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17:39:07

(shot of Albert Peña, seated)

RP: Now we're rolling.

JSL: We're here in Corpus Christi, in the office of Mr. Albert Peña. It's February 25, 2005. Mr. Peña, if you'd just say your name and tell us something about your history as a lawyer.

17:39:24

Albert Peña: Well, I've been a lawyer since 1971. I'm a third-generation lawyer. My partner is my son, he's a fourth-generation lawyer. I kind of grew up in the courts. I've been practicing primarily criminal defense work for the first ten years, and exclusively after that.

(camera cuts to new shot, still Peña)

RP: Ok, I'm rolling.

17:39:50

JSL: Mr. Peña, did you have anything to do with a case, State of Texas against Jesse Garza, back in 1979, 1980.

17:40:00

AP: I did. I was his defense lawyer, I was appointed by the court.

JSL: Tell us everything you know about that case. Tell us the history of that case.

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RP: And whenever possible, use everybody's name.

17:40:18

AP: Jesse Garza, when I first met him, he was incarcerated and charged with the murder of Dahlia Saucedá. He had been there for a while by the time I talked to him. He was there for over a year pending trial [sic]. But this young man had been involved in a group, a little clique, for one day. There was a young woman by the name of Dahlia Saucedá, who was the victim of the murder. And Dahlia had received money from a civil lawsuit. Her son was unfortunately killed on the front yard by an automobile that had lost control, a drunk driver. So she had come into money, and she bought a very fancy vehicle that was called a "Happy Time" van. So she used to almost daily go around driving with a lot of her friends. And she would take her infant. I don't remember how old her infant was, less than one year as I recall. And on this one particular day she went out with the same normal people that would hang out with her, and they also met up with my client, Jesse Garza. And my client, Jesse Garza, and his friend, Peter Olivarez, decided to go riding around. I think they went as far as Kingsville, then they came back and were dropped off. Later, when he was arrested, Peter Olivarez is the one that was the eyewitness. He said he saw Jesse kill Dahlia Saucedá. Pete Olivares was a young man who was mentally retarded or mentally

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deficient. And the police put a lot of pressure on him, and he said that he saw it. "I saw Jesse kill her."

17:42:02

AP: He described where they went and what happened.

(camera cuts to new shot, still Peña)

17:42:10

AP: Forgot where I was.

JSL: They were riding.

AP: They were riding around, just having a good time, just the three of them. And then they picked up a couple of other friends. And finally, Jesse and Pete were let off the van. And they proceeded to join up with some other people. And then that's where the mystery begins, because that's where Pete . . . They knew that Pete and Jesse had been with her. Someone else who was in the vehicle said that Jesse was with Dahlia and Pete Olivarez. And Jesse Garza was charged with the murder, based primarily on the statement of Pete Olivares, who said he witnessed it. And that he was there, that it happened. And that the infant child was in the back of the van, and described that part of it. And where it happened, it was at the Corpus Christi Egg Company. And he had just left her. So he was the star witness. My client insisted that he was innocent. So we began investigating the case. We got into . . . I was a lot younger then, and I could get

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into the milieu of the people that she hung out with a lot easier than I could now. But in any event, I was assisted by Eddie Cruz, who was a . . . his background was he was an insurance adjuster.

17:43:40

AP: He was also Jesse's uncle. So he assisted me in investigating the case. It was a very thorough investigation. We went up there shaking the bushes. In the van, the physical evidence that was there that did not point to my client was that there was a can of beer. And I believe it was Budweiser [Schlitz], but I'm not sure. There were some fingerprints on this can of beer. And there was also some J.C. Penney boxer shorts of a certain design, 36 inch waistline. So that led me to conclude that whoever left that there could have been the one that did it, because why would you leave so rapidly and leave your shorts behind? And my client was a very thin individual, those boxer shorts wouldn't have stayed up more than two seconds. So that led us into the clique, the so-called group that would hang out together a lot. We went and talked to various people, to find out that Dahlia Saucedo had been dating Carlos Hernandez, the one we ultimately believed, and still believe -- and I think it has been pretty much proven -- that he was the one that actually committed the homicide. That he had been upset with Dahlia because Dahlia had been dating his brother-in-law. I can't remember the first

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name but it was Schilling, was the last name. He had a grudge for her. We also understood that there was a situation in which the van had been parked behind a particular bar. And we went to that bar and just went door to door.

