

# Myths About the Country Walk Case

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**ABSTRACT.** The Country Walk case in Dade County, Florida was long considered a model for how to prosecute a multi-victim child sexual abuse case involving young children. In the past 10 years, however, a contrary view has emerged that the case was tainted by improper interviewing and was likely a false conviction. This is the first scholarly effort to assess the competing views of this case. Critics of this case advance three primary claims: (1) the positive STD test result from Frank Fuster's son was unreliable; (2) highly suggestive interviewing produced the children's claims; and (3) Frank Fuster's wife, Ileana, was coerced into testifying against her husband. On close examination, all three claims prove to be false. This article documents the reasons why these claims constitute myths and why those findings are significant in the larger debate on children as witnesses. doi:10.1300/J070v16n03\_06 [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2007 by The Haworth Press, Inc. All rights reserved.]

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Some of the most famous day-care sexual abuse cases of the 1980s became the primary basis for scholarly and journalistic writing about child suggestibility in the 1990s. One of the most prominent of those cases is known as Country Walk, named after a suburban development in Dade County, Florida, where Frank and Ileana Fuster ran an illegal babysitting service out of their home for approximately nine months in 1983-1984. The Fusters were eventually arrested and charged with multiple counts of child sexual abuse. A year later, Ileana Fuster pleaded guilty; two months later, Frank Fuster was convicted by jury. Ileana Fuster served her sentence and was deported. Frank Fuster remains in prison serving a 165-year sentence. The case was widely considered an example of how to prosecute a sexual abuse case involving very young victims in an era when examples of failed prosecutions were beginning to accumulate. A book that tells that story, *Unspeakable Acts* (Hollingsworth, 1986), was published a year after the trial.

The view of the case as a model prosecution was challenged in the early 1990s when Janet Reno was nominated for U.S. Attorney General. Reno had been State Attorney for Dade County and she played an important role in overseeing the Country Walk case. Strident critics of the case claimed that the evidence was weak and that the charges were trumped up (Cockburn, 1993; Isaac, 1997; Nathan, 1993a; Rosenthal, 1996). Several prominent academics picked up the cause. The leading academic book on child suggestibility, *Jeopardy in the Courtroom* (Ceci & Bruck, 1995), draws frequently on the Country Walk case as an example of the dangers of repetitive and suggestive interviewing. The view that the case produced an injustice has since been voiced in two different episodes of PBS's highly acclaimed program *Frontline* (Boyer & Kirk, 1998; Kirk, Boyer, & Audette, 2002).

Competing views of the Country Walk case have co-existed then, for more than 10 years. There has not been any scholarly effort that we can find to explore the vast differences between these perspectives empirically; that is, based on the actual evidence presented in the case.<sup>1</sup> Yet, reconciling these differences is important for reasons far beyond the historical record.

This is the first scholarly effort to verify and assess the competing views of the Country Walk case. The research on this case spanned 7 years. It included a comprehensive examination of the entire trial transcript, the

investigative interviews with the children, documents involved in the subsequent appeals, and thousands of pages of depositions in the criminal cases and in the civil cases against the Disney Corporation and the Arvida Corporation, owners of the Country Walk development.

Critics of the case advance three primary claims: (1) the positive sexually transmitted disease (STD) test result from Frank Fuster's son was unreliable; (2) highly suggestive interviewing produced the children's claims; and (3) Frank Fuster's wife, Ileana, was coerced into testifying against her husband. These claims have been widely embraced in academic writings and in the popular press. This article is confined to those claims.

On close examination, all three claims prove to be false. This article documents the reasons why these claims constitute myths. A fuller consideration of all the issues in the Country Walk case will be contained in a book currently being written by the lead author. We also leave it to other venues to engage questions such as why such myths are created and why they persist.

The significance of the Country Walk case extends beyond the question of historical accuracy. The case is widely cited in the leading books on child suggestibility and the problem of false convictions (Ceci & Bruck, 1995; Nathan & Snedeker, 1995). If their assessment of this case is incorrect, then there are important potential implications about the accuracy and predictive value of these influential works.

#### ***FIRST MYTH: THE POSITIVE STD TEST WAS UNRELIABLE***

The most incriminating piece of evidence against Frank Fuster was that his 6-year-old son tested positive for gonorrhea of the throat. Fuster himself did not test positive for gonorrhea at the time of arrest, but it turns out that he had recently received a short course of penicillin treatments after seeing his doctor about "a big pain" in his penis (*State v. Fuster*, Trial tr. 4597). Fuster's account of that treatment would be laughable if the subject matter were not so serious. According to Fuster, the sore on his penis was caused by a zipper and the doctor prescribed penicillin "just in case." He also claims that his visit to the doctor was originally "for diabetic" (*Id.*, tr. 4595) reasons. Fuster's explanation for how he ended up receiving penicillin is as follows: "My doctor said 'I'm going to check you for syphilis, just in case, since I already have the blood'" (*Id.*).

The positive test results of Fuster's son were fully documented at trial. The precise test used by the lab—the RapID/NH System—was evaluated in the *Journal of Clinical Microbiology* in March 1983. In 162 cases of known *N. gonorrhoea*, the RapID/NH system correctly identified 100% of the cases. The conventional and more time-consuming carbohydrate-based method identified 98% of the cases (see Robinson & Oberhofer, 1983, Table 1.). The article concluded that “the accuracy of [the RapID/NH system] is impressive, and the system has been proven to be superior to conventional carbohydrate degradation tests” (p. 404).

