

Aldape: Trial Transcript
(9/82) (voir dire) (v. 14)



8437 - ~~CLOSED~~

H NEXT DAY 03/15/2006 3:00pm CST R2
HH254 60654804-000051 For: JAASM
VINSON & ELKINS LLP
1001 FANNIN STREET
SUITE 2240
FLOOR 22
HOUSTON, TX 77002-6760
RECORDS MGMT RECORDS MGMT B06157018
JULIE AASMYR-RECORDS DEPT SR
ZZ0865766076
0865766076



HHY00534803-00001 Return To IRON MOUNTAIN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CAUSE NO. 359,805

THE STATE OF TEXAS

IN THE DISTRICT COURT

VS.

OF HARRIS COUNTY, TEXAS

RICARDO ALDAPE GUERRA

248TH JUDICIAL DISTRICT

VOLUME XIV
STATEMENT OF FACTS
VOIR DIRE EXAMINATION
CONTINUED
SEPTEMBER 21, 1982

I N D E X

	<u>Page</u>
VOLUME XIV	
September 21, 1982	
VOIR DIRE EXAMINATION, CONTINUED	
NEW JURY PANEL EXAMINED BY THE COURT	2438
Dan Laverne Ward, Jr.	
Examination by the State (Moen)	2449
Examination by the Defense (Elizondo)	2488
James Thomas Tucker	
Examination by the State (Bax)	2513
Examination by the Defense (Elizondo)	2533
Examination by the State (Bax)	2540
Mark Logan Matthews	
Examination by the State (Moen)	2551

1 (At this time a jury panel of three
2 was brought into the courtroom, whereupon the
3 following proceedings were had.)

4 THE COURT: Hello, again.

5 THE JURY PANEL: Hello.

6 THE COURT: We are here to select a
7 jury in a capital case. We have been at this
8 now, this is entering our fourth week. Yesterday,
9 we began our fourth week of jury selection in
10 this case.

11 Let me tell you a few preliminary
12 things about the situation to see whether or
13 not you know anything about the case that is
14 on trial.

15 The individual charged with the offense
16 of capital murder is Mr. Ricardo Aldape Guerra,
17 who is the gentleman seated next to the lady
18 at the end of the table, and the lady seated
19 there next to him is Linda Hernandez. She
20 is the interpreter, and is telling him in
21 Spanish everything that we say in this courtroom
22 in English.

23 Mr. Guerra is represented by two
24 attorneys, Mr. Candelario Elizondo and Mr.
25 Joe Hernandez, who is no relation to Linda

1 Hernandez.

2 The Prosecution is represented by
3 two Assistant District Attorneys, Mr. Bob Moen,
4 the gentleman in the blue suit, and Mr. Dick
5 Bax, the gentleman in the gray suit.

6 Ms. Cindy Layne, the pretty lady in
7 front of you, is the court reporter, and she
8 is taking down every word that is said in the
9 courtroom, and while you are being interviewed
10 as a prospective juror in this case, if you will,
11 remember that her machine cannot record nods
12 of the head and that sort of thing, and simply
13 say yes or no or answer out when you can.

14 The offense is alleged to have occurred
15 on July the 13th of this year, 1982, out in the
16 east part of Houston, right off of Dumble and
17 Harrisburg on a little street called Edgewood
18 and Walker street.

19 Mr. Guerra is alleged to have killed
20 a Houston Police officer by the name of James
21 D. Harris while Mr. Harris was performing his
22 official function as a police officer.

23 It is alleged that Officer Harris
24 was shot three times in the face, and a citizen,
25 about a minute or so later down the street with

1 two children in the car was killed, and about
2 an hour later when the Houston Police Department
3 had received information as to where the possible
4 perpetrators of that crime were located, they
5 responded, and another officer was shot five
6 times, managed to return the fire of the gunman,
7 and killed that individual.

8 With the brief statement that I have
9 given you as to the facts of this case, do
10 any of you know anything about this case?

11 (The jury panel answered no, sir.
12 unanimously.)

13 THE COURT: There is nothing wrong
14 with having read about it or heard about it.
15 We simply need to know the extent of your
16 knowledge and whether you could put that aside
17 to decide the case, if you are chosen on the
18 jury, based on what you hear.

19 Now, the lawyers are going to visit
20 with you at length and I am going to take just
21 a few more minutes to go over preliminary things
22 with you.

23 You need not know anything about the
24 law in this case or any criminal case for that
25 matter. I am going to give you the law and the

1 jury will receive that law in writing in what
2 is called the Court's charge.

3 After both sides have rested, I sum
4 it all up and give you the law that is applicable,
5 and the lawyers will make their arguments to
6 you, and you will go back and deliberate.

7 I can't tell you everything that will
8 be in that charge because I don't know what
9 issues will be raised in the case at this point,
10 but some of the issues that will be in that
11 charge will be the things I want to talk to
12 you about, basically rights we citizens have
13 in this country.

14 First of all, every person charged
15 with a criminal offense is presumed to be
16 innocent until his guilt is established by
17 legal evidence beyond a reasonable doubt.
18 The State in any case has the burden of proof.
19 No Defendant in any criminal case has to prove
20 anything under our law. He can sit absolutely
21 silent and not ask -- his lawyers don't have
22 to ask questions of any witnesses who testify.
23 The Defendant does not have to testify, and
24 you are to judge the case based upon what you
25 do hear. If you hear only from the State's

1 side, you must make your decision based on
2 whether the State has met its burden of proof
3 in convincing you beyond a reasonable doubt
4 that he committed the offense with which he
5 is charged.

6 I have used the term several times
7 or a phrase that will not be defined for you.
8 I will define certain terms for you and certain
9 words for you in the charge, but the term
10 "beyond a reasonable doubt" will not be defined
11 for you, because I can only define for jurors
12 those things the legislature has defined for
13 me, and they have not defined beyond a reasonable
14 doubt.

15 To me, it means nothing in the world
16 other than common sense. If you are convinced,
17 after hearing whatever evidence you hear, that
18 the individual committed the crime, then to me,
19 that is sufficient.

20 If you are not convinced, then that
21 is not sufficient, and it is your duty to find
22 the Defendant not guilty.

23 These lawyers will undoubtedly talk
24 to you about reasonable doubt and that sort
25 of thing, but there will be no definition of

1 that.

2 The way a case gets into a courtroom
3 for trial is by a process called an indictment.
4 An indictment is a legal-size piece of paper,
5 and it is simply a piece of paper upon which
6 words are typed which bring formal charges against
7 an individual.

8 I will tell the jury in that charge
9 that the indictment is absolutely no evidence
10 of guilt, and the fact that any Defendant has
11 been arrested for, charged with, and perhaps
12 confined for an offense is absolutely no
13 evidence of his guilt. That guilt must be
14 established in the case from evidence that
15 you hear, the jury hears from this chair right
16 here, and from no other place.

17 That indictment is the same thing
18 as if you received a traffic ticket, and a lot
19 of people think once you have received that,
20 you are automatically guilty and that may well
21 be the truth, but, in fact, that is only a
22 summons for you to appear and answer the charges
23 that are on that piece of paper.

24 The same principle applies to an
25 indictment. Obviously, it is a more serious

1 matter, but that same principle applies. It
2 is a pleading. The State has made those charges
3 as alleged, and it is up to the State to prove
4 it.

5 The way a criminal case is tried in
6 Texas, it is divided into two portions. The
7 first portion of a trial is to hear facts
8 about an event, in this case, the events
9 surrounding the death of Officer Harris, and
10 you will decide, based upon what you hear of
11 the facts surrounding that event, whether or
12 not this individual committed that crime. It
13 is to hear facts about an event, and that is
14 all.

15 If the jury goes back, after hearing
16 those facts, and decides that the individual
17 charged is the party who committed that event,
18 made that event occur, then there is a second
19 stage to the trial, and it is called the
20 punishment phase, and at that stage of the
21 trial, the jury may or may not hear additional
22 evidence about the individual who committed
23 the offense for which he is to be found guilty.
24 It is what is called a bifurcated trial.

25 If you hear the lawyers use that term,

1 it simply means divided into two portions.

2 In a normal criminal case, the jury,
3 when they go back on the second stage of the
4 trial, has a range of punishment to choose
5 from.

6 In a murder case, for instance, where
7 we are not alleging capital murder, the range
8 of punishment for murder in this state is not
9 less than five years nor more than ninety-nine
10 years in the Texas Department of Corrections or
11 by confinement for life. In addition to any
12 of those punishments, there can be a fine of
13 ten thousand dollars attached. So a juror,
14 having found a Defendant guilty of murder, can
15 go to the jury room to find his punishment in
16 that range, of not less than five nor more than
17 ninety-nine years or life.

18 In a capital case, the jury goes
19 back and they simply answer two questions. In
20 this particular case, there will be two questions
21 submitted to the jury, and they are right there
22 on that board, and you will have a chance to
23 read those and talk about them with the lawyers
24 in a minute, but the jury does not assess a
25 term of years in a capital case. They simply

1 answer those questions.

2 A yes answer to those two questions
3 results in me, under the law, assessing the
4 punishment of this Defendant at death.

5 If the jury answers one of those
6 questions yes and the other question no, then
7 it is my duty, under the law, to assess
8 punishment at life in the penitentiary.

9 There are only two possible punishments
10 if a jury finds a Defendant guilty of capital
11 murder, and that is death or life in the
12 penitentiary.

13 Now, at this stage of the proceeding,
14 if you have any questions at all of me or the
15 lawyers, you are certainly free to ask those
16 questions. We want you to understand the
17 process. We want you to understand what is
18 going on, and if there is something you don't
19 understand and you want it clarified, you
20 simply may ask us.

21 However, when the evidence in the
22 case actually begins, a juror is not permitted
23 to ask questions. You cannot examine a witness
24 or anything of that nature. I can't do that
25 either.

1 You can ask to have an answer
2 repeated if you do not understand it or did
3 not hear it, but you cannot ask questions.

4 A juror may have certain testimony
5 read back when they are deliberating. In that
6 sense, they can ask a question. If they have
7 a disagreement about a specific point, they can
8 tell me in writing what that is, if they have
9 a disagreement about that point, and who the
10 lawyer was questioning what witness at that
11 time, and that is where this lady comes in,
12 among other things. She would then look up
13 that portion of the testimony in the record
14 that she is making, and you can have it read
15 back to you; but for our purposes, you cannot
16 ask questions of any witness.

17 Now, I realize that that is a very
18 thumbnail sketch of what is going on.

19 Do you have any questions of me at
20 this point?

21 Now, we bring over jurors to be
22 examined individually in a capital case. I
23 told you when you were over there at noon, we
24 could only bring three over. It takes normally
25 about an hour, give or take a few minutes, to

1 examine each juror. That will fill our afternoon
2 up real good.

3 Some may not last that long, and not
4 many last longer, but you will be called out
5 and asked questions and given a chance to ask
6 your own questions if you don't understand
7 something.

8 And again, I repeat what I said over
9 there earlier. The questions are not designed
10 to embarrass you, to pry into your personal
11 affairs. We don't intend to change your views
12 about anything that you have, but the lawyers
13 on each side are simply trying to know how
14 you feel about such things so they can make an
15 intelligent decision as to whether or not to
16 select you on this jury.

17 I am sure there must be something else
18 I need to talk to you about. I have been doing
19 this all this period of time, and it all seems
20 to run together, so we will need to begin the
21 voir dire examination of Mr. Ward.

22 If you will, remain in the courtroom
23 with us and have this chair right over here.

24 Mr. Tucker -- Father Tucker? Father?

25 MR. TUCKER: Yes.

I N D E X

Page

VOLUME XIV

VOIR DIRE EXAMINATION, CONTINUED

Mark Logan Matthews

Examination by the State (Moen)

2551

James Thomas Tucker

Examination by the State (Bax)

2513

Examination by the Defense (Elizondo)

2533

Examination by the State (Bax)

2540

Dan Laverne Ward, Jr.

Examination by the State (Moen)

2449

Examination by the Defense (Elizondo)

2488

1 THE COURT: All right, and, Mr.
2 Matthews, I am sure you will have time, if
3 you would like, to go downstairs and get a cup
4 of coffee or something. Father, if you would,
5 be back in twenty or thirty minutes. We might,
6 you know, depending on the circumstances, might
7 be ready for you at that time.

8 With that, unless you have any questions,
9 I will let you go.
10
11
12

13 DAN LAVERNE WARD, JR.,
14 was called as a prospective juror and responded to
15 questions propounded as follows:
16

17 EXAMINATION
18

19 QUESTIONS BY MR. MOEN:

20 THE COURT: Just relax, Mr. Ward, and
21 Mr. Moen is going to ask you some questions.

22 MR. MOEN: May I proceed, Judge?

23 THE COURT: Yes, sir.

24 Q (By Mr. Moen) Mr. Ward, my name is Bob Moen.

25 " I am a member of the District Attorney's Office

1 here in town, and the fellow who will be joining
2 me shortly, who will be joining me, is Dick
3 Bax with the District Attorney's Office, and
4 together with Mr. Bax, we will be representing
5 the District Attorney's Office in the trial of
6 this case styled the State of Texas versus
7 Ricardo Aldape Guerra.

8 As the judge mentioned, he is charged
9 with killing a police officer back on July 13th
10 of this year, a fellow by the name of James
11 D. Harris.

12 The judge asked you and the other
13 gentlemen whether you have read anything about
14 the case. I take it you have not heard or read
15 anything about the shooting of Officer Harris,
16 or have you?

17 A Not to my recollection.

18 Q There is nothing wrong with that. The only
19 reason we check with jurors is to see whether
20 or not they have formed opinions or conclusions
21 about anything they have read or heard, and
22 since you have not read or heard anything about
23 the case, don't worry about it.

24 A Yes, sir.

25 Q " About the next few minutes, I need to visit

1 with you and find out what your feelings or
2 opinions are concerning some aspects of the
3 law that come up during a trial such as this,
4 a capital murder case.

