

— Aldape: State Habeas Pleadings
(9/92) (v. 3) (Habeas Petition)

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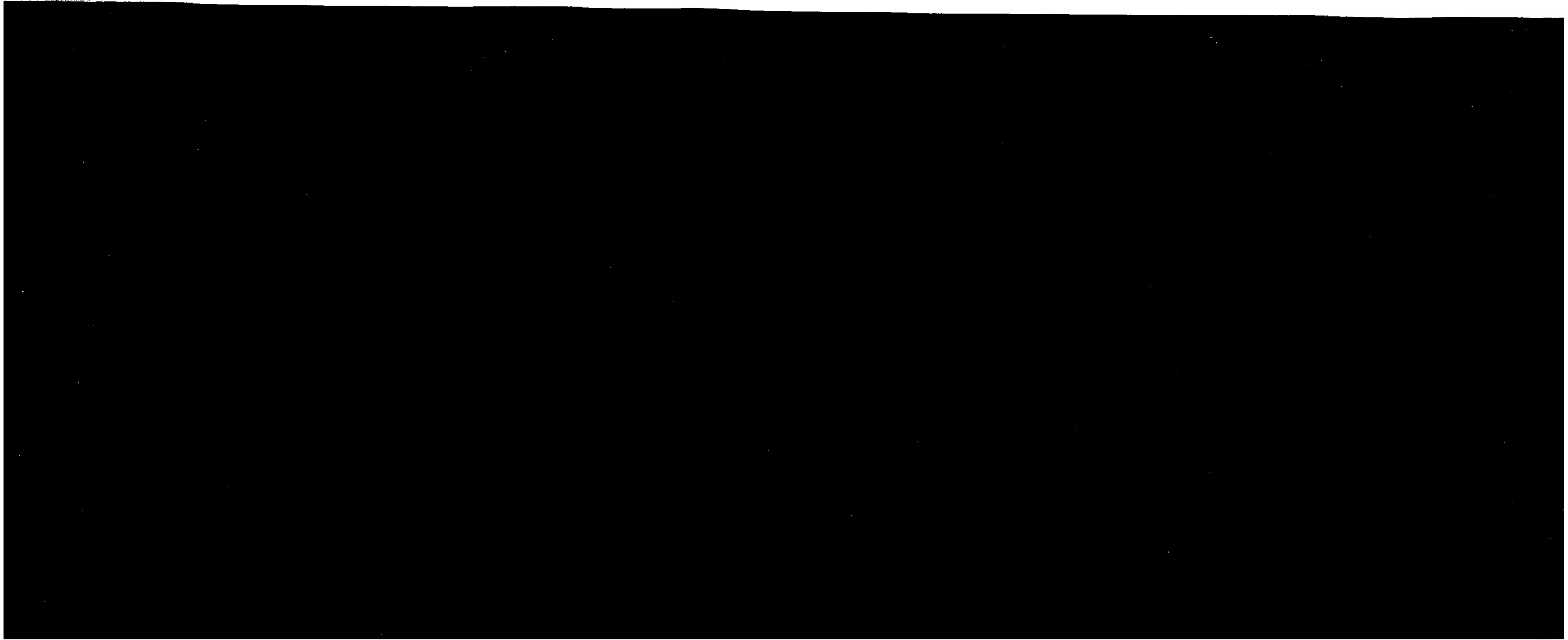
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KATHERINE TYRA

HARRIS COUNTY DISTRICT CLERK

September 17, 1992

REC'D

SEP 17 1992

S.J.

Mr. Scott J. Atlas
2500 First City Tower
1001 Fannin
Houston, Texas 77002-6760

Ricardo Aldape Guerra
RE: Cause No. 359805-A

248th District Court

Dear Applicant:

Please be advised that your post-conviction petition for writ of Habeas Corpus was received and filed on September 17, 1992 Article 11.07 of the Texas Code of Criminal Procedure affords the State 15 days in which it may answer said petition. After the 15 days allowed the State, the Court has 20 days in which it may order a hearing. If the Court has not entered an order within 35 days from the date of the filing of the petition, the petition will be forwarded to the Court of Criminal Appeals for their consideration.

The records of this office reflect the following:

CAUSE NO.	PETITION FOR WRIT OF HABEAS CORPUS FILED	DISPOSITION
-----------	--	-------------

Please be further advised that all future correspondence should indicate the above listed cause number.

Very truly yours,

Raymond Posado lm

RAYMOND POSADO, Manager
Post-Trial Systems
Criminal Division
for KATHERINE TYRA, District Clerk
Harris County, Texas

RP: lm

cc: Judge of the above named District Court
District Attorney's Office
Appellate Division

PC/CR-1 R01-01-91

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Ms. Katherine Tyra
District Clerk
301 Fannin
Houston, Texas 77002

Re: Cause No: 359805; Ex Parte Ricardo Aldape Guerra

Dear Ms Tyra:

Enclosed please find for filing in the above-captioned case an original and one copy of:

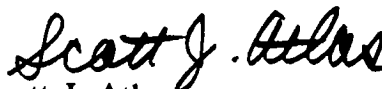
- (1) a First Amended Application of Writ of Habeas Corpus, which is missing a table of authorities that will be supplied within the next few days;
- (2) and an Appendix to First Amended Application of Writ of Habeas Corpus; and
- (3) a Motion to Withdraw Order Setting Execution Date Pending Consideration and Disposition of Application for Writ of Habeas Corpus Proceeding.

Please give both sets of all three documents to Debbie Wilson in Post-Conviction Writs.

A copy of these pleadings is being hand delivered to opposing counsel.

Thank you for your attention to this matter.

Very truly yours,


Scott J. Atlas

Ms. Katherine Tyra
September 16, 1992
Page 2

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Enclosures

cc: Ms. Kari Sckerl - by messenger
Clerk, Texas Court of Criminal Appeals - by overnight mail
Monica Washington, U.S. Court of Appeals for the 5th Circuit - by overnight mail
Ricardo Aldape Guerra - by overnight mail

Ms. Katherine Tyra
September 16, 1992
Page 3

bcc: Stan Schneider - by messenger
Santiago Roel - by DHL overnight
Amb. Francisco Gonzalez de Cossio - by messenger
Sandra Babcock - by messenger
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By Federal Express

Thomas F. Lowe
Clerk, Texas Court of Criminal Appeals
14th and Lavaca
Price Daniel Building
Room 201
Austin, Texas 78701

Re: Cause No: 359805; Ex Parte Ricardo Aldape Guerra

Dear Mr. Lowe:

As requested by Rick Wetzel, enclosed are the following:

- (1) Nine copies of the First Amended Application for Writ of Habeas Corpus filed on behalf of Ricardo Aldape Guerra; and
- (2) an Order signed by Judge Densen this morning denying Mr. Guerra's petition for Habeas Corpus and denying both Mr. Guerra's motion to withdraw the setting of his execution date and the State's request for a modification of the execution date to January 28, 1993.

You should have received by messenger yesterday afternoon a copy of Mr. Guerra's motion for stay of his execution date.

Very truly yours,



Scott J. Atlas

Thomas F. Lowe
September 21, 1992
Page 2

Enclosures

cc: Ms. Kari Sckerl - by messenger [w/Order only]
Monica Washington, U.S. Court of Appeals for the 5th Circuit - by telecopy
[w/Order only]
Ricardo Aldape Guerra [w/Order only]

Thomas F. Lowe
September 21, 1992
Page 3

bcc: Stan Schneider - by telecopy [w/Order only]
Amb. Francisco Gonzalez de Cossio - by telecopy [w/Order only]
Sandra Babcock - by telecopy [w/Order only]
Team

7.22.12

IN THE TEXAS COURT OF CRIMINAL APPEALS

AND

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

Ex Parte RICARDO ALDAPE GUERRA,

Applicant.

§
§
§
§
§
§

Case No. _____
(Harris County
Cause No. 359805)

FIRST AMENDED
APPLICATION FOR WRIT OF HABEAS CORPUS

RICARDO ALDAPE GUERRA IS CURRENTLY SCHEDULED TO BE EXECUTED
SEPTEMBER 24, 1992 AT 12:01 A.M.

RECEIVED IN
COURT of CRIMINAL APPEALS

SEP 22 1992

THOMAS LOWE, CLERK

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IN THE TEXAS COURT OF CRIMINAL APPEALS

AND

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

_____	§	
Ex Parte RICARDO ALDAPE GUERRA,	§	
	§	Case No. _____
Applicant.	§	(Harris County
	§	Cause No. 359805)
_____	§	

FIRST AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS

Petitioner RICARDO ALDAPE GUERRA ("Guerra"), pursuant to Article 11.07 of the Texas Code of Criminal Procedure, moves this Court to issue a Writ of Habeas Corpus for his release from confinement on grounds that he is being denied his liberty under an illegal and unconstitutional conviction and sentence of death.

Petitioner seeks an evidentiary hearing to more fully develop the facts on which this Petition is based.

INTRODUCTION

1. This is a case involving an abhorrent crime -- the murder of Houston police officer James D. Harris ("Harris"). The true murderer, Roberto Carrasco Flores ("Carrasco"^{1/}), was killed by police only 90 minutes after the Harris murder, in a shootout

^{1/}Guerra will refer to Roberto Carrasco Flores as "Carrasco" rather than "Flores" to avoid confusion with the name of one of the State's principal witnesses, Vera Flores.

that began when Carrasco emerged from his hiding place, shooting the murder weapon, carrying 31 rounds of ammunition, and holding Harris's gun in his belt. Shortly after Carrasco was killed, Guerra, who had been in a car with Carrasco when they encountered Harris, was found cowering behind a nearby trailer. Guerra immediately and willingly cooperated with the police and gave an explanation of the events that remains unchanged to this day and that is completely consistent with the physical evidence.

2. Guerra had left his home in Mexico two months earlier to find a better job in Houston. He had been working and sending money home to his family. In fact, when arrested he was carrying a \$300 money order payable to his mother. Guerra will show that he had never previously been in trouble with the police in the U.S. or in Mexico and had no criminal record.

3. Twenty-eight-year-old Carrasco, on the other hand, a mere acquaintance of Guerra's, had bragged of killing several people, hated the police because of incidents in his past, used numerous aliases, and carried a cherished nine-millimeter semi-automatic pistol -- the same gun that killed Harris.

4. With Carrasco dead and Guerra the only one available for trial, the police and prosecution immediately began a course of conduct designed to influence the evidence away from Carrasco and towards Guerra. In addition, throughout the case the prosecution used subtle methods of planting prejudice in the jurors' eyes against a poor immigrant, hardly able to protect himself, who was in the wrong place at the wrong time.

5. These factors -- combined with a defense presented by court-appointed lawyers with little time to prepare, who did not have all the facts available to this Court, and who were not prepared to cope with the subtle but effective use of prejudice against their client --resulted in a conviction that was a miscarriage of justice and that now threatens to result in the taking of an *innocent* life.

6. Guerra will demonstrate that the State's case was based on confused, manipulated, and concealed witness evidence; effective prejudicial prosecutorial remarks; and rejection of the physical evidence. The motive for this conduct was the desire and need by the prosecution and police to blame Guerra, the only person alive and available for trial.

FACTUAL OVERVIEW

1. On July 13, 1982, Officer Harris was shot and killed with a nine-millimeter Browning semi-automatic pistol that belonged to Carrasco. It was not Guerra's gun.

2. The shooting occurred as Harris approached a stopped vehicle in a residential neighborhood in East Houston. In the vehicle was Guerra, who lived in the neighborhood, and his acquaintance, Carrasco. One of the occupants approached Harris, pulled a gun, and shot him three times. At the time of the shooting, the other occupant, in response to the officer's previous requests, was standing with his hands on the hood of Harris's car. After the shooting, both individuals fled.

3. Approximately 90 minutes later, Carrasco was killed in a shootout in which he shot and seriously wounded police officer Lawrence Trepagnier five times with the

same nine-millimeter Browning used to kill Harris. Harris's gun, a .357 Colt Python, which was taken from him after he was shot, was found wedged in Carrasco's pants waistband.

4. There is no dispute that there was *no* physical evidence -- fingerprints, metal trace, or anything else -- indicating that Guerra had ever touched either the murder weapon or victim Harris's gun. All the physical evidence surrounding Harris's shooting pointed unequivocally to Carrasco, not Guerra, as the killer.

5. Nonetheless, in a trial that began less than seven weeks later, Guerra was convicted of murder and sentenced to death solely on the basis of contradictory, unreliable testimony and unconstitutionally tainted witness identifications.

6. Guerra, an undocumented worker from Mexico, maintains his innocence, as he has since his arrest immediately after the shootout in which Carrasco was killed. Within hours after Harris was killed, Guerra, unaided by counsel, voluntarily gave police officers a full account of the shooting that was consistent in all respects with the physical evidence.

7. Eyewitnesses' initial descriptions of the shooter were far more consistent with Carrasco's dress and appearance than with Guerra's. On the night of the shooting, Carrasco wore a maroon shirt and brown pants, while Guerra wore a light green shirt and blue jeans. Carrasco had short hair and was clean-shaven; Guerra had black, straight, shoulder-length hair, a mustache, and a beard.

8. Only after a series of improper investigative tactics and procedures -- including withholding and concealment of exonerating evidence, witness intimidation, a

highly suggestive lineup, a reenactment of the crime staged by the police for potential State witnesses, and the use of life-sized mannequins of Carrasco and Guerra dressed in clothing worn by them the night of the shooting -- were a few prosecution witnesses able to disregard their initial impressions and identify Guerra as the shooter.

9. This Application demonstrates, as Justice Clinton stated in dissent on Guerra's direct appeal, that "a genuine miscarriage of justice has occurred." Guerra v. State, 771 S.W.2d 453, 486 (Tex. Crim. App. 1988), cert. denied, 492 U.S. 925 (1989). Guerra's conviction and death sentence resulted from an investigation and trial that were infected by the State's unfair "blind focus" on the only available target in the investigation for the murder of a police officer. This "blind focus" caused the prosecution to engage in 18 different acts of prosecutorial misconduct, both before and during the trial, and to conduct an overly aggressive investigation in grievous violation of Guerra's rights.

10. A calm and deliberate investigation of the crime without this "blind focus" compels the conclusion that Guerra is innocent of the killing for which he was convicted and sentenced to death, and that the evidence supporting the jury verdict was patently insufficient.

11. Guerra's trial also was fatally infected by the community's inflamed passions, engendered by the alleged killing of a police officer by an undocumented worker. The prosecution repeatedly and wrongly appealed to ethnic prejudices and Guerra's "illegal alien" status.

12. Not satisfied with the available relevant evidence, the prosecutors further inflamed the jury during the guilt-innocence phase by eliciting detailed, sympathy-evoking testimony from Mrs. Harris -- *and* the wife of an innocent bystander who also was shot and killed but whose death was not the subject of any charge against Guerra.

13. Guerra's conviction and sentence also are constitutionally flawed because his defense counsel failed to render effective assistance of counsel, in substantial part because of exculpatory evidence that the State withheld.

14. Finally, a series of improper rulings by the trial court compounded the unconstitutional treatment of Guerra and give rise to other grounds requiring that his conviction and death sentence be reversed.

15. At an evidentiary hearing, Guerra will present witnesses and documentary evidence proving the claims set forth in this Application and demonstrating that he should not be executed.

PRIOR PROCEEDINGS

1. The 248th Judicial District Court of Harris County, Texas entered the judgment that is the subject of this petition. Tr. 340-41.^{2/}

^{2/}The separately bound and paginated Appendix, which contains mostly documents from the State's files (principally offense reports, lab reports, and witness statements) and newspaper clippings, will be cited as "App. __," with a separate reference to Guerra's internal numbering system as "F__." The Statement of Facts will be cited as "S.F. Vol. _ at __." The Transcript will be cited as "Tr. __."

2. Guerra was arrested on July 13, 1982, id. at 2, and indicted on July 23, 1982 for the offense of capital murder of a police officer. Id. at 1a.

3. Guerra entered a plea of not guilty. Id. at 8. Because he was indigent, he was represented at trial by court-appointed counsel, Candelario Elizondo and Joe Hernandez, who were appointed by July 15. Id. at 3, 355-56.

4. Jury selection began on August 30, 1982. S.F. Vol. 2 at 4. The trial began on October 4, 1982, Tr. 367; S.F. Vol. 20 at 3, and on October 12 the jury returned a verdict of guilty, Tr. 326, 372; S.F. Vol. 25 at 994.

5. The sentencing proceedings began on October 13, 1982. Tr. 373; S.F. Vol. 26 at 1. On October 14 the jury returned a verdict affirmatively answering the two sentencing issues presented to it. Tr. 331-32, 374; S.F. Vol. 27 at 206-07. The trial court sentenced Guerra to death. Tr. 374. A Motion for New Trial was filed that same day. Tr. 341, 374.

6. On October 26, 1982, a hearing was held on Guerra's First Amended Motion for New Trial. S.F. Vol. 28 at 1. The trial court denied the motion. Tr. 341; S.F. Vol. 28 at 5.

7. Guerra appealed his conviction to the Texas Court of Criminal Appeals, which affirmed his conviction on May 4, 1988. Guerra v. State, 771 S.W.2d 453 (Tex. Crim. App. 1988). On July 3, 1989, the Supreme Court of the United States denied certiorari. Guerra v. Texas, 492 U.S. 925 (1989).

8. Guerra is presently incarcerated on death row in Huntsville, Texas. This is Guerra's first application for habeas corpus relief.

STATEMENT OF MATERIAL FACTS

A. Background

9. Guerra is a Mexican citizen. He first came to the United States in May 1982, shortly after his twentieth birthday. S.F. Vol. 24 at 855; S.F. Vol. 26 at 158-59. He entered the country illegally in search of better wages and working conditions. See S.F. Vol. 24 at 856.

10. Shortly after he arrived in Houston, Guerra found work for a subcontractor. Id. at 856. He was paid \$3.00 per hour. Although the work paid little by American standards, Guerra earned more in two days than he would earn in a week in Mexico. He was able to pay for his living expenses in Houston, and still had enough left to send money to his mother in Monterrey, Mexico. See App. 82 (F333).

11. While he was working in Houston, Guerra lived in a small apartment at 4907 Rusk Street, in a neighborhood in East Houston known as Magnolia. S.F. Vol. 24 at 841, 856. Magnolia was a lower-income, predominantly Hispanic neighborhood, S.F. Vol. 20 at 63, where street fights and the sound of gunfire were routine. Guerra carried a gun for protection, S.F. Vol. 24 at 869, as did many who lived in the neighborhood, see id.

12. Guerra shared his cramped living quarters with several other undocumented workers. Id. at 856. Rent, food, and utility bills were divided among them, although if someone fell on hard times, the others would cover his share of the rent. They spent

their days working, cooked Mexican food together in the evenings, and drank beer on their porch during the hot, muggy summer nights when the lack of air conditioning in their apartment made staying inside unbearable. See id. at 858.

13. The house at 4907 Rusk served as a gathering place for friends and acquaintances of the people who lived there. Most were undocumented Mexican laborers, or "wetbacks" as some of the Mexican-Americans in the neighborhood called them. They shared stories of Mexico, drank, and sometimes went out to a neighborhood bar called "Mary's."

14. Carrasco was merely a recent acquaintance of Guerra's. Id. 841-42. They met at 4907 Rusk in late June 1982, only two or three weeks before the shooting. Id. at 841-42, 874. Carrasco was known to Guerra only as "El Werro." Id. at 24 at 841.^{3/} "Werro," or "Guero," is a Mexican nickname for a light-skinned or light-haired person. El Werro was charismatic and mysterious. He was also "a little bit crazy and known to carry a gun." App. 76 (F269). He told Guerra and others he had met in Houston only that

^{3/}Carrasco introduced himself to others by the name "Antonio." See S.F. Vol. 24 at 783-84. He assumed yet another identity after robbing James Joseph Kosmerl, when he took Kosmerl's driver's license and superimposed his picture over that of Kosmerl. Appendix ("App.") 97 (F409); see also App. 115-119 (F503-07). He also used the name "Luis" when he persuaded a stranger to buy the murder weapon for him in a gun store. App. 24-26 (F42-44); App. 84-86 (F357-59); see also S.F. Vol. 21 at 220-22. It was only after taking fingerprints and requesting a search of the latent print files in the Texas Department of Public Safety that police were able to identify him as Roberto Carrasco Flores. See App. 78 (F279).

he came from Chihuahua, Mexico, and had come to the United States illegally. He kept his true identity a secret.

15. On June 19, 1982, shortly before he began visiting the Rusk Street apartment, Carrasco approached Alfredo Maldonado, Jr. in Carter's Country Gun Store in Pasadena, Texas, introduced himself, and gave Maldonado \$550 to purchase a nine-millimeter Browning high-powered pistol and two boxes of ammunition. App. 24-26 (F42-44). In exchange for the favor, Carrasco told Maldonado to keep the \$30 left over after Maldonado bought the nine millimeter. See S.F. Vol. 21 at 221-22; App. 24-26 (F42-44).

16. Carrasco wore his nine-millimeter Browning constantly, and he practiced firing it in the backyard of the house at 4907 Rusk. According to those who knew him, he guarded the weapon jealously and never allowed others to fire it. He bragged about having killed a convenience store clerk, see App. 36 (F36); App. 83 (F350), and at least one other person, and professed his hatred of all policemen.

B. Trial Evidence

1. The Crime Scene and Apprehension of Suspects.

17. Shortly after 10:00 p.m. on the night of July 13, 1982, Officer Harris was shot three times in the side of the head by a Hispanic man wielding a Browning nine-millimeter pistol. S.F. Vol. 20 at 73-74, 83, 97. The shooting occurred at the intersection of Walker and Edgewood streets in the lower-income, residential neighborhood in East Houston called Magnolia. S.F. Vol. 21 at 215.

18. Houston homicide detective G.T. Neely arrived on the scene only minutes after the shooting. S.F. Vol. 20 at 62-63. When he arrived, he saw a black Buick (with a partially red top) parked parallel to Harris's patrol car, facing south.^{4/} Id. at 65-66. Down the street was a Ford with a bullet hole in the windshield. Id. at 69. The bullet damage indicated that the shooter had fired from the passenger side of the Ford. Id. at 70.

19. Neely later learned that the driver of the Ford, Jose Francisco Armijo ("Mr. Armijo"), had been shot in the head by a nine-millimeter bullet.^{5/} Id. at 71.

20. On the top of Harris's patrol car, there was a blood spatter starting at the driver's side and traveling across the car toward the passenger side. Id. at 86. Three fired cartridges from a nine-millimeter gun were found near the northeast corner of

^{4/}See App. 107 (F446) (Map of Crime Scene). Although it is not clear from Neely's testimony where the Buick and the patrol car were parked, the record later indicates that both cars were parked on Walker Street. The state made extensive use of a diagram throughout the trial to aid the jury in understanding the events surrounding the shooting. That diagram was marked State's Exhibit 5 and introduced in evidence. S.F. Vol. 20 at 54-55. Unfortunately, Exhibit 5 is *not* in the possession of the evidence custodian for the 248th District Court and cannot be found. Moreover, an extremely poor record was made for the purposes of reviewing that testimony, so that it is virtually impossible to decipher some of the testimony and the precise location of the vehicles. See Guerra, 771 S.W.2d at 478 n.2; see pp. 276-77, infra (loss of map violates Guerra's due process rights).

^{5/}Mr. Armijo sat in his car, unattended by emergency medical personnel, for 45 minutes, because they initially thought he was the shooter. App. 195 (F1464). (KTRK-TV Channel 13 Newscast, 6:00 p.m., July 14, 1982). He died from his injuries on July 20, 1982. S.F. Vol. 20 at 71.

Edgewood and Walker. Id. at 132. Three nine-millimeter bullets were also found; they had struck a house that was at the northwest corner of Walker and Edgewood. Id. at 73.

21. From this evidence, Neely deduced that Harris had been standing by the door of his car when he was shot at close range on the left side of his face, with the bullets traveling across the car "in an almost perpendicular position" (i.e., from driver side to passenger side) toward the house where the bullets were found. Id. at 87; see App. 182 (F1567) (diagram and map of neighborhood).^{6/}

22. Neely found another four fired nine-millimeter cartridges: one in the passenger seat of the Buick, id. at 68, another in a ditch in front of 4925 Walker,^{7/} and two in the driveway of 4925 Walker, id. at 143-44, on the north side of Walker Street. In addition, police recovered two .45 caliber fired casings on the south side of Walker Street. Id. at 102. From this evidence Neely concluded that whoever shot Harris used a nine-millimeter pistol, ran east down the north side of Walker, shot Armijo, and continued running in the same direction, while the other person was running east on the south side of Walker and fired a .45 caliber pistol at least twice. Id. at 104-05.

^{6/}Subsequent testimony by the medical examiner who performed the autopsy, see p. 35, infra, established that Harris had gunpowder burns on and around his wounds. S.F. Vol. 23 at 685-86, 691. A police ballistics expert opined that the distance most likely to leave powder burns from the murder weapon was 18 to 24 inches and probably not as far away as four feet. S.F. Vol. 20 at 148-52.

^{7/}This cartridge was found close to the car driven by Mr. Armijo when he was shot. S.F. Vol. 20 at 103.

23. The physical evidence surrounding Mr. Armijo's shooting resulted in the prosecution's expert witnesses concluding that after Harris had been shot, Mr. Armijo was shot from the front of his car, through the windshield. S.F. Vol. 20 at 145-46; App. 61-63; (F223-25); App. 68 (F245); App. 103-106 (F439-42).

24. As detectives were canvassing the area for witnesses following the shooting, they received information that the suspects might be found at 4907 Rusk. S.F. Vol. 21 at 216. They searched the house but found no suspects, so they went next door, to 4911 Rusk, and searched that house. Id. at 217. They then returned to 4907 Rusk and searched it again. Id. at 218. As officers were coming out of 4907 Rusk, they heard several gunshots. Id. at 219.

25. While several police officers were searching the inside of 4907 Rusk, officers Lawrence Trepagnier and Mike Edwards remained outside to search the back yard and driveway area of 4911 Rusk. S.F. Vol. 23 at 653.

26. Carrasco fired his nine-millimeter Browning at Trepagnier as the officer approached the dark garage where Carrasco was hiding. Id. at 672-73. Trepagnier was hit five times in the chest and abdominal area. Id. at 672-73, 678, 680. Carrasco ran past Trepagnier, who returned fire before becoming incapacitated. Id. at 674-75. Carrasco then ran around the side of the house at 4911 Rusk and was shot and killed by other police officers firing from the front of 4911 Rusk. S.F. Vol. 20 at 56-57. Carrasco was firing at other officers when he was killed. See App. 81 (F327).

27. Police found the Browning nine-millimeter pistol, which had dropped from Carrasco's hand as he fell, next to his body on the grass. Id. at 146. The clip inside the gun, which had a capacity of 13 to 15 rounds of ammunition, id. at 127, was empty. App. 71 (F259); App. 122 (F536).

28. After Carrasco was taken to the morgue, police found Harris's .357 revolver in the front of Carrasco's waistband under his belt. S.F. Vol. 21 at 202-03. At the morgue, police also discovered another magazine for the nine-millimeter pistol in a military-type magazine pouch attached to Carrasco's belt. Id. at 202. This clip contained 20 rounds of nine-millimeter ammunition. Id. They also found 11 additional loose rounds of nine-millimeter ammunition in his left front pants pocket, id. at 205, and a leather holster on the inside of his front waistband, id. at 204.

29. The police found Guerra minutes after Carrasco was killed, hiding behind a horse trailer in the back yard of 4911 Rusk. S.F. Vol. 20 at 25-26, 50-51. Guerra was unarmed at the time of his arrest, although detectives found a .45 caliber Detonics pistol lying under the trailer, wrapped in a bandanna. Id. at 27-28. He was arrested and returned to the original crime scene, where witnesses were being questioned, before being taken to the police station. Id. at 27.

30. Only hours later, Guerra gave a voluntary statement, unaided by counsel, in which he explained his actions at the time of the shooting. App. 73 (F264); App. 87-88 (F366-67). This statement is entirely consistent with Guerra's position at trial and in this Application.

2. The Prosecution's Theory at Trial.

31. Although Carrasco was found with the murder weapon, which he owned, the State tried Guerra as the triggerman in the shooting of Harris. The State speculated at trial that Guerra, after allegedly shooting Harris and Armijo with the nine-millimeter gun belonging to Carrasco, switched guns with Carrasco. See S.F. Vol. 25 at 907-09. Under the State's theory, Carrasco had been carrying the .45 caliber Detonics pistol when Harris was shot and took the nine-millimeter pistol and Harris's .357 revolver only after the shooting of Harris and Armijo, and before the shooting of Officer Trepagnier. Id.

32. This farfetched theory is not only illogical but was without any evidentiary support at trial. The State was unable to produce *any* physical evidence whatsoever supporting a gun switch, or even suggesting that at any time Guerra might have handled the murder weapon.

A. Police lab chemist Danita Smith testified that she had performed a trace metal detection test on Guerra only hours after the shooting, to determine if he had ever held the murder weapon. S.F. Vol 21 at 181. She found *no* trace metal pattern on his palms to indicate that he had ever held any gun. Id. at 194-95. Smith performed a trace metal detection test on Guerra's abdomen, as well, and again found no evidence of metal contact. Id. at 197.

B. These results were consistent with the results of a laboratory test that Ms. Smith performed on her own hands after holding the .45 caliber Detonics

pistol. She found that the .45 left no trace metal pattern on her palms, due to the composition of the gun's metal. Id. at 188.

C. The nine-millimeter Browning, on the other hand, when held for 2½ minutes by police lab chemist Amy Parker Heeter, left an easily discernible trace metal pattern. Id. at 164-65. Likewise, Officer Harris's .357 Colt revolver left a clear trace metal pattern. Id. at 168.

D. When Heeter performed a trace metal detection test on Carrasco's palms, she found trace metal on both palms. The pattern on his right palm, according to her testimony, was consistent with the pattern left by Harris's .357 revolver. Id. at 171, 176-77. There was a pattern on his left palm, as well, although Heeter opined that it was inconsistent with the trace metal pattern left by the nine-millimeter. Id. at 172. At an evidentiary hearing, Guerra will show that Heeter's opinion about the pattern in Carrasco's left palm is simply wrong.

33. In attempting to explain how it was possible that Guerra held and shot the nine-millimeter pistol repeatedly without having any trace metal on his palms, the State elicited from Heeter testimony that trace metal patterns could be obliterated by rubbing one's hands with dirt or washing one's hands with water. Id. at 174-75. However, chemist Smith testified that plastic bags had been placed on Guerra's hands after his arrest, in order to preserve any evidence such as powder particles or trace metal. Id. at 195-96.^{8/}

^{8/}She noted, however, that the palms of Guerra's hands were dirty, speculating that
(continued...)

34. Sensing the weakness in the proof of its theory based on the evidence, the prosecution speculated to the jury in closing argument that Guerra and Carrasco must have removed their guns from their waistbands while driving, put them on the car seat, and mistakenly picked up the wrong guns as they got out of their car at Harris's request. See S.F. Vol. 25 at 908-09. This speculation concerning the reason or circumstances substantiating the unusual "gun-switch" theory being advanced is nonsensical and contrary to the evidence in several respects. First, Guerra denied that he had laid his gun on the seat at all. S.F. Vol. 24 at 870-71.^{9/} Second, Carrasco was very possessive of his weapon; he had a holster and bullets for it and could not possibly have mistaken one gun for the other. Finally, the State never explained why any rational (or even irrational) person in Carrasco's position would want to incriminate himself by accepting *both* a weapon, even

^{9/}(...continued)

he may have rubbed them in dirt or fallen on the ground in dirt. S.F. Vol. 21 at 187. No one called Officer G.L. Bratton to testify. His report stated that as he saw other policemen arrest Guerra and bag his hands, he "notice[d] that [Guerra's] hands had sand on them from where he had been on the ground being searched by officers." App. 34 (F79). At an evidentiary hearing, Guerra will show that neither a normal handwashing nor rubbing one's hands with dirt, unless done with great force, will eliminate a trace metal pattern.

^{9/}In fact, the prosecutors undoubtedly were aware of statements obtained in the investigation suggesting the fallacies in their theory. Since Guerra had admitted removing his gun just before leaving a car to enter a store earlier in the day, App. 19 (F34), there is an unavoidable implication that he had been riding in the car *with* the gun in his waistband before he removed it to enter the store. Also, it is inconceivable that he would have put his unregistered gun back on as he was about to leave his car to speak to a police officer making a routine stop for a minor traffic violation.

his own, that someone had just used to kill two people (including a police officer) *and* the weapon of the murdered officer.

35. The detailed facts proven by the prosecution at trial through various experts and police investigators lead to the inescapable conclusion that (i) Harris was standing between his car and the shooter, (ii) the shots were from a gun fired at very close range -- *within* two feet of Harris's face, and (iii) the shooter had to be standing east of Harris and thus at least several feet from the hood of the car.^{10/} Nevertheless, the testimony of the prosecution's so-called "eyewitnesses" failed to support these conclusions. Indeed, the confused witnesses' stories at trial contradicted the physical evidence.

36. Since there was *no* physical evidence tying the murder weapon to Guerra (and all available physical evidence suggested that Carrasco was the shooter), the State relied on the testimony of several eyewitnesses to the shooting in order to prove that Guerra had held the nine-millimeter and used it to shoot Harris.

3. The So-Called "Eyewitness" Testimony.

37. The State presented the testimony of several witnesses. Five witnesses placed Guerra at the scene of the murder, but only one (Mr. Armijo's 10 year-old son) consistently claimed that he actually saw who shot Harris and Mr. Armijo. S.F. Vol. 21 at 284, 287. Nevertheless, the prosecution recast this testimony to convert these witnesses

^{10/}See pp. 11-12, *supra*; S.F. Vol. 20 at 87, 143-52; Vol. 23 at 685-86, 691; App. 29-30 (F57-58); App. 44-61 (F206-23); App. 77 (F272); App. 98-102 (F432-36); App. 107 (F446); App. 133 (F601); App. 136-137 (F622-23).

to "eyewitnesses." The prosecution also ignored fundamental inconsistencies in these witnesses' testimony in three respects. First, these witnesses' stories differed materially from each other. Second, each witness's initial description of the shooter, given within hours after the crime, differed significantly from Guerra's appearance. Finally, the witnesses gave statements to the police shortly after the crime that differed materially from their trial testimony. To grasp fully the varied versions of the events of July 13, 1982, it is helpful to examine the testimony of each purported "eyewitness" individually.^{11/}

a. Patricia Diaz

38. Patricia Diaz was driving east on Walker Street when she found the street blocked off at Edgewood by a black car with a red top. Id. at 310. She stopped her car approximately 9-1/2 feet from the Buick. S.F. Vol. 20 at 65 (Neely's testimony). As she pulled up to that intersection, she noticed a police car parked behind the Buick and heard a voice yelling, "Stop." S.F. Vol. 21 at 312. She then noticed the profile of a man with a long beard, long hair, and a moustache, standing by the driver door of one of the

^{11/}All the so-called "eyewitness" testimony must be considered in light of the State's use of two suggestive, life-sized mannequins of Guerra and Carrasco. The mannequins were molded into astonishing likenesses of the two men as they looked on July 13, 1982; the state purportedly spent \$7,000 to have them made. App. 162 (F1432); App. 163 (F1495) (Houston Post and Houston Chronicle articles dated Oct. 5, 1982). Each wore the clothes that had been taken from the two men on the night of the shooting. Carrasco's mannequin wore the bullet-riddled, bloodstained shirt that he was wearing when he died. These mannequins were positioned in front of the jury and witnesses throughout the trial. Id.; S.F. Vol. 25 at 899.

cars, pointing toward the police car.^{12/} Id. at 312-13, 316, 329-30. She saw *nothing in the man's hands*. Id. at 318. After seeing the man point, she *ducked* and *heard shots*. Id. at 314.^{13/}

39. Ms. Diaz testified that she could *not see* the police officer, because she "was scared to look up again" after she had initially caught a glimpse of the scene. Id. at 313. When asked by the State if she had any trouble seeing what was happening, she replied, "I didn't get to see that good the people around and everything. I saw the shadows, but saw the shadow of one person then." Id. at 313.

40. In sum, she saw the profile of a man with long hair and facial hair standing by one of the cars pointing at the police car. She ducked and "heard some shots." Id. at 314. She did not see anyone shoot Harris. Id. at 330, 340.

^{12/}See App. 182 (F1567) (Map of Crime Scene). Walker Street runs east to west. The Buick was facing south on Walker, thereby blocking virtually the entire street. The police car was behind the Buick, also facing south. The police car was parked on Edgewood, a north-south street that intersects in an upside-down "T" intersection with Walker. See App. 181 (F1566).

^{13/}She testified that the man she saw pointing was wearing a green shirt. S.F. Vol. 21 at 324. After being reminded that she had told the police on the night of the murder that she did not know the color of the shirt, she conceded that she did not know its color. Id. at 324-25. At a lineup later on the night of the shooting, she identified Guerra as the man whose profile she saw. Id. at 317.

b. Herlinda Garcia.

41. Herlinda Garcia was 15 years old at the time of the shooting. S.F. Vol. 22 at 463. She was standing on Walker Street when the shooting occurred.^{14/} She testified that as she was on her way to the store, the Buick stopped in the middle of Walker Street, id. at 445, two men got out of the car, and the driver, whom she identified as Guerra, said that their car was "messed up," id. at 446-47. Seconds later, a police car pulled up, and she claimed that she heard Harris say: "Hold it." Id. at 448. She did not, however, recall seeing Harris get out of his car. Id.

42. At that point, Ms. Garcia testified, "those two men" got out of their car, id., contradicting her earlier statement that the men were already out of the car when Harris pulled up, id. at 446, 448. Both men then walked toward Harris.^{15/} Id. at 449. One or both men had their hands on top of one of the cars. Id. at 478-79. Then "one man turn[ed] toward the policeman, and he pulled something out of his pants . . . [a]nd then he shot that policeman, and that is when I ran, me and my baby." Id. at 449. Ms. Garcia later said that she heard three gunshots, id. at 450, that she saw the policeman "on the floor," and that is when she ran, id. at 451. Finally, she clarified: "I told you I was running at the time of the gunshots." Id. at 480.

^{14/}The trial record on the location of witnesses and events is incomprehensible. See note 4, supra. For example, Garcia testified that she was standing "right here," and the police officer's car was "right here." S.F. Vol. 22 at 444.

^{15/}During cross-examination she placed Harris walking up to the Buick, id. at 476, but later claimed that he was halfway between both cars, id. at 477.

43. She testified that from where she was standing, she could not see what object, if any, the man pulled out of his pants. Id. at 450.

44. She testified that she was able to see the man who she identified at trial as Guerra running on the opposite side of Walker, as she ran toward her house on Walker, id. at 452, which is on the south side of the street, compare id. at 451-52, with Vol. 20 at 104-05, 143-44, and Vol. 22 at 547, 562.

45. As she was running inside her house, Ms. Garcia saw a red Ford (apparently the Armijo vehicle) coming down the street toward her. Id. at 458-59.

46. Despite her in-court identification of Guerra as the person she believed shot Harris, Ms. Garcia acknowledged that in her initial statement to the police she had described the shooter as a *blond haired* man ^{16/} wearing a *brown* shirt and *brown* pants. Id. at 466-67. This description most closely matches Carrasco, who was wearing a maroon shirt and brown pants and was called "Werro," or fair-skinned one. See S.F. Vol. 24 at 809. Even at trial, Ms. Garcia continued to insist that the shooter wore brown clothes, see, e.g., S.F. Vol. 22 at 467, 478-80, even though this more closely fits the description of the clothes worn by Carrasco than those worn by Guerra.

47. Near the end of her testimony, Ms. Garcia admitted that she *never saw the man in brown clothes* raise his hand or shoot anyone! Id. at 484.

^{16/}Her unbelievable explanation for having identified the shooter as blond was that "at a distance in the dark," it looked like it was blond. Id. at 460.

48. In sum, Ms. Garcia, a young teenager, recalled seeing a blond-haired man in brown clothes standing near the trunk of the Buick, start walking toward Harris, and pull something out of his pants. She ran, then heard gunshots, and *assumed* the shots were fired by the blond man in brown clothes.

c. Vera Flores.

49. Vera Flores, who was 16 at the time of trial, id. at 522, testified that she was with her sister, Herlinda Garcia, when the Buick stopped in the middle of Walker Street. Id. at 503, 506. She claimed that the Buick was coming down Edgewood Street when she first noticed it, id. at 521; that one man got out of the car and asked Ms. Flores if she had any cables to give his car a boost, id. at 507; and that she told him that she did not, id. At that time, she noticed only one man. Id. at 508.

50. Ms. Flores testified that about 1-1/2 minutes after the Buick stopped, the police car arrived at the intersection. Id. at 508. Ms. Flores started to walk away and then she heard the policeman say, "Stop." Id. She saw that Harris was out of his car, standing by his door. Id. at 510. "The men from the black and red car" approached the police car. Id. at 511. She heard someone say, "no, no," like they were frightened, and then she heard gunshots. Id. at 512.

51. *Ms. Flores did not see anyone with a gun.* Id. She testified that the reason she concluded that the driver of the Buick shot Harris, was "[b]ecause when he started running, I just seen him shooting down the [Walker] street." Id. at 513-15. She admitted,

however, that she could not see what happened to the police officer because she hid *behind* a car when the shooting started. Id.

52. Ms. Flores identified Guerra as the driver and the man she saw running down Walker street, *on the side of the street where she lived, across the street from Mrs. Galvan*. Id. at 517; see id. at 516. Here, Ms. Flores's testimony directly contradicts her sister Herlinda's account of the shooting, which placed the Buick driver running on the opposite side of the street. Id. at 452.

53. Ms. Flores conceded that at a lineup at the police station several hours after the crime, she had failed to identify Guerra, which she attributed to fear. Id. at 518.

54. On cross-examination, Ms. Flores admitted that in the first statement she gave police, at 12:40 a.m. on July 14, she said that she could not identify anyone. Id. at 525. She further testified that her sister Herlinda had already started walking back toward her house before any shooting started. Id. at 527.

55. In her first statement, Ms. Flores said that the two men were at the police officer's car, with their hands on the hood. Her testimony at trial was confused but supported this observation, with the passenger nearer to and within about two feet of Harris. Id. at 527-31.

56. Most importantly, Ms. Flores testified that she did not see the man who shot Harris or Armijo Sr. Id. at 516, 535; see id. at 545. She saw no gun until *after* Harris had been shot and after the man she *assumed* was the shooter had begun to run

down the street. Id. at 512-513. Ms. Flores re-confirmed on cross-examination that she *did not see anyone shoot Harris*. Id. at 535.^{17/}

57. In sum, she saw both men from the Buick put their hands on the hood of the police car, with the passenger closer to and about two feet from Harris. She heard shots. Then she saw Guerra running down the south side of Walker.

d. Hilma S. Galvan.

58. Hilma Galvan testified that she was out walking with Jose and Armando Heredia on the night of July 13, 1982. Id. at 551. While she was at the corner of Lenox and Walker, she noticed a car parked on Lenox, with its headlights on. Id. at 550. The car then came up the street at a high rate of speed, turned the corner, and came close to hitting her. Id. at 551. She saw then that the driver of the car was Guerra, id. at 570, whom she knew, id. at 567.

59. Ms. Galvan then saw the police car stop near George Brown. Id. at 553. Hearing the other car "coming down Rusk real fast," she started back toward her house. Id. She next saw the police car and the other car parked at the intersection of Edgewood and Walker. Id. at 554. While she was at the driveway of the Cavazos home, she saw the police car pull up behind the other car. Id. at 555.

^{17/}Even after acquiescing in the prosecutor's leading question on *re-direct* that she had seen the driver pull a pistol and shoot Harris, id. at 543-44, she immediately backpedalled to say that she was unsure what the driver had pulled out and no longer remembered if she had seen him shoot Harris, id. at 545.

60. From her vantage point, she could see one of the men standing in front of his car, by the sidewalk across the street. Id. at 556. She then walked to her driveway, which was the second house east from the intersection of Edgewood and Walker, id. at 548, 556, on the north side, compare Vol. 20 at 104-05, 143-44 with Vol. 22 at 547, 562; App. 181 (F1566) (map). From there, she watched what happened. S.F. Vol. 22 at 556.

61. According to her testimony, Harris got out of his car and yelled "Come here" to the "man that was by the sidewalk." Id. at 557. The man "kept on walking," so Harris again told him to "come here." Id. The man kept on walking, so Harris told him: "Hey, you come back." Id. At that point, the man turned around and walked back toward the police officer. Id.

62. Ms. Galvan saw Ms. Garcia and Ms. Flores standing in front of "the car," but she saw no one else there apart from the police officer and "that man." Id. The police officer continued to stand by the door of his car. Id. at 558.

63. Ms. Galvan described the shooting as follows:

Well, it happened so sudden when the police officer called him for the second time and he said, "Hey, you, come here," he turned around and started toward the police officer, and all I heard was two shots, and I seen the officer fall, and then I heard about two more shots

Id. at 559. She said *she never saw a gun*, but she saw the flash coming out of the gun.

Id. at 560. Ms. Galvan testified that the shooter had *blond* hair and wore a black or *dark*

brown shirt and *brown* pants. Id. at 589.^{18/} In court, however, she identified the shooter as Guerra. Id. at 561. She claimed she never saw Carrasco. Id. at 567, 581.

64. After Harris fell, she ran into her house. Id. at 562. She saw Ms. Garcia and Ms. Flores running to their house, on the opposite side of the street from Galvan. Id. She did not see what the shooter did after she ran into her house. Id.

65. Ms. Galvan testified that she had seen Guerra previously, at a convenience store where she worked. Id. at 567. She believed she had first seen him several months before the shooting. Id.

66. On cross-examination, she admitted that in the statement she first gave police, at 12:05 a.m. on July 14, she stated that Harris walked up to Guerra and pushed him against the car. Id. at 584. When asked if Harris had his revolver out, she responded, "I couldn't see the officer. His back was towards me." Id. Later, she elaborated:

He didn't really push him against the car. He tried to go -- well, I know I said "pushed," but, of course, I was confused that night. He tried to get a hold of him like this, and everything happened so soon. The shots were fired right there and then.

Id. at 585. The person she believed to be the shooter then ran towards her, on her side of the street, id. at 587, which is the north side.

^{18/}Ms. Galvan attributed the blondness to light reflecting off the street, S.F. Vol. 22 at 569-70, 589, even though (1) she admitted that Guerra was inside the Buick at the time, id. at 569, and (2) the nearest streetlight was across the street and 34 yards west of the intersection, id. App. 67 (F229). She then inconsistently claimed that she might have been mistaken about the clothing color because it was dark. Id. at 589.

67. In her first statement to police, she described the shooter as having a dark brown or black shirt, dark brown pants, and blond hair. Id. at 589. Yet, she testified that she knew Guerra because he frequently came into the convenience store where she worked. Id. at 566-67. She had not seen Carrasco in the neighborhood. Id. at 588. Yet, when asked if Carrasco was with Guerra the first time that Guerra came into her store, she responded: "To tell you the truth, I think he was, but there were so many of *them* that it's hard for me to remember *all of them* and *they* don't look the same now." Id. at 587.

68. Jose Heredia was standing next to Ms. Galvan when the shooting took place. Id. at 590.

69. In sum, Ms. Galvan saw Harris order Guerra to come closer and push him against the police car. Then she heard shots, saw a flash, and saw Harris fall. She never saw a gun, and she said nothing about seeing Guerra pointing at Harris. She then saw "Guerra," whom she described to police that night as having blond hair and black or dark brown clothing, begin to run towards her as she ran into her house.

e. Jose Armijo, Jr.

70. Ten year-old Jose Armijo, Jr. was in the car with his father, Jose Francisco Armijo, when the elder Armijo was shot in the head with a single nine-millimeter bullet. S.F. Vol. 21 at 287.

71. Mr. Armijo was driving west on Walker Street, toward the intersection of Edgewood and Walker, when Jose Jr. saw the black Buick. Id. at 281. Jose Jr. was

sitting in the front passenger seat of his father's car Id. He saw the police car behind the Buick. Id. at 282. His father then stopped the car. Id.

72. In response to leading questions posed by the State, Jose Jr. testified that Harris was standing beside the open door of the patrol car. Id. at 283. Two other men were standing by the hood of the patrol car, with their hands on the hood. Id. At that point, Jose Jr. testified, one of the men "acted like he was scratching his back," took out a gun, and shot Harris.^{19/} Id. at 284. Jose Jr. could see fire coming out of the gun. Id. at 285. Harris then fell to the ground. Id.

73. Jose Jr. testified that the shooter wore a green shirt and the other man wore a purple shirt. Id. While testifying, he was facing two life-sized mannequins molded into likenesses of Guerra and Carrasco, each of whom wore the same clothes that they had worn on the night of the shooting. Guerra wore a green shirt and blue jeans, and Carrasco wore a maroon shirt and brown pants. The State introduced the mannequins in evidence at the beginning of the State's case, and they remained in front of each witness as each testified. S.F. Vol. 20 at 44; Vol. 25 at 899.

^{19/}On the night of the shooting, Jose Jr. told the police that the shooter used his *left* hand to retrieve and shoot the gun. App. 7 (F16). He omitted from his trial testimony any reference to which hand the shooter had used, perhaps because the prosecutors knew, as Guerra will prove at an evidentiary hearing, that *Guerra is right-handed* while *Carrasco was left-handed*.

74. Jose Jr. saw one of the men grab the police officer's gun, but he could not tell which one. Id. at 286. Both men then "started running and shooting all over the place." Id.

75. Mr. Armijo began to back his car up after Harris was shot. Id. The two men ran by the car, one on each side, and the one on the passenger side of the car shot into the car. Id. at 287. Jose Jr. testified that he thought the shooter was wearing a green shirt. Id. Mr. Armijo was hit by a bullet and put the car in drive. Id. at 287-88. The car went into a ditch. Id. at 288. After the shooters ran by the car, Jose Jr. got out of the car and went to Galvan's house to get help. Id.

76. At a lineup only hours after the shooting, Jose Jr. was unable to identify Guerra as the shooter. Id. at 290. Yet, with the mannequins facing him in court, he was able to distinguish the color of the shirts worn by Guerra and Carrasco. Id. at 285. He also testified that the shooter had a beard and long hair, like the mannequin of Guerra in the courtroom. Id. at 292. In court, he identified Guerra as the shooter. Id. at 291.

77. On cross-examination, Jose Jr. admitted that he gave a sworn statement to the police on the night of July 13, 1982, in which he stated that *he did not see the shooter clearly*. Id. at 295. In that first statement, given shortly after the shooting and hours before the lineup, he told police that *he did not know who shot* the police officer. Id. at 296. In that statement, Jose Jr. also told the police that he did not know what clothing Guerra and Carrasco were wearing the night of the shooting. Id. at 301. At a lineup hours later, he failed to identify Guerra. Id. at 298. At that lineup, a police officer told

Jose Jr. that the men in the lineup could not see him because Jose Jr. and the other witnesses were looking through a one-way mirror. Id. at 296. Nevertheless, at trial, the State elicited from Jose Jr. the excuse that he had failed to identify Guerra at the lineup out of fear. Id. at 290.

78. After he heard the shots that killed Officer Harris, Jose Jr. ducked and hid on the floorboard of his father's car. Id. at 302. He stayed on the floor of the car until the men ran past the car and reached the corner of the street behind the car. Id. at 303.

79. In short, Jose Jr. testified that as two men were standing with their hands on the patrol car, one acted like he was scratching his back, took a gun, and shot Harris. Jose Jr. then hid on the car's floorboard as the two men ran past, one shot his father, and both turned the corner at Lenox. At trial with the mannequins in front of him, Jose Jr. claimed that Guerra was the shooter of both Harris and his father, id. at 291, even though he initially told the police that he had not seen either man well, did not know what they looked like, and did not know who shot Harris; even though he was down on the floorboard when his father was shot; and even though he told the police at the lineup that he could not identify anyone.

80. To rehabilitate Jose Jr., the State called Marie Estelle Armijo ("Mrs. Armijo"), Jose Jr.'s mother and the widow of Mr. Armijo. S.F. Vol. 23 at 620. The court allowed Mrs. Armijo to testify, even though she was present for the State's entire case and heard all the testimony of her son and of the other witnesses, and she saw the mannequins. Id. at 626. The court overruled defense counsel's objection that her

testimony constituted a violation of "The Rule," Tex. R. Evid. 614, requiring witnesses to be excluded from the courtroom during others' testimony. Id.

81. Mrs. Armijo testified that at approximately 8:30 a.m. on July 14, 1982, Jose Jr. had come home from the lineup and told her that he had seen the person who had done the shooting but was afraid to tell the police. Id. at 633. It is not clear from the record whether Jose, Jr. was referring to the shooting of Harris or the shooting of his father.^{20/} She further testified that she had waited six weeks, until only a few days before the trial, to tell the prosecutors that Jose Jr. could identify Guerra as the shooter. Id. at 635-36.

82. Over defense counsel's objections, Mrs. Armijo was also permitted to testify about how Jose Jr.'s behavior had changed since his father's death. Id. at 634-35. This testimony could only have been intended to engender sympathy and to arouse jury hostility against Guerra, the only defendant present. It clearly was irrelevant to the question of his guilt.

83. On cross-examination, Mrs. Armijo admitted that she had been asked to leave the courtroom during her son's testimony after she had an emotional outburst in reaction to defense counsel's questioning. Id. at 639; see also S.F. Vol. 21 at 304. She also testified that she had spoken to her son after his testimony, but before hers, about the facts of this case. S.F. Vol. 23 at 640.

^{20/}Mrs. Armijo testified that Jose told her he knew who had "done it." S.F. Vol. 23 at 633.

4. Other Prosecution Witnesses.

84. In addition to the testimony of the five people named above who, according to the State, witnessed the shooting of Harris, early in its case the State presented the testimony of three witnesses who, although not present at the scene of the shooting, witnessed events before and after the shooting that were relevant to the State's theory of the case. These witnesses' testimony was similarly inconsistent and apparently affected by improper influences.

a. George Brown.

85. First, George Brown testified that he was walking his dog on Walker Street when a "black Cutlass" drove dangerously close to him. S.F. Vol. 22 at 381-82. The car passed by him twice. Id. at 376-78, 382. The first time the car passed, Mr. Brown noticed the man in the passenger seat of the car. At trial, Mr. Brown identified Guerra as the passenger. Altogether, he saw four or five people in the car, unlike all other witnesses (except Jose Jr., who reported seeing at least four people, App. 7 (F16)), who reported seeing only two in the vehicle, id. at 392-93, 399.

86. "No more than ten seconds" after the car drove passed him and turned left on Altic, a police car approached. Id. at 383. Mr. Brown informed Officer James Harris that a car had nearly hit him and his dog. Id. Harris then drove off in pursuit of the car described by Brown. Id. at 383-84.

87. "Less than a minute" later, Mr. Brown heard 6 to 8 gunshots. Id. at 385. He was walking in the direction of the shooting, when he saw a "Mexican" man running

toward McKinney Street. Id. at 385-86.^{21/} Mr. Brown recalled the man wearing a white T-shirt and blue jeans, holding his stomach, and turning his head to look behind him as he ran. Id. at 385-87. Mr. Brown testified that the man he saw running was neither Guerra nor Carrasco. Id. at 387.

b. Frank Perez

88. Next, Frank Perez testified that he was working in his driveway at 919 Lenox Street^{22/} when he heard gunshots. Id. at 408. About a minute later, he saw a man running, coming from Walker and cutting across the yard of the house at Lenox, and heading down Lenox toward McKinney. Id. at 410-11. As the man ran by his house, Perez heard "something metallic" drop to the ground. Id. at 411. The man turned around, picked up the dropped object, and continued running toward McKinney. Id. at 410-412.

89. Perez testified that the man he saw had *short hair*, a *short, full beard*, and a mustache and was wearing a light-colored T-shirt and jeans. Id. at 413. When shown a picture of Carrasco, Perez testified that he was "pretty certain" Carrasco was the man he saw that night. Id. at 413-14. On cross-examination, Perez admitted that his initial description of the man referred to *long hair* and a *full beard* and a *mustache*. Id. at

^{21/}McKinney runs parallel to, and is one block south of, Walker. See App. 181 (F1566).

^{22/}Lenox is parallel to and one block east of Edgewood. Number 919 is a few houses south of Walker on the east side of the street. See S.F. Vol. 22 at 419; App. 181 (F1566) (map).

425-26. The mannequin of Carrasco, noted Perez, had short hair and no beard. Id. at 426-27.

c. Jose Gelasio Saucedo.

90. Finally, Jose Gelasio Saucedo, Mr. Armijo's brother-in-law, testified that he was inside his house on the northwest corner of Lenox and Walker when he heard gunshots. S.F. Vol. 21 at 265. He went to his side window and saw the back of a man running north on Lenox, in the direction of Rusk Street. Id. at 266.^{23/} Although there was no light outside his house, he claimed initially that he could see that the man had shoulder-length hair and was wearing a shirt that was either dark green or blue, although it was difficult to tell the color due to the darkness. Id. at 269. On cross-examination, he admitted that he could not discern the color of the man's shirt, hair, or pants, because of the darkness and that all he could tell about the shirt color was that it was dark. Id. at 275-77.

5. An Emotional Appeal Based on Victim Character Evidence.

91. The medical examiner who conducted the autopsy of Harris described the powder burns around Harris's wounds and the path of each bullet. S.F. Vol. 23 at 685-91. During his testimony, the State introduced (i) several grisly photographs of the autopsy showing the entrance and exit wounds to Harris's face and head and (ii) several pictures

^{23/}Rusk is parallel to, and one block north of, Walker.

showing rods entering one side of Harris's face and exiting the other side. Id. at 688-91 & Exs. 74-78.

92. The State's final witness, immediately after the grisly pictures of Harris had been displayed, was Pam Harris, Harris's widow, who testified at some length about her husband's life, work, and marriage. Id. at 701-11. The court overruled repeated objections by defense counsel that the prosecutor's line of questioning was immaterial and inflammatory. Id. at 702-03, 706.

93. As of the end of the State's case, only one witness -- 10-year-old Jose Jr. -- claimed to have seen Guerra shoot Officer Harris. S.F. Vol. 21 at 284. Ms. Diaz saw a man with long hair standing by the side of one of the cars point towards the police car with his hands -- not a gun, id. at 312-13, 316; teenagers Garcia and Flores saw two sets of hands on the police car hood, S.F. Vol. 22 at 479, 527-32, heard shots, and saw Guerra run away after the shooting, id. at 452, 536-37; and Ms. Galvan saw Guerra being pushed against the police car, saw a flash, and heard shots, id. at 559-60, 584-85. No one saw Guerra in the location where the shooter had to be -- east of Harris.

6. The Defense Case.

94. The defense presented the testimony of four witnesses, two of whom were eyewitnesses to the shooting of Officer Harris and two of whom heard Carrasco confess to the murder immediately after the shooting. The defense's final witness was Guerra.

95. The defense witnesses each supported Guerra's version of the events and establish his innocence.

96. The two eyewitnesses to the shooting were Jacinto Vega and Jose Heredia.

a. Jacinto Vega.

97. Jacinto Vega, who was 17 at the time of the trial, testified that he had been sitting on Hilma Galvan's porch when he first saw Guerra, whom he knew, drive the black and red Buick past the house. S.F. Vol. 23 at 715. He saw the car stop at the intersection of Edgewood and Walker. Id. at 716. He saw the driver get out of the car and approach two girls, Ms. Garcia and Ms. Flores, who were standing by the sidewalk. Id. at 717. He recalled the passenger, who had short hair, getting out of the car. Id. at 718.

98. A police car drove up and parked behind the Buick. Id. at 716. When Harris arrived, he called the driver, who walked over to the police car and placed his hands on the hood of the car. Id. at 718. The passenger walked behind the driver and, while he was standing behind (and thus east of) the driver, "took something out," and shot Harris. Id. He held the weapon with two hands. Id. at 719.

99. After shooting Harris, the passenger began running. Id. Vega did not see which way the shooter ran, because Galvan yelled at him to "Get inside the house." Id. Instead, however, he hid behind a brick wall on Galvan's porch. Id. He saw someone pass by, but could not see the person well enough to describe him. Id.

100. Vega went to the police lineup, where he identified Guerra as the person he had seen driving the Buick around the neighborhood. Id. at 720.

101. On cross-examination, Vega testified that he had not seen the faces of the two men, id. at 724, but insisted that at the time of the shooting the driver was closer to Harris, while the passenger, who had hair that was not long, shot from right behind the driver. Id. at 727-31, 736.

b. Jose Heredia

102. The defense next called Jose Heredia, who testified that while he was out walking with his brother (Armando Heredia) and Ms. Galvan on the night of the shooting, id. at 739, he saw Guerra driving a black and red car, id. at 742. Later, he saw the same car parked on Walker, blocking the street. Id. at 743. The police car pulled up, and Harris got out of his car. Id. Harris spoke to Guerra, who went to the police car and placed his hands on the car's hood. Id. at 744. With Harris standing next to his car door, the passenger approached the police car and shot Harris. Id. The shooter was "Werro, the light-colored one." Id. at 744.

103. Shortly after the shooting, Heredia gave the police a statement describing the events of the evening that was consistent with his trial testimony. Id. at 746; see id. at 769.

104. On cross-examination, the State questioned Heredia at length regarding an alleged killing that took place at a cemetery roughly 40 minutes before Harris was killed. Id. at 747. The prosecution knew that *no* such incident in fact had occurred and also knew that the false rumor was not connected in any way with Guerra or the shooting of Harris and Armijo. Nevertheless, the prosecutor implied that the perpetrators were the

same and promised to "spell out" the relevancy, id. at 747, but he never did. The judge erroneously permitted this line of questioning, despite defense counsel's objection on relevancy grounds. Id. at 746-47.

c. Jose Manuel Barrosa Esparza

105. The defense also called two witnesses, Jose Luis Torres Luna and Jose Manuel Barrosa Esparza, who lived at 4907 Rusk at the time of the shooting. S.F. Vol. 24 at 774, 813-14. Both testified that they were at home when *Carrasco* ran into the house and *confessed* that he had killed a police officer. Id. at 784-85, 814-15.

106. Mr. Esparza testified that at approximately 10:00 or 10:30 p.m. on July 13, 1982, he heard gunshots from his home at 4907 Rusk. Id. at 784. Three or four minutes later, Carrasco, whom he knew as "Antonio," came into the house, agitated and out of breath, and said that he had just killed a policeman, id. at 784-85, and showed Mr. Esparza the police officer's gun, id. at 785.

107. "Antonio" held a gun in his hand and had another gun in his belt. Id. He removed a clip from the pistol in his hand and replaced it with a loaded clip. Id. at 785-86. Shortly after Antonio's arrival at the house, Guerra came running up to the house from the direction of Dumble Street.^{24/} Id. at 786. After Guerra arrived, Mr. Esparza asked both men to leave. Id. at 791.

^{24/}Dumble is one block west of Edgewood. If Guerra had turned south at Lenox, then west on McKinney, the straightest path home without running back to the crime scene would have been to turn north on Dumble. See App. 181 (F1566) (map).

108. A short time later, police arrived at the house, took Mr. Esparza and Mr. Luna outside, and made them lie on the ground. Id. at 791. There were roughly seven police officers; most had their guns drawn. Id.

109. On cross, Mr. Esparza stated that Guerra and "Antonio" had left 4907 Rusk earlier that night, in a car owned by Jacinto Lopez. Id. at 796.

110. He told the police nothing because of fear resulting from the way that the police had treated him. Id. at 801.

d. Jose Luis Torres Luna.

111. Mr. Torres Luna testified that after the shooting "Werro" came running into the house at 4907 Rusk and excitedly said that he had killed a policeman. Id. at 815. Werro took the police officer's revolver from his belt and offered it "as a present" to Mr. Torres Luna, which he refused. Id. Werro then loaded the other pistol with a clip. Id. at 816.

112. A short while later, Guerra arrived from the direction of Dumble and told Mr. Torres Luna that Werro had just killed a policeman. Id. at 817. Werro announced that he was going to defend himself and that he preferred death to surrender. Id. at 817-18. Both Werro and Guerra then left through the rear door of the house. Id. at 818.

113. Mr. Torres Luna admitted to telling the police none of the substance of his testimony because he was scared. Id. at 834-35, 839.

c. Ricardo Aldape Guerra.

114. Finally, Guerra took the stand. His trial testimony was consistent with the statement he gave to police on the night of the murder. He testified that he had known Carrasco, whom he knew only as "Werro," for two or three weeks. Id. at 842. On the night of July 13, he and Carrasco borrowed a car from Jacinto Lopez and went to the store to buy some soda. Id. at 843. Carrasco was carrying his nine-millimeter pistol. Id.

115. After going to the store, Guerra drove around the neighborhood, driving fast and spinning his tires. Id. at 843. The car stalled out at the intersection of Walker and Edgewood. Id. at 844. Guerra got out of the car and asked two girls standing nearby if they had any jumper cables. Id. at 845.

116. A police car arrived. Id. Guerra heard the police officer say something, but the only words he understood were, "Come on." Id. at 846. On hearing that command, Guerra walked over to the police car and placed his hands on the hood of the car. Id.

117. Harris had his gun out. Id. at 847. He was telling Carrasco to "come on." Id. Guerra was unable to see Carrasco. Id. Suddenly, Guerra heard shots, "almost in my ears." Id. He saw Harris drop to the ground. Id. Carrasco walked up to Harris and took his gun. Id. Both men then ran. Id. at 848.

118. Guerra ran down the right side of the street, heading east toward the cemetery on Walker Street. Id. He heard shots behind him, and, panic stricken, fired his own gun twice in the air. Id. at 849. When he got to the first intersection (Lenox), he

turned right, then ran to the next block (McKinney), turned right again, and ran to Dumble Street. Id. at 850. He ran along Dumble until he arrived at Rusk Street, where he turned and ran into his house. Id. at 851; see generally App. 181 (F1566).

119. When he arrived at 4907 Rusk, Carrasco was already there. Id. Carrasco said that he had shot at another car. Id. at 853.

120. Guerra left the house through the rear door and hid behind a horse trailer. Id. He heard shots, and shortly thereafter, police found him in his hiding place behind the trailer. Id. Guerra had taken his pistol and placed it underneath the trailer, within arm's reach.^{25/} Id.

121. Upon Guerra's arrest at 11:30 p.m., he was handcuffed, placed in a squad car, and driven back to the original scene of the crime. S.F. Vol. 20 at 27. Around that time, there were at least one hundred interested onlookers and witnesses within the immediate vicinity of the intersection of Edgewood and Walker. Id. at 13. At least one State witness, George Brown, saw Guerra sitting in the patrol car. See App. 39 (F133).

7. The Prosecution's Rebuttal.

122. On rebuttal the prosecution called only one witness, police officer Jerry Robinette. Robinette testified that he had interviewed Mr. Torres Luna and Mr. Esparza near their house at about 11:30 p.m., S.F. Vol. 24 at 878-79, shortly after Carrasco had shot Trepagnier. Robinette first saw them approaching 4907 Rusk with two other men.

^{25/}On cross-examination, Guerra explained that he had been carrying the gun for his own protection, because there was a lot of crime in the area. S.F. Vol. 24 at 869.

Id. at 879-82. He claimed that he had been told by Mr. Torres Luna and Mr. Esparza that they and the two other men had left home together shortly after the departure of Carrasco and Guerra earlier in the evening and had not returned until Robinette saw them. Id. at 884-86. Robinette insisted that he had seen no one pointing a gun at Mr. Torres Luna and Mr. Esparza as they were talking to any police officer and that neither man had said anything about Carrasco admitting to killing Harris. Id. at 887-88.

8. Closing Argument.

123. In closing argument the prosecution speculated that while driving around in the Buick, Guerra and Carrasco must have taken their guns out of their belt, placed them on the seat, picked up the wrong gun as they got out of the car, and somehow exchanged guns after the murder.^{26/} S.F. Vol. 25 at 907-08.

124. The prosecutors described the testimony of each so-called "eyewitness" as follows: Jose Jr. saw Guerra shoot a policeman, whom Jose Jr. viewed as a "superman," and then saw Guerra shoot his father, id. at 920; Ms. Galvan testified that she saw Guerra pull a gun and shoot Harris and shoot at the Armijo car, id. at 927; the "girls" (Ms. Garcia and Ms. Flores) said that Guerra shot Harris, id. at 927; and Ms. Diaz said she could "come close to identify him" and saw him make a gesture, id. at 928. The State insisted that *all five* people -- Jose Jr., Galvan, Diaz, Garcia, and Flores -- immediately

^{26/}The *only* testimony that either man ever removed his gun while riding in a car came from Guerra, who testified that he had removed his gun on the afternoon of the shooting, at a friend's request, as he was *leaving* a car to enter a store. Id. at 875-76. He insisted that while driving he *always* kept his pistol tucked in his pants. Id. at 870-71.

went to the police station, gave written statements without having a chance to confer, viewed the lineup while being told not to discuss what they saw, were asked individually whether they recognized anyone, and pointed out Guerra. Id. at 932-33.

125. The defense argued generally that each witness had changed what was in his or her statement in numerous ways and described some of the discrepancies among witnesses. Id. at 937-38, 954-56. They pointed out that Carrasco was violent, had done all the shooting outside 4911 Rusk (even though Guerra had a loaded gun within easy reach) and was the kind of man who would kill a policeman. Id. at 958.

126. On rebuttal, the prosecution asked for a verdict fair to Harris and his family, id. at 968-69; insisted again that *five witnesses had said*, without reservation, *that Guerra killed Harris*, id. at 969-70; that all five had identified Guerra at a lineup without consultation, id. at 972; that the scientific evidence was "inconclusive," id. at 975; that Torres Luna and Esparza were liars, id. at 977; that Heredia was probably under the influence of alcohol or narcotics, id. at 981; and that Harris was "a good man, a good member of the community," id. at 986-87.

127. After reviewing testimony of Galvan describing who shot Harris and of Jose Jr. describing who shot Harris and his father, id. at 990-91, and 15 minutes after the judge asked to be told the jury vote (which was then 11 to 1, id. at 991-93), the jury returned a verdict of guilty, id. at 994.

C. The Lineup and Evolution in the Witnesses' Recollections

128. As the State's witnesses' inconsistent and varying trial testimony revealed, these individuals were confused and uncertain about what they had seen of the shooting. The police force conducted their investigation overzealously -- or at least without the ordinary safeguards for a suspect's rights, because the most likely suspect was already dead, and the only other suspect was an undocumented, non-English speaking man from Mexico.

129. Close to midnight, at least 16 witnesses were taken to the police station to give statements about their knowledge of the shooting. See App. 134-35 (F620-21). Both before and after they were questioned, the witnesses remained together in the police station for the entire night. Recent investigation reveals that during that night, at least one eyewitness saw Guerra, in handcuffs, being led by police officers into the police station. Before the lineup, police informed witnesses that they had captured one of the men responsible for the shooting and that witnesses would be given the opportunity to identify him.

130. All 16 witnesses viewed the 6-person lineup as a group. Cf. id. As a group, they were asked if they could identify anyone in the lineup. Several witnesses, in voices audible to others present, identified Guerra, in position number four, a few saying he was

the shooter; others, the driver; still others, merely recognized him. See, e.g., S.F. Vol. 23 at 753 ("Well, as everybody was saying, 'It's the fourth one'"; note 101 infra.^{27/}

131. On July 22, 1982, six police officers, a firearms expert, and the two prosecutors assembled the group of witnesses at the intersection of Walker and Edgewood and orchestrated a "walk through," or reenactment, of the shooting. App. 90-91 (F374-75). It was during and after this "walk through" that two of the most significant eyewitness accounts underwent a major transformation.

132. In her statement to police at 12:40 a.m. on July 14, Ms. Flores stated: "I don't think I can identify the two persons I saw and I have never seen them before." See App. 9 (F18). At the lineup several hours later, Ms. Flores did not identify Guerra. App. 135 (F620). Yet, after detectives interviewed her at the July 22 "walk through," she suddenly regained her memory of the shooter. See App. 92-93 (F376-76A). Detectives then showed her a photo array, from which she selected the picture of Guerra. Id. at 376. At that time, she told a police detective that she knew Guerra because he was a regular in the neighborhood. See App. 91-93 (F375-76A). Ms. Flores informed the detective that she had not identified Guerra in the lineup because she thought "enough people had already picked him out." Id. This contrasts dramatically with her trial testimony, where

^{27/}At an evidentiary hearing, Guerra will prove that the witnesses not only viewed the lineup as a group, but also spoke to each other and identified Guerra audibly as either the shooter, the driver, or someone they recognized. In addition, Guerra will show that one of the witnesses, before, during, and after the lineup, tried to pressure others into identifying Guerra as the shooter.

she had claimed fear as the reason for not identifying Guerra in the lineup. S.F. Vol. 22 at 518. The same detective then took a second statement from Ms. Flores at the homicide division of the Houston Police Department. See App. 10-11 (F19-20).

133. At the July 22 "walk through," Ms. Galvan, who had previously described the shooter as a blond man wearing a dark brown or black shirt and dark brown pants, App. 3 (F8), told police that she had recognized Guerra because he had been in the neighborhood for several months and was a regular in her store. App. 92 (F376). The coincidental similarities between the statements of Ms. Flores and Ms. Galvan were not explained.

134. Two days before trial, the State assembled its witnesses once again, this time to show them the mannequins of both men. State witnesses Jose Jr., Ms. Armijo, Diaz, Perez, Garcia, Flores, and Galvan all viewed the mannequins at that time.^{28/} On that date, Marie Estelle Armijo first told prosecutors that her son, Jose, could identify the shooter. S.F. Vol. 23 at 636.

135. The State's mannequins remained in the courtroom throughout the presentation of the State's case, despite defense counsel's strenuous and repeated objections. S.F. Vol. 22 at 374-75, 431, 447; Vol 25 at 900. The mannequins assumed a prominent position in the courtroom, in full view of both jurors and witnesses. According to one reporter, the courtroom "took on the unsettling air of a wax museum" with the

^{28/}The mannequins were wearing the same clothing that the two men had worn on the night of the shooting, including Carrasco's bloody, bullet-ridden shirt on his mannequin.

presence of the mannequins, App. 163 (F1433) (Houston Chronicle article dated Oct. 5, 1982, § 1, at p.11), and frequently scared even the artist who had sculpted them, App. 162 (F1432) (Houston Post article dated Oct. 5, 1982, at 14A). According to the sculptor: "All the D.A.s were very smirky [as they brought the models into the courtroom]. They figured they really put something over." Id.

ARGUMENT

I. GUERRA IS INNOCENT, AND THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION REQUIRE A MECHANISM FOR REVIEW OF NEW, SUBSTANTIAL EXCULPATORY AND MITIGATING EVIDENCE IN GUERRA'S CASE

1. Guerra did not commit the crime for which he was convicted and sentenced to death. The trial evidence does not support the conviction; neither does logic.

First, *every* so-called "eyewitness" placed Guerra south of the driver's open door and *south or west* of Harris,^{29/} while the physical evidence conclusively establishes that Harris was shot at close range from *east* to *west*. See App. 182 (F1567) (map).

^{29/}The following witnesses indicated that Guerra was standing *south* of Harris: (1) Garcia on the night of the shooting, see App. 5 (F10), and at trial, see S.F. Vol. 22 at 476-80; (2) Flores on the night of the shooting, see App. 9 (F18), at the reenactment, see App. 92 (F376), and at trial, S.F. Vol. 22 at 510-11, 527-31, 543-44; (3) Galvan at the reenactment, see App. 91 (F375); (4) Patricia Diaz, although not clearly, on the night of the shooting, see App. 12 (F21), and at trial, see S.F. Vol. 21 at 312-13, 329-30; and (5) Jose Jr. on the night of the shooting, see App. 2 (F7), and at trial, see S.F. Vol. 21 at 282-85. On the night of the shooting and at trial, Galvan inferred that Guerra fired from *west* to *east*. See App. 2 (F7); S.F. Vol. 22 at 584-85. To the extent any witness testimony is unclear, Guerra will demonstrate at an evidentiary hearing what that witness meant.

2. Second, the ballistics evidence points conclusively to Carrasco as the culprit. His right hand and abdomen contained trace metal from Harris's gun (which witnesses saw the shooter take from Harris after the shooting). Id. at 172. Guerra will prove that the trace metal on Carrasco's left hand came from the murder weapon. In contrast, Guerra's hands and abdomen had no such tracings. Id. at 187-88, 197.

3. Third, Guerra's fingerprints were not found on the murder weapon. App. 89 (F368).

4. The totality of the State's own evidence strongly suggests that the State's witnesses were simply wrong (whether confused or influenced) in concluding that it was Guerra who did the shooting. Rather, the fact that most of these witnesses could not recall seeing Carrasco at the scene supports Guerra's defense that Carrasco fired the shots that killed Harris. The witnesses' confusion in part is attributable to the fact that virtually all witnesses admit it was dark, the critical events all occurred in a matter of minutes, and all on-lookers feared for their *own* safety. See pp. 183-89, infra; E. Loftus, *Witness for the Defense* 53, 189, 195 (1991 ed.) (discussing fallibility of eyewitness testimony when incident was stressful and biased instructions are given for lineup).

5. Most witnesses' testimony and the physical evidence support the theory that Carrasco, with his nine-millimeter gun in his waistband, got out of the passenger side of his car (the Buick), stood in the dark where most of the witnesses could not see him, and pulled the gun from his pants as he moved between the Buick and the police car. While Harris told Guerra to put his hands on the police car hood -- and Guerra did so -- it

appears that Carrasco may have continued around the back of the Buick and kept moving eastward. Instead of stopping to put his hands on the police car hood, Carrasco, from a position east of Harris, *shot his own gun at Harris* at close range. Carrasco, after grabbing Harris's gun, ran east on the north side of Walker. Guerra, after hearing the shots and seeing Harris fall to the ground, also ran east, but on the south side of Walker.

6. The State's witnesses' unreliability also is demonstrated by their confusion concerning the shooting of Mr. Armijo. None of the State's witnesses could reliably identify Mr. Armijo's killer either. Except for Mr. Armijo's 10-year old son, Jose Jr., not one State witness who attempted to blame Guerra revealed under questioning at trial that he/she had seen the Armijo shooting at all. Most merely *heard* the shots. See pp. 19-32, supra.

7. The only witness who contended consistently that the shots were fired by Guerra was Jose Jr., who testified definitively that on hearing or seeing the shooting of Harris, he hid under the dashboard of his father's car until the men passed on either side of the car. S.F. Vol. 22 at 302-03. *He could not possibly* have seen who shot his father, since the bullets were shot through the windshield from in front of the car.

8. Jose Jr.'s confusion -- and possibly sincere belief -- that he had identified Harris's shooter correctly must be viewed in light of that boy's failure to identify the shooter at the lineup, S.F. Vol. 21 at 290; see App. 134 (F621), *and* his unexpected identification -- subsequent to numerous conversations with the police and prosecutors - - at trial, id. at 303, only after he was exposed to (i) relentless pressure by one of the

other so-called "eyewitnesses" to identify Guerra as the shooter, (ii) repeated hints by the State about what was considered the "correct" answer, and (iii) the macabre mannequins that facilitated making distinctions between the two men.

9. The prosecution's theory -- without *any* foundation in the trial record -- that Carrasco and Guerra had placed their guns on the front seat of the Buick, then somehow retrieved each other's gun by mistake, and switched guns *again* after the murder, is illogical, contrary to the most likely inferences from the State's expert witnesses, and contrary to Guerra's trial testimony, as well as his and others' statements during the investigation.

10. The irrationality of this theory is demonstrated by the following:

(i) It makes no sense that men would drive around with stolen guns lying on the car seat.

(ii) Even if the guns were on the seat, it is inconceivable that Carrasco and Guerra would pick up each other's gun without noticing the mix-up and exchanging guns before replacing them in their waistbands as they sat in the Buick.^{30/} The guns -- one with a longer and much heavier clip holding more than twice as many bullets compare App. 185 (F270) with App. 184 (F257) and App. 183 (F200) -- establish that they were sufficiently different in appearance and "feel" to make the mistake *very* unlikely.

^{30/}Guerra must have emerged from the car with his gun concealed under his shirt, since otherwise Harris could have spotted it.

(iii) Moreover, Jacinto Lopez's statement given to police during the investigation, corroborated by Guerra's statements and trial testimony, established that Guerra earlier the day of the shooting had taken his gun from his pants pocket when he left his car to go into a store. App. 19-21 (F34-36). Obviously, Guerra generally *drove* with his gun in his waistband and would not have placed it on the seat that night where Carrasco could have picked it up by mistake.

11. Guerra's innocence is also supported by the State's conduct. Aware that the available evidence was weak, both police and prosecutors overreached, as demonstrated by the failure to disclose exculpatory evidence and the State's unlawful investigative and trial tactics. Hampered by lack of time, resources, experts, and the State's withholding of evidence, Guerra's defense attorneys unfortunately failed to adequately develop their client's defense.

12. Had the State properly disclosed all exculpatory evidence, the jury would have heard -- as this Court will at an evidentiary hearing -- witnesses describe seeing (i) Guerra's empty hands on the police car hood as Harris was being shot, (ii) Carrasco running down the north side of Walker and carrying a gun that appeared to be a nine-millimeter pistol, and (iii) one of the witnesses pressuring others to identify Guerra as the shooter.

13. Finally, Guerra's defense was hampered by serious prosecutorial misconduct in violation of Brady v. Maryland, 373 U.S. 83 (1963), in the investigation, and at trial, as well as by numerous procedural errors caused by the Court described herein.

14. Guerra's conviction must be reversed to prevent a travesty of justice. Since the time of Guerra's conviction at trial and the direct appeal therefrom, substantial new evidence has been obtained concerning both Guerra's actual innocence and circumstances mitigating against the imposition of the death penalty. At an evidentiary hearing, Guerra will present newly discovered evidence concerning: withholding and concealment of exculpatory evidence; improper coercion of witnesses; unconstitutional line-up procedures; prosecutorial misconduct during *voir dire* and trial; presentation of flawed analyses of the physical evidence by the State's experts; ineffective assistance of counsel that deprived the jury of evidence of Guerra's innocence and of circumstances from Guerra's life mitigating against the imposition of the death penalty; and other items set forth elsewhere in this Application, all of which supports Guerra's claim that he is innocent of the crime for which he was convicted.

15. Current Texas law provides no procedure for review of new evidence discovered after the expiration of the time period in which a defendant may move for a new trial. See Herrera v. Collins, 954 F.2d 1029, 1034 (5th Cir.), cert. granted, 112 S. Ct. 1074 (1992); Ex parte Binder, 660 S.W.2d 103 (Tex. Crim. App. 1983) (en banc). The United States Supreme Court has granted certiorari in Herrera to determine:

- (i) whether the execution of an innocent person convicted of murder violates the Eighth and Fourteenth Amendments of the Constitution;
- (ii) if so, whether Texas and other state courts must provide meaningful mechanisms for hearing claims of actual innocence in capital cases; and

(iii) the necessary federal procedures for adjudicating such claims.

Petition for Writ of Certiorari to the U.S. Court of Appeals for the Fifth Circuit at 5, Herrera (No. 91-7328), 112 S. Ct. 1074 (U.S. Feb. 25, 1992).

16. In light of the substantial exculpatory and mitigating evidence that was discovered after the expiration of Guerra's time to move for a new trial, either an evidentiary hearing should be granted in this habeas proceeding to allow the presentation of such evidence; or Guerra must be granted a stay of execution pending the ultimate disposition by the U.S. Supreme Court of the issues presented in Herrera.

II. GUERRA'S CONVICTION WAS BASED ON INSUFFICIENT EVIDENCE IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND ARTICLE 1, SECTIONS 13 AND 19, OF THE TEXAS CONSTITUTION

1. A criminal defendant's federal due process rights are violated if, after viewing the trial evidence in the light most favorable to the prosecution, no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979). This is such a case.

2. As demonstrated in other portions of this brief, see pp. 48-54; 163-189, the physical evidence pointed to Carrasco, and the testimony of the so-called eyewitnesses contradicts the physical evidence and the testimony of each other. The only witness for the State who claimed to see the shooting was a 10-year-old boy who was (i) in shock after seeing his father shot, (ii) unable to identify the shooter on the night it happened, and (iii) claimed to have seen from a position that made it impossible to see, the same

man shoot his father. In contrast, the defense presented three witnesses including Guerra, who gave the *only* testimony consistent with the physical evidence demonstrating the location of the gunman as he shot Harris.

3. Although Ex parte Williams, 703 S.W.2d 674, 681-83 (Tex. Crim. App. 1986), held that under Texas law sufficiency of the evidence cannot be raised on collateral attack where the defendant pleaded guilty,^{31/} the court in Williams explicitly stated that sufficiency of the evidence may be argued where, as here, the defendant pleaded not guilty and the State bore the burden of proving guilt beyond a reasonable doubt. Id. at 683. The court then cited a case, Parker v. Procunier, 763 F.2d 665 (5th Cir.), cert denied, 474 U.S. 855 (1985), in which the Fifth Circuit suggested that the Texas standard of reviewing insufficiency of the evidence on habeas corpus is identical to the federal standard: "Although some language in earlier Texas cases indicates that the Texas standard of review is more stringent than the federal standard, the Texas Court of Criminal Appeals has recently stated that the two standards of review are ultimately identical. Carlsen v. State, 654 S.W.2d 444, 449-50 (Tex. Crim. App. 1983) [overruled on other grounds, Geesa v. State, 820 S.W.2d 154, 161 (Tex. Crim. App. 1991)]." 763 F.2d at 666 n.1.

4. Because the Texas Court of Criminal Appeals has embraced the view that the federal and state "standards of review are ultimately identical," this Court should

^{31/}Ex parte Brown, 757 S.W.2d 367, 368 (Tex. Crim. App. 1988), stands only for the narrow proposition that a collateral attack is not permitted on the sufficiency of the evidence to prove the proper sequence of enhancement allegations.

perform a review of the sufficiency of the evidence based on the standard announced in Jackson v. Virginia, 443 U.S. 307, 317 (1979).³²

III. FLAGRANT PROSECUTORIAL MISCONDUCT BEFORE AND DURING TRIAL VIOLATED GUERRA'S RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 10, 13, AND 19, OF THE TEXAS CONSTITUTION

A. Introduction

1. Prosecutorial misconduct is no simple violation. It appears in many forms. What follows are numerous examples of prosecutorial misconduct that resulted from the State's overzealous efforts to convict a person for a crime the police and prosecutors desperately wanted to see punished. Their desire for punishment unconstitutionally skewed their exercise of fair judgment.

2. This section includes discussions of at least *18 different violations* of Guerra's constitutional rights before and during each phase of trial due to prosecutorial misconduct. Each of these violations is explained separately, and each alone warrants reversal of Guerra's conviction and sentence. See pp. 58-110, infra.

3. Alternatively, reversal is mandated by the cumulative effect of this grotesque series of wrongs that pervaded the investigation and trial. This unusually severe accumulation of prosecutorial violations so infected the State's case that Guerra's

³²The Jackson standard (set out in the first paragraph of this section) was derived from the Fourteenth Amendment and is binding on a state court performing its own habeas review. See Carlsen, 654 S.W.2d at 449.

conviction and death sentence cannot stand when viewed in the light of the U.S. and Texas Constitutions. See pp. 277-79, infra.

4. The Fifth Circuit has held that prosecutorial misconduct violates constitutional guarantees when the prosecutor's comments "so infected . . . the trial with unfairness as to make the resulting conviction a denial of due process." Derden v. McNeel, 938 F.2d 605, 615 (5th Cir. 1991) (citation omitted). The test for whether such conduct makes a trial fundamentally unfair is "whether there is a reasonable probability that the verdict might have been different had the trial been properly conducted." Kirkpatrick v. Blackburn, 777 F.2d 272, 278-79 (5th Cir. 1985), cert. denied, 476 U.S. 1178 (1986). The Fifth Circuit has also held that, where properly preserved, improper comments constitute reversible error if they affected the defendant's "substantial rights." United States v. Wicker, 933 F.2d 284, 292 (5th Cir.), cert. denied, 112 S. Ct. 419 (1991). In determining if substantial rights were affected, the Court considers: "(i) the magnitude of the prejudicial effect of the statements; (ii) the efficacy of any cautionary instruction; and (iii) the strength of the evidence of the defendant's guilt." Id. at 290. The prosecutor's remarks must be considered in the context of the entire trial to determine if they resulted in a miscarriage of justice. United States v. Hatch, 926 F.2d 387, 394 (5th Cir.), cert. denied, 111 S. Ct. 2239 and 112 S. Ct. 126 (1991).

5. "Like the Hydra slain by Hercules, prosecutorial misconduct has many heads." United States v. Williams, 112 S. Ct. 1735, 1749 (1992) (Stevens, Blackmun, O'Connor and Thomas, JJ., dissenting) (quoting Berger v. United States, 295 U.S. 78

(1935)). Examples include misstatements of fact; "putting into the mouths of such witnesses things which they had not said . . . and persistently cross-examining the witness upon that basis; [making] improper insinuations and assertions calculated to mislead the jury." Williams, 112 S. Ct. at 1749 (quoting Berger, 295 U.S. at 84-85).

6. These serious and continuing acts of misconduct made the trial so fundamentally unfair that Guerra is entitled to a new trial even though his counsel failed to object to some of the conduct described here.^{33/}

B. Pretrial Investigative and Prosecutorial Wrongdoing

1. The Prosecution Failed to Disclose – and Affirmatively Concealed – Material Exculpatory Evidence.

7. Under Brady v. Maryland, 373 U.S. 83, 87 (1963), "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." To establish a Brady violation, the defendant must prove: "(i) the prosecution suppressed evidence, (ii) the suppressed evidence was favorable to the defense and (iii) the suppressed evidence was material to the defense." Derden v. McNeel, 938 F.2d 605, 617 (5th Cir. 1991). The Texas Court of Criminal Appeals has expressly adopted this standard. Butler v. State, 736 S.W.2d 668, 670 (Tex. Crim. App. 1987) (en banc). The suppressed evidence is "material" if there is "a reasonable

^{33/}Moreover, there should be no waivers in a capital case. See pp. 290-93, infra.

probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." United States v. Bagley, 473 U.S. 667, 682 (1985); see also Ex parte Adams, 768 S.W.2d 281 (Tex. Crim. App. 1989) (adopting Bagley materiality test in cases involving exculpatory evidence). "A reviewing court may consider any adverse effects the prosecutor's failure to release information might have had on the defendant's preparation and presentation of the case." Derden, 938 F.2d at 617.

8. Texas courts have held that "[a] conviction must be reversed if the prosecution actively suppresses evidence or negligently or inadvertently fails to disclose evidence which may exonerate the defendant." Butler, 736 S.W.2d at 670 (citing Brady and Crutcher v. State, 481 S.W.2d 113 (Tex. Crim. App. 1972)). It has further been held that reversible error exists "even though the accused's counsel is not diligent in his preparation for trial, with the focus being upon the essential fairness of the procedure and not on the astuteness of either counsel." Ham v. State, 760 S.W.2d 55, 58 (Tex. App.--Amarillo 1988, no writ).

9. The actions constituting a Brady violation in Derden, a case involving a failure to disclose certain evidence vital to impeachment of key state witnesses, bear great similarity to the facts here. In Derden the prosecution failed to produce a radio log in response to a Brady motion filed by the defense. The Fifth Circuit concluded that the sheriff's radio entries were relevant to impeach state witnesses and to prove that the testimony of certain of the State's witnesses was "possibly incorrect." 938 F.2d at 617. A key witness testified that he called the police at 1:00 a.m., but the log sheet reflected that

no call had been made until 2:05 a.m. The court held that if the call was not made until 2:05 a.m., as reflected on the radio log, the time frames given by co-conspirators were not credible. The court held that where the crux of the defense was that the events as described were chronologically impossible, failure to disclose the log was error contributing to a due process violation. Id. at 618.

10. Similarly, in Adams the court granted the petitioner's application for writ of habeas corpus on the basis of Brady violations. The state was found to have knowingly suppressed (i) a prior inconsistent statement made by a key state witness and (ii) evidence that a witness had failed to identify the applicant in a police line-up and that a police officer had advised her that she had not identified the applicant and told her which person she should have identified. The court found that the witness had given a statement to the police that the police had intentionally failed to disclose. The statement was the "diametric opposite" of the witness's trial testimony and would have provided a basis for impeachment. 768 S.W.2d at 290-91.

11. Like the foregoing cases, the State's failure to reveal key information constitutes the withholding of exculpatory evidence material to Guerra's defense and warrants a reversal of his conviction.

12. On August 13, 1982, pursuant to Articles 39.14 and 26.10 of the Texas Code of Criminal Procedure, Guerra filed a Motion to Produce Evidence seeking production by the prosecution of all material inconsistent with guilt or lawful arrest, including written or recorded witness statements, police reports, the prosecutors' work product, and lab tests.

Tr. 17-18. Pursuant to Article 39.14 and the due process clause of the Fourteenth Amendment and Article I, section 19, of the Texas Constitution, Guerra filed, on the same day, an extensive Motion for Pre-trial Discovery and Inspection, Tr. 20-22, requesting, *inter alia*, all photographs, moving pictures, or videotapes, all tangible objects obtained in connection with the investigation of this case, any document reflecting the prior criminal record, if any, of all State witnesses, and the names, addresses and telephone numbers of all prospective State witnesses who may have knowledge of some of the facts of this case and who may testify for the State during any stage of the trial.

13. The Motion also sought this information on everyone *interviewed* by the State or its law enforcement agencies even if the State did not intend to call the individuals as witnesses during the trial. The court granted almost every request in both motions after the State represented that it had provided Guerra's lawyers with access to the entire prosecution file. See S.F. Vol. 1 at 9, 12-20.

14. At an evidentiary hearing, Guerra will prove that numerous pieces of evidence were withheld by the prosecution, in violation of Guerra's rights under the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and Article I, section 19, of the Texas Constitution. Guerra will show that on the night of the shooting, police investigators prepared several witness statements that deliberately distorted beyond recognition the witnesses' comments and omitted exculpatory information.

(i) One witness saw Guerra with his hands on the police car and Carrasco east of Harris at the time of the shooting but was given a statement to sign that said nothing about either fact.

(ii) A second witness described to the police Guerra's movements just before the shooting in a manner that supported Guerra's story that, at the time of the shooting, his hands were on the hood of the police car, but the witness was pressured and these words were twisted in order to create the impression that either Guerra was the shooter or the witness had seen nothing helpful to Guerra's defense.

(iii) A third witness told police about seeing Carrasco running on the north side of Walker and carrying a gun that looked like a nine millimeter pistol, but the police omitted these facts from the statement prepared for the witness's signature.

(iv) Additionally, a number of witnesses were interviewed and tape-recorded on the night after the shooting either at the crime scene or subsequently at the police station. *None* of these tape-recordings was ever turned over to defense counsel, and the offense report fails to reveal that Anguiano provided exculpatory information. See App. 74-75 (F267-68). Hector Anguiano, a neighborhood resident, recently stated that he was interviewed and tape recorded by police officers at the scene of the shootout with Carrasco. Police reports made at or around the time of the shooting confirm this fact and reflect police tape-recorded interviews with others as well.^{34/} At an evidentiary

^{34/}According to a statement given by officer G.L. Bratton, certain individuals who
(continued...)

hearing, Guerra will provide proof that Anguiano witnessed, and gave a statement that he saw Carrasco running west on Rusk, carrying a gun and coming from the direction of Lenox Street shortly after Anguiano heard the shots that killed Harris. The detail in Anguiano's statement supports Guerra's testimony and defense that he was not the shooter and was thus innocent of the crime for which he was convicted and sentenced to die. According to the prosecutors' office, those tapes cannot be found.

(v) The State, on information and belief, never gave the defense a copy of the report of the trace metal test on Carrasco's hands. Defense counsel were informed orally that the test results for Guerra were negative; they were told the results for Carrasco were "positive" as to Harris's gun and "inconclusive" as to the murder weapon. App. 141 (F690). Defense counsel, however, because of the absence of the full report, does not recall knowing before trial that the pattern on Carrasco's *right* hand matched Harris's gun and that the pattern on his *left* hand was inconclusive. If defense counsel had seen the report, they would have known they needed to conduct their own test on the murder weapon and compare the results to the State's.

³⁴/(...continued)

heard gunshots from the rear of 4911 Rusk and saw officers return fire spoke only Spanish. App. 72 (F263). A report prepared by Officer M.E. St. John recites that he recorded interviews with these individuals on a mini-cassette recorder he obtained from Assistant District Attorney Terry Wilson, with Officer Robinette acting as translator. App. 74-76 (F267-69); see App. 111 (F457). The police report describing these interviews says nothing about what Anguiano saw. See App. 74-75 (F267-68).

15. Guerra will show at the requested hearing that: (i) the State's conclusions as to its own test were wrong as to the trace metal from the nine millimeter gun on Carrasco's left hand, (ii) Carrasco was *left* handed, and (iii) testimony by an expert that the trace metal pattern on Carrasco's left hand was consistent with the pattern left by the murder weapon. This evidence seriously would have impeached Jose Jr.'s identification of Guerra as the triggerman since Jose Jr. stated to police with certainty that Harris was shot by someone holding the gun in his *left* hand.

16. Because Guerra will prove that the police had knowledge of the witness statements described above, the prosecutors' actual knowledge is irrelevant: "It is of no consequence that the facts pointed to may support only knowledge of the police because such knowledge will be imputed to state prosecutors." Adams, 768 S.W.2d at 292 (quoting Williams v. Griswald, 743 F.2d 1533 (11th Cir. 1984); see also United States v. Antone, 603 F.2d 566, 569 (5th Cir. 1979) (declining "to draw a distinction between different agencies under the same government, focusing instead upon the 'prosecution team' which includes both investigative and prosecutorial personnel").

17. The undisclosed information was critical for the defense because it discredits the testimony of those witnesses identifying Guerra as the shooter. Testimony from these witnesses would have at least placed before the jury greater evidence of Guerra's innocence, and thus contributed to the existence of reasonable doubt. Moreover, the statements -- both written and taped -- given by other witnesses that were withheld from the defense as described above could have provided additional exculpatory information.

18. An evidentiary hearing is required to demonstrate that the State was in possession of this evidence. If any of these statements were suppressed, this violation of Guerra's rights under the Sixth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, section 19, of the Texas Constitution mandates that his conviction and sentence be reversed.

2. The Pretrial Intimidation of Witnesses by Police and Prosecutors Deprived Guerra of His Due Process Rights.

19. Actions by both the police and the prosecutors have resulted in deprivation of Guerra's due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 13 and 19, of the Texas Constitution. At an evidentiary hearing Guerra will prove that the police engaged in a course of conduct designed to intimidate various witnesses to the crime in order to induce cooperation and change testimony. First, the police jailed one witness who described seeing Guerra with his empty hands on the police car south of Harris and Carrasco east of Harris at the time of the shooting. Second, the police and prosecutors twisted another witness's words to make them sound more incriminating than was intended, using threats to deprive the witness of custody of a child if the witness did not cooperate.

Intimidation by the prosecution to dissuade a witness from testifying or to persuade a witness to change testimony may violate a defendant's due process rights. See Davis v. State, 831 S.W.2d 426, 437 (Tex. App.--Austin 1992, no pet.). Police actions that intimidated witnesses can be imputed to the State in its prosecution. Cf. Fulford v.

Maggio, 692 F.2d 354, 358 n.2 (5th Cir. 1982), overruled on other grounds, 462 U.S. 111 (1983) ("State's duty of disclosure is imposed not only upon its prosecutor, but also on the State as a whole, including its investigative agencies. Therefore, if the confessions were held by the [local police], . . . constructively, the State's attorney had both access to and control over these documents.").

20. In Davis, the prosecutor had threatened the witness with a grand jury indictment for perjury if her testimony were found to be false. 831 S.W.2d at 436. The witness testified outside the presence of the jury that she had changed her testimony because of the prosecutor's threat. "[S]he had been intimidated by his attitude and manner, by his having come unexpectedly into the apartment complex property one day, and by a police officer who had tried to get her to 'ride out in the country' one day to talk about the case." Id. The prosecutor in Davis also had questioned the witness individually in his office, which the appeals court found to have occurred outside the trial court and the protection of judicial supervision -- "[I]t was a personal interview in the district attorney's office, a setting clearly conducive to intimidation." Id. at 438.

21. At an evidentiary hearing Guerra will show that he can meet the Davis test.

3. Evidence of Other Improper Police Procedures.

22. At an evidentiary hearing, Guerra will prove that: (i) at the police station late on the night of the shootings, witnesses were allowed to discuss the events among themselves, and several saw Guerra in handcuffs, wearing bags on his hands, (ii) during the lineup early on the morning after the murder, witnesses were allowed to view it

together, discuss it amongst themselves, and identify Guerra in each other's presence, (iii) one witness was permitted to attempt to pressure others into identifying Guerra as the triggerman, all in the presence of police and a member of the prosecutor's office, see also S.F. Vol. 23 at 753, and (iv) just before trial the prosecutors showed several witnesses pictures of Carrasco and Guerra and described Carrasco as dead and Guerra as "the man who shot the cop." See pp. 161-62, infra.

23. To hide this flagrant violation of proper and fair lineup procedures, the police deliberately inserted into many of the witness statements an inaccurate description of the lineup to make it seem as if proper procedure had been observed. App. 6 (F11); App. 14 (F23); see note 92, infra. If the police had properly disclosed the lineup procedures actually followed, this would have provided a basis to challenge the lineup. See pp. 144-53, infra. The failure to do so constitutes the failure to disclose exculpatory evidence in violation of Brady.

24. Moreover, at trial the prosecutors perpetuated this charade in closing argument by insisting that the witnesses gave written statements without conferring with each other and that proper lineup procedures had been followed. See, e.g., S.F. Vol. 25 at 932-33, 972.

C. Prosecutors' Improper Trial Conduct

1. The Prosecutors' Improper Remarks During *Voir Dire* Deprived Guerra of His Constitutional Rights.

a. Appeals to Prejudice Against "Illegal Aliens" From Mexico.

25. The prosecutors improperly appealed to prejudice by telling some jurors that they could consider Guerra's undocumented status in evaluating his character at the punishment phase of his trial. This clearly is unconstitutional argument and should not be allowed. See pp. 126-31, *infra*.

b. A Juror Was Told that the Testimony of Police Officers Is Entitled to Greater Credibility than that of Other Witnesses.

26. During *voir dire* a prosecutor told one juror in essence that if a police officer testified in his capacity as a policeman, his testimony was entitled to more credibility than that of other witnesses.^{35/} This is an erroneous statement of the law that was left uncorrected in a trial in which most of the State's experts worked for the Police

^{35/}The prosecutor stated:

[E]ven a police officer is not accorded in the eyes of the law any more or less belief than any other witnesses. Certainly if his job or experience enters into his testimony, certainly his job can enter into his testimony, but unless he testifies as a police officer, you are not to believe him any more or less than any other witness.

S.F. Vol. 6 at 962-63 (Kellogg) (emphasis added); see also S.F. Vol. 17 at 2917-18 (Busby); S.F. Vol. 15 at 2607 (Brumley).

Department and six other police officers testified about events at the scene.^{36/} Moreover, the testimony of at least one police officer, Robinette, was contradicted by information in the State's own file and was extremely prejudicial. See pp. 42-43, supra. This is improper. See generally United States v. Murmah, 888 F.2d 24, 26 (5th Cir. 1989).

c. A Juror Was Told that a Life Sentence Did Not Mean Life.

27. One juror was told by the prosecution during *voir dire* not to consider how long a person would have to serve a life sentence in determining punishment and that the decision concerning how much of a life sentence would be served was made by the Board of Pardons and Paroles based on a formula. S.F. Vol. 7 at 1085-87 (Monroe). Defense counsel did not object,^{37/} even though this was improper argument in violation of the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution and Article I, sections 10, 13 and 19, of the Texas constitution. E.g., McKay v. State, 707 S.W.2d 23, 38 (Tex. Crim. App. 1985) (en banc), cert. denied, 479 U.S. 871 (1986); see also Rose v. State, 752 S.W.2d 529, 532, 536-37 (Tex. Crim. App. 1987) (statute requiring instruction on parole is unconstitutional; "prosecutor must not invite a jury to consider the parole law in assessing punishment"). Consequently, at least one juror knew during the punishment

^{36/}See S.F. Vol. 20 at 61, 106, 116; Vol. 21 at 158, 179, 199, 211, 250; Vol. 23 at 643, 665; Vol. 24 at 878.

^{37/}Additionally, the State repeatedly emphasized during *voir dire* that a person given a life sentence may well serve less by reminding several jurors not to consider how long a person will serve a life sentence with a possibility of parole. S.F. Vol. 5 at 683 (Douthitt); Vol. 19 at 3471 (Petty), 3536 (Whiteford). Defense counsel's failure to object should not be fatal. See pp. 290-93, infra.

phase that giving Guerra a life sentence did not necessarily mean he would remain in prison for life.

d. The Prosecutors Misstated the Law of Parties in a Manner that Misled Most of the Jurors into Thinking They Could Sentence Guerra to Death Even if They Believed that He Was Not the Triggerman.

28. During *voir dire* of many of the jurors, one of the prosecutors, Robert Moen, used a hypothetical to illustrate an issue arising in the sentencing phase. The facts of this hypothetical set forth a theory of guilt based on the law of parties suggesting that the jury could answer the first sentencing issue affirmatively and find that Guerra had committed the offense "deliberately," with sufficient intent to be sentenced to death, even if he was only an accomplice and not the triggerman.^{38/} The prosecution's hypothetical contained

^{38/} For example, in the *voir dire* of Donald Paul Kellogg, Mr. Moen states:

[T]his question [sentencing Question No. 1] is not automatically answered yes just because someone has been found guilty of capital murder because there are . . . as many fact situations as the mind can think of -- where the jurors' answers might be no.

Let me give you an example. Imagine . . . the ex-con goes in and asks the seventeen-year-old to go with him. . . . The seventeen-year-old owns no such pistol or loaded gun, but he is given one by the ex-convict.

They go to the Seven-Eleven store. The seventeen year old is outside watching as a lookout. He doesn't know the ex-con is going to kill a woman, and the ex-con kills a woman. However, under our law of parties, they can't come and say they were surprised by something another person did. By committing the crime together, they agreed to commit it. Our law says if you act together to commit a crime and other felonies are committed, that should have been anticipated by you during the course of committing that

(continued...)

two fundamental errors that render Guerra's conviction and sentence unconstitutional. First, the prosecutor misstated the law -- since a *non*-triggerman's sentence must be based on his *own* deliberateness and future dangerousness, not on that of the shooter. See Nichols v. Collins, C.A. No. H-92-36, Slip Op. at 8-9 (S.D. Tex. Sept. 2, 1992); Lane v. State, 743 S.W.2d 617, 619 (Tex. Crim. App. 1987) (en banc), cert. denied, 112 S. Ct. 1968 (1992); Green v. State, 682 S.W.2d 271 (Tex. Crim. App. 1984), cert. denied, 470 U.S. 1034 (1985).

29. This prosecutorial error also was fundamental since Guerra was neither prosecuted nor tried, nor was the jury charged, on the law of parties. Thus, this inapplicable hypothetical that in effect misstated the law caused confusion in the jurors' minds by suggesting that Guerra could be convicted or possibly sentenced to death even if the jurors believed he was not the "triggerman."

30. The erroneous hypothetical was particularly harmful in this case because the central issue was whether Guerra was the shooter. The prosecution left the jurors --

^{38/}(...continued)

crime, then all the parties are responsible regardless of the parts they played in the commission of the crime.

So that seventeen-year-old could be tried and convicted for the offense of capital murder even though he did not pull the trigger that caused the death of the cashier"

S.F. Vol. 6 at 939-40. (emphasis added). The prosecutor provided a similar hypothetical to most of the jurors. See S.F. Vol. 13 at 2379-80, 2423-24 (Brown); Vol. 15 at 2617-18 (Brumley); Vol. 12 at 2065, 2096 (Martenis); Vol. 7 at 1062-63, 1110-11 (Monroe); Vol. 18 at 3242-43 (Smith); Vol. 6 at 845 (Woods).

incorrectly -- with the impression that no matter how they came out of this issue during the guilt-innocence phase, they could sentence Guerra to death in the punishment phase even if some jurors doubted that he was the triggerman.

31. Nevertheless, an instruction not to apply the law of parties was given neither at the guilt-innocence phase of the trial nor at the punishment phase.^{39/} S.F. Vol. 27 at 163.

32. Thus, absent a specific charge that the law of parties does not apply during the punishment phase, Special Issue No. 1 improperly "permits the jury to apply the law of parties to the nontriggerman." Nichols, Slip Op. at 9-10. Accordingly, the Guerra court's failure to instruct against application of the law of parties is fundamental error (and thus is not waived by failure to object) in violation of the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution and Article I, sections 10, 13, and 19, of the Texas Constitution, and the conviction and sentence must be reversed. Id. at 10.

e. Many Jurors Were Told Guerra Would Be "Crazy" Not to Testify.

33. During *voir dire*, the prosecutors' repeated comments on Guerra's failure to testify violated Guerra's constitutionally-protected right against self-incrimination. The State repeatedly commented that, in the event Guerra did not testify, it would be permissible to speculate about why he did not testify.

^{39/}The prosecution's error was so fundamental and thus reviewable by the court despite defense counsel's failure to request a court instruction during the guilt/innocence phase. See pp. 290-93, infra, as to non-waiver of issues in capital cases.

34. With almost every member of the *venire*, including fully half of those selected for the jury, one of the prosecutors stated that the judge would instruct that the defendant's failure to testify could not be considered as evidence of guilt and that only evidence from the witness stand should be considered. However, the prosecutors then improperly embellished this warning in a manner calculated to focus the jurors' suspicions on any failure to testify, suggesting that the defendant's failure to testify on the most important day of his life would be "crazy" and that they could wonder why he did not testify.^{40/}

^{40/}The prosecutors made the following comments:

"That doesn't mean you can't, as a juror, decide in your mind and heart you would have liked to have heard his version. *That doesn't mean you can't wonder why he didn't testify.*" S.F. Vol. 15 at 2594-95 (Brumley) (emphasis added).

"But *as crazy as it may seem*, if a person doesn't want to testify, he can remain totally silent. At *one of the most important days of his life*, he can remain seated at the counsel table and never get on the stand to testify if he decides, for whatever reason, that is what he wants to do." S.F. Vol. 6 at 948 (Kellogg) (emphasis added).

"The Defendant . . . has the right to remain silent even at his trial which may be *the most serious day in his life* he may have, but he has the right to remain silent if he chooses." S.F. Vol. 7 at 1073-74 (Monroe) (emphasis added).

[Y]ou might want to hear from the defendant. That is a natural reaction . . . but *unfortunately*, in a criminal trial, *the defendant doesn't have to testify* unless he wants to. S.F. Vol. 19 at 3473-75 (Petty) (emphasis added).

"The defendant . . . has a right to remain silent at his or her trial. . . . Now, *that sounds crazy*, I guess. Our natural reaction obviously, whether we are jurors or just ordinary, everyday people, we like to get as much of a fact situation as we can to reach a decision." *Id.* at 3538 (Whiteford) (emphasis added).

(continued...)

35. Guerra testified during the guilt-innocence phase of the trial. He did not testify during the punishment phase, however, deciding to rest on his Fifth Amendment rights in response to the State's evidence concerning a gun store robbery in which he had been accused of participating.^{41/}

36. By deliberately making derogatory comments during *voir dire* about the prospect that Guerra might remain silent, the prosecutor placed enormous pressure on Guerra to testify and heightened unfairly his election not to do so in the punishment phase. This deliberate attempt to circumvent, in advance, the court's express instruction forbidding the jury to consider on punishment Guerra's failure to testify, Tr. 328-30, violated Guerra's rights under the Fifth, Eighth and Fourteenth Amendments of the U.S. Constitution, Article I, section 10, of the Texas Constitution.

37. Both the State and Federal Constitutions prohibit prosecutorial comment on a defendant's failure to testify. See Owen v. State, 656 S.W.2d 458, 459 (Tex. Crim. App.

^{40/}(...continued)

"That does not mean you wouldn't *wonder why he failed to testify . . .*" S.F. Vol. 6 at 854 (Woods) (emphasis added).

The prosecutors repeated their pattern of discussing the defendant's failure to testify even with those members of the venire not chosen. For example, Moen told Dan Laverne Ward, Jr. that the judge would tell him that he is not to consider the Defendant's failure to testify as evidence of guilt, but that it "doesn't mean you can't wonder why the Defendant didn't testify or you wished he had said something or you didn't wish to hear the Defendant's side of the story." S.F. Vol. 14 at 2474.

^{41/}No charges were ever filed, and witnesses were divided about whether Guerra even was present. See note 167, infra.

1983) (en banc). Prosecutorial comment on an accused's failure to testify constitutes reversible error. See Griffin v. State, 380 U.S. 609, 615 (1965). Such comments violate the privilege against self-incrimination contained in Article I, section 10, of the Texas Constitution and the express provisions of the Texas laws of criminal procedure.^{42/} In addition, a comment on the defendant's failure to testify constitutes a violation of the self-incrimination clause of the Fifth Amendment made applicable to the states by the Fourteenth Amendment. See Montoya v. State, 744 S.W.2d 15, 34 (Tex. Crim. App. 1987), cert. denied, 487 U.S. 1227 (1988).^{43/}

38. "The prohibition against a comment on the defendant's failure to testify is mandatory and the adverse effect of any reference to the accused's failure to testify is not generally cured by an instruction to the jury." Owen, 656 S.W.2d at 459; accord Lopez v. State, 793 S.W.2d 738, 741 (Tex. App.--Austin 1990, pet. dismiss'd, improvidently granted, 810 S.W.2d 401 (Tex. Crim. App. 1991)); see also Hicks v. State, 815 S.W.2d 299, 303

^{42/}Article 38.08 of the Texas Code of Criminal procedure provides:

Any defendant in a criminal action shall be permitted to testify in his own behalf therein, but the failure of any defendant to so testify shall not be taken as a circumstance against him, nor shall the same be alluded to or commented on by counsel in the cause.

^{43/}Normally such comments are made in closing arguments. But the test as articulated can certainly be met by comments during *voir dire*. See generally Allen v. State, 536 S.W.2d 364, 367 (Tex. Crim. App. 1976).

(Tex. App.--Houston [1st Dist.] 1991). This kind of error is rarely harmless. Litaker v. State, 784 S.W.2d 739, 749 (Tex. App.--San Antonio 1990, pet. ref'd).^{44/}

39. Moreover, testimony by a defendant during the guilt-innocence phase of his trial waives his constitutional and statutory privilege against self-incrimination *only* for that proceeding and not for any subsequent proceeding such as the punishment hearing.^{45/} Stewart v. State, 666 S.W.2d 548 (Tex. App.--Dallas 1984, pet. ref'd); Owen, 656 S.W.2d at 459. See also Brown v. State, 814 S.W.2d 477, 481 (Tex. App.--Dallas 1991, pet. ref'd) (improper prosecutorial argument on failure to testify requires reversal if there is a reasonable possibility it might have contributed to conviction *or punishment*); Marable v. State, 802 S.W.2d 3, 5 (Tex. App.--Texarkana 1990, writ ref'd).

40. Thus, the prosecutors' comments about Guerra's need to testify violated the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution and Article I, section 10, of the Texas Constitution and require reversal of his conviction and death sentence.

^{44/}The test to determine whether or not the error is harmless error is not whether a conviction could have been had without the improper argument, but "whether, in light of the record as a whole, there is a reasonable possibility that the argument complained of might have contributed to appellant's conviction or punishment." Orona v. State, 791 S.W.2d 125, 128 (Tex. Crim. App. 1990); Brown v. State, 814 S.W.2d 477, 480 (Tex. App.--Dallas 1991, pet. ref'd) (dicta); Litaker, 784 S.W.2d at 749. There is no need to show that the jury based its verdict on the fact that the defendant did not testify. Hicks, 815 S.W.2d at 304.

^{45/}Article 38.08 is not rendered inapplicable by the fact that Guerra testified at the guilt/innocence phase of his trial. Since Guerra did not waive his right against self-incrimination in the punishment phase by testifying during the guilt phase, he did not forfeit the protections of Article 38.08.

2 The Prosecutor's Use of Known False Evidence Deprived Guerra of His Right to a Fair Trial.

41. The use of known false testimony by the prosecution violates Guerra's due process right under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 13 and 19, of the Texas Constitution. A new trial is required when false testimony could in any reasonable likelihood have affected the judgment of the jury. Davis v. State, 831 S.W.2d 426, 439 (Tex. App.--Austin 1992, n.w.h.).

42. Guerra will show two types of false testimony, one in each phase of the trial, that almost certainly affected the jury's judgment: evidence that Guerra had committed an unrelated murder and evidence that one of Guerra's roommates had participated in a robbery.

a. False Accusation that Guerra Committed an Unrelated Murder.

43. During direct examination by defense counsel, Mr. Heredia testified that on July 13, 1982, he was walking back from a cemetery where "they had killed a woman." Guerra's lawyer immediately clarified that when Mr. Heredia said "*they* killed a woman," he was not referring to Guerra:

Q: Let me backtrack a little bit. When you say they killed a woman, you are not saying this man killed a woman, are you?

A: No, sir.

Q: Okay. I wanted to clarify that.^{46/}

^{46/}S.F. Vol. 23 at 739. From this account, there is no evidence either that Mr. Heredia or Guerra's lawyer knew that there had been no cemetery murder or that Guerra's counsel anticipated Mr. Heredia's response.

S.F. Vol. 23 at 739.

44. During cross examination of Mr. Heredia, the State pursued a line of questions that portrayed the rumored murder as a fact *even though the prosecutor knew it to be false*. The prosecutor insisted that the cemetery "murder" was relevant to the trial of Guerra for the murder of Officer Harris, thus implying that Guerra was involved in that purported incident. Mr. Moen questioned Mr. Heredia as follows:

Q: *When was this woman killed* at the cemetery that you went down to check on?

A: The day they killed the policeman.

Q: There was a woman killed down at the cemetery, too?

A: *Yes*.

Q: Was that the same time that the police officer was killed or was that a few minutes earlier?

A: It was first. Before then.

Q: How long before the police officer was killed *was this woman killed* down there in the cemetery?

[DEFENSE COUNSEL]: Objection, Your Honor. I don't see the material relevancy of this line of questioning.

MR. MOEN: *Well. I can spell it out for them.*

THE COURT: Go ahead.

Q: How long before the police officer was killed *was this woman killed* down at the cemetery?

A: Well, I don't know.

Q: Well, give me your best guess.

A: Well, something like thirty or forty minutes.

Q: And *did you go* down there and *see the woman's body* when the police officers were down there as well?

A: Well, we didn't go there. You see, they only told us they had killed a lady down there at the cemetery.

Q: Who told you *they had killed a woman* down there at the cemetery?

A: Some boys.

Id. at 746-47 (emphasis added). During this exchange, the State three times used the phrase "the woman killed," once used the phrase "they had killed a woman," and once referred to the "woman's body." At the time of this questioning (during trial), however, *the State knew that no woman was killed in the cemetery on the night of the Harris shooting or any other night.*

45. This rumor -- that an elderly woman living in a house on the cemetery grounds was killed on the night of July 13, 1982 -- circulated through the neighborhood surrounding the intersection of Edgewood and Walker. App. 93 (F376A). On July 21, 1982, Houston police Detective L.E. Webber learned of the rumor, drove to the cemetery to investigate, and called for a patrol unit to assist him. Id. They located a Mrs. Hooper, the subject of the rumor and the supposed murder victim, and found her unharmed. Id. Indeed, she was not even home the night of the shooting. Id. Detective Webber prepared a report dated July 22, 1982 describing these findings and concluding that the so-called cemetery murder never occurred. App. 93 (F376A).

46. Thus, by the time of Mr. Heredia's testimony, the State had known for over two months not only that Guerra had not been involved in a cemetery murder the night of Officer Harris's death, but that there had been no such murder.^{47/}

**(i) Prosecutorial Use of Material, False Testimony Violates
a Criminal Defendant's Rights Under Both the U.S.
and Texas Constitutions.**

47. "The principle that a state may not knowingly use false evidence, including false testimony, to obtain a tainted conviction [is] implicit in any concept of ordered liberty" Napue v. Illinois, 360 U.S. 264, 269 (1958). That principle governs whether the prosecution actively solicits or passively fails to correct false or misleading testimony. Any conviction obtained by the knowing use of false or misleading evidence deprives the defendant of the right to due process under the Fifth and Fourteenth Amendments of the U.S. Constitution and due course of law under Article I, section 19, of the Texas Constitution. Id.; Ex parte Adams, 768 S.W.2d 281, 293 (Tex. Crim. App. 1989); Granger v. State, 683 S.W.2d 387, 391 (Tex. Crim. App. 1984). In this case, the prosecution's

^{47/}Even if the prosecuting attorneys did not have in their immediate possession the HPD Report or did not recall its contents, both of which are unlikely, the knowledge of the Houston Police Department may be imputed to the prosecution. Texas courts "have declined in the past to distinguish different agencies under the same government, focusing instead upon the prosecuting team, which includes both investigative and prosecutorial personnel." Ex parte Brandley, 781 S.W.2d 886, 892 n.7 (Tex. Crim. App. 1989), cert. denied, 111 S. Ct. 61 (1990). For this reason, courts impute knowledge obtained by police investigators to prosecutors. Adams, 768 S.W.2d at 292 (citing Williams v. Griswald, 743 F.2d 1533, 1542 (11th Cir. 1984)). The HPD Report was prepared as part of the investigation of Harris's death and was among the evidence in the State's possession during its prosecution of Guerra.

knowing emphasis on prejudicially inaccurate and misleading testimony about an alleged cemetery murder -- one that never occurred -- during its cross examination of Mr. Heredia requires reversal of Guerra's conviction.

48. The U.S. Supreme Court has long held that the "[d]eliberate deception of a court and jurors by the presentation of false evidence is incompatible with the 'rudimentary demands of justice'" and requires a new trial. Giglio v. United States, 405 U.S. 150, 153 (1971) (quoting Mahoney v. Holohan, 294 U.S. 103, 112 (1935)). "[T]he same result obtains when the state, though not soliciting false evidence, allows it to go uncorrected when it appears." Giglio, 405 U.S. 153 (quoting Napue, 360 U.S. at 269). In Napue, the Supreme Court reversed a conviction that was based on the principal state witness's untruthful testimony that he had received no consideration in return for his testimony. 360 U.S. at 272. By failing to correct the false testimony, the Court reasoned, the prosecution prevented the jury from fairly deliberating the merits of the case, which turned in part on the credibility of the witness and his reasons for testifying. 360 U.S. at 272.

49. Texas courts, too, impose a duty on the state to refrain from buttressing the merits of its case with false testimony: "The purpose of imposing this paramount constitutional duty is 'not to punish the prosecutor or the trial court for the error committed, but rather to avoid an unfair trial to the accused.'" Duggan v. State, 778 S.W.2d 465, 469 (Tex. Crim. App. 1989) (citing Burkhalter v. State, 493 S.W.2d 214, 218 (Tex. Crim. App.), cert. denied, 414 U.S. 1000 (1973)).

50. Where the prosecution prompts false testimony by posing misleading questions, the interference with the jury's truth-seeking function is even more egregious. In United States v. Barham, 595 F.2d 231, 242 (5th Cir. 1979), cert. denied, 450 U.S. 1002 (1981) the court emphasized that "the defendant is entitled to a jury that is not laboring under a Government-sanctioned false impression of material evidence when it decides the question of guilt or innocence with all its ramifications." As in Napue, Barham's conviction rested in part on the prosecution's failure to correct false testimony regarding agreements the witness had made with the government. Id. at 243. The court specifically noted that the prosecution compounded the due process violation by affirmatively reinforcing the deception through misleading questions. Id. at 243 n.17.

51. Moreover, a defendant's right to due process is also violated if a prosecutor, "although not actively soliciting false evidence, passively but knowingly allows it to go uncorrected *or allows the jury to be presented with a materially false impression.*" United States v. Anderson, 574 F.2d 1347, 1355 (5th Cir. 1978) (emphasis added). Nor does evidence adduced by the defense to contradict the falsehood cure the taint caused by the prosecution's conduct. Granger, 683 S.W.2d at 391.

(ii) **The Prosecution Intentionally Misled the Jury by
Knowingly Eliciting and Failing to Correct Misleading,
Prejudicial Testimony.**

52. In light of these principles, a conviction obtained through the presentation of false testimony violates due process where (i) testimony is false or leaves a materially false impression; (ii) the prosecution knows the testimony is false; and (3) the false

testimony is material to the deliberations of the jury. May v. Collins, 955 F.2d 299, 315 (5th Cir.), cert. denied, 112 S. Ct. 1925 (1992); United States v. Lochmondy, 890 F.2d 817, 822 (6th Cir. 1989); see also Anderson, 574 F.2d at 1355 ("materially false impression"). The "cemetery murder" testimony solicited by the prosecution at Guerra's trial clearly meets these tests.

53. As in Barham, the prosecution bolstered that false impression of another murder by posing leading questions to Mr. Heredia that precipitated a dialogue between the prosecutor and the witness in which the "fact" of another murder was emphasized. Mr. Moen then compounded the falsity by failing to correct the misleading insinuations that (i) a cemetery murder had occurred and (ii) Guerra was involved.

54. Mr. Moen clearly intended the knowing, flagrant injection into the trial of deceptive information to serve one purpose only: to color the jury's subsequent deliberations with the impression that another murder had occurred the night Harris was killed, perhaps by Guerra.

55. In cases such as this, "the Court has applied a strict standard of materiality, not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process." United States v. Agurs, 427 U.S. 97, 104 (1976). A "new trial is required if the false testimony *could in any reasonable likelihood have affected* the judgment of the jury." Granger, 683 S.W.2d at 391 (emphasis added); Adams, 768 S.W.2d at 293 ("[a] conviction which rests on a mistaken identification is a gross miscarriage of justice"). In applying this standard in

habeas corpus proceedings, Texas courts also have analyzed the use of false or misleading testimony under Texas's codification of the "harmless error rule." Id. at 292. Under Rule 81(b)(2) of the Texas Rules of Appellate Procedure, a court must reverse an errant conviction unless it "determines beyond a reasonable doubt that the error made no contribution to the conviction or to the punishment."

56. The false impression that Guerra participated in a separate murder the night of Harris's death is "material" under either standard. There is certainly a *reasonable likelihood* that the testimony and Mr. Moen's misleading questions affected the jury's judgment.

57. There is no excuse for the prosecution's conduct. In response to defense counsel's objection, Mr. Moen promised to "spell out" the relevancy of this line of leading questions, S.F. Vol. 23 at 747, -- but he never did and never could, since there was no such murder and the prosecution knew (or is attributed with knowledge of) it.

58. Accordingly, the testimony violated Guerra's rights to due process under the Fifth and Fourteenth Amendments of the U.S. Constitution and under Article I, section 19, of the Texas Constitution, and he must be granted a new trial. Granger, 683 S.W.2d at 393; Adams, 768 S.W.2d at 293; Smith v. State, 683 S.W.2d 393 (Tex. Crim. App. 1984).

b. False Accusation that Guerra's Roommate Committed a Robbery and Use of This Evidence in Support of Argument for Imposing Death Penalty

59. During the punishment phase of the trial, two prosecution witnesses identified Enrique Torres Luna, a spectator at the trial, as a participant in a gun store robbery in which many weapons had been taken, S.F. Vol. 26 at 86-88, 115, including an Uzi submachine gun. Id. at 55-57, 64. The State knew that one of the robbery witnesses who did not testify could not identify Torres Luna, App. 142 (F700), and that Torres Luna could not have participated in the robbery because he did not meet the suspect's description. In a police report dated July 7, 1982, witnesses to the robbery described this suspect as having a uniquely distinguishing feature, a tattoo of a Mexican caballero (cowboy) on his right arm bicep. App. 114 (F486). Torres Luna had no tattoos.

60. Even though Torres Luna did not fit the description of this suspect, the State *actively encouraged* its witnesses to identify Torres Luna during their testimony as one of the robbers.^{48/} The jury already knew that Guerra had identified Torres Luna's brother Jose, a crucial witness for the defense, as a long-time friend with whom Guerra had come to Houston from Monterrey, S.F. Vol. 24 at 854-55; see Vol. 25 at 976-77, and that Jose and Enrique Torres Luna had been Guerra's roommates, S.F. Vol. 24 at 794-95, 823, 856. The State took every opportunity to remind the jury that Enrique and Jose

^{48/}The prosecution expected this testimony because both witnesses had identified Torres Luna as one of the robbers outside the presence of the jury before being asked to do so in the jury's presence. Compare S.F. Vol. 26 at 18-19, 28-29, with id. at 86-88, 115; see also App. 186-191 (F703-08); App. 192-193 (F728-29).

Torres Luna were brothers. S.F. Vol. 26 at 86-87; S.F. Vol. 27 at 196. Then, in closing arguments, the prosecution implied that these friends and former roommates of Guerra's were crooks and encouraged the jury to "look at [Guerra's] friends as a way of telling what kind of person he is," id. at 199-200, presumably referring to the special issue on future dangerousness.^{49/}

61. At an evidentiary hearing, Guerra will show that after he was sentenced to death, the State dropped all charges against Torres Luna because of insufficient evidence. By then, however, Guerra's trial was already completed and it was too late for him to undo the following three types of damage caused by the accusation. First, this deception allowed the State to unfairly impeach by association the testimony of Torres Luna's brother, Jose, one of only two witnesses who were at 4907 Rusk when Carrasco, followed by Guerra, arrived at the house following the Harris murder. Since Jose Torres Luna testified that Carrasco admitted to having murdered Harris, S.F. Vol. 24 at 809-10, he was a crucial witness for the defense. Second, by repeatedly reminding the jury that Guerra and the Torres Luna brothers were long-time friends and that Enrique Torres Luna was a crook, see S.F. Vol. 27, at 199-200, the State falsely portrayed for the jury the type of people with whom Guerra associated. The State created a false record of association by

^{49/}For example, one of the prosecutors argued that "Enrique, brother of one of the defense witnesses, Jose Torres Luna," participated in a gun store robbery, S.F. Vol. 27 at 196; that one way to determine whether Guerra might pose a future threat was to look at his friends, specifically Enrique, id. at 200; and that by its verdict, the jury should let the other residents of 4907 Rusk know what they think of this conduct, id. at 179.

Guerra with violent individuals so that the jury would reject Guerra's plea that he did not constitute a "continuing threat to society" and thus impose the death penalty. Finally, the State's false accusation in effect impeached an individual who never testified at the trial and, by association, tainted Guerra's mother and father, whom Guerra will show were escorted to the trial by, and sat next to, Enrique Torres Luna throughout the trial. The State thus explicitly relied on testimony that it knew or should have known was false and deceptive in its appeal to the jury to give Guerra the death penalty.

62. Moreover, the State's proffer of evidence during Guerra's sentencing proceeding to show "the type [of] people" with whom Guerra allegedly associated was extremely prejudicial and thus further violated Guerra's rights under the First and Fourteenth Amendments, Dawson v. Delaware, 112 S. Ct. 1093, 1097 (1992), and Article I, sections 13 and 19, of the Texas Constitution. The State clearly sought to show that because Guerra shared a house with someone who had committed a frightening crime, the jury could conclude that Guerra was a continuing threat to society and deserved the death penalty. Since Enrique Torres Luna did not commit the gun store robbery, and the State otherwise did not show he was of "bad" character, Guerra's association with Torres Luna was free from taint, and his freedom to associate with Torres Luna was unconstitutionally infringed where the State used that innocent association to obtain a death sentence. As in Dawson, Guerra's association with Torres Luna "had no relevance to the sentencing proceeding" and "one is left with the feeling that the [Torres Luna association] evidence was employed simply because the jury would

find [that association] morally reprehensible." Id. at 1098. As such, the State's conduct was constitutionally impermissible.

3. Prosecutors' Display of Mannequins Throughout Trial

63. The prosecutors took the "highly unusual" step of producing two life-like mannequins of Guerra and Carrasco, at a cost of \$7,000, App. 163 (F1433) (Houston Chronicle, Oct. 5, 1982, § 1, at 11), and -- over defense objection^{50/} -- placed them on display directly in front of the jury during the *entire* trial. S.F. Vol. 25 at 899. The mannequins were startlingly life-like. For added effect, they were clothed by the prosecutors in the same garments worn by the two men on the night of the crime. The clothes worn by Carrasco's mannequin were "stained with blood and ripped with bullet holes," conveying an atmosphere of violence surrounding both Guerra and Carrasco. App. 163 (F1433) (Houston Chronicle, Oct. 5, 1982, § 1, at 11).^{51/}

^{50/}S.F. Vol. 20 at 44; Vol. 22 at 375, 431, 447; Vol. 25 at 900; Vol. 26 at 48.

^{51/}As a result, "the trial took on the unsettling air of a wax museum when the prosecutors brought [the mannequins] into evidence." App. 163 (F1433). According to the artist who sculpted the mannequins: "[A]ll the D.A.'s were very smirky. They figured they really put something over." App. 162 (F1432) (Houston Post, Oct. 5, 1982, at 14A). The prosecutors would not explain why they felt it so important to impress the faces and stature of Guerra and Carrasco on the jury. Id. at 1A.

64. The State used the mannequins to remind the jury constantly, see S.F. Vol. 25 at 899, that Carrasco, who died a violent death, and Guerra were two of a kind: both Mexican, both violent, both to be feared.^{52/}

65. The State clearly intended to overwhelm the jury's dispassionate consideration of the evidence.

66. This prosecutorial objective was accomplished. In her affidavit submitted with Guerra's Motion for New Trial, juror Donna Monroe said that the mannequins affected her tremendously: "They were eerie mannequins which were positioned right at the jury. They remained in our presence staring straight at me during the whole time." Tr. 348; see also App. 166 (F1447) (Houston Chronicle, Oct. 26, 1982, § 1, at 8).^{53/} Away from the mannequins' omnipresent gaze, Monroe later began to realize that Guerra was innocent. Tr. 348.^{54/}

^{52/}The State undoubtedly also hoped to assist its witnesses, who were all confused and inconsistent in their identification testimony.

^{53/}Ms. Monroe had nightmares about the life-like mannequins; "especially the blood-stained one," the Carrasco mannequin which "was like a dead man staring back at me." Tr. 348; App. 166 (F1447) (Houston Chronicle, Oct. 26, 1982, § 1, at 8).

