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Jon Kelly Interview Transcript

JSL: We are here in Corpus Christi, Texas with attorney Jon Kelly. It is December 9, 2004. It's about 9:25, and we're going to talk to Jon Kelly about the Carlos DeLuna matter. Jon, would you tell me something about your background, as a lawyer and as a human being?

06:15:20

JK: [chuckles] OK. I was born and raised in San Francisco, California. After high school and a short period of college I was in the service, in the army. Served, basically in Europe and a short period of time in Southeast Asia during the Vietnam thing. Got out of the service in '66 and lived in Europe for another year and a half, almost two years. Then returned to the United States. I went to the University of Nevada and graduated from there. And since Nevada at that time, I don't know if they do now, but at that time did not have a law school, I ended up going to St. Mary's law school in San Antonio, Texas. In those days, a fine law school. I graduated from there, and worked in San Antonio for a period of about five years, doing basically general practice, but with an emphasis on criminal law. I tended to like that. Did not do, in fact, for a lot of reasons, did not do appointive cases, very rarely, but did an awful lot of criminal work. Associated... not associated, but near a bondsman, so somehow

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people would come to me, not by referral, but because we were close. Came to Corpus Christi around 1979, 1980, and practiced in Corpus Christi up until about 1998, when I moved to Alice. Still do criminal work. In the course of winding down now and retiring.

06:17:09

JSL: Mr. Kelly, when you moved to Texas to go to law school I assume that you didn't speak Spanish then.

JK: Well, I grew up in not the nicer parts of San Francisco. And there was a relatively large Mexican-American community there at that time. I took Spanish in high school and had some knowledge of it.

JSL: And how's your Spanish now?

JK: Mmmm fair, fair to poor. In the practice of criminal law, it's usually a better practice to speak English if you can. Nuance and questions about translation can backfire on you, whether you're a Hispanic or an Anglo lawyer, better to do it in English. You have control of the situation. If that's where you were going...?

06:18:05

JSL: But if you have someone speaking to you in Spanish...

JK: ... I can understand what they are saying.

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JSL: OK. Good. And tell us about your experience as a criminal defense lawyer, starting with how many, let's say, major felony cases you think you handled and how many you tried in court. And without being bashful, tell me what your reputation was in Corpus Christi in the eighties and early nineties as a criminal defense lawyer.

06:18:33

JK: Well, in terms of cases, I guess, thousands. Tried, oh hundreds. Rarely tried misdemeanors. Here in this area, in those days, it's getting more difficult now with the DWI laws, but in those days you rarely tried cases in county court. It usually could be worked out one way or the other, to the interest of both sides. Tried almost all felonies, for a period of time, almost two years, would average at least, maybe two trials a month. And by major felonies... murder cases, about four or five trials a year for a period of time. You know, you would try the gamut of all cases. And, oh Jeez, modesty! I think I was considered a good lawyer, maybe one of the better second tier. I wasn't Douglas Tinker, but I was considered a very competent attorney who, with the right kind of case-- because I was a little overly dramatic or something, and emotional-- could do it. I was a good lawyer. Very good lawyer at times.

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JSL: You're being bashful, given what I've heard from others, but that's great. What I want to do now is talk about a gentleman who you and I have had quite a bit of conversation about by the name of Carlos Hernandez.

06:20:17

JK: We've talked about him. I knew him well.

JSL: First of all, tell me, um, what you remember. Just, what you remember, from beginning to end.

06:20:33

JK: I remember my initial contacts, contact with Carlos Hernandez was, I don't know what year. In the latter part of the eighties was it? He was in jail. He had been, I believe, charged with, a murder. I believe. And he... I was called by the court manager for Judge Blackmun, the elder Judge Blackmun. And advised that the attorney representing him [Hernandez] was having difficulty in dealing with him, and he and the client weren't getting along. And it appeared that this was an old case that the DA really didn't want to mess with, and he'd been sitting in jail for a long time, and could I remedy the situation? And I said yes. And there were a few hearings, and in those hearings the district attorney was to produce certain evidence. There was an initial great

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reluctance to even do it, but with the cooperation of the judge we pressured them. They failed to produce the evidence, and he was released shortly after Christmas, just before New Years.

06:22:16

JSL: OK. I'm going to hand you what is a photocopy of a newspaper clipping. You can see the date on here very, uh, it's up in the right hand corner, but in any event it's July 25th, 1986. And I've marked this just so we know what it is with today's date, your initials JK, and it's got number 2 on it, and see if you can tell us what that is and what that has to say about the case here.

JK: "Acquitted man hopes another arrest of another man will clear his name." Um, is this the incident in the van? That's the one where Carlos was charged in and that's the one where they never really gave us the evidence we asked for. The two gentleman in the picture with Carlos there, to his left and to the right of the picture is Eddie Garza, and just behind Carlos is Paul Rivera, now I believe Chief Deputy of the Nueces County Sheriff's Office. They were the top murder investigators for the CCPD at that time.

06:24:02

JSL: If you can hold the picture up so that we can...

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JK: Like this you mean? [holds up picture]

JSL: Yes. And tell me what, you referred there at the end to Paul Rivera and Eddie Garza. Tell me a little bit more, using their names, about who they were in the 1980s in terms of their work in law enforcement and their reputation.

06:24:24

JK: Eddie and Paul were conscientious. They were very good investigators. They were somewhat ruthless, but not... they didn't... and had a reputation for not beating people up, or anything like that. They were, very, uh, they would get tunnel vision, which I believe sometimes is good for an investigator to have, but not totally unfair either. They were the city's top murder investigators. They, and I believe in the underlying case that we're eventually going to talk about, they weren't too involved in the investigation of that case. Probably one of the problems with that case is that. It sometimes would take Eddie and Paul to see the light, but eventually they would. Additionally, they were tough, but in the end, they tried to be fair.

