

Defense Expert Testimony

State of Texas v. Duane Buck

December 9, 1997

This is a scanned copy of a portion of the court recorder's transcript in the Duane Buck murder trial, including the testimony of defense experts Walter Quijano and Patrick Lawrence. Some portions are obscured because of highlighting on the copy available for scanning, which shows up as black when scanned on a black-and-white scanner.

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WALTER QUIJANO

was called as a witness by the Defense and,
having been first duly sworn, testified as
follows:

DIRECT EXAMINATION

BY MR. EASTERLING:

Q State your name, please, sir.

A My name is Walter Quijano.

Q Mr. Quijano, where have you been the
last hour and a half?

A In another court.

Q So you finished up and then came to
visit with us?

A Yes.

Q Give the jury an idea of what kind of
work you do, what your credentials are,
what your educational history is.

A I have a Bachelors Degree in General
Psychology and a Master's and Doctorate
Degree also in Clinical Psychology. I
have completed all the requirements of
the Texas State Board of Examiners of
Psychologists to practice psychology in
Texas.

1 My work has been both with the
2 public and private sectors. I was a
3 Consulting Psychologist at the Federal
4 Correctional Institution in San Pedro,
5 California, properly called the Federal
6 Corrections Institution at Terminal
7 Island. From there I did some chemical
8 dependency work as a Staff Psychologist
9 at the then Texas Department of
10 Corrections and now called the Texas
11 Department of Criminal Justice
12 Institutional Division. From there I
13 worked for a State hospital in Oklahoma
14 where I did forensic work and was Chief
15 Psychologist.

16 Then I returned to the private
17 sector doing chemical dependency work in
18 Oklahoma and then in San Antonio. I
19 then was invited back to the then TDC to
20 become Chief Psychologist and Director
21 of Psychiatric Services. I did that for
22 about four or five years and then I
23 resigned that position and represented
24 the State of Texas in the Special Master
25 Theme that surveyed the compliance of

1 the prison system with Court-ordered
2 stipulations. I did similar work for
3 the Federal Court in Florida.

4 After that I opened a full-time
5 private practice in Conroe. I do much
6 criminal work. I do evaluations and
7 treatment for both juveniles and adult
8 probations out of Montgomery County
9 District Courts as well as the 258th
10 Judicial District. I do some work for
11 the Texas Rehabilitation Commission
12 doing vocational as well as disability
13 evaluations. I do some work for DPS. I
14 also have private clients coming from
15 various referral sources.

16 Q How many years did you work for the
17 Texas Department of Corrections which is
18 the prison system in Texas?

19 A I did as an employee for five years, and
20 I continued to do some work for them on
21 a case-by-case basis depending Court-
22 ordered evaluations.

23 Q Were you appointed by Judge Collins of
24 the 208th District Court to [REDACTED]

25 ~~evaluation from the defendant Duane Edward~~

1

[REDACTED]

2

A

[REDACTED] Yes, I got an order to perform a

3

[REDACTED]

4

Q

Are you paid by the County to do this work?

5

6

A

Yes.

7

Q

Have you been appointed in other cases over the years since you've been in private practice?

8

9

10

A

Yes.

11

Q

Can you give us a general estimate of how many capital murder cases that you've been appointed to evaluate?

12

13

14

A

About seventy.

15

Q

About seventy?

16

A

Yes.

17

Q

Have you also worked for the State of Texas and District Attorney's Offices throughout the State evaluating defendants and testifying in their behalf also?

18

19

20

21

22

A

Yes.

23

Q

Can you give us an estimate of how many times you've testified for the State of Texas?

24

25

1 A It's running about even. I keep track
2 of that because I get that question real
3 often, so it's about fifty-fifty.

4 Q ~~Did you do a forensic psychological~~
5 ~~evaluation and some testing on~~ ~~Shane~~
6 ~~Edward Buck?~~

7 A ~~Yes.~~

8 Q Where was that done?

9 A At the Harris County Jail.

10 Q Can you tell us some of your behavioral
11 observations first about Mr. Buck?

12 A He was very cooperative. There was
13 nothing unusual with our conversation or
14 his demeanor during the evaluation. I
15 did not see any thinking disorder or
16 emotional disorder. I saw some poor
17 insight, but overall it was a normal
18 conversation except for the fact that
19 the insight was poor and he had a
20 excessive obsession with the Bible and
21 Jesus and what we call jail house
22 conversion.

23 Q When you were conversing with him in
24 doing your observations, were you also
25 looking for any symptoms of mental

1 illness or, I guess, insanity or what
2 the lay person would call craziness?
3 Were you looking for things like that?

4 A Yes, you interview and keep an eye on
5 any thinking disorder, any emotional
6 disorder, and then any personality
7 disorder.

8 Q You didn't see any of those things?

9 A No thinking disorder, no significant
10 emotional problems, but I recognized a
11 personality disorder.

12 Q Let's talk about that.

13 Q What did you recognize?

14 A He has what is called a ~~dependent~~
15 ~~personality disorder~~.

16 Q Would you explain that?

17 A A person with a dependent personality
18 disorder is one who in one sense is
19 selective in their relationships that
20 they develop, but once they develop the
21 relationship, they hang on to it even
22 when the relationship is over. It is
23 difficult for them to disengage and they
24 will do extraordinary things to hang on
25 to the relationship. These individuals

1 can become very extreme in wanting to
2 maintain that relationship and sometimes
3 go to the point of thinking if I cannot
4 have you, nobody else can.

5 Q You developed a history of his
6 relationship with, for lack of a better
7 word, his common-law wife [REDACTED]
8 [REDACTED] where he had a child; is that
9 correct?

10 A Yes.

11 Q Were you also aware of the relationship
12 that he had with the deceased in this
13 case, [REDACTED]?

14 A Yes.

15 Q Of course, you were provided the facts
16 from the police report and from me
17 concerning how the murder occurred on
18 Puerto Vallarta, correct?

19 A Yes.

20 Q So all of this evaluation and the
21 symptoms you saw, all of that was
22 developed from your evaluations as well
23 as the facts of this capital murder,
24 correct?

25 A Yes.

1 Q He showed no signs of insanity to you;
2 is that correct?
3 A No, not in the legal sense.
4 Q Now, the defendant's personality
5 disorder that you've described, is that
6 an Axis I disorder?
7 A It is an Axis II disorder.
8 Q For the jury's information, what is Axis
9 I and what is Axis II?
10 A Axis I is a psychological problem that
11 is the object of study or object of
12 treatment. So you would have
13 schizophrenia, depression, substance
14 abuse. Those are objects of study or
15 treatment.
16 ~~Axis I~~ is a personality style
17 or personality disorder of a person that
18 would interact with Axis I. Many times
19 you treat Axis I disorder and the
20 treatment doesn't work. Chances are
21 there's a personality defect that's
22 interfering with your treatment and you
23 have to address the Axis II disorder
24 first.
25 Q On your Clinical Impressions on Page 6

1 of your report, what's the Axis I
2 diagnosis that you have?

3 A The Axis I was ~~alcohol dependence~~ which
4 was in remission because he was in jail,
5 ~~cocaine dependence~~ e which was in
6 remission because he was in jail, but
7 those were the Axis I impressions.

8 Q Are you familiar with the capital murder
9 punishment issues that jurors are given
10 in a capital murder case at the
11 punishment phase?

12 A Yes.

13 Q The first that the issue has to decide
14 is whether the State has proven beyond a
15 reasonable doubt that there's a
16 probability that the defendant would
17 engage in future acts of violence which
18 would constitute a continuing threat to
19 society.

20 You're familiar with that issue,
21 aren't you?

22 A Yes.

23 Q I want to talk about that with you for a
24 moment. I'm going to ask your
25 professional opinion regarding Mr. Buck

1 in relation to that issue.

2 If we have an inmate such as Mr.
3 Buck who is sentenced to life in prison,
4 what are some of the factors,
5 statistical factors or environmental
6 factors that you've looked at in regard
7 to this case?

8 A Number one, among the statistical
9 factors we know to predict future
10 dangerousness is the ~~fact of the crime~~
11 You have to look to see if the person
12 ~~has in the past been assaultive or~~
13 ~~aggressive~~, chances are he will be in
14 the future.

15 ~~Age~~, the younger the person, the
16 more aggressive and violent a person is.
17 The older a person is, over the age of
18 thirty or in the thirties, the
19 assaultiveness decreases to the point
20 whereby age fifty years old, there's
21 less than one percent of violent acts
22 committed by senior citizens.

23 ~~Sex~~ The male for some strange
24 reason is more violent than a female and
25 more assaultive.

1 **Race.** It's a sad commentary
2 that minorities, Hispanics and black
3 people, are over represented in the
4 Criminal Justice System.

5 **Social-Economics.** The poorer
6 the person, the more likely they are to
7 be violent. There is less violence in
8 the upper social economic levels. The
9 more stable the employment, the less
10 violent the person is.

11 **Substance abuse.** The more
12 substance abuse there is, the more
13 violent a person is.

14 Those are the statistical
15 factors in deciding whether a person
16 will or will not constitute a continuing
17 danger.

18 Q If you have a defendant such as Duane
19 Edward Buck **that has no prior violent**
20 **offenses,** is it true that there would be
21 less of a probability that he's going to
22 be dangerous or commit acts of violence
23 in the future?

24 A True.

25 Q Let's talk about environmental factors

1 if he's incarcerated in prison. Let's
2 talk about things such as the
3 availability of victims and things like
4 that. Explain that in terms of
5 probability to the jury.

6 A ~~The availability of victims~~ means the
7 broadness or narrowness of the victim
8 pool. If the victim is randomly
9 selected, then the more dangerous the
10 person is because there is no
11 predictability as to who the next victim
12 is. The narrower the victim pool, the
13 less dangerous the person will be in the
14 future.

15 In this particular case the
16 victim is not random, ~~it's narrow~~, and
17 there is a pre-existing relationship.
18 It was, for lack of a better term, a
19 husband and wife difficulty that is
20 unlikely to be repeated. In prison
21 there is, of course, a narrow victim
22 pool. A sex relationship that this
23 person is prone to have will not be
24 pleasant in prison. There will not be
25 wives or girlfriends in prison.

1 There are other potential
2 victims in prison like other inmates,
3 civilian staff, male and female guards, .
4 nurses, teachers and so forth. Those
5 are potential victims [REDACTED]

6 [REDACTED] particular case the probability of
7 [REDACTED] developing a dependent relationship with
8 [REDACTED] them would be very small, and those
9 [REDACTED] potential victims in prison are more
10 [REDACTED] alert to the danger and are less likely
11 [REDACTED] to be victimized than in free society
12 [REDACTED] where the victims are just victims of
13 [REDACTED] crime.

14 Q You were also provided with some data or
15 some history on Mr. Buck in relation to
16 how he reacts in custody. Isn't it true
17 that the records from the County Jail as
18 well as from the prison system --

19 MS. HUFFMAN: I would
20 object. He's asking for this
21 witness to testify from hearsay.

22 MR. EASTERLING: That's
23 what he's expected to do. They
24 evaluate reports and form
25 opinions. It's an exception to

1 the hearsay rule.

2 THE COURT: Lay your
3 groundwork.

4
5 BY MR. EASTERLING:

6 Q You have been provided data and some
7 records and information on Duane Buck's
8 behavior while he was in the jail and in
9 prison; is that correct?

10 A Yes.

11 Q When you looked at that information and
12 talked with me about the information,
13 you determined whether or not he had had
14 any disciplinary problems, didn't you?

15 A Yes.

16 Q And he hasn't had any disciplinary
17 problems in the County Jail or in the
18 Texas Prison System; isn't that correct?

19 MS. HUFFMAN: I'd object
20 to the hearsay.

21 THE COURT: Sustained.

22
23 BY MR. EASTERLING:

24 Q You used some data to determine whether
25 or not he would be a threat from his

1 behavior in prison, correct?

2 A Yes.

3 Q What did you determine that from?

4 A ~~From the disciplinary records he has no~~
5 ~~assaultive incidents either at IDC or in~~
6 ~~jail.~~

7 Q What does that tell you?

8 A Number one, that's a good sign that this
9 person is controllable within a jail or
10 prison setting. He has demonstrated
11 that to be so. Some people do well from
12 an open environment and some people do
13 well in a restricted environment. This
14 person seems to have adjusted to the
15 structures of the prison and has shown
16 himself to be not assaultive there.

17 Q ~~So if Duane Buck was sentenced to 15~~
18 ~~in prison~~ do you have an opinion about
19 whether there's a probability that he
20 would commit criminal acts of violence
21 that would be a continuing threat to
22 society?

23 A The probability of that happening in
24 prison would be low.

25 Q Let's talk about whether or not there's

1 any differences in your research between
2 someone who does a small or short prison
3 sentence compared with one who is
4 sentenced to life in prison. Are there
5 any differences?

6 A Short-termers are more disorderly than
7 long-termers. People who are serving
8 shorter sentences are more rebellious.
9 They create trouble in the prison
10 system, mischief, fighting. The long-
11 term prisoners or life-termers
12 constitute a good sub-section of the
13 prison system. They, in the words of
14 the correctional people, know how to do
15 time.

