Dreams Deferred:
Capital Punishment and Injustice in Texas

by

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AN HONORS THESIS

Submitted to the College of Humanities and Social Sciences
Carnegie Mellon University
Pittsburgh, Pennsylvania
in partial fulfillment of the requirements
for the degree of

BACHELOR OF ARTS IN HISTORY

May 2007

On the night that the State of Texas killed David Spence, a thunderstorm beat wrathfully at the windows to Huntsville. It was a Thursday, and the death chamber had been prepared and filled with both the relatives of the teens he supposedly butchered and the allies he had previously enlisted to prove his innocence. "I understand your pain, I really do," Spence, strapped to a gurney in the Texas death chamber, said to six relatives of two of the victims. "But," he added, "I didn't kill anybody. I'm going to miss you all."

The witnesses stared through a large, barred window into the death chamber. Brad Montgomery, a relative of the deceased, responded to Spence's assertion of innocence by muttering, "Just die. Just die." "It's finally over," Montgomery said with his arms raised as he left the prison. "I wish it was harder. It was so easy, just going to sleep. If we were going to change anything, we needed to make him suffer."[1]

The team of Truman Simons, a police officer, and Vic Feazell, a district attorney, who put him here, agreed. "(Spence) won't accept the fact that he's dying until he feels (the chemicals) going in him," said Simons. "And that's the part I'd like to see. Spence needs to die for every one of those cuts, for every one of them bodies," said the former police officer. The district attorney agreed. "David is just a glitch in the fabric of

[1] "Relative expresses relief as killer is executed at last." *Deseret News*. 4 April, 1997.

the universe," Feazell said. "I think he'll believe that there's somebody on the other side of his life want with a case of Budweiser and a new knife."[2]

The night David Spence was killed, like almost every other, Muneer Deeb was driving a fare in his Lincoln Towncar. He had been accused of the same murders as Spence, convicted for them, and had served nearly a decade of his life on death row before his own diligent research and some top-notch legal help won him a retrial and acquittal. On the night that Spence was put to death for the three murders in Waco's Speegleville Park, Deeb, the man who supposedly paid Spence to commit these killings, was free by the same justice system that was pumping the poison into Spence's veins.[3] Deeb had fought hard to build a life for

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[2] "Pain echoes 10 years after grisly deaths: 1 defendant to be retried in slaying of 3 teenagers." *Houston Chronicle*, 26 July, 1992.

[3] There has been a great deal of academic scholarship about the effectiveness of capital punishment in deterring violent crime. While the rest of the Western world has been attempting to enforce nonexecution as a human rights issue, the policy of the national government in the United States has shifted to the toleration of capital punishment by the states, and a series of capital crimes have been added by the federal Congress for the limited jurisdiction of the federal government. The current circumstances of capital punishment in the United States, asserts Franklin Zimring in *The Contradictions of American Capital Punishmen*t, are distinguished from earlier years by "huge death row populations, very long delays between the sentence of death and the earliest the execution might occur, and a relatively small likelihood at current rates that a particular death sentence will lead to an execution…The delay and uncertainty of the current system have produced anger and frustration… some states reverse eight out of every ten death sentences on appeal, while other states affirm eight out of ten." He suggests three ways to remedy the system: making DNA matching resources available to all death row defendants, making substantial improvements in minimum standards for capital lawyers, and maintaining a moratorium on executions until a study can reveal and fix the causes of mistaken death verdicts." Other factors were at work, though, including the racial makeup of the accused. Bowers and Pierce found in their 1980 study "Arbitrariness and Discrimination under Post-Furman Capital Statutes" (*Crime and Delinquency 26* (4;563-645). Referenced in Mann, Coramae Richey. Unequal Justice: A Question of Color. Bloomington: Indiana University Press, 1993.),that "where there is animosity, prejudice, and stereotyping along racial lines—resulting, perhaps from long-standing patterns of discrimination and deeply rooted racial attitudes and fears—people will be more shocked and outraged by crimes that victimize members of the dominant racial group, by crimes that are perpetrated by members of the subjugated or subordinated racial group, and especially by killings in which a minority group offender crosses racial boundaries to murder a majority group victim. Moreover, the people who have these attitudes and fears are also the ones who serve as jurors and who elect

himself after leaving jail: he had started a successful cab company in Dallas and was involved in Amnesty International.

Jeremy Jay, his good friend and one of his regular fares at his cab company, describes the circumstances surrounding his discovery of Deeb's past. An exploration geologist, Jay was a frequent traveler who used executive limo services to get from his home in the suburbs to the Dallas-Fort Worth Airport. During a trip, Jay recalls, the radio announcer mentioned something about Waco. "I offhandedly mentioned that I had really never been to Waco but that it seemed to be a strange city." When Jay mentioned conversationally that he should probably visit it sometime, "Deeb spoke firmly that he would never go to Waco. I asked why and he told me that there were people there who were bad people and they had treated him very badly. That was all—no details to fill in the blanks."

Jay asked Deeb what had happened to him in Waco, expecting to hear about unpaid bills or an ex-girlfriend, but was shocked at the reply that he received. "He told me, in a matter-of-fact manner, that he had been in jail in Waco and that it was a very unpleasant experience. He told me, of course, that he was innocent, which didn't really convince me

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prosecutors and judges to execute their laws." In addition, the US is one of only five nations in the world that still allows the execution of children, along with Iran, Pakistan, Saudi Arabia, and Yemen, and though 11 states currently ban the practice, at least 27 mentally retarded people have been executed since 1976. Though there are statistics that can be quoted from both sides of the issue, many scholarly studies, such as Bedau 1997, have shown that the death penalty fails as a deterrent to violent crime. The United States Bureau of Justice Statistics itself found in 1995 that states without the death penalty see less murder and violence than those that do have the punishment, according to John May's book *Building Violence: How America's Rush To Incarcerate Creates More Violence.*

since you hear that all inmates claim innocence. I asked Deeb what he had been put in jail for and he calmly said 'I was put on death row for a murder of a girl that I didn't do.' Now imagine me in the back seat listening to this convicted murderer of Middle East descent driving me around town to the airport. What does one say to his driver in response to such an admission? Well I merely said that I was sorry it was such a bad experience."

"There was something in Deeb that struck me during this conversation: he was not railing against the U.S. prison and court system that wrongly convicted him and, I later learned, took ten years out of his life. In fact, he was excited about working and saving money so as to start his own company. He was focused on the 'classic American Dream' of becoming successful, rather being bitter and mad at the system that had created such agony in his life.

At this point, Jere Jay still did not know how much, if any, of his story to believe. But to his surprise, when Deeb picked him up after he returned from his trip, he handed him a copy of Life Magazine with a full-page article about his case.

"I was shocked: what he had said was true. Here I had been driving around with a convicted murderer who spent almost 10 years on death row –for a murder he didn't commit," said Jay. "I was absolutely blown away. Here this guy appeared to me to be the model immigrant, who was courteous, well spoken, hard-working, looking to save money to

start his own limo company, and run an honest and ethical business. In effect, Deeb's goal was to live the "American" dream. There was no animosity; no ranting and raving about the American system that had stolen 10 years from the young man, just a cab driver who was disgusted at the unethical behavior of the big cab companies who wanted to start his own company. The whole thing made me realize how easy my own life had been, never having to deal with any major setbacks like Deeb."[4]

That same stormy night in 1997 that Deeb was driving his fare and David Spence was put to death, Tony Melendez sat in his prison cell. He had seen Spence and Deeb sentenced to death for the murders, in which he was accused of participating, and following the advice of everyone around him had confessed to the murders. "I just told my lawyers to tell Simons I didn't have anything to do with it, but they just kept telling me over and over that if I didn't plead to the crime, I would die," he said. "If I had it all to do over again, I wouldn't tell them anything I didn't do—I would chance the death penalty and try to fight it, because if you're on death row at least people will listen to you. That's the only reason Deeb got freed—they may not have listened or cared about his case the first time, but by the time he got a judge to hear it a second time everyone was ready to listen."[5]

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[4] Jeremy Jay, "Deeb Memories," Unpublished, typescript recollections. December 17, 2006; Allen, TX, p. 4.

[5] Anthony Melendez. Interview by author. Polansky Prison; Livingston, Texas, 31 December, 2006.

Tony Melendez and his brother Gilbert, both convicted of the murders, had been promised by the police that their confessions would earn them freedom after a few years. It had been decades since either of them had seen the outside of a prison's walls. Gilbert Melendez would die a year later, in prison, of complications from HIV.[6]

On the day of his execution, David Spence ate his last meal of fried chicken, French fries, chocolate ice cream, Coke, tea and coffee before being strapped to the gurney. It took only seven minutes for the potassium chloride in the lethal injection to stop his heart. He was pronounced dead at 6:32 p.m. on April 3, 1997.. Meanwhile, Deeb, the man who had supposedly hired him to perform the killings had already been won his own retrial, been proved innocent, released, and founded what was to become Dallas's fastest-growing executive limo company.

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The state of Texas executes far more inmates than any other state in the nation. Former Governor George W. Bush wrote in his autobiography that, "I review every death penalty case thoroughly. Early in my administration, I decided the standards by which I would decide whether to allow an execution to proceed. In every case, I would ask: Is

[6] "Deeb, figure in lake slayings, confirmed dead: Ex-store owner's conviction in 1982 deaths was overturned." Waco Tribune-Herald, April 14, 2000.

there any doubt about this individual's guilt or innocence? And, have the courts had ample opportunity to review all the legal issues in this case?"[7]

Experts on capital punishment, surveying the wreckage of Governor Bush's terms in office, disagree that he has such high standards. For instance, a study by Columbia law professor James Liebman found that the rate of reversible errors (errors that could have been avoided and seriously undermined the reliability of the sentence) in Texas capital cases to be 52 percent.[8] A *Washington Post* study of sixteen Texas death penalty cases found several instances in which lawyers for the defense slept through key testimony, failed to file key papers on time (or at all) or were later cited for professional misconduct.[9] The *Chicago Tribune* did an in-depth study of the cases of the first 131 people executed in Texas during Bush's terms. It found that in 43 of the 131 cases, the attorneys appointed had been sanctioned for unethical behavior either before or since their cases. Thirty-four had been suspended or disbarred, and nine had been reprimanded.[10] Reasonable doubts persist about the innocence of a number of those executed by the state of Texas, and the Lake Waco case is a classic example of how the legal and justice system fosters those doubts regarding the convictions of

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[7]"Some Texas executions leave doubt: Despite Bush claim, ambiguities Linger." Boston Globe, May 13, 2000.

