66039-0

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FILED
COURT OF APPEALS
STATE OF WASHINGTON
2011 JUN -3 AM 10:51

State of Washington

v. Case # 66039-0

Allen Jack Frost

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

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COURT OF APPEALS
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STATE OF WASHINGTON	)	
Respondent,	)	No. 66039-0
V.	)	
ALLEN JACK FROST	)	STATEMENT OF ADDITIONAL
Appellant,	)	GROUNDS FOR REVIEW
	)	

I, Allen Jack Frost, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not fully addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

ADDITIONAL GROUND 1, 2, and 3.....Please find attached my declaration of additional grounds. After a very brief history I will discuss and support further:

1) INEFFECTIVENESS OF COUNSEL, herein, I will provide a more extensive discussion of the aforementioned facts as well as new and un-presented facts with supporting argument.

2) MOTION FOR RELEASE OF RECORDS, herein, I will discuss the post trial motions regarding the mental health issues of Brandii Cantrell as presented by David Zuckerman.

3) MOTION FOR A NEW TRIAL, herein, I will discuss the efforts of David Zuckerman who represented me through sentencing and entered a new trial motion after the verdict based.

Dated.....June 1st 2011....prepared and submitted by _____

Allen Jack Frost

Can the Trier of fact always recognize the truth? Can the Trier of fact, without the guidance of a mental health expert, always trust what they are hearing and seeing? Can the listener believe the testimony of Brandii Cantrell? Does the task of finding truth become more difficult if the defense counsel is unprepared and completely ineffective? In the following declaration I will attempt to answer these questions.

I certify under penalty of perjury under the laws of the state of Washington the following is true and correct. This is a basic summary of the language that Brandii Cantrell, either by signature or by the raising of her right hand, attested to each time she appeared in or submitted declarations to the various Courts, law enforcement interviewers and deposition interviewers. She made a similar avowing of truth on every declaration regarding the 3rd party custody case heard by Comm. Hillman and Judge Prochnau. She made such avowing of truth each time she testified or was interviewed regarding her criminal charge of rape by me. She made such avowing of truth each time she filed a NCO violation claim against me all of which were dismissed. She made this avowing of truth as she signed the custody agreement granting custody of her child to me during her heroin relapses. She made this avowing of truth each time she told the Court she was raped by her would be father in law and the grandfather of her first child and each time she claimed the following:

- when he found out I was shooting heroin he raped me,
- when I felt strong he disabled my car and kept me from leaving the property for a year,
- Jack gave me $50 to $100 dollars to buy heroin daily for a year,
- he gave me heroin and syringes,
- Jack gave me those checks,
- Carol didn't know about his BECU card,
- no, I have never seen that letter before... and no, I didn't write it, Jack Frost forged it,
- Carol has severe OCD and is on several medications,
- Jack refused to get me help and kept me addicted for a year,
- I tested positive for opiates after the wreck...my mother gave me a Vicodin for my back pain,
- he threatened me into giving him custody,
- I only pretended to clean their house, Jack and me put on a show,
- no, I didn't work that year, Jack gave me hush money,
- no one but Jack and Carol lived in the home at the time of the rape,
- I told my mother of the rape on January 27th 2009,
- Logan stole and forged those checks,

and, every time Brandii said that she never hurt her daughter she had sworn that she was telling the truth. Each statement listed above was made after Brandii completed treatment and stated "now I am

clean and sober... and strong enough to finally tell the truth". The following is an ***examination of that truth*** as told by Brandii Cantrell, as heard by various legal observers and missed by Richard Warner.

I will begin with a brief history of the undisputed events of Brandii in my family and continue with a discussion of my attorney (at the time) Richard Warner's ineffectiveness regarding the above points.

My wife, Carol, and I got to know Brandii Cantrell a few months prior to her 18th birthday. She had been dating our son, Logan Corey. We helped them move into a one bedroom apartment in Enumclaw in August of 2006. By the end of December she and our son had confessed to Oxycotin addiction and Logan had asked for our help. On December 27th of 2006 the five week pregnant young couple moved into our basement. Brandii and Logan shared the space with Jordyn, the last of Carol and my seven children, who was a junior at Enumclaw High School. During the next twenty-four months Brandii became like a daughter to us. We were excited to have her in our family and grateful for the help and strength we believed she was bringing to our struggle with our son's addiction. She had stopped oxycotin a few weeks into her pregnancy. She and Jordyn became close friends even though they were on divergent paths, Brandii to young motherhood and Jordyn to Seattle University as Biology major. We enjoyed having the "kids" in the basement, and set up a "work for rent agreement" in which Brandii took care of the house during and after her pregnancy. Carol was very busy, she had taken on a new student at Tahoma High School where she was a full time para-educator working with profoundly disabled young adults. Brandii's help around the house relieved Carol of the burden of house work; her help was a Godsend.

Kendle Corey was born July 19th 2007 and won the hearts of all who cared for her. Logan had found a good job and it appeared that the 'kids' would soon have a home of their own like Logan's older brothers. Brandii, although she had dropped out of school at 14, showed interest in completing her education and even considered following Logan's sister and step sisters to college. Logan had proposed to Brandii and we were to have a wedding in the future. We found the first syringe in October2007, Kendle was 13 weeks old. Brandii, who we believed was helping us with Logan's oxycotin addiction, assured us that there was no problem and told us the syringe probably fell out of her mother's purse, explaining "my mom (Brenda Cole) is a meth addict." We knew Brandii had come from a broken family and that her real father had been in prison nearly all her life. We felt, with the right opportunity, Brandii could be anything she wanted; all she needed was a chance. In December of 2007 Brandii and I began looking Craig's list to find her a local nanny position. Keezia, one of my daughters, had

supplemented her scholarships at the U with a part time nanny job. We were seeking a family with small children that would allow Brandii to bring her 5 month old baby to their home while she cared for their children. Jessica Johnson answered our ad and, as a trial, Brandii baby sat her boys New Year's Eve. They were happy with her and offered her a job starting January 2nd of 2008. Saturday, January 5th, Carol and I were contacted by our bank; "someone is trying to cash your check and it's neither of your signatures". Brandii had stolen a check from my desk and she and Logan were in Buckley trying to cash it to buy heroin. My wife and I arrived on the scene about 20 minutes later. Our son was in handcuffs and Brandii had been separated from 5 month old Kendle. Detective Plaster was preparing to take both of them to jail and Kendle to CPS. We were shocked. We immediately explained to him that we knew Brandii was a good mother and that she had been helping us with our son's addiction. After speaking with Logan, who stated he was out for his "last hurrah" before going into treatment the next morning, we thought we understood. We convinced the officer to release Brandii, who we thought was not a drug user, and allow us to take Logan to treatment day early. This was the first day of a nearly 2 year nightmare that culminated in my false conviction for rape 3 and the loss of custody of our granddaughter because of the guilty verdict.

Carol and I, as well as Brandii and Kendle, drove Logan to treatment that Saturday night. Brandii did not feel well so she went to bed as soon as we returned from the hospital and Carol and watched Kendle. By the next morning Brandii was violently ill and it became apparent that it was more than the flu. After some discussion Brandii admitted to heroin use, she showed me and, 90 minutes later, Carol, the extensive track-marks on her arms. Carol had returned from Church at 10:30 that morning and we went down together to talk to Brandii and check on Kendle. Jordyn had left for work after giving the baby some rice cereal. Brandii admitted she was going through withdrawal and had been injecting heroin beginning in August of 2007. Carol called the clinic and they told her that Brandii would be very uncomfortable for 3 days but she was in no danger and that with the help of a few over the counter remedies she would be fine. Brandii wanted to do her withdrawal at home; she wanted no record of her addiction and ***refused treatment***. According to Brandii....this is when, after discovering that she, ***my future daughter in law and the mother of my beloved granddaughter*** was a heroin addict, I, the happily married father of five very successful women reacted to the addiction discovery by raping her while Carol was at work. In actuality, the day after Logan's admittance was **Sunday**, January 6th2008 and here begins the divergence of fact and the start of Brandii's fabrication. I will complete this history using excerpts from her sworn incident statement of March 3rd 2009, her sworn 'Victim Statement' of March

17th2009, her sworn declarations made throughout 2009, her sworn testimony in front of Judge Prochnau on both April 17th2009 during a custody hearing and May 19th2009 while requesting a NCO, her release of the No Contact Order between Kendle and I on July 24th2009 (also with Prochnau), her treatment results from Sundown M Ranch, her sworn interview with the DPA and Warner's office, her three separate and signed custody agreements giving Kendle to Carol and me if she were to relapse, and her intake evaluation dated January 27th2009. *All of the above documents* are in evidence in one form or another and all were available to Richard Warner, my criminal defense attorney. I will, using the aforementioned as well as other documents, describe the incredible lack of understanding Mr. Warner had of this case and how his ineffectiveness led ***directly*** to the Judge's guilty verdict.

The 'Victim Statement' was identified in front of the Court but was not brought into evidence. Because I believed the 'Victim Statement' was important, I strongly urged my attorney to take the Prosecutor to task for his refusal of admittance. By this point in the trial, Warner and I had had several strong disagreements regarding the case and I had been told on several occasions that he was the attorney and I was the client and that if I didn't like it he would be more than happy to withdraw from the case; he explained he had more than enough work and did not need my complications. This was not an option as Carol's and my entire savings had been depleted from the simultaneous custody and criminal Court cases. We had no recourse but to continue with Warner who had already been paid. Warner's response to my refusal to back down on the admittance of the 'Victim Statement' was... "*Shut the f___ up Jack! Or I will clock you*!" He said this to me at the defense table while we were in front of the Judge during Warner's cross examination of Brandii. I never recovered what trust I had in him and I felt very frustrated at his lack of courtesy and patience and his unawareness of the most basic facts of the case. I began sending nightly e-mails regarding the points I felt were being missed. He had, through an agreement he made, allowed the DPA to block reference to my character thus preventing the calling of any of my step-daughters, who all had been in my home with never a word of impropriety their entire lives. He refused to call any of the players of the many teams of girls I coached over 8 years without incident, who are now all adults. He had refused to call the Psychologist or the addiction specialists who had worked with Brandii during the 13 months she lived in our home after the incident at the bank on 1-5-08. The Psychologist, Kevin Connolly, had provided 4 declarations in family Court to clarify issues and help the Court understand Brandii's fabrications associated with her mental health issues. During the trial, in a series of e-mails, when I re-presented the use of the Psychologist's declarations Warner denied ever having these declarations and even went to the point of lying in his own declaration

submitted by the state in response to my new attorney's motions for a new trial and mental health evaluation of Brandii. Warner told Judge McDermott, hearing the Motion for a new trial, that he had reviewed Dr Connolly and that the Doctor wasn't qualified to testify and had nothing to offer. ***This complete fabrication*** is how he explains his reasons for not using Dr. Connolly's testimony in my defense. *Warner never spoke to Connolly*; had he checked the man's credentials, Warner would have discovered that Connolly had nearly forty years of experience and owned a practice with 30 various mental health providers working under him. The e-mails presented to the Court in our pursuit of a new trial show Warner's deception. He was not even willing to study the family Court declarations and tossed them back at me telling me, "quit bringing me your family court crap Jack!!" When I pursued Brandii's early mental health disclosures to Carol and me, Warner told us... "Just because she and her mother are bipolar doesn't mean you didn't rape her...drop it Jack." He had completely missed the point and, until much later, remained unwilling to recognize the significance of Brandii's conditions and what she was capable of. After dealing with her in Court he finally realized how profoundly effective she was within her fabrication. By then it was, "...Too late now, Jack."

Another point made in the new trial motion by Zuckerman shows that Warner had not recognized the true value of a very stern warning given to Brandii on April 17, 2009, in the family Court proceedings by Judge Kimberly Prochnau. Warner failed to even listen to the official audio recording that I presented him. He had me describe what was on the tape and, not recognizing that the admonishing Brandii had received, was her ***entire motive*** to continue with her rape charge until the custody case was completed...Warner rejected the quote. In this warning, Judge Prochnau told Brandii, in no uncertain terms that if I was acquitted and it was discovered that she had made up the story to "put the man that helped you most in the hands of the police"... "It would be a very horrific...lack of empathy"...*and you would not be a fit mother*. Warner dismissed the value with a simple "the Judge didn't say she was lying...she said if you are lying" however, this was Brandii's motive for *never backing away* from her story; if she admits the lie, she loses Kendle. Based on his opinion, it seems Judge McDermott sees her continued pursuit of my conviction as a proof of truth because Warner failed to provide a motive and failed to demonstrate that there were multiple custody agreements in place when Brandii began her threats on January 14th2009, and ***she knew*** her child would be removed due to her "*lack of empathy*". Further, Warner did not complete *promised* interviews of the main defense witnesses leading to the exclusion of two alternate versions of the rape story that Brandii had shared with these witnesses. Warner had his assistant interview Carol and Logan in preparation for the trial,

time ran out during the interviews and plans were made to finish interviewing later in the week. They never contacted Carol or Logan again and when I questioned Warner why they still hadn't finished talking to my family he said, "I already have too much to go through, your wife talks a lot" and "Logan has a history of addiction"..."Before I put them on the stand I will go over their testimony with them". He did not and because of this, both witnesses were very frustrated that they had no opportunity to share their complete knowledge with the Court. With an unprepared Warner asking the questions during the trial neither witness was utilized effectively and both complained of their confusion with the presentation of his questions. I too found myself more than once during my testimony wondering; "*What is he talking about? We haven't even finished the previous question and now we are off on another subject.*" Due to the unfinished interviews and because they were based on sequential recollections of Carol and Logan's lives with Brandii, the last 13 months of Carol's time with Brandii were not covered. The interviewer was only to the point of early January of 2008 and he had not even begun to get Carol's memories of the day of the alleged rape or any of the 13 months of Brandii living with us that followed. Not only did Warner miss information critical to his preparation for the deposition interview of Brandii, he also missed descriptions of phone conversations regarding the rape story as told to Carol by Brandii and to Logan by Brandii. These versions were never heard by McDermott because Warner failed. Warner told me, "I am busy with a much more complicated case Jack"and that he would get to me after that trial. When his missed opportunity regarding Brandii's multiple versions of the alleged rape was discussed after the guilty verdict, he said... "I am sorry Jack...it's too late now and this information was available to me so it cannot be used in a motion for a new trial...I am very sorry and *I will fall on my sword* for you, if you need any help". This was an empty promise of the first order.

