84-4951-D

NO. 84-4951-D

LOUIS G. VARGAS, ET AL	*	IN THE DISTRICT COURT
VS.	*	105TH JUDICIAL DISTRICT
DIAMOND SHAMROCK	*	NUECES COUNTY, TEXAS

DEPOSITION OF HARRY CALDWELL
OCTOBER 8, 1987

APPEARANCES:

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ORIGINAL

HARRY CALDWELL,

having been first duly examined, cautioned and sworn upon his oath to tell the truth, the whole truth and nothing but the truth, testified as follows:

E X A M I N A T I O N

BY MR. RODRIGUEZ:

Q. Mr. Caldwell, please give me your full name for the record.

A. Harry Caldwell.

Q. Where do you live?

A. I live in Houston.

Q. And what is your business address?

A. 13430 Northwest Freeway, Suite 900.

Q. Is that in Houston, Texas?

A. Houston, Texas. Zip code is 77040.

Q. How long have you been living in Houston?

A. Thirty-five years.

Q. Okay. What is your present occupation?

A. I'm the assistant to the chairman of the WKG Group, which is an acquisition firm. We buy companies.

Q. Okay. And how long have you been doing that?

A. Since I retired as Chief of Police in March, 1980.

Q. Would that be Chief of Police in Houston, Texas?
A. Yes.
Q. How long were you working for the Houston Police Department?
A. Twenty-seven years.
Q. All right. Do you remember what year you entered?
A. Yes.
Q. What year was that?
A. 1953.
Q. Year of my birth.
A. Time flies by, Mr. Rodriguez.
Q. When did you retire?
A. I retired in 1980.
Q. Okay. And how long were you the Chief of Police there?
A. From 1977 to 1980.
Q. All right. I would assume before you became the Chief of Police, you, you were in a supervisory position prior to that?
A. Yes. I held every position in the Houston Police Department from patrolman through the rank of chief.
Q. Okay. At what point in the police department hierarchy do you, does - are your duties relegated to administrative-type functions?
A. Well, there are certain administrative

responsibilities that accrue to every rank - from sergeants through the chief's office. I think the degree of administrative responsibility increases as one's rank increases.

Q. Okay. As a lieutenant, were you responsible for either investigating crimes or, or traveling in the streets, so to speak?

A. Yes. Yes and no. As a lieutenant, in one position, I was field commander - field commander in the hierarchy at that time, the radio patrol was responsible for the operation of a precinct station, and for the control of the officers who were working on the streets. As a field commander, I stayed on the street with the troops.

Q. Okay. And when you were promoted to a captain, what were your duties?

A. Captains have divisional responsibility, and depending on what division I was in as to what my duties were.

Q. Okay. As a captain in the Houston Police Department, in any of the divisions, were you responsible for investigating crimes or also arriving at scenes of crimes to either supervise or initiate investigations?

A. No.

Q. Okay. Would it be fair to say that from captain on up in the Houston Police Department, that would be - you would be responsible mainly for administrative-type duties?

A. Well, one's responsibility, depending on the position, is responsible for the utilization of police resources. This might involve strictly administrative affairs. It also involves planning. And it does not, however, involve on street investigation.

Q. When did you become a captain?

A. I'm sorry, Mr. Rodriguez, the best I can do is to try to interpolate -- would probably have been about 1966, 1967 - subject to being corrected by the record.

Q. Okay. Were you ever involved while at the Corpus Christi - I mean - the Houston Police Department in a division that involved either crime prevention or community services?

A. Yes. I created the crime prevention division of the Houston Police Department; was its first commander. I also was a homicide detective, so I -- in both of those capacities, I participated in preventative reference.

Q. When did you develop that program for the Houston

Police Department?

A. Would have been during the sixties, Mr. Rodriguez. I'm sorry that --

Q. No, that's fine.

A. -- I can't recall the exact date. It would have been during the sixties, the first of our community relations division, whose job it was to relate with the public on crime prevention.

Q. And how long did you do that?

A. How long was I the captain of that division?

Q. That's correct.

A. Subject to being corrected by the record, sir, my best recollection is for two or three years.

Q. All right. And can you tell me what your duties were with regard to that particular assignment?

A. Yes. Well, they were varied, but one of them, of course, was to try to establish a better preventative program involving the citizens of our community, and to try to provide methods by which we could communicate with the business community in regards to crime prevention, and with the citizens in general.

Q. Okay. Would you conduct seminars for business people and private citizens?

A. Yes.

Q. Would you also be involved in providing, go around speaking to certain groups?

A. Yes.

Q. All right. Do you have any type of formalized training in the security field?

A. Yes.

Q. Can you tell me what that training is?

A. Yes. I taught at the university level for about seventeen years, Mr. Rodriguez. In the course of teaching both graduate and undergraduate students, the significant part of certain courses, depending on the course being taught, dealt with, with preparing professionals to deal with crime prevention as a policy and methodology for preventing crime.

Q. Can you tell me what some of those courses were that you taught?

A. Well, I can refer you to the catalog at the University of Houston or South Texas College, which is now the downtown school of the University of Houston, or Sam Houston State University, for the specific description of those courses. I taught at the University of Houston for five years; about two years at South Texas College, and then about ten or eleven years at Sam Houston, until I was appointed

Chief of Police. As a matter of fact, the courses ran the entire curricula for police administration in all of these locations, and my subjects were primarily in the area of police administration.

Q. Okay. Did you receive any type of formal training such as what - I guess - what you were doing to others?

A. Yes.

Q. Okay. Can you tell me what that is?

A. Yes. I have a Bachelors Degree and a Master's Degree and have completed all the academic work for my doctorate, and in the course of these many years at the college level, I also took those courses that I taught, in addition to which, I attended many seminars and practicums and symposiums that dealt with preventative methods of crime prevention. I was the co-founder of the National Association of Police Community Relations Officers who are primarily in the business of crime prevention and teaching crime prevention.