5 There are no right or wrong answers,
6 and we encourage jurors if they have questions,
7 to discuss those questions so we can clear them
8 up. If you have disagreements, we encourage
9 them to tell us their disagreements as well
10 so we can talk about those, and, hopefully,
11 what we can do is explain exactly what will
12 be required by your jury service so you will
13 know exactly what you will be getting into
14 by being a juror, what will be expected of
15 you.

16 I am not trying to frighten you, but
17 it is important you understand what will be
18 required by your jury service, and if you
19 have questions, state them now so we can clear
20 it up.

21 What I am going to ask you in just
22 a second is what your feelings or opinions are
23 concerning the death penalty and whether or not
24 your feelings and opinions will allow you to
25 serve as a juror on a capital murder case and

1 return a verdict that you know would result
2 in someone receiving the death penalty, and
3 the reason I am going to ask you that is a
4 couple of reasons, one, to see how you feel about
5 it, but primarily to find out what your response
6 is, because we live in the type of country, I
7 think you realize, Mr. Ward, where no person
8 is required to do something that would violate
9 his or her conscientious, religious, or moral
10 beliefs. We don't require or make jurors serve
11 on capital murder cases where their feelings
12 against the death penalty would not allow them
13 to be jurors.

14 No one is going to take you by the
15 scruff of the neck if you don't believe in the
16 death penalty and make you be a juror on a
17 capital murder case.

18 The only way we know how prospective
19 jurors feel about the death penalty and different
20 aspects of the trial that come up in a trial
21 such as this is by asking what their feelings
22 and opinions are. That is the only way we
23 know.

24 We have been at this, as the judge
25 mentioned, this is our fourth week, and the

1 thing I live in the most fear of, I am sure
2 all lawyers do, is running across a juror who
3 doesn't speak up and tell us how they feel,
4 and after the evidence has been presented a
5 couple of weeks down the road from now, eleven
6 of the jurors having reached a decision, being
7 confronted with one juror who didn't have the
8 courage to speak out and state how he or she
9 really felt, and as a result, our having to do
10 it all over again, having got a juror on the
11 jury panel who didn't act to return a verdict.

12 No one wants to see that happen.
13 Frankly, too much time and effort, and frankly,
14 taxpayers' money is involved to do it all over
15 again simply because one juror didn't have the
16 courage to speak up and tell us how he felt,
17 and because you feel one way or another doesn't
18 make you any more or less a citizen. In fact,
19 by telling us how you feel, you become more of
20 a citizen than someone who does not tell us how
21 they feel in being placed on a jury such as
22 this.

23 Do you follow me so far?

24 A Yes.

25 Q " With that in mind, can you tell us what your

1 feelings and opinions are concerning the death
2 penalty? Would they allow you to be a juror
3 on a case such as this or not allow you to?

4 A They would allow me to.

5 Q Can you tell me exactly what your feelings are
6 for the death penalty as being the proper
7 punishment for certain crimes? How do you feel
8 about that punishment? Do you feel that is
9 the proper punishment, given the terms and the
10 evidence?

11 A If the case were of a serious nature, it would
12 be a proper punishment if it is proven, but not
13 a sentence that could be made lightly.

14 Q Certainly. That is certainly a very wise
15 response. I think that is what the majority
16 of people come in and say. It probably puts
17 you in the 99.9% bracket or percentile. That
18 is what most of the people come and tell us
19 or give us that response.

20 Certainly, I don't want nor does Mr.
21 Bax want anyone to take jury service on this
22 type of case lightly. The only thing we want
23 to make sure is that the jurors could perform
24 the task such as reaching a verdict based on
25 the evidence that would result in someone

1 receiving the death penalty.

2 Your feelings concerning the death
3 penalty, is that pretty much the way you have
4 felt most of your adult life so far?

5 A Yes.

6 Q You've got a lot of your life left to look
7 forward to. That's why I say so far.

8 Do you know how your parents felt?

9 Are your feelings concerning the
10 death penalty a product of the way your dad
11 and mom felt or are they what you have reached
12 on your own?

13 A A combination of the two. I have, you know,
14 looked at different things, and, you know, plus
15 the way they raised me. Like I say, that is
16 not something you can do easily.

17 Q Sure.

18 A But in some cases, you know, it would be a proper
19 punishment.

20 Q How long have you -- well, let me ask you this
21 before I get into that: What does your dad do
22 for a living?

23 A He owns a lumber yard, home improvement center.

24 Q Would I be familiar with the name? Which lumber
25 yard does he own?

1 A No, sir. It is in Kansas.

2 Q Oh, okay.

3 And how about your mom? Has she ever
4 worked outside the home or has she pretty much
5 been a housewife and mother all her life?

6 A She -- well, most of my young life, she was at
7 home, but now I believe she is a secretary in
8 San Antonio.

9 Q I take it from what you have just told me that
10 your mom and dad are separated or divorced?

11 A Divorced. Yes, sir.

12 Q Did your mom raise you or did your dad raise
13 you?

14 A After the divorce -- that happened when I was
15 fourteen -- I was with my mom for the majority
16 of that time.

17 Q When you were with your mom, was that in San
18 Antonio or was that still in Kansas?

19 A That was in San Antonio.

20 Q Okay. Since you were fourteen years of age,
21 have you been residing in San Antonio until
22 you came to Houston?

23 A For the majority of that time, yes, sir. I have
24 moved periodically because of my stepfather's
25 business.

1 Q What kind of business does your stepdad have?
2 A At the time he was married to my mother, he
3 was an insurance salesman.
4 Q I take it or I gather from what you are telling
5 me that your mom and stepdad no longer reside
6 together, or had they separated or divorced?
7 A They are divorced.
8 Q Do you have any other brothers and sisters in
9 your family?
10 A Two brothers and four sisters.
11 Q Younger or older than yourself?
12 A Both. Two younger sisters, and everyone else
13 is older than myself.
14 Q Your younger sister is still residing with
15 your mother?
16 A My younger one does.
17 Q Is she still in school or does she work or what?
18 A She's still in school.
19 Q What about your brothers older than yourself?
20 What are their occupations, any brothers or
21 sisters older.
22 A My older sister is a secretary for a car dealer
23 here in town, and my other sister is a housewife,
24 and let's see. The sister just younger than
25 " myself works for the bank here in town, and my

1 brother, my oldest brother, works as a parts
2 manager for a car dealer, and my other brother
3 works for car dealer in the body shop.

4 Q Is everybody here in town with you except for
5 your youngest sister in San Antonio? Is pretty
6 much the rest of the family in Houston?

7 A Yes, sir. One of my sisters lives in Sweeny.

8 Q Sweeny?

9 So the family has pretty much stayed
10 together, or at least the brothers and sisters
11 have so far? All of you folks reside, I guess,
12 pretty much in driving distance of each other?

13 A Yes, sir.

14 Q Down here at the bottom we ask a question, and
15 it is obliterated on your form, but we ask a
16 question: Have you or any member of your family
17 ever applied for a job in law enforcement and
18 subsequently decided not to take the job, and
19 you answered yes, and you can't see why on the
20 bottom of my form. It's not there.

21 A I applied for a job with the Houston Police
22 Department, and I was turned down, and since
23 that time, I have lost interest in the job.

24 Q How long ago was it you applied?

25 A " It was a little over a year ago.

1 Q Did they give you any reason for why you were
2 turned down?

3 A They felt that I might have a tendency to get
4 too personally involved in cases of a sensitive
5 nature.

6 Q Did you ever go through the academy or start to
7 go through the academy, or did they just reject
8 you during the application process?

9 A It was in the final stage of the application
10 process.

11 Q Why did they draw that conclusion? Some type of
12 psychological test or conclusion?

13 A It was a psychological test.

14 Q Okay. Was there anything about the way you were
15 treated, as far as the application process went,
16 where you feel like you weren't fairly treated?

17 A No, sir. Not necessarily. I didn't necessarily
18 agree or disagree with all of their findings,
19 but I didn't have much choice there.

20 Q Well, what can you do? It's pretty much a final
21 decision, and not too much you can do about it.

22 A Yes, sir.

23 Q Now, you have been a witness or at least a member
24 of your family has in a shoplifting that took
25 place in April? Tell me about that.

1 A I was working as a security officer for J. C.
2 Penney Company, and I --

3 Q You witnessed someone in the store in the act of
4 shoplifting?

5 A Yes, sir.

6 Q What do you do now as an engineering technician?
7 What are your job duties in that?

8 A I make drawings and set up materials for metering
9 devices and oil field equipment.

10 Q How do you like it so far?

11 A It's nice.

12 Q Let me explain a little bit to you about our
13 law in regards to capital murder cases.

14 Not all murders that take place in
15 our state or community are punished as capital
16 murders. The judge mentioned that for someone
17 who takes another human's life, the range of
18 punishment is five to ninety-nine years or
19 life, but our legislature has said that if a
20 man takes another person's life during the course
21 of committing one of five felony offenses, to
22 break into another man's home and to cause the
23 death during the course of that crime, burglary-
24 murder, for the rape victim or for the rapist,
25 "rather, to kill his rape victim, for the

1 kidnapper to kill his kidnap victim, robbery,
2 during the course of a robbery or arson-murder,
3 all of those become capital murders. It removes
4 it from the range of punishment of five to
5 ninety-nine years and defines the case as a
6 capital murder, and the only two punishments
7 the man can receive for committing that crime
8 is a life sentence in the Department of
9 Corrections or the death penalty.

10 The legislature has also said there
11 are five other instances where a man, if he
12 causes the death of another, commits capital
13 murder, and they are to kill a fireman or a
14 policeman during the course of his or her
15 official duties, for a convict to kill an employee
16 of a penal institution, for a convict to kill
17 anyone while they are escaping or in the process
18 of escaping, and finally, murder for hire, to
19 kill someone so that you would profit by that
20 death, or to hire someone to kill another
21 human being for you, and that murder takes place.

22 Those are the only examples of
23 capital murder. All other murders fall into
24 this range of punishment.

25 " Do those strike you as being the

1 proper type of cases in which the death penalty
2 could be a proper punishment, depending upon
3 the evidence surrounding the crime?

4 A Yes, sir.

5 Q The way that the death penalty is assessed in a
6 capital murder case is not by the jury, after
7 they find the man guilty, going back and deciding,
8 "Should we give this man a life sentence or the
9 death penalty?"

10 Instead, what the jury does is take
11 these two questions appearing on my left back
12 to the jury room with them, and depending on the
13 jurors' answers to those two questions, the
14 man receives either the death penalty or a life
15 sentence.

16 If both questions are answered yes,
17 the man receives the death penalty. If no,
18 the man receives a life sentence rather than
19 the death penalty.

20 So no one tries to hide anything from
21 you, Mr. Ward. You will know what your answers
22 will be if you are selected to serve as a juror.
23 If both are yes, the death penalty. A no answer,
24 the life penalty. All twelve jurors must agree
25 " before the questions can be answered yes; only

1 ten before the questions can be answered no.

2 There is a slight difference there, only slight.

3 Now, at the first stage of the trial
4 in a capital case, all you hear is evidence
5 about whether the man is guilty or not guilty.
6 That is it. Did he do the crime he is alleged
7 to have done back on July 13th?

8 The jury goes back to the jury
9 room and makes their decision. They say he is
10 guilty or not guilty. If they find him guilty,
11 they come back, get in their seats in the box,
12 and start all over again, but you don't hear
13 evidence about that, whether he did it, because
14 that issue has been resolved.

15 Instead, you hear evidence about what
16 type of man is on trial. Has he been convicted
17 of felonies in this or in any other state? Has
18 he committed any other crimes, crimes of
19 violence?

20 After the jury hears all the evidence,
21 the very last thing the jury does is the jury
22 goes to the jury room and deliberates on what
23 these questions should be.

24 Do you follow me on how that procedure
25 " works?

1 A Yes, sir.

2 Q The trial is broken down into two parts. In
3 the first part, the testimony is as to whether
4 the man did it. If the jury finds he did, if
5 he did, the second part is what the jurors'
6 answers might be to any question that might be
7 relevant to answering these questions, the jury
8 can hear at that time, and then the jury decides
9 what their answers should be.

10 Have you had a chance to look at both
11 these questions and read them to yourself?

12 A Yes, sir. I have.

13 Q Let me talk about the questions and the answers
14 that appear. The way they came into existence,
15 the legislature drafted these questions as being
16 the two types of questions all jurors would
17 answer in every capital murder case in deciding
18 what the punishment should be.

19 The first question asks about the
20 conduct of the man on trial. Was the conduct
21 of the Defendant we found guilty of capital
22 murder, was that conduct that caused the death
23 of the deceased deliberately done, and done
24 with the expectation that the deceased or
25 " another would die?

1 Let me give you an example, hypothetical
2 example of how that question comes into play.
3 Okay?

4 Imagine a man who goes into a
5 convenience store with a pistol and confronts
6 a cashier. She is all by herself and she is
7 frightened to death and turns the money over
8 to him. He takes the money, looks around and
9 doesn't see there are other witnesses, doesn't
10 think there are. He takes out the pistol and
11 fires two bullets and kills her.

12 Unbeknownst to him, as he leaves the
13 store, she steps on an alarm and the police
14 are waiting for him outside and arrest him
15 as he comes outside the store. He has committed
16 capital murder. To rob and murder is capital
17 murder in our state.

18 The jury, after they have found him
19 guilty, would then have to decide what the
20 answers to the first question should be. Was
21 the conduct on the part of that man that caused
22 the death of the deceased deliberately done
23 and was it done with a reasonable expectation
24 she would die? Is it a deliberate act when
25 "you take a pistol, loaded pistol, point it at

1 another human being and point it at another
2 body, and when you point it at the chest or
3 head of another person, should there be a
4 reasonable expectation a person would die as
5 a result of wounds such as those?

6 Do you see how that first question
7 would ask you to make a determination, based
8 on the evidence you have heard, about whether
9 the man is guilty or not?

10 A Yes.

11 Q And I guess you would agree it is a straight-
12 forward question based on the facts of the
13 case. You will have to use your own definition
14 for deliberately and reasonable. We don't have
15 definitions to give you on that, Mr. Ward, like
16 the judge said.

