

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-17-001735  
victoria benavides

CAUSE NO. D-1-GN-17-001735

JASON SPENCE, Individually and as	§	IN THE DISTRICT COURT
Heir and Representative of the Estate of	§	
DAVID SPENCE, deceased;	§	
JOEL SPENCE, Individually and as Heir	§	
And Representative of the Estate of DAVID	§	
SPENCE, Deceased and	§	345TH
ESTATE OF ANTHONY MELENDEZ	§	_____ JUDICIAL DISTRICT
	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
STATE OF TEXAS	§	TRAVIS COUNTY, TEXAS
	§	
Defendant.	§	

**ORIGINAL PETITION FOR DECLARATORY JUDGMENT and  
REQUEST FOR DISCLOSURE**

TO THE HONORABLE COURT:

NOW COME Jason Spence, Individually and as an heir and representative of the Estate of David Spence, Joel Spence, Individually and as an heir and representative of the Estate of David Spence, the Estate of David Spence (“David”), and the Estate of Anthony Melendez (“Tony”), Plaintiffs, and in accordance with *Texas Civil Practice and Remedies Code Chapter 37* seek a Declaration as to the legal relations and rights affected by statutes of Defendant State of Texas and would show as follows:

**Jurisdiction and Venue**

1. This action and underlying facts, rights and statutes arise under the common law of the State of Texas, rights recognized and defined by the Texas Constitution, pursuant to the Texas Tort

Claims Act, Chapter 11 of the Texas Code of Criminal Procedure, and Chapters 37, 38, 74, 101 and 103 of the Texas Civil Practice and Remedies Code. Discovery is intended to be conducted under Level 3 of Rule 190.

2. The Court has jurisdiction over this matter and venue is proper in the Travis County because at least some of the events giving rise to these claims occurred in Travis County, Texas.

3. Alternatively, venue is proper in Travis County, Texas pursuant to Section 15.014 of the Texas Civil Practice and Remedies Code.

#### **Parties**

4. DAVID SPENCE is deceased. His Estate is represented by Jason Spence and Joel Spence.

5. JOEL SPENCE and JASON SPENCE are the surviving children of David Spence.

6. ANTHONY MELENDEZ is deceased.

7. THE STATE OF TEXAS is a governmental entity and may be served by serving citation on Governor Greg Abbott at Office of the Governor, State Insurance Building, 1100 San Jacinto Blvd., Austin, Texas 78701. Additional service is requested on the State Attorney General, Ken Paxton, at the Office of the Attorney General at 300 W. 15<sup>th</sup> Street, Austin, Texas 78701. Plaintiffs request service by certified mail.

#### **Conditions Precedent**

8. Plaintiffs specifically aver that all conditions precedent to this suit have occurred or have been waived.

#### **Short Statement of Facts**

9. This case arises out of the wrongful conviction, incarceration and ultimate deaths of David Spence (hereinafter referred to as "David" or "Spence"), Gilbert Melendez (hereinafter referred to

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as “Gilbert”), and Anthony Melendez (hereinafter referred to as “Tony”).

10. In 1984, Tony, David and Gilbert were arrested and convicted of two counts of murder that occurred in July of 1982. The referenced murders are commonly known as the “Lake Waco Murders.”

11. Each of the Plaintiffs were innocent men and did not commit the referenced murders.

12. The State of Texas, by and through its employees, agents, and representatives withheld evidence, destroyed evidence, coerced untruthful confessions, utilized junk science, bribed witnesses, fraudulently concealed the foregoing and knowingly convicted not one, but four individuals (Tony Melendez, Gilbert Melendez, David Spence, and Muneer Deeb) for the above referenced crimes. One of the four, Muneer Deeb, the purported mastermind of what was presented to the jury as a murder for hire, was found to be “not guilty” upon re-trial. Gilbert Melendez and Tony Melendez avoided the death penalty that was meted out to David Spence by entering coerced, fabricated confessions and have since recanted same. All four are now deceased.

### **Background**

13. This case arises out of the wrongful imprisonment and execution of David Spence, at the hands of the State of Texas and the wrongful imprisonment of Gilbert Melendez and Anthony Melendez.

14. David Spence, Tony Melendez, Gilbert Melendez and Muneer Deeb were all originally convicted of a 1982 triple homicide known as the “Lake Waco murders.”

15. David was tried for two of the murders in two separate trials and received the death sentence for each. Muneer Deeb was also tried and given the death penalty. With the death penalty hanging over their heads, the Melendez brothers, Gilbert and Tony, confessed several

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times, in as many different ways, with each confession conflicting with the other confessions, as part of a plea bargain that spared them the death penalty.

16. The State built its case at trial on the notion that Deeb was the mastermind who paid Spence and the Melendez brothers to commit the murders. On re-trial, Deeb was found not guilty and released. It is intellectually inconsistent and dishonest to convict David, Gilbert, and Tony when Deeb, the purported mastermind, was in fact not guilty.

17. Gilbert and Tony originally denied involvement and have long since recanted their confessions. The confessions were coerced and coached. David continually maintained his innocence until the moment of his execution. Tony was some hundred miles from the scene of the crime on the night of the murders. Gilbert was picked up by his youngest brother on the day of the murders and could not have participated in the murders. Tony was never seen in Waco during the week of the murders. Newly discovered testimony, new scientific methods and evaluation, and hidden evidence, uphold all of their defenses.

18. The State began constructing its case against David, but needed more than just one actor to have committed all three murders. Tony was brought into the investigation as an afterthought, some six months after his older brother, Gilbert Melendez was being pursued as a suspect. The State acting through its authorized District Attorney, Vic Feazell and staff, believed that more than two people were necessary to make their version of the facts work. Making accusations against Tony also put additional pressure on Gilbert to begin cooperating again with authorities to protect his brother.



19. The McLennan County District Attorney, Feazell, was recording conversations in his own office. These recordings were subpoenaed by federal authorities investigating Feazell for corruption and one tape revealed that the D.A. had virtually no case against Melendez. Other recordings paint a disturbing picture of collusion to subvert justice between the D.A. and the Melendez brothers' court-appointed defense attorneys. Those tapes demonstrate that the D.A. and the attorneys knew that Tony had an ironclad alibi for the crime; and that Tony was promised release in roughly ten years if he pled guilty. The Melendez brothers were worn down and coerced after being pointedly assured by their attorneys that the alternative to a plea of guilty was certain death.

20. Forensic science, key documents, and the word and testimony of respected law enforcement officers and expert criminalists bolster the criminal defendants' case. The current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed because the factual or legal basis for the claim was unavailable on the date the applicants filed the previous applications and petitions. But for a violation of the Constitution, no rational juror or jury could have found the applicants guilty beyond a reasonable doubt. But for a violation of the Constitution, no rational juror or jury would have answered in the state's favor one or more of the special issues that were submitted to the jury in the criminal trials.

