

Aldape: Trial Transcript
(9/82) (voir dire) (v.10)



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1 CAUSE NO. 359,805

2 THE STATE OF TEXAS

IN THE DISTRICT COURT

3 VS.

OF HARRIS COUNTY, TEXAS

4 RICARDO ALDAPE GUERRA

248TH JUDICIAL DISTRICT

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13 STATEMENT OF FACTS
14 VOIR DIRE EXAMINATION
15 CONTINUED
16 SEPTEMBER 15, 1982
17

18 Vol. ~~X~~

19 Whitson Sadler
20 PP. 1623-1676
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1 (A panel of six prospective jurors was
2 brought into the courtroom, after which the
3 following proceedings were had.)

4 THE COURT: Good morning. Welcome to
5 the criminal justice system.

6 My name is Henry Oncken. I am judge of
7 the 248th District Court.

8 Obviously, we are not in the courtroom.
9 We are in a conference room, and the reason for
10 that is that we are picking a capital jury, a jury
11 to try a capital case. When that occurs, it takes
12 four to six to eight weeks to try one of those
13 cases, and during that period of time, the business
14 of the court has to continue, and therefore, we
15 have to have a visiting judge to handle the normal
16 duties while we pick a jury and that judge has
17 to have a courtroom to operate out of, and that
18 leaves us to pick a jury anyplace we can find.

19 We will probably find a courtroom to go
20 into later this afternoon, but for the morning,
21 we use the conference room. I know it doesn't
22 make a good impression on citizens who come down
23 to participate in the system, but, believe me,
24 at this point, it's the best we can do.

25 The case that we are working on, the

1 Defendant is Ricardo Aldape Guerra. He is the
2 gentleman seated in the corner with the lady, and
3 he is charged with the offense of capital murder
4 alleged to have been committed on July 13th of
5 this year in which a police officer by the name
6 of James D. Harris was killed.

7 A citizen there at the scene was also
8 killed, and about an hour later when the police
9 arrested several people, there was another police
10 officer shot five times, and one of the individuals
11 they had come to take into custody was killed
12 in the shoot-out.

13 With the information I have given you --
14 that took place on the corner of Edgewood and
15 Walker streets out there in the east end -- with
16 the information I have given you, do any of you
17 know anything about this case?

18 MS. COOK: I think I heard something on
19 the news.

20 MR. SADLER: Sure.

21 THE COURT: I take it none of you have
22 formed opinions about the guilt of anyone?

23 The Defendant is represented by these
24 two lawyers, Candelario Elizondo and Mr. Joe
25 Hernandez.

1 The State will be represented, the
2 Prosecution, by Mr. Dick Bax and Mr. Bob Moen
3 who is making some coffee back there.

4 The lady seated next to Mr. Guerra is
5 Linda Hernandez. She is an interpreter. Mr.
6 Guerra speaks no English and we are providing him
7 with an interpreter to tell him what is taking
8 place in this case.

9 Now, my purpose is to acquaint you just
10 a little bit with the process we are involved in
11 and give you a little bit of information, and
12 then I am going to let the lawyers visit with you
13 about your qualifications to serve on this
14 particular case.

15 A capital case is tried just a little
16 bit differently than a normal case in that a jury
17 is selected on an individual basis.

18 Normally, if we have a murder case, we
19 bring over thirty-six to forty people and we would
20 all be in the courtroom at the same time for
21 jury selection, and it would take maybe a couple
22 of hours to pick a jury.

23 In a capital murder voir dire, we bring
24 in six people at a time and go through this
25 process and then bring the jurors in

1 individually. It takes a great deal of time,
2 sometimes six to eight weeks, just to pick a
3 jury, and so the jury will be -- I lost my train
4 of thought for a second. Excuse me.

5 I want to tell you a little bit about
6 the charge that will be given to you and some of
7 the presumptions that apply to any particular case.

8 First of all, this Defendant is presumed
9 to be innocent as he sits here today. He will
10 carry that presumption of innocence with him
11 until such time as the Prosecution brings you
12 sufficient evidence to convince you beyond a
13 reasonable doubt that he is guilty of the
14 offense with which he is charged.

15 If the State fails to do that, to
16 convince you that he is guilty, then it is your
17 duty to find him not guilty. That presumption
18 attaches to any person accused of a criminal
19 offense, regardless of the nature of it.

20 I have told you that the State has the
21 burden of proving his guilt, and no Defendant in
22 any criminal case has to prove anything. The
23 State has brought the charges, and they must
24 prove them. The Defendant in a criminal case
25 is not bound to testify. He doesn't have to

1 put on any evidence whatsoever. His lawyers
2 don't have to ask any questions of witnesses who
3 do testify, and I will tell you or tell the jury
4 in the charge, that if he does not testify that
5 is not to be taken as any circumstance of his
6 guilt. That is a right given to him. He can
7 testify or not testify.

8 I have mentioned the word charge, and
9 what that means is that at the close of all the
10 evidence, after both sides have done whatever
11 they are going to do, I will prepare a legal-size
12 document which will give you all of the law that
13 is applicable to this particular case, so if you
14 are worried about not being qualified to be a
15 juror because you don't know anything about the
16 law, don't worry about that. All I want you to
17 bring with you is your common sense. I will
18 provide you with the law with the help of the
19 attorneys and court reporter; we will draw it
20 up. I will read it to you and you will take it
21 back in the jury room to have to use as a guide-
22 line, and what I am telling you now is some of
23 the things that will be in that document.

24 The first thing a jury will hear after
25 they are selected and sworn to hear evidence is

1 the State will read the indictment. That
2 indictment is a legal-size piece of paper on
3 which words are typed. It is a charge, a legal
4 pleading, and I will tell you in my charge that
5 it is no evidence of guilt. The fact that any
6 Defendant has been arrested for, charged with,
7 and perhaps confined for an offense is absolutely
8 no evidence of his guilt. That evidence must be
9 established in a courtroom with witnesses giving
10 testimony under oath before a Defendant can be
11 found guilty.

12 That instrument is nothing more than a
13 pleading, and it's the same type of pleading that
14 -- let's take for instance a traffic ticket. You
15 get a ticket. That ticket itself is a pleading,
16 if you will, that the City of Houston or whatever
17 municipality in which you got the ticket must
18 prove. It is not evidence of any type. The same
19 principle holds true to an indictment.

20 Any criminal case is divided into two
21 portions. It is called a bifurcated trial, and
22 if you hear the lawyers use the term, what it
23 means is simply "divided into two parts."

24 The first part of any criminal trial
25 is to hear facts about an event which occurred,

1 in this case, the shooting of a police officer,
2 and the second stage of the trial is to hear
3 facts about the individual who committed that
4 offense if you find him guilty. At the first
5 stage, if the Defendant is found not guilty, there
6 is obviously no second part to the trial.

7 Everybody goes home.

8 So please bear in mind there are two
9 stages, the guilt-or-innocence stage and the
10 punishment phase. You hear facts about the event
11 in the first stage. You hear facts about the
12 individual who committed that offense in the
13 second stage.

14 Normally in a case not capital murder,
15 the jury goes back to deliberate at the
16 punishment stage and has a range of punishment
17 within which to work. In a murder case, for
18 instance, the range of punishment is not less
19 than five years nor more than ninety-nine years
20 or life, and there can be a fine attached to any
21 punishment assessed, so a juror, having found the
22 Defendant guilty of murder, goes back to
23 deliberate punishment and can assess punishment
24 anywhere within that range. It is strictly up
25 to the jury.

1 In a capital case, it is different in
2 that the jury simply answers two questions. Those
3 two questions are right there on the board. If
4 you will, take just a minute to read those, and
5 we will talk with you about them in more detail
6 later on.

7 All right. There will be evidence
8 presented on the punishment stage, and you will
9 go back, and I will submit those two questions
10 to the jury, and they will deliberate on what
11 their answers should be. A yes answer to both
12 of those questions will result in my assessing
13 the punishment of this Defendant at death. A
14 yes to one of those questions and a no to one
15 of them will result in my assessing a life
16 sentence. A no answer to both questions will
17 also result in a life sentence. Those are the
18 only two possible punishments in a capital case
19 if the jury finds the Defendant guilty of capital
20 murder, is death or life in the penitentiary.

21 I need you to be thinking at this
22 time, and until such time as you are brought in
23 to be interviewed for your qualifications, I need
24 for you to think about your feelings on capital
25 punishment, how you feel about it.

1 I want you to bear in mind when you are
2 brought in here to be interviewed that we are not
3 attempting, intending to be personal. We do not
4 intend to pry into your personal affairs and do
5 not intend to embarrass you in any way and will
6 not argue with you about your views one way or
7 another about any subject. You are entitled to
8 your views, and we respect that. We sincerely
9 want to hear how you feel about certain things.
10 The lawyers have a right to ask you questions,
11 and you have a right to your opinions. Okay?

12 I believe that that is all I have at
13 this time to discuss with you.

14 Do you have any questions of me?

15 All right. Now, it takes about an hour
16 to examine each prospective juror, and I realize
17 that the benches in the hallway are hard and I
18 apologize. I wish there was something I could do
19 about ~~that~~. Maybe later this evening if we are
20 able to find a courtroom on this floor, you can
21 sit in these chairs. They are at least not quite
22 as hard as the ones you have.

23 Ms. Watts, Ms. Darr, and Ms. Cook, I
24 know without question that we are not going to be
25 able to get to you before this afternoon, so I am

1 going to allow you if you want to, to leave the
2 courthouse and you will return about a quarter of
3 2:00. Now, you may go anywhere you would like
4 during that period of time, and please return here
5 at that time.

6 Mr. Maloy, Mr. Krezinski, and Mr.
7 Sadler, you will remain with us, and we will visit
8 with you this morning.

9 Let me say if you are selected as a
10 juror in this case today, you will not be required
11 to stay here at the courthouse during the
12 remainder of the jury selection. You will be
13 allowed to go home, to go about your normal daily
14 activities, and we will keep you posted on the
15 progress and give you some idea of when it will
16 be you will actually hear the jury case.

17 We have six jurors selected, and we
18 have been at this some two weeks now, and it will
19 probably take us another two weeks to complete.

20 The trial, I anticipate, will take about
21 a week, give or take a day or so, to try.

22 There may be some time during that
23 period, during the actual trial, that the jury
24 may have to stay downtown overnight in a hotel,
25 so I want you to be thinking about that also.

1 As you come into the jury room and you
2 are interviewed and you leave and there are other
3 jurors in the hallway, please do not discuss
4 with those other jurors what was asked of you in
5 here or in the courtroom or wherever we may be
6 when you are interviewed.

7 Once again, are there any questions?

8 All right. The three of you may remain,
9 and the other three may return at a quarter to
10 2:00.

11 Mr. Krezinski, Mr. Sadler, please
12 remain in the hallway, and we will be with you
13 as quickly as we can, and, Mr. Maloy, we will
14 visit with you first.

15 MR. SADLER: You estimate an hour?
16 That is what you estimate?

17 THE COURT: About that. Some are
18 shorter, and some a little longer.

1 ANTHONY RAY MALOY,
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: Mr. Maloy, please move to
9 the center so we can all get a good look at you.

10 Mr. Maloy, please relax and visit with
11 us. We have a very informal setting, and please
12 answer the questions as you feel and not as you
13 think somebody wants to hear.

14 Can you do that?

15 THE JUROR: Yes, sir.

16 THE COURT: Mr. Bax, you may proceed.

17 MR. BAX: Thank you, Your Honor.

18 Q (By Mr. Bax) Good morning, Mr. Maloy. I hope
19 we can talk over the coffee brewing and everything
20 else going on.

21 As the judge told you earlier, my name
22 is Dick Bax. I am with the District Attorney's
23 Office.

24 The fellow behind you making the coffee
25 is Bob Moen, also with the District Attorney's

1 Office.

2 We have asked you to come here today,
3 or you have been selected to come here today so
4 we could talk with you about capital murder
5 primarily. The judge has given you a little bit
6 about the background of the facts. I don't know
7 whether he mentioned -- let me give you a little
8 more background.

9 When the police were trying to apprehend
10 the suspects, one police officer was shot five
11 times and one suspect was shot.

12 Do you recall anything about this in the
13 paper or on TV?

14 A I might have heard about it, but I don't know.

15 Q There is nothing wrong with hearing about it or
16 not hearing about it.

17 The reason we ask is to determine if
18 someone may have formed an opinion as to someone
19 else's guilt or innocence. I take it at this time
20 you have formed no opinion as to the Defendant's
21 guilt or innocence?

22 A No, I haven't.

23 Q Usually when we select jurors in every other type
24 of case, we bring a group of people, usually
25 forty people, and we talk to the people as a

1 group, the forty people, and ask them questions
2 as a group, but since this case involves the
3 serious punishment of death, the law provides
4 that we talk to each juror individually so they
5 are not influenced, perhaps, by what other people
6 may think or sometimes people aren't as open in
7 a group, and hopefully, this situation allows
8 people to express their views more comfortably
9 and express their opinions.

10 If this Defendant is found guilty, the
11 State will be seeking the death penalty. I can
12 tell you that right up front. There is no
13 question about what our position will be in the
14 case. We have had almost fifty people come
15 through so far, and we have been able to select
16 six jurors out of the people who have come
17 through.

18 I find it very difficult to talk above
19 that coffee pot.

20 MR. MOEN: Just do the best you can.

21 MR. BAX: Do you have any problems?
22 Can you hear me way back there?

23 MS. HERNANDEZ: Yes. I can hear you.
24 Don't hurry.

25 Q (By Mr. Bax) We have had people come through

1 saying, you know, I believe with the death
2 penalty; I believe it is a proper punishment in
3 certain cases, and I could with my beliefs return
4 a verdict which would call for the death penalty.

5 We have had other people come through
6 and say, "You know, because of my beliefs or my
7 religious upbringing, I could never personally
8 participate in a trial which would perhaps result
9 in the taking of another person's life, because
10 personally, I just don't believe that we, as a
11 society, have that right," and there is nothing
12 wrong with feeling that way.

13 No one in this room today is going to
14 try to change any juror's opinion as to how they
15 believe. That is your absolute right as to how
16 you believe, and no one here is going to think
17 that any person who comes before us is any less
18 a citizen or there's anything wrong because of
19 their beliefs.

20 The only thing we really need to know
21 is how people feel. You see, the only person who
22 puts himself as a juror in a capital case is the
23 juror himself by the way he answers the questions.
24 We have no way of telling how a juror feels
25 except by the way they tell us, and if a person

1 comes before us and says, "I don't care what the
2 facts are. I can't ever envision myself voting
3 for the death penalty," that is fine. They may be
4 fine jurors in another case, but because of
5 personal beliefs, they would not make a good juror
6 in this.

7 Let me ask you if you can tell us in
8 twenty-five words or less how you feel about the
9 death penalty, if you agree with it or disagree
10 with it?

11 A. Really, to take a life is kind of a hard thing to
12 do anyway, but I wonder what would it solve by
13 taking another person's life even after he took
14 a life, because you are surely not going to bring
15 back the life he took. I don't know whether they
16 are cutting down in the prison or what.

17 Q. I take it you don't see any real value in the
18 death penalty, and there is nothing wrong with
19 that. A lot of people have said that same thing
20 to us. What do you accomplish? Somebody's been
21 killed. It is not going to bring that person
22 back.

23 Perhaps if you could bring that person
24 back by taking a person's life, maybe you could
25 see some value in it, but is it correct to say

1 you do not believe there is value in the death
2 penalty?

3 A Hum. Well, it is a hard question you ask. To
4 say yes, I could do it, but it depends on whether
5 it would help the next person, you know. If it
6 solved a lot of people that are killing by taking
7 his life, it would help.

8 Q Do you think by giving the death penalty to one
9 man, it may stop another person?

10 A That I what I wondered, would it help.

11 Q What is your feeling in that regard? Do you think
12 it really does, or if you were to take one person's
13 life, that would not affect another person?

14 A I doubt it, because crime is steadily going up,
15 so I guess really, you just stop that person
16 himself, instead of helping somebody else.

17 Q I think you are --

18 A I know I am talking around --

19 Q You didn't have a whole lot of notice. You are
20 the first person we are talking to this morning.
21 Those people are more fortunate in that they can
22 sit out for an hour or so and think about it, and
23 we've got you on the hot seat to think about it
24 now, and you have to think about it now.

25 Really, from what I understand you are

1 saying, it is basically that you don't agree
2 with the death penalty because there is no real
3 value to it? It doesn't stop other people from
4 doing it and doesn't bring back people killed in
5 the first place?

6 A I was thinking about something -- I was just, you
7 know, putting myself in his position, and to know
8 that my life was up for that, you know, I was
9 wondering, too, and I don't know the reason that
10 he took a person's life or what, but for him, it
11 might have been self-defense or whatever. I
12 don't know.

13 Q Uh-huh.

14 A But it is a hard thing to say.

15 Q Do you think there is any situation, any fact
16 situation where you could be a juror and return
17 a verdict which would call for the death penalty,
18 or would you, if there was an option in a case of
19 returning a verdict of life imprisonment, would
20 you automatically go for the life imprisonment
21 because, number one, if there was a mistake made,
22 that could be rectified and he could be let out
23 of prison, and, number two, because you feel the
24 death penalty doesn't serve a purpose?

25 A Sure, if it came to that, I think I could decide.

1 Q Do you think you could decide to go with the
2 life sentence? That is a pretty severe
3 punishment in itself.

4 A Yes, it is, but it is more -- as you know, just
5 like you do something wrong and you get a
6 spanking for it, you probably would think about
7 it more than do it next time, but if his life is
8 taken and he doesn't have anything to think
9 about it when it came down --

10 Q So if you were in the situation of making a
11 choice of giving the life sentence or the death
12 sentence, okay, would you automatically go for
13 the life sentence rather than the death penalty
14 even though the facts would call for the death
15 penalty just because of your personal beliefs?

16 A Yes, depending on hearing the case. I guess that
17 would help me in understanding about death.

18 Q Let me go over with you how the death penalty
19 comes about. Okay? First of all, you have to
20 have a person convicted of capital murder.

21 Capital murder can either be the killing
22 of a police officer, killing of a fireman, if
23 you kill someone during a robbery or during a
24 burglary, break into someone else's home and kill
25 someone, during a rape, a kidnapping, or arson,

1 if you kill someone for money, hire someone to
2 kill or kill someone for somebody, or if you are
3 in prison and kill an employee in the prison or
4 if you kill someone during your escape from a
5 penal institution, those are the only types of
6 cases, murder plus one of those factors are the
7 only types of cases where the person has the
8 possibility of receiving the death penalty. Okay?

9 First of all, let me take you through
10 and ask, could you find a person guilty if you
11 believed beyond a reasonable doubt that they
12 would commit capital murder, could you find them
13 guilty of capital murder knowing if you did, they
14 could only receive life or death as a
15 punishment?

16 A. Uh-huh.

17 Q After a person is found guilty, these two
18 questions are submitted to the jury. Depending
19 on the way these two questions are answered by the
20 jury, the judge will assess either life or death.
21 If all twelve jurors answer Question 1 yes and
22 all twelve jurors answer Question No. 2 yes, then
23 the judge must, by law -- he's got no choice --
24 he must sentence the Defendant to death. Okay?

25 A. Uh-huh.

1 Q If either Question 1 or Question 2 is answered
2 no, or they are both answered no, then the judge
3 must assess life imprisonment, so, you see, the
4 jury doesn't go back after finding someone guilty
5 and say, "Should we give him the death penalty
6 or a life sentence," but by the way they answer
7 these questions, they are telling him what to do.

8 A It will be up to the jury?

9 Q Really up to the jury, although the judge is the
10 bad guy in that respect of telling the Defendant
11 what his punishment is, but by the way the jury
12 answers, he is required to do one of two things.
13 If you answered both of these questions yes, and
14 he wanted to give the man a life sentence, he
15 couldn't do it. If you answered one of them no
16 and he wanted the death sentence, he couldn't
17 change it. He has to give him life.

18 It is up to the jury basically.

19 Could you answer both of these questions
20 yes if you believed they should be yes beyond a
21 reasonable doubt, knowing that the man would
22 receive the death penalty, and when I ask you
23 that, knowing what your feelings are, you know,
24 that the death penalty isn't going to solve
25 anything, would you still be able to answer them

1 yes, or would you answer one of them no which
2 would mean the judge would still give him a life
3 sentence which is still a very severe punishment?

4 A. Sure. I believe I could answer it. You say if
5 that were to come up, either one of the two?
6 Could I answer it?

7 Q Uh-huh.

8 A. I believe so.

9 Q Let's say if we put on evidence and you were asked,
10 "Was the conduct of the Defendant that caused the
11 death of the deceased deliberate and was it done
12 with the reasonable expectation someone would die,"
13 that is basically what that question says, if
14 you believed beyond a reasonable doubt, would you
15 answer that question yes if you believed that
16 should be the answer?

17 A. Uh-huh.

18 Q Knowing if you answered it yes, it is one step
19 closer to the death penalty? Do you see what
20 I mean?

21 A. Okay. That is saying that if he deliberately
22 just took his life?

23 Q Uh-huh.

24 A. Wasn't thinking about nothing else but taking
25 his life?

1 Q Right.

2 A Yes, I believe so.

3 Q Okay.

4 A Knowing that it was, you know, what is it?

5 Premeditation?

6 Q We are not going to tell you what the word

7 deliberately means. To me, it means on purpose.

8 A Right.

9 Q That is what you want to happen. Okay?

10 If you find he did it deliberately and

11 it was reasonable to expect that someone would

12 die, could you answer that question yes knowing

13 that he is that far away from receiving the

14 death penalty?

15 A Uh-huh.

16 Q Or would you say to yourself, "You know, I don't

17 believe in the death penalty. To me, the death

18 penalty serves no purpose so I will answer this

19 no which will mean not that he goes home, but

20 that he will receive a life sentence"?

21 A Yes, you can answer it two ways.

22 Q Yes.

23 A I know it sounds stupid.

24 Q No, it doesn't. What I am trying -- I guess what

25 I am trying to get at is something like this.

1 I don't believe in the Sunday Blue Laws, but it
2 says there are certain things you can't sell on
3 Sundays.

4 A Uh-huh.

5 Q You can buy those items Monday through Saturday.
6 You can go to the store and buy, you know, some
7 kitchen appliances or something like that, but if
8 it's Sunday, you can't buy those. I think that is
9 a ridiculous law. I think that law serves no
10 purpose whatsoever. Maybe it did at some other
11 point in time, but I can't agree with that.

12 Now, I could probably say, if I were
13 asked to be on a jury, I would like to think I am
14 a fair person, that I am not biased and prejudiced,
15 and if the question were asked of me, I could be
16 fair, all right, but deep down inside, knowing I
17 am against the Blue Laws and if someone were on
18 trial violating the law, I wouldn't be as fair
19 a juror as someone who agreed with that law.

20 Do you see what I mean?

21 A Uh-huh.

22 Q And deep down, to say I could be honest with you
23 and me, I will try to do my best, but I am going
24 to be prejudiced because I disagree with the
25 Blue Laws.

1 That is what I am getting at with my
2 questions with you. All right?

3 A Uh-huh.

4 Q You have told me you don't really believe in the
5 death penalty because it serves no purpose. That
6 is fine. That makes you no less a citizen.

7 Do you think because of your feelings
8 you might be biased because of these feelings,
9 although it would be harder to prove it to you
10 than someone who, say, didn't have those types
11 of feelings that you have?

12 A Yes, the way you put it, I can understand it now,
13 too.

14 That is a big --

15 Q You see what I mean? Do you think your feelings
16 about the death penalty would affect the way
17 you answer these questions?

18 A In a way, yes.

19 Q Sure. Okay. I mean, do you think you would be
20 biased in answering these questions knowing you
21 really wouldn't want to give the death penalty,
22 but perhaps your feelings would affect you the
23 way you listen to the evidence and apply the
24 evidence to these two questions?

25 A Uh-huh. Yes.

1 Q Let me ask you, do you think that you, with your
2 personal feelings as they are, could participate
3 in a death penalty case, or do you think that
4 perhaps you would be better off in some other
5 type of trial and not sit on a death penalty case?
6 A I don't know. Maybe I could help by being in
7 there.
8 Q How do you think you could help?
9 A Well, by not being there, I don't have any power
10 over what goes on.
11 Q Uh-huh.
12 A But if I am there and I believe in one thing, I
13 might could have some kind of help in it.
14 Q Do you think that -- that if you were on the
15 jury and you believed like you are saying, that
16 you are against the death penalty, that you might
17 be able to persuade some of the other jurors to
18 go along with voting against the death penalty?
19 A Yes.
20 Q Even though the evidence may be for the death
21 penalty?
22 A Uh-huh.
23 Q So you'd let your personal feelings more or less,
24 the fact that you are against the death penalty,
25 you would try to use that to persuade other

1 jurors that they should give the life sentence?

2 That is fine. I think I would do the
3 same thing on a jury with the Blue Laws. I would
4 say, "This is a stupid law. We shouldn't find
5 this fellow guilty."

6 That would be in violation of my oath.

7 Do you see what I mean?

8 A. Right.

9 Q I think that is basically what you are telling
10 me, is that your personal feelings about being
11 against the death penalty would cause you to try
12 to influence those other people towards your
13 viewpoint that you shouldn't assess the death
14 penalty because you don't believe in it.

15 Is that your statement?

16 A. Yes.

17 Q When you say you could help, do you think you
18 could go back and probably answer one of these
19 questions no to avoid the death penalty?

20 A. Yes. Uh-huh.

21 Q Would it be fair to say -- we are talking about
22 life or death as far as punishment is concerned,
23 either life or death if he is found guilty.

24 If you had to choose one or the other,
25 would you have a preference? I think your

1 preference would probably be life imprisonment
2 over death.

3 A Right.

4 Q And would that preference that you have cause you
5 to answer one of those questions no which would
6 mean the life sentence regardless of what the
7 evidence was?

8 A By hearing the evidence, I guess I would be able
9 to decide whether or not life or death.

10 Q Yes, but do you think that -- you know, on the
11 one hand, you have told me that your personal
12 feelings would allow you to be back there and
13 persuade the other people to go for a life
14 sentence.

15 A Yes.

16 Q Do you think you could look at that evidence
17 fairly?

18 A Yes.

19 Q Let me give you another example. Let's say you
20 were on trial. Okay?

21 A Uh-huh.

22 Q And I am a juror out there, and your attorney is
23 up there questioning everybody and you are saying,
24 "Do you have anything you want to mention to me
25 about whether or not they might not be a fair

1 juror," and I raised my hand and said, "I don't
2 like people who wear tan-colored jackets. I
3 think they all lie, you know, and I couldn't
4 trust anything they said," and your attorney
5 said, "Do you think you can put that out of your
6 mind? You see, my client has a tan-colored
7 jacket on." And I said, "Yes, I think I could
8 put that out of my mind," would you want me for
9 being a juror?