Warner did not impeach or bring any question to the credibility of Brenda Cole's testimony even though he had, in his file, undeniable proof that she made up her story, that on January 27th2009, Brandii disclosed being raped to her. This key witness, Brandii's mother, was allowed to testify with no access to her very extensive criminal and mental health history. However, Logan's credibility was allowed, by Warner, to be challenged in detail. Warner had, but did not present, Brenda's time card showing she was at work all day on January 27th, ***not home with Brandii*** as she testified. He failed to bring any doubt to her credibility. Also, when in midtrial, the DPA introduced an unviewed intake evaluation containing at least 7 significant mistakes made by the intake counselor at "The Center" and called Alice Adams as an expert; Warner failed to notice that **Brandii's answer** regarding sexual assault on this evaluation form **contradicted what she had stated in a sworn interview 4 months earlier** by

Warner's office. To understand how significant the above points are it is necessary to review the Judge's Opinions. I will quote each portion of the opinion that is relevant and will provide the proof of my attorney's ineffectiveness. This ineffectiveness led ***directly*** to Judge McDermott's misguided finding of each fact and ultimately to the guilty verdict.

The Judge states in his opinion of February 8th2010, "Despite a 14 month delay between January of '08 and the March '09 police report, that Ms. Cantrell was able to recount the rape in great detail. I believe that her *report remained consistent*, in spite of many inquiries and many rounds of examination. I watched everybody testify, I tried to determine whether or not those people had credibility. There is no doubt that Ms. Cantrell has given inconsistent stories about a number of things in the past, including the theft, inconsistent stories to the judge hearing the child custody case, inconsistent stories to the authorities who were investigating various allegations of drug possession. ***Nevertheless, I was convinced in watching her in this courtroom that she was telling the truth***. Her reaction to the questions, her body language, the way she conducted herself and the way she answered to me was indicative of someone who was profoundly and permanently affected, in a negative way, consistent with an event of this nature." (Pg. 4 lines 8-25 of the Judge's opinion)

Had Warner been effective the Judge would have realized through the examination of her 'Victim Statement', various interviews, child custody court transcripts, and family court declarations that Brandii remained extremely consistent in ***all*** her exposed deception until the *evidence was so strongly against her that she apologized and changed her story*. Warner was so ineffective that the Judge makes the point that Brandii was inconsistent in all other areas but that she remained consistent about the rape. This is her Modus Operandi and Carol and I observed her, when caught lying, she will apologize and beg for forgiveness. She would often plead to Carol and me, "I am so sorry, you are the only people that believe in me, and how I could do this to you? Please forgive me." She has yet to be proved a liar regarding the rape allegation; therefore, she has not made her plea for forgiveness and her story appears, at first blush, to be consistent. I will give 3 examples of her unwavering consistency that can be documented. Then I will re-emphasize the complete inconsistency of her *rape story*.

On June 6th2008, Brandii totaled her car with Kendle and the 2 young Johnson boys in the back seat. At the hospital, where they were taken by the EMTs, she tested ***positive for opiates***. She and her mother told the physician that her mother had given her a Vicodin to relieve her back pain. This story was repeated in and out of Court unchanged with great detail for 11 months. In front of Judge Prochnau Brandii stated... "No, I didn't tell them I'd been using heroin because I didn't that day I had told them

that my mother had given me a Vicodin and a valium". This is 11 months after the accident and her *story remained as told* until Logan, in a family court declaration, told of their meeting at Safeway and with the 3 very young children left in the car, Logan explained they met at and shot heroin in the Safeway family bathroom and within 5 minutes she had hit a power pole doing 45 miles per hour. Only when her lie was proved did she reveal the truth. However, the Judge sites all of her stories as inconsistent with the exception of the rape claim, which has not yet been proven false. Had Warner sited any of the examples available to him and made it clear that she holds to a story under incredible scrutiny, the Judge may have read between the lines and recognized her ongoing deception.

A further example demonstrating her consistency within each fabrication comes from this same verbatim report: Brandii, to the family court Judge, states that, a handwritten letter detailing her drug use, her lying and stealing in our home, and her shame that she had "...hurt those that helped her the most", was a forgery. Brandii, to Judge Prochnau, stated that until the custody case she had never seen the letter in question. She testified on three separate occasions in front of Judge Prochnau that she did not write the letter and had never seen it. This deception went on for nearly 8 months until ***we hired a handwriting expert*** who wrote a declaration stating that he was 100% positive that Brandii was the author of the letter. On May 19th2009, Brandii told Judge Prochnau, "No it is not my handwriting and I do not know who wrote it". Also, while asking for help with a declaration of support from CPS, Brandii was questioned about the letter by Jessica Chaney, the case worker familiar with our situation. Brandii told Ms. Chaney "Jack Frost wrote that letter; he has a history of forgery". Recognizing her deception, Ms. Chaney did not agree to help her, so Brandii called the head of CPS and told him that Chaney had colluded with us to take her child. Brandii included in one of her **sworn** family court declarations her story claiming that the CPS director had removed Chaney from the case for fraternization and that she had been reprimanded by CPS. None of this happened. The Director stated that he told Brandii he was not familiar with the case and that Ms. Chaney was very competent. This was the extent of their exchange yet in a **sworn** Court declaration she discredits Chaney. This exemplifies, as described in the Connolly information later in my declaration, the borderline's need to "split off" those who can't or won't help her. Warner neglected to even read the Chaney reports submitted in family Court and failed to question Brandii regarding her claim of my "forgery". Brandii remained consistent with her sworn 'letter' testimony from February 2009 until Warner's investigator asked her about it in a sworn interview on October 26th2009. Brandii stated, "I don't remember writing it and it doesn't sound like something I'd say...but if the handwriting guy says I wrote it, I guess I did". This letter "Week (her spelling) Brandii's

letter to strong Brandii" (exhibit 27) was written to herself as a reminder of nearly losing Kendle and nearly losing her own freedom. It is dated 1-6-08, the day of the alleged rape and it is a damning review of her recent actions. It contains details of shooting heroin and nursing... "You might as well have cooked up a hit and shot her up because that is what you were doing" ...lying, stealing, forging and pretending to help us get Logan clean while all along "shooting up with him".

The final example of Brandii's unwavering consistency in her stories is twofold: In all her police reports, custody declarations, and sworn testimony she states that she was not allowed to leave our property and that "hush money" was her only source of income. When asked where she works, Brandii states in her 5-17-09 victim statement: "I just worked around the house...my money came from Jack to keep quiet...every time I was sober and tried to leave, he stopped me". This quote is from her sworn 'Victim Statement'; (exhibits 5-6) the statement the Detective used to file her charges. She made the same claim of restricted freedom in her 2-22-09 declaration admitted as exhibit 16. If the Detective or the DPA's office had checked her statement through bank and employment records they would have discovered ***she worked and was gone from Carol's and my home with Kendle daily***, before and after the alleged rape. Her jobs lasted for nearly nine months and she earned $400 every pay check and each check was deposited in her US Bank account. If the Sheriff's Detective, Ms. Ferguson, had discovered that truth she may have looked closer at the rest of Brandii's statement and realized that it was unsupported and that it was a complete fabrication. After nearly 2 years with Brandii in our home, we realized it was impossible to tell her truth from her lies. Carol and I, as well as all of our kids, never suspected her of any deceit for years. She has fooled and continues to fool loved ones, multiple Judges, Commissioners, Doctors, Lawyers, Psychologists, CPS workers, UA testing facilities, Addiction Specialists, and Prosecutors. As I will explain later while discussing Dr Kevin Connolly: The Judge, the Detective, and the DPA found her testimony believable because they had no idea they were observing, a psychopathic borderline playing the role of a victim. To further this point, Brandii's testimony was **very early in the trial** and the **Judge believed her**. Because there was no qualification of her statements through expert testimony regarding mental health issues, the Judge, early in the trial, had already determined that she told the truth regarding the rape. Where does that put the value of the remaining testimony? Is every defense witness lying as the state would lead one to believe? The DPA states all the defense witnesses are in my pocket. Had Warner called Dr. Kevin Connolly to testify, he would have testified to my depth of character and he would have given the Judge a reason to question his perception of Brandii. ***I cannot make this point strongly enough***. Warner had all of Connolly's, Carol's and my declarations from

the custody and NCO hearings which address Brandii's mental illness. As Connolly stated in his *fifth declaration*, this one for a new trial and presented by David Zuckerman, "I submitted four declarations during the course of court proceedings regarding the custody of Brandii and Logan's daughter Kendle...I stand by what I said in those declarations. I would have been willing and available to testify to the same points at Jack Frost's criminal trial. I was ***never contacted*** by his defense attorney (Warner)." Connolly continues, "I will amplify some of those points in this declaration. First, during any of the times that I saw her, it would not have been possible for Brandii Cantrell to enter in-patient treatment. (The DPA states Frost is negligent and didn't get her help because he knew Brandii would disclose the rape; Connolly's testimony would have directly contradicted the DPA) In fact for a long time she denied that she was an addict...it is important to recognize that from the beginning, Jack and Carol's motivation was clearly to help these kids and provide safety for their granddaughter. It was also apparent that *Brandii was not uncomfortable with Jack* in my presence; she also had the opportunity to speak to me privately several times without the slightest intimation of a problem with Jack's behavior. I did not have the opportunity to fully evaluate Brandii for purposes of a diagnosis. I believe it would be helpful to the court, however, for her to undergo a thorough assessment regarding potential personality disorders and other psychiatric issues. I understand that Brandii self-reported the diagnosis of bipolar affective disorder, and it may well be that that diagnosis is appropriate. The existence of such a mood disorder however, can go hand in hand with a personality disorder, such as borderline personality disorder or psychopathic personality disorder. The latter diagnosis struck me as something that should be explored in Brandii's case. It would also be crucial for the evaluator to be not only expert in psychopathy and borderline phenomena, but also have all treatment records available. Borderline personality is sometimes described as an "as if" personality. Such a person can be whatever others want her to be. *She can mimic emotional states that do not truly pertain to anything she has experienced.* People with borderline personalities can be pathological liars. They actually convince themselves that what they are saying is true. They see others as objects to be manipulated to gain their own ends. Persons with borderline traits can be quite convincing in their lies because they give every outward indication that they are relating something real. They will also cling to their story under pressure, and in some cases have almost perfect memory for the details of the lie, making it very difficult to determine the truth without external verification. One way that a borderline personality may manipulate people is through sexual seduction, as was apparently the case with Brandii and Logan at certain times. I have been informed that Brandii willingly left Kendle in the care of Jack and Carol at many points after she alleges

that she was raped. In fact, it appears that she did so even during the course of the rape trial. Such behavior could be consistent with what is called a "psychopathic slip", in this case a slippage in her story that Jack truly was a rapist. No one leaves their child with someone who raped them or even in their household when they have other options..." (Connolly declaration as attached to Zuckerman motions.)