[8] Alan Berlow, "Bush's Death Penalty Dodge." Salon.com. 12 June, 2000 <http://archive.salon.com/politics/feature/2000/06/12/death/index.html>

[9] Paul Duggan, "George W. Bush: The Record in Texas--Attorneys' Ineptitude Doesn't Halt Executions," *Washington Post*, 12 May, 2000.

[10] Steve Mills, Ken Armstrong, Douglas Holt, "Flawed Trials Lead to Death Chamber: Bush Confident in System Rife with Problems SERIES: The State of Execution: The Death Penalty in Texas." *Chicago Tribune*, June 11, 2000.

many defendants. This would be egregious normally, but when it happens in a capital case, when a citizen's life is at stake, the State is quite literally toying with the lives of those who find themselves swept up in the maelstrom of the Texas system of executions.[11]

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On July 13, 1982, at the beginning of this saga, two fishermen out at Waco's Speegleville Park stumbled onto the body of local teenager Kenneth Franks propped up against a tree, wearing sunglasses. The mangled bodies of Gail Kelley and Raylene Rice were found nearby, covered with stab wounds and blood. One of the first people on the scene was Truman Simons, a Waco police officer, who found himself extremely moved by the morbid scene in front of him.

"I don't know who you are," he whispered to the body of Jill Montgomery, which was attacked more viciously than the other two, "and I don't know how or why this happened to you. But I promise you that whoever did this is going to pay for it. This won't be just another murder in Waco, Texas. I give you my word on that. You're not going to be some

[11] In fact, a bi-partisan commission appointed by Governor George Ryan of Illinois released the findings of its two-year study of the death penalty system in Illinois, which led to moratorium on the death penalty and the commutation of the sentences of those on death row. The commission recommended dozens of reforms to the state's criminal justice system that would reduce the scope and arbitrariness of capital punishment and lower the risk of wrongful convictions and executions. The commission was unanimous in concluding that no system, given human nature and frailties, could ever guarantee absolutely that no innocent person would be sentenced to death, and a majority of the commission favored abolishing capital punishment entirely. Governor Paris Glendening imposed a moratorium on executions in Maryland pending the completion of a study on racial bias in application of the death penalty in Maryland. Eleven of the seventeen death row defendants in Maryland were African-American, and all but one were convicted of murdering white victims, even though the vast majority of murder victims in Maryland are African-American. Yet Texas is currently leaning the other way: legislation has recently been introduced in the Senate that would allow for the expansion of the death penalty to include child molesters.

little girl who was just left lying out here like this. It's not right, and I won't let it happen."[12]

Jill Montgomery, Raylene Rice and Kenneth Franks were teenagers from Waco. All had currently or previously attended the Methodist Home, a residential program for troubled or rebellious youth. Koehne Park was one of the teenage hangouts; in a town as small as Waco, a large part of the nightlife was cruising around. The night before, the three of them had been headed to Koehne to drink a few beers, smoke a joint or two, just have a lazy good time.

Intriguingly, before she left her house Jill Montgomery's sister-in-law saw her put a yellow-handled pocket knife in her purse.

"What in the world are you doing with that?" Gloria Montgomery had asked.

"Protection," Jill said.[13] This episode was never subsequently explained, as it did not in any way fit in with the police and district attorney's version of the crime.

The medical examiner found that Kenneth had been stabbed or slashed twenty times. Jill Montgomery had been stabbed nine times in the chest, had the nipple had been cut away from her left breast, and had her throat cut. Raylene Rice had been stabbed eleven times, penetrating her lungs and heart, and her throat had been slashed. In her examination, the medical examiner found no hair or tissue samples on

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[12] Carlton Stowers, *Careless Whispers*, (New York: St. Martins), p. 15.
[13] Stowers, p. 40.

the bodies that would help identify the culprits, and identified no marks on the bodies as possible bite marks.[14] However, the police recovered hair samples from the cloth that was used to bind the girls, as well as palm prints from Kenneth Franks' car.

Lieutenant Marvin Horton of the Waco police department was officially assigned to head up the investigation, assisted by Detective Ramon Salinas and Patrolman Mike Nicoletti. Even though he wasn't assigned to the case, Simons continued to work on it on his own time, staying current on leads and investigating hunches. The detectives working the case were hostile towards him, and as a whole didn't appreciate his intrusion.

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Waco sits at the crossroads of Texas, along highway I-35, just a few hours removed from each of the major cities of the state. In 1982 Waco's population of 100,000 was shocked by these gruesome murders, and as soon as the initial horror wore off the tips started rolling in with such ferocity that the police had to scramble to keep up.

Early on, there were several suspects in the case, including a local resident named Terry Harper. Several witnesses told police that Mr. Harper had bragged about the killings before the bodies were found and before news stories regarding the murders had aired. The witnesses claimed that Mr. Harper had even offered details that even some law

[14] Stowers, p. 53-56.

enforcement officials did not know, mentioning, for example, that one of the victim's nipples had been severed in the attack. Implicating Mr. Harper even more deeply, almost 20 witnesses saw either the victims or their car in Koehne Park on the night of the murders; many mentioned seeing Mr. Harper with the victims. Seven witnesses reported that Harper had told them of his involvement in the murder and at least three said he had made those statements before the murders were reported in the media.

Harper refused to cooperate with the police, who nonetheless decided that he was untrustworthy as a suspect because he had previously (and untruthfully) bragged about being involved in other murders. When Spence's lawyers later questioned him, he denied his involvement and signed an affidavit stating he was at home watching the television program "Dynasty" during the murders. However, Dynasty wasn't shown that night. Incredibly, this was the "airtight alibi" that had caused the police to dismiss him as a suspect.[15]

Another of the hundreds of tips was from a girl named Linda Kelton. She mentioned an Arab man, Muneer Deeb—also known as Lucky— who ran a convenience store across the road from the Methodist Home. Once, she had heard him threaten to "put Kenneth Franks in the hospital." She told Patrolman Nicoletti that "Kenneth had ridden his motorcycle through the parking lot of the Rainbow—that's the name of

[15] Alan Berlow. "The Hanging Governor: Did Execution-happy George W. Bush sign off on the lethal injection of an innocent man?" 05/11/05.

Lucky's store—and cussed him or maybe shot him the finger. They didn't like each other, I know that. It had something to do with Gayle. She and Kenneth were good friends and Lucky didn't like that one bit. I think he wanted Gayle to be his girlfriend." She smiled, and when Nicoletti inquired further, explained that Lucky was small, "a lot smaller than Kenneth. I remember telling him at the time that I didn't think he was capable of putting anybody in the hospital. The idea of him even getting into a fight was pretty funny, really." Patrolman Nicoletti dutifully wrote up the tip, and the investigation ground on.[16]

By September 9, 1982, the worthwhile leads had petered out and the case had stalled. Simons burst into Police Chief Larry Scott's office, livid because he'd discovered that the case had been marked "suspended," a virtual kiss of death for an active investigation. Chief Scott hid his surprise well—he was unaware of that decision, and wouldn't have agreed with it had he known. Though he had reservations about the decision, and about Simons, Scott granted his request to take another look at the murder cases.

Simons had previously boasted, "I guarantee, you assign me that case and I can solve it in a week's time." True to his word, Simons declared just the next day that he had a suspect, Muneer Deeb. Deeb had no prior criminal record nor had he ever been suspected of any

[16] Carlton Stowers, *Careless Whispers*, (New York: St. Martins), p. 70.

criminal activity. Nevertheless, Deeb was arrested three days after Officer Simons was assigned the case. [17]

The owner of the Rainbow Drive Inn just across the street from the Methodist home, Muneer Mohammed Deeb, was known as "Lucky" to those in Waco with tongues unwilling or unable to pronounce his given name. Deeb was slight man who had been born with a club foot and walked with a limp. He was born in Jordan to a military officer who was jailed in a Hezbollah military upheaval. The youngest boy in a family of nine, he was the child chosen to brave the barbed wire and snipers to bring his father food while he was in prison.

"He would roll under the barbed wire and run and take him food and run back and they would shoot at him," remembered his best friend and business partner Bobbi Heyn. "I used to ask him, "Weren't you scared?" and he'd say "No, because I know they could've killed me, they didn't want to shoot a little kid, they just shot thinking they would scare me; it was kind of a joke for them." He would say, "If they wanted to kill me, they would have killed me." I always wondered if his parents chose him because he was the one that wasn't a perfect specimen, because he was deformed."

After his father was freed, the family fled to Saudi Arabia, where Deeb grew up. According to Dick DeGuerin, the lawyer who fought his retrial, he had originally picked Texas State Technical Institute from a

[17] Bob Herbert. "The Impossible Crime." *New York Times*. July 28, 1997.

book, sight unseen. He'd never been to America before. "He took something like a 48 hour flight and wound up in Waco, Texas of all places," said DeGuerin in a slight country drawl. "He started school there, and like so many Middle-Eastern folks he decided that having a convenience store would be a good way to make some money and he somehow got his place, his little convenience store. He was running it on a shoestring but it was right across the street from the Methodist Home. It's really a high-dollar juvenile ward where folks send their uncontrollable teenagers, so these kids would jump the fence and come over and Deeb would sell them beer. Well, in the middle of Waco, Texas having a Middle Easterner selling beer to teenagers doesn't make you real popular, so Deeb was a target."[18]

Even beyond that factor, the combination of cultural differences and Deeb's particular quirks made Simons and the small team he assembled regarded Deeb in a negative light. All involved agreed on a few facts: Deeb was naïve, he was eager to please, he let people, especially women, walk all over him, and he would try too hard at times to impress them, even to the point of saying shocking things.

