

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

RICARDO ALDAPE GUERRA,

Petitioner

vs.

JAMES A. COLLINS,  
Director, Institutional Division,  
Texas Department of Criminal Justice,

Respondent.

CIVIL ACTION NO.  
H 93-290

November 16, 1993  
Houston, Texas  
9:00 a.m.

Transcript of Proceedings  
Volume II

Before the Honorable Kenneth M. Hoyt

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DISTRICT COURT, SOUTHERN DISTRICT

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1 (The following proceedings were held outside the courtroom, in  
2 jury room.)

3 MR. ATLAS: Your Honor, my client advised me this  
4 morning about 15 minutes ago for the first time several things  
5 I thought important to bring to the Court's attention  
6 immediately. Not necessarily in the order of importance, he  
7 told me that last night he was -- they put him in a small cell  
8 that has a hole for necessity, but no other furniture,  
9 including no beds. He had to sleep on the floor and about  
10 froze to death.

11 Secondly, he got no dinner last night, a sandwich  
12 this morning. And when he was back at the county jail after  
13 the Marshal had released him, I believe, although I am not  
14 familiar enough with the mechanics to get the sequence  
15 completely accurate, he said one of the guards there who was  
16 wearing a TDC uniform hit him several times. He said he hadn't  
17 spoken to him in advance and I've actually seen one of the  
18 bruises on his hand. He has got another one on his knee. The  
19 fellow hit him at least three times.

20 MR. GEE: While he was handcuffed.

21 MR. ATLAS: While he was handcuffed. Must have been  
22 shortly after he got back over there. Needless to say, I am  
23 very disturbed about this and would ask the Court for whatever  
24 relief.

25 THE COURT: I guess I need to say something about this

1 at this point on the record. A call came into my office this  
2 morning and I believe it was from police officer Heater. I  
3 believe she is the female who --

4 MS. CORNELIUS: Amey Heater.

5 THE COURT: -- testified. And she asked me to get in  
6 touch with Mr. Zapalac because she wanted to communicate with  
7 him. And of course, I said well -- I told my secretary, I said  
8 well, we really don't take messages. This is not the center  
9 for that. I said but if Mr. Zapalac is -- she's got the lady  
10 on hold. I said if this is one of Mr. Zapalac's witnesses,  
11 somebody who is assisting him, then I will have one of the  
12 clerks just take the number and name and Mr. Zapalac can call  
13 her back and tell her when she is to be here, whatever.

14 Well, when she got back on the phone, what she  
15 realized was the lady was offended by some article that  
16 appeared in today's Post or Chronicle. And she is not  
17 apparently a witness in the case. I don't think she is.

18 MS. CORNELIUS: No.

19 MR. ZAPALAC: She is not.

20 THE COURT: She indicated she had not apparently been  
21 contacted by you and her whole purpose and motivation was to  
22 get me to deliver a message to you so she could talk to you so  
23 that she would be able to, quote, set the record straight, so  
24 she could tell you what was wrong with this testimony  
25 yesterday. I simply bring that up to make sure that none of

1 you -- and I don't suggest that any of you are and obviously I  
2 don't think you had anything to do with any of this. This is a  
3 person who apparently is still with the police department.

4 MS. CORNELIUS: She is in the crime lab.

5 THE COURT: Yes, who wants to throw her --

6 MS. CORNELIUS: Two cents in.

7 THE COURT: -- two cents in. And I would say this. I  
8 will -- my office will take a message from any of your people  
9 that need to get in touch with you, if they are your witnesses  
10 or people that need to -- because I know that you don't walk  
11 around with phones in your pocket and things like that. That  
12 is important that you know what is going on. But I want you to  
13 know that because I don't want someone to tell you later on  
14 that there was an effort to reach you and the judge's office  
15 would not give you the message.

16 MR. ZAPALAC: Certainly.

17 THE COURT: I don't have an obligation to do it. But  
18 I don't know what the next move might be by this lady. She may  
19 call the press, she may say I called the judge's chambers,  
20 which is totally inappropriate anyway. And she may have some  
21 things to say about it. She may finally contact you and tell  
22 you she is unhappy that I didn't give you her number. And I  
23 told my secretary I am not going to give him any number based  
24 on what is going on.

25 I mention that because in the context of what you

1 are saying, there are some things that are happening that  
2 probably would not ordinarily happen in this kind of case.

3 I am not sure what I can do except to probably  
4 have -- I think there is an attorney, I think, out there for  
5 the police department. Obviously this man is not being handled  
6 by the police department, the City of Houston. He is being  
7 handled, I believe, by the Harris County Sheriff's Department.  
8 And it seems to me that the appropriate thing to do would be to  
9 get in touch with the sheriff about this, me personally try to  
10 talk with the sheriff about it to let him know the seriousness  
11 of this problem.

12 And I invite suggestions from you regarding how  
13 this should be handled because it is a very serious matter.  
14 And I am not sure what the total and full implications of this  
15 are in the sense that this man could -- his life could be put  
16 in jeopardy by simply placing him someplace that parties would  
17 not like him. And for whatever reason. Or someone do  
18 something to him thinking they are going to do the City of  
19 Houston or the Sheriff's Department some favor because they've  
20 overheard somebody say something. And even worse, police  
21 agency involvement in this kind of harassment and violation,  
22 potentially, of civil rights by individuals, if any of this is  
23 true.

24 So I would invite suggestions from you. I  
25 simply -- I believe that the best way to deal with it is to get

1 Sheriff Klevenhagen on the phone and talk to him about it or  
2 ask him to come over here and tell him in your presence what  
3 the problem is. And that, you know, this is on his watch. It  
4 is not on some sergeant's watch. It is not on some deputy's  
5 watch. It is not on somebody else's watch. This is his  
6 responsibility. I think that is the only way I know of to deal  
7 with it because to try to talk to someone else doesn't make any  
8 sense and I am not sure it makes any sense for you to deal with  
9 it because it is really not your fight. Not that anyway. You  
10 are state officials. And even the District Attorney's office  
11 doesn't have any authority over the Sheriff's office. These  
12 are all elected individuals and they have that responsibility.

13 MR. ATLAS: I appreciate that. I appreciate it  
14 happening -- consistent with the Court's convenience and  
15 schedules, having it happen as soon as reasonably possibly so  
16 if Sheriff Klevenhagen indicates there are not many options  
17 open to him, we can think about what option may be proposed.

18 THE COURT: I hate to think there aren't options  
19 available in the county jail situation.

20 MR. ATLAS: I am not opposed to him being segregated  
21 from the rest of the inmate population. I understand there is  
22 some security risk involved. Obviously the notion that he  
23 isn't given bed and isn't given dinner, obviously none of which  
24 I have personal knowledge of, but at least the first two ought  
25 to be easily verifiable in the sheriff's records.

1 THE COURT: Well, does he know the name of the officer  
2 that hit him?

3 MR. ATLAS: I don't think he does although I am not  
4 sure I posed the question quite that way. I asked him who it  
5 was and he said it was a TDC official.

6 THE COURT: As opposed to the sheriff.

7 MR. ATLAS: As opposed to the sheriff.

8 THE COURT: There are a couple in the courtroom.

9 MR. ATLAS: I don't know, but he is not in the  
10 courtroom.

11 MS. CORNELIUS: He was in a TDC uniform?

12 MR. ATLAS: That is what he said. When I heard about  
13 it, I decided I should give him the third degree. And I really  
14 haven't taken him on voir dire.

15 MR. GEE: Your Honor, I don't suppose there is room in  
16 the facility in the courthouse.

17 THE COURT: I don't know if we have overnight  
18 capability. We certainly have holdover cells. Sort of metal  
19 type. But we do not have the ability to house people  
20 overnight. That is not to say that we can't do it because I  
21 suspect that what we may have to do if we can't get some  
22 assurance is certainly we would have to make some arrangements  
23 maybe with the Marshal's Service there.

24 MR. GEE: My concern, Your Honor, is not only for him,  
25 but for what the people out here, if they heard about it.

1 THE COURT: Yes, and that is something that I don't  
2 want.

3 MR. GEE: We might have a riot.

4 THE COURT: I don't want to handle it in that fashion.  
5 I want to make sure that the appropriate officials understand  
6 the gravity of this situation and understand the seriousness of  
7 it to the extent that I don't want to have to stop doing what I  
8 am doing now to conduct a hearing about what is going on in the  
9 jail and enter some special order ordering the sheriff to do  
10 something because I think his general attitude would be it  
11 ain't my job, it is a state prisoner. You know, with all of  
12 the problems that the state and the county have had. It is a  
13 mixed bag of confusion at the very least.

14 MS. CORNELIUS: Do you want me to just try right now  
15 to get Sheriff Klevenhagen on the line?

16 THE COURT: I think I will do it. I will put a call  
17 in to his office now. And if he doesn't return my call, I  
18 would hate to think he would return yours.

19 MS. CORNELIUS: No, sir, I was going to call in your  
20 name. I was going to call in your name.

21 THE COURT: No, I think I need to try to personally  
22 get him on the phone and see if I can get him over here because  
23 I think it is important that he come over and talk with me in a  
24 setting like this about the situation. Now, he doesn't have  
25 any authority over the state -- theoretically over the state

1 guards, prison guards in some general sense. Certainly he has  
2 a responsibility -- certainly he has a responsibility to deal  
3 with persons that are in his domain and to speak to them  
4 specifically about matters that may be of interest and would  
5 protect him from knowing participation by just blind eyes to  
6 what is going on. So I think that it would be best for me to  
7 go ahead and call him and see if I can get him on the phone and  
8 tell him how important it is.

9 MS. CORNELIUS: Actually, Judge, I think right now he  
10 is a federal prisoner because he is being handled under a  
11 federal bench warrant. So, Judge -- the sheriff, I think, does  
12 have actual responsibility over him because you all have the  
13 agreement with the county jail holding federal prisoners. So  
14 don't let him tell you he doesn't have any control.

15 THE COURT: Well, he can tell me what he wants to. I  
16 won't argue with him about it but I do believe you can't just  
17 let something happen in your house. I don't think my sister  
18 can come over and beat a kid up in my house and kill him and I  
19 stand there and watch.

20 MR. GEE: Really this man has very little incentive to  
21 say something like this if not so. And if it is, we've got the  
22 potential for a real disaster.

23 MR. ATLAS: Yes, we do, and that is something I prefer  
24 to avoid any way I can so long as my client's rights are  
25 protected.

1 THE COURT: Okay, let me make that phone call and I  
2 will try to report back to you as soon as I hear something from  
3 him on that matter.

4 MR. ATLAS: Your Honor, I will also endeavor to see if  
5 I can get any more information describing the particular guard  
6 and if I can, I will report it to one of your court personnel.

7 (Proceedings in the courtroom.)

8 THE COURT: All right, I apologize for the delay. But  
9 I think we are ready to get started now. I believe we  
10 concluded on yesterday with the testimony of, I believe,  
11 Mr. Perez. And I believe we are ready now for your next  
12 witness. Who is that?

13 MR. ATLAS: Your Honor, I call to the stand Donna  
14 Monroe Jones. I had somebody go out in the hall to get her.  
15 Had some problems with weather-induced delay this morning, but  
16 I think most everybody will be here.

17 THE COURT: I understand that. That is why we have to  
18 some extent been delayed. We are still having some weather  
19 problems out there. Hopefully we will have that blow over and  
20 through soon.

21 Please come forward, ma'am. And we will swear  
22 you in.

23 DONNA MONROE JONES

24 Witness called by the petitioner, duly sworn

25 DIRECT EXAMINATION

1 BY MR. ATLAS:

2 Q What is your name, please?

3 A Donna Jones.

4 Q In September and October of 1982, did you have the same  
5 name?

6 A No.

7 Q What was your name at that time?

8 A Donna Monroe.

9 THE COURT: I am sorry?

10 THE WITNESS: Donna Monroe.

11 BY MR. ATLAS:

12 Q Are you the same Donna Monroe who sat on a jury in a  
13 Houston courtroom in early October, 1982 to hear the capital  
14 murder trial of Ricardo Aldape Guerra for the July, 1982 murder  
15 of Houston Police Officer James Harris?

16 A I am.

17 Q Let me direct your attention, Ms. Monroe, to these two  
18 mannequins over to your left. For the record, I am pointing to  
19 state's exhibits 19 and 20. As you can see, they've not  
20 survived the years very well and they are almost comical now  
21 with some of the gashes and missing hair and missing eyelashes  
22 on them. But except for a missing wig on each and a few broken  
23 parts and scratches, do these appear to be the mannequins that  
24 were used in the trial of Mr. Ricardo Aldape Guerra?

25 A Yes.

1 Q Where were they placed during the trial? I realize it  
2 wasn't in this courtroom, but was it on the same side of the  
3 room as the jury or the opposite?

4 A It was the opposite side of the jury.

5 Q Which way were they facing? What were they looking at?

6 A They were facing the jury stand.

7 Q Were they facing the jury during the entire time of the  
8 trial from the moment they were brought into the courtroom and  
9 placed standing across the room?

10 A Yes.

11 Q Were they there all day for every day of testimony?

12 A Yes.

13 Q How did having the mannequins in front of you staring  
14 directly at you make you feel?

15 MR. ZAPALAC: Objection, Your Honor. This is an  
16 attempt to impeach the jury's verdict by going into the thought  
17 processes of the juror and it is totally impermissible.

18 MR. ATLAS: Your Honor, the -- as Your Honor knows --

19 THE COURT: I am not sure it is impeachment of the  
20 verdict.

21 MR. ZAPALAC: Certainly an inquiry into the state of  
22 mind of the jurors and the thought processes of the jurors  
23 during their deliberations.

24 THE COURT: I am not sure that is the question either.  
25 I think the question is how did it make her feel during the

1 course of the trial on a daily basis.

2 MR. ATLAS: Yes, Your Honor, that is certainly what I  
3 intended.

4 THE COURT: Well, if you are asking whether or not  
5 that had -- whether or not there was some feeling during their  
6 attendance at trial, I don't think I would have a problem with  
7 that.

8 MR. ATLAS: I would be happy to restate the question  
9 to make it clear that is what I mean, Your Honor.

10 THE COURT: All right. Overruled.

11 BY MR. ATLAS:

12 Q Ms. Monroe, let me restate the question in light of the  
13 need for clarity. How did having the mannequins in front of  
14 you during the trial staring directly at you make you feel  
15 during the course of the trial?

16 A Very eerie and uncomfortable.

17 Q Why is that?

18 A Well, the one had blood stains on the shirt, and I believe  
19 there was a bullet hole or they showed us where a bullet hole  
20 was. It was very uncomfortable to look at them.

21 Q Was the one with the blood stains and bullet holes the one  
22 wearing the green or the one wearing the purple shirt of the  
23 mannequins in front of you?

24 A That purple shirt.

25 MR. ATLAS: I would like the record to reflect the

1 witness is referring to state's exhibit 20 which is the  
2 mannequin made up to look like Roberto Carrasco Flores.

3 BY MR. ATLAS:

4 Q Now, did you see any uniformed police officers in the  
5 visitor seating area of the courtroom during Mr. Aldape  
6 Guerra's trial?

7 A Yes.

8 Q On the first and last days of the guilt/innocence part of  
9 the trial and on the last day of the sentencing hearing, can  
10 you give me your approximate estimate of about how many  
11 uniformed police officers you observed in the visitor gallery  
12 of the courtroom?

13 A On which days?

14 Q On the first and last days of the guilt/innocence part of  
15 the trial and the last day of the sentencing part of the trial?

16 A I would say 20 to 30.

17 Q Each of those three days?

18 A Yes.

19 Q On other days, were there always at least a few uniformed  
20 police officers present in the courtroom in the gallery area?

21 A Yes.

22 Q Were the members of the jury ever told why so many police  
23 officers were present?

24 A No.

25 Q Do you remember having thought during the course of the

1 trial testimony about what the reason, rationale was for having  
2 the police officers present in the courtroom in those numbers?

3 MR. ZAPALAC: Objection again, Your Honor. I don't  
4 see how we can separate what the juror was thinking during the  
5 trial from what she was thinking during jury deliberations.  
6 And it is still an attempt to get into the thought processes of  
7 the jury during the deliberations.

8 THE COURT: I am going to overrule that.

9 BY MR. ATLAS:

10 Q You may answer, Ms. Monroe.

11 A Would you ask your question again, please?

12 Q Of course. Do you remember during the course of the trial  
13 testimony when all of these police officers were present,  
14 several dozen of them on the first and last days of the  
15 guilt/innocence phase and last day of the sentencing phase, and  
16 several police officers in the uniform in the gallery area  
17 every other day, do you remember having any thought during the  
18 course of the trial testimony about what, in your opinion, the  
19 rationale was for having the police officers present in those  
20 numbers?

21 A It showed solidarity, and maybe to make sure that there was  
22 a guilty conviction.

23 Q Do you remember, Ms. Monroe, seeing pictures of the Officer  
24 Harris's dead body at the morgue during the course of the  
25 trial?

1 A Yes.

2 Q And I am referring for the record to trial exhibits 73  
3 through 77 which are discussed at Volume 23 of the statement of  
4 facts at pages 688 to 691 in the statement of facts which is  
5 the petitioner's exhibit 1. And frankly for the sake of  
6 Ms. Monroe's sensitivity, and frankly for the Court's and ours,  
7 I will not show you those pictures again.

8 Can you describe for me what you thought those  
9 pictures were like when you saw them?

10 A They were gruesome.

11 Q Right after seeing those pictures, do you remember the  
12 trial testimony of Officer Harris's widow?

13 A Yes.

14 Q What do you remember about her testimony?

15 A It was very emotional and upsetting.

16 Q Do you remember her testifying about the last time she said  
17 good-bye to her husband?

18 A Yes.

19 Q How did you react to this testimony as you heard it right  
20 after seeing the pictures of her husband's dead body at the  
21 morgue with a steel rod through the wounds in order to show the  
22 angle of the shots?

23 A I felt bad for her, sorry. It was a terrible thing to have  
24 to go through and a terrible thing for us to have to see.

25 Q Can it fairly be characterized as very emotional testimony

1 and emotional reaction?

2 A Yes, it was.

3 Q During the jury deliberations on whether or not Ricardo  
4 Aldape Guerra was guilty, did any juror comment on Mr. Aldape  
5 Guerra's immigration status?

6 A Yes.

7 MR. ZAPALAC: Objection, Your Honor. This is going  
8 into the jury's deliberative processes.

9 THE COURT: Let's approach the bench just a second,  
10 please.

11 (At the bench)

12 THE COURT: Let's see if we can kind of separate what  
13 is going on here. Let's assume that these jurors testified to  
14 everything that happened back in the jury room and let's assume  
15 that I found in my opinion that there was jury misconduct.  
16 That would not be a basis for granting the writ, would it?

17 MR. ATLAS: If it were an allegation that he was  
18 making that there was juror misconduct. What I am saying is it  
19 seems to me that irrespective as to what happened back in the  
20 jury room, I would have to link that, not to their misconduct,  
21 but prosecutorial or police misconduct, would I not?

22 MR. ZAPALAC: As far as what this hearing is about,  
23 yes.

24 THE COURT: In other words, if this case were being  
25 heard by the judge and we were trying to determine whether or

1 not he was going to grant a new trial, it seems to me that that  
2 would be appropriate, or whether or not there is some basis to  
3 grant some kind of pre writ, and I say pre writ meaning  
4 something that would occur prior to the writ process. But if  
5 what we are attempting to do is determine whether or not there  
6 was prosecutorial misconduct, then it seems to me that I would  
7 need to hear things beyond that that the jury considered.

8 Now, let's assume for purposes of this question  
9 that there was no reference to -- improper reference by the  
10 prosecutors to his alien status. Then it would really have no  
11 bearing at all on my decision. In other words, if the juror's  
12 misconduct was simply stupidity and ignorance, I certainly  
13 can't blame that on the police department or the prosecutors.  
14 But I am not sure where Mr. Atlas was going with this. So I  
15 brought you up to say this. I am not sure whether or not there  
16 was any argument made by the prosecutors during the course of  
17 the trial that relates to this. I do remember generally that  
18 there was a statement at the beginning of the trial, when they  
19 were going through the voir dire process that there was some  
20 statement about not letting this man's alien status bear upon  
21 the jury verdict. I believe that was said. But I don't know  
22 what the closing argument centered on because I haven't read  
23 the closing arguments. I focused primarily on the testimony.

24 My concern is that if there is some inquiry  
25 having to do with closing arguments that would lead the jury to

1 believe that they were permitted to do that, then that is  
2 prosecutorial misconduct, irrespective as to whether the jury  
3 did anything or not. But if they, on their own, went back  
4 there and said ignore the evidence, we are just going to find  
5 this man guilty because we don't like him doesn't mean anything  
6 to me. I am trying to let you understand my thinking.

7 MR. ATLAS: Perhaps I can cut to it by explaining what  
8 my purpose is and what the witness is going to say. Frankly,  
9 we are one question away from the end of my direct. There is  
10 an argument in our laborious petition that during the jury  
11 selection, there were a number of people that ended up on the  
12 jury and a number who didn't, and that the prosecutors engaged  
13 in misconduct by telling those jurors, in effect, while it is  
14 true they couldn't consider Mr. Guerra's alien status, they  
15 couldn't consider that in the basis of guilt/innocence but they  
16 could consider that in the punishment in deciding whether it  
17 was life or death.

18 THE COURT: I did remember seeing that.

19 MR. ATLAS: In response to our argument that was  
20 improper and irrelevant and in fact it was done at the early  
21 stage so the jury was aware of it when they went into the jury  
22 room during the guilt/innocence phase, we argued that there was  
23 simply no conceivable legitimate argument that that was a  
24 relevant factor. The state's response was that illegal aliens  
25 are -- the jury was allowed to consider that illegal aliens are

1 more likely to commit crimes than others. Our response was  
2 generalizing about that and trying to find somebody guilty  
3 because they are a member of the group is not the way the death  
4 penalty applies, and by saying that early on, it affected the  
5 punishment phase.

6 The purpose of saying it is not to prove the  
7 juror misconduct, but to prove the prosecutor's comments hit  
8 home sufficiently such that when they started talking about the  
9 guilt/innocence phase, it was on the minds of the jury. That  
10 is probably as far as I can legitimately take it.

11 THE COURT: Well, that testimony I will permit. But  
12 my concern primarily is my job certainly is to sort of filter  
13 through this and focus on what is appropriate for writ hearing.  
14 It may be argued that I didn't focus on the right thing at the  
15 end by both sides. But the point is that I think it is  
16 important that if that is a line of testimony to be developed,  
17 the only way you generally determine whether or not there is  
18 prosecutorial misconduct sometimes is to look at what the  
19 jurors did and what they said during the course of their  
20 deliberations. Not for the purpose of impeaching the verdict  
21 because that is not why we are here. The question is whether  
22 or not there was something they believed they could focus on a  
23 particular problem, and my question is whether or not that is  
24 an improper focus by the jury and is it related to something  
25 that the prosecutors did that was improper. That is the way I

1 see it. All right, let's proceed.

2 (In open court)

3 THE COURT: All right, gentlemen, let's proceed.

4 BY MR. ATLAS:

5 Q Ms. Monroe, I only have one or two more questions. Since  
6 we got interrupted with objection in the middle of your answer,  
7 let me reask the question just to be sure I understand your  
8 answer.

9 Do you recall during jury deliberations on  
10 whether or not Mr. Aldape Guerra was guilty, whether any juror  
11 commented on his immigration status?

12 A Yes.

13 THE COURT: Is this during the guilt --

14 MR. ATLAS: This is during the guilt/innocence phase,  
15 Your Honor.

16 BY MR. ATLAS:

17 Q Was that your understanding of what my question was,  
18 Ms. Monroe?

19 A Yes.

20 Q We are talking now about, not about whether he gets a life  
21 sentence or the death penalty, but about whether or not he  
22 actually committed the murder.

23 A Yes.

24 Q In other words, whether you all were going to find him  
25 guilty or not. Give me your best recollection of what the

1 juror or jurors said, just what they said.

2 A It was either the fact that he was an illegal Mexican or an  
3 illegal alien. I can't recall exactly the statement, but it  
4 was one of those two.

5 Q And the juror said that -- was it one juror or more than  
6 one, or do you recall?

7 A I can't remember. It was at least one.

8 Q Okay. Now, at least one juror said that even though the  
9 lawyers had specifically explained to you and many of the  
10 jurors not to consider it in the deliberations on guilt?

11 A Yes.

12 MR. ATLAS: Pass the witness, Your Honor.

13 THE COURT: All right. Cross examination.

14 CROSS EXAMINATION

15 BY MR. ZAPALAC:

16 Q Mrs. Jones, did you ever say anything to anyone connected  
17 with the trial, the bailiff, the judge, the district attorneys,  
18 anyone about the presence of the mannequins and that they were  
19 making you feel uncomfortable?

20 A I don't know if I said it to a judge. I know I might have  
21 mentioned it in the jury room among the other jurors.

22 Q But you didn't mention it, say, to the bailiff or anyone  
23 like that?

24 A I can't remember. I don't think so.

25 Q Okay. Did anyone, either from the District Attorney's

1 office, the defense attorneys, the judge ever explain to the  
2 jury why there were police officers present in the courtroom  
3 during the trial?

4 A Would you repeat that again, please?

5 Q Did anyone from the District Attorney's office or the  
6 defense attorneys or the judge ever explain to the jury why  
7 there were sometimes a large number of police officers in the  
8 courtroom?

9 A No.

10 Q Okay. So when you expressed your idea of why there were a  
11 large number of police officers, this was just your assumption  
12 of why they were there?

13 A Yes.

14 Q You testified about the introduction of autopsy pictures of  
15 the victim in this case, Officer Harris. And you described  
16 those pictures as being gruesome. When they were introduced,  
17 were they described as fairly depicting the state of the body  
18 of Officer Harris at the time the pictures were taken?

19 A I don't remember.

20 Q You don't remember that?

21 A No.

22 Q Okay. They did show that he had been shot in the face; is  
23 that correct?

24 A I believe so.

25 Q Okay. Now, do you recall during the deliberations during

1 the guilt and innocence phase of the trial that the jury sent  
2 out notes asking to have some of the testimony of the  
3 identification witnesses reread?

4 A Yes.

5 Q And this was because there was some disagreement among the  
6 jurors as to exactly what these witnesses had testified to?

7 A I believe so. I'm not certain.

8 Q Okay.

9 MR. ZAPALAC: I believe that is all the questions I  
10 have at this time, Your Honor.

11 THE COURT: Anything on redirect?

12 MR. ATLAS: No, Your Honor.

13 THE COURT: You may step down. Thank you very much.

14 And do you want to excuse this witness?

15 MR. ATLAS: Yes, Your Honor, she may be excused.

16 THE COURT: You may be excused.

17 (Witness excused).

18 THE COURT: All right, who is your next witness?

19 MR. ATLAS: If I may have a moment, Your Honor, to  
20 confer.

21 THE COURT: Yes.

22 MR. ATLAS: Your Honor, we think our witness is -- we  
23 know the next witness is being brought in by car and they got  
24 caught up in the rain. We are calling now on a car phone to  
25 find out where they are. We think they are only five minutes

1 away. If I could take just a minute and see what the phone  
2 call is and I will advise.

3 THE COURT: Let's do that. Stand at ease a few  
4 minutes and we'll see.

5 (Pause in proceedings.)

6 MR. ATLAS: Your Honor, I have been advised that the  
7 witnesses in the car are literally about five minutes away.

8 THE COURT: All right.

9 MR. ATLAS: I appreciate the Court's indulgence.

10 THE COURT: We have a motion that we may want to talk  
11 about here at the bench. Where is counsel for the City of  
12 Houston?

13 (At the bench)

14 THE COURT: All right. Are you all in close enough?  
15 Somebody may be able to step in the middle. I believe it is  
16 the City of Houston. What is your name for the record?

17 MR. MC COPPIN: My name is Tom McCoppin. I am a staff  
18 attorney with the police department. I am here on behalf of  
19 Chief Nuchia's custodian. This is Michael Dirden, one of our  
20 other staff attorneys.

21 THE COURT: It is my understanding that the subpoena  
22 has been served on someone there, a duces tecum regarding  
23 records. And I gather it is the personnel file?