The artist who sculpted the mannequins said that "they frequently scared her" during the four weeks she worked on them. App. 162 (F1432) (Houston Post, Oct. 5, 1982, at 14A).

^{54/}Guerra does not offer this affidavit evidence in order to impeach the jury's verdict -- which, admittedly, is unacceptable -- but instead as evidence of actual prejudice, *i.e.*, that the jury process was so tainted that Guerra was unable to receive a fair trial. Guerra's counsel objected to the use and presence of the mannequins repeatedly. See p. 47, supra.

67. Ms. Monroe's statement manifestly demonstrates that the use of the mannequins not only had the potential to interject impermissible factors into the trial, but actually did so. This prejudicial effect was induced by the prosecutors not for any evidentiary purpose, but for other impermissible reasons. Holbrook v. Flynn, 475 U.S. 560, 570 (1986). The way the State employed the mannequins presented "an unacceptable risk [of] impermissible factors coming into play," fatally prejudicing Guerra's right to receive a fair trial. Woods v. Dugger, 923 F.2d 1454, 1459 (11th Cir. 1991).^{55/}

4. Eliciting Irrelevant Testimony that Witnesses Feared Guerra.

68. The State reinforced the notion that Guerra was dangerous by repeatedly encouraging witnesses to give hearsay testimony about the totally irrelevant and prejudicial fear that they and others had of Guerra or of testifying. S.F. Vol. 22 at 592-93 (Galvan says she and others were afraid to testify); id. at 434-35 (Perez says some people were afraid to testify).^{56/} This testimony, particularly when coupled with the presence of uniformed police officers in the courtroom, see pp. 123-25, infra, undoubtedly created a

^{55/}An assessment of the jurors' state of mind is of little consequence, since "[e]ven though a practice may be inherently prejudicial, jurors will not necessarily be fully conscious of the effect it will have on their attitude toward the accused." Flynn, 475 U.S. at 570. Due process requires the courts to safeguard against this subversion of the trial process, "even [if] . . . all the forms of trial conformed to the requirements of law" Woods, 923 F.2d at 1456-57 (citing Estes v. Texas, 381 U.S. 532, 561 (1965)).

^{56/}Jose Jr. and Ms. Flores also testified about fearing Guerra, S.F. Vol. 21 at 290, 293; Vol. 22 at 518, which was supported by hearsay testimony from others, id. at 592-93; Vol. 23 at 617-20, 632-33. Whether or not admissible to explain their failure to identify Guerra at the lineup, this testimony nevertheless reinforced the impression created by the police officers' presence, see pp. 123-25, infra, that the witnesses' fear was justified.

perception that Guerra was a violent and dangerous person, and made it more likely that the jury would find Guerra guilty and answer "yes" to the special issue on dangerousness during the punishment phase. Here again, the prosecutors went too far and violated Guerra's rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 10, 13, and 19, of the Texas Constitution.

5. The Prosecutor's Improper Jury Argument, and Repeated Statements of Personal Opinion and the Introduction of Evidence Outside the Record.

69. In violation of Guerra's due process rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 13 and 19, of the Texas Constitution, the prosecutor improperly used jury argument during the guilt-innocence phase of the trial to mischaracterize the evidence in the record and to knowingly introduce evidence outside the record. The prosecutor sought to impermissibly bolster the credibility of key State witnesses, to discredit testimony of the defendant and other key defense witnesses, and to inflame the passions of the jury through appeals to prejudice and references to inadmissible evidence.

70. The nature of the evidence and the issues presented to the jury in the trial magnify the harm caused by the prosecutor's improper argument. The jury was in the position of having to evaluate an array of conflicting purported "eyewitness" testimony, both between the witnesses offered by the State and by the defense, as well as among the State's own witnesses. The physical evidence also contradicted many of the State's purported "eyewitnesses." Against this backdrop, the prosecutors consistently ignored their

witnesses' testimony -- and most of the physical evidence -- and injected their personal opinions or evidence outside the record to insure that their version of the events of July 13, 1982 was presented to the jury.

71. Generally, proper jury argument must be confined to one of four areas: "(1) summation of the evidence, (2) reasonable deduction from the evidence, (3) answer to argument by opposing counsel, and (4) plea for law enforcement." Harris v. State, 784 S.W.2d 5, 12 (Tex. Crim. App. 1989), cert. denied, 494 U.S. 1090 (1990).

72. The prosecution may not interject personal opinions that lack support in the evidence, United States v. Herberman, 583 F.2d 222, 230 (5th Cir. 1978); may not go outside the record, Fuentes v. State, 664 S.W.2d 333, 338 (Tex. Crim. App. 1984); may not misstate the law, Rogers v. Lynaugh, 848 F.2d 606, 610 (5th Cir. 1988); may not seek to inflame the jury, see Hess v. State, 328 S.W.2d 308, 309 (Tex. Crim. App. 1959); and may not engage in various other improper acts, see, e.g., Herberman, 583 F.2d at 230.

73. Although a prosecutor can express his opinion or knowledge if it is plain they are derived from the evidence, any other expressions of personal opinion are improper. Foy v. Donnelly, 959 F.2d 1307, 1318 (5th Cir. 1992). Such comments, especially if not isolated instances but characteristic of the whole trial, can be grounds for reversal of a conviction. E.g., Fuentes, 664 S.W.2d at 335, 338 & n.1 (prosecution argued that defense objections were "in bad faith like usual" and "garbage"); see Herberman, 583 F.2d at 230 ("[i]n general, an attorney may not inject into his argument any extrinsic or prejudicial matter that has no basis in the evidence") (citation omitted).

74. Because of his standing as a public official "[the prosecutor's] allusion to extrinsic evidence and interjection of his own opinion may be given undue weight by the jurors." Id. Hence, he is held to a "high standard of care." Id. at 231. The harmful effect of repeated failures to stay within the record and to conduct proper jury argument often cannot be cured by an instruction to disregard. Bennett v. State, 677 S.W.2d 121, 129 (Tex. App.--Houston [14th Dist.] 1984, no pet.).

75. From *voir dire* to closing argument, Guerra's trial was rife with just such improper comments by the prosecutors. The prosecutors injected personal opinions about the veracity of key defense witnesses and sought to discredit Guerra and other defense witnesses by mischaracterizing evidence in the record and knowingly interjecting false information from outside the record. Each comment separately, and all cumulatively, violated Guerra's rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 10, 13, and 19, of the Texas Constitution.

a. The Prosecutors Repeatedly Improperly Bolstered the
Testimony of State Witnesses with Imaginary Facts or
Impermissible Opinions.

76. Although a prosecutor may not go outside the record to bolster the credibility of a witness by unsworn testimony, Menefee v. State, 614 S.W.2d 167-68 (Tex. Crim. App. 1981); Harkey v. State, 785 S.W.2d 876, 882 (Tex. App.--Austin 1990, no pet.), the prosecutors in this case did so repeatedly in closing argument.

77. First, one of the prosecutors, Mr. Richard Bax, improperly bolstered the inconsistent testimony of the State's purported "eyewitnesses" by insisting that five of the

State's witnesses had identified Guerra as "the man I saw shoot and kill Officer Harris and then run down the street and shoot into the car that Mr. Armijo was driving." S.F. Vol. 25 at 916. Mr. Bax later argued that this was not a case of mistaken identity because, he contended, "five eyewitnesses" individually had identified Guerra as Harris's killer. S.F. Vol. 25 at 933; see id. at 927. On rebuttal, Mr. Moen repeated that all five "eyewitnesses" had picked the same man in the lineup as the killer of both Harris and Mr. Armijo and that none said they were unsure. Id. at 969-70.

78. Yet, the witnesses' written statements and the results of the police lineup refute Mr. Bax's mischaracterization of the evidence and demonstrate that only Jose Jr. consistently testified that he *believed he* saw Guerra shoot both Harris and Mr. Armijo, Jose Jr.'s father. Galvan, originally claiming to have seen Guerra shoot Harris, revealed on cross-examination that she had not even seen the gun. None of the other witnesses claim to have seen the shooting of Mr. Armijo. See p. 50, supra.

79. Second, Mr. Bax injected his own opinion and introduced evidence outside the record to bolster the testimony of the State's key witness, Jose Jr. In closing argument, Mr. Bax began his discussion of Jose Jr.'s testimony by describing him as a little boy who knew that "God would get after him if he told a lie," S.F. Vol. 25 at 918, none of which was in the record or even asked during the trial.

80. The purpose of this unsworn opinion testimony was clearly to bolster Jose Jr.'s testimony about why he had failed to recognize or identify Guerra in the police

lineup. Defense counsel's objections were overruled or did not receive a ruling. S.F. Vol. 25 at 918-19.

81. Finally, the prosecution presented as fact the speculation that Jose Jr.'s stated reason for refusing to read his own statement -- that he did not have his glasses - - was really an excuse for his shyness and inability to read. Id. at 925. Jose Jr.'s clear perception of the events that night were critical to the State's case. Thus, Mr. Bax provided unsworn testimony to preclude impeachment of the poor eyesight of a key witness.

b. The Prosecutors Gave False, Unsworn Testimony in an Attempt to Unfairly Impeach Two Crucial Defense Witnesses.

82. The prosecutors consistently gave unsworn testimony and went outside the record in argument concerning the defense witnesses.

(i) The Prosecutors Falsely Accused Guerra of Lying About How He Ran Back to 4907 Rusk.

83. Mr. Bax also expressed personal opinions during Guerra's testimony concerning his actions following the shooting of Harris. Guerra stated at trial that after running down Edgewood he turned right at an intersection, ran to the next block, turned right again, and continued straight until he reached Dumble. Mr. Bax interjected -- incorrectly -- that Guerra "could not reach Dumble based on those directions." The Court sustained an objection to the prosecutor's testifying. S.F. Vol. 24 at 849-51. In effect, however, the effect was worse because the prosecutor was falsely accusing Guerra of perjury.

(ii) Without Evidence, the Prosecutors Accused a Key
Defense Witness of Being High on Drugs or Alcohol.

84. Mr. Moen used mere personal opinion during cross-examination of a key defense witness, Mr. Heredia, to seriously undermine the witness's credibility. The prosecution asked Mr. Heredia, without any foundation, if he had been drinking alcohol or smoking anything. S.F. Vol. 23 at 747-48. In concluding his cross-examination of Mr. Heredia, Mr. Moen remarked that he would let Mr. Heredia "go back to sleep." *Id.* at 758. Subsequently, in closing argument, Mr. Moen referred to Mr. Heredia as "Rip Van Winkle from Sleepy Hollow" and stated that "I think he was probably under the influence of some type of alcoholic beverage, or narcotic drug." S.F. Vol. 25 at 981. These comments, based on personal opinion and clearly outside the record, were highly prejudicial attacks on a key defense witness.

85. A prosecutor's statement during argument that the defendant was "coming down from an addictive drug" was held to be reversible error in Reynolds v. State, 505 S.W.2d 265, 267 (Tex. Crim. App. 1974). There, the court concluded that similar comments amounted to injecting new, unsubstantiated evidence where (i) there was no evidence that the defendant was under the influence of an addictive drug, and (ii) it was unlikely that such a state would unlikely be recognizable absent expertise, "the prosecutor's comments amounted to . . . injection of new, [unsubstantiated] evidence." *Id.* Recent experiments have shown that demeanor alone such as apparent sleepiness -- which is not reflected in this record -- does not assist in identifying either honesty or

accuracy in testimony. See generally Olin G. Wellborn, III, Demeanor, 76 Cornell L. Rev. 1075 (1991).

86. The prosecutor's observations, however, biased the jurors' evaluation of Heredia's demeanor. By expressly imputing to the witness a condition that would diminish his accuracy as well as suggest dishonesty, the prosecution improperly injected new "evidence" into the proceedings. Such an unfounded and personal attack on a defense eyewitness, particularly in a case in which a conviction was obtained in large part by contradictory testimony of other purported "eyewitnesses," severely prejudiced Guerra's right to a fair trial.

(iii) In Flagrant Contradiction to Material in the Prosecutors' Files, Prosecutors Wrongly Accused Two Defense Witnesses of Lying.

87. In a blatant example of improper conduct, Mr. Moen impeached two defense witnesses, Jose Torres Luna and Mr. Esparza, by arguing that they had either lied in their testimony or lied to police officer Robinette. S.F. Vol. 25 at 977-78. Mr. Moen knew or should have known that the testimony of Mr. Torres Luna and Mr. Esparza that they were at 4907 Rusk when Carrasco came in the house with two pistols and said that he had killed a policeman, S.F. Vol. 24 at 784-85, 815, was *consistent* with an earlier statement to Police Officer Palos. Nevertheless, the prosecutor accused the defense witnesses of lying, in artificial reliance on Officer Robinette's testimony that Torres Luna and Esparza had told Robinette that both of them had been out of the house until he saw them after Carrasco had been killed in the police shootout. Id. at

884-86. In an interview taken at Mr. Torres Luna's house by Officer Palos minutes after Harris's shooting and before Carrasco's death, Mr. Torres Luna had stated that he had remained at the house when his brother, Enrique, had left 30 minutes earlier. App. 35 (F92). This statement was in the prosecutors' files at the time of trial.

88. Based on the foregoing, it is clear that the prosecutor had no basis to assert that the two witnesses lied on the stand. Accordingly, the prosecutor's statement was merely a personal opinion about the veracity of two key defense witnesses, which is prohibited. See United States v. Murrah, 888 F.2d 24, 26 (5th Cir. 1989) ("prosecutor may not give a personal opinion about the veracity of a witness").

(iv) Prosecutor's Impeachment of Defense Witnesses
Through Questions Without Underlying Proof.

89. During cross-examination of Mr. Vega, who testified that he saw Carrasco shoot Harris, Mr. Moen asked if it was not true that the previous weekend Mr. Vega had told Mr. Moen that the shooter was the one closest to the police officer. S.F. Vol. 23 at 726-27.^{57/} Moen introduced no evidence that Vega made any such prior statement.

90. Similarly, during his cross-examination of Mr. Heredia, Mr. Moen first asked if it was not true that at the reenactment Mr. Heredia told Mr. Moen that Heredia could not identify the shooter. Id. at 751-52. Moen then attempted to induce Mr. Heredia to admit to the absurd notion that Heredia had told a policeman or an assistant District

^{57/}Mr. Moen was trying to prove Guerra's guilt since Guerra had previously been placed closest to Harris by several witnesses.

Attorney that Guerra *was not present* the night Harris was shot. Id. at 753. There is no support for either prosecutorial assertion. Heredia's statement on the night of the murder says only that the officer put the driver against the car and was about to search him while the passenger got out of the car, walked behind Harris, and shot him. App. 28 (F55). It says nothing about Mr. Heredia claiming that Guerra was not present or that Mr. Heredia could not identify the shooter.

91. It is reversible error where the form of a question -- such as those posed to defense witnesses Vega and Heredia -- has the effect of asserting as fact matters unsupported by evidence in the record. See, e.g., Sisson v. State, 561 S.W.2d 197, 199 (Tex. Crim. App. 1978) (reversing a conviction in part because the prosecutor asked "Have you heard that on August the 7th, 1976, this defendant . . . did in fact smoke marijuana"); Dakin v. State, 632 S.W.2d 864 (Tex. App.--Dallas, pet. ref'd 1982) (reversing conviction based, in part, upon the prosecutor's unsupported statements made in the form of questions to witnesses). The prejudicial effect on the jury is so severe that it cannot be cured by instructions to disregard from the court. E.g., Sisson, 561 S.W.2d at 199-200; Dakin, 632 S.W.2d 864.

92. Similarly, in this case, in the guise of questioning certain witnesses, the prosecution made statements of fact unsupported by the record, thereby unconstitutionally tainting the conviction.

6. The Prosecutors' Repeated Pleas to Community Expectations.

93. Arguments by the State referring to expectations of the community for conviction constitutes reversible error. Porter v. State, 226 S.W.2d 435 (Tex. Crim. App. 1950). The prosecutor made just such an argument when he exhorted the jury to return a speedy verdict in the punishment phase and to "let the other residents at 4907 Rusk and . . . the people who have the rest of those weapons out there somewhere . . . know just exactly what we as citizens of Harris County think about this kind of conduct" S.F. Vol. 27 at 179.

94. These arguments are unconstitutional and require reversal of Guerra's conviction.

7. Use of Irrelevant and Inflammatory Victim Impact Testimony from Mrs. Harris and Mrs. Armijo Violated Guerra's Rights.

95. The State's unrelenting strategy of inciting and inflaming the jury against Guerra is further demonstrated by the prosecution's attempts to substitute sympathy for the victims in lieu of evidence of guilt. The prosecution began this tactic during *voir dire* and continued through trial and closing argument.

96. Recognizing the evidentiary infirmities of its case against Guerra, the State adopted a strategy of creating a contest for the jury's sympathy between the defendant and the victims of the tragic events on the night of July 13, 1982. This was a contest Guerra was bound to lose.

97. The State initiated its strategy by impressing on the jury that the prosecutors represented the family of Officer Harris in the trial proceedings. Throughout the *voir dire*, the prosecutors announced that they represented both the State *and* the family of Officer Harris.^{58/} Of course, they had *no* such responsibility: the prosecutors, representing the State and otherwise ostensibly acting as officers of the Court, served solely to present evidence to the jury for the jury's determination whether Guerra was guilty of the murder of Officer Harris beyond a reasonable doubt. Instead, the prosecutors sought to create the impression that the proceeding was merely a contest between two disputants, Officer Harris's family and Guerra, between whom the jury must express a preference.

98. Next, the prosecution presented its case in a way designed to obliterate its evidentiary weaknesses, by focusing the jury's attention, in riveting, laser-like intensity, on the victim of the crime, rather than on questions about the actions of the alleged murderer. In the penultimate stage of its case, the State introduced five grisly autopsy photographs of Officer Harris. The last three showed rods entering one side of Harris's face and exiting the opposite side. S.F. Vol. 23 at 691. Then -- immediately following the display of Harris's mutilated head, and with the mannequins gazing remorselessly at the jurors -- the prosecution dramatically called Mrs. Harris to the stand.

^{58/}See S.F. Vol. 13 at 2366 (Brown); Vol. 15 at 2574 (Brumley); Vol. 17 at 2896 (Busby); Vol. 5 at 659 (Douthitt); Vol. 12 at 2054 (Martenis); Vol. 13 at 2192 (Phillips); Vol. 19 at 3452 (Petty); *id.* at 3518 (Whiteford). They continued this tactic during closing arguments. See Vol. 25 at 968-69, 986-87; Vol. 27 at 204. See p. 102, *infra*.

99. Mrs. Harris recounted her life with her dead husband and his qualities as a father and husband. S.F. Vol. 23 at 701-10. She described meeting her husband, id. at 702-03, and how he regularly worked extra jobs so that she could devote full time to raising their children. Id. at 710. In a moving testimonial to a close family relationship, maintained by a dedicated officer, she recalled that he was a good father. She testified that he was good to his children when he was there, id. at 709-10; it was just Sundays and Mondays on his days off that he was able to be with the children, and he did as much as possible for them and with them, id. at 710; in "fact, . . . just the weekend before, [they] had taken a little out-of-town trip just to get away so the kids -- [he] took them to San Marcos," id.; and she couldn't have asked for a better husband or better father for her children, id. She described how excited he had been leaving for work the day of his murder, because he had a new patrol dog. Id. at 708. Over objections of Guerra's counsel, the prosecutor coaxed from Mrs. Harris the couple's parting words:

Q. What happened after that?

A. He kissed me and he said, "I love you," and he left.

Q. Was that the last thing you ever heard him say to you?

A. Yes sir.

Id. at 709-10.

100. In his closing argument in the guilt-innocence phase, the prosecution also stated that it represented Officer Harris, Mr. Armijo and their families. See S.F. Vol. 25 at 904. For example, in closing, Mr. Bax stated that he and Mr. Moen "have clients in this case, and . . . will represent them with all the vigor and ambition that [defense

counsel] will be representing his client with" Id. at 913-14. Mr. Moen reassured the jury that he acted to represent Officer Harris to the best of his abilities -- just as they would represent any of the jurors "or [their] loved ones." Id. at 968-69.^{59/} Then, the prosecutor seized on this incendiary portrait of the victim and his wife, fanning the testimony into a blazing plea for retribution. Bitterly contrasting the poignant image of a virtuous husband and father with "the type of person [Guerra] is," Mr. Moen vehemently exclaimed:

You know, trials like this, murder cases like this make me angry a little bit as a lawyer as far as the law is concerned because you are presented just the briefest biographical sketch of what type of person Jim Harris really was, and it is not really fair. It is not fair to Jim or his family, that you know so little about what kind of person he was.

Throughout the trial, he is characterized as being a police officer, just a police officer. He was a person working as a police officer. He was not just another statistic, murder statistic here in Houston. He was a good man.

Put it out of your mind he was a police officer. Sure, it enters into this case, but he was not just a police officer, not just a distant figure we can write off. He was a man, a good man, a good member of this community.

Id. at 986-87.

101. This emotional appeal alone was sufficient to crumble the objectivity of even the most conscientious juror. But the State did not stop with evidence of the impact of Officer Harris's death. The prosecutors also elicited victim impact testimony from Mrs. Armijo in the guilt-innocence phase of the trial, even though the State was not trying

^{59/}See note 58, supra, for similar characterizations in *voir dire*.

Guerra for Mr. Armijo's murder. In response to the prosecutor's questions, Mrs. Armijo described how her son Jose Jr.'s behavior changed after the death of her husband:

[Jose Jr.] used to go out to play a lot and he would ride his bicycle on the sidewalk and going around the block. He played a lot of baseball, yes, sir. And, he would play a lot, and he was quite happy, and he used to play a lot of baseball with his father and now he doesn't want to go out to play and he just comes home and he wants to lie down and sleep, and he doesn't even want to eat.

S.F. Vol. 23 at 633-35.

102. Once again, Mrs. Armijo's testimony, over the objection of Guerra's counsel, about the emotional condition of her son did not tend to prove or to disprove any of the elements of the crime with which Guerra was charged. Like Mrs. Harris's testimony, its sole purpose and effect was to inflame the jury against Guerra, replacing the jurors' dispassionate consideration of the evidence (or lack thereof) with an overwhelming desire to avenge the deaths.

103. As Guerra demonstrates elsewhere, see pp. 131-44, infra, under Texas Rule of Criminal Evidence 402 and established principles of United States and Texas constitutional law, such victim impact evidence presented during the guilt-innocence stage of Guerra's trial was fundamentally unfair, in violation of Guerra's rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Sections 10, 13, and 19, of the Texas Constitution. This alone constitutes grounds for the granting of a writ.

8. The Prosecution Attempted to Invoke Religion to Persuade the Jury to Give the Death Penalty.

104. In the punishment phase, the prosecutor made several inflammatory and improper appeals to religion. He told the jury that the Bible commands the jury to impose the death penalty on Guerra.^{60/}

105. This was a deliberate, improper attempt by the prosecutor to destroy the objectivity of the jury and remove the responsibility from the jury for their verdict. See Commonwealth v. Chambers, 599 A.2d 630 (Pa. 1991), cert. denied, 112 S. Ct. 2290 (1992). It is improper for the prosecutor to interject religious law as the source of the jury's obligation to impose the death penalty rather than their duty to determine whether the death penalty is appropriate based on the laws enacted by the legislature of the State.

^{60/}The prosecutor argued:

Where do we get the death penalty from? Where does this inhumane law come from? Where do we receive our direction for the death penalty? Have any of you forgotten or is it possible we have put aside our directions on where we get the death penalty from? Have any of us forgotten what God told Moses two thousand years ago? 'Thou shalt not kill.' What did God tell Moses when he was telling Moses his commandments, laying down his law? What did he tell him twenty-five verses later? Twenty-five verses later, after he told Moses to tell everyone it was God's law, 'Thou shalt not kill,' he said, 'He that smiteth a man so that he die shall surely be put to death himself.' Twenty-five verses later. That is where we get this inhumane law from, the death penalty. It is not something we thought up. It is not something we arbitrarily decided upon. Our direction comes from someone a little bit higher than us, someone a little bit smarter than us. That is where this inhuman law comes from.

S.F. Vol. 27 at 192-93 (emphasis added).

Id.; see also Miller v. North Carolina, 583 F.2d 701, 704 n.3 (4th Cir. 1978) (disapproving of this type argument); North Carolina v. Morse, 313 S.E.2d 507, 519 (N.C. 1984) (same). By telling the jury that the Bible commands them to return a death penalty verdict, the prosecutor attempted to inflame the jurors' emotions in rendering their verdict rather than their judgment based on the evidence.^{61/}

106. The prosecutor's punishment phase argument thus denied Guerra his due process rights pursuant to the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, sections 10, 13, and 19, of the Texas Constitution and his right to a reliable capital sentencing proceeding pursuant to the Eighth Amendment.

D. The Cumulative Effect of Prosecutorial Misconduct Throughout Guerra's Trial Deprived Him of a Fair Trial and Deprived Guerra of His Due Process Rights Under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Sections 3, 3A, 10, 13, and 19, of the Texas Constitution

107. Each of the foregoing instances of prosecutorial misconduct constitutes a violation of Guerra's right to a fair trial. Each incident and comment, by itself, constitutes error of constitutional magnitude that deprived Guerra of due process of law and rendered his conviction and sentence invalid, as established above. Moreover, although each individual instance of prosecutorial misconduct so seriously undermined fundamental fairness that it deprived Guerra of his due process guarantees, consideration of those acts

^{61/}Prosecutors' arguments that, regardless of any other evidence and regardless of the law, the death penalty is mandatory whenever one man kills another, has long been held to be unconstitutional. Woodson v. North Carolina, 428 U.S. 280, 292-93 (1976).

cumulatively and in the context of the trial as a whole, including closing arguments, makes clear that Guerra was denied a fair trial. United States v. Herberman, 583 F.2d 222, 231 (5th Cir. 1978); see Kirkpatrick v. Blackburn, 777 F.2d 272, 281 (5th Cir. 1985).

108. It is clear that where a prosecutor acted improperly in many instances,

[e]ven though any single instance might not have resulted in a reversal, we are convinced that the sum of all these errors prevented appellant from obtaining a fair and impartial trial. The prosecution made too many improper suggestions, introduced too much improper evidence and denied the existence of evidence on too many occasions. What inferences were planted in the minds of the jurors we cannot determine. We hold, however, that their verdict could not have been based solely upon proper consideration of relevant and admissible evidence.

Herberman, 583 F.2d at 231 (emphasis added).

109. Texas law provides a similar rule. Where "pronounced and persistent" prosecutorial misconduct "permeate[d] the entire record" even though no single instance of misconduct seems likely to have required reversal, the totality of the misconduct denied the defendant due process. Rogers v. State, 725 S.W.2d 350, 360-61 (Tex. App.--Houston [1st Dist.] 1987, no pet.); see also Dakin, 632 S.W.2d at 869 (holding that "when an entire record, such as the one before us, is permeated" with prosecutorial misconduct, "the verdict reached by the jury must necessarily be based upon consideration of such factors" and, thus, must constitute an impermissible denial of due process).

110. The numerous acts of prosecutorial misconduct -- including but not limited to (i) intimidation of witnesses, (ii) failure to disclose material exculpatory evidence, (iii) cover-up of improper lineup procedures, (iv) improper remarks during *voir dire*, including

improper references to using Guerra's status as an illegal alien when deciding if he would live or die, (v) use of known false evidence, (vi) interjection of improper jury argument, personal opinions and matters outside the record, (vii) repeated pleas to family and community expectations, (viii) emphasis on victim impact evidence and improper assertions that the prosecutors "represented" the victims' families, (ix) misstatements of the law, and (x) attempts to invoke religion to persuade the jury to give the death penalty -- each alone, and certainly accumulated, deprived Guerra of a fair trial in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution and Article I, sections 3, 3A, 10, 13, and 19, of the Texas Constitution.

E. The Serious and Continuing Prosecutorial Misconduct Alleged Here Resulted in a Deprivation of Fundamental Fairness that Cannot Be Waived By a Failure to Object

111. Generally, where error is not preserved during trial, that objection is considered to be "waived," unless the conduct in question constitutes "plain error." See United States v. Hatch, 926 F.2d 387, 394 (5th Cir.), cert. denied, 111 S. Ct. 2239 and 112 S. Ct. 126 (1991). Similarly, under Texas law, a failure to object to improprieties in prosecutorial argument or conduct constitutes a waiver. Borgen v. State, 672 S.W.2d 456, 457 (Tex. Crim. App. 1984) (en banc).

112. Defense counsel in fact objected at trial to many of the acts of prosecutorial misconduct set forth above. For some others, however, counsel did not object. But as to the bulk of those, the State's actions were so egregious and created a condition of such

fundamental unfairness that the failure to make a contemporaneous objection should result in neither the denial of review by this Court nor in the application of the relatively strict "plain error" standard. As the Supreme Court has explained:

Where there is serious and continuing prosecutorial misconduct that undermines the reliability of the fact-finding process or, even worse, transforms the trial into a farce and a mockery of justice, as occurred here, resulting in deprivation of fundamental fairness and due process of law, the defendant is entitled to a new trial even though few objections have been perfected.

Berger v. United States, 295 U.S. 78, 88 (1935); accord, Ruth v. State, 522 S.W.2d 517 (Tex. Crim. App. 1975); Kerns v. State, 550 S.W.2d 91 (Tex. Crim. App. 1977). Reversal is justified to reaffirm the critical importance of convicting the accused based only on the evidence presented, without attempting to inflame or prejudice the minds of the jurors. Boyde v. State, 513 S.W.2d 588, 593 (Tex. Crim App. 1974); Stein v. State, 492 S.W.2d 548, 551 (Tex. Crim. App. 1973). Rogers v. State, 725 S.W.2d 350 (Tex. App. -- Houston [1st Dist.] 1987, no pet.).

113. Indeed, under Texas law, a failure to object will not waive the error where the prosecutor's argument is so prejudicial that an instruction to disregard would not cure the harm. Borgen, 672 S.W.2d at 458. Other applicable federal and state cases recognize that the failure to make a contemporaneous or proper objection need not be considered a waiver where the prosecutors' conduct is particularly improper or prejudicial.^{62/}

^{62/}See, e.g., United States v. Dorr, 636 F.2d 117 (5th Cir. 1981); Fuentes v. State, 664 S.W.2d 333, 336-37 (Tex. Crim. App. 1984); United States v. Edwards, 576 F.2d 1152, 1154 (5th Cir. 1978); Boyde v. State, 513 S.W.2d 588, 593 (Tex. Crim. App. 1974).

114. Sensitivity to this matter is especially important in capital cases. As courts from other jurisdictions have recognized, "where [the] death penalty is applicable, [the Supreme] Court will notice all possible errors even though not properly raised." State v. Smith, 554 So.2d 676, 678 (La. 1989); see also State v. Bay, 529 So.2d 845, 852 (La. 1988), cert. denied, 111 S. Ct. 2865 (1991) (holding that "[t]he potential deprivation of life warrants that we make the extra effort to review the record and see if we can develop a viable argument for the defendant even if the defendant fails to do so himself. Special consideration should be afforded before a life is taken").

115. Even absent *de novo* review of trial error, the many instances of prosecutorial misconduct considered individually and in the context of the entire trial, were so egregious that they must be found to have deprived Guerra of his fundamental rights even under a "plain error" standard. Under Texas law, it is clear that the prosecutors' conduct so prejudiced the trial that no instruction to disregard could have cured the multiple errors. See Thomas v. State, 693 S.W.2d 7, 9 (Tex App.--Houston [14th Dist.] 1985, pet. ref'd).

IV. THE HOSTILE ENVIRONMENT SURROUNDING GUERRA'S TRIAL AND THE PROSECUTORS' CONDUCT IN EXACERBATING THE HOSTILE ENVIRONMENT SUBVERTED THE TRIAL PROCESS AND VIOLATED GUERRA'S RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 10, 13, AND 19, OF THE TEXAS CONSTITUTION

1. The jury's objectivity was destroyed by the unusually hostile environment that surrounded Guerra's trial -- due to

- (i) a record number of unrelated police killings, and
- (ii) inordinately inflamed, prejudicial attitudes towards illegal aliens -- as a group -- that had been the subject of several recent events.

2. Shockingly, the State pandered to these improper emotions and thereby created a hostile environment to surround and unfairly color jurors' consideration of the evidence at trial. Guerra was thus denied his right to a *fair trial* as guaranteed under the Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution and Article I, sections 10, 13 and 19, of the Texas Constitution.^{63/}

3. Central to the right to a fair trial is the principle that "one accused of a crime is entitled to have his guilt or innocence determined *solely on the basis of the evidence introduced at trial*" Holbrook v. Flynn, 475 U.S. 560, 567 (1986) (quoting Taylor v. Kentucky, 436 U.S. 478, 485 (1978)) (emphasis added). "[C]ertain practices pose such a threat to the 'fairness of the fact finding process' that they must be subjected to 'close judicial scrutiny.'" Flynn, 475 U.S. at 568 (quoting Estelle v. Williams, 425 U.S. 501, 503-04 (1976)). Due process requires that the courts safeguard against "the intrusion of factors into the process that tend to subvert its purpose." Woods v. Dugger, 923 F.2d 1454, 1456-57 (11th Cir. 1991).

4. To prevail on a claim of denial of a fair trial, a criminal defendant must show either actual or inherent prejudice. Woods, 923 F.2d at 1457 (citing Flynn and Irvin

^{63/}In some instances trial counsel failed to object to events contributing to the hostile environment, but this should not constitute waiver. See pp. 290-93, *infra*.

v. Dowd, 366 U.S. 717 (1961)). The test for inherent prejudice is "not whether jurors actually articulated a consciousness of some prejudicial effect, but rather whether 'an unacceptable risk [to a defendant's right to a fair trial] is presented of impermissible factors coming into play.'" Flynn, 475 U.S. at 570 (quoting Estelle, 425 U.S. at 505) (quoted in Woods, 923 F.2d at 1457). A risk becomes unacceptable when there is a "probability of deleterious effects." Williams, 425 U.S. at 504 (quoted in Woods, 923 F.2d at 1457).

5. Although each impermissible prejudicial factor, standing alone, may be insufficient to render a verdict constitutionally unfair, each factor must be "viewed in the context of the complete trial." Woods, 923 F.2d at 1459. In other words, the totality of circumstances must be examined to evaluate the fairness of the trial. Id. at 1457 (citing Sheppard v. Maxwell, 384 U.S. 333, 352 (1966)).^{64/}

6. The State benefitted from vast negative pretrial publicity -- seen by several members of the jury -- about this case and used the surrounding circumstances to encourage unfounded generalizations from this incident.^{65/}

^{64/}Moreover, when there is an "unacceptable risk" that a defendant's trial processes have been subverted, a harmless error analysis is not applicable. See Woods, 923 F.2d at 1460. This reflects the reasoning of the U.S. Supreme Court in Irvin v. Dowd, 366 U.S. 717, 722 (1961), in which the important threshold issue for the Court was whether the defendant was afforded a fair trial, not whether he was innocent. See also Satterwhite v. Texas, 486 U.S. 249, 256 (1988). Here, where the evidence of guilt is borderline at best, it would be almost impossible to demonstrate that errors like those described above were harmless.

^{65/}See also Section on references to "illegal alien" at pp. 127-28, infra.

A. Pretrial Publicity and Prejudicial Feelings Toward Illegal Aliens

1. Record Number of H.P.D. Officers Killed.

7. As reported in a major Houston newspaper several times in mid-July 1982, Harris was the fourth Houston police officer to die in the line of duty that year, the highest number killed in the line of duty for any *full* year since 1917, App. 156 (F1423); App. 152 (F1297) (Houston Chronicle, July 14, 1982, § 1, at 8 and July 16, 1982, § 1, at 10), and a number that tied Chicago for the U.S. city with the highest number of slain officers, App. 160 (F1429) (Houston Chronicle, July 17, 1982, § 1, at 16). Houston police officers, led by Police Chief Lee Brown, were "alarmed and concerned" over "the unprecedented number of deaths and injuries to our officers" and were concerned that they were "losing too many." App. 159 (F1428); App. 160 (F1429) (Houston Chronicle, July 16, 1982, § 1, at 10 and July 17, 1982, § 1, at 16). Harris's funeral received major attention from the news media, as "500 gathered" for the funeral, which drew fellow police officers from as far away as Fort Worth. App. 160 (F1429) (Houston Chronicle, July 17, 1982, § 1, at 16). The day following Harris's death, flags throughout the city were flown at half-mast by order of the Mayor. App. 157 (F1426) (Houston Chronicle, July 15, 1982, § 1, at 12). Most of the articles about the trial were on the front page of the Houston Chronicle and Houston Post, with a constant barrage of incendiary publicity.

8. Many members of the jury had followed the investigation in the press.^{66/}

2. Attitudes Towards Illegal Aliens.

a. Harris Murder, Trial, and Guerra as "Illegal Alien."

9. Press and newscast reporting was extensive during the days immediately following the Harris murder and during the trial 2-1/2 months later. At an evidentiary hearing, Guerra will prove that the city's three major television stations carried nearly 100 reports covering the incident and the trial. Numerous newspaper stories referred to Guerra as the "suspected illegal alien" or "suspected undocumented alien." App. 156 (F1423); App. 157 (F1426); App. 1059 (F1428); App. 163 (F1433); App. 158 (F1427) (Houston Chronicle, July 14, 1982, § 1, at 8; July 15, 1982, § 1, at 12; July 16, 1982, § 1, at 10 and Oct. 5, 1982, § 1, at 11; Houston Post, July 16, 1982, at 7A and Oct. 4, 1982, at 14A). At an evidentiary hearing on this Application, Guerra will show that these terms have a negative and prejudicial connotation that appeals to ethnic prejudice.

b. Anti-"Illegal Alien" Attitudes in Houston.

10. Also, Guerra will demonstrate that during the time period when he was arrested and brought to trial for the Harris murder, many Houston residents -- especially

^{66/}See S.F. Vol. 8 at 659-60 (Douthitt); Vol. 8 at 832, 878 (Woods heard of murder on radio and t.v.); Vol. 8 at 974 (Kellogg heard the murder "coverage in . . . all the channels for several days"); Vol. 21 at 3453 (Petty); Vol. 19 at 3519 (Whiteford). Only Juror Busby, Vol. 17 at 2896, claimed that he had not heard media coverage of the case. According to the *voir dire* transcript, two jurors were not questioned about the pretrial publicity (Monroe and Smith), and four were uncertain (Brennan, Brown, Brumley, and Martenis). Of the 60 members of the *venire* questioned on this issue, only 18 stated that they had heard no media coverage.

non-Hispanics -- exhibited a strong bias against "immigrants" and "illegal aliens," blaming them for increases in crime, displacement of American workers, and excessive reliance on public welfare programs. With unemployment at a "record-breaking" 9.4%, App. 174 (F1457) (Houston Post, May 9, 1982, at 6GG), Guerra will show that generally speaking, residents of Houston viewed immigrants and undocumented aliens (usually Mexican nationals) in terms of "illegal" status or on the basis of an alleged negative impact on the U.S. economy, crime, and society.^{67/} Perhaps these attitudes could have been tempered by the presence of one or more Mexican Americans on the jury, but there were none.^{68/}

^{67/}Letters to the editor published in Houston newspapers reflect that some people believed that illegal immigration was "causing a national crime wave." E.g., App. 153 (F1311) (Houston Chronicle, July 27, 1982, § 3 at 1); see also App. 150 (F1453A) (Houston Post, May 9, 1982, at 3GG) ("crime in the city has advanced greatly because [illegal aliens] have nothing to lose"). Others compared undocumented Mexican immigrants to "roaches in the night" who "slither across the border [daily], snatching up jobs Americans so desperately need." App. 155 (F1375) (Houston Chronicle, Nov. 4, 1982, § 2, at 14).

This is not to suggest that all, or even most Houstonians shared these obnoxious views. But the selection of only one juror of a similar persuasion would infect the entire panel.

^{68/}There were at most *two* Mexican Americans among the 90 questioned during *voir dire*. see S.F. Vol. 9 at 17 (Anita Hernandez); Vol. 8 at 1375 (Marshall McDonald). Both were struck by the State. S.F. Vol. 9 at 1417 (Hernandez); Vol. 8 at 1377 (McDonald). The potential for racism to enter jurors' deliberations in inter-racial homicides, which the Supreme Court has recognized, see *Turner v. Murray*, 476 U.S. 28, 33-37 (1986), should not be discounted. See pp. 127-28, infra ("illegal alien" comments).

c. Supreme Court Decision on Education of the Children of "Illegal Aliens."

11. Many also blamed "illegal aliens" for placing an unprecedented financial strain on the U.S. school system. In June 1982, the Supreme Court held that a Texas statute discriminated against and deprived of a public education children who were not "legally admitted" into the United States. Plyler v. Doe, 457 U.S. 202 (1982). The U.S. District Court for the Eastern District of Texas had made extensive findings of fact regarding the issues involved in that case. Id. at 207. Those findings concluded that undocumented children were "[a]lready disadvantaged as a result of poverty, lack of English-speaking ability, and *undeniable racial prejudices* . . ." Id. at 208 (emphasis added). The Court observed that

a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor [had resulted in] . . . the existence of such an underclass . . . who are virtually defenseless against any abuse, exploitation, or callous neglect to which the state or the state's natural citizens . . . may wish to subject them.

Id. at 218-19 n.17. This decision was bitterly criticized by Texas public officials. See, e.g., App. 168 (F1453) (Houston Post, June 16, 1982, at A20) (quoting Secretary of State Strake saying the ruling "will hurt the people of Texas").

d. Immigration Reform Debate.

12. At the time of Guerra's trial, the U.S. Congress was considering a controversial bill -- the Immigration Reform and Control Act of 1982 -- that, according to then Texas Governor Bill Clements, would "change the direction of this state" if it

becomes law. App. 169 (F1454) (Houston Post, Sept. 19, 1982, at 15A). The most controversial provisions of the bill, which because of Texas' proximity to Mexico was expected to have a significant impact on Texas, were (i) stiff penalties against employers who knowingly hire illegal aliens, (ii) modest increases in the temporary worker program, and (iii) an amnesty program that would offer permanent resident status for millions of illegal aliens. App. 171 (F1455A); App. 176 (F1458); App. 154 (F1356) (Houston Post, Sept. 26, 1982, at 5GG and Sept. 23, 1982, at 11C; Houston Chronicle, Sept. 30, 1982, at § 1, p. 30). One of the bill's sponsors argued that uncontrolled immigration "can result in harm to American values, traditions, customs, our public culture, institutions and way of life" and was creating an American with "hostility cooking in his bosom" out of fear he will lose his job to illegal immigrants. App. 167 (F1452) (Houston Post, May 29, 1982, at 8B).

13. Hispanic organizations opposed the bill, fearing that penalties against employers would lead to discrimination against all Hispanics, U.S. citizens as well. App. 171 (F1455A) (Houston Post, Sept. 26, 1982, at 5GG). The most controversial provision of the bill was addressed by House Majority Leader Jim Wright of Texas who, apparently recognizing the prejudice illegal aliens face in Texas, said: "[T]he public is not prepared to support a total permanent blanket amnesty for [illegal aliens] who can establish that they have managed to evade the law for five or six years and thus claim some right of [resident status]." App. 171 (F1455A) Houston Post, Sept. 26, 1982, at 5GG. Texas Gov. Bill Clements said: "I am absolutely opposed to that bill, and I am doing everything

I know how to do to see that bill never comes to a vote (in the U.S. House)." App. 169 (F1454) (Houston Post, Sept. 19, 1982, at 15A). He also was quoted saying that Texans could wake up some morning and find millions of additional Mexican nationals and other aliens living in their midst and a dramatically altered quality of life if the bill passed:

So you are talking about enormous pressures on our housing, on our public services, on our social programs, on our hospitals, on our schools. There's hardly anything that . . . wouldn't suffer under pressures of this kind.

And you know its not right for Texas. It [the amnesty provisions] would change our quality of life in Texas. It'll change the direction of this state. We just don't want it.

Id.; see also App. 149 (F1065) (Houston Post, May 1, 1982, at 2C (syndicated columnist G.A. Geyer argues that massive, uncontrolled immigration from Mexico and Central America "weakens and may perhaps eventually destroy the fabric of a nationhood that holds the American people together").

14. Other well-known personalities made even more explicitly prejudicial comments. One of the most graphic, publicized in Houston only *three days* before jury selection began in Guerra's case, was by Clare Booth Luce, former U.S. Ambassador to Italy and widow of the founder of Time and Life magazines, who warned that "invading aliens posed a greater threat than the atom bomb" and continued:

Soon there will probably be as many Mexicans in Texas . . . as there are natives

. . . Now a vast majority of these are illegal. *They're coming in with wives and sisters and nieces who get pregnant* immediately because they can then become American citizens *and go on relief*. I do not know how much more we can absorb.

[Unless the influx of aliens could be stopped,] there are bound to be dreadful clashes in our society

In the 19th century, the United States absorbed something like 40 million immigrants. . . . But the vast majority were of a fundamental culture, and they were all white. They were not black or brown or yellow. And even then we had problems [of ethnic discrimination].

App. 172 (F1456) (Houston Post, Aug. 28, 1982, at 42E (emphasis added) (quoting interview in GED magazine).

e. Study Claiming "Illegal Aliens" Burden the Welfare System.

15. Just before Guerra's trial began, in articles published on Oct. 3 and Oct. 11, 1982, the Houston Chronicle reported on a study warning that illegal aliens are a "growing burden on the welfare system." App. 161 (F1430); App. 164-65 (F1437-38) (Houston Chronicle, Oct. 3, 1982, § 1, at 9 and Oct. 11, 1982, § 1, at 4 (emphasis added)). The study claimed to have evidence indicating that "illegal aliens pay less in taxes than they get in benefits" and "are applying for and receiving hundreds of millions of dollars worth of services -- *at the same time these programs are being cut back for disadvantaged Americans.*" App. 161 (F1430) (Houston Chronicle, Oct. 3, 1982, § 1, at 9 (emphasis added)).^{69/} The organization that conducted the study, whose motives were suspect since

^{69/}This study reinforced a widely held view of undocumented immigrants as freeloaders. See, e.g., App. 151 (F1110) (Houston Post, June 15, 1982, at 3B).

Only a few months earlier a GAO report, described in the Houston press, claimed that "illegal aliens and other questionable cases" collect \$180 million in social security benefits. App. 175 (F1457A) (Houston Post, June 2, 1982, at 5A); see also App. 177 (F1458A) (Houston Post, May 23, 1982, at B1).

its members strongly opposed immigration reform, App. 164 (F1437) (Houston Chronicle, Oct. 11, 1982, § 1, at 4), insisted that "a hemorrhage of our social welfare system" could result unless legislation was passed to clamp down on illegal immigration. Id. This report flew in the face of extensive evidence cited in Plyler "suggest[ing] that illegal aliens underutilize public services, while contributing their labor to the local economy and tax money to the state fisc." 457 U.S. at 228.⁷⁰

f. Ku Klux Klan Demonstration.

16. Indications that the jurors were infected by the publicity surrounding this trial and alleged consequences of having "illegal aliens" (Mexicans) in the community is reinforced by the occurrence of a Ku Klux Klan demonstration outside the Harris County Court building following Guerra's sentencing. Guerra will show that three or four KKK units marched and carried a number of signs saying "Houston will not tolerate *illegal alien* crimes," "Guerra Got Justice," and "No Sympathy for Cop Killers."

17. This is the type of prejudicial, hostile environment that confronted Guerra when he was arrested and convicted for the shooting of Harris. The State took full advantage of every opportunity, from *voir dire* through closing argument, to put the jury on notice that Guerra was an "illegal alien" whose status could be considered by the jury when deciding "what type of person he is." See pp. 127-28, infra.

⁷⁰Union officials exhibited mixed reactions towards undocumented workers. Some Houston area unions attempted to organize them, while others shared the attitude of one prominent union leader: "We'd like to organize them [undocumented workers] in a bunch and send them back." App. 173 (F1456A) (Houston Post, Aug. 1, 1982, at B1).

3. The Jurors Were Aware of Anti-"Illegal Alien" Issues Discussed in the Media.

18. Many of the jurors were aware of the Plyler decision, the immigration and reform debates in Congress and throughout the country, as well as other issues concerning "illegal aliens" in Texas. Several citizens selected for the jury honestly expressed their reservations concerning Guerra's illegal status and the Supreme Court's decision in Plyler.^{21/} Although they insisted that they believed they could give Guerra a fair trial, they expressed sentiments casting serious doubt on their true objectivity. For example, one juror said that he disagreed with the Plyler decision and felt that one should be a citizen in order to qualify for a free education. S.F. Vol. 3 at 296-97 (Brennan). Another juror candidly admitted that Guerra's status as an illegal alien would affect her view of "the type of person he is." S.F. Vol. 21 at 3552-53 (Whiteford).^{22/}

B. The Prosecutors Repeatedly Focused Jurors' Attention on "Illegal Aliens" During *Voir Dire* and Subtly Incited Prejudices Among the Jurors.

19. During jury selection, the State incorporated the negative connotations associated with the term "illegal alien" into its questioning of numerous members of the

^{21/}S.F. Vol. 3 at 296-97 (Brennan); Vol. 5 at 693 (Douthitt); Vol. 18 at 3276-77 (Smith); Vol. 6 at 874-75 (Woods).

^{22/}Several people not picked for the jury candidly admitted bias and the belief that illegal aliens should not have the same rights as citizens. S.F. Vol. 10 at 1745-46, 1763-66 (Cook); Vol. 3 at 414-17, 421, 436, 439-40 (Deckert); Vol. 11 at 1973-75 (Grant); Vol. 6 at 1028-29 (Matthews); Vol. 13 at 2230-34 (Phillips); Vol. 10 at 1672-73 (Sadler); Vol. 7 at 1175-79 (Wilkinson).

venire, including several who were selected for the jury. As described in notes 76 and 77, infra, the State repeatedly mentioned that Guerra was an "illegal alien," to induce negative feelings toward him. The State then reinforced that patent appeal to ethnic prejudice by suggesting that knowing someone is an illegal alien gives some "indication of the type person he is" and that the jury could take Guerra's status into consideration during the punishment phase of the trial. The State thus inferred either that illegal aliens are more likely than others to commit acts of violence in the future, or that illegal aliens are more deserving than others to receive the death penalty. At an evidentiary hearing, Guerra will show that the jurors discussed these matters during deliberations.^{73/} These circumstances clearly violated the principle that "one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of evidence introduced at trial." Holbrook v. Flynn, 475 U.S. 560, 567 (1986).

C. Presence of Uniformed Officers in the Courtroom

20. At an evidentiary hearing, Guerra will demonstrate that throughout the trial up to 10 off-duty police officers, in full uniform, constantly attended the trial, assuming prominent positions on the front rows of the gallery. Some officers would leave the courtroom during a recess or break, only to be replaced by other officers, also in uniform. At an evidentiary hearing, Guerra will show that during two critical stages -- the first and

^{73/}Guerra is *not* required to show that the jury was consciously affected, however. See Flynn, 475 U.S. at 570.

last days of the guilt phase and the last day of the punishment phase -- 20-30 uniformed police officers apparently attended, representing as much as 50% of the spectators in the gallery.

21. The number of police officers present on the first day, before any evidence had been introduced in the trial, branded the defendant with guilt. The police officers' presence *en masse* heightened the hostile environment against Guerra. Police epitomize citizens' concept of authority figures, and their constant group presence during most people's work hours sent a clear message to the jury that members of the police force took a special interest in this trial and sought to create the impression that they believed Guerra was dangerous and untrustworthy, see Flynn, 475 U.S. at 569,²⁴ and that they were opposed to any finding that Guerra was not guilty, compare Norris v. Risley, 918 F.2d 828, 830 (9th Cir. 1990).

22. These uniformed police officers were not present to maintain courtroom security. Compare Caraway v. State, 550 S.W.2d 699 (Tex. Crim. App. 1977); Chappell v. State, 519 S.W.2d 453 (Tex. Crim. App. 1975). Indeed, there was no such threat.

23. Instead, the officers, attending on their own time, were present for one reason: "they hoped to show solidarity with the killed [police] officer," Woods v. Dugger,

²⁴The officers in the gallery were not subjected to cross-examination of their opinion that Guerra had committed the murder. "Thus, though far more subtle than a direct accusation, the [officers'] message was all the more dangerous precisely because it was not a formal accusation . . . [and] not susceptible to traditional methods of refutation." Norris, 918 F.2d at 833.

923 F.2d 1454, 1459 (11th Cir.), cert. denied, 112 S. Ct. 407 (1991). They were there to "communicate a message to the jury": they "wanted a conviction followed by the imposition of the death penalty." Id. at 1460.

24. By their presence, particularly in uniform, the officers at Guerra's trial violated his Sixth Amendment right to be tried by an impartial jury, interfered with his presumption of innocence, and deprived him of the right to confront and cross-examine these silent accusers. Compare Norris, 918 F.2d at 831, 833.^{75/}

25. Guerra's counsel inexplicably failed to object to the presence of the officers in the courtroom during the trial; nevertheless, the risk of jury intimidation by their presence, when viewed in the context of the entire trial, including the egregious conduct of the State throughout the trial process, resulted in the deprivation of fundamental

^{75/}The court should have permitted only spectators who were not wearing uniforms.

For example, in United States v. Yahweh, 779 F. Supp. 1342 (S.D. Fla. 1992), the court, concerned about a possible intimidating effect and influence on the jury, recognized its duty to permit only spectators who were not wearing uniforms. Spectators barred included not only the defendant's supporters, who were prohibited from wearing their religious garb in the courtroom, but also "Department of Public Safety witnesses." Id. at 1344.

In Norris the presence in the courtroom of only three women wearing buttons that read "Women Against Rape" created "an unacceptable risk of impermissible factors coming into play," by depriving him of both the presumption of innocence and his right to confront and cross-examine his accusers. Although the court recognized that it would "never fully know the extent to which the buttons influenced any juror," it ruled that any consideration of the buttons by the jurors would have been impermissible and that the risk that the buttons affected the jurors thus tainted the defendant's constitutional right to a fair trial. 918 F.2d at 834.

fairness and due process of law. Thus, Guerra should be entitled to the relief requested even though a contemporaneous objection was not made. See pp. 290-93, infra, regarding the preservation of error during trial.

D. Conclusion

26. The cumulative effect of the negative pretrial publicity, the negative and prejudicial feeling held by some Houston residents toward illegal aliens that was fanned by the prosecution, and the numerous uniformed police officer spectators sent a thinly veiled message to the jury that it was the jury's duty to find Guerra guilty, based not on the evidence, but on prejudice, intimidation, and fear.

27. None of these factors were "subject to the constitutional safeguards of confrontation and cross-examination"; they are clearly the sort of "impermissible factors" that courts must ensure receive no weight." Norris, 918 F.2d at 830. Yet these extraneous factor intruded into the process, influenced the jurors during both the guilt-innocence and sentencing phases of Guerra's trial, and posed an "unacceptable risk" that the jury's deliberations were infected by impermissible factors.

V. THE PROSECUTORS' APPEAL TO ETHNIC PREJUDICE BY URGING JURORS TO CONSIDER GUERRA'S STATUS AS AN ILLEGAL ALIEN WHEN ASSESSING PUNISHMENT VIOLATED HIS RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 3, 3A, 10, 13, AND 19, OF THE TEXAS CONSTITUTION

1. The prosecution against Guerra had the perfect case to appeal to the community's prejudice. Guerra was an undocumented Mexican national who spoke little English and had been in the United States less than two months. Moreover, Guerra was charged with killing a white Anglo police officer. "It remains an unfortunate fact in our society that violent crimes perpetrated against members of other racial or ethnic groups often raise [a reasonable possibility that racial prejudice would influence the jury.]" Turner v. Murray, 476 U.S. 28, 35 n.7 (1986) (quoting Rosales-Lopez v. United States, 451 U.S. 182, 192 (1981)) (bracketed phrase in original).

2. The prosecution could not resist an appeal to prejudice to bolster its case. Throughout *voir dire*, prosecutors repeatedly emphasized that Guerra was an "illegal alien."^{76/} Moreover, prosecutors expressly instructed three members of Guerra's jury that during the punishment phase of trial the jury could consider his status as an "illegal alien" as a factor in evaluating his character and assessing what type of person he is. See S.F.

^{76/}See, e.g., S.F. Vol. 13 at 2397-98 (Brown); Vol. 15 at 2603-04 (Brumley); Vol. 6 at 965 (Kellogg); Vol. 12 at 2077 (Martenis); Vol. 19 at 3489 (Petty); Vol. 18 at 3253-54 (Smith); Vol. 19 at 3552-53 (Whiteford); Vol. 6 at 864-65 (Woods).

Vol. 15 at 2603-04 (Brumley); S.F. Vol. 18 at 3253-54 (Smith); S.F. Vol. 19 at 3552-54 (Whiteford).^{27/}

3. During closing argument in the punishment phase, the prosecution again invoked prejudice as its ally. The prosecution stated: "[Y]our answers will demonstrate what type of person . . . Guerra was while he was in *our* community for less than two months after coming here from Monterrey, Mexico." S.F. Vol. 27 at 165 (emphasis added). The prosecutor continued his closing: "[L]et the other *residents* of 4907 Rusk . . . know just exactly what we as *citizens* of Harris County think about this kind of conduct." S.F. Vol. 27 at 179 (emphasis added).

4. This repeated encouragement by the State, with court approval, permitted the jury to consider its emotions, passions, and prejudices against "illegal aliens," which meant Mexican nationals to Guerra's neighbors.^{28/} App. 15 (F24). This prosecutorial

^{27/}Prosecutors told juror Leah K. Brumley that the fact Guerra was an "illegal alien" was "information that the jury can consider in deciding what type of person he is." S.F. Vol. 17 at 2603-04. Prosecutors informed juror Tommy Ray Smith that Guerra's status as an "illegal alien" might help in answering the sentencing questions that would determine whether Guerra would be executed. S.F. Vol. 18 at 3254. Defense counsel failed to object in either instance, but these comments are fundamental error that cannot be waived as Guerra will demonstrate. See pp. 131, 290-93, *infra*.

Finally, despite the objection of defense counsel, prosecutors were allowed to instruct juror Constance J. Whiteford that "the fact that a person is in someone else's country unlawfully or has come into a country illegally could be evidence the jury could consider about what type of person he is." S.F. Vol. 19 at 3552.

^{28/}Not only did these thinly veiled appeals to prejudice induce the jury to sentence Guerra to death, but they won the apparent approval of the Ku Klux Klan. Guerra will
(continued...)

conduct -- particularly in the context of a hostile environment awards "illegal aliens" (as detailed at pp. 113-21, supra) -- created a strong appeal for the jury to rely principally on ethnic prejudice.

5. Prosecutorial appeals to prejudice are constitutionally prohibited. See, e.g., McCleskey v. Kemp, 481 U.S. 279, 309 n.30 (1987); see also McFarland v. Smith, 611 F.2d 414, 416-17 (2d Cir. 1979); cf. United States v. Sanchez, 482 F.2d 5, 8 (5th Cir. 1973). Appeals to prejudice "distort the search for truth and drastically affect a juror's impartiality." United States v. Doe, 903 F.2d 16, 25 (D.C. Cir. 1990); see United States ex rel. Haynes v. McKendrick, 481 F.2d 152, 157 (2d Cir. 1973). The racial, ethnic, and ancestral fairness of judicial proceedings is an indispensable ingredient of due process and a hallmark of justice. See Doe, 903 F.2d at 25; see Batson v. Kentucky, 476 U.S. 79, 89 (1986); Vasquez v. Hillery, 474 U.S. 254, 262 (1986). Thus, considering the context, any reference to race, ancestry, or ethnic background can constitute an appeal to prejudice. See Doe, 903 F.2d at 25; see also United States v. Chase, 838 F.2d 743, 750 (5th Cir.), cert. denied, 486 U.S. 1035 (1988). Indeed, the line between a permissible argument and an appeal to prejudice is crossed anytime "the argument shifts its emphasis from evidence to emotion." Doe, 903 F.2d at 25.

^{28/}(...continued)

show that on October 16, 1982, after he was sentenced, several Klan units paraded outside the Harris County Court building, carrying signs emblazoned with slogans eerily similar to the prosecution's closing argument. "HOUSTON WILL NOT TOLERATE ILLEGAL ALIEN CRIMES" and "GUERRA GOT JUSTICE."

6. The prejudicial effect of the prosecution's instructions cannot be underestimated.^{79/} In a trial for a crime of interracial violence the prosecution's statements present a special danger. See Turner, 476 U.S. at 36 n.8. And the risk of racial prejudice infecting a capital sentencing proceeding is the most serious risk of all, because of the complete finality of the death penalty. Id. at 35.

7. Under Texas law, the only issue during the sentencing phase to which Guerra's character is relevant is future dangerousness, i.e., whether he will constitute a continuing threat to society. There was no evidence -- and could be none -- associating undocumented Mexican nationals *per se* with bad character or proclivities to commit violent acts.^{80/} Accordingly, Guerra's immigration status was totally irrelevant to the

^{79/}As one court observed:

Undeniably, prosecutorial remarks kindling racial or ethnic predilections "can violently affect a juror's impartiality." Comments of that sort are especially egregious because of "the possibility that the jury will give special weight to the prosecutor's arguments, not only because of the prestige associated with his office, but also because of the fact-finding facilities presumably available to him." Just how much influence the prosecutor's summation exerted upon the jury is, of course, incapable of precise measurement, but its portent for harm is ominous.

Doe, 903 F.2d at 28 (footnotes omitted). "The average juror, indeed some lawyers, do not know that many of our constitutional protections extend to aliens as well as citizens." United States v. Herrera, 531 F.2d 788, 790 (5th Cir. 1976).

^{80/}To signal the jury that a defendant is more deserving to die because he is an "illegal alien" denies undocumented persons basic humanity. Undocumented persons are entitled to the same fundamental constitutional rights of due process and equal protection of the laws that are guaranteed to all persons within the territorial jurisdiction of the United States.
(continued...)

sentencing proceeding. The prosecutor's transparent and pernicious motive was to appeal to the basest prejudice in any juror who viewed "illegal aliens" as a dangerous class to be feared simply because of their ethnicity and status.^{80/}

8. The appeal to prejudice during the prosecution's closing argument was plain error. Viereck v. United States, 318 U.S. 236, 248 (1943). "[The prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." Id.

9. In their quest for victory, Guerra's prosecutors lost sight of their role as truth seekers and turned to constitutionally impermissible prejudice as their ally.

10. Neither Guerra's sentence nor his conviction can stand against the prohibition of appeals to prejudice in violation of Guerra's rights under the Fifth, Sixth,

^{80/}(...continued)

States. Plyler, 457 U.S. at 213; Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). If the state legislature had imposed a different and higher punishment on Guerra than is prescribed for all for like offense, this would have been a clear violation of the Fourteenth Amendment. Id. at 367-68; People v. Arellano, 524 P.2d 305-06 (Colo. 1974).

^{81/}See Dawson v. Delaware, 112 S. Ct. 1093, 1097-98 (1992). Even if there had been some minuscule relevance, the exclusionary rules of evidence apply at the punishment phase of a criminal proceeding. Rumbaugh v. State, 589 S.W.2d 414, 415-16 (Tex. Crim. App. 1979). Under these rules, the prosecution's appeals to prejudice are inadmissible. Tex. R. Crim. Evid. 403.

and Fourteenth Amendments to the U.S. Constitution and Article I, sections 3, 3A, 10, 13, and 19, of the Texas Constitution.

VI. THE ADMISSION OF IRRELEVANT, INFLAMMATORY VICTIM IMPACT EVIDENCE DURING THE GUILT-INNOCENCE PHASE VIOLATED GUERRA'S RIGHTS UNDER THE FIFTH, EIGHTH, AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 13 AND 19, OF THE TEXAS CONSTITUTION

A. Admission of the Victim Impact Evidence During the Guilt-Innocence Phase Violated the Fifth and Fourteenth Amendments to the U.S. Constitution as Well as Article I, Sections 13 and 19, of the Texas Constitution

1. As detailed at pages 100-01, supra, in the guilt-innocence phase of the trial the prosecutors repeatedly pleaded with the jury to consider the prosecutors as representatives of the victims' families, and repeatedly sought sympathy for the victims by showing in graphic detail the grisly autopsy photographs of Officer Harris. The prosecutors then obtained graphic descriptions from Mrs. Harris of the last days of her husband's life with her and the children. Finally, to enhance the potentially emotional arguments being made to the jury, the prosecutors invited Mrs. Armijo's testimony about how her son, Jose Jr., had changed for the worse since his father's death – a death for which Guerra was *not* being charged.

1. **The Victim Impact Evidence Was Irrelevant and Inadmissible Under Texas Law.**

2. Only relevant evidence is admissible in a criminal trial. Tex. R. Crim. Evid. 402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* at 401. Hardships faced by a victim as a result of a crime or the after-effects of a crime on its victim are not relevant and are inadmissible during the guilt-innocence phase of a bifurcated trial. *Miller-El v. State*, 782 S.W.2d 892, 895 (Tex. Crim. App. 1990); *Brown v. State*, 757 S.W.2d 739, 740-41 (Tex. Crim. App. 1988); *Garrett v. State*, 815 S.W.2d 333, 336-38 (Tex. App.--Houston [1st Dist.] 1991, pet. ref'd). Similarly, it is reversible error for the trial court to permit the State to introduce evidence of a murder victim's good character. *Armstrong v. State*, 718 S.W.2d 686, 695-96 (Tex. Crim. App. 1985). Both types of testimony cause extreme prejudice.^{82/}

3. Guerra's counsel objected to the testimony of both Mrs. Harris and Mrs. Armijo, but was overruled. S.F. Vol. 23 at 633, 635, 709. The prosecution made no

^{82/}As Justice Cohen pointed out in *Brown*, the harm and prejudice that result from the introduction of victim impact testimony during the guilt-innocence phase of a criminal trial can not be underestimated. 692 S.W.2d 146, 154-55 (Tex. App. 1985) (dissent), *aff'd*, 757 S.W.2d 739 (1988) (agreeing with Justice Cohen's conclusion that the victim's emotional testimony regarding the after-effects of the rape was inadmissible). There is little doubt that testimony by a victim about the suffering caused by the commission of a crime prejudices a jury against a defendant. *Id.* at 154. Victim impact testimony of this nature is unquestionably used by the prosecution solely to "mislead the jury from the [primary issue of guilt] by creating justifiable sympathy for an injured victim." *Id.* "Focusing the jury's attention on the victim's severe injuries is a winning trial tactic for the . . . State in a criminal action, because it tends to distract the jury's attention from weaknesses in the [State's] case." *Id.* 155. Justice Cohen correctly concluded that there was no place in the guilt-innocence phase of a criminal trial for the use of victim impact evidence. *Id.* at 154.

effort to justify either woman's testimony as relevant to the sole issue before the jury -- whether Guerra was guilty of Officer Harris's murder. Indeed, the State could not have made such a showing, since the nature and effect of the testimony -- in addition to being highly inflammatory -- unquestionably had no "tendency to make the existence of any fact . . . of consequence to the determination of [Guerra's guilt] more probable or less probable" The trial court therefore clearly committed reversible error in admitting the testimony over Guerra's objection.^{83/} Moreover, that error was of fundamental, constitutional consequence.^{84/}

^{83/}Given the centrality of the testimony to its case, the State obviously could not prove beyond a reasonable doubt that the error made no contribution to the conviction. See Tex. R. App. Proc. 81(b)(2); Arnold v. State, 786 S.W.2d 295, 297 (Tex. Crim. App. 1990). Indeed, the constitutional nature of the error here so fundamentally undermined the fairness of the trial that it was harmful as a matter of law. See Arnold, 786 S.W.2d at 297 n.6 (citing Satterwhite v. Texas, 486 U.S. 249, 253 (1988)). Inexplicably, Guerra's appellate counsel on his direct appeal apparently failed to raise the error. Neither the majority nor the dissent mentions the testimony. See generally Guerra v. State, 771 S.W.2d 453 (Tex. Crim. App. 1988) (en banc), cert. denied, 109 S. Ct. 3260 (1989).

^{84/}Significantly, the prosecution's use of victim impact evidence at Guerra's trial, if done today, would violate Texas law and evidentiary rules. After balancing the danger of prejudicing a jury's verdict in the guilt-innocence phase against the public interest in considering victim impact evidence during the sentencing phase, the Texas legislature, in the Victim Impact Statute, Tex. Code Crim. Proc. Ann. art. 56.03 (Vernon Supp. 1992), precluded consideration by a *jury* of either a victim impact statement or victim impact witness testimony, *id.* art. 56.03(f), and permitted limited use of a victim impact statement by a *court*, but only during the sentencing stage of a trial. Under the statute, the court may not inspect a victim impact statement until *after a finding of guilt* or until deferred adjudication is ordered. *Id.* The statute allows a defendant, but not the State, the right to attack with witness testimony the accuracy of a victim impact statement. See *id.* art. 56.03(e).

2. **Victim Impact Evidence During the Guilt-Innocence Phase of Guerra's Trial Rendered the Trial Fundamentally Unfair and Violated Guerra's Right to Due Process of Law Under the U.S. Constitution.**

4. The Fifth and Fourteenth Amendments require States to ensure maintenance of the fundamental elements of fairness in a criminal trial. See Spencer v. State of Texas, 385 U.S. 554, 563-64 (1967). This is particularly true in a capital case: "When a defendant's life is at stake, the Court has been particularly sensitive to insure that every safeguard is observed." Gregg v. Georgia, 428 U.S. 153, 187 (1980). Accordingly, when a violation of a state's evidentiary rule results in the denial of fundamental fairness, the defendant's right to due process is violated, and federal habeas relief must be granted. Dudley v. Duckworth, 854 F.2d 967, 970 (7th Cir. 1988), cert. denied, 490 U.S. 1011 (1989); Cooper v. Sowders, 837 F.2d 284, 286 (6th Cir. 1988).

5. If a person is to be executed, it should be as the result of a decision based on reason and reliable evidence. Gholson v. Estelle, 675 F.2d 734, 738 (5th Cir. 1982). In evaluating whether a violation of a state evidentiary rule rises to constitutional dimensions, "the issue is whether the probative value of the evidence outweighs the prejudice to the accused." United States ex rel. Palmer v. DeRobertis, 738 F.2d 168, 171 (7th Cir. 1984), cert. denied, 469 U.S. 924 (1984); Dudley, 854 F.2d at 970. DeRobertis explains that:

When it must be said that the probative value of such evidence, though relevant, is greatly outweighed by the prejudice to the accused from its admission, then the use of such evidence by a state may rise to the posture of the denial of fundamental fairness and due process of law.

6. "[T]he government should not have the windfall of having the jury influenced by evidence against a defendant which, as a matter of law, they should not consider but which they cannot put out of their minds." Bruton v. United States, 391 U.S. 123, 129 (1968), cert. denied, 397 U.S. 1014 (1970) (finding Sixth Amendment violation). It defeats a defendant's constitutional right to the selection of jurors who possess a "mental attitude of appropriate indifference," United States v. Wood, 299 U.S. 123, 145-46 (1936), where once trial begins the prosecution destroys that indifference by inflaming the jury's emotions through appeals to act in sympathy for the victim's family.^{86/}

^{85/}In Dudley, the state elicited testimony from a codefendant, who had agreed to testify against the petitioner, that the codefendant had received anonymous phone threats to his life the night before testifying. The court determined that the threat testimony in Dudley was irrelevant to the defendant's guilt or innocence. 854 F.2d at 969-72. Further, the court found that the testimony prejudiced the petitioner, even though the threats were not traced to him or his co-defendants, except by innuendo. Id. at 972. The resulting prejudice was of "such magnitude that the result [was] a denial of fundamental fairness" and mandated habeas relief. Id.

Similarly, in Cooper the Sixth Circuit granted a writ of habeas corpus because several errors by the trial court combined to deny Cooper's right to due process. 837 F.2d at 286-88. These errors included: (i) admitting police officer testimony that there was no evidence to justify the arrest of any suspects other than Cooper, suggesting that Cooper was guilty and that the other suspects were innocent; (ii) calling the police officer an expert when under state law he was not; and (iii) allowing a police informant to testify concerning his own reliability in other cases, when this testimony was irrelevant and prejudicial. The cumulative impact of these evidentiary errors rendered the trial fundamentally unfair.

^{86/}Arguments that the prosecutors represent the family of the deceased are error, compare Rougeau v. State, 738 S.W.2d 651, 657 (Tex. Crim. App. 1987), cert. denied, 485 U.S. 1029, overruled on other grounds, Harris v. State, 784 S.W.2d 5 (Tex. Crim. App. 1989), since the prosecutor represents not the family's interest in retribution, but the sovereign's interest in a fair trial, Viereck, 318 U.S. at 248.

7. In Guerra's trial, the State was no mere passive recipient of a windfall. The prosecutors orchestrated an emotional assault specifically designed to burn irrevocably into the jurors' minds the profound tragedy of both the murder for which Guerra was being tried and another one for which he was not. This conduct fails the constitutional test articulated in such cases as Dudley and DeRobertis.

8. Guerra's conviction was impermissibly obtained through the use of victim impact evidence. He thus was deprived of due process under the Fifth and Fourteenth Amendments to the U.S. Constitution.

3. **The Victim Impact Evidence Also Rendered Guerra's Trial Fundamentally Unfair Under Article I, Sections 13 and 19, of the Texas Constitution.**

9. The Texas Constitution also bars the fundamentally unfair prosecution strategy and tactics employed to convict Guerra of Officer Harris's murder. The introduction of the testimony of Mrs. Harris and Mrs. Armijo and the State's relentless emphasis on the victims from *voir dire* to closing argument violated Guerra's right to due course of law under Article I, sections 13 and 19, of the Texas Constitution.^{87/}

10. Texas constitutional due process rights are at least as broad as those provided under the U.S. Constitution.^{88/} The Texas Constitution, like its federal

^{87/}Siegel v. State, 814 S.W.2d 404, 409 (Tex. App.--Houston [14th Dist.] 1991, pet. ref'd); accord Webb v. State, 278 S.W.2d 158, 160 (Tex. Crim. App. 1955); McMurrin v. State, 239 S.W.2d 632, 633 (Tex. Crim. App. 1951), cert. denied, 342 U.S. 874 (1951).

^{88/}See Price v. Junction, 711 F.2d 582, 590 (5th Cir. 1983); Moore v. Port Arthur Indep. Sch. Dist., 751 F. Supp. 671, 673 (E.D. Tex. 1990); compare Heitman v. State, 815 S.W.2d 681 (Tex. Crim. App. 1991) (en banc) (Texas Constitution Article I, section 9, affords broader rights than Fourth Amendment); see pp. 279-87, infra (discussing broader due process guarantees in Texas Constitution).

counterpart, requires that an accused be accorded "that fundamental fairness that is essential to the very concept of justice." Siegel, 814 S.W.2d at 410. A denial of due course of law occurs in a criminal trial whenever an absence of fairness fatally infects the proceeding and renders it fundamentally unfair. Id.; Webb, 278 S.W.2d at 160, McMurrin, 239 S.W.2d at 633.

11. The prosecution's conduct in this case is quite similar to actions that resulted in the reversal of a conviction in Stahl v. State, 712 S.W.2d 783 (Tex. App.--Houston [1st Dist.] 1986), 749 S.W.2d 826 (Tex. Crim. App. 1988). In overturning Stahl's conviction, the Texas Court of Appeals held that the mother's outburst during her identification of her son, the victim, and the prosecutor's closing argument that emotionally appealed to the jury on behalf of the mother and family, requesting that "justice be done," id. at 791-92, interfered with the jury's verdict by inflaming and prejudicing the minds of the jury. Id. at 792. The Court specifically criticized the State for neglecting to exercise *its* responsibility to maintain the evidence and argument within proper bounds. Id.

12. Similarly, during Guerra's trial the prosecution orchestrated a strategy of focusing the jury on the victims, both living and dead. Worse, neither the trial court nor the prosecutors even attempted to justify the testimony of Mrs. Harris and Mrs. Armijo as relevant, or to otherwise restrict that testimony and the prosecutor's closing arguments to issues of guilt or innocence. As such, the State violated Guerra's right to due course of law under Article I, sections 13 and 19, of the Texas Constitution and the conviction and sentence must be reversed.

B. The Admission of Prejudicial Victim Impact Testimony at the Guilt-Innocence Phase of Guerra's Trial Violated the Eighth and Fourteenth Amendments to the U.S. Constitution

1. The Victim Impact Testimony Resulted in the Arbitrary and Capricious Imposition of the Death Penalty.

13. The Eighth Amendment prohibits the infliction of cruel and unusual punishment. Punishment for a crime must be graduated and proportioned to the offense. Gregg v. Georgia, 428 U.S. 153, 172 (1976). In addition, the Eighth Amendment requires that punishment "should be directly related to the personal culpability of the criminal defendant," and "the sanction imposed [for conduct must] not be so totally without penological justification that it results in the gratuitous infliction of suffering." Penry v. Lynaugh, 492 U.S. 302, 319 (1989).

14. The Supreme Court, in analyzing Eighth Amendment concerns, has recognized that the death penalty is an extreme punishment suitable to only the most extreme of crimes. Gregg, 428 U.S. at 172. Moreover, because of the uniqueness and finality of the death penalty, it may not constitutionally be imposed under sentencing procedures that create a substantial risk that it will be inflicted in an arbitrary and capricious manner. The Eighth and Fourteenth Amendments do not permit the "wanton" or "freakish" imposition by states of the death penalty. Rather, "any decision to impose the death sentence must 'be, and appear to be, based on reason rather than caprice or emotion.'" Booth v. Maryland, 482 U.S. 496, 508 (1987) (quoting Gardner v. Florida, 430 U.S. 349 (1977)), overruled on other grounds, Payne v. Tennessee, 111 S. Ct. 2597 (1991). Accordingly, a capital jury is constitutionally required to make an "*individualized*

determination" of whether a defendant should be assessed the death penalty based on the "character of the individual and the circumstances of the crime," Zant v. Stephens, 462 U.S. 862, 878-79 (1983) (emphasis in the original); Rushing v. Butler, 868 F.2d 800, 804 (5th Cir. 1989).^{89/}

15. The admission at trial of highly inflammatory victim impact evidence, as described earlier in this petition, see pp. 100-05, supra -- testimony with no probative value regarding the existence of a single element of the offense with which Guerra was charged -- caused the jury to sentence Guerra to death in an arbitrary and capricious manner. This emotionally charged and wholly irrelevant testimony was purposely introduced by the prosecutor to inflame the jury's passions, to create a clamor for accountability for the death of Officer Harris regardless of whether the accused was guilty beyond a reasonable doubt. The nature and presentation of the evidence was contrary to any notion of a rational, individualized assessment of whether Guerra was guilty. To the contrary, it was a blunt appeal to sorrow and anger divorced from any element of the crime. It is impossible that Guerra's jury remained dispassionate in the face of Mrs. Harris's and Mrs. Armijo's testimony, performing their constitutional obligation to determine Guerra's guilt based solely on the evidence of his alleged actions.

16. The Supreme Court recently reiterated the constitutional requirement that sentences of death be based solely on determinations of individual culpability. In Dawson v. Delaware, 112 S. Ct. 1093 (1992), the State introduced evidence of the defendant's

^{89/}In Rushing, the Fifth Circuit relied in part upon Booth, a decision recently overturned by the Supreme Court on other grounds. See pp. 142-44, infra.

membership in a violent white supremacist organization during the sentencing phase following defendant's murder conviction. On First Amendment grounds, the Court reversed the Delaware Supreme Court, finding that such evidence "had no relevance to the sentencing proceeding" and instead seemed intended solely to appeal to a juror's sense of outrage. Id. at 1098.

17. Guerra, like Dawson, stands to die based on "guilt by association" -- here, mere association with the events leading to the crime. The Eighth Amendment requires that the determination of guilt in a capital trial be accomplished without blatant State appeals to emotions rather than relevant evidence because the jury failed to make an individualized determination of Guerra's guilt, a writ must be issued.

2. The Use of the Victim Impact Testimony During the Guilt Phase Unconstitutionally Destroyed the Bifurcated Capital Trial Procedure Mandated By the Eighth Amendment.

18. The Eighth Amendment, which applies to the States through the Fourteenth Amendment, further places substantial restrictions on the manner in which States may try and sentence capital defendants. See generally Gregg, 428 U.S. at 188. The death penalty cannot be imposed under procedures that create a substantial risk of arbitrary and capricious sentencing. Id.

19. In Gregg, the Court discussed the special problems that arise and that must be addressed by acceptable sentencing procedures when a single jury both determines the guilt or innocence of the accused and, if guilty, his sentence. Id. at 191. The Court approved the constitutionality of the bifurcated capital trial procedure, which completely separates the determination of guilt or innocence from the determination of sentence, id.

at 162-63, 191-92, but emphasized that if one jury is used to determine both guilt and sentence, prosecutors must isolate prejudicial evidence solely relevant to death sentence questions from the guilt-innocence phase of the trial, *id.* at 190. Texas law mandates such a bifurcated capital trial. Tex. Code Crim. Proc. Ann. art. 37.071 (Vernon Supp. 1992); Jurek v. Texas, 428 U.S. 262, 267 (1976).

20. The Gregg Court emphasized that "[m]uch of the information that is relevant to the sentencing decision may have no relevance to the question of guilt, or *may even be extremely prejudicial to a fair determination of that question.*" 428 U.S. at 190 (emphasis added). Significantly, the sole rationale given by the Court for its approval of the bifurcated capital trial procedure is the fact the such a procedure *would prevent juries from hearing highly prejudicial evidence relevant only to sentencing prior to determining the guilt or innocence of a defendant.* *Id.* at 190-92. According to the analysis of the drafters of the Model Penal Code, which is cited by the Court, the prior criminal record of the accused is an example of the type of unfairly prejudicial evidence that must be kept from the jury until after guilt or innocence is determined. *Id.*

21. If, as Gregg suggests, admission of a capital defendant's prior criminal record is too inflammatory for a jury to hear before weighing the evidence of guilt or innocence, then the same must certainly be true for victim impact evidence. Such evidence is surely less relevant than a prior record; it has no probative value on the issue of the guilt or innocence of the defendant; and it can serve only to arouse the jurors' sympathy and indignation. Thus, the admission of victim impact evidence at Guerra's trial, in addition

to its irrelevance, breached the constitutional wall erected by Gregg and by Texas law between the guilt-innocence and sentencing phases of Guerra's trial.

22. Under the Eighth and Fourteenth Amendments, Texas law, and the rationale of Gregg, Guerra was entitled to have a jury decide his guilt or innocence without exposure to highly prejudicial evidence that was relevant only, if at all, to the question of an appropriate sentence.

23. The trial court deprived Guerra of that right. The prosecutors asserted that they "represented" the victim's family, and they relied on the victim impact testimony in making a highly emotional appeal for a guilty verdict during closing argument. The State's conduct with respect to the victim impact testimony, as permitted by the trial court, resoundingly defeated the very purpose of the bifurcated trial procedure required by Texas law and ratified by the Supreme Court. Accordingly, Guerra's trial violated his Eighth Amendment right to be free of an arbitrary and capriciously obtained capital sentence.

C. Payne v. Tennessee Permits Victim Impact Testimony at the Sentencing Phase Only

24. Because of profound concern that victim impact testimony could never be employed in a manner that did not violate a capital defendant's due process and Eighth Amendment rights, the Court until recently even barred the use of such testimony during the sentencing phase of capital trials. See South Carolina v. Gathers, 490 U.S. 805, 810-12 (1989); Booth, 482 U.S. at 502-09. In Booth and Gathers, the Court ruled that the introduction of such evidence created a constitutionally unacceptable risk that the jury might impose the death penalty in an arbitrary and capricious manner. Gathers, 490 U.S.

at 810-11; Booth, 482 U.S. at 509. Implicit in Booth and Gathers was the constitutional principle that the introduction of prejudicial victim impact evidence not relevant to issues of guilt or innocence during the guilt-innocence phase of a capital trial also violates the Eighth Amendment.

25. Recently, in Payne v. Tennessee, 111 S. Ct. 2597 (1991), the Court explicitly overruled Booth and Gathers, but only insofar as those decisions barred victim impact testimony from use in the *sentencing* phase of capital trials. Nothing in Payne addressed or can be read to imply that the Court now allows use of victim impact testimony during the guilt-innocence phase of such a trial. See Payne, 111 S. Ct. at 2605-10; compare Gathers, 490 U.S. at 810-12, and Booth, 482 U.S. at 502-09.

26. Indeed, the Court admonished that its opinion must be construed narrowly. The majority in Payne cautioned that "[o]ur holding today is limited to [overruling] the holdings of [Booth] and [Gathers to the effect] that evidence and argument relating to the victim and the impact of the victim's death on the victim's family are inadmissible *at a capital sentencing hearing*." 111 S. Ct. at 2611 n.2 (emphasis added). Thus, by its own terms, Payne only applies to the use of victim impact evidence at the *sentencing phase* of a capital trial.^{90/}

^{90/}The recent Fifth Circuit decision in Black v. Collins, 962 F.2d 394, 408 (5th Cir. 1992), is not at odds with this analysis. The habeas petitioner in Black argued that the admission of inflammatory, prejudicial victim impact evidence during both the guilt/innocence phase and sentencing phase of his trial violated his Eighth Amendment rights. Id. The Texas Court of Criminal Appeals had concluded that the petitioner "was procedurally barred from complaining of the State's closing argument to the jury for failure to object at trial." Id. The Fifth Circuit examined the merits of only the claim that the introduction of victim impact evidence during the sentencing portion of his trial
(continued...)

27. Guerra's trial was fundamentally unfair because victim impact testimony was introduced and relied on by the State during the *guilt-innocence* phase, thus violating his rights under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution and Article I, sections 13 and 19, of the Texas Constitution.

VII. THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE INVESTIGATION AND TRIAL DENIED GUERRA'S RIGHT TO DUE PROCESS OF LAW UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND DUE COURSE OF LAW UNDER ARTICLE I, SECTIONS 13 AND 19, OF THE TEXAS CONSTITUTION

1. Guerra was found guilty of capital murder due solely to severely tainted witness testimony -- testimony that changed materially over time, was materially inconsistent among the witnesses, and was, in virtually all respects, contrary to definitive physical evidence that the prosecutors ignored. With no evidence, physical or otherwise, to support its highly suspect "gun switch" theory, the State^{91/} relied on highly improper police procedures to manipulate witnesses until they finally "identified" Guerra as the

^{90/}(...continued)

violated the Eighth Amendment. Id. In accordance with Payne, the Fifth Circuit found that the claim lacked arguable merit. Id. The Black court did not evaluate the properly preserved claim asserted here -- that victim impact evidence introduced in the guilt-innocence phase is unconstitutional.

^{91/}In determining whether a due process violation exists, the Texas Court of Criminal Appeals has declined "to distinguish different agencies under the same government, focusing instead upon the prosecuting team, which includes both investigative and prosecutorial personnel." Ex parte Brandley, 781 S.W.2d 886, 892 n.7 (Tex. Crim. App. 1989), cert. denied, 111 S. Ct. 61 (1990), appeal filed. Accordingly, references to "the State" will include the prosecution and/or the police.

shooter.²² Improper pretrial procedures used by the State included: police intimidation of witnesses; allowing witnesses to see Guerra in handcuffs; an unnecessarily suggestive lineup, jointly viewed, during which witnesses were allowed to converse, identify Guerra, and subject each other to pressure; attempts by police to skew the lineup against Guerra; a police-orchestrated "reenactment" of the crime at the scene; the pretrial witness viewing of mannequins and pictures, with the prosecution describing Guerra as the shooter; and the use of the mannequins in the courtroom to aid State witnesses with their in-court identifications of Guerra and to elicit coached testimony from State witnesses.

²²Guerra's counsel did not request a pretrial hearing regarding the suggestiveness of the pretrial lineups probably because at that time the State had concealed evidence that the lineups were impermissibly suggestive. See Landano v. Rafferty, 670 F. Supp. 570, 575 (D.N.J. 1987), aff'd, 856 F.2d 569 (3d Cir. 1988), cert. denied, 489 U.S. 1014 (1989) (basis for petitioner's argument that he suffered a deprivation of his due process right to a fair trial as a result of the improper admission of tainted identification testimony resulted from information discovered subsequent to the underlying trial). See pp. 204-06, infra, as to ineffective assistance claim. Ms. Diaz's post-lineup statement misleadingly suggests that the lineup was conducted properly where it states that witnesses were asked to identify Guerra separately. App. 14. (F23). Ms. Garcia's statement was equally misleading where it states: "After viewing the lineup I was called outside the lineup room and asked by [HPD] if I recognized anyone" App. 6 (F11). Ms. Galvan's statement provides that she identified Guerra "*[a]fter attending the lineup.*" App. 4 (F9).

Counsel's failure to object did not waive this issue for three reasons. First, waiver should not be permitted in capital cases. See pp. 290-93, infra. Second, failure to object should not be treated as a waiver when the evidence necessary to be aware of that claim was withheld by the State. Cf. Landano, 670 F. Supp. at 575. Finally, this is fundamental constitutional error. See Johnson v. State, 486 U.S. 578, 587-91 (1988); compare Ake v. State, 470 U.S. 68, 74 (1985) (habeas court can reach merits if state court has a "fundamental error" exception to its regular procedural default rules and fundamental federal constitutional error is encompassed therein); with Williams v. State, 773 S.W.2d 525, 529-35 (Tex. Crim. App. 1988), cert. denied, 493 U.S. 900 (1989), Fuller v. State, 829 S.W.2d 191, 209 (Tex. Crim. App. 1992, pet. filed), and Porter v. State, 623 S.W.2d 374, 384-85 (Tex. Crim. App. 1981), cert. denied, 456 U.S. 965 (1982).

2. Under the Texas Constitution's broad due process protections (Article I, sections 13 and 19 (see p. 279-87, infra)), or under the Court of Criminal Appeals' interpretation of the federal due process provision, the State's blatant misuse of investigative procedures should require the automatic exclusion of the putative identifications in this case. Even using the more restrictive "totality of the circumstances" test articulated by the United States Supreme Court in Manson v. Brathwaite, 432 U.S. 98 (1977), it is difficult to imagine a more compelling case requiring exclusion of the tainted eyewitness testimony.

A. The Applicable State and Federal Constitutional Legal Standards

1. The Federal Standards.

a. The Reliability/Totality-of-Circumstances Test as Interpreted by *Manson*.

3. The United States Supreme Court has expressly adopted a "totality of the circumstances test" that purports to allow admission of identification testimony if it appears "reliable," even if it has followed improper police behavior. See *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977).

4. In United States v. Wade, 388 U.S. 218 (1967), the Supreme Court recognized the dangers inherent in pretrial identifications. The Wade Court understood that when an eyewitness identifies the suspect, for all practical purposes the case is over: "The trial which might determine the accused's fate may well not be that in the courtroom but that at the pretrial confrontation . . . with little or no effective appeal from the judgment there rendered by the witness -- 'that's the man'." Id. at 235-36. More

importantly, the Court has noted the risk that the innocent may be convicted based on a witness's mistaken identification: "The vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification." Id. at 228.

5. Accordingly, the consequences of mistaken identification are most harmful in cases where the conviction rests heavily on eyewitness identification. See Manson, 432 U.S. at 107.^{23/} The frailty of human perception and memory often lead to mistaken identification of the accused. Wade, 388 U.S. at 228.

6. Procedures that induce a witness to identify a particular individual will magnify this potential for error.^{24/} Dispensa v. Lynaugh, 847 F.2d 211, 218 (5th Cir. 1988);

^{23/}The 1977 Manson case is the most recent exposition by the Supreme Court of the analysis to be used when a prisoner files a writ of habeas corpus alleging the use of improper identification procedures by the police and the introduction of tainted evidence. While Manson involved the use of a photo array for identification purposes, the Court framed the issue as whether the Fourteenth Amendment's due process clause compels exclusion of "pre-trial identification evidence obtained by a police procedure that was both suggestive and unnecessary," or whether reliability should nonetheless be considered. 432 U.S. at 99. Because of the broad language "pre-trial identification evidence," Manson has been applied to pretrial identification procedures generally as well as to photographic identification procedures. See United States v. Williams, 592 F.2d 1277, 1281 (5th Cir. 1979) ("The same bipartite inquiry . . . regarding photographic spreads is applicable to other types of confrontation procedures such as the line-up.").

^{24/}Persuasive procedures need not be overt and may be subtle. "Exposure and even false information about an event through means of questions containing presuppositions can supplement or even transform memory." Neil McCabe, The Right to a Lawyer at the Lineup: Support from State Courts and Experimental Psychology, 22 Ind. L. Rev. 905, 909 (1986). "Memory, it appears, is extremely fragile and can be supplemented, altered, or even restructured by as simple an instrument as a strong verb, imbedded unnoticed in a question about the event concerned." Id. (quoting Loftus & Ketcham, "The Malleability of Eyewitness Accounts," in Evaluating Witness Evidence (S. Lloyd-Bostock & B. Clifford eds. 1983)).

E. Loftus, *Witness for the Defense* 53 (1991 ed.). As the court recognized in Neil v. Biggers, 409 U.S. 188, 198 (1972): "Suggestive confrontations are disapproved because they increase the likelihood of misidentification, and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous." In fact, where an eyewitness's identification is the product of an impermissibly suggestive pretrial procedure, the admission into evidence of such identification can result in a denial of due process. Manson, 432 U.S. at 106; Stovall v. Denno, 388 U.S. 293, 301-02 (1967) ("the conduct of a confrontation" may be so "unnecessarily suggestive and conducive to irreparable mistaken identification" that it denies "due process of law.")

7. Nevertheless, unnecessarily suggestive identifications are not subject to *per se* exclusion. Manson, 432 U.S. at 114. Instead, admissibility of identification evidence is governed by the two-step analysis enunciated in Manson. Id. at 107. The initial inquiry is whether the identification procedure was unnecessarily suggestive. Id. Second, the court must determine if the identification was so unreliable that the defendant's due process right to fair judicial procedure should have precluded an identification at trial. Id. at 114. "[A]n identification found to be reliable will be admitted even though the confrontation procedure was suggestive." Passman v. Blackburn, 652 F.2d 559, 569 (5th Cir. 1981), cert. denied, 455 U.S. 1022 (1982), 480 U.S. 948 (1987).^{25/}

^{25/}While the State may argue that evidence of the reliability of an identification must go to weight rather than admissibility, such an argument should be rejected:

Such arguments in identification cases generally both beg the question and misapprehend the issue. The evidence of reliability a court looks to in determining if an identification may be admitted into evidence is (if it is
(continued...))

8. To measure whether an in-court identification is reliable despite an earlier, impermissibly suggestive (and usually out-of-court) identification is to determine whether under the totality of the circumstances the suggestion connected with the earlier identification was so corrupting that it led to a "substantial likelihood of irreparable misidentification." Id.; see Neil, 409 U.S. at 188; Simmons v. United States, 390 U.S. 377, 384 (1968), on remand, United States v. Garrett, 395 F.2d 769 (7th Cir. 1968). The same standard, "with the deletion of 'irreparable,'" also applies when the issue is the admissibility of testimony as to the earlier identification. Rodriguez v. Young, 906 F.2d 1153, 1167 (7th Cir. 1990), cert. denied, 111 S. Ct. 698 (citing Neil, 409 U.S. at 198). This requirement "of minimally acceptable reliability has obtained constitutional stature because of the great evidentiary impact and statistically questionable validity of an eyewitness's identification from the stand of a defendant as the perpetrator of a criminal act." Napoli, 814 F.2d at 1156; see Wade, 388 U.S. at 228 & n.6 (citations omitted) (noting unreliability of eyewitness testimony).

9. Noting that "reliability is the linchpin in determining the admissibility of identification testimony" the Manson Court listed several factors to be considered in

^{95/}(...continued)

otherwise admissible) to a large extent the same evidence a jury looks to in determining whether to rely on the identification once it is admitted. (Citations omitted) The analyses are quantitatively similar. The difference, and it is a crucial difference, is between the *degree* of reliability required to admit the evidence, on the one hand, or to credit it once it is admitted, on the other.

United States ex rel. Kosik v. Napoli, 814 F.2d 1151, 1156 n.9 (7th Cir. 1987); see Stovall, 388 U.S. at 928.

determining the reliability of eyewitness testimony. 432 U.S. at 114 (citing Neil, 409 U.S. at 199-200). These factors include: (i) the witnesses' opportunity "to view the criminal at the time of the crime"; (ii) "the witnesses' degree of attention"; (iii) "the accuracy of" the witnesses' "prior description of the criminal"; (iv) "the level of certainty demonstrated at the confrontation"; and (v) "the time between the crime and the confrontation." Id. "Against these factors is to be weighed the corrupting effect of the suggestive identification itself." Id.^{96/}

10. When analyzing these factors, the burden is on the prosecution to establish by "clear and convincing proof"^{97/} that the in-court testimony is not the fruit of an earlier, unnecessarily suggestive identification procedure. Herrera v. State, 682 S.W.2d 313, 318 (Tex. Crim. App. 1984), cert. denied, 112 S. Ct. 1074 (1992) (state must demonstrate the independent origin of in-court identification following an improper or illegal lineup by

^{96/}Psychological studies demonstrate that improper pretrial procedures that affect a witness's identification of a suspect as the criminal permanently taint the witness's mind and destroy the reliability of the later in-court purported identification. See McCabe, supra, note 8, at 909. It is difficult to imagine how courts, in hindsight, can purport to be able to determine the source of a witness's identification based on Manson's simplistic five factor test, particularly where counsel for the defendant has no means to recreate the pretrial confrontation. See Manson, 432 U.S. at 114. Undeniably, the complexity of the human mind makes determining the effects of outside influences difficult if not entirely impossible. Guerra urges Texas not to indulge a legal fiction that undoubtedly has resulted in the denial of Guerra's due process rights.

^{97/}The phrase 'clear and convincing' evidence has been defined as 'clear, explicit, and unequivocal,' 'so clear as to leave no substantial doubt', and 'sufficiently strong to command the [petition of] unhesitating assent of every reasonable mind.'" Martinez v. State, 437 S.W.2d 842, 849 (Tex. Crim. App. 1969) (citing In re Jost, 256 P.2d 71, 74 (1953)).

independent origin of in-court identification following an improper or illegal lineup by clear and convincing evidence). Finally, in applying the factors, each case must be decided on its own facts. Simmons, 390 U.S. at 384.

11. Under the case law, then, the Court is asked to evaluate each State investigative procedure to assess if it amounted to a denial of due process. In addition, the court may evaluate the State's collective procedures to determine if these attempts to manipulate its witnesses' testimony coupled with other prosecutorial misconduct have resulted in the denial of the defendant's right to due process.

b. The Totality of Circumstances Test as Interpreted by *Brandley*.

12. In Ex parte Brandley, the Texas Court of Criminal Appeals in a habeas case recognized that the state's investigative procedures as a whole may be so improper that they may result in the denial of the accused's rights to due process of law. 781 S.W.2d 886, 891 (Tex. Crim. App. 1989) (citing Foster v. California, 394 U.S. 440 (1969); Dispensa, 847 F.2d at 218). The court in Brandley, reading the United States' decision in Foster expansively, noted that "[a]lthough Foster involves impermissible State conduct in an identification procedure, the Due Process Clause of the Fourteenth Amendment is not limited to the State's action in that narrow context." Id. The Brandley court added that while individual incidents of improper investigative procedures might not affect the outcome of trial, the *cumulative effect of investigative procedures*, judged by the *totality of circumstances*, may result "in a deprivation of [an] applicant's right to due process of law by suppressing evidence favorable to the accused, and by creating false testimony and inherently unreliable testimony." Id. at 894. For example, due process is not satisfied

where the State "contrives a conviction 'through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty.'" Id. at 891 (citing Mooney v. Holohan, 294 U.S. 103, 112 (1935) (State's use of perjured testimony)).

13. As a result, the court adopted a "totality of the circumstances" test to determine whether the state's investigation techniques lead to a denial of due process and fundamental fairness. Id. at 892 (citing Ex parte Adams, 768 S.W.2d at 293; Foster, 394 U.S. at 442). Further, a new trial is required "if 'the false testimony could . . . *in any reasonable likelihood* have affected the judgment of the jury.'" Adams, 768 S.W.2d at 292 (citing Giglio, 405 U.S. at 154) (emphasis added).

14. As noted by the Court of Criminal Appeals, "[d]ue process of law is the cornerstone of a civilized system of justice. Our society wins not only when the guilty are convicted but when criminal trials are fair; our system of justice suffers when an accused is treated unfairly." Id. at 894 (citing Brady, 378 U.S. at 87).

2. The Texas Standards.

15. In light of the State's misconduct, Guerra urges Texas courts to uphold the Texas Constitution's broad due process protections under Article I, sections 13 and 19, by enforcing an exclusionary rule when police use improperly suggestive pretrial identification procedures, particularly in cases such as this one where the cost of requiring the State to conduct fair lineups is minimal. No Texas case has yet adopted this interpretation, but Guerra urges the court to do so. See pp. 279-87, infra.

3. Harmless Error.

16. Even if this were not fundamental error, which it is, see note 92, supra, this would constitute reversible error under the harmless error standard. Where the State's use of pretrial identification procedures posed a substantial likelihood of tainting the State witnesses' identifications of the defendant and their in-court identifications are not shown to be independently reliable, the court must determine if admission of the identifications into evidence was harmless. See Young v. Herring, 917 F.2d 858, 864 (5th Cir. 1990), superseded by, 938 F.2d 543 (5th Cir. 1991) (citing Chapman v. California, 386 U.S. 18, 23 (1967)). The beneficiary of the error has the burden of proving that the error was harmless *beyond a reasonable doubt*. Thigpen v. Cory, 804 F.2d 893, 897 (6th Cir. 1986), cert. denied, 428 U.S. 918 (1987) (citing Chapman, 386 U.S. at 24).

17. In determining if the error was harmless, the focus is on whether the process was fair rather than on whether the State had a strong case.^{98/} The court should

^{98/}As succinctly expressed by one court:

[T]he reviewing court should focus not on the weight of the other evidence of guilt, but rather on whether the error at issue might possibly have prejudiced the jurors' decision-making; it should ask not whether the jury reached the correct result, but whether the jurors were able properly to apply the law to facts in order to reach a verdict. Consequently, the reviewing court must focus upon the process and not on the result. In other words, the reviewing court must always examine whether the trial was an essentially fair one. *If the error was of a magnitude that it disrupted the jurors' orderly evaluation of the evidence, no matter how overwhelming it might have been, the conviction is tainted.*

Gaines v. State, 789 S.W.2d 926, 941 (Tex. App.--Dallas 1990, no pet.) (citing Harris v. State, 790 S.W.2d 568, 587 (Tex. Crim. App. 1989)) (emphasis added).

also determine whether a declaration that the error was harmless "would encourage the state to repeat the error with impunity."^{99/}

B. The State Identification Procedures Were Impermissibly Suggestive

18. The State used a host of improper identification procedures in their effort to manipulate the witnesses' memories. Notably suggestive were (i) police intimidation at the crime scene, (ii) allowing witnesses to see Guerra in handcuffs before the lineup, (iii) impermissibly suggestive lineup, (iv) a impermissible suggestive reenactment, (v) the viewing of the mannequins prior to the trial, and (vi) the use of the mannequins at trial. The following paragraphs analyzing the suggestive events can lead to only one conclusion -- the state's identification procedures were unnecessarily suggestive.

1. Police Intimidation.

19. Police began intimidating witnesses at the crime scene and before the witnesses began providing their initial police statements. In fact, Guerra will prove that at least two *witnesses* were *handcuffed* at the scene and at least one witness was threatened by police. Arguably, where witness statements may have been the product of

^{99/}E.g., *id.*; United States v. Russell, 532 F.2d 1063 (6th Cir. 1976) (identification which violated due process not harmless in view of "dearth of other evidence"); Escalera v. Coombe, 826 F.2d 185, 194 (2d Cir. 1987) ("Moreover, we cannot conclude that admission of Nieves' and Torres' identification of Escalera was harmless beyond a reasonable doubt. Their testimony was the sole evidence linking Escalera to the crime. The state simply had no case without it, and its erroneous admission would be extremely harmful."), vacated and remanded, 484 U.S. 1054 (1988); Dickerson v. Fogg, 692 F.2d 238, 247 (2d Cir. 1982) (erroneous admission of identification not harmless, even though robbery defendant also was found in non-exclusive possession of stolen goods).

State intimidation, there is a substantial likelihood of misidentification warranting the exclusion of such testimony.

2. Guerra in Handcuffs.

20. Guerra will show that police officers allowed Guerra, handcuffed and with paper bags over his hands, to be seen by the State's eyewitnesses before the lineup. This suggestive viewing tainted any subsequent identification by the State's witnesses. See Archuleta v. Kerby, 864 F.2d 709, 710 (10th Cir. 1989) (state conceded that allowing eyewitnesses to see defendant while "handcuffed in a police car among uniformed police officers" was suggestive); Dispensa v. Lynaugh, 847 F.2d 211, 220 (5th Cir. 1988) (rape victim's identification of defendant at restaurant was unduly suggestive where defendant was walked through restaurant accompanied by police officer).

3. The Lineup.

21. At an evidentiary hearing Guerra will prove that the State's witnesses viewed an impermissibly suggestive lineup of six men on July 14, 1982, eight hours after the shooting. At the lineup, Guerra was the only participant to have "collar length hair," which was the description of the shooter given initially to police by both Diaz and Galvan. App. 13 (F22) (Diaz); App. 3 (F8) (Galvan). Clearly, the lineup was unnecessarily suggestive where it was designed to highlight an unusual identifying feature in the initial police statements of these two crucial witnesses. As the Fifth Circuit has clearly stated: "[T]he identification of a defendant in a manner that suggests whom the witness should identify is a denial of the defendant's right to due process of law." Id. at 218.

22. Police records further reveal that the State made other efforts to skew the lineup against Guerra. Soon after the shooting, police acquired from several witnesses (other than Diaz and Galvan) an initial description of the shooter that was entirely *inconsistent* with Guerra's appearance that night.^{100/} Armed with the inconsistent description, police tracked down and arrested a man named Alex Sanchez, App. 138 (F660), who was then brought back to the intersection of Edgewood and Walker for a one-person showup before the witnesses. App. 140 (F662). Based on the failure of any witnesses to identify Sanchez, at that time the police concluded that he was not the shooter. Id. Yet Sanchez was placed in the lineup viewed by the State's witnesses later that evening, App. 80 (F323), which left only Guerra and four others in the six-person lineup.

23. Further, Guerra will prove that during the lineup several witnesses verbally identified Guerra in a manner that was audible to all the other witnesses present.^{101/}

24. In addition, Guerra will show that in at least one instance an HPD detective openly solicited an identification in the presence of other witnesses, that several witnesses were pressured by another witness to identify Guerra as the shooter, and that the in-

^{100/}In fact, Officer J. Arocha's statement notes that witnesses at the scene described the suspect as a Latin American male in his 20s, having *short* hair and wearing a light colored T-shirt and blue jeans. App. 36 (F99).

^{101/}While we cannot know exactly what each witness said during the lineup, it is clear from the statements given on the night of the shooting that not all of the witnesses were identifying Guerra as the shooter. For example, George Brown and Danny Joe Martinez merely identified Guerra as the passenger in the Buick. App. 31 (F69) (Brown); App. 16 (F27) (Martinez). Jacinto Vega identified him merely as the driver. App. 27 (F54); S.F. Vol. 23 at 719-20 (Jacinto Vega).

court identification testimony of at least one of the State's witnesses was not only the product of hearing other witnesses identify Guerra at the lineup, but of one of the witnesses coercing others to identify Guerra during the lineup, in the presence of several police officers, as the shooter.^{102/}

25. It would be difficult to imagine a case where lineups were more suggestive than here, a case where witnesses (i) were allowed to see Guerra handcuffed and in police custody, (ii) then gathered in a room for a joint viewing of the lineup, and (iii) allowed not only to share their individual opinions of the shooter's identity, but in some instances, to exert influence over each other. The practice of allowing two identifying witnesses to be present during each other's identification has been severely criticized because it is "a procedure said to be fraught with dangers of suggestion." United States ex rel. Pierce v. Connor, 508 F.2d 197, 200 (7th Cir. 1974), cert. denied, 423 U.S. 841 (1975) (quoting Wade, 388 U.S. at 234); Escalera v. Coombe, 652 F. Supp. 1316, 1326 (E.D.N.Y. 1987),

^{102/}The prosecution may argue that the pre-identification activities in this case were not unduly suggestive because in some instances it was not the police that caused the improper suggestion. Admittedly, it could be argued that several of the witnesses offered their opinion of the shooter's identity voluntarily while viewing the lineup. However, it was the police who walked a handcuffed Guerra in front of the witnesses, corralled all the witnesses together to view the lineup, and allowed them to communicate with each other during the lineup. Moreover, whether the verbal identifications were solicited by police is not the issue; the chief concern is the reliability of witness identifications, not police deterrence. Thigpen, 804 F.2d at 895; Neil, 409 U.S. at 198-99; Green v. Loggins, 614 F.2d 219, 222 (9th Cir. 1980). "Because it 'is the likelihood of misidentification that violates the defendant's rights to due process' (citation omitted), only the effects of, rather than the causes for, pre-identification encounters should be determinative of whether the confrontations were unduly suggestive." Thigpen, 804 F.2d at 895 (quoting Neil, 409 U.S. at 198); see also Green, 614 F.2d at 223 ("[A] court is obligated to review every pre-trial encounter, accidental or otherwise, in order to insure that the circumstances of the particular encounter have not been so suggestive as to undermine the reliability of the witness's subsequent identification").

rev'd 826 F.2d 185 (2nd Cir. 1987), appeal filed, (noting that dangers of suggestion are compounded when the witnesses view a showup together); see also Note, Pretrial Identification Procedures -- Wade to Gilbert to Stovall: Lower Courts Bobble the Ball, 55 Minn. L. Rev. 779, 795 (1971). The reason for the criticism is justified, given the "enormous suggestive power" of group pressure to modify recollections.^{103/}

26. Federal courts are united in their condemnation of joint identification procedures.^{104/} Texas cases also condemn joint identification procedures.^{105/}

^{103/}As several experts explained:

Changes in perception occur readily in response to information from social sources. The enormous suggestive power of groups in modifying perceptions, attitudes and norms was first illustrated experimentally by Sheriff and then by Asch.

. . . .

Both experiments, however, demarcate the potency of group pressure in modifying judgments, despite awareness of a conflict between sensory and social information. While the usual conditions of social suggestion are not always as extreme as those represented by the Sheriff and Asch arrangements, clearly some witnesses to identical phenomena may markedly tailor their reports to the majority position. And in the case of criminal identification, this "tailoring" could occur among witnesses at the scene of the crime, in subsequent communication with or without police knowledge, and at the lineup itself.

Levine & Tapp, Psychology of Criminal Identification: The Gap From Wade to Kirby, 121 U. Pa. L. Rev. 1079, 1110-11 (1973).

^{104/}See Pearson v. United States, 389 F.2d 684, 688 (5th Cir. 1968) ("The fairness of the pretrial lineup depends upon a number of factors Its result could be tainted if the witnesses were allowed to view the lineup together and discuss among themselves their conclusions, or if they were allowed even accidentally to see the defendant in police custody just prior to the lineup"); United States ex rel Pierce v. Cannon, 508 F.2d 197, 201 (7th Cir. 1974), cert. denied, 423 U.S. 841 (1975) ("[T]here would seem to be no excuse
(continued...)

27. Further, joint viewings are criticized because they *unnecessarily* decrease the reliability of the identification made. Swicegood v. State, 577 F.2d 1322, 1325 (5th Cir. 1978) (noting that police may take relatively simple precautionary measures to guard against communication between witnesses). In most situations, the purpose that the State seeks to accomplish can be achieved without increased burdens or decreased efficiency, while at the same time making any lineup identification more accurate. *Id.* Thus, given the potential for error caused by group pressure and the minimally increased burden created by requiring all identifications to be made separately, there is no excuse for allowing a procedure that permits two or more witnesses to jointly view a lineup and discuss their identifications.

¹⁰⁴/(...continued)

for allowing a procedure which permits two or more witnesses to discuss their identifications"); Escalera v. Coombe, 826 F.2d 185, 191 (2d Cir. 1987) (an uncontrolled, joint selection renders photographic identification suspect); United States v. Wilson, 787 F.2d 375, 385 n.11 (8th Cir.), *cert. denied*, 479 U.S. 857 (1986) (suggesting that allowing witnesses to view photographs together with the opportunity to discuss their perceptions before making a decision, and pressuring or leading witnesses toward a particular selection would be unnecessarily suggestive); United States v. Bridgefourth, 538 F.2d 1251, 1253 (6th Cir. 1976) ("We do specifically disapprove of any consultation of witnesses engaged in inspecting displays of photographs during police attempts to identify an offender").

¹⁰⁵Powell v. State, 466 S.W.2d 776, 778 n.1 (Tex. Crim. App. 1971) ("We recommend that exhibition of photographs be shown to witnesses separately and apart."); Robinson v. State, 502 S.W.2d 819, 820 (Tex. Crim. App. 1973) (suggesting that allowing parties who are observing a lineup to converse while viewing the lineup is improper: "[T]hey were twelve to fifteen feet apart while the lineup was being conducted, and their identification of appellant by number was made by them separately after leaving the room where the lineup was conducted."); Jackson v. State, 682 S.W.2d 692, 695 (Tex. App.--Houston [1st Dist.] 1984, *pet. ref'd*) (witnesses' failure to view suspect individually was a factor in the court's finding that identification procedure may have been unnecessarily suggestive).

28. The identifications of Guerra were fundamentally unreliable because the lineup procedures used by police were irreparably tainted by the witnesses' group viewing and discussions, and therefore denied Guerra due process.

4. The July 22 "Walk-Through".

29. At 10:00 a.m. on July 22, 1982, nine days after the night of the shooting, police gathered together several of the State's witnesses to conduct a "walk-through" or "reenactment" of the shooting. Witnesses known to be present include Galvan, Garcia, Flores, and Perez. App. 90-92 (F374-76); S.F. Vol. 22 at 432-33, 436-37, 492-93, 542. What happened at the reenactment is sketchy;^{106/} however, Perez described the scene as "a spectacle" with people "coming and going to see what was going on." S.F. Vol. 22 at 437. In the presence of these other witnesses, Galvan radically changed her version of the shooting, see pp. 172-73, infra, and Flores identified Guerra as the shooter for the first time, App. 91 (F375).

30. It is clear that the "walk-through" was another step in the State's attempt to manufacture false testimony. See Ex parte Brandley, 781 S.W.2d 886, 893 (Tex. Crim. App. 1989), cert. denied, 111 S. Ct. 61 (1990) (suggestive "walk-through" contributed to due process violation by creating false testimony). The jointly attended reenactment was highly improper. For these reasons, this Court should hold that the admission of the State witnesses' identification testimony denied Guerra due process.

^{106/}Guerra only has become aware of the specifics of what occurred at the reenactment since obtaining police records years after his trial, in preparation for Guerra's filing of his original application, pursuant to a request under the Texas Open Records Act.

5. The Mannequins and Prosecutorial Suggestiveness.

31. There can be little doubt that the State, confronted with no physical evidence to support their "gun switch" theory and extremely weak witness identifications, was in a dilemma. Unable to manipulate the physical evidence, the State endeavored to influence the minds and bolster the testimony of their eyewitnesses through the use of the mannequins. On the Saturday before trial, several of the State's witnesses viewed the mannequins in a conference room at the District Attorney's office. S.F. Vol. 22 at 425. Present together at that mannequin showing were Mrs. Armijo, Trinidad Medina, Diaz, Garcia, Frank Perez, Galvan, Jose Jr., and several other State witnesses, S.F. Vol. 21 at 303, 332-33; S.F. Vol. 22 at 430-31, 494, 539, who were allowed to discuss the facts of the case in each others' presence. Id. at 430-31.

32. The State's use of the wax-museum quality mannequins dressed in the original bloodied, bullet-riddled, unwashed clothes of Carrasco and Guerra grossly tainted the testimony of the State's witnesses. The inescapable non-verbal message being sent continuously throughout the trial was that Carrasco (with the bloody, bullet-riddled, dark "maroon" or "brown" shirt) was the dead man and the witnesses were to focus on the other man, Guerra. By dressing and grooming the life-like mannequin of Guerra as he appeared on July 13, the prosecutors ensured that the witnesses could easily frame their identification testimony to correspond to the mannequin of Guerra and avoid the confusion that the witnesses' earlier statements had revealed.^{107/} Guerra will prove that

^{107/}Moreover, after seeing Carrasco's bloodied shirt and knowing from the night of the shooting as well as subsequent television reports that one of two men present at the
(continued...)

the prosecutors left nothing to chance. They showed several of the witnesses pictures of Carrasco and Guerra, identified Carrasco as dead, and described Guerra as "the man who shot the cop."

33. Undoubtedly, allowing the State's witnesses to examine the mannequins before trial as well as to use the mannequins during trial violated Guerra's rights to due process under the Fifth and Fourteenth Amendments of the U.S. Constitution as well as under the Texas Constitution's due process safeguards in sections 13 and 19.

6. Repeated Viewings.

34. By the start of trial, none of the State eyewitnesses had yet attended a properly conducted lineup and had been subjected to:

- (i) intimidating and coercive police interrogation at the scene of the shooting;

^{107/}(...continued)

shooting had been killed by police, it took no effort for the witnesses to realize that they were expected to identify Guerra as the shooter. See Chaisson v. State, 761 S.W.2d 77, 81 (Tex. App.--Beaumont 1988, no writ) ("Furthermore, the police had told the witnesses so much about the photographs of the two suspects, all that remained for the witnesses to determine which of the two men drove the car and which one entered the service station wielding the knife").

Thus, the pretrial use of the mannequins for all practical purposes was the equivalent of a one-person showup or at best a two-person lineup. The use of one-person showups has been widely condemned. Wade, 388 U.S. at 229; Herrera v. Collins, 904 F.2d 944, 947 n.2 (5th Cir.), cert. denied, 449 U.S. 985 (1980), cert. denied, 111 S. Ct. 307 (1990); see also Babers v. Estelle, 616 F.2d 178 (5th Cir.) (one-on-one showups are inherently more suggestive than lineups and we have purposely not encouraged their use); Rodriguez, 906 F.2d at 1162 n.6 ("Showups . . . will almost always lead to undue suggestion."); Jackson v. State, 682 S.W.2d 692, 695 (Tex. App.--Houston [1st Dist.] 1984, pet. ref'd 1985) (practice of showing suspects singly to crime witnesses for identification has been widely condemned); Escalera v. Coombe, 652 F. Supp. 1316, 1326 (E.D.N.Y.), rev'd, 826 F.2d 185 (1987).

- (ii) exposure to a handcuffed Guerra at the police station only hours after the shooting;
- (iii) an impermissibly suggestive lineup that the police attempted to skew against Guerra and that allowed witnesses to identify Guerra in each other's presence and to persuade other State witnesses to identify Guerra;
- (iv) a jointly attended reenactment of the shooting; and
- (v) a discussion of the case in the presence of the mannequins and a comment by one of the prosecutors branding Guerra as "the man who shot the cop."

After repeated viewings of Guerra under circumstances implicating him in the shooting, it is not surprising that several so-called "eyewitnesses" became convinced that Guerra was the shooter. Even when each of many pretrial viewings has been properly conducted, repeated exposure to a defendant inevitably will be unduly suggestive.^{108/}

C. The State Witnesses' Identifications Were Fundamentally Unreliable

35. The State must prove by clear and convincing evidence that its witnesses had identified Guerra in-court as the shooter based on recollections free from suggestion and that the identifications were therefore independently reliable, before the identifications are

^{108/}See Herrera v. Collins, 904 F.2d 949, 947 n.2 (5th Cir. 1990) ("What occurred between this initial uncertainty and the eventual certitude Hernandez expressed at the second photographic display, the live lineup, and the trial was the display to Hernandez of Petitioner's picture uncomplicated by any accompanying array"); Thigpen v. Cory, 804 F.2d 893 (6th Cir. 1986) (citing United States v. Ballard, 534 F. Supp. 749, 752 (M.D. Ala. 1982) (defendant seen at lineup and a related court proceeding)); United States ex rel. Johnson v. Hatrak, 417 F. Supp. 316, 327 (D.N.J. 1976) (defendant seen at lineups and unrelated preliminary hearing), aff'd mem., 564 F.2d 90 (3d Cir. 1977), cert. denied, 435 U.S. 906 (1978).

admissible. See Manson, 432 U.S. at 114. The State cannot meet its burden in light of the grossly mishandled pretrial investigation and practices.

1. The Witnesses' Testimony Was Inconsistent.

36. Before evaluating the Manson reliability factors, scrutiny of the witnesses' testimony itself is enlightening. The in-court identifications, especially when viewed in connection with the other State evidence, were patently incredible and worthy of little or no weight. The harmful effect and significance of the State's improper pretrial procedures are apparent when the stories of the prosecution's so-called "eyewitnesses" are reviewed. These stories were wholly unreliable in three respects. First, and most importantly, their stories contradicted the irrefutable physical evidence. Second, each witness's story changed over time. Finally, their stories contradicted each other.

a. The Stories of the State's So-Called "Eyewitnesses" Contradicted the Irrefutable Physical Evidence.

37. The State witnesses testimony contradicted the physical evidence in nearly all respects. First, Jose Jr., the only person who testified that he saw Guerra shoot his father and Harris, told police that the shooter fired with his left hand. App. 7-8 (F16-17). At an evidentiary hearing Guerra will show that Guerra is right-handed -- but Carrasco is left-handed. It is inconceivable that Guerra shot Harris with his left hand.

38. Second, the physical evidence -- including blood spatter patterns, the recovery of bullets from the house on the northwest corner of Walker and Edgewood, the location of spent nine millimeter hulls on the northeast corner of that intersection, and *the police's own interpretation of that data* -- all conclusively establishes that the shooter

fired in a mostly *westerly* direction with the bullets entering the left side of Harris's head and exiting the right. S.F. Vol. 20 at 87; see pp. 11-12, 18, supra. Thus, the shooter must have been standing close to and *east* of Harris at the time of the shooting. But the statements and trial testimony of each of the State's so-called "eyewitnesses" place Guerra *south* or *west* of Harris when the shots were fired. See note 29, supra.

39. Third, even though the lighting was poor and the nearest street light was 34 feet west of the Buick and on the south side of Walker, App. 67 (F229), Flores, Garcia, and Galvan all claimed to see a blond-haired shooter. Their dubious explanations for describing the shooter as blond-haired also defied the physical evidence.^{109/}

40. Fourth, Galvan claimed at the reenactment that the impact of the bullets lifted Harris off his feet. App. 91 (F375). An examination of the angles that the bullets traveled, however, as they entered Harris's head reveals a downward trajectory, *i.e.*, the bullets struck Harris on the left side of his head and exited the lower right portion of his neck. App. 133 (F601). Thus, Guerra will show that it was physically impossible for Galvan to have seen the bullets lift Harris off his feet.

41. Finally, Flores's testimony that the shooter ran east *down the middle* of Walker as he fled the shooting, S.F. Vol. 22 at 514-15, is inconsistent with the path ran by the man who shot and killed Armijo, Sr. The physical evidence reveals that Armijo, Sr. was shot from the north side of Walker with the bullets travelling in a mostly

^{109/}*Garcia* claimed that "[a]t a distance *in the dark*, the shooter's hair looked like it was blond." S.F. Vol. 22 at 460. *Galvan* testified that light reflecting off the street caused a glare that made the shooter's hair appear "light-colored" even though the shooter was "*in the car*." *Id.* at 569. Despite being at a different vantage point, *Flores* similarly described the shooter as blond because "of the reflection of the light." *Id.* at 520.

southeasterly direction. See S.F. Vol. 20 at 104-05, 145-46; App. 62-63, 68, 103-106 (F224-25, 245, 439-42).

42. In short, the stories of each of the State's "eyewitnesses" are incredible in light of the physical evidence, and the testimony was irremediably confused. These witnesses' identifications of the shooter were therefore wholly unreliable and were legally of insufficient weight to permit Guerra's conviction resulting in the death penalty -- particularly in light of the totally exculpatory testimony of Guerra and others.

43. In sum, the witnesses' initial descriptions of the shooter, even taken collectively and ignoring inexplicable inconsistencies among the witnesses and within the physical evidence, could generate at best a description that the shooter was a Latin American male in his twenties with collar length hair. Clearly such a broad description is so lacking in detail that it is wholly inadequate.^{110/}

b. The Stories of the State's Principal So-Called "Eyewitnesses" Changed Over Time.

44. The trial testimony of the prosecution's witnesses was patently unreliable also because each witness changed his or her testimony dramatically from their initial statements.

^{110/}See Velez v. Schmer, 724 F.2d 249, 252 (1st Cir. 1984) ("[w]e have seen no case with such a total absence of description of the individual."); Rodriguez, 906 F.2d at 1163 (witness's description "would fit dozens of men in Milwaukee and elsewhere, and the fact that it offers no details as to facial features or other more distinguishing characteristics than age, build and complexion is troubling."); Thigpen v. Cory, 804 F.2d 893, 897 (6th Cir. 1986), cert denied, 482 U.S. 918 (1987) ("Accuracy also refers to how *particularly* a description matches a suspect, and [the robbery victim and sole witness were] unable even to describe the robbers' weights, builds, hairstyles, or facial hair") (emphasis added).

(i) Patricia Diaz.

45. Patricia Diaz, who cannot be counted as a witness who "saw" the shooting, recalled more detail as she got further away from the night of the murder. On the night of the shooting, she told police that she had seen a man standing by the Buick and *pointing* at the police car. S.F. Vol. 21 at 312-13, 316, 329-30. She said that the man, whom she had never seen before, had collar-length black hair and was wearing a long-sleeve, dark-colored shirt. App. 12-13 (F21-22). Her statement confirms that she never saw Harris or any pistol,^{111/} although initially it mentions that the man appeared to be pointing a gun. Further, her statement on the night of the shooting says nothing about facial hair. See *id.*

46. At the lineup she identified Guerra as the man she had seen with his hands "outstretched." App. 14 (F23).

47. At trial, she testified on direct that the pointer had a long beard, a moustache, brownish hair, and a short-sleeve, green shirt. S.F. Vol. 21 at 316, 324-25. She acknowledged on cross-examination that she had not recalled the shirt color on the night of the murder. *Id.* at 324-25.

48. Finally, Diaz admitted at trial that she did not know "who shot who," *id.* at 331, 340, and that she actually had seen Guerra for the first time at the lineup, *id.* at 316. In fact, Diaz admitted that it was dark, *id.* at 326, that she had only seen the

^{111/}Prosecution witnesses concluded, based on gunpowder on Harris's face, that the shooter was one or two feet from Harris at the time of the murder. S.F. Vol. 23 at 685-86, 691; Vol. 20 at 148-52. It is difficult to imagine that Diaz was able to see the shooter shoot Harris but was unable to see Harris being shot.

pointer's "shadow" at the time of the shooting, id. at 313, and that she had ducked before hearing the shots that killed Harris, id. at 313, 318.

49. At an evidentiary hearing, Guerra will demonstrate that when Ms. Diaz told the police on July 14 and the jury at trial that she had seen a man pointing, she meant *not* that he appeared to be pointing a gun, but that his hands were outstretched with palms down, about a foot apart, in a manner consistent with lifting his hands off of the car hood.

(ii) Herlinda Garcia.

50. Herlinda Garcia, who finally admitted that she had not witnessed the shooting, likewise substantially changed her description of what had occurred. On the night of the shooting, Ms. Garcia told the police that as the two men who had emerged from the driver's side of the Buick walked with raised hands toward Harris, who had told them to put their hands on the hood of the police car, the man with *blond* hair, *brown* shirt that was "open all the way down," and *brown* pants reached into the front of his pants, pulled out a pistol, and shot Harris. App. 5 (F10). She mentioned *nothing* about long hair or facial hair in her statement. See id.

51. By the time of trial, Ms. Garcia had become uncertain about what one of the men had pulled out of his pants. S.F. Vol. 22 at 449-50. She testified for the first time that the other man had his hands on top of one of the two cars, id.,^{112/} recanting her testimony that both men's hands were raised immediately before the shooting, id. at 478-

^{112/}Not mentioned at the trial was her husband's statement to police on July 14 that she had been drinking beer shortly before the shooting. App. 17-18 (F28-29).

79. When pressed on cross examination, she finally admitted that she saw neither the gun nor gunfire; after seeing a man pull out something she turned and ran, hearing gunfire as she was running. Id. at 479-82.

(iii) Vera Flores.

52. Vera Flores, who likewise did not witness the shooting, underwent a dramatic transformation in her recollection between the night of the shooting and the time of trial. On the night of the shooting, she told the police that after the Buick's driver and passenger put their hands on the hood of police car while standing on the side, near the car's left front fender, the *blond*-haired driver pulled a pistol from somewhere in his front, shot Harris, and then ran toward the cemetery (eastward). App. 9 (F18). She mentioned *nothing* about long hair, facial hair, or clothing color. Indeed, she said that she did *not* think she could identify either man and had never seen them before. Id.

53. At the lineup the next morning, she identified no one. App. 135 (F620); S.F. Vol. 22 at 518, 525.

54. Mysteriously, however, by the afternoon of the reenactment on July 22, she was able to provide much more detail. At that point she claimed for the first time that the driver had spoken to her before the shooting.^{113/} She further claimed that the driver had long hair, a beard, and a mustache. She described the driver thereafter standing near the front of the police car, with the passenger standing closer to the driver door of the police car and Harris standing on the inside of his open car door. She told police that

^{113/}She said that the driver got out of the car and asked her for a "boost." App. 10-11 (F19-20).

she saw the driver turn, take his hands off the car, and begin to shoot while backing up. App. 10-11; 92-93 (F19-20; see F376-76A). She even claimed for the first time to remember seeing the driver shoot Armijo, id. at 10-11; 93 (F19-20; F376A), a curious omission from her first statement *and* a claim that she recanted at trial, see S.F. Vol. 22 at 516.

55. In direct contradiction of her statement on the night of the shooting that she had never seen the suspects before, Ms. Flores also claimed for the first time at the reenactment that she knew the suspect because he was a regular in the neighborhood. App. 92 (F376). Ms. Flores's confusion, like Ms. Galvan's, continued when she identified the shooter as "El Guerro," a nickname belonging to Carrasco, not Guerra. App. 95 (F386).

56. Finally, for the first time, nine days after the shooting, she identified Guerra as the shooter. App. 92 (F376). She told police that she had recognized Guerra at the lineup as the driver and shooter, but insisted that she had told HPD at the lineup that she did not identify anyone "because I figured enough people had already identified him." App. 10-11; 92 (F19-20; F376).

57. Ms. Flores's trial testimony, not unexpectedly, was so confused that it was virtually worthless.^{114/} By the time of trial, Ms. Flores claimed that the Buick drove south

^{114/}Not mentioned at trial was her brother-in-law's statement of July 14 that she had been drinking beer shortly before the shooting. App. 17-18 (F28-29).

on Edgewood to Walker, S.F. Vol. 22 at 521, which is completely inconsistent with the version she described at the reenactment that the suspects made a u-turn on Walker.^{115/}

58. At trial, Ms. Flores also had developed a new recollection that the driver wore a green shirt, S.F. Vol. 22 at 542, in addition to having long hair, a beard, and a moustache, id. at 517. When confronted with her prior description of a blond-haired shooter, Ms. Flores testified that she had seen blond hair because of the reflection caused by a streetlight. S.F. Vol. 22 at 519-20. This description is inconsistent with her claimed recollection at the reenactment that she knew the driver as a regular in the neighborhood. App. 92 (F376).

59. However, she admitted that the only reason that she had accused "the driver" of being the man who shot and killed Harris was that after Harris had been shot, she had seen the driver shooting "down the street." S.F. Vol 22 at 513. Moreover, at trial, she was unsure if she had seen the passenger again after he got out of the car: initially she claimed that she never saw him again, id. at 528, even after being reminded of the contents of her initial statement to the contrary, id. at 529; then she insisted that she had seen *both* men put their hands on the patrol car, id. at 529-32.

(iv) Hilma Galvan.

60. Hilma Galvan, who finally admitted that she had never seen Guerra holding a gun, id. at 560, gave various statements and testimony that were so internally inconsistent as to be fundamentally without credibility. On the night of the shooting, Ms.

^{115/}At the reenactment she claimed to have seen the Buick heading down *Walker*, not Edgewood, until the car attempted to do a doughnut in the middle of the street and died. App. 10-11 (F19-20).

Galvan told the police that from her vantage point on the sidewalk in front of her house, App. 91 (F375); S.F. Vol 22 at 556, she could only see *one* man from the Buick. App. 3 (F8). The second man, she reported, was on the other side of the street, and she could not see what he was doing, since her view was obstructed by a tree in her yard and the Buick. Id. She said she *never* got a good look at him. Id. She told police that the first man had shoulder-length, straight *blond* hair and wore *dark brown* pants and a *dark brown* or *black* shirt. Id. She saw him take some steps towards her and the two Heredia boys, then step back towards Harris. Id. She told police that she saw Harris push that man up against the police car and then saw the man turn and begin shooting at Harris. Id. Despite her description of the shooter as a blond, she claimed to know him by sight, but not by name. Id.

61. During the lineup she identified Guerra as the man she saw shoot Harris, adding in a statement given shortly after the lineup that at the time of the shooting Guerra had been standing underneath a street light. App. 4 (F9).

62. A police report dated July 26, 1982, App. 91-92 (F375-76), however, reveals that Ms. Galvan gave a *dramatically different* version of the shooting at the July 22 reenactment. First, she claimed for the first time that she saw both suspects "out of the black car when the officer came up behind them." App. 91 (F375), which is inconsistent with her recollection on the night of the shooting that both men were already out of the Buick by the time she arrived, App. 2 (F7) S.F. at 579.

63. Second, despite her admission on the night of the shooting that she could not see what the non-shooter was doing, id., by July 22 she claimed to recall with great clarity the non-shooter's movements. See App. 90-92 (F374-76).