For this information to be kept from the Judge is inexcusable. The life of an ***innocent man*** is at stake. Warner was completely ineffective regarding Brandii and her family's mental health conditions. This ineffectiveness was exposed when David Zuckerman presented a motion, on my behalf for a new trial, including a mental health evaluation of Brandii. Judge McDermott in his denial for the mental health evaluation stated; "At the trial the victim was examined at great length for approximately three days, and many witnesses testified about the victim (including the defense witnesses who personally knew the victim as well as the defendant himself) on the defendant's behalf, but no evidence was elicited to support the theory that the victim was psychologically unstable during the relevant time period...the defendant's showing was inadequate to justify the discovery of the victim's confidential records ....motion denied". The Judge had been left in the dark because ***Warner was asking the questions of the above mentioned defense witnesses*** and refused to review, read or speak to Connolly until well into the trial when in his response to the following email "Warner stated... "Too late, Jack!" This documented email was sent to Warner by me on January 23, 2010, half way through the trial. I quote: "To describe my disappointment re: the value of Dr Connolly I have to go back to our initial (6 months prior) discussion. I was presenting the information included in the packet I brought for you...I told you that, Dr Connolly, who had written 4 declarations in our favor and had counseled Brandii on several occasions, would be a good witness for me. I told you that he had 35 years of experience with a PHD in Psychology. I told you that one of the declarations in particular addresses the rape claim. You said you would consider this. Later when we were discussing witnesses and evidence I brought up Connolly again and you told me "why would I call someone who could testify to your failing marriage...drop it Jack" at that point I had assumed that you had *at least read his declarations*. Last week you announced to me "I don't have any declarations from Dr Connolly" and that you did not read any of his declarations or any professional stuff and that "this is not your family court case Jack drop it". You dismissed the importance of the family court declarations...Jessica Chaney...and the "week Brandii letter" it got to the point that I was afraid to speak to you. Now you tell me that the man with 35 years of experience cannot be called on my behalf. Here is what I am losing...He stated that Brandii is a borderline sociopath with no regard for the people her statements affect. This goes the entire gamut

from the way she explained the first syringe.... "It must have fallen out of my mother's purse".... "Carol has severe OCD and is on several medications" ... "Logan stole and forged those checks".... "Jack raped me" ... and on and on and on. Lies are a means to an end and in Brandii's case it is chronic. Connolly would have testified that this is a mental condition and that she needs help. He would have testified that rape is an act of violent control and in all his years with this type of behavior he has never heard of a rapist having conversations with the victim, attempting to share preferences, or oral stimulation for pleasure much less pulling out to ejaculate. I want his participation! Is there any way this can be rectified? I want to get his testimony to the Judge...is there a way? He is dismissed, by Brandii, in the Prochnau hearings as "only addressing the relationship" He saw B several times she is bipolar and has stage 2 mental illness and one symptom of that is a total lack of concern for the person her story affects..."He raped me... lying is a means to an end and there is no forethought as to the consequences for people with this type of mental illness. FYI....Dr Connolly says our marriage is strong!!!!" (The e-mail ends and is accurately reproduced above) Warner's response to the above email was "it's too late to add witnesses". He makes no mention at any time that he has reviewed Dr. Connolly; this and his other responses are admittance by omission that ***he did not even look into the Doctor.*** This explains why he lied in his declaration written in support of the state's opinion and to cover this profound lack of effectiveness. Warner claims, in his declaration, "...It was my understanding that, on occasion, Jack and Carol brought Brandii to their sessions...It was my understanding that Dr. Connolly never saw Brandii as a patient in a formal mental health setting, nor did he treat her for any mental illness." Warner continues, "I looked into Dr. Connolly's experience and background to determine whether he had previously been qualified as an expert witness in criminal case. **It did not appear to me** that his practice focused on rape victims and post traumatic stress in rape victims. I did not believe he was qualified to testify as an expert witness in this case...no basis to call Dr. Connolly to testify to Brandii's purported failure to disclose her rape to him. He was the Frosts' therapist. There was nothing to suggest that Brandii had a patient-therapist relation or any reason to trust or confide..." This declaration came with the state response to the new trial motion due to ineffectiveness of counsel. This statement made by Warner completely contradicts what he told Carol and me after the guilty verdict. When the three of us discussed Connolly's value as evidence for a new trial Warner was totally uninformed about any detail of Dr. Connolly and very apologetic regarding this lapse. Had he actually spoken with Connolly or read the four declarations provided by Connolly, he could not have come to the conclusion he stated in his declaration.

Continuing now, with Judge McDermott's statement regarding my guilt: "Brandii's story remained consistent". On February 11th 2009, well after Brandii has *allegedly disclosed* the rape, Brandii's mother, Brenda Cole, began a custody attempt of her own. She submitted a declaration explaining why Kendle should not remain in the Frost home. There were very critical statements made about both Carol and I with absolutely no mention of any inappropriate behavior on my part. In the trial both Brandii and her mother testified that they had talked about the rape on January 27th2009. Yet, there is no rape mention in Cole's declaration. Her declaration attempts to paint my wife and I in a bad light. On February 18th2009 we were granted an ex-parte order giving us temporary custody of Kendle. I got a phone call that night from Sundown M ranch where Brandii was in treatment. She had been told that we had taken Kendle back and that *our custody agreement giving us Kendle until she tested clean for a year remained in place.* On the phone she was furious, "Jack if you don't give my f__ing baby to my f__ing mother right f__ing now, I am going to tell all your f__ing kids that you f__ing raped me." Three days later she spoke with Carol on the phone and stated "he paid me to let him look at me and touch me". This phone conversation is not in testimony; Warner did not complete the interview of Carol and was not aware of this until too late. Warner was not aware that Carol immediately told her friend Jeannie at work who said, "So what Brandii is over 18!" Both women would have given that testimony. Now we have the first version of the story; I paid to look and touch and, so far, there has been no mention of any impropriety yet by her mother. Even though in court they claim disclosure occurred nearly a month earlier on January 27th2009. On February 22nd 2009, **after her 2 threats**, both Brandii and her step father (written by her mother) mention assault in their declarations. Brandii states "I will be filing a sexual assault charge against Jack Frost". Brian states, "and there has been inappropriate touching". All mention of assault follows the 2-18-09 return of Kendle to us and her 2-18-09 threat and **ALL** are well after the 1-14-09 veiled threat. These assault disclosures and reports are all well after she has allegedly disclosed to her mother yet, her mother mentions nothing until after Brandii's threats have begun. On March 3rd 2009, two days before the start of the custody hearing, she filed her incident report with King County Sheriff Tommy Collins. (Exhibit 44 admitted in lieu of live questioning of Collins and agreed to against my wishes by Warner) The report reads... "Early January of 2008 Frost entered her room **sometime in the evening**. When he entered the room Cantrell said he **immediately forced** himself on her. In this second version it has now become an **immediate** forced ***evening*** rape in her story. Also, in this same incident report she claims that Carol and I were granted a NCO to keep her from having contact with Kendle. We have never done such a thing. On March 17th 2009 she made her

1 sworn 'Victim Statement' via her interview with the DPA and Detective B. Ferguson. In that 60 page
2 interview she misled the Detective on many critical points regarding her employment, her ability to
3 leave the property, her sources of income, who resided with her in the home, her "discomfort around
4 Jack" and most importantly her story of the rape. She claims that while the baby was down for her
5 afternoon nap I brought her water and rubbed her back and then I forced myself on her with threats of
6 revealing her drug usage to Carol who would take her baby. **Now we have a 12AM to 1PM back rub**
7 third version while Carol is at work. There are many variations of this part of the story as told by Brandii
8 to various agencies and family members: Jack has the baby, the baby is down for her nap in a crib, I
9 force he, she has no strength to fight, my boxers are on, my boxers are off, she screams, she doesn't
10 scream, she fights, I tell her she did a good job, I hit and slap, or, I pay to look and touch. None of these
11 discrepancies are clear to the Judge because, not only does Warner fail to develop the multiple versions,
12 he does not even know about some of her disclosures. This is unforgivable because he had access to the
13 sources of these differing versions but was too busy to complete interviews or contact potential
14 witnesses who had been told of the rape by Brandii. Also, by ***not*** completing his promised pretrial
15 interview Warner missed yet another version. This version was told to Logan when Logan questioned
16 Brandii over the phone. In front of his new girlfriend Jasmine he asked Brandii... "How can you be raped
17 orally?" Her response was; "Jack hit and slapped me until I stopped fighting". Logan said.... "Wait, we
18 had sex that Friday when you came to visit in the bathroom at treatment...I didn't see any bruises." Her
19 response was "no Logan, I hid them from you" Logan replies "come on, during sex, you weren't even
20 skittish". For the Court to not have access to these accounts proved critical to the outcome of my trial.
21 Warner did nothing to develop her explanation to Logan, which totally contradicts her other stories. In
22 every official version she is asked if she was violently forced to comply and she says... "No". In her
23 petition for a NCO on March 30th2009..."he began vaginally raping me then did other positions and oral
24 sex". In her official version she is "too dry down there" so I force her to do "Carol's favorite thing", oral
25 sex. It has been years since Carol and I have been able to do this due to our age and my bad back, and it
26 is not her favorite thing. Warner did not expose any of these discrepancies. He did not question Carol
27 or me about our intimate relations. The Judge calls her story consistent...***it is anything but consistent***. In
28 the same NCO petition she claimed that I controlled her family visits to our home. She claimed I violated
29 the temporary order by being at the exchanges. She claimed I threatened her into giving me temporary
30 custody of Kendle by telling her family the truth about her addiction if she didn't sign the November 20th
31 2009 custody agreement. All of these secondary accusations were disproved and yet Warner failed to

address any of them even though they were included as part of a sworn rape description. Had the Judge heard all these variations he would not have heard a consistent story. Were the Judge privy to these insights and with the Connolly revelations, I believe he would have at the minimum, requested a psychological evaluation of Brandii with a psychologist familiar with borderline and psychopathic influences.

Continuing in a new direction with Judge McDermott's opinion of February 8th2010: (pg. 5 lines 1-25, pg. 6 lines 1-13) The judge states that, (1) "the fact that Brandii disclosed on her intake evaluation of 1-27-09 in answer to the question have you been sexually assaulted, Alice Adams the intake worker, claims Brandii answered yes by me boyfriend's step-father". McDermott further states that, (2) the third party Custody case had not even started, she had custody and therefore Brandii had no **motivation** for a rape **disclosure** other than **unburdening herself**. The Judge discusses also, (3) the claim that she continued on the 27th by telling her mother and later during the drive to her in-treatment at Sundown M ranch. He also states that (4) the phone conversation of the 18th of February is Brandii telling me that she will disclose the rape if I don't back off. Judge McDermott concludes this line of thought with a discussion of his experience with drug court and his understanding that, (5) once addicts get clean they bear their soul. There are so many missed points leading to this portion of the opinion that I do not even know where to begin. Please bear with me as I attempt to unravel Warner's unbelievable negligence that led the Judge to the above conclusion. I did not have access to the evaluation that contains Brandii's alleged disclosure until the trial had completed. Upon viewing the document after the trial, in a matter of moments I was able to discover a revelation of motive, a total contradiction with earlier **sworn** interviews, a revelation regarding her and her family, proof that she had lied in earlier proceedings and numerous critical mistakes made by the intake technician. I will speak to the Judge's points... (1) The rape disclosure: In the interview conducted by Warner's office with the DPA and Warner present (exhibits 7/8) Brandii is asked about her first disclosure. She answers, "Like I had an evaluation with Alice. It was, um, like a drug evaluation or assessment to see what kind of treatment I would need for my, um, addiction and she asked several questions, um, and one of the questions was, have you ever been raped?" In this sworn interview observed by the DPA, Brandii answers, "And um, *I said yes, but I* ***had only told her because she had told me that I didn't need to say who*** and that I didn't need to go into any detail...." Yet, in the evaluation, she had allegedly named me. Warner missed this. He also missed how she answers on the same evaluation the question: what is your reason for wanting to get clean? (2) She answers, "*To regain custody of my child*" because, she knows there are 3 custody

agreements in place and until she is clean for a year, my wife and I have temporary custody of Kendle. (From reading his opinion, the **Judge believed she had custody** at this time). Brandii, how long have you managed to stay clean in the last year? (5) *"Several times once for 4 months"* (the Judge believed she is only now clean for the first time). Would Judge McDermott state she had not lost custody of the child and had no motive for fabricating a rape claim had Warner pointed these answers out? Could Judge McDermott, without hesitation, state that she named me on this evaluation had he read the October Warner office interview answer stating she would not tell Alice unless no one was named. Under cross examination regarding this evaluation Alice Adams states after being questioned about the "yes answers" to the boxes for alcoholism and meth addiction. (2 of the 7 mistakes and an example of glaring incompetence) **"Oh, that's not Brandii's drug of choice...that must have been the interview before her**...I see so many people". Can Judge McDermott come to the conclusion that she is just now sober and finally stepping forward to unburden herself in light of the "several times sober and once for 4 months" answer? Brandii, in family Court claimed she was never sober and that's why "I never told anyone... now I'm clean and...I'm telling the truth." This statement was made before all her various stories had been told and before the fact that they were perjuries had been discovered. Alice Adams wrote a declaration for Brandii in family Court. She wrote this declaration in an attempt to explain why Brandii had missed 8 of 13 Court ordered UAs in a 3 month period during the summer of 2009. Instead of holding Brandii accountable for her own court orders Alice Adams blamed herself for the missed UAs. This is consistent with yet another professional coming to the aid of this "troubled victim". I believe that Alice Adams or Brandii (who had a great deal to lose) altered the evaluation, or at the minimum added the "step-father of my significant other". There are too many inconsistencies within this document to give it any credence. There is a law requiring a rape be reported by any professional who discovers that there has been an assault where there is a minor in the home. Had Brandii disclosed a rape to Alice, the counselor would have been obligated to report her claim, because of Kendle's presence in our home. No report was made, even though the abuser is supposedly identified. Warner missed this and so did the Judge. (3)(4)The Judge also discusses Brandii's disclosure to her mother. In both Brandii and her mother's testimony during my trial they told the same story of disclosure. They both stated that after the intake appointment was finished at 11 AM on the 27th of January, I drove a very angry Brandii back to her mother's home 15 minutes away, and when her mother tried to calm her down Brandii told her that I had tried to listen in on the evaluation because I was afraid that Brandii would say things about me. They state that Brandii set up her own appointments for treatment and that I was against her