"It was always kind of on his mind, that he needed to have a girlfriend… you know, in his religion, that pretty much makes you complete, to have a wife," recalls Heyn. "But things just did not work for him in that area. He would be attracted to people who would use him

[18] Dick DeGuerin, interview by author, digital recording of telephone interview, 29 November 2006.

financially. He already had that habit to prove himself, or maybe brag a little more than what was real, exaggerate a little bit, tease a little bit, and if they wanted to believe that maybe he was bigger and badder than he really was… but he actually was about as pure as the driven snow. And it's hard…in his spirit, in every way you could imagine, business-wise, and he just had this dream that he would find someone that would appreciate him for him but yet his actions didn't do anything but make the opposite happen because he would be so naïve: they would catch on that he was an easy mark. Absolutely, people would take advantage of him, particularly females."[19]

Even once the investigation had begun to focus on him in earnest, his faith in his innocence and in the machinations of the American justice system kept him "kind of cocky about it," related his best friend Heyn. "If somebody asked him he's say sarcastically, 'Oh yeah, I killed those girls.' Well then [the police] would say, 'He made a confession,' when he was really just acting stupid. He should have just shut up. But you have to know Deeb to know that [he was full of hot air]. I've heard him be just like that, until I want to smack him and say, 'Do you know what you sound like?' And he'd say 'Well I don't mean it!' But if it would get him that female attention, he'd do it."[20]

He wanted so badly to find love and companionship in the alien Texas culture that he was taken advantage of by the rebellious teens

[19] Bobbi Heyn, interview by author, digital telephone recording, 19 November 2006.
[20] Ibid.

from the Methodist home and the various lowlifes the prowled the streets of Waco. As Simons focused more on Deeb as a suspect, he discovered that Deeb and Kenneth Franks had an extremely adversarial relationship—Franks would frequently drive by the store and shoot Deeb the bird, and there was an aspect of romantic competition between them as well. Gayle Kelley worked for Deeb at the Rainbow Inn, and she was one of Kenneth's best friends. While investigating the murders, Simons interviewed Bobby Brim, Kenneth Franks' friend who was supposed to be out at Speegleville Park with the teens that night, and asked him what he knew about Muneer Deeb.

"He's this little wimpy dude who runs a store over by the Methodist Home. Now, he's someone who didn't like Kenneth, but, hey, he couldn't have pulled off something like what happened out at the lake. The guy couldn't whip his way out of a paper bag. Hell, Kenneth would have loved an excuse to kick his ass."

"What do you mean by that?" Simons asked.

"Well, they sorta had this thing going," Bobby said. "It had something to do with Gayle Kelley, one of Kenneth's best friends. I really don't know much about it but I think Deeb had the hots for her or something and Kenneth thought the guy was a creep. He was always telling Gayle to stay away from him. We used to ride through his parking lot on Kenneth's motorcycle every now and then and shoot him the finger, stuff like that. A couple of times Kenneth made fun of his limp out

in front of his store and was always calling him 'Ahab.' They got into a couple of cuss fights, but that was about it. No big deal. Shit, Deeb was afraid of his own shadow. You don't think he had anything to do with the murders, do you?"[21]

Simons persisted in interviewing Waco teens and continued constructing a profile of Deeb. He had hired Gayle Kelley to work at the store, and had taken out a life insurance policy on her as a more affordable form of worker's compensation, with himself listed as the beneficiary. Deeb had comparable policies for his other employees. Simons was struck by how much Gayle Kelley and her best friend Jill Montgomery looked alike, and hatched a theory of the crime that included an insurance payoff, a cold-blooded murder-for-hire and a case of mistaken identity.

Unfortunately, Simons' murder-for-hire theory had several flaws. Deeb paid for similar policies on another employee, plus one for himself and his partner. These policies were cheaper than workman's compensation, and according to Deeb's insurance agent, the policy did not pay in the case of murder or suicide.[22]

At various times, Deeb had remarked to people that he was glad Franks was dead or that he got what he deserved. Once, on the way back

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[21] Stowers, 109.

[22] Ann Zimmerman. "Defending Darlie; Wealthy Waco businessman Brian Pardo spends his time and money helping death-row inmates he believes are innocent. His efforts on behalf of Darlie Routier have raised suspicions about her husband—and about Pardo's motives." *Dallas Observer,* August 6, 1998.

from seeing a horror movie with Gayle Kelley and Patti Pick, he even said that he did it—and depending on who you believe, he may or may not have been joking. By all accounts, he was prone to making outrageous statements for shock value, but nonetheless, as soon as they got home, both girls immediately phoned Simons.

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The next day, Truman Simons and the Waco Police Department arrested Muneer Mohammed Deeb. Three days after his arrest, a polygraph test was administered to Deeb, which he passed "with no deception whatsoever."[23] Unable to hold him, lacking any real evidence tying him to the crime, Simons and the Waco Police were forced to release him.

Truman Simons had gone out on a limb and fallen off. Humiliated by his failure to close his pet case and fed up by the resistance he felt from the other officers, he quit the police force, which he'd been a part of for seventeen years. He took a job as a night jailer at the McLennan County Jail in October 1982.

At the same exact time, Davis Spence was incarcerated for a different crime. He was held in McLennan County Jail, and was soon moved to the fourth floor, where prisoners being held for parole violations, awaiting trial, or those already sentenced and waiting to be transferred wait for the bureaucracy to wind its way to one conclusion or

[23] Snydor, Rev. Paul M. "How Many Innocent People Did He Execute? The Texas Death Penalty Under Governor George W. Bush." <http://www2.bc.edu/~sydnor/>

another. These are, for the most part, people who are familiar with the criminal justice system; these are generally people who have learned to do time.

As soon as Spence was moved to the fourth floor, Simons got himself transferred to the fourth floor as well. Thus began a series of near-nightly conversations between this odd couple.

"Deeb always told me that he never thought Spence had anything to do with it," said Bobbi Heyn. "And Spence was executed for it! You know the policeman in Waco, Truman Simons, his co-officers got so fed up that he was demoted to a jail guard. But that was a plan of his own, because he got to Spence then, and got Spence to say this and that, and of course Spence thought he was buying his freedom with that. But he ended up dying and Deeb didn't. He ended up getting executed because of what he had said, because I guess he was led to believe that if he talked and gave them Deeb that he would save himself."[24]

To Simons, Deeb was a foreigner in money trouble, and in his eyes, a combination of jealousy, cultural differences and monetary pressure forced Deeb try to have Gayle Kelley killed. "He's from Jordan or Saudi Arabia or one of those end-of-the-world places," Simons was quoted as saying. He called him a "strange little shit."[25]

"Being Middle Eastern in Texas had a lot to do with why he was targeted," said Heyn. "If you go back through the newspapers, they even

[24] Bobbi Heyn, interview by author, digital telephone recording, 19 November 2006.
[25] Stowers, 104.

refer to him as 'the Arab': 'We're gonna get that Arab, we got that Arab,' whatever." [26] Few people called Deeb by his name; he was called 'Lucky,' 'Ahab,' or myriad other derogatory nicknames. According to Carlton Stowers' book about the case, *Careless Whispers*, the nickname 'Lucky' referred to his inability to successfully interact with women.[27]

Dick DeGuerin, the attorney who represented him on retrial, agrees that being Arab was a factor in why Deeb was a suspect. "Deeb was an easy target: he was unpopular with the people of Waco, he was Middle Eastern, and he was selling beer to minors. Waco is the buckle of the Bible belt, and Deeb was unfamiliar with the social morays of Texas. He was very naïve, and he didn't really know the difference between a 16 year old and a 26 year old. Where he came from, women wore veils and there wasn't any fooling around, and all of a sudden he's over here and finds himself in the middle of paradise, with all these loose-moraled kids running around and sidling up to him in order to buy beer. So he wasn't real popular among the adults around there. But that doesn't mean he committed murder."[28]

The only evidence that Simons could produce against Deeb was the insurance policy he had purchased for Gayle Kelley and Deeb's "admission of guilt," which he claimed was said merely in jest. However, Simons also managed to convince Karim Qasim, Deeb's partner at the

[26] Heyn, interview by author, 19 November 2006.
[27] Stowers, 122.
[28] Dick DeGuerin, interview by author, digital recording of telephone interview, 29 November 2006.

Rainbow Drive Inn, to testify that he heard Deeb ask Spence if he knew anyone that would kill Gayle Kelley, and that on another occasion he heard Deeb remark that if Gayle Kelley had been with the teens, he would be rich now.

Years later, talking with his best friend and business partner Bobbi Heyn, Deeb tried to explain the complex emotions and competing loyalties that he knew must have been driving his former partner's decision to testify against him at his first trial.

"You just don't know what it was like until you've been there," Deeb said. "He didn't know if he'd go down for something he didn't do, and in his mind, it was either him or me."

"I don't know how you can be forgiving," Heyn said.

"I don't forgive him, but I understand. I haven't forgiven him, but I'm just explaining why," said Deeb. "They put the fear of God in him."

Although Qasim's testimony was a large part of Simon's case, as Heyn observed philosophically, "Deeb always said, and he's probably right, that if it hadn't been [Qasim] it would be someone else." Qasim declined to testify against Deeb at his retrial.