17:45:40

AP: In the back there was a little area, they had little houses in the back. We hit it lucky, we found some people that were there when the van was there. And it attracted their attention. So they went outside, and they saw the Happy Times van, and it hurriedly ran off or took off.

JSL: What took off?

17:46:04

AP: The van. The van took off when the people in the house came out to see what was there. Obviously they were probably smoking pot or something, because they were pretty much into drugs. So the van hurriedly takes off, and that's the last they saw of the van. But then the more and more we got into it, seemed like this Carlos Hernandez really had this real hot grudge. Several people said that he was very disgusted and angry that his sister was being abused, in the sense that her husband not only beat her up but also was going out on her. So I decided to talk to the investigating officer. There were two of them, and I talked to Sergeant Paul Rivera. And I told him. I'd never met Mr. Rivera,

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but he was very, very cooperative. I told him, look, I have reason to believe its Carlos Hernandez. Of course, I didn't have proof, but I had reason to believe that he may have done the murder.

17:47:09

AP: Remember that [beer] can that the fingerprints were on, they didn't match Jesse Garza. I believed they matched Carlos Hernandez. I had reason to believe that. And I believe that underwear that was found there matched, I mean belonged to, Jesse Garza . . . Carlos Hernandez. So from there . . . He [Paul Rivera] was a little reticent at times, they don't want to mess up a case that's too tidy. And it happened that Lieutenant Malcolm Pace had just been made the chief of homicide, and he wanted an arrest quickly, because he didn't want his first homicide to go unsolved. So they picked up Jesse pretty quick, without continuing the investigation. But anyway, Sergeant Paul Rivera picked up Carlos Hernandez, took him to jail. And at the jail, fingerprinted him. The fingerprints matched those found on the can that was left in the back of the van. He was wearing J.C. Penney, Fruit of the Loom underwear, boxer shorts, size 36. The ones found in the van were size 36, Fruit of the Loom, the same design except for the color: one was blue and the other one was brown. I still don't understand it, but the prosecutor said that I was not entitled to

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anything they had on Carlos Hernandez because he was not going to be my witness. And I kept persisting, and finally he just threw a tape at me. Because he had a conversation with Carlos Hernandez, which is another story. He was telling him that I was the black knight and he was the white knight.

17:48:50

AP: "You don't understand it. I [A.D.A. Ken Botary] don't want to screw you [Carlos Hernandez], he [Albert Pena] does." Of course, my argument at jury was all he had to tell him was "Kill, kill, kill!" (*audio overload distortion*) In any event, the importance of that was that, since he [Botary] didn't understand Spanish, he threw a tape recording which apparently he didn't know what was on it. Because on that tape recording was a tape recording that Carlos Hernandez had made at the jail. He called his mother. And in that conversation he tells his mother, "They've got me down here, they say I killed Dahlia." And she asks, "Well, did you?" (*audio overload distortion*) "I don't know, I was so out of it, I don't know what I did. I saw her that night, but I don't remember." And that was dynamite. He didn't even remember whether he did it or not. So that particular piece of evidence, I explained to Sergeant Paul Rivera that it might be a violation of federal wiretapping statutes. And I suggested that he speak with the mother, to make sure that when I asked you these

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questions, she'd go down the list of what I was asking her, so I wouldn't have to introduce the tape, which would cause problems for the other officer who had done it. So, true to form, she got up there, she was a real trooper, she went down the list, "Oh, yeah, he told me, he told me." So that's how we got that into evidence. And the other thing was, there was a knife that was found.

17:50:33

AP: Take it back. The other thing that helped us was Doctor Rupp. He was the medical examiner back then. Doctor Rupp testified that the "X" that had been marked on her back was made with a dull, not with a sharp, knife. And at the time that Paul Rivera picked up Carlos Hernandez, he had a pocket knife on him. So when I got him on the stand, I approached him and I said, "There's the knife that you had when Sergeant Paul Rivera arrested you." And he denied it, "I didn't have that knife." In any event, I made him open up the blade, one for one. I said, "Well, this is a fairly sharp little blade, this one not so sharp, and this is kind of dull." And then I got a map, and I said, "Make an 'X' as to where you live, where Dahlia lived, where you say you had sex with her," which is the only three places he said that he had seen her. He never mentioned where he had dropped off the van. So he made the "X's" and I turned to the

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jury -- and was admonished, because I told the jury, "Well, we know he knows how to make 'X's." But in any event, I had a lot of fun with him. He was about ready to come out of there with that knife at me. I got him real angry at me. He obviously had a hot temper, which played right into my hands.

