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R E P O R T E R ' S R E C O R D

VOLUME 12 OF 53 VOLUMES

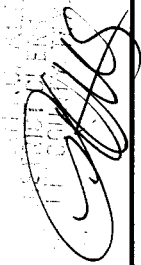
TRIAL COURT CAUSE NO. 380-80047-01

THE STATE OF TEXAS)	IN THE DISTRICT COURT
)	
VS.)	COLLIN COUNTY, TEXAS
)	
IVAN ABNER CANTU)	380TH JUDICIAL DISTRICT

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JURY VOIR DIRE

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On the 30th day of August, 2001, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Machine Shorthand.

1 REPORTER'S RECORD 1
 2 VOLUME 12 OF 53 VOLUMES
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 21 above-entitled and -numbered cause before the
 22 Honorable Charles F. Sandoval, Judge Presiding,
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1 APPEARANCES 2
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 25 VOLUME 12
 CHRONOLOGICAL INDEX
 AUGUST 30, 2001
 INDIVIDUAL VOIR DIRE
 VENIREPERSONS:
 Name/Examination By: STATE DEFENSE PAGE
 ROBERTO J. PLACINO (Cont'd) - - 4 10
 State's Challenge for Cause granted
 MIKEL J. WHITE 11 78 87
 State's Peremptory Strike
 MEETA R. BABU 89 102 102
 Excused by agreement
 LAURA K. ROBINSON 105/198 149 203
 Defense Challenge for Cause granted
 GABRIEL S. DAVID 217 231 252
 Defense Challenge for Cause granted

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 2 CHRONOLOGICAL INDEX (CONT'D)
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 4 DANNY R. CUMMINGS 253/326 291/332
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 14 Defense Peremptory Strike
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 16 Defense Challenge for Cause granted
 17 ROBERTO J. PLACINO (Cont'd) - - 4 10
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 19 LAURA K. ROBINSON 105/198 149 203
 20 Defense Challenge for Cause granted
 21 MIKEL J. WHITE 11 78 87
 22 State's Peremptory Strike
 23
 24
 25

1 PROCEEDINGS: 4
 2 (Open court, defendant present.)
 3 THE COURT: Let's bring in Mr. Placino.
 4 THE BAILIFF: Yes, Your Honor.
 5 (Venireperson Placino present.)
 6 THE COURT: I just want to remind you you
 7 are still under oath.
 8 THE COURT: All right. Mr. High?
 9 MR. HIGH: Thank you, Judge.
 10 VOIR DIRE EXAMINATION (CONT'D)
 11 BY MR. HIGH:
 12 Q. Good morning, Mr. Placino.
 13 A. Good morning.
 14 Q. How are you this morning?
 15 A. I'm fine. Thank you.
 16 Q. Yesterday we spent quite a bit of time talking,
 17 you and I, and you and Ms. Falco, about the death
 18 penalty and a life sentence. And we had discussed the
 19 procedure in a capital murder case. I'm sure you recall
 20 that.
 21 A. Yes, I do.
 22 Q. And I think we had gotten through the procedure
 23 of a guilty verdict, and, you know, the steps that we
 24 would have to take if we get into the punishment phase
 25 of a trial and what the jury would have to consider. Do

08:44 1 you recall that?

08:44 2 A. Yes.

08:44 3 Q. And we'd be called -- we discussed the two
08:44 4 special issues that the jury would have to consider.
08:44 5 Can you recall that?

08:44 6 A. Yes.

08:44 7 Q. And just by way of review, the first special
08:44 8 issue that the jury would have to consider is this one.
08:44 9 And that has to do with whether there is a probability
08:44 10 that the defendant would commit criminal acts of
08:44 11 violence that would constitute a continuing threat to
08:44 12 society, the future dangerousness question. And that
08:44 13 would be after you've heard all of the evidence in the
08:44 14 case, all the evidence that would bear on this issue.

08:44 15 And you said that you could talk with the
08:44 16 other jurors and deliberate. And, in fact, if the
08:45 17 evidence proved that the defendant was a future danger,
08:45 18 that you could answer "yes" to that question. Do you
08:45 19 recall that?

08:45 20 A. Yes.

08:45 21 Q. And then we got to the last special issue, the
08:45 22 look-back issue, the one last look at the defendant.
08:45 23 And it's this long special issue that talks about
08:45 24 circumstances of the offense, his character and
08:45 25 background, his personal moral culpability and whether

08:45 1 there's a sufficient mitigating circumstance or
08:45 2 circumstances to warrant that a sentence of life
08:45 3 sentence imprisonment rather than a death sentence be
08:45 4 imposed. Basically, that's what that special issue
08:45 5 says. And you and I discussed that at length yesterday,
08:45 6 correct?

08:45 7 A. Yes.

08:45 8 Q. And we also discussed the fact that if the jury
08:45 9 says that there is no sufficient mitigating
08:45 10 circumstance, if the answer is no, then that means the
08:45 11 death sentence to a defendant. You understood that?

08:45 12 A. Yes.

08:46 13 Q. But if the jury answered yes, there is a
08:46 14 sufficient mitigating circumstance, that the -- that
08:46 15 would mean a life sentence. We discussed that?

08:46 16 A. Yes.

08:46 17 Q. Then we got to the point where we were talking
08:46 18 about your views on the death penalty, that you don't
08:46 19 agree with the death penalty. And that's understood,
08:46 20 right?

08:46 21 A. Yes.

08:46 22 Q. And we talked about the concept of an oath that
08:46 23 a juror would have to take.

08:46 24 A. Uh-huh.

08:46 25 Q. And that the Judge would swear you in and give

08:46 1 you an oath to follow the law and apply the evidence to
08:46 2 the law. We discussed that yesterday. Do you recall
08:46 3 that?

08:46 4 A. Yes.

08:46 5 Q. And then I threw in a little term called rig,
08:46 6 you know, rigging your answer? And we talked about
08:46 7 football and boxing, and sometimes those events are
08:46 8 rigged. Sometimes players will throw a game. Sometimes
08:46 9 a boxer will throw a game to get a certain result. I
08:46 10 was doing that to try to explain to you the concept of
08:47 11 rig. Do you recall that?

08:47 12 A. Yes.

08:47 13 Q. Did you have an opportunity to think about that
08:47 14 over the evening where it makes more sense to you this
08:47 15 morning, or is it still as confusing as ever?

08:47 16 A. It's still the same as where we left off
08:47 17 yesterday. Because I was kind of confused because when
08:47 18 you say about under oath and rigged, I was trying to
08:47 19 piece all of those, you know, terminologies together.
08:47 20 And if I'll be under oath, and that I should abide what
08:47 21 the law is. And I think the law is that there should be
08:47 22 death sentence, and I don't agree to that death
08:47 23 sentence. So and if you call that rigging, so I
08:47 24 definitely wouldn't like to be a part of this, a part of
08:47 25 the jury.

08:47 1 Q. Okay. Maybe you don't like the term. Maybe I
08:47 2 need to pick another term. I guess what I'm getting at
08:48 3 is, if the Judge instructs you on what the law is and
08:48 4 what the special issues are, and you hear all the
08:48 5 evidence in the case and you get to the end, and in your
08:48 6 heart you feel like there is no mitigating circumstance
08:48 7 or no sufficient mitigating circumstance or
08:48 8 circumstances, the answer should be no.

08:48 9 And even though the Judge has given you an
08:48 10 oath to follow -- to follow the law and apply the
08:48 11 evidence to it, would you answer yes to that question
08:48 12 even though you know the answer should be no?

08:48 13 A. I also have some difficulty sometimes in
08:48 14 comprehension. This has been a problem of mine just
08:48 15 like I have been -- special with some words, you know,
08:48 16 because I'm not used to using these words. And actually
08:48 17 English is not my forte. Can you repeat that, please?

08:49 18 Q. Okay. In other words, if you know that the --
08:49 19 if you answer no to that question, it's going to mean a
08:49 20 death sentence.

08:49 21 A. Yes. I understand that part.

08:49 22 Q. And you believe the evidence shows that it
08:49 23 should be a no answer, the evidence and the law at the
08:49 24 end of the trial, if you believe that in your heart, the
08:49 25 answer should be no. All right?

08:49 1 A. Okay.
 08:49 2 Q. But you know that that means death to a
 08:49 3 defendant?
 08:49 4 A. Yes. Okay.
 08:49 5 Q. Are you instead going to answer yes because you
 08:49 6 don't want a death penalty to be imposed?
 08:49 7 A. If that will compromise my situation of being
 08:49 8 under oath, you know, I have some difficulty in making
 08:49 9 any, in making that choice to say something that would
 08:50 10 implicate me, you know. I wouldn't want to make any
 08:50 11 answer that would implicate me under oath.
 08:50 12 Q. Okay. You used a big word "implicate." We're
 08:50 13 not talking about your guilt. We're not talking about
 08:50 14 any wrongdoing on your part. What we're talking about
 08:50 15 is following your oath and voting your conscience.
 08:50 16 A. Uh-huh.
 08:50 17 Q. Okay. And applying the law to the evidence.
 08:50 18 What I'm asking is: Would you vote as the evidence and
 08:50 19 as the law instructs you, or would you vote yes to save
 08:50 20 the defendant's life even though the evidence shows you
 08:50 21 shouldn't?
 08:50 22 A. Yeah. I think I would vote yes.
 08:51 23 Q. Okay. In other words -- in other words, you
 08:51 24 would disregard your oath as a juror to follow the law
 08:51 25 and follow the evidence?

08:51 1 A. There, again, I have difficulty in that part
 08:51 2 because I know the oath is to follow -- to follow
 08:51 3 whatever the jury is, but --
 08:51 4 Q. Absolutely.
 08:51 5 A. But if it goes to that death thing, I really
 08:51 6 don't want to be, you know.
 08:51 7 Q. Okay. That's fair enough. I'm not saying what
 08:51 8 you are doing is wrong. I'm not judging you. I'm just
 08:51 9 trying to find out the bottom line. In other words, if
 08:51 10 the evidence and the law, you know you should vote no,
 08:51 11 but you would vote yes? You would violate your oath
 08:51 12 because you wouldn't go along with the death penalty.
 08:51 13 You wouldn't be any part of it. That's what you would
 08:51 14 do?
 08:51 15 A. Yes.
 08:51 16 MR. HIGH: All right. Thank you so much.
 08:51 17 I appreciate your candor with me this morning.
 08:51 18 THE COURT: All right. The challenge is
 08:52 19 granted. You are finally excused.
 08:52 20 VENIREPERSON: Thank you.
 08:52 21 (Venireperson Placino excused.)
 08:52 22 THE COURT: The next juror is Mikel White.
 08:52 23 (Venireperson White present.)
 08:54 24 THE COURT: Sir, are you Mikel White?
 08:54 25 VENIREPERSON: Yes.

08:54 1 THE COURT: Am I pronouncing it right?
 08:54 2 VENIREPERSON: Yes.
 08:54 3 THE COURT: I just want to remind you that
 08:54 4 a little over a week ago I put everyone under oath and
 08:54 5 asked them to give true answers to the questions that
 08:54 6 were propounded by the attorneys and by me. So you are
 08:54 7 still under that oath.
 08:54 8 VENIREPERSON: Yes, sir.
 08:54 9 THE COURT: Thank you. You may be seated.
 08:54 10 All right. Mr. Schultz?
 08:54 11 VOIR DIRE EXAMINATION
 08:55 12 BY MR. SCHULTZ:
 08:55 13 Q. Good morning, Mr. White.
 08:55 14 A. Good morning.
 08:55 15 Q. My name is Bill Schultz. You doubtless
 08:55 16 remember me from jury selection Tuesday, a week ago,
 08:55 17 when I spoke to the panel as a whole. The other
 08:55 18 attorneys representing the State of Texas in this
 08:55 19 prosecution are Ms. Gail Falco and Ms. Jami Lowry.
 08:55 20 All three of us are felony prosecutors.
 08:55 21 We -- statistically death penalty cases are rare in
 08:55 22 Collin County, but we do have that experience. And we
 08:55 23 do, perhaps, unhappily spend our lives doing some of
 08:55 24 that type of work.
 08:55 25 At the defense table is, first of all, the

08:55 1 defendant in this case, Mr. Ivan Cantu, in the blue
 08:55 2 shirt. To his left, your right, is Mr. Don High. And
 08:55 3 to Mr. High's left, your right, is Mr. Matt Goeller.
 08:55 4 Those are both fine practicing private attorneys in
 08:55 5 Plano, Texas.
 08:55 6 And my recollection is that when I asked
 08:55 7 everybody, you included, on the general panel, that you
 08:56 8 didn't know any of us; is that correct?
 08:56 9 A. That's correct.
 08:56 10 Q. And it's almost one of those situations in
 08:56 11 life, there might have been some trivial thing or we
 08:56 12 might have met some place that couldn't have been
 08:56 13 important enough that we would ever remember each other.
 08:56 14 So, whether or not we know each other, it would never be
 08:56 15 a problem anyway; is that right?
 08:56 16 A. Yes.
 08:56 17 Q. Is that fair enough?
 08:56 18 A. Yes.
 08:56 19 Q. This is -- the primary purpose of this
 08:56 20 individual voir dire or this individual exchange between
 08:56 21 jurors or prospective jurors and the attorneys is the
 08:56 22 thinking that because these death penalty issues are
 08:56 23 really special, special because they touch on people's
 08:56 24 religion, they touch on people's deepest traits of
 08:56 25 compassion.

08:56 1 And I guess the flip side of that is
08:56 2 probably anger in almost response and punishment against
08:57 3 people who do awful crimes.

08:57 4 I mean, those are pretty heavy emotions
08:57 5 for people. And the thinking is that it's a whole lot
08:57 6 easier if it's a one-on-one process. First of all, it's
08:57 7 a little more private. There are a bunch of people
08:57 8 here. It's not like 75 people, and you are all sitting
08:57 9 there. So it's a lot more private, number one, and
08:57 10 probably we don't miss stuff.

08:57 11 If I'm trying to talk to 15 people at the
08:57 12 same time, it's kind of hard to focus on anybody and
08:57 13 kind of get a feeling or understanding for how they are
08:57 14 reacting. There are certainly no right or wrong
08:57 15 answers. There's nothing that -- I guess the only wrong
08:57 16 answer that could come from a prospective juror or
08:57 17 something, not that it would be wrong not because it was
08:57 18 an incorrect statement, but probably because it would
08:57 19 mislead somebody. That would be a tragedy for -- for us
08:57 20 all.

08:57 21 What I said last Tuesday, a week, is
08:57 22 absolutely true. We don't have any protection from a
08:58 23 juror who chooses to say whatever he or she wants to
08:58 24 say, either to get on the jury or off the jury, other
08:58 25 than the integrity of that juror, and yet it always

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08:58 1 works. There is something about the jury system that is
08:58 2 almost like -- sacred is a bad word, but certainly very
08:58 3 special. And there is something so cleansing about the
08:58 4 whole process. People really are honest. It is the
08:58 5 most amazing thing, so I know you will be.

08:58 6 You've indicated, first of all, that you
08:58 7 are a proponent, or that is that you are in favor of the
08:58 8 death penalty, or at least that was true when you filled
08:58 9 out the questionnaire. And why I say that, and I'm not
08:58 10 like prophetic or anything, but if we give people a
08:58 11 questionnaire before really talking to them, you are
08:58 12 sitting in there in court and thinking: What is the
08:58 13 jury thinking?

08:58 14 Well, they think they are just going to a
08:58 15 regular trial. It might be a civil case or it might be
08:58 16 a burglary or traffic or whatever it might be. Next
08:59 17 thing you know the Judge says, welcome to a capital
08:59 18 murder case. And, you know, that having been said and a
08:59 19 little bit of an explanation perhaps, you are given a
08:59 20 questionnaire. And the questionnaire more or less says:
08:59 21 Tell us how you feel about this and that on issues and
08:59 22 things you have not done a whole lot of thinking on.

08:59 23 I don't know. I don't know how much time
08:59 24 you spent thinking about the role of prosecutors and
08:59 25 defense attorneys because there are questions on it like

08:59 1 that. But those are almost like first-impression type
08:59 2 questions that are given to the jury because it's only
08:59 3 afterwards that the lawyers talk to you and try to tell
08:59 4 you a little bit more about how the process is and what
08:59 5 all is involved.

08:59 6 And so sometimes, almost always we have
08:59 7 jurors that come in and say, since the time when we
08:59 8 filled out that questionnaire and the lawyers talked to
08:59 9 us about capital murder and death penalty litigation,
08:59 10 I've done lots of thinking about it. You know, I can't,
08:59 11 maybe not 24 hours a day, but I have been doing a lot of
09:00 12 thinking and, you know, I watch television. And I'll
09:00 13 see this -- there is a capital murder trial going on in
09:00 14 Dallas. That's a prison escapee that murdered the
09:00 15 police officer. And I see that on TV, and that makes me
09:00 16 think about capital punishment. And I see this and I
09:00 17 see that, and I see about DNA labs being slow to correct
09:00 18 things, and all that kind of stuff.

09:00 19 And so sometimes jurors come in and say,
09:00 20 you know, I thought I could do it; but now I have
09:00 21 actually changed from thinking I could do it to having
09:00 22 to decide whether I could do it or not. Sometimes they
09:00 23 come in and say, I don't think I could do it.

09:00 24 Other jurors come in and say, you know,
09:00 25 it's easy. Talk was cheap when I was in my living room

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09:00 1 saying we have to do something about these violent
09:00 2 criminals. And then I got up there and I realized when
09:00 3 the State started talking about the actual process and
09:00 4 the execution and actually putting a man on a gurney and
09:00 5 strapping him down and humanely, but nevertheless
09:01 6 consciously, causing his death.

09:01 7 I thought about it. It's grim, but I'm as
09:01 8 much for it as I've ever been. It didn't change my
09:01 9 resolve. It just -- it almost confirmed what I've
09:01 10 always believed. So everybody is different that way.

09:01 11 Well, let me ask you this, first of all,
09:01 12 when I talk about that, when I told you very clearly and
09:01 13 the rest of the jury what our purpose was and what we're
09:01 14 doing and what decisions we've made, you knew I wasn't
09:01 15 trying to be amusing or entertaining with anybody when I
09:01 16 talk that way. You didn't take it that I was somehow
09:01 17 ghoulish or enjoy talking about it, I hope?

09:01 18 A. No.

09:01 19 Q. And let me tell you, I've not asked you this
09:01 20 question, but one thing I know about you because I know
09:01 21 about every human being and you obviously are, you don't
09:01 22 wake up in the morning and say, boy, aren't I lucky?
09:01 23 You know, I thought my life was full and now, but now I
09:01 24 have the chance to participate in killing somebody. You
09:01 25 didn't feel that way, did you?

09:01 1 A. No.
 09:01 2 Q. None of us do, either. Absolutely. I'm no
 09:02 3 different than the lawyers sitting over at the table. I
 09:02 4 don't know the defendant. I doubt he woke up this
 09:02 5 morning saying, gee, aren't I lucky that maybe they are
 09:02 6 going to kill me.

09:02 7 Nobody finds this kind of work pleasant or
 09:02 8 funny or amusing. And I bet everybody in this courtroom
 09:02 9 wishes we weren't here with this kind of -- this kind of
 09:02 10 situation. But I've come to grips with it. People at
 09:02 11 this table have come to grips with it. Certainly the
 09:02 12 defense attorneys have come to grips with it in some
 09:02 13 form, depending on how they see it or how they view it.

09:02 14 And we are all professionals. And a juror
 09:02 15 can be a professional about it too and do the job that
 09:02 16 this great State imposes upon us. And that is to
 09:02 17 administer justice fairly and give effect to the laws of
 09:02 18 the State because that's what we all are really doing
 09:02 19 here.

09:02 20 We are administering justice and giving
 09:02 21 effect to the laws of the State of Texas, however those
 09:02 22 laws direct us all. Does that make sense to you?

09:03 23 A. Yeah.

09:03 24 Q. Have you changed, either in your view of the
 09:03 25 death penalty or the degree to which you support it,

09:03 1 since this all began?

09:03 2 A. No.

09:03 3 Q. Then I think I should ask you -- then I think I
 09:03 4 should ask you: What's the main reason that you find
 09:03 5 yourself in favor of the death penalty? What's your
 09:03 6 thinking that leads you to say, yes, I favor the death
 09:03 7 penalty?

09:03 8 A. To me, probably the only just reason I think
 09:03 9 you could have is that it's reality, a just reward.
 09:03 10 Other reasons result from that. For example, deterrent.
 09:03 11 I think it would be very inappropriate to impose a death
 09:03 12 sentence on someone to deter something else.

09:03 13 Q. Is that because you think it wouldn't work or
 09:04 14 you just think --

09:04 15 A. No. I think you are dealing with someone,
 09:04 16 especially in a case with the death penalty, the only
 09:04 17 reason can be for that case. And that's why, the
 09:04 18 only -- my personal opinion, the only reason you could
 09:04 19 support that is just reward. Although, the deterrent
 09:04 20 factor I believe is there, but it's a result of, not a
 09:04 21 reason for.

09:04 22 Q. Well, there are probably four reasons that
 09:04 23 people have offered in -- in support of punishment in
 09:04 24 general. And only three of which probably apply with
 09:04 25 the death penalty as a particular kind of punishment.

09:04 1 The four things that people have pointed to as purposes
 09:04 2 of punishment are, I don't want to use the term revenge
 09:04 3 because that -- I think that sounds a little more
 09:05 4 negative than what you are talking about.

09:05 5 My preference is society's measured
 09:05 6 response to an infraction against it. But I may just be
 09:05 7 playing word games. Revenge just seems negative. It
 09:05 8 might be kind of what it is. It's society's retaliation
 09:05 9 against people that do awful things, and maybe that's
 09:05 10 accurate. That's kind of what -- that's kind of the
 09:05 11 idea you are talking about, I think; is that correct?

09:05 12 A. Uh-huh.

09:05 13 Q. And that is a legitimate basis for punishment.
 09:05 14 It can have either biblical roots. I mean, you can
 09:05 15 approach it from that Old Testament concept of an eye
 09:05 16 for an eye. I guess if you scratch a guy's arm, he
 09:05 17 ought to get his arm scratched back. And if you punch
 09:05 18 him in the nose, maybe your nose gets punched. And if
 09:05 19 he plucks your eye out -- you know, that kind of idea?
 09:05 20 And if he kills, then he gets killed. Is it that kind
 09:05 21 of notion?

09:05 22 And even if you don't look biblically,
 09:05 23 there are people that say, it seems to make sense that
 09:06 24 the worse your violation of society's rules, the worse
 09:06 25 your punishment should be. You park too long at a

09:06 1 parking meter, they give you a ticket and you pay ten
 09:06 2 bucks or something for a fine. You steal some
 09:06 3 cigarettes, that's a small fine. If you steal
 09:06 4 somebody's car, it's some time. You know, that kind of
 09:06 5 idea?

09:06 6 And, finally, when you work your way up to
 09:06 7 really awful forms of murder, the punishment measure,
 09:06 8 measurementwise ought to be the same, and you should
 09:06 9 be -- you should be killed. Deterrence is another one.
 09:06 10 And although I'm hearing you say that that doesn't seem
 09:06 11 to be high on your list of reasons for punishment, the
 09:06 12 deterrent aspect, the notion still goes that, for at
 09:06 13 least some of us, the idea of severe punishment might
 09:06 14 control us in our behavior. And that maybe people
 09:07 15 contemplating what a capital murder did would have to
 09:07 16 say, you know, if I do what this person did, I'm going
 09:07 17 to get the same thing.

09:07 18 If I break out of prison, go burglarize a
 09:07 19 sporting goods store to get guns and ammunition and when
 09:07 20 the police come, if I kill a policeman, I'm liable to
 09:07 21 get the same thing. Some people may be that way. And
 09:07 22 yet you got to ask yourself probably, do people who do
 09:07 23 those kinds of crimes, do they think, for thinking that
 09:07 24 way and the thought processes are that good. You got to
 09:07 25 ask yourself, "Why would they do it anyway?"

09:07 1 But, you know, I'm thinking about Timothy
09:07 2 McVeigh. I don't guess we've had anything quite like
09:07 3 him before so that we could say, you know, old Johnny
09:07 4 blew up the courthouse ten years ago, and they gave him
09:07 5 the death penalty. So maybe I shouldn't blow up
09:07 6 Oklahoma City. But even if he had, he wasn't thinking
09:07 7 about deterrence. He was going to do what he wanted to
09:07 8 do, and he's prepared to suffer the consequences, at
09:08 9 least if he got caught. Don't you think probably he
09:08 10 wasn't going to be deterred?

09:08 11 A. Right.

09:08 12 Q. And the whole nature of it tends to be callous
09:08 13 and impulsive. And if the people have the ability to
09:08 14 think logically, they wouldn't be doing that stuff
09:08 15 anyway. Don't you agree?

09:08 16 A. To some -- yeah.

09:08 17 Q. There are exceptions to some of our tax laws.
09:08 18 You know, I got to agree that if the IRS decided they
09:08 19 were never going to put anybody in prison for not paying
09:08 20 taxes, you know our treasury is going to get smaller. I
09:08 21 mean, anybody knows that. That's a fact. I'm not
09:08 22 saying you are not -- I'm not saying you and I aren't
09:08 23 law abiding.

09:08 24 A. My statement was more in terms of the death
09:08 25 penalty. That extent of punishment versus punishment,

09:08 1 locked up for something else. When you reach that
09:08 2 level, deterrent, although a deterrent ideally seems
09:09 3 like a good arguing factor, when you impose a death
09:09 4 sentence on someone, that's a -- not really fair to look
09:09 5 at that as deterring someone else, I guess.

09:09 6 So it's a deterrent. I look at it
09:09 7 different, only in the death penalty. For life
09:09 8 sentences, for other sentences, harsh punishment is a
09:09 9 good deterrent, and I support those measures.

09:09 10 Q. It's just that maybe the example that we would
09:09 11 set is not as important as the person's life taken,
09:09 12 setting an example. Is that kind of what you are
09:09 13 saying?

09:09 14 A. Yes.

09:09 15 Q. That makes perfect sense to me. Another
09:09 16 purpose for punishment, and remember I told you there
09:09 17 are four of them. One doesn't apply in death penalty
09:09 18 cases, really. It doesn't apply in giving a death
09:09 19 sentence. It may apply in trying to decide on whether
09:09 20 to give the death sentence. That's the concept of
09:10 21 rehabilitation.

09:10 22 I mean, whatever else we say about the
09:10 23 death penalty, imposing it probably doesn't have
09:10 24 rehabilitation factored anywhere within it. I mean, I
09:10 25 could -- I could try to come up with a sophisticated

09:10 1 argument about how, you know, it does some ultimate
09:10 2 rehabilitation because it comes in kind of connection
09:10 3 with your -- with your why you are here and where you
09:10 4 are going kind of thing. But that's just -- that's just
09:10 5 talk.

09:10 6 The fact of the matter is, imposing the
09:10 7 death penalty doesn't have anything to do with trying to
09:10 8 rehabilitate the defendant. It may have to do with,
09:10 9 number one, some people's belief that a particular
09:10 10 defendant may not be rehabilitated. He's not amenable
09:10 11 to rehabilitation.

09:10 12 If, the flip side, a life sentence may be
09:10 13 imposed through the legitimate answer of those special
09:10 14 issues because people might believe that the defendant
09:11 15 has some hope for rehabilitation. But that's the one
09:11 16 that's missed -- I think you'd agree with me -- if I'm
09:11 17 arguing for the death penalty, I'm not suggesting let's
09:11 18 try to rehabilitate the defendant because there would be
09:11 19 nothing to rehabilitate him.

09:11 20 And the fourth one and ironically, the one
09:11 21 that probably finds its way in the forefront of these
09:11 22 special issues, not the other three that I've talked
09:11 23 about, the fourth one is protection of society. The
09:11 24 notion that a death penalty is maybe society's
09:11 25 self-defense.

09:11 1 The notion that, however somebody got the
09:11 2 way he or she became, whether good or bad, we don't have
09:11 3 to allow ourselves to be the victims of that person no
09:11 4 matter what made them that way or what excuses they may
09:11 5 choose to offer for how they got that way. And why I
09:11 6 say that is because most of my questions are going to be
09:12 7 cast in terms of assuming that the defendant has been
09:12 8 found guilty of capital murder. That the jury, the
09:12 9 first phase of the trial, listened to all the evidence
09:12 10 and find the defendant committed the offense of capital
09:12 11 murder, and you find that beyond a reasonable doubt.

09:12 12 And I'm not glossing over that or
09:12 13 trivializing that process. We have a burden of proof.
09:12 14 They don't have any burden of proof. And if we prove
09:12 15 he's guilty of capital murder, we're entitled to that
09:12 16 vote and that finding from the jury. But I'm not going
09:12 17 to worry so much about discussing those issues with you
09:12 18 at this time because we're either going to do it or
09:12 19 we're not. And trying to explain to you how we're going
09:12 20 to do it, doesn't much matter. I think we'll do it.
09:12 21 Perhaps the defense thinks we won't, and that will be up
09:12 22 to the jury for when we finish that.

09:12 23 But let's assume that you found the
09:12 24 defendant guilty of capital murder, then as you know
09:12 25 now, and perhaps before you came up here last Tuesday, a

09:13 1 week, there is no automatic death sentence in Texas.

09:13 2 I wish we didn't call it capital murder
09:13 3 because to many people that, when we give that
09:13 4 questionnaire: Should people always get the death
09:13 5 penalty if convicted of capital murder? A lot of people
09:13 6 put "yes" because they don't understand, you know,
09:13 7 there's anything else.

09:13 8 It's almost like saying, if a guy gets a
09:13 9 prison sentence, should he actually have to go? In
09:13 10 their minds they think it is automatic because they
09:13 11 don't keep up with the law very much.

09:13 12 But you certainly understand either now or
09:13 13 always have that capital murder is not an automatic
09:13 14 death sentence. It's automatically life or death.
09:13 15 Those are the only two possibilities. But it's only
09:13 16 automatic in the sense that, once the questions are
09:13 17 answered, results follow from the answers to those
09:13 18 questions. And those results do follow automatically
09:13 19 from how you answer the questions. Does that make sense
09:13 20 to you?

09:13 21 A. Uh-huh.

09:13 22 Q. First question has to do with what we call the
09:13 23 probability of being a threat to society. The
09:14 24 probability that the defendant will commit criminal acts
09:14 25 of violence that is a continuing threat to our society.

09:14 1 Do you see that question there?

09:14 2 A. Yes.

09:14 3 Q. We really didn't quite do the question
09:14 4 perfectly because that's right out of the statute.
09:14 5 That's the question that's asked, but we should have put
09:14 6 before that: Do you find beyond a reasonable doubt that
09:14 7 the defendant will probably -- there is a probability
09:14 8 the defendant will engage in criminal acts of violence?
09:14 9 But that's our burden beyond a reasonable doubt to prove
09:14 10 to you that that question should be answered yes.

09:14 11 Does that look like a question that you
09:14 12 would -- that you have the ability to look at the
09:14 13 evidence and understand that question and answer it yes
09:14 14 or no according to the evidence?

09:14 15 A. Yes.

09:14 16 Q. And your standards may be different from your
09:14 17 neighbors on the jury. But you understand that
09:14 18 question, while it appears to require us to predict the
09:14 19 future, it doesn't require us to predict it with any
09:14 20 certainty the way it's worded.

09:15 21 We use the term probability, and it sure
09:15 22 would be nice if we'd define that word to the jury
09:15 23 because to different people with different backgrounds
09:15 24 that means different things.

09:15 25 Have you ever listened to a weather

09:15 1 forecaster, for example, and the forecaster says,
09:15 2 there's a 20 percent probability of rain today or 20
09:15 3 percent probability of showers? Have you ever heard
09:15 4 them talk that way?

09:15 5 A. Yes.

09:15 6 Q. They don't do that so much anymore. Now they
09:15 7 talk about chance because that seems to be the new
09:15 8 language. But that's an interchangeable term with the
09:15 9 weather people. If I talk about the -- the probability
09:15 10 of me flipping a coin ten times and it coming up heads
09:15 11 ten times, there is a probability of that happening. I
09:15 12 forget what it is. It might be one in ten. But
09:15 13 whatever it is, if you have a math background, you'll
09:15 14 know exactly. It's probably a one in ten that it will
09:15 15 come up, but I don't know.

09:15 16 THE COURT: Just a minute. What is it?

09:15 17 VENIREPERSON: My background?

09:15 18 THE COURT: No. What is the probability?

09:16 19 VENIREPERSON: It would be 1 over 10
09:16 20 factorial; but I would need a calculator to tell you.

09:16 21 THE COURT: But it would be huge.

09:16 22 VENIREPERSON: Yes.

09:16 23 Q. (BY MR. SCHULTZ) If I get a coin out and the
09:16 24 Judge will let us, we could do that for days and we're
09:16 25 probably never going to have that happen. Is that fair

09:16 1 enough?

09:16 2 A. Yes.

09:16 3 Q. But there is a quote probability?

09:16 4 A. Yes.

09:16 5 Q. But in fairness to both sides it seems to me
09:16 6 that when they talk about probability, they got to mean
09:16 7 more than theoretically it could happen.

09:16 8 A. Uh-huh.

09:16 9 Q. It could snow today. There is a probability
09:16 10 it's going to snow outside here in Texas, August. Real
09:16 11 remote. It may never happen before, but there is a
09:16 12 probability. But you and I know we don't need to be
09:16 13 putting chains on our car today, and nobody would ever
09:16 14 do that. And I think that's probably true for that
09:16 15 question. I think it's at least got to be a legitimate
09:16 16 functional probability.

09:16 17 And let me tell you why. Suppose, for
09:16 18 example, a defendant, when he got arrested for capital
09:17 19 murder, got shot by the police, and it didn't kill him,
09:17 20 but it hit his spine and paralyzed him from the ears
09:17 21 down. And so about the only movement he's got is maybe
09:17 22 he can move his eyebrows and blink his eyes kind of
09:17 23 thing. That's the only movement he's got. And we're
09:17 24 trying to deal with the question: Is this person
09:17 25 probably going to be a threat to our society doing

09:17 1 criminal acts?

09:17 2 Surely that answer would have to be no in
09:17 3 such a circumstance. Even though he's a capital
09:17 4 murderer and would have been dangerous had he not gotten
09:17 5 shot and paralyzed. Are you with me on that?

09:17 6 A. Yeah.

09:17 7 Q. And if I bring a doctor in and the doctor says,
09:17 8 yeah, but I've seen these kind of injuries before. And
09:17 9 if that 1 in about 10 factorial times the spinal cord
09:17 10 repairs itself and he can walk again and do crimes,
09:17 11 that's a probability. But I don't think any of us can
09:18 12 answer that question yes on that fact situation. Are
09:18 13 you with me? There's no real probability.

09:18 14 A. Right.

09:18 15 Q. There's no likelihood. On the other hand, the
09:18 16 flip side is also true. No matter what the likelihood
09:18 17 is, we could always say, well, we don't know with
09:18 18 certainty that that's going to happen.

09:18 19 Like this guy Rivas down in Dallas. I
09:18 20 mean, they could give him a life sentence. And they
09:18 21 can't -- they can't even say with certainty that he'll
09:18 22 be dangerous to anybody in the future. It sure looks
09:18 23 like it from his past, but nobody can say whether he's
09:18 24 going to be dangerous in the future. But they can say
09:18 25 there is a probability, and they can answer those

09:18 1 questions -- that question yes.

09:18 2 Do you see yourself as being able to
09:18 3 answer that question just fine just based on the
09:18 4 evidence?

09:18 5 A. Yes.

09:18 6 Q. Now, what evidence might you look at in
09:18 7 answering that question? Well, it would seem the most
09:18 8 important evidence of trying to answer that question
09:19 9 might be the crime itself or the evidence of that crime.
09:19 10 Why I say that is because you will consider all sorts of
09:19 11 things in deciding the -- the guilt of the defendant in
09:19 12 the first phase of the trial.

09:19 13 You will consider motive, although we
09:19 14 don't have to prove motive. And it's often hard for
09:19 15 people to understand what the motive is. It's
09:19 16 sometimes -- it's stuff. It's so different from how we
09:19 17 think or how we approach life that we can't -- that we
09:19 18 can't make any sense out of it. It's almost like
09:19 19 Oklahoma City. We may think we understand McVeigh's
09:19 20 motive in doing it, but it's so different from how we
09:19 21 think, that we really can't.

09:19 22 I mean, you and I probably get annoyed
09:19 23 with the government all the time for what they do here
09:19 24 or there. Some decision that maybe gets made, but we
09:19 25 would no more think of doing such a thing to innocent

09:19 1 people and taking their lives that way than -- than --
09:20 2 than thinking about flying, right?

09:20 3 A. Yes.

09:20 4 Q. But you might look at it -- you might say,
09:20 5 what's the motive? Why did he do it? Why did he have
09:20 6 to do it? For example, was it necessary in his mind to
09:20 7 do this killing, or is it just something that he did?
09:20 8 I'm trying to think of an example.

09:20 9 Somebody is a witness to some real bad act
09:20 10 that you've done, and you don't want anybody knowing it.
09:20 11 And so you go kill that person to keep them from ruining
09:20 12 your life by killing what they've observed you do.
09:20 13 That's pretty bad, but at least it's sort of
09:20 14 situational. Maybe it makes sense. And except for that
09:20 15 circumstance, it wouldn't happen.

09:20 16 Somebody murders your children, and the
09:20 17 Judge turns him loose. No disrespect to Judge Sandoval.
09:20 18 But some liberal judge somewhere else turns the killers
09:20 19 of your children loose, and you go kill them. And we
09:20 20 could maybe understand why you would go kill that person
09:21 21 because your children may be hurt.

09:21 22 And something happens to you, and you
09:21 23 decide: I want to go do that. But if you could
09:21 24 consider all that in answering that question, why did
09:21 25 you kill? What were your options? What was your

09:21 1 motive? How did you feel about it right after you did
09:21 2 it? Did you stand up for what you've done and turn
09:21 3 yourself into the police and say, yes, I committed this
09:21 4 crime, and now I'm ready to accept responsibility, or
09:21 5 did you run off?

09:21 6 Did you -- did you show remorse when you
09:21 7 ran off before you got arrested and people started
09:21 8 watching you, and you knew you were going to be tried
09:21 9 for capital murder? When did your remorse start showing
09:21 10 itself? You can consider things like: How did you talk
09:21 11 about it?

09:21 12 For example, did you point to it with
09:21 13 horror and cry when you are talking with witnesses.
09:21 14 When you are talking with your friends, do you say, my
09:21 15 God, what have I done? What do I do? I'm distraught.
09:21 16 I'm upset. Or do you almost brag about it?

09:21 17 Do you -- I mean, do you say, you know,
09:21 18 I've done this sort of thing before and, you know, and
09:21 19 I'll do it again. Those kinds of things are all part of
09:21 20 what you consider, may consider on those questions. Do
09:22 21 you understand?

09:22 22 A. Yes.

09:22 23 Q. And other things may be considered. For
09:22 24 example, both sides have the right to offer evidence on
09:22 25 that question. We don't have to. The State has no

09:22 1 obligation to bring you a bit more evidence at the
09:22 2 second part of the trial than the first.

09:22 3 We can stand up and say, the first
09:22 4 evidence is why we believe these questions should be
09:22 5 answered to cause a death penalty. We can do that. The
09:22 6 defense has a right, just as the first part of the
09:22 7 trial, to sit at the defense table and not do anything
09:22 8 but behave. They don't have to ask questions, but they
09:22 9 will. And they are very capable, and I know they will,
09:22 10 but they don't have to. That's -- they will choose to
09:22 11 be very capable. They don't have to be.

09:22 12 And the same thing with that question.
09:22 13 They don't have to offer any evidence to you that shows
09:22 14 that the defendant's not dangerous. They can sit there
09:22 15 and be polite and behave. And the burden of proof stays
09:22 16 on the State on that question.

09:23 17 I expect the evidence will be offered by
09:23 18 the defense just because it often is. And I can't
09:23 19 imagine why it wouldn't be, but that's just me thinking.
09:23 20 It's none of my business what they do.

09:23 21 I expect the evidence would be offered to
09:23 22 try to explain and diminish the significance of a
09:23 23 capital murder, not because the approach is that it
09:23 24 doesn't matter. But rather because the approach would
09:23 25 be: Here's the defendant, and here's his background,

09:23 1 and here's his tragedies in his life, or his sadness in
09:23 2 his life.

09:23 3 And they prove two things: One, that he's
09:23 4 not really dangerous. This was just some unfortunate
09:23 5 situation that probably wouldn't happen again. It might
09:23 6 be offered upon this issue to show that he won't commit
09:23 7 acts of violence or be a continuing threat to society.
09:23 8 And it might be also offered on the second special issue
09:24 9 you'll be dealing with. And would relate to this one
09:24 10 also, which is the mitigation question.

09:24 11 You know, I don't need you to read that
09:24 12 right now. I'm just going to leave that up there and
09:24 13 ask you to do that in a second, if you would. I
09:24 14 believe, if I've read your questionnaire right,
09:24 15 Mr. White, and it's been a while, I believe you've been
09:24 16 involved in some prison ministry; is that right?

09:24 17 A. Yes.

09:24 18 Q. I want to -- and since it is a ministry, I'm
09:24 19 going to make the assumption, maybe incorrectly, that
09:24 20 it's some type of Christian ministry?

09:24 21 A. Yes, it is.

09:24 22 Q. Would you tell me a little bit about your faith
09:24 23 and what denomination, if any, you find yourself
09:24 24 connected to?

09:24 25 A. I attend a Freewill Baptist Church, which is

09:24 1 a -- it is Baptist. A little actually more conservative
09:24 2 than Baptist, if you can believe such a thing exists.
09:24 3 I, very, very active in my church. The Kairos Prison
09:25 4 Ministry is, I attended a Walk to Emmaus, which is a
09:25 5 nondenominational, predominantly sponsored by a
09:25 6 Methodist group, which is a Christian short course in
09:25 7 Christianity.

09:25 8 One of the related ministries related
09:25 9 things, once you get involved in Emmaus is Kairos, and
09:25 10 it's a prison ministry.

09:25 11 Q. How do you spell that?

09:25 12 A. K-A-I-R-O-S; and E-M-M-A-U-S. The Kairos
09:25 13 ministry, we go down -- I went this last spring was the
09:25 14 first time I participated. Following that each month,
09:25 15 each second Saturday of each month, we return. But it's
09:25 16 a three-day ministry when we go down there the first
09:25 17 time. 42 candidates who will attend the weekend
09:25 18 retreat.

09:26 19 Q. I believe I know the answer, I believe. I'm
09:26 20 not a Baptist. I'm a Methodist. And there are probably
09:26 21 all faiths sitting at these tables, actually. One of
09:26 22 the defense attorneys has been lifelong active in the --
09:26 23 I won't say traditional Southern Baptist Church, but
09:26 24 certainly the, what we consider to be the more
09:26 25 mainstream Southern Baptist convention, I guess.

09:26 1 I don't believe there would be anything in
09:26 2 your faith in terms of the teaching of the Freewill
09:26 3 Baptist Church that's against the death penalty; am I
09:26 4 correct about that?

09:26 5 A. Yes.

09:26 6 Q. And I doubt -- I doubt, but I could be wrong.
09:26 7 I would doubt that there is an official position that
09:26 8 there ought to be a death penalty. Am I right on that?

09:26 9 A. If there is, I wouldn't -- I never heard of
09:26 10 such a statement.

09:26 11 Q. Is it more that there are a couple sets of laws
09:26 12 going on? One is maybe God's law and the other is maybe
09:27 13 the State's law, and the two kind of work independently?
09:27 14 Is that kind of more the idea, do you feel like, from
09:27 15 your church? Not a separation of church and state, but,
09:27 16 rather, the church doesn't need to involve itself in
09:27 17 whether we do or don't have a death penalty. That's up
09:27 18 to the individual conscience of the people. Is that how
09:27 19 you feel it probably is or --

09:27 20 A. I would say that's probably true. I never felt
09:27 21 any compelling one way or another that way from the
09:27 22 church or pulpit or whatever.

09:27 23 Q. I say that because at least two faiths that I
09:27 24 know of and probably a lot more, I don't know much about
09:27 25 Eastern religion. I have a sense that probably some of

09:27 1 the Eastern religions -- I'm thinking of such things as
09:27 2 Buddhism, Zoroastrianism and those kinds of things. I
09:27 3 have a sense that they also are opposed to capital
09:27 4 punishment.

09:27 5 I don't know about the -- I don't know
09:27 6 about Islam. Given some of the Jihads and stuff, I have
09:28 7 sort of a sense that maybe they are not so rigid about
09:28 8 death penalties and that sort of thing. But I do know
09:28 9 that the Roman Catholic Church, at least, strongly
09:28 10 opposes the death penalty. I don't know that it makes
09:28 11 it a sin for its parishioners to be on a jury that does
09:28 12 that. But I know they have an official position on the
09:28 13 subject, and it's against the death penalty. It may
09:28 14 have to do with maybe consistent with their view on
09:28 15 reproductive issues like abortion. But at the same time
09:28 16 I know that church has an official position.

09:28 17 I know the Society of Friends, the
09:28 18 Quakers, has an official position on it. And there are
09:28 19 probably some other, what we would call Protestant
09:28 20 faiths, that actually have a position opposing the death
09:28 21 penalty.

09:28 22 I am curious because I can tell you are a
09:28 23 man of faith and not only a man of passive faith, but
09:29 24 what you do is very impressive because it's an act of
09:29 25 faith when you go to the prison ministries and other

09:29 1 things that I'm sure you do.

09:29 2 I'm curious if you think that a person who
09:29 3 has legitimately converted or returned to Christian
09:29 4 beliefs, should that person therefore not be subject to
09:29 5 the death penalty if that's occurred?

09:29 6 A. To be honest, that's something I have struggled
09:29 7 with for, and not since I heard this was a death penalty
09:29 8 case. That's something that I debated amongst my fellow
09:29 9 Christians, taking both the for and the against just to
09:29 10 hear their arguments.

09:29 11 Q. Tell me what the arguments -- before I pin you
09:29 12 down, tell me what the arguments on both sides are.

09:30 13 A. In short, it would be mainly just, what is
09:30 14 deserving versus what is love and compassion that Christ
09:30 15 has shown and the forgiveness that comes with it.

09:30 16 Q. Okay. I mean, I'm not -- if you think I
09:30 17 disagree, we're just talking. And there's no
09:30 18 disagreement or wrong answers, like I've said before.
09:30 19 You know, one argument to some people of faith make
09:30 20 because I hear it, this is what I do for a living. I
09:30 21 talk to people just like you, hour after hour, day after
09:30 22 day.

09:30 23 Some people say, you know, I would
09:30 24 actually be much more comforted if I found that the
09:30 25 defendant had received some religious conversion and

09:30 1 acceptance of Christ, because that would free me to
09:30 2 answer those questions more fairly. And what they
09:30 3 say -- and if you stop and think about it, it makes
09:31 4 perfect sense. And they say, I'm not merely as
09:31 5 concerned about sending him to death as I am about
09:31 6 sending his soul to hell.

09:31 7 And that's a real concern to me. And they
09:31 8 say, I would be much more comforted if I found that he
09:31 9 converted his life to Jesus because then I would know
09:31 10 he's going to go to a better place. I could do my job
09:31 11 on those questions and answer them fairly, and I
09:31 12 wouldn't have the same concerns that I might if he
09:31 13 hadn't? Does that argument make any sense to you? Have
09:31 14 you heard it?

09:31 15 A. I've heard it, yes.

09:31 16 Q. What do you think of that argument?

09:31 17 A. I think there needs to be a separation in death
09:31 18 manner. The comforting that I would get -- I don't
09:31 19 think you make a judgment one way or another based on
09:31 20 that. Either you support, as the Bible puts it, there's
09:31 21 laws of seizure in the Bible and you support that,
09:31 22 especially if they are not in conflict, or you don't.
09:32 23 Whether someone believes or not, gives you peace when
09:32 24 the -- they die.