Years later, Debbie Nathan asserted that “the test” on Fuster's son “cannot distinguish that organism from others that occur normally in children's and adult's throats” (Nathan, 1993b, p. 3). To support her assertion, she cited an impressive-sounding article from the Centers for Disease Control and Prevention (CDC) called “Incorrect identification of *Neisseria gonorrhoea* from infants and children” (Whittington, Rice, Biddle, & Knapp, 1988). But the CDC article has nothing to do with the Country Walk case: none of the 14 cases discussed in the article involved children who were reported as having been tested with the RapID/NH system.<sup>2</sup> That is not surprising since the RapID/NH system is used when STDs are suspected; the children in the 1988 article were generally seen for conjunctivitis, sore throats, or routine visits. Whittington, Rice, Biddle, and Knapp (1988) concluded that “unless there is other evidence of sexual abuse, initiation of formal child abuse investigations should await the confirmed identification of the isolate” (*Id.*, p. 8). Notably, that is precisely what happened in the Country Walk case: the isolates *were* confirmed. Lab technician Freda Burstyn testified that “after the Martin Lewis agar results were observed to be positive there was a biochemical test to confirm it” (*State v. Fuster*, Burstyn deposition, tr. 4-5). Moreover, the confirmatory test was processed at a reference laboratory, as recommended by the CDC. A full text of the Burstyn deposition is contained in a Virtual Appendix, located at <http://www.brown.edu/PublicPolicy/webdocs>.

The claim that the CDC article has direct relevance to the Country Walk case is without factual basis. Notably, no one who has cited Whittington, Rice, Biddle, and Knapp (1988) with approval has also identified the specific test used in the Country Walk case. Nevertheless, the “unreliable test” myth has been given credence by Wil Whittington, the lead author of the CDC article (who has since left the CDC). Whittington filed a declaration for the defense in Frank Fuster's federal habeas petition. The declaration is most revealing for what it does not say: Whittington never claims that the “one-third false positives” reported in

the 1988 article applies directly to Fuster's case (*Fuster-Escalona v. Singletary*, Whittington declaration, paras. 18-21). As the State pointed out in its response brief, "the most remarkable aspect of Whittington's affidavit is that it does not appear to be based on the 1988 CDC report" (*Fuster-Escalona v. Singletary*, Response to Motion for an Evidentiary Hearing and for Limited Discovery, p. 7). This is remarkable because the 1988 article had been cited as the primary basis for post-conviction relief in earlier filings, and by so many others (e.g., Ceci & Bruck, 1995; Nathan & Snedeker, 1995).

In his sworn declaration, Whittington made only the oblique claim that: "the RapID/NH test as constituted in 1984 was incapable of being 100% accurate" (*Fuster-Escalona v. Singletary*, Whittington declaration, para. 32.). He did not reveal the nature or extent of the imperfection, and he certainly did not claim a 33% false-positive rate. The article he cited for the proposition that the test was not 100% accurate is in the *Journal of Clinical Microbiology* that concluded that the RapID/NH test was "an accurate, reliable, and useful method for the identification of *Neisseria* species" (Robinson & Oberhofer, 1983, p. 404). The positive predictive value of the RapID/NH test, as documented in the article, was 99.38%. The positive test result on Fuster's son meant that he had a 99.38% chance of having gonorrhea of the throat.

### **SECOND MYTH: SUGGESTIVE INTERVIEWS CREATED THE CHILDREN'S DISCLOSURES**

Frank Fuster's primary defense at trial was that suggestive interviewing created the children's disclosures. The defense hired a psychologist and a psychiatrist who concluded that the interviews were inappropriate: Dr. Ralph Underwager, known from the Jordan, Minnesota case, and Dr. Lee Coleman, who was working on McMartin-related cases in Southern California. The jury was shown 33 videotapes of interview sessions with the state's interviewers, Drs. Joseph and Laurie Braga.<sup>3</sup> The jury convicted Frank Fuster on all charges, soundly rejecting the child-suggestibility defense. The claim has since been revived by Ceci and Bruck (1993, 1995).

The child-suggestibility defense turns entirely on the particulars of how a case evolved, child by child. If all of the incriminatory statements in a case originated *after* the children had been interviewed repeatedly, then the suggestibility claim would be plausible on its face. That would

certainly merit a close contextual analysis. But that is not how the Country Walk case evolved. There were spontaneous statements incriminating Frank Fuster long before the investigative interviews. Many children displayed medical problems and sexualized behavior, and at least eight families removed their children from the Fuster's care before the formal investigation began. Moreover, the earliest investigative interviews contain specific, highly incriminating statements, often in response to very open-ended questions.

### ***Key Developments Before the Investigative Interviews***

The earliest events in a multi-child case like Country Walk are critical in assessing claims that the case originated in the interviewing phase. The child-suggestibility defense in this case has been framed around the interviews conducted by the Bragas, who began interviewing children in the case on August 9, 1984. Virtually all of the examples cited by proponents of the child-suggestibility defense are from interviews by the Bragas. The problem with this portrayal, however, is that it ignores key events prior to the interviews by the Bragas.