Q. When did you do that?

A. In the sixties, Mr. Rodriguez, subject to the record - It was in the sixties, primarily.

Q. All right. Do you recall any specific courses that you took, or seminars that you took, that dealt with

security analysis with regard to businesses?

A. Mr. Rodriguez, I don't recall the specific name of courses. However, security analysis was part of the curriculum that I both took and taught, because it was necessary for us to, to advise businessmen regarding security and security analysis, and to teach those who later became security personnel how to conduct security analysis.

Q. Are you presently a member of any security-related organizations?

A. Well, sir, I don't know exactly what security-related -- could you be more specific?

Q. Well, any organization. There's several out there that deal specifically with, with security of convenience stores, security of businesses, security of internal crimes - that type of thing.

A. Yes, sir. No, sir, I'm not a member of any of these organizations. However, I have been the guest speaker at their annual conventions and have taught many of the persons who are in this field. I do not belong to any of the, such organizations as is.

Q. Do you recall any of these organizations that you spoke to - the names of them?

A. Yes. The American Society of Industrial Security is the one that comes to mind immediately. I was a

guest speaker at their national convention at Dallas. I'm also a member of the International Association of Chief's of Police, and at one time was a member of their subcommittee that dealt with crime prevention and their security - private security - was a liaison committee between private security people and the organized police agencies of the United States.

Q. Okay. That first organization that - it's the American society of --

A. Industrial Security.

Q. -- Industrial Security. Do you remember what topic you spoke on?

A. Yes.

Q. What was that?

A. Well, I talked to them about the need for professionalizing private security in the United States - how important it was to the overall security of the people.

Q. Important to the public, or to the employees, or to whom?

A. Well, the gist of my talk to them was that it was very necessary that they be very professional people so that people would have enough faith in them to use their services; encouraged them to very

carefully select and train their security personnel, and pointed out to them the importance of relating their efforts to those of the local police agencies.

Q. Why would that latter part be important?

A. The police can't be everywhere. Businesses sometimes have a responsibility to assist the police in crime prevention, and it was important, in my opinion, for them that, to cooperate very closely with the police in crime prevention.

Q. In what way could a business assist the police in cooperating in the area of crime prevention?

A. Well, the main thing that they could do would be is very carefully select and train their security personnel. Unfortunately, there's many crimes committed by persons posing as security people.

Q. Okay. Why is it, is training so important of security personnel?

A. Well, security personnel needs to know enough not to violate the civil rights of people. They need to know enough to do their job.

Q. Okay. What would you recommend would consist of adequate training of security personnel?

A. Well, could you be more specific, Mr. Rodriguez?

Q. Okay. I assume that you're, you're testifying as an expert in the security field in this case. So, as

such, I would think that you have certain opinions with regard to training of security people so that they can go out, either in the community or back to their, to their business establishments, and if training of these people is important, what would you consider to be adequate training so that they could go back and utilize whatever they have learned?

A. Mr. Rodriguez, I'm sorry. I think the question is too general for me to answer. Depends on the type of security that they are involved in as to how they should be trained and the types of responsibilities that they are asked to perform.

Q. Okay. Do you have opinions as to what type of training security people should have in the area of robbery prevention?

A. Yes.

Q. Okay. Can you tell me what type of training one should have with regard to that?

A. Well, they should have sufficient training to advise their people, and to perhaps have printed for their employees a list of do's and don'ts for in case of an armed robbery.

Q. When you say "have things printed", what, what sort of things are we talking about?

A. Well, I think it would be well to have something in writing so that an employee could look at it from time to time if, to be reminded of the things to do in the event of an armed robbery.

Q. Anything else?

A. Well, I think certainly that would be the most important.

Q. Have you ever conducted a security analysis of convenience stores or super markets?

A. No, I'm not in business of conducting security analysis.

Q. Do you receive any security-related periodicals or materials?

A. No. Please let me correct that. Yes.

Q. Okay. Can you tell me which ones?

A. Yes. I receive the copies of periodicals from the American Society of Industrial Security. I receive copies of periodicals from the International Association of Chief's of Police, and several other unsolicited periodicals whose name do not come to mind, and I have a flood of these sorts of things that come to me. But I misunderstood your question.

Q. Okay. While we're there, if there is anything that is too general or you think has, may be misconstrued, let me repeat it because I don't want

you to answer anything that, you know, you may misunderstand.

A. Yes, sir.

Q. I don't get offended because I know a lot of times I talk that way. So, have you, in the past, ever acted as a security consultant on a private basis?

A. Yes.

Q. For whom?

A. Southland Corporation; for the Pilgrim Cleaners; and from time to time on an individual basis, with others, just in terms of requests from persons for opinions and advice. I may add, also, Mr. Rodriguez, that when I did work and provide information for these organizations, it was not on a for-pay basis.

Q. I see. What type of information did you provide to Southland Corporation?

A. Well, at the time, I was Chief of Police and their people met with me to see what we could do to cut down on their problems, and there were several of their stores in Houston.

Q. What type of problems were they having?

A. They were being robbed.

Q. And what did you do for Southland?

A. Well, I provided them with staff assistance to help

them to look at their policies and procedure.

Q. Did you review the recommendations or the activities of the staff that you provided to Southland?

A. In a very general way. Primarily, what we did was have our community relations division work with their people to update and to upgrade their materials and to advise them regarding those things the police department could do to help them.

Q. Okay. Did -- what did you do for Pilgrim Cleaners?

A. Essentially the same thing - provide them with staff support to look at their problem.

Q. And was there problem also robberies?

A. Yes, sir.

Q. Now, when did you assist Southland and Pilgrim?

A. Would be sometime during my tenure as chief, Mr. Rodriguez. I don't remember the exact date.

Q. What was the period, again, when you were chief?

A. '77 to '80.

Q. Now, the assistance you provided to Pilgrim -- that was Pilgrim Cleaners in Houston, also?

A. Yes, sir.

Q. In your present occupation, do you - are you responsible for any security-related duties?

A. No.

Q. What are your duties in your present occupation?

A. Well, as the assistant to the chairman, I assist in the acquisition of companies. We do leveraged buy-outs. I also have an equity position in our companies, in addition to which, I consult with attorneys on cases where security is a question.