17 The legislature drew these up and
18 didn't give us any definitions we could give
19 to you. Okay?

20 A Okay.

21 Q This second question asks you to make a
22 determination based on the facts you have heard
23 about what kind of person it is in front of
24 you. What kind of person is it you, as a member
25 of the jury, have found guilty? Is the man on

1 trial the type of person where there is a
2 probability existing that he would commit
3 criminal acts of violence that would constitute
4 a continuing threat to society?

5 Let me break some of that question
6 down for you by way of explanation. Before
7 you could answer Question 2 yes, you would have
8 to believe, first of all, there is a probability,
9 and you would have to use your own definition
10 for that word -- but the question is not certainty,
11 not beyond all doubt or a shadow of a doubt that
12 the man on trial is a person who would do such
13 acts, and I think you realize why. The only
14 person I know of who can predict anything to
15 a certainty is God Almighty himself. He will
16 not testify as a witness in the case, and I
17 don't mean to be blasphemous.

18 The legislature does not permit you,
19 if you are selected on this jury, to play God.
20 What you are to do, from listening to all the
21 evidence here, is to make your determination
22 about the type of man on trial. Is the man the
23 type of person where there is a probability
24 he would commit criminal acts of violence that
25 "would constitute a continuing threat to society?

1 You don't have to believe, before
2 you could answer that question yes that the
3 Defendant would commit any specific type of
4 violence, whether burglaries, robberies, rapes,
5 arsons, murders, or any other criminal act of
6 violence we can think of; only is there a
7 probability the man would commit such acts,
8 criminal acts of violence, and would those acts,
9 once committed, constitute a continuing threat
10 to society, whatever society the man finds
11 himself in, whether it be the prison society
12 or the type of society we find ourselves in.

13 Do you follow me on what Question
14 2 would be?

15 A Yes.

16 Q He would be to basically make a judgment
17 determination about the man on trial based on
18 all the evidence you have heard surrounding
19 his guilt or innocence and any additional evidence
20 you might hear about what type of person he is
21 and any other crimes he has committed, to make
22 a determination on whether he is that type of
23 person.

24 Do you feel that Question 1 and 2 are
25 " the type of questions you could answer? I am

1 not asking you how you would answer, based on
2 the evidence you might hear, but is there
3 anything about the wording of Question 1 and
4 2 that would make it impossible for you to
5 answer those questions?

6 A No, sir.

7 Q And do you feel that, depending upon the evidence
8 you might hear, that you would be able to
9 answer Question 1 and 2 yes or no depending
10 upon the evidence?

11 A Yes, sir.

12 Q Let me explain to you another thing in regard
13 to Question 1 and 2. Just because a person is
14 found guilty of capital murder, which is to
15 intentionally and knowingly take another's life,
16 does not mean the jury automatically answers
17 Questions 1 and 2 yes. They don't automatically
18 answer Questions 1 and 2 no just because you
19 found the man guilty.

20 You base your evidence on the
21 evidence you heard.

22 Do you follow me on that, because if it
23 were the other way, when the jury said guilty,
24 the jury would be excused and go home. They
25 "wouldn't have to answer 1 and 2, because if

1 the guilty verdict were the whole trial, we
2 wouldn't have the jury stick around.

3 They answer those questions depending
4 upon the evidence they might hear. Because
5 of the evidence, you might feel, you might feel
6 the answers to 1 and 2 of those questions would
7 be no.

8 Let me give you an example. We have
9 talked about the man at the convenience store.
10 Let me give you another example.

11 Imagine a man at the convenience
12 store who goes to rob the people and he does.
13 He gets the money, and let's say he doesn't
14 feel the people are turning the money over fast
15 enough, and he wants to scare them, so he takes
16 his pistol and intentionally fires a bullet
17 by the head of one of the victims at the store,
18 and the bullet passes out through one of the
19 store windows, and unbeknownst to the robber,
20 a lady getting some food for her young child,
21 the bullet goes through the window and strikes
22 her in the head and she dies. It is capital
23 murder. He has intentionally or knowingly
24 taken the life of a human being during the
25 " course of committing a robbery.

1 When it is your conscious desire or
2 objective to cause a result to take place, to
3 bring about that result, you have intentionally
4 or knowingly acted, even though he didn't have
5 any intention of killing her specifically, by
6 intentionally and knowingly firing his gun and
7 in intending to do that act, he has caused a
8 death. He has brought about her death by
9 conscious desire or objective.

10 A Yes, sir.

11 Q He could be guilty of capital murder, but you
12 see where, when you are answering Question 1,
13 in trying to decide whether the man acted
14 deliberately, you might answer that part yes,
15 but the question is basically in two parts.
16 You have to ask was his conduct done with the
17 reasonable expectation she would die, and you
18 certainly might believe the answer to that was
19 no, --

20 A Yes.

21 Q -- that when he fired his pistol to scare the
22 people, he didn't do so with the expectation
23 that the people on the other side of the window
24 would die.

25 A Yes, sir.

1 Q That was a stupid mistake on his part and
2 something that shouldn't have been done in the
3 first place.

4 Do you see how you have to answer
5 that question based on the evidence you hear?

6 A Yes.

7 Q The law says in a proper case just the crime
8 itself can be enough evidence for the jury to
9 answer both questions yes. You don't have to
10 hear other evidence about the man on trial.
11 The man on trial does not have to be an ex-con
12 or anything else or have committed any number
13 of crimes for the jury to answer both questions
14 yes. The jury can answer both yes just based
15 on the crime itself.

16 Do you follow me on that?

17 A Yes, sir.

18 Q That will be a determination you will make based
19 on the evidence you will hear as a juror on this
20 or any other capital case.

21 Do you follow me on how those questions
22 work?

23 A Yes, sir.

24 Q If you have questions of me, don't hesitate to
25 ask, or if you have disagreements, don't

1 hesitate to discuss them with me.

2 We are going a little fast trying to
3 cover these, yet at the same time, I want to
4 make sure you understand everything we talk
5 about. Okay?

6 A Yes, sir.

7 Q Now, let me explain to you some of the things
8 that would be required of you before I pass off
9 these questions.

10 Let me tell you that the judge will
11 tell you -- the only instructions the judge will
12 give you in addition to what we have talked about
13 in answering these questions -- he will tell
14 you you are not to discuss with the other jurors
15 how long the man will have to serve on the life
16 sentence.

17 MR. ELIZONDO: Objection to the
18 prosecutor emphasizing the law of parole.

19 THE COURT: Overruled.

20 Q (By Mr. Moen) If the jurors were to assess the
21 life sentence, the jurors are not to discuss
22 among themselves how long the man would have
23 to serve. The judge will tell you that is left
24 within the exclusive jurisdiction of the Board
25 of Pardons and Paroles.

1 Do you follow me on that?

2 A Yes.

3 Q If any of the jurors did, you would have to tell
4 them to keep their mouths shut, and if they
5 didn't stop talking about it, you would have
6 to knock on the door and tell the judge. The
7 jury should not talk about parole. It cannot
8 be allowed. Okay?

9 A Yes, sir.

10 Q Now, the judge is going to tell you -- here are
11 some of the things required of you. He will
12 talk to you about them.

13 He will tell you if the Defendant
14 doesn't testify, you are not to consider the
15 Defendant's failure to testify as evidence of
16 his guilt. In other words, you should reach
17 your verdict on what you have heard from the
18 witness stand and not on what you have not heard
19 from the Defendant.

20 That doesn't mean you can't wonder
21 why the Defendant didn't testify or you wished
22 he had said something or you didn't wish to
23 hear the Defendant's side of the story.

24 The only thing is that the judge
25 will tell you the Defendant's silence is no

1 evidence, and you are not to base your verdict
2 of guilty or not guilty on the fact that the
3 Defendant did not testify. You are to reach
4 your decision on the testimony that you have
5 heard.

6 The trial is a wide open proceeding,
7 and the Defendant can testify if he wants to.
8 He can get up on the stand just like you are
9 and look at the jury in the face and tell them
10 what his version of the facts are, but he doesn't
11 have to. If he wants to for some reason, he
12 can remain completely silent. That is his
13 option.

14 A Yes, sir.

15 Q Even though it may be the most important trial
16 in his life, most important day in his life,
17 he doesn't have to utter a single word in his
18 defense unless he wants to.

19 Do you follow me on that --

20 A Yes, sir. Yes.

21 Q -- obligation?

22 The judge will tell you this in his
23 charge.

24 A Yes, sir.

25 Q * He will also tell you you are to presume the

1 Defendant innocent, and basically that means
2 we ask jurors who don't know anything about
3 a crime that took place and haven't formed
4 opinions or conclusions about what they have
5 read or heard to keep an open mind and base
6 their verdict on the testimony you hear from
7 the witness stand.

8 Do you think you can do that?

9 A Yes, sir.

10 Q The judge will also tell you the burden of
11 proof rests with Mr. Bax and myself. It rests
12 with the District Attorney's Office to prove
13 that a man committed a crime.

14 In a trial, as I have already mentioned,
15 either side can call whatever witnesses they
16 want. You see, the Defense -- it is not a closed
17 proceeding -- the Defense can call whatever
18 witnesses they want. It doesn't cost them
19 anything to do that, either. If they want to
20 get someone to testify at the courthouse, they
21 can get a subpoena and it will be served by
22 the Sheriff's Office, and if they don't come
23 voluntarily, they will come anyway, whether
24 they want to or not. It is an open proceeding.
25 * Either side can call whatever witnesses they

1 want to hope to prove whatever they can prove
2 by their witnesses' testimony.

3 But only one side has the burden to
4 do that. Mr. Bax and myself, we've got to prove
5 it to the jury. That is our obligation. We
6 have to prove it to the jury beyond a reasonable
7 doubt. That is the phrase the judge used just
8 a second ago.

9 The test in our court is as to
10 proof, and before you could find someone and
11 say by your verdict guilty, you would have
12 to believe beyond a reasonable doubt that is
13 what your verdict should be. I think the
14 judge described it best when he said you have
15 to be convinced from the evidence.

16 A Yes, sir.

17 Q You don't have to be convinced beyond all doubt
18 or any doubt or a shadow of a doubt. You see,
19 you might listen to a number of witnesses
20 testify at any trial, whether it be a civil
21 trial or a criminal trial, and you might have
22 some doubt in your mind. Ten people who view
23 the same fact situation take place may have
24 ten different versions of what they saw. You
25 * might have some doubts in your mind.

1 Did you ever play that game when
2 the teacher would relate the same story to next
3 in class and they would relate it to another
4 person and the very last student would tell
5 the teacher what he had heard from the student
6 and the story had usually gotten so changed from
7 the first person through the thirtieth, that
8 it was almost hard to believe how it could have
9 gotten so changed from the relating from one
10 student to the next?

11 You know, I don't try to form any
12 opinions or get any pre-formed thoughts in your
13 mind about the trial or anything else except
14 to explain to you that when you listen to people
15 testify about what they saw or what took place,
16 you might have some doubts about things.
17 Witnesses can be confused about things such
18 as how dark it was when they saw what they saw
19 or what time of day it was when they saw what
20 they saw or what the person was wearing.
21 Witnesses have doubts about those things. That
22 is why the burden of proof is beyond a reasonable
23 doubt, not all doubt or a shadow of a doubt.

24 I would suggest the only way to prove
25 * it to that burden would be if you were a witness

1 and actually saw the crime take place, and
2 witnesses or people who know something about
3 a crime cannot serve as jurors under any
4 circumstances whatsoever.

5 So the test is not to prove through
6 witnesses or people who know about the crime
7 to all doubt or a shadow of a doubt. It's to
8 prove to people who know nothing about a crime
9 and learn about it from witnesses who tell
10 people in a courtroom, prove to those people
11 beyond a reasonable doubt.

12 Do you follow me how that test or
13 burden of proof works?

14 A Yes, sir.

15 Q The judge will finally tell you the Grand Jury
16 indictment is no evidence of anything. The
17 analogy I draw for people I talk to, such as
18 yourself, is don't give the Grand Jury indictment
19 any more significance of anything than you
20 would the starter's pistol in a race. Until
21 the pistol goes off, the race can't begin. Until
22 the Grand Jury indictment is returned, the
23 trial can't begin.

24 A Yes, sir.

25 Q And that is the only significance you should

1 give it at all. Okay?

2 A Yes, sir.

3 Q Finally, the judge will tell you when you are
4 judging the credibility of a witness, you are
5 not to give a witness any more or less belief
6 just because of the job a witness has. A police
7 officer, a priest, such as the man who was
8 sitting next to you in the jury box, a District
9 Attorney, a man who has his own lumber company;
10 just because a man has a particular job in his
11 life or has chosen a particular job does not
12 mean that person is any more or less believable
13 than any other witness.

14 Now, that is before a person testifies.
15 After a person testifies, if his job enters
16 into his testimony, you can consider his job.

17 A Yes, sir.

18 Q Such as a doctor testifying about medical
19 injuries or a police officer with twenty-two years
20 of experience in investigation testifying about
21 what his investigation resolved. Then it is
22 proper to consider his job. I am only talking
23 about before a witness testifies that you should
24 not consider a witness any more or less
25 * believable than any other witness because of his

1 or her job.

2 Do you follow me on that?

3 A Yes, sir.

4 Q Now, as a juror -- and I don't know if the
5 judge mentioned this -- he told some of the
6 prospective jurors he talked to there are thirteen
7 judges in every criminal case. The judge
8 decides all the questions of law and the jurors
9 are the judge of all of the facts. What
10 that means, basically is, as a juror, you can
11 believe or disbelieve everything a person tells
12 you even though that witness is under oath.
13 That sounds crazy at first, doesn't it, to
14 disbelieve something someone tells you after
15 they have taken an oath to God to tell the
16 truth?

17 A Yes, sir.

18 Q I wish we lived in a society, Mr. Ward, where
19 there were no people on the face of this earth
20 who never told an untruth. It would be fine
21 to think that every time we dealt with someone
22 in our business life or personal life, there
23 were no people at all who would ever tell a
24 lie.