24 MR. MC COPPIN: It is the Internal Affairs Division,  
25 Your Honor, which are separate and apart from our personnel

1 records.

2 THE COURT: Yes, it does say Internal Affairs records.  
3 I apologize. I guess in reading it, I got the impression that  
4 was some personnel file having to do with disciplinary action.  
5 But apparently this Internal Affairs record had to do with some  
6 disciplinary action or accusations of discipline against  
7 Sergeant Robert Gatewood.

8 MR. MC COPPIN: That is correct, Your Honor.

9 THE COURT: Did they arise out of this case,  
10 Mr. Atlas?

11 MR. ATLAS: Not specifically, Your Honor. It is our  
12 understanding from newspapers in particular that he was accused  
13 and ultimately convicted of witness tampering.

14 THE COURT: Not in this case?

15 MR. ATLAS: No, in another case. The reason we asked  
16 for it was he was the person -- he appears from the police  
17 records to be the person who escorted Mr. Guerra from the scene  
18 where he was apprehended to the police station, walking through  
19 the area where the people were positioned to see him and then  
20 essentially down, I think down to the line-up.

21 MR. SCHNEIDER: No, he took him into the Homicide,  
22 took his -- three of the statements.

23 THE COURT: So in other words, he came up to, what is  
24 it, the third floor?

25 MR. SCHNEIDER: Up to the third floor.

1 THE COURT: Off the elevators?

2 MR. SCHNEIDER: Down the hallway, through the  
3 witnesses, through to Homicide.

4 THE COURT: Took his statement and took him out.

5 MR. SCHNEIDER: Officer Webber took custody of him at  
6 that point.

7 THE COURT: Let me ask, the prisoners have to use the  
8 same elevators as the public? There are no private elevators?

9 MR. SCHNEIDER: Not at that time.

10 THE COURT: And what is it that you are seeking? It  
11 is simply to determine whether or not, in that case, there was  
12 a finding of witness tampering or not? Or do you already know  
13 the answer to that?

14 MR. SCHNEIDER: See if there was witness tampering  
15 before 1982.

16 THE COURT: 1982. Uh-huh.

17 MR. SCHNEIDER: See what the conduct was before 1982.  
18 The tampering with the witness was in the Ida Delaney case.

19 THE COURT: Was he in that case too?

20 MR. SCHNEIDER: Yes.

21 THE COURT: I thought I remembered that name.

22 MR. SCHNEIDER: And he has now been convicted in  
23 federal court of a drug charge.

24 THE COURT: Was that the guy that was convicted in  
25 judge -- about three weeks ago?

1           MR. SCHNEIDER: A month ago. Sentenced about a month  
2 ago to over 20 years in prison.

3           THE COURT: I remember that. I remember the piece  
4 that came out about that. I didn't remember. And so he is in  
5 federal custody, I gather.

6           MR. SCHNEIDER: Yes. So we are looking at the course  
7 of conduct.

8           THE COURT: Well, let me ask this. Is there any  
9 evidence that Gatewood did any witness -- that he handled any  
10 of the people who gave statements? Is there any reason to  
11 believe that he handled any of the witness statements?

12          MR. ATLAS: His name appears on a number -- I know it  
13 is secondary, I know he appears more than once as a notary and  
14 I am almost certain it appears as a witness.

15          MS. CORNELIUS: I have all the witness statements and  
16 I didn't see any his name on any of the witness statements.

17          MR. ATLAS: I can find it quickly.

18          THE COURT: The reason I asked that, there may be some  
19 reason as to whether or not he has a propensity to make a case.

20                 But the second reason, I would gather what the  
21 scope of any discovery might be. It may be that we don't need  
22 records as much as we need either stipulations or -- or for  
23 example, the ultimate findings as relates to whatever this  
24 witness tampering situation was regarding Sergeant Gatewood.

25                 My other and final concern has to do with whether

1 or not -- let me wait. My other and final concern has to do  
2 with whether or not any of the witnesses who will be testifying  
3 here who gave statements and may have testified at trial are  
4 going to say in any appreciable way that their statements are  
5 materially different than they --

6 MR. ATLAS: Than what they told the police.

7 THE COURT: Than what they told the police at the time  
8 because I believe, if I recollect the records correctly, there  
9 was a series of statements taken around midnight, 12 to 1:00.  
10 Maybe 1 to 2 range. Then there was another series of  
11 statements taken from some other people, either early that  
12 morning, I mean later that morning, 3 or 4:00, or later, of  
13 some of the same people.

14 MR. SCHNEIDER: And there were some statements right  
15 after the line-up also from one or two witnesses.

16 THE COURT: Those may be the ones I am referring to.  
17 And so my concern, and I looked at -- one of the things that  
18 struck me was I looked at Perez's statement on yesterday and it  
19 was a little bit -- the statement sort of contradicts to a  
20 great extent his own testimony in trial as well as here. But  
21 it looked as though he needed to sign it twice. Like something  
22 was added to it and he went back and signed it again at some  
23 other point because he signed it at the bottom where all of the  
24 usual signatures were. Well, whatever order, he may have  
25 signed at the top and then at the bottom. In any event, there

1 are two signatures on the same page on one statement. It may  
2 be they said sign this and he signed in the wrong place. No,  
3 not there and he signed at the bottom.

4 In any event, my question is is there going to be  
5 any testimony that puts this conduct of Gatewood, assuming we  
6 were to say that it is improper conduct, that is going to put  
7 this conduct in a different light than whatever his conduct  
8 was?

9 MR. ATLAS: Yes, Your Honor, we will have more than  
10 one witness, in fact, who gave a statement to the police on a  
11 statement in which Officer Gatewood's name appears. And those  
12 witnesses will testify that what it says in the statement is  
13 not entirely what they told the police and some of the  
14 information on there is dead wrong.

15 THE COURT: Well, I know they can say that now. But  
16 what I am concerned about is whether or not there is any reason  
17 for that happening that they can attribute to Gatewood. I mean  
18 in other words, is their reasoning that they didn't know and  
19 they simply went along, or is their reasoning that they didn't  
20 pay attention, or is their reasoning that they were  
21 intimidated, or is their reasoning that somebody suggested  
22 things? When it all boils out, the question is did they read  
23 the statement and understand what they wrote and was it  
24 important to them at that time? That is what my concern is.

25 MR. ATLAS: Your Honor, I think I may need a moment to

1 look at my notes to be sure I am completely accurate about it.  
2 While none of these witnesses who have Gatewood's name on their  
3 statement attribute to him --

4 THE COURT: They wouldn't necessarily remember him, I  
5 don't guess.

6 MR. ATLAS: They will say, let me say I am a little  
7 uncomfortable right now. You catch me with my --

8 THE COURT: Let me ask this. Who handled Armijo, the  
9 little boy? Who handled him?

10 MR. ATLAS: I can answer that in two seconds, Your  
11 Honor.

12 Officer Gatewood was not present or there is no  
13 indication he was present during the taking of the statement of  
14 the Armijo boy. There were two people we don't have any reason  
15 to believe have any record, certainly not one we are trying to  
16 get.

17 With respect to the witnesses who will testify  
18 after having given statements with Officer Gatewood's name on  
19 their statement, essentially they will say, one will say that  
20 they signed one of the statements because they were tired and  
21 wanted to go home; and the other statement because the police  
22 kept telling them that my client shot the cop and told them to  
23 sign it.

24 The other one will say -- the other one I don't  
25 think we have allegations of any misconduct specifically with

1 respect to their statement.

2 THE COURT: Well, let me ask this. What was the  
3 determination, as best you know, of the Internal Affairs? What  
4 was the result of that? Was there any finding about concerning  
5 witness tampering within the Internal Affairs Division?

6 MR. DIRDEN: We did fire Officer Gatewood.

7 THE COURT: As a result of misconduct?

8 MR. DIRDEN: For what we believe police misconduct.  
9 But the Harris County District Attorney's office declined to  
10 take it. They thought there wasn't enough evidence to take the  
11 case. This was in 1991 which is nine years after the fact.

12 THE COURT: What case did it relate to.

13 MR. DIRDEN: It was the Ida Delaney case. Officer  
14 Gatewood was one of the officers who was allegedly drinking  
15 after hours and there was a witness who would testify that  
16 Gatewood was drinking after hours.

17 THE COURT: I guess what I am concerned about, the  
18 case that that arose out of was a 1987 or '88 case. Whatever  
19 year the Delaney case was.

20 MS. CORNELIUS: '89.

21 THE COURT: It seems to me that is a bit remote.  
22 Unless there is something specific, Mr. Atlas, that you can  
23 tell me that would be in Internal Affairs records associated  
24 with his conduct back in '82, I would not be interested in  
25 ordering the city to produce those documents simply for a

1 review.

2 MR. SCHNEIDER: Would the Court review them in camera?

3 THE COURT: Well, I'm not sure what I would be  
4 reviewing. What you are asking me to do is look at records of  
5 Internal Affairs, I gather, associated with Robert Gatewood.  
6 For what period of time?

7 MR. SCHNEIDER: 1980 through '87 or up to the Ida  
8 Delaney case. We know what his conduct was since '89 through  
9 the present because of that case and his cocaine conviction.  
10 If the Court would look at what the allegations are and see if  
11 there were findings that would relate to the handling of  
12 witnesses, I think that would be relevant for the Court's  
13 consideration. For that time period.

14 THE COURT: I am trying to figure out what the  
15 significance of that would be. Let's assume that I reviewed  
16 those records and I determined that on four or five different  
17 occasions in the past, at least the accusation of witness  
18 tampering had been maintained. That obviously there would  
19 probably be a no finding probably because, you know, either a  
20 letter in the file or whatever. Let's assume that that is what  
21 would be revealed.

22 How would that relate to this case except that  
23 the witnesses who -- the witnesses who would -- who were taken  
24 down and came in contact, let's say, with him, how would that  
25 bear upon any -- bear upon this case at all unless those

1 parties are going to say, the ones that he handled, that  
2 somehow he influenced them to do whatever it is that they did?  
3 And if they said that, it really doesn't matter what his  
4 internal -- what Internal Affairs has said about him as a  
5 person. It seems to me that it bears upon his -- not on his  
6 credibility, on their credibility. And I would be concerned  
7 about their testimony within the context of their statement,  
8 and maybe if we are looking also at their testimony at trial to  
9 see how the testimony at trial related to the statement and  
10 relates now. That to me would be my main concern, it seems to  
11 me, is how they explain their conduct as to explaining  
12 Gatewood's conduct.

13 MR. SCHNEIDER: Like a reverse 404(b). A course of  
14 conduct of the officer and influencing, violating the standard  
15 procedures rules to cause people to influence witnesses'  
16 testimony.

17 THE COURT: I understand. But the fact that they  
18 marched him in front of these people during the course of their  
19 investigation happened. That is undisputed. Now, the question  
20 is what impact did that have upon them? I think their  
21 testimony and the testimony of people like Perez will be able  
22 to tell me that. But that may be a violation, irrespective as  
23 to whether or not Gatewood is a bad egg or was a bad egg or  
24 not.

25 MR. SCHNEIDER: It then goes to the individual

1 statements and testimony of one witness, the one person whose  
2 statement was taken by Gatewood. And it would be the second  
3 statement of Patricia Diaz, right?

4 MR. ATLAS: Uh-huh.

5 MR. SCHNEIDER: And how that related to the line-up  
6 and how it related to her contact with the person that was  
7 taking the second statement.

8 THE COURT: Well, let me ask this. Is there any way  
9 that you can give me a statement or a representation in the  
10 nature of a statement that there are no Internal Affairs  
11 records involving police Sergeant Robert Gatewood bearing upon  
12 his conduct on the question of witness tampering? Is that  
13 something that you can do?

14 MR. DIRDEN: Your Honor, the only issue of witness  
15 tampering in Officer Gatewood's file was in 1988.

16 THE COURT: What was the time frame requested?

17 MR. DIRDEN: They did not request a time frame. From  
18 '80 to '87.

19 THE COURT: Well, let me ask this. Is there any  
20 historical data that you are aware of?

21 MR. DIRDEN: Officer Gatewood was disciplined twice in  
22 one was in 1986 for failure to qualify.

23 THE COURT: Failure to qualify weapons?

24 MR. DIRDEN: Weapons. And the second one is the  
25 witness tampering. That is all the records would reflect.

1 THE COURT: There would be no records to indicate  
2 there were any allegations made.

3 MR. DIRDEN: No, Your Honor.

4 MR. ATLAS: Based on that representation, we are  
5 satisfied.

6 THE COURT: If that is the case, what I am trying to  
7 make sure is we don't have a lot of records brought over to  
8 make that representation. If that representation can be made  
9 and you are making that representation on the record here.

10 MR. DIRDEN: Yes, Your Honor, I am.

11 THE COURT: Then I would be satisfied also that we  
12 have covered that base. All right, so the motion to quash  
13 would be granted then at this point, or at least, unless you  
14 simply want to withdraw it.

15 MR. ATLAS: I think we have to withdraw it, Your  
16 Honor, in light of the representation.

17 THE COURT: Very good. Thank you very much. You all  
18 may be excused.

19 (In open court)

20 MR. ATLAS: Your Honor, I would like to call to the  
21 witness stand Mrs. Herlinda Garcia.

22 THE COURT: Please take the witness stand.

23 You may proceed, Mr. Atlas.

24 HERLINDA GARCIA

25 Witness called by the Petitioner, duly sworn

DIRECT EXAMINATION

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BY MR. ATLAS:

Q What is your name, please?

A Herlinda Garcia.

Q Are you the same Herlinda Garcia who testified in the Houston court in October, 1982 in the capital murder trial of Ricardo Aldape Guerra for the July 13, 1982 murder of Houston Police Officer James Harris?

A Yes.

Q In July, 1982 when Officer Harris was shot, Ms. Garcia, how old were you?

A 14.

Q Where were you at about 10:00 at night on the night of July 13, 1982, just before Officer Harris was shot?

A In my house.

Q Okay. Let me show you a chart we have. Do you recall the address of your house at that time?

A Yes.

Q What was it?

A 4938 Walker.

Q All right. This is a chart we have marked as petitioner's exhibit 13. And it shows 4938 Walker in exactly the middle of the block on the south side of Walker, half way between Edgewood and Rusk. I am sorry, half way between Edgewood and Lenox. Is that your recollection of where the house was back

1 where you lived back then?

2 A Yes.

3 Q Okay. Now, who was with you at the time?

4 A My sister Vira, my husband Johnny and my son.

5 Q All right. Is Vira Elvira Flores?

6 A Yes.

7 Q And your husband Johnny, is that Johnny Reyes Matamoros?

8 A John Reyes Matamoros.

9 Q How old was your son at the time?

10 A Seven months.

11 Q Had anyone been drinking liquor that night, Ms. Garcia?

12 A Yes.

13 Q Who is that?

14 A Johnny and Vira.

15 Q Were either of them particularly drunk at the time just  
16 before the shooting?

17 A Yes.

18 Q Which one?

19 A Vira.

20 Q How about you, had you been drinking that night?

21 A No.

22 Q How come?

23 A I don't drink.

24 Q Okay. In fact, were you pregnant at that time as well?

25 A Yes.

1 Q Now, at some point before the shooting, did any of you  
2 leave your house?

3 A Yes.

4 Q Who did and why?

5 A I did and Vira.

6 Q How come?

7 A Because I wanted to go to the store to go get formula for  
8 my baby and other things.

9 Q And why did Vira come with you? What did she say was the  
10 reason why she wanted to come with you?

11 A She wanted to buy some more beer.

12 Q Okay. Do you remember about how much beer she had to drink  
13 by the time you all left to go to the store?

14 A Like a case.

15 Q A case of beer?

16 A (Witness nods head.)

17 Q All right. Where were you and Vira -- actually, let me  
18 show you a chart that is a blow-up of a chart that we have  
19 marked as petitioner's 12. And just to familiarize you with  
20 what it looks like, Walker is running left to right and  
21 Edgewood is running north and south to where it dead-ends into  
22 Walker. Does this help you put everything into perspective  
23 about where the intersection was and where the cars were?

24 A Yes.

25 Q Okay. Now, if I remember right, your house would be a

1 little bit off to the right side of this chart, right? A  
2 couple of houses down?

3 A It is on the left side.

4 Q I am sorry. No, it would be between Edgewood and Lenox.  
5 Lenox is over on the right side.

6 A If I look this way, it would be on this side.

7 Q You are looking down from Edgewood, you mean?

8 A Yes.

9 Q It would be on the left side this way?

10 A Yes, down that side. Yes.

11 Q All right, so it would be about where my finger is pointing  
12 or at least in that general area?

13 A Yes.

14 Q And for the record, I am pointing in the lower left -- I am  
15 sorry, lower right part of petitioner's exhibit 12 a little to  
16 the east, I guess three houses to the east of the intersection  
17 of Edgewood and Walker.

18 Now, show me on this chart, if you can -- why  
19 don't you tell me, first, where you and Vira were at the time  
20 of the shooting of Officer Harris.

21 A Where were we at?

22 Q Yes. We have already had testimony that the car in which  
23 Mr. Aldape Guerra and Mr. Carrasco Flores had been driving, or  
24 had been riding in anyway, was parked right here, partly in a  
25 driveway where Edgewood dead-ends into Walker.

1 A Yes.

2 Q And that the police officer's car was over on Edgewood a  
3 little bit, about even with the sidewalk on the north side of  
4 the street, okay?

5 A Okay.

6 Q Is that basically consistent with your recollection too?

7 A Yes.

8 Q Now, where were you at the time of the shooting?

9 A On the sidewalk.

10 Q Here is the sidewalk. Can you tell me about where? Were  
11 you to the right or to the left of the car that Mr. Aldape  
12 Guerra had been in?

13 A A little more over there.

14 Q To the right or to the left?

15 A That way.

16 Q Okay. To the right. Right about --

17 A Yes.

18 Q There were two driveways here. Were you in between the  
19 driveways or outside them?

20 A In between.

21 Q Right about where my red light is right now?

22 A Yes.

23 MR. ATLAS: Let the record reflect that the witness is  
24 pointing to the sidewalk in between the driveway in which the  
25 car in which Mr. Aldape Guerra had been riding in and the

1 driveway immediately to the east of it.

2 BY MR. ATLAS:

3 Q Now, before that night, had you ever seen Mr. Carrasco  
4 Flores or Mr. Aldape Guerra before?

5 A No.

6 Q Did you know either of them by name?

7 A No.

8 Q All right. Now, let's -- at the time of the shooting,  
9 could you see where the police officer was standing?

10 A Yes.

11 Q Where was he standing? And let's talk about it in relation  
12 to his car which I've already pointed out to you is right  
13 there. Where was he standing?

14 A The stick that is on that -- if that is a car, the stick  
15 that is on there is like the door of the car.

16 Q Yes, I am sorry. I should have said something like that.  
17 That line that is coming out to the right about two-thirds of  
18 the way from the back of the car is meant to be the driver door  
19 of the police officer's car and the car was facing down towards  
20 the south. Okay?

21 A Yes.

22 Q Now, where was the police officer at the time of the  
23 shooting, if you know?

24 A On the other side of the door.

25 Q By other side, you mean on the south side where my light is

1 now, or on the north side?

2 A On that side.

3 Q On the north side?

4 A Yes.

5 Q Now, where was -- could you see where Mr. Aldape Guerra was  
6 at the time of the shooting?

7 A Yes.

8 Q Where was he?

9 A On that side of the car.

10 Q Which car are we talking about, the police car or the car  
11 he had been riding?

12 A Where he was at at first?

13 Q Where he was at at the time of the shooting?

14 A I know where he was at. He was where the car was at.

15 Q Are you talking about the police car or are you talking  
16 about the car he had been riding in?

17 A The police car.

18 Q Okay. And was he on the side that the driver door was on  
19 on the other side of the car?

20 A The other side.

21 Q Are you saying over here or over here?

22 A Yes, right there.

23 Q Where that red dot is now?

24 A Yes, sir.

25 Q All right. Now, was he --

1 MR. ATLAS: Let the record reflect the witness is  
2 identifying the driver's side of the police car.

3 BY MR. ATLAS:

4 Q Now, was he -- let me see if I can find something we can  
5 use as an example. Let's say this is the police car, using  
6 counsel table, and that this is the driver door.

7 A Yes.

8 Q And you said that the police officer is standing right  
9 behind it? Why don't you stand up, Robert, and we will use  
10 this as a demonstration.

11 Here is the driver door. Where was Mr. Aldape  
12 Guerra on the side of the car?

13 A Right there where you are at on the front of the car.

14 Q How close was he to the car?

15 A Real close.

16 Q Was he facing towards the police officer, towards the car  
17 or some other direction?

18 A Towards the car.

19 Q What posture was he in at the time of the shooting? How --  
20 was he leaning, standing up straight or what?

21 A He was leaning.

22 Q Was he leaning over against the car or away from the car?

23 A He was like this.

24 Q And how did he have his hands at the time?

25 A On top of the hood of the car.

1 Q Did he have anything in his hands?

2 A No.

3 Q All right. Did it look to you like he was in a position  
4 where he had spread out like somebody was going to search him?  
5 Is that what it looked like?

6 A Yes.

7 Q Okay. Now, at the time of the shooting, did you see where  
8 the fellow we now know to be Roberto Carrasco Flores was  
9 standing?

10 A Yes.

11 Q Where was he? Let's look again at petitioner's exhibit 12,  
12 and tell me where he was standing.

13 A He was standing in the front, you know where the door is  
14 at.

15 Q Do you want to come point to where it is on the chart, if  
16 you don't mind. We have got the police officer right here.

17 A He was standing here. The police officer is here in front  
18 of -- this is the door and the police officer is here. That  
19 other man was right here.

20 MR. ATLAS: And let the record reflect the witness is  
21 pointing just to the right and east of the police officer door,  
22 either even with it or perhaps slightly to the north of it.  
23 Looks like just a couple of feet to the east of where she  
24 pointed that the police officer was standing.

25 BY MR. ATLAS:

1 Q Is that correct, if this way is east? You have got the  
2 police officer here, you have got Mr. Carrasco Flores about  
3 there?

4 A Would have been right here.

5 Q He is just, what, a couple of feet away from the police  
6 officer and off to the right on this chart?

7 A Yes.

8 Q And you have got Mr. Aldape Guerra on the south of the  
9 driver door down below it near the front of the police car,  
10 right?

11 A Yes.

12 Q Now, could you tell what posture Mr. Carrasco Flores was in  
13 at the time of the shooting? What -- was he standing straight  
14 up with his hands down to his side? Did he have his hands  
15 behind his back, did he have them in front of him? What was  
16 Mr. Carrasco Flores doing at the time of the shooting, could  
17 you tell?

18 A Yes.

19 Q How was he standing?

20 A His legs kind of spread. He was standing towards the  
21 police officer.

22 Q And could you see his hands and arms?

23 A Yes.

24 Q And how were they -- where were his hands and arms? What  
25 did they look like?

1 A When it happened?

2 Q Yes, at the time of the shooting?

3 A He was putting his hands inside of his pants.

4 Q And what did he do after he did that?

5 A He pulled out something, I don't know what it was.

6 Q All right. And what did he do with his hands after he  
7 pulled out --

8 A He pulled out straight to the police officer like that.

9 Q Pointing at the police officer with both hands clasped  
10 together?

11 A Yes.

12 Q All right. Did it look to you like it was somebody who was  
13 holding a gun about to shoot it?

14 A I seen flames coming out but I didn't see a gun.

15 Q Okay. Just so I can be sure I understand, you are telling  
16 this Court that at the time of the shooting, you saw Roberto  
17 Carrasco Flores a few feet away and to the east of Officer  
18 Harris with his legs spread a little bit, his hands clasped  
19 together pointing out in the direction of Officer Harris, and  
20 you saw flames coming out the front of his hands; is that  
21 right?

22 A Yes.

23 Q What did it look like he was doing, to you?

24 A Like if he was shooting.

25 Q All right. Now, could you see a gun?

1 A No.

2 Q All right. As you heard the shots, did you see what  
3 position Mr. Ricardo Aldape Guerra was standing in?

4 A Yes.

5 Q What position was he standing in?

6 A With his legs spread. And his hands were on the hood of  
7 the car, the police car.

8 Q The same place you told us just a moment ago, on the hood  
9 of the car on the right side, the driver's side?

10 A Yes, on this side. On the front of the car on this side.  
11 Not that side of the door, on this side.

12 Q The same side of the car as the police officer, but in  
13 front of the driver door instead of behind the driver door?

14 A Yes.

15 Q Was he pretty close to the front of the police car?

16 A Yes.

17 Q All right. When I say pretty close, I mean within a foot  
18 or two, do you think?

19 A Yes.

20 Q Now, did you see Mr. Aldape Guerra's face shortly after or  
21 during the time you heard the shots?

22 A Yes.

23 Q What did it look like? What did his face look like? Did  
24 he look happy? Was he grinning, was he scowling?

25 A No, he looked -- he looked real scared.

1 Q After the shots, did you see what either man did next,  
2 either Mr. Carrasco Flores or Mr. Aldape Guerra?

3 A Yes, I did.

4 Q What did they do?

5 A The man that I seen pull out something from his hands that  
6 was in front of the police officer, he ran.

7 Q Okay. And what street did he run down?

8 A He ran down Walker, going towards Lenox.

9 Q So he ran down Walker from Edgewood towards Lenox which is  
10 off to the right on this chart?

11 A Yes.

12 Q Towards the east then, right? If east is to the right,  
13 then he was running down Walker towards the east?

14 A Yes.

15 Q Was he running -- could you tell if he was running on the  
16 north side of Walker or on the south side of Walker?

17 A The north side of Walker.

18 Q The top side on this chart?

19 A Yes.

20 Q Could you see where Mr. Aldape Guerra went after the  
21 shooting?

22 A No.

23 Q Okay. Let me ask you, just so we can keep this clear, if  
24 you would show us -- I have got a copy of what I've marked as  
25 petitioner's exhibit 22 which is a reduced size 8 and a half by

1 11 of petitioner's exhibit 12. And I have marked it 22.

2 Let me ask you to mark for us on this chart --  
3 actually let me get you a pen rather than this Marks-A-Lot.  
4 And let me ask you to put a "P" for the location of the  
5 policeman at the time of the shooting on this chart.

6 A This is the door.

7 Q That is the door. All right. And why don't you put a "CF"  
8 for Carrasco Flores when you saw him with his hands out at the  
9 time of the shooting.

10 All right. And why don't you put an "AG" where  
11 Aldape Guerra was at the time.

12 A AG?

13 Q AG for Aldape Guerra. Okay.

14 A (Witness marks chart.)

15 Q And then you say that after the shooting, Mr. Carrasco  
16 Flores you saw running down the north side of Walker towards  
17 the right?

18 A Yes.

19 Q Let me mark that with an arrow. Without regard to whether  
20 it was in the street or in the ditch or on the sidewalk, he was  
21 running from left to right on the north side of the street?

22 A Yes.

23 Q I am going to make an arrow from left to right and put "CF"  
24 on that. Is that at least generally the right direction and  
25 the right side of the street?

1 A Yes.

2 MR. ATLAS: Your Honor, at this time I would like to  
3 offer into evidence petitioner's exhibit 22. And let me show  
4 it to counsel.

5 Your Honor, let me offer this into evidence as  
6 petitioner's exhibit 22.

7 THE COURT: Objection?

8 MR. ZAPALAC: No objection, Your Honor.

9 THE COURT: Admitted.

10 BY MR. ATLAS:

11 Q All right. Did you see Mr. Carrasco Flores point his gun  
12 and shoot at anybody else, and actually as far as you could  
13 tell, hit anybody else as he was running east down the north  
14 side of Walker?

15 A Yes.

16 Q What did you see?

17 A I seen him running down the street and he shot at my  
18 friend's car.

19 Q Who was your friend?

20 A Jose.

21 Q Mr. Armijo?

22 A Yes.

23 Q Was Jose Armijo, Sr. a friend of yours?

24 A Excuse me?

25 Q Was Jose Armijo, Sr., the man who was shot, as you say by

1 Mr. Carrasco Flores, was he actually a friend of yours?

2 A Yes.

3 Q Was your husband John Matamoros outside in a position where  
4 he could have seen the shooting at the time of the shooting?