06:25:40

JSL: No, that was great. If you would, if you would just start from the point where you said, "they were the top investigators" and just use their full names, if you would.

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JK: Sure. The two gentlemen in the picture with Carlos Hernandez are, the first one is Eddie Garza, and the other officer behind Carlos is Paul Rivera. Eddie and Paul were the two top investigators for the Corpus Christi Police Department. There were even people senior, but if you had a serious murder case, and you wanted it investigated seriously, you wanted Eddie and Paul. They were considered the top people. I mean, if there were others involved they usually were on the periphery, and Paul and Eddie would do the serious, on-the-ground investigation. They could, at times, be ruthless, but they had.... Actually, I didn't think they were violent men. I dealt with them in numerous cases. It wasn't the stereotypical picture of hitting people or anything, they didn't do things like that. Sometimes they had tunnel vision, and sometimes the forest for the trees was lost. But in the end, they would see the light, and their reputation was that they were fair men. And that, if shown, or if they came upon evidence that would harm their case, but actually, they thought, led to a different result, they wouldn't hide it.

06:27:36

JSL: In a moment we are going to talk some about a case involving a man who was tried here for murder named Carlos

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DeLuna. Do you recall whether or not Detectives Garza and Rivera had anything to do with that case and how that may have affected it?

06:27:54

JK: Uh, I only know. I don't know that much about the case. That was a case I was not involved in. I knew, I was, I am close, and was even closer at that time, to one of the attorneys, but I... you know, criminal lawyers really don't talk too much about each other's case. You don't want to get involved. You don't want to second guess a friend. I don't think that Eddie and Paul were actively involved in this investigation. And if there are problems, that's probably one of the problems. You know, Eddie and Paul were not text book investigators, but they were pretty thorough in their own rather unique way. And I would feel better about the case, if I was a supervisor, if they were in it, especially a capital murder case. My question would be, why weren't they? I bet you Eddie and Paul think that too.

06:28:50

JSL: As between Eddie Garza and Paul Rivera, was there one ... I actually don't know if this is really true, about them or anyone. But you sometimes you hear "[inaudible], nice guy, little bit harder guy." Was their any kind of dynamic

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like that? What was there division of labor in terms of their qualities?

06:29:20

JK: Uh, they were always together, and I always got the impression that Eddie would be the nicer guy ... maybe other's didn't ... and that Paul would be kind of the harder guy. But, you know, they almost shared the same brain in a way, because they always were in agreement on the end result. Even when I thought it was wrong. Eddie and Paul, you couldn't peel one away and get him to move from the story, and I don't think it was collusion. I think that they worked well as a team.

06:29:58

JSL: OK, coming back to Carlos Hernandez, if you would tell us just what you remember about Carlos, really, not just in the context of representing him, but everything that you... a recollection of Carlos Hernandez.

06:30:38

JK: Sure. Carlos Hernandez was a grateful client. Would actually do some chores around my house, was very kind to my middle son who at that time was in a wheel chair. Clearly, I was fully aware of Carlos's reputation. Carlos had a rather bad reputation for violence. Personally, other than I would

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sometimes see the end results because he'd be charged, and I would be told by Paul, Rivera, about his violent past and violent nature. But, to be honest, I didn't see that side of him. But obviously, as a criminal lawyer, I wasn't a fool. I understood.

06:31:34

JSL: What other kinds of things did you, what other kinds of interactions did you...

06:32:07

JK: Well, I mean, occasionally, I would go to where he lived. I believe he lived on Hancock, and he lived with a black woman, um, kind of a nice person. I think you're talking about, yes. Rarely, but maybe two or three times, he and I would go somewhere and have a beer. We even went to a cantina on Port Street one time. And I think what you remember about Carlos Hernandez and I walking into that cantina was that it was very clear in that cantina that he was known. That is was ... It wasn't one of the worst, but it wasn't a nice cantina either. And clearly Carlos was a known person, and was given the deference that one would give to someone with Carlos' reputation.

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JSL: And if you could just set that scene for us, a little bit. Just describe...

JK: Uh, it's like three-o'clock in the afternoon. It's dark, cement floors. Clean. It was a clean place. Cement floors. Pool tables in the back. Some tables in the front area. There were maybe six or seven men there. I think there was a bar maid. And the owner. And Carlos wanted to stop there. The men, when we were walking in, were rather boisterous around the pool table. When Carlos was seen it became very quiet. And, you know, you knew that something, that people were saying, "That's Carlos Hernandez." I got that feeling.

06:34:22

JSL: And what did that suggest to you at that point about his reputation among those...

JK: That probably what Paul was telling me was basically true. And I knew by then, too. But the person I dealt with, in my dealings with him, he wouldn't do anything in my presence that would cause me that kind of a problem or anything. So, I just let it pass. He was extremely grateful for something I had done, and it was real important that he buy me a beer. And it was a Friday afternoon, and it was the summertime here in Corpus which means it was hot. And not a bad idea. It worked out.

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06:35:00

JSL: And what, if you would start and tell me, using everybody's full names, what you had heard about Carlos Hernandez from Paul Rivera?

JK: Well, I had heard about the incident, obviously, which was the underlying case involving the van and the girl and all of that. That Paul would occasionally, initially especially, would say, "This is a real bad guy. He's been involved in violence for years. He has just an uncontrollable temper, which goes off at times. He's a very dangerous man." And it would be followed up by other detectives. I was socially ... my wife at the time was very friendly with the wife of a lieutenant in the police department, or a sergeant, I forget. And, so socially it would come up that I was Carlos Hernandez's lawyer, and it was always lead to comments and talk. In good nature, but always his violent past would come up.

06:36:16

JSL: Always?