*The initial disclosure.* More than three months before the Bragas (or any other investigators) spoke to a single child, several parents were already concerned enough to remove their children from the Fusters' care. This unease stemmed from a spontaneous comment made by 3-year-old Steven Vickers<sup>4</sup> on April 27, 1984. After spending the day at the Fusters' house, Steven casually told his mother to "kiss my body" (Miami Dade County Police Department, 1984, p. 5). Jill Vickers, whose family used the term "body" to refer to genitals, asked her son why he would say such a thing. "Ileana kisses my body," he replied. "Ileana kisses all the babies' bodies." Jill inquired whether Ileana did this to Andy Peirson, the son of a friend. Steven said she did. Though Mrs. Vickers later testified that Steven awkwardly denied his disclosure hours later, she nevertheless pulled her son from the babysitting service immediately and told her friend to do the same, swearing her to secrecy (*State v. Fuster*, Trial tr. 4144-4179).

Three months later, another mother whose child spent time at the Fusters' was given reason to be concerned that her child had been mistreated and even drugged. On July 31, 1984, Susan Maxwell picked 18-month-old Kyle up from the Fusters' and immediately observed to a friend that her son "looked funny" (*State v. Fuster*, Maxwell deposition, tr. 13). The presence of a rash around Kyle's anus aroused more concern. When Maxwell observed her son repeatedly hitting himself on

the head with a wooden block, she examined his eyes and concluded that they looked “very glazed” (*Id.*, 13-16). After taking away the block and moving her son to another room, she noticed Kyle repeatedly banging his head on a sliding glass door. At this point, Maxwell “became convinced . . . he had been drugged” (*Id.*, 17). Maxwell contacted her son’s pediatrician (who told her that too much time had passed to make a blood test reliable), her husband, and several other Country Walk parents who sent their children to the Fusters (*Id.*, 17-19). When Sara Levy told Maxwell of a “rumor that children had been sexually molested” at the Fusters, Maxwell called a friend who worked in television news and had a contact at the state attorney’s office (*Id.*, 19-22). The police investigation of Country Walk Babysitting Service began days later.

*Widespread use of antibiotics.* Frank Fuster’s son was the only child to test positive for a STD. One might wonder why none of the other children tested positive for STDs. The answer is chilling: “virtually every child alleged to have been the victim of Frank Fuster putting his penis in their mouth was on antibiotics the entire time” (*State v. Fuster*, Trial tr. 5061-5062). The record includes other instances of children who were never involved in the criminal charges, but who also came down with raging fevers after attending Country Walk. These children were all tested for strep throat; the tests were negative, but they were all prescribed antibiotics anyway. Nobody ever thought to test them for STDs.

Jeannie Peirson noted that her son had numerous upper respiratory infections that would clear up with penicillin and subsequently reappear. She also observed what she deemed to be a worrisome rash around Andy’s penis while he was at the Fusters’ (*Id.*, Trial tr. 989-990). Vera Lee reported that her son attended the Fusters’ for babysitting twice, once in April and once in July of 1984. Both times, Lee said, James developed a fever of approximately 104 degrees and stomach and throat infections (*Id.*, tr. 1374; *State v. Fuster*, Lee deposition, tr. 12-14). Debbie Lancaster noted that her daughter April was on “ampicillin practically the entire time” she was at the Fusters, frequently complained of sore throats, and suffered from frequent rashes around her vagina (*State v. Fuster*, Trial tr. 1806). Lancaster also testified that upon picking her daughter up from the Fusters’, April was “sound asleep” and did not respond to vigorous shaking (*Id.*, tr. 1811-1813). Sheri Herschel described picking her son up one afternoon wearing only his underwear and looking “very dazed” (*Id.*, tr. 1109-1110).

*Sexually precocious behavior and other disturbing incidents.* Steven Vickers’s “kiss my body” comment to his mother was only one example of highly sexualized behavior on the part of Country Walk children. In

the interest of addressing the child-suggestibility claims alone, we limit the discussion here to behaviors observed *before* the state began interviewing any children. A number of parents reported being puzzled as to how their children learned to French kiss and why they were acting this way. Jeannie Peirson also noticed that Andy began to masturbate “quite a bit” while attending the Fusters’, though he had not done so before (*Id.*, tr. 992-993). Sheri Herschel noticed a number of sexualized behaviors in her two-year-old son, Chad. Though toilet trained, Chad would frequently defecate on the floor and urinate in his pants after coming home from the Fusters’. Shortly after Chad began attending the Fusters’, he repeatedly tried to French kiss his mother, would “constantly pull on his penis,” and once put her hand on his penis, saying “mommy, rub my pee pee” (*Id.*, tr. 1102-1103). Maggie Fletcher testified that her daughter asked whether it “was normal to eat feces” (*Id.*, tr. 1565-1566). She also masturbated in public, French kissed her parents, and tried on numerous occasions to stick toys in her rectum (*Id.*). Jackie Harrison described her sons, Joshua and Jason (5- and 2-years old, respectively) French kissing, engaging in penile and anal stimulation of each other, and attempting anal stimulation of her (*State v. Fuster*, Jackie Harrison deposition, tr. 11-13). Jason frequently asked his mother to play with his penis when she changed his diapers (*State v. Fuster*, Trial tr. 2017). Even the defense psychiatrist allowed that “it would be significant” if numerous children of that age started French kissing (*State v. Fuster*, Coleman deposition, tr. 78).

A number of parents also recounted strange incidents observed at the Fuster home. Nearly all described waiting a long time at the front door. Jeannie Peirson described seeing April Lancaster naked from the waist down. When Peirson questioned Ileana, she explained that April’s mother had forgotten to pack diapers for her daughter (*Id.*, tr. 994). Mrs. Lancaster testified that April did not wear diapers while at the Fusters’ (*Id.*, tr. 1815). Sara Levy described twice walking into the home unannounced. Once, Ileana emerged from the master bedroom and shut the door behind her, locking a whining Andy Peirson inside (*Id.*, tr. 1034). The second time Ileana did the same thing but failed to properly lock the bedroom door, allowing Andy to open the door and run out totally naked. Mrs. Levy said that Ileana’s hair was “a mess” and she seemed “nervous” (*Id.*, tr. 1035). All of the incidents described earlier occurred *before* the state began investigating the Fusters. Accordingly, they contradict the claim that the case was “created” when the State Attorney’s office started interviewing children on August 9, 1984.