17:52:00

AP: The other thing about this case that I think is very significant: this young man -- I was court-appointed -- and he was indigent. He was never able to make bail. And he sat in there for over a year without getting his day in court.

17:52:18

AP: Then, subsequently, we got a "not guilty" verdict, but there were a lot more facts that we were able to . . . Like on cross-examination, this kind of a weird situation developed. Pedro Olivarez, eyewitness, testified on the first day of trial. I had not yet begun my cross-examination. The next morning he didn't show up. That's kind of strange. That's how I was able to bump into him, because he came in late with the police in hand. What had happened was he had decided to go play basketball that morning. *(phone rings, Peña silences it)* He didn't realize he had to be in court. So the police were out searching for him. The prosecutor and the main man, Mr. District Attorney, were making snide remarks like I tried to have him killed. Which would

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be the last thing I would want to do. Especially in this case, I knew I was going to rake him over the coals. He had a lot of the facts were terrifically inaccurate. One of the things . . . We went the route that everybody went that day, and where they stopped and all that. And there was one convenience store where Jesse Garza and Pete and Dahlia had stopped to buy cigarettes and I don't know what. That was significant in that he'd also said that was where they had gassed up. But since we'd been that route we knew that there were no gas pumps there.

17:54:05

AP: So if they had gassed up there it had to be some miraculous event. Also the scene, he described how the van was positioned, and he had it totally wrong. It was perpendicular to the way the police said they had found the van. And there were many other inconsistencies in his statement. The police had also stopped them earlier that evening. And that was a quasi-alibi. Because they [Jesse Garza and Pedro Olivarez] had already been dropped off. And they stopped them for questioning, and were not making that known to us until the very end, we found out. That was really an alibi because of the time frame they claimed. 'Cause Carlos didn't come along until after that, of course. But in any case, Pete was just traumatized by the police. I felt sorry for him even though he was putting the finger on my guy, because I

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knew he was just totally petrified. And the Reverend [Sgt. Smith], as they called him, he was a very, very aggressive interrogator, and he's the one that talked to him right after I had talked to him. And he had told me that his mother had told him to tell the truth, that it wasn't fair for Jesse to go to the penitentiary for something he didn't do. And the Reverend got him back on the straight and narrow, and he went back up there, said, "I don't remember talking to you," [i.e., to Albert Peña]. But by that point there was enough holes poked in the case. In fact, the jury afterwards asked why Carlos Hernandez had not been indicted.

17:55:52

AP: So it was a bunch of little details that didn't make any sense and were contradicted by the police themselves. And this Carlos Hernandez had called it a . . . That night, he didn't go home. He went to Cole Park, which you can probably see from here, its right down there. He went to Cole Park and spent the night there, sitting there. And he called this lady [Shirley Curry] to tell her he was feeling sick and all this kind of stuff. And she testified, "Oh, no, he couldn't have done it, I was talking to him at the time," and all this other stuff. But that was kind of a weird relationship. She was 10 or 15 years older than him, and didn't fit the milieu of what Carlos Hernandez was normally

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hanging out with. In any event, later on Carlos Hernandez was actually indicted for the murder of Dahlia Saucedo. I'm not sure, but I heard that he had had an accident, he had fallen off the back of a truck, and he was not capable of standing trial because he was a deficient . . . The interesting thing about the police is, there was several years intervening, something like maybe 7 years I'm guessing. When he was finally indicted, the police chief comes out on television, which was kind of ludicrous, that they had new evidence. All the evidence they had was the same evidence they had when they took Jesse to trial. There was nothing new.

17:57:39

AP: So that was kind of a weird way to handle the thing, but of course they didn't want to admit that they were wrong. And the prosecutor did not believe, up until the time that Carlos Hernandez was indicted, that Jesse was actually not guilty.

17:58:00

RP: Why do you think it took them so long to actually indict somebody when all the evidence pointed to-

17:58:08

AP: Because they had already screwed up their case. They had already shot all their bullets. And they said, "This guy did it." And it's very difficult for the police mentality to admit error.

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How do you explain to the public that they messed up? Finally, after several years, they felt more comfortable. There was a change of administration. The homicide detective or Lieutenant no longer was the same one, so he wasn't personally involved in the decision making.