25 A Yes.

1 Q I think you realize there are perhaps a few
2 people who fit that description, but there are
3 people who come to the courthouse and take an
4 oath to tell the truth and do not do that.
5 That is why the obligation falls on jurors to
6 believe or disbelieve everything a witness
7 tells them under oath?

8 A Yes, sir.

9 Q They make that decision as to whether or not
10 a witness is believable and how much of their
11 story they are going to believe.

12 That applies to every witness, even
13 the Defendant if he gets on the stand. You judge
14 him like any other witness and decide whether
15 or not you are going to believe what he is
16 telling you and make a decision just like you
17 would any other witness.

18 Do you follow me on that?

19 A Yes, sir.

20 Q One final thing, and I will pass you to the
21 Defense and they will have questions to ask.

22 I want to explain to you what the
23 judge talked about earlier, the range of
24 punishment for the offense of murder. That
25 is five to ninety-nine years or life, different

1 than capital murder.

2 The only reason I mention it is
3 because every capital murder includes the lesser
4 included offense of murder.

5 Now, murder is not a lesser offense
6 in my book, and I am sure your book, but it is
7 when you compare it to the punishment you could
8 receive for capital murder.

9 Every capital murder is comprised of
10 two elements, a homicide and some other
11 aggravating circumstance such as one of these
12 felonies we have talked about, or such as a police
13 officer or fireman being killed, et cetera.

14 A Yes, sir.

15 Q It has to be a murder that takes place either
16 to one of those individuals I have mentioned or
17 during the course of committing one of the
18 crimes I have talked about.

19 You see, you could be a juror on a
20 capital murder case and hear all the facts and
21 decide that the person was not guilty of capital
22 murder, but was, in fact, guilty of murder.

23 Do you remember that hypothetical
24 I first gave you about the man going into the
25 convenience store and shooting the cashier?

1 A Yes, sir.

2 Q Let's say there were witnesses present who
3 saw the offense take place and they thought it
4 was a robbery-murder, but after the jury heard
5 all the facts, they found out what really
6 happened was this man knew this lady who worked
7 in the convenience store. They had been
8 living together all these years, and they were
9 in the process of breaking up, and he was
10 extremely angry about it, that his shooting her
11 was a continuation of the argument they had
12 had earlier in the day. He got his pistol, and
13 they argued again. He got angry because she
14 was going to leave, and he killed her, but
15 didn't take any property. He was just mad.

16 You see how the jurors' burden would
17 be not to say guilty of capital murder, but
18 guilty of the offense of murder?

19 A Yes.

20 Q Now, the range of punishment as I have mentioned
21 is five to ninety-nine years or life, and the
22 jury can, if they feel it is a proper case,
23 recommend probation.

24 Have you ever heard that phrase
25 "probation before?"

1 A Yes, sir.

2 Q Even though the jury has found someone guilty
3 of murder, they can, if they feel it is a
4 proper case, the jury can recommend probation
5 for the person even though the person -- man's
6 been found guilty of murder.

7 Let me give you an example of what I
8 am talking about. Imagine a man who comes home
9 from work, has been working hard all day, has
10 got a family started, been married a couple of
11 years, and has a little girl only a couple of
12 years old, and he's got a good start on a
13 family, and he comes home to find that his wife
14 has been sexually assaulted and horribly beaten,
15 her clothes half torn off. The little girl's
16 been killed, strangled to death. His wife says,
17 "Joe Blow did it."

18 He gets his pistol and goes to talk
19 to Joe Blow. He goes to the door and he says,
20 "I want to talk to you about my wife and child.
21 They are dying, and in her dying breath, she
22 told me you did it." And Joe Blow says he
23 did it and says, "What of it?" And he fires
24 a shot. That is technically murder, the
25 "intentional taking of another man's life, but

1 the range of punishment is five to ninety-nine
2 years or life, and the jury, if they felt it was
3 a proper case, could consider giving a man
4 probation.

5 The only thing I want to ask you is
6 this: I know you never thought about it before
7 you came here today, but if you were a juror
8 on a case where you found somebody guilty of
9 murder and if the facts indicated to you that
10 probation was proper, would you be able to
11 consider it if you felt it was proper and
12 recommend probation to the judge?

13 A Yes, sir.

14 Q Even though the man or woman on trial had been
15 convicted of the offense of murder?

16 A Yes, sir.

17 Q So I take it you can at least keep an open mind
18 where probation might be a proper range of
19 punishment?

20 A Yes, sir.

21 Q Mr. Ward, do you have questions of me so far
22 about anything?

23 A No, sir. Not a thing.

24 Q Is there anything at all about anything we have
25 * talked about? If you have any questions, please

1 don't hesitate to ask me, because if you are
2 selected to serve on the jury panel, from this
3 time on, I can't talk to you. We have pretty
4 strict rules that govern myself and Mr. Bax's
5 conduct, and if we see you coming and going,
6 we are going to have to ignore you.

7 A Okay.

8 Q If you don't have questions, I will pass you to
9 the Defense, but before that, let me check and
10 see if Mr. Bax has any questions.

11 (Consultation between attorneys.)

12 Q (By Mr. Moen) Mr. Bax wants to find out about
13 this skydiving hobby of yours.

14 How many jumps have you made?

15 A A little over a hundred.

16 Q Well, I would say that is a modest response to
17 say "a little over a hundred." I have never
18 found the courage yet to even stare out the
19 door of a plane when it's open, more or less
20 die.

21 How did you ever get interested in
22 a hobby such as that?

23 A Boredom. It doesn't take as much guts as most
24 people think it does.

25 Q " I guess that is easy for you to say.

1 A Not sometimes.

2 Q Is that here in town that you do that?

3 A Yes, sir. Up in Tomball.

4 Q Are you a member of clubs? Do they have any
5 clubs here in town?

6 A Not really a club, just a little group of people.

7 Q Not one of the fellows we read about every now
8 and then that takes a jump off the Texas Tower?

9 A No, it's a little low.

10 Q It's a little low? You are just teasing?

11 A It's a little too low.

12 Q Mr. Ward, I appreciate your visiting with us,
13 and thank you for your attention.

14 I will pass you to the Defense, and
15 if you are selected as a juror on the panel,
16 I look forward to serving with you.

17
18 EXAMINATION

19
20 QUESTIONS BY MR. ELIZONDO:

21 Q Good afternoon. How are you?

22 A Fine.

23 Q This portion of the trial is called the voir
24 dire examination.

25 " Voir dire is a French word which means

1 to speak the truth, and the reason you are
2 here today is for us to find out how you feel
3 about certain things and see if you think you
4 can give Ricardo Guerra a fair trial.

5 We want to ask you a few questions,
6 and don't want to embarrass you in any way, and
7 I want you to tell me how you honestly feel about
8 certain things.

9 Once you get in there, I can't talk
10 to you anymore. I want to talk to you now if
11 I can.

12 This is a capital murder trial. As
13 in all trials in Texas, it is divided into two
14 parts. It is divided into the guilt-or-innocence
15 stage and the punishment stage.

16 In the guilt-or-innocence stage, the
17 State has to prove certain things to you beyond
18 a reasonable doubt. It has to prove it happened
19 in Harris County, Texas; on this particular day,
20 he intentionally and knowingly shot a police
21 officer in the official discharge of his official
22 duties, knowing at the time he was a police
23 officer. He must prove it beyond a reasonable
24 doubt.

25 " The term "beyond a reasonable doubt"

1 won't be defined for you. The judge won't
2 define reasonable doubt. I can't give you one,
3 and the Prosecution can't either, but all I can
4 tell you is that across the street at 301
5 Fannin when they try suits over workmen's
6 compensation cases, sometimes for millions of
7 dollars, the proof over there is by a
8 preponderance of the evidence, the greater weight
9 of the credible evidence.

10 Down here in the criminal courthouse,
11 the legislature said before somebody's life is
12 literally -- in this case, literally forfeited,
13 the State is going to have a proof a little bit
14 higher, proof beyond a reasonable doubt.

15 Now, I hope by reason of that
16 comparison or that analogy, you can see that the
17 burden of proof over here is a lot higher than
18 it is across the street.

19 A Yes.

20 Q Do you agree with that or disagree with that, or
21 how do you feel about that?

22 A I agree with it. Although I was a witness, as
23 I said, in a shoplifting case, one of the things
24 we on the job considered was if somebody wasn't
25 " there, even though we assumed that he probably

1 did it, we wouldn't pick anybody up, and by
2 the same token, you know, unless everything
3 is put there and I am convinced, I couldn't
4 find somebody guilty of something like that.

5 Q You couldn't or you wouldn't or both?

6 A Both.

7 Q Okay. Why do you feel that way?

8 A That is the way -- well, that is the way I
9 was raised and that is the way I was trained
10 when I was working in security, as if everything
11 wasn't there. If I wasn't completely convinced
12 -- well, in that case, it didn't even go to a
13 reasonable doubt. I had to be completely
14 convinced everything was in its proper place
15 and everything did happen the way it did.

16 Q Is this a -- go ahead.

17 A I am trying to -- I can't think of it exactly,
18 the way I am trying to say this, but like I say,
19 if I wasn't one hundred percent sure, I wouldn't
20 even go close to it even though I was almost
21 totally convinced in my mind. All the facts
22 had to be in place.

23 Q Is that a personal feeling of yours or is that
24 company rule?

25 A " It is both ways in that particular case. Like

1 I say, it was a company rule, but I am not going
2 to get somebody sent to prison or even a fine
3 unless I am sure that that event occurred.

4 Q Sure in your own mind?

5 A I beg your pardon?

6 Q Sure in your own mind?

7 A Yes, sir.

8 Q Okay. Let me tell you more or less the
9 Prosecution in a murder case talks a lot about
10 usually the punishment stage.

11 A Yes, sir.

12 Q We are going to talk about the guilt-or-innocence
13 stage.

14 The Defendant in this case will plead
15 not guilty, and if the State can prove the case
16 to you beyond a reasonable doubt, it will be
17 your job to find him not guilty.

18 A Yes, sir.

19 Q By the same token, if the State hasn't proven
20 the case beyond a reasonable doubt, it will be
21 your job, under your oath, to find him not guilty.

22 Can you do that in view of the fact
23 that he is charged with a horrible crime?

24 A Yes, sir.

25 Q He is charged with killing a police officer.

1 A Yes, sir.

2 Q But you know, like with anything else, that
3 would depend on the circumstances and whether
4 or not everything was proven, as to whether or
5 not he did it?

6 A Yes, sir.

7 Q Okay. Let me tell you how they do that or attempt
8 to prove their case beyond a reasonable doubt.
9 Have you ever been in trial before,
10 ever been a witness before?

11 A Yes, sir.

12 Q And testified in court?

13 A Yes, sir.

14 Q How many times?

15 A Only two times I can think of.

16 Q As a security guard?

17 A Yes, sir.

18 Q Well, you basically know how they do it. They
19 call witnesses and they come and take the stand
20 where you are sitting and give their version
21 of the facts. Correct?

22 A True.

23 Q And when they are through presenting witnesses,
24 they go ahead and rest their case, saying in
25 "so many words, "That is all we have."

1 A Yes, sir.

2 Q The Defendant, if he chooses at that time, can
3 also rest his case and not put on any evidence
4 whatsoever.

5 Let's assume for one minute you are
6 back there in the jury deliberation room. The
7 State has rested its case. We haven't put on
8 evidence and we have rested our case and you
9 are back in the jury deliberation room thinking
10 and saying, "I think he did it. Maybe he
11 did it, but I am not sure they have proven
12 their case to me beyond a reasonable doubt."

13 What would your verdict be in that
14 situation?

15 A It would have to be not guilty.

16 Q And you could do that regardless of any of the
17 facts -- not the facts, but the type of crime
18 that he is charged with?

19 Like I said, again, it is a pretty
20 horrendous crime.

21 A Yes, sir.

22 Q And you could come back and say to these
23 prosecutors or to anybody else they haven't
24 proven their case? You could say, "I am not
25 " sure he is guilty," and you could find him not

1 guilty? You can do that?

2 A Yes.

3 Q The Defendant can testify, of course, if he
4 wants to. He can call witnesses up here to
5 testify as to what they saw that day.

6 A Yes, sir.

7 Q The Defendant -- if the Defendant testifies,
8 the State can impeach him or discredit him with
9 any prior felony convictions he may have had
10 within, say, the last ten years, and if they
11 can impeach him or discredit him, you can base
12 your opinion or how credible a person he or she
13 is by that alone. Did you know that?

14 A I didn't and don't know, sir.

15 Q And you can also judge a witness by other means,
16 you know. You have been around for some time,
17 and you can tell when somebody is mistaken about
18 something.

19 Have you ever seen somebody who was
20 mistaken and honestly thought he was telling
21 the truth, but he was mistaken?

22 A Yes, sir.

23 Q Has that ever happened to your friends or
24 acquaintances or anyone you worked with?

25 A * Yes.

1 Q You can see how someone can honestly believe
2 certain versions of the facts and still be
3 mistaken?

4 A Yes, sir.

5 Q How do you feel about eyewitness testimony? Do
6 you think they can be mistaken?

7 A Yes, sir. They can.

8 Q Have you ever gone up to somebody and said, "Hey,
9 Joe. How are you doing," and this person turned
10 around and it is not Joe?

11 A Yes, sir.

12 Q Has it happened to you on few or many occasions?

13 A A few.

14 Q Happened to me on more than one, I will tell you.
15 Embarrassing.

16 So you, as a juror, or prospective
17 juror will have one job and one job alone. You
18 will be the judge of the facts.

19 Judge Oncken will be the judge of the
20 law.

21 A Yes, sir.

22 Q He will rule on the objections and admissibility
23 of certain items.

24 You, as a juror, if you are selected
25 " on this jury, I can almost guarantee you one

1 thing, and that is that you will hear two
2 diametrically opposed stories. He did it, and
3 no, he didn't, and it will be your job as a
4 juror to resolve those conflicts.