10 A Not after saying that.

11 Q You see where I am having a problem? You are
12 telling me on one hand you don't believe in the
13 death penalty and you could answer these questions,
14 and I believe you would try to do that fairly the
15 way I would try to, but you see my dilemma and
16 where I am having a problem?

17 A Yes, I think so.

18 Q Knowing that, do you think you could -- the
19 Defendant has a right to a fair trial. Okay?
20 But, so do we. It doesn't mean you are bad or
21 less of a citizen because you may have a bias
22 against the death penalty. A lot of people feel
23 that way, but you are the only one who can tell
24 me deep down inside your heart. You are going
25 to have to wake up the next day after this is

1 over and look in the mirror and decide whether
2 you have done the right thing without violating
3 your conscience.

4 Do you think you can really say you can
5 give us a fair trial, and I don't mean that in a
6 bad way and I am not trying to say you are unfair.
7 I don't mean it in that regard.

8 But can you see how your personal
9 feelings affect how I feel? Maybe I could never
10 convince you because of your feelings. Do you
11 see what I mean?

12 A Right.

13 Q But you are the only one who can tell me, you
14 know, whether you think you could really be a
15 fair and impartial juror knowing what your
16 feelings are, and nobody is going to think you are
17 bad if you come out and say, "Mr. Bax, I tell you
18 what. I disagree with the death penalty, and I
19 don't think I could be fair in determining
20 whether a person should receive it or not receive
21 it." Maybe you would be a fine juror on another
22 case in a robbery or murder case or rape case
23 where the death penalty doesn't come into play.

24 What do you think?

25 A You hit it on the head really. I don't think

1 I could really give a person death.

2 Q Okay. It's so hard, and these attorneys will ask
3 you a couple of questions in a couple of minutes.
4 They are going to say that you are going to take
5 an oath to render a true verdict according to the
6 evidence. Okay?

7 A Uh-huh.

8 Q You don't have to take that oath if it would
9 violate your personal feelings or make you feel
10 like, "I don't know if I could follow that oath
11 when it comes down to the nitty-gritty." Okay?

12 "I don't know if I could ever answer
13 those questions yes because of my personal
14 feelings."

15 A Uh-huh.

16 Q It is better that you tell us now than two weeks
17 from now, and it is the last day and there are
18 eleven other jurors saying the answers should be
19 yes, and you are saying, "I agree the answers
20 should be yes, but if I answer yes, I will be
21 participating --

22 A Participating.

23 Q " -- in this guy's death."

24 Do you see the conflict? You will have
25 your oath versus what your personal feelings are,

1 and I think most people would put their personal
2 feelings above an oath when you are talking of
3 taking a life. Do you see what I mean?

4 A Yes.

5 Q You might answer it -- not answer no, but refuse
6 to answer it. Do you see what I mean?

7 A Yes.

8 Q Knowing what your feelings are, do you think you
9 can ever participate in a death penalty case and
10 really be fair to both sides?

11 A Not really.

12 Q Okay. Do you think that you would either not
13 answer -- if you believed -- let's say you took
14 the oath and you believed the answers should be
15 yes. Do you think you would probably not answer
16 one of the questions to avoid the death penalty,
17 no matter what the facts in the case would be?

18 A Yes. I hope I am not puzzling you.

19 MR. MOEN: I think we can agree with
20 Mr. Maloy.

21 THE COURT: Both sides agree to Mr.
22 Maloy?

23 MR. BAX: We will agree.

24 THE COURT: Mr. Elizondo and Mr.
25 Hernandez?

1 MR. ELIZONDO: We agree.

2 MR. HERNANDEZ: We do.

3 THE COURT: Thank you very much. We
4 appreciate your time.

5
6
7
8 CHARLES EDWARD KREZINSKI,
9 was called as a prospective juror and responded to
10 questions propounded as follows:

11
12 EXAMINATION

13
14 QUESTIONS BY MR. MOEN:

15 THE COURT: Mr. Krezinski, can we get
16 you a cup of coffee before we start?

17 Just relax. Obviously, we are informal
18 here. I am not wearing a robe, not even a coat,
19 so just try to relax and visit with us. The
20 lawyers are going to ask you some questions.

21 Q (By Mr. Moen) Is Krezinski the way you pronounce
22 your last name?

23 A Yes.

24 Q I am Bob Moen from the District Attorney's Office.
25 The fellow who got up and is getting a cup of

1 coffee is Dick Bax, also with the District
2 Attorney's Office, and Mr. Bax and myself will
3 be representing the District Attorney's Office
4 in the prosecution of this case. It is styled
5 the State of Texas versus J. D. Harris (sic), and
6 we will be representing J. D. Harris -- excuse me.
7 It is the State of Texas versus Ricardo Guerra.
8 J. D. Harris was the victim. We will be
9 representing J. D. Harris in the prosecution of
10 this case, as well as the District Attorney's
11 Office. That is what our job is, and that is what
12 we are doing.

13 Mr. Guerra is charged with killing
14 J. D. Harris on July 13th, 1982, and as the judge
15 mentioned when he gave you some of the facts
16 generally speaking, because no one is allowed to
17 go into the specifics at this time.

18 Those facts will help you make your
19 decision as you hear them based on the evidence
20 on the witness stand.

21 But we can talk in general about the
22 facts to see if the jurors remember either reading
23 or hearing anything about the case whatsoever
24 in the newspaper or television or radio, and
25 does the general description of the facts that

1 the judge gave you ring a bell in your mind about
2 anything you may have read or heard about the
3 case?

4 A Possibly on television. I heard something. I
5 don't know if it's this particular one or not.

6 Q There is absolutely nothing wrong with having
7 read or heard anything about a case or seeing
8 something on TV. The only reason we ask jurors
9 about it at all is to see if jurors have formed
10 opinions or conclusions about the guilt or
11 innocence of the man on trial based on what they
12 have read or heard, and have you formed any
13 opinion in your mind based on what you have read
14 or heard on television?

15 A No.

16 Q Let me explain in a little more detail what the
17 judge touched on briefly when you were in here.

18 This portion of the trial is very
19 informal. In a capital murder case, the law
20 provides we have to interview jurors individually,
21 just like Mr. Bax and myself are doing, and we
22 have been doing this two and a half weeks now,
23 and it will probably be another week or so before
24 we get the twelve members that will comprise our
25 jury panel.

1 The reason we go so slow, one of the
2 reasons, and the reason we talk to jurors
3 individually is because it is a very serious
4 case, a life-or-death case.

5 For a person convicted of a capital
6 murder, a man can receive only one of two
7 possible punishments, life imprisonment or the
8 death sentence.

9 I think you realize we live in the type
10 of country where no person is required to be on a
11 jury panel where their service would violate their
12 religious convictions, conscientious, or moral
13 beliefs, whatever they may be.

14 One of the things I am going to ask you
15 is your feelings concerning the death penalty and
16 whether or not your feelings would allow you to
17 serve on a jury and participate in returning a
18 verdict you know would result in someone getting
19 the death penalty. But before that, I want you
20 to know to an absolute certainty in your mind
21 there are no right or wrong answers to any of the
22 questions anyone asks you this morning. What we
23 ask the jurors to do, more than anything else, is
24 to be honest and frank in their responses, to give
25 us the response that most accurately reflects how

1 the juror feels in his heart and mind.

2 If you have a disagreement, please
3 tell us now. The only way that we can excuse
4 a juror is if the juror is frank enough to tell
5 us that his or her jury service would violate
6 his or her personal, religious, or conscientious
7 beliefs.

8 We can't guess on that, can't read
9 someone else's mind, so we ask people for the
10 feedback and we tell the jurors. "Don't place
11 yourself in the position of being a juror on such
12 a case such as this, on any case, but particularly
13 a capital murder case, by answering the way you
14 think a lawyer wants to hear you answer or by
15 being afraid to say, "I have a disagreement."
16 Don't put yourself as a juror on a case where you
17 have disagreements. The only way we know that is
18 by what the juror tells us.

19 Knowing that there are no right or
20 wrong answers, can you tell us what your opinions
21 or beliefs are concerning capital punishment,
22 whether or not your feelings and beliefs would
23 allow you to participate in such a trial, or would
24 they not allow you to participate in such a case?

25 A I don't think my religion or anything like that

1 affects me as far as my beliefs, and I think
2 justice should be done regardless of what it is.
3 I don't disagree with the death penalty.

4 Q Well, good. I certainly hope you didn't think
5 I was trying to talk you into disagreeing, but
6 so often people say, "Well --" When they come
7 in and sit in a chair in a room filled with total
8 strangers, a lot of times, they hesitate to tell
9 us what their true feelings are.

10 The only thing I wanted to assure you
11 of is there are no right or wrong answers.

12 I want to ask you about your background,
13 but I will ask you first of all about your feelings
14 about the death penalty. Is that pretty much that
15 in some cases, it is a proper punishment for
16 persons who commit certain crimes?

17 A In some cases.

18 Q Of course, that is the law in our state. Not in
19 all cases of murder does the death penalty apply.
20 Our legislature has said the death penalty will
21 apply in a limited type of circumstance, ten
22 different types of circumstances in which the
23 death penalty can apply. For instance, to commit
24 a murder while breaking into someone else's home,
25 burglarizing, whoever it might be, and they wake

1 up and hear a noise and the burglar shoots one
2 of them to death. That is capital murder.

3 For the rapist to kill his rape victim,
4 that is capital murder; kidnapper to kill his
5 kidnap victim; the robber to kill his robbery
6 victim; and finally, for an arsonist to set a
7 fire and as a result of that fire, death results.

8 Those are examples of capital murder.
9 Also, the legislature has said to kill someone
10 for money or hire someone to do the killing,
11 that is capital murder, murder for hire.

12 To murder a police officer or fireman
13 in the course of their official duties, that is
14 capital murder.

15 For a convict to kill anyone while he
16 is escaping from a penal institution, that is
17 capital murder, and finally, for a convict to
18 kill anyone employed in the running of the
19 penal institution, whether that be a guard,
20 librarian, medical staff personnel, someone working
21 in the kitchen, someone taking care of the grounds,
22 someone taking care of the running of the penal
23 institution, that is capital murder, too, and I
24 think you are probably familiar with hearing of
25 the death of Warden Pack, the gentleman who

1 died in a case like that.

2 That is a capital murder case. The
3 warden was provided in the penal institution for
4 the State of Texas. That is capital murder,
5 regardless of what has happened in the case.

6 All other murder cases -- now, it
7 doesn't make any difference how often or how
8 awful, such as the Hinley killings, whether he
9 killed twenty-seven boys, those are murder cases,
10 not capital murder cases. Capital murder doesn't
11 have anything to do with how the people meet
12 their deaths. The murder has to take place
13 during the commission of one of those felonies
14 or during -- or to the particular individual I
15 have mentioned or to the other individuals I have
16 talked about.

17 Do you follow me there?

18 THE COURT: Excuse me just a moment.

19 (The voir dire was interrupted by a
20 telephone call.)

21 MR. MOEN: Okay. That is my headache,
22 not the judge's.

23 Q (By Mr. Moen) So, it is just those instances
24 we have mentioned that are capital murder. All
25 other murder cases have a different range of

1 punishment for taking another person's life.

2 The range of that punishment is five to ninety-
3 nine years or life. Murders fall into this
4 punishment. The capital murders fall into the
5 other type of punishment.

6 Do those types of cases fall into what
7 you think of as capital punishment, a man being
8 killed by a murderer-robber, murder-rapes?

9 A. Death penalty?

10 Q. Do those strike you as the kinds of cases you have
11 in your mind?

12 A. Yes. I can see this as being the result, but not
13 always the answer, depending on --

14 Q. No. I am not asking you what your answers would
15 be. I am not trying to stake you out. That is
16 not what my intentions are. I am trying to ask
17 you whether you think those are the cases where
18 the death penalty is the best possible punishment,
19 because a man can receive a life sentence on those
20 cases. The way the sentences are assessed is a
21 different proceeding altogether.

22 I wanted to see if those sounded like
23 the fair and right cases for which the death
24 penalty ought to be a possible punishment?

25 A. Yes.

1 Q You see, the way a person receives a life
2 sentence or the death penalty when they are found
3 guilty of capital murder is by their answers to
4 questions that appear to my right.

5 You see, at the first stage of the
6 trial, all they do is hear evidence about whether
7 a man is guilty or not guilty of the offense.
8 Both sides can present evidence if they choose
9 to at that portion of the trial, and the judge
10 will give you a legal-size paper like this, and
11 he will put the legal definitions down and you
12 will apply the facts as you heard them to the
13 legal definitions as to the facts of the case
14 and you will come back with an answer of guilty
15 or not guilty of capital murder.

16 If the jury finds someone guilty of
17 capital murder, they come in the courtroom again
18 and we proceed with the trial and the jury can
19 hear additional evidence at that time. There
20 doesn't have to be additional evidence. There
21 can be, but there doesn't have to be. Once
22 again, the jury can hear additional evidence to
23 help them answer those questions, and after the
24 entire trial is over, the jury goes back to
25 deliberate on what the answers ought to be to

1 those questions.

2 No one tries to hide anything from
3 you. You know in advance, and I want to tell
4 you right now if both questions are answered
5 yes, the man receives the death penalty. If
6 either question, it doesn't matter which one, one
7 no answer, and the man receives a life sentence
8 rather than the death penalty.

9 Do you understand me on that?

10 A. Yes.

11 Q. All twelve jurors have to agree before the
12 answers are yes which would result in the death
13 penalty. Only ten have to agree before a question
14 can be answered no.

15 You see, there is a slight distinction.
16 To answer a question no, ten jurors; to answer a
17 question yes, all twelve have to agree.

18 Let me ask you if you could to take a
19 few seconds and go over those, read those
20 questions to yourself, and I want to go over
21 some of the words that appear.

22 Okay. That first question would be
23 asking you, after you found the man guilty of
24 capital murder, to make a determination about the
25 conduct of the man, and of course, you answer that

1 question basically on what you have heard about
2 the offense; what part did the man play in the
3 case? Were there Codefendants involved? Was only
4 one man the triggerman, or what part that person
5 actually played in murdering the deceased? What
6 were the parts played by everyone?

7 And you go back and answer that question.
8 Was that conduct displayed by the man committing
9 capital murder, was that conduct done with the
10 reasonable expectation that the deceased would
11 die?

12 Let me give you an example as to how
13 that question applies to a hypothetical case.
14 Imagine a man goes into a convenience store and
15 goes in with a pistol and demands from the cashier
16 that she turn the money over to him and she is
17 terribly frightened like anyone would be under
18 the circumstances. He looks around and sees
19 there is no one in the store and he is an ex-
20 convict and doesn't want to go back to the
21 penitentiary for a long time. He fires the
22 pistol at her and she dies. Unbeknownst to him,
23 she steps on an alarm and calls the police and
24 they are waiting outside the store. The man
25 has committed capital murder. He has taken a

1 life during a robbery.

2 If he is taken before a jury, they
3 would have to decide: Was that conduct on that
4 man's part that caused the death of the deceased,
5 was that deliberate conduct and was that done
6 with the reasonable expectation she would die?
7 In other words, when you take a loaded pistol and
8 point it at a human being and point it at their
9 chest, is that deliberate conduct and done with
10 the reasonable expectation -- when you take a
11 loaded pistol and fire it into someone else's
12 head, would that person die? Is that done with
13 the reasonable expectation that the person would
14 die?

15 You see, in that hypothetical, you make
16 a decision as to whether the conduct was
17 deliberate and done with the reasonable expectation
18 that the death of the deceased would result, and
19 then you pass to the second question and decide
20 in the second question what type of person was this
21 on trial.

22 You can use all the evidence to make
23 that decision, but then you make a decision about
24 the type of person on trial. Is the man on trial
25 the type of person that would --

1 Excuse me just a second.

2 Then you answer the second question and
3 you make a determination about the kind of person
4 on trial. Is the man the type of person who would
5 probably commit criminal acts of violence that
6 would constitute a continuing threat to society?

7 There are two words and phrases I want
8 to point out to you in there. The first word is
9 probability. You will have to make a determination
10 from the evidence if there is a probability that
11 the man on trial is the type of person, and you
12 will have to use your own definition for that
13 word. The legislature drew these questions up
14 and said, "This is the decision on how capital
15 murder will work. The judge will make a decision
16 based on the answers to these questions."

17 That is fine, but they didn't give us
18 definitions for the jurors. You will have to use
19 your own definitions for the word probability.

20 I want to point out one thing, and that
21 is the decision you will be making there, there is
22 a probability, you will notice it is not a
23 certainty, and I think you will know as well as I
24 do why it is not a certainty is because the only
25 person in the world who can predict something to

1 a certainty is God himself, and you are not to be
2 put in the position of playing God.

3 What you are required to do is make a
4 determination as to whether there is a
5 probability, not a certainty.

6 That phrase "criminal acts of
7 violence": You would have to believe there is a
8 probability the man would have to engage in that
9 type of conduct. You don't have to prove or
10 believe the man would commit any specific acts
11 of violence, capital murders, robberies, assaults,
12 rapes, any particular acts. It is only is there
13 a probability he would engage in that type of
14 conduct, and would that conduct constitute a
15 continuing threat to society.

16 That brings me to the last word,
17 "society." You will have to bring me your
18 definitions on that word. We don't have a
19 definition from the legislature either. I think
20 you realize from your common sense, like everyone,
21 once a man is found guilty of capital murder, the
22 society or portion of society the man will find
23 himself in is the prison society.

24 Do you follow that?

25 Because he is not going to come live

1 next to you and not going to come live next to
2 me. That is the portion of society we live in.
3 He is going to live in the prison society. That
4 is the portion of society I would suggest is going
5 to be the most unfavorable part of our society,
6 or portion of our society where all the people
7 who can't get along wind up in the penitentiary
8 at one time, it seems like, who can't get along.

9 That is the portion of society he will
10 find himself in. The only thing I want to bring
11 out, to find out whether you agree or disagree
12 with me on -- I am not trying to talk you into
13 it -- but do you feel there are persons in the
14 prison system who need protection from other
15 prisoners in the society? Do you think there are
16 convicts who, although they are in the
17 penitentiary, have the right to serve out their
18 time in a reasonably safe manner as well as
19 employees in the system who have the right to go
20 and work in that system protected?

21 A. I would agree.

22 Q. Now that we have had a chance to go over Questions
23 1 and 2, do you have questions of me about
24 Questions 1 and 2 that I can clear up for you at
25 this time?

1 A No.

2 Q Do you feel like Question No. 1 and Question No.
3 2 are the type of questions you would be able to
4 answer depending upon the evidence you would
5 hear? I am not asking you how you would answer
6 them. That is based on the evidence. But do you
7 feel like the type of questions and the way the
8 questions are worded, that is the type of questions
9 you could answer depending upon the evidence you
10 would hear?

11 A Yes, sir.

12 Q Okay. The law says -- and this is the last thing
13 I want to point out in regards to Questions 1 and
14 2 -- at the punishment phase of the trial, you can
15 hear additional evidence. You don't have to.
16 There is no requirement you hear additional
17 evidence before you answer Questions 1 and 2 yes.
18 You could answer in a proper case both of those
19 questions yes based on the facts of the trial
20 itself. That can be enough for the jury to answer
21 both questions yes. The jury doesn't have to
22 hear additional evidence at the punishment phase.

23 The trial itself, in a proper case, can
24 have enough evidence for the jury.

25 Do you understand that?

1 A I understand that.

2 Q What does your dad do? I take it he is an
3 employer?

4 A Semiretired.

5 Q What is his occupation?

6 A Building contractor, self-employed.

7 Q How about your mom? Has she ever worked outside
8 the home or is she a housewife?

9 A She works for Nabisco here.

10 Q For what?

11 A Nabisco here in Houston.

12 Q That is the plant over off of Almeda, isn't it?

13 A Right.

14 Q Behind the park?

15 A Off Almeda. I don't know where the park is
16 situated.

17 Q Do you have any brothers and sisters in your
18 family?

19 A Yes.

20 Q How many brothers and sisters do you have?

21 A Three sisters and three brothers.

22 Q Okay. Are there any of your brothers and sisters
23 still alive at the home with your mom and dad?

24 A My youngest sister and youngest brother live in
25 the home.

1 Q Tell us then about your other brothers and
2 sisters older than yourself.

3 What type of jobs or occupations do
4 they have?

5 A My oldest brother, also my second oldest brother,
6 is an architect here in Houston, and my youngest
7 brother is going to high school in his senior
8 year.

9 Q Where does he go?

10 A St. Pius.

11 Q Who was coach of baseball when you were going to
12 St. Pius? Do you know? Wasn't a fellow named
13 Dorski it?

14 A Dorski, no. They changed two or three times while
15 I was there.

16 Q I just wondered. A fellow I knew from St. Pius
17 played baseball, and I wondered if he still is.

18 What about your sisters? What type of
19 work do they do?

20 A My oldest sister works for the phone company,
21 second oldest works for an insurance company,
22 and the youngest sister, I believe she works for
23 an insurance company also -- no, she works for
24 a bank.

25 Q Now, I see that you are a jet aircraft mechanic.

1 How did you wind up in that field?

2 A I was always interested in aircraft.

3 Q Did you train for it?

4 A You have to go through fifteen months of school,
5 and sometimes schooling gets you a government
6 license.

7 Q You have to be actually licensed by the F.A.A.
8 or Federal Government to be able to work on a jet
9 aircraft?

10 A You don't have to be, but most places require it.

11 Q Most places require it.

12 Does the school you attend, does that
13 have to be certified or approved by the Government
14 as well?

15 A Yes.

16 Q Airesearch?

17 A Airesearch Aviation.

18 Q What kind of business is that?

19 A They are part of the Garrity Corporation,
20 Airesearch. They manufacture engines, aircraft
21 engines actually, but more or less, they are a
22 service center for the aircraft engines.

23 Q Pretty good line of work?

24 A Yes.

25 Q As far as weathering the recession and economy

1 here in Houston? Pretty good?

2 A We work mostly on corporate jet aircraft and
3 stuff like that, so --

4 Q I ask it for a couple of reasons. One is I am just
5 curious, and also I anticipate if you are selected
6 as a juror, you would probably be down here a week
7 on the case.

8 What is your policy at work?

9 A They pay us full-time for jury duty.

10 Q It wouldn't cause you problems or loss of a job
11 by your being down here?

12 A No.

13 Q Good.

14 What type of hunting do you like to do?
15 Bird hunting, deer hunting, or both?

16 A Deer hunting.

17 Q How about fishing? Salt water or fresh water?

18 A Salt water.

19 Q What type of cases have you been interested in
20 down here at the courthouse? Have you been
21 following any case in particular recently?

22 A Just the big cases on television, watching the
23 news and hearing big cases. The Hinley case
24 and stuff like that, that is gory, but still is
25 the kind of stuff you watch.

1 Q Let me talk to you a little bit now, take a little
2 break from talking about the questions and that
3 aspect of the law and tell you some of the things
4 required of you by your jury service.

5 The judge will tell you there are
6 certain things you have to do to be a juror on a
7 criminal case. He will put them in writing. That
8 will be part of the Court's charge, and you will
9 deliberate and the judge will tell you, "Here are
10 the definitions, legal definitions, of what
11 constitutes capital murder." He will also put
12 pages in there that will say, "Here is what you
13 have to do while you are deliberating," and it
14 will tell the jurors that you don't have to
15 consider the Defendant's failure to testify. If
16 the Defendant doesn't testify, you are not to
17 consider the Defendant's failure to testify as
18 evidence of his guilt. You are not to find a
19 person innocent because he fails to testify. That
20 doesn't mean you can't wonder why in the back of
21 your mind and say, "Why would someone not want to
22 testify at their own trial? It's an important
23 trial. Why couldn't they get on the stand and
24 testify?"

25 There is nothing wrong with wondering

1 why, but you can't hold a person's silence as
2 evidence of their guilt.

3 Do you follow me on that? Does that
4 feel like a fair thing in your mind that you would
5 be able to abide by?

6 A Yes.

7 Q He will tell you there is a presumption of
8 innocence that attaches to the Defendant in this
9 case. What that basically means is this. You
10 are not to find the Defendant guilty just because
11 we are in the courtroom. Of course, we are in the
12 chambers today, but if actually selected, we will
13 be in a courtroom, and you will be instructed not
14 to find the Defendant guilty just because he is
15 in one of the courtrooms charged with serious
16 allegations and represented by attorneys, and the
17 jury is a judge, but you are to decide a man is
18 guilty or not guilty and keep an open mind in that
19 regard until the evidence is in and base your
20 verdict on the evidence after it is all in.

21 Do you feel like that is the type of
22 situation you could abide by? Does that sound
23 fair to you?

24 A Yes, sir.

25 Q The judge will also charge you in writing that the

1 Grand Jury indictment is no evidence of anything.
2 It is a piece of paper you will probably never get
3 a chance to look at during the trial. It is like
4 a pistol in a footrace. The race can't begin
5 until the indictment is returned. We can't begin
6 the trial. It is the way we are to start this
7 trial. That is all.

8 You are not to give it significance other
9 than that. It is no evidence of anything.

10 Do you feel like you could abide by that
11 ruling or admonishment by the judge?

12 A Yes.

13 Q Okay. The judge has talked to you about this, and
14 I hope to explain it just a little bit more.

15 The burden of proof in a criminal case
16 always rests with Mr. Bax and myself. We have
17 the burden of proving that Mr. Guerra is guilty,
18 and we have the burden of proving -- of course,
19 the burden of proof means we have the obligation
20 to call witnesses and prove our point. We have
21 to put witnesses on the stand. In some European
22 countries, if you are charged with a crime, the
23 burden shifts to the Defendant. He has to prove
24 he is innocent, and because he is charged with a
25 crime, the State can remain silent. They don't

1 have to call any witnesses whatsoever, and the
2 Defendant has to find himself innocent of the
3 allegations he is accused of.

4 That is not the way it works in our
5 country. You know that. The burden rests with
6 Mr. Bax and myself. The State has the burden of
7 proof.

8 Just because we can call witnesses
9 doesn't mean the Defense can't call witnesses.
10 The trial is a wide-open proceeding. If they want
11 to subpoena someone to the courthouse and get them
12 to testify to whatever they want to prove, it
13 doesn't cost them a penny to issue a subpoena to
14 call somebody. The Sheriff will go out and call
15 the person and even arrest them. Only one side
16 has the burden of putting on witnesses, but both
17 sides can, and you have to hold Mr. Bax and
18 myself to the burden of proving it. Okay?

19 A. Okay.

20 Q. The State has that burden, and we must prove it
21 before you can say a person is guilty of any crime,
22 all the way from a traffic ticket to all the
23 way to a murder charge. You have to believe
24 beyond a reasonable doubt that the man is guilty.
25 That is the phrase, and the judge was right when

1 he indicated a little while ago, we can't give
2 you a definition for what the phrase "beyond
3 a reasonable doubt" means. I can only tell you
4 beyond a reasonable doubt does not mean we have
5 to prove this case to you beyond all doubt or any
6 doubt or a shadow of a doubt, and for a jury to
7 believe that, they are wrong. Okay?