09:32 25 But that isn't in my faith. That is not

09:32 1 up to me. That's not up to anyone else witnessing.
09:32 2 That's a freewill belief. That's a choice someone
09:32 3 makes. That doesn't -- whether someone accepts Christ
09:32 4 or doesn't, it's not a -- it's not going to change my
09:32 5 approach to speaking, to talking or something else.
09:32 6 That's a decision they make and the consequences that
09:32 7 they get from that decision.

09:32 8 Q. What I'm -- and where I'm coming from, it's not
09:32 9 just simply: Tell me about how you think. Because I
09:32 10 would fully anticipate -- I'm not saying that it will
09:32 11 happen, but experience teaches me that we may have
09:32 12 evidence that since the time of a -- in a hypothetical
09:33 13 case, let's do it that way.

09:33 14 In a hypothetical case, that since the
09:33 15 defendant became arrested and got charged with capital
09:33 16 murder, and this hypothetical defendant may have started
09:33 17 demonstrating a fever for Christianity. And the fever
09:33 18 may take the form of active stuff or writing letters or
09:33 19 trying to establish a jailhouse ministry or a whole host
09:33 20 of things like that.

09:33 21 And it's probably not ever for me to judge
09:33 22 anyway. Although, I got to tell you, I sometimes am
09:33 23 very cynical about that. Because here's what I know: I
09:33 24 know that all other things being equal, people of faith
09:33 25 would respond favorably to somebody else pursuing that.

09:33 1 I mean, that's how we all are. Is that a fair
09:33 2 statement?

09:33 3 A. Yes.

09:33 4 Q. I mean, I don't know how you do it in your
09:33 5 church exactly, but I would imagine the people come
09:33 6 forward at the end and either renew their vows or
09:34 7 more -- that's half of the congregation. Do you know
09:34 8 what I mean?

09:34 9 A. Yes.

09:34 10 Q. And they are the same people they were in some
09:34 11 respects. They come up with their same lives and their
09:34 12 same situations. I mean, who doesn't respond to that?
09:34 13 That's a friendly time for us all. That's a kind of
09:34 14 hugging time and a close time. Do you know what I mean?

09:34 15 A. Yes.

09:34 16 Q. And so I got to think, if I'm on a jury and I'm
09:34 17 a person of faith and a defendant has adopted something,
09:34 18 approaching the kind of faith that I have or claims to
09:34 19 have, I would think in general, that's a -- that's
09:34 20 something that's going to warm me to that defendant. Is
09:34 21 that fair?

09:34 22 A. I think it goes back to the statement that I
09:34 23 said, you are happy for that defendant or that person,
09:34 24 regardless of whether they are saying -- your example in
09:34 25 church. You were saying you are happy for that person.

09:34 1 I've also, in my prison ministry, talked to people about
09:34 2 their cases. Not really, but just on what they've done,
09:35 3 and there is -- if you've read through, you understand
09:35 4 that I'm pretty conservative especially when it comes to
09:35 5 crime and the punishment therefore set forth. But there
09:35 6 is no doubt that there is, even in biblical terms, there
09:35 7 is consequence of sin. Forgiveness and consequences are
09:35 8 separate.

09:35 9 Q. Uh-huh.

09:35 10 A. And someone's faith does not relieve them of
09:35 11 consequences. It relieves them of the burden of
09:35 12 having -- not having that forgiveness, but it doesn't
09:35 13 relieve them from consequences.

09:35 14 Q. And what I'm trying to get at, Mr. White, I
09:35 15 want to make sure that in your situation this trial
09:35 16 wouldn't be a trial of whether -- whether or not --
09:35 17 first of all, the defendant has been converted. And
09:35 18 second of all, that conversion is sincere. And thirdly,
09:36 19 whether or not that conversion is going to last, because
09:36 20 I'm not saying that that's something that you don't
09:36 21 consider.

09:36 22 I'm just saying I can't -- that almost
09:36 23 increases my burden of something I couldn't prove
09:36 24 anyway. How do I know what's right in somebody else's
09:36 25 heart any better than the jury? And even if it is, I'm

09:36 1 just curious about how that affects your service. And
09:36 2 you are telling me that you could still send a
09:36 3 legitimately converted Christian to a death sentence if
09:36 4 you believe the answers to the questions required that
09:36 5 result?

09:36 6 MR. GOELLER: Excuse me, I'm going to
09:36 7 interrupt Mr. Schultz. Judge, I object to the form of
09:36 8 that last question regarding proof and disproving.
09:36 9 There is no -- it interjects a burden of proof. And by
09:36 10 Mr. Schultz's comment, an insinuation that a burden
09:36 11 would have to be rebutted. While there is no burden, in
09:36 12 the first place, on that third special issue. I
09:37 13 understand the question he's asking about the first part
09:37 14 of it, the form of it. I object to it.

09:37 15 THE COURT: All right. Sustained.

09:37 16 Q. (BY MR. SCHULTZ) Well, certainly there's
09:37 17 nothing in the questions relating to Christianity which
09:37 18 means, in answering those questions, the death penalty
09:37 19 would seem to be available to people who are Christians,
09:37 20 who have become Christians, who are atheists, who don't
09:37 21 even go far enough to figure whether they are atheists
09:37 22 or Christians. That's not a part of their lives.

09:37 23 The question itself or the questions
09:37 24 themselves seem to invite a look at the personality of
09:37 25 the defendant and his moral blameworthiness, when you

09:37 1 get to that question. And I guess what you are telling
09:37 2 me is that his or any defendant's religion or lack of
09:37 3 religion isn't going to be a deciding factor for you.
09:38 4 Am I right about that?

09:38 5 A. More than likely I think it would be. And I
09:38 6 guess this probably goes to the defense's objection
09:38 7 there. I don't ever see how in a case, how I would
09:38 8 ever, in whatever you could present or the defense could
09:38 9 present that I could make a judgment upon reality of
09:38 10 faith.

09:38 11 Q. Okay.

09:38 12 A. Whether true or not. The mitigating
09:38 13 circumstances, if it got to that point, I think faith
09:38 14 would be something that would be very difficult to look
09:38 15 at and make a true judgment on whether that is sincere
09:38 16 or not. It's possible, but I think that would be very
09:38 17 difficult.

09:38 18 Q. Would whether or not -- and I guess I'm
09:38 19 assuming something that may not be so -- of whether or
09:38 20 not there is a conversion and whether or not it is
09:39 21 sincere, would that be something that you would think
09:39 22 would be important in deciding these questions?

09:39 23 A. I would struggle with that just because I don't
09:39 24 know how I could judge the sincerity. And biblically,
09:39 25 that's the one thing we aren't to judge, to be honest.

09:39 1 Q. Well, I bet, I'm guessing, but when you are
 09:39 2 down at the prison ministry I would imagine you are
 09:39 3 dealing with some prisoners who have pretty lengthy
 09:39 4 sentences, don't you?
 09:39 5 A. Oh, yes.
 09:39 6 Q. Probably some people with a life sentence down
 09:39 7 there, I would imagine?
 09:39 8 A. Kairos, in fact, tries to get the worst of the
 09:39 9 worst, if you will, that are in there and make a
 09:39 10 difference, so yes.
 09:39 11 Q. And I've got to believe that there must be some
 09:39 12 prisoners that you believe that are convinced in your
 09:39 13 heart that have genuinely accepted the message that you
 09:39 14 have been taking them?
 09:39 15 A. Yes.
 09:39 16 Q. And that's probably almost easier for a lot of
 09:39 17 them who have a sentence because, yeah, maybe that looks
 09:39 18 good to the parole board, but that's not quite the same
 09:40 19 as maybe to a trial jury. Are you with me on that?
 09:40 20 A. Yes.
 09:40 21 Q. I mean, what's the motive for a lifer receiving
 09:40 22 your message? I mean, other than it's good for them.
 09:40 23 There's probably not a whole lot he gets for that; is
 09:40 24 that so?
 09:40 25 A. Yes.

09:40 1 Q. He doesn't get a reward, and they don't give
 09:40 2 him a better job at the pen. They don't -- I don't know
 09:40 3 if the parole board cares about that. I almost figure
 09:40 4 they would be sort of skeptical. They wouldn't pay any
 09:40 5 attention to it. He probably doesn't get out of his
 09:40 6 work details, right, on Sunday morning, whenever you
 09:40 7 have your ministry?
 09:40 8 A. Well, Saturday morning they do get lay-ins, but
 09:40 9 I think that's available to anyone.
 09:40 10 Q. If you don't want to go to church, you can
 09:40 11 probably still do something equivalent to it, couldn't
 09:40 12 you?
 09:40 13 A. Uh-huh.
 09:40 14 Q. When you find people like that, that you
 09:40 15 believe have -- it can certainly change faithwise. Does
 09:40 16 that make you think that they are wrongfully in prison
 09:40 17 then, once they've done that?
 09:41 18 A. No.
 09:41 19 Q. I mean, if you've got a guy that's doing a life
 09:41 20 sentence and you say, gee, he's become a person of
 09:41 21 faith, does that make you think he ought to be let out
 09:41 22 sooner than he would be if he said, I'm not interested
 09:41 23 in what you've got to say, Mr. White? Thank you very
 09:41 24 much?
 09:41 25 A. No.

09:41 1 Q. You say, the only real reason for the death
 09:41 2 penalty is the response, the revenge kind of notion; is
 09:41 3 that right?
 09:41 4 A. Yeah. I will say after what you said, the
 09:41 5 protection of society is a good reason for the life
 09:41 6 sentences and the death penalty as well.
 09:41 7 Q. Okay.
 09:41 8 A. I'll go that far.
 09:41 9 Q. Because what I was thinking, go back to my
 09:41 10 paralyzed capital defendant again. If your idea is
 09:41 11 revenge for what he has done, if that's the notion, then
 09:42 12 it would still seem to make sense to execute that
 09:42 13 person. If he did a capital murder, even though --
 09:42 14 let's face it, living in that condition is probably a
 09:42 15 whole lot worse than being executed anyway. You know,
 09:42 16 living in a paralyzed condition.
 09:42 17 Do you see it that way? That irrespective
 09:42 18 of what's happened to the person since the murder, that
 09:42 19 the only reason for it or the main reason in your mind
 09:42 20 for the death penalty is the revenge for what he has
 09:42 21 done?
 09:42 22 A. Like you, I don't appreciate the term revenge,
 09:42 23 but --
 09:42 24 Q. I don't have a better. I guess I'm -- I guess
 09:42 25 I'm kind of critical on my own side, but --

09:42 1 A. Yes. Later on that has to be the consequence.
 09:42 2 There's a consequence for our actions. We all must bear
 09:42 3 those consequences.
 09:42 4 Q. You have a couple answers that may or may not
 09:42 5 be inconsistent. They certainly are to me. They kind
 09:43 6 of look like it to me.
 09:43 7 A. Yes.
 09:43 8 Q. So forgive me for asking you. And I note, I
 09:43 9 can only imagine how sick everybody must have been of
 09:43 10 this questionnaire going through it.
 09:43 11 A. When I was writing those answers, I realized
 09:43 12 they were inconsistent, so...
 09:43 13 Q. But you may not be inconsistent. The answers
 09:43 14 may just have come out that way. And that's what I'm
 09:43 15 interested in. You are in favor of the death penalty
 09:43 16 because you circled "yes." And then you were given a
 09:43 17 series of statements that was maybe not right on for how
 09:43 18 you feel. But the one you chose as best is: I believe
 09:43 19 the death penalty is appropriate in some capital murder
 09:43 20 cases. And I could return a verdict resulting in death
 09:43 21 in a proper case. And that seems pretty mainstream.
 09:43 22 You did mention deterrence, by the way, as
 09:43 23 the best argument in favor of the death penalty. You
 09:43 24 mentioned deterrent and just reward. I like "just
 09:43 25 reward" better than "revenge." That is a better term.

09:44 1 A. I guess the deterrent has been since that's
 09:44 2 probably the only change I've made, is that the
 09:44 3 deterrence isn't fair in administering a death sentence.
 09:44 4 Q. Your best argument in -- in opposition to the
 09:44 5 death penalty --
 09:44 6 A. People change.
 09:44 7 Q. People change. Let me look at your
 09:44 8 questionnaire. It looks like you started to write
 09:44 9 something. Maybe you were writing people, and just
 09:44 10 scratched it out, or maybe you were writing something
 09:44 11 else. Let me ask you: Were you writing people and
 09:44 12 didn't like how that came out, or is that going to be
 09:44 13 rehab, or what was that going to be?
 09:44 14 A. It may have been rehab.
 09:44 15 Q. Same kind of thing?
 09:44 16 A. That people change.
 09:44 17 Q. Pretty much the same notion?
 09:44 18 A. That comes from, I guess, more from when you
 09:44 19 see a sentence is carried out 20, 30 years later.
 09:44 20 That's a different person.
 09:44 21 Q. Okay.
 09:45 22 A. And the question is: Do people have the right
 09:45 23 to get to that different person based on the acts
 09:45 24 committed?
 09:45 25 Q. Okay. And why I'm curious about this because

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09:45 1 what you told me is that, even those lifers that you
 09:45 2 think have changed, either because of just getting older
 09:45 3 or thinking about or because of your prison ministry.
 09:45 4 You've indicated to me that that fact shouldn't have
 09:45 5 anything to do with the punishment that they got at the
 09:45 6 time of their trial. Is that still your belief?
 09:45 7 A. Yes.
 09:45 8 Q. Have you ever written letters in support of
 09:45 9 somebody getting parole? Have you done that as part of
 09:45 10 your prison ministry?
 09:45 11 A. No. I believe it's not even allowed.
 09:45 12 Q. Okay. If it were allowed, could you see
 09:45 13 yourself doing that?
 09:45 14 A. Depending on the individual. How well I knew
 09:45 15 them.
 09:45 16 Q. Okay, okay. Do you believe that life
 09:46 17 confinement in prison is appropriate in some capital
 09:46 18 murder cases, and you could return a verdict resulting
 09:46 19 in life confinement in a proper case?
 09:46 20 A. Yes.
 09:46 21 Q. Do you have any moral religious or personal
 09:46 22 beliefs that would prevent you from returning a verdict
 09:46 23 which would result in the execution of another human
 09:46 24 being, and you circled yes. And then you inserted --
 09:46 25 A. That's the --

09:46 1 Q. Huh?
 09:46 2 A. That's the conflicting --
 09:46 3 Q. No. Well, maybe not. I'm not sure. I'm not
 09:46 4 sure it is. I think -- I think there's room for
 09:46 5 somebody who doesn't like the death penalty and doesn't
 09:46 6 relish that notion. You say you would find it
 09:46 7 difficult. I would hope you would. I find it difficult
 09:46 8 to take a position seeking to impose a death sentence on
 09:46 9 a defendant, and I hope I always will. I hope that's
 09:46 10 not a joy to me.
 09:46 11 I hope that's not kind of like paying a
 09:47 12 bill. It's just something you do everyday. I hope it's
 09:47 13 never like that. I hope it would be difficult for
 09:47 14 everybody on the jury. That part doesn't bother me at
 09:47 15 all.
 09:47 16 Tell me what that -- tell me what that
 09:47 17 means to you. I know, I could write that statement.
 09:47 18 Somebody asked me that, and I'm on a jury panel. That
 09:47 19 could be my words, and I would know what that would mean
 09:47 20 to me. Tell me what that means to you.
 09:47 21 A. That it would be difficult?
 09:47 22 Q. Uh-huh.
 09:47 23 A. I guess going back to just the same argument
 09:47 24 the defense put in our meeting last Tuesday that that's
 09:47 25 final. You are dealing with life. And as a Christian

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09:47 1 and believing in forgiveness and love, that's difficult.
 09:47 2 Q. Okay. You made a statement that one of the
 09:48 3 biggest problems in the criminal justice system is that
 09:48 4 the reasonable death clause has been changed to beyond
 09:48 5 the remotest possibility. Can you tell me what you are
 09:48 6 thinking of when you write that?
 09:48 7 A. To be a hundred percent honest, the only -- the
 09:48 8 only reality I have is what I read in the newspapers and
 09:48 9 watch on TV. So that may be an unfair statement, but it
 09:48 10 seems, based on some of the trials and what little
 09:48 11 excerpts we get out of the press and so forth, that
 09:48 12 there are examples when juries have let people out based
 09:48 13 on -- I think the understanding of beyond a reasonable
 09:48 14 doubt, reasonable is important.
 09:48 15 It is important to the defendant that you
 09:48 16 believe sincerely that the defendant is guilty. But
 09:49 17 there's a difference between reasonable and a remote
 09:49 18 possibility that the person is -- is innocent, in my
 09:49 19 opinion.
 09:49 20 Q. The death penalty in Texas is reflected with
 09:49 21 the belief in the Texas citizens. Well, of course
 09:49 22 that's true. You don't say that disrespectfully in any
 09:49 23 way or contemptuously?
 09:49 24 A. No. That was a question. How do you answer?
 09:49 25 Q. Police officers do an honorable job. The

09:49 1 burden of proof is on the prosecution. The prison
09:49 2 system in Texas is full. Prosecutors have a tough job.
09:49 3 Criminal defense attorneys have a bad rap. I agree with
09:49 4 that.

09:49 5 It's interesting because a lot of lay
09:49 6 people don't understand what I think is the bad rap they
09:49 7 get. People say, how could you defend somebody you know
09:49 8 or think is guilty? That's the thing you always hear
09:49 9 about defense attorneys. How can you make your money
09:50 10 that way?

09:50 11 I never hear anybody asking you how you
09:50 12 can go down there and minister to people you know are
09:50 13 guilty? I never hear anyone asking the doctor, how can
09:50 14 you go take a bullet out of a fellow that is a bad
09:50 15 person? How can the dentist fix a bad person's teeth?
09:50 16 You never hear any of that.

09:50 17 It's like the lawyers are the scapegoats
09:50 18 for the humane way we treat our criminally accused in
09:50 19 this society. And I don't know if that's what you mean
09:50 20 or not, but whatever you mean.

09:50 21 A. That's exactly what I mean.

09:50 22 Q. I mean, right on with you. I think that's, you
09:50 23 know, we may fuss and fight in this trial, the lawyers
09:50 24 on both sides, but it isn't out of disrespect. It's out
09:50 25 of our advocacy roles that creates that and, you know.

09:50 1 I want good lawyers in this kind of a
09:50 2 case. I don't want weak lawyers or rollover lawyers,
09:50 3 and neither do you. You don't want that in this
09:50 4 society. What makes a person dangerous is morals, anger
09:51 5 and disrespect for others. You trust the criminal
09:51 6 justice system in Collin County. You don't think the
09:51 7 laws are too harsh on defendants. You don't think a
09:51 8 defendant should have to prove his innocence in a
09:51 9 capital murder case. Persons determine their destiny or
09:51 10 fate by choices they make in life.

09:51 11 Tell me about that because you strongly
09:51 12 agree with that statement.

09:51 13 A. Yes. Although I think there was another
09:51 14 statement, a question on there, it may have been part of
09:51 15 that question where it's based on your upbringing as
09:51 16 well. That has an influence, but we still get to a
09:51 17 point and we recognize that in our laws that at a
09:51 18 certain age you make decisions. Your upbringing may --
09:51 19 may cause you to make -- make you more susceptible to
09:51 20 making poor decisions.

09:51 21 As a parent, I'm very aware of that fact
09:51 22 and very concerned about parenting and what I say to my
09:51 23 children, and how I bring them up. However, there will
09:52 24 be a point where, no matter what I did, they will make
09:52 25 decisions, whether I was a great parent or a bad parent,

09:52 1 though we base, that they will have to deal with the
09:52 2 consequences of good, bad or otherwise.

09:52 3 Our society recognizes that, I believe,
09:52 4 with at the age of 18 for voting. So we make decisions,
09:52 5 and there are consequences for those.

09:52 6 Q. We never think about it, but every single one
09:52 7 of us has a bunch of quote mitigating circumstances in
09:52 8 our life that we kind of carry around with us. We don't
09:52 9 ever think in those terms but, but we do. We have many
09:52 10 things in our life that we could probably point to if we
09:53 11 got in some really serious trouble to try to perhaps
09:53 12 explain or, if not excuse, at least explain or maybe
09:53 13 lessen, you know, what happened.

09:53 14 And it doesn't even matter whether it's
09:53 15 criminal or not. I mean, every single time something
09:53 16 doesn't go right for us, we probably have the ability to
09:53 17 offer an explanation for it. You know, we have trouble
09:53 18 with our spouses.

09:53 19 We could probably say, well, the reason I
09:53 20 did this is because you did that or, you know, remember
09:53 21 that time five years ago when you did this or that?
09:53 22 Everybody can offer explanations which may well have
09:53 23 something to do with how they get to that point exactly.
09:53 24 Does that make sense?

09:53 25 A. Yes.

09:53 1 Q. You know, people may be go to college and they
09:53 2 don't make particularly good grades. And they apply for
09:53 3 a job and the employer says: How come your grades were
09:53 4 that way? Well, I had to work, or I was sick one
09:53 5 semester or this happened or that happened or I ran out
09:54 6 of money, or I was having trouble in my family.
09:54 7 Everybody has -- has things they -- we all have things
09:54 8 that go wrong in our lives. Do you agree?

09:54 9 A. Uh-huh.

09:54 10 Q. And sometimes it can be worse than others. I
09:54 11 mean, you got to know that many of these people you deal
09:54 12 with in your prison ministry probably had really bad
09:54 13 lives growing up. Don't you agree with that?

09:54 14 A. Yes.

09:54 15 Q. I don't do -- I've never done what you do, but
09:54 16 I suspect that a higher percentage of the people that
09:54 17 you deal with on these serious crimes with Kairos, they
09:54 18 probably have a higher percentage of having all messed
09:54 19 up lives than maybe even in the average population.
09:54 20 That would seem to be logical?

09:54 21 A. Absolutely.

09:54 22 Q. And it's kind of what you said on some of the
09:54 23 other questions relating to how people's faith turns out
09:55 24 that things can influence what they do. Does that mean
09:55 25 they didn't make choices that they should be held

09:55 1 accountable for what got them down there since their
09:55 2 lives were the kind of lives that break yours and my
09:55 3 heart?

09:55 4 We treat our children a certain way, and
09:55 5 their parents -- if their parents were even around
09:55 6 didn't do that for them. How big -- how big an excuse
09:55 7 is that in your mind for them to say, you know,
09:55 8 Mr. White, the reason I'm here is because my dad was
09:55 9 never around to take me fishing and teach me wholesome
09:55 10 values because my dad was a drug dealer. Because my
09:55 11 parents were alcoholics, because my -- you know, I was
09:55 12 sexually abused. Because I grew up in an environment
09:55 13 where respect for lives and property was not a role
09:55 14 model for me.

09:55 15 Even if all that is absolutely true, even
09:56 16 if every single part of that is true, how -- how big an
09:56 17 explanation, as you see the world, is that to you?

09:56 18 A. In the world we use it all the time. In a
09:56 19 trial, I am -- like I said before, conservative in
09:56 20 the -- in general, I will tend also, as an engineer, to
09:56 21 go down to the letter of the law. I think where it
09:56 22 comes in in this case is the mitigating circumstances in
09:56 23 the -- if we got to that stage in the punishment, I
09:56 24 think you have to consider that because the letter of
09:56 25 the law says, consider it.

09:56 1 Q. Sure, sure.

09:56 2 A. It would be -- I believe for the prosecution to
09:56 3 show that a person is guilty of the crime as stated in
09:56 4 the law. And in the guilt or innocence, not guilty
09:56 5 stage, that I would tend to be right along the lines of
09:56 6 the law. Now, if the law in a certain case allows to
09:57 7 consider that, I would consider it because I try to, in
09:57 8 general, go by that.

09:57 9 Q. Right.

09:57 10 A. Even though I'm a Christian, my heart is pretty
09:57 11 hard on that side of it until found guilt or innocence.
09:57 12 It's along the lines of the law, what our laws are
09:57 13 stated.

09:57 14 Q. Okay. Okay. Why I say that is because we
09:57 15 probably would realize, I mean, we would understand why
09:57 16 maybe somebody didn't finish high school growing up in
09:57 17 that kind of environment with that kind of flawed
09:57 18 support system. We would understand that. And in our
09:57 19 society, we have -- we have programs. We have GED
09:57 20 programs. I think we pay people to go back and get
09:57 21 their GED. We have all kinds of programs for them.

09:58 22 We might understand why somebody like that
09:58 23 would have trouble holding a job because they never saw
09:58 24 anybody growing up that held jobs for very long maybe.
09:58 25 So we try to teach them vocational stuff. If they don't

09:58 1 have any money, not only do we not make them pay taxes
09:58 2 because they aren't making any income, we give them free
09:58 3 stuff. We'll fix them at the hospital. We'll take care
09:58 4 of their children in hospitals. We'll give them food at
09:58 5 the food lines.

09:58 6 I don't know about your church, but most
09:58 7 churches, you can always get a meal out of a church
09:58 8 always. I mean, there are plenty of churches. You know
09:58 9 how that all works. Our society doesn't require a whole
09:58 10 lot out of citizens other than just don't go hurting
09:58 11 other people. We don't make you hurt much, and you can
09:58 12 still survive all right. Do you agree?

09:58 13 A. Yeah.

09:58 14 Q. Maybe we're too compassionate. Maybe we're
09:58 15 right on, I don't know. I guess when you are -- when
09:58 16 your transgression becomes so enormous like a capital
09:58 17 murder, there are many people who say, so what? I've
09:59 18 known people that have had worse lives than you that
09:59 19 have done great, and I've known people that have had
09:59 20 wonderful lives who have done poorly.

09:59 21 And it doesn't matter anyway because it's
09:59 22 not my fault, and my kids or my family or my life should
09:59 23 not be taken for all that. Do you agree with that as a
09:59 24 concept? That when you go so far, whatever got you that
09:59 25 way, doesn't necessarily matter all that much?

09:59 1 A. Probably, yes.

09:59 2 Q. Let's test it. Let's check it.

09:59 3 MR. SCHULTZ: Judge, if you would give me
09:59 4 a little latitude on time on this, I promise I'll make
09:59 5 it up to you. I'm working hard on this one.

09:59 6 THE COURT: All right.

09:59 7 MR. SCHULTZ: Thank you.

09:59 8 Q. This question invites you, in fact, directs you
09:59 9 to take into consideration all the evidence including
09:59 10 the circumstances of the offense. And of course it
09:59 11 invites you to take into the defendant's character,
10:00 12 background and personal moral culpability, whatever that
10:00 13 means. One thing that nobody can tell you what it
10:00 14 means, I mean, different people might have different
10:00 15 ideas.

10:00 16 I have been -- I have been looking at that
10:00 17 question now for years, and finally it occurred to me --
10:00 18 an example of what it could mean is Dr. Kevorkian, the
10:00 19 mercy killing doctor. Depending on how you feel about
10:00 20 that, that's certainly murder in Texas.

10:00 21 If he had two people, two people lined up
10:00 22 to the same machine, that would even be capital murder
10:00 23 in Texas. What he does. He can get them to sign
10:00 24 consent forms and videotape them saying, "Please put me
10:00 25 out of my misery." And the family can say, "Yeah,

10:00 1 Doctor, you are doing the right thing." But that would
10:00 2 still be capital murder in Texas if he killed two people
10:00 3 in a mercy killing. Are you with me?

10:00 4 A. Uh-huh.

10:00 5 Q. And perhaps, and I'm not saying I think this,
10:00 6 but perhaps some people would say, he doesn't have moral
10:00 7 culpability for that. He's actually before his time,
10:01 8 and he's doing actually a moral thing, albeit a capital
10:01 9 murder. His personal moral culpability is low. Do you
10:01 10 know what I'm saying?

10:01 11 I'm not saying that's the argument. But
10:01 12 the argument -- the argument would make sense. You
10:01 13 can't exactly say that's not so. If you believe what he
10:01 14 does is a moral thing, then perhaps he doesn't have
10:01 15 moral culpability. Are you with me on that?

10:01 16 A. Yes.

10:01 17 Q. I think of these cases where reproductive
10:01 18 surgeons, abortion doctors are murderers. There are
10:01 19 people that would say that's a moral thing because it's
10:01 20 saving lives by doing that. I'm not saying they are
10:01 21 right and those are murderers. And if they do it in a
10:01 22 certain way, it could be capital murder. But there are
10:01 23 people who could reasonably say those -- those are
10:01 24 situations where the moral culpability of the killer is
10:01 25 a lot lower than the thrill killer, let's say. Does

10:01 1 that thinking make sense to you?

10:02 2 I'm not asking: Do you agree with it?
10:02 3 But does that process make sense that you kind of look
10:02 4 and say how bad is what this person did? And that's
10:02 5 almost like motives.

10:02 6 It's almost like -- it's almost like
10:02 7 turning around again and maybe asking to look at the
10:02 8 motive for the killing and seeing how moral it really
10:02 9 was. Does that make sense?

10:02 10 A. Yes.

10:02 11 Q. The question doesn't say it, but perhaps it
10:02 12 implies it. And if it does, you can consider it. If it
10:02 13 doesn't, you don't. The question tells you to take into
10:02 14 consideration the circumstances of the offense and
10:02 15 measure all of this and see whether there is a --
10:02 16 whether there is a sufficient mitigating circumstance or
10:02 17 circumstances to warrant the sentence of life as opposed
10:02 18 to the sentence of death.

10:02 19 Now, it would seem that a huge part of
10:02 20 that measurement for looking for sufficient mitigating
10:02 21 evidence to cause a life sentence, of course, relates to
10:02 22 the defendant's character and background, but also the
10:02 23 crime itself. And let me tell you my thinking -- my
10:03 24 thinking about that, and see what you think.

10:03 25 Let's assume for a moment that Adolf

10:03 1 Hitler were being prosecuted for what happened in
10:03 2 Europe, just hypothetically, in Texas for the
10:03 3 illustration. And let's get us by the concept of the
10:03 4 law of parties. We talked about that real briefly on
10:03 5 Tuesday. And that is, that if you are not the actual
10:03 6 killer yourself, that is, if you don't have the knife or
10:03 7 the poison drops or the gun and actually cause the
10:03 8 death, you can only get the death penalty if you were of
10:03 9 an equal intent with the person that actually pulled the
10:03 10 trigger and were kind of in there with them.

10:03 11 So if you and I go -- if you go do a
10:03 12 burglary, and I don't know you got a gun and you kill
10:03 13 somebody, I may be responsible. I may be a murderer
10:03 14 under the felony murder rule, but I can't get the death
10:03 15 penalty because that's just how our law is.

10:03 16 Because, why I say this, I don't think
10:03 17 Hitler ever killed anybody as near as I can tell. He
10:03 18 had it done, but he didn't do any of the killings, as
10:03 19 far as I can tell. I know of no indication that he did.
10:04 20 But he certainly was of an equal intent of those people
10:04 21 who were doing the killing because he's ordering it.

10:04 22 A. Uh-huh.

10:04 23 Q. I believe, from what we can all tell, Hitler
10:04 24 had a lot of what we consider mitigating evidence about
10:04 25 him. I believe he had an unhappy childhood, an absent

10:04 1 dad. He almost wasn't born. I don't know if you know
10:04 2 the story, but apparently he's one of those people that
10:04 3 had a mom who was contemplating an abortion, which was
10:04 4 lawful in Germany at the time, or a lawful drug, if
10:04 5 available.

10:04 6 And it's kind of one of those funny
10:04 7 stories, you know, when you are saying: Is an abortion
10:04 8 a good or bad thing? And then you say, look at Hitler.
10:04 9 And then you look at the other side. And then you never
10:04 10 know if a Mother Teresa had never made it because of
10:04 11 that, it's kind of that thinking. But he apparently had
10:04 12 a mom that didn't want him.

10:04 13 He was apparently sickly as a kid growing
10:04 14 up. He apparently was picked on by other children. He
10:05 15 went to art school, and they said he wasn't talented,
10:05 16 and they kicked him out. And he ends up in the army and
10:05 17 didn't -- didn't do anything. He became a corporal
10:05 18 which wasn't anything remarkable. And he had -- he
10:05 19 apparently was also about half nuts. Maybe almost all
10:05 20 nuts. Functional maybe, but nuts. And he had syphilis.

10:05 21 All those things were just, you know, many
10:05 22 people would say that that was a lot of mitigating
10:05 23 evidence. And, yeah, I mean, that's mitigating
10:05 24 evidence. That's evidence that tends to explain -- that
10:05 25 tends to tell us how Hitler turned into what Hitler

10:05 1 became. We can see the progression from all of that.
 10:05 2 And yet, do you think there's any way that
 10:05 3 any rational human being would say that those kinds of
 10:05 4 things were sufficient mitigating circumstances to
 10:05 5 warrant that a sentence of life imprisonment rather than
 10:05 6 death be imposed for that kind of crime?

10:05 7 MR. GOELLER: Judge, I object to that
 10:05 8 question. Very specific fact situation asking or trying
 10:06 9 to qualify the juror on a yes or no answer on a specific
 10:06 10 fact situation. And I believe that's improper.

10:06 11 MR. SCHULTZ: What's so evidently
 10:06 12 hypothetical that the very most it's nothing but
 10:06 13 illustrative. I don't think what his answer is or what
 10:06 14 he would do with Hitler in Texas could possibly have an
 10:06 15 effect other than just an illustration anyway.

10:06 16 MR. GOELLER: Then why is he asking it?

10:06 17 MR. SCHULTZ: Because I want to know what
 10:06 18 he thinks of it.

10:06 19 MR. GOELLER: Obviously, Mr. Schultz
 10:06 20 knows --

10:06 21 THE COURT: Let's do this. Don't talk to
 10:06 22 each other at all. Only talk to me.

10:06 23 MR. SCHULTZ: Yes, sir.

10:06 24 THE COURT: Objection is overruled.

10:06 25 A. No. I don't think in that instance, specific

10:06 1 instance given the -- in the circumstances of the
 10:06 2 offenses and moral culpability, a defendant in that
 10:07 3 case, that life sentence would be warranted.

10:07 4 Q. (BY MR. SCHULTZ) What I'm saying is, obviously
 10:07 5 each case has to stand on its own, and you have to look
 10:07 6 at it. There may be some capital murders, where the
 10:07 7 facts -- although, I don't know how any capital murder
 10:07 8 could be acceptable or not a big deal. I can't imagine
 10:07 9 how that could ever be. But there are some that are
 10:07 10 more extreme than others, don't you agree? I mean.

10:07 11 A. Yeah.

10:07 12 Q. That example I use, for example, of the father
 10:07 13 that kills the killers of his children who are laughing
 10:07 14 as they go out of the courtroom free. It's still
 10:07 15 killing, but that might not be the same level as
 10:07 16 kidnapping a couple people and murdering them just for
 10:07 17 the fun of watching them die. Do you follow what I'm
 10:07 18 saying?

10:07 19 A. Uh-huh.

10:07 20 Q. They are both capital murders. They both
 10:08 21 require a fair answer to those questions if the State is
 10:08 22 seeking a death penalty. But the evidence that's
 10:08 23 mitigating might have more play in one fact situation
 10:08 24 than another. Don't you agree?

10:08 25 A. Yes.

10:08 1 Q. I'm about at the end, and I absolutely trust
 10:08 2 you to tell me how you feel, and I know you are. I
 10:08 3 sense that, and I know that you are telling the defense
 10:08 4 the exact same things to their questions, that is, how
 10:08 5 you feel.

10:08 6 Is there any reason why you would be less
 10:08 7 than neutral and fair to the State of Texas in the first
 10:08 8 part of the trial? And that's deciding whether or not
 10:08 9 the defendant is guilty of capital murder?

10:08 10 A. No.

10:08 11 Q. And you're not the kind of a man who would say
 10:08 12 I'm not relishing having to even deal with the death
 10:09 13 issue. And so, therefore, I'm going to look for some
 10:09 14 way to find the defendant guilty of something less than
 10:09 15 capital murder, like a lesser-included offense, to spare
 10:09 16 myself the unpleasant prospects of deciding life or
 10:09 17 death. You are not that kind of man?

10:09 18 A. Hopefully you'll throw me out and not get to
 10:09 19 that point. But if it gets to that point, I will decide
 10:09 20 in the first phase, the guilt or innocence, based
 10:09 21 strictly on what is presented here during that time.

10:09 22 Q. We were doing just fine until you said
 10:09 23 hopefully I'll throw you out. I can't let it go. I got
 10:09 24 to know. What does that mean?

10:09 25 A. I think it goes back to the same thing. I

10:09 1 don't want -- I do not want to serve in this -- in a
 10:09 2 capital murder case, three to five weeks. The stakes
 10:09 3 that are at hand. I agree with the notion and fully
 10:10 4 support our country and the criminal justice system.
 10:10 5 And the idea of serving jury duty is a responsibility I
 10:10 6 think is necessary. But I'm like everyone else, that
 10:10 7 they don't want to be here.

10:10 8 Q. I understand. I don't want to be here
 10:10 9 prosecuting. Not because I don't like the work, I don't
 10:10 10 like my job or I don't believe in my work. I don't like
 10:10 11 it either. I'm not happy that this has to be, nor are
 10:10 12 you or anybody else. Let's say, now, I understand
 10:10 13 hopefully -- hopefully, you know, you could say the same
 10:10 14 thing. Hopefully --

10:10 15 A. Either one of you.

10:10 16 Q. Somebody else will get rid of you kind of
 10:10 17 thing. But let's say I don't. Let's say I'm here
 10:10 18 reading it. And I'm saying this is a man of faith and
 10:10 19 conscience and care who doesn't want to do this work,
 10:10 20 but neither does anybody else. And he's an honorable
 10:10 21 man and a man that I can work with, and I can
 10:10 22 communicate with, and a man that will listen to the
 10:11 23 evidence.

10:11 24 And if I prove guilt beyond a reasonable
 10:11 25 doubt of capital murder, he'll vote yes. He's not

10:11 1 liking it. And he may not even be liking me for not
 10:11 2 getting rid of you because I got to ask that at some
 10:11 3 point, not just yet. He may not be liking that, but
 10:11 4 he's a man that will do his duty. Kind of like a
 10:11 5 soldier. A lot of soldiers probably don't like being in
 10:11 6 Bosnia right now. I bet they don't. But they do their
 10:11 7 duty.

10:11 8 And if I'm reading you and I say, if I
 10:11 9 prove that this defendant is probably going to be
 10:11 10 dangerous in the future by the evidence in the case, I
 10:11 11 know this man will vote yes on that question. He's not
 10:11 12 liking being here. He wishes I would have gotten rid of
 10:11 13 him.

10:11 14 He's not real pleased with me for not
 10:11 15 getting rid of him, but I know he's a person of honor
 10:11 16 and a conscious, and he can do that. If I prove the
 10:11 17 case to him beyond a reasonable doubt that this future
 10:11 18 danger question ought to be answered yes, he'll do it.
 10:12 19 Am I right about you?

10:12 20 A. Yes.

10:12 21 Q. All right. And am I also right about you that
 10:12 22 even if you think the reason you end up on this jury is
 10:12 23 because I didn't get rid of you or throw you away or
 10:12 24 whatever you said, even if it becomes clear that there's
 10:12 25 one reason you are still on this jury and that's William

10:12 1 L. Schultz, prosecutor, that's why you are here, are you
 10:12 2 the kind of man that will say, well, you know, he's got
 10:12 3 a job to do. And being mad at him doesn't do justice
 10:12 4 because the only justice comes on what I do in this case
 10:12 5 for the State of Texas and for the defendant. Are you
 10:12 6 that kind of man?

10:12 7 A. Yes.

10:12 8 Q. All right. All right. And you can be mad at
 10:12 9 me later and hate me forever, but you can still do your
 10:12 10 job as a juror?

10:12 11 A. Yes.

10:12 12 Q. Now, the mitigation question. Of course, you
 10:12 13 are right. That's where -- that's where you look at
 10:12 14 background. That's where you look at sad things growing
 10:12 15 up. That's where you consider stuff like drugs. Or
 10:13 16 what do you think about drugs?

10:13 17 You may be the kind of man that says, oh,
 10:13 18 if a person takes drugs, they are not in their right
 10:13 19 mind so it's not even them that we're prosecuting
 10:13 20 anyway. Or you may be the kind of person that said, you
 10:13 21 know about drugs. You have been told about drugs, and
 10:13 22 that's even worse, the fact that you did this crime on
 10:13 23 drugs.

10:13 24 To me it's even worse than if you had done
 10:13 25 it sober because if you chose to make yourself dangerous

10:13 1 and allow that result to occur. Do you understand how
 10:13 2 drugs could be mitigating or aggravating, depending on
 10:13 3 how you look at it?

10:13 4 A. Yes.

10:13 5 Q. Do you feel that way? Do you feel that way,
 10:13 6 that you could certainly say drugs don't excuse your
 10:13 7 criminal behavior? In fact, it's very predictable, and
 10:13 8 you knew you were on that path when you started doing
 10:13 9 drugs that make you mean?

10:13 10 A. I agree with that, drugs don't excuse.

10:13 11 Q. All right. But you can still consider it, and
 10:13 12 it may be in your mind that drug usage could be
 10:13 13 mitigating. You might say, well, I understand. A lot
 10:14 14 of people do that, and maybe he got hooked.

10:14 15 Are you the kind of person that would
 10:14 16 listen to all the evidence being offered as mitigating
 10:14 17 evidence or maybe even something you think is mitigating
 10:14 18 that nobody even talks about, but it connects with you
 10:14 19 and how you see the world. Are you the kind of person
 10:14 20 that can look at all that evidence, jail conversion, if
 10:14 21 it's real, or even if it's not real. I mean, if it's a
 10:14 22 feigned conversion or if it's insincere, whatever value
 10:14 23 that might have.

10:14 24 Are you the kind of person that can look
 10:14 25 at character evidence involving the defendant, other

10:14 1 actions, other events and consider all of what might be
 10:14 2 mitigating? And are you the kind of person that could
 10:14 3 find that there's so much mitigating evidence, a
 10:14 4 sufficient quantity of mitigating evidence, sufficient
 10:14 5 mitigating circumstance or circumstances is the language
 10:15 6 from the statute.

10:15 7 Are you the kind of person that could
 10:15 8 find, yeah, I find enough in this case to spare the
 10:15 9 defendant's life and vote for a life sentence? Are you
 10:15 10 the kind of person that could do that, based on the
 10:15 11 evidence?

10:15 12 A. Yes.

10:15 13 Q. Great. Now, are you the kind of person that
 10:15 14 would require evidence of sufficient mitigating
 10:15 15 circumstances before you do that? Do you understand my
 10:15 16 question?

10:15 17 A. Yeah. I think -- to answer that question, you
 10:15 18 have to know what circumstances are available. What
 10:15 19 the, I mean, I've got to answer that question if it gets
 10:15 20 to that -- that phase is, at that point I would, based
 10:15 21 only on what was said during the trial I would have
 10:15 22 circumstances of the offense, defendant's character or
 10:16 23 background. Is that enough, I would need to have
 10:16 24 something to say.

10:16 25 Q. What I'm getting at is that question requires

10:16 1 you to consider evidence.

10:16 2 A. Yes.

10:16 3 Q. It doesn't tell you what evidence to consider
10:16 4 or what -- how to weigh the evidence or what evidence is
10:16 5 important. That's up to you. But what I'm saying is,
10:16 6 you can't answer that question simply because of what
10:16 7 you want to do. You can't -- what I'm saying is, you
10:16 8 can't say, well, I want a death sentence on this guy and
10:16 9 so, therefore, my wanting a death sentence means there's
10:16 10 not any mitigating evidence. Does that make sense to
10:16 11 you what I'm saying?

10:16 12 It's not a what-do-you-want-to-do
10:16 13 question, for either side. It's a look at the evidence
10:16 14 and say, is there, in this case, sufficient mitigating
10:16 15 circumstances to cause a life sentence? Does that make
10:17 16 sense?

10:17 17 Because otherwise, if it's one of those,
10:17 18 if you go to that question and you say, oh, I can't kill
10:17 19 anybody. Who am I to do such a thing? I'm not going to
10:17 20 look at the evidence. I just can't do that. You're not
10:17 21 wanting to ever impose a death sentence. That's not
10:17 22 mitigating evidence. That's -- that's -- do you
10:17 23 understand what I'm saying?

10:17 24 A. Yes.

10:17 25 Q. It's not looking at the evidence, and that's

10:17 1 what I've got to know about you. And it would be the
10:17 2 same if you were the kind of juror that was always for
10:17 3 the death penalty because the same question might come
10:17 4 from me and might come from the other side. Will you
10:17 5 answer that mitigation question fairly based upon the
10:17 6 evidence and not based upon your preference for either
10:17 7 life or death?

10:17 8 A. If I'm called -- I think the only way to -- to
10:17 9 do this would be to hang onto the letter of the law and
10:18 10 answer that question as posed, specifically as posed, as
10:18 11 whether there are mitigating circumstances, yes.

10:18 12 Q. And they would have to be sufficient mitigating
10:18 13 circumstances, because I told you, you and I have got
10:18 14 mitigating circumstances, right now, if we ever get
10:18 15 charged with capital murder. We have them. They are
10:18 16 available to us. But I don't know about you.

10:18 17 I can't -- I hope it never happens to me
10:18 18 because I'll eat these words, but I don't have any
10:18 19 sufficient mitigating circumstances to do a capital
10:18 20 murder. I may claim it some day. If it happened to me,
10:18 21 I would come up with a bunch, but I haven't got them,
10:18 22 and I bet you don't have them either. You don't have
10:18 23 any sufficient mitigating circumstances.

10:18 24 MR. GOELLER: Judge, I'm sorry. That's --
10:18 25 that's not a jury argument. That's improper. He's --

10:18 1 what he's doing is asking the juror to speculate about
10:18 2 what Mr. Schultz has. And not knowing that, but him
10:18 3 guaranteeing him he doesn't have it, nor does he have
10:19 4 it. That is highly improper, and I object to that line
10:19 5 of questioning.

10:19 6 THE COURT: Sustained.

10:19 7 Q. (BY MR. SCHULTZ) You and I -- you don't want
10:19 8 to be on this jury? You told me that, right?

10:19 9 A. Absolutely.

10:19 10 Q. Okay. And you already know that if you end
10:19 11 up -- I've told you who is going to be responsible. I
10:19 12 mean, it takes two sides. But you know who is going to
10:19 13 put you on here if you end up. Do you understand?

10:19 14 MR. GOELLER: Judge, come on, this is
10:19 15 improper. Now, he's trying to get the juror to
10:19 16 speculate if I strike him, he strikes him, you strike
10:19 17 him. That has nothing to do with voir dire in this
10:19 18 case.

10:19 19 THE COURT: Sustained.

10:19 20 Q. (BY MR. SCHULTZ) Okay. If you have a
10:19 21 suspicion of who is ultimately responsible, you aren't
10:19 22 going to take it out on anybody, are you?

10:19 23 A. It wouldn't -- if I get called, that's a duty I
10:19 24 have to serve. I really have no speculation who would
10:19 25 or wouldn't strike me. I'm hoping any of you would.

10:19 1 Q. You are saying, any of us throw you out?

10:20 2 A. I don't care. I just hope one of you.

10:20 3 Q. I'm with you. But you are the kind of man that
10:20 4 can give either a yes or no answer to this question,
10:20 5 depending on the evidence, even though you know what the
10:20 6 outcome will be depending on how you answer that?

10:20 7 A. Yeah. I mean, it would be a struggle, yes.

10:20 8 Q. I hope it would be. I hope this wouldn't be
10:20 9 easy for anybody, but you can do it?

10:20 10 A. Yes.

10:20 11 Q. Would you, if you returned a guilty -- I'm
10:20 12 sorry, if you returned a no answer on that mitigation
10:20 13 question, having answered the first one yes, are you
10:20 14 going to feel guilty about yourself? Are you going to
10:20 15 somehow feel like you are some -- like you've done a
10:20 16 killing yourself or something? Are you going to feel
10:20 17 that way?

10:20 18 A. I don't know. That's my struggle.