getting help. They state that, after several attempts at getting to the truth about what I had done, Brandii finally told her mother that I had sexually touched her. This testimony was a complete fabrication and Warner had the evidence to show this. However, he failed, until it was too late, to question Brenda about her time card that clearly shows she was at work until 4:30 that afternoon. He also failed to make the Court aware of the actual events of the day and the significance of the $40 Fred Meyer receipt time stamped 1:48 on the 27th of January. (exhibit 33) Brandii was **not** furious that day, in fact, she was very excited because she had finally taken the first step, going to the intake appointment **I had arranged** for her. Brandii knew she would soon be clean and, as a good mother, she would be on the road to full custody of Kendle again. After the appointment we stopped at the 'Mad Dog Café' where her mother worked, for lunch. It was fun for Brenda because she got to show off Kendle to her waitress and customer friends. (Warner called no one about this) She sat with us while we ate and we all talked about the bright future ahead for the young family now that they were finally getting help. We left on very good terms and went shopping for Brandii's birthday present from Carol and me. She wanted new jeans. While she tried on several pairs of pants, Kendle and I played in the toy department. We would run back to the changing room and Kendle would crawl under the door to surprise her mom shouting "Boo" and Brandii would pretend to be surprised. Brandii did a fashion show for the clerk and me until we picked out two pairs that she liked. She was very proud that she had not wanted the fancy label pants and that she was able to get two pairs with the money Carol and I had discussed spending. We then continued on our way home where Logan was waiting. They had planned to go out for her birthday and Carol and I would have Kendle. They didn't have enough cash so we gave them some chores to earn money for dinner and a movie. Both Carol and Logan could have testified to this. Warner asked no questions and let the damaging story remain so strongly that the Judge referenced it in his opinions. Even Alice Adams supported me in regard to the fact that I had set up the appointments and testified that Brandii had signed a release allowing me to discuss Brandii's treatment. She further testified that I had not been interested in hearing the evaluation. The Judge concludes his opinion by suggesting that it was in my best interest to keep them addicted and that I enabled her use of heroin. This is where knowledge of my good character is important. This is so against my nature I cannot begin to describe my frustration. We set up countless appointments with multiple counselors, we took care of the baby so they could attend at least two NA meetings weekly, we got her enrolled in WIC, we got her to all her well baby appointments, we had her tell her personal Doctor of her addiction before treating her, we had her tell the dentist she couldn't have any opiate pain killers when she had tooth problems,

we drug tested weekly using tests that cannot be faked, we had family meetings weekly and we worked relentlessly toward their sobriety. We involved them in all our family activities, we helped them find work, signed her up for school, helped her buy a car, demanded receipts whenever we provided cash and most importantly of all we kept Kendle safe!! We were told by Connolly that helping them through their addiction at home would be difficult but, "if anyone can do it, you can!" He also told us, "if they leave, they can legally take the baby with them." (This is before any custody agreements were exchanged and his claim that they could "legally take the baby" was our primary reason for making the agreements). "At least, at home, he told us, you can keep the baby safe; a lot of addicts die on the street." This is the same thing CPS told us. I am so upset that my attorney did nothing to show the Judge the effort that Carol and I were willing to put out to keep our young family clean. Warner called no one to substantiate our dedication to their recovery. He was provided a list of professionals who had seen them and all of them had seen Brandii and me together several times. I am offended that the Judge was unable to see through the deception. Brandii was clean for long periods of time during that year and we all enjoyed a close relationship. She was ***never*** confined to our home. If you studied the (over 200) photos we have of Brandii in our family you would never believe you were looking at a heroin addict. You would see a young mother, happy in her life, proud of her child and very comfortable with me and my family. How could any one believe she was given heroin and syringes? We all went to the movies and out to eat; she was at every extended family event with all of us, she earned her own money and when she struggled she would, invariably, ask us for help. Her letter to herself known as "Week Brandii's letter to Strong Brandii" was written at our request the day after she nearly lost Kendle to the Buckley police during the forgery and heroin incident at the bank. This letter was to be her "keep me on the right track" inspiration and we would give it to her to reread during her relapse times. Brandii was to be our daughter in law and she was the mother of our very special granddaughter. I cherished both of them and the idea that the Judge believed I could hurt her brings tears to my eyes as I re-read this.

After studying the various mental disorders that she has been linked with, I am even more certain that she needs help. The main cause of this type of disassociation is rejection by and loss of parental attention at a very early age. The troubled subject compensates for the parental abandonment. In this case, a missing mother (meth addict) and a missing father (in prison). Beginning early in life the subject has no problem lying as a means to an end. She was raised in various relative's homes while her parents were missing. Brandii was diagnosed bipolar at the age of 13. To pursue this diagnosis implies that there were major problems with her within her caretaker families. At a very early age this mental

condition manifests itself in a profound ability to manipulate others for personal needs. The entire complexion of my trial would have been changed if experts had been allowed to evaluate Brandii. It is now, over a year, since I have been found guilty and I have nearly completed my jail sentence. For me the worst part of all of this is the fact that I, as a convicted rapist, have not been able to see or speak to Kendle (in state custody) and she can't return to the home of her Nana and father because it is my home also. My family and friends know the truth, but how can a 3 year old understand why her Papa is gone. Currently, in another CPS action, Brandii has now (as of 2-12-11) lost custody of Kendle to the State, and is guilty of neglect, drug abuse and child abuse. If she wants any form of custody she has to complete a dependency situation and drug treatment. Had her true mental state been exposed and had she not succeeded in her multiple deceptions Brandii would have gotten the help she needed and Kendle would be safe within the large extended family that loves her so much. In the January 27th 2009 evaluation Brandii re-states that she, her mother, and her grandmother are all bipolar, and have drug addiction, depression and have been suicidal. Children raised by bipolar mothers are 13 times more likely to develop the same or worse mental disorders. This young woman needs help. Note: the intake evaluation and the Warner office interview mentioned above, as well as the Fred Meyer receipt, are in evidence. The Connolly declarations are in the denied motions for a new trial as well as the motion for a mental health evaluation.

Before detailing the major flaws in Brandii's report as told in her 'Victim Statement' I would like to further discuss Warner and his boss Jim Newton and their part in my choosing a bench trial. First, let me say, even though the idea of a bench trial came from them, I had the final say in this decision. It was my choice. However, I was badly misinformed regarding the potential out come if the Judge found me guilty. It has become clear to me that new trials, motions for release of records, and appeals are much more difficult to obtain. Also, the burden of proof is greater when seeking to appeal a bench trial decision. That being said, on January 7th2009 the morning of the first day of my trial I met with Jim Newton in his office. During the meeting Mr. Newton stated, "You've gotten one of the best Judges in the state, he is a personal friend of mine and he handled the adoption of my son; **you should consider a bench trial** he will treat you well and you will have a much shorter time in Court allowing you to focus on your grand child and the custody proceedings". On January 4th2009, Newton had, ***(3 days earlier)***, told Carol and I, it would be at least 6 weeks to 3 months before my case would be heard. We explained that this was horrible news because the family court hearing was scheduled for February 22. The 3rd party custody Judge had explained that she would make her decision on time without the results from

my trial and allow that there may be some truth to the rape charge. I will admit to not taking the criminal charges as serious and focusing on the custody of Kendle. Her life was at stake and my charges were unbelievable. If Newton and later Warner are both recommending a bench trial, "way faster without a jury", and speed is of the essence in the custody situation the bench trial is my solution. I, at their prompting, gave up my right to a jury trial. At the time it did not dawn on me that if they don't expect our start for several weeks, how can they be ready 3 days after telling me "6 weeks to 12 weeks out"?

The 'Victim Statement' was taken by Detective Belinda Ferguson on March 17th 2009. There was also a DPA in attendance. I will only address the most significant aspects of ineffective counsel as exposed via the Brandii Cantrell two part 'Victim Statement'. A line by line review or a lie by lie review would even further overwhelm the reader. Brandii's entire statement is a fabrication and by association each lie helps to focus the deception that is the "rape story". Each revealed lie in the document draws suspicion to the un-provable statements included with them. The lies included in her report are so significant that the impeaching of even one should destroy the credibility of the entire document. The proof I extend to every point that I am questioning here can be proven. This document speaks to her complete lack of credibility. Further, the rape claim is her word alone without any evidence and therefore the fact that she supports her claim with over 50 pages of fabrication invalidates her rape charge by association. By the second page Brandii has already begun the deception stating that she no longer lived in our home when she entered detox and treatment. On the stand she and her mother claim she was at her parent's house for 3 weeks prior to detox. Her mother later admitted that it was a 3 day visit not 3 weeks. During that time we had evicted her and they both impeach their own statements by describing Brandii being picked up from her room in our basement to go to detox. Brandii knew they couldn't come home to Kendle, Carol and I until they tested clean. This is critical because the supposed "disclosure" occurred during the time they were out of our home and the calendar does not support their story. Brandii had finally tested clean and was **living with us** on the 27th of January. Warner missed all of this. On the 3rd page she describes who lives in our home at the time of the alleged rape. Her answer is well thought out; she protects herself by stating, "it's just Carol and Jack, Logan, Kendle and me." With that answer, she **purposely excludes** her best friend (during her years in our home) and future sister-in-law **Jordyn Frost** and Logan's brother Brendan. By excluding them she has limited the Detective to Carol and me to rebut her charging statements. The custody Lawyer, Linda Lilivik, told us in no uncertain terms "do not agree to speak to the Detective, she will trick you and gain information to

use against you." This haunts me daily, I had no idea the details of what Brandii was accusing me of and did not find out until much later; had I answered the questions the investigation would have stopped. Had Carol been questioned she would have described that day without hesitation, it is imbedded in both our memories. Before I describe what she or I would have told the Detective, it is important to explain, throughout all the proceedings in the criminal case, all the proceedings in the custody case and all the proceedings following Brandii's false NCO accusations there has never been a single incident of deception by Carol or me. Or, for that matter any of our family or our witnesses. Character matters!!

Both Carol and I would have easily described that day, January 6th2008. We will never forget discovering that the mother of our grandchild had been using heroin and nursing for several months. She had been stealing, forging, and lying to us from shortly after Kendle was born. We were devastated and relieved at the same time. Our first thoughts were for the young family, we knew we could get her help and save the baby. Logan was already in treatment and we now had answers to many questions that had troubled us about Brandii. I understand this is water under the bridge for me, but, it has been so frustrating. Jordyn was home the morning of January 6th. Had the Detective realized there were other witnesses in the home for most of that year, she could have questioned them. Jordyn could have cleared up such statements as "I couldn't stand being alone with Jack". Jordyn, Brandii, Kendle and I were good friends and did lots together. When they had car trouble I got Brandii to work, to all her appointments, to her family in Eastern Washington, to her visits with her sister and to her various counselors. Jordyn would have totally debunked: The never allowed to leave story, the I was never was alone with Jack story, the No job story, the I just pretended to do chores to explain to Carol why Jack was giving me money story, the no money except hush money story and the, they never got me any help and Jack wanted to keep me addicted story. On page 6 Brandii is asked where she worked. ***She denies having any employment***; that would disclose her real source of money and that she and Kendle left for work daily. With a simple search of her bank records or her W-2 information, (the Johnsons and I-Hop both sent in Brandii's W-2s to the IRS) Detective Ferguson would have learned the truth about Brandii's source of cash and of her unrestricted freedom to go and do whatever she pleased. She worked for the Johnsons for 6 months beginning January 2nd2008; (4 days before the alleged rape) into June until 2 weeks after she wrecked the car high on heroin June 6th2008. Carol told her that as long as she was relapsing that she could not work with children and if she tried, the parents would be told the truth. We found her a non-nanny job at I-Hop with-in a few days, where she continued until school started that fall. This was her main source of income, plus, she also did extra chores for cash on occasion.

Page 10 and her 2-22-09 family declaration quote her stating that Carol has severe OCD and is on several medications. Dr. Connolly in his declarations, Dr. Magley (Carol's personal doctor) in a declaration, Michael Maryanski (superintendent of Tahoma school district and Carol's boss) in a declaration, and later *Brandii herself* all disproved this claim. The blatant mental illness and medication claim to discredit Carol reflects a common trait of the borderline. "Splitting" is a trait people with borderline personality disorders use to separate threats by discrediting them if they are no longer useful. In Brandii's case some examples are: Carol has OCD, Chaney fraternized, Connolly only did relationships, and Jack raped me. I became a threat and was no longer useful to Brandii January 8th 2009. On this day while evicting Brandii without Kendle she was told, until she tested clean, she could not come home. I told her that I would no longer be available for support on any level and that I would be focusing all of my attention and support toward her daughter's safety. She knew I was serious and immediately began her campaign of destruction. We had evicted both Logan and Brandii but kept Kendle. Again, this was January 8th2009 and due to a custody agreement we had signed at our attorney's office Brandii knew she had lost full custody of Kendle until she tested clean for a year after completing inpatient. January 14th2009, after discovering Carol's bank account was overdrawn, we contacted Logan who admitted that Brandii had stolen and was forging checks. I confronted her on the phone and was told, "if you call the police about those checks I will say you did things!" This is her first threat to me and is well before her intake with Alice Adams or our pursuit for full custody of Kendle. **Because Warner failed** to clarify this pre-rape threat**, the Judge was totally unaware** that her campaign of my destruction was already well underway and that **Carol and I had temporary custody of Kendle**. So, back to the 'Victim Statement': To support her OCD claim about Carol, Brandii describes an incident of how controlling Carol is on page 11. She has totally made this story up and it is based on a conversation about the basement windows that Carol and I had in front of her. Brandii has the ability to adopt other people's lives and facts and her observations of my personal life became the basis for the comments she claims I made about Carol during the alleged rape. On page 13 she states that anytime she is strong enough to leave "Jack disables my car"; work and employment records would have impeached this story. ***She is gone daily with her child***. Warner failed here allowing the DPA to ask me "yes or no, can you disable a car?" Any farm kid can disable a car; that doesn't mean I ever would. Warner did not develop the truth during cross, by failing to ask the lead in questions. It was like watching Detective Colombo bumble through an investigation, only there was no positive result or brilliant ending. Brandii claims that the only time I let her leave was when she was strung out and knew that I had her heroin. Two minutes of examining my character or an interview of

anybody who observed her in our family would totally destroy this story. We are vegetarians, (41 years) I have not consumed alcohol, nicotine or drugs (41 years). I have NO HISTORY of any type of inappropriate activity. Brandii had her own car and was, with Kendle, leaving daily to work. That being said, the idea that I would provide heroin for a young mother, or anyone for that matter, is absurd! On page 15 Brandii describes the events leading up to the alleged rape. She states "Logan has gone to treatment and I am coming off heroin" there is no mention of the Buckley bank incident the day prior, the help we provided to her at the bank, the confession letter written on the day of the alleged rape, Carol and I helping her through withdrawal, or, her starting the nanny job 4 days earlier. Any part of the Buckley event would have given the Detective access to the truth. Ferguson would have made a quick call to Officer Plaster in Buckley (Warner refused to contact him). He would have described, because he still remembers, Carol and me convincing him of Brandii's innocence and our shared gratitude for the help Brandii had given us with Logan. He would have told Ferguson that we bragged about how smart and healthy Kendle was and, at such a young age, what a good job Brandii was doing. The Buckley officer could have shared how shocked we were that they had taken a check from us and that we were convinced it was an isolated incident instigated by Logan. On page 17 she is in the middle of her rape story and states I was wearing Christmas tree boxers. Brandii handled our laundry and knew all our clothes. By page 21 she is quite far into her story of the rape. She dismisses Carol "she's at work" (there's no school on Sunday) and states "early afternoon" even though in the incident report made 2 weeks earlier she is raped sometime in the evening. Anyone familiar with heroin withdrawal knows that at this stage the patient is incoherent, extremely nauseous, and unable to function. It was pointed out in the motion for a new trial that a man of my fussiness would never consider sexual contact with an intravenous drug user especially my future daughter-in-law and the mother of my granddaughter.