Q. That's kind of like a moonlighting from the business, or is that part of the business that you're in?

A. Well, actually this is sort of like moonlighting in working with the WKG Group. I'm semi-retired, and I consult with attorneys, and I have an equity position in the companies, and from time to time requires international travel and things of this sort. So, I do, as any part owner would do, try to look after my business.

Q. What percentage of your time do you do consulting work for attorneys?

A. Oh, maybe, maybe ten percent of my time, Mr. Rodriguez - without subjecting it to some mathematical - maybe more; maybe less.

Q. Have you ever developed a robbery prevention program either while at the police department or now - for anybody?

A. I have not developed a robbery prevention program, no.

Q. When you assisted Southland and Pilgrim Cleaners, do you recall what some of the recommendations were?

A. Yes.

Q. What were they?

A. Some of the recommendations were that they provide their employees with, with information regarding how to conduct themselves in the event of a robbery.

Q. And what did that consist of?

A. Told them don't try to be a hero. Told them to try to get a good look at whoever was robbing them. Told them to offer no resistance to the robber. Told them to notify the police as soon as possible. And things of this nature.

Q. In regards to convenience stores, such as 7-11 or the Diamond Shamrock-type establishment, what are some of the things that you consider, in your professional opinion, to be important security needs with regard to robbery prevention?

A. What do you mean by "security needs", Mr. Rodriguez?

Q. Well, would you agree with me that convenience stores such as the ones I've described, and Diamond Shamrock's, are susceptible to robberies?

A. I think anybody that opens their door must consider the possibility of robbery. I would hesitate to cover every convenience store station as you've

described, like the Diamond Shamrock, with one blanket. Every store has a different security needs, depending on its uniqueness.

Q. So it's your opinion that convenience stores, in general, are not susceptible to robberies, or that you just can't make that blanket statement, or what?

A. That's not what I said. I said that anyone who opens their door is --

Q. Okay. Go ahead.

A. I'm sorry. Shall I stop?

Q. No. No. I'm sorry. I didn't mean to stop you.

A. Anyone who opens their stores is susceptible to robbery, in my opinion, Mr. Rodriguez, including the individuals that walk the streets.

Q. When you say "anyone that opens their door", are you referring to --

A. Yes.

Q. Okay. "Anyone" - you mean business?

A. Yes. Or any individual who walks the streets. I don't know of anyone who's immune.

Q. In your professional opinion, what do you feel are management responsibilities with regard to robbery prevention?

A. Could you be more specific, Mr. Rodriguez?

Q. Well, in regard to any type of business. It's just

a general question. With regard to any type of business, in view of your statement that any business that opens its door, you know, is susceptible to robbery, or could be the subject of a robbery. What would you consider, as an expert in the security field, to be management's responsibilities with regard to preventing that - robberies from occurring?

A. To see that the employees know what to do in the event of a robbery.

Q. Okay. And how would the employee -- how would you, do you feel management can accomplish that goal?

A. Do it in several ways; one of which is to provide them with written material. The second way is to give them individual - to advise them individually, either through their supervisors, as to how to conduct themselves.

Q. Okay . Okay. Do you think that there is such a thing as a deterrence to robbery?

A. It all depends on who the robber is. Deterrence connotes that the robber is a rational individual carefully weighing risk and reward. Deterrence is absolutely useless in some cases. It's -- it strictly depends on who is doing the robbing. Some robbers are deterred by the presence of others.

Other robbers are not deterred by the presence of others. Some can be deterred by a sign in a window. Others will use the sign in the window to whip someone over the head with it. Deterrence is a very individual thing. We never -- it's very difficult to measure the value of deterrence because we don't know by definition what crimes, or how many we deter. We only know the ones that actually occur. I've seen crimes occur when all so-called deterrent factors were present. I've seen banks robbed where the robber mugs for the cameras. I have seen others deterred, or who said they were deterred by the mere presence of a dog in the place. So, it's a very strictly -- I think we can not reduce to specifics and say that were you to do this, you could count on a deterrence to occur. Were you to take these steps, then you need not worry about robbery occurring. Simply depends on the person who's doing the robbing.

Q. So, are you using --

A. Excuse me.

Q. Do you feel, then, that there's not a difference between deterrence, deterrence of a crime and preventing a crime. Are you using that interchangeably?

A. Well, both of those terms are very broad, Mr. Rodriguez, and I'm not sure that deterrence and prevention are exactly the same.

Q. Okay. What, in your mind, in your professional opinion, do you see as the difference?

A. Deterrence occurs to me as something that prevents the opportunity for crime to occur. And prevention seems to me of those things that one does that although they may not be an actual barrier to the crime occurring, make it less likely that it will occur. And, again, I apologize for the broadness, but these are very broadminded, broad terms. Deterrence and prevention do not lend themselves to simple, simplistic definition. The best that I could say, though, is what I have told you.

Q. Now, why do you feel that some individuals can't be deterred from committing a crime such as robbery?

A. Because of my experience.

Q. All right. So, in those cases, it's your opinion that the crime can't be deterred no matter what you do?

A. No, sir. That's not what I said.

Q. Okay. What, then, what do you mean by your response?

A. Well, I said that I have seen persons commit crimes

in the presence of many so-called deterrents. I do not know of a single type of business establishment, regardless of its degree of security, or its lack of security, that has not at some time or another in the State of Texas experienced an armed robbery, specially those in large cities. I know, certainly, of no convenience stores that have not experienced armed robberies. And I've seen them with a wide latitude, a wide spectrum of policies, procedures, whistles and bells. There are certain persons who are going to commit crimes, and simply who do not take into consideration deterrence factors. There are certain persons who commit crimes in the presence of other people, commit crimes notwithstanding light, notwithstanding cameras, or notwithstanding any other equipment or anything else that might be present. And I think the records of any large police department, such as the Corpus Christi Department, would have example after example of this.