21. The Lake Waco murders occurred on Tuesday, July 13, 1982. The victims were three teenagers: Kenneth Franks, 18, of Waco; his ex-girlfriend, Jill Montgomery, 17, of Waxahachie; and Raylene Rice, 17, one of Montgomery's best friends in Waxahachie. Franks

and Montgomery had met the previous year when they were both living in a Waco foster home for troubled youth. Montgomery had a part-time job at a local museum in Waco. Montgomery had since moved back home with her mother in Waxahachie, but on the day of the murders, Rice drove Montgomery to Waco, about 65 miles from Waxahachie, so that Montgomery could collect her last paycheck from the museum.

22. Montgomery had cashed the \$226 check by 7:30 p.m. She then telephoned Franks to say that she was in town with her friend Rice. Soon after the call the girls picked up Franks in Rice's car, an orange Pinto, and the three teenagers headed to Koehne Park, on Lake Waco. Police reports, testimony, and interviews suggest that the youths planned to buy drugs; Koehne Park was a popular place for such transactions.

23. Koehne is one of the smaller parks on Lake Waco and consists of a parking area, a boat ramp, and a patch of green with some picnic tables. There are no facilities for camping or hiking. There is a shallow wooded area, only a few trees deep, on the perimeter. The park was crowded on the night of the murders. Rick Guthrie, a trial witness, testified that he went to Koehne that evening with a friend and had to wait for a parking space. Franks, Montgomery, and Rice arrived around 8 p.m. in the orange Pinto. A number of witnesses, including some who knew Kenneth Franks by name, remembered seeing him either in the car or at a picnic table in the company of two young women. The three teenagers quickly disappeared from sight, leaving behind the Pinto. At around 6:45 p.m. the next day, July 14,

the bodies of the three victims were discovered in Speegleville Park, a large, densely wooded park on the opposite side of Lake Waco.

24. The homicide investigator first assigned to the case, Waco police detective Ramon Salinas, began developing a plausible theory that a drug transaction had gone wrong and resulted in the murders. He believed the victims had been whisked away from Koehne in another vehicle, driven to Speegleville and murdered there. During the two and a half months that Salinas headed the investigation, a single suspect was arrested and read his rights, Terry Lee "Tab" Harper, a violent felon who had previously dealt drugs to Kenneth Franks. Salinas built a circumstantial case against Harper, but did not gather sufficient evidence for an indictment. Harper ultimately died of a self-inflicted gunshot wound in October 1994, in the course of being arrested for stabbing an 80-year-old man.

25. Salinas suspended the Lake Waco investigation on September 3, 1982 and as such was no longer required to file a daily report. He failed to inform his police chief, Larry Scott, however. Another Waco police detective, Sgt. Truman Simons, learned of the suspension and called Scott at home. Scott asserted in a 1993 deposition that Simons told the police chief he wanted to take over the investigation, and that "he was going to solve the case in a week." Scott agreed to make Simons the primary investigator on the Lake Waco case.

26. Simons apparently had many detractors in law enforcement, including ultimately, Chief Scott, who in his 1993 deposition said he had come to the conclusion that Simons used illegal methods to close cases. In a sworn affidavit, Waco police detective James Blair accused Simons of obstructing Blair's investigation of a murder for which one of Simons' informants,

in an interview with the FBI, later claimed credit. By way of example, a full pardon for innocence granted by the state of Texas in 2001 for Calvin Washington, an inmate convicted in a case developed by Simons, profoundly troubled Washington's two prosecutors; both concluded that Simons might well have suborned perjury and fabricated the case.

27. Simons took over the Lake Waco case on September 11, 1982. By the following day, he had set his sights on a new suspect, a Jordanian-born convenience store owner named Muneer Deeb, who reportedly had a dislike for Kenneth Franks. Simons interviewed a 16-year-old girl, Gayle Kelley, another graduate of the Waco foster home for troubled youth, who frequented Deeb's store, and informed her of his suspicions.

28. Playing detective, Kelley went to the movies that evening with Deeb, and as Deeb later told the story, she pestered him into agreeing that he "killed them" - the Lake Waco victims - which Deeb said he intended as a joke. Deeb, lacking physical prowess and of a slight build would be hard pressed to commit a triple homicide with a knife. Nevertheless, when Kelley reported the supposed confession to Simons, it seemed to confirm the police sergeant's hunch. Simons persuaded Chief Scott that Deeb, as a foreigner, presented a flight risk, and on September 13, 1982 with the "confession" essentially his entire case, Simons arrested Deeb. Through his court-appointed attorney, Deeb demanded either truth serum or a lie-detector test to prove his innocence. He was polygraphed twice, and was found both times to exhibit no deception. Felipe Reyna, then the McLennan County D.A., ordered Deeb released, over Simons' protests.

29. Simons, whose ego had offended many of his colleagues in the Waco Police

Department, became the subject of mockery. "People started ridiculing him, making comments like 'the big investigator screws up,'" Det. Salinas recalled. "Truman and I both caught some flak," concurred Sgt. Dennis Baier, Simons' hand-picked co-investigator on the Lake Waco case. "There were things said like, 'There go the super cops. Baier shrugged it off, but Simons apparently found the derision intolerable. Less than two weeks after Deeb's release, only eight years away from his pension, Simons quit the Waco Police Department.

30. By the middle of October, 1982, Simons had taken an entry-level job with the McLennan County Sheriff's Department, and was now working as a guard in the county jail. One of the jail inmates was David Spence, then age 24, who had recently been arrested for assaulting a young man named Darvin Pack at a house party. The assault had begun as a fistfight, but turned uglier when Gilbert Melendez, also at the party, ordered Pack to perform a sex act. David Spence and Gilbert Melendez were indicted for aggravated sexual assault. Gilbert accepted a plea deal and was sentenced to seven years; David refused to plead because he believed he had not sexually assaulted Pack and argued that he had attempted to prevent Pack from engaging with Gilbert – not encourage the assault. Thus, when Truman Simons became David Spence's guard, David was awaiting trial for the Pack assault.

31. In January 1983, McLennan County's newly elected district attorney, Vic Feazell, took office. Two months later, Feazell personally prosecuted David Spence for the Pack assault and won a conviction. At Feazell's insistence, the jury sentenced David to an amazing ninety years in prison. During the trial, Gilbert Melendez had been bench-warranted back to McLennan

County as a potential witness, and though he never testified, he too found himself under Simons' custodianship in the county jail.

32. By this time, Simons had already begun to see a way to revive his ill-fated case against Muneer Deeb. David Spence's girlfriend, Christine Juhl, had been employed by Deeb and David had hung around Deeb's convenience store on occasion. Simons now began formulating a new theory, that Deeb had hired David Spence to commit the Lake Waco murders. Deeb's supposed motive for the killings was never entirely clear - the state ultimately argued that it was a combination of Deeb's supposed hatred for Kenneth Franks and a misguided insurance scheme.

33. In January 1983, Simons began collecting statements from inmates in the McLennan County Jail who claimed that David Spence was bragging about having committed the Lake Waco murders in return for payment. The inmates also said David Spence boasted about having raped the two girls (vaginal contusions on the female victims indicated sexual violation, possibly rape, although contemporary tests were negative for the presence of sperm or semen). The first statement, from Charles David Castle, was a poor beginning, since it developed that Castle was not on the same floor as David, and had never met him. Simons utilized favors for jailhouse informants and fared better with the next round of jailhouse informants. He struck paydirt when Gilbert Melendez became an inmate. Gilbert, aware of David's 90 year sentence for an aggravated sexual assault that he arguably didn't commit proved willing not merely to implicate David Spence in the Lake Waco murders, but himself as an accomplice.