The events that caused the State Attorney to investigate this case included a spontaneous statement by one child and highly unusual behavior from another, both immediately after attending the Fusters' day care. Before any child was interviewed at the State Attorney's office, several children were interviewed by a police detective and were seen at the Rape Treatment Center at Jackson Memorial Hospital. The incriminating statements made to interviewers at both places explain why children were asked to be interviewed at the State Attorney's Office.

### ***The Earliest Investigative Interviews***

The earliest interviews in any case are the most important in assessing the claim that the interviewers "created" the allegations. A systematic analysis of the Country Walk case reveals that three of the earliest children in the case have been overlooked or distorted by those advocating the child suggestibility defense.

*Steven Vickers.* The index child in this case is the boy whose spontaneous utterance caused his parents to pull out their child and warn their friend in confidence. The strength of his disclosure is evidenced by how his parents reacted. It is also the only reason that the Arvida Corporation, his father's employer, ultimately paid millions in dollars in civil settlements. The Arvida Corporation managed the Country Walk development. This boy's father actually patrolled the development looking for various code violations. Had it not been clear that his son's utterance implicated Ileana Fuster in child sexual abuse, the Arvida Corporation would not have been a defendant. Had Mr. Vickers taken decisive action and reported his son's statements and closed down the Fuster's illegal babysitting service, there would have been no possibility for abuse in May, June, or July. That is why the Arvida Corporation eventually agreed to a multi-million dollar settlement.

Steven Vickers was interviewed twice by the Bragas in August 1984. The second interview, 34 minutes long, was the only interview tape played in Frank Fuster's three-day Parole Violation Hearing in August 1985. Steven Vickers described oral sex acts involving Frank and Ileana Fuster. The videotapes of both interviews were played for the jury in the criminal proceedings. Despite his clear importance to the prosecution's case, Steven Vickers has been largely overlooked in criticisms of the case. Steven's interviews are not used in any way in Ceci and Bruck (1995). According to her affidavit, Professor Bruck, who later filed an affidavit for the defense, did not review either of these interviews (*Fuster-Escalona v. Singletary*, Bruck affidavit 1999).

*Joshua Harrison.* The first child interviewed by the Bragas was an articulate 5-year-old, who made detailed and incriminating statements on August 9 in response to a number of open-ended questions. Hollingsworth (1986, pp. 54-66) describes the initial interview in enough detail to fill 13 pages. When asked to "show me" what happened at Frank and Ileana's, Joshua described something involving his brother: "Iliana's (*sic*) changing his diaper and, uh, playing with his, uh, penis." Critics have not come to terms with the content of these early disclosures. Dr. Lee Coleman, the psychiatrist for the defense, told the prosecutor that he had no notes on the August 9 tape because it contained "just playing" (*State v. Fuster*, Trial daily tr. 75). Professor Bruck claimed in court papers in 1998 that audio difficulties had rendered the tape inaudible.<sup>5</sup> Joshua made far more detailed disclosures about sexual acts by the Fusters in a follow-up interview that afternoon. Those statements were later corroborated by other evidence.

*Jason Harrison.* The second child seen by the Bragas on August 9, 1984 was Joshua's younger brother, Jason. The boy was only 18 months old, obviously too young to testify. He was interviewed once by the Bragas. The session lasted 20 minutes. The transcription of that videotaped interview misses considerable content.<sup>6</sup> The child's body language during this session was mentioned several times in the proceedings. In closing arguments, for example, one of the prosecutors mentioned "Jason's reaction on his tape" as one indicator of the credibility of the charges involving Frank Fuster. It is impossible to assess that claim, of course, without viewing the actual tape. Even with those limits, however, the transcript indicates that in response to an open-ended question, the boy indicated that Ileana took his clothes off and did something with her mouth (*State v. Fuster*, Trial tr. 2235). Charges involving Jason were brought based on a triangulation of other evidence, primarily his brother's statements, statements by Frank Fuster's son, and statements by Ileana about lewd acts by Frank Fuster against Jason.

### ***Placing the Child-Suggestibility Defense in Context***

Critics have made general claims that the interviews were overly repetitive and unduly suggestive (Ceci & Bruck, 1993, 1995; Nathan, 1993b; Nathan & Snedeker, 1995), but none of these critics has set forth a systematic account of the interviews. Nathan (1993b) made the general claim that children did not disclose initially and, "Only later (in some cases months later), did they give affirmative statements" (p. 2). The facts of the case simply do not bear out these claims.

Every session conducted at the State Attorney's Office by the Bragas was videotaped. A log of those tapes indicates that 27 children were interviewed. The total number of sessions, however, was only 48, and a few of those sessions were not investigative interviews. The average number of interviews per child, then, was less than two. Indeed, 16 of the children were interviewed only once. Five were interviewed only twice. Those facts alone contradict the idea that the case was characterized by repetitive interviews. If there was such a determined attempt to produce "disclosures," would not every child who failed to disclose something have been interviewed a second or third time? But that did not happen. Given the number of children who attended the Fusters' for babysitting, the total number of interviews in the case was hardly excessive.<sup>7</sup> The simple ratio of interviews to children (less than 2-1) casts serious doubt on the child-suggestibility defense.