Deeb's insurance agent, Alex Sanchez, stated under oath that he had explained to Deeb that the insurance policy would not pay off in the event of murder or suicide and that Deeb fully understood, yet the prosecution continued to base all four convictions on the theory that the case was a murder-for-hire which turned into a mistaken identity and

went horribly awry. Is it really more plausible that Deeb bought these policies for all his employees, which he was aware wouldn't even pay out in case of murder, and then was *so* imbecilic that he then both ordered a hit *and* used people to perform it that were so dimwitted that they couldn't even kill the right person? Or is the simpler explanation, which Occam's Razor tells us probably right, that perhaps Truman Simons was mistaken in his theory of the crime?[29]

"Deeb's court-appointed lawyer was a good man, and a decent man, but not a criminal lawyer: he'd never handled a criminal case before and he'd never handled a capital case before," said DeGuerin. "And he just didn't know what to do. Plus, he didn't know to object to the hearsay testimony when there was testimony of what had been said to the police officer by Spence, and what the two Melendez brothers had said to the police officer. He quit the police department and worked in the jail so he could get close to Spence. And he said that Spence basically confessed to the murders, but just hypothetically."[30]

Nonetheless, a jury of five men and seven women took less than a day in deliberation to convict Deeb of murder. McLennan County District Attorney Vic Feazell said he was pleased with the death sentence. "I think that, in a way, it makes our state, our country, a safer place to raise our children," he said. "They [jurors] are sending out a message to

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[29] Brian Pardo and John McLemore v. Truman Simons, Ned Butler, Vic Feazell, and Homer Campbell, no. 10-02-00212-CV, 10th Court of Appeals of the US, 21 July 2004.
[30] Dick DeGuerin, interview by author, digital recording of telephone interview, 29 November 2006.

other people like Deeb: You don't kill other people's kids; you don't kill babies and get away with it," Feazell said. Defense attorney Jack Holcomb refused to answer questions after jurors reached their decision. In a prepared statement, Holcomb said Deeb was "shaken and disappointed." In final arguments, Feazell compared Deeb to Judas Iscariot, directing the jury's attention to Deeb's "dirty hands," saying that he was to blame for the deaths even though he was not physically at the scene of the crime. They listened and convicted him. Muneer Mohammed Deeb was off to death row.[31]

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At the same time, Simons was pursuing the convictions of the Melendez brothers for their involvement in the murders. "I really didn't like my [state-appointed] lawyers: they didn't seem like they knew what they were doing. It seemed more like they just wanted to get the case finished with. They told me and my family that if I didn't plead out, I would get the death penalty and a needle in my arm," said Anthony Melendez.[32] His brother Gilbert was under similar pressure. Simultaneously, jailhouse informants were coming forward in droves to testify against their codefendants and rumors had begun swirling about the deals that Simons would offer for people that told him what he wanted to hear.

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[31] "Jury Recommends Deeb Get Death Sentence for Lake Waco Murder of Teen" *Dallas Morning News*, 16 March, 1985.
[32] Anthony Melendez. Interview by author, Polansky Prison; Livingston, Texas, 31 December, 2006.

Fearful of the threat of the death penalty hanging over his head, Gilbert Melendez confessed to the crimes, incriminating himself and David Spence. He did with the understanding that he would be given complete immunity from prosecution, a promise which was later retracted. Understandably, Gilbert's "confession" was likewise retracted, at great personal risk.

Years later, defense strategists working on David Spence's appeals found a hand-written note on the trial prosecutors' official stationery which indicated that Gilbert Melendez had told another inmate "he did not know anything [about the triple homicide] but was going to make up a story to get off of the sexual abuse case" that he was in jail for at that time. [33] Similarly, after witnessing the results of the legal battles against Spence and Deeb, Anthony Melendez took the advice of his lawyers and decided to plead out, relying on their promises of leniency.

"My lawyers just kept telling me over and over that if I didn't plead to the crime I would die. Simons said that once I testified they'd drop the third charge, and wouldn't oppose my parole so I'd be out in ten years. Of course, I didn't know then that Simons couldn't promise me anything about getting me out or off on parole. But I believed him then, because I didn't know any better," said Tony Melendez from the maximum security wing of Polansky Prison. He sits there today, down in Livingston, Texas, a quarter century after that fateful night.

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[33] Jack Hayes and Jenny Allen, "Stolen Lives," *Life Magazine*. Oct., 1994, p. 70.

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The bulk of the State's case rested on these confessions and the inmate testimony. However, even a cursory examination of these "confessions" shows the levels to which Simons manipulated and exploited his power in order to make the case. Felipe Reyna, a respected lawyer in Texas who held the position of district attorney in Waco when the crimes were committed (though not when they were prosecuted), observed, "It's real easy to get an inmate, somebody who's already in jail for committing a felony, to do just about anything you want him to do. They all sing like birds just to get some points, so to speak, to get some time off. I was never in favor of that. If I didn't have independent testimony, good solid evidence, I wouldn't go to the grand jury." During his tenure as District Attorney, Mr. Reyna had his reservations about Simons and his ability to keep within the lines of the law. "Simons would do whatever it took to get a conviction."[34]

However, between the time the crimes were committed and their prosecution a new district attorney, Vic Feazell, was elected. A later deposition confirmed that when he tried to assemble a task force, Feazell learned that "no law enforcement agency in McLennan County would work with Truman Simons. Many police officers had warned Ned Butler, [who prosecuted the case against Spence,] of Truman Simons' ways of gathering information and evidence, and have stated that this was the

[34] Bob Herbert, "The Impossible Crime." *New York Times.* 28July, 1997.

reason that they could not work with him. The District Attorney's office began lashing out in the media about the inept Waco Police Department. Criticism of the Waco PD increased from that time until present."[35] Even at this early point in the case, it was evident that district attorney Feazell had aligned himself with Simons, since, as that same deposition confirmed, his office increasingly criticized the Waco Police Department's handling of the case and championed his involvement. Vic Feazell actually ended up employing Truman Simons in his private law firm after they both had left public practice.

In fact, it later came to light that many of the jailhouse informants claimed to have received special privileges from both Simons and Feazell in return for their testimony. In preparing for Spence's retrial, his lawyer, Raul Schonemann, sought out the inmates who had testified against him. Independently, they confirmed that they had perjured themselves in exchange for extraordinary privileges from the sheriff's and district attorney's offices, including the opportunity to have sex with their girlfriends and wives in the district attorney's office. A former investigator in the district attorney's office confirmed this fact later.[36]

Schonemann also uncovered evidence that many of the inmates were promised help with their pending cases. After the trials, many of the informants came forward to admit that their testimony was fabricated

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[35] Ronald Boyter; Investigator. Department of Public Safety Affidavit, p. 2. 17 April, 1984.

[36], Ann Zimmerman. "Defending Darlie; Wealthy Waco businessman Brian Pardo spends his time and money helping death-row inmates he believes are innocent. His efforts on behalf of Darlie Routier have raised suspicions about her husband—and about Pardo's motives." *Dallas Observer*. 6 August, 1998.

and prompted. In an article published in the March 1997 issue of *Capitol Watch,* titled "The Lake Waco Murders Revisited, Is Justice Really Being Served?", two such witnesses, Ivy and Mikel, were both quoted saying that Butler and Simons gave them information so they could falsely testify against Spence in exchange for conjugal visits with their wives in Feazell's office on his black leather couch and in the library.[37] Though Simons, Butler, Feazell and Campbell ended up suing for defamation over this article, the court found that their claims of libel were without basis.[38]

For instance, one of Simons' jailhouse informants, an inmate named James Jordan, provided two statements, one in February and one in September of 1983. The first statement did not implicate David Spence. But in the second statement Mr. Jordan claimed that Mr. Spence had admitted committing the killings. Two weeks after providing the second statement Mr. Jordan was paroled.[39]

Robert Snelson, one of the inmates who testified against Spence, stated numerous times after the trial that "we all fabricated our accounts of Spence confessing in order to try to get a break from the state on our cases."[40] After Spence was convicted, three inmates admitted they had fabricated their testimony against Spence with the help and

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[37] Brian Pardo and John McLemore v. Truman Simons, Ned Butler, Vic Feazell, and Homer Campbell. In the 10th court of appeals; From the 74th district court, McLennan County, Texas.
[38] Ibid.
[39] Bob Herbert, "The Impossible Crime." *New York Times.* 28 July, 1997.
[40] Bob Herbert, "Wrong man's execution raises questions about justice," *Austin American-Statesman*. 26 July, 1997.

encouragement of Truman Simons, and that they had testified in return for favors or promises of favorable treatment in their own cases.[41]

Feazell and Simon have both denied many times that witnesses in either case were coerced or given special favors. "If there had been (favors), everyone in town would have known about it," Feazell was quoted as saying in an interview. "There were people in and out of the (district attorney's office and the jail) all the time. It's just hard to respond to these continued rumors. When you respond to one, there are three more."[42]

Yet this response doesn't really address the accusations. A minute scrutiny of the evolving statements, testimony and 'confessions' of the Melendez brothers might shed some light on the methods and tactics used in order the close the case.

The first time Gilbert Melendez was interviewed regarding the crimes, he told Truman Simons that Gilbert, Tony and David Spence had transported the bodies in Spence's white station wagon. When the cops had him show them where the bodies had been left in the park, he failed miserably, demonstrating "great difficulty in locating the actual area where the bodies had been left," according to *Careless Whispers*, the sensationalistic book written about the case which champions Simons' role.

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[41] *A State of Denial: Texas Justice and the Death Penalty*. Texas Defender Service. October 2000, p. 140.
[42] "DNA reversal of two murder convictions casts doubt on Lake Waco Murders" AP Wire, 17 December, 2001.

