



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-36,232-02

EX PARTE DANIEL KELLER, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 924217-B IN THE 147TH DISTRICT COURT
FROM TRAVIS COUNTY**

JOHNSON, J., filed a concurring opinion.

CONCURRING OPINION

I agree that applicant should be granted relief, but I would grant relief on all the grounds that have been raised. This was a witch hunt from the beginning.¹ The allegations in the indictment were based on the testimony of a three-year-old child who, even before she sporadically attended the

¹ In 1692, two young cousins, aged nine and eleven, accused three women of causing the fits that, among other things, caused them to throw things, make strange noises, crawl under furniture, and assume contorted positions. MARION L. STARKEY, *THE DEVIL IN MASSACHUSETTS: A MODERN INQUIRY INTO THE SALEM WITCH TRIALS* 3, 21-23, 33-35 (1949). Before the hysteria died down, twenty-two women and men had been hanged. Beginning in 1711, Massachusetts reversed the convictions and paid compensation to the families of the hanged. Mass. Province Laws (Private Acts) 1711-12 No. 26; Mass. Province Laws (Resolves, etc.) 1711-12 Ch. 80. Modern studies indicate that the cousins and others who made accusations of witchcraft probably were suffering from poisoning from tainted rye grains. Linnda R. Caporael, *Ergotism: The Satan Loosed in Salem?*, 192 *SCIENCE* 21-26 (1976); Mary Kilbourne Matossian, *Ergot and the Salem Witchcraft Affair*, 70 *AMERICAN SCIENTIST* 355-57 (1982).

applicant's day-care facility, was in therapy for numerous psychological and behavioral issues. In accusing applicant, she asserted that applicant had come to her house and had cut her dog's vagina with a chainsaw until it bled,² that she was taken to a cemetery, where, after a person dressed like a policeman threw a person in a hole, Daniel Keller shot the person who had been thrown into the hole and cut up the body with a chainsaw while all the children helped,³ and that she had been put into a swimming pool with sharks that ate babies. She also alleged that applicant served blood-laced Kool-Aid, forced the children to have videotaped sex with adults and other children,⁴ sometimes wore white robes and lit candles before hurting the children, and forced the children to watch or participate in the killing and dismemberment of cats, dogs, and a crying baby. According to the complainant, bodies were unearthed in cemeteries and new holes were dug to hide freshly killed animals, an adult passer-by was shot and dismembered with a chain saw,⁵ Frances Keller cut off the finger of a gorilla at Zilker Park,⁶ and applicant had performed a satanic bone-replacing ritual on one child. And the children were taken on several plane trips, including one to Mexico, where they were sexually abused by soldiers before returning to Austin in time to meet their parents at the day-care facility. In spite of such fantastical claims, which should have produced total incredulity in the police investigators and prosecutors, charges were filed.

The complainant's bizarre accusations were supported at trial by the testimony of a six-year-

² One would think that such an injury would have resulted in a police report and a trip to the veterinarian and could thus be verified.

³ One would expect at least one of the other children to have mentioned such an activity to a parent.

⁴ No such video tapes were found.

⁵ This probably is the same person who was thrown in a hole by a person dressed like a policeman.

⁶ There is no zoo in Zilker Park, nor is there any evidence that a gorilla was ever there.

old who insisted that his teddy bear was alive and could talk, that applicant gave the children at the facility drugs, that God talked to him often (a claim he recanted), and that his parents and the prosecutors talked to him about the case 21 times.

The state presented a witness, Randy Noblitt, who claimed to be an expert on satanic cults and rituals and who testified that the complainant had described such rituals. Applicant's brief on appeal noted that Noblitt had parlayed his testimony into a business opportunity, giving lectures and writing a book on the evils of ritual abuse, and that pointed to "a Noblitt-sponsored 1995 conference as providing an eye-opening look into his world view." That conference included speakers who "revealed" the FBI's cover-up of a satanic cult in Nebraska that had White House ties, the existence of more than 500 satanic cults conducting eight sacrificial murders a year in New York City, and that then-President Bill Clinton was the anti-Christ.

It was not just Dr. Mouw who was too quick to believe. If he is to be blamed for the failure to provide applicant with a fair trial, the missteps of other persons and entities need to be examined also. We do not learn from our mistakes unless and until we are required to acknowledge those mistakes.

I concur in the judgment of the Court.

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