16 Q Is there a disciplinary system within
17 the prison system that effectively
18 controls inmates?

19 A Yes.

20 Q Would you briefly describe that to the
21 jury?

22 A There are two or maybe three systems.
23 The informal system is there's always
24 somebody bigger than you.

25 The second system is one that we

1 call a court. The court is a
2 disciplinary committee inside the prison
3 system made up of officers and other
4 prison employees.

5 There is a third system that is
6 used if they commit felonies inside the
7 prison. There is a special prosecution
8 inside the prison system that prosecutes
9 felonies committed in the prison.

10 MR. EASTERLING: May I
11 approach the witness, Your
12 Honor?

13 THE COURT: Yes, sir.
14

15 BY MR. EASTERLING:

16 Q Let me show you what's been marked
17 ~~Defense Exhibit No. 1~~ Mr. Quijano. I'd
18 ask you if you recognize that?

19 A Yes.

20 Q What is that?

21 A It's a copy of my psychological
22 evaluation of the defendant.

23 Q The defendant in this case?

24 A In this case.

25 Q Is it a true and accurate copy of your

1 findings and your report on Duane Edward.
2 Buck?

3 A Yes.

4 MR. EASTERLING: I'd
5 tender the exhibit to State's
6 Counsel and ask that it be
7 admitted in evidence.

8 MS. HUFFMAN: Your Honor,
9 I would object to this as being
10 hearsay.

11 THE COURT: Approach the
12 bench.

13
14 (The following proceedings
15 are held at the bench
16 outside the hearing of the
17 jury.)

18
19 MR. EASTERLING: This is
20 not hearsay, Your Honor. It's
21 his work.

22 THE COURT: I've never
23 even seen it.

24 MR. GUERINOT: If her
25 objection is hearsay, she's

1 right. We need to prove up the
2 predicate for business records
3 and then reoffer it and then see
4 what she has to say.

5 MS. HUFFMAN: I'd like to
6 look at it. I need to read it.

7
8 (The following proceedings
9 are held in the hearing of
10 the jury.)

11
12 THE COURT: I've sustained
13 your objection.

14
15 BY MR. EASTERLING:

16 Q Dr. Quijano, who prepared this report?

17 A I did.

18 Q What time did you do so?

19 A I completed the report on March the 8th
20 of 1997.

21 Q Did you make the entries in this report
22 from your own personal knowledge?

23 A Yes.

24 Q Are you the custodian of these records?

25 A Yes.

1 Q Have you kept these records in your
2 possession since you made the entries?
3 A Yes.
4 Q Were the entries made at or near the
5 time or immediately following your
6 evaluation of Duane Edward Buck?
7 A Yes.
8 Q Have there been any changes or deletions
9 or alterations from your original
10 personal report that you brought in your
11 briefcase today?
12 A No.

13 MR. EASTERLING: I'd make
14 the same offer, Your Honor.

15 MS. HUFFMAN: He's
16 offering a document I've never
17 seen before.

18 THE COURT: Ladies and
19 gentlemen, I'm going to send you
20 to lunch. The Deputy is going
21 to take you to lunch.

22 Remember you cannot
23 discuss anything about the case
24 at all. Does everyone
25 understand that? You're excused

1 for lunch.

2
3 (The following proceedings
4 are held outside the
5 presence of the jury.)

6
7 MS. HUFFMAN: The State is
8 going to object to admitting to
9 Defense No. 1, Your Honor.
10 There are many, many instances
11 of hearsay contained in this
12 document. I understand they
13 have established it as what we
14 call business records, but there
15 are many instances of hearsay
16 contained within that document.
17 In fact, there's hearsay within
18 hearsay. There's no exception
19 there. This is a long analysis
20 of the defendant's conversation
21 with this examiner about the
22 conduct charged. In fact, on
23 Page 3 of the document it states
24 that the defendant describes the
25 contact charged as follows.

1 Then it goes on with the
2 defendant's conversation to the
3 examiner. There are self-
4 serving statements that are not.
5 admissible under any theory of
6 law. It's clearly hearsay and
7 not admissible. I'd ask the
8 Court to look at it.

9 THE COURT: Before I go
10 through this document, in order
11 to make this determination of
12 whether or not he'd be violent
13 in the future, he has to talk to
14 him. I imagine some of this has
15 to be based on what the
16 defendant told him.

17 MR. EASTERLING: That's
18 our exact point. It's data that
19 the expert has to use to form an
20 opinion.

21 THE COURT: It has to be
22 relevant to what he formed his
23 opinion on.

24 MR. EASTERLING: That's
25 what he was thinking at the

1 time, his actions, his behavior,
2 his depression. All of these
3 are factors that the
4 psychologist needed to evaluate
5 in order to give his opinion.
6 The State's objection that it is
7 not an exception to the hearsay
8 rule is unfounded. I think it
9 clearly is an exception.

10 We're not offering it for
11 the truth of the matter asserted
12 but only the basis from which
13 the doctor gave his opinion.

14 MS. HUFFMAN: I don't
15 believe there's any rule that
16 allows the Defense to get in the
17 defendant's version of the
18 offense through the use of a
19 mental health expert. It is not
20 admissible. They could ask the
21 witness what he's basing his
22 evaluation on but they haven't
23 asked him straight out. He
24 could generally say he based his
25 opinion on his conversation with

1 the defendant, the defendant's
2 version of the fact that he
3 related to him or lack of
4 information that he related to
5 him. He could testify to that,
6 but he can't go into the context
7 of the conversation. It can't
8 come in under any theory of law.

9 Secondly, I would point
10 out to the Court a notation on
11 Page 9 of the report where the
12 reportee says that in prison the
13 minimum of forty years time
14 served, that he would be seventy
15 before he would be eligible for
16 discharge. That's clearly a
17 violation of the Court's
18 previous ruling about the
19 admissibility of any reference
20 to parole or that the defendant
21 may be eligible for parole.
22 We'd ask that that be deleted.

23 Also, if I could, I'd ask
24 for an oral Motion in Limine at
25 this time that both of these

1 witnesses not be allowed to
2 testify about parole eligibility
3 or how that factors into the
4 decision. I would ask that
5 before this witness returns to
6 the stand and before the next
7 witness takes the stand, I would
8 ask that the Court admonish them
9 as to the inadmissibility of
10 that type of information.

11 MR. GUERINOT: I'd like to
12 address the forty-year statement
13 he made on the last page of Dr.
14 Quijano's report. As he stated
15 on direct examination, age was a
16 factor in determining the
17 potential for violence in the
18 future, and that the older a
19 person got, the less potential
20 there was for violence. It goes
21 directly to the heart of the
22 first question, that future
23 dangerousness question. The
24 inability of the jury to know
25 the minimum amount of time

1 somebody would be required to
2 stay in prison, which adds up to
3 age seventy-four years for this
4 defendant, denies them the
5 opportunity to have a full and
6 complete review of the evidence
7 for the jury to decide whether
8 their answer is yes or no to the
9 first question.

10 It goes to the very heart
11 of the question, and it goes to
12 the very heart of Dr. Quijano's
13 testimony that the older a
14 defendant gets, the less
15 potential there is for violence.
16 Coupled with the statement
17 that's on the last page --

18 Do you have the report?

19 THE COURT: I don't have
20 it.

21 MR. GUERINOT: If you
22 would take a look at Page 9, he
23 talks about the defendant being
24 in a structured environment. He
25 talks about the Texas Department

1 of Corrections offering him a
2 lack of opportunity to be
3 violent because, number one,
4 there is no contact with outside
5 people, or minimum contact with
6 outside people; the inability to
7 form relationships which could
8 provoke a future act of
9 violence; lack of drugs, lack of
10 weapons, the structured
11 environment; and that lifers are
12 better adapted and better suited
13 to live a life of non-violence
14 in the penitentiary as opposed
15 to short-timers.

16 All of that goes to the
17 heart of the first question, and
18 we have laid the predicate to
19 show this to the jury so that
20 they can make an intelligent
21 decision as to whether the
22 answer should be yes or no to
23 that first question.

24 MS. HUFFMAN: All the
25 information about the structured

1 environment in prison, the
2 testimony about age decreasing
3 violence, all that information
4 is in front of the jury. What
5 is not in front of the jury and
6 what is not admissible is the
7 time a person serves before
8 becoming eligible for parole.
9 That's not relevant. That's
10 what we're objecting to and not
11 all these other factors that are
12 already in front of the jury.
13 They're admitted. We're not
14 arguing with that. There is a
15 way for them to get all that in
16 without introducing this report.

17 MR. GUERINOT: I would
18 submit to the Court that the
19 forty-year rule is relevant.
20 It's very relevant to the issue
21 of age and the age that the
22 defendant would have to attain
23 before he could even be eligible
24 to get out of jail.

25 I would also point out,

1 Judge, that it is almost akin to
2 the Simmons case that the
3 Supreme Court decided. The
4 Simmons case talked without life
5 without parole, and that it is
6 information that the jury should
7 be made aware of before they
8 decide whether or not somebody
9 ought to be sentenced to death.

10 THE COURT: I've already
11 ruled on that issue.

12 MR. GUERINOT: That does
13 not prevent you from revisiting
14 the request.

15 MS. HUFFMAN: As you're
16 looking at that, Judge, I would
17 also object to the fact that the
18 examiner has his version of a
19 synopsis of what the witness has
20 said taken from the Defense
21 attorneys' notes. There are
22 many levels of hearsay. We
23 would object to the witness'
24 summary of some witness'
25 testimony that has already

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testified before this jury.

MR. EASTERLING: Pretrial motions --

THE COURT: Just a minute. Let me read this.

MR. EASTERLING: This is the most recent case which they affirmed the trial Court not giving it, but there was a footnote that I want to refer to. I would like to recite into the record while we're arguing the forty-year eligibility rule which has been argued throughout this case, during voir dire and now during the trial, the most recent case I know of is the Willie Marcel Shannon case.

It's Court of Criminal Appeals Case No. 71805 out on 12-11-96. I don't think it has a cite yet.

The footnote on that case is very interesting because a footnote by one of the Justices states that there was no record

1 made concerning the effective
2 age and the forty-year
3 eligibility as it might relate
4 to an older defendant. The
5 dicta there seemed to be that if
6 there was a case where a
7 complete record was made, that
8 might be an exception to giving
9 the jury the parole eligibility
10 of forty years instruction so
11 that they are fully informed
12 about what happens on a life
13 sentence in a capital murder
14 case.

15 I intend to do that with
16 Dr. Quijano and even further
17 with Dr. Patrick Lawrence who is
18 the next expert we have.

19 So it's on the record, I'm
20 referring the Court to Willie
21 Marcel Shannon. I don't have a
22 cite, Judge, but it's in your
23 most recent handout that the
24 District Judges receive from Ray
25 Speece's office. I read it

1 yesterday when I was there doing
2 some research. I'm sure he's
3 very familiar with it. It's one
4 of those handouts of significant
5 decisions that he gives to
6 District Judges.

7 THE COURT: Your position
8 being?

9 MR. EASTERLING: My
10 position is that you've heard
11 Dr. Quijano and after you've
12 heard Dr. Lawrence, then I think
13 you should revisit the issue
14 about whether you're going to
15 give them parole eligibility
16 instruction in the punishment
17 charge. We will be asking for
18 it again.

19 I'm asking the Court to be
20 sensitive to what you're hearing
21 regarding age, the fact that the
22 defendant is now thirty-four
23 years old and will be seventy-
24 four before he even becomes
25 eligible, and most likely will

1 die of natural causes before he
2 is even eligible for it.

3 THE COURT: All right. As
4 to the report, under Rule 703
5 concerning opinion testimony of
6 experts --

7 MR. EASTERLING: That's
8 correct, Judge.

9 THE COURT: That rule
10 pretty much speaks to this issue
11 in that the data need not be
12 admissible in order for your
13 expert to use them as a basis
14 for his opinion. That doesn't
15 mean that they are admissible
16 themselves. In other words,
17 your expert can certainly
18 testify about his opinion, and I
19 guess generically what he based
20 it on, conversation with your
21 client, but he can't go into
22 inadmissible areas. The same
23 would be true at this time for
24 the parole information. I ruled
25 that it's irrelevant and

1 inadmissible. Therefore, you
2 certainly can't get it in
3 through the report. Now, there
4 may be other things in here. I
5 didn't read it line for line. I
6 glanced through it, and every
7 paragraph had to do with his
8 childhood and what happened on
9 the day of the offense and so
10 forth. I don't know if there
11 are some statements in here that
12 might be exceptions to the
13 hearsay rule. I didn't go
14 through it that carefully.
15 There may be some statements
16 admissible under some other
17 theory.

18 MR. EASTERLING: I think
19 what Ms. Huffman was objecting
20 to was the details of the
21 morning of the murder where he's
22 trying to describe -- on Page 4
23 he's talking about when he wants
24 to leave and he's packing his
25 clothes and exchanging words in

1 getting tools from the trunk
2 and --

3 MS. HUFFMAN: My objection
4 was general but the State is
5 objecting to every page. Every
6 page has objections to it. Let
7 me just give you an example.