5 A Yes, sir.

6 Q Do you think you could do that?

7 A Yes, sir. I do.

8 Q If the Defendant is found guilty of capital
9 murder -- and I've got to touch on this because
10 I want to know how you feel about certain
11 things -- if he is found guilty of capital murder,
12 then we go to the punishment stage which is a
13 different phase.

14 A Yes, sir.

15 Q At that point in time, he will have subjected
16 himself to one of two possible punishments, life
17 or death.

18 A Yes, sir.

19 Q That is determined by how you answer those two
20 questions. The first question is asking you
21 whether the conduct of the Defendant that caused
22 the death of the deceased was committed
23 deliberately and with a reasonable expectation
24 that the death of the deceased or another would
25 * result.

1 The word deliberately is underlined
2 there, and there is no legal definition of the
3 word deliberately. The judge can't give you
4 one; I can't give you one. The legislature never
5 gave us one, but we know in everyday use, to
6 some people it might mean premeditated and
7 to other people to ponder and think about.

8 But let me give you another analogy
9 or comparison. When, after the State and
10 Defense rest, you will then go into the jury
11 deliberation room --

12 A Yes, sir.

13 Q -- and you will ponder or think about whether
14 this man is guilty or not.

15 What do you think the word deliberately
16 means?

17 A Knowingly, intentionally.

18 As an example, since we are talking
19 about murder, if I was to walk over to you with
20 a knife in my hand and plunge it into your
21 chest, that is an intentional, a deliberate act.

22 But like if I was running across
23 the room with a knife in my hand and I just
24 happened to pass by you and the knife went into
25 * your chest and killed you, that would be

1 unintentional.

2 Q Okay. Let me ask you then and backtrack a little
3 bit. As I said, these trials are divided into
4 two parts. The first is the guilt-or-innocence
5 stage, and then there is the punishment phase.
6 If you have found him guilty of the murder of
7 a police officer, you will have found him guilty
8 of intentionally and knowingly killing a police
9 officer.

10 A Yes, sir.

11 Q Then we go to the punishment phase.

12 Would you automatically answer Question
13 No. 1 yes solely because you have already found
14 him guilty of intentionally and knowingly killing
15 a police officer?

16 A No, sir.

17 Q You would look at the evidence again and ask
18 yourself, I guess, whether or not it was
19 committed deliberately and with a reasonable
20 expectation that the death of the deceased
21 might result or would result?

22 A Correct. Yes, sir.

23 Q The second question is whether or not there is
24 a probability that the Defendant will commit
25 * criminal acts of violence that would constitute

1 a continuing threat to society.

2 That No. 2 question is more or less
3 asking you to forecast or foretell the future.

4 A Yes, sir.

5 Q Do you agree with that?

6 A Yes, sir.

7 Q Do you think that a person can change --

8 A Yes, sir.

9 Q -- his mode of behavior, mode of conduct?

10 A Yes, sir.

11 Q In those two questions, the State of Texas will
12 have to prove to you beyond a reasonable doubt
13 that there is a probability that the Defendant
14 will commit criminal acts, more than one act of
15 violence that would constitute a continuing
16 threat to society.

17 If they can't prove to you there is
18 probability he will commit criminal acts of
19 violence that will constitute a continuing
20 threat to society, can you answer that question
21 no?

22 A Would you repeat that?

23 Q If they don't prove to you beyond a reasonable
24 doubt that the answer to that question should be
25 " yes, could you answer that question no, No. 2

1 question?

2 A I am sorry. If they didn't?

3 Q That's right.

4 A If they didn't prove it?

5 Q Correct. Question No. 2.

6 A That would mainly depend upon the facts involved
7 in the --

8 Q Right, but they have to prove to you if you have
9 found him guilty, they have to prove to you
10 beyond a reasonable doubt that the answer to
11 Question No. 1 should be yes.

12 A Yes, sir.

13 Q And they have to prove to you beyond a reasonable
14 doubt that the answer to Question No. 2 should
15 be yes.

16 A Yes, sir.

17 Q They have to prove that to you beyond a reasonable
18 doubt.

19 Now, if they don't do that and prove
20 that to you beyond a reasonable doubt that the
21 answer to Questions 1 and 2 should be yes, would
22 you answer them no?

23 A Yes, sir.

24 Q Do you understand what I am saying?

25 A " Yes, sir.

1 The last sentence there started to
2 throw me off, but I caught it right before then.
3 Q Okay. The prosecutor mentioned to you a lesser
4 included offense of capital murder is murder.
5 A Yes, sir.
6 Q And, of course, since it is lesser, it carries
7 a lesser penalty, five to ninety-nine years or
8 life and a fine of ten thousand dollars can also
9 be imposed.
10 I believe you said you could consider
11 probation in the proper case, in a murder case?
12 A Yes, sir.
13 Q You could consider as little as five years'
14 probation in a proper case for murder?
15 A If that is the way the facts -- you know, if the
16 facts show that would be proper, yes, sir.
17 Q You know, as you are sitting there, Ricardo
18 Guerra is sitting here.
19 Do you have any inkling of any feeling
20 that he might be guilty of something, just by
21 his sitting there and you sitting here?
22 A No, sir.
23 Q You can give him the benefit of that doubt and
24 presumption of innocence?
25 A Yes, I can.

1 Q Are you still working as a security guard?
2 A No, sir. I am not.
3 Q When did you quit?
4 A Back in June, I believe.
5 Q How long did you work as a security guard?
6 A This particular occasion, for a little less than
7 two years.
8 Q And before then?
9 A Before then, I had worked for nine months.
10 Q Well, okay. When did you apply for the police
11 force.
12 A I applied, I believe it was a year ago, March or
13 April.
14 Q Had you applied anyplace before --
15 A No, sir.
16 Q -- any other police force?
17 What made you decide to go into law
18 enforcement?
19 A I was working as security at the time, and it
20 seemed like -- well, the one thing, really --
21 I thought about it back in '76, '77, when the
22 case was on about -- I forget the name now, where
23 the police officer is said to have drowned a
24 prisoner.
25 Q Oh, Jose Campos Torres?

1 A Yes, sir.

2 And I realized at that point in time
3 this city -- yes, they were found guilty on that
4 -- but this city had police officers in it that
5 shouldn't necessarily be on the street, and I was
6 going to get in there and show them there could
7 be good police officers here in Houston.

8 It was just a decision, I mean,
9 something that I felt being a citizen of the city
10 that I should do.

11 Q Okay. Let me ask you a few questions, and again,
12 I don't mean to pry into your background, and
13 certainly don't want to embarrass you in any way,
14 but have there ever been any complaints against
15 you as a security guard about people you have
16 arrested?

17 A There was in one particular instance, yes, sir.

18 Q How long ago was that?

19 A Probably one and a half to two years ago.

20 Q Was that at Target, I believe?

21 A J. C. Penney.

22 Q J. C. Penney. I am sorry.

23 A Yes, sir.

24 Q That was J. C. Penney, the same job you had in
25 * April of '82?

1 A Yes, sir.

2 Q And what was that person alleging?

3 A That during the course of arrest or confinement
4 or whatever term you would like to use, force was
5 necessary and it was a female, and she stated
6 that I did not identify myself properly and that
7 I used undue force and she charged me -- she was
8 going to charge me with assault. The charges
9 were never brought up, though.

10 Q Were you wearing a uniform at that time?

11 A No, sir. I wasn't. We were plainclothesmen.

12 Q What J. C. Penney's were you working in?

13 A The Northwest Mall.

14 Q How did you feel about that?

15 A I felt it was unfair. She had two witnesses --
16 well, two people with her, and they went along
17 with her story that I did not identify myself,
18 but at the same time, I felt they were too far
19 away to get any kind of idea because they were
20 fifteen to twenty feet away from me at the time,
21 and I don't have a real loud voice and I just
22 very calmly pulled out my badge and told her I
23 was with the J. C. Penney Company and she had to
24 come with me.

25 Q * Did you use force to subdue her?

1 A Yes. It was more or less just a struggle,
2 because the police officer arrived just shortly
3 afterwards, the one that was working in the store
4 at the time.

5 Q Well, you know, Ricardo Guerra is charged with
6 killing a police officer.

7 A Yes, sir.

8 Q And you have applied with the police department
9 and also been a security guard.

10 Do you feel like in view of all that,
11 you can give this man a fair and impartial
12 trial and base it upon the facts you hear from
13 the witness stand, or do you think that based
14 upon the premise or the fact that you have applied
15 as a police officer and you went through the
16 interview process and you have been a security
17 guard for two, two and a half years or more, do
18 you think that might bias you in any way, shape,
19 form, or fashion against this man?

20 A No, sir. I don't. As I explained, I applied at
21 the police department because I felt there were
22 some police officers that shouldn't be working
23 there, and that police officers are human; they
24 make mistakes.

25 Q * Sure.

1 A And things -- I don't know the circumstances
2 surrounding this event, but, you know, there is
3 a chance that the police officers could have acted
4 improperly on various other things.

5 Q Or they could have had the wrong man?

6 A Yes, sir.

7 Q How long have you lived in Houston?

8 A This time, for two and a half years. I have lived
9 here a year or two years on other occasions.

10 Q I think it was -- I don't recall when it was,
11 three or four months ago -- it might have been
12 as many as seven months ago. I don't know, but
13 the Supreme Court came down with the decision
14 that the children of illegal aliens had a right
15 to a free education.

16 Remember that?

17 A Yes, sir.

18 Q What was your initial reaction when that came
19 down?

20 A I was a little bit confused. I look at it from
21 a point, the way I understand it, illegal aliens
22 don't necessarily pay the same taxes that we do.

23 Q Uh-huh.

24 A And, therefore, I think the decision could have
25 " been made in error, but it's a decision that was

1 made, so I am, you know --

2 Q I only want to know how you honestly feel about
3 it.

4 Did that kind of make you dislike
5 illegal aliens? I hate to use the word bias,
6 because people get upset with bias or prejudice,
7 but I can't think of a better word.

8 A No, I don't, because as it says on that form,
9 I worked as a pipe fitter, and at that time, I
10 worked with people who were illegal aliens, and,
11 you know, they were there with me. We were on
12 the same level and everything was going fine
13 and we didn't necessarily socialize. I generally
14 don't socialize with people I work with to a
15 great degree, but we got along fine, you know.
16 We were friends at work.

17 Q Hold on for one second.

18 Let me go back to your police interview.
19 They came back and they said that you might get
20 involved in cases of a personal nature?

21 A Yes, sir.

22 Q Did you ever talk to them about that or ask
23 them what they meant about that?

24 A They were referring to -- they mentioned -- well,
25 " the psychologist, psychiatrist, whatever --

1 Q What kind of tests did you take? Do you recall?
2 Was it the Rorschach?

3 A Yes. They had that and --

4 Q The Inkblot Test?

5 A They had that and a questionnaire along with
6 that.

7 Q That Wunderlich Apptitude Test?

8 A I am not sure.

9 Q And what did they say about the apptitude test?

10 A They said that they felt that I might get so
11 tied up in it that I wouldn't want to let go
12 of the case, and at that time, they were probably
13 right, and that is something that I realized,
14 you know, that I wouldn't want to say, "Okay.
15 That is all I had done, and that was it. I
16 couldn't do any more."

17 And like I said, at the time, I feel
18 they were right.

19 Q The reason I ask you this: I suspect, like I
20 said before -- this is the murder of a police
21 officer --

22 A Yes, sir.

23 Q -- and I suspect that the wife of the slain
24 officer will testify, and that will be pretty
25 " emotional, and, you know, there was a police

1 officer that was killed, an innocent bystander
2 that was driving his car with his child was
3 also shot in the head, and another police officer
4 was wounded, got five bullets into him, and
5 the other suspect was killed there at the scene.
6 It is a pretty emotional case, and what I am trying
7 to get at is: If you hear the evidence and you
8 hear Ms. Harris testify and because you are of
9 your tendency to get personal with certain things,
10 do you think you would go back in the jury
11 deliberation room and start asking yourself,
12 "I am not sure if they have proven their case to
13 me, but I can't go and face Ms. Harris, so I am
14 going to find him guilty"?

15 A No, sir, because -- all right. It is true that
16 she is going through a lot and the people around
17 her, but at the same time, this gentleman back
18 here, if this gentleman back here did not commit
19 the offense and I were to find him guilty for
20 that, he could be serving -- well, if it were
21 capital murder --

22 Q Life or death.

23 A It could be life or death, and I am not going to
24 have somebody's life ended unless I am sure,
25 "regardless, you know.

1 Like I said, the rest of the people
2 have been through a lot, but I can't see taking
3 somebody else's life just to appease a few of
4 the other people surrounding the event.

5 Q What made you decide to quit your job as a
6 security guard?

7 A Just got tired of it, basically, and as it also
8 states on there, I have also gotten into sky-
9 diving, and that takes up my weekends.

10 Q For photography, also?

11 A I am getting more into it now, but photography,
12 also, and there wasn't any way to fit both of
13 them in there.

14 Q Mr. Ward, again, I hate to belabor the point, but
15 if you are on this jury panel, can you promise
16 us one thing, and that is if the State of Texas
17 does not prove their case to you to your
18 satisfaction beyond a reasonable doubt or beyond
19 a reasonable doubt to your satisfaction, can
20 you find this man not guilty?

21 A Yes, sir. I can.

22 Q You can promise us that?

23 A Yes, sir.

24 Q And the fact he is sitting right here is no
25 " indication in your mind of his guilt or innocence?

1 A No, sir.

2 MR. ELIZONDO: We will pass him, Your
3 Honor.

4 THE COURT: What says the State?
5 Could I have a decision, please?

6 MR. MOEN: Judge, we will agree to
7 excuse Mr. Ward.

8 THE COURT: Say what?

9 MR. MOEN: We have an agreement to
10 excuse Mr. Ward.

11 THE COURT: We went through an hour's
12 examination, and y'all have agreed as to him?

13 MR. MOEN: Yes, sir.

14 THE COURT: Mr. Ward, thank you
15 very much. We appreciate your participation.

1 JAMES THOMAS TUCKER,
2 was called as a prospective juror and responded to
3 questions propounded as follows:
4

5 EXAMINATION
6

7 QUESTIONS BY MR. BAX:

8 THE COURT: Let's proceed.

9 MR. BAX: Thank you.

10 Q (By Mr. Bax) Is it Father Tucker?

11 A Yes. That will be fine.

12 Q As the judge told you earlier -- I was in and
13 out -- my name is Dick Bax. I am with the
14 District Attorney's Office.