The patterns of disclosure by the children who were interviewed multiple times also belie the child-suggestibility defense. There were a handful of children interviewed between three and six times. One of those children was Frank Fuster's son, who tested positive for a STD. Most of the recorded sessions with him were not investigative interviews; rather, they were psychological assessment sessions conducted for the Family Court for the purpose of assessing which relative should be given custody of the boy. The final one, however, contained leading questions that had been requested by his mother, who apparently felt that way because of his positive STD test. For the remaining children, any interviews after the first one were almost always in response to some kind of disclosure the child made at home. For none of these children did a disclosure about sexual abuse come only after numerous suggestive interviews.

Joshua Harrison, the very first child interviewed by the Bragas, participated in six interviews. Two were very brief sessions when another child was present and those sessions cannot meaningfully be considered interviews. Moreover, the total number of interviews with this child has nothing to do with the pattern of disclosure. This child made disclosures in his very first interview; he made more extensive disclosures later that day in an interview that has been ignored by critics of the case but was described in detail by Hollingsworth (1986, pp. 50-81).

Two remaining girls have been the focus of most of the criticism of this case. Both girls appear to fit the pattern of initial denial followed by eventual disclosure after more than one interview. That is, each girl was interviewed more than one time by the Bragas and neither of the girls disclosed sexual abuse in the first interview. While that pattern alone

obviously does not prove that the disclosures were suggested by the interviews, it establishes a fact pattern that is at least consistent with that claim. On closer examination, however, there are compelling facts that contradict this claim, facts that have consistently been omitted by those advancing the child-suggestibility defense. Crystal Fletcher, who was first seen by the Bragas on August 9, did not disclose any abuse in her first interview. She did, however, talk about a “pee-pee game” in her second interview, and she made disclosures concerning sexual abuse in her third (and final) interview. But attributing those disclosures to the Bragas overlooks the fact that Crystal disclosed at the Rape Treatment Center on August 8, 1984, before ever meeting the Bragas, that Frank Fuster had put his finger in her vagina (Miami Dade County Police Department, 1984, p. 5). Similarly, April Lancaster did not disclose anything in her first interview with the Bragas. But one day prior to that interview, she told Ms. McGinnis at the Rape Crisis Center that she had seen Frank Fuster’s penis (*State v. Fuster*, McGinnis deposition, tr. 45-46).

**THIRD MYTH:  
THE STATE COERCED ILEANA FUSTER  
TO TESTIFY AGAINST HER HUSBAND**

Ileana Fuster was arrested and charged with child sexual abuse 2 weeks after her husband was arrested. She denied that there was any sort of abuse in her household. She maintained that position through much of the year at the Dade County Women’s Detention Center awaiting trial. A few weeks before the trial was scheduled to begin, however, she pleaded guilty to 12 counts of felonious child sexual abuse. It was not a plea bargain; it was a guilty plea without any assurances about her sentence, which could have been life. Ileana Fuster’s eventual trial testimony corroborated various statements children made against her husband. Her testimony also detailed her own physical and sexual abuse by Frank Fuster. Her lawyer argued for probation based largely on her own victimization by Frank Fuster. But Judge Newman sentenced her to 10 years and he took away the one thing that Ileana Fuster wanted most: her U.S. citizenship. (Ileana Fuster was deported to Honduras after she was released from prison.)

Ileana Fuster was an enigma throughout the case. She projected the image of a hardened and diffident adult when she first appeared in court

in tinted sunglasses and flashy clothes. When she testified a year later, however, Ileana Fuster was described as “tiny, almost childlike, with a long braided ponytail, nervously moving hands, and dark, sad eyes” (Messerschmidt & Ducassi, 1985, p.1B). It was never entirely clear whether she was an adult or a juvenile. She told parents in the Country Walk development that she was in her early 20s. She swore early in the criminal proceedings that she was 21-years old, although her own lawyers later produced papers indicating that she was 17-years old. The judge proceeded against her as an adult because she had sworn she was 21-years old, but he sentenced her more like she was a juvenile.

The extent of Ileana Fuster’s complicity and culpability became as ambiguous as her age. The most significant confounding factor to emerge was that Ileana Fuster was also a victim of Frank Fuster. She testified that her marriage to Frank Fuster was precipitated by a rape that left the 16-year-old girl ashamed and convinced that she had to marry a man more than twice her age. Whatever she subsequently did to children was attributable, at least in her mind, to threats and abuse by Frank Fuster. That is precisely how Dr. Charles B. Mutter, who evaluated Ileana Fuster’s competency before sentencing, explained the matter. Her own lawyer, Michael Von Zamft, came to see her as perpetrator and victim as well. The prosecution also came to view her as a perpetrator *and* a victim. Accordingly, they sought a significant sentence but also worked to place her in a juvenile facility and to help her obtain an education.

Those who question the convictions in the Country Walk case have essentially argued that the prosecution conspired with Ileana Fuster’s own lawyer to coerce her into falsely implicating herself and testifying against her husband. These critiques make four related arguments: (1) the state desperately needed Ileana Fuster’s testimony, (2) Ileana Fuster was seriously mistreated in prison, (3) she was then brainwashed into pleading guilty, and (4) she has since given a convincing retraction of her guilty plea and related testimony. All four of these claims fall under close scrutiny.