5 A Yes.

6 Q Do you know a woman named Hilma Galvan?

7 A Yes.

8 Q Did you know her back then in July, 1982?

9 A Yes.

10 Q Were you close friends?

11 A Well, not close close, but we were friends.

12 Q Okay. Do you remember where she lived in 1982?

13 A Yes.

14 Q Where was that?

15 A Across the street from my house.

16 Q Okay. Let me go back to petitioner's exhibit 13. And you  
17 know I just realized I was pointing to 4938 Rusk and not 4938  
18 Walker. 4938 Walker is on the south side of Walker and it is,  
19 I guess --

20 A The second house is my house. And Miss Galvan's house is  
21 on the other side, across the street is the second house to the  
22 end.

23 Q Let's see if we can get this straight. On petitioner's  
24 exhibit 13, it shows 4938 Walker being the second house away  
25 from Lenox?

1 A Yes.

2 Q And it shows Miss Galvan's house, according to the address  
3 she testified about --

4 A Is right there.

5 Q -- on the north side of the street, the second house away  
6 from Edgewood. Two houses east from Edgewood. Is that your  
7 recollection too?

8 A Yes.

9 Q And where was John Matamoros at the time of the shooting if  
10 you can tell?

11 A In the front of the house of 4938 Walker.

12 Q Okay. Now, could you tell whether Miss Galvan was in front  
13 of her house at the time of the shooting of Officer Harris?

14 A I didn't see Miss Galvan.

15 Q Okay. Later that night in your neighborhood, did you talk  
16 to the police?

17 A Yes.

18 Q Did you tell the police what you had seen?

19 A Yes.

20 Q All right. Were you taken later that night to the police  
21 station for questioning?

22 A Yes.

23 Q Did you hear at some point that night that the man we now  
24 know to be Roberto Carrasco Flores had died?

25 A Yes.

1 Q Where and how did you hear this?

2 A I heard it in the hallway while I was sitting down on a  
3 bench.

4 Q And who did you hear it from?

5 A From Miss Galvan and the other people that were sitting on  
6 the bench with me.

7 Q Was it before or after you gave your information to the  
8 police at the police station in one of the cubicles back behind  
9 in one of the interior offices?

10 A It was before.

11 Q Was that before or after you sat in on the line-up?

12 A Before.

13 Q Let me show you what has been marked as petitioner's  
14 exhibit 16. This is a little very rough schematic of the way  
15 that the police station looked back at that time on the floor  
16 where you people were apparently being kept waiting and then  
17 being questioned. Just for ease of reference, the elevators  
18 were here. I think the line-up generally was over in this  
19 area. There is a long hallway to enter into the area where  
20 Homicide was with offices on either side.

21 Does that generally comport with your  
22 recollection of the way the floor was that night?

23 A Yes.

24 Q Now, where are the benches that you were talking about?

25 They talk about some wooden benches here in the hallway just

1 outside where it says Homicide Division. Were those the  
2 benches or were they someplace else, if you remember?

3 A I don't remember -- but I remember this is like a hall,  
4 instead of benches are right here.

5 Q The hall that is right around the corner from the  
6 elevators?

7 A Yes.

8 Q When Miss Galvan said one of the two men had died, were  
9 there any other people nearby at the time she said it?

10 A Yes.

11 Q Other people from the neighborhood?

12 A Yes.

13 Q Now, while at the station waiting out in the hallway, at  
14 any point that night, did you ever see a man you now know to be  
15 Ricardo Aldape Guerra in handcuffs?

16 A Yes.

17 Q Where were you when you saw him?

18 A In the hall sitting down on the bench.

19 Q Who was with you in the hallway when you saw him?

20 A Other people from the neighborhood and Vira, and Patricia,  
21 my cousin, Johnny, Miss Galvan, Jose.

22 Q All right, let me make sure I understand who you are  
23 talking about. I've got some pictures here. Let me make sure  
24 I have got the right people.

25 First one of -- petitioner's exhibit 20 is a

1 group of pictures of people from the neighborhood. First one  
2 marked F 2034 is Jose Armijo, Jr. Was he out in the hall with  
3 you at the time that you saw Mr. Aldape Guerra in handcuffs?

4 A Yes.

5 Q What about your sister, Vira Flores, of the picture F 2036?

6 A Yes.

7 Q What about Hilma Galvan, the picture marked F 2037?

8 A Yes.

9 Q F 2038 is you, isn't it?

10 A Yes.

11 Q F 2041, who is that?

12 A That is Johnny.

13 Q Your husband John Matamoros?

14 A Yes.

15 Q Was he out in the hall with you at the time too?

16 A Yes. And Patricia Diaz.

17 Q All right. That is F 2035, is that a picture of her?

18 A Yes.

19 Q Do you remember whether -- did you know a fellow named  
20 Frank Perez at the time?

21 A Yes.

22 Q Picture of him is F 2043. Is that what he looked like  
23 then?

24 A Yes.

25 Q Was he out there in the hall with you too, do you remember?

1 A I don't remember.

2 Q Okay. Now, when Mr. Aldape Guerra came out into the  
3 hallway, -- first of all, what direction did he come from? Do  
4 you remember where he came from and where he went to? Was he  
5 brought past you? Was he just at the end of the hallway?

6 A No, he walked past me.

7 Q Okay. Did he go pretty much all the way down the hall?

8 A Yes.

9 Q Were there any police officers escorting him?

10 A Yes.

11 Q Did anyone of your -- the group from the neighborhood you  
12 were sitting with or around say anything about him when you saw  
13 him in handcuffs coming down the hall?

14 A Yes.

15 Q Who did and what did they say?

16 A Well, other people, the other people from the neighborhood  
17 were talking. But Miss Galvan made a remark over the man that  
18 passed by us.

19 Q What did she say?

20 A She said for us to put the blame on the man with the beard  
21 and the mustache that looked like God, and then she did a  
22 remark and called him a mojado.

23 Q What is that word in English?

24 A A wetback.

25 Q Did she say why you ought to blame the man in the beard and

1 the mustache that looked like God, the wetback, for the  
2 shooting of Officer Harris?

3 A Yes.

4 Q What did she say?

5 A She said because the other man died and we should put the  
6 blame on this man because he was from Mexico.

7 Q Now, at the time she said it, were the police officers  
8 escorting Mr. Aldape Guerra close enough that they could have  
9 heard her talking?

10 A They didn't hear her.

11 Q At some point while you were at the station, were you  
12 questioned by the police?

13 A Excuse me?

14 Q At some point while you were at the station that night, at  
15 the police station, were you actually taken back to one of the  
16 cubicles and questioned by some police officers?

17 A Yes.

18 Q Did you tell them what you had seen in the same way that  
19 you've testified about here in the courtroom today?

20 A Yes, sir.

21 Q Did you tell them the -- where Officer Harris and Ricardo,  
22 the man with the beard and the long hair who is now known to be  
23 Ricardo Aldape Guerra, and where the man with the short hair,  
24 now known to be Roberto Carrasco Flores, where they were  
25 standing at the time of the shooting?

1 A Did they ask me?

2 Q Did you tell them? Did you tell the police who were  
3 questioning you at the police station about where those three  
4 men were standing at the time of the shooting?

5 A Yes, I did.

6 Q Did you tell them the same thing you told us here, that  
7 Mr. Carrasco Flores was a little bit to the east of the driver  
8 door of the police car, Officer Harris was a little bit to the  
9 north of it, and Ricardo Aldape Guerra was near the front of  
10 the police car, the south end of the police car with his hands  
11 spread out over the hood?

12 A Yes.

13 Q Did you tell them that you saw Mr. Carrasco Flores at the  
14 time of the shooting standing with his legs spread apart and  
15 his hands clasped together pointing directly at Officer Harris  
16 and then you saw flames coming out of his hands?

17 A I did.

18 Q Now, the police officer you told this to, how did he  
19 respond when you told him that?

20 A How did he respond towards me?

21 Q Yes. When you told him that you saw Roberto Carrasco  
22 Flores, in effect, looking like he was doing the shooting, what  
23 did he say in response to you?

24 A He didn't say anything to me. He just -- when I tried to  
25 explain him who I seen shooting the police officer, he was

1 being real rude to me, scaring me. He told me that, you know,  
2 that he is not the one who shot the police officer.

3 Q And when you say scaring you, what did he say or do that  
4 scared you? What were you scared of?

5 A What was I scared of?

6 Q Uh-huh.

7 A At the time I was scared what had happened and what I seen  
8 and then I tried to explain to him and he scared me over the  
9 reason that he asked me questions about me and my husband and  
10 it scared me.

11 Q What was it about you and your husband and whatever the  
12 police officer said that got you scared?

13 A Because he told me to cooperate -- it scared me because I  
14 was just a kid and my husband was over age and, you know, had  
15 been in trouble and stuff, and he had asked me questions about  
16 it.

17 Q In fact, was your husband on parole at the time?

18 A Yes.

19 Q An you had said he was over age, you mean he was over 18?

20 A Yes.

21 Q And you were under age, you were only 14 at the time?

22 A Yes.

23 Q Did he say anything specifically to you, this police  
24 officer -- after you told him you thought that the short haired  
25 guy was the shooter, did he actually make a comment, say

1 anything specifically about your husband being over age?

2 A Yes.

3 Q What did he say?

4 A He just told me that if I didn't cooperate, that I can get  
5 in trouble and so can my husband.

6 Q Now, after being questioned at the police station that  
7 night, were you asked to sign a document that had been typed up  
8 and prepared by the police.

9 A I was signing -- they told me to sign some papers but I  
10 don't know what they were.

11 Q Ms. Garcia, let me show you a document that we have put a  
12 sticker on that says petitioner's exhibit 23. For the time  
13 being, let me just ask you if that is your signature down in  
14 more or less the lower right-hand corner?

15 A Yes.

16 Q Now, that document up in the upper right-hand corner says  
17 July 14th and 12:17 a.m. Is that about the time you were  
18 questioned that night, the best you can remember?

19 A Yes.

20 Q Did you ask to read this document before you signed it?

21 A For me to read it?

22 Q Yes.

23 A No.

24 Q Why not?

25 A Because I don't know how to read.

1 Q Did you ask the police to read it to you?

2 A Yes.

3 Q Did the police actually read it to you?

4 A No.

5 Q What did they tell you when you asked them to read it to  
6 you?

7 A They shoved it in my face and asked me to sign.

8 Q Why didn't you insist on having it read to you before you  
9 signed it?

10 A I did insist. They didn't want to read it to me.

11 Q What made you decide to go ahead and sign it?

12 A Because he told me that if I didn't cooperate that I can  
13 get in trouble for it.

14 Q Did that scare you?

15 A Yes.

16 Q Did he tell you whether they would leave you alone if you  
17 went ahead and signed it?

18 A They told me if I signed it, they would leave me alone and  
19 I didn't have to deal with this any more. I didn't have to go  
20 to court or anything. Just sign it.

21 Q Did this police officer tell you that that document, if you  
22 signed it, could be used in court or to prosecute the man who  
23 had the long hair and the beard for the murder of the police  
24 officer?

25 A No.

1 Q Now, let me read to you one or two things in your  
2 statement. I know you don't have to follow along since I know  
3 reading is not easy.

4 Do you read any better now than you did in July  
5 of 1982?

6 A Yes.

7 Q Had you attended school at all as of July, 1982?

8 A No.

9 Q Not at all?

10 A No.

11 Q Elementary school?

12 A Yes, I went to elementary school.

13 Q Okay. Were you still in school at the time of the  
14 shooting?

15 A No.

16 Q Okay. How far had you gone in school?

17 A The 7th grade.

18 Q All right. You still after 7 years of schooling were not  
19 able to read a statement like this?

20 A No.

21 Q Okay. Now, your statement in the second paragraph says, in  
22 the -- I guess the third sentence, third line down, half way  
23 down the line, "Both men came out of the car on the driver's  
24 side."

25 Was that accurate?

1 A Excuse me?

2 Q It says that both men, Mr. Carrasco Flores and Mr. Aldape  
3 Guerra, got out of the car they were riding in on the driver's  
4 side. First, one got out of the driver's side and then the  
5 other one got out of the same door?

6 A No, that is not true.

7 Q Did you tell the police officer that that night?

8 A No.

9 Q In the third paragraph, the first sentence says, "Before I  
10 got a chance to move, I saw this guy with the blond hair reach  
11 around in front of his pants, pull out a pistol and shoot the  
12 policeman."

13 And in the paragraph before -- I am sorry, in the  
14 next to the last paragraph on that page, the last sentence  
15 says, "The man that shot the policeman and the man in the red  
16 car had blond hair. He was wearing brown pants and brown shirt  
17 and opened all the way down."

18 I believe -- I can't find it in here, but I  
19 believe you later testified that the man with the blond hair  
20 that you were talking about was Ricardo Aldape Guerra, the guy  
21 with the long hair. Did you tell the police that night that  
22 the man now known as Ricardo Aldape Guerra, that you saw him  
23 reach in the front of his pants and pull out a pistol and shoot  
24 the policeman?

25 A No.

1 Q Was that an accurate statement? Did that happen?

2 A No, that didn't happen.

3 Q Now, did you tell the policeman that night, or are you  
4 pretty sure you told the policeman that night that the man with  
5 the -- let me rephrase that.

6 Did you at any point that night at the police  
7 station ever tell the police that the man with the long hair  
8 was the shooter?

9 A No.

10 Q Did you stay at the police station virtually all night that  
11 night?

12 A Yes.

13 Q At about 6:00 the next morning, were you asked to come and  
14 look at five or six men standing behind a glass in a line-up?

15 A Yes.

16 Q Were there other neighbors from the neighborhood in the  
17 room with you at the time?

18 A Yes.

19 Q Now, was Miss Galvan in the room at the same time?

20 A Yes.

21 Q What about your sister, Vira Flores?

22 A Yes.

23 Q What about Jose Armijo, Jr?

24 A Yes.

25 Q What about Patricia Diaz?

1 A Yes.

2 Q By the way, Ms. Garcia, let me go back to when you saw  
3 Mr. Aldape Guerra being brought down the hall with handcuffs.  
4 Did he have anything on his hands other than handcuffs?

5 A Yes.

6 Q What did he have?

7 A Paper bags.

8 Q Now, let me show you a document, a document that has been  
9 marked petitioner's exhibit 24 and ask you if that looks like  
10 the people who were in the line-up that night during the period  
11 that you saw them? Or actually I guess it was the next morning  
12 since it was about 6:00 the next morning. Does that picture  
13 accurately reflect the line-up at some point during the early  
14 morning line-up?

15 A Yes.

16 MR. ATLAS: Your Honor, at this point, I would like to  
17 offer into evidence petitioner's exhibit 24.

18 THE COURT: Objection?

19 MR. ZAPALAC: No objection, Your Honor.

20 THE COURT: It is admitted.

21 BY MR. ATLAS:

22 Q While watching these five or six men from behind the  
23 window, did anybody from the neighborhood do any talking out  
24 loud?

25 A Yes.

- 1 Q Who did?
- 2 A Miss Galvan.
- 3 Q What did she say? First of all, was she speaking English
- 4 or Spanish, if you remember?
- 5 A I don't remember.
- 6 Q What did she say?
- 7 A She said pick that one, pick that one.
- 8 Q Did she describe which one she meant?
- 9 A Yes.
- 10 Q What did she say?
- 11 A Pick the one with the long hair and the beard that looks
- 12 like God.
- 13 Q Did she refer to him again as a mojado or a wetback?
- 14 A Yes.
- 15 Q Did she say anything to Jose Armijo, Jr. while all of you
- 16 were watching the five or six men behind the two-way glass?
- 17 A Yes.
- 18 Q What did she say?
- 19 A That is the one that shot your dad. That is the one that
- 20 shot your dad.
- 21 Q Did she ever say while you all were watching the line-up
- 22 whether she liked or disliked Mr. Aldape Guerra?
- 23 A She said she didn't like him.
- 24 Q Did she say why?
- 25 A She said because he was from Mexico.

- 1 Q Did she say why she disliked people from Mexico?
- 2 A Yes.
- 3 Q What did she say?
- 4 A Because they just come here to commit crimes and go back.
- 5 Q Now, while you all were talking, were there people from the
- 6 police who were actually in the room, either in uniform or
- 7 plain clothes?
- 8 A Yes.
- 9 Q Were they close enough to have at least heard her talking
- 10 at the time she was saying all this?
- 11 A I don't know whether they were close enough, but they heard
- 12 her talking.
- 13 Q How do you know they heard her talking?
- 14 A Because they kept saying hush and she wouldn't hush.
- 15 Q After you finished the line-up, were you asked to sign
- 16 another document that the police had typed up for you?
- 17 A Another paper?
- 18 Q Yes, another paper.
- 19 A Yes.
- 20 Q Let me show you a document that has been marked as
- 21 petitioner's exhibit 25 and ask you if that is your signature
- 22 in the lower right-hand column, the lower right-hand corner of
- 23 the paper?
- 24 A Yes.
- 25 Q Now, it says in the upper right-hand corner, it has the

1 date July 14th at 6:26 a.m. Was that about the time that you  
2 signed a document prepared by the police after the line-up that  
3 morning?

4 A I don't remember.

5 Q Okay. Was it -- let's say, just accept for the purpose of  
6 talking about it that the line-up ended about 6:15 in the  
7 morning. Was it within the next half an hour after that that  
8 they asked you to sign a document?

9 A No, they hurried up and asked me.

10 Q Okay. Did you read this document before signing it?

11 A No.

12 Q Why not?

13 A Because at the time I didn't know how to read.

14 Q All right. Did you ask the police to read it to you?

15 A Yes.

16 Q Did they?

17 A No.

18 Q Why not?

19 A I don't know.

20 Q Did they tell you -- did they insist again that you sign  
21 this one?

22 A This paper?

23 Q Yes.

24 A Yes, they did.

25 Q All right. Did they tell you what would happen to you if

1 you didn't sign it or didn't cooperate?

2 A Yes, they did.

3 Q What did they tell you?

4 A That I could get in trouble. For me to cooperate. Sign.  
5 They just kept telling me to sign.

6 Q Why did you sign it if you really didn't know what was in  
7 it?

8 A I was scared.

9 Q What were you scared about?

10 A Most scared of what could happen to me and my baby and the  
11 father, Johnny.

12 Q Was John Matamoros the father of your six-month-old baby?

13 A Yes.

14 Q Now, on that document that we've marked as petitioner's  
15 exhibit 25, it says in the fourth line down, "I picked the  
16 number 4 person in the line-up as the subject that shot the  
17 police officer."

18 Now, if you look at petitioner's exhibit 23, that  
19 picture of the line-up, can you tell who the fourth person over  
20 from the left is? If you count them 1, 2, 3, 4, who is the  
21 fourth person from the left on petitioner's exhibit 25? Is  
22 that what Mr. Aldape Guerra looked like at that time?

23 A Yes.

24 Q Did you tell the police?

25 A No.

1 Q Did you tell the police after the line-up that you picked  
2 out Mr. Aldape Guerra as the person who shot the police  
3 officer?

4 A Excuse me?

5 Q Did you tell the police after the line-up that Mr. Aldape  
6 Guerra or the fellow who was number 4 from the left in the  
7 line-up, that he was the one you saw shoot the police officer?

8 A No.

9 Q It says also, three lines from the bottom of that paragraph  
10 in petitioner's exhibit 25, that "I saw this man" referring to  
11 Mr. Aldape Guerra, "shoot the man in the red car."

12 Did you tell the police after the line-up that  
13 you saw Mr. Aldape Guerra shoot Mr. Armijo?

14 A No.

15 Q Was that accurate that Mr. Aldape Guerra had shot  
16 Mr. Armijo? Was that true?

17 A No.

18 Q Okay. Now, at any time during that night while you were at  
19 the police station, did anyone there tell you who you could  
20 talk to about the shooting?

21 A The night that I was at the police station?

22 Q Yes.

23 A They told me not to talk to anybody. They told me not to  
24 talk to the people from the other side, whoever that is.

25 Q Did they specifically refer to Mr. Aldape Guerra's lawyers?

1 A Yes.

2 Q Tell me as best you can remember what the police officer  
3 told you when he said this to you?

4 A He told me that not to talk to the people, the guys from  
5 the other side because I can get in trouble.

6 Q Okay. Did he tell you whether you ought to be willing to  
7 continue talking to the police or representatives of the  
8 District Attorney's Office?

9 A No.

10 Q Did the person who told you this, was it a uniformed police  
11 officer?

12 A No.

13 Q Were they somebody who were with the police force?

14 A Yes.

15 Q How could you tell? Was it clear that there was somebody  
16 who was in authority there that night?

17 A Yes.

18 Q It wasn't somebody from the neighborhood, was it?

19 A No.

20 Q Now, after you got home that morning, did your sister Vira  
21 Flores say anything to you about what she remembered about the  
22 shooting?

23 A Yes.

24 Q What did she tell you?

25 A After everything happened?

1 Q Yes. After you went home, after the line-up, they took up  
2 home. What did she say?

3 A We talked about it and she had told me that she wasn't sure  
4 who did the shooting, you know, and she put the blame on the  
5 guy with the long hair.

6 MS. CORNELIUS: Objection, Your Honor. This is  
7 hearsay.

8 THE COURT: That will be overruled.

9 BY MR. ATLAS:

10 Q Ms. Garcia, on a Saturday, about a week after the shooting,  
11 did you and your sister Vira and Miss Galvan and others meet  
12 several police officers, two of the District Attorney  
13 prosecutors, other investigators and several people from the  
14 neighborhood to sort of re-enact the shooting?

15 A Yes.

16 Q Do you remember when that happened?

17 A Yes.

18 Q Did you tell either of the prosecutors who were there that  
19 morning that the guy with the long hair and the beard now known  
20 to you as Ricardo Aldape Guerra was not the shooter?

21 A Yes.

22 Q Which officer? Did you tell one or the other or both?

23 A I told one.

24 Q Okay. Let me show you a document that has been marked as  
25 petitioner's exhibit 19 which has already been identified as

1 the two mannequins that were at the trial, the way they looked  
2 back then, and on the outside, two prosecutors at the trial.  
3 Do you remember seeing them at the trial?

4 A Yes.

5 Q All right. Does this picture show pretty much what they  
6 looked like at the time of the trial, the two prosecutors?

7 A Yes.

8 Q The same thing for the two mannequins?

9 A Yes.

10 Q Do you remember which of the two prosecutors you told that  
11 Ricardo Aldape Guerra was not the shooter of the police officer  
12 and Mr. Armijo?

13 A Yes.

14 Q Which one was it, the one on the right or the one on the  
15 left?

16 A The one with the blond hair.

17 Q You are pointing to the man on the left?

18 A Yes. This one.

19 MR. ATLAS: Let the record reflect the witness is  
20 pointing to, I believe, Mr. Moen.

21 BY MR. ATLAS:

22 Q Now, when you told this to Mr. Moen that the man with the  
23 long hair and the beard was not the shooter, did he say  
24 anything in response?

25 A Yes, he did.

1 Q What did he say?

2 A He said he is the one that did do the shooting.

3 Q When you say he is the one, who was he referring to? Was  
4 he talking about --

5 A He was talking about this, the one on this side.

6 Q The one with the green shirt with the beard?

7 A Yes.

8 Q The one with the beard and mustache who that night had long  
9 hair?

10 A Yes.

11 Q Who you now know to be Ricardo Aldape Guerra?

12 A Yes.

13 Q Did he tell you whether the other man, Mr. Carrasco Flores,  
14 was still alive or dead?

15 A He said he was dead.

16 Q Now, did you attend a meeting in the prosecutor's office  
17 downtown here in downtown Houston the Saturday before you  
18 testified in October of 1982?

19 A Yes.

20 Q Who was there? Were both prosecutors there, Mr. Bax and  
21 Mr. Moen?

22 A Yes.

23 Q Were there also a number of people from the neighborhood?

24 A Yes.

25 Q Was Miss Galvan there?

1 A Yes.

2 Q What about Jose Armijo, Jr.?

3 A Yes.

4 Q Your sister, Vira Flores?

5 A Yes.

6 Q Were there other people from the neighborhood as well?

7 A Yes.

8 Q At that meeting, were you shown for the first time the  
9 original dummies of -- mannequins of Mr. Aldape Guerra and  
10 Mr. Carrasco Flores, the way they looked at the time of the  
11 trial?

12 A Yes.

13 Q Were you shown any photographs of the two men?

14 A Yes.

15 Q Did either District Attorney say anything while showing you  
16 the photographs?

17 A Yes, did he.

18 Q What did he say?

19 A With the pictures, he kept shoving them in my face telling  
20 me this is the one that shot the police officer and this is the  
21 one that died.

22 Q When he showed you a picture and said this is the one who  
23 shot the police officer, which picture was he pointing to? Was  
24 it a picture of the man with the long hair and the beard or the  
25 picture of the man with the short hair?

- 1 A The picture of the long hair and the beard.
- 2 Q Mr. Aldape Guerra?
- 3 A Yes.
- 4 Q When he showed you a picture and said this is the man who  
5 is dead, which man was he pointing to? Which picture was he  
6 pointing to, the picture of the man with the short hair or the  
7 picture of the man with the long hair?
- 8 A With the short hair.
- 9 Q Let me show you a document -- well, which of the two  
10 prosecutors was it who told you this? Was it the man with the  
11 blond hair or the man with the dark hair and the mustache? I  
12 am going to show you petitioner's exhibit 19 again.
- 13 A The same man, this one.
- 14 Q Still Mr. Moen?
- 15 A Yes.
- 16 Q Did you tell him whether you agreed or disagreed with his  
17 comment that Mr. Aldape Guerra, the man with the long hair and  
18 the beard, had killed the police officer?
- 19 A Yes.
- 20 Q What did you tell him?
- 21 A That he was confused. He got the wrong man, the one that  
22 did the shooting and the one that didn't do the shooting. He  
23 had them confused.
- 24 Q Did you tell him that the man you saw doing the shooting,  
25 or the one you thought had done the shooting based on what you

1 saw, was the man with the short hair?

2 A I told him it was the man with the short hair. He kept  
3 confusing that he wasn't.

4 Q How did he respond when you told him that?

5 A He was just mean about it, telling me that no, trying to  
6 confuse me, telling me which one was which. And I told him no,  
7 it was the one with the short hair that did the shooting.

8 Q Did he show you a copy of one of the two documents that you  
9 had signed that night at the police station?

10 A Yes, he did.

11 Q Do you remember if it was the longer one I showed you or  
12 the shorter one?

13 A I don't remember.

14 Q When he showed it to you, what did he say about it?

15 A He said I already had signed this paper. That I couldn't  
16 change it.

17 Q What did you tell him when he told you that?

18 A I asked him what did I sign? I don't know what it said.

19 Q What was his response?

20 A He just said you just signed it already. You know, it is  
21 too late for you to change anything.

22 Q Now, at trial, Ms. Garcia, you testified that at the  
23 line-up you had picked Mr. Aldape Guerra as the shooter. And  
24 that you were not afraid to testify and that no one had ever  
25 told you what to say. Were those statements accurate when you

1 testified that way at trial?

2 A No.

3 Q Why did you say those things at the trial if they weren't  
4 true?

5 A Because they told me, they kept pressuring me, telling me  
6 that it was too late, that I had signed. I kept telling them  
7 and letting them know that I didn't know what it said. I was  
8 scared.

9 Q Which one kept -- was it one or both of the prosecutors who  
10 kept telling you that?

11 A No, the same man that I just showed you.

12 Q Mr. Moen with blond hair?

13 A Yes.

14 Q And after he kept pressuring you to do this, what was it  
15 that prompted you, in light of all that pressure, to go ahead  
16 and testify about things that really were not accurately  
17 reflecting what you saw? Why were you scared?

18 A Because I was scared what he was telling me about me and  
19 Johnny. I didn't know, you know. I was so young. I was just  
20 scared of it.

21 Q Have you ever spoken to this day to my client, Mr. Aldape  
22 Guerra?

23 A No.

24 Q Now, you and I and at least one other lawyer representing  
25 Mr. Aldape Guerra had spoken together several times, once or so

1 several months ago, and once or twice more recently, haven't  
2 we?

3 A Yes.

4 Q Did we find you or did you find us?

5 A I found you all.

6 Q Other than the visits you've had with us, have you  
7 discussed your testimony with anyone since the end of the  
8 trial?