64. Third, she claimed that she saw both men walk in single file from the Buick to the police car (with Carrasco in front, closer to Harris), and put their hands on the police car's hood (with Carrasco closer to the driver's door). Id. She claimed in this version that as soon as Guerra put his hands on the hood of the police car, he turned and started shooting, moving from left to right, then began running down the sidewalk in front of her house. App. 91 (F375). Gone was any reference to (i) being accompanied by the Heredia brothers, (ii) the shooter walking towards her before the shooting, (iii) Harris pushing one of the men, or (iv) her inability to see the other man.

65. Fourth, Ms. Galvan made the bizarre and obviously fabricated claim for the first time that she had seen Guerra shoot Armijo Sr., App. 91-92 (F375-76), even though she told police on the night of the shooting and told the jury at trial that she had learned that Armijo Sr. had been shot only after being told by Jose Jr., App. 3 (F8); S.F. Vol. 22 at 562-66.

66. Finally, despite having stated on the night of the shooting that she did not know the shooter by name, App. 3 (F8), on July 22 she claimed that she knew the driver of the Buick as "El Guero," a regular customer of the neighborhood grocery store where she once worked. App. 92 (F376). In actuality, the nickname "El Guero" belonged to Carrasco due to his light skin.

67. At trial, *for the first time*, she (i) remembered that the killer had a beard, see S.F. Vol. 22 at 561, (ii) placed Harris even with his driver door, id. at 558, and (iii) finally admitted that she had never seen a gun, id. at 560. Moreover, she merged and confused her two previous renditions of Guerra's movements between the cars, see id. at 579-83, and attempted to soften her earlier statement that Harris had pushed Guerra against the police car, id. at 585.^{116/}

(v) Jose Armijo, Jr.

68. The statements and testimony of 10-year old Jose Armijo Jr. are even more inconsistent. This 10-year-old child, obviously in shock on the night of Harris's murder after seeing his father mortally wounded, is the *only* witness who testified that he saw Guerra pull a gun and shoot Officer Harris. S.F. Vol. 21 at 284. On the night of the shooting, shortly after midnight, he told the police that after his father stopped his car, Jose Jr. saw Harris get out of the police car and stand behind his door; saw two men get out of the Buick while others stayed inside; saw the two men walk up to Harris standing next to each other; saw the man on the outside tap the hand of the man standing next

^{116/}The trial testimony contained other inconsistencies with her prior statements. In her initial police statement Galvan recalled Harris exiting his car and telling "the guy coming toward us to stop . . . The officer yelled again." App. 2 (F7) Later she recalled Harris yelling at the men to "come over to the police unit" before Harris exited his police car. App. 91 (F375) Galvan testified at trial that Harris only yelled at "the man that was by the sidewalk" *after* exiting his patrol unit. S.F. Vol. 22 at 557.

Further, Galvan later admitted that she had a subsequent opportunity to see Guerra's true hair color as he ran toward her, Id. at 589-90. Why she chose to describe the shooter's hair as blond is therefore perplexing. Finally, Ms. Galvan never explained her inconsistencies regarding her explanation of the shooter's clothing; her description matched Carrasco's clothing, *not* Guerra's.

to the police car; and saw the man next to the police car reach around his back as if to scratch it, pull out a gun, and shoot with his left hand. App. 7-8 (F16-17). Then he saw the two men run toward his father's car, which his father had begun to back up, with one man on each side of the car. Jose Jr. told police that he then saw the man on his side shoot through the front windshield. Id.

69. As for a description of the two men, he "didn't seen the men who shot the policeman too good, and [did not] remember what they looked like or what they were wearing." App. 8 (F17) Six hours later, he could not identify Guerra in the lineup. App. 134 (F621).

70. By the time he testified at trial, his story had changed dramatically in numerous respects. First, he testified that when his father stopped the car, (i) Harris was already out of his car behind the open driver door, S.F. Vol. 21 at 282-83, not just getting out, and (ii) the two men were already standing next to the police car, id. at 282, not just getting out of the Buick. Second, he testified that he saw both men from the Buick put their hands on the hood of the police car, with one man (the shooter) standing closer to Harris, id. at 283-85, not standing next to each other with one man (the shooter) standing closer to the police car. Third, he said nothing at trial about one man tapping the hand of the shooter or about the shooter using his left hand.^{117/} Fourth, in the presence of the mannequins and in response to leading questions, he suddenly remembered that the

^{117/}The prosecutor was careful not to ask Jose, Jr. to indicate which hand the shooter had used. At an evidentiary hearing, Guerra will prove that he is right-handed while Carrasco was left-handed and that the prosecutors knew or should have known this.

shooter had long hair, a moustache, and a beard and wore a green shirt. Id. at 289, 291-92. He conceded that he had told the police at the lineup that he could not identify anyone.^{118/} He never explained why he had told the police in his first statement, *six hours before the lineup*, that he did not know what the two men looked like or what they were wearing because *he had not seen them very well*. See id. at 295, 301.

71. Finally, while continuing to insist that he had seen Guerra shoot his father, Jose Jr. admitted at trial that after hearing the shots that hit *Harris*, he had ducked, *hidden* under the dashboard, and stayed there until the two men ran *past* him to the corner of Lenox and Walker. Id. at 302-03, 307-08. The likely cause of the inconsistencies in his story became apparent on cross-examination, when he revealed how much his memory had improved after discussions with prosecutors and the police.^{119/}

^{118/}He testified that he previously had lied because he feared Guerra, S.F. Vol. 21 at 290, even though he knew that the people in the lineup could not see him and were in jail, id. at 296, 298.

^{119/}Jose Jr. testified at trial:

Q. Has anybody talked to you about this case?
A. Yes.

Q. The prosecution, the prosecutors, Mr. Bax and Mr. Moen?
A. Yes.

Q. Have the police talked to you?
A. Yes.

Q. Yesterday?
A. Yes.

Q. . . .
Q. Did they talk to you on Saturday?
A. Yes.

(continued...)

(vi) Other Prosecution Witnesses.

72. Other prosecution witnesses experienced similar transformations from what they told police on the night of the shooting to what they testified at trial.

73. Jose Gelasio Saucedo, whose house was on the northwest corner of Lenox and Walker, told police on the morning of July 14, a few hours after the lineup, nothing about the hair length of the man he saw running past his house and north on Lenox. App. 1 (F2). By trial time, he was certain that the man's hair was long. S.F. Vol. 21 at 276-77.

74. George Lee Brown, who was near Lenox south of Walker, told police shortly after the murder that he saw a man running south on Lenox and that this man had short, wavy hair, a *beard*, and a *mustache*. App. 40 (F134). At trial the prosecutor was careful

¹¹⁹(...continued)

Q. Did they talk to you today?

A. Yes.

Q. Who talked to you?

A. I forgot his name.

Q. Mr. Bax?

A. Yes.

Q. And Mr. Moen?

A. Yes.

....

Q. *So after you talked to these people, you have changed your complete version of the facts* and they are completely different from what you told the police back on the night of the incident; isn't that correct?

A. Yes.

Id. at 303-04 (emphasis added).

not to ask Mr. Brown about the man's facial hair, see S.F. Vol. 22 at 387, which would have supported Guerra's explanation of the route he ran after the shooting.

(vii) Defense Witnesses.

75. The *only* witnesses whose initial statements were consistent with the physical evidence and their own and Guerra's trial testimony were two *defense* witnesses, Jacinto Vega and Jose Heredia. Mr. Vega told police shortly after midnight on the night of the murder, *before* speaking to Guerra's lawyer or hearing Guerra's testimony, that he saw Harris get out of his car and stay behind his door. App. 41-41A (F181-82). He saw "one of the Mexican dudes" get out of the Buick and put his hands on the hood of the police car as if under arrest. Id. Meanwhile, he saw the "other Mexican dude came walking up to him also behind the first dude acting real cool," get within two feet of Harris, pull a hidden pistol from somewhere in the back, shoot Harris, run down Walker, shoot Armijo in front of Galvan's house, run to Lenox, and turn left (north). Id. At the lineup six hours later, Mr. Vega identified Guerra as the driver. App. 27 (F54). Mr. Vega's trial testimony was virtually identical to his statement except that he specified the first man from the car as "the driver", see S.F. Vol. 23 at 718-19, 727, 729-31, except that he added that the passenger had regular, not long hair, id. at 718, and had fired the gun while holding it with both hands, id. at 719, the omission of neither of which is surprising. Acknowledging his prior statement that he could not identify either men because he had seen neither face, id. at 723-24, he nevertheless insisted that when he saw the two men

he thought he knew who they were, id. at 725, since they were standing side-by-side, id. at 722-23.^{120/}

76. Mr. Heredia told police on the night of the killings that the driver got out of his car and came to where Harris was standing by the door of the police car. App. 28 (F55). He said that Harris put the driver against the car and was going to search him. Id. Meanwhile, the passenger, whose face he did not see, got out of the Buick, walked behind Harris (i.e., on the east side), pointed, shot, and took off running and shooting. Id. His trial testimony is essentially identical: Guerra went up to the police car, where Harris was standing by his car door, and put his hands on the hood of Harris's car, S.F. Vol. 23 at 744; next to Guerra (to the north) was Carrasco, who shot Harris, id. at 744, 755, 759.

c. The Witnesses' Stories Contradicted Each Other.

77. The State's five so-called "eyewitnesses" not only changed each of their stories over time, but their stories were materially inconsistent with each other. The witnesses' stories differed in the following ways:

- where the Buick had come from;^{121/}

^{120/}He conceded that since he was not asked, he had not told the police on the night of the murder or at the lineup that the driver had long hair and the shooter had short hair, id. at 732-34, and that the first time he told anyone was when Guerra's lawyers came to his house to visit, id. at 734.

^{121/}Despite reporting on the night of the shooting that the Buick was stopped with its motor off at the time she saw it in the intersection, App. 2 (F7), *Galvan* recalled at the reenactment that she saw the suspects arrive at the intersection from Lenox. App. 91 (F375). After the reenactment, *Flores*, too, recalled that the Buick traveled West down Walker from Lenox and attempted to do "a doughnut" in the middle of the street and
(continued...)

- how many people were in the Buick;^{122/}
- where the witnesses were located before the shooting;^{123/}
- where the non-shooter started, moved, and ended before the shooting;^{124/}

^{121/}(...continued)

died. App. 10 (F19). At trial, however, she testified that the Buick arrived at the intersection after traveling straight south down Edgewood. S.F. Vol. 22 at 521.

On the night of the shooting *Garcia* stated that the Buick turned onto Lenox when a police officer driving down Lenox pulled in behind the Buick as the Buick was "getting ready to back up." App. 5 (F10). *Diaz* and *Jose Jr.* never stated how the Buick arrived at the intersection.

^{122/}On the night of the shooting and at trial, *Jose Jr.* reported seeing "other people" in the Buick aside from Carrasco and Guerra. S.F. Vol. 21 at 307; App. 7 (F16). *Galvan*, *Diaz*, *Flores* and *Garcia* never mentioned seeing anyone other than Carrasco and Guerra in or near the Buick. In fact, on the night of the shooting, *Galvan*, who was "so close she could have thrown a rock and hit them," testified that she never saw anyone other than the shooter and Harris near the Buick. App. 2 (F7).

^{123/}*Galvan* recalled that at the time of the shooting she was standing on the sidewalk in front of her house accompanied by Jose and Armando Heredia. S.F. Vol. 22 at 555-56. At an evidentiary hearing Guerra will offer proof that Galvan was actually alone on her front porch and that she immediately ran into her house once the shooting started.

On the night of the shooting, *Garcia* claimed to be in a position to see the shooting. See App. 5 (F10). *Flores*, however, claimed that Garcia was running home; and thus, had her back to the intersection at the time of the shooting. S.F. Vol. 22 at 527; App. 9 (F18).

^{124/}*Galvan's* recollection changed over time regarding the non-shooter's location. On the night of the shooting she stated that she could not see the non-shooter because a tree in her yard and the Buick blocked her view. App. 3 (F8). Yet at the reenactment she provided a detailed description of the non-shooter and placed his hands on the hood of the police car near the driver's door. App. 91 (F375). *Garcia* on the night of the shooting reported that the man's hands were in the air before the shooting, App. 2 (F7). Garcia and Flores recalled at trial that the non-shooter had his hands on the police car before the shooting. S.F. Vol. 22 at 478 (Garcia); S.F. Vol. 22 at 530, App. 92 (F376),
(continued...)

- where shooter was located immediately before the shooting;^{125/}

^{124/}(...continued)
App. 9 (F18) (Flores).

That *Garcia's*, *Galvan's*, and *Flores's* recollections suddenly matched is not surprising since, as Guerra will prove, they spoke constantly at the police station before and after giving their statements, during the lineup, and presumably thereafter, in an attempt to make their stories consistent. They were also the only witnesses on the night of the shooting to erroneously describe a blond-haired shooter wearing brown pants and a brown shirt. App. 5 (F10) (*Garcia*); App. 3 (F8) (*Galvan*); App. 9 (F18) (*Flores*). On the night of the shooting, *Jose Jr.* recalled that the non-shooter was standing next to the shooter, who was nearest the police car. App. 7 (F16). *Diaz* never saw the non-shooter. S.F. Vol. 21 at 318; App. 13 (F22). By the time of trial, *Diaz*, *Galvan*, *Garcia*, and *Flores* all testified that they did not see or did not pay attention to the non-shooter. See pp. 19-32, *supra*.

^{125/}On the night of the shooting *Jose Jr.* stated that the shooter was in front of the police car's open driver's door, App. 7 (F16); *Galvan* said the shooter was being pushed against the police car when he turned and fired, App. 2 (F7); *Garcia* reported that the shooter and non-shooter were walking toward Harris with raised hands when the blond haired shooter reached into his pants and pulled out something and shot Harris, App. 5 (F10); *Flores* said that the shooter removed his hands from the left front fender of the police car, pulled a pistol from his front, and started shooting at Harris, App. 9 (F18); *Diaz's initial* police statement fails to specify where the shooter was located at the time of the shooting. See App. 12 (F21).

At trial, *Jose Jr.* again testified that the shooter was in front of the police car driver's door but added that the shooter had his hands on the hood of the police car just before the shooting, S.F. Vol. 21 at 283; *Diaz* testified that the shooter was standing next to the driver's side of one of the cars, *id.* at 313; *Galvan* testified that the shooter was walking from somewhere near the sidewalk on the south side of Walker when he turned to Harris and began shooting, S.F. Vol. 22 at 556-59. *Flores* initially testified that after hearing Harris say "stop," both the shooter and non-shooter approached Harris and then the shooter shot him (Harris), *id.* at 511-112; later in her testimony, she recalled that the shooter and non-shooter had their hands on the police car before the shooting, *id.* at 529. *Diaz* testified that after hearing Harris say "hold it," both the shooter and non-shooter exited the Buick, walked toward Harris, and then the shooter turned toward Harris while pulling something out of his pants and shot him (Harris). *Id.* at 448-49.

- where Harris was located immediately before the shooting;^{126/}
- what the shooter looked like;^{127/}
- where the shooter reached to pull his gun;^{128/}
- the location of Guerra's hands just before the shooting;^{129/}
- seeing the Browning nine millimeter pistol before the shooting;^{130/} and

^{126/}On the night of the shooting, *Galvan* stated that Harris was in front of the police car's driver's side door "pushing" the shooter, App. 2 (F7); at the reenactment she stated that Harris was behind the open driver's side door, App. 91 (F375); at trial she stated that Harris was standing even with the open driver's side door, S.F. Vol. 22 at 558. At trial, *Flores* maintained that Harris was behind the police car's open driver's door. S.F. Vol. 22 at 510. *Diaz* never saw Harris until after the shooting. S.F. Vol. 21 at 313; App. 12 (F21). *Garcia* also testified that she did not see Harris at the time she heard the shots. S.F. Vol. 22 at 479-80; App. 11 (F20). On the night of the shooting and at trial, *Jose Jr.* placed Harris behind his driver door. App. 7 (F16); S.F. Vol. 21 at 282-83.

^{127/}See pp. 167-77, *supra*, for innumerable inconsistencies in the descriptions of shooter's clothing, facial hair, and hair length and color.

^{128/}*Jose Jr.* said that the shooter pulled the gun from his back. App. 7 (F16). Although at trial they admitted that they *never saw a gun*, *Flores* and *Garcia* testified that they thought they remembered the shooter had pulled the gun from his front, S.F. Vol. 22 at 543-44; App. 9 (F18) (*Flores*); S.F. Vol. 22 at 479-80; App. 5 (F10) (*Garcia*).

^{129/}*Diaz* told the police and the jury that she saw the shooter's hands pointing in the direction of the police car. App. 20-21 (F21-22); S.F. Vol. 21 at 312-13. *Galvan* recalled for the first time at the reenactment that the shooter had placed his hands near the front of the police car. App. 91 (F375). At trial, *Jose Jr.* also recalled for the first time that the shooter put his hands on the hood of the police car, closer to Harris. S.F. Vol. 21 at 283-84. On the night of the shooting, *Garcia* claimed that the shooter and non-shooter both had raised hands, App. 5 (F10), a fact she denied at trial. S.F. Vol. 22 at 484.

^{130/}At trial, *Galvan*, *Diaz*, *Flores* and *Garcia* all testified that they never saw the gun at the time of the shooting. S.F. Vol. 22 at 560 (*Galvan*); Vol. 21 at 314 (*Diaz*); Vol. 22 at 513-14, 545 (*Flores*); *id.* at 479-80 (*Garcia*). Ten-year-old *Jose Jr.* was the only State witness who maintained that he actually saw the gun, S.F. Vol. 21 at 284, although his testimony is questionable for many reasons, as described above.

- statements made by Harris before the shooting.^{131/}

78. The stories of each of the State's principal witnesses were thus rife with internal inconsistencies and inconsistencies among them. Guerra's death penalty conviction cannot stand in view of these inconsistencies plus the fundamental fact that of the five so-called "eyewitnesses" the State argued saw the shooting of Harris, four admitted at trial they never saw the gun and were unsure who actually had shot Harris, see pp. 19-32, supra. These witnesses -- each frightened for their own safety and shocked by the fleeting violent events that sped by them -- did not have clear perceptions and obviously lack clear recollections of the shooting of Harris.

2. The Manson Reliability Analysis.

79. Similarly, under the Manson reliability factors, the State's witness identifications fail miserably. The State must prove by clear and convincing evidence under a five-factor test -- that when the factors are weighed against "the corrupting effect

^{131/}On the night of the shooting, *Diaz* claimed to have heard someone yell "stop" three times, App. 12 (F21); *Flores* heard the driver say in Spanish "I need this," and then she heard Harris tell the Buick driver and passenger to put their hands on the police car, App. 9 (F18); *Galvan* reported that Harris told the shooter to "stop," Harris yelled at the shooter a second time when the shooter kept walking, and finally Harris told the shooter to come toward him, App. 2 (F7); *Garcia* stated that Harris merely told the occupants of the black car to put their hands on the hood of one of the cars, App. 5 (F10); *Jose Jr.* did not report hearing anyone speak prior to the shooting. At the reenactment *Galvan* did not mention hearing anyone speak before the shooting, App. 90-92 (F374-76); *Flores* recalled that the driver said something to her in Spanish that she did not understand. App. 92 (F376).

At trial, *Diaz* heard someone yell "stop" twice, S.F. Vol. 21 at 312; *Garcia* remembered Harris saying "Hold it," S.F. Vol. 22 at 448; *Flores* testified that Harris said "stop," and that one of the men said "No, no," id. at 512; *Galvan* testified that Harris said "Come here" twice and then said "Hey, you come back." Id. at 22 at 557.

of the suggestive identification itself each witness's identification was independently reliable. Manson, 432 U.S. at 114.

80. The factors to be evaluated are: (i) the opportunity to view the criminal during the crime; (ii) the witness's degree of attention; (iii) the accuracy of his prior [pretrial] description of the criminal; (iv) the witness's level of certainty; and (v) the time between the crime and the confrontation. Id.

a. The Opportunity to View the Criminal at the Time of the Crime.

81. The crime here was the shooting of Harris. All agree that the shooting occurred in a matter of seconds^{132/} and that lighting conditions were poor.^{133/} See Young v. Herring, 917 F.2d 858, 864 (5th Cir. 1990). There is no dispute that Guerra was present at the scene of the shooting: The real issue is *who shot the gun to kill Harris*.

82. Each of the State's "eyewitnesses" either ducked or fled for cover upon hearing the initial shots.^{134/} In fact, three of the five State "eyewitnesses," Garcia, Flores

^{132/}In fact, Galvan testified to the fact that the shooting occurred "so sudden" and "everything happened so soon. The shots were fired there and then." S.F. Vol. 22 at 559, 585.

^{133/}Jose Jr., Diaz, and Garcia all admitted that it was dark the night of the shooting. S.F. Vol. 22 at 441 (Garcia); S.F. Vol. 21 at 326 (Diaz). In fact, Diaz admitted that she could only see shadows: "I could see pretty good, the shadows. I didn't get to see that good the people around and everything. I saw the shadows, but saw the shadow of one person then." Id. at 313. Police reports also indicate that lighting conditions were poor. App. 67 (F229).

^{134/}Diaz admitted ducking into her car seat prior to any shooting because she "was scared". S.F. Vol. 21 at 314. In fact, she later admitted that she closed her eyes when the shooting occurred. Id. at 330. Jose Jr. similarly laid in the floorboard of his father's car with his little sister. Id. at 302. Flores ducked behind or hid under a nearby car. S.F. (continued...)

and Diaz, admitted at trial that as a result of their attempts to seek cover, they did *not* see who shot Harris.^{135/} Galvan, Flores, Diaz and Garcia admitted they did *not* see the gun.^{136/} While Galvan's version changed over time, she insisted at the reenactment that she saw both Carrasco and Guerra moving around the stopped cars. App. 91 (F375).^{137/} Thus she easily could have inadvertently merged or confused the actions of the two men. The likelihood is that the actions of the two men blended in her mind. This is supported by her initial impossible description of the shooter as a person in dark clothes (like Carrasco) but with long hair (like Guerra). App. 3 (F8). Her later revision of the story was her attempt (with police "help") to reconcile the obvious inconsistencies in her original version and to make her version even *possible*. Also, Guerra will show that the lines of sight of Galvan and Jose Jr. were probably obstructed, at least in part, by a crepe myrtle tree that was located between each of them and the place where Harris was shot. App. 182 (F1567); see Marsda v. Moore, 847 F.2d 1536, 1546 (11th Cir. 1988) (reliability weakened when witness had only two brief glimpses of suspect, neither from front);

^{134/}(...continued)

Vol. 22 at 537. Mrs. Galvan said that she "ran screaming in the house, because he was still shooting." Id. at 562. Finally, Garcia also admitted running towards her house before the shooting. Id. at 480-81.

^{135/}S.F. Vol. 22 at 479-80, 482, 484 (Garcia); id. at 516, 535 (Flores); S.F. Vol. 21 at 313 (Diaz).

^{136/}S.F. Vol. 22 at 479-80 (Garcia); id. at 560 (Galvan); id. at 512 (Flores); S.F. Vol. 21 at 318 (Diaz).

^{137/}At trial, however, she denied having seen the passenger at all. S.F. Vol. 22 at 581.

Thigpen v. Cory, 804 F.2d 893, 896-97 (6th Cir. 1986), cert. denied, 482 U.S. 918 (1987) (reliability weakened when witness "barely looked" at the suspect during the robbery).

b. The Witness's Degree of Attention.

83. None of the State's witnesses had an opportunity to study the men at the scene.^{138/} The incident was momentary and chaotic. E.g., S.F. Vol. 22 at 559, 585 (Galvan). All the State's witnesses were fearful for their own safety and ran or ducked.^{139/} For example, Diaz testified to being "scared" and "stunned." S.F. Vol. 21 at 314. Similarly, Galvan testified to being "nervous." S.F. Vol. 22 at 565. Additionally, Flores and Garcia had been drinking beer, App. 17-18 (F28-29), which inevitably affected their ability to concentrate.

84. The witnesses' fear likely affected their ability to concentrate on (or even perceive) who shot Harris.^{140/} The stress suffered by the State's "eyewitnesses" probably accounts for (i) the failure of any witness to provide correct identifying features of

^{138/}None of the witnesses were trained observers. See Manson v. Brathwaite, 432 U.S. 98, 115 (1977) (police officers were trained observers); Herrera v. Collins, 904 F.2d 944, 948 (5th Cir.), cert. denied, 111 S. Ct. 307 (1990).

^{139/}See note 43, supra.

^{140/}See Young v. Herring 917 F.2d 858, 864 (5th Cir. 1990) (concluding that it was unlikely that witness had a high degree of attention as to the description of identity during robbery because it was "an intensely stressful and brief situation"); United States v. Russell, 532 F.2d 1063, 1066 (6th Cir. 1976) (stress or excitement may significantly affect the reliability of an identification); Thigpen, 804 F.2d at 897 ("Jackson was obviously affected by such stress, for at trial he repeatedly indicated that he was too scared during the robbery to 'pay too much attention' to the robbers").

Guerra, including his clothing, beard, and mustache; or (ii) to recall the second man -- which, by the time of trial, they assumed was Carrasco.^{141/}

c. The Accuracy of His Prior Description of the Criminal.

85. As noted above, not one of the initial descriptions given by the State's witnesses of the men at the scene (before the State's use of improper techniques of persuasion) was accurate. Three of the State's witnesses initially described the shooter as "blond-haired," two described him as wearing "brown pants" and a "brown shirt," and none recalled the shooter's mustache or beard. The State's so-called "eyewitness" identifications therefore were wholly unreliable. United States v. Dring, 930 F.2d 687, 693 (9th Cir. 1991), petition for cert. filed, 60 U.S.L.W. ____ (U.S. May 11, 1992) (No. 91-8200) ("one element that detracts from the reliability of the agents' eyewitness testimony was that none of the agents mentioned in their initial reports that Dring had worn a beard"); see Peoples v. Fulcomer, 731 F. Supp. 1242, 1245 (E.D. Pa. 1990) (noting the lack of witness testimony referring to the defendant's unique features).^{142/}

^{141/}Diaz, Galvan, Garcia, and Flores all testified that they did not have an opportunity to see, or that they did not pay attention to the non-shooter. S.F. Vol. 21 at 318 (Diaz); S.F. Vol. 22 at 559-562 (Galvan); id. at 478 (Garcia); id. at 529 (Flores).

^{142/}Accord Dispensa, 847 F.2d at 220 ("Overwhelmingly more significant are those features that [the witness] failed to include in her description of the assailant, particularly his mustache, his general hirsuteness, and the striking tatoos. This pronounced incongruity between the assailant described and the suspect identified leads us to conclude that the identification was unreliable and should have been suppressed"); Jiminez v. State, 787 S.W.2d 516 (Tex. App.--El Paso 1990, no writ).

d. The Witness's Level of Certainty.

86. The Manson court includes a witness's level of certainty as a factor in assessing the reliability of witness identifications. 432 U.S. at 114-15. This factor has been greatly criticized. "Determinations of the reliability suggested by a witness's certainty after the use of suggestive procedures are complicated by the possibility that the certainty may reflect the corrupting effect of the suggestive procedures [themselves]". Rodriguez v. Young, 906 F.2d 1153, 1163 (7th Cir. 1990), cert. denied, 111 S. Ct. 698 (1991). Experts' studies refute the idea that there is a correlation between a witness's level of confidence in his identification and his or her accuracy in identification. McCabe, 22 Ind. L. Rev. at 910; see id. at 908 n.23 (citing Wells & Lindsay, How Do People Infer the Accuracy of Eyewitness Memory? Studies of Performance and of Metamemory Analysis). "In light of the experimental studies, the common but erroneous notion that there is a close relationship between the certainty of a witness and the accuracy of the identification should be expunged from our jurisprudence." McCabe, 22 Ind. L. Rev. at 911.^{143/}

87. In light of the remarkable changes in the witnesses' descriptions of the men at the scene, the group discussion at the lineup before most witnesses were able even to make any identifications, and other pretrial suggestive procedures by the police, any claims of "certainty" of the identifications at the trial are baseless. Moreover, the State's use of the mannequins to suggest "the right answer" to the State eyewitnesses before and during trial undercuts any "reliability" argument the State may assert.

^{143/}"It is a matter of common experience that once a witness has picked out the accused at the [pretrial confrontation], he is not likely to go back on his word later on." Manson, 432 U.S. at 130-31 (Marshall, J., dissenting).

e. The Time Between the Crime and the Confrontation.

88. Admittedly, the time between the crime and the lineup in the present case was relatively short. However, it is significant to note that "the greatest memory loss occurs within hours after an event." Manson, 432 U.S. at 131 (Marshall, J., dissenting). Further, the State witnesses were forced to attend the lineup at 6:00 a.m. on the morning following the shooting after having been interrogated at length. Arguably, having to make their identifications after being deprived of sleep may have affected the recollections of the State witnesses.^{144/}

89. In sum, the powerful, suggestive impact of the State's identification procedures far outweigh any indicia of reliability contained in the identifications by the State's so-called "eyewitness." To have allowed any of the State "eyewitnesses" to testify resulted in the denial of Guerra's due process rights under the Fifth and Fourteenth Amendments of the U.S. Constitution and Article 1, sections 13 and 19, of the Texas Constitution. Accordingly, this Court should grant Guerra a new trial.

3. The Court Should Adopt the ALI Guidelines for Pretrial Identification Procedures.

90. As noted by the Seventh Circuit, "Some form of control, even an exclusionary rule for showups, would be 'desirable.'" Rodriguez, 906 F.2d 1153, 1163 n.6 (citing United States ex rel. Kirby v. Sturges, 510 F.2d 397, 409 (7th Cir.), cert. denied,

^{144/}In any event, this factor becomes insignificant where all the other factors demonstrate a substantial likelihood of misidentification by each witness. See United States v. Watkins, 741 F.2d 692, 695 (5th Cir. 1984) ("The only factor supporting reliability is the short span of time between the robbery and the showup. . . Taken as a whole, the overall factors suggest a substantial likelihood of misidentification.").

421 U.S. 1016 (1975)); see also A.L.I., Model Code of Pre-arraignment Procedure, § 160 (1975). "[E]xclusion both protects the integrity of the truth-seeking function of the trial and discourages police use of needlessly inaccurate and ineffective investigatory methods." Manson, 432 U.S. at 127 (Marshall, J., dissenting).^{145/}

91. Guerra also urges this Court to hold that the State's failure to make visual or sound recordings during the identification procedures in this case violates Guerra's rights of due process under both the United States and Texas Constitutions.^{146/} In light of long existing inexpensive recording technology, it is shocking to note that audio and video technology has not been employed to ensure the fairness of pretrial identification procedures. In fact, police reports show that the State had audio and video equipment available, but that they used the equipment selectively. Compare App. 74, 111 (F267,

^{145/}At least one Texas court has recognized the significance of police deterrence, stating that "the purpose of the rule excluding evidence of unnecessarily suggestive and unreliable identification procedures is to deter police from "using a less reliable procedure where a more reliable procedure is available." Chaisson v. State, 761 S.W.2d 77, 81 (Tex. App.--Beaumont 1988, no writ) (citing Jackson v. State, 657 S.W.2d 123, 128 (Tex. Crim. App. 1983)). For the U.S. Supreme Court, police deterrence is no longer a chief consideration. See id. at 111. As a result, state enforcement agencies unchecked by an exclusionary rule, continually engage in procedures designed to deny defendants their due process rights. See Rodriguez, 906 F.2d at 1163 n.6. As the Seventh Circuit has stated, "we note, with distress, that we continue to review cases . . . [involving] showups [citations omitted] and other suggestive police procedures." Id.

^{146/}Members of the Manson Court expressly invited states to experiment in the development of rules governing pretrial identification procedures. Manson, 432 U.S. at 118 (Stevens J., concurring) ("Federal Constitution does not foreclose experimentation by states in development of such rules"); see also id. at 128-129 (Marshall, J., dissenting) ("It is therefore important to note that the state courts remain free, in interpreting state constitutions, to guard against the evil clearly identified by this case").

457) (witness statements audio taped), with App. 88 (F367) (reenactment not video taped), and App. 70 (F250) (videotapes taken at 4911 Rusk).

92. Guerra's request is consistent with recommended pretrial identification procedures by adopting the guidelines proposed by the American Law Institute Model Code of Pre-arraignment Procedure, which provide as follows in Section 160.4:

- (1) Voice, Photographic and Personal Identifications; General Requirements. A written record shall be made of any identification procedure conducted pursuant to section 160.1(1)(a), setting forth in detail the names and addresses of the persons sent, the circumstances of the procedures, and what took place at the procedure, and a record or reference to any record of any prior identification procedure and of any prior statements by any witness regarding the identification of the person who committed the crime under the investigation. A written record shall include any statements by or to any witness, unless those statements are contained in a sound record of the procedure.
- (2) Identification of persons in custody are pursuant to an order to appear. In addition to the written record required by subsection (1), a visual and sound record shall be made of any identification procedure involving hearing the voice of, or viewing a person in custody or sent pursuant to an order to appear, except such visual and sound record may not be made where
 - (a) confrontation is arranged pursuant to section 160.2(1)(a) [confrontation promptly after conviction of a crime];
 - (b) counsel is sent and consents to such admission; or
 - (c) the procedure takes place in the presence of a judicial officer.
- (3) In photographic identifications, the written required by subsection (1) shall have appended to it copies of any photographs or other representations made by a witness, with an indication of the sequence and circumstances under which they were reviewed, or reference to such photographs or other representation which would permit a reconstruction of a procedure. A [written or sound] record shall be made of any statements made by or to the witness in the course of the procedure.

VIII. GUERRA WAS DEPRIVED OF HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10, OF THE TEXAS CONSTITUTION

A. Guerra has the Constitutional Right to Receive Effective Assistance of Counsel

1. The Sixth Amendment guarantees criminal defendants the right to competent counsel. The Sixth Amendment's guarantee of competent counsel is binding upon the States through the Fourteenth Amendment.^{147/} Anders v. California, 386 U.S. 738, 742 (1967) (citing Gideon v. Wainwright, 372 U.S. 335 (1963)). This right is fundamental to our criminal justice system. Competent counsel for the defendant is critical to the adversarial system in order to produce just results and ensure that the trial is fair. Strickland v. Washington, 466 U.S. 668, 685 (1984).

^{147/}The Texas Constitution also guarantees a right to counsel. Tex. Const. art. I, § 10. Should the court be unwilling to find the constitutional support under the U.S. Constitution needed to save this innocent man from death, it can find Guerra's rights were violated under the Texas Constitution. See pp. 279-87, infra (discussing broader interpretation of the Texas Constitution).

2. The right to counsel includes the right to *effective* assistance of counsel.^{148/} Id. at 680 (emphasis added). The benchmark for judging an ineffective assistance claim is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Id.

3. Demonstrating ineffective assistance requires proving that (i) defense counsel's performance was deficient and (ii) that deficient performance prejudiced the defense. Id. at 687. In other words, the test requires that a defendant show that counsel's errors were so serious that they deprived the defendant of a fair trial, a trial whose result is *reliable*. Id.

1. The "Norm" for Professional Competence.

4. Strickland suggests that courts look to the "range of competence demanded of attorneys in criminal cases," or "reasonableness under prevailing professional norms" in determining whether counsel was effective. 466 U.S. at 687-88. "[T]he legal profession's maintenance of standards" is key to ensuring that "counsel will fulfill the role in the adversary process that the [Sixth] Amendment envisions." Id. at 688.

5. For guidance in establishing that "range of competence" by which counsel's performance should be judged, the U.S. Supreme Court and Texas courts have looked to the standards set by the American Bar Association. Strickland, 466 U.S. at 688; Nealy v.

^{148/}The Sixth Amendment requires the *assistance* of counsel, not merely the *provision* of counsel. United States v. Cronin, 466 U.S. 648, 654 (1984). "The special value of the right to the assistance of counsel explains why '[i]t has long been recognized that the right to counsel is the right to effective assistance of counsel.'" Id. (citing McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970)). Further, "[t]he Sixth Amendment mandates that the State bear the risk of Constitutionally deficient counsel." Kimmelman v. Morrison, 477 U.S. 365, 379 (1986).

Cabana, 764 F.2d 1173, 1178 (5th Cir. 1985) The most current ABA Standards for Criminal Justice (hereinafter "ABA Standards") urge defense counsel to conduct a prompt investigation of all avenues relevant to guilt-innocence and punishment.^{149/} The ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (hereinafter "ABA Guidelines") place an even stronger emphasis on prompt investigation of mitigating evidence for the punishment phase.^{150/} Although these guides are not to be rigidly applied when evaluating the adequacy of trial counsel's performance, they provide

^{149/}The ABA Standards provide:

(a) Defense counsel should conduct a prompt investigation of the circumstances of the case and to *explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction*. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty."

ABA Standards 4-4.1, 49 Crim. L. Rep. (BNA) 2017 (April 10, 1991) (emphasis added).

^{150/}The ABA Guidelines provide:

A. Counsel should conduct independent investigations relating to the guilt/innocence phase and to the penalty phase of a capital trial. Both investigations should begin immediately upon counsel's entry into the case and should be pursued expeditiously.

. . . .

B. *The investigation for preparation of the sentencing phase should be conducted regardless of any initial assertion by the client that mitigation is not to be offered*. This investigation should comprise efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor.

ABA Guidelines 11.4.1 (February 1989) (emphasis added).

a professional norm by which counsel's effectiveness can be judged. In this case trial counsel's performance fell far short of that norm.

2. Need to Show Prejudice Resulting from the Defense.

6. In United States v. Cronin, 466 U.S. 648 (1984), the Supreme Court recognized that in certain situations counsel may be rendered ineffective through actions of the State that deprive counsel of the opportunity to put the prosecution's case to a fair and adequate adversarial testing, thus rendering counsel ineffective. In such circumstances, unlike Strickland's test, the defendant need not prove prejudice; rather, prejudice is presumed. In addition to the due process violations arising from the State's repeated non-disclosures of material exculpatory evidence to the defense as described earlier herein, the failure of the State to make such disclosures rendered trial counsel ineffective. Counsel was prevented by the State from putting the prosecution's case to a true adversarial test, easing the State's burden to obtain a conviction. Id. at 658-62 & accompanying notes.

7. Even if prejudice were required, it is present here, and the Strickland standard is met.

8. To show prejudice against the defendant under the Strickland standard, "the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different." Id. at 694.^{151/} In the criminal trial's guilt phase, the "question is whether there is a reasonable

^{151/}A convicted defendant making an ineffective assistance claim must identify the counsel's acts or omissions that are alleged not to have been the result of reasonable
(continued...)

probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt." Id. at 695. In the punishment phase, "the question is whether there is a reasonable probability that, absent the errors, the sentencer -- including an appellate court, to the extent it independently reweighs the evidence -- would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Id. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." Id. at 694.

9. The defendant does *not* have to show that the "deficient conduct *more likely than not* altered the outcome of the case." Id. at 693 (emphasis added).

10. In making a determination of ineffectiveness, the court must look to the *totality of the evidence*. Id. at 695. "Moreover, a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming support." Id. at 696. These principles are not mechanical rules -- they are guides for a decisionmaking process whose "ultimate focus . . . must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. The result is unreliable if there was a breakdown in the adversarial process. Id.

11. In Guerra's case, the facts and the totality of the evidence indicate the adversarial process indeed broke down due the ineffective assistance of counsel. At virtually every stage in his capital murder trial, Guerra's lawyers failed to provide representation that meets with the constitutionally guaranteed minimum effective

¹⁵¹(...continued)
professional judgment and thereby resulted in ineffective assistance. Strickland, 466 U.S. at 690.

assistance of counsel, often because of actions by the State that deprived Guerra's lawyers of crucial exculpatory evidence. But for their errors, Guerra would have been neither convicted nor sentenced to death. He was, therefore, deprived of his constitutional right to effective assistance of counsel, and his conviction must be reversed.

12. The following facts outline the acts and omissions of Guerra's attorneys amounting to ineffective assistance and indicate that he is entitled to a new trial.

B. Guerra's Counsel Rendered Ineffective Assistance Throughout the Entire Trial Process

13. Defense counsel, while making sincere efforts, failed to adequately investigate and prepare Guerra's case, in large part due to improper actions by the police and prosecutors. Counsel failed to:

- utilize the very limited time available to ascertain the facts;
- hire an investigator promptly to locate crucial witnesses;
- use the court-appointed investigator effectively;
- interview important witnesses;
- recreate the scene to determine the viability of the witnesses' stories and the impact of the physical evidence;
- hire expert witnesses;
- investigate and attack the lineup and other identification procedures;
- object to improper comments by the prosecution during *voir dire*;

- raise numerous issues during the guilt-innocence phase (including the contradiction between the witness testimony and the physical evidence concerning Guerra's location when Harris was shot); and
- prepare for and present mitigating evidence during the punishment stage.

These failures are not the result of any reasonable trial strategy. In sum, counsel failed to even try to obtain available evidence that would have demonstrated the inconsistencies in the State's case and would have proven Guerra's innocence.

1. Inadequate Pretrial Investigation and Preparation for the Guilt-Innocence Phase.

14. Defense counsel failed to conduct a prompt and adequate pretrial investigation (personally or through the court-appointed investigator) and failed to analyze the State's evidence to ascertain the inherent inconsistencies between and among the State's witnesses and the physical evidence.

15. No strategic considerations account for the failure to promptly find witnesses, talk to those identified by the prosecution, and spend the time necessary to discover and expose the incredible deficiencies and inconsistencies in the State's investigation. Much of this can be explained by the State's careful tailoring of witness statements to eliminate certain exculpatory information and by other conduct, described elsewhere, designed to prevent defense counsel from discovering helpful evidence.^{152/}

^{152/}See pp. 58-65, *supra*, describing *inter alia*, police withholding and concealment of exculpatory evidence and witness intimidation. It is difficult to blame counsel for failing to investigate leads that the State deliberately conceals. The State's abuse of its role as justice seeker undoubtedly hindered the ability of Guerra's attorneys to effectively defend their client.

16. By July 15, 1982, the trial court had appointed two attorneys to defend Guerra. Tr. 3, 355. Jury selection was scheduled to begin on August 30, 1982. Id. at 8. Thus, Guerra's lawyers had at best *6½ weeks* to prepare the defense in this much anticipated and highly publicized capital murder trial at which Guerra's life was at stake.^{153/}

17. Unfortunately, Guerra's counsel did not face the best of circumstances when preparing Guerra's defense. The senior attorney had another trial that began on August 2, 1982. Id. at 24. At an evidentiary hearing, Guerra will show that that trial lasted approximately four or five days. That same attorney had a second trial set to begin on August 16, 1982. Id. Although the second trial apparently never occurred, the first case's trial and the other setting undoubtedly required weeks of work, preventing Guerra's lead attorney from focusing on Guerra's defense and necessary investigation. This left barely a month, at best, to prepare for Guerra's capital murder trial.

18. In the meantime, Guerra's junior attorney was in no position to begin investigating on his own. At the time of trial, Guerra's junior attorney had only practiced law for three years and had *never* tried a capital case. He understandably viewed his role as a subordinate one that required guidance from co-counsel.

19. Indeed, the State's file reveals that defense counsel did not review the police files until August 19, more than *a month* after their appointments and only *11 days* before

^{153/}For a detailed account of the publicity and notoriety surrounding this trial and the effect these factors had on the trial, see pp. 110-26, supra.

trial began. App. 141 (F690). Nor did they receive the exculpatory trace metal test results until that day. Id.

20. Defense counsel did not file a motion for the appointment of an investigator until Friday, August 13, 1982, Tr. 45, almost a month after the appointments. The trial court granted this motion on Thursday, August 19, 1982, id. at 46, only 11 days before trial.

21. Guerra's counsel filed a Motion for Continuance on August 13, 1982. Id. at 24-26. The reasons as stated in the motion for needing the continuance were as follows: (i) the August 2, 1982 trial; (ii) the second trial setting of August 16, 1982; (iii) the numerous witnesses involved in the case; (iv) the shortage of time between the date on which counsel had been appointed and the start of trial. Id. The motion insisted that "[t]o force defense counsel to go to trial within six weeks after he has been appointed could and would work to the detriment of the Defendant." Id. at 24. By August 19 Guerra's lawyers had decided not to seek a ruling on the motion. S.F. Vol. 1 at 20. The resulting shortage of time made imperative the need for a prompt and intensive investigation by counsel and extensive use of an investigator and experts.

22. Jury selection began as scheduled on August 30. See S.F. Vol. 2 at 4. The jury was impaneled on October 1. See S.F. Vol. 19 at 3567. The State announced ready to begin its case-in-chief on October 4, 1982, see S.F. Vol. 20 at 3-4, but the defense filed another motion for continuance based on the recent receipt of information "that one or two witnesses exist," Tr. 101-03. The Court denied the motion, but indicated the defense could use an investigator to assist counsel in contacting witnesses. S.F. Vol. 20 at 3.

23. At an evidentiary hearing, Guerra will show that his trial counsel apparently hired an investigator, but used him sparingly to question only three or four witnesses due to financial constraints. Moreover, Guerra can find no indication of any lawyer follow-up of those witnesses or efforts to contact a number of other crucial witnesses.

24. A thorough investigation and extensive preparation were essential in order to effectively prepare and defend Guerra against this capital murder charge. As confirmed by counsel's belated second motion for continuance filed after jury selection,^{154/} the short time between the date of the crime and the start of trial in August (6½ weeks) prevented counsel from completing all the investigation required to even approach adequate trial preparation.

25. Guerra will prove that if counsel had thoroughly investigated, they would have found additional witnesses who support Guerra's account of the shooting. A competent crime scene investigator with adequate defense counsel guidance would have exposed the remarkable deficiencies in the State's investigation of the case and its witnesses.

2. Failure to Consult and Retain Other Experts and to Prepare.

26. The State presented the testimony from several Police Department forensic experts to introduce circumstantial evidence supporting its theory of the case. Numerous items of physical evidence were available for review (before and during trial), yet defense counsel never hired -- and never sought -- their own independent experts to evaluate this

^{154/}As the motion inferred, defense counsel was unable to engage in meaningful investigation during jury selection, presumably because they needed to be in court day after day and other matters needed some attention as well.

material. This omission is glaring and was undoubtedly prejudicial to Guerra. For example,

- A ballistics and firearms expert would have examined the location of the blood spatters, bullets, and shell casings to determine the location of the shooter when he was shot and thereby refuted the testimony of every so-called "eyewitness."
- A trace metal expert could have determined that (i) the pattern on Carrasco's left hand was consistent with the pattern left by the murder weapon, thereby suggesting that Jose Jr.'s description of a left-handed shooter might have been referring to Carrasco, and (ii) the murder weapon leaves a pattern much sooner than the 2½ minutes claimed by the State's expert.
- A fingerprint expert might have determined (i) whether the print found on the police car belonged to Guerra and thus verified whether Guerra was closer to the driver door or the front of the car, and (ii) whether the shooter had left a print on Harris's holster when Harris's gun was taken.
- A chemist could have determined whether nitrite was present on the right rear shoulder of Guerra's shirt, which would have substantiated Guerra's claim that he heard the sound of Carrasco's gun over his right shoulder.
- A lighting expert would have examined the amount of street light close to cars where Carrasco and Guerra were located to determine how easily witnesses could discern clothing color, hair length and color, and movements.^{155/}

It appears that due to apparent financial constraints, defense counsel never consulted with *any* experts to evaluate the possibilities of rebutting or at least questioning the State's assertions. Defense counsel therefore had *no independent* evidence to use or to help

^{155/}Guerra will present expert testimony at an evidentiary hearing, proving the veracity of these allegations.

impeach the State's experts, all of whom (with only one minor exception) were *Police Department officials or employees*. S.F. Vol. 20 at 61, 106, 116; Vol. 21 at 158, 179.

27. Defense counsel has a duty to conduct an independent investigation into the facts.^{156/} Counsel's duty to investigate may not be "sloughed off to an investigator. . . [i]t is counsel's responsibility." Flores v. State, 576 S.W.2d 632, 634 (Tex. Crim. App. 1978).

28. Here, neither counsel nor an investigator made an adequate investigation of Guerra's case. As in Baldwin, there is no way that defense counsel could have provided effective assistance to Guerra since there was no reasonably substantial investigation. No reasonable trial strategy would leave out independent expert consultation in preparation of the defense to a case about the shooting of a police officer.^{157/}

^{156/}Butler v. State, 716 S.W.2d 48, 54 (Tex. Crim. App. 1986) (citing Ex parte Ewing, 570 S.W.2d 941, 947 (Tex. Crim. App. 1978)), see also Bell v. Watkins, 692 F.2d 999, 1009 (5th Cir. 1982), cert. denied sub nom. Bell v. Thigpen, 464 U.S. 843 (1983); Baldwin v. Maggio, 704 F.2d 1325, 1332-33 (5th Cir. 1983), cert. denied, 467 U.S. 1220 (1984) (unless counsel undertakes "a reasonably substantial, independent investigation into the circumstances and the law for which potential defenses may be derived," *he cannot provide effective assistance*) (emphasis added).

^{157/}Guerra was denied access to evidence not introduced at trial at the hearing on his Motion for Discovery on July 28, 1992. Many crucial items have not been examined to date. For example, Guerra cannot

- (i) test-fire the murder weapon to determine (a) how quickly it leaves a trace metal pattern when held tightly enough to fire it and (b) how far and in what direction its shell casings are thrown, which would allow more accurate placement of the shooter,
- (ii) attempt to computer-enhance the smudged fingerprint from the hood of the police car, which would place Guerra's location near the time of the shooting and confirm that he could not have fired the shots at Harris from the east, and

(continued...)

29. Defense counsel's failure to request funds for expert assistance could have had no strategic basis. This lack of pretrial preparation caused Guerra to receive ineffective assistance of counsel.

3. Failure to Attack the Lineup and Other Prosecution Pretrial Investigative Techniques.

30. As Guerra will show at an evidentiary hearing, the lineup that gave rise to several witnesses' purported identifications of Guerra as the shooter was grossly suggestive. The suggestive lineup caused confused witnesses to adopt the State's "party line" and grievously prejudiced Guerra. See pp. 166-83, supra. The police and prosecutors' subsequent investigation by the use of the July 22 group "walk-through" and the pretrial mannequin viewing were also highly and unfairly suggestive.

31. To camouflage its use of improper procedures, the police inserted into several witness statements lineup descriptions carefully phrased to leave a reader with the impression that proper procedures had been followed^{158/} and that all potentially relevant witnesses had participated in the July 22 walk-through. Defense counsel failed to

^{157/}(...continued)

(iii) test the back of Guerra's shirt for gunpowder, the presence of which, though only remotely likely after 10 years, would, if nitrite is found, demonstrate that Carrasco fired the gun near Guerra's shoulder, as Guerra has claimed.

Guerra again renews this request since independent experts' analysis of such material is crucial to a complete evaluation of the prejudice worked on Guerra. Moreover, the importance of the absence of the defense experts at the time of the original trial is heightened by the court's denial of this request.

^{158/}See note 92, supra.

investigate the lineup and walk-through and thus failed to learn of the wrongdoing and to attack their constitutionality either at a preliminary hearing or at trial.

32. Even though certain defects in investigative procedures were hidden, defense counsel nevertheless should have inquired in detail about the procedures from cooperating witnesses. See, e.g., S.F. Vol. 23 at 753 (Heredia testimony about the lineup problems). On learning at trial that the police used improperly suggestive identification techniques, it was incumbent upon trial counsel to seek a Wade-Gilbert hearing. Counsel's failure to request such a hearing amounted to ineffective assistance of counsel in violation of Guerra's Sixth Amendment rights. Cronic, 466 U.S. 648; Rodriguez v. Young, 906 F.2d 1153, 1160 (7th Cir. 1990), cert. denied, 111 S. Ct. 698 (1991) (defense counsel's failure to move to suppress identification testimony was objectively unreasonable and outside the wide range of professional competent assistance).

33. The result of not raising the issue was a possible waiver of Guerra's federal constitutional rights and conceivably his state constitutional rights as well.^{159/} "It is inconceivable that such an omission can be attributed to trial strategy. '[A]bdication of a basic threshold responsibility . . . is the antithesis of a considered strategy.'" Sanders v. State, 715 S.W.2d 771, 775 (Tex. App.--Tyler 1986 no pet.) (citing Ex parte Dunham, 650 S.W.2d 825, 827 (Tex. Crim. App. 1983)).^{160/}

^{159/}See pp. 290-93, infra, for why this failure should not waive Guerra's state constitutional rights.

^{160/}Although Sanders involved the failure to attack the voluntariness of the defendant's confession, it is analogous to the failure to attack the suggestiveness of the lineup. The State contended in Sanders that defense counsel's strategy had been to attack the
(continued...)

34. Defense counsel had a "threshold responsibility" -- especially in a highly publicized and emotionally charged case such as this -- to determine whether the lineup had been conducted improperly. If counsel had requested such a hearing and had questioned the State's witnesses, the identifications at the lineup and subsequent investigative procedures almost certainly would have been suppressed at trial. See pp. 163-92, supra. Without the prosecution being able to assert in closing in its rebuttal that "five" witnesses had identified Guerra as the shooter, see p. 166-77, supra, no conviction would have occurred, since the physical evidence, the initial statements of the State's witnesses, *and* two defense eyewitnesses pointed to Carrasco as the gunman.

35. Thus, defense counsel's failure to investigate the lineup and other investigative procedures was not only prejudicial but probably critical.

4. Acts and Omissions During Voir Dire.

36. Defense counsel failed to object when the prosecutors repeatedly misstated the law during *voir dire* by telling people who became jurors: (i) that Guerra's status as an illegal alien was relevant at the punishment stage, see pp. 126-28, supra, with defense counsel objecting only once, see S.F. Vol. 19 at 3552; (ii) that police officers are entitled to more credibility than other witnesses, see p. 68, supra; and (iii) that the length of prison term actually served by a person given a life sentence is determined by a formula

¹⁶⁰(...continued)

voluntariness of the confession at trial. 715 S.W.2d at 775 n.10. But the court noted that defense counsel failed to request a charge on the issue. Id. (citing Burnworth v. State, 698 S.W.2d 686, 690 (Tex. App.--Tyler 1985, pet. ref'd)). Moreover, the defense could have raised the issue both at a preliminary hearing and at trial. Sanders, 715 S.W.2d at 775, n.10 (citing Harris v. State, 465 S.W.2d 175, 177 (Tex. Crim. App. 1971)).

used by the Parole Board, see pp. 69-70, supra.^{161/} No reasonable trial strategy envisions defense counsel's acquiescence to these tactics.

37. "To pass over the admission of prejudicial and *arguably* inadmissible evidence may be strategic; to pass over the admission of prejudicial and *clearly inadmissible* evidence . . . has no strategic value. Lyons v. McCotter, 770 F.2d 529, 534 (5th Cir. 1985) (emphasis added). The same must be true of prejudicial and inappropriate comments during *voir dire*. Since there is no strategic reason for defense counsel's failure to object to these prejudicial statements, that failure amounts to ineffective assistance.

5. Defense Counsel's Acts and Omissions During the Trial's Guilt-Innocence Phase Resulted in Ineffective Assistance.

a. Failure to Mention the Impossibility of Someone in Guerra's Location at the Scene Could Have Been the Shooter.

38. The physical evidence unequivocally demonstrated that the shooter, when he fired at Harris, was standing *east* of and close to Harris. S.F. Vol. 20 at 73-74, 87; Vol. 23 at 685-86. *All* the State's witnesses placed Guerra *south or west* of Harris. See note 29, supra. Defense counsel *never once* mentioned this contradiction.

b. In-Court Identifications Were Not Attacked.

39. Although Guerra's trial counsel had an indication of the State's use of improper identification and investigative procedures, they failed to request a pretrial hearing at which they could expose the unreliability of the purported eyewitness

^{161/}Guerra's attorneys did not object, but Guerra submits that separately and in totality he was denied a fair trial, objection to which cannot be waived. See pp. 277-79, 290-93, infra.

identifications.^{162/} Furthermore, defense counsel failed to object to the in-court identifications of Guerra by State witnesses. This does not illustrate a reasonable trial strategy.

40. Had defense counsel sought to suppress the in-court "eyewitness" identifications on the basis that the State's pretrial identification procedures were impermissibly suggestive, the State's case would have collapsed. Without the in-court identifications of Guerra, the State had no evidence on which to base a conviction. Nevertheless, defense counsel failed to request a Wade-Gilbert hearing, which would have demonstrated the inherent unreliability of the so-called eyewitness's testimony and identifications.

c. Omissions in Cross-Examination of Fingerprint Expert.

41. Trial counsel also failed to bring out crucial exculpatory evidence on cross-examination of fingerprint examiner L.L. Cooper. As revealed in his report, App. 89 (F368), Cooper discovered no fingerprints on the murder weapon matching Guerra's fingerprints. Yet defense counsel inexplicably failed to cross-examine Cooper on this critical point. See S.F. Vol. 20 at 116. As a result, the jury was not provided with clearly

^{162/}The key to the State's case against Guerra was the testimony of so-called "eyewitnesses" that, albeit in an inconsistent and misleading manner, identified Guerra as the shooter. Defense counsel knew that Guerra had been placed in a lineup without counsel present. At this lineup some witnesses identified Guerra. Defense counsel knew that the prosecutorial team of lawyers and police (i) went to the crime scene; and (ii) walked through (i.e., reenacted) the events of the shooting as police interpreted the events -- all in the presence of the group of witnesses. Defense counsel also knew that most of the State's witnesses had been shown the mannequins of Carrasco and Guerra prior to trial, thus giving these witnesses ample opportunity to examine their appearance. For a detailed account of the specific problems with this testimony, see pp. 161-62, 163-83, supra. For a detailed account of specific problems with the line-up, see pp. 155-60, supra.

exculpatory evidence that was material to Guerra's defense. No reasonable trial strategy would omit bringing out this critical evidence.

6. **Defense Counsel's Conduct During the Penalty Phase Resulted in Ineffective Assistance.**

42. In the penalty phase of the trial, the State has the burden to show beyond a reasonable doubt that (i) the defendant committed the crime deliberately and with the reasonable expectation that death would result, and (ii) *there is a probability* that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. Compare Tr. 331 with Tex. Code Crim. P. art. 37.071(b). The defendant then is expected to controvert this proof by adducing mitigating evidence.

43. The *entire defense case* at the punishment hearing consisted of the following testimony by Guerra's mother:

Q: Tell the jury your name, please.

A: Francisca Guerra de Aldape.

Q: And are you related to Ricardo Aldape Guerra?

A: He is my son.

Q: Where do you live, Mrs. Guerra?

A: Monterrey

Q: And when did you come to the United States?

A: Right now.

Q: How long have you been here?

A: A month; that is, the 12th of September. I have been here a month.

Q: How many children do you have?

A: Four.

Q: Do you know when your son, Ricardo Aldape Guerra, came to the United States?

A: Yes.

Q: When?

A: In May.

Q: Of this year?

A: Yes.

Q: How old a man is he?

A: Twenty years.

Q: Prior to his coming to the United States in May of 1982, had he come here previously?

A: Never.

Q: Where did he live when he lived in Mexico?

A: Right now since I have been here I have been living there one year, and I have lived at Caracas, 410 Caracas San Nicolas de los Garza Nuevo, District of Monterrey.

Q: Where did your son live when he lived in Mexico?

A: With us.

Q: Had he ever been convicted of any felonies?

A: Never. Never.

Q: Are you here in a visa?

A: Yes. We have a permit, a permit. Here it is for you to see.

Q: And when does your permit expire?

A: It says right here the 31st of October.

S.F. Vol. 26 at 158-60. The defense put on no other witnesses.

44. The prosecutors used this paucity of proof in closing argument with piercing effectiveness. Mr. Bax wondered rhetorically how to interpret defense counsel's failure to ask Guerra's mother what her son had been like growing up. S.F. Vol. 27 at 177. Mr. Moen was more biting. Pointing out that defense counsel had offered no evidence from anyone about Guerra's character, he noted that many people could have provided insight

on Guerra's reputation for being peaceful. Id. at 200-03. He then argued that the lack of evidence left the jurors with no alternative but an affirmative finding on future dangerousness, id. at 203.

45. The Supreme Court has held that the adversarial nature of the punishment phase of a capital case is sufficiently similar to the guilt-innocence phase that defense counsel's role in the two proceedings is similar. Therefore, ineffective assistance of counsel claims arising out of either phase are governed by the same standards. Burger v. Kemp, 107 S. Ct. 3114, 3123 (1987); Strickland v. Washington, 466 U.S. 668, 686-87 (1984). The Eighth Amendment mandates that the punishment phase of a capital proceeding focus on the defendant as a "uniquely individual human being[]" and allow the jury to make a reasoned decision about whether death is an appropriate sentence. Woodson v. North Carolina, 428 U.S. 280, 304 (1975). This individualized assessment of the appropriate sentence is to be made through the jury's consideration of the particular characteristics of the defendant and the circumstances of the crime. Penry v. Lynaugh, 109 S. Ct. 2934, 2946 (1989); Eddings v. Oklahoma, 455 U.S. 104, 112 (1982); Gregg v. Georgia, 428 U.S. 153, 198 (1976). To do this, the jury must hear facts about the defendant's background, and defense counsel must, of course, have knowledge of those facts in order to present them.

46. It follows, then, that just as defense counsel has a duty to conduct a reasonable investigation of the facts of the crime, a reasonable investigation must also be conducted into the defendant's background for possible mitigating evidence. Middleton v. Dugger, 849 F.2d 491, 493 (11th Cir. 1988). It would be a violation of the Sixth

Amendment standard of effective assistance under Strickland for counsel to fail to make any investigation relevant to the punishment phase. Knighton v. Maggio, 740 F.2d 1344, 1350 (5th Cir.), cert. denied, 105 S. Ct. 306 (1984). "[D]efense counsel must make a *significant effort*, based on reasonable investigation and logical argument, to ably present the defendant's fate to the jury and to focus the attention of the jury on any mitigating factors. . . . [C]ounsel may not treat the sentencing phase as nothing more than a mere postscript to the trial." Kubat v. Thieret, 867 F.2d 351, 369 (7th Cir. 1989).

47. Capital sentencing is in a category apart from all other sentencing proceedings due to the qualitative difference in the penalty that may be imposed. See Turner v. Murray, 476 U.S. 28, 35 (1986) (qualitative difference of death penalty requires greater scrutiny). Therefore, "[i]n a capital case the attorney's duty to investigate all possible lines of defense is strictly observed." Osborn v. Shillinger, 861 F.2d 612, 627 (10th Cir. 1988) (citing Coleman v. Brown, 802 F.2d 1227, 1233 (10th Cir. 1986), cert. denied, 482 U.S. 909 (1987)). When assessing counsel's performance, the seriousness of the death penalty is a factor that must always be considered. See Magill v. Dugger, 824 F.2d 879, 886 (11th Cir. 1987) (seriousness of charge is factor to be considered in assessing counsel's performance).

a. **Defense Counsel Failed to Investigate Guerra's Background for the Punishment Phase.**

48. If defense counsel had engaged in only minimal investigation into Guerra's background, they would have found a wealth of strong, favorable evidence. At a hearing, Guerra will show the following through sworn testimony from numerous witnesses:

49. Guerra had just turned 20 when he came to the United States in May 1982. He was born in Monterrey, Mexico, on April 3, 1962. His father stapled cardboard boxes together on the assembly line at a local carton factory for 33 years. His mother was a housewife. Guerra lived with his parents until he left Mexico in early 1982 looking for work.

50. Guerra is the youngest of four children, all of whom remain close to their parents in Monterrey. His family, although very poor, is close-knit and supportive. His parents are still married. His family regularly makes the arduous trek from Monterrey by van to visit him on Death Row.

51. Guerra attended primary and secondary school in Monterrey, but dropped out at the age of 17 to take a job at the factory with his father. He worked at a variety of tasks at the factory, from loading cartons to running errands. Guerra worked full time and earned roughly \$35 per week. He turned his entire paycheck over to his mother every week; she, in turn, would provide him with an allowance and use the rest of the money to purchase food and clothing for Guerra and the other children.

52. Guerra was a valued employee at the carton factory for two and one-half (2½) years. An avid soccer player, he starred on the factory's soccer team. Yet Ricardo longed for a better job, one which would allow him to support his parents in their old age. When two of his friends told him that they were going to the United States to find work, Guerra spontaneously decided that he would accompany them.

53. After he arrived in Houston, Guerra worked installing sheetrock for a subcontractor. He was paid little by American standards, only \$3.00 per hour, but still

managed to save some money which he intended to send back to his mother in Monterrey. Indeed, when he was arrested for the capital murder of Officer Harris, his property consisted of \$14.00 cash and a money order made out to his mother in the amount of \$300.00 -- his total savings after two months of work.

54. Guerra had never been arrested, charged, or convicted with any crime before the incident in this case. Had defense counsel requested documentation from the Government of Mexico, they could have introduced official proof of his clean criminal record. Defense counsel's failure even to request that documentation was a violation of the ABA Standards. See note 149, supra.

55. An investigation also would have led counsel through Guerra's parents to a psychologist who tested Guerra when he was 16 and who would have testified that he was a follower, not a leader, and that she found no indication that he possessed criminal or violent tendencies. In his home town of Monterrey, he was known as a quiet, calm man who helped support his parents with the meager wages he earned at the factory. His friends remember him as a gifted soccer player, whose tolerance for strict discipline exceeded that of his teammates. His teachers remember him as a quiet boy who respected authority and interacted well with other children.

56. Even the most cursory investigation of Guerra's background and character, therefore, would have uncovered a plethora of mitigating evidence in the testimony of his friends, teachers, employers, and family.

57. Defense counsel made no effort to learn any facts about Guerra's character and present these facts to the jury. In fairness, adequate investigation into and

presentation of this evidence would have required traveling to Monterrey and bringing witnesses to trial, which required funds that the trial court might not have authorized. But such a request should have been made.

b. This Failure to Investigate and Present Mitigating Evidence Constituted Ineffective Assistance of Counsel.

58. "It should be beyond cavil that an attorney who fails altogether to make *any* preparations for the penalty phase of a capital murder trial deprives his client of reasonably effective assistance of counsel by any objective standard of reasonableness." Blake v. Kemp, 758 F.2d 523, 533 (11th Cir.), cert. denied, 474 U.S. 998 (1985) (emphasis added). Here, counsel's failure to present the readily available mitigating evidence described in the previous nine paragraphs reflects a failure to interview Guerra about his background or other potential mitigating evidence. Defense counsel also failed to conduct a social history interview of Guerra. A social history interview is fundamental to developing mitigating evidence and should be conducted by defense counsel within 24 hours of entering the case. ABA Guideline 11.4.1(D)(2).

59. Other courts have held that a failure to investigate and present mitigating character evidence falls short of the Sixth Amendment guarantee of effective assistance of counsel. See, e.g., Blake v. Kemp, 758 F.2d 523 (11th Cir.), cert. denied, 474 U.S. 998 (1985);^{163/} King v. Strickland, 748 F.2d 1462 (11th Cir. 1984), cert. denied, 471 U.S. 1016

^{163/}The type of mitigating evidence that was available in Blake, and was presented at the petitioner's habeas hearing, was the testimony of four persons who had known the petitioner to be "a man who was respectful toward others, who generally got along well with people and who gladly offered to help whenever anyone needed something." Martinez v. Collins, Slip Op. at 534. There were others who would have testified on
(continued...)

(1985) (counsel's failure to present available character witnesses, combined with his weak closing argument, constituted ineffective assistance of counsel); Martinez v. Collins, 88-0961R-01 Slip Op. (W.D. Tex. Nov. 6, 1991).^{164/}

60. Clearly, counsel's failure here to seek out mitigating evidence was ineffective assistance because strong mitigating evidence would have been discovered. The failure to seek out and interview potential witnesses is ineffective "where the result is that any viable defense available to the accused is not advanced." Butler v. State, 716 S.W.2d 48, 54 (Tex. Crim. App. 1986) (citing Ex parte Lilly, 656 S.W.2d 490 (Tex. Crim. App. 1983)). It is ineffective assistance of defense counsel to fail to investigate sources of evidence that may be beneficial to the defense. Jones v. Thigpen, 555 F. Supp. 870, 879 (S.D. Miss. 1983), aff'd, 788 F.2d 1103 (5th Cir. 1986).

61. In a capital sentencing proceeding, "the jury is called upon to make a 'highly subjective, "unique individualized judgment regarding the punishment that a particular person deserves.'" Turner v. Murray, 476 U.S. 28, 33-34 (1986) (citation omitted). It is essential, therefore, that the sentencer consider those "compassionate or mitigating factors stemming from the diverse frailties of humankind." Woodson v. North Carolina, 428 U.S.

^{163/}(...continued)

Blake's behalf but they had died since the time of the trial. This is the same type of mitigating evidence that could have been presented at Guerra's trial had counsel conducted an investigation.

^{164/}In Martinez, slip op., an unpublished decision which is nevertheless instructive, the court applied Strickland v. Washington, 466 U.S. 668 (1984), and concluded that trial counsel's performance was deficient, in part because of counsel's failure to investigate and present evidence from family members regarding the defendant's good character traits. The district court found that trial counsel failed to interview family members in preparation for the sentencing phase of the defendant's capital murder trial.

280, 304 (1975). Due to counsel's ineffective assistance at the punishment phase, the jury was prevented from rendering an individualized decision because their attention was not focused on the particular characteristics of this defendant. "Evidence tending to show [Guerra's] good character might well have been beneficial to the defense." Harris v. Dugger, 874 F.2d 756, 763 (11th Cir. 1989). "Testimony about the appellant's good character constituted the only means of showing that [Guerra] was perhaps less reprehensible than the facts of the murder indicated." Id. at 764. Where no mitigating evidence is introduced, the jury is provided with no "counterweight to the evidence of bad character which was in fact received." Blake, 758 F.2d at 535.

c. Defense Counsel's Failure to Investigate Mitigating Facts Was Not the Result of an Informed Strategic Decision and, Therefore, Was Unreasonable.

62. In determining whether counsel was ineffective for failing to put on mitigating evidence:

First, it must be determined whether a *reasonable investigation* should have uncovered such mitigating evidence. If so, then a determination must be made whether the failure to put this evidence before the jury was a *tactical choice* by trial counsel. If, however, the failure to present the mitigating evidence was an oversight, and not a tactical decision, then a *harmlessness review* must be made to determine if there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

Middleton, 849 F.2d 491, 493 (11th Cir. 1988) (emphasis in original).

63. The State may not credibly argue that a given course of conduct by defense counsel was within the realm of trial strategy unless counsel made the necessary legal and factual investigation that could enable him to make an informed, rational decision. Ex

parte Welborn, 785 S.W.2d 391, 393 (Tex. Crim. App. 1990); Bouchillon v. Collins, 907 F.2d 589, 597 (5th Cir. 1990).^{165/} An attorney is not necessarily required to investigate every evidentiary lead; a decision to limit the investigation "may be reasonable under the circumstances." Harris v. Dugger, 874 F.2d 756, 763 (11th Cir. 1989). "However, such decisions must flow from an informed judgment." Id.

64. It is inconceivable that Guerra's defense counsel could claim it was a trial tactic not to conduct even a cursory investigation for mitigating evidence to use in the punishment phase. No reasonable professional judgment could support such a decision -- particularly when the trial court has approved defense counsel's request for an investigator. Any decision made by Guerra's defense counsel not to investigate and not to put on mitigating evidence was unreasonable because counsel did not possess enough facts to make an informed, strategic choice not to investigate mitigating evidence.^{166/}

^{165/}In Baldwin v. Maggio, 704 F.2d 1325 (5th Cir. 1983), cert. denied, 467 U.S. 1220 (1984), the court stated that:

[The] obligation to investigate, in the context of a capital sentencing proceeding, requires defense counsel to undertake a reasonably thorough pretrial inquiry into the defenses which might possibly be offered in mitigation of punishment, and to ground the strategic selection among those potential defenses on an informed, professional evaluation of their relative prospects for success. . . . [W]hile "counsel for a criminal defendant is not required to pursue every path until it bears fruit or until all conceivable hope withers," neither is effective assistance given by a decision, tantamount to an abdication of the defendant's cause, not to investigate potential defenses at all.

Id. at 1332-33 (citations omitted) (emphasis added).

^{166/}The failure to interview witnesses or discover readily available mitigating evidence is an error in trial preparation, not trial strategy. Kenley v. Armontrout, 937 F.2d 1298, 1304 (8th Cir.), cert. denied sub nom. Deleo v. Kentucky, 112 S. Ct. 431 (1991).
(continued...)

65. These omissions are patently *not* harmless. Indeed, the facts in this case supporting a finding of prejudice are similar to the facts that supported the finding of prejudice in Ex parte Guzman, 730 S.W.2d 724 (Tex. Crim. App. 1987). As in Guzmon, the jury's finding of Guerra's future dangerousness is only weakly supported by the evidence. Conclusions only weakly supported by the evidence are more likely to have been affected by the errors. Strickland, 466 U.S. at 696. Guerra was barely 20 years old at the time of the offense. Although he did not have a wife or children, Guerra was helping support his family in Mexico. This fact could have been shown by Guerra's mother and corroborated by the money order made out to her that was found on Guerra at the time of his arrest. App. 82 (F333). Guerra had not been in the United States long enough to establish an "employment history" here, but, as we will show, he did have such a history in Mexico. Moreover, in Guzmon, the court emphasized the defendant's lack of a prior criminal record, 730 S.W.2d at 735, and, as we will show, Guerra here similarly had no previous criminal record.

66. The only evidence that the State offered to support a finding of future dangerousness was a prior *uncharged and unadjudicated* robbery in which Guerra was allegedly involved. If defense counsel, before trial, had questioned the eyewitnesses to that offense, he would have discovered fundamental flaws in their recollections that would

¹⁶⁶(...continued)

Consequently, any choice that flows "from lack of diligence in preparation and investigation is not protected by the presumption in favor of counsel." Id. Where the failure to investigate was due to a lack of thoroughness and preparation, "[c]ounsel can hardly be said to have made a strategic choice against pursuing a certain line of investigation when s/he has not yet obtained the facts on which such a decision could be made." Id. at 1308.

have called into question the only evidence of future dangerousness offered by the State during the punishment phase.^{167/} Further, had the jury known of Guerra's prior good conduct and had stronger evidence been offered regarding his clean criminal record, it would have tipped the scale away from a death sentence and cast additional doubt on whether he had been involved in the incident on which the State was focused.

^{167/}The only evidence offered by the State during the punishment phase was testimony by (i) two of the four witnesses to a store robbery, Robert Dawson and Steve Earhardt, one of whom (Earhardt) claimed that Guerra was one of the robbers, S.F. Vol. 26 at 116-17 (along with Carrasco and Enrique Luna, *id.* at 102-03, 115) and (ii) a police expert that Guerra's fingerprint was found on a canister of adhesive tape used to tie the hands of the store employees and customers during the robbery, *id.* at 149; *see id.* at 82-83, 107-08, 128-30, 137, 156.

But initially *none* of the witnesses identified Guerra when they saw his picture. App. 79, 131 (F286, 598). And one of the witnesses (Dawson) did not identify Guerra at trial as one of the robbers, *see id.* 85-89 (although he did identify Enrique Luna as a participant, *id.* at 86-88). Moreover, when questioned more closely by the police months after the trial, Dawson identified the third robber as a man with a tattoo named Mata, App. 145-46 (F762-63). In any event, one of the two store employees who had seen the robbery, but did not testify, told police that the *only* robber with a beard was Carrasco, App. 147 (F765), and he identified Luna and Mata from a photo array as the other two robbers, *compare* App. 145 (F762), *with* App. 143-44 (F738-39) (photo array). The second employee was uncertain. App. 142, 148 (F700, 801).

The presence of Guerra's print on the tape canister could have been explained in a myriad of ways. For example, he might have innocently bought the tape at Carrasco's request or handled it briefly at home or in the car trunk of these acquaintances or neighbors.

In sum, defense counsel -- because of lack of investigation and preparation for the punishment phase -- was unaware of how shaky the State's proof was and thus was unable to attack it on cross-examination or in closing argument or to produce a countervailing witness.

C. Even if No Single Error Constituted Ineffective Assistance, the Totality of the Errors Amounts to Ineffective Assistance and Justifies a New Trial

67. "Although each isolated error of counsel *may* not have amounted to ineffective assistance, the standard of review is the totality of the representation." Trybule v. State, 737 S.W.2d 617, 621 (Tex. App.--Austin 1987, pet. ref'd) (emphasis added).^{168/} In Texas, "[w]hether a defendant has received adequate assistance is to be judged by 'the totality of the representation,' rather than isolated acts or omissions of trial counsel." Wilkerson v. State, 726 S.W.2d 542, 548 (Tex. Crim. App. 1986) (citation omitted); Butler v. State, 716 S.W.2d at 54; see also Bridge v. State, 726 S.W.2d 558, 571 (Tex. Crim. App. 1986). In Guerra's case, unlike in Trybule, the defendant challenges not only the sentence, but also the determination of guilt, both of which were only *weakly* supported by the evidence.

68. In Ex parte Welborn, 785 S.W.2d 391 (Tex. Crim. App. 1990), the court found ineffective assistance and reversed the trial court's judgment based on errors similar to the ones alleged by Guerra, including failure to interview the State's witnesses, failure to object to statements made by the prosecution in closing argument that were fundamental error, and failure to demand a hearing on the voluntariness of the statement (in the present case, a hearing on the propriety of the lineup). Id. at 396. The court

^{168/}In Trybule, the court found that even though there may have been ineffective assistance of counsel based on the totality of the circumstances, the defendant was not harmed because the appellant was only challenging the severity of the sentence and, due to the overwhelming evidence of guilt, the court concluded that he probably would have received the maximum penalty anyway. Id. at 620-21. In reaching that conclusion, the court used the rule from Strickland v. Washington that verdicts only weakly supported by evidence are more likely to have been affected by errors. Strickland, 466 U.S. at 696.

stated that no error standing alone was sufficient proof of ineffective assistance; the defense counsel's performance taken as a whole, however, compelled such a holding. Id. After reviewing the expansive list of errors cited herein, many induced by the State, it cannot reasonably be said that the totality of the errors does not undermine confidence in the outcome of the trial. But for the totality of the errors, there is a reasonable probability that, at the least, Guerra would have received a life sentence instead of death; and, if justice prevailed, at best he would have been found innocent.

69. Similar to the "totality of the circumstances" test is the "cumulative error analysis." The Fifth Circuit recognized the cumulative error analysis in habeas corpus appeals in Derden v. McNeel, 938 F.2d 605, 609 (5th Cir. 1991).^{169/} Cumulative error analysis in habeas appeals is done on a case-by-case basis, and the "sole dilemma for the reviewing court is whether the trial taken as a whole is fundamentally unfair." Id. (citation omitted). "When a trial is fundamentally unfair, 'there is a reasonable probability that the verdict might have been different had the trial been properly conducted.'" Id. (citation omitted). Cumulative error analysis "is a Fourteenth Amendment Due Process inquiry and the fact whether one or several errors caused the trial to be fundamentally unfair is not important." Id. at 610. Just as one error can violate a defendant's due process rights under the Fourteenth Amendment, several errors taken together can violate those rights

^{169/}In Derden, the court noted that "[f]ederal courts review habeas petitions for a 'constitutional infraction of the defendant's due process rights which would render the trial as a whole fundamentally unfair,'" 938 F.2d at 609 (citation omitted). To determine whether a trial error makes a trial fundamentally unfair is "whether there is a reasonable probability that the verdict might have been different had the trial been properly conducted." Id. (citation omitted).

and cause the trial to be fundamentally unfair. Id. Since it is the accumulation of errors that results in the deprivation, the entire proceeding must be analyzed. Id. at 610-11. The foregoing numerous points establish that this standard is met.

D. In Capital Cases, Texas Should Follow the Same Test of Ineffective Assistance that It Uses in Noncapital Cases

70. As the law presently stands in Texas, the Strickland two-pronged test is the proper standard for gauging the effectiveness of counsel at the guilt-innocence phase of a non-capital trial and at the guilt-innocence and punishment phases of a capital murder trial. Craig v. State, 825 S.W.2d 128, 129 (Tex. Crim. App. 1992). In the punishment phase of a non-capital case, however, the standard is different. Id. at 129-30. In that instance the test is "first, whether counsel was reasonably likely to render effective assistance, and second, whether counsel reasonably rendered effective assistance." Id. at 130; see also Ex parte Walker, 794 S.W.2d 36, 37 (Tex. Crim. App. 1990); Ex parte Duffy, 607 S.W.2d 507, 514 n.14 (Tex. Crim. App. 1980). *A showing of prejudice is not required.* Id. at 524. Because the punishment phase of a capital trial is sufficiently like a trial in its adversarial format, the Supreme Court has held that the same standard for effective assistance applies to both phases. Strickland, 466 U.S. at 686-87. Thus, it is the adversarial nature of the punishment phase in a capital case that constitutionally requires the application of the Strickland test.

71. In Texas, the punishment phase of a non-capital case is similar to the punishment phase of a capital case in that both are adversarial in nature. At the punishment phase of a non-capital case in Texas, witnesses may be called to testify and

be cross-examined regarding aggravating and mitigating circumstances that may be considered in determining punishment. The main differences in a non-capital case are procedural (defendant may elect for the judge to assess punishment, and punishment is not based on special issues) and evidentiary (evidence of prior unadjudicated crimes is not admissible).

72. The Supreme Court declined in Strickland to address the role of counsel in non-capital cases for two reasons. Id. at 686. The first was that such proceedings may be informal. The Texas system in non-capital cases, however, is a formal, adversarial process. The second reason was that the process may involve standardless discretion in the sentencer. Since the sentencer in non-capital cases in Texas has discretion in assessing punishment, defense counsel's duty, and thus the standard by which his performance is judged, should be higher. Where there is discretion in the decisionmaker, counsel's advocacy should be all the more stringent in order to have some chance of influencing the discretion in his client's favor. Further, in regards to Texas's special issue No. 2, the decision of whether it is probable that a defendant would commit criminal acts of violence and be a continuing threat to society involves some discretion by the jury.

73. The "reasonably effective assistance standard" used in Texas in non-capital punishment proceedings covers a greater range of errors by counsel than does the fundamental fairness standard. Ex parte Ewing, 570 S.W.2d 941, 944 (Tex. Crim. App. 1978) (citing Fitzgerald v. Estelle, 505 F.2d 1334 (5th Cir. 1974) (en banc), cert. denied, 422 U.S. 1011 (1975)). Thus, *Texas holds defense counsel to a higher standard of assistance in non-capital punishment proceedings than in capital punishment proceedings.* This situation

is illogical and should be changed. Where a defendant's *life*, not just his freedom, is at stake, counsel's performance should be judged by the highest standards. Further, there is no rational basis for the distinction.^{170/} The distinction drawn by the Supreme Court was based on the possible difference in the adversarial nature of capital and non-capital punishment proceedings -- a distinction that does not exist in Texas. Since there is no rational basis for the distinction, the difference in treatment violates the Equal Protection clause of the Fourteenth Amendment and Article I, section 3 of the Texas Constitution.

74. Before Strickland, the test of the adequacy of counsel's representation was whether it was reasonably effective assistance. Duffy, 607 S.W.2d at 516. A showing of harm was not required; ineffective assistance of counsel could "never be treated as harmless error." Id. at 524 (citations omitted). In Hernandez v. State, 726 S.W.2d 53 (Tex. Crim. App. 1986), the court held that the Texas Constitution does not create a standard for effective assistance that is more protective of a defendant's rights than the Strickland standard and stated that it would follow the two-pronged Strickland test. Id. at 56-57. Since Hernandez, Strickland has been the law in Texas. See, e.g., Ex parte Walker, 777 S.W.2d 427 (Tex. Crim. App. 1989); Ex parte Cruz, 739 S.W.2d 53 (Tex. Crim. App. 1987).

75. Three of the reasons the Hernandez court gave for adopting Strickland and holding that the Texas Constitution provided no greater protection were the following: (i) the Texas Court of Criminal Appeals had consistently and consciously applied federal

^{170/}Compare Thompson v. Lynaugh, 821 F.2d 1054, 1062 (5th Cir. 1987) (different procedures for capital and non-capital cases must meet "rational basis" test).

constitutional standards in all ineffective assistance cases; (ii) the language of Article I, section 10 of the Texas Constitution was modeled on the Sixth Amendment; and (iii) Texas case law has never provided a higher standard than Strickland. 726 S.W.2d at 55-56. After noting in his concurring opinion that the issue of whether to adopt Strickland was not before the court, Judge Clinton argued that "it has never been properly demonstrated" that Article I, section 10, was modeled on the Sixth Amendment and that this "is irrelevant even if true." Id. at 60-61 (Clinton, J., concurring). Judge Clinton also argued that to say that "'this Court has consistently and consciously applied a federal constitutional standard in all effectiveness cases' . . . is misleading at best." Id. at 61. Judge Clinton also noted that the cases cited by the majority were "not entirely supportive" of the proposition that Texas has never had a higher effectiveness standard.^{171/}

76. One of the problems with the Strickland test is that it is difficult to apply. See id. at 63 (after adopting test, majority misapplied it). Another problem with Strickland is the nebulous standard it adopts for judging effectiveness; the Supreme Court did not provide a meaningful standard to review counsel's performance. "While adopting the new 'reasonable competency' language, the Strickland Court wrote the opinion in a manner which ensures that the courts will still apply the underlying elements of the 'farce and mockery' test." Id. at 75 (Teague, J., concurring and dissenting). The Strickland test is "problematical and purely speculative" Cruz, 739 S.W.2d at 61-62 (Duncan, J., dissenting). Judge Duncan asserted that the first prong of the test is fallacious because

^{171/}The weakness of the Hernandez decision is further reflected by the fact that it was a 5-4 decision.

"the proposition that counsel's performance was so deficient that he 'was not functioning as the counsel guaranteed the defendant by the Sixth Amendment,' . . . simply asserts the very point it establishes in the conclusion." Id. at 62. Further, the second prong is fallacious because "it is purely speculative"; it "is a proposition premised upon a possibility disguised as a fact; . . . this part of the Supreme Court's standard is based upon what might have been," which "can never be proven absolutely" and thus "can only be the subject of speculation with varying degrees of reliability." Id. Based on this reasoning, Judge Duncan urged, as Guerra does, that the Court readopt the Duffy test, which does not suffer the same problems as Strickland.

IX. THE COURT'S REFUSAL TO EXCUSE FOUR *VENIRE* MEMBERS FOR CAUSE DENIED GUERRA HIS RIGHTS TO A FAIR AND IMPARTIAL TRIAL AND TO AN IMPARTIAL JURY IN VIOLATION OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 10, 13, AND 19, OF THE TEXAS CONSTITUTION

1. The trial court denied Guerra his right to a fair and impartial trial and his right to an impartial jury, rights that are guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and by Article I, sections 10, 13, and 19 of the Texas Constitution, by not excusing at least four members of the venire for cause following an appropriate challenge by defense counsel. Those four individuals were Jack D. Lee, Jerry C. Thagard, Cynthia Matthews, and Tommy R. Smith. Defendant was forced to strike the first three with peremptory challenges following unsuccessful challenges for cause. S.F. Vol. 12 at 2053; Vol. 17 at 3013; Vol. 17 at 3130. Mr. Smith actually

served on the jury following another unsuccessful challenge for cause, since Guerra had already exhausted all of his peremptory challenges.

2. As to Mr. Lee, Ms. Thagard, and Ms. Matthews, defense counsel preserved the court's error by stating on the record that he found two jurors, Tommy R. Smith and Ana A. Petty, unacceptable, S.F. Vol. 18 at 3289-90; S.F. Vol. 19 at 3514-15, and that he would have stricken them if his preemptory challenges had not been exhausted. See Felder v. State, 758 S.W.2d 760, 766-767 (Tex. Crim. App. 1988)^{172/}. For Mr. Smith, the error was complete and preserved when the court overruled Guerra's challenge for cause and Mr. Smith was subsequently sworn in as a juror. S.F. Vol. 19 at 3287.^{173/}

3. While the granting of challenges for cause generally is left to the sound discretion of the trial judge, that discretion is certainly not unbounded. The bias, prejudice, or lack of impartiality of a potential juror may be so plain that it removes the matter from the discretion of the judge and requires dismissal for cause as a matter of law. The judge's discretion "is limited by 'the essential demands of fairness'." Knox v.

^{172/}Trevino v. State, 815 S.W.2d 592 (Tex. Crim. App. 1991), stated the test as follows:

In order to present reversible error appellant must show that he was forced to exercise a peremptory challenge to excuse a prospective juror to whom his challenge for cause should have been sustained. He then must show that he exhausted his peremptory challenges and was later forced to accept a juror whom he found to be objectionable.

Id. at 611-12 n.5

^{173/}Guerra's attorneys requested extra peremptory challenges. S.F. Vol. 17 at 3130-31; S.F. Vol. 19 at 3514-15. The court granted Guerra only one extra peremptory challenge. S.F. Vol. 17 at 3130. As a result, Guerra ran out of challenges and could not strike Smith and Petty from the jury. See S.F. Vol. 18 at 3287; S.F. Vol. 19 at 3515.

Collins, 928 F.2d 657, 661 (5th Cir. 1991) (citing Aldridge v. United States, 283 U.S. 308, 310 (1931)). Thagard, Lee, Matthews, and Smith were so manifestly unable to serve impartially that the court was compelled to disqualify them as a matter of law.

A. Detective Jack D. Lee

4. At the time of Guerra's trial in 1982, Detective Lee had been a police officer for 32 years. S.F. Vol. 17 at 3002. He spent 24 of those years as a detective in the burglary and theft division of the Houston Police Department. Id. at 2995, 3002. These facts alone created an impermissible level of doubt that Detective Lee could have been impartial while sitting on a jury to decide the fate of a man charged with the murder of Detective Lee's fellow police officer, who was killed in the line of duty, in a trial in which many of the witnesses were Police Department employees.

1. Many States Recognize the Inherent Partiality of a Police Officer/Juror.

5. Throughout the United States, courts recognize the inherent unfairness of allowing police officers to serve as jurors in trials in which police officers are the victims. Some states even disallow police officers as jurors in *any* case. At the very least, the presence of a police officer on the jury in a case involving the murder of a fellow police officer casts an intolerable doubt over both the actual impartiality and appearance of impartiality of the jury, and thus over the integrity of the entire procedure. Unfairness in jury selection harms not only the accused: even the perception of unfairness "undermine[s] the public confidence in the fairness of our system of justice." Batson v. Kentucky, 476 U.S. 79, 87 (1986).

6. In response to such concerns, the Supreme Court of Georgia has established an automatic bar to police officers serving on criminal juries, regardless of the nature of the crime.^{174/} Colorado created a similar bar by statute. See People in re R.A.D., 586 P.2d 46 (Colo. 1978). In support of this statute, the Colorado Supreme Court stated: "[O]ne who is employed by a law enforcement agency is likely to favor the group with whom he comes in daily contact and upon whom his livelihood depends." Id. at 47. The highest courts of other states agree.^{175/}

7. Like the Fifth and Sixth Amendments, the Texas Constitution guarantees a fair trial by an impartial jury. Shaver v. State, 280 S.W.2d 740 (Tex. Crim. App. 1955). An impartial jury is one that is unprejudiced, disinterested. Id. at 742; compare United States v. Wood, 299 U.S. 123, 145-46 (1936) (jurors must possess "mental attitude of appropriate indifference"). While Texas has not established a *per se* rule against service

^{174/}The Georgia Supreme Court has explained the rationale for this prohibition:

'Jurors should be above suspicion.' (citation omitted) It is inherent in the nature of police duties and the closeness with which such officers are identified with criminal procedures that questions regarding possible bias, fairness, prejudice or impermissible influence upon jury deliberations inevitably arise. These questions cannot be erased by a mere subjective, albeit sincere, declaration by the officer that he or she can be fair and impartial as to a defendant. 'The constitutional test of impartiality, however, does not turn on the subjective declaration of the individual jurors' (citation omitted).

Hutcheson v. State, 268 S.E.2d 643, 644 (Ga. 1980).

^{175/}State v. Cooper, 353 S.E.2d 441, 442 (S.C. 1986); State v. Simmons, 390 So. 2d 1317, 1318 (La. 1980); State v. Beckett, 310 S.E.2d 883, 889 (W. Va. 1983); cf. Jackson v. United States, 395 F.2d 615 (D.C. Cir. 1968) (holding that a juror situated similarly to the victim in a manner that would create an emotional identification with the victim was disqualified under the Sixth Amendment).

by a police officer on a criminal jury, apparently neither has a Texas appellate court ever confronted the situation presented by Guerra's challenge to Detective Lee: the potential service on a capital crime jury by a police officer, one of whose fellow officers was the murder victim, and several of whose friends and fellow officers were potential prosecution witnesses. In these circumstances, there was a "natural inference that the juror will not act with impartiality," notwithstanding Detective Lee's statements to the contrary. See Powers v. Palacios, 794 S.W.2d 493, 496 (Tex. App.--Corpus Christi 1990), rev'd on other grounds, 813 S.W.2d 489 (Tex. 1991); Compton v. Henrie, 364 S.W.2d 179, 182 (Tex. 1963).

2. **Detective Lee's Familiarity with the Lawyers and Witnesses of the Prosecution Team and His Status as a Police Officer Disqualified Him as a Matter of Law Under the Facts of this Case.**

8. Guerra's counsel challenged Detective Lee for cause, but that challenge was rejected by the court. S.F. Vol. 17 at 3013. This was reversible error.

9. Detective Lee's partiality in this case was not speculative: here, the specific facts made it certain. Detective Lee actually knew *both* of the attorneys for the prosecution, S.F. Vol. 17 at 2995, and he had known for many years (25 in one case) at least *seven* of the police officers subpoenaed by the prosecution to be witnesses in the case.^{176/} Two of these officers actually testified at Guerra's trial. L.L. Cooper testified in his capacity as a fingerprint technician with HPD. S.F. Vol. 17 at 106-07. Detective Lee

^{176/}Mr. Lee stated that he had known J.K. Newman for 25 years, S.F. Vol. 17 at 3004; L.L. Cooper, about five years, id. at 3007; D.R. Bostock, around 20 years, id. at 3008; J.G. Burmeister, 10 years, id. at 3009; John Donovan, five or 10 years; J.T. Neely, 10 or 15 years; and A.T. Hermann, 10 years, id. at 3010.

had known Officer Cooper for five years, and had relied on Officer Cooper for assistance in fingerprinting analysis on some of his own cases. Id. at 3007-08; Vol. 22 at 106; Vol. 28 at 146. Officer J.T. Neely, whom Lee had known for 10 or 15 years, S.F. Vol. 17 at 3010, also testified. S.F. Vol. 22 at 61.

10. At a minimum, these long-standing relationships would have put Detective Lee in the untenable position of being asked to judge the veracity of the people with whom he associated daily in professional life and on whom he periodically relied.

11. Clearly, Detective Lee's status as a Houston policeman -- especially when considering the emotional issue of the murder of a fellow police officer in a year of an unprecedented number of such deaths -- raises questions about Detective Lee's subconscious ability to approach the case with the necessary "mental attitude of appropriate indifference," Wood, 299 U.S. at 145-46, even if he thought he could do so.

12. In addition, Detective Lee's acquaintance with the prosecutors, as well as several of the prosecution's subpoenaed witnesses, increased the risk that Detective Lee would, consciously or unconsciously, identify himself with the prosecution team whose attorneys, witnesses, and victim were part of the law enforcement agencies of Harris County with which Detective Lee worked day-to-day. It is difficult to conceive how Detective Lee would not identify with and be persuaded by his own co-workers.

13. All of these facts, considered together, give rise to a clear presumption that Detective Lee lacked the impartiality to which Guerra was entitled under the Sixth Amendment and Article I, section 10, of the Texas Constitution. In short, the facts and

the U.S. and Texas Constitutions compelled Detective Lee's disqualification for cause, and the court erred in refusing to do so.

B. Jerry C. Thagard

14. Ms. Thagard repeatedly stated her belief that a person who killed a police officer should be sentenced to death. She began, during questioning by the prosecutor: "[I]n in the killing of a policeman, the death penalty should be the sentence." S.F. Vol. 12 at 2026. She repeated this view several times. See, e.g., id. at 2029-31.

15. Under further questioning, Ms. Thagard tried to backtrack, suggesting that her answers to the two questions at the punishment phase would not necessarily automatically be affirmative. But even then Ms. Thagard clearly reversed the burden of proof, requiring Guerra to produce evidence that death was *not* the appropriate penalty. Id. at 2031-32, 2035-36.

16. Ms. Thagard later removed all doubt about her fundamental predisposition to vote for death:

Q. All right. Would you answer question no. 2 automatically yes because he was found guilty in the first stage of intentionally and knowingly causing the death of the police officer? Would you automatically answer it yes?

A. With the way number two is worded?

Q. Right.

A. Yes.

Id. at 2038.

17. At this point, Guerra's counsel challenged Ms. Thagard for cause. Id. Before ruling, the court allowed further questioning by the prosecutor and defense

counsel, and she repeated her reversal of the burden of proof: "I would not be prejudgmental to say no. 2 should be yes. *I could arrive at a no answer if the evidence were there . . .*," id. at 2045-46.

18. The United States Supreme Court recently reiterated that the due process clause of the Fourteenth Amendment prohibits a juror expressing an intention to vote automatically for the death penalty, as Ms. Thagard repeatedly did here, from serving on a capital sentencing jury. Morgan v. Illinois, 112 S. Ct. 2222 (1992). Based on Ms. Thagard's unequivocal and (as least as to punishment question number two) unrehabilitated statements of her intention to answer automatically the punishment questions "yes" following a guilty verdict, as well as her repeated and improper imposition of the burden of proof on Guerra at the penalty phase, the trial court clearly erred by refusing to excuse Ms. Thagard for cause.

C. Cynthia Matthews

19. Ms. Matthews established her bias against Guerra in two ways. First, she indicated that she felt that the "beyond a reasonable doubt" burden on the prosecution was inappropriate. Second, she indicated that if Guerra failed to testify, she would hold that against him. Because of her clear and multifaceted bias against Guerra, Ms. Matthews should have been excused by the court for cause.

1. She Would Have Difficulty Requiring the Prosecutor to Prove Guilt Beyond a Reasonable Doubt.

20. During Ms. Matthews *voir dire* questioning, the following exchange took place:

- Q. What do you feel about the heavy burden they [i.e., prosecutor] have? Do you think that is right or wrong? Just how do you feel?
- A. Sometimes it is wrong because of the things that are happening and people are getting away with things, and because you have to prove it to such an extent, it seems like they are getting away with things.
- Q. And like I say, all I want to know is how you feel about this. Do you think the State should have that heavy burden?
- A. Sometimes, no. I don't feel like they should.
- Q. Do you think the State should have the burden of proving this case beyond a reasonable doubt, or do you think it's too much of a burden and they ought to prove it by a preponderance of the evidence, the greater weight of the credible evidence?
- A. I would say no; I don't think they should have to prove it beyond a - but then again yes. It depends on the circumstances.

The Court: Is that a definite maybe?

. . . .

The Juror: I guess.

- Q. What do you mean "circumstances"?
- A. Depending on what the crime was and what was done and the evidence and the record.

S.F. Vol. 17 at 3106-08.

21. Ms. Matthews later made her feelings on the burden of proof even clearer and more specific in the following exchange:

- Q. You would want him [i.e., the defendant] to at least get up and explain to you, or to your satisfaction, why he is not guilty?
- A. Right.
- Q. Or prove his innocence to you?
- A. Right.

Id. at 3112.

22. Later, in response to various hypothetical questions, Ms. Matthews tentatively and equivocally indicated that *at least in those hypothetical situations* she would hold the State to its burden of proof beyond a reasonable doubt, *id.* at 3108-10, but even then, she hedged, saying that "I don't think I could give you an honest [answer]," *id.* at 3109, and that she "wouldn't know" what her verdict would be if she had not been convinced beyond a reasonable doubt, *id.* at 3109, even though she had been told that the law would require an acquittal in such a situation.

23. Nothing that Ms. Matthews said subsequently served to modify her expressed feelings that "sometimes" and "depending on what the crime was and what was done," the State's burden of proof beyond a reasonable doubt was too onerous, or that the Defendant would have to "explain . . . why he is not guilty" and "prove his innocence" to her. Defendant challenged Ms. Matthews because of her opinions on the burden of proof, *id.* at 3125, but the Court overruled that objection, *id.* at 3129.

2. She Would Hold Guerra's Failure to Testify Against Him.

24. As the above exchange demonstrates, Ms. Matthews extended her bias against Guerra to include a disagreement with his right not to testify at his trial. She repeatedly made clear that if Guerra chose to remain silent, she would imply that he was guilty.

Q. Would you want him to testify?

A. Yes. I probably would. I would.

. . . .

Q. What if he didn't testify at all? Would you wonder about what he might have said or done?

A. Yes. I would wonder. I would wonder.

Q. Would you hold it against him?

A. Yes. I think I probably would hold it against him.

Q. You would or probably would?

A. I would.

Q. You would hold it against him?

A. Yes, I would.

Q. Of course, this would be the most important day of his life.

A. If it was mine, I would want to defend myself.

Q. Sure.

A. That is only right, you know.

Q. You would want him to at least get up and explain to you, or to your satisfaction, why he is not guilty?

A. Right.

Q. Or prove his innocence to you?

A. Right.

Q. And so you would want him to testify?

A. Yes, I would.

Q. And if he didn't testify, that would be a strike against him?

A. It would be a doubt in my mind; yes, it would be.

Q. It would be a strike against him, right?

A. Yes.

Id. at 3111-13.

25. Defense counsel challenged Ms. Matthews on the basis of her opinion regarding Guerra's exercise of his right not to testify, id. at 3125, but again the Court overruled this objection, id. at 3129.

26. Following an attempt by the prosecutor to rehabilitate her, Guerra's attorney again questioned Ms. Matthews regarding Guerra's right not to testify. At this point, Ms. Matthews expressed opinions that directly contradicted her initial statements:

Q. So then if he didn't testify, you wouldn't hold it against him in any way, shape, form, or fashion?

. . . .

A. No, I wouldn't hold it against him.

Id. at 3129.

27. Yet, given the certainty with which Ms. Matthews made and repeated her initial statements that she would hold Guerra's failure to testify against him, Ms. Matthews's sudden change of heart is, at the very least, suspect. The Supreme Court has said that imposition of the death penalty must *be* and *appear to be* based on reason. Gardner v. Florida, 430 U.S. 349, 358 (1977). Given this heightened need for both impartiality and the *appearance* of impartiality in a capital murder trial, the Court should have excused Ms. Matthews for cause.

28. When Ms. Matthews's opinions regarding Guerra's right not to testify are viewed in conjunction with her objection to the prosecutor's burden of proof, it becomes clear that had Ms. Matthews sat on the jury, the trial would have lacked fairness both in appearances and reality.

D. Tommy R. Smith

29. The harm presented to Guerra by Tommy Smith extended even beyond that of the other three members of the venire discussed above. Unlike those three people,

Mr. Smith actually served on the jury. Having already exhausted all of his peremptory challenges, Guerra was unable to remove Mr. Smith from the panel after the judge overruled his challenge for cause. S.F. Vol. 18 at 3284-85.

30. Mr. Smith unequivocally admitted that he would favor the death penalty over a life sentence.

Q. Do you believe in an eye for an eye and a tooth for a tooth?

A. An eye for an eye and a tooth for a tooth.

Q. Explain that.

A. Punishment for revenge's sake.

Q. Revenge because he killed somebody?

A. Uh-huh. I am not a revengeful person, if that is what you are asking. I'm just saying in a case where the facts are given and a man took another man's life and it is without doubt, reasonable doubt, or whatever you call it, if he took another man's life, I believe in the death penalty.

. . . .

Q. . . . Hypothetically, do you have a preference in a capital murder case? Would you prefer life as punishment or death as punishment? You told me you strongly believe in the death penalty.

A. I would prefer death.

Id. at 3282-84.

31. Mr. Smith thus made it clear that he would begin his deliberations with a preference for death. Such a presumption in the prosecution's favor fatally undermines the constitutional protection provided to a defendant by the prosecution's burden of proof beyond a reasonable doubt. Mr. Smith never stated that he would set aside this predisposition and view the evidence from the neutral position required by the Sixth Amendment's guarantee of an impartial jury. Because of Mr. Smith's bias against the

imposition of a life sentence, he did not possess the constitutionally required "mental attitude of appropriate indifference." United States v. Wood, 299 U.S. 123, 145-46 (1936). The presence of such a biased juror on Guerra's jury clearly deprived him of his right to a fair trial by an impartial jury.

E. Conclusion on Refusal to Excuse for Cause

32. The jury that decided Guerra's guilt and punishment lacked the constitutionally-mandated impartiality to which he was entitled. The conviction and sentence should be reversed.

X. THE ARTICLE 35.13 REQUIREMENT THAT PEREMPTORY CHALLENGES BE EXERCISED AFTER QUESTIONING EACH PROSPECTIVE JUROR VIOLATED GUERRA'S RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 3, 3A, 13, AND 19, OF THE TEXAS CONSTITUTION

1. The Texas Code of Criminal Procedure, Articles 35.13 and 35.25, requires that parties to a capital murder trial exercise peremptory challenges at the time each prospective juror is qualified. Thus, unlike defendants who are charged in non-capital cases, Texas law barred Guerra from waiting to exercise his peremptory challenges until after the entire venire had been examined. Grijalva v. State, 614 S.W.2d 420 (Tex. Crim. App. 1980). This arbitrary limitation placed on the exercise of Guerra's peremptory challenges denied him equal protection and due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and of due course of law

and equal protection under Article I, sections 3, 3a, 13, and 19, of the Texas Constitution.^{177/}

2. The U.S. Supreme Court has made clear that "[b]oth equal protection and due process emphasize the central aim of the entire judicial system -- all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American Court.'" Griffin v. Illinois, 351 U.S. 12, 17 (1956) (quoting Chambers v. Florida, 309 U.S. 227, 241). "Due process is denied by circumstances creating the 'likelihood or the appearance' of bias, Peters v. Kiff, 407 U.S. 493, 502 (1972), overruled on other grounds by Taylor v. Louisiana, 419 U.S. 522 (1975) . . . and 'our system of law has always endeavored to prevent even the probability of unfairness'."

^{177/}Guerra's trial counsel preserved this issue. On August 30, 1982, Guerra's counsel filed a "Motion to Exercise Challenges to Juror After the Entire Venire has been Examined and Objecting to the Constitutionality of 35.13 V.A.C.C.P." Tr. at 87 ("Article 35.13 V.A.C.C.P. violates the equal protection and due process clauses of the State and federal constitutions . . ."). The trial court denied the motion the same day. Id. at 88.

Guerra's counsel renewed his objection with the exercise of virtually every peremptory challenge that he exercised. See, e.g., S.F. Vol. 2 at 62 (Bridges); Vol. 3 at 442 (Deckert); Vol. 10 at 1622 (Krezinski); Vol. 15 at 2729 (Langdon); Vol. 6 at 1030 (Matthews); Vol. 13 at 2240 (Philips); Vol. 8 at 1321 (Oliver); Vol. 2 at 181-82 (Reifel); Vol. 3 at 385 (Rister); Vol. 10 at 1675 (Sadler); Vol. 13 at 2364 (Smith); Vol. 12 at 2053 (Thagard); Vol. 4 at 537 (Zadroga).

After the selection procedures had been completed and before the panel was sworn, Guerra's counsel made clear that had he been permitted to exercise his peremptories in the same manner permitted non-capital defendants, he would not have stricken Charles Krezinski, Wanda Oliver, or Charles Gougenheim, and would have stricken instead Larry Douthitt, Stephen Busby, and Ana Petty. S.F. Vol. 19 at 3570. Thus, Guerra's equal protection and due process challenge is fully preserved. See Sanne v. State, 609 S.W.2d 762, 767 (Tex. Crim. App. 1980), cert. denied, 452 U.S. 931 (1981) (harm must be demonstrated by showing that the defendant would have exercised peremptory challenges differently).

Brown v. Rice, 693 F. Supp. 381, 390 (W.D.N.C. 1988), aff'd in part and rev'd in part, 891 F.2d 490 (4th Cir. 1989) (quoting In re Murchison, 349 U.S. 133, 136 (1955)).

3. Capital defendants are not a "suspect class" for equal protection purposes. Thompson v. Lynaugh, 821 F.2d 1054, 1062 (5th Cir.) (citing Williams v. Lynaugh, 814 F.2d 205, 208 (5th Cir.), cert. denied, 484 U.S. 935 (1987)). Nevertheless, to meet constitutional requirements, the state must show that the differing procedures for jury selection for capital and non-capital defendants rationally promote a legitimate governmental objective. Id.

4. In Janecka v. State, 739 S.W.2d 813 (Tex. Crim. App. 1987), the Court of Criminal Appeals held that the different procedures used in capital and non-capital cases did not violate due process or equal protection because that Court deemed the rules overall to be more favorable to capital defendants than to others, except in this one instance, which the court characterized as "a minor disadvantage". Id. at 834. After having acknowledged the discriminatory effect of Code of Criminal Procedure Article 35.13, the Court of Criminal Appeals then concluded that "legislatures should be free to make some classifications and discriminations in gradually [sic] dealing with societal issues." Id.^{178/}

^{178/}In Pierce v. State, 777 S.W.2d 399 (Tex. Crim. App. 1989), cert. denied, 496 U.S. 912 (1990) another appellant argued that the differential treatment of capital and non-capital defendants with regard to the exercise of peremptory challenges denied him the equal protection of the law. Instead of simply citing Janecka as dispositive, the court rejected the claim solely on the procedural ground that the error had not been preserved and declined to consider the merits of the claim. Id. at 413. This curious disposition suggests that the Court of Criminal Appeals might reconsider its holdings in Janecka when the issue is properly presented.

5. The Janecka court failed to identify any state interest that is advanced by preventing a capital defendant from using peremptory strikes after examining the entire venire. The court simply pointed to other procedures that are reasonably necessary to promote selection of jurors who can properly consider the death penalty. In contrast to those procedures, the restriction on the timing of peremptory challenges furthers no such interest.

6. To the contrary, proper analysis shows that the distinctions drawn between the use of peremptory challenges in capital and non-capital cases lacks any grounds that are properly related to the functions of the jury selection process. "The right of peremptory challenge in capital cases, which existed at common law, has been spoken of as 'one of the most important rights secured to the accused.'" Frazier v. United States, 335 U.S. 497, 506 n.11 (1948) (quoting Pointer v. United States, 151 U.S. 396, 408 (1894)). "The peremptory challenge represents an important, perhaps even vital safeguard of the right to an impartial trial, a right guaranteed by the Sixth Amendment, and one which lies at the heart of the right to due process." Hines v. Enomoto, 658 F.2d 667, 672 (9th Cir. 1981). A party's right to an impartial trial is implemented principally through the system of challenges exercised during the *voir dire* of prospective jurors. United States v. Nell, 526 F.2d 1223 (5th Cir. 1976).

7. "A *voir dire* procedure that effectively impairs the defendant's ability to exercise his challenges intelligently is ground for reversal, irrespective of prejudice." Knox v. Collins, 928 F.2d 657, 661 (5th Cir. 1991). These principles may be found in equal or greater measure in the guarantee to trial by due course of law afforded by

Article I, sections 13 and 19, of the Texas Constitution. See Heitman v. State, 815 S.W.2d 681, 690 (Tex. Crim. App. 1991) ("The decisions of the [U.S.] Supreme Court represent the minimum protections which a state must afford its citizens: The federal constitution sets the floor for individual rights; state constitutions establish the ceiling"); see pp. 279-87, infra.

8. The Texas venire system forces a capital defendant to gamble juror by juror when the stakes are highest: when he is literally betting his life on each draw. Clearly, a capital defendant cannot choose "intelligently" if the State does not disclose the alternative until the alternative is unavailable. This disability is more than an "incidental or minor disadvantage." The state thus engages in a brutal form of gamesmanship, reserved only for those who may die should their individual choices of jurors prove mistaken.

9. There simply is no legitimate state interest in discriminating against capital defendants in the timing of their peremptory challenges. Because the discriminatory Texas scheme prevented Guerra from striking jurors who would have been stricken had non-discriminatory procedures been used, he was denied due process and equal protection of the law in violation of his rights under the Fifth and Fourteenth Amendments to the United States Constitution and under Article I, sections 3, 3a, 13, and 19, of the Texas Constitution.

XI. THE COURT'S INQUIRY INTO THE NUMERICAL DIVISION OF THE JURY DURING DELIBERATIONS DENIED GUERRA HIS RIGHTS TO DUE PROCESS OF LAW AND TRIAL BY IMPARTIAL JURY UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 13 AND 19, OF THE TEXAS CONSTITUTION

1. During the jury's deliberations in the guilt-innocence phase of the trial, the trial court asked whether the jury had yet voted. S.F. Vol. 25 at 991-92. After receiving an affirmative response, the trial court further asked for the numerical division of the jury. Id. at 992. The foreman responded that the split was 11 to 1, without indicating whether the majority favored conviction or acquittal. Id. The trial court asked whether further deliberations that evening would be productive. The foreman requested an additional hour, and the court agreed. The jury returned 15 minutes later with a unanimous guilty verdict. Id. at 992-93.

2. The Supreme Court and the Fifth Circuit have long held that such an inquiry in federal court into the numerical division of a jury is *per se* reversible error.^{179/} Brasfield v. United States, 272 U.S. 448 (1926), superseded by statute as stated in United States v. Fiorilla, 850 F.2d 172 (3d Cir.), cert. denied, 488 U.S. 966 (1988); Cook v. United States, 254 F.2d 871, 873 (5th Cir. 1958). The Supreme Court condemned such an inquiry as inherently coercive:

We deem it essential to the fair and impartial conduct of the trial that the inquiry itself should be regarded as grounds for reversal. *Such procedure serves no useful purpose that cannot be attained by questions not requiring the jury to reveal the nature or extent of its division.* Its effect upon a divided jury

^{179/}While trial counsel failed to object, this should not be waiver. See pp. 290-93, infra.

will often depend upon circumstances which cannot properly be known to the trial judge or to the appellate courts and may vary widely in different situations, but in general its tendency is coercive. *It can rarely be resorted to without bringing to bear in some degree, serious, although not measurable, and improper influence upon the jury*, from whose deliberations every consideration other than that of the evidence and the law as expounded in a proper charge, should be excluded. *Such a practice, which is never useful, and is generally harmful, is not to be sanctioned . . . the error . . . affects the proper relations of the court to the jury, and cannot be effectively remedied by modification of the judge's charge after the harm has been done.*

Brasfield, 272 U.S. at 450 (emphasis added).

3. Although the Brasfield Court did not explicitly base its holding on constitutional grounds, "the Court employed language that sweeps broadly and closely resembles that found in other due process holdings, notably those that have extended federal constitutional guarantees to the states via the Fourteenth Amendment." Cornell v. State, 628 F.2d 1044, 1049 (8th Cir. 1980) (Bright, J., dissenting), cert. denied, 449 U.S. 1126 (1981). Most notably, the language in Brasfield reflects that found in Duncan v. State, 391 U.S. 145, 149 (1968) ("trial by jury in criminal cases is fundamental to the American scheme of justice"), and Gideon v. Wainwright, 372 U.S. 335, 342 (1963) (right to counsel is "fundamental and essential to a fair trial"). Further,

[w]henver the question of numerical division of a jury is asked from the bench, in the context of an inquiry into the progress of deliberation, it carries the improper suggestion that the state of numerical division reflects the stage of the deliberations. It has the doubly coercive effect of melting the resistance of the minority and freezing the determination of the majority.

People v. Wilson 390 Mich. 689, 213 N.W.2d 193, 195 (1973) (emphasis added). The nature of the language used and the nature of the problem addressed (improper coercion of a jury) in Brasfield thus indicate that while the Court may have explicitly stated only

a federal procedural rule, its holding reflects fundamental notions of fairness embedded in the due process guarantees of the U.S. and Texas Constitutions.

4. The Texas Court of Criminal Appeals apparently never has addressed the question whether the due process guarantees of either the U.S. or Texas Constitutions preclude inquiry into the numerical division of the jury. The matter was briefly addressed in Odom v. State, 682 S.W.2d 445 (Tex. App.--Fort Worth 1984, pet. ref'd). There, the defendant failed to object to the jury poll and to the jury foreman's voluntary disclosure of the numerical division. Id. at 448. Because of that failure, on appeal the Odom court held that (i) the defendant was limited to arguing that the poll and response constituted fundamental error; and (ii) Brasfield did not require finding fundamental error because it stated only a rule of procedure not binding on the states. Id. Odom did not involve a capital offense, and that court did not address whether the Texas Constitution protects capital defendants from such jury inquiries.

5. In contrast, given the highly charged atmosphere surrounding Guerra's trial, and in the context of all of the prejudicial actions and circumstances described elsewhere in this brief, the trial court's inquiry into the numerical division of the jury, followed by a verdict within 15 minutes, rises to the level of constitutional error.

6. The effect of the Guerra court's improper inquiry into the numerical division of the jury is magnified by the greater reliability required in capital cases because of the

nature of the sentencing process and the difference between the death penalty and a prison sentence of any length.^{180/}

7. The speed with which Guerra's jury returned its verdict after the court's inquiry also suggests an improper invasion of the secrecy of the jury. Cf. Jones v. Norvell, 472 F.2d 1185, 1186 (6th Cir.), cert. denied, 411 U.S. 986 (1973) (speedy return of jury after court inquiry is a factor in a "totality of circumstances" test).

8. "Any criminal defendant, and especially any capital defendant, being tried by a jury is entitled to the uncoerced verdict of that body." Lowenfeld v. Phelps, 484 U.S. 231, 241 (1988). There simply is an unacceptable danger that the Guerra court's inquiry into the numerical division of the jury improperly coerced the jury into reaching a unanimous guilty verdict. That inquiry invaded the secrecy of the jury's deliberations in violation of Guerra's constitutional rights to due process and to a fair and impartial trial by jury, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution.

9. Moreover, as discussed in this brief at pp. 279-87, infra, those federal Constitutional provisions merely establish the minimum protection due a capital defendant in Texas. In the circumstances here, Texas should afford more than the minimum

^{180/}In Lowenfeld v. Phelps, 484 U.S. 231 (1988), a case in which the Court found no jury coercion, partly because the trial court had not asked the jury for its numerical division, id. at 240; see id. at 234-35, Justice Marshall, in dissent, pointed out the need for greater reliability in capital sentencings, id. at 248, and the heightened potential for coercion inherent in the "volatile nature of the inquiry" of whether the defendant should live or die, id. at 254-55; see also Lockett v. Ohio, 438 U.S. 586, 604 (1978), (the "qualitative difference" between death and other penalties calls for a greater degree of reliability when the death sentence is imposed); Woodson v. State, 428 U.S. 280, 305 (1976) (plurality opinion) (same).

guarantee of fairness established at the federal level. Rather, this court should recognize a higher standard, as found in Article I, sections 13 and 19, of the Texas Constitution: a guarantee to Guerra that due course of law precludes any taint of coercion of a jury weighing a life-or-death decision.

XII. THE JURY WAS PRECLUDED DURING SENTENCING FROM CONSIDERING GUERRA'S MITIGATING EVIDENCE OF GUERRA'S YOUTH AND THE INAPPLICABILITY OF THE LAW OF PARTIES IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 13 AND 19, OF THE TEXAS CONSTITUTION

A. Mitigating Evidence of Youth

1. Guerra had just turned 20 years old in April 1982, see Tr. 2, shortly before the offense for which he was sentenced to death. In his closing argument at the penalty phase of Guerra's capital murder trial, Guerra's counsel pleaded with the jury to consider Guerra's age as a factor that weighed in favor of a life sentence. S.F. Vol. 27 at 181. But this plea was for naught: under Texas law, the jury that sentenced him to die was unable to give full effect to his mitigating evidence of youth. Thus, Guerra's death sentence violates the Eighth and Fourteenth Amendments and the due process of law clauses of Article I, sections 13 and 19, of the Texas Constitution. Penry v. Lynaugh, 492 U.S. 302 (1989); Franklin v. Lynaugh, 487 U.S. 164 (1988); Mayo v. Lynaugh, 893 F.2d 683 (5th Cir. 1990).^{181/}

^{181/}Additionally, on January 3, 1992, the U.S. Court of Appeals for the Fifth Circuit in a close decision (7 to 6) held that youth and "other mitigating evidence" *could* "adequately be taken into account" by the jury in answering the Texas Special Issues. Graham v. Collins, 950 F.2d 1009, 1033 (5th Cir. 1992). The Supreme Court granted a
(continued...)

2. Evidence of Guerra's youth at the time of the offense had mitigating value beyond the scope of the special issues submitted to the jury.^{182/} While the jury may have considered that Guerra was less morally culpable because of his age, the jury had no vehicle to express its "reasoned moral response" that life imprisonment rather than death was justified. Franklin v. Lynaugh, 487 U.S. 164, 185 (1988). Texas clearly regards those in their early 20's as sufficiently "youthful" for their age to be considered a mitigating circumstance.^{183/}

^{181/}(...continued)

writ of certiorari on that issue to the petitioner in Graham, 112 S. Ct. 2937 (1992). Guerra's execution should be stayed pending the Supreme Court's determination of the constitutionality of the Texas statute where mitigating evidence of youth is presented -- the precise question that Guerra presents to this court.

^{182/}For example, the jury may have concluded that due to his age, Guerra was unable to control his impulses or evaluate the consequences of his conduct. See, e.g., Eddings v. State, 455 U.S. 104, 115-16 (1982) (young people are less mature and more susceptible to influence than adults).

The sentencer in a capital case must be permitted to consider and to give effect to the mitigating qualities of youth, and to the chronological fact of youth itself. Id. Eddings distinguished "the chronological age of a minor," which is "itself a relevant mitigating factor of great weight," from "the background and mental and emotional development of a youthful defendant," and concluded that the Constitution required that the sentencer be permitted to consider and give independent mitigating weight to *both* aspects of youth. Id. It follows that a sentencing scheme that precludes the sentencer from giving independent mitigating weight to evidence of youth violates the Constitution.

Justice O'Connor noted that "of course, the relevant Oklahoma statute permits the defendant to *present* evidence of any mitigating circumstance." 455 U.S. at 118 (emphasis added). Because the sentencer could not *consider* and give effect to this evidence, however, the young defendant's death sentence violated the constitution. (O'Connor, J., concurring).

^{183/}See, e.g., Lackey v. State, 819 S.W.2d 111, 129 (Tex. Crim. App. 1989), *rev'd*, 112 S. Ct. 1547 (1992) (describing as a mitigating circumstance that the appellant, at the time
(continued...)

3. The Supreme Court has confirmed that in particular cases, the Special Issues of the Texas sentencing statute preclude the jury's consideration of constitutionally protected mitigating evidence. Penry, 492 U.S. 302 (1989).^{184/} Penry held that the Texas capital sentencing statute is unconstitutional as applied in cases in which the Special Issues provide the jury no vehicle for expressing its reasoned moral response to the defendant's mitigating evidence. Id. at 328. In Guerra's case, a jury's reasoned moral response could have been that while Guerra's youth did not make his actions any less "deliberate" or his

^{183/}(...continued)

of the offense, was of a "youthful age (23)"); Trevino v. State, 815 S.W.2d 592, 622 (Tex. Crim. App. 1991) ("There is also mitigating evidence of appellant's youth; appellant was twenty-one years old at the time of the offense"); Madden v. State, 799 S.W.2d 683, 694 (Tex. Crim. App. 1990), cert. denied, 111 S. Ct. 1432 (1991) ("Appellant . . . introduced substantial mitigating evidence. He was only twenty-one years old at the time of commission of th[e] offense").

^{184/}In Penry the Court held that the Texas statute was inadequate to permit the consideration, *as mitigating*, of evidence of mental retardation and childhood abuse. 492 U.S. at 324.

With respect to the second Special Issue, the Court observed that Penry's intuitively and constitutionally *mitigating* evidence of mental retardation and an abused childhood was "relevant only as an *aggravating* factor," because it compelled "a 'yes' answer to the question of future dangerousness." 492 U.S. at 323 (emphasis in original). As the Court put it,

Penry's mental retardation and history of abuse is thus a two-edged sword: it may diminish his blameworthiness for his crime even as it indicates that there is a probability that he will be dangerous in the future

. . . .

The second special issue, therefore, did not provide a vehicle for the jury to give mitigating effect to Penry's evidence of mental retardation and childhood abuse.

492 U.S. at 324.

future threat to society any more or less "probable," he did not deserve the death penalty because, at the age of 20, only three months older than a teenager, he was less able to control his impulses or to evaluate the consequences of his conduct. Thus, as in Penry, the major mitigating thrust of the evidence of Guerra's youth went beyond the scope of the Special Issues. Because the jury had no vehicle in which to express their "reasoned moral response," Guerra's death sentence, like Penry's, cannot stand.

B. Inapplicability of the Law of Parties

4. On September 2, 1992, Hon. David Hintner, United States District Judge for the Southern District of Texas, granted a writ of habeas corpus on grounds directly raised by Guerra's petition -- that the trial court failed to instruct the jury that the law of parties did not apply in the punishment phase of the trial. Nichols, Slip Op. at 9-10. The federal court held that it was fundamental error (and thus not waivable due to defense counsel's failure to object) for a court to fail to give this instruction to a capital murder jury.

5. In Guerra's case, in the punishment phase, defense counsel requested a charge on (i) "mitigation of punishment," S.F. Vol. 27 at 163, and (ii) "the role of Guerra in relationship to the role of the co-defendant^{185/} in light of the testimony," id. at 163-64. Clearly, these were requests for a mitigation charge on Guerra's status as a non-triggerman and an instruction on the inapplicability of the law of parties to the sentencing questions. The court's refusal to charge the jury on either issue resulted in the unconstitutional application of Special Issue No. 1 to Guerra. Nichols, Slip Op. at 10.

^{185/}The "co-defendant" to which defense counsel referred was obviously Carrasco.

6. In Penry v. Lynaugh, 492 U.S. 302, 319, 327-28 (1989), the Supreme Court held that the Texas sentencing statute mandates that a jury be able to consider and give effect to all "evidence that mitigates against the death penalty."

7. In applying Penry, the Fifth Circuit concluded that "Penry does not invalidate the Texas statutory scheme . . . in instances where no major mitigating thrust of the evidence is substantially beyond the scope of all the special issues." Graham v. Collins, 950 F.2d 1009, 1027 (5th Cir.) (en banc), cert. granted, 112 S. Ct. 2937 (1992). The Nichols court held that "evidence that the *petitioner* did not kill the deceased" constitutes just such mitigating evidence. Slip Op. at 9 (emphasis added).

8. In Texas, the law of parties may not be applied to the special issues in the punishment phase. Green v. State, 682 S.W.2d 271, 287 (Tex. Crim. App. 1984) (en banc), cert. denied, 470 U.S. 1034 (1984):

[W]hile the death penalty may be imposed against one convicted as a party to a capital offense, it may not be imposed on a capital defendant for the deliberate conduct *of another* or the future dangerousness *of another* without regard to the individual conduct of the defendant whose fate is being determined.

Nichols, Slip Op. at 8-9 (citing Green, 682 S.W.2d at 287) (emphasis in original); see also Tr. 331.

9. In construing Special Issue No. 1, the Nichols court observed:

Special issue number one inquires into the deliberateness of "the conduct" of the defendant that caused the death of the deceased. "The conduct" of the defendant convicted of capital murder under the law of parties is deliberate when the defendant is deliberately a party to the capital crime. With such imprecise inquiry into conduct, special issue one allows a jury to answer in the affirmative more easily for the non-triggerman than for the triggerman. *Thus, special issue number one permits the jury to apply the law*

of parties to the non-triggerman unless the jury is specifically instructed at the punishment phase that the law of parties does not apply.

Nichols, Slip. Op. at 9 (underlined emphasis in original; italics emphasis added).

10. In Guerra's trial, the prosecution's oft-used hypothetical and repeated explanations of the law of parties during *voir dire*, see pp. 70-72, supra, introduced the legal concept to the jurors, and they arrived at the punishment phase informed of the law of parties. Nothing in the court's charge informed those jurors that this doctrine could not be applied.

11. Particularly in this case -- where Guerra's entire defense was that *he was not the triggerman*, the prosecutor's misstated law of parties in *voir dire*, and evidence creating any lingering doubts in jurors' minds would have constituted mitigating evidence -- the court's failure to explain the inapplicability of the law of parties caused the unconstitutional application of Special Issue No. 1 to Guerra.

XIII. THE TRIAL COURT'S REFUSAL TO DEFINE THE OPERATIVE TERMS OF ARTICLE 37.071 IN PUNISHMENT SPECIAL ISSUES NO. 1 AND 2 VIOLATED GUERRA'S RIGHTS UNDER THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 10, 13, 15, AND 19, OF THE TEXAS CONSTITUTION

1. The trial court neither defined "reasonable doubt" when it instructed the jury during the guilt-innocence phase of the trial, nor defined that term -- nor any of the operative terms -- in the Special Issues when it instructed the jury during the punishment

phase.^{186/} Instead, the jury instructions pertaining to the Special Issues tracked the language of Article 37.071(b) verbatim.^{187/} The trial court told many of the jurors during *voir dire* that it would not define "reasonable doubt," thus forcing the jurors to invent their own definitions of that term and the operative terms in the Special Issues because the court would not do it for them.^{188/} Additionally, while certain terms were not defined by the

^{186/}The court instructed the jury to answer the first Special Issue by deciding "from the evidence beyond a reasonable doubt that the conduct of the defendant, Ricardo Aldape Guerra, that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result." The jury was instructed to answer the second Special Issue by deciding "from the evidence beyond a reasonable doubt that there is a probability that the defendant, Ricardo Aldape Guerra, would commit criminal acts of violence that would constitute a continuing threat to society." *Id.* at 331.

^{187/}At the time of Guerra's trial, Art. 37.071(b) of the Texas Code of Criminal Procedure read as follows:

(b) On conclusion of the presentation of the evidence, the court shall submit the following issues to the jury:

(1) whether the conduct of the defendant that caused the death of the deceased was committed *deliberately* and with the reasonable expectation that the death of the deceased or another would result;

(2) whether there is a probability that the defendant would commit *criminal acts of violence that would constitute a continuing threat to society*; and

(3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased.

Texas Crim. Proc. Code Ann. § 37.071 (Vernon 1981) (emphasis added).

^{188/}The trial court told one of the jurors (while out of earshot of the others), "many terms will be defined for you, but one which will not be defined for you is . . . beyond a reasonable doubt To me it means that you will bring with you your common sense
(continued...)

court, the *prosecution* attempted to impose its own definitions on the jury during *voir dire* for "reasonable doubt," "deliberately," and "continuing threat to society."^{189/}

2. The court's post-trial jury instructions violated the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, sections 13 and 19, of the Texas Constitution, pp. 285-86, *infra*, and the right to a reliable jury verdict as guaranteed by the Sixth, Eighth and Fourteenth Amendments to the United

^{188/}(...continued)

and you will listen to what goes on in the courtroom and *if you are convinced that the individual* charged with the crime *committed that crime*, then if you believe that, *the State has met its burden of proof. If you are not convinced, they have not met their burden of proof.* To me it is that simple. It may not be that simple to other folks, and may be more simple to other people, but that is the way my definition is." S.F. Vol. 13 at 2139-2140 (Brown). A substantially similar statement was made by the court to many of the other members of the *venire* who became jurors. S.F. Vol. 15 at 2566 (Brumley); Vol. 17 at 2886-87 (Busby); Vol. 5 at 645-46 (Douthitt); Vol. 7 at 1036 (Monroe); Vol. 6 at 814-15 (Kellogg); Vol. 19 at 3444-45 (Petty); Vol. 13 at 3140 (Smith).

^{189/}The prosecution advised many of the jurors that "beyond a reasonable doubt" was not "proof beyond all doubt . . . and is not proof beyond a shadow of a doubt." S.F. Vol. 13 at 2393 (Brown); Vol. 17 at 2915 (Busby); Vol. 5 at 672 (Douthitt); Vol. 6 at 950 (Kellogg); Vol. 7 at 1074 (Monroe); Vol. 19 at 3477 (Petty); Vol. 18 at 3251 (Smith); 19 at 3541 (Whiteford); Vol. 6 at 853 (Woods).

With respect to the term "deliberately" the prosecution told some members of the jury that "to some people [deliberately] may mean the same thing as intentionally." S.F. Vol. 13 at 2376 (Brown); Vol. 12 at 2062-63 (Martenis). Additionally, the prosecution told one juror that "it is hard for me to see a difference between intentional and deliberate, although in my mind, what is intentional means what is intent on your mind, what your thought processes were . . . deliberately speaks of it in terms of conduct. What was your conduct like rather than a thought process." S.F. Vol. 5 at 665-66 (Douthitt).

With respect to the definition of "society" the prosecution told some jurors that convicts at the penitentiary should also be considered members of a society, prison society. S.F. Vol. 15 at 2588-89 (Brumley); Vol. 17 at 2907 (Busby); Vol. 5 at 669 (Douthitt); Vol. 6 at 942-43 (Kellogg); Vol. 12 at 2067-68 (Martenis); Vol. 19 at 3534-35 (Whiteford); Vol. 6 at 843 (Woods).

States Constitution and Article I, sections 10, 13, 15 and 19, of the Texas Constitution, because the terms "reasonable doubt," "deliberately," "reasonable expectation," "criminal acts of violence," and "a continuing threat to society" were void for vagueness on their face and as applied.^{190/}

3. Additionally, Guerra's death sentence violated the Eighth and Fourteenth Amendments to the United States Constitution and Article I, sections 13 and 19 of the Texas Constitution because the vague terms in the Special Issues do not genuinely narrow the class of persons eligible for death and reasonably justify the imposition of a more severe penalty. Maynard v. Cartwright, 486 U.S. 356, 374-75 (1988); Godfrey v. Georgia, 446 U.S. 420, 433 (1980).

A. "Reasonable Doubt" Must Be Defined

4. At both the guilt-innocence and punishment stages of trial, the court's charge to the jury at the close of the evidence failed to define the term "reasonable doubt." The omission of this necessary charge violated Guerra's rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, sections 10,

^{190/}Guerra's counsel raised these issues at trial. Guerra's counsel filed a pretrial motion to find unconstitutional Article 37.071 of the Texas Code of Criminal Procedure on its face and as applied. The motion stated that "Article 37.071 is so vague and indefinite as to be incapable of interpretation by reasonable men and is therefore facially void as it violates the defendant's rights to 'due process' of law and 'fundamental fairness' guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States." Tr. 48. The motion also contended that the terms contained in Article 37.071, such as "deliberately . . . can have no meaning for the average juror and consequently death could result for the defendant without any true or reasonable version of due process or fundamental fairness." Id. The court denied the motion, id. at 49, and instead merely instructed the jury in the bare terms of the statute.