10:20 19 Q. Okay. But you can still do it? You can still
10:21 20 answer that question, according to the evidence?

10:21 21 A. At this point I believe I would hang on to that
10:21 22 and just say that's a duty I have.

10:21 23 Q. Okay.

10:21 24 A. But that's probably one of the reasons I don't
10:21 25 want to serve.

10:21 1 Q. Could you explain a little more what you mean?
 10:21 2 A. The fact, excuse me for a minute -- when you
 10:21 3 answer yes to those questions, there's a consequence to
 10:21 4 answering those questions. The Judge said he imposes
 10:21 5 the sentence, but there's consequence.
 10:21 6 Q. Sure.
 10:21 7 A. And I don't want to deal with that. So that's
 10:21 8 why I say I'll try to hang to the letter of the law.
 10:21 9 That's the one thing I'll reach for. But --
 10:21 10 Q. But you are able to vote the evidence, even
 10:22 11 though the result may be something you don't want to
 10:22 12 happen? You can do it?
 10:22 13 A. At this point I believe I can, yes.
 10:22 14 Q. Okay. Okay. How seriously do you take your
 10:22 15 oath as juror? Tell me about that. How important is
 10:22 16 that to you?
 10:22 17 A. The oath, I mean, my word is utmost. You get
 10:22 18 my word, you got it. It's utmost. If I feel I can't
 10:22 19 answer those questions, I would at that point, I believe
 10:22 20 I would come forward and say something. I know at that
 10:22 21 point it would be too late maybe, I guess, but --
 10:22 22 Q. It would be. It would be too late.
 10:22 23 A. But that's a -- my oath, my word is, you can
 10:23 24 bank on it.
 10:23 25 Q. The Judge will swear you to tell -- I'm sorry,

10:23 1 to render a true verdict according to the law and the
 10:23 2 evidence in the case, which is kind -- that's the law.
 10:23 3 And then the law tells you to answer that question on
 10:23 4 the evidence. And there's a comfort in that for most
 10:23 5 people because you are just looking at evidence.
 10:23 6 You are not, in that phrase, what I want
 10:23 7 to do and not want to do. There's nothing more just
 10:23 8 than looking at the evidence and making findings on it.
 10:23 9 Do you agree with that?
 10:23 10 A. Yes.
 10:23 11 MR. SCHULTZ: Thank you, Judge. We'll
 10:23 12 pass the juror.
 10:23 13 THE COURT: All right.
 10:23 14 VOIR DIRE EXAMINATION
 10:23 15 BY MR. GOELLER:
 10:23 16 Q. Good morning, Mr. White. You have been sitting
 10:23 17 in that position for an hour and 25 minutes. Do you
 10:23 18 want a break? Get a glass of water? Use the rest room?
 10:24 19 A. I'm all right. It depends on how long you are
 10:24 20 going to take. I actually have a scheduled medical
 10:24 21 appointment at 11 that I may have to call and cancel.
 10:24 22 Q. I'm not -- why don't you stand up for a minute
 10:24 23 and shake it out.
 10:24 24 THE COURT: Is it down in Plano?
 10:24 25 VENIREPERSON: Yes. It's in Richardson

10:24 1 actually.
 10:24 2 THE COURT: You know what, I don't think
 10:24 3 there is a chance. We'll take a ten-minute recess.
 10:24 4 Give you a chance to make a call and let everybody use
 10:24 5 the bathroom, and let's come back no later than 10:35.
 10:24 6 THE BAILIFF: All rise.
 10:24 7 (Break)
 10:39 8 MR. GOELLER: Thank you, Your Honor.
 10:39 9 Q. (BY MR. GOELLER) Thank you, Mr. White. Again,
 10:39 10 my name is Matthew Goeller. I represent Ivan. Don
 10:39 11 High, and you know the prosecutors. I won't waste your
 10:39 12 time. I promise you that. Mr. Schultz covered a lot of
 10:39 13 law. And I'm not going to waste your time and go over
 10:39 14 the same material. I'll cut right to the chase. I know
 10:40 15 you've got things you've got to do.
 10:40 16 Towards the end of the questionnaire, I
 10:40 17 want to just talk to you a couple minutes about work
 10:40 18 commitment. You've got 27. Well, that's already past.
 10:40 19 18 -- 17 and 18 September, approximate work commitment.
 10:40 20 Can you tell me what that is?
 10:40 21 A. Just a customer from my defense company. We
 10:40 22 are presenting data from work to secure more funding.
 10:40 23 Q. And what came up right before the break, you
 10:40 24 had a medical procedure?
 10:40 25 A. That's it.

10:40 1 Q. Is it for you or a family member?
 10:40 2 A. It's for me.
 10:40 3 Q. If you are out of here in about ten minutes,
 10:40 4 can you make it?
 10:40 5 A. It will probably work.
 10:40 6 Q. It's important to you, obviously?
 10:40 7 A. Yeah.
 10:41 8 Q. I've got the questionnaire. I've listened to
 10:41 9 all your answers. When Mr. Schultz had you on voir dire
 10:41 10 examination, and I don't need to go over any of that
 10:41 11 again. You are a Ph.D., you are an engineer?
 10:41 12 A. Yes.
 10:41 13 Q. My dad was a double E. I was supposed to be an
 10:41 14 engineer like my dad and my brother and everybody, but I
 10:41 15 broke away. What's your -- your undergraduate degree,
 10:41 16 you've got an engineering degree in what type of
 10:41 17 engineering?
 10:41 18 A. Electrical engineering.
 10:41 19 Q. You are a double E?
 10:41 20 A. Yes.
 10:41 21 Q. And your Ph.D. is in?
 10:41 22 A. It's electrical engineering.
 10:41 23 Q. Wow. Wow. Okay. On the questionnaire you
 10:41 24 were given an option of leaving the death penalty -- if
 10:41 25 you believe in using the death penalty, how strongly on

10:41 1 a scale of 1 to 10 you hold such a belief, and you put
10:42 2 9. Tell me why you put 9.

10:42 3 Obviously, you know, you know

10:42 4 Mr. Schultz's role and Ms. Falco's role and Ms. Lowry's
10:42 5 role in this case. And you know my role, my role and
10:42 6 Mr. High's role. If there is a conviction -- we don't
10:42 7 even know if there is going to be a conviction of
10:42 8 capital murder. If not, something else will happen. If
10:42 9 there is, the bottom line, our role, is to save that
10:42 10 kid's life. That's how you boil this case down to its
10:42 11 essence. On a scale of 1 to 10 when you put 9, should
10:42 12 that cause me concern?

10:42 13 A. I don't see why. It's hard to put a rating and
10:42 14 what level do you, on 1 to 10 level on how you feel.
10:42 15 The question -- the answers I've given state more how I
10:42 16 feel, and that would be a better rating system than
10:42 17 circling a number. It was difficult during the
10:42 18 question.

10:42 19 Q. I know, it's a tough questionnaire. You know,
10:43 20 a lot of jurors have said, you know, I wish we could
10:43 21 have filled out the questionnaire after both sides had
10:43 22 given the general speech. Maybe that's something we
10:43 23 need to think about in the future. Many jurors -- I
10:43 24 don't think I read this from you -- but many jurors have
10:43 25 come up here. And when they talk about that third

10:43 1 special issue, there is a common theme that, well, that
10:43 2 doesn't excuse it. That's not an excuse.

10:43 3 And understand that this -- this special
10:43 4 issue is not really talking about an excuse because we
10:43 5 don't even get to these questions. I suppose the only
10:43 6 thing in our law regarding excuse comes about in ways
10:43 7 that this case is not going to entail like, yeah, I
10:43 8 killed him, but it was self-defense. Or I killed him
10:44 9 because I threw him out of the plane because the plane
10:44 10 was going down and 300 people or whatever, you've heard
10:44 11 all those -- those situational ethics questions. You
10:44 12 know, the plane with 12 Boy Scouts on it, and it's going
10:44 13 down unless there is somehow you are able to clear that
10:44 14 mountain peak. 200 pounds will clear it.

10:44 15 So someone tosses off the first mate or
10:44 16 something like that, and all that kind of stuff. But
10:44 17 anyhow, all of that stuff may be by way of excuse. In
10:44 18 the first phase of the trial, there is no -- there's no
10:44 19 mechanism in the law for excuse. And then there
10:44 20 probably shouldn't be. You are either guilty or you are
10:44 21 not guilty, beyond a reasonable doubt, proved by the
10:44 22 State.

10:44 23 When we get to these second special
10:44 24 issues, it's not that it's an excuse. But by its -- I
10:44 25 don't need to read it to you again. It's that juror's,

10:44 1 individually and as a group, 12, it's their way to look
10:45 2 back at everything, anything and everything that they so
10:45 3 choose and then just make a determination. What is the
10:45 4 right thing to do in this case? Is it the right thing
10:45 5 to impose the death penalty, or is the right thing a
10:45 6 life sentence? Does that make sense to you?

10:45 7 A. Uh-huh.

10:45 8 Q. Um, with an engineering background, and I'll
10:45 9 try to think how my father would have answered that
10:45 10 question because I ask everybody that question. And
10:45 11 people would -- especially a double E -- and my father
10:45 12 said, you know, there's really only one kind of
10:45 13 engineer. That was a double E. He was pretty
10:45 14 prejudiced as far as engineers go. But people with your
10:45 15 background may look at that word probability differently
10:45 16 than other folks. You work for Raytheon?

10:45 17 A. Yes.

10:46 18 Q. Somebody, it may have been Mr. Schultz with
10:46 19 another juror, was talking about Raytheon does defense
10:46 20 work, missiles, surfaced air, air-to-air, air to ground,
10:46 21 I suppose all sorts of things. What's the probability
10:46 22 that, when the pilot hits launch, that that missile will
10:46 23 either go off track? Somehow it just won't do what it's
10:46 24 supposed to do? And I guess all that kind of stuff is
10:46 25 figured in and designed and engineering with missiles

10:46 1 and things like that.

10:46 2 Do you -- if you looked at that word
10:46 3 probability and were trying to assess, or if I asked you
10:46 4 if you could put that in a percentage, 0 to 100, and it
10:46 5 may not even make any sense to an engineer. My mind is
10:46 6 not good enough to think like an engineer. Where would
10:46 7 you put probability, if you tried to think of it as a
10:46 8 layman or actually, yourself?

10:46 9 A. The way I perceive it in the context here is,
10:47 10 there is a likely chance.

10:47 11 Q. Likelihood?

10:47 12 A. Yeah.

10:47 13 Q. Okay. Okay. Does that probably mean more than
10:47 14 50 percent to you?

10:47 15 A. It's hard to say.

10:47 16 Q. Legislature probably could have used a lot of
10:47 17 words. One word that we hear come up, but it is
10:47 18 definitely -- the legislature chose not to -- is
10:47 19 possibility. They could have put, whether there's a
10:47 20 possibility, and they didn't use that word. They put
10:47 21 probability. And probability is subject to a lot of
10:47 22 interpretation. But you think more likely than not?

10:47 23 A. Yes. I would agree with that.

10:47 24 Q. So we're probably talking something roughly
10:47 25 more than 50 percent?

10:47 1 A. Probably, yeah.
 10:47 2 Q. Okay.
 10:47 3 A. Probably, probably.
 10:47 4 Q. Probably. There's a probability that the
 10:48 5 probability -- okay, I'm with you. We have three
 10:48 6 minutes. I'm not going to break my promise to you.
 10:48 7 "What is the best argument in opposition
 10:48 8 of the death penalty?" "People change." Take a minute,
 10:48 9 Mr. White, and tell me what you mean about by that.
 10:48 10 A. The same way I answered Mr. Schultz.
 10:48 11 Q. I already broke my promise and asked you a
 10:48 12 question he asked you, right?
 10:48 13 A. I've seen many cases in Utah where I grew up.
 10:48 14 When the death sentence was imposed, it typically came
 10:48 15 many many years after the crime. And there was a
 10:48 16 question of whether the deterrent, you know, people who
 10:48 17 witnessed or understood the crime that happened 20 years
 10:49 18 ago, whether it had any deterring effect, whether the
 10:49 19 person is so different that it is -- it is the argument
 10:49 20 I posed earlier, just reward valid after 20 years?
 10:49 21 I guess that would be, and like I answered
 10:49 22 Mr. Schultz's question is, how do you come to that
 10:49 23 decision? Is it, well, if you truly believe in 20 years
 10:49 24 a person is different, then do we make the argument that
 10:49 25 we should give them that time or just reward causes us

10:49 1 that just -- just answer there just to apply the
 10:49 2 sentence.
 10:49 3 Q. Right. Do you think people can change after
 10:49 4 something bad has happened in their life? Maybe they've
 10:49 5 done bad?
 10:49 6 A. Yes.
 10:49 7 Q. But you'll, regarding mitigation evidence,
 10:50 8 whatever it is, and we can't tell you, the Judge will
 10:50 9 tell you, we don't know what it is. Our courts have
 10:50 10 interpreted it as anything and everything a juror may
 10:50 11 think or may not think. It's kind of like the whole
 10:50 12 package, that last look. What's the right thing to do
 10:50 13 in this case?
 10:50 14 You are open to that kind of evidence, you
 10:50 15 can at least listen to it, and then make your decision
 10:50 16 after you hear all those kind of things, right?
 10:50 17 A. Yes.
 10:50 18 Q. You hesitated for a minute. Because my
 10:50 19 question was so poorly spoken, or you want to say
 10:50 20 something else?
 10:50 21 A. No. I think it probably goes to, once again,
 10:50 22 the way I answered Mr. Schultz when we were talking
 10:50 23 about a religious, based on bad acts. There are chances
 10:50 24 that are made. It -- I think it's difficult to judge in
 10:51 25 short periods of time what affect or what is the

10:51 1 sincerity of such changes.
 10:51 2 Q. Right.
 10:51 3 A. And that's why I hesitated. Making a judgment
 10:51 4 based on short, short term would be difficult.
 10:51 5 Judgments are made more on what's been demonstrated.
 10:51 6 Q. Okay. Okay.
 10:51 7 MR. GOELLER: I don't have any further
 10:51 8 questions for Mr. White, Your Honor.
 10:51 9 THE COURT: All right.
 10:51 10 MR. GOELLER: If we could have a brief sub
 10:51 11 rosa.
 10:51 12 THE COURT: If you could step down for
 10:51 13 just a moment, we'll call you back in in just a minute.
 10:51 14 Sir, I just want to advise you, if you would -- I
 10:51 15 suppose there are other jurors back there -- not to
 10:51 16 discuss with them anything you've been asked or anything
 10:51 17 you've said while you were in here. We'll call you back
 10:52 18 in. Thank you. Just go back in the jury room.
 10:52 19 (Open court, defendant present, no juror.)
 10:52 20 MR. SCHULTZ: Before we announce, would
 10:52 21 you excuse us? We have a little disagreement in the
 10:52 22 ranks on this one.
 10:52 23 THE COURT: Sure.
 10:52 24 MR. SCHULTZ: We tried. We can't take
 10:52 25 him, Judge. We need a peremptory challenge. It's awful

10:55 1 close, and I appreciated the extra time. That was one
 10:55 2 we really wanted, and we just couldn't find it working.
 10:55 3 MR. GOELLER: Coulda, woulda, shoulda.
 10:55 4 THE COURT: Would you ask Mr. White to
 10:55 5 step back in for a moment?
 10:55 6 MR. GOELLER: Since they are not going to
 10:55 7 take him, can I ask him a few more questions?
 10:55 8 THE COURT: Should I tell him that you did
 10:55 9 his bidding or --
 10:55 10 MR. SCHULTZ: Uh-huh. I would appreciate
 10:55 11 it if you would.
 10:55 12 MR. GOELLER: No, I struck him.
 10:55 13 (Venireperson White present.)
 10:55 14 THE COURT: Mr. White, I just want to let
 10:55 15 you know that I want to thank you for your service. I
 10:55 16 suppose you've got mixed feelings in many ways on this,
 10:56 17 and I kind of hate to see you go myself. But at any
 10:56 18 rate, you are finally excused.
 10:56 19 VENIREPERSON: All right.
 10:56 20 THE COURT: Thank you.
 10:56 21 MR. GOELLER: Thanks, Mr. White.
 10:56 22 MR. SCHULTZ: I got rid of you, Mr. White.
 10:56 23 VENIREPERSON: Thank you.
 10:56 24 (Venireperson White excused.)
 10:56 25 THE COURT: All right. The next one is

10:56 1 Meeta Babu.
 10:56 2 THE BAILIFF: Yes, Your Honor.
 10:56 3 THE COURT: Who also seems to have some
 10:56 4 conflicts.
 10:56 5 (Venireperson Babu present.)
 10:56 6 THE COURT: All right. Ma'am, are you
 10:56 7 Meeta Babu?
 10:56 8 VENIREPERSON: Yes.
 10:56 9 THE COURT: I just want to remind you that
 10:56 10 I had placed you under oath a week ago Tuesday.
 10:56 11 VENIREPERSON: Uh-huh.
 10:56 12 THE COURT: And the oath was to give true
 10:57 13 answers to the questions that you were asked. So I just
 10:57 14 want to remind you that you are still bound by that
 10:57 15 oath.
 10:57 16 VENIREPERSON: Okay.
 10:57 17 THE COURT: Mr. Schultz or Ms. Falco?
 10:57 18 MR. SCHULTZ: It would be me, Judge.
 10:57 19 THE COURT: Is it you? Okay. Go ahead.
 10:57 20 VOIR DIRE EXAMINATION
 10:57 21 BY MR. SCHULTZ:
 10:57 22 Q. It is still good morning. Refreshing your
 10:57 23 memory, my name is Bill Schultz. I'm one of the
 10:57 24 prosecutors in this case, along with Ms. Falco and
 10:57 25 Ms. Lowry.

10:57 1 We'll be representing the State of Texas
 10:57 2 in its capital prosecution of Ivan Cantu, who is the man
 10:57 3 in the blue shirt at the next table.
 10:57 4 And next to him is Don High. And then I
 10:57 5 don't know if you can see Mr. Goeller past his satchel
 10:57 6 there, but he's also there next to him.
 10:57 7 MR. GOELLER: Good morning.
 10:57 8 VENIREPERSON: Good morning.
 10:57 9 Q. He's over there next to Mr. High.
 10:57 10 MR. GOELLER: Good morning.
 10:57 11 THE COURT: In fact, Mr. Goeller, I would
 10:57 12 ask you, if you would, please put that down.
 10:57 13 MR. GOELLER: Actually, Judge, there's
 10:57 14 nothing between me and the juror. It's when I'm in my
 10:57 15 box they can't see me.
 10:57 16 THE COURT: Just as a general proposition.
 10:57 17 MR. GOELLER: Okay.
 10:57 18 MR. SCHULTZ: For aesthetics.
 10:57 19 THE COURT: Because that is an immense,
 10:58 20 beautiful case. Go ahead.
 10:58 21 Q. (BY MR. SCHULTZ) You don't know any of us from
 10:58 22 what I remember last Tuesday; is that correct?
 10:58 23 A. Yes.
 10:58 24 Q. And you are doing fine. There may be times
 10:58 25 when you might nod your head yes or no. And you and I

10:58 1 would understand what that meant because we're talking.
 10:58 2 But one side might ask you to actually say yes or no
 10:58 3 because there's a record of every word that's being
 10:58 4 spoken, and it being taken down just next to you there.
 10:58 5 And so the court reporter can't take down
 10:58 6 a nod, even though you and I communicate fine. So I'm
 10:58 7 not -- I'm not being a controlling kind of guy if I just
 10:58 8 ask you to say yes or no. It's just that we have to
 10:58 9 have that all on the record.
 10:58 10 A. Okay.
 10:58 11 Q. As I read your questionnaire, on the -- on the
 10:58 12 death penalty issues, there's some questions I have
 10:58 13 about it because the answers are not inconsistent. But
 10:58 14 I need to make sure that I understand exactly where you
 10:59 15 are on those answers because sometimes the way -- a flaw
 10:59 16 in our system of jury selection is that we give the
 10:59 17 jurors the questionnaire before any explanations of law
 10:59 18 are given.
 10:59 19 A. Uh-huh.
 10:59 20 Q. And so sometimes people read those
 10:59 21 questionnaires as simply, how do you think it ought to
 10:59 22 be? How should this issue be or how should that issue
 10:59 23 be? And it looks like one thing to us. And all that is
 10:59 24 that jurors are just not lawyers. And they are just
 10:59 25 coming up with the best answer they can give. For

10:59 1 example, what is your line of work now?
 10:59 2 A. I'm in the -- I'm a clinical scientist, so I
 10:59 3 work for a marketing research company.
 10:59 4 Q. Can you tell me a little bit more about what
 10:59 5 that means?
 10:59 6 A. Okay. We do studies like make-up products,
 10:59 7 household products. We have people come in and do
 10:59 8 the -- try out the products. And then I basically just
 11:00 9 write down the results and take care of the study so the
 11:00 10 studies run on like for months and months. And I just
 11:00 11 have to keep in touch with those people, have them come
 11:00 12 in and fill out questionnaires and stuff, and then we
 11:00 13 turn in data over to the reports department. So we are
 11:00 14 basically testing out products.
 11:00 15 Q. Do you have a technical background for that
 11:00 16 position, or is it a marketing type background? What is
 11:00 17 your background?
 11:00 18 A. I do a lot of different things in there. Like,
 11:00 19 I work in the lab. But then, yet, I work with people on
 11:00 20 an everyday basis. On the computer. I'm always
 11:00 21 working. Just a lot of different things.
 11:00 22 Q. Okay. It's kind of the same thing, if you
 11:00 23 would bring me a survey related to the kind of work that
 11:00 24 you do, say filling this out or a questionnaire. I
 11:00 25 don't know anything about what you do. I would do the

11:00 1 best I could. I would put some answers and you would
 11:00 2 say, this guy, he doesn't understand anything because
 11:01 3 the answers don't make sense to our business sort of
 11:01 4 thing.

11:01 5 And that's sometimes what we do with
 11:01 6 jurors. We'll ask them questions like, who should have
 11:01 7 the burden of proof? And sometimes they'll say the
 11:01 8 defendant ought to because that's just how it seems to
 11:01 9 them, or maybe they'll answer different ways.

11:01 10 And that's a mistake that we have, and
 11:01 11 yet, if we don't have the questionnaires, it also just
 11:01 12 gives us some background information on you. Where you
 11:01 13 work, who your relatives are, what your hobbies are,
 11:01 14 what books you read. If we don't have that, then when
 11:01 15 we start talking to you, we don't really have anything,
 11:01 16 we don't have anything to say because we've got nothing
 11:01 17 to look from and that's interesting to us in testing
 11:01 18 your qualifications.

11:01 19 So sometimes there are answers that we are
 11:01 20 concerned about or just got curiosity about. You've
 11:01 21 indicated that you are in favor of the death penalty; is
 11:01 22 that correct?

11:01 23 A. Yes. I am in favor of it. But --

11:01 24 Q. And even more importantly, in terms of your
 11:01 25 being in favor of it, we gave you that ten-point scale

11:02 1 of nine-point scale, whatever it was, how well do you,
 11:02 2 exactly how strong you are on that. As I recall, you
 11:02 3 circled 9; is that right?

11:02 4 A. I believe so.

11:02 5 Q. Does that make -- do you remember that? Let's
 11:02 6 see if I can find it. If you believe in using the death
 11:02 7 penalty, how strongly on a scale from 1 to 10 do you
 11:02 8 hold that belief? 1 being least and 10 being the
 11:02 9 strongest, and you indicated 9. Do you remember that
 11:02 10 question?

11:02 11 A. Yes, I do.

11:02 12 Q. And does that still seem to be your position on
 11:02 13 the death penalty?

11:02 14 A. Yes.

11:02 15 Q. And then having said that you are in favor of
 11:02 16 the death penalty because you believe it is the only way
 11:02 17 to punish individuals, depending on the crime committed,
 11:02 18 regarding a capital murder, I think this is death
 11:02 19 penalty, what the individual deserves, but it also
 11:02 20 depends on evidence. And that, and I understand what
 11:03 21 that means. And then you circled number 4 about which
 11:03 22 best represents your feelings.

11:03 23 And you said that you believe the death
 11:03 24 penalty is appropriate in some capital murder cases, but
 11:03 25 that you could never return a verdict which assessed the

11:03 1 death penalty; is that correct?

11:03 2 A. That is correct.

11:03 3 Q. So I'm taking what you are saying, trying to
 11:03 4 tape it together. Also, I think there's a question that
 11:03 5 asked you: Do you have any moral, religious or
 11:03 6 philosophical beliefs that would prevent you from being
 11:03 7 able to impose the death sentence? I think you answered
 11:03 8 that one yes?

11:03 9 A. I don't have any -- nothing religious or
 11:03 10 anything. I thought it was no.

11:03 11 Q. We lumped all three together and perhaps that
 11:03 12 was --

11:03 13 A. Under.

11:03 14 Q. Do you have any moral, religious or personal
 11:03 15 beliefs that would prevent you from returning a verdict
 11:03 16 which would result in the execution of another human
 11:03 17 being. And your answer to that was yes.

11:04 18 A. The reason I circled that because I don't feel
 11:04 19 comfortable deciding whether individuals deserve, you
 11:04 20 know, what kind of punishment, death penalty or not.
 11:04 21 That would be the reason I circled that, but there's no
 11:04 22 religion based on.

11:04 23 Q. Okay. Of all the 200 jurors that you were with
 11:04 24 at the very beginning filling out the questionnaires,
 11:04 25 I'll bet we would not find a single one, out of all

11:04 1 those 200, who would say I will feel comfortable voting
 11:04 2 for death.

11:04 3 I mean, what you say doesn't, to me,
 11:04 4 doesn't seem any different from probably how all of us
 11:04 5 feel. I don't know about you, but I woke up this
 11:04 6 morning and I didn't say, what a lucky man I am. I get
 11:04 7 to come up and be a prosecutor in a case that may result
 11:04 8 in somebody being killed. I didn't, you know, I
 11:04 9 don't -- I don't much think about that anymore because
 11:05 10 it just -- because I'm a professional, and I'm doing a
 11:05 11 job.

11:05 12 But I will assure you that nothing about
 11:05 13 this is fun or comfortable or, you know, if I had a
 11:05 14 choice with this kind of trial and trying a regular
 11:05 15 burglary where nobody was killed, you know, I would much
 11:05 16 rather be trying that kind of case. Are you with me on
 11:05 17 that?

11:05 18 A. Yes, I am.

11:05 19 Q. And I would hope that you are the kind of
 11:05 20 person, like those other 200 people that would -- that
 11:05 21 would not take a capital prosecution lightly. And I
 11:05 22 know you are not, and I understand those -- those
 11:05 23 answers. Both sides are entitled to jurors who are
 11:05 24 quote fair.

11:05 25 I mean, the defendant is entitled to fair

11:05 1 jurors to be sitting in evaluation of his case. The
 11:05 2 State is equally entitled to fair jurors sitting in
 11:05 3 evaluation of our case, which happens to be the same
 11:06 4 case.

11:06 5 But when we talk about fair, that doesn't
 11:06 6 mean people without opinions, people without experience,
 11:06 7 or people without values that shape how they go about
 11:06 8 their work as jurors. What it really means is that both
 11:06 9 sides are entitled to jurors who can honestly consider
 11:06 10 all of the law that the Judge tells them to consider and
 11:06 11 find the facts that relate to how that law works. And
 11:06 12 it's easy if the law is something that you like and you
 11:06 13 support and the facts end up going along with what you
 11:06 14 want to do. That's an easy job.

11:06 15 I mean, if you are on a jury and
 11:06 16 somebody's not guilty according to the evidence, and you
 11:07 17 also, for example, you think the defendant seems like a
 11:07 18 nice person. And that's an easy thing to do when you
 11:07 19 like the defendant in a hypothetical case, and the
 11:07 20 evidence makes you find him not guilty. Does that make
 11:07 21 sense to you?

11:07 22 A. Yes, it does.

11:07 23 Q. What could be better? Here's a nice guy who is
 11:07 24 charged with a crime he didn't commit, and the State
 11:07 25 didn't prove it, and so I vote not guilty. And

11:07 1 everybody is happy because he's a nice guy, and he's not
 11:07 2 guilty and everything is fine.

11:07 3 It's much tougher when what your heart
 11:07 4 might want to be the result isn't the same as what the
 11:07 5 evidence says has to be the result. You might be
 11:07 6 trying -- you might be in a case and you think the
 11:07 7 defendant, what a nice guy the defendant is, but he's
 11:07 8 guilty. You know, you hate to do something tough to a
 11:07 9 nice guy, but yet I got to find you guilty of stealing
 11:07 10 or whatever you are charged with, Charlie, even though
 11:07 11 you are a nice guy.

11:07 12 Or you might hate the defendant. I mean,
 11:07 13 you might have -- you might have a Charles Manson type
 11:07 14 of person on trial for something, and let me add him
 11:07 15 because of who he is. But maybe the State doesn't have
 11:08 16 evidence in that case. And so what a fair juror is is
 11:08 17 somebody who can vote not guilty on a guy like Charles
 11:08 18 Manson because the evidence isn't there and vote guilty
 11:08 19 on a wonderful person, on whoever that wonderful person
 11:08 20 might be. If the evidence is there, go apart from your
 11:08 21 heart. Am I making sense to you on that?

11:08 22 A. Yes, you are.

11:08 23 Q. And I'm not sure, I used to think that was
 11:08 24 asking a lot of people to go against their heart, but I
 11:08 25 don't know that it really is if you approach it

11:08 1 analytically. Kind of like your work. I mean, you do
 11:08 2 testing on products?

11:08 3 A. Yes.

11:08 4 Q. And I would assume that there are some products
 11:08 5 that you test that you hope will test good and people
 11:08 6 will be responsive to them, and the FDA will say they
 11:08 7 are good? All that kind of stuff, right?

11:08 8 A. Yes.

11:08 9 Q. And sometimes it's probably a surprise in the
 11:08 10 lab that something goes wrong with a product. Doesn't
 11:09 11 that happen sometimes?

11:09 12 A. Yes, it does.

11:09 13 Q. And that's one of those situations. Everybody
 11:09 14 is disappointed because it looked like a great product.
 11:09 15 It looked like it would make money or provide a real
 11:09 16 comfort or service to people somehow. But it doesn't
 11:09 17 work for some reason, and yet your lab still does the
 11:09 18 honest work of evaluating it and testing it, right?

11:09 19 A. Yes.

11:09 20 Q. And while I know it, I know laboratories --
 11:09 21 this isn't a laboratory, and we're not talking about
 11:09 22 1984 or something. I don't mean that. But what we ask
 11:09 23 jurors to do is that same mechanical process of
 11:09 24 measuring, of weighing and evaluating and allowing the
 11:09 25 results of that measurement to dictate the outcome of

11:09 1 the case, and that's what jury service is.

11:09 2 And so as it relates to a criminal case,
 11:09 3 the first thing we tell the jury is don't -- nobody ever
 11:09 4 says, ladies and gentlemen, do you want the defendant to
 11:10 5 be convicted or not of capital murder? That's never a
 11:10 6 question asked of the jury. Give him what you want to
 11:10 7 give him.

11:10 8 Instead the question is: Do you find
 11:10 9 beyond a reasonable doubt that the defendant is guilty
 11:10 10 of the crime of capital murder? Has the State proved
 11:10 11 it? That's a measurement kind of thing. The State has
 11:10 12 evidence. And if the evidence is enough to be beyond a
 11:10 13 reasonable doubt, whatever you reasonably define that
 11:10 14 term to be, we are entitled to have 12 people vote
 11:10 15 guilty if we prove it beyond a reasonable doubt.

11:10 16 And if we fail to prove it to you beyond a
 11:10 17 reasonable doubt, to you or the other 11 people, the
 11:10 18 defendant's entitled to a vote of not guilty. It's a
 11:10 19 measurement. It's like you are testing. It's the,
 11:10 20 sorry, evidence isn't good enough or, sorry, the
 11:10 21 evidence was too strong. That kind of idea. Do you see
 11:10 22 yourself as being able to do that fine?

11:10 23 A. Do I see myself doing that fine?

11:10 24 Q. Uh-huh.

11:11 25 A. Not really. I think one thing, I'm narrow

11:11 1 minded. I'm not open-minded, so I think that might be a
 11:11 2 problem there.
 11:11 3 Q. How so?
 11:11 4 A. You are asking about guilty and not guilty,
 11:11 5 right?
 11:11 6 Q. Uh-huh.
 11:11 7 A. Okay. And based on the evidence. I can't
 11:11 8 really give you exact answers, but I just feel like the
 11:11 9 way I am, narrow minded, not being able to focus on
 11:11 10 everything that is laid out, taking it from an open
 11:11 11 mind, looking at everything, you know, I'm afraid I
 11:11 12 probably would just focus on one thing.
 11:11 13 Q. Yeah.
 11:12 14 A. 'Cause like, if you relate it to my work, where
 11:12 15 I work, we really don't -- we just do the testing.
 11:12 16 Q. Let me interrupt you for a second.
 11:12 17 MR. SCHULTZ: May Mr. Goeller and I confer
 11:12 18 for just a moment?
 11:13 19 MR. GOELLER: I think Mr. Schultz and I
 11:13 20 may have an agreement, Judge. Can I ask just one or two
 11:13 21 questions?
 11:13 22 THE COURT: Sure.
 11:13 23 MR. GOELLER: Is that okay?
 11:13 24 MR. SCHULTZ: Yes. Well, maybe. But
 11:13 25 depends on the answers.

VOIR DIRE EXAMINATION

11:13 1 BY MR. GOELLER:
 11:13 2 Q. I see from your questionnaire you are a
 11:13 3 clinical scientist?
 11:13 4 A. Yes.
 11:13 5 Q. What is your degree in college?
 11:13 6 A. Biology.
 11:13 7 Q. Biology?
 11:13 8 A. Yes.
 11:13 9 Q. Okay. And when you write down criminal defense
 11:13 10 attorneys are the defense attorneys -- I think I
 11:13 11 understand that. I think that's pretty clear. Okay.
 11:13 12 That's all I have, Judge.
 11:13 13 THE COURT: All right. Do you-all have an
 11:13 14 agreement, do you think?
 11:13 15 MR. SCHULTZ: Yes, Judge.
 11:13 16 THE COURT: All right. And is that --
 11:14 17 MR. SCHULTZ: Could we excuse the juror
 11:14 18 for just a moment?
 11:14 19 THE COURT: Yes. Can I ask you to step
 11:14 20 down. We'll call you right back in in just a moment.
 11:14 21 VENIREPERSON: Okay.
 11:14 22 (Venireperson Babu not present.)
 11:14 23 MR. SCHULTZ: May I speak?
 11:14 24 THE COURT: Yes.

11:14 1 MR. SCHULTZ: Yes. We have an agreement
 11:14 2 to excuse this juror by consent. One thing I request
 11:14 3 that the Court do, and I'm not jacking with anybody.
 11:14 4 I'm looking down the road, and I'm thinking to myself, I
 11:14 5 want to make sure that we're clear that we're getting
 11:14 6 answers from Mr. Cantu on all of this. And not that I'm
 11:14 7 suggesting Mr. Goeller or Mr. High would give different
 11:14 8 answers than what he's giving. But I can envision some
 11:14 9 defendants, if things went wrong in a capital murder
 11:14 10 case, later on claiming they were up there saying that I
 11:14 11 agreed to excuse these jurors, and maybe I really didn't
 11:14 12 or whatever. And so I'd like to have him also tell the
 11:15 13 Court that it's all right with him on these.
 11:15 14 THE COURT: You mean with his own voice?
 11:15 15 MR. SCHULTZ: Yes, sir. Yes, I would.
 11:15 16 I'm only being cautious. I'm not accusing anybody.
 11:15 17 It's not critical of anybody, but I've seen these things
 11:15 18 before. I guess if I'm sitting on death row with writs,
 11:15 19 I guess I might remember it differently than it was.
 11:15 20 And so, if it's okay with the defendant, I'd like him to
 11:15 21 just say it's okay with him.
 11:17 22 THE DEFENDANT: Judge, I do agree to that
 11:17 23 agreed strike.
 11:17 24 THE COURT: Okay. That's good. Thank
 11:17 25 you. Then I suppose that in spite of Ms. Babu's

11:17 1 courageous stance, we're going to excuse her. Will you
 11:17 2 please tell her that she's finally excused?
 11:17 3 THE BAILIFF: I will, Your Honor.
 11:17 4 (Venireperson Babu excused.)
 11:17 5 THE COURT: Then, let's see, I suppose the
 11:17 6 next one is Laura Robinson.
 11:17 7 MR. GOELLER: You know, Judge, I think for
 11:17 8 the benefit of you, the bailiff, the court reporter,
 11:17 9 everyone in this courtroom, I think we need to find out
 11:17 10 what she's testing, what products she's stamping
 11:18 11 approved to go out in the marketplace.
 11:19 12 (Venireperson Robinson present.)
 11:19 13 THE COURT: Ma'am, are you Laura K.
 11:19 14 Robinson?
 11:19 15 VENIREPERSON: Yes.
 11:19 16 THE COURT: And do you recall that a week
 11:19 17 ago, Tuesday, I administered an oath to all the jurors?
 11:19 18 And the oath -- I asked you to swear that you will give
 11:19 19 true answers to the questions that are asked by
 11:19 20 everybody?
 11:19 21 VENIREPERSON: Yes, I do.
 11:19 22 THE COURT: Then I want to remind you that
 11:19 23 you are still under that oath. And the attorneys on
 11:19 24 both sides will have a chance to ask you questions now.
 11:19 25 VENIREPERSON: Okay.

THE COURT: All right. Ms. Falco?
VOIR DIRE EXAMINATION

BY MS. FALCO:

Q. Ms. Robinson, my name is Gail Falco, and I'm an assistant district attorney here in Collin County. And as you recall, sitting next to me on my right is my boss, the first assistant district attorney, Bill Schultz. He spoke to you on Tuesday.

A. Yes, that's correct.

Q. And to my left is Jami Lowry. She's also an assistant district attorney here in Collin County.

Seated at the other table, closest to me, is the defendant Ivan Cantu. And seated next to him are his lawyers, Don High and Matt Goeller, both private practitioners here in Collin County.

MR. GOELLER: Good morning.

VENIREPERSON: Good morning.

Q. (BY MS. FALCO) I take it from last Tuesday that you do not know any of us; is that correct?

A. That's correct.

Q. Ms. Robinson, we do this part of, or we do voir dire in this kind of a case in a two-part series, I guess you'd say. When you came in on Tuesday, that's what we called general voir dire. And everybody was given a questionnaire to fill out, and everybody heard

about the law as it applied to capital murder, as it applied to everybody during that time. And then we have each juror come back and individually interview them, and in a situation where the State is seeking the death penalty.

And that's done for a couple of different reasons. One of the main reasons is you had a little bit of opportunity to think from the time you first walked in the door on Tuesday until today. But more importantly, it's a time, it's a little bit more intimate when we're in here. And it's just you, and we can talk more freely and openly about your positions, your opinions, and your personal beliefs without any kind of embarrassment or feeling that you had to be politically correct or anything like that.

A. Okay.

Q. The only obligation on your part is just to tell the truth because both sides are looking for 12 people who can be fair and impartial and could fairly consider a life sentence in the appropriate circumstances and could appropriately consider the death penalty in appropriate circumstances. So that's kind of the importance of you just being honest with us.

A. Okay.

Q. When you first came in on Tuesday and when you

first realized it was a death penalty case, what were your thoughts?

A. Oh, my gosh. I was pretty much shocked because I've never been on a jury before so. I was like, I mean, I was just kind of flabbergasted, honestly. I mean, I really didn't know what to think. I mean, my brother is a prosecutor and my half brother. And so I just never thought, ever dreamed I would potentially be picked for that kind of case, so.

Q. Let's talk about that a little bit. You said that your half brother?

A. Yes.

Q. Are you all close? Do you all communicate pretty often?

A. Pretty often.

Q. And how long has he been working as an assistant district attorney?

A. He's worked in the DA's office in Hale County probably -- let's see, I'm 26, probably about 18 years.

Q. So he's been there a long time?

A. Uh-huh.

Q. Do you all ever talk about the cases he prosecutes?

A. Sometimes.

Q. Has he ever prosecuted a death penalty case?

A. Yes.

Q. And have you all discussed that?

A. Somewhat, just maybe about the case. Not really get into a whole whole lot. Maybe just about what happened basically. I mean, not in a whole whole lot of detail, but somewhat.

Q. Do you know if he's like just an assistant district attorney, or if he's like the first assistant?

A. He's the first assistant.

Q. What's his name?

A. Rob Kincaid.

Q. Rob Kincaid. As far as this process goes, as far as you coming in here and, when you first had to come in for the general voir dire and now we're bringing you back. And I'm sure you had a lot of time to read or visit or do whatever you want back there before you come in here and we talk to you.

And probably almost unanimously on that question where it asked, "What is the biggest problem with the criminal justice system?" And people put, it's too slow. And knowing that we are seeking the death penalty, and we're spending this time. And I can promise you we're not being inefficient as far as we're not playing around. We were not goofing around. We are constantly working while you are all sitting back there.

11:24 1 What are your thoughts about the process so far? Do you
11:24 2 think we are being too cautious, do you think?

11:24 3 A. It's really hard for me to say because I really
11:24 4 don't know. You know, I'm not a lawyer. I don't really
11:24 5 know what's involved in all this. I mean, I have a very
11:24 6 outside view of the whole thing. It feels slow, but
11:24 7 then again maybe there's reasons beyond what I can
11:24 8 understand. So I don't -- I really don't have any.

11:24 9 Q. Do you think this is an important enough of a
11:24 10 case to spend the time individually with each voir
11:24 11 dire -- with each individual juror to determine whether
11:24 12 or not they'd make a fair juror?

11:24 13 A. I would say.

11:24 14 Q. Now, when you got this questionnaire, and I
11:24 15 understand that y'all get these questionnaires before
11:24 16 the lawyers even get a chance to talk to you about the
11:24 17 law or anything like that, and it's kind of like getting
11:24 18 the test before you got the lesson.

11:24 19 And more importantly with this
11:24 20 questionnaire, right off the bat they ask you your name.
11:24 21 And the very next question: What do you think about the
11:24 22 death penalty? without a whole lot of time to think
11:25 23 about it and without a whole lot of time for reflection.

11:25 24 And I notice that your answer for that was
11:25 25 you were in favor of the death penalty and that you

11:25 1 believed, in the appropriate circumstances, you can
11:25 2 return a verdict resulting in the death sentence?

11:25 3 A. (Moving head up and down.)

11:25 4 Q. You've had some time since you filled out the
11:25 5 questionnaire, and I'm sure you've thought about it
11:25 6 since you filled it out and what your thoughts and views
11:25 7 were. Have they changed any since you filled out the
11:25 8 questionnaire?

11:25 9 A. No, not really. I mean, I still feel in favor
11:25 10 of the death penalty. I still -- I mean, I think
11:25 11 it's -- it's definitely kind of a hard moral decision to
11:25 12 make, but I still am in favor of the death penalty. I
11:25 13 think in some cases, I think that it has merit, and I
11:25 14 think that it's an important thing.

11:25 15 Q. And that you kind of touch on something that's
11:25 16 important. It's a little bit of a conflict in your --
11:25 17 in that answer where you said you could return a verdict
11:25 18 on the second page. It asked: Do you have any moral,
11:25 19 religious or personal beliefs that would prevent you
11:26 20 from returning a verdict which would result in the
11:26 21 execution of another human being? And you answered that
11:26 22 question "yes"?

11:26 23 A. Yeah. Because I'm like, oh, my, you know, when
11:26 24 it comes to the death penalty, I mean, my logical
11:26 25 beliefs, yes. I believe that, you know, that it's

11:26 1 something that we -- that is good for society.

11:26 2 I mean, I believe that it's like -- I
11:26 3 personally favor it. But in the same sense, when it's
11:26 4 me making the choice over somebody's life, that just --
11:26 5 I mean, that always raises a thought in my head like,
11:26 6 oh, my God, that's just -- I'm making the choice for
11:26 7 somebody else. So that's kind of my personal, I mean,
11:26 8 it's just kind of like I guess since I've thought about
11:26 9 it some more, I think that I would -- I would just have
11:26 10 to, you know, if -- I mean, in evaluating each -- any
11:27 11 case, I would just have to put some of those feelings
11:27 12 aside if it was the right thing to do. But in any case,
11:27 13 I'm just -- I'm just human. I just think it's kind of
11:27 14 an emotional thing, when you think about it.

11:27 15 Q. And you are exactly right about that. And it's
11:27 16 one thing to sit there and talk among friends at lunch.
11:27 17 And it's another thing to be with your family,
11:27 18 especially your brother and it comes on the TV, on the
11:27 19 news about the Rivas trial or something and kind of
11:27 20 discusses the death penalty in a hypothetical sense and
11:27 21 whether or not that's good or bad.

11:27 22 It's a completely different ball game when
11:27 23 you are asked personally, can you be involved in that
11:27 24 process? And part of this one-on-one questioning is to
11:27 25 help you evaluate yourself, because only you can know

11:27 1 for sure if you can be involved in a process that could
11:27 2 result in the death of another person. And that's
11:27 3 something you have to be honest with us about. And
11:27 4 understanding, it is a difficult process for all of us.
11:27 5 It is not a process that any of us enjoy. It is not a
11:28 6 process any of us look forward to everyday, excited that
11:28 7 we're here.

11:28 8 A. Uh-huh.

11:28 9 Q. I think all of us, in our heart of hearts, we'd
11:28 10 love to turn the TV on, to turn the news on and not hear
11:28 11 about someone's family that got murdered. Do you know
11:28 12 what I'm saying?

11:28 13 A. Uh-huh.

11:28 14 Q. And so recognizing, and you would be unusual to
11:28 15 me if you did not have a conflict or turmoil by putting
11:28 16 yourself in that situation. I think that's very normal,
11:28 17 just being a compassionate person?

11:28 18 A. Yeah.

11:28 19 Q. And I think our sensibilities, we'd rather not
11:28 20 kill than kill, if we had the choice?

11:28 21 A. Right.

11:28 22 Q. And as far as that goes, as far as jury
11:28 23 selection and being here, if you did end up being on the
11:28 24 jury, both sides ended up deciding you could be fair and
11:28 25 impartial and you ended up being on the jury -- well,

11:28 1 let me ask you: If you had your choice, would you want
11:28 2 to do it?

11:28 3 A. No.

11:28 4 Q. And why is that?

11:28 5 A. I just don't want to be -- have to make that
11:29 6 decision. I mean, it's probably -- I mean, I think a
11:29 7 lot of it has to do with the time, I mean, involved. I
11:29 8 see it as very important, and I think it's important to
11:29 9 do my civic duty and, but making that kind of decision
11:29 10 is just, you know, that's not something I particularly
11:29 11 would like to do.

11:29 12 Q. Right. And assuming if you did get picked,
11:29 13 both sides agree that you were fair, you could be fair
11:29 14 to their side. And if you got picked, you wouldn't be
11:29 15 so frustrated by whatever you are missing at work or
11:29 16 whatever interfered in your personal, you wouldn't be so
11:29 17 frustrated by that that you would take it out on one
11:29 18 side or the other, would you?

11:29 19 A. No. I wouldn't do that.

11:29 20 Q. You would be a law abiding citizen, and you
11:29 21 would follow the law. And whatever the Court instructed
11:29 22 you to do, you would be able to do that?

11:29 23 A. Right.

11:29 24 Q. I want to talk to you a little bit -- well,
11:29 25 first of all, before we move off of that, lots of people

11:29 1 favor the death penalty for different reasons. Some
11:30 2 people may say, well, I like it because it might have a
11:30 3 deterrent effect if people know that if they kill
11:30 4 someone, they are looking at being killed themselves or
11:30 5 executed themselves, and that might act as a deterrent.

11:30 6 Some people may say I like it because of
11:30 7 the retribution or the just reward. You know, in our
11:30 8 society in America, we have the punishment fits the
11:30 9 crime type thing. If you get a traffic violation, it's
11:30 10 fine only. I mean, you are not going to go to jail for
11:30 11 just speeding.