9 A No.

10 Q In fact, if I remember right, you found us after you heard  
11 we were looking for you, didn't you?

12 A Yes.

13 Q Did I or any lawyer for Mr. Aldape Guerra's team tell you  
14 what to say today?

15 A No.

16 Q Why are you coming forward now with the truth?

17 A Because I seen what happened and I know that he didn't  
18 do -- he didn't shoot the officer or that man. I know that he  
19 didn't do it.

20 Q Are you telling the truth today?

21 A Yes.

22 MR. ATLAS: Pass the witness, Your Honor.

23 THE COURT: Cross examination.

24 MR. ATLAS: Excuse me, Your Honor, if I may retrieve a  
25 pen I left at the witness stand.

1 THE COURT: You may proceed.

2 CROSS EXAMINATION

3 BY MS. CORNELIUS:

4 Q Ms. Garcia, my name is Shirley Cornelius. I don't believe  
5 I have ever met you, have I?

6 A No.

7 Q Well, I am with the Harris County District Attorney's  
8 office.

9 I guess I should start with your testimony at  
10 trial. Well, no, let me back up.

11 Do you recall what officer it was on the evening  
12 of July 13th that took your first statement?

13 A No.

14 Q What did he look like?

15 A I don't remember.

16 Q Was he the same officer that took the second one?

17 A I don't remember.

18 Q Was he white? Was he black? Was he Hispanic?

19 A No, he was white.

20 Q But you don't recall if it is the same officer; is that  
21 correct?

22 A No, I don't remember.

23 Q Would you be surprised to learn that it was two different  
24 police detectives that evening?

25 A Excuse me?

1 Q Would you be surprised to learn that it was two different  
2 police detectives that evening that took your statements?

3 A Would I be surprised?

4 Q Uh-huh.

5 A I don't know. I don't know who they were. I mean I don't  
6 remember. Am I surprised?

7 Q Would it be inconsistent -- well, do you recall that it was  
8 two different detectives that took the two different  
9 statements?

10 A No.

11 Q Does the name Sergeant Anderson ring any bells?

12 A No.

13 Q Does the name Sergeant Yanchak ring any bells?

14 A No.

15 Q Do you recall testifying at trial?

16 A Yes.

17 Q Do you recall that in your testimony at trial, you  
18 identified this defendant as the shooter?

19 A I don't understand.

20 Q Do you recall your testimony at trial in 1982?

21 A Uh-huh. Yes.

22 Q Do you recall that in 1982, at trial, you identified this  
23 defendant as the person you saw shoot the police officer and  
24 then shoot into the red car killing Mr. Armijo?

25 A No.

1 Q You don't recall that testimony?

2 A No.

3 Q Would you like to review it?

4 A I don't understand.

5 Q Do you recall testifying in 1982?

6 A Yes.

7 Q Who did you identify as the person you saw shooting the  
8 police officer in 1982 at trial?

9 A Well, I remember who I identified.

10 Q Who was that?

11 A In the trial?

12 Q In the trial?

13 A Is the guy with the long hair.

14 Q This defendant sitting here; is that correct? Mr. Aldape  
15 Guerra?

16 A Yes.

17 Q Do you recall testifying that you picked out the person in  
18 the number 4 position?

19 A No.

20 Q You don't recall that testimony?

21 A No.

22 Q You are not denying you testified to that, you are just  
23 saying you don't recall the testimony; is that correct?

24 A I don't understand.

25 Q Are you saying that you don't remember your testimony or

1 are you saying that you did not testify to that?

2 A Of the line-up?

3 Q Yes.

4 A Oh, I testified.

5 Q Do you also recall testifying in response to a question by  
6 Mr. Moen that -- excuse me. Do you recall Mr. Moen asking you,  
7 "Okay, have you been afraid to come down here and testify?"

8 Do you recall that question?

9 A Who is Mr. Moen?

10 Q He was the tall blond man that you have accused of forcing  
11 you to testify a certain way. He is the DA.

12 A Okay. What was the question?

13 Q Do you recall Mr. Moen asking you at trial, "Have you been  
14 afraid to come down here and testify?"

15 A I was afraid.

16 Q Well, do you recall your answer was "No, sir"?

17 A No.

18 Q You don't? Would you like to look at it? Would you like  
19 to refresh your memory?

20 MS. CORNELIUS: May I approach the witness, Your  
21 Honor?

22 THE COURT: You may.

23 BY MS. CORNELIUS:

24 Q Now, Ms. Garcia, I understand your reading skills have  
25 drastically improved. Are they improved enough to where you

1 can read this testimony?

2 A Not too well.

3 Q Would you like me to read it to you?

4 A Yes.

5 Q This is on page 461 of Volume 22, line 20.

6 Excuse me. Line 15. This is by Mr. Moen, the  
7 prosecutor. "I mean I want you to tell the ladies and  
8 gentlemen of the jury, Herlinda, and don't be afraid, just  
9 relax, but tell the ladies and gentlemen of the jury how  
10 certain you are in your mind that is the man you saw shoot the  
11 police officer. Do you understand what I am asking you?"

12 Your answer was, "Uh-huh, yes, I am sure."

13 "Okay. Have you been afraid to come down here  
14 and testify?"

15 Your answer. "No, sir."

16 Question. "Have you been scared at all?"

17 Top of the page of 462. Your response. Answer.

18 "No, sir."

19 Do you recall that exchange of testimony?

20 A No.

21 Q Do you recall the defense attorney Candelario Elizondo?

22 A I don't know who that is.

23 Q Okay. Do you recall when Mr. Moen finished questioning  
24 you, another attorney questioned you?

25 A I don't remember.

1 Q You don't remember? Do you remember a Hispanic attorney  
2 questioning you after Mr. Moen, the blond-haired man,  
3 questioned you?

4 A No.

5 Q You don't? You don't remember then your testimony when  
6 Mr. Elizondo led you back through the events of the evening and  
7 you again identified this defendant as the shooter and stated  
8 again you never got a look at the second man?

9 A No, I didn't say that.

10 Q You didn't say that? Are you saying you don't remember  
11 saying it, or that you didn't say it?

12 A I don't remember.

13 Q You don't? Okay. Well, on page 481 of your testimony, do  
14 you recall being asked, "Did you see the man over here by the  
15 front headlight?"

16 "No, I didn't see the other one."

17 Question. "Did you see what he was doing?"

18 Top of the page 482. "I didn't see the other  
19 one."

20 "Do you know if he had anything in his hands?"

21 "No, I didn't see anything of him."

22 "When this man put his hands into his pants,  
23 where was the other man?" Referring to Carrasco Flores.

24 "I don't know. I didn't see him."

25 You don't recall testifying to that?

1 A I didn't say that.

2 Q You didn't say that in the trial?

3 A I didn't say that on that paper.

4 Q I am not referring to the paper. I am referring to your  
5 live testimony at trial.

6 A I don't remember.

7 Q Do you also recall testifying at trial that you didn't --  
8 well, let me back up. Do you recall testifying earlier this  
9 morning that you saw the fire from the gun? Do you recall  
10 testifying to that earlier this morning?

11 MR. ATLAS: Your Honor, I have got to object.

12 THE WITNESS: This morning?

13 MR. ATLAS: That is not an accurate characterization  
14 of the witness' prior testimony. She said earlier this morning  
15 she saw fire coming from his hands, but she didn't see a gun.

16 THE COURT: Restate the question.

17 BY MS. CORNELIUS:

18 Q Do you recall testifying to that, you saw fire coming from  
19 his hands, but that you did not see the gun?

20 A Yes.

21 Q Would you be surprised to find out that you testified  
22 exactly opposite to that at trial? Do you recall testifying  
23 about that at trial?

24 A No.

25 Q You don't? Would you like me to read your testimony to

1 you, maybe refresh your memory?

2 MS. CORNELIUS: May I proceed, Your Honor?

3 THE COURT: You may.

4 BY MS. CORNELIUS:

5 Q On page 480 of Volume 22. "You are not telling this jury  
6 you saw the man with the blond hair and brown pants, brown  
7 shirt shoot the police officer?"

8 "Yes."

9 "With something he had in his hands."

10 Answer. "What else could it have been if not  
11 gunshots?" That is your answer.

12 The question next. "Did you see the fire come  
13 out of the barrel?"

14 Your answer. "No, I didn't."

15 Question. "Because when you saw this, you ran,  
16 right?"

17 Answer. "Uh-huh."

18 Does that refresh your memory any of your  
19 testimony in 1982?

20 A No.

21 Q It doesn't? What elementary school did you attend?

22 A Lantrip Elementary.

23 Q Landrum?

24 A Lantrip.

25 Q Lantrip Elementary. And I believe you testified you went

1 to Jackson Junior High. Do you recall testifying to that?

2 A Yes.

3 Q How far did you get in Jackson Junior High?

4 A The 7th grade.

5 Q I believe you testified the 8th grade at the hearing. Did  
6 you possibly start the 8th grade and then drop out?

7 A Yes.

8 Q Okay. Do you recall testifying at trial in 1982 when  
9 Mr. Elizondo was questioning you, that would be the defense  
10 attorney in 1982, do you recall telling him that you didn't  
11 talk to Mr. Moen or Mr. -- anyone from the state side until the  
12 Saturday before trial?

13 A No.

14 Q You don't recall that testimony?

15 A No.

16 Q Well, let me ask you this. When you've just testified that  
17 Mr. Moen -- that you first told Mr. Moen that Guerra was not  
18 the shooter, where were you when you told him that?

19 A When I told the man?

20 Q Yes.

21 A I was at home.

22 Q You were at home when you told the man that Guerra was not  
23 the shooter, when you told him the first time. Am I correct  
24 that you are testifying that you told Mr. Moen on two different  
25 occasions that Guerra was not the shooter?

1 A I told him when he was showing me the pictures and I told  
2 him out there when he was out there at my neighborhood.

3 Q When he was out in your neighborhood?

4 A Yes.

5 Q At the re-enactment?

6 A Yes.

7 Q Would you be surprised to learn, since you don't remember  
8 your testimony well, that you testified on cross examination  
9 that you never talked to anyone during that re-enactment? You  
10 didn't talk to police officers, you didn't talk to anyone from  
11 the DA's office because they were all talking to other people.  
12 Do you remember that testimony?

13 A No.

14 Q Well, let me read you your testimony from your trial in  
15 1982 and perhaps that will refresh your memory. Volume 22,  
16 page 492. This is the cross examination by Mr. Elizondo.

17 Line 17, question. "And you talked to Mr. Moen  
18 and Mr. Bax about this case, didn't you?"

19 Your answer. "Yes."

20 "You talked to the police about this case, didn't  
21 you?"

22 Your answer. "I didn't talk to no police."

23 Question. "Remember when they had a re-enactment  
24 and they went out -- they went down there about a week and a  
25 half later and they put the two cars where they were according

1 to that diagram? Do you remember that?"

2 Your answer. "Oh, yes."

3 Question. "You talked to the police then, didn't  
4 you?"

5 Answer. "I didn't talk to no police then."

6 Question. "Did anybody talk to you then?"

7 Answer. "They were talking to some other  
8 people."

9 Question. "They didn't talk to you?"

10 Your answer. "They didn't ask me nothing then."

11 Question. "Before you testified today?"

12 Your answer. "They asked me Saturday. Saturday  
13 they talked to me, but there was no police."

14 Does that refresh your memory any about the  
15 re-enactment scene and who you talked to?

16 A Yes, it does.

17 Q Okay. Well, which story is true? Did you talk to people  
18 at the re-enactment or did you not talk to people at the  
19 re-enactment?

20 A I did.

21 Q You did talk to people at the re-enactment?

22 A Yes.

23 Q So when you talked to people in 1982, you lied?

24 A No, I didn't lie.

25 Q Let me rephrase it. When you testified in 1982, you

1 testified inconsistently with what you are saying today?

2 A Because I was scared.

3 Q That is not my answer. Is that correct, you testified  
4 inconsistently with what you said today?

5 A I don't remember.

6 Q You don't remember?

7 Do you recall when Mr. Elizondo -- excuse me, I  
8 know you don't recall Mr. Elizondo. During your testimony in  
9 1982, the record reflects that Mr. Elizondo, who was this  
10 defendant's attorney, questioned you. Now, I understand you  
11 don't recall that; is that correct?

12 A That is correct.

13 Q So then I guess you don't recall when Mr. Elizondo had you  
14 read your statement to refresh your memory; is that correct?

15 A Excuse me?

16 Q I guess you also don't recall when Mr. Elizondo had you  
17 reread your statement to refresh your memory?

18 A I didn't read the statement.

19 Q Is that correct? I am asking you do you recall when  
20 Mr. Elizondo gave you the statement to read?

21 A I remember.

22 Q Uh-huh. What did you do?

23 A I just looked at the paper. I told him I didn't know how  
24 to read. For him to read it.

25 Q You did? Well, would you be surprised to know that the

1 record reflects on page 466 of Volume 22, Mr. Elizondo, when  
2 questioning you and getting an inconsistent statement when you  
3 said I didn't say that, questioned you again and said are you  
4 sure? You said no. Mr. Elizondo then said, "Go ahead and look  
5 at your statement and see if that will refresh your memory,  
6 primarily the last paragraph."

7 "Whereupon the statement was handed to the  
8 witness."

9 The next question by Mr. Elizondo, "Do you recall  
10 now saying or telling the police the color of shirt the man  
11 that you can describe had on?"

12 Your answer then was. "Yes."

13 He then asked, "And what color did you tell the  
14 police?"

15 Answer. "Brown."

16 Do you recall this?

17 A No.

18 Q You don't recall the incident at all; is that correct? You  
19 just don't recall testifying at all?

20 A I recall -- I remember testifying.

21 Q Do you recall this incident in the testimony?

22 A No.

23 Q So you don't recall being handed the statement, is that  
24 correct, and being asked to refresh your memory? Do you recall  
25 that?

1 A No.

2 Q Well, I'm a little confused. You just said not five  
3 minutes ago that during that testimony, you asked Mr. Elizondo  
4 to read it to you because you couldn't read English -- excuse  
5 me, because you couldn't read. Now you are saying you don't  
6 recall at all?

7 A You mean the piece of paper where they had written on  
8 there? I did ask him to read it to me.

9 Q During the testimony?

10 A Yes.

11 Q While you were testifying, you asked him to read it to you?

12 A Yes.

13 Q Ms. Garcia, when you were down at the police station that  
14 night and Detective Anderson -- excuse me, Sergeant Anderson --  
15 well, actually I believe they were detectives back then --  
16 forced you to sign a statement that you could not read, do you  
17 recall that?

18 A Yes.

19 MR. ATLAS: I object to that testimony, Your Honor.  
20 She didn't identify the specific police officer.

21 THE COURT: I sustain.

22 MS. CORNELIUS: Excuse me. I will rephrase it, Judge.

23 BY MS. CORNELIUS:

24 Q The night at the police station, July 13th, the early  
25 morning hours of July 14th, the first statement you signed that

1 you allegedly could not read, when you just testified that the  
2 detective forced you to sign it.

3 A He shoved it in my face and told me to sign.

4 Q Who else was present in the room?

5 A Nobody.

6 Q You don't recall someone there who was a notary?

7 A No, I don't.

8 Q Do you know what a notary is?

9 A No, I don't.

10 Q Do you recall someone there asking you is this -- your  
11 statement true and correct to the best of your knowledge?

12 A No.

13 Q Do you recall the second statement you gave approximately  
14 six hours later after having viewed the line-up?

15 A Do I remember?

16 Q Do you recall signing a second statement?

17 A Yes.

18 Q And you don't recall whether or not it was a different  
19 detective --

20 A No.

21 Q -- who also allegedly forced you to sign a statement you  
22 couldn't read?

23 A No.

24 Q Do you recall the -- another individual being in the room  
25 when you signed the statement?

1 A I don't remember.

2 Q Are you saying you don't remember or you don't -- or there  
3 was no one there?

4 A I don't remember.

5 Q During your testimony in 1982, you certainly had an  
6 opportunity to tell the defense counsel that Mr. Carrasco  
7 Flores was the shooter, didn't you?

8 A I don't understand.

9 Q When you were being questioned, did you ever tell the judge  
10 in that trial you were being forced to testify a certain way?

11 A No.

12 Q Did you tell defense counsel you were being forced to  
13 testify a certain way?

14 A The what?

15 Q Defense counsel?

16 A I don't know who that is.

17 Q Okay. These gentlemen here are defense counsel. In 1982,  
18 this defendant had other counsel, a Mr. Elizondo and a Joe  
19 Hernandez. Do you recall telling them prior to your trial or  
20 even during trial that you were being forced to testify to a  
21 story that was untrue?

22 A Did I tell them?

23 Q Uh-huh.

24 A No, I didn't.

25 Q Did you tell your mother?

- 1 A I don't remember.
- 2 Q Did you tell -- what is your husband's name?
- 3 A Johnny.
- 4 Q Did you tell Johnny?
- 5 A Yes, I did.
- 6 Q Where does Johnny currently reside?
- 7 A Excuse me?
- 8 Q Where does Johnny currently reside?
- 9 A I don't know.
- 10 Q Well, were you present at his trial for capital murder in
- 11 1991?
- 12 A Yes.
- 13 Q Were you there when he received the death penalty?
- 14 A I was there, but I don't know if they gave him the death
- 15 penalty.
- 16 Q Oh, you don't know that. Have you visited him with you
- 17 all's children since he was convicted --
- 18 A No.
- 19 Q -- of capital murder?
- 20 A No.
- 21 Q Do you write to him?
- 22 A No.
- 23 Q Does he write to you?
- 24 A No.
- 25 Q Would you be surprised to learn he resides on death row?

1 A Excuse me?

2 Q Would you be surprised to learn he resides on death row?

3 A I don't know.

4 Q Did you testify in Mr. Matamoros's capital murder trial?

5 A Yes.

6 Q You did?

7 MS. CORNELIUS: I have no further questions, Your  
8 Honor.

9 THE COURT: Redirect.

10 MR. ATLAS: Yes, Your Honor, just a few.

11 REDIRECT EXAMINATION

12 BY MR. ATLAS:

13 Q Ms. Garcia, let me show you one of the statements that  
14 Ms. Cornelius asked you about just a minute ago. This is  
15 petitioner's exhibit 23, one of the two documents that has your  
16 signature on it that I have shown you. Let me point you to a  
17 word in the next to the last paragraph, the last line that has  
18 the letters b-r-o-w-n. Can you read that word?

19 A Yes.

20 Q What does it say?

21 A Brown.

22 Q If Mr. -- if one of my client's lawyers, Ricardo Aldape  
23 Guerra's lawyers, if one of those lawyers at the trial had  
24 asked you to read that word, just that word, if he pointed to  
25 you that word, would you have been able to read that word?

1 A No.

2 Q Okay. Now, you have given a lot of -- you have testified a  
3 good bit this morning about not being able to remember a lot of  
4 the testimony you gave 11 years ago at the trial. If you said  
5 some of the things that Ms. Cornelius described, if you said at  
6 the trial that my client was the shooter and that you weren't  
7 afraid and that you didn't see Carrasco at all that night and  
8 that you didn't see the fire coming from his hands and that you  
9 never talked to anyone at the re-enactment from the DA's  
10 office, and if those things were not correct, why was it that  
11 you testified that way at the trial?

12 A I was scared. They told me I didn't have to testify. They  
13 told me I didn't have to go through this.

14 Q When did they tell you that?

15 A The day I went to the police station.

16 Q And who was it who told you that?

17 A Some police officer. I don't know who he is.

18 Q Okay. So if you testified about these things at the trial,  
19 the reason you testified about things that simply were not  
20 accurate is because you were scared because of what the police  
21 and the District Attorney had told you?

22 A Yes.

23 MR. ATLAS: Pass the witness, Your Honor.

24 THE COURT: Anything else?

25 MS. CORNELIUS: Nothing, Your Honor.

1 THE COURT: I have a couple of questions I need to ask  
2 you, Ms. Garcia.

3 You testified that the blond-haired man that had  
4 a discussion with you about the -- your statements in a room, I  
5 believe you said before the trial, was that at his office or at  
6 some other place? At his office or at some other location? Do  
7 you remember?

8 THE WITNESS: When I --

9 THE COURT: Go ahead.

10 THE WITNESS: Excuse me. Can you tell me again?

11 THE COURT: When you had this conversation with the  
12 blond-haired man about your statement, when he was saying you  
13 can't change your mind, and one is the shooter, and you said  
14 no, the other one is the shooter, do you remember that?

15 THE WITNESS: Yes.

16 THE COURT: Where were you when that occurred?

17 THE WITNESS: At the police station.

18 THE COURT: All right. And was that the night of the  
19 shooting itself, or was this sometime later on?

20 THE WITNESS: I don't remember what day it was. It  
21 was the day that he showed me the pictures.

22 THE COURT: All right. And you believe or remember  
23 that you were at the police station when he showed you these  
24 pictures?

25 THE WITNESS: Yes.

1 THE COURT: Was anybody else in the room with you?

2 THE WITNESS: Not that I remember.

3 THE COURT: When you came down, I believe, on a  
4 Saturday and there were several of you all in the room  
5 together, did they -- did you come down and see these  
6 mannequins on a Saturday along with several other people?

7 THE WITNESS: Yes.

8 THE COURT: Did you have any conversations with the  
9 blond-haired man on that day?

10 THE WITNESS: Yes.

11 THE COURT: And what conversations did you have with  
12 him?

13 THE WITNESS: I kept telling him about the mannequins.

14 THE COURT: All right. And did anybody -- was anybody  
15 in the room able to hear your discussion with him?

16 THE WITNESS: I don't remember.

17 THE COURT: Okay. Do you remember anyone coming up to  
18 you from that -- from the neighborhood that was in that room  
19 saying you are not telling the truth or asking you what is it  
20 that you were talking about with the blond-haired man? Did  
21 anybody ever ask you anything about that that was in the room  
22 with you?

23 THE WITNESS: Not that I remember.

24 THE COURT: When you saw the mannequins -- and you  
25 notice they don't have wigs on here today, did either of the

1 mannequins have a blond wig on?

2 THE WITNESS: No.

3 THE COURT: Did you bring that to the attention of any  
4 of the people that were -- let's say the blond-haired man that  
5 talked to you or anybody else?

6 THE WITNESS: Yes, I told them what I meant about the  
7 blond hair.

8 THE COURT: All right. Now, let me ask you a little  
9 bit about your education and how far you went in school. You  
10 speak English. Have you always spoken English?

11 THE WITNESS: Yes.

12 THE COURT: All right. And you started elementary  
13 school, I think you said at Lantrip or Lanthrum Elementary?

14 THE WITNESS: Yes.

15 THE COURT: And you -- I gather you graduated or --

16 THE WITNESS: Well, my mom kept switching the schools.  
17 So I was going to Lantrip and then I went to Burnet and I  
18 graduated from Burnet Elementary.

19 THE COURT: And when you graduated from Burnet, you  
20 went to Jackson Junior High?

21 THE WITNESS: Yes, sir.

22 THE COURT: Were you ever in any -- I don't know if  
23 this term has ever been told to you, what is called remedial  
24 reading classes? Did you have to take any extra reading  
25 classes when you were in elementary or junior high?

1 THE WITNESS: Yes.

2 THE COURT: And what kind of grades did you make? I  
3 know this seems a little personal but I need to know what kind  
4 of grades you made.

5 THE WITNESS: Well, they were not too good. C's, D's.

6 THE COURT: And have you gone back since you left, I  
7 guess the 7th or 8th grade?

8 THE WITNESS: No, I haven't.

9 THE COURT: You have not gone back to school?

10 THE WITNESS: No.

11 THE COURT: What have you done since then to improve  
12 your ability to read?

13 THE WITNESS: I learned how to read by getting books  
14 and, you know, with a friend.

15 THE COURT: Just on your own?

16 THE WITNESS: Yes.

17 THE COURT: Can you read your statement, I believe  
18 what is it 23?

19 MR. ATLAS: I think it is 25, Your Honor. 23 is the  
20 longer one and 25 is the shorter one.

21 THE COURT: Right, 23 is the one I am concerned about.

22 Can you read your statement today? Can you read  
23 that entire statement that was prepared by the police  
24 department without --

25 THE WITNESS: This one?

1 THE COURT: Hold it up.

2 MR. ATLAS: Your Honor, I will approach the witness.  
3 Ms. Garcia, the Court is referring to number 23. That is this  
4 one.

5 THE COURT: Can you read that today?

6 THE WITNESS: No.

7 THE COURT: You would not be able to read all the  
8 words?

9 THE WITNESS: No.

10 THE COURT: Have you talked to Miss Galvan since the  
11 trial of this case?

12 THE WITNESS: No.

13 THE COURT: Does she still live in the neighborhood?

14 THE WITNESS: Not that I know of.

15 THE COURT: At the same place, I mean, same house?

16 THE WITNESS: No, she doesn't.

17 THE COURT: How long did she stay there after the case  
18 was over, or had she moved before you testified?

19 THE WITNESS: I don't know.

20 THE COURT: Do you still live in the same  
21 neighborhood?

22 THE WITNESS: No.

23 THE COURT: Okay. Do you know where Miss Galvan  
24 lives?

25 THE WITNESS: No.

1 THE COURT: You haven't seen or heard from her in a  
2 long time?

3 THE WITNESS: I don't know where she lives. I haven't  
4 seen her for a long time.

5 THE COURT: When was the last time you saw her that  
6 you remember?

7 THE WITNESS: When all this happened.

8 THE COURT: That was during the trial of the case?

9 THE WITNESS: Yes.

10 THE COURT: All right. That is all I have. You may  
11 step down, ma'am. Thank you very much.

12 MR. ATLAS: Your Honor, this witness can be excused.

13 THE COURT: Any objection?

14 MR. ZAPALAC: No objection, Your Honor.

15 THE COURT: You may be excused, ma'am. Thank you very  
16 much.

17 All right, let's recess until 1:30.

18

19 (Noon recess)

20

21

22

23

24

25

## AFTERNOON SESSION

1:30 p.m.

1 THE COURT: All right, I think we are ready to  
2 proceed, are we not?

3 MR. ATLAS: Yes, Your Honor.

4 May we approach the bench?

5 THE COURT: Yes.

6 (At the bench)

7 MR. ATLAS: Your Honor, my client informed me that the  
8 shoes that have been provided by the officer are too tight. I  
9 brought him a pair from my home through the check-in point  
10 downstairs. The Marshal said something about the people that  
11 brought it, we had to go through a special procedure with the  
12 Marshal's office, he had to put them on there. I don't really  
13 understand this. I have them here in the courtroom and I  
14 wonder if I could have the permission of the Court to provide  
15 them to my client while in the courtroom.

16 THE COURT: If you mean put them on his feet -- well,  
17 we don't have a jury though. I was thinking about the jury. I  
18 have no problem with him taking the shoes off, putting on other  
19 shoes. He should not leave out with them on so they can be  
20 taken up by you. Let the Marshal go x-ray them.

21 MR. ATLAS: They actually did that on the way in this  
22 morning downstairs.

23 THE COURT: But that is not the Marshal doing that.  
24 That is the court security personnel. They have their own  
25

1 procedure. If I need to enter some order, let me know. In the  
2 meantime, if he feels more comfortable, let him do that.

3 MR. ATLAS: I should say on the record, I mentioned  
4 this to you and Mr. Zapalac, I discovered after our in camera  
5 visit this morning that I had erred about one aspect about what  
6 my client told me involving the jail. He misunderstood a  
7 question of mine and said there were TDC guards present when  
8 the pummeling or whatever it was took place. It was actually  
9 someone from the Sheriff's Department that did it. There were  
10 other people present from TDC.

11 THE COURT: I had a call back, and I am glad you  
12 brought that up because I did get a call back from Sheriff  
13 Klevenhagen right about noontime. He indicated to me or  
14 confirmed what the procedure is for them to book a person out  
15 in the morning because he is a federal prisoner and book him  
16 back in in the afternoon. And that if someone, in his words,  
17 failed to do the computer work right, he would remain in a  
18 holding cell which is apparently where he was with no bed that  
19 entire night. But that it would not happen again. That has  
20 been corrected.