15 Standing behind me is Bob Moen, also
16 with the District Attorney's Office, and
17 together, we will be representing the State of
18 Texas and the family of Officer James D. Harris
19 in this case.

20 The Defendant is Ricardo Guerra, who
21 is seated at the end of the table, and he is
22 represented by two attorneys, Candelario
23 Elizondo and Joe Hernandez.

24 MR. HERNANDEZ: Good afternoon.

25 Q " (By Mr. Bax) He is no relation to Linda

1 Hernandez who is doing the translating for the
2 Defendant in this case.

3 Father, in a criminal case, we usually
4 take about two hours to select a jury. We bring
5 people over in a group of thirty-six to forty.
6 Both sides talk for about forty-five minutes
7 or an hour and we strike a list, and the ones
8 with the strikes through their names become the
9 members of the jury, and we usually start voir
10 dire in the morning and start testimony in the
11 afternoon.

12 We started this back on August 30th.
13 We've got eight jurors, and we will probably go
14 through twelve and get one alternate juror, and
15 probably will start testimony on the 4th.

16 You can see already it's a long, drawn-
17 out process, and the law requires it, but I
18 think personally it is a good way to do it when
19 we are talking about this type of decision.

20 If this Defendant is found guilty of
21 capital murder, he faces two possible punishments,
22 both of which are very severe, namely, life or
23 death; of course, the death being more severe
24 than a life sentence.

25 " We bring people in individually so we

1 can talk to them, and hopefully make them feel
2 comfortable, and in that case, I don't think
3 that is going to be a big problem. We try to
4 make people feel comfortable so they will be
5 equipped to come out and tell us how they feel
6 about certain things that will be presented in
7 the case, and primarily the death penalty.

8 We get many different people with
9 different viewpoints that talk to us. Some
10 people are characterized as being extremely
11 drawn to the death penalty. They feel every
12 time a life is taken, another life should be
13 forfeited. That type of person would not be
14 a good juror because he would automatically
15 decide on the fact that someone should die.

16 We have people with the total
17 opposite viewpoint, and they feel the way they
18 have been brought up, their religious beliefs,
19 their philosophies in life, no one on earth
20 has the right to make that decision as to
21 whether a person lives or dies, be it a criminal
22 on the streets or our own criminal justice
23 system.

24 Of course, I am not going to quarrel
25 " with either one of these decisions, not going

1 to have a debate on the pros and cons of capital
2 punishment and try to convince anybody they
3 should feel differently than they do.

4 Of course, in this country, everyone
5 has a right to disagree with the law. They are
6 bound to follow the law, but don't have to agree
7 with the law.

8 That same law we are not bound to
9 agree with all the time, that same law does not
10 force a person to be on a jury if that jury
11 service would force them to violate their
12 philosophies or religious beliefs or conscientious
13 scruples or anything else they might have, and
14 quite frankly, some people are qualified as
15 jurors in any other type of case except perhaps
16 a death-penalty case, because of their feelings.

17 I guess the twenty-five word or less
18 question -- or answer -- I need to ask you the
19 question for is: How do you feel about the death
20 penalty? Would your beliefs allow you to return
21 a verdict of death in a proper case or would you
22 be prevented from that by your religious
23 background or any other reason?

24 A That is a question I have always been sort of
25 " afraid of being put in the position of answering.

1 I have thought about it before. I obviously
2 am very much against personally sentencing
3 anyone or calling for the death of anyone, and
4 believe that that is primarily in God's domain,
5 but I also recognize and understand society's
6 need to enforce laws, and whether it is war as
7 in certain cases or whether it is the death
8 penalty in the criminal justice system, I am
9 not saying I condone the death penalty, but I
10 can certainly understand that it exists, and
11 as I understand it, a juror is not called upon
12 to sentence anybody --

13 Q They don't actually come out --

14 A Up until --

15 Q They used to, up until 1967, a juror could go
16 back and sentence a person from anywhere from
17 two years in the penitentiary up to a maximum
18 of life imprisonment to the death penalty, and
19 basically what they did, they went back at one
20 proceeding, after all the evidence, and found
21 a man was guilty and would assess the punishment
22 at the very same time, and now our statute reads
23 there has to be an intentional taking of a life
24 before the death penalty comes into play, plus
25 " other circumstances that come into being which

1 I will tell you about in a second.

2 Back then, you could get the death
3 penalty for rape, robbery, even where murder
4 wasn't involved.

5 A This seems strange, and maybe inconsistent, but
6 I would find it impossible to stand up and say,
7 "I sentence you to death."

8 On the other hand, I recognize the
9 death penalty exists.

10 Q Father, I thank you for your candid answer.

11 You can understand the purpose for
12 the death penalty. Although many people believe
13 it deters others, it will deter the person on
14 trial. You can understand perhaps in some
15 circumstances society has the right to self-
16 protection from that individual.

17 A Sure, because there is no guarantee, even if
18 you sentence someone to life, they will remain
19 --

20 The Cuevos trial, where they tried
21 to escape from the penitentiary and several
22 people were killed, was just an example of that
23 kind of case where they could never be guarded,
24 and people say I agreed with that, and I can
25 " understand it, but personally, I could understand

1 if other people do it, but I could never be
2 involved in that type of decision.

3 When it came time to register for
4 the vote and I did so, it was that same kind of
5 understanding. I felt society has the right
6 and need in given instances -- and it's difficult
7 to say there is such a thing as a just war --
8 but I was willing to register, but at the same
9 time, I am just not sure. I am not sure how I
10 would respond when the moment came. I just
11 don't know.

12 Q And I take it, for the record -- how long have
13 you been in the ministry?

14 A I have been out of the seminary and in the
15 ministry, ordained a priest now for a year.

16 Q A moment ago, you said you could not think of
17 any situation where you yourself could stand
18 up and sentence someone to die.

19 Do you understand that basically,
20 though, the jury doesn't say that today?

21 The way they answer these two questions

22 --

23 A I know that.

24 Q -- tells the judge what he must say.

25 A " The law doesn't really let you off the hook.

1 No, sir.

2 Q Let me make sure you understand the one thing.
3 The only person that puts themselves on the
4 jury is the juror himself by the questions he
5 answers, and, of course, you have to be -- we
6 are asking you to be true to us, honest with us,
7 but even more importantly, to be true to yourself
8 in your responses with us, because whatever we
9 talk about today, it will become more real, I
10 am sure more real than yesterday, since you are
11 putting yourself in this situation.

12 A. Sure.

13 Q I am sure you can imagine three weeks from now
14 being on a jury and having Mr. Moen and I
15 standing before you, and I am sure this will
16 happen, and asking you to answer these questions
17 yes, and if you answered this yes, yes, the
18 judge has no choice but to sentence the Defendant
19 to die, so though he doesn't want to say, "I
20 sentence you to die," he must do what the law
21 requires, even if he disagrees with your verdict.
22 If you answered them yes with eleven other
23 jurors, he couldn't change it. You would be
24 the ultimate decider of that issue basically.

25 " Can you envision any case where you

1 could render a verdict answering both of these
2 questions yes, knowing then the man on trial
3 would receive the death penalty, or would your
4 religious and personal convictions either cause
5 you to answer one no or perhaps even prevent
6 you from answering the questions either yes or
7 no, because I don't anticipate anyone would
8 really get before us and say they would violate
9 their oath as a juror and go against the law.

10 A I can see where I might -- no. This bothers me
11 not being able to be more definite about it.

12 I can see where I could answer both of these
13 questions and still not personally be able to
14 stand up and condemn the person to death, but
15 I know, in effect, I am doing that.

16 Q I guess the most dramatic way to think about it:
17 Imagine that you were elected foreman of the
18 jury and you would have to be the one not only
19 signing the verdict form with the answers, but
20 with the answers yes, yes, knowing that the
21 judge, when receiving that, would turn to the
22 person on trial and sentence him to the death
23 penalty injection.

24 A Yes.

25 Q " And again, if you feel you can't do it, that is

1 all we need to know.

2 A I have a reasonable -- I have a doubt. I might
3 be able to, and I might not. I am not sure.

4 Q Those are terms, I guess, that make lawyers
5 shake: "I don't think I can," or "I don't know
6 that I can."

7 This lady here is taking down everything
8 we say --

9 A Uh-huh.

10 Q -- and more than likely, someday in the future,
11 some other court will be looking at this
12 testimony today, and, "I don't think I can,"
13 and "I don't know," they can interpret that one
14 way or another, so I am not picking at you, but
15 be more specific.

16 A You want a yes or no?

17 Q You know, you have to remember you've got to be
18 fair to yourself. If you feel you have some
19 doubt about it, we are here talking in
20 hypothetical situations, and you've got to be
21 able to answer to yourself, whether you could do
22 it when we get down to it perhaps three weeks
23 from now, and if you can't, if you feel you can't,
24 that is fine, and it is not going to make you
25 * any more or less of a citizen because of that.

1 A Yes, I know, but as a member of this society,
2 and yet as an individual --

3 I think I would have to say no.

4 Q That is fine. Is that primarily a feeling you
5 have held -- your feeling against the death
6 penalty -- you have held most of your adult
7 life?

8 A No. It is a religious feeling about my participa-
9 tion in the taking of another's life, and yet
10 hypothetically or whatever, I can understand
11 society's right to do so.

12 Q The law requires that I ask you certain questions
13 just to make sure there is no question about how
14 you feel, and in a few moments, Mr. Elizondo
15 will probably ask you a few of the same questions.

16 From my understanding, no matter what
17 the facts of what a person did, your feelings
18 would be the same?

19 A No, because the first answer, which you have
20 really said I couldn't use, was the feeling that
21 I have to cross that bridge when I came to it,
22 which was not viable. That is the same reason
23 I went ahead and registered for the draft.

24 There was a doubt in my mind, a strong
25 * doubt that perhaps I could take someone else's

1 life if called upon in the duty of my country,
2 and perhaps I could not. I was not sure, and
3 I still am not.

4 Q Okay. You see, again --

5 A I know. I know. It is better to answer that
6 --

7 Q I am not going to try to put words into your
8 mouth or anything, but the law, of course, requires
9 before you would be able to sit on this jury,
10 you would have to take an oath that you would,
11 number one, render a verdict on the guilt-or-
12 innocence stage according to the evidence, and,
13 number two, take an oath under God that the
14 fact that the person may receive a death penalty
15 would not affect your verdict in answering
16 Questions 1 and 2, and you have expressed to us
17 that you have a doubt as to whether you could
18 do it or not do it, and I think there is a
19 sincere doubt in your mind.

20 A Yes.

21 Q Because I understand you understand everything
22 that is going on right now.

23 A Yes.

24 Q Do you think you would be able to take such an
25 * oath prior to hearing any evidence, prior to

1 even beginning the trial, taking an oath to
2 God guaranteeing us you would be able to answer
3 these questions without that affecting your
4 verdict, knowing the man may receive the death
5 penalty?

6 A No. I don't think I could because of the very
7 basis of my -- I suppose my ultimate stand is
8 what I conceive of to be God.

9 Q Okay.

10 A And this is my --

11 Q Let me ask you something I think I may know the
12 answer to.

13 We use terms bias and prejudices,
14 and usually when we use those terms, it gives us
15 a bad connotation. If someone accuses us of
16 bias and prejudice, we become defensive. We
17 all have biases and prejudices. I am sure you
18 understand that.

19 A Sure.

20 Q And sometimes, your biases and prejudices are
21 about some good things. I am not sure a bias
22 or prejudice against the death penalty could be
23 categorized as anything bad or wicked, and
24 perhaps it is something that is a good type of
25 * bias or prejudice, if there is such a thing, but

1 sometimes a bias or prejudice is so strong and
2 so deep-rooted it prevents us from being an
3 impartial observer, prevents us from making an
4 objective judgment, and, of course, any question
5 in this trial, either the guilt or innocence or
6 when we came to answering those questions, those
7 would have to be based on an objective view of
8 the evidence presented.

9 A Uh-huh.

10 Q Do you feel perhaps because of your feelings
11 concerning the death penalty that you might not
12 be as impartial -- and again, I am not using that
13 term in a bad sort of way --

14 A Sure.

15 Q -- that perhaps you wouldn't be as objective as
16 to the facts as someone who felt in some cases
17 the death penalty is proper, and I could do it,
18 and in some cases, I feel the death penalty would
19 not be proper, and I could not do it?

20 A Yes. It's a possibility I might not be as
21 totally objective as another person.

22 Q Sort of like Ted Williams? They said Ted
23 Williams had a better eye for strikes, but
24 certainly didn't let him call them, because he
25 was a member of the team.

1 A I would like to think on the facts presented.
2 I could be objective, but to be perfectly
3 honest, I am not sure subconsciously.

4 Q That is what I am getting at. Subconsciously,
5 that is something we can't control.

6 A That's right.

7 Q I think all of us would like to hopefully put
8 that out of our minds in looking at a certain
9 fact situation.

10 A Society would lead me to do my best to be
11 objective, but I am not sure.

12 Q Sort of like I think of the Blue Laws, laws
13 precluding stores from selling on Sundays.
14 Personally, my personal opinion on that is that
15 I don't agree with that law. I think if you
16 could sell kitchen utensils on Saturday, I
17 don't see why I couldn't, if I needed, buy a
18 serving spoon on Sunday, but I can't.

19 I would like to think I could sit on
20 a jury when a man was charged with violating
21 that law, and I would like to think I could be
22 fair, but I think subconsciously, I would try
23 to explain away evidence as being something it
24 wasn't, but not consciously.