On page 1 of part 2 of the Ferguson interview, Brandii states that Kendle is in her crib with a bottle down for a nap. Actually, the baby slept in the "family bed" she was still nursing and Brandii wasn't willing to get up so she kept her in bed with her. This practice was explained to Carol, "I read that it is very good for the baby to be in the family bed." Kendle had not been weaned and was just starting soft food. (After the heroin use was discovered we stopped her from nursing until she tested clean) On page 2 part 2 Brandii states Carol is at work again and follows with the **statement that pinpoints the rape date in her story**. Her answer to the question: where is Logan? Dates the event at 1-6-08 because she says Logan went into treatment the night before. His bed date was 1-5-08. The 6th is a Sunday....***no one checked a calendar***, no one called the clinic for his admittance records, and no one

checked Carol's work schedule to see if she had worked on the 6th. ***I was home, Jordyn was home, Carol was home and Brendan stopped by later.*** The date is critical and was not investigated at all. **THIS IS UNFORGIVABLE**. On the next page Brandii names Carol's place of employment and no one checks to see if she was working? In the incident report of March 3rd, the time of rape is "sometime in the evening", she has changed to around noon in this version. I am guessing that she realized Carol would be home from work at 5 and can't be dismissed if the story stays "sometime in the evening" not even realizing, the date she picked to claim rape happened, is a Sunday so Carol is home anyway. On page 3 part 2 we are back to the rape description. I have taken my boxers off. In the Warner office interview of Brandii she states I keep the boxers on and penetrate her through them. On page 4 the, "too dry to get it in" statement is made, as well as her saying that I told her to "*keep being good and just lay there*". No mention of hitting, yelling or fighting back. All included in other versions. ***Warner does not even begin to make these important discrepancies clear to the Judge.*** On page 8 she is finishing the story and says "He was just, he was saying that I did a good job and that he wouldn't tell anybody, and he said that no one would have to know that I was a junkie, and he said that if I did try to tell anybody, or if I told on him that no one would believe me because I am a heroin addict and that Logan would probably leave me, think that I was horrible, and that he would kick me out, and that Carol would take custody of my little girl." Her drug use is known by Carol at 10:30 that morning when she returns from Church. However, Carol does not take her little girl. Further, her motive for not "telling on him", "I will tell your family" is gone by June. Her family discovers Brandii's drug use when her mother lies about the Vicodin on June 6th2008 to explain the positive results for opium after the car wreck. Carol tells all of Brandii's extended family and our family by the end of June. To all, Carol states, "Brandii is an intravenous heroin addict and has been since a month after Kendle was born!" Warner fails to make the point; all her claims of possible future actions of Kendle's removal due to family or CPS knowledge of her drug use have been removed by June when a hospital caseworker and her mother are included in the opiate positive test. Her entire explanation for not crying out is gone by June yet in all her testimony, family and CPS discovery remain her motive for silence. Because Warner missed the significance of all of this the Judge remained unaware of the truth. (All of the above points can be documented with information available to Warner at the time.) At the bottom of page 8 part 2 she states, she is uncomfortable around me and will not be alone with me. She will only come up stairs if Logan joins her. Warner could have called the WIC office, her dentist, Julie the hair lady, the Enumclaw Clinic, Dr. Connolly, the Enumclaw hospital, our favorite Safeway clerk, our favorite Costco clerk, all our children, our relatives, Dr. Graham, Dr. Leng and

his staff, all of my friends, all of Carol's friends, my employees, all our neighbors, and many of my business associates. There were hundreds of people who interacted often with Brandii and I without Logan or any other person present. For the next several pages she is telling the story of disclosure to her mother on the day of the intake evaluation. There is a great deal of detail regarding who is home at the mother's house and the time of day. This statement is impeached in a few minutes if the detective calls the mother's work and asks for a time card showing the 27th of January because her time card shows Brenda working an 8 hour shift that day and punching out at 4:30 PM. On page 12 she continues with a description of her parents finally discovering her addiction in October of '08. There is extensive testimony regarding her parent's knowledge of her addiction beginning in June. ***We are now 33 pages into this interview that resulted in my arrest. It is a total fabrication of a SWORN statement and were ANY of the officials involved diligent in their concern for the other party; a good man's life would be intact, Kendle would be out of state care and safe, Brandii would be getting the help she needs, our family savings and retirement would be intact, my reputation would remain impeccable and there would be no need to continue this discussion.*** Page 12 part 2: "Is that the only time that he, that he, that he assaulted you in any way?" Brandii answers "yes" and goes on to state that I never brought it up again. To imagine that a man capable of such a horrible and degrading act of control would not recommit the incident is hard to accept; especially, when he is paying the victim '$100's of dollars a week'. Warner refused any line of questioning regarding such a contradiction. For the next several pages they question her regarding all the money she claims I gave her. Here, she says that I knew she "was spending it on heroin". In her 2-22-08 declaration for the custody hearing she denigrates my character by stating "Jack has done such things as...not allowing contact with my family...Jack would disable my car, then would give me heroin and syringes **he had bought**, again keeping me under his control". In another official interview she claims that, "When I need money I tell him, give me some money, I need to get my shit". There are several other versions of this aspect of her story but, the point is clear. Brandii is capable of saying anything it takes to gain her objective with absolutely no concern for her target. Would the judge have recognized a pattern had he had Dr Connolly's testimony acting as a Brandii filter? Would a man with good character be capable of such actions? She states on page 14 that "Jack started giving me large amounts of **cash** a few days **after the rape**."(1-6-08) In her 2-22-08 declaration she states that, "**After Kendle was born** on July 19th 2007 (165 days prior to the alleged rape) Jack...started...giving me **large amounts of money** then would tell me not to tell his wife". The detective knew we were in a custody battle yet, she made no effort to review the paper work involved. She would

have discovered, in Brandii's very first declaration, contradicting versions of stories she had been told in her interview of Brandii. As an afterthought, in this same declaration she states she is a good mother and 'had nursed Kendle the first nine months of her life'. This is a direct contradiction to her earlier claim in the victim statement that "I had just put Kendle down with a bottle for her nap..." If the investigators knew that Jordyn and Brendan lived in our home that year they would have had a resource to check the accuracy of Brandii's statements. On page 16 part 2, Brandii states "yeah he gave me at least fifty dollars to a hundred dollars a day" the PA asks "and how long did this go on for?" Brandii answers "for almost a year..." If they had done the math they would have realized that Brandii is claiming I gave her $27,375 dollars. That's half my average annual net income! Yet, no bank records for Logan or Brandii are pulled. All they check of my bank records, is a debit card from a low balance BECU savings account that we let them use when we had no cash for their chore money. The BECU records show, at the most, Brandii and Logan taking $375 over a 6 month period with permission from Carol and me. The $375 includes funds they stole by altering the receipts that we demanded. She claims Carol had no knowledge of this account. Actually, it was our Christmas money and Carol was a signatory on the account. They did not even check that and they had the BECU records. This is discussed on page 17 part 2. Page 17 also includes a discussion of her wanting to leave but not being allowed to go. She is, once again, describing an actual single event and twisting the story to her own needs. Her story here; "At point in times I just couldn't take, the last time where I couldn't take getting high I had a little girl and I would try to stop, and I would start to get sober and I would wanna go home to my mom's. And I would tell Logan and start packing my stuff...Jack would disable my car." When Logan and Brandii fought she would pack and leave, only to return a day, at the most, later. Had detective Ferguson contacted CPS; Jessica Chaney, Brandii's case worker, would have explained that Carol and I had custody agreements in place and that Brandii and Logan have given us Custody on three separate occasions. Ms. Chaney also, would have explained that during an in home visit she, in private, asked Brandii if there was any inappropriate behavior by Mr. Frost and was told by Brandii "he can be controlling sometimes but he has been a big help to me and Logan and especially Kendle". This in home visit was in late September of 2008 and 9 months after the alleged rape. Brandii had been told that as long as she was trying to get clean CPS would work with her and that "because you have strong family support from the Frosts, Kendle would be allowed to stay in the home...your safety plan gives custody to the Frosts if you relapse". Chaney would have told the detective that Brandii had worked almost the entire year with Kendle outside the Frost home and that "she and Jack had a very good relationship".

1 None of this investigation was done even though Brandii tells of losing Kendle for a short time to CPS.
2 On page 23 part 2 Brandii tells the investigators that Logan believes her rape story. Actually, Logan has
3 never wavered in his support for me and without him we would never have discovered the car wreck
4 truth, the origin of the "week Brandii letter" truth, the BECU credit card and stolen check truth, or the
5 truth about the threat made on January 14th2009 because he was the only other witness to all these
6 events. Brandii prior to every hearing effectively seduced or attempted to seduce Logan to control his
7 testimony. The DPA claims Logan will say anything as long as I give him money and enable his addiction.
8 This is so far from the truth as to be laughable. Logan had been removed from our home and gets no
9 support from us at all. Warner did nothing to make this clear. Logan has only told the truth and his
10 insight into Brandii has not been utilized at all. If Logan were supporting Brandii why wasn't he
11 interviewed by Ferguson? She goes on to state on the next page that she had told Logan at the end of
12 her 3rd week in rehab, "your step dad raped me". This is well after her phone threat and yet Warner
13 does not check this or any of the disclosures she claims she made to her group at Sundown even though
14 she names her counselor and her group friends. I asked repeatedly for them to be interviewed
15 independently; to find the truth of her claim of disclosure and to hear any other versions of the rape
16 story. Warner said there wasn't enough time; even though he had this statement 6 months before the
17 trial. On page 26 part 2, Brandii describes how she often told her mother that she hated it in our home
18 because we are so controlling. Yet throughout that year she gave custody of Kendle to us not her
19 mother. Chaney from CPS knew the truth about Brandii in our home and had she been questioned, Ms.
20 Chaney could have brought clarification to the interview. Chaney also knew that I was drug testing
21 Brandii and Logan. I felt that the CPS testing of one time every few months was insufficient. Ms. Chaney
22 applauded us for a deep commitment to our family. On page 27 part 2, Brandii quotes Logan as saying...
23 "I know, it doesn't make any sense, and he's never done that (cash to his kids) with even any of his kids-
24 handed them money the way he's handed me (Brandii) in the last year that I lived there." Logan would
25 never say this. He was driving a $2500 dollar car I bought him; he knew I made all the kids first car and
26 home down payments and gave freely to all. Her lack of fear in her sworn statement fabrication is
27 demonstrated throughout every interview as well as her written declarations and Court testimony. She
28 has never been held responsible for her actions. She admitted in Court to wrecking while driving the
29 children high on heroin. There has been no charge of DUI, no charge of reckless endangerment, no
30 charge for lying under oath. It is no wonder that she continues in her current situation (2-12-11 state
31 has taken Kendle) to accuse others, lie about Logan, lie about Carol and continue to lie about me. In the

evidence for a new trial as presented by David Zuckerman, it is pointed out by both Zuckerman and Connolly that her actions contradict her accusations. She claims I raped her yet she drops the NCO between Kendle and me and gives me 180 hours including 7 overnights beyond the Court ordered visitation. All of this extra time with Kendle occurs during the rape investigation, after I have been charged, and continues through the rape trial. ***After the guilty verdict*** she agreed to meet with Carol, Logan and me to determine a parenting plan with a mediator. These are all examples of psychopathic 'slippage' and were not available to Warner because he refused to investigate Connolly as a witness. At this point, further examination of her 'Victim Statement' would be counter-productive. However, I will say that the deception continues throughout the document and, as before, with any amount of investigative diligence, her statement impeaches itself page by page. This should not have come to trial; the DPA who sat in on this interview is charged with proving guilt beyond a reasonable doubt.