JK: We'd hear of his escapades, or alleged escapades. And, you know, it was cop talk. And, you know, I wouldn't pay much attention to it, but yeah, I knew. And cops knew too.

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JSL: In your interactions with other members of the police department, what did you hear about Carlos Hernandez?

06:36:40

JK: As I said, initially, Paul, when I first represented Carlos, Paul made it known to me that Carlos Hernandez was a bad guy. And I would ask around, and maybe one or two lawyers would say, "you know, he's involved in a case that I had and he's a bad dude." My wife at the time was very friendly and close to a detective and the detective's wife, and so socially we would go over to their house, oh, maybe every other week. And at Christmas time, etc. I remember going to Eddie Garza's at Christmas. And one of the ways, besides being the asshole, was that I was introduced as Carlos Hernandez's lawyer. And I was well known to the members of the police department. But usually the mention of Carlos Hernandez would allow other detectives to make comments. And ... about Carlos and stuff. I blew it off, but I understood that they truly believed that they knew who Carlos was, that Carlos Hernandez was a dangerous man and that he was someone to reckon with.

06:38:02

JSL: If the issue had arisen let's say in 1983, this is a little bit before, a few years before, you had represented

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him, but knowing what you know about Carlos Hernandez, if the question had arisen in law enforcement circles in Corpus Christi, Texas in 1983, is there a Carlos Hernandez in this town who was capable of using a knife to hurt a woman, or at least have a reputation in that direction, if you would just describe what the likelihood is that attention would focus on the Carlos Hernandez that you knew.

06:38:43

JK: You know, we're not ... Corpus isn't an enormous city, but, you know, we're fairly large. If you were ... Carlos Hernandez was known. If someone said, "knife" and "Carlos Hernandez," they'd know exactly what you were saying. If you were an active detective. If you were experience in patrol in, not so much on the west side, but more on the Mary Street area, you'd know who Carlos was. I mean, come on! They all knew.

06:39:20

JSL: And that was true throughout the 1980s?

JK: Oh sure. I think that can be verified very easily. I'm sure Paul and Eddie would verify that.

06:39:36

JSL: What did your, another way that you had to keep your eye and ear on the community, I would assume, is through your

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clients. I wondered if you hear anything from your clients about Carlos Hernandez and his reputation?

JK: You don't talk much about other clients to clients, but occasionally, not so much from the clients, but there'd be a case of some violence of some sort. An aggravated assault or something. And you would see Carlos's name mentioned as a possible suspect in a report. Or, maybe his name would come up. I mean, we're talking certain areas of town where, in certain bars, or something, that are frequented. He was an active member of the community, I would imagine.

06:40:30

JSL: You talked a little bit about....

JK: He's dead now, and I don't mean to speak ill of the dead. He had a good side too.

06:40:46

JSL: You mentioned Carlos Hernandez's effect on the patrons of that cantina that you went to on that occasion. Would you ..., you also, I think, mentioned to me at one point that Carlos from time to time would be in your office, because he did some work....

06:41:07

JK: Well, I remember I was running for office. He was very anxious to help and put up signs. And was dependable. And

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that's not an easy thing at times to find someone to put up signs that you can rely upon. He would come by, sometimes just to say hello, but usually for reasons. But, he was welcome. He was not a bad client in terms of someone you wouldn't want to see anymore. I mean, some, you know, this is criminal law. Some people who certainly don't want ever to darken your door again.

06:41:53

JSL: Can you describe whether he had any effect on other people coming into your office or perhaps your home who encountered him there?

06:42:06

JK: I remember someone remarking, I couldn't say whom, but I remember someone remarking, "what on earth is he doing here?" And then I just said, well, you know, I know who he is and he's never caused me a problem, and he's not going to steal from me, so? But I do remember someone being aware of that. It wasn't something I paid a lot of attention to.

06:42:36

JSL: What was it about Carlos Hernandez? Was it his demeanor or his reputation?

JK: No, I've represented, or, I've represented one, maybe two people that I felt were like psychopaths, true psychopaths.

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You feel the evil when you walk into the room. I mean, you want to get away from them. And a number of psychopaths are extremely manipulative. Carlos was, number one, not that intelligent to be manipulative. And I didn't find him... Remember, I only saw him sober, I did not find him a menacing person, towards me. Or towards people around us.... well, except maybe with one or two, one occasion, was he ever very menacing to anyone else.

06:43:27

JSL: Can you describe that occasion?

JK: It involved a neighbor of his who was making some complaint. He lived in an apartment house. And he was [Hernandez] somewhat menacing. I know, I thought it was time to leave fairly quickly. I left. I didn't run, but I thought it was time to go. It appeared that something might happen. But it didn't appear that he was, that it was an ungovernable anger at that point. It just was not a time to stay around.

06:44:06

JSL: Did you ever see Carlos Hernandez with a weapon? That is, did he ever have any kind of weapon around?

JK: I never saw him with a gun. I think he at times had.... I never saw him with a switchblade, but I think at times he had a knife of some sort.

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06:44:26

JSL: I'm going to hand you a picture. Again, the same notations here, JK, this is number 1, December 9, '04. And just ask you if that resembles the kind of knife you might have seen with Carlos. It's not a switchblade, but it's a buck knife.

JK: [takes picture, interrupts] Yes. He had that all the time

JK: I consider it more of a work knife. But, yeah, he had that on him quite often, I'd say.

JSL: OK, but with his name.

06:45:10

JK: Carlos Hernandez, a number of times. It would be used. From something simple like cutting limes in a bar to drink with beer, to cutting wire or something. Yeah, that was something he usually had. It's not an unremarkable knife. And the "he" I'm talking about is Carlos Hernandez.