17:58:44

RP: And that sort of inability to admit their error, was that common, or a pervasive police attitude towards investigations at the time?

17:58:57

AP: Still the prevalent attitude. Police will not admit that they did wrong. They will not. Very rarely you'll have some innocent or some truthful guy admit that he made a mistake. But normally they . . . You can show them anything, in black and white, on video, and they will deny it, that "We're right and you're wrong." That is the mentality of the police department then and now.

17:59:26

JSL: If I could get you to go right back over that last part and just mention Jesse Garza and Carlos Hernandez, their names. Why do you think that they arrest Jesse Garza, you do an investigation, you produce all this evidence that links all of their forensic, all of their physical evidence, to another person.

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Why, at that point, didn't they say, "We've got the man, Carlos Hernandez."

17:59:52

AP: Because they had already committed to going after Jesse Garza. And they had the eyeball witness. According to the prosecutor, they had the eyeball witness. That's pretty compelling. Of course, they were keeping him under wraps. They had him terrified. And as long as the Reverend [Sgt. Smith] would not allow Pedro to change his testimony, Pedro Olivares was going to be consistent in what he was saying.

18:00:25

RP: Can you go over that again? It was a little confusing.

AP: Sure.

RP: There was a police officer posing as a Reverend?

AP: That was a different case.

18:00:35

JSL: Tell us who the Reverend is. You've referred to the Reverend, tell us who is that?

18:00:45

AP: Sergeant Sidney Smith, who is now married very well.

JSL: And why was Sergeant Smith called the Reverend?

18:00:50

AP: Because in a case preceding the Jesse Garza case, it was

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common knowledge that he had gotten the defendant and had posed as a minister, and had gotten a confession from him. That confession was good for the soul, that type of thing.

18:01:08

JSL: He was the officer who managed to get Pedro Olivares to say that Jesse Garza had committed this crime?

AP: That's correct.

18:01:20

RP: That sort of duplicity, again. Was that common in police investigations at the time? To pass yourself off as a minister?

18:01:31

AP: No, that is a very rare occurrence. In fact, that is the only one I have ever known of. Although there's been some really squirrely things happening with confessions here in Corpus. There was a capital murder case one time in which a member of the sheriff's department -- who is a high member of the congressional staff now -- was getting a confession from one guy, saying that his uncle had done it, or a statement implicating his uncle. And then he found out that the uncle was in jail. He had a perfect alibi, so he could not have done the homicide. So he went back and did another statement. "Oh, I was wrong, it was my other uncle that did it." At the same time this was happening -- this was the sheriff's department. At the same time this was

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happening, there was a member of the police department getting statements from a black, from an African American, claiming that he had done it. And he's the one that was ultimately went to trial and was convicted. It's kind of frightening, isn't it?

18:02:20

JSL: It is frightening. Let me ask you a couple other questions. First of all, describe how Dahlia Saucedo was killed. Describe how she died, the evidence how showed she died.

18:02:56

AP: Gosh, that's tough to remember. I think that she was strangled. There was some speculation she was raped, but there was no visible signs. Every physical sign of the scene indicated it was consensual. There was no bruising or anything of that nature. But she was beaten, I remember. She was beaten and strangled to death. And then the big "X."

18:03:24

AP: Now, the medical examiner, who at that time was Doctor Joseph Rupp, fashioned himself at being an expert at everything. And you could use Dr. Rupp because he never knew the facts of the case. But, of course, he knew about the "X." But he didn't know that my client had just met Dahlia Saucedo that day, and that there was this other group of people almost on a daily ride with Dahlia, the clique. And I asked him about the "X", "What does that mean, you

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being an expert and . . . blah blah." And he said, "What that meant is he was making a statement to the other group of people who they all hang out with, and that is, 'Don't cross me, it will happen to you.'" That was a help.

18:04:20

JSL: Did . . . What role did the Casino Club play in all this? Do you remember any of that?

18:04:29

AP: The Casino Club is where a lot of them hung out. The one that did a lot of work there was Jesse, I mean Eddie Cruz, my investigator, non-paid investigator, uncle of the defendant. And he got a lot of sources from that place. That was one of the places they hung out.

18:04:50

JSL: Do you remember where that was?

AP: I don't remember the names of the streets, but it was somewhere in the . . . No, I'd rather not guess.

18:05:00

JSL: And who else hung out in the Casino Club that was involved in all this?