Character is important, especially when there is no evidence other than a diversionary claim of a rape that occurred 13 months earlier that was not reported until the start of a custody battle. Character is important when all charges are based on fabricated claims made by a very gifted liar. Why would she exclude the rest of the family from her description of her living situation? Why would she deny her employment? Why would she hide the fact that she left our home daily for most of the year? Why would she hide all the help she was receiving? Why would she deny authorship of the "week Brandii letter"? Why would she fabricate stories of Carol having OCD? Why would she grant custody to the man that raped her? Why would she grant overnights with her child to the man that raped her? Why would she fabricate a story of disclosure when the actual events of the day make her claim impossible? Each of these questions would have been in the forefront of the Judge's concerns, had they been addressed. Even with all the County's investigative shortcomings the outcome of the trial could have been completely changed through Dr. Connolly's testimony. This is on Rick Warner alone. He failed on every level to bring clarity to this case. He allowed the DPA to make outrageous claims with no rebuttal. He was so negligent that the Judge believed Brandii had presented a consistent story. Warner was so negligent that the Judge found me capable of this heinous act. He was so negligent that Brandii is seen as a troubled addict finally coming forward with the truth. The Judge had no idea what he was hearing and seeing when she testified because Warner brought no information to him regarding Brandii's mental condition. In her Sundown M Ranch completion certificate from March 2nd 2009 we have a self-described bipolar, suicidal, drug addict with multiple mental issues. Warner had this document from our first meeting. We had a heroin addict about to lose her child claiming that a man with 40 years of family

and community service raped her. She remained in his home another 12 plus months, she was best friends with him and his daughter, she interacted with all his family, she gave him custody of her child, she expressed gratitude for his actions in her life to others, she went to him for help with her addiction and she was loved and treated with respect. Character matters and combined with the new evidence presented by Zuckerman and the revelations of Warner's incompetence I feel there **IS** reasonable doubt and beg the Court for the opportunity to present this case to a Jury.

It is my opinion that Judge McDermott, by the time of sentencing, having now heard the motion for a mental health evaluation and having now heard the motion for a new trial, found himself in a difficult position. He had, in two short motions, been shown Warner's negligence in my representation. However, by this point his hands were tied. He had sat through a bench trial and with the information available to him, had found me guilty. There is no precedent for him to reverse himself; yet, it became evident at sentencing that he had begun to doubt his decision. Fifty four people wrote very powerful letters on my behalf. All of my children and a few of their friends wrote of the help I had been in their time of need, my customers wrote of honesty and professional integrity, the parents of girls I coached wrote of their total belief in my character, many of the young women that had come to me for help wrote of their experiences and the benefit gained by knowing me, my three adult step daughters who grew up in my home wrote of their lives in my home and their unwavering support of me, parents of children who had spent time with my family wrote of their gratitude for the joy experienced on our vacations, and most important of all my wife wrote of her belief in me and love for me. ***Character matters***. At my sentencing Judge McDermott heard my 28 year old daughter speak on my behalf. Keezia has her Masters from the University of Washington and is employed by the accounting firm Price Waterhouse Cooper. I will quote Keezia one of the many witnesses not called by Warner verbatim. She states:

"In the days leading up to this sentencing hearing I have struggled deeply. I have struggled to find the right words to say.

I have struggled to stay within the guidelines that Mr. Zuckerman has established for my dad and his loved ones. I struggled because I quickly realized that there is no string of words lasting merely a couple of minutes that can express the emotions I am feeling right now. I have struggled to fathom how the string of investigations, declarations and testimony has brought me to this courtroom speaking to you now. I understand how your Honor reached the decision you made. However, *I cannot stand here bearing my truth and concede that I agree with you.*

I observed my dad and Brandii for the past years and never once witnessed anything that would suggest a relationship beyond that of a parental guidance that he has provided to me, my siblings, my step siblings, and so many of our friends over the years. The idea that I was fooled by an elaborate act put on by Brandii and my dad is ridiculous. My dad is extremely easy to read. He is no better at hiding his emotions than I am at hiding mine. I have struggled because I want to share with you the hundreds of lessons that I learned from my dad over the years. In reading the other 53 letters that were presented to the Court, one particular letter struck a chord with me. In her letter Brenda Charlton wrote, I know Jack would never hurt anyone. He doesn't have a mean bone in his body as he wouldn't even let me kill bees that were infesting our cabin in his work area. Brenda's observation reminded me of a childhood memory. When I was in Kindergarten, my friend Katie was over for a play date and we were out in my yard. It was early fall and the grass hoppers were jumping around with nearly every one of our steps. At one point Katie accidently stepped on one of the grasshoppers breaking his leg. Watching the grasshopper struggle was completely unbearable for me. I began to cry, and even though Katie mocked my fears, I ran inside to my dad and had him end the grasshoppers' suffering. Even to this day I am upset by accidently stepping on snails in my driveway and force my boyfriend to put them out of their misery. This is because *my dad raised me to treat everyone around me with the utmost respect and empathy,* even something as small as a grasshopper or a snail. I have struggled because I want you to understand how fortunate I feel to have a dad who truly cared for me and put so much into raising me to my full potential. Without our countless hours of the animal guessing game on car trips, math and memory games on hikes, summer book reports and the numerous other ways my dad encouraged me over the years, I wouldn't be the confident professional I am today. I know my dad is not perfect, and while I may have struggled to articulate to Your Honor in a way respectable to the Court, I know that my dad is not the monster the prosecutor has made him out to be, which is why I have struggled so, because it is absolutely impossible to share in a string of words 28 years' worth of mutual respect, love, support, and encouragement I have received from my dad."

So, with that as an example of what 53 others said; I will further discuss my belief that the Judge found his hands tied. In his giving of the sentence the Judge states, "Mr. Frost, I am probably six months older that you. So, as you were testifying and during the course of the trial clearly I identified many things that you said to myself. I have three children; my oldest daughter is older than your oldest daughter...in my opinion, which this morning is the only one that really counts, ***you have led an exemplary life***. I read and reread some of the letters several times."

"I did read the one from Mrs. Charlton about the bees. I did read... the ones that really struck a responsive chord with me were the ones from the young people who you had befriended and helped. There is no doubt you are a good businessman and a good builder and you pleased your customers and ***you're honest*** and fair and reasonable, and that's how you get a reputation for getting more business. You figured that out, and you have done a good job of that. But the letters that really matter to me are the ones from the young people that you helped, that you ***never did anything inappropriate with***, taking people into your home and family, trying to set an example, being a coach. These are the same things I have done my whole life. Going on family vacations and having each child pick a friend to go with them, that's what we used to do. Coaching soccer and baseball, that's what I used to do. You don't do those kinds of things unless you ***have a good heart***. You don't do those kinds of things in my opinion unless deep down inside ***you are a good person***. I also cannot ignore 60 years of an ***exemplary life.*** It wouldn't be fair for what I stand for. When I sentence people, I try and sentence people to appropriate sentences based not only on the elements of the crime, but also based on who they are. ***I don't know what happened, and I don't know why it happened***, it did. But we all need to move on." He also commented to my wife by saying, "***I think Mrs. Frost is a wonderful lady who has an amazing relationship with you*** and I would like to make sure that that continues for many, many years." Later when the prosecutor pushed for the third time for a sexual deviancy evaluation, Judge McDermott rejected his query saying loudly, I said "I want a comprehensive mental health evaluation, as I ordered, and then I will review it".

The point I am attempting to make here is twofold: 1) character matters and 2) once the Judge was privy to my history he became much more sympathetic. Had he been aware, through my girls' testimony and a community history statement about me, he may have looked closer at some of the outrageous claims that Brandii made about me. There must be a "character provision" for situations like this. A 19 year woman losing her child due to heroin addiction accuses, (with no evidence) a very well respected 60 year old man who has dedicated his life to the importance of community and family of a heinous act. His character and the value of his word are all that support his innocence. Warner called no unbiased no family witness for me. My character, presented through my family Psychologist who is very familiar with all the parties would have been invaluable. Warner, by the ignoring of Connolly and then the lying about his review of Connolly, limited the Judge and led me to my current status as a sex offender and felon with ***absolutely no evidence*** to prove my alleged guilt.

When we first met I gave Rick Warner my *very complete file*. This 2 large binder file was a

complete representation of what had transpired in the 3rd party custody case as well as the criminal charges and the dismissed NCO violation claims of Brandii Cantrell. Within this file were the Connolly declarations, the Chaney declarations, all of my declarations as well as Carol and our families many declarations. There were also many documents and photos detailing the years of Brandii in our home. Of all the documents in this file; The Prochnau warning, the "week Brandii's letter to strong Brandii", the Connolly declarations, and the Chaney declarations were given the highest priority by me in the review of my file that I was leaving for him to copy. After a quick read, Warner's response, to the original hand written copy of "week Brandii's letter to strong Brandii", a very heart felt and damaging unburdening of her soul written to herself the day after the bank incident (on the day she claims she was raped) is, "So what Jack, it doesn't prove you didn't rape her!" (This statement was made on several occasions discussing many topics and thoughts I felt were important.) He has completely missed the value of what she reveals by first writing and then denying in multiple court proceedings, that she wrote this letter. By the time Warner had finally agreed to use her letter we were well into the cross examination of Brandii during the criminal trial. Because Warner had discounted the letter 6 months earlier, he was completely unprepared to address it when the opportunity arose. I will do a line by line review of the letter with commentary revealing what, due to Warner's lack of preparation, I lost and consequently, the Judge missed. (The following letter is exhibit 27.) <u>"Week Brandii's letter to strong Brandii",</u>

begins: "You were your mother" (With this statement Brandii is associating the fact that she is now a drug addict failing her child to Brenda Cole, her mother, who had failed her 18 years earlier. Brandii reported, on her March 2nd2009 Sundown M Ranch inpatient completion form submitted to Comm. Hillman and us on March 5th2009, and on her "The Center" intake evaluation given to the parties on January 23rd2010 that her mother and grandmother are addicts and all are bipolar and have experienced depression and have suicidal tendencies.)

Next: "You deprived your innocent beautiful baby of the things she needed and deserves...instead of protecting your baby you hurt her – you might have well just cooked Kendle a hit and shot her up yourself cuz that's pretty much what you were doing to her." (Written the day of the alleged rape, this very troubling and heartfelt opening statement reveals the depth of her need to be honest in her revealing of her life choices to Carol and me and to the strong woman she was planning to become)

Next: "You made your baby an addict – you put her around other addicts – you shot up right in front of her then even worse you fed her right afterwards – you put your baby around drugs, needles, dealers, and ***almost*** into the hands of the state" (Here she, by her saying "almost" she is referencing the help

Carol and I provided during the bank incident; this acknowledging of our role was never in any of her sworn versions of the events of the day and it becomes obvious, by this point in the letter, why for 8 months after it appeared in the custody case, ***she denied writing it and even accused me of forging it.*** Warner misses the entire value here.)

Next: You were so incredibly selfish that you somehow just pretended you were some kind of good mother and made excuses for yourself. *You stole from people that have **done nothing** but help you* in your life." "You lied like it was nothing, like it was natural…to people that trusted you, that thought you were helping their son; instead you enabled him further." (This letter is written the evening of the day of the alleged rape, yet, Warner sees no value? It is obviously after we are aware of the heroin use and when I have discovered her addiction is when she claims my immediate reaction is to rape her? However, this letter identifies me as a victim of her lies; someone that "**HAS DONE NOTHING BUT HELP HER**" for me, Warner's shortsightedness is unforgivable, I trusted him, he told me he was the best and that he knew what he was doing.

Next: "You got in trouble with the police – you had Kendle in a car full of drugs and paraphernalia – people thought you were disgusting, and you were. You almost got your baby taken from you – the cops were so disgusted with you they wouldn't even let you touch her. They said you weren't going to see or be able to hurt her anymore. You had to look at your baby through your car window while she cried to you as a cop was going through your car finding needles that were right next to your baby's seat – and they just kept pulling more things out of your car as people are driving by starring at you looking disgusted with you seeing how gross you are, and what a horrible piece of shit you are; while your boyfriend/fiancé the father of your child is sitting in the back of the cop car while Kendle cries in her seat and I'm crying looking at her through a window and wondering if I'll ever be able to hold her again or look at her again." She continues, "Instead of saving your family and protecting your child you instead gave in and turned not only yourself into a junky but you did it to your helpless child and in doing that made it OK for Logan to be doing it. You are supposed to be her protector, her mother and instead, for your own selfish reasons, not caring about the effects it will have on your helpless baby and what it could have done to your family; you took the easy way out. You made you and your baby addicted to heroin." (I am crying as I write this. I fought for a year for the girl, I thought, was capable of this honesty. We did everything we could to her help before we evicted her and started the 3rd party proceedings that would make official the custody agreement we had drawn up at the attorney's office in Enumclaw. How could Warner have missed the opportunity to bring in front of the Court the

1 importance of the feelings she reveals in her letter written the day she claims she was raped?)
2 I have related the story of the discovery of her heroin use the morning of the 6th, what I haven't
3 discussed is her level of shame and her reaching out for help. We were so profoundly affected by her
4 renewed commitment to her young family that morning that our first thoughts were to get her back on
5 her feet so she could start her new life. By the time she wrote the "letter" that evening she had further
6 committed herself to a new life. A life free of drugs and shame, free of crime, and free of lying to those
7 that helped you the most; a life full of the joy of a beautiful child. Through her honesty as written to
8 herself in her letter, Brandii had taken the first step toward self-respect. She completed her withdrawal
9 and would return to her nanny job the following Wednesday. ***No, Mr. Warner***, the "letter" doesn't
10 prove I didn't rape her, it proves I helped her and believed in her and she believed in me!
11 I think now is a good time to share what these two, year long, simultaneous legal cases, as well
12 as the two ***dismissed*** NCO violation charges, (Brandii made false NCO charges at critical times during the
13 trials) have done to our financial situation. Our savings and retirement are gone; had my oldest step-
14 daughter not paid Mr. Zuckerman for all his efforts, there would have been no motions for the new trial
15 and a great deal of evidence ignored by Warner would not be in the record. I do not qualify for
16 assistance because we own property that we cannot liquidate. The father of a friend of the above
17 mentioned step-daughter is my current attorney. His name is Dan Chasan, and, although he makes his
18 living as an author, he has a degree in law from Seattle University. Even though he has no appellant
19 experience he, without request for payment, is helping with my case. I ask that you bear in mind our
20 lack of experience and please overlook our mistakes as you seek the truth within our presentation of
21 this case.
22 Before I conclude I would like to present a brief outline of the evidence submitted in the
23 motions for a new trial as presented by David Zuckerman. Prior to my sentencing and the Judge's
24 finding of fact David Zuckerman presented two motions with memorandums for the Court's review. We
25 felt it was imperative that the Court be made aware of Brandii's mental health issues. Zuckerman only
26 presented issues Warner could not use strategy as his reasoning for not presenting said argument. I
27 have included above, in my declaration, such points and have exposed Warner's failure to understand
28 the value of these points prior to his strategic dismissal of the point's value. Because Warner had failed
29 to even consider, review declarations by, or interview Dr. Connolly; until it was too late, these
30 revelations remained unavailable to the Court. In the first motion we have:
31