### ***The Importance of Ileana Fuster’s Testimony***

The revisionist view of the Country Walk case is that Ileana Fuster’s testimony was so vital to the state’s case that they were willing to obtain it at any cost. According to Nathan (1993a, p. 9A), “Reno decided that to get a conviction she would need a confession from Ileana Fuster.” The notion that the prosecution had to “break Ileana down” to win is

flatly contradicted by the chronology of the case. The case was originally scheduled for trial on January 7, 1985. The defense sought several delays, and the state objected and lost each time. Janet Reno made what was described as “a rare court appearance” (Daughtery, 1985, p. 3B) in June to argue against any further delay. She lost the motion and the trial date was set for September 1985. Ileana Fuster did not decide to plead guilty until the middle of August. Indeed, the psychologists who allegedly brainwashed her into that position had been hired only 2 weeks earlier. But the state was prepared to go ahead with its case *months earlier*. Their repeated objections to defense motions for continuances clearly contradict the position they would take if Ileana’s Fuster’s testimony was vital to their case.

Nathan’s claim is also contradicted by the role that Ileana Fuster’s testimony played in the trial. The state did not even include her in their case in chief; she was used only on rebuttal. Ileana Fuster was never seen as the key to the case by anyone except perhaps Michael Rappaport, the defense psychologist who apparently inflated his own importance in the case in a 1991 interview with Debbie Nathan (Nathan, 1993b, p. 6).

### ***Ileana Fuster’s Treatment in Prison***

Whatever the importance of Ileana Fuster’s testimony in proving Frank Fuster’s guilt, those who reject the substance of her testimony also argue that she was “coerced” into making those statements. They maintain that the coercion began with sustained and extreme mistreatment in prison, followed by a series of questionable visits by two psychologists. The prison mistreatment claim springs from a single truth: Ileana Fuster was kept in a “safety cell,” otherwise known as solitary confinement for some, but not all, of her time in pretrial detention. Not surprisingly, the conditions in solitary confinement are stark. But the claim of mistreatment goes far beyond the unpleasantness of an isolation cell in a modern jail. Ileana Fuster’s confinement has been described in horrifying terms, including the claim that she was “often kept nude” (Isaac, 1997, p. 32; see also, Nathan, 1993b, p. 5) and was “drugged most of the time” (Rosenthal, 1996, p. 35). The prison mistreatment claim rests entirely on a sworn statement by Stephen Dinerstein, who was hired in 1984 as a private investigator for the defense. Eight years after the conviction, Dinerstein made graphic claims about Ileana Fuster’s mistreatment in jail (*State v. Fuster*, Dinerstein statement, pp. 4-5). Dinerstein is the primary source for Nathan and Snedeker’s (1995, pp. 172-173) claims. He was also described as a “witness” by *Frontline*

(Kirk, Boyer, & Audette, 2002, p. 16), although Dinerstein saw Ileana only a few times in 1985 and was not present during any of the claimed coercion or mistreatment in prison.

These claims do not stand up for careful scrutiny of the trial records, especially the motions and hearings at the time of this alleged mistreatment. Remarkably, Dinerstein has been accepted instead, even though there are serious reasons to doubt his credibility. First, he lost his investigator's license years before making his claims about Ileana Fuster. It is unclear from public records why his license was revoked, but the revocation alone raises questions about his professionalism. Curiously, those most alert to issues of child credibility have been completely inattentive to the credibility issues that this raises. Moreover, Dinerstein's credibility was directly damaged early in the Country Walk case when his "sworn statement" that Dr. Joseph Braga was an impostor proved to be completely false. Given the public embarrassment caused by that incident, it is all the more surprising that his 1995 statement contains an obvious error related to Joseph Braga. Dinerstein refers to "Boston State University," a non-existent institution, where Dinerstein supposedly exercised his professional skill in checking Braga's background (*State v. Fuster*, Dinerstein statement, para. 20).

Dinerstein's claims, made years after the fact, are also contradicted by several credible sources of the time. First, the Fusters' own motion on this matter, heard on April 12, 1985, does not support these claims. The factual claims made by the Fusters under the banner of "cruel and unusual punishment" were surprisingly tame. Ileana Fuster wanted to be moved out of her "safety cell" into the general population, a request that the judge granted. But her complaints about solitary confinement were ordinary. She complained that she had "only limited access to shower facilities, only limited access to hot water for coffee; no access to day room or television." There was nothing in Ileana Fuster's motion in 1985 about lack of clothing or sleep deprivation. Frank Fuster's complaints about his prison conditions were patently absurd. He wanted two showers a day and cable television.

The testimony of two adults who interacted with Ileana Fuster in 1984-1985 also contradicts Dinerstein's claims. Both of these adults had far more contact with Ileana Fuster during this time period than Dinerstein did. First, Shirley Blando, a chaplain in the facility who befriended Ileana, said nothing about Ileana Fuster being nude or hosed down or any of the other wild claims that have been made on her incarceration. To the contrary, Blando recounts sitting outside in a patio with Ileana (*State v. Fuster*, Blando deposition, tr. 21) and Ileana remarked

specifically about how *well* she did even while in solitary confinement (*Id.*, tr. 38, 55). The Reverend Tommy Watson, who visited her weekly and later assisted in her education, also took strong issue with Mr. Dinerstein's claims. He wrote that during her period of solitary confinement, "I saw her in the chapel service and in Chaplain Bando's office many times. Ileana asked me to thank the Captain of the detention center for her kind care given while she was in jail" (Watson, 1995, p. 3).