Q. In your opinion, what are some physical deterrents that one can implement in a convenience store with regard to a robbery?

A. Well, if you mean by deterrents, things you can do to prevent anybody from robbing you - I don't know

of any.

Q. Okay.

A. I don't know of anybody who has ever been able to device anything that would prevent someone from robbing them. To do so, to provide a sterile robbery-free environment, would make it extremely difficult for them to conduct business. I suppose that one could lock people in a cage that was bulletproof. I don't know how they could conduct their business under these circumstance, but, there are - there is a possibility that one could be locked into a cage in such a way that it could be extremely difficult for them to be robbed. Perhaps it would not preclude their patrons from being robbed, or them from being robbed as they left work going to their car, but I know of very few things, if any at all, that would absolutely guarantee that a crime would not be committed at a location.

Q. Okay. What are some of the physical and psychological things that one can do to reduce the likelihood of a crime, such as robbery or murder, being committed in a store such as the Diamond Shamrock that we are here for today?

A. Well, I don't know what we mean by "reduce the likelihood". I don't think there's any convenience

store in the city of Corpus Christi or anywhere else that has not been the subject of an armed robbery if it's been open for any period of time, and they have a wide variety of attitudes and opinions on what is deterrence. The fact of the matter is that there's nothing that is going to guarantee that they are not going to be robbed. Deterrence only works when men act rationally. Deterrence is most effective against criminals who act rationally, who very carefully weigh risk and reward. Deterrence factors are of no use at all for persons who do not act in such a manner that, that they are deterred by the presence of various devices.

Q. Assuming you were asked to evaluate the security needs of a convenience store and establish physical and psychological deterrence of a crime being committed by someone who acts rationally, what would you do?

A. I would conduct such a survey.

Q. What would you do in that survey - in conducting that survey?

A. I'm not in the business of conducting surveys, but certainly one would have to evaluate all of the factors that go to make up the entire spectrum of security.

Q. What are some of those factors that you would consider in reaching conclusions with regard to security needs of that store?

A. One thing, of course, that would have to be considered would be the location of the store.

Q. Okay. What else?

A. Other thing that would have to be considered would be the training of the employees.

Q. Anything else?

A. Certainly those two things should be done. It's hard to prescribe a security routine without having a specific location in mind. It's like a doctor prescribing treatment without examining a patient.

Q. So you can't say that there is something that - a laundry list - that you could tell us about which would describe security needs of any establishment with regard to the prevention of crime?

A. I would no more try to prescribe security measures for a store than a doctor would prescribe treatment for a patient without examining them, because all of them are unique to the specific location.

Q. Well, I'm not asking you to give me something, give me an opinion with regard to any particular store, but, are you telling me that you can't tell me, generally, what one would look at in establishing

security needs of a store in order to prevent or deter robbery?

A. Well, Mr. Rodriguez, I said that the physical factors were important, and also that the human factors were important in terms of training the employees, and what one would recommend would depend on these physical factors - the plant, the facilities, its location.

Q. Why would location be important?

A. Well, the location of the store is important because it gives management an idea of what sorts of things might be needed and might be economically feasible to produce security in their store, or to, at least, provide security recommendations to their store. You have to know how it was built - constructed -- if it -- what its location was, as how it was physically put together.

Q. When you say "location", are you also including in that term the neighborhood where the store is at?

A. Neighborhoods may or may not be important, depending on an individual case. I don't think one could automatically conclude that there was no need for crime prevention or deterrence measures simply because the neighborhood was, quote, "a good neighborhood". I don't think that one could, on the

other hand, conclude that it was a dangerous location simply because it was a bad neighborhood. It strictly depends on individual circumstances, and I just do not feel comfortable making security recommendations without more specifics, without a specific example.

Q. If you were asked, in your capacity as an expert in this field, to evaluate the security needs of a convenience store, and I'm not referring to any convenience store in particular, just I'm telling you that I want you to do that for me for a convenience store. Would it be important to you to look at the neighborhood to see if it was a high crime area, a low crime area. Would that be something that you would look at, and would it be important?

A. What do you mean by "important" Mr. Rodriguez?

Q. Well, would it be important in your evaluation of security needs of a location?

A. Well, it certainly would be a factor that you would want to look at. I don't think we could carry any connotation with that, but certainly would be a factor to be looked at.

Q. Would, would interior and exterior lighting be important of that physical structure?

A. What do you mean "important", Mr. Rodriguez?

Q. Well, important in your reaching an evaluation with regards to security needs of that site.

A. It carries a very strange connotation that lighting is going to keep them from being robbed. There are certain types of robbers that are not deterred by lights at all, that would rob you in the middle of Corpus Christi High School Stadium. There are others who perhaps might be -- we never know who is deterred -- but certainly lighting is a factor that would be considered, but if you say is it important to you, it connotes that it may carry some guarantee with it. It doesn't.

Q. No. Okay.

A. The fact of the matter is people are robbed everyday in broad daylight. If lighting precluded robberies, I would assume there would be no daylight robberies. As a matter of fact, significant numbers of convenience stores are robbed when the sun is at high noon.

Q. All right. Would it be fair to say that the particular training of an individual clerk would be a factor that you would consider in evaluating security needs of the store?

A. Certainly how employees are instructed would be a

factor to be considered.

Q. Okay. Would --

A. Excuse me, Mr. Rodriguez. May I get some more coffee, please.

(Short break was taken)

Q. (By Mr. Rodriguez) Do you feel it's important for businesses who - convenience stores-type businesses - to have some type of police liaison?

A. What do you mean "important", Mr. Rodriguez?

Q. Well, would it be a factor that one would consider in assisting them to evaluate their security needs?

A. I'm sorry, sir, I think that's over general and over broad for me to answer, Mr. Rodriguez. There are businesses operating very successfully, never had any contact at all with the police. I guess it would strictly depend on how that company felt about whether or not it wanted to, the degree to which it wanted to establish this liaison.