34. In an interview with his attorneys and an investigator in December 1983, David Spence explained his reasons for initially cooperating with Simons. The tough new D.A., Vic Feazell, had just convicted Spence for the Pack assault, and gotten Spence a ninety-year sentence, whereas Gilbert Melendez, under the previous D.A., had plea-bargained a seven-year sentence for the same crime. Simons informed Gilbert Melendez that Feazell had enough evidence to indict and convict him for raping a young woman in Waco the previous year. According to Gilbert Melendez, Simons added that "I better have something to say about [the Lake Waco murders] or...they were going ahead and put the rape case on me, and get me a life sentence on it." Gilbert further claimed that Simons assured him that if he cooperated, even to the extent of incriminating himself in the Lake murders, "we'll make a good deal where you won't even have to do any time on it." A self-styled jailhouse lawyer, Gilbert Melendez believed that if he stalled the rape case long enough, he could get it dismissed under the Speedy Trial Act.

35. His account is corroborated by a detailed letter he wrote his parents in April 1983. One thing is abundantly clear: Gilbert was at that time unable to provide an account of the Lake Waco murders that was either credible or coherent. On March 25, 1983, he gave the first of several written confessions, and the following day he rode in a car with Simons and another deputy sheriff, Dan Weyenberg, in an effort to recreate what he and David Spence supposedly did on the night of July 13, 1982. The outing was tape recorded and transcribed. Even a charitable reading of the transcript suggests that Gilbert Melendez was trying hard to be helpful, but had difficulty remembering elementary facts; at key points, the tape is filled with long, painful silences.

36. More damning than the long silences are statements that proved demonstrably false. Gilbert Melendez recalled driving to Koehne Park and subsequently carting the victims' bodies to Speegleville, in David Spence's four door station wagon. Sgt. Dennis Baier of the Waco P.D. subsequently broke the bad news to Simons: David purchased the station wagon on July 23, ten days after the murders, trading in the car he owned when the murders occurred, a 1970 two-door Malibu. Gilbert also states that he and David arrived at Koehne Park at around 11:30 p.m. This was clearly not possible because the entrance gates of Speegleville Park, where the bodies were found, were locked at 11 p.m. Gilbert did not remember whether the gates were open when he and David supposedly arrived with the bodies. When Simons helpfully suggested he and Spence might have driven off the main road onto gravel and cut a fence to enter the park, Gilbert could not remember those details either. In response to Gilbert's lack of memory, Simons said, incredibly, "Why don't we cut this tape off, and we'll just drive around here until we see if we can come up with some kind of a pattern, okay?"

37. In the end, Gilbert Melendez would give no fewer than six sworn confessions, and at least two more that were unsworn; and when it was possible for him to alter an obvious incongruity, he did so. The trip to Koehne Park was moved to an earlier, unspecified hour, the station wagon was transformed into the Malibu and multiple references to the car's back door were simply removed. During the process of revision, the corpses, were for awhile said to have been transported from Koehne to Speegleville, a distance of more than seven miles by the best possible route. The three blood-soaked bodies would have to have been stacked like cordwood in the small car. Unfortunately for Simons, just as Gilbert began cooperating, the Texas Department of Public Safety, at the behest of the Waco P.D., was examining David Spence's

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Malibu in its laboratory. The Malibu was taken apart nut by bolt, and yielded nothing to connect the car to the Lake Waco murders. In the end, Gilbert Melendez claimed (and the state argued) that the murderers had used Gilbert's pickup truck to transport the bodies. Simons saw to it that the truck, which inexplicably was never impounded, would never be examined as the Malibu had been examined. Simons arranged for an associate to purchase the truck from Gilbert, and shipped it to his farm in Robinson, Texas, and gave it to a junkman to be turned into scrap.

38. Unaware that Gilbert Melendez had been given a ride to his mother's house by his youngest brother earlier in the day, Simons never coached Gilbert around that detail.

39. What is equally disturbing about the confessions, which undermine the central narrative of the state's account of the Lake Waco murders, are the wild incongruities that never were amended.

40. In the state's account, the victims are all screaming, and pleading up to the moment they are stabbed to death; the girls have their arms and legs free as they are being raped; and when they are murdered, all three victims are unbound. On these points, Melendez and the state, are unequivocal. Since all three victims were found securely bound and gagged, it became necessary for the state to argue - and the state did so - that the victims were bound and gagged after death. This is of course, nonsense, and is a medical and forensic impossibility. The contusions on the victims' mouths, wrists, and ankles demonstrate that they were alive when the ligatures were applied, and vomit was found inside Raylene Rice's gag, and in the dirt next to her head in Speegleville Park.

41. The very idea that the triple murders occurred in Koehne Park was beyond incredible.

It seemed to stem from a fanciful notion of Simons, who claimed he was able to "feel" where a violent crime had occurred via extrasensory perception; he was certain the Lake Waco victims were not murdered in Speegleville. Koehne Park was crowded on the night of the murders; witnesses interviewed by the police gave a consistent account of seeing one another, and seeing the victims alive. It is simply preposterous to think that in so small an area, two young women were brutally raped, after which they and a young man were brutally stabbed, complete with struggling and screaming, and that not a single park visitor that evening saw or heard a thing. In fact, it is more than prosperous - once again, it is a forensic impossibility.

42. In March 2003, four distinguished criminalists from the Tarrant County, Texas, medical examiner's office - Patricia Eddings, senior forensic trace analyst; Ronald Singer, administrative director; Dr. Marc Krouse, deputy medical examiner; and Dr. Nizam Peerwani, chief medical examiner - got together and studied crime-scene photographs from the Lake Waco murders. It was their unanimous conclusion, based on bloodstain pattern analysis, that all three victims were murdered where their bodies were discovered, in Speegleville Park. Had they been stabbed to death in Koehne Park and transported by vehicle, the bloodstain patterns would have been entirely different.

43. Newly elected District Attorney, Vic Feazell, was unimpressed with Gilbert Melendez' first confession, and even less enthusiastic after Gilbert, at Feazell's insistence, took a polygraph examination. On April 15, 1983, Feazell was tape-recording his thoughts in the form of a personal diary. He said, "I've arranged to run Gilbert on the lie detector again, on Monday, at ten o'clock, out at DPS. I just didn't feel good about the questions that were asked. They were way too general

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on the first polygraph that he took. I got into the office yesterday, the 14th. Jack Harwell, the sheriff, was waiting to see me. I'm sure that Truman Simons had put him up to it. Truman didn't want to run Gilbert on a polygraph again. I'm having some problems with Truman. He, uh, his method of operation seems to be to get a suspect, and then obtain only the information, and do only the part of the investigation that would prove his theory right, rather than doing a complete investigation. Truman doesn't want Gilbert run again. "

44. Feazell was only thirty-two at the time, one of the youngest district attorneys in Texas, and politically ambitious. He made no secret of his desire to convict the perpetrator or perpetrators of the Lake Waco murders, but he needed a winnable case. His attitude toward the case being put forth by Simons changed dramatically only a month or so after his April 15 diary entry. Ned Butler, an assistant D.A. working for Feazell, had recently won a murder case in Amarillo, Texas, on the strength of testimony from Homer Campbell, an Albuquerque dentist with a sideline in what is called forensic odontology, a field that has increasingly fallen into disrepute and is now recognized as nothing but junk science.