18:05:04

AP: All of the little clique hung out there at various times. And that's where a lot of gossip, oh, they said this and they said

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that. That's where Eddie Cruz was able to develop a lot of his information.

18:05:17

JSL: Did Carlos Hernandez hang out there?

AP: Yes. He was there.

JSL: Could you put that in your own words? The people in this case . . . Who among the people in this case did your investigation show hung out at the Casino Club?

18:05:34

AP: Well, generally speaking, the whole clique. That is, there were about 10 different people that hung out together, smoked dope together, drank together. And when they wanted to go out and socialize, they used to go to the Casino Club. Carlos Hernandez was one of the ones that went there.

18:05:50

JSL: In your investigation, did you have occasion to talk to a woman by the name of Gloria Licea, Gloria Longoria, I don't what name she would have been using at that time.

18:06:05

AP: That was Gloria Licea. Yes, she was very helpful. She was one of our sources. I can't remember whether she was Schilling's sister or related to Schilling in some way. That's the brother-in-law. I just don't remember.

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18:06:25

JSL: Does it ring a bell or refresh your recollection that she was a friend of Paula Hernandez, Freddy Schilling's wife and the sister of Carlos Hernandez.

AP: Oh, I didn't remember that. I sure didn't.

18:06:41

JSL: Ok. The van was found at the Corpus Christi Egg Company, you said.

AP: Right.

JSL: And that's over at [the corner of] Mexico and Musset?

AP: Musset.

JSL: Musset. Ok. How far was that from . . . You had the map up there and Carlos was showing you everything. How far was that from where he lived?

18:07:02

AP: It was almost a perfect triangle. The distance from Dahlia's house to where they reportedly had sex was within blocks of her [his, Carlos's] house. And the incident where the van was found was just a matter of another few blocks, not too far at all.

JSL: To?

AP: Not too far at all from each other.

18:07:25

JSL: And how about in relation to Carlos Hernandez's house?

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18:07:29

AP: The place where they had sex, where he lived, and Musset, they're all in the same neighborhood. And as I mentioned earlier, my suspicion is that she was killed in back of the bar, where he was supposedly having sex with her. And my reason for that is that they . . . friends, his friends, came out and they take [the van takes] off. And they were Dahlia's friends, too. And it took off very rapidly. And then when it was parked it looked like somebody had gotten there pretty quick, not in heat but in fear of being caught doing something wrong.

18:08:13

JSL: You described that . . . Someone had to make a decision somewhere along the way. You had produced evidence of Carlos Hernandez's involvement, and then they had originally arrested your client, Jesse Garza.

AP: Correct.

JSL: Who made that decision? And what do you know about that decision?

18:08:33

AP: Bill Mobley, the district attorney . . . Well, ultimately, the initial decision was made by Lieutenant Malcolm Pace, the one that had just been appointed as head of homicide. And he put the pressure on the homicide police, "We need somebody." Because the

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got a lot of news publicity, because the infant child was there in the van when she [the victim, Dahlia Saucedo] was found. So that's where it initially came. Then they go over to the D.A.'s office. The D.A.'s office doesn't do investigations, they just go by what the police tell them. Ken Botary was the prosecutor. And Ken, for many years, still believed that Jesse Garza was the guy and I had gotten a guilty man off. Even after all was said and done. Again, I guess prosecutors have a hard time admitting that they were prosecuting an innocent person.

18:09:27

JSL: Did he ever change his mind?

18:09:28

AP: Yes, he did. That happened several years later, when, finally, Carlos Hernandez was indicted. Now, all of a sudden, "Yeah, he did it. We're after him."

18:09:45

JSL: Tell me about the conversation on that tape that you heard. It was between Carlos Hernandez and his mom. He made a phone call from the jail, and somebody taped that phone call when he was calling. Would you just describe the conversation again? And also, if you remember what the mother, Fidela Hernandez, said-- what the conversation was.

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AP: Ok. The beginning of the conversation was, "Mama, they have me here in jail. They say I killed Dahlia." And then she asked him, "Did you?" "I don't know. I don't know. I was real high. I don't know what happened, if anything." And then she says, "Have you given them a statement?" "No." "Don't tell them anything, don't tell them anything." He says, "Ok, mom. Please get me out," and that type of thing. But basically, that was the most incriminating part.

18:10:44

JSL: And there was a time Mr. Botary met with Carlos Hernandez and, I think, his mother Fidela, if I'm not mistaken.