8 On the first page under
9 "Findings" -- well, let's start
10 with the introduction. The
11 Defense Attorney on 1-13-97
12 wrote to this psychologist about
13 this defendant who was alleged
14 to have shot and killed his ex-
15 girlfriend. That's hearsay.

16 Moving down, the defendant
17 states that he didn't know the
18 date but he had been in jail
19 since July of '95.

20 Moving on it goes on to
21 say that he used to have suicide
22 thoughts, and it goes on and on
23 with hearsay.

24 There's a lot of stuff in
25 here. Anything that came from

1 the defendant is what I'm
2 objecting to, whether it be a
3 direct quote or whether the
4 doctor makes reference to the
5 information having come from the
6 defendant. It's hearsay. If
7 they're trying to introduce the
8 summary of the doctor's analysis
9 or his diagnosis, I would have
10 no objection to that.

11 THE COURT: Which part is
12 that, by the way?

13 MS. HUFFMAN: Well, you
14 have to get all the way down
15 here to Page 3. You see that
16 little paragraph there?

17 THE COURT: Yes.

18 MS. HUFFMAN: That's his
19 summation. That would be a
20 business record. That would be
21 his opinion, his analysis of the
22 situation.

23 I'd object to all this
24 about the charge, where it
25 starts with the defendant said

1 he was charged, and that goes
2 all the way down there. At the
3 bottom of Page 4 it makes
4 reference to witnesses'
5 statements that were reviewed, I
6 would object to all of that
7 which is a synopsis of different
8 witnesses. Actually, I think
9 it's a synopsis of what they
10 testified to in writing here.

11 On 4, 5, and 6, I would
12 not object to the clinical
13 impression. I guess that's a
14 summary of his clinical
15 diagnosis and clinical
16 recommendation.

17 In other words, anything
18 that the doctor produces that is
19 truly a report of his analysis,
20 that's not hearsay and I don't
21 object to it. I don't have any
22 objection to forensic
23 recommendations and his final
24 analysis of different factors.
25 I do have the objections we

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discussed previously.

THE COURT: What about
Page 7 and 8 and 9?

MS. HUFFMAN: I would
object to that. This is stuff
he's testified to. I don't see
how this is really a business
record. I don't understand what
principle is coming in. It's
more of a synopsis of someone's
testimony. I don't know under
what rule there is a provision
for a synopsis of testimony to
come in, but I don't think this
is an applicable situation.

MR. GUERINOT: May I
respond, Judge?

THE COURT: Yes, sir.

MR. GUERINOT: I don't see
what the difference is between
this and a forensic report from
the Medical Examiner. Dr. Murr
sat up there and told us all the
things she needed to tell for
the jury to go back and make a

1 decision about whether or not
2 these people died as a result of
3 a gunshot wound to the chest,
4 homicide. They stood up and
5 introduced pictures to
6 demonstrate what she said. And
7 then they got the report
8 introduced in evidence. That's
9 the same thing as this.

10 Under Rule 705, Disclosure
11 of Facts or Data, it states: .
12 The expert may testify in terms
13 of opinion or inference and give
14 his reasons therefor without
15 prior disclosure of the
16 underlying facts or data, unless
17 the Court requires otherwise.
18 The expert may in any event
19 disclose on direct examination,
20 or be required to disclose on
21 cross-examination, the
22 underlying fact or data, subject
23 to Paragraph B through D which
24 are voir dire, admissibility of
25 opinion, and the balancing test.

1 The bottom line is that he
2 can testify to every one of
3 these facts because it is the
4 basis of the opinion that he is
5 giving. He is giving his
6 opinion as an expert which he is
7 allowed to do. If he can
8 testify about the facts that
9 form the basis of his opinion,
10 obviously the report containing
11 the facts that are the basis of
12 his opinion would be admissible.

13 It's very much like a
14 picture. If you can tell it in
15 words, the picture can do that.
16 This report is a picture. The
17 words are what he testified to.
18 I don't see the difference. I
19 would ask the Court to rule that
20 this is admissible in its
21 entirety.

22 THE COURT: What I believe
23 you're missing is that Rule 705
24 doesn't undermine Rule 703. All
25 it basically says is that an

1 expert can make an opinion based
2 on inadmissible evidence. It
3 doesn't make it admissible
4 because he bases his opinion on
5 it. If it's admissible, if it's
6 otherwise admissible, he can
7 testify to the basis of his
8 opinion.

9 MR. GUERINOT: I don't
10 think that restriction is placed
11 on it by that rule, Your Honor.

12 MR. EASTERLING: I have
13 stated it before and I will
14 state again that we are not
15 offering the report for the
16 truth of the matter asserted
17 which is the general rule of
18 hearsay.

19 THE COURT: What is the
20 exception under which you are
21 offering it?

22 MR. EASTERLING: It's the
23 data the expert has used to form
24 his opinion.

25 THE COURT: That is not an

1 exception to the hearsay rule.

2 MR. GUERINOT: Well,
3 there's no doubt that it is a
4 business record.

5 THE COURT: It is a
6 business record, but even
7 business records contain -- as
8 you removed that last page of
9 that Autopsy Report --
10 inadmissible hearsay. That was
11 the investigator's report. That
12 didn't come in.

13 MR. GUERINOT: This is not
14 an investigator's report. This
15 would be like removing Dr.
16 Murr's --

17 THE COURT: I don't know
18 if you can ferret out the parts
19 of this which are admissible.
20 I'm assuming you're not
21 objecting to all of this.
22 Somebody needs to prepare
23 something.

24 MR. EASTERLING: We do
25 want Defense 1 introduced as

1 Defense No. 1 for purposes of
2 the record, and then you're
3 asking us to modify an
4 admissible form. We'll do
5 whatever the Court orders,
6 Judge.

7 THE COURT: I won't admit
8 it in this form but I will admit
9 1-A for Appellate purposes only.

10 MR. EASTERLING: Then I'm
11 offering Defense 1-A in its
12 entirety for purposes of the
13 record if the case goes on
14 appeal, and then we'll work to
15 modify the document.

16 THE COURT: All right.
17 1-A will be admitted for
18 purposes of the appellate
19 record.

20 MR. GUERINOT: Do I
21 understand the Court's ruling
22 that you will admit certain
23 portions of Defense 1?

24 THE COURT: It's going to
25 be modified.

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MR. GUERINOT: I understand. We can do that later.

THE COURT: Bring your expert back in.

MS. HUFFMAN: As to my Motion in Limine --

MR. EASTERLING: Let me talk to both of them. They're out there now.

THE COURT: Your Motion in Limine will be granted.

MR. GUERINOT: I would object to any kind of record being made on a 705(d) claim when in fact that is not the basis of the State's objection. The basis of the State's objection is that it's hearsay and not an exception to the hearsay rule.

THE COURT: When the underlying facts or data would be admissible in evidence for any purpose other than to

1 explain or support the expert's
2 opinion or inference, the Court
3 shall exclude the underlying
4 facts or data if the danger that
5 they will be used for an
6 improper purpose outweighs their
7 value as explanation or support
8 for the expert's opinion.

9 I make that finding that
10 admitting them would outweigh
11 any probative value they may
12 have as explanation or support
13 of the expert's opinion.

14 MR. GUERINOT: And we
15 would object to that most
16 respectfully.

17 THE COURT: Bring the jury
18 out.

19
20 (The following proceedings
21 were had in the presence
22 of the jury.)
23

24 MR. EASTERLING: I'll pass
25 the witness, Your Honor.

CROSS-EXAMINATION

BY MS. HUFFMAN:

Q Sir, how are you today?

A Fine, thank you.

Q Dr. Quijano, you've testified here in Harris County before, have you not?

A Yes.

Q And in this case you're being paid for your testimony; is that correct?

A Yes.

Q In fact, right before you testified in this case you were testifying for the Defense in a serial rape case down the hall; is that correct?

A Not serial rape.

Q What kind of case was it?

A A rape case.

Q How much are you being paid for your testimony today?

A I'm not paid for my testimony. I'm paid for my time.

Q How much are you being paid for your time?

A I charge one hundred fifty.

Q Dollars?

1 A Dollars.

2 Q For what?

3 A Per hour.

4 Q Approximately how many hours have you

5 got up to this point at almost 3:00

6 o'clock in this case?

7 A It's been since 12:00 o'clock.

8 Q So prior to your testimony here today,

9 you have previous time in this case?

10 A Yes, the evaluation.

11 Q When did that evaluation occur?

12 A The actual interview was February 14,

13 1997, and I finished writing the report

14 on March 8th.

15 Q How many times did you meet with the

16 defendant Duane Buck?

17 A Just one time.

18 Q What was the time period you spent with

19 the defendant?

20 A How long I spent with him?

21 Q Yes.

22 A Two and a half hours.

23 Q So all your conclusions and all the

24 opinions that you have given to this

25 jury are based on a two and a half-hour

1 interview with the defendant; is that
2 true?

3 A Some testing and some eyewitness
4 statements.

5 Q So you have reviewed some eyewitness
6 reports given to you by Mr. Guerinot?

7 A Mr. Easterling.

8 Q And then you interviewed the defendant?

9 A Yes.

10 Q Did you interview him in the Harris
11 County Jail?

12 A Yes.

13 Q What type of facilities did you
14 interview him in? What type of room was
15 it?

16 A It's a booth with Plexiglas between us
17 and a small speaker screen.

18 Q It's kind of like a closet, isn't it?

19 A Yes.

20 Q You're surrounded by concrete and it's
21 real loud in there?

22 A Yes.

23 Q It's difficult to hear who you're
24 conversing with; is that correct?

25 A Yes.

1 Q Would you say it's probably the worst
2 situation or circumstances in which to
3 conduct a clinical interview?
4 A Yes. I prefer the old jail.
5 Q But in the new jail that's the way it's
6 set up?
7 A Yes.
8 Q The information that you used to
9 complete your report and to give your
10 opinion to this jury is based a lot on
11 your interview with the defendant; is
12 that correct?
13 A Yes.
14 Q Now, you testified that you administered
15 some tests to him. Did I hear you say
16 that?
17 A Yes.
18 Q What type of tests did you administer to
19 him?
20 A It's called the Millon Clinical
21 Multiaxial Inventory Two.
22 Q Inventory Tool?
23 Q Two, number two.
24 Q What is the purpose of that test?
25 What's the objective?

1 A This test is for mainly to measure the
2 different personality styles. That's
3 its most useful use. It can also give
4 some indication of major psychiatric
5 disorders and substance abuse, but it's
6 primary tool is to determine or help
7 determine personality style, personality
8 disorder.

9 Q The manner in which the test is
10 administered, are you asking him
11 questions and he responds verbally, or
12 does he have to write something?

13 A He has to answer true or false so it's a
14 paper and pencil test.

15 Q So the test is purely self-supporting in
16 that whatever he tells you, that's what
17 you go with?

18 A That's correct. True.

19 Q There's no way to back up what he says?
20 You don't interview other people or
21 other witnesses to verify what he has
22 told you; is that correct?

23 A Once the results are in and it gives you
24 some impressions, you have to judge that
25 against the clinical interview and

1 historical background to see if it makes
2 sense. Then you either accept the test
3 or reject the test.

4 Q So you make a judgment call in that
5 regard?

6 A Yes.

7 Q Do you have a copy of that test with
8 you?

9 A Yes.

10 Q May I see it, please?

11 A Yes.

12 Q Dr. Quijano, just to give the jury an
13 idea what kind of questions that they're
14 asked, I'd like to go through some of
15 this.

16 Is this a common question? "I
17 always follow my own ideas rather than
18 doing what others expect of me." True
19 or false.

20 Is that one of the questions?

21 A Yes.

22 Q "I always feel like I'm not wanted in a
23 group."

24 Is that a question?

25 A Yes.

1 Q "I enjoy doing so many different things
2 that I can't make up my mind what to do
3 first."

4 A That's also a question.

5 Q "I think I'm a very social and outgoing
6 person."

7 Is that a question that you ask?

8 A Yes.

9 Q "I have a talent to be dramatic."

10 A Yes.

11 Q "I think I'm a special person which
12 deserves special attention from others."

13 These are some of the questions
14 that you said you asked?

15 A Yes.

16 Q "I was on the front cover of several
17 magazines last year."

18 A Yes.

19 Q "I feel very often that I lose my
20 ability to feel any sensation in parts
21 of my body."

22 A Yes.

23 Q "I use my charm to get the attention of
24 other people."

25 Is that a question?

1 A Yes.

2 Q "For some time now I've been feeling
3 very guilty because I can't do things
4 right anymore."

5 Is that a question?

6 A Yes.

7 Q "Many people have been prying in my
8 private life for a year."

9 Is that a question?

10 A Yes.

11 Q "I often get angry with people that do
12 things slowly."

13 A Yes.

14 Q These are pretty much the nature of the
15 questions that you go through with them?
16 I see there are a hundred and seventy-
17 five of those questions; is that
18 correct, sir?