8 The burden of proof is to prove beyond
9 a reasonable doubt. I will suggest to you, I
10 will tell you I can't prove any criminal case to
11 you or any other juror -- I am not just talking
12 about this case; I am talking about any case.
13 No case can ever be proven beyond any doubt or
14 all doubt.

15 The only way you can prove that or
16 convince a person in their mind to all proof
17 beyond any doubt, a shadow of a doubt, would be
18 if the jury were present and saw the offense
19 itself take place, and of course, a person who
20 knows anything about the crime cannot be a juror,
21 and that is why we ask jurors, did you form
22 opinions or conclusions?

23 People who form opinions or conclusions
24 or people who are witnesses to a crime can never
25 serve as jurors on that case. They are

1 specifically excluded from jury service. We take
2 people and put them in the jury box who don't
3 know anything about the crime, haven't seen
4 anything, aren't witnesses, haven't formed any
5 opinions or conclusions, and we have to prove the
6 case to them beyond a reasonable doubt, not beyond
7 all or a shadow of a doubt.

8 That specifically applies to Question
9 2, because number one, the only person in the
10 entire universe who could prove Question No. 2
11 to you beyond all doubt or a shadow of a doubt
12 is the Almighty himself. That is why Question 2
13 is proven to you beyond a reasonable doubt, if
14 there is a probability the Defendant will commit
15 criminal acts of violence that would constitute
16 a continuing threat to society.

17 Do you follow me about how that fits
18 together? I hope it fits together.

19 The final thing the judge will charge
20 you on is this. He will tell you when you are
21 judging the credibility of a witness, you are not
22 to give a witness any more belief or any less
23 belief just because of the witness' job.

24 Let me explain. As a juror, you will
25 be the judge of the credibility of the witnesses.

1 You will hear what took place on July 13th. You
2 will believe that from what you hear on the
3 witness stand.

4 A juror has a right to believe or
5 disbelieve everything a witness told you, even
6 though the witness is under oath.

7 That sounds crazy to think that someone
8 gets on the witness stand and takes an oath to
9 tell the truth and lies. I wish we lived in the
10 type of world -- I mean this sincerely -- I wish
11 we lived in the type of world where somebody would
12 take an oath to God and not lie.

13 People aren't perfect, so the jurors
14 decide when someone is telling them about a fact
15 situation whether they believe a witness or not.
16 They can believe part of what a witness says or
17 reject a part or reject the whole thing if it
18 doesn't make sense, in fact, if they don't believe
19 the witness.

20 Do you understand that?

21 The only thing the judge will tell you,
22 he will tell you, Mr. Krezinski, don't believe
23 or disbelieve someone because of the job someone
24 has, because no one, regardless of the church we
25 attend or regardless of the minister, whoever it

1 might be, no person in the eyes of the law is
2 deemed to be an automatic truth-teller because of
3 his job. Okay?

4 A Okay.

5 Q And now the final thing I want to talk to you
6 about, and I will pass you to the Defense and
7 they are going to have questions, the final
8 thing I want to talk to you about is this. The
9 offense of murder carries a different range of
10 punishment, five years to ninety-nine years or
11 life. Why did I mention that? The only reason
12 I mentioned it is this. The crime of capital
13 murder includes the crime of murder as one of its
14 elements.

15 Remember how we talked about in order
16 to commit capital murder, you had to commit a
17 murder during the course of one of the crimes
18 we mentioned or you had to murder the class of
19 individual we talked about? An employee of a
20 penal institution, a fireman, a policeman?

21 You see, someone could be, hypothetically
22 speaking, charged with capital murder and the
23 jury could hear all the evidence and believe that
24 the person is -- no question in their mind --
25 guilty of murder, but that murder did not take

1 place during the commission of one of these
2 crimes or in the murder of a police officer;
3 at the time he committed the murder, he did not
4 know at the time he was a police officer or
5 fireman.

6 In that event, the jurors' proper
7 verdict would be not guilty of capital murder but
8 guilty of the offense of murder.

9 You see, murder is an included element
10 of the crime of capital murder, and that would be
11 just as proper a verdict in the case if the juror
12 believed that as it would be for the jury to find
13 someone guilty of capital murder if they believed
14 that to be the case. That is a determination the
15 jury makes from the facts.

16 If you find someone guilty of murder,
17 the range of punishment is different, five to
18 ninety-nine years or life.

19 Have you ever heard the phrase
20 "probation"?

21 A Yes, sir.

22 Q You are familiar with what that means?

23 A person who gets probation doesn't
24 go to the penitentiary. He has to report to his
25 probation officer once a month, has to allow the

1 probation officer to visit him in his home; has
2 to work at a place of employment; avoid persons
3 or places of disreputable or harmful character;
4 not violate the laws of this state or any other
5 state or of the United States; avoid the use of
6 habit-forming -- you know, just stay away from
7 alcohol and drugs and things like that. In other
8 words, live a life like a decent human being and
9 stay out of trouble, and the only admonition
10 basically is to report to the probation officer
11 once a month for the length of your probation.

12 Now, the only way the person can get
13 probation is if the jury recommends it, and the
14 only way the jury can recommend probation is
15 first, if they find the man guilty of the crime
16 he is charged with and then the jury has
17 assessed a penitentiary sentence of ten years or
18 less. Then the jury can discuss among themselves
19 and decide, "Are we going to recommend probation
20 to the judge for this man? Do we feel this is
21 the proper case for probation for this man," and
22 if the jury decides to recommend probation, it is
23 a binding recommendation on the judge. He has
24 to give the Defendant probation.

25 What I want to ask you is this. Do you

1 feel like if you were a juror on a case where
2 you had found someone guilty of the offense of
3 murder and you felt like it was a proper case for
4 probation, do you feel like you could recommend
5 probation to the judge even though you found
6 someone guilty of murder?

7 Now, before you answer that question,
8 let me give you some hypothetical examples of
9 cases that would fall within the technical
10 definition of murder.

11 Okay. Murder is defined as the
12 intentional or knowing taking of another human
13 being's life, to intentionally or knowingly cause
14 someone's death, but there are many different
15 types of murder that fall within that definition
16 of murder. For instance, I think you would agree
17 with me that a man standing out in front of
18 Foley's killing men, women, and children as they
19 come outside to attract attention to his
20 political cause, and he has murdered seven or
21 eight people, is the type of person who needs to
22 spend the rest of his life in living hell if it
23 were possible. If there were a place under the
24 courthouse to put a man like that, that would be
25 fine.

1 There is a difference in that type of
2 killing and someone who comes to his house and
3 finds his wife and child sexually abused and his
4 daughter dead in one of the bedrooms. His wife
5 is in another bedroom, and she was tortured, and
6 in her dying breath, she says, "It was Joe Blow
7 down the street who did that to us," and this
8 portion of the house has been set on fire to cover
9 up this crime, and here is the cornerstone
10 basically, the foundation of his life, and his
11 wife is dying saying, you know, "Joe Blow did it,"
12 and she dies.

13 He gets his pistol and goes to Joe
14 Blow's house to get an explanation. He goes down
15 and he is plenty mad. He knocks on the door, and
16 Joe Blow answers the door, and he says, "I want
17 to talk to you about my wife and daughter," and
18 Joe Blow says, "I did it. What are you going to
19 do about it?" He fires one shot into Joe Blow's
20 body, intentionally takes a life. That is
21 technically murder.

22 You see the difference in standing before
23 Foley's and the man who comes and finds that type of
24 situation that exists?

25 That is why the legislature has decided

1 that the range of punishment for murder can be
2 all the way from five years' probation to ninety-
3 nine years or life, and that the crime should fit
4 within that range depending upon the facts as the
5 jury hears them, and if the jury finds it is a
6 proper case for probation, the jury can even
7 recommend that.

8 I can give you another case that would
9 fall within the sympathetic range for murder,
10 but the thing I want to ask you is this.

11 Do you feel you could at least keep an
12 open mind to this question of probation even
13 though you found someone guilty of murder, and if
14 you felt like it was a proper case, not be afraid
15 to recommend it to the other jurors or the judge?

16 A Yes, I feel I could.

17 Q The word murder has a horrible connotation, and
18 when you ask someone, "Could you give someone
19 probation for murder," it is hard to see without
20 that explanation. There are many different ranges
21 that fall in that definition.

22 I want to start you thinking along that
23 line.

24 Do you have any questions on what we
25 have talked about?

1 A No.

2 Q I know I have tried to explain so many things.
3 I know I am guilty of doing a lot of talking at
4 times, but after you are selected for the jury
5 panel, I won't have a chance to talk to you at
6 all. And that is the right way. There should be
7 no suggestion after a case is over with that a
8 juror has voted the way he does because the
9 juror has struck up a friendship with Bob Moen.

10 We are instructed to avoid personal
11 contact with the jurors.

12 Let me ask you a few final questions
13 about the death penalty.

14 What particular purpose do you think the
15 death sentence serves in society as far as being
16 the possible punishment for certain crimes? Why
17 do you think it is useful?

18 A Why? It is hard to answer really.

19 Q I know when you came down, you didn't know what
20 kind of case you might be a juror on, but I will
21 bet you a dollar to your dime you didn't think it
22 was this type of case.

23 I am trying to ask you questions, and I
24 don't know how to do it except to ask you something.

25 A About it being a useful tool?

1 Q Well, what part do you think it plays? You
2 don't necessarily have to use that phrase I
3 used, but what part do you think the death penalty
4 plays in an ordinary society?

5 A Well, how I think on this thing?

6 Q Do you really feel it's a punishment to be used
7 under certain circumstances as either a deterrent
8 or the type of punishment a man ought to receive
9 if he has unlawfully taken another life?

10 A Under particular circumstances.

11 Q Okay. I take it from your responses here this
12 morning that your feelings would allow you to
13 serve on a capital murder jury and return a
14 verdict that you know would result in someone
15 receiving the death penalty.

16 If you were elected foreman, and I take
17 it if you were elected foreman on a case, you would
18 be able to sign your name to a verdict sheet you
19 knew ~~would~~ result in someone receiving the death
20 penalty?

21 A Yes.

22 Q If you were elected foreman, you would have to
23 sign the verdict page with guilty, and if both
24 questions were answered yes, you would have to
25 write that and return it to the Court, and I take

1 it your feelings on the death penalty would
2 allow you to do that?

3 A Yes.

4 Q Let me check with Mr. Bax and see if he has
5 questions to ask of you.

6 Let me ask you about your children. Who
7 takes care of your kids? Does your wife work?

8 A Yes. She works for Houston Lighting & Power.

9 Q Who takes care of your kids during the day?

10 A My mother, during the day.

11 Q The only reason I ask you that is if you are
12 locked up at night when the evidence is in and
13 you go home, the judge will tell you not to
14 listen to anyone or read anything or see TV about
15 the case. He will give you an admonition when
16 the jury is deliberating, the jury cannot
17 separate. No one can allow the jury to separate
18 until they reach their verdict. Okay? So, at
19 the end of the business day, if the jury hasn't
20 reached a verdict, you will be locked up in a
21 hotel.

22 Would that cause problems other than
23 the inconvenience? Would there be someone to take
24 care of your children?

25 A There would always be someone to take care of the

1 children.

2 Q And finally, the judge will ask you when you are
3 deliberating on those questions, he will you you
4 are not to consider -- this is an absolute
5 admonition -- if any of the jurors did this, we
6 would have to start all over again, and it may
7 take five to six weeks to try this case, and we
8 would have to start all over again if there was
9 any mention of how long a person might have to
10 serve if he received a life sentence.

11 MR. ELIZONDO: I object to the
12 prosecutor stressing the law of parole.

13 Q (By Mr. Moen) How long a person would have to
14 serve on a life sentence, that is for the Board
15 of Pardons and Paroles to decide. They have to
16 say that, and jurors, if anyone brings it up and
17 starts talking about it, you must tell them to
18 shut up and knock on the door if they don't so
19 we can take care of it then.

20 A judge cannot have talk about how long
21 a person would serve on a sentence, and the judge
22 will put that in writing, too. That is for the
23 Board of Pardons and Paroles.

24 I wish there was a way to do this
25 quicker. Unfortunately, there is not.

1 MR. MOEN: I will pass you to the
2 Defense attorney.

3 THE COURT: Let's let Cindy stretch
4 her fingers a minute.

5
6 EXAMINATION

7
8 QUESTIONS BY MR. HERNANDEZ:

9 Q I guess it is my turn to ask personal questions,
10 but let me tell you this: That all the questions
11 we ask, Mr. Moen and I will ask, it is all done
12 in good faith. Basically what it is is an
13 attempt to find or select the best possible
14 twelve jurors that can be free of any biases
15 and prejudices and could be fair and just and
16 honest, and basically what we are asking is
17 sincerity and truth in your answers, and that is
18 all we are asking, how you feel. Okay?

19 There are no right or wrong answers, and,
20 believe me, we accept any answers that you might
21 give us simply because it comes from you, comes
22 from your heart, and it is the feelings that you
23 have had all your life and your views, and perhaps
24 if you are not able to serve on this jury, that
25 does not detract from the fact that you can be --

1 and you could be a good juror on another jury.

2 Do you understand what I mean?

3 A Yes, sir.

4 Q So please don't take the questions we are asking
5 as prying into your personal life. It is all done
6 only in good faith, and I am not here to
7 humiliate or embarrass you in any way. Okay?

8 A All right.

9 Q There are several questions that I will ask you,
10 but before I get into that, there are three
11 concepts of law that you are required to know,
12 and the judge will charge you on that, and Mr.
13 Moen has explained to you, and that would be the
14 presumption of innocence and the burden of proof
15 and a reasonable doubt.

16 But, first of all, Mr. Guerra, who is
17 our client sitting right here, has been indicted
18 by the Grand Jury. He sits here today charged
19 and indicted with knowingly and intentionally
20 causing the death of J. D. Harris, a police
21 officer, while Mr. Harris was in the lawful
22 discharge of his duties.

23 By the mere fact that he sits here
24 today represented by two attorneys, would that --
25 and charged and indicted by the Grand Jury of

1 intentionally and knowingly taking the life of
2 a police officer -- would that affect you in any
3 way?

4 A. What do you mean by affecting me?

5 Q. Well, would that affect your -- say, for example,
6 in considering the trial, in being fair?

7 A. No, it really wouldn't affect me. I would have
8 to hear all the deliberations or whatever. It
9 just, you know, him being here and there --

10 Q. Let me go one more step further than that. The
11 fact that it will be known in the trial that Mr.
12 Guerra, our client, is an illegal alien, would
13 the fact that he is an illegal alien, the fact
14 that he has been indicted by the Grand Jury, the
15 fact that he is sitting here indicted and charged
16 with knowingly and intentionally causing the
17 death of a police officer, would that affect you
18 in any way?

19 THE COURT REPORTER: Would you please
20 speak out?

21 MR. HERNANDEZ: I am sorry. She can't
22 take a nod. You need to say yes or no.

23 A. No.

24 Q. Are we saying for the simple reason he is an
25 illegal alien it would not affect you in any way?

1 A No.

2 Q What are your feelings towards illegal aliens, if
3 I might ask?

4 A I really don't have feelings on them, but when
5 it comes to something like this, being illegal
6 doesn't affect me whatsoever, when it comes down
7 to being charged with something like that. It
8 wouldn't sway my feelings one way or the other.

9 Q Okay. So then we might say, hypothetically
10 speaking, as he sits here today, you are on our
11 side? Would you be in agreement with that?

12 A I am not really on anybody's side.

13 MR. MOEN: Of course, I know that is
14 where he would like you to be.

15 Objection to that.

16 THE COURT: On the record, the objection
17 is sustained.

18 Q (By Mr. Hernandez) Well, let me put it another
19 form then.

20 The fact that he sits here today and
21 is indicted by the Grand Jury is no evidence of
22 guilt whatsoever?

23 A Right. I will agree with that.

24 Q Do you agree with that statement?

25 Okay, then, that is fair enough.

1 Then let's go to the -- first or
2 pre-concept you are required to know, and the
3 judge will charge you on that, and that would
4 be the presumption of innocence.

5 The law states that a Defendant is
6 presumed innocent until proven beyond a reasonable
7 doubt that he is guilty and that you are not to
8 be swayed, for example, sway in any matter of his
9 presumption of innocence until the State has
10 proven to you beyond a reasonable doubt or
11 overcome that presumption.

12 A Uh-huh.

13 Q Do you agree with that law or disagree with it?

14 A I agree with it.

15 Q So in essence, we can say as he sits here today,
16 you can presume that he is innocent?

17 A As he sits here today, yes.

18 Q And as he will sit in front of you and the other
19 eleven jurors throughout the trial?

20 A Yes.

21 Q Could you give him that presumption?

22 A Yes.

23 Q Okay, then, you would definitely make the State
24 prove to you his innocence or non-innocence?

25 A Yes.

1 Q And you would also make the State place or bring
2 to you the charges or proof of the charges that
3 he is now being -- which he has been indicted
4 for?

5 A Yes.

6 Q And that gets us to the next burden of proof.
7 Okay?

8 The law states that the burden will
9 always be on the State, never upon my client,
10 Mr. Guerra.

11 Do you agree with that?

12 A Yes, sir.

13 Q And that the burden will never shift, even
14 throughout the whole trial?

15 A Yes, sir.

16 Q And the law also states that Mr. Guerra or any
17 Defendant does not have the burden or duty to
18 call witnesses or to produce any evidence.

19 Do you disagree or agree with that?

20 A I agree that he doesn't have to call any witnesses,
21 yes, sir.

22 Q So we are in agreement then that the duty or burden
23 is strictly placed on the State's shoulders?

24 A Yes.

25 Q And the mere fact that Mr. Guerra does not

1 produce any evidence or witnesses would not affect
2 your deliberations in any way?

3 A. No.

4 Q Okay, now, we go with reasonable doubt, and
5 of course, there is no definition for reasonable
6 doubt as Mr. Moen was telling you.

7 Basically what it means or would mean
8 to me would be common sense. In other words, if
9 you have reason, if you have reason founded in
10 doubt or simply put, a doubt founded in reason,
11 now that burden is much, much heavier than the
12 civil burden, say, in a civil case where it is
13 preponderance of the evidence or the greater
14 weight of the credible evidence. In other words,
15 whoever puts on more evidence, wherever it tips
16 a little bit, this side would win, while in a
17 criminal case the burden is much, much heavier.
18 The State would have to prove to you beyond a
19 reasonable doubt, and of course, that is not any
20 doubt and not all doubt, but beyond a reasonable
21 doubt.

22 Do you understand? Do you follow me?

23 A. Yes.

24 Q Now, could you follow the law as it is today that
25 the State would have to prove his guilt beyond a

1 reasonable doubt, or would you agree with that
2 law?

3 A I could agree with that law.

4 Q Now, we get to the point of the first question
5 that Mr. Moen was talking to you about. As you
6 know, any trial, any criminal trial has two
7 stages. The first stage is the guilt-or-innocence
8 stage. That is where the State would present
9 their evidence to overcome the presumption of
10 innocence.

11 If he is convicted or found guilty by
12 the jurors, then you would come back and be asked
13 to answer Question 1 and Question 2, which is at
14 the second stage and what we call the punishment
15 stage. Okay?

16 A Uh-huh.

17 Q Now, the first question, or should we say -- let's
18 assume in a capital murder case that you find the
19 Defendant intentionally and knowingly takes the
20 life of someone. You have found him guilty of
21 that, and you go into your second stage and you
22 are asked to answer those two questions.

23 Read with me, if you will, the first
24 question: Whether the conduct of the Defendant
25 that caused the death of the deceased was

1 committed deliberately and with a reasonable
2 expectation that the death of the deceased or
3 another would result.

4 The word deliberately will not be
5 explained to you or defined for you. You would
6 have to make your own definition. At this point,
7 let me ask you what your definition of deliberately
8 would be?

9 A. It seems like as far as that question goes, to
10 me, to me it seems like he was knowing what he was
11 doing at the time, deliberately.

12 Q. Knowing what he was doing at the time?

13 A. Yes.

14 Q. What do you mean? You mean thinking about it?

15 A. There is some good word. It seems like what he
16 was doing and he was wrong, whether he -- he knew
17 what he was doing was wrong at the time. That
18 is the way I see it.

19 Q. All right. So you will consider -- let me ask
20 you this: Will the mere fact that you found
21 him guilty in the first stage of intentionally
22 and knowingly taking the life of someone, and
23 then you get to the first question, would you
24 answer that question automatically yes simply
25 because of the word "deliberately"?

1 A Okay. Can you say that again?

2 Q Okay. You found him guilty in the first stage
3 of intentionally and knowingly taking the life
4 of someone.

5 Are you with me on that one?

6 A Uh-huh.

7 Q Then you get to answer Question 1 and 2, and you
8 are asked to answer Questions 1 and 2.

9 Do you understand now how close finding
10 someone guilty of knowingly and intentionally
11 causing the death of someone, and then having to
12 answer Question No. 1 as to whether the conduct
13 of the Defendant that caused the death of the
14 deceased was committed deliberately, would you
15 answer that No. 1 yes simply because you found
16 him guilty in the first stage of intentionally
17 and knowingly killing someone?

18 MR. MOEN: I object to the way the
19 question is phrased. He can't answer the question
20 yes just because he's found someone guilty of
21 intentionally and knowingly causing someone's
22 death.

23 The question that would disqualify the
24 juror is would he automatically do it just because
25 he has found someone guilty, because of the

1 evidence.

2 THE COURT: Sustained.

3 Q (By Mr. Hernandez) Let me rephrase the question.

4 Let me ask you this. Simply because
5 you found someone guilty of intentionally and
6 knowingly causing the death of someone, would you
7 want or expect evidence in order to answer No.
8 1?

9 A I would need some type of evidence.

10 Q Huh?

11 A Yes.

12 Q So then what you are saying, you wouldn't
13 automatically answer Question No. 1 yes or you
14 would?

15 A I wouldn't automatically.

16 Q You would not? Okay.

17 Then you are asked to go to Question
18 No. 2: Whether there is a probability that the
19 Defendant would commit criminal acts of violence
20 that would constitute a continuing threat to
21 society, and considering the seriousness of this
22 case, would you expect to hear evidence before you
23 could answer that question, or would want evidence
24 or testimony before you could answer that question?

25 A For sure, No. 2, yes. I would want some type of

1 evidence.

2 Q Would you agree with me or disagree with me that
3 people can change?

4 A Yes.

5 Q All right. Now, then, we get to a sticky
6 question that Mr. Moen was asking you about, and
7 that was probation, whether in certain situations
8 if you found someone guilty of a lesser offense,
9 not capital murder, but murder, and the punishment
10 came in from the jurors and their agreement was
11 a punishment of ten years or less, the question
12 is, could you consider probation where that
13 punishment range comes in between one year or
14 two years and ten? Could you consider probation?

15 A Yes.

16 Q For someone that has been found guilty of
17 intentionally and knowingly taking the life of
18 someone? In other words, murder in a proper
19 case?

20 A In a proper case, yes.

21 Q Pardon?

22 A In a proper case, yes.

23 Q Okay. Basically, the reason for all these
24 questions is to seek out honest answers to see
25 whether you can set aside feelings of biases and

1 prejudice, and, of course, everyone has them, but
2 not to the extent they would affect their
3 judgment, or at least we would hope not, or my
4 client would hope not.

5 Can you decide solely and only on the
6 evidence and set aside any kind of feelings of
7 prejudice or bias that you might have?

8 A Yes. I can. Yes.

9 Q Do you have the ability -- or could you keep an
10 open mind until you retired to reach a verdict?

11 A Yes.

12 Q And would you not be influenced by the fact that
13 the media -- or probably there would be media
14 coverage?

15 A No, I wouldn't.

16 Q And most importantly of all, would you make the
17 State prove the case to you?

18 A Yes. When I heard that was what they were
19 supposed to do.

20 Q Pardon?

21 A From what I heard, that is what they were supposed
22 to do. Yes, sir.

23 Q And you would make them prove every element of
24 this crime he is charged with beyond a reasonable
25 doubt?

1 A Yes.

2 Q And any element in doubt, would you then vote
3 for not guilty?

4 MR. MOEN: I object to the form of that
5 question.

6 THE COURT: Sustained.

7 Q (By Mr. Hernandez) Just a few more questions.
8 Mr. Elizondo has brought to my attention some
9 questions concerning police officers.

10 There will be police officers testifying
11 in this trial. Of course, you are aware by now
12 that he is charged with the death or causing the
13 death of a police officer, and, of course, I am
14 sure growing up, you were always taught to
15 respect police officers, and what I am getting to
16 is whether you could give or would give or how
17 would you give witnesses, being police officers,
18 more credibility or more weight simply because
19 of the mere fact that they are police officers?

20 A No.

21 Q Then would you agree with me that they are humans
22 just like you and I?

23 A Yes.

24 Q And subject to the same human frailties as you
25 and I?

1 A Yes.

2 Q And they are subject to mistakes just like you
3 and I?

4 A Yes.

5 Q And you can be fair and just and render a true
6 verdict in this case?

7 A Yes.

8 MR. HERNANDEZ: That is all we have.

9 MR. MOEN: We will accept Mr. Krezinski.

10 THE COURT: What says the Defense?

11 MR. ELIZONDO: Your Honor, may we have
12 a moment?

13 Your Honor, prior to excusing Mr.
14 Krezinski, we re-urge our motion to examine the
15 whole venire and hope we can have peremptory
16 challenges at the end of the examination of the
17 whole venire.

18 THE COURT: Motion overruled.

19 Mr. Krezinski, you are not required to
20 be a juror on this case.

21 You see, each side has a certain number
22 of strikes, and the Defense has chosen to exercise
23 those strikes.

24 Thank you for your cooperation.

25 MR. BAX: Thank you.

1 M. WHITSON SADLER,
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: Mr. Sadler, we promised
9 you we would be somewhere else.

10 Please relax and visit with us a little
11 while.

12 You may proceed.

13 MR. BAX: Thank you, Your Honor.

14 Q (By Mr. Bax) Good afternoon, Mr. Sadler.

15 A Good afternoon.

16 Q As the judge told you earlier, my name is Dick
17 Bax. The man to my right is Bob Moen. We are
18 both Assistant District Attorneys here in Harris
19 County.

20 We will be representing the State and
21 the family of Officer James Harris.

22 (An object was moved from the front
23 of the witness stand by Mr. Moen.)

24 THE JUROR: Thank you.

25 MR. BAX: I don't know if he thought

1 you were going to steal that or not.

2 MR. MOEN: I didn't know if you could
3 see with that stuck in front of your face.

4 Q (By Mr. Bax) Mr. Moen and myself will be
5 representing the State of Texas and the family
6 of James D. Harris in this case against Ricardo
7 Aldape Guerra, seated to your right and third
8 from my left.

9 The judge has gone over a few of the
10 facts about this case in outline form. Did that
11 jog your memory about anything you may have read
12 or seen on TV about the case?