11:30 12 And as the crime gets progressively worse,
11:30 13 so does the punishment and people see if you kill
11:30 14 somebody, it's an aggravated murder or capital murder,
11:30 15 then that's an appropriate sanction, is the death
11:30 16 penalty.

11:30 17 A. Uh-huh.

11:30 18 Q. And another group of people might say, well,
11:30 19 I'm in favor of the death penalty because it protects
11:30 20 society. And that's the only way we can protect society
11:30 21 is to basically eliminate those people from our society
11:30 22 and keep them from ever harming anyone again.

11:30 23 A. Uh-huh.

11:30 24 Q. What -- what is your reason for being in favor
11:30 25 of the death penalty?

11:30 1 A. I see kind of both of it. I mean, both sides
11:31 2 of it. I think that the death penalty may serve
11:31 3 somewhat as a deterrent to others. I mean, to prohibit
11:31 4 them from acts. But I also think I want to -- I would,
11:31 5 I view the death penalty as a -- as trying to keep
11:31 6 somebody else from being harmful to others. I mean, if
11:31 7 they cannot be -- if they can't, you know, live a
11:31 8 civilized life, you know, whether and to me, I mean,
11:31 9 that even includes if they are in jail.

11:31 10 I would see the death penalty as an
11:31 11 appropriate action because, I mean, I just -- I think
11:31 12 murder is horrible. I can't even imagine anyone
11:31 13 murdering anyone. And to me, I just feel like the
11:31 14 punishment fits the crime.

11:31 15 Q. Let's talk a little bit -- I'll kind of take
11:32 16 you through the stages of the trial and just kind of
11:32 17 explain it as we go. And anytime you don't understand
11:32 18 or if you have any questions, just let me know.

11:32 19 A. Okay.

11:32 20 Q. The first, if you are chosen as a juror, the
11:32 21 first step in our situation and our trial, we have a
11:32 22 bifurcated system in Texas, which means there is a
11:32 23 guilt-innocence phase. And if the defendant is found
11:32 24 guilty, you move onto the punishment phase. So the
11:32 25 first stage is the guilt-innocence stage.

11:32 1 A. Uh-huh.

11:32 2 Q. And that's where the burden of proof is on the
11:32 3 State of Texas. And basically that's because we're the
11:32 4 ones doing the accusing. If we're going to accuse
11:32 5 someone of capital murder, then we have to be the ones
11:32 6 to prove it. Does that seem fair to you?

11:32 7 A. That seems fair.

11:32 8 Q. And our burden is to prove to you beyond a
11:32 9 reasonable doubt that that person committed capital
11:32 10 murder.

11:32 11 A. Uh-huh.

11:32 12 Q. And does that -- if the Judge gave you that
11:32 13 instruction as the law, saying this is the law, the
11:32 14 State has to prove to you beyond a reasonable doubt, is
11:32 15 that something you could follow?

11:32 16 A. I think so.

11:32 17 Q. And understanding the defense, if they don't
11:33 18 have any burden of proof at all at this stage, they --
11:33 19 all they have to do is show up, and they've met their
11:33 20 burden just by showing up. And it's kind of like, if I
11:33 21 accused you of a crime, you would want to say, well,
11:33 22 prove it. Prove I did it.

11:33 23 And if you don't think I proved it, you
11:33 24 have the right to sit there and remain silent and just
11:33 25 say, no, I don't think they proved it, and that would be

11:33 1 the end. Does that make sense to you?
 11:33 2 A. I think so; I think so.
 11:33 3 Q. And you could follow that law if the Judge told
 11:33 4 you that's the law, and that's the way it is?
 11:33 5 A. Yeah. If you are saying keeping a mind free of
 11:33 6 opinion until proven otherwise, yeah, I think so.
 11:33 7 Q. And granted it's the defense's right. I mean,
 11:33 8 they can put on evidence if they want to. The defendant
 11:33 9 can testify if he wants to. It's totally up to him.
 11:33 10 But the bottom line is, they don't have to. They don't
 11:33 11 have to do it, and if they don't put anything on, don't
 11:33 12 put any evidence on, you can't hold that against them.
 11:33 13 You have to look at what the State presented to you and
 11:33 14 decide if that's enough evidence to convict.
 11:34 15 A. Okay.
 11:34 16 Q. Does that make sense to you?
 11:34 17 A. It does make sense.
 11:34 18 Q. And I think you were asked. And if you
 11:34 19 remember on your questionnaire, you were given a bunch
 11:34 20 of statements, and you were asked anywhere from strongly
 11:34 21 agree to strongly disagree kind of where you fell on the
 11:34 22 continuum. Do you remember any of those?
 11:34 23 A. Uh-huh.
 11:34 24 Q. You even acknowledged that. And you were
 11:34 25 asked -- given a statement, "A defendant is innocent

11:34 1 unless proven guilty beyond a reasonable doubt," and you
 11:34 2 put *strongly agree*?
 11:34 3 A. Uh-huh.
 11:34 4 Q. So that's a proposition you could agree with
 11:34 5 and you could follow along with if the Judge told you
 11:34 6 that's the law?
 11:34 7 A. Yes.
 11:34 8 Q. And while we're on that -- that subject, with
 11:34 9 regard to capital murder, Mr. Schultz told you on
 11:34 10 Tuesday capital murder is basically murder plus an
 11:34 11 aggravating factor. And as far as this trial is
 11:34 12 concerned, the different manner and means that we have
 11:34 13 to concern ourselves with is murder in the course of
 11:35 14 burglary.
 11:35 15 If you intentionally break into somebody's
 11:35 16 house without the effective consent of the owner, with
 11:35 17 the intent to commit a felony or to steal, that's a
 11:35 18 burglary. If you kill somebody in the course of
 11:35 19 committing burglary, that's capital murder.
 11:35 20 A. Uh-huh.
 11:35 21 Q. Do you have any problem with that crime being
 11:35 22 subject to the death penalty?
 11:35 23 A. No. I don't know the full details, so...
 11:35 24 Q. Just the concept of that, that crime of murder
 11:35 25 in the course of burglary. In your opinion, is that an

11:35 1 appropriate type of crime that ought to be subject to
 11:35 2 the death penalty? Not necessarily automatic, but that
 11:35 3 ought to be an option, depending on what the facts are?
 11:35 4 A. Yeah. I mean, murder is murder.
 11:35 5 Q. Now, with regard to murder in the course of
 11:35 6 robbery, if you are robbing someone. And as Mr. Schultz
 11:35 7 told you, the difference of robbery that is personal
 11:35 8 contact. And in the course of robbing someone and you
 11:35 9 commit the murder, that's also a crime that's subject to
 11:35 10 the death penalty.
 11:35 11 In your mind is that an appropriate type
 11:35 12 of crime where the death penalty ought to at least be an
 11:36 13 option?
 11:36 14 A. Yes.
 11:36 15 Q. And in the last one to talk about, is to murder
 11:36 16 two or more people in a common scheme or plan. So for
 11:36 17 our purposes, a double homicide.
 11:36 18 A. Uh-huh.
 11:36 19 Q. In your opinion, is that a type of crime where
 11:36 20 the death penalty ought to be an option?
 11:36 21 A. Yes.
 11:36 22 Q. Now, moving on. Assuming that we prove to you
 11:36 23 beyond a reasonable doubt that the defendant committed
 11:36 24 or a defendant committed capital murder and the jury
 11:36 25 finds that person guilty, we would then move onto the

11:36 1 second phase, the penalty phase of the trial.
 11:36 2 A. Uh-huh.
 11:36 3 Q. With regard to the penalty phase, Mr. Schultz
 11:36 4 told you it is not going to be a matter of going back
 11:36 5 there and circling life or circling death. You still
 11:36 6 have questions to answer. And the way you answer those
 11:36 7 questions determines whether or not it's a life sentence
 11:36 8 or a death sentence. And you know the results of your
 11:36 9 answers; but, yet, you are not asked to specifically say
 11:36 10 life or death.
 11:36 11 A. Okay.
 11:36 12 Q. And the first question that you'll be going to,
 11:36 13 I believe, is the question that's up there. If you want
 11:37 14 to read that just to refresh your memory.
 11:37 15 A. Okay. Okay.
 11:37 16 Q. And that's the first question that you, as a
 11:37 17 juror, would get if you found someone guilty of capital
 11:37 18 murder. And it would be phrased in a question form.
 11:37 19 And it would be, you know, whether you find beyond a
 11:37 20 reasonable doubt that there is a probability that a
 11:37 21 defendant is going to commit criminal acts of violence
 11:37 22 in the future.
 11:37 23 With regard to this question, again, the
 11:37 24 burden of proof is on the State. We have to prove to
 11:37 25 you beyond a reasonable doubt that there is a

11:37 1 probability the defendant would commit criminal acts of
11:37 2 violence in the future.

11:37 3 A. Uh-huh.

11:37 4 Q. Now, this question does not ask with a
11:37 5 certainty, will the person commit criminal acts of
11:37 6 violence? It says if there's a probability.

11:37 7 A. Uh-huh.

11:37 8 Q. Now, that word probability is a word that is
11:37 9 probably highly debated, but you're not going to be
11:37 10 given a definition. The Court's Charge gives you all
11:38 11 the law, but there will not be a definition of
11:38 12 probability.

11:38 13 To some people who are mathematically
11:38 14 minded, they may say, well, probability to me is
11:38 15 numbers. It means a certain percentage, you know?

11:38 16 A. Uh-huh.

11:38 17 Q. A 1 percent chance. To some people they may
11:38 18 say, well, that word to me means more likely than not.

11:38 19 A. Uh-huh.

11:38 20 Q. In your mind, what does that word probability
11:38 21 mean?

11:38 22 A. More likely. More likely than not.

11:38 23 Q. Okay. And as you move along, probably the next
11:38 24 phrase that's frequently debated and undefined is
11:38 25 criminal acts of violence. I think all of us would

11:38 1 agree murder is a criminal act of violence. I think all
11:38 2 of us would agree that sexual assault or rape is a
11:38 3 criminal act of violence.

11:38 4 A. (Moving head up and down.)

11:38 5 Q. When you are doing violence to a person, most
11:38 6 of us can agree that that falls into that category. It
11:38 7 changes a little bit if that becomes property, acts to
11:38 8 property. If I were to go out to the parking lot with a
11:38 9 baseball bat and just smash up your car, in your
11:39 10 opinion, is that a criminal act of violence?

11:39 11 A. Yes.

11:39 12 Q. And it gets a little fuzzier even more if you
11:39 13 move on to drug dealing. Some people may say, well,
11:39 14 drug dealing is an act of violence because, first of
11:39 15 all, it's doing violence to your body. And then,
11:39 16 secondly, when you take your drugs, it leads to violent
11:39 17 consequences; so, therefore, drug dealing is a criminal
11:39 18 act of violence.

11:39 19 Other people may say, no, it's just
11:39 20 something you do to yourself. You are not harming
11:39 21 another person. You are not harming property,
11:39 22 therefore, it is not. Where do you fall in that
11:39 23 continuum?

11:39 24 A. When you say drug dealing, I'm thinking of
11:39 25 buying and selling drugs, not maybe taking drugs.

11:39 1 Taking drugs, yes, I think it's harmful to your body.

11:39 2 But drug dealing, I think is even -- I think drug

11:39 3 dealing, although it's a crime, it's kind of like -- it

11:39 4 is kind of fuzzy. I'm trying to think about this. Drug

11:39 5 dealing would be kind of like, I mean, it's kind of like

11:39 6 putting you in a situation. I mean, it's against the

11:40 7 law. You are not supposed to do it, but I feel kind of

11:40 8 like, criminal -- let me think about this.

11:40 9 I guess drug using I would consider a
11:40 10 criminal act of violence. Drug dealing, although you
11:40 11 are breaking the law, I think that's a little bit
11:40 12 different.

11:40 13 Q. Okay. And let's talk a little bit about that.
11:40 14 Let's take drug dealing, which may not be a criminal act
11:40 15 of violence in and of itself, things like that, things
11:40 16 like theft. Not really an act of violence, but breaking
11:40 17 the law. Things like running from the cops, evading
11:40 18 arrest type deal. Even though those might not
11:40 19 necessarily be an act of violence, do you think that
11:40 20 would give you insight into a person's character?

11:40 21 A. Yeah, I mean, I think so. If you are drug
11:40 22 dealing and, I mean, that, I think, puts you in kind of
11:41 23 a more -- you have more access to criminal acts.

11:41 24 Basically, I think that makes you more, I mean, more of
11:41 25 a target for criminal -- I mean, for things to happen to

11:41 1 you.

11:41 2 And now that I'm thinking about it, I
11:41 3 mean, it's just kind of like -- I'm thinking of, in my
11:41 4 mind, when somebody is like negligent, they don't mean
11:41 5 for things to happen, but they happen. Well, like in
11:41 6 drug dealing, it's like you are a part of the crime
11:41 7 scene. You don't -- it's kind of like you are doing
11:41 8 your own -- you are trying to gain your own thing
11:41 9 through dealing drugs because it's kind of like you are
11:41 10 still in. You could, so it's something that could lead
11:41 11 to maybe a criminal act of violence.

11:41 12 Q. So that would help you determine whether or not
11:41 13 there's a probability of future acts of dangerousness?

11:41 14 A. Right.

11:42 15 Q. And as we move along that statement, the next
11:42 16 word that is, again, frequently debated and yet
11:42 17 undefined is that word society.

11:42 18 A. Uh-huh.

11:42 19 Q. When you get to that word, it doesn't
11:42 20 necessarily limit itself to prison society. It doesn't
11:42 21 say: Will he be a future danger in prison? The
11:42 22 question does not ask: Can he safely be locked up in
11:42 23 prison? It just says "society."

11:42 24 And that can be interpreted, yeah, it
11:42 25 could include prison, but it can also include the

11:42 1 outside world like the person driving your school bus,
11:42 2 the person selling ice cream to your child, the man on
11:42 3 the street corner selling flowers. Could he be a future
11:42 4 danger in society? Do you understand how that could be
11:42 5 interpreted more broadly?

11:42 6 A. Uh-huh.

11:42 7 Q. Now, with regard to that question, and I'm sure
11:42 8 you heard, and I'm sure you've seen if you watched any
11:42 9 of the news coverage on George Rivas's trial. Typically
11:42 10 in these type of cases, psychiatrists and psychologists
11:43 11 will testify to the defendant's or to a defendant's
11:43 12 particular pattern of behavior, to say he's going to be
11:43 13 a future dangerousness or he's not going to be a future
11:43 14 danger.

11:43 15 In your opinion, how important would that
11:43 16 testimony be?

11:43 17 A. Well, if, let's say he was -- okay. We're in
11:43 18 phase two of the trial, and we're deciding whether he
11:43 19 needs to go to -- it's life or death. I just -- I can't
11:43 20 fathom murder. I just think it's horrific. And so if
11:43 21 some psychologist is going to get up there and say, oh,
11:43 22 he can function in society and things like that, I don't
11:43 23 think I'm going to buy that. I'm not going to buy that.

11:43 24 I mean, if you murder somebody, which we
11:43 25 all know you are not supposed to do and then get up

11:43 1 there and tell me that, you know, so and so could
11:43 2 probably be a nonthreatening person. You know, what if
11:44 3 he goes to prison and there's somebody that may be like
11:44 4 in prison for a different, like a white-collar crime? I
11:44 5 just think murder is wrong. Period. And I just don't
11:44 6 think I could buy that.

11:44 7 Q. Do you think, as a juror, just sitting there
11:44 8 and listening to the evidence, listening to the facts of
11:44 9 the crime, at that point you had already heard all the
11:44 10 facts, and listening to all the evidence put on during
11:44 11 the punishment phase, do you think you, as a juror,
11:44 12 could decide that question whether or not somebody is a
11:44 13 future danger without having the help of an expert or
11:44 14 psychiatrist?

11:44 15 A. I probably could without the expert of a
11:44 16 psychiatrist.

11:44 17 Q. And, again, there's all kind of situations
11:44 18 regarding probability for future danger. There could be
11:44 19 the person who, during the getaway got shot by the
11:44 20 police and now he's paralyzed and he may never be a
11:45 21 future danger. And there may be situations like I think
11:45 22 Whitman, the guy on the tower at UT. Do you remember
11:45 23 him, that shot people?

11:45 24 A. Uh-huh.

11:45 25 Q. Apparently his situation is he had a brain

11:45 1 tumor, and he had a brain tumor pressing on his brain,
11:45 2 and that caused him to do the things that he did. There
11:45 3 are all kinds of situations regarding whether or not
11:45 4 someone could be a future danger or not a future danger.
11:45 5 Do you think with regard to that question you could
11:45 6 fairly answer that question yes or no depending on what
11:45 7 the evidence showed?

11:45 8 A. I think so.

11:45 9 Q. With regard to that question, if all 12 jurors
11:45 10 say yes, there is a probability that he is a future
11:45 11 danger, you then would move on. You are still in the
11:45 12 process of assessing the death sentence, and you would
11:45 13 then move onto the next question. If ten or more jurors
11:45 14 say no, there's not a probability he will be a future
11:45 15 danger, then that's it. The trial is over. It's an
11:46 16 automatic life sentence. Does that make sense to you?

11:46 17 A. Yes, that makes sense.

11:46 18 Q. So let's assume all 12 jurors at this point
11:46 19 say, yes, we think the defendant is a future danger.
11:46 20 There's another question that involves parties. I don't
11:46 21 know if you remember Mr. Schultz talking about the
11:46 22 getaway driver, and we haven't been spending much time
11:46 23 on that question. It may or may not apply. But we know
11:46 24 for sure that this question, you will answer, if you
11:46 25 answer this question "yes," you will definitely move on

11:46 1 to this question. So we're going to move on to this
11:46 2 question, if you want to take a second to just read it.

11:46 3 A. Okay. Okay.

11:46 4 Q. Do you remember Mr. Schultz covering that
11:46 5 question?

11:46 6 A. Uh-huh.

11:46 7 Q. Now, with regard to this specific question,
11:47 8 there is no burden of proof on either side. It's not up
11:47 9 to the State to prove mitigating evidence to you, and
11:47 10 it's not up of the defense to prove mitigating evidence
11:47 11 to you.

11:47 12 A. Uh-huh.

11:47 13 Q. But you, as a jury, just have to decide, after
11:47 14 looking at all the evidence, including all the facts of
11:47 15 the case, the defendant's character and background,
11:47 16 whether there is sufficient mitigating evidence to
11:47 17 warrant a life sentence. What does that word
11:47 18 "mitigating" mean to you?

11:47 19 A. I guess mitigating like -- you know, I don't
11:47 20 think I knew the dictionary meaning of that word until I
11:47 21 came in the other day. I mean, I've always heard about
11:47 22 that word, but I didn't know much about it. Sufficient,
11:47 23 I guess means to me, a circumstance that would make
11:47 24 everything seem lesser than what it is.

11:48 25 Q. And lessen is probably what most people would

11:48 1 say, to lessen?
 11:48 2 A. To lessen.
 11:48 3 Q. To kind of reduce the damages kind of deal?
 11:48 4 A. Uh-huh.
 11:48 5 Q. Now, with regard to that question, again, you
 11:48 6 are not going to be given a definition of what
 11:48 7 mitigating is. You are not going to be given a list of,
 11:48 8 here's some mitigating factors that you are to consider
 11:48 9 or here are some aggravating factors that you are to
 11:48 10 consider. It is up to you, as a jury, to decide if
 11:48 11 there is mitigating evidence. And if so, is it
 11:48 12 sufficient to mitigate the crime?
 11:48 13 A. Uh-huh.
 11:48 14 Q. Now, with regard to mitigating evidence, I
 11:48 15 think probably all of us, if we're forced to put in a
 11:48 16 situation where we committed a crime and our life is on
 11:48 17 trial, we could probably all come up with mitigating
 11:48 18 evidence. There is probably something in everybody's
 11:48 19 background that is particularly sympathetic or
 11:48 20 particularly sad that we could present to make us look a
 11:48 21 little more sympathetic. But the question is not
 11:48 22 necessarily there's any, but is it sufficient to
 11:48 23 mitigate, based on all the circumstances of the crime,
 11:49 24 to warrant a life sentence as opposed to a death
 11:49 25 sentence?

11:49 1 A. Uh-huh.
 11:49 2 Q. Does that make sense to you?
 11:49 3 A. That makes sense.
 11:49 4 Q. There may be a whole lot of evidence that
 11:49 5 explains something. You may hear that and go, that
 11:49 6 explains it, but does it excuse it? Do you understand
 11:49 7 the difference between some evidence may explain it, but
 11:49 8 excusing it is a whole different story?
 11:49 9 A. Right.
 11:49 10 Q. And getting back a little bit, while we are on
 11:49 11 that mitigating question to your questionnaire, where
 11:49 12 again the statements where you are asked, do you
 11:49 13 strongly agree to strongly disagree. When asked, "A
 11:49 14 person's destiny or fate is determined by the
 11:49 15 circumstances of their birth and their upbringing." Do
 11:49 16 you remember that question?
 11:49 17 A. Yes, I do.
 11:49 18 Q. And you put disagree?
 11:49 19 A. I think that -- I mean, I still disagree with
 11:49 20 that.
 11:49 21 Q. Right.
 11:49 22 A. Because I think, I mean, I think that, yes, I
 11:49 23 mean, I think it can contribute to their -- the way, the
 11:49 24 type of person they are. And I think some people are
 11:50 25 very unfortunate, and they have bad circumstances. But

11:50 1 I still think that there's a lot of people out in the
 11:50 2 world that go to work everyday. They don't kill people,
 11:50 3 and they've had horrible lives.
 11:50 4 Q. Exactly.
 11:50 5 A. So that's kind of my thoughts on that.
 11:50 6 Q. Okay. And kind of along those same lines. As
 11:50 7 long as, as far as people's background may go, from
 11:50 8 looking at your questionnaire, you don't have any
 11:50 9 children; is that right?
 11:50 10 A. No, no children.
 11:50 11 Q. Do you have nieces and nephews?
 11:50 12 A. Yes.
 11:50 13 Q. Are you close to your nieces and nephews?
 11:50 14 A. Yes.
 11:50 15 Q. And I'm in the same position. I couldn't
 11:50 16 imagine loving my own children any more than I love my
 11:50 17 nieces and nephews. If one of your nieces or nephews
 11:50 18 got in trouble with the law, and I imagine you, being a
 11:50 19 very caring loving aunt would do anything in the world
 11:50 20 to protect your children.
 11:50 21 A. Oh, yeah, sure.
 11:50 22 Q. And you would -- you would give them love. You
 11:50 23 would give them support. Let them know you will be
 11:50 24 there no matter what?
 11:50 25 A. Uh-huh.

11:50 1 Q. Is that fair?
 11:50 2 A. That's a fair question.
 11:50 3 Q. Would you necessarily expect the same thing
 11:50 4 from a person who is on trial for their life, that they
 11:51 5 are going to have family members there who love them and
 11:51 6 support them no matter what?
 11:51 7 A. Oh, absolutely.
 11:51 8 Q. And would you expect, during the punishment
 11:51 9 phase of a capital murder trial, to hear from maybe that
 11:51 10 person's mother? To get on the stand and just say, I
 11:51 11 love my child, and please don't execute my child.
 11:51 12 A. I would think -- think that a mother would want
 11:51 13 to get up there and say that, yeah.
 11:51 14 Q. And how does that argument lay with you as far
 11:51 15 as, don't execute the defendant because look what it
 11:51 16 will do to his mom? It will break his mom's heart. How
 11:51 17 does that argument sit with you?
 11:51 18 A. It doesn't fly. I mean, yeah, I mean, I would
 11:51 19 feel mortified if my nephew or, you know, a relative, a
 11:51 20 close relative, brother, something like that had, had
 11:51 21 been on trial. But in the same sense, I mean, you just
 11:51 22 can't -- if you are guilty, you just can't get away with
 11:51 23 that. I mean, to me it's just, it's not really, I mean,
 11:52 24 that to me seems pretty clear.
 11:52 25 Q. Okay.

11:52 1 A. And so, I mean, you just, I mean, you just got
11:52 2 to face the consequences.

11:52 3 Q. While we're still on that topic of background
11:52 4 and, suppose somebody is -- gets on the stand and says,
11:52 5 well, it was all drug related. I just got in a bad
11:52 6 position with drugs, and I just started doing drugs, and
11:52 7 it changed my personality. And it was the drugs, really
11:52 8 that -- that's the reason I committed this crime. But
11:52 9 now I don't do the drugs at all. I'm different. I got
11:52 10 off the drugs, and I'm a changed person. How does that
11:52 11 argument sit with you?

11:52 12 A. Well, still, I mean, you are on drugs. Just
11:52 13 because you are on drugs doesn't mean that you, I mean,
11:52 14 you should get, I mean, just get some -- get off. I
11:52 15 mean, you still committed a crime, and you still need to
11:52 16 pay the piper.

11:52 17 Q. And drugs is a perfect example of how one juror
11:52 18 might see that as mitigating and one juror might see
11:52 19 that as aggravating?

11:53 20 A. Uh-huh.

11:53 21 Q. Because one juror may say that did change his
11:53 22 personality, and that's not the way he is. And if it
11:53 23 weren't for the drugs, he would have never done it. So,
11:53 24 therefore, that's mitigating to me.

11:53 25 Whereas the juror sitting next to him,

11:53 1 they would say, you know what? We're raised being told,
11:53 2 don't do drugs, and just say no to drugs. And the whole
11:53 3 reason is because it could lead to consequences like
11:53 4 this. That's aggravating to me because, not only are
11:53 5 they doing drugs, but that's leading to this horrendous
11:53 6 result?

11:53 7 A. Uh-huh.

11:53 8 Q. Do you see that?

11:53 9 A. Uh-huh.

11:53 10 Q. And kind of the same, and basically the reason
11:53 11 we have this question is because of a defendant named
11:53 12 Penry. And it's the same thing for somebody who is
11:53 13 mentally challenged. And in Mr. Penry's situation he
11:53 14 got up there to say, I'm mentally retarded or borderline
11:53 15 mentally retarded. And one juror may say that's
11:53 16 mitigating because he's competent. So they already
11:53 17 found that, but maybe because of his mental retardation,
11:53 18 that's mitigating to me.

11:53 19 A. Uh-huh.

11:53 20 Q. And the juror next to him may say, no, he has
11:53 21 less control so that's aggravating to me. So do you see
11:54 22 how that's something that could go both ways? A juror
11:54 23 could look at that both ways?

11:54 24 A. Mental retardation. This is a specific
11:54 25 question or --

11:54 1 Q. Yes. Do you see how that could be seen, both
11:54 2 by one person as mitigating, by another person maybe it
11:54 3 is aggravating?

11:54 4 A. Clarify *aggravating*.

11:54 5 Q. That makes the situation worse. Maybe makes
11:54 6 them more of a future danger. Maybe it makes them --

11:54 7 A. Oh, I see what you are saying, okay.

11:54 8 Q. It could worsen the situation as opposed to
11:54 9 making it better.

11:54 10 A. Okay, okay.

11:54 11 Q. Does that make sense?

11:54 12 A. That -- that makes sense to me.

11:54 13 Q. Do you see how people might see -- might view
11:54 14 that differently?

11:54 15 A. Uh-huh.

11:54 16 Q. Okay. How about -- well, let me ask you this:
11:54 17 Have you ever heard the phrase, there are no atheists in
11:54 18 a foxhole?

11:54 19 A. No. I've never heard that.

11:54 20 Q. You know, a foxhole during the time of war,
11:54 21 kind of the front line, person on the front line, firing
11:54 22 at the enemy, and the fact that there are no atheists
11:55 23 there, what would that tend to mean to you?

11:55 24 A. You are biased. You've got some sort of --
11:55 25 when it comes down to it, you've got some sort of

11:55 1 conviction.

11:55 2 Q. When faced with death, maybe that's when you
11:55 3 start looking toward God?

11:55 4 A. Correct, uh-huh.

11:55 5 Q. Do you think someone who is on trial for their
11:55 6 life, can you see how that might be analogous to someone
11:55 7 in a foxhole? That might be the time where all of a
11:55 8 sudden they have some conversion, look to God?

11:55 9 A. I can see that.

11:55 10 Q. Accept Christ. And whether or not that's real
11:55 11 or not, whether or not that's, you know, just to show
11:55 12 for the jury or whether or not that person, you know,
11:55 13 really has changed their life or accepted Christ, would
11:55 14 that make a difference to you in answering these
11:55 15 questions in the punishment phase?

11:55 16 A. I mean, I'm glad that they would do that, but
11:55 17 to me, it's no different. I mean, you still -- just
11:55 18 because you are now a Christian doesn't mean you can't
11:55 19 pay for your consequences or suffer the consequences of
11:56 20 your actions in the past.

11:56 21 Q. And looking at that -- at that question, that
11:56 22 mitigation question, other than the phrase the
11:56 23 circumstances of the offense, there's really no
11:56 24 reference at all to the victim. It seems to focus on
11:56 25 the defendant. The defendant's character, the

11:56 1 defendant's background, the defendant's culpability. So
11:56 2 necessarily that question focuses on the defendant as
11:56 3 opposed to the victim?

11:56 4 MR. GOELLER: I object to that. That's a
11:56 5 misstatement of the law. If she is saying that's her
11:56 6 opinion, that's one thing. The circumstances of the
11:56 7 offense, I object.

11:56 8 THE COURT: Sustained.

11:56 9 MR. GOELLER: Thank you.

11:56 10 Q. (BY MS. FALCO) That question seems to focus on
11:56 11 the defendant as opposed to the victim?

11:56 12 A. It -- it looks like it's talking about the
11:56 13 defendant, yes.

11:56 14 Q. Now, going back to what Mr. Schultz is talking
11:56 15 about on Tuesday when he was saying, you know, there
11:56 16 might be a situation where a nun kneeling in church gets
11:56 17 killed as opposed to the drug dealer out on the street
11:56 18 gets killed. Does it make a difference to you who the
11:57 19 victim is?

11:57 20 A. No.

11:57 21 Q. Does it make a person any less of a killer
11:57 22 depending on who he would kill?

11:57 23 A. No.

11:57 24 Q. Does it make him any less dangerous depending
11:57 25 on who he killed?

11:57 1 A. No.

11:57 2 Q. How about -- let's extend that a little bit to
11:57 3 the victim's family. Let's suppose I wanted to live a
11:57 4 free and easy lifestyle. I decided I'm going to go rob
11:57 5 a liquor store because I just want the money. I don't
11:57 6 want to work for it. I'm just going to run away and
11:57 7 enjoy my money.

11:57 8 I decide to pick a 7-Eleven on the way
11:57 9 home. I don't know the clerk. I don't know anybody in
11:57 10 there working, but I just decide to go in there. I hold
11:57 11 it up, and I'm going to kill anybody who tries to stop
11:57 12 me, and I do that. I go in and get the money and kill
11:57 13 him, and I leave. And I don't know that man from Adam.

11:57 14 And compare that situation to, let's say,
11:57 15 it's a neighborhood I grew up in. And I know the family
11:57 16 that owns that store. And, particularly, I know my
11:57 17 friend's going to be working at that time. And I know
11:57 18 how much money that friend keeps at the register. And
11:58 19 that's when I choose to go in and rob that store, and I
11:58 20 go in there, and I get the money from my friend. And I
11:58 21 end up killing my friend.

11:58 22 And when I do that I know how it's going
11:58 23 to impact the family because this is a family whose
11:58 24 house I had dinner at and whose house I might have spent
11:58 25 the night at. And I know how it's going to impact their

11:58 1 lives when I commit that murder. Does that make a
11:58 2 difference to you?

11:58 3 A. No. It's equally callous to me. I think you
11:58 4 just didn't even use any -- you didn't even -- I mean,
11:58 5 think about that at all. Either situation is pretty
11:58 6 callous to me.

11:58 7 Q. When looking at this question, I mean,
11:58 8 obviously it's the time that you take into consideration
11:58 9 all of the evidence, all the facts of the case, all of
11:58 10 the evidence regarding the defendant. And like
11:58 11 Mr. Schultz was telling you on Tuesday, there can be all
11:58 12 kind of situations where you end up in a capital murder.
11:58 13 Like the instance where a person's child is killed, and
11:58 14 then that killer, for whatever reason, gets off on a
11:59 15 technicality.

11:59 16 And the parent of that child goes down,
11:59 17 hunts him down, breaks into his house, whatever, and
11:59 18 kills him, and it ends up capital murder. There's a
11:59 19 whole type -- there's a whole lot of type of crimes that
11:59 20 could end up being capital murder.

11:59 21 A. Uh-huh.

11:59 22 Q. And you understand that?

11:59 23 A. That's true, yeah.

11:59 24 Q. Now, when looking at these questions, and this
11:59 25 kind of goes back to, can you follow the law? Like I

11:59 1 was asking you during the guilt-innocence, on that first
11:59 2 question going back to the probability question, could
11:59 3 you fairly answer that question based on the evidence?
11:59 4 Could you answer it yes, if that's what the evidence
11:59 5 showed? Can you answer it no, if that's what the
11:59 6 evidence showed?

11:59 7 A. Huh, that's kind of tough. Okay, if -- I'm
11:59 8 sorry. In regards to that question, are you -- given in
12:00 9 the first phase, are you saying, would I be able to know
12:00 10 from the first phase whether I could determine that
12:00 11 question? Is that what you are saying?

12:00 12 Q. You have already found the defendant guilty of
12:00 13 capital murder.

12:00 14 A. Uh-huh.

12:00 15 Q. Like I say, it could be a whole slew of
12:00 16 situations that we've already talked about. Let's just
12:00 17 assume you've already found the person guilty of capital
12:00 18 murder. And now you're moving to this first question,
12:00 19 the probability question. And, again, it could be a
12:00 20 whole slew of fact situations. It could be a paralyzed
12:00 21 defendant. It could be the person killing this child's
12:00 22 killer. No matter what you found the defendant guilty
12:00 23 of, as long as it's capital murder, you are going to get
12:00 24 to this question.

12:00 25 A. Oh.

12:00 1 Q. When you get to this question and, again, the
 12:00 2 burden of proof is on the State. We'd have to prove to
 12:00 3 you beyond a reasonable doubt there's a probability
 12:00 4 he'll be a future danger. Could you fairly answer that
 12:00 5 question yes, if we proved to you beyond a reasonable
 12:00 6 doubt he's a future danger?

12:01 7 A. Well, I'll put it this way, I think that I
 12:01 8 could be, in my mind, I think I could fairly come to
 12:01 9 that decision. But the thing is, on murder, I mean --
 12:01 10 constitute, I guess, it's kind of conflicting to me
 12:01 11 because I'm thinking, I mean, I don't know the aspects
 12:01 12 of the trial. And I just don't know -- I probably, I
 12:01 13 really hate the idea of murder. I think that's a really
 12:01 14 horrible crime.

12:01 15 I think I would try to be as impartial as
 12:01 16 I could be. But if I already know that they committed
 12:01 17 murder, to me that constitutes somebody who is -- who
 12:01 18 has the probability that they would commit criminal acts
 12:01 19 of violence in the future. So, I don't know if my
 12:01 20 mind-set would be, if that's particularly fair or not,
 12:02 21 is what I'm saying, is what I'm thinking.

12:02 22 Q. Let's back up a little bit and talk about -- we
 12:02 23 talked about during the first stage the burden of proof.
 12:02 24 The Judge instructed you on the law.

12:02 25 A. Uh-huh.

12:02 1 Q. And prove to you beyond a reasonable doubt, and
 12:02 2 you said you could follow the law. The Judge told you,
 12:02 3 here's the law. Here's what you have to do to follow
 12:02 4 it, and you said you could do that?

12:02 5 A. Uh-huh.

12:02 6 Q. And when we get to the second phase, again,
 12:02 7 these questions are not designed for you to figure out
 12:02 8 what you want to happen. You know, that you want death
 12:02 9 or that you want life. They are designed for you to
 12:02 10 consider certain things before you answer the question.

12:02 11 A. Okay.

12:02 12 Q. And to be a qualified juror you have to be able
 12:02 13 to fairly answer those questions. You have to be able
 12:02 14 to follow the law.

12:02 15 A. Okay.

12:02 16 Q. And we had already talked about this a little
 12:02 17 bit. But in your questionnaire you mentioned there are
 12:02 18 certain circumstances or situations where life, a life
 12:03 19 sentence is appropriate. Do you remember indicating
 12:03 20 that?

12:03 21 A. Yeah. I think so. That's absolutely true.

12:03 22 Q. So there are situations you can envision where,
 12:03 23 if you found someone guilty of capital murder, you could
 12:03 24 answer the questions in such a way that would result in
 12:03 25 a life sentence?

12:03 1 A. I think so.

12:03 2 Q. Okay. And so when we get to these questions,
 12:03 3 the same thing applies. If the Judge tells you, with
 12:03 4 regard to that probability question, the State has to
 12:03 5 prove to you beyond a reasonable doubt he'll be a future
 12:03 6 danger, could you fairly answer that question, just
 12:03 7 following?

12:03 8 A. I think I can. I mean, this is -- I'm trying
 12:03 9 to think. But I think -- I would think I could.

12:03 10 Q. I mean, you're not going to just decide when
 12:03 11 you get back there, well, I just want him to die. So
 12:03 12 just tell me how I need to answer those questions and
 12:03 13 I'll answer them that way. You are not telling me you
 12:03 14 are going to do that, are you?

12:03 15 A. No, no, no.

12:03 16 Q. So you are going to take each question one by
 12:03 17 one, evaluate the evidence, look at the law the Judge
 12:04 18 has given you and use that to answer the questions?

12:04 19 A. Yes.

12:04 20 Q. Without just saying, I want him to die so I'm
 12:04 21 going to answer it this way only?

12:04 22 A. I mean, I would think that I would be
 12:04 23 fair-minded about it and evaluate the circumstances.

12:04 24 Q. And take that into consideration and to answer
 12:04 25 that?

12:04 1 A. To answer that question, uh-huh.

12:04 2 Q. And, I mean, you would agree with me that if
 12:04 3 the law said that you were automatically dangerous
 12:04 4 because you can get convicted of capital murder, that
 12:04 5 question would be useless. There would be no sense of
 12:04 6 even having that question if that's the way the law was;
 12:04 7 is that right?

12:04 8 A. That's right.

12:04 9 Q. So knowing that, and knowing based on your
 12:04 10 questionnaire where you said life is appropriate in some
 12:04 11 situations, it shouldn't be automatic, is basically what
 12:04 12 you told us in your questionnaire. You understand the
 12:05 13 need for that question, for a juror to be able to fairly
 12:05 14 consider the question?

12:05 15 A. I think so. I'm just kind of thinking about
 12:05 16 it. I think I understand that, yeah.

12:05 17 Q. And so understanding is not automatic. And
 12:05 18 just because you found them guilty of capital murder
 12:05 19 doesn't automatically make them a future danger?

12:05 20 A. Right. Well, it kind of conflicts with what I
 12:05 21 think in a way.

12:05 22 Q. And it's okay if it conflicts with what you
 12:05 23 think. That's okay.

12:05 24 A. I could be a law abiding person about it.

12:05 25 Q. Exactly. If the law tells you it's not

12:05 1 automatic, but if the law says, okay, you found him
 12:05 2 guilty of capital murder, now it's time to decide
 12:05 3 whether or not he's a future danger, and here's the law.
 12:05 4 Can you fairly consider that? You could follow the law?
 12:05 5 A. Right.
 12:06 6 Q. Now, with regard to the next question, assuming
 12:06 7 you do answer that question of probability, yes. And
 12:06 8 you get to the mitigation question and, again, there's
 12:06 9 no burden of proof here.
 12:06 10 A. Uh-huh.
 12:06 11 Q. And it just asks again, it can involve any fact
 12:06 12 scenario that we've talked about or anything you might
 12:06 13 have thought of on your own over the past week, could
 12:06 14 you fairly consider all the evidence that he asks you to
 12:06 15 take into consideration and then answer that question
 12:06 16 yes or no based on the evidence?
 12:06 17 A. The mitigating question?
 12:06 18 Q. Yes.
 12:06 19 A. Yes, I think so.
 12:06 20 Q. And you are not just going to decide, I just
 12:06 21 want this defendant to die, so I am just going to go
 12:06 22 back there, and tell me how to answer that so he can
 12:06 23 die. You are not going to do that, are you?
 12:06 24 A. No.
 12:06 25 Q. And you are going to read the law that the

12:06 1 Judge gives you in the charge and take into
 12:06 2 consideration all the evidence you've heard during the
 12:06 3 trial and then answer that question.
 12:07 4 A. Yes.
 12:07 5 Q. And dependent on the facts--we obviously can't
 12:07 6 tell you the facts of this case--but depending on what
 12:07 7 they are, you can envision a situation where you would
 12:07 8 answer those questions in a way that would result in a
 12:07 9 death sentence; is that correct?
 12:07 10 A. Okay. Say that again?
 12:07 11 Q. Obviously, since I can't give you the facts of
 12:07 12 the case --
 12:07 13 A. Right.
 12:07 14 Q. -- could you picture in your head a situation
 12:07 15 in which you'd be able to answer those questions in such
 12:07 16 a way that resulted in a death sentence?
 12:07 17 A. Yes.
 12:07 18 Q. And on the flip side of that, could you
 12:07 19 envision a situation in your head where you would answer
 12:07 20 those questions in such a way that resulted in a life
 12:07 21 sentence?
 12:07 22 A. Yes.
 12:08 23 Q. Excuse me, Ms. Robinson, I want to go through
 12:08 24 your questionnaire and see if there's anything else I
 12:08 25 wanted to talk to you about.

12:08 1 A. Okay.
 12:08 2 Q. One of the last things on your questionnaire,
 12:08 3 you say you plan on moving November 4th?
 12:08 4 A. Yes.
 12:08 5 Q. Is that out of Collin County?
 12:09 6 A. Yes.
 12:09 7 Q. I sure hope we're done with the strikes by
 12:09 8 November 4th, so I don't see that as a problem.
 12:09 9 A. Yes.
 12:09 10 Q. And it says, mid-October you plan to visit your
 12:09 11 family in Plainview?
 12:09 12 A. Yes, that's right, uh-huh.
 12:09 13 Q. If you were called as a juror to serve on this
 12:09 14 case, and I don't anticipate we'd still be going
 12:09 15 mid-October, but if we were still going in mid-October,
 12:09 16 granted you probably would be upset that you couldn't
 12:09 17 visit your family, but would you be able to put that
 12:09 18 frustration aside and not take it out on either side?
 12:09 19 A. I think so.
 12:09 20 Q. I guess the only other comment you put is
 12:09 21 driving to McKinney from where you live, I can tell you
 12:09 22 I live fairly close to where you do.
 12:09 23 A. You do?
 12:09 24 Q. I do. It's a drive fortunately going against
 12:09 25 traffic.

12:09 1 A. Yeah. That was the nice thing about it. I
 12:09 2 found a new route today.
 12:10 3 MS. FALCO: Thank you, Ms. Robinson. We
 12:10 4 pass this juror.
 12:10 5 THE COURT: Tell you what, we're going to,
 12:10 6 Ms. Robinson, I'm going to ask you to take a real quick
 12:10 7 lunch. And let's take a half hour for lunch, and that
 12:10 8 will bring us back at 12:40. And when we come back at
 12:10 9 12:40, then the other side will have a chance to ask you
 12:10 10 questions. I've sent the other people to lunch already.
 12:10 11 So you -- you perhaps won't run into them.
 12:10 12 If you do run into anybody else who is a juror in this
 12:10 13 case, I'm going to ask you not to discuss anything that
 12:10 14 was asked of you or anything that you have answered of
 12:10 15 them.
 12:10 16 MR. HIGH: Judge, could we have 45 minutes
 12:10 17 so that we would have time to call our office and check
 12:10 18 back in at the office? We just don't have enough time
 12:10 19 to eat and make our phone calls that we need to make
 12:10 20 within 30 minutes.
 12:10 21 THE COURT: I don't know. I tell you
 12:10 22 what, we were about 15 minutes later getting starting
 12:10 23 from 8:30. I understand it was excusable; but let's
 12:10 24 just take a half hour for lunch.
 12:10 25 THE BAILIFF: All rise.

12:15 1 (Lunch recess.)
 12:48 2 THE COURT: Are you ready to go? Is the
 12:48 3 defense ready?
 12:48 4 MR. HIGH: We're ready.
 12:48 5 THE COURT: Go ahead.
 12:48 6 VOIR DIRE EXAMINATION
 12:48 7 BY MR. HIGH:
 12:48 8 Q. Pardon me, Ms. Robinson. Did you have a chance
 12:48 9 to get some lunch?
 12:48 10 A. Yes, I did.
 12:48 11 Q. Good. My name is Don High, and I'm one of the
 12:48 12 defense lawyers in this case. And my last name is
 12:48 13 pronounced high, H-I-G-H, like up high in the air.
 12:48 14 A. Okay.
 12:48 15 Q. So you won't have to guess at that. That's
 12:48 16 really my name. And we've got some questions we want to
 12:48 17 ask you, too. I know they've been over a lot of the
 12:48 18 more substantive, more difficult stuff, and we'll
 12:49 19 probably get to that in just a minute. But it's mostly
 12:49 20 going to be review because you've already covered all
 12:49 21 the hard stuff.
 12:49 22 A. Okay.
 12:49 23 Q. So that's good. I want to kind of start out
 12:49 24 with some easy things, and we'll just kind of cover some
 12:49 25 things in your background so I can try to get a better

12:49 1 feel for you, if you don't mind?
 12:49 2 A. Okay.
 12:49 3 Q. First of all, I think it was discussed with you
 12:49 4 that when you first came in here -- or came up here you
 12:49 5 found out that this was a capital murder case, and it
 12:49 6 was going to involve the death penalty?
 12:49 7 A. Uh-huh.
 12:49 8 Q. Have you had any discussions with your brother,
 12:49 9 Rob, about death penalty cases? What's involved in a
 12:49 10 death penalty case?
 12:49 11 A. In the past, yes. I mean, somewhat. I mean, I
 12:49 12 don't know that it involved anything specific. You
 12:49 13 know, we have had some discussion about it.
 12:50 14 Q. All right. And has he handled several death
 12:50 15 penalty cases?
 12:50 16 A. Yes.
 12:50 17 Q. Okay. And I'm sure he has told you what it
 12:50 18 feels like to work on a case like that and the stress
 12:50 19 that's involved in it, and that sort of thing?
 12:50 20 A. You can see the stress on him. I mean, yeah,
 12:50 21 it's pretty evident.
 12:50 22 Q. Okay. Are you close with your brother?
 12:50 23 A. I would say fairly close, yeah.
 12:50 24 Q. I kind of pick that up. You have two older
 12:50 25 brothers?

12:50 1 A. I have two older brothers.
 12:50 2 Q. Okay. Do they look after you?
 12:50 3 A. I would say so.
 12:50 4 Q. I'm -- I'm not at all surprised at that.
 12:50 5 A. Okay.
 12:50 6 Q. Because if I was your brother, I would look
 12:50 7 after you too, so. I noticed you a shot a gun. Do you
 12:50 8 go hunting with them, go hunting with your dad from time
 12:50 9 to time?
 12:50 10 A. No. That was just a one-time thing, not at
 12:50 11 all.
 12:50 12 Q. Was that out on the farm or something?
 12:50 13 A. Yeah.
 12:50 14 Q. Do you all have a farm?
 12:50 15 A. We used to.
 12:50 16 Q. What kind of a farm?
 12:50 17 A. It was like a cotton farm. Wait, my father
 12:51 18 actually got into all kinds of things like he sold grass
 12:51 19 seed. And he was -- he would sell hay. And he was
 12:51 20 mainly a cotton farmer, but he did get into growing
 12:51 21 other kinds of produce and things like that, so...
 12:51 22 Q. Was that his main career?
 12:51 23 A. Oh, yeah.
 12:51 24 Q. Farming?
 12:51 25 A. Oh, yeah. Yes. And then he retired from that.