13, 15 and 19, of the Texas Constitution. As a result, Guerra's conviction and sentence cannot stand.

5. Until recently the term "reasonable doubt" was not defined by statute in Texas, and earlier judicial pronouncements criticized trial judges for attempting to define that term. See, e.g., Massey v. State, 1 Tex. App. 563, 570 (1877); Young v. State, 648 S.W.2d 2, 3 (Tex. Crim. App. 1983) (Onion, C.J., concurring). Recently, the Texas Court of Criminal Appeals expressly adopted a definition of reasonable doubt and held that the "instruction *shall be submitted* to the jury in all criminal cases, even in the absence of an objection or request by the State or the defendant, whether the evidence be circumstantial or direct." Geesa v. State, 820 S.W.2d 154, 162 (Tex. Crim. App. 1991) (emphasis added).^{191/}

6. Geesa further directed that this requirement was one of only "limited prospectivity," claiming that the rule did not confer "any greater constitutional protections

^{191/}Geesa adopted the following definition:

a "reasonable doubt" is a doubt based on reason and common sense after a careful and impartial consideration of all the evidence in the case. It is the kind of doubt that would make a reasonable person hesitate to act in the most important of his own affairs.

Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

820 S.W.2d at 162.

This definition requires much stronger proof than the trial court's explanation to some of the jurors that the State has met its burden "if you are convinced that [the defendant] committed that crime," see note 188, supra -- and thus makes it even more important to find the charge inadequate and reverse Guerra's conviction on this issue.

than existed before" Id. at 165. Guerra contends nevertheless that the failure of the charge to define the term "reasonable doubt" in this case violated his rights to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, the right to a reliable jury verdict as guaranteed by the Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States, and Article I, sections 10, 13, 15 and 19, of the Texas Constitution.

7. Section 2.01 of the Texas Penal Code and Article 38.03 of the Texas Code of Criminal Procedure require proof beyond a reasonable doubt before an accused may be convicted of a crime. Article 37.071 similarly requires proof beyond a reasonable doubt before an affirmative answer to any of the Special Issues may be returned to assess a death sentence. These provisions represent an attempt to comply with the federal constitutional requirements prescribed in In re Winship, 397 U.S. 358 (1970).

8. In Taylor v. Kentucky, 436 U.S. 478 (1978), the Court held that even when a charge defining the term "reasonable doubt" is given, a charge on the "presumption of innocence" is also mandated by the due process clause in order to safeguard against a dilution of the principle that guilt is to be established by probative evidence beyond a reasonable doubt. Id. at 486. In so doing, the Court noted that the definition of "reasonable doubt" given by the trial court in Taylor was not a "model of clarity" and might have itself been reversible error. Id. at 488.^{192/}

^{192/}The trial court's charge in Taylor defined "reasonable doubt" to mean "a substantial doubt, a real doubt, in that you must ask yourself not whether a better case might have been proved, but whether after hearing all the evidence you actually doubt that the defendant is guilty." Id. at 481 n.7.

9. Thus, the Supreme Court plainly indicated that an incorrect definition could violate the right to due process. If an incorrect definition could violate that right by leaving the jurors misinformed concerning the constitutionally mandated standard of proof, then indisputably the failure to give *any* definition (and thereby allowing up to twelve different, personal, and potentially erroneous definitions to be employed) fails to meet minimal due process standards.

10. Furthermore, the failure to define the term "reasonable doubt" also renders jury verdicts at the guilt-innocence and punishment stages unreliable, because when certain terms are left undefined, the juror has the discretion to disregard them. The need for reliability is even greater in capital cases because of their finality. Woodson v. North Carolina, 428 U.S. 280, 305 (1976); see also Mills v. Maryland, 486 U.S. 367, 383-84 (1988); Beck v. Alabama, 447 U.S. 625, 637-38 (1980); Lockett v. Ohio, 438 U.S. 586, 604-05 (1978).

11. The term "proof beyond a reasonable doubt" is not commonly understandable. It must be defined to ensure that all twelve jurors are using the same standard. A process (i.e., jury deliberations) allowing use of twelve different, personal, and potentially incorrect definitions of such a decisive term plainly fails the standard of heightened reliability. Moreover, not only is the process inherently unreliable, but *a fortiori* the results of the guilt-innocence and punishment stages are likewise unreliable.

**B. The Terms in the Special Issue Questions also Must Be Given Limiting
Constructions During the Punishment Phase of the Trial.**

12. Article 37.071 of the Texas Code of Criminal Procedure requires that the sentencer in a death penalty case be adequately informed of what it must find in order to impose the death penalty. Maynard v. Cartwright, 486 U.S. 356 (1988). Because the operative terms of this statute are vague and the trial court failed to define those terms for the jury, Article 37.071 of the Texas Code of Criminal Procedure was applied to Guerra in violation of the Eighth Amendment. Additionally, the verdict obtained by the jury is not rationally reviewable, because the deliberative process was tainted with vague standards. Thus, the Eighth and Fourteenth Amendments were violated in that there was no rational process justifying the imposition of a death sentence on Guerra in comparison to those cases in which a life sentence has been imposed.

**1. The Language of the Special Issues Must Provide the Jury with
Specific Guidance.**

13. In Godfrey v. Georgia, 446 U.S. 420 (1980), the Supreme Court held that the Eighth Amendment requires that the discretion of the sentencer in a death penalty case must be channeled "'by clear and objective standards' that provide 'specific and detailed guidance.'" Id. at 428 (citing Gregg v. Georgia, 428 U.S. 153, 198 (1976), and Proffitt v. Florida, 428 U.S. 242, 253 (1976)).

14. In "channeling" the sentencer's discretion, states that choose to impose the death penalty must provide a two-step process in determining which persons will receive that ultimate sentence: (i) the first must narrow the class of those eligible for the death penalty; and (ii) the second must select from that class those who shall actually be

sentenced to death. Zant v. Stephens, 462 U.S. 862, 876-79 (1983). A requirement of "aggravating circumstances" performs the first of these functions by narrowing the class of death-eligible defendants. Id. at 878. The most important factor in the second process is "an *individualized* determination on the basis of the character of the individual and the circumstances of the crime." Id. at 879. The jury's consideration of the evidence at the guilt-innocence stage of the trial, its consideration of mitigating and other factors about the character and background of the defendant at the sentencing stage, and appellate review of each death penalty case perform the second function.

15. Guerra was tried under a two-step process before the imposition of his death sentence. A jury first convicted him of capital murder, which is defined by Texas Penal Code § 19.03 as a narrow class of aggravated murders.^{193/} After additional evidence

^{193/}At the time of Guerra's trial, Texas Penal Code §19.03 read:

- (a) A person commits an offense if he commits murder as defined under Section 19.02(a)(1) of this code and:
 - (1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;
 - (2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated rape, or arson;
 - (3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(continued...)

was adduced at the sentencing phase, the sentencing jury then returned unanimous, affirmative answers to the two Special Issues. The court then sentenced Guerra to die.

16. Texas courts have recognized that while the first step (Texas Penal Code § 19.03) is intended to narrow those eligible to receive the death penalty, the Special Issues provide a further narrowing and are therefore aggravating circumstances:

[T]he function of Article 37.071 . . . [is] to further narrow the class of death-eligible offenders to less than all those who have been found guilty of [capital murder] as defined under § 19.03 (Texas's capital murder statute).

Smith v. State, 779 S.W.2d 417, 420 (Tex. Crim. App. 1989); Roney v. State, 632 S.W.2d 598, 603 (Tex. Crim. App. 1982) (facts of crime themselves do not provide death-eligibility; otherwise, every capital murder in the course of a robbery would warrant death and destroy the purpose of punishment stage in Texas capital cases, which is to provide reasonable and controlled decision concerning imposition of death penalty and to prevent capricious and arbitrary imposition of sanction).

¹⁹³(...continued)

- (4) the person commits the murder while escaping or attempting to escape from a penal institution;
 - (5) the person, while incarcerated in a penal institution, murders another who is employed in the operation of the penal institution.
- (b) An offense under this section is a capital felony.
- (c) If the jury does not find beyond a reasonable doubt that the defendant is guilty of an offense under this section, he may be convicted of murder or of any other lesser included offense.

Tex. Penal Code Ann. § 19.03 (Vernon 1989).

17. In imposing a death sentence, it is impermissible for a state to use aggravating factors that are inherently vague or imprecise. The Supreme Court recently reiterated this constitutional mandate:

[I]f a State uses aggravating factors in deciding who shall be eligible for the death penalty or who shall receive the death penalty, it cannot use factors which as a practical matter fail to guide the sentencer's discretion Although our precedents do not require the use of aggravating factors, they have not permitted a State in which aggravating factors are decisive to use factors of *vague or imprecise content*. A vague aggravating factor employed for the purpose of determining whether a defendant is eligible for the death penalty fails to channel the sentencer's discretion.

Stringer v. Black, 112 S. Ct. 1130, 1139 (1992) (emphasis added).

18. If an aggravating circumstance contains vague and imprecise terms, it is imperative that the state apply a limiting construction on such terms:

When a jury is the final sentencer, it is essential that the jurors be properly instructed regarding all facets of the sentencing process. It is not enough to instruct the jury in the bare terms of an aggravating circumstance that is unconstitutionally vague on its face.

Walton v. Arizona, 110 S. Ct. 3047, 3057 (1990).^{194/}

^{194/}The Court emphasized the same principle in Lewis v. Jeffers, 110 S. Ct. 3092 (1990):

Our decision in Walton thus makes clear that if a State has adopted a constitutionally narrow construction of a facially vague aggravating circumstance, and if the State [court] has applied that construction to the facts of the particular case, then the "fundamental constitutional requirement" of "channeling and limiting . . . the sentencer's discretion in imposing the death penalty," Cartwright . . . has been satisfied.

Id. at 3101 (citing Maynard v. Cartwright, 486 U.S. 356, 362 (1988)).

In Walton and Jeffers, the Supreme Court held that Arizona's aggravating circumstances, though facially vague, were not unconstitutional because the state had
(continued...)

19. In Gregg v. Georgia, 428 U.S. 153 (1976), the Supreme Court initially upheld the Georgia death penalty scheme against a challenge that one of Georgia's statutory aggravating circumstances, which contained the words "outrageously or wantonly vile," was unconstitutional on its face. Id. at 201. Nearly four years later, however, the Court held that the Georgia Supreme Court had adopted such a broad and vague construction of those words that the scheme violated the Eighth and Fourteenth Amendments. Godfrey, 446 U.S. at 432.

20. In Maynard, the Supreme Court affirmed the Tenth Circuit's holding that certain words contained in one of Oklahoma's statutory aggravating circumstances -- "heinous," "atrocious," and "cruel" -- did not on their face sufficiently guide the jury to satisfy the Eighth Amendment. The lack of any limiting construction on such words therefore constituted a failure to cure this Eighth Amendment violation. 486 U.S. at 364.

21. As discussed below, the Texas statute contains the same flaw found in the Oklahoma scheme. The key standards -- "deliberately," "criminal acts of violence that would constitute a continuing threat to society" -- contained in the Texas statute do not on their face provide sufficient guidance to the jury in determining whether the death penalty should be imposed. Furthermore, the Texas courts have failed to cure this Eighth

¹⁹⁴(...continued)

adopted and applied a valid limiting construction. Specifically, the Supreme Court upheld the constitutionality of the construction given by the Arizona Supreme Court to the "cruelty" aspect of the aggravating circumstance of "especially heinous, atrocious or cruel." The Arizona Supreme Court had determined that a murder is committed in an "especially cruel" manner when "the perpetrator inflicts mental anguish or physical abuse before the victim's death." Walton, 110 S. Ct. at 3053. The trial court (which is the sentencer in Arizona capital cases) was presumed to have applied this limiting instruction.

Amendment violation by providing a limiting construction on such words. Thus, the Texas scheme as applied in Guerra's case was unconstitutional.

2. The First Special Issue Question Provides No Guidance.

22. The first Special Issue requires a finding that "the conduct of the defendant that caused the death of the deceased was committed *deliberately* and with the reasonable expectation the death of the deceased or another would result." Tex. Crim. Proc. Code Ann. § 37.071(b)(1) (Vernon 1981) (emphasis added). The use of the bald term "deliberately," without more, deprived Guerra's jury of clear and objective standards that provide specific guidance regarding the limited meaning and application of the first Special Issue. Godfrey, 446 U.S. at 428; Penry v. Lynaugh, 492 U.S. 302 (1989). Moreover, as with the second Special Issue, Texas courts have neither created nor applied a constitutional limiting construction to the Issue.

23. The term "deliberately" lacks any clear and objective meaning. It can connote many things to many people. For example, a legal thesaurus lists numerous synonyms for "deliberate," including "intended" and words synonymous with intentional. West's Legal Thesaurus Dictionary, at 219 (1986).^{195/} Yet the court never defined the term for the jury that sentenced Guerra to death, in spite of his counsel's objection to the vague application of these terms.

24. The absence of a viable definition of "deliberate" is constitutionally impermissible because there is no difference in common usage between "deliberate" as

^{195/}The synonyms are: aforethought, carefully considered, calculated, well advised, considered, conscious, designed, dispassionate, *intended*, *intentional*, planned, plotted, premeditated, purposeful, studied, thought-out, volitional, willful.

used in the first Special Issue and the term "intentional" as used in the guilt-innocence phase instructions. In criminal law, both terms denote a form of *mens rea*. Guerra's jury had to find intent in order to convict him of capital murder. They were not instructed that deliberateness requires something *greater* than mere intent. They could easily have equated intent and deliberateness. More importantly, they were not told what, in addition to intent, they had to find in order further to determine that Guerra acted deliberately.

25. The fact that the jury most likely equated "intentional" from the guilt-innocence phase and "deliberate" from the punishment phase is of constitutional magnitude because of the second step of the Godfrey test, p. 261, supra, *and* because the Court of Criminal Appeals has repeatedly held that the word "deliberate," as employed in the Texas death penalty statute, means something different from "intentional." See, e.g., Lane v. State, 743 S.W.2d 617, 628-29 (Tex. Crim. App. 1987), cert. denied, 112 S. Ct. 1968 (1992); Heckert v. State, 612 S.W.2d 549, 552-53 (Tex. Crim. App. [Panel Op.] 1981).^{196/} So far the Court has sought to define what "deliberately" *is not* in specific cases;

^{196/}Indeed, members of the Court of Criminal Appeals have over the years commented on how misunderstood, confusing, and unclear the meaning of the term "deliberate" is to judges, juries, and lawyers throughout the state. See, e.g., Lane v. State, 743 S.W.2d 617, cert. denied, 112 S. Ct. 1968 (1992) (Duncan, J., concurring). Nevertheless the Court has consistently refused to require trial courts to instruct a capital sentencing jury on the meaning of "deliberate" in the first Special Issue. Cannon v. State, 691 S.W.2d 664, 677-78 (Tex. Crim. App. 1985), cert. denied, 474 U.S. 1110 (1986); see Penry v. Lynaugh, 492 U.S. 302, 326 (1989) ("[n]either the Texas Legislature nor the Texas Court of Criminal Appeals have defined the term 'deliberately'").

it has never defined what "deliberately" is, by providing a general limiting construction for the phrase.^{197/}

26. The first Special Issue is thus unconstitutionally vague because it fails to fulfill its requirement of narrowing the class of death-eligible persons by rationally channeling the jury's discretion. Truly, a "person of ordinary sensibility could fairly characterize almost every" intentional murder as being deliberate. Godfrey, 446 U.S. at 428-29.

^{197/}For example, prior to Guerra's trial the Court of Criminal Appeals had indicated that one need not act with premeditation to act "deliberately." Granviel v. State, 552 S.W.2d 107, 123 (Tex. Crim. App. 1976), cert. denied, 431 U.S. 933 (1977). Likewise, the court stated that deliberately "embraces more than a will to engage in conduct and activates the intentional conduct." Fearance v. State, 620 S.W.2d 577, 584 (Tex. Crim. App. 1980), cert. denied, 492 U.S. 927 (1989), and cert. denied, 454 U.S. 899 (1981). Nevertheless, by merely stating that the phrase "embraces more than" a will to act, the court has failed to provide the term with any limiting or reviewable principle.

Years after Guerra's trial, the court stated that "[t]o find the act of deliberateness there must be the moment of deliberation and the determination on the part of the actor to kill." Cannon, 691 S.W.2d at 667 (Tex. Crim. App. 1985). Of course, Guerra's jury received no such instruction. But even if they had, such a tautological definition of "deliberateness" (using the word "deliberation") provided no meaningful guidance concerning the nature of the first Special Issue. Clearly, such a "definition" is not constitutionally sufficient. Moreover, the "determination of the part of the actor to kill" reflects nothing more than the formation of intent to kill. Unlike the limiting instruction that the Arizona Supreme Court applies to the "especially heinous, cruel, or depraved" aggravating factor, see Walton, 110 S. Ct. at 3057, the Texas Court of Criminal Appeals does not provide a narrowing construction in its appellate review.

The Court's lack of a limiting principle is further evidenced by the fact that it has relied on a non-exclusive list of possible factors that underlie any determination of deliberateness. See, e.g., Livingston v. State, 739 S.W.2d 311, 339 (Tex. Crim. App. 1987), cert. denied, 487 U.S. 1210 (1988) (considering various factors in its determination of sufficiency of evidence for affirmative answer to the first Special Issue).

27. Consistent with Court of Criminal Appeals precedent, and despite the lack of clarity in the word "deliberately," members of Guerra's jury first were told on *voir dire* to use their own definition of "deliberateness" and then were given the bare, standardless charge requiring them to apply that vague term. Given the diverse meanings of "deliberate," the determination of the first Special Issue thus was left to the "uncontrolled discretion of a basically uninstructed jury." *Id.* at 429. Consequently, because the jury received no clarifying limiting instruction, there is no way to determine whether Guerra's jury defined "deliberately" in a manner consistent with other Texas capital sentencing juries -- and especially to determine whether his jury interpreted "deliberate" to require a state of intent no greater, or even *less* than, that required for conviction of the crime in the first instance. Having received no "specific and detailed guidance" as to the meaning of this vague term, the jury's finding of deliberateness is not "rationally reviewable" and therefore unconstitutional. *Id.* at 428 (citing *Proffitt*, 428 U.S. at 253, and *Woodson*, 428 U.S. at 303).

3. The Second Special Issue Question also Provides No Guidance.

28. The terms in the second Special Issue also are indisputably vague. The phrase "criminal acts of violence that would constitute a continuing threat to society" has no clear and objective meaning. The various words and phrases in the second Special Issue, when viewed individually and considered as a whole, do not provide the sentencer "clear and objective standards" that provide "specific and detailed guidance" and that "make rationally reviewable the process for imposing a sentence of death." *Godfrey*, 466 U.S. at 428 (citing *Gregg*, 428 U.S. at 198, and *Proffitt*, 428 U.S. at 253). They do not

limit the sentencer's discretion because a person of ordinary sensibility could fairly characterize almost every person convicted of capital murder as having *some* "probability" of committing "criminal acts of violence that would constitute a continuing threat to society." See id. at 428-29.

29. Given that the terms of the second Special Issue are unconstitutionally vague, the next inquiry under Godfrey, Maynard, and similar cases is whether the Texas courts have applied a valid limiting construction that cures the lack of clear and objective standards. They have not. To the contrary, the Texas Court of Criminal Appeals has rejected any limiting construction on the terms. See Holland v. State, 761 S.W.2d 307 (Tex. Crim. App. 1988), cert. denied, 489 U.S. 1091 (1989); Cannon v. State, 691 S.W.2d 664 (Tex. Crim. App. 1985), cert. denied, 474 U.S. 1110 (1986).

30. Cannon is particularly instructive on the absence of a limiting construction of the second Special Issue. In Cannon, the Court merely recited the facts surrounding the crime and then characterized them as showing "on the part of the appellant, a total lack of regard for the ownership of property, sanctity of life and respect for the personal dignity of individuals who had gone out of their way to help him." Id. at 678. The Court acknowledged in passing that Cannon was only 17 years old and illiterate, but then concluded that there was sufficient evidence to support the jury's finding. The court's sole rationale for this conclusion was that "[e]ach of these cases must be decided on its own merits." Id. at 678-79.

31. Texas's construction of the second Special Issue, as stated in Holland and Cannon, thus, is no construction at all: the decision whether the evidence supports the

second Special Issue in any given case is governed by no rational objective standard, but instead rests on the Court's independent judgment when it views the facts. See, e.g., Pyles v. State, 755 S.W.2d 98, 123 (Tex. Crim. App. 1988), cert. denied, 488 U.S. 986 (1988); Livingston v. State, 739 S.W.2d 311, 341 (Tex. Crim. App. 1987), cert. denied, 487 U.S. 1210 (1988); Santana v. State, 714 S.W.2d 1, 8-9 (Tex. Crim. App. 1986); Earvin v. State, 582 S.W.2d 794 (Tex. Crim. App.), cert. denied, 444 U.S. 919 (1979).

32. The lack of a limiting construction in Texas is highlighted by the consistent assertion of the Court that "[t]he circumstances of the offense itself can sustain a yes answer if they are severe enough . . . or can fail to support it if they are not and are unsupplemented by other evidence." Muniz v. State, 573 S.W.2d 792, 795 (Tex. Crim. App. 1978), cert. denied, 442 U.S. 924 (1979) (citations omitted). By stating that an affirmative answer is justified if the circumstances are "severe enough," the Court has simply substituted one vague standard for another, again impermissibly relying on the invalid principle that "a particular set of facts surrounding a murder" can itself support the death penalty. Maynard, 486 U.S. at 363.

33. In fact, in neither Muniz nor any other case has the Court employed any limiting construction for determining when the facts of a crime are "severe enough" to warrant an affirmative answer. The arbitrariness inherent in the Texas courts' practice is evident from the fact that the "brutal" murder in Muniz supported an affirmative finding, while the "brutal" murder in Garcia v. State, 626 S.W.2d 46 (Tex. Crim. App. 1981), did

not.^{198/} Simply put, Muniz was "struck by lightning," Furman v. Georgia, 408 U.S. 238, 309 (1972) (Stewart, J., concurring), while Garcia was not. Such standardless appellate consideration of vague aggravating circumstances was expressly condemned in both Godfrey, Maynard, and subsequent cases reaffirmed in Walton and Jeffers.^{199/}

34. Just as in Godfrey and Maynard, Texas's unconstitutionally vague second Special Issue has not been cured by the Texas courts. The Texas Court of Criminal Appeals, like the Georgia court in Godfrey and the Oklahoma court in Maynard, adheres

^{198/}The Court of Criminal Appeals has likewise stated that there are no limitations on what can be considered in determining the sufficiency of evidence under the second Special Issue. See Keeton v. State, 724 S.W.2d 58 (Tex. Crim. App. 1987) (providing nonexclusive list of factors underlying inquiry of sufficiency of evidence under Special Issue two). Indeed, in numerous cases, the Court has found sufficient evidence to support an affirmative answer to the second issue by upholding affirmative answers based on factors never mentioned in Keeton, including such amorphous factors as the "total lack of regard for the ownership of property." Cannon v. State, 691 S.W.2d 664, 678 (Tex. Crim. App. 1985), cert. denied, 474 U.S. 1110 (1986); see Crawford v. State, 617 S.W.2d 925, 933 (Tex. Crim. App. 1980), cert. denied, 452 U.S. 931 (1981) (considering fact that greed motivated the crime); Duffy v. State, 567 S.W.2d 197 (Tex. Crim. App. 1978), cert. denied, 439 U.S. 991 (1978) (considering fact that victim would not have been threat to defendant); Smith v. State, 540 S.W.2d 693 (Tex. Crim. App. 1976), cert. denied, 430 U.S. 922 (1977) (considering fact that defendant made no effort to rehabilitate himself).

^{199/} The Supreme Court in Godfrey "plainly rejected the submission that a particular set of facts surrounding a murder . . . were enough in themselves, and without some narrowing principle to apply to those facts, to warrant the imposition of the death penalty." Maynard, 486 U.S. at 363. A state court's conclusion that "on th[e] facts the jury's verdict that the [aggravating circumstance] . . . was supportable [does] not cure the constitutional infirmity of the aggravating circumstances." Id. at 364; see also Godfrey, 446 U.S. at 432 (unconstitutional aggravating circumstance not cured by appellate court's assertion that the circumstance was "factually substantiated").

Maynard itself acknowledged that "the conclusion of the Oklahoma court that the events recited by it 'adequately supported the jury's finding' [is] indistinguishable from the action of the Georgia court in Godfrey, which failed to cure the unfettered discretion of the jury to satisfy the commands of the Eighth Amendment." 486 U.S. at 364.

to the standardless practice of simply considering the facts of a case to assess the propriety of an affirmative answer to the Special Issue.

35. Capricious results are inevitable in these circumstances. For instance, the Court of Criminal Appeals held in Smith that the evidence did not support an affirmative answer to the second Special Issue, even though Mr. Smith had raped and killed a woman by entering her home, tying her to the headboard of her bed, and repeatedly stabbing her with scissors. The evidence also suggested that Smith had been plotting for several weeks to commit a rape. The offense was described by the State's forensic pathologist as "over-kill." 779 S.W.2d at 419.

36. On the other hand, the Court of Criminal Appeals in a different case held that precisely such forethought is "probative of [a person's] propensity to commit future acts of violence." Hawkins v. State, 660 S.W.2d 65, 82 (Tex. Crim. App. 1983). In Hawkins the Court of Criminal Appeals found that Hawkins had been "looking around . . . 'for somebody to rape,'" and that eventually he walked into the victim's home, raped her, and stabbed her repeatedly. Id. Nearly identical evidence was sufficient to support an affirmative finding of future dangerousness in Hawkins but not in Smith.

37. In yet another contrast to Smith, the Court of Criminal Appeals held in Earvin v. State, 582 S.W.2d 794 (Tex. Crim. App. 1979), reh'g denied, 444 U.S. 985 (1979), that the evidence of the crime alone supported an affirmative answer to the second Special Issue. Id. at 799. The Court so held despite the fact that Earvin had shot a man at a gas station who had made a sudden movement as if to reach for a gun. Mr. Earvin then had thrown down his gun in terror and fled. When arraigned, he cried

before the magistrate and confessed to the shooting but insisted that he had not intended to kill the man. He was 18 at the time of the offense and had no prior criminal history.

38. Yet in Huffman v. State, 746 S.W.2d 212 (Tex. Crim. App. 1988), the appellant killed his neighbor by applying pressure to her heart, beating her about the face, kicking her repeatedly, and strangling her. After killing her, he stole her car and led the police on a high speed chase in which he rammed two police cars. He attacked two officers before being taken to court. At the hospital, he became uncontrollable and had to be restrained by leather cuffs. He had two prior convictions for burglary, the latter while on parole for the former. He had repeatedly beaten his girlfriend and had bragged to both his girlfriend and a neighbor that he knew how to kill a person by pushing the nose bone up into the brain or hitting them hard enough in the chest to flood the heart. Remarkably -- particularly when weighed against the evidence in Earvin -- the court found this evidence insufficient to support an affirmative answer to the second Special Issue. Id. at 225.

39. In Green v. State, 682 S.W. 2d 271 (Tex. Crim. App. 1984), cert. denied, 470 U.S. 1034 (1985), the Court of Criminal Appeals found the evidence sufficient to support an affirmative answer to the second Special Issue even though appellant was not the triggerman. Id. at 289-90. There was no evidence that Green helped plan the burglary that led to the killing, that any of the perpetrators expected a murder to be committed, or that Green had either prior felony convictions or prior unadjudicated violent conduct. In addition, Green introduced the testimony of four work associates, each of whom testified that he had known Green many years and had never heard of him being in

trouble and that he was a professional, reliable cement mason. Two witnesses testified that notwithstanding Green's conviction for capital murder, they would rehire him if he were released.

40. If there is any distinguishing factor to explain these cases, it could only be that the evidence in Green and Earvin did not appear to support an affirmative answer to the second Special Issue, while the evidence in Huffman and Smith was manifestly sufficient. Yet the Court of Criminal Appeals decided them in exactly the opposite fashion. Further, the Court has stated that precisely the same evidence -- i.e., forethought and planning in connection with a rape/murder -- supported a finding of future dangerousness in Hawkins, but not in Smith.

4. Conclusion.

41. In Jurek v. Texas, 428 U.S. 262 (1976), a plurality of the Supreme Court conditionally upheld the Texas capital punishment statute, while specifically noting that the Texas Court of Criminal Appeals had not yet "define[d] precisely the meanings of such terms as 'criminal acts of violence' or 'continuing threat to society'" in the second Special Issue. Id. at 272 (plurality opinion). Fourteen years later, the Texas Court of Criminal Appeals still has not defined those and other vague terms in the second Special Issue. In Texas, there is simply no rational way to determine the definition of the terms in the question by comparing the cases determined to be deserving of death with those deserving of life. This failure has converted the second Special Issue into a macabre instrument of caprice, sending men to death in random circumstances.

42. Thus, Guerra did not receive the constitutionally required "specific and detailed guidance" concerning the meaning and application of the aggravating second Special Issue. See Godfrey v. Georgia, 446 U.S. 420, 428 (1980). Moreover, as in Godfrey and Maynard, the Texas Court of Criminal Appeals has provided absolutely no limiting construction to save the second Special Issue from its constitutional infirmity. Accordingly, Guerra's death sentence is unconstitutional.

XIV. EVIDENCE CUSTODIAN'S LOSS OF STATE EXHIBIT 5 (THE MAP OF THE SCENE) DEPRIVED GUERRA OF DUE PROCESS IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT AND ARTICLE I, SECTIONS 13 AND 19, OF THE TEXAS CONSTITUTION

1. Despite Guerra's attempts to obtain all trial exhibits which the Court authorized at a hearing on July 28, 1992, the evidence custodian cannot find State Exhibit 5 -- a map on which the State's witnesses extensively relied to indicate the locations of the cars, the shooter, Officer Harris, relevant lighting, and others. The map is essential to adequately review the events at trial and in particular to Guerra's actual innocence argument. Guerra's inability to review the eyewitnesses' testimony with the aid of the only map detailing the movements of the triggerman and Officer Harris denies Guerra's due process rights under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution. Gardner v. California, 393 U.S. 367, 369-71 (1969) (noting that a prisoner seeking habeas corpus relief needed to have a transcript of the relevant evidentiary hearing for the "effective presentation" of his case); United States v. Valenzuela-Bernal, 458 U.S. 858, 867-72 (1982) (holding that a state's pretrial deprivation

of material evidence that was favorable to a defendant violated the Fifth and Sixth Amendments). The rationale underpinning the doctrine controls here: A state cannot deny a defendant the means to rebut the prosecution's case, whatever the stage of proceedings. Cf. Rheuark v. Shaw, 628 F.2d 297, 302 (5th Cir. 1980), cert. denied, 450 U.S. 931 (1981) (noting that the inability of defendants to receive a trial transcript for appeals violated their due process rights). This principle is at "the very concept of justice." Valenzuela-Bernal, 458 U.S. at 872 (citing Lisenba v. California, 314 U.S. 219, 236 (1941)). Guerra was denied this evidence on appeal. The Constitution thus requires that his conviction be reversed.

2. The same argument should apply under Article I, sections 10, 13, and 19, of the Texas Constitution.

XV. THE CUMULATIVE EFFECT OF THE ERRORS AT GUERRA'S TRIAL DENIED HIM HIS CONSTITUTIONAL RIGHT TO A FUNDAMENTALLY FAIR TRIAL

1. A writ of habeas corpus should issue where the cumulative effect of errors "produce[s] a trial setting that is fundamentally unfair." Walker v. Engle, 703 F.2d 959, 963 (6th Cir. 1983), cert. denied, 464 U.S. 951, 962 (1983). Errors that alone might not suffice to support a writ nevertheless may together offend a sense of justice, Conner v. Deramus, 374 F. Supp. 504, 516 (M.D. Pa. 1974); or render the trial taken as a whole so fundamentally unfair that "there is a reasonable probability that the verdict might have been different had the trial been properly conducted," Derden v. McNeel, 938 F.2d 605, 609 (5th Cir. 1991) (quoting Kirkpatrick v. Blackburn, 777 F.2d 272, 278-79 (5th Cir.

1985), cert. denied, 493 U.S. 105 (1990), and cert. denied, 476 U.S. 1178 (1986), reh'g en banc granted, No. 90-1230 (5th Cir. Oct. 31, 1991));^{200/} see also Guidroz v. Lynaugh, 852 F.2d 832, 835 (5th Cir. 1988) ("we must evaluate any possible unfairness in the context of the entire proceedings"); Bowers v. Coiner, 309 F. Supp. 1064, 1071 (S.D. W. Va. 1970) (errors "were so damaging as to deprive [defendant] of a fair trial").

2. THIS IS THAT CASE WHERE THE CUMULATIVE EFFECT OF THE ERRORS SET FORTH IN THIS APPLICATION DEMONSTRATE THE FUNDAMENTAL UNFAIRNESS OF GUERRA'S TRIAL AND SENTENCING.

3. As the Bowers court stated:

[I]t does not help society to deny the defendant due process of law and to let him linger in doubt as to whether he was denied the fair trial, which our institutions, our laws and our constitutional guarantees demand. The far wiser course is . . . to make it possible for [the] defendant to have a new trial according to the precepts of due process.

309 F. Supp. at 1072. In this case, it is society, not Guerra, that will long linger in doubt if he is executed in spite of the gross, repeated errors that permeated his trial, denying

^{200/}But see United States v. Taylor, 814 F.2d 172, 175 (5th Cir.), cert. denied, 484 U.S. 865 (1987), and United States v. Birdsell, 775 F.2d 645 (5th Cir. 1985), cert. denied, 476 U.S. 1119 (1986). In both Taylor and Birdsell, Judge Jones rejected the concept of cumulative error at least on the facts of those cases. In her dissent in Derden, however, Judge Jones clarified that she did

not necessarily disagree that habeas corpus might be granted for a series of trial court errors, not individually reversible, that so poisoned the state trial court atmosphere as to cause, on the whole record, a questionable guilty verdict.

938 F.2d at 618 (citing Taylor v. Kentucky, 436 U.S. 478 (1978)). Judge Jones thus dissented in Derden on the grounds that the few circumstances of which the defendant was entitled to complain in that case did not amount to harmful error that could be "cumulated."

him the due process to which he is constitutionally guaranteed. Based on the facts and arguments set forth in this petition, a writ must issue to afford Guerra a chance to stand trial in a capital proceeding free from taint.

XVI. THE TEXAS CONSTITUTION PROVIDES BROADER GUARANTEES OF INDIVIDUAL RIGHTS AND LIBERTIES THAN THOSE FOUND IN THE U.S. CONSTITUTION

1. Many of the arguments raised by Guerra under the Texas Constitution, such as the standard governing lineup procedures and effective counsel, call on this court to fulfill its earliest function as the "primary guarantor[] of individual rights and of liberty in criminal cases." Heitman v. State, 815 S.W.2d 681, 686 (Tex. Crim. App. 1991) (opinion on appellant's petition for discretionary review) (en banc) (citing LeCroy v. Hanlon, 713 S.W.2d 335, 338 n.3 (Tex. 1986)), citing Linde, First Things First: Rediscovering the States' Bill of Rights, 9 U. Balt. L. Rev. 379, 380-83 (1980), and Comment, Rediscovering State Constitutions for Individual Rights Protection, 37 Baylor L. Rev. 463, 474-75 (1985).^{201/} Thus, "[t]he decisions of the [United States] Supreme Court represent the *minimum* protections which a state must afford its citizens. 'The federal constitution sets the floor for individual rights; state constitutions establish the ceiling.'" Heitman, 815 S.W.2d at 690 (citing LeCroy, 713 S.W.2d at 338).¹²^{202/}

^{201/}Opinions from the Texas Supreme Court are relevant because the Texas Court of Criminal Appeals has looked to that court for assistance in interpreting the Texas Constitution. See, e.g., Heitman, 815 S.W.2d at 687.

^{202/}See also Olson v. State, 484 S.W.2d 756, 762 (Tex. Crim. App. 1969) (opinion on motion for rehearing) (finding that federal constitutional safeguards establish "a minimum standard for state courts," but that "such courts are not limited to those standards in construction of federal or state rights").

2. Indeed, courts frequently have observed that the Texas Constitution affords a greater degree of individual liberties and rights than the U.S. Constitution generally. Davenport v. Garcia, 35 Tex. Sup. Ct. J. 894, 899 (June 17, 1992) (declining to limit "the liberties of Texans to those found in the Federal Constitution"); Heitman, 815 S.W.2d at 689 (noting that the guarantees in the Texas Bill of Rights "are generally more expansive and solicitous of people's liberties than the federal Bill of Rights").^{203/} The framers of the Texas Constitution did not intend for its guarantees necessarily "to mirror that of the federal government." Heitman, 815 S.W.2d at 690. Consequently, it is axiomatic that Texas courts may reject federal precedent and find more expansive rights when interpreting the Texas Constitution. Heitman, 815 S.W.2d at 682 ("Under our system of federalism . . . the states are free to reject federal holdings as long as state action does not fall below the minimum standards provided by federal constitutional protections").

3. The U.S. Supreme Court has recognized the importance of states developing their own constitutional law, and accordingly has refused to interfere with state constitutional interpretations that are more protective of individual rights than federal precedent. See, e.g., City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 293 (1982); PruneYard Shopping Center v. Robins, 447 U.S. 74, 81 (1980). Moreover, this Court is

^{203/}Accord O'Quinn v. State Bar, 763 S.W.2d 397, 402 (Tex. 1988) (noting that the Texas Supreme Court has often held that "Texas Bill of Rights affords protection beyond that provided by the [U.S.] Constitution"); LeCroy, 713 S.W.2d at 339 (claiming that the Texas Constitution has "independent vitality" and urging the protection of "additional state guaranteed rights"); State v. Morales, 826 S.W.2d 201, 204 (Tex. App.--Austin 1992, writ dismissed w.o.j)) ("The Texas Constitution has a meaning independent of the United States Constitution and, in a number of cases, Texas courts have relied on the state constitution to find more expansive rights than those granted by the federal courts.").

not bound to find that a Texas constitutional provision has the same limits as a federal provision merely because the two provisions have been read as equivalent in the past. In Heitman, for example, the Court remanded the case to the Court of Appeals after the latter court had disposed of an Article I, section 9 claim "solely by construing [Article I, section 9] in harmony with the Fourth Amendment," even though the Court of Criminal Appeals had "*repeatedly* recognized that article I, § 9 . . . and the Fourth Amendment . . . are the same in all material aspects." 815 S.W.2d at 682 (emphasis added).

A. The Texas Bill of Rights Should Be Construed Broadly

1. The Constitutional Language Calls for a Broad Construction.

4. Not only *can* the Court construe the Texas Constitution more broadly than the U.S. Constitution, the Court *should* do so. The very language and structure of the Texas Constitution explain why Texas courts often construe its provisions more broadly than comparable provisions of the U.S. Constitution.

5. First, the state's constitutional guarantees are often worded in terms that allow a far broader interpretation than the corresponding federal constitutional provision. See generally Heitman, 815 S.W.2d at 688-89; Travelers Ins. Co. v. Marshall, 76 S.W.2d 1007, 1009 (1934) (noting that the Texas Bill of Rights consists of "*express limitations of power*"). Moreover, even where the wording in the two constitutions is similar, the provisions need not be interpreted as equivalent: "Initially, using similarity of wording as the foundation for the theory of harmonious interpretation assumes that state

constitutional framers desired that this be done. We believe this assumption to be erroneous." Heitman, 815 S.W.2d at 685.

6. Second, the prominent position that the Bill of Rights occupies at the beginning of the Texas Constitution shows its preeminent character. Id. at 690 ("[I]t is . . . significant that our Bill of Rights is the first article in our state constitution and that it held this position in each of Texas's five state constitutions").

7. Finally, Article I, section 29 specifically provides that the Texas Bill of Rights shall prevail over even other constitutional provisions. See Davenport, 35 Tex. Sup. Ct. J. at 895 (citing Article I, section 29 for support that Article I, section 8 "shall forever remain inviolate"); James C. Harrington, *The Texas Bill of Rights: A Commentary and Litigation Manual* 24 (1987) (hereafter "Harrington, Texas Bill of Rights") (arguing that section 29 "underlines the elevated position of the Bill of Rights").

2. Juridical Advantages of Broader Construction.

8. Texans benefit from the Court of Criminal Appeals' summons to explore Texas's unique constitutional protections. Texas courts act as "'laboratories' of constitutional law," guiding "future constitutional decisions of . . . state courts . . . [and] the Supreme Court," Heitman, 815 S.W.2d at 686, and respond with "a more innovative and responsive approach to local interests than the Supreme Court whose decisions bear the onus of nationwide applicability," id. at 687.

9. The federal system of government draws strength from independently drawn and interpreted state constitutions. Id. at 687. The power of state courts to "review and

'rethink' federal constitutional decisions" ensures that "their citizens will have the 'double security' the federal constitution was intended to provide." Id.^{204/}

10. When a court fails to "independently interpret the state constitution," it "effectively repeals or renders moot the state constitutional provisions" and "ignores our own constitutional history." Heitman, 815 S.W.2d at 688. Both the "powers restricted and the individual rights guaranteed" in the Texas Constitution reveal "Texas's values, customs, and traditions." LeCroy, 713 S.W.2d at 339. To consider the Texas Constitution "merely as a restatement of the Federal Constitution . . . both insults the dignity of the state charter and denies citizens the fullest protection of their rights." Davenport, 35 Tex. Sup. Ct. J. at 899.

11. Finally, in interpreting the Texas Constitution, this Court must remain aware that the "dimensions of our constitutionally guaranteed liberties are continually evolving." Davenport, 35 Tex. Sup. Ct. J. at 898. In the Texas Constitutions' two distinct due process provisions, Article I, sections 13 and 19, this Court must refrain from "blindly follow[ing] the Supreme Court's decisions." Heitman, 815 S.W.2d at 690.

^{204/}See also The Federalist No. 51, at 240-41 (James Madison, Hollowell ed. 1842) ("In the compound republic of America, the power surrendered by the people is first divided between two distinct governments. . . . Hence a double security arises to the rights of the people."); Davenport, 35 Tex. Sup. Ct. J. at 901 ("By enforcing *our* constitution, we provide Texans with their full individual rights and strengthen federalism.") (citing LeCroy, 713 S.W.2d at 339).

B. Specific Texas Constitutional Provisions Provide Broader Protection of Individual Rights and Liberties than Current Interpretations of the Federal Constitution

1. Article I, Section 13.

12. Article I, section 13 of the Texas Constitution provides in relevant part: "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." One commentator contends that this provision, "which is quite plainly a due process guarantee, promises to be one of the marked distinctions which sets the Texas Constitution apart from its federal counterpart." Harrington, The Texas Bill of Rights 102 (1987) (citing Sax v. Votteler, 648 S.W.2d 661, 664 (Tex. 1983)).

13. Courts have recognized the breadth of protection offered by section 13 for over a century. For example, in Dillingham v. Putnam, 14 S.W. 303 (1890), the Supreme Court invalidated a supersedeas bond statute because it effectively prevented certain parties from securing an appeal. The court held under Article I, section 13 that "[a] law which practically takes away from either party to litigation the right to a fair and impartial trial in the courts provided by the constitution for the determination of a given controversy, denies a remedy by due course of law." Id. at 304.

14. Comparing section 13 to the federal constitution, Texas courts have repeatedly held that it provides defendants with additional rights. See, e.g., LeCroy, 713 S.W.2d at 338-41; Sax, 648 S.W.2d at 664 (finding that because Article I, section 13 "does accord Texas citizens additional rights, we choose not to decide this case on the basis of the United States Constitution."); see also Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 11-12

(1987) (finding that Article I, section 13 of the Texas Constitution "appears to address Texaco's claims more specifically than the Due Process Clause of the Fourteenth Amendment.").

15. Similarly, Guerra's access to the courts is effectively denied when a court refuses to review all constitutional errors raised in habeas corpus proceedings in a capital trial, see pp. 290-93, infra, or when a case is riddled with error, such as here.

16. The government bears the burden of showing that a "legislative purpose outweighs the interference with the individual's right of access." LeCroy, 713 S.W.2d at 341; Glass v. Glass, 826 S.W.2d 683, 687 (Tex. App.--Texarkana 1992, writ filed) ("[O]rdinarily it might be appropriate to determine whether any state purposes outweigh Peggy Glass's constitutional right to access to [sic] the courts. Here, however, no state purpose or policy is shown to be served that might be weighed against the right to open courts.").

2. Article I, Section 19.

17. In addition to section 13, section 19 of Article I of the Texas Constitution requires the state to afford due course of law in its actions: "No citizen of this state shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land." Section 19 differs from the federal Fourteenth Amendment in that it "confers affirmative rights directly on the people and is not limited to restricting government activity, as is the fourteenth amendment (and the fifth amendment, for that matter)." Harrington, *The Texas Bill of Rights* 102.

18. Article I, section 19 thus also provides broader guarantees than the U.S. Constitution. Aladdin's Castle, 455 U.S. at 293 ("It is first noteworthy that the language of the Texas constitutional provision [Article I, sections 3 and 19] is different from, and arguably significantly broader than, the language of the corresponding federal provisions."); Ex parte Patterson, 740 S.W.2d 766, 770 (Tex. Crim. App. 1987), overruled by Ex parte Beck, 769 S.W.2d 525, 528 (Tex. Crim. App. 1989) ("We need not define 'liberty' for purposes of due course of law analysis under Article I, § 19 of the Texas Constitution in accordance with the 'entitlement' doctrine that has developed in federal due process jurisprudence, and we decline to define it in those terms."); Long v. State, 742 S.W.2d 302, 319-20 (Tex. Crim. App. 1987), cert. denied, 485 U.S. 993 (1988), overruled by Briggs v. State, 789 S.W.2d 918 (Tex. Crim. App. 1990) (noting language in Mesquite that Texas Constitution has "arguably significantly broader" language than the United States Constitution).

19. Even though sections 13 and 19 are both called due process of law provisions, they need not be interpreted as offering identical guarantees. Each provision provides distinct constitutional protections. "Logically, our constitutions have included both provisions [Article I, sections 13 and 19] because they serve different purposes. The open courts provision must have been intended to provide rights in addition to those in the due process provision or the former would be surplusage." LeCroy, 713 S.W.2d at 340; see also Nelson v. Krusen, 678 S.W.2d 918, 921 (Tex. 1984) ("Although sections 13 and 19 of article I both guarantee due process, the two Texas due course of law provisions are not coterminous.").

20. Under either section 13 or section 19 of Article I, the Court will find the guarantees of liberty that must be vindicated in order to prevent the execution of an innocent man.

XVII. JUDICIAL REVIEW OF ALL CONSTITUTIONAL ERRORS RAISED IN HABEAS CORPUS PROCEEDINGS INVOLVING CAPITAL CASES IS REQUIRED BY ARTICLE I, SECTION 13, OF THE TEXAS CONSTITUTION

A. Article I, Section 13, of the Texas Constitution Requires Review of all Constitutional Errors, Even if Unpreserved in Capital Cases

1. In various places in this Application, Guerra noted objectionable conduct to which Guerra's trial counsel did not object. In most instances, the conduct, both separately and cumulatively, was fundamental error, which requires no objection to be preserved. But even where the error was not fundamental, it should not be treated as a waiver in a capital case.

2. Where the death sentence -- life extinguishing and irrevocable -- has been imposed, the Texas Constitution requires review of all constitutional errors alleged to have occurred in both the guilt and punishment phases of the trial, even if the defendant's attorney did not preserve the errors. Article I, section 13, of the Texas Constitution provides in part: "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." This section "specifically guarantees all litigants the right to redress their grievances . . . the right to their day in court." LeCroy, 713 S.W.2d at 341; see also Nelson, 678 S.W.2d at

921; Sax, 648 S.W.2d at 664; Hanks, 48 S.W.2d at 946-47; see discussion of Article I, section 13, pp. 284-85, supra.^{205/}

3. Texas courts have held repeatedly that section 13 provides defendants with protections in addition to those afforded by the U.S. Constitution. See pp. 284-85, supra.

4. Under the Open Courts provision of section 13, the Legislature "cannot arbitrarily or unreasonably interfere with a litigant's right of access to the courts" because a "substantial right is involved." LeCroy, 713 S.W.2d at 341.^{206/} The Open Courts provision calls on the court to balance the legislature's actual purpose in enacting a statute against "that law's interference with the individual's right of access to the courts." Id. at 341; Sax, 648 S.W.2d at 665-66.

5. Under section 13, the burden is on the State to show that a "legislative purpose outweighs the interference with the individual's right of access." LeCroy, 713 S.W.2d at 341; Glass v. Glass, 826 S.W.2d at 687. Through its constitution and various laws, and in the development of its common law, Texas has developed a comprehensive scheme for prosecuting and sentencing capital crimes; for conducting appeals of such cases; and for permitting habeas corpus review of the results. Little burden falls on the State in a first habeas review of such claims. Surely whatever burden exists is vastly

^{205/}Although most cases discussing the breadth of section 13 arise in civil court (see, e.g., LeCroy, Nelson, Sax, and Hanks), certainly nothing in section 13 limits the broader due process rights to civil litigants. On the contrary, section 13 applies to "[a]ll courts" (emphasis added).

^{206/}See also Neagle v. Nelson, 685 S.W.2d 11, 12 (Tex. 1985) (holding statute unconstitutional under Article I, section 13 where it abridged plaintiff's right to sue before "he has a reasonable opportunity to discover the wrong and bring suit"); Nelson, 678 S.W.2d at 922; Sax, 648 S.W.2d at 664; Hanks, 48 S.W.2d at 946-47.

outweighed in this case by Guerra's right to have his guilt or innocence determined and his sentence rendered -- his right to life preserved -- only in full compliance with the applicable constitutional principles. Indeed, the Texas Court of Criminal Appeals has overlooked procedural rules to reach defendants' claims where the death penalty has been imposed.^{207/}

6. Failure to preserve constitutional error here is no greater a procedural failing than similar omissions overlooked in such cases as Holland, Vigneault, and Earvin. All rest on the fundamental balance presented in this habeas proceeding: the gravity of the possible miscarriage of justice if the errors are dismissed on mere procedural grounds.

^{207/}See, e.g., Holland v. State, 761 S.W.2d 307, 312 (Tex. Crim. App. 1988), cert. denied, 489 U.S. 1091 (1989) (noting that although "appellant's point of error is multifarious and presents nothing for review," the court would "deal with each of appellant's claims" because of the "gravity of the sentence"); Vigneault v. State, 600 S.W.2d 318, 323 (Tex. Crim. App. 1980) (en banc) (noting that although ground of error was multifarious and not in compliance with procedural rule, it would be reviewed "in the interest of justice"); Earvin v. State, 582 S.W.2d 794, 797 (Tex. Crim. App.) (en banc), cert. denied, 444 U.S. 919 (1979) (noting that although specific page numbers of the record were not provided to support ground of error, given that "the extreme penalty was assessed," the court "made an independent search of the record").

But see Russell v. State, 665 S.W.2d 771, 777 (Tex. Crim. App. 1983), cert denied, 465 U.S. 1073 (1984) (finding in a capital murder case that "[f]ailure to object can even waive an error involving constitutional rights"); Hovila v. State, 562 S.W.2d 243, 247 (Tex. Crim. App. 1978), cert denied, 439 U.S. 1135 (1979) (finding in a capital murder case that "[f]ailure to object to the improper exclusion of veniremen waives that right and such exclusion cannot be considered on appeal"). These cases, however, apparently did not consider the constitutionality of the denials under Article I, section 13.

B. Other Courts Allow Review of Unpreserved Errors in Capital Cases

7. Interpreting a provision of its Constitution that is nearly identical to Article I, section 13, the Louisiana Supreme Court held it would ignore waiver in capital cases because of its Open Courts provision:

Where the death penalty is applicable, this court will notice all possible errors even though not properly raised. Failure to recognize this duty on our part would be inconsistent with the mandate of our constitution that "[a]ll courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."

State v. Smith, 554 So. 2d 676, 678 (La. 1989) (citing La. Const. Art. I, § 22) (Smith I). The similarity between the Texas and Louisiana constitutions is not accidental. The Texas Court of Criminal Appeals has already recognized that the framers of the Texas Constitution "consult[ed] other State constitutions such as . . . Louisiana" when drafting the Texas Constitution. Forte v. State, 759 S.W.2d 128, 135 (Tex. Crim. App. 1988), partially overruled on other grounds by McCambridge v. State, 778 S.W.2d 70 (Tex. Crim. App. 1989), cert. denied, 495 U.S. 910 (1990)

8. The Louisiana Supreme Court recently reaffirmed its holding in State v. Smith, 600 So. 2d 1319 (La. 1992) (Smith II). In Smith II, the trial attorney failed to object to an error made during the guilt-innocence phase of the trial. Id. at 1325. The court refused to dismiss the appeal because of this error. Relying on Smith I, the court found that because "this is a capital case . . . we consider issues to which no objection was raised at the trial but which have been assigned as error on appeal." Id.

9. The reasoning of Smith I and Smith II is equally applicable to cases arising under Article I, section 13. It is appropriate to look to the Louisiana Supreme Court for guidance, not just because Louisiana has similar constitutional provisions, but also because it is generally helpful to look to "precedent from sister states," when determining the full breadth of rights under the Texas Constitution. Davenport, 35 Tex. Sup. Ct. J. at 906 (citing Pollock, Adequate and Independent State Grounds as a Means of Balancing the Relationship Between State and Federal Courts, 63 Texas L. Rev. 977, 992 (1985)).

10. Other jurisdictions, to varying degrees, also have held that where the death penalty has been imposed, the appellate court has a duty, independently and with a greater degree of scrutiny, to review the entire record for prejudicial error.^{208/}

^{208/}See, e.g., United States v. Cramer, 137 F.2d 888, 895 (2d Cir. 1943), rev'd on other grounds, 325 U.S. 1 (1945) ("[W]here the death penalty is applicable, a court will notice all possible errors even though not properly raised."); Stephan v. United States, 133 F.2d 87, 89-90 (6th Cir. 1943), cert. denied, 318 U.S. 781 (1943) (noting that while some assignments of error raised "questions not presented to the court below and others of which are not discussed in the brief, nor called to our attention in the oral argument," the court would "proceed upon the exception to the general rule and shall notice possible error, although the questions may not properly be raised" because "the case involves a penalty of death for appellant"); State v. Hickock, 363 P.2d 541, 546-47 (Kan. 1961), dism'd, 373 U.S. 544 (1963) (same); Russell v. State, 85 So.2d 585, 585 (Miss. 1956) (examining record to "see that the appellant received a fair and impartial trial" although there was no assignments of error or brief filed); State v. Payne, 402 S.E.2d 582, 592 (N.C. 1991) ("By failing to object or move for a mistrial in regard to the unsworn deputy, defendant has waived his right to have this issue considered on appeal. Nonetheless, since this is a capital case, we will address the issue") (citations omitted); State v. Swilling, 155 S.E.2d 607, 611 (S.C. 1967), cert. denied, 389 U.S. 1055 (1968) ("The questions presented by the exceptions all relate to alleged error in various rulings of the trial judge, which it is charged deprived the defendant of a fair and impartial trial. Since this is a death case, these questions are decided without regard to whether they are properly before us under the usual rules of appellate procedure").

11. The argument that section 13 requires judicial review of all constitutional errors applies as forcefully in habeas proceedings as it does in appellate review. The principle is the same -- a life should not be extinguished before a court has assured itself that all phases of the trial afforded the accused his constitutional rights.

C. Alternatively, the Court Should at Least Review Errors in the Punishment Phase

12. In the alternative, if the Court is unwilling to reach arguments not based on objections during the guilt-innocence phase of the trial, it should still be willing to address errors that were not preserved during the punishment phase of the trial. One justice in Smith I advanced this view, although the Louisiana Supreme Court rejected it in favor of even more comprehensive review:

I consider that in a death case we should review all assignment of errors whether or not filed with the trial judge or briefed or argued in this court. However, the assignment of errors should be based upon an objection at the time of the occurrence except that *during the penalty phase any prejudicial or other aggravating factor is reviewable*, whether or not objected to, in order to *determine if the sentence of death is excessive*.

Smith I, 554 So.2d at 687 (Marcus, J., concurring) (citation omitted; emphasis added).

Should the Court find that it would be too burdensome to address unpreserved errors in the guilt-innocence phase of the trial, Guerra urges the Court to find that it has a duty to address the errors in the penalty phase of the trial because of the gravity of the sentence involved.

D. Conclusion

13. Guerra asks the Court to hear his claims and recognize that

[a]ny law . . . which would undertake to deprive a man of his life . . . without giving him a hearing, or in any manner affect his rights without a hearing, would necessarily be vicious and unconstitutional. Ours is a country of law, and, whenever a man is affected in his life . . . he has the right to resort to some legal tribunal where those matters can be honestly and fairly adjudicated.

Ex parte Farnsworth, 61 Tex. Crim. 342, 135 S.W. 535, 538 (1911). A court's unwillingness to address errors because a defendant's attorney did not properly preserve error denies a meaningful hearing to the defendant. Whether this should be tolerated where lesser sentences are given is not a question before this court. Here, the defendant is sentenced to die. If Texas is to take an individual's life, Article I, section 13 of the Texas Constitution requires that the Court assure itself that all constitutional arguments are meritless. Anything less provides no meaningful access to Texas courts. A meritorious constitutional claim that cannot be invoked to protect a defendant from lethal injection is no constitutional claim at all.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Applicant RICARDO ALDAPE GUERRA prays that this Honorable Court:

- (i) withdraw the Order setting Mr. Guerra's imminent execution for September 24, 1992, and delay his execution pending final disposition of this Application;
- (ii) order and conduct an evidentiary hearing at which additional proof may be offered supporting the allegations of this Application;

(iii) grant full discovery in this matter, including but not limited to access to all physical evidence to allow analysis by independent experts and disclosure of the full prosecution files in this case; full disclosure of any and all records, wherever and however maintained, concerning agreements made by the State promising its witnesses favorable or lenient treatment in exchange for testimony; or, in the alternative, inspection of this evidence *in camera* to determine whether it is or should have been properly subject to disclosure;

(iv) vacate Mr. Guerra's conviction for capital murder and sentence of death;

(v) issue a writ of *habeas corpus* releasing Mr. Guerra from custody; or alternatively, release Mr. Guerra from custody unless the State grants him a new trial;

(vi) allow Mr. Guerra a reasonable period of time and an opportunity to submit a memorandum of law briefing all of the issues in this Application following an evidentiary hearing, and an opportunity for oral argument; and

(vii) grant such other relief as law and justice require.

Respectfully submitted,

VINSON & ELKINS L.L.P.

BY: Scott J. Atlas

SCOTT J. ATLAS

Texas Bar No. 01418400

2500 First City Tower

1001 Fannin

Houston, Texas 77002-6760

(713) 758-2024

FAX: (713) 758-2346

ATTORNEY FOR APPLICANT,
RICARDO ALDAPE GUERRA

STATE OF TEXAS §
 § ss
COUNTY OF HARRIS §

AFFIDAVIT OF VERIFICATION

I, SCOTT J. ATLAS, upon oath state that I have read the foregoing First Amended Application for Writ of Habeas Corpus; I am familiar with its contents, and to the best of my knowledge and belief the matters set forth therein are true and correct.



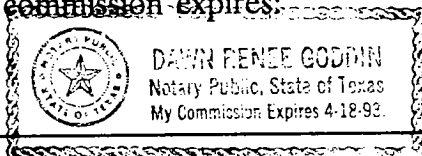
Scott J. Atlas

Subscribed and sworn to before me this 17 day of September, 1992.



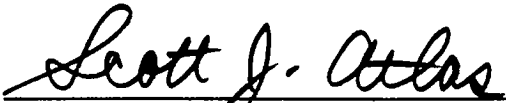
Notary Public

My ~~commission expires:~~



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served by mail/delivery on Roe Wilson, Assistant District Attorney of Harris County, on the 17th day of September, 1992.



Scott J. Atlas

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IN THE COURT OF CRIMINAL APPEALS

STATE OF TEXAS

AT AUSTIN

EX PARTE

§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

RICARDO ALDAPE GUERRA

248TH DISTRICT COURT

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DATE FILED

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June 24, 2004

Natalie Wortley
Texas Defender Service
412 Main Street, #150
Houston, TX 77002

Re: Ricardo Aldape Guerra

Dear Natalie:

As you requested, I am enclosing a copy of the application for writ of habeas corpus that we filed in the *Aldape* case in September 1982.

Please call if you have any questions.

Very truly yours,



Scott J. Atlas

Enclosure

1686506_1.DOC

Atlas, Scott

From: Natalie Wortley [nataliewortley@hotmail.com]
Sent: Thursday, June 24, 2004 10:15 AM
To: Atlas, Scott
Subject: Request for information on behalf of the Texas Defender Service

Dear Mr Atlas,

I am a barrister from England currently undertaking a placement at the Texas Defender Service. I'm doing some research on the Ricardo Aldape Guerra case and I wondered if you might be able to help me out.

I have read the cases and note that prosecutorial misconduct only really became an issue at the federal stage, when you were involved. I wondered how you found out about the intimidation of witnesses, the conduct of the identification procedures and the non-disclosure of material evidence? Was it by interviewing witnesses or did you come across any documents? At what stage in the proceedings did these issues become apparent? Why didn't the trial lawyers / state lawyers find out about them?

The District Judge was clearly very critical of the prosecutors' conduct. Do you know whether any disciplinary proceedings were ever taken against them by any of the relevant authorities? They both subsequently left the DA's office for private practise. Do you know whether their leaving was in any way connected with this case? (Needless to say, no one I have spoken to so far has been very forthcoming about these matters!)

Given the strong criticisms of the prosecution by Judge Hoyt, I have been looking to see whether I can find any admission of error by the prosecuting authorities. So far I haven't come across anything. I just wondered whether you were aware of anything?

Best regards
Natalie Wortley

Make the most of your family vacation with tips from the MSN Family Travel Guide! <http://dollar.msn.com>

IN THE TEXAS COURT OF CRIMINAL APPEALS

AND

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

Ex Parte RICARDO ALDAPE GUERRA,

Applicant.

§
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§
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§
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Case No. _____
(Harris County
Cause No. 359805)

APPENDIX TO
FIRST AMENDED
APPLICATION FOR WRIT OF HABEAS CORPUS

RICARDO ALDAPE GUERRA IS CURRENTLY SCHEDULED TO BE EXECUTED
SEPTEMBER 24, 1992 AT 12:01 A.M.

OF COUNSEL

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11 E. Greenway Plaza
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICARDO ALDAPE GUERRA,

Petitioner.

v.

JAMES A. COLLINS,
Director, Institutional Division,
Texas Department of Criminal Justice,

Respondent.

Civil Action No. _____

U.S. COURT
SOUTHERN DISTRICT OF TEXAS

93 JAN 32 PM 4:56

APPENDIX TO
FIRST APPLICATION FOR WRIT OF HABEAS CORPUS

RICARDO ALDAPE GUERRA HAS NO PENDING EXECUTION DATE

OF COUNSEL

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Houston, Texas 77002
(713) 229-1198

STATEMENT

STATE OF TEXAS: DATE: 7-14-82, 19__
 COUNTY OF HARRIS: TIME: 1:40 A.M.

Before me the undersigned authority, personally appeared
PATRICIA ANN FLORES DIAZ, who
 after being duly sworn on his/her oath deposes and says;
 My name is PATRICIA ANN FLORES DIAZ
 and I am 17 years of age, having been born on 9-17-64
 My home address is 4430 CLAY
 telephone number 921-6932.
 I am employed at UNEMPLOYED
 telephone number _____. I can
 also be reached at 921-0410 (AUNT THRINA MEDINA)
 My Driver License number is NONE and my
 Social Security number is 654-41-5611.

TONIGHT ABOUT 11:00 P.M., MY AUNT, THRINA MEDINA, ASKED ME IF I WOULD DRIVE HER OVER TO HER UNCLE'S HOUSE ON RUSK STREET. HER UNCLE IS NAMED "FRANCISCO" BUT I DO NOT KNOW HIS LAST NAME OR HIS ADDRESS.

WE WERE GONE ABOUT 30 MINUTES BECAUSE NOONE WAS HOME OR THEY JUST DID NOT ANSWER THE DOOR SO WE CAME BACK TO MY AUNT'S HOUSE. I AM NOT SURE BUT I THINK MY AUNT LIVES AT 3904 WALKER. I ALSO HAD MY BABY WITH ME, WHO IS A 1½ YEAR OLD GIRL BY THE NAME OF ELIZABETH.

WE WERE GOING DOWN WALKER STREET AWAY FROM TOWN AND I WAS DRIVING MY 75 CHEVRELET NOVA, RED, WHEN WE CAME UP TO A "T" INTERSECTION WITH WALKER ST. WALKER GOES EAST AND WEST AND THIS STR GOES OFF OF WALKER TO THE NORTH ONLY. IT DOES NOT CONTINUE ON THRU WALKER. I DO NOT KNOW WHAT THE NAME OF THIS STREET IS AT THIS TIME.

WHEN WE GOT TO THIS "T" INTERSECTION, I SAW A BLACK CAR CAR PARKED CROSS WAYS IN THE MIDDLE OF THE STREET, ACROSS WALKER AND I SAW ONE MEXICAN MALE STANDING THERE BY THIS CAR. ALSO, I SAW THAT A POLICE CAR HAD STOPPED THERE TOO, AND THE POLICE CAR HAD IT'S RED LIGHTS FLASHING BUT I DID NOT SEE THE POLICE OFFICER AT THIS TIME

WE GOT REAL CLOSE TO THE CAR THAT WAS PARKED ACROSS WALKER AND THE POLICE CAR BEFORE I REALIZED THAT ANYTHING WAS FIXING TO HAPPEN. ABOUT THIS TIME, I HEARD SOMEONE YELL, "STOP" ON THREE (3) DIFFERENT TIMES RIGHT IN A ROW. I COULD NOT TELL WHO WAS YELLING THIS, IF IT WAS THE MEXICAN MAN I ORIGINALLY SAW STANDING BY THE BLACK CAR OR IF IT WAS THE POLICE OFFICER WHO I HAD NOT SEEN YET.

JUST AFTER I HEARD SOMEONE YELL, "STOP", I SAW THIS MEXICAN MAN WHO I HAD ORIGINALLY SEEN BY THE BLACK CAR POINTING A GUN IN THE DIRECTION OF THE POLICE CAR AND I SAW HIM SHOOT FOUR (4) TIMES AT THE POLICE CAR. I STILL HAVE NOT SEEN THE POLICE OFFICER AT THIS POINT.

WHEN THE MEXICAN MAN GOT THRU SHOOTING, HE RAN DOWN WALKER, GOING AWAY FROM DOWNTOWN AND THAT WAS THE LAST TIME THAT I SAW THIS MAN TONIGHT.

WHEN THIS HAPPENED, MY AUNT AND I GOT OUT OF THE CAR TO SEE WHAT HAPPENED AND I HEARD SOMEONE YELL FOR SOMEONE TO CALL AN AMBULANCE, THAT THEY HAD SHOT THE COP. MY AUNT AND I GOT UP TO THE POLICE CAR BEFORE I FINALLY SAW THE OFFICER LAYING ON THE STREET AND I COULD TELL THAT HE HAD BEEN SHOT BECAUSE HE HAD BLOOD ALL OVER HIM AND HE WAS ON THE GROUND. BY THAT TIME, THERE WERE SEVERAL PEOPLE AROUND THE POLICE CAR AND MY COUSIN'S HUSBAND, JOHNNY MATAMORAS, WAS TRYING TO HELP THE OFFICER AND TELLING SOMEONE TO CALL THE AMBULANCE. I STAYED THERE ABOUT TEN MINUTES BEFORE I LEFT TO GO LEAVE MY BABY AND MY AUNT STAYED THERE.

ALTHOUGH I DID NOT SEE IT, MY COUSIN TOLD ME THAT THE SAME MAN WHO SHOT THE POLICE OFFICER, STARTED SHOOTING AT EVERYONE AFTER THAT AND HE ALSO SHOT ANOTHER MAN JUST DOWN THE STREET

I have completed 7 years of school/college and can read and write the English language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. K.R. WILLIAMSON of my own free will. This statement was typed by DET. K.R. WILLIAMSON



SIGNED: Patricia Diaz

Subscribed and sworn to before me this 14 day of JULY, 19 82

SIGNED: Edward G. Green
 NOTARY PUBLIC IN AND FOR
 THE STATE OF TEXAS

(Page 2 of statement of PATRICIA ANN FLORES DIAZ)

FROM WHERE THE POLICE OFFICER WAS SHOT. THIS MAN WAS DRIVING A RED AND WHITE CAR AND I SAW HIM IN THE CAR AND HE WAS BLEEDING TOO BUT I DO NOT KNOW IF HE WAS ALIVE OR NOT. I DO NOT KNOW WHAT ACTUALLY HAPPENED TO HIM EITHER.

I ONLY SAW ONE MEXICAN MALE AROUND THE BLACK CAR THAT WAS PARKED ACROSS WALKER ST. AND I ONLY SAW HIM FROM THE SIDE BUT HE LOOKED LIKE HE WAS IN HIS 20's, ABOUT 5'10", THIN BUILD, COLLAR LENGTH BLACK HAIR AND WAS WEARING A LONG SLEEVE, DARK COLORED SHIRT.

THE CAR THAT HE WAS AROUND WAS A BLACK CAR THAT HAD A RED TOP AND RED INTERIOR AND IT WAS A 2dr. I THINK THE CAR WAS AN OLDSMOBILE BUT I AM NOT FOR SURE. IT WAS A MEDIUM SIZE CAR THOUGH.

I ALSO DID NOT ACTUALLY SEE THE PISTOL THAT THE MEXICAN MAN USED TO SHOOT THE POLICE OFFICER BUT I THINK THAT IT WAS BLACK IN COLOR.

I HAVE NEVER SEEN EITHER THE MEXICAN MAN WHO SHOT THE POLICE OFFICER BEFORE OR THE BLACK CAR THAT HE WAS DRIVING AT THE TIME. I DO NOT THINK I CAN ABSOLUTELY IDENTIFY THE MEXICAN MAN WHO SHOT THE OFFICER IF I EVER SAW HIM AGAIN BUT I THINK THAT I COULD GET PRETTY CLOSE.

I WAS LATER BROUGHT TO THE HOMICIDE DIVISION AT THE POLICE STATION WHERE I WAS ASKED TO MAKE A WRITTEN STATEMENT TO WHAT I SAW AND THIS IS WHAT I AM DOING AT THIS TIME.

I have completed 7 years of school/~~and~~ and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. K.R. WILLIAMSON of my own free will. This statement was typed by DET. K.R. WILLIAMSON.

SIGNED: Patricia DiazSubscribed and sworn to before me this 14 day of JULY, 1982SIGNED: Edward G. Herstein
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 2 of 2 pages.

2:30 AM

(Form CIB-0004)

F 0000 22

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: 7-14-82, 19__

COUNTY OF HARRIS:

TIME: 6:20 AM

Before me the undersigned authority, personally appeared
PATRICIA ANN FLORES DIAZ, who
after being duly sworn on his/her oath deposes and says:
My name is Patiricia Ann Flores Diaz
and I am 17 years of age, having been born on 9-17-64
My home address is 4430 CLAY
; telephone number 921-6932
I am employed at UNEMPLOYED
; telephone number . I can
also be reached at 921-0410 (AUNT THIRNA MEDINA)
My Driver License number is NONE and my
Social Security number is 654-41-5611

On Wednesday, July 14, 1982, at approximately 6:10 AM, I attended a lineup on the third floor of the Houston Police Department. I was asked to sit and look at six men who were standing in front of me and I was told that after the lineup I would be taken outside and would be asked if I recognized any of the men.

After the lineup I was taken outside of this room and asked if I recognized any of the men that were standing before me. I told the Det. that the man that was standing fourth from the left was the same man that I had seen on Walker just before the officer was shot.

I recognized this mans hair and profile. When I was in my car I drove down Walker St. and this was the first time that I saw this man standing on the side of a car. I saw this man with his hands outstretched and I guess he had a gun in his hand.

After the lineup I was taken back to the Homicide Office where I gave Det. Gatewood this statement.

I have completed 7 years of school and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Det. Gatewood of my own free will. This statement was typed by Det. Gatewood

PETITIONER'S
EXHIBIT

31

SIGNED: Patricia Diaz

Subscribed and sworn to before me this 14 day of JULY, 1982

SIGNED: Robert Diaz

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

6:40AM

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: JULY 14th, 1982

COUNTY OF HARRIS:

TIME: 1:30AM

Before me the undersigned authority, personally appeared
ELENA GONZALEZ HOLGEN, who
after being duly sworn on his/her oath deposes and says:
My name is ELENA GONZALEZ HOLGEN
and I am 38 years of age, having been born on
7-22-38. My home address is 4938 J RUSK
_____; telephone number 923-6964.
I am employed at _____;
_____; telephone number _____. I can
also be reached at _____.
My Driver License number is _____ and my
Social Security number is _____.

Tonight there was a car that kept passing by burning the tire and driving real fast. This car pass by several times and every time that it passed by it had the lights turned off.

I was getting ready to go to bed and, I was praying when I heard four (4) gunshots real rapitt. Then my son Jose Angel came running into the house and into my room and told me that the same men that were burning the tire eariler tonight had just shot a Policemen and for me to call the Police and tell them ,

I then asked my son Jose Anger where his brothers were, jose Angel told me that they were with one of his brothers girlfriends mother. So, I went outside to see where my sons were at. When I walked outside I saw that the Policemen walked to the other side of the Police car and fell to side of the street and toward the ditch.

I then ran up to where the Policeman was lying and I saw that he was still moving and that he had been shot. While I was standing by the Policeman I heard three (3) more gunshots so, I turned and I saw two men running toward the cemetery, I couldn't see who they were but it had to be the men that were in the car that the policeman stopped.

When I was standing by the policeman that had been shot I heard a car slam it brakes and I turned and saw that the car ran into the ditch and it almost hit a pole. I stayed by the officer until he was picked up and taken away. Aftert they took the officer I walked to the car that had slamed the brakes and I looked inside the car on the drivers side.

I then saw that the driver had been shot , at first I thought that he had been shot on the head because he had alot of blood on one side. Then I notic that he had been shot on his right shoulder. The man was shouting for his but I told him to sit still because the anmbulance was already coming to help him and that way he wouldn't loose any more blood.

I then stood and talked to one of the Mexican officers and asked him if he knew where the owner of the car lived. I then told the officer that I knew where the owner of the car lived . The officer then asked me if I would show him where the house was at and I told him that I would take him there.

I have completed 2 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to INV. U.P. HERNANDEZ of my own free will. This statement was typed by INV. U.P. HERNANDEZ.

PETITIONER'S
EXHIBIT

26

SIGNED: Elena Gonzalez Holgen

Subscribed and sworn to before me this 14th day of JULY, 1982.

SIGNED: James E. Proctor
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 1 of 2 pages

Incident . 1

(Page 2 of statement of ELENA GONZALEZ HOLGEN)

When we got to the house where the owner of the car lived the Mexican office told me to wait while they went inside the house. The officers then came outside and the Mexican Officer had several pictures and showed them to me.

I then showed the Mexican officer who the owner of the car was from one of the pictures. Then the officers heard a police with the siren on and the officers ran around the house and that when the shooting started. One of the officer yelled at us to lie down on the ground so, we did.

After the shooting stopped me and this other lady got up and walked to the corner house where on of my sons girlfriends mother lives and stayed there. Then This officer walked up to me and told me that I need to go with him to the Police Station and give a statement which I did.

This is all that I saw tonight . I do not read or write the English language I gave this statement to Inv. U.P. Hernandez in Spanish and he has read it back to me in Spanish and it is true and correct as I gave it.

E G H

I have completed 2 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to INV. U.P. HERNANDEZ of my own free will. This statement was typed by INV. U.P. HERNANDEZ.

SIGNED: Elena Gonzalez Holgen

Subscribed and sworn to before me this 14th day of JULY, 1982

SIGNED: Ramon E. Montano
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 2 of 2 pages.

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: JULY 14, 19 82

COUNTY OF HARRIS:

TIME: 9:55 A.M.

Before me the undersigned authority, personally appeared GELASIO SAUCEDO, who after being duly sworn on his/her oath deposes and says: My name is GELASIO SAUCEDO and I am 28 years of age, having been born on NOVEMBER 21, 1953. My home address is 4939 WALKER WALKER & LENOX; telephone number 921-6250. I am employed W/TH ARNOLD RODRIGUEZ-CONTRACTOR-ROOFER; telephone number N/A. I can also be reached at N/A. My Driver License number is 09173315 and my Social Security number is N/A.

ABOUT 10:00p.m., MAYBE 10:30p.m., LAST NIGHT, I WAS INSIDE MY HOUSE, I WAS GETTING READY FOR BED. I THEN HEAR GUN SHOTS, I'M NOT SURE HOW MANY, MAYBE 2 OR 3. MY WIFE LOOKED OUT THE WINDOW AND SAID TO ME THAT THERE WAS A MAN WITH A GUN OUTSIDE. I THEN LOOKED OUT AND SAW A SHORT MAN RUNNING PAST THE HOUSE. I COULD NOT SEE THE GUN, BUT MY WIFE SAID THAT THE GUN WAS SMALL. I WENT OUTSIDE AS HE RAN UNDER THE STREET LIGHT. I SAW THAT HE WAS A MEXICAN MAN, WEARING EITHER A BLUE OR GREEN T-SHIRT, I'M NOT SURE WHAT COLOR. I THEN LOOKED DOWN THE STREET AND SAW MY FATHER-IN-LAW'S CAR IN A NEIGHBOR'S YARD. I RAN TO THE CAR THERE WERE PEOPLE THERE LOOKING INSIDE THE CAR. I THEN NOTICED THAT MY BROTHER-IN LAW WAS IN THE CAR, HE WAS DRIVING THE CAR. I TRIED TALKING TO HIM, BUT HE WAS HURT. AFTER THAT THERE WAS A LOT OF CONFUSION.

I have completed 4 years of school/college and can read and write the SPANISH language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to OFFICER YBARRA of my own free will. This statement was typed by OFFICER YBARRA.

SIGNED: Gelasio Saucedo

Subscribed and sworn to before me this 14 day of JULY, 19 82

SIGNED: [Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 1 of 1 pages

(Form C18-0004)

F 000002

App. 0001

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: JULY 14, 19 82

COUNTY OF HARRIS:

TIME: 12:05 AM

Before me the undersigned authority, personally appeared
HILMA SAMANIEGO GALVAN, who
after being duly sworn on his/her oath deposes and says;
My name is HILMA SAMANIEGO GALVAN
and I am 43 years of age, having been born on 2-13-38.
My home address is 4925 WALKER; telephone number none.
I am employed at HOUSEWIFE; telephone number _____. I can
also be reached at _____.

My Driver License number is _____ and my
Social Security number is 466-564702.

TONIGHT AT ABOUT 9:30 or 9:45 PM I WAS INSIDE MY HOUSE WATCHING TV.
MY DAUGHTER PATRICIA, CALLED TO ME THAT MY OTHER DAUGHTER CATHY
WENT TO GO SEE WHAT AN AMBULANCE THAT WAS DOING AROUND THE CORNER.
CATHY IS 15 AND PATRICIA IS 21. I WAS MAD AT PATRICIA FOR LETTING
CATHY GO. I WENT TO GO GET CATHY, TWO OF THE NEIGHBORHOOD BOYS
WENT WITH ME, ONE JOSE ANGEL LAM16 HE LIVES BEHIND ME ON RUSK.
THE OTHER ONE WAS HIS BROTHER ARMANDO LAM16.

WE WALKED TOWARD LENNOX ST. LOOKING FOR MY DAUGHTER. WE WENT
ALL THE WAY TO LENNOX. WE SAW TWO LAM IN A BLACK AND RED CAR,
I THINK IT WAS A MONIE CARLO OR A CUTLASS. THEY WERE COMING TOWARD
US FROM THE DEAD OF LENNOX ON WALKER. THEY STARTED TO TURN ON
DELMAR BUT THERE WAS A POLICE CAR WITH A SPOT LIGHT. THEY STOPPED
AND BACKED UP REAL FAST AND CAME BACK TOWARD US ON WALKER.
BOTH TIMES THEY CAME PAST US WE HAD TO GET OUT OF THEIR WAY
OR THEY WOULD HAVE RUN OVER US. THE POLICE CAR CAME AFTER THE
BLACK AND RED CAR. BUT THE POLICE CAR TURNED ON RUSK.

THE TWO BOYS AND I WERE COMING BACK TO MY HOUSE WHEN WE SAW THE
BLACK AND RED CAR THE MOTOR WAS OFF IT WAS IN THE MIDDLE OF THE STREET.
THE POLICE CAR CAME UP AND STOPPED BEHIND THE CAR. THE TWO
GUYS THAT WERE IN THE CAR WERE OUTSIDE OF THE CAR, ONE WAS COMING TOWARD
US AND THE OTHER ONE WAS ON THE OTHER SIDE OF THE CAR AND
I COULD NOT SEE WHAT HE WAS DOING. THE OFFICER GOT OUT AND
TOLD THE GUY COMING TOWARD US TO STOP. THE GUY KEPT WALKING.
THE OFFICER YELLED AGAIN. THE GUY STOPPED AND LOOKED AT THE OFFICER.

THE OFFICER TOLD THE GUY TO COME TOWARD HIM. THE OFFICER ALSO MOTIONED
FOR THE GUY TO COME. THE OFFICER WAS JUST GETTING OUT OF HIS CAR.
THE GUY CAME TO THE OFFICER, THE OFFICER DIDNOT NOT HAVE HIS
GUN OUT. THE OFFICER PUSHED THE GUY UP AGAINST THE POLICE CAR.
WHEN THE OFFICER PUSHED THE GUY AGAINST THE CAR THE GUY TURNED
AND STARTED SHOOTING THE OFFICER. THE OFFICER NEVER HAD A CHANCE.
THE GUY SHOT ABOUT FOUR TIMES. I SAW THE OFFICER FALL. I WAS SO
CLOSE THAT I COULD HAVE THROWN A ROCK AND HIT THEM. THE GUY KEPT SHOOTING
AT EVERYONE THAT WAS OUT WATCHING. EVERY STARTED RUNNING AND DUCKING.
THE GUY WAS SHOOTING AT ONE OF MY NEIGHBOR WHO AHD HER BABY IN HER
ARMS. SHE STARTED RUNNING. THERE WAS A CAR, A RED AND WHITE FORD,

I have completed 11 years of school/college and can
read and write the English Language. I have read this
statement and it is true and correct to the best of my
knowledge. I have given this statement to _____
P. L. TRUMBIE of my own free will. This statement
was typed by P. L. TRUMBIE.

SIGNED: Hilma S. Galvan

Subscribed and sworn to before me this 14 day of JULY, 19 82

SIGNED: Bruce E. Trumbie

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 1 of 2 pages

P.L.T.

7-14-82 12:57 AM

(Form CIB-0004)

F 000007

App. 0002

(Page 2 of statement of HILMA SAMANIEGO GALVNA)

THERE WAS A MAN, WITH HIS OSN AND DAUGHTER THE BOY IS ABOUT 10 AND THE GIRL IS 2, THEY LIVE BEHIND ME ON RUSK. THE MAN IN THE CAR GOT SHOT IN THE HEAD. I LEARNED THIS WHEN THE LITTLE BOY RAN TO ME AND ASKED ME FOR HELP THAT HIS FATHER GOT SHOT. I RAN OUT AND GOT THE LITTLE GIRL. THE CAR HAD RUN INTO A TREE IN FRONT OF MY HOSUE.

THE OFFICER FELL AGAINST THE CAR, THE CAR WAS A BLUE AND WHITE POLICE CAR WITH OUT A RES LIGHT ON TOP OF IT. MY HUSBAND WAS TRYING TO GET TO THE POLICEMAN BUT THE GUY KEPT SHOOTING. MY HUSBAND SAID THAT THE GUY HAD SHOT SEVEN TIMES. SOME ONE ELSE SAID THAT THENOTHER GUY WAS SHOOTING A SHOTGUN. I COULD NOT SEE THE OTHER GUY BECAUSE OF A TREE IN MY YARD AND THE BLACK AND RED CAR.

I KNOW THE ONE THAT SHOT THE OFFICER BY SIGHT BUT I DO NOT KNOW HIS NAME. I NEVER GOT A GOOD LOOK AT THE ONE ON THE PASSENGERS SIDE OF THE BLACK AND RED CAR. THE GUY I SAW SHOOT THE OFFICER LIVES WITH SEVERAL OTHER ILLEGAL ALIENS. THEY ARE ALWAYS SHOOTING, CUTTING, AND BEATING PEOPLE IN THE AREA. THEY ALSO ROB PEOPLE. THEY ALL CAUSE TROUBLE. I AM AFRAID THAT THE OTHER PEOPLE THAT HE LIVES WITH HIM WILL COME AND TRY TO SHOT MY FAMILLEY.

THE GUY THAT DID THE SHOOTING WAS WEARING DARK BROWN PANTS AND A DARK BROWN OR BLACK SHIRT. HE IS ABOUT 20 YEARS OLD, HE TALL AND THIN AND HAS SHOULDER LENGTH STRAIGHT BLOND HAIR. HE IS AN ILLEGAL ALIEN.

H.S.G.

I have completed 11 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statment to

P.L. TRUMBLE of my own free will. This statement was typed by P.L. TRUMBLE.

SIGNED: Hilma S. GalvnaSubscribed and sworn to before me this 14 day of JULY, 1982SIGNED: Ben E. SmithNOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 2 of 2 pages.

P.L.T.

7-14-82

1:09 AM

(Form CIB-0004)

F 000008

App. 0003

STATEMENT

STATE OF TEXAS:

DATE: JULY 14, 1982

COUNTY OF HARRIS:

TIME: 6:20 AM

Before me the undersigned authority, personally appeared HILMA SAMANIEGO GALVAN, who after being duly sworn on his/her oath deposes and says: My name is HILMA SAMANIEGO GALVAN and I am 43 years of age, having been born on 02-13-38. My home address is 4925 WALKER; telephone number NAME. I am employed at HOUSEWIFE; telephone number NAME. I can also be reached at NAME. My Driver License number is NAME and my Social Security number is 466-56-4702.

MY NAME IS HILMA SAMANIEGO GALVAN. ON THIS DATE JULY 14, 1982, AT 6:20 AM I ATTENDED A LINEUP AT THE HOUSTON POLICE DEPARTMENT. AFTER ATTENDING THE LINEUP OF SIX LATIN AMERICAN MALES I SELECTED FROM NUMBERS OF ONE THROUGH SIX, THE FOURTH LATIN AMERICAN STANDING FROM LEFT TO RIGHT AS THE MALE THAT I SAW SHOOT THE POLICE OFFICER AS HE STOPPED HIM AND ANOTHER LATIN MALE ON TRAFFIC. I SAW THIS MALE IN THE NUMBER FOUR SPOT SHOT THE POLICE OFFICER AND THEN RUN FROM THE SCENE. I WAS ABLE TO SEE THIS MALE IN THE NUMBER FOUR SPOT IN THIS LINEUP BECAUSE AFTER SHOOTING THE POLICE OFFICER HE RAN TOWARD US. WHILE THIS MAN WAS RUNNING TOWARD US HE WAS STILL FIRING HIS PISTOL. I AM ABLE TO RECOGNIZE THIS MALE AS THE ONE WHO SHOOT THE POLICE OFFICER BECAUSE WHEN HE SHOT THE OFFICER THIS MALE WAS STANDING UNDERNEATH THE STREET LIGHT AND I SAW HIM CLEARLY. THIS MALE WAS ALSO THE SAME ONE THAT WAS DRIVING THE CAR WHEN IT HAD STALLED ON HIM ON THE CORNER OF EDGEWOOD AND WALKER. THIS WAS ALSO THE TIME WHEN THE POLICE OFFICER PARKED HIS CAR BEHIND THIS STALLED CAR. IT WAS THEN THAT THE DRIVER ALSO THE #4 MAN IN THE LINEUP SHOT THE POLICE OFFICER. I AM POSITIVE THIS IS THE MAN I SAW SHOOT THE POLICE OFFICER.

H.S.G.
I have completed 11 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to INV. F. YBARBO of my own free will. This statement was typed by INV. F. YBARBO.

SIGNED: Hilma S. GalvanSubscribed and sworn to before me this 14 day of JULY, 1982SIGNED: Thomas E. Montano
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 1 of 1 pages

App. 0004

(Form CIB-0004)

F 000009

STATEMENT

STATE OF TEXAS:

DATE: JULY 14, 19 82

COUNTY OF HARRIS:

TIME: 12:17AM

Before me the undersigned authority, personally appeared HERLINDA MEDINA GARCIA, who after being duly sworn on his/her oath deposes and says; My name is HERLINDA MEDINA GARCIA and I am 16 years of age, having been born on 08/31/67. My home address is 4938 WALKER; telephone number 921-0410. I am employed at _____; telephone number _____. I can also be reached at _____. My Driver License number is _____ and my Social Security number is _____.

THIS EVENING SOMETIME AFTER 10:00PM MY SISTER AND ME WERE GOING TO THE STORE ON THE CORNER OF WALKER AND DUMBLE NAMED PAT'S GROCERY STORE. MY SISTER AND I WAS WALKING DOWN THE SIDEWALK WHEN I REMEMBERED THAT I HAD LEFT MY MONEY AT THE HOUSE. I TOLD MY SISTER TO WAIT RIGHT THERE AND I RAN HOME TO GET MY MONEY. WHEN I GOT THE MONEY I CAME OUT OF THE HOUSE AND I WAS RUNNING TOWARD MY SISTER. WHEN I GOT TO MY SISTER WE SAW THIS BLACK CAR TURN OFF OF WALKER ON TO LENEX STREET REAR FAST IN FRONT OF US. AS THE CAR WAS GETTING READY TO BACK UP A POLICE CAR COMING DOWN LENEX PULLED IN BEHIND IT.

WHEN THE POLICEMAN PULLED BEHIND THE CAR HE TURNED ON THE BRIGHT SPOTLIGHT. HE THEN GOT OUT OF HIS CAR AND HE TOLD THE MEN IN THE BLACK CAR TO GET OUT OF THE CAR AND PUT THEIR HANDS ON THE HOOD. THERE WERE TWO MEN IN THE CAR. BOTH MEN CAME OUT OF THE CAR ON THE DRIVERS SIDE OF THE CAR. THE POLICEMAN TOLD THEM TO PUT THEIR HANDS ON THE HOOD, BOTH MENS HANDS WERE IN THE AIR. THEY WERE WALKING BACK TOWARD THE POLICEMAN WHEN HE TOLD THEM TO PUT THEIR HANDS ON THE HOOD. AS THEY WERE WALKING THEY TURNED AND LOOKED TOWARD ME AND MY SISTER. I TOLD MY SISTER LETS GO.

BEFORE I GOT A CHANCE TO MOVE I SAW THIS GUY WITH THE BLOND HAIR REACH INTO THE FRONT OF HIS PANTS AND PULL OUT A PISTOL AND SHOOT THE POLICEMAN. MY SISTER GOT DOWN UNDER THE BLACK CAR. I STARTED RUNNING. THE MAN WITH BLOND HAIR CAME AFTER ME SHOOTING AT ME. AS I WAS RUNNING THIS MAN IN A RED CAR GOT BETWEEN ME AND THE MAN WITH THE BLONDE HAIR. THE MAN WITH THE BLONDE HAIR THEN SHOT THE MAN IN THE RED CAR. THE CAR RAN INTO A TREE. I HAD MADE IT TO THE HOUSE BY THIS TIME AND I CALLED MY HUSBAND AND I TOLD HIM THAT A MAN HAD SHOT A POLICEMAN.

MY HUSBAND RAN OUT OF THE HOUSE AND RAN TOWARD THE POLICEMAN AND PICKED HIM UP. MY HUSBAND CHECKED TO SEE IF THE OFFICER WAS STILL BREATHING. HE THEN GOT ON THE C. B. AND STARTED ASKING FOR HELP. THE POLICEMAN ACROSS THE STREET FROM MY HOUSE CAME OUT AND GOT MY HUSBAND AND TOLD HIM TO MOVE AND HE THEN GOT ON THE C. B.

THE MAN WITH THE BLONDE HAIR WAS SHOOTING EVERYWHERE. HE WAS SHOOTING AT ALL THE HOUSES. I DID NOT GET TO SEE THE OTHER MAN AND I DO NOT KNOW WHAT HAPPENED TO HIM. THE MAN THAT SHOT THE POLICEMAN AND THE MAN IN THE RED CAR HAD BLONDE HAIR AND WAS ABOUT 5'8" TALL. HE WAS WEARING BROWN PANTS AND A BROWN SHIRT THAT WAS OPEN ALL THE WAY DOWN.

I F I SAW THE MAN AGAIN THAT SHOT THE OFFICER I THINK I CAN IDENTIFY HIM.

I have completed 7 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DETECTIVE ANDERSON of my own free will. This statement was typed by DETECTIVE R. D. ANDERSON.

SIGNED: Herlinda Medina GarciaSubscribed and sworn to before me this 14TH day of JULY, 19 82SIGNED: [Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 1 of 1 pages

App. 0005

(Form CIB-0004)

F 000010

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: July 14, 19 82

COUNTY OF HARRIS:

TIME: 6:26 A.M.

Before me the undersigned authority, personally appeared HERLINDA MEDINA GARCIA, who after being duly sworn on ODS/her oath deposes and says: My name is HERLINDA MEDINA GARCIA and I am 14 years of age, having been born on 8-31-67. My home address is 4938 Walker. I am employed at _____; telephone number 921-0410. I can also be reached at _____.

My Driver License number is _____ and my Social Security number is _____.

On this date I viewed a line up at the police station. After viewing the line up I was called outside the line up room and asked by a Detective if I recognized anyone in the line up. I told the Detective that I did in fact recognize the suspect that did the shooting. I picked the #4 person in the line up as the subject that shot the police officer. There is no doubt in my mind and I am positive that he was the one that shot the police officer. Also, after this subject shot the police officer he started running toward Lencx street. As he was running he was shooting at me and at this time I ran to my house with my baby in my arms. When I got inside my house I noticed this man in a red car driving down the street. This man had two children in the car. I saw the subject that I picked out of the line up, this would be the #4 subject, I saw this man shoot the man in the red car. I think that he shot the man twice. This subject was the driver in the black car. I did not see the passenger of the car.

I have completed 7 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Detective E.T. Yanchak of my own free will. This statement was typed by Detective E.T. Yanchak.

SIGNED: Herlinda Medina Garcia

Subscribed and sworn to before me this 14th day of July, 19 82

SIGNED: Rubert D. Cain
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 1 of 1 pages

(Form CIB-0004)

App. 0006

F 000011

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: July 14, 19 82

COUNTY OF HARRIS:

TIME: 12:15 AM

Before me the undersigned authority, personally appeared
Jose Francisco Armejo, who
 after being duly sworn on his/her oath deposes and says;
 My name is Jose Francisco Armejo J. F. A.
 and I am 10 years of age, having been born on
October 20, 1970. My home address is 2400 Rusk 4924 Rusk
 ; telephone number _____.
 I am employed at _____;
 ; telephone number _____. I can
 also be reached at _____.
 My Driver License number is _____ and my
 Social Security number is _____.

Around 10:00PM tonight me and my sister and my father went to the auto parts store and the store where you can buy gas. We went to the auto parts store first and bought something for the car. Then we went to the store to get some gas and Fritos and cokes. On the way back from the store we were going home and we saw the police had a car stopped. My father couldn't turn on our street because the car the police had stopped was blocking the street. My father stopped the car and said that he was going to have to go straight because the car was blocking the street. I don't remember what street we were on but we were close to my house on Rusk. While we were stopped I saw the police car parked behind the other car. The policeman got out and stood behind his door and two men got out of the other car. One man got out from the driver's side and the other one came from the other side. I saw that there were some other people in the car that the police had stopped but they stayed inside. The two men that got out of the car walked up to the policeman. The policeman was still standing behind his door when they walked up. The two men were standing next to each other and I saw one man tap the other man who was standing next to police car. He tapped the other man on the hand but the policeman couldn't see him because of the door. Then the man next to the police car reached around his back like he was going to scratch it and pulled out a gun and shot the policeman in the face. The man shot the gun with his left hand and I think he shot about four times. The policeman fell on the ground and the two men started shooting all over the place. They were shooting at houses and then they saw us and my father said that we needed to get out of there. My father put the car in reverse and we started going backwards and the two men were chasing us. There was one man on each side of the car and the man on my side of the car shot through the front glass of the car. I heard my father yell and I thought he had been shot because the seat of the car and his back

I have completed 3 years of school/education and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Det. F.S. Dobyanski of my own free will. This statement was typed by Det. F.S. Dobyanski.

SIGNED: X Jose Francisco ArmejoSubscribed and sworn to before me this 14 day of July, 1982SIGNED: James H. Bonnell
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 1 of 2 pages

App. 0007

(Page 2 of statement of Jose Francisco Arreola)

had blood all over them. My father then put the car in drive and we went a little ways up the street and the car went into the ditch. My father was laying over in the middle of the seat so I put the car in park and turned the key off.

The two men that shot the policeman came running by our car and ran past us to the curve down the street. They were still shooting when they went past us but they stopped when they got to the curve.

After the men had gone I ~~got~~ out of the car and ran to Mrs. Galvan's house and told her to call an ambulance because they had shot my father. I told her that I had to go back and get my little sister but she told me to stay her house and she would go and get my sister. Then after that I don't know what happened.

Also, when the policeman got shot the other people in the car got out and ran and went all over the place.

I didn't see the men that shot the policeman too good and I don't remember what they looked like or what they were wearing.

I don't read very well yet so Peggy Howell read this statement to me. Everything that was read to me was everthing I could remember to the best of my knowledge.

J.F.A.

I have completed 3 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Det. F.S. Dobyanski of my own free will. This statement was typed by Det. F.S. Dobyanski.

SIGNED: Jose Francisco ArreolaSubscribed and sworn to before me this 14 day of July, 1983SIGNED: Peggy H. Howell
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 2 of 2 pages.

App. 0008

(Form CIB-0004)

F 000017

STATEMENT

STATE OF TEXAS:

DATE: 7-14-_____, 1982

COUNTY OF HARRIS:

TIME: 00:40 A.M.

Before me the undersigned authority, personally appeared ELVIRA MEDINA FLORES, who after being duly sworn on his/her oath deposes and says: My name is ELVIRA MEDINA FLORES and I am 16 years of age, having been born on 3-4-66 Texas. My home address is 4938 Walker, Houston, Texas; telephone number 921-0410. I am employed at _____; telephone number _____. I can also be reached at _____. My Driver License number is _____ and my Social Security number is 4450-37-1159.

Earlier tonight (7-13-82) I am not sure of the exact time, I was walking west on Walker Street. I was accompanied by my younger sister whose name is Herlinda Garcia, and she is 14 years old. I was several houses down from where I live when I saw a car going fast on a street that crosses Walker Street. This street is just west of where I live. The car was headed south on the street and the car was a large black vehicle with red stripes on it. The car pulled into the intersection at Walker Street and stopped in the middle of the intersection. I then noticed that there was a Houston Police Car directly behind the black car and that the police vehicle had its flashing lights on. These are the red lights that are on the roof of the police car. There were two persons in the black vehicle but I only noticed that the driver of the black vehicle had blond colored hair and that he was a Latin/American male in his twenties. Both of the people in the black vehicle then got out of the car. There was only one police officer in the police car and he got out too. I could hear the blond haired driver saying something in Spanish like: "I need this" or something like that. The police officer then told the two guys to put their hands on the police car. The two persons had been talking briefly with the police officer before he told them to do that. Both the driver with blond hair and the passenger of the black vehicle then put their hands on the police car near the left front fender. By this time my younger sister had started back toward our house because I felt their might be some trouble. At this time the blond haired driver pulled a pistol from somewhere to his front and started shooting at the police officer. The police officer fell immediately to the ground. I am not sure but I think the driver of the car only shot one time at the police officer and then shot several times as he began to run away. I don't know where the passenger of the black vehicle went because I jumped underneath a car. I don't think I can identify the two persons I saw and I have never seen them before. I saw the blond haired Latin/American male last as he was running toward the cemetery. After the shooting was over I saw my brother-in-law trying to help the wounded police officer.

car descript

Police Stopped

driver blond
descrip

get out

handson
car

blond shot

officer

can't
identify

I have completed 7 years of school/~~xxxxxx~~ and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. D.D. SHIRLEY of my own free will. This statement was typed by DET. D.D. SHIRLEY.

SIGNED: E. Herlinda Medina FloresSubscribed and sworn to before me this 14th day of July, 1982SIGNED: [Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 1 of 1 pages

(Form CIB-0004)

App. 0009

F 000018

STATEMENT

STATE OF TEXAS:

DATE: 7-22-82, 19 82

COUNTY OF HARRIS:

TIME: 1:53pm

#2

Before me the undersigned authority, personally appeared ELVIRA MEDINA FLORES, who after being duly sworn on his/her oath deposes and says: My name is ELVIRA MEDINA FLORES and I am 16 years of age, having been born on 3-4-66. My home address is 921-0410. I am employed at unemployed; telephone number . I can also be reached at GULFWAY VILLAGE APARTMENTS ON DISMUKE STREET. APT#19; telephone number . My Driver License number is and my Social Security number is 450-37-1159.

On July 14, 1982, I brought to the Homicide Division where I gave a statement to a Detective concerning the shooting of a police officer. I want to give this second statement, because I would like to mention some events that I did not mention. On July 13, 1982, myself and my sister were walking west on Walker St. going to Pat's store. My sister is Herlinda and she have already given a the Detectives a statement. As we were walking to the the store that is on the corner of Walker and Dumble, I saw this black car with two LA/males inside. The car was going west on Walker at a high rate of speed. As the car pass us, the driver of the car tried to do a doughnut in the middle of the street but the car stopped. The car died right there. When the driver tried to do this doughnut is when the car fell dead in the middle of the street. The car was in the same position when the police came to where the police officer was shot.

When the car came to a stop, the driver got out of the car and asked me for a boost. I started ^{E.M.F. walking backwards} backwards walking, and he kept asking me for a boost. I had started to walk back because I saw the police officer drive up behind the black car. The police officer was coming down Edgewood to Walker street. There were two LA/males inside of the car and they both had gotten out of the car. I did not pay that must attention to the other one, just the driver. The driver had long hair and a beard and a mustache.

When the officer drove up, the officer got out of his car and called for the two LA/males to come back to his car. When this all happen I was standing in front of the black car that the two LA/males were driving. When the officer called the two LA/males over to his car. The officer had the two LA/males

I have completed 7th years of school ~~and~~ and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. L.E.WEBBER of my own free will. This statement was typed by DET. L.E.WEBBER.

SIGNED: Elvira Medina FloresSubscribed and sworn to before me this 22nd day of JULY, 19 82SIGNED: Det. L. E. Webber
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 1 of 2 pages

App. 0010

(Page 2 of statement of ELVIRA MEDINA FLORES)

E.M.F.
to place their hands on the police car. The two LA/males walked up to the police car and placed their hands on the hood of the police car with the other LA/m placing his hands on the police until near the drivers door of the police car and the driver of the black car placing his hands on the hood near the front. The police officer was standing on the inside of his car door. The officer had his car door open on the drivers side and had the two LA/males standing between him and the door.

As the driver of the black car was placing his hands on the hood of the police car, the officer was saying something to him and the driver was saying in Spanish "No No, we need a boost". The driver of the black car then turned from the police car and took his hands off the car, the driver of the black car then starting shooting at the officer. I did not see where the LA/m got the gun from. He was just shooting. The LA/males did not go back to the black car. The driver of the black car was backing up shooting at the officer. After the driver of the black car had shot the officer, the driver left running down the street and he was still shooting. The driver ran east on Walker street. The man that was in the red car was going west on Walker when the driver of the black car was running and shooting. I saw the driver of the black car shoot the man that was in the red car as he was running.

After the driver of the black car had shot the officer, the officer just fell to the ground. I did not see where the other LA/m went to. I later dove into a ditch to keep from being hit by the bullets. I never did see the officer take out his gun.

E.M.F.
On July 14, 1982, I took part in a line-up while at the police station. I recognize the man standing in the number 4 position as the driver of the black car and the man that I saw shoot the officer. I told that the Detectives on that day that I did not recognize anyone, because I figured enough people had already identified the man in the # 4 position. On today I talked with Detective Webber and some District Attorneys and I gave them my story as to what I saw on the night the officer was shot. I told them that I did recognize the man as the driver of the car and the one that shot the officer. So I want to give this statement to make everything straight.

I have completed 7 years of school/~~XXXXXX~~ and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. L.E. WEBBER of my own free will. This statement was typed by DET. L.E. WEBBER.

SIGNED: *Elvira Medina Flores*Subscribed and sworn to before me this 22nd day of JULY, 1982SIGNED: *Robert L. Webb*
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 2 of 2 pages.

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: 7-14-82, 19__

COUNTY OF HARRIS:

TIME: 1:40 A.M.

Before me the undersigned authority, personally appeared
PATRICIA ANN FLORES DIAZ, who
after being duly sworn on his/her oath deposes and says:
My name is PATRICIA ANN FLORES DIAZ
and I am 17 years of age, having been born on 9-17-64
My home address is 4430 CLAY
telephone number 921-6932
I am employed at UNEMPLOYED
; telephone number I can
also be reached at 921-0410 (AUNT THRINA MEDINA)
My Driver License number is NONE and my
Social Security number is 654-41-5611.

TONIGHT ABOUT 11:00 P.M., MY AUNT, THRINA MEDINA, ASKED ME IF I WOULD DRIVE HER OVER TO HER UNCLE'S HOUSE ON RUSK STREET. HER UNCLE IS NAMED "FRANCISCO" BUT I DO NOT KNOW HIS LAST NAME OR HIS ADDRESS.

WE WERE GONE ABOUT 30 MINUTES BECAUSE NOONE WAS HOME OR THEY JUST DID NOT ANSWER THE DOOR SO WE CAME BACK TO MY AUNT'S HOUSE. I AM NOT SURE BUT I THINK MY AUNT LIVES AT 3904 WALKER. I ALSO HAD MY BABY WITH ME, WHO IS A 1 1/2 YEAR OLD GIRL BY THE NAME OF ELIZABETH.

WE WERE GOING DOWN WALKER STREET AWAY FROM TOWN AND I WAS DRIVING MY 75 CHEVRELET, NOVA, RED, WHEN WE CAME UP TO A "T" INTERSECTION WITH WALKER ST. WALKER GOES EAST AND WEST AND THIS STREET GOES OFF OF WALKER TO THE NORTH ONLY. IT DOES NOT CONTINUE ON THRU WALKER. I DO NOT KNOW WHAT THE NAME OF THIS STREET IS AT THIS TIME.

WHEN WE GOT TO THIS "T" INTERSECTION, I SAW A BLACK CAR PARKED CROSS WAYS IN THE MIDDLE OF THE STREET, ACROSS WALKER AND A ~~SOMEONE~~ MEXICAN MALE STANDING THERE BY THIS CAR. ALSO, I SAW THAT A POLICE CAR HAD STOPPED THERE TOO, AND THE POLICE CAR HAD ITS RED LIGHTS FLASHING BUT I DID NOT SEE THE POLICE OFFICER AT THIS TIME.

WE GOT REAL CLOSE TO THE CAR THAT WAS PARKED ACROSS WALKER AND THE POLICE CAR BEFORE I REALIZED THAT ANYTHING WAS FIXING TO HAPPEN. ABOUT THIS TIME, I HEARD SOMEONE YELL, "STOP" ON THREE (3) DIFFERENT TIMES RIGHT IN A ROW. I COULD NOT TELL WHO WAS YELLING THIS, IF IT WAS THE ~~MEXICAN MAN~~ STANDING BY THE BLACK CAR OR IF IT WAS THE POLICE OFFICER.

JUST AFTER I HEARD SOMEONE YELL, "STOP", I SAW THIS MEXICAN MAN WHO I HAD ORIGINALLY SEEN BY THE BLACK CAR POINTING A GUN IN THE DIRECTION OF THE POLICE CAR AND I SAW HIM SHOOT FOUR (4) TIMES AT THE POLICE CAR. I STILL HAD NOT SEEN THE POLICE OFFICER AT THIS POINT.

WHEN THE MEXICAN MAN GOT THRU SHOOTING, HE RAN DOWN WALKER, GOING AWAY FROM DOWNTOWN AND THAT WAS THE LAST TIME THAT I SAW THIS MAN TONIGHT.

WHEN THIS HAPPENED, MY AUNT AND I GOT OUT OF THE CAR TO SEE WHAT HAPPENED AND I HEARD SOMEONE YELL FOR SOMEONE TO CALL AN AMBULANCE, THAT THEY HAD SHOT THE COP. MY AUNT AND I GOT UP TO THE POLICE CAR BEFORE I FINALLY SAW THE OFFICER LAYING ON THE STREET AND I COULD TELL THAT HE HAD BEEN SHOT BECAUSE HE HAD BLOOD ALL OVER HIM AND HE WAS ON THE GROUND. BY THAT TIME, THERE WERE SEVERAL PEOPLE AROUND THE POLICE CAR AND MY COUSIN'S HUSBAND, JOHNNY MATAMORAS, WAS TRYING TO HELP THE OFFICER AND TELLING SOMEONE TO CALL THE AMBULANCE. I STAYED THERE ABOUT TEN MINUTES BEFORE I LEFT TO GO LEAVE MY BABY AND MY AUNT STAYED THERE.

ALTHOUGH I DID NOT SEE IT, MY COUSIN TOLD ME THAT THE SAME MAN WHO SHOT THE POLICE OFFICER, STARTED SHOOTING AT EVERYONE AFTER THAT AND HE ALSO SHOT ANOTHER MAN JUST DOWN THE STREET.

I have completed 7 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. K.R. WILLIAMSON of my own free will. This statement was typed by DET. K.R. WILLIAMSON.

SIGNED: Patricia Diaz

Subscribed and sworn to before me this 14 day of JULY, 1982

SIGNED: Edward G. Duranti
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

000021

Incident

(Page 2 of statement of PATRICIA ANN FLORES DIAZ)

2ND
SHOOTING

Description
of shooter

Car
description

gun
description

⇒

FROM WHERE THE POLICE OFFICER WAS SHOT. THIS MAN WAS DRIVING A RED AND WHITE CAR AND I SAW HIM IN THE CAR AND HE WAS BLEEDING TOO BUT I DO NOT KNOW IF HE WAS ALIVE OR NOT. I DO NOT KNOW WHAT ACTUALLY HAPPENED TO HIM EITHER.

[REDACTED] THAT WAS PARKED ACROSS WALKER ST. AND [REDACTED] HE WAS IN HIS 20'S, ABOUT 5'10", 160 LBS., [REDACTED] BLACK HAIR AND WAS WEARING A [REDACTED] SLEEVE, DARK COLORED SHIRT.

THE CAR THAT HE HAD [REDACTED] A BLACK CAR [REDACTED] A RED AND WHITE CAR [REDACTED] WAS [REDACTED] I AM NOT FOR SURE. IT WAS A RED AND WHITE CAR.

[REDACTED] THAT THE MEXICAN MAN USED TO SHOOT THE POLICE OFFICER [REDACTED]

I HAVE NEVER SEEN EITHER THE MEXICAN MAN WHO SHOT THE POLICE OFFICER BEFORE OR THE BLACK CAR THAT HE WAS DRIVING AT THE TIME. I DO NOT THINK I CAN ABSOLUTELY IDENTIFY THE MEXICAN MAN WHO SHOT THE OFFICER OR EVEN SEE HIM AGAIN BUT I THINK THAT I COULD GET PRETTY CLOSE.

I WAS LATER BROUGHT TO THE HOMICIDE DIVISION AT THE POLICE STATION WHERE I WAS ASKED TO MAKE A WRITTEN STATEMENT TO WHAT I SAW AND THIS IS WHAT I AM DOING AT THIS TIME.

P.D.

I have completed 7 years of school/~~XXXXXX~~ and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. K.R. WILLIAMSON of my own free will. This statement was typed by DET. K.R. WILLIAMSON.

SIGNED: Patricia Diaz

Subscribed and sworn to before me this 14 day of JULY, 1982

SIGNED: Edward G. Green
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 2 of 2 pages.

2:30 AM

App. 0013

000022

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: 7-14-82, 19__

COUNTY OF HARRIS:

TIME: 6:20 AM

Before me the undersigned authority, personally appeared
PATRICIA ANN FLORES DIAZ, who
 after being duly sworn on his/her oath deposes and says:
 My name is Patricia Ann Flores Diaz
 and I am 17 years of age, having been born on 9-11-64
 My home address is 4430 CLAY
 ; telephone number 921-6932
 I am employed at UNEMPLOYED
 ; telephone number _____. I can
 also be reached at 921-0410 (AUNT THIRINA MEDINA)
 My Driver License number is NONE and my
 Social Security number is 654-41-5611.

On Wednesday, July 14, 1982, at approximately 6:10 AM, I attended a lineup on the third floor of the Houston Police Department. I was asked to sit and look at six men who were standing in front of me and I was told that after the lineup I would be taken outside and would be asked if I recognized any of the men.

After the lineup I was taken outside of this room and asked if I recognized any of the men that were standing before me. I ~~thought~~ thought that the man that was standing fourth ~~from the back was the same man that I had seen on Walker just before the officer was shot.~~

*C. Garcia
 for picking
 #4*

~~From the back of the line and, probably~~ When I was in my car I drove down Walker St. and this was the first time that I saw this man standing on the side of a car. I saw ~~this man with a gun in his hand~~ and I guess he had a gun in his hand.

After the lineup I was taken back to the Homicide Office where I gave Det. Gatewood this statement.

I have completed 7 years of school ~~and~~ and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Det. Gatewood of my own free will. This statement was typed by Det. Gatewood.

App. 0014

SIGNED: Patricia Diaz

Subscribed and sworn to before me this 14 day of JULY, 19 82

SIGNED: Robert Diaz

NOTARY PUBLIC IN AND FOR
 THE STATE OF TEXAS

6:40AM

Incident No. _____

STATEMENT

STATE OF TEXAS:
COUNTY OF HARRIS:

DATE: July 14, 1982
TIME: 1:00am

Before me the undersigned authority, personally appeared
DANNY JOE MARTINEZ, who
after being duly sworn on his/her oath deposes and says:
My name is DANNY JOE MARTINEZ
and I am 17 years of age, having been born on 5-13-65.
My home address is 49244 POLK; telephone number NONE.
I am employed at STEVE ROSE (self employed) Unk Apt on
Broadway; telephone number UNK. I can
also be reached at Oleta Perez (Grandmother) 227-4613.
My Driver License number is NONE and my
Social Security number is UNK.

Tonight I saw a police officer that had been shot. This was around 9:30 tonight on
July, 13, 1982. The person who shot the police officer lives near the Eastwood Park.

Earlier today I went to Eastwood Park. I go there from time to time to play some
basketball. There is a house on the corner of Rusk and Dumble and there is always a
black car there. I have seen this black car before with "Wet Backs" in it. These
"Wet Backs" are the ones who own the car and stay at the house on the corner of
Rusk and Dumble. I have seen them before and in fact I once saw them beat up a man
real bad at a store called Pat's on Dumble and Walker.

I saw the black car at the house on Rusk and Dumble today when I played basketball.
After I played basket ball I then went home and ate. Later I was going to go to my
girl friends house. I looked out of the front door and looked at the "AAA" which is
a store and gas station. The "AAA" is located on Polk and Dumble. I always look
over there from my front door because I want to know what is going on before I leave.
The reason I look is because prople are always getting rolled and hurt there. Tonight
when I looked over there I saw the black car at the gas pumps and saw that the driver
was pumping gas. The passenger in the car did not get out. The passenger was wearing
a green shirt and had a black moustache. His hair was parted down the middle and came
to his shoulders. There was also two people in the back seat. I then left my house
which is located at 49244 Polk and started down Polk towards Altic in order to get
to my girl friends house. At this time I was jogging as I always do. When I got
to Altic street I turned left and was going up the street when the black car came
up behind me. It had a headlight out. I heard them coming up behind me when they turned
the corner. I was jogging in the middle of the street and when I heard them I went to
I have completed 9 years of school/~~university~~ and can
read and write the English Language. I have read this
statement and it is true and correct to the best of my
knowledge. I have given this statement to DETECTIVE
C.S. MAGAN of my own free will. This statement
was typed by DETECTIVE C.S. MAGAN.

App. 0015

SIGNED: Danny Joe Martinez

Subscribed and sworn to before me this 14 day of JULY, 1982

SIGNED: Edward G. Greenleaf
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: JULY 14, 1982

COUNTY OF HARRIS:

TIME: 6:00AM

Before me the undersigned authority, personally appeared DANNY JOE MARTINEZ, who after being duly sworn on his/her oath deposes and says; My name is DANNY JOE MARTINEZ and I am 17 years of age, having been born on 5-13-65. My home address is 4924 E Polk; telephone number None. I am employed at _____; telephone number _____. I can also be reached at _____.

My Driver License number is None and my Social Security number is Unk.

On July 14, 1982, about 6:00AM, I viewed a show up, and I positively identified, the man who was in the number 4 position in the show, as the man I saw, in a black, with red vinyl top Regal, on July 13, 1982.

The first time I saw him in the car was about 9:00PM to 9:30PM July 13, 1982, at the A and A store, on Polk and Dumble.

This man was setting in the passengers seat.

I have completed 9 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. A. T. HERRMANN of my own free will. This statement was typed by A. T. HERRMANN.

SIGNED: Danny Joe Martinez

Subscribed and sworn to before me this 14 day of July, 1982

SIGNED: [Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 1 of 1 pages

(Form C18-0000)

App. 0016

F 000027

STATEMENT

Incident No. _____

STATE OF TEXAS:

DATE: 7/14, 19 82

COUNTY OF HARRIS:

TIME: 12:10PM

Before me the undersigned authority, personally appeared John Reyes Matamoros, who after being duly sworn on his/her oath deposes and says: My name is John Reyes Matamoros and I am 19 years of age, having been born on 5/18/63. My home address is Unknown Walker; telephone number 921-0210. I am employed at not employed; telephone number _____. I can also be reached at _____. My Driver License number is _____ and my Social Security number is _____.

I am John Reyes Matamoros and I have just moved in with my wife's mother on Walker Street but I am not sure of the numbers. I just moved in there last Friday. I was born here in Houston and I have a social security card but I do not have it with me.

Tonight sometime before 10:30PM my wife, myself, my sister-in-law, and my sister-in-law's boyfriend were outside. We ran out of beer and my sister-in-law and my wife were going to the store to get some more. My wife had our baby with her. My sister-in-law's boyfriend and myself went inside the house as soon as they left walking toward the store. As soon as we got inside the house my wife came running inside and she had the baby with her and she said there was a lot of shooting going on outside. I went outside the door and I saw my sister-in-law in the ditch and I saw a red and white car going by and the car was going toward where the officer got shot. I also saw a man with a gun and he was running away from where the officer got shot. The man had a gun and he was still shooting crazy like he was shooting everywhere. The red and white car just started going real slow and it headed off into a ditch and then hit a tree. Then the horn in the car started going off. I saw a lady take a kid out of the car. I knew the man in the car had been shot.

I ran over to my sister-in-law in the ditch to see if she was okay. She grabbed me and I told her to let me go because a police officer had been shot. I could see the officer laying on the ground right beside his car. The police officer was laying across the street from where I was and about two and a half houses down from where the red and white car was. I seen a big hole in the officer's head and he was bleeding. I got on his CB radio and I started saying "breaker 19 get me a police officer, a police officer has been shot". Then my sister-in-law came over and she saw that the officer had been shot and she started screaming. Another Houston officer came up and he must have thought I was involved because he asked me what I was doing and I told him I was trying to help the officer and that he had been shot. I told him he should get some help fast cause it didn't look like he was breathing too good. Then the other officer got on the CB and started getting help.

The man who I saw running with the gun was a Mexican American about 20 or 21 years old. He had shoulder length hair that was not as dark as mine and it looked more like hair that a white person would have. He was wearing a button up shirt and brown pants. He may have had on a hat but I am not sure. All I saw was fire coming I have completed 12 years of school/college and can read and write the English language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Det. C.M. Hoffmaster of my own free will. This statement was typed by Det. C.M. Hoffmaster.

SIGNED John Reyes MatamorosSubscribed and sworn to before me this 14 day of July, 19 82SIGNED: James A. HinesNOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 1 of 2 pages

(Form CIB-0004)

App. 0017

F 000028

Side of
Street?

(Page 2 of statement of John Reyes Matamoros)

from the gun and he must have had a gun with 16 shots because I know he shot more than 7 times. I did not recognize the guy as anyone I know. I think I might be able to recognize him if I saw him again by his hair and how tall he is. I just saw the side of his face as he ran by.

My wife's name is Herlinda but I do not know my sister-in-laws name in English and I just met her boyfriend so I don't know his name either. We had been drinking but I know what happened tonight. If it had not been for the man in the red and white car I don't think my wife and baby would be here now because I think they would have been shot.

This is all that I saw that happened tonight. This statement was read to me by Peggy Howell and it is true and correct.

John Reyes Matamoros

I have completed 12 years of school/college and can read and write the English language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Det. C.M. Hoffmaster of my own free will. This statement was typed by Det. C.M. Hoffmaster.

SIGNED: *John Reyes Matamoros*Subscribed and sworn to before me this 14 day of July, 1982SIGNED: *Peggy Howell*
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 2 of 2 pages.

App. 0018

STATEMENT

STATE OF TEXAS:

DATE: July 14, 19 82

COUNTY OF HARRIS:

TIME: 10:45 a.m.

Before me the undersigned authority, personally appeared Jacinto Banda Lopez, who after being duly sworn on his/her oath deposes and says: My name is Jacinto Banda Lopez and I am 26 years of age, having been born on April 16, 1956. My home address is 5517 Brock, Houston Texas; telephone number 921 3951. I am employed at Brown and Root, Marine Division, on Greens Bayou Road; telephone number 678 1356. I can also be reached at my Brother, Guadalupe Manuel Lopez, 4801 McKinney, apt #1, 928 2157. My Driver License number is 09373517 and my Social Security number is 389 80 4572.

On Tuesday, July 13, 1982, at approximately 9:00 p.m., I was at my friend Enrique's house. Enrique lives at 4907 Rusk. Also there at this time were Roberto Onofre, Jose Manuel who's last name I don't know, Jose Luis Torres, "Guero" and Ricardo.

Sometime after 9:00 p.m., Ricardo asked to borrow my car so that he could go run an errand. I told him he could if he did not delay bringing the car back. I then gave the car key to Ricardo. Ricardo and "Guero" then left. My car is a 1977, Buick, Regal, red/black in color.

I had seen Ricardo earlier this date at approximately 3:00 p.m. At this time I took Ricardo to Memo's Record Shop located at 75th and Canal Street. Ricardo wanted to exchange some Mexican money for American money. When we got to Memo's I asked Ricardo if he was armed. The reason I asked Ricardo if he was armed was because I had seen Ricardo carrying a .45 Caliber automatic pistol, chrome plated, on previous occasions.

Ricardo at this time took this same automatic pistol from out of his from waist and laid the pistol up on the front seat. I then concealed the pistol a little better by bring the front seat, middle arm rest down, covering the pistol. Ricardo then went inside Memo's and conducted his business. Once he came back to the car I drove him to an apartment on Avenue C, nearby 70th and 67th Street.

When Ricardo was leaving Enrique's house with my car I saw that there was an impression of what appeared to be his automatic pistol protruding

I have completed _____ years of school/college and can read and write the English language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to _____ of my own free will. This statement was typed by _____.

SIGNED: Jacinto Lopez B.Subscribed and sworn to before me this 14 day of July, 19 82SIGNED: _____
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

11:00 a.m.

Page _____ of _____ pages

App. 0019

F 000034

000035

(Page 3 of statement of JACINTO BANDA LOPEZ)

Sometime later another brother who live 4801 McKinney, apt #1 called on the telephone and advised that it was my car and that "Guero" and Ricardo had been involved in the officers shooting.

I then went to my house and was there until Enrique came looking for me. Enrique told me that I needed to go to the Homicide Division and talk with a Detective Castillo.

After Enrique had given me this information we both went to Enrique house and asked a police officer for Detective Castillo.

I have known Ricardo for approximately two months. I do not know his last name but can be described as being a Mexican male, 20 yrs., 5'9", slender, 147 pounds, light brown hair, straight, shoulder length, has a brown colored mustache, some beard,

I have known "Guero" approximately one month. I do not know his real name. I have a general idea where he was living. I never saw "Guero" with a pistol but he did tell me that he had a 9 mm, automatic pistol. Also "Guero" had mentioned to me that he had at one time killed an oriental male. After telling this to me he simply laughed about it. Also his physical appearance was what I considered strange.

JBL

I have completed 10 years of school in Mexico and can not read or write the English language. This statement was read back to me in Spanish by Detective J.M. Castillo and it is true and Correct to the best of my knowledge. I have given this statement to Detective J.M. Castillo of my own free will. This statement was typed by Detective J.M. Castillo. I have completed 10 years of school/college and can read and write the English language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to myself of my own free will. This statement was typed by myself.

SIGNED: Jacinto Lopez B.Subscribed and sworn to before me this 14 day of July, 19 82

11:40 a.m.

SIGNED: [Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 3 of 3 pages.

App. 0021

STATEMENT

STATE OF TEXAS:

DATE: 7-14-82, 19__

COUNTY OF HARRIS:

TIME: 4:35 Am

Before me the undersigned authority, personally appeared Armando Heredia, who after being duly sworn on his/her oath deposes and says: My name is Armando Heredia and I am 16 years of age, having been born on 3-30-64. My home address is 4938 Rusk; telephone number 9236964. I am employed at unemployed; telephone number _____. I can also be reached at home. My Driver License number is none and my Social Security number is none.

The day that I speak about is last night. The day was tuesday night. The date was the 13th day of july. The time was around 10:00Pm or 11:00 Pm. I remeber that me and my brother (Jose Angel) walked over to these friends house who live on the street called walker. I do not know the exact address

The time was around 9:30 Pm when we went to this house. When we arrived at this house on Walker we played volley ball outside. We played for a long time. We stopped playing around 10:00Pm. After we finished playing, we all sat at the steps and talked. It was me the lady named Irma Galvan, her sons and my brother that were sitting out ther talking. We talked for about 30 Minutes. After that, me, my brother, and Irma Galvan decided to look for another son of Irma Galvan. We were walking down on Walker. It at this time that a dark car passed by us real fast. Then the car kept going. The car made the corners. Then we decided to walk on the grass because we did not want to run over us. We continued to walk and this same car passed by us again. When ^{we} saw that this car had passed us two time we decided to walk back home.

We were walking on the street named Walker. As we were walking we saw that a police car had stopped the car that had passed us twice. The Officer had shined his light on the car so it could stopped. The car stopped and the police Officer parked his car his car behind this car. The policeman stepped out of the car. The passenger of the car stepped out of the car. The policemen told the passenger (come here). It was then that the passenge walked over to the police man. The driver of the car stayed in the car. The policeman told the passenger to put his hands on the car. The man was placing his hands on the roof of the car. It was then that the driver of the car got out of the car real slow as to not let the Officer know that he was

I have completed 6 years of school ~~college~~ and cannot read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to C T Mosqueda of my own free will. This statement was typed by C T Mosqueda.

SIGNED: Armando HerediaSubscribed and sworn to before me this 14 day of July, 1982

SIGNED: James E. Mosquera
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

(Page 2 of statement of Armando Heredia)

getting off. When the driver of the car got out he had a pistol in his hands. He was holding it with his two hands. The driver with the pistol got up to the Officer and pointed the pistol at the Officer. It was then that the policeman looked up and saw the man with the pistol. The Officer tried to get his pistol. The officer ducked down trying to avoid the pistol that was being pointed at him. It was then that the driver shot the policeman about three or four times around the neck. After the Officer was shot both the driver and the Passenger ran at ~~different~~ ^{different} directions.
AH

The man that shot the Officer ran down Walker and then turned on Rusk. It was then that me, and Irma Galvan, her husband and sons ran inside the house. Before we saw that the man was running and shooting his pistol. This was the reason that we ran inside.

About ten minutes later we walked outside. This was when we saw this man that we know by face was shot in his car. The car was on Walker street. We stayed at the house. About 25 minutes later the ambulance picked up the man in the car and took him away. Later on the police came and talked to us and brought us to the police station.

The man that shot the police Officer I know him as Wedo) I have known him about a month. As soon as he got out of the car I recognized him. He was also the man that drove the car and shot the Policeman.

Today, July 14, 1982 I was in a showup room. I saw a line of six Mexican men in this line. I picked out the number four man from left to right as the man I know as Wedo and also the man that shot the police Officer. He was also the driver of the car. I am positive that it was him.

I am from Mexico, I have been here in Houston for two years. I do not speak nor write English. Today Officer Mosqueda took my statement in Spanish. Officer Mosqueda read my statement back to me in Spanish and it was the way I gave it to him. It is true and correct as I saw it happen last night. I have six years of school back in Mexico. I lived in the city of Juarez Mexico.

I have completed 6 years of school/~~missing~~ and cannot read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Ct Mosqueda of my own free will. This statement was typed by C T Mosqueda.

SIGNED: Armando HerediaSubscribed and sworn to before me this 14 day of July, 1982SIGNED: [Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 2 of 2 pages.

App. 0023

STATEMENT

STATE OF TEXAS:

DATE: JULY 16, 19 82

COUNTY OF HARRIS:

TIME: 11:04pm

Before me the undersigned authority, personally appeared Alfredo Maldonado Jr., who after being duly sworn on his/her oath deposes and says; My name is Alfredo Maldonado Jr. and I am 28 years of age, having been born on 07-28-53. My home address is 713 Ave. L. SOUTH HOUSTON; telephone number 943-8096. I am employed at International Tool and Supply 2701 Magnet; telephone number 705-8600. I can also be reached at 8502 Glenview-mother's address- Ninfa Munoz. My Driver License number is 07162453 and my Social Security number is 455-04-3560.

On June 19, 1982, I was at Carter's Country Gun store in Pasadena, Texas. I was there with my wife and my two kids. My wife name is Loura. This was sometime around 6:00pm. I had gone to the store to buy a little Charter AR7 .22 rifle for my little girl. I went to the counter and was looking at the rifle that was on the rack behind the counter. While I was at the counter this LA/m came up to the counter. This LA/m asked me if I could speak Spanish. I told him yea and asked him, What's up?. The LA/m then asked me in Spanish if I would buy him a gun. I told him no the first time. He then asked me again and he then started to explain to me why he needed one. This LA/m then started to tell me that his family was having problems with another family down in Mexico. He did not tell where he was from in Mexico. This LA/m told me his name, but I only remember his first name and that is Luis. He shook my hand.

I told him no again. ^{amp} I told him that I didn't know if ^{amp} might go and shot somebody or get into a hassle. He sworn to me that he was not going to load it and that he was going to take it back to Mexico as soon as he can. He sworn that he would go straight to Mexico. I then started to walk around the store and was thinking about it. I told my wife about the LA/m wanting me to buy him a gun. My wife told not to do it because it was not worthy it.

During the time, this LA/m was asking me to buy him a gun, the LA/m was looking at the guns in the guns case. He pointed at the gun he wanted, I

I have completed 1 years of ~~XXXXXX~~/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. L.E. WEBBER of my own free will. This statement was typed by DET. L.E. WEBBER.

SIGNED: Alfredo Maldonado Jr.Subscribed and sworn to before me this 16th day of JULY, 19 82SIGNED: Edward R. Green
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 1 of 3 pages

App. 0024

(Page 2 of statement of MALDONADO, ALFREDO JR.)

said to him, the Browning and he said yea. During the time I was talking to my wife about buying the gun for this LA/m, the LA/m was walking around also. I looked back at him and he came up and asked me if I was going to buy it or not. I then asked him if he was going back to the border with it and he said that he was. The LA/m then told me that he was going to give me \$550 to buy the gun with. The gun cost about \$485.00. The LA/m told me to keep what was left. I think there was about \$30.00 left from buying the gun. I now feel like "JUDAS". I also bought him a box of shells and the gun came with a case. The LA/m wanted an extra clip for the gun, but the store had no extra clips in stock.

The gun that I bought for this LA/m was a Browning 9mm. When I bought this gun for this LA/m I gave him the receipt and everything. The only thing I keep was the \$30.00.

I told the salesman that I was not buying the gun for myself, but that I was buying for the LA/m. The salesman told me that after I buying it from him, it my business what I do with the gun. The LA/m was standing behind me when this was going on. I had already given the salesman my drivers license so that he could write up my purchase for the Charter AR7 rifle. I was putting this rifle in layaway. I then told the salesman after I had made up my mind about buying the gun for the LA/m to write up the Browning also.

So, I bought the Browning 9mm in my name for the LA/m with the money he had given me. After I had bought the gun for the LA/m, we then walked outside and stood to the side. I then handed the gun to the LA/m, and he told me not to worry about it because he was going to take the gun back home as soon as possible. After I had given him the gun, I then got into my truck and drove off. The LA/m stood at the front of the store and watched until I drove off and then he walked to the side of the store. I did not see him get into a vehicle.

I do not know this guy and I have never seen him before. At first I thought I knew the guy because he looked familiar. I asked him if he had ever worked for Brown and Root and he told me no. I used to work for Brown and Root. I worked there for seven years and I thought the LA/m was one of the guys that

I have completed 1 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. LE. WEBBER of my own free will. This statement was typed by DET. J. FERRER.

SIGNED: Alfredo MaldonadoSubscribed and sworn to before me this 16th day of JULY, 19 82SIGNED: Edward A. Green
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 2 of 3 pages.

App. 0025

(Form CIB-0004)

F 000043

(Page 3 of statement of ALFREDO MALDONADO JR.)

use to work with me.

On tonight I went to Carter's Country to pay on my layaway. While I was at the store so Pasadena Police Officer's came into the store and asked me for some identification. I gave them my drivers license. The manager of the store told the police that a gun I had bought had been traced back to the store and the records shows that I had bought the gun. The manager told the Pasadena Police Officer that the gun I had bought was used in the killing of Officer Harris. The Pasadena Officer took me to the Pasadena police department and some Houston Police officers later came and picked me up at the Pasadena police station and brought me to the Homicide Office where I am now giving this statement.