When Simons discovered that Spence had not bought the white station wagon until the week following the murders, Melendez revised his statement to identify Spence's car as a gold Chevy Malibu. Unfortunately, in his initial statement he had had said that Spence had approached one of the victims "by the back door" of his car, and since the gold Malibu was a coupe, in this second, revised statement he changed it and had Spence approach the victim "on the passenger side in the back seat."[43]

It is curious that, for a crime this brutal, no blood was ever found tying any of the suspects to the crime, even after the FBI dismantled the Chevy, and pubic and head hairs found on the victims' bodies didn't match any of Simons' suspects. Those hairs were never tested against any other suspects. According to Gilbert, "they [the state] didn't like the car because [it] didn't seem logical that you could put three bodies in a car and not find bloodstains or anything…"

So Melendez tried for a third time, this time claiming that he moved the bodies in his truck. This time, though, it was quickly discovered that his truck was up on cement blocks at the mechanic's the entire time the murder occurred.

Other changes occurred in his testimony concerning the times of the murders. Originally he testified that they'd arrived at the park at 11.30, but after Simons reminded him that the gates to the park were

[43] Alan Berlow, "The hanging governor: Did execution–happy George W. Bush sign off on the lethal injection of an innocent man?" *Salon*, 11 May, 2000. <http://archive.salon.com/politics2000/feature/2000/05/11/bush>

closed at 11, he conveniently remembered that they had actually arrived at the park an hour and a half before that.

Finally, just to further confirm that Gilbert did not really know anything about the murders, he greatly elaborated on how much the victims were "screaming" and "hollering" during the murders. When confronted with the fact that they were found gagged, Gilbert testified that they were gagged *after* they were murdered, though no explanation for this incongruity was ever provided. [44]

Just like his brother, Tony Melendez's statements were utterly shaped by the influence of Truman Simons. "Simons and Feazell took me out to the lake, but I didn't know anything specific about what had happened. Simons started walking me around and showing me exactly where they'd found them. He'd walk one way and I'd go in the other direction, and then he'd say, "No, remember? It was this way." At one point I told him that we'd gotten there at a certain time, and he said 'Remember how drunk and messed up you were, Tony?" During this trip to the crime scene, Simons 'helped Tony remember' details of the crime that he had forgotten.

"The first statement I gave, Simons and Feazell said that it wasn't specific enough. But I talked to one of the inmates who had been talking to Simons, and he told me that the boy's body was found sitting upright

[44] Rev. Paul M Snydor. "How Many Innocent People Did He Execute? The Texas Death Penalty Under Governor George W. Bush." < http://www2.bc.edu/~sydnor/> (Rev. Snydor has Masters degrees in both Divinity and Theology and is a PhD candidate in Systematic Theology.)

against a tree, bound and gagged," said Tony Melendez. "I included that in the next statement I gave, and I guess that one was all right with Simons."

In fact, Tony Melendez's statement claimed that the victims were killed in Koehne Park and that the defendants left them there; it entirely failed to account for the fact that the victim's bodies were found in Speegleville Park. [45]

"What I want to know is how all the people who testified against us got their information. It was stuff that only someone who'd seen it firsthand or been to the crime scene would have been able to know. So where did it come from? Did Simons tell them everything?" said Tony Melendez. [46]

Both Gilbert and Tony Melendez later recanted their testimony against Spence, even though by doing so they knowingly put themselves at risk of being charged in the death of Raylene Rice. Both Melendez brothers were only tried with two capital murder charges, with Simons himself admitting in post-trial testimony that the third charge was left open as "insurance" to keep the Melendezes from recanting their testimony.

As Gilbert Melendez testified, subject to cross-examination by the State: "I didn't commit these crimes and anything I said about anybody

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[45] *"A State of Denial: Texas Justice and the Death Penalty."* Texas Defender Service. October 2000, p. 140-141.

[46] Anthony Melendez. Interview by author. Polansky Prison; Livingston, Texas, 31 December, 2006.

else [is] just a lie. I can't say that because I wasn't there." His brother similarly testified denying his complicity in the crime and renouncing his former testimony: "I did not murder Jill Montgomery, Kenneth Franks or Raylene Rice. I do not know who killed them… I was not present during the crimes. The statements and testimony that I gave in the past that implicated me, David Spence and Gilbert were not true."[47]

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Over a year after the victims were buried, a prosecutor examining autopsy photos of the victims concluded that some bruising that was described in the autopsy as "lacerations" were actually made by teeth.

David Spence was first tried in McLennan County trial in June of 1984. Dr. Homer Campbell was called to testify, against the repeated objections of the defense. "Forensic odontology" was an extremely new science, one which was not yet recognized by the medical community. Their objections were overruled, however, and Dr. Campbell's testimony was admitted without a hitch.

The testimony provided by the jailhouse inmates to whom Spence had supposedly confessed was disorganized and contradictory. For instance, one testified that Spence chose Speegleville Park to leave the bodies because he knew the area "like the back of his hand," while a second inmate testified that Speegleville was chosen "because none of

[47] *"A State of Denial: Texas Justice and the Death Penalty."* Texas Defender Service. October 2000, p. 141.

them ever went out there, so nobody would suspect them."[48] One witness said Deputy Simons threatened to charge her in a different homicide after she told him she had no knowledge about what he was asking her. Still others testified to receiving special food, cigarettes, and conjugal visits with their wives and girlfriends in exchange for their testimony.[49]

The jury returned a guilty verdict within the day, and only three hours to decide the special questions that would impose the death sentence. David Spence's fate was decided.

Years later, lawyers working as part of Spence's appeal sent the enhanced autopsy photos of the alleged bite marks on Jill Montgomery along with Campbell's analysis to Dr. Thomas Krauss, a leading forensic odontologist who has taught at the FBI National Academy. The dentist concluded that Campbell's methodology in this case "was well outside the thinking in mainstream forensic odontology." At Krauss' suggestion, Schonemann set up a blind panel of five odontolgy experts. They were asked to examine the enhanced photos and determine whether the supposed bite marks matched any of five teeth molds, including Spence's. None of the experts said they could determine with any degree of certainty whether the pictures in fact showed bite marks. Only two experts said the pictures came close to matching one dental mold—not

[48] Ibid, p. 140.
[49] Rev. Jon Paul Snydor. "How Many Innocent People Did He Execute? The Texas Death Penalty Under Governor George W. Bush." < http://www2.bc.edu/~sydnor/ >

the one made of David Spence's teeth, but a mold belonging to a patient of Dr. Krauss'.

One denied that the bruises could even be identified as bite marks. He characterized the testimony of Dr. Campbell as bordering on the unbelievable.[50]

Dr. Campbell's judgment was brought into question in other areas as well: he once claimed to positively identify the body of a missing woman, Melody Cutlip, with medical certainty based on dental records. In this case he had both the actual teeth of the corpse and the dental records of the alleged deceased. However, two years after the funeral and burial, the real Melody Cutlip was found happy and healthy, living in Florida.

Considering that the only physical evidence in the case against Spence was based on questionable practitioner of an untested science, he and his lawyers attempted to get the new evidence reheard. However, the courts refused to modify his imminent execution date to allow his attorneys to wade through the thousands of pages of documents pertinent to his appeal. The state courts refused to conduct evidentiary hearings on any of his claims of state misconduct, and the state habeas proceedings in Spence's case lasted fewer than 60 days. The federal district court initially denied his request for relief without even requiring the State to respond to Spence's petition. Although eventually Spence

[50] Ibid.

was allowed to depose witnesses and present evidence, the federal court "reaffirmed its original denial of relief in a one-page letter, without addressing the significance of the new evidence Spence had developed. The Fifth Circuit affirmed in an opinion that uncritically accepted the State's evidence at trial."[51]

What was some of the evidence brought to light in these depositions? Lieutenant Marvin Horton, who supervised the original investigation into the Lake Waco Murders, testified, "I do not think David Spence committed this offense."

Larry Scott, the Waco Chief of Police at the time of the investigation, testified, "I have never really been convinced [of David Spence's guilt]."

In an interview July 23, 1997, Ramon Salinas, the homicide detective who investigated the murders, said: "my opinion is that David Spence was innocent. Nothing from the investigation ever led us to any evidence that he was involved."[52]

The Fifth Circuit Court of Appeals decided that "while we are bound by the district court's findings that Snelson and Ivy [the inmates who retracted their testimony and claimed to have been given special privileges and information in exchange for testifying against Spence] received privileges that were undisclosed at trial, we also conclude this

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[51] Ibid, p. 141-142.
[52] Bob Herbert. "Wrong man's execution raises questions about justice," *Austin American-Statesman*, 26 July, 1997

evidence is not material under Brady. Both Snelson and Ivy were effectively cross-examined by the prosecution, although not on the subjects of conjugal visits or their potential eligibility for the federal witness protection program. But even if these inducements, made known to the jury, had caused them to discount the two inmates [sic] testimony, this would not have been reasonably likely to affect the verdict."[53]

Even though the courts said that they considered the collective materiality of the withheld evidence—"Gilbert Melendez's benefits for testifying, police reports on Tab Harper, reports on Kenneth Franks's status as a drug use and on Koehne Park witnesses"—against the total case on Spence. According to the Fifth Circuit Court of Appeals,

> "the defense does not profit here. The strength of Tony Melendez's testimony is unchallenged, while that of Gilbert is only somewhat weakened. Spence's statements against penal interest to Rosenbaum and Puryear remain unassailed, while the status of hotly contested bite injury testimony is not changed. Without credible support, the Kenneth Franks-as-drug-dealer scenario could easily have backfired on the defense as a shoddy tactic to blacken the victim's reputation…The police set no store by the reports of Tab Harper's involvement after they investigated it; there is no reason to suspect defense counsel could have challenged their work based only on innuendo… We do not believe that the cumulative effect on Spence's defense of withheld information was reasonably likely to have affected the jury verdict."[54]

This case is important because when Spence tried to appeal, the courts would not reevaluate the factual evidence against him; "not only did the state courts refuse to conduct an evidentiary hearing on any of

[53] David Wayne Spence v. Wayne Scott, Texas Department of Criminal Justice, no. 94-20212, no. 94-20213, Ct. of Appeals for the Fifth Circuit of the US, 29 March 1996.
[54] Ibid.