12:51 1 Q. So is that where you grew up, in Plainview?
 12:51 2 A. Yes.
 12:51 3 Q. Did you go to Plainview High School?
 12:51 4 A. Yes.
 12:51 5 Q. And they used to have a pretty good football
 12:51 6 team, as I recall?
 12:51 7 A. Um, yeah, depends on the years. Some years
 12:51 8 better than others.
 12:51 9 Q. What activities were you involved in in high
 12:51 10 school?
 12:51 11 A. Oh, I was involved in, let's see, drama, and I
 12:51 12 was on junior varsity tennis team, and National Honor
 12:52 13 Society and band.
 12:52 14 Q. What instrument do you play?
 12:52 15 A. I played a trumpet.
 12:52 16 Q. Do you still play the trumpet?
 12:52 17 A. No, no. I sold my trumpet. It was mainly for
 12:52 18 fun, basically, kind of just social.
 12:52 19 Q. Sure. Do you read music?
 12:52 20 A. Yes, I can.
 12:52 21 Q. Good. Did you get any scholarships coming out
 12:52 22 of high school?
 12:52 23 A. I had a high GPA; but, no, I didn't get any
 12:52 24 scholarships. My family pretty much took care of my
 12:52 25 education.

12:52 1 Q. Did you go to Tech?
 12:52 2 A. Yes, I did.
 12:52 3 Q. Is that where you wanted to go to school?
 12:52 4 A. Yes. I kind of was torn between that and UT,
 12:52 5 so, but I picked Tech.
 12:53 6 Q. A lot of kids in that area, Tech is the main
 12:53 7 pull. I mean, that's where most of your friends go?
 12:53 8 A. Right.
 12:53 9 Q. I guess.
 12:53 10 A. Well, I had -- actually all my friends went in
 12:53 11 different directions. I was probably the only college
 12:53 12 person, college-seeking person at the time out of my
 12:53 13 friends, so...
 12:53 14 Q. Okay.
 12:53 15 A. Yeah.
 12:53 16 Q. Now, Lubbock is about 60 miles south of
 12:53 17 Plainview, or is it?
 12:53 18 A. 45 miles.
 12:53 19 Q. 45 miles south?
 12:53 20 A. Uh-huh.
 12:53 21 Q. So it was pretty home -- pretty easy to go home
 12:53 22 on the weekends, go back and forth, et cetera, while you
 12:53 23 were at school?
 12:53 24 A. Somewhat.
 12:53 25 Q. Are you fairly close with your parents?

12:53 1 A. Yes, I would say so.
 12:53 2 Q. So it's a strong, loving family that you are
 12:53 3 from?
 12:53 4 A. Uh-huh.
 12:53 5 Q. I forgot what I was going to ask you. Oh, I
 12:53 6 notice in your questionnaire that you are going to be
 12:53 7 moving out of Collin County?
 12:53 8 A. Uh-huh.
 12:53 9 Q. Are you moving back to Plainview?
 12:54 10 A. No. I'm not moving back to Plainview. I'm
 12:54 11 moving. I just put that on there because I was moving
 12:54 12 to Dallas County. I didn't know if it had any relevance
 12:54 13 or whatnot.
 12:54 14 Q. Sure. But you get back to Plainview
 12:54 15 frequently?
 12:54 16 A. Yes, I do.
 12:54 17 Q. And where exactly is Hale County where your
 12:54 18 brother works?
 12:54 19 A. That's Plainview is the -- I guess.
 12:54 20 Q. The county seat?
 12:54 21 A. County seat, yeah, of Hale County. That's up
 12:54 22 in, which would be up in the panhandle.
 12:54 23 Q. I see, so your brother works there where your
 12:54 24 parents live?
 12:54 25 A. Right, uh-huh.

12:54 1 Q. And I suppose that when you go home, you visit
 12:54 2 your mom and dad, you visit your brother? What other
 12:54 3 family members live there in Plainview?
 12:54 4 A. My aunt and my uncle and my cousins. That's
 12:54 5 basically about it.
 12:54 6 Q. Any of them work in law enforcement?
 12:55 7 A. Well, my uncle. I guess he kind of works for
 12:55 8 the government. He's not really law enforcement. He --
 12:55 9 he was an ex-Secret Service agent.
 12:55 10 Q. Interesting.
 12:55 11 A. He's now doing kind of contract work with the
 12:55 12 government. My cousin is working as a lawyer, besides
 12:55 13 my brother, and that's really pretty much it.
 12:55 14 Q. With respect to, back to your brother, again,
 12:55 15 who is a -- who is the first assistant right there in
 12:55 16 Plainview, I assume he's going to be at the Thanksgiving
 12:55 17 dinner table, probably?
 12:55 18 A. Uh-huh, uh-huh.
 12:55 19 Q. And let's assume that you wind up on this jury.
 12:55 20 And hopefully we're done by then, but there's no way to
 12:55 21 be assured of that, but hopefully we will be, are you
 12:56 22 going to have a problem -- how do I ask this? Are you
 12:56 23 going to have a problem talking to your brother and
 12:56 24 telling him how you voted in this case?
 12:56 25 I mean, are you going to want to tell him,

12:56 1 look, I gave the death penalty in a case. Do you feel
 12:56 2 more comfortable with that, or would you be comfortable
 12:56 3 telling him I gave a life sentence, or maybe you found
 12:56 4 somebody not guilty? Does that factor in at all?
 12:56 5 A. I don't -- I don't -- I don't think so, no. I
 12:56 6 mean, I just don't -- I just don't even see having much
 12:56 7 of a conversation about it. I mean, maybe. I mean,
 12:56 8 maybe, if the trial -- I don't know. That's kind of
 12:56 9 hard.
 12:56 10 Q. Wouldn't he be interested in your jury service
 12:56 11 on a capital murder?
 12:56 12 A. Oh, yes, he would. He would just kind of want
 12:56 13 to know what it was like.
 12:57 14 Q. He would probably ask you a bunch of questions
 12:57 15 about it. That's what lawyers do, isn't it?
 12:57 16 A. Yeah.
 12:57 17 Q. They ask a bunch of questions?
 12:57 18 A. I imagine he would. I imagine he would. It's
 12:57 19 kind of hard to, I don't know. I can't picture that
 12:57 20 quite well.
 12:57 21 Q. I'm just trying to find out, would you feel an
 12:57 22 affinity or reason to do a certain thing because your
 12:57 23 brother might expect you to?
 12:57 24 A. No, not necessarily.
 12:57 25 Q. So that's not a problem?

12:57 1 A. That's not a problem.
 12:57 2 Q. Okay. You understand that this is kind of an
 12:57 3 interesting situation. You strike me as being a very
 12:57 4 intelligent young lady. And yet you are coming in here,
 12:57 5 and we haven't even had the trial yet, and we're talking
 12:57 6 about a sentencing and a death penalty. I'm sure that
 12:57 7 might be somewhat confusing to you.
 12:57 8 And the best explanation I've got for that
 12:57 9 is this is the way the process works. We've got to
 12:58 10 interview prospective jurors one by one to examine their
 12:58 11 views on the death penalty and a life sentence and
 12:58 12 determine if they would be proper jurors for this kind
 12:58 13 of case, which is a capital case.
 12:58 14 A. Uh-huh.
 12:58 15 Q. I want to point out to you that the trial
 12:58 16 hasn't taken place yet. There's been no finding of
 12:58 17 guilt yet. And also I want to point out that we're not
 12:58 18 stipulating or admitting that our client is guilty.
 12:58 19 A. Uh-huh.
 12:58 20 Q. Do you understand that?
 12:58 21 A. I understand that.
 12:58 22 Q. Okay. And that there may be some issues with
 12:58 23 respect to his guilt or innocence that, if you sit on
 12:58 24 the jury, you may have to listen to and make a decision.
 12:58 25 A. That's right.

12:58 1 Q. Okay. And nevertheless, we have to focus most
 12:58 2 of our efforts and most of our questioning on the
 12:58 3 sentencing phase of the trial. Because, I mean, that's
 12:58 4 where the real rub comes is whether you can assess the
 12:59 5 death penalty or assess a life punishment. Fair enough?
 12:59 6 A. Fair enough.
 12:59 7 Q. Has your brother ever explained to you how a
 12:59 8 person comes to be charged with capital murder and how,
 12:59 9 in fact, the State would seek a death penalty? Has he
 12:59 10 ever explained that to you?
 12:59 11 A. No.
 12:59 12 Q. Who is the D.A. in Hale County?
 12:59 13 A. Terry McEachern.
 12:59 14 Q. Name sure sounds familiar. All right. Do you
 12:59 15 know Mr. McEachern?
 12:59 16 A. Yes, I do.
 12:59 17 Q. I'm sure that if there are death penalty cases
 12:59 18 in Hale County, then he is the one that has to make the
 12:59 19 call on whether the State will seek a death penalty.
 12:59 20 A. Right.
 12:59 21 Q. Does that make sense to you?
 12:59 22 A. That makes sense.
 12:59 23 Q. Have you ever heard in the media, so and so was
 12:59 24 arrested, charged, and the State will seek the death
 12:59 25 penalty?

13:00 1 A. Yes.
 13:00 2 Q. Who do you think makes that decision?
 13:00 3 A. I have no idea.
 13:00 4 Q. People like Mr. McEachern?
 13:00 5 A. Right. I mean, that's who I assume, but I
 13:00 6 don't know specifically who makes that decision.
 13:00 7 Q. Obviously, in a much larger county, such as
 13:00 8 this one, you know there's an elected district attorney,
 13:00 9 and there may be many assistants that work on the staff.
 13:00 10 A. Okay.
 13:00 11 Q. Does that make sense to you?
 13:00 12 A. That makes sense.
 13:00 13 Q. Whereas, in a smaller county like Hale County,
 13:00 14 how many attorneys are on the staff up there?
 13:00 15 A. Three.
 13:00 16 Q. Your brother and one more?
 13:00 17 A. Yes.
 13:00 18 Q. So, nevertheless, the district attorney will
 13:00 19 make the decision and then gives his marching orders to
 13:00 20 the staff to carry them out. Does that make sense to
 13:00 21 you?
 13:00 22 A. Yeah.
 13:00 23 Q. You understand that Mr. Goeller and myself,
 13:00 24 we're defense lawyers, we played no part in that
 13:00 25 decision.

13:00 1 A. I understand that.
 13:01 2 Q. Nevertheless, we're here on the case and --
 13:01 3 this death penalty case, and we've got to work on that.
 13:01 4 Do you understand that?
 13:01 5 A. Right.
 13:01 6 Q. With respect to your questionnaire -- well, let
 13:01 7 me go back just a little bit. I have a few more
 13:01 8 questions for you. When you went to Texas Tech, did you
 13:01 9 know what you were going to major in?
 13:01 10 A. No. Well, I mean, I thought I did, but not
 13:01 11 really.
 13:01 12 Q. So did you just kind of explore? Take your
 13:01 13 basics the first few years and try to explore, gee, what
 13:01 14 am I going to do with my life?
 13:01 15 A. Yes. That's kind of what I did.
 13:01 16 Q. How did that come about? Did you take some
 13:01 17 business classes? Did your father suggest you go into
 13:01 18 business?
 13:01 19 A. No. I think I'm still figuring that out.
 13:01 20 Q. Okay.
 13:01 21 A. I'm pretty mathematically inclined. I kind of
 13:01 22 thought I was going to go through -- I thought I wanted
 13:02 23 to be like a pediatrician when I first went to college.
 13:02 24 And then the more I got into it, the more I decided, no,
 13:02 25 I don't really want to do that. I don't want to spend a

13:02 1 million years in school. And so I decided, well, what
 13:02 2 else is there I can do?
 13:02 3 I kind of proceeded the artistic route,
 13:02 4 and that didn't seem to -- I decided to keep that as my
 13:02 5 hobby. And then I decided, well, what else can I do? I
 13:02 6 am pretty mathematically inclined, and I got into
 13:02 7 business school, and I thought maybe that would
 13:02 8 coordinate.
 13:02 9 Well, of course they are different things,
 13:02 10 but just kind of got -- got into the accounting program,
 13:02 11 stuck with it. Didn't really -- I finished, not really
 13:02 12 knowing what I really wanted to do and just thought,
 13:02 13 well, I'll just, you know, I just wanted to finish my
 13:02 14 degree basically and then get out into the world and see
 13:03 15 what a job -- what working would be like. And so I've
 13:03 16 done that, and then --
 13:03 17 Q. Let me interrupt you. Just a second, how many
 13:03 18 accounting classes did you take?
 13:03 19 A. Oh, I've taken about 36 hours.
 13:03 20 Q. Well, I can fully understand that. I have 33
 13:03 21 hours in accounting.
 13:03 22 A. Uh-huh.
 13:03 23 Q. That's an awful lot of accounting classes.
 13:03 24 A. Oh, yes.
 13:03 25 Q. So did you sit for the CPA exam?

13:03 1 A. I've sat twice.
 13:03 2 Q. And have you been successful with any parts of
 13:03 3 it?
 13:03 4 A. No.
 13:03 5 Q. So that's still in your future?
 13:03 6 A. No.
 13:03 7 Q. You decided against that?
 13:03 8 A. Yes.
 13:03 9 Q. Well, I tell you what. It is really a
 13:03 10 challenging test.
 13:03 11 A. Uh-huh.
 13:03 12 Q. And I'm sure you agree with that.
 13:03 13 A. Oh, yes.
 13:03 14 Q. Separates the men from the boys.
 13:03 15 A. That's right.
 13:03 16 Q. Were you in any accounting fraternities at
 13:03 17 Tech?
 13:03 18 A. Yes.
 13:03 19 Q. Which one?
 13:03 20 A. Alpha psi.
 13:03 21 Q. So you were a very good student then in
 13:03 22 accounting?
 13:04 23 A. I was okay. I did well the first couple of
 13:04 24 semesters, yeah.
 13:04 25 Q. Okay, great. And we always used to say that

13:04 1 that's the toughest major in the business school. Would
 13:04 2 you agree with that?
 13:04 3 A. Yeah. Well, maybe second to like the
 13:04 4 quantitative sciences or MIS, yeah.
 13:04 5 Q. Fair enough. And so then you got your degree
 13:04 6 and you got out, and where was your first job?
 13:04 7 A. Principal Financial Securities.
 13:04 8 Q. All right. You didn't think about going into
 13:04 9 public accounting?
 13:04 10 A. No.
 13:04 11 Q. Why is that? I mean, the lure is tremendous.
 13:04 12 A. Oh, I mean, I interviewed with several
 13:04 13 accounting firms, but it just wasn't. I kind of was
 13:04 14 interested in investments and securities at that time.
 13:04 15 And that just kind of, that came -- the opportunity
 13:04 16 became available, and so I took it.
 13:04 17 Q. Did you take some other classes in finance?
 13:05 18 A. Just finance, basically.
 13:05 19 Q. Just one class in finance?
 13:05 20 A. Uh-huh.
 13:05 21 Q. And this Principal Financial Securities, is
 13:05 22 that the one down there on the tollway?
 13:05 23 A. Well, that's the parent company. They actually
 13:05 24 were sold when I got -- when I first started working.
 13:05 25 So they've -- they were probably sold in '97.

13:05 1 Q. All right. Were you hired on as an investment
 13:05 2 adviser?
 13:05 3 A. Staff, staff accountant.
 13:05 4 Q. A staff accountant?
 13:05 5 A. Uh-huh.
 13:05 6 Q. And what exactly -- what functions did you
 13:05 7 perform?
 13:05 8 A. Oh, just lots of P & L work, basic bookkeeping
 13:05 9 type things. I mean, some work on, you know,
 13:05 10 contributing to SEC reporting and things like that.
 13:05 11 Q. Okay. So reviewing financials, preparing
 13:05 12 financials?
 13:05 13 A. Uh-huh.
 13:05 14 Q. And you didn't do any auditing work?
 13:05 15 A. No.
 13:06 16 Q. Never have done any auditing?
 13:06 17 A. No.
 13:06 18 Q. Have you ever done any tax work?
 13:06 19 A. No.
 13:06 20 Q. Tax work is kind of dry, isn't it?
 13:06 21 A. Yeah. But now I'm getting to where I
 13:06 22 appreciate it more in my current career.
 13:06 23 Q. And how long did you stay with Principal
 13:06 24 Financial?
 13:06 25 A. Well, I was there about three months, and then

13:06 1 they were -- they were sold. So, yeah, I mean, I was
 13:06 2 laid off. So about three months.
 13:06 3 Q. Welcome to Dallas, huh?
 13:06 4 A. Yeah.
 13:06 5 Q. And so what did you do at that point?
 13:06 6 A. Oh, I found another accounting job, and I
 13:06 7 worked there and got really burned out for about a year
 13:06 8 and a half.
 13:06 9 Q. And what were you doing in that position?
 13:06 10 A. Staff accounting for a health care company.
 13:06 11 Q. For a health care?
 13:06 12 A. Uh-huh. Because I just couldn't find another
 13:06 13 job in financial services, so...
 13:06 14 Q. But you really wanted to be in financial
 13:06 15 services?
 13:06 16 A. Yeah. So that's where I am now.
 13:07 17 Q. Okay. And tell me about your current job.
 13:07 18 A. I work at Bank One, customer service
 13:07 19 representative. But what I basically do is open
 13:07 20 accounts, do personal lending, some business accounts
 13:07 21 and investments.
 13:07 22 Q. And I take it you see yourself eventually
 13:07 23 winding up more on the investment side?
 13:07 24 A. Maybe, possibly.
 13:07 25 Q. I take it being with a big bank like that,

13:07 1 there's a whole lot of opportunities for you to explore?
 13:07 2 A. Oh, yeah. I mean, there's everything. You can
 13:07 3 go into, you know, there's just tons of possibilities,
 13:07 4 back office, training, branch management, things like
 13:07 5 that.
 13:07 6 Q. Well, you've got a very good degree. You've
 13:07 7 got a powerhouse degree, and that is terrific.
 13:08 8 A. Thank you.
 13:08 9 Q. I notice that you attend church at First United
 13:08 10 Methodist, downtown Dallas?
 13:08 11 A. That's correct.
 13:08 12 Q. And it says about two to three times a month?
 13:08 13 A. That's correct.
 13:08 14 Q. Are you involved in their drama program down
 13:08 15 there?
 13:08 16 A. No.
 13:08 17 Q. You know they have a drama program?
 13:08 18 A. Oh, yeah. Yeah, I just -- it's kind of
 13:08 19 difficult to always to make it downtown.
 13:08 20 Q. Absolutely.
 13:08 21 A. I have to work, so it just takes a lot of
 13:08 22 hours, so...
 13:08 23 Q. Yeah. I'm a member of First Baptist, which is
 13:08 24 just around the corner.
 13:08 25 A. Oh, okay.

13:08 1 Q. And I know the challenge that you are talking
 13:08 2 about. It's tough to make it down there. You indicate
 13:08 3 that you help out with the Stew Pot Ministry?
 13:08 4 A. Somewhat, at my brother's church.
 13:09 5 Q. Where is that?
 13:09 6 A. That's also downtown. He is at the First
 13:09 7 Presbyterian.
 13:09 8 Q. I see. And that's downtown Dallas?
 13:09 9 A. Uh-huh.
 13:09 10 Q. Do you sometimes attend church there, as well?
 13:09 11 A. Yes.
 13:09 12 Q. What is the Stew Pot Ministry?
 13:09 13 A. It -- it's a ministry for homeless individuals.
 13:09 14 I mean, they -- they serve every -- I think everyday.
 13:09 15 Well, everyday they serve, you know, stew to feed the
 13:09 16 needy people, basically. I mean, it's downtown, and
 13:09 17 it's in a building location. And on Saturdays on
 13:09 18 occasion I've just helped serve them, basically.
 13:09 19 Q. Sure. How many times have you done that?
 13:09 20 A. It's been, now, it's been a few months, but
 13:09 21 sometimes it's been on a monthly.
 13:09 22 Q. So did you have kind of a standing commitment
 13:09 23 to go work in that ministry?
 13:10 24 A. No. I don't have any commitment to it. It's
 13:10 25 just on a volunteer basis. Just whenever -- just

13:10 1 whenever I can go down there.
 13:10 2 Q. And here's an open-ended question. It says,
 13:10 3 "Do you consider yourself politically liberal,
 13:10 4 conservative or moderate?" And you answered "moderate."
 13:10 5 Tell me the reasons why you answered moderate.
 13:10 6 A. Probably because I just don't like politics
 13:10 7 that much. I don't know. I probably now in retrospect
 13:10 8 think about it, I probably vote more conservatively, but
 13:10 9 I guess I think of myself as sort of fair-minded, so I
 13:10 10 put moderate. I like to look at all the -- all avenues.
 13:10 11 Q. I'm sure, in fact, I know when I was your age I
 13:11 12 couldn't have told you the difference between a liberal
 13:11 13 or conservative and moderate. But you are way ahead of
 13:11 14 me at your age. The -- let me ask you this: Are you
 13:11 15 interested in lower taxes?
 13:11 16 A. Oh, yeah, definitely.
 13:11 17 Q. Are you interested in less government?
 13:11 18 A. Yeah. To be more conservative, yeah.
 13:11 19 Q. Yeah. It's starting to sound conservative, and
 13:11 20 it's starting to sound republican. Okay. We don't --
 13:11 21 you live in the southernmost portion of Collin County?
 13:11 22 A. I feel like. I think I do.
 13:11 23 Q. Like right on the line, pretty much?
 13:11 24 A. Pretty much.
 13:11 25 Q. Have you spent much time in Collin County?

13:11 1 A. Just only through work, yes, but not really.
 13:12 2 Probably, I've only lived in Collin County about two
 13:12 3 years.
 13:12 4 Q. You would agree that it's a fairly wealthy,
 13:12 5 fairly upscale, north Dallas area?
 13:12 6 A. Oh, yeah.
 13:12 7 Q. That's fair to say, isn't it?
 13:12 8 A. That's fair to say.
 13:12 9 Q. And when you go down to work in the Stew Pot
 13:12 10 Ministry, you see a whole different cross-section of
 13:12 11 society that you are not used to seeing on a daily
 13:12 12 basis; is that right?
 13:12 13 A. That's correct.
 13:12 14 Q. The down-and-out people who have serious
 13:12 15 problems, serious life issues?
 13:12 16 A. Uh-huh.
 13:12 17 Q. I'm sure that must be eye-opening to you?
 13:12 18 A. Somewhat.
 13:12 19 Q. When you look in their eyes, I'm curious,
 13:12 20 what -- what do you see, Laura?
 13:12 21 A. I probably see a person that's like, that's
 13:13 22 dead inside.
 13:13 23 Q. Absolutely. Okay. And in some instances they
 13:13 24 may be twice or three times your age?
 13:13 25 A. Uh-huh.

13:13 1 Q. I'm sure you've also seen people your age or
 13:13 2 even younger. Have you seen any of those people?
 13:13 3 A. A few times.
 13:13 4 Q. And even so, they -- you may look in their
 13:13 5 eyes, and you don't see much, right?
 13:13 6 A. No.
 13:13 7 Q. No light in their eyes?
 13:13 8 A. Yeah. I mean, I think they are pretty
 13:13 9 discouraged on life.
 13:13 10 Q. That -- those questions that you answered were,
 13:13 11 where it says a person's destiny or fate is determined
 13:14 12 by the circumstances of their birth and their
 13:14 13 upbringing, you disagree with that. I want you to
 13:14 14 reconsider that question in the context of what you see
 13:14 15 in the Stew Pot Ministry. Is that still the way you
 13:14 16 think on that or --
 13:14 17 A. Yes.
 13:14 18 Q. Have you ever visited with any of those folks?
 13:14 19 You know how they got there? How they got to be
 13:14 20 homeless?
 13:14 21 A. Not a whole lot, no. I mean, I'm basically
 13:14 22 there to serve. But, no, I mean, I haven't really
 13:14 23 gotten into that a whole lot.
 13:14 24 Q. I'm sure you guys have rules down there too in
 13:14 25 terms of how much you can talk to them? How close you

13:14 1 can get, that sort of thing?
 13:14 2 A. Somewhat. I mean, I kind of just, I mean, I
 13:14 3 feel like I'm there to help them. But, you know, in a
 13:14 4 way I guess it's kind of scary because you just don't
 13:15 5 know --
 13:15 6 Q. That's right.
 13:15 7 A. -- what people are like.
 13:15 8 Q. And I'm sure your parents have had some input
 13:15 9 on that, too?
 13:15 10 A. Um, yes.
 13:15 11 Q. And they've probably given you some
 13:15 12 instructions on living in Dallas?
 13:15 13 A. Oh, yeah, definitely.
 13:15 14 Q. I'm sure they strongly told you what they think
 13:15 15 about that, right?
 13:15 16 A. I would say my mother, yes.
 13:15 17 Q. And you come to find out that mom's pretty much
 13:15 18 right?
 13:15 19 A. Um.
 13:15 20 Q. Are you to that point that your mom is getting
 13:15 21 pretty smart?
 13:15 22 A. Somewhat. She's smart but, I mean, I think
 13:15 23 she's a little overprotective, too.
 13:15 24 Q. Okay. Good. Well, you are normal then.
 13:15 25 That's good. You indicated that you consider yourself

13:15 1 more of a follower than a leader?
 13:15 2 A. Uh-huh.
 13:15 3 Q. And if you would, could you give me a few
 13:16 4 examples of why you view yourself that way?
 13:16 5 A. Well, maybe -- that's a difficult question
 13:16 6 because I think it depends on the circumstance. I mean,
 13:16 7 I'm probably never going to be like, if you think of
 13:16 8 people like -- like a celebrity. I'll probably never be
 13:16 9 like a powerful person. I mean, maybe I will be. I
 13:16 10 don't know, but I mean to me that would constitute
 13:16 11 somewhat of a leader. And leaders can also take on
 13:16 12 supervisory roles.
 13:16 13 Whereas, right now, I'm not a supervisor,
 13:16 14 by any means. I'm just kind of independent, but I guess
 13:16 15 follower would be what I -- that's kind of how I defined
 13:16 16 it. I mean, because I'm -- I'm -- I'm kind of working
 13:17 17 for a bank. And, you know, kind of following management
 13:17 18 and things like that, so...
 13:17 19 Q. Okay. That's fair enough. So let's talk about
 13:17 20 in terms of a group setting.
 13:17 21 A. Uh-huh.
 13:17 22 Q. Did you attend church in high school?
 13:17 23 A. Yes.
 13:17 24 Q. Which church did you attend?
 13:17 25 A. The Methodist Church in Plainview.

13:17 1 Q. Were you involved in the youth group?
 13:17 2 A. Yes.
 13:17 3 Q. And were you involved in your youth group?
 13:17 4 A. I mean, I would come and show up, yeah.
 13:17 5 Q. And did you-all ever play games or sit around
 13:17 6 in a circle and discuss things, make decisions, you
 13:17 7 know, like kids do?
 13:17 8 A. Well, yeah. I mean, we did all that.
 13:17 9 Q. And in that kind of situation, did you consider
 13:17 10 yourself a leader or a follower?
 13:17 11 A. I guess if you are going to have a serious
 13:17 12 topic or conversation, maybe more of a leader, but in
 13:17 13 some circumstances more of a follower. I mainly try to
 13:18 14 get along with people, which is really good for what I
 13:18 15 do at work.
 13:18 16 Q. Yeah. You strike me that way.
 13:18 17 A. Yeah.
 13:18 18 Q. You strike me as really friendly and fair. Are
 13:18 19 you -- now, my niece, about your age, and I never knew
 13:18 20 this about her, but I'm told that when she's with her
 13:18 21 friends, she's a clown.
 13:18 22 A. Uh-huh.
 13:18 23 Q. And she can make everybody laugh and crack
 13:18 24 everybody up and -- and I would have never known that,
 13:18 25 unless somebody told me. What about you? Are you --

13:18 1 are you that type or --
 13:18 2 A. Yeah.
 13:18 3 Q. -- kind of a clown?
 13:18 4 A. Pretty much.
 13:18 5 Q. So you like to get along, and you like to have
 13:18 6 a good time and --
 13:18 7 A. (Moving head up and down.)
 13:18 8 Q. That's very interesting. I notice you listen
 13:18 9 to KISS FM. Is that like pop-rock type music?
 13:19 10 A. Uh-huh.
 13:19 11 Q. And I think it's got some jazz, kind of black
 13:19 12 jazz that they play?
 13:19 13 A. I guess. I guess maybe some of it, you could
 13:19 14 call it that.
 13:19 15 Q. Or R & B?
 13:19 16 A. I listen mainly in the morning. I don't really
 13:19 17 listen to the radio that much.
 13:19 18 Q. So that's your commute time?
 13:19 19 A. Yeah.
 13:19 20 Q. And you like to watch *The Practice*?
 13:19 21 A. Uh-huh.
 13:19 22 Q. Why is that?
 13:19 23 A. It's entertaining, it's drama. Maybe just kind
 13:19 24 of courtroom drama.
 13:19 25 Q. Okay. So you've got a little bit of a

13:19 1 fascination with that?
 13:19 2 A. Uh-huh.
 13:19 3 Q. And I'm sure you probably watch it, and you
 13:19 4 think about your brother?
 13:19 5 A. True.
 13:19 6 Q. Okay. You indicated that you followed the
 13:19 7 O. J. Simpson case, which the evidence somewhat seemed
 13:20 8 to point circumstantially against him. "But I think
 13:20 9 that if I had been on that jury, I would have voted the
 13:20 10 same way because nothing was ever concrete enough to
 13:20 11 sentence him."
 13:20 12 That's a very interesting response. You
 13:20 13 understand the difference between being found guilty and
 13:20 14 being sentenced?
 13:20 15 A. Right.
 13:20 16 Q. So are you trying to say that there's not
 13:20 17 enough concrete evidence to convict him, find him
 13:20 18 guilty?
 13:20 19 A. Right.
 13:20 20 Q. And tell me what you meant by that.
 13:20 21 A. Well, in my mind I was listening to the news,
 13:20 22 what the news publicity around it. So I thought there
 13:20 23 was a lot of the evidence that suggested, I mean, that
 13:20 24 he did in fact. But if I was in the courtroom, what I
 13:20 25 saw of the courtroom evidence, I thought that the

13:20 1 courtroom evidence would not be enough to cast a, you
 13:21 2 know, beyond a reasonable doubt verdict in that case.
 13:21 3 Q. All right. So, so you could understand that
 13:21 4 the -- the legal burden beyond a reasonable doubt is
 13:21 5 very strong?
 13:21 6 A. Right.
 13:21 7 Q. I mean, do you have any problem with that
 13:21 8 concept, that -- that the proof must be beyond a
 13:21 9 reasonable doubt?
 13:21 10 A. No. I don't have any problem with that.
 13:21 11 Q. And you agree with it?
 13:21 12 A. I agree with it.
 13:21 13 Q. That should be the legal standard in a criminal
 13:21 14 case?
 13:21 15 A. Yes.
 13:21 16 Q. How did you feel the verdict should have been
 13:21 17 in O. J.'s case?
 13:21 18 A. Well, I think, given the news about it, I mean,
 13:21 19 it really seemed like he was really guilty.
 13:22 20 Q. Yeah.
 13:22 21 A. It felt -- I mean, in all honesty, I don't know
 13:22 22 whether he did it or not.
 13:22 23 Q. Yeah.
 13:22 24 A. But it seemed like it appeared that he had a
 13:22 25 lot of things that pointed in his favor that he did it.

13:22 1 Q. Okay. Pointed toward him as a suspect?
 13:22 2 A. Yeah. Yeah. So I couldn't imagine who else it
 13:22 3 would be, I mean, another suspect.
 13:22 4 Q. So, so kind of deep in your heart you thought,
 13:22 5 gee, this man is guilty?
 13:22 6 A. Well --
 13:22 7 Q. Don't let me put words in your mouth. How did
 13:22 8 you feel deep in your heart?
 13:22 9 A. Deep in my heart, I don't think I had a heart
 13:22 10 decision about it. I would say, yeah, it felt probably
 13:22 11 more like he was guilty.
 13:22 12 Q. But yet you can also see intellectually what
 13:22 13 the jury phase to the legal standard, and you can
 13:22 14 understand at least with respect to what they did? You
 13:22 15 can understand that perhaps they didn't find it beyond a
 13:22 16 reasonable doubt?
 13:22 17 A. Right.
 13:22 18 Q. Okay. That's fair enough. And did you follow
 13:23 19 the Menendez trial, as well?
 13:23 20 A. A little bit, not much.
 13:23 21 Q. Now, I'm interested in the people that you
 13:23 22 listed here because I took one look at it. And I'll be
 13:23 23 honest with you, I would have listed almost the exact
 13:23 24 same people --
 13:23 25 A. Okay.

13:23 1 Q. -- on the questionnaire. Save and except
 13:23 2 Nicole Kidman?
 13:23 3 A. I didn't know who else to put.
 13:23 4 Q. Okay. But you listed people that you most
 13:23 5 respect: President George W. Bush, Dick Cheney and
 13:23 6 First Lady, Laura Bush. Those would be three of my
 13:23 7 picks. And then Nicole Kidman. Why Nicole Kidman?
 13:23 8 A. I guess I felt sorry for her 'cause I saw her
 13:23 9 in an interview just that day. And they asked for four
 13:23 10 people, and I think I feel sorry for her right now just
 13:23 11 because she's going through a divorce with Tom Cruise,
 13:23 12 and I don't like Tom Cruise.
 13:23 13 Q. You don't like him?
 13:23 14 A. No.
 13:23 15 Q. Why don't you like Tom Cruise?
 13:23 16 A. He seems arrogant and cocky, and I don't like
 13:24 17 him.
 13:24 18 Q. Well, I agree with you. I agree with that.
 13:24 19 And so you empathize with Nicole, and that's --
 13:24 20 A. That's probably my -- I couldn't really think
 13:24 21 of a fourth person to put on there that I really most.
 13:24 22 I didn't know, I thought better to put somebody than
 13:24 23 leave it blank. I don't know.
 13:24 24 Q. Sure.
 13:24 25 A. There's no really. I don't rate her -- if I

13:24 1 would have thought about it, I would have thought maybe
 13:24 2 Mother Teresa, if I had thought, if it had come to mind.
 13:24 3 But I was just drawing a blank that day.
 13:24 4 Q. I don't think you did. I think you did a great
 13:24 5 job. With respect to folks that you least respect, you
 13:24 6 hit the jackpot with me again, you put Bill Clinton,
 13:24 7 Gary Conditt, First Lady Hillary Clinton, and Monica
 13:24 8 Lewinsky. You get an A plus as far as I'm concerned.
 13:25 9 Tell me about these people. Why is it
 13:25 10 that you least respect these people? What's consistent
 13:25 11 about them, I guess?
 13:25 12 A. I think what's consistent about all of them is
 13:25 13 that they seem to, at the expense of others, try to take
 13:25 14 things for their personal advantage. That's kind of
 13:25 15 what I see about them.
 13:25 16 Q. More interested in personal gain?
 13:25 17 A. Right.
 13:25 18 Q. And I suppose you have a problem -- correct me
 13:25 19 if I'm wrong, but you think their core values are
 13:25 20 misplaced?
 13:25 21 A. Yes.
 13:25 22 Q. Values are important to you?
 13:25 23 A. (Moving head up and down.)
 13:26 24 Q. When you were in high school at Plainview, did
 13:26 25 you have any experience with people using drugs?

13:26 1 A. I never saw any, no.
 13:26 2 Q. I'm sure they have drugs in Plainview?
 13:26 3 A. Oh, yeah, yeah.
 13:26 4 Q. Any of your friends use drugs?
 13:26 5 A. Any of my friends use drugs?
 13:26 6 Q. Yeah.
 13:26 7 A. I know that some of them have, yes. I don't
 13:26 8 know if they still use them, but -- that's not. I don't
 13:27 9 think that they use them anymore, but I think some of
 13:27 10 them have, yes.
 13:27 11 Q. Have you run across any drugs since you have
 13:27 12 been in Dallas?
 13:27 13 A. No.
 13:27 14 Q. You indicated that if you are into drug
 13:27 15 dealing, you put yourself in a position where there's
 13:27 16 more access to criminal acts. You are more of a target
 13:27 17 for things to happen to you. Now, I think I understand
 13:27 18 what you mean by that. Just elaborate a little bit more
 13:27 19 for me, if you will.
 13:27 20 A. I think, I mean, for instance my younger
 13:27 21 brother had a really good friend in high school that has
 13:27 22 been -- has been picked up several times for possession.
 13:27 23 I mean, that can't be a good thing. That's on his
 13:27 24 criminal record. I mean, it's against the law. By
 13:28 25 association, I know that you can, you know, be arrested.

13:28 1 So, I mean, I think that just the mere
13:28 2 nature of it, if you are trying to sneak around, I mean,
13:28 3 people notice things. And, I mean, you are eventually
13:28 4 going to get caught. And I think it also can lead to a
13:28 5 lot of other more serious things. I mean, I think it's
13:28 6 basically putting yourself in a situation where it just
13:28 7 leads to problems.

13:28 8 Q. Sure. And most likely, if you are breaking the
13:28 9 law, then you are going to associate with other people
13:28 10 who do; is that fair to say?

13:28 11 A. Yes, I would think so.

13:28 12 Q. And then who knows what kind of laws they are
13:28 13 breaking. They may be big, they may be small; but
13:28 14 there's a potential for law breaking going on?

13:28 15 A. Right.

13:29 16 Q. Why is it that you never wanted to use drugs?

13:29 17 A. It just never occurred to me. I just never was
13:29 18 offered drugs and didn't really care.

13:29 19 Q. Okay.

13:29 20 A. Just not -- I mean, my friends really aren't
13:29 21 that into them. I mean, some of them, I guess, were
13:29 22 more -- some people I know were experimenting with them,
13:29 23 but other than that, no.

13:29 24 Q. And you also knew that it could create more
13:29 25 problems for you down the road?

13:29 1 A. Right.

13:29 2 Q. And you -- how long have you known this or had
13:29 3 this realization that, you know, if you do drugs you are
13:29 4 going to run with people that are breaking the law, and
13:29 5 you may create more problems for you? How long have you
13:29 6 known that?

13:29 7 A. For a very long, very long time. Since high
13:29 8 school. Maybe even longer than that.

13:29 9 Q. Did your folks teach you that?

13:29 10 A. Yeah.

13:30 11 Q. And was it your mother mostly or mother and
13:30 12 father?

13:30 13 A. Probably both. I would say both. My mother is
13:30 14 more of the lecturer type but, yeah.

13:30 15 Q. And you also were involved in a youth group at
13:30 16 church?

13:30 17 A. Right.

13:30 18 Q. And I assume that was discussed there, as well?

13:30 19 A. Yeah. You can't go anywhere without some
13:30 20 discussion of antidrug.

13:30 21 Q. Sure. And I'm sure it was discussed some at
13:30 22 school, too?

13:30 23 A. Yeah, uh-huh.

13:30 24 Q. So you knew at a very young age that, I better
13:30 25 not do that because it's just going to create more

13:30 1 problems for you?

13:30 2 A. True.

13:30 3 Q. Boy, I understand. I was the same way.

13:30 4 A. Uh-huh.

13:30 5 Q. You understand that there's some other folks
13:30 6 out there that haven't had the benefit that you've had,
13:30 7 with all that instruction and coaching and that sort of
13:31 8 thing.

13:31 9 A. Yeah.

13:31 10 Q. Probably some of those folks on the Stew Pot
13:31 11 line down in Dallas; is that fair to say?

13:31 12 A. That's fair to say.

13:31 13 Q. Okay. I want to get to some of these
13:31 14 questions. Now, I think they went through the procedure
13:31 15 in a capital murder case very very well.

13:31 16 A. Uh-huh.

13:31 17 Q. In terms of the guilt or innocence. You get to
13:31 18 hear all the evidence and then you make a decision and
13:31 19 it needed to be proof beyond a reasonable doubt. And if
13:31 20 you found the defendant guilty of capital murder, then
13:31 21 that's assuming you do?

13:31 22 A. Uh-huh.

13:31 23 Q. We're not saying you will, but assume that he's
13:31 24 found guilty, then you get to these questions and that's
13:32 25 clear, right?

13:32 1 A. Right.

13:32 2 Q. And you understand that this is question No. 1,
13:32 3 the future dangerousness question.

13:32 4 A. Uh-huh.

13:32 5 Q. And this is question No. 2?

13:32 6 A. The mitigating.

13:32 7 Q. The mitigating, very good. Mitigating
13:32 8 question. I want you to take another look at No. 1
13:32 9 there and whether there's a probability that the
13:32 10 defendant would commit criminal acts of violence that
13:32 11 would constitute a continuing threat to society. And we
13:32 12 see, right up front we see the word probability. What
13:32 13 does probability mean to you?

13:32 14 A. Likelihood.

13:32 15 Q. Fair enough. If you were to assign a
13:32 16 percentage to it, because you are good with numbers --

13:32 17 A. Okay.

13:32 18 Q. -- what kind of percentage would you assign to
13:32 19 it?

13:32 20 A. I would assign over 50 percent.

13:33 21 Q. Okay. Fair enough. You understand there's a
13:33 22 difference between the word probability and possibility?

13:33 23 A. Uh-huh.

13:33 24 Q. And you understand that the legislature gave us
13:33 25 this special issue, the folks in Austin. And when they

13:33 1 wrote this, put it into law, they didn't use the word
 13:33 2 possibility. They used the word probability. I'm not
 13:33 3 trying to be cute. I'm just trying to make a point.
 13:33 4 A. Okay.
 13:33 5 Q. Would you think that probability would be
 13:33 6 stronger than possibility?
 13:33 7 A. I would say -- well, I understand that they are
 13:33 8 different words, but it's kind of like they are -- I
 13:33 9 would say probability is a stronger word than
 13:34 10 possibility.
 13:34 11 Q. Okay. Fair enough. If I'm going in for heart
 13:34 12 surgery tomorrow --
 13:34 13 A. Uh-huh.
 13:34 14 Q. -- the doctor may tell me that, you know,
 13:34 15 there's risk of stroke. There's a risk of some kind of
 13:34 16 serious blood clotting issue. There's a risk of death.
 13:34 17 And the probability of that happening is maybe one in
 13:34 18 1,000. Okay? What if the doctor told me it was 999 out
 13:34 19 of a thousand? I would realize that was a pretty good
 13:34 20 probability I was going to die on the table, right?
 13:34 21 A. Correct.
 13:34 22 Q. Whereas, if I realize it's one in a thousand,
 13:34 23 it's possible that it's going to happen, but it's
 13:34 24 probably not going to happen.
 13:34 25 A. Right.

13:34 1 Q. Okay. Now, you understand that this is a look-
 13:34 2 forward type question. Like sitting here today, after
 13:35 3 you've heard all the evidence in the case, in a capital
 13:35 4 murder case, all the evidence that bears on this
 13:35 5 particular issue, you know, a continuing threat to
 13:35 6 society and future acts of violence, a jury would have
 13:35 7 to conclude that there's a probability that he would do
 13:35 8 that. Do you understand that?
 13:35 9 A. Uh-huh.
 13:35 10 Q. Okay. It's a look-forward question.
 13:35 11 A. Right.
 13:35 12 Q. And you were asked if you could consider it,
 13:35 13 whether you could answer it yes or no, and you said you
 13:35 14 could?
 13:35 15 A. Uh-huh.
 13:35 16 Q. And is there any hesitation in the back of your
 13:35 17 mind, you know, knowing that you are going to be trying
 13:35 18 to determine a sentence for capital murder, maybe even a
 13:35 19 death penalty? Is there any hesitation in your mind
 13:35 20 that your ability to look forward and determine a
 13:35 21 probability?
 13:35 22 A. I don't think so.
 13:36 23 Q. Fair enough. Let me ask you this: With
 13:36 24 respect to -- you understand that at that juncture, once
 13:36 25 you reach that question, there's already been a

13:36 1 conviction or a guilty verdict for capital murder.
 13:36 2 A. Uh-huh.
 13:36 3 Q. And obviously that sounds bad, when somebody is
 13:36 4 convicted of capital murder. That just sounds terrible.
 13:36 5 A. Yes, it does.
 13:36 6 Q. Here's the thing: We need to know if, when you
 13:36 7 get to this question, Ms. Robinson, and you found him
 13:36 8 guilty of capital murder, are you going to automatically
 13:36 9 determine that he's going to be a future danger? I
 13:36 10 mean, he's already, in your mind, he's already committed
 13:36 11 capital murder, is this going to be an automatic thing?
 13:36 12 I mean, my goodness, here's a guy we found guilty.
 13:36 13 Surely he's going to be a future danger. Is that how
 13:37 14 you are going to look at this question?
 13:37 15 A. I probably would look at it that way. I mean,
 13:37 16 I've never been in a capital murder case, but I would, I
 13:37 17 just think murder is horrible. And if he was convicted
 13:37 18 of it, yeah, I would think that way.
 13:37 19 Q. Okay.
 13:37 20 A. I would think anybody that murdered anybody
 13:37 21 would be a -- constitute a threat to society.
 13:37 22 Q. Certainly. And I can't argue with that.
 13:37 23 A. Uh-huh.
 13:37 24 Q. In fact, if I were sitting where you are, I
 13:37 25 might say the very same thing. In fact, I probably

13:37 1 would. Okay? But you understand, though, that the law
 13:37 2 requires you to make the finding of guilty, and that's
 13:37 3 at one stage of the proceeding. And then you'd be
 13:37 4 submitted issues where you'll have to render a decision,
 13:37 5 yes or no, to future acts of violence. And it can't be
 13:37 6 automatic.
 13:37 7 You are going to have to think about the
 13:37 8 evidence and apply the law to it, and you're going to
 13:38 9 have to find this issue, yes, beyond a reasonable doubt.
 13:38 10 It's the same legal standard as the guilt-innocence
 13:38 11 phase of the trial.
 13:38 12 A. Okay.
 13:38 13 Q. Does that make a little more sense to you?
 13:38 14 A. Yeah, it does.
 13:38 15 Q. Okay. Nevertheless, though, even though the
 13:38 16 law requires you to make a separate finding and listen
 13:38 17 to the evidence, consider all the facts of the case and
 13:38 18 everything that you've heard in this courtroom, would it
 13:38 19 still be your tendency, you know, that you've convicted
 13:38 20 him, you found that a capital murder has occurred?
 13:38 21 Would it be your tendency to automatically answer that
 13:38 22 yes?
 13:38 23 A. I would say so.
 13:38 24 Q. Okay. And is it fair to say then that, if
 13:38 25 there's a conviction of capital murder, there's a 99

13:39 1 percent probability that you are going to find the
 13:39 2 answer is yes to that question?
 13:39 3 A. I mean, I wouldn't do what I wasn't supposed
 13:39 4 to, I mean, as far as, I would think I would try to
 13:39 5 abide by the law. But at the same time I would, there's
 13:39 6 a probability that that would be in my mind.
 13:39 7 Q. Very high?
 13:39 8 A. Pretty high.
 13:39 9 Q. More often than not?
 13:39 10 A. I would -- I guess so, yes.
 13:39 11 Q. Okay. Let me ask you this. With respect to,
 13:39 12 you know, we talked about -- have we talked about having
 13:39 13 an open mind? Have we talked about that with you? We
 13:39 14 talked to so many people today.
 13:39 15 A. I don't -- I don't remember.
 13:39 16 Q. Let me talk about it with you. Do you think
 13:39 17 that once you get to this question that you could keep
 13:39 18 an open mind and listen to all the evidence and, you
 13:39 19 know, even after you convicted him of capital murder,
 13:39 20 could you listen to all the evidence and talk with the
 13:39 21 fellow jurors and reasonably consider saying, no, I
 13:40 22 don't believe that there's a probability he'll commit
 13:40 23 future acts of violence? And, no, I don't think he's a
 13:40 24 continuing threat to society? I mean, is that even
 13:40 25 within the realm of possibilities with you,

13:40 1 Ms. Robinson?
 13:40 2 A. I mean, I think that, you know, I -- I mean,
 13:40 3 I'm not -- unless he is guilty, I wouldn't, you know,
 13:40 4 unless they've proven guilt, I would not be like, okay,
 13:40 5 he's guilty. But, like, if there was --
 13:41 6 Q. We've already established guilt.
 13:41 7 A. We've already established guilt.
 13:41 8 Q. We've already established he's guilty of
 13:41 9 capital murder.
 13:41 10 A. It would always be in my mind there is a
 13:41 11 probability that he would commit criminal acts of
 13:41 12 violence. I would think that, and with that I would
 13:41 13 think that would render that he would be a continuing
 13:41 14 threat to society, so...
 13:41 15 Q. Okay. That's fair enough. Is that how you
 13:41 16 feel?
 13:41 17 A. That's how I feel about it.
 13:41 18 Q. Okay. And I'm not saying that's wrong. I'm
 13:41 19 not arguing with you. Please don't think I'm arguing
 13:41 20 with you.
 13:41 21 A. No.
 13:41 22 Q. I'm not trying to be mean to you or argue with
 13:41 23 you; but we've got to know how you feel because we
 13:41 24 represent this young man.
 13:41 25 A. Right.