18:10:55

AP: I don't know if he met with the mother. I never got any-

18:10:57

JSL: Ok. Tell me what you know about that meeting. This was before the trial?

AP: This was before the trial.

JSL: And they were trying to decide, are they going to go after Hernandez, or are they going to stay with Garza.

18:11:05

AP: No, I think they were already committed to go after Garza.

JSL: Ok. So what happened?

18:11:08

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AP: Because of the conversation which later came up. The conversation began by Mr. Botary telling Carlos, "Look, I want you to understand, I'm not out to get you." And then he developed this scenario about a chess game, and I [Pena] was a black knight, and he [Botary] was the white knight. That he [Botary] was on his {Hernandez's} side. But what was real curious was that Mr. Botary puts his tape recorder on the desk, and Carlos Hernandez pulls out his tape recorder and sets it on the desk, too. Neither one trusted each other, I guess. And he [Hernandez] goes and tells him, "No, I didn't have anything to do with it," that type of thing. Basically gives just a general denial that he did anything.

18:11:52

JSL: I want you to tell that story again, and just describe who set up the chess game, whether it was Mr. Botary or if it was Carlos Hernandez.

18:12:05

AP: They both sat down. Kenneth Botary brought out his tape recorder, set it on his desk. That was the prosecutor. Then Carlos Hernandez was sitting across from him, he pulls out his tape recorder and puts it on the desk. And then, Botary tries to calm him down. He says, "Look, I just want to talk to you about what you know about this particular case, the Jesse Garza case. And I want you to understand that I'm not out to get you. This is

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like a chess game. I'm the white knight, and Peña is the black knight. He's out to get you. I'm not. I don't have anything against you." So then they begin the conversation. And basically, it was very little information. Actually, I was better off with the other tape they gave me the . . . , which he refused to give, since he was my witness. But it was kind of strange the way it began.

18:13:05

JSL: And how did that tape . . . How did you ultimately hear it? Did they give it to you at trial as Jencks material or that sort of thing?

18:13:10

AP: Well, they maintained that I wasn't entitled to it, because of the fact that he had already . . . that he [Hernandez] was my witness.

JSL: And how did you know, then, about the conversation [between Botary and Hernandez]?

AP: Between them?

JSL: Yes.

18:13:24

AP: Well, I found out about it through sources I cannot reveal.

JSL: And so Mr. Botary knew Carlos Hernandez well?

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AP: Mr. Botary had the information about the fingerprints, about the Fruit of the Loom. He didn't have the information on the tape recording between mom and the son. Because he [Botary] had just haphazardly thrown the tape at me, "Here, you can have this." He doesn't understand Spanish, to begin with. He does understand some, but not very much. But that tape was dynamite.

18:14:00

JSL: But at that point, Mr. Botary knew who Carlos Hernandez was, he conversed with Carlos Hernandez.

18:14:08

AP: That's why he brought him in. I was trying to get the case dismissed against my client, and I had to reveal, of course, why. And that was, that Carlos Hernandez's fingerprints had been found on the beer can that was found in Dahlia Saucedo's van. And also, he was wearing the same kind of boxer shorts, size 36, which had been left behind, indicative of somebody trying to get away quick.

18:14:38

AP: Which also logically explains why he took off so rapidly from behind that bar that he was at, with Dahlia Saucedo. And he admitted, that is, Carlos Hernandez admitted, to having sexual relations with her that night. But denied killing her. And then, it's not a very far distance [to Hernandez's house] where that van was found. And as he took off rapidly from behind the bar, the

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van, the impressions made on the grass and all there where it was ultimately dumped, was indicative of somebody going in there real quick, and dropping off, and taking off. This was physical evidence.

18:15:20

JSL: And you explained all of that to Mr. Botary.

AP: Yeah.

JSL: And tell us about giving the evidence to him and what happened after that. Let's keep going with that.

AP: He talked to Carlos Hernandez and he assured himself-

JSL: Use Mr. Botary's name.

18:15:35

AP: Mr. Botary talked to Mr. Carlos Hernandez and apparently convinced himself that there was no truth to what I was telling him, or it wasn't of any significance. They had the eyeball witness. And they were going to dance with who who brung [sic] them.

18:15:54

JSL: The knife that was . . . Would you describe how that knife came into the possession of the authorities?

18:16:03

AP: The knife that was brought into court by Sergeant Paul Rivera was taken by Sergeant Paul Rivera from Carlos Hernandez when he

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picked him up for investigation, when I had requested he do so. And that's when they took his fingerprints as well. And I used that knife in our favor.

