



guilt or innocence as the co-defendants had been co-operating with the State and would be providing significant evidence against Mr. Whitaker.

We began negotiations with the goal of obtaining life sentences because it was believed, based on Mr. Cogdell's experience, the facts of the case, the timing of the commission of the offense as well as the law and order climate within the community, that a death sentence would be the probable result of a trial on the merits. Our negotiations were primarily conducted with Fred M. Felcman, Assistant District Attorney for Fort Bend County.

During the course of those negotiations, Mr. Cogdell and I were approached while in a public place by Mr. Felcman who stated that he would consider removing the death penalty as a possible option only if we would submit an acceptable "proffer of evidence" which would be supplied by Mr. Whitaker, in his words, as to his involvement with the offenses alleged. It was specifically stated by Mr. Felcman that statements of remorse or contrition were to be left out of the proffer and that the proffer should include only the facts, truthfully stated. Upon this representation, and in reliance on the good faith of Mr. Felcman in making the offer, we approached Mr. Whitaker and he agreed to supply such a proffer as desired by Mr. Felcman. Of course, the proffer would be protected by a Rule 410 agreement and would not be admissible against Mr. Whitaker in the event the case was not resolved by a plea agreement

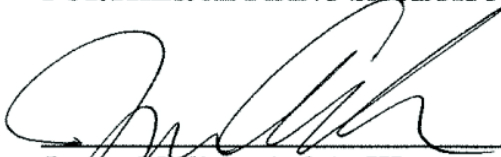
I worked with Mr. Whitaker in preparing the document, using his words, and produced a multi-paged document which we then had printed. When we presented the document to Mr. Felcman, he was upset, and rejected the proffer as the basis for a life sentence offer, because it "did not contain any mention of remorse" on Mr. Whitaker's part.

This abrupt turnabout was totally unexpected and for it to be the reason the proffer was rejected and the death penalty remained an option, was beyond belief. Given that the document had been secured with the specific admonition that remorse should be avoided within the document, we were stunned when we learned that its absence was the

reason for its rejection. Following this interchange, the plea negotiations ceased.

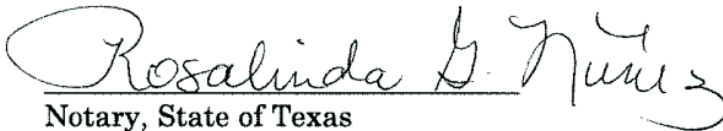
Shortly after this Mr. Cogdell was approached by and spoke with Mr. Whitaker's uncle, who expressed to him the family's desire that he not continue as Mr. Whitaker's attorney. Given the prior agreement in this regard, the request was discussed with Mr. Whitaker who was neither surprised nor angry, nor did he object. My active involvement with the case was terminated at this time.

**FURTHER AFFIANT SAYETH NOT.**



James Madison Ardoin III

Sworn to and subscribed before me the undersigned authority on this the 15<sup>th</sup> day of April 2009.



Notary, State of Texas