Spence's substantial claims of state misconduct, but each trial court adopted the State' responsive pleading as its own 'findings' in the case, *without changing so much as a comma*" [italics inserted for emphasis].[55]

Thus, instead of letting a jury of his peers decide whether this was true, instead of letting the new evidence be evaluated and judged, instead of considering the report from the Kraus Commission of the five forensic odontologists because it was filed late, they rejected his claim.

> "The court did not accept [Spence's] theory that Truman Simons orchestrated false inmate testimony by seven witnesses against Spence. At best, the court may have found that Snelson and Ivy… might have delivered false testimony… As to Puryear, the court finds only 'inconsistencies' but no perjury or knowing presentation of perjury by the state… The court did not clearly err in rejecting the broad claim of mass-manufactured inmate testimony against Spence. There is no support for it in any of the numerous law enforcement officers' depositions, including that of Jan Price because her testimony, vehemently disputed by Simons in his deposition, does not deal with this case… a conspiracy to fabricate inmate testimony about incriminating statements made by Spence could surely have first been identified and challenged at trial rather than six year later in habeas proceedings."[56]

What testimony by Jan Price was this appeals decision referring to? Well, while David Spence was on death row, his mother, Juanita White, received a letter from David Snelson, who had testified against Spence at trial. Snelson wrote that he had committed perjury at trial and begged for forgiveness. Ms. White turned his letter over to a lawyer, who alerted the police. Less than 48 hours after a police memorandum about the letter was disseminated throughout the department, Ms. White was

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[55] *"A State of Denial: Texas Justice and the Death Penalty."* Texas Defender Service. October 2000, p. 141

[56] David Wayne Spence v. Wayne Scott, Texas Department of Criminal Justice, no. 94-20212, no. 94-20213, Ct. of Appeals for the Fifth Circuit of the US, 29 March 1996.

found sexually assaulted—in a similar manner to the victims of the Lake Waco murders—and beaten to death. The next day, her house was broken into again. Although nothing was physically taken, her papers were ransacked and her house was torn apart.

No proof exists linking White's death to the investigation and conviction of her son, though there have been claims that "street sources" say there was a direct correlation. White's murder case was assigned to Waco police officer Jan Price, who developed a suspect—a man who had committed a similar murder in Juanita White's neighborhood two months later. But before Price could pursue the case any further, she was informed that Truman Simons had begun conducting his own investigation, on his own initiative. Vic Feazell's district attorney's office was going to try the two men Simons had fingered for the crime—Joe Sydney Williams and Calvin Washington, who had arrests for petty thefts, barely knew each other, and had almost a decade's difference in their ages.

Once again, Simons used jailhouse snitches to make his case, and once again, their testimony immediately came under fire. At least fifteen Waco police officers testified for the defense at their trials, seriously calling into question the validity of this jailhouse testimony. The officers said, in essence, that the most important witnesses for the prosecution were not worthy of belief. Needless to say, this is not a common occurrence, especially not in Waco, Texas.

Officer Price, who testified at the trial for the defense, witnessed Simons instructing one of his jailhouse witnesses to question the "unlucky" suspects. Shortly afterward, the charges against the witness were dropped. In a sworn affidavit, Price wrote: "I have obtained statements from a significant number of witnesses in the White case, which uniformly attest that Simons offered deals to prospective jailhouse witnesses in order to secure their cooperation, and then created himself the statements which later formed the basis of their testimony in court. My experience in the Juanita White murder has convinced me that the prosecution's case against the defendants in this matter was utterly fabricated and that the prosecution knew it and presented it anyway to secure a conviction. As a career law-enforcement officer, I find such actions offensive and unacceptable."[57]

District Attorney Vic Feazell said similarities are to be expected whenever brutal murders are involved, and discounts those who try to draw parallels between the two cases. For example, the prevalence of inmate testimony in both trials is due to the fact that the defendants associated with 'those sorts of people', he said.

Many of the witnesses admitted under oath that they had lied on the stand. Interviewed independently by investigators and defense attorneys, these witnesses told strikingly similar stories about how they

[57]Ann Zimmerman. "Defending Darlie; Wealthy Waco businessman Brian Pardo spends his time and money helping death-row inmates he believes are innocent. His efforts on behalf of Darlie Routier have raised suspicions about her husband—and about Pardo's motives." *Dallas Observer*. 6 August, 1998.

were bribed or coerced by law enforcement officials or members of the district's attorney office. Ms. Price, one of the officers who testified, said in a sworn affidavit: "My experience in the Juanita White murder had convinced me that the prosecution's case against the defendants in the matter was utterly fabricated and that the prosecution knew it and presented it anyway to secure a conviction."

Among the accusations made by the four witnesses that recanted were that Simons had fed them evidence about the crime, including showing them photos and telling them details, and had changed their written statements to read more like he wanted. The four witnesses detailed in sworn statements or statements to police favors they said they received in exchange for cooperating with Simons. Among other things, they said he helped get charges against them dropped or reduced, gave them special food and cigarettes, allowed them to have conjugal visits in his office and promised them federal protection after they testified. Defense attorneys didn't find out until years later that a Waco police officer who investigated the case came up with a suspect named Bennie Carroll, said Washington's lawyer, Walter M. Reaves Jr. of West. Carroll, who killed himself in 1990, has been identified through DNA tests as the person who raped White.[58]

"I wish we could have exposed the problem in the very beginning," Price said after it was discovered that Carroll had killed White. "I felt bad

[58] "DNA reversal of two murder convictions casts doubt on Lake Waco Murders" AP Wire, 17 December, 2001.

for those two who were in jail because they shouldn't have been there. *It is bad enough when the criminal justice system goes haywire. It is worse when safeguards like the appeals process and officials with oversight authority fail to bring the system back under control. But it is absolutely intolerable to allow such disasters to occur when a defendant's life is at stake—when an executioner is waiting in the wings, ready to add the ultimate punishment to the system's folly* [Emphasis added]". [59]

There are many parallels between this case and the Lake Waco case's investigation. The State admitted during Spence's appeal process that it failed to disclose a police report that someone reported seeing a man resembling Bishop threatening Kenneth over drug debts and a report suggesting a relationship between Bishop and Ronnie Lee Breiton. However, because the state said that their odontological evidence (which remember, is of extremely questionable validity) ruled Bishop as a suspect, the appeal court found that the "police report about him would not have affected the jury's verdict…we do not find the information in the reports exculpatory or material."

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Even with the many inconsistencies, the lack of physical evidence of any kind, and the faulty witness statements presented during his trial, Muneer Mohammed Deeb was sent to death row.

[59]Bob Herbert. "In America; A System Gone Mad." *New York Times*, 31 July, 1997.

"I asked him once, is it like they say it is in prison?" said his friend and business partner Bobbi Heyn. "I said, 'You don't have to say how it affected you, but is it like they say it is?' And he said, 'Yeah, it sure is. He said, 'There were some big guys there and I'm little.' But he said, 'I told them, to begin with, I'm not gonna fight you, but if you have anything to do with me [sexually], because [of] my religion I'm better off dead anyway, so I'll come get you. I'm PLO [Palestine Liberation Organization], I can make bombs with Pringle cans if I have to! But when you go, I'll go, because I'll have to kill myself. So it better be good for you.' And he basically bluffed his way through it. Then, after a while, he realized that in prison you get power three different ways: one, you're bigger and badder, two, you have money, and three you're educated. And the more educated Deeb got, the more he was able to help other prisoners with their cases, and to get them privileges, so he got more powerful. People didn't want to mess with him because they might need him."[60]

Battling his own inadequate English, the lack of a copying machine and the frequent ransacking of his documents by prison authorities, Deeb endlessly studied law books from the prison library and copied out case law—including one 600-page text—on a manual typewriter.[61]

Life in jail was rough. "He used to get so excited about the holidays, Christmas and Thanksgiving, because they'd give them a hamburger if they'd been doing a good job, stuff like that," recalled Heyn.

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[60] Bobbi Heyn, interview by author, digital telephone recording, 19 November 2006.
[61] Jack Hayes and Jenny Allen, "Stolen Lives," *Life Magazine*. Oct., 1994, p. 70.

"Deeb had been really excited about one Thanksgiving because he had been told that they would get turkey. Thanksgiving Day rolls around, and what do they bring him? Ham. Ham! And of course he couldn't eat it [as a Muslim]! And that was one thing he did the whole time he was there, he never knowingly ate anything he wasn't supposed to eat, pork or anything like that. Sometimes he'd get very, very hungry and live on crackers, and he did lose a lot of weight, but he never broke his religious rules and ate what he thought he shouldn't."[62]

His overwhelmingly negative experience with the American judicial system made him hesitant to entrust his case to anyone else, and one article about his case called him bitter about "an overzealous prosecutor, incompetent defense lawyers who sold him out, and jurors who decided his fate over a four-hour steak dinner."[63]

"Very soon I saw that my lawyers did not investigate properly; they did not discredit witnesses who lied against me. I became convinced that practically I had no lawyer at all," said Deeb. After seven and a half years on death row, his briefs finally convinced the Texas Court of Criminal Appeals that the hearsay evidence used to convict him was improperly admitted into trial: "I am trying to get me a lawyer right now," said Mr. Deeb at the time. "The appeal is easy. The actual trial is difficult. This time I'm going to get the best lawyer money can buy."

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[62] Bobbi Heyn, interview by author, digital telephone recording, 19 November 2006.
[63] "Conviction overturned, inmate now seeks job: Deeb condemned in '82 Waco killings." Houston Chronicle, July 6, 1991.