45. Butler looked at the Lake Waco crime scene photographs, and believed he saw bite marks on the girl victims' bodies - even though the medical examiner who had conducted the autopsies had said in her report that those marks were likely caused by ants or maggots. In May 1983, dental impressions were taken of David Spence, and Campbell positively matched Spence's dentition to the supposed bite marks in the photographs. This, of course, has recently been proven to be junk science and would never be admissible in a court today.

46. Sgt. Baier of the Waco P.D. recalled his unease with Campbell and his methods. "Ned Butler had set up a meeting with Homer Campbell in New Mexico, and I told him I wanted to

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go," Baier said. "I wanted to see for myself what forensic odontology was all about. So we flew to Albuquerque. Campbell just had a regular dentist's office - I guess I was expecting a laboratory of some kind. We went in there and sat down. Campbell took a magnifying glass and some calipers. First he looked at the photographs and said, 'Yeah, these look like bite marks.' Then he measured the molds of David Spence's teeth with the calipers and said, 'Yeah, I think this is your man.' It was that simple. And it kind of floored me. I said to myself, 'It can't be this easy. This is not right.'" The officer was correct. It wasn't right.

47. In time, Campbell would be discredited in three significant ways. First, in August, 1984, Campbell was asked to compare the teeth of an unknown 16-year-old girl whose skeletal remains were found under a tree in Flagstaff, Arizona, to enlarged photographs of a missing runaway girl named Melody Cutlip. Campbell determined that Cutlip's teeth, and the skeleton's teeth, "matched exactly." The dentist's finding was sufficient for a positive identification of the victim, in the eyes of the Coconino County Sheriff's Department. In September 1986, however, Melody Cutlip turned up alive.

48. Second, a panel of five forensic odontologists was assembled in 1993, given the Lake Waco crime-scene photographs and five sets of dental molds, including David Spence. Not one matched the supposed bite marks in the photographs to David's teeth. One of the panelists, Dr. Richard Souviron, chief forensic odontologist at the Miami-Dade Medical Examiner's Office, did not even believe he saw bite marks in the photographs. In a letter to the doctor who assembled the blind panel, Souviron wrote, "Is the purpose of this exercise [to] find marks on this body, more likely than not made by insects or artifacts, and call it a human bite mark? And

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then, even more outrageously, attempt to match the marks in the photographs, which are not even identifiable as bite marks, to a set of teeth? It borders on the unbelievable. "

49. The third way in which Campbell has been discredited is the most significant. His testimony was used to help convict Joe Sidney Williams in a murder case overturned with DNA evidence. In Campbell's expert opinion, Williams left his teeth marks on the victim; DNA proved to the state's satisfaction that Williams had no connection to the crime at all.

50. Campbell made a strong impression on jurors. To the delight of Feazell and Butler, he would testify that David Spence's teeth, to the exclusion of any other teeth in the world, had made the marks on the girl victims' bodies. In a newspaper interview, Dr. Souviron expressed his scorn for such pronouncements: "If you say that this bite fits this person and nobody else in the world, and if you use the bite mark as the only piece of physical evidence linking an attacker to his victim, that's not science — that's junk."

51. Now that Vic Feazell had Dr. Campbell as a potential witness in David's case, his chances of winning seemed greatly improved. But there was a problem: not long after Campbell came on board, Gilbert Melendez withdrew his cooperation. It was only then that the focus turned to Tony Melendez.

52. From July 1, 1982 to November 1982 - before and after the Lake Waco murders Tony was living and working as a painter in an apartment project in Bryan, Texas, approximately a hundred miles from Waco. He worked with his cousins Rudolph and Perry Surita, and his uncle Roy Surita. The Suritas and Tony Melendez were employed and paid by a contractor

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named John Hazel. Tony had no driver's license - let alone a car - and because he lacked proper identification, he received no check from Hazel. Instead, Perry Surita got a weekly paycheck, issued on Thursdays or Fridays, representing both his work and Tony's work. Thus, although Roy Surita received \$10.50 an hour, while Perry and Tony received \$7.00 an hour, Perry's checks were typically for sums 25 percent above those paid to his father.

53. Perry said that his and Tony Melendez' work week began on Monday morning and ended at noon on Friday. Only then, on Friday, would he and Tony drive to Waco for the weekend, in Perry's van, since Tony Melendez had no vehicle of his own. The Lake Waco murders occurred on a Tuesday and the bodies were discovered the following day. Perry insisted - and was prepared to testify - that he and Tony Melendez worked that entire week at the apartment project. Cancelled checks support same. Had Tony Melendez gone to Waco on July 13, both he and Perry would have missed a day of work. But the check issued to Perry Surita on July 15 was for \$546, almost exactly 25 percent higher than the \$441 check issued that day to Roy Surita. The 25 percent difference is the norm for other weeks, before and after the Lake Murders. In interviews, Rudolph corroborated that he was certain that Perry and Tony missed no work the week of the murders. Further, Tony did not spend any nights that week at his mother's house - which is where he always stayed when in Waco. Both brothers said they were astonished when Tony pled guilty and unsurprised to learn that he had since recanted his confession.

54. Tony has not at any time denied his guilt in another matter for which he was never tried: an aggravated robbery that occurred on September 17, 1979, in Corpus Christi, Texas.

Two other culprits, Ronald and Kenneth Clark, were quickly apprehended, and a warrant was issued for Tony.

55. Tony was finally apprehended for the robbery in August, 1983, and placed in the county jail in Corpus Christi. In a letter to his mother dated August 30, Tony writes, "There [sic] charging me with robbery.... I just want to do my time and get out, so I could start over and do it right." Then, in September, Tony got a visit from Ned Butler and Truman Simons. "They took me downstairs." Tony recalled. "That's when they showed me pictures of the girls [the dead bodies of Montgomery and Rice], and Butler was telling me, 'We know you did it, and you're going to get the death sentence.' I started banging on the door, yelling, 'Do I have to talk to these people?' As they were leaving, they said, 'We'll see you in court.'"

56. In a letter to his mother dated September 22, Tony wrote, "Mom what's going on they were here. They say they [will] give me [a] chance and won't kill me. I told them to get fuck[ed] so they're going to indict me. I told [them] do what they want cause I didn't have nothing to do with it so they got mad and told me they (will) see me in court. I [am] going to fight it all the way. I got nothing to do with this I wasn't even in town so they can't do this to me.... [G]ct in touch with Perry and them cause their the only one(s) that know where I was at.... Mom I am willing to pay for what I did but fuck them...I got nothing to do with this. "

57. Gilbert Melendez was disgusted that his brother had been dragged into the case, and believed it was merely a tactic to regain his own cooperation with Simons and the D.A.'s office. He was convinced, however, that Tony's alibi would save his brother from indictment. In a letter to his parents dated November 11, 1983, after reaffirming that he was innocent of the

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murders, Gilbert adds, "Here's another thing, Tony did not have anything to do with that, he has an alibi, and even if they indicted him it would be to scare him. He doesn't have a reason to worry about [it], I can't see how they could even indict him. I think it's bullshit. Now as for me I was playing games with these people and I would have more of a chance because I am innocent." Consequently, Gilbert Melendez did not resume cooperating.