06:45:43

JSL: When you saw Carlos, let's not say when he was in jail, but when you saw him on the street, or when he came over to your house or your office, or on the occasions when you went and had a beer with him, what was he wearing? What did he wear?

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06:46:12

JK: Uh... jeans, T-shirt. Tennies. It was not unusual for someone like Carlos to wear that and that was kind of what he usually wore. Occasionally, if we went to court or something, he would have a shirt on. But almost always jeans and a T-shirt and tennies.

06:46:36

JSL: What about his facial hair? What do you remember about Carlos [cut off, inaudible]

JK: Uh, he usually had a moustache. The picture that you showed me shows him thinner than I remember him a few years later, but that's the way he looked and the T-shirt is there.

06:46:59

JSL: And did he smoke? Cigarettes?

06:47:00

JK: I believe so. I don't really... That's a long time ago. I believe so, yeah. Most of us did.

JSL: And did he, um, what did he drink?

06:47:13

JK: Cerveza. Beer. Whatever was popular at the time. If it was Miller Lite at the time or it was, nowadays it was Bud Lite, and I think we're going back to Miller again, or Coors. He drank beer. Schlitz, I used to like Schlitz, and we would

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drink that. Smoke grass. I mean, he was... But I never saw him deeply involved in drugs. I don't remember him as an intravenous drug user.

06:48:07

JSL: You mentioned a moment ago that you rarely, if ever, saw Carlos when he was drunk.

JK: Right.

06:48:16

JSL: And you suggested that that might be a divide for him. In other words... What did that mean? What did you hear about Carlos Hernandez and being drunk?

06:48:33

JK: Well, I mean, I would hear the stories. And I would hear that, you know, that he was extremely violent when he was drinking, and that he was an extremely dangerous person. And it usually involved alcohol. But, I, I never saw it. I mean, I'm a criminal lawyer, and I deal with people as they treat me, and I have to have... I mean, I don't live his life. But, you know, he was OK with me. I mean, gee... I would hear these stories. Paul, say, would go on and on about him. He, it wasn't the person I saw. What am I supposed to do? He was OK. But, you know, Carlos Hernandez, drinking... I believe the initial crime I represented him on involved

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alcohol. I believe almost all of his, the alleged crimes, he was involved in did involve some sort of drinking, some time during the evening, whatever evening it was. It usually involved him and alcohol. Sorry.

06:49:47

JSL: In the course of your being a lawyer in Corpus Christi and hearing about Carlos Hernandez, did you every hear that he did or was reputed to have killed someone?

06:50:05

JK: Sure. What did you think they were telling me? You know, I mean, he wasn't the only one. I mean, you know, cops are cops. They're going to say what they think, for whatever it's worth. Yeah. I tended, and that's why my memory was hazy on it. I tended not to want to listen to it. For a lot of reasons. There's the reason that it didn't mean anything to me. Number two is, maybe I'd ended up representing him, or someone else. I just... wasn't something I needed to hear. But, sure, they would talk about that. When they said he was violent, they meant that Carlos Hernandez was a very dangerous man. I never saw it.

JK: When an officer, maybe someone in the district attorney's office, I don't know, his name would come up, that would be someone where there would then become a litany of stories.

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And, "well, you know he was involved in this incident," the he being Carlos Hernandez. "And Carlos Hernandez was involved in this incident." "And Carlos Hernandez harmed this woman." And, you know, they would go on to a litany, but, to me, it was time when they mentioned it, and it was Carlos Hernandez, I would just do an off-switch, because, you know, that's their story, and I didn't need to hear it.

06:51:56

JSL: When there was discussion about Carlos Hernandez, was there any sense of the typical gender of the victims of these crimes that he was reputed to have committed.

06:52:11

JK: [pause] I... And [small sigh], yeah, there was, but I don't really think of Carlos in those terms. And I think because he's dead I think someone needs to say that. Yeah, usually they involved women, quite often. But, you know, I never detected that kind of an attitude with him. I've known bullies of women. Represented them. I didn't think of Carlos Hernandez in those terms, but often the crimes that I remember involved violence to women. I don't know if that's what you want to hear, but I do remember... But, you know, I think if anything it involved others too, but I do remember certain crimes where you just, you know, you just "ugh!" It

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wasn't something you liked hearing. This is Texas, you know. We have a certain standard. [pause] I know you don't believe that. [laughs]

06:53:10

JSL: When you had a beer with Carlos Hernandez on a hot July afternoon...

JK: Sure.

JSL: ... when somebody needed a little refreshment. Or on other occasions when you were socializing with him or working with him in your endeavors, whether it was your campaigning or work at your home, did he ever intimate to you or suggest to you, hint to you, that he had committed serious crimes, hurt people, anything of that nature?

06:54:00

JK: [big pause] Sorta, kinda, maybe. And by that I mean, if he intimated, I would end it immediately. I didn't want to hear it. I didn't want to know about it, and so I didn't need to hear that story. So, if anything was said or was beginning to be said, I would end it. I never was inebriated where I would, you know or had enough to drink where I would allow something like that to be said around me. There was kind of a courtly relationship in terms of ... I was the *abogado*. You know? I was the lawyer. And yeah, I mean, you know, he wanted

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to tell his side or something. I might say, well, they're saying this about you, you know? I don't want to hear, but I think you might want to be aware that this is something that is being said. I remember telling him that a couple times. And, he would start to tell me his side and I would just say, that's it.

JK: And I can narrow it down further. Carlos Hernandez, in his dealings with me, would brag more about a job he had done. If something like that came up, and you triggered my mind, someone would tell me, "Hey, your guy Carlos Hernandez was involved with this incident here." And I'd listen to the story and usually it was kind of tangential [?]. And if I saw Carlos I'd say, "Hey, guy, this is what they are saying about you." And then, he was not a quick man. It would have to register. And then, and so it would give him--me time, and so when he started to answer I could say, "I don't want to hear, but I thought you'd like to know this is what the cops are talking about, or this is what someone in the D.A.'s office said you did." Of the many people that I represented, during that period of time especially, which was probably my most active criminal practice time, that was really the only defendant that they would talk to me about, and that was Carlos Hernandez. He seemed to be their fall guy for almost

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every case.

