

1. Charge: "*I do not think David Spence committed this offense.* Lt. Marvin Horton, supervisor of the Waco Police Department's investigation into the Lake Waco murders, during sworn testimony in 1993."

Answer: Not credible. Truman Simons, the supervisor of the Spence criminal investigation, said that Marvin Horton had nothing to do with the Spence case once Spence became the investigation's focus. Horton was removed from the case because of incompetence. Further, he committed perjury during depositions in the Spence case. During depositions conducted before District Court Judge Black, Horton said he had been present during co-defendant Gilbert Melendez's confession, when, in fact, he was not.

2. Charge: "The prosecution failed to disclose exculpatory evidence that contradicted the testimony of its key witnesses, implicated another suspect in the crimes, and exonerated Spence."

Answer: False. The lead prosecutor in the Spence case, Ned Butler, reported that he provided the district courts in both cases with every piece of evidence that the prosecution had accumulated in the Spence case. Nothing was withheld. The trial courts then reviewed the evidence and, by law, was required to turn over to the defense any potentially exculpatory evidence. All of the evidence that the prosecution provided to the court became part of the case record. This record was reviewed by the Texas Court of Criminal Appeals, a federal district court during habeas corpus review, the United States Court of Appeals, Fifth Circuit, and the United States Supreme Court. All of these courts concluded that the record was devoid of any exculpatory evidence.

Charge: "Several jail inmates, as well as two of Spence's co-defendants, were induced to testify falsely against Spence in exchange for leniency in their own cases and extraordinary jailhouse privileges, including conjugal visits with their wives and girlfriends."

Answer: False. The prosecution reported that the inmates to whom Spence confessed the details of his gruesome crime were not given any "extraordinary privileges." They were not given conjugal visits but were given family visits at the McClennan County jail. These visits were standard and not extraordinary. Regarding the three TDCJ inmates who were temporarily housed in the McClennan County jail during the trial, the family visits were allowed only after the first trial and were permitted because the inmates from TDCJ would have been allowed those visits at the TDCJ prison. Further, Ned Butler, the lead prosecutor reports that all the inmates who testified volunteered to testify and none of them were induced to do so by promises of lenient treatment. That includes the Melendez brothers. Both Gilbert and Tony volunteered to testify in the second trial. Neither of them testified in the first trial. Mr. Butler reports that the Melendezes asked to testify in the second trial because of the misrepresentations the Spence defense made during the first trial about their role in the slayings.

Charge: "The State relied on suspect "forensic odontology" evidence that has since been discredited."

Answer: False. The Texas Court of Criminal Appeals, the United States Court of Appeals, Fifth Circuit, and the United States Supreme Court all reviewed the forensic odontology evidence (and the conclusions drawn therefrom) and found it credible. At trial, Spence's own odontological expert

conceded that the marks on the victim's bodies were bite marks and that he could not rule out Spence as the perpetrator of those marks. Fifteen years after the crime was committed, Spence's appellate team devised their own panel of "experts" to review the evidence and, not surprisingly, they found it insufficient. However, their conclusions are contradicted by Spence's own trial expert, who could not rule out Spence as the person who inflicted these wounds. Further, the prosecution's experts, in contradistinction to those on the "blind panel," provided their opinions under oath and in open court. The materials they used to examine were available for inspection by the jury and were introduced as exhibits in the trial. The State's odontological experts, who were nationally recognized in the field of odontology, testified that the wounds were bite marks and that they were made by the teeth of David Spence. Finally, testimony at trial indicated that Spence had a proclivity for aggravated biting during sex.

Charge: "The prosecution failed to disclose information that strongly incriminated Terry Harper, a convicted felon with a lengthy history of violence, in the triple homicide."

Answer: False. In a lengthy and detailed opinion, the Fifth Circuit reviewed the allegations and evidence about Terry Harper and found them to be without merit.

Charge: "After Spence was convicted, three inmates admitted they had fabricated their testimony against Spence with the help and encouragement of Truman Simons, and that they had testified in return for favors or promises of favorable treatment in their own cases."

Answer: Not credible. Spence confessed his complicity in the Lake Waco murders to at least ten inmates, some in the McClennan County Jail and others in the Texas Department of Criminal Justice prison. In September 1982, Spence and co-defendant Gilbert Melendez were in the McClennan County jail for sexually assaulting a 17-year-old boy. While incarcerated, Spence began bragging about having committed the murders. He revealed details about the crime to at least 7 fellow inmates in McClennan County. He subsequently was transferred to a TDCJ prison to serve time, and while there he told at least three TDCJ inmates about the crimes. Some of these latter inmates later recanted, probably because they ultimately received no benefit for their testimony. However, the TDCJ inmates voluntarily provided the substance of their testimony to the prosecutors before the prosecutors had ever spoken to them. Robert Snelson, who recanted in 1991, had committed armed robbery in Amarillo after he was released from TDCJ in the late 1980s. After his arrest, Snelson had his lawyer call Mr. Butler and threaten him with a recantation in the Spence case if he did not help Snelson beat this new charge. Mr. Butler refused and Snelson subsequently recanted. Snelson's lawyer apologized for carrying. Finally, other McClennan County jail inmates, who provided crucial details about the crime (learned from Spence and that only the perpetrator could know), did not recant.

Charge: "Taking full advantage of the co-defendants' determination to avoid the death penalty, the prosecution induced each co-defendant to give a self-incriminating statement in exchange for leniency on all pending charges."

Answer: Irrelevant. David Spence was convicted by two different juries for the Lake Waco murders. In the second trial, both the Melendezes voluntarily testified to detailed facts that only the participants could have known. They were not induced with promises of leniency. It is standard law enforcement procedure to consider the fact of confession in assessing sentence. Further, both Melendezes received two life sentences for their role in the Lake Waco murders. This can hardly be called "lenient."

Charge: "Although it (the federal court conducting habeas corpus review) subsequently permitted Spence to depose witnesses and present documentary evidence, it ultimately reaffirmed its original denial of relief in a one-page order, without addressing the significance of the new evidence Spence had developed."

Answer: Inaccurate. The court issued an opinion in conjunction with its order that substantiated its rejection of the many allegations that Spence raised. The court conducted an in depth evidentiary review of all of these allegations and found them without merit.

Charge: "The Fifth Circuit affirmed in an opinion that uncritically accepted the State's evidence at trial."

Answer: Inaccurate. The Fifth Circuit, in a lengthy and detailed opinion, reviewed all of Spence's allegations, weighed the evidence, and reached the same conclusion that two state juries, a state district court, a federal district court, the highest state appeals court, and the highest federal court in the land had reached – that David Spence was guilty, beyond any reasonable doubt, of the Lake Waco murders.