19 A Yes.

20 Q After you've gone through about a
21 hundred and seventy-five of those
22 general type of questions, do you often
23 feel you have a pretty good handle on
24 the person, or enough of a handle on the
25 person to make the type of diagnosis

1 that you have made?

2 A It gives you some tips or ideas as to

3 the direction to go in and then you

4 confirm with your clinical data.

5 Q Your clinical data being what?

6 A Interviews, histories, eyewitness

7 statements.

8 Q Of course, that all comes within the

9 time period that you've told the jury

10 that you have spent on the case?

11 A Yes.

12 Q And that's based on a synopsis from the

13 Defense about their version of the facts

14 of the case; is that correct?

15 A Yes.

16 Q Are you aware of any determination by

17 the American Psychological Association

18 where they have determined that it is

19 unethical for a psychiatrist to testify

20 in a capital murder case about the

21 future dangerousness of the defendant?

22 A No, that's not true.

23 Q You disagree with that?

24 A That is not true. The American

25 Psychological Association does not

1 control psychiatrists. That statement
2 is by the American Psychiatric
3 Association.

4 Q Here's what I asked you. I said the
5 American Psychiatric Association. That
6 is my question.

7 A If that is your question, then it is
8 true that the American Psychiatric
9 Association has made that statement.
10 The American Psychological Association
11 has not made that statement.

12 Q That's not the question I asked but
13 thank you for clarifying that.

14 MR. EASTERLING: Excuse
15 me, Judge, but the record will
16 show that she did say the
17 American Psychological
18 Association. Probably wasn't
19 intentional but that's how she
20 asked the question.

21 Q In any event, sir, let's move on. I'd
22 like to ask you some questions from your
23 report that I've had a chance to look
24 over during the lunch hour.

25 You and I have never spoken

1 before you came in to testify today; is
2 that correct?

3 A No, we haven't.

4 Q In fact, is it true that the State of
5 Texas didn't know in advance that a
6 Defense expert was going to testify one
7 way or another in this prosecution; is
8 that correct?

9 A I don't know. Sometimes they know and
10 sometimes they don't because I get calls
11 from prosecutors sometimes before I
12 testify.

13 Q In this case you and I have not spoken?

14 A No, we haven't.

15 Q I have a few questions about your report
16 that I would ask you to explain to me,
17 if you don't mind. You made the comment
18 that the defendant appeared to be of
19 questionable reliability as an
20 informant.

21 Was that based upon your general
22 impression of the defendant or on
23 something that didn't pan out from his
24 test as opposed to what you knew about
25 the facts of the case?

1 A [REDACTED]
2 [REDACTED] situation to me. Some of his version
3 [REDACTED] did not make sense.

4 Q So you had some questions about that?

5 A Yes.

6 Q You also mentioned that through the
7 administration of the tests that it
8 appeared that he had magnified the level
9 of experienced illness. What does that
10 mean?

11 A In that test we discussed in some of the
12 questions that you read, there is a
13 mechanism built into the test to measure
14 the degree in which the respondent
15 either pulls too much appearing too sick
16 or pulls too much to feeling too well,
17 too healthy. So on one side you have
18 exaggeration and on the other side you
19 have minimization. This particular
20 respondent showed some exaggeration on
21 symptoms.

22 Q Of course, at the time the defendant is
23 speaking with you in the jail setting,
24 he knows because you've informed him
25 that you're interviewing him for

1 purposes of making a determination about
2 your opinion as to his future
3 dangerousness; is that correct?

4 A Yes.

5 Q Certainly the defendant knows that at
6 some point in the future he's going to
7 go to trial, right?

8 A Yes.

9 Q And at some point you're going to
10 testify before a jury about your
11 opinion, correct?

12 A Yes.

13 Q Is that a fair statement?

14 A Yes.

15 Q Looking at your report regarding the
16 future dangerousness issue and the
17 statistical factors including when you
18 analyzed his past crimes, I believe you
19 stated that this was non-contributory,
20 correct? .

21 A Yes.

22 Q I believe or I'm assuming you testified
23 to that because you thought all of his
24 past offenses were non-violent, correct?

25 A True.

1 Q Is that based on self-reporting and
2 maybe a synopsis of the Defense's notes?

3 A Mostly self-reporting.

4 Q If you were informed that the defendant
5 in fact had a history of abuse towards
6 women and had been assaultive and
7 combative and had threatened women with
8 weapons before, would that alter that
9 factor under this statistical factor
10 category?

11 A Yes.

12 Q So would that increase the probability
13 then of future dangerousness if that
14 were a factor that you would consider?

15 A That would increase the probability with
16 that population of victims, yes.

17 Q Now, you also mentioned that it was your
18 opinion that as a person becomes older
19 that they are less likely to commit
20 violent crimes. Is that true?

21 A Yes.

22 Q Isn't it true that even though it may be
23 less likely that it is a fact that
24 people of a greater age than thirty-
25 three do in fact commit extremely

1 violent crimes?

2 A Yes.

3 Q So you can't rule that possibility out
4 that an older defendant would commit
5 violent crimes, correct?

6 A No, we are talking about decreasing
7 probability and not impossibility.

8 Q You have determined that the sex factor,
9 that a male is more violent than a
10 female because that's just the way it
11 is, and that the race factor, black,
12 increases the future dangerousness
13 ~~various complicated reasons,~~ is that
14 correct?

15 A Yes.

16 Q Now, as far as the socioeconomic factor,
17 I believe you said that the report of
18 his working stability was self-
19 reporting?

20 A Yes.

21 Q Which decreased the probability,
22 correct?

23 A Yes.

24 Q What if you had information that in fact
25 that the defendant wasn't a steady

1 worker, that he worked for someone who
2 paid him in cash, that he worked only
3 sporadically. Would that increase the
4 probability more so than you initially
5 stated in your report?

6 A The second sentence says unstable by
7 witness report because one of the
8 witness' statement said that he refused
9 to work.

10 Q So that increases it?

11 A Yes.

12 Q Let's talk about environmental factors.
13 In your report you talked about the
14 availability of victims, that the victim
15 pools become smaller in a prison
16 situation.

17 A Yes.

18 Q Would you agree with me though that in
19 fact there are victims available in the
20 prison population?

21 A Yes.

22 Q Without a doubt that there are crimes
23 that occur in the prison population,
24 correct?

25 A Yes.

1 Q You worked in TDC yourself for several
2 years, correct?
3 A Yes.
4 Q Certainly you've been aware of instances
5 where an inmate was killed by another
6 inmate, correct?
7 A Yes.
8 Q And incidents of guards being killed by
9 inmates?
10 A Very, very seldom, but it has happened.
11 Q Other people who are in the prison
12 system for various reasons have been
13 killed before; is that true?
14 A Yes.
15 Q So you can't tell this jury that violent
16 crimes do not happen in prison because
17 in reality it does occur, correct?
18 A I'm not telling the jury that it
19 doesn't.
20 Q Also you mentioned earlier that there is
21 a prosecution --
22 A Unit.
23 Q Thank you very much. That a prosecution
24 unit is set up to prosecute people who
25 commit crimes in prison. Of course,

1 what happens is that when they are
2 prosecuted and found guilty and are
3 punished, they're sent back to prison,
4 right?

5 A Or remain in prison.

6 Q That's what happens. They're in prison .
7 and they commit a crime and they're
8 prosecuted and they go back to prison,
9 right?

10 A Yes.

11 Q Let's talk about the factor of
12 availability of weapons which is also
13 one of the factors that you say would
14 increase probability. Is it true that
15 weapons are available in prison?

16 A Yes.

17 Q Have you had occasion during your time
18 working in the prison system to see an
19 almost incredible variety of weapons
20 that can be fashioned by inmates in
21 prison?

22 A Yes.

23 Q In fact, they're almost ingenious in
24 what they can come up with and what they
25 can use to make a deadly weapon; is that

1 not true?

2 A Yes.

3 Q They can use toothbrushes, toothpicks,
4 and fashion all kinds of things that
5 they use to injure, assault, or maim
6 other people; is that correct?

7 A Yes.

8 Q Let's talk a little bit about drugs and
9 alcohol in prison. You have that as an
10 increased probability and that's
11 because, unfortunately, there are drugs
12 available in the Texas Department of
13 Corrections, correct?

14 A Yes.

15 Q And it is a known fact, however it gets
16 in there, that there is a network of all
17 kinds of illegal and illicit substances
18 in the Texas Department of Corrections,
19 correct?

20 A Yes.

21 Q You talked about clinical factors that
22 you consider when you make the
23 assessment of a continuing threat and
24 the dangerousness issue. You could not
25 give an opinion basically because of

1 insufficient data from the defendant's
2 self-reporting; is that correct?

3 A From his version, not sufficient data.
4 From the eyewitnesses, it appeared
5 deliberate.

6 Q So the more information you would know
7 about the time period, the
8 thoughtfulness the defendant put into
9 committing his crime, or let's just call
10 it the ~~premeditation~~ factor for lack of
11 a better word, that went into it, the
12 number of intentional acts it took to
13 perpetrate his crime, all those are
14 important factors to consider when
15 determining the probability for future
16 dangerousness, correct?

17 A Yes.

18 Q So the more deliberate the act, the more
19 thought that went into the act, the more
20 awareness of the result of a person's
21 act, the less impulsive the act, the
22 more likely the person would be a danger
23 and violent in the future?

24 A Yes.

25 Q Would that be a fair statement?

1 A Yes.

2 Q The lack of remorse, the fact that a
3 person showed very little or absolutely
4 no remorse for the results of his action
5 even for an extremely violent act, would
6 that show that that person has a greater
7 likelihood of being a threat in the
8 future?

9 A Yes.

10 Q Talking about post-conduct behavior,
11 things he did after he committed the
12 crime, you have a category called fun.
13 I don't know if that's a standard
14 category or whether it applies in this
15 case or not. I'm not sure. You made a
16 notation about the fact that you had
17 information that the defendant was
18 laughing. If you had information that
19 the person thought it was quite
20 humorous, the crime that he committed,
21 which was an extremely violent and
22 heinous act, and even after seeing the
23 result of his handiwork with people
24 bleeding, people screaming, children
25 crying, children running over to their

1 mother and hugging her before she died,
2 would that indicate to you that that
3 person with no remorse would have a
4 greater probability of being a danger in
5 the future?

6 A Yes.

7 Q In your report you indicated, and I
8 believe you testified to the jury that
9 you believed that the defendant if
10 incarcerated would not -- there would
11 not be the probability about him being a
12 continuing threat to society. I believe
13 that was your opinion.

14 A No.

15 Q That was not your opinion?

16 A ~~A decreased probability but there is a~~
17 ~~probability.~~

18 Q So there's a probability that the
19 defendant would be a continuing threat
20 to society?

21 A Right, but he would be on the low end of
22 the continuum. ~~I never rule out any~~
23 ~~probability.~~

24 Q Then there is a probability that he
25 would be a continuing threat to society?

1 A Yes.

2 MS. HUFFMAN: No other
3 questions, Doctor. Pass the
4 witness.

5

6 REDIRECT EXAMINATION

7 BY MR. EASTERLING:

8 Q First of all let's make it clear whether
9 or not you're a psychologist or a
10 psychiatrist and what the difference is
11 so the jury understands. Are you a
12 psychiatrist?

13 A I'm a psychologist.

14 Q Tell the jury what the difference is
15 between an psychologist and a
16 psychiatrist.

17 A About two hundred dollars an hour.

18 A psychiatrist is a medical
19 doctor. They go to medical school. The
20 last three years they have to specialize
21 and they are trained in psychiatry which
22 is the medical diagnosis and treatment
23 of psychiatric disorders. A
24 psychologist undergoes approximately the
25 same number of years in training but

1 specializes in psychology and does not
2 use medication to treat but uses
3 established psychological principles and
4 not medical intervention.

5 Q So it's the medical doctors, the
6 psychiatrists from the American
7 Psychiatric Association that don't
8 believe in coming in and testifying in
9 death penalty cases?

10 A I don't think it's that simplistic. It
11 simply says that you have to examine the
12 person and know the basis of your
13 prediction and that it's not enough to
14 predict. You have to also explain the
15 basis for that prediction so that the
16 trier of facts can give the appropriate
17 weight to your opinion.

18 Q But the American Psychological
19 Association has never taken the position
20 that there's something wrong with you
21 coming in here and testifying, have
22 they?

23 A No. The American Psychological
24 Association's guidance is to use
25 existing knowledge, psychological

1 knowledge, the body of knowledge that we
2 have, and apply to the specific
3 questions. It warns us not to
4 exaggerate our opinions or overclaim.
5 That's why I'm very careful to state my
6 opinions in terms of probabilities and
7 not black and white type of assessment.

8 Q If I would have asked you to do this
9 evaluation and you would have given me
10 the opinion that he was going to be a
11 high risk or there was a high
12 probability, then that would have been
13 the opinion we all would have had to
14 live with, right?

15 A Correct, because it would have been
16 based on the facts of the case.

17 Q You didn't give your opinion to me
18 because I wanted you to give that
19 opinion or Mr. Buck wanted you to give
20 that opinion or Mr. Guerinot wanted you
21 to give that opinion. You gave us your
22 professional experienced opinion; is
23 that correct?