DEFENDANT'S MEMORANDOM IN SUPPORT OF MOTION FOR DISCOVERY AND MENTAL HEALTH EXAMINATION. Warner opens with the relevant facts. Briefly stated: Frost moves for a mental health exam to support his upcoming motion for a new trial. The Court noted, her demeanor during rape description seemed consistent with someone who had been raped. Warner failed to explore her mental health issues. And that, with her condition, she is capable of mimicking actions of a rape victim. Warner made no effort to obtain records and refused to interview Connolly even though he was urged to do so on several occasions by Frost. Frost is entitled to a new trial based on these failures if he can show that his attorney's representation was deficient, and that he was prejudiced by the deficiency. Strickland v. Washington, 466 U.S. 668, 104 S Ct. 2052, 2068, 80 L.Ed2d 674 (1984)

Zuckerman continues with 7 points he learned from speaking with Dr. Kevin Connolly. This discussion (much abbreviated and previously discussed), these points are: 1) Connolly saw Jack and Carol, Brandii and Logan, and Kendle. He had private visits with Brandii. The main focus was the addictive behavior of the young parents. 2) Connolly submitted 4 declarations in the 3rd party custody of Kendle. (They are summarized later here and attached in Warner's motion.) 3) Connolly states ... "Impossible for Brandii to enter treatment as she denied the need to go in". He states Frost felt that he could help them get clean. 4) Brandii saw the doctor privately on several occasions without a rape claim and that when he observed Frost and Cantrell together she showed no signs of discomfort. 5) Although he did not evaluate her for a diagnosis he feels the Court would be helped with a thorough examination regarding potential personality disorders. Further, he understands Cantrell self-reported bipolar disorder. 6) Borderline personality disorder is described as an "as if" personality; said person can be whatever the observer needs her to be. Some are pathological liars and begin to believe their story making them even more convincing. 7) The 'psychological slippage' of Frost being given the child freely and without Court order even during the rape trial is a slippage in her mental construct of being raped by him. Zuckerman requests relief in the form of....an order for record release, for a psychological evaluation by a borderline expert, permission for Connolly to disclose his results, and subpoenas of her mental health practitioners. He then follows with 3 pages of legal precedent for his requests. See Brady v. Maryland 373 U.S. 83, 83 S Ct 1194, 10 L. Ed.2d 215 (1963) Defendant has the right to review material that is favorable to the accused and material to guilt or innocence. Also, Penn. v. Richie 480 U.S. 39, 57, 107, S. Ct. 989, 94 L. Ed. 2d 40 (1987) that the information requested is confidential does not prevent its being disclosed to the defendant. Ritchie, 480 U.S. at 57-58. In Ritchie the Court views a similar case. The trial Court denied disclosure and declined to conduct a complete *in camera* review of the records.

At 49. The US Supreme Court held that a defendant is entitled under the due process clause to the Constitution, to have pertinent files reviewed by the trial Court to determine whether there is information material to the defense. They ordered the case remanded to be reviewed and opened if there was information material to the defense. Zuckerman continues with a lengthy argument requesting at least an *in camera* review of her records and Connolly's notes. Finally Mr. Zuckerman argues for the mental health examination and among others; he cites State v. Wiesburg 65 Wn. App. 721, 829 P 2d 252 (1992) as stated in Wiesburg:

The granting or denying of a motion for psychiatric examination of a complaining witness is within the sound discretion of the trial court. State v Braxton, 20 Wn. App. 489, 580, P 2d, 1116 (1978) review denied, 91 Wn. 2d. 1018 (1979). A psychiatric exam may be ordered upon a sowing of compelling reason for doing so. State v Demos, 94 Wn. 2d. 733, 619 P 2d. 968 (1980). Absent this showing other, more traditional means of assessing the witness credibility and perceptual ability are sufficient. State v Demos, 65 Wn. App at 727

In this case, Zuckerman states, the traditional means of assessing credibility may be useless because she apparently suffers from a mental disorder that causes her to fully mimic the personality of someone who has truly experienced a traumatic event. There is therefore compelling reason for a psychological examination of Ms. Cantrell. (I am adding my thought here. I feel that, not only is this examination critical to my future it would be the first step to Brandii's chance to break the cycle that exists in her family and Kendle would be the first in 4 generations that we know of to be free of this stigma. Brandii and Kendle's current situation, the toddler in state care and Brandii in the dependency situation, would be greatly benefited by the insights gained by such an evaluation.) I will continue with Zuckerman's second motion.

DEFENDANT'S MEMORANDOM IN SUPPORT OF MOTION FOR A NEW TRIAL.

After his introduction and list of relevant facts, Mr. Zuckerman presents his argument for a new trial as follows.

III. THE COURT SHOULD ORDER A NEW TRIAL BECAUSE OF INEFFECTIVE ASSITANCE OF DEFENSE COUNSEL In this memorandum; Mr. Zuckerman breaks his arguments into parts A thru E.

A) THE LEGAL STANDARD FOR EFFECTIVE ASSISTANCE OF COUNSEL. The 6th amendment guarantees the right to effective assistance of counsel. To prevail...a criminal defendant must show (1)

that the trial counsel's performance was defective; and (2) a reasonable probability that, but for the deficient performance, the outcome of the proceeding would have been different. Reasonable tactical choices do not constitute deficient performance however, decisions based on inadequate trial preparation, inadequate factual investigation, or inadequate legal research **cannot be deemed legitimate tactical decisions.** *See e.g.,* Eldridge *v Atkins, 665 F 2d. 228, 236-37 n.5 (8th cir.1981)* (decision made as accommodation to inadequate trial preparation is not a strategic choice), *cert.denied,* 456 U.S. 910, 102 S Ct. 1760, 72 L.Ed.2d 168 (1982); *People v Hayes,* 229 Ill.App.3d 55,593 N.E. 2d 739, 744, 170 Ill. Dec850 (Ill. App.1992) (decision attributable to misapprehension of law is not strategic). *See also in re Brett,* 142 Wn.2d 868, 873, 16 P.3d 601 (2001) (counsel ineffective for failing to request necessary jury instruction) **To prevail in this case** Mr. Frost must only establish that there is a reasonable probability that, absent counsel's deficiencies, the outcome of the trial might well have been different. *Id.*at 695. The "ultimate focus of inquiry must be on fundamental fairness of the proceeding whose result is being challenged." *Strickland, supra* at 696. In assessing prejudice the court must consider the cumulative effect of counsel's errors. "Prejudice may result from the cumulative impact of multiple deficiencies." *Harris v Wood*, 64 F. 3d 1432, 1438 Cir. (1995) quoting *Cooper v Fitzharris*.

B) COUNSEL FAILED TO PRESENT EVIDENCE SHOWING MS. CANTRELL'S MOTIVE FOR MAINTAINING HER LIE. The Court wondered why, if Cantrell was lying about Frost, she would continue to maintain her lie at time of trial. By then, she had completed treatment and convinced Judge Prochnau to place Kendle with her. In fact, a statement by Prochnau during the family court proceedings gave Ms. Cantrell a strong motive to obtain a verdict of "guilty" in the criminal case. On April 17, 2009, Judge Prochnau found that the Frosts had made a *prima facie* showing that Cantrell was unfit as a parent. Quoting Prochnau "First, they had provided evidence of Cantrell's heroin addiction. Second the Frosts argued that Ms. Cantrell's allegations against Jack Frost were further evidence of her dishonesty and her lack of empathy for other people."..... "If these allegations are false, that's really a horrific thing to be making such terrible allegations about someone that has cared for and helped you care for your child, and in fact trying to get him in trouble with law enforcement and get rape charges filed. ***That would be a horrible thing and its pretty clear-about the clearest lack of empathy that I can imagine.*** (Once again...when Warner read this he claimed it had no value...totally missing the obvious motive Brandii has just received as she listened to this. The Judge basically told her if you're lying you lose Kendle. This becomes her entire motive!) The Judge followed with "What does it say about the mother? *It would say that she's not even close to making progress in her recovery if she's still making*

false allegations." Zuckerman again...This amounted to a warning to Cantrell that she would lose her daughter of Jack was acquitted of the rape. Thus, giving her a powerful motive for her performance in the criminal trial. Mr. Frost told Warner that he had an audio recording of this court hearing and quoted the relevant portion. Warner responded: "Quit giving me your family court crap Jack. I told you the court would not allow it" (Mr. Zuckerman forgot that he also said "that doesn't prove you didn't rape her...drop it Jack!" because, I continued to push the point. These meetings with Warner were very difficult; he talked over me and cut me off nearly anytime I tried to make a point. His response to the above motive for a new trial in his declaration presented by the DPA was "I don't even use the word crap". Actually, he used crap and much worse in his tirades during my challenges of his understanding of the case.) Mr. Zuckerman continues, but; Judge Prochnau's warning to Cantrell was clearly admissible as important evidence of bias. Bias being the term incorporating various factors that can cause a witness to fabricate or slant testimony, such as prejudice, self-interest, or ulterior motives. He then quotes several legal precedents for the right of a defendant to cross-examine witnesses against him as to their biases. "Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony." *United States v. Able* 469 US 45, 52, 105 S. Ct. 465, 83 L Ed.2d 450(1984). This right of cross-examination is guaranteed by the 6th amendment. "The exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." Skipping his legal locations of these findings concerning bias; I quote Zuckerman continuing..."It is fundamental that a defendant charged with the commission of a crime should be given great latitude in the cross-examination of prosecuting witnesses to show motive or credibility, although specific instances of conduct are inadmissible under ER 608(b) for purpose of showing "character for untruthfulness", they are admissible to show bias." And... "When acts of misconduct or criminal conviction are offered to show bias (as opposed to general tendencies towards untruthfulness), the restrictions in Rules 608 and 609 are not applicable". Thus defense counsel was ineffective by failing to present this evidence.

C) DEFENSE COUNSEL'S FAILURE TO CONSIDER EVIDENCE FROM DR. CONNOLLOY Mr. Zuckerman reviews all the facts regarding how Warner was given the declarations and asked repeatedly by me to contact Connolly. Zuckerman quotes from the Connolly declarations and I will abbreviate for the reader these aforementioned points...In the 1st declaration he discusses our concern for the parents and their addictions and tells of our yearlong effort to gain their sobriety. The second declaration

reiterates our struggle to contain the addictions of Kendle's parents "so all three don't wind up on the street". The focus with their session was how to stay clean and sober. His testimony along these lines would have countered the state's claim that I wanted to keep her addicted. (When reference to all the help I had provided for her came up the state claimed that all was for show and they, "because they were in my pocket", would say anything for me. (FYI this is also how the state dismissed the statements of my family.) In the third declaration Connolly explained the he saw Brandii without me and, "At no time in any of these meetings was there any mention of sexual assault, fondling, rape or anything of the kind, with plenty of opportunity to speak out." In the forth declaration he explained: "When Jack and Brandii were here together, I saw none of the usual signs of an abusive relationship. Given the circumstances, they were ***friendly and cordial to one another***, even when discussing difficult issues." Such testimony was relevant, of course to raise the inference that Brandii was not truly raped." Had defense counsel simply reviewed these declarations, he should have understood the need to consult Connolly. Had he done so, he would have gathered additional information, as well as, Connolly's belief that the Court needed to understand how her potential diagnosis of multiple mental health disorders would affect the Court's perception of her truth. The presence of ***these disorders could explain to the Court how Ms. Cantrell could seem so convincing*** when relating the "rape" on the witness stand even though it never happened. Finally, Dr. Connolly could have explained why counsel should have presented evidence that Cantrell left her daughter in the care of Frost after the date of the "rape" when there was no legal compulsion to do so. (As soon as this point was made Brandii, even though she had agreed to mediate with me after the guilty verdict, pulled Kendle away from me and I have not seen Kendle in over a year.) Zuckerman was saying that Connolly would have explained what this "slippage" reveals about Brandii. However, Connolly confirms that ***he was never contacted in any manner by Warner*** or any of Warner's office. ***Warner excluded a fact witness with great insight into the entire situation.*** Zuckerman quotes ER 702 which provides: "*If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise*". After three more paragraphs of legal opinion Zuckerman continues the Connolly statement by stating. "Thus, trial counsel was ineffective in failing to review Dr. Connolly's declarations in the custody case, in failing to interview him, and in failing to present him as a witness. Further, had counsel interviewed Dr. Connolly he would have known to obtain all of Cantrell's mental health records and to move for a psychological evaluation of her. **Frost cannot prove the full**

prejudice from that failure, however, because this Court has denied his request for such relief." "As noted above, Dr. Connolly would have stressed the importance of evidence that Cantrell acted in ways ***inconsistent with being raped."***

D) COUNSEL FAILED TO PRESENT EVIDENCE THAT CANTRELL ACTED IN WAYS INCONSISTANT WITH BEING RAPED. Numerous witnesses (too many to include) could have confirmed two important points: 1) Brandii was frequently in the presence of Frost after January 6th 2008 and appeared comfortable with him; and 2) Cantrell voluntarily left her daughter with him after that date. Also, Brandii, July 24th 2009 **voluntarily** dropped Kendle from her NCO giving Frost access to his grand-daughter. He received an additional 180 hours and 7 overnights with Kendle up to and including time during the criminal trial. Zuckerman names two precedents to the above next, and then argues: A woman who has truly been raped will not socialize cordially with her rapist. Similarly, she will not leave her young daughter in the care of her rapist.