The LA/m that I bought the gun for was approx. 28-32 years old, 5'10" tall, 140 pounds slim, light complexion, hairy eyebrows, hair cut close, clean and neat, short sleeve short that was gold or beige, and a pair of Levi type slacks that was brown in color.

After I had come to the Homicide Office, I was shown six color photos of LA/males by Detective Webber. The man with the #6 position is the one that I picked out as the man that I bought the gun for.

I think the salesman at the Carter's Country gun store that sold me the gun was name MIKE, he is a tall red head white male with freckles and I think he had a beard.

This is all I have to say, I'm just sorry I bought the gun. I saw the story on the TV about the Officer being shot and I feel bad about it.

I have completed 1 years of ~~XXXXXX~~ college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. L.E. WEBBER of my own free will. This statement was typed by DET. L.E. WEBBER.

SIGNED: Alfredo Maldonado Jr.

Subscribed and sworn to before me this 16 day of JULY, 1982

SIGNED: Edward A. Green
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 3 of 3 pages.

App. 0026

STATEMENT

STATE OF TEXAS:

DATE: July 14, 19 82

COUNTY OF HARRIS:

TIME: 6:30 A.M.

Before me the undersigned authority, personally appeared Jacinto Vega, who after being duly sworn on his/her oath deposes and says: My name is Jacinto Vega and I am 16 years of age, having been born on 9-11-65. My home address is 4940 Walker Street Houston Texas; telephone number 926-1460. I am employed at Attend Jackson Jr. Hl.; telephone number _____. I can also be reached at _____.

My Driver License number is none and my Social Security number is none.

Last night at about 11:15 P.M. I saw a police officer get shot. The man that shot the police officer was Mexicano.

I was brought to the police station and I made a written station. After I made a statement, I was then taken to a room on the third floor where I was a line up.

The line up consisted of 6 men that all looked similar.

I picked out the number 4 man in the line up. He was the man with the beard and long hair. The number 4 man that I picked out is the man that I have seen drive the car that the police officer that got shot had stopped.

I have seen this same number 4 man around the neighbor hood several times before.

I have completed 8 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Officer J. Selvera of my own free will. This statement was typed by Officer Jose Selvera.

SIGNED: Jacinto Vega

Subscribed and sworn to before me this 14 day of July, 1982

SIGNED: Earl L. Williams
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page _____ of _____ pages

App. 0027

STATEMENT

Incident No. _____

STATE OF TEXAS:

DATE: July 14, 19 82

COUNTY OF HARRIS:

TIME: 4:15AM

Before me the undersigned authority, personally appeared
Jose Angel Heredia, who
 after being duly sworn on his/her oath deposes and says;
 My name is Jose Angel Heredia
 and I am 14 years of age, having been born on 10-12-68
4938 Kusk. My home address is _____
 _____; telephone number 923-6964
 I am employed at _____
 _____; telephone number _____. I can
 also be reached at _____
 My Driver License number is _____ and my
 Social Security number is _____.

Me and this other lady who I don't know her name went to look for my brother.

We then saw this car that kept passing by real fast. They kept spinning the wheel and driving real fast.

The lady then told me that we should go to her house because the men in the car might do us something.

So we went to the lady's house and set on the brick type rails to the steps. Then I saw that the black car that was passing by real fast was stopped and then the police stopped behind the black car.

The policeman got out of his car and told the man that was driving to come outside. The man that was driving the car came out of the car and to where the policeman was at.

The policeman was standing by the door to his car.

So when the man walked up to where the policeman was at, the policeman put the man against the car and was going to start to search him.

I don't know if the man that the policeman was searching called the other man in the car, but, he came out of the car and walked up behind the policeman and shot him. I don't know where he hit the policeman because I was a little far away but I could see that he was pointing and shooting at the policeman.

After he shot the policeman, he took off running and shooting the gun up in the air. I didn't see where the other man ran to.

After I saw this, I ran into the lady's house to call the police but since she didn't have a telephone I ran across the yard and jumped the fence.

I ran inside the house and told her to call the police because someone had shot and killed the policeman and that they had also shot the man in the red car.

After my mother called the police, I ran back to the lady's house and I stayed.

This is all that I saw and did. I didn't get to see the man's face that was shooting the policeman.

I do not read or write the English language. I gave this statement to Investigator Hernandez in Spanish and he read it back to me and it is true and correct as I gave it.

I have completed 9 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Inv. Hernandez of my own free will. This statement was typed by P Howell

SIGNED: Jose Angel Heredia

Subscribed and sworn to before me this 14 day of July, 19 82

SIGNED: James A. Howell
 NOTARY PUBLIC IN AND FOR
 THE STATE OF TEXAS

Page 1 of 1 pages

App. 0028

F 000055

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: JULY 14, 1982

COUNTY OF HARRIS:

TIME: 3:05AM

Before me the undersigned authority, personally appeared
Officer G.A. Clark #60565, who
after being duly sworn on his/her oath deposes and says:
My name is G.A. Clark
and I am _____ years of age, having been born on _____
My home address is _____
_____ telephone number _____
I am employed at Houston Police Department Southeast Division
_____ telephone number _____. I can
also be reached at _____

My Driver License number is _____ and my
Social Security number is _____.

I, Officer G.A. Clark Badge 3098 Payroll #60565 am assigned to the South Patrol Bureau
S/E Division 3PM-11PM. Riding unit 11D23.

On 7-13-82 at approximately 2145 hrs. myself and Officer J.C. Worton received a shooting
call to Dumble at Altic. Officers met ambulance 1118 while in route. Officers and
ambulance cruised the area but found no shooting. Officers and ambulance 1118 were at
approximately 200 Latham. When we heard over the radio that an officer was down at 4900
Walker. We then stopped the ambulance and advised them of the location, this was at
approximately 2205 hrs. We then proceeded to 4900 Walker with ambulance 1118. We
arrived at 4900 Walker approximately 30 seconds later. I observed an unmarked blue and
white on Edgewood facing south at Walker. I then went to the drivers side of the vehicle
and observed an officer laying on the ground with his face and feet facing toward the front
of the vehicle. His feet were partially under the vehicle and his upper body jutting out
from the vehicle. At this time, ambulance drivers brought the stretcher to the scene and
I helped load him onto the stretcher and take him to the ambulance. I then went back to
secure the scene. The ambulance driver then told us to move our car, which was stopped
on Walker just west of Edgewood facing east. I moved the car to a position just past
Edgewood. As I was getting out of the patrol car, I observed an ambulance attendant drive
the unmarked unit straight ahead into the intersection so the ambulance could exit the
scene. The drivers door of the unmarked unit was open upon my arrival and headlights were
on and spotlight was on and angled toward the ground. Another vehicle was stopped longways
across Walker facing south. The vehicle was not moved to my knowledge. I then heard over
the radio that the suspects ran east towards the cemetery. I remained at the scene and
Officer Worton ran toward the cemetery. I also observed upon arrival that the officers
holster was unsnapped and his gun missing. I could not find his gun at the scene.

I continued to secure the scene until homicide arrived and myself and Officer Worton took
three witnesses to Homicide.

I have completed _____ years of school/college and can
read and write the English Language. I have read this
statement and it is true and correct to the best of my
knowledge. I have given this statement to _____
of my own free will. This statement
was typed by Maureen Lincoln

SIGNED: G.A. Clark

Subscribed and sworn to before me this 14 day of JULY, 1982

SIGNED: Maureen Lincoln

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 1 of 1 pages

App. 0029

F 000057

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: _____, 19__

COUNTY OF HARRIS:

TIME: _____

Before me the undersigned authority, personally appeared
Officer J.C. Worton _____, who
after being duly sworn on his/her oath deposes and says:
My name is J.C. Worton
and I am _____ years of age, having been born on _____
My home address is _____
_____ telephone number _____
I am employed at Houston Police Department Southeast Division
_____ telephone number _____. I can
also be reached at _____

My Driver License number is _____ and my
Social Security number is _____

I, Officer Worton Payroll #76105 riding 11D23 received a call to Dumble @ Altic concerning a shooting at approximately 9:45PM. The above address was not good and I requested a better location from dispatcher. Dispatcher gave us 4900 Curtain. During the search for the shooting location Officers were with HFD Ambulance who also had same call. Officers learned from ambulance driver that shooting victim was at a Cemetery. I figured out at this time that it must be located at dead end of Lathan Street approximate 200 block. Upon arrival at cemetery entrance, with HFD ambulance Officer found no shooting victim. We talked with ambulance driver and decided it was a hoax. I started to get into patrol car to leave and heard the call go out that officer was shot on Walker. I ran back to ambulance behind our patrol car and told them an officer had been shot on Walker. The ambulance followed our unit (11D23) to Walker.

Upon arrival at Walker (shooting scene) I heard dispatcher request location and I told her Walker @ Edgewood twice. I then bailed out of the car following the paramedic. The paramedic ran ahead then turned and ran back toward the ambulance. A female officer yelled at me to move the police car. I reached for the drivers door, but the door was locked. I yelled at Clark to move the patrol car and started for the scene. I approached the scene and observed a police officer laying on the pavement next to his patrol car. The officer shot was on the corner of Walker @ Edgewood. It appeared to me he had been shot in the head because he was in a pool of blood. His face was looking toward my direction as I passed going east on Walker. The officer was laying directly outside the driver side with the door open. I remember the area to be lighted up possibly from patrol car of shot officer lit up. At this time, I looked up and saw Officer Rodriguez up the street on Walker I ran towards Officer Rodriguez and we proceeded up Walker looking for suspects. I and Rodriguez searched the area and then was met by Officer Delahandro and continued to search.

I have completed _____ years of school/college and can
read and write the English Language. I have read this
statement and it is true and correct to the best of my
knowledge. I have given this statement to _____
of my own free will. This statement
was typed by Maureen Lincoln

SIGNED: _____
Subscribed and sworn to before me this 14 day of JULY, 1982

SIGNED: _____
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 1 of 1 pages

App. 0030

F 000058

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: JULY 14, 1982

COUNTY OF HARRIS:

TIME: 6:35 A. M.

Before me the undersigned authority, personally appeared GEORGE LEE BROWN, who after being duly sworn on his/her oath deposes and says: My name is GEORGE LEE BROWN and I am 19 years of age, having been born on 4-21-63. My home address is 5004 MC KINNEY; telephone number 921-1612. I am employed at UNEMPLOYED; telephone number _____. I can also be reached at _____. My Driver License number is _____ and my Social Security number is _____.

On July 14, 1982 I viewed a police lineup. This lineup consisted of six persons. All of the persons in the lineup were similar in appearance. I identified the man that was in the number four(4) position in the line. The person that I identified was the passenger in the car that I had made a statement about earlier.

I have completed _____ years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Detective B. E. Frank of my own free will. This statement was typed by Detective B. E. Frank.

SIGNED: George Lee Brown

Subscribed and sworn to before me this 14 day of JULY, 19 82

SIGNED: Carl W. Kerst
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 1 of 1 pages

App. 0031

F 000069

STATEMENT

STATE OF TEXAS:

DATE: JULY 16, 19 82

COUNTY OF HARRIS:

TIME: 11:04pm

Sup

Before me the undersigned authority, personally appeared Alfredo Maldonado Jr., who after being duly sworn on his/her oath deposes and says; My name is Alfredo Maldonado Jr. and I am 28 years of age, having been born on 07-28-53. My home address is 713 Ave. L. SOUTH HOUSTON; telephone number 943-8096. I am employed at International Tool and Supply 2701 Magnet; telephone number 795-8600. I can also be reached at 8502 Glenview-Mother's address- Nina Munoz. My Driver License number is 07162453 and my Social Security number is 455-04-3560.

On June 19, 1982, I was at Carter's Country Gun store in Pasadena, Texas. I was there with my wife and my two kids. My wife name is Loura. This was sometime around 6:00pm. I had gone to the store to buy a little Charter AR7 .22 rifle for my little girl. I went to the counter and was looking at the rifle that was on the rack behind the counter. While I was at the counter this LA/m came up to the counter. This LA/m asked me if I could speak Spanish. I told him yea and asked him, What's up?. The LA/m then asked me in Spanish if I would buy him a gun. I told him no the first time. He then asked me again and he then started to explain to me why he needed one. This LA/m then started to tell me that his family was having problems with another family down in Mexico. He did not tell where he was from in Mexico. This LA/m told me his name, but I only remember his first name and that is Luis. He shook my hand.

I told him no again. *AMP* I told him that I didn't know if *HP* might go and shot somebody or get into a hassle. He sworn to me that he was not going to load it and that he was going to take it back to Mexico as soon as he can. He sworn that he would go straight to Mexico. I then started to walk around the store and was thinking about it. I told my wife about the LA/m wanting me to buy him a gun. My wife told not to do it because it was not worthy it.

During the time, this LA/m was asking me to buy him a gun, the LA/m was looking at the guns in the guns case. He pointed at the gun he wanted, I

I have completed 1 years of ~~XXXXXX~~/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. L.E. WEBBER of my own free will. This statement was typed by DET. L.E. WEBBER.

SIGNED: *Alfredo Maldonado Jr.*Subscribed and sworn to before me this 16th day of JULY, 19 82SIGNED: *Edward A. Green*NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 1 of 3 pages

(Page 2 of statement of MALDONADO, ALFREDO JR.)

said to him, the Browning and he said yea. During the time I was talking to my wife about buying the gun for this LA/m, the LA/m was walking around also. I looked back at him and he came up and asked me if I was going to buy it or not. I then asked him if he was going back to the border with it and he said that he was. The LA/m then told me that he was going to give me \$550 to buy the gun with. The gun cost about \$485.00. The LA/m told me to keep what was left. I think there was about \$30.00 left from buying the gun. I now feel like "JUDAS". I also bought him a box of shells and the gun came with a case. The LA/m wanted an extra clip for the gun, but the store had no extra clips in stock.

The gun that I bought for this LA/m was a Browning 9mm. When I bought this gun for this LA/m I gave him the receipt and everything. The only thing I keep was the \$30.00.

I told the salesman that I was not buying the gun for myself, but that I was buying for the LA/m. The salesman told me that after I buying it from him, it my business what I do with the gun. The LA/m was standing behind me when this was going on. I had already given the salesman my drivers license so that he could write up my purchase for the Charter AR7 rifle. I was putting this rifle in layaway. I then told the salesman after I had made up my mind about buying the gun for the LA/m to write up the Browning also.

So, I bought the Browning 9mm in my name for the LA/m with the money he had given me. After I had bought the gun for the LA/m, we then walked outside and stood to the side. I then handed the gun to the LA/m, and he told me not to worry about it because he was going to take the gun back home as soon as possible. After I had given him the gun, I then got into my truck and drove off. The LA/m stood at the front of the store and watched until I drove off and then he walked to the side of the store. I did not see him get into a vehicle.

I do not know this guy and I have never seen him before. At first I thought I knew the guy because he looked familiar. I asked him if he had ever worked for Brown and Root and he told me no. I used to work for Brown and Root, I worked there for seven years and I thought the LA/m was one of the guys that

I have completed 1 years of ~~school~~/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. LE. WEBBER of my own free will. This statement was typed by DET. I. FERRER.

SIGNED: Alfredo MaldonadoSubscribed and sworn to before me this 16th day of JULY, 1982SIGNED: Edward A. Green
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 2 of 3 pages.

(Page 3 of statement of ALFREDO MALDONADO JR.)

use to work with me.

On tonight I went to Carter's Country to pay on my layaway. While I was at the store so Pasadena Police Officer's came into the store and asked me for some identification. I gave them my drivers license. The manager of the store told the police that a gun I had bought had been traced back to the store and the records shows that I had bought the gun. The manager told the Pasadena Police Officer that the gun I had bought was used in the killing of Officer Harris. The Pasadena Officer took me to the Pasadena police department and some Houston Police officers later came and picked me up at the Pasadena police station and brought me to the Homicide Office where I am now giving this statement.

The LA/m that I bought the gun for was approx. 28-32 years old, 5'10" tall, 140 pounds slim, light complexion, hairy eyebrows, hair cut close, clean and neat, short sleeve short that was gold or beige, and a pair of Levi type slacks that was brown in color.

After I had come to the Homicide Office, I was shown six color photos of LA/males by Detective Webber. The man with the #6 position is the one that I picked out as the man that I bought the gun for.

I think the salesman at the Carter's Country gun store that sold me the gun was name MIKE, he is a tall red head white male with freckles and I think he had a beard.

This is all I have to say, I'm just sorry I bought the gun. I saw the story on the TV about the Officer being shot and I feel bad about it.

I have completed 1 years of ~~XXXXXX~~ college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. L.E. WEBBER of my own free will. This statement was typed by DET. L.E. WEBBER.

SIGNED: Alfredo Maldonado Jr.

Subscribed and sworn to before me this 16 day of JULY, 1982

SIGNED: Edward G. Green
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 3 of 3 pages.

App. 0034

STATEMENT

STATE OF TEXAS:

DATE: JULY 14, 19 82

COUNTY OF HARRIS:

TIME: 2:30AM

Before me the undersigned authority, personally appeared ANTONIO PALOS II, who after being duly sworn on his/her oath deposes and says; My name is TONY PALOS and I am 25 years of age, having been born on 7-2-56. My home address is 8915 BROADWAY #9228; telephone number 640-1337. I am employed at HOUSTON POLICE DEPT. CENTRAL III; telephone number . I can also be reached at . My Driver License number is and my Social Security number is .

I OFFICER ANTONIO PALOS, BADGE 3135, PR 60599, AM CURRENTLY ASSIGNED TO THE METRO BUREAU IN CENTRAL PATROL III, FROM 10PM TO 6:00AM. ON JULY 13, 1982, I WAS ASSIGNED TO RIDE 2A20 WITH MY PARTNER K.D. TEMPLETON, BADGE 2293, PR 61595.

AT APPROXIMATELY 10:15PM, OFFICERS HAD BEEN MONITORING THE POLICE RADIO IN REGARDS TO AN OFFICER SHOOTING. SHORTLY THEREAFTER OFFICERS WERE ADVISED BY DISPATCHER TO GO TO 4900 WALKER TO TRANSLATE. AS OFFICERS WERE ARRIVING WE WERE ADVISED TO DISREGARD AND THAT A SPANISH SPEAKING UNIT WAS ALREADY ON THE SCENE. WE THEN ADVISED THE DISPATCHER THAT WE WOULD BE IN THE AREA AIDING IN THE SEARCH FOR THE WANTED SUSPECTS.

AT APPROXIMATELY 11:00PM, OFFICERS WERE ADVISED VIA THE POLICE RADIO THAT THE WANTED SUSPECTS WOULD BE LIVING AT 4911 RUSK AND WERE AT THAT LOCATION NOW. OFFICERS ON 2A20 THEN ADVISED THE DISPATCHER THAT WE WOULD BE IN ROUTE TO THAT LOCATION. UPON ARRIVAL I OBSERVED ANOTHER UNIT HAD ALREADY ARRIVED ON THE SCENE. AT THIS POINT DET. ANDERSON ARRIVED AND WAS ADVISED THAT THE ADDRESS OF 4907 RUSK, A TWO STORY WOOD FRAME HOUSE, WAS WHERE THE SUSPECTS WOULD LIVE. OTHER OFFICERS ON THE SCENE THEN ADVISED THAT THIS HOUSE HAD ALREADY BEEN SEARCHED AND NO SUSPECTS WERE FOUND. WE THEN, ALONG WITH DET. ANDERSON, WERE GIVEN PERMISSION TO ENTER THE RESIDENCE AT 4911 RUSK. THE OWNER OF THIS HOUSE, NAME UNKNOWN, HAD GIVEN OFFICERS PERMISSION TO ENTER THE HOUSE. SHORTLY THEREAFTER THIS SEARCH ALSO TURNED UP NO SUSPECTS.

WE THEN WENT BACK TO 4907 RUSK WHERE A SMALL GROUP OF PEOPLE WERE STANDING IN FRONT. AFTER A BRIEF INTERVIEW IT WAS LEARNED THAT ONE OF THE WANTED SUSPECTS DID LIVE THERE. THIS SUSPECT WAS ENRIQUE GOMEZ LUNA. I OBTAINED THIS INFO FROM A LATIN AMERICAN MALE WHO LIVED AT 4907 RUSK AND WHO ALSO STATED THAT LUNA WAS HIS BROTHER. THIS SAME LAM ADVISED THAT LUNA HAD LEFT APPROXIMATELY THIRTY MINUTES EARLIER TO GO EAT AND DID NOT KNOW WHEN HE WOULD RETURN. I WAS IN THE PROCESS OF OBTAINING THIS WITNESSES NAME WHEN AN OFFICER FROM THE CHICANO SQUAD ADVISED MY PARTNER AND I TO ASK FOR A VAN TO COME TO THIS LOCATION. THE CHICANO SQUAD OFFICER WENT ON TO SAY THAT THIS GROUP OF PEOPLE, ALONG WITH THE WITNESS I WAS TALKING TO, WOULD NEED TO BE TRANSPORTED TO HOMICIDE FOR QUESTIONING.

I have completed 13 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. J.C. MOSIER of my own free will. This statement was typed by DET. MOSIER.

SIGNED: Antonio Palos IISubscribed and sworn to before me this 14 day of JULY, 19 82SIGNED: Robert O. Can
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 1 of 2 pages

11/ App. 0035

F 000092

Incident No. 43667612

STATEMENT

STATE OF TEXAS:

DATE: JULY 14, 1982, 19__

COUNTY OF HARRIS:

TIME: 2:43 AM

Before me the undersigned authority, personally appeared JIM AROCHA, who after being duly sworn on his/her oath deposes and says: My name is JIM AROCHA and I am 25 years of age, having been born on NOV. 1, 1956. My home address is SOUTHEAST POLICE STATION; telephone number . I am employed at HOUSTON POLICE DEPARTMENT; telephone number 649 5529. I can also be reached at . My ~~HOUSTON POLICE DEPARTMENT~~ PAYROLL # 59054 and my Social Security number is .

I AM CURRENTLY ASSIGNED TO PATROL BUREAU SOUTH, THIRD SHIFT, 10PM to 6 AM. ON JULY 13, 1982 I WALKED INTO THE SOUTHEAST SU-STATION TO BEGIN MY REGULAR TOUR OF DUTY. AT APPROX. 9:55 PM, I, ALONG WITH THE RESZ OF THE SHIFT WALKED INTO THE ROLL CALL ROOM FOR THE BEGINNING OF EARLY SIDE ROLL CALL. AT EXACTLY 10 PM, EVEN BEFORE ROLL CALL STARTED THE CALL CAME OVER THE RADIO THAT AN OFFICER HAD BEEN SHOT. AT THAT TIME, THE ROLL CALL SGT., SGT. R.L. PUSTELJOSKY, INSTRUCTED EVERYONE ON THE SHIFT TO GET THEIR CARS REDDY AND HEAD OUT TO THE SCENE OF THE SHOOTING. NO ROLL CALL WAS HELD.

MY PARTNER, OFFICER J.E. ZITZMAN, AND I RAN TO OUR ASSIGNED SHOP, SHOP # 6036, AND HEADED TO THE SCENE OF THE SHOOTING AT 4900 WALKER. UPON ARRIVING AT THE SCENE, I WAS ABLE TO OBTAIN A DESCRIPTION OF THE SUSPECT, ESPECIALLY THE SUSPECT THAT WAS DRIVING. HE WAS DESCRIBED AS A L/M IN HIS 20'S, SHORT HAIR, WEARING LIGHT COLORED 2-SHIRT AND BLUE JEANS. THIS DESCRIPTION WAS OBTAINED BY SEVERAL OTHER OFFICERS AT THE SCENE AND BROADCAST OVER THE AIR.

UPON MY ARRIVAL AT THE SCENE THERE WERE ABOUT 10 TO 15 UNITS ALREADY AT THE SCENE. MOST OF THE UNITS, AND I, BEGAN AN IMMEDIATE SEARCH OF THE AREA. AT APPROX. 10:30 PM, UNIT 11D21, AN EVENING SHIFT UNIT, ADVISED THAT THEY HAD ONE OF THE SUSPECTS ON THE GROUND AT THE CAR LOT ON THE CORNER OF LATHAM AND HARRISBURG OR THE 5400 BLOCK OF HARRISBURG. SEVERAL OTHER UNITS AND UNIT 11D21 AND MY PARTNER AND I SEARCHED THE AREA BUT FOUND NOTHING. AT THAT TIME UNIT 1A41 CAME OVER THE AIR AND ADVISED THAT THEY HAD INFORMATION THAT THE SUSPECT WAS AT 4911 RUSK AT A TWO STORY HOUSE. MY PARTNER AND I THEN WENT TO THAT LOCATION.

UPON ARRIVAL THERE, AT APPROX. 11:10 PM, I SPOKE WITH HOMICIDE DETECTIVES GATEWOOD AND ANDERSON, WHO DECIDED TO ENTER THE TWO STORY HOUSE AT 4907 RUSK. THE BROADCAST ADDRESS OF 4911 RUSK WAS DIRECTLY NEXT DOOR, EAST OF 4907 RUSK. BOTH DETECTIVES WERE ADVISED EARLIER THAT THE BIG HOUSE HAD BEEN SEARCHED EARLIER AND THAT NO SUSPECTS HAD BEEN FOUND. DETECTIVE GATEWOOD, DETECTIVE ANDERSON, AND I THEN ENTERED THE RESIDENCE AND SEARCHED FOR SOME PHOTOGRAPHS OF THE SUSPECT. THE HOMICIDE DETECTIVES DID FIND SOME PHOTOGRAPHS. AFTER THE PHOTOGRAPHS WERE FOUND, DETECTIVE ANDERSON AND I STEPPED OUTSIDE OF THE RESIDENCE TOWARD THE FRONT. IT WAS AT THIS TIME, APPROX. 11:30 PM, THAT WE HEARD SHOTS BEING FIRED AT 4911 RUSK. I THEN RAN TOWARD THE SOUTHEAST CORNER OF THE YARD OF 4911 RUSK, AND WHILE RUNNING, SHOTS WERE STILL BEING FIRED. THE FIRST SHOTS FIRED APPEARED TO HAVE BEEN COMING FROM AN AUTOMATIC, SEVERAL IN RAPID SUCCESSION. AS I REACHED THE SOUTHEAST PORTION OF THE YARD, I SAW THE SUSPECT DISCHARGING A WEAPON WHILE OTHER OFFICERS WERE DISCHARGING THEIRS. THE SUSPECT WAS BENT OVER ON HIS KNEES NEXT TO THE HOUSE, BY A TREE. I DID NOT DISCHARGE MY WEAPON FOR FEAR OF HITTING ANOTHER

I have completed 14 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to Det. J.G. Bumester of my own free will. This statement was typed by Det. J.G. Bumester.

SIGNED: [Signature]

Subscribed and sworn to before me this 14th day of JULY, 1982

SIGNED: [Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 1 of 2 pages

App. 0036

000039

(Page 2 of statement of OFFICER JIM AROCHA)

OFFICER. I WAS NOT ABLE TO SEE WHICH OFFICERS WERE RETURNING THE SUSPECT FIRE BECAUSE I WAS TRYING TO TAKE COVER AND KEEP AN EYE ON THE SUSPECT AT THE SAME TIME.

I BELIEVE THAT I HEARD BETWEEN 10 AND 15 SHOTS FIRED, INCLUDING THE SUSPECT'S FIRE. WHEN THE SHOOTING STOPPED, I BEGAN YELLING OUT TO CEASE FIRE AND I BEGAN WALKING TOWARD THE SUSPECT. BY THE TIME I REACHED THE SUSPECT, I SAW THAT AN OFFICER HAD BEEN SHOT. AT THAT TIME PARAMEDICS WERE CALLED, AND HOMICIDE DETECTIVES TOOK OVER THE SCENE.

WHEN I WAS REFERRING TO DETECTIVE ANDERSON EARLIER IN MY STATEMENT, I WAS TALKING ABOUT DETECTIVE WEBBER. THIS WAS BROUGHT TO MY ATTENTION AFTER DETECTIVE ANDERSON WAS POINTED OUT TO ME IN THE HOMICIDE OFFICE.

J.C.

I have completed 15 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to J.G. BURMESTER of my own free will. This statement was typed by J.G. BURMESTER.

SIGNED: J. ArochaSubscribed and sworn to before me this 14th day of JULY, 1982SIGNED: [Signature]NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 2 of 2 pages.

App. 0037

F 000100

STATEMENT

STATE OF TEXAS:

DATE: 7-14-82, 1982

COUNTY OF HARRIS:

TIME: 12:40Am

Before me the undersigned authority, personally appeared George Lee Brown, who after being duly sworn on his/her oath deposes and says; My name is George Lee Brown and I am 19 years of age, having been born on 4-21-63. My home address is 5004 McKinney; telephone number 921-1612. I am employed at unemployed; telephone number . I can also be reached at home or at 526- 4737. My Driver License number is none and my Social Security number is 449-13-4458.

The day that I speak about is on a Tuesday night around 9:45Pm to 10:00pm. The date was the 13th day of July. I remember that I was at my home watching tv, the all star game. It was around 9:30 Pm when I heard an ambulance coming down my street. I looked out the front door and saw the ambulance coming down McKinney but by that time the ambulance had turned off the siren and only had the emergency lights on. The ambulance past my house and I walked out my house to see where the ambulance had stopped.

When I got out of the house I walked down McKinney. When I got to the corner of McKinney and Delmar I turned left on Delmar and started walking towards Walker street which was only about a half a block. When I got to the corner of Delmar and Walker. I stopped so I could let this Black over burgandy cutlass supreme could pass so I could cross the street. Though the car did not pass me but took a right on Delmar Street. I remember that this car had its music real loud and it was occupied by four mexicans. I remember this because as the car turned the corner it almost went into someones yard.

I continued walking after the car pass and did not pay to much attention the cutlass after it had past me. I took a right on Walker street and started towards Altic street. I remember as I was walking down Walker in between Delmar and Altic street, I heard this car turn the corner behind and was heading towards me. I could hear that the car had spun its tires and had stepped on the gas and was going about 45MPH towards me. I turned around and this same Cutlass that I had seen before was trying to run over my dog. My dog got out of the way. Then the Cutlass came at me about 40 to 45 mph. I jumped off the street unto a ditch trying to dodge the car. AS the car past me I was able to see the passenger and the driver real good once again and they were the sameones that had past me before. I also saw that there was two other persons in the back seat. The Cutlass got to the corner of Walker and Altic street. Then it took a left on Altic street.

As soon as the the car had taken the left turn on Altic the officer in a blue and white police shined his light on me. I flagged the officer over and told him that a black and burgandy Cutlass was trying to run me over and it had circled twice around already. The Officer and his dog drove off. The officer took a left on Altic street. This was the same way that the Cutlass had gone. I continued to walk to the corner of Walker and Altic. I looked both ways down Altic street and saw neither the ambulance or the cutlass nor the police car and thought that it was nothing.

I have completed 11 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to C T Mosqueda of my own free will. This statement was typed by C T Mosqueda.

SIGNED: George Lee BrownSubscribed and sworn to before me this 14 day of JULY, 1982SIGNED: [Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 1 of pages

(Page 2 of statement of George Lee Brown)

So I turned back and was walking down on Walker towards my house. About midway the block in between the streets of Altic and Delmar I heard ~~heard~~ seven to eight gun shots pretty close to the area. The shots sounded like the had come towards Dumble street. I then started jogging down walker pass Delmar street. As I was jogging down Walker I saw this mexican man in a white T-Shirt and blue jeans running. This mexican man was turning around as he ran. The mexican man was running down on Lenox street towards McKinney.

When I got to the corner of Walker and Lenox I could see the same police car and the same cutlass parked in the middle of the street in the corner of edge wood and Walker. This was about half a block where I was standing. I saw that the mexican man that was running had disappeared somewhere and I did know where he had gone.

At this point when I saw the police car I ran towards the police car thinking that the police officer had caught the men that had tried to run me over. When I got near the police car I saw that the police car was right behind the same Cutlass that had tried to run me over. The police car had its spot light shining on the Cutlass while it was parked behind it. It was then that I saw that the police Officer was lying on the ground near the drivers side. The drivers door of the police car was wide open. The Officer was lying on his right side on the street.

As I got nearer I made sure that there was no one near that might been involv in the shooting. I saw no one in the cutlass or no one near. I then saw that there was a mexican man leaning into the police car and using the police radio. At that time I asked this man what he was doing and this was when he told me that he was an off duty sergeant. I then checked the officers pulse in his neck. I could see that the Officer had been shot in the left side of the head and was bleeding. The officer did have a pulse but did not respons to anything. I kept my ~~hand~~ on the police Officer until the ambulance arrived. The ambulance took about three minutes to get there and the officer was still alive when Ambulance arrived. The paramedics placed the officer on the stretch and started giving him aid. It was about that time that a lot of Officers arrived.

When the Officers arrived, I told a group of Officers where possibly the suspe could be hiding. So me and about three Officers on foot and police cars began looking around. So we ran on Walker towards Altic street, near the cemetery. When we got to Altic we took a left. Two Officers and a police dog entered the cemetery and came out after they had searched the cemetery. The cemetery was heavily wooded. Me and the Officers had gathered at the corner of Rusk and Altic and were talking about the different ways to get in & out of the cemetery. There was two other people with this whole time. As we were talking there it was then that we saw this mexican guy running towards the back of Lenox Bar B Que. Officers and my self gave chase and were able to arrest this mexican man. I was able to see this man and it was neither the driver nor the passenger that I had seen in the Cutlass. After the man was arrested we all heard about 12 to 15 shots fired, near by. This was about half a block away. Police Officers did not let us see who had been sho ing this time. I was able to see one of the men that had gotten arrested and he was the man that was sitting in the front passenger seat in the cutlass and the same ones that had tried to run me and my dog over. Later we were asked to come to the police station.

I have completed 11 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statment to C T Mosqueda of my own free will. This statement was typed by C T Mosqueda.

SIGNED: George Lee BrownSubscribed and sworn to before me this 14 day of July, 1992SIGNED: [Signature]NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 2 of 3 pages.

App. 0039

(Page 3 of statement of George Lee Brown)

The man that I saw driving the cutlass was a mexican man . He appeared to about 20 years of age, slim built, about 150lbs, short wavy hair which he comb back in a neat fashion. He had a beard and mustache , wearing a white T-Shirt and blue jeans . This was the same guy that I had seen running down on Lenox after I had seen the Police unit that had stopped the cutlass. I want to say that I saw this man carrying something in his right arm close to his body. I did not know what he was carrying.

CS
The man that I saw as the passenger , was also american man, about 18 yrs of age , green T-Shirt, had long stringy hair parted in the middle . This was the same one that the Officers had arrested after the second set of shots.

I was not able to see the two mexican men that were in the back seat.

This is all I know and saw .

VF
ps
CW

I have completed 11 years of school/college and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statment to C T Mosqueda of my own free will. This statement was typed by C T Mosqueda .

SIGNED: George Lee BrownSubscribed and sworn to before me this 14 day of July , 19 82 SIGNED: [Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXASPage 3 of 3 pages.

Incident No. _____

STATEMENT

STATE OF TEXAS:

DATE: 7-15-82 . 19__

COUNTY OF HARRIS:

TIME: 12:10 A.M.

Before me the undersigned authority, personally appeared
JACINTO VITALES VEGA, who
after being duly sworn on his/her oath deposes and says:
My name is JACINTO VITALES VEGA
and I am 16 years of age, having been born on 9-11-65
My home address is 4940 WALKER
telephone number 926-1450.
I am employed at JACKSON JR. HIGH, 9th. GRADE
telephone number _____ I can
also be reached at NONE
My Driver License number is NONE
Social Security number is NONE and my

TONIGHT ABOUT 11:15 PM, I WAS ACROSS THE STREET FROM WHERE I LIVE AND A FEW
HOUSES DOWN AND I WAS TALKING TO LADY THAT LIVES DOWN THE STREET. I WAS UP
ON HER PORCH TALKING TO HER AND I NOTICED TWO LATIN AMERICAN GIRLS WALKING
DOWN WALKER STREET ON THE SIDEWALK. ONE OF THE GIRLS WAS HOLDING A BABY AND
THE OTHER GIRL WAS WALKING BEHIND HER. ONE WAS NAMES ELVERA AND THE OTHER GIRL
WAS HER SISTER. THEY LIVE ON THE SAME STREET AS I DO, NEXT TO MY HOUSE.
I THEN NOTICED A CAR COME DOWN THE STREET AND IT HAD TWO MEXICAN MALES IN
IT. THE CAR WAS RED WITH A BLACK VINYL TOP AND I THINK IT WAS A MONTE CARLO
OR A BUICK. I THINK IT WAS A 1976 OR 1977 MODEL CAR BUT I AM NOT FOR SURE.

WHEN THE CAR GOT NEAR THE TWO MEXICAN GIRLS WHO WERE WALKING DOWN THE SIDEWALK
THE CAR MADE HALF A U-TURN WHERE A SIDE STREET COMES INTO WALKER. IT IS LIKE
A "T" AT THAT INTERSECTION AND THE CAR WAS PARKED ACROSS WALKER ST. BLOCKING
THE STREET. THIS IS ALL TAKING PLACE IN THE 4900 BLOCK OF WALKER.

WHEN THE CAR MADE HALF A U-TURN, THE TWO MEXICAN DUDES GOT OUT OF THE CAR
AND WALKED OVER TO THE TWO GIRLS TO EITHER TALK TO THEM OR MAKE THEM GO WITH
THEM SOMEWHERE. ABOUT THIS TIME, A POLICE CAR CAME DRIVING UP THE SIDE STREET
AND PARKED BEHIND THE RED AND BLACK CAR.

THE POLICE OFFICER GOT OUT OF HIS POLICE CAR BUT STAYED BEHIND THE DOOR OF
THE CAR AND HE TOLD THE TWO MEXICAN DUDES SOMETHING. WHEN THE POLICE OFFICER
SAID SOMETHING TO THEM, ONE OF THE MEXICAN DUDES CAME OVER TO THE POLICE CAR
AND PUT HIS HANDS ON THE HOOD OF THE POLICE CAR AS IF HE WAS UNDER ARREST.

THE OTHER MEXICAN DUDE CAME WALKING UP TO HIM ALSO BEHIND THE FIRST DUDE
AND HE WAS ACTING REAL COOL, LIKE NOTHING WAS GOING ON. THIS SECOND DUDE
WALKED UP BEHIND THE FIRST MEXICAN DUDE WHO HAD HIS HANDS ON THE HOOD OF THE
POLICE CAR AND THE FIRST DUDE TURNED AROUND AND LOOKED AT HIM AND ALL OF A
SUDDEN, THIS SECOND DUDE PULLED A PISTOL OUT FROM SOMEWHERE AND SHOT AT THE
POLICE OFFICER ABOUT FOUR (4) TIMES. I WAS NOT ABLE TO TELL WHERE HE PULLED
THE PISTOL FROM BUT IT WAS SOMEWHERE IN THE BACK WHERE HE HAD IT HIDDEN BEFORE
HE PULLED IT OUT.

WHEN THE SECOND MEXICAN DUDE WALKED UP TO THE OFFICER, HE WAS ONLY ABOUT
TWO FEET FROM THE OFFICER WHEN HE PULLED HIS PISTOL AND SHOT AT THE OFFICER
AND I COULD TELL THAT HE HIT THE OFFICER FROM THE WAY THE OFFICER ACTED. THE
OFFICER DID NOT HAVE A CHANCE TO DO ANYTHING OR SHOT BACK BECAUSE IT WAS SO
QUICK AND SUDDEN.

AFTER THIS SECOND DUDE SHOT THE OFFICER, HE TOOK OFF RUNNING DOWN WALKER ST
AWAY FROM TOWN.

I have completed 8 years of school and can
read and write the English Language. I have read this
statement and it is true and correct to the best of my
knowledge. I have given this statement to DET. K.R. WILLIAMSON
of my own free will. This statement
was typed by DET. K.R. WILLIAMSON.

SIGNED: Jacinto Viales

Subscribed and sworn to before me this 14 day of JULY, 1982

SIGNED: Thomas E. Morken
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 1 of 2 pages

App. 0041

12:52AM

F 000151

WHILE THIS SHOOTING WAS GOING ON, A MAN HAD DRIVEN DOWN WALKER ST. TOWARD THE INTERSECTION WHERE THE SHOOTING WAS GOING ON. THIS MAN STOPPED BEFORE THE INTERSECTION BECAUSE I THINK HE SAW THE MAN SHOOT THE POLICE OFFICER. WHEN THIS MAN SAW THIS, HE STARTED BACKING UP HIS CAR, WHICH WAS A RED FORD TORINO. WHEN THE TORINO GOT ABOUT IN FRONT OF THE HOUSE WHERE I WAS STANDING ON THE PORCH, THE MEXICAN DUDE WHO HAD FIRST SHOT THE POLICE OFFICER THEN RAN UP TO HIM AND SHOT HIM FOR NO REASON. I KNOW THE MAN WAS HIT BECAUSE OF THE WAY HE WAS ACTING AND BECAUSE HE THEN RAN HIS TORINO OFF INTO THE DITCH. THE DUDE WHO WAS DOING THE SHOOTING THEN RAN OFF DOWN WALKER, TO THE NEXT INTERSECTION AND TURNED LEFT WHICH WOULD BE NORTH ON THAT STREET.

AFTER THE SHOOTING STARTED, I DID NOT SEE WHAT THE FIRST MEXICAN DUDE DID. HE WAS THE ONE WHO HAD HIS HANDS ON THE HOOD OF THE POLICE CAR AND HE WOULD HAVE BEEN THE DRIVER OF THE CAR. THE OTHER DUDE, THE ONE WHO SHOT THE POLICER WAS THE PASSENGER OF THE CAR AND HE WAS THE ONE I SAW RUNNING DOWN WALKER AND THEN TURN NORTH IN THE NEXT BLOCK.

I NEVER DID ACTUALLY SEE THE PISTOL THAT THE MEXICAN DUDE HAD BUT IT SOUNDED LIKE A BIG ONE FROM THE NOISE IT MADE. THIS MEXICAN DUDE WAS THE ONLY ONE DOING ANY SHOOTING BECAUSE HE DID NOT GIVE THE POLICE OFFICER A CHANCE TO DO ANYTHING.

AS FAR AS THE MEXICAN DUDES ARE, IT WAS A LITTLE BIT DARK OUT ON THE STREET TONIGHT AND I NEVER GOT TO SEE THEIR FACES SO I CAN NOT RECOGNIZE THEM IF I EVER SAW THEM AGAIN. I CAN NOT REMEMBER WHAT THEY LOOKED LIKE AND I CAN NOT REMEMBER WHAT EITHER ONE WAS WEARING. I CAN REMEMBER SEEING THE CAR THEY WERE DRIVING IN THE NEIGHBORHOOD BEFORE BUT I DO NOT KNOW WHO OWNS IT OR WHO WAS DRIVING IT AT THE TIME I SAW IT.

J. V.

I have completed 8 years of school/XXXXXX and can read and write the English Language. I have read this statement and it is true and correct to the best of my knowledge. I have given this statement to DET. K.R. WILLIAMSON of my own free will. This statement was typed by DET. K.R. WILLIAMSON.

SIGNED: Jacinto Vitales

Subscribed and sworn to before me this 14 day of JULY, 1982

SIGNED: James J. Montoya
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Page 2 of 2 pages.

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT (S) J.D. Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ SEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

SCENE SUMMARY

The scene of this offense is the intersection of Walker and Edgewood streets, in Houston, Harris County, Texas. This intersection is located in the near east end of town in a mostly residential area. The intersection is just east of Dumble and Walker. The area contains mostly smaller houses occupied largely by Mexican-Americans citizens. Walker street is a general east/west street and is two-way with one lane in each direction in the 4900 block. Edgewood street is a generally north/south street and is also two-lane with one lane in each direction. The 700 block of Edgewood dead ends into the 4900 block of Walker forming a "T" type intersection, with Walker forming the top of the "T". Both streets are typical asphalt residential streets and are uncurbed in this area. Both streets are approx the same width, with Walker being approx 18 ft wide and Edgewood approx 19 ft wide.

Small woodframe residences occupy the south side of the 4900 block of Walker, the south end of the intersection. 4922 Walker and 4928 Walker are the two houses on the south end of the intersection that face into Edgewood. Similar wood frame houses occupy the north side of Walker street.

☐ SUPPLEMENT COMPLETE ☒ CONTINUED

OFFICER 1 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____
PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

App. 0042

F 000204

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT(S) J.D.Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME: _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME: _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME: _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ SEAT _____

VEH. RELEASED TO: _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

SCENE SUMMARY Contd.,...

There is a red brick house on the northeast corner of the intersection, one of the few brick houses in the area. This house is 4921 Walker and there are more woodframe residences farther east down Walker on the north side. There is a woodframe residence on the northwest corner of the intersection and this is 4919 Walker. Woodframe residences continue farther west on the north side of the street. As mentioned before, there is no curb on either street around this intersection. A shallow ditch runs beside each street, on both sides of the streets, running parallel to the street. This shallow earth ditch is several feet from the edge of the pavement of the street. A common 4 ft sidewalk runs along the north side of Walker and also on the south side of Walker, parallel to Walker. Driveways from the different residences along Walker extend out to Walker with small culverts where the driveways cross the shallow ditch. On the west side of Edgewood, north of Walker, grass comes up to the edge of the street. On the east side of Edgewood there is one to two feet of dirt and gravel between the edge of the street and the grass.

For purposes of this scene summary, there are several points of reference at the intersection of Walker and Edgewood which will be used in forthcoming measurements. There is a typical posted street sign on the

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 R.W.Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 G.T.Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000205

App. 0043

HOUSTON POLICE DEPARTMENT OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT (S) J.D. Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ SEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____
SCENE SUMMARY Contd...

northwest corner of the intersection. This signpost is on the corner in the yard of 4919 Walker, inside the beforementioned ditch line. The other point of reference is a concrete sign post that is located on the northeast corner of the intersection. This is a standard short concrete street sign post and is positioned approx 10 ft east of the east edge of Edgewood and approx 8 ft north of the north edge of Walker. These two sign posts will be used in some measurements recorded later in this summary.

There was a large puddle of wet blood on the east edge of Edgewood street, just north of Walker. This was approx a 2 ft area of blood right at the east edge of Edgewood and approx 14 ft north of the north edge of Walker and approx 7 ft north of the concrete sign post on the northeast corner. Most of the blood was on the asphalt road surface and some was on the dirt area next to the roadway. This was the only area of blood noted on the street, with the exception of some blood drippings that were left when HPD personnel had loaded the wounded citizen aboard the ambulance.

Dets noted no skid marks in the intersection of Walker and Edgewood during the nighttime scene investigation.

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 R.W. Holland EMPS 57884 SHIFT 2 DIVISION / STATION Homicide

OFFICER 2 G.T. Neely EMPS 48473 SHIFT 2 DIVISION / STATION Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000.06

App. 0044

HOUSTON POLICE DEPARTMENT OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE Capital Murder (police Officer) LOCATION 4900 Walker
COMPLAINANT(S) J.D. Harris DATE OF OFFENSE 07-13-82
DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____
CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGE \$ _____
☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)
RECOVERY LOCATION _____ DIST _____ SEAT _____
VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____ POSITION OF VEHICLES: <u>Complainant and Suspect Vehicles:</u> When viewed by detectives, both the suspects' vehicle and the vehicle of the slain officer were parked in the 4900 block of Walker, facing south. The vehicles were positioned parallel to one another, with the front tires in close proximity to the south edge of Walker Street. This intersection consists of Walker Street, running east and west, while Edgewood Street runs north to south, dead ending at its intersection with Walker Street. Both vehicles, when viewed, faced the south edge of Walker Street, with the rear bumpers of the vehicles facing back towards Edgewood. <u>Police Unit</u> It should be noted that the suspect vehicle was viewed in its original position in regards to this offense, while detectives were advised that the police vehicle had been moved from its original position by ambulance personnel. The police unit, shop 6217, License 360 015, VIN: TH42L9A215711, was positioned to the left, or east of the suspect vehicle. The unit was noted to be parked with its engine running and the headlights on with the lights in the high beam position. There were a pair of blinking red lights functioning, these being positioned at the front of the vehicle behind the grille. This vehicle is white over blue in color, being a 1979 Chrysler 4dr, and is not equipped with emergency equipment on the roof of the vehicle. <input type="checkbox"/> SUPPLEMENT COMPLETE <input checked="" type="checkbox"/> CONTINUED
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OFFICER 1 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide
OFFICER 2 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Hom
CALLER'S NAME _____
PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000.07

App. 0045

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE Capital Murder (Police Officer)

LOCATION 4900 Walker

COMPLAINANT(S) James D. Harris

DATE OF OFFENSE 07-13-82

DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ SEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC:

The vehicle is also equipped with an exterior spotlight on the driver's side, which is positioned and switched through a control handle inside the vehicle. This spotlight was found in an "on" condition, with the spot of the light beam being pointed downward and rearward. The beam of this light focused on the pavement at a position roughly even with the center door post on the driver's side of the vehicle, a distance of four and one half feet out from the side of the vehicle.

The passenger side doors of the police vehicle were locked, and the windows rolled fully up. The driver's side doors of the vehicle were unlocked, and both windows rolled down approx. 4 inches. The rear portion of the police vehicle did not have seats, but rather had a piece of carpet-covered hardboard of some type for a level floor. An adult German Shephard dog, which was Officer Harris' newly assigned canine partner, was seen lying on this floor in the back seat.

The left front (driver side) tire of the police vehicle was resting on the south edge of the asphalt roadway, while the right front (passenger side) tire rested approx. one and one half feet north of the south edge of the asphalt roadway. The vehicle itself was very closely aligned with the gravel driveway in front of the residence at 4928 Walker, this driveway being located on the west side of the residence. The vehicle was not, however, parked in or on this driveway.

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide
 OFFICER 2 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Hom

CALLER'S NAME _____
 PHONE _____

FORM NO. REC-0007
 (Revised June 27, 1980)

F 000205

App. 0046

HOUSTON POLICE DEPARTMENT **OFFICER'S SUPPLEMENTAL FIELD NOTES**

INCIDENT NO. 42614582

OFFENSE Capital Murder (Police Officer)

LOCATION 4900 Walker

COMPLAINANT(S) James D. Harris

DATE OF OFFENSE 07-13-82

DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: Prior to viewing the interior of the police vehicle, the exterior was examined for any trace evidence. The following were observed on the driver's side of the vehicle; 1. Loose hair, adhering to the side of vehicle roofline, approx. 1 inch above the driver's window frame, and 19 inches rearward of the junction of the roofline and top corner of the windshield frame. This hair located by Neely, recovered by D. Smith of the HPD Crime Lab. 2. Blood spatters; these spatters were several in number and ranged in size from small to mist-like. These were scattered over the roof on the passenger side of the vehicle, growing smaller in size and concentration towards the opposite side of the roof. The direction of the spattering appeared to be across the roof toward the passenger side from a position in the approximate center of the driver's side. Spatters located towards the front of the vehicle appeared to have been flung across the roof towards the passenger side, and slightly frontward. This was determined by observing the "Keyhole" effect of shapes taken by the spatters, and also the heavier concentration of the blood toward the passenger side of the droplets. 3. Blood spatter; located over the rear driver's side wheel well, at a height 28 inches from the roadway, and 53 inches from the outside of the rear bumper. Height above the wheelwell opening itself was approx 2 inches. The direction of this spatter appeared to <div style="text-align: center;"> <input type="checkbox"/> SUPPLEMENT COMPLETE <input checked="" type="checkbox"/> CONTINUED </div>

OFFICER 1 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Hom

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000209

App. 0047

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE Capital Murder (Police Officer) LOCATION 4900 Walker

COMPLAINANT(S) James D. Harris DATE OF OFFENSE 07-13-82

DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME: _____	<input type="checkbox"/> SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME: _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME: _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGE \$ _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ SEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

toward the rear of the police vehicle, also showing a slight upward direction.

4. Blood spatter; on the left rear fender (driver side) fender, 29 inches up from the roadway, 41 inches from the outside of the rear bumper. (Rearward direction).

5. Blood spatter; 36 inches up from the roadway, 42 inches from the outside of rear bumper; rearward direction.

6. Blood spatter; located at the top edge of the left rear (driver side) fender, 38 inches up from the roadway, 40 inches from the outside of the rear bumper. This droplet showed a direction rearward and slightly across the vehicle (east to west).

The above blood spatters are described as droplets, approx. 1/8 to 1/4 inch in diameter. (Spatters numbered 3 through 6).

As it had been previously learned from a scene witness, the police vehicle and the suspect vehicle parked beside it had been involved in a minor accident prior to the shooting. A search of the outside of the police vehicle revealed only one possible area having new damage; however, lighting at the scene did not afford visibility for a thorough inspection. This area of possible damage consisted of a black smear, which

☐ SUPPLEMENT COMPLETE ☒ CONTINUED

OFFICER 1 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Hom

CALLER'S NAME _____
PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000210

App. 0048

HOUSTON POLICE DEPARTMENT OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE Capital Murder (Police Officer)

LOCATION 4900 Walker

COMPLAINANT(S) James D. Harris

DATE OF OFFENSE 07-13-82

DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST. _____ SEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC:

was roughly 6 inches wide from top to bottom, and approx. 9 inches front to rear.

This smear was located at the rear edge of the driver's door of the vehicle, extending onto the front or leading edge of the rear driver's side door. The bottom of the smear began approx. 18 inches from the roadway, extending approx. 6 inches upward. The rear edge of the smear began approx. 99 inches forward of the outside edge of the rear bumper, extending forward approx. 9 inches at its longest point.

Adjacent to this smear was what appeared to be old damage to the front driver's door, this being a crescent-shaped crease in the metal, running laterally from a position forward of the smear. This is thought to be old damage, due to the rust which has formed on the metal of the vehicle where the paint is missing.

No bullet damage was noted on the police vehicle, nor were there any heavy concentrations of blood noted on the exterior of the police vehicle. The interior of the police vehicle was not viewed until the German Shepard was removed from the back seat of the vehicle by canine officers present on the scene. At that time, Latent Prints personnel (L.L. Cooper) were in the process of dusting the exterior of the vehicle for fingerprints.

Det. Neely then had the driver's door opened, and at that time viewed the interior of the vehicle. The mileage was noted as 58682 miles, with the resettable trip odometer reading 837 miles. The engine was running, as mentioned above, and the gearshift of

☐ SUPPLEMENT COMPLETE ☒ CONTINUED

OFFICER 1 G.T. Neely EMPS 48473 SHIFT 2 DIVISION / STATION Homicide

OFFICER 2 R.W. Holland EMPS 57884 SHIFT 2 DIVISION / STATION Hom

CALLER'S NAME _____
PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000211

App. 0049

HOUSTON POLICE DEPARTMENT OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE Capital Murder (Police Officer) LOCATION 4900 Walker
COMPLAINANT(S) James D. Harris DATE OF OFFENSE 07-13-82
DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____
CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____
☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)
RECOVERY LOCATION _____ DIST _____ BEAT _____
VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC.: the automatic transmission was in the "Park" position. Two standard shop keys were noted on a circular key ring, with the ignition key inserted. A chrome police whistle also hung from the key ring. A thorough inventory was not made of the vehicle at that time, as the vehicle has been sent to the print stall for further processing. At the time of the viewing, the following were noted: Back seat area: no property noted. No seat, floor revamped with flat surface and carpet. Front seat area: Driver side: On viewing this area, no property or other articles were noted on the surface of the driver's seat itself. The sun visor above this seat, showed the following: A. Sunglasses, with brown plastic frames, inserted under rubber band on visor. B. Black Bic ballpoint pen, also held by rubber band. C. Work card, showing last call as an alarm call, 3250 Telephone. Time received - 8:45 P.M., time cleared - 8:55 P.M. Disposition - unfounded. Work card recovered at print stall is retained with this case. In the centermost surface of the driver's seat was a leather dog leash, which was rolled
<input type="checkbox"/> SUPPLEMENT COMPLETE <input checked="" type="checkbox"/> CONTINUED

OFFICER 1 G. T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide
OFFICER 2 R. W. Holland EMP# 57984 SHIFT 2 DIVISION / STATION # Homicide
CALLER'S NAME _____
PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000212

App. 0050

HOUSTON POLICE DEPARTMENT OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE Capital Murder (Police Officer)

LOCATION 4900 Walker

COMPLAINANT(S) James D. Harris

DATE OF OFFENSE 07-13-82

DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

up and inserted under the backrest of the seat, near the split between the bench-style front seats. A black aluminum flashlight was inserted between the two upright back cushions of the seat, with the head of the flashlight facing forward. This flashlight was between the passenger side seat back and the folding armrest, which was folded up.

Passenger Side:

The passenger side of the seat had the following items on top of the bottom seat cushion:

- A. Black standard City of Houston Key Map.
- B. Brown woodend clipboard with chrome clip, containing offense report forms, Department publications and personal correspondence.
- C. Blue binder, containing papers. Later found to be papers in reference to dog training exercises, critiques.

The floorboard area of the front seat was covered with a gold-colored carpet. On the Driver's side of the floorboard, no property was noted. Located atop the transmission hump in the center of the front seat area was a Citizens Band radio, with the microphone extended to lie in the floorboard of the passenger side. A Q-Beam spotlight was noted lying face-down in the passenger side floorboard, with the handle pointed toward the passenger side door. This light was plugged into the dash-mounted cigarette lighter

☐ SUPPLEMENT COMPLETE ☒ CONTINUED

OFFICER 1 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Hom

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000213

App. 0051

HOUSTON POLICE DEPARTMENT OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE Capital Murder (Police Officer)

LOCATION 4900 Walker

COMPLAINANT(S) James D. Harris

DATE OF OFFENSE 07-13-82

DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ SEAT _____

VEH. RELEASED TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

receptacle. A paper drink cup and another piece of paper trash lay in this area of the floorboard.

The sun visor over the passenger side seat contained several personal papers, department forms, and a court slip in the name of the complainant. Also present were ~~the~~ Texas Operator's License, number 9646720 (John Ralph Emerson) and a common identification card, as is purchased at supermarkets. This card is in the name of Isabel Martinez, LAF 08-04-51, 810 Fair Oaks. Neither of these pieces of identification are thought to be involved in this case.

SUSPECT VEHICLE:

The vehicle driven by the suspects in this case was parked parallel to the position of the deceased officer's vehicle, and was located to the west of the police vehicle. Distance between the two vehicles at the front bumpers was a measured 10 1/2 feet, while the separation at the rear bumpers was a measured 6 feet. Suspect vehicle is a 1977 Buick Regal 2dr, Red over black, License 82 TX YTX479, VIN: 4J57J77108413.

This vehicle was also found facing south, and was aligned with the driveway of the residence at 4922 Walker, although not in this driveway. The left front (driver side) tire of the vehicle rested at the edge of the asphalt roadway, while the right front

☐ SUPPLEMENT COMPLETE ☒ CONTINUED

OFFICER 1 G.T. Neely EMPS 48473 SHIFT 2 DIVISION / STATION Homicide

OFFICER 2 R.W. Holland EMPS 57884 SHIFT 2 DIVISION / STATION Hom

CALLER'S NAME _____
PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000214

App. 0052

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE Capital Murder (Police Officer)LOCATION 4900 WalkerCOMPLAINANT(S) James D. HarrisDATE OF OFFENSE 07-13-82DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC:

tire of this vehicle rested on the dirt shoulder, approx. 1 foot south of the edge of the asphalt roadway.

The rear of this vehicle was approx. 19 feet south of the metal street sign in the intersection of Walker and Edgewood, this sign being located in the northwest corner of the intersection. The measured distance from the left rear corner of the rear bumper of the vehicle to the concrete sign post at the northeast corner of the intersection was 25 feet 8 inches. The rear of the suspect vehicle was also found to be a distance of 26 feet southwest of the large puddle of blood on Edgewood Street, where the deceased officer fell after being shot.

The suspect vehicle was noted to have its front wheels turned to the left, and was not running when viewed. Both windows of this vehicle were rolled fully down, and both doors unlocked. The vehicle was noted to have chrome-reverse wheels and wide, raised, white-letter tires on the rear, and had whitewall tires and standard chrome Buick rally type wheels at the front.

The vehicle did not have a front grille, this leaving the radiator of the vehicle exposed. The front of the hood was also noted to have old damage to the tip end. As the exterior of the vehicle was being inspected, it was found that the vehicle had a small blue paint smear present on the tip of the left rear bumper.

☐ SUPPLEMENT COMPLETE☒ CONTINUEDOFFICER 1 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # HomicideOFFICER 2 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000215

App. 0053

HUSTON POLICE DEPARTMENT **OFFICER'S SUPPLEMENTAL FIELD NOTES**

INCIDENT NO. 42614582

OFFENSE Capital Murder (Police Officer) LOCATION 4900 Walker
 COMPLAINANT(S) James D. Harris DATE OF OFFENSE 07-13-82
 DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____
 CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____
☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)
 RECOVERY LOCATION _____ DIST _____ SEAT _____
 VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

<p>PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC:</p> <p>This paint smear was light blue in color, and appeared to closely match the color of the paint on the police vehicle. This smear is very thin in width, and is located on the left rear point of the bumper, at a point 22 3/4 inches from the ground. This smear runs a distance of approx. 2 1/2 inches, and is parallel to the ground. The direction of the smear appears to be front-to-rear.</p> <p>Immediately below this paint smear, a black rubber protective strip runs laterally around the bumper. The portion of this strip immediately below the paint smear was noted to have a small amount of what appeared to be abrasive damage. This damage appeared to be fresh, as there was still a feathered edge present on the damaged area. No other fresh damage was noted at the scene in the lighting provided.</p> <p>Upon looking into the suspect vehicle, Det. noted that the keys to the vehicle were still in the ignition, however, the ignition was not on. The gearshift lever of the automatic transmission was in the "Drive" position. Mileage on the odometer was noted to be 81011.6 miles.</p> <p>The floorboard of the vehicle had clear plastic mats, front and rear, which extended from driver to passenger side. The front passenger floorboard was also covered in what appeared to be an additional black rubber mat, which was rumpled when viewed.</p> <p align="center"> <input type="checkbox"/> SUPPLEMENT COMPLETE <input checked="" type="checkbox"/> CONTINUED </p>

OFFICER 1 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide
 OFFICER 2 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Hom
 CALLER'S NAME _____
 PHONE _____

FORM NO. REC-0007
 (Revised June 27, 1980)

F 000216

App. 0054

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE Capital Murder (Police Officer)

LOCATION 4900 Walker

COMPLAINANT(S) James D. Harris

DATE OF OFFENSE 07-13-82

DATE SUPPLEMENT MADE 07-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC:

Lying on the front passenger seat of this vehicle was a fired cartridge casing.

This cartridge case was located in the crease formed by the junction of bottom and back seat cushions, a distance of approx. 4 inches from the outermost edge of the front passenger seat. ~~This cartridge casing was recovered at the scene later by Firearms Examiner G.E. Anderson, in the presence of Det. Neely. Anderson retrieved this casing by reaching in the open passenger side window and picking up the casing with his fingers.~~

~~DELETE~~

A set of keys were also noted in the vehicle, with the ignition key inserted into the ignition, switch off. These keys were also left in the vehicle and the interior not entered, as the vehicle was towed to the HPD print stall for processing by latents and crime lab personnel.

** It should also be noted that an additional vehicle was parked in the vicinity of the two above vehicles. This vehicle, a 1975 Chevrolet Maroon Chevrolet Nova 2dr, 82 TX License: ZQV725, VIN: 1X27G5L118922, was parked on the south side of Walker Street, facing east. Both windows of this vehicle were rolled down, and the doors unlocked. This vehicle was parked with its front bumper approx. 9 1/2 feet west of the right front fender of the suspect vehicle.

This vehicle was pointed out by witnesses later in the investigation as belonging to a witness who had pulled to a stop as the shooting began, and had witnessed the entire

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Hom

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000217

App. 0055

INCIDENT NO. 42614582

COMPLAINANT(S) James D. Harris DATE OF OFFENSE 07-13-82

DATE SUPPLEMENT MADE <u>07-14-82</u>		
<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

Scene Summary Contd. on next page.

☐ SUPPLEMENT COMPLETE ☐ CONTINUED

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

App. 0056

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT(S) J.D. Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED TO: _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC.: <u>SCENE SUMMARY Contd....</u> <u>Spent Cartridges Found on Northeast Corner of Intersection</u> During the scene investigation, Dets and lab personnel located four (4) spent 9mm cartridge casings. One of these spent cartridges was found in the Suspect's vehicle front seat and three other spent cartridges were found in the northeast corner of the intersection, not far from the blood puddle. The (3) spent cartridges were located as follows: 1) located on the ground just east of the blood puddle, approx 3 ft east of the east edge of Edgewood and approx 7 ft 3 ins north of the concrete sign post. 2) located in the shallow ditch east of the blood puddle, approx 8 ft 2 ins east of the east edge of Edgewood and approx 10 ft north of the concrete sign post. 3) located on the ground under a boxwood bush in the front yard of 4921 Edgewood at the northeast corner of the intersection, approx 13 ft east of the east edge of Edgewood and 13 ft 9 ins north of the concrete sign post. <u>Bullet Holes and Slugs Recovered at 4919 Walker</u> During the scene investigation, it was learned that several bullets had struck the house on the northwest corner of the intersection of Walker <div style="text-align: center;"> <input type="checkbox"/> SUPPLEMENT COMPLETE <input checked="" type="checkbox"/> CONTINUED </div>

OFFICER 1 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000219

App. 0057

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT(S) J.D. Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME: _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME: _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME: _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ SEAT _____

VEN. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

SCENE SUMMARY Contd.,...

and Edgewood. This is the house at 4919 Walker. It is a white woodframe house on raised blocks. There is a 6 ft wide raised wooden porch around the house on part of the east side and the south side. This porch is approx 1 ft 9 ins up from the ground level. There are two windows and a door on the east face of the house, that side which faces out to Edgewood. There is another door on the south face of the house, that side which faces out to Walker. There were three (3) apparent bullet holes noted on the outside of the east wall of the house. These holes were near the area of the window and door on that side of the house and were located as follows:

- 1) apparent bullet hole located 6 ft up from porch level and 3 ft 2 ins south of the south door frame of the door on the east side of the house.
- 2) apparent bullet hole located at the base of the east wall near the porch level and approx 2 ft 9 ins south of the south door frame of the door on the east side of the house.
- 3) apparent bullet hole located approx 1 ft 9 ins up from porch level and approx 7 ft 10 ins south of the south door frame of the door on the east side of the house.

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION Homicide

OFFICER 2 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000220

App. 0058

HUSTON POLICE DEPARTMENT **OFFICER'S SUPPLEMENTAL FIELD NOTES**

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT(S) J.D.Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGE \$ _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ SEAT _____

VEH. RELEASED TO: _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____ <u>SCENE SUMMARY Contd.,...</u> It is noted that the porch of the house at 4919 Walker on the east side of the house is approx 22 ft from the west edge of Edgewood and is directly west of the location where Officer Harris is said to have stopped his patrol vehicle. Of the three(3) bullets that struck the east outside wall of 4919 Walker, only one of the bullets completely pierced the wall and ended up in the southeast bedroom of that house. One of the other rounds lodged in the baseboard and the other round broke the inside surface of the wall but did not exit the inside wall. The southeast bedroom of the house at 4919 Walker is the front bedroom on the side of the house closest to Edgewood street. This is apparently the master bedroom of the house and there is a large, lengthy dresser sitting against the east wall of the room, in front of the northern of the two windows on that side of the room. The room is approx 15ft by 19ft and houses a king size bed and typical bedroom furniture. There was a bullet hole located in the east wall of this bedroom approx 6 ft up from the floor and 1 ft 6 ins south of the north wall of the bedroom. This hole will correspond with the before mentioned exterior bullet hole at the same height. <input type="checkbox"/> SUPPLEMENT COMPLETE <input checked="" type="checkbox"/> CONTINUED
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OFFICER 1 R.W.Holland EMPO 57884 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 G.T.Neely EMPO 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000221

App. 0059

JUSTON POLICE DEPARTMENT OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT(S) J.D. Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____

VEH. RELEASED: TO _____ TOWED TO: _____ SEAT _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC:

SCENE SUMMARY Contd...

This bullet appears to have scraped the north wall of the southeast bedroom as there is a scrape mark on the north wall approx 7 ft 3 ins up from the floor and 8 ft west of the east wall of the bedroom. There is another apparent bullet hole or indentation in the northwest corner of the bedroom near the bathroom. This hole is located on the east face of the corner approx 8 ft up from floor level and approx 9 ins south of the north wall of the bedroom. It did not appear as though this bullet actually penetrated the wall, but only punctured the paneling. There was a spot on the east wall of the bedroom where the wood paneling had been splintered and fractured where a bullet had reached the inside wall but did not pierce it. This area of bullet impact was behind the beforementioned dresser in the east wall and approx 1 ft 7 ins up from floor level and 6 ft 3 ins south of the north wall of the bedroom. This splintered area corresponds with the bullet hole on the outside wall of similar height.

There were three (3) fired slugs recovered from the house at 4919 Walker and they are as follows:

- 1) copper jacketed slug found on the floor of the southeast bedroom approx 4 ft 4 ins inside the entry to that room in the northeast corner, just west of the dresser on the east wall.

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____ PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000222

App. 0060

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. _____

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT(S) J.D. Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME: _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME: _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME: _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGE \$ _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

SCENE SUMMARY Contd...

2) copper jacketed slug lodged in the east wall of the southeast bedroom. (Same location as previously described area where the bullet fractured the paneling but did not enter).

3) copper jacketed slug lodged in the baseboard of the east wall (outside) of the house.

It was noted that a glass cup mounted on an ornate candle holder that was hanging on the north wall of the bedroom had been broken. There were several pieces of the broken glass lying on the floor near the bed. This glass candle piece was near the apparent bullet scrape on that wall.

The preceding portion of this scene summary has concerned itself with the immediate area and evidence pertaining to the shooting of Officer Harris. The following portion of the scene summary will pertain to the scene farther east on Walker where the uninvolved citizen was shot by the Suspects while they were fleeing the scene.

Scene of Jose Armijo's Shooting and Evidence Farther East on Walker

The car in which Jose Armijo was shot was located east of the location where Officer Harris was shot, on the north side of the 4900 block of Walker. Armijo's vehicle is a 1976 Ford Elite 2dr, White over RED in

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000223

App. 0061

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT(S) J.D. Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

SCENE SUMMARY Contd...

color, bearing Tx license plates JYN-576, VIN: 6G2LH174311. The vehicle was stopped on the north side of Walker, in front of the house at 4925 Walker. This is the second house east of Edgewood on the north side of Walker. The car was positioned at an angle with the front of the car generally to the west and the back of the car generally to the east but the front of the car was angled into the ditch on the north side of the street. The car gave the appearance of having been westbound on Walker and swerving off the road to the north. The front of the car was resting approx 6 ins from a tree. The left front wheel of the car was resting in the shallow ditch approx 3 ft north of the edge of Walker. The right front wheel was resting on the grass just south of the sidewalk running in front of the houses on the north side of Walker. The left rear wheel was approx 1 ft north of the pavement and the right rear wheel was resting on the grass. Armijo's vehicle was approx 76 ft east of the concrete signpost at the northeast corner of Walker and Edgewood.

Both of the doors of the vehicle were closed with both windows down. The keys were in the ignition and appeared to be in the off position. The gear shift lever was in the PARK position and the headlights were on. Det noted blood on the back of the drivers seat, particular around the

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide
OFFICER 2 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000224

App. 0062

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE/CAPITAL MURDER OF A POLICE OFFICER/LOCATION 4900 Walker

COMPLAINANT(S) J.D. Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME: _____	<input type="checkbox"/> SHORT FORM SUPPLEMENT INFORMATION CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME: _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME: _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC.: SCENE SUMMARY Contd... headrest and also blood on the back floorboard behind the drivers seat. There was also five(5) cold Lite beers and (1) one cold can of Hawaiian punch in the back seat behind the drivers seat. There was an apparent bullet hole in the front windshield of the car, approx 4in in width. This bullet hole was near the bottom of the windshield located approx 2 ft in from the passenger side of the windshield and approx 2 ft down from the top of the windshield. There was a gouge in the front dashboard of the car just inside this bullet hole where the bullet apparently scraped the dashboard after coming through the windshield. No slugs were found in the vehicle. What appeared to be a possible point of bullet impact was noted on the base of the radio antenna mounted on the passenger side of the car. There was a yellow Michelob baseball cap lying on the ground in front of the left rear wheel. There was a small childs slip on shoe lying on the ground near right rear wheel. A bloody crumpled up paper sack was lying in the street approx 4 ft away from the back bumper of the car. Jose Armijo's vehicle was otherwise unremarkable. There were two (2) additional spent cartridge casings found in a

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000225

App. 0063

JUSTON POLICE DEPART)T
OFFICER'S SUPPLEMENTAL FIELD NOTES INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker
 COMPLAINANT(S) J.D.Harris DATE OF OFFENSE 7/13/82
 DATE SUPPLEMENT MADE 7/14/82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____
 CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____
☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)
 RECOVERY LOCATION _____ DIST _____ BEAT _____
 VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____ SCENE SUMMARY Contd.: driveway on the north side of Walker, east of Armijo's vehicle. Two (2) 9mm spent cartridge casings were lying in the driveway of the house at 4929 Walker near the street. One cartridge casing was approx 3 ft 7 ins north of the north edge of Walker and approx 3 ft 8 ins east of the west edge of the driveway. The second cartridge casing was approx 10 ft north of the north edge of Walker lying on the west edge of the driveway. The driveway is composed of shell and is approx 8 1/2 ft in width. The shells were approx 6 ft 8 ins apart from one another and the one closest to the street was approx 53 ft behind (east of) the back of Armijo's vehicle. A hat believed to have possibly been dropped by the fleeing suspects was found in a driveway at the east end of the 4900 block of Walker. The brown felt western hat was found in the driveway of the house at the northwest corner of Walker at Lenox, 4937 Walker. The hat was laying in the middle of the driveway on the east side of the house, approx 29 ft north of the north edge of Walker. Dets are to return to the scene in daylight hours to search for any evidence that may have been missed during the nighttime scene investigation. <div style="text-align: center;"> <input type="checkbox"/> SUPPLEMENT COMPLETE <input checked="" type="checkbox"/> CONTINUED </div>
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OFFICER 1 R.W.Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide
 OFFICER 2 G.T.Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____
 PHONE _____

FORM NO. REC-0007
 (Revised June 27, 1980)

F 000226

App. 0064

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker
 COMPLAINANT(S) J.D.Harris DATE OF OFFENSE 7/13/82
 DATE SUPPLEMENT MADE 7/14/82

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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES \$ _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED TO: _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: SCENE SUMMARY Contd.,..
The position of Officer Harris when he fell is unknown to these Dets as he had been removed from the scene prior to Dets arrival. Information is that Officer Harris fell to the ground beside his patrol vehicle immediately after being shot.
The position of Jose Armijo, the uninvolved citizen, after he was shot is unknown, as he also had been removed from the scene prior to the Dets arrival. It is known that Armijo was operating the Ford vehicle when he was shot.
The Complainant in this case, Officer J.D.Harris, was wearing a blue Houston Police Officer's uniform at the time of the shooting, complete with badge and identifying patch.
It is unknown at this time what the wounded citizen was wearing when he was shot.
The Complainant was identified at the scene by Officers present as well as by Police Department I.D..
<input type="checkbox"/> SUPPLEMENT COMPLETE <input checked="" type="checkbox"/> CONTINUED

OFFICER 1 R.W.Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide
 OFFICER 2 G.T.Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
 (Revised June 27, 1980)

F 000227

App. 0065

JUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT(S) J.D. Harris

DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____ <u>SCENE SUMMARY Contd.</u> <u>Wounds of Victims</u> Officer Harris sustained three (3) apparent gunshot wounds to the head during this incident. The wounds were generally to the left side of the head. For details as to exact location, see Dets Bloyd and Roberts supplement. Jose Armijo sustained a single apparent gunshot wound to the back of the head. For details, see Det Burmester's supplement. There were no apparent signs of a struggle at the scene. Disorder noted at the scene was as follows: 1) The Police vehicle and Suspect vehicle in the middle of the intersection 2) The large puddle of blood on the east side of Edgewood just north of Walker. 3) The spent 9mm cartridge casings found at the scene. 4) The bullet holes in the east side of the house at 4919 Walker. 5) Jose Armijo's vehicle which had run into the ditch and the blood within <input type="checkbox"/> SUPPLEMENT COMPLETE <input checked="" type="checkbox"/> CONTINUED
--

OFFICER 1 R.W. Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 G.T. Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000228

App. 0066

JUSTON POLICE DEPARTI)T

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE CAPITAL MURDER OF A POLICE OFFICER LOCATION 4900 Walker

COMPLAINANT(S) J.D.Harris DATE OF OFFENSE 7/13/82

DATE SUPPLEMENT MADE 7/14/82

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RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ SEAT _____

VEH. RELEASED TO: _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

SCENE SUMMARY Contd.,

All weapons believed to have been used in this incident have been recovered. AT this time the murder weapon is believed to be a Browning Hi-Power 9mm auto pistol, Ser# 245P287128. Another suspect weapon, a Detonics .45cal auto combat master pistol, Ser# CR16126 " was also recovered. Officer Harris' weapon, a Colt .357Mag revolver, Ser# 21267F has also been recovered.

The weather at the time of this incident was hot, humid and partly cloudy, having rained some earlier in the evening. The lighting in the intersection of Walker at Edgewood was fair to poor at the time of the shooting and scene investigation. There was a street light on the south side of Walker, just west of the intersection and approx 34 ft west of the Suspect's vehicle. There was another street light approx 100 ft east of the intersection on the north side of Walker. There was also a large light on the front of one of the houses on the south side of Walker, near the intersection. Visibility at the time of the investigation was fair. Artificial light was provided by using flashlights and later a Fire Dept Rescue Truck provided high intensity lights.

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 R.W.Holland EMP# 57884 SHIFT 2 DIVISION / STATION # Homicide

OFFICER 2 G.T.Neely EMP# 48473 SHIFT 2 DIVISION / STATION # Homicide

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000229

App. 0067

PAGE 1.001
INCIDENT NO. 042669482

10-0006

STREET LOCATION INFORMATION

RECOVERED STOLEN VEHICLES INFORMATION

EMP#-043133 SHIFT-I DIV/STATION-HOMICIDE

PROGRESS REPORT::::::::::07-20-82

DR. MATTIOLI WAS ABLE TO DETERMINE THE POSSIBLE LOCATION OF THE COMPL'S WOUND AS FOLLOW:::.....

- DETECTIVE TOOK PHOTOS OF THE COMPL. WHILE AT THE MORGUE.

4. ONE VIAL OF BLOOD RECEIVED FROM DR. MATTIOLI AT THE HARRIS COUNTY MORGUE. THE BLOOD WAS SUBMITTED TO THE HOUSTON POLICE DEPARTMENT CRIME LAB TO CHEMIST KRUGER FOR COMPARSION WITH BLOOD STAINED ITEMS RECOVERED FROM THE SCENE.

INCIDENT NO. 042669482 OFFENSE REPORT PAGE 1.002

2. DETECTIVE RECEIVED NO HAIR FROM THE COMPL'S HEAD SINCE ALL OF HIS HAIR HAD
BEEN SHAVED OFF.

INVESTIGATION TO CONTINUE::::::::::::

SUPPLEMENT ENTERED BY = 43133
DATE CLEARED- 07/13/82

END OF PAGE TWO

10

F 000246

App. 0069

INCIDENT NO. 042667682 CURRENT INFORMATION REPORT PAGE 1.004

NO- 03 DISPOSITION-EVIDENCE PROPERTY TAG NO-0000000 COMPLAINTANT NO-01
ITEM TYPE-BULLET JACKET UCR CLASS-00

DESCRIPTION-FOUND AT 4915 RUSK BY ANDERSON TO FIREARMS
RECOVERY DATE-07/14/82 RECOVERY VALUE-\$ 0.00

NO- 04 DISPOSITION-EVIDENCE PROPERTY TAG NO-0000000 COMPLAINTANT NO-01
ITEM TYPE-4-.12GA SHOTGUN HULL UCR CLASS-00

DESCRIPTION-TO FIREARMS LAB BY C ANDERSON
RECOVERY DATE-07/13/82 RECOVERY VALUE-\$ 0.00

NO- 05 DISPOSITION-EVIDENCE PROPERTY TAG NO-0000000 COMPLAINTANT NO-01
ITEM TYPE-3-45 HULLS UCR CLASS-00

DESCRIPTION-TO FIREARMS LAB BY C ANDERSON
RECOVERY DATE-07/13/82 RECOVERY VALUE-\$ 0.00

NO- 06 DISPOSITION-EVIDENCE PROPERTY TAG NO-0000000 COMPLAINTANT NO-01
ITEM TYPE-HPD HAT BADGE #3428 UCR CLASS-00

DESCRIPTION-TO CRIME LAB BY D SMITH & A HEATER
RECOVERY DATE-07/13/82 RECOVERY VALUE-\$ 0.00

NO- 07 DISPOSITION-EVIDENCE PROPERTY TAG NO-0000000 COMPLAINTANT NO-01
ITEM TYPE-SCENE PHOTOS UCR CLASS-00

DESCRIPTION-T BRADSHAW--B HAIR--D SCHULTS
RECOVERY DATE-07/13/82 RECOVERY VALUE-\$ 0.00

NO- 08 DISPOSITION-EVIDENCE PROPERTY TAG NO-0000000 COMPLAINTANT NO-01
ITEM TYPE-VIDEO OF SCENE UCR CLASS-00

DESCRIPTION-BY BRADSHAW OF PHOTO LA
RECOVERY DATE-07/13/82 RECOVERY VALUE-\$ 0.00

NO- 09 DISPOSITION-EVIDENCE PROPERTY TAG NO-0000000 COMPLAINTANT NO-01
ITEM TYPE-TREPAGNIER CLOTHES UCR CLASS-00

DESCRIPTION-FROM HOSP BY G L DOLLINS TO CRIME LAB
RECOVERY DATE-07/13/82 RECOVERY VALUE-\$ 0.00

NO- 10 DISPOSITION-EVIDENCE PROPERTY TAG NO-0000000 COMPLAINTANT NO-01
ITEM TYPE-DEAD COMPLS CLOTHES UCR CLASS-00

DESCRIPTION-FROM MORGUE BY BOSTOCK TO CRIME LAB
RECOVERY DATE-07/13/82 RECOVERY VALUE-\$ 0.00

NO- 11 DISPOSITION-EVIDENCE PROPERTY TAG NO-0000000 COMPLAINTANT NO-01
ITEM TYPE-FIRED BULLETS-MOGUE UCR CLASS-00

DESCRIPTION-SHOTGUN PELLETS AND SLUG REC BY BOSTOCK
RECOVERY DATE-07/13/82 RECOVERY VALUE-\$ 0.00

NO- 12 DISPOSITION-EVIDENCE PROPERTY TAG NO-0000000 COMPLAINTANT NO-01
ITEM TYPE-FIRED BULLET UCR CLASS-00

DESCRIPTION-FROM 4915 RUSK BY C ANDERSON TO FIREARMS
RECOVERY DATE-07/14/82 RECOVERY VALUE-\$ 0.00

F 000250

App. 0070

INCIDENT NO. 042667682

CURRENT INFORMATION REPORT

PAGE 2.012

#22 ADDITIONAL BULLET STRIKE INTO THE BOTTOM OF THE TREE AT A POINT 1' SOUTH OF
RIGHT FOOT OF THE COMPI

#23 TO #25 FIRED .45 HULLS 11 FOUND DURING NIGH SCENE AND 2 FOUND DURING DAY
LIGHT SEARCH. OFFICER PALOS REPORTS BEING AT THE FRONT EDGE OF THE HOUSE
WHEN HE FIRED HIS WEAPON AT THE COMPI:
34 INCHES WEST OF THE FENCE AND ON LINE WITH THE FRONT OF THE HOUSE
23 FEET 7 INCHES FROM CORNER FENCE POST AND 6 INCHES FROM FENCE
25 FEET 3 INCHES FROM CORNER FENCE POST AND 20 INCHES FROM FENCE

#26 AND #27 BULLET STRIKES INTO SOUTHSIDE OF GARAGE APT AT 614 EDGEWOOD. THESE
BULLET STRIKES WERE FOUND TO BE IN THE FIFTH AND SEVENTH BOARDS FROM THE
GROUND. THE STRIKE IN THE SEVENTH BOARD IS VISABLE, BUT THE ONE IN THE
FIFTH BOARD (45 CAL STEEL) WENT THRU THE BOARD. (DAY LIGHT SEARCH OF THE
INSIDE OF THIS GARAGE WAS FRUITLESS---THERE BEING MUCH STORED PROPERTY IN
THIS GARAGE AND AFTER A SEARCH OF 30 MINUTES WERE NOT ABLE TO FIND THE SLUG

#28 HPD HAT SHIELD #3438 FOUND HANGING ON TREE NEXT TO GARAGE. DURING THE SCENE
INVESTIGATION A REGULATION HOUSTON POLICE DEPT CAP WITH SHIELD #3438 WAS
FOUND HANGING ON THE SIDE OF A TREE. THIS HAT DID NOT APPEAR TO HAVE BEEN
IN THIS LOCATION LONG. THE VISOR WAS DUSTY BUT THE CLOTH WAS RELATIVELY
CLEAN. (THIS HPD HAT REPORTED STOLEN IN BURG OF M.V. 1-31-82 BY OFFICER
Y.C. RUSSO, FROM 7800 CHANNEL STDF)

#29 AND #30 BLOOD ON THIS SCENE. THERE WAS A SMALL AMOUNT OF BLOOD FOUND ON
THIS SCENE AND EACH AREA OF BLOOD WAS WHERE (1) THE WOUNDED OFFICER WAS
BEING TREATED, AND (2) WHERE THE COMPI FELL AND DIED. THERE WAS NO TRAIL
OF BLOOD IN RELATION TO EITHER OF THESE PEOPLE. IT IS POSSIBLE THAT OFFICER
TREPANGIER MAY HAVE BLED AWAY FROM WHERE HE FELL BUT THE CONDITION OF THE
GROUND AND THE FOOT TRAFFIC QUICKLY OBSCURED WHAT MAY HAVE BEEN THERE.

THERE WERE SIX WEAPONS INVOLVED ON THIS SCENE AND ARE DESCRIBED AS FOLLOWS:
#1. 9MM BROWNING HIGH POWER, BLUE STEEL, SER #245P287128. THIS IS THE WEAPON
FOUND EMPTY UNDER LEG OF COMPI

#2. .45 DETONICS AUTOMATIC, PARKERIZED CHROME FINISH, SER #CR16126. FOUND
LOADED WITH 3 HOLLOW POINTS IN CLIP AND 1 ROUND NOSE IN CHAMBER SAFETY
OFF, HAMMER DOWN

#3. .357 OFFICER TREPANGIER'S WEAPON, SER #42121E (ALL ROUNDS FIRED)

#4. .357 PYTHON REVOLVER, OFFICER HARRIS' WEAPON FOUND IN BELT OF DEAD COMPI
BLUE STEEL, SER #21267E--LOADED WITH 6 LIVE ROUNDS

#5. 45 COLT SEMI-AUTOMATIC, SER #143046709--OFFICER PALOS WEAPON

#6. 12GA SHOTGUN, REMINGTON MDL 870, SER #V612138V--OFFICER RODRIGUES WEAPON

SCIENTIFIC AIDS:

THE FOLLOWING LAB PEOPLE WERE PRESENT AND CONDUCTED EXTENSIVE SEARCHES FOR
EVIDENCE IN THIS CASE:

(1) FIREARMS LAB: C ANDERSON
R JORDAN

(2) CRIME LAB: D SMITH
A HEETER

(3) PHOTO LAB: T BRADSHAW-- WHO TOOK VIDEO OF THE SCENE
B HAIR

F 000259

App. 0071

INCIDENT NO. 042667682 CURRENT INFORMATION REPORT PAGE 2.016

#1. M. R. EDWARDS, CENTRAL PATROL
THIS OFFICER WAS WITH OFFICER TREPAGNIER WHEN THEY STARTED TO CHECK THE REAR OF 4911 RUSK. OBSERVED TREPAGNIER GO BETWEEN THE HOUSE AND THE GARAGE AND THEN HEARD GUNSHOTS. WAS NOT ABLE TO SEE THE OFFICER OR ANY GUN FLASH. AFTER THE SHOOTING STOPPED, HE WENT AND FOUND OFFICER TREPAGNIER ON THE GROUND---DID NOT FIRE HIS WEAPON

#2. GL BRATTON, RECRUITING DIVISION
RESPONDED TO THE SCENE OF THE SHOOTING FROM AN EXTRA JOB. WHILE AT 4907 RUSK HEARD SHOTS FROM THE REAR OF 4911 RUSK AND RAN TO THE EAST SIDE OF THE YARD AT 4911 RUSK. OBSERVED AN OFFICER WITH A SHOTGUN (WILL BE RODRIGUEZ) AT THE FENCE POST AND TWO OTHER OFFICERS AT THE CORNER OF THE HOUSE AT 4911 RUSK. REPORTED THAT THE SUSP BEGAN FIRING AT OFFICERS AND THAT FIRE WAS RETURNED AND THE SUSP HIT AND FELL TO THE GROUND. WHEN HE APPROACHED THE SUSP, HE FOUND A GUN NEXT TO HIM AND THE BREECH WAS OPEN.----DID NOT FIRE HIS WEAPON

#3. CA DEALEJANDRO, SOUTHEAST PATROL
WAS ON THE SCENE AFTER THE SHOTS WERE FIRED AND FOUND COMPL ON THE GROUND AND HANDCUFFED HIM.-----DID NOT FIRE HIS WEAPON

#4. M RODRIGUEZ, SOUTHWEST PATROL
RESPONDED TO THE ORIGINAL SHOOTING CALL ON WALKER. TALKED TO A WITN WHO TOLD HIM THAT THE SUSP LIVED AT 4911 RUSK. HE WENT TO THAT LOCATION WITH SEVERAL OTHER OFFICERS AND DET. TOOK HIS SHOTGUN WITH HIM. AFTER CONDUCTING THE SEARCH WITH NEG RESULTS, STARTED TO WALK BACK TO WALKER STREET. ON HEARING THE GUN SHOTS FROM THE REAR OF 4911 RUSK, RAN TO THE SOUTHWEST CORNER OF THE CHAIN LINK FENCE ON THE EAST SIDE OF THE PROPERTY. SOMEONE SHINED A FLASHLIGHT ON THE SUSP WHO WAS ON THE EAST SIDE OF THE HOUSE AND SAW HIM WITH A PISTOL IN HAND AND HE FIRED HIS SHOTGUN FOUR TIMES AND SAW HIM FALL TO THE GROUND.

#5. ANTONIO PALOS, II CENTRAL PATROL
WAS ON RUSK AND HEARD SHOTS FROM THE REAR OF 4911 RUSK. WENT TO THE SOUTHEAST CORNER OF THE RESIDENCE AND OBSERVED THE SUSP ON THE SIDE OF THE HOUSE FIRING AT OFFICERS. OFFICER PALOS THEN FIRED 3 TIMES AT THE COMPL WITH HIS .45

#6. KD TEMPLETON, CENTRAL PATROL
ON HEARING THE GUNSHOTS FROM THE REAR OF 4911 RUSK WENT TO THE SOUTHEAST CORNER OF THE HOUSE AND SAW LATIN MALE IN THE DARK CLOTHING COMING TOWARD HIM. THIS LATIN MALE BEGAN TO FIRE HIS GUN AND TOOK COVER BEHIND SOME TREES. STATED THAT HE DID NOT RETURN THE FIRE OF THE COMPL. USED HIS FLASHLIGHTS TO LIGHT UP THE COMPL FOR OTHER OFFICERS WHO FIRED AT THE COMPL. SAW THE COMPL FALL AND THEN HANDCUFFED.

#7. TG WILSON, D.A. OFFICE
CAME ON THE SCENE AFTER THE SHOOTING AND PARTICIPATED IN THE ARREST OF THE 2ND SUSP IN THE MURDER OF OFFICER HARRIS.

THERE ARE NO CIVILIAN WITNS TO THE ACTUAL SHOOTING THERE ON RUSK STREET. DET ST JOHN TALKED TO SEVERAL WHO WERE ACROSS THE STREET AT 4916 AND 4916 1/2 RUSK AND WHO REPORT SEEING THE OFFICERS ARRIVE AND THEN HEARING 3 GUNSHOTS FROM THE REAR OF THE HOUSE AT 4911 RUSK AND THEN SAW OFFICERS RETURN FIRE TO THE REAR OF THE HOUSE. THESE WITNS SPEAK ONLY SPANISH AND THEIR INTERVIEW WAS RECORDED BY

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INCIDENT NO. 042667682

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ST JOHN AND INTERPERTED BY HPD OFFICER J ROBINETTE. SEE SUPPLEMENT BY ST JOHN
FOR FULL DETAILS.

INTERROGATION OF SUSPECTS:

THIS COMPL WAS ONE OF TWO SUSPS IN THE MURDER OF A POLICE OFFICER WHO WAS KILLED
ONE STREET OVER.

RICARDO ALDAPE GUERRA, LAM, 4/3/62, 4911 RUSK

~~THIS IS THE 2ND SUSP INVOLVED IN THE MURDER OF THE POLICE OFFICER ON WALKER.~~
GUERRA WAS ARRESTED IN THE REAR OF 4911 RUSK HIDING BEHIND A HORSE TRAILER AFTER
THE SHOOTING OF OFFICER TREPAGNIER AND THE DEATH OF THE COMPL.

GUERRA MADE AN ORAL STATEMENT WHICH WAS REDUCED TO WRITTING ON A COFESSION FORM
BUT AFTER IT WAS TYPED, GUERRA REFUSED TO SIGN IT.

BRIEF DETAILS OF THE STATEMENT BY GUERRA:

WITH WITH THIS COMPL WEDO, WHEN STOPPED BY THE OFFICER ON WALKER STREET. SAW
~~WEDO SHOOTING THE OFFICER SEVERAL TIMES AND TAKE HIS GUN AND THEN THEY BOTH~~
RAN OFF. ADMITS TO FIREING HIS PISTOL IN THE AIR A COUPLE OF TIMES AS HE RAN
FROM THE SCENE.

WAS HIDING IN THE REAR OF 4911 RUSK IN THE HORSE TRAILER WHEN HE SAW A FLASH
LIGHT AND FIGURED IT WAS OFFICERS. STATED THAT WEDO WAS HIDING IN THE GARAGE
~~AND THAT HE HEARD SEVERAL SHOTS AND FIGURED THAT WEDO AND THE POLICE WERE~~
SHOOTING AT EACH OTHER. REMAINED WHERE HE WAS UNTIL OTHER OFFICERS ARRIVED AND
THEN HE WAS SEEN BY OTHER OFFICERS AND HE WAS ARRESTED. MAINTAINS THAT HE DID
~~NOT FIRE HIS GUN THERE ON RUSK STREET IN THE BACK YARD.~~

GUERRA WAS SUBSEQUENTLY CHARGED WITH CAPITAL MURDER OF A POLICE OFFICER IN THE
MURDER OF HPD OFFICER JO HARRIS.

DISPOSITION:

CASE TO BE REFERRED TO GRAND JURY.

F 000264

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DET GL DOLLINS #45936 TOOK POSSESSION OF THESE ITEMS.

SUPPLEMENT ENTERED BY - 59096
REPORT REVIEWED BY-V W WEST EMPLOYEE NUMBER-030529
COPIES ALSO SENT TO- RP1/ / / ACTION DUE DATE- / /
DATE CLEARED- 07/13/82

NO-C003

OFFENSE- DEAD MAN (SHOOTING)

STREET LOCATION INFORMATION
NUMBER- 4911 NAME-RUSK TYPE- SUFFIX-
DATE OF OFFENSE-07/13/82 DATE OF SUPPLEMENT-07/20/82
COMPLIS LAST-WEDO FIRST- MIDDLE-
LAST- FIRST- MIDDLE-

RECOVERED STOLEN VEHICLES INFORMATION
NONE
OFFICER1-ME ST JOHN EMP#-060607 SHIFT-3 DIV/STATION-HOMICIDE

SUPPLEMENT NARRATIVE

SUPPLEMENT DATED 7/19/82

THIS CASE IS RELATED TO THE ATTEMPT CAPITAL MURDER OF A POLICE OFFICER CASE
#42667382. (SEE OTHER REPORT)

THIS DATE, DET ST JOHN WAS ASSIGNED THE DUTY OF INTERVIEWING VARIOUS
POTENTIAL WITNS IN THE NEIGHBORHOOD OF THE 4900 BLOCK OF RUSK STREET. DET
ST JOHN ARRIVED AT THE SCENE WITH DETS KENT AND WALTON AND CONTINUED THE
INVESTIGATION ALREADY BEGUN BY DETS BOSTOCK AND WEST.

DET ST JOHN OBTAINED A MINI-CASSETTE RECORDER FROM ASSIST D.A. T. WILSON AND
ALONG WITH OFFICER J ROBINETTE, 865656, UNIT 2A29, BEGAN INTERVIEWING THE
WITNS IN THE RESIDENCES OF 4911 RUSK. MOST OF THE WITNS INTERVIEWED DIDNT SPEAK
ENGLISH AND SO OFFICE ROBINETTE SERVED AS THE INTERPRETER DURING THE INTERVIEWS.

THE FOLLOWING SIX (6) WITNS LIVE AT 4911 RUSK AND WERE PRESENT AT THAT
LOCATION ASLEEP WHEN THE SHOOTING OCCURRED IN THEIR BACKYARD. ALL SIX
PERSONS WERE INTERVIEWED IN SPANISH AND THEIR RESULTING CONVERSATION WAS
TAPED BY THE CASSETTE AND THE CASSETTE TAGGED ACCORDINGLY. ALL PERSONS TAPED
WERE ADVISED THAT THEY WERE BEING TAPED AND ALL CONSENTED. THE WITNS ARE AS
FOLLOWS:

- (1) AMADA ARTEAGA ANGUIANO LAM42, 4911 RUSK, DOB: 6/16/41, HOME #928-5163,
TOL #11037901
- (2) ILDA A ANGUIANO LAF42, 4911 RUSK, DOB: 8/28/41, HOME #928-5163 (WIFE)
- (3) ERMA TREVINO ANGUIANO LAF14, 491 RUSK, DOB: 12/21/67 (DAUGHTER)
- (4) HECTOR TREVINO ANGUIANO, LAM19, 4911 RUSK, DOB: 8/12/62 (SON)
- (5) AMADA ANGUIANO LAM10, 4911 RUSK, DOB: 2/21/72 (DAUGHTER)

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(16) TRANQUILINO ANGUIANO LAM8, 4911 RUSK (SON)

ALL OF THE ABOVE WITNS STATED THAT THEY WERE AWAKENED BY THE SHOTS AND POLICE SURROUNDING THEIR HOUSE SHINNING FLASHLIGHTS. NONE OF THESE WITNS ACTUALLY SAW THE SHOOTING AND NONE OF THEM KNEW WHO FIRED FIRST OR HOW MANY TIMES. SEVERAL OF THESE WITNS STATED THAT THEY KNEW THE MAN NEXT DOOR AND SAID THAT THEY WERE TROUBLEMAKERS AND WERE ALWAYS SHOOTING THEIR GUNS. THESE WITNS ARE ON SIDE "A" OF THE CASSETTE TAPE AND AT THE BEGINNING OF THE TAPE. NONE OF THESE WITNS WERE BROUGHT DOWN TO THE HOMICIDE OFFICE FOR STATEMENTS.

THE NEXT GROUP OF WITNS TO BE INTERVIEW LIVED ACROSS THE STREET FROM 4911 RUSK WHERE THE SHOOTING OCCURRED AND THEY HAD WITNS PART OF THE INCIDENT. ONCE AGAIN, MOST OF THESE WITNS WERE INTERVIEWED IN SPANISH AND THEIR CONVERSATION IS ON SIDE "A" AND "B" OF THE CASSETTE TAPE. THESE WITNS WERE ALSO ADVISED THAT THE CONVERSATION WOULD BE TAPED AND ALL CONSENTED. THE WITNS ARE AS FOLLOWS:

- (1) NARCISO GONZALES LAM34, 4916 RUSK, DOB: 3/21/46, TDL 805644722, H#M926-1992 NO WORK PHONE
- (2) MARYLOU GONZALES LAF36, 4916 RUSK, DOB: 10/3/46, H#M926-1992, W# UNKNOWN AT ASSOC BLDG SERVICE (WIFE)
- (3) DINAH GONZALES LAF22, 4916 RUSK, DOB: 11/6/59, H#M926-1992, W#921-1025 (DAUGHTER)
- (4) CARLOS GONZALES LAM14, 4916 RUSK, DOB: 10/23/67 (SON)
- (5) JESUS GONZALES LAM7, 4916 RUSK, DOB: 1/7/75 (SON)
- (6) LINDA MARIE PEDROSA LAF21, 4916 1/2 RUSK, DOB: 6/16/61 H# NONE, W# NONE
- (7) TRANQUILINO ARTEAGA ANGUIANO LAM34, 4916 1/2 RUSK, DOB: 9/23/48, H# NONE W# UNKNOWN, V#E CONSTRUCTION (BROTHER) (BOYFRIEND)

ALL OF THESE WITNS WERE ON THE PORCH OF THE 4916 RUSK RESIDENCE WHEN THE SHOOTING OCCURRED. MOST WITNS SPOKE SPANISH DURING THE INTERVIEW SO A TRANSLATION OF THE CASSETTE TAPE WILL BE NECESSARY FOR FULL DETAILS OF THE INTERVIEW. THE ESSENCE OF THE INTERVIEW WAS THAT THE WITNS WERE ON THE PORCH AND SAW THE POLICE CARS DRIVE UP TO 4911 RUSK (ACROSS THE STREET) AND ONE OFFICER GO TO THE DOOR WHILE SEVERAL OTHERS WERE ALONG THE SIDES TO THE HOUSE.

SEVERAL OF THE WITNS STATED THAT THEY HEARD SEVERAL SHOTS (ONE WITN STATED IT COME FROM THE REAR OF THE HOUSE & THEY ALL SOUNDED LIKE THEY WERE FROM THE SAME GUN. THEN THE WITNS STATED THAT THE OFFICERS BEGAN TO RETURN FIRE DIRECTING THEIR FIRE TOWARDS THE REAR OF THE HOUSE. THE WITN STATED THAT THE SHOOTING STOPPED WHEN ONE OFFICER YELLED TO STOP ALL FIRE THAT AN OFFICER HAD BEEN SHOT. THE WITNS STATED THAT THEY COULDN'T SEE THE OFFICER SHOT OR THE SUSP BUT THEY KNEW THAT BOTH HAD BEEN SHOT. NONE OF THE WITNS STATED THAT THEY SAW ANYONE RUN FROM THE SCENE. ALL WITNS STATED THAT THEY INITIALLY HEARD A FEW SHOTS FROM THE SAME WEAPON AND THEN THE MASSIVE SHOOTING FROM THE OFFICERS. NONE OF THESE WITNS KNEW THE SUSPS BY NAME OR HAD HEARD ANYTHING ABOUT THEM. ALL WITNS WERE COOPERATIVE AND KNEW THAT THEY WERE BEING TAPED.

DET ST JOHN AND OFFICER BORTINETTE THEN KNOCKED ON SEVERAL OTHER DOORS IN AN EFFORT TO FIND ANY OTHER WITNS.

DET SPOKE WITH A ANDREA LUNA LAF12, DOB: 5/23/70, AT 4920 RUSK, H#921-0729, AND THIS WITN STATED THAT SHE WAS ALONE AT THE RESIDENCE AND HEARD SOME SHOTS BUT NEVER SAW ANYTHING OR ANYONE. SHE STATED THAT SHE WAS TOO SCARED TO LOOK OUT SIDE.

DET SPOKE WITH A GRACE MACIAS LAF30, DOB: 5/2/52, H# NONE, W# NONE, AT 4919 RUSK

F 000265

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AND SHE STATED THAT SHE HADNT HEARD ANYTHING ALL NIGHT. THIS WITN WAS ALSO BY HERSELF AT THE HOUSE.

DET ALSO CHECKED ALL OTHER RESIDENCES ON THE BLOCK AND THEY WERE EITHER VACANT OR NO ANSWER AT THE DOOR. DET WAS UNABLE TO FIND ANY OTHER WITNS AT THEIR HOMES.

DET HAD RECEIVED INFORMATION AT THE SCENE THAT A POTENTIAL WITN LIVED AT 4735 RUSK BUT WHEN DET KNOCKED O THE DOOR, DET RECEIVED NO ANSWER. THIS RESIDENCE IS APPROX TWO BLOCK AWAY FROM THE SHOOTING AND IT IS UNKNOWN IF THE WITN LIVES THERE OR NOT. DET HAD NO NAME FOR THIS POTENTIAL WITNS.

DET ST JOHN AND OFFICER ROBINETTE ALSO LOCATED FOUR LAM'S WALKING DOWN THE 4900 BLOCK OF RUSK AND WE LEARNED THAT THESE MALES LIVED AT THE HOUSE NEXT TO 4911 RUSK AND KNEW ONE OF THE SUSPS. THESE WITNS LIVE AT 4907 RUSK AND ARE AS FOLLOWS:

- (1) ENRIQUE TORRES LAM20, DOB: 7/1/62 4907 RUSK, NO PHONES
- (2) ROBERTO OROZCO, LAM21, DOB: 8/27/61, 4907 RUSK, NO PHONES
- (3) JOSE LOIS TORRES LAM22, DOB 8/25/60, 4907 RUSK, NO PHONES
- (4) JOSE MANUEL BARROCIO LAM19, DOB: 6/11/63, 4907 RUSK, NO PHONES }

ALL OF THESE WITNS STATED THAT THEY LIVE AT THE RESIDENCE NEXT TO WHERE THE SHOOTING OCCURRED BUT THAT NONE OF THEM WERE HOME AT THE TIME OF THE SHOOTING. ALL WITNS WERE ENROUTE TO THEIR HOME WHEN STOPPED BY DETS AND INTERVIEWED IN SPANISH. THESE WITN WERE SHOWN A PHOTO OF THE COMPL AND THEY RECOGNIZED HIM AS A FRIEND OF THE OTHER SUSP "RICARDO ALDAPE". THEY STATED THAT THE COMPL WAS A LITTLE BIT CRAZY AND KNOWS TO CARRY A GUN.

THE WITN ENRIQUE TORRES RELATED THE FOLLOWING:

WHEN HE LEFT THE RESIDENCE AT 4907 RUSK, THE SUSP RICARDO ALDAPE AND THE COMPL WERE STILL AT THE HOUSE AND WERE DRIVING THE SUSPS VEHICLE, A BLACK BUICK REGAL. MOMENTS LATER, THE WITN HEARD THE SHOOTING AND SO HE BELIEVED THAT RICARDO ALDAPE AND THE COMPL WERE PROBABLY THE SUSPS IN THE CASE. WITN TORRES STATED THAT RICARDO ALDAPE HAD BROUGHT THE SUSPS VEHICLE FROM A JACINTO LOPEZ AND ALTHOUGH HE DIDNT KNOW THE ADDRESS, HE COULD SHOW DETS WHERE IT WAS. THIS WITN WAS BROUGHT TO THE HOMICIDE OFFICE TO MAKE A STATEMENT TO THE ABOVE.

NONE OF THESE WITNS STATED THAT THEY SAW THE SHOOTING OR HEARD THE SHOTS AND SO THEY WERE NOT TAPED.

NO OTHER WITNS WERE LOCATED AT THIS TIME. THE CASSETTE TAPE CONTAINING THE CONVERSATION OF THE ABOVE WITNS WILL BE TAGGED ALONG WITH THE OTHER EVIDENCE OF THIS CASE. REFER TO EVIDENCE DISPOSITION UNDER THIS CASE NUMBER FOR DETAILS.

SUPPLEMENT ENTERED BY = 60607

REPORT REVIEWED BY-V W WEST

COPIES ALSO SENT TO- RP1/ / / /

DATE CLEARED- 07/13/82

EMPLOYEE NUMBER-030529

ACTION DUE DATE- / /

F 000269

App. 0076

INCIDENT NO. 042667682

CURRENT INFORMATION REPORT

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NO-C005

OFFENSE- DEAD MAN (SHOOTING)

STREET LOCATION INFORMATION

NUMBER- 4911 NAME-RUSK

TYPE-

SUFFIX-

DATE OF OFFENSE-07/13/82

DATE OF SUPPLEMENT-07/20/82

COMPLIS1 LAST-VEDO

FIRST-

MIDDLE-

LAST-

FIRST-

MIDDLE-

RECOVERED STOLEN VEHICLES INFORMATION

NONE

OFFICER1-JL WALTON

EMP#-032402 SHIFT-3 DIV/STATION-HOMICIDE

OFFICER2-CW KENT

EMP#-028778 SHIFT-3

SUPPLEMENT NARRATIVE

SUPPLEMENT DATED 7/14/82

MORGUE INVESTIGATION CONTINUED:

DET WALTON AND KENT UPON CONTINUING THE MORGUE INVESTIGATION MADE OUT A HOMICIDE REQUEST FOR THE COMPI JO HARRIS WHICH REQUESTED TRACE METAL TEST, CLOSE UP PHOTOS OF WOUNDS, CLOTHING, BLOOD SAMPLES, HEAD HAIRS, HEAD HAIR SHAVED FROM AROUND GUNSHOT WOUND AND FOREIGN MATERIAL ON/IN BODY, ALSO FINGERNAIL SCRAPINGS.

THERE WAS A HOMICIDE AUTOPSY REQUEST FORM MADE OUT ON THE UNKN SUSP WHO WAS SHOT BY OFFICERS. REQUEST WERE MADE FOR TRACE METAL TEST, CLOSE UP PHOTOS OF WOUNDS, FINGERPRINTS, CLOTHING, BLOOD SAMPLES, HEAD HAIR, HEAD HAIR SHAVED FROM AROUND GUNSHOT WOUNDS, FOREIGN MATERIAL ON/IN BODY AND FINGERNAIL SCRAPINGS.

UPON VIEWING THE OFFICERS BODY IT WAS FOUND THAT HE HAD THREE ENTRY GUNSHOT WOUND TO THE RIGHT SIDE OF THE HEAD AND THREE EXIT WOUNDS TO THE LEFT SIDE OF THE LOWER HEAD AND NECK AREA.

01. ENTRY GUNSHOT WOUND TO THE LEFT LATERAL HEAD WHICH WAS 1 3/4" UP FROM THE LEFT EAR AND 4 1/2" AROUND FROM FRONT CENTER LINE OF HEAD
02. ENTRY GUNSHOT WOUND TO THE LEFT LATERAL HEAD WHICH WAS 1" FORWARD OF THE LEFT BOTTOM OF EAR AND 4 3/4" FROM CENTER LINE OF FACE
03. ENTRY GUNSHOT WOUND TO LEFT LATERAL SIDE OF CHIN AREA WHICH WAS 1 1/2" LEFT OF CENTER LINE OF FACE AREA
04. EXIT WOUND TO THE RIGHT LATERAL SIDE OF HEAD AND NECK AREA WHICH WAS 2 1/2" TO THE REAR AND IN LINE WITH THE BOTTOM RIGHT EAR LOBE
05. EXIT WOUND TO THE RIGHT LATERAL SIDE OF LOWER HEAD AND NECK AREA WHICH WAS 1 1/2" DOWN AND IN LINE WITH RIGHT EAR LOBE
06. EXIT WOUND TO THE RIGHT LATERAL SIDE OF LOWER HEAD AND NECK AREA 2 1/4" DOWN FROM THE 05 WOUND AND 1/2" TO LEFT OF 05

ALL THREE WOUNDS WERE THRU AND THRU TYPE WOUNDS TO THE HEAD AREA.

WOUNDS OF UNKNOWN SUSPECT:

01. ENTRY TYPE GUNSHOT WOUND TO THE RIGHT LATERAL SIDE OF THE HEAD WHICH WAS 2" UP FROM THE RIGHT EAR AND 1" TOWARDS THE REAR FROM THE RIGHT EAR

F 000272

App. 0077

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THIS DET CONTACTED HERMANN HOSPITAL ON 7/16/82, AND REQUESTED THAT MPD OFFICERS WORKING SECURITY THERE CHECK WITH THE NURSE ATTENDING OFFICER TREPAGNIER TO DETERMINE IF IT WOULD BE POSSIBLE TO TALK WITH HIM. OFFICER HALL CALLED BACK TO RELATE THAT IT WOULD BE POSSIBLE AND PROVIDED ME WITH THE NAME OF THE NURSE, MS. CASIMANO #797-2765. I CALLED THIS NURSE AND SHE RELATED THAT SHE HAD TOLD OFFICER TREPAGNIER THAT A DET WAS WANTED TO TALK TO HIM AND HE TOLD HER THAT HE DID NOT WANT TO TALK TODAY, DID NOT FEEL LIKE DOING SO. THIS DET THEN LEFT WORD THAT WHEN HE DID FEEL LIKE TALKING TO HAVE SOMEONE CALL THIS OFFICE AND THAT HE WOULD THEN COME BY AND TALK TO HIM.

THIS DATE, SATURDAY, JULY 17, 1982, I CALLED MS. TREPAGNIER, AND ADVISED HER THAT I NEEDED TO TALK TO HER HUSBAND AND SHE STATED THAT WHEN SHE GOES TO THE HOSPITAL TODAY THAT SHE WOULD TALK TO HIM AND IF HE FELT LIKE TALKING WOULD CALL ME BACK IN HOMICIDE.

WHILE I WAS OUT OF THE OFFICE, AN ATTORNEY CALLED TO SAY THAT HE WAS REPRESENTING OFFICER TREPAGNIER AND REQUESTED THAT WE NOT TALK TO HIM FOR SEVERAL MORE DAYS UNTIL THE DOCTOR SAYS THAT IT IS OK TO DO SO.

MS. TREPAGNIER RELATED THAT HER HUSBAND HAD BEEN MOVED THIS DATE TO ROOM #18 #797-4111.

SUPPLEMENT ENTERED BY = 30529

REPORT REVIEWED BY-V W WEST

EMPLOYEE NUMBER-030529

COPIES ALSO SENT TO- RP1/ / / ACTION DUE DATE- / /

DATE CLEARED- 07/13/82

NO-0011

OFFENSE- DEAD MAN (SHOOTING)

STREET LOCATION INFORMATION

NUMBER- 4911 NAME-RUSK

TYPE-

SUFFIX-

DATE OF OFFENSE-07/13/82

DATE OF SUPPLEMENT-07/20/82

COMPLIST LAST-FLORES

FIRST-ROBERTO

MIDDLE-CARRASCO

LAST-

FIRST-

MIDDLE-

RECOVERED STOLEN VEHICLES INFORMATION

NONE

OFFICER1-LE WEBBER

EMPH-043133 SHIFT-1 DIV/STATION-HOMICIDE

SUPPLEMENT NARRATIVE

SUPPLEMENT DATED 7/20/82

PROGRESS REPORT:

ON THIS DATE AT 4:45PM, DET RECEIVED A CALL FROM CECIL WINGO OF THE HARRIS COUNTY MORGUE WITH INFORMATION THAT THE DEAD SUSP IN THE SHOOTING OF OFFICER TREPAGNIER INC 042667382 HAS BEEN IDENTIFIED. CECIL WINGO STATED THAT THE SUSPS WAS IDENTIFIED FROM FINGERPRINTS THAT WERE SENT OFF TO OPS LATENT PRINTS IN AUSTIN. THE DEAD MAN WAS IDENTIFIED FROM PRINTS AS BEING:::

ROBERTO CARRASCO FLORES LAM, DOB: 11/27/54, TOL #08804013, LAST KNOWN ADDRESS 310 S.E. 4TH AVE, PERRYTON TEXAS 79070. CECIL WINGO ALSO ADVISED DET THAT THE DEAD MAN SHOWS ONE ARREST WITH THE PERRYTON POLICE DEPT. ON 6/24/79 FOR PUBLIC INTOXICATION.

DET AFTER RECEIVING THIS INFORMATION CALLED THE PERRYTON POLICE DET AT AREA CODE

F 000-79

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DET WEBBER ARRANGED FOR ALFREDO MALDONADO TO TAKE A POLYGRAPH IN REGARDS TO
HIS STATEMENT. THIS WAS DONE ON 7-17-82, AND THE RESULTS WERE THAT MALDONADO
WAS TELLING THE TRUTH IN HIS STATEMENT WITH REGARDS TO ALL ELEMENTS.

ADDITIONAL INVESTIGATION BY DET WEBBER WITH REGARDS TO THIS DEAD COMPL

DET WEBBER RECEIVED INFORMATION FROM LT D CAMPBELL OF PRCT #4 CONSTABLE
OFFICE THAT THAT OFFICE HAD SHOWN A PHOTO LINEUP TO WITNESSES IN THE COUNTY
ROBBERY AND THAT THEY HAD MADE A POSITIVE ID OF ROBERTO FLORES AS ONE OF THE
PEOPLE INVOLVED IN THAT ROBBERY BUT THAT THEY WERE UNSURE ON GUERRA.

IN ADDITION, PRINTS WERE GIVEN TO DET WEBBER BY LT CAMPBELL FROM THE SAME
ROBBERY WHERE FLORES WAS ID. THESE PRINTS WERE TAKEN BY WEBBER TO LATENT
PRINTS AND CHECKED BY L. COOPER. ONE OF THE SUBMITTED PRINTS WAS FOUND TO
BE THAT OF THE ARRESTED SUSPECT RICARDO ALDAPE GUERRA.

SUPPLEMENT ENTERED BY = 30529
REPORT REVIEWED BY-V W WEST EMPLOYEE NUMBER-030529
COPIES ALSO SENT TO- RP1/ / / / ACTION DUE DATE- / /
DATE CLEARED- 07/13/82

NO-0015

OFFENSE- DEAD MAN (SHOOTING)

STREET LOCATION INFORMATION

NUMBER- 4911 NAME-RUSK TYPE- SUFFIX-
DATE OF OFFENSE-07/13/82 DATE OF SUPPLEMENT-07/24/82
COMPLIS1 LAST-FLORES FIRST-ROBERTO MIDDLE-CARRASCO
LAST- FIRST- MIDDLE-

RECOVERED STOLEN VEHICLES INFORMATION

NONE

OFFICER1-V W WEST

EMP#-030529 SHIFT-1 DIV/STATION-HOMI

SUPPLEMENT NARRATIVE

IDENTIFICATION OF ROBERTO FLORES QUEDO AS ROBBERY SUSPECT
CASE 37977582 6-24-82 3400 BISSONNETT

THIS DET WENT TO THE HOME OF THE COMPL IN THIS CASE, JIM KOSHERL, AND HAD
HIM VIEW A SERIES OF PHOTOS, ONE OF WHICH WAS THE DEADMAN PHOTO OF FLORES.
MR. KOSHERL MADE AN IMMEDIATE IDENTIFICATION OF FLORES AS THE MAN WHO
ROBBED HIM AT GUN POINT ON 6-24-82, AT 3400 BISSONNETT, IN WHICH HE LOST
HIS CAR, CREDIT CARDS, AND OTHER PAPERS AND CASH.

IT WAS JIM KOSHERL'S DRIVERS LICENSE WHICH WAS IN THE POCKET OF FLORES WHEN
SEARCHED AT THE MORGUE.

F 000286

App. 0079

INCIDENT NO. 042614582 CURRENT INFORMATION REPORT PAGE 2.031

118 OFFICER M.T. MORENO - HPD - CENTRAL PATROL - PR #70319.

OFFICER MORENO WAS RIDING UNIT 1A21 WITH OFFICER R.R. RUTH WHEN A VOICE CAME OVER THE POLICE RADIO ADVISING THE POLICE DISPATCHER THAT AN OFFICER WAS DOWN. MORENO STATES THAT THEY ARRIVED A MINUTE LATER JUST BEHIND UNIT 1A41 - *A. G. Smith* AND SAW THAT AN OFFICER WAS LYING SHOT NEXT TO AN UNMARKED POLICE UNIT. OFFICER MORENO STATES THAT A FEW MINUTES LATER A LAP CAME RUNNING UP SCREAMING AND POINTING EAST ON WALKER AND STATING THAT THE SUSP'S HAD RUN IN THE DIRECTION HE WAS POINTING. OFFICER MORENO STATES THAT SHE GOT A BRIEF DESCRIPTION OF THE SUSP'S AND STARTED TO COMB THE NEIGHBORHOOD FOR THE SUSP'S. OFFICER MORENO AND HER PARTNER APPREHENDED THE SUSP AFTER THEY HAD OBSERVED THE SUSP RUNNING BETWEEN SOME HOUSES ON LENOX AND TEXAS. ACCORDING TO OFFICER MORENO THE SUSP WAS EXTREMELY NERVOUS AND SWEATY. THE SUSP WAS LATER TRANSPORTED TO THE HOMICIDE OFFICE, WHERE HE WAS INTERVIEWED BY DET'S IN THE CHICANO SQUAD. THE SUSP WAS ALSO PLACED IN A SHOW-UP WITH THE ARRESTED RICARDO ALDAPE GUERRA. ALEX SANCHEZ WAS NOT IDENTIFIED AS A SUSP IN THE SHOOTING OF OFFICER HARRIS. OFFICER MORENO AND HER PARTNER LATER FILED A CHARGE OF EVADING ARRESTS ON ALEX SANCHEZ. CHARGES FILED IN CCCL89, CAUSE #662943, HPD INCIDENT #42670182.

119 OFFICER R.R. RUTH - CENTRAL PATROL, PR#76788.

OFFICER WAS RIDING WITH OFFICER MORENO AT THE TIME THE CALL WAS RECEIVED VIA POLICE RADIO THAT AN OFFICER WAS DOWN IN THE 4900 BLOCK OF WALKER. OFFICER RUTH'S STATEMENT IS BASICALLY THE SAME AS HIS PARTNER, HOWEVER, OFFICER RUTH DID STATE THAT AT THE TIME THEY ARRESTED ALEX SANCHEZ, SANCHEZ WAS WEARING A PINK COLORED SHIRT AND BROWN PANTS.

120 OFFICER J.C. WORTON - HPD - SOUTHEAST DIVISION, PR#76105.

OFFICER WORTON WAS RIDING UNIT 11023 WITH OFFICER CLARK AT THE TIME THE CALL WENT OUT VIA POLICE RADIO THAT AN OFFICER WAS SHOT ON WALKER STREET. OFFICER WORTON STATES THAT THEY WERE ABOUT TO GET IN SERVICE AFTER RUNNING A SHOOTING AMBULANCE CALL AT A CEMETERY IN THE 200 BLOCK OF LATHAM. OFFICER WORTON STATES THAT AN AMBULANCE UNIT WAS WITH THEM AT THAT TIME AND THAT THE SHOOTING CALL TURNED OUT TO BE UNFOUNDED. AFTER THE CALL WENT OUT THAT AN OFFICER WAS SHOT, WORTON STATES THAT HE STOPPED THE AMBULANCE UNIT AND TOLD THE PARAMEDICS TO FOLLOW THEM TO A SHOOTING WHERE AN OFFICER WAS DOWN. OFFICER WORTON STATES THAT WHEN THEY ARRIVED AT THE SCENE ON WALKER, HE SAW OFFICER HARRIS LYING NEXT TO HIS PATROL UNIT ON THE PAVEMENT AND IT APPEARED THAT OFFICER HARRIS HAD BEEN SHOT IN THE HEAD SINCE THERE WAS A LARGE POOL OF BLOOD AROUND THE OFFICER'S HEAD.

121 OFFICER C.A. CLARK - SOUTHEAST PATROL HPD PR#60565.

OFFICER CLARK WAS PAIRED UP WITH OFFICER WORTON. OFFICER CLARK STATES THAT HE HELPED THE PARAMEDICS LOAD OFFICER HARRIS ON THE STRETCHER AND LATER SECURED THE SCENE FOR DET'S. OFFICER CLARK STATES THAT HE OBSERVED UPON ARRIVING AT THE SCENE THAT OFFICER HARRIS' HOLSTER WAS UNSNAPPED AND THAT OFFICER HARRIS' WEAPON WAS MISSING. OFFICER CLARK STATES THAT HE SEARCHED THE SCENE FOR THE WEAPON AND HE COULD NOT FIND THE WEAPON.

122 OFFICER C.W. GRANT - HPD - CENTRAL PATROL - PR#33219.

OFFICER GRANT STATES THAT HE ARRIVED AT THE SCENE SHORTLY AFTER THE CALL CAME ACROSS POLICE RADIO THAT AN OFFICER WAS DOWN AT 4900 WALKER. OFFICER GRANT STATES THAT HE LATER ARRIVED AT THE SCENE AND AFTER THE WOUNDED OFFICER WAS

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ALL OFFICERS WERE COVERING AND MAKING THEIR WAY TO THE AREA WHERE THE SHOTS WERE COMING FROM. BY THAT TIME, MOST OF THE OFFICERS HAD POSITIONED THEMSELVES AT THE EASTERN FRONT CORNER OF THE HOUSE AT 4911 RUSK, NEAR A TREE AND A FENCE. ONE OFFICER WAS HEARD TO SAY THAT "THERE HE IS, HE'S GOT A GUN". AT THAT TIME, ANOTHER SHOT CAME FROM THE EAST SIDE OF THE HOUSE AND THE OFFICERS THAT WERE POSITIONED IN THE AREA RETURNED THE HOSTILE FIRE FROM THE SUSPECT IN THE AREA. THE SHOOTING CEASED IN ABOUT 10 TO 15 SECONDS. AFTER THE SHOOTING HAD CEASED, OFFICER M.R. EDWARDS PR #7088C, WHO WAS STANDING ON THE WEST SIDE OF THE HOUSE YELLED OUT THAT AN OFFICER WAS DOWN TO THE REAR OF THE HOUSE AT 4911 RUSK. DETECTIVES AND OFFICERS CHECKED AND SAW THAT OFFICER L.D. TREPAGNIER WAS LYING ON HIS BACK WITH A GSW TO THE ABDOMEN AND CHEST. THE SUSPECT THAT WAS SHOOTING WAS OBSERVED TO BE LYING TO THE EAST SIDE OF THE HOUSE AND WAS DEAD FROM APPARENT GSW TO VARIOUS AREAS OF THE BODY. AN AMBULANCE WAS CALLED TO THE SCENE FOR THE WOUNDED OFFICER. DETECTIVE HAD THE SUSP'S HANDS BAGGED AND HANDCUFFED. DETECTIVE ALSO NOTICED THAT THERE WAS A GUN LYING ON THE GROUND NEXT TO THE DEAD SUSP. THE GUN APPEARED TO BE A BROWNING 9MM. DETECTIVE PRESERVED THE SCENE UNTIL HELP ARRIVED.

FOR FURTHER DETAILS SEE DETECTIVE WEST'S REPORT UNDER INCIDENT #42667382.

THE SCENE AT THE RUSK STREET LOCATION WAS TURNED OVER TO DETECTIVE WEST FOR INVESTIGATION. DETECTIVE RETURNED TO THE SCENE AT 4900 WALKER TO CONTINUE THE INVESTIGATION THERE.

NOTE: { A SECOND SUSPECT BY THE NAME OF RICHARDO ALDAPE GUERRA WAS ARRESTED AT THE SCENE AND LATER TRANSPORTED TO THE HOMICIDE OFFICE FOR INTER-ROGATION. SEE DET GATEWOOD'S SUPPLEMENT REGARDING THE STATEMENT OF THE SUSPECT ARRESTED AT THE RUSK STREET SCENE.

DETECTIVE UPON ARRIVING BACK AT THE WALKER STREET SCENE INTERVIEWED THE TWO PARAMEDICS ON AMBULANCE UNIT 1118. THE PARAMEDICS ARE C. SANCHEZ PR#59799 AND J.A. ESCOBAR PR#65370. BOTH PARAMEDICS STATE THAT WHEN THEY ARRIVED AT THE SCENE THE OFFICER WAS LYING TO THE LEFT SIDE OF HIS PATROL UNIT AND WAS BLEEDING PROFUSELY FROM THE LEFT SIDE OF THE HEAD AND THE RIGHT SIDE OF THE NECK. C. SANCHEZ INFORMED DETECTIVE THAT HE HAD ANOTHER FIREMAN BY THE NAME OF JERRY MELCHER TO MOVE THE POLICE OFFICER'S VEHICLE TO ITS PRESENT LOCATION AT THE SCENE. THE PARAMEDICS LATER CAME TO THE HOMICIDE OFFICE AND GAVE WRITTEN STATEMENTS.

INVESTIGATION TO CONTINUE....

SUPPLEMENT ENTERED BY = 43133

REPORT REVIEWED BY-DSF

COPIES ALSO SENT TO- RP17 / / /

DATE CLEARED- 07/13/82

EMPLOYEE NUMBER-057123

ACTION DUE DATE- / /

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THE SUSP'S CLOTHING WAS RETAINED BY THIS DET AND WAS SUBMITTED TO THE MPD CRIME
LAB. THE CRIME LAB NUMBER IS L82-SRC6. DET REQUESTED THAT THE CLOTHING BE
EXAMINED FOR BLOOD AND OTHER FOREIGN EVIDENCE RELEVANT TO THIS CASE AND
INCIDENT #42667382.

EVIDENCE SUBMITTED:

1. A GREEN MILITARY FATIGUE LONG SLEEVE JACKET. THE RIGHT FRONT BREAST
POCKET CONTAINED \$21 IN CHANGE, A BIC TYPE CIGARETTE LIGHTER THAT IS
COVERED WITH A SILVER METAL CASE WITH AN EAGLE ATTACHED, AND FOURTEEN
DOLLARS IN CURRENCY (\$14.00) TWO FIVE DOLLAR BILLS AND FOUR ONE DOLLAR
BILLS.
2. PAIR OF SEMI-FADED LEVI BLUE JEANS WITH ONE DOLLAR AND THIRTY-EIGHT CENTS
IN COINS IN THE RIGHT FRONT POCKET (\$1.38).
3. PAIR OF WHITE HIGH-TOP TENNIS SHOES, ALL STAR BRAND.
4. A PAIR OF WHITE UNDER BRIEFS.
5. A PAIR OF WHITE CREW SOCKS WITH GREEN STRIPPINGS AT THE TOP.
6. DETECTIVE ALSO COLLECTED HAIR SAMPLES FROM THE SUSP.

THE SUSPECT WAS LATER PLACED IN THE CITY JAIL AT 8:00AM. DET'S WEBBER AND
BOSTOCK SPOKE WITH SGT. WEAVER OF THE JAIL DIVISION AND REQUESTED THAT THE
SUSP BE KEPT SEPARATE FROM ALL OTHER PRISONERS.

ARRESTED AND NOT YET CHARGED: RICARDO ALDAPE GUERRA LAM/20
4911 RUSK, DOB 4-3-62

HOLD CARD SHOWS DET GATEWOOD AND OFFICER
YBARBO AS THE ARRESTING OFFICERS.

NOTE: RICARDO ALSO HAD IN HIS RIGHT BREAST POCKET OF THE SHIRT HE WAS WEARING
A UNITED STATES POSTAL SERVICE MONEY ORDER MADE OUT TO A FRANCISCA
ALDAPE IN MONTERREY, MEXICO. MONEY ORDER #27942975033 FOR THE AMOUNT
OF \$300.00. DATED 7-13-82 POST OFFICE #770111, MAIL TO FRANCISCA
GUERRA, CARACAS 410 VALLE DE VOGALAR. SUSPECT LIST AN ADDRESS IN
HOUSTON AS 6617 AVE C.

SUPPLEMENT ENTERED BY = 43133

REPORT REVIEWED BY-DSF

EMPLOYEE NUMBER-057123

COPIES ALSO SENT TO- RP1/ / /

ACTION DUE DATE- / /

DATE CLEARED- 07/13/82

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DETECTIVE WHILE IN THE HOMICIDE OFFICE, RECEIVED A CALL FROM MFD ARSON INV CABRELLLO, PHONE #222-3274 INFORMING DETECTIVE THAT HE HAD CONSULTED SEVERAL OF HIS CI'S IN THE EAST END AND THEY ALL WERE TELLING HIM THAT THE SUSP THAT WAS SHOT AND KILLED BY OFFICERS AT THE RUSK STREET SHOOTOUT WAS FROM EL SALVADOR AND THAT THE SUSPECT ALONG WITH THE ARRESTED SUSP WAS PULLING A LOT OF ROBBERIES IN THE EAST END AND AROUND THE CITY. CABRELLLO STATED THAT THE CI FURTHER TOLD HIM THAT THE SUSP'S HAD ROBBED A STOP N GO STORE IN HOUSTON ABOUT A MONTH AGO AND THAT AN ORIENTAL MALE WAS SHOT BY THE SUSP'S. CABRELLLO STATES THAT THE CI INFORMED HIM THAT THE SUSP'S WERE USING A 9MM. CABRELLLO FURTHER STATES THAT HIS CI RELATED TO HIM THAT THE SUSP'S WERE GOING TO GO AND PULL A JOB THE NIGHT OFFICER HARRIS STOPPED THEM. CABRELLLO STATED THAT HIS CI DID NOT KNOW WHAT STOP N GO THE SUSP'S HAD HIJACKED, BUT THAT HE WILL KEEP IN CONTACT WITH DETECTIVE AS HE RECEIVED INFORMATION FROM HIS CI.

DETECTIVE LATER CONFERRED WITH DETECTIVE ROMAN OF THE ROBBERY DIVISION. DET ROMAN HAD BEEN ASSIGNED BY HIS LT TO CHECK ROBBERY CASES IN HOUSTON WHERE LAM'S HAD BEEN INVOLVED AS SUSP'S. DETECTIVE ALSO ASKED DETECTIVE ROMAN TO CHECK ON THE STOP N GO ROBBERIES SINCE INFORMATION WAS RECEIVED ABOUT THE SUSP'S BEING INVOLVED IN A STOP N GO ROBBERY. DETECTIVE ALSO CHECKED THE HOMICIDE MURDER BOOK AND FOUND NO MURDER CASE INVOLVING LAM'S AS SUSP'S AND THE COMPL AN ORIENTAL.