Q. So, it may or may not be a factor?

A. May or may not be a factor.

Q. Do you feel that an establishment, business establishment, such as the convenience store, should update their security needs on a periodic basis?

A. I don't know what you mean by whether they should update their security needs. Could you be more specific - specifically, Mr. Rodriguez?

Q. Assuming that -- assuming that management has established a security program for, let's say, the prevention of robbery, do you think that it's, it should be good policy, or should be policy to update that program to see if it's working or if it's not working, whether it should be altered or left the same?

A. I think that if any management device is a method for the prevention of robberies, you could probably have it copyrighted and sell it to every corporation of America. I don't know of any management that's ever established such policy that prevented robberies. I would assume that by the same token if one establishes a policy, they would then on an individual basis determine what it could, what its evaluation indicated, and whether or not this evaluation indicated that they needed to try something else. Again, I can't overemphasize the fact that there are very few things that one can do that are going to prevent robberies from occurring.

Q. All right. Did you evaluate the security of the store at 2602 South Padre Island Drive, which is the

store in which the robbery occurred, which is the subject of this lawsuit?

A. I'm not sure what you mean by did I evaluate the security. I did look at the fact situation surrounding the death of Mrs. Lopez.

Q. Okay. Did you go physically to the site? Or have you ever been to the site?

A. Yes.

Q. What was the purpose of going to the site?

A. To look at the store.

Q. Why did you want to look at the store?

A. I wanted to see it for myself, rather than to simply read about it.

Q. Was there any particular reason why you wanted to see it for yourself?

A. Yes.

Q. What was that reason?

A. Gave me a better understanding of the fact situation.

Q. Was there any other reason for going over there?

A. Well, I feel if one is going to render an opinion regarding an incident that occurred at a location, that they are much better served by having seen that location, than by having to be presumptive enough to render an opinion without having done so.

Q. Did you evaluate the adequacy or inadequacy of any physical deterrent factors that were at the site?

A. I don't know what you mean by "physical factors", and adequacy or inadequacy are overbroad, Mr. Rodriguez. I'll try to answer, if you could be more specific.

Q. Well, physical factors, I would think, as an expert, you would know that that would include the windows, the register, the safes, the security alarm, or the lack thereof, the lighting, interior and exterior, the entrances, the exits, if any, the arrangement of the displays of the store. Those types of things. Did you evaluate any of that?

A. Well, I asked about them and I looked at them.

Q. And was there any reason why you asked and looked at them?

A. Yes.

Q. What was that?

A. I wanted to get a better idea of what the conditions were on that night in February, 1983 when --

Q. How many times have you been --

A. -- such incident occurred.

Q. How many times have you been at the Diamond Shamrock store at 2602 SPID?

A. On two occasions.

Q. When was that?

A. The date?

Q. More or less - a month ago, ten years ago?

A. Within the last six weeks.

Q. Okay. Did you review any of Diamond Shamrock's written policies with regard to robbery or robbery prevention?

A. Yes.

Q. And what were those policies, if you recall?

A. Well, I don't recall the policies verbatim, sir. I do recall, generally, the policy that was posted in the store by the cash register, and I'm told this was the policy that was in place and has not been moved since the death of Ms. Lopez.

Q. Uh huh.

A. And, generally, those sorts of things one would expect to find with regard to instructions to employees as to how to conduct themselves in the event of an armed robbery.

Q. Okay. And was it your understanding that this written policy was by the cash register back then?

A. Yes.

Q. And who told you that?

A. Mr. Robert --

Q. Stange?

A. Yes. That's correct, sir - who said that he was employed at the store - not during the hours of this crime - but at the time that this crime occurred, and was, in fact, the supervisor in charge of the store at the time this crime occurred - if my memory serves me.

Q. All right. And the policy that you saw and you referred to earlier is the same one that you examined at the site which was next to the register?

A. Yes. Mr. -- it's not next to the register now. The register has since been moved, but it was the manager's statement to me that this policy was there in exactly the same location it is now - at the time this offense occurred and had been for some time.

Q. And did -- is it your understanding that the policy that you examined is the same as it was back in February of '83?

A. That's what I was told, sir.

Q. All right. Did you review any other written policies by the Diamond Shamrock or Sigmor Corporation?

A. I'd have to go back to my file, sir, to determine - a very, a very voluminous file on the case - and I don't recall specifically -- however, I simply have to refer to the files to see if there were other

materials from Sigmor.

Q. Okay. Would your files indicate all of the written policies that were given to you which existed at the time of the incident that's the subject of this lawsuit?

A. Mr. Rodriguez, I'd have to ask the attorney for the defendant what materials - for a list of the materials that were furnished in that I don't have them all with me. I think that perhaps the defense, defendant's attorney can provide that information - as to whether or not it was included in the package of materials that was given me.

Q. But my question to you is, the materials with regard to written policies that were given to you, do you have them?

MR. McKIBBEN: You mean have them with him now?

Q. (By Mr. Rodriguez) No. Are they in your possession?

A. Well, well, I don't know. I'll have to check and see if they are, Mr. Rodriguez. That was the question, I -- it's a very voluminous case, as you know, with many pleadings and many interrogatories, and some of which, some of the interrogatories ask for information that would be policy, and I have no

clear recollection as to whether any policy I may have seen was in response to an interrogatory or was part of a deposition. I just have to check my files to determine whether or not such was the case.

Q. I'm just trying to find out if there were any written policies that you saw that I haven't seen?

A. Gee, I don't know. I can't answer that question, Mr. Rodriguez, cause I don't know what you've seen.

Q. All right. Did you review Diamond Shamrock's training program of its employees with regard to robbery?

A. It seems to me that I went over that - some material that was provided in that regard.

Q. Okay. Do you recall what that material consisted of?

A. What to do in case of a robbery was the only part I was looking at. It was essentially the same sorts of things that were posted by the cash register.