### ***The Brainwashing Claim***

Ileana Fuster pleaded guilty on August 22, 1985. She was not offered anything in exchange for this plea. Judge Newman specifically asked if she understood that she could be sentenced to life in prison. Ms. Fuster replied that she did (*State v. Fuster*, Proceedings of August 22, 1985, tr. 7). The complete transcript of those proceedings is contained in the Virtual Appendix at <http://www.brown.edu/PublicPolicy/webdocs>. Ms. Fuster provided detailed testimony against her husband later that month, both in depositions and on the stand on the final day of his criminal trial. When she appeared for sentencing in November, Ileana Fuster "repeatedly told [Judge] Newman 'I am sorry. . . . I am very sorry'" (Messerschmidt, 1985, p. 1B).

Debbie Nathan (1993b) argued that Ileana Fuster's confession was the product of coercion. In an article in Ralph Underwager's self-published journal<sup>8</sup> *Issues in Child Abuse Accusations*, Nathan claimed that the substance of Ileana Fuster's testimony was created by two psychologists hired by Michael Von Zamft, her own lawyer. The psychologists did not testify in the criminal trial, but one of them apparently told Ms. Nathan years later that he did "a kind of reverse brainwashing" to get Ileana Fuster to plead guilty (p. 6). There is no tape-recorded record of that statement, nor have any written notes ever been referenced by Nathan.

The "reverse brainwashing" statement makes sense in light of the evidence that Ileana Fuster was subject to physical threats of and psychological control by Frank Fuster. Dr. Charles B. Mutter, the psychiatrist who examined Ileana Fuster several times for the court between July and November 1985, provided a cogent explanation: "although she played a role in [the abuse], this was not a role of volition, but the role of a terrorized human being" (Mutter, 1985, p. 3).

It has also been argued that Ileana Fuster's guilty plea was "hardly a definitive admission" because of something she said in court the day of her guilty plea (Nathan & Snedeker, 1995, p. 175). This claim is based

on a misleading “quote.” Following is a precise quotation from the court proceedings; the words in bold were left out of the “excerpt” as reproduced in Nathan (1993b, p. 6) and Nathan and Snedeker (1995, p. 175):

THE DEFENDANT: Judge, I would like you to know that I am pleading guilty, not because I feel guilty, but because I think—I think it’s in the best interest. It’s the best for my own interest and for the children and for the Court and all the people that are working on the case, but I am not pleading guilty because I feel guilty or because I think I have a criminal mind.

THE COURT: All right.

THE DEFENDANT: **There were circumstances and that—I was raped at sixteen. I was taken away from my home and my school. My attorney said that I am an unlucky person but** I just want you to know that I am pleading guilty not because I feel guilty or that I know I am, that I am guilty. I am innocent of all those charges. I wouldn’t have done anything to harm those children. I have never done anything in my life. **I have never seen such a case in my life before. I wasn’t raised in any environment like it.** I am innocent. I am just doing it—I am pleading guilty you get all of this over **and I think it’s best for the parents and for everyone.** (tr. 10)

What Ileana Fuster said, in an unofficial statement made after her plea had been entered, and was apparently offered as a reason for a lenient sentence. Not only have Nathan and others omitted the gist of her statement (“there were circumstances,” “I was raped”), they have also omitted any reference to what came before and after this statement. As demonstrated in the transcript of the proceedings that day, Ileana Fuster first indicated that she was satisfied with her legal representation (tr. 5), that she understood the nature of the charges (tr. 5), that she knew the constitutional rights she was giving up by pleading guilty (tr. 5), that she had not been coerced or promised anything (tr. 5), that she understood exactly what she was doing (tr. 7), that she knew she could be sentenced to as much as life in prison (tr. 7), and that she was entering a plea of guilty (tr. 7). The judge then indicated that he wanted “to go over with you some of the constitutional rights that you have and that you are giving up by entering this plea” (tr. 7). After obtaining additional affirmations from Ileana Fuster, the judge entered the requisite findings into

the record and accepted the plea (tr. 8-9). Ileana Fuster's lawyer also stipulated for the record that the evidence "would have constituted a prima facie case" (tr. 9). Judge Newman began to schedule the sentencing hearing, when Ileana Fuster's lawyer stated "I think Miss Fuster would like to say something to the Court." Then the statement quoted above was made, apparently for the purpose of mitigating her sentence. Clearly caught off guard by this statement, the judge then asked again: "You understand that I will pass sentence upon you at another time? I am not indicating to you in any way what the sentence will be. Do you understand that?" Ileana Fuster replied: "Yes" (tr. 11-12).

### ***Ileana Fuster's Dubious Retraction***

In 1994, years after Ileana Fuster had returned to Honduras and changed her last name back to Flores, Frank Fuster's lawyers claimed that she had retracted her trial testimony. The retraction was recorded in Honduras by defense lawyer Arthur Cohen. No representative for the prosecution was present, nor did Ileana Flores have her own legal counsel. It has never been disclosed what Mr. Cohen told or promised Ileana Flores in advance of this meeting. Nevertheless, Frank Fuster's defense team convinced a federal judge to schedule an evidentiary hearing. The hearing at which this "new evidence" would have subject to cross-examination never took place, even though the judge allowed for testimony to be taken by satellite from Honduras. As the defense euphemistically put it, Ms. Flores was "unavailable to provide testimony to the court" (*State v. Fuster*, Prehearing Proffer, p. 5). More accurately, she was not planning to say what the defense wanted to hear. She had, in short, retracted her retraction. The defense was left in the uncomfortable position of calling their own would-be witness a serial liar (*Id.*). Reverend Tommy Watson, who visited Ileana Fuster regularly in prison in Florida, went to see her in Honduras after the stories of her "retraction" surfaced in the Miami media. He returned with a letter signed by Ileana Flores stating that she was coerced by Mr. Cohen (Garcia, 1995, p. 2B). Rev. Watson later testified that Ileana Fuster told him that "she was pressured to give statements and that she realized that what she had done as wrong" (*State v. Fuster*, Watson deposition, tr. 32-33). Years later, she provided another retraction. This time it was on the television program *Frontline* (Kirk, Boyer, & Audette, 2002).

