan grabbed cats, put them in a bag and put the bag in the garbage. The ritual abuse motif next appeared in full form in mid-October – just two weeks before Halloween.

On October 14th, David-Campbell called Wade to tell him she suspected ritual abuse. At 10:15 p.m. that evening, Christy told David-Campbell that Fran and Dan had stuck needles in her anus, (as well as other children, specifically Blake, Christopher, Rachel and Vijay) many times, with candles burning, and everyone wearing robes. Dogs and cats were killed, according to Christy, and the horse would soon be killed with a green gun-rifle and a small gun. Then next day, Suzanne called Wade to inform him the children at the daycare

had been drugged. Meanwhile, Brendan told Zimmerman he, Christy, Vijay and Blake had been put in a box. From this point in time and thereafter, the ritual abuse theme recurred throughout the reports from the Nashes, Staelins, Suzanne and their children.

This Court should include these facts in its determination whether Fran Keller has established her innocence. As a chronology of the known facts reveals, everything Christy said to her mother and her therapist was viewed through the distorted lens of preconceived or biased belief of child sexual abuse. What might well have been a child's mishap with real glue that Fran might dutifully have washed out, became a child molester's semen, and Fran became his accomplice, dutifully destroying the evidence with shampoo. What might well have been ordinary play between caregiver and child, through the prism of powerful neurosis, became sexualized, the remark "ate me all up," together with perhaps a child's poorly-aimed demonstration with a doll, became startling proof that Fran Keller actually performed cunnilingus on a child. If the conviction that Christy had been molested had not gelled by the end of David-Campell's therapy that day, it was surely cemented with Dr. Mouw's mistaken confirmation of Christy's hymenal lacerations. Once that foundation was established, so, ultimately and inevitably, was Fran Keller's wrongful conviction.

All other evidence weighs against this doubtful proof that a crime occurred. When viewed in its totality and with clarity of mind, the evidence and circumstances involved in the prosecution of Fran Keller leads to the conclusion that she is innocent and became the unfortunate magnet for the hysteria of her time. The wrongful imprisonment of Fran Keller

is the result of forces which arise only in somewhat unique social and psychological circumstances. A 21st century court ought to be able to recognize a 20th century witch-hunt, and render justice accordingly.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

1. Issue a writ of habeas corpus vacating her unlawfully obtained conviction and sentence;
2. Grant a full and fair evidentiary hearing on all claims raised by the Application;
3. Grant Applicant such other and further relief as may be just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE: By affixing my signature above, I hereby certify that a true and correct copy of the foregoing *Memorandum* was personally delivered to the Travis County District Attorney's Office on January 14, 2013.

COURT OF APPEALS DECISION

DR. MICHAEL MOUW'S AFFIDAVIT

FRANCES BALTA'S AFFIDAVIT

AFFIDAVIT OF VIVIAN LEWIS HEINE

More than Suggestion: The Effect of Interviewing Techniques from the McMartin Preschool Case (Garven, S., Wood, I. M., Malpass, R. S., & Shaw, J. S. (1998)

Allegations of Wrongdoing: The Effects of Reinforcement on Children's Mundane and Fantastic Claims (Garven, S., Wood, I. M., Malpass, R. S., & Shaw, J. S. (2000)

Evan Harrington, *Conspiracy Theories and Paranoia: Notes from a Mind-Control Conference* (Skeptical Inquirer, Sept./Oct. 1996)

AFFIDAVIT OF REVIS KANAK

Believing the Children

by Jordan Smith

Austin Chronicle (March 27, 2009)

The Innocent and the Damned

by Gary Cartwright

(Texas Monthly)(April 1994)

Excerpt from the University of Illinois Law Review

About the Christopher Ochoa Confession and Exoneration

From the University of Illinois Law Review:

On October 24, 1988, Nancy DePriest, a twenty-year-old wife and mother, was found raped and murdered in a Pizza Hut in Austin, Texas. DePriest, an assistant manager at the Pizza Hut, was tied up, raped, and shot in the back of the head with a .22-caliber gun. Her killer took a currency bag from the restaurant filled with money.

A few weeks later, twenty-two-year-old Christopher Ochoa and eighteen-tear-old Richard Danzinger, roommates and employees at a different Pizza Hut, drank a beer at the Pizza Hut where the killing occurred. Afterwards, they chatted with a security guard, asking him questions about the crime. The guard thought their inquiries were suspicious and reported the conversation to homicide detectives, who then questioned Ochoa about the killing.

Ochoa's interrogation was not electronically recorded and Austin law enforcement officials have declined to comment on the details of the case. According to Ochoa, however, the police interrogated him for more than twelve hours. After asserting that they had convincing evidence of his guilt, the interrogating detectives "threatened him with a capital-murder prosecution if he did not cooperate, showing him photos of death row and even pointing out the spot on his left arm where the needle would be inserted." Ochoa said that the detectives also promised him he would not die if he admitted what he had done. In addition, the police employed other tactics that exerted pressure on Ochoa to confess. Among other things, they "falsely told him that Danzinger was in another interrogation room, blaming the grisly crime on Ochoa."

According to Ochoa's present lawyer, William Allison, Ochoa has "average intelligence," but is "meek and mild-mannered" and easily manipulated. So, in response to the interrogators' threats and other tactics, he agreed to a deal. He would avoid the death penalty by pleading guilty to second degree murder and providing "truthful" testimony against Danzinger.

At Danzinger's trial, Ochoa's detailed testimony seemed to provide convincing evidence that he and his friend had committed the crime. He testified that he and Danzinger raped DePriest eight times before he shot her in the back of the head. As Allison explained, however, the reason Ochoa was able to testify in such convincing detail was because of the information his interrogators communicated to him during his interrogation. According to Allison, the interrogators "showed him crime-scene photos, they showed him autopsy photos, they showed him everything... . Every fact that Ochoa had came from the police, because he had nothing himself." Nevertheless, Ochoa's testimony was convincing to the jury. They convicted Danzinger of aggravated rape and sentenced him to ninety-nine years in prison. A few years after his conviction, Danzinger was beaten by other prisoners, causing head

injuries that left him permanently mentally disabled.

In a series of letters from 1996 to 1998, Achim Josef Marino – who did not know either Ochoa or Danzinger – confessed to DePriest's murder, including details that would lead authorities to keys and money bags that he said he stole from the Pizza Hut. Nevertheless, the police were not convinced that Ochoa and Danzinger were innocent. Instead, they suspected that the two had acted with Marino, and they spent the next four years trying to find some connection between the three men.

When an investigator visited Ochoa in 1998 and asked him about his confession, Ochoa maintained that it was true. According to his attorney, Ochoa continued to insist on his guilt because he believed his chances for parole would be lost if he claimed he was innocent. After hearing rumors that someone else had confessed to the crime, however, Ochoa recanted his confession and wrote a letter to the Innocence Project, asking for their help. Subsequently, DNA tests determined that neither Ochoa nor Danzinger could have been the source of the semen found in DePriest. In January, 2001, a judge vacated Ochoa's guilty plea and he was released from prison after serving more than twelve years. Danzinger was released a few months later.

White, W., *Confessions in Capital Cases*, 2003 U Ill.L. Rev. 979, 1009-1012 (2003)(footnotes omitted).