24 A Correct. Nobody interfered with my
25 opinion nor lobbied me. I wrote my

1 report and I submitted it the way it is.

2 Q What is the I.Q. of Duane Buck that you
3 know from your testing?

4 A I did not do the testing myself but the
5 tests from some other psychologist shows
6 74, I think.

7 Q Could it be 72 to 74?.

8 MS. HUFFMAN: I'd object
9 to the leading, Your Honor.

10 THE COURT: Sustained.

11

12 BY MR. EASTERLING:

13 Q If it was around 74, is that on the low
14 or high end of I.Q.?

15 A That would be what is called the low end
16 of the borderline range.

17 Q Do you feel that had some effect on what
18 Ms. Huffman pointed out, that he was a
19 questionable informant about information
20 and details?

21 A That opinion came from his report to me
22 that he could not remember details up to
23 a certain point and that is where I said
24 that his reliability is questionable,
25 the lack of recollection of details

1 after a certain point.

2 Q You then used facts that you learned
3 from the police report and the
4 witnesses' statements about the details
5 of the murders, correct?

6 A Yes. The witnesses' statements were
7 detailed enough to pick up where he left.
8 off. It was very beneficial for me to
9 read that and to make a judgment in this
10 case, and the witnesses' statements were
11 responsible for many of the favorable
12 judgments I made of this defendant.

13 Q Now, you were aware that there was some
14 history of some alleged assaultive
15 behavior to a woman. You were aware of
16 that. You are still aware of it today.

17 Does that change your opinion in
18 any way concerning the fact that he's at
19 the low end of probability of committing
20 future acts of violence?

21 A No, my opinion would be the same. Many
22 of these factors that are true to him
23 now would not be true in prison. When
24 you're deciding on a person's
25 dangerousness, you not only look at the

1 factors that contribute to dangerousness
2 but you also look at where the people
3 will be and the facts of that
4 environment. You look at those factors
5 and know that many of those factors will
6 be controlled in prison. They cannot be
7 ruled out completely but they are
8 controlled much better in prison than in
9 free society.

10 Q It's very unlikely that he would have a
11 relationship with a woman in the
12 penitentiary; is that true?

13 A That would be unlikely.

14 Q And that would reduce the victim pool
15 that you talked about, correct?

16 A Correct. Particularly in his case where
17 the assaulted victims were always
18 involved in a romantic relationship.
19 When that victim pool is removed, the
20 probability of him being assaultive
21 towards other people as shown by his
22 previous prison record would be expected
23 to be good.

24 MR. EASTERLING: May I
25 approach the witness, Your

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Honor?

THE COURT: Yes, sir.

BY MR. EASTERLING:

Q You talked about weapons with Ms. Huffman, about weapons in prison. Do inmates walk around with .22 rifles in prison?

A No, they are no guns in prison.

Q Do they walk around with .12 gauge shotguns in prison?

A No.

Q The kinds of things she's talking about is like an inmate getting a fork from the cafeteria and filing it down and making it into a little knife. That's the kind of thing she's talking about, correct?

A There are no more forks, so it's toothbrushes and pens and bones. There are no more forks.

Q Does Duane Buck have any history of using a knife or that type of deadly weapon with anybody?

A No, not when he was in prison and in

1 jail.

2 Q In fact, there is no data or record
3 indicating that Duane Buck has ever used
4 a knife or a toothbrush or a razor blade
5 all the time that he was in the County
6 Jail or in TDC, correct?

7 A True.

8 Q Ms. Huffman talked to you about there
9 being no remorse immediately after the
10 crime. Let me talk to you about your
11 opinion about that. If the defendant
12 cried in open court when the witnesses
13 were testifying, do you have an opinion
14 about whether or not that's remorse?

15 A Yes.

16 Q What is that?

17 A It's remorse.

18 Q That, of course, would decrease
19 probability under all the facts that you
20 talked about concerning future violence?

21 A Yes.

22 Q To make sure that the jury understands,
23 you're saying that it's at the very low
24 end of probability that he would commit
25 any criminal acts of violence in the

1 prison population where he would be
2 incarcerated; is that correct?

3 A Yes.

4 Q You realize that the issue they have to
5 decide, the jury has to decide, is the
6 phrase beyond a reasonable doubt in
7 front of probability in that issue,
8 correct?

9 A Yes.

10 MR. EASTERLING: Pass the
11 witness, Judge.

12 MS. HUFFMAN: No
13 questions.

14
15 (At this time the witness
16 is excused from the
17 courtroom.)

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PATRICK GORDON LAWRENCE

was called as a witness by the Defense and,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EASTERLING:

Q State your name to the jury, please.

A Patrick Gordon Lawrence.

Q Where do you live, Dr. Lawrence?

A Garrison, Texas.

Q Will you tell the jury where that is?

A North of Nacogdoches about eighteen
miles on Highway 59 if you're driving
from Houston to Shreveport.

Q Tell the jury your educational
background and your professional
credentials, please.

A I have a Doctorate in Philosophy and
Clinical Psychology from the California
School of Professional Psychology in
Fresno. I took that in 1979. Prior to
that I had a Masters in Psychology from
Texas A. & I. University in Kingsville
in 1971. Prior to that I had a
Bachelors in Financial Management, a

1 B.B.A. in Financial Management in 1969
2 from Texas A. & I. in Kingsville. I
3 belong to the American Psychological
4 Association, the Texas Psychological
5 Association and I'm Director of the
6 Division of Applied Psychology of the
7 Texas Psychological Association. I
8 belong to the American Correctional
9 Association, the Association for
10 Professional Psychologists, the East
11 Texas Psychological Association. I
12 believe that's all. I believe that's
13 pretty much all the professional
14 associations I belong to.

15 Q Let me show you Defendant's Exhibit
16 No. 2. Do you know what that is?

17 A That's my Curriculum Vitae.

18 Q And that shows all your educational
19 experience and the professional
20 associations that you belong to as well
21 as your bibliography on the third page?

22 A Yes.

23 MR. EASTERLING: I tender
24 this exhibit to the State and
25 offer it in evidence.

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MS. HUFFMAN: No
objection.

THE COURT: Defense No. 2
is admitted.

BY MR. EASTERLING:

Q What is your current position?

A I work for the University of Texas
Medical Branch in Galveston, a managed
care company providing psychological
services for the inmate offenders of the
Texas Prison System at the Skyview
Psychiatric Facility. I am Supervising
Psychologist for a fifty-bed acute care
mission unit where we see approximately
thirty new inmates a month and evaluate
those people and decide what level of
care they need, whether they need long-
term institutional care or just short-
term care for depression or anxiety, or
if they need care on an out-patient
basis. I've been there since 1988.

Q And you have a private practice that
you've been working in since 1987?

A Yes, I've had a private practice there

1 in Garrison since 1987. I've appeared
2 in several courts in East Texas doing
3 evaluations for both the Defense and the
4 prosecution, evaluating particular
5 fellows they have brought to my
6 attention for a variety of different
7 offenses.

8 Q Did you also work at the Pine Lands
9 Hospital?

10 A Yes, sir, I worked there for a brief
11 period of time from April until October
12 of 1987 as Director of Patient Care
13 services. It was a private psychiatric
14 hospital in Nacogdoches.

15 Q Then from 1984 until 1987 did you work
16 as Director of Mental Health Services at
17 the Wichita Falls MHMR Community Center?

18 A Yes, sir, I was Director for the Mental
19 Health Services for the Wichita Falls
20 Mental Health Mental Retardation Center.
21 I supervised the provision services for
22 twelve hundred outpatients. I had
23 fifty-five long-term residential care
24 units. I had two fairly large programs
25 of structured living halfway house

1 facilities for mentally ill people. I
2 also supervised our DNE process which is
3 a process for evaluating people for
4 mental retardation. I supervised
5 services for Crisis Line and Crisis
6 Intervention Service within the
7 community which was a twenty-four hour
8 service.

9 I also supervised and did
10 evaluations on all the juvenile
11 offenders referred to us by the court,
12 the adult offenders referred to us by
13 the court as well as evaluating both
14 sexually abused children and sexual
15 offenders.

16 Q Sometime between 1980 and 1987, did you
17 work at River Gardens, New Braunfels, as
18 Director of Psychological Services; and
19 as Executive Director for Guadalupe
20 County Guidance Center; and as
21 psychologist at Big Spring State
22 Hospital; and as a psychological intern
23 at San Luis Obispo Community Mental
24 Health Center in California? Did you
25 work at all of those places?

1 A At San Luis Obispo I was doing an
2 internship from 1978 to 1979. The other
3 places were jobs where I was completing
4 my residency at Big Spring State
5 Hospital. Then I took a job at
6 Guadalupe County Guidance Center where I
7 was evaluating mentally ill substance
8 abusers developing some alternative
9 program for them. That program was
10 discontinued because of lack of Federal
11 Funds.

12 Q Do you recall meeting me about a year
13 ago at a capital murder symposium
14 seminar as required by District Judges
15 for anyone to practice in capital murder
16 cases? Do you remember that?

17 A Yes, sir.

18 Q Have you ever evaluated inmates or any
19 type of alleged offender or convict and
20 determined that they had the probability
21 to commit future acts of violence in the
22 future?

23 A Yes, I have.

24 Q Would you give us an example of one of
25 the projects that you did? I believe it

1 was in New Mexico. Would you just give
2 us an idea of what you've done in the
3 past?

4 A I was Staff Psychologist for the
5 Forensic Treatment System in New Mexico
6 from 1972 to 1975. In New Mexico we had
7 a law that required that someone had to
8 be brought to trial within six months or
9 the charges would be dismissed. So many
10 times the Defense would say that the
11 person was incompetent to stand trial
12 and send them away long enough to get
13 the charges dropped.

14 We developed an alternative way
15 of evaluating these people in a very
16 short period of time. I evaluated
17 everyone in the State of New Mexico from
18 1972 through 1975 that was sent for
19 competency on the sanity issue.

20 Practically all of them had to do with
21 crimes of violence, either murder or
22 sexual assault, or some other heinous
23 crime where people wanted an evaluation.
24 We appeared in court for our evaluations
25 of these folks.

1 In that process I saw a number
2 of inmates, a number of people that
3 later became convicted. I was told by a
4 friend of mine in --

5 MS. HUFFMAN: I'd object
6 to any hearsay.

7 THE COURT: Sustained.

8

9 BY MR. EASTERLING:

10 Q Try to answer without saying what people
11 told you.

12 A All right. I evaluated seven of the
13 nine offenders that went out and killed
14 people in the New Mexico riot. At the
15 time that I evaluated those people, I
16 did not see the other two offenders
17 because I wasn't there from 1976 to
18 1980. The riot happened in January of
19 1980. I evaluated seven of those
20 offenders and said that they would
21 probably commit heinous crimes or kill
22 again.

23 Q Did they do so?

24 A Yes.

25 Q And ever since that time you have been

1 interested in the dynamics of the field
2 of psychology of trying to predict
3 criminal future behavior?

4 A Yes, I have. That's one of my academic
5 interests, yes.

6 Q I'm not trying to infer that that's all
7 you do but it is the majority of what
8 you do?

9 A Yes.

10 Q I want to concentrate on the number or
11 at least estimate of some of the numbers
12 of people that you've evaluated,
13 particularly murderers. Can you give me
14 an idea on that?

15 A I've never counted exactly. I've looked
16 at the number of people I used to
17 estimate in New Mexico, California, and
18 in Texas, and I looked at the number of
19 people I was probably doing during a
20 month's period of time, and I would
21 estimate since 1972 working in all three
22 of these prison settings as well as
23 working in the free world evaluating
24 people, probably about eighty-five
25 hundred offenders. My experience at

1 about eleven percent of the population
2 in the criminal offenders are homicidal
3 offenders -- yes, homicidal offenders I
4 have evaluated. Eleven percent of those
5 eighty-five hundred have been actual
6 murderers. I've seen these people
7 within the prison setting in a variety
8 of different contexts but still in the
9 process of their evaluation.

10 Q Are you familiar with the TDC death row
11 which is the Ellis Unit? You've worked
12 there before, haven't you?

13 A Yes, I went there in 1988 to where I
14 evaluated a number of offenders they had
15 on death row that had not been seen for
16 provision of the psychiatric services.

17 Q Let's talk about the difference between
18 the murder rate that we have in Texas
19 and the research you have done in the
20 murder rate that exists in the prison
21 system. What is the general murder
22 rate in Texas nowadays?

23 A It's lower than the national murder rate
24 which is 13.5 per 100,000. The murder
25 rate in Texas now has been declared to

1 be 7.5 per 100,000.

2 Q Let's compare that to the murder rate in
3 the Texas prison system currently.

4 A That is approximately 4 per 100,000.

5 Q How many murders did they have last year
6 in 1996?

7 A Six.

8 Q Through the whole entire prison system?

9 A Yes.

10 Q What do those generally involve?

11 A Gang activity, all gang-related murders.
12 They are murders of the people that
13 didn't live up to their gang-related
14 obligation.