### CONCLUSIONS

Three major claims that have been advanced to challenge the conviction of Frank Fuster do not stand up to close factual scrutiny; they stand only as myths. As such, they inform us about our cultural fears and they alert us to our cultural blind spots. This is not an explication of all the evidence in the case. A longer version of this analysis, covering virtually every claim advanced at the trial and since, will be published as a chapter in a forthcoming book. This analysis covers enough of the evidence to generate a hypothesis about the previously unrecognized problem of disconfirmation bias. Ceci and Bruck (1995) “believe that the evolution of many of the mass-allegation day-care cases” are caused by the phenomenon of “interviewer’s bias,” also known as “confirmation bias” (p. 93). A close examination of the Country Walk case, however, reveals that a reverse kind of bias is apparently at work. Disconfirmation bias involves a selective examination of evidence with a predisposition toward the child-suggestibility defense.

The persistence of all three myths analyzed in this article seems to exemplify disconfirmation bias. These myths can be believed only by ignoring available evidence to the contrary. The exaggerated claim on error rates and STD testing can be uncovered by reading the sources cited in Whittington’s affidavit. So, too, the child-suggestibility defense can be debunked by reading the trial transcripts. But Lee Coleman, who testified for the defense, allowed that he never looked at the number of instances in which children made statements about sexual abuse that were in response to open-ended questions (*State v. Fuster*, Trial tr. 4410). Similarly, Ceci and Bruck (1993, p. 421) criticized a few lines reported in Hollingsworth’s (1986) account of the first interview with Jason Harrison. But the statements that he made earlier in the same interview, described in detail by Hollingsworth (pp. 51-69), contradict the idea that the interviewers created the disclosures. Similarly, Ileana’s “recantation” has been accepted at face value by many, even though the transcribed record contains numerous statements to the contrary. In one response, Ileana twice says “those things probably happened” but Arthur Cohen, who represented Frank Fuster, did not follow-up and ask what “probably happened” (Institute for Psychological Therapies, 1994, p. 200). Similarly, when Ileana started describing her fear of Frank Fuster, Cohen cut off her answer in the middle of this sentence: “And because I was so afraid of him that I would break down. You know, even today . . .” (*Id.*, p. 204). The disconfirmation bias in these examples seems apparent.

A rigorous analysis of the facts of the Country Walk case reveals that the child-suggestibility defense simply does not fit the facts of the case. The widespread acceptance of that view by many in the media and academia is of political and social significance. The phenomenon of disconfirmation bias appears to help explain these trends, which undoubtedly deserve more analysis in the future.

### NOTES

1. The federal court system has examined the case in detail since Fuster's habeas corpus appeal was filed in 1994. That appeal was recently denied by the Eleventh Circuit Court of Appeals (*Fuster-Escalona v. Crosby*, 2006). His petition for review by the U.S. Supreme Court was denied on February 16, 2007. The defendant is consistently listed as "Francisco Fuster-Escalona" in federal documents. The state documents are inconsistent, referring to him as "Frank Fuster," "Francisco Fuster Escalona," and even "Francisco Escalona Fuster." For this article, the caption *State v. Fuster* is used for all documents from the state court proceedings.

2. The article describes the general basis for the original identification in 11 of the 14 cases. It was apparently not known in the other three cases.

3. There are 48 tapes listed in an index that has been filed with various appellate documents. Not every one of these sessions was an investigative interview. For example, the first three sessions with Jamie Fuster were ordered by the Family Court for determination of custody, not for investigation of sexual abuse charges. Similarly, there were several recorded interactions between the Bragas and several children after the indictments had been finalized. They were not investigative interviews and they could not possibly have affected the contents of the charges in the case. The defense deemed 13 of the videotapes to be so irrelevant that they did not show them to the jury.

4. This article adopts the pseudonyms used in Hollingsworth (1986).

5. *Fuster-Escalona v. Singletary*, Bruck affidavit, para. 163, p. 56. But the trial transcript indicates that the audio difficulties were with the court reporter, who moved to another room to transcribe all of the remaining tapes. One juror indicated that some of the sound in the first tape was "distorted in my ears" (Trial tr. 2193, line 19); nobody else indicated a problem. Indeed, if the audio track did not work, then Hollingsworth would not have been able to describe the tape, which was played in open court, in such detail.

6. The transcript is 17 pages long. Jason's responses are recorded as "inaudible" 21 times. There are 12 instances where "no response" is attributed to Jason. Four times the transcript indicates that the child is demonstrating something, but there is no description of what is demonstrated.

7. An anonymous reviewer pointed out that multiple interviews should not automatically be considered improper. It is difficult and possibly inadvisable to put a child on the stand on the basis of only one interview. The more refined objection to multiple interviews concerns the reliability of "new" information revealed after the first interview. Recent studies suggest that this concern might be overstated (Quas & Schaaf, 2002; Peterson, Moores & White, 2001).

8. See Houtt (2006, p. 14) on the status and apparent bias of this journal.

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