13 A Not really. I read some newspaper accounts. I
14 am not familiar with the case.

15 Q There is nothing wrong with reading something
16 in the newspaper or seeing something on TV. I
17 don't think there is really any way a person could
18 avoid it. The reason we ask that question is to
19 find out whether a prospective juror may have
20 formed an opinion as to the Defendant's guilt or
21 innocence, and I take it you have not?

22 A I have no opinion.

23 Q In most cases, we select a jury by bringing over
24 a group of people, forty or so, and talking to
25 them as a group, explaining certain principles of

1 law that will be involved in the case, and each
2 side has a certain number of strikes they can
3 eliminate a juror with, and usually within two
4 hours, we have a jury and evidence begins.

5 A capital case is different. We talk
6 to each juror individually and differently, and
7 usually go through anywhere from a hundred to a
8 hundred fifty or so prospective jurors before we
9 can seat a jury, taking up, I guess, between two
10 and four weeks, I guess would be the average
11 time.

12 The reason we do that is, number one,
13 the law requires it, and I think in this case,
14 it benefits the parties involved. It gives us
15 a chance to visit with each of the jurors and
16 see if there is anything about the case, and
17 especially the death penalty as a possible
18 punishment, which might violate their religious
19 or personal or moral scruples if they were to have
20 to serve on a jury like that.

21 There are no right or wrong answers to
22 anything we discuss here today. Certainly everyone
23 has a right to their opinion about the death
24 penalty.

25 What we need to do -- to know, is whether

1 a person can, in fact, render a verdict if the
2 evidence called for the result of the death
3 penalty. The only person who can put someone
4 on a jury is the juror himself by the way he
5 answers the questions. No one here will change
6 their opinion, no matter what it is. We need to
7 know what it is.

8 Could you briefly, in twenty-five words
9 or less, tell us briefly what your position is
10 on the death penalty; tell us what you know about
11 it?

12 A I believe in the death penalty if it is proven
13 beyond a reasonable doubt that the crime was
14 committed by the Defendant.

15 Q Okay. Let me give you -- there are only a limited
16 number of cases in which a person becomes eligible
17 for the death penalty.

18 Let me go over those with you and see
19 if that would fit your feelings in this area.

20 First of all, you have to have an
21 intentional taking of a life. You have to have
22 a murder.

23 A Uh-huh.

24 Q But a murder alone -- and I don't mean to say
25 that, that murder is something that is a lesser

1 offense -- but murder alone is not sufficient,
2 no matter how many people are killed and no matter
3 what the person's background is that does the
4 killing.

5 For example, if someone were to stand
6 outside of Foley's this afternoon and gunned down
7 people as they walked out to further a political
8 view that they might have, that would be a murder
9 case. The maximum punishment would be life in
10 prison.

11 If you commit the murder during the
12 course of one of five felonies, during the course
13 of a robbery, during the course of a burglary,
14 a rape, an arson, or a kidnapping, that elevates
15 it to capital murder. If you murder for money;
16 if you murder a police officer or fireman when
17 they are in the actual discharge of their
18 official duties and you know that the person
19 was either a fireman or policeman, that is
20 elevated to capital murder.

21 If you are a prisoner and kill someone
22 while trying to escape or if you are a prisoner
23 and kill any employee of the penal institution,
24 that is elevated to capital murder.

25 Those are the only areas in which a

1 person is subjected to the possible punishment
2 of death.

3 A Capital murder?

4 Q Right.

5 A Whether or not it was intentional?

6 Q First of all, we have to show an intentional
7 taking of a life. That is murder.

8 A Say, in a robbery if a person was robbing a
9 store and he claims it was unintentional but
10 he shot someone in the course of the robbery,
11 that is not capital?

12 Q It can be capital.

13 A It can.

14 Q You see, first of all, it is hard to go into
15 specific cases.

16 A All right.

17 Q Let me give you an example.

18 A I am sorry I jumped in. Go ahead and finish.

19 Q Let me give you an example. That is one of the
20 questions this jury will have to decide. Okay?
21 You have to have an intentional taking of a life.
22 In any case, a person may get on the stand and
23 say, "I didn't intend to take a life. It was an
24 accident." In that case, it would be up to the
25 jury to decide whether the person was telling the

1 truth or not telling the truth, and you look to
2 all the evidence. If all the evidence shows the
3 person pulled a gun and discharged a bullet which
4 struck the person in the head or chest, you could
5 say as a juror, "That is fine. That is what you
6 say is an accident, but as I see the evidence, that
7 is an intentional act on his part." But you do
8 have to have an intentional killing. If someone
9 were walking down the street and shooting in the
10 air and there happened to be a fireman up on a
11 ladder and you believed from the evidence it was
12 accidental, that would not be a capital murder.
13 All right?

14 A All right.

15 Q If you consciously engage in your conduct, if you
16 consciously desire to engage in the conduct, you
17 have acted intentionally. Okay? So you've got
18 to have an intentional taking of a life plus
19 one of those other circumstances attached to it.
20 Okay?

21 A Right.

22 Q Those types of cases I mentioned to you, do they
23 fit within your thought process as a proper
24 type of case for the possibility of the death
25 penalty?

1 A Yes, they do.

2 Q Let me tell you at this point in time simply
3 because a person is found guilty of intentionally
4 taking the life of a police officer or taking
5 the life of someone during a robbery, that does
6 not mean automatically they would receive the
7 death penalty. All right?

8 A All right.

9 Q We would go on to the punishment stage of the
10 trial.

11 At the punishment stage of the trial,
12 two questions are asked of the jury. The jury
13 has to answer those questions based on the
14 evidence. The two questions asked are there to
15 your right that the judge pointed out earlier.

16 Take a few seconds to look at them, and
17 we will discuss them and I will show you how they
18 work in relation to the death penalty.

19 A Okay.

20 Q Okay. Assume with me, if you will, you are on a
21 jury with eleven other people and you have returned
22 a verdict in open court that a Defendant is guilty
23 of capital murder, be it a murder of a police
24 officer, murder for hire, whatever the situation,
25 but these two questions were created by our

1 legislature back in 1974 when the death penalty
2 was reenacted in Texas. Every capital murder jury
3 that has reached the punishment stage of the
4 trial since 1974 has had to deal with these
5 two questions in determining whether a person
6 would receive life or death.

7 A For death, does there have to be an affirmative
8 answer to 1 and 2?

9 Q That is correct. If the jury answers 1 yes,
10 because it has been proven beyond a reasonable
11 doubt that it should be yes, and the same for
12 2, yes, beyond a reasonable doubt, then the
13 judge must, by law, assess the death penalty.

14 A Uh-huh.

15 Q He can't say I disagree with those questions, and
16 I will give the Defendant life. If you agree
17 with those questions, the Defendant receives the
18 death penalty.

19 All twelve jurors must agree the
20 answer is yes before it can be answered yes.

21 On the other hand, if either 1 or 2
22 is answered no, the judge must, by law, sentence
23 the Defendant to life imprisonment, the only
24 difference being it takes only ten jurors to
25 agree that the jury can answer it no. All right?

1 So, it is a little more of a burden to answer
2 it yes in that it takes all twelve jurors to
3 agree.

4 Again, when you reach the punishment
5 stage, simply because you have found the Defendant
6 guilty of intentionally taking a life does not
7 mean these two questions are automatically answered
8 yes.

9 If that were the situation, we wouldn't
10 need the punishment stage.

11 In looking at Question 1, the word
12 "deliberately" is underlined.

13 A Correct.

14 Q That is underlined because the judge will not give
15 you a definition for that term. The jury is
16 expected to use a common, everyday definition for
17 the word "deliberately."

18 A Yes.

19 Q A lot of people say it pretty much means
20 intentionally or on purpose or along those lines.
21 I can't tell you what the definition is, and I
22 think until you hear the evidence, it would be
23 pretty hard to put a definition on words like
24 that, but you can see by Question No. 1, Question
25 No. 1 asks you to go back and look at the

1 evidence and make another decision on what you
2 heard.

3 One, was his conduct deliberate, and
4 two, was that conduct done with the reasonable
5 expectation someone would die as a result of that.

6 A Uh-huh.

7 Q A lot of people say, "Wait a minute now. We have
8 already found he intentionally caused the death
9 of somebody. I think I have already answered
10 that question at that point."

11 Let me give you an example, maybe two
12 examples, where that question could be answered
13 no where you found someone guilty of killing
14 someone during the robbery of a police officer.

15 Assume someone goes into a Seven-Eleven
16 and there is only the clerk inside, and after he
17 goes inside, he says, "After I have robbed this
18 person, I don't want him chasing me outside and
19 getting my license plate number, but I don't think
20 I can kill him."

21 He gets the money from the clerk and
22 shoots the clerk in the leg hoping that will stop
23 him from going outside and getting the license
24 plate number. He does that and goes outside, and
25 when he shoots him in the leg, he severs an

1 artery and the man dies from loss of blood.

2 Under our law, that is intentional
3 murder; that is, he shoots him in the leg and he
4 dies.

5 The jury, if they believed that, would
6 find the man guilty of capital murder.

7 Then when you get to Question 1, the
8 jury may say, "Yes, his conduct was deliberate,
9 but he did not have, perhaps, the reasonable
10 expectation someone would die," so can you see
11 where that question would not automatically be
12 answered yes, but it would depend on the evidence?

13 A Yes. Sure.

14 Q Question 2 is a little different. You are really
15 talking about the person on trial, and what are
16 his tendencies? What is he likely to do? Is he
17 likely to commit criminal acts of violence which
18 would be a continuing threat to society?

19 The word "probability" is the first word
20 underlined. Again, that word will not be defined
21 for the jury. To most people, that means chances
22 are, more likely than not, something more than
23 fifty percent. It is underlined to point out the
24 fact that we don't have to prove to the jury
25 before they can answer that question yes that

1 there is a certainty something will happen in the
2 future.

3 There is no way Mr. Moen and myself
4 in any case could prove to a jury beyond a
5 reasonable doubt to a certainty a person would
6 commit criminal acts of violence in the future.

7 A Uh-huh.

8 Q Only God himself could probably answer that
9 question for us to a certainty, so the law only
10 requires that we prove it to a probability, and
11 prove that he would be probable to commit criminal
12 acts of violence, not a specific crime, not that
13 he would be likely to go out and commit another
14 capital murder or likely to murder someone, but
15 just that he is the type of person that would
16 probably be an assaultive-type person, perhaps
17 rob, maybe steal, rape people. Who knows? But,
18 there is no way I could prove to you what crime
19 a person would be likely to commit in the future,
20 and those acts would be a continuing threat to
21 society, whatever society the person might find
22 himself in. Either the penitentiary or perhaps
23 back on the street at some time. All right?

24 A Uh-huh.

25 Q That question -- of course, there can be other

1 evidence offered at the punishment stage other
2 than the crime itself, but the jurors can, if
3 they believe the evidence proves it, answer
4 Question 2 based solely on the facts before them
5 when he committed the crime. They can look at
6 the person who committed it, the mentality of the
7 person who has done the crime and answer that
8 question yes or no based on the facts of the
9 case alone.

10 A Uh-huh.

11 Q Or other evidence available.

12 Is there anything about Question 1 or
13 2, the way they are written, that would cause you
14 a problem in answering those questions based on
15 the evidence?

16 A Well, as I said before, I think you would have to
17 see the evidence of the case and determine it
18 then. It might possibly give me problems, but
19 I don't see problems right now.

20 Q The way they are written or anything?

21 A No.

22 Q So now you can see that is basically the way the
23 death penalty works.

24 First of all, one of those cases
25 enumerated to you, it has to be first proven he

1 is guilty beyond a reasonable doubt, and then at
2 the punishment stage based on the evidence, the
3 jury either answers yes or no to Questions 1 and
4 2, and there are no automatic answers.

5 Do you feel that is a fair way for a
6 jury and a judge to determine how a person
7 receives a life or death sentence in those
8 situations?

9 A Uh-huh.

10 Q Really clinical in a way.

11 A Never having really been familiar with the details
12 of it, it seems, I would say, more than fair,
13 really.

14 Q Here is how they used to do it --

15 A I would say that, seeing it for the first time.

16 Q Up until 1967, a person could be eligible for the
17 death penalty for murder without these
18 circumstances, robbery, rape, even where a person
19 wasn't killed. In that case, the jury was given
20 a punishment range anywhere from two years to
21 the maximum of death, and the jury would go back
22 and decide, "Does this person deserve the death
23 penalty?"

24 Of course, the Supreme Court of the
25 United States struck that law down and said, "You

1 have to have certain guidelines," and these are
2 the guidelines they set forth.

3 Everyone is treated the same with the
4 death penalty issue. All right?

5 A All right. I would certainly think if a person
6 had a reasonable expectation they were going to
7 kill someone and you thought they were going to
8 continue to commit criminal acts of violence,
9 that is a good test.

10 Q And that would be all based on the evidence we
11 could produce for you. And you can see certain
12 cases would call for two yes answers and certain
13 cases would call for two no answers, and all that
14 the law requires is that a juror could answer those
15 questions based on the evidence.

16 Do you feel you could do that?

17 A Yes, I do.

18 Q Let me go over -- you have never served on a
19 criminal jury before, correct?

20 A Correct.

21 Q Have you ever been brought over in a large panel?

22 A No.

23 Q Let me go over certain obligations that apply to
24 this case or any other case, either driving while
25 intoxicated or a theft case or whatever it was.

1 First of all, I will tell you and read
2 it to you, this Defendant has been indicted by a
3 Grand Jury.

4 I think you will understand we didn't
5 pick this man off the street and say, "We thought
6 we would try you for Officer Harris' murder."

7 I think the people would be foolish if
8 they thought that is the way we conducted our
9 business in regards to law enforcement, but the
10 fact a person has been indicted cannot be used
11 as evidence by the jury to determine whether he
12 is guilty or not guilty. The indictment tells
13 him what he is charged with and tells us what we
14 must prove to the jury beyond a reasonable doubt
15 to be entitled to a guilty verdict.

16 The fact that he has been indicted and
17 the fact he is here with two lawyers representing
18 him is no evidence of guilt.

19 Can you afford the Defendant that right
20 at this point?

21 A Certainly. Certainly.

22 Q He is under our law, what we say, presumed to be
23 innocent.

24 All persons charged with a crime,
25 whether a traffic offense or capital murder, at

1 this time, the law says they are presumed to be
2 innocent. In other words, the jury must take
3 the box with an open mind and not have any pre-
4 formed or preconceived ideas about his guilt or
5 innocence.

6 Is there any problem with that?

7 A No.

8 Q Of course, the presumption of innocence doesn't
9 mean a person is innocent. It really just puts
10 the State up to the test of proving it.

11 If he is guilty the day it is alleged
12 he committed the offense, certainly he is guilty
13 the day he walks in this courtroom and he will be
14 guilty until the day he dies.

15 We must prove this case beyond a
16 reasonable doubt. I can't tell you what that is.
17 That is something that is individual to each and
18 every juror, and hopefully, the twelve people
19 who sit in a jury box will have the quality of
20 common sense to listen to evidence and decipher
21 it and reach a judgment based on that evidence.

22 If you are convinced after hearing the
23 evidence that he is guilty, I believe it has been
24 proven to you. If you are not convinced after
25 hearing the evidence, I will ask you to find the

1 Defendant not guilty.

2 It is the same as we talked about in
3 Question 2. There is no way I could prove to you
4 or anyone else beyond all doubt or a shadow of a
5 doubt that that person is guilty of an offense.
6 The only way I guess I could come close to doing
7 that would be if the twelve jurors were all
8 eyewitnesses to the transaction that took place.
9 Of course, if you are a witness, you can't be a
10 juror.

11 A Uh-huh.

12 Q And even if we had twelve jurors as witnesses,
13 they would probably have twelve different stories
14 as far as the things they saw.

15 Do you follow me there?

16 A On the second question?

17 Q Sure.

18 A Can you present the past history of the Defendant
19 or do you have to deal with just the one incident?

20 Q All right. You can hear further evidence. As
21 far as past history is concerned, we could only
22 prove up any convictions we knew about, anytime
23 the Defendant was convicted.

24 You can hear other evidence. My point
25 was, the law says that the facts in a particular

1 case may be in and of themselves enough.

2 A I understand.

3 Q You may or may not hear further evidence, or
4 based on whatever evidence you hear, have to make
5 the decision at that time. Okay?

6 A Uh-huh.

7 Q Any problem with burden of proof or proving a case
8 beyond a reasonable doubt? Any problems with that?

9 A I don't think so.

10 Q Do you think that is a fair burden of proof?

11 A Uh-huh.

12 Q A Defendant in a criminal trial does not have to
13 testify. Okay?

14 A Okay.

15 Q He can sit there and not say word one. His
16 attorneys don't have to ask one question, and that
17 is simply because the State is bringing the case.
18 The State is accusing someone of committing this
19 offense.

20 You must look entirely to the State in
21 making your decision as to the guilt or innocence.

22 If the Defense doesn't put on one
23 witness, if they don't put on the Defendant, you
24 can't hold that against him.

25 The judge will instruct you if the

1 Defendant doesn't testify, you cannot use that
2 as evidence against him.

3 Can you follow that?

4 A Can I follow it? Can I abide by it?

5 Q Yes.

6 A Certainly, if you weren't able to present any
7 case, I can't see that would determine someone
8 is guilty.

9 Q That is, would you, you know, say, "Now, they
10 haven't met their burden of proof because he
11 didn't testify"?

12 A No.

13 Q You wouldn't do that and still find him not guilty
14 in that instance?

15 We have to talk about credibility of
16 witnesses. A Defendant can testify. If he
17 does testify, maybe he gives up this right that
18 he has not to testify, and that doesn't make him
19 an automatic truth-teller. You have to judge the
20 Defendant's credibility the same way you would
21 any other witness' credibility.

22 When a witness takes the stand, he will
23 take an oath to tell the truth. It is too bad
24 that is not the case and they don't always follow
25 that. That would make our job easier and probably

1 we wouldn't have a job if that were the case, but
2 you, as a juror, along with the eleven other
3 jurors, must listen to the witness testify, judge
4 his demeanor, his motive or bias for testifying
5 the way he does, and ask yourselves, "Is it
6 reasonable what he is telling me in relation to
7 what everyone else has said," and you must
8 determine if you believe all, part, or nothing
9 of what he says.

10 The only rule is that no witness takes
11 the stand with automatic believability before they
12 open their mouth. Okay?

13 If a person walks in and they say, "Call
14 Dr. Smith to the stand," it would be wrong for the
15 jury to say, "That is a doctor. I am going to
16 believe everything he has to say." The same with
17 ministers, police officers, plumbers.

18 No one takes the stand with automatic
19 believability.

20 Do you follow me and agree with me on
21 that?

22 A. Absolutely on that.

23 Q. The judge will also instruct the jury that at the
24 punishment stage of the trial, they are not to
25 discuss, allude to, or mention in any manner

1 parole. They will tell you and the judge will
2 instruct you that the area of parole is left
3 solely to the discretion of the Board of Pardons
4 and Paroles.

5 MR. ELIZONDO: I object to the
6 prosecutor stressing the law of parole, Your
7 Honor.

8 THE COURT: Overruled.

9 Q (By Mr. Bax) The judge will tell you the area of
10 parole is left to the exclusive discretion of the
11 Board of Pardons and Paroles.

12 The reason I mention that to you is it
13 is such a strong admonishment that if anyone in the
14 jury room were to mention the word "parole" while
15 you were trying to arrive at a punishment, the
16 judge will tell you to tell the other person to
17 stop the discussion immediately, and if the person
18 continues that discussion, to knock on the door
19 and tell the judge, "We have this problem.
20 Someone is discussing the law of parole," and let
21 the judge handle it from there.

22 The reason I am emphasizing it from
23 this point is because if that is discussed by a
24 jury, we start all over again. We may have spent
25 five weeks. A case would be reversed, and we would

1 have to start all over again, and I want to make
2 sure if that came up, you would be able to tell
3 that person you are not allowed to discuss it.

4 A I guess I could certainly do that. I guess
5 everything else you have said thus far, I
6 understand, at least feel I understand the logic
7 in it.

8 I don't really understand the logic about
9 not talking about parole.

10 Q I don't know if I understand the logic about it
11 either.

12 A Okay. I certainly wouldn't want to waste the
13 taxpayers' money and mine going halfway through
14 the trial and having a mistrial because of it. I
15 could abide by that, but I don't understand it,
16 really.

17 THE COURT: Nor do I, sir.

18 Q (By Mr. Bax) You are probably in the ninety-ninth
19 percentile of our population that doesn't understand
20 that.

21 The question is: Could you follow the
22 Court's admonishment and not consider that?

23 A Yes.

24 Q Let me talk to you about what we call the lesser
25 included offense of murder.

1 As I mentioned earlier, you have to have
2 a murder, the intentional taking of a life,
3 combined with a robbery, burglary, or what not.

4 Can you imagine a situation where, after
5 hearing the evidence and listening to the evidence
6 and saying, "I am convinced beyond a reasonable
7 doubt that the person took the life of another
8 person," but for some reason, you know he did
9 not believe he knew it was a police officer. He
10 never identified himself as a police officer,
11 didn't have a uniform on, may not have known the
12 person he killed was a police officer. In that
13 case, you couldn't return a verdict of capital
14 murder, because one of the elements would be
15 missing. Okay? But you could return a verdict
16 of what we call "the lesser included offense of
17 murder."

18 In that case, the punishment range is
19 no longer life or death. The punishment range
20 is now a minimum of five years to a maximum of
21 ninety-nine years or life, and in addition, the
22 jury can give a fine of up to ten thousand
23 dollars.

24 You can see in the first place that is
25 a very, very wide range of punishment?

1 A Yes.

2 Q Murders are committed by people from different
3 backgrounds and committed for different reasons.
4 The case I gave you earlier about the man shooting
5 people indiscriminately coming out of Foley's.
6 I imagine most jurors would feel that would be the
7 upper end of the punishment range because of the
8 way it was committed and they would give him
9 ninety-nine years and a fine.

10 If a juror decides this case falls
11 between the five-year and the ten-year range,
12 after hearing the case and they say, "This case
13 is somewhere between five and ten years," the
14 jury can, if they believe it is proper, grant
15 probation to the Defendant.

16 Of course, probation -- I am sure you
17 are aware of this -- means the release of a
18 convicted person.

19 If he were convicted of the offense of
20 murder -- this is another thing most people say,
21 "I don't know if I could consider probation in
22 any type of case like that." Let me give you an
23 example of where it might be proper to give
24 probation and get your mind thinking about some
25 facts.

1 A Please.

2 Q Imagine a man comes home and when he gets home
3 from work, he finds his two children have been
4 brutally murdered, his wife has been sexually
5 abused, had her throat slit, and in her dying
6 breath, she says, "Joe Blow down the street did
7 it." The man gets his .38 pistol he keeps under
8 the bed and walks down the street and knocks on
9 the door and Joe Blow comes to the door with a
10 big smile, and he says, "I heard you killed my
11 wife and two children."

12 Joe Blow says, "Yes, and I had a lot of
13 fun." The man shoots Joe Blow and kills him.
14 That is murder. The law doesn't ask us to go
15 out and take the law into our own hands. But,
16 can you see that would be a proper case for
17 probation?

18 A Yes, I see.

19 Q Then I would take it that you can, if it were a
20 proper case in your mind, consider the area of
21 probation in the intentional taking of a life,
22 if the facts were proper?

23 A I could consider it.

24 Q Let me ask you this. On your questionnaire it
25 states back in 1966, your brother was the victim

1 of a murder. Is that correct?

2 A Correct.

3 Q Could you tell us a little bit about that?

4 A He was living in a suburb north of Atlanta and
5 he was murdered. He had a van and he was shot
6 in his van and the case has never been solved.

7 Q Was some of his property taken?

8 A No. They have never solved it. They couldn't find
9 a clear motive in the case, either. There were
10 a lot of different theories: drugs, his wife, and
11 various theories, but they have never solved it.

12 Q Is there anything about that incident in your
13 life that you feel would affect you in any way,
14 any manner, in listening to the facts of a case
15 such as this?

16 We will be talking about a case where
17 more than one person has been killed, as a matter
18 of fact.

19 A Only to the extent which I have already stated,
20 that I do believe in the death penalty for
21 murder if it meets these criteria, yes, and I
22 would certainly feel that in the case of my
23 brother's murderer.

24 Q That wouldn't reduce my burden of proof, though,
25 and wouldn't make it easier for me to prove it to

1 you than if it hadn't happened? You would still
2 require me to meet the requirements of the law
3 and prove it to you beyond a reasonable doubt?

4 A Absolutely.

5 Q It says here also someone -- and it looks like
6 you may have underlined close friend studied
7 some law?

8 A I've got a number of friends who are lawyers.
9 That is all I meant there. I never studied law,
10 no.

11 Q You are fortunate.

12 A Yes.

13 Q Is there anything about those acquaintances or
14 anything that would affect you in listening to
15 any of this?

16 A No. I didn't understand that question, quite
17 frankly.

18 Q These are questions that -- it is funny. This is
19 the fifth time I have been involved in picking a
20 capital jury, and every time we come up with a
21 different information form, and I don't know who
22 is responsible for creating those, but they float
23 around and lawyers agree on the questions, and some
24 are probably good and some are probably bad.

25 Have you and your wife ever discussed

1 the death penalty? Is she basically of the same
2 opinion you are?

3 A Yes. I think she would be. Uh-huh. I am sure
4 we have discussed it.

5 Q Where do your two boys go to school?

6 A Kinkaid.

7 Q Where were you stationed while you were in the
8 Navy?

9 A Washington, D. C.

10 Q And your interest in lawsuits, I guess that would
11 be as the average citizen?

12 A Blood and Money, Blood Will Tell, that sort of
13 thing.

14 Q Can you think of any reason whatsoever why you
15 could not be a fair and impartial juror in a
16 case such as this?

17 A No reason why I couldn't be fair and impartial.

18 The only concern that I would have, if
19 the trial should drag on for a long period of time,
20 I am trying to run a business. It might -- I
21 don't know. I would have my thoughts elsewhere,
22 perhaps.

23 Q Let me give you my best estimate.

24 If you are selected, you will be Juror
25 7, and I imagine the rest of this week and probably

1 the end of next week or so, we will complete
2 the selection of the jury and you will probably
3 have at least three or four days' prior notice
4 before you have to come and begin your service.

5 I would imagine the case will take
6 approximately five days, give or take a day or
7 two, and that will consist of 9:00 o'clock in the
8 morning until 5:00 o'clock in the afternoon, and
9 you will be able to go home up until the time the
10 case is given to the jury for deliberation.

11 If it is overnight, the jury is
12 sequestered in a hotel and brought back the next
13 morning to continue deliberations.

14 Would that be too much of an imposition
15 where it would take your mind away from the facts
16 of the case where it would take your mind off the
17 facts?

18 A. Let me say I can't believe if I were involved in
19 a capital murder charge or any murder charge I
20 wouldn't be able to concentrate on the facts.