15 Q Is there any evidence that Duane Edward
16 Buck has ever been a member of a gang or
17 is currently involved in any kind of
18 gang-related activity?

19 A There is no evidence that I heard or
20 that I found in my evaluation of him.

21 Q Let's talk about what you did with Duane
22 Buck. When did you see Duane Edward
23 Buck?

24 A I need to get out my report and look at
25 that.

1 Q Let me ask you a question. I'm going to
2 backtrack for just a minute so the jury
3 understands.

4 Were you appointed by the Court,
5 Judge Collins, to do an evaluation of
6 Mr. Buck?

7 A Yes, I was.

8 Q Are you being paid by the County for
9 your services?

10 A Yes, sir.

11 Q When did you see Mr. Buck for the
12 purpose of his evaluation for the first
13 time?

14 A I saw him on March 14th of this year
15 from 2:30 to 4:30 and on the following
16 day, March 15th, from 1:00 o'clock until
17 3:00 o'clock.

18 Q So the first day was for two hours and
19 the second day was for how many hours?

20 A The first day was really two and a half
21 hours and the second day was two hours.

22 Q What did you do the first day?

23 A I did some interviewing and some
24 testing.

25 Q What type of testing did you do?

1 A I did an intellectual evaluation to find.
2 out how he functioned in comparison to
3 other folks as far as intellectual
4 skills.

5 Q Let's take this one at a time. What did
6 you find out about his intellectual
7 skills?

8 A On the Revised Beta Examination Duane
9 Buck attained a performance I.Q. equal
10 of 75 which suggests that he functions
11 within the borderline intellectual range
12 of the population at about the 4
13 percentile. That means that if we put a
14 line of a hundred people out there, he's
15 going to be No. 4 on the end.

16 Q That's on the low end?

17 A Yes.

18 Q What other kind of test did you do?

19 A I did some neuro psychological tests
20 including the Memory-For-Designs Test,
21 the Trailmaking Test.

22 Q Any other tests?

23 A I did some personality tests. I gave
24 him a Barratt Impulse Scale Test, a
25 Carlson Psychological Survey, a

1 Personality Assessment Inventory, and
2 then I also interviewed him.

3 Q Did you also review the data and records
4 in the police report information about
5 what happened, the allegations of the
6 crime?

7 A Yes, Mr. Easterling. I reviewed your
8 entire case file that you had on that
9 day.

10 Q Now, what were you doing, what was your
11 objective in doing these tests? What
12 were you trying to achieve? What were
13 you trying to do?

14 A I was interested in attempting to
15 evaluate Mr. Buck's potential for future
16 dangerousness or further risk of
17 violence.

18 Q What did you find out about his Axis I
19 diagnosis?

20 A The Axis I diagnosis is the psychiatric
21 diagnosis we use to evaluate people for
22 psychiatric form filling. The point of
23 those things is that you have to have a
24 number to collect insurance. So they
25 have different Axis or five different

1 ways of rating people.

2 The first Axis, Axis I, depends
3 upon acute pathology, what's going on
4 right now causing this person trouble.

5 Q Did he have any symptoms of an Axis I
6 diagnosis?

7 A Not at the time that I evaluated him
8 although he had a history of substance
9 abuse problems which is an ongoing
10 problem but something that can be
11 changed. Axis I diagnoses are usually
12 things that can be changed. Axis II
13 diagnoses are things that generally
14 cannot be changed like level of
15 intellectual functioning, the overall
16 character of the personality, but Axis I
17 diagnoses, whether a person abuses
18 substances or not, whether a person
19 hears voices or not, whether they
20 believe they're more important than
21 anybody else, those things are subject
22 to remission or change by the use of
23 medication or psychotherapy where
24 Axis II diagnosis like mental
25 retardation, things like that, they're

1 never going to change.

2 Q So there was substance abuse and alcohol
3 abuse that was in remission?

4 A I'd have to look at my exact diagnosis.
5 I believe it was alcohol dependency and
6 cocaine dependency.

7 Q As to his Axis II diagnosis, tell us
8 what you found out about his
9 personality.

10 A From testing and interviewing both, I
11 thought this person had a tendency to be
12 a dependent personality, that he needed
13 other people to help him get along, that
14 he was more dependent than you or I
15 would be, the kind of person who needed
16 structure and support from other people,
17 emotional support from other people. He
18 doesn't feel very good about himself so
19 he's a person that needs a lot more
20 nurturing and reassurance than most of
21 us would need.

22 Q From your review of the records about
23 Duane Buck's custody level while he was
24 in jail, various county jails as well as
25 TDC, did you determine his custody-type

1 level?

2 A Well, custody has a number of different
3 classes. Would you like me to explain
4 that?

5 A Do you have something there to help you?

6 A Yes, I do. I don't know if the jury can
7 see this or not. Can you see that?

8 We have several ways of rating
9 custody within the prison system. We
10 have maximum security administrative
11 segregation where we keep most all of
12 our violent gang members because we know
13 they're going to do something again, and
14 also people who have been fairly violent
15 in the prison setting. Within that
16 administrative segregation we have
17 different levels of administrative
18 segregation depending upon if they
19 continue to commit crimes while they've
20 been in the administrative segregation
21 or whether they've leveled off and
22 stopped committing offenses.

23 We have three different levels.
24 We treat these people differently within
25 different levels. Some of them have

1 some privileges and some of them have no
2 privileges. The ones in administrative
3 level three which is the lowest level
4 you can be, they're usually on what we
5 call food rows because they chuck food
6 at us and do things. They may or may
7 not have clothing. Then we have level
8 two and level one. These are people
9 that are locked up twenty-four hours a
10 day and are allowed out of their cell
11 one hour a day for individual recreation
12 and/or showering.

13 The people in level one
14 administrative segregation can have
15 razors. These are people that have
16 improved their behavior so that they've
17 been moved from two to one and may be
18 moved to closed custody but we still
19 want to watch them for awhile so we
20 still have them in that level.

21 Then we have what's called
22 closed custody. These are people who
23 are usually in two-man cells and they're
24 watched fairly closely or fairly
25 intensely.

1 Then we have medium custody
2 where it's more open, where it might be
3 a dormitory setting. They're watched
4 less closely and they're allowed more
5 privileges. They're also allowed to
6 achieve more good time credits. They
7 can go to school and be involved in
8 other programs. They have to get to
9 this certain level before they can go to
10 these vocational programs.

11 Then there's what is called
12 minimum custody in. These are people
13 you probably see around the Warden's
14 Office cleaning up by themselves, or if
15 you go to the prison you can see them in
16 different areas walking around by
17 themselves, taking care of themselves.

18 Then we have minimum custody
19 out. These are the fellows you see
20 outside driving the tractors on the side
21 of the road and you may not even see a
22 guard in the area. They're wearing
23 white so you know they're out there
24 doing something.

25 From what I could find out from

1 the records was that Duane Buck was
2 minimum custody in. He was never in any
3 of these other programs. He was minimum
4 custody in.

5 Q What does that tell you?

6 A That he did not present any problems in
7 the prison setting.

8 Q Is that the category of murderers that
9 are called psychopathic murderers?

10 A Well, yes.

11 Q Are you familiar with that and have you
12 done some research in that regard?

13 A Well, I have evaluated a number of
14 people over the years which I said would
15 kill again. They were what I would
16 consider psychopaths. They were
17 inherently evil people that would, I
18 thought would be extremely dangerous.

19 Q Does Duane Buck come anywhere close to
20 that type of person?

21 A No.

22 Q Tell us why or why not.

23 A These fellows have very terrible
24 personalities. In order to be what I
25 consider a psychopathic murderer --

1 incidentally, these are a very small
2 percentage of the prison population.
3 These are like Ted Bundy or Tex Watson,
4 who was another person I evaluated in
5 California.

6 These people go out and kill and
7 get some feeling for killing and then
8 kill again. They are highly
9 manipulative. They're selfish and
10 inconsiderate. They're overwhelming.
11 They think everybody owes them
12 something. They seek and require
13 extensive recognition for their acts.
14 They're very self-righteous and
15 sanctimonious people. They make up
16 their own rules. They do not admit any
17 wrongdoing or thinking. They're very
18 arrogant. This is some of their
19 personality system.

20 Q Did you see any of those symptoms in
21 Duane Edward Buck?

22 A Well, probably the selfish and
23 inconsiderate attitude.

24 Q That's the only one?

25 A Yes. You've got to understand that a

1 psychopath has all of these things. A
2 lot of people are selfish and
3 inconsiderate.

4 In this particular case I didn't
5 see any of these others, but you've got
6 to understand there are more components
7 if you want me to go into that. There's
8 personality and then there's the
9 behavior of a person.

10 Q Why don't you do that?

11 A This is more or less a subcategory of
12 behavioral. This is how you act out.
13 This is what happens when you do things..
14 This is not how you think but how you do
15 things, and they have a way of creating
16 trouble with other people by lying and
17 deliberate deception. These are people
18 who lie to you all the time and
19 deliberately deceive you. They do
20 things that make others look bad and
21 make them look good. The evil person or
22 psychopath is always going to look good
23 as opposed to the other person. There
24 is always something inherently wrong
25 with them. They always create a way of

1 power or a way of -- I'm trying to
2 explain -- a way of power that separates
3 them from other people.

4 I don't know if you can see most
5 of these here but maybe that helps you
6 out some.

7 Q Let's move on to --

8 A That's two of them, then you have
9 motivation and emotions. How you get a
10 psychopathic killer is if they fit all
11 of these areas. They are inherently
12 evil people. They're motivated to
13 receive positive recognition or glory
14 whether it's deserved or not. They're
15 motivated to counteract their extremely
16 low frustration and feelings of failure
17 and inadequacy. In other words, they
18 avoid that stuff. They're motivated to
19 preserve themselves at the expense of
20 others. There's one other area,
21 emotions.

22 Q Emotions?

23 A Yeah. All these fit into the lack of
24 genuineness or empathy. Relationships
25 have only the pretense of value.

1 There's over-responsiveness. They anger
2 quickly, and there's frequent
3 irritation, disappointment, jealousy.

4 Q All right. When you evaluated Duane
5 Buck, which methods or tests did you use
6 to evaluate him for the future risk of
7 violence?

8 A I used all of them as well as my own
9 personal clinical skills.

10 Q Is there some kind of a list that
11 involves the risk of violence?

12 A Well, it's one of the ways that we look
13 into developing a set of factors to
14 evaluate people for the potential of
15 further violence.

16 Q How did Duane Buck perform or show on
17 that particular test?

18 A Well, I have a summary in my report, but
19 we look at personal factors. We look
20 people's personality factors. We look
21 at personal factors and we look at
22 historical factors.

23 Personal factors are things that
24 can't change. You're born with them.
25 Historical factors are things that have

1 more to deal with those people that you
2 grew up with. We also work with
3 contextual factors and those contextual
4 factors are that violence occurred at a
5 particular scene setting or context.
6 You have to look at the stressors
7 involved in that.

8 Then we look at clinical
9 factors. Some people have more
10 predisposition to be violent because
11 they hear auditory hallucinations and
12 they become violent. Those are clinical
13 factors.

14 Then there's this McArthur Risk
15 Assessment Scale which is the long-term
16 study of violence that has been done
17 with forensic patients to see if we can
18 develop better predictors for violence
19 than we have now.

20 We combine all these four major
21 areas to try to improve our prediction
22 for violence.

23 Q When you put all these evaluations
24 together, did you come to an opinion or
25 do you have an opinion?

1 A Yes, I do.

2 Q On whether or not there's a probability
3 that Duane Edward Buck would commit
4 criminal acts of violence which would
5 constitute a continuing threat to
6 society?

7 A Yes, I do. It's in my report if I may
8 read from that report.

9 Q You may.

10 A Based upon my analysis of my interviews,
11 test reports and review of your case
12 file, I do not believe that Duane Edward
13 Buck would commit criminal acts of
14 violence that would constitute a
15 continuing threat to society. His was a
16 crime of passion, and based upon my
17 experiences with homicidal killers over
18 the past twenty-five years, Mr. Buck's
19 personality, attitudes and behaviors are
20 vastly different from the psychopathic
21 murderers I have evaluated and predicted
22 that they would kill again.

23 Q Now, the key words there are probability
24 and criminal acts of violence.

25 A That's right.

1 Q Can you give us an opinion specifically
2 about whether or not there's a
3 probability in prison that he's going to
4 commit criminal acts of violence in the
5 future?

6 A Yes, I can.

7 Q What is that opinion?

8 A My opinion is based on my analysis of
9 everything in his past record, my tests
10 and interviews, that he would not commit
11 criminal acts of violence within the
12 prison system.

13 Q That there would be a very low
14 probability if any probability that he
15 would; is that what you're saying?

16 A Well, I'm not sure I know what a low
17 probability is.

18 Q Let me stop you there. There's no
19 definition of probability.

20 A I understand.

21 Q A lot of people call it more likely than
22 not.

23 A I understand.

24 Q So if we're going on the definition of
25 more likely than not --

1 A If we're saying that, then I'd say it's
2 more not than likely.

3 Q Now, that's based upon several factors.
4 Let me make sure I can summarize that.
5 History of what you had about Duane
6 Buck, his personality, the interview,
7 the facts of the case itself, how
8 murders are committed. You said it was
9 a crime of passion, correct?