06:57:56

JSL: When were the active years of your ... that high intensity time in your criminal practice. Just some dates. Maybe we ought to go back and get some...

JK: Oh, I would say, I would say from the early eighties to the early nineties.

06:58:18

JSL: [small pause] OK. Let's switch gears here to a case in the early 1980's, or the mid 1980's, the case of a homicide killing that occurred in a gas station and a little store on South Padre Island Drive. Diamond Shamrock, the victim there was a woman by the name of Wanda Lopez, and the man who was charged with that crime was Carlos DeLuna. Is that the case that we were referring to earlier on when you made the remark that if Garza and Rivera had been on it, maybe any problems with it might have been avoided?

06:58:58

JK: Yes. I only have a general knowledge of the case. I've never looked at police reports involving it or anything. I'd like to see them, because it occurred to me and from what I have heard, there are a couple of things that are very troubling in it. And what I remember being told is,

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obviously, I know that Carlos Hernandez, some people feel, is the real culprit, but it was interesting to me, in hearing about this case, is that there was an enormous amount of blood found at the scene. Additionally there were people, this wasn't an ice-house, but in fact was a Sigmores, a convenience store gas station place, and that there were witnesses outside, that the descriptions of the culprit differed from what Mr. DeLuna was found in. That Mr. DeLuna was found and that the eye-witnesses said that the culprit went in a different direction from which, different from which DeLuna was found, and that DeLuna didn't have a lot of, didn't have any blood on him. And, you know, what kind of police work is that? I mean, I've been around enough murder cases, been around enough blood to make anybody vomit. And you stab somebody in an artery or something and people start bleeding like a stuck pig. And it squirts. And it, it-it.... You get blood on you. It's hard not to. And I find that somewhat suspect. Additionally, I think this case was wrapped up within an hour or two. And it was at night when Eddie and Paul weren't working, yeah. If Eddie and Paul were there, they might have viewed it differently. Clearly, if people had started questioning about that, they had enough integrity where you would go to them and say, "Paul" or "Eddie."

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Usually Paul I dealt with, and Eddie was very nice too, but Paul and I had a fairly good rapport. He used to always say, "When are we going hunting so I can shoot you?" But if I had said to him, "Where's the blood, dude." You know, he'd think on that, and he'd come back, he might come back a week later and say, "there wasn't any blood on his shoes, I wouldn't look at him." The people I think, I heard were involved were people that I don't think we're that good.

07:01:50

JSL: And when you say "those people" you mean the investigators that IDed him?

07:01:53

JK: Cops. Yeah, you know, I'm sure there were competent people there, but, you know, you need a lead person. That lead person kind of controls how an investigation goes down. You know, you need to—a solution to a crime is nice, but it's good to make sure you get all the evidence. Cleary, DeLuna in that situation was a man to arrest, but the case didn't need to be wrapped up in an hour. It clearly....This is a capital murder case. This ain't no joke.

07:02:25

JSL: Let me ask you a few questions about that. Because you have established your expertise here, I'm going to ask you

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just to assume that certain facts are true.

JK: Sure.

JSL: And as you say, this is not your case, you did not immerse yourself in it. But let me just ask you some things about how your experience here in Corpus Christi, in Texas in trying criminal cases and capital cases, you would react to certain things. Let's start with the fact that, let's assume here we've got a crime scene which is the interior of a small store at a gas station. The victim came out of the gas station—out of the store at the end and collapsed right outside, so I suppose the crime scene actually came out, you know, onto the outside, but let's just... How would you react to the fact that that crime scene was processed over the course of less than two hours, and turned back over to the manager of the gas station that evening, within two hours of the event occurring, to be cleaned out, washed out, and open for business soon thereafter, so that all of that happened at night and there was no investigation done at the scene, possibly during the day or over any course of time beyond two hours. So, starting from the beginning, using names, react to that.

07:03:57

JK: Well, the reaction that one has is that, you know,

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look: this isn't New York City and this isn't California, but come one now. I mean, how much work could be done. You know, obviously just the description itself begs the answer, doesn't it? I mean, you can close an ice house down for a night and nothing bad is going to happen. Certainly Diamond Shamrock isn't going to go broke. A man's life is at stake. Somebody died. Couldn't you think that's important enough to do it right? Of course not. I mean, it's silly. Return it two hours later? Come on. I mean, we're not as sophisticated nor maybe should we be, than the ridiculous things that were brought up on the O.J. case, and I think that's an extreme also. But, you know, things should have been done maybe in the light of day, just to be sure that it was done right. I don't know who the persons were involved, but that's awful quick, isn't it? You hit that place with pine oil the next—that night, or the next morning, that's lost. All that's lost.

07:06:14

JK: Well, I mean, you know. First of all, I represent, I'm more of an emotion person, but come on now. We're talking fingerprints, aren't we. And if there's blood and people get blood on their hands there's going to be fingerprints all over the place, so you're going to be looking for prints.

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You're going to be looking too for, kind of, for footprints. I mean, just think of the characteristics of tennis shoes, the characteristics of any shoes! Oh, my god, if any of the stuff was being handled, it just, it begs, doesn't it, to have a lot of forensic people there, to have a lot of photographs, to have a lot of fingerprint work. If there isn't, clearly something is seriously, seriously lacking, because if there was a struggle, these people were rolling in it, and, you know, you'd be screaming bloody murder in terms of, that's exactly what happened, isn't it. It's a bloody murder. And you'd be looking for that, certainly on the man that was caught. You'd be looking for blood. If there wasn't, you'd start to wonder, wouldn't you? I mean, that to me, that's the one thing that troubles me about this case is that I don't believe that DeLuna had much blood on him, if any. Well, he didn't go take a bath! And they found him, what? Within half an hour? Well, doesn't that leave one to question what the heck is going on?