JSL: Describe that knife.

18:16:25

AP: Well, that knife that Carlos Hernandez had when Sergeant Paul Rivera arrested him, had three blades. It was just a regular pocket knife, but it had three blades nonetheless. I asked him to open up each blade, one by one, describing whether it was sharp or dull. Because Doctor Rupp, who was the medical examiner, had testified that it was not a very sharp knife. So I asked Carlos Hernandez, as he opened up one. "Well, that's not a very sharp blade." And I asked him about the other one. "That's a little bit sharper but still kind of dull." And he opened the third one up. All three of them were dull. But in any event, Dr. Rupp had said it was not a very sharp knife.

18:17:12

JSL: Olivia Escobedo was one of the investigating officers on this.

AP: Right.

JSL: Tell us about Olivia Escobedo.

18:17:20

AP: As I recall, she had just become involved in homicide cases. She was actually supposed to be the person in charge. But male

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chauvinism being what it is, she wasn't really in charge.

18:17:32

JSL: You sort of embarrassed her on the stand. I guess I remember because she didn't know some pieces of the investigation that had been taken place by other people, sort of demonstrating that she wasn't really in charge. Do you remember that?

18:17:43

AP: I remember generally, yeah. I remember that there was obviously "She's a woman? Keep her to the side. You don't have to let her in on everything, even though she's the person in charge of this homicide investigation."

18:17:55

JSL: And who were the other officers who were freelancing on her case?

18:17:00

AP: I believe everybody involved in the investigation was freelancing. You know, there was a move to put women in higher positions, and she was a token from the eyes of the old male police on the force. I think even Lieutenant Malcolm Case put her in charge of the investigation just because it looked good. She was a wonderful lady.

18:18:30

JSL: You mentioned that, at the end of the trial, members of the

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jury or a member of the jury came to you and asked, "Why didn't they indict Carlos Hernandez?" What's your answer to that question?

18:18:45

AP: I told them because they were narrow-minded, they focused in on my client, and they had blinders on and were not going to consider any other person. They said, "But it's so obvious." I know it's obvious, but you have the District Attorney's office, and I've been told everything by the police department.

18:19:01

JSL: Ok. What I'd like you to do is just describe that whole conversation, after the trial is over, and use everybody's name -- you client's, Carlos Hernandez, and everybody. Just describe the whole incident from the point where a juror or jurors approached you.

18:19:15

AP: After the trial was over, three or four jurors approached me and asked me, "Why was Jesse Garza not out on bond?" And I said, "He couldn't afford to be out on bond." And they asked me, "How come they didn't indict Carlos Hernandez?" And I told them, "Well, because they have blinders on, the law enforcement. And they had already narrowed in on one guy and they were not going to go off that road, come hell or high water. Because it's

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the nature of the beast. They will not admit that they're wrong, especially when they already had a person in custody for a year. Obviously they weren't going to admit they had him in custody for a year without having any hard evidence other than the poor guy that they intimidated." Sergeant Paul Rivera was the only one that looked further, but, then again, he was not the one calling the shots.

JSL: Mr. Peña, in your opinion, who killed Dahlia Saucedá?

18:20:57

AP: Carlos Hernandez. No doubt in my mind.

JSL: Would you just state in your own words, incorporating this question into your answer, and names. In your opinion, who killed Dahlia Saucedá?

18:21:12

AP: In my opinion, Carlos Hernandez killed Dahlia Saucedá. I subsequently learned he had confessed to several people that he had done it, and bragged about it, and that he had gotten away with. He also had . . . The physical evidence was pointing at him, the fingerprints and, of course, the underwear that matched to a tee: 36-inch waist line, J.C. Penny Fruit of the Loom, and the same design on the ones he was wearing when Paul Rivera arrested him and the ones that were left behind in the van. He also admitted to having had sexual relations with her. He also

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admitted to having a knife in his possession, that he always carried it. And the doctor testified that the marks had been made with a very dull knife. His knife had three blades, and all three of them qualified for being dull. [Note: At the Garza trial, Hernandez claimed that the knife Paul Rivera found in Hernandez's possession at the time of Hernandez's arrest was a buck knife, not a pocket knife, and that Rivera had switched the knives. Rivera admitted to me at one point that the knife from Hernandez had been lost or misplaced]