13:41 1 Q. And we've got to make sure that you would be
 13:41 2 open-minded, if and when you get to that question, you
 13:41 3 can consider the evidence and at least give us a shot at
 13:41 4 that question. Are you telling us that, if you sit on
 13:42 5 the jury and you -- and you convicted him or any other
 13:42 6 defendant of capital murder, it's likely?
 13:42 7 A. It's likely because --
 13:42 8 Q. It's probable?
 13:42 9 A. -- I think it's just very, I mean, that's a
 13:42 10 very serious thing. And I don't know, I would have a
 13:42 11 really hard time with that.
 13:42 12 Q. You'd have a really hard time finding the
 13:42 13 answer "no" to that question?
 13:42 14 A. Right.
 13:42 15 Q. Right?
 13:42 16 A. Right.
 13:42 17 Q. And a second ago you used the sentence *always*.
 13:42 18 Is that how you feel? In other words, if you find him
 13:42 19 guilty of capital murder, if you find any defendant
 13:42 20 guilty of capital murder, you are always going to answer
 13:42 21 that question, yes, they are a continuing threat. I
 13:42 22 mean, after all, they are guilty of capital murder.
 13:42 23 A. I would, yeah. I mean, that's kind of how I
 13:42 24 feel about it.
 13:42 25 Q. Okay, fair enough. You would always do that.

13:42 1 A. Uh-huh.
 13:42 2 Q. Okay. I got a little bit further to go. We're
 13:43 3 almost done. It was explained to you last week that a
 13:43 4 capital murder can be a double homicide when two or more
 13:43 5 people are killed --
 13:43 6 A. Uh-huh.
 13:43 7 Q. -- in a situation of a double homicide. And
 13:43 8 you found that yes, in fact, that occurred. And the
 13:43 9 defendant's guilty of capital murder. Would you always
 13:43 10 find this answer to a first special issue, yes, a
 13:43 11 continuing threat?
 13:43 12 A. Yes.
 13:43 13 Q. You always would?
 13:43 14 A. Yes.
 13:43 15 Q. It was also explained to you last week that a
 13:43 16 capital murder could be a case in which there's a
 13:43 17 burglary that took place and then a murder associated
 13:44 18 with it.
 13:44 19 A. Uh-huh.
 13:44 20 Q. In the event that a burglary was proven to you
 13:44 21 and a murder, therefore; you've made a finding of
 13:44 22 capital murder.
 13:44 23 A. Uh-huh.
 13:44 24 Q. Would you always find that the answer to that
 13:44 25 special issue would be, yes, continuing threat?

13:44 1 A. Yes.
 13:44 2 Q. Last week it was also explained to you that a
 13:44 3 robbery plus murder is capital murder.
 13:44 4 A. Uh-huh.
 13:44 5 Q. And I don't want to go too fast because this
 13:44 6 is, and I know you don't live in this world, so don't
 13:44 7 let me go too fast.
 13:44 8 A. Okay.
 13:44 9 Q. It was explained to you last week that if there
 13:44 10 was a robbery -- you know, the physical taking of
 13:44 11 something from someone?
 13:44 12 A. Uh-huh.
 13:44 13 Q. And then if you have that and you have a
 13:44 14 murder, that's capital murder. And if you were sitting
 13:45 15 on the jury and you found someone guilty of robbery plus
 13:45 16 murder, which is capital murder --
 13:45 17 A. Uh-huh.
 13:45 18 Q. -- would your answer to that first special
 13:45 19 issue, that is probability that he would commit criminal
 13:45 20 acts of violence and would constitute a continuing
 13:45 21 threat to society, would your answer always be yes?
 13:45 22 A. Yes.
 13:45 23 Q. I want to go a little bit further with you,
 13:45 24 because I think I understand what you are saying, but I
 13:46 25 just want to make sure. By virtue of finding someone

13:46 1 guilty of capital murder, whether it's a double
 13:46 2 homicide, burglary plus murder or robbery plus murder
 13:46 3 which is capital murder, is that going to dictate your
 13:46 4 decision on special issue No. 1? That is, it's always
 13:46 5 going to be yes, because you found someone guilty of
 13:46 6 capital murder in those three situations?
 13:46 7 A. I would say, yes.
 13:46 8 Q. Okay. It really doesn't have much to do with
 13:46 9 the facts of a particular case. I mean, the finding of
 13:46 10 guilty of capital murder, double homicide, burglary,
 13:46 11 robbery, murder, somebody's going to be a continuing
 13:46 12 threat to society, at least in your mind?
 13:46 13 A. In my mind, yes.
 13:46 14 Q. You've already decided that?
 13:46 15 A. I mean, well, I mean, it's kind of like we go
 13:47 16 back to the mitigating circumstances, too.
 13:47 17 Q. Uh-huh.
 13:47 18 A. In certain circumstances that are mitigating,
 13:47 19 it depends on what they were, maybe I would answer that
 13:47 20 question differently. But in regards to the first
 13:47 21 question, in my mind, if they are guilty of capital
 13:47 22 murder, yes, I would think that they would constitute a
 13:47 23 criminal -- a continuing threat to society.
 13:47 24 Q. Okay. And they always will.
 13:47 25 A. And that's -- that's the way I look at it.

13:47 1 Q. I understand. And I'm not arguing with you at
 13:47 2 all. And, in fact, I probably agree with you, if the
 13:47 3 truth were known. Okay?
 13:47 4 Do you have anything that I've been
 13:47 5 unclear about, that you want to ask me, any questions?
 13:47 6 A. I can't think of any, no.
 13:47 7 Q. If you were sitting where I am, doing the job
 13:47 8 I've got to do, would you want you on your jury?
 13:48 9 A. (Laughter.)
 13:48 10 Q. Would you want to sit here knowing that you
 13:48 11 were sitting over there in the jury box? Kind of a
 13:48 12 weird question, isn't it?
 13:48 13 A. Probably not.
 13:48 14 Q. All right. And why is that?
 13:48 15 A. Because I'm pretty, I mean, I just take a look
 13:48 16 at the law. Like I just feel, well, the law, but I take
 13:48 17 a look at criminal acts as really, I mean, I just think
 13:48 18 that -- that they deserve punishment. And I'm probably
 13:48 19 more -- I mean, more inclined for the death penalty. So
 13:48 20 if I was looking at it, if I was sitting from your
 13:48 21 standpoint and wanting somebody like me on the jury, I
 13:48 22 wouldn't.
 13:48 23 Q. You wouldn't pick you?
 13:48 24 A. No.
 13:48 25 Q. Okay. You understand the questions we're

13:49 1 asking you is not because we don't like you or because
 13:49 2 we -- I mean, we think you are terrific. But you
 13:49 3 understand the whole reason we're asking these questions
 13:49 4 is to find out if you are the right kind of juror for
 13:49 5 this kind of case.
 13:49 6 A. Right.
 13:49 7 Q. You understand you may be right for some other
 13:49 8 case?
 13:49 9 A. And not right for others.
 13:49 10 Q. That's right. I know that's the case with me.
 13:49 11 A. Uh-huh.
 13:49 12 Q. Do you think you are not right for this case?
 13:49 13 A. I don't know. I mean, I don't know if I'm
 13:49 14 right for this case or not.
 13:49 15 Q. Now, if you are interviewing for the job, so we
 13:49 16 need to ask you.
 13:50 17 A. Well, I mean, for this case, I mean, I don't --
 13:50 18 I don't like the idea of being on this jury, no.
 13:50 19 Q. I understand.
 13:50 20 A. Yeah, I don't like. Now, if you look at it
 13:50 21 from a point of view, if I'm interviewing as a juror,
 13:50 22 yeah. I probably could, am fair-minded, yes. But in
 13:50 23 certain circumstances, maybe to clarify, I do have
 13:50 24 certain biases.
 13:50 25 Q. Okay. Sitting there, right now, do you think

13:50 1 that you are biased towards our side or biased towards
13:50 2 the State's side? Or do you lean one way or lean
13:50 3 another way?

13:50 4 A. I have no way of leaning because I really don't
13:50 5 know anything about this case.

13:50 6 Q. Okay.

13:50 7 A. I mean, I would say, though, if -- if it's
13:50 8 something where we come down to a verdict, I'm probably
13:51 9 more biased toward -- I mean, if there was something
13:51 10 that found me guilty beyond a reasonable doubt, I would
13:51 11 probably be more biased than towards the prosecution,
13:51 12 you know, towards favoring kind of what the State
13:51 13 would --

13:51 14 Q. Would want to do?

13:51 15 A. Yeah.

13:51 16 Q. And if they convinced you beyond a reasonable
13:51 17 doubt on special issue No. 1, or at least you would find
13:51 18 special issue No. 1, it's true. And it applies anyway
13:51 19 because he's found guilty of capital murder, right?

13:51 20 A. Right.

13:51 21 Q. So they would get special issue No. 1
13:51 22 automatically from you, right?

13:51 23 A. Right.

13:51 24 Q. So then it's just a question of special issue
13:51 25 No. 2 and, I mean, you are going to jump straight from

13:51 1 the conviction past special issue No. 1 to special issue
13:51 2 No. 2; is that true?

13:51 3 A. Say that again. Jump past the conviction to --

13:51 4 Q. In other words, if you found him guilty or
13:51 5 found the defendant guilty --

13:51 6 A. Uh-huh.

13:51 7 Q. Special issue No. 1 is going to be fairly
13:52 8 automatic with you, right? And so then it -- the only
13:52 9 question is, you know, does special issue No. 2 apply?

13:52 10 A. Right.

13:52 11 MR. HIGH: We're going to pass the juror,
13:52 12 Judge.

13:52 13 VOIR DIRE EXAMINATION

13:52 14 BY MS. FALCO:

13:52 15 Q. Ms. Robinson, just briefly, and I know it seems
13:52 16 like we were hammering on the same parts over and over.
13:52 17 This part is pretty important. It's okay to be a juror.
13:52 18 You can still be qualified if you may be more likely to
13:53 19 give the death penalty than the juror sitting next to
13:53 20 you.

13:53 21 You may think nine times of out of ten I
13:53 22 can give it. As long as there's that one time in ten
13:53 23 you wouldn't, you would render a life sentence, and you
13:53 24 are okay.

13:53 25 Just like the person that is on the flip

13:53 1 side that thought, well, you know, maybe one time out of
13:53 2 ten I'd give it, but I'm more likely to give a life
13:53 3 sentence. As long as there's fact situations, either
13:53 4 way, that you can render a life sentence or a death
13:53 5 sentence.

13:53 6 A. Uh-huh.

13:53 7 Q. And obviously, based on everything you've said
13:53 8 today and looking in your questionnaire, you are a very
13:53 9 law-abiding citizen. You grew up in a law enforcement
13:53 10 type family. Obviously, what your brother does is
13:53 11 enforcing the laws. And I'm sure like on your way up
13:53 12 here today when you were driving, I'm sure you passed
13:53 13 some speed limit signs.

13:53 14 A. Yes.

13:53 15 Q. When you got to those speed limit signs, you
13:53 16 just didn't accelerate and start speeding and exceed the
13:53 17 speed limit, did you?

13:53 18 A. No.

13:53 19 MR. GOELLER: She has rights. Don't
13:53 20 answer that question.

13:53 21 Q. (BY MS. FALCO) You saw the law. You didn't
13:53 22 just purposely disregard it?

13:53 23 A. Right.

13:53 24 Q. And that's kind of the same thing that we're
13:54 25 asking you here. Obviously, the legislature did not set

13:54 1 up the death penalty system in such a way that if you
13:54 2 find someone guilty of capital murder, they are
13:54 3 automatically a future danger?

13:54 4 A. Right.

13:54 5 Q. It's a two-step process. The law says, first
13:54 6 you find them guilty of capital murder. Then you have
13:54 7 to consider whether or not there's a probability they'll
13:54 8 be a danger in the future. And the State's got to prove
13:54 9 that to you beyond a reasonable doubt.

13:54 10 A. Uh-huh.

13:54 11 Q. And if the State doesn't prove that to you
13:54 12 beyond a reasonable doubt, which means there might be
13:54 13 situations where you found them guilty of capital
13:54 14 murder --

13:54 15 A. Uh-huh.

13:54 16 Q. -- but the State can't prove to you beyond a
13:54 17 reasonable doubt that that person is going to be a
13:54 18 future danger, you have to answer that question no.

13:54 19 A. Okay.

13:54 20 Q. Do you understand that?

13:54 21 A. I guess I understand that. I mean, I kind of,
13:54 22 it's just hard for me to see the difference.

13:55 23 Q. Now, the law allows you to answer that question
13:55 24 solely on the facts of the case. I mean, if you just
13:55 25 look at the facts of case and that's it, you don't look

13:55 1 at any of the other punishment evidence, I mean, you
 13:55 2 just look at the facts of case, that's okay too, to make
 13:55 3 your decision.
 13:55 4 A. Uh-huh.
 13:55 5 Q. But the law says that you have to let the State
 13:55 6 prove it to you beyond a reasonable doubt before you can
 13:55 7 answer that question yes.
 13:55 8 A. Okay.
 13:55 9 Q. It's not automatic. Just because you found him
 13:55 10 guilty of capital murder.
 13:55 11 A. Uh-huh.
 13:55 12 Q. It's not automatic that he's a future danger.
 13:55 13 A. Okay.
 13:55 14 Q. Do you understand what I'm saying?
 13:55 15 A. I understand that. I will. I just can't
 13:55 16 picture that though, that's the only thing.
 13:55 17 Q. Okay.
 13:55 18 A. I mean, finding somebody guilty and then,
 13:55 19 finding that -- I mean, well, you explained it, but you
 13:55 20 know, I think, I just can't see any difference. I mean,
 13:55 21 why you'd convict somebody being guilty of something and
 13:55 22 then not beyond a reasonable doubt. I guess you were
 13:55 23 talking about circumstantial evidence, was that it?
 13:55 24 Q. Or just -- I mean, we talked about all
 13:55 25 different kind of scenarios such as the person whose

13:56 1 child killer got off, and they killed that person or
 13:56 2 somebody robbed a bank and killed people. But on their
 13:56 3 way out he got shot in some kind of cross fire, and now
 13:56 4 he's paralyzed from the neck down. We've discussed all
 13:56 5 different type of scenarios.
 13:56 6 A. Uh-huh.
 13:56 7 Q. And so, what it's saying is you may find
 13:56 8 somebody guilty of capital murder because the elements
 13:56 9 are there, and the State proved it to you beyond a
 13:56 10 reasonable doubt. But there may be circumstances that
 13:56 11 when we get to the second phase, the State can't prove
 13:56 12 to you beyond a reasonable doubt that they are a future
 13:56 13 danger.
 13:56 14 A. Okay.
 13:56 15 Q. Do you understand that?
 13:56 16 A. Right.
 13:56 17 Q. And so if the law said, the Judge gave you the
 13:56 18 Court's Charge and told you that, I mean, it's not
 13:56 19 automatic. You have to next consider whether or not the
 13:56 20 State proved to you beyond a reasonable doubt that he's
 13:56 21 a future danger --
 13:57 22 A. Okay.
 13:57 23 Q. -- could you do that? Could you make it the
 13:57 24 next step as opposed to just automatically answering it
 13:57 25 yes?

13:57 1 A. Okay. Murder is really hard for me to not put
 13:57 2 as an automatic. I see that as, I mean, an automatic --
 13:57 3 automatic answer to that question.
 13:57 4 MR. SCHULTZ: We quit, Judge. We give up.
 13:57 5 THE COURT: All right.
 13:57 6 MR. HIGH: Can we agree?
 13:57 7 MR. SCHULTZ: Well, I assume they are
 13:57 8 going to challenge --
 13:57 9 MR. HIGH: We do.
 13:57 10 MR. SCHULTZ: -- and we've got nothing
 13:57 11 else to say.
 13:57 12 THE COURT: Granted.
 13:57 13 THE COURT: Ma'am, you are finally
 13:57 14 excused.
 13:57 15 VENIREPERSON: Okay.
 13:57 16 THE COURT: Thank you very much.
 13:57 17 (Venireperson Robinson excused.)
 13:57 18 THE COURT: I think the next juror is
 13:57 19 Mr. Gabriel David, a little bit out of order.
 13:57 20 MR. SCHULTZ: We'd rather do these in
 13:57 21 order. I mean, it seems like we're getting a lot of
 13:57 22 ones and fives when we're out of order, and that kind of
 13:57 23 breaks our rhythm a little bit. I know you didn't, but
 13:57 24 I'd like to keep in order, if we could.
 13:57 25 THE COURT: In fact, that's the idea. To

13:58 1 bring up the ones and fives because I think we can move
 13:58 2 them along. That's the whole idea.
 13:58 3 MR. SCHULTZ: I understand, but couldn't
 13:58 4 we take them as they come up numerically?
 13:58 5 THE COURT: Why? What difference does it
 13:58 6 make?
 13:58 7 MR. HIGH: Judge, we kind of join in that
 13:58 8 request because, the way I understand it is, you know,
 13:58 9 they are seated in a particular order.
 13:58 10 THE COURT: Uh-huh.
 13:58 11 MR. HIGH: And we requested a shuffle at
 13:58 12 the beginning of the trial because we were concerned
 13:58 13 about the order. And we'd like the order followed
 13:58 14 because it affects the way we view our challenges for
 13:58 15 cause and also our peremptories. And if we take them
 13:58 16 out of order, that affects our trial strategy. So it
 13:58 17 would be our request to stick as much as possible to the
 13:58 18 numerical order as we can.
 13:59 19 MR. GOELLER: And can I just add my
 13:59 20 comment?
 13:59 21 THE COURT: Sure.
 13:59 22 MR. GOELLER: I don't want the Court to
 13:59 23 think I -- I'm talking out of both sides of my mouth. I
 13:59 24 know early on I told the Judge, I prefer that any juror
 13:59 25 involved in, any manner whatsoever in this case, be

13:59 1 accommodated because I think I'm protecting my client.
 13:59 2 Because I know how hacked off jurors tend to view the
 13:59 3 criminal justice system. And I'm not going to go after
 13:59 4 those three, that's for sure.

13:59 5 So I join Mr. High's comments. I don't
 13:59 6 mind accommodating a juror. If a guy wants to go today,
 13:59 7 or a woman or a male juror wanted to be heard today
 13:59 8 because tomorrow is really bad, or on their honeymoon or
 13:59 9 whatever, I do prefer we go in order.

13:59 10 But I'm still telling the Court, if there
 13:59 11 are jurors calling you saying, please don't make me come
 13:59 12 up there next Tuesday because my little girl, it's her
 13:59 13 first time to a pediatric dentist, or she's getting her
 14:00 14 braces on or something like that. Of course, I don't
 14:00 15 mind, I would like the Court to accommodate that person.
 14:00 16 But outside of people with problems, I like -- I'd
 14:00 17 rather go in order because my shuffle becomes
 14:00 18 meaningless. And with that said, that's all I have to
 14:00 19 say. Thank you, Judge.

14:00 20 THE COURT: I don't see how that becomes
 14:00 21 meaningless if we -- if we take number four before
 14:00 22 number five -- or number five before number four. What
 14:00 23 difference does it make?

14:00 24 MR. HIGH: Judge, we've taken --

14:00 25 THE COURT: Hey, excuse me. You sit down.

14:00 1 MR. HIGH: Pardon me.

14:00 2 THE COURT: Go ahead.

14:00 3 MR. GOELLER: I'm sorry. You are asking
 14:00 4 me a question, Judge?

14:00 5 THE COURT: Yes.

14:00 6 MR. GOELLER: It could make a -- early on
 14:00 7 it probably makes no difference. It probably makes no
 14:00 8 difference whatsoever. I'm sitting on four preempts
 14:01 9 right now. I'm sorry, we've got three. We've got two
 14:01 10 jurors in the box. I, you know, Mr. High, and I have
 14:01 11 reviewed these questionnaires.

14:01 12 I know it's coming down the pike with all
 14:01 13 the issues that I don't want to talk about right now.
 14:01 14 But I got to -- I got to -- I got to worry about taking
 14:01 15 juror 78 right now or juror 56. Because I've got --
 14:01 16 I've got a scheme and a plan. And I can't talk.
 14:01 17 Obviously, you know, I can't talk about that. But it
 14:01 18 does -- it does -- it does make a difference to me when
 14:01 19 I've looked at all these jurors if I'm taking juror
 14:01 20 one-on-one right now. I don't know what number the next
 14:01 21 juror is, but -- I don't know how to answer the Court's
 14:02 22 question. I look at the numbers that I have right
 14:02 23 now --

14:02 24 THE COURT: Look, I'm asking you a
 14:02 25 question, not that you asked the jurors. Just tell me

14:02 1 what difference does it make if you take Juror No. 5
 14:02 2 before Juror No. 4? You know, I'm not talking about --
 14:02 3 MR. GOELLER: Early on, none. Absolutely
 14:02 4 none. If I got all 15 of my peremptory strikes, it
 14:02 5 wouldn't make a bit of difference at all. But I don't
 14:02 6 anymore and I've, after the shuffle, I've looked at my
 14:02 7 makeup of these jurors. And I burn peremptory strikes
 14:02 8 as high up as 23. I see, I've taken a juror as high as
 14:03 9 34. I know we've done a lot of agreements to try to
 14:03 10 move this process along, but --

14:03 11 THE COURT: Yeah, okay. Hey, listen, I
 14:03 12 get the point. That's what I was asking. I just want
 14:03 13 to know. The thing is, as you know right now, the only
 14:03 14 ones that we've skipped are 26, 27, and 28, at least
 14:03 15 this one. We've played some catch up. And we've picked
 14:03 16 up some ones that we skipped before.

14:03 17 But right now, we have 26, 27, 30, 31, and
 14:03 18 32 that have yet to be called even though, and we've
 14:03 19 jumped over them. And we've taken up No. 33 and 34, 37,
 14:03 20 38, 39, 40, and 41. And I, let's see, wait a minute.
 14:03 21 We've also done -- actually I'm --

14:04 22 MR. GOELLER: Judge, if I could, if I
 14:04 23 could tell you what I'm trying to articulate, when we
 14:04 24 start pulling ones in down in the stack, one of these
 14:04 25 days Mr. Schultz is going to turn that one or Gail or

14:04 1 Jami is going to turn that one into a three. And they
 14:04 2 are going to be able to do it on the record. And I'm
 14:04 3 going to be forced to burn a peremptory strike on a one
 14:04 4 buried down in that stack that I wouldn't have had to
 14:04 5 had we not drug that one up now.

14:04 6 I'm sitting on four preempts. My greatest
 14:04 7 fear is that one of those three, and they are good
 14:04 8 lawyers. They are going to turn a one into a two or a
 14:04 9 two into a three. And that's -- that's my biggest fear.
 14:04 10 That's why I don't want -- I don't want to dig --
 14:04 11 because you know what? If I can't turn a five into a
 14:04 12 four, big deal.

14:04 13 When you are the criminal defense lawyer
 14:04 14 in this kind of case, so what? But if I get stuck
 14:05 15 eating a one, and I got to burn a preempt on them,
 14:05 16 that's the kind of thing that makes me stay up at night
 14:05 17 and get up at midnight and start walking around the
 14:05 18 house because I'm sitting on four strikes with two
 14:05 19 jurors right now. That's not the Court's fault, but I
 14:05 20 don't need help dragging ones to the front of the pack.
 14:05 21 And what if I don't work them? What if they work them?
 14:05 22 And they make them so they say the right things, I'm in
 14:05 23 trouble.

14:05 24 THE COURT: As it is right now, you've
 14:05 25 taken four strikes, and so have they.

14:05 1 MR. GOELLER: Right.
 14:05 2 THE COURT: And we've gone through Juror
 14:05 3 No. 41, but we haven't done five jurors, 26, 27, 29, 30,
 14:05 4 and 31.
 14:05 5 MR. SCHULTZ: We show 28 also.
 14:05 6 MS. FALCO: 26, 27, 28, 31, 32, 42, 43.
 14:05 7 THE COURT: We've done 30. We've done
 14:05 8 Laura Robinson just now. So we haven't done 26, 27, 28,
 14:06 9 31, and 32, right? That's four jurors we haven't done.
 14:06 10 MS. FALCO: Five.
 14:06 11 THE COURT: Who is the other one?
 14:06 12 MS. FALCO: 26, 27, 28, 31, 32 is five.
 14:06 13 And then if you are skipping all the way down to David,
 14:06 14 then that's skipping over No. 42 and No. 43. So that
 14:06 15 would be a total of seven jurors being skipped to get to
 14:06 16 that point.
 14:06 17 THE COURT: Yeah, but I anticipate that
 14:06 18 we'll probably get to -- what time is it? About 2:10.
 14:06 19 Hey, let me ask you then for the future, are you asking
 14:06 20 me to bring in 26, 27, 29, 31, 32? Would you like them
 14:06 21 in tomorrow? We can do it. Is that what you want? If
 14:06 22 that's what you guys are telling me that's what you
 14:06 23 want, that's what we'll do. Would everybody like to do
 14:06 24 that? Just go right in order.
 14:06 25 MR. SCHULTZ: The other --

14:06 1 THE COURT: Is that what you all would
 14:07 2 like?
 14:07 3 MR. SCHULTZ: What I'd like is to not
 14:07 4 treat the ones and fives any differently than any other
 14:07 5 class of juror, and that's what's creating the problem.
 14:07 6 I actually understand what they are saying. And that
 14:07 7 applies to us, too, in a different kind of way. It may
 14:07 8 be that it's less important in the scheme of things to
 14:07 9 fight to try to -- to try to save a one if we're getting
 14:07 10 near the end of the process, for example.
 14:07 11 We've got some more jurors, but it's
 14:07 12 extremely difficult for us -- understanding the
 14:07 13 disagreement with the Court on this, I'm absolutely
 14:07 14 respectful. I don't, other than the Court has made the
 14:07 15 rule, I don't know any reason we would be treating ones
 14:07 16 and fives any different than anybody else.
 14:07 17 He's absolutely right. He's going to turn
 14:07 18 a five on me before it's over. That will happen. And
 14:07 19 the question, when you get right down to it, the honest
 14:07 20 answer to the question is, it doesn't matter anyway.
 14:07 21 It's what they are going to say under oath when they
 14:07 22 understand the law.
 14:07 23 We are treating them differently. He gets
 14:07 24 to go first on the -- on the ones and maybe that's an
 14:08 25 advantage, but it's certainly unusual. We're just

14:08 1 treating those people very differently. And I almost
 14:08 2 wonder if that's even a good record kind of thing to
 14:08 3 have some special rules for certain classes of answers
 14:08 4 because I don't know how that gets viewed later on.
 14:08 5 THE COURT: We'll find out, I suppose.
 14:08 6 And personally, I'm not concerned about it. But if you
 14:08 7 have a substantial reason for saying that there's
 14:08 8 something wrong with it, by all means tell me.
 14:08 9 MR. SCHULTZ: Well, it's certainly
 14:08 10 limiting -- limiting -- certainly turning a juror over
 14:08 11 to the defense first to have to go first and to have to
 14:08 12 bear down over them over that issue of -- I'd always
 14:08 13 give it. It certainly interrupts their opportunity to
 14:08 14 see us go first and see if we make some mistake that
 14:08 15 they can take advantage of.
 14:08 16 THE COURT: Hey, they've asked me if they
 14:08 17 can go first on some jurors. Isn't that correct,
 14:08 18 Mr. Goeller? Or did I not understand what you were
 14:09 19 telling me? Didn't you tell me that you would like to
 14:09 20 take some jurors first?
 14:09 21 MR. GOELLER: I told the Court I would ask
 14:09 22 the Court to consider it if I filed a motion to
 14:09 23 alternate. Just --
 14:09 24 THE COURT: No. That isn't what you said.
 14:09 25 MR. GOELLER: Yes.

14:09 1 THE COURT: We can bring up the record, if
 14:09 2 you want. But what you said --
 14:09 3 MR. GOELLER: Please do, because that's
 14:09 4 exactly --
 14:09 5 THE COURT: This Court has the authority
 14:09 6 to let the defense go first.
 14:09 7 MR. GOELLER: Yes, I did say that.
 14:09 8 THE COURT: And the inference I drew from
 14:09 9 that is that that's what you wanted. Did I not
 14:09 10 understand that?
 14:09 11 MR. GOELLER: No, you understood that.
 14:09 12 You understood that. I think I couched it in terms of
 14:09 13 it was at the end of the day, and I may file a motion
 14:09 14 the next day. But you are right. My overall comment to
 14:09 15 the Court was, I'd like the Court -- not to go first
 14:09 16 sometimes, but just pure alternate.
 14:09 17 THE COURT: If you are telling me you
 14:09 18 don't want to do that, then fine. I'll let the State go
 14:09 19 first. So just tell me what your desires are so at
 14:09 20 least I'll know.
 14:09 21 MR. GOELLER: Well, I may be confused or
 14:09 22 mixing apples or oranges. I don't get the impression,
 14:09 23 I'm not talking about ones or fives, two, threes, and
 14:10 24 fours. I don't get the impression that the Court is
 14:10 25 just going to let me alternate, go first every time. I

14:10 1 understand the Court's scheme on ones and fives. I
14:10 2 mean, obviously I would welcome the opportunity to maybe
14:10 3 go first with all jurors.

14:10 4 Now, I can't -- I can tell you the Court
14:10 5 has the authority, and I think I spoke. I can't tell
14:10 6 you case law on it is when a Court --

14:10 7 THE COURT: Let's do this.

14:10 8 MR. GOELLER: All right.

14:10 9 THE COURT: Think about it tonight.

14:10 10 MR. GOELLER: Okay.

14:10 11 THE COURT: And I think what I may do is
14:10 12 let you go first on the -- on the fives. But if you
14:10 13 tell me for a while that you don't want to go first on
14:10 14 the fives, let me know, and I'll let the State go first
14:10 15 on all of them.

14:10 16 MR. GOELLER: I understand. Judge, I'm
14:10 17 not mincing words with you. When I brought up the
14:10 18 comment last week about I would like to be able to go
14:11 19 first, I meant just alternating every juror.

14:11 20 THE COURT: But you see, here's the thing,
14:11 21 as I see it --

14:11 22 MR. GOELLER: I've never conceived your
14:11 23 idea of alternating ones and fives. I have never
14:11 24 thought about it.

14:11 25 THE COURT: Yeah, I know you didn't. I

14:11 1 thought about that all by myself. Here's what I am
14:11 2 saying: If that's some advantage to you, then any one
14:11 3 that you get to go first on is an advantage to you, but
14:11 4 maybe I don't understand. But anyway, like I said,
14:11 5 think about it, sleep on it, tell me tomorrow if you
14:11 6 don't want to go first on the fives, and I can fix that
14:11 7 problem. So that's easy to fix. Don't even tell me
14:11 8 now. Just think about it, and tell me what you want to
14:11 9 do tomorrow.

14:11 10 MR. GOELLER: All right.

14:11 11 THE COURT: I tell you what we'll do,
14:11 12 we'll finish up with the ones we've got for today. And
14:11 13 we're going to bring Mr. Gabriel David in here next, and
14:11 14 defense will go first. Let's see if we can get to 42
14:11 15 and 43. And I tell you what I'll do, I'll go back to
14:12 16 No. 26. And we'll take these, one right after the
14:12 17 other. So, and I anticipate I'll be able to get ahold
14:12 18 of these.

14:12 19 My court reporter isn't in right now, but
14:12 20 I expect her back. In fact, tell you what. See if you
14:12 21 can get ahold of her on her cell phone and tell her what
14:12 22 we're going to do is we're going to go -- we're going to
14:12 23 take the people that are on standby and take them up
14:12 24 tomorrow. And from now on we'll just go right in order.
14:12 25 That's the way they want to do it.

14:12 1 So let's bring in Mr. Gabriel David in.
14:12 2 He is a number one. Yeah. In fact, I had it backwards.
14:12 3 I'm talking about you going first on number ones.

14:12 4 MR. GOELLER: Yes, sir, I appreciate it.

14:12 5 THE COURT: Would you like to?

14:12 6 MR. GOELLER: Absolutely, sir.

14:12 7 THE COURT: Let's bring Gabriel David in.
14:13 8 You go first, and then we'll see if we can get to 42 and
14:13 9 43 today. If we don't, then we'll take up No. 43 last.
14:13 10 (Venireperson David present.)

14:13 11 THE COURT: All right. Come on in, sir.

14:13 12 Are you Gabriel David?

14:13 13 VENIREPERSON: Yes, sir.

14:13 14 THE COURT: I tell you what, I do want to
14:13 15 ask you a couple questions. Please be seated. Let me
14:13 16 tell you before we get started, if you recall about a
14:13 17 week ago --

14:13 18 VENIREPERSON: Yes, sir.

14:13 19 THE COURT: -- I asked everybody to be
14:13 20 sworn to tell the truth with regard to the questions
14:13 21 that might be propounded by the attorneys and by me.
14:13 22 And you are still under that oath.

14:13 23 VENIREPERSON: Yes.

14:13 24 THE COURT: I tell you what, I want to ask
14:13 25 you, I'm looking at the questionnaire that you filled

14:13 1 out.

14:13 2 VENIREPERSON: Uh-huh.

14:13 3 THE COURT: And on page 13, you said you
14:13 4 have an assigned -- the question is: If you have plans
14:13 5 to be out of Collin County in the next three months,
14:13 6 please state the dates.

14:13 7 VENIREPERSON: Yes, sir.

14:13 8 THE COURT: And you said you are assigned
14:14 9 overseas effective September 15 for six months.

14:14 10 VENIREPERSON: Yeah, that's my job, is
14:14 11 international coverage for EDS. That's my job is
14:14 12 international banking and brokerage. My assignments are
14:14 13 in Europe and Asia.

14:14 14 THE COURT: And the next sentence says,
14:14 15 travel overseas on assignments next 12 months. What if
14:14 16 you were not able to -- to travel September 15th?

14:14 17 VENIREPERSON: That would be a problem.

14:14 18 THE COURT: What kind of a problem?

14:14 19 VENIREPERSON: In the sense that I'm the
14:14 20 only specialist they have in the downsizing. We'd
14:14 21 probably lose the job, lose the contract in Europe.

14:14 22 THE COURT: And you would be the only one
14:14 23 who would stand?

14:14 24 VENIREPERSON: I'm spearheading it right
14:14 25 now.

14:14 1 THE COURT: Pardon me?
 14:14 2 VENIREPERSON: I'm the leader on the
 14:14 3 contract with the bank.
 14:14 4 THE COURT: All right. Well, I just
 14:14 5 wanted to ask you about that, and the attorneys will ask
 14:14 6 you questions. And Mr. Goeller goes first.

14:15 7 VENIREPERSON: Yes.

14:15 8 VOIR DIRE EXAMINATION

14:15 9 BY MR. GOELLER:

14:15 10 Q. Good afternoon, Mr. David. I appreciate your
 14:15 11 being here today. You probably had to wait around some
 14:15 12 today?

14:15 13 A. Uh-huh.

14:15 14 Q. And some days we never know what's actually
 14:15 15 going to happen to a particular juror once we start
 14:15 16 asking the questions. Some folks wait just a little
 14:15 17 while. Some folks can wait all day. We appreciate your
 14:15 18 service being here.

14:15 19 Between last Tuesday, a week ago this past
 14:15 20 Tuesday and today, have you thought anything about the
 14:15 21 facts, not the facts, but the prospects of being a juror
 14:15 22 in a potential death penalty case?

14:15 23 A. Yes, I have.

14:15 24 Q. Tell me what you think. Tell me what your
 14:15 25 thoughts are about it.

14:15 1 A. I have no problem with it, with my background.
 14:15 2 My grandfather was a judge, not in this country, but
 14:15 3 under what they call Queen's Council and a Barrister.
 14:15 4 As a kid, I sat through the cases in London and in
 14:15 5 India. I don't think I'd have a problem being on a
 14:16 6 case. I think it's an obligation we need to fulfill at
 14:16 7 some point in time.

14:16 8 Q. Okay. You understand that what -- what my job
 14:16 9 at this part of the trial is to -- to get at the -- to
 14:16 10 get at the -- the essence of your thoughts on capital
 14:16 11 punishment. Okay? You are obviously an educated man,
 14:16 12 correct?

14:16 13 A. I hope so.

14:16 14 Q. You obviously are, based on what I heard about
 14:16 15 your job. What do you do? What's our educational
 14:16 16 background?

14:16 17 A. My background is engineering and applied math,
 14:16 18 engineering management specifically. My job has been
 14:16 19 primarily in the financial service industry. Is
 14:16 20 fundamentally unraveling when big banks, like bearings
 14:16 21 and all collapse, to go unravel the mess, if you will,
 14:16 22 and the operations that I decide.

14:16 23 The other thing I do is the large
 14:16 24 contracts for EDS, when they are in trouble or when they
 14:17 25 have to restructure something on global contracts, I'm

14:17 1 the spearhead for that in the financial industry,
 14:17 2 specifically, also the U.S.

14:17 3 Q. Do you believe in the death penalty?

14:17 4 A. I do.

14:17 5 Q. You were given a choice of five statements
 14:17 6 that, I guess, maybe you adopt or as far as which one
 14:17 7 best represents your feelings about the death penalty,
 14:17 8 you circled No. 1. You believe the death penalty should
 14:17 9 be imposed in all capital murder cases?

14:17 10 A. I do.

14:17 11 Q. What is your understanding of capital murder?
 14:17 12 Do you recall the speeches that were given? Probably
 14:17 13 Mr. Schultz's was more of an educational speech.

14:17 14 A. Yeah, it was. And I think, from my words, it's
 14:17 15 murder with burglary and some other aggravating type of
 14:17 16 crimes with it.

14:17 17 Q. Robbery?

14:17 18 A. Robbery, burglary, rape or double homicide, or
 14:18 19 something aggravated.

14:18 20 Q. That's exactly right. Good. That's exactly
 14:18 21 right. Good memory. You -- you stated in your
 14:18 22 questionnaire regarding why you favor the death penalty.
 14:18 23 Yes, when the murder is committed when the person
 14:18 24 through -- the person, oh, and when a person through
 14:18 25 making choices kills someone else. Okay. Is that what

14:18 1 you wrote?

14:18 2 A. Correct. That's correct.

14:18 3 Q. When you -- you are asked what is the best
 14:18 4 argument in favor of it? Appropriate punishment,
 14:18 5 removes the person from society. Prevention of
 14:18 6 additional, prevention of additional crimes?

14:18 7 A. That's correct.

14:18 8 Q. Okay. When asked the question of: What is the
 14:18 9 best argument in opposition to the death penalty? I
 14:18 10 believe you intentionally left that blank because you
 14:19 11 can't think of one?

14:19 12 A. I couldn't think of one.

14:19 13 Q. All right. No problem there. Under life
 14:19 14 confinement, you had three choices. I believe that life
 14:19 15 confinement is prison. Prison is never appropriate in
 14:19 16 any capital murder case. You believe that life
 14:19 17 confinement in prison is never appropriate in any murder
 14:19 18 case. You circled the middle one, the last one was, you
 14:19 19 thought, you would think life confinement would be
 14:19 20 appropriate in some types of capital murder cases.

14:19 21 I would assume logically the reason why
 14:19 22 you chose the second one, if you believe that life is
 14:19 23 never good for murder, you would necessarily believe
 14:19 24 it's never good for --

14:19 25 A. That's correct.

14:19 1 Q. -- capital murder?
 14:19 2 A. Uh-huh.
 14:19 3 Q. When you answered this questionnaire, when you
 14:19 4 filled out the top half, and the Judge had you put your
 14:20 5 seat number and your juror number and your name,
 14:20 6 address, all that kind of thing, you understood the
 14:20 7 nature of an oath?
 14:20 8 A. That is correct.
 14:20 9 Q. And what you put in here was not only how you
 14:20 10 felt, it was the sworn truth about how you felt?
 14:20 11 A. That is correct.
 14:20 12 Q. Okay. You also put in your questionnaire that
 14:20 13 you believe the death penalty ought to be available for
 14:20 14 things such as dealing or selling drugs?
 14:20 15 A. That is correct.
 14:20 16 Q. Tell me why you think that.
 14:20 17 A. I have been exposed to a lot of it particularly
 14:20 18 in Asia. I spent a lot of time in Singapore and Bangkok
 14:20 19 and Amsterdam, and I've seen the damage it caused.
 14:20 20 Q. Uh-huh.
 14:20 21 A. I've also seen what happens when it isn't
 14:20 22 imposed. And I've seen the effect of it in Singapore
 14:20 23 where they've actually cleaned up the area. And the
 14:20 24 question is that it's cleaned up society to the point
 14:21 25 where there's very little drugs in Singapore right now.

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14:21 1 Q. If you take, okay. Yeah, I always thought, you
 14:21 2 always think of, having never been there, you always
 14:21 3 think of Singapore as a well-run, well-oiled machine
 14:21 4 with very little crime.
 14:21 5 A. And that is true.
 14:21 6 Q. Because they will take a drug killer and kill
 14:21 7 them.
 14:21 8 A. They are pretty serious about it.
 14:21 9 Q. I'm sorry, what was that?
 14:21 10 A. They are pretty serious about it.
 14:21 11 Q. Okay. They will bring -- they will execute
 14:21 12 people for less than homicide?
 14:21 13 A. That's right.
 14:21 14 Q. And that would clean up the drug world. That's
 14:21 15 for sure.
 14:21 16 A. I've seen the effects of it, too. And I've had
 14:21 17 the response of meeting with staff of about 1,500 people
 14:21 18 at a time, and I've seen what drugs can do to people,
 14:21 19 close at hand in multiple countries, so...
 14:21 20 Q. No one, absolutely no one including myself
 14:21 21 would argue with you, debate it with you, somehow
 14:22 22 insinuate that your views are not as valid, say, as mine
 14:22 23 or anybody else's out there. Because the great thing
 14:22 24 about this country is that Gabriel David is entitled to
 14:22 25 his opinion, and people are entitled to respect his

14:22 1 opinion, just like mine.
 14:22 2 Although there are a lot of people, I
 14:22 3 think, that believe that not only is it the death
 14:22 4 penalty should come about for capital murder, any type
 14:22 5 of homicide, as you stated. We've really only got,
 14:22 6 we've got three or four, but two that most people know
 14:22 7 about, capital murder, murder and a manslaughter issue
 14:22 8 in homicide. But you believe all homicide and those
 14:22 9 offenses less than homicide, drug dealing, capital
 14:22 10 punishment should be -- should be part of the solution?
 14:22 11 A. Yes.
 14:22 12 Q. And you probably remember this from
 14:22 13 Mr. Schultz's conversation: The way our capital scheme
 14:22 14 is set up is these special issues on the punishment
 14:22 15 phase. But on the first phase of the trial, in a
 14:23 16 capital case and you've heard the indictment, you would
 14:23 17 be asked to consider whether a person is guilty or not
 14:23 18 guilty on capital murder. Okay? And as you've heard,
 14:23 19 burglary. Do you have a pretty good idea of what
 14:23 20 burglary is?
 14:23 21 A. Yes.
 14:23 22 Q. Kind of the unlawful entry into a habitation or
 14:23 23 building?
 14:23 24 A. As stated in your question, I'd already been
 14:23 25 through one here when I just moved into Texas.

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14:23 1 Q. Oh, a burglary of a habitation case?
 14:23 2 A. Yes. No. Mine, personal house.
 14:23 3 Q. Oh, your house was burglarized?
 14:23 4 A. Yes.
 14:23 5 Q. That's right. That's right. So you know what
 14:23 6 burglary is?
 14:23 7 A. Yes.
 14:23 8 Q. So you understand how a capital murder can come
 14:23 9 about in a burglary. You kill the homeowner basically?
 14:23 10 A. Yes.
 14:23 11 Q. And you know what robbery is?
 14:23 12 A. Yes.
 14:23 13 Q. And a double homicide?
 14:23 14 A. Yes.
 14:23 15 Q. Per the indictment in this case, it would come
 14:24 16 about perhaps that the Judge would ask you to deliberate
 14:24 17 whether the State has proved beyond a reasonable doubt
 14:24 18 capital murder, either double homicide, burglary-murder,
 14:24 19 robbery-murder. You understand the burden of proof,
 14:24 20 right?
 14:24 21 A. That's correct.
 14:24 22 Q. What you are telling me is, your personal
 14:24 23 feelings about it. If you have found somebody guilty of
 14:24 24 capital murder, you would not be in a position to ever
 14:24 25 sentence them to life because it violates your personal

14:24 1 beliefs?
 14:24 2 A. That's correct.
 14:24 3 Q. And, therefore, in all fairness, again, I
 14:24 4 wouldn't disagree with you. Who knows, I can't tell
 14:24 5 you, I may share your views. You and I could have a cup
 14:24 6 of coffee and have lots of fun. But once you have found
 14:25 7 somebody guilty of capital murder and these would be --
 14:25 8 let me put it in reverse order. I guess first one,
 14:25 9 second one.
 14:25 10 I've got future dangerous on top, the
 14:25 11 third one. You are going to find these questions, as
 14:25 12 far as punishment, don't really figure into the picture
 14:25 13 with you personally because you already believe it ought
 14:25 14 to be a death sentence if you have already found them
 14:25 15 guilty of capital murder?
 14:25 16 A. That is correct. Because I believe they should
 14:25 17 take responsibility for what they have done with no
 14:25 18 excuses.
 14:25 19 Q. No excuses?
 14:25 20 A. That's right.
 14:25 21 Q. No mitigation, no probability, if they have
 14:25 22 been found guilty of capital murder?
 14:25 23 A. To that point. If it's been proven that
 14:25 24 they've done it, then they ought to be taking
 14:25 25 responsibility for what they have done.