JSL: There was one forensic individual, Joel Infante, was the single person processing the scene, and there was a single detective on the case, not the normal two, but a single detective by the name of Olivia Escobedo. What is your reaction to...

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07:09:12

JK: [interrupts] I don't know them. I know Infante. Escobedo I remember. I'd leave it to other officers to talk in terms of her qualifications. I don't remember her on major cases before. Enough said.

JSL: Say that again.

07:09:29

JK: I don't remember her, Escobedo, being an important part of cases before. If she's chief investigator, she got promoted. For what? I don't know. This was a big case. This hit the news. This was a bad, bad thing. We're not that big a city where this doesn't have an effect. The major portion of the middle class of Corpus Christi drives past that area every day, two times. Hello! You know? An hour or two to figure out a crime seems awful quick to me. I bet you cops aren't always proud of it either.

07:10:22

JSL: Part of the evidence in this case was as follows, and again, I'll ask your reaction to it. As you've pointed out, Carlos DeLuna was found underneath a truck nearby the station within half an hour, forty minutes of the incident itself. At the gas station, the police had found four people who claimed that they had seen individuals around that area. They put

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those four people together at a location, at the gas station, where they were conversing with each other for those twenty, thirty minutes when they were out looking. They then, instead of taking Mr. DeLuna to a police station, they...

07:11:11

JK: [interrupts] You don't have to tell me. They drove him up in a police car and asked them if they could identify the guy sitting in the back seat between two cops, right?

JSL: With his hands handcuffed behind his back.

07:11:22

JK: Yeah. Standard practice by idiots. Yeah. I mean, it's not that uncommon here. I'm more troubled, really, by the people sitting and comparing, or standing around and comparing notes for half an hour. Witnesses usually are relatively responsible when questioned, by saying, "You know, it kind of tells you something when they're pulling the guy up in the cop car." Most witnesses really will be the first to say, "You know, that really isn't the best identification I could have given." They're pretty good about that. Where I'm troubled is that you have decent people, remember, and I'm sure this is true in other parts of the country. It certainly is true here. Most people don't want to come forward. Most people don't want to be witnesses. You had, I

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believe, four people who said, "You know, this is a terrible crime. I'm a witness. I want to help." You don't need them talking to each other. That's classic police thinking, isn't it? The pulling up in the car. We do that. I'm not enamored of it. But usually you can weed through that. I find more trouble because people will sit around and say, "What did you see?" "Well, I saw this." "Well, he had a blue shirt." "No, I think it was red." I mean, you could hear them talking. Wouldn't you? It's only human nature. Within half an hour, boy, whose to say what impressions they really had.

07:12:49

JSL: So, in that kind of a situation...

JK: That is messy, bad police work. Hello!

07:13:01

JK: These are average folks. They've never seen a murder before, and they're standing around. That's all they're talking about. And clearly they're going to say, "I saw the guy, and he looked like this." And then another person's going to say, "Yeah, but, you know, he was slightly different." Within fifteen minutes there's going to be a consensus. Because people are standing around and talking. And they have to have something in common to talk about. Do

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you think it's human nature for a person, for one of the four to say, "you guys are all full of it, and I'm going to hold to my first impression." That's not human. That's not the way we deal with others in this world.

JSL: Do you remember any discussion around the courthouse about the situation with Carlos DeLuna's representation at the beginning of that case, and what that discussion was? You don't have to mention names if you don't like. [inaudible]

07:15:21

JK: Well, the person that was appointed was a competent attorney. Not a real criminal attorney. He was in general practice. He was the son of a judge. He was having some difficulty making ends meet. But, you know, hey, we all do in private practice. But the kind of, what I was intimated was that Hector needed some help and they appointed him to the case. We all kind of went [makes skeptical eye-rolling motion], you know. You have to understand, in those days, this is in the middle eighties, I would imagine. What year?

JSL: 1983.

07:16:59

JK: In those days, it was an honor to be an attorney in a capital murder case. If you were an attorney in a capital murder case, that means at least that judge thinks you are,

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not only competent, but you are of the echelon that you can be trusted to do it. Let's be honest, most capital murder cases are overturned because of incompetence of counsel. It means that the judge thinks you've got enough brains to at least get it through, and at least make sure that basic rights are protected. It doesn't mean that other attorneys aren't competent, it means that, you know, if it's capital murder that that attorney is going to be under pressure, that there's going to be press, that there's going to be - that you have to handle a myriad of things. Hector was not a bad lawyer at all. He later became a very good judge. But none of us thought that Hector was of that caliber as a criminal attorney. Good judge later, but [shakes head] no.

07:17:24

JSL: Was there an explanation discussed about how he might have come to be appointed to that case at that time though he was not in that upper echelon.

JK: He might have needed the money. His dad was a judge, a sitting judge at that point. He might have needed the money. Hector had been having a hard time. I mean, we're not unsympathetic. And none of us were, I mean, none of us thought that Hector was going to bollix it or something. It was just strange. There's always a little ... In those days,

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not later, but in those days, a little resentment, because if you've been named to do capital murder, you think you're, you know at least one judge thinks you're good. Probably more. And if someone that you don't think is at your level is appointed, it's kind of an affront, isn't it? It's pride.

07:18:27

JSL: Who was in that upper echelon at that time?