"I was full of joy," Deeb said of the court ruling [on the appeal]. "I never give up hope." Deeb insisted he did not arrange for any killing and testified to that at his trial. "I took a polygraph and passed," he said. "I offered to take truth serum."[64]

The best lawyer money could buy was Dick DeGuerin, who was named the Texas Criminal Defense Lawyer's Association's outstanding criminal defense lawyer of the year in 1994. Although he usually charged $100,000 for his services, DeGuerin was so impressed by Deeb's initiative that he took on his case pro-bono. "He's a very talented trial lawyer," said Mike Hinton, a Houston defense lawyer who once worked as an assistant district attorney. "[DeGuerin] is very aggressive. He's well-prepared. He's intense. He's bright. No one has ever referred to Dick as afraid of anything."[65]

"I was impressed by his intelligence, and also the fact that he'd gotten his case reversed," explains DeGuerin. "I took a look at the case, and it was one of those situations where they were relying on jailhouse snitches who had made a deal, where the real killers were trying to get a sweet deal, and it just encourages perjury, which is one of my pet peeves, so I decided to become involved. It's just the kind of inherently suspect

[64] "Waco killings figure confident about retrial." Dallas Morning News, July 4, 1991.
[65] Cult Siege Spotlights Attorney but Dick DeGuerin's Already a Legal 'Name.'" Seattle times/ DMN, March 31, 1993.

testimony that anyone in the criminal justice system knows is probably perjured."[66]

"Deeb just said that he never, ever believe that he'd really be executed," said Heyn. "I said, 'I figure I'd had broken long ago, just given up," and he'd say, 'If you're in there, and you're not supposed to be in there, you'll never quit. You won't ever quit.' And just like the typewriter that his folks wouldn't give to me, wouldn't sell to me—they put it in the dumpster—the typewriter he worked on for all those years, he had no place to put it, he just sat with his legs crossed on the cold concrete floor with it between his legs and that's how he typed all his briefs on. It was just a little, old, clackety-clack typewriter he probably bought for $5. He typed hundreds and hundreds of pages on that thing."[67]

Deeb educated himself in prison, first gaining a firm grip on the English language and then completing his studies as an electronics engineer and becoming a certified para-legal in order to more effectively fight his appeal.

"Deeb had a cellmate for a while, and we went to his funeral when he was executed. Deeb had told me about his case and said, 'If he had just not waited so long he would have gotten out, that they would not have killed him.' Deeb never quit fighting, and [the people he was in prison with] made fun of him, but he said, 'Say what you want, I'm getting out of prison.' Deeb's cellmate said that he was too afraid,

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[66] Dick DeGuerin, interview by author, digital recording of telephone interview, 29 November 2006.
[67] Bobbi Heyn, interview by author, digital telephone recording, 19 November 2006.

because he said 'they'll just take it out on me, it'll make it worse,' and Deeb said 'Well how much worse can it be, they're gonna kill you! They're gonna kill us both, so we have to fight!' And Deeb said, 'Right there at the last this guy figured out I was right, and it was too late.' I would love if you would encourage people, if they're truly innocent, don't wait until too late. Because that did cost him his life:, Deeb fought and the other fellow one didn't, and they both had about the same amount of time in jail, so… simple fact that Deeb never stopped fighting from the moment he was put in prison, and the other guy was afraid to was why he died."[68]

But the overriding factor, DeGuerin contended, was ambition on the part of the prosecutors. "Unfortunately, human nature being what it is, justice isn't always what prosecutors seek," he said. "I personally believed in his innocence since the first time I met him."

It took seven years in prison before Deeb was able to get someone to listen to his appeals. He spent 12 hours a day studying—the only thing that kept his mind off of his incarceration. The more he studied, the more confident he became about his chances to prove his innocence, he said. His time was spent waiting for Wednesdays, the day the high criminal court rules on appeals.

When he finally got the chance to appeal the ruling, he decided that no legal-aid lawyer would know or care about his case as much as

[68] Ibid.

he did, so Deeb decided to represent himself in his appeal. Even though the judge compared it to performing his own heart surgery, he decided to go ahead.

Commenting on Deeb's decision to represent himself in his own appeal, Special prosecutor Bill Lane, a Fort Worth attorney, said that as far as he knows no one convicted of capitol murder in Texas has been allowed to represent himself or herself in a retrial. "But that's his call if he wants to do it," Lane said. "I've been doing this long enough so that I rarely get surprised over anything."[69]

However, Deeb spent over five hours masterfully interrogating the police officers who had investigated him and jailhouse snitches who had testified against him, which resulted in a successful appeal. He had won a retrial, and his initiative and intelligence had attracted the notice of Dick DeGuerin, one of Texas's top trial lawyers.

"What caused Deeb to be convicted was the prosecutors' almost unchecked ability to offer deals to people in order to get them to testify," recalls DeGuerin. ""It's a form of legalized bribery: if you can tell someone 'I'll give you part of your life back if you'll testify for me,' and they're dead certain to go to prison for the rest of their life or even to be executed for a horrible crime—and it was a horrible crime—then I think that that's something that's wrong. I think there ought to be more checks and balances in how prosecutors are allowed to award benefits to prisoners.

[69] "Hearing for '82 triple-murder retrial planned Friday: Defendant's representation the issue in Cleburne." Fort Worth Star-Telegram, November 6, 1991.

If a defense lawyer could offer a witness $50, they'd be indicted and lose their law license, and they should! It's bribery, it's sponsored perjury! A person who doesn't know anything will make it up just to spend less time in jail, or to get out of jail, or to keep from getting executed. So offering someone freedom or less time in jail or prison instead of the death penalty, is like offering gold. It's more valuable than gold. And that's why Deeb was convicted in the first place, on the perjured and purchased testimony of the Melendez brothers. And, of course, the hearsay that was wrongly admitted in the first trial."[70]

Jury selection in the retrial took ten weeks, and the prosecution called 53 witnesses. After the indictment against him was read aloud in court, Deeb, dressed in a dark blue suit and wearing gold-frame glasses, faced jurors and calmly said: "I am not guilty, ladies and gentlemen."[71]

"The real problem with Deeb was, he really wasn't a very smart killer," Prosecutor Lane said. After almost a decade, the prosecution still clung to their theory that the crime had been so inexpertly bungled. Earlier, DeGuerin told jurors that Deeb, the fourth of 10 children, excelled while attending Texas State Technical Institute in Waco. Though "people, particularly young ladies, took advantage of him," DeGuerin said Deeb had no motive for having Reyes killed. After the three bodies were

[70] Dick DeGuerin, interview by author, digital recording of telephone interview, 29 November 2006.
[71] "Retrial opens in Lake Waco murder case." Fort Worth Star-Telegram. December 2, 1992.

found, DeGuerin said a media frenzy put pressure on police to solve the case.[72]

When the "not guilty" verdict was read, courtroom observers reacted with varying degrees of shock and elation. Deeb's mother stood and held her hands in air before rushing to hug her son when the bailiff said he was a free man. Relatives of the victims buried their hands as visiting state District Judge Frank Douthitt read the verdict. "I never doubted for all the 10 years. I knew they were just trying to railroad me this time, but I knew it wouldn't work," said Deeb, 33. Jury foreman Felton McAffee said the jury could not convict Deeb based on the evidence presented. "I think we took everything the state showed us and reached the only verdict that we could come up with," McAffee said.[73]

Truman Simons said he was surprised at the jury's decision. He walked to the back of the courtroom, shaking his head, and said, "Well. That's hard to believe." After the verdict was read, a relative of one of the victims stood up, stared at Deeb and said, "He better get… back to Saudi Arabia." The woman then stormed out of the courtroom. Feazell was also stunned by word of this week's acquittal. "I'm perplexed and bewildered as I'm sure a lot of people are," said Feazell, at that time an Austin

[72] Ibid.
[73] "Jury acquits man in Lake Waco deaths 33-year-old is set free after 10 years in jail." Fort Worth Star-Telegram, January 13, 1993.

attorney. “It doesn’t matter what they think, I know I’m innocent,” Deeb said.[74]

DeGuerin recalls the dramatic scene when Deeb was released, on the same day the verdict was read. “It was very unusual for a murder case. We argued in the morning, got the “not guilty” verdict at 7.30 that night, and he was in my hotel room with his mother and father that evening. He was very, very grateful, and his parents were very tearful, they had come all the way from Jordan although they didn’t speak much English.”[75]

“I want to do so much now,” Deeb said. “They wasted 10 years of my life…Finally, someone saw the truth.” [76] He recalled finally being released from a Texas prison on a cold night in 1993. “I looked up,” he said. “It was the first time I’d seen stars in almost 10 years.”[77]

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“I came here for the American Dream,” Deeb said, laughing ruefully. “I got the American nightmare.”[78]

Even after his release from jail, life was tough for Deeb. He moved to Dallas and began driving cabs and executive limousines. “When Deeb got his first little apartment, he just felt like he was in a mansion, because he’d lived in that little bitty cell all those years and he’d adapted

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[74] Ibid.
[75] Dick DeGuerin, interview by author, digital recording of telephone interview, 29 November 2006.
[76] Freedom comes at high price: Inmate cleared of 3 teens’ deaths in ‘82” *Houston Chronicle*. January 16, 1993.
[77] “Attendees assail capital punishment: Former Death Row inmates honored at NU conference.” Chicago Tribune, November 15, 1998.
[78] Jack Hayes and Jenny Allen, “Stolen Lives,” *Life Magazine*. Oct., 1994, p. 70.

to the point where he did not feel comfortable," said his best friend and partner in the limo business Heyn. "It was not until he moved over there across from the limo company that he got a bed. That was his first bed since he got out of prison; he slept on the floor [until then] because he didn't feel safe."[79]

These fears were not unfounded. "Deeb had been threatened in the courtroom when he was released at his second trial, and nobody did anything about it. When they freed him, the policeman and a couple of the other people in the room said, basically, we're going to get you one way or the other," remembered Heyn." They basically told him that he'd go down anyway. So whether he died in prison or not, he always had that hanging over him. Always. He always had to be careful, you know?"[80]

In fact, Nancy Wiser, the mother of Jill Montgomery, said killing Deeb had crossed her mind. "I'm not a violent person. I have given the justice system every chance to take care of this killer and they haven't done it. And it does make a nonviolent person like myself feel like, 'Somebody, please take care of this killer.' I'm not asking for anyone to harm Deeb. I'm just asking for justice."[81]

In later years, if someone called Deeb's limo company out of the blue, Heyn or Deeb would either investigate them to make sure they were

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[79] Bobbi Heyn, interview by author, digital telephone recording, 19 November 2006.
[80] Ibid.
[81] "Two-year legal battle led from Death Row to freedom: Ten years after the Lake Waco murders, the decision to acquit one of the four defendants shakes the victims' families." Fort Worth Star-Telegram, January 14, 1993.

who they said they were, or Bobbi would drive them the first time. He continued to be cautious of retribution from people in Waco for his entire life.