21 He also indicated that they gave him a bag lunch,  
22 a sack lunch is what they would normally give prisoners in the  
23 afternoon, I gather, or late people, they consider to be too  
24 late for dinner. I don't know what the dinner hours are. But  
25 you may want to confirm, find out from your client whether or

1 not he received a sack lunch of some sort.

2 MR. ATLAS: I did ask him that question because he  
3 said he had a sandwich given to him this morning but he had  
4 nothing last night after court.

5 THE COURT: What they are claiming occurred, according  
6 to him, did not occur. Or at least what Sheriff Klevenhagen's  
7 records show did not occur.

8 MR. ATLAS: What about the most significant, the first  
9 safety concern?

10 THE COURT: Well, he assured me that he was not aware  
11 of it, no incident reports, which obviously if you are going to  
12 slap somebody, you are not going to write it down. He assured  
13 me that would not happen. What I am going to do is to speak  
14 with the US Marshals and let them know that it is their  
15 responsibility to protect this prisoner while he is here in  
16 court, and if they have to sleep with him, that is their  
17 problem. They better make sure that he is not being  
18 mistreated.

19 The other thing that I think may be important, I  
20 don't know how many state guards are here, but from my  
21 perspective, I don't like to treat these things lightly. I  
22 would want to know from these guards that are here how many of  
23 them are here. They may have people over at the county jail  
24 all the time. In and out all the time. I don't know. But I  
25 would like to know who handled him last night, who put him in

1 his cell, those kinds of things. Somewhere during the course  
2 of this proceeding, we may end up having a little hearing like  
3 that to determine the extent of any handling by these persons  
4 and the extent to which they did or did not witness or  
5 participate in any altercation involving Mr. Guerra.

6 So I just say that because I think it has been  
7 brought to my attention. I don't think I can just say well,  
8 maybe it didn't happen. I think I've got to have a hearing to  
9 determine what, if anything, needs to be done. And it will  
10 also be based upon how he gets treated today also.

11 MR. ATLAS: He did tell me that they seem to send  
12 different people from the TDC down every day or at least the  
13 guards he has seen today from TDC are different.

14 MS. CORNELIUS: I was just going to say that these  
15 guards will be going back to Huntsville tonight.

16 THE COURT: Why are they going back and forth?

17 MS. CORNELIUS: So they don't have to pay the hotel.

18 THE COURT: They get mileage.

19 MS. CORNELIUS: They will be in state cars.

20 MR. ATLAS: And I asked him whether there was anyone  
21 in the courtroom who participated or observed and he said no.

22 THE COURT: Well, I think we can find out who the  
23 other guards were, whether it is through the records that are  
24 kept or not. But I think that can be determined. So if you  
25 want to go ahead and have your client change his shoes, I don't

1 have any problem with doing that so long as when he is -- if he  
2 is going -- when we take a break, and I am not sure what time  
3 we should break this this afternoon, we have got quite a bit of  
4 a problem out there with the weather. May be we should get out  
5 of here 3:30, 4:00 to make sure you all can get home, I guess.  
6 In any event, if he takes a break and goes upstairs, he cannot  
7 wear the shoes upstairs because they would obviously be  
8 offended by that. I want to make sure that we recognize and  
9 respect that procedure.

10 MR. ATLAS: And I will instruct my client.

11 Your Honor, I take it there is not anything we  
12 need to do in terms of subpoenaing the sheriff's records about  
13 who was on duty last night or anything of that nature.

14 THE COURT: Not at this point. And I'm not sure  
15 whether or not -- I mean if you want to do something about  
16 this, you certainly have the right to do something independent  
17 of this proceeding. But my main concern has to do with making  
18 sure that the right people get the message.

19 MR. ATLAS: That is my principal concern by far.

20 THE COURT: Because the other part of it has to do  
21 really with a personal grievance of his own. But I want to  
22 make sure he is not mishandled during this process.

23 (In open court)

24 THE COURT: All right, Mr. Atlas, are you ready to  
25 proceed at this time?

1 MR. ATLAS: Yes, Your Honor. I would like to call as  
2 our first witness for the afternoon, Mr. Sylvan Rodriguez.

3 THE COURT: Please come forward, sir, and we will  
4 swear you in. Raise your right hand at this time, please, sir.  
5 (Witness sworn.)

6 THE COURT: Please be seated. All right, if you would  
7 adjust the microphone.

8 Mr. Atlas, you may proceed.

9 MR. ATLAS: Your Honor, it is my understanding this  
10 witness has considerable experience with microphones.

11 THE COURT: I suspect so.

12 SYLVAN RODRIGUEZ

13 Witness called by Petitioner, duly sworn

14 DIRECT EXAMINATION

15 BY MR. ATLAS:

16 Q State your name, please, sir.

17 A My name is Sylvan Rodriguez.

18 Q Are you the Sylvan Rodriguez who works as a news reporter  
19 on Channel 11, KHOU TV here in Houston?

20 A Yes, I am.

21 Q In July, 1982, were you working as a TV news reporter for  
22 Channel 13, KTRK TV also here in Houston?

23 A Yes, I was.

24 Q Can you give us a rough approximation, Mr. Rodriguez,  
25 approximately how often you have gone to a crime scene as a TV

1 news reporter in your career and interviewed people at the  
2 scene and then filmed a piece for the TV news?

3 A Dozens. Perhaps hundreds of times.

4 Q Let me ask you about the routine, if there is one,  
5 concerning your visits to the crime scene. At any crime scene,  
6 as a routine matter, who would you talk to to obtain  
7 information about the crime?

8 A A primary source of information at a crime scene are the  
9 police officers and witnesses.

10 Q When is -- is there anyone else from the -- as a matter of  
11 practice from the TV station who typically visits with police  
12 officers and the witnesses, at least those who are available  
13 and willing to talk, when a crime scene is being visited by you  
14 or people from the TV station in preparation for doing a piece  
15 for the news?

16 A Typically, on an overnight story especially, a photographer  
17 called a police photographer or street photographer is the  
18 first on the scene from the television station who video tapes  
19 events as they are happening and interviews folks for  
20 information.

21 Q And as a routine matter, who would the photographer talk to  
22 at the scene to obtain information about the crime?

23 A The photographer would talk to both witnesses and police.

24 Q Typically, when an artist sketch of a crime being committed  
25 is shown on the air, on television, typically who directly

1 provides the artist with the information he or she needs about  
2 what happened?

3 A Usually the reporter and the photographer.

4 Q Now, typically, who will be the -- well, let me ask you  
5 this. On -- did you at my request, view a film of a clip that  
6 you were the principal reporter for that purports to be a clip  
7 for the evening news on July 14th, 1982?

8 A Yes, I did.

9 Q Now, assuming that clip is accurately dated on that date,  
10 July 14, 1982, did you film a report from the scene of the  
11 murder of Houston Police Officer James D. Harris?

12 A Yes, we put together the follow-up report.

13 Q By follow-up, you mean you were there the next day? '

14 A That is correct.

15 Q Now, with the Court's permission, I would like to show  
16 you that piece just to make sure we are talking about the same  
17 film, and then follow up with some questions about it.

18 THE COURT: Is this an exhibit number?

19 MR. ATLAS: Yes, Your Honor. I believe it is exhibit  
20 5.

21 THE COURT: Exhibit 5 previously admitted?

22 MR. ATLAS: Yes, Your Honor.

23 THE COURT: All right, you may proceed.

24 (Tape played in open court.)

25 BY MR. ATLAS:

1 Q Mr. Rodriguez, we have already had a stipulation in this  
2 case that that, in fact, is a correct video, an accurate video  
3 of the tape shown on Channel 13 on the evening 6:00 news of  
4 July 14, 1982. So you may accept that as fact for purposes of  
5 this case. Do you specifically recall doing that story?

6 A I do not specifically recall.

7 Q I take it from at least looking at it that you were the  
8 principal reporter on that story?

9 A That is correct.

10 Q All right. Now, would you then have been the person who,  
11 you and the photographer have been the people who gave  
12 information about the crime to the TV station's artist who  
13 sketched these pictures of the person in the green shirt early  
14 in the piece running away, while the person in the dark blue  
15 shirt was shown as shooting Officer Harris and Mr. Armijo?

16 A We would be those, among those who gave information to the  
17 artist.

18 Q Other than the police -- let me back up. I take it that at  
19 least what appears to be on this piece and what is often the  
20 case is that the video camera people go out and shoot the scene  
21 the night of the offense, and then you would go out the next  
22 day to do the follow-up story?

23 A I believe that is what happened in this case.

24 Q Other than the police and Jose Armijo, Jr., the little nine  
25 or ten-year-old boy that you saw being interviewed by you, do

1 you remember whether you talked to any other people to obtain  
2 information about the clothing color and the general appearance  
3 of the shooter and the other man being seen running away in  
4 that piece?

5 A No, I do not recall the specifics.

6 MR. ATLAS: Pass the witness.

7 THE COURT: Cross examination.

8 MR. ZAPALAC: No questions, Your Honor.

9 THE COURT: All right. You may step down, sir. Thank  
10 you very much.

11 MR. ATLAS: Your Honor, this witness may be excused.

12 THE COURT: You may be excused.

13 (Witness excused.)

14 THE COURT: Who is your next witness?

15 MR. ATLAS: Your Honor, at this time I would like to  
16 call Mrs. Linda Hernandez. She is out in the hall. Somebody  
17 is getting her.

18 (Witness sworn.)

19 THE COURT: Please take the witness stand and if you  
20 will adjust the microphone after you sit down.

21 LINDA HERNANDEZ

22 Witness called by Petitioner, duly sworn

23 DIRECT EXAMINATION

24 BY MR. ATLAS:

25 Q What is your name, please?

1 A Linda Armendariz Hernandez.

2 Q Where do you work?

3 A I am a free lance federally certified judicial interpreter  
4 in Spanish.

5 Q Are you both an interpreter and a translator?

6 A Yes, sir.

7 Q Do you do any work of any kind for the Texas Employment  
8 Commission?

9 A I contract my services with Texas Employment Commission  
10 Appeals Division.

11 Q Mrs. Hernandez, could you explain for us the difference  
12 between translating and interpreting?

13 A Yes, sir. Translating is the written word. Interpreting  
14 is the spoken word.

15 Q What languages do you speak?

16 A English and Spanish.

17 Q Do you interpret and translate both ways meaning from  
18 English into Spanish and from Spanish into English?

19 A Yes, sir.

20 Q Are you the same Linda Hernandez who served as the official  
21 interpreter or as one of the official interpreters during the  
22 capital murder trial of Ricardo Aldape Guerra in 1982 in state  
23 court here in Houston?

24 A Yes, sir.

25 Q Would you tell us briefly, Mrs. Hernandez, how you learned

1 Spanish?

2 A This was the first language that I learned at home from my  
3 parents.

4 Q And did they speak Spanish and English in the home or only  
5 Spanish?

6 A Mostly Spanish. Later on as my father learned more of it  
7 and conversed with us more, my mother already knew it, and then  
8 we spoke a lot more English. But mostly always Spanish.

9 Q What type of work did either of your parents do?

10 A My mother had been a school teacher before she married. My  
11 father was a Presbyterian minister, now retired.

12 Q Could you please briefly describe your educational  
13 background, beginning with high school, and tell us about any  
14 formal language training you've had during those years?

15 A I finished high school in Phoenix, Arizona. I took two  
16 years of Spanish there and two years of Latin. And up until  
17 the 12th grade, of course, all the required studies in English.  
18 I went one year to Austin College and I took English again and  
19 Spanish. Years later here in Houston, I again took English and  
20 Spanish again in college.

21 Q Did you attend a college here in Houston?

22 A Houston Community College one year.

23 Q All right. Now, during those years, were you also taking  
24 courses in English, high school and college?

25 A Yes, sir. And I kept up with actually just the avid part

1 of reading and learning anything new.

2 Q Now, could you please describe for us briefly your early  
3 experiences translating from English to Spanish and vice versa  
4 beginning in childhood and continuing only up until you became  
5 regularly involved in court reported -- court-related matters?

6 A I began by helping my father translate some of the  
7 materials that he would receive. I think I was about ten or  
8 12. Of course, it was just as a beginner trying to make him  
9 understand whatever he would receive in English.

10 And of course, because I was bilingual, a lot of  
11 the time whenever anybody -- I could see that anyone wasn't  
12 understanding, I would ask if I could help.

13 When I married and had my children, I became very  
14 active in whatever they were doing, and I was the president of  
15 the PTA and, as such, I brought people to speak to the parents  
16 and I would translate whatever the PTA meetings were about,  
17 whatever the speakers were speaking about.

18 Q From English to Spanish or Spanish to English?

19 A I would do both. And from there I had -- I became, at the  
20 suggestion of one of these people who come to speak to the PT  
21 group, I became a notary. And I, as a result of being a notary  
22 and writing and answering letters both in English and in  
23 Spanish, I began to do a lot of also filling out of immigration  
24 forms. And people began to solicit my services to accompany  
25 them to municipal courts, that being, I think, the only thing

1 at that time that they could afford because it was a one-shot  
2 time and they could afford to pay for the service.

3 Q And were you translating these immigration documents you  
4 were describing?

5 A Yes, I translated all sorts of immigration documents.

6 Q In which direction?

7 A English to Spanish and Spanish to English.

8 Q Okay. How long did you serve as president of the PTA when  
9 you were describing translating -- or interpreting both  
10 directions for these PTA meetings?

11 A I was five times the president of our local PTA there.

12 Q At some point, did you become a notary and begin  
13 translating more legal documents?

14 A Yes, sir. More.

15 Q Now, could you describe briefly your experiences in  
16 interpreting court and deposition testimony?

17 A I had begun doing deposition work a long time before I came  
18 into the state and district courts. And I would also interpret  
19 documents. This is for a number of years before the  
20 interpreter's law was passed and before I became really active  
21 in the state and district courts. But I had been active quite  
22 a long time by then in the municipal courts for people who  
23 would ask me to interpret for them.

24 Q At some point, did you receive any special training to be a  
25 court interpreter?

1 A There was a course given through the University of Houston,  
2 Clear Lake City branch of the U of H. It was an interpreter's  
3 training course. And this was for a -- from about January till  
4 about May. And there were several of us.

5 Q What year?

6 A '79. And we were given certificates after having taken the  
7 training and having passed a test.

8 Q And did you, in fact, pass the test?

9 A Yes, sir.

10 Q How many people took the course and about how many people  
11 ended up receiving their certification?

12 A I am not exactly sure, but it must have been like about 29  
13 who started out. And I think six or seven passed the, what was  
14 called a qualification test from UHCLC.

15 Q And by passing the test, what kind of certification did you  
16 receive?

17 A This was in the consecutive mode.

18 Q I am sorry, I don't understand that. Did you become a  
19 certified interpreter, or was there a designation or name that  
20 you were given by virtue of receiving that certification?

21 A A qualified interpreter.

22 Q Did you at any time become a certified federal court  
23 interpreter?

24 A That same year, the first testing done by the US  
25 Administrative Courts was done here in the city and I took the

1 federal certification, written exam. And then I could take the  
2 oral exam. And upon passing both, I became a federally  
3 certified judiciary interpreter.

4 Q After receiving your certifications in 1979, did you in  
5 fact begin spending time serving as an interpreter in either  
6 state or federal courts?

7 A Yes, sir.

8 Q Did you also begin serving as an interpreter during  
9 depositions for litigation in state and federal courts?

10 A Yes, sir.

11 Q Can you give us some notion, just approximately, about how  
12 often you had interpreted testimony in court on average for the  
13 three, three and a half, four years from when you became a  
14 certified state court interpreter in early 1979 until the  
15 capital murder trial of Ricardo Aldape Guerra in late August of  
16 1982?

17 A Since this is done on a free lance basis and there are  
18 other interpreters that are called as well, I would say between  
19 ten and 15 days per month.

20 Q During that three or four year period?

21 A Yes, sir.

22 Q Now, at some point in the trial of Mr. Aldape Guerra, do  
23 you remember a second court interpreter being brought in by the  
24 district attorneys to interpret for the witnesses?

25 A Yes, sir.

1 Q Now, the record reflects -- and for the Court's and  
2 opposing counsels' benefit, this is Volume 23 at 738. The  
3 record reflects that the very first defense witness who had an  
4 interpreter other than yourself was a man named Jose Heredia.  
5 And that his testimony was interpreted by a gentleman named  
6 Rolf, R-o-l-f, Lentz, L-e-n-t-z. Do you remember Mr. Lentz  
7 interpreting for Mr. Heredia?

8 A Yes, sir.

9 Q Once Mr. Lentz began interpreting for the witnesses, did he  
10 continue interpreting for all the remaining defense witnesses?

11 A Yes, sir.

12 Q And that continued through the end of the trial?

13 A Yes, sir.

14 Q While Mr. Lentz was interpreting for the witnesses who were  
15 testifying from the witness stand, what role did you play, if  
16 any?

17 A I was doing simultaneous for Mr. Guerra, seated at his  
18 side.

19 Q Are you referring to Ricardo Aldape Guerra who is sitting  
20 at the table where I was sitting?

21 A Yes, sir. I was interpreting for him everything that was  
22 being said at the witness stand.

23 Q You were interpreting from the English when a witness spoke  
24 in English so Mr. Aldape Guerra could understand it?

25 A Yes, sir.

1 Q Were you in the courtroom serving as Mr. Aldape Guerra's  
2 interpreter when a 14 or 15-year-old boy named Jose Heredia,  
3 while testifying, was asked by one of the District Attorneys if  
4 he was drunk or smoked anything or thought something was funny?

5 A Yes, sir.

6 Q Do you remember that?

7 A Yes, sir.

8 MR. ATLAS: For the record, Your Honor, that is Volume  
9 23 at page 747, line 22, continuing to page 748, line 5.

10 BY MR. ATLAS:

11 Q At the time that those questions were asked by the  
12 prosecutor of Mr. Heredia, Mrs. Hernandez, could you see  
13 Mr. Heredia while he was sitting on the witness stand?

14 A Yes, sir.

15 Q Had you been able to see him during his entire testimony up  
16 to that point?

17 A Yes, sir.

18 Q Did he appear drunk or on drugs to you?

19 A No, sir.

20 Q Did he laugh at all while testifying?

21 A There was a little while when it became something of a  
22 mirthful situation.

23 Q Could you explain for us what it was that created, as you  
24 called it, this mirthful or humorous situation?

25 A The young man, when he went to sit up at the table, of

1 course, he was very tense. And the gentleman who came up to  
2 interpret began to address him, not as the attorneys were  
3 addressing him Mr. Heredia or Jose, he began to address him  
4 bato and che. And after a while, the young boy thought that  
5 this was funny and he began calling the interpreter back che.

6 Q This was some sort of nickname he was using?

7 A Well, I believe it means something like buddy or hey, guy.  
8 Hey, kid. Hey, you. Something like that.

9 Q All right. Did the interpreter --

10 A Or, you there.

11 Q Did the interpreter engage in any kind of gestures during  
12 this period of time while Mr. Heredia was testifying that  
13 contributed to this humorous situation?

14 A The interpreter had been standing out here in front, and  
15 when he addressed the boy, did something like this  
16 (indicating).

17 And the boy came back with something like this  
18 (indicating).

19 MR. ATLAS: Let the record reflect the witness is  
20 moving her head in some sort of jerky up and down fashion. I  
21 guess that is a fair way to describe it.

22 BY MR. ATLAS:

23 Q Continue.

24 A There was tittering from the audience.

25 Q There was what?

1 A Tittering. T-i-t-t-e-r-i-n-g.

2 Q Okay.

3 A And so that seemed to bring on a response. And the  
4 interpreter again continued to address the boy in the familiar.  
5 And continued to address him as che and was smiling and being  
6 playful with the boy. And the boy began to be smiling and  
7 playful with the man, and so that tension had been broken. But  
8 he seemed -- my perception was that he seemed as though to be  
9 playing to the audience.

10 Q Now, do you recall the approximate age of Mr. Heredia when  
11 he testified?

12 A He was a young boy.

13 Q 14, 15?

14 A I don't think he was over 15.

15 Q Now, while doing this, engaging in these familiar -- use of  
16 familiar words and these gestures you described, was the  
17 interpreter standing in a position where he was -- appeared to  
18 be visible to the prosecution's table?

19 A Yes, sir.

20 Q Were there -- other than responding to the interpreter, did  
21 Mr. Heredia do anything to cause the laughter among people in  
22 the audience that you could see?

23 A Not that I could see.

24 Q Do you remember one of the district attorneys in closing  
25 described Mr. Heredia as Rip van Winkle from Sleepy Hollow in

1 his closing argument and claimed that Mr. Heredia was probably  
2 under the influence of alcohol or drugs?

3 A Yes, sir.

4 MR. ATLAS: For the record, Your Honor, that is Volume  
5 25 at page 981 in petitioner's exhibit 1.

6 BY MR. ATLAS:

7 Q Had you seen anything, Mrs. Hernandez, in Mr. Heredia's  
8 demeanor on conduct as he testified to justify the comment in  
9 closing argument that Mr. Heredia looked like he was on drugs  
10 or alcohol, anything whatsoever?

11 A I wasn't as close as the prosecutors were, but I could not  
12 see anything.

13 Q Did you think you could see Mr. Heredia reasonably well as  
14 he was testifying?

15 A Yes, I think he was as far away as you are right now from  
16 where I was sitting at the table.

17 Q Did you wear glasses at that time?

18 A Yes, sir.

19 Q Were you wearing glasses during the trial?

20 A Yes, sir.

21 Q In your opinion, do you have an opinion about whether this  
22 Mr. Lentz that replaced you as the court interpreter at the  
23 trial did a competent job? First of all, do you have an  
24 opinion one way or the other?

25 A Yes.

1 Q What is that opinion?

2 A I felt that there was a lack of professionalism.

3 Q Did that lack of professionalism translate into any -- into  
4 any interpreting errors during the course of his interpreting  
5 the witnesses' questions -- I am sorry the prosecution's  
6 questions and the witnesses' answers?

7 A I think I would have to say that more than a lack of  
8 professionalism, it may have been a lack of having worked in a  
9 criminal trial setting. But I don't know.

10 Q Other than the use of familiar names and theatrical  
11 gestures, was there anything else, was there any kind of  
12 mistakes in interpreting that the interpreter made reflecting  
13 this lack of professionalism as you described?

14 A Yes, sir.

15 Q Can you describe for me in general categories the types of  
16 mistakes that he made?

17 A I believe that some of these errors in interpreting may  
18 have been a lack of understanding.

19 Q All right. Well, let me be a little clearer. I am sorry,  
20 my question wasn't clear.

21 A Okay.

22 Q Did, for example, the interpreter fail to interpret for the  
23 witnesses, or some witnesses some parts of the questions that  
24 were posed to them by the lawyers?

25 A Yes, sir.

1 Q Did the interpreter fail to interpret into English some  
2 parts of the answers given in Spanish by one or more witnesses?

3 A Yes, sir.

4 Q Did the interpreter ever add words in the Spanish  
5 interpretation for the witnesses that were not contained in the  
6 English questions that came from the lawyers?

7 A Yes, sir.

8 Q Did the interpreter add words sometimes to the English  
9 interpretations of the questions that were not contained in  
10 the -- I am sorry.

11 Did the interpreter on occasion add words to the  
12 English interpretations that were not contained in the answers  
13 given in Spanish by the witnesses?

14 A Yes, sir.

15 Q Did the interpreter on occasion misinterpret the question?

16 A Yes, sir.

17 Q And did the interpreter on occasion misinterpret the  
18 answer?

19 A Yes, sir.

20 Q What was your best estimate of how many of these errors you  
21 observed? Just a ballpark.

22 A Ballpark?

23 Q Yes.

24 A Oh, 70.

25 Q 70?

1 A 74.

2 Q Literally dozens and dozens of them?

3 A I would say dozens.

4 Q Did these errors result on occasion in changing the meaning  
5 of the questions and the answers?

6 A Inevitably.

7 Q I am sorry, I didn't hear you.

8 A Inevitably.

9 Q Let me show you a passage in the testimony from the trial.  
10 And I am going to refer to Volume 24 at page 833 beginning at  
11 line 17. Testimony from Mr. Jose Luis Torres Luna. And let me  
12 show you on page 833, line 12. The question was. "Isn't it in  
13 fact true, yes or no --" this is from the prosecutor, "that you  
14 told the police the night Antonio --" meaning Mr. Carrasco "was  
15 shot that you weren't at your house when the police officer was  
16 killed? Yes or no? Did you make the statement or did you  
17 not?"

18 And the answer beginning at line 17 as it is  
19 interpreted and appears in the official statement of facts  
20 says, "I don't remember. You see, I don't understand you very  
21 well, what you are trying to say."

22 Do you remember Mr. Torres Luna saying something  
23 like that when he testified? He was one of the witnesses, just  
24 to refresh your recollection, who heard -- who testified that  
25 Mr. Carrasco Flores came running into the apartment where

1 Mr. Torres Luna and Mr. Aldape Guerra lived and confessed to  
2 the murder of the police officer. Do you remember that  
3 question and answer generally from Mr. Torres Luna and the  
4 prosecutor?

5 A I remember that, yes.

6 Q Based on your observation of that testimony and the answer  
7 that Mr. Torres Luna gave to that question in Spanish, did you  
8 remember thinking whether it was properly interpreted from  
9 Mr. Torres Luna's answer in Spanish to what appears there on  
10 the written page?

11 A I believe that when he answered, he said I don't  
12 understand. You see, I don't understand you very well, what  
13 you are trying to say.

14 Q Well, it says here, I don't remember. Are you saying that  
15 those words were an incorrect interpretation of what he said?

16 A I believe that was one of the correct -- misinterpret --  
17 correct, that was one of the misinterpretations.

18 Q Now, based on your observation of that testimony, what  
19 seemed to be the problem that the interpreter was having?

20 A As I understood it, the interpreter was a person from  
21 another country who spoke a much different level of Spanish.  
22 And the man that was on the witness stand at that time was one  
23 of these people that had very little education and knew only a  
24 very common type of Spanish.

25 Q Now, did Mr. Lentz have the same problem with other

1 witnesses of interpreting their answer in a way that, in  
2 effect, seemed to change the meaning of what they said?

3 A Yes, sir. Would you like one example that I can think of?  
4 That I thought was --

5 Q Yes.

6 A I thought was a little funny?

7 Q All right, ma'am. Go ahead.

8 A When a witness, I forget which, was giving the -- giving  
9 the description of the car that Mr. Aldape and Mr. Flores had  
10 been in, he had said that it was a black car with a red top, I  
11 believe, or the other way around. Red top on a black car. And  
12 the interpreter said a red rear end.

13 Q Let me make sure I understand that. The witness said that  
14 he saw a red top on a black car and the interpreter said --  
15 interpreted that to be that there was a red rear end?

16 A A black car with a red rear end.

17 Q I see. All right, ma'am.

18 MR. ATLAS: Pass the witness, Your Honor.

19 THE COURT: Mr. Zapalac.

20 CROSS EXAMINATION

21 BY MR. ZAPALAC:

22 Q Mrs. Hernandez, what is required in order to be certified  
23 as an interpreter in state court in Texas?

24 A There is no certification for state courts in Texas at all,  
25 period.

1 Q How does a person become an interpreter for state court?

2 A You go into any one of the courts or into all of the courts  
3 and you tell them that you are an interpreter and you give them  
4 your name and you give them your telephone number.

5 Q And there is no kind of testing that is done to certify  
6 that the person actually is able to interpret from one language  
7 to another?

8 A Texas has no such certification.

9 Q Okay. Are interpreters assigned to any particular court in  
10 the state court system?

11 A I don't know right now because I have not been working in  
12 state or district courts for approximately the last seven  
13 years. I had heard that they were going to start a system of  
14 assigning interpreters, but I don't know whether that has ever  
15 been done or not.

16 Q Okay. In 1982, that was not the case that interpreters  
17 were assigned to a particular court?

18 A No, sir.

19 Q Do you recall who Mr. Guerra's attorneys were during this  
20 trial?

21 A Yes, sir.

22 Q And who were they?

23 A They were Candelario Elizondo and Jose Luis Hernandez.

24 Q And they are both Hispanic?

25 A Yes, sir.

1 Q Are you familiar with them personally?

2 A I know them.

3 Q Do you know whether they understand Spanish?

4 A I would say that Mr. Jose Luis Hernandez understands a  
5 little more of the -- a very common low-grade Spanish. I would  
6 say that Candelario Elizondo is even more limited.