25 A " Yes. I don't know. In society's best interest,

1 that has to be the most honest answer I could
2 give. I think there might be something in me
3 that would make me less fit than another juror.

4 Q And we have to use the words "prevent you from
5 being impartial as to where the facts of the
6 case are concerned."

7 A Right, because I would think they would need
8 to be with a clear-cut conviction to start with.
9 I don't know.

10 Q That is fine. You know, I think that any other
11 type of case, you would probably be an excellent
12 juror, while you are talking about anything
13 other than the possibility of the death penalty.

14 A My father, who is also an Episcopal priest,
15 sat on a jury for an attempted capital murder,
16 and it turned out it was formed for that, but
17 did not contain the same sort of ultimateness
18 as this. I am not sure how he would have responded
19 either.

20 Q Do you feel -- and I know this is sort of asking
21 you to predict the future again -- and that is
22 where you and I are having some problems with
23 my questions, but do you feel that no matter
24 what the facts are then -- and I am sure you

25 * could answer these outside the system of being

1 in the jury box --

2 A Very much.

3 Q -- knowing the ramifications of your answers.

4 Assuming you are on a jury and had already
5 found someone guilty of capital murder, had
6 already locked him into either life or death --

7 A That's right.

8 Q -- if the evidence were to show that the answer
9 to Question 1 should be yes and you have answered
10 that question, let's say, and you know one more
11 yes answer and you would be participating in the
12 death penalty, can you ever envision a situation
13 where you could go on to Question 2 and answer
14 it yes, regardless of the evidence, knowing if
15 you were to answer it yes, the judge would
16 assess the death penalty, or would you more
17 than likely -- I don't think you would answer
18 it no?

19 A The judge, if I answered it yes also wouldn't
20 have the choice except the death penalty? He
21 has to?

22 Q If it's yes, yes, he has to, even if he disagrees
23 with your verdict.

24 A Okay.

25 Q * Can you ever envision your answering both of

1 those questions yes, knowing the judge would
2 assess the death penalty?

3 And what that basically gets at is,
4 again, if you say you could, then you will be
5 putting yourself to be in a position to be on
6 the jury. If you could never envision yourself
7 answering those questions yes based on the
8 evidence, you will not find yourself in that
9 situation, and, you know, there is no right or
10 wrong answer.

11 A No, I am just torn by my own feelings in this
12 towards society and my own understanding with
13 God.

14 Q I guess maybe --

15 A I have to say no.

16 Q I would think that your obligation or your feelings
17 towards the Lord would be tantamount, I guess,
18 to society's, although I am not trying to say
19 you have no social feeling, but I --

20 A No. I have a strong feeling that death is, in
21 a very profound way, the Lord's business, but
22 by the same token, the Lord is involved in our
23 society. But again, and perhaps it is a kind of
24 gutless response on my individual part, but it
25 " is the kind of thing I seem more willing to let

1 somebody else decide, and yet I live with that,
2 should I say, hypocrisy.

3 Q That is a wrong term. I think courageous would
4 be more appropriate. It would be more gutless
5 for someone to sit before us now and tell us
6 their personal feelings would not affect them
7 and that yes, they could answer those questions,
8 and yet turn around three weeks from now and
9 find themselves on the jury with eleven other
10 people and say, "I can't do it," with eleven
11 other people, "I can't do it." That would be
12 more gutless.

13 A I have a strong feeling I would be doing the law
14 enforcement system or the criminal justice system,
15 in this situation, a disservice if I said yes.

16 Q I will not go into groups and fact situations.
17 I suppose we can both sit here and imagine
18 horrible situations where the evidence might
19 show you the answers should be yes, yes, by the
20 --

21 A And I might say society should call for the
22 death penalty, but as far as my personally standing
23 up here and saying this person should be
24 sentenced to death --

25 Q Or saying, "Yes, yes," which is the same.

1 A Yes.

2 Q Mr. Elizondo may talk to you about thirty
3 school children kidnapped and he gets the ransom
4 money and kills all of them anyway. He may
5 have been to the penitentiary five times before.
6 This is not a real case; it is an imaginary
7 case.

8 He might say, "Can you see where the
9 answers to the questions should be yes in that
10 case?"

11 But I think you can see where the
12 answers should be yes, --

13 A Personally, sure.

14 Q -- but you could not answer both of those
15 questions yes?

16 A There is a distinct possibility I could not
17 be totally objective in that situation. I am
18 not saying I couldn't under any circumstances
19 say yes, but there is a good possibility I couldn't.

20 Q Again, just to clarify the record, because of
21 your feelings, it would prevent you from being
22 an impartial judge as to all the facts that
23 would be presented before you because of the
24 death penalty?

25 A I have a strong bias towards Christ's statement,

1 "Judge not lest ye be judged," and yet I know
2 that judgment needs to take place constantly,
3 and I admit the right of society to be a judge.

4 MR. BAX: Your Honor, at this time,
5 I have a challenge for cause.

6 MR. ELIZONDO: May I have a few moments?

7
8 EXAMINATION

9
10 QUESTIONS BY MR. ELIZONDO:

11 Q Father, a little while ago, you said that the
12 death penalty was society's way of preservation,
13 I believe.

14 A No, I don't remember saying that.

15 Q You said something about society's --

16 A I think that society has a right to either enroll
17 us in an army in the case of defense of this
18 country, and it's conceivable to me, I suppose,
19 that society has a right to ask for someone else's
20 life in some situations.

21 Q First, self-preservation?

22 A I would say yes, I guess society's -- uh-huh.

23 Q In other words, to make sure that this particular
24 person never does that crime again in any event?

25 A Yes.

1 Q Let me explain to you, first of all, in a
2 capital murder case or any kind of case in Texas,
3 it is divided into two parts, guilt-or-innocence,
4 and if he is found guilty, we go to the punishment
5 phase.

6 A Uh-huh.

7 Q And in the punishment phase, there are two
8 questions that need to be answered, and if you
9 believe beyond a reasonable doubt that the
10 answer to Question 1 should be yes, you should
11 answer Question 1 yes, and if you believe beyond
12 a reasonable doubt that the answer to 2 should
13 be yes, you should answer yes to Question 2.

14 A Yes, and I would hope I could do so, if I
15 believed so.

16 Q If you believed beyond a reasonable doubt?

17 A Yes.

18 Q And if you don't, you would answer the questions
19 no?

20 A Right.

21 Q Now, there are many, many fact situations. I
22 can't go into the details of this case. I can't
23 go into the details of any case, but I can give
24 you good examples.

25 * Let's assume that a person, a father,

1 buys some cyanide and gives it to his little
2 kids and puts it in Halloween candy. He goes
3 down there to the store, to the chemical store,
4 and he buys the cyanide. He goes to the insurance
5 company and he buys an insurance policy on the
6 children --

7 A I remember the case.

8 Q I am not trying to go into any particular case.
9 Anyway, he goes out to the insurance company and
10 he buys an insurance policy and makes himself
11 the beneficiary. He kills one of the children
12 and he hurts another one, but he or she lives,
13 and you go to trial on the case, and at the
14 guilt-or-innocence stage, you believe beyond a
15 reasonable doubt that the answer should be yes.

16 You come to find out later that this
17 person has attempted it before, let's say on
18 another occasion in another state, attempted to
19 kill one of his children before with cyanide,
20 only this particular time, it didn't kill them,
21 just left them crippled or whatever.

22 You find out all of this in the case.

23 Let me give you another example. Let's
24 assume there is a person going around the
25 " country, going to Canada, Michigan, Texas,

1 Houston, Galveston, Austin killing women.

2 A Okay, sir.

3 Q And let's say he goes around and kidnaps them.

4 If he kidnaps and kills them, that is capital
5 murder. If he sexually molests them or tortures
6 them and then blows their brains out with a
7 .45, that is capital murder. He confesses to
8 the crime.

9 You find out later he has done this
10 on nineteen other occasions.

11 I am not asking you -- just trying to
12 stimulate your imagination and try to show you
13 there are many cases that probably deserve the
14 death penalty.

15 A Obviously. Uh-huh.

16 Q There are many types of cases.

17 Let's assume you are a juror in a case,
18 not necessarily these cases I have been talking
19 about --

20 A Uh-huh.

21 Q -- and if you believe beyond a reasonable doubt
22 that the man is guilty of the offense, could you
23 find him guilty?

24 This is just the guilt-or-innocence
25 * stage.

1 A Yes, but it all hinges together.

2 MR. BAX: I would like to add to that
3 "knowing he's --"

4 MR. ELIZONDO: We will get to that.

5 A Yes, I know that. It is all tied together, and,
6 again, I am torn. I can tell you I hope so, but
7 I can tell you also I might be prejudiced against
8 it because I understand all of it is linked
9 together and ultimately facing this "yes, yes"
10 situation, I will say I might have a very difficult
11 time.

12 Q Okay. The question only calls for you to consider
13 whether you would consider asking the death
14 penalty if it is proven to you beyond a
15 reasonable doubt.

16 MR. BAX: I object to the statement
17 as to whether he would consider the death penalty.
18 He certainly can consider the death penalty.

19 The question is whether in a proper
20 case if he could answer those questions yes,
21 knowing it would result in a man's death.

22 MR. ELIZONDO: I would disagree.

23 Q (By Mr. Elizondo) Could you consider the death
24 penalty in a proper case in your own mind if
25 * it is proven to you beyond a reasonable doubt

1 that the answers to those two questions should
2 be yes and it is proven to your satisfaction
3 beyond a reasonable doubt, and, of course, it
4 will be --

5 A Well, I think I have almost made it clear that
6 it doesn't really hinge on the facts, even though
7 I have tried to say my problems are not
8 philosophical, not factual, and I have tried to
9 say my satisfaction and cooperation with the
10 legal systems of this country are based upon an
11 understanding that this is what we have to
12 support society and that God certainly works
13 through that, but philosophically, I believe I
14 would have serious problems with it personally.

15 Q I would hope anybody on that jury panel would
16 have serious problems with it. I would hope
17 there would be no one who would say "yes, yes,"
18 and go ahead and kill him. I would hope they
19 would think about it, have problems and think
20 about it.

21 A They would ultimately get to the question "yes,
22 yes."

23 Q It could be "no, no."

24 A It could be.

25 Q Sure. All we are asking is: If it is proven to

1 you beyond a reasonable doubt that the answer
2 to those questions should be yes, can you answer
3 them yes?

4 A Could I -- do you want a definitive answer here?

5 Q Yes.

6 A I can't give you that. I can give you a -- I
7 have -- I can say yes, I would have a definite
8 prejudice against a "yes, yes" answer. I would
9 hope that I could in some way be objective and
10 serve society, but I can't give you a definite
11 answer on that.

12 Q You have to wait and hear the evidence and at
13 that time make a decision?

14 A Yes. I don't know. This comes from several
15 feelings within me philosophically, and I don't
16 know if you want to hear them or not. They are
17 brief.

18 One is there are lots of people in our
19 society who are within our power to judge, and
20 people who judge who have no right and power to
21 judge. They do it all the time, and I think
22 there needs to be a few people, regardless of
23 what the consequences, who stand as nonjudges,
24 and I have chosen that stance in my life, "Judge
25 * not lest ye be judged," and, again, I realize

1 that -- I am fully aware of the potential
2 hypocritical nature of that, and I think being
3 aware keeps me from being hypocritical about it,
4 but being aware makes me aware of how I stand
5 in my life.

6 MR. ELIZONDO: We think he is qualified.

7
8 EXAMINATION

9
10 QUESTIONS BY MR. BAX:

11 Q Mr. Elizondo made the statement, "You would have
12 to wait and make up your mind, hear the evidence
13 to make your decision."

14 A I am afraid when push comes to shove that is
15 right, and I am afraid my bias -- I just don't
16 know if I could serve as a good, impartial
17 juror. I don't know.

18 Q And I think you have a tendency to believe right
19 now perhaps you couldn't more so than you could?

20 A It's a definition of what a good, impartial
21 juror is. If a good, impartial juror is someone
22 who could sentence someone to death, I would not
23 be a good, impartial juror. If mercy --

24 Q Remember what I said originally?

25 A Yes. That's right.

1 Q It would be just as wrong to have twelve people
2 on this jury who would come in and say, "I have
3 proof the man killed a police officer. My
4 personal beliefs are the man should die for that
5 offense. I am not going to base my decision on
6 the evidence."

7 That would be totally unfair to the
8 Defendant. We want twelve people who will not
9 bring their personal feelings into the case and
10 will tell us they would not bring their personal
11 feelings into the case.

12 A I am afraid I would, and, again, it is based on
13 a kind of deep -- I don't know -- I am sure you
14 have heard this before, and there is no need to
15 hear it again.

16 The Lord whom I follow is one who in
17 the end did not behave the way the world behaves
18 and who chose to allow himself to be killed, and
19 it is a different kind of behavior.

20 Q Do you think in your own mind if you were sitting
21 on the jury, say, as one charged with driving
22 while intoxicated versus a death penalty case,
23 do you think that your position would be
24 different in each of those cases because on the
25 one case, it would be a question of whether or

1 not he was intoxicated, and his punishment
2 would be anywhere from probation up to two
3 years and a fine?

4 A I could serve on such a case, yes.

5 Q And you wouldn't have these difficulties we
6 are talking about here today?

7 A No.

8 MR. BAX: I submit under the totality
9 of the circumstances and in response to the
10 questions, he is not qualified, and we resubmit
11 our challenge for cause at this time.

12 THE COURT: Let me understand now.
13 Would there be any case involving a situation
14 where the Prosecution was asking for the death
15 penalty where you could serve on that case and
16 return a guilty verdict, and if you thought the
17 evidence called for it, return a verdict that
18 would result in the death penalty?

19 THE JUROR: I suppose -- I tend to
20 want to say no. I tend to want to say no, and
21 by the same token, if I were in that situation,
22 and that is not a situation I would want to be
23 in, but if I had to make a decision, understanding
24 what society needs, I suppose it is within the
25 a realm of possibility I could decide, because

1 facts are facts and you have to make some kind
2 of attempt to answer them, but it is such a
3 nebulous answer. But, I have a strong feeling
4 I could not return a "yes, yes" answer. That
5 doesn't help you, I know.