JK: Oh, jeez... Probably about ten guys. Douglas, Douglas Tinker was probably considered the top attorney. And then there were a number, any number of people. It's hard, it's hard to remember. Nate Rhodes [?]. There were a number. He was not amongst them.

JSL: And when you say "he," you mean...

07:18:57

JK: By, I mean Hector, Hector DePena. He was a good judge, and a competent attorney. I'm not saying he was a turkey. But I don't know if Hector was up to a capital murder.

07:20:24

JK: I'd be screaming bloody murder. That's where I'd be different. I might miss an appeal point or two, but, damn it, I'd be screaming to the newspapers. "This thing is B.S. This is crazy! Where's the blood? What the hell is going on? This is railroad justice," or something. That can be effective,

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but it can also be ineffective. But I think, if anything, maybe this case called for it. I don't know. That's not my call.

07:24:52

JSL: How would you react to the fact that during the course of preparation for trial, and at trial, Mr. DeLuna testified and he told his attorneys that he had seen a man named Carlos Hernandez there at the scene, struggling with the victim, and committing that crime, and the prosecutor gave an argument to the jury and also spoke to the press saying that Carlos Hernandez is a phantom. He's never been shown to exist; it's a name as common as Jon Smith. If you were to come to find out that that prosecutor three years earlier had interviewed Carlos Hernandez as a suspect in a knifing killing of a young woman in Corpus Christi.

07:25:58

JK: People in the D.A.'s office at that time knew who Carlos Hernandez was. Period. [pause] I know those people personally. I consider them friends. But I can say that without much hesitation. Anybody with any period of time and services in the Nueces County District Attorney's office in that period of time, they knew who Carlos Hernandez was. Period. [pause] So, you take that for what it says, what it

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means.

07:26:39

JSL: Now I'm... One little thing that I meant to ask about before, but didn't. At one point when you were running for office, was there a threat or some kind of, some threat made to you, or some criticism made of you where Carlos Hernandez offered to defend you in some way in that case. Do you remember that incident?

JK: There was a situation where a city councilman was caught doing something he shouldn't have been doing. And I was hired by a group of citizens to prosecute, before the city council, the ouster, pursuant to the city charter, of that person. It was an extremely political case and was front page news for the good part of a month, lead story on the six-o'clock news three, at least three days a week. It was an ethnic, degenerated into, it had really nothing to do with that, but it degenerated into: it was the power structure and that person, Frank Mendez, was their boy, and the outsiders, and they played pretty rough. At one point my son was at home after school, and someone broke into our house. And my son saw him and had enough brains to call the cops. And Carlos found out about it and asked it he, if I wanted him to look into it. Because there was no way the cops could identify the

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person. Couldn't expect them to.

07:29:08

JSL: What did Carlos Hernandez mean by that? What was he offering?

JK: I didn't ask. I would have imagined he would have taken care of the problem. I understood ... I considered it a gesture of respect.

07:29:33

JSL: What did you imagine?

JK: I imagine he would have beaten him within an inch of his life. But that didn't need to be done, and if that had happened ... I mean, there were a number of reasons. Number one, it wouldn't have been the right thing. But number two, in that political atmosphere at that time that would have backfired against us. I didn't report it, except to the police. I did not tell the press about it. It would have been misinterpreted.

07:30:04

JSL: In the course of your work as a criminal defense attorney, did you have occasion to use Carlos Hernandez to obtain information.

07:30:15

JK: Sure, he was an investigator all the time. "Criminal

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defense attorney," nice words. I'm a criminal lawyer. We do not have the respect of most of the bar, but, you know, we do better work. And, yeah, did I? Sure. Why? Because we don't have the money that the state has, and we need investigation too. But you try to do that on, maybe, the most, getting two hundred and fifty, five-hundred dollars. I think now it's more. But, you know, you use what you got. And he was pretty good at times. He could find people, and without harming them could convince them that maybe they needed to talk to me. He was somewhat effective at that. But basically he could find people. He was not threatening people. He was an investigator. Sure cheaper and sure more effective than I would have been. And let me bring up, in the DeLuna case, did not the sheriff get a subpoena from the defense asking them to serve Carlos Hernandez? Well, that's criminal too, but that shows you that the kind of burden that a criminal attorney has. Your subpoenas, despite what is said, aren't worth the paper they're written on. They don't go and look for your guy. Carlos Hernandez, I guarantee you, if you went to Paul. He's a man of integrity. Or Eddie too. "How long would it take you to find Carlos?" They would have said, "Hernandez? Hancock Street. Two minutes?" Certainly within a half a day. No matter where he was. I don't know if

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you verified that, but it's true. And, yeah, it should have been an appeal point, but then again, probably handled by some... I don't know...

07:32:08

JSL: You said that you used Carlos Hernandez to do some investigation for you, to provide information.

JK: Sure I did.

JSL: Did the police have that kind of a relationship with Carlos Hernandez from time to time?

07:32:20

JK: I never asked him if he narc'ed, but I would imagine he did. I don't know. I heard that rumor.

07:33:54

JSL: From your perspective, sitting here in Corpus Christi and Alice, Texas, how serious is this state about its use of the death penalty?