DETECTIVE ALSO CHECKED WITH THE CORPORATE LOSS DIVISION OF STOP N GO AT 572-7411. DETECTIVE WAS TOLD THAT THE PERSON IN CHARGE OF THIS DIVISION IS A BILL SAUERS. AT THE TIME DETECTIVE CALLED, BILL SAUERS WAS NOT IN HIS OFFICE, DETECTIVE LEFT WORD FOR HIM TO CALL.

DETECTIVE ALSO CHECKED WITH CRIME ANALYSIS OFFICER C.L. TUCKER AT THE PARK PLACE SUB-STATION CONCERNING THE INFORMATION ABOUT THE ROBBERY SHOOTING OF AN ORIENTAL AT A STOP N GO. OFFICER TUCKER CHECKED HIS RECORDS AT PARK PLACE AND FOUND NO REPORT OF THAT TYPE OF OFFENSE. DETECTIVE WILL CHECK WITH THE OTHER CRIME ANALYSIS OFFICERS AT THE OTHER STATIONS.

DETECTIVE LATER CONFERRED WITH LATENT PRINT EXAMINER COOPER CONCERNING THE PRINTS THAT WERE LIFTED FROM OFFICER HARRIS' POLICE UNIT AND THE VEHICLE THAT THE SUSP'S WERE DRIVING. COOPER INFORMED DETECTIVE THAT THERE WERE SOME FINGERPRINTS FOUND ON THE PASSENGER SIDE OF THE VEHICLE THAT THE SUSP'S WERE DRIVING AND THAT THE PRINTS THAT WERE LIFTED WERE COMPARED TO THOSE OF BOTH SUSP'S AND THE PRINTS ON THE PASSENGER SIDE OF THE VEHICLE WILL BE THAT OF THE DEAD MAN (SUSP) KNOWN AS "WEDD". COOPER ALSO STATED THAT A SWEATED SWEATY PALM PRINT WAS LIFTED FROM THE AREA OF THE LEFT FRONT FENDER NEAR THE HOOD OF THE POLICE UNIT. COOPER STATED THAT THERE WERE NOT ENOUGH GOOD CHARACTERISTICS FROM THE PALM PRINTS TO MAKE A DEFINITE IDENTIFICATION.

COOPER ALSO STATED THAT THE PRINTS THAT WERE LIFTED FROM THE TRUNK OF THE POLICE UNIT WERE THOSE OF OFFICER HARRIS.

WITH THE FINDING OF PRINTS OF THE DEAD MAN (SUSP) ON THE PASSENGER SIDE OF THE SUSP'S VEHICLE, WILL GIVE SOME VALIDITY TO THE EYEWITNESS ACCOUNT OF SEVERAL WITNESSES STATING THAT THE SUSP THAT WAS DRIVING THE VEHICLE SHOT OFFICER HARRIS.

DETECTIVE ALSO CONFERRED WITH PEGGY JAMES OF THE AUTOMATED FINGERPRINT SYSTEM AND SHE INFORMED DETECTIVE THAT SHE HAD RUN BOTH SUSP'S FINGERPRINTS ON THE COMPUTER AND THERE WAS NO HIT ON THE FINGERPRINTS.

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OR RUNNING A RED LIGHT IN PEARLAND AND FOR FAILURE TO APPEAR IN PEARLAND ON
-10-81. DETECTIVE ALSO CHECKED FOR CRIMINAL HISTORY AND WANTED AND FOUND NO
RECORD FOR MALDONADO. MALDONADO WAS ALSO CLEAR WITH THE HPD I.D. DIVISION AND
WITH THE HARRIS COUNTY SHERIFF'S OFFICE. NO TRAFFIC WARRANTS EITHER. DETECTIVE
LATER CHECKED FOR ANY POSSIBLE POLICE OFFENSE REPORTS UNDER MALDONADO'S NAME TO
SEE IF HE HAD REPORTED THE WEAPON STOLEN. DETECTIVE FOUND NO RECORD OF ANY
OFFENSE REPORTS FOR ALFREDO MALDONADO. DETECTIVE CRISS-CROSSED THE GLENVIEW
ADDRESS AND SAW THAT THE RESIDENT THERE HAS A PHONE NUMBER OF 649-3406 AND IS
LISTED TO A NINFA MUNOZ. DETECTIVE LATER CALLED THE NUMBER AND GOT NO ANSWER.

AT 9:00PM, DETECTIVE RECEIVED A CALL FROM OFFICER WHEAT OF THE PASADENA POLICE
DEPARTMENT DISPATCHERS OFFICE INFORMING DETECTIVE THAT THE MANAGER OF CARTER'S
COUNTRY GUNS IN PASADENA CALLED THE POLICE DEPARTMENT AND REPORTED THAT A
SUBJECT BY THE NAME OF MALDONADO WAS IN THE GUN STORE AND THAT HE WAS WANTED IN
THE SHOOTING CASE OF OFFICER HARRIS OF THE HOUSTON POLICE DEPARTMENT. DETECTIVE
THEN INFORMED OFFICER WHEAT THAT MALDONADO WAS NOT WANTED, BUT THAT WE DO NEED
TO TALK TO HIM. OFFICER WHEAT THEN REPLIED THAT A PASADENA UNIT WAS AT THE GUN
STORE AND HAD MALDONADO IN CUSTODY. DETECTIVE ASKED OFFICER WHEAT TO HAVE HIS
UNIT TRANSPORT MALDONADO TO THE PASADENA POLICE STATION AND I WILL HAVE A
HOUSTON UNIT COME AND PICK HIM UP AS A WITNESS.

AT 10:15PM, HPD UNIT 13041 MANNED BY OFFICER W.J. ROPER PR#57729 AND OFFICER
J.D. CLIFTON PR#76051 ARRIVED IN THE HOMICIDE OFFICE WITH ALFREDO MALDONADO JR.
DETECTIVE PLACED MALDONADO IN THE MONTROSE SQUAD OFFICE WITHIN THE HOMICIDE
OFFICE AND READ MALDONADO HIS LEGAL RIGHTS FROM THE D.A.'S BLUE CARD AT 10:25PM.
BEFORE DETECTIVE COULD COMPLETE READING MALDONADO HIS RIGHTS, MALDONADO STARTED
TO TALK ABOUT KNOWING THAT THE MEXICAN MALE WAS GOING TO KILL A POLICEMAN.
DETECTIVE MANAGED TO COMPLETE THE READING AND MALDONADO STATED THAT HE UNDER-
STOOD HIS RIGHTS AND WANTED TO TELL WHAT HE KNEW ABOUT THE BROWNING GUN. AFTER
MALDONADO HAD MADE MENTION ABOUT THE BROWNING GUN, DETECTIVE THEN ASKED
MALDONADO HOW HE KNEW ABOUT WHAT HE WANTED TO TALK TO HIM ABOUT AND HE STATED
THAT THE MANAGER AT CARTER COUNTRY WAS TELLING THE PASADENA OFFICER WHY HE HAD
CALLED THE POLICE.

MALDONADO WAS ASKED TO GIVE A STATEMENT ABOUT THE BROWNING WEAPON THAT HE
PURCHASED ON 6-19-82.

NOTE: ALFREDO MALDONADO INFORMED DETECTIVE THAT HIS WIFE WAS WITH HIM AT THE
TIME HE PURCHASED THE GUN AT CARTER'S COUNTRY. LAURA MALDONADO LATER
CALLED THE HOMICIDE OFFICE TO CHECK ON ALFREDO AND DETECTIVE INFORMED
HER THAT A STATEMENT WAS NEEDED FROM HER ALSO. SHE CAME TO THE HOMICIDE
OFFICE AND DETECTIVE DUNN TOOK A WRITTEN STATEMENT FROM LAURA.

WRITTEN STATEMENTS:

#1 ALFREDO MALDONADO, JR., LAM/28, 713 AVE L, SOUTH HOUSTON, TEXAS, PS#943-8096
EMPLOYED WITH INTERNATIONAL TOOLS & SUPPLY, 2701 MAGNET, TOL#07162453.

ALFREDO STATES THAT HE HAD GONE TO CARTER'S COUNTRY GUN STORE IN PASADENA,
TEXAS ON 6-19-82 TO MAKE A PURCHASE OF A CHARTER AR7 .22 RIFLE FOR HIS 6 YEAR
OLD DAUGHTER. ALFREDO MENTIONED THAT HIS WIFE LAURA WAS WITH HIM ALONG WITH
HIS TWO KIDS. WHILE IN THE STORE, ALFREDO STATES THAT HE WENT TO THE COUNTER
TO LOOK AT THE RIFLES THAT WERE ON A RACK BEHIND THE COUNTER. DURING THE TIME
ALFREDO WAS AT THE COUNTER, ALFREDO STATES THAT A LAM CAME UP TO THE COUNTER
AND WAS LOOKING AT SOME HANDGUNS IN THE GUN CASE. THE LAM ACCORDING TO ALFREDO
ASKED ALFREDO IF HE (ALFREDO) COULD SPEAK SPANISH, ALFREDO REPLIED THAT HE

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COULD AND ASKED THE LAM, WHAT'S UP? AT THAT TIME, THE LAM REPLIED BY ASKING ALFREDO TO PURCHASE HIM A GUN. ALFREDO STATES THAT THE LAM TOLD HIM THAT HE WOULD GIVE ALFREDO THE MONEY TO BUY THE GUN. ALFREDO AT THAT TIME TOLD THE LAM, NO. THE LAM AT THAT TIME STARTED TELLING ALFREDO THE REASON WHY HE WANTED THE GUN. ALFREDO STATED THAT THE LAM TOLD HIM THAT HIS FAMILY IN MEXICO WAS HAVING PROBLEMS WITH ANOTHER FAMILY AND THAT HE WANTED THE GUN TO TAKE BACK TO MEXICO. ALFREDO STATES THAT THE LAM NEVER MADE MENTION WHERE IN MEXICO HE WAS FROM. ALFREDO STATES THAT THE LAM SHOOK HIS (ALFREDO'S) HAND AND TOLD ALFREDO THAT HIS NAME WAS LUIS. ALFREDO CLAIMS THAT HE DOES NOT REMEMBER THE LAM LAST NAME.

ALFREDO STATES THAT THE LAM ASKED HIM AGAIN AND ALFREDO AGAIN STATES THAT HE TOLD THE LAM, NO. ALFREDO STATES THAT HE THEN WALKED AWAY FROM THE COUNTER AND TOLD HIS WIFE ABOUT THE LAM WANTING HIM TO PURCHASE A GUN. ALFREDO STATES THAT HIS WIFE TOLD HIM NOT TO DO IT BECAUSE IT WAS NOT WORTH IT. ALFREDO STATES THAT THE LAM TOLD HIM THAT IF HE (ALFREDO) WOULD BUY THE GUN, HE PROMISED TO GO STRAIGHT TO MEXICO WITH THE GUN AND NOT GET INTO ANY TROUBLE WITH THE GUN WHILE IN THE STATES. ALFREDO STATES THAT THE LAM KEPT SWEARING THAT HE WOULD GO STRAIGHT BACK TO MEXICO. ALFREDO CONTINUED BY SAYING THAT WHILE AT THE GUN COUNTER, THE LAM POINTED TO A GUN HE WANTED. ALFREDO THEN SAID TO THE LAM A BROWNING AND THE LAM SAID "YES". ALFREDO STATES THAT THE LAM THEN ASKED HIM AGAIN IF HE WAS GOING TO BUY THE GUN OR NOT, ALFREDO THEN ASKED THE LAM IF HE WAS GOING BACK TO THE BORDER AND THE LAM REPLIED THAT HE WAS. ALFREDO STATED THAT THE GUN COST \$465 AND THAT THE LAM TOLD HIM THAT HE (LAM) WOULD GIVE ALFREDO \$550 TO BUY THE GUN AND WHAT WAS LEFT ALFREDO COULD KEEP.

ALFREDO STATES THAT HE LOOKED AT THE GUN AND TOLD THE SALESMAN TO WRITE UP THE BROWNING ALSO. ALFREDO STATES THAT THE SALESMAN WAS IN THE PROCESS OF WRITING UP THE CHARTER .22 RIFLE FOR HIM, SO HE JUST ASKED THE SALESMAN TO WRITE UP THE BROWNING ALSO. ALFREDO STATES THAT HE AND THE LAM STEPPED AWAY FROM THE COUNTER AND THE LAM GAVE HIM THE \$550.00 TO PURCHASE THE GUN. ALFREDO STATES THAT HE ALSO BOUGHT TWO BOXES OF AMMUNITION FOR THE LAM. THE LAM ACCORDING TO ALFREDO WANTED AN EXTRA CLIP FOR THE BROWNING, BUT THE STORE HAD NO EXTRA CLIPS IN STOCK.

ALFREDO STATES THAT HE PURCHASED THE BROWNING FOR THE LAM IN HIS (ALFREDO'S) NAME AND AFTER PURCHASING THE BROWNING, HE GAVE THE LAM THE RECEIPT FOR THE BROWNING AND EVERYTHING THAT CAME WITH IT. ALFREDO STATES THAT THEY WALKED OUTSIDE OF THE STORE AND WALKED TO THE SIDE OF THE STORE AND THIS IS WHEN HE GAVE THE LAM THE BAG CONTAINING THE BROWNING. ALFREDO STATES THAT THE LAM THANKED HIM AND LEFT. ALFREDO STATES THAT HE DID NOT SEE THE LAM GET INTO A VEHICLE, HE JUST WALKED OFF.

ALFREDO STATES THAT WHILE HE WAS IN THE STORE AND WAS ABOUT TO PURCHASE THE BROWNING, ALFREDO STATES THAT HE TOLD THE SALESMAN THAT HE WAS NOT BUYING THE GUN FOR HIMSELF, BUT FOR THE LAM. ALFREDO STATES THAT THE SALESMAN TOLD HIM ALFREDO THAT AFTER THE GUN IS PURCHASED ITS HIS (ALFREDO'S) BUSINESS WHAT HE DOES WITH THE GUN. ALFREDO STATES THAT THE SALESMAN THAT SOLD HIM THE GUN'S NAME IS MIKE, ALFREDO THINKS. ALFREDO STATES THAT THE SALESMAN WAS A ALL RED HEADED WHITE MALE WITH FRECKLES.

ALFREDO CLAIMS NOT TO KNOW THE LAM, BUT THOUGHT AT FIRST AFTER SEEING THE LAM THAT HE WAS SOMEONE THAT USED TO WORK FOR BROWN AND ROOT DURING THE TIME ALFREDO WAS WORKING FOR BROWN AND ROOT.

ALFREDO MADE MENTION THAT THERE WAS \$30.00 (THIRTY DOLLARS) LEFT FROM PURCHASING THE BROWNING. ALFREDO EXPRESSED REMORSE BY SAYING THAT HE FELT LIKE "JUGAS".

SEE WRITTEN STATEMENT ATTACHED TO THIS REPORT FOR FURTHER DETAILS.

ALFREDO MALDONADO, WHILE IN THE HOMICIDE OFFICE WAS SHOWN A PHOTO ARRAY OF LAM'S HAM, HAD BEEN PUT TOGETHER BY THIS DETECTIVE. THE PHOTO ARRAY CONTAINED THE PHOTO OF THE SUSPECT THAT WAS SHOT AND KILLED BY OFFICERS AT 4911 RUSK AND THE ARRESTED SUSPECT RICARDO A. GUERRA. ALFREDO AFTER VIEWING THE PHOTO'S INFORMED DETECTIVE THAT THE SUBJECT IN THE #6 POSITION WAS THE LAM THAT HE (ALFREDO) HAD PURCHASED THE BROWNING FOR. ALFREDO WAS ASKED TO LOOK AT THE PHOTO OF RICARDO A. GUERRA SEPARATE FROM THAT OF THE DEAD SUSPECT AND ALFREDO STATED THAT HE HAD NEVER SEEN THE PERSON IN THE PHOTO. ALFREDO ALSO STATED THAT THE LAM THAT HE PURCHASED THE BROWNING FOR WAS IN THE STORE BY HIMSELF. ALFREDO STATES THAT HE KNEW THIS BECAUSE THE STORE WAS ABOUT TO CLOSE AND THEY WERE THE ONLY ONES INSIDE OF THE STORE.

LAURA DALE MALDONADO WF/28, LATER ARRIVED AT THE HOMICIDE OFFICE WITH AN ATTORNEY. THE ATTORNEY IS LUIS MARTINEZ LAM STATE BAR LICENSE NUMBER 13142785, 11 NORTH SAMPSON, PHONE 223-5106 OR 5107.

2- LAURA DALE MALDONADO WF/28, DOB 5-6-54, TOL #C5215715, SS#446-58-5426.

LAURA STATES THAT SHE HAD GONE TO CARTER'S COUNTRY GUN STORE WITH HER HUSBAND IN PASADENA, TEXAS TO PICK UP A GUN IN LAYAWAY. WHILE IN THE STORE, LAURA STATES THAT AN ILLEGAL ALIEN LOOKING MAN CAME INTO THE STORE AND STARTED SPEAKING SPANISH TO HER HUSBAND (ALFREDO). LAURA STATES THAT SHE HEARD THIS LAM ASK HER HUSBAND IN SPANISH TO BUY HIM A GUN. LAURA STATES THAT SHE THEN ASKED HER HUSBAND WHAT THE LAM WANTED AND ALFREDO TOLD HER THAT THE LAM WANTED HIM TO BUY HIM (LAM) A GUN. LAURA STATED THAT SHE THEN ASKED ALFREDO IF HE WAS GOING TO DO THIS AND ALFREDO TOLD LAURA THAT HE DIDN'T KNOW. LAURA STATES THAT THIS WAS ALL TAKING PLACE IN FRONT OF THE COUNTER (GUN) AND THE SALESMAN WAS LISTENING TO WHAT WAS BEING SAID. LAURA STATES THAT ALFREDO TOLD THE SALESMAN THAT HE DIDN'T HAVE TO DO THIS (SELL THE GUN) IF HE DIDN'T WANT TO. LAURA STATES THAT THE SALESMAN TOLD ALFREDO THAT "IF YOU HAVE THE MONEY, I'LL SELL YOU THE GUN". THIS IS WHEN ALFREDO TOLD THE SALESMAN TO WRITE IT UP ACCORDING TO LAURA.

LAURA STATES THAT THE LAM AND ALFREDO WALKED OFF FROM THE COUNTER AND THE LAM GAVE ALFREDO THE MONEY. ALFREDO BOUGHT THE GUN AND TWO BOXES OF AMMUNITION AND LATER WALKED OUTSIDE AND GAVE THE PURCHASED GUN TO THE LAM. LAURA STATES THAT SHE DOES NOT KNOW WHAT KIND OF GUN ALFREDO BOUGHT FOR THE LAM, BUT STATES THAT SHE DOES KNOW THAT IT WAS AN AUTOMATIC BECAUSE THE LAM WANTED ANOTHER CLIP FOR THE GUN. LAURA STATES THAT THE GUN WAS EXPENSIVE AND LOOKED TO BE SILVER.

LAURA WAS LATER SHOWN THE SAME PHOTO'S OF THE SUSP'S AS ALFREDO IN A PHOTO ARRAY AND LAURA WAS NOT ABLE TO MAKE A POSITIVE IDENTIFICATION OF THE SUSP'S. LAURA ALSO PRESENTED TO DETECTIVE DUNN DURING THE TAKING OF HER STATEMENT A COPY OF A SALES RECEIPT FROM CARTER'S COUNTRY SHOWING THAT ALFREDO HAD PLACED A CHAPTER AR7 .22 RIFLE IN LAYAWAY DATED JUNE 19, 1982. THE INVOICE NUMBER ON THE RECEIPT IS 307862. LAURA ALSO PRESENTED A CUSTOMER IDENTIFICATION STUB FOR LAYAWAY WITH THE TICKET NUMBER BEING C442 ALSO DATED JUNE 19, 1982. THE SALES RECEIPT AND THE LAYAWAY STUB SHOW THAT THE RIFLE WAS SOLD BY SOMEONE WITH THE INITIALS OF "B.R.".

DETECTIVE LATER ASKED ALFREDO MALDONADO IF HE WOULD TAKE A POLYGRAPH TEST AND

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O-0030

OFFENSE- CAPITAL MURDER OF A POLICE OFFICER 88
STREET LOCATION INFORMATION
NUMBER- 49CC NAME-WALKER TYPE- SUFFIX-
PT NO-0 NAME- TYPE- SUFFIX-
DATE OF OFFENSE-07/13/82 DATE OF SUPPLEMENT-07/21/82
COMPL(S) LAST-HARRIS FIRST-JAMES MIDDLE-D
LAST- FIRST- MIDDLE-
RECOVERED STOLEN VEHICLES INFORMATION
NONE
OFFICER1-V W WEST EMP#-030529 SHIFT-1 DIV/STATION-HOMI

SUPPLEMENT NARRATIVE

HIS DET THIS DATE CHECKED THE BELOW WEAPON OUT OF THE POLICE PROPERTY ROOM
AND SUBMITTED IT TO THE CRIME LAB FOR REQUIRED LAB WORK.

WEAPON SUBMITTED: .357 COLT REVOLVER, BLUE STEEL, #21267E

SUPPLEMENT ENTERED BY = 30529
REPORT REVIEWED BY-V W WEST EMPLOYEE NUMBER-030529
COPIES ALSO SENT TO- RP1/ / / ACTION DUE DATE- / /
DATE CLEARED- 07/13/82

O-0031

OFFENSE- CAPITAL MURDER OF A POLICE OFFICER 88
STREET LOCATION INFORMATION
NUMBER- 49CC NAME-WALKER TYPE- SUFFIX-
PT NO-0 NAME- TYPE- SUFFIX-
DATE OF OFFENSE-07/13/82 DATE OF SUPPLEMENT-07/21/82
COMPL(S) LAST-HARRIS FIRST-JAMES MIDDLE-D
LAST- FIRST- MIDDLE-
RECOVERED STOLEN VEHICLES INFORMATION
NONE
OFFICER1-BW GATEWOOD EMP#-036193 SHIFT-1 DIV/STATION-HOMICIDE

SUPPLEMENT NARRATIVE

ON 7-14-82, DET. GATEWOOD ALONG WITH ASST. DISTRICT ATTORNEY DICK BAX HAD THE
SUSPECT TAKEN TO CAPTAIN ADAMS OFFICE, HOMICIDE DIVISION, WHERE WE HAD TWO
CIVILIAN WITNESSES BROUGHT TO THIS OFFICE SO THAT THEY COULD WITNESS THE SIG-
NATURE OF THE SUSPECT.

THE TWO FEMALE WITNESSES ARRIVED AND ONE OF THEM WAS ASKED TO READ THE SUSPECTS
CONFESSION BACK TO HIM. THE FEMALE WITNESS READ THE CONFESSION TO THE SUSPECT

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App. 0087

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.....

AND THE SUSPECT WAS THEN ASKED IF HE UNDERSTOOD EVERYTHING THAT HAD BEEN READ TO HIM.

THE SUSPECT TOLD THE CIVILIAN WITNESS THAT HE UNDERSTOOD WHAT HAD BEEN READ TO HIM. AT THIS TIME DA BAX TOLD THE CIVILIAN TO READ THE SUSPECTS RIGHTS THAT WERE ON TOP OF THE PAGE JUST BEFORE THE CONFESSION BEGAN.

AFTER THE READING OF EVERY RIGHT THE SUSPECT WAS ASKED IF HE UNDERSTOOD WHAT HAD JUST BEEN READ TO HIM. WHEN THE SUSPECT WAS READ THE PART WHERE IT STATES THAT HE HAS THE RIGHT TO HAVE A LAWYER PRESENT DURING ANY QUESTIONING HE AT THIS TIME ASKED IF HE COULD HAVE A LAWYER.

THE SUSPECT TOLD THE CIVILIAN WITNESS THAT HE WOULD SIGN THE CONFESSION BECAUSE IT WAS THE TRUTH AS TO WHAT HAD HAPPENED. HE STATES THAT HE NEEDED A LAWYER SO THAT HE COULD TELL HIM WHAT TO DO.

WHEN THE SUSPECT EXPRESSED HIS DESIRE TO HAVE AN ATTORNEY, ASST. DA BAX AT THIS TIME SAID THAT THE SUSPECT WOULD NOT BE QUESTION ANY FURTHER. MR. BILL HARE FROM THE PHOTO LAB HAD BEEN TAPING THE READING OF THE CONFESSION AND AFTER THE SUSPECT ASKED FOR AN ATTORNEY THE TAPING WAS STOPPED.

THE SUSPECT WAS PLACED IN DET. WEBBERS CUSTODY.

INVESTIGATION TO CONTINUE.....

SUPPLEMENT ENTERED BY = 36193
REPORT REVIEWED BY-V W WEST EMPLOYEE NUMBER-030529
COPIES ALSO SENT TO- RP1/ / / ACTION DUE DATE- / /
DATE CLEARED- 07/13/82

0-0032

FFENSE- CAPITAL MURDER OF A POLICE OFFICER 00

STREET LOCATION INFORMATION
UMBER- 49CC NAME-WALKER TYPE- SUFFIX-
PT NO-0 NAME- TYPE- SUFFIX-
ATE OF OFFENSE-07/13/82 DATE OF SUPPLEMENT-07/21/82
OMPLIS) LAST-HARRIS FIRST-JAMES MIDDLE-D
LAST- FIRST- MIDDLE-

RECOVERED STOLEN VEHICLES INFORMATION
NONE
FFICER1-L.L. COOPER EMP#-034365 SHIFT-2 DIV/STATION-5825

76

F 000367

App. 0088

SUPPLEMENT NARRATIVE

ON 7-13-82 AT THE REQUEST OF THE HOMICIDE DIVISION THIS OFFICER WENT TO 4900 WALKER TO CONDUCT AN EXAMINATION FOR LATENT PRINTS. UPON ARRIVAL THIS OFFICER ROPED OFF THE SCENE AND EXAMINED THE OUTER DRIVERS DOOR AND TRUNK AREA OF POLICE VEHICLE (SHOP 627). THIS OFFICER THEN WENT TO 4911 RUSK AND EXAMINED ONE (1) BROWNING HI-POWER, 9MM/.357 S&W 245P287128, AND ONE (1) .45 CAL. DETONICS PISTOL, SER#CR16126 FOR LATENT PRINTS. THE BROWNING PISTOL WAS EMPTY, THE DETONICS PISTOL WAS CHAMBERED WITH .45 BALL, AND THREE (3) LIVE .45 JHP'S. THE FIREARMS WERE VOID OF SUITABLE PRINTS. THE ABOVE FIREARMS WERE RELEASSED TO OFFICER C.E. ANDERSON, FIREARMS EXAMINER, AT THE SCENE.

THIS OFFICER THEN FOLLOWED THE SUSPECTS VEHICLE AND POLICE VEHICLE TO THE VEHICLE EXAMINATION BUILDING AND CONDUCTED EXAMINATION OF THE EXTERIOR OF EACH VEHICLE. LATENT PRINTS WERE DEVELOPED ON THE TRUNK AREA, ONE PALM PRINT NOT SUITABLE FOR IDENTIFICATION WAS DEVELOPED ON THE DRIVERS FRONT FENDER OF POLICE VEHICLE. NO PRINTS WERE DEVELOPED ON THE ROOF OF POLICE VEHICLE. ONE LATENT PRINT DEVELOPED ON THE TRUNK OF POLICE VEH. WAS IDENTIFIED AS THE LEFT RING FINGER OF OFFICER J.D. HARRIS.

LATENT PRINTS DEVELOPED ON SUSPECTS VEHICLE (77 BUTCH PEGAL, IC# YTX 479) WERE FROM THE OUTSIDE DRIVERS DOOR AND OUTSIDE PASS. DOOR AND RRCP. ONE LATENT PRINT DEVELOPED ON THE ROOF WAS IDENTIFIED AS THE LEFT PALM OF UNK. DEC'D MALE "CUIDO", ONE LATENT FINGERPRINT DEVELOPED ON PASSENGER DOOR OUTSIDE WAS IDENTIFIED AS THE RIGHT INDEX FINGER OF "CUIDO", ONE PALM PRINT DEVELOPED ON THE DRIVERS DOOR BELOW WINDOW OUTSIDE WAS IDENTIFIED AS THE LEFT PALM OF RICARDO G. ALDARE. P.O.# 383339. THE LATENT PRINTS WILL BE RETAINED IN THE LATENT LAB.

LEONARD L. COOPER 34365
LATENT PRINT EXAMINER

SUPPLEMENT ENTERED BY = 343465

REPORT REVIEWED BY-V W WEST

EMPLOYEE NUMBER-330529

COPIES ALSO SENT TO- RP1/ / /

ACTION DUE DATE- / /

DATE CLEARED- 07/13/82

10-0033

OFFENSE- CAPITAL MURDER OF A POLICE OFFICER 00

STREET LOCATION INFORMATION

NUMBER- 4900 NAME-WALKER

TYPE-

SUFFIX-

PT NO-C NAME-

TYPE-

SUFFIX-

DATE OF OFFENSE-07/13/82

DATE OF SUPPLEMENT-07/21/82

EMPL(S) LAST-HARRIS

FIRST-JAMES

MIDDLE-D

LAST-

FIRST-

MIDDLE-

RECOVERED STOLEN VEHICLES INFORMATION

NONE

OFFICER1-L.L. COOPER

EMP#-034365 SHIFT-2 DIV/STATION-5825

INCIDENT NO. 042614582 CURRENT INFORMATION REPORT PAGE 2.063

ET WAS GIVEN THE INCIDENT NUMBER TO THE AGGRAVATED ROBBERY AS 41589082.
DESCRIPTION OF SUSP WILL BE A LAM, 5'10" TALL, THE REPORT SHOWS THAT THE
ITNS STATED THAT THE SUSP WAS USING A BLUE STEEL REVOLVER. DATE OF REPORT
7/9/82.

HIS SUPPLEMENT TO ENTERED UNDER INCIDENT NUMBERS:
2667382 AND 41589082

EVIDENCE SUBMITTED:
• ONE SPENT HULL CASING, SPEER 9MM LUGER

SUPPLEMENT ENTERED BY = 43133
REPORT REVIEWED BY-V W WEST EMPLOYEE NUMBER-030529
COPIES ALSO SENT TO- RP1/ / / / ACTION DUE DATE- / /
DATE CLEARED- 07/13/82

0-0037

OFFENSE- CAPITAL MURDER OF A POLICE OFFICER 88
STREET-LOCATION INFORMATION
NUMBER- 4900 NAME-WALKER TYPE- SUFFIX-
PT NO-C NAME- TYPE- SUFFIX-
DATE OF OFFENSE-07/13/82 DATE OF SUPPLEMENT-C7/26/82
OMPL(S) LAST-HARRIS FIRST-JAMES MIDDLE-D
LAST- FIRST- MIDDLE-
RECOVERED STOLEN VEHICLES INFORMATION
NONE
OFFICER-L.E.WEBBER EMP#-043133 SHIFT-1 DIV/STATION-HOMICIDE

SUPPLEMENT NARRATIVE

PROGRESS REPORT::::::::::07-22-82

DETECTIVE WAS ASSIGNED TO CONTINUE THE INVESTIGATION INTO THIS CASE. ON 07-21-82
ARRANGEMENTS HAD BEEN MADE FOR THE EYEWITNESSES IN THIS CASE TO MEET DETECTIVE
IN THE 4900 BLOCK OF WALKER STREET FOR AN RE-ENACTMENT OF THIS CASE. THE RE-EN-
CTMENT WAS SCHEDULED FOR 10:00AM THIS DATE.

::::::::::PERSONNEL PRESENT AT RE-ENACTMENT::::::::::

• DETECTIVES WEBBER, NEELY, HOLLAND, MONTERO, SELVERA AND GONZALES OF THE
HOMICIDE DIVISION.

• CHARLIE ANDERSON OF THE FIREARMS EXAMINER OFFICE.

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App. 0090

INCIDENT NO. 042614562 CURRENT INFORMATION REPORT PAGE 2.084

3. TOM ERADSHAW, OF THE PHOTO LAB

4. OFFICER WILLIAMSON, OF THE PARK PLACE SUB-STATION.

5. DICK BAZ, BOB MOREN, AND STEVE MORRIS, OF THE DISTRICT ATTORNEYS OFFICE.

DETECTIVE ALONG WITH ASST. DAS BAZ AND MOREN REINTERVIEWED THE WITNESSES AT THE SCENE AND WERE ABLE TO CLARIFY SOME UNCLEAR DETAILS. WITNESS #3, HILMA GALVAN WALKED DETECTIVE AND ASST. DAS BAZ AND MOREN THROUGH THE NEIGHBORHOOD IN ORDER TO POINT OUT WHERE SHE HAD FIRST OBSERVED THE SUSPECTS IN THE BLACK VEHICLE AND WHERE SHE HAD OBSERVED OFFICER HARRIS. MRS. GALVAN STATED THAT SHE WAS WALKING EAST ON WALKER TOWARD LENOX STREET WHEN THE SUSPECTS IN THE VEHICLE FIRST DROVE PAST HER AT A HIGH RATE OF SPEED. MRS. GALVAN STATES THAT THE SUBJECT THAT WAS DRIVING THE VEHICLE IS THE SAME PERSON SHE PICKED OUT OF THE SHOW-UP. AS THE VEHICLE SPED PAST, MRS. GALVAN STATES THAT THE DRIVER OF THE VEHICLE MADE A RIGHT TURN ONTO DELMAR STREET AND AS SOON AS THE VEHICLE HAD MADE THE RIGHT TURN, THE VEHICLE CAME BACKING OUT FROM DELMAR ONTO WALKER AND PROCEEDED EAST. MRS. GALVAN STATES THAT THE DRIVER WAS IN A HURRY AND SHE WAS WONDERING WHAT WAS GOING ON, BUT LATER SAW A POLICE UNIT COMING UP DELMAR TRAVELLING NORTH TO WALKER. THE POLICE UNIT ACCORDING TO MRS. GALVAN THEN FELL IN BEHIND THE BLACK VEHICLE AND BOTH WERE TRAVELLING EAST ON WALKER. MRS. GALVAN STATES THAT THE BLACK VEHICLE MADE A LEFT TURN ON ALTIC STREET AND THE POLICE UNIT WAS STILL IN PURSUE. MRS. GALVAN STATES THAT SHE TURNED AROUND AND WALKED BACK TO HER HOUSE. AFTER ARRIVING BACK TO HER HOUSE, MRS. GALVAN STATES THAT SHE WAS STANDING IN HER FRONT YARD NEAR A TREE WHEN SHE SAW THE TWO LA/MALES IN THE BLACK DOWN WALKER STREET AND LATER TRYING TO TURN THE VEHICLE AROUND IN THE MIDDLE OF THE STREET. MRS. GALVAN STATES THAT THEY STOPPED THE VEHICLE IN THE MIDDLE OF WALKER STREET AT EDGEWOOD. THE SUSPECTS WERE TRAVELLING WEST ON WALKER FROM ENOX STREET AT THIS TIME. MRS. GALVAN STATES THAT THE POLICE UNIT LATER CAME UP BEHIND THE BLACK VEHICLE FROM EDGEWOOD. MRS. GALVAN POINTED OUT TO DETECTIVE THE LOCATION IN WHERE SHE WAS STANDING AND THE POINT IN WHICH THE POLICE UNIT MADE TO STOP. MRS. GALVAN WAS STANDING DIRECTLY IN FRONT OF HER HOUSE ON THE NORTH SIDE OF WALKER STREET ON THE SIDEWALK. MRS. GALVAN STATED THAT SHE COULD SEE CLEARLY BECAUSE OF THE STREET LIGHT THAT WAS ON. THE STREET LIGHT IS LOCATED ON THE OPPOSITE SIDE OF THE STREET IN FRONT OF 4922 WALKER. THE POLICE UNIT CAME TO A STOP WITH ABOUT HALF OF THE POLICE UNIT IN THE MIDDLE OF WALKER STREET AND TO THE EAST SIDE OF EDGEWOOD. MRS. GALVAN STATES THAT BOTH SUSPECTS WERE OUT OF THE BLACK CAR WHEN THE OFFICER CAME UP BEHIND THEM. ACCORDING TO MRS. GALVAN OFFICER HARRIS CALLED OUT FOR THE TWO LA/MALES TO COME OVER TO THE POLICE UNIT. MRS. GALVAN STATES THAT THE OTHER LA/M, WHO WAS A PASSENGER INSIDE THE BLACK CAR WAS THE CLOSER OF THE TWO TO THE OFFICER, WITH THE DRIVER BEHIND WALKING BEHIND THE PASSENGER. AS THEY APPROACHED THE POLICE UNIT, THE OFFICER ASKED THEM TO PLACE THEIR HANDS ON THE POLICE UNIT. THE OFFICER ACCORDING TO MRS. GALVAN WAS STANDING TO THE INSIDE OF THE DRIVERS DOOR OF THE POLICE UNIT. THE PASSENGER PLACED HIS HANDS ON THE HOOD OF THE POLICE UNIT NEAR THE DRIVERS DOOR AND THE DRIVER CAME UP AND PLACED HIS HANDS ON THE HOOD NEAR THE FRONT OF THE POLICE UNIT. MRS. GALVAN STATES THAT AS SOON AS THE DRIVER OF THE BLACK VEHICLE PLACED HIS HANDS ON THE POLICE UNIT, THE DRIVER (IDENTIFIED SUSPECT) TURNED AND STARTED SHOOTING OFFICER HARRIS. MRS. GALVAN STATED THAT SHE DID NOT SEE WHERE THE SUSPECT GOT THE GUN FROM. MRS. GALVAN STATES THAT THE SUSPECT WAS MOVING LEFT TO RIGHT FIRING AT THE OFFICER. WHEN THE OFFICER WAS SHOT, MRS. GALVAN STATES THAT THE OFFICER WAS STANDING UPRIGHT AND AFTER BEING SHOT THE OFFICER FELL STRAIGHT BACK LIKE THE IMPACT OF THE BULLETS WAS LIFTING THE OFFICER UP HIS FEET. MRS. GALVAN STATES THAT THE SUSPECT THEN LEFT RUNNING FROM THE SCENE DOWN THE SIDEWALK IN FRONT OF HER HOUSE. MRS. GALVAN TOLD DETECTIVE THAT

85

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App. 0091

7/26/82

LE Webber/HF

.....
 INCIDENT NO. C42614562 CURRENT INFORMATION REPORT PAGE 2.C85

 HE RAN INTO HER ~~HOUSE~~ BECAUSE THE SUSPECT WAS STILL SHOOTING. MRS. GALVAN
 ALSO INFORMED DETECTIVE THAT SHE WAS ABLE TO SEE THE SUSPECT AS HE RAN BY
 NOT THE CITIZEN THAT WAS DRIVING WEST ON WALKER STREET.

RS. GALVAN STATES THAT SHE WAS NOT ABLE TO SEE WHERE THE TONER LA/H RAN TO.
 HE STATES THAT SHE LATER CAME OUT OF HER HOUSE AND WENT TO WHERE THE OFFICER
 AS AND SAW THAT HE WAS SHOT IN THE HEAD AND THE LEFT SIDE OF THE FACE. MRS.
 ALVAN ALSO INFORMED DETECTIVE THAT SHE KNOW THE DRIVER OF THE VEHICLE AS
 EL GUERO " BECAUSE HE HAS BEEN IN THE NEIGHBORHOOD SINCE ABOUT FEBRUARY
 F THIS YEAR. MRS. GALVAN STATED THAT SHE ONCE OPERATED PAT'S GROCERY STORE
 N THE CORNER OF DUMBLE AND WALKER AND THAT "EL GUERO" WAS A REGULAR CUSTOMER.

Hilma Galvan
 "El Guero"

Merlinda Medina Garcia
 Elvira Medina Flores

TECTIVE ALSO INTERVIEWED MERLINDA MEDINA GARCIA AND ELVIRA MEDINA FLORES. THEY
 RE SISTERS AND WERE WALKING TO PAT'S GROCERY STORE WHEN THEY SAW THE SHOOTING
 F OFFICER HARRIS. MERLINDA ORIGINALLY IDENTIFIED THE ARRESTED SUSPECT IN SHOW-
 P PROCEDURE ON 07-14-82, AND IS STILL ABLE TO MAKE A POSITIVE IDENTIFICATION.
 HE ONLY THING MERLINDA IS SAYING DIFFERENTLY FROM HER STATEMENT IS THE VEHICLE
 HERE HER SISTER ELVIRA HAD UNDER. THE VEHICLE WILL NOT BE THE SUSPECTS VEHICLE
 S ORIGINALLY THOUGHT, BUT WILL BE AN ABANDON BLACK VEHICLE THAT IS PARKED
 N FRONT OF 4932 WALKER.

URING THE INTERVIEW WITH ELVIRA MEDINA FLORES, ELVIRA INFORMED DETECTIVE
 HAT SHE DID NOT IDENTIFY THE SUSPECT IN THE SHOW-UP BECAUSE SHE THOUGHT
 NOUGH PEOPLE HAD ALREADY PICKED HIM OUT, THEREFORE SHE TOLD THE DETECTIVE
 ANDLING THE SHOW-UP THAT SHE COULD NOT IDENTIFY THE SUSPECT. ELVIRA IS
 HE 813 WITNESS IN THIS CASE. ELVIRA WAS SHOWN A PHOTO OF THE SUSPECT WITH
 MOTOS OF OTHER LA/MALES IN A PHOTO ARRAY AND ELVIRA STATED THAT SHE KNOW
 HE SUSPECT BECAUSE HE WAS A REGULAR IN THE NEIGHBORHOOD. ELVIRA ALSO
 AVE THE REASON OF FEAR FOR HER NOT TELLING THE DETECTIVE WHO SHE HAD SEEN SHOOT
 FFICER HARRIS. ELVIRA STATES THAT SHE WAS FEARFUL THAT "EL GUERO" WOULD GET
 UT OF JAIL ON BOND AND COME LOOKING FOR THE PEOPLE THAT TURNED HIM IN.

LVIRA WAS LATER TRANSPORTED TO HOMICIDE BY THIS DETECTIVE WHERE SHE GAVE
 NOTHER STATEMENT. ELVIRA TOLD DETECTIVE AT THE SCENE THAT SHE WAS STANDING
 O THE SOUTH SIDE OF OF WALKER STREET AT EDGEWOOD IN FRONT OF THE POLICE UNIT
 T THE TIME OF THE SHOOTING AND TO THE DRIVERS SIDE OF THE SUSPECTS VEHICLE.
 LVIRA STATES THAT SHE FIRST SAW THE BLACK VEHICLE TRAVELLING WEST ON WALKER
 TREET APPROACHING EDGEWOOD AT A HIGH RATE OF SPEED. WHEN THE VEHICLE GOT TO
 OGEWOOD AT WALKER, ELVIRA STATES THAT THE DRIVER "EL GUERO" TRIED TO MAKE A
 OUGHNUT TURNED IN THE BLACK CAR BUT THAT THE VEHICLE STALLED OUT ON HIM.
 LVIRA STATES THAT "EL GUERO" TRIED STARTING THE VEHICLE SEVERAL TIMES, BUT IT
 OULD NOT START. ELVIRA STATES THAT BOTH "EL GUERO" AND THE PASSENGER GOT
 UT OF THE CAR AND CAME UP TO HER. ELVIRA STATES THAT "EL GUERO" WAS SAYING
 OMETHING TO HER IN SPANISH THAT SHE DIDN'T QUITE UNDERSTAND. ELVIRA STATES
 HAT SHE HAD STARTED WALKING BACKWARDS AND "EL GUERO" KEPT TALKING. ELVIRA
 TATES THAT SHE FINALLY UNDERSTOOD "EL GUERO" TO SAY THAT HE NEEDED A BOOST
 ND WAS ASKING HER FOR A BOOST. AT THAT TIME OFFICER HARRIS PULLED UP AND
 ALLED OUT FOR "EL GUERO" AND THE OTHER LA/H TO COME OVER TO THE POLICE UNIT.
 LVIRA STATES THAT SHE DID NOT PAY THAT MUST ATTENTION TO THE OTHER LA/H.

LVIRA STATES THAT THE OFFICER HAD BOTH LA/MALES TO PLACE THEIR HANDS ON THE
 OOD OF THE POLICE UNIT. ELVIRA STATES THAT THE OFFICER WAS SAYING SOMETHING TO
 HE LA/MALES AND "EL GUERO" REPLIED BACK SAYING "NO NO, WE NEED A BOOST".
 LVIRA STATES THAT AT THIS TIME, "EL GUERO" TURNED AND STARTED SHOOTING AT
 HE OFFICER. ELVIRA STATED THAT AFTER "EL GUERO" HAD SHOT THE OFFICER, "EL GUERO"
 LEFT RUNNING FROM GOING EAST ON WALKER STREET. ELVIRA STATES THAT SHE SAW

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App. 0092

Neely
DD Smith
LE Weber
Sybert
Miller
HPD
7/26/82

"El Guero"

Elvira Flores

Yilma Galvan

Rachel Figueroa

George Lee Brown

Mrs. Hooper

.....
INCIDENT NO. 042614582 CURRENT INFORMATION REPORT
.....
"EL GUERO" SHOT THE CITIZEN THAT WAS DRIVING A RED CAP.
.....
PAGE 2.086

SEE ELVIRA'S STATEMENT ATTACHED TO THIS REPORT:.....

THE UNMARKED POLICE UNIT THAT OFFICER HARRIS WAS DRIVING AT THE TIME OF THE SHOOTING WAS BROUGHT TO THE SCENE BY OFFICER WILLIAMSON AND WAS PLACED IN THE GENERAL AREA AS DESCRIBED BY THE WITNESSES PRESENT AT THE RE-ENACTMENT. THE VEHICLE DRIVEN BY THE SUSPECTS WERE ALSO USED AT THE RE-ENACTMENT. THIS VEHICLE WAS BROUGHT TO THE SCENE BY A HPD WRECKER. EACH WITNESS WAS ASKED TO GIVE HIS OR HER ASSESSMENT OF WHAT THEY SAW. EACH WITNESS GAVE HIS OR HER EYEWITNESS ACCOUNT VERBALLY AND THE INFORMATION WAS NOT RECORDED AUDIO-VISUALLY.

WHILE AT THE RE-ENACTMENT, A FEMALE CITIZEN CAME UP AND TOLD DETECTIVE THAT SHE DID NOT SEE THE SHOOTING OF THE OFFICER, BUT HAD EARLIER SEEN THE SUSPECT DRIVING THE VEHICLE. THE CITIZEN IDENTIFIED HERSELF AS RACHEL FIGUEROA, A/F16, ADDRESS 5001 MCKINNEY, PHONE 928-2379. RACHEL STATES THAT SHE SAW THE PHOTO OF THE SUSPECT ON TV AND RECOGNIZED THE SUSPECT AS THE DRIVER OF THE RED AND BLACK VEHICLE. RACHEL STATED THAT SHE WAS WALKING WITH MRS. ALVAREZ AT THE TIME SHE SAW THE SUSPECT DRIVING THE VEHICLE THE SAME NIGHT OF THE SHOOTING. RACHEL WAS SHOWN A PHOTO OF THE ARRESTED SUSPECT ALONG WITH SEVERAL OTHER FEMALES IN A PHOTO ALBUM AND SHE IDENTIFIED THE ARRESTED SUSPECT AS THE PERSON SHE SAW DRIVING THE RED AND BLACK VEHICLE.

WITNESS BROWN WAS NOT PRESENT AT THE TIME OF THE RE-ENACTMENT. DETECTIVE LEARNED LATER FROM THE BROWN WITNESS THAT THE BROWN WITNESS GEORGE LEE BROWN HAD LEFT HOUSTON FOR GEORGE BROWN DURING AN INTERVIEW AT THE SCENE OF THE SHOOTING ON 7-13-82, HAD TOLD DETECTIVE NEELY THAT THE SUSPECTS HAD HIT OFFICER HARRIS POLICE UNIT WITH THE VEHICLE THEY WERE DRIVING. GEORGE LEE BROWN IN HIS WRITTEN STATEMENT GAVE NO DETAILS OF THE ACCIDENT.

NOTE:.....D. SMITH OF THE CRIME LAB CONDUCTED A COMPARISON TEST WITH THE PAINTS LIFTED FROM THE LEFT REAR BUMPER OF THE SUSPECTS VEHICLE TO THAT OF OFFICER HARRIS'S POLICE UNIT AND THE PAINTS MATCHED UP.

AFTER DETECTIVE HAD TRANSPORTED ELVIRA MEDINA FLORES TO HOMICIDE FOR ANOTHER STATEMENT, ELVIRA TOLD DETECTIVE THAT A RUMOR WAS CIRCULATING THAT THE SUSPECTS IN THE BLACK VEHICLE HAD EARLIER THAT NIGHT SHOT AND KILLED AN OLD LADY THAT LIVES IN THE CEMETARY OFF TEXAS AND LATHAM. AFTER LEAVING THE HOMICIDE OFFICE WITH ELVIRA AND HER BOYFRIEND ENROUTE HOME, ELVIRA POINTED OUT TO DETECTIVE THE CEMETARY. DETECTIVE AFTER DROPPING OFF ELVIRA AND HER BOYFRIEND DROVE BACK TO THE CEMETARY AND CALLED FOR A PATROL UNIT TO ASSIST IN CHECKING OUT THE LOCATION. OFFICERS SYBERT AND MILLER ON UNIT 11025 RESPONDED TO THE CEMETARY. DETECTIVE ALONG WITH OFFICERS SYBERT AND MILLER WENT TO A HOUSE THAT IS LOCATION WITHIN THE BRICK WALLS OF THE CEMETARY. THE CEMETARY IS LOCATED IN THE 5000 BLOCK OF TEXAS AT LATHAM. DETECTIVE KNOCKED ON THE DOOR TO THE SINGLE STORY WHITE WOODEN FRAME HOUSE AND AN ELDERLY WHITE FEMALE ANSWERED THE DOOR. THE LADY IDENTIFIED HERSELF AS MRS. HOOPER. MRS. HOOPER STATED THAT SHE HAD HEARD THE RUMOR ALSO ABOUT THE SUSPECTS SHOOTING HER. MRS. HOOPER RELATED TO DETECTIVE THAT SHE WAS AT ST. JOSEPH'S HOSPITAL ON THE NIGHT OF THE SHOOTING. MRS. HOOPER LIVES ALONE AT THE HOUSE.

INVESTIGATION TO CONTINUE:.....

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F 00376A

INCIDENT NO. 042667682 CURRENT INFORMATION REPORT PAGE 1.005

DETAILS OF OFFENSE

THIS COMPL INVOLVED IN MURDER OF OFFICER AT 4900 WALKER ST AND THEN FLED SCENE WITH THE #1 SUSPECT AND WHILE DOING SO SHOT AND SERIOUSLY WOUNDED A CITIZEN. FOLLOWING A SEARCH FOR THIS COMPL AND THE OTHER SUSPECT, THIS COMPL SHOT AND SEVERLY WOUNDED ONE OFFICER AND THEN FIRED AT OTHER OFFICERS. THOSE OFFICERS THEN RETURNED THE FIRE OF THIS COMPLAINT AND KILLED HIM. SEE CASES 42614582--42669482--42667382.

OFFICER1: NAME-V W WEST
OFFICER2: NAME-1

EMPLOYEE NO-030529 SHIFT-
EMPLOYEE NO-000000 SHIFT-

DIVISION/STATION 8-HOMI

UNIT # - 2236

CALL RECEIVED: DATE-07/13/82 TIME-2330 REPORT MADE: DATE-07/14/82 TIME-1500

F 000385

App. 0094

END OF PAGE ONE

F 000386

App. 0095

NO-0006

OFFENSE- DEAD MAN (SHOOTING)

STREET LOCATION INFORMATION

NUMBER- 4911	NAME-RUSK	TYPE-	SUFFIX-
DATE OF OFFENSE-07/13/82		DATE OF SUPPLEMENT-07/20/82	
COMPLIS LAST-WEDO	FIRST-	MIDDLE-	
LAST-	FIRST-	MIDDLE-	

RECOVERED STOLEN VEHICLES INFORMATION

NONE	
OFFICER1-GL DOLLINS	EMP#-045936 SHIFT-2 DIV/STATION-HOMICIDE
OFFICER2-JK NEWMAN	EMP#-000000 SHIFT-2

SUPPLEMENT NARRATIVE

SUPPLEMENT DATED 7/14/82

DETS GL DOLLINS AND JK NEWMAN WHILE IN THE HOMICIDE OFFICE, WERE APPROACHED BY OFFICER MJ MCMAHON PR #59096 ON UNIT 17450. MCMAHON ADVISED THAT HE HAD POSSESSION OF THE PERSONAL EFFECTS AND CLOTHING BELONGING TO OFFICER TREPAGNIER. HE ADVISED THAT HE HAD RECEIVED THESE ITEMS FROM CREW MEMBERS OF THE LIFE FLIGHT HELICOPTER. HE DID NOT GET THEIR NAMES. DETS RECIEVED THE FOLLOWING ITEMS FROM OFFICER MCMAHON AT 12:10AM.

- 1) H.P.D. UNIFORM SHIRT--BADGE WAS REMOVED BY MCMAHON
- 2) WHITE T-SHIRT
- 3) H.P.D. UNIFORM PANTS
- 4) TWO WHITE SOCKS
- 5) UNIFORM BELT
- 6) ONE PAIR BLACK BOOTS
- 7) EMPTY HOLSTER AND SAM BROWN BELT
- 8) BLOODY GAUZE

THESE ITEMS WERE PLACED IN LARGE PAPER BAGS. THE CLOTHING AND UNIFORM BELT WERE PLACED IN ONE BAG AND BOOTS AND SAM BOWN RIG IN ANOTHER. BOTH BAGS THEN LOCKED IN THE EVIDENCE CLOSET IN HOMICIDE DIVISION TO BE TURNED OVER TO CRIME LAB PERSONNEL.

IN ADDITION TO THE ABOVE ITEMS, DETS RECEIVED FROM MCMAHON THE FOLLOWING PERSONAL EFFECTS WHICH HAD BEEN REMOVED FROM THE OFFICERS CLOTHING:

- 1) I.D. FOLDER--WALLET COMBINATION CONTIANING HIS H.P.D. I.D. MINIATURE BADGE, TEXAS DL, PERSONAL PHOTOTS, CREDIT CARDS AND \$107.00 IN CASH.
- THESE ITEMS HAD BEEN REMOVED FORM THE RIGHT REAR PANTS POCKET
- 2) COMB--REMOVED FROM RIGHT REAR PANTS POCKET
- 3) \$1.55 IN LOOSE CHANGE REMOVED FROM THE RIGHT FRONT PANTS POCKET
- 4) H.P.D. BADGE #3370 WHICH HAD BEEN REMOVED FROM THE UNIFORM SHIRT

THESE ITEMS WERE PLACED IN A LARGE EVIDENCE ENVELOPE AND ALSO LOCKED IN THE EVIDENCE CLOSE. AT 1137AM THE OFFICER SUPERVISOR CAME TO HOMICIDE DIVISON WHERE HE TURNED OVER TO DET DOLLINS THE OFFICERS STREAMLIGHT 20 FLASHLIGHT BEARING HIS NAME AND BADGE #. THIS FLASHLIGHT WAS ALSO PLACED IN THE LOCKED EVIDENCE CLOSET

INCIDENT NO. 042667682 CURRENT INFORMATION REPORT PAGE 2.028

THE DETS THEN TURNED THE ENVELOPE CONTAINING THE OFFICERS PERSONAL EFFECTS TO HIS SUPERVISOR, SGT. DA STRAUGHAN PR #40930, WHO IS ASSIGNED TO CENTRAL PATROL NIGHTS. SGT. STRAUGHAN ADVISED THAT THE DID NOT KNOW THE NAME OF THE OFFICER FROM WHOM HE RECEIVED THE FLASHLIGHT BUT THAT HE DID GET IT FROM AN OFFICER AT THE SCENE. HE FURTHER ADVISED THAT THE OFFICER TOLD HIM THAT ANOTHER SERGEANT, SGT. STEWART ION LOAN TO I.A.D.1 HAD TOLD HIM TO GIVE THE FLASHLIGHT TO SGT. STRAUGHAN.

AT 3:30AM DET DOLLINS TURNED THE TWO PAPER BAGS CONTAINING THE CLOTHING AND SAM BROWN AND HOLSTER TO D SMITH OF THE H.P.D. CRIME LAB. A SUBMISSION FORM WAS MADE BY DET AND A COPY IS ATTACHED TO THE REPORT. MS. SMITH ADVISED THAT SHE MADE THE SCENE OF THIS OFFENSE AND KNEW WHAT TEST WERE NEEDED ON THE EVIDENCE AND THUS SHE WOULD COMPLETE THE "ANALYSIS REQUIRED" SECTION OF THE SUBMISSION FORM.

SUPPLEMENT ENTERED BY = 45936
REPORT REVIEWED BY-V W WEST EMPLOYEE NUMBER-030529
COPIES ALSO SENT TO- RP1/ / / ACTION DUE DATE- / /
DATE CLEARED- 07/13/82

NO-0007

OFFENSE- DEAD MAN SHOOTING

STREET LOCATION INFORMATION

NUMBER- 4911 NAME-RUSK TYPE- SUFFIX-
DATE OF OFFENSE-07/13/82 DATE OF SUPPLEMENT-07/20/82
COMPLIS1 LAST-FLORES FIRST-ROBERTO MIDDLE-CARRASCO
LAST- FIRST- MIDDLE-

RECOVERED STOLEN VEHICLES INFORMATION

NONE
OFFICER1-JG BURFMESTER EMP#-041924 SHIFT-2 DIV/STATION-HOMICIDIE

SUPPLEMENT NARRATIVE

SUPPLEMENT DATED 7/14/82

I DET BURFMESTER, WAS SENT TO THE MORGUE TO CHECK ON THE COMPL, JOSE FRANCISCO ARMIJO, WHO IS THE COMPL IN COMPANION CASE #42669482. THIS COMPL HAD BEEN REPORTED TO HAVE DIED AT BEN TAUB HOSPITAL. UPON ARRIVAL AT THE MORGUE IT WAS FOUND THAT THIS COMPL WAS STILL ALIVE.

I HAD ALSO BEEN INSTRUCTED TO RECOVER CERTAIN ARTICLES THAT HAD BEEN TRANSPORTED TO THE MORGUE WITH THE BODY OF OFFICER HARRIS ISAM BROWN HOLSTER AND BELT, IDENTIFICATION AND SHIELD. I FOUND THAT THESE ITEMS HAD BEEN RELEASED TO OFFICER J F HUDSON & SGT MCSWAIN OF THE FAMILY ASSISTANCE DETAIL.

I HAD FURTHER BEEN INSTRUCTED TO PHOTOGRAPH THE WOUNDS OF COMPL IN THIS CASE, JAMES JOSEPH KOSMERL. WHILE AT THE MORGUE, I RECEIVED A TELEPHONE CALL FROM DET CW KENT, INFORMING ME THAT THE TDL THAT HAD BEEN USED TO IDENTIFY THE COMPL, KOSMERLY, HAD BEEN ALTERED WITH A PHOTOGRAPH OF THE COMPL TAPED OVER THE ACTUAL KOSMERL, AND THAT THE COMPL WOULD NOW BE UNKNOWN. DET KENT THEREFORE REQUESTED THAT I OBTAIN A SET OF DEAD MEN PRINTS OF THE UNKN HISPANIC MALE THAT IS THE COMPL IN THIS CASE. AFTER TAKING 12 PHOTOGRAPHS OF THE COMPL AND THE COMPLS WOUNDS WITH A PENTAX 35MM CAMERA, I TOOK 2 SETS OF DEAD MAN PRINTS FROM THE COMPL.

28

F 000409

App. 0097

JOSEPH A. JACHIMCZYK, M.D., J.D.
FORENSIC PATHOLOGIST
ATTORNEY AT LAW
CHIEF MEDICAL EXAMINER



(713) 791-7214
(713) 791-7568

OFFICE OF THE MEDICAL EXAMINER
OF HARRIS COUNTY
1700 HOLCOMBE
SUITE 100
HOUSTON, TEXAS 77030

AUTOPSY REPORT

Case 82 - 4300

July 14, 1982

PATHOLOGICAL DIAGNOSIS ON THE BODY

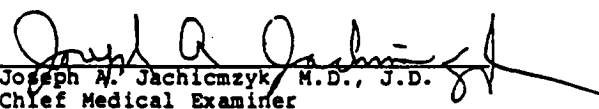
OF

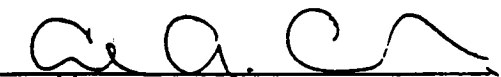
James Donald Harris
1931 Winding Creek
Pearland, Texas

Gunshot wounds (3) of head, face
and chin, through and through.

OPINION

It is our opinion that the decedent,
James Donald Harris, came to his death
as a result of gunshot wounds (3) of
head, face and chin, through and
through, Homicide, while at work.


Joseph A. Jachimczyk, M.D., J.D.
Chief Medical Examiner


Aurelio A. Espinola, M.D.,
Deputy Chief Medical Examiner

F 000422

App. 0098

POSTMORTEM EXAMINATION ON THE BODY OF

James Donald Harris
1931 Winding Creek
Pearland, Texas

HISTORY: This 29 year old white male was shot while on duty as a Houston Police Officer in the 4900 block of Walker Street, Houston, Texas and was dead at the scene at 10:50 p.m., on July 13, 1982. See Companion Cases 82 - 4304 and 82 - 4434.

AUTOPSY: The autopsy was performed by Deputy Chief Medical Examiner Aurelio A. Espinola, M.D., at the request and in the presence of Chief Medical Examiner Joseph A. Jachimczyk, M.D., beginning at 1:30 p.m., on July 14, 1982, in the Harris County Morgue.

EXTERNAL APPEARANCE: The body was that of a well developed, well nourished Caucasian man, measuring 71 inches in length and weighing 198 pounds and appearing to be the stated age of 29 years. The body rigidity was fully developed. There was unfixed posterior lividity. The scalp was covered with a moderate amount of dark brown hair, measuring 3 inches in length. There was a gunshot wound of entrance over the left side of the head. The eyes were hazel with round and equal pupils. There was a marked hematoma involving both upper and lower eyelids. The ears were unremarkable. The nose showed a scratch mark over the left side. There was a gunshot wound of entrance over the left side of the face and another gunshot wound of entrance over the left side of the chin. There were a few scattered stippling over the left side of the face. A moustache was present and there was a stubble of beard. The mouth contained natural teeth. The neck was symmetrical with no palpable masses or scars. There were three gunshot wounds of exit, two over the right side of the neck and one was located at the back of the right ear. The chest was symmetrical with normal adult male breasts. There were resuscitation marks present over the upper and left lower chest. The abdomen was symmetrical with no palpable masses or scars. The external genitalia were those of an uncircumcised male with both testes palpable within the scrotal sac. The lower extremities were unremarkable. The upper extremities showed fresh needle puncture marks on both antecubital fossae. There were no needle tracks present. There was a hospital band around the left wrist. The back showed no deformity or sign of injury. The cerebrospinal fluid was bloody.

INTERNAL EXAMINATION: Section: The usual Y-shaped thoracoabdominal incision was made and the chest plate was removed. The subcutaneous fat measured 2 inches in thickness at the level of the umbilicus. There were no abnormal collections of

F 000433

App. 0099

fluids or adhesions in any of the body cavities. The domes of the diaphragm were normally situated and the visceral organs were in their normal anatomical position and relationship.

HEART: The pericardial sac contained a small amount of blood stained fluid. The heart weighed 350 grams. The surface was smooth and glistening with a moderate amount of epicardial fat. On sectioning, the chambers were of normal size and contained a very small amount of fluid blood. The endocardium was smooth and glistening. The myocardium was red-brown throughout with no scarring. The valves and papillary muscles were unremarkable. The coronary arteries were patent throughout with no arteriosclerotic changes. The coronary ostia were widely patent. The pulmonary artery and great veins were unremarkable. The aorta and its major branches showed no remarkable findings.

LUNGS: The right lung weighed 520 grams and the left lung weighed 470 grams. The pleural surfaces of both lungs were smooth and glistening. There were scattered areas of subpleural ecchymoses. On serial sectioning, the parenchyma was congested and hemorrhagic. It exuded a moderate amount of frothy fluid. There were no areas of consolidation. The tracheobronchial tree contained a moderate amount of thick brown mucus. The lining mucosa was unremarkable. There were no foreign materials present. The pulmonary vessels showed no remarkable findings.

LIVER: The liver weighed 1820 grams. The surface was smooth and glistening with a sharp inferior margin. On serial sectioning, the parenchyma was yellow-brown. There was no injury or any type of lesion. The gallbladder was intact and contained 5 cc. of bile. The cystic duct and common bile ducts were patent and unremarkable.

Pancreas: The pancreas weighed 240 grams with normal configuration. On serial sectioning, the parenchyma was light yellow-brown, soft and lobulated.

Adrenals: Both adrenals were of normal size and configuration and on serial sectioning, showed no remarkable findings.

SPLEEN: The spleen weighed 160 grams. The surface was smooth, slate gray and glistening. On serial sectioning, the parenchyma was congested and friable.

GENITOURINARY TRACT: The kidneys together weighed 300 grams. The capsules stripped with ease, leaving a smooth and glistening surface. On sectioning, the parenchyma was red-brown. There was a good demarcation between the cortex and medulla. The calyces and pelves were unremarkable. The ureters were of normal caliber

and patent. The urinary bladder contained 40 cc. of clear urine. The mucosa was pink-tan and glistening. The prostate gland and both testes were of normal size and configuration and sections were unremarkable.

GASTROINTESTINAL TRACT: The esophagus had a smooth and glistening blue-gray mucosa. The stomach contained 80 cc. of dark green-black mucoid material with fragments of partially digested food material, consistent with ground meat. There was a retention of the normal rugal pattern. There were no erosions or ulcerations. The pyloric valve, duodenum, jejunum and ileum were unremarkable. The appendix was present and the large intestine showed no remarkable findings.

BONES: The skull showed a bullet hole involving the left parietal bone. There were also two bullet perforations involving the facial bones.

NECK: There was extensive hemorrhage involving the strap muscle on the lateral aspect of the neck. The hyoid bone was intact. The larynx and vocal cords were unremarkable except for a laceration of the right side of the epiglottis with areas of submucosal hemorrhage. There was a laceration at the base of the tongue. The tongue was otherwise unremarkable. On serial sectioning, there was extensive tissue destruction involving the base of the tongue. The thyroid gland was of normal size and configuration and sections were unremarkable.

HEAD: The scalp was incised and reflected. There were focal areas of subgaleal hemorrhage covering the left parietal and temporal areas. The skull showed a bullet hole involving the left parietal bone, measuring 1/4 inch in diameter, with internal beveling and radiating linear fractures. There were also linear fractures involving both anterior cranial fossae. There was a bullet hole of exit involving the base of the skull at the right posterior cranial fossa. This measured 1/2 inch in diameter with external beveling and radiating fractures. There was a corresponding dural defect. There was no extradural hemorrhage. There was a small amount of diffuse subdural hemorrhage amounting to approximately 20 cc. The brain was symmetrical with flattening of the gyri and weighed 1530 grams. The cerebral vessels at the base of the brain were unremarkable. There was a bullet track involving the left temporal lobe toward the brain stem. There were areas of contusion involving the posterior aspect of the right temporal lobe, measuring 3 inches by 1-3/4 inches in diameter. There was a similar area of contusion over the inferior aspect of the temporal and occipital lobes, measuring 2-1/2 inches in widest dimension. On serial coronal sectioning, no other types of injuries were present. There was extensive tissue destruction and hemorrhage along the wound track.

F 000436

DESCRIPTION OF INJURIES: (Multiple gunshot wounds) On the left parietal area 2-3/4 inches above the left tragus and 4-3/4 inches to the left of midline, there was a gunshot wound of entrance. The wound measured 1/4 inch in diameter with a marginal abrasion. The autopsy showed that the bullet entered the cranial cavity, perforated the brain, and exited through the right posterior cranial fossa and through the back of the ear. This exit wound was located 3 inches to the right of midline, and 6 inches below the top of the head. This exit wound appeared to be a laceration, measuring 1/4 inch in diameter. The wound track was from left to right, downward and toward back.

On the left side of the face 1-3/4 inches below and anterior to the tragus, 7 inches below the top of the head, there was a gunshot wound of entrance. The wound measured 1/4 inch in diameter with a marginal abrasion. The autopsy showed that the bullet perforated the facial bone, lacerated the epiglottis, the base of the tongue, lacerated the external jugular vein and common carotid artery and exited the left side of the neck, located below and the ear. This was located 6-1/2 inches to the right of midline and 9 inches below the top of the head. This wound appeared to be a laceration, measuring 5/8 inch in length. The wound track was from left to right and downward.

On the left side of the chin 1-1/2 inches to the left of midline and 9-1/2 inches below the top of the head, there was a gunshot wound of entrance. The wound measured 1/4 inch in diameter with a marginal abrasion. The autopsy showed that the bullet perforated the base of the tongue and exited over the right side of the neck, located 5-3/4 inches to the right of midline and 8-3/8 inches below the top of the head. This exit wound appeared to be a laceration, measuring 5/8 inch in length. The wound track was from front to back, downward and toward right.

There were a few powder stippling over the left side of the face, scattered over a diameter of 5 by 4 inches.

F 000436

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HOUSTON, TEXAS 77030

AUTOPSY REPORT

Case 82 - 4434

July 20, 1982

PATHOLOGICAL DIAGNOSIS ON THE BODY

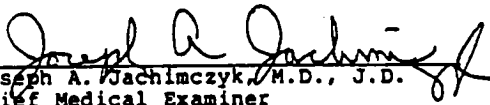
OF

Jose San Francisco Armijo
4924 Rusk Street
Houston, Texas

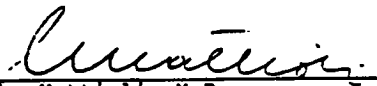
Gunshot wound of the head.

OPINION

It is our opinion that the decedent,
Jose San Francisco Armijo, came to
his death as a result of a gunshot
wound of the head, Homicide, delayed
death.


Joseph A. Jachimczyk, M.D., J.D.
Chief Medical Examiner


Aurelio A. Espinola, M.D.
Deputy Chief Medical Examiner


Martha Mattioli, M.D.
Assistant Medical Examiner

F 000439

App. 0103

POSTMORTEM EXAMINATION ON THE BODY OF

Jose San Francisco Armijo
4924 Rusk Street
Houston, Texas

HISTORY: This 33 year old white male was brought to Ben Taub General Hospital at 10:46 p.m., on July 13, 1982, with a diagnosis of gunshot wound to the head. He was pronounced dead at 9:08 a.m., on July 20, 1982. The bullet was recovered during surgery. See Companion Cases 82-4300 and 82-4304.

AUTOPSY: The autopsy was performed by Deputy Chief Medical Examiner Aurelio A. Espinola, M.D. and Assistant Medical Examiner Martha Mattioli, M.D., at the request and in the presence of Chief Medical Examiner Joseph A. Jachimczyk, M.D., beginning at 2:30 p.m., on July 20, 1982, in the Harris County Morgue.

EXTERNAL APPEARANCE: The body was that of a well nourished, well developed, thin white man, measuring 67-1/2 inches in length and weighing 130 pounds. There was fixed rigor mortis and fixed posterior dependent lividity. The head was asymmetrical. The right parietotemporal area was soft and bulging and showed an 8 inch anteroposterior incision with black stitches, which extended up to the back of the head. Also on the parietotemporal area at a point 4 inches superior to the tip of the right ear and 2 inches to the right of the midline there was a gunshot wound of entrance. The characteristics of the wound could not be determined due to surgical procedures. The hair had been shaved. There was a small skin nodule on the left cheek. The eyes were brown. The pupils were round and equal. The conjunctivae were clear. There was an area of ecchymoses on the right upper eyelid. The nose was intact. There was a decubitous ulceration on the left nostril. The mouth contained natural teeth in good condition. The ears were symmetrical and unremarkable. There was a black goatee and moustache. The neck was symmetrical. There were no palpable masses or scars. The chest was symmetrical. The breasts were adult male-type. There was no hair in the anterior portion of the chest. The abdomen was flat. There was an ecchymoses on the right inguinal area. There were no scars or marks present. The pubic hair was black and male in distribution. The external genitalia were those of a circumcised male. Both testes were palpable within the scrotal sac. The lower extremities were symmetrical and equal. On the lateral aspect of the right thigh there was a sutured incision, measuring 5 inches. The lower extremities were otherwise unremarkable. The toenails were short. The nail beds were markedly cyanotic. There was a name tag attached to each great toe. The upper extremities were symmetrical and equal. There were no needle tracks present. The

F 000440

hands were slightly swollen. There was a hospital nameband attached to the left wrist. The back showed, at the back of the neck, a large area of ecchymoses with swelling, extending from the occipital to the superior aspect of the neck. It was otherwise unremarkable. The spinal fluid could not be obtained.

INTERNAL EXAMINATION: Section: The usual Y-shaped incision was made. The subcutaneous tissue was bright yellow, measuring 1 inch in thickness at the level of the umbilicus. The pectoral muscles were beefy red. The rib cage was intact. The thoracic viscera were in their usual anatomic relationships. The free edges of both lungs were blunted. The pleural surfaces were smooth and glistening. There were no pulmonary adhesions. There was no free fluid within either chest cavity. The pericardial sac contained several milliliters of a clear, light amber fluid. The heart's blood was both fluid and clotted. Both leaves of the diaphragm were intact. The abdominal viscera were in their usual anatomic relationships. The serosal surfaces were smooth and glistening. There were no adhesions. There was no free fluid within the peritoneal cavity. The peritoneum was smooth, light gray and glistening. The appendix was present.

HEART: The heart weighed 330 grams. There were no thrombi in any of the four chambers. The foramen ovale was not patent. The cavities were normal. The valves were intact. The epicardium, myocardium and endocardium were uniformly tan-red-brown and beefy. The papillary, pectinate and trabeculae carneae muscles were intact. The coronary ostia were patent. The coronary artery walls were smooth, thin, glistening and pliable, and their lumina were widely patent throughout. The aorta was elastic and showed mild fibrolipid deposition in the ascending portion. The great veins were collapsed.

LUNGS: The lungs were similar in size, shape and appearance, together weighing 2220 grams. The pleural surfaces were smooth and glistening. The crepitation of both lungs was diminished. The cut surfaces were edematous and congested. The bronchi were lined with an intact, gray-yellow mucosa. The lumina contained a moderate amount of gray, frothy fluid. There was no foreign material present. There were no pulmonary thrombi or emboli.

LIVER: The liver weighed 1620 grams. The capsule was smooth and glistening. On section, the cut surfaces revealed a homogeneous, red-brown, lobulated appearance. The gallbladder and biliary tree were not remarkable. The gallbladder contained 30 milliliters of a green bile. There were no calculi.

Pancreas: The pancreas was of normal size and on sectioning, it was unremarkable.

F 000441

App. 0105

Adrenals: The adrenals were similar in size and appearance and on sectioning, there was a good demarcation between the cortex and medulla.

SPLEEN: The spleen weighed 190 grams. The capsule was smooth and glistening. On section, the cut surfaces revealed a soft, dark red, parenchyma. The Malpighian corpuscles were prominent.

GENITOURINARY TRACT: The kidneys were similar in size, shape and appearance, together weighing 320 grams. The capsules stripped with ease revealing a smooth brown surface. On section, the gross renal architecture was not remarkable. The ureters and urinary bladder were intact. The urinary bladder. The testes were similar in size, shape and appearance. The tunica was intact. On section, the tubules strung with ease. The epididymides were not remarkable.

GASTROINTESTINAL TRACT: The esophagus was lined with an intact, blue-gray mucosa. The stomach contained 10 milliliters of brown-green fluid. There were a few petechial hemorrhages in the mucosa. The remainder of the gastrointestinal tract was not remarkable. The appendix was present.

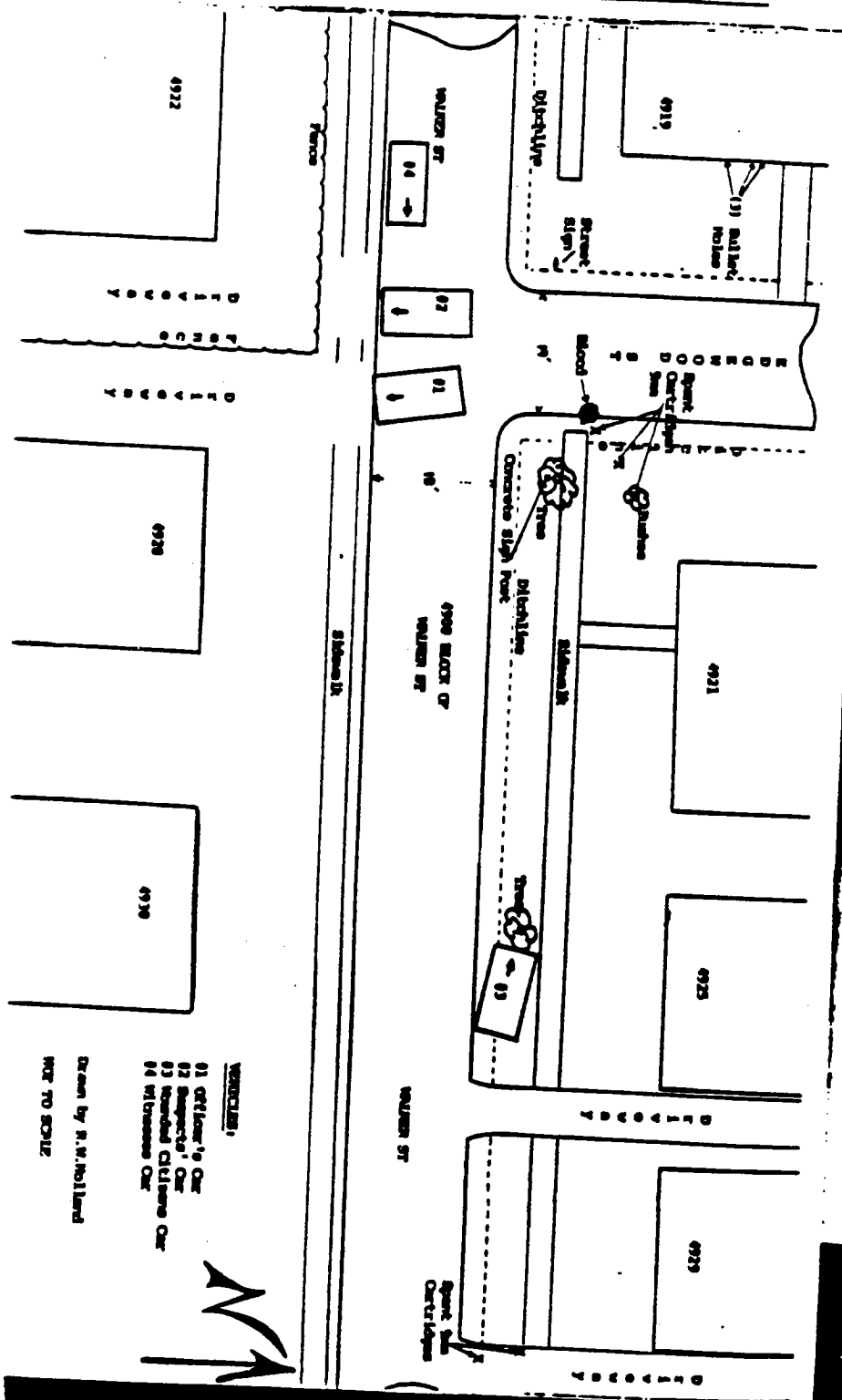
HEAD: The scalp was reflected in the usual coronal fashion. There was a massive subgaleal hemorrhage and there were stitches corresponding to the sutured incision. On the right parietal area there was an entrance hole, which showed inward beveling. The hole measured 3/8 inch. From this there were lines of fracture extending posteriorly and superiorly. There was a small gap of the parietal bone due to surgical procedures. The brain weighed 1360 grams. There was a massive subarachnoidal hemorrhage. There was marked destruction of the right cerebral hemisphere which showed necrosis. The wound track could not be completely traced due to necrosis of the tissue. There was also necrosis of the right cerebellum. The brain stem was intact. The neck was palpably intact.

DESCRIPTION OF INJURY: The bullet entered the head on the right parietotemporal area, fractured the skull, and lacerated the right cerebral hemisphere and cerebellum. The direction of the wound track was front to back and right to left. No bullet was recovered.

F 000442

App. 0106

OFFICER J.D. HARRIS
July 13, 1962
SCHEIDT DIAGRAM



F 000446

42667682

HOMICIDE INVESTIGATION

DATE: 7-27-82

CHECK LIST

DET.: V. W. WEST

COMPANION INC#s

42667382---ATTD CAPITAL MURDER P.O.
OFFICER L. R. TREPAGNIERSCENE INVESTIGATION

SAME AS PAGE ONE

☐ A. Aerial Photographs.....
☐ B. Canvass For Witnesses.....
☐ C. Diagram..... Scale..... Not to Scale.....
☐ D. Photographs of Scene.....
☐ E. Recanvass for Additional Witnesses.....
☐ F. Video.....

STATEMENTS

SAME AS PAGE ONE

☐ A. Officers.... Written No. Oral#
☐ B. Citizens.... Written No. Oral#
☐ C. Defendants.... Written No. Oral#

COMPLAINANT(1 OF 3 NAME H.P.D. OFFICER
L. R. TREPAGNIER)
COMPL INC# 42667382

☐ N/A A. Autopsy..... Viewed..... Not Viewed.....
☐ NO B. Blood Sample.....
☐ YES C. Clothes..... DOLLINS - NEWMAN
☐ NA D. County Clerk on Pending Cases.....
☐ NA E. D.P.S.....
☐ NA F. File Check in other Divisions.....
a. Computer Name Check.....
b. Index Name Cards.....
☐ NA G. Fingernail Scrapings.....
☐ NA H. Hair Samples.....
☐ NA I. Identification Division Check..... HFD..... HCSO.....
☐ NA J. N.C.I.C./T.C.I.C.
☐ YES K. Personal Property Retained..... DOLLINS-NEWMAN
☐ NO L. Photos.....
☐ NA M. Prints.....
☐ NO N. NONE REMOVED DURING SURGERY (MOST THRU & THRU WOUNDS)
Slugs.....

1 000151

App. 0108

(Page #2. Homicide Investigation Check List)

42667682 (DEAD MAN) ROBERTO FLORES, CONTD

YES O. T.M.D.T. D. SMITH CRIME
NO P. Toxicology Results.....
YES Q. Wound Chart..... KENT-WALTON

4. SUSPECT/DEFENDANT

A. Autopsy..... Viewed..... Not Viewed.....
B. Blood Sample.....
C. Clothes.....
D. County Clerk on Pending Cases.....
E. D.P.S.
F. File Check in other Divisions.....
 a. Computer Name Check.....
 b. Index Name Cards.....
G. Fingernail Scrapings.....
H. Hair Samples.....
I. Identification Division Check.....
J. N.C.I.C./T.C.I.C.
K. Personal Property Retained.....
L. Photos.....
M. Prints.....
N. Slugs.....
O. T.M.D.T.
P. Toxicology Results.....
Q. Wound Chart.....

5. WEAPON(S) CHECK

YES S & W. XX (FLORES) Complainant..... Defendant..... WEBBER/WEST
YES A.T.F. XX (FLORES) Complainant..... Defendant..... WEBBER
 a. Results Received..... WEBBER
 b. Follow-up Results on Check..... WEBBER

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1 000 455

App. 0109

(Page 62. Homicide Investigation Check List)

INC# 42667682

FOR INC# 42667382 OFFICER TREPAGNIER

<u>NO</u>	O. T.M.D.T.	
<u>NA</u>	P. Toxicology Results.....	
<u>YES</u>	Q. Wound Chart.....	BOSTOCK

4. SUSPECT/DEFENDANT

_____	A. Autopsy.....	Viewed.....	Not Viewed...
_____	B. Blood Sample.....		
_____	C. Clothes.....		
_____	D. County Clerk on Pending Cases.....		
_____	E. D.P.S.		
_____	F. File Check in other Divisions.....		
	a. Computer Name Check.....		
	b. Index Name Cards.....		
_____	G. Fingernail Scrapings.....		
_____	H. Hair Samples.....		
_____	I. Identification Division Check.....		
_____	J. N.C.I.C./T.C.I.C.		
_____	K. Personal Property Retained.....		
_____	L. Photos.....		
_____	M. Prints.....		
_____	N. Slugs.....		
_____	O. T.M.D.T.		
_____	P. Toxicology Results.....		
_____	Q. Wound Chart.....		

5. WEAPON(S) CHECK OFFICER TREPAGNIER'S WEAPON

<u>NO</u>	S & W.....	Complainant.....	Defendant.....
<u>NO</u>	A.T.F.	Complainant.....	Defendant.....
	a. Results Received.....		
	b. Follow-up Results on Check.....		

iv

F 000456

App. 0110

IC.0 42667682

COMPANION CASE INC#
42667382--ATTD CAPITAL MURDER P.O.

EVIDENCE

A. Laboratory Results

<u>YES</u>	1. Crime Lab.....	A. HEATER
	a. Distance Determination.....	A. HEATER
	b. Other Tests.....	
<u>YES</u>	2. Latent Print Lab.....	L. COOPER
	a. Suspect weapon.....	L. COOPER
	b. Vehicle.....	
	c. Other items.....	L. COOPER
<u>YES</u>	3. Firearms Lab.....	C. ANDERSON
	a. Suspect weapon.....	C. ANDERSON
	b. Other weapon.....	C. ANDERSON

CASSETT TAPES MADE

A. Police Department Tapes

	1. Car to Dispatcher.....	
	2. Telephone clerk.....	
<u>YES</u>	3. Interviews/statements/confession.....	ST JOHN

COMPANION CASES SENT TO OTHER DIVISIONS FOR INVESTIGATION

(a.) Incident#	(b.) Division	(c.) Offense
1. 42614582	1. HOMICIDE	1. CAPITAL MURDER P.O.
2. 42669482	2. HOMICIDE	2. CAPITAL MURDER
3. 37977582	3. ROBBERY	3. AGG ROBBERY (HANDLED BY HOMICIDE)
4. 82-006775 (PRCT #4)	4. CONSTABLE OFFICE	4. AGG ROBBERY
4. 42667382	4. HOMICIDE	4. ATTD CAP MDR P.O.

COPIES OF REPORT MADE FOR

<u>YES</u>	A. D.A. Civil Rights Section.....	WEST
	B. D.A. where charges filed.....	
<u>YES</u>	C. I.A.D.	WEST
<u>YES</u>	D. CAPTAIN.....	WEST
<u>YES</u>	E. Homicide.....	WEST
<u>YES</u>	L. B. ALSUP--SOUTHEAST PATROL	WEST

SYNOPSIS

A. Prepared by V. W. WEST

ADDITIONAL COMPLAINANTS & DEFENDANTS

F 000457

App. 0111

Case No. 82 006775
J.P. No. _____

M-10

REAL EVIDENCE:

Two(2) spools of 2" white adhesive tape
 One(1) black "CLOSED" sign - red letters and white border - 7"x11"
 Three(3) sets of partial finger prints
 One(1) True Value brown paper bag
 One(1) envelope of strips of 2" white adhesive tape used to bound reportee's hands and two customer's hands

DETAILS OF OFFENSE:

Reportees Zastrow and Carrell, both employees of Rebel Guns, located at 18448 Kuykendahl, stated to this deputy, L.E. Shiflet 453, that at approximately 3:15: 7-8-82, three Mexican males walked into the store, the oldest was carrying a brown paper bag, and walked to the counter where Mr. Zastrow was sitting and talking on the phone. As the other two moved to the back of the store, the suspect with the paper bag, removed a blue steel Russian revolver .45 caliber with an extended magazine from the bag, pointed same at Mr. Zastrow and said, "This is a hold up". The other two suspects hustled the two customers to the back room and then Mr. Zastrow was taken to the back room where all four were bound with strips of 2" white tape. Only the hands were bound behind each victim's back. Suspects then placed a closed sign on the door and removed several automatic weapons and fled the scene. Direction unknown and mode of travel unknown.

A security guard for Sal walked into the store and did not see anyone. He looked around and opened the door to the back room and found the four men with their hands bound behind their backs. The guard helped the men get free and as they came out of the room, this deputy arrived on the scene.

The security guard was later identified as DENNIS ROSINGTON. He stated that he did not see the fleeing suspects. The two customers were identified as: ENRIQUETA, STEVEN GORDON, 11911 Jane Lane, Tomball, Texas, W/M, DOB 2-3-59, Phone: 151-6000, work phone: 443-7590. and DAWSON, ROBERT DANIEL, 9718 Largs, Spring, Texas, W, DOB 6-23-50, Phone: 376-1663, work phone 376-4180 x380.

All reportees and witnesses can identify all three suspects.

LOSS: One(1) Detonics .45 caliber stainless steel pistol(automatic), serial number CR16126, valued at \$550.00
 One (1) M1A1 Thompson sub-machine gun .45 caliber blue steel, serial number 539390, valued at \$1500.00
 One(1) MAC 10 Ingram .45 caliber automatic pistol, blue steel, no serial number available, valued at \$700.00
 One(1) MAC Suppressor(silencer) blue steel for .45 caliber, no serial number available, valued at \$250.00

34 REPORTING DEPUTY UNIT BADGE	35 STATUS (Check one)	36 DATE & TIME
L.E. Shiflet 453	UNFOUNDED OPEN XXXX	REPORT MADE
37 SECOND DEPUTY UNIT BADGE	CLOSED SUSPENDED	38 SUPERVISOR APPROVING UNIT BADGE NO.

HARRIS COUNTY CONSTABLES DEPARTMENT
PRECINCT 44

page 3 of 3

CONTINUATION FORM

Case No. 82-0067

DETAILS OF OFFENSE CONTINUED:

LOSS CONTINUED:

- One (1) M-2 Carbine automatic .30 caliber inland brand, blue steel, no serial number, valued at \$500.00
- One(1) Browning Hi Power 9mm, serial number 245-PZ-56343, valued at \$600.00
- One(1) Lama .45 caliber automatic pistol, blue steel, serial number 706056, valued at \$325.00
- One(1) S & W model 459 9mm, blue steel, serial number A735951, valued at \$400.
- One(1) S & W model 539 9mm, blue steel, serial number A766489, valued at \$400.

DISPOSITION:

SUSPECTS WANTED:

- #1 - M/M, Ht. 5'5", Wt. 125-130 lbs, approximately 35-38 years old, slender build, unshaven, trimmed mustache, speaking broken english, wearing dark brown T-shirt and blue jeans and high top dark brown running shoes. Has dark brown hair with gray streaks, dark brown eyes and dark complexion.
- #2 - M/M, Ht. 5'10", Wt. 185 lbs, medium build, light skin, dark brown hair, dark brown eyes, medium length hair(styled), trimmed mustache, wearing light blue T-shirt with #80 on front, blue knit pants, blue tennis shoes, speaks no english, has tattoo of Mexican Caballero on right arm bicep approximately 3"x4" Approximately 19-21 years of age.
- #3 - M/M, Ht. 5'5", Wt. 120-130 lbs, approximately 15-17 years old, dark skin, dark blue T-shirt, powder blue slacks with pink tennis shoes, speaks broken english, dark brown hair, dark brown eyes.

NONE OF THE SUSPECTS WERE WEARING ANY TYPE OF JEWELRY.

CASE OPEN PENDING FURTHER INVESTIGATION

34. REPORTING DEPUTY UNIT BADGE L.E. SHIFIST 453	35. STATUS (Check one) UNFOUNDED OPEN XXXX CLOSED SUSPENDED	36. DATE & TIME OF REPORT 7-8-82
37. SECOND DEPUTY UNIT BADGE	38. SUPERVISOR APPROVING UNIT BADGE NO.	

M-12

App. 0114

F 000486

SECURITIES

NO- 01 DISPOSITION-STOLEN PROPERTY TAG NO-0000000
DENOMINATION- TYPE- CASH
ISSUER-US GOVERNMENT VALUE-\$ 80.00
SECURITY DATE- COMPLAINT NO- 02 SSN-000/00/0000

NO- 02 DISPOSITION-STOLEN PROPERTY TAG NO-0000000
DENOMINATION- TYPE- CREDIT CARDS
SECURITY DATE- COMPLAINT NO- 02 SSN-000/00/0000
OWNER-VARIOUS CREDIT CARDS

ARTICLES

NO- 01 DISPOSITION-STOLEN PROPERTY TAG NO-0000000 COMPLAINANT NO-01
ITEM TYPE-TEXAS DRIVERS LIC UCR CLASS-11

DETAILS OF OFFENSE

SUSPECT PULLED A PISTON ON COMPL. #2 AND STOLE HIS VEH.

OFFICER1: NAME-ME GILCHRIST ME
OFFICER2: NAME-RM STISO

EMPLOYEE NO-071818 SHIFT-2
EMPLOYEE NO-071922 SHIFT-2

DIVISION/STATION B-CENTRAL UNIT B-17A6J

CALL RECEIVED: DATE-06/24/82 TIME-1433 REPORT MADE: DATE-06/24/82 TIME-1515

END OF PAGE ONE

F 000504

App. 0116

INCIDENT NO. 037977582 CURRENT INFORMATION REPORT PAGE 2.00

SUSPECT(S)

NO-01 DISPOSITION-POSSIBLE /CHARGED HPD-NO-000000
NAME: LAST-FLORES FIRST-ROBERTO MIDDLE-CARRASCO
ALIAS(NICKNAME)-WEDO
ADDRESS-310 S.E. 4TH AVE, PERRYTON, TX
RACE-W SEX-M AGE-27-00 HISPANIC-H DATE OF BIRTH-11/27/54
HEIGHT-511 TO- WEIGHT-175 TO-
HAIR: COLOR-BLK TYPE-CURLY LENGTH-MED
COMPLEXION-MED FACIAL HAIR-
SPEECH/ACCENT-BROKEN ENGLISH EYE COLOR-
DRESS-STRIPED SHORT SLEEVE SHIRT, LIGHT BLU SHIRT
WEAPON USED-STAINLESS STEEL, AUTOMATIC LARGE
MISC-SUSPECT POSSIBLY MID-EASTERN
SUSP KILLED BY POLICE 7-13-82
INJURED: TAKEN TO-MORGUE BY-
CONDITION-DEAD

M.O. SUMMARY

REPORT ENTERED BY-BROOKS EMPLOYEE NUMBER-077477
STATUS: OPEN-X CLEARED- INACTIVE-X UNFOUNDED-
REPORT REVIEWED BY-V WEST EMPLOYEE NUMBER-030529
COPIES ALSO SENT TO-RP1/ / / ACTION DUE DATE- / /

NARRATIVE

**ORIGINAL REPORT NOT ENTERED-DESIGNATED PAGES ENTERED TO MAKE SUPPLEMENT.

I 000505

App. 0117

INCIDENT NO. 037977582 CURRENT INFORMATION REPORT *****
***** PAGE 2.00 *****

SUPPLEMENT(S)

NO-0004

OFFENSE- AGGRAVATED ROBBERY (DW)&THEFT(AUTO)(FELONY)
STREET LOCATION INFORMATION
NUMBER- 3400 NAME-BISSONNET TYPE- SUFFIX-
DATE OF OFFENSE-06/24/82 DATE OF SUPPLEMENT-06/25/82
COMPL(S) LAST-AWC INC FIRST- MIDDLE-
RECOVERED STOLEN VEHICLES INFORMATION
YR-82 MAKE-BUICK MODEL- COLOR: TOP-DBLU 2ND: SILVER
LICENSE: YR-82 ST-TX NO-ZVHS80 VIN: 1G4AB69X8CT421228
RECOVERY LOCATION-5420 HARRISBURG DISTRICT- BEAT-
RELEASED/TOWED TO-COMPL JIM KOSMERL TOWED BY-
OFFICER1-VERSHAVE JT EMP#-078392 SHIFT-1 DIV/STATION-METRO
OFFICER2-CONTRERAS RD EMP#-025538 SHIFT-1
CALLER'S NAME-VERSHAVE JT PHONES (000) 000-0000 EXT-0000

SUPPLEMENT NARRATIVE.

OFFICERS ON PATROL RIDING 1A22 WERE DISPATCHED AT 0715 TO
5420 HARRISBURG ON AN ABANDONED VEH. CALL. UPON ARRIVAL OFFICERS DISCOVERED
THE KEYS WERE IN THE VEH. AND THE OWNER OF THE BUSINESS WHERE THE VEH. WAS
PARKED TOLD OFFICERS THE VEH. HAD BEEN THERE SINCE APPROX. 1500 -06-24-82.
THROUGH INVESTIGATION OFFICERS DISCOVERED OWNERS NAME AND PHONE #.-COMPL.
NOTIFIED. COMPL. THEN GAVE OFFICERS THE INCIDENT # 37977582 WHICH WAS
AN AGGRAVATED ROBBERY & THEFT (AUTO)(FELONY). COMPL. MET OFFICERS AT 5420
HARRISBURG AND AT THIS TIME OFFICERS RELEASED VEH. TO THE COMPL.

COMPL. STATED HIS WALLET IS STILL MISSING CONTAINING DRIVERS LICENSE, VARIOUS
CREDIT CARDS AND \$80 CASH. NOTHING ELSE APPEARED TO BE MISSING.

NO PRINTS WERE TAKEN DUE TO THE FACT THE VEH. WAS TOO DIRTY-NO SUSPECTS-NO
WITNESS.

SUPPLEMENT ENTERED BY - 77477
REPORT REVIEWED BY-L FLORES
COPIES ALSO SENT TO- RP1/ / / EMPLOYEE NUMBER-044773
DATE CLEARED- 07/24/82

F 000506

App. 0118

INCIDENT NO. 037977582 CURRENT INFORMATION REPORT *****
***** PAGE 2.00 *****

NO-0002

OFFENSE- AGGRAVATED ROBBERY (DW)&THEFT(AUTO)(FELONY)
STREET LOCATION INFORMATION

NUMBER- 3400 NAME-BISSONNET TYPE- SUFFIX-
DATE OF OFFENSE-06/24/82 DATE OF SUPPLEMENT-07/27/82
COMPL(S) LAST-AWC INC FIRST- MIDDLE-
LAST-

RECOVERED STOLEN VEHICLES INFORMATION

NONE
OFFICER1-V W WEST

EMPH-030529 SHIFT-1 DIV/STATION-HOMI

SUPPLEMENT NARRATIVE

THIS DET TOOK A PHOTO OF ROBERTO CARRASCO FLORES, LM 27, ALONG WITH 4 OTHER PHOTOS AND SHOWED THEM TO THE #2 COMPL IN THIS CASE ON SATURDAY, JULY 24, 1982 JIM KOSMERL MADE AN IMMEDIATE AND POSITIVE ID OF FLORES AS THE PERSON WHO ROBBED HIM AND TOOK HIS PROPERTY IN THIS CASE.

ROBERTO CARRASCO FLORES, LM 27, IS DECEASED, BEING KILLED ON 7-13-82, BY POLICE OFFICERS AFTER SHOOTING AND SEVERELY WOUNDING ONE OFFICER AND KILLING A SECOND.

SUSPECT: (DECEASED)
ROBERTO CARRASCO FLORES, LM 27.

CASE CLEARED BY DEATH OF SUSPECT AND PARTIAL RECOVERY OF PROPERTY(COMPLS VEHIC

SUPPLEMENT ENTERED BY - 30529
REPORT REVIEWED BY-V W WEST
COPIES ALSO SENT TO- RP1/ / / / EMPLOYEE NUMBER-030529
DATE CLEARED- 07/24/82

END OF PAGE TWO

F 000507

App. 0119

CITY OF HOUSTON
INTER OFFICE CORRESPONDENCE

TO ASST. D. A. TERRY JILSON
CIVIL RIGHTS DIVISION
DISTRICT ATTORNEY'S OFFICE

FROM V. W. WEST, DETECTIVE

DATE JULY 23, 1982

SUBJECT DEAD MAN (SHOOTING)
POLICE OFFICERS INVOLVED
INCH 43667682
JULY 13, 1982, 11:30PM
4911 RUSK
CORPORATION CASE
INCH43667682 ATTD CAPITAL MURDER P.O.

CORPORATION CASES (4900 WALKER)
INCH436614582 CAPITAL MURDER P.O.
INCH43669482 CAPITAL MURDER

AT APPROX 1130PM, TUESDAY, JULY 13, 1982, ROBERTO CARRASCO FLORES, LM 27, MEXICAN NATIONAL, B WEDO, WAS SHOT AND KILLED BY UNIFORM HOUSTON POLICE OFFICER L. J. TREPAGNIER, A. PALOS, II, AND M. E. RODRIGUEZ, AT 4911 RUSK, IN THE YARD. FLORES, GLEDD WAS EVADING APPREHENSION FOR THE CRIMES OF CAPITAL MURDER OF A POLICE OFFICER AND THE ATTEMPTED CAPITAL MURDER OF A CITIZEN WHICH HAD OCCURED 90 MINUTES PREVIOUS AT 4900 WALKER ST. THE LOCATION OF 4900 WALKER IS ONE BLOCK SOUTH OF 4911 RUSK ST.

FLORES AND A 2ND SUSPECT-RICARDO ALDAPE GUERRA-HAD SHOT AND KILLED HOUSTON POLICE OFFICER J. D. HARRIS FOLLOWING A TRAFFIC STOP AND THEN SHOT AND FATALITY WOUNDED JOSE F. ARMIJO, AN INNOCENT CITIZEN, AS HE WAS DRIVING BY WITH HIS FAMILY IN THE CAR. (ARMIO DIED JULY 20, 1982, IN BEN TAUB HOSPITAL)

SECONDS BEFORE BEING SHOT BY THE ABOVE MENTIONED OFFICERS, FLORES HAD SHOT AND SEVERELY WOUNDED OFFICER L. J. TREPAGNIER. FLORES, GLEDD THEN RAN AROUND THE CORNER OF THE HOUSE FROM THE BACK YARD AT 4911 RUSK AND SAW OTHER OFFICERS AND FIRED AT THEM. FIRE WAS RETURNED AND FLORES WAS HIT SEVERAL TIMES AND DIED ON THE SCENE.

THE SHOOTING OF OFFICER TREPAGNIER OCCURED FOLLOWING THE SEARCH OF AN APARTMENT HOUSE AT 4907 RUSK BY OTHER OFFICERS AND DETECTIVES FOR THE TWO SUSPECTS IN THE EARLIER SHOOTINGS. OFFICER TREPAGNIER AND OFFICER EDWARDS HAD BEEN AT THE SIDE OF 4911 RUSK OBSERVING THE REAR OF 4907 RUSK. AFTER OTHER OFFICERS HAD CLEARED FROM 4907 RUSK, OFFICERS TREPAGNIER AND EDWARDS DECIDED TO CHECK THE GARAGE AREA, CARS, AND BACK YARD AT 4911 RUSK. OFFICER TREPAGNIER SAW OFFICER EDWARDS AND ENTERED THE BACK YARD AND WAS SHOT 5 TIMES BY FLORES.

2ND SUSPECT INFORMATION
AT THE TIME OF THE SHOOTING OF OFFICER TREPAGNIER, THE SECOND SUSPECT OF THE EARLIER SHOOTINGS WAS ALSO IN THE BACK YARD. RICARDO GUERRA, 2ND SUSPECT WAS ARRESTED HIDING BEHIND A HORSETRAILER IN THE SAME BACKYARD A FEW MINUTES AFTER THE SHOOTING OF TREPAGNIER. A .45 SEMI-AUTOMATIC WEAPON WAS RECOVERED FROM UNDER THE TRAILER WITHIN A FEW FEET OF WHERE GUERRA WAS ARRESTED. THIS WEAPON WAS LATER IDENTIFIED AS COMING FROM AN AGGRAVATED ROBBERY IN THE COUNTY IN WHICH SEVERAL GUNS WERE TAKEN. IN ADDITION, GUERRA WAS LATER IDENTIFIED IN A LINE-UP AS BEING THE PERSON WHO SHOT AND KILLED OFFICER HARRIS. AT THIS TIME THERE IS NO INDICATION THAT GUERRA TOOK PART IN THE SHOOTING OF OFFICER TREPAGNIER.

SHOOTING OF FLORES GUERO
WHEN THE SHOOTING OF OFFICER TREPAGNIER OCCURRED, OFFICER EDWARDS DROPPED TO
THE GROUND ON THE WEST SIDE OF 4911 RUSK. OTHER OFFICERS IN THE FRONT OF
4907 AND 4911 RUSK RAN TO THE SOUTHEAST CORNER OF THE YARD AND HOUSE AND TO
POSITIONS. THERE WERE 6-7 OFFICERS IN THIS LOCATION. THE POSITIONS TAKEN WERE

(1) SOUTHEAST CORNER OF RESIDENCE
OFFICER A. PALOS (USING .45 AND FIRED 3 TIMES)

OFFICER K. D. TEMPLETON (.357 NOT FIRED) USED FLASHLIGHT TO LIGHT UP SUE

(2) SOUTHEAST CORNER OF YARD BY END OF FENCE AND CAR PARKED NEAR BY

OFFICER M. RODRIGUEZ (USING .430A SHOTGUN AND FIRED 4 TIMES)
OFFICER G. BRATTON (9MM NOT FIRED) STOOD BY CAR PARKED IN FRONT YARD
OFFICER C. DEALEJANDRO (.357 NOT FIRED) TOOK POSITION EAST SIDE OF HOUSE
OFFICER J. AROCHA (DID NOT FIRE UPON) TOOK POSITION ON EAST SIDE OF HOUSE

(3) BACK YARD OF 4911 RUSK
OFFICER L. TREPAGNIER (.357 FIRED 6 TIMES)-----W O U N D E D

FIREARMS EVIDENCE CONSISTING OF FIRED .45 AND .12 GA SHOTGUN HULLS AND FIRST
CARTRIDGE CASES IN TREPAGNIER'S WEAPON AND BULLET STRIKES AND FIRED 9MM HULL
FROM THE DEAD COMPLAINANT'S GUN INDICATES THE FOLLOWING OCCURRED:

F I R I N G B Y C O M P L A G U E R O
(1) FOUR (4) FIRED 9MM HULLS FOUND IN THE BACK YARD UP NEXT TO THE HOUSE AND
ONE (1) IN THE DETACHED GARAGE INDICATE THAT WEDO WAS STANDING EITHER
THE GARAGE OR JUST OUTSIDE IT WHEN HE FIRED ON OFFICER TREPAGNIER. (MOST
LIKELY STANDING BY THE LARGE TREE NEXT TO THE GARAGE

A SIXTH FIRED 9MM HULL WAS FOUND HALFWAY BETWEEN WHERE OFFICER TREPAGNIER
FELL AT THE NORTHEAST CORNER OF THE HOUSE-BUT OUT OF SIGHT OF OFFICERS AT
THE FRONT-AND WHERE WEDO FELL WHEN SHOT (DISTANCE OF APPROX 6 FEET)

F I R I N G B Y O F F I C E R S A T C O M P L A G U E R O

(1) OFFICER TREPAGNIER'S .357 REVOLVER WAS FOUND WITH ALL 6 ROUNDS FIRED.
BULLET STRIKES WERE FOUND IN THE WEST SIDE OF 4915 RUSK, THE HOUSE TO THE
EAST OF 4911. ONE OF THESE STRIKES ENTERED THE HOUSE AND ONE (1) .357
CORE WAS FOUND IN AN INNER ROOM OF THIS HOUSE. THERE WAS A TRAJECTORY
OF TOE TO HEAD, AND WEST TO EAST. ONE (1) COPPER JACKET WAS FOUND BELOW
THE BULLET STRIKE IN THE BRICK.

THIS WOULD INDICATE THAT THESE SHOTS CAME FROM THE REAR OF THE HOUSE AND
SINCE ONE .357 WAS FOUND IT WOULD INDICATE THAT OFFICER TREPAGNIER FIRED
THESE SHOTS. IT WOULD ALSO INDICATE THAT IT WOULD HAVE BEEN NECESSARY
FOR OFFICER TREPAGNIER TO HAVE BEEN AT THE CORNER OF THE HOUSE WHEN
HE FIRED THESE SHOTS FOR THEM TO STRIKE WHERE THEY DID OR ELSE SEVERAL
FEET FROM WHERE HE FELL.

VII

(2) OFFICER A. PALOS FIRED 3 TIMES AT THE CORPL WITH HIS .45 AND 3 .45 BULLETS WERE RECOVERED. OFFICER PALOS FIRED AT THE CORPL FROM THE SOUTHEAST CORN. OF THE RESIDENCE FROM BEHIND A TREE. THE DISTANCE FROM OFFICER PALOS TO THE CORPL WAS APPROX 32 FEET.

ONE .45 ROUND WAS RECOVERED FROM THE LEFT ANKLE AT AUTOPSY OF LEDO

WHAT IS BELIEVED TO BE A BULLET HOLE MADE BY A .45 SLUG WAS FOUND IN THE SIDE OF A GARAGE APT LOCATED ACROSS THE FENCE BEHIND 4514 RUSK.

(3) OFFICER M. RODRIGUEZ FIRED 4 TIMES AT THE COMPLAINANT WITH HIS .12GA. SHOTGUN WITH 4 FIRED .12 BULLETS RECOVERED. OFFICER RODRIGUEZ FIRED AT THE COMPLAINANT FROM THE SOUTHEAST CORNER OF THE YARD, NEAR THE END OF THE FE AND AT A DISTANCE OF APPROX 52 FEET.

SEVERAL WOUNDS WERE FOUND IN THE BODY OF THE COMPLAINANT WHICH WERE MADE SHOTGUN PELLETS.

THIRTY-SIX (36) STRIKES WERE COUNTED IN THE SIDE OF THE HOUSE AND TREES.

ONE (1) STRIKE WAS FOUND IN THE SIDE OF THE PREVIOUSLY MENTIONED GARAGE AND THIS WAS A SHOTGUN PELLET

INFORMATION ON COMPLAINANT AND HIS WEAPON

THIS COMPLAINANT WHILE AT THE SCENE ON RUSK HAD BEEN HANDCUFFED BEFORE BEING AS A SAFETY MEASURE FOR OFFICERS ON THE SCENE, AND PAPER BAGS HAD BEEN PLACED ON HIS HANDS TO PROTECT THEM SO THAT A T.R.D.T. COULD BE RUN LATER AT THE MORGUE. WHEN THE COMPLAINANT WAS LOADED AT THE SCENE, HE WAS LOADED AS HE LAY AND NO ATTEMPT WAS MADE TO SEARCH HIM.

IN ADDITION, LAYING NEXT TO HIS LEFT LEG WAS A BROWNING 9MM SEMI-AUTOMATIC PISTOL WITH THE SLIDE LOCKED BACK INDICATING THAT THE WEAPON WAS EMPTY. THIS WEAPON WAS PRINTED AT THE SCENE AND AN A.T.F. CHECK WAS RUN ON THIS GUN LATER TO DETERMINE THE OWNER AS THERE WAS NO STOLEN ON THIS GUN.

ON ARRIVAL AT THE MORGUE, QUEDO WAS SEARCHED IN THE PRESENCE OF DETS VENT AND DALMON OF HOMICIDE AND THE FOLLOWING ITEMS FOUND:

- (1) OFFICER HARRIS' .357 COLT PYTHON SER#24267E FOUND STUCK IN THE FRONT OF QUEDO'S TROUSERS
- (2) 9MM CLIP WITH 20 ROUNDS IN MILITARY TYPE POUCH
- (3) 11 LIVE 9MM RDS IN POCKET
- (4) ANOTHER HOLSTER
- (5) DRIVERS LICENSE IN NAME OF JAMES JOSEPH KOSNELL WITH THE PHOTO OF QUEDO OVER THE ORIGINAL PHOTO
THIS LICENSE FOUND TO HAVE COME FROM A ROBBERY VICTIM IN WHICH MONEY, CAR AND PAPERS WERE TAKEN.

THE BROWNING 9MM SEMI-AUTOMATIC PISTOL SER#245P087128 WAS CHECKED YARD A.T.F. AND FOUND TO HAVE BEEN SOLD TO CARTER'S COUNTRY GUN STORE IN PASADENA. FURTHER CHECK FOUND THAT ALFREDO TALDONADO, JR., HAD PURCHASED THIS GUN ON JUNE 19, 1982. FOR A LATIN MALE WHO HAD APPROACHED HIM THERE IN THE STORE AND WHO ASKED TALDONADO TO BUY THE GUN FOR HIM. TALDONADO MADE A POSITIVE ID ON QUEDO AS THE MAN HE BOUGHT THE GUN FOR THERE AT CARTER'S COUNTRY.

WITNESSES TO THIS CASE
THE FOLLOWING OFFICERS MADE WRITTEN STATEMENTS REGARDING THIS CASE

- 21 M. R. EDWARDS, CENTRAL PATROL
WAS WITH OFFICER TREPAGNIER ON THE SIDE OF THE HOUSE AND WENT WITH TREPAGNIER TO SEARCH THE LOCATION OF 4911 RUSK AND HEARD SHOTS BUT DID NOT SEE THE SHOOTING OR TREPAGNIER UNTIL AFTER TREPAGNIER AND THE COMPL HAD BOTH BEEN SHOT.
- 22 G. L. BRATTON, WAS WORKING AN EXTRA-JOB AND HEARD OF THE SHOOTING OF OFFICER HARRIS ON HIS POLICE RADIO. WENT TO THE SCENE AND THEN TO 4911 RUSK. AT THE TIME OF THE SHOOTING, HE WAS AT THE CAR PARK IN THE YARD AND DID NOT FIRE HIS WEAPON BECAUSE OF OFFICERS TO HIS FRONT. SAW THE COMPL FIRING AT OFFICERS. OBSERVED A BLUE STEEL AUTOMATIC BY COMPLS LEG.
- 23 C. A. DEALEJANDRO, SOUTHEAST PATROL
ARRIVED ON SCENE SHORTLY AFTER THE SHOOTING OF OFFICER HARRIS AND SEARCHED FOR SUSPECTS. ON RETURNING TO THE SCENE WAS APPROACHED BY A FEMALE WHO TOLD HIM THAT SHE KNEW WHO THE SUSPECTS WERE AND WHERE THEY LIVED. WENT TO DOUBLE AND RUSK AT 4907 RUSK AND SEARCHED THE HOUSE WITHOUT FINDING THE SUSPECTS. WAS ON RUSK WHEN THE SHOOTING STARTED AT 4911 RUSK AND OBSERVED OFFICERS SHOOTING AT THE SIDE OF THE HOUSE. SAW A LATIN MALE FALL TO THE GROUND. THIS OFFICER HANDCUFFED THE COMPLAINANT THERE AT THE SCENE AND OBSERVED THE BLUE STEEL AUTOMATIC BY HIS LEG.
- 24 OFFICER M. RODRIGUEZ, SOUTHEAST PATROL
WHEN THE SHOOTING STARTED AT 4911 RUSK, THIS OFFICER RAN TO THE SOUTHEAST CORNER OF THE YARD WITH HIS SHOTGUN AND OBSERVED OFFICERS POINTING TO THE REAR OF THE HOUSE. SOMEONE SHINED A LIGHT AT THE REAR AND HE SAW A LATIN MALE WITH A GUN POINTING IT AT OTHER OFFICERS AND HE FIRED HIS SHOTGUN AT THE CRIMINAL. THIS OFFICER FIRED FOUR TIMES AND SAW THE SUBJECT WITH THE PISTOL FALL TO THE GROUND. THE MAN HAD BEEN CROUCHED BESIDE A TREE.
- 25 OFFICER A. PALOS, II, CENTRAL PATROL
WAS AT 4907 RUSK TALKING TO WITNESSES AND SEARCHING FOR THE SUSPECT IN THE SHOOTING OF OFFICER HARRIS WHEN HE HEARD SHOTS COMING FROM THE REAR OF 4911 RUSK. WENT TO THE SOUTHEAST CORNER OF THE YARD AT 4911 RUSK AND TOOK UP A POSITION. HEARD SOMEONE FALL TO THE GROUND AND THEN SAW OFFICERS FALL TO THE GROUND AND THOUGHT THAT THEY HAD BEEN HIT. WAS TOLD BY OFFICER TREPAGNIER THAT THE SUSPECT WAS IN THE REAR OF THE HOUSE AND LOOKED AND SAW A SUBJECT WITH A GUN FIRING AT OFFICERS. RETURNED THIS FIRE WITH HIS .45. A .45 GUN WAS HIT FROM THE LEFT ANKLE OF THE COMPL AT AUTOREV.
- 26 OFFICER K. D. TETPLETON, CENTRAL PATROL
WHEN THE FIRING BEGAN AT 4911 RUSK, WENT TO THE SOUTHEAST CORNER OF THE YARD AND SAW SUSPECT WITH GUN FIRING AT OFFICERS. YELLED TO THE OTHER OFFICERS THE SUSPECT LOCATION AND SHINED HIS LIGHT ON THE SUSPECT.
- 27 OFFICER J. ARCOHA, SOUTHEAST PATROL
WHEN THE FIRING STARTED RAN FOR COVER AND OBSERVED OFFICERS FIRING AT A SUSPECT WHO WAS SHOOTING AT THEM. DID NOT FIRE FOR FEAR OF

HITTING OTHER OFFICERS.

#3 T. G. WILSON, ASST. D.A.

WAS PRESENT IN THE AREA AND HEARD THE SHOTS. ON GOING TO THE SCENE AND WHILE SECURING THIS SCENE FOR INVESTIGATION FOUND THE 2ND SUSPECT INVOLVED IN THE MURDER OF OFFICER HARRIS HIDING IN THE SAME YARD BEHIND A HORSE TRAILER.

CIVILIAN WRITTEN STATEMENT:

ALFREDO MALDONADO, JR., PERSON PURCHASING THE 9MM USED BY THE COMPLAINANT CAME TO HOMICIDE AND MADE A PHOTO IDENTIFICATION OF THIS COMPLAINANT AS THE PERSON WHO APPROACHED HIM ON JUNE 19, 1982, AT CARTERS COURT AND WHO HAD HIM PURCHASE A BROWNING 9MM PISTOL FOR HIM. CLAIMED THAT HE DID NOT KNOW THE MAN AND HAD NEVER SEEN HIM BEFORE.

WRITTEN CONFESSIN STATEMENT:

RICHARDO ALDAPE GUERRA, LM, 20, AND 2ND SUSPECT INVOLVED IN THE MURDER OF OFFICER HARRIS MADE A CONFESSION STATEMENT AND STATED THAT HE AND WEDO WERE HIDING IN THE BACK YARD WHEN THE SHOOTING BEGAN AND THOUGHT THAT WEDO AND THE OFFICER WERE SHOOTING AT EACH OTHER.

EVIDENCE THIS CASE

(1) FIREARMS (CHARLIE ANDERSON OF FIREARMS LAB ON SCENE)

AT THIS SCENE NUMEROUS ITEMS OF FIREARMS EVIDENCE WAS RECOVERED INCLUDING FIVE 9MM, 45 AND 42 GA CASES AND FIRED .357 BULLS FROM THE WEAPON OF OFFICER TREPAGNIER. IN ADDITION SEVERAL FIRED BULLETS WERE RECOVERED. THE SEVERAL WEAPONS INVOLVED WERE ALSO RECOVERED BY ANDERSON OF FIREARMS AND SUBMITTED FOR EXAMINATION.

ONE FIRED .45 SLUG AND SEVERAL SHOTGUN PELLETS WERE RECOVERED AT AUTOPSY FROM THE COMPLAINANT.

AS OF THIS TIME, NO BULLETS HAVE BEEN REMOVED FROM OFFICER TREPAGNIER.

(2) CRIME LAB (AMY HEATER ON SCENE)

RECOVERED THE CLOTHING OF THE COMPLAINANT AND OFFICER TREPAGNIER TO BE EXAMINED AND DISTANCE TESTS RUN.

(3) LATENT PRINT LAB (CL COOPER OF LATENT PRINT LAB ON SCENE)

PRINTED THE SEVERAL WEAPONS ON THIS SCENE

(4) PHOTO LAB (T. BRADSHAW AND B. HAIR OF PHOTO LAB ON SCENE)

SCENE PHOTOS WERE TAKEN.
BRADSHAW MADE A VIDEO OF THIS SCENE

(5) CRIME SCENE DRAWING MADE BY V W WEST--NOT TO SCALE

CRIMINAL RECORD ON COMPLAINANT

AT THIS TIME NO LOCAL CRIMINAL RECORD CAN BE FOUND ON THIS COMPLAINANT.

AT THE TIME OF HIS DEATH HE HAD A DRIVERS LICENSE TAKEN FROM A ROBBERY COMPLAINANT ON WHICH THIS COMPLAINANT HAD PLACED HIS PHOTO. THE COMPLAINANT THEN BECAME KNOWN ONLY AS GUESSO.

AFTER SENDING HIS PRINTS TO DPS IT WAS FOUND THAT HE HAD BEEN HANDLED IN PERRYTON, TEXAS, BY THE P.D. THERE FOR PUBLIC INTOXICATION AFTER BEING FOUND IN A CAR WITH TWO OTHER LATIN MALES IN WHICH A .38 S&W AND A .22RG WERE FOUND. THIS COMPLAINANT ONLY FILED ON FOR PUBLIC INTOXICATION. DPS PROVIDED THE NAME OF ROBERTO CARRASCO FLORES, LN 11-27-54, TOLR 5504013, DATE OF ARREST IN PERRYTON WAS 6-24-79.

ON 7-24-82, JIM KOSMERL, COMPL IN AGG ROBBERY OF 6-24-82, 0400 BISSONNET, AND THE PERSON WHOSE DRIVERS LICENSE FLORES HAD ON HIS PERSON WHEN KILLED, MADE A POSITIVE IDENTIFICATION FROM A GROUP OF PHOTOS AS THE PERSON WHO

HAD FORCED HIM AT GUNPOINT OF PROPERTY. AT THIS ROBBERY ONLY ONE SUSPECT WAS INVOLVED.

LACK OF STATEMENT FROM OFFICER TREPAGNIER AS OF THIS DATE, JULY 24, 1982, NO ONE FROM THE HOMICIDE DIVISION HAS BEEN ABLE TO TALK TO OFFICER TREPAGNIER AND DETERMINE FROM HIM WHAT TRANSPIRED IN THE REAR OF 4911 RUSK WHEN HE WAS SHOT. THE PHYSICAL CONDITION OF OFFICER TREPAGNIER COUPLED WITH THE ATTITUDE OF HIS WIFE HAS NOT MADE AN INTERVIEW POSSIBLE.

THE FOLLOWING QUESTIONS NEED TO BE ASKED OF OFFICER TREPAGNIER WHEN HE IS ABLE TO ASSIST IN THIS INVESTIGATION AND UNTIL THEY ARE ANSWERED THE INVESTIGATION WILL BE CONSIDERED INCOMPLETE BY THIS DETECTIVE.

- (1) THE SEQUENCE OF EVENTS LEADING UP TO AND THE ACTUAL SHOOTING OF THE OFFICER
- (2) LOCATION OF OFFICER WHEN HE WAS SHOT
- (3) DID HE SEE THE PERSON WHO SHOT HIM
- (4) WHERE WAS THE SUSPECT STANDING WHEN HE (SUSPECT) FIRED
- (5) DID HE SEE TWO SUSPECTS IN THE BACK YARD---DID THE 2ND SUSPECT AID THE DEAD COMPLAINANT IN SHOOTING TREPAGNIER---IF THIS HAPPENED, CHARGES SHOULD BE FILED ON THIS 2ND SUSPECT
- (6) DID TREPAGNIER FIRE ALL HIS SHOTS AT THE COMPL, OR DID THE COMPL TAKE HIS WEAPON AND USE IT TO FIRE AT THE OFFICERS IN THE FRONT YARD
- (7) DID OFFICER TREPAGNIER EVER COME FROM AROUND THE BACK OF THE HOUSE TO THE SIDE WHERE HE MAY HAVE BEEN IN THE LINE OF FIRE OF THE OFFICERS IN FRONT
- (8) DID EITHER HE OR THE SUSPECT EVER SAY ANYTHING TO EACH OTHER
- (9) DID HE SEE THE ACTIONS OF EITHER SUSPECT AFTER HE-TREPAGNIER-WAS SHOT
- (10) ANY OTHER INFORMATION WHICH HE MAY HAVE WHICH WOULD BE HELPFUL IN CONCLUDING THIS INVESTIGATION

xi

DETECTIVES AND OTHER PERSONS ON THIS INVESTIGATION		
V. U. LEST	DETECTIVE	SCENE AND FOLLOW-UP
M. E. ST. JOHN	DETECTIVE	SCENE INTERVIEWS
J. L. WALTON	DETECTIVE	SCENE AND MORGUE INVESTIGATION ON COMPL
C. U. KENT	DETECTIVE	SCENE AND MORGUE INVESTIGATION ON COMPL
G. L. DOLLINS	DETECTIVE	OFFICE INVESTIGATION/REPAIGNIER'S PROPERTY
J. K. NELMAN	DETECTIVE	OFFICE INVESTIGATION/REPAIGNIER'S PROPERTY
J. G. BURMESTER	DETECTIVE	MORGUE INVESTIGATION/PHOTOS OF COMPL
D. R. BOSTOCK	DETECTIVE	HOSPITAL INVESTIGATION ON OFFICER
J. M. DONEGAN	DETECTIVE	RECOVERY OF EVIDENCE FROM MORGUE
L. E. WEBBER	DETECTIVE	FOLLOW-UP INVESTIGATION
C. E. ANDERSON	FIREARMS	
R. M. JORDAN	FIREARMS	
A. HEATER	CRIME LAB	
T. BRADSHAW	PHOTO LAB	
B. HAIR	PHOTO LAB	
N. DRUHEL	PATROL OFFICER	SCENE
J. M. McMAHON	PATROL OFFICER	SCENE

xii

S Y N O P S I S

INCIDENT#42614582

OFFENSE:: CAPITAL MURDER OF POLICE OFFICER

LOCATION::4900 WALKER AT EDGEWOOD

DATE/TIME:: TUESDAY JULY 13,1982, 10:00am

COMPLAINANT:: JAMES D. HARRIS, HOUSTON POLICE OFFICER P/R#56129

SUSPECTS:: RICARDO ALDAPE GUERRA aka "EL GUERO" and ROBERTO CARRASCO FLORES
aka "WEDO".

N A R R A T I V E

On Tuesday July 13,1982 at approx. 10:00pm, Officer James D. Harris, a Houston Police Officer was fatally shot by Ricardo A. Guerra after stopping Guerra and a second suspect on traffic in the 4900 block of Walker at Edgewood. The second suspect was later identified as Roberto C. Flores.

NOTE:: THE APPARENT MOTIVE THAT LEAD TO THE SHOOTING OF OFFICER HARRIS WILL BE ESTABLISHED LATER IN THIS SYNOPSIS.

Officer Harris assigned to the Canine Division of the Houston Police Department riding unit 11K90 was on routine patrol in the southeast sector of the city of Houston when the shooting occurred. Sometime around 9:50pm, Officer Harris was flagged down by a citizen in the vicinity of Walker and Delmar, who reported to Officer Harris that several LA/males in a black and burgundy Cutlass had tried to run him (the citizen) down. The citizen later identified as George Lee Brown and is now listed in this investigation as a witness, reported seeing the LA/males in the vehicle on Walker street between Altic and Delmar street. The vehicle was been driven by a LA/m that Brown later picked out of a show-up that took place at Police Headquarters on 7-14-82, this being Ricardo A. Guerra. As the vehicle sped pass Brown, Brown reported that he had to jump into a ditch in order to avoid being hit by the vehicle. Brown was out walking his dog at the time these events had started to unfold.

Soon after the vehicle sped off, Brown later saw a blue and white police unit being driven by Officer Harris pull up the the T-shaped intersection of Delamar and Walker. It was at this time that Brown stopped Officer Harris and informed Officer Harris of the incident involving the Cutlass occupied by the LA/males. Several other witnesses that were walking in the area at same time as Brown also gave statements about seeing the vehicle occupied by the LA/males speeding and driving erratic. Officer Harris after being told of this incident drove off in the direction of travel as the black and burgundy Cutlass.

Sometime later other witnesses in the area of the 4900 block of Walker reported seeing a black and red vehicle occupied by several LA/males driving at a high rate of speed down Walker street from Lenox travelling west. As the vehicle occupied by the LA/males approached the T-shaped intersection of Walker at Edgewood, the driver of the vehicle tried to make a U-turn in the middle of Walker. The vehicle at this time stalled out on the driver and the vehicle to a stop in front of the house at 4922 Walker with the front of the vehicle facing to the south and blocking off the entire street of Walker at Edgewood. After trying several times to start the vehicle, the occupants got out of the vehicle and approached two LA/females that were walking west on Walker street. Witnesses at this time reported that there were only two LA/males in the vehicle. One of the LA/females, that later identified herself as Elvira Medina Flores, stated that the driver of the vehicle approached her and asked her in Spanish if she would give him a boost. During this time, Officer Harris was travelling south on Edgewood approaching Walker street. Upon arriving at the T-shaped intersection of Walker at Edgewood, witnesses state that Officer Harris stopped his blue and white unmarked police unit to the east side of Edgewood street and to the left of the vehicle that was occupied by the two LA/males. According to the witnesses at the scene the front half of the police unit was partially in the middle of Walker street. When Officer Harris exited his police unit, Officer Harris positioned himself by standing inside the drivers door of the police unit. At that time as the LA/males were out of the vehicle, Officer Harris called for the two LA/males to come to the police unit. It is reported that Officer Harris had the two LA/males to place their hands on the hood of the police unit on the left side.

The passenger in the black and red vehicle was the closest of the two LA/males to Officer Harris with the driver walking directly behind the passenger. The passenger according to witnesses placed his hands on the hood of the police unit nearest the drivers door and the driver near the left front. Before

LA/males had placed their hands on the vehicle, witnesses reported seeing the passenger from the vehicle use his left hand to go to his back like he was going to scratch his back and hand the driver of the red and black vehicle a handgun. As the driver of the vehicle approached the police unit and was placing his hands on the police unit, witnesses standing in the area could hear the driver talking to Officer Harris in Spanish. Witnesses states that they were not able to fully understand everything that was spoken by the driver, but did hear the driver say "NO NO, a boost".

As soon as the driver was heard to say this, the driver just instantaneously turned from his position at the police unit with a gun in his hand and started firing upon Officer Harris hitting the Officer three times to the left side of the head. Witnesses reported that Officer Harris had no chance to react to the shooting. The impact of the bullets striking Officer Harris according to witnesses lifted Officer Harris off his feet and he fell to the ground on the left side of his police unit.

After shooting Officer Harris the driver of the red and black vehicle fled the scene discharging the weapon several more times. A citizen that was driving a red and white Ford Torino Elite vehicle on Walker heading west was shot at by the driver of the red and black vehicle as the driver was fleeing the scene. The driver of the red and black vehicle fired into the windshield of the citizen's vehicle hitting the citizen in the head. The citizen was later identified as Jose Francisco Armijo LA/m33 address 4924 Rusk. Also in the vehicle with Jose F. Armijo was his 10 year old son Jose Jr., who was not injured and his 2 year old daughter Guadalupe who was struck on the right side of the neck with flying glass. The bullet entered Jose F. Armijo's vehicle from the right side through the windshield. Jose later died as a result of the GSW on 07-20-82 at Ben Taub Hospital.

When the shooting started, individual witnesses states that they started looking for cover and no one saw where the passenger from the red and black vehicle fled. Some witnesses did report seeing the other suspect fleeing the scene running east on Walker the same direction as the driver.

Sgt. Cavazos of HPD was visiting his parents on Walker street at the time of the shooting and report hearing the shots, but thought at first that the shots were fireworks being discharged. There were other shots, so Sgt. Cavazos went to investigate and was told by several witnesses that an Officer had been shot.

Sgt. Cavazos ran to the scene of the shooting and got Officer Harris's walkie-talkie and called in that an Officer was down at Walker and Edgewood. Sgt. Cavazos states that he does not recall seeing Officer Harris's service weapon; however, other units responding to the call states that Officer Harris's service weapon was not in his holster.

Houston Fire Department ambulance unit 1118 arrived on the scene and transported Officer Harris to Eastwood Park so that a Life Flight Helicopter could fly Officer Harris to Hermann Hospital, however Officer Harris was pronounced dead by Life Flight doctor, Dr. Malone. Officer Harris's body was then transported to the Harris County Morgue by HFD ambulance 1118 with a police escort.

Detectives upon arriving at the scene conferred with Sgt. Cavazos, who related to Detective that he had gotten information that the suspects involved in the shooting lived in a two story white house on the corner of Dumble and Rusk behind Nick's Lounge. Detective went to that location and upon arriving conferred with several uniform officers that were already at that location. The officer informed this Detective that a search of the house was made and the search turned up nothing. Detective at that time requested that another search be conducted. Detective and officers first went to 4911 Rusk and searched this location. At the 4911 Rusk location there were at least fifteen Mexican Nationalists inside of the house. Officer Palos, a Spanish speaking Officer interviewed individuals and all claimed not to know anything. Detective and Officers later went to 4907 Rusk and searched this location. Officer Palos along with Detective Gatewood who had arrived at the location interviewed several Mexican Nationalists that were sitting outside. One of the Mexican Nationalists reported that a subject by the name of Jacinto Lopez had loaned his vehicle which is a red over black Buick Regal to a subject he knew as "EL GUERO". During this interview with the Mexican Nationalist, gunshots were heard coming from the rear of the house at 4911 Rusk. Detectives and Officers ran to the area of the gunshots and there were several other shots being fired.

An exchange of gunfire ensued between Officers and a LA/m on the east side of the house at 4911 Rusk and the LA/m was shot to death. Officer L.D. Trepagnier was shot by the LA/m assailant at the rear of the house at 4911 Rusk prior to the assailant being shot to death by officers. Officer L.D. Trepagnier was shot several times to the abdomen, the chest, and the arm. While at the scene of the Rusk Street shootout, a second suspect was arrested by Asst. D.

riect Attorney Terry Wilson. This suspect was found hiding in a horse trailer in the rear of the house at 4911 Rusk. Detectives in charge of the scene at 4911 Rusk recovered a Browning 9mm automatic handgun lying near the body of the dead suspect and a Detonic 45 caliber automatic handgun under the trailer where the second suspect was arrested. The Detonic .45 was wrapped in a red bandana handkerchief.