Q. So, you're referring to written materials?

A. Yes.

Q. Was there any type of training program?

A. Oh, I don't know about the training program, sir. I only know what I - what information that I've gained from my review of the materials that were provided me, and my conversations with the manager of that

store at the time, and his suggestion was that he conducted a training program for the victim in this case.

Q. Did he tell you what that training program consisted of?

A. Well, in addition to those things that covered their policies for employment and what have you, he stipulated that he had personally gone over her - gone over with her - the robbery policy pointed out to her, and that they had personally gone over all of the factors that essentially covered the material that was found in the policy that is posted beside the cash register even today as we speak, and was there at that moment, and was there at the time of this tragedy.

Q. Okay. So, he essentially just went over what the written policy was?

A. Sir, I don't know what he did in addition to that. My primary concern was whether or not he had gone over that policy. His statement to me was that he had.

Q. Was there any type of formalized training policy by the corporation that you saw?

MR. McKIBBEN: You mean like an in-service training or something like that?

MR. RODRIGUEZ: Uh huh.

A. I have no recollection on that question, Mr. Rodriguez.

Q. Did, did you speak to anyone in the Diamond Shamrock or Sigmor's security division?

A. Well, I talked to Mr. Pete Gonzalez. I talked to Robert, whose last name is --

Q. Stange.

A. Stange. To my recollection, these are the only two employees of Diamond Shamrock that I visited with.

Q. Okay. Did Mr. Gonzalez tell you anything about their security policies?

A. I asked Mr. Gonzalez whether or not those persons who worked at the store were advised what to do in case of a robbery, and he said they were.

Q. All right.

A. Also asked Robert the same question, and he said that not only they were given information but he personally had done so in this case.

Q. And that consisted of going over with Ms. Lopez the security policy?

A. I didn't discuss that with him in detail, Mr. Rodriguez. My concern was that Ms. Lopez did know, and that there was posted something to remind the employees. He said, yes, he had discussed it with

her, personally; yes, there was posted, and showed it to me - what to, do's and don'ts in case of an armed robbery.

Q. When were you retained in this case?

A. Some time -- Mr. Rodriguez, I will provide you that information, but I'm sorry, I don't have it with me now.

Q. Okay. We can leave a blank in the deposition to fill it in.

A. I will provide you -- I simply don't have the records as to the date of retention.

(Date: FEB 3 1987)

Q. Do you recall who called you to seek your services?

A. Yes.

Q. Who was that?

A. Mr. Bargger.

Q. Would that be Barger?

A. Barger - yes, I'm sorry, sir.

Q. And what were you asked to do?

A. I was asked if I would look at this case and provide them an opinion regarding the case and the offense that gives rise to this lawsuit.

Q. How do you know -- you've testified earlier that you do some work for lawyers, in addition to the other things that you do with the companies.

A. I'm sorry, sir, that's not correct. I don't work for lawyers. I work for myself. Sometimes lawyers call me in regards to their cases, and retain my services.

Q. Okay. In those instances, how do you go about getting that type of work?

A. I don't, sir. My phone rings - I answer the phone. They ask me if I'll look at a case and give them an opinion.

Q. You don't do anything to solicit those types of cases?

A. No. I don't advertise. I don't have any commercials.

Q. How long have you been doing this?

A. Oh, since the first of the year, I guess I've done more of it than I had in the past, Mr. Rodriguez, because there seemed to be a demand for consultation in these areas. And let me correct a statement. I did, in January of this year, send a very small business card to some attorneys announcing the opening of my, of my company, but I've done no advertisement or solicitation.

Q. When you said, "the company", what company are you referring to, Global International Transport Services?

A. No, sir. Harry Caldwell and Associates.

Q. Okay. And this would be for consulting work in this type of field?

A. Not exclusively, sir. We -- I do, and I'm asked to do, a lot of things, but consultation is certainly one of them.

Q. Okay. What does Harry Caldwell and Associates do?

A. They consult with attorneys on security questions, and they also do provide other services.

Q. What are some of the other services you provide?

A. Investigative services are provided as necessary, mostly on an international scale.

Q. When did you first start providing consulting services for attorneys?

A. I can't remember when I first started, sir. I have consulted with members of the bar, I suppose, since the day I retired. Many attorneys would call me and ask opinions regarding police policies or procedures, or security - about security matters. It's only within the last year that I have done these things professionally.

Q. Okay. How many cases have you worked on this year and you're presently working on?

A. Maybe five or six, Mr. Rodriguez.

Q. Have you testified in court in the last year or so?

A. No, sir. Harry Caldwell and Associates.

Q. Okay. And this would be for consulting work in this type of field?

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Q. Okay. How many cases have you worked on this year and you're presently working on?

A. Maybe five or six, Mr. Rodriguez.

Q. Have you testified in court in the last year or so?

A. Yes.
Q. Do you remember what case that would be?
A. Yes.
Q. What case is that?
A. The case styled Kroger vs. Kainer, K-a-i-n-e-r, tried in about - I don't recall the exact date, but this year, yes.
Q. Was that tried in Houston?
A. No.
Q. Where was it tried?
A. In Corpus Christi.
Q. How many other depositions have you given this year with regard to your services in the consulting field?
A. Maybe five or six, Mr. Rodriguez, subject to being corrected by the record. I have no clear recollection of -- I have no records in front of me, but that's my best recollection at this time.
Q. I see. What types of cases are those?
A. Generally, they are questions where security is a question or involved in the case. Certainly not trying to be an attorney, but generally evolves around cases where there's an allegation of negligence, the lack of security being the proximate cause of the injury to the individual. And I say

these things only as a lay person. I'm not trying to use them as a legal --

Q. In any of these - or do any of these cases involve robberies, assaults of employees at convenience stores?

A. Yes.

Q. Do you know the names of any?

A. Yes, sir, I do, but these are cases that are not, have not been litigated, and working for an attorney, I hopefully can maintain privileged communication. Some of the cases are in the process of being litigated. Others are being settled, but in answer to your question, Mr. Rodriguez, yes, some of them do involve that, sir.