21 However, that time would be a tremendous
22 burden. In that time period, I have scheduled a
23 trip to Europe, have two or three board of
24 directors meetings scheduled during that period
25 you mentioned.

1 Q When is your trip scheduled?

2 A The week of the 27th of September.

3 Q When were you planning on returning?

4 A That following weekend, the 1st or so.

5 Q We have already discussed this before, and I

6 think our tentative kickoff date would be no

7 sooner than October 4th.

8 A I have scheduled a board meeting on the 14th of

9 October. I have one on the 13th and the 14th of

10 October.

11 Q I would imagine on the 4th, if we start on that

12 date, we would be done by the 13th or 14th.

13 A That would give me a lot of time to prepare for

14 my board meeting.

15 Q It is going to be a burden on anyone, I am sure.

16 A I am not trying to duck out on that account. I

17 am saying that is the only reservation I have.

18 Q If you actually did serve, it wouldn't detract

19 from your listening to the facts?

20 A I would imagine I wouldn't be able to concentrate

21 on the facts.

22 Q Mr. Sadler, I have no further questions of you.

23 Do you have questions of me about

24 things we have discussed today?

25 A Just one thing. This trial, is this for the

1 innocence or guilt of the Defendant or is this
2 the sentencing phase?

3 Q It will be two stages. The first stage of the
4 trial would be the guilt-or-innocence stage.

5 A You would have the same jury for both?

6 Q Right. The same jury that hears the facts in the
7 guilt-or-innocence phase, if we find him not
8 guilty, we would all go home.

9 If they return a verdict of guilty,
10 we will proceed to the second phase of the trial.

11 Mr. Sadler, I look forward to working
12 with you if you are selected on this jury.

13 MR. BAX: Pass the juror.

14
15 EXAMINATION

16
17 QUESTIONS BY MR. ELIZONDO:

18 Q Mr. Sadler, how are you doing?

19 A Fine.

20 Q This part of the trial is known as voir dire
21 examination.

22 A Voir dire?

23 Q Voir dire. It is a French word, and they tell me
24 it means to speak the truth. That is what they
25 say, and the reason we are here, we want to ask

1 you certain questions about how you feel about
2 certain things.

3 As the prosecutor mentioned, this is
4 a capital murder case. As in all trials in Texas,
5 it is divided into two parts.

6 First of all is the guilt-or-innocence
7 stage, and the second part is the punishment
8 stage. If you find him guilty, we go to the
9 punishment stage, and if you find him not guilty,
10 we don't go to the punishment stage.

11 As in all criminal trials in Texas, the
12 State has the burden of proving its case to you
13 as a prospective juror beyond a reasonable doubt.
14 They must prove to you that on a certain date in
15 Harris County, Texas, this Defendant shot and
16 killed a police officer in the lawful discharge
17 of an official duty, knowing at the time that he
18 was a police officer.

19 They have to prove those elements to
20 you beyond a reasonable doubt.

21 The judge won't give you a definition
22 of reasonable doubt. They won't give you one.
23 I can't give you one because there is no legal
24 definition of the term "reasonable doubt."

25 About all I can do is give you

1 comparisons or, by way of analogy, compare it to
2 the civil courthouse across the street at 301
3 Fannin where they try lawsuits for millions of
4 dollars sometimes over Workmen's Comp cases,
5 personal injuries, and the burden of proof over
6 there right across the street is proof by a
7 preponderance of the evidence, the greater weight
8 of the credible evidence.

9 However, here in the criminal courthouse
10 where a person's life is literally at stake,
11 the legislature said before you can put a man's
12 life out, before you can convict him of capital
13 murder or any kind of criminal case and sentence
14 him to death, you better make sure we have the
15 right man, so we will make the State prove this
16 case to the jurors beyond a reasonable doubt.

17 How do you feel about that?

18 A I guess I was brought up believing in proof beyond
19 a reasonable doubt. I don't know what reasonable
20 doubt is any better than you do, obviously.

21 Q Correct.

22 A But I believe in --

23 Q Let me give you another analogy or another
24 comparison, for example.

25 Let's assume for a minute that a person

1 wants to go to the banker and get a loan. The
2 person goes to the banker. The banker says, "Let
3 me see your financial statement. Where do you
4 live? How much are your house payments? How much
5 are your car payments? How much do you owe
6 Foley's? How much do you owe Joske's? How many
7 children do you have? Are they going to school,
8 to college? Are they working?" And, based upon
9 that, the banker makes a decision, and that
10 decision is either to loan them money or not loan
11 them money.

12 I submit to you that banker made a
13 decision by a preponderance of the evidence.

14 A Uh-huh?

15 Q Because if he made his decision beyond a reasonable
16 doubt, theoretically, that banker should never have
17 a default.

18 A That is right. I agree with that.

19 Q We know bankers have defaults and foreclosures.

20 A Right.

21 Q So, anyway, how do they go about doing that?

22 First of all, they call witnesses who
23 take the same stand where you are sitting and give
24 their rendition of the facts.

25 Then after they are through, the State

1 will then rest their case, which means in so many
2 words, "That is all we have."

3 Then the Defendant can, if he chooses,
4 he can testify. He doesn't have to.

5 Let me give you a hypothetical and let
6 me see how you would react to this hypothetical.

7 Let's assume that the State has rested
8 its case. The Defendant has not, or will not put
9 on any evidence. You are back there in the jury
10 deliberation room and you are thinking, "Well, I
11 think he did it, but I haven't been convinced
12 beyond a reasonable doubt."

13 What would your verdict or decision be
14 in that case?

15 A I think you would have to let him go. He is
16 innocent if I don't feel that the Prosecution has
17 convinced me beyond a reasonable doubt that he is
18 guilty.

19 Q Okay. Of course, the Defendant can, if he chooses,
20 he can testify, and when he does testify, he can
21 be impeached or discredited by proof of any prior
22 felony convictions within the last ten years, let's
23 say, and you, as a juror, will be able to listen
24 to the way he is talking, look at his demeanor,
25 how he answers the questions, and based upon that,

1 make some kind of a decision as to whether or not
2 he is telling you the truth.

3 Do you agree with me there?

4 A. Uh-huh. Uh-huh.

5 Q. The Defendant can also call witnesses to testify
6 in his behalf, and I suggest to you that if he
7 does, there will be two different versions of the
8 facts, two diametrically opposed stories, and it
9 will be your job as a juror to be the judge of
10 the facts.

11 Judge Oncken will be the judge of the
12 law, but you, as a prospective juror, will be the
13 judge of the facts.

14 It will be your job, your function, your
15 duty to decipher the facts.

16 You can, as a juror, believe some of,
17 all of, or none of what a particular witness says.

18 Let me ask you, you know, I know when
19 I was growing up, I was taught to believe that
20 a police officer always tells the truth. I was
21 always taught to believe or obey a police officer.
22 I suspect that in this type of case, the State
23 will have numerous police officers taking the
24 stand and testifying, but would the fact that
25 they are police officers, would you give them any

1 more credibility than you would, say, an ordinary
2 citizen --

3 MR. BAX: Judge, the only objection I
4 have to that, they can't give a police officer
5 more credibility --

6 Q (By Mr. Elizondo) -- before he testifies?

7 THE COURT: As the question is now
8 stated, I will overrule your objection.

9 A Would I give a police officer's testimony more
10 weight than anyone else's testimony? Is that the
11 question?

12 Q Automatically, because he is a police officer,
13 before he testifies, of course, would you?

14 A No. No. Not automatically, no. But I think
15 certainly, I think it's been proven that police
16 officers don't always tell the truth, also.

17 Uh-huh.

18 Q Okay. So then, you would more or less just wait
19 and listen to what they testify to and then form
20 your own opinion after you heard them testify?

21 A I think that is a fair statement. Yes.

22 Q You wouldn't automatically think just because they
23 are police officers you would automatically give
24 them more credence before you heard what they
25 testified to, let's say?

1 A Correct.

2 Q Correct?

3 In a capital murder case, if you find
4 him guilty of capital murder, then we go to the
5 punishment phase. At that point in time, there is
6 only two possible punishments, life or death, and
7 that is determined, of course, by the way you
8 answer those two questions.

9 A Uh-huh.

10 Q And the first question is asking you whether the
11 conduct of the Defendant that caused the death
12 of the deceased was committed deliberately --

13 A Uh-huh.

14 Q -- and with a reasonable expectation that the death
15 of the deceased would result.

16 A Uh-huh.

17 Q The word deliberately is underlined in that first
18 question.

19 It won't be underlined in the charge.

20 The reason it is underlined there is
21 to bring attention to the word, because there is
22 no legal definition of the word deliberately.

23 The legislature when they drew up those
24 questions didn't see fit to give us a definition
25 of deliberately.

1 A Uh-huh.

2 Q I have been told deliberately means to ponder or
3 think about with measurable consideration or to
4 premeditate.

5 For example, if you were in the guilt-or-
6 innocence stage, you will go into the jury
7 deliberation room and you will deliberate or
8 ponder or think about whether this man is guilty
9 or not.

10 A Uh-huh.

11 Q What does the word deliberately mean to you?

12 A Well, I really haven't thought about it in great
13 detail in listening to this definition, but I
14 don't think I would ascribe as strong a definition
15 as you are, seemingly, that you have to ponder
16 over something, and I think if somebody turned
17 and fired on somebody in a reaction-type thing --
18 but on purpose would be, I guess, closer to my
19 definition. On purpose, he turned on purpose
20 and fired on someone and killed them. That would
21 be deliberate to me.

22 Q Would you say the word deliberately means the same
23 thing as intentionally?

24 A Close. Yes. Yes.

25 Q Okay, now --

1 A Same thing. If you turn and intentionally fire
2 on somebody, you don't have to ponder over it.
3 It can be done very rapidly. Ponder, to me, it
4 implies a great deal of time.

5 Q Premeditated?

6 A Not necessarily premeditation. It could have been
7 done, thought of ahead of time.

8 Q Let me backtrack a little then.

9 A Uh-huh.

10 Q As I said, there are two parts to a trial.

11 A Uh-huh.

12 Q The first part is the guilt-or-innocence stage.
13 At that point in time, if you find him guilty,
14 you would have found him guilty of intentionally
15 and knowingly killing a police officer.

16 A Uh-huh.

17 Q Then we go to the punishment stage.

18 A Right.

19 Q Would you automatically answer Question No. 1
20 yes solely because you have already found him
21 guilty of intentionally and knowingly killing a
22 police officer?

23 A Well, the example the prosecutor gave before where
24 he shot a fellow in the leg without the intent of
25 bringing about death, there I would not

1 automatically.

2 However -- and maybe I should think
3 about this further before answering -- I would
4 think before he was found guilty that he did it
5 intentionally during the guilt-or-innocence
6 phase of the trial. Intentional would probably fit
7 the same definition for me as deliberate.

8 Q Well, would you automatically answer Question No.
9 1 yes solely because --

10 A If he intentionally fired on somebody with the
11 intention, the expectation that he was trying to
12 cause the death of that person, I would say yes.
13 I would probably have to say yes to No. 1.

14 Q Okay. Let me see now if I've got this right, and
15 I don't mean to belabor the point. I just want to
16 make sure I got this right.

17 A Okay. I am not sure. These are all new words to
18 me, too.

19 Q In the guilt-or-innocence stage, you have found
20 him guilty, let's say --

21 A Correct.

22 Q -- of intentionally and knowingly killing a police
23 officer.

24 A Uh-huh.

25 Q Then we go to the punishment stage.

1 A Correct.

2 Q As a result of your having found the Defendant
3 guilty of intentionally and knowingly killing
4 a police officer, would you automatically answer
5 Question No. 1 yes solely because you have already
6 found him guilty of intentionally and knowingly
7 killing a police officer?

8 A I thought I answered that before, and I said no,
9 that if there was not the reasonable expectation
10 that the death of the deceased would result --
11 there are two parts to No. 1.

12 Q Correct.

13 A But as I said before, also, I think if I had
14 found him to be intentionally committing the crime,
15 then that would fit my definition of deliberately
16 committing the crime, so half of the first
17 part of the question would be yes, but not
18 necessarily the second part.

19 Q So then let me see if I've got this right --

20 MR. BAX: Objection. I think he has
21 been very clear as to what his answer is, and we
22 can go over this fifteen times, and I believe we
23 would have the same response.

24 THE COURT: I think so, too. I think
25 it would be repetitive.

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MR. ELIZONDO: Okay.

A It's y'all's time. I have already blown today.
I don't mind going over it one more time.

Q (By Mr. Elizondo) Thank you.

Let's go on to the second question.

A All I am saying is No. 1 has two parts to it.

Q Right. It is a two-part question.

A And it would seem to me the first part would be
answered by the first finding of intentionally,
automatically, it seems, maybe yes, but not
necessarily the second part.

Q Okay. Can you think of any instance where you
would automatically -- where you would not answer
Question No. 1, the first part of Question No. 1
yes after you have found the Defendant guilty of
intentionally and knowingly killing a police
officer?

A No, I don't believe so. If he intentionally
killed a police officer, in my mind, he deliberately
killed a police officer, and those are one and the
same to me.

Q So -- excuse me just a minute.

(Consultation between attorneys.)

THE JUROR: It must be awfully boring
for y'all all day, all week.

1 THE COURT: Try two weeks.

2 Q (By Mr. Elizondo) So then the first part of
3 Question No. 1 is -- what I am saying, in your
4 own mind, is the same as when you have convicted
5 the Defendant of intentionally and knowingly
6 killing a police officer?

7 A The first part of the question, correct, would be
8 one and the same with the definition of the word
9 deliberately. Yes.

10 MR. ELIZONDO: May it please the Court,
11 I would respectfully challenge the juror.

12 MR. BAX: I have a few questions.

13
14 EXAMINATION

15
16 QUESTIONS BY MR. BAX:

17 Q When we were talking a few minutes ago, I said
18 there were two examples, and we went over Question
19 1 and ran out before Question 2.

20 Let me give you another example where
21 you may, in fact, find from the evidence the
22 person didn't act deliberately in causing the
23 death. Okay?

24 That may sound strange, but we have the
25 law of parties, and if two or more persons

1 conspire together to commit a felony, and if
2 during the course of that felony, one of the
3 coconspirators commits another felony, the law
4 says all of the coconspirators are guilty of
5 the act committed by the one, even if they didn't
6 commit it, if they could anticipate the
7 possibility of that taking place during the
8 conspiracy --

9 A Uh-huh.

10 Q For example, Mr. Moen and I decide the District
11 Attorney's Office is not paying us enough money.
12 We conspire to make a little extra money on the
13 side, and we go to the delicatessen and I talk
14 Bob into waiting and keeping the motor running
15 in the car and I go in and go inside. While I
16 am inside, something goes wrong with my robbery
17 and I commit murder by killing the clerk. I am
18 guilty because I am the triggerman.

19 Under our law of parties, Mr. Moen is
20 also guilty of capital murder, and he would be
21 acting the same as I if he intentionally caused
22 the death of a clerk, but do you see when we got
23 to that first question as to Mr. Moen's case, you
24 would see he was a coconspirator by his conduct,
25 but none of his conduct that caused the death --

1 all of the conduct was on the triggerman's part.

2 A Uh-huh.

3 Q Can you see in that case where a person could be
4 convicted of capital murder, causing a death as
5 a party, and yet both of those questions could
6 be answered no based on the evidence one way or
7 the other?

8 A Sure. I see what you are saying.

9 MR. BAX: I believe he is nuts?, Your
10 Honor.

11 THE COURT: Objection is overruled.

12
13 EXAMINATION
14

15 QUESTIONS BY MR. ELIZONDO:

16 Q Do you still say the word deliberately means the
17 same in your own mind as the word intentionally?

18 A Quite honestly, I didn't know the second fellow
19 would be intentionally a murderer under the case
20 presented, so no.

21 Q You didn't? Okay.

22 The second question, whether there is
23 a probability that the Defendant would commit
24 criminal acts of violence --

25 A Yes.

1 Q -- that would constitute a continuing threat to
2 society.
3 A Uh-huh.
4 Q Would you agree with me that that question is
5 asking you to foretell or forecast the future?
6 A Pretty much, yes. You have to assign a
7 probability to actions in the future. That is
8 correct. Uh-huh.
9 Q Do you think a person can change his mode of
10 behavior or his mode of conduct?
11 A Yes. Uh-huh.
12 Q Let me talk to you a little bit about your brother.
13 Your brother was killed in Atlanta?
14 A Uh-huh.
15 Q Is there anything about that case in any way,
16 shape, form, or fashion that would bias you in any
17 way against this Defendant?
18 A I don't believe so. I can't think of any reason
19 why it would.
20 Q Do you have any friends that are prosecutors?
21 A No. No, no.
22 Q I was just wondering.
23 You said you had a lot of friends who
24 were lawyers?
25 A No, mostly corporate lawyers.

1 Q Mr. Sadler, I think it's been three or four
2 months ago, maybe longer. I don't recall exactly
3 when it happened, but the Supreme Court came down
4 and said that the children of illegal aliens had
5 the right to a free education.
6 Do you remember that?
7 A Yes. I sure do.
8 Q How did you feel about that and what was your
9 immediate reaction?
10 A My immediate reaction was I disagree with that.
11 Q How do you feel now?
12 A I still disagree with that.
13 Q As a result of that, have you formed any kind of
14 bias against, let's say, illegal aliens as a class?
15 A Biases against illegal aliens as a class?
16 I think the word illegal alien says it
17 itself. It is illegal. I wouldn't call that a
18 bias, though. I don't think we should have
19 illegal aliens. It's an illegal thing.
20 Q Okay, but -- and I am using the word "illegal"
21 for lack of a better word --
22 A Let me say I would not allow any feelings I had
23 about illegal aliens to affect my judgment on a
24 life-or-death decision on anybody, whether or not
25 he was an illegal alien or Martian or anybody else.

1 Q If you should come to find out that this
2 Defendant is an illegal alien, would you hold it
3 against him in any way in the trial of this
4 case?

5 A I can't believe that I would in any way in the
6 trial of this case, in a murder trial.

7 Q Uh-huh.

8 Could you give him the same rights, the
9 same constitutional rights that you could give
10 an ordinary citizen of this country?

11 A Or any country. Yes.

12 Q A little while ago, you told Mr. Bax -- I am
13 sorry -- what is your position at Soltex?

14 A I am the president of Soltex.

15 Q You run the outfit then?

16 A Uh-huh.

17 Q Is there -- no, only you can answer this question.

18 You've got a busy agenda. On October
19 the 4th, I believe you have a conference, a board
20 of directors meeting, I believe, and then after
21 that, you have what?

22 A After that, I have another board meeting on the
23 13th and one on the 14th, and I am not sure
24 exactly what in between. Those are the only
25 really important things.

1 Q The 13th and 14th?

2 A Well, actually, my one board is on the 5th. I
3 think I did say on the 4th, but on the 5th, and
4 the other is on the 13th and 14th. One is in
5 Chicago, and the 13th and 14th are here in Houston.

6 Q As Mr. Bax was saying, this trial will probably
7 start around the 4th of October, and do you foresee
8 any problems -- I am sure you do.

9 A I do, yes. That is why I mentioned it before.
10 Yes.

11 Q If you were a juror in this case, could you pay
12 attention to the facts irrespective of this meeting
13 you had in Chicago on the 5th, or would that in
14 any way, shape, form, or fashion, would that
15 hinder your deliberations?

16 A Well, as I answered that question previously, or
17 at least I will be consistent since it's being
18 recorded, I cannot believe in a capital murder
19 charge that I could not pay complete attention
20 to the facts presented, and I still, though --
21 it would have to bother me somewhat, being away
22 from my business during that kind of critical
23 period.

24 Q You said it would bother you.

25 That is what bothers me now.

1 A Well, I don't know how to answer it more
2 honestly.
3 MR. BAX: I don't think we would tell
4 a person to be more clear about his feelings than
5 he has stated twice on the record now.
6 THE COURT: Yes, I agree.
7 MR. ELIZONDO: Pass the juror, Your
8 Honor.
9 MR. BAX: We would accept Mr. Sadler.
10 THE COURT: What says the Defense?
11 MR. ELIZONDO: May I have a moment,
12 Judge?
13 THE JUROR: What was that, Judge?
14 When he says, "We will pass the juror," that means
15 they are done questioning?
16 THE COURT: Yes.
17 MR. ELIZONDO: Prior to excusing Mr.
18 Sadler, we would re-urge our motion to examine
19 the entire venire and exercise our peremptory
20 challenges at that time.
21 THE COURT: That motion will be
22 overruled.
23 MR. MOEN: That means you are excused.
24 THE COURT: That does mean you are
25 excused, Mr. Sadler.

1 Thank you very much. I wish we could
2 have citizens as alert and as intelligent as you
3 serve on all of our juries, and I appreciate your
4 time.

5 THE JUROR: Thank you very much, and I
6 wish you luck in getting this along.

7
8
9
10 LESLIE A. WATTS,
11 was called as a prospective juror and responded to
12 questions propounded as follows:

13
14 EXAMINATION

15
16 QUESTIONS BY MR. MOEN:

17 THE COURT: Ms. Watts, as I talked to
18 you briefly this morning in the little room that
19 we had the lawyers in, I told you the lawyers were
20 going to ask you some questions, and I know you
21 have been waiting around here all day.

22 THE JUROR: Actually, I went back to
23 work.

24 THE COURT: I know you are probably a
25 little apprehensive about being in this situation,

1 but please just relax and visit with us a little
2 bit and answer those questions and don't tell
3 them what you think they want to hear, just how
4 you feel about different things.

5 You may proceed.

6 MR. MOEN: Thank you, Judge.

7 Q (By Mr. Moen) Ms. Watts, my name is Bob Moen,
8 and I am with the District Attorney's Office
9 here in town. Seated beside me is a gentleman
10 by the name of Dick Bax, also with the District
11 Attorney's Office.

12 Before I go into the aspects in the
13 course of the trial, let me cover a topic with
14 you particularly because of some of the other
15 answers you have given to us on the jury information
16 form you have filled out earlier about your job --

17 A Okay.

18 Q -- and the inconvenience your jury service might
19 have with regards to your occupation.

20 Five weeks is how long I think the
21 trial would be going on, five working days, give
22 or take a day or so.

23 A lady in this state who has a child
24 at home under the age of ten has a right to claim
25 exemptions from the jury service. I'm not

1 suggesting you do that. I am only telling you
2 that is your right to claim such an exemption, but
3 we have to have a juror claim it before any juror
4 can be excused for that reason.

5 Would you like to claim your exemption
6 because you are a mother of a child under ten?

7 A No.

8 Q How would you reconcile your absence from work?
9 We can't give excuses whatsoever for work anymore.
10 We could at one time give allowances for doctors
11 or other persons whose patients relied on their
12 particular expertise or whatever.

13 A What do you mean by reconcile? What would happen?

14 Q The only thing I am getting at is, yes, what would
15 happen over at work with your bosses downtown
16 and you are over here?

17 A I work for the newspaper, the Houston Chronicle,
18 and my boss and I put out a section. We are
19 under deadlines, and she is sitting there putting
20 proofs, and I worked until midnight and went back
21 there during the break to work, and it would be
22 very difficult. I would probably be, if it
23 lasted any longer than a week, I would certainly
24 have to be replaced. They would have to call
25 someone else in to train. No one else is trained

1 to do the job, and she is going to be out of town
2 next week and in October, out two more weeks, and
3 I will do it single-handedly during that time.

4 Q I anticipate the trial will start roughly
5 October 4th.

6 A I am also involved in a divorce myself, and I
7 have a tentative hearing set sometime during the
8 next six to eight weeks.

9 Q Who takes care of your kids in the event you are
10 locked up overnight --

11 A Their father.

12 Q -- in the case you are a juror.

13 That is why I am going to explain what
14 might be involved in the jury service. Jurors at
15 times can be sequestered during the course of a
16 jury trial.

17 A I understand, of course.

18 Q You would be locked up in a hotel room, not locked
19 up in any other facility other than a hotel room,
20 where the jury would be kept together perhaps
21 overnight, but I anticipate the trial would last,
22 give or take a day or so, a week, at least five
23 working days. That is what we are looking at.

24 I don't want you to lose your job.

25 A Well, it would be very, very critical, and if it

were at a time when she was also out of town,
it would -- I quite frankly don't know what they
would do. I would probably have to go back to
work and work at night to make up the section.
I normally work fifty hours a week. I also work
a part-time job as well. I put in fifty hours a
week as it is. It is a financial thing.

Q I am concerned for a couple of reasons.

MR. ELIZONDO: Yes.

MR. MOEN: Both sides are willing to agree to excuse you. I think it is only fair.

THE JUROR: Thank you.

THE COURT: Thank you, Ms. Watts.

MRS. HARRY M. DARR,
was called as a prospective juror and responded to
questions propounded as follows:

EXAMINATION

QUESTIONS BY MR. MOEN:

THE COURT: Ms. Darr, you have been waiting around all day. Now you find yourself in

1 the courtroom practically being questioned.

2 Please, as I mentioned this morning,
3 please relax and just visit with us and answer
4 the questions that the lawyers ask of you. Okay?

5 THE JUROR: Yes.

6 THE COURT: Thank you.

7 Q (By Mr. Moen) My name is Bob Moen. I am with
8 the District Attorney's Office here in town.

9 Seated next to me is Dick Bax, also
10 with the District Attorney's Office.

11 Mr. Bax and myself are representing
12 the family of Officer J. D. Harris and the
13 District Attorney's Office in the prosecution of
14 this case styled the State of Texas versus Ricardo
15 Aldape Guerra, and he is charged with having killed
16 Officer Harris back on July 13th, 1982.

17 The judge asked all the jurors earlier
18 if they had heard anything about the case other
19 than on television, and I don't think you made any
20 response.

21 I take it you don't remember anything
22 about the case, either having read or heard
23 anything?

24 A I don't remember it. As to my knowledge right
25 now, I might have read something or heard something

1 on television, but I don't remember it.

2 Q No problem with remembering or not remembering.
3 Sometimes we ask the question because sometimes
4 jurors form opinions or conclusions based on what
5 they have read or heard, and that is why we touch
6 base with them on that, to see if they have
7 reached any type of conclusion or opinion.

8 The Defendant will be represented by
9 two gentlemen, Candelario Elizondo and Joe
10 Hernandez, both lawyers here in town who will be
11 representing the Defendant who is on their left,
12 and I think the judge mentioned earlier, the lady
13 whispering in the background is the interpreter,
14 translating what we are saying from English to
15 Spanish.

16 This portion of the trial is unusual
17 in criminal cases in Texas because in no case
18 except a capital murder case are we allowed to
19 bring jurors in individually and visit with them.

20 In the usual criminal cases, the usual
21 rule is that we bring all jurors in together,
22 thirty or forty at a time, and make our remarks
23 as a whole, but on a capital murder case, the law
24 requires us to talk to jurors individually to see
25 how they feel, to see if they have agreements or

1 disagreements with any of the aspects of the law
2 that may come up during the course of the trial
3 or with anything that would be required of them
4 by their jury service, and why do we do that?
5 Well, because there are many people who agree or
6 disagree with aspects of the law. Many people
7 come in and find themselves in the seat you find
8 yourself in this afternoon and they tell us,
9 "We agree with that principle of law and disagree
10 with that principle of law. We agree with the
11 death penalty, or do not agree with the death
12 penalty."