The dead suspect was identified by the live suspect as "WED0". The dead suspect was later identified by fingerprints as being Roberto Carrasco Flores, a Mexican Nationalist that once lived in Perryton, Texas. The Perryton Police Department show Flores to have one arrest in 1979 for Public Intoxication. The lived suspect identified himself as Ricardo Aldape Guerra.

Ricardo A. Guerra was placed in a show-up and was identified by nine eyewitnesses as the driver of the red and black vehicle and suspect that shot and killed Officer Harris and the citizen Jose F. Armijo. Ricardo A. Guerra was later filed on in the 248th D.C. for Capital Murder of a Police Officer Cause# 359805.

Upon examining the dead suspect body at the morgue, Homicide Detectives Kent and Waltmon recovered from the front waist of the suspect Officer Harris' service revolver, a Colt 357 magnum.

Further investigation into this case revealed that the Detonics .45 caliber automatic handgun with serial number CR16126 was taken in a robbery at Rebel Gun store located at 18448 Kuykendahl in the county. Constables Precinct#4 made the report on 7-8-82. The dead suspect, Roberto Flores was identified as one of the hijackers. The live suspect Ricardo A. Guerra was not identified by witnesses at the robbery, but prints were taken at the gun store robbery and were submitted to the HPD Latent Prints Lab by this Detective. The examination of the prints revealed that the prints lifted at the robbery matched those of Ricardo A. Guerra. Detective was able to trace the Browning 9mm to a Alfredo Maldonado. LA/m28, address 713 Ave L. in South Houston. Maldonado was approached by the dead suspect on 6-19-82 at Carter's Country Gun Store in Pasadena and asked Maldonado to purchase the weapon for him. Maldonado agreed to buy the Browning 9mm for the suspect. The dead suspect gave Maldonado \$550 in cash to purchase the gun. Maldonado bought the Browning 9mm in his name and gave the gun to the dead man. Maldonado was given the change left from the \$550 after buying the gun for the dead suspect. The change amounted to \$30.00.

At the scene of the shooting of Officer Harris at least six spent 9mm hull casings were recovered at the scene. There were three spent bullets removed from the house at 4919 Walker. The bullets had exited Officer Harris and lodged in the walls at the house at 4919 Walker. The bullet that was extracted from the citizens head was also a 9mm bullet. The spent hulls recovered at the scene were Speers and Winchesters. Several other spent hulls were recovered at the shooting at 4911 Rusk and they too were Winchesters.

In a statement given to Detective Gatewood by Ricardo A. Guerra, Guerra is alleging that the dead suspect Roberto C. Flores had shot and killed Officer Harris. Ricardo is quoted as saying "That he had the .45 automatic and that he discharged several shots in the air, but never shot the Officer". However, all witnesses present during the shooting related to investigating Detectives that the suspect that shot the Officer had long shoulder length hair, a beard and mustache, and wearing a green shirt or jacket and jeans. When Ricardo was arrested, he was observed by Detectives to have long shoulder length hair with a beard and mustache. Ricardo was dressed in a green Army fatigue shirt and blue jeans. The dead suspect had a close cut hair style and wearing brown pants and a purple looking shirt. The dead suspect had no hair on his face.

Witnesses present during the shooting also reported knowing Ricardo as "EL GU" and states that Ricardo had been in the neighborhood since about February of this year.

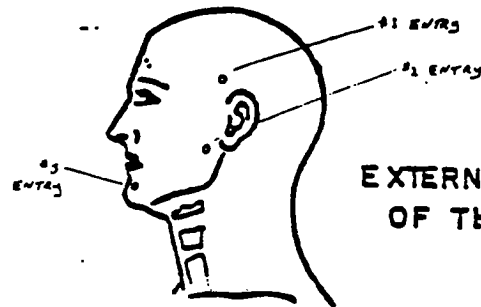
A P P A R E N T M O T I V E

From the information that has been gathered during the investigation of this case, Detective can opine and state the only apparent motive for the shooting of Officer Harris. This opinion being that the suspects since having been involved in the robbery of the Rebel Gun store and the dead suspect in possession of a drivers license belonging to a citizen that was robbed on 6-29-82, the suspects apparently thinking that Officer Harris was on to them because of their criminal activity, therefore shot and killed Officer to facilitate their not being captured. Other information was received concerning the criminal activity of the suspects and all the information was checked into but nothing was substantiated.

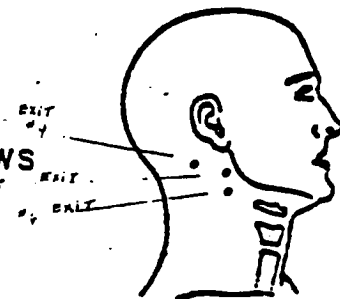
HOUSTON POLICE DEPARTMENT
HOMICIDE HEAD WOUND CHART

SERIAL NO. 426145-82

CHARGE	CAPITAL MURDER OF POLICE OFFICER	Name of Complainant	J.D. HARRIS
CHARGE CHANGED TO		Address	61 REISNER
LOCATION	4900 WALKER	Date of Offense	7-14-82

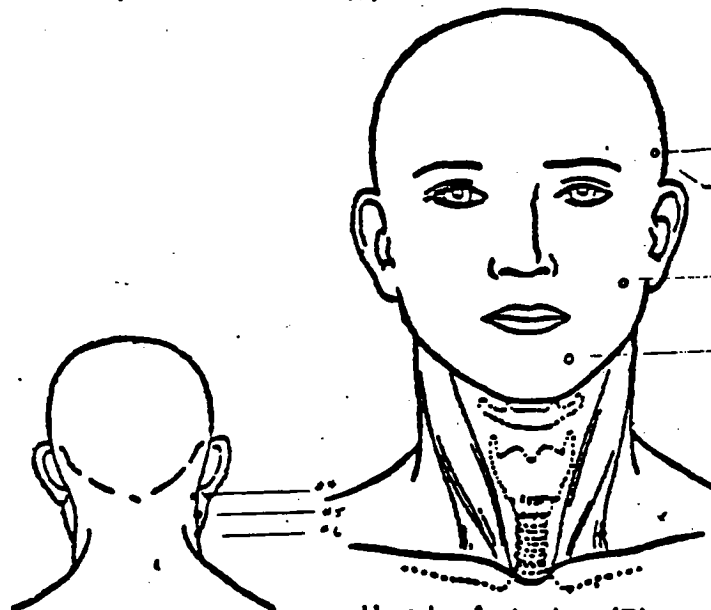


Head, Left Lateral (1)

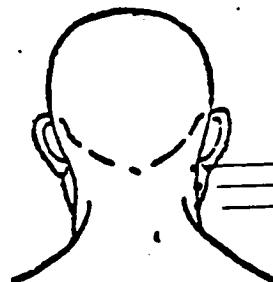


Head, Right Lateral (2)

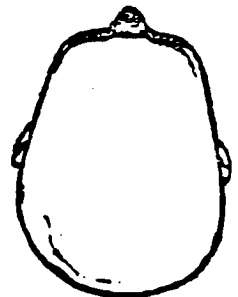
EXTERNAL VIEWS
OF THE HEAD



Head, Anterior (3)



Head, Posterior (4)



Head, Superior (5)

CHARTED BY J.L. WALTON

#1-ENTRY GUNSHOT WOUND TO THE LEFT LATERAL HEAD WHICH WAS $1\frac{3}{4}$ INCHES UP FROM THE LEFT EAR AND $4\frac{1}{2}$ INCHES AROUND FROM FRONT CENTER LINE OF HEAD.

#2-ENTRY GUNSHOT WOUND TO THE LEFT LATERAL HEAD WHICH WAS 1" FORWARD OF THE BOTTOM OF EAR AND $4\frac{3}{4}$ INCHES FROM CENTER LINE OF FACE.

#3-ENTRY GUNSHOT WOUND TO LEFT LATERAL SIDE OF CHIN AREA WHICH WAS $1\frac{1}{2}$ " LEFT OF CENTER LINE OF FACE AREA.

#4-EXIT WOUND TO THE RIGHT LATERAL SIDE OF HEAD AND NECK AREA WHICH WAS $2\frac{1}{2}$ " TO THE REAR AND IN LINE WITH THE BOTTOM RIGHT EAR LOBE.

#5-EXIT WOUND TO THE RIGHT LATERAL SIDE OF LOWER HEAD AND NECK AREA WHICH WAS $1\frac{1}{2}$ " DOWN AND IN LINE WITH RIGHT EAR LOBE.

#6-EXIT WOUND TO THE RIGHT LATERAL SIDE OF LOWER HEAD AND NECK AREA $2\frac{1}{4}$ " DOWN FROM THE NUMBER 5 WOUND AND $\frac{1}{4}$ " TO LEFT OF #5 WOUND. F 000601

SUPPLEMENTARY OFFENSE REPORT

SERIAL NO 42614582

OFFENSE **CAPITAL MURDER (POLICE OFFICER)**

Name of Complainant
J.D. HARRIS HPD





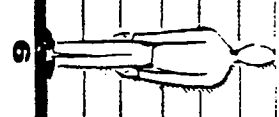
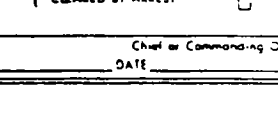
OFFENSE CHANGED TO

Address

LOCATION **4900 WALKER**

Date of Offense **7/14/82**

Name							
Race & Age							
Height							
Weight							
Color Shirt							
Color Pants							
Color Shoes							

WITNESS PRESENT AT SHOWUP:		LIST SUSPECTS NUMBER IN SHOWUP			
Name	Address	Phone	Positive I.D.	Tentative I.D.	Negative I.D.
1. TRINIDAD MEDINA	4938 WALKER	921-0410			X
2. JACINTO VEGA	4940 WALKER	926-1460	#4		
3. JOSE ANGEL	4938 RUSK	923-6964			X
4. PATRICIA DIAZ	4930 CLAY	921-6932	#4		
5. DANNY MARTINEZ	4924 1/2 POLK	NONE			
6. ELFINA CONZALES	4938 RUSK	923-6964			X
7. MARCELLA SALSADO	4937 WALKER	921-6250			X
8. JOE ARMILLO	4924 RUSK	UNKNOWN			X

Suspects arrested in: _____ Case No: _____

Officers Conducting Showup: _____ Front _____ Back _____

Did Suspect Waive Right to Counsel at Showup: Yes ☐ No ☐

Name of Attorney Present: _____ Phone: _____ Date: _____

Time Showup Began: _____ Time Showup Ended: _____ Location: _____

NOTE: All subjects in Showup are numbered from left to right facing interviewing officer. Officer conducting interview shall fill in description of subjects from his observation and without interrogation of subjects.

<p>I RECOMMEND THAT THIS CASE BE DECLARED</p> <p align="center">INACTIVE (NOT CLEARED) <input type="checkbox"/> CLEARED BY ARREST <input type="checkbox"/> UNFOUNDED <input type="checkbox"/></p> <p>Investigating Officer _____ BADGE NO _____</p> <p>Investigating Officer _____ BADGE NO _____ Time _____</p>	<p>CASE DECLARED <input type="checkbox"/></p> <p>SIGNED _____</p> <p>DIVISION _____</p> <p align="right">INACTIVE (NOT CLEARED) <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> CLEARED BY ARREST <input type="checkbox"/></p> <p align="right">Chief or Commanding Officer _____ DATE _____</p>
--	--

Form No. ROB-0002

App. 0134

F 000621

SUPPLEMENTARY OFFENSE REPORT

SERIAL NO. 42614592

OFFENSE **CAPITAL MURDER (POLICE OFFICER)**

Name of Case Officer
J.D. HARRIS HPD

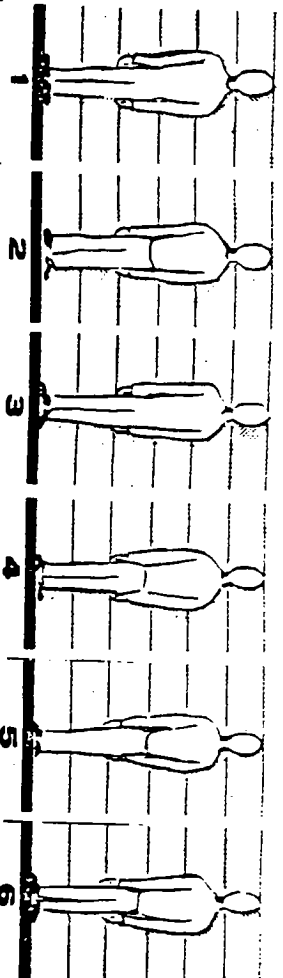
OFFENSE CHANGED TO

Address

LOCATION **4900 WALKER**

Date of Offense **7/13/82**

Name	1	2	3	4	5	6
ALEX SANCHEZ	JOSE MARTINEZ	DEWAYNE HARDEN	RICARDO ALDEIA GARCIA	FRANCISCO GARCIA	ARTURO GONZALES REYES	
Race & Age	LA/M 22	LA/M 23	W/M 30	LA/M 20	LA/M 20	LA/M 22
Height	5'6"	5'4"	5'7"	5'6"	5'11"	5'6"
Weight	150	130	154	127	155	150
Color Shirt	WHITES	WHITES	WHITES	WHITES	WHITES	WHITES
Color Pants						
Color Shoes						



WITNESS PRESENT AT SHOWUP:

Name	Address	Phone	LIST SUSPECTS NUMBER IN SHOWUP
1. ELIVIRA MEDINA FLORES	4938 WALKER	921-0410	Positive I.D. Tentative I.D. Negative I.D. Time Viewed
2. JOHN REYES <i>Mataoeros</i>	4938 WALKER	921-0410	#4 X
3. ERNINDA GARCIA	4938 WALKER	921-0410	#4
4. FRANK PEREZ	919 LENOX	921-4769	#4 X
5. GEORGE BROAN	5004 MCKINNEY	921-1612	#4
6. ENRIQUE TORRES	4907 RUSK	NONE	#4
7. HILMA CALVAN	4925 WALKER	NONE	#4
8. ARMANDO HERIDIO	4938 WALKER	921-0410	#4

Suspects arrested in **Case No. 42614582**

Officers Conducting Showup: **From ROBERTS/BLOYD/MONTEREO**

Did Suspect Waive Right to Counsel at Showup: **Yes** ☐ **No** ☒

Name of Attorney Present: **NONE**

Offense: **CAPITAL MURDER (POLICE OFFICER)**

Back **HERNANDEZ**

Address:

Phone:

Date: **7/14/82**

Location: **61 RIESNER**

Time Showup Began: **6:00am** Time Showup Ended: **6:15am**

NOTE: All subjects in Showup are numbered from left to right facing interviewing officer. Officer conducting interview shall fill in description of subjects from his observation and without interrogation of subjects.

I RECOMMEND THAT THIS CASE BE DECLARED

☐ INACTIVE (NOT CLEARED)
☐ CLEARED BY ARREST
☐ UNFOUNDED

CASE DECLARED

☐ INACTIVE (NOT CLEARED)
☐ UNFOUNDED
☐ CLEARED BY ARREST

SIGNED

DIVISION

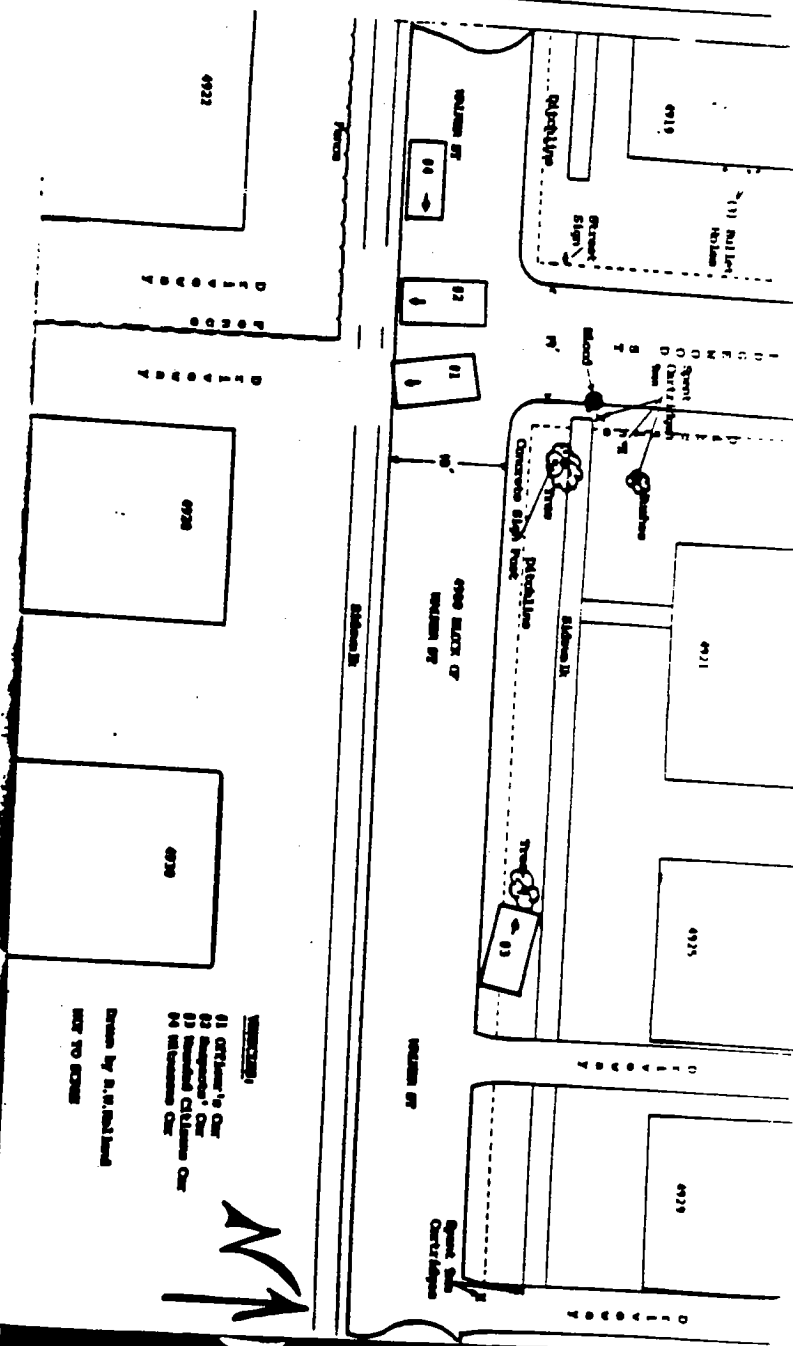
Chief or Commanding Officer
DATE

Form No. ROB-0002

App. 0135

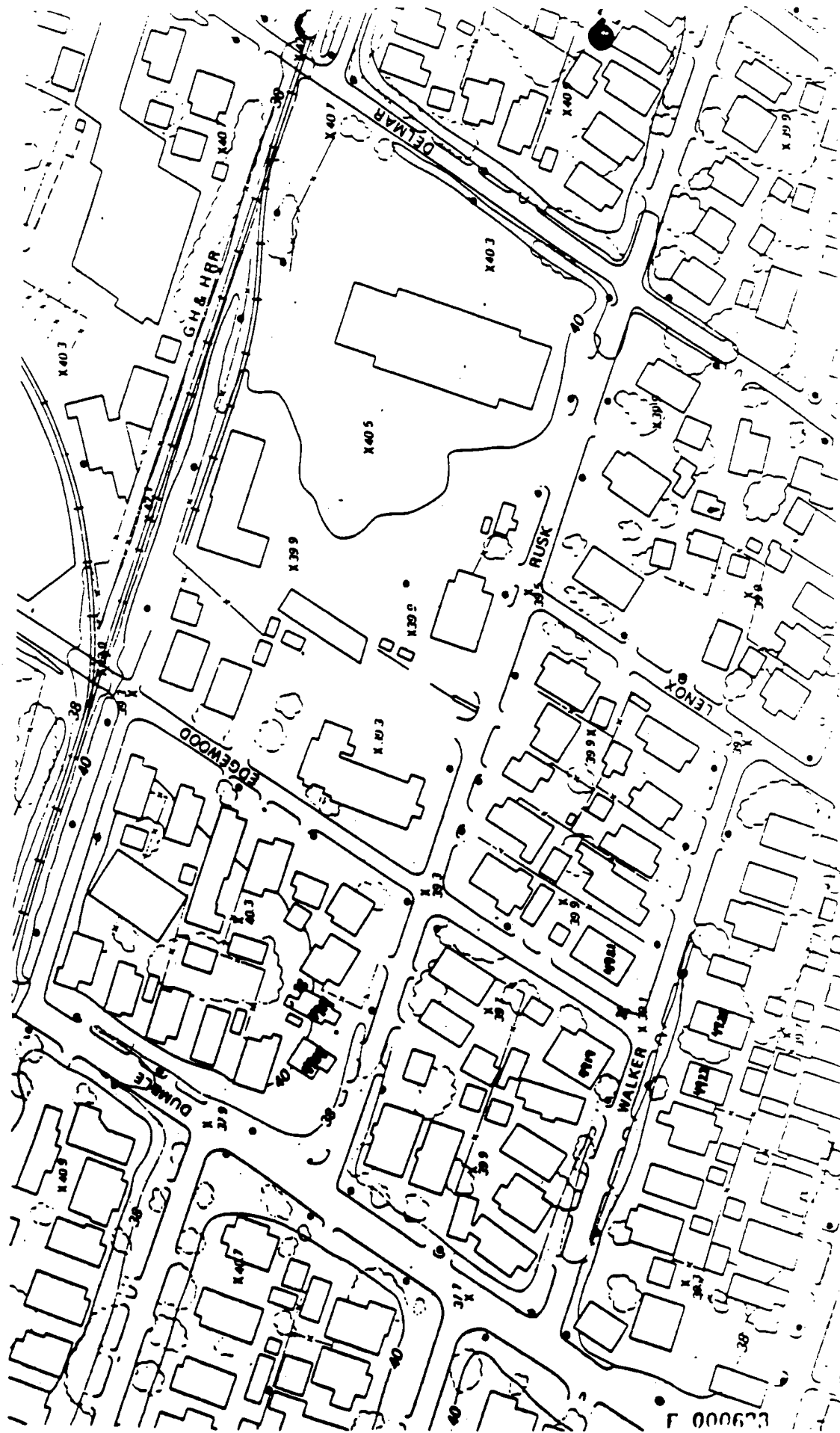
F 000620

OFFICE J.D. BARKS
July 13, 1962
SCHEM DIAGRAM



App. 0136

F 000622



HOUSTON POLICE DEPARTMENT - OFFICER'S FIELD NOTES

INCIDENT NO 43670182

ENTRY (IF BURGLAR):	INSTRUMENT USED
EXP:	
SUMMARY (BRIEF DESCRIPTION): <u>SUSPECT ARRESTED FOR EVADING ARREST</u>	

OFFICER(S) MAKING REPORT

DE MACIAS EMP# 70319 SHIFT II DIV/STATION# Central UNIT 1921 TYPE 3
PR LUTK EMP# 71788 SHIFT II DIV/STATION# Central UNIT 1921 TYPE 3
 CALL RECEIVED: DATE 7-13-82 TIME 2300 REPORT MADE: DATE 7-14-82 TIME 0400

SUSPECTS INVOLVED	#1 NAME: LAST <u>SANCHEZ</u> FIRST <u>AIRTON</u> MIDDLE _____ ALIAS (NICKNAME) <u>ALLEN</u>
	<input type="checkbox"/> WANTED ADDRESS <u>409 12 DOX</u> DOB <u>9-13-60</u> HPD# _____
	<input checked="" type="checkbox"/> ARRESTED RACE <u>W</u> SEX <u>M</u> AGE <u>22</u> HISPANIC <u>H</u> HEIGHT <u>5'10</u> WEIGHT <u>155</u>
	<input type="checkbox"/> RELEASED HAIR: COLOR <u>BLACK</u> TYPE <u>Wavy</u> LENGTH <u>11-12</u> COMPLEXION <u>Medium</u>
	<input checked="" type="checkbox"/> CHARGED FACIAL HAIR <u>WISKEY</u> SPEECH ACCENT _____ EYE COLOR <u>Brown</u>
	<input type="checkbox"/> POSSIBLE DRESS <u>Pink T-shirt / Blue Jeans</u> WEAPON USED _____
	MISC. DESCRIPTION (PHYSICAL ODDITIES) _____
	INJURED: TAKEN TO _____ BY _____
	CONDITION _____
	#2 NAME: LAST _____ FIRST _____ MIDDLE _____ ALIAS (NICKNAME) _____
<input type="checkbox"/> WANTED ADDRESS _____ DOB _____ HPD# _____	
<input type="checkbox"/> ARRESTED RACE _____ SEX _____ AGE _____ HISPANIC _____ HEIGHT _____ WEIGHT _____	
<input type="checkbox"/> RELEASED HAIR: COLOR _____ TYPE _____ LENGTH _____ COMPLEXION _____	
<input type="checkbox"/> CHARGED FACIAL HAIR _____ SPEECH ACCENT _____ EYE COLOR _____	
<input type="checkbox"/> POSSIBLE DRESS _____ WEAPON USED _____	
MISC. DESCRIPTION (PHYSICAL ODDITIES) _____	
INJURED: TAKEN TO _____ BY _____	
CONDITION _____	
<input type="checkbox"/> ADDITIONAL SUSPECTS IN NARRATIVE	

NARRATIVE (COMPLETE DETAILS INCLUDING SYNOPSIS OF WITNESS STATEMENTS, PHYSICAL EVIDENCE, ETC.)

INTRODUCTION

OFFICERS WERE ASSIGNED AN OFFICER DOWN AT 4400 HAINSBURY FROM DISPATCH AT APPROXIMATELY 2215 HOURS. OFFICERS AT TIME OF CALL WERE AT 4400 HAINSBURY AND ARRIVED AT SCENE OFFER 2216 HOURS.

CONTINUED ON SUPPLEMENT - YES ☒ NO ☐

M.O. SUMMARY

RELATED CASES

OTHER OFFICERS:

F 000660

App. 0138

**DUSTON POLICE DEPARTMENT
OFFICER'S SUPPLEMENTAL FIELD NOTES**

INCIDENT NO. 42670182

OFFENSE EVDING ARREST LOCATION 5500 Harrisburg

COMPLAINANT (S) STATE OF TEXAS DATE OF OFFENSE 7-13-82

DATE SUPPLEMENT MADE 7-14-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
--	---	--

RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

SCENE SUMMARY

OFFICERS OBTAINED SUSPECT AT THE INTERSECTION OF
HARRISBURG AND DELMAR, A PUBLIC STREET.
VISIBILITY WAS POOR AND WEATHER WAS CLOUDY.
DETAILS OF INCIDENT

OFFICER ARRIVING AT HARRISBURG DISCOVERED AN
OFFICER DOWN AND THE SURROUNDING SCENE CHAOTIC.
SUSPECT IN OFFICER'S VEHICLE WAS GIVEN AS
4M IN A WHITE T-SHIRT. OFFICERS WERE ALSO INFORMED
OTHER 4M'S HAD BEEN AT SCENE BUT RAN FOR LIFE.

OFFICERS SEARCHED FOR SUSPECTS IN AREA OF
SURROUNDING AREA. OFFICERS WHILE TRAVELLING
EAST ON TEXAS FROM LENOX OBSERVED LISTED
SUSPECT WALKING AT A FAST PACE WITH HEAD
DOWN IN OPPOSITE DIRECTION. AS OFFICERS DROVE
PAST SUSPECT, HE WAS FLAGGED DOWN BY A GROUP
OF 4-5 YOUNG MALES WHO POINTED AT SUSPECT AND
STATED HE HAD FIRED AT THE SCENE WHERE SUSPECT
HAD BEEN SHOT AND HAD RUN AWAY.

OFFICERS TURNED PATROL VEHICLE AROUND AND OBSERVED
SUSPECT RUNNING NORTH ON LENOX FROM TEXAS.

☐ SUPPLEMENT COMPLETE ☒ CONTINUED

OFFICER 1 M. MORRIS EMP# 2645 SHIFT II DIVISION / STATION Central Station

OFFICER 2 R. R. PUTA EMP# 26782 SHIFT II DIVISION / STATION Central Station

CALLER'S NAME _____

PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000661

App. 0139

PROGRESS OF INVESTIGATION ADDITIONAL INFORMATION, ETC:

OFFICERS OBSERVED SUSPECT RUNNING BETWEEN HOUSES AND ONTO A USED CAR LOT ON THE 500 BLOCK OF HARRISBURG. OFFICERS IN PURSUIT OF SUSPECT YELLED various times at suspect to stop, WHICH HE REFUSED TO DO. SUSPECT WAS APPREHENDED AT THE 5500 BLOCK OF HARRISBURG AT THE INTERSECTION OF DELMAR. SUSPECT WAS TENSE AND EXTREMELY NERVOUS. SUSPECT RETURNED TO YOUNG WALKER BUT COULD NOT BE IDENTIFIED AS SUSPECT IN SHOOTING OF OFFICER. SUSPECT RETURNED TO 3556 WHOLE HOLD WAS OBTAINED. SUSPECT CLEAR 5521 & 3622. HOLD ALSO OBTAINED FROM HOMICIDE. SUSPECT PLACED IN CITY JAIL. SUSPECT GIVEN RIGHTS BY OFFICER MORENO IN SPANISH.

☒ SUPPLEMENT COMPLETE

☐ CONTINUED

F 000662

App. 0140

SUPPLEMENT REPORT
HARRIS COUNTY CONSTABLES DEPARTMENT
PRECINCT 44

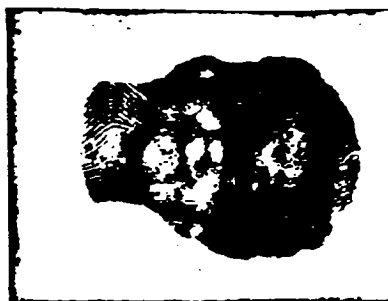
Case No. 11-000700
 J.P. No.

NAME OF DEFENDANT(S) (Last, First, Middle)			
COMPLAINANT (Last, First, Middle)		LOCATION OF OFFENSE	DATE
OFFENSE, CHARGE OR INCIDENT ON ORIGINAL REPORT		CORRECT OFFENSE OR INCIDENT CLASSIFICATION	
		CHANGED TO	
SHOW-UP YES <input type="checkbox"/> NO <input type="checkbox"/>	MAGISTRATE OR LEGAL WARNING (Attach form, time, Deputy)	MULTIPLE CLEAR UP (Use other case numbers and co-defendant's name) YES <input type="checkbox"/> NO <input type="checkbox"/>	
EVIDENCE OR PROPERTY RECOVERED YES <input type="checkbox"/> NO <input type="checkbox"/> (Describe)	IN PROPERTY ROOM YES <input type="checkbox"/> NO <input type="checkbox"/>	TAG NO.	TO CRIME LAB YES <input type="checkbox"/> NO <input type="checkbox"/>
INSTRUCTIONS: Record activity in case subsequent to last report, give names, address, dates, and time of all personal interviews and attach witness statements, if any. Record statements of unfavorable facts or of spouse of defendant.			
ITEM NO	<div style="font-size: 2em; text-align: center; margin-top: 20px;"> 346 12/19 </div>		
F000700			
REPORTING DEPUTY	BADGE	STATUS (Check one)	
<u> </u>	<u> </u>	OPEN <input type="checkbox"/> CLOSED <input type="checkbox"/> SUSPENDED <input type="checkbox"/>	
SECOND DEPUTY	BADGE	SUPERVISOR S.S. NO.	
<u> </u>	<u> </u>	<u> </u>	

HARRIS COUNTY



DISTRICT ATTORNEY'S OFFICE



1



2



3

SHOW-UP FOLDER



4



5



6

F 000738

CASE # 366178

JAIME ESPARZA
W/M Date: 6-11-57

JAVIER CARD
W/M Date: 12-17-57

ENRIQUE TERRES LUNA
W/M Date: 7-1-62

#4 ROLANDO GARCIA
W/M Date: 8-1-58

#5 EFREN MARGUES MATA
W/M

#6

F000739

App. 0144

HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE - HOUSTON, TEXAS

INVESTIGATOR REPLY:

DEFENDANT: LUNA, Enrique Torres Cause # 366178

1744 85	I, Clampitte, was asked by Prosecutor, John Cossum, to take a photo that had been received of a subject by the name of Efren Marques Mata, to the compl in this case, Dennis Zastrow. He said that the defense attorney had taken a photo of Mata to Zastrow and he had ID the tattoo on the upper right arm of the subject MATA as being the same as one of the suspects in this case. The Defendant in this case, Luna, does not have a tattoo of this nature on his upper right arm.
	I called the phone number given for Zastrow, 443 2083, and learned that it was the Denrow Guns, at 188 FM1960. I went to this location and showed Dennis Zastrow the photo that I had received of the LA/M with the Tattoo. He was unable to see the face of the person with the tattoo on and he said that the tattoo looked like the tattoo that one of the suspect had when he was robbed. He said that he could not be certain of this in the photo but would like to see the tattoo in person to make the final decision.
	Zastrow was then shown the photo spread that was attached to the file and he picked out # 3 & # 5. number 3, is the defendant in this case and # 5, is Efren Marques Mata. Zastrow said that he is sure that # 5 was the man with the tattoo and that # 5 was a photo that he had been shown before. Zastrow then asked that I take the photos to another witness in this case, Dan Dawson, who works at the Klein School District. Dawson was contacted and agreed to meet with me.
	I went to 7200 Spring-Cupress Rd, to the Administrative Offices of the Klein School District and talked with R.D. "Dan" Dawson. He was asked if he had ever seen a tattoo during the robbery and he said that he had not. I then showed Dawson the photo spread that I had previously shown Zastrow. Dawson picked out Mata and Luna both.
	Dawson said that he felt that both of the subjects were involved in the

F000762

PAGE (1) OF (2) PAGE(S)

Investigator: J.W. Clampitte

HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE - HOUSTON, TEXAS

INVESTIGATOR REPLY:

DEFENDANT: LUNA, Enrique Torres

Cause # 366178

contd	robbery at the Rebel Gun Store. He said that he felt that Mata was the
	stocky one that was rough with everyone and that Luna was the younger one
	who held a gun on them in the back room while the other two went through the
	store. He said that he did not feel that the subject who had been previously
	convicted for Capital Murder Ricardo Guerra, was one of the persons that
	committed the robbery. Dawson said that during Guerra's trial he never
	said that he was one of the robbery suspects. He said that he felt that the
	third man was Roberto Flores.
	Dawson says that in addition to not recognizing Guerra, that he saw pictures
	of Guerra when he was arrested five days after the robbery. He said that
	when he saw the photos of Guerra that Guerra had a beard that was possibly
	weeks old and that during the robbery, none of the suspects had a beard.
	Dawson said further that when he came to trial on one of his appearances,
	he saw Luna sitting in the front of the court room and immediately knew
	him as one of the suspects.
	Dawson is sure that the first robbery suspect into the store was Roberto
	Flores who had the pistol to Zastrow's head. There was Enrique Luna,
	who got a gun from inside the store to use and was a larger and rougher
	person than Efren Mata who was supposed to be younger and held a gun on
	them in the back room while Luna and Flores went through the store.
	Dawson has a new home phone which is unlisted and it is 376 4171, and his
	work phone is 376 4180, Ext. 380.
	I called back and talked with Zastrow after talking with Dawson and he
	said that he was not in agreement with Dawson on Luna being one of the
	suspects as he believes Guerra is one of them although he has never seen
	Guerra. He feels as if another of the witnesses should see the photos and

F 000763

INVESTIGATOR REPLY:

DEFENDANT: Enrique Torres Luna

Cause # 366178

	I called and talked with Prudential Maintenance which is also knows as I.S.
	and learned that Apolinia Loredo had worked for then but had been terminated
	on 8/18/84. She gave her home address as 4627 Woodside Apt # P-4. This
	is the same address as I had checked out previously. She said that she
	did not have a forwarding address or a new place of employment for her.
1-9 85	I, Clampitte talked with witness, Dan Dawson again about his Identification
	of Mata & Luna in the photospread I had shown him. He said that he was
	still sure that both of them were involved in the robbery. I told him that
	Guerra's fingerprints had been found at the gun store at the time of the
	robbery and he said that he remembered that and felt that Guerra had been
	in the store earlier and lef the prints then. He said that he thought
	Guerra may have cased the store as well as Flores. He again re-iterated the
	story that the only one of the hijackers which had a beard was the one that
	had gotten killed by the police. Dawso says he is willing to testify in
	court about his beliefs.
	I tried to get hold of Zastrow but he was out sick. I left word for him
	to call me.
1-15 85	I, Clampitte, contacted the C/W Dennis Zastrow again and talked with him
	about the case. He was told that since the ID on the subjects was not too
	good, that it was a good possibility that the case against Luna would be
	dropped and that Mata would not be charged either. He said that it was
	fine with him becuae he would not like to see the wrong man to to the
	Pen for the robbery, and that Mata was probably too hard to find since he
	was probably back in Mexico. I told him that if anything changed that we
	would be in cont act with him later.

F 000765

App. 0147

To Cossum
Date 9-28 Time 1:00

WHILE YOU WERE OUT

M. James Carroll
of Woon - 1-6 PM
Phone 409 846-1466
Area Code Number Extension

TELEPHONED	PLEASE CALL
CALLED TO SEE YOU	WILL CALL AGAIN
WANTS TO SEE YOU	URGENT

RETURNED YOUR CALL ☐

Message Cannot Meet
A Sunday
mb
Operator

**AMPAD
EFFICIENCY®**

FOO801

Nothing secedes like seceding

Key West 'joke' fades when the realities begin to set in

Margie Anne Goyer

"We see and fantasy often overlay serious movements of change. We should get us out of the saddle, ignore the fun and games of the ceremony, ignore the last week of the year... West's ceremonies last week were... the town seceded from the union. It was re-named itself the independent state Republic."

lyptic, murderous, perhaps criminal — but it's not unthinkable: Witness the mass protests against it. World war? Mass starvation? No, they are quite unthinkable too.

The "unthinkable" in the United States today is that the country — God's country, the blessed land, the land of the free and the brave — could break up, could disintegrate into component parts or little countries, could even become subject to a new Middle Ages in which roving gangs control the law, in a union where there is no common language or national belief to maintain an "American way."

This "unthinkable" scenario is not only increasingly possible, it is already happening on our two borders. Canada itself has not dealt conclusively with French-speaking Quebec and the ten western provinces' desires to secede, while Mexico's population explosion, coupled with well-documented country's unemployment, some warning signs are:

■ Massive and as yet uncontrolled immigration into the United States that will become even more extreme in the future. The Mexican population will double from 60 million today to 120 million by the turn of the century, and the Central American population will double as

When these "illegals" come to the United States, as increasing numbers of them undoubtedly will, they form a permanent underclass that is forced to live outside the law, often in a kind of slavery to human traffickers. These people weaken and may perhaps eventually destroy the fabric of nationhood that holds the American people together.

■ The weakening of English as the official language of the country. With the spread of bilingual education to deal with illegal aliens, the borders of the country already are losing their American character. Yet, at the same time, these aliens cannot take part in the mainstream and get ahead because they cannot compete linguistically. The result is further breakup.

■ The death of a general national agreement on what "Americanization" means: The political reform movement's noble in their conception, nevertheless broke down the unified political power groups and lent to our disintegration. In the media, information has become so diffused that no one newspaper or electronic medium has enough power to act

as a force against corruption. The short-lived "Conch Republic" was an immediate flash of anger pressed through playfulness. But the inception lay in the tens of thousands of Cubans sent out by Cuban President Fidel Castro two years ago in a desperate attempt to destabilize the United States. We can now clearly see the results of that destabilization, not only in angry Key West but in all of crime-ridden south Florida and in cities like New York.

A few voices are beginning — just beginning — to speak out on these new threats to national integrity. California Gov. Edmund G. Brown recently alluded to such when he wrote of the 50 states being "compelling colonies in the drive for more business investments and pleaded for a 'national consensus.'"

Unfortunately, the Reagan signing of this bill seems instinctively to understand these problems and has begun decisive steps to strengthen and control American buyers in a way that President Carter and people seemed unable to do. The administration deserves credit for acting. If it does not continue to do so, a "Constitutional Republic," as impossible as it seems to most Americans today, could become reality.

of their students.

Reagan's partial return of their taxes to those who keep God in their schools is long overdue.

John A. Hoopes

1997 Campbell Road, Houston, Texas 77080

■ Unfairness

One of your questions in your editorial of April 22 was whether taxpayers should help pay the tuition for private schools. Surely you see that average people who, for conscience sake, send their children to private schools now have to pay double. The tax credit is an attempt to correct this unfairness. It is certainly no subsidy. It seems that the money that the public school would save by handling fewer students should be channeled back to relieve those who choose other means of education.

Your point of comparing public and private education to public and private gardens and parks is well taken. But walking in the park is voluntary and casual; whereas schooling is obligatory and of profound implication. Should not a pluralistic society protect a

healthy diversity in thinking and values? Encouraging private schools will help protect freedom of thought.

Thomas O. Moeller

4307 Ione, Bellaire, Texas 77401

■ At home

I am writing in regard to bilingual education. This is the United States, where English is the No. 1 language. I do not believe in teaching Spanish to children in elementary schools, as I do believe this only hinders the children and slows down their learning process. The Mexican-Americans have no right to inflict their heritage on my children . . .

Let them teach their children their language at home, or as an elective later in school . . .

Mrs. Susan Schmidt

146 White Cedar, Houston, Texas 77015

May 9, 1982 6-6-3

The illegal alien question

The Immigration and Naturalization Service has my vote. It's about time the jobs were given back to the ones they were taken from. It's about time the citizens of the UNITED STATES stop letting not just from Mexico but from all other countries walk on them.

They scream their rights are being violated. What about our rights as taxpayers? I am a United States citizen. It's my husband that has been out of work. It is in the field that many illegals are working.

I don't think another country would let us go to work and let their native-born go jobless. In my honest opinion it's the citizens of the United States that are getting the dirty end of the stick.

Linda McCormick

11915 Pompano, Houston, Texas 77072

■ Overdue

I wish to thank whoever is responsible for the drive on sending the illegal aliens back to where they be-

long. It is long overdue. They have taken over the job market, housing, stores (rude and pushy), crime in the city has advanced greatly because of them because they have nothing to lose. They think they should have the same privileges that the citizens have, education free, jobs, and when anything is done about it, the group LULAC comes to their defense as if they were good upstanding citizens. I also think the people who hire them (which is treason in my book) should be fined such heavy fines that they would not get anywhere hiring them. . . .

If they want to come into this country legally, learn to speak English instead of wanting us to hire special teachers to teach them so they can continue to speak the language of a country that they don't think enough of to stay in, treat the citizens as people instead of animals, then I would say they would be welcome, but to come here as lawbreakers, then that is another story. . . .

E. H. Pearson

P.O. Box 61677, Houston, Texas 77208

F0010S0

App. 0150

Collecting debts to I

As the secretary of housing and urban development, I want you and your readers to know that the study made by the General Accounting Office on the collection of defaulted home improvement loans (noted in your article . . . Jan. 31 . . .) covered a period that reflected management deficiencies and an inadequate oversight program by the previous

to reduce the number of claims for insurance benefits on the department. We will soon be implementing new rules that will require security on all loans above \$2,500 and will be requiring lenders to obtain commercial credit reports on all borrowers. We expect that these new criteria will improve considerably the quality of loans made in the future and, if necessary, help us even more in the collection of debts from defaulting

ld seem the law enforcement agencies are

State Mail Verde, Houston, Texas 77063

Marc Bedford

Hurricane season thoughts

ure that anyone who is interested in Gulf s noticed that the first one coming up is perty. If it were spelled A-L-B-E-R-T-A then should rush to their storm shelters.

Alberta McCown
uregard, Alvin, Texas 77511

-pickey

w-nit-pickey can people get? Every other has to have a masculine name. This is ridiculous. I would like to know of anyone has ever heard me.

D: Petrosky
sel Lane, Houston, Texas 77080

■ Now

Now we name hurricanes after ~~illegal~~. This oughta tell the INS something!

Catherine Covington
10020 Ocean Drive, Baytown, Texas 77520

■ Nails

During hurricanes and other violent storms some people have to board up windows for protection. Getting the nails out afterwards is much easier and less damaging if they use a duplex (two-headed) nail.

Jim Reid
9802 Rockhurst, Houston, Texas 77080

Responding to columnists

georgie Anne Geyer's column (Post June 2), not senseless," I don't recall the officer's he was in the ETO and the Germans called surrender. His answer was a classic it fits Geyer's column as well!

hting, which I presume to mean "war" is which is usually started by stupid old men they are smart, and fought by stupid young hink the old men are smart.

a solution to all war! Let's arrange a bind-ational agreement that all future wars shall by men 55 years of age or older! Never by unger, and no exceptions, period! Bingo! No

Orville E. Wallace
mont Parkway, No. 1605, Pasadena, Texas

icer whose name you could not recall was Anthony C. McAuliffe who made the terse nswer to a demand to surrender when Ger-s had his troops surrounded at Bastogne, in 1944. — Editor.

ny others.

I Reeves' column (Post June 4) is very en-

lightening. He exposed the greed for profit of one corporation . . . He knows, and I know, there are too many others doing the same thing.

Our lawmakers cannot keep these corporations from vacating our country and setting up shop where cheap foreign labor is so abundant, but they have the power and should use it to make them wish they hadn't.

Robert C. Roach
1016 Iowa, South Houston, Texas 77587.

■ Think

It's time to stop and think! Re: "A new role in Africa — Does U.S.-Moroccan base accord outweigh the risks?" by Geoffrey Godsell (Post June 4).

Will centuries of Northwest Africa-European wrangles get mixed with centuries of Middle East wrangles with the U.S.A. as "mixmaster"?

Yandell "Woody" Boatner Jr.
804 Fannin, No. 714, Houston, Texas 77002

Write to Sound-Off, The Houston Post, Houston, Texas 77001. Sign your letter and list your mailing address and daytime telephone number. And please keep it short.

App. 0151

F0C1110

Editorials

Op
Tv

Let us pay tribute today to James Donald Harris

by Jan

Today, let the entire city of Houston pay tribute to Patrolman James Donald Harris.

Every police officer, and every member of his family, lives with the knowledge that a routine event can suddenly turn savage. Officer Harris stopped a car for reckless driving, and witnesses say he was shot to death by one of the two men he was arresting. The men fled, and one later shot Officer Lawrence J. Trepagnier five times and was then shot to death himself. The other man was caught and charged with the murder of Officer Harris.

This is the dangerous environment we as a community ask our policemen and policewomen to enter each day to enforce our laws. They put on their uni-

form, pin on their badge and strap on their weapon, telling their family they'll be home after work.

So far this year in Houston, four policemen have died in the line of duty. Three others have been killed in traffic accidents. One other has died of a gunshot wound. They did not return to their homes and their families. Harris leaves a wife and two daughters.

Earlier this year, a Chronicle editorial about the deaths and injuries of Houston policemen cited the words of John Paul Jones, who in 1778 said he wanted a fast ship because "I intend to go in harm's way."

We as a community asked Officer James Donald Harris to go "in harm's way." Let us today and forevermore honor his name.

F001297

Soviet economy is vulner

App. 0152

At the heart of the dispute between the United States and its allies over the pipeline the Soviets want to build from Siberia to Western Europe is the amount of trade leverage that can be exerted against the Soviet Union.

for the ruble. In actual value, Soviet imports and exports have almost three times as much impact on the Soviet economy as previously estimated.

International trade, the Census Bureau says, amounts to about 27 percent of the Soviet economy, about the same

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Match funds for retarded to help the mentally ill

From Mary Cagney, Box 22187.

It is highly commendable of Mrs. Rose Kennedy to donate \$750,000 for research in the field of mental retardation. Is there anyone out there who would like to match that amount for research on the causes and possible cures for the chronically mentally ill?

Tues July 27, 1982 Chronicle Sec 3 p. 11

Illegal immigration responsible for much of national crime wave

From Russ Turner, P.O. Box 55309.

Many people think that illegal immigration is causing a national crime wave. The taxpaying citizen is told that the government cannot stop the flow. The liberals and ethnic groups seem to oppose all attempts to enforce it. The government must come down on these lawbreakers as a priority measure. The alternative is for citizens to arm themselves to protect their lives and properties.

The government should establish work farms along the borders with Mexico. Instead of returning illegals to their country, they should first be incarcerated on the work farms. Their terms should be commensurate with the number of times they have persisted in breaking the immigration

Houston and its doctors responsible for life, health

From Eric W. Drescher, APDO-577, Cuernavaca, Morelos, Mexico.

I feel very strongly about your beautiful city and would like to express my admiration. The first time I saw Houston was in 1932 when I arrived as a merchant marine. At the time Houston was for Americans very likely a small town but for me, coming from Silesia, Germany, it gave an impression of greatness and adventure and was truly a signpost of the New World.

I returned to Houston in 1979 seriously ill with little hope of surviving my ordeal. The progress in the city was inspiring, although I saw little of it as my time was taken up with tests and consultations in your imposing Texas Medical Center.

I returned repeatedly for checkups and got to know Houston better. Of

I viewed with dismay and horror the front page photo (Chronicle, July 21) which showed, among other things, four dead or dying horses. The Irish Republican Army — Irishmen — say they did this thing and even followed it up by bombing a bandstand — bodies of people cut in two hurtling through the air.

An Irish broadcaster made a statement on television for all to hear: There will be more of this. Today, I am ashamed of my Irish ancestry.

laws. Labor on the work farms will offset the cost of setting them up.

It is ridiculous to play games with these people. Catching them and sending them back is like playing tag with children. It is bound to precipitate a challenge for many of them.

Eyewitness testimony not reliable piece of evidence

From James R. Brown, P.O. Box 585, Pearland.

Regarding the article by Frank Klimko entitled "An angry freedom" (Chronicle, July 3) about Thomas Landreth who was freed on a technicality rather than cleared after another man confessed to the crime for which he was convicted, based on the information in the story it appears he was convicted only upon eyewitness testimony of the victim. If that is the case, then he never should have been convicted at all.

Since a person's recall is subject to a degree of alteration from new input, it could be that the police might have accidentally influenced the victim's memory. Eyewitness testimony without corroborating evidence does not constitute "proof beyond a reasonable doubt."

Sight was gift of young Houston accident victim

From Mrs. Cyrus A. Lyon, 238 Guava Ave., Chula Vista, Calif.

We want to say thank you to the donor of an eye cornea which my husband received on July 4, 1982. This is one of the best donor programs ever

by James O. C

SEVEN WEEKS A tion economic r state-at-Versailles, relations among Eu and Japanese are at recent history, some in postwar history.

Seldom has the fat nual economic ritual strated — than — in participants square warfare before the unique is even dry So harsh is the to principal economic p their gold-lame conv King's palace that it administration may later, into a change

Goldsborough, a the Carnegie Endo tional Peace, is au published book, Re

similar to an earlier trol policy to head with Europe. If so, case of ideology yie.

Late last year P bargoed U.S. comp General Electric (equipment worth \$; viet Union's natural ern Europe. Consid since he returned president to Europe

• The United Sta nese employees of firms, accusing the panies in general of

• Washington im on U.S. subsidiaries rope to keep them the pipeline project ing the legality of s

• Washington an pean and Japanese ness under Americ General Electric allowed to fill orde ment made under

• France and I would defy the Am lation, setting the s a long and bitter di major European co pipeline — France Germany — and Ita States.

FOC1311

App. 0153

POLI

source-efficient methods do not make the national "production" as measured by the GNP rise even one penny, unless indirectly.

When one company through waste recovery added \$45 million to its sales, this raised the GNP. The equally desirable side effects of lowering waste disposal costs and decreasing pollution, while contributing to human well-being, did not add to the GNP.

means less well off than we

Morris D. Morris, professor of economics at the University of Washington, has developed a measure of the quality of life, the Physical Quality of Life Index, or PQLI, which more adequately expresses in a single number as well as in its component parts the wellness of a society. While GNP focuses on the economic inputs that may have bearings on the quality of life, the PQLI is based on

would greatly improve efforts to meet the needs of our society. Such measures would provide more specific handles to problems without the questionable economic theories too often associated with decisions made in the name of raising the well-being of our citizens. Even this brief comparison also illustrates that efforts to strengthen an economy are not necessarily equivalent to measures to improve society.

F001356

App. 0154

Push comes to shove

by Michael S. Teitelbaum

THE CURRENT ECONOMIC CRISIS in Mexico will increase the pressure of illegal immigration on the U.S. border. This strengthens the case for the Simpson-Mazzoli bill, now before the House of Representatives. Simpson-Mazzoli seeks to limit the increased flow of illegal immigrants without curtailing civil liberties in the bargain.

Mexico's recent devaluations and inability to service its enormous foreign debt have occurred while Congress is in the final stages of a nearly 10-year-long debate on immigration reform. The Simpson-Mazzoli bill's provisions include: holding employers accountable for hiring illegal aliens; improving means of identification for workers; amnesty for millions of illegal aliens already living in the country; and increased funds for immigration law enforcement. The bill seeks above all to limit the flow of illegal immigrants to the United States — a crucial reform inasmuch as the Mexican economic crisis seems likely to increase pressures for illegal immigration.

The economic crisis compounds the many flaws in our existing immigration policy. It is not unlawful, for example, to employ illegal aliens. At the same time, America's borders are remarkably porous, and its visa system easily violated. Ready access to employment and poor enforcement of existing immigration laws have made the United States a country of choice for millions of people wishing to migrate unlawfully. While no one can know for sure the size of the illegal population

tion, a conservative estimate today would surely exceed 5 million.

Mexicans account for 50 percent to 60 percent of these immigrants. This is primarily a result of Mexico's proximity to the United States and the large disparities in wages and unemployment between the two countries. A year ago, when the exchange rate was about 25 pesos to the dollar, prevailing wages in the United States were nearly 10 times greater than those in Mexico. After two major devaluations of the peso and Mexico's imposition of exchange controls, the volatile exchange rate now fluctuates between 70 and 100 pesos to the dollar, and runs even higher on the black market. There have been substantial Mexican wage increases during this period, but even so wages in the United States are now at least 15 times greater than those in Mexico, thereby increasing the "pull" of American employment.

The fiscal austerity needed to cool Mexico's 100 percent inflation and to attract international financial assistance will cause unemployment, currently estimated at more than 25 percent, to rise even further. Many hundreds of thousands of existing jobs are expected to disappear over the coming year, so the "push" factor that causes Mexican emigration will also grow stronger. Mexicans are ambivalent about these trends. In his State of the Union address, on Sept. 1, President Jose Lopez Portillo reiterated his view that Mexican emigration is caused by demand for labor in the United States. He stated: "We will never agree to patrol our own borders."

Some Mexicans see emigration as a safety valve for

Teitelbaum is a senior associate of the Carnegie Endowment for International Peace, in Washington, D.C.

unemployment and political dissent, while others decry the loss of skilled manpower and the unlawful mistreatment of Mexican citizens in the United States. There is also great concern about illegal immigration across Mexico's southern border with Guatemala. In his recent election campaign, President-elect Miguel de la Madrid spoke publicly of the sovereign right of both Mexico and the United States to control the entry of foreigners.

Given this ambivalence, Mexican officials may prefer the status quo — a weakly enforced U.S. immigration policy. But Mexican criticism of the Simpson-Mazzoli bill has been muted compared to that of previous reform proposals. In part this is because Mexicans are justifiably skeptical about America's political will to reform and enforce its immigration laws. But Mexicans are also aware of the bill's favoritism toward Mexico: Millions of Mexican citizens working unlawfully in the United States would be granted amnesty, and one of every seven future immigrant visas would be allocated to Mexicans.

The stakes are high for both countries. If immigration reforms like those in Simpson-Mazzoli were to be blocked, emasculated or poorly enforced, a plausible consequence down the road would be mass round-ups and deportations of illegal aliens already in the country. (This was done 28 years ago during "Operation Wetback" and, on a smaller scale, during this year's "Operation Jobs.") Failure to reform the law might also mean drastic increases in police activities along the borders. It is clear that continued disarray in U.S. immigration policies and the increasing migration pressures in Mexico make a dangerous combination.

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Chronicle

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A border patrolman leads a group of illegal aliens down the hillside toward waiting vans which will take them to a holding center.

Larger border patrol needed to stop illegals

From Stephen Hartsell, Pasadena

It's no secret that the Mexican economy is a shambles. But that shouldn't mean we Americans should have to feed and provide free education to illegals who slip past our badly understaffed border patrols like roaches in the night.

Americans are experiencing some of the toughest times in history. Many are without jobs or even enough money to buy food. Yet massive numbers of illegals slither across the border into our country every day, snatching up jobs Americans so desperately need.

They add to our crime problem substantially. They apply for government benefits like food stamps and even get free education in our schools. All this is paid for by Americans, of course.

I think a much larger border patrol is needed, and soon. The result of this would be obvious — less crime and more jobs for American workers. Times are tough all over but in our country, we Americans should come first.

**If autoworkers unhappy,
let others have their jobs**

**It seems auto theft now
a big problem in Houston**

From Patricia Atkinson, Houston.

My husband and I are retired. He was a fireman for 34 years. I was a registered nurse. We have saved for a trip around our great country for many years. We set out in our trailer and a pickup truck with a camper shell. Our trip was great until Oct. 23. While dining at a restaurant in Houston after seeing the Johnson Space Center, we found our truck had been

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by Al

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tributor and witnesses at the scene of the officer's shooting told investigators the two men fled to a nearby residence at 811 Ninth, where the man who had shot the officer was hiding. The man, legally blind and Harris was said to be fleeing with several other people.

James paired officer James Don-
ald Harris, 30, was fatally shot
on Wednesday night in a traffic
accident on the highway.

The defendant, who was arrested during the rioting, was charged with robbing a convenience store. The suspect is released on \$100,000 bail.

Rains rule out need to ration

Police and Harris' report was based on the body of the dead man, along with a 15-ounce punch bowl (COURTESY FROM THE ALC).

about 2 mi. with the garage for the car arrived without further incident and a 15-ounce punch bowl (COURTESY FROM THE ALC).

He was shot five times in the stomach and chest during a police search to find the gunman who shot Officer Harris.

Similar comments by citizens, the mayor said, could have left a cross scarred on the city's reputation. "The problems that occurred during the summer of 1980, when the water was not restricted for more than a few days, were not restricted for more than a few days," he said.

Public Works Department officials in Houston said the city's water supply is not as secure as it once was.

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Public Works Department officials in Houston said the city's water supply is not as secure as it once was.

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App

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Administration.

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Man who allegedly sent bogus bills indicted

When they returned the balls and made the waterworks very late. Major Kathy Whitcomb in early May went to Houston to see one of the biggest balls, whatever she had the great offer to buy on the fair ball, was a U. S. Ball. She says: "I didn't get it until the city actually goes to it." Dan 1962

A current was found for Lappa as a result. He lives a maximum generally on each count of five years in prison and a U. S. 1000 flow.

April said the students were marked due to the way within which they and the others in the party is a little change in the movement and

Paul stated that with the students on a private and when they in the party were in the 10 November that committed the industry and any money there said

There is a 30 people a little the Hall

disappointing, however, if it becomes an industry trend, including such companies as Leppes and Leppes Associates, a Louisville, Ky., restaurant.

A Houston man who allegedly sent phone statements to small businesses for city income taxes was indicted Thursday on a charge of mail fraud.

A federal grand jury indicted Richard J. Leggett II of the Dallas office of Alchister on charges he defrauded several small business operators by sending out bogus city bills.

The indictment accused Leggett of re-

However, Communications and Transport Minister Emilio Mayer says the government is not planning to change the law. "The law is not perfect, but it is the best we have," he says. "We will continue to work on it, but we will not change it now."

MEXICO CITY (UPI) — The Mexican government Thursday took control of Mexicana Airlines, one of Latin America's largest private carriers, and planned to install a government minister as chief administrator officials said.

The government already owns Mexico's other major airline, Aerolineas.

The state bought the majority

Gun confiscated after shooting of officers was stolen from store

Cardinal Llanos and the 110 members were appointed a judge in the capital murder charge.

Cuerra appeared before state District Judge Henry Overton and issued there a probable cause to keep him in jail until a grand jury can convene in late July.

Hernandez said this arrest is from Measure and is an attempt to save Cuerra and his lawyers from the state. Cuerra was an innocent man, he said, meaning, doesn't he is guilty of capital murder.

ST. LOUIS, Sept. 17 (AP)—A robbery of a bank in St. Louis today was the first in which the police have recovered all the loot. The bank was robbed by a group of men who had been in the city for some time. The police had been following them for some time, but they were not able to catch them until today. The police recovered all the loot, including cash and jewelry. The men were taken into custody and are being held in jail. The police are still looking for other members of the group.

After allegedly receiving the offer, Webster was almost blind to the consequences of the move. The two paid Harris service charges were heard in the dead man, Webster said. The next day, apparently had been given the place after the shooting of Harris and Armitage, Webster said.

A short time later, Curry was discovered hiding behind a bench inside between the two houses. The Grallers were seen to leave the trailer, he

On 11 of the 608 beds of Rush Armys
FATH TREPAGNIER, 36, was Thursday night
at Rush Army Hospital, with a gunshot
wound to the leg.

Courts and the other suspect were
confronted by police about 11:30 p.m.
Thursday night, two hours in the OGD
beds of Rush Trepagnier sub. "Initially
was wounded during a gunshot between
him and the other suspect police said

Trepagnier, 36, was in serious but
stable condition Thursday night at the
main hospital, with five gunshot

The three robbers were armed with a .38 Smith & Wesson revolver, a .30 Smith & Wesson rifle, several Red Boyman and

[illegible]

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P001427

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BY JIM CARLTON
OWNER/STAFF

GUEST

Guerra was being held without bond in Harris County Jail on capital murder charges in the death of Officer James Donald Harris, 29, who was killed during a traffic stop in the 6800 block of Walker.

4
Harris was the fourth Houston Police Department
officer killed in the line of duty this year.

He said he is disturbed that people who should not be in possession of firearms have access to them. He added that he stands to maintain strict enforcement of laws restricting the carrying of firearms, but added that because of "search and seizure problems," people may not be searched arbitrarily for guns.

Brown said it is "desirable" that officers wear bullet-proof vests but reserved comment on enactment of a policy mandating them.

Guerra was from an unknown city in Mexico. Detectives said Guerra shot and critically wounded a passing motorist as he and "Guerra" walked from the rear of Harro's shop to Guerra's residence. The motorist, Jose Francisco Arreola, 23, of 4324 Russ, was taken to a hospital and died in Ben Tuley Hospital.

Webster said police learned of the gunshots connection after being contacted by the Harris County Precinct 4 controller's office, which has been investigating the

He Campbell said three men entered the gun shop
placed a Colored sign they had brought along over the
front door and announced a business.

Police are also investigating "Guerrilla" and "Guerrilla" in four recent robberies in southeast Houston in which they found evidence of the suspect.

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King size wall/bedroom, \$369
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Study says illegals a growing burden to welfare system

WASHINGTON (UPI) — A new study, warning "illegal aliens aren't a bargain," says undocumented immigrants are making growing use of American welfare and unemployment benefits.

The Federation for American Immigration Reform said this weekend that unless legislation is passed to clamp down on illegal immigration, the nation could face "a hemorrhage of our social welfare system."

Concluding that "illegal immigrants aren't a bargain," a federation study said evidence indicates illegal aliens pay less in taxes than they get in benefits.

"Illegal aliens are applying for and receiving hundreds of millions of dollars worth of services—at the same time these programs are being cut back for disadvantaged Americans," the report said.

"Illegal immigration was not a free lunch; it has been charged to our account, and payment is coming due."

The report, "Breaking Down the Barriers: The Changing Relationship Between Illegal Immigration and Welfare," was written by the federation's executive director, Roger Conner.

Among his findings:

- About 18.5 percent of undocumented women of Mexican descent in Los Angeles, interviewed after giving birth at county hospitals, said their families received welfare, according to one survey.

- In a study of illegal aliens in New York City who had not been caught, 13 percent of Haitians and 29 percent of Dominicans said they received unemployment insurance.

- A California survey found nearly 35 percent of illegal aliens surveyed received unemployment benefits.

- An Illinois survey still under way suggests illegals collect more than \$50 million in unemployment benefits, and 46 percent to 51 percent of aliens' applications are from illegal aliens.

Conners wrote that although earlier studies showed illegal aliens used few government services, the illegal population has grown since then, new studies use more accurate methods and the illegal population has changed.

Not only are illegals now more likely to be "intact family nuclear groups" than transient Mexican workers, but today's illegal aliens are more aggressive in seeking benefits, the report said.

FO01430

Life-size dummies add vivid twist to murder trial

By MARY FLOOD
Post Reporter

State's exhibits 19 and 20 stared at the jury during most of the testimony in a capital murder trial Monday.

The exhibits in state District Judge Henry Oncken's court are two \$3,500 dummies made in the likeness of the man on trial and his dead companion.

The mannequins purchased by the Harris County district attorney's office are meant to show the jury how illegal aliens Ricardo Aldape Guerra and the late Roberto Carras Flores looked July 13 when Flores, a policeman and a passer-by were shot to death and another officer was critically wounded.

The models are wearing the clothes Guerra and Flores wore that night. Flores' double wears a purple shirt that has bullet holes in the back and is heavily stained with blood. The manne-

quin has a 5 o'clock shadow and chest hair is visible at the opening of its shirt.

The model of Guerra, 20, has much longer hair than now worn by the man whose likeness it mirrors. The Guerra mannequin also has a long mustache, a beard and the high cheekbones and prominent Adam's apple of the man on trial.

Prosecutors said both models are made to reflect the men's height and weight the night of the chain of shootings.

When assistant district attorneys Dick Bax and Bob Moen lugged the models into view Monday afternoon there wasn't a poker face in the courtroom.

"All the DAs were very smirky. They figured they really put something over," said Melba Champion, the artist who sculpted the precise busts.

"And the defense attorney looked like he was really surprised."

Champion worked with her husband, Jack, of

United Scale Models Southwest Inc. to make life-size images. She said the pair frequently scared her during the four weeks she worked them. She said she'd forget they were in the workroom and suddenly see their outlines and think someone was there.

She made the faces from death scene and morgue pictures of Flores, but she got a chance to see Guerra before sculpting him.

The defense attorneys objected to the admission of the exhibits, saying they were inflammatory and would just bolster the witnesses. Attorney Joe L. Hernandez said the models will serve no purpose but to inflame the jury because of blood-stained shirt and the spooky nature of likenesses.

Defense attorney Candelario Elizondo, a mer prosecutor himself, said he wasn't surprised, though. "I'm used to almost anything with these guys."

Harris County District Attorney John P.

said the total \$7,000 bill for the models will be picked up with money collected by the worthless check division, not tax money. He said he thinks the money is well spent.

None of the prosecutors would explain why they felt it so important to impress the faces and stature of Guerra and Flores on the jury. But defense attorneys Elizondo and Hernandez said they plan to argue that Flores fired all the shots and not their client.

The models are likely to be used by the state to have the many witnesses involved point out the differences they saw between the two suspects and who they thought did the shooting.

The case began when Houston policeman James D. Harris, 29, pulled over a speeding car. Investigators speculated that Guerra and Flores wanted to hide evidence of a robbery and wound up shooting Harris when they were stopped at Edgewood and Walker.

Witnesses told police that after Harris was

shot, the suspects ran east on Walker and one raised a pistol and fired at Jose Francisco Armijo, 33, of the 4900 block of Rusk, who was driving with two young children in his car. He died several days later of the gunshot wound.

Police said Flores was killed when the two suspects were cornered in the 4900 block of Rusk. Flores allegedly shot Houston policeman Lawrence J. Trepagnier, who was critically wounded and hospitalized for weeks.

Flores was then shot by other officers at the scene, police said.

Monday, jurors heard testimony from Assistant District Attorney Terry Wilson, who happened on Guerra at the scene of Flores' death. Wilson said he was marking off the crime scene when he spotted a crouching man, pulled his pistol and eventually got Guerra to lie on the ground.

The state is scheduled to continue presenting testimony Tuesday.

F001432



Photo by Buster Dean, Chronicle Staff

Prosecutors Bob Moen, left, and Dick Bax flank mannequins resembling capital murder defendant Ricardo Guerra and his alleged accomplice, Roberto Flores, who was slain by police. The real Guerra, above, had a beard and moustache when arrested.



Mannequins used in trial of alleged police killer

BY ALAN BERNSTEIN
Chronicle Staff

The capital murder trial of an alleged slayer of a policeman took on the unsettling air of a wax museum when prosecutors brought into evidence two life-size mannequins resembling the defendant and his alleged accomplice.

Courtroom observers said accused killer Ricardo Aldape Guerra sat agape Monday, the first day of testimony in his trial, when assistant district attorneys Bob Moen and Dick Bax showed the jury the strikingly accurate models of Guerra, 20, and Roberto Carrasco Flores, 27.

The mannequins, which cost the Harris County District Attorney's Office about \$7,000, stood in place in front of the jury and state District Judge Henry Oncken throughout the day as police officers testified about the southeast Houston scene where Houston patrolman James Donald Harris was killed in a shoot-out with two suspects July 13.

Flores was killed and Deputy Sheriff James Trepagnier was critically wounded in a resulting man-bunt that night. A passer-by, Joe Armijo, 33, also died in a related shooting.

District Attorney John B. Holmes Jr. said the idea of using the mannequins to bring "alive" descriptive testimony is highly unusual and was conceived by Moen and Bax.

The prosecutors apparently intend to use the mannequins to clear up confusion about eyewitness testimony on the behavior of Flores and Guerra. Guerra claims Flores shot Harris, but witnesses say Guerra was the killer, police say. Court-appointed defense attorneys Candelario Elizondo and Joe Hernandez objected to use of the mannequins, contending they were introduced only to "inflamm[e] the minds of the jurors."

Elizondo said the mannequins have a "highly emotional" effect. Flores' clothes, stained with blood and ripped with bullet holes, cover his likeness. The model of Guerra is covered with the clothes he wore the night he was arrested.

The Guerra mannequin includes wigs showing his heavy facial hair the night of his arrest. Guerra is now clean-shaven. Production of the mannequins included measurements of Flores' body.

Plastic molds, constructed with the help of photographs and drawings of the suspects, were used to fashion the mannequin heads.

Assistant District Attorney Terry Wilson, who investigates shootings involving police officers, testified Monday he was walking near the area where Harris was shot when he noticed Guerra near a horse trailer. Wilson said he pulled a gun and arrested Guerra, who was carrying a handgun.

The defense maintains that the firm used to shoot Harris, Armijo and Trepagnier was in Flores' hands.

Harris, on routine patrol, stopped Guerra, Flores for reckless driving in the 1960s. Walker, Guerra allegedly shot Harris, then Armijo as the suspects fled to Guerra's residence block away.

During the hunt for Harris, officers found Flores was killed by gunfire from several officers after he ran from a garage firing at the police.

Detectives theorize that Harris was shot by Guerra and Flores, thought to be illegal, who were fearful of being apprehended in connection with a robbery the previous month. Flores, carrying a robbery victim's driver's license, was killed.

If Guerra is convicted of capital murder, he will be sentenced to life in prison or death.

Drain by illegal aliens on we

Group favoring tighter clamps on immigration ch

BY JODY WIESSLER
Chronicle Washington Bureau

WASHINGTON — A group that favors tight clamps on immigration has published a report disputing earlier research that indicated illegal aliens are not a drain on government social programs such as welfare.

The report was immediately criticized by Hispanic group advocates who argue that most aliens here illegally are a boon to, rather than a drain on, the economy and should be allowed to stay here legally.

The Federation for American Immigration Reform, which goes by the acronym FAIR, is trying to dispel the conventional wisdom, garnered mostly from studies in the early to middle 1970s, that illegal aliens pay taxes but make little use of public services.

That idea is a myth that could lead to "a hemorrhage of our social welfare system" unless illegal immigration is substantially stopped," said the report by Roger Conner, executive director of FAIR who has a background as an environmental lawyer.

Findings of the report dovetail with FAIR's advocacy of immigration restrictions and its opposition to con-

cepts such as legalization for perhaps millions of illegal aliens being considered by Congress.

"It seems to be FAIR's standard, slick-looking publication that on its face has a lot of material, but is just another slim document to be added to the side of the restrictionists," said Enrique Valenzuela, an immigration specialist for the Mexican American Legal Defense and Education Fund.

The FAIR report does not include original research, but is a survey of recent studies which Conner said have not received enough attention.

FAIR said newer studies show, for example, that almost 35 percent of a group of illegal aliens in California received unemployment benefits; that 29 percent of illegal Dominicans in New York City received welfare; that 18.5 percent of undocumented women in Los Angeles received welfare; and that 46 percent to 51 percent of all unemployment insurance applications by aliens in Illinois were from illegal aliens.

Like most of the earlier studies, those cited by FAIR are generally analyses restricted to certain types of illegal aliens in one program in one state or county during one limited time period. But FAIR said they

F001437

welfare claimed

challenges earlier research

point to a change in welfare use by illegal aliens.

"The first evidence on the subject, drawn primarily from surveys of apprehended illegal aliens, suggested minimal utilization of income transfer programs," Conner wrote. "Later, more representative evidence, though largely ignored by the media and politicians, indicates much greater utilization."

He contended earlier studies "seriously underestimated" the use of social programs by illegal aliens, and that "correction of the false impression is a matter of some importance."

David North, one of the leading researchers who did some of the earlier studies, said he generally thinks FAIR has a point, although he did not analyze the FAIR report in detail. "I think there's something to it," he said, but added that much more research is needed to be definitive.

North said his own pioneering studies of the 1970s that showed most of a sampling of apprehended illegal aliens paid taxes and did not take social benefits "have been somewhat misused."

He said he cautioned at the time, as Conner does in the current report, that a sampling of illegal aliens who were mostly young, previously employed males would naturally have been expected to be paying taxes, deducted from their paychecks, and not to be using welfare programs. North said he always knew that the whole story could not be told by "looking just at this group of husky, though unlucky, men who got themselves apprehended."

Conner said a major weakness of the earlier studies was that government records were not used. "Three recent surveys of illegal immigrants and six recent studies of government records indicate that some illegal-alien populations are making extensive use of tax-supported programs," he wrote.

The FAIR report cited these findings from the studies it surveyed:

- A survey of illegal aliens who sought legal help at a Los Angeles immigration center showed that 12.4 percent of the study group indicated they were receiving or had received some form of welfare.

- A 1981 survey of women who had live births at Los Angeles County hospitals showed at least 13.2 percent were illegal immigrants of Mexican descent, and about one-fifth of the undocumented women reported their families used welfare, food stamps and Medicaid.

- A small survey of non-apprehended Dominican and Haitian illegals in New York City showed that 13 percent of the Haitians and 29 percent of the Dominicans interviewed had received unemployment insurance.

- Los Angeles County's human resources agency in recent years identified about 1,000 illegal aliens per month seeking welfare benefits and saved \$36 million each year by denying them benefits.

- A California study on unemployment benefits showed 49 percent of a group of illegal aliens filed for benefits and 35 percent received them.

- An Illinois study, continuing this year, "suggests that more than \$50 million in unemployment insurance has been paid annually to illegal immigrants in the state."

F001435

New trial for Guerra rejected after juror has change of mind

BY ALAN BERNSTEIN
Chronicle Staff

A judge today rejected a request for a new trial in the capital murder case of Ricardo Guerra, who earlier this month was sentenced to death for slaying a Houston police officer, despite a juror's statement that she thinks another man was the killer.

In a sworn statement she signed Monday, the juror, secretary Donna Monroe, 30, also said that life-size mannequins used in the trial to portray Guerra and his alleged accomplice "made me nervous and they influenced my verdict."

But state district Judge Henry Oncken told court-appointed defense attorneys Carlelario Elizondo and Joe L. Hernandez that the statement was not proper in a new trial hearing but could be included in the appeal of the death sentence for Guerra, 20. An appeal is mandatory in death penalty cases.

The defense maintained in the trial that Guerra's partner, Roberto C. Flores, 27, killed Officer James Donald Harris, 29, in the 4900 block of Walker on July 13.

In her sworn statement, Ms. Monroe said, "I also don't believe that Ricardo Guerra was the actual killer. I believe the other man was, even though I believe (Guerra) had a part in it somehow."

Under state law, Guerra could have been convicted of capital murder as a "party" to the shooting and have been sentenced to life in prison. But the jury sided with the prosecution theory that Guerra was the trigger man.

Flores was killed by gunfire from several police officers in a manhunt for the suspects who killed Harris.

Five prosecution witnesses indicated they saw Guerra shoot the officer in the head, and several witnesses said Guerra also was the gunman who killed a passer-by. The trial took an unusual turn when prosecutors Bob Moen and Dick Bax introduced into evidence the \$7,000 mannequins resembling Guerra and Flores, apparently to avoid confusion about the eyewitness testimony.

In her affidavit, Ms. Monroe said:

"Those two mannequins affected me tremendously, especially the blood-stained one, which was the mannequin of Flores. They were eerie mannequins which were positioned right at the jury. They remained in our presence staring straight at me during the whole time."

At the end of the trial, Ms. Monroe told the defense attorneys that the mannequins gave her nightmares. "It was like a dead man was staring back at me," she said then.

During the trial, the judge overruled defense objections that the mannequins

were "inflammatory and prejudicial" that they wrongly bolstered prosecution testimony and that they had "undue influence on the jury."

Elizondo said most of the other jurors were questioned after the trial but provided no information to support the request for a new trial.

Elizondo would not comment on Ms. Monroe's reasons for voting to convict Guerra and sentence him to death if she thought Flores was the killer. Ms. Monroe refused comment today.

About 20 minutes before the jury returned its guilty verdict Oct. 12, the 8-man jury indicated to Oncken that the vote was 11-1. Elizondo said Ms. Monroe apparently was not the juror holding out for acquittal.

A delegation of Mexican government officials met last week with Guerra, the defense attorneys and Gov. William P. Clements Jr. to investigate the case and will recommend that the Mexican government pay the costs of Guerra's appeal, Elizondo said.

The Mexican officials think Guerra is innocent, he said.

Residents of Guerra's hometown, Monterrey, Mexico, started a defense fund for his case, and Mexican newspapers charged that his conviction was "racist" and his trial unfair because he is an illegal alien.

The U.S. Embassy in Mexico City has received several petitions from Mexicans concerned Guerra would be executed soon and asking for clemency, a spokesman said.

The verdict also sparked picketing at the Harris County Criminal Courthouse by Houston residents in favor of and against the results.

According to testimony, Harris stopped Guerra and Flores on suspicion of reckless driving and was shot while searching the suspects outside their car. The suspects then ran down the street and shot into the car of Joe Armijo Sr., 33, who died a few days later.

During the manhunt that night, Flores shot and critically wounded Houston police Officer Larry Trepagnier. Flores then was shot by several officers.

Harris' gun and a 9mm pistol used to shoot him were found on the body of Flores. Guerra was found hiding next to a horse trailer near his house in the 4900 block of Rusk.

Two defense witnesses testified that before Flores was killed, he said he had killed an officer and had his gun.

Prosecutors theorized that Harris was shot because Guerra and Flores feared they would be arrested in connection with a gun-store robbery they allegedly participated in during the previous week.

F001447

Judge refuses to force government to resume aid

MIAMI (AP) — A federal judge refused Friday to force the Reagan administration to resume aid to 22,000 Cuban and Haitian refugees in Florida.

The ruling by Chief U.S. District Judge C. Clyde Adams came after nearly three hours of telephone negotiations between Gov. Bob Graham and U.S. Health and Human Services Secretary

Richard Schweiker failed to produce a settlement.

The state filed suit Tuesday against the federal government. Officials did not say immediately whether the decision would be appealed.

Florida wants \$16 million to compensate for refugee assistance since an April 1 cutoff in federal funding, as well

as \$55 million for future refugee aid.

Florida continued the aid after the federal cutoff. But saying it can't afford to pay for what should be a federal responsibility, the state will end assistance payments of about \$180 a month to some 22,000 Cubans and Haitians on Tuesday.

Those refugees will have been in this country 18 months. Previously, refugees

received federal aid for their first 18 months in this country, but the eligibility was halved by the Reagan administration.

About 6,000 more refugees will be taken off state assistance rolls by the end of the summer, as their 18-month period ends, officials say.

These 22,000 refugees and indigents

El Salvador's violence leaves 22 more dead

SAN SALVADOR, El Salvador (UPI) — El Salvador's latest political violence claimed another 22 victims, including seven youths dragged from their homes and shot to death in a San Salvador suburb, authorities and witnesses said Friday.

The execution-style slayings of the seven youths by suspected right-wing

gunmen took place in the capital's northern suburb of Apopa Thursday, witnesses said.

A Christian Democratic legislator, who requested anonymity, said he had evidence that a civil defense commander in Quetzaltepeque, about 15 miles north of San Salvador, was involved in the slayings of party activists.

Lawyers hiss immigration bill sponsors

SAN ANTONIO (UPI) — Immigration lawyers Friday heaped the sponsors of the Immigration Control and Reform Act that is marching through Congress, despite the sponsors' assurances that the bill is not racist.

"Controlled immigration is one of our finest traditions," said Sen. Alan Simpson, R-Wyo.

who knowingly he...
The House and Senate versions of the bill differ in specifics, and the sponsors said they are fighting against amendments that would make the bill more restrictive.

It is scheduled for debate in the Senate in June and is still at the committee level in the House.

THE THREAT to this country of uncontrolled immigration is great," he said. "It can result in harm to American values, traditions, customs, our public culture, institutions and way of life."

Simpson told 300 members of the American Immigration Lawyers Association that illegal immigrants or those who enter as students with no intention of leaving are "taking jobs that can be and should be obtained by Americans."

The influx of immigrants, he said, is also creating a xenophobic American with "hostility cooking in his bones," who fears he will lose his job to immigrants.

THE MULTIPARTY Simpson-Mazzoli immigration bill would give temporary legal status to about 5 million aliens who have been in this country for several years, allowing them to seek citizenship. It would also impose criminal penalties on employers

SIMPSON'S partner in the bill, Rep. Romano Mazzoli, D-Ky., finally reprimanded the segment of the audience that was hailing the immigration proposals. He said he and Simpson had worked hard to make sure the bill is "not racist, not nativist and not mean."


He and Simpson have already had to overcome other congressmen's negative attitude toward aliens, and they also want to be reconciled with the other side — the lawyers who have defended immigrants and sympathize with them.

"They (immigrants) are good, decent, intelligent, hard-working, devoted human beings who just happen not to have been born in this country," he said. "But our country is not large enough to take every one of them in."

CHARLES FOSTER, president of the immigration lawyers' organization, said later the group had mixed feelings about the Simpson-Mazzoli bill.

"We appreciate the effort that they made. There are very good parts of the bill," he said. "But we fear it goes too far in restricting lawful immigration. We believe there is a middle ground in permitting, for example, foreign university graduates to remain in the United States if you could show a shortage of qualified U.S. workers."

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It was Bill Hobbs and Sam Field. Hobbs had been slated to start the fund-raiser but was unable to do so.

Next photo by Craig Harkey

Illians raised \$3 million at their dinner. ...they're going to need a lot more money than that to beat Mark White." in November

phume but White's voice could not be heard by the crowd.

White, who was in Wyoming on state legal business, was low budget.

U.S. THEATRE, phone
bookings in Kalamazoo, and
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For the agriculture commissioner elected the Republicans who had gained the state it was believed when

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The Supreme Court's ruling that the federal government must let admitted children of undocumented immigrants attend public schools will regenerate the debate for the federal government to enact immigration laws and to provide amnesty to millions of immigrants who entered the impact of the ruling was official said Tuesday.

Some officials were surprised by the ruling, and most accepted the conclusion that the children have a right to free expression under the equal protection clause of the 14th Amendment.

Only George Strake, Republican candidate for lieutenant governor, and Kelly Butler, president of the State Board of Education, were critical of the court's decision.

Attorneys for the children and for the American Legal Defense and Education Fund, which began the case in 1971 with a suit against the U.S. Department of Education, said they expected the school to rule in their favor. Reaction to the ruling focused much attention on whether the number of students who are black or Hispanic often at school children would increase and whether the ruling would mean the door for other racial suits, such as welfare and unemployment.

ing the children would not pose a financial hardship on Texas, says Donella, president of the League of United Latin American Citizens, urged the governor to "get his head out of the sand" and ensure that either state or local funds are available for the district, with large numbers of ~~black~~ alien school children. Texas Attorney General Mark White, who headed the state's appeals through the Fifth U.S. Circuit Court of Appeals to the Supreme Court, said he has always refused undocumented children should be educated. **NS**

The ruling, however, points up the need for the federal government to enforce its immigration laws or to provide impact funds for school districts with large percentages of illegal aliens. While said

Raymond Blum, Texas commissioner of education, said he will have to increase his budget request for the next state fiscal biennium by between \$10 million and \$12 million a year for compulsory and/or special programs to prenatary and/or special programs to cover expected cost increases in those programs for alien children.

He said his agency's budget requests for the next biennium already are between \$4 billion and \$4.5 billion.

Isabel Torres, the attorney who represented the children in the case, said it is ridiculous for Texas to plead economic hardship for educating the children. "Texas is fourth in wealth and 41st in per pupil expenditures," Torres said.

Bynum said the ruling may mean the death of the largest concentration of aliens may be fought to build the equivalent of one new building a year to keep up with the influx of aliens.

Tom Keller, assistant superintendent of the Florenceville Jail, predicted the ruling will result in an increase of about 800 alien children a year in the Florenceville village.

Brownsville is putting up portable classrooms at the rate of one room every two weeks and recently passed a \$48 million bond issue to build new schools, he said.

we were hoping the veterans' government would come in with some type of subsidy to help us like they did with the Cuban and the Vietnamese children that have been brought in ... Keller said.

...I don't think they come just to at-
tend school," Cathy said. "They come
basically as I see it for economic condi-
tions, a better life and maybe a freer
education."

In Houston, Superintendent Billy Ray Canales said it costs an estimated \$15 million a year to educate the 450 children of migrant children now enrolled in the Houston Independent School District. While the children are scattered throughout the district, concentrations of them in the east end have resulted in overcrowding of some elementary schools, he said. HISD is planning a new elementary school to relieve overcrowding at Southlawn Elementary

While Houston at one time fought the admission of blacks into the district, in recent years it has initiated many programs to help them adjust to American schools.

The Rev. James Nazario, a member of HHSID's court appointed Itri Ethnic Committee, said in the past four years the Hispanic community's attitude toward the HHSID administration has changed from hostility to cooperation.

The change came when TEISD up-graded the curriculum and the quality of the teachers and built new schools in the

Hispanic community. Navarin said that Dallas, which expects the number of bilingual children in school to double to 2,500 when school begins in September, Superintendent Flouss Wright said the consequences of not educating the children far outweighs the cost of the bilingual

Tyler Superintendent Jack Davidson predicted the ruling will have little impact, since the district has been educating about 100 legal alien children annually since U.S. District Judge William Wayne Justice ordered the children admitted.

The district has paid nearly \$60,000 in legal fees to fight the case, Davidson said.

While U.S. Gov. Bill Hobby declined comment on the ruling, Strake, his Republican opponent, said the court's opinion was incredible.

...It is the product of strained reasoning. It is a bad decision and one which will hurt the people of Texas," Strake said.

Earth is entitled to the benefits of U.S. citizenship

"Using the logic of the Supreme Court, children in Uganda, India or Burma must be educated for free as long as their parents can successfully evade the immigration laws and get them here," he said.

While Hynum and others speculated the ruling would open the door to litigation over the rights of illegal aliens to other government benefits, such as welfare, food stamps and unemployment compensation, MAITHE Attorney Peter Henry Rouse said it would be a mistake to read that interpretation into the ruling.

The only cases regarding other social services currently pending involve access to emergency medical care. Koon said. "I suspect there will be other cases, but the outcome of those is not predetermined by this ruling," Koon said.

Honilla, however, said LULAC has "no quarrels" with the possibility that ruling could boost claims for other states and federal benefits. Many undocumented workers have paid Social Security, and another issue for years without receipt of benefits, he said.

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App. 0168

The Houston Post / Sun. Sept. 19, 1982 15A

pg. 1 of 2

Immigration bill battled by Clements

By FRED BONAVENTA
Post Austin Bureau

AUSTIN — Texans could wake up some morning and find additional millions of Mexican nationals and other aliens living in their midst and a dramatically altered quality of life if proposed changes in federal immigration laws are approved by the Congress, Gov. Bill Clements says.

Speaking with reporters before going to a two-day meeting with other governors from both sides of the U.S.-Mexico border beginning Sunday, Clements said the immigration-reform measure, as passed recently by the Senate, would "change the direction of this state" if it becomes law.

"I am absolutely opposed to that bill, and I am doing everything I know how to do to see that bill never comes to a vote (in the U.S. House)," Clements said. He said he reflects the feelings of governors of states along Mexico's side of the border.

"And I'll make a further prediction to you that it won't come to a vote," he said.

HE SAID HE HAS ENLISTED THE AID of three Texas Democrats — two of them in powerful positions in the House leadership — to help keep the measure from reaching the House floor for a vote. The House is set to adjourn Oct. 8.

The governor identified them as U.S. Reps. Jim Wright, the House majority leader from Fort Worth; Jack Brooks of Beaumont, the ranking Democrat on the House Judiciary Committee, which considered the immigration-reform bill last week; and Sam Hall of Marshall, a member of that committee.

Clements said immigration-law changes and the devaluation of the peso would be the main topics at the Third International Border Governors' Conference set for Tijuana, Mexico, and San Diego, Calif. The gathering will bring together the four U.S. governors and their six Mexico counterparts whose states flank the 2,000-mile line between the two nations.

An aide to the Texas governor said President Jose Lopez Portillo, the outgoing head of state in Mexico, might attend the Sunday dinner for the governors in Tijuana.

IN LOOKING AHEAD TO THE governors' meeting, Clements said he expects the session to confront directly the serious problems between the neighboring nations, especially the peso devaluation and its effects on the economies on both sides of the border. That issue likely will consume more time than any other, he said.

But second to it will be the proposed immigration reform bill now working its way through the Congress. Saying repeatedly that his feelings are shaped by the

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valuation of the peso would be the main topics at the Third International Border Governors' Conference set for Tijuana, Mexico, and San Diego, Calif. The gathering will bring together the four U.S. governors and their six Mexico counterparts whose states flank the 2,200-mile line between the two nations.

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But second to it will be the proposed immigration reform bill now working its way through the Congress. Saying repeatedly that his feelings are shaped by the governors from Mexico — but stopping short of committing his fellow U.S. governors, of which he is the only Republican — Clements sharply criticized a provision in the bill that would grant amnesty to aliens now in this country illegally and allow them to remain.

Part of the amnesty provision, Clements continued, would let those aliens bring members of their immediate families to this country to live. Given the fact there are at least 500,000 illegal aliens in Texas — a number the governor projected to be in the millions but which he now says is unverifiable — that could mean at least 2 million additional residents in the state, he said.

"Our population is over 15 million right now, and that does not include the 2 million that we are talking about," said the governor. "So you are talking about enormous pressures on our housing, on our public services, on our social programs, on our hospitals, on our schools. There's hardly anything that you can talk about that wouldn't suffer under pressures of this kind."

"AND YOU KNOW IT'S NOT RIGHT for Texas. It would change our quality of life in Texas. It'll change the direction of this state. We just don't want it."

Saying he and the Mexican governors have talked about the flow of illegal aliens north across the border, Clements said those officials also want the exodus stopped. He said Mexican officials do not want to lose the population.

"They are as opposed in Mexico to amnesty as I am right here in Texas," Clements said. "I hear this from the highest levels and down through these governors."

While Mexico's governors are not likely to join in a resolution on the immigration reform legislation at the conference, said Clements, "that doesn't necessarily apply to the U.S. governors."

"It's entirely possible that we will make our views very strongly known," he said.

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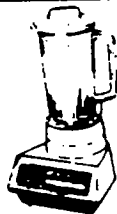


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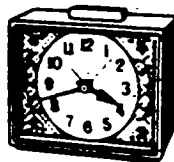
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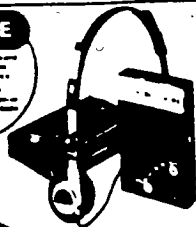
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don were smaller this year than last year. As for the relatively low bidding on the top two animals: "Nobody wanted to part with such large amounts of money this year," one worker said.

Housing chief resigns

GALVESTON — Chas Bottom, executive director of the Galveston Housing Authority, has resigned his position to join a private real estate management firm. Bottom, whose resignation is effective Dec. 31, may be retained as a consultant to the housing authority for six months to a year after his departure. Although he had come under increasing criticism from some City Council members for supporting the sale of the Magnolia House housing project, Bottom said he was not pressured into resigning.

School borrowing OK'd

DICKINSON — School trustees have authorized the administration to borrow up to \$3 million to run the school district if it becomes necessary because of delays in tax collections. Dickinson Superintendent Dr. Jerome Bourgeois said the late certification of tax rolls, which has prevented the school board from setting a tax rate, and a court fight over school

finance were among the reasons. The state sources totaled \$51.8 million at Texas A&M University during the 1982 fiscal year, an increase of \$7.5 million or 6.9 percent over 1981, according to university officials. The annual report showed an increase of nearly \$3 million in federal support for research, reversing a one-year decline in federal money. State support was up slightly from \$48.2 million to \$48.5 million and private funding rose from \$11.9 million to \$12.5 million. The largest increase in research funding came for projects in the College of Science where support rose from \$8.9 million last year to \$10.3 million in 1982. Agricultural research continued to lead the list with \$48.3 million, up nearly \$1 million, engineering at \$20.6 million, up \$1.3 million; and humanities at \$6.9 million, up more than \$200,000.

Tax official resigns

LIBERTY — Anne Van Ert, longtime Liberty school tax assessor-collector, has resigned effective Oct. 1. Superintendent Scott C. Chance said Van Ert, who has worked in the tax office for 19 years, will be replaced by W.P. Odum, who recently was moved from high school principal to assistant business manager with the intention that he would succeed Van Ert when she retired.

Immigration bill takes low priority

By JIM CRAIG
Pied Washington Bureau

WASHINGTON — For the millions of illegal aliens believed to be concentrated in Texas and other border states, hope for amnesty may be fading as time runs short for the 97th Congress.

The House Judiciary Committee last week completed work on the controversial immigration reform bill, which calls for amnesty for aliens. The Senate approved a similar measure this summer.

But the House, along with the Senate, is planning to recess at the end of next week and it is doubtful the immigration bill can go through an expected review by the House Education and Labor Committee and go to the floor for a vote of the full House before the week ends.

Even if the House adopts the measure, the legislation would have to go to a conference committee to iron out differences between the Senate and House versions. After that, it would return to each chamber for final approval.

If all that weren't enough to worry supporters of the bill, there is considerable reluctance among key House Democrats — namely Majority Leader J. J. Pickens of Texas — to see the bill pass through this session of Congress.

There will be a lame duck session of Congress following the November elections (possibly returning after Thanksgiving), but leaders in the House and Senate agreed to the special session in hopes of dealing exclusively with economic issues.

THE IMMIGRATION BILL calls for stiff penalties against employers who knowingly hire illegal aliens, modest increases in the current temporary worker program and an amnesty plan that would offer permanent resident status for those who came here before Jan. 1, 1977 and temporary status for those who arrived before Jan. 1, 1980.

These three major elements represent only a handful. Although the most controversial of provisions from the complex package. Each of the three individually have stirred major opposition which has threatened the bill's passage.

Business interests as well as Hispanic

organizations have opposed employer sanctions, the former saying they should not be involved in law enforcement and the latter arguing such a plan will lead to discrimination against all Hispanics. U. S. citizens as well.

It is amnesty, however, that has stirred the most controversy as the legislation evolved over the past few years.

Rep. Sam Hall, D-Texas and a member of the Judiciary Committee, said last week to approve the bill will change the complexion of America. He made the comment as he sought support for his motion, which narrowly failed, to have the bill killed.

ALTHOUGH THE BILL passed the House panel, its future is uncertain.

An aide to Wright said it will be a "miracle" if the immigration bill surfaces in the House. "We're not big on that bill and we're not interested in it coming up," the assistant said in an interview.

Indeed, Wright was miffed when his efforts to personally convey his opposition to the measure before the Judiciary Committee were ignored.

The Texas, whose role as majority leader can impact significantly the bill, sent a letter to Rep. Peter Rodino, D-N.J., Judiciary Committee chairman, raising "very serious concerns" about the bill and urging that the measure not be rushed through.

"In my opinion, the public is not prepared to support a total permanent blanket amnesty for all those who can establish that they have managed to evade the law for five or six years and thus claim some right of seniority," Wright told Rodino.

Wright said, "I think it would be a serious mistake to try to rush something through in the closing days of our legislative session without making sure that it has been given the extremely serious consideration that a matter of this magnitude deserves."

That statement, several congressional aides agree, is a clear indication that immigration will take a low priority in the legislative crunch facing Congress in the final hours next week.

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ALLISON

CHARL S. ALLISON, died August 16, 1982. Survivors: wife, Mary M. Allison of Houston; daughters and sons: Janell and Hunter of Lake Charles, La.; Mary and Skip Kinney of Toluca, La.; two grandchildren; funeral services, August 28, Heights Memorial Chapel, Rev. Charles L. Irvin officiating, 2:00 p.m. Sunday, August 29, in Rockwell City Cemetery, in Rockwell, Texas. **HEIGHTS MEMORIAL HOME**, 1317 Heights Blvd., 862-8844.

EDMOND

MRS. MYRTLE M. EDMOND, died Sunday, August 22, 1982. Survivors: three daughters; six sons; 11 grandchildren; two sisters; and five brothers. Wake service was held Thursday. Funeral services Saturday 1 p.m. Johnson Catholic Chapel, Burial Houston Memorial Garden. **JOHNSON FUNERAL HOME**, 5730 Calhoun Rd., 747-9604.

KESLER

GRACE TAGGART KESLER, born April 1, 1909 on August 27th, returned home to be with the Lord. Resident of Houston 31 years. Member of Fidelity Sunday School Class, First United Methodist Church and life-long member Methodist Church. Survivors: husband, George W. Kesler Sr., of Houston; daughter, Donna K. Wilkins; son, George W. Kesler Jr., both of Houston; sister, Donna Berry of California; grandchildren, Linda and Ellen Wilkins, Katherine, Kimberly, and Kelli Kesler. Funeral services 10:30 a.m. Monday, Geo. H. Lewis & Sons Sage Rd Chapel with Bob R. Kristensen officiating. Burial Memorial Oaks Cemetery. Pallbearers, M. Olan Diehl, Helen Crawford, Jack M. Jones, Roe Brown, C.W. Hughes, Dr. E.P. Crutchfield. Honorary pallbearers, other members of Fidelity Sunday School Class. In lieu of flowers family request contributions be made to American Diabetes Association. **GEO. H. LEWIS & SONS**, 2530 Sage Rd., 621-6500.

FRAZER

MRS. BILLIE FRAZER, 71, died Thursday, August 26, 1982 in Houston. Resident of Houston for over 50 years. Member of the First United Methodist Church of Houston. Survivors: husband, Claude Frazer, Houston; daughters, Claudia Sims, Houston, Nancy Renard, Arlington, Tx.; sisters, Alma Vogel, Lockhart, Tx.; Robbie Hill, Austin, Tx.; Myrtle Boyle, Phoenix, Arizona; Virgie Schaffner, Northham, Tx.; brother, Carlos Monroe, Austin, Tx.; six grandchildren; numerous nieces and nephews. Funeral services Saturday, 1:30 p.m. Forest Park Westheimer Funeral Chapel with Dr. D. Orval Strong and Rev. Frank Dietz officiating. Interment Forest Park Westheimer Cemetery. **FOREST PARK WESTHEIMER FUNERAL HOME**, 12800 Westheimer at Davy Ashford, 497-2330.

ARMSTEAD

BERT PECORE ARMSTEAD, 24, died August 1, 1982. He was born July 26, 1958 and attended Houston Public Schools. Mr. Armstead graduated from Robert E. High School and the University of Houston. He was a member of St. Stephens Episcopal Church and employed by Fish engineering. Survivors include: parents, Mr. and Mrs. S.E. Armstead Jr.; brothers, Stewart III, Garrett; sisters, Nancy Bryan, Julie McCullough; grandmothers, Mrs. Edna Pecore and Mrs. Zella Armstead. Funeral services will be held at 1:30 p.m. Monday, August 30, 1982 at St. Stephens Episcopal Church with the Rev. Helen Owens officiating. Interment will follow at Forest Park Westheimer Cemetery. **GEO. H. LEWIS & SONS**, 530 Sage Road at Westheimer, 621-6500.

AXTELL

ANK F. AXTELL, 72, of 10 Woodlawn Dr., Port Arthur, died Thursday at a Baptist Hospital in Marilla. He was a native of Port Arthur and was retired from Texaco as a mechanical engineer. Survivors include his wife, Mary Axtell of Port Arthur; two daughters, Mary Tees of Austin, and Ann Thulew of Houston; one brother, Eddie Axtell of Port Arthur; and six grandchildren. Funeral services will be Sunday at 2 p.m. Nunnally Stanley Chapel of the Chimes in Port Arthur. Burial will follow in Greenlawn Memorial Park. Masonic graveside rites by the Port Arthur Lodge No. 1264. **A.F. & A.M. NUNNALLY STANLEY FUNERAL HOME**, 3727 Lewis Dr., Port Arthur, 985-5522.

EARLE

SAMMIE LOU EARLE, 71, died Thursday, August 26, 1982. Member First United Methodist Church, Houston. Employee of Ford Credit Company.

PHOENIX

VERNON PHOENIX, 49, passed August 25, 1982. Survivors: wife Leon Phoenix; two sons, Mich-

(6)

Luce says aliens pose bigger threat to U.S. than A-bomb does

NEW YORK (UPI) — Clare Booth Luce, former U.S. ambassador to Italy and widow of the founder of Time and Life magazines, says America faces a greater threat from invading aliens than from the atomic bomb.

"Soon there will probably be as many Mexicans in Texas, New Mexico, lower California and Arizona — and as many Cubans and Latin Americans in Florida — as there are natives," Luce said in an interview in the September issue of GEO magazine.

"They are also pouring in from Haiti. Now a vast majority of these are black. They're coming over the border, and they're coming in with wives and sisters and aces who get pregnant immediately because they can then become Americans and go on relief. I do not know how much more we can absorb."

She said she feared that unless the influx of aliens could be stopped, "there are bound to be dreadful clashes within our society." When Luce was reminded America has always been the great melting pot, she said the times had changed since foreigners began moving to American shores in great numbers.

"In the 19th century, the United States absorbed something like 40 million immigrants," she said. "But the vast majority were of a fundamental culture, and they were all white. They were not black or brown or yellow. And even then we had problems. I remember as a girl in New York seeing signs that said 'No Irish Wanted' or 'No Italians Wanted' or 'No Jews Wanted.' Well, we made historic strides and it was Theo-

dore Roosevelt, my first president, who said, 'There is no such thing as a hypo-allergic American. We are all 100 percent Americans.' Now anyone who mentions 100 percent American is viewed as an American."

She said the cultural differences between the newcomers of the 1980s and the white foreigners of the 19th century seemed to change the meaning of the melting-pot philosophy.

Luce said she was more concerned about threats from within than threats from abroad because she did not think that either the United States or the Soviet Union would start a nuclear war.

"I rather think that if a nuclear bomb is dropped, it will be some small nation in its death throes that says, 'Well, since you're wiping me off the map, you may as well go with me.'"

"I feel that it will not be the Soviet Union or the United States that drops a nuclear weapon. I think it may be that nuclear bombs will be cooked on by historians 300 years from now as a moment of partial insanity that seized upon the human race."

Luce, now 79, entered politics in 1942 when she was elected to Congress from Connecticut. She served two terms in the House and after an unsuccessful bid for the U.S. Senate, she served as ambassador to Italy during the Eisenhower administration. She served on President Nixon's Foreign Intelligence Advisory Board, which later was dissolved by President Carter. When President Reagan reinstated the board, he invited Luce to return and she accepted.

Reagan asked to aid widow

OMAHA, Neb. (AP) — Sen. Edward Zorinsky asked President Reagan Friday to help a widow who has been ordered to return her husband's May Social Security check because he died 37 minutes before the last day of the month ended.

Roy Gillespie, a retired airline mechanic from David City and a veteran of World War II, died at 11:23 p.m. May 31. Although his May Social Security check for \$388.00 has already been direct-deposited into the couple's bank account, the Social Security Administration has demanded that it be returned.

Kay Gillespie, 71, spent the money on funeral expenses and has refused to give it back. She wrote to Zorinsky, D-Neb., asking him to help her fight the government's demand for the money.

"You may remember I wrote Reagan. You sent his death, praising his death, the country would never be now to remember him and his

Social Security officials and Zorinsky's staff that in a minute of every day in a month's benefit."

"The Social Security Administration discretionary powers," Gillespie said, doesn't seem decision based on justice. Zorinsky told the president, "Before I move to introduce

Man accused of killing mom with

NEW YORK (UPI) — Federal charges were dropped Friday against a Brooklyn man accused of using the mail to kill his mother by sending her a bomb in a cookbook, but he was re-arrested by New York City police on homicide charges.

Craig Kipp was arrested by two detectives from 68th precinct about 1:30

p.m. as he walked with his attorney up the steps of the U.S. District courthouse in Brooklyn. Brooklyn District Attorney Elizabeth Holtzman said.

Kipp, 31, was charged with second-degree murder and possession of a dangerous weapon and taken to the precinct stationhouse for booking. The charges against Kipp carry a

Post Aug 1, 1982 B1

Undocumented workers: Should they be organized?

By TUPPER HULL
Post Reporter

Illegal aliens, undocumented workers, wetbacks. Are they a potent force to organize into labor unions or cheap labor stealing jobs from skilled U.S. workers?

These are questions being asked by labor leaders and the rank-and-file of Houston's labor unions. They are questions that evoke painful recollections of labor's more difficult history.

And they are difficult questions, as difficult as the overall immigration crisis this nation is facing.

"SURE WE'RE TRYING to organize undocumented workers. If they're working we'll sign them up," said Bill Chandler, an organizer with the National Hospital Employees Organizing Committee here.

"They want a better life," he said.

Chandler, who directs an effort to organize Houston-area hospital workers, has prepared a small card, printed in Spanish and English, explaining immigration laws and workers' rights. The card has been used as a model for other unions trying to organize undocumented workers.

Gale Van Hoy, head of the Gulf Coast Building Trades Council, does not think undocumented workers should be organized.

"We'd like to organize them in a bunch and send them back," he said.

The gravity of the debate is apparent in the cautious remarks of union officials like Dee Hearn, secretary-treasurer of the Harris County AFL-CIO.

"The AFL-CIO is not mad at the illegal aliens," he said. "We're mad at the system that allows this. Undocumented workers are working people, too, so there is a kind of kindred spirit there."

But Hearn said the AFL-CIO endorses a proposal to give U.S. workers counterfeit-proof identity cards and requiring all workers to show them to get a job. Once the card is distributed, the federation believes undocumented workers already here should be permitted to stay.

THE FEDERATION ALSO supports strong sanctions against employers who hire undocumented workers.

"There is a debate within the labor movement about what the role of undocumented workers should be," said Rex Hardisty, spokesman for the national AFL-CIO in Washington.

"It is a tremendous, on-the-job, immediate problem and there are some direct conflicts with trade union principles on human rights. Do you accept the status quo and embrace them as union members or do you seal the border and try to protect your members?" Hardisty said.

How unions answer these questions usually depends on history and the work done by their members.

Industrial unions like the machinists and the steelworkers usually represent all workers in an industrial plant. When a plant is organized by an industrial

union, the union takes in the workers already there. Workers may come and go but the unions remain the bargaining agent at the plant.

"If it's a union plant then the undocumented workers in there become our members," said A.B. Green, president of district 37 of the International Association of Machinists and Aerospace Workers.

"We don't question them at all (about citizenship). Nobody knows how many we have in the union."

TRADE UNIONS SUCH AS the carpenters, plumbers and electricians unions, do not usually represent all workers at a job site. They sometimes control the hiring of workers and partly control training programs for prospective union members.

Some building-trades unions have been accused of keeping minorities out of their unions.

One such union is carpenters Local 211. "We are under a court decree to actively recruit minorities," said Dennis Luster, Local 211 business representative. "Because of these past problems we actively seek out minorities now," he said.

Undocumented workers are a major problem for the carpenters union because they make up a majority of the workers building homes in Houston, officials say. It is a work force entirely non-union.

"There are some very skilled artisans from Mexico working here now," Luster said.

Luster said the carpenters have considered trying to organize residential carpenters "but it's not a priority of ours now, especially with the slump we're in. It's an extremely cutthroat business."

"I have no quarrel with (undocumented) Hispanics doing the work, if they are qualified. We just wish they would come through the legal channels. And if they are going to do the work I think they should belong to a labor organization."

MANY UNION ORGANIZERS don't object to organizing undocumented workers but say it is an impossible job. Illegal alien workers fear deportation too much to sign union authorization cards and are easily intimidated by employers to oppose the union, the union officials say.

Lenche Hernandez is an organizer with the Service Employees International Union who believes it is possible to organize undocumented workers. He now is trying to organize the city's 41,000 to 50,000 building-service workers such as janitors and maids. He estimates 80 percent are undocumented workers.

"I organized a plant once where there were a large number of undocumented workers. The employer tried everything he could think of to scare them, including spreading the rumor that the INS (U.S. Immigration and Naturalization Service) was going to raid the place. But we still won that election," he said.

Jose Medina, an immigration lawyer who has worked with some Houston unions, said many undocumented workers from Mexico and Central America belong to strong labor unions in their home countries and would be willing to join unions here.

F001456A

INS raids show unresolved dilemma

The Immigration and Naturalization Service issued a final report on

Project Jobs, but the reverberations from that campaign to round up

undocumented workers and replace them with American unemployed are still being felt not only in Washington and the southwestern United States, but internationally as well.

The idea seemed like a good one. With unemployment at a record-

breaking 9.4 percent, it would seem that a campaign targeted at aliens working at good-paying jobs would bring strong support from the public in general and possibly fuel a little interest in immigration law reforms now before a Senate subcommittee.

At best, the campaign had equal measures of success and failure. Intelligence and stupidity, seriousness and absurdity.

Naturally, the INS wanted to center attention on the brighter side of the raids.

IN ITS final report, the agency said it rounded up more than 5,600 aliens, deported 75 percent of those apprehended and made more than 5,000 job referrals. It also pointed out there were long lines of Americans applying for jobs at certain raided job sites.

Just as naturally, the INS wants to forget the bitter controversy, the complaints of rights violations, the lack of applicants for most of the jobs and the hostility it created in the ranks of Mexican-American community leaders.

Yes, there were some new jobs opened for Americans because of the raids. But generally the raided employers reported there was little if any interest in the unskilled or semi-skilled jobs that were vacated by the raids.

Some are even waiting anxiously for the return of



ESPEJO
Richard Vaya

the aliens so that production can return to normal. Many of the employers extolled the virtues of undocumented workers over American workers, noting they are hard workers, punctual and willing to do the menial or manual labor that most natives shun.

It should be the goal of Project Jobs to monitor the raided job sites for at least a year and determine if Americans are working the vacated jobs.

ONCE AND for all, Americans are entitled to find out whether aliens are really taking jobs away from them or whether Americans have to come to accept the fact that aliens are integral to our economy and should be accommodated.

Espejo has little hope that the INS will survey the job sites and report the findings a year from now. Barring an economic catastrophe, INS knows good and well that the aliens will reclaim most if not all the jobs.

Former INS commissioner Leonel Castillo also pointed out that the raids were poorly timed.

"It really hurt us in Latin America," he said.

The raids were given front page coverage and raised considerable animosity in Mexico, the chief U.S. ally south of the Rio Grande River.

That, coupled with the U.S. support of Britain in the Falkland Islands dispute has lowered U.S. prestige and will foster the anti-Latino image that President Reagan is developing in the southern hemisphere.

AND THAT'S not to mention the anti-Latino image that Reagan is developing in this country. The raids alienated most of the country's Hispanic leaders.

There are substantial numbers of Chicanos who dislike Mexicans' contradictory as that might seem.

They dislike them because the Mexicans take great pride in Mexico, their culture and their language, a pride that grates on Chicanos who identify more with American traditions and who massacre the Spanish language.

Moreover, the Mexicans are more aggressive, ambitious and can generally outwork Chicanos who have grown as soft as the general American workforce.

Hispanic leaders realize that the undocumented represent a growing and greater class, both economically and politically. They also realize that many of the undocumented are here to stay.

All the carping, wailing and taunting from Americans, including some Chicanos, is not altering the fact that industry, business, agriculture and even government need the contributions of "wetbacks."

AMERICA needs a pool of workers willing to do the labor that an increasingly industrial and technically oriented America is unwilling to do.

F001457

check

are in the middle of a critical dilemma. I don't know if you have noticed it or not, but a growing number of Americans are not voting in the

Questionable benefits cited

GAO eyes Social Security savings

WASHINGTON (UPI) — Congress could save \$180 million through 1980 by dropping a Social Security provision that allows illegal aliens and other questionable cases to collect benefits, the General Accounting Office said Tuesday.

The GAO report urged Congress to drop the "currently insured" provision, which applies to less than 0.5 percent of workers who die each year. The provision allows survivor benefits for their children and those caring for them.

It serves some workers "under circumstances apparently never envisioned by Congress," GAO said, listing as "questionable" cases illegal aliens, some self-employed people filing retroactively, government "double dipppers" and others with only brief work histories.

Dropping the provision for future recipi-

ents would save \$180 million through 1980 for the cash-short Social Security trust funds, the report estimated.

The provision, a looser alternative to the "fully insured" provision under which most workers become eligible, was enacted as "backstop protection" in the program's early days but is no longer needed, GAO said.

Workers can become "currently insured" by being employed in covered jobs for six quarters during the 13-quarter period ending in death. In 1977, 3,700 out of the 1.3 million workers who died became eligible under the provision.

To become fully insured, workers must have one quarter of coverage for each year after 1950 or age 21 and before the year of death or age 62. The maximum required in 1981 was 30 quarters, or 7½ years.

The report said currently insured survi-

vers collect more per tax dollar than fully insured survivors, and recover their taxes much faster.

Because it emphasizes the period just before death, the provision "fosters abuses inequity — some workers pay more Social Security taxes and work as long or longer than the currently insured but do not qualify for benefits," GAO said.

It cited the case of a 31-year-old illegal alien who worked in the United States for six quarters, just long enough to obtain currently insured status. Upon his death, his wife filed for \$200 in monthly benefits for herself and three children from a previous marriage. The youngest child was 7 years old.

"At the original monthly award rate of \$200, this family could receive more than \$2,000 for paying Social Security taxes of \$600," GAO said.

F001457A

Post Sept. 23, 1982 at 11c

Panel OKs immigration reform bill

By MICHAEL
Post Washington Bureau

WASHINGTON — The House-Judiciary Committee Wednesday approved immigration reform legislation to grant amnesty for millions of illegal aliens, drop stiff penalties on employers who knowingly hire them and expand sharply the current temporary guest worker program.

The panel's action on voice vote ended five days of work on the bill which now goes to the House floor for consideration. However, a recess expected early next month threatens enactment of the measure in this Congress.

The legislation, which largely parallels an immigration bill already approved in the Senate, was begged down in dozens of amendments Wednesday. Many of those were aimed explicitly at detracting the historic legislation.

ONLY MOMENTS BEFORE the panel voted on the measure, supporters narrowly defeated a motion by Rep. Sam Hall, D-Texas, that would have killed the bill. Hall's amendment to send the bill back to the subcommittee for more work was defeated by a 15-13 margin.

The most controversial element in the bill is the amnesty provision. According to the bill — and the Senate measure, as well — illegal aliens who entered the United States before Jan. 1, 1977 would be eligible for permanent resident status. Those who came before Jan. 1, 1980 could be granted temporary resident status and, after three years, could have their status upgraded to permanent.

Temporary residents, under the amnesty provision, would be ineligible for federal assistance programs. However, funding would be provided for emergency medical care for the temporary residents.

The precise number of illegal aliens who may qualify for the amnesty program is unknown, although estimates range from 600,000 to several million.

THE MAJOR ALIENS BEZELING seeking to gain legal status would have to produce employment records or rent receipts or tax records or other documents to prove their residency.

Hall, who said approving the measure amounts to "changing the complexion of America," warned the total immigration package, as approved by the panel, will cost more than \$1.3 billion yearly by 1985.

During the final mark-up session Wednesday, the panel approved, 6-1, a amendment by Rep. Dan Edwards, D-Calif., that would allow the federal government to reimburse the states up to 100 percent of the costs of programs for aliens granted legal status.

The committee first approved the amendment by a narrow margin but after a lunch break and arm twisting by the White House, the measure was reconsidered and defeated.

Administration officials at the committee meeting said the objection to the 100 percent funding was raised because of wording that would have subjected the measure to scrutiny by the Appropriations Committee, which could keep the bill from being considered in the House this year.

Edwards re-wrote the amendment, adding

a provision that funding to states would be subject to available appropriations. That was the needed change to keep the bill out of the hands of the appropriations panel.

THE MEASURE PASSED BY A 16-13 margin, but the change in wording also changed the impact of the funding provision to give it little more muscle than to suggest that Congress could, in the future, appropriate funds to reimburse the states.

Administration sources agreed, however, the Edwards provision leaves the door open for large reimbursement payments to states for a variety of services — including education — to aliens who are granted legal status.

The committee's bill also calls for a four-step penalty structure to impose sanctions against employers who knowingly hire illegal aliens. The proposal requires that violators first be cited, then receive civil penalties of up to \$1,000 per illegal alien for the second offense, followed by \$2,000 civil fine per illegal alien for the third offense.

A criminal penalty of up to \$1,000 and one year in prison could be levied as the fourth step of the sanctions.

One major difference between the committee's bill and that already approved in the Senate is the ceiling placed on immigration. The Senate voted to lift the current 600,000 ceiling while the House, at the urging of Chairman Peter Rodino, D-N.J., retained the ceiling in the proposed law.

The House committee struck from the measure a provision that would have doubled the number of legal immigrants allowed from Mexico, increasing the limit to 40,000 a year

F001458

HUD policy lets illegals draw housing subsidies while citizens must wait

By LEIGH HERMANC
Post Reporter

"I have a Spanish surname. And I would be indignant as hell if someone asked me if I was an American citizen after having been shot at in Vietnam."

— Rogelio Santos, U.S. Department of Housing and Urban Development supervisor

Illegal aliens are able to draw housing subsidies in Houston and other Sun Belt cities while American citizens wait months or years for similar assistance because the federal government will not allow verification of citizenship status of applicants, federal and local housing officials say.

But a proposed change in federal housing policy may reverse a U.S. Department of Housing and Urban Development directive issued during the Carter administration that forbade public housing authorities from verifying if applicants for federal housing subsidies were legal residents.

HUD officials said the verification procedure could violate civil rights laws.

HUD officials in Houston said they have received complaints about the Houston Housing Authority's attempts to block subsidies for illegal aliens, and ordered HHA to stop efforts to verify legal residency.

"It's frustrating — the whole point is: you cannot require them to submit documentation," said Ernest P. Fuentes, director of HHA's rent subsidy program. "We just ask applicants if they are a citizen or legal resident. We are limited to that."

HUD's policy on verification has drawn criticism from the General Accounting Office, the investigative arm of Congress, from housing authority directors and from private citizens who believe subsidies should be limited to citizens.

Congress responded to the criticism when it passed the 1981 federal budget, which stipulated that subsidies be limited to certain classes of aliens who provided documentation that they were legal residents.

"The new administration is moving swiftly so that only the true-blue American citizens get housing," said Rogelio Santos, deputy supervisor for housing management in HUD's Houston office. "As they say, 'It plays well in Peoria.'"

"BUT YOU CANNOT EXPECT HOUSING officials to serve as immigration agents," Santos said. "No one has the resources. The new rules will get good public play, but they won't solve a thing."

The proposed new rules were published earlier this month in the Federal Register. HUD will accept public comment on the proposed policy change until June 2, but probably will not adopt new regulations until early fall.

Several housing authority directors in Texas and California said the proposed policy change is long overdue. An informal survey of area housing authorities showed interpretation of HUD's verification directive has varied widely.

In Corpus Christi, housing authority officials ignored HUD's objection to their policy of asking for documentation of legal residency, said executive director Ruth Mary Price.

"There is an old Chinese proverb: Man who said it cannot be done should not interrupt man who is doing it," she said.

"We thought it was ridiculous that with one hand the taxpayer is paying up the bill to pick up illegals and cart them back home and on the other hand, paying to provide them with a standard place to live while citizens waited in line," Price said.

Galveston housing officials also ask applicants to certify they are U.S. citizens or legal residents. If they are not a citizen, they are asked to provide documentation of legal residency.

"AS AN AMERICAN, MY FIRST INTEREST is with American citizens," said Claud H. Bolton Jr., Galveston Housing Authority executive director. "If I knew I had some illegals living in projects, I would report them to the proper officials."

But Laredo, El Paso, San Antonio and Los Angeles housing authority directors said that, at HUD's insistence, they no longer ask questions about citizenship status.

HUD officials ordered the Los Angeles Housing Authority to remove a question on the application for subsidy asking if the head of the household was a legal U.S. resident despite the objections of executive director Homer Smith.

"I do not think it is a right to live in public housing; it is a privilege," Smith said. "I think any reasonable person should realize that it's a government subsidy and should be provided to residents of this country first."

"I do not think it is any more onerous to ask about citizenship status than to ask an applicant if they are working or are receiving welfare," Smith said.

But some Hispanic leaders said the new policy would open the door to invasion of the privacy of Mexican-Americans and would be virtually impossible to enforce.

"It is very absurd and insane," said Johnny Mata, deputy state director of the League of United Latin American Citizens. "It is a burden that will impose a lot of hardship and embarrassment on the Hispanic community."

"We already are experiencing many problems handling the number of discrimination complaints coming into our office," MATA said.

Salvador F. Canchola, executive director for the El Paso Housing Authority, said he does not expect the new policy to cause significant changes. Illegal aliens will continue to live in subsidized housing because they will use forged documents, he said.

"FROM OUR PERSPECTIVE, WE'VE got more important things to do than worry about that," Canchola said. "We cannot do INS' (U.S. Immigration and Naturalization Service's) work for them."

Housing officials should not expect much enforcement assistance from INS because the service's current policy prohibits document checks at projects, said Vincent P. Henderson, assistant district director for INS' Houston office.

Besides, he said, "With the number of people I have, we are spread awfully thin just going to job sites."

Abraham Rodriguez Jr., executive director of the Laredo Housing Authority, asked: "Is this going to be another role for housing authorities: checking violations of immigration laws? I would imagine there are lots of illegals living in projects here."

Apolonio Flores, executive director of the San Antonio Housing Authority, said he also is concerned about the policy change. "I foresee some lawsuits."

"People will say, 'I look brown and therefore I have to prove citizenship whereas the blond, blue-eyed guy doesn't have to do a thing.'"



SANTOS

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Drain by illegal aliens on we

Group favoring tighter clamps on immigration ch

BY JUDY WIESSLER

Chronicle Washington Bureau

WASHINGTON — A group that favors tight clamps on immigration has published a report disputing earlier research that indicated illegal aliens are not a drain on government social programs such as welfare.

The report was immediately criticized by Hispanic group advocates who argue that most aliens here illegally are a boon to, rather than a drain on, the economy and should be allowed to stay here legally.

The Federation for American Immigration Reform, which goes by the acronym FAIR, is trying to dispel the conventional wisdom, garnered mostly from studies in the early to middle 1970s, that illegal aliens pay taxes but make little use of public services.

That idea is a myth that could lead to "a hemorrhage of our social welfare system" unless illegal immigration is substantially stopped," said the report by Roger Conner, executive director of FAIR who has a background as an environmental lawyer.

Findings of the report dovetail with FAIR's advocacy of immigration restrictions and its opposition to con-

cepts such as legalization for perhaps millions of illegal aliens being considered by Congress.

"It seems to be FAIR's standard, slick-looking publication that on its face has a lot of material, but is just another slim document to be added to the side of the restrictionists," said Enrique Valenzuela, an immigration specialist for the Mexican American Legal Defense and Education Fund.

The FAIR report does not include original research, but is a survey of recent studies which Conner said have not received enough attention.

FAIR said newer studies show, for example, that almost 35 percent of a group of illegal aliens in California received unemployment benefits; that 29 percent of illegal Dominicans in New York City received welfare; that 18.5 percent of undocumented women in Los Angeles received welfare; and that 46 percent to 51 percent of all unemployment insurance applications by aliens in Illinois were from illegal aliens.

Like most of the earlier studies, those cited by FAIR are generally analyses restricted to certain types of illegal aliens in one program in one state or county during one limited time period. But FAIR said they

Most on border report little increase of illegals on rolls

Chico, 10
8/30/82
p 11 51

Schools see no large influx of aliens

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SAN ANTONIO (UPI) — Predictions that 100,000 illegal alien children would flood across the Mexican border to take advantage of a U.S. education this year did not come true in cities where classes opened last week. Most school districts along the Texas-Mexico border say only a few more illegal alien children than last year showed up in early enrollment figures. But some school officials, especially those in the Rio Grande Valley, say they cannot afford even a few more undocumented children.

"At this point it's like the straw that breaks the camel's back," said Manuel Gomez Jr., administrative assistant to the superintendent in Harlingen. "If it's a child that does not bring a command of the English language, it makes the problem even worse."

The U.S. Supreme Court in June struck down a Texas law that had allowed school districts to charge tuition to the children of illegal aliens. The court said the children could go to school free as long as they lived in the school district, regardless of their immigration status.

But most school districts had already begun to admit the undocumented children when federal Judge William Wayne Justice originally ruled against the Texas law in 1978.

About 25,000 illegal alien children are believed to be in the Texas schools at an estimated cost of \$62.5 million, state officials have said. They predicted the figure could rise to 100,000 under the Supreme Court ruling.

Some school districts are keeping records on illegal aliens this year — which is not required — to prove that educating the children is a drain on their budgets. The figures will also come in handy if Texas congressmen are successful in getting federal money to help out the districts.

"If they all came in and bought \$50,000 homes, we would be fine," said Brownsville Superintendent Raul

Besteiro. "But when they come, they can't afford to buy the taxable property that offsets the burden they cause the district."

Brownsville registered 219 illegal alien students among nearly 29,000 in the first four days of school, but that figure reflects only the new students. Most of the 813 illegal aliens who attended last year will be back, officials said.

Neighboring Harlingen has signed up 42 undocumented children so far.

To register, the children must show a birth certificate and proof they live in the school district. Those without documentation papers are considered illegal aliens, Gomez said.

The U.S. Immigration and Naturalization Service has no access to the school records, however, so undocumented families will not be caught by enrolling their children, said Walter Cheedle of the Harlingen INS district office.

In Hidalgo, across the border from much larger Raynosa, about 300 illegal alien students are expected — the same as last year, said Superintendent Alejo Salinas. He said he is more worried about children attending Hidalgo schools while living in Mexico.

"We keep a very close eye on the bridge," he said. "We actually have people at the bridge checking the children coming over. We have to educate them if they're living here but not if they're crossing the bridge every day."

To buy, sell,

or trade . . .

Call Miss Classified.

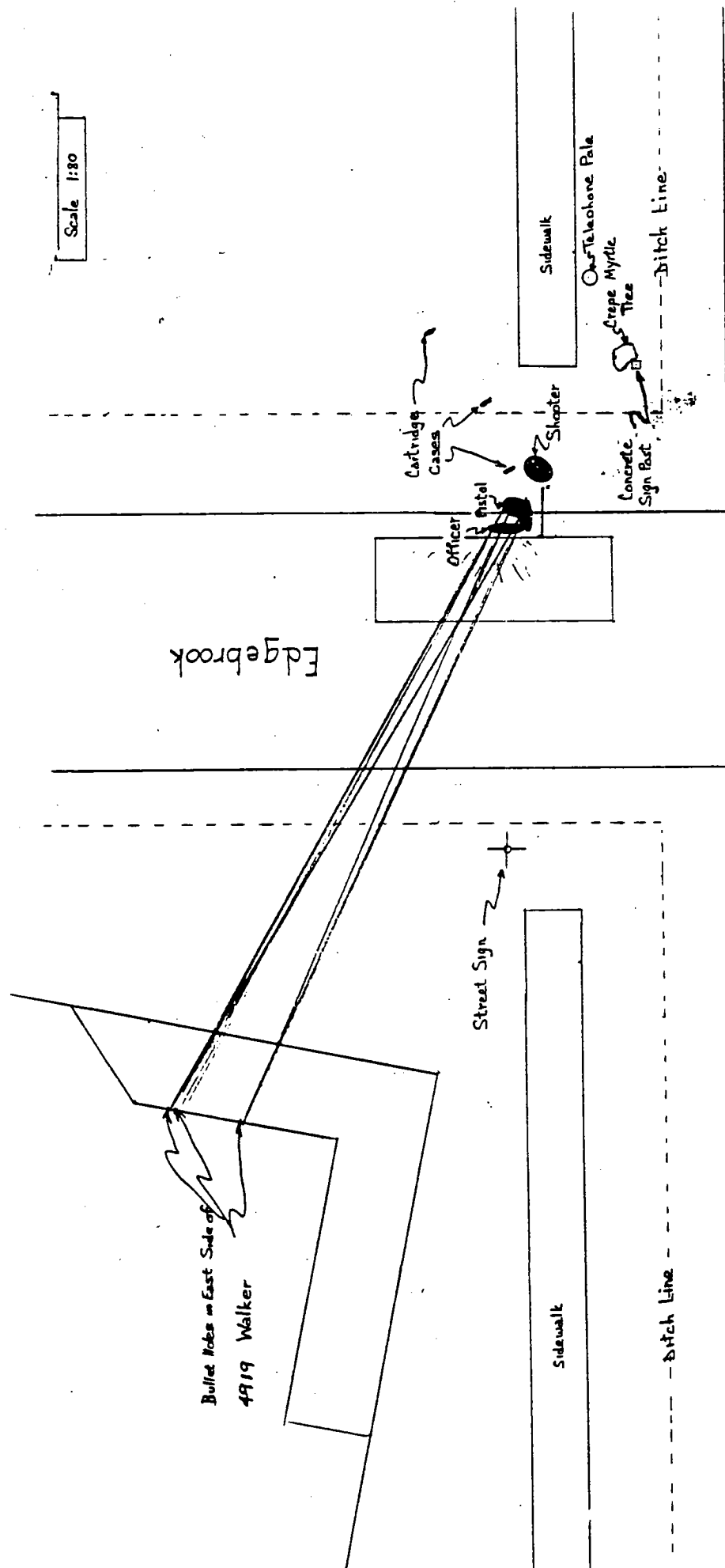
She's ready to help you get fast, proven results.

PIANOS
FOR RENT

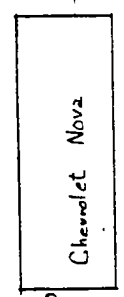
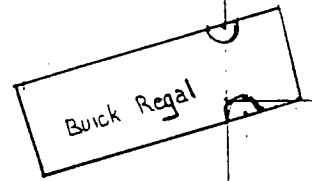
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F001566



Walker



Street Light

Light Pole

Ditch Line

Driveway

App. 0182

F001567

007000 J

HOUSTON POLICE DEPARTMENT — OFFENSE REPORT SUPPLEMENT

Incident No. 42614582

OFFENSE CAPITAL MURDER POLICE OFFICER

LOCATION 4900 Walker

COMPLAINANT(S) Officer J.D. Harris

DATE OF OFFENSE 7-13-82

DATE SUPPLEMENT MADE 9-1-82

Sirs:

Firearms Case No. 495-82

Examinations were completed, on this date 9-1-82
by the Firearms Section of the Identification Division of the
following:

Received from:

- (1) .9mm Browning Hi-Power semi-automatic
pistol, serial#245P287128 (W-8)
(1) .45 caliber Dettonics combat master
semi-automatic pistol serial#CR16126 (W-9)
(8) fired cartridge cases (ECC-1 thr 8)
(1) fired cartridge case (ECC-9)
(3) fired jacketed lead bullets (EB-1-3)

From Scene by C.E. Anderson, Firearms 7-14-82
From Scene by C.E. Anderson, Firearms 7-14-82
From Scene by C.E. Anderson, Firearms 7-14-82
From Front Seat of Vehicle 7-14-82
From Scene by C.E. Anderson, Firearms 7-14-82

These examinations revealed: seven (7) fired cartridge cases (ECC-1 thr 6 & 9) were fired in the above described 9mm Browning semi-automatic pistol (W-8) FA#488-82 and two (2) fired cartridge cases (ECC-7 & 8) were fired in the above described .45 caliber Dettonics semi-automatic pistol (W-9) FA#488-82. The three (3) fired jacketed lead bullets (EB-1 thr 3) contain insufficient definite and consistent individual characteristics to effect an identification. However the three (3) fired jacketed lead bullets were not fired in the above described .45 caliber Dettonics semi-automatic pistol.

TRIGGER PULL: (Single Action): _____ (Double Action): _____

CONDITION OF EVIDENCE: Weapon- Good, Cartridge cases - Good, Bullets - Fair.

The aforementioned evidence will be:

(Retained in Firearms Section): XX

(Returned to): Weapons FA#488-82

Firearms Examiner, C. E. Anderson #20483
Firearms Section,
Identification Division

Emp. No.

Firearms Examiner,
Firearms Section,
Identification Division

Emp. No.

Form No. ID-0030

F000200

App. 0183

INCIDENT NO. 042667682 CURRENT INFORMATION REPORT PAGE 2.010

OFFICERS 357 HAD BEEN FIRED SIX TIMES WHEN CHECKED BY ANDERSON. PISTOL WAS NEXT TO OFFICER. THE OFFICER WAS LAYING APPROX 34'6" FROM THE REAR OF A HORSE TRAILER WHERE THE #2 SUSP AND THE DETONICS #5 AUTO WERE FOUND.