07:34:19

JK: You know, we're as serious as a heart attack. This is Texas. You get sentenced to death in Texas, there's a very good chance you're going to die. And usually, uh... It's been cheapened, but for a long time, it was appropriate. Like every other place in the country, in the seventies, we became overridden with crime, and especially violent crime. This is

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Texas; we sometimes are more violent. And I believe in the death penalty, but I only believe in it in extraordinary circumstances. The Lance [Scott] Peterson case. He don't deserve to be killed. You know, that's a right given by God. I mean, that's God's job. But, you know, I represented a psychopath. I know that guy. I know that if that guy hits the street he kills again. I know that given the opportunity, he will kill in prison. I've been lucky [knocks on wooden table], and in the capital cases that I've tried, no one died. It's not a lot of fun. But I can tell you that I am troubled. I mean, I didn't mind, and actually thought it was correct, when the president was running, when President Bush was running in 2000 and he was asked, "as governor of Texas, during your period of time, X number of men were executed. Do you have any doubts?" What was he supposed to say? Of course he said, "no doubts." But I can tell you, because of the Court of Criminal Appeals in this state, and because of the political tenure, or tenor, of criminal law in this state, I have serious doubts about the enforcement of the death penalty now. I seriously do. The Court of Criminal Appeals in this state, which is our supreme court for criminal cases, is criminal. Not only—I'm not the only person saying that. The Supreme Court of the United States has said that twice, most

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recently less than a month ago. It is so political, and it has gotten to the point where these idiots, because they're republican, decide they have to be ... They're beyond fascist. They're silly. And we have become the joke of the country. The classic case is the lawyer falling asleep in the trial. And our Court of Appeals, Court of Criminal Appeals saying, "Well, that wouldn't have an effect on the jury." Hello! Obviously it did. And obviously the Supreme Court took us to task. And they still ignored it! I mean, these people ... What is impeachment for if not for people like that? They are an affront to the legal profession.

JSL: Knowing what you know about Carlos Hernandez, would it surprise you if he had killed Wanda Lopez with a knife?

07:38:55

JK: I wouldn't be shocked. I mean, that's all I can say. I don't know if he did. I really have no idea. But I wouldn't be shocked. I might be angry at him, but not shocked. I would understand that it was definitely a possibility. I'd be angry at him, but yeah, it's possible. He had that reputation. But I don't know. I do know, what little I know of the DeLuna case, I'm very troubled. And, you know, I'm very troubled about the way it was handled. Not by the attorneys as much as I am with the police department. And, by

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the system itself. I'm very troubled with the system, because we used to, and I think I was talking about this previously, and I think this needs to be said. You know, when the death penalty was re-instituted, In Texas, like everywhere else, we took it seriously. And should. And I thought, when I came to Corpus, I was kind of, you know, It took me a couple years, but I thought we handled it pretty well. The judges took it serious. And, as I had told you previously, they didn't appoint people they didn't think could handle it. And

07:50:44

JSL: What is your, if you would just describe your opinion of the effect on the DeLuna case, using everybody's names and the identifying case, of the fact that there was a visiting...

JK: [coughs] Excuse me.

JSL: ...there was a visiting judge in this case.

07:51:04

JK: A visiting judge comes into a county and, you know, he don't want to make trouble. He's getting paid. Coming into Corpus Christi is not a bad assignment. Usually you stay at the Hershey or at the Marriott downtown. Nice places to stay. You don't want to cause trouble for the judge whose bench you're sitting on, and you don't want to cause trouble

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for the county. That's number one. Number two is, you don't really care, do you? Because you're not going to be here when this is over. Are you? Usually, additionally, these are retired judges. OK. And often those retired judges have been retired by the voters. Usually for a reason. Hello! And, thus, if you get a visiting judge who really decides he wants to get this case moving because he's got to get on a plane by the end of the week, it's going to go fast, and, you know, there's no way of stopping a judge in the middle of a trial if he wants to do the dance. And, come on now, visiting judges. He's-[coughs]. He's going to challenge the county's district attorney? He going to challenge the other judges in the court house? No. He's there not to make waves. And the way to do that is to rule for the state and against the defendant. Because he ain't going to be asked back if he does it another way. And would you rather be in Alice or would you rather be in Corpus for the night?

07:52:38

JSL: Knowing what you know of Carlos Hernandez, would it be a surprise to you to find out, if you did find out, that he had committed the knife killing of Wanda Lopez.

07:53:29

JK: No. Surprised? No.

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07:53:32

JSL: Knowing what you know about how Carlos DeLuna's case was handled by police and tried before this visiting judge, would it surprise you if justice miscarried in this case, and an innocent man was charged, convicted, and executed.

07:53:50

JK: Ashamed, heartbroken. I have friends that were involved, on all sides. Still ashamed. And, it troubles me a great deal.

JSL: If a miscarriage of that sort occurred, would you describe what you think the obligation would be of the folks who had obtained the information to suggest that that miscarriage had occurred and an innocent man had been convicted.

07:54:30

JK: The public needs to know. Too much ... How can I say this? Too often, the rights of criminals and the rights of defendants in capital murder cases are brought forth by people, even the wrongest, by people who, you know, you don't really want to listen to. You don't like their politics. They seem to be against capital punishment. They're not very believable. If it proves out that DeLuna was railroaded and that evidence was withheld, you know, you need some

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credibility here, because that's wrong, and the public needs to understand that sometimes the system breaks down

JSL: OK, I'm going to hand you a piece of paper here. This is again JK, Jon Kelly, 12/9/04, number 3.

JSL: Mr. Kelly, you're holding a picture there that you are holding in your hand.

JK: Right.

JSL: Can you take a look at it. When you saw it over here on the desk, tell me what you said...

08:06:01

JK: As it was being handed to me, I glanced at it, and remember, I'm practiced at looking at pictures. I glanced at it, I said, "that's my boy," meaning Carlos Hernandez. Then, upon reflection, and looking a little closer, and remembering that, at the time.... Carlos, it's Carlos Hernandez without a moustache. Looking closer I recognized that it was DeLuna, Carlos DeLuna, who, I had seen a previous picture of him. But initially.... It would have been of great assistance to have these photos in a line-up, and I believe DeLuna was already saying, fairly early in the case, that Carlos Hernandez was the defendant.

JK: Could have been him too. He looks just like him. [they begin to take his mike off] I mean, that's true, they should

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have done a line-up.