58. Eleven days later, on November 22, 1983, Gilbert Melendez was indicted for the Lake Waco murders, along with David Spence, Muneer Deeb, and Tony Melendez. In an interview, Tony said he had been prepared to fight the case all the way to trial. He did not lose his resolve, he added, "until I met my lawyers."

59. Vic Feazell remains to this day a figure of controversy in McLennan County. On September 17, 1986, he was indicted by the U.S. Attorney, Western District of Texas, for "the acceptance of bribes offered by defense attorneys to influence his handling of criminal cases." Three Waco attorneys confessed to bribing him and testified against him at trial. Attorney Don Hall, one of the prosecution witnesses, said Feazell proposed the idea of dismissing cases in return for payment. "He made a statement to me...somewhere between the middle of April or the first part of May [1983] that he wanted to participate in our fees," Hall testified, referring to client fees generated by himself and his law partner, Dick Kettler, who also testified for the prosecution. "He had done us a lot of favors and knew we were making money out of the favors that he had done, and he wanted to participate in those favors.... He meant a mathematical percentage." Hall said he and Kettler agreed to pay Feazell a third of whatever fee they



collected for any case that Feazell dismissed, and cited specific instances of drunk driving cases that were never prosecuted, despite valid evidence.

60. The federal prosecutor who had developed the case, Jan Patterson, was recused before trial because of a conflict, and her replacement, Jack Frels, later faulted himself for doing, in his own estimation, a poor job of prosecuting. Feazell was acquitted. Nevertheless, on January 4, 1988, the state bar of Texas, unpersuaded that Feazell was innocent of accepting bribes, placed him on two years' probation for "professional misconduct."

61. Though neither of Tony Melendez' court-appointed defense lawyers, Chuck Youts and Jim Barlow, testified in Feazell's federal trial, both were investigated by the FBI. Youts was of particular interest to federal investigators, because of a suspicious case involving a wealthy client named Alfred Ray Smith. In December 1983, a rookie Waco police officer, Mary Crook, was arresting Smith for a drunken disturbance at a Christmas party; Smith, in his own words, "went crazy," and broke the officer's nose. Facing a charge of aggravated assault on a peace officer - a serious felony that typically results in jail time - Smith called Youts for help. An interview that Smith gave to federal agents recounts that "Youts contacted him and stated that he had been talking with the District Attorney's Office, and that he needed \$2500 cash that day. Smith said that he delivered \$2500 in cash to Youts.... Youts indicated that everything would be taken care of." A problem ensued, however. Crook filed a civil suit against Smith, and Youts told Smith that the lawsuit needed to be settled before the criminal case could be disposed of. Crook then received a call from the D.A.'s office, asking her to accept an out-of-court settlement from Smith and drop the lawsuit - a most irregular request. Crook agreed to a

settlement of \$7,000. Youts then told Smith to buy a table at the Vic Feazell Appreciation Dinner; Smith did so. Smith's charge was reduced from a felony to a misdemeanor, and he received no jail time.

62. Jim Barlow, Tony's other attorney, was investigated regarding his representation of a client named Daniel Lopez, who was arrested for driving drunk and smashing into a telephone pole. Feazell never brought charges against Lopez - in legal patois, the case was a "no-file." In a May 31, 1985, phone call between Barlow and Feazell - a call that, unbeknownst to Barlow, Feazell tape-recorded - the two men discuss the Lopez case in a manner that suggests they are agreeing on a plausible explanation for the no-file, in the event that Barlow is questioned about it. Barlow then slips, however, and says, "You and I both know that on these two or three little old civil cases that you referred me, I have paid you" a finder's fee. Feazell, well aware that a D.A. cannot legally take money for a referral, says he has no recollection of that ever occurring.

63. In the same conversation, Barlow brings up another delicate subject: Tony's alibi for the Lake Waco murders. Though by this time Tony had already pled guilty and been sent to prison. Barlow had learned that the FBI, then investigating Feazell for bribery, might have questioned Tony Melendez' cousins, Perry and Rudolph Surita. FBI special agent Bob Zane had received a tip that Tony's attorneys knew their client had alibi witnesses and supporting documentation, yet nevertheless had urged their client to surrender and give the D.A. exactly what he desired. Such conduct was consistent with the alleged trading of favors between Feazell and the defense bar that the FBI was investigating. Tellingly, Barlow does not even have to ask why the FBI wants to talk to Tony's cousins - he already knows the reason. "You

know, he [Anthony Melendez] had an alibi." Barlow reminds Feazell in the May 31 phone conversation. "That was his original - he was down there [in Bryan]. Hell, he couldn't have committed the murders.... And he had a couple of cousins that were willing to testify he wasn't here" in Waco.

64. According to Leon Cheney, the private investigator assigned to Tony's case, both Barlow and Youts treated Tony Melendez' alibi as a matter of inconvenience. Cheney said he interviewed Roy Surita, who was certain that both his son Perry and Tony were with him in Bryan painting an apartment on the day of the murders; the investigator then went to see John Hazel, the contractor, who confirmed Surita's story with cancelled checks. Cheney submitted his findings to Youts and Barlow. "I figured, hey, this one's over with," Cheney recalled. "The attorneys said, 'Great, turn in your bill. '" Cheney was dismissed, and heard nothing more about the case, he said, "until I read in the paper that Tony pled guilty. And I said, 'How the hell could he confess to something he didn't do?'"

65. Barlow could not simply ignore the alibi evidence. He dealt with it by writing himself a memo to the file, with a copy to Youts. The memo, dated January 14, 1984, makes no mention at all of the cancelled checks. Instead, Barlow notes that both Perry and Rudolph Surita 'will testify that Tony was with them the night of the murders," but he takes pains to point out that neither of the Surita brothers "will take a polygraph concerning these events." Barlow omits an inconvenient fact: The brothers did agree to a polygraph examination, but hesitated when Barlow informed them that they would have to pay for it themselves. Perry Surita recalled that "my aunt said she would pay for the lie detector test. I never would have said no. I had nothing

to hide." Rudolph concurred: "I said, 'Yeah, we can take a lie detector test.' But Barlow already had his mind set. He didn't want to help Tony." Barlow knew perfectly well that the results of a polygraph would not be admissible in court in any event. It seems instead that he was looking for an excuse to brush aside the alibi evidence, should it ever become an issue. Barlow repeats his canard about the polygraph in his taped conversation with Feazell.

66. Feazell made prodigious use of the tape recorder. Apart from his diary, he recorded his witness preparation and strategy sessions for the first Lake Waco trial and was even accused of illegally recording the grand jury that returned the Lake Waco indictments. During the federal bribery investigation, Feazell made it a habit to record key phone calls and office visits, apparently without the knowledge of the other parties being recorded. In those tapes, he carefully controls his comments, but often has difficulty reigning in the people he is recording.