13 The reason we ask jurors to tell us
14 how they feel is because people are not required
15 to be a juror on a case where their jury service
16 would cause them to violate or be in conflict
17 with any personal opinions or beliefs that the
18 juror holds dear to their life -- to their way
19 of thinking. In other words, no one has to be
20 a juror where it is going to violate any moral,
21 religious, or conscientious beliefs a juror
22 happens to have. They don't have to do it.

23 How do we know that is the case unless
24 the jurors tell us? That is basically what we
25 are going to ask you to do, give us your frank

1 responses and don't worry if you agree or don't
2 agree with something. The only answers we are
3 concerned about are the answers that are truthful
4 to the way Ms. Darr feels, because what we ask
5 is for you to be honest to your feelings.

6 None of the lawyers or the judge or
7 anybody else in this courtroom has to get in the
8 jury box and participate on a capital murder jury.
9 It is people like yourself, and only if you feel
10 like you can and it would not violate any of your
11 beliefs concerning any of these aspects of the
12 law.

13 Do you follow me on what we have talked
14 about so far?

15 THE COURT REPORTER: Would you please
16 speak out?

17 A Yes.

18 Q I am sorry. The lady next to you is a court
19 reporter and she takes down everything you say.
20 Even though I see you nodding your head, if you
21 could, answer out so she can take down your
22 response.

23 A Certainly.

24 Q Could you tell me your feelings, Ms. Darr,
25 concerning the death penalty? Would they allow

1 you to serve on a jury knowing someone might be
2 receiving the death penalty, or would your
3 feelings keep you from being a juror in such a
4 case?

5 A Well, I think if I was convinced to my knowledge
6 and what I have heard, if a person deserved it,
7 I think I could go along with it myself.

8 Q I take it what you are telling me is if the case
9 were the right case and you were convinced from
10 the evidence, that you are in favor of the death
11 penalty?

12 A That is right.

13 Q Is that pretty much the way you have felt all your
14 life?

15 A Not until I got older and knew more about things.

16 Q Pretty much a decision you made for yourself
17 based on things you have read or people you have
18 talked to, et cetera?

19 A Right.

20 Q Okay, but not particularly the product of your
21 teaching or anything by your mom and dad when you
22 were growing up?

23 A No, nothing like that; just something I have come
24 to conclude on my own.

25 Q Okay. Do you know how your husband feels? Is he

1 of the same frame of mind? Have you people ever
2 discussed it at the house --

3 A Not that much.

4 Q -- some crimes or things you have read in the
5 paper?

6 A Not that much, really.

7 Q Let me ask you a question by way of testing your
8 feelings, and I don't mean to pick at you, because
9 I am not, but what purpose do you think the death
10 penalty serves in an ordinarily lawful society?
11 What purpose do you think the death penalty plays?
12 What reason do you think we have that particular
13 type of punishment for certain crimes?

14 A Well, I guess it would be that if a person is
15 like a habitual criminal, somebody that you think
16 would go out and do it again, murder someone again,
17 you know, if they take someone else's life
18 intentionally --

19 Q Uh-huh.

20 A -- I think they should be punished.

21 Q Yes. Of course, our law applies to someone who
22 may, in fact, even be a first offender. A first
23 offender can receive the death penalty, even
24 though they've never committed any other criminal
25 act in their entire life, so the law applies to

1 the crime, basically, and not to the person.

2 A Yes, I understand.

3 Q Okay. I want to get around to explaining some
4 things to you in just a second, but I wanted to
5 ask you some questions first off in regards to
6 that.

7 Our legislature has said there are only
8 ten different situations or ten different instances
9 in which a person can receive the death penalty
10 anyway. Not all crimes -- not all crimes are
11 punished by the death penalty.

12 A man driving while intoxicated doesn't
13 have to worry about the death penalty, or someone
14 who steals something from the store worth four
15 or five dollars.

16 Our legislature has said someone who
17 commits murder during the course of a fire, sets
18 a fire, and when the people come to put out the
19 fire, he shoots one of the firemen, because that
20 is his idea of having a good time, that is
21 capital murder; to kill a police officer during
22 the course of his official duties; to murder
23 someone while breaking into their home; for a
24 rapist to kill the rape victim; the kidnapper to
25 kill the kidnap victim; arson-murder, the arsonist

1 kills his victim; murder for hire; or someone
2 incarcerated in one of our penal institutions
3 kills while trying to escape, that is capital
4 murder; or killing anyone who is employed in our
5 penal institutions, whether that be a librarian
6 or someone working in the medical department or
7 one of the wardens or guards or anyone else of
8 the numerous people employed in running our
9 penal institutions.

10 If a person is convicted of any one of
11 those, that is capital murder. That keeps the
12 convict in line. They know if they hurt anybody
13 we ask to keep our penal institutions running
14 and to keep us protected from anyone in prison,
15 convicts, they know if they hurt those people and
16 take their lives, they stand to lose their lives
17 as well. It is a way of protecting them as well.

18 All other murder cases fall into a
19 totally different range of punishment, five to
20 ninety-nine years or life. That is the range of
21 punishment for someone who takes another person's
22 life. But only those murders that occur under
23 the circumstances we have talked about are
24 punished as capital murders.

25 Do you follow me on that distinction

1 there?

2 A Yes.

3 Q Okay, and the way a person receives either a life
4 sentence or the death penalty, which are the only
5 two possible punishments you can receive for being
6 found guilty of capital murder, the way a person
7 receives those punishments is not by the jury
8 deliberating and deciding should we give this
9 person a life sentence or the death penalty.

10 Instead, the jury answers those two
11 questions over your right shoulder. No one tries
12 to hide anything from you, because you know by
13 your answers to those particular questions, two
14 yes answers, and he receives a death penalty.
15 A no answer to either one and he receives a life
16 sentence instead. Two yes answers, and the
17 Defendant gets the death penalty. A no answer
18 and the Defendant receives the life sentence
19 rather than death.

20 Now, all twelve jurors have to agree
21 to answer a question yes, but only ten of the
22 jurors have to agree to answer a question no,
23 so there is a slight distinction there. Ten
24 jurors have to agree to answer a question no.
25 All twelve have to agree to answer a question yes.

1 Do you follow me on that --

2 A Yes, sir.

3 Q -- how that works?

4 Most of the time, I am going to be doing
5 the talking, trying to explain things to you.
6 Anytime you have questions, tell me to shut up
7 and ask a question and tell me what you want. I
8 want to go over them with you. I want you to
9 understand what will happen during most of the
10 course of the trial.

11 Even though I will be doing most of the
12 talking, at the same time, I want to explain
13 everything to you so I will be sure Ms. Darr
14 will know what is required of her.

15 Look at these two questions and you may
16 have had a chance to read them earlier, but if
17 you haven't, go ahead and read them again, and I
18 want to talk to you about them.

19 A Okay.

20 Q These questions are the ones that will be
21 submitted to the jury.

22 Now, let me tell you how these questions
23 come into play. At the first portion of the trial,
24 all you hear is people getting onto the stand
25 like you are seated on today, and they will tell

1 you what happened back on July 13th. They will
2 be witnesses and they will take an oath to tell
3 the truth and tell the jury what they saw, heard,
4 or any investigation they conducted back on July
5 13th, and that will be evidence concerning whether
6 or not the man on trial is guilty or not guilty,
7 and the jury will hear the evidence and they will
8 go back and deliberate and make a decision as to
9 whether or not the man is guilty or not guilty
10 and they will come and tell the judge after the
11 man is convicted, "Judge, we find the man guilty,"
12 or "not guilty."

13 After they find the man guilty, they
14 take their seats again and we proceed to the
15 punishment phase of the trial. These questions
16 aren't submitted to the jury until after the
17 entire trial is over with. There is a first
18 phase and a second phase of the trial.

19 Then the jury gets these questions and
20 then they try to answer them based on all the
21 evidence they have heard about the crime the
22 man committed, what kind of person do we have
23 here, whether this man has been convicted of
24 other crimes before or convicted of other crimes
25 we haven't heard about yet, because in a capital

1 case, you can also hear about other crimes to
2 help you answer and decide what your answers to
3 those questions should be.

4 A Uh-huh.

5 Q You take all that evidence back and it asks you to
6 decide -- the first question asks you to make a
7 determination about the conduct of the man on
8 trial and was the conduct of that man deliberately
9 done and was that conduct done with the reasonable
10 expectation the deceased would die.

11 That is legal talk. Let me give you an
12 example of how a hypothetical situation fits
13 in there. Okay?

14 A Okay.

15 Q Imagine a man who goes into the convenience store
16 and he points a pistol at the lady working there
17 as a cashier. It is early in the morning and
18 no one else is around, and he points a pistol and
19 says, "I want all the money from the cash
20 register." She is afraid and scared to death
21 like anybody would be, and gives him the money.
22 He grabs the money and he looks around and sees
23 no one else is in the store. He is an ex-convict
24 and doesn't want to go back to the penitentiary.
25 He shoots her once in the head and takes her life.

1 Unbeknownst to him, she has stepped on an alarm
2 and calls the police and the police are waiting
3 and he has committed a capital murder.

4 That is different than just ordinary
5 murder. He has committed murder during a robbery.
6 The jury would have to answer this question
7 after the man's trial if they had found him guilty,
8 and then they would answer this question here,
9 this first question, and they would decide: Was
10 the conduct on the part of that man, the pointing
11 of the pistol at that woman and the firing of those
12 bullets into her body, was that deliberate conduct
13 and was that conduct done with a reasonable
14 expectation she would die?

15 Is it reasonable to expect a person will
16 die when you shoot them in the head with a gun?

17 A It is reasonable to me. The woman would be very
18 lucky to live.

19 Q It is reasonable to me, too.

20 That is basically the decision you make.
21 It is based on the evidence you have heard and
22 the conduct on the man's part, and determining
23 is that conduct deliberate on his part, and so
24 you make a determination from the facts and you
25 determine this question here about the man on

1 trial. What kind of person is it that would go
2 in and commit a robbery with a pistol and shoot
3 someone in the head and chest? Is that the type
4 of person where there is a probability he would
5 commit acts of criminal violence that would
6 constitute a continuing threat to society?

7 That is a mouthful, too.

8 Let me explain what this question asks.
9 This calls for you to make a judgment about what
10 kind of person is on trial. Is there a
11 possibility that the person, if he is allowed to
12 roam free in this world, would do the same thing
13 again, do other crimes of violence that would
14 constitute a threat to society that would hurt
15 people? Is he the type of person who, if allowed
16 to roam free, would likely hurt other people?
17 That is basically what that question asks, or is
18 he the type of person if he were locked up in
19 jail, there is a probability he would hurt other
20 people in jail, whether the employees or other
21 convicts?

22 That second part is asking you to make
23 a determination about the type of man on trial.
24 You can answer that question yes or no depending
25 upon the evidence you hear. Just the crime

1 itself can be enough evidence.

2 I will give you an example. Are you
3 familiar with the name Ronald Clark O'Bryan? Are
4 you familiar with that case? The name might ring
5 a bell.

6 A I remember that.

7 Q He poisoned his children on Halloween.

8 A I remember that.

9 Q Whether the man had ever done anything else in
10 his life, you could get a feel about what kind
11 of person that man was, even though he had never
12 done a single other thing in his life. You could
13 get a feel as to whether there was a probability
14 he would hurt other people again or commit other
15 crimes and that he would wind up being a threat
16 to other people in society.

17 A Uh-huh.

18 Q Just the crime itself might be enough, but you
19 also have other evidence, but there is no
20 requirement you get other evidence. You can get
21 other evidence about the man on trial. Sometimes
22 you don't. You just have the crime to make a
23 decision on.

24 Do you follow me on that?

25 A Uh-huh.

1 Q Do you have any questions so far?

2 A I don't think so. I think I understand what

3 you are trying to tell me.

4 Q Do you have any questions of me about Questions

5 1 or 2 that I can answer for you or try to clear

6 up for you at this time?

7 A I think you have explained it fairly well.

8 Q You know the language there is legal language.

9 It was drafted by the legislature and that is

10 fine. That is the job of the legislature, to give

11 us guidelines. That is fine.

12 But they didn't give us any definitions

13 we can give you to use --

14 A Uh-huh.

15 Q -- for the word "probability" or "society." You

16 will have to use your own definitions for those

17 words, and I take it from looking at your

18 background sheet, you probably have a good working

19 definition for the word "probability" and

20 "society" as well. Use your own definitions, and

21 you will be doing fine. Okay?

22 A Okay.

23 Q Let me talk to you about some of the things that

24 would be required of you if you are a juror on a

25 criminal case. I don't think you have been a

1 juror before, have you?

2 A No, I Haven't.

3 Q The judge is going to tell you in writing there
4 are certain things you have to do as a juror. He
5 will tell you the Defendant in a criminal case is
6 presumed to be innocent. That doesn't mean the
7 man is innocent just because he finds himself
8 in the courtroom here getting ready to go to
9 trial. I think you realize from the hypothetical
10 we talked about, the lady who was shot by the man
11 in the convenience store, he is just as guilty
12 the day he did that as the day he comes to the
13 courtroom to answer for it. The presumption of
14 innocence means this: Jurors should keep an open
15 mind and wait until they hear the evidence and
16 make a decision based on the evidence.

17 A Definitely.

18 Q And that is how you decide whether a person is
19 guilty or not guilty. You listen to what people
20 tell you from the witness stand and then make a
21 decision as to whether this man is guilty or not
22 guilty. That is the presumption of innocence.

23 A Okay.

24 Q The judge will also tell you the burden of proof
25 in a criminal case, the burden of proof someone

1 has, in fact, committed a crime here in Harris
2 County in our community rests right here with
3 Mr. Bax and myself -- the waiter who was bringing
4 the coffee in right now, that is Mr. Bax.

5 MR. BAX: I can do a little more than
6 this, but not much.

7 Q (By Mr. Moen) We have the burden of proving to
8 you, before you and the other jurors can say by
9 your verdict "guilty", we've got to prove it to
10 you. That is what is called the burden of proof.

11 The Defense doesn't have the burden of
12 proving anything. Mr. Elizondo and Mr. Hernandez,
13 they don't have to prove anything, if they don't
14 want to. You see, they don't have any burden to
15 do it, but a trial is a wide-open proceeding,
16 and either side can call whatever witnesses or
17 whomever they want.

18 It is not a closed trial. Don't get
19 the idea they don't have the same rights we do.
20 They do. They can call whomever they want to to
21 the stand. Just by issuing a subpoena, the
22 Sheriff's Department will go get them and bring
23 them down here, and if they don't come willingly,
24 they will come by whatever way to tell the jury
25 what they want to prove. They don't have to

1 prove anything, but if they want to call witnesses,
2 they can.

3 A Uh-huh.

4 Q But the judge will tell you the only person you
5 should hold to proving it to you is Mr. Bax and
6 myself. We have to prove it to you before you can
7 say by your verdict "guilty," and before you can
8 answer yes, Mr. Bax and I have got to prove it
9 to you again. If we don't prove it to you, I
10 expect you to answer no and say by your verdict
11 "not guilty."

12 That is our fault if we fall down in our
13 burden of proof. I expect the jurors to come and
14 tell us about it and not be afraid to do so.

15 Okay?

16 A Okay.

17 Q Would you like coffee?

18 A No, thank you. I don't drink coffee.

19 Q The burden of proof now is to prove beyond a
20 reasonable doubt -- not all doubt, any doubt, or
21 a shadow of a doubt -- and I don't know what type
22 of television programs Ms. Darr watches at her
23 house, but let me just tell you that when I grew
24 up as a kid, my mom's favorite program, and that
25 meant my dad's favorite program -- that is the way

1 things worked in our house -- was Perry Mason,
2 and I grew up weaned on Perry Mason. I think it
3 was every Friday and Saturday night, and I was
4 a kid growing up, and the greatest phrase on
5 Perry Mason was Mr. Burger had not proven his case
6 beyond a shadow of a doubt or any and all doubt,
7 were his favorite phrases.

8 Those were great for TV lawyer shows.
9 However, our law says before a juror can find
10 someone guilty, they have only to be convinced
11 beyond a reasonable doubt, not all doubt or a
12 shadow of a doubt.

13 I want to tell you there is no way in the
14 world I am a smart enough lawyer to prove any case
15 to you beyond all doubt or beyond a shadow of a
16 doubt. You may have a doubt listening to the
17 evidence on any criminal trial. The test is
18 whether you believe beyond a reasonable doubt,
19 not beyond all doubt.

20 Do you follow me on that?

21 A Yes, sir.

22 Q That applies to those questions as well, and I
23 want to tell you right now there is no way in the
24 world I can prove to you what type of person a
25 man is beyond any, all, or a shadow of a doubt.

1 That is not the test.

2 You may have some thoughts in your mind
3 about what type of person a man is, and the only
4 thing is you have to believe beyond a reasonable
5 doubt that there is a probability he is the type
6 of person that would commit criminal acts of
7 violence that would constitute a continuing threat
8 to society, and if you believed that, you could
9 answer the question yes.

10 Do you follow me on how that works?

11 A Yes, sir.

12 Q Have you ever heard or read in the paper the
13 phrase "probation"? Do you know what that means?
14 Have you ever heard that phrase used?

15 A Yes, part of it.

16 Q In discussion on what goes on down here at the
17 courthouse now and then?

18 A I have heard the word probation, yes.

19 Q Let me explain what probation means, and I will
20 go over it as briefly as I can.

21 Probation means a person doesn't have to
22 go to jail or the penitentiary. Probation means
23 a person gets released from custody by the judge.
24 Now, the judge places that person on certain terms
25 and conditions that he must live up to, such as,

1 "You've got to report to a probation officer once
2 a month." There is a building a couple of blocks
3 down the street from the building you are in right
4 now, and you've got to go and report there once
5 a month.

6 You've got to work faithfully at
7 suitable employment, and you've got to remain
8 within the limits of Harris County. If you are
9 going to leave the county, you have to go tell
10 your probation officer so they can keep tabs on
11 you.

12 If you are going to change residences,
13 you tell your probation officer so they can keep
14 tabs on you.

15 You are supposed to support your
16 dependents, any people who are going to rely on
17 you for your support. You are supposed to take
18 care of them.

19 You are supposed to avoid persons and
20 places of harmful and disreputable character. That
21 is what we are supposed to do every day.

22 You are supposed to avoid habits,
23 vicious and injurious habits is the way it reads,
24 such as the use of narcotics and habit-forming
25 drugs. In other words, try to lead a decent life

1 and stay out of trouble.

2 That is basically the terms of
3 probation.

4 Now, a person can receive probation even
5 though a person has committed a felony crime, and
6 a person can receive probation even though they
7 have taken another person's life and been found
8 guilty by the jury, rather, of the offense of
9 murder.

10 Did you know that?

11 A No. I didn't.

12 Q So even though a person has killed another person,
13 a person can still receive probation from the
14 jury if the jury recommends it and if the jury
15 feels like it is a proper case for probation.

16 You see, those are the two qualifications
17 there. No person can get probation after they
18 have been found guilty of a crime by a jury unless
19 the jury recommends it because the jury felt like
20 it's a proper case for it, and even though it is
21 a murder case.

22 Now, let me give you an example of what
23 I am talking about -- okay -- of a crime that
24 is technically murder, but yet might be a probation
25 case.

1 Imagine a man comes home to his house
2 from work and he finds that his wife and child
3 have been horribly attacked. They have been
4 sexually abused. The little girl is dead. He
5 goes in to see about his wife and she is dying.
6 About the last few words out of her mouth is,
7 "Joe Blow down the street did this." The man goes
8 to the room where he keeps a pistol there in the
9 bed-stand or next to the bed and he gets a pistol
10 and goes down the street to talk to Joe Blow about
11 it. He is mad. There is no question he is mad
12 when he goes down there. Let's say he doesn't
13 have murder in his heart at that time, but he
14 goes and talks to the man to get an explanation,
15 and Joe Blow goes to the door and has a big
16 smile on his face, and maybe has a bloody T-shirt
17 he had on when he committed that crime, and he
18 says, "I want to talk to you about the death of
19 my wife and child," and the man looks him in the
20 face and says, "I did it. What's it to you," or
21 makes some similar smart remark, and the man fires
22 the gun and kills him and he falls and dies.

23 Technically, that man has committed
24 murder. I would think it would be difficult for
25 the jury, if the jury believed he was also the

1 fellow who murdered that man's daughter and
2 wife, it would be hard for a jury to find that
3 man should go to the penitentiary for that act,
4 even though technically he has committed murder.

5 I am trying to stimulate your thought
6 processes to the fact that though a man committed
7 murder, he might be an eligible candidate for
8 probation.

9 Do you follow me on that?

10 A Yes, sir.

11 Q Do you feel like even though you may be a juror
12 on a case where you found someone guilty of
13 murder, do you feel like you could consider
14 probation if you felt like it was a proper case,
15 depending upon the facts that you hear?

16 A I could consider it. It would depend on the facts
17 of the case.

18 Q That doesn't mean you have to do it.

19 A Uh-huh.

20 Q No person has a right to expect a juror to give
21 probation. The only thing the law requires is
22 for the jury to keep an open mind for probation
23 if and when that becomes a subject matter for
24 their consideration.

25 Do you follow me on that?

1 A Yes, sir.

2 Q Do you have any questions of me so far?

3 A No.

4 Q Okay. It looks like earlier this year that a

5 family member of yours was a victim of a crime,

6 some type of theft?

7 A Yes, sir.

8 Q When did that happen?

9 A My daughter and son-in-law were coming home. She

10 was at a doctor's office. She was pregnant, and

11 they had stopped on Highway 59 at a service station

12 to use a phone and buy gas, and three colored men

13 walked up, pulled a gun, and stole my car from

14 them.

15 Q That is armed robbery if he pulled a gun and stole

16 a car.

17 A I didn't know how it should be put down.

18 Q From the way it looks, it doesn't appear on paper

19 to be as serious as it was.

20 Was anybody hurt at all?

21 A That's what happened. She was just shook up.

22 Q She didn't lose her baby over that or anything?

23 A She was just about a week past due at the time.

24 No.

25 Q It didn't start her into labor, did it?

1 A No, it didn't. She went a full month overdue.

2 Q Did you ever get your car back at all?

3 A Yes, I did get my car back.

4 Q How about the men who did that? Were they arrested

5 or punished for that?

6 A To my knowledge, I don't know. My son and daughter

7 did go down and identify one person, I know

8 definitely. They did tell me that, but I never

9 heard any more from the police about it.

10 Q I notice you are a leader in the club out there

11 and you people -- I see you people -- and I don't

12 mean to say that -- but you people from Humble

13 pronounce it Humble, don't you?

14 A Humble.

15 Q The H-H is there in Humble, isn't it?

16 A Yes.

17 Q What type of club is that?

18 A 4-H.

19 Q It looks to me on the Xerox as if it were H- --

20 H-, H-period.

21 What appears to be an H is actually a

22 4-H Club?

23 A That's right.

24 Q And I take it your husband pretty much has always

25 been a machinist? How long at Cameron Iron Works?

1 A Sixteen years.

2 Q Are they having problems with layoffs?

3 A Yes, they are. I am keeping my fingers crossed.

4 Q You know, it seems like I wanted to talk to you
5 about something else.

6 Let me explain one other thing to you.
7 The only reason I mentioned the issue of probation
8 and murder when we were talking about a capital
9 murder case is because the crime of capital murder,
10 the crime of capital murder includes what is
11 called the lesser included offense of murder.
12 That doesn't mean that murder is a lesser offense.
13 Murder is a serious crime. I think you realize
14 that, but the crime of capital murder is made up
15 of two elements. It is made up of the crime of
16 murder and the other crimes we have talked about.

17 For instance, to kill a person when you
18 know that person is a police officer; to kill a
19 person when you know that person is a fireman;
20 to kill a person during the course of committing
21 a burglary; robbery; kidnapping; rape; arson;
22 and of course, the other individuals we have
23 mentioned, so, you see, it takes that aggravating
24 type of circumstance, if you would, to elevate
25 the crime of murder to the crime of capital murder,

1 and the only reason I even touch on the offense
2 of murder is to let you know that if a person
3 were charged, you see, with the crime of capital
4 murder, the jury could, in fact, after they had
5 heard the evidence, believe the person is only
6 guilty of the offense of murder rather than
7 capital murder, and in that case, the jurors
8 proper verdict would be not guilty of capital
9 murder but guilty of murder.

10 A Okay.

11 Q Do you see how that can work? Depending upon the
12 facts you hear and what you believe from the
13 facts, you can, in fact, find someone guilty of
14 the offense of murder rather than capital murder
15 if you don't believe the murder took place as
16 the judge would charge you, that it was either
17 a police officer or a fireman or it was during the
18 course of one of these felonies we have talked
19 about. That is why -- and yet, in the event
20 such a verdict were returned by a jury, the range
21 of punishment would be five to ninety-nine years
22 or life and including probation if the jury felt
23 like that was proper.

24 One of the things I want to mention to
25 you about probation that I did not, and that is

1 that the jury can only consider probation where
2 all of the twelve jurors unanimously agree that
3 the maximum time the man should serve in the
4 penitentiary is ten years or less.

5 You see, if the jury feels like it is
6 the type of murder case where the man deserves
7 to spend the rest of his life in the penitentiary
8 or twenty or forty years, they don't even talk
9 about or consider probation. It is only where the
10 jury honestly feels like this is a proper case
11 where the man or woman should receive ten years
12 or less. Then the jury can discuss among
13 themselves, also, and decide whether or not they
14 are going to recommend probation to the judge or
15 whether they are not going to recommend it, and
16 the jury can do either one, recommend it or refuse
17 it.

18 A Okay.

19 Q It would be their choice, whether they felt this
20 was the type of case and type of person deserving
21 of it. That is for the jury to decide.

22 Do you follow me on how probation
23 works?

24 A Yes, sir.

25 Q Okay. I have talked to you about so many things,

1 I kind of apologize for going over them so fast.

2 Do you have questions of me at all so
3 far?

4 A I don't think so.

5 Q Do you feel like a capital murder case is the type
6 of case Ms. Darr could be a fair juror on?

7 A I think so.

8 Q Okay. If it came down to you being the foreman,
9 say, you were the only lady, and eleven men
10 decided to elect you as foreman, and it came down
11 to signing the verdict sheet, do you feel you could
12 do that even though you knew bringing that verdict
13 back to the Court might result in someone
14 receiving a death penalty; if that was the proper
15 thing to do, could you sign it as a foreman and
16 turn it over to the judge?

17 A Yes, sir.

18 Q Okay. It seems like there was something else I
19 wanted to ask you.

20 Let me talk to Mr. Bax just a second
21 and see if I have neglected to ask you something
22 or if he has something to cover with you.