8 9MM HULL. WHILE OFFICER TREPAGNIER WAS BEING TREATED, THIS DET NOTICED A 9MM HULL LAYING APPROX HALFWAY BETWEEN THE FEET OF OFFICER TEPAGNIER AND THE HEAD OF THE DEAD COMPL. THIS HULL WAS IN THE PATH ALONG SIDE THE HOUSE FROM THE FRONT TO REAR. THE HULL WAS ABOUT 3 PACES OUT FROM THE NORTHEAST CORNER OF THE HOUSE. BECAUSE OF THE HEAVY TRAFFIC IN THIS AREA, THIS HULL WAS RECOVERED BY C ANDERSON, FIREARMS, TO PREVENT IT FROM BEING LOST IN THE REMOVAL OF THE OFFICER BY MFD

9 LOCATION OF DEAD COMPL IN RELATION OT THE OFFICER. THE DEAD COMPL AS HE LAY WITH HIS HEAD TO THE NORTH TOWARD (COMPLS, HEAD TO OFFICERS FEET) WHERE THE WOUNDED OFFICER WAS BEING TREATED, IS A DISTANCE OF APPROX 6'

#10 HORSE TRAILER AT REAR OF HOUSE WHERE 2ND SUSP AND WEAPON FOUND. THIS TWO HORSE TRAILER IS LOCATED IN THE APPROX CENTER OF THE BACK YARD WITH THE HITCH PORTION OR FRONT OF TRAILER TO THE SOUTHEAST AND THE REAR TO THE NORTHWEST, THE TRAILER IS A GOLD OR LIGHT BROWN COLOR, THE TRAILER APPEARS TO HAVE BEEN SITTING HERE FOR SOME TIME. IT ALSO APPEARS THAT SOMEONE MAY HAVE BEEN SLEEPING IN THIS AT ONE TIME OR ANOTHER. THE RIGHT REAR OF THE TRAILER IS APPROX 39" SOUTH OF THE FENCE AND APPROX 34 1/2' FROM WHERE OFFICER TREPAGNIER RECEIVED HIS TREATMENT AT THE SCENE

#11 .45 DETONICS AUTOMATIC LOADED WITH 3 M.P. RDS IN CLIP AND 1 ROUND NOSE ROUND IN CHAMBER WRAPPED UP IN RED BANDANA. THE ABOVE WEAPON BELIEVED TO BE CARRIED BY RICARDO ALDAPE GUERRA WAS FOUND UNDERNEATH THE HORSE TRAILER MENTIONED ABOVE AND A MATTER OF INCHES FROM WHERE GUERRA WAS CAPTURED. AS

STATED PREVIOUSLY, THE TRAILER WAS APPROX 39" FROM THE FENCE AND THE PISTOL WAS UNDER THE RIGHT REAR OF THIS TRAILER APPROX 12" AS MEASURED FROM THE REAR OF THE TRAILER IT SHOULD BE NOTED THAT THE PISTOL APPEARS TO HAVE BEEN PLACED HERE IN A DELIBERATE MANNER AND NOT IN A HURRIED ATTEMPT TO THROW IT UNDER THE TRAILER.

#12 9MM HULL FOUND IN DETACHED GARAGE. WHILE CONDUCTING A SEARCH OF THE DETACHED GARAGE, ONE ADDITIONAL 9MM HULL WAS FOUND IN THE EXTREME NORTHWEST CORNER OF THIS GARAGE APPROX 25' FROM THE NORTHWEST CORNER OF THE HOUSE

BULLET STRIKES IN HOUSE AT 4915 RUSK (FOUND DURING DAYLIGHT SEARCH)

#13 ONE BULLET STRICK WAS FOUND IN THE BRICK SIDE OF THE HOUSE AT 4915 RUSK AND TO THE EAST OF THE SHOOTING SCENE. THIS STRIKE WAS FOUND TO BE 4' FROM THE GROUND AND 8 1/2' NORTH OF THE SOUTHWEST CORNER OF THE HOUSE

#14 ONE BULLET HOLE IN A WINDOW (BOARDED UP) ON THIS SAME SIDE OF THE HOUSE AT A POINT 8' FROM GROUND AND 6'7" NORTH OF THE SOUTHWEST CORNER OF THE HOUSE

THIS BULLET CONTINUED THRU THE BOARDED UP WINDOW AND INTO THE HOUSE IN AN UPWARD TRACK AND THRU THE BLIND INSIDE UP AND IT HIT THE BOTTOM OF THE WINDOW CASE. THEN UP TO HIT THE CEILING AND THEN GLANCE DOWN TO HIT THE

F 000257

App. 0184

INCIDENT NO. 042667682

CURRENT INFORMATION REPORT

PAGE 2.023

NO-0004

OFFENSE- DEAD MAN (SHOOTING)

STREET LOCATION INFORMATION

NUMBER- 4911 NAME-RUSK TYPE- SUFFIX-

DATE OF OFFENSE-07/13/82

DATE OF SUPPLEMENT-07/20/82

COMPLIS1 LAST-WEDO

FIRST-

MIDDLE-

LAST-

FIRST-

MIDDLE-

RECOVERED STOLEN VEHICLES INFORMATION

NONE

OFFICER1-CW KENT

EMP#-028778 SHIFT-3 DIV/STATION-HOMICIDE

OFFICER2-JL WALTMON

EMP#-032402 SHIFT-3

SUPPLEMENT NARRATIVE

SUPPLEMENT DATED 7/14/82

MORGUE INVESTIGATION:

DET KENT AND WALTMON WHILE IN THE HOMICIDE OFFICE RECEIVED THE ASSIGNMENT TO ASSIST DET VW WEST AT THE SCENE OF THE OFFICER SHOOTING AT 4911 RUSK INCIDENT NUMBER 42667682. DETS RECEIVED THIS ASSIGNMENT FROM LT. WAGNER AT 2340 HOURS AND DETS ARRIVED AT THE SCENE AT 2350 HOURS.

UPON ARRIVAL DET OBSERVED THE DEAD SUSP LAYING ON THE EAST SIDE OF THE RESIDENCE AT 4911 RUSK. THE SUSP HAD BEEN SHOT BY POLICE OFFICERS DURING A SHOOT OUT AFTER THE SUSP HAD SHOT AND KILLED THE OFFICER IN INC #42614582 LJO HARRIS AND SHOT AND WOUNDED OFFICER LR TREPAGNER IN INCIDENT #42667382.

DETS WERE ASSIGNED TO GO TO THE MORGUE AND CHART THE WOUNDS OF THE DEAD OFFICER AND THE DEAD SUSP. M.E.I. BRIGHT HAD THE DEAD SUSP TRANSPORTED TO THE MORGUE STATING THAT HE WOULD TAKE AN INVENTORY OF THE SUSPS PROPERTY THERE RATHER THAN AT THE SCENE.

DETS DROVE TO THE MORGUE AND THERE WHILE CHARTING THE DEAD SUSPS WOUNDS DETS RECOVERED OFFICERS HARRIS SERVICE REVOLVER IN THE SUSPS WAIST BAND NEXT TO HIS STOMACH. THE RECOVERED PISTOL WAS A COLT PYTHON .357 REVOLVER, BLUE STEEL, SER #21267E. THE PISTOL WAS FULLY LOADED WITH 6 LIVE ROUNDS OF W-W SUPER SILVER TIP ROUNDS OF .357 AMMO. DETS ALSO RECOVERED A LEATHER BLANCHT INSIDE WAIST BAND HOLSTER FROM THE SUSPS WAIST BAND NEXT TO HIS STOMACH. DETS ALSO RECOVERED A MILITARY WEB MAGAZINE POUCH (DOUBLE) ON THE SUSPS BELT WHICH HAD ONE FULLY LOADED 9MM HI POWER MAGAZINE IN IT. THE MAGAZINE HAD 20 LIVE ROUNDS OF AMMO IN IT 14-SPEER 9MM LUGAR; 16-W-W 9MM LUGAR. DET WALTMON TOOK POLAROID PHOTOS OF THE RECOVERED EVIDENCE AS LISTED AND DET KENT RETAINED THE PROPERTY AND TAGGED IT IN THE POLICE PROPERTY ROOM UNDER THIS OFFENSE INC #42614582. DET KENT ALSO RECOVERED A BLACK MENS WALLET FROM THE SUSPS LEFT FRONT PANTS POCKET. IN THIS WALLET DET KENT FOUND A DRIVERS LICENSE WITH THE SUSPS PHOTO ON IT, ID#10105781. THE NAME ON THE DRIVERS LICENSE WAS JAMES JOSEPH KOSHERI WITH DOB: 8/26/53. DET MONTERO CHECKED ON THIS NAME AND LEARNED THAT THIS PERSON WAS A COMPL IN AN AGGRAVATED ROBBERY, INC #37977582. UPON EXAMINING THE DRIVERS LICENSE DET KENT FOUND THAT THE DEAD SUSP HAD PLACED HIS PHOTO OVER THE



F 000270

App. 0185

HARRIS COUNTY CONSTABLES OFFICE OCT 4
HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 82006775

OFFENSE Appropriated Robbery

LOCATION 18448 Kuykendahl

COMPLAINANT (S) Rebel Guns

DATE OF OFFENSE 7-8-82

DATE SUPPLEMENT MADE 10-13-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
--	---	--

RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____

CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGE \$ _____

☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)

RECOVERY LOCATION _____ DIST _____ BEAT _____

VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC:

While in 248th DISTRICT COURT ROOM AT 11:30 AM 10-13-82, The Two Below listed witnesses pointed out A M/M AND STATED TO REPORTING DEPUTY, L.F. SHIFLET, UNIT 452, MCCO #4, "THAT YOUNG M/M IS THE YOUNGEST PARTY INVOLVED IN ARMED ROBBERY OF THE Rebel gun shop on 7-8-82, AT APPROX 3:40 PM."

BOTH WITNESSES POSITIVELY TOLD THE M/M TO DEPUTY'S SHIFLET + EDGAR APPROX.

SUSPECT TAKEN IN CUSTODY IN COURT ROOM BY REPORTING DEPUTY. SUSPECT CANNOT SPEAK ENGLISH. ATTORNEY J.C. CASTILLO READ THE SUSPECT HIS RIGHTS IN SPANISH AT 11:52 A.M., 10-13-82.

WITNESS: 1) Robert D. Dawson - 9718 LARGES, Spring Tex
TAX COLLECTOR - Klein School District
376-1663

2) ENHARDT, Steven Gordon - 11911 Jane Lane
Tomball, Tex - Mechanic
443-7550

☐ SUPPLEMENT COMPLETE ☐ CONTINUED

OFFICER 1 _____ EMP# _____ SHIFT _____ DIVISION / STATION # _____

OFFICER 2 _____ EMP# _____ SHIFT _____ DIVISION / STATION # _____

CALLER'S NAME _____

PHONE _____

F 000703

App. 0186

☐ CONTINUED

☐ SUPPLEMENT COMPLETE

Guevara, Ricardo A.

F 000704

App. 0187

PROGRESS OF INVESTIGATION ADDITIONAL INFORMATION, ETC:

SUPPLEMENT REPORT
HARRIS COUNTY CONSTABLES DEPARTMENT
PRECINCT 24

Case No. 83-006775

S.P. No.

2488C 178

NAME OF DEFENDANT(S) (Last, First, Middle)		
TORRES, LUNA ENRIQUE (MM) (7-1-62)		
COMPLAINANT (Last, First, Middle)	LOCATION OF OFFENSE	DATE
REBEL GUNS	18448 Kuykendahl	10-13-82
OFFENSE, CHARGE OR INCIDENT ON ORIGINAL REPORT	CORRECT OFFENSE OR INCIDENT CLASSIFICATION	
ROBBERY	CHANGED TO:	

On 10-13-82, at 9:00 A.M., reporting deputy, L. E. SHIPLET, and Officer E. HAROLD were in 248th District Court to testify on a murder case. At 11:30 A.M., 10-13-82, two (2) witnesses in above case independently identified a spectator in the court room as one of three that robbed the Rebel Guns on 7-8-82 at approximately 3:40 P.M.

Witnesses identified the suspect to both officers. Reporting deputy advised District Attorney's office immediately.

The District Attorney then put the witnesses on stand and under oath. Both witnesses pointed out suspect in court room as one of the robbers.

Reporting deputy then filed charges through D.A. Intake and warrant for defendant was issued in the 178th District Court, cause #386178 for Aggravated Robbery, Bail set at \$20,000.00.

Suspect placed in Harris County Jail.

Suspect was read his rights at 11:52 A.M., 10-13-82, in spanish by attorney and witnessed by H.P.D. officer E. L. Marine.

Both witnesses while on witness stand also identified the defendant, R. Guerra, who is on trial for Capital Murder of H.P.D. Officer Harris, as one of the bandits who robbed Rebel Guns, 18448 Kuykendahl, 7-8-82.

359805 2488C

F000705

App. 0188

REPORTING DEPUTY	SADGE	STATUS (Check one)		DATE & TIME
L. E. SHIPLET 453	453	OPEN	CLOSED	10-14-82
SECOND DEPUTY	SADGE	SUPERVISOR	S.S. NO.	

10/13/82

12:30 PM

In July 8, 1982 while shopping in the Rebel Gun Store I was the victim of an armed robbery conducted by three Latin American males. Upon appearing in District Court on a related capital murder case the youngest member of the armed robbery team was sitting among the spectators. I pointed him out to Constable's Deputy Shifflet. Later when asked in court under oath if any of the robbery team suspects were in the courtroom I pointed the suspect out and later witnessed him being taken into custody.

Robert Daniel Dawson

9718 Largs Dr.

Spring, TX 77379

376-1663

F 000706

App. 0189

10-13-82
I Steve Ehrhardt was in the retail g.
shop on July 8th 1982 when the store
was raided by three latex males.
When I was called to testify in the
capital murder trial. While sitting in
the court room I observed one
of the three sitting in the spectator
area. I pointed him out to one of
the attending officers (Shiflet). He
was then taken into custody.
I also identified the suspect in court.
12:30 P.M.

Steve Ehrhardt

11911 West Jane Ln

Tomball Tex

77325

home 351-4211

F000707

RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____
CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____
☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)
RECOVERY LOCATION _____ DIST _____ BEAT _____
VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

While in 248th District Court Room at 11:30 AM 10-13-82, The Two Below Listed Witnesses pointed out A.M/M and stated to Reporting Deputy L.F. Skiffet, Unit 453, HCCO 44, "That young M/M is the youngest party involved in armed robbery of the Rebel Gun Shop on 7-8-82, at Approx 3:40 PM."

Both witnesses positively ID'ed The M/M TO Deputy's Skiffet & Eddie Arnold.

Suspect taken in custody in Court Room by Reporting Deputy. Suspect cannot speak English. Attorney J.C. Castillo read the suspect his rights in Spanish at 11:52 A.M., 10-13-82.

Witness: 1.) Robert D. Dawson - 9718 Largs, Spring, Tex
TAX COLLECTOR - Klein School District
376-1663

2.) EHAARDT, Steven Gordon - 11911 Jane Lane
Tomball, Tex - Mechanicist.
443-7590

☐ SUPPLEMENT COMPLETE

☐ CONTINUED

OFFICER 1 _____ EMP# _____ SHIFT _____ DIVISION / STATION # _____
OFFICER 2 _____ EMP# _____ SHIFT _____ DIVISION / STATION # _____
CALLER'S NAME _____
PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000708

10/13/82

12:30 PM

In July 8, 1982 while shopping in the Rebel Gun Store I was the victim of an armed robbery conducted by three Latin American males. Upon appearing in District Court on a related capital murder case the youngest member of the armed robbery team was sitting among the spectators. I pointed him out to Constables Deputy Shifflett. Later when asked in court under oath if any of the robbery team suspects were in the courtroom I pointed the suspect out and later witnessed him being taken into custody.

Robert Daniel Dawson

9718 Largs Dr.

Spring, TX. 77379

376-1663

376-4171

F000725

App. 0192

10-13-82

I Steve Richards was in the Rebel gun shop on July 8th 1982 when the store was robbed by three latent males. When I was called to testify in the capital murder trial. While sitting in the court room I observed one of the three sitting in the spectator area. I pointed him out to one of the attending officers (Shiflet). He was then taken into custody.

I also identified the suspect in court.

12:30 P.M.

Steve Richards

11911 West Jane - n
Tomball Tex

77375

home 35-62

F000729

App. 0193

7/14/82

6:00 p.m.

D. Ward:

Good evening friends, tragedy has struck the ranks of the Houston Police Department again. Last night a wild shootout took the life of one officer, left another critically injured with gun shot wounds to the chest and abdomen. An innocent passerby was also shot and critically injured. One of the suspects was shot and killed. The other is now behind bars. It was a tragedy that had an innocent beginning as Sylvan Rodriguez reports.

S. Rodriguez:

Responding to a routine traffic complaint Officer J. D. Harris ordered the two Hispanic suspects out of their car. One obeyed, placing his hands on the patrol unit in the search position. The other began moving away and then pulled a 9mm pistol hitting Officer Harris three times in the face. The officer's canine partner could only bark from inside. A motorist, Jose Armijo, was returning home with his two children when the two suspects ran from the scene of the shooting. The suspect with the 9mm pistol shot into the car. Armijo slumped over the wheel with a gun shot through his head. His three-year old daughter Lupita and nine-year old son Jose Junior could only watch.

Jose
Armijo, Jr.:

He took out his gun and shot the police, and then he took the police gun away and he started shooting [inaudible], and then they shot my father. [Inaudible] my sister, but he shot my father.

S. Rodriguez:

As paramedics worked in vain to save Officer Harris' life 50 officers aided by the helicopter searched for the suspects. In all the confusion Jose Armijo remained bleeding in his car for 45 minutes. Originally investigators thought he had shot Officer Harris. Then within the hour shots rang out again just a block and a half away. There at the 4900 block of Rusk the two hiding suspects surprised police hitting Officer L. R. Trepagnier three times in the chest and stomach.

Male
Police Officer:

Shots were fired. The officer was hit several times. The officer returned fire along with numerous other officers, and the suspect was DOA on the scene.

S. Rodriguez:

The second suspect was found hiding behind the trailer. A 45 caliber pistol was found beneath that trailer. The 29-year old Officer J. D. Harris is survived by his wife and two small children. He had been with the Houston police force since 1976, the last three years assigned to the Canine Corps. Tuesday night had been his first night out with a new dog named Texas. The note he left his Sergeant said, "Sergeant, everything is going smooth for the first day." Sylvan Rodriguez, Eyewitness News.

D. Ward:

Officer Trepagnier now listed in critical condition at Hermann Hospital. The motorist Jose Armijo is also in critical condition at Ben Taub. Funeral services for Officer Harris have been set for 10:30 Friday morning at the Forest Park Funeral Home in the 6900 block of Lawndale.

weapons indicating the Red Brigades kidnapers of U.S. Brig. Gen. James Dozier planned a major attack.

"We are on a 24-hour security alert," said a NATO official. "Measures that have been taken are perhaps the tightest we've seen here."

Police sources also said documents seized in weekend raids show the Red

The sources said among the weapons seized from terrorist suspects were Soviet-made anti-tank rockets, grenade launchers and shells powerful enough to penetrate thick steel plates.

In addition to placing sandbags and doubling armed guards at the command entrances, Italian policemen have been posted along the roads leading to the

after police received a tip Dozier's kidnapers might try to move him to another hideout, police said.

In another development, police investigating Dozier's kidnapping captured two more Red Brigades suspects Tuesday on information provided by three members of the leftist terrorist gang arrested last weekend.

Anger by a trial

Bu state right

HOUSTON POST

JAN 13, 1982 A-2

2

High court backs California

Post News Services

WASHINGTON — A split Supreme Court Tuesday upheld a law allowing state judges to remove judges from a state's judiciary, including "bedding" inspectors. Four dissenting justices said the decision "defies common sense."

And in halting a challenge to the government's gift of land to a private college in Pennsylvania, the court made it

tougher for citizens to file suits to block government actions.

The court, in a 5-4 ruling, upheld a California statute that requires applicants for about 70 state jobs to be U.S. citizens. The decision said the law shows the state to be narrow-minded and hostile toward foreigners.

The ruling reversed a lower court decision that the law was unconstitutional. Three dissenting justices said the law was unconstitutional.

were denied jobs as deputy probation officers in Los Angeles originally filed the suit.

The court majority found it was within the state's powers of self-government to exclude non-citizens from certain jobs involving police powers.

coming public The premier quier must court. The to the tion c

N2

N19

N13

Haig in Egypt striving to refuel peace efforts

Post News Services

CAIRO, Egypt — Secretary of State Alexander Haig, concerned about the stalled Palestinian autonomy negotiations, opened talks with Egyptian government leaders Tuesday to try to restore the lost momentum of the peace process.

whether to name a high-level U.S. envoy to the autonomy talks and "it is not ruled out" that Haig himself might take a more active part in the talks about self-rule for Palestinians in the occupied West Bank and Gaza Strip.

On his arrival in Cairo for a two-day visit that will



F001590

in court a man
re him to another
nt, police inves-
pping captured
suspects. These
vided by three
terrorist gang ar-

by a Newark, N.J., policeman, an offi-
cial said Tuesday.

But William Bradford Reynolds, as-
sistant attorney general for civil
rights, said he turned down a request

the group marched 225 miles in nine
days from Newark to the Justice De-
partment building on Pennsylvania
Avenue.

A member of the Newark chapter of
the Guardian Angels, Frank Melvin,

The Guardian Angels, however, say
Melvin was attempting to identify him-
self as a member of the anti-crime
group when he was struck down by a
shot fired at street level.

California job ban against aliens

puty probation
originally filed
and it was with-
self-government
om certain jobs

common sense, and reinstates the dead-
ening mantle of state parochialism in
public employment.

The land decision continues a Su-
preme Court trend tightening the re-
quirements that groups and individuals
must meet to fight official actions in
court.

Justice Harry
g "rewrites the
s history, defies

The court ruled that a group devoted
to the constitutionally mandated separa-
tion of church and state has no legal

standing — or sufficient stake in the out-
come of the case — to press its claims.

By 5-4, the court said the group,
Americans United for Separation of
Church and State, lacked standing either
as taxpayers or as firm advocates of
church-state separation to challenge the
government's decision to give land to
the Valley Forge Christian College for
use as a campus.

In another decision delivered Tues-
day, the court, in a technical case in-
volving wage hikes for federal workers,
voted 9-0 to strike down a ruling the
would have cost the government at least
\$22 million in back pay.

The court unanimously agreed to
limit the amount of the pay raises fed-
eral employees can expect when the
switch from blue-collar to white-collar
jobs.



3 rebels killed, Haitians report

PORT DE PAIX, Haiti (AP) — Three
men who were captured when a small
invasion force landed on Haiti's Tortuga
Island have "succumbed to their wounds
and died," the national television report-
ed Tuesday night.

desolate offshore island after stopping a
two points on Haiti's northern coast. H
said he did not know whether anyone
went ashore during the earlier stops.
The invaders presumably are follow-
ers of Bernard Sansaricq, a Florida

F001591

HOUSTON POST JAN 23, 1985 AS

Aliens taking away jobs, economist says

By FRED KING
Post Reporter

More than one million unemployed Americans are working on construction projects in the United States, a Rice University economist estimated Friday.



Donald L. Huddle, who headed a study of 2,000 construction workers in the Houston area last year, said the researchers found "an astounding" one-third of all workers in sampled segments of commercial construction were unemployed.

The specialist in U.S. and Latin American labor economics said the percentage probably is higher in residential construction.

Projecting the survey results nationally while allowing for differing economic conditions, Huddle estimated 2.97 million Spanish-speaking Americans are working on construction projects in this country, with an annual payroll of at least \$7 billion.

Huddle said the study would not have found many aliens from Mexico, but some from other countries were discovered.

Huddle said he has concluded the move to U.S. citizens requires immediate action with the most effective measure is a heavy fine on employers for hiring illegal aliens.

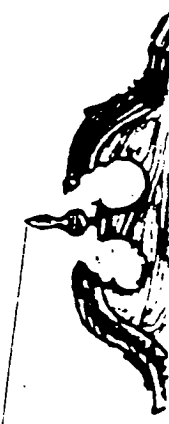
"To make the program effective and comprehensive will require some type of forger-proof national identity or employment card. I believe that with proper safeguards an identity card need not be a heavy burden on employers."

Huddle said President Reagan's proposed "Guest Worker" program would not solve the problem.

CHOOSE FROM HUNDREDS OF CLOCKS

FULL
80"
TALL

TRIPLE
CHIME
WEST
GERMAN



The prosecutor said he believed the check," he said.

Worker Program," which might bring in as many as 50,000 legal foreign workers, "would be a disaster."

"We find that all male youths and minority youths, aged 16-24, could, in principle, have been removed from the rolls of the unemployed as of the time of our study and that adds up to more than one million U.S. workers who have been displaced," he said.

Those unemployed citizens may be drawing unemployment compensation, applying for food stamps, or even be placed in federally financed make-work projects," he said.

Huddle said the researchers found illegal aliens were being paid \$4 to \$9.50 per hour while the minimum wage was \$3.35 an hour. "These wages debunk the

commonly held notion that illegal aliens are taking only those jobs that Americans workers don't want because they are so lowly paid," he said.

Aliens often have a better network for job information than do U.S. youths and minorities and pass the word on the availability of jobs through their community and back to members of their country also are part of the information network," he said.

Huddle said he and the researchers, his senior economics students some of whom speak Spanish, identified workers as illegal aliens by talking to job foremen and other workers, then interviewing some of the co-workers of those believed to be illegal aliens.

He said the identifications by foremen and co-workers "seemed to be very accurate" and the study did not find any evidence of Hispanic citizens being classified as illegal aliens.

WASHINGTON — Alexander Haig made a dramatic effort Tuesday to ease tensions between the Falkland Islands and the United Kingdom, according to administration officials. One source said he made a "gentle reply," but had a "strong message" early Tuesday evening.

Argentina's Costa Mendez rests head in hand at OAS meeting

HOUSTON POST APR 28, 1982 A-1

(6)

— AP photo

255 more illegal aliens arrested

By DIANE FREEMAN
Post Reporter

Immigration officials arrested 255 more illegal aliens in Houston Tuesday in a crackdown that officials hope will result in making more jobs available to U.S. citizens.

That brings to 462 the number of illegal aliens arrested in the Houston area in the past two days, Immigration & Naturalization Service officials said.

Vincent Henderson, INS director of investigations, said 55 illegal aliens were apprehended Tuesday at Krest Mark Industries, 14029 Alameda Road, an aluminum fabrication plant. Another 59 were arrested at area construction sites, he said.

INS officials and U.S. Border Patrol agents made the arrests as part of the nationwide

INS-sponsored Project Jobs, a week-long operation that began Monday. It targets higher-paying jobs held by illegal aliens that could be given to unemployed Americans, Henderson said.

The average pay of the illegal aliens arrested Monday was about \$5 an hour and some made as much as \$12 an hour, he said. The average pay scale of the aliens arrested Tuesday had not been determined Tuesday night.

The illegal aliens worked jobs as construction workers, cement workers, railroad workers, sandblasters and pipe inspectors, Henderson said.

Of the 255 arrested Tuesday, 225 were from Mexico, 29 were from El Salvador and one was from Honduras, Henderson said.

"drawing unemployment benefits can apply for those jobs."

Henderson said the INS is alerting the Texas Employment Commission each time a large arrest of illegal aliens is made at one location.

When the operation concludes at the end of the week, the INS will furnish TEC and other job placement agencies a more complete list, he said.

The week-long Project Jobs employs a task force of 25 officers to make the arrests here compared to the two or three investigators normally assigned to the routine raids, called area control investigations, Henderson said.

On Monday 207 illegal aliens were arrested here, and of those 186 chose to return voluntarily to their home countries, Henderson said.

They were placed on charter buses Monday and sent home, officials said. Others remained

The Houston Post

Good morning!

Ashby	1C	Editorials	2C
Ask Us	5C	Energy	5E
Autocast	13A	Entertain.	7C
Bridge	6C	Graham	5C
Business	1E	Jumbo	5C
		Names	1C

F001611

App. 0199

Swat at fly triggered rampage, Koreans say



rests head in hand at OAS meeting

— AP photo

WASHINGTON — Secretary of State Alexander Haig made a last-ditch diplomatic effort Tuesday to head off war in the Falkland Islands by dispatching a new set of peace proposals for Argentina, according to administration sources.

country's delegation in Washington calling Haig's proposals "unacceptable to the government."

Meanwhile, supporting Argentina the Falkland Islands crisis, foreign ministers of the Organization of American States approved a resolution on Wednesday recognizing Argentine sovereignty over the islands.

illegal aliens arrested here

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The illegal aliens worked jobs as construction workers, cement workers, railroad workers, sandblasters and pipe inspectors, Henderson said.

Of the 255 arrested Tuesday, 225 were from Mexico, 29 were from El Salvador and one was from Honduras, Henderson said.

INS officials are notifying state employment agencies and community service organizations of the vacated jobs so that American citizens

drawing unemployment benefits can apply for those jobs.

Henderson said the INS is alerting the Texas Employment Commission each time a large arrest of illegal aliens is made at one location.

When the operation concludes at the end of the week, the INS will furnish TEC and other job placement agencies a more complete list, he said.

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On Monday 207 illegal aliens were arrested here, and of those 186 chose to return voluntarily to their home countries, Henderson said.

They were placed on charter buses Monday and sent home, officials said. Others remained

In custody at the INS detention facility at Port Isabel.

All 207 illegal aliens arrested Monday entered the United States illegally and not one was a student or visitor who had overstayed his permit, he said.

That's "rather unusual," Henderson said. Normally, large arrests of illegal aliens result in the apprehension of a few people who entered the country legally but overstayed their permits, he said.

He said he was "not elated" with Monday's figures but noted that probably some aliens who are illegally in the country did not show up for work Monday because it was raining when the operation began at 5 a.m.

Advance publicity about the crackdown also may have kept them from going to work, Henderson said.

Please see 255 more/page 15A

it at fly triggered page, Koreans say

App. 0200

F001612



Jet crash reported

South Korea (UPI) — Woo asleep in his home in Ulryong, a farming village 170 miles southeast of Seoul. His wife swatted a fly on his

Un cent 1 mont ed Tu Th force ple to were Du unsmi Exa jump cent u of wor The Libert

ceived when he drove his white Lincoln Continental convertible — which is adorned with two large American flags — to a downtown Mexican market on Sunday to buy a taco.

The candidate was cited for an improper turn, expired license plate (which reads "EMBS") and no proof of auto liability insurance.

Other friends that he planned to head for Oregon and Yakima next.

Burns won the jackpot — a record for a slot machine in Las Vegas — April 3 at the Circus Circus Hotel and Casino.

He said at the time that he had been playing one machine when he

but he had no intention of leaving Nevada immediately.

Went to the Circus Circus in Reno and played the slots there, and then I went back to Las Vegas and back and forth," he said.

"I spent that \$300,000 trying to

childre
"If I
have b
his wi
never
really
fishing
that m

255 more illegal aliens ar

From Page 1

derson said.

The operation began in Houston with the arrests of 130 illegal aliens at Trees Inc., a tree-cutting business at 7020 Stuebner-Airline Road.

Rudy Reyes, vice president of Trees Inc., said five job applicants referred by TEC showed up Tuesday for the jobs vacated by the aliens who were arrested.

Another 30 to 35 people, the normal number of daily job applicants, also showed up Tuesday, he said. They were not referred by the

state employment agency, he said.

Reyes said everyone who applied for work was told to come back Wednesday but he doesn't expect all of them to appear.

"It's not an easy job, not a high-paying job," he said. The entry level wage for an inexperienced tree worker is \$4 an hour, Reyes said.

Reyes said his company has been listed with TEC and other employment agencies "for years and years" but they have difficulty finding workers.

Climbing trees is "hard work for \$4 an hour," he said.

He accused the INS of targeting his compa-

ny so the service would receive favorably by making a large number of ar Hispanics who work there. While INS said 130 illegal aliens were apprehended Reyes said that figure was exaggerated cause the company's manpower was 55 workers later Monday.

Henderson said final figures to be after the project is completed will show far more than 55 illegal aliens were for Trees Inc.

Officers of Krest Mark Industries could be reached for comment.

Though Project Job is scheduled Friday, Henderson said the INS here

Post Austin Bureau

sign as of June 1.

AUSTIN — Gov. Bill Clements announced Tuesday "with very great regret" that his director of budget and planning, Paul T. Wrotenbery, will re-

Wrotenbery plans to establish a high-technology-based corporation serving the financial services industry and headquartered in Texas, the governor's office said.

Clements said that at his request Wrotenbery will serve as chairman of a new Governor's Advisory Council on Texas State Government Management Efficiency.

Wrotenbery has led the government management efficiency efforts in the

Clements announces resignation of budget director

F001613

...indicated to ... they bought him an airplane ticket. ... he had no intention of leaving ... Nevada immediately. ... I cashed the airplane ticket and ... went to the Circus Circus in Reno ... and played the slots there, and then ... I went back to Las Vegas, and back ... and forth," he said.

"I spent that \$300,000 trying to

dren. He said he would give his children \$25,000 each.

"If I were younger, I suppose I'd have bought a farm," he said after his win. "Other than that, there's never been any material things I've really craved. I like hunting and fishing, and I'll probably do more of that now."

elgnty over the islands.

Britain has insisted that Argentina seized the islands illegally April 2 and that Britain retains legal sovereignty. It has demanded British administration and a recognition of full British sovereignty for at least a short period after a complete Argentine withdrawal. It then would be willing to negotiate the islands' long-term future.

Legal aliens arrested here

Draft

int agency, he said. ... everyone who applied for work ... back Wednesday but he does ... them to appear.

... easy job, not a high-paying ... the entry level wage for an inex- ... worker is \$4 an hour, Reyes

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Henderson said final figures to be tallied after the project is completed will show that far more than 55 illegal aliens were working for Trees Inc.

Officers of Krest Mark Industries could not be reached for comment.

Though Project Job is scheduled to end Friday, Henderson said the INS here will con-

tinue the program with decreased manpower. No action will be taken against employers, he said.

Throughout the country 400 agents were involved, and Immigration and Naturalization Service officials said initial reports indicated as many as 1,000 aliens had been caught in nine cities the first day.

In San Francisco 61 people were arrested at several sites on Monday. Most were laborers working primarily at agricultural jobs that paid between \$3.75 and \$7 per hour.

In New York City metropolitan area, 111 suspects were picked up on Tuesday, officials said, bringing the two-day total there to 302.

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nation of budget director Wrotenbery

Clements said that at his request Wrotenbery will serve as chairman of a new Governor's Advisory Council on Texas State Government Management Efficiency.

Wrotenbery has led the government management efficiency efforts in the

Clements administration. He joined the governor's staff as budget and planning director in 1979 after serving as an executive in several industrial firms.

His successor on the governor's staff

Timberland
Moccasin

Timberland has made

17

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AP / The Houston Post/Thurs., Apr. 29, 1982

HEARING OUT OF FOCUS

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Brussels airport closed by blast

BRUSSELS, Belgium (AP) — The Brussels airport closed for six hours Wednesday after smoke from a small fire spread through the air-conditioning system into halls, offices and the control tower, airport spokesman Jean-Paul Knipf said.

Knipf said no one was injured in the fire and that flights to Brussels were rerouted to Amsterdam, Paris and other Western European cities.

INS arrests another 253 illegal aliens

Immigration officials Wednesday arrested 253 more illegal aliens in Houston, bringing to 725 the number apprehended here since Monday in a week-long crackdown to make more jobs available to American citizens.

Of those arrested Wednesday, all but 17 were from Mexico, said Vincent Henderson, U.S. Immigration and Naturalization Service director of investigations.

He said 188 were apprehended at Mid West America, TMI Fairview, a steel fabricating company. Officials there could not be reached for comment.

Other arrests were made at construction sites around town, Henderson said.

THE INS AND U.S. Border Patrol agents made the arrests as part of Project Jobs, a nationwide operation that focuses on higher-paying jobs held by illegal aliens that could be given to unemployed American citizens.

Most of the jobs held by the aliens who have been arrested pay an average of \$5 an hour, Henderson said.

Joel Terry, Houston district director of Texas Employment Commission, said the agency has referred 15 job applicants to one of the employers where arrests of illegal aliens were made this week. More referrals will be made as the job applicants are screened, he said.

HE SAID THE INS IS alerting TEC of the job vacancies after arrests are made and the employment agency then contacts the employer.

One of the employers concerned notified TEC before the employment agency was alerted that arrests had been made there, Terry said.

Some of the companies where arrests have been made use TEC's services regularly, he said.

A representative of a Hispanic community group condemned the INS operation Wednesday and said the federal government is using illegal aliens scapegoats to blame for the economic crisis.

AMBROSIO MENDOZA, a spokesman for Al Frente de Lucha, made the statement at a noon news conference outside the Federal Building. He refused to say how many members belong to his organization.

Elsewhere, immigration agents staged raids on three Fort Worth businesses Wednesday and rounded up about 18 undocumented aliens, officials said.

Wednesday's haul brings to about 600 the number of illegal aliens scooped up this week in that area, according to Travis Stewart in the Dallas office of the Immigration and Naturalization Service.

WARDROBE & SPRING SALE!



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19

INS roundup snares 1,112 in 5-day sweep

Lynn Ashby/page 1C

By JIM SIMMON
Post Reporter

Project Jobs, the federal government's much-publicized roundup of illegal aliens, came to a close in Houston Friday afternoon with the arrest of the last of 1,112 undocumented workers netted here in a five-day sweep.

Agents of the Immigration and Naturalization Service, who made the arrests in Houston and eight other large cities, pronounced the operation a success.

BUT THE MASS ARRESTS have aroused the ire of some labor and Hispanic leaders. Critics charged the raids were a publicity ploy to divert public attention from rising unemployment and blame Mexican nationals, who accounted for most of those arrested, for a lack of job opportunities for U.S. citizens.

INS agents, who arrested 177 illegal aliens in Houston Friday, said they plan to return to businesses where arrests were made to ensure the firms do not rehire illegal aliens.

Project Jobs, so named because it was aimed at businesses that employ large numbers of undocumented workers in jobs that INS officials said might otherwise be filled by U.S. citizens, marked the first time the INS has informed employment agencies of job vacancies created by the large-scale arrests of illegal aliens.

Vincent Henderson, INS director of investigations in Houston, said those arrested Friday included 71 workers at East West Pipe Threaders Inc., 7431 Sheldon Road, the largest single haul of the day.

In a normal month, the Houston INS office arrests between 300 and 500 illegal aliens in its 30-county district, Henderson said.

OF THE NUMBER ARRESTED in Houston, 962 were Mexicans and the rest were mostly El Salvadorans, along with a smattering of other nationalities, Henderson said.

Henderson dismissed criticism that the operation involved selective enforcement against Mexican aliens, saying it was to be expected that most of those arrested were Mexican since "the vast majority of the illegal alien population in Houston is Mexican."

By mid-afternoon Friday, the Texas Employment Commission had referred 52 job seekers to businesses that lost workers in the raids, but only three of the referrals had been hired, said Lavonne Thomas, assistant manager of the TEC's main Houston office.

Thomas said, however, that some of the businesses contacted by the TEC reported they had received numerous applications from walk-in job hunters who learned of the openings through the heavy media attention the INS raids have received.

THOMAS SAID SALARIES FOR most of the openings referred to the TEC ranged from \$4 to \$4.50 an hour. Most of the jobs involved manual labor, she said.

Henderson acknowledged that the majority of arrested aliens were being paid between \$4 and \$5 an hour, but said only six or seven were making less than \$3.25 an hour, which is 10 cents below the minimum wage.

He said businesses hit in the Project Jobs raids were selected because the INS had arrested workers at those job sites in the past, with some of the companies yielding up to 150 illegal aliens a year to the INS.

BURBANK, Calif. (AP) — A 4-year-old boy missing since Wednesday was found Friday in a suit case in a closet at his family's apartment, police said.

Detectives said James Corrigan's body was discovered as his mother was



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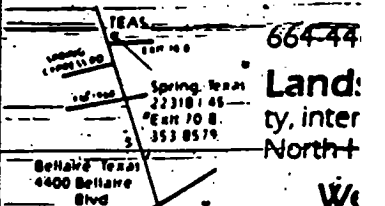
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ated prices, optional with dealers

draw housing subsidies while citizens must wait

By LIEGH KIERMANCE
Post Reporter

"I have a Spanish surname. And I would be indignant as hell if someone asked me if I was an American citizen after having been shot at in Vietnam."

— Rogelio Santos, U.S. Department of Housing and Urban Development supervisor

Illegal aliens are able to draw housing subsidies in Houston and other Sun Belt cities while American citizens wait months or years for similar assistance because the federal government will not allow verification of citizenship status of applicants, federal and local housing officials say.

But a proposed change in federal housing policy may reverse a U.S. Department of Housing and Urban Development directive issued during the Carter administration that forbade public housing authorities from verifying if applicants for federal housing subsidies were legal residents.

HUD officials said the verification procedure could violate civil rights laws.

HUD officials in Houston said they have received complaints about the Houston Housing Authority's attempts to block subsidies for illegal aliens, and ordered HHA to stop efforts to verify legal residency.

"It's frustrating — the whole point is: you cannot require them to submit documentation," said Ernest P. Fuentes, director of HHA's rent subsidy program. "We just ask applicants if they are a citizen or legal resident. We are limited to that."

HUD's policy on verification has drawn criticism from the General Accounting Office, the investigative arm of Congress, from housing authority directors and from private citizens who believe subsidies should be limited to citizens.

Congress responded to the criticism when it passed the 1981 federal budget, which stipulated that subsidies be limited to certain classes of aliens who provided documentation that they were legal residents.

"The new administration is moving swiftly so that only the true-blue American citizens get housing," said Rogelio Santos, deputy supervisor for housing management in HUD's Houston office. "As they say, 'It plays well in Peoria.'"

"BUT YOU CANNOT EXPECT HOUSING officials to serve as immigration agents," Santos said. "No one has the resources. The new rules will get good public play, but they won't solve a thing."

The proposed new rules were published earlier this month in the Federal Register. HUD will accept public comment on the proposed policy change until June 2, but probably will not adopt new regulations until early fall.

Several housing authority directors in Texas and California said the proposed policy change is long overdue. An informal survey of area housing authorities showed interpretation of HUD's verification directive has varied widely.

In Corpus Christi, housing authority officials ignored HUD's objection to their policy of asking for documentation of legal residency, said executive director Ruth Mary Price.

"There is an old Chinese proverb: Man who said it cannot be done should not interrupt man who is doing it," she said.

"We thought it was ridiculous that with one hand the taxpayer is paying up the bill to pick up buses and cart them back home and on the other hand, paying to provide them with a standard place to live while citizens waited in line," Price said.

Galveston housing officials also ask applicants to certify they are U.S. citizens or legal residents. If they are not a citizen, they are asked to provide documentation of legal residency.

"AS AN AMERICAN, MY FIRST INTEREST is with American citizens," said Claude H. Bolton Jr., Galveston Housing Authority executive director. "If I knew I had some illegals living in projects, I would report them to the proper officials."

But Laredo, El Paso, San Antonio and Los Angeles housing authority directors said that, at HUD's insistence, they no longer ask questions about citizenship status.

HUD officials ordered the Los Angeles Housing Authority to remove a question on the application for subsidy asking if the head of the household was a legal U.S. resident despite the objections of executive director Homer Smith.

"I do not think it is a right to live in public housing; it is a privilege," Smith said. "I think any reasonable person should realize that it's a government subsidy and should be provided to residents of this country first."

"I do not think it is any more onerous to ask about citizenship status than to ask an applicant if they are working or are receiving welfare," Smith said.

But some Hispanic leaders said the new policy would open the door to invasion of the privacy of Mexican-Americans and would be virtually impossible to enforce.

"It is very absurd and asinine," said Johnny Mata, deputy state director of the League of United Latin American Citizens. "It is a burden that will impose a lot of hardship and embarrassment on the Hispanic community."

"We already are experiencing many problems handling the number of discrimination complaints coming into our office," Mata said.

Salvador F. Canchola, executive director for the El Paso Housing Authority, said he does not expect the new policy to cause significant changes. Illegal aliens will continue to live in subsidized housing because they will use forged documents, he said.

"FROM OUR PERSPECTIVE, WE'VE got more important things to do than worry about that," Canchola said. "We cannot do INS (U.S. Immigration and Naturalization Service's) work for them."

Housing officials should not expect much enforcement assistance from INS because the service's current policy prohibits document checks at projects, said Vincent P. Henderson, assistant district director for INS Houston office.

Besides, he said, "With the number of people I have, we are spread awfully thin just going to job sites."

Abraham Rodriguez Jr., executive director of the Laredo Housing Authority, asked: "Is this going to be another role for housing authorities: checking violations of immigration laws? I would imagine there are lots of illegals living in projects here."

Apolonio Flores, executive director of the San Antonio Housing Authority, said he also is concerned about the policy change. "I foresee some lawsuits."

"People will say, 'I look brown and therefore I have to prove citizenship whereas the blond, blue-eyed guy doesn't have to do a thing.'"



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Siza enje

By RICK BOLTON
Post Reporter

Some motorists ignore it stares them in the face.

Fire lane signs — ins measure — are being centers throughout Houston.

The lawbreaking motorists, authorities say.

One can hardly miss white fire lane signs in parking centers, yet a Houston-area centers for the law at every center.

SHOPPING CENTER fire department official delivery vehicle drivers the 20-foot wide fire lane.

"People are too dangerous. If you and I open to them, they'd p front door."

When questioned, some customers said they only the fire lane a few minutes customer's vehicle had for 30 minutes.

One woman said she car at Memorial City cause she needed to pick after having had foot surgery was waiting to pick up the Eastway Plaza.

Another woman said: an Eastway Plaza store she was afraid someone elsewhere in the parking.

Others claimed they signs, which state: "Fire

MALL MANAGERS / fighters are not sympathetic. They issue polite warning traffic citations and hav.

TDC must face up to

F001636

6/2/82

★ The Houston Post/Wed., June 2, 1982/ 8A

Reverses order, allows CAT scan evidence

Defense lawyers contend the abnormal creases on Hinchley's brain are similar to those found in many persons suffering from schizophrenia — a disease in which a person suffers delusions, lacks emotional expression and falls victim to his impulses.

The doctor said Hinchley's brain appeared to have "less tissue than one usually sees," that the ventricles that hold fluid in his brain were enlarged, and that the folds on the brain's surface, called sulci, were "very prominent."

"I think it's very unusual," she said. "I measure this brain to different than most people of his age. It means the

tissues between the folds are smaller."

Consistency of the two scans, she said, indicates "permanent changes have occurred" in Hinchley's brain.

Under cross-examination by Assistant U.S. Attorney Roger Adelstein, however, she acknowledged Hinchley's ventricles are within normal limits, and that several other radiologists reading the same CAT scans concluded the surface creases were normal or slightly widened.

The doctor said CAT scans have been in use in the United States only since 1973 or 1974, and there is no proven link between CAT scan results and human behavior.

The prosecutor asked LeMay whether the scan results should be linked to Hinchley's behavior on the day of the shooting.

"No," she replied.

Prosecutors objected strenuously to introduction of the CAT scans on grounds it would confuse the jury, and Adelstein further opposed showing the jury the slides on grounds the image would unfairly remain on the jurors' "minds' eye."

CAT scan is short for Computer Assisted Tomography, an advanced X-ray technique for photographing a cross-section of the brain.

tion of the brain.

Dr. Daniel Weinberger of the National Institute of Mental Health, the world's leading expert on CAT scans, is scheduled to testify Wednesday as a defense expert on the issue.

At an all-day hearing last week, after which Parker sided with the government, Weinberger testified outside the jury's presence that a study of CAT scans found 10 percent to 20 percent of schizophrenics had similar brain abnormalities. He said the abnormality showed up in less than 2 to 3 percent of the normal population.

nation

is completing his first term write-in opposition.

ocrats also nominated former oney Anaya as their gubernatorial former state Sen. John blican race. The Democratic ing, cannot succeed himself

state Sen. Mike O'Connor won nation for governor and will atest the Republican incumbent who was unopposed in the

2,106 of 2,120 precincts re-ear-old dean of the Senate, ie Sen. Charles Pittman had to station owner Colon John-

side, with 2,091 precincts in, the GOP worker and an attorney ahead of Highway Commissioner, 45, a recent convert 0,531 votes.

Questionable benefits cited

GAO eyes Social Security savings

WASHINGTON (UPI) — Congress could save \$180 million through 1990 by dropping a Social Security provision that allows aliens and other questionable cases to collect benefits, the General Accounting Office said Tuesday.

The GAO report urged Congress to drop the "currently insured" provision, which applies to less than 0.5 percent of workers who die each year. The provision allows survivor benefits for their children and those caring for them.

It serves some workers "under circumstances apparently never envisioned by Congress," GAO said, listing as "questionable" cases aliens, some self-employed people filing retroactively, government "double dippers" and others with only brief work histories.

Dropping the provision for future recipi-

ents would save \$180 million through 1990 for the cash-short Social Security trust funds, the report estimated.

The provision, a lesser alternative to the "fully insured" provision under which most workers become eligible, was enacted as "backstop protection" in the program's early days but is no longer needed, GAO said.

Workers can become "currently insured" by being employed in covered jobs for six quarters during the 13-quarter period ending in death. In 1977, 3,709 out of the 1.3 million workers who died became eligible under the provision.

To become fully insured, workers must have one quarter of coverage for each year after 1950 or age 21 and before the year of death or age 62. The maximum required in 1981 was 30 quarters, or 7½ years.

The report said currently insured recipi-

ents collect more per tax dollar than fully insured survivors, and recover their taxes much faster.

Because it emphasizes the period just before death, the provision "fosters another inequity — some workers pay more Social Security taxes and work as long or longer than the currently insured but do not qualify for benefits," GAO said.

It cited the case of a 21-year-old alien who worked in the United States for six quarters, just long enough to obtain currently insured status. Upon his death, his wife filed for \$200 in monthly benefits for herself and three children from a previous marriage. The youngest child was 7 years old.

The alien's original monthly award rate of \$200 could receive more than \$300 for paying Social Security taxes of \$800, GAO said.

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State to ask Washington to foot bill for educating illegal alien children

FOOT BILL

By PHILTON WEST
Chief, First Austin Bureau

AUSTIN — Top state officials decided Thursday to start a concerted effort to have the federal government pay the whole cost of educating illegal children in the public schools.

Acting in response to a June 15 decision by the U.S. Supreme Court voiding a 1975 Texas law that denied free education to children of illegal immigrants, the state leaders set the cost of schooling for an estimated 25,000 such children at \$82.5 million a year.

The Texas Education Agency, which made that estimate, projected the num-

ber of such children in the public schools would grow at the rate of about 5,000 a year. That would add about \$12.5 million a year, at today's prices, to the \$82.5 million present cost.

Education Commissioner Raymon Byrnum said the alien children are high-cost students needing bilingual, computer and other programs not provided most students, and the estimate of 25,000 students was conservative.

Gov. Bill Clements met with Lt. Gov. Bill Hobby, a representative of Attorney General Mark White, Chairman Joe Kelly Butler of the State Board of Education, Byrnum, and staff aides to map strategy to win federal impact aid

because of the Supreme Court decision. "There's no reason why they (the federal government) shouldn't pay for this," said Clements.

He and Hobby said the cost to the state was entirely the consequence of failure of federal immigration policy, over which the states have no control.

Clements said the state would abide by the court decision, but officials in the meeting were "all disappointed in a manner of speaking" by the ruling. Hobby pointed out that the result is not new, but a return to the situation before the state outlawed free education for undocumented children in 1975.

The leaders said Texas has a legitimate case to make for the federal aid.

They decided to send a letter to members of the Texas congressional delegation and Reagan administration officials asking them to work for such aid. Clements said he would work in the national and southern governors' associations to marshal the support of other governors for such legislation, and support would be sought from U.S. senators in other states.

Hobby said he expected border state senators to take the same position calling for federal aid.

Jury sentences man to life term in beating death

A man was sentenced to life in prison by a jury Thursday for beating another man to death while the victim's 16-year-old son beat helplessly on the attacker.

Kenneth James Brown, 21, of the 2200 block of Francis was found guilty of murder and sentenced by a jury in the court of state District Judge Joseph Guarino.

Guarino stacked Brown's life sentence on a 60-year prison sentence Brown received in January for a July 1981 aggravated robbery. Brown will not be able to

get credit on both sentences simultaneously but will have to serve the prison terms one after another.

Assistant District Attorney Ned Morris said Brown and two friends were riding in the Meyerland area July 23, 1981, when police tried to pull them over for littering. He said Brown was involved in a high-speed chase that ended when his car, which turned out to be stolen, crashed at Richmond and Audley.

Morris said Brown apparently broke into the home of musician William Ar-

thur Holman, 40, in the 3300 block of Bernard to steal keys to a car.

Evidence showed Brown started rummaging through drawers and awakened Holman's 16-year-old son. Brown beat the boy with an iron bar and later turned his wrath on the father, testimony showed.

Morris said Brown kicked and beat Holman while the son used a barbell pole to try to get the attacker away. He said the son required hospitalization after the ordeal and the father died in

the hospital that night.

Brown's attorney Joe Cannon argued there was only tentative identification of Brown as the attacker. He said a pistol belonging to Holman that police found in Brown's home was purchased on the street by Brown's girlfriend and was not taken by Brown from the Holman apartment.

During the punishment phase of the trial Brown said he is sorry Holman was killed, but he said he did not do it.

whether to continue to operate the 11,000-mile system, now running at about 10 percent capacity with engineers closing plant loss.

A total shutdown would lay off 225,000 employees.

British Rail said it operated about 1,300 passenger trains and 90 freight trains Monday, and said 700 of about 2,000 engineers had reported for duty. The railroad normally operates about 15,000 passenger trains and 1,500 freight trains on weekdays.

"We have got to face the situation that we cannot go on indefinitely running a passenger service," said C.H. Rose, British Rail's industrial-relations director. "We will seriously have to consider a shut-down."

British Rail, which has been losing the equivalent of about \$13.3 million a day since the strike started July 4, has warned that it is also considering dismissal of all striking members of the Associated Society of Locomotive Engineers and Firemen.

Union leader Roy Buckton has

100 branch and district meetings were held over the last three days and that members showed solid support for the strike.

"In many meetings, the trade union members, the spokesman said, "The worst reports we have got show that only two or three hands went up against the strike at some meetings."

The union increased picketing Monday at depots across the country.

Financially strapped British Rail claims the flexible rosters, which were introduced in 21 depots the day the strike began, are cost-effective. The schedules vary work shifts from between seven and nine hours.

Union members, who have worked an eight-hour day since 1915, claim the new schedule will lead to layoffs.

"Buckton had warned that the strike will go on with British Rail withdrawing the flexible rosters."

British Rail Chairman Sir Peter Park, or says the issue of flexible hours is not negotiable and has predicted a lengthy strike.

Mexican recession could increase flow of aliens to U.S.

MEXICO CITY (AP) — One of Mexico's worst recessions since World War II will probably increase the flow of Mexicans going illegally to the United States in search of jobs and a better life, American officials here predict.

The economic slump, which started last year with a sharp fall in world oil prices, may get worse. Already, President-elect Miguel de la Madrid, says he plans tough austerity measures to reduce the nation's economic health when he takes office Dec. 1.

De la Madrid aims to cut government spending, reduce inflation — now running at 60 percent a year — and slash a foreign debt that is expected to reach \$60 billion by the end of 1982.

Further complicating the country's economic health was the 60 percent devaluation of the peso in February.

All of this adds up to the prospect of about 1 million people out of jobs by

year's end in a country where unemployment and under-employment combined now total 65 percent of the labor force. Mexico needs to create 80,000 new jobs every year just to keep up with its population growth, one of the world's fastest.

De la Madrid, 47, an economist with a master's degree in public administration from Harvard University, won by a landslide in elections July 4. His Institutional Revolutionary Party has been ruling since it was founded in 1929.

One of his first tasks, aides say, will be to slow down — or even stop for a while — an ambitious industrial development program financed with all export revenues that outgoing President Jose Lopez Portillo started when he took office six years ago.

The de la Madrid took an estimated 73 percent of the vote in the elections.

all the time like me, you really appreciate a good cup of coffee," Biggs goes on to say the Australian price is a "real deal."

The tribunal has based the commercial firm appearing on Australian television, saying Biggs is a criminal and therefore not suitable for television promotions.

GI who stole tank charged earlier, Army

First News Service

MANNHEIM, West Germany — The American soldier who careened through the city in an Army tank before crashing into a river and drowning was scheduled to be court-martialed for stealing a pistol, a U.S. Army spokesman said Monday.

Major Ronny Craven said the soldier, Pvt. Charles Koeder, 20, of Barwick, Pa., faced a pending court-martial for unauthorized receipt of a .45 Army pistol and aiding in theft.

"We cannot give any reason why the soldier took the tank," said Craven, adding a military commission was investigating the weekend incident.

Koeder, who joined the Army two years ago and came to West Germany three months later, had also undergone non-judicial punishment from his unit for a minor offense, Craven said.

Koeder, a tank operator, stole the 34-ton M-48 tank from Sullivan Barracks Saturday and charged through the city, injuring four people. The tank ran over a streetcar and crashed into the Neckar River. Two off-duty soldiers charged the tank from the bar.

Traces and one of them, Sgt. Lt. Clam Michael Morry, from Chico, Calif., injured his shoulder when he was thrown off the tank after trying to switch off the engine.

The other soldier, military policeman Sgt. Lt. Clam Jeffrey Lear, from Columbus, Ga., said Koeder was "an outstanding tank driver."

"He did no damage prior to entering the narrow pedestrian area," said Lear, 26. "He was trying to get back into the open."

Koeder was found drowned inside the tank, which had tipped from a bridge while he was trying to evade his pursuers.

A Mannheim police spokesman said Monday that claims for civilian damages were still coming in, but currently totaled about \$1.5 million. The Army has said it will pay damages.

of Adels Albin, the Somali Democratic Salvation Front, claimed to have — not Ethiopia's — were responsible for the killings.

The largest group, committed to the overthrow of Siad Barre's regime, is composed mainly of Somali refugees from the Maerveen clan that controlled Somalia before the 1969 military coup that put Siad Barre in power.

Steve Williams, assistant chief patrol agent of the Chula Vista sector covering most of Southern California, said "When all along the border there seems to be a downturn in arrests, and there had been no real change in the manpower we are using, then it means there is a decrease in the total number of illegal entries."

A bill sponsored by Sen. Alan Cranston, D-Calif., and Rep. Ron McNamara, D-Calif., would increase the United States' control over immigration by requiring employers that hire foreign workers to obtain a permit from the Immigration and Naturalization Service (INS) before the election, said he is re-

gards Mexican immigration as fulfilling an unavoidable need in both nations.

"In the United States, there is an effective, structured demand for Mexican labor," he said. "In a certain way, it fulfills a need of the American economy, that it also obeys the lawsuit, clarity that we still face in creating enough jobs in Mexico."

There are no firm estimates for the number of Mexican illegal immigrants in the United States, though various studies have given numbers ranging from 1.5 million to as high as 18 million.

The most common averages give are from two to four million, and some people say as many as six million Mexican illegal aliens enter the United States illegally every year," said one U.S. official, who spoke on condition not to be further identified.

De la Madrid, in an interview a week before the election, said he is re-

gards Mexican immigration as fulfilling an unavoidable need in both nations.

"In the United States, there is an effective, structured demand for Mexican labor," he said. "In a certain way, it fulfills a need of the American economy, that it also obeys the lawsuit, clarity that we still face in creating enough jobs in Mexico."

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official progress" on the immigration issue.

In an interview last week with Mexico City's English-language newspaper The News, Garza said that if the Mexican-Mexican "all does not come out perfect, and I promise you it won't, at least it will be a step in the direction of trying to achieve some kind of legislation of this very difficult problem."

"I believe it is our aspiration to be able to create enough well-paid jobs for all Mexicans. I think the time will come when we even may be able to attract some Mexicans back from the United States," de la Madrid said.

De la Madrid said Mexico recognizes the right of the Mexican administration to establish immigration policies, but he also urged protection of the rights of Mexican citizens living in the United States.

Houston Post July 13 A-4

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Ban on foreign currency sales eased by Mexican government

MEXICO CITY (AP) — The government partially lifted a ban on foreign currency sales Monday but kept all dollar accounts in banks frozen as the country considered seeking outside help to cope with its economic crisis.

New measures and restrictions further, regulating the economy were expected to be issued later this week, said a source at the Bank of Mexico, the country's central bank. The source, who asked not to be identified, did not elaborate.

Mexico's leading newspaper El Excelsior said Treasury Secretary Jesus Silva Herzog quietly traveled to Washington on Friday for two days of talks with International Monetary Fund officials.

A source at the Mexican Embassy in Washington confirmed that Silva Herzog spent two days last week in that city, but declined to give any details.

IMF approval of a government austerity plan to revive the economy would enable Mexico to obtain bail-out loans from international banking institutions. But many officials and politicians fear that the IMF's strict rules of doing away with government subsidies for basic foods and services would bring along further price increases that could touch off labor unrest.

An announcement Sunday night by the Bank of Mexico said people can send money abroad if they deposit an equivalent amount of dollars in cash with a Mexican bank. Mexican banks can also honor dollar checks and

obligations issued previously and presented by banking institutions for collection abroad.

Mexico suspended foreign payments when it ordered all foreign currency trading halted on Friday to try stop a rush by people anxious to buy dollars, fearing the peso will sink even more.

Authorities also froze an estimated \$13 billion in dollar accounts in Mexican banks, where people had been depositing their savings and extra cash as a hedge both against inflation and devaluation.

A drop in world prices of oil, silver, coffee and other principal exports cut heavily in Mexico's foreign revenue. The country is the world's third-largest oil exporter, with a major part of the exports going to the United States.

Arrests of illegal aliens rise after peso drop

EL PASO (AP) — Mexican citizens, their buying power virtually cut in half by the devaluation of the peso, are streaming into Texas and New Mexico in search of work, U.S. Border Patrol officials say.

Illegal alien arrests in Texas and New Mexico jumped dramatically immediately after the Mexican government's latest devaluation of the peso. Border Patrol officials in Arizona and California say they have yet to see such a surge.

Because it's harvest time for many crops picked by illegal aliens, Border Patrol officials are hesitant to blame the increases totally on the devaluation. But Alan Eliason, El Paso sector chief agent, said the devaluation "certainly is a factor."

The peso dropped from about 45 to the dol-

lar to as low as 90 to the dollar last week, following the government's Aug. 5 announcement that it could no longer support the peso in international trading.

Last Thursday, the government announced a freeze on dollar trading at Mexican banks, a step taken to prevent panicky Mexicans from changing their pesos into more stable U.S. currency. The freeze was partially lifted on Monday to allow banks to honor foreign currency drafts and checks presented for collection outside the country and to sell documents in foreign currency if customers could prove they had pressing debts abroad.

"These steps may be frightening some people enough that they feel they just have to get out and come over here in search of work," Eliason said.

In the El Paso sector, which encompasses West Texas and southern New Mexico, arrests of illegal aliens so far in August are up 28 percent over the same period last year.

More telling, perhaps, is last week's sudden upswing in apprehensions as the effects of the devaluation made themselves known. Sector officers arrested 3,586 illegal aliens during the first eight days of the month. Four days later, that number had jumped to 6,092.

Larry Richardson, chief of the Border Patrol office in McAllen, said arrests there have jumped more than 30 percent since mid-July.

"For a couple of months there, we were averaging between 90 and 100 (arrests) a day," Richardson said. "During the first 13 days of this month, we've been averaging 140 a day."

Yields on Treasury bills plummet to lowest levels since summer 1980

WASHINGTON (UPI) — Treasury bill yields dropped sharply by more than a percentage point at the government's auction Monday, to levels not seen for the past two years.

The government sold \$5.5 billion of three-month bills at an average discount of 8.616 percent, down from 10.025 percent last week.

The government also sold \$5.5 billion worth of six-month bills at an average discount of 9.821 percent, down from 10.940 percent last week.

The latest rates were the lowest for three-month bills since they were 8.221 percent on July 29, 1980, and the lowest for six-month bills since they were 9.765 percent on Aug. 18, 1980.

The latest three-month discount rate is

lags certificate. The interest rate for the new certificate, available in denominations of \$7,500 or more, will be 8.616 percent at savings and loan associations and a quarter point less, 8.366 percent, at commercial banks, effective Tuesday.

The rate had been 10.025 percent for thrifts and 9.775 percent for banks.

The latest four-week average of six-month T-bill rates plus a quarter point is 10.932 percent, the highest rate banks and thrift institutions may choose to pay on six-month money market certificates issued in denominations of \$10,000 or more effective immediately. The rate had been 11.357 percent.

The government-imposed ceiling for the six-month money market certificate is a quarter point more than whichever is higher, the discount rate for the latest six-month T-

bill or an average of the last four weeks' discount rates.

The actual return to the investor on the three-month T-bill itself is 8.33 percent and for the six-month bill, 10.48 percent.

The actual T-bill yields to the investor may be higher after adding the benefit of their exemption from state and local taxes.

The ceiling rate for the 2 1/2 year "small saver" certificate with no minimum deposit, also set Monday, was 13 percent for thrifts, 12.75 percent for commercial banks. The rate had been 0.45 percentage points higher.

The current annual return on "All Savers" certificates is 9.98 percent. These are one-year certificates on which individuals can earn up to \$1,000 in tax-free interest or \$2,000 for couples filing joint tax returns.

Block paints bright

F001692

Sentencing of Watts postponed to Sept. 3

By BEN ROBINSON
Post Reporter

Sentencing for confessed mass killer Oral Eugene Watts again has been postponed as authorities from Michigan, Indiana and Canada question him about slayings and assaults in jurisdictions there.

Watts, who has admitted killing 12 women in Texas and one in Michigan, was scheduled to be sentenced Friday to 60 years in prison. He pleaded guilty to a charge of burglary with intent to murder.

But Watts' sentencing, which hinges on a plea-bargain agreement with the Harris County District Attorney's office, is now scheduled for Sept. 3, state District Judge Doug Shaver said Thursday.

Watts originally was scheduled to be sentenced April 16, but the proceeding was delayed to give police more time to question Watts about other slayings before he goes to prison.

The burglary with intent to murder charge against Watts stems from a May 23 attack on two Houston women that led to Watts' capture by police.

SHAVAR SAID HE DELAYED the sentencing at the request of Harris County District Attorney John Holmes.

Holmes said Thursday he asked for the delay at the request of Houston Police homicide detectives who are investigating the Watts' killings.

Police said they have wanted additional time to question Watts from other areas outside the state to Houston and question Watts.

Holmes declined to specify which jurisdictions he intended to talk to Watts, but Shaver said he delayed them in talking to Watts, Indiana and Canada.

Authorities in Michigan and Windsor, Canada, have received several wanted notices and warrants of arrest that bear a resemblance to the slayings Watts admitted in the Houston area.

Shaver said he believed Lafayette, Ind., authorities might be interested in speaking to Watts, but he was not certain.

BUT AUTHORITIES THERE SAID Thursday they are not aware of the slayings to which Watts has confessed in Texas and Michigan.

Capt. James Withers of the Lafayette Police Department said 5,000 criminal offense reports would not have been included.

Higgins said he knew the city's files were incomplete and late when he sent them to the Department of Public Safety in Austin in May. State crime files are sent to the DPS, which transmits them to the FBI.

Higgins said about 100,000 offense reports had not been categorized — about 5,000 of which were from 1981 — when it reached the time for last year's statistics to be sent to the DPS.

Higgins said there are still about 1,000 offense reports that have not been categorized.

An inadequate computer system, a lack of manpower and a breakdown in communications among Houston, state and federal authorities kept the Houston Police Department's statistics out of the city's overall crime figures for 1981, a police captain said.

But Capt. W. T. Higgins, head of the police department's records division, said even if the city's figures had been included in the FBI's report they would not have been included.

personnel said the city, however, has one unneeded homicide and neighboring West Lafayette has another involving female victims killed in the late 1970s.

He added that, the Watts came in Texas and said the Lafayette Police Department will review the two areas cases for similarity to the case to which Watts has confessed.

Withers said he is interested in Watts because some "good fingerprints" were lifted at one of the crime scenes and police never found the person who left them. He said he is interested in whether they belong to Watts.

The Lafayette homicide involved the apparent strangling of Linda Ferry, a housewife in her late 20s, whose decomposing body was found in the trunk of her car about four days after she disappeared while on route to a grocery store, Withers said. He said a piece of her clothing was found around her neck.

THE BODY OF KERRY KOSAS, a 21-year-old Purdue University senior, was found in a field in near West Lafayette, he said. She had been celebrating the completion of exam finals and was apparently on route between a tavern and a sorority house when she disappeared, Withers said. Her body was found several months later, he said.

Both women disappeared on weekend nights, he said. Because of the body decomposition, investigators were unable to determine whether either woman was sexually molested, he said.

None of the homicides to which Watts has confessed has involved sexual molestation of victims, according to authorities. He confessed to strangling or stabbing 11 women in the Houston-Galveston area, one woman in Austin and one woman in Granger Police Farms, Mich.

Prosecutors here said the plea bargain with Watts was reached because they had no physical evidence to tie Watts to any of the homicides. His admission to the slayings helped police find some missing bodies and allowed investigators to clear heretofore unsolved homicide cases.

Watts' attorneys also allowed him to be incarcerated by law-enforcement officers from Austin and Granger Police Farms after he was accused of kidnapping from his confinement would be used against him for purposes of prosecution.



There aren't many ways to escape the bike. Will Robinson II was sheltered from some of the heat Thursday afternoon as he rode his bike on North Boulevard.

— Post photo by Audrey Uecker

Arrests of aliens soaring

EL PASO (AP) — U.S. Border Patrol officers are breaking illegal alien arrest records as increasing numbers of Mexicans attempt to flee their country's troubled economy.

Alan Elmore, chief agent for the El Paso sector, said more illegal aliens have been arrested in the area already in August than in all of the same month last year.

By midnight Wednesday, 14,881 aliens had been arrested, compared with a total of 14,077 in August 1980.

Thursday set a one-day record for apprehensions when officers arrested 1,335 aliens who were trying to get into the country, Elmore said. That broke a record set Monday, when 888 aliens were caught.

The previous high was 951 aliens caught on July 4, 1981, he said. Meanwhile, officers, acting on tips from unemployed citizens, arrested 24 illegal Mexican aliens at several construction sites near Bay City Thursday.

Galveston Border Patrol agent-in-charge H. L. LaPlante, whose territory includes 54 counties, said officers arrested 27 aliens in one vehicle Wednesday and another 35 on Thursday.

LaPlante said Thursday's arrests came as a result of tips provided by citizens to the Border Patrol office. "We've had our hands full," Elmore said. "We certainly think that (detention of the press) is a significant contributing factor."

The press's value was virtually cut in half Aug. 5 when the Mexican government announced it no longer could support the ailing currency on the international money market. Unemployment in Mexico is about 40 percent this year, and inflation is climbing at a rate of 45 percent.

In McAllen, chief agent Larry Nichols said his officers are averaging 132 arrests a day this month, up from "about 10 a day six to eight weeks ago."

comprehensive, would still meet the FBI's deadline when he sent them to the DPS. And Kilgusworth said the city's crime figures did "just barely make" the May 15 deadline. Deputy Police Chief Frank Yarek, who heads the bureau which includes the records division, said the department offered to deliver to permit the statistics but Kilgusworth's office gave assurances they could be dropped in the mail and still make it in time.

Kilgusworth said he received the city's December crime report May 24 and that it was dated May 1981.

Problems cited in city's failure to get crime data to FBI

By BEN ROBINSON
Post Reporter

about 5,000 criminal offense reports would not have been included.

Higgins said he knew the city's files were incomplete and late when he sent them to the Department of Public Safety in Austin in May. State crime files are sent to the DPS, which transmits them to the FBI.

Higgins said about 100,000 offense reports had not been categorized — about 5,000 of which were from 1981 — when it reached the time for last year's statistics to be sent to the DPS.

Higgins said there are still about 1,000 offense reports that have not been categorized.

ceded and categorized. He also said some of the reports are "so botched up" by employees since filed that they most likely will never be entered in the computer.

"Very few" of these reports are of major crimes, Higgins said. He blamed a computer system too small to store all the reports and a lack of personnel for the backlog. Higgins said he is more concerned with getting caught up in coding the reports so they can easily be categorized and submitted for statistical reasons "by this time next year."

in statistical form. When an offense report is made it is taken no more than 24 hours for it to be related to the division in the police department which will investigate it, Higgins said.

With the approved addition of 24 personnel for his staff, and the planned improvement to the computer system, Higgins hopes his staff also will be caught up in coding the reports so they can easily be categorized and submitted for statistical reasons "by this time next year."

Cal Kilgusworth, manager of the DPS' unrecorded crime reporting bureau in Austin, said Houston is the only Texas city with more than 100,000 residents to be included in the FBI's figures. To make matters worse, the police department's crime statistics for the first six months of this year had still not been received by the DPS Thursday, meaning these figures will not be included in the DPS publication for crime statistics for the first half of 1982.

Higgins said he was under the impression that it was dated May 1981.

much of it would be left over to the city.

THE PRESIDENT'S announcement ended recent speculation that Ellington might be offered for sale to Houston rather than transferred without cost. The city of Pasadena had also sought Ellington.

Pasadena Mayor Johnny Isbell reacted to the news by saying the city's legal and planning departments are seeking an official explanation of the decision from the General Services Administration and the Federal Aviation Administration.

Isbell said that Pasadena would request, if necessary, a review of government documents under the Freedom of Information Act. "If we don't like what we see, we will file a lawsuit to stop this conveyance," Isbell said Wednesday.

Houston officials plan to promote Ellington primarily as a general aviation airport, receiving some of the heavy demand on nearby Hobby Airport by private and corporate users.

Though commercial aviation is not planned for Ellington, air cargo activities have been discussed and commuter air services may provide it with a link to other area airports.

Whitney said she was called by Transportation Secretary Drew Lewis Tuesday and told Reagan might make the announcement during a Republican fund-raiser for Gov. Bill Clements.

Lewis told her Houston will receive Ellington.

been established, Transportation Department spokesman Dick Shoenefeld said in Washington.

About 1,822 acres is all that has been considered excess property by the General Services Administration of the federal government. The city's aviation department is prepared to spend \$2 million improving Ellington and Whitmire said she will ask the City Council to approve a \$3.2 million one year operating budget.

A.L. McMillan, the department's acting director, said his staff has not yet made final plans for improvements that will be made. Ellington has two primary runways. The north-south runway will be used initially, while the northeast-southwest is upgraded to full instrument capability.

Air and Army national guard units as well as the Coast Guard and the National Aeronautics and Space Administration will remain at Ellington.

Shoenefeld said Houston was selected over Pasadena for the airport because of established capital development plans for Hobby and Intercontinental airports that will accommodate operations at Ellington.

THE TRANSPORTATION Department official said Houston also was favored in the decision because city services, including fire department units, are already located at Ellington.

Pasadena has been locked in a battle with

York consulting firm \$25,000 for an airport study that included plans for the city to hire a management firm to operate the facility as a general aviation airport.

It also called for major improvements to Houston now plans to use.

"Houston is going to get federal money (for improvements) and the same money was available to Pasadena also," Isbell said. "The justification that Houston should have Ellington because of congested air traffic does not wash," Isbell said. "Pasadena did not propose to turn Ellington into a vegetable farm."

"We developed a realistic, viable plan to operate Ellington as a general aviation facility which would serve the needs of the flying public better than anything we've seen proposed by Houston."

ISBELL SAID FEDERAL officials who reviewed applications from both cities have told him that Pasadena's proposal was far superior to Houston's.

The context in which the decision was made public, meaning at a political fund-raiser, suggests that more was involved in the decision than the relative merits of the two proposals to operate the facility, Isbell said. "We have expended years of effort and thousands of dollars in the quest for Ellington and we will not forgive those expenditures lightly."

6/17/ A 20

Groups favoring free schooling for aliens discuss victory

By EMILY GROTTA
Staff Reporter

It was a warm reunion Wednesday when the lawyers and community representatives who initiated a lawsuit to end alien school segregation met at the Houston Center for Immigrants Inc.

They came to discuss their victory at a news conference, but they had a serious message to deliver as well: the rejection of some Texas officials to Tuesday's Supreme Court decision "can only lead to hysteria in the community at large," Margarita Melville, chairperson of the center, spoke for 30 organizations

that lent their support to the case over the years. She said state officials' claims that the decision will cause a huge influx of illegal aliens into the state are unfounded.

"This decision will not open the flood-gates of undocumented immigration, because employment, not education, is the factor for the influx," Melville said. "This decision will not open the flood-gates of undocumented immigration, because employment, not education, is the factor for the influx," Melville said.

By exaggerating financial implica-

tions of the decision and the number of undocumented aliens who will enter the state as a result of it, officials are dividing the community and shifting the blame for government mismanagement to innocent children, Melville said.

The present bad health of bilingual education in Texas is a product of the historical neglect and hostility that Texas has given to it," she said.

Isabel Torres, head attorney in the case, added it was against the law to speak Spanish on school grounds in Texas until 1969, when the law was repealed and the first bilingual education programs were begun.

"Texas has a historical hostility to

Torres said he and the other lawyers in the case will ask the courts to assess damages against the state and the school districts. While unable to say specifically what the plaintiffs will seek, Torres said it could be in the form of remedial and compensatory educational programs for the children excluded from school for three or four years.

While some officials are now saying the federal government must revise its immigration laws, Torres said he cannot support the proposal now pending in Congress.

That proposal would shift the focus

from family unification to police enforcement," Torres said. "It's a typical reaction. When the economy locally is in difficulty, they use the immigrants as scapegoats to direct attention from actual policies."

Torres said Tuesday's decision that the children of illegal aliens are protected under the 14th Amendment's "equal protection" clause may eventually lead to extension of other benefits to the aliens as well.

Only a close examination of the decision, and possible court cases to test other issues, will tell whether it can be interpreted to mean they cannot be denied other benefits as well, he said.

Groups joining the Houston Center for

control teams from three participating companies will scrutinize construction work on the reviving project.

Ebasco Services Inc. will inspect its own construction work, Bechtel Power Corp. will check Ebasco, and the Houston Lighting & Power Co. will field an "aggressive" new quality team to check them both, the witnesses explained.

James E. Geiger, HILAP's new quality assurance manager for the project, explained that in the past, Brown & Root Inc. inspected its own construction work, and an HILAP quality assurance group did little more than review and approve any major Brown & Root quality control actions.

Geiger said from here on, things will be different. "Aggressive surveillance, in my judgment, is the key to maintaining day-to-day control of activities," said Geiger, a former Bechtel quality assurance manager.

He said HILAP quality assurance specialists and engineers will spend a lot of their time at the nuclear site near Bay City witnessing construction, monitoring performance and checking inspection documents.

"They provide a constant on-site QA (quality assurance) presence on the site," Geiger said.

The resumption of non-safety-related construction on the half-finished nuclear project was announced by George W. Oprea, HILAP executive vice president.

It includes turbine generator, lighting, miscel-

project design engineer, then withdrew as the construction manager, and Ebasco is the new construction manager.

Geiger said the extensive nuclear experience of both companies is an additional asset to quality control and assurance.

Donald T. Kriha, quality assurance manager for the Houston area office of Bechtel, said Bechtel and Ebasco combined will eventually have a total of about 28 quality assurance and control people at the site.

Kriha acknowledged to the hearing board that this is a smaller quality team than Brown & Root had fielded, but he said this does not concern him. Experience on other nuclear projects shows this number is adequate, he said.

Despite its large quality control team, Brown & Root was accused by the NRC of trying to speed up construction at the expense of quality control.

Kriha and Clyde L. Hume, quality program manager for Ebasco, said they have independence within their companies and rank as high in the corporate structure as their construction counterparts.

Geiger said the HILAP quality team will actively reinspect already completed work to ensure it was properly checked by Ebasco or Bechtel.

He said the HILAP team will also conduct exacting quality audits of Bechtel and Ebasco work and will have 18 qualified auditors at the site by the end of August.

Immigrants in their statement Wednesday included: The League of United Latin-American Citizens, the Houston Metropolitan Ministers, the American Jewish Committee, Houston Metropolitan Ministers, the American Civil Liberties Union, the Gulf Coast Legal Foundation, Texas Conference of Churches, the Association for the Advancement of Mexican-Americans, Elsay House, Casa De Amigos, National Council on Children and Youth, Texas Impact, the Houston Council on Human Relations, Church Women United, the Grande Alliance, La Raza Legal Alliance, the AFL-CIO, Houston Organizing Project, Padre and Hermanas.

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7-10
10-22-92

IN THE COURT OF CRIMINAL APPEALS

STATE OF TEXAS

AT AUSTIN

EX PARTE

IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

RICARDO ALDAPE GUERRA

248TH DISTRICT COURT

POST-CONVICTION WRIT
(Capital Murder)

FILED

KATHERINE TYRA
District Clerk

OCT 22 1992

Time: 9:30
Harris County, Texas
By M. W. [Signature]
Deputy

GINA BENCH
Certified Court Reporter
248th District Court
Harris County, Texas

CAUSE NO. 359805-A

THE STATE OF TEXAS * IN THE 248TH DISTRICT COURT
VS. * HARRIS COUNTY, T E X A S
EX PARTE *
RICARDO ALDAPE GUERRA * AUGUST TERM, A.D., 1 9 9 2

A P P E A R A N C E S

FOR THE STATE OF TEXAS: Ms. Kari Sckerl
Assistant District Attorney
Houston, Texas

FOR THE DEFENDANT: Mr. Scott J. Atlas
And
Mr. Richard A. Morris
VINSON & ELKINS
2500 First City Tower
1001 Fannin
Houston, Texas 77002
And
Mr. Stanley G. Schneider
11 E. Greenway Plaza
Suite 3112
Houston, Texas

BE IT REMEMBERED, that upon this 21st day of
September, 1992 the above entitled and numbered cause came
for ~~Motion For Discovery~~ ^{WRIT HEARING} before Woody R. Densen, JUDGE of
the 248th District Court of Harris County, Texas; and the
State appearing by counsel and the Defense appearing by
counsel announced ready to proceed; and all preliminaries
having been disposed of, the following proceedings were
had, viz:

1 SEPTEMBER 21, 1992

2
3 THE COURT: For the record,
4 this is Ex Parte Ricardo Aldape Guerra. And, Mr.
5 Scott Atlas, you filed a motion. You may proceed.

6 MR. ATLAS: Your Honor, we
7 filed a motion to withdraw the order setting the
8 execution date pending the consideration and
9 disposition of the Application for Writ of Habeas
10 Corpus proceeding. We're asking that the September
11 24th, 1992 execution date be withdrawn completely
12 pending final disposition of our Amended Application
13 for Writ of Habeas Corpus, both final disposition by
14 this Court and, if necessary, by the Federal Courts.

15 And let me give the Court the reasons for
16 our request: First, as the Court will recall at the
17 hearing last July when we asked for discovery, the
18 Court asked for some indication of whether there was
19 any reason to believe that the trial in this case
20 had been conducted unfairly or, in other words,
21 conversely, if in fact Mr. Aldape Guerra had
22 received a fair trial.

23 Last week, late Wednesday night, we filed a
24 296-page Amended Application for Writ of Habeas
25 Corpus. I had offered Ms. Sckerl or sent portions

1 to her earlier, but it took awhile, and by the time
2 I offered them, she said I might as well go file the
3 final version, which I did.

4 In that application we raised, literally,
5 dozens of meritorious claims with numerous fact
6 issues and we're requesting an evidentiary hearing
7 to resolve those fact issues.

8 Let me give the Court some of the
9 allegations in the application. We are alleging
10 police intimidation and manipulation of witnesses.
11 We're alleging concealment of exculpatory evidence
12 by both the police and the prosecutors. We're
13 alleging, literally, I think, seventeen or eighteen
14 other examples of police or prosecutorial
15 misconduct; improper appeals to ethnic prejudice on
16 the part of the jury; insufficient evidence at trial
17 as well as new evidence; some of it was suppressed
18 by the State, showing that Mr. Carrasco Flores, not
19 Mr. Aldape Guerra, was in fact the person who shot
20 the police officer, Officer Harris.

21 We have raised several claims that are,
22 literally, identical to the claims in Herrera and
23 the Graham case. In addition, we have raised a
24 claim that is, literally, identical to a claim in
25 which Judge Hittner, in Federal District Court here

1 in the Southern District, ruled, granting an
2 Application for Writ of Habeas Corpus just a few
3 weeks ago, and we maintain, at the minimum, that the
4 Court ought to have the execution date delayed until
5 final disposition of those cases. Because if those
6 cases are resolved in our favor, particularly if
7 Judge Hittner's opinion is affirmed on appeal, then
8 we think it will follow, virtually, automatically
9 that we are entitled to issuance of Writ of Habeas
10 Corpus

11 Secondly, if the Court agrees to our
12 request for an evidentiary hearing, Your Honor, both
13 sides are going to need time to prepare for the
14 hearing and to let the court reporter prepare and
15 file a transcript and to submit briefs and proposed
16 findings of fact. The Court will then have to sift
17 through the hearing and pleadings to come to its
18 conclusion, and we think to continually change the
19 trial date will be a waste of the Court's time.

20 Thirdly, we think withdrawal of the date
21 will eliminate the artificial crisis atmosphere that
22 would inevitably surround the Court, would eliminate
23 both turmoil for this Court considering future
24 appeal, prison officials, for both sides and my
25 client, Mr. Aldape Guerra and his family. This

1 would allow the attorneys to predict their time
2 demands between deadlines. Frankly, Your Honor, we
3 think fairness requires the attorneys in this first
4 Post-Conviction Writ of Habeas Corpus Application to
5 have a period of time after a court denies relief to
6 prepare pleadings and brief for the next appeal, and
7 this can be done in one of two ways: either by
8 having a period of time after relief is denied,
9 before a new execution date will be set, until the
10 next application is filed, or to wait until the
11 State Court denies relief, if that should happen,
12 and then schedule the execution date more than 30
13 days in advance so there's enough time for the
14 attorney to file the next appeal. Continuing to
15 have an execution date, even one delayed four
16 months, as Ms. Sckerl will apparently request, would
17 impose significant administrative burdens on the
18 Texas Department of Criminal Justice.

19 As I'm sure the Court knows, before the
20 Court set an execution date, Mr. Aldape Guerra was a
21 participant in the Death Row Work Capable Program,
22 which was set up to comply with the Ruiz v. Estelle
23 case. It's the only one in the United States that
24 lets inmates who qualify, after being reviewed by a
25 classification board, work in the garment factory at

1 the Ellis I Unit pending an execution date, no
2 matter how far a distance the prisoner is ineligible
3 to participate in that Work Capable Program. The
4 program has been a tremendous success, Your Honor.
5 It is the most efficient garment factory in the
6 entire TDC system. They sold, literally, more than a
7 million and a quarter dollars' worth of goods to
8 other state agencies in the most recent years, which
9 I found the statistics in '87. I'm sure that number
10 has gone up since. Prisoners who qualify for this
11 Work Capable Program receive limited privileges:
12 they don't have any wire mesh on their bars, they
13 are not handcuffed, they are not strip-searched when
14 leaving their cells, they are fed from tables, they
15 are allowed to eat in their cells or in the day
16 room, they can shower in the general prison
17 population bath house and they're permitted out of
18 their cells 14 hours a day on weekdays and 10 hours
19 a day on weekends. In other words, except for
20 contact visits, which they are denied, they're
21 treated like a general inmate population.

22 They have found that inmates who qualify
23 and participate in this program are better behaved
24 and have better attitudes than those in segregation.
25 They have fewer disciplinary violations, less

1 stress. They need fewer guards per prisoner because
2 these people, frankly, have something to lose if
3 they misbehave. And they need fewer cells because
4 they don't need to have one cell for prisoners as
5 you do when someone has an execution date.

6 In summary, the presence of an execution
7 date, even one four months or six months or a year
8 off, deprives Mr. Aldape Guerra of a few small
9 privileges and, frankly, complicates the State's
10 offer to comply with the Ruiz ruling on prison-cell
11 requirements and imposes an unnecessary and
12 artificial urgency on this court proceedings and,
13 frankly, doesn't contribute to the fair and full
14 presentation of Mr. Aldape Guerra's argument in this
15 case. The Court can still control the filing-
16 docketing hearing matters without an impending
17 execution date. If the Court denies relief, this
18 Court can promptly schedule his execution 30 days
19 away. So the case will not lie dormant, but the
20 attorneys will still have an opportunity to file a
21 Federal Habeas Corpus Petition.

22 So in summary, we would argue both to
23 relieve the administrative burden to this Court, to
24 the attorneys, to the prison system, and to allow
25 Mr. Aldape Guerra the few privileges that someone on

1 death row is entitled to. We would ask that the
2 execution date be completely withdrawn.

3 THE COURT: Does the State want
4 to respond?

5 MS. SCKERL: Yes, Your Honor.

6 While I certainly understand the viewpoint
7 of habeas counsel, the fact is that Mr. Guerra had a
8 valid sentence that was found by the jury in 1982,
9 convicting him of capital murder, and sentencing him
10 to death.

11 The Court of Criminal Appeals has already
12 affirmed that conviction, it was statutorily denied
13 by the Supreme Court, therefore, we have a valid
14 conviction. There's absolutely no reason that we
15 cannot go forward with an execution date.

16 Because of the filing of the Amended Writ
17 of Habeas Corpus, which they actually filed late
18 Wednesday, and I received it on the 17th of
19 September, there is no possible way that we, the
20 State, can respond to the allegations made prior to
21 the Thursday execution date, and we're requesting
22 that the execution date be modified for
23 approximately four months, January 28th of 1993, and
24 that four-month time frame should give us enough
25 time to answer the allegations and to have any

1 hearings that are necessary for consideration by the
2 Court of Criminal Appeals.

3 THE COURT: Ms. Sckerl and Mr.
4 Atlas, you filed your writ back in May. We had an
5 extensive hearing on your motion for discovery. The
6 execution date was delayed for four months, and I
7 don't believe another four months is going to serve
8 justice in this case. This case is ten years old.

9 I am denying your motion to withdraw the
10 order setting the execution date. I am going to
11 leave the execution date as it is at this time.

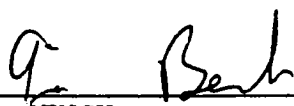
12 MR. ATLAS: Your Honor, let me
13 be clear. While we would like the execution date
14 withdrawn, we do not oppose the four months --

15 THE COURT: I understand what
16 both sides are doing, but this case is being
17 litigated to death, and if you want to take it to
18 another court, you're welcome to do it, but I am
19 denying your motion to set aside the execution date.
20 So you will be excused at this time.

1 THE STATE OF TEXAS *
2 COUNTY OF HARRIS *

3
4 I, Gina Bench, Certified Court
5 Reporter for the 248th District Court of Harris County,
6 Texas, do hereby certify that the foregoing pages of
7 typewritten material contain a true and correct
8 transcript of all evidence adduced and admitted at the
9 POST-CONVICTION WRIT in the case shown in the caption
10 hereof; that I was present in open court and reported
11 said testimony in shorthand, and that later I transcribed
12 same into typewriting.

13 IN TESTIMONY WHEREOF, witness my official
14 signature on this the 23rd day of October,
15 1992.

16 
17 GINA BENCH
18 Certified Court Reporter
19 248th District Court
20 Harris County, Texas

21 Certification Number: 221
22 Certification Expires: 12-31-92
23 Business Address: 248th District Court
24 301 San Jacinto
25 Houston, Texas 77002
Telephone Number: (713) 755-7094



EX PARTE RICARDO ALDAPE GUERRA

Habeas Corpus Application

NO. 24,021-01

From HARRIS County

ORDER

This is a post conviction application for writ of habeas corpus filed pursuant to the provisions of Article 11.07, V.A.C.C.P.

On October 12, 1982, Applicant was convicted of the offense of capital murder. After the jury returned affirmative answers to the special issues submitted under Article 37.071, V.A.C.C.P., punishment was assessed at death. Applicant's conviction was affirmed on direct appeal. *Guerra v. State*, 771 S.W.2d 453 (Tex.Cr.App. 1988), *cert den.*, 492 U.S. 925, 109 S.Ct. 3260 (1989).

In the instant cause, applicant presents seventeen allegations in which he challenges the validity of his conviction and resulting sentence. The trial court did not hold a hearing nor did it enter findings of fact and conclusions of law. See Article 11.07, § 2 (c), V.A.C.C.P. The failure to take action within the statutory time allowed for such is deemed to be a finding that no controverted, previously unresolved facts material to the legality of Applicant's confinement exist. Article 11.07, § 2(c), *supra*. The trial court recommended that relief be denied on September 21, 1992.

This Court has reviewed the application, briefs and record with respect to the allegations made by applicant, including both of the briefs of *amici curiae* which were received and considered by the Court. The finding and recommendation to deny made by the trial court is fully supported by the record and upon such basis the relief sought is denied.

IT IS SO ORDERED THIS THE 13TH DAY OF JANUARY, 1993.

PER CURIAM

EN BANC
DO NOT PUBLISH

Clinton and Maloney, JJ., dissent
Baird, J., concurs in the result as to Allegations III, IV, VII and VIII, believing Applicant failed in his "burden of proving allegations which entitle him to relief," *Ex parte Empey*, 757 S.W.2d 771, 775 (Tex.Cr.App. 1988) and the verification by Applicant's attorney was not sufficient. *Ex parte Jackson*, 616 S.W.2d 625 (Tex.Cr.App. 1981), and otherwise joins the Order.

FILED

NOV 06 1991

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

CHARLES W. VAGNER, Clerk
By *CV* Deputy

FEDERICO MARTINEZ-Macias, §
Texas Department of Corrections §
Death Row Inmate No. 771 §

V. §

JAMES A. COLLINS, Director, §
Texas Department of Criminal §
Justice, Institutional Division §

EP-88-CA-473-B
88-0961R-01

ORDER

BEFORE THIS COURT is Petitioner's Application for Writ of Habeas Corpus pursuant to 28 U.S.C § 2254 in the above-captioned cause. Petitioner timely filed written objections. Respondent timely filed written objections and Petitioner Responded. After consideration of the Petition and Report and Recommendation of Magistrate Judge Janet Ruesch, this Court is of the opinion the Magistrate Judge's Report and Recommendation should be ADOPTED and the Petition for Writ of Habeas Corpus should be GRANTED.

The Magistrate Judge limited her constitutional error examination to the ineffective assistance of counsel at the guilt and sentencing phases of Petitioner's trial. Pursuant to Strickland v. Washington, 466 U.S. 668 (1984), the Magistrate Judge concluded Petitioner's trial counsel's performance fell outside the wide range of reasonable professional conduct, and Petitioner was prejudiced by counsel's shortcomings. There is a reasonable probability Petitioner would have received a life sentence in prison in lieu of the death sentence he received for the murders of Robert and Naomi Haney on which occurred on December 7, 1983.

The Report and Recommendation and the parties' briefing is extensive. Magistrate Judge Ruesch painstakingly addressed the facts and extensively applied the law, thus this Court deems unnecessary an extensive rehash. Consequently, this Court will summarily address the parties' objections in order to supplement the record.

A. RESPONDENT'S OBJECTIONS

1. Presumption of Correctness

Respondent objects to the Magistrate Judge concluding the State court failed to conduct a full and fair evidentiary hearing as required by Townsend v. Sain, 372 U.S. 293 (1963). "[A] federal evidentiary hearing is required unless the [S]tate-court trier of fact has after a full hearing reliably found the relevant facts." Id. at 312-13. The Magistrate Judge correctly concluded the presumption of correctness under 28 U.S.C. § 2254(d) was not applicable.

Respondent contends Petitioner failed to offer sufficient reasons justifying the evidentiary hearing conducted by the Magistrate Judge. "In capital proceedings generally, th[e Supreme] Court has demanded that factfinding procedures aspire to a heightened standard of reliability." Ford v. Wainwright, 477 U.S. 399, 411 (1986).

Section 2245(d) provides the presumption does not apply in eight circumstances. At least four apply here as Petitioner contends, 28 U.S.C. § 2245(d)(2), (3), (6), (8). Generally,

No "full and fair" evidentiary hearing has occurred if "the material facts were not adequately developed at the [S]tate court hearing." . . . Material facts are those facts crucial to a fair, rounded consideration of a petitioner's claim. . . . Material facts have not been "adequately developed" where the petitioner alleges undeveloped evidence sufficient to call into question the "reliability" of the [S]tate court's determination of [P]etitioner's federal claims.

Streetman v. Lynaugh, 812 F.2d 950, 958 (5th Cir. 1987) (quoting Townsend) (citations omitted).

The State court failed to adequately developed the material facts necessary at either the guilt or sentencing phase of Petitioner's trial. As a result of the deficiencies, the Magistrate Judge correctly decided a hearing was required to permit the full development of material facts necessary for Petitioner's federal claims. Both sides were given a full and fair opportunity to develop the facts. As a result of the hearing, an expansive record was developed which provided a firm basis for the Magistrate Judge's decision.

2. Counsel's Strategy Regarding Alibi

Respondent objects to the Magistrate Judge concluding a disinterested witness was available at the time of trial, Mario Carrson, who could have provided Petitioner an alibi for the day the crimes in question were committed. At trial, the only evidence placing Petitioner at the scene of the crime was Pedro Luevanos, the alleged accomplice who testified pursuant to a plea agreement. Petitioner was charged with the assault on and robbery of Frank Kolenberg in California in September 1982. The State did not

introduce evidence of the Kolenberg offense. However, Petitioner's counsel feared any alibi testimony would open the door to the Kolenberg offenses, an extraneous offense for which Petitioner had not been convicted.

Respondent contends Petitioner's counsel acted reasonably by not taking the risk of opening the door to presentation of the extraneous Kolenberg incident. However, the Magistrate Judge found Petitioner's counsel never researched whether the Kolenberg crime was sufficiently similar to the murder in question to be introduced. As the Magistrate Judge reasons, counsel's research of Texas law would have proved incorrect his assumption regarding the admissibility of the Kolenberg offenses? Therefore, the Magistrate Judge concluded trial counsel's failure to use Mr. Carreon as an alibi witness was not a reasonable strategic decision, and the failure constituted deficient performance.

Texas law exists on which Defense counsel could have relied for the proposition the Kolenberg crime was not admissible at the guilt phase. In order for the extraneous offense to be admissible for the purpose of proving identity, the extraneous offense must be so similar to the one at issue so as to be the "signature" of the Petitioner's modus operandi. As the Magistrate Judge delineated, the differences between the Kolenberg crimes and the crimes at bar far outweigh the similarities, thus precluding the Kolenberg crimes from being introduced to prove identity. As Petitioner contends, identity was put into issue by the trial

counsel. The use of Mr. Carreon as an alibi witness would not have increased the risk.

Respondent further claims the danger of opening the door to the extraneous Kolenberg offenses existed as trial counsel could not account for Petitioner's whereabouts on December 6, 1983, the possible date of the crimes of which Petitioner was convicted. Counsel's investigation tended to place Petitioner in the company of Mr. Luevanos, and counsel was unable to sufficiently confirm the possibility of an unnamed second person having committed the crime. However, Petitioner correctly points to Respondent's attempt to make the introduction of the alibi contingent on the defense being able to provide unnecessary information. By the time Mr. Carreon could have been called as a witness, the State held the position the crime occurred on December 7, 1983. Furthermore, Petitioner's sole defense at trial was he did not commit the crime. Mr. Carreon's alibi testimony was powerful evidence in support of Petitioner's defense. Under these circumstances, counsel's failure to call Mr. Carreon fell outside the range of professionally competent assistance as concluded by the Magistrate Judge. Counsel's failure to put on an alibi defense prejudiced Petitioner and undermined the confidence of the outcome.

3. Rebuttal of Jennifer Flores

Respondent objects to the Magistrate Judge's finding that Petitioner's trial counsel acted unreasonably in failing to present testimony from either defense investigator Cecil Ming or

Petitioner's daughters to rebut Jennifer Flores' testimony. Jennifer and her mother, Lucy Flores, were surprise witnesses announced by the State whose testimony the Magistrate Judge called "devastating." Jennifer testified at trial she saw Petitioner in the bathroom of his trailer one afternoon with blood on his hands and shirt. The afternoon in question was prior to Jennifer staying at Petitioner's house with his daughters. Lucy testified about the specific date Jennifer saw Petitioner and the questionability of Jennifer's memory.

Trial counsel never interviewed Petitioner's daughters who could have provided valuable testimony to refute the testimony of Jennifer. Mr. King could have provided valuable evidence casting further doubt on the testimony of Jennifer and Lucy Flores as the Magistrate Judge concluded. Ignoring the witnesses to refute the devastating trial testimony provided no strategic advantages. The Magistrate Judge correctly concluded counsel's failure to talk to Petitioner's daughters and to use either the children or Mr. King to respond to this testimony constituted ineffective assistance of counsel. Further, counsel's failure to refute the devastating testimony prejudiced Petitioner and undermined the confidence of the outcome.

4. Counsel's Actions Regarding Punishment

The Magistrate Judge concluded Petitioner's counsel should have investigated and presented evidence from family members regarding Petitioner's good character traits. Respondent objects

and claims the additional testimony would have been duplicative. However, Petitioner's counsel failed to interview the family members in order to make a proper determination. Additionally, counsel's failure to prepare Janet Macias, Petitioner's wife, for testimony at the sentencing stage of the trial added to the Magistrate Judge's finding of ineffective assistance of counsel.

The Magistrate Judge further determined Petitioner's counsel should have investigated and presented evidence from expert testimony regarding Petitioner's deprived social background, and Petitioner's counsel failed to utilize records from the California Rehabilitation Center (CRC) to demonstrate Petitioner's good behavior and attempts to rehabilitate while in custody. Respondent objects and argues the failure by trial counsel to investigate or present such evidence was a reasonable tactical decision based on counsel's belief that any evidence about Petitioner's drug use would not be considered mitigating evidence. Petitioner correctly reasons, however, Respondent's argument rests on the assumption that any possible negative reaction of a jury to evidence of drug abuse or a violent childhood excuses counsel's failure to investigate. The CRC's records were readily available to trial counsel, but the evidence was never admitted to the jury because counsel never discovered it. At the habeas hearing, Dr. Cecil Whiting, an education psychologist, presented a striking picture of a child who grew up facing serious disadvantages and adversities, yet became a loving son, husband, and father.

The picture the jury received at the sentencing hearing was very negative and truncated as compared to the habeas hearing, which established a more complete picture of Petitioner. The State's case would naturally seem extremely strong at the punishment phase without Petitioner's counsel introducing any available mitigating evidence. Contrary to Respondent's contentions, Dr. Whiting's testimony was not of minimal value because of the lack of any causal link between the crime and Petitioner's background. The Magistrate Judge correctly concluded Petitioner received ineffective assistance of counsel at the sentencing phase of his trial. Furthermore, Petitioner was prejudiced by his trial counsel's representation at the sentencing phase.

B. PETITIONER'S OBJECTIONS

Petitioner make three brief objections, which this Court will briefly address. First, the Magistrate Judge correctly concluded the trial counsel's failure to request a continuance when the State announced it would call Jennifer Flores as a witness was not ineffective assistance. Although counsel learned at a late date Jennifer would testify, her being called was not an unexpected occurrence and the substance of her testimony was not surprising. Counsel's failure to request a continuance did not constitute deficient performance.


Second, the Magistrate Judge correctly concluded counsel's failure to put Dr. Walker, a child psychologist, on the stand to

testify about the credibility of children's eyewitness testimony did not constitute ineffective assistance. As the Magistrate Judge correctly explains, Dr. Walker's testimony would have been used to impeach the testimony of a witness because such testimony was inadmissible in this case.

Third, Petitioner objects to the Magistrate Judge's finding it highly unlikely any El Paso court in 1984 would have authorized the payment of \$11,599 the federal government paid Dr. Whiting for his testimony at the habeas hearing. Petitioner concedes Texas law provided for payment of only \$500 for investigators and experts. The Magistrate Judge reached the reasonable and correct conclusion.

IT IS ORDERED the Report and Recommendation of Magistrate Judge Janet Ruesch, filed April 26, 1991, in the above-captioned cause is hereby APPROVED AND ADOPTED.

SIGNED this 6TH day of November, 1991.


HONORABLE LUCIUS D. BUNTON, III
CHIEF JUDGE

3:88-CV-00473

RANDALL T.E. COYNE, ESQ.
UNIVERSITY OF OKLAHOMA
COLLEGE OF LAW
300 WEST TIMBERDELL
NORMAN, OK 73019

GS

IN THE TEXAS COURT OF CRIMINAL APPEALS
and
IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

Case No. _____
(Harris County
Cause No. 359805-A

ORDER

On this day came on to be considered the Motion of Scott J. Atlas to be substituted and appear as counsel for Ricardo Aldape Guerra in the above-styled and numbered cause. The Court, having examined the foregoing motion, and being of the opinion that good cause has been shown finds the motion should be granted and that the following Order should be entered:

It is ORDERED that the motion of Scott J. Atlas to be substituted and appear as counsel in the above-styled and numbered cause be, and is hereby, GRANTED.

It is further ORDERED that the motion of Scott J. Atlas to prepare an Amended Application for Writ of Habeas Corpus to replace the application currently on file should be, and is hereby, GRANTED.

JUL 07 1992

Signed and entered this ____ day of July, 1992.



PRESIDING JUDGE FOR THE
248TH DISTRICT COURT

IN THE TEXAS COURT OF CRIMINAL APPEALS

and

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS


EX PARTE RICARDO ALDAPE GUERRA

Case No. _____
(Harris County
Cause No. 359805-A

ORDER DENYING APPLICANT'S PETITION FOR
WRIT OF HABEAS CORPUS

On this 21st day of September, 1992, it is hereby ORDERED that applicant's petition for writ of habeas corpus is DENIED. It is further ORDERED that applicant's motion to withdraw the setting of applicant's execution date, and the State's request for a modification of the execution date to January 28, 1993 are both hereby DENIED.

Signed this SEP 21 1992 day of September, A.D., 1992.


HONORABLE WOODY R. DENSEN
JUDGE, 248TH DISTRICT COURT
HARRIS COUNTY, TEXAS

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THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING PETITIONER'S TRIAL SO SUBVERTED NORMAL TRIAL PROCESSES THAT IT DENIED HIS RIGHT TO DUE PROCESS AND A FAIR TRIAL.

In his habeas corpus petition filed in this Court on May 8, 1992, at 62-64, petitioner cited a 1991 decision of the U.S. Eleventh Circuit Court of Appeals, Woods v. Dugger, 923 F.2d 1454, 1456 (11th Cir. 1991), to support his claim that various circumstances surrounding his trial so subverted normal trial processes that it denied him due process and his right to a fair trial. Woods is merely a logical permutation of Irvin v. Dowd, 366 U.S. 717 (1961), the Supreme Court's leading statement about a criminal defendant's inviolable right to a fair trial, one free from prejudicial influences.

While Irving specifically involved prejudicial pre-trial press publicity, its rationale easily lent itself to the cumulative, "totality-of-the-circumstances" approach taken by the Eleventh Circuit in Woods v. Dugger. Thus, a discussion of the totality of factors that subverted petitioner's trial is in order.

a. Petitioner's Controversial Status as an Illegal Alien

The first extraneous factor injected into petitioner's trial was his well-recognized status as an illegal alien from Mexico, juxtaposed with the fact that the slain police officer was a white American. Feelings of racism and xenophobia were underscored in the minds of all those in the courtroom by the presence of a large contingent of Ku Klux Klansman who marched outside during petitioner's trial. {CITE -- MORE ON THIS IF POSSIBLE}. During this time, petitioner was uniformly described in the press as

"Hispanic," "Mexican," or as an "illegal alien." See, e.g., Houston Chronicle, October 15, 1982, at p.1; Houston Post, July 15, 1982, at p.1. Eleven of twelve of petitioner's jurors were non-Hispanic. During voir dire, the prosecution repeatedly made known to jurors that petitioner was an illegal alien.¹ At least one juror, who was ultimately seated, let her true sentiments surface. Although she claimed that she would not allow the petitioner's illegal alien status to interfere with her determination of guilt or innocence, she candidly admitted that it would affect her view of "the type of person he is" V.D. vol. 21: 3552-53.

Moreover, during the time surrounding petitioner's trial, his case stirred strong feelings in the Latino community, both here and abroad, about ethnic injustice in the American criminal justice system. See, e.g., UPI wire service, November 5, 1982 (in reaction to petitioner's closely followed case, Mexican inmates in Mexico threatened to retaliate by killing all U.S. nationals in Mexican prisons). The racial atmosphere surrounding petitioner's case was hardly amenable to a fair trial. Cf. Moore v. Dempsey, 261 U.S. 86

(1923) (minority habeas petitioner's trial was tainted by presence of racist "mob" atmosphere). The potential for racism to enter jurors' deliberations in inter-racial homicides ~~should not be discounted~~. ~~Indeed, the Supreme Court recognized precisely this danger in a recent case.~~ See Turner v. Murray, 476 U.S. 28, 33-37 (1986). ~~which has~~ ~~should not be discounted.~~

See, e.g., V.D. vol. 8: 863-64; vol. 9: 1205; vol. __: 2397; : 2603.

b. The Presence of Uniformed Police Officers at Petitioner's Trial and the Pre-trial Publicity Generated by the Killing of a Police Officer

Another extraneous prejudicial factor interjected into petitioner's trial, just as in Woods v. Dugger, was the regular presence of a throng of uniformed peace officers who attended the trial in an expression of solidarity for ~~the slain police officer~~ slain Officer Harris. ~~when petitioner was on trial for murdering~~ Although discussed in petitioner's prior Application for Writ of Habeas Corpus, at 62-64, Petitioner has since discovered a very recent decision of this Court, Sterling v. Texas, 1992 Tex.Crim.App. LEXIS 103 (April 22, 1992), relevant to the issue.

Sterling involved a capital murder trial in which seven uniformed deputies sat in the courtroom during the trial. The defendant claimed that the seven uniformed peace officers were an "armed camp," which prejudiced his presumption of innocence and right to a fair trial. In rejecting his claim, this Court cited Holbrook v. Flynn, 475 U.S. 560 (1986), a case precisely on point. This Court noted that the seven officers were present for the purpose of providing security, just like the four uniformed officers in Holbrook, and that their presence did not constitute the type of "inherent" prejudice that denied the defendant due process. Since the Sterling defendant ~~neither~~ could not show any "actual" prejudice, his claim was denied. Id. at *8-*10.²

² This Court also cited Carrasquillo v. State, 742 S.W.2d 104, 112 (Tex.App. 1987) ~~that~~ another case in which a defendant unsuccessfully argued the presence of uniformed officers prejudiced his right to a fair trial, in which the Court of Appeals required a showing of actual prejudice by the defendant.

The present case is readily distinguishable from Holbrook, Sterling, and Carrasquillo. Furthermore, as noted in petitioner's prior petition, his case is considerably more in point with Woods v. Dugger, in which the Eleventh Circuit explicitly distinguished Holbrook. In a series of cases following the Holbrook rationale,³ courts have regularly held that defendants' claims were untenable in view of the legitimate security needs justifying the presence of the uniformed peace officers.

This "security" rationale was entirely lacking in petitioner's case, as it was in Woods v. Dugger. The fifteen or so policeman ~~who~~ regularly attended petitioner's trial were off duty; they were merely spectators. To aptly quote the court in Woods, they "were there for one reason: they hoped to show solidarity with the killed correctional officer [in the instant case, a police officer]. In part, it appears that they wanted to communicate a message to the jury." 923 F.2d at 1459 (emphasis added). There is no reasonable interpretation of the Houston police officers' presence at petitioner's trial except that they were, intentionally or otherwise, evincing a motive identical to the correctional officers in Woods.

The Woods court noted that "[t]he message of the officers is clear in light of the extensive pretrial publicity. The officers wanted a conviction followed by the imposition of the death penalty." Id. at 1460. Certainly the same is true in petitioner's

³ See, e.g., State v. Lankford, 747 P.2d 710 (Idaho 1989); Hunt v. State, 540 A.2d 1125 (Md.App. 1988); People v. Ainsworth, 755 P.2d 1017 (Cal. 1988); But see State v. Franklin, 327 S.E.2d 449 (W.Va. 1985).

case. Indeed, as Houston Chronicle reported on its front page, October 15, 1982, the day after petitioner's death sentence was imposed:

One of several sheriff's deputies guarding [the] courtroom Thursday was [the wife of one of the policeman shot, although non-fatally, during the incident]. She beamed when the death sentence was announced. "I'm very pleased"⁴

In Houston, as much or more than anywhere in the country,⁵ the death of a police officer in the line of duty is considered the gravest of public concerns. Petitioner does not intend to diminish this gravity in arguing that the general sentiment of outrage tainted the fairness of his trial. Rather, he has strongly maintained from the outset of his case that it was his compatriot who killed Officer Harris. Petitioner simply contends that his cherished right to a fair trial was tainted by that sense of outrage, which spilled over into the trial when the ^{cadre of} uniformed officers sat in on the trial.

The jury should be presumed to have been receptive the officers' message. Many members of the jury had followed the murder

⁴ Apparently this peace officer served a security function at trial. nevertheless, the fact that one of the guards was the wife of a policeman injured in the same ~~transaction~~ ^{event} in which the purported victim of petitioner was killed itself raises a problem of possible prejudice if this fact was known by the judge or jury. Petitioner has no way of knowing at this date whether this was in fact the case, but the fact that the officer's wife served as a bailiff is strong evidence of the sense of peace officer solidarity marshalled against petitioner at his trial.

⁵ As one example of this sentiment: the recently announced Houston Police Officer Memorial, which will cost approximately \$1,000,000 when completed, is reported to "be the largest of its kind in the nation." See Houston Chronicle, May 12, 1992, at A13.

think[s] [the death penalty] should be used [more] . . . than it is . . . I have had friends involved . . . where her father was a policeman . . . so my feelings toward the death penalty are strong. I think it should be used [more].

Surely, as in Woods, the presence of a sea of blue shirts during petitioner's trial posed an "unacceptable risk" that the jury would feel compelled to convict to vindicate the death of a fallen police officer, whether or not there was a reasonable doubt in their minds about whether it was petitioner or his compatriot

⁷ See, e.g., Houston Chronicle, July 14, 1982, sec. 1, p. 1, July 15, 1982, sec. 1, p. 10, July 16, 1982, sec. 1, p. 10, July 17, 1982, sec. 1, p. 10, October 5, 1982, sec. 1, p. 11; Houston Post, July, 15, 1982, sec. A, p. 1, October 5, sec. A, p. 1, October 12, 1982, sec. A, p. 6; UPI wire service, October 12, 1982. There was also extensive radio and television coverage of the case prior to and during petitioner's trial. See V.D. Vol. 8: 974 (Juror Kellogg's comments during voir dire: "it did make coverage in . . . all the channels for several days"); V.D. vol. 8: 832 (juror Woods' comments during voir dire about "radio and t.v." coverage with which he was familiar).

who pulled the trigger. Thus, there is no need to show "actual prejudice" when such "inherent" prejudice existed. See Woods, 923 F.2d at 1457; Holbrook, 475 U.S. at 570. And "inherent" prejudice exists when there is a "probability of deleterious effects" in trial process. Woods, 923 F.2d at 1457.

c. The Prosecution's Use of Mannequins

In addition to the pretrial publicity, the presence of the uniformed officers, and the supercharged racial atmosphere, there was yet another factor that is relevant under a Woods v. Dugger analysis. Namely, an unrelated factor that influenced the jury was the presence of two vividly life-like mannequins of petitioner and his deceased compatriot. As noted in petitioner's prior petition, one of the jurors submitted an affidavit after trial noting that:

the two mannequins affected me tremendously They were eerie mannequins which were positioned right at the jury . . . during the whole [trial]. They made me nervous and they influenced my verdict. . . . I don't believe that Ricardo Guerra was the actual killer, I believe the other man was

*Juror
Monroe*

Petitioner's Application for Writ of Habeas Corpus at 63.

X The mannequins were incredibly life-like -- "[t]he mannequin has a 5 o'clock shadow and chest hair. . . visible at the opening of its shirt." See Houston Post, October 5, 1982, at 14A. However, while life-like, the dummies served to caricaturize the defendant, dehumanizing him in front of his jury.⁸ In an interracial case

⁸ It should be noted that the mannequins were entirely unnecessary to serve the function that they State claimed they served. For witness identification purposes, the State could have constitutionally required petitioner to don the clothes he wore at the scene and kept his beard and hair length for the trial. See

such as petitioner's, this particular danger of prejudice was even greater.

There have been numerous cases in which criminal defendants have, at trial, sought to exclude mannequins and other props under the applicable rules of evidence. In most of these cases, appeals courts have affirmed trial judges' refusals to ~~keep out~~ ^{exclude} such evidence, otherwise relevant, on the ground that its prejudicial value outweighed its probative value. See generally "Propriety, in a Trial of a Criminal Case, of Use of Skeleton or Model of Human Body or Part," 83 A.L.R.2d 1097 (including supplement); cf. "Admissibility, in a Homicide Prosecution, of Deceased's Clothing Worn at Time of Killing," 68 A.L.R.2d 903 (including supplement). But see People v. Fletcher, 509 N.E.2d 625 (Ill.App. 1987).

These cases are ~~inapposite to the issue raised by the mannequins in the present case, as such cases implicated the law of evidence, which is not that is at issue in this case.~~ ^{the here.} Unlike those cases, petitioner is not presently claiming that, from an ex ante perspective, the trial judge erred in allowing ~~for~~ ^{and} the introduction of the mannequins on the ground that they posed too great of a risk of undue prejudice. Thus, ~~this court should not analyze~~ ^{should not be analyzed} petitioner's claim according to the traditional abuse-of-discretion analysis used in evidence cases. Rather, petitioner ~~points out~~ ^{argues} that the use of the mannequins in fact tainted the jury's ability to deliberate fairly. The effect of the mannequins is another factor,

Holt v. United States, 218 U.S. 245 (1910) (defendant may be required to don clothes at trial); United States v. Valenzuela, 722 F.2d 1431 (9th Cir. 1983) (defendant may be required to shave for trial); United States v. Hammond, 419 F.2d 166 (4th Cir. 1969) (defendant may be required to don a fake goatee at trial).

(Only possible relevance is as part of environment - small part) It's very weak

I don't get it!
Put this up earlier if it's the point

¹ i.e., whether the facts constitute a deprivation of Guera's right to a fair trial.

under the Woods v. Dugger analysis, that should go into this Court's calculus for determining in the aggregate whether there was "inherent" and/or "actual" prejudice within the meaning of the Sixth and Fourteenth Amendments (as opposed to the rules of evidence). The standard for review in such a case is de novo since there is a "mixed question" of fact and constitutional law involved. See Morris, 918 F.2d at 830. The unequivocal statement of Juror Monroe is strong evidence of the "unacceptable risk" that the mannequins posed with respect to the remaining jurors.⁹

~~Finally, it should be noted that under the Woods v. Dugger, harmless error analysis is not applicable.~~ The Eleventh Circuit noted that when there is an "unacceptable risk" that a defendant's trial processes have been subverted, whether there is otherwise overwhelming evidence of guilt ~~or not~~ is irrelevant. See Woods, 923 F.2d at 1460. This reflects the reasoning of the U.S. Supreme Court in Irvin v. Dowd, in which the important threshold issue for the Court was whether the defendant was afforded a fair trial, not whether he was innocent.

Yet unlike the defendants in Dugger and Irvin, petitioner's case is one where there is a serious question of his actual innocence. The State's case against him was by no means overwhelming, see discussion of petitioner's Jackson v. Virginia claim in his Application for Writ of Habeas Corpus at 64-67, and as reflected in the admission of Juror Monroe. Moreover, common sense compels

⁹ ~~Similarly, for purposes of this Court's review, it should be noted that petitioner has not offered the juror's affidavit for the purpose of impeaching the jury's verdict -- which, admittedly, is not cognizable -- but instead as evidence that the jury process was so tainted that petitioner was unable to receive a fair trial.~~

Guera
unacceptable
of actual prejudice and

the conclusion that the State sought a death sentence for petitioner because the only other party whose capital conviction would have vindicated the fallen police officer was dead and thus unavailable for trial and punishment.¹⁰ Thus, in a case where the processes for proving a defendant's actual innocence has been subverted, the reasoning in Woods and Irvin is a fortiori.¹¹ But for the cumulative effect of the pretrial publicity, the supercharged racial atmosphere, the large numbers of Officer Harris' comrades-at-arms ~~sitting~~ ^{grimly} sitting on the sidelines, and the "errie" mannequins staring ~~at~~ ^{at} the jury ~~in the face~~ throughout trial, it cannot be gainsaid that such prejudice may have tainted the jury's decisions in either the guilt or punishment phases. Under the "totality-of-cirmstances" approach of Woods v. Dugger, this Court should grant petitioner a new trial.

¹⁰ This tactic apparently worked, at least in the case of Juror Monroe, who implied in her affidavit that she was willing to find petitioner guilty and sentence him to death because "I believed that he had a part in it somehow" -- and thus deserved some punishment for the death of a policeman -- even if he was not the trigger man. See Petitioner's Application for Writ of Habeas Corpus at 63. Note that it was also Juror Monroe who admitted during voir dire that she had a predisposition toward imposing the death penalty where policemen were victims. See V.D. vol. 9: 1050. She doubted the guilt of the petitioner, but she was ne

- III ?

OP

Draft

F - Aldape
p lge

① addition to ineff counsel
claim (XIV)
② new claim on DA's voice
die comments on Aldape's
undocumented status
③ ref. to

IN THE TEXAS COURT OF CRIMINAL APPEALS

and

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

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Mr. Aldape Guerra hereby amends this claim by deleting paragraph 291 ^{- § XIV} and adding the following text and references to attached exhibits¹:

1. Maria de la Luz Valero Elizondo, Mr. Aldape Guerra's sixth grade teacher at the C.P.A. Francisco Sarabia primary school, still remembers him for his sweetness of character. She describes him as an "outstanding" young man who was "always a polite, friendly student, simple, but happy and playful, that is likeable and nice, a sports lover. . .[who exhibited] good behavior and good development of his subjects." See Appendix 3, at 2.

2. Likewise, Mr. Aldape Guerra is remembered by former high school teachers at the Dr. Gabino Barrera High School as a model student. Teachers Artemio Villagomez Lozano and Gamaliel Garza Ramos found young Ricardo to be "a kind, attentive, and happy young man, who was a good classmate and always very respectful of the established disciplinary rules." See Appendix 4A, at 2.

3. This characterization is echoed by others who taught Ricardo at the Dr. Gabino Barrera High School. Former teachers

¹ Attached to this Amended Application are translations of the affidavits contained in Appendices P, Q, R, and S, of the original Application for Writ of Habeas Corpus, as well as translations of records procured from the Government of Mexico attesting to Mr. Aldape Guerra's clean criminal record.

Alicia Guadalupe Saldivar Saavedra and Enedina Gamez Lopez describe him as a well-mannered young man who provided no disciplinary problems and always ~~conducted himself within the confines of the~~ ^{followed} rules. Professor Lopez remembers Ricardo

perfectly...since he was different from the rest due to the fact he was very attentive and respectful to his teachers and classmates...a very correct young man who was never disrespectful to his instructors and always observed the disciplinary rules imposed by the school, which at that time were very strict....[he] always behaved as an attentive, hard-working student who, even if he did not have the highest grades, he had regular average grades.

Appendix 4B, at 1.

4. The impression created by Mr. Aldape Guerra's teachers that he is a gentle and kind man who would not commit the violent crime for which he has been convicted finds support in the professional opinion of a psychologist who evaluated him at ~~the~~ ⁹ age ~~of~~ ¹⁶. Lucia B. Villarreal Garza is a psychologist who was employed by the Dinamica S.A. company to undertake a psychological evaluation of Mr. Aldape Guerra. Her evaluation was conducted in order to determine if Mr. Aldape Guerra possessed the requisite good character and personality to work at Empaques de Carton Titan, the factory where his father worked. She employed the Thurstone personality test, and concluded on the basis of her test results that Mr. Aldape Guerra

tends to behave in a stable manner and has the capability of making friends. . .[and is] a very passive man, that is, with very low impulsivity . . . [with high] emotional stability.

Appendix 2, at 2. ^{This evaluation was performed in 19⁹¹, only - years before Mr. Aldape Guerra was accused,}
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a recent statement, confirmed that her ¹ analysis revealed nothing in Mr. Guerra's character that would indicate a capacity for violence. Appendix 2, at 3. Indeed, there is nothing in Mr. Aldape's Guerra's history ~~that~~ *that* would indicate that he is in any way violent or dangerous.

6. When he left high school, Mr. Aldape Guerra sought employment at the Empanagues de Carton Titan carton factory. Those acquainted with him enthusiastically recommended him for a position. Mr. Rufino Gamez Barela, Manager of IBM Computers, echoed the impressions of Mr. Aldape Guerra's teachers:

He is a good and responsible young man, very much into sports. He has always behaved well and I believe that he will continue to do so. His father is a very correct person. I fully recommend the applicant. Appendix 1, at 5.

7. Mr. Andro Solis Carranco, the owner of Relojos Industriales, also recommended Mr. Aldape Guerra:

The applicant's family has left me with a very good impression, they are very correct in everything, with good habits. The applicant is a good boy and I have never known him to have a problem, therefore, I recommend him fully. Appendix 1, at 5.

8. Mr. Aldape Guerra was hired for the job. He was a conscientious employee at Empaques de Carton Titan, and never exhibited any sort of combative or violent behavior. His supervisor, Mr. Reginaldo Montemayor Martinez, describes him as "serious and responsible." Mr. Montemayor Martinez remembers that Mr. Aldape Guerra *2*

was a normal young man, obedient, hard-working, who never caused problems, who was not absent from work, [and] who got along well with co-workers. Appendix 1, at 3.

9. For nearly two^{one}-and-a-half years, Mr. Aldape Guerra worked at the Empaques de Carton Titan carton factory. He eventually decided to leave the factory in order to pursue other activities. Appendix 1, at 2.

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10. Mr. Aldape Guerra amends his petition for writ of habeas corpus by adding the following claims.

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THE PROSECUTOR'S REMARKS DURING VOIR DIRE THAT THE JURY COULD CONSIDER MR. ALDAPE GUERRA'S UNDOCUMENTED STATUS IN EVALUATING HIS CHARACTER AT THE PUNISHMENT PHASE OF HIS TRIAL DEPRIVED MR. ALDAPE GUERRA OF HIS RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND ANALOGOUS PROVISIONS OF THE TEXAS CONSTITUTION.

11. During voir dire, prosecutors expressly instructed three of the members of Mr. Aldape Guerra's jury that they could consider Mr. Aldape Guerra's illegal status in evaluating his character during the punishment phase of his trial. Other jurors were informed that Mr. Aldape Guerra was an "illegal alien,"² and were questioned as to whether his illegal status would affect their

² Throughout voir dire, prosecutors repeatedly emphasized Mr. Aldape Guerra's status as an "illegal alien." See, e.g., S.F. vol. 8 at 864 - 65; S.F. vol. 9 at 1205; S.F. vol. 15 at 2397 - 98; S.F. Vol. 17 at 2603 - 04; S.F. Vol. 20 at 3253 - 54; S.F. Vol. 19 at 3489; S.F. Vol. 19 at 3552 - 53.

deliberations at the guilt phase of his trial.

12. Mr. Aldape Guerra's "trial began with a jury that had been informed that . . . his very presence in the country was illegal." Ex Parte Guzman, 730 S.W.2d 724, 727 (Tex. Cr. App. 1987). Prosecutors encouraged jurors to consider his illegal status as a fundamental character flaw; something that the jury could consider an aggravating factor in determining whether Mr. Aldape Guerra deserved to live or die. Juror Leah K. Brumley was told that Mr. Aldape Guerra's status as an illegal alien was "information that the jury can consider in deciding what type of person he is." S.F. Vol. 17 at 2603-04. Prosecutor Robert Moen instructed juror Constance J. Whiteford that "the fact that a person is in someone else's country unlawfully or has come into a country illegally could be evidence the jury could consider about what type of person he is." S.F. Vol. 19 at 3552-53. Finally, juror Tommy Ray Smith was informed that Mr. Aldape Guerra's status might "benefit [him] in answering [the special issues]." S.F. Vol. 20 at 3254.

13. In his summation at Mr. Aldape Guerra's punishment hearing, prosecutor Dick Bax once again encouraged jurors to consider Aldape Guerra's illegal status: "[Y]our answers will demonstrate what type of person Ricardo Aldape Guerra was while he was in our community for less than two months after coming here from Monterrey, Mexico, in May" S.F. Vol. 27 at 165 (emphasis added).

14. Unequal treatment on the basis of race or alienage is

anathema to the principles on which the Fourteenth Amendment is based. In the area of criminal justice, where racial discrimination "strikes at the fundamental values of our judicial system and our society as a whole," Rose v. Mitchell, 443 U.S. 545, 556 (1979), the Supreme Court has "consistently articulated a "strong policy . . . of combatting racial discrimination. Id., at 558. Prejudicial, inflammatory comments pertaining to a defendant's ancestry and undocumented status are no less pernicious. "[D]istinctions based upon ancestry are as 'odious' and 'suspect' as those predicated on race; in practical terms, appeals to either threaten the fairness of a trial." U.S. v. Doe, 903 F.2d 16, 21-22 (D.C. Cir. 1990). Likewise, the Court has condemned discrimination on the basis of immigration status. Plyler v. Doe, 457 U.S. 202 (1982). ~~add~~

15. To signal to the jury that a defendant is more deserving of the death penalty because of his immigration status ~~denies~~ the undocumented person ~~of~~ his basic humanity. Undocumented persons are entitled to the same fundamental constitutional rights of due process and equal protection of the laws that are guaranteed to all persons within the territorial jurisdiction of the United States. Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886); Plyler, 457 U.S. at 213. A defendant's undocumented status bears no relation to his criminal culpability, future dangerousness, or moral worth.

16. Millions of undocumented aliens live and work within the borders of the United States, many of whom migrated to this country in search of work. To allow prosecutors, in a criminal

~~add discussion re~~
~~gangster~~

during sentencing

add discussion re
Dawson v. Delaware, 112
S.Ct. 1093 (1993) (opinion due to
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prosecution, to argue that undocumented workers should be more harshly treated as a result of their illegal status, constitutes that "caste-based and invidious class-based" discrimination that the Equal Protection Clause was specifically designed to eliminate. Plyler, 457 U.S. at 214.

17. Further, the prosecutors' prejudicial appeals provided the jurors with authority for indulging any ethnic or racial animus they might have felt toward Mr. Aldape Guerra as an undocumented Mexican worker. The trial court endorsed the prosecutorial team's message that illegal status could be considered in assessing punishment. When defense counsel objected to prosecutor Robert Moen's assertion that illegal status was relevant to an assessment of the defendant's character, the court overruled the objection. S.F. Vol. 19 at 3553.

18. The prosecutors' comments, and the trial court's endorsement of those comments, warrant a reversal of Mr. Aldape Guerra's conviction. Within the context of a courtroom surrounded by parading Ku Klux Klan members protesting against the presence of undocumented workers in Texas, and a trial at which the evidence of Mr. Aldape Guerra's guilt was far from overwhelming, it cannot be said that the remarks constituted harmless error. "Even if brief," racially inflammatory remarks or allusions are enough to distort the fairness of a trial. See Doe, 903 F.2d at 26 (citing Brooks v. Kemp, 762 F.2d 1383, 1413 (11th Cir. 1985)); see also State v. Wilson, 404 So.2d 986, 970 (La. 1981) ("a single appeal to racial prejudice furnishes grounds for a mistrial"). Despite trial

counsel's objection to the prosecutor's comments at voir dire, the court failed to correct the prosecutors' highly prejudicial misstatement of the law. This failure on the part of the trial court is critical in evaluating the harm that resulted from the prejudicial comments. See Dues v. State, 634 S.W.2d 304 (Tex. Cr. App. 1982). The flimsiness of the state's case against Mr. Aldape Guerra is another factor that weighs heavily in finding reversible error. See, e.g., Doe, 903 F.2d at 28; Derden v. McNeel, 938 F.2d 605 (5th Cir. 1991).

The prejudicial effect of the prosecutor's instructions cannot be underestimated.

Undeniably, prosecutorial remarks kindling racial or ethnic predilections "can violently affect a juror's impartiality." Comments of that sort are especially egregious because of "the possibility that the jury will give special weight to the prosecutor's arguments, not only because of the prestige associated with his office, but also because of the fact-finding facilities presumably available to him." Just how much influence the prosecutor's [remarks] exerted upon the jury is, of course, incapable of precise measurement, but its portent for harm is ominous.

Doe, 903 F.2d at 28 (citations omitted).

A conviction tainted by appeals to racial or ethnic animus cannot be allowed to stand. Mr. Aldape Guerra's conviction must be reversed.

Other claims we may want to add:

1. Claim that the cumulative error in the case rendered his trial fundamentally unfair. See Derden v. McNeel, 938 F.2d 605 (5th Cir.

How⁹ is this diff. from § XII

1991), reh'rg granted in October 1991.

2. Juror misconduct claim based on their use of the guns in their deliberations. See the note they passed to the judge which is in the transcript (the volume with all of the motions and jury instructions, look in the index to find it).

F- A1c

IN THE TEXAS COURT OF CRIMINAL APPEALS
and
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counsel's objection to the prosecutor's comments at voir dire, the court failed to correct the prosecutors' highly prejudicial misstatement of the law. This failure on the part of the trial court is critical in evaluating the harm that resulted from the prejudicial comments. See Dues v. State, 634 S.W.2d 304 (Tex. Cr. App. 1982). The flimsiness of the state's case against Mr. Aldape Guerra is another factor that weighs heavily in finding reversible error. See, e.g., Doe, 903 F.2d at 28; Derden v. McNeel, 938 F.2d 605 (5th Cir. 1991).

The prejudicial effect of the prosecutor's instructions cannot be underestimated.

Undeniably, prosecutorial remarks kindling racial or ethnic predilections "can violently affect a juror's impartiality." Comments of that sort are especially egregious because of "the possibility that the jury will give special weight to the prosecutor's arguments, not only because of the prestige associated with his office, but also because of the fact-finding facilities presumably available to him." Just how much influence the prosecutor's [remarks] exerted upon the jury is, of course, incapable of precise measurement, but its portent for harm is ominous.

Doe, 903 F.2d at 28 (citations omitted).

A conviction tainted by appeals to racial or ethnic animus cannot be allowed to stand. Mr. Aldape Guerra's conviction must be reversed.

Other claims we may want to add:

1. Claim that the cumulative error in the case rendered his trial fundamentally unfair. See Derden v. McNeel, 938 F.2d 605 (5th Cir.

1991), reh'rg granted in October 1991.

2. Juror misconduct claim based on their use of the guns in their deliberations. See the note they passed to the judge which is in the transcript (the volume with all of the motions and jury instructions, look in the index to find it).