67. It is hard to overstate the importance of one particular conversation, between Feazell and Chuck Youts, which took place in Feazell's office on June 7, 1985. Feazell has already learned from Barlow that the FBI may have spoken to Tony Melendez' cousins. Before that subject is broached, however, there is a discussion of Alfred Smith, the client who received neither a felony conviction nor jail time, despite assaulting a rookie woman police officer and breaking her nose. "For a year and a half I have drilled it into Al's head on stuff that he and I talked about," Youts says. "He talks to nobody, I talk to nobody, it don't go out of my office or out of wherever we are, period. I have a hard time locking that in his head because Al's got a big mouth." Feazell inquires, "What did they [the federal investigators] ask Al?" Youts replies, "They wanted to know about his case. He told them they needed to talk to me, I represent him.

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I told him not to talk to a damn soul about it." It is clear that Youts is trying to reassure Feazell that he is taking steps to make sure Alfred Smith will not become a federal witness - a needless preoccupation if Youts and Feazell had nothing to hide.

68. Feazell then asked another question: "What's this about Tony's cousins being contacted?" Youts says the feds are "investigating Tony's plea because of his ironclad alibi with his two cousins, not being able to be here." Feazell's only comment, under his breath, is "Shit." Barlow had conceded that Tony Melendez had an alibi; now Tony's other attorney characterizes that alibi as "ironclad." Not surprisingly, Feazell then changed the subject.

69. Another tape from the Feazell archive is just as damning, because it confirms a key point asserted by Tony and denied by Feazell, that Tony was led to believe he would serve no more than ten years, and possibly less, if he pled guilty to the Lake Waco murders. On June 5, 1984, Feazell switched on a tape recorder and announced, "In the room is Tony Melendez, Jim Barlow, Truman Simons, and Vic Feazell." Barlow says his client is prepared to make a confession, and will agree to testify against David Spence, whose trial was scheduled for later that month. He then moves to the subject of how much prison time his client can expect in return for cooperation. "We have not really talked years specifically," Barlow says, "although we are somewhere in the area of ten calendar years, give or take some." Feazell does not in any way dispute that statement, leaving Anthony Melendez with the expectation that he would be paroled while still in his mid-thirties.

70. On June 12, 1984, Tony gave a three-page written confession, and signed the plea bargain negotiated by his attorneys. He agreed to plead guilty to murdering two of the three Lake Waco victims in return for concurrent life sentences with a finding of no deadly weapon, and waived his right to a speedy trial for the third victim - a Damoclean sword held over Tony's head to prevent him from recanting. Two days later, he stood before Judge George Allen, in McLennan County district court, to enter his pleas of guilty. Youts and Barlow were present on Tony Melendez' behalf; Ned Butler represented the D.A.'s office. Mercifully for Butler, Tony Melendez was not asked for an allocution; as we shall see in a moment, his written confession was ludicrous and utterly inconsistent with the state's case. Nancy Wisner, the mother of Lake Waco victim Jill Montgomery, was in the courtroom that day. "I remember Tony shaking his head when he pleaded guilty," she recalled. "Like, 'I can't believe this.'"

71. Why did Barlow and Youts work so hard to persuade Tony to plead guilty, when they knew he had, in Youts' words, an ironclad alibi, and clearly wanted to fight the case? Tony was so unhappy with his representation that he persuaded his mother and stepfather, Juanita and John Arnet, to scrape together what little money they had for retained counsel, and they briefly engaged a Waco attorney named Lou Bright. Barlow and Youts should have been delighted to be relieved of the assignment of a capital murder case. Indeed, David Cherry, the attorney appointed to represent Gilbert Melendez, paid another lawyer out of his own pocket to replace him. Instead, Juanita Arnet recalled, "Barlow screamed at me. He told me if I hired that man [Lou Bright], I was going to kill my boy. He was

going to get the needle." Lou Bright was not retained.

72. Feazell's tapes reveal the cozy and blatantly improper relationship he had with Tony's two attorneys, and there is ample evidence to suggest a quid pro quo. Plaintiffs assert that Tony Melendez was prey to something far worse than ineffective assistance of counsel. His attorneys were acting against his interests, on their own behalf, in collusion with the district attorney.

73. In this regard, Tony offers another piece of evidence from the Feazell tape archive. On June 15, 1984, Tony's guilty plea made the front page of the Waco Tribune Herald, a fortuitous bit of timing for the D.A.'s office, which was then selecting the jury for the first Lake Waco trial, against David Spence, for the murder of Jill Montgomery. The following day, Richard Franks, the father of Lake Waco victim Kenneth Franks, was in a room with Feazell, Simons, and Butler at the D.A.'s office. Franks was a scheduled trial witness, and he was being prepared for his testimony. On the tape recording of that session, Franks is startled to learn that Tony is not going to be called to testify at David's trial. "Even if he wanted to, he might not help us," Butler says. "We may have a better case without him."

74. Franks later asks, "Why was it necessary for Tony to plead guilty before David's trial?" "Because Tony was wavering up and down. And Tony was our weakest case," Simons said. "By far our weakest case." Butler affirmed. "If they would have put Tony last," Simons said, "we'd have been in trouble." "If they'd have put Tony first, we'd have been in trouble," Butler said. "If they'd put Tony in the middle, we'd have been in trouble. We didn't have much on Tony."

75. Tony's three-page confession of June 12, 1984, made it clear why he was not called later that month as a trial witness against David Spence. In it, Tony said he rode to Koehne Park with his brother Gilbert and David Spence, then fell asleep on a picnic table and awoke just in time to see one of the girls being stabbed by David Spence. Tony recalled Kenneth Franks being bound and gagged while still alive - the only instance in any confession by either brother in which this was the case. Before Franks was stabbed, Gilbert Melendez said "to split, to go back to Bryan." At that point, Tony Melendez drove off in David Spence's car, which would have stranded his brother and Spence with their murder victims. None of the confessions were consistent with each other or the objective facts of the crimes.

76. With Gilbert still refusing to testify, and Tony incapable of giving a believable account, the state's case against David Spence consisted of the testimony of forensic dentist Homer Campbell, and the word of six jailhouse snitches - four inmates who had met Spence in the McLennan County Jail, and two who had served time with him in the Eastham prison unit. (The two Eastham inmates later recanted, asserting that Truman Simons coached them and plied them with favors such as conjugal visits). Despite the flimsiness of the case, David Spence was convicted of the murder of Jill Montgomery and sentenced to death.

77. Gilbert Melendez soon lost his resolve to fight. On January 18, 1985, he gave a new written confession and three days later entered his plea of guilty in district court. On March 5, in Johnson County, Texas, Gilbert Melendez testified at trial for the first time, as a prosecution witness against Muneer Deeb.



78. Though Deeb was found guilty at the Johnson County trial and sentenced to death, his conviction was reversed on appeal. He was retried in Tarrant County in December, 1992, and acquitted on all charges the following month. Felton McAfee, one of the Tarrant County jurors, said a significant reason for the verdict of not guilty was the conduct of Truman Simons. "He was just absolutely totally corrupt in all our opinions," McAfee said. "It appeared that he coerced information.... And that actually hurt the prosecution's case quite a bit.... We just felt...that he was somewhat underhanded in his practices, his law-enforcement practices. We just didn't buy what happened." Deeb was the purported mastermind and yet was not guilty.