14:25 1 Q. What does that mean?
 14:25 2 A. And pay the consequences for it, without making
 14:25 3 excuses for bad behavior of the crime.
 14:26 4 Q. Gotcha. And what, how should they pay?
 14:26 5 A. Whatever the penalties are. In capital murder,
 14:26 6 in my view, should be death for murder or drug dealing.
 14:26 7 Q. Okay, okay. How strongly do you feel in that
 14:26 8 position on a scale of 1 to 10?
 14:26 9 A. I'd say probably about a nine.
 14:26 10 Q. Nine. Okay. Okay. If you had found -- let me
 14:26 11 talk about that first special issue. Of course, you
 14:26 12 remember to even get to these questions, you have
 14:26 13 already found somebody guilty of capital murder.
 14:26 14 A. Yeah.
 14:26 15 Q. Of course, if they are found not guilty, trial
 14:26 16 is over, they go home, unless there's another charge.
 14:26 17 But, if you, individually and as a jury, collectively
 14:26 18 say: We the jury find the defendant guilty of capital
 14:26 19 murder --
 14:26 20 A. Right.
 14:27 21 Q. -- double homicide, robbery, burglary, then
 14:27 22 there would be a punishment phase of the trial. And the
 14:27 23 State would have to prove that there's a probability
 14:27 24 that the defendant would commit criminal acts of
 14:27 25 violence that would constitute a continuing threat to

14:27 1 society. Is that an automatic for you? If you've
 14:27 2 already found them guilty of capital murder, do you
 14:27 3 even -- are you going to answer that question yes?
 14:27 4 A. I would find it difficult for the State not to
 14:27 5 prove.
 14:27 6 Q. Okay, okay.
 14:27 7 A. Because someone has made a conscious choice to
 14:27 8 kill somebody already, so we've gone past that stage.
 14:27 9 That would be a very difficult thing for me to accept.
 14:27 10 Q. Regarding the third special issue, and I don't,
 14:27 11 I don't disagree with you, regarding the third special
 14:27 12 issue, this may be the issue that, I think you use the
 14:27 13 word excuse. We call it mitigation, maybe roughly.
 14:28 14 Excuse tends to more show that what they did is not a
 14:28 15 crime to begin with. But I understand most juries --
 14:28 16 A. Or try to minimize.
 14:28 17 Q. Yeah.
 14:28 18 A. I have a tough. That, I personally cannot
 14:28 19 accept in terms of mitigating circumstance. The crime
 14:28 20 has been done of this type pretty clearly.
 14:28 21 Q. You bet. And of course you are right. We only
 14:28 22 get to this if a crime of this type is a crime of
 14:28 23 capital murder. Are you telling this jury, based on
 14:28 24 your personal convictions, you would not consider
 14:28 25 mitigating circumstances?

14:28 1 A. That is correct.
 14:28 2 Q. You would not be open to listening to any
 14:28 3 mitigation evidence?
 14:28 4 A. That's correct.
 14:28 5 Q. And that's perfectly logical, and it fits into
 14:28 6 your bottom-line premise that the natural result of a
 14:28 7 conviction ought to be the death penalty?
 14:28 8 A. That is correct.
 14:28 9 Q. And that's further consistent with your sworn
 14:28 10 statement under oath that you believe that life
 14:28 11 confinement is never appropriate in a murder or a
 14:28 12 capital murder case?
 14:28 13 A. That's correct.
 14:28 14 Q. It is further buttressed by your position that
 14:28 15 crimes of less than homicide, for example, drug dealing
 14:28 16 ought to carry a death penalty with them?
 14:29 17 A. That's correct.
 14:29 18 Q. Mr. David, thank you for your honesty. I
 14:29 19 appreciate your answer. Remember what I told you back
 14:29 20 Tuesday, I could care less what you tell me. If it's
 14:29 21 the truth and if it's from your head and your heart, you
 14:29 22 got my blessing and my thanks. Thank you.
 14:29 23 MR. GOELLER: I pass the witness.
 14:29 24 THE COURT: Are you going to go?
 14:29 25 MR. SCHULTZ: Yes, sir.

14:29 1 THE COURT: I'm going to step down for
14:29 2 about ten minutes, fix the rest of this schedule. And
14:29 3 then when I come back, we'll be set for the rest of the
14:29 4 voir dire. And, sir, you may step down. I want to ask
14:29 5 you --

14:29 6 VENIREPERSON: Yes, sir.

14:29 7 THE COURT: -- not to discuss anything
14:29 8 that has been asked of you or that you have said with
14:29 9 the other jurors.

14:29 10 VENIREPERSON: Definitely.

14:29 11 THE BAILIFF: All rise.

14:29 12 (Break.)

14:29 13 (Open court, defendant present, no juror.)

14:39 14 THE COURT: All right. We're back on the
14:39 15 record in Cantu. Hold on before we bring the witness
14:39 16 in. I'll tell you what the schedule is. I think we're
14:39 17 probably going to get to either Danny Cummings or David
14:39 18 Cannon. We'll get to Danny Cummings next, and I think
14:39 19 that will leave David Cannon, No. 43 for tomorrow. So
14:39 20 tomorrow morning we've got, I suppose, David Cannon,
14:39 21 Chris Edgar, Jesse Bedwell. And then at one o'clock,
14:39 22 we've got Charles Hayden and Linda Hunnicutt. And that
14:39 23 will take us through tomorrow, and that will get
14:39 24 everybody just right in the right order, just the way
14:39 25 y'all want it.

14:39 1 And then starting on -- on Tuesday, I
14:40 2 guess it is, we'll take the next seven, and then the
14:40 3 next seven will be scheduled for everyday thereafter, if
14:40 4 I can get to them, if we've got some leftovers. But
14:40 5 basically, we'll put all the rest of the folks that were
14:40 6 scheduled on standby, but that will be the schedule.
14:40 7 Does everybody understand it?

14:40 8 MS. FALCO: Yes, sir. And, Your Honor,
14:40 9 just for clarification, I didn't hear you mention
14:40 10 Jeffrey Vu, No. 32, when he was coming.

14:40 11 THE COURT: Let's see, Jeffrey Vu.
14:40 12 Jeffrey Vu is going to be scheduled for next week. He
14:40 13 and Jung So, Michael Foster, and Bobby Bolin are going
14:40 14 to be scheduled for September 4th, which is Tuesday,
14:40 15 right? And that will have us right on schedule just the
14:40 16 way you want it. Is the defense happy with that
14:40 17 schedule?

14:40 18 MR. GOELLER: Yes, sir.

14:40 19 THE COURT: Is the State happy?

14:40 20 MR. SCHULTZ: Yes, Judge.

14:40 21 THE COURT: All right. Then let's call
14:40 22 Mr. Gabriel David back in. I believe he had been passed
14:41 23 to the State.

14:41 24 THE BAILIFF: Yes, Your Honor.

14:41 25 (Venireperson David present.)

14:41 1 THE COURT: Mr. David, I just want to
14:41 2 remind you, once again, that you are still under oath,
14:41 3 sir. Thank you. Mr. Schultz?

14:41 4 VOIR DIRE EXAMINATION

14:41 5 BY MR. SCHULTZ:

14:41 6 Q. Yes. How are you, Mr. David? I'm Bill
14:41 7 Schultz. I'm an assistant district attorney
14:41 8 representing the State of Texas in its capital
14:41 9 prosecution of Mr. Cantu. And I don't believe you've
14:41 10 been introduced to Ms. Falco, who is the lady to my
14:41 11 left, and Ms. Lowry, who is the lady further to my left.
14:41 12 Now, you don't know any of us, do you?

14:41 13 A. No.

14:41 14 Q. Now, I believe you indicated on your
14:42 15 questionnaire that you are -- that your city of birth
14:42 16 was Pune, India?

14:42 17 A. That is correct.

14:42 18 Q. Am I pronouncing that right?

14:42 19 A. Southeast of Bombay.

14:42 20 Q. What region would that be considered? It's not
14:42 21 for example the Punjabi region?

14:42 22 A. No. It's the Bombay presidency under the
14:42 23 British state.

14:42 24 Q. Do you have any business dealings up in the
14:42 25 Punjabi region?

14:42 1 A. No.

14:42 2 Q. So you don't have any business, for example, in
14:42 3 Amritsar, the City of Gold?

14:42 4 A. No. But I do have staff in Delhi and other
14:42 5 places in India, about 5,000 of them.

14:42 6 Q. Okay. And I want to talk a little bit about
14:42 7 your belief in support of the death penalty. Some
14:42 8 people, it's purely a societal type of belief. And
14:42 9 other people, there are probably religious underpinnings
14:42 10 to their beliefs, either in support of or opposition to
14:42 11 the death penalty.

14:42 12 And my inquiry partially relates to the
14:43 13 fact that you come from a nation which is well known for
14:43 14 its diverse faiths. As a matter of fact, in many
14:43 15 regards my limited understanding of Indian culture
14:43 16 indicates to me that many -- much of the civil distress
14:43 17 that exists in that nation has roots of a religious
14:43 18 nature?

14:43 19 A. That's correct.

14:43 20 Q. And as a matter of fact, from time to time the
14:43 21 religious tension has been so significant that there was
14:43 22 a split, I guess, in the late '40s in which Pakistan
14:43 23 actually seceded or separated in some form or fashion
14:43 24 from the newly created nation of India. Primarily
14:43 25 because of its Islamic leanings in a nation that was, I

14:43 1 suppose, strongly made up of Hindu fashions, number one,
14:43 2 and there are a number of lesser, although no less
14:43 3 committed faiths, for example, the Sikhs?

14:44 4 A. Yes.

14:44 5 Q. But the Sikhs in your nation are of a committed
14:44 6 faith. And from time to time take that faith into
14:44 7 action as they see necessary; is that a fair statement?

14:44 8 A. That is correct.

14:44 9 Q. And then there are probably other -- there are
14:44 10 probably more denominations of religion in India
14:44 11 probably even than in America, it seems to me. Would
14:44 12 you agree with that?

14:44 13 A. That's correct.

14:44 14 Q. For example, have you ever read any of the
14:44 15 teachings or works of the Indian philosopher and
14:44 16 religious zealot, Kirpal Singh?

14:44 17 A. No, but I had nine years of theology training
14:44 18 in a Jesuit school, comparative theology of all of the
14:44 19 major religions.

14:44 20 Q. Perhaps you are familiar with his grandson,
14:44 21 Charron Singh?

14:44 22 A. That's right.

14:44 23 Q. The movement which finds its way generally in
14:44 24 the Punjabi region?

14:44 25 A. Towards Amritsar, yes.

14:44 1 Q. And I don't get the impression that that's your
14:44 2 faith, but particularly, for example, Radhasoami is
14:45 3 fairly limited, almost a mystic-type faith in many ways;
14:45 4 is that correct?

14:45 5 A. That is correct.

14:45 6 Q. Is your support of the death penalty one that
14:45 7 you find that's based in some -- in some faith or some
14:45 8 religious teachings from your earlier days, or is it
14:45 9 simply your view of society in a secular fashion?

14:45 10 A. It's more society in a secular fashion. And
14:45 11 the reason for that is my grandfather was a judge when
14:45 12 the partition of India took place, and all the people
14:45 13 got killed on the streets. Then, as a child, I was told
14:45 14 that my grandfather had to go and judge them. Once you
14:45 15 started imposing the death penalty, it did clean it up
14:45 16 pretty fast.

14:45 17 Q. I understand. Some people would say that it is
14:45 18 more difficult for a juror to be flexible and
14:45 19 open-minded in his or her views of death penalty issues.
14:45 20 That is more difficult if the views are based in
14:46 21 religion as opposed to secular propriety.

14:46 22 I believe the thinking may be something
14:46 23 like you have to answer to a higher being if you
14:46 24 disregard what your religion is teaching. But if it's
14:46 25 merely disregarding your own idea of what ought to be in

14:46 1 a secular fashion it is not the same crisis within the
14:46 2 human spirit. Does that make any sense to you?

14:46 3 A. Not really. Because I think some religious
14:46 4 beliefs that I was taught as an Orthodox Jewish person
14:46 5 from India actually supported the death penalty. But
14:46 6 also the experiences that I have had have led me to the
14:46 7 same belief.

14:46 8 Q. I often like to analogize jury service, and in
14:46 9 particular capital murder jury service to military
14:46 10 service. And I realize that in many regards there are
14:46 11 differences, but in many ways there are similarities.
14:46 12 Would you agree with me that the military is often
14:46 13 called upon to do things that perhaps if they were
14:46 14 polled in a democratic type of fashion, they would
14:47 15 indicate an objection to it?

14:47 16 A. Probably not. Depends on the culture.

14:47 17 Q. All right. Let's talk about it. Let's talk
14:47 18 first of all, we can talk about American culture. Let's
14:47 19 talk about Indian culture for a minute. I'm sure you
14:47 20 remember a time when there was a fair amount of civil
14:47 21 distress in the Punjabi region with the Sikhs, the
14:47 22 so-called Sikh separatists.

14:47 23 A. Okay.

14:47 24 Q. And do you remember a time when they occupied
14:47 25 the Holy Temple?

14:47 1 A. That's correct.

14:47 2 Q. And a decision was made by the late President
14:47 3 Gandhi, which probably caused her to be the late
14:47 4 President Gandhi, as a matter of fact, to send the army
14:47 5 in to clear out that temple of the Sikhs and take
14:47 6 whatever measures were necessary.

14:47 7 A. Yes.

14:47 8 Q. Now, you and I know that probably that army had
14:47 9 units in it comprised of Sikhs who probably had
14:47 10 relatives up there in that area, didn't it?

14:47 11 A. Actually that is not true. Because what the
14:47 12 Indian army, the way it is designed, you have the Sikh
14:47 13 regiment, and you have the south Indian regiment. What
14:48 14 was sent was the regiment from south India so there
14:48 15 would be no conflict.

14:48 16 Q. So there would not be a Sikh regiment?

14:48 17 A. That is exactly correct.

14:48 18 Q. Do you believe that there were army personnel
14:48 19 who thought that was a bad move because politically a
14:48 20 lot of people thought that was an unwise move, and it
14:48 21 sure wasn't good for her health.

14:48 22 A. Not in Punjab, but the rest of the country
14:48 23 thought it was a good move.

14:48 24 Q. And as a result, do you think the soldiers all
14:48 25 wanted to do what they were doing then because it was

14:48 1 pretty bloody?

14:48 2 A. Yes. But, again, just remember that the people
14:48 3 sent in were not from the region or from the culture.

14:48 4 Q. All right. All right. Do you see a way that
14:48 5 there could, in fact, and do you agree with me that the
14:48 6 reason she was assassinated was because she did that to
14:48 7 the Sikhs, and they never forget?

14:48 8 A. That's correct.

14:48 9 Q. Now, do you see a connection between asking
14:48 10 people in the military to do things that they personally
14:48 11 disagree with and still expecting them to do it and
14:48 12 asking somebody to do stuff in death penalty cases? Do
14:48 13 you see the connection?

14:49 14 A. I think in the military cases the consequence
14:49 15 is of utmost severe for society.

14:49 16 Q. All right. Well, here's what I'm thinking.
14:49 17 Let's assume, for example, that you and I are soldiers
14:49 18 together, and we're in war with an enemy. But we don't
14:49 19 like the enemy because we're committed to what we're
14:49 20 doing. They have done bad things to us. Maybe we are
14:49 21 the Russians fighting the Germans, and the Germans have
14:49 22 done unspeakable atrocities under Adolf Hitler and his
14:49 23 band of lunatics.

14:49 24 And let's further assume that we, as
14:49 25 Russians, want to keep on fighting until there is

14:49 1 nothing but dead Germans. You understand how somebody
14:49 2 makes peace and Germany surrenders and our people say,
14:49 3 well, don't fight anymore, and they say we're done now.
14:49 4 You and I want to keep on fighting because there are
14:49 5 still some live Germans running around; do you
14:49 6 understand that?

14:49 7 A. I understand.

14:49 8 Q. But, nevertheless, we -- if we're going to be
14:49 9 law abiding and we better be in the Russian army, by the
14:49 10 way, we better follow orders real well. If we're going
14:49 11 to be law abiding, we better do what we're told even if
14:50 12 we want to keep on fighting; does that make sense?

14:50 13 A. That makes sense.

14:50 14 Q. And likewise if we happen to find ourselves
14:50 15 pacifists and maybe we're in some Nazi regiment that's
14:50 16 invading Poland and trying to perpetrate atrocities on a
14:50 17 defenseless European nation, perhaps we would say to
14:50 18 ourselves: We're pacifists, and we don't want to fight.
14:50 19 But if we're in the army, we better follow orders and do
14:50 20 what the army says?

14:50 21 A. At that point you are entering a personal
14:50 22 choice of giving up life because you are disobeying the
14:50 23 army or not.

14:50 24 Q. Jury service doesn't perhaps have those dreaded
14:50 25 issues. I mean, we are not talking about people

14:50 1 shooting back at you and those kinds of things.

14:50 2 Nevertheless, it's fair to say that jurors are often
14:50 3 called upon to do something that in their heart doesn't
14:50 4 seem to be the right thing to do.

14:50 5 It may be that in your heart the right
14:50 6 thing to do is to kill that guy over there and kill him
14:51 7 fast if you have that opportunity. That might be in
14:51 8 your heart. I don't know what's in your heart. It may
14:51 9 be that in your heart your idea is to spare his life and
14:51 10 nurture him and try to teach him a trade or something.

14:51 11 I don't know what might be in your heart,
14:51 12 but the effect is if we don't give effect to what's in
14:51 13 our heart, we give, rather, effect to what's in the
14:51 14 evidence. That's the idea of an ordered trial which is
14:51 15 a regulated pursuit of the truth. All right.

14:51 16 Now, I can tell you're a very intelligent
14:51 17 man. That's not the problem. I mean, you appear to me
14:51 18 to be a law-abiding fellow, so I don't think of you as
14:51 19 an outlaw or some type of -- some type of hooligan or
14:51 20 something that's just going to go do whatever you want
14:51 21 to and disregard the law. You don't seem like that kind
14:51 22 of man to me. You seem like a fellow that pays your
14:51 23 taxes and obeys the speed limit and follows all of the
14:51 24 laws. Are you that kind of man, sir?

14:51 25 A. Yes. Taxes may be a little high, but, yeah.

14:51 1 Q. I understand. But nevertheless, you pay. You
14:51 2 pay enough to keep them from bothering you?

14:52 3 A. That's right.

14:52 4 Q. At least; is that right?

14:52 5 A. That's right.

14:52 6 Q. Now, as a law-abiding person, you understand
14:52 7 that you can't make up the law yourself. You can't come
14:52 8 into a courtroom and say, well, I'm a jury. I'm going
14:52 9 to go over there and interview the defendant and make
14:52 10 him talk to us. I mean, the 12 of you can't go over
14:52 11 there and grab him around the neck and shake him and
14:52 12 say, talk to us and tell us what you did. That's the
14:52 13 not law. You can't do that. You can't come here when
14:52 14 you want to. And if the Judge tells you to be here
14:52 15 tomorrow, you can't just say I'm busy and not be here.

14:52 16 A. That's correct.

14:52 17 Q. If the Judge tells you to leave the courtroom
14:52 18 because some evidence is going to be taken up, you can't
14:52 19 just say I'd rather stay and just sit in here. You
14:52 20 understand all that?

14:52 21 A. Yes.

14:52 22 Q. If the Judge tells you not to talk to the
14:52 23 lawyers, you can't go out to dinner with us and let us
14:52 24 tell you about the case even though maybe you want to.
14:52 25 And you are not that kind of man? You wouldn't disobey

14:52 1 the Judge, would you?
 14:52 2 A. No.
 14:52 3 Q. Your granddad was a judge. People shouldn't
 14:52 4 disobey him. He made lawful decisions.
 14:52 5 A. That's right.
 14:52 6 Q. In the Queen's Province, right? It shouldn't
 14:52 7 be done?
 14:53 8 A. That's right.
 14:53 9 Q. So we can ask you, what's your personal
 14:53 10 opinion? And it can be you are free as a -- as a person
 14:53 11 in this society to have any personal opinion that you
 14:53 12 want. If you want to have the personal opinion that we
 14:53 13 don't do enough executions in this society, fine. If
 14:53 14 you want to have the personal opinion that executions
 14:53 15 are immoral, that you shouldn't be doing any executions,
 14:53 16 fine. A juror is not required to check at the cloak
 14:53 17 room all your ideas and opinions and the things that go
 14:53 18 into making you you. They are not required. Do you
 14:53 19 understand?
 14:53 20 A. That's correct.
 14:53 21 Q. We only have a problem when a juror is so
 14:53 22 recalcitrant, so defiant, so balky, so obstreperous, so
 14:53 23 disobedient, that perhaps he would say I know better
 14:53 24 than what the Judge says. And even more importantly
 14:53 25 than that, I will do what I think rather than what the

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14:53 1 Judge says. There's our problem. Does that make sense
 14:54 2 to you?
 14:54 3 A. That's correct.
 14:54 4 Q. You will be instructed under our law that it
 14:54 5 is the obligation of you and 11 other jurors to base
 14:54 6 your answers upon the evidence in the case, whatever the
 14:54 7 result of those answers may be. That's your duty.
 14:54 8 That's your obligation.
 14:54 9 That means at the guilt-innocence phase of
 14:54 10 this trial, if the jury finds beyond a reasonable doubt
 14:54 11 the defendant is guilty of a capital murder, that jury
 14:54 12 must vote to convict the defendant if it's found beyond
 14:54 13 a reasonable doubt that he's guilty of capital murder.
 14:54 14 He must do that. There's no option. There's no "I
 14:54 15 don't want to. I won't do it. It's a stupid law."
 14:54 16 None of that applies. You've got to do it.
 14:54 17 And if you are going to be otherwise, if
 14:54 18 you are going to be -- if you are going to be the
 14:54 19 defiant, the disobedient juror, then we need to know
 14:55 20 that now. But that doesn't seem like the kind of person
 14:55 21 you are, to be disobedient or defiant?
 14:55 22 A. To that part I'm okay, to that part.
 14:55 23 Q. So in other words what you are saying is, if
 14:55 24 the State proves its case beyond a reasonable doubt to
 14:55 25 you of capital murder, you will vote guilty?

14:55 1 A. That's correct.
 14:55 2 Q. Now, perhaps you, and I don't know you well.
 14:55 3 Nobody really knows you. Some people may view you as
 14:55 4 leaning more toward the State's side of things than the
 14:55 5 defense. Other people might view you opposite. They
 14:55 6 might think, for example, that you are more biased
 14:55 7 toward the defense. How people view you, I guess, is up
 14:55 8 to them. But your personal views are all right as long
 14:55 9 as you'll do what the evidence requires you to do.
 14:55 10 If those people who think you are more on
 14:55 11 the State's side of reality than the defense side of
 14:55 12 reality, if those people are correct, it might be more
 14:55 13 difficult for you to acquit somebody of capital murder
 14:56 14 than the next person sitting on the jury. That's all
 14:56 15 right provided you give a fair hearing to both sides of
 14:56 16 the coin. That means guilty or not guilty.
 14:56 17 And it may be that you are statistically
 14:56 18 more likely to vote guilty than somebody else just
 14:56 19 because of your background or perhaps you've got some
 14:56 20 education through your granddad or you are a highly
 14:56 21 educated person. And somebody else might be more likely
 14:56 22 to vote not guilty.
 14:56 23 In other words, your idea of reasonable
 14:56 24 doubt might be for you, that might be different than
 14:56 25 somebody else. And you might -- reasonable doubt to you

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14:56 1 might be a whole lot less than to somebody else, let's
 14:56 2 say. Does it make sense?
 14:56 3 A. That is correct.
 14:56 4 Q. And you are free to fashion your definition of
 14:56 5 reasonable doubt as long as you are fair about it. I
 14:56 6 mean, if you want to interpret reasonable doubt as maybe
 14:56 7 so, and as long as they prove it could have happened, I
 14:56 8 will find him guilty of capital murder. That's
 14:56 9 outrageous. You would have to be satisfied beyond a
 14:56 10 reasonable doubt, as you would define that term, that
 14:57 11 he's guilty of capital murder, and you can do that; is
 14:57 12 that correct?
 14:57 13 A. That is correct.
 14:57 14 Q. And you could also acquit the defendant if the
 14:57 15 State fails to prove the case beyond a reasonable doubt?
 14:57 16 A. That is correct.
 14:57 17 Q. All right. Now, we don't contemplate getting
 14:57 18 jurors in a capital murder trial who will disobey the
 14:57 19 law. We contemplate jurors who can receive instructions
 14:57 20 from the Judge about such things as: How do you find
 14:57 21 evidence? Sometimes there are limiting instructions
 14:57 22 saying consider evidence for one purpose but not
 14:57 23 another.
 14:57 24 THE COURT: Mr. Schultz, I'll give you ten
 14:57 25 more minutes.

14:57 1 MR. SCHULTZ: Thank you, Judge.
 14:57 2 Q. (BY MR. SCHULTZ) Perhaps they would say --
 14:57 3 perhaps the Judge would tell you, disregard some
 14:57 4 testimony that occurred in the courtroom. It doesn't
 14:57 5 say, forget it. Don't put it on the scales of justice,
 14:57 6 in other words. And those are the things that are
 14:57 7 expected of jurors to follow those instructions because
 14:57 8 this society is ordered, and it's a fair trial for
 14:58 9 everybody who has to be there -- you, me, or this
 14:58 10 defendant. Does it make sense to you?

14:58 11 A. That's correct.

14:58 12 Q. All right. So here's how we get to this. This
 14:58 13 first question is what we call the future danger
 14:58 14 question. Whether there is a probability that the
 14:58 15 defendant would commit criminal acts of violence that
 14:58 16 would constitute a continuing threat to society. All
 14:58 17 right? Are you with me on that?

14:58 18 A. Uh-huh, yeah.

14:58 19 Q. Obviously, the law would not ask a juror a
 14:58 20 question that had already been answered. For example,
 14:58 21 you don't get to the punishment phase, and you are not
 14:58 22 going to get a question saying: Having found the
 14:58 23 defendant guilty of capital murder, do you find he
 14:58 24 committed capital murder?

14:58 25 In other words, you wouldn't ask the same

14:58 1 question twice. There's no point for the second
 14:58 2 question if it's been answered. Do you agree with me on
 14:58 3 that?

14:58 4 A. That's correct.

14:58 5 Q. Correct. We wouldn't ask you at the punishment
 14:58 6 phase: Are you sure you were right the first time?
 14:58 7 Because you heard the evidence. That's just not done.
 14:58 8 Are you with me?

14:58 9 A. That's correct.

14:58 10 Q. The question, obviously, contemplates the
 14:59 11 notion that a person could be a capital murderer
 14:59 12 clearly, beyond a reasonable doubt, beyond all doubt, I
 14:59 13 suppose, and yet not be a danger to society, not be a
 14:59 14 continuing threat to society. Otherwise why ask the
 14:59 15 question if it's automatic? Does it make sense to you?

14:59 16 A. It does, but I have a tough time believing
 14:59 17 that.

14:59 18 Q. Well, all right. We're going to test that
 14:59 19 hypothesis for a moment.

14:59 20 A. All right.

14:59 21 Q. Let assume, for example, there is an individual
 14:59 22 who commits a capital murder, and he, in the course of
 14:59 23 escaping, he gets run over by a streetcar, gets plowed
 14:59 24 into by a streetcar, breaks his spinal column into 25 or
 14:59 25 30 pieces. He just rattles back there.

14:59 1 And as a result of that the greatest
 14:59 2 doctors in the world can't do more than just save his
 14:59 3 life, and he's paralyzed from the scalp down literally.
 15:00 4 Somehow he manages to stay biologically alive, but
 15:00 5 that's all the coordination this man has. And it's
 15:00 6 never going to get any better because the backbone will
 15:00 7 fuse probably.

15:00 8 There's no way that man's dangerous.
 15:00 9 Would you agree with me? How could he ever be a threat
 15:00 10 to anybody? He's just -- he's just there. He's just,
 15:00 11 he's just --

15:00 12 A. I would agree with that. That's a very unique
 15:00 13 circumstance and probably far stretched.

15:00 14 Q. I understand it's unique. I'm not trying to
 15:00 15 limit the situation.

15:00 16 A. That's correct.

15:00 17 Q. Let me give you another example. Instead of
 15:00 18 that suppose the person has a stroke while he's awaiting
 15:00 19 trial. And the same thing, he's paralyzed, let's say,
 15:00 20 from the ears down this time. Same situation; do you
 15:00 21 agree with me?

15:00 22 A. Yeah.

15:00 23 Q. He can't be dangerous if he can't do anything,
 15:00 24 except, like, blink his eyes, for example. Would you
 15:00 25 agree with me on that?

15:00 1 A. Yes. Those are very unique situations though.

15:00 2 Q. There are other circumstances that may occur.
 15:00 3 There are ways a capital murder could occur and yet the
 15:00 4 person would not be dangerous. All right? Let me test
 15:01 5 that with you for a moment. Have you got children?

15:01 6 A. No.

15:01 7 Q. Have you ever had children?

15:01 8 A. No.

15:01 9 Q. All right. Have you got anybody you love a
 15:01 10 whole lot?

15:01 11 A. Yeah.

15:01 12 Q. Tell me who you really love?

15:01 13 A. Wife and parents.

15:01 14 Q. Let's assume, and pardon the analogy, but I
 15:01 15 want to make sure you and I are communicating very well.
 15:01 16 Your parents ever come and visit you here?

15:01 17 A. They do.

15:01 18 Q. Your parents are here and you are happy, and
 15:01 19 they are proud of their son. You have done well in
 15:01 20 life, and there is that beautiful mixture of old-world
 15:01 21 culture and new-world culture. And you are actually
 15:01 22 probably still talking in the native tongue with your
 15:01 23 parents?

15:01 24 A. Not really. English.

15:01 25 Q. It's only English?

15:01 1 A. Yeah.
 15:01 2 Q. Well, I guess that's the native tongue in any
 15:01 3 regard. And let's assume that your parents get
 15:01 4 murdered, and this is just an example. And let's assume
 15:01 5 that your -- because that's two people, your mom and
 15:01 6 your dad. And they get murdered by a couple of thugs,
 15:01 7 and the thugs get arrested, and they get prosecuted for
 15:02 8 capital murder, but they get found not guilty because of
 15:02 9 some technicality. The evidence doesn't get admitted.
 15:02 10 And they go out of the courtroom laughing
 15:02 11 and thinking it's real funny that they beat the system.
 15:02 12 And you kill them because you can't stand it because you
 15:02 13 miss your mom and dad, and you kill them. Does that
 15:02 14 mean you are a dangerous person if you killed them under
 15:02 15 those circumstances?
 15:02 16 A. I would say, yeah. Because you used your rage
 15:02 17 or anger or whatever it is to commit a crime.
 15:02 18 Q. So even that, so even that situation. So
 15:02 19 except for the stroke victim or the guy with the multi-
 15:02 20 fractured spine, there wouldn't be any?
 15:02 21 A. I would have a tough time doing that.
 15:02 22 Q. I don't mind that part. I want to know, could
 15:02 23 you do it?
 15:02 24 A. I would have a tough time doing it. Can I do
 15:02 25 it? I don't think I would consider those cases.

15:02 1 Q. Well, I don't think those are going to apply.
 15:02 2 His spine seems all right to me.
 15:02 3 A. That's right.
 15:02 4 Q. And he hasn't had a stroke?
 15:02 5 A. That's right.
 15:02 6 Q. My question is: Can you fairly answer that
 15:02 7 question according to the evidence as you see it?
 15:02 8 A. I could, I would try to. Could I do that? I
 15:03 9 don't know yet. I have never been in a murder trial
 15:03 10 before.
 15:03 11 Q. Neither has anybody else on the jury probably.
 15:03 12 A. Yes.
 15:03 13 Q. My question to you is: You are obviously
 15:03 14 intelligent enough to follow the law if you want to.
 15:03 15 A. That's correct.
 15:03 16 Q. You're not stupid so that you wouldn't
 15:03 17 understand what the Judge is saying and you just
 15:03 18 couldn't figure it out. You are obviously a brilliant
 15:03 19 man. I can tell that. All right? So the only reason
 15:03 20 you wouldn't follow the law is because you refuse to?
 15:03 21 A. That is correct.
 15:03 22 Q. I mean, is that what you are telling me up
 15:03 23 here? You refuse to follow the law?
 15:03 24 A. No. I'm not saying I refuse to follow the law.
 15:03 25 I have a tough time -- people -- you have to convince me

15:03 1 that the person beyond a reasonable doubt that he would
 15:03 2 not constitute a threat to society.
 15:03 3 Q. It doesn't work that way. I don't have to
 15:03 4 convince you of that. I have to convince you that he
 15:03 5 is.
 15:03 6 A. That's right. I guess the other gentleman
 15:03 7 does.
 15:03 8 Q. No. They don't have to do that, either. They
 15:03 9 can just sit there and see if I can do it.
 15:03 10 A. Yeah.
 15:03 11 Q. Do you understand you are trying to put the
 15:03 12 burden of proof on them? And that's not the law. You
 15:03 13 are -- you are -- you are as intelligent a juror as
 15:03 14 we've had come up here so far, Mr. David. I'm just
 15:04 15 telling you, you are. And it's not your brain that's
 15:04 16 getting in the way of all this, and so it must be your
 15:04 17 defiance if you can't follow the law. Why else would
 15:04 18 you not follow the law? You are smart enough to.
 15:04 19 A. I would just -- I would just have a tough time
 15:04 20 believing that someone that has committed a criminal
 15:04 21 act, given the circumstances that you mentioned in the
 15:04 22 first two cases out there, would not constitute a threat
 15:04 23 to society.
 15:04 24 Q. Maybe that's okay for you to have a tough time
 15:04 25 with it. Other people might have an easy time.

15:04 1 A. Yeah.
 15:04 2 Q. My question is: Are there situations where you
 15:04 3 could do it, where you could vote no on that question?
 15:04 4 A. I can't think of any.
 15:04 5 Q. So are you saying there would never be a
 15:04 6 situation?
 15:04 7 A. I didn't say that. I said, I can't think of
 15:04 8 any right now.
 15:04 9 MR. SCHULTZ: We disqualify him.
 15:04 10 THE COURT: Pardon me?
 15:04 11 MR. SCHULTZ: That's all the questions we
 15:04 12 have, Your Honor.
 15:04 13 THE COURT: All right. Then I tell you
 15:04 14 what. I suppose there is a challenge?
 15:04 15 MR. GOELLER: Yes, Your Honor.
 15:04 16 THE COURT: And the challenge is granted.
 15:05 17 Mr. Gabriel, you are free to travel overseas. Do
 15:05 18 anything you want.
 15:05 19 MR. SCHULTZ: Thank you, Mr. David.
 15:05 20 MR. GOELLER: Thanks for coming in.
 15:05 21 (Venireperson David excused.)
 15:05 22 THE COURT: The next one is Danny
 15:05 23 Cummings, No. 42.
 15:05 24 (Venireperson Cummings present.)
 15:06 25 THE COURT: Sir, are you Danny Cummings?

15:06 1 VENIREPERSON: Yes.
 15:06 2 THE COURT: I just want to remind you that
 15:06 3 you are still subject to the same oath that I gave y'all
 15:06 4 over a week ago which was to answer the questions
 15:06 5 truthfully propounded by both sides.
 15:06 6 VENIREPERSON: Correct.
 15:06 7 THE COURT: Thank you, sir. Please be
 15:06 8 seated. All right. Who is going to do this juror?
 15:06 9 MS. FALCO: I will, Your Honor.
 15:06 10 THE COURT: All right.
 15:06 11 VOIR DIRE EXAMINATION
 15:06 12 BY MS. FALCO:
 15:06 13 Q. Good afternoon, Mr. Cummings.
 15:06 14 A. How are you?
 15:06 15 Q. My name is Gail Falco, and I am an assistant
 15:06 16 district attorney here in Collin County. And next to me
 15:06 17 is my boss, you heard from him on last Tuesday, is
 15:06 18 Mr. Bill Schultz. And he's the first assistant district
 15:06 19 attorney here in Collin County. And to my left is
 15:06 20 Ms. Jami Lowry. She's also an assistant district
 15:06 21 attorney here in Collin County.
 15:06 22 A. Okay.
 15:06 23 Q. At the other table closest to me is the
 15:06 24 defendant Ivan Cantu.
 15:06 25 A. Hello, Ivan.

15:06 1 Q. And seated next to him are his two lawyers, Don
 15:06 2 High and Matt Goeller, both private practitioners. I
 15:07 3 take it back on Tuesday, you don't know any of us; is
 15:07 4 that correct?
 15:07 5 A. No.
 15:07 6 Q. No one looks familiar to you at all?
 15:07 7 A. No.
 15:07 8 Q. Mr. Cummings, with regard to this type of a
 15:07 9 case, capital murder case in which the State is seeking
 15:07 10 the death penalty, it's the only kind of case where we
 15:07 11 sit down and do this individual voir dire. It's
 15:07 12 actually a two-step process. You came in for the
 15:07 13 general voir dire, and that was mostly to give the law
 15:07 14 to everybody that was going to pertain to everybody.
 15:07 15 And everyone was going to fill out the questionnaires
 15:07 16 and then scheduled to have you brought back to interview
 15:07 17 you one-on-one.
 15:07 18 And it's done for a couple of reasons.
 15:07 19 One of those is that while -- when you come back for
 15:07 20 your individual interview, you've had some time since
 15:07 21 you filled out your questionnaire, and it gives you an
 15:07 22 opportunity to reflect about how you really feel about
 15:07 23 the death penalty.
 15:07 24 And two, and probably more importantly,
 15:07 25 here in this setting, we can all talk very freely and

15:07 1 you can be open and honest regarding your opinions and
 15:07 2 your views regarding the death penalty without feeling
 15:07 3 like anybody has to be politically correct or anything
 15:07 4 like that because the only thing required of you at this
 15:08 5 time is that you be honest with us.
 15:08 6 A. Correct.
 15:08 7 Q. And both sides are looking for 12 people who
 15:08 8 can be fair and impartial and who could fairly consider
 15:08 9 a life sentence if that's what the evidence showed or
 15:08 10 fairly consider a death sentence if that's what the
 15:08 11 evidence showed?
 15:08 12 A. Okay.
 15:08 13 Q. And as far as the process, and I know you've
 15:08 14 already had to, like, make at least two trips up here.
 15:08 15 And I can tell you almost unanimously when people were
 15:08 16 asked that question on the questionnaire, what's the
 15:08 17 biggest problem in the criminal justice system? And
 15:08 18 unanimously people said, too slow, jammed up, you know.
 15:08 19 And understanding that, with regard to the process for
 15:08 20 this type of a case, what do you think about it so far?
 15:08 21 In fact, you have had to come up twice,
 15:08 22 and we are spending all this time with you one-on-one.
 15:08 23 What do you think about that?
 15:08 24 A. Well, I think Mr. Cantu still has his rights.
 15:08 25 And in this type of case, I know I would want someone to

15:08 1 be absolutely sure about what -- what they are going to
 15:09 2 do or going to say or what they believe about the death
 15:09 3 penalty and things of that nature.
 15:09 4 Q. And you are absolutely right. It is probably
 15:09 5 the highest stakes of any criminal case. It is a matter
 15:09 6 of life or death with this case more than any other
 15:09 7 case. When you first showed up last Tuesday and found
 15:09 8 out that you were going to be a potential juror on a
 15:09 9 capital murder case, what were you thinking?
 15:09 10 A. My first thought was, uh-oh. You know, it's
 15:09 11 kind of shocking because one never thinks that that's
 15:09 12 going to happen to them.
 15:09 13 Q. Right.
 15:09 14 A. And least of all Mr. Cantu. But if I have to
 15:09 15 make that decision, you know, then I have to make that
 15:09 16 decision.
 15:09 17 Q. And with that, if you were -- if you had a
 15:09 18 choice whether or not to be on this jury, would you say
 15:09 19 yes or no?
 15:09 20 A. I put no. Now, and a lot of people say if you
 15:10 21 put no, you are going to get picked, but that's beside
 15:10 22 the point. If I get picked, I get picked. That was not
 15:10 23 my reason for saying no, that I did not want to. The
 15:10 24 reason I said no, was for my benefit.
 15:10 25 Because the reason, you may call me an

15:10 1 idiot or whatever you want to call me, because I said
 15:10 2 this, but if you select me to do this, I have basically
 15:10 3 told y'all that I would rather not do this. But if you
 15:10 4 do select me, then you have taken some of the mental
 15:10 5 reservations away that I had. That's saying, okay, I'm
 15:10 6 going to have to do this. So, you'll -- I will answer.

15:10 7 Q. And to tell you the truth, Mr. Cummings, you
 15:10 8 are more in the majority. Most people when asked, do
 15:10 9 you want to be on here, say no. There are very few
 15:10 10 people that are raising their hands saying pick me.

15:10 11 In fact, we're more likely to question
 15:10 12 someone raising their hand saying, pick me, than we are
 15:10 13 the person that doesn't want to do that because I think
 15:10 14 deep down all of us in our heart of hearts don't want to
 15:10 15 be here. Nobody enjoys this process. And if we had our
 15:10 16 choice, there wouldn't be capital murders. We wouldn't
 15:11 17 have to seek the death penalty. None of us would have
 15:11 18 to be here, if given a choice, and I think you are right
 15:11 19 on with that.

15:11 20 With regard to the death penalty and
 15:11 21 looking at your questionnaire and, granted, when you got
 15:11 22 this questionnaire, you got it before any of the law was
 15:11 23 explained to you. And pretty much it asks you what your
 15:11 24 name is. And right off the bat, what do you think about
 15:11 25 the death penalty, without really a whole lot of time

15:11 1 for reflection before you had to check that. But given
 15:11 2 that and given that since you filled out this
 15:11 3 questionnaire you have had some time to think about it,
 15:11 4 and I'm sure you thought about it over the past week.

15:11 5 On the questionnaire it says: Are you in
 15:11 6 favor of the death penalty? You said yes. And then
 15:11 7 when it says, pick which one best represents your
 15:11 8 feelings, you say, I believe the death penalty is
 15:11 9 appropriate in some capital murder cases, and I could
 15:11 10 return a verdict resulting in death in the proper case?

15:11 11 A. Yes.

15:11 12 Q. Do you still feel that way?

15:11 13 A. Yes, I do.

15:11 14 Q. Over the past week what kind of things have
 15:12 15 been crossing your mind?

15:12 16 A. The things that have been crossing my mind is:
 15:12 17 What if I had to do that? How would I feel afterwards?
 15:12 18 Then that's what would bother me. But I could still
 15:12 19 return that verdict if -- if the evidence showed that it
 15:12 20 warranted that. But there would have to be, there would
 15:12 21 be no reasonable doubt. If there was no reasonable
 15:12 22 doubt, then I would have to.

15:12 23 Q. And you are right on point. And we'll get to
 15:12 24 that, as I go through the various processes, but you are
 15:12 25 exactly right. It's one thing to sit there in theory,

15:12 1 and think, yeah, I believe in the death penalty and talk
 15:12 2 about it among family members if it comes on TV. But
 15:12 3 it's a whole different ball game when you are called
 15:12 4 upon and asked, can you participate in a process that
 15:12 5 can lead to somebody's death? And that's why we need
 15:12 6 you to be as honest as you can with us because only you
 15:13 7 can evaluate yourself.

15:13 8 A. Let me say this right off the bat, I'm saying
 15:13 9 this now, yes, I could. Come to the nitty-gritty, I'm
 15:13 10 going to tell you, I don't know until I get to that
 15:13 11 point, but I feel that I could.

15:13 12 Q. And you understand obviously that we can't give
 15:13 13 you any facts of the case.

15:13 14 A. Exactly.

15:13 15 Q. If you hear the facts, how would you vote?

15:13 16 A. Exactly.

15:13 17 Q. We can only go based on what you tell us today.

15:13 18 A. That's correct.

15:13 19 Q. And if you really think you are going to change
 15:13 20 your mind or you can't do it, now is the time.

15:13 21 A. I can't give you that either. I'm being
 15:13 22 honest with you. I don't know. Because like I said,
 15:13 23 this was just -- I wasn't expecting this kind of jury
 15:13 24 selection. I was expecting traffic court or something
 15:13 25 like this. And then this gets thrown at you, and whoa.

15:13 1 And then when the word *capital* got put in front of that,
 15:13 2 then that's pretty much one way or the other, and that's
 15:13 3 it.

15:13 4 Q. Let's talk a little bit. We'll explore your
 15:13 5 feelings as we go. Tell me why you do believe in the
 15:13 6 death penalty. Why you favor it?

15:14 7 A. Well, if a person was to take someone's life,
 15:14 8 okay, granted that person that did the taking still has
 15:14 9 his rights. What about the person that -- that died?
 15:14 10 Where is his rights? He's not breathing anymore.
 15:14 11 Regardless of who he was, you know, he's still out a
 15:14 12 life. And I don't want to bring the Bible into this,
 15:14 13 but, "an eye for an eye, and a tooth for a tooth."

15:14 14 Q. And a lot of people -- there are several
 15:14 15 different reasons people may favor the death penalty.
 15:14 16 Some may say kind of what you said when you say "an eye
 15:14 17 for an eye." It's kind of a retribution factor or the
 15:14 18 just reward. And in our society had you been called
 15:14 19 upon to go to traffic court, I mean, you speed. It's
 15:14 20 just a fine only as your punishment. Little crime,
 15:14 21 little punishment. And obviously as the crime gets
 15:15 22 worse, the punishment gets worse.

15:15 23 A. Sure.

15:15 24 Q. Well, some people think, well, that's why a
 15:15 25 death penalty is a just punishment for capital murder.

15:15 1 Other people may say, well, I believe in it because of
 15:15 2 the deterrent effect. If people know that if they kill
 15:15 3 somebody, they are subject to the death penalty, then
 15:15 4 maybe that will deter some people somewhere down the
 15:15 5 road. So that may be a reason some people would be in
 15:15 6 favor of it.

15:15 7 And then there's another factor, and it's
 15:15 8 actually what the law contemplates when it gives you the
 15:15 9 questions in the penalty phase, and that is for
 15:15 10 protection of society. The only way to protect
 15:15 11 ourselves from these people is to execute them and to
 15:15 12 remove them from our society. And that would be the
 15:15 13 protection of society.

15:15 14 A. All of the above apply.

15:15 15 Q. Okay.

15:15 16 A. I think they do.

15:15 17 Q. Okay. And given all that -- well, let me ask
 15:15 18 you, when you say you spent a lot of time thinking about
 15:15 19 how you feel down the road. Let's assume that we did --
 15:15 20 you were picked, and you were called to sit on this
 15:15 21 jury. And you sat here for a couple of weeks and
 15:15 22 listened to evidence. And at the end of the evidence
 15:16 23 you believed beyond a reasonable doubt that the
 15:16 24 defendant, that defendant was guilty. And you voted for
 15:16 25 that defendant, guilty of capital murder. And then you

15:16 1 move onto the penalty phase, and you hear all the
 15:16 2 evidence. And at the end of the penalty phase, you are
 15:16 3 convinced by whatever standard is necessary, and you
 15:16 4 answer the questions in such a way that results in a
 15:16 5 death sentence.

15:16 6 And let's say, after all that happens,
 15:16 7 sometime down the road you hear that the defendant was
 15:16 8 executed, whether you hear it on the news or read it in
 15:16 9 the paper. You hear he was executed. How would that
 15:16 10 make you feel?

15:16 11 A. Oh, I mean, you know, if you have a direct role
 15:16 12 in something like that, you are going to have some kind
 15:16 13 of emotional feeling. There's just no getting around
 15:16 14 it. I don't know how I would feel. I wouldn't feel too
 15:16 15 good, but I would feel I was being okay. From the
 15:16 16 evidence I was given and if it turned out that it had to
 15:17 17 be that way, then it had to be that way, then that's
 15:17 18 something I would have to live with.

15:17 19 Q. Back on Tuesday when Mr. Schultz was talking to
 15:17 20 you and he brought up the reality of what we were doing
 15:17 21 here, when he described to you how that death process
 15:17 22 would actually take place, that at some point in time in
 15:17 23 the future, a person would be taken to the death
 15:17 24 chamber, strapped to a gurney and injected with a lethal
 15:17 25 substance.

15:17 1 A. Right.

15:17 2 Q. Obviously, that wasn't for dramatic flare, and
 15:17 3 it wasn't for the gore factor. It was to let you know
 15:17 4 the reality of it.

15:17 5 A. I've seen it. You've seen it on TV. They show
 15:17 6 you the process and what's going to happen. So I've
 15:17 7 seen it before.

15:17 8 Q. Did you have any unusual thoughts or thoughts
 15:17 9 going through your head at that point when he was
 15:17 10 describing that to you?

15:17 11 A. No.

15:17 12 Q. Now, with regard to following the law and,
 15:17 13 obviously, that's what we're looking for. We're looking
 15:17 14 for 12 people who can be fair and can follow the law.
 15:17 15 And from your questionnaire, I understand you were in
 15:17 16 the military.

15:17 17 A. Yes.

15:17 18 Q. How long were you in the military?

15:17 19 A. Four years.

15:17 20 Q. And you come from military parents. They were
 15:18 21 both in the military?

15:18 22 A. Yes.