Q. And those --

A. Or at least one does, sir.

Q. And in that one, have you given any deposition testimony?

A. No.

Q. In that one, are you testifying for the plaintiff or for the defendant?

MR. McKIBBEN: Excuse me. As I understood, his answer was it may be that the one we are talking about he's been hired for consultation purposes, and not identified as

an expert, but, you know, if he says whether he's been retained by the plaintiff or defendant, that's fine, but I don't think he said he testified. The question was, who did you testify for?

Q. I'm sorry. Were you retained by the plaintiff or the defendant in that case?

A. I guess about fifty percent of the cases that I have been retained by, have been plaintiff's attorneys, and about fifty percent by the defendant. It's really not been a preponderance either way, Mr. Rodriguez.

MR. McKIBBEN: I think he was asking you about the specific one.

A. Oh, that specific case. Okay. The plaintiff - the plaintiff's attorney has asked me for an opinion, sir.

Q. What materials and documents were you given in this case to evaluate?

A. Subject to being corrected by the record, I was given the police report of the Corpus Christi Police Department which contained many things, among which was the official police report, statements of various witnesses, statements by various officers, the postmortem report, photostatic copies of

pictures that were taken at the scene. In addition to this, I was given the Plaintiff's Second Amended Original Petition, a series of interrogatories, of court requests for various motions and pleadings, and the deposition of a Mr. Bottoms. I have today received, have looked at very briefly, but have not studied three other depositions, including those of Robert, Mr. Gonzalez, and a third employee - I understand -- third person I understand to be an employee of --

Q. Mr. Manning?

A. Yes, Mr. Manning. I have not yet had a chance to really look at those. I have copies of correspondence from - to Mr. Bottoms from your office. My recollections are, sir, that those materials that I've reviewed, subject to - some interrogatories, various interrogatories.

Q. Okay. Have you arrived at an opinion with regard to what you were asked to do by Mr. Barger?

A. Yes.

Q. What is that opinion?

A. It's my opinion that there's nothing that Sigmor could have done to have prevented this crime from occurring.

Q. Okay. And can you tell me why?

A. May I have a recess, please? I'd like to consult with my attorney. Not with my attorney, with the defendant's attorney.

(A short break was taken)

A. Thank you for the break, Mr. Rodriguez. Would you please repeat your question, sir.

Q. I just asked her what was the last question. Okay. I think you stated that there was nothing that Diamond Shamrock could have done to prevent this tragedy, and I asked you why.

A. Yes, sir. My opinion - the person who committed this crime, who killed Mrs. Lopez, by his conduct indicated to me that he would not have been deterred by any factors that I know of. This person committed this crime in perfect lighting. Ms. Lopez, according to what I was able to determine from the documents, had performed exactly according to everything that any recognized expert would have told her to do. She offered no resistance according to the information that is available to me. She told him, take whatever you want, I'm not going to give you any trouble. This individual killed this woman with other people present; knew that other

people were present, and as a matter of fact, bumped into one of them as he walked out the door. There's no indication to me that lighting was a factor in this question. Ms. Lopez called the police prior to his coming in to the station, was on the phone with the police dispatcher, had stayed on the phone because he had requested her to do so, and the entire episode and incident is available to us as it rarely is in crimes of this sort. We know that she told him to do whatever he wanted to do; she would offer him no resistance. I don't think visibility is a question because we have the testimony of one of the witnesses in this case, that he saw the struggle occurring as he was driving on the freeway, on the other side of the freeway, and saw the man struggling with Mrs. Lopez. It was apparent that he could see into the store. He saw from all the way from the other side of the freeway what was happening in the store; stopped and asked a security guard to call the police; returned to the scene, at which time Ms. Lopez had already been killed by De Luna. I see nothing reasonably that could have been done to have prevented this crime from occurring. I find no evidence in the facts submitted to me to indicate that this man had been at the scene for any

significant period of time. There was some speculation that he may have been - the amounts of time varied - there were some conflicts of testimony as to whether or not he was intoxicated. Two of the officers said they did not think he was; a constable said that he thought he was. I saw no records or report to indicate blood test that was given, or any other tests that were given him. The store had in place a security alarm, a silent alarm. There's no question about the ability to notify the police. The police were on the phone at the time that this occurred. The man killed in the presence of other people. I simply see nothing that anyone could have done to prevent the tragic untimely death of Ms. Lopez.

Q. Based on what you've read, is it your opinion that he was going to go in there to kill her?

A. I don't think anyone can say what he intended to do. All we know is what happened. We know that he came into the store while she was on the phone. We know that she was asked to remain on the phone. We know that she offered no resistance to him, and told him to take whatever he wanted; she wouldn't give him any trouble. And we know that he stabbed her at least twice with a knife, and fled the scene, and

was subsequently arrested near the location by the police.

Q. Based on -- did you listen to the tape recording of the incident?

A. I saw the transcript of the tape recording, and I listened to the recording.

Q. In your professional opinion, in all the cases that you have either examined or dealt with personally as a police officer, in robberies where violence occurs, would you agree that many times something happens to trigger the criminal to commit violence while in the course of a robbery?

A. In most robberies where homicides occur, we simply never know the answer to this one. In this case, we do know what was said. We know what was said - what Ms. Lopez said - take whatever you want; I won't give you any problems. We, then, know that he subsequently stabbed her anyway. It is hard to project to most robberies where persons are killed because the only person that knows what happened is either dead, or has, or is the robber himself.

Q. Okay.

A. But I think it oversimplifies to say that there is a, quote, "triggering incident". In this case, we know that Ms. Lopez was doing everything that one

could possibly do to cooperate with this individual. She said, go ahead and take it. I won't give you any trouble. This indicates to me that that's exactly what happened. The witness then saw the man stab, or saw him dragging Ms. Lopez' body out from behind the counter of the store.