23 (Discussion between attorneys.)

24 Q (By Mr. Moen) I meant to ask you this, and I
25 just flat forgot. I anticipate the evidence

1 in the trial will show that the Defendant is,
2 in fact, an illegal alien, that he is not
3 lawfully here in this country.

4 Do you feel like that might affect
5 your decision in any way at all as to whether or
6 not the man is guilty or not guilty just because
7 you might learn during the course of the trial
8 he is, in fact, an illegal alien?

9 Now, whether it does or not, I don't
10 mind. I am not going to pick at you, but I just
11 want to hit you in the face with that cream pie
12 and see how you feel.

13 A I think I would have to go by the evidence presented
14 during the trial.

15 Q Ms. Darr, thank you for letting me visit with
16 you. I will pass you to the Defense, and they
17 will have questions to ask of you. Okay?

18 THE COURT: Do you need a break?

19 THE COURT REPORTER: No, Your Honor.

20
21 EXAMINATION

22
23 QUESTIONS BY MR. ELIZONDO:

24 MR. ELIZONDO: Thank you, Your Honor.

25 Q (By Mr. Elizondo) Hi, Ms. Darr. How are you

1 doing today?

2 A. Just fine.

3 Q As the judge said earlier, I am Candelario
4 Elizondo, and this is Joe Hernandez. This is
5 the interpreter, Linda Hernandez, and this is
6 the Defendant, Ricardo Guerra.

7 As the Prosecution mentioned to you,
8 this is a capital murder case. In a capital
9 murder case as in any criminal case in Texas,
10 the State must prove its case to you beyond a
11 reasonable doubt. The term "reasonable doubt"
12 will not be defined for you by the judge, by the
13 Prosecution, or by us. All I can tell you is that
14 across the street at 301 Fannin in the civil
15 courthouse where they are trying lawsuits over
16 contract disputes, over Workmen's Comp cases,
17 over personal injuries, the burden of proof over
18 there is proof by a preponderance of the evidence,
19 the greater weight of the credible evidence.

20 The legislature says in the criminal
21 courthouse before a person's life can be
22 forfeited, the State will have a higher burden
23 of proof, proof beyond a reasonable doubt.

24 Do you agree with that or disagree
25 with that?

1 A I agree with that.

2 Q In a capital murder case, the State has certain
3 elements to prove. They have to prove it
4 happened in Harris County, Texas; that on a
5 particular day, this Defendant shot and killed
6 a police officer in the lawful discharge of an
7 official duty, knowing at the time that he was
8 a police officer. They have to prove that to
9 you beyond a reasonable doubt.

10 The way they will do that, basically,
11 is they will call witnesses to the witness stand
12 who will take the same chair where you are sitting
13 and they will give their rendition of the facts.

14 You, as a juror, will be sitting close
15 to the witnesses. You will be able to watch their
16 demeanor, see how they answer the questions, and
17 based upon that, form an opinion in your mind
18 as to whether or not they are telling the truth
19 or shading the truth. You, as a juror, can,
20 of course, believe all of, none of, or some of
21 what a particular witness says.

22 After the State is through presenting
23 evidence, they will then rest their case. That
24 means, "That is all we have for right now," or
25 "That is all we have period."

1 Then the Defendant can, if he chooses,
2 he can put on evidence. He doesn't have to.

3 So let's assume that you are on the
4 jury panel and the State has rested its case and
5 the Defense also rests their case and don't put
6 on one bit of evidence and you are back there
7 in the jury deliberation room and you are thinking
8 and you are saying to yourself, "Well, maybe he
9 did and maybe he didn't commit the crime, but I
10 am not sure if the State has proven its case to
11 me beyond a reasonable doubt." In that particular
12 situation, what would your verdict be?

13 A Well, they would have to -- I wouldn't be able
14 to decide, you know, yea or nay. I guess it
15 would have to be nay if they hadn't proven to me
16 definitely, you know, beyond a reasonable doubt
17 that he was guilty.

18 Q So you could come back and say "not guilty" if
19 they hadn't proven the case to you beyond a
20 reasonable doubt?

21 A That is right.

22 Q The Defendant can, if he chooses, he can put on
23 evidence. He can take the stand himself, and if
24 he takes the stand himself, the Prosecution can
25 impeach him or discredit him with any prior

1 felony convictions within the last, say, ten
2 years.

3 He can call witnesses to the witness
4 stand, and then you, as a juror, if you are
5 selected, then I can almost guarantee that you
6 will hear two different versions of the facts.
7 Then it will become your job, your duty, and your
8 function to decipher the evidence and see if the
9 State has proven its case to you to your
10 satisfaction beyond a reasonable doubt, and if
11 they haven't, then it will be your job, your
12 duty under your oath, to find him not guilty.

13 Can you do that?

14 A Yes, I could.

15 Q Do you think that the Defendant, as he sits here
16 right now, do you think he is guilty of something?

17 A I couldn't tell, myself, without hearing any
18 evidence of any kind. I don't presume to judge
19 anybody until I hear evidence.

20 Q Well, even though he is represented by two lawyers,
21 he is sitting here in court, he has got to answer
22 some accusations, you don't think he is guilty
23 at all or think he is guilty?

24 A Well, he could be, yes, but I am not going to
25 say he is because I haven't heard anything to tell

1 me if he is or isn't.

2 Q Well, do you think that he could be guilty?

3 A He could be, and then he could not be. I would

4 have to hear the evidence.

5 Q The fact that he has been indicted by the Grand

6 Jury, would that be a strike against him in your

7 own mind?

8 A I really don't know about that, because I don't

9 know that much about the Grand Jury.

10 Q Do you think -- is there anything --

11 A What it would entail?

12 Q Well, I am just trying to find out how you **feel**

13 about certain things, and of course, there **are**

14 no right or wrong answers in this type of situation,

15 and all we want to know is whether Ricardo Guerra

16 is starting off with a strike against him in your

17 own mind?

18 A Not to my knowledge, no. Not to my thinking,

19 **because** like I said, I would have to hear each

20 side myself. That is what I would have to hear

21 to judge him by.

22 Q What if you didn't hear our side?

23 A I would have to hear, you know, just go by what

24 I had heard, what had been presented to me.

25 Q And if the State had not proven its case to you

1 to your satisfaction beyond a reasonable doubt,
2 could you then return a verdict of not guilty
3 even if you didn't hear from our side?

4 A If they had not convinced me beyond a reasonable
5 doubt, I could not go with a guilty verdict.

6 Q You could guarantee us one thing if you were
7 selected on this jury panel: If he doesn't
8 testify, it won't be a strike against him at all?

9 A No. If he doesn't testify, I wouldn't, you know,
10 hold it against him or whatever. I would have to
11 go by just like I said, what was presented to me
12 and what I believed. If it was -- you know, if
13 it made me think he was guilty or not guilty.

14 Q What you heard?

15 A Yes, from what I heard.

16 Q Would you want him to testify?

17 A I really couldn't say, because I have never served
18 on a jury of this kind. I don't know. This is
19 my first time.

20 Q I don't mean to embarrass you or humiliate you.
21 I just want to know how you feel about certain
22 things, and I apologize if I am embarrassing you
23 and I hope I am not.

24 A No. I am just trying to answer it to the best of
25 my ability.

1 Q That is all we want.

2 Ma'am, I notice you have a child under
3 the age of ten years.

4 A He is ten.

5 Q He is ten?

6 A Yes.

7 Q You know, under the law, you have an exemption
8 that you can take if you believe that you need
9 to be there to take care of him. I suspect that
10 this trial might take anywhere from five to six
11 days to seven days. I don't know, but at some
12 point, you might have to be sequestered or put
13 up in a hotel room, and in view of all that and
14 knowing that, you can take your exemption if you
15 do want it.

16 Do you think that your child would be
17 left with adequate supervision if left alone?

18 A No, he wouldn't.

19 Q Your husband?

20 A To my knowledge, the way I understood that
21 exemption was the child had to be under ten years
22 of age.

23 THE COURT: That is correct.

24 MR. ELIZONDO: Thank you, Judge.

25 A I thought ten or under. I am sorry. I thought

1 it was under ten years of age.

2 Q (By Mr. Elizondo) I didn't recall for sure. I

3 thought it was ten or under.

4 A And he is taken care of anyway at home.

5 Q Is he the only child?

6 A I have a daughter nineteen who is married and has

7 two children of her own.

8 Q Do they live at home?

9 A No, she doesn't live at home.

10 Q Hold on for a second.

11 How long have you been in the 4-H Club?

12 A I just became a leader this year. My son's been

13 in it. This is his second year. I was in 4-H,

14 oh, several years ago when my daughter was in

15 school in the 4-H program.

16 MR. ELIZONDO: Your Honor, we have

17 agreed on the strike.

18 MR. MOEN: Yes, we would agree.

19 THE COURT: Ms. Darr, it will not be

20 necessary for you to serve on this jury. Both

21 sides have agreed to excuse you for whatever

22 reason. I don't know why.

23 THE JUROR: That is okay.

24 THE COURT: Thank you so much for your

25 patience with us.

1 THE JUROR: Thank you.

2
3
4
5 BARBARA GRAY COOK,
6 was called as a prospective juror and responded to
7 questions propounded as follows:
8

9 EXAMINATION

10
11 QUESTIONS BY MR. BAX:

12 THE COURT: Ms. Cook, do you feel like
13 you have been forgotten?

14 Please bear with us, and these lawyers
15 are going to ask you questions.

16 Q (By Mr. Bax) Ms. Cook, my name is Dick Bax.

17 As the judge told you earlier, to my
18 right is Bob Moen. We are both with the
19 District Attorney's Office. We will be representing
20 the State of Texas in this case, and also the
21 family of James Harris.

22 I believe you were one of the jurors
23 who raised your hand when the judge gave a brief
24 outline about the case, if you recalled reading
25 or seeing something on TV about the case.

1 A I think so. I think I may have seen something
2 on the news.

3 Q Is there anything about what you read or saw on
4 TV that made you form an opinion as to the guilt
5 or innocence of the persons involved or arrested
6 at that time?

7 A No. No.

8 Q There is nothing wrong with a person reading or
9 seeing something on TV. The only reason we ask
10 that question is that the law requires that the
11 twelve people listening to the case have not
12 formed an opinion.

13 I take it by your answer, there is
14 nothing you have read or heard about this case
15 that would cause you to form an opinion at this
16 time as to the Defendant's guilt or innocence?

17 A No.

18 Q You served on a jury once before? It was a civil
19 jury?

20 A Yes.

21 Q And I imagine in that case, all the jurors were
22 brought over in a group and talked to by the
23 judge and lawyers as a group and asked certain
24 questions and what not.

25 In this type of case -- this is a

1 criminal capital murder case, it is done
2 individually, primarily because of the serious
3 questions concerning punishment in the case.

4 We have had -- you are the fifty-first
5 person we have talked to in some two and a half
6 weeks -- we've got six jurors, and we need six
7 more. You can see it is a long process to get
8 people to come before us with many different
9 opinions concerning the death penalty, and that
10 is fine. We are not here trying to have a debate
11 on the pros and cons of the death penalty, and
12 why we do this individually, of course, is to try
13 to let the jury feel a little more comfortable
14 about telling their true feelings concerning the
15 death penalty, and we don't want one person
16 influencing someone else about what their opinion
17 may be. Okay?

18 A Okay.

19 Q We get people who say, "I believe in the death
20 penalty. I agree with it, and my conscience
21 would not be violated by returning a verdict
22 calling for the death penalty," and we have the
23 other belief where people come in and say, "I
24 personally could never participate in a death
25 penalty case because, number one, I don't believe

1 in it, or, number two, I just personally, because
2 of my beliefs, could not participate in it even
3 though I believe in the death penalty."

4 No one can require that you serve on a
5 jury that would require you to violate any of
6 your personal, religious, moral, or conscientious
7 scruples. All right?

8 So what we are here for today is to
9 just basically see how you feel and see if you
10 could serve on a jury where you may be called
11 upon to return a death penalty verdict, or
12 whether because of your feelings, you could
13 participate in that type of trial.

14 A Yes.

15 Q And the big sixty-four-thousand-dollar question is:
16 How do you feel about the death penalty? Do you
17 feel you could participate in returning a verdict
18 of death in a proper case?

19 A Yes, I do.

20 Q Is that a feeling -- could you tell me what you
21 feel about the death penalty as far as what
22 purpose it serves, if any, and why you believe
23 in it?

24 A I guess partly because of the way I was raised.
25 Both my parents have always believed in the death

1 penalty, and --

2 Q Some people say, of course, that the death penalty
3 is proper because it is punishment for punishment's
4 sake, an eye for an eye and a tooth for a tooth,
5 something along those lines.

6 A I believe that to some extent.

7 Q Others believe it is a deterrent not to other
8 people but to the person on trial, of course, a
9 deterrent to others when the death penalty is
10 actually carried out.

11 Let me give you just a little bit of
12 background information on how the death penalty
13 operates in the State of Texas. First, you have
14 to have an intentional taking of a life, a murder.
15 But a murder alone, no matter how violent it is
16 and no matter how many people are killed, does
17 not automatically bring in the death penalty.
18 There has to be another factor to elevate it to
19 capital murder.

20 If a murder takes place during the course
21 of any one of five different felonies, it elevates
22 it to capital murder.

23 If you kill someone during the course
24 of a robbery; if you kill someone during the
25 course of a burglary, a burglar breaks into a

1 home and kills anyone in that home during the
2 course of that breaking in, that is capital
3 murder.

4 If a rapist kills his rape victim, that
5 is capital murder.

6 If you kill someone during the course
7 of kidnapping or arson, that is also capital
8 murder.

9 If you kill a classified group of
10 people, classified, as the law says, who need to
11 be protected, if you kill a police officer and
12 you know he is a police officer and he is acting
13 in the lawful discharge of his duties or a
14 fireman with the same conditions, that is capital
15 murder.

16 If you kill for money or if you hire
17 someone to kill for money, that is capital
18 murder, or if you are a prisoner and you either
19 kill an employee of the prison or if you kill
20 anyone during an escape attempt from the prison,
21 that is capital murder.

22 Those are the only areas in which a
23 person is subjected to the possibility of the
24 death penalty.

25 So you can see -- I am sure you read in

1 the paper about this fellow, Coral Eugene Watts,
2 here recently.

3 A Yes.

4 Q What was done, he was accused of murder, and
5 he admitted to at least nineteen murders
6 throughout the country. In Texas, those were not
7 capital murders. They were horrible groups of
8 facts, but he would not be subjected to the
9 death penalty in Texas because he didn't commit
10 those offenses during one of those felonies I
11 have outlined to you earlier. All right?

12 Had he or had we perhaps been able to
13 show he had raped or kidnapped one of those
14 women, he would have been guilty of capital
15 murder.

16 If you are convicted of murder, the
17 punishment range is from five years to ninety-nine
18 years or life. You can see the difference there.

19 Do those types of crimes I have outlined
20 for you, do they fit your beliefs in the types
21 of crimes where the person should be subjected to
22 the possibility of the death penalty?

23 A Yes, they do.

24 Q Even though a person is found guilty of capital
25 murder, that does not mean that the death

1 penalty is automatically then assessed. We have
2 two stages to the trial in every criminal trial.

3 The first stage is the guilt-or-
4 innocence stage of the trial. At that time, we
5 are only concerned with did the person do it or
6 did he not do it. If the jury finds he did, in
7 fact, commit the crime, the jury comes back and
8 we go into the punishment stage, another trial,
9 if you will. At that stage of the trial, the
10 punishment phase, these two questions on the
11 right are asked of the jury. Then, depending
12 upon how they answer these two questions, the
13 punishment is assessed at life or death. Okay?

14 If all twelve jurors answer Question
15 1 yes and all twelve answer Question No. 2 yes,
16 the judge must, by law, assess the death
17 penalty.

18 If either Question No. 1 or Question
19 No. 2 is answered in the negative, then the
20 judge must, by law, assess the punishment at life
21 imprisonment. Okay?

22 So, the jury doesn't go back in a
23 capital murder case and say, "Does this person
24 deserve the death penalty or deserve the life
25 sentence," but you can see by the way the jury

1 answers those questions, he is put in a position
2 where he must do one of two things. All right?

3 A Yes.

4 Q Looking at the first question -- and let me tell
5 you this. The death penalty was reinstituted
6 in Texas back in 1974, and we had a period of
7 seven years when there was no death penalty in
8 Texas. In 1974, the legislature came out with
9 these questions. These questions aren't
10 particular to this case or this judge or the
11 Defendant involved. Every Defendant accused of
12 capital murder has had to deal with these two
13 questions since 1974.

14 The first question is really rather
15 straightforward. I guess to capsulize it, was
16 it deliberate and done with the reasonable
17 expectation someone would die as a result of that
18 conduct. That calls for the jury to look back
19 at the same evidence they have already heard at
20 the guilt-or-innocence stage.

21 Do you follow me there?

22 A Yes.

23 Q To get to that point in time, we have to find
24 that the Defendant acted intentionally in the
25 taking of a life. The word "deliberately" has

1 been underlined in Question 1. There will not be
2 a definition given to the jury. You have to use
3 your everyday meaning to the word.

4 To me, deliberately means on purpose.
5 To some people, they say that means something
6 a lot like intentionally.

7 Do you see where Question 1, though,
8 is really in two parts? Was it deliberately
9 done, Question 1, and the second part, was it
10 done with the reasonable expectation someone would
11 die?

12 Simply because you found a person
13 guilty of intentionally taking a life does not
14 automatically mean Question 1 is answered yes.

15 A Uh-huh.

16 Q The jury is asked to look to the evidence and base
17 their answer to that question and also the second
18 question on the evidence.

19 Do you feel you could do that or do you
20 feel if you find a person guilty, you would
21 automatically answer that question yes?

22 A I think I could decide between the two. I could
23 make it into two questions.

24 Q You could look to the evidence to make that
25 decision?

1 Q Some people come in and they say, "If I find
2 someone killed someone during the course of a
3 robbery, I am going to automatically give him the
4 death penalty, which means I would automatically
5 answer the question yes, no matter what the
6 evidence shows."

7 Even though it says "reasonable
8 expectation he would die."

9 Question 2 is different. Question 2 is
10 asking you about the person on trial and is asking
11 you to predict, as much as humanly possible, what
12 the probability or likelihood is that person would
13 commit criminal acts of violence in the future
14 in whatever society he may find himself in from
15 that point on.

16 The word "probability" is underlined
17 again because you will not have a definition given
18 to you as to that term.

19 To me, it means more likely than not,
20 chances are, or something more than fifty percent.

21 Would you agree with that?

22 A Yes.

23 Q There is no way I could ever prove to a juror
24 something is certain to happen in the future. I
25 have no crystal ball I could use or a juror could

1 use to determine what is absolutely positively
2 going to happen at some given time. There is only
3 one person who could probably ever do that, and
4 that person would not be a juror in this case or
5 any other case.

6 Do you feel you could look to the
7 evidence and determine from the evidence whether a
8 person is likely to commit criminal acts of
9 violence in the future based on his conduct in
10 the past?

11 A Based on the conduct in the past, I think I could.

12 Q Based on the criminal acts of violence, and that
13 would include other murders, rapes, robberies,
14 breaking into someone else's home with a vehicle,
15 or someone who has a tendency to go up and beat
16 up on people?

17 The law doesn't require us to prove
18 he is the type of person that would kill again,
19 just engage in some type of activity that would
20 involve persons or things, that that type of
21 conduct would be a continuing threat to society,
22 either the society we live in or the society we
23 like not to think about, the society within the
24 penitentiary system, not only inmates but also
25 guards, librarians, the medical staff, wardens,

1 and what not. Okay?

2 Do you feel those are the proper types
3 of questions that a jury should ask in determining
4 whether a person should live or die for what
5 they have done?

6 A I do.

7 Q Do you feel you could answer, especially as to
8 Question 2, based on the evidence, whether a
9 person is likely to commit criminal acts of
10 violence in the future?

11 A With the past history, I think I could.

12 Q Sometimes that past history may be the one case
13 the juror hears about. Certainly, you can be
14 given other evidence if there is other evidence
15 that is available and known at that time, but
16 our law says in certain circumstances, the facts
17 alone can provide enough information for a jury
18 to answer whether or not he is likely to commit
19 criminal acts of violence in the future.

20 One case that comes to mind is the
21 Ronald Clark O'Bryan case where back in, I think
22 it was '74 or '75, he had poisoned one of his
23 children and attempted to poison another child
24 of his with some Halloween candy --

25 A Uh-huh.

1 Q -- in return for some insurance proceeds. That
2 is capital murder, killing for money.

3 That jury answered both Question 1 and
4 Question 2 based solely on that evidence.

5 MR. ELIZONDO: Objection, Your Honor.
6 Misstatement of the law.

7 THE COURT: Overruled.

8 Q (By Mr. Bax) You can see where the jury can look
9 to a certain one case and say someone would do
10 this or act this way in a particular case. That
11 alone would prove he is capable of committing
12 criminal acts of violence in the future and would
13 be a threat to society as a whole.

14 Is there anything about Question 1 or
15 2, the way it is phrased, that you think would
16 make it impossible for you to answer either
17 question?

18 A No.

19 Q Okay. Let me ask you a few questions.

20 Your husband is an attorney?

21 A Yes, sir.

22 Q I have been with the District Attorney's Office
23 about seven years and came to the District
24 Attorney's Office right out of law school, and I
25 am not familiar with many attorneys other than the

1 attorneys I see day in and day out.

2 Is that a civil law firm?

3 A Yes, sir.

4 Q Does your husband do any type of criminal law at
5 all or refer out any criminal cases they get, if
6 you know?

7 A They don't accept any at all.

8 Q How long has your husband been practicing law?

9 A For four years.

10 Q Where did he go to school?

11 A U. of H.

12 Q Anything about that fact, that your husband
13 is an attorney, that you feel might affect you
14 in listening to the evidence or anything like
15 that?

16 A No.

17 Q When you served on that civil jury, let me ask you
18 first of all, was that a six-person or twelve-person
19 jury?

20 A Twelve.

21 Q You said that there was a jury experience that
22 either aggravated you or upset you to a degree.
23 Were you one against eleven in that case?

24 A It was two, and it was relatively minor. It took
25 us most of the afternoon. We were deliberating

1 for a long time, and it's kind of funny, but
2 the other woman who agreed with me, her husband
3 is a retired lawyer, and because the bailiff and
4 one of the lawyers and the judge whose case --
5 the Court whose case it was tried in knew my
6 husband, and it got out to the rest of the jurors
7 they knew him and they found out the other woman's
8 husband was a lawyer, and they started
9 insinuating since our husbands were lawyers, we
10 knew more, were prejudiced or something along
11 those lines.

12 Q This was a case involving a contractor and what
13 else?

14 A A couple.

15 Q Who were y'all siding with?

16 A The contractor, and it was a couple.

17 Q Would you say it came down to more a question of
18 law or question of fact that the disagreement came
19 about?

20 A I think fact.

21 Q Was there anyone there that was having difficulty
22 defining what the law was that may have been given
23 by the Court? I know they do the same thing here.
24 You get the law from the judge, and what you are
25 saying is y'all disagreed as to perhaps who was

1 telling the truth?

2 A Uh-huh.

3 Q Or what not?

4 Do you feel that that situation would
5 have affected you to the extent if you had to
6 serve on another jury you may have a problem in
7 that area again?

8 A No.

9 Q Is there anything else about that situation that
10 would affect your listening to the evidence in a
11 case such as this?

12 A No.

13 Q Usually in a criminal case -- I imagine is the
14 same in a civil case -- the main function of the
15 jury is to decide or resolve conflicts in the
16 testimony. If there weren't conflicts in what
17 the facts were, we probably wouldn't need to have
18 judges or lawyers or anything else.

19 If people get on the stand and swear
20 they are going to tell the truth, some people do
21 and some people don't. Your main function as a
22 juror is to decide between two different sides of
23 the story, especially in criminal law. You may
24 get people who get up on the stand and say, "That
25 is the guy who did it," have five people who did

1 that, and other witnesses may say, "He couldn't
2 have done it. He was with me down at Joe's
3 Bar and Grill."

4 There is no way both sides could be
5 telling the truth in that situation. Do you feel
6 even though you hear two different versions
7 diametrically opposed, would that automatically
8 cause you to have a reasonable doubt or do you
9 believe you could decide, listen to both sides,
10 and decide which side is believable and which is
11 not believable?

12 A I think I could resolve it.

13 Q Were there many conflicts in the testimony you
14 heard in that case?

15 A Quite a few.

16 Q Let me just go over with you briefly some of the
17 requirements you would have as a juror in either
18 this type of case or a driving-while-intoxicated
19 case. ~~It~~ doesn't make any difference, because we
20 are talking about capital murder and talking about
21 the death penalty.

22 The law does not raise the State's
23 burden of proof. There is the same burden of
24 proof whether you are trying to decide if a person
25 were intoxicated while driving a motor vehicle.

1 Okay?

2 First of all, the fact that the
3 Defendant has been indicted, the judge will tell
4 you that is no evidence of his guilt. In other
5 words, the jury can't consider that as evidence.

6 Do you feel you could follow that
7 obligation, you know, that requirement of the
8 law?

9 A Yes.

10 Q Obviously, we didn't just go pick somebody off the
11 street and say, "I think we will try you for the
12 murder of Officer Harris." The Grand Jury heard
13 some type of evidence, and he is here represented
14 by attorneys.

15 You would not let that affect your
16 verdict as far as the evidence is concerned?

17 A No, sir.

18 Q I am sure you have heard about the fact that the
19 Defendant in a criminal trial does not have to
20 testify. You may only hear evidence from one
21 side of the table or one side of the courtroom.

22 How would you feel if you sat there and
23 listened to the evidence and only heard from the
24 State's witnesses and the Defendant didn't
25 testify?

1 Would that affect you in any way?

2 A I don't think so.

3 Q That is what the judge will tell you. You can
4 only base your answers on what you hear. You cannot
5 use that failure to testify as evidence of guilt.

6 Of course, the Defendant may testify.
7 If he does testify, he is like any other witness,
8 and you have to judge his credibility the way
9 you would any other witness, if it is reasonable
10 what he is telling you and what is his demeanor
11 and what is his motive for telling you what he
12 does.

13 Do you follow me there?

14 A Yes.

15 Q I am sure Mr. Elizondo and Mr. Hernandez will
16 talk to you about this, but in a civil case, the
17 burden of proof is by a preponderance of the
18 believable evidence. Whichever side presents
19 more believable evidence, that is the way they
20 should vote.

21 In a criminal case, the burden is higher
22 than that, beyond a reasonable doubt. I can't
23 tell you what that is. I can't give you a
24 definition for it, and the judge would not give
25 you a definition for it because, frankly, the

1 lawyers and judges have not been able to agree
2 on a definition for that term.