79. David Spence, already on death row, was tried a second time, in October 1985, in Brazos County, for the murder of Kenneth Franks. On October 10, 1985 for the first and only time, Tony Melendez appeared as a trial witness. Because his first signed confession was unusable, Tony signed his second and final confession six days before his court appearance. While the second confession and the trial testimony are more consistent with the state's account of the crime, they still wax inauthentic, and bear all the hallmarks of having been scripted.

80. In his confession and testimony, Tony subscribes to the notion that the rapes and murders occurred in Koehne Park, that the victims were bound and gagged postmortem, and that the corpses were transported by vehicle to Speegleville Park - assertions which have been shown to defy both common sense and forensic science. In Tony's account, he, his brother and David Spence arrived at Koehne Park in Spence's Malibu, but cart the dead bodies to Speegleville in Gilbert's 1963 Ford pickup truck, which Gilbert had purchased for \$300. The state conceded that on the night of the murders, the truck was in Bosqueville, Texas, at the farm

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of Calvin Nesbit, an auto mechanic; but the state disputed Nesbit's trial testimony that on the night of the murders, the truck had a broken fuel pump, starter, and carburetor, and three flat tires.

81. In Tony's account, after the Lake Waco victims are dead, he and his brother take Spence's Malibu to Nesbit's farm in Bosqueville, drive the truck and Malibu to David's mother's house in downtown Waco, leave the Malibu, return to Koehne Park in the truck and finally load the bodies onto the truck and cart them to Speegleville. J. Neil, an investigator employed by David's post-conviction lawyers, recreated the trip described by Tony from Koehne to Bosqueville to downtown Waco to Koehne to Speegleville - and determined that it could not be accomplished in under two and a quarter hours. David Spence would have had to remain alone with the three bloody, mutilated corpses, in the middle of small, crowded Koehne Park, undetected, for a good ninety minutes, during which time he supposedly amused himself by securely gagging and tying up his victims. The account is not credible. Were it the truth, it could almost certainly have been corroborated with DNA testing - three blood-soaked bodies loaded onto the flatbed of a pickup truck would surely have left detectable traces of themselves, and DNA comparison samples exist for all three victims. But Simons arranged for the truck to be compressed into scrap metal.

82. Just as significant as the incongruous details in Tony's account of the crime are the key details that are entirely missing. Confessions ring authentic when they contain information that only the perpetrator could have known. For instance, Montgomery and Rice were found naked, apart from their ligatures. What became of their clothes, shoes, and purses? What became of the

murder weapon? Tony not only fails to address such matters; he was never asked in any official or recorded proceeding.

83. Simons claimed that Tony's confession and testimony did in fact contain a detail he could not have known had he not participated in the murders. Tony says in his October 10, 1985, confession that David and his brother unloaded Franks' body from the truck and "took him off aways. When David came back, he was laughing. He said when they find him, they'll freak out because he's going to be sitting up." Tony repeats this account in his trial testimony. Franks' body was in fact discovered lying down near a tree, but the medical examiner who conducted the autopsy on Franks, Dr. Mary Gilliland, concluded that Franks had been sitting up for a time after his death, and based her conclusion on lividity in the victim's hands, which she believed was caused by the downward flow of blood. Simons insisted that Tony Melendez could not have known that Franks had been propped up in a sitting position had he not been at Speegleville on the night of the murders.

84. In fact, this detail is further evidence that Tony's confession was coached and scripted because it was based on false information that Simons believed was factual. At the time Dr. Gilliland conducted her autopsy, she had not seen the police photographs of the dead bodies as they were found in Speegleville.

85. When shown the photographs of Franks, she observed that Franks was lying flat on his back with his hands beneath his legs, and that the weight of his legs was undoubtedly the cause of lividity. Furthermore, like other experts who have looked at the police photographs, Gilliland observed that if Franks had been seated against the tree and had toppled over, he could not have conceivably landed in the prone position in which the body was found.

86. Tony Melendez asserts that his 1985 confession and trial testimony were scripted for him by Simons, and coerced by the State and his own attorneys, who repeatedly assured him that if he fought the charges, he would end up in the death chamber. Tony further asserts that he was told by Simons that in order to make his confession credible, he had to include two particularly damning details - that at Spence's urging, he inflicted two stab wounds in Raylene Rice, and that he sexually violated Jill Montgomery. Those details make it all the more understandable that Tony's bid for parole has repeatedly been denied. "If I'd known then what I know now," Tony said in an interview, "I could have lied in a whole different way." Eleven of the testifying witnesses against Spence have recanted their testimony and have sworn that they were coerced or bribed by the State to lie.

87. On October 10, 2001, the Governor of the State of Texas issued a proclamation granting a full pardon for innocence to Calvin Edward Washington, who had been serving a life sentence for the murder of a Waco resident named Juanita White. Four months later, the McLennan County district court granted a motion fully exonerating Washington's co-defendant, Joe Sidney Williams, who had been convicted of the same murder. The Washington case has a direct bearing on this claim, because the convictions of Washington and Williams were based largely on the word of twelve felons whose testimony was elicited by Deputy Sheriff Truman Simons. The innocence of Washington and Williams was proven conclusively by DNA evidence; as a consequence, the two state prosecutors who convicted Washington and Williams in separate trials, and who had trusted Simons implicitly, were badly shaken.

88. The twelve informants had told a consistent story connecting Washington and Williams to the murders, and if their matching stories were false, it suggested that Simons had concocted their stories and told them what to say. Or so it seemed to one of the state prosecutors, Scott Peterson. "It's very difficult for me," Peterson said shortly after Washington was set free. "I know police officers lie on the stand in order to get bad guys that they know did it.... But to just out and out frame somebody — that would hurt me. To find out that that happened.... I mean, twelve people come forward and they all just kind of come up with this story without him [Simons] participating in some way, if it was untruthful? That would be next to impossible, wouldn't it?" Asked whether only one of two scenarios had to be the truth either Washington and Williams were guilty, or they were framed - Peterson replied, "It really does. It has to be an on or off switch."

89. Karen Amos, the lead prosecutor, testified on Washington's behalf at a June 13, 2001, DNA hearing in McLennan County district court; she concluded her testimony by saying she was "very ashamed and sorry" to have taken the Washington case to trial. In interviews before and after the DNA hearing, Amos explained the reason for her shame: she had been pointedly warned by Jan Price, a homicide detective with the Waco Police Department, that Williams and Washington were innocent, and that Simons had concocted the case against him. Amos had chosen to believe Simons over Price.