7 Q Okay. Did you ever bring to the Court's attention any of  
8 the errors that you have spoken about in the interpreter's  
9 interpretations of questions and answers?

10 A No, sir.

11 Q Okay.

12 MR. ZAPALAC: No further questions.

13 THE COURT: All right. Anything on redirect.

14 MR. ATLAS: Pass the witness, Your Honor.

15 THE COURT: You may step down. Thank you very much.

16 Do you want to excuse this witness?

17 MR. ATLAS: Yes, Your Honor.

18 THE COURT: You may be excused.

19 (Witness excused)

20 THE COURT: Who is your next witness?

21 MR. ATLAS: Your Honor, we next call Elena Gonzales  
22 Holguin.

23 Your Honor, we will need an interpreter for this  
24 witness.

25 THE COURT: All right, have her to raise her right

1 hand, please.

2 (Witness sworn through the interpreter.)

3 THE WITNESS: I swear.

4 THE COURT: Please take the witness stand.

5 All right, you may proceed.

6 Let me just instruct counsel on both sides that  
7 in the process of asking these questions, make sure your  
8 questions are short and to the point and not spend 300 words  
9 making one question. All right. Let's proceed.

10 ELENA GONZALES HOLGUIN

11 Witness called by Petitioner, duly sworn through the interpreter,  
12 testified through the interpreter as follows

13 DIRECT EXAMINATION

14 BY MR. ATLAS:

15 Q What is your name, please?

16 A Elena Gonzales Holguin.

17 Q Are you the same Elena Gonzales Holguin who testified in a  
18 Houston court in the October, 1982 capital murder trial here in  
19 Houston?

20 A Yes, sir.

21 Q And that was the trial of Ricardo Aldape Guerra for the  
22 July 13, 1982 murder of Houston Police Officer James Harris?

23 A Yes, sir.

24 Q Where were you at about 10 p.m. on the night of July 13th,  
25 1982 when Officer Harris was shot?

1 A In my house.

2 Q And do you remember the address of that house?

3 A Yes, sir.

4 Q You testified, I believe, that it was 4938 Rusk. Is that  
5 correct?

6 A Yes, sir.

7 Q At the time of the murder of Officer Harris in July, 1982,  
8 how long had you lived at that house?

9 A About three months. At that house, I had about three  
10 months.

11 Q Before that, where did you live?

12 A At 307 Dumble.

13 Q Let me show you what has been marked as petitioner's  
14 exhibit 13. This is a sky view of the neighborhood which shows  
15 Walker, Rusk, Dumble, Edgewood, Lenox and other streets.

16 This shows that 4938 Rusk is on the south side of  
17 Rusk between Edgewood and Lenox. Is that correct?

18 A That is correct, yes.

19 Q Now, where did you live -- before you lived on Rusk, you  
20 said you lived on Dumble?

21 A At Dumble, yes.

22 Q Where was it on Dumble in relationship to the corner of  
23 Dumble and Rusk?

24 A It was the corner of Dumble and Rusk.

25 Q Let me point to several corners and ask you if you know

1 which one it was. Was it this corner?

2 A It was Dumble on the left side and Rusk on the right side.

3 Q I see. So Dumble is over here on the left and Rusk is on  
4 the right?

5 A And my house had an exit on Rusk and an exit on Dumble.

6 Q Is it one of the houses over on this side of Dumble that I  
7 am indicating now?

8 A Yes.

9 MR. ATLAS: And let the record reflect I was showing  
10 the west side of Dumble.

11 BY MR. ATLAS:

12 Q And was that between the streets of Rusk and Walker?

13 A Rusk and Walker? No. Dumble and Rusk.

14 Q No, but I mean you were on Dumble. What was the street  
15 just above you and just below you? When you walk out on  
16 Dumble --

17 A On one side Walker and the other side Rusk.

18 Q Now, that appears to be directly catty-corner from 4907  
19 Rusk which we know from the trial was the location of the house  
20 where Mr. Aldape Guerra and other people lived?

21 A In front of my house on Rusk.

22 Q Is that where they lived, in front of your house on Rusk?

23 A Yes, they lived there.

24 Q Did you know Mr. Aldape Guerra before July 13, 1982?

25 A Yes, I used to see him there in that house.

1 Q Would you see him inside the house or outside the house?

2 A Outside on the yard.

3 Q What was he like?

4 A Very peaceful and shy young man who didn't mess with  
5 anybody.

6 Q Was he a friendly person, in your opinion?

7 A Yes.

8 Q Had you ever been around the man whose name we now use as  
9 Roberto Carrasco Flores who looked like this mannequin with the  
10 purple shirt, only he had hair?

11 A Yes.

12 Q What was he like?

13 A Very violent. He used to come in a car burning tires.

14 Q Did you ever see him using a gun outside or holding a gun  
15 outside?

16 A On one occasion, he was drinking and he shot. It was  
17 pretty late.

18 Q Now, how are you related to Jose and Armando Heredia?

19 A They are my sons.

20 Q Where does Armando, your son, live now?

21 A In Chicago.

22 Q Now, let me ask you about the night of the shooting of the  
23 police officer. Shortly after that shooting the night of July  
24 13th, 1982, did you join your sons outside near the  
25 intersection of Edgewood and Walker?

1 A Yes, because after I heard the shots, one of my sons came  
2 to tell me, he was very surprised, very scared and he told me  
3 that they had killed a policeman.

4 Q You didn't actually see the shooting yourself, did you?

5 A No, sir. No, sir.

6 Q Now, during the half hour after you joined your sons at the  
7 intersection of Edgewood and Walker, did you hear anyone there  
8 trying to convince people that Ricardo Aldape Guerra was the  
9 killer?

10 A When I went out there, I stood next to the policeman who  
11 was still dying, and at that time, Miss Galvan came out saying  
12 that it was -- it had been Ricardo Aldape who had shot the  
13 policeman.

14 Q Let me show you a document from petitioner's exhibit 20, a  
15 document marked F 2037. Is that Miss Galvan?

16 A Yes, sir.

17 Q At the time, did you -- strike that.

18 And the same exhibit, number number F 2040, is  
19 that you?

20 A Yes, that is me.

21 Q And in the same exhibit, who is the person pictured in  
22 F 2039?

23 A Armando, my son.

24 Q And I don't seem to have a picture of Jose.

25 A No, Jose -- Jose is not in any picture there.

1 Q Now, tell me as best you can recall the words that Miss  
2 Galvan used -- let me back up.

3 Who was Miss Galvan talking to when she talked  
4 about Ricardo Aldape Guerra being the killer?

5 A With Jose, my son. With Armando. And with the son of Jose  
6 Armijo, the other one they killed.

7 Q Let me show you a picture from petitioner's exhibit 20 of a  
8 picture marked F 2034. Is that the son of Jose Armijo you are  
9 referring to?

10 A Yes, the one who was with him in the car at the time of the  
11 accident when he got killed.

12 Q Now, his name was Jose Armijo, Jr., do you remember that?

13 A Junior, yes.

14 Q Now, you said that Miss Galvan was talking to your two  
15 sons, Jose and Armando, and to Jose Armijo, Jr. out near the  
16 intersection that night, right?

17 A Yes. Yes.

18 Q Can you give me your best recollection of what Miss Galvan  
19 told them about the shooting?

20 A Telling them, trying to convince them to say that it had  
21 been Ricardo, the man who had shot, and not Carrasco.

22 Q She was trying to convince them to say that Ricardo Aldape  
23 Guerra was the shooter and not the other man Carrasco Flores?

24 A Yes. Yes. And not Carrasco.

25 Q Did Jose Armijo, Jr. say anything in response after she

1 said that?

2 A That he didn't remember because his dad had pushed him to  
3 the floor of the car so the bullets wouldn't hit them.

4 Q When you say he didn't remember, were those his words he  
5 didn't remember or that he didn't see it, or was it something  
6 else?

7 A Yes. Yes. No, that he didn't know anything because my dad  
8 pushed me down so the bullets wouldn't hit me.

9 Q Did your son Jose Heredia say anything in response to Miss  
10 Galvan's effort to persuade him to say that Aldape Guerra was  
11 the shooter?

12 A Yes. They argued quite a lot because he told her that he  
13 had been near the car when Ricardo was being searched and the  
14 other young man had come and shot the policeman.

15 Q Did the police at the crime scene ask you if you had seen  
16 the shooting?

17 A Yes. That if I knew anything. I told him that I had  
18 arrived late because my son had come to tell me.

19 Q So you told the police at the intersection that you had not  
20 seen the shooting; is that right?

21 A That I hadn't seen anything, and he kept insisting.

22 Q What did the policeman say when you told him you hadn't  
23 seen anything?

24 A That I should try to remember. And he yelled at me and he  
25 told me that I had the right to help in the investigation, and

1 I told him that that was his job, that he should do the  
2 investigation.

3 Q When you say he told you that you had the right to help in  
4 the investigation, you mean that you had the duty to help?

5 A Yes, the duty.

6 Q Now, after this policeman got angry with you, what did he  
7 do with you?

8 A He got angry. He handcuffed me and he threw me inside a  
9 patrol car.

10 Q And then did he take you to the police station?

11 A No, at one time, somebody came and told him that I knew  
12 where the car had come from, so they came and told me that I  
13 should cooperate and tell them where the car had come from.

14 Q Eventually after you did that, did they take you down to  
15 the police station that night?

16 A Yes. Yes.

17 Q Did you tell the police at the police station -- strike  
18 that. At the police station, were you questioned by the  
19 police?

20 A Yes.

21 Q Did you tell them that you had not seen the shooting?

22 A The same I had told them at the house there where the  
23 accident occurred.

24 Q Now, did the police at the police station ask you if you  
25 knew Mr. Aldape Guerra?

1 A Yes.

2 Q How did they ask? What did they say, the best you can  
3 remember?

4 A If I was sure that I hadn't seen any of the shooting, and I  
5 told them no.

6 Q Did any of the police there questioning you say anything  
7 about who they thought had been the shooter?

8 A They were talking among them, but I was scared and nervous  
9 and I remember some things, I don't remember others.

10 Q Do you remember any of the police officers saying whether  
11 Mr. Aldape Guerra or Mr. Carrasco Flores had been the shooter  
12 of the police officer at Edgewood and Walker?

13 A No.

14 Q Now, after being questioned there, were you asked to sign a  
15 document that was typed up and prepared by the police?

16 A Yes, sir.

17 Q Let me hand you a document that has been marked as  
18 petitioner's exhibit 26, Mrs. Holguin, and ask you if this is  
19 your signature on the bottom of each of the two pages on this  
20 document?

21 A Yes, sir. Yes. Yes, sir, it is my handwriting.

22 Q Does that appear to you to be a document that you signed  
23 while at the police station early in the morning on July 14th,  
24 1982?

25 A Yes, sir, that is my signature.

1 MR. ATLAS: Your Honor, this is a document, for ease  
2 of reference, that is actually already a part of petitioner's  
3 exhibit 4. It has document numbers F 88 and 89 on it. And at  
4 this time, I would offer petitioner's exhibit 26 into evidence.

5 MR. ZAPALAC: No objection, Your Honor.

6 THE COURT: Admitted.

7 BY MR. ATLAS:

8 Q Mrs. Holguin, at the top right-hand side of that in the  
9 first page of exhibit 26, it says that -- it is dated July 14th  
10 and it says 1:30 a.m. Do you see that?

11 A Yes.

12 Q As best you recall, is that about the time you were  
13 questioned by the police at the police station that night?

14 A Yes. Yes, sir.

15 Q Did you read that document before you signed it?

16 A No, sir, because I don't know how to read English and  
17 nobody read to it me.

18 Q Mrs. Holguin, how long did you attend school, primary and  
19 secondary school?

20 A One year of primary school and about six months of the  
21 second year of primary school. That is all.

22 Q And was that school in the United States or in Mexico?

23 A In Mexico. In Mexico.

24 Q Were there any police officers at the police station that  
25 night who could speak Spanish?

- 1 A Yes, sir.
- 2 Q Did anyone translate that statement out loud to you in
- 3 Spanish before you signed it?
- 4 A No, sir.
- 5 Q Mrs. Holguin, if you couldn't read it and no one translated
- 6 it for you, when you signed it, did you have any idea what it
- 7 said?
- 8 A No, sir.
- 9 Q If you didn't know what it said, why did you sign it?
- 10 A Because of ignorance, I was very tired and very surprised
- 11 because I had never been in trouble like that. I didn't know.
- 12 Q Had you ever been arrested before that night?
- 13 A No, sir.
- 14 Q Did the fact that they had arrested you and brought you in
- 15 handcuffs to the police station, did that make you nervous when
- 16 you got to the station?
- 17 A Quite.
- 18 Q What did -- did the police tell you what you should do when
- 19 he gave you the statement?
- 20 A No, he only told me, sign here. And I signed.
- 21 Q Did you ask him if he would have somebody translate it for
- 22 you or interpret -- translate it for you?
- 23 A No, sir. I didn't ask for anything. I only signed. I was
- 24 very scared.
- 25 Q Did the police officer who asked you to sign it, had he

1    been talking to you in Spanish?

2    A    No, sir.

3    Q    Did the police officer who took the information from you  
4    when they questioned you speak to you in Spanish?

5    A    Yes, sir.

6    Q    At the bottom of the first page of petitioner's exhibit 26,  
7    it says in the last paragraph, actually the printed page, "I  
8    have completed two years of school/college and can read and  
9    write the English language."

10                   Was that a true statement at that time?

11   A    No, nobody asked me anything about that. How was I going  
12   to lie? I don't know any English.

13   Q    How long did you stay at the police station that night?

14   A    Till about 6 in the morning.

15   Q    At about 6 the next morning, were you asked to look at five  
16   or six men standing behind a glass two-way mirror in a line-up?

17   A    Yes.

18   Q    Does petitioner's exhibit 24 look like it is a picture of  
19   the people taken during the line-up?

20   A    Yes.

21   Q    Does that look like the six men who were behind the two-way  
22   window standing there in the line-up?

23   A    Yes. Yes, sir.

24   Q    When you went into the line-up room to sit there and watch  
25   those men behind the window, did you already know that Carrasco

1 had been shot and killed?

2 A Yes.

3 Q How did you hear?

4 A Because the car where they had me in handcuffs was parked  
5 on Dumble near where the shooting had occurred and everybody  
6 was saying, they killed Carrasco. They killed Carrasco.

7 Q Who else was in the -- now, do you remember them actually  
8 using the name Carrasco or were they using one of his other  
9 names like Antonio or Tony or something like that?

10 A No. Carrasco.

11 Q Was it the police saying that?

12 A The policemen and other people who were there because there  
13 were a lot of people at the time of the shooting.

14 Q The reason that that confuses me is that the police didn't  
15 know that that was his name yet and most of the people who  
16 lived in that area didn't know that was his name either until  
17 later on that night. So are you fairly certain they were  
18 referring to him by the name Carrasco out there at the  
19 intersection?

20 A Yes. Yes.

21 Q Let's go back to the line-up now. You are sitting there in  
22 a room watching these six men behind a two-way window. Do you  
23 remember that?

24 A Yes.

25 Q While you were in that room, was Miss Galvan in the same

1 room?

2 A Yes, sir.

3 Q What about your two sons, Armando and Jose?

4 A Yes, also.

5 Q And what about Jose Armijo, Jr., was he there in the room  
6 at the same time as well?

7 A Yes.

8 Q And were there five or six other neighbors from the  
9 neighborhood in the room at the same time with you?

10 A Yes. Yes, there were more there.

11 Q Were there also several detectives in plain clothes in the  
12 room with you at the time?

13 A Yes, sir. Yes, in there.

14 Q While watching these five or six men behind the two-way  
15 window, Mrs. Holguin, did anyone from the neighborhood talk out  
16 loud?

17 A Miss Galvan.

18 Q Who was she talking to?

19 A To Armando and Jose. She was telling them, that is the  
20 one, that is the one. And she was pointing to Ricardo.

21 Q Ricardo Aldape Guerra?

22 A Yes.

23 Q Now, when you say she was talking to Armando and Jose, are  
24 you talking about Armando, your son?

25 A Yes.

1 Q And was she talking to your son Jose Heredia or to Jose  
2 Armijo?

3 A Heredia.

4 Q Was she also talking to Jose Armijo, Jr.?

5 A Yes, advising them to say that it was him.

6 Q You are testifying that Miss Galvan was telling your two  
7 sons and Jose Armijo, Jr. to say that Ricardo Aldape Guerra was  
8 the shooter?

9 A Yes, and she pointed him in the line-up.

10 Q Now, when she said that, did your son Jose Heredia say  
11 anything back to her?

12 A Yes. That it wasn't him because he was the one that the  
13 policeman was searching who had his hands over the car and that  
14 he couldn't have been. That it must have been the other one.

15 Q Now, did your son Jose Heredia say anything to Miss Galvan  
16 at that point about where she was at the time of the shooting?

17 A Yes.

18 Q What did he say?

19 A He argued with her. He said you couldn't have seen it well  
20 because you were inside the house.

21 Q And did Miss Galvan say anything in return?

22 A Yes, she got angry. She said you say what I am telling  
23 you. There is nothing to lose because he is a damn wetback.

24 Q When Miss Galvan said to say that it was Mr. Aldape Guerra  
25 who was the shooter, did Jose Armijo, Jr., the little nine or

1 ten-year-old boy say anything to her?

2 A That he couldn't identify him because he hadn't seen  
3 anything.

4 Q Little Jose Armijo, Jr. said in response to Miss Galvan  
5 that he didn't know who the shooter was because he hadn't seen  
6 anything? Is that your testimony?

7 A That he hadn't seen anything. His dad had pushed him down  
8 and he hadn't seen anything.

9 Q Now, did -- when Miss Galvan said that the boys, your two  
10 sons and Jose Armijo, Jr. ought to say that Mr. Aldape Guerra  
11 was the shooter, were the police close enough to hear her  
12 talking, the plain clothes detectives?

13 A Yes, there were policemen around near us.

14 Q And did the police at any time while she was talking in the  
15 line-up room ever try to get her to stop talking?

16 A To keep silent and she stopped for a while and then she  
17 started right away because she liked to talk.

18 Q After telling her to be quiet again, did the police ever  
19 tell her to be quiet because she started talking a second time  
20 in the line-up?

21 A Yes, they told her to keep silent again.

22 Q Told her more than one time or just one time?

23 A Two, about two times.

24 Q And after they told her the second time, did she finally  
25 stop talking?

1 A A little and then she started again in English and in  
2 Spanish; to the ones who knew English, in English; to the ones  
3 who spoke Spanish, in Spanish.

4 Q In July, 1982, did you know Hilma Galvan very well?

5 A I had known her for about five years.

6 Q At that time, did you know her reputation in the  
7 neighborhood for telling the truth?

8 A Yes. That she liked to lie a lot and mostly against  
9 illegals because she didn't like them.

10 Q You are telling me that Hilma Galvan had expressed her  
11 views before about not liking wetbacks from Mexico, as she  
12 called them?

13 A Yes, several times.

14 Q Did she explain at any one of these times why she didn't  
15 like undocumented workers from Mexico?

16 A Yes, because they only came to the states looking for  
17 trouble and to take jobs away from the American citizens.

18 Q How long did you live on Dumble across the street from the  
19 house where -- well, strike that.

20 How long did you live at 313 Dumble or whatever  
21 that address was?

22 A Six years.

23 Q Beginning -- and you moved away just a month or so, a month  
24 or two before the shooting of the police officer in July, 1982?

25 A Yes. About May, I moved there because they were going to

1 fix the apartment where I lived.

2 Q All right. So do I understand then you were living on  
3 Dumble catty-corner from where Mr. Aldape Guerra lived from  
4 about 1976 to mid 1982?

5 A Yes. In '75. 1975 until '82.

6 Q Okay. 1975 to 1982 is about seven years. How long after  
7 that did you live at 4938 Rusk?

8 A Four months only.

9 Q After you left the house at 4938 Rusk, where did you live?

10 A On Walker. Walker.

11 Q Near what street?

12 A Across the street from Miss Galvan's house, across the  
13 corner where the policeman died.

14 Q So near the intersection of Edgewood and Walker?

15 A Yes.

16 Q How long did you live in that house?

17 A One year.

18 Q So for about eight years at least, starting in 1975 and  
19 continuing through 1983, you lived in the general neighborhood,  
20 within a couple of blocks at least of where the police officer  
21 had been shot and killed at Edgewood and Walker; is that right?

22 A Yes. Yes, sir.

23 Q Now and that was eight or nine years in a row then in that  
24 neighborhood?

25 A Yes, sir.

1 Q What year did you move away from the neighborhood?

2 A In '84.

3 Q Did you recently drive by the corner of Edgewood and Walker  
4 at my request?

5 A Yes.

6 Q Did you notice the location of the street signs at the  
7 northeast and the northwest corner of Edgewood and Walker?

8 A Yes. Yes, I saw where they were.

9 Q Did you notice that the street sign on the northeast corner  
10 is a concrete sign with the names of the two streets on it?

11 A Yes, with the name of the street and the number.

12 Q And did you also notice that on the northwest corner, there  
13 was a street sign with the green sign and white letters, one  
14 that said Edgewood and one that said Walker?

15 A Yes, sir.

16 Q Now, Mrs. Holguin, you just said that you lived in that  
17 neighborhood for eight or nine years from 1975 to 1984.

18 A Yes, sir. Yes, sir.

19 Q From what you saw when you visited the neighborhood  
20 recently, have those signs, the two street signs at the  
21 northeast and northwest corner of Edgewood and Walker been  
22 moved at all since July, 1982?

23 A No, sir.

24 Q Since the night of his arrest in July, 1982, have you  
25 spoken at all to Mr. Aldape Guerra?

1 A No, sir.

2 Q When was the last time you spoke about the shooting of the  
3 police officer to Vira Flores or Linda Garcia or anyone else  
4 that was out near the intersection on the night of the  
5 shooting?

6 A Who are they?

7 Q I am sorry, let me rephrase the question then. When was  
8 the last time you talked to anybody who was out there the night  
9 of the shooting about the shooting itself? Has it been many  
10 years?

11 A I haven't seen anybody since the shooting. I haven't seen  
12 anybody again.

13 Q And I assume you've had a couple of conversations with your  
14 son Jose and maybe Armando, right, about the shooting?

15 A Well, yes, whenever we heard on the news something about  
16 Ricardo, we made comments, but just my sons and I.

17 Q Now, I've met with you a couple of times, haven't I,  
18 Mrs. Holguin?

19 A Yes.

20 Q And in fact, at least one other lawyer for Mr. Aldape  
21 Guerra has met with you on a couple of occasions as well,  
22 hasn't he?

23 A Yes, a lady lawyer, about two years ago.

24 Q All right. Did any of the lawyers who said they were  
25 working for Mr. Aldape Guerra tell you what to testify about

1 today, tell you what you should say?

2 A No. No, sir. Nobody has advised me.

3 Q Now, did we find you or did you find us?

4 A No, they found me.

5 MR. ATLAS: Your Honor, if I may confer one moment.

6 THE COURT: Sure.

7 MR. ATLAS: Your Honor, I will pass the witness.

8 THE COURT: Cross examination.

9 CROSS EXAMINATION

10 BY MR. ZAPALAC:

11 Q Mrs. Holguin, I have just a few questions for you. You  
12 testified earlier that you had heard Miss Galvan saying that  
13 Ricardo Guerra had been the one who had shot the police  
14 officer, and that you had heard her saying this at the  
15 intersection while the police officer was still on the ground;  
16 is that correct?

17 A Yes.

18 Q Okay. Do you know about what time it was that Miss Galvan  
19 was making these statements?

20 A About 10 minutes till 10 that night. It was -- the  
21 shooting was about 9:30 and it was after that. About 10 till  
22 10.

23 Q Okay. And did Miss Galvan at that time -- out at the scene  
24 where Officer Harris was killed, did she at that time say why  
25 it was that she thought that it was Mr. Guerra had killed the

1 police officer?

2 A No, just because she didn't say what the motive was. She  
3 only said that he was, that he was.

4 Q She was telling people that she had seen him -- she had  
5 seen Mr. Guerra kill the police officer?

6 A She was telling them, but it wasn't true because she was  
7 inside her house.

8 Q Okay. But she was telling people that at any rate?

9 A Without being the truth, but because she didn't see  
10 anything, she was inside her house during the shooting.

11 Q Okay. Now, your sons were also present at the time that  
12 Miss Galvan was saying that it was Guerra who had killed the  
13 police officer?

14 A Yes. Yes.

15 Q And your sons were also present at the line-up when Miss  
16 Galvan was making the same comments?

17 A Yes.

18 Q Okay. Now, you have also testified that you spoke with a  
19 police officer about what you knew about the killing; is that  
20 correct?

21 A Yes, what I had seen, that they had come to tell me and I  
22 went out to where the shooting had occurred to see what  
23 happened.

24 Q And was the police officer you were speaking with speaking  
25 to you in Spanish or in English?

1 A In Spanish. No, in Spanish.

2 Q Okay. And what sorts of things was he asking you?

3 A If I had seen who had shot the officer. I told him that I  
4 hadn't seen, that I was inside the house, and when my son Jose  
5 came to tell me I went out of the house to see.

6 Q Now, you also said that he got angry with you and  
7 threatened you. Is that correct?

8 A Yes, he yelled at me real loud and -- because I told him  
9 that I didn't know anything and he told me, don't you know that  
10 you have the obligation to help the police in this case?

11 Q Did he make any threats to you if you didn't cooperate?

12 A No, he didn't threaten me. But when I answer him, I said  
13 you are the law, you have the obligation to clarify the crime.  
14 I don't know anything.

15 Q Okay. What did he do after you made that statement?

16 A He handcuffed me and he pushed me towards the car.

17 Q Okay. And then you were taken downtown to the police  
18 station?

19 A Yes. Yes, sir. Barefooted and in my shorts because he  
20 didn't let me go to my house to get any shoes.

21 Q When you gave your statement at the police station, was  
22 this -- was it given to the same officer that you had talked to  
23 out at the scene of the murder?

24 A Yes. The same, yes.

25 MR. ATLAS: Your Honor, forgive me for interrupting.

1 I waited until I thought I wouldn't be interrupting  
2 Mr. Zapalac's flow. At this time I would like to ask about how  
3 long we will be going today because I need to know whether to  
4 bring another witness in. I would be happy to do it. They are  
5 waiting standing by. I didn't want to do it if we were going  
6 to stop soon.

7 THE COURT: I haven't looked outside at the weather.  
8 I didn't know where the witness was coming from. Where are  
9 they coming from?

10 MR. ATLAS: About two or three miles away. Not far.

11 THE COURT: Why don't we go ahead and work. We will  
12 take a break in a few minutes, hopefully after this witness,  
13 and then we will work to about 5. I think we are going to be  
14 taking off tomorrow anyway.

15 MR. ATLAS: Yes, Your Honor.

16 THE COURT: I am sorry, go ahead, Mr. Zapalac.

17 MR. ZAPALAC: Thank you, Your Honor.

18 BY MR. ZAPALAC:

19 Q When you were giving your statement to the police officer  
20 at the police station, did he just ask you what you knew or did  
21 he ask you questions?

22 A He only made questions because when the police arrived, I  
23 was standing next to the officer. And perhaps that is why they  
24 thought that I knew something.

25 Q Okay. When you were at the police station, did the

1 policeman just ask you to tell your story, or did he ask you  
2 specific questions?