E) COUNSEL FAILED TO PRESENT EVIDENCE REBUTTING THE STATE'S THEORY THAT CANTRELL WAS DEPENDANT ON FORST FOR MONEY, THAT FROST RESTRICTED HER MOVEMENTS, AND THAT HE DELIBERATLY KEPT HER OUT OF INPATIENT TREATMENT. In order to explain her extreme tardiness in the report of rape, the DPA presented the theory that Cantrell was dependent on Frost for drugs and money, and that he controlled her movements so that she could not report the assault. Defense counsel should have been aware that Cantrell worked as a nanny beginning at the same time she is claiming the rape occurred. She drove herself and her daughter to the Johnson's daily where she cared for her daughter and their 2 boys. No W-2s were provided; no declarations of her freedom were provided, Warner provided only what the DPA described as biased testimony. (Even though I urged him to get testimony from independent observers he rejected the idea, "the Judge is already upset at the length of your trial and he will not look favorably on you"...it's too late, drop it Jack!") Zuckerman included a small sample of the declarations and testimony that could have exposed her true role as 'a daughter' to me in the family had Warner been effective. He concludes: ***As discussed above, defense counsel's performance was deficient in many ways. Further, particularly when viewed cumulatively, these errors were prejudicial. The case against Frost was not strong to begin with*** (my family believes Warner was not committed) ***Cantrell's allegation was uncorroborated, she waited over a year to make the allegation, and she had a clear motive to fabricate. It is reasonably likely that the additional evidence discussed above would have tipped the balance toward a verdict of "not guilty".***

FROST IS THEREFORE ENTITLED TO A NEW TRIAL.

The state discredits the motion for a new trial by explaining how effective Warner was and what a good attorney he is. They claim that Connolly was never aware of the bipolar diagnosis of Brandii until the intake evaluation came out in the criminal trial. The source of Connolly's self-reported diagnosis comment came from Brandii Cantrell's 2nd Family court declaration when in March of 2009, ***nearly a year before my trial and several months before I hired Warner.*** She provided her Sundown M Ranch treatment prognosis as proof that she had completed treatment. Within this statement of completion, under mental health issues, she answers **yes**, bipolar, depression, suicidal thoughts, and anorexia. Connolly reviewed these documents in preparation for his second declaration nearly a year before my trial. He was responding to her claim that he only saw Brandii and Logan to help them in their relationship and parenthood. This was Brandii's method of dismissing his comments in family court. The DPA's attempt here is consistent with his entire presentation of the state's case. He had substantial evidence of my innocence and as each opportunity arose he found a way to either keep it out or discredit it. He twisted the facts throughout the trial and without concern for me, led the judge to believe an incredible story supported by nothing other than his use of Brandii and her mother's manufactured evidence. The DPA, Ben Santos added to his success quota at the expense of an innocent man. He suppressed any fact that exposed her fabrication.

Zuckerman responds...DEFENDANT'S REPLY ON MOTION FOR A NEW TRIAL. **The state does not dispute Frost's summary of the facts.** He continues; A) Much of the state's brief is devoted to the legal standards of ineffective counsel, which are not in dispute. B) The state does not dispute the Prochnau warning but chooses to use the same argument that Warner did claiming there has been no finding of Brandii lying. They, in no way, address the revelation of motive. The state concedes that Warner was informed by me. They quote Warner's declaration and claim that I was misinformed as to the legality of admissibility of the Prochnau statement...It is the attorney's job to understand the rules of evidence not mine. The state calls Warner's not including Connolly as a strong "tactical decision" As Zuckerman pointed out "an attorney's tactical decision is entitled to deference only to the extent it is supported by reasonable investigation. It is undisputed that Warner never even spoke to Connolly, much less read his declarations, despite Carol's and my repeated requests to do so. In order to prepare their response the state requested any e-mails between Warner and I regarding Connolly. The provided e-mails clearly show Warner refusing to even talk to Connolly. While he may be correct that some of my reasons were inappropriate, that does not mean that Connolly should not have been at least interviewed to evaluate his potential. This refusal damaged my case beyond salvation. Without

1 Connolly there are no mental health issues, no slippage, and no cordial relationship. Brandii's claims go
2 unchallenged. Warner's reason for not contacting Connolly as stated to me... "he is your marriage
3 counselor and will tell all of your bad marriage" this he has assumed but had he spoke to Connolly this
4 view would have been corrected and further, if criticism of our marriage was relevant why did Warner
5 not object when Brandii made her claim of a failed marriage? So, ultimately, the main problem is
6 Warner's refusal to speak with him. Without doing so, he could not guess whether Connolly could
7 provide information that would be helpful and relevant to my case. It is not the client's job to interview
8 witnesses or to parse out what portions of their statements might be useful at trial. Once a witness has
9 come to the attention of the attorney it is his job to ask the right questions!
10 D) COUNSEL FAILED TO PRESENT EVIDENCE THAT CANTRELL ACTED IN WAYS INCONSISTANT WITH
11 BEING RAPED. In his opening brief Mr. Zuckerman made 2 points. 1) Brandii and I were often alone
12 together and when others saw us she was comfortable. 2) Brandii left Kendle with me...inconsistent
13 with being raped. The state claims "she put on a show" and further that witnesses (they identified no
14 one) testified for me about her comfort. In fact the "putting on a show" was regarding; if she really did
15 housework, and there is nowhere in her testimony that she is pretending to be comfortable with me.
16 She claims, to the contrary that, she told Logan that I made her uncomfortable. The only witness
17 Warner called was Jordyn. It would have been far more persuasive to present the unrelated and very
18 numerous witnesses to share their observations of us together. The second point draws no response
19 from the state and by this omission they demonstrate the value and accuracy of the Court hearing of
20 the "slippage" or psychological slip demonstrated by Brandii every time she gave custody to me or gave
21 me visitation with Kendle leading up to and during the trial.
22 E) COUNSEL FAILED TO PRESENT EVIDENCE REBUTTING THE STATE'S THEORY THAT CANTRELL WAS
23 DEPENDANT ON FROST FOR MONEY, THAT FROST RESTRICTED HER MOVEMENTS, AND THAT HE
24 DELIBERATELY KEPT HER OUT OF INPATIENT TREATMENT. Without responding directly to Zuckerman's
25 point made in the above section of his motion for a new trial; the state say's in regard to Connolly,
26 that... "Any other testimony from Dr. Connolly about the defendant and his wife's motivations during
27 this timeframe would have been inadmissible" If, in this, they are claiming that Connolly's knowledge of
28 my desire to help Brandii with her addiction is inadmissible they are mistaken. The DPA put my
29 motivations at issue himself. In his cross of me he repeatedly hammered me on my "failure" to get
30 Cantrell into in-patient and in his closing claimed that I was giving her money to keep her addicted. The
31 prosecutor proposed a finding and the Court accepted it. Obviously, I was entitled to rebut the state

with testimony of the facts...my relentless working to get her clean and provide all the help she was willing to accept. Dr. Connolly saw this first hand and he also saw Brandii in denial of the need for treatment. In the motion for a new trial Dr. Glen Carlson, one of my building customers, submitted a declaration. His insight into addiction was gained firsthand through 20 plus years as an emergency room physician. He had submitted an offer to testify on my behalf regarding my extensive pursuit of addiction guidance during our time shared building his home in Seabeck. His importance was not recognized by Warner and even mocked to me in an e-mail responding to my entreaty that he be called as a witness. Dr. Carlson states in paragraph 3 of his new trial declaration... "Beginning around June of 2008, Jack and I had many conversations about the drug addiction of his step-son Logan, and of Logan's girlfriend, Brandii Cantrell. Jack was very much preoccupied with doing whatever he could to get them on the road to recovery. He was concerned for Logan and Brandii, and for their daughter Kendle. Jack believed it important that Kendle grow up in a stable home. Jack was looking for appropriate treatment programs I gave him some information about recidivism rates and the detox process." The state can suggest no reason for Carlson to lie. Further, I had no motivation to "put on a show" for Carlson, who would have no reason to be suspicious of my relationship with Brandii. Glen only met Kendle during the many times I had her with me during my mornings at his job never Brandii. In Warner's declaration there is no suggestion that he was following a strategy when he failed to call witnesses to prove that I was trying to cure Brandii of her heroin addiction. NOTE: A brief note on the state's request for Connolly e-mails between Warner and me. These e-mails are included in my reply on the new trial motion. The state's strategy backfired because they believed Warner's declaration claiming he had reviewed and dismissed Dr. Kevin Connolly once they read the e-mails they realized Warner's total negligence and his attempt to cover up that neglect. I think he may be guilty of his own "psychopathic slippage". Zuckerman, not the state, submitted the e-mails as forwarded to the DPA by Warner.

E-MAIL #1) 1-13-2010...Frost to Warner....Why would I pay for a psychologist for her (Connolly) when, with one sentence, she could have put me in jail? Also, if I am keeping her high why waste the counseling money? And later... "We got confirmation from Brandii about her mental issues."

E-MAIL #2) 1-20-2010...Warner to Frost..."FYI you have never shown me Connolly's, Graham's, or Leng's, because you have spelled it so many different ways so, I don't know how to spell it.

E-MAIL #3) 1-22-2010...re: Connolly...Frost to Warner. "We just got back from Carol's appointment with Dr. C...she needed a letter of release so she could go back to work. After talking with him for nearly 2 hours we think he would be very good for my case. Brandii is a level 2 borderline sociopath and rape as

she is describing it does not occur...at least give him a call for me...I have his personal cell # it is Kevin Connolly @ 206-850-7260...he knows his shit...he knows Carol and I, he knows Logan and Kendle, but most importantly he knows, and has treated Brandii. He says there is no truth to the worry that he could harm our case by faulting our marriage. He has known us for almost 5 years and watched this entire Circus from a ring side seat. Please, at least phone him. **WARNER RESPONDS... "Too late;** you have to disclose any experts you intend to call as witnesses at Omnibus which in your case was long age. This is NOT your Family Court case. End of story. I am not calling him. It is not relevant to whether you raped her and just like every other witness, he cannot comment on what another person's thinking or motivation is/was. I will try to call Carol tomorrow at home." (Warner did not call her)

E-MAIL #4) 1-23-2010...re: Connolly. This is my **response to Warner** and I have included it earlier in this declaration. So, re-quoted here is a thumbnail of the original. "To describe my disappointment re: Connolly...I go back to our original discussion. I presented my packet to you. I told you Dr C wrote 4 declarations and had met with Brandii several times...I told you he would be a good witness for me. I told you he includes the rape claim in a declaration. You said you would consider this. Later, I brought him up again....you questioned me... "Why would I call someone who could testify to your failing marriage...drop it Jack" At that point I assumed you had at least read his declarations. Last week you announced, "I don't have any declarations and have not read them anyway...or Jessica Chaney's or any professional stuff I had brought you... "This is not your family court case Jack drop it!"(Warner had everything by July of 2009). You dismissed the importance of the FC declarations...Jessica Chaney...the "week Brandii letter"; It got to the point I was afraid to speak to you. Now you tell me the man with 35 years' experience cannot be called on my behalf. Here's what I am losing...Brandii...mental problems with no regard for the people her statements affect. This goes the entire gamut from explaining our discovery of the 1st syringe, "it must have fallen from my mother's purse...she's a meth addict!"... "Carol has severe OCD and is on several medications."... "Logan stole and forged those checks" ... "Jack raped me" and on and on and on. He would have testified...she needs help...rape is a violent act of control...in all his years; he never heard of a rapist having conversations with the victim, attempting to share preferences or oral stimulation for pleasure much less pulling out to ejaculate....I want him on the stand. Lying is a means to an end "he raped me" ....FYI, Connolly says our marriage is strong!!!" (The full version is on pages 10-11 of this declaration)

BEYOND A RESONABLE DOUBT, there was attorney ineffectiveness, Connolly's testimony may have changed the Judges perceptions and character DOES matter.

I, at the beginning of this declaration, used the language of the attesting of truth by the laws of the state of Washington to focus the degree of Brandii Cantrell's willingness to perjure herself. The **ONLY** remaining statement in the opening list of points that has not been disproved during our legal process is "**He raped me".** It is also the only point **based on her word** alone. She has perjured herself countless times: Yet, as I write this I am a sex offender with a felony conviction for the rape of Brandii Cantrell. Each and every time I and my family swore to tell the truth throughout all of these proceedings that is what we did. Lying is not a means to an end and with your help the truth will prevail. My signature and my handshake, for all of my adult life, have been my bond. As a man, my initial response to a mistake is to correct it or, if immediate correction is not possible, I make amends within the situation to my fullest capacity. From the time Brandii Cantrell moved into our home my only interest regarding her was, to provide help, support and guidance as needed. I sought to, by example, share what true family values are. I sought to provide a safe and loving home for her young family. She was treated like one of our children and SHE WAS TREATED with respect. I would hope that this very simple truth would be apparent to the extent that I would be allowed to present my case to a Jury of my peers. ***I did not rape Brandii and I will not give up my pursuit of the truth. I AM INNOCENT!***