90. Juanita White was found dead in her Waco home on March 2, 1986. She had been raped, and then strangled and bludgeoned to death. Price, originally assigned to the murder case by the Waco P.D., was effectively pushed off the case by Simons. It was her theory that a known rapist

named Bennie Carroll was the killer, but Simons was not interested in Price's theory. One of Simons' top informants, a felon named Reggie Bible, reportedly had had a row with Calvin Washington, over a woman, and wanted revenge. Washington was at liberty when the White murder occurred, but a complaint had been filed against him for the unauthorized use of a motor vehicle - he had borrowed a friend's car without permission. Such complaints were typically ignored, but Simons had Washington arrested. Washington said that while in the McLennan County jail, awaiting the disposition of motor vehicle complaint, he was shocked to learn, from a televised news report, that he was going to be charged with the Juanita White homicide.

91. Jan Price was shocked as well. Nothing in her preliminary investigation had pointed to Washington. She was even more alarmed when Simons fingered a second suspect in the homicide, Joe Sidney Williams. At the time of the murder, Washington was thirty and Williams was eighteen; the two men were virtual strangers to one another. Williams was repeatedly pressured - just like Tony Melendez - to plead guilty in return for promises of leniency, and to implicate Washington. Unlike Tony Melendez, Williams refused to succumb to the pressure.

92. Price was so certain that Simons had fabricated his case that she took a highly unusual step. On November 19, 1987, eleven days before the start of Washington's trial, Price, accompanied by Waco police Chief Larry Scott, appeared before a McLennan County grand jury to present evidence of "possible tampering with witnesses and subornation of the Washington case. When the effort failed to halt the trial, Price and more than a dozen police officers testified for the defense and asserted under oath that the informant witnesses recruited by Simons lacked credibility. Washington was nevertheless found guilty and sentenced to life.

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93. Williams fared no better. In addition to informant witnesses, the principal direct evidence against him was the testimony of Dr. Homer Campbell, the forensic dentist from Albuquerque. Juanita White had marks on her buttocks that appeared to be genuine human bite marks. (Dr. Richard Souviron of Dade County, Florida, believed the supposed bite marks on the Lake Waco victims were in reality caused by insects or artifacts.) Campbell, now deceased, was a man who seemed to know what was expected of him. When the sheriff's department of Coconino County, New Mexico, believed that the skeleton of a dead girl belonged to a missing runaway named Melody Cutlip, Campbell determined that the skeleton's teeth and Cutlip's teeth "matched exactly"; but two years later, Cutlip turned up alive. After Simons told Campbell he believed Joe Sidney Williams had bitten Juanita White, Campbell testified in court that it was "highly unlikely" that anyone in the world other than Williams had left the bite marks on White's buttocks.

94. It would take fourteen years for conclusive proof to emerge that vindicated Det. Price, discredited Dr. Campbell, exposed the informant witnesses recruited by Simons as liars, and exonerated Washington and Williams. The Southwest Institute of Forensic Science in Dallas, where White's autopsy was performed in 1986, had preserved one vaginal swab and one anal swab from the autopsy. Both swabs revealed the presence of DNA from the semen of a single male donor. On November 28, 2000, Forensic Analytic, a laboratory in California, excluded both Washington and Williams as the source of the DNA. The lab then compared the unknown DNA profile to the DNA of Bennie Carroll, the suspect developed by Jan Price. On April 10, 2001, Forensic Analytic determined that there was a nineteen billion to one likelihood that Bennie Carroll was the source of the DNA on both swabs.

95. Tony Melendez was imprisoned for more than thirty years before dying in jail for a crime he did not commit; and he is far from alone in making that assertion. Jan Thompson, the aunt of Lake Waco victim Jill Montgomery, has stated publicly that she believes those convicted were innocent. When Muneer Deeb was retried, and found not guilty, he maintained his own innocence, Gilbert Melendez recanted his confession and maintained his innocence until his death. David Spence maintained his innocence while being executed. No DNA evidence points to any of them.

**Declaration Issue:**

96. Chapter 103.001 of the Texas Civil Practice and Remedies Code defines which claimants are entitled to compensation and health benefits coverage for wrongful imprisonment. Each definition requires either a full pardon on the basis of innocence; a successful Writ of Habeas Corpus based on actual innocence; or, a successful Writ of Habeas Corpus and accompanying dismissal by the sentencing court.

97. While Sec. 103.001(c) contemplates compensation for a deceased individual, Article 11.01 of the Texas Code of Criminal Procedure defines a Writ of Habeas Corpus in Texas and contemplates a living complainant.

98. Accordingly, it is unclear as to whether Tony, David and Gilbert can meet the Habeas Corpus requirements of Chapter 103.001 even though actually innocent – because they died while in the care, custody and control of the State.

99. Plaintiffs seeks a declaration that they are entitled to Writ of Habeas Corpus relief and



compensation under Chapter 103 for the time they were wrongfully imprisoned.

100. Plaintiffs request that the Court utilize the powers granted it under the Declaratory Judgment Act and determine the facts underlying this cause.

101. Evidence now exists that contradicts scientific evidence relied on by the state at trial. Plaintiffs request that the court find that, based on the facts presented that: relevant scientific evidence is currently available and was not available at the time of the deceased prisoners' trials and/or convictions because the evidence was not ascertainable through the exercise of reasonable diligence by the convicted persons before the date of their trial or conviction; and the scientific evidence would be admissible under the Texas Rules of Evidence at a trial held on the date of the application; and, that had the evidence been presented at trial, the accused prisoners would not have been convicted. Arguing further, new evidence exists that supports the actual innocence of the accused prisoners.

102. Plaintiffs request that the court declare that David Spence and Anthony Melendez were actually innocent, that no reasonable jury would or could have found them guilty, and that they were wrongfully imprisoned, and in David Spence's case, wrongfully executed.

#### **Attorney's Fees**

103. Plaintiffs adopt and republish paragraphs 1 - 97 as if set forth at length.

104. Plaintiffs hereby seek an award of attorney's fees pursuant to Chapters 37 and 38 of the Texas Civil Practice and Remedies Code.

105. Plaintiffs will show that they have had to retain the undersigned attorney to prosecute this action on her behalf, and, upon final trial of this cause, that they should be awarded their reasonable attorney's fees.

37 – Petition for Declaratory Judgment

**Jury Demand**

106. Plaintiffs make demand for a jury trial in this matter.

**Request for Disclosure**

107. Pursuant to Rule 194, you are requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court declare and enter judgment against the Defendant, as follows:

Declaration that the Plaintiffs are not disqualified from seeking Habeas corpus relief and determination because they are deceased.

Declaration that the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application;

Declaration that, by a preponderance of the evidence, but for a violation of the Constitution no rational juror or jury could have found the applicant guilty beyond a reasonable doubt;

Declaration that, by clear and convincing evidence, but for a violation of the Constitution no rational juror or jury would have answered in the state's favor one or more of the special issues that were submitted to the jury in the applicant's trial.

Declaration that David Spence and Anthony Melendez were actually innocent;

Declaration that Plaintiffs are eligible for statutory compensation for the wrongful imprisonment and deaths of David Spence and Anthony Melendez;

Declaration that Plaintiffs are eligible for Writ of Habeas Corpus relief;  
Declaration of Compensation for wrongful imprisonment;  
An award of reasonable and necessary attorney's fees and costs; and  
For such other and further relief, general or special, in law or in equity, to which they may  
show themselves to be justly entitled.

Respectfully submitted,

**ENGLISH LAW GROUP, PLLC**

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