3 A To tell what had happened, how had things happened.

4 Q Okay. At the time that the statement was finished and  
5 typed up, did the police officer ask you to read it?

6 A No, sir.

7 Q Did he offer to read the statement for you?

8 A No, sir. He only told me sign here, and I signed.

9 Q Have you read the statement that you gave to the policeman  
10 at the police station since you gave that statement?

11 A No, sir.

12 Q Or have you had that statement read to you by anyone?

13 A The lawyer asked me if that was my statement and, yes, he  
14 asked me why had I signed it without reading it.

15 Q And what lawyer had asked you -- which lawyer was it who  
16 asked you about your statement?

17 A He was the only one. Only he.

18 Q Okay.

19 A He only asked me if it had been read to me like you are  
20 asking and I told him no.

21 Q Did any of the attorneys at Mr. Guerra's trial ask you  
22 about your statement?

23 A No.

24 Q Do you recall testifying at Mr. Guerra's trial?

25 A Yes.

1 MR. ZAPALAC: May I approach the witness, Your Honor?

2 THE COURT: You may.

3 BY MR. ZAPALAC:

4 Q I have Volume 21 of the statement of facts from the State  
5 of Texas versus Ricardo Aldape Guerra. And beginning at page  
6 240 is cross examination of Mrs. Holguin by Mr. Hernandez, one  
7 of Mr. Guerra's lawyers. And I would like to ask the  
8 interpreter to read from page 240 through line 9 on page 241.

9 \*\*\*\*\*

10 (Interpreter read the witness a question from the transcript.)

11 THE WITNESS: Yes, sir.

12 \*\*\*\*\*

13 (Interpreter continued reading transcript to the witness.)

14 \*\*\*\*\*

15 BY MR. ZAPALAC:

16 Q Mrs. Holguin, does having your testimony from the trial  
17 read back to you refresh your memory about what you said about  
18 your statement in your testimony at trial?

19 A Well, the same I have always said about how things had  
20 happened.

21 Q Okay. Do you recall specifically testifying at the trial  
22 that the night they took the statement, that the officer did  
23 read the statement back to you?

24 A No, he didn't read it.

25 Q Do you recall testifying at the trial that he did read it

1 to you?

2 A No. I don't recall.

3 Q Do you recall the substance of your testimony at  
4 Mr. Guerra's trial?

5 A When I came to court the second time?

6 Q When you went to testify at Mr. Guerra's trial?

7 A Yes, I don't recall very well because they didn't let me  
8 talk a lot in court. It was pretty fast.

9 Q Okay. When you went to the line-up at the police station  
10 to view the individuals who were brought in, were you given any  
11 instructions by the police before you went into the room?

12 A No, sir.

13 Q The police did not tell you anything about what was going  
14 to be going on in the line-up room?

15 A No, sir.

16 Q And the police did not give you any instructions about how  
17 you were to behave while you were in the line-up room?

18 A No.

19 MR. ZAPALAC: I have no further questions, Your Honor.

20 THE COURT: Redirect?

21 MR. ATLAS: Pass the witness, Your Honor.

22 THE COURT: Let me ask a couple of questions before  
23 you step down, please, ma'am.

24 Do you know whether or not there were any Spanish  
25 speaking police officers in the room, in the line-up room? Do

1 you know?

2 THE WITNESS: Yes, there were.

3 THE COURT: All right. And the next question is when  
4 did the officer take the handcuffs off of you? Was it at the  
5 scene or was it sometime after you were transported to the  
6 police station?

7 THE WITNESS: When we arrived there, when we arrived  
8 to the police station.

9 THE COURT: So how long was it that you were sitting  
10 in the car after being handcuffed, or wherever you were after  
11 being handcuffed until you arrived downtown and were no longer  
12 handcuffed?

13 THE WITNESS: About more than three hours.

14 THE COURT: And is it my understanding that your  
15 education is one year of primary school? Is that -- is that  
16 like elementary school in this country or do you know?

17 THE WITNESS: No. No. Like kinder here.

18 THE COURT: Like kindergarten?

19 THE WITNESS: Yes.

20 THE COURT: All right. Do you read the English  
21 language?

22 THE WITNESS: No.

23 THE COURT: Do you read English? I am sorry.

24 THE WITNESS: No, sir.

25 THE COURT: But you do speak some English?

1 THE WITNESS: No, sir.

2 THE COURT: All right. You may step down. Thank you  
3 very much.

4 MR. ATLAS: Your Honor, may this witness be excused?

5 THE COURT: Yes. Any objection?

6 MR. ZAPALAC: No objection.

7 THE COURT: You may be excused, ma'am.

8 (Witness excused).

9 MR. ATLAS: Your Honor, before we take the break, may  
10 we approach the bench?

11 (At the bench)

12 THE COURT: Good evening.

13 MR. MC COPPIN: I apologize for the inconvenience of  
14 coming back. This morning as we were up here discussing the  
15 records that we had --

16 THE COURT: Internal Affairs?

17 MR. MC COPPIN: Right, a light bulb kind of went on in  
18 my head. Let me explain. Prior to going to work for the  
19 Houston Police Department, I was a prosecutor in the Harris  
20 County District Attorney's office. In the Spring of 1991, I  
21 tried a case called State versus Sergio Mata. In that case, I  
22 had a witness who, a week before I tried the case, indicated to  
23 me that two Houston Police officers had threatened her to have  
24 her give a statement. One of those officers was an Officer  
25 Gatewood.

1                   After the trial, I wrote a letter to the Houston  
2 Police Department outlaying the -- no further specifics came  
3 out at trial -- outlying the allegations, making them aware of  
4 the alleged misconduct. I never heard anything official back  
5 from that. As Officer Dirden was informing the Court this  
6 morning about Ida Delaney, that an Officer Gatewood was  
7 involved, that is when the light bulb really went on. I said  
8 that is the same guy because I recall that I had a discussion  
9 with an IAD officer about my letter and he mentioned the  
10 Delaney case. I asked Officer Dirden, because he had read the  
11 entire file, I had not, I said there was nothing in there about  
12 that case and it is not on the 3 x 5 which is the computer  
13 printout. So we discussed it and I felt, as an officer of the  
14 Court, I should check with the officer to see if nothing was  
15 done or something was done, if it was misfiled or what have  
16 you. So I got in touch with the Sergeant who I had had the  
17 brief discussion with and who it was my impression was  
18 investigating. He said yes, he did. I said well, it is not on  
19 the 3 x 5 or in the IAD records of Gatewood. He said well, as  
20 I recall, Gatewood had already been fired or terminated or was  
21 in the process of being terminated. He said well, it was under  
22 the other officer's control number. That is why it didn't  
23 appear.

24                   THE COURT: The officer who was his companion?

25                   MR. MC COPPIN: Yes, Your Honor. We have been trying

1 all afternoon to find that. We have been having records  
2 reloaded so we can get those records and give you a more  
3 complete report. I wanted to let the Court know while there is  
4 not a file over there with Gatewood's --

5 THE COURT: Name on it.

6 MR. MC COPPIN: Right, and he was not disciplined,  
7 there are records, and I don't know what they show, but in my  
8 opinion and as an officer of the Court might be the type that  
9 this subpoena, I think, was intended to get.

10 THE COURT: Well, would they be -- when you say there  
11 are records, are you referring to the records of the nature you  
12 just indicated?

13 MR. MC COPPIN: Yes, Your Honor.

14 THE COURT: How would anybody go about locating those?

15 MR. MC COPPIN: Once I get the whole offense report  
16 reloaded, I remember in the report where it talked about the  
17 arrest of this witness. And the officer that arrested her was  
18 the officer that was with Officer Gatewood. I can find the  
19 name there and then run that officer's payroll number and IAD  
20 records and probably find it. Again, it is going to be a 1991 --  
21 the actions occurred in 1990 and were investigated over a year  
22 later in '91. So I don't know that they would be any more  
23 relevant. But I just felt like I had personal knowledge of  
24 that situation and should make the Court aware.

25 MS. CORNELIUS: I was just going to say, Judge, I know

1 it takes some time to start reloading offense records. We can  
2 pull our murder file out on that defendant and it will give us  
3 all the sergeants involved. If you want it, it will probably  
4 be quicker for our office to get our file out.

5 THE COURT: I am not sure it is relevant except I know  
6 lawyers like to look at these things and make sure it is not  
7 relevant, but it is so remote, for one thing. And I am not  
8 sure that if we ever get any witness in this Court to tie in  
9 their statement or, for example, I'm not sure we know who the  
10 officer was that handcuffed Mrs. Holguin on the occasion in  
11 question. It very well could have been a Hispanic officer. I  
12 don't know. Because I got the impression at one point maybe  
13 the person talking to her was speaking to her in Spanish.

14 But I would be more concerned, I gather, if he  
15 was one of the, quote, investigating officers in this case.  
16 But I imagine it was at a higher level than he was at that  
17 time.

18 MR. SCHNEIDER: No, Your Honor, he was a Homicide  
19 Detective at the time.

20 THE COURT: Okay. So he would have been intimately  
21 theoretically involved.

22 MR. DIRDEN: In 1982?

23 MR. SCHNEIDER: Yes, Gatewood.

24 THE COURT: He is the one, I believe, who allegedly  
25 brought Guerra in?

1 MR. SCHNEIDER: And he was the one that was working on  
2 the statements of Guerra that night in Homicide.

3 MS. CORNELIUS: But he didn't transport Holguin. A  
4 Spanish-speaking officer transported Holguin.

5 THE COURT: Right, but I guess what I would be  
6 concerned about is more importantly how his handprints affect  
7 and were involved in this particular case, partly. And the  
8 question of whether or not the later propensity to do the kind  
9 of thing that he has been accused of doing, whether or not  
10 there is any evidence of that at some prior time. That is  
11 going to be -- I'm not sure that -- well, let's do this. Why  
12 don't you run whatever records you have got. Just report back  
13 to me on what you have found because I don't know it is  
14 critical at this point. It may be it is a piece of evidence  
15 that may or may not have any relevance. I say that it may or  
16 may not have any relevance, that is, the significance of it.  
17 The quantity of it may not be that significant. May not be any  
18 more than what you have related already.

19 MR. MC COPPIN: Yes, Your Honor. Again, I apologize  
20 to the Court. Actually it is an unusual occurrence.

21 THE COURT: I don't think that is the problem. If you  
22 said you didn't have any knowledge, I would say well, you  
23 remembered it. You didn't say you didn't have any knowledge.  
24 It is a matter of records. In any event, I appreciate you  
25 bringing that to my attention.

1 MR. SCHNEIDER: We appreciate him remembering it and  
2 coming back.

3 MR. MC COPPIN: We will report back to you once we  
4 have found the records.

5 THE COURT: Let's take 15 minutes.

6 By the way, I didn't ask, how long is this next  
7 witness going to take?

8 MR. ATLAS: I would expect this next witness to take  
9 about as long as the last one.

10 THE COURT: 30 to 40 minutes, maybe an hour.

11 I lose track of the time. I think that is right.  
12 I don't want to get into a two to three-hour witness and carry  
13 it over to Thursday.

14 MR. ATLAS: Unless the cross is substantially longer  
15 than this one, I don't think so.

16 MR. ZAPALAC: You've seen my cross.

17 THE COURT: Let's take a break.

18 (Recess)

19 THE COURT: All right, Mr. Atlas. Mr. Atlas, who is  
20 the next witness?

21 MR. ATLAS: Your Honor, the petitioner wishes to call  
22 Jose Heredia who I believe has just arrived and is on his way  
23 upstairs.

24 THE COURT: Please come forward, sir. You are Jose  
25 Heredia? Would you raise your right hand, sir?

1 (Witness sworn.)

2 MR. ATLAS: Your Honor, this witness will need an  
3 interpreter.

4 THE COURT: Let's start out by asking him whether or  
5 not he understood the oath that I just administered to him in  
6 English?

7 THE INTERPRETER: Yes, Your Honor.

8 THE WITNESS: Yes, sir.

9 THE COURT: All right, let's proceed.

10 JOSE ANGEL HEREDIA

11 Witness called by Petitioner, duly sworn, testified  
12 through the interpreter as follows

13 DIRECT EXAMINATION

14 BY MR. ATLAS:

15 Q What is your name, sir?

16 A Jose Angel Heredia.

17 Q Are you the same Jose Heredia who testified in the Houston  
18 court in October, 1982?

19 A Yes.

20 Q And was that in the murder trial of Ricardo Aldape Guerra  
21 for the July 13th, 1982 murder of Houston Police Officer James  
22 Harris?

23 A Yes.

24 Q In July, 1982 when Officer Harris was shot and killed, how  
25 old were you?

1 A I was like 14 years old.

2 Q At the exact moment of the shooting, I would like to find  
3 out where you were. Where were you at that exact point in  
4 time?

5 A I was under a tree.

6 Q Near what house?

7 A In a house at the corner right next to Miss Galvan's house.

8 Q All right. I believe -- this is a schematic of the  
9 neighborhood from the sky. And we've already had testimony in  
10 the record from the original trial that Miss Galvan lived at  
11 4925 Walker, which is on the north side of Walker Street  
12 between Edgewood and Lenox. And the schematic I am talking  
13 about has been marked as petitioner's exhibit 13.

14 If this -- I am pointing this red laser light now  
15 at the house of Hilma Galvan, 4925 Walker. Were you -- on this  
16 chart, were you to the left of the house or to the right of the  
17 house?

18 A To the right.

19 Q You were back this way?

20 A Yes.

21 Q Now, the police officer was shot and killed right around  
22 here, this intersection.

23 A No, no, I am looking from this side. It is on this side,  
24 on the left-hand side.

25 Q So if the police officer was shot somewhere around the

1 intersection of Walker and Edgewood, you are saying on this  
2 chart, petitioner's exhibit 13, you were to the front of and to  
3 the left of Miss Galvan's house?

4 A Yes.

5 Q Is that right?

6 A Yes.

7 Q You understand a little bit of English, don't you,  
8 Mr. Heredia? (Question not interpreted.)

9 A Yes. Yes.

10 Q But you feel more comfortable -- (Question not  
11 interpreted.)

12 A Spanish.

13 Q Now, at the exact moment of the shooting, were you sitting  
14 down or standing up? (Question not interpreted.)

15 A I was standing up.

16 Q Had you been sitting down just a few seconds earlier?  
17 (Question not interpreted.)

18 A When they were burning tires, yes.

19 (Court reporter note: No interpretation from this point.)

20 Q At that time, did you know Ricardo Aldape Guerra by sight?  
21 Did you know who he was when you saw him?

22 A When I saw him driving the car, I knew who he was because  
23 he used to live in front of my house.

24 Q Were you and he close friends?

25 A No, not really.

1 Q Had you ever gone anywhere with him?

2 A Uh-uh.

3 Q Is that a yes or no?

4 A No, sir.

5 Q Did you ever go inside his house at -- I am afraid I can't  
6 remember the address -- at 4907 Rusk?

7 A No, sir.

8 Q All right. How are you related to a woman who just  
9 testified a few moments ago named Elena Gonzalez Holguin?

10 A Holguin?

11 Q Yes. Let me put it this way, she said she was your mother.  
12 Did she tell the truth?

13 A Yes, my mother.

14 Q I guess she would actually have better firsthand knowledge  
15 than you?

16 A She looks like me anyway.

17 Q Now, she said that a few months before, you all moved --  
18 you lived on Rusk at the time and a few months before, you had  
19 moved there from a house on Dumble between Rusk and Walker, I  
20 guess, pretty much catty-corner to the house where Mr. Aldape  
21 Guerra lived.

22 A Uh-huh.

23 Q Is that your recollection too?

24 A Uh-huh.

25 THE COURT: You need to answer that yes or no.

1 THE WITNESS: Yes, sir.

2 BY MR. ATLAS:

3 Q Now, you said you had never actually gone inside Mr. Aldape  
4 Guerra's house. Had you ever actually played or had any  
5 conversations with Mr. Aldape Guerra and in his front yard or  
6 your front yard?

7 A Yes, sometimes me and my brother would play ball and he  
8 would come outside and play ball and that is it.

9 Q How did he treat you? How did he act towards you?

10 A He acted right. He was a good person.

11 Q Before the night of the shooting, had you ever seen Roberto  
12 Carrasco Flores before, the man who looks like the mannequin in  
13 the purple shirt, except he had hair?

14 A No, sir.

15 MR. ATLAS: Let the record reflect I am referring to  
16 state's exhibit 20, the mannequin made to look like Mr. Roberto  
17 Carrasco Flores.

18 BY MR. ATLAS:

19 Q Now, at the time of the shooting, the exact moment of the  
20 shooting, where was Mr. Aldape Guerra standing? Let me explain  
21 this chart first so that you can understand it because this is  
22 a chart marked petitioner's exhibit 12 which has Walker going  
23 left and right and has Edgewood going up and down, north and  
24 south, dead-ending into Walker. And we've already had  
25 testimony that this car that is on the south side of the street

1 where Edgewood dead-ends into Walker, a little bit over into a  
2 driveway, was the car Mr. Aldape Guerra and Mr. Carrasco Flores  
3 had been riding in; and that the car that is on Edgewood, a  
4 little bit to the left on this chart of the sidewalk on the  
5 northeast corner of Edgewood and Walker was the car that the  
6 police officer had been driving. All right?

7 A Uh-huh. Yes, sir.

8 Q Is that a reasonably accurate description from your  
9 recollection of where those two vehicles were at the time of  
10 the shooting?

11 A Yes, they were not like that. They were close together.

12 Q Well, it is hard to show what the actual distance is. But  
13 in terms of their relationship to each other, does that show it  
14 reasonably well?

15 A Yes, sir.

16 THE COURT: Pull that microphone around in front of  
17 you. Slide it right around in front of you.

18 BY MR. ATLAS:

19 Q Mr. Heredia, at the exact moment of the shooting, where was  
20 Ricardo Aldape Guerra standing?

21 A He was standing on the side of the police car.

22 Q Can you come show me, if this is the police car and it is  
23 facing down on petitioner's exhibit 12, facing south, where he  
24 was standing?

25 A He was standing right there on the hood. He had his hands

1 on top of the hood.

2 Q All right, sir. And why don't you show me where the police  
3 officer was standing?

4 A He was -- Ricardo was standing right here -- he was  
5 standing right here.

6 Q Ricardo was standing there?

7 A Yes. And Carrasco was standing beside him.

8 Q Was he standing in front of his car door or behind his car  
9 door?

10 A In front.

11 Q Are you sure?

12 A Yes, because I remember when he got out, he went up to  
13 Ricardo -- when the guy Carrasco got off and he just started  
14 shooting the police. That is when I started running. I got  
15 scared.

16 Q Okay. Now, let me ask you if you would mark with this  
17 pen -- well, let me label this first.

18 Now, Mr. Heredia, at the time of the shooting,  
19 how close was the police officer to his driver door? Just  
20 in --

21 A I don't remember. It was kind of dark, you know.

22 THE COURT: Please keep your voice up. I am sorry.

23 BY MR. ATLAS:

24 Q Why don't you go ahead and sit down with the microphone  
25 again?

1 THE COURT: He needs to restate his answer. I didn't  
2 hear it.

3 BY MR. ATLAS:

4 Q Let me reask the question. At the time of the shooting,  
5 the exact moment of the shooting, do you recall how close the  
6 police officer was to his driver door?

7 A I don't remember because it was kind of dark.

8 Q All right, sir. Let me hand you what has been marked as  
9 petitioner's exhibit 27 which I believe, Your Honor, is another  
10 copy of petitioner's exhibit 12, and ask you if you would mark  
11 on this chart, this is just a smaller version of that big chart  
12 up there marked petitioner's exhibit 12, and ask you if you  
13 would put an "AG" for Aldape Guerra where Ricardo was standing?

14 A AG?

15 Q AG.

16 A (Witness marks chart.)

17 Q All right.

18 MR. ATLAS: Now, let the record reflect that the  
19 witness has indicated, both has demonstrated and as he wrote  
20 down on petitioner's exhibit 27, that he put Mr. Aldape Guerra  
21 south of the police officer's front door near -- on the east  
22 side of the car near the south end. In other words, near the  
23 front of the car.

24 BY MR. ATLAS:

25 Q Is that what you intended to do, Mr. Heredia?

1 A Yes, sir.

2 Q Now, what was Mr. Aldape Guerra doing at the very moment of  
3 the smoothing? Where were his hands?

4 A His hands, they were on top of the police car hood.

5 Q Did he have anything in his hands?

6 A I didn't see nothing.

7 Q You testified at the original trial that you saw the other  
8 fellow, Carrasco Flores, shoot Officer Harris. At the time of  
9 the shooting, where was Carrasco standing?

10 Let me ask you to show me on this chart. And by  
11 this chart, I mean petitioner's exhibit 27. Where was Carrasco  
12 Flores at the moment of the shooting?

13 A About right here. Ricardo's car was right here.

14 Q I am not asking you how he got there. I am asking you  
15 where he was at the time of the shooting?

16 THE COURT: Just ask him to mark it right now, so if  
17 he is going to give an answer, you need to give it now for the  
18 court reporter.

19 BY MR. ATLAS:

20 Q Where do you have the police officer now? Why don't you  
21 put, I forget what we used the other time, I guess "P". Put a  
22 "P" for the police officer. It will have to be bigger. And  
23 put "RC" -- I am sorry, put "CF" for Carrasco Flores.

24 A "CF"?

25 Q Yes.

1 A (Witness marks chart.)

2 Q All right, sir. Now, I tell you just to make it more  
3 legible, let me do this and you just verify I am doing it in  
4 the same place so these are legible. I am trying to redo the  
5 "P" and the "AG" and the "CF".

6 All right, did I put those in the same place  
7 where you put them, the same letters?

8 A Yes, sir.

9 MR. ATLAS: Now, let the record reflect, Your Honor,  
10 that the witness has located Mr. Aldape Guerra to the south of  
11 the police car driver door. He has also got the police officer  
12 just south of the driver door, but Mr. Aldape Guerra much  
13 further south. And Mr. Carrasco Flores, at least where his  
14 initials are, are a little bit to the east and a little bit to  
15 the south of the police officer.

16 BY MR. ATLAS:

17 Q Now, at the time of the shooting, how was Mr. Carrasco  
18 Flores standing? What kind of posture was he in with his hands  
19 and his arms?

20 A I just saw him went like that. (Indicating.)

21 Q Well, you just demonstrated.

22 MR. ATLAS: And let the record reflect that the  
23 witness demonstrated, he had both hands clasped together in  
24 front of his body essentially pointing.

25 BY MR. ATLAS:

1 Q Is that a fair description, Mr. Heredia?

2 A Yes, sir.

3 Q Could you tell what he was holding in his hands?

4 A I knew it was a gun because I saw the fire coming out.

5 Q Okay. Where was -- at the time of the shooting, where was  
6 your brother Armando?

7 A He was inside Miss Galvan's house.

8 Q And at the time of the actual shooting, where was Officer  
9 Harris? Was he in front of his car door or behind?

10 A When he got shot?

11 Q When he got shot?

12 A That is when I told you I don't know because I took off  
13 running. I didn't see if he fell down or nothing.

14 Q All right. Now, where was Hilma Galvan at the moment of  
15 the shooting?

16 A She was inside of the house.

17 Q Whose house was it she was inside?

18 A Her house.

19 Q Excuse me?

20 A Her house.

21 Q Now, she testified at the original trial that she was on  
22 the sidewalk in front of her house at the original shooting,  
23 this is Volume 22 of the statement of facts from pages 555 to  
24 556. Are you certain she was inside her house?

25 A Yes.

1 Q How can you be so certain?

2 A Because when I turned around, she wasn't there. She was  
3 inside the house.

4 Q Had you been inside her house also earlier?

5 A Well, I was inside with her but when I heard the car taking  
6 off, I got off. And I was sitting down right beside the porch.  
7 I saw them taking off and I got closer.

8 Q Once Miss Galvan came outside, did you ever tell her out  
9 there at the shooting who had actually done the shooting?

10 A Yes, sir.

11 Q What did you say?

12 A I told her I didn't know the guy's name but I told her  
13 Ricardo didn't shot the police, the other guy did.

14 Q What did you know the other guy by, what name?

15 A Pelon. Pelon. Bald-headed.

16 Q Well, he had hair at the time?

17 A Yes, but I heard that name.

18 Q And you are referring to Mr. Carrasco Flores, with the  
19 shirt -- in front of you in the purple shirt, except he had  
20 hair? Is that the one you told her?

21 A Yes, sir.

22 Q When you told her it was Mr. Carrasco Flores who had done  
23 the shooting, what did she say?

24 A She said it was Ricardo.

25 Q What did you tell her?

1 A I told her no, she was lying.

2 Q Did you tell her she didn't see anything at the time --

3 A Yes, sir.

4 Q -- because she was inside her house?

5 A Yes, sir.

6 Q I will try not the interrupt your answers and you try to  
7 slow down.

8 A Okay.

9 Q Now, when you told her she couldn't possibly have seen the  
10 shooting because she had been inside her house, what did she  
11 say in return, anything?

12 A She didn't tell me nothing.

13 Q Did you hear another shooting an hour and a half later that  
14 same evening?

15 A Not really because I went to the house. I went to sleep  
16 because I usually going to school.

17 Q At some point later that evening, did you hear that the  
18 fellow named Carrasco Flores had been shot and killed?

19 A I heard it because my mom told me.

20 Q Was that before or after the line-up the next morning?

21 A Before.

22 Q Do you remember if you were questioned by the police at the  
23 police station?

24 A I don't remember.

25 Q At some point late that night after the shooting, were you

1 taken to the police station?

2 A Yes, sir.

3 Q Did you wait in the hall with other people from the  
4 neighborhood?

5 A Yes, sir.

6 Q Did anyone, while you were waiting outside in the hall  
7 waiting to be questioned by the police, say who they thought  
8 the shooter was?

9 A The only one was Miss Galvan.

10 Q Who was she talking to when she said who she thought the  
11 shooter was?

12 A She was telling my brother to say it was Ricardo.

13 Q And your brother is Armando Heredia?

14 A Yes, sir.

15 Q Let's see if we've got a picture of him. I am looking  
16 through a document we have marked as petitioner's exhibit 20.

17 A photograph that is marked F 2039, was that what your brother,  
18 Armando Heredia, looked like in July, 1982?

19 A Yes, sir.

20 Q And is F 2037 a picture of what Miss Galvan looked like in  
21 1982?

22 A Yes, sir.

23 Q Now, that night while you were at the police station in the  
24 hallway, did anyone from the neighborhood tell you what you  
25 should say about the shooting?

- 1 A Only Miss Galvan.
- 2 Q And who was she talking to when she said this?
- 3 A She was telling me and my brother and Joe, Jr.
- 4 Q Is that Jose Armijo, Jr?
- 5 A Jose Armijo, yes.
- 6 Q Let me just make sure we have got the right person. Going
- 7 back to petitioner's exhibit 20, these photographs, I have got
- 8 a photograph marked F 2034. Does that show what Jose Armijo,
- 9 Jr. looked like in July, 1982 there at the police station?
- 10 A Yes, sir.
- 11 Q Now, what did Miss Galvan say to you and your brother
- 12 Armando and Jose Armijo, Jr. there in the hall about who you
- 13 ought to say had shot the police Officer Harris?
- 14 A She was saying to say it was Ricardo.
- 15 Q By Ricardo, who did you understand her to be referring to?
- 16 A I just told her that Ricardo wasn't the guy that shot the
- 17 police.
- 18 Q Did you repeat again what you told her earlier about how
- 19 she had been inside and couldn't have seen it?
- 20 A Yes, sir.
- 21 Q Did she ever tell you why she wanted you and your brother
- 22 Armando and Jose Armijo, Jr. to say that Ricardo Aldape Guerra
- 23 was the shooter and killer of the police officer at Edgewood
- 24 and Walker?
- 25 A Can I say it?

1 Q Yes.

2 A Yes, because she said she didn't like no wetbacks.

3 Q And you actually heard her say that?

4 A Yes.

5 Q While at the police station, did Jose Armijo, Jr. spend  
6 most of his time with anyone in particular?

7 A I only saw him one time with Miss Galvan.

8 Q At some point that night, were you questioned by the  
9 police?

10 A Yes, sir.

11 Q While at the police station, what did you tell the police  
12 about which man shot Officer Harris?

13 A I told him it was the guy, the one who was dead.

14 Q You are referring to the person we are calling Carrasco  
15 Flores?

16 A Yes.

17 Q Sir?

18 A Yes, sir.

19 Q How did the police officer react when you told him this?

20 A Well, I remember they was like saying that they thought I  
21 was lying to them.

22 Q Did they tell you why they thought you were lying?

23 A No, they didn't tell me. But I noticed.

24 Q Did you talk to them about where Miss Galvan was at the  
25 time of the shooting?

1 A Yes, sir.

2 Q What did you tell them?

3 A I told them Galvan, Miss Galvan was inside the house.

4 Q Now, in July of 1982, could you speak or read English?

5 A Nothing.

6 Q You needed an interpreter at the original trial in July of  
7 1982, didn't you?

8 A Yes, sir.

9 Q Has your English improved at all since July of 1982?

10 A A little bit.

11 Q You seem to be able to answer my questions without an  
12 interpreter. Would you have been able to do that in July,  
13 1982?