3 It is something that is individual for
4 each and every juror. I can tell you what it is
5 not. It is not proof beyond all doubt, beyond
6 a shadow of a doubt, and not beyond all doubt,
7 but beyond a reasonable doubt. The only way I
8 can prove anything to anyone beyond all doubt or
9 a shadow of a doubt or any doubt would be if those
10 people who composed the jury were actually
11 witnesses to each and every transaction that took
12 place, and if you had twelve people who saw the
13 same thing, I am sure you would have twelve
14 different versions. Okay?

15 The law doesn't require that. Do you
16 feel that is a fair burden of proof?

17 A Yes.

18 Q Would you hold the State to any higher proof than
19 proof beyond a reasonable doubt?

20 A I don't understand that.

21 Q Okay. Some people say, "Bax, I understand that
22 is what the law says, but, you know, we are talking
23 about a death penalty case, talking about if he
24 doesn't receive the death penalty, he is at least
25 going to get life imprisonment which is a serious

1 punishment, and I understand what the law says,
2 proof beyond a reasonable doubt, but if I had to
3 make that monumental decision, I couldn't do it
4 unless you proved it beyond all doubt."

5 Do you understand what I am saying?

6 A I think so.

7 Q Would you require me to prove beyond what the law
8 requires because of the seriousness and possible
9 punishment?

10 A No.

11 Q Something else I wanted to talk about. The only
12 thing I can tell you as far as a type of
13 definition of reasonable doubt is what the judge
14 says. You use your common sense and hear the
15 evidence, and if you believe it, it's been proven
16 to you, and if you don't believe it, it's not been
17 proven, and you should find him not guilty. Okay?

18 When we talked about capital murder, I
19 said ~~one~~ of the elements was murder plus some
20 aggravating element that goes with it.

21 Assume with me you were on a jury, and
22 let's use the allegation that is contained in this
23 indictment, that a person is charged with killing
24 a police officer knowing he was a police officer.

25 After hearing all the evidence, and say

1 you are convinced beyond a reasonable doubt that
2 the person, in fact, killed a police officer, if
3 that person that was killed was a police officer,
4 but for one reason or another, you felt the State
5 didn't prove to you as to whether or not that
6 person knew that person was a police officer --
7 it could have been an undercover narcotics
8 situation or something along those lines -- if
9 that were the jury's belief, they could not find
10 the person guilty of capital murder because you
11 would only have one of two elements.

12 The jury could still find the person
13 was guilty of the offense of murder. All right?

14 As I mentioned earlier, the punishment
15 range for murder would be from five years to
16 ninety-nine years or life, and in addition, assess
17 a fine of up to ten thousand dollars.

18 Can you imagine a situation where a
19 person intentionally takes the life of another
20 person where you could consider probation if the
21 punishment were less than ten years for the
22 intentional taking of a life?

23 A Would I accept that? Is that what you mean?

24 Q Could you consider it?

25 Let me give it to you this way. I

1 should have put this in it.

2 — If the jury, after hearing all the
3 facts, believes that the punishment range is
4 somewhere between ten years and five years, the
5 jury can recommend probation.

6 If the jury, after hearing the evidence,
7 says this case is worth fifty years, probation
8 is not an issue, but between five years and ten
9 years, the jury can recommend probation.

10 Do you feel there is any fact situation
11 you can conceive of where you could consider
12 giving probation for the intentional taking of a
13 life?

14 A Intentional? To prove that?

15 Q No.

16 A No.

17 Q It is not fair really to phrase that that way, to
18 bring you down here one day and throw you on the
19 hot seat?

20 Let me give you something to stimulate
21 your imagination a little bit. Can you imagine
22 a woman married to a no-good bum who doesn't work.
23 She works two jobs to support him and the two or
24 three children they have, and every night he
25 comes home drinking and beats her up and beats the

1 kids up. She has tried everything to straighten
2 out his life. He is no-good. He will scoop up
3 the money and take it to drink with, and this
4 has been going on month after month after month,
5 and finally, she has enough, and when she gets
6 that paycheck, she goes out and buys a .38 and
7 she knows in her own mind the only way to stop
8 him is to kill him.

9 He comes home one night and passes out
10 on the floor, and she takes the gun and shoots
11 him. It is murder.

12 I am not asking you what you would do
13 in that case, but can you see where murders take
14 place in different situations, and even in those
15 types of situations, could you consider probation
16 if you felt like it were proper, or are you the
17 type of person who says, "Murder, no matter what
18 the facts are, if you take a life, you cannot
19 possibly consider probation in a situation like
20 that?

21 A I could consider probation.

22 Q I believe the evidence will show in this case
23 that the Defendant is not legally in this country,
24 nor was he at the time Officer Harris was killed.

25 Would that have any effect on you in

1 listening to the evidence?

2 A It could.

3 Q I feel like you had a thought that went through
4 your mind. Could you tell how that might affect
5 you?

6 A Well, I don't think it is fair. I think there
7 should be stricter laws about illegal aliens, to
8 begin with, and if one would come over and if
9 the case proved he was guilty of killing somebody
10 here --

11 Q Let me ask you this. Would it make my job any
12 easier to convince you he was guilty simply
13 because he may be an illegal alien?

14 A No.

15 Q Would it make my job easier to answer those
16 questions yes simply because he was an illegal
17 alien?

18 A No.

19 Q I think what you are saying, the term "illegal
20 alien," it is illegal?

21 A Yes.

22 Q And that concept, you certainly could give that
23 person a fair trial under our laws?

24 A I think so.

25 Q The judge will instruct you if you are on the jury

1 that you could not consider, discuss, or allude
2 to or mention in any way or go over what parole
3 is in determining whether a person receives life
4 or death.

5 MR. ELIZONDO: Objection, Your Honor,
6 to the counselor stressing the law of parole.

7 THE COURT: Overruled.

8 Q (By Mr. Bax) That is what the judge will tell
9 you. That will be in the law he gives the jury.
10 He will say you are not to discuss the law of
11 parole. That is left exclusively to the jurisdic-
12 tion of the Board of Pardons and Paroles.

13 The reason I mention that is should a
14 juror during your deliberations begin to talk
15 about parole at the punishment stage or any stage
16 of the trial, the judge will also instruct you
17 you are to tell that person to stop and get off
18 of that subject immediately, and if the person
19 persisted in discussing parole, then you would
20 be under an obligation to ring the buzzer and
21 knock on the door and inform the judge if there
22 was a person in the jury room doing that.

23 Do you feel you could do that?

24 THE COURT REPORTER: Please answer out.

25 A I am sorry.

1 Yes.

2 Q (By Mr. Bax) Do you understand that that would
3 be your obligation if anyone were to discuss how
4 long a person had to serve on a life sentence?
5 Your obligation as a juror would be to first tell
6 the person to stop and then inform the judge?

7 A Yes.

8 Q It is automatic reversible error if a person
9 discusses how long a person has to serve on a life
10 sentence.

11 We are going to put in a week or so
12 presenting evidence, and that would be at the
13 tail end of this, and we would have to start
14 over again, and that is the only reason I bring
15 it up at this point.

16 You have on your juror information
17 sheet "tennis" written down and a slash through
18 it and then a question mark.

19 A I didn't know if they would include it as a hobby.

20 Q I think it would be.

21 Do you have brothers and sisters?

22 A Sisters.

23 Q What are they doing now?

24 A One is a housewife. She baby-sits, and the other
25 one works for an advertising agency in Lubbock.

1 Q I take it your family moved here to Houston
2 seventeen years ago?

3 What does your father do?

4 A He is deceased.

5 Q What did he do?

6 A He worked for a chemical company in Sugar Land.

7 Q And your mother?

8 A A dress shop, but mostly a housewife.

9 Q I imagine this case will take approximately from
10 five to six days as far as the evidence is
11 concerned. It would be 9:00 to 5:00 during the
12 day.

13 When it came time to deliberate, the
14 jury could possibly be sequestered and put up in
15 a hotel overnight. Would that cause any problems
16 for you or for your family?

17 A No.

18 Q Can you tell us about your duties as a nurse there
19 at Baylor? Do you work in an operating room, or
20 what type of nursing?

21 A I work in a family practice clinic. We see
22 patients like any other doctor's office would.
23 However, it is more or less a training clinic
24 for family practitioner residents. I am a staff
25 nurse assisting the doctor.

1 Q And jury duty would not affect that?

2 A No. There is only one slight problem, and I am
3 not sure it is a problem. The nurse I work with
4 is going on vacation in two weeks for two weeks.

5 Q That will be around October?

6 A The last of September to the first of October.
7 There are two other nurses that work with us.
8 It would leave them a little short.

9 Q It looks like October 4th that we will probably
10 be starting testimony which will probably be two
11 weeks from this coming Monday and it will probably
12 last from that week and perhaps to Monday or
13 Tuesday of the following week.

14 A That would only leave them short a week. That
15 would be all right.

16 Q If you were here and knew they were short over
17 there perhaps a week or so, would that affect
18 your concentration as far as listening to the
19 facts?

20 A I don't think so.

21 Q Do you have any questions of me?

22 A No.

23 Q Suppose that you are elected foreman of the jury
24 in a capital murder case and you believed that
25 the Defendant was guilty of capital murder. Would

1 you be able to sign that verdict sheet with
2 "guilty" knowing that then he would receive
3 one of two possible punishments, life or death?

4 A Yes, sir. I think I could.

5 Q And taking it all the way to the ultimate step,
6 you are the foreman or foreperson, I guess would
7 be a better term, and you and the eleven other
8 jurors believed beyond a reasonable doubt that
9 both questions should be answered yes, do you feel
10 that you could sign that verdict sheet with both
11 answers yes knowing then the Defendant would be
12 sentenced to death by injection?

13 A Yes, sir.

14 Q Ms. Cook, I have no further questions of you.

15 If you have none of me, I know it is
16 getting late, I will pass you at this time.

17 THE COURT: Okay.

18
19 EXAMINATION

20
21 QUESTIONS BY MR. ELIZONDO:

22 Q Hello, Ms. Cook. How are you doing?

23 A Fine.

24 Q My name is Candelario Elizondo.

25 This is Joe Hernandez, Ricardo Guerra,

1 and Linda Hernandez, the interpreter for Ricardo
2 Guerra.

3 This is a capital murder case, and this
4 part of the trial is known as the voir dire
5 examination.

6 Voir dire, they tell me, is a French
7 word which means to speak the truth, and the
8 reason you are here today is to allow us to ask
9 you a few questions and see how you feel about
10 certain things and see if we could give Ricardo
11 Guerra a fair and impartial trial.

12 Most of the questions will be directed
13 toward the first part of the trial, the guilt-or-
14 innocence stage, because when the trial starts,
15 Ricardo Guerra will plead not guilty to the
16 offense and if the State proves it to you beyond
17 a reasonable doubt that he did it, then it will
18 be your job to find him guilty.

19 A Uh-huh.

20 Q If, however, they do fail in their burden and
21 don't prove it to your satisfaction beyond a
22 reasonable doubt, it will be your job under your
23 oath to find him not guilty.

24 If you believe, after you hear the
25 evidence in this case, and you don't believe the

1 State has proven its case to you beyond your
2 reasonable doubt, can you find this man not
3 guilty?

4 A Yes, I believe so.

5 Q The term reasonable doubt will not be defined for
6 you. There is no definition of the term reasonable
7 doubt. The judge won't give it to you; the
8 Prosecution won't give it to you. I can't give
9 you one because there is no legal definition of
10 the term reasonable doubt. All I can do is tell
11 you that across the street in the civil courthouse
12 at 301 Fannin where they try lawsuits over personal
13 injuries, contract disputes, over Workmen's
14 Compensation cases, the burden of proof over
15 there is proof by a preponderance of the evidence.

16 Over here in the criminal courthouse,
17 the legislature, in their wisdom, said, "Wait a
18 minute. Before anybody forfeits their life,
19 literally their life in this case, the State
20 better prove the case to you beyond a reasonable
21 doubt."

22 How do you feel about that?

23 A I think it is fair.

24 Q Okay. In a capital murder case such as this
25 one, there are certain elements the State has to

1 prove: That it happened here in Harris County,
2 Texas; this Defendant on a particular day, shot
3 and killed a police officer in the lawful
4 discharge of an official duty knowing at the time
5 he was a police officer. They have to prove that
6 to you to your satisfaction beyond a reasonable
7 doubt.

8 And let me backtrack a little bit. I
9 am sorry. We have seen fifty-one jurors, and I
10 don't really recall if Mr. Bax went through some
11 of the facts in this case.

12 Let me run them by you real fast and
13 see.

14 Back on July 13th of 1982, a police
15 officer stopped two individuals in a routine
16 traffic stop over here on the east end on the
17 corner of Edgewood and Walker streets. The main
18 thoroughfare around there is Dumble and
19 Harrisburg. The police officer got shot, got
20 killed. About seventy feet away, an innocent
21 bystander was driving his car with his children,
22 and he got shot and he later died. About an hour
23 and a half later, the police got there, or they
24 had been there earlier, but they got there and
25 they arrested two individuals, one of whom was a

1 gunfighter, and the person firing at the police
2 officer managed to hit the police officer five
3 times himself. The police officer returned fire
4 and shot him and killed one of the suspects in
5 this case. The officer who got shot lived. He
6 got wounded, but he lived.

7 Do you remember anything about that?

8 A Just hearing about it in the news.

9 Q When you heard about it in the news, did you form
10 any kind of opinion about that?

11 A Not really. I think I read it one time. I don't
12 really read the paper. I listen to the news
13 sporadically. I think I heard it once or twice.

14 Q Did you hear the suspect's name being mentioned?

15 A If I did, I don't remember.

16 Q I take it then you have not formed any kind of
17 opinion about this?

18 A Right.

19 Q Anyway, the way the State proves their case, they
20 go ahead and they will read the indictment to the
21 jury. The Defendant will plead not guilty. They
22 will then present evidence by way of witnesses.
23 They will come in and take the same chair where
24 you are sitting now, and you, as the juror, will
25 be sitting in the jury box as one of the jurors.

1 You will be able to judge their
2 demeanor, any inconsistent statements, if any,
3 how they answer the questions, any bias or motive
4 they may have or may not have, and based upon
5 that, you may be able to form an opinion about
6 a person, because that will be your job as a
7 prospective juror. You will be the judge of the
8 facts.

9 There will be twelve judges of the facts,
10 and Judge Oncken will be the judge of the law.

11 You can believe any, part of, all of,
12 some of what a particular witness testifies to.
13 That is your sole function.

14 Let's assume for a minute that the
15 State puts on its evidence and then they rest
16 their case, which means that is all they've got.
17 That is all. The Defendant does not have to put
18 on any evidence. He does not have to testify.
19 In fact, we can rest our case right behind the
20 State.

21 Let's assume you go back into the jury
22 deliberation room and you are sitting back there
23 and you are saying, "Well, I think he did it.
24 Maybe he did it, but I am not sure the State has
25 proven its case to me beyond a reasonable doubt."

1 What would your verdict be in that
2 situation?

3 A Not guilty.

4 Q Okay. The Defendant can, if he chooses, he can
5 put on evidence. He can testify, and if he
6 testifies, he can be impeached or discredited by
7 any prior felony convictions he may have had within
8 the last, say, ten years, and you, as a juror,
9 will listen to the evidence, and based upon what
10 he says, you can form an opinion also as to
11 whether he is telling the truth, and you can
12 believe some of, none of, all of, or part of what-
13 ever he says.

14 The Defendant can call witnesses to the
15 witness stand, and I submit to you that if, in fact,
16 he does, there will be two different versions
17 of the facts, two completely different versions.

18 It will then become your job as a
19 juror to decipher the evidence, decipher the
20 facts, and based upon what you have heard, form
21 some kind of an intelligent opinion as to whether
22 or not the State has proven its case to you
23 beyond a reasonable doubt.

24 If the State has not proven its case
25 to you beyond your reasonable doubt, can you come

1 back and say to this man "not guilty"?

2 A Yes.

3 Q If, however, you do find him guilty -- and I am
4 talking to you about this mainly to get your
5 feelings on the punishment stage -- if you find
6 him guilty, then we go to the punishment stage.

7 At that point in time, you will have
8 to answer two questions, and based upon your
9 answers to those two questions, the judge will
10 then sentence him either to life or death.

11 In the first question, it is asking
12 you whether the conduct of the Defendant that
13 caused the death of the deceased was committed
14 deliberately and with the reasonable expectation
15 that the death of the deceased would result.

16 The word deliberately is underlined in
17 that example there. There is no legal definition
18 of the word deliberately. The legislature, when
19 they ~~drew~~ up those two questions, didn't see fit
20 to give it a definition, and I mean no legal
21 definition.

22 About all I can do is give you, by
23 reason of analogy, when you go into the jury
24 deliberation room, you will deliberate on
25 whether or not Ricardo Guerra is guilty or not.

1 You will think about it.

2 What do you think the word deliberately
3 means?

4 A Intentionally. He meant to do it.

5 Q Okay. Let me backtrack a little bit then.

6 As I said, there are two parts to the
7 trial, the guilt-or-innocence stage and the
8 punishment stage. At the guilt-or-innocence
9 stage, if you have found him guilty of murder,
10 you will have found him guilty of intentionally
11 and knowingly causing the death of a police
12 officer.

13 Then you go to the punishment stage
14 and you have to answer the question as to whether
15 or not the conduct was committed deliberately
16 and with a reasonable expectation that the death
17 of the deceased would result.

18 Would you automatically answer Question
19 No. 1 ~~yes~~ solely because you found him guilty in
20 the first part of intentionally and knowingly
21 killing a police officer?

22 A I am a little confused. I would first say yes,
23 but in the first phase, you could find him guilty
24 of killing a police officer without him knowing
25 that he was for sure the police officer?

1 Q No, if you find him guilty of intentionally
2 and knowingly killing a police officer, you would
3 have to have found him guilty of intentionally
4 and knowingly killing a police officer knowing
5 he was a police officer.

6 A Well, then I would say I would have to answer
7 yes to the first question.

8 Q Well, let me give you an example to maybe clarify
9 the whole thing.

10 Let's assume that you've got a thirty-
11 five-year-old two-time ex-con walking to a Seven-
12 Eleven and he needs some cash and he runs into
13 a seventeen-year-old and he gives the seventeen-
14 year-old a gun and he says, "Look, why don't you
15 be the lookout here? I will go in there and rob
16 the Seven-Eleven." The thirty-five-year-old ex-
17 con goes in and robs the Seven-Eleven and he
18 kills the cashier. They both run. They both
19 get arrested.

20 Under our law of parties, if a person
21 encourages, aids, or abets in the commission of
22 a felony offense or aids another in the commission
23 of a felony offense, then he, too, is guilty of
24 the same crime.

25 MR. BAX: Judge, I want to object on

1 that theory without showing intent on his part
2 to the capital murder.

3 THE COURT: Sustained.

4 MR. ELIZONDO: I am sorry.

5 Q (By Mr. Elizondo) Under our law of parties, if
6 a person intentionally aids, abets, and encourages
7 or assists another in the commission of another
8 felony, then he, too, is guilty under the same
9 felony the other has committed.

10 Do you see what I mean?

11 So, you see where theoretically he
12 could be prosecuted and could be found guilty of
13 capital murder. When you get to the punishment
14 stage, you are going to ask yourself to answer
15 that question as to whether the conduct of the
16 Defendant that caused the death of the deceased
17 was committed deliberately and with a reasonable
18 expectation that the death of the deceased would
19 automatically result.

20 Would you answer that question yes
21 if you believed it beyond a reasonable doubt,
22 or would you think about that one?

23 A If you are prosecuting the seventeen-year-old,
24 let's say, if it was proven beyond a reasonable
25 doubt, I would say yes. I mean, if I thought it

1 was that situation, I would have to say no
2 because for the seventeen-year-old, it wasn't
3 deliberate.

4 MR. BAX: I want to be sure she
5 understands under this theory he is talking about
6 it would have to be shown that the seventeen-
7 year-old knew and intended that someone would be
8 killed in the course of that robbery, even though
9 the triggerman --

10 THE COURT: I think by her response
11 she understood what the law of parties was.

12 Are you confused?

13 THE JUROR: I am slightly.

14 If you proved what you said, that it
15 was deliberate, if it was or wasn't, either he
16 knew or didn't know.

17 Q (By Mr. Elizondo) Can you see where you would
18 answer Question 1 no sometimes after you had
19 found him guilty of killing a police officer?

20 A Yes, in that situation. I can see it is possible
21 to answer no.

22 Q Question No. 2 is more or less asking you to
23 predict the future.

24 Do you think that a person can change
25 his mode of behavior or his mode of conduct?

1 A Yes. I think they can.

2 Q Do you think it is probable they may change their
3 mode of behavior and mode of conduct?

4 A Are we talking about anybody in particular?

5 Q Anybody that you can think of.

6 A I think there is always the chance.

7 Q Okay. About three or four months ago -- and I
8 don't recall exactly when it came down -- the
9 Supreme Court said the children of illegal aliens
10 had a right to a free education.

11 Do you remember that?

12 A Uh-huh.

13 Q What was your immediate reaction to that?

14 A It made me mad. I didn't agree with it.

15 Q Why didn't you agree with it?

16 A It may be selfish, but I feel we have enough
17 of our own people, even here in Texas and other
18 communities and welfare projects we could put
19 our money into, and there are problems with
20 teachers and everything else. I just felt they
21 could have done much --

22 Q Right.

23 Again, there are no right or wrong
24 answers. We just want to know how you feel about
25 certain things.

1 Would it be fair to say you have some
2 kind of bias, for lack of a better word, towards
3 these illegal aliens?

4 A I don't think so.

5 Q Do you in any way dislike them as a class, let's
6 say?

7 A No.

8 Q Let's assume that you are on a jury panel, and
9 again, I am trying to find out how you feel, and
10 it comes to your knowledge that the Defendant
11 here is an illegal alien and he was an illegal
12 alien when this crime was committed and you find
13 out also he has been indicted by the Grand Jury,
14 is represented by two lawyers.

15 Would that be a strike against him in
16 your own mind?

17 A No.

18 Q So you would afford him all the rights that a
19 regular citizen of this country has in the trial
20 of this case?

21 A I think so.

22 Q Okay. Now, when you say the words "I think," it
23 worries me.

24 To quote an example Mr. Bax gave, if
25 you had a mallet or a hammer in your hand and I

1 go and say, "You have a hammer. Are you going
2 to hit me," and you say, "I think not," I would
3 be leery.

4 We will need a yes or no answer.

5 Again, there are no right or wrong
6 answers of how you feel.

7 A I don't think I will be biased, no.

8 Q That still doesn't work. I just worry when
9 you say "think."

10 A I think when I came in and you said he was an
11 illegal alien, that would not influence me.

12 Q At all?

13 A No.

14 Q Let's say the word --

15 A In particular cases it might.

16 Q Pardon?

17 A I mean, the children that it directly -- well,
18 more or less directly affected me, my tax money
19 and everything, so that bothered me about that,
20 but I don't think I am biased against them because
21 it made me mad about that.

22 Q So you can tell us you would give Ricardo Guerra
23 a fair trial if you are selected on the jury?

24 A Yes.

25 Q You can promise us that?

1 And if the evidence shows the State
2 has not met its burden of proof, you can find
3 him not guilty?

4 A Yes.

5 Q You can promise us that?

6 A Yes.

7 Q I will give you a brief description of the facts
8 just so you can find out if you have an opinion
9 about this case.

10 Just from what I have told you, it is
11 a pretty emotional case. A police officer gets
12 killed, and an innocent bystander gets killed,
13 and the other police officer gets five bullets.

14 Will you promise you will separate
15 emotion from fact and try Ricardo Guerra solely
16 on the facts as you see them?

17 A Yes.

18 Q You worked at St. Luke's Episcopal Hospital? What
19 were your duties there?

20 A At St. Luke's, I was a charge nurse on a medical
21 floor.

22 Q And at Baylor College of Medicine, you are a staff
23 nurse?

24 A Staff nurse.

25 Q Where does your husband work?

1 A Where does he work?

2 Q Where, location wise.

3 A Greenway Plaza.

4 Q You have been the victim of a minor theft you
5 say. What was that about?

6 A Jewelry in a motel room.

7 Q You left the motel room and when you came back,
8 the jewelry was gone and you assumed --

9 A Somebody took it.

10 Q -- somebody took it?

11 And you probably assumed the maid took
12 it?

13 A Right.

14 Q Did you ever bring any charges on that?

15 A No.

16 Q Did you ever complain about it?

17 A No.

18 Q Is there anything about that that might prejudice
19 you or ~~bias~~ bias you in any way against this man in
20 the trial of this case?

21 A No.

22 Q You know, Ms. Cook, when I was growing up, I was
23 told to listen to police officers, to always pay
24 attention to whatever they say and do.

25 Did you grow up the same way?

1 A Yes.

2 Q I am sure you did.

3 I suspect in this case there will be

4 a lot of police officers testifying. Would you

5 give a police officer more credibility solely

6 because he is a police officer even before you

7 heard him testify?

8 A No, because I believe there is good and bad in

9 everything, and just because he is a police

10 officer may not mean he is a good cop or a good

11 person.

12 Q They are humans just like you and I?

13 A Right.

14 Q They have the same human frailties that the

15 juror has?

16 A Yes.

17 Q And they can make mistakes?

18 A Uh-huh.

19 Q How do you feel about eyewitness testimony? Have

20 you ever gone after somebody and said, "Hey, Joe,"

21 and they turn around and it wasn't Joe? Do you

22 think that eyewitnesses can ever be mistaken?

23 A Yes.

24 Q Let me ask you what your feelings are on the

25 Cullen Davis case.

1 A I put that down mainly because my husband was
2 from Fort Worth and he talked a lot about it.
3 I guess I did form an opinion.
4 Q What was your opinion?
5 A That he probably did it, that he probably shot
6 her.
7 Q Of course, you didn't hear all the evidence the
8 jurors heard?
9 A No.
10 Q You just heard what the paper said?
11 A Right, and there is a book out on it.
12 Q How long have you been married?
13 A Three years in November.
14 Q What part of town do you live in?
15 A Alief.
16 Q Alief?
17 A Yes.
18 Q How big is McPherson, Kansas?
19 A I haven't been back for a while. It is tiny.
20 Q Farming community?
21 A Yes, sir.
22 Q Hold on for a second.

23 Again, Ms. Cook, and I hate to belabor
24 the point, but if you were on this jury panel,
25 can you promise us one thing, and that is if the

1 State does not prove its case to you beyond
2 a reasonable doubt, you will have the courage to
3 say, "Mr. Bax and Mr. Moen, you didn't prove the
4 case to me, and therefore, I will have to go and
5 say not guilty"?

6 A Yes.

7 Q Can you make them prove it to you?

8 A Right.

9 MR. ELIZONDO: Pass the juror.

10 MR. BAX: We will excuse this juror.

11 THE COURT: Ms. Cook, it will not be
12 necessary for you to get a relief nurse for your
13 employee. You may be excused. Thank you very
14 much.

15 THE JUROR: Thank you.

16 (At this time court recessed for the
17 day.)