6 THE COURT: Well, there are certain
7 legal things going through my mind just as
8 though -- just as the religious aspects in your
9 deep-rooted beliefs are going through your mind.

10 Let's take about a five-minute recess.

11 (At this time a recess was taken by
12 the court.)

13 THE COURT: All right. Is everybody
14 ready?

15 (At this time the State's challenge
16 is overruled.)

17 Q (By Mr. Bax) We went back, and as you can tell,
18 had a little conversation. Nobody said they
19 would say anything if I said it's close right
20 now. In my personal opinion, I don't think it
21 is close. I think you have been very honest in
22 telling us how you feel. I don't mean to be
23 picking at you or trying to pin you down, but I
24 have to do that.

25 A. If you could pin me down, you would be doing me

1 everything out of their mind and basing their
2 decision solely on the facts, and they come from
3 the witness stand.

4 A I think I am afraid I cannot be such a juror.

5 Q I think you are telling us your personal feelings
6 and religious beliefs and philosophy would
7 influence your decision as to "yes, yes" or
8 "no, no," or whatever the facts would be.

9 A I am very much deeply committed personally.
10 I choose not to choose for society. It is
11 difficult for me to decide and to say what
12 society should be. That is very difficult.

13 I am a lot of individual things and
14 deal with other people individually, and yet
15 am a priest of God. I cannot make judgments
16 for society, but make them for myself. I could
17 for myself.

18 Q Could you for us make that decision, no matter
19 what the decision was, if it was "yes, yes"?
20 Personally, could you ever live with that
21 decision?

22 A Who knows? Part of living with decisions like
23 this, you know, if something happened to me or
24 my family personally, who knows what I might
25 be -- I might be temporarily insane and do a

1 possess the feelings that you have?

2 A I think it definitely would.

3 Q And therefore, the law requires that a jury --

4 A Uh-huh.

5 Q -- we always talk in terms of a fair trial for
6 a Defendant. I am not going to downplay that
7 at all. Every Defendant has a right to a fair
8 trial.

9 There are two parties to a lawsuit,
10 and the other side is the State of Texas and
11 the family of James Harris, in this case.

12 A Sure.

13 Q That side deserves the same fair trial that the
14 Defendant does.

15 A That is the reason I am maintaining my position.

16 Q I believe I understand that one hundred percent.
17 Okay?

18 I think some of the other people and
19 maybe the record disagrees with me in that area.
20 Okay?

21 That is why I am going on with the
22 questions. Both sides have the right to a fair
23 and impartial jury --

24 A I agree.

25 Q -- a jury who is not predisposed to putting

1 lot of things, but ultimately, the process of
2 inner healing and the ability to live for the
3 rest of your life with something, that is
4 something which I leave in the hands of the
5 grace of God and that is something that is part
6 of also what is telling me I can't -- I could
7 not personally be such a judge.

8 Q Can you tell me unequivocally, if all the evidence
9 were presented and the answers to those questions
10 should be yes, you could answer them yes, or
11 are you telling us, as you did earlier, you don't
12 know what you would do in that situation until
13 you were placed in it?

14 A The latter I have to say because as a good
15 citizen, I -- you could present me case after
16 case, and I could as long as I was not personally
17 called upon to stand up and give the sentence.
18 I could say I see the point of society here,
19 but when I am called upon to be the judge, that
20 is when my ability to make a decision ceases.

21 Q And do you feel that in this situation answering
22 these questions yes, you would, in effect, be
23 the one pronouncing the sentence?

24 A Surely.

25 Q Although you would like to be able to follow

1 society's rule and the law, and if the evidence
2 required "yes" answers to those, you can't
3 tell us right now that you would answer those
4 yes?

5 A No, I can't.

6 Q And your decision, when it came down to it, if
7 you were placed in that position, the evidence
8 wouldn't make the difference as much as your
9 personal feelings would? And, I think that is
10 what you said a little bit earlier to us.

11 A If I was sitting on the jury, the battle going
12 on would be one of personal philosophy.

13 Q Not a battle with the facts in the case?

14 A No, because I might find the facts completely
15 adequate to answer "yes, yes." That would not
16 be the battle. The battle would be my own
17 personal philosophy.

18 Q And you can't tell us which would win out right
19 now?

20 A No.

21 Q And perhaps -- I think probably the likelihood
22 that your duty to your religion and to our Lord
23 would be broken, would have a very strong effect
24 on that outcome?

25 A • Surely. Yes.

1 Q And if ultimately those feelings did win out,
2 you would either refuse to answer the question
3 or answer it no to prevent the death penalty
4 from being imposed, in guaranteeing a life
5 sentence that would, in other words, take you
6 out of the sentencing portion of it?

7 A I suppose, painful as it would be for me, I would
8 have to choose not to answer somehow, because
9 I don't think I would -- I don't know I could
10 insult society, the rules of society, or flout
11 them enough to sit there and purposefully
12 answer them no, even though I think "yes" on
13 the facts.

14 Q I understand.

15 A And I think I would have to refuse to answer,
16 no matter the cost on that.

17 Q And no one could force you to answer that?

18 A No.

19 Q The judge couldn't force you to answer? You
20 could, if that was your decision, just not
21 answer the question at all?

22 A That would be the position I would be stuck in,
23 I am afraid.

24 Q And in your own words again, I guess if you will
25 just tell us whether or not you feel that you

1 could be fair and impartial to the State, where
2 the State is actively seeking the death penalty
3 in regards to judging the facts and evidence,
4 that means solely on the facts and evidence and
5 nothing else.

6 A There is a good chance I might not be fair to
7 the State, yes, and as painful as that is --
8 because I can appreciate the family of Officer
9 Harris, et cetera, and just as sick at heart
10 about that judgment that took place, however
11 it took place -- but still, I am afraid I would
12 not be fair to the State.

13 MR. BAX: We renew our challenge.

14 THE COURT: The challenge is sustained.

15 MR. ELIZONDO: Note our objection,
16 Your Honor.

17 It is a specific violation of
18 Witherspoon.

19 THE COURT: Thank you very much. We
20 appreciate your honesty.

1 MARK LOGAN MATTHEWS,
2 was called as a prospective juror and responded
3 to questions propounded as follows:
4

5 EXAMINATION
6

7 QUESTIONS BY MR. MOEN:

8 THE COURT: Come up and have this
9 chair, please, sir.

10 You may proceed.

11 MR. MOEN: Thank you, Judge.

12 Did you ask if you could smoke?

13 THE JUROR: Yes.

14 MR. MOEN: I don't know if the judge
15 heard you.

16 THE COURT: I said yes.

17 Q (By Mr. Moen) Mr. Matthews, my name is Bob
18 Moen. I am with the District Attorney's Office
19 here in town, and Dick Bax is another lawyer
20 from the District Attorney's Office, and Mr. Bax
21 and myself will be representing the District
22 Attorney's Office and the family of Officer
23 Harris in the prosecution of this case.

24 I think you are entitled to an
25 explanation as to why you have had to be down

1 penalty, whether you believe in capital
2 punishment, the death penalty, for the punishment
3 of certain crimes, or whether or not your
4 personal beliefs, moral convictions, et cetera
5 put you or place you in a position where you are
6 opposed to the death penalty and could not be
7 a member of such a jury, but before I do that,
8 let me explain once again, there are no right
9 or wrong answers.

10 Because you feel opposed to or in
11 favor of the death penalty is frankly your
12 business because we need to know how you feel.

13 You see, we live in the type of
14 country where people aren't required to serve
15 on jury panels where it would violate their
16 religious or moral beliefs, and the only way we
17 can know or reach a decision on whether or not
18 they could is if they speak up and tell us.

19 With that in mind, could you tell us
20 what your feelings or convictions are or opinions
21 concerning the death penalty? Would they allow
22 you to be a juror on a capital murder case or
23 keep you from being a juror?

24 A I believe in the death penalty.

25 Q • Pardon me, sir?

1 A I believe in the death penalty, I said.

2 Q How long have you felt that way? Pretty much

3 all your life?

4 A Pretty much all my life. I don't remember any

5 turning point that changed it.

6 Q Has that pretty much been the result of things

7 you may have read or discussions you had with

8 friends, or perhaps a combination of both?

9 A Like I said, I don't remember anything that made

10 my opinion for or against it, just something

11 I have always believed in.

12 Q Let me explain to you: In our state, not all

13 murders are punished as capital murders.

14 A Uh-huh.

15 Q Our legislature has said if a man takes someone's

16 life while breaking into someone else's home or

17 robbing someone or raping someone or burning

18 someone's property up, if he causes a death,

19 he has committed capital murder, and also if

20 you murder someone for money or murder a police

21 officer or fireman during the course of his

22 official duties or murder someone who works at

23 a penal institution, helps us keep the penal

24 institution running, that is capital murder,

25 or if a convict tries to escape and he kills

1 someone in the process of trying to escape,
2 that is capital murder as well.

3 Does that strike you as being the
4 type of cases where you feel the death penalty
5 is the proper punishment for a crime like that?

6 A Yes, sir.

7 Q The way the jury finds the death penalty is not
8 by saying, "We find this man guilty, and should
9 we give this man the life sentence or death
10 penalty."

11 Instead -- excuse me just a second.

12 Mr. Matthews, on the bottom of your
13 form, before I talk any more about that, let
14 me ask you about your personal information form
15 here.

16 You are a native Houstonian and have
17 been here all your life?

18 A Yes, sir.

19 Q Your mom and dad, what about them? Are they
20 native Houstonians or Texans?

21 A My father moved to Texas when he was young. My
22 mother came from Kansas.

23 Q Do you have any brothers or sisters?

24 A One brother and one sister.

25 Q Older or younger than your sister?

1 A Older.

2 Q What types of occupations do they do?

3 A I don't know what he does. Something like makes
4 up tests for the school system in Seattle.

5 Q I guess if you were a student, you would call
6 that a worthless occupation.

7 How about your sister?

8 A She is a teacher in Dallas.

9 Q Dallas? I guess it would be pretty fair to say
10 you have been a machinist most of your working
11 life?

12 A Pretty much.

13 Q Where did you get your machinist training at?
14 On the job?

15 A On the job.

16 Q And you have been in the Army? What period of
17 time have you been in the service?

18 A '71 and '72.

19 Q Stationed overseas and so on?

20 A Korea.

21 Q What was your highest rank while in the service?

22 A E-4.

23 Q Now, it looks like just in August of this year,
24 correct, you were the victim of a theft?

25 A Yes, sir.

1 Q Or someone in your family was?
2 A Yes, sir.
3 Q What happened there?
4 A Somebody tore my truck up and stole a spare tire
5 out of it.
6 Q Did they break inside the cab and take anything
7 from out of the cab?
8 A No. No.
9 Q It was just a spare tire they were after? Did
10 they tear up the lock?
11 A Yes.
12 Q Did they ever get it?
13 A You mean the thief get the spare tire?
14 Yes.
15 Q Got any suspects on the case?
16 A I never turned it in.
17 Q One time or another, you applied for a job in
18 law enforcement. What type of agency did you
19 try to get on?
20 A Houston Police Department.
21 Q When was that?
22 A Right after I got out of the Army. '71 or '72.
23 Q I take it from your response they wouldn't take
24 you?
25 A No.

1 Q Did they tell you why?

2 A I didn't ask why.

3 Q They gave you an application and said your
4 application was rejected?

5 But in the Army, at least, you were a
6 military policeman over in Korea?

7 A Yes, sir.

8 Q You have indicated that as far as -- is there
9 anything about your job or family or personal
10 health that affects your service as a juror?
11 If you have to go to work, would they pay you
12 at all if you have to stay a week? Does your
13 job pay you anything?

14 A They said they would pay for today. I didn't
15 ask them past that. It's a new company, and
16 the rules --

17 Q Are you governed by the machinists' union?

18 A No, sir.

19 Q You are basically a nonunion worker?

20 A Yes.

21 Q They said they would cover you for today?

22 A No.

23 Q They didn't say what they would do if you were
24 down here for a week?

25 A I don't know what they would do.

1 Q I anticipate the trial to last a week.

2 A I don't know what they would do. It's a new
3 company, and all the policies are new.

4 Q If you were down here for a week and they didn't
5 pay you -- sounds like kind of a foolish question,
6 but I need to ask it anyway. It's an obvious
7 question. I need to ask it anyway.

8 Do you think that might affect your
9 deliberations or ability to listen to the
10 evidence, knowing that basically you were out
11 of work down here getting five dollars or six
12 dollars a day as a juror?

13 A I don't see how it would affect my ability to
14 listen and think.

15 Q I wanted to check with you. I don't know if
16 your wife works outside the home or not.

17 A No, she doesn't.

18 Q And you wouldn't know what would happen as far
19 as your home life was concerned if you missed
20 a paycheck. I wanted to check with you and see.

21 What type of work was your dad in, if
22 he is not still actively employed? If he is
23 retired, and assuming he is still alive, what
24 type of occupation did he have?

25 A Salesman, home remodeling salesman.

1 Q Did your mom ever work outside the home?

2 A Principal of an elementary school.

3 Q Here in town? Which one?

4 A Here in town. I can't think of the name of it
5 now.

6 Q That's all right.

7 Okay. Let me explain to you -- excuse
8 me just a second.

9 MR. ELIZONDO: Judge, I believe we
10 have reached an agreement.

11 MR. MOEN: Judge, we have, primarily
12 because of his job, reached an agreement as far
13 as Mr. Matthews is concerned, as far as his
14 jury service, and we would be in agreement to
15 excusing him.

16 THE COURT: Does the Defense agree?

17 MR. ELIZONDO: We agree.

18 THE COURT: Mr. Matthews, thank you
19 very much.

20 MR. MOEN: I'm sorry you had to wait
21 around. Thank you for being patient with us.
22 Thank you.

23 (At this time court recessed for the
24 day.)

25