Q. Is there anything that you saw in your review of the materials which would indicate to you the possibility that something happened prior to the assault that would have caused Carlos De Luna to inflict harm on Ms. Lopez?

A. I'm sorry, counsel. Would you, would you clarify that and be more specific with me. Do you mean was there anything that Ms. Lopez did that would have caused Mr. - caused De Luna to kill her?

Q. That's correct.

A. That's what you're asking?

Q. That's correct.

A. Well, the best evidence is the evidence of the police, Corpus Christi Police Department, where unlike any other case that I'm familiar with, we know exactly what she said. She said, take whatever you want - or words to that effect - I won't give you any problems. This is exactly and precisely what she had been trained to do and exactly and

precisely what was recorded by the Corpus Christi Police Department as having been perhaps her last words before she was murdered by this individual.

Q. Okay. In your evaluation of the, or examination of the materials and of the site, what, in your opinion, did Diamond Shamrock do to safeguard their employees from injury as a result, resulting from a crime?

A. Well, I don't know exactly how to answer that question, Mr. Rodriguez. They provided a silent alarm. They provided instructions as to what to do in the event of an armed robbery for their employees. They were careful to have their supervisors go over these things with the employee. They provided it in writing, pasted by the cash register in case the employee should need to be reminded on a daily basis. Every time she opened the cash register, she would have seen these do's and don'ts for robbery. Her boss stated to me that he had personally instructed her in this regard. They had provided her with a silent alarm in the event that she should need it, and had instructed her what to do in case it occurred. Now, I don't know what else they could have reasonably done to have safeguarded her under these circumstances.

Q. In your examination of the site, did you notice the empty lot behind the store?

A. I noticed that there was an empty space behind the service station, yes.

Q. Would it have been important in your evaluation of the security needs of this particular store to know if at the time of the incident which caused Ms. Lopez to die, that there were no lights back there?

A. Had the crime occurred back there, it would have been of importance. The crime occurred, to my understanding, within the service station, inside the service station. It was so well lit that it could be seen from the opposite lane of the freeway, across the entire freeway and the esplanade and the feeder street, and that the store was very well lit. Had the crime have occurred back there on that parking lot, or back on the empty vacant lot, certainly this would have been a factor to take into consideration.

Q. So, you would not take, in this particular instance, take that into consideration in determining whether security was adequate or not?

A. It's my opinion that whether or not that lot was lit there, or a hundred yards down the road, or two blocks down the road, had absolutely nothing to do

with De Luna having stabbed Ms. Lopez and killed her. I'm perfectly convinced that had it been lit like a Corpus Christi high school stadium, that it would not have precluded Ms. Lopez from being stabbed by De Luna. I base this not only on my own opinion, but on the facts in this case.

Q. You think that if a security guard, such as a police officer or private security guard, were present, that this crime would have been prevented?

A. I don't know.

Q. Why not?

A. I don't know whether it would have prevented it or not. I say that had there been an armed guard or a police officer stationed at the door of this station, in February, 1983, I'm reasonably assured that it would have had a significant effect on many persons who would have attempted to commit this crime. I also say to you that it is my opinion that had there been an armed guard or police officers in that service station with Ms. Lopez, that the crime would not have occurred - in my opinion.

Q. Is the type of traffic that goes in and out of that store at night a factor that you would consider in evaluating security at this store?

A. Well, I evaluated the facts in this particular case,

and my understanding in this particular case is that this, that there was a continuous flow of traffic in and out of this station. As a matter of fact, when this offense occurred, there was one man who saw De Luna prior to his killing her; another one who saw him as he left after having killed her. So apparently there was a significant traffic in and out of that station.

Q. Okay. Do you have an opinion about whether the storeroom that's located by the cash register at that store --

A. I'm not sure what you mean, but do you mean, do I know where the storeroom was located? Was that your question?

Q. First of all, let me ask you this: Do you know where it's located?

A. Yes.

Q. That storeroom that's in that store --

A. Yeah.

Q. Do you think that was a factor in any way in evaluating whether the store was safe or not for a, for the employees?

A. Yes, I have an opinion regarding that.

Q. What is that?

A. My opinion is that the location of that storeroom

had absolutely nothing to do with De Luna having stabbed and murdered Ms. Lopez. I don't think that in this case it was a factor whatsoever.

Q. Why is that?

A. I don't know how else I can say it, sir. I simply don't think that it was a factor. There was no indication Mr. De Luna was in the storeroom, or that, or that the storeroom had anything to do with this crime, and I certainly saw no evidence to indicate the storeroom was involved in any way, or any factors involving the storeroom.

Q. Do you think that having only one employee work at that store at that time of day was a factor at all?

A. Well, the only -- that's a largely an economic decision to decide whether or not one can afford one or more employees. There were people apparently all over the parking lot out there, and that didn't have anything to do with it. He knew, apparently -- De Luna apparently knew there were people there. It wasn't like this was an isolated incident. There was one man out there pumping gas. There was another man he had come up to just prior to the killing; another one bumped into him coming out of the store. Whether the presence or absence of another employee or other people would have been a

factor, apparently it was not, as it related to Mr. De Luna. He knew people were out there. He had talked to them. He had talked to a man as he came out of the store after he killed her. So, apparently, he wasn't impressed with the presence of other people, and certainly didn't deter him from murdering this lady. Whether the store would economically support one or more employees, I don't know.

MR. RODRIGUEZ: I guess that's it.

Harry Caldwell

HARRY CALDWELL

THE STATE OF TEXAS

COUNTY OF HARRIS

SUBSCRIBED AND SWORN TO BEFORE ME by the said witness, HARRY CALDWELL, on this the 26th day of October, 1987.

Pamela S. Jones

NOTARY PUBLIC, THE STATE OF TEXAS

MINERVA ARRIAGA, CSR