14 A No, sir.

15 Q Now, the night of the murder after you had gone to the  
16 police station and were sitting out in the hall and then been  
17 questioned by the police, sometime after that, did the police  
18 ask you to sign a document they prepared?

19 A Yes, sir.

20 Q Let me hand you a document that has been marked  
21 petitioner's exhibit 28 and it also has -- document stamp F 55  
22 which appears in petitioner's exhibit 4. Let me ask you,  
23 Mr. Heredia, if that is your printed signature in the lower  
24 right-hand corner of the page?

25 A Yes, sir.

1 Q Does that look like the document that you signed sometime  
2 that night at the police station after being questioned the  
3 first time?

4 A Yes, sir.

5 Q Did you try to read that document before you signed it?

6 A Yes, sir.

7 Q Were you able to do it?

8 A I was trying to read it. But that is when the policeman  
9 came and just took it away from me. But you signed it? I  
10 said, yes, sir.

11 Q Would you have been able to read the English version of the  
12 affidavit?

13 A I was trying. Like I said, I was trying.

14 Q Now, you said you weren't able to do it. Did the police  
15 say anything to you about the importance of signing it?

16 A No, sir.

17 Q Did anybody ask you to sign it, specifically say just sign  
18 this or anything like that?

19 A Yes, the police told me to sign it.

20 Q Well now, if you didn't know what it said, why did you sign  
21 it?

22 A I don't know. I was scared.

23 Q Why were you scared?

24 A I don't know. I was young.

25 Q I am sorry?

1 A I was young. That is why.

2 Q Now, had you seen your mother at the intersection of  
3 Edgewood and Walker or at least nearby when she was questioned  
4 by the police and then put in handcuffs and taken to the police  
5 station?

6 A No, I didn't see her.

7 Q Okay. Now, let me ask you --

8 MR. ATLAS: Your Honor, at this time, I would like to  
9 offer into evidence petitioner's exhibit 28.

10 THE COURT: Objection?

11 MR. ZAPALAC: Number 28 is the statement?

12 MR. ATLAS: Yes.

13 MR. ZAPALAC: No objection.

14 THE COURT: Admitted.

15 BY MR. ATLAS:

16 Q All right, Mr. Heredia, let me show you one statement in  
17 the document that you signed that night. It has been marked as  
18 petitioner's exhibit 28. And it is actually the seventh  
19 paragraph down on that document. It begins with the words "so  
20 when".

21 It says, "So when the man walked up to where the  
22 policeman was at, the policeman put the man against the car and  
23 was going to start to search him."

24 Do you recall, did you -- do you remember seeing  
25 the police officer having -- I guess in these words, putting

1 the man against the car, Ricardo Aldape Guerra, or did Ricardo  
2 just get up there and go up against the car of his own free  
3 will? I say free will, but do it without being put up?

4 A Like I say, it was dark and I was under the tree so I can't  
5 see how it was. I know Ricardo had his hands on top of the  
6 hood.

7 Q At the exact moment of the shooting?

8 A Yes.

9 MR. ATLAS: Your Honor, I realize I have not  
10 introduced petitioner's exhibit 27 which is the chart where the  
11 witness indicated where people were located. And I would like  
12 to offer it in evidence at this time.

13 THE COURT: All right.

14 MR. ZAPALAC: No objection, Your Honor.

15 THE COURT: It is admitted.

16 BY MR. ATLAS:

17 Q All right, now, I realize there is one thing on here that  
18 might cause some confusion, Mr. Heredia. So let me clear this  
19 up. You have a dot here and you have the CF. Which one did  
20 you mean to be showing where Carrasco Flores was standing at  
21 the time of the shooting? The dot or the CF?

22 A "CF."

23 Q The dot was just something you put there by mistake?

24 A Yes, sir.

25 Q Now, at about 6:00 in the morning, the morning after the

1 shooting, did you sit in a room to watch five or six men  
2 including Mr. Aldape Guerra stand behind a two-way mirror in a  
3 line-up?

4 A Yes, sir.

5 Q Let me show you, Mr. Heredia, what has been marked as  
6 petitioner's exhibit 24. Does that look like a picture taken  
7 at the line-up that night?

8 A Yes, sir.

9 Q Really at 6:00 the next morning. Is that right?

10 A Yes, sir.

11 Q Now, were you in the line-up room watching the line-up at  
12 the same time as Jose Armijo, Jr? Was he in the room?

13 A I believe, yes, sir.

14 Q Pardon me?

15 A Yes, sir.

16 Q What about Miss Galvan?

17 A Yes.

18 Q What about your brother Armando?

19 A Yes, sir.

20 Q What about your mother Elena?

21 A Yes.

22 Q And were there a few others from the neighborhood as well?

23 A Yes, but I don't know them.

24 Q And were there also several police officers in plain  
25 clothes in the room at the same time?

1 A Yes, sir.

2 Q Or detectives. While you were watching the line-up, while  
3 Mr. Aldape Guerra and the other five gentlemen were standing up  
4 behind that two-way mirror, was anybody sitting in the room  
5 with you talking out loud?

6 A Not that loud, but Miss Galvan was telling my brother to  
7 say it was Ricardo.

8 Q I am sorry, when I said talk out loud, was she actually  
9 talking?

10 A Yes, I think so.

11 Q And what was she saying to your brother?

12 A She was saying to say it was number four, Ricardo.

13 Q Could you see where -- was Jose Armijo sitting close to her  
14 at the time she was telling Armando this?

15 A I believe so.

16 Q Now, were -- was she speaking loud enough for the other  
17 people from the neighborhood and the police detectives to at  
18 least hear that she was talking?

19 A No, never --

20 Q Do you know?

21 A Well, I was sitting next to my brother. I was listening to  
22 her too.

23 Q No, what I am asking you though is whether Miss Galvan was  
24 talking loud enough for some of the other people sitting around  
25 to hear?

- 1 A No, sir.
- 2 Q You could hear her though?
- 3 A Yes, sir.
- 4 Q Could you hear what she was saying?
- 5 A Yes, sir.
- 6 Q Do you know whether somebody sitting behind her or
- 7 alongside her could hear what she was saying? Is that
- 8 possible?
- 9 A It is possible. I wasn't looking around.
- 10 Q I wasn't asking you whether you know who heard it but
- 11 whether it was loud enough somebody might have heard it?
- 12 A Yes.
- 13 Q Now, during the line-up with Mr. Aldape Guerra and the
- 14 other five people standing behind that window, do you remember
- 15 the police trying to stop anyone from talking?
- 16 A No, I don't remember.
- 17 Q In any event, if they did try to stop somebody from
- 18 talking, did it stop Miss Galvan?
- 19 A No, sir.
- 20 Q After the line-up, did the police ask you if you recognized
- 21 the shooter?
- 22 A Yes, sir.
- 23 Q What did you say?
- 24 A I told him nobody -- I didn't know nobody in there behind
- 25 the mirror.

- 1 Q Did you say whether you recognized Ricardo Aldape Guerra as
- 2 having been the driver of the car?
- 3 A Yes, sir, I told them it was the driver.
- 4 Q Did they ask you if it was the shooter of the police
- 5 officer --
- 6 A Yes, sir.
- 7 Q -- at Edgewood and Walker?
- 8 A Yes, sir, they asked me.
- 9 Q What did you tell them?
- 10 A I told them no.
- 11 Q Where were you when you told them that, in the line-up room
- 12 or a separate room?
- 13 A I was in a separate room.
- 14 Q When you said that, was anybody taking notes or tape
- 15 recording your answer?
- 16 A I believe I saw a tape recorder.
- 17 Q Was the recorder on?
- 18 A Probably was.
- 19 Q Could you tell one way or another?
- 20 A Not really.
- 21 Q At the trial, you remember the original mannequins being
- 22 across the courtroom from you while you testified?
- 23 A Yes, sir.
- 24 Q While you were testifying, could you see which of the
- 25 mannequins' shirts had blood holes -- I am sorry, bullet holes

1 and blood stains in it?

2 A Yes, sir.

3 Q Which one was that, the fellow with the green shirt or the  
4 purple shirt?

5 A The one with the purple shirt.

6 MR. ATLAS: Let the record reflect the witness is  
7 referring to state's exhibit 20, the one supposed to look like  
8 Roberto Carrasco Flores.

9 BY MR. ATLAS:

10 Q Did the fact that the shirt had bullet holes and blood  
11 stains on it help you to know the fact which one of them was  
12 already dead?

13 A Yes, sir.

14 Q Now, at the trial, Mr. Heredia, the District Attorney or  
15 the prosecutor who was asking you questions commented more than  
16 once about the fact that you appeared to be sleepy.

17 MR. ATLAS: And for the record, Your Honor, that is --  
18 at least one instance is Volume 23 at 747, line 20.

19 BY MR. ATLAS:

20 Q Were you sleepy when you testified at the original trial in  
21 July of 1982?

22 A Yes, because they wake us up at 3:00 in the morning.

23 Q Who woke us up?

24 A The policeman when they brought us to the police station.

25 Q Was that for the purpose of testifying?

1 A Yes, sir.

2 Q Had you drunk any liquor or taken any drugs of any kind  
3 including prescription medicine before coming to court that  
4 morning?

5 A No, sir.

6 Q What about the day before?

7 A No, sir.

8 Q At that time -- have you ever taken any illegal drugs?

9 A No, sir.

10 Q At that time, did you drink at all, drink alcoholic  
11 beverages?

12 A No, sir.

13 Q At the original trial, you testified that, as you said  
14 today, that you had visited with Ricardo at his house. Did you  
15 mean in front playing ball with him a little bit or inside the  
16 house?

17 A Outside.

18 Q Did you consider yourself, in July, 1982, to be a close  
19 personal friend of Mr. Aldape Guerra's?

20 A No, not really.

21 Q Have you spoken or communicated in any way with Mr. Aldape  
22 Guerra since you saw him -- since he was taken away by the  
23 police the night of July 13th, 1982 after the shooting of  
24 Officer Harris and the later shooting of Carrasco?

25 A No, sir.

1 Q Since the trial, have you, other than your mother, have you  
2 spoken about the shooting to any of the people out in the  
3 neighborhood?

4 A Only you and some lawyers. That is it.

5 Q Now, you and I and our lawyers representing Mr. Aldape  
6 Guerra talked several times about what happened that night,  
7 haven't we?

8 A Yes, sir.

9 Q Did I or any of these other lawyers who talked to you on  
10 behalf of Mr. Aldape Guerra tell you what to say today?

11 A No, sir.

12 Q Based on what you saw at the intersection of Edgewood and  
13 Walker at about 10 p.m. or so on the night of July 13, 1982,  
14 who do you believe shot and killed police officer James Harris?

15 A I believe it was Carrasco -- well, I don't believe. I saw  
16 it myself.

17 Q Do you have any doubt about whether -- how certain are you  
18 that Ricardo Aldape Guerra was not the shooter?

19 A Because I saw it.

20 Q Are you a little certain, very certain?

21 A I am sure that Carrasco shot the police. I was there.

22 MR. ATLAS: Pass the witness.

23 THE COURT: Cross examination.

24 CROSS EXAMINATION

25 BY MR. ZAPALAC:

1 Q Mr. Heredia, do you remember which police officer it was  
2 that you spoke with when you gave your statement at the police  
3 station on the -- I guess in the morning of July 14th, 1982?

4 A No, sir.

5 Q Okay. Did you give your statement in English or in  
6 Spanish?

7 A Spanish.

8 Q And did the officer you were speaking with speak Spanish?

9 A Yes, sir.

10 Q Okay. You indicated that when you told him that it was  
11 Mr. Carrasco Flores who had shot the officer that he thought  
12 you were -- that he told you that you were lying and you  
13 weren't telling the truth? Is that what your testimony was  
14 earlier today?

15 A Yes, sir.

16 MR. ATLAS: Your Honor, I think that is -- if I heard  
17 the question right and Mr. Zapalac is asking if that is what a  
18 police officer told him at the scene of the crime, that is a  
19 mischaracterization of his testimony.

20 THE COURT: I think he said at the time of the  
21 statement.

22 MR. ZAPALAC: At the time of the statement.

23 MR. ATLAS: I misheard. I am sorry.

24 THE COURT: You may answer the question.

25 THE WITNESS: Yes, sir.

1 BY MR. ZAPALAC:

2 Q So at the time you were giving your statement and you said  
3 that you thought it was -- that you had seen Mr. Carrasco  
4 Flores shoot the officer, the policeman at the police station  
5 said that he thought you were lying or not telling the truth?

6 A Yes.

7 Q Did he try to get you to change your testimony in any way?

8 A Not really.

9 Q And did he -- have you read the statement that you signed  
10 on July 14th of 1982?

11 A No.

12 Q You have never read that statement?

13 A No.

14 Q And have you ever had that statement read to you?

15 A No, sir.

16 Q Now, when you went in to the line-up to view the six  
17 individuals, before you went in, did the police give you any  
18 instructions on what was going to be happening in the line-up  
19 room?

20 MR. ATLAS: Forgive me for interrupting, Your Honor.  
21 I am sure I read a sentence of that statement to Mr. Heredia  
22 when I was visiting with him but I don't recall reading the  
23 whole thing from start to finish. I am sure as an officer of  
24 the Court I need to state that.

25 THE COURT: You may inquire about that if you wish.

1 Go ahead and restate the question.

2 BY MR. ZAPALAC:

3 Q Before you went in to the line-up to view the individuals,  
4 did the police give you any instructions about what you were  
5 going to be doing and how you were to behave when you were in  
6 the line-up room?

7 A I don't remember.

8 Q You don't remember that happening?

9 A No, sir.

10 Q Do you recall that you testified at the trial of Mr. Guerra  
11 in October of 1982? Do you remember being in the courtroom and  
12 testifying?

13 A Yes, I remember.

14 Q You remember that? Do you remember ever being asked  
15 anything by any of the attorneys about the statement that you  
16 had given to the police?

17 A I don't remember.

18 MR. ZAPALAC: May I approach the witness, Your Honor?

19 THE COURT: You may.

20 BY MR. ZAPALAC:

21 Q I am going to show you the -- a portion of your testimony  
22 of the trial, State of Texas versus Ricardo Aldape Guerra,  
23 Volume 23, beginning on page 745. I would like for you to  
24 start at line 19 and go to page 746, line 6. If you could  
25 review that for me, please.

1 MR. ATLAS: Your Honor, I think in the interest of  
2 clarity, it might be advisable to ask the interpreter to  
3 interpret this document for him so there is no --

4 THE COURT: We will wait and see if he has any  
5 difficulty.

6 THE WITNESS: I understand.

7 BY MR. ZAPALAC:

8 Q You were able to read that okay?

9 A Yes, sir.

10 Q Now, having read a portion of your testimony from the trial  
11 of Mr. Guerra, do you recall that you had stated that the  
12 police had read you back your statement the night that you gave  
13 it?

14 THE COURT: Excuse me. What part did you have him  
15 read, from what line? 745, line 19 --

16 MR. ZAPALAC: Line 19 to 746, line 6. I am sorry.

17 BY MR. ZAPALAC:

18 Q Do you recall testifying that what you told the police the  
19 night that you gave your statement was the same thing that you  
20 were testifying to within the trial?

21 A Yes, sir.

22 Q So that you did testify at trial to substantially the same  
23 thing that you told the police on the night that you gave your  
24 statement?

25 A Yes, sir.

1 Q And it is your testimony now that what you testified to at  
2 trial was the same as what you told the police when you gave  
3 your statement?

4 A Yes, sir.

5 Q Now, you stated that after the line-up, the police asked  
6 you if Ricardo Guerra was the shooter, the person that you had  
7 seen shoot Officer Harris and you told them no; is that  
8 correct?

9 A Yes, sir.

10 Q And did you tell them anything else about Mr. Guerra?

11 A No. No, sir.

12 Q Okay. Did you tell them that someone else had been the  
13 shooter?

14 A Yes, sir.

15 Q And who did you tell them had been the shooter?

16 A The guy who was there.

17 Q Okay. You told them this at the time of the line-up, after  
18 the line-up?

19 A Yes, sir.

20 Q Did you tell them that at the time that you gave your  
21 statement?

22 A Yes, sir.

23 MR. ZAPALAC: No further questions, Your Honor.

24 THE COURT: All right. Anything else on redirect?

25 MR. ATLAS: Your Honor, I will pass the witness.

1 THE COURT: All right, you may step down, sir. Thank  
2 you very much.

3 MR. ATLAS: I ask that he be excused.

4 THE COURT: Any objection?

5 MR. ZAPALAC: No objection.

6 THE COURT: You may be excused. Thank you very much.

7 (Witness excused)

8 THE COURT: Let me see the attorneys at the bench.

9 (At the bench)

10 THE COURT: Mr. Guerra has informed his attorneys who  
11 have informed the Court that on yesterday afternoon when he was  
12 taken back to the Harris County Sheriff's office -- Harris  
13 County jail, that he was maintained in a, what I have learned  
14 this morning from Sheriff Klevenhagen to be a holdover cell  
15 which meant that he had nowhere to sleep except on the floor  
16 last night. And that he was not fed, that he was not given a  
17 sack lunch or any kind of -- I say sack lunch meaning he was  
18 not given a sack dinner last night.

19 I talked to Sheriff Klevenhagen about that. But  
20 I would like you to communicate to the United States Marshal or  
21 through the supervisors that I want them to ensure that this --  
22 that this does not happen again.

23 DEPUTY US MARSHAL CHILDERS: Okay.

24 THE COURT: And that if they cannot ensure that, then  
25 I will take whatever affirmative acts are or is necessary to

1 ensure that the prisoner gets treated appropriately and also  
2 that the prisoner is fed after he goes back over in the  
3 afternoon.

4           There was an additional complaint that one of the  
5 Harris County deputies physically -- well, handled him. In  
6 other words, he punched him a couple, or two or three times or  
7 more. I am not sure and I have not asked Mr. Guerra anything  
8 and I don't want to go on the record at this point necessarily  
9 of asking him that. But I do want to make sure that when you  
10 all -- do they bring him through you all's holdover in the  
11 morning?

12           DEPUTY US MARSHAL CHILDERS: Yes, sir, they bring him  
13 to our holdover.

14           THE COURT: I would like for -- I would like for you  
15 all to make an inquiry each morning so that we don't have a  
16 problem on our hands here in the federal facility as to whether  
17 or not he has any complaints about, for example, any physical  
18 complaints or any problems. And we don't want to be handling  
19 him here if he has been physically hurt. I want to know that  
20 and I want you all to make sure that you record that he has  
21 been communicated with and that he doesn't have any complaints  
22 about the way he has been treated because if he comes in here  
23 injured, it becomes a problem for us obviously not paying  
24 attention to what is going on. I want to make sure he is  
25 communicated with on a daily basis in terms of what his

1 treatment has been the night before or during the period of  
2 time that he has been away from the federal facility. So if  
3 you would communicate that to her and if she needs some kind of  
4 order, some kind of letter from me, I will have it ready  
5 tomorrow morning.

6 DEPUTY US MARSHAL CHILDERS: Very good.

7 THE COURT: Let me say this. I will -- Mr. Guerra, I  
8 want him taken back and I don't know if I should communicate  
9 with the state prison guards or with you about this, but I want  
10 to take him back to the jury room behind me here so he may  
11 speak directly with his mother. And I know you all have your  
12 policies and procedures.

13 DEPUTY US MARSHAL CHILDERS: Yes, sir.

14 THE COURT: If that is not going to happen, if you  
15 don't want to do it that way, certainly you can do it in the  
16 courtroom. I don't want these people, the general public  
17 involved. It is not the situation where I want them feeling  
18 there is some reaction they need to make to this or reaction  
19 they need to maybe make to one of the officers not liking what  
20 was happening. We could have 200 people down here tomorrow  
21 marching around the building making us all look bad by what is  
22 happening here.

23 MR. ATLAS: By direct visit, you mean contact?

24 THE COURT: Yes, direct contact. I think everybody  
25 ought to be able to hug their mother at some point. What I

1 would like you to do is assure yourself along with Mr. Atlas  
2 that Mrs. -- what is her last name?

3 MR. ATLAS: Guerra de Aldape.

4 THE COURT: -- Mrs. Guerra has left all of her  
5 personal belongings. I am sure she went through the scanner  
6 and all that. But whatever she has got personally, she leaves  
7 it there at the bench and she may come inside the well. I may  
8 call her up. I don't know if she speaks English.

9 MR. ATLAS: She does not.

10 THE COURT: I don't want to go through that.

11 MR. ATLAS: She has someone that can interpret.

12 DEPUTY US MARSHAL CHILDERS: Do you want that done in  
13 the courtroom?

14 THE COURT: I want that done in the courtroom. You  
15 can ask her to come inside the well. Mr. Atlas will bring her  
16 inside to the bench here and she will be able to -- let's do it  
17 like this. Let's bring her up to the table and let her sit  
18 next to her son and she can talk and hug.

19 DEPUTY US MARSHAL CHILDERS: That would be fantastic.

20 THE COURT: Make sure she leaves her personal stuff in  
21 the back.

22 Could you speak to the prison guard in the back  
23 and ask him if he would step forward, please.

24 MR. ATLAS: Your Honor, it wasn't clear what extent  
25 Sheriff Klevenhagen had maintained that he would be able to

1 assure the physical safety of my client this evening.

2 THE COURT: He assured me that nothing would be  
3 happening to this young man. He gave me the impression that he  
4 had talked with the persons in charge and had communicated with  
5 them the importance that this be taken care of. And that is  
6 why I want you to make sure that your client communicates with  
7 the Marshal in the mornings when they come in and say look,  
8 something has happened and I need to tell you what it is before  
9 we get started so we will know the extent to which, if  
10 anything, we have a problem.

11 How are you doing this evening? What is your  
12 name for the record.

13 OFFICER HIMPSTEDT: Bill Himpstedt.

14 THE COURT: Himpstedt. How are you referred to, is it  
15 officer?

16 OFFICER HIMPSTEDT: Correction officer, yes. Transfer  
17 officers.

18 THE COURT: Officer Himpstedt, a complaint has been  
19 made by the attorneys representing Mr. Guerra regarding  
20 conditions that existed on yesterday afternoon at the jail.  
21 And I talked to Sheriff Klevenhagen about those, particularly  
22 number one, that Mr. Guerra did not get dinner last night. And  
23 number two, he didn't get booked in. None of that is your  
24 problem because you don't have the ability to make them book  
25 people in.

1                   And -- but I want to make sure there is no  
2                   omission here, that you are not doing something to prevent him  
3                   from getting booked in and prevent him from getting to a cell  
4                   where he can sleep. He did not sleep in a bed last night. He  
5                   slept on the floor. And I am sure you know from your handling  
6                   state prisoners that is really a violation of all the rules  
7                   that have been set down for state prisoners, and it also  
8                   violates our state order, our order here for the Harris County  
9                   jail. But I want to make sure you and the people that handle  
10                  him do not interfere with him in any way and prevent him from  
11                  being handled appropriately by the Sheriff's Department when he  
12                  is taken over there because I think he is being held in their  
13                  custody pursuant to agreement between you all.

14                  The second part of his complaint is a little bit  
15                  more serious and concerns me quite a bit. His complaint is  
16                  that one of the Harris County deputy sheriffs physically hit  
17                  him on more than one occasion, either in your presence or in  
18                  the presence of other officers. How many of you all were over  
19                  there yesterday?

20                  OFFICER HIMPSTEDT: Two officers were there.

21                  THE COURT: Yourself and one other?

22                  OFFICER HIMPSTEDT: Yes, sir.

23                  THE COURT: Who was the other officer?

24                  OFFICER HIMPSTEDT: Mr. Blumenthal was with me  
25                  yesterday.

1 THE COURT: He is not here today, is he?

2 OFFICER HIMPSTEDT: No, sir.

3 THE COURT: How many officers are here today?

4 OFFICER HIMPSTEDT: We have four here today.

5 THE COURT: Four here today. So it is yourself and  
6 who else this afternoon?

7 OFFICER HIMPSTEDT: That man over there.

8 THE COURT: You don't know his last name right now?

9 OFFICER HIMPSTEDT: Mr. Barrow.

10 THE COURT: Mr. Barrow. In any event, the allegation  
11 is that this physical confrontation and violation occurred in  
12 your presence and that you were present when it occurred. Now,  
13 I don't know to what extent this man was handled or how he was  
14 handled, but certainly the last thing in the world that we need  
15 in the middle of this proceeding is for this man to be handled  
16 in such a way that it becomes something of a media event.

17 Number two, we do still have the 8th Amendment  
18 that creates a very serious problem for all of us, me from the  
19 point of view that I have the responsibility once these things  
20 come to any attention to make sure that not only I communicate  
21 with you and the other officers but that I put this information  
22 in the hands of people who have the responsibility to take care  
23 of it; you in the sense that it involves you personally, at  
24 least by the allegations; and the sheriff in the sense that it  
25 may involve him personally along with some of his officers.

1           Let me be very clear. I am not making  
2       accusations, but I want to be very clear about what we expect  
3       in terms of handling this man. He is obviously on death row.  
4       There are a lot of people who don't like him. And there may be  
5       officers and police and sheriffs in other places that do not  
6       like the fact he is getting this hearing and has been accused  
7       and found guilty of this offense. All kinds of reasons why  
8       they would feel some emotion about this man. Whatever that  
9       emotion is, I want you to assure me and to make sure you  
10      communicate with other officers that will be handling this man  
11      that none of that will come between you and your job.

12           That is the best I can do. Otherwise, we will  
13      end up with a situation where I will end up having to house him  
14      someplace separate and different which will cause the state an  
15      awful lot of embarrassment and money and the press can get this  
16      and run with it and embarrass us. I think it is important  
17      whatever needs to be gotten ahold of, gotten a handle on, I  
18      will certainly hope you will communicate this with the fellow  
19      officers who will be handling him and that no verbal abuse  
20      occur. I don't want him coming back tomorrow and telling his  
21      lawyer, they took me over and cussed me and and called me a  
22      bunch of names and told me things were going to happen. I see  
23      too many of those cases in my court. I appreciate it if this  
24      information is disseminated to the officers who are handling  
25      him if you would.

1 OFFICER HIMPSTEDT: I will.

2 THE COURT: I am going to permit his mother to come  
3 inside the well of the Court and spend two minutes with her son  
4 as soon as we dismiss. As soon as that is over, you all will  
5 be released to go.

6 MR. ATLAS: She have an opportunity to hug him and  
7 will not bring her purse.

8 THE COURT: Right. She is not going to bring any  
9 paraphernalia.

10 MR. ATLAS: Although I have nothing in particular, I  
11 would like to have the opportunity to take photographs of my  
12 client's bruises.

13 THE COURT: Well, I think you can probably bring a  
14 camera into this building. I will have to sign something. You  
15 need to take it up to the top floor and use it and take it back  
16 to the bottom floor and they will hold it for you. Communicate  
17 with your client and we will stand at ease.

18 MR. ATLAS: I will ask her to wait where she sits.

19 THE COURT: I really don't care. I think we should  
20 just do it.

21 (In open court)

22 THE COURT: All right, that is it.

23

24 (Whereupon the above-entitled matter was recessed)

25

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION  
4

5 CERTIFICATE OF REPORTER  
6

7 I, Joyce Schaefer, Official Court Reporter, United States  
8 District Court, Southern District of Texas, appointed pursuant  
9 to the provisions of Title 28, United States Code, Section 753,  
10 do hereby certify that I reported the proceedings had in the  
11 above-styled and numbered cause, and that said proceedings were  
12 later reduced to typewriting under my personal supervision by  
13 computer-aided transcription, and the above and foregoing pages  
14 constitute a true and correct transcript thereof.

15 Given under my official hand this 20<sup>th</sup> day of

16 July, 1995.  
17  
18  
19  
20  
21

22 Joyce K. Schaefer  
23 Joyce K. Schaefer  
24 Official Court Reporter  
25