"He wasn't necessarily afraid; he was just trying to be smart. Deeb was not a coward. We were just trying to be wary, and this kept going on the whole time he was alive. And what really amazed me is that they never did anything to these people about… they yelled [these threats] out loud, they didn't hide it. You'd think someone would do something about it, but they didn't."[82]

Deeb also became involved with Amnesty International, traveling worldwide to speak at conferences against the death penalty. He even spoke on a panel with the Dalai Lama. "I just want everybody to know there's more I left behind that are innocent, and they need somebody to speak for them," he said.[83]

Said Sherry Swiney, the director of the PATRICK Crusade: "Of all the stories [at the National Conference on Wrongful Convictions and the Death Penalty], I think [Deeb's] was the most compelling. Coming from a foreign country, Deeb believed in the American ideal. His family had been persecuted in Jordan and he came here full of hope. It was just so sad to hear what happened to him. He seemed like a nice guy."[84]

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[82] Bobbi Heyn, interview by author, digital telephone recording, 19 November 2006.
[83] "Crime victim, ex-death row inmate speaks out against capital punishment." Dallas Morning News. November 12, 1993.
[84] http://www.patrickcrusade.org/national_conference_wrongful.htm

Rick Halperin, the Amnesty International board member who organized the panel, is convinced that Mr. Deeb is innocent of the gruesome Lake Waco murders. "He's quite an impressive young man, very soft-spoken, very passionate about what he went through. And very concerned about educating people about what is happening in this state, in Huntsville, concerning the phenomenon of innocent people on death row," said Dr. Halperin, who teaches history and human rights at Southern Methodist University.[85]

"And I'm going to show," said Deeb, "that I'm not the only one… The way I look at it right now, they can take anybody off the street, because once you're accused, you have a very, very small chance or proving yourself innocent. Innocent until proven guilty is a myth."

Halperin agreed that "his is not an isolated case, where you think it's a fluke and it's just one guy," he said. "If you do the type of work I'm involved in, you hear about this all the time." [86]

Along the same lines, in the current capital punishment system "whether a defendant actually committed the crime is typically significantly less important than the quality of the defendant's trial lawyer," explained Professor David R. Dow of the University of Houston Law Center. "Mr. Spence was executed for committing a murder for hire at the request of Muneer Mohammad Deeb, yet a Texas jury acquitted

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[85] "Fighting the system: Ex-inmate acquitted of Waco murders embraced by rights advocates, but skeptics doubt innocence" DMN, Nov. 4, 1993
[86]Ibid.

Mr. Deeb of participating in the plot. The pivotal difference between Mr. Spence's case and Mr. Deeb's case was that Mr. Deeb had a first-class criminal lawyer represent him at his second trial. Mr. Spence had mediocre lawyers at his second trial. It is that single fact, more than any other, that explains why Mr. Spence was executed while Mr. Deeb was not even convicted."[87]

"We should take this toy from the public officials and do away with the death penalty," asserted Deeb.[88]

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"The last time I saw Simons was in 1992," said Tony Melendez. "He came by promising the same things he always had, that if I'd testify against Deeb he'd get me out or get me transferred somewhere better. I said, 'No, I've been in here for too long. I didn't do it.' Later I told him that at least I didn't kill anybody.' He went on about, 'Well, Spence deserved to die.' I said 'No. If it hadn't been for you and Feazell, Spence would be alive. But there's no way to try you for his death because you did it through the State of Texas. Cops shouldn't be able to tell suspects whatever they want, or promise them things they cannot deliver."[89]

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[87] "Lawyers Save Lives." David R. Dow. *New York Times*, August 1, 1997.
[88] "Fighting the system: Ex-inmate acquitted of Waco murders embraced by rights advocates, but skeptics doubt innocence" DMN, Nov. 4, 1993
[89] Anthony Melendez. Interview by author. Polansky Prison; Livingston, Texas, 31 December, 2006.

Gilbert Melendez died in prison in October 1998 of complications from HIV, the virus that causes AIDS. Anthony Melendez sits in Polansky Prison to this day.[90]

After his ten year ordeal was over, Deeb moved to Dallas and was so successful driving cabs that he started his own business. In a nod to the odyssey he'd been through, the business was named "Freedom Won." He also filed a $100 million federal lawsuit against Waco law officers who investigated the 1982 deaths. In his lawsuit before US District Judge Jerry Buchmeyer, Deeb contended that former McLennan County District Attorney Victor Feazell, Sheriff Jack Harwell and four other county investigators and prosecutors had pursued the case against him without any real evidence. However, Deeb attempted to litigate it himself, unsuccessfully.[91]

Deeb also spoke throughout his life of writing a book about his experiences. A New York book agent, Nicole Aragi, who worked with him, considers Deeb's story a "very dramatic account" of an immigrant's scathing brush with American zealots on a crusade for justice. One of the working titles of his book was "Cruel but not Unusual"; another was "Injustice Inherited."[92]

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[90] "Deeb, figure in lake slayings, confirmed dead: Ex-store owner's conviction in 1982 deaths was overturned." *Waco Tribune-Herald*, 14April, 2000.
[91] "Waco officers target of legal action; Death row inmate acquitted in killings seeks $100 million." *Houston Chronicle*, 14 January, 1994.
[92] "Pain echoes 10 years after grisly deaths: 1 defendant to be retried in slaying of 3 teenagers." *Houston Chronicle*, 26 July, 1992.

Unfortunately, stomach cancer curtailed Deeb's amazing life. He grew weaker and weaker, eventually hurting so intensely that the was unable to continue driving fares or spend time running the business

"I was extremely sad to see my friend at the end of his short life," remembers his friend and client, Jeremy Jay. "Nothing could change Deeb's inevitable fate. I knew it, and Deeb knew it." They spoke frankly during their last visit, when Deeb was in the intensive care unit. "I gave him a hard time because he had not taken care of his pain earlier, when treatment might have been effective to prevent the cancer that was claiming his life. He said that he felt like it might 'just go away', but of course, it never did. I sobbed a bit as I tried to maintain a conversation but it was hard for me. It was painful to think of this immigrant who had to live through the hell of an arrest and conviction for a crime he did not do, had to survive a decade on death row, had taught himself enough English and learned enough of the legal system to reopen his case and represent himself in front of a judge to get his case appealed, and ultimately had the conviction overturned, winning his freedom. By the time I met him, he was merely a cab driver with a dream of owning his own company. So, I said goodbye to my friend, who looked up from his bed and said, 'I have been unfortunate enough to get two life sentences in my life. I survived the first one but I will not get through this second

one. It is going to get me.' I received a call from Bobbi soon after with the news that Deeb had died."[93]

Deeb died on November 5, 1999. Although he had many close friends and had accomplished much in his life, he had never married.

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So why does it matter what happened to these four men so very long ago in Waco, Texas? What does it matter to you, and why should your concern be expended for four random kids—two Hispanic brothers working construction, a Middle Eastern student who worked in a convenience store, and a young tough—that some cop became fixated on over twenty years ago?

The case of the Lake Waco murders, and their subsequent prosecution, is important because it illustrates the incredible power that an individual police officer can have within the Texas criminal justice system, and the subsequent powerlessness that can befall a defendant. There is ample evidence that Truman Simons acted outside of the accepted boundaries of a criminal investigation by soliciting and finessing testimony, both from jailhouse witness and the Melendez brothers, on whose "confessions" the State's case was based.

Millionaire Texas businessman Brian Pardo was asked for help by Mr. Spence while he was on death row. "The probability of him being innocent seemed very small in my mind at that time," Mr. Pardo said.

[93] Jeremy Jay, "Deeb Memories," Unpublished, typescript recollections. December 17, 2006; Allen, TX, p. 8.

“He was on death row. It just seemed to me that most people there are guilty, and they all say they are innocent.” Mr. Pardo agreed to underwrite an investigation that would last only until some evidence turned up showing that Mr. Spence was guilty. No evidence ever did. “It was all entirely to the contrary,” Mr. Pardo said. “There is no chance that he committed those murders.” Brian Pardo’s involvement in the David Spence case was a disillusioning experience. “I’m a Republican,” he said. “I’m for the death penalty. But this has shaken my belief in the justice system.”

Even now, over a quarter century after the murders, Tony Melendez sits in jail, and David Spence is dead. Did they do it? Since the original confessions, evidence and trials were so riddled with problems, and since the appeals courts never allowed evidence to be re-examined, we will probably never know. George W. Bush continues to claim that the state of Texas has never executed an innocent man; if the facts from this case are indicative of larger problems in the Texas justice system, then this claim is baseless. If the state cannot guarantee that it is not executing innocent citizens, it should not be employing the death penalty in the first place. The criminal punishment of those who are innocent is always a tragedy, but when the punishment wrongfully imposed is death, the mistake is a disaster that undermines the legitimacy of both the death penalty and the state.

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