10 A Yes.

11 Q As well as the fact that there was no
12 disciplinary records from jail or
13 prison.

14 A Yes.

15 Q And in view of the fact that he had an
16 alleged abusive relationship with the
17 deceased, Ms. Gardner, as well as maybe
18 a previous one with Ms. Jackson.

19 A Yes.

20 Q You knew all that information?

21 A Yes.

22 Q You still stand by your opinion; is that
23 correct?

24 A Yes, sir.

25 Q Now, what kind of Code of Ethics are you

1 governed by as a psychologist?

2 A We have our own Code of Ethics. One of
3 the most important parts of that Code of
4 Ethics is that we have truthfulness and
5 candor. We have to state the limits of
6 our expertise. We have to state the
7 truth the way we see it in our clinical
8 opinion.

9 Q Could I pay for your opinion when I want
10 it?

11 A No, sir, but you can pay me for my time.

12 Q I understand that. In fact, when I
13 first came to you with this case, isn't
14 it true that you told me that you may
15 look at the guy and you may tell me
16 something that I don't like, that he
17 might be a violent person in the future
18 and that maybe he can kill again?

19 A Yes.

20 Q I told you that I could live with that,
21 didn't I?

22 A Yes, and I tell everyone that.

23 Q In fact, you have come to the direct
24 opposite opinion dozens of times,
25 haven't you, Doctor?

1 A Yes.

2 Q So you've been on both sides of the
3 fence in these types of cases, both for
4 the Government as well as in private
5 practice, correct?

6 MS. HUFFMAN: I'd object
7 to the leading.

8 THE COURT: Sustained.

9 MR. EASTERLING: Pass the
10 witness, Judge.

11

12 CROSS-EXAMINATION

13 BY MS. HUFFMAN:

14 Q How are you, Dr. Lawrence?

15 A I'm fine, thank you.

16 Q My name is Joan Huffman. I'm a
17 prosecutor. We've never met before; is
18 that correct?

19 A That's correct.

20 Q We've never discussed this case?

21 A Yes, ma'am.

22 Q I have a few questions for you, Dr.
23 Lawrence. In your report which I looked
24 at over the lunch period, I see that you
25 have tested for Mr. Buck's I.Q.?

1 A Yes, that's correct.

2 Q And you've testified that he functions
3 within a low borderline range; is that
4 correct?

5 A Yes.

6 Q You're not saying Mr. Buck is mentally
7 retarded, are you?

8 A Of course not.

9 Q He's just at the lower end of the scale?

10 A Yes.

11 Q Isn't it true that when you look at the
12 total jail population, that it's
13 probably average?

14 A It's a little lower than average. In my
15 evaluation of inmates at Skyview, it's
16 about eighty-three to eighty-four which
17 is in a little bit higher range which we
18 call lower normal. I haven't evaluated
19 everyone in the prison system. I'm just
20 referring to the ones that we've worked
21 with.

22 Q Is there some room for deviation there
23 in the administration of that test?

24 A Certainly.

25 Q By how many points would there be a

1 deviation?

2 A There's something called a standard
3 error of the instrument which means that
4 I give the test now to two people
5 exactly the same way, the test scores
6 could deviate by -- I believe on the
7 data -- I don't have the manual with me
8 -- but I believe it's five points.

9 Q Actually, a person who's on the lower
10 range intellectually -- I guess that's
11 how you classify Mr. Buck; is that
12 correct?

13 A That's correct.

14 Q In fact, persons on the lower range of
15 intelligence, that increases their
16 tendencies towards violence; is that not
17 true?

18 A It depends upon the -- there is some
19 data that says that people with lower
20 I.Q.'s have a tendency to become more
21 violent.

22 Q You testified about different custody
23 statuses of prisoners, different
24 statuses they can attain within TDC.
25 You held that chart up. Do you remember

1 that, don't you?

2 A Yes.

3 Q The person who is given a life sentence
4 in a capital case goes into the general
5 population; is that not true?

6 A That's correct.

7 Q So they're put in with everybody else,
8 there is no special status assessed to
9 them because they're there on a capital
10 murder case; is that correct?

11 A We are currently enrolling all inmates
12 now at medium custody with a SAT Level
13 One which is -- no, Line One, which is
14 below State Line One so they're watched
15 a little more intensely than a minimum
16 group of inmates. In fact, that's what
17 we've been doing with everyone that
18 comes into the prison system for the
19 last four years.

20 Q Everybody that goes in, no matter what
21 kind of offense, they all have the same
22 status initially?

23 A Yes, and it's a more protective status
24 than a large percentage of our
25 population.

1 Q After some period of time if they're
2 good inmates for a little bit of time,
3 they get a lower status; is that
4 correct?

5 A It's usually six months.

6 Q So if somebody behaves for six months,
7 they're watched less; is that correct?

8 A You cannot change the classification
9 level but once a year and you can't
10 change custody levels but once a year,
11 but they can be allowed to get into more
12 programs.

13 Q Maybe I'm not asking the question right.
14 At some point if they behave like
15 they're supposed to for some period of
16 time, they can get into a situation
17 where they have less supervision?

18 A Yes.

19 Q And they have more access to other
20 people?

21 A That's correct.

22 Q And they can go all the way down to a
23 point where they're actually out to a
24 certain extent in that they're on a
25 tractor or they're driving a van or

1 they're dropping off the laundry and
2 that kind of stuff?

3 A That's correct.

4 Q Any inmate, no matter what they're in
5 there for, if they manage their behavior
6 for a certain period of time, can manage
7 to manipulate themselves to a lower
8 custody status, correct?

9 A Well, we're supposed to be not placing
10 violent offenders in the minimum out
11 custody level.

12 Q So he could be a minimum in but not
13 necessarily a minimum out?

14 A Correct.

15 Q So they're not supposed to be driving a
16 van down the street?

17 A That's correct.

18 Q Or making deliveries for the Warden?

19 A Yes.

20 Q However, for a person to get from that
21 initial status that they enter prison
22 in, they have to earn their way to the
23 administrative segregation facility
24 where you have the food --

25 A They have to exhibit enough bad

1 behaviors that they can be placed in
2 those places.

3 Q I'm using the word earn and maybe I'm
4 being a little facetious. I apologize.
5 Basically they have to commit a violent
6 act in prison, a violent act against a
7 guard or inmate, they have to do
8 something violent to get to where they
9 are in an administrative segregation
10 position?

11 A That's correct, except for death row.

12 Q Death row -- let's get to that. That's
13 a whole different ball game, correct?

14 A Yes.

15 Q When you enter death row, you're
16 segregated from the rest of the
17 population; is that correct?

18 A You're segregated from the rest of the
19 population as well as a certain
20 percentage of the death row population.

21 Q So they are in a much more isolated and
22 protected environment; is that correct?

23 A Yes.

24 Q The rest of the population is protected
25 from them and they are protected from

1 each other?

2 A Well, there are three levels of
3 segregation within death row.

4 Q And they are protected more from non-
5 inmates who have to deal with them for a
6 variety of reasons?

7 A Yes.

8 Q But the bottom line is that those given
9 a life sentence go into the general
10 population, correct?

11 A That's correct.

12 Q You've testified that you've had
13 occasion to interview psychopathic
14 killers in the past and you think this
15 defendant is different.

16 A Yes, I do.

17 Q You don't think he's a psychopathic
18 killer as opposed to this chart that you
19 held up which had all those
20 characteristics of psychopathic killers,
21 correct?

22 A Yes.

23 Q However, it's true that you cannot
24 guarantee this jury that this defendant
25 will never commit other violent acts

1 whether it's in prison or out?

2 A Well, I can't predict the future. I
3 gave my opinion based upon my data. I
4 can't make a hundred percent guarantee.

5 Q So you're here to give an opinion?

6 A Yes.

7 Q But no guarantees?

8 A That's correct.

9 Q You can't predict the future, can you?

10 A I can reasonably say but I can't say one
11 hundred percent that I can predict the
12 future.

13 MS. HUFFMAN: No further
14 questions.

15

16 REDIRECT EXAMINATION

17 BY MR. EASTERLING:

18 Q Doctor, there's no burden of proof in
19 any court in these United States which
20 requires one hundred percent guarantee
21 of anything. You understand that, don't
22 you?

23 A Yes.

24 Q And the burden of proof on the State of
25 Texas on this issue of future

1 dangerousness is beyond a reasonable
2 doubt that there's a probability of
3 future acts of violence, correct?

4 MS. HUFFMAN: Excuse me,
5 Your Honor. I'd object to the
6 leading nature of the question.

7 THE COURT: Sustained.

8
9 BY MR. EASTERLING:

10 Q You understand the issue, don't you?

11 MS. HUFFMAN: Objection.
12 That's leading.

13 THE COURT: Don't lead.

14
15 BY MR. EASTERLING:

16 Q Do you realize what the issue is to a
17 jury on the first issue of probability,
18 don't you?

19 A Yes.

20 Q That's what you're basing your opinion
21 on; is that correct?

22 A That's correct.

23 Q That's what the jury is going to look at
24 when they look at the evidence and that
25 issue, correct?

1 A Yes, sir.

2 MR. EASTERLING: May I
3 approach the witness, Your
4 Honor?

5 THE COURT: Yes, sir.

6

7 BY MR. EASTERLING:

8 Q Let me show you what's been marked
9 Defense Exhibit No. 3. Would you see if
10 you recognize that, please, sir?

11 A Yes, sir, that's my psychological
12 evaluation that I did on Mr. Buck.

13 Q This is your report; is that correct?

14 A Yes, sir. I have a copy of that here.

15 Q And that consists of six pages?

16 A Yes.

17 Q And you signed the last page, correct?

18 A Yes, sir.

19 Q When did you do this report?

20 A I'd have to look at the date. I
21 probably did it about a week
22 after --

23 Q If the report indicates the dates of
24 examination as March 14th and March
25 15th --

1 A I believe I wrote it the next week.
2 Q Did you personally type this report?
3 A No, sir, I did not.
4 Q Did you personally dictate it and have
5 it typed up by somebody?
6 A Yes.
7 Q Then you reviewed it?
8 A Yes.
9 Q Are all the entries made on here made by
10 you?
11 A Yes, sir.
12 Q And you are the custodian of your own
13 records?
14 A Yes.
15 Q And the case file of Duane Buck?
16 A Yes.
17 Q Were all the entries in here made at or
18 near the time that you did the
19 evaluation on Mr. Buck?
20 A Yes.

21 MR. EASTERLING: I would
22 offer Defense No. 3 into
23 evidence, Your Honor. I gave
24 the State a copy earlier. I'd
25 ask that it be admitted in

1 evidence.

2 MS. HUFFMAN: The State
3 would object on hearsay entries
4 contained in that document.

5 MR. EASTERLING: We need a
6 conference, Judge. The same
7 type of conference that we had
8 before.

9 THE COURT: Any other
10 questions of this witness?

11 MR. EASTERLING: I do have
12 a couple of other questions, if
13 I may.

14 THE COURT: Go ahead.

15

16 BY MR. EASTERLING:

17 Q You're aware that Duane Buck is thirty-
18 three years old; is that correct?

19 A Yes, sir.

20 Q He's going to be thirty-four on July
21 5th, 1997; is that correct?

22 A Yes, sir.

23 Q What is the age factor here as it
24 applies to future dangerousness? How
25 does that fit into the profile and data

1 research in that area?

2 A . We find as inmate offenders or patients
3 become older, they are less prone to
4 future risk of violence.

5 Q What do you think the probability would
6 be for Duane Buck if he gets a life
7 sentence?

8 A I'm sorry?

9 Q What's the probability about what's
10 going to happen to Duane Buck if he does
11 get a life sentence for capital murder?

12 MS. HUFFMAN: I'd object
13 to the form of the question.
14 The question is over-broad.

15 THE COURT: Approach the
16 bench.

17
18 (At this time there's a
19 conference at the bench
20 outside the hearing of the
21 court reporter.)

22
23 THE COURT: Please step
24 back into the jury room, ladies
25 and gentlemen. We'll be back

1 with you shortly.

2
3
4 (The following proceedings
5 are held outside the
6 presence of the jury.)
7

8 MR. EASTERLING: I can
9 qualify him with some questions
10 outside the presence of the
11 jury.

12 THE COURT: Hold on a
13 minute. Let me just cut right
14 to the chase.

15 I granted the State's
16 Motion in Limine having to do
17 with instructing the witnesses
18 not to make reference to parole
19 eligibility and in particular
20 the forty-year requirement.

21 You have now tendered
22 Defense 3 which makes reference
23 to parole and the forty-year
24 requirement.

25 MS. HUFFMAN: I didn't

1 want to make that objection in
2 front of the jury.

3 MR. EASTERLING: We
4 realize what your ruling would
5 be and we will redact that out
6 of there. That's what we did in
7 the previous report.