18:22:09

AP: The other thing is he was part of this group. Carlos Hernandez was part of this group that was always getting together, always traveling around. And, according to the doctor, the "X" was a sign to the rest of the group, that they were crossed by any of them, he would do the same to them. Then we have the relationship of Carlos Hernandez's brother-in-law with Dahlia Saucedo. And that he had made many, many statements that he was very angry about that. And there was also the situation where he had this conversation with his mother after he had been arrested by Sergeant Paul Rivera. And Carlos Hernandez very explicitly said, "They've got me here because they say I killed Dahlia." And he did say that he had been with Dahlia the night before but did not know or remember if he had killed her or not because he

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was "out of it." "*Es trampao*," is that "out of it"? That's good enough. And this was tape recorded. Subsequently he was going all over town taking credit for it. I don't know why he would go around town taking credit for it if he didn't do it. Also, on the stand, it was very obvious that he had a very volatile temper. He had the knife with three blades in his hand, opened. I was telling the jury about the "X's" that he made on the map, and jokingly said, "Well, we know he knows how to make 'X's'." And he almost jumped out of the chair at me with a knife in his hand.

18:23:57

JSL: In court.

AP: In court. Yes sir. So all those factors certainly pointed at him. And subsequently, he was indicted for the offense. Not that indictment is evidence of everything, but that, in conjunction with all the other factors that I know of, sure points to him.

18:24:20

JSL: What did you hear about Carlos Hernandez after that, outside the context of this case? What do you know about Carlos Hernandez as a person?

18:24:28

AP: As a person? He was a bully, he beat up people. He considers himself a tough guy. I heard he'd fallen off the back

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of a truck and got hurt. And then I started hearing rumors that he was responsible for a capital murder case that occurred in Corpus Christi. I don't remember the year, but it was years after Jesse Garza. There was another young man, whose last name was Luna, was actually convicted and has been since executed.

18:25:04

JSL: Tell me what you've heard.

18:25:07

AP: Well, unfortunately, I heard that Carlos Hernandez had done it, and police were going through the city. *(chokes up)* Excuse me. Capital murder, there's no appeal. I'd heard that, through police sources and through people at the courthouse, people in the know, that Carlos Hernandez was suspected of doing it. Not this fellow Luna. But again they took the attitude of putting the blinders on. I believe I had spoken to one of the attorneys that was representing him. I'm not sure if it was Hector de Peña Junior, who later became judge, or not. But they had reason to believe that that may have happened, that they got the wrong guy, that Carlos may have actually done it, but weren't able to firm it up as well as we were lucky to do so.

18:26:03

JSL: You just got a little choked up. Explain to me why.

18:26:07

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AP: Well, quite frankly. I don't believe in the death penalty. I would go crazy if I lost somebody to the death penalty. I did lose one guy to the death penalty, but that case was reversed. It was tried again, he was convicted of murder, got a life sentence, and then that was reversed a second time. And then he pled out, got 35 years. And I knew the guy was guilty. This was a robbery at 12 noon with a hundred people in the restaurant. But I don't believe in capital punishment. My belief is that too many innocent people are executed.

18:26:48

AP: And that is a grave commentary on our system of justice. I mean, even one person being innocent and being executed is horrendous. Because there's no appeal from there, from the death. You're dead, you're dead. You can't come across DNA evidence or anything after that, it's too late.

18:27:09

JSL: And you think that happened to Carlos DeLuna?

AP: I certainly do. Just a gut reaction. I don't have any facts. But knowing Carlos Hernandez the way I learned, and what I learned about him during and after the trial. I'm just sad that they weren't able to develop facts to show that. My guy was not charged with capital murder, but he was still facing a life sentence.

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18:29:00

JSL: If the question had been put to, let's say, Ken Botary, within the D.A.'s office, "Gee, Mr. DeLuna says somebody by the name of Carlos Hernandez used a knife on this woman at the Shamrock and killed her." Ken Botary would have known what Carlos Hernandez was being referred to at that point.

18:29:24

AP: No question about it. They played chess together. If, in 1983, somebody had asked Mr. Botary, or told Mr. Botary, that there was a claim Carlos Hernandez had committed this stabbing at the Shamrock station, what would he have known about a Carlos Hernandez?

18:30:50

AP: *He prosecuted Jesse Garza, my client. And he knew Carlos Hernandez also testified in the case, and that's not a fellow that you're going to likely forget.*