8 He's going to testify --
9 I'd like to make a proffer of
10 what he's going to say. He
11 would say that's he familiar
12 with the statistics that the
13 average life span of inmates in
14 the Texas Department of
15 Corrections, and particularly
16 with people with life sentences,
17 and he would testify that he
18 most likely will die of a
19 natural death in prison. He's
20 not going to say anything about
21 parole eligibility or anything
22 about the forty-year
23 requirement. He will only
24 testify that he will probably
25 die a natural death in prison if

1 he's assessed a life sentence.

2 He is qualified to say
3 that. That does not violate the
4 Motion in Limine. That's as far
5 as he's going to go. He knows
6 he cannot say anything else.

7 THE COURT: Doesn't that
8 presume how long the defendant
9 will be in prison?

10 MR. EASTERLING: I can
11 make a proffer, Judge. I want
12 to make a proffer so you can
13 understand. Can I do that?

14 THE COURT: Yes, sir.

15
16 REDIRECT EXAMINATION CONTINUED

17 BY MR. EASTERLING:

18 Q Dr. Lawrence, you have done some
19 research and have also seen data on the
20 life expectancy of inmates in the Texas
21 Department of Corrections; is that
22 correct?

23 A Yes.

24 Q What have you seen in that regard?

25 A Well, we have a population that's living

1 between fifty-five and seventy, and
2 they're dying of tuberculous and other
3 types of diseases and heart problems,
4 chronic illness type problems.

5 Q Natural causes of death?

6 A Yes.

7 Q Not from being murdered and not from
8 anything else?

9 A That's correct.

10 Q So if I ask you the question in front of
11 the jury and the Court allows it, the
12 question about your research, have you
13 done research about aging and so on
14 concerning inmates and their life span,
15 and I ask you the question about Duane
16 Buck going to be thirty years old in a
17 couple of months, and if he gets a life
18 sentence for this case, what would be
19 the probability of what would happen to
20 him in prison? If I ask you that
21 question, what would you answer?

22 A I would say that the man probably would
23 die in prison. I think if I said that
24 he'd probably live between sixty-five
25 and seventy years that it would be going

1 back to the issue of forty-years.

2 Q For the purpose of a Bill of Exceptions,
3 let me ask you this question. Were you
4 aware that the laws of the State of
5 Texas provide that if you receive a life
6 sentence for capital murder, that you do
7 forty flat years before you're parole
8 eligible?

9 A Yes, I am.

10 Q If the Court would allow the question
11 and I asked you if he would receive life
12 in prison for capital murder and you
13 knew that he was going to be in prison
14 for at least forty years and he'd be
15 seventy years old before he was eligible
16 for parole, and I asked you what the
17 likelihood would be that he was going to
18 achieve parole at seventy-four years old
19 in prison, what would you say?

20 A I would say the likelihood would be
21 small, that he would probably be dead
22 before then.

23 Q So the way the Texas law is structured,
24 if someone receives forty flat years
25 before they're eligible for parole on a

1 life sentence, that's essentially life
2 without parole, isn't it?

3 A At the current time, yes, because
4 they're not even paroling people for
5 murder that are parole eligible.

6 Q In fact, there's been a very strict
7 reduction in parole, hasn't there?

8 A Yes.

9 Q And under the current Governor it's
10 likely to be the same in the future?

11 MS. HUFFMAN: I would
12 object. This is not qualified
13 to testify about what the
14 Governor might do in the future
15 about parole.

16 MR. GUERINOT: We're just
17 making a Bill, Judge.

18 MR. EASTERLING: He has
19 knowledge, Judge. He works in
20 the prison.

21 THE COURT: Sustained. I
22 sustain that even for your Bill.

23 MR. EASTERLING: Are you
24 denying me the right to ask me
25 further questions?

1 THE COURT: That's a
2 different Bill. You can make a
3 Bill in regard to that.

4 MR. EASTERLING: I think
5 we have enough.

6 THE COURT: Would you like
7 to make a Bill in that regard?

8 MR. EASTERLING: I think
9 we made enough. I can't think
10 of anything else to ask him.

11 Yes, I can think of
12 something else.

13

14 BY MR. EASTERLING:

15 Q Do you have an opinion based on your
16 experience as to whether or not he would
17 be granted parole at seventy-six years
18 old if he was alive?

19 A At the current time everyone that I know
20 of who's under a murder offense who
21 becomes eligible for parole is denied.

22 MR. EASTERLING: Judge,
23 for purposes of what I can ask
24 in front of the jury, if the
25 Court feels it's safer to ask

1 him what he thinks Duane Buck's
2 life span would be under a life
3 sentence, I can be more
4 specific. If you want me to
5 narrow it down about what he
6 thinks his life span is going to
7 be from his qualifications to
8 know that, from his research, I
9 can ask that. I don't think
10 that violates any Motion in
11 Limine. I don't think it even
12 comes close to telling the jury
13 about the forty years at all.
14 It just tells them that the
15 older inmate from his experience
16 is not going to make it.

17 MS. HUFFMAN: That's the
18 same question about what a life
19 sentence in Texas is. He might
20 as well ask him that if he's
21 going to phrase the question
22 that way. Asking him what his
23 life span is if he receives a
24 life sentence in prison, that's
25 not relevant. That's asking him

1 to comment on what a life
2 sentence is. He did not voir
3 dire on that. It's not anywhere
4 in the charge. It's not
5 relevant to any issue in this
6 case. We're not going to argue
7 it. It has nothing to do with
8 anything.

9 MR. EASTERLING: I'm going
10 to argue it. I'm going to argue
11 that he's thirty-four years old,
12 that he would be an older
13 inmate, and that most likely
14 he's never going to get out. I
15 can argue that. I can make a
16 reasonable deduction from the
17 evidence. I am going to argue
18 it unless the Court orders me
19 not to. I'm not going to go any
20 further than that. I'm not
21 going to mention any years. The
22 jury needs to know.

23 MS. HUFFMAN: They don't
24 know if he's going to get out or
25 not. If he argues that, I think

1 that I can argue that in
2 response to his argument.

3 MR. EASTERLING: This is
4 exactly why, Judge, the Texas
5 Board of Criminal Appeals'
6 decisions are so unfair to a
7 defendant on trial for his life.
8 It's a disgusting law. It's
9 absolutely ridiculous that
10 jurors are not told what happens
11 to somebody if they get a life
12 sentence.

13 It's frustrating, and I
14 apologize to the Court for my
15 language, but that's exactly --

16 THE COURT: You've already
17 made this argument. I've
18 already ruled according to the
19 established Texas law.

20 MR. EASTERLING: I don't
21 know what's established about
22 it. It's not fair.

23 THE COURT: Is there
24 anything else you would like to
25 ask him?

1 MR. EASTERLING: I would
2 like to ask Dr. Lawrence,
3 however the Court feels I ought
4 to fashion it or how I should
5 ask the question, but I'd like
6 to ask him what he feels the
7 life span of Duane Buck is going
8 to be if he receives life in
9 prison. He knows from his
10 experience. He knows from his
11 research that people are dying
12 off at sixty-five to seventy
13 years old from natural causes,
14 as he said. That's all I'm
15 going to ask.

16 MS. HUFFMAN: That's what
17 my objection was.

18 THE COURT: What is it
19 that you want to ask exactly?

20 MR. EASTERLING: I want to
21 ask him if he's done some
22 research on age of inmates,
23 research on life spans of
24 inmates in the Texas Prison
25 System, if he knows that Duane

1 Buck is thirty-four years old in
2 July, and what his opinion would
3 be about what probably is going
4 to happen to him if he gets a
5 life sentence. Or I could say
6 or ask him what he thinks is
7 going to be his life span in the
8 Texas Prison System.

9 MS. HUFFMAN: And that's .
10 what we object to. You can't
11 make an opinion about what a
12 life sentence would mean for
13 this defendant. If he wants to
14 ask him about studies about life
15 spans of persons in TDC, I won't
16 object, but as it relates to
17 what a life sentence would mean
18 to this defendant, I would
19 object.

20 THE COURT: But you don't .
21 object about the average life
22 span of an inmate in prison?

23 MS. HUFFMAN: Not on a
24 person who receives a life
25 sentence.

1 MR. GUERINOT: Because
2 that leaves them thinking that
3 he's going to be seventy-four,
4 and somewhere between thirty-
5 three and seventy-four that he's
6 going to get out. That's
7 exactly what the State wants.
8 We ain't walking into that trap.

9 THE COURT: Here's my
10 ruling. I don't see any way
11 that you can get around the
12 Motion in Limine with your
13 question no matter how artfully
14 you phrase it, Mr. Easterling.

15 MR. GUERINOT: So you're
16 telling him he can't ask the
17 question?

18 THE COURT: Yes.

19 MR. EASTERLING: So the
20 record is clear, we would like
21 to ask all those questions.

22 THE COURT: It is very
23 clear, Mr. Easterling.

24 Bring the jury back in.
25

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(The following proceedings
are held in the presence
of the jury.)

THE COURT: I think we
were at the point where we were
going to excuse this witness but
you had another question.

MR. EASTERLING: We have
no further questions, Judge.

MS. HUFFMAN: We have no
further questions but I'm not
sure you made a ruling on
Defense No. 3?

THE COURT: I'll admit
that in the same fashion as I
did Defense No. 1. We'll do
that later.

You're excused, sir.

(At this time the witness
is excused from the
courtroom.)

MR. EASTERLING: The

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Defense rests.

THE COURT: The State
rests and closes.

THE COURT: Approach the
bench.

(The following proceedings
are held at the bench
outside the hearing of the
jury.)

THE COURT: Defense 1 and
3 will be admitted with those
changes that we talked about
earlier.

MR. GUERINOT: We would
object, Judge, to the Court's
Charge with regard to Issue
Number Two in that it instructs
the jurors that they should
consider evidence that they
might regard as reducing moral
blame worthiness including
evidence of the defendant's
background, record, emotional

1 instability, intelligence or
2 circumstances of the offense
3 that would reduce his moral
4 blameworthiness. That's not
5 what this Special Issue says.

6 It should say you shall
7 consider all the evidence
8 including evidence of the
9 defendant's background,
10 character, record, emotional
11 instability, intelligence, and
12 the circumstances surrounding
13 the offense that mitigate
14 against the imposition of the
15 death penalty. It's not moral
16 blameworthiness.

17 THE COURT: Ladies and
18 gentlemen, please step back to
19 the jury room.

20
21 (The following proceedings
22 are held outside the
23 presence of the jury)
24
25

1 MR. GUERINOT: It's my
2 opinion that it defines what
3 mitigating evidence is because
4 it says that you shall consider
5 mitigating evidence to be
6 evidence that a juror might
7 regard as reducing the
8 defendant's moral
9 blameworthiness. That's the
10 definition of what mitigating
11 evidence is. We have no
12 definition in the law. How did
13 we come around to be the
14 legislative branch of the
15 government? They are the ones
16 that write the law. Not us.
17 We're not supposed to write the
18 law.

19 MS. HUFFMAN: What do you
20 want it to say?

21 MR. GUERINOT: I just
22 think that it should say that in
23 answering Issue Number Two that
24 you shall consider evidence of
25 the defendant's background,

1 character, record, emotional
2 stability, intelligence, the
3 moral blameworthiness, if you
4 want to put that in there, or
5 circumstances of the offense.

6 MS. HUFFMAN: We can put
7 that in there if that's what
8 they want.

9 THE COURT: Tell me what
10 it is exactly that you want.

11 MR. GUERINOT: In
12 answering Special Issue Number
13 Two you shall consider all of
14 the evidence before you
15 including evidence of the
16 defendant's background,
17 character, record, emotional
18 instability, intelligence, moral
19 blameworthiness, and the
20 circumstances of the offense
21 that mitigate against the
22 imposition of the death penalty.

23 THE COURT: Then that's
24 the way I'll read it.
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(The following proceedings
are held in the presence
of the jury.)

THE COURT: Cause No.
699684, the State of Texas vs.
Duane Edward Buck.

Are both sides ready to
proceed?

MS. HUFFMAN: The State's
ready.

MR. EASTERLING: The
Defense is ready.

THE COURT: Ladies and
gentlemen, I'm going to read the
punishment charge. You will get
one copy to take back in the
jury room with you.

(At this time the Judge
reads the Court's Charge
to the jury.)

THE COURT: Ladies and
gentlemen, the State has the

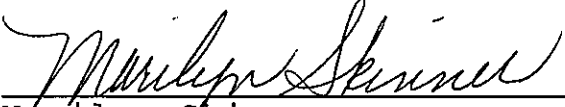
THE STATE OF TEXAS

COUNTY OF HARRIS

I, MARILYN SKINNER, Official Court Reporter in and for the 208th District Court of Harris County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of the proceedings reported by me in the above styled and numbered cause, to the best of my knowledge and belief, all of which occurred in open court or in chambers.

I further certify that this transcription of the record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

WITNESS MY HAND this the 9th
day of December A.D., 1997.


Marilyn Skinner
Official Court Reporter
208th District Court
Harris County, Texas

Certificate No. 689
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