15:18 23 Q. So obviously a very law-abiding family?

15:18 24 A. (Moving head up and down.)

15:18 25 Q. And everybody's rights, and this is something

15:18 1 you fought for. This is something your parents fought
 15:18 2 for, to have this type of trial.

15:18 3 A. Right.

15:18 4 Q. And have these rights. And being in the
 15:18 5 military you understand the importance of following the
 15:18 6 rules --

15:18 7 A. Yes.

15:18 8 Q. -- and obeying the rules?

15:18 9 A. (Moving head up and down.)

15:18 10 Q. And when it comes to a jury trial, it's the
 15:18 11 same thing. Everyone's called upon to give the rules,
 15:18 12 and you are called upon to follow the rules. And you
 15:18 13 seem like you could be a law-abiding citizen, and you
 15:18 14 wouldn't have a problem with following the rules. Is
 15:18 15 that a fair statement of you?

15:18 16 A. Yes.

15:18 17 Q. And granted, there may be, just like when you
 15:18 18 were in the military, there may be rules you don't like.
 15:18 19 And if you had your choice, you'd definitely change
 15:18 20 them, but even though you have your own thoughts and
 15:18 21 your own opinion about the rules, you could still follow
 15:18 22 them.

15:18 23 A. Correct.

15:18 24 Q. Let's talk a little bit about the trial
 15:18 25 process. The first phase of a trial, if you are

15:18 1 selected as a juror, would be what we call the guilt-
 15:18 2 innocence phase. And during that phase it's up to the
 15:19 3 State to prove to you beyond a reasonable doubt that the
 15:19 4 defendant is guilty of capital murder.

15:19 5 And a couple things about that, first of
 15:19 6 all, the burden of proof is on us, which is only fair
 15:19 7 because we're the ones that do the accusing. We ought
 15:19 8 to be the ones that ought to do the proving. Would you
 15:19 9 agree with that?

15:19 10 A. Yes.

15:19 11 Q. And you understand that the defense has
 15:19 12 absolutely no burden at all. All they have to do is
 15:19 13 show up.

15:19 14 A. That's correct.

15:19 15 Q. And it's completely up to us. At the end of
 15:19 16 our case, if they don't think we've proved it, they can
 15:19 17 sit back and let the jury decide on what we presented,
 15:19 18 and that's it. You can never take into consideration
 15:19 19 what they might or might not have said if they put
 15:19 20 evidence on. Does that seem fair to you?

15:19 21 A. Yes.

15:19 22 Q. And you understand it's their right. And they
 15:19 23 can present evidence if they want to, but they don't
 15:19 24 have to, and we definitely can't make them.

15:19 25 A. That's true.

15:19 1 Q. And if the Judge told you you are not to take
 15:19 2 into consideration a defendant's failure to testify, you
 15:19 3 could follow that?

15:19 4 A. Yes.

15:20 5 Q. And you could just look at the State's evidence
 15:20 6 and say, did they meet their burden of proof? Yes or
 15:20 7 no, and vote based accordingly?

15:20 8 A. Yes.

15:20 9 Q. Now, with regard to capital murder, Mr. Schultz
 15:20 10 told you a little bit about what capital murder was. We
 15:20 11 call it murder plus some aggravating factor.

15:20 12 A. Right.

15:20 13 Q. And for our purposes here, we have three
 15:20 14 different situations. We have murder in the course of
 15:20 15 burglary. We have murder in the course of robbery, and
 15:20 16 then we have murdering two or more people in a common
 15:20 17 scheme or plan, or double homicide.

15:20 18 A. Right.

15:20 19 Q. And with regard to murder in the course of a
 15:20 20 burglary, in your opinion, is that the type of offense
 15:20 21 where the death penalty should be an option, not
 15:20 22 necessarily automatic, but it ought to be an option if
 15:20 23 it's murder in the course of burglary.

15:20 24 A. Yes, I do.

15:20 25 Q. And the same with murder in the course of

15:20 1 robbery, do you think the death penalty in that type of
 15:20 2 a crime --

15:20 3 A. Yes.

15:20 4 Q. And then, again, with the double homicide, in
 15:20 5 your opinion?

15:20 6 A. Yes.

15:21 7 Q. Now, let's assume the jury has heard all the
 15:21 8 evidence, and you found a defendant guilty of capital
 15:21 9 murder. And at that point you move onto the punishment
 15:21 10 phase. And as it was explained to you on Tuesday, it's
 15:21 11 not -- the situation where you go back and you say,
 15:21 12 okay, life or death. You just decide. And it's not a
 15:21 13 situation where you want a certain result. You want the
 15:21 14 death penalty or you want life, and so you answer
 15:21 15 questions in such a way that result.

15:21 16 What the law requires, what the Judge will
 15:21 17 tell you is, you are to answer the questions and follow
 15:21 18 the law. And with regard to each question, to be
 15:21 19 qualified, you have to be able to answer each one of
 15:21 20 those questions fairly based on the law and the facts
 15:21 21 presented to you.

15:21 22 A. Uh-huh.

15:21 23 Q. And not with regard to how you want the result
 15:21 24 to be.

15:21 25 A. Okay.

15:21 1 Q. Does that make sense to you?

15:21 2 A. Yes.

15:21 3 Q. And if you were instructed to do so, to answer
 15:21 4 the questions based on the law and the evidence, could
 15:21 5 you do that?

15:21 6 A. Yes.

15:21 7 Q. With regard to that first question, is what we
 15:21 8 call the future danger question, and I believe it's the
 15:21 9 one up there on the board, if you want to look over it
 15:21 10 for a second to refresh your memory.

15:22 11 A. All right.

15:22 12 Q. And like I say, it's a question called the
 15:22 13 future danger question. And it would be given to you in
 15:22 14 a question form, whether or not you find beyond a
 15:22 15 reasonable doubt there is a probability that the
 15:22 16 defendant would commit criminal acts of violence in the
 15:22 17 future.

15:22 18 Again, with regard to this question, the
 15:22 19 burden of proof is on the State. We have to prove to
 15:22 20 you beyond a reasonable doubt there's a probability that
 15:22 21 a defendant would commit criminal acts of violence in
 15:22 22 the future, be a threat to society.

15:22 23 Now, with regard to that question, there
 15:22 24 are several words in there that are undefined, but they
 15:22 25 are commonly debated as to what their meaning is. And

15:22 1 the first word I want to talk to you about is the word
15:22 2 probability.

15:22 3 A. Okay.

15:22 4 Q. Some people may say, well, I'm mathematically
15:22 5 minded. When I hear that word, I think of a percentage.
15:22 6 There is some percentage that in the future he is likely
15:22 7 to commit criminal acts of violence. Other people say,
15:22 8 well, that means to me more likely than not. What does
15:23 9 that mean to you?

15:23 10 A. The word probability by itself means, yeah,
15:23 11 he's gonna.

15:23 12 MR. GOELLER: I'm sorry. I didn't hear
15:23 13 that.

15:23 14 VENIREPERSON: The word probability by
15:23 15 itself, without anything else in that sentence, it's
15:23 16 probable. Yes, he's going to.

15:23 17 Q. (BY MS. FALCO) Do you see a difference? That
15:23 18 question doesn't ask with a certainty: Is the defendant
15:23 19 going to commit probable acts of violence in the future?
15:23 20 Do you see the difference between the word certainty and
15:23 21 the word probability?

15:23 22 A. Certainty is, yes, he's going to. Probability
15:23 23 is he might.

15:23 24 Q. And so considering that, the fact that they use
15:23 25 the word probability as opposed to certainty, do you

15:23 1 find that he will commit?

15:23 2 A. I think he might.

15:23 3 Q. Okay. Okay. And moving onto the next phrase
15:24 4 that's undefined, commonly debated, is criminal acts of
15:24 5 violence. And I think all of us would agree criminal
15:24 6 acts of violence to a person like murder, sexual
15:24 7 assault, that's violence. That's a criminal act of
15:24 8 violence. I think everyone would agree on that.

15:24 9 It gets a little fuzzier when you move to
15:24 10 property. If I were to take a baseball bat, go out to
15:24 11 your car and just start smashing it with a baseball bat,
15:24 12 in your opinion, is that a criminal act of violence?

15:24 13 A. Just plain old violence. I don't know if it
15:24 14 would be criminal or not. Everybody has a temper, I
15:24 15 guess, so. I don't think it would be a criminal act of
15:24 16 violence. Now, if there were 50 cars lined up there and
15:24 17 all the windows were busted out, yeah, I would have to
15:24 18 say it was.

15:24 19 Q. It gets a little bit fuzzier when we move in to
15:24 20 drugs, whether it's dealing drugs or taking drugs. And
15:25 21 some people may say, well, if you are doing drugs, you
15:25 22 are doing violence to your own body. And if you are
15:25 23 doing drugs, it's going to make you act crazy, and you
15:25 24 are going to do violent things. So, yeah, that's a
15:25 25 criminal act of violence.

15:25 1 And other people may say, no, because you
15:25 2 are not doing harm to anybody else. You are not doing
15:25 3 harm to any property, so no, it's not. Where do you
15:25 4 fall?

15:25 5 A. I think as long as somebody is doing drugs and
15:25 6 they are not pushing it on someone else and they are off
15:25 7 in a corner, whatever they are doing with their drugs,
15:25 8 then that's them.

15:25 9 Q. Okay.

15:25 10 A. But once they start involving me or someone
15:25 11 else, then I don't particularly like that.

15:25 12 Q. What about just selling drugs?

15:25 13 A. Selling drugs?

15:25 14 Q. Selling drugs.

15:25 15 A. Put them away.

15:25 16 Q. How does that fall in criminal acts of violence
15:25 17 to you? Do you think that is or it's not?

15:25 18 A. I think it is basically toward children or
15:26 19 something like that.

15:26 20 Q. Then you get some things like theft that are
15:26 21 clearly not a criminal act of violence. But if you got
15:26 22 someone that's stealing, somebody or maybe just running
15:26 23 from the cops or evading arrest, just different types of
15:26 24 crimes that may not be violent, but do you think that
15:26 25 gives you some insight into their character?

15:26 1 A. I don't know how to answer that one.

15:26 2 Q. Would it help you at all in answering this type
15:26 3 of question as to what type of person they are? If you
15:26 4 heard that they steal, they run from the cops, they
15:26 5 disrespect authority, does that help you in deciding
15:26 6 whether or not they might be a future danger?

15:26 7 A. I think so, if there's more than one
15:26 8 occurrence. If he's got a list of -- it's a grocery
15:26 9 list of offenses, yeah, I would have to say, yeah.

15:27 10 Q. Moving along toward the end of the question,
15:27 11 you get to the last word, society. And that question
15:27 12 does not limit itself to prison society. It doesn't
15:27 13 say, can the defendant be safely locked up in prison?
15:27 14 It doesn't say, will he only be a threat to the prison
15:27 15 society? It just says "society." Take it as it is.

15:27 16 Now, that could mean the prison society,
15:27 17 but it could also mean the society that you and I live
15:27 18 in. It could be the person driving your school bus or
15:27 19 it could be a person selling ice cream to your children.
15:27 20 It could just be the society that you and I live in. Do
15:27 21 you see how it can be interpreted different ways, that
15:27 22 word society?

15:27 23 A. No. Because it's not, you are not -- like you
15:27 24 said, it could be anything. I mean, you are not making
15:27 25 it one society.

15:27 1 Q. What does society mean to you?
 15:27 2 A. Everything.
 15:27 3 Q. Outside?
 15:27 4 A. Outside.
 15:27 5 Q. Inside prison?
 15:27 6 A. In fact, prison didn't even cross my mind.
 15:28 7 Q. Okay.
 15:28 8 A. Society-wise.
 15:28 9 Q. While we're on that question, let's talk a
 15:28 10 little bit about psychiatric testimony or psychological
 15:28 11 testimony. And we're assuming that they won't testify
 15:28 12 like a brain tumor or a brain disease that a person
 15:28 13 might have.
 15:28 14 I don't know if you have been paying
 15:28 15 attention to the George Rivas trial or, in general,
 15:28 16 looking in the newspaper or the media. You probably
 15:28 17 heard that psychiatrists or psychologists would testify
 15:28 18 in these type of cases. And say, well, looking at that
 15:28 19 criminal history or that pattern of behavior, I think
 15:28 20 the defendant is a future danger or is not a future
 15:28 21 danger. In your opinion, is that type of testimony
 15:28 22 important?
 15:28 23 A. Well, I think on my questionnaire I put that
 15:28 24 they are -- they are a medical doctor. However, in that
 15:28 25 type of situation, I don't see how they could say that,

15:28 1 you know.
 15:28 2 Q. So you probably wouldn't find that? Assuming
 15:29 3 they are not diagnosing some type of mental illness or
 15:29 4 brain disease?
 15:29 5 A. Yeah.
 15:29 6 Q. They are saying based on a pattern of behavior,
 15:29 7 I think this or I think that. Do you think that would
 15:29 8 be very helpful?
 15:29 9 A. I would sure hate to depend on that.
 15:29 10 Q. And do you think that, if the defense got
 15:29 11 somebody up there to say, well, looking at the pattern
 15:29 12 of behavior, I don't think he'll be a future danger,
 15:29 13 don't you think the State could come right back and put
 15:29 14 their expert up there to say, well, I think they are a
 15:29 15 future danger?
 15:29 16 A. Yeah. You see that all the time. Just batter
 15:29 17 back and forth, one counteracting the other.
 15:29 18 Q. Exactly.
 15:29 19 A. I think that's difficult on a jury.
 15:29 20 Q. Do you think if you were sitting on that jury
 15:29 21 that you could look at the facts of the case -- you
 15:29 22 already heard everything for the guilt-innocence part.
 15:29 23 And then you get to the punishment phase and you get to
 15:29 24 hear everything in the punishment phase: the good, the
 15:29 25 bad, and the ugly. Do you think you could listen to all

15:29 1 of that and come up with an answer to that question by
 15:29 2 yourself without the help of experts?
 15:30 3 A. You put me on the spot with this one.
 15:30 4 Q. Do you think you would have an opinion, after
 15:30 5 you heard all the evidence?
 15:30 6 A. I'm sure after I heard all the evidence, I
 15:30 7 would have an opinion, yes.
 15:30 8 Q. Based on that opinion, if we proved it to you,
 15:30 9 beyond a reasonable doubt, could you answer that
 15:30 10 question, yes?
 15:30 11 A. Yeah, I think so.
 15:30 12 Q. And if we didn't prove it to you beyond a
 15:30 13 reasonable doubt, could you answer that question no?
 15:30 14 A. Yes.
 15:30 15 Q. Now, with regard to that question, if all 12
 15:30 16 jurors agree, yes, that he will be a future danger, then
 15:30 17 you are still in the process of assessing a death
 15:30 18 sentence. If ten or more jurors say, no, we do not
 15:30 19 think he's a future danger, that's it. The trial is
 15:30 20 over. It's an automatic life sentence. Okay? Does
 15:30 21 that make sense to you?
 15:30 22 A. I think it will soak in, yes.
 15:31 23 Q. So we're at the point of 12 of y'all agree,
 15:31 24 yes, he's a future danger, you are going to move on and
 15:31 25 answer another question. Ten or more jurors decide, no,

15:31 1 we don't think he's a future danger, you stop. That's
 15:31 2 it.
 15:31 3 A. No more debate after that.
 15:31 4 Q. No more debate. It's a life sentence for the
 15:31 5 defendant?
 15:31 6 A. Okay.
 15:31 7 Q. Let's assume that all 12 jurors decide, yes,
 15:31 8 he's a future danger, and you are going to move on. And
 15:31 9 there was actually another question talked about. I
 15:31 10 don't know if you remember Mr. Schultz talking about the
 15:31 11 question about the getaway driver, and if you were a
 15:31 12 party and not the actual shooter.
 15:31 13 A. Yes.
 15:31 14 Q. Do you remember that question?
 15:31 15 A. Yes.
 15:31 16 Q. We're not going to really talk about that
 15:31 17 question because that may or may not apply, because
 15:31 18 we're going to go ahead and move on to the next question
 15:31 19 which you would definitely have to answer if you answer
 15:31 20 this first question, yes. You would definitely get to
 15:31 21 this question and have to answer this one. If you want
 15:31 22 to take a moment just to read back over that.
 15:32 23 A. Okay.
 15:32 24 Q. Again, this is a very long question and
 15:32 25 probably be a lot better if they just had an average or

15:32 1 average lay person, such as yourself, draft the question
 15:32 2 because y'all are the ones that have to answer it.
 15:32 3 Again, you got a lot of words here that are not going to
 15:32 4 be defined for you. It's going to be up to you, as a
 15:32 5 juror, to decide what this means. But this is what we
 15:32 6 call generally the mitigation question. What does that
 15:32 7 word "mitigation" mean to you?

15:33 8 A. Lack of, not enough. If there's not enough,
 15:33 9 then that's about what it means to me.

15:33 10 Q. And some might say it's evidence that would
 15:33 11 lessen or reduce the defendant's moral blameworthiness.

15:33 12 A. Right.

15:33 13 Q. And what that question is asking -- you are
 15:33 14 right on point -- what it's asking is not just whether
 15:33 15 or not there's mitigating evidence, but whether or not
 15:33 16 it's sufficient mitigating evidence taking into
 15:33 17 consideration what that person did, their character and
 15:33 18 background. Is it sufficient to mitigate all of that,
 15:33 19 to lessen that, to warrant a life sentence? Does that
 15:33 20 make sense?

15:33 21 A. Yes.

15:33 22 Q. And as you can probably imagine, I mean, if any
 15:33 23 one of us ended up on trial for whatever reason for
 15:33 24 whatever crime, we probably all have stuff in our
 15:33 25 background, something that's sad, something that's

15:33 1 sympathetic. We could all come up with something to put
 15:34 2 on trial. Say, look at that. That's mitigating because
 15:34 3 look what happened here, and that's pretty sympathetic.

15:34 4 And so you can imagine, we probably all
 15:34 5 have mitigating evidence that we could present at a
 15:34 6 trial. And so the issue is, is it sufficient? Does it
 15:34 7 rise to the level of mitigating what that person did?
 15:34 8 Mitigating what I did, if I'm on trial, to warrant a
 15:34 9 life sentence? Do you understand that?

15:34 10 A. Yes.

15:34 11 MR. GOELLER: Judge, I'm sorry. I know
 15:34 12 we're doing voir dire.

15:34 13 THE COURT: Okay.

15:34 14 Q. (BY MS. FALCO) Now, one thing about the
 15:34 15 mitigating evidence, when you hear it, like I said, you
 15:34 16 are not going to get a list of evidence saying, here's
 15:34 17 mitigating evidence for you to consider. You are not
 15:34 18 going to get a list saying, well, this is aggravating.
 15:34 19 It is not mitigating. It's just going to be up to you
 15:34 20 collectively, as a jury, to decide.

15:34 21 Now, there may be some things that one
 15:34 22 person thinks is mitigating, another person may say, no,
 15:34 23 that's aggravating to me. Somebody may say, well, that
 15:35 24 explains it. But do you understand the difference
 15:35 25 between some evidence explaining? Yeah, that explains

15:35 1 it. But does it excuse it? And a good example of that
 15:35 2 would be drugs.

15:35 3 And there may be one juror that sits on
 15:35 4 there and says, well, he did all this stuff because he
 15:35 5 was on drugs. It's not his normal personality. He
 15:35 6 started doing that and kind of went off the deep end,
 15:35 7 and that's mitigating to me because that's not the way
 15:35 8 he normally is.

15:35 9 Juror right next to him may say, you know
 15:35 10 what? We're raised in a society where we're told drugs
 15:35 11 are bad, and he knew better, and we all know better.
 15:35 12 And you don't do drugs because that kind of horrible
 15:35 13 result happens.

15:35 14 A. Right.

15:35 15 Q. And so that's aggravating to me because not
 15:35 16 only is he doing drugs, but he's causing harm too. So
 15:35 17 you can see how that's something that it could be
 15:35 18 mitigating, or it could be aggravating depending where
 15:35 19 you sit on that side of the fence.

15:35 20 A. Right.

15:35 21 Q. And you may be the kind of person that says,
 15:35 22 well, okay, he was on drugs. That explains it. You try
 15:35 23 to get into the mind of a killer. I mean, that explains
 15:36 24 it. But does it excuse it? Does that, doing those
 15:36 25 drugs and all that, does that excuse his behavior? Do

15:36 1 you see what I'm saying?

15:36 2 A. Yes.

15:36 3 Q. Do you see the difference in that?

15:36 4 A. Yeah.

15:36 5 Q. Now, I'm going to talk about--while we're still
 15:36 6 on that question a little bit--on your questionnaire.
 15:36 7 You were -- there's that one page, and it had statements
 15:36 8 and you had to say whether you strongly agree up to
 15:36 9 strongly disagree. Do you remember all, you had a
 15:36 10 series of statements. Do you remember that?

15:36 11 A. Yeah, but I don't remember what the questions
 15:36 12 were.

15:36 13 Q. That's what we're going to talk about. I just
 15:36 14 want to know if you remember that page. And one of
 15:36 15 the -- well, first of all, one of the things you said
 15:36 16 is: If someone is accused of capital murder, he should
 15:36 17 have to prove his innocence. And at that point you put
 15:36 18 "uncertain." So we've covered that.

15:36 19 A. Right.

15:36 20 Q. Capital murder is no different than any other
 15:36 21 crime. It's totally up to us to prove to you beyond a
 15:36 22 reasonable doubt, and they have got absolutely no burden
 15:36 23 at all.

15:36 24 A. Okay.

15:36 25 Q. And you don't have a problem following that

15:36 1 law?

15:36 2 A. No.

15:36 3 Q. But what I want to talk about is it asks:

15:37 4 "Persons determine their destiny or fate by the choices
15:37 5 they make in life." And you put "agree." Tell me a
15:37 6 little bit behind your thinking there.

15:37 7 A. Well, I think that if someone takes drugs, goes
15:37 8 out and kills somebody, they chose that way.

15:37 9 Regardless, you know. He may not have done it without
15:37 10 drugs but that's regardless, beside the point. He did
15:37 11 it.

15:37 12 Q. Okay.

15:37 13 A. Or he, she did it. Let's put it that way.

15:37 14 Q. Okay. Very next question says: "A person's
15:37 15 destiny or fate is determined by the circumstances of
15:37 16 their birth and their upbringing." And you wrote
15:37 17 "disagree."

15:37 18 A. That's true.

15:37 19 Q. Tell me your thoughts behind that.

15:37 20 A. My thoughts, that is, I come from a broken
15:37 21 home. I thought I done real well by myself. There's a
15:37 22 lot of people that do come from the ghettos that have
15:37 23 done real well by themselves. And so, that's being used
15:37 24 in court too many times nowadays. Every time you hear
15:37 25 something, they are using that, upbringing, upbringing,

15:37 1 upbringing. I mean, that's standard defense nowadays.

15:38 2 Q. And you are exactly right. We probably can
15:38 3 think of the flip side.

15:38 4 A. What about the ones that come from my
15:38 5 generation? You never heard that.

15:38 6 Q. People owned up to what they did?

15:38 7 A. Exactly.

15:38 8 Q. And we can probably all think of people on the
15:38 9 flip side of the coin that maybe came from a great home
15:38 10 and had never lacked for material things and had
15:38 11 everything they wanted growing up but turned out to be
15:38 12 just a bad apple?

15:38 13 A. What about the two boys that killed the
15:38 14 parents? Ramirez?

15:38 15 Q. Menendez brothers. Exactly, exactly. So,
15:38 16 okay. Let me ask you this, kind of while we're on that
15:38 17 topic, you don't have any children; is that correct?

15:38 18 A. No, I do not.

15:38 19 Q. But with regard to your parents or anyone in
15:38 20 your family member that you are close to, you really
15:38 21 love, you can imagine, if they got in trouble legally,
15:38 22 that you would love them and you would support them just
15:38 23 like you always have.

15:38 24 A. Sure.

15:38 25 Q. Is that a fair statement?

15:38 1 A. Yes, it is.

15:38 2 Q. And you can only imagine in this type of a case
15:39 3 where somebody is on trial for their life that they
15:39 4 would have family members that would love them and
15:39 5 support them no matter what?

15:39 6 A. I would think so, yes.

15:39 7 Q. And you can probably imagine a scenario where a
15:39 8 person who is on trial for capital murder, their mother
15:39 9 testifying.

15:39 10 A. Sure.

15:39 11 Q. And getting on the stand and just crying and,
15:39 12 you know, please don't execute my child because I love
15:39 13 them.

15:39 14 A. Uh-huh.

15:39 15 Q. How does that argument sit with you?
15:39 16 Basically, don't execute this person because it would
15:39 17 break their mamma's heart?

15:39 18 A. Well, I feel for her. I really do, you know,
15:39 19 but here again, you have to go by what the law says. I
15:39 20 would feel bad for her.

15:39 21 Q. How about, kind of getting back a little bit to
15:39 22 the background, the upbringing situation. What if
15:39 23 somebody says, you know, I was just in a bad period. I
15:39 24 was doing drugs. I was just kind of letting them get
15:39 25 the best of me. I was out of control and led to this

15:39 1 crime, but now I'm better. I'm not doing drugs anymore.
15:40 2 I'm changed. I'm different. How does that argument
15:40 3 play with you?

15:40 4 A. It doesn't.

15:40 5 Q. How come?

15:40 6 A. You did drugs. You didn't have to do that.
15:40 7 You didn't have to.

15:40 8 Q. Okay. Let me talk to you, I believe you said
15:40 9 you were Catholic. Am I right about that?

15:40 10 A. No.

15:40 11 Q. So many questionnaires we look at everyday.
15:40 12 Baptist, I'm sorry.

15:40 13 A. Yes.

15:40 14 Q. Have you ever heard the expression, there's no
15:40 15 atheists in a foxhole?

15:40 16 A. I can't say that I have, no, uh-huh.

15:40 17 Q. And even being in the military. Let's assume,
15:40 18 you obviously know what a foxhole is?

15:40 19 A. Yes.

15:40 20 Q. And you can imagine somebody in that situation
15:40 21 faced with impending death might get right with their
15:40 22 maker at that point, might trust --

15:40 23 A. Might do it, yes, uh-huh.

15:40 24 Q. And you can imagine, I'm sure, someone in the
15:40 25 same situation on trial for capital murder, again, in a

15:40 1 similar situation, facing death.
 15:40 2 A. Oh, yes.
 15:40 3 Q. That they might try to get right with God?
 15:41 4 A. Yes.
 15:41 5 Q. And that may be legit; it may not be. And, I
 15:41 6 guess, ultimately that's not for us to decide.
 15:41 7 A. That's correct.
 15:41 8 Q. But either way, whether it's legitimate or not,
 15:41 9 would that make a difference to you? If after the
 15:41 10 murder they said, well, I'm a Christian now. I've
 15:41 11 accepted Christ, so don't kill me.
 15:41 12 A. No, it wouldn't.
 15:41 13 Q. Why not?
 15:41 14 A. Well, that's after the fact. I mean, you
 15:41 15 should have thought about that before. You should have
 15:41 16 been right with him before. If that was your belief to
 15:41 17 start with anyway.
 15:41 18 Q. Let's talk a little bit, looking at that
 15:41 19 mitigation question, other than the phrase,
 15:41 20 circumstances of the offense, the rest of the question
 15:41 21 appears to focus on the defendant, looking at the
 15:41 22 defendant's background, the defendant's character, the
 15:41 23 defendant's culpability. It appears to be focusing on
 15:41 24 the defendant, correct?
 15:42 25 A. Yes.

15:42 1 Q. What -- do you remember Mr. Schultz talking
 15:42 2 back on Tuesday about whether or not it's a nun praying
 15:42 3 in church that gets killed or the drug dealer on the
 15:42 4 street that gets killed?
 15:42 5 A. Yes.
 15:42 6 Q. In your mind, does it make a difference who the
 15:42 7 victim is?
 15:42 8 A. Does it make a difference who the victim is?
 15:42 9 Q. Or was?
 15:42 10 A. Or was? No. It's a human being.
 15:42 11 Q. Does it make that person that killed them any
 15:42 12 less dangerous?
 15:42 13 A. No.
 15:42 14 Q. Because of who he killed?
 15:42 15 A. No.
 15:42 16 Q. Does it make him any less of a killer?
 15:42 17 A. No.
 15:42 18 Q. Does it make him any better or worse because of
 15:42 19 who he killed?
 15:42 20 A. No.
 15:42 21 Q. And in that same regard, let's say I decide I
 15:42 22 want to live a nice lifestyle, but I don't want to have
 15:42 23 to work for it. And I decide I'm going to go and rob a
 15:42 24 liquor store, and if I've got to kill somebody, I'm
 15:42 25 going to do it. And so I, just on my way home, I just

15:42 1 pick a 7-Eleven. I don't know anyone in there, and I
 15:42 2 decide to go in. I hold it up, and I kill him because I
 15:42 3 don't want any witnesses. Not knowing his family, not
 15:43 4 knowing who I've affected.
 15:43 5 Compare that to, let's say, it's my
 15:43 6 neighborhood. And I know the people that own the store.
 15:43 7 And their child who has worked in there is the clerk, is
 15:43 8 one of my good friends that I grew up with, and I had
 15:43 9 eaten dinner in his family's home. And I spent the
 15:43 10 night there, and they clothed me and gave me shelter and
 15:43 11 gave me food. But I know how much money they keep
 15:43 12 there, and I know what their hours are and the
 15:43 13 scheduling. And I know how much money I can get when
 15:43 14 and where. And so that's the place I decide to rob.
 15:43 15 And I go in there, and I make my friend
 15:43 16 give me all the money, and then I kill them, knowing how
 15:43 17 it's going to devastate his family, this family who has
 15:43 18 taken care of me. Does that make any difference to you?
 15:43 19 A. No.
 15:43 20 Q. Okay. And how come?
 15:43 21 A. You still killed somebody.
 15:43 22 Q. Okay.
 15:43 23 A. Whether you knew them or not, that person is
 15:43 24 dead.
 15:43 25 Q. Okay.

15:43 1 A. You are not.
 15:43 2 Q. Now, it asks you previously, getting back to
 15:44 3 that first question, that probability question. I
 15:44 4 talked to you and said, we failed to prove to you beyond
 15:44 5 a reasonable doubt that he's going to be a future
 15:44 6 danger. I asked, would you answer that question no?
 15:44 7 You told me you could. Right?
 15:44 8 A. Yes.
 15:44 9 Q. And I said, if we proved it to you beyond a
 15:44 10 reasonable doubt, you could answer it yes?
 15:44 11 A. Yes.
 15:44 12 Q. When you get to this mitigation question, like
 15:44 13 I said, there's no burden of proof on either side.
 15:44 14 Neither side is required to prove anything to you. It's
 15:44 15 just a matter for the jury to look at everything that
 15:44 16 question calls for and decide if that's sufficient to
 15:44 17 mitigate to warrant a life sentence.
 15:44 18 Can you envision -- let me ask you, could
 15:44 19 you to that? Could you fairly look at all the evidence
 15:44 20 and fairly answer that question yes or no depending on
 15:44 21 how the evidence played out?
 15:44 22 A. Are you talking about if I answered yes to that
 15:44 23 one?
 15:44 24 Q. Right.
 15:44 25 A. Yes.

15:44 1 Q. You would only get to this mitigation question
 15:44 2 if you answered the first one yes.
 15:44 3 A. Correct.
 15:44 4 Q. And assuming that, you can envision a situation
 15:44 5 where you would say: No, there's no mitigating
 15:44 6 evidence, and that's going to be a death sentence?
 15:45 7 A. Yes.
 15:45 8 Q. You also could envision a situation where you
 15:45 9 are looking at all the evidence, and you think, yes,
 15:45 10 that's sufficient mitigation. I'd answer yes to that,
 15:45 11 resulting in a life sentence?
 15:45 12 A. Right. Yes.
 15:45 13 Q. And you could do that?
 15:45 14 A. Yes.
 15:45 15 Q. Okay. Now, you had an opportunity, both today
 15:45 16 and I suppose on Tuesday, to have an opportunity to look
 15:45 17 at the defendant, just based on his looks alone. Have
 15:45 18 you had an opportunity to look at him?
 15:45 19 A. Yes, I have.
 15:45 20 Q. And based on his looks alone, do you have any
 15:45 21 observation about how he looks?
 15:45 22 A. No, I don't.
 15:45 23 Q. What about youth, or young? Does he look young
 15:45 24 to you?
 15:45 25 A. Well, he's not all that young. But, yes, he's

15:45 1 younger than I am. I'll put it that way, yes.
 15:45 2 Q. Would that factor, or does that make a
 15:45 3 difference when you're answering these questions? And
 15:45 4 particularly the mitigation question, does that make a
 15:45 5 difference to you?
 15:45 6 A. No.
 15:45 7 Q. If someone is of sufficient age to know right
 15:46 8 from wrong?
 15:46 9 A. Yes.
 15:47 10 Q. So, Mr. Cummings, just so we're clear, you have
 15:47 11 got no problem starting at the beginning, following the
 15:47 12 law on the guilt-innocence phase, making us prove to you
 15:47 13 beyond a reasonable doubt that person is guilty of
 15:47 14 capital murder?
 15:47 15 A. No.
 15:47 16 Q. You can do that?
 15:47 17 A. I can do that, yes.
 15:47 18 Q. And you understand that the defense doesn't
 15:47 19 have to present evidence. The defendant doesn't have to
 15:47 20 testify. It's purely his choice?
 15:47 21 A. Yes.
 15:47 22 Q. And you are not to hold it against him one way
 15:47 23 or another?
 15:47 24 A. That's correct.
 15:47 25 Q. And then when we get to the punishment phase,

15:47 1 when we're looking at the first question, the future
 15:47 2 danger question, the probability, the burden of proof
 15:47 3 again is on the State. And you could follow the law and
 15:47 4 answer that question fairly, depending on whether or not
 15:47 5 we prove it to you beyond a reasonable doubt?
 15:47 6 A. Yes.
 15:47 7 Q. And you can envision a situation, and you would
 15:48 8 answer it yes. You could envision a situation, you
 15:48 9 would answer it no?
 15:48 10 A. Yes.
 15:48 11 Q. And with regard to the last question, there's
 15:48 12 no burden of proof either way, but yet you could
 15:48 13 envision a situation where you could answer it no,
 15:48 14 resulting in a death sentence. And you can envision a
 15:48 15 situation, you'd answer it yes, resulting in a life
 15:48 16 sentence?
 15:48 17 A. Yes.
 15:48 18 MS. FALCO: Thank you, Mr. Cummings. We
 15:48 19 pass this juror.
 15:48 20 THE COURT: All right.
 15:48 21 MR. GOELLER: Thank you, Judge.
 15:48 22 VOIR DIRE EXAMINATION
 15:48 23 BY MR. GOELLER:
 15:48 24 Q. Mr. Cummings, hi. Again, my name is Matt
 15:48 25 Goeller. Do you want to stand up for just a minute and

15:48 1 shake it out?
 15:48 2 A. I'm fine.
 15:48 3 Q. You could go for another couple hours?
 15:48 4 A. Sure, go for it.
 15:48 5 Q. Okay. Mr. Cummings, regarding your potential
 15:49 6 service as an actual juror in this case and your service
 15:49 7 here today, what do you think's your most important
 15:49 8 obligation?
 15:49 9 A. To Mr. Cantu, to the Court, to the State of
 15:49 10 Texas, or just my most important obligation?
 15:49 11 Q. I'll cut to the chase. Forget the Court and
 15:49 12 the State and Mr. Cantu.
 15:49 13 A. Just to ensure that he gets the fairest trial
 15:49 14 that is possible.
 15:49 15 Q. Okay. And in context of your being here today,
 15:49 16 what's your most important obligation, as far as being
 15:49 17 here today?
 15:49 18 A. To let everybody see my character. To ensure
 15:49 19 that y'all understand that I am going to do what I have
 15:49 20 to do, whether it be for one side or the other. It's
 15:49 21 going to be on the evidence that's presented to me.
 15:49 22 Q. You bet. You bet. And regarding your -- of
 15:50 23 course, that's if you're actually seated as a juror in
 15:50 24 this case. As a prospective juror here today, what do
 15:50 25 you think your most important obligation is?

15:50 1 A. My most is to be here so you can -- so I can
 15:50 2 answer the questions for you.
 15:50 3 Q. Right. Assuming that, you are here. To tell
 15:50 4 the truth, right? Shoot straight?
 15:50 5 A. That's true.
 15:50 6 Q. And if you do that, no matter what your answers
 15:50 7 are, that's -- that's the most important thing. And
 15:50 8 then I can -- I can at least, no matter what happens
 15:50 9 with you as a person, whether you are a juror or not.
 15:51 10 You've satisfied your obligation. I mean, the Judge
 15:51 11 isn't going to ask you any questions.
 15:51 12 A. Right.
 15:51 13 Q. And nothing having to do with this case
 15:51 14 probably really.
 15:51 15 A. Right.
 15:51 16 Q. The State's told you they've got -- they have
 15:51 17 questions for you, and they told you, and they were
 15:51 18 frank about it. They want to kill him. And only a fool
 15:51 19 would think I want to do something other than save his
 15:51 20 life. Okay? And one of the people, all 12, and
 15:51 21 individually, each juror, potential juror such as
 15:51 22 yourself -- who knows, if there's a verdict on capital
 15:51 23 murder, life or death will result. Okay?
 15:51 24 A. (Moving head up and down.)
 15:51 25 Q. So my job here today is to probe you, test you,

15:51 1 get your heart of hearts answers to truly life and
 15:51 2 death. Would you agree with me that, as a potential
 15:51 3 juror in this case, it's probably the only time in your
 15:52 4 life, if you are a juror, that you may be asked to and
 15:52 5 have the power to kill.
 15:52 6 A. It's not a good feeling, I'll tell you that.
 15:52 7 Q. No. I hope it wouldn't. If you told me, yeah,
 15:52 8 that's pretty neat, I'd figure out a way to -- I don't
 15:52 9 know. You know what I'm saying?
 15:52 10 A. Uh-huh.
 15:52 11 Q. I would have to do anything I could to keep you
 15:52 12 off the jury. I mean, who wouldn't? And plus, I'd
 15:52 13 really, really worry about a person. I had somewhat of
 15:52 14 a military background. Were your folks career military?
 15:52 15 A. My dad was, yes.
 15:52 16 Q. How long was he in?
 15:52 17 A. He retired after 26 years of Army.
 15:52 18 Q. What kind of rank did he have?
 15:52 19 A. A major.
 15:52 20 Q. Okay. Did he ever see combat?
 15:52 21 A. Oh, yeah.
 15:52 22 Q. I bet he did. You know, it's funny. I suppose
 15:53 23 I guess I had a lot of instructors that were like
 15:53 24 colonels, marine corps lieutenant colonels. They are an
 15:53 25 odd group. There are men that look, on the average, 15

15:53 1 to 20 years older than they really are. They are all
 15:53 2 leathery. They are -- they are all raspy voiced. They
 15:53 3 are -- they go in the field and teach you the fine
 15:53 4 points of killing human beings. How to make the most
 15:53 5 out of maybe a quarter, a half, a quarter of a stick of
 15:53 6 C4 and some rusty nails, and they will show you the best
 15:53 7 way to kill as many or maim as many as you can. But a
 15:53 8 lot of them were antideath penalty back in the civilian
 15:53 9 world. I always thought that odd.
 15:53 10 You have a couple beers with them at the
 15:53 11 club, and you find out they are not the born killers you
 15:53 12 thought they were, and I always thought that was odd.
 15:53 13 They'll teach you how to kill the enemy, but they don't
 15:53 14 want no part of killing, I guess, in the civil
 15:54 15 courtroom. I always thought that was odd.
 15:54 16 Are you -- have you ever thought about
 15:54 17 whether you are prolife or prochoice when it comes to
 15:54 18 abortion?
 15:54 19 A. No, I have not. I really haven't. Like I say,
 15:54 20 I don't have any kids. And so it would be hard for me
 15:54 21 to even give you an answer on that.
 15:54 22 Q. Right.
 15:54 23 A. I mean, I can see where if I had a kid, yeah,
 15:54 24 that might be, ah, why are we doing that?
 15:54 25 Q. That's a tough one.

15:54 1 A. It is a tough one.
 15:54 2 Q. Let me tell you, I listened to you very very
 15:54 3 carefully when Ms. Falco was asking you questions. I
 15:54 4 have to. I -- I perceive that you are kind of an Old
 15:54 5 Testament, "eye for an eye" kind of guy. Am I wrong?
 15:54 6 A. No. I think you are pretty much right there.
 15:55 7 Q. In -- in these kind of capital murder cases,
 15:55 8 before you ever get to these special issue. Okay? Now
 15:55 9 obviously, you know this whole -- have you ever served
 15:55 10 as a juror in any kind of a case before?
 15:55 11 A. No, I have not.
 15:55 12 Q. If this were a burglary, robbery, DWI,
 15:55 13 shoplifting, or you are up here to listen to a divorce
 15:55 14 case, or you are listening to one citizen who has filed
 15:55 15 a lawsuit against Middlekauff Ford. They sold me a bad
 15:55 16 car. That just -- I don't like Fords, and I'm not
 15:55 17 saying anything about Middlekauff, I just don't like
 15:55 18 Fords. Are you a Ford man?
 15:55 19 A. No.
 15:55 20 Q. Good. You and I are all right. The whole
 15:55 21 process takes about an hour. Most judges are squawking
 15:55 22 pretty loud if your voir dire is going longer than an
 15:56 23 hour on a regular case. But the reason why it's
 15:56 24 different in this case is 'cause, obviously, you know,
 15:56 25 the decisions could be life or death?

15:56 1 A. You have to be sure.
 15:56 2 Q. We know that the indictment in this case, as
 15:56 3 Judge Sandoval read you -- I don't know if you read it.
 15:56 4 He may have read the whole thing to you. We know
 15:56 5 they've alleged a double homicide. Okay? We can't talk
 15:56 6 about the facts, but I would fall down if it turns out
 15:56 7 two people weren't dead in this trial. Okay? So we'll
 15:56 8 pretty much figure. We don't know how those people
 15:56 9 died. But without talking about the facts, I guarantee
 15:56 10 you they wouldn't have alleged it. Nobody would make
 15:56 11 that big a mistake in the Grand Jury indictment. Okay?
 15:56 12 So we're going to have two people
 15:56 13 deceased. How that came about will be up to the jury.
 15:56 14 They've also alleged a burglary murder. Murder in the
 15:56 15 course of a burglary of a habitation. That's capital
 15:56 16 murder and robbery. Do you recall all that, when
 15:57 17 Mr. Schultz was telling you all that about a week ago?
 15:57 18 A. Yes.
 15:57 19 Q. Or the general idea.
 15:57 20 A. Yeah, yeah, I can't --
 15:57 21 Q. Murder plus.
 15:57 22 A. Right, right.
 15:57 23 Q. Murder plus.
 15:57 24 A. Right.
 15:57 25 Q. Before we ever get, and the first order of

15:57 1 business to a jury in this case, I anticipate will be:
 15:57 2 Does the jury find beyond a reasonable doubt that
 15:57 3 somebody committed capital murder, you know? That
 15:57 4 somebody is him. Did he do it? Okay?
 15:57 5 If the jury comes back unanimously guilty
 15:57 6 of capital murder, we know that the punishment is going
 15:57 7 to be life unless, and it's going to be life unless. I
 15:57 8 make the argument that -- that the -- the automatic
 15:58 9 punishment for capital murder is life. Because in order
 15:58 10 for there to be death, the jury -- the State has a
 15:58 11 further burden of proof that if they don't meet, then
 15:58 12 it's going to be a life sentence.
 15:58 13 And then a jury has another question to
 15:58 14 answer that nobody has a burden of proof, and the jury
 15:58 15 makes the final call, life or death. But they don't get
 15:58 16 to that last question unless that future dangerousness
 15:58 17 question is answered in the affirmatively unanimously.
 15:58 18 Are you with me so far?
 15:58 19 A. Yes.
 15:58 20 Q. I heard you tell Ms. Falco that you don't
 15:58 21 really relish this, but if it had to be that way, you
 15:58 22 were kind of, you know, you could do it. I -- I kind of
 15:58 23 gleaned from that, that if you thought that if
 15:58 24 somebody -- and you, this -- this may be your feeling on
 15:59 25 this, and I won't argue with you. Remember what I told

15:59 1 you on Tuesday, if you shoot straight with me --
 15:59 2 A. Uh-huh.
 15:59 3 Q. -- no matter what happens, I'm so appreciative
 15:59 4 because that's all I got to -- that's all I need. I'll
 15:59 5 buy you a cup of coffee and shake your hand any day,
 15:59 6 even if you didn't agree with me. Okay? Because my job
 15:59 7 here is not to debate you or disagree with you. It's
 15:59 8 just to protect that kid sitting behind me.
 15:59 9 A. Uh-huh.
 15:59 10 Q. I get the feeling that if you find somebody
 15:59 11 guilty of that kind of offense, of capital murder, that
 15:59 12 you believe that the death sentence should flow from
 15:59 13 that?
 15:59 14 A. If the evidence proves it.
 15:59 15 Q. Proves what?
 15:59 16 A. That it was -- that he deserves it.
 15:59 17 Q. Okay. Tell me what you mean by that.
 15:59 18 A. I mean, if I just get partial evidence, you
 15:59 19 know, and I have doubts, it's going to be, I would have
 15:59 20 to --
 15:59 21 Q. Going to be what?
 15:59 22 A. Without reasonable doubt.
 15:59 23 Q. Yeah. I mean, if you had doubt, if it wasn't
 16:00 24 proved beyond a reasonable doubt, what would you do in a
 16:00 25 case?

16:00 1 A. If it wasn't proved beyond a reasonable doubt?
 16:00 2 Q. Yeah.
 16:00 3 A. I would have to give him life.
 16:00 4 Q. See, therein lies my problem. To get to those
 16:00 5 questions, to get to the life or death questions, so to
 16:00 6 speak --
 16:00 7 MS. FALCO: Your Honor, I'd like to
 16:00 8 clarify, because he's correct if he's speaking about the
 16:00 9 probability question. But I guess -- to ask Mr. Goeller
 16:00 10 to clarify whether he's talking about guilt-innocence or
 16:00 11 the burden of proof is on the punishment questions.
 16:00 12 THE COURT: All right.
 16:00 13 Q. (BY MR. GOELLER) You said if you had a
 16:00 14 reasonable doubt whether he did it. Okay? And that's
 16:00 15 my problem that I have. And we may just be -- I may
 16:00 16 need -- I may not understand what you said. But if you
 16:00 17 had a doubt whether he did it, committed capital murder,
 16:00 18 he should not have been found guilty, a doubt based on
 16:00 19 reason. He should have been found not guilty.
 16:00 20 A. I'm being confused now here. You are asking
 16:00 21 me --
 16:01 22 Q. Let me back up. Let me ask the next question.
 16:01 23 A. Please.
 16:01 24 Q. Did you tell me, and again, we're not arguing.
 16:01 25 I just got to make sure because that court reporter is

16:01 1 taking down everything I say, and I've got to make sure
 16:01 2 it's reflective of.
 16:01 3 Did you tell me that the State -- let me
 16:01 4 start again. Did you say that if he had a doubt, if you
 16:01 5 had a doubt about whether he did it, that would
 16:01 6 determine whether you gave him life or death?
 16:01 7 A. Not whether he did it, about all the evidence
 16:01 8 that I was given, that if it all pointed to whether he
 16:01 9 received the death sentence or a life sentence, and if
 16:01 10 it all pointed to whether he got the death sentence,
 16:01 11 then, yes, I would vote death sentence.
 16:01 12 Q. All right. I got you. All right. We're clear
 16:01 13 on that?
 16:01 14 A. Does that clear that up?
 16:01 15 Q. Now, when we talk about that first special
 16:02 16 issue --
 16:02 17 A. Okay.
 16:02 18 Q. -- and I know you've probably read it a bunch
 16:02 19 of times, and you've been asked a million questions
 16:02 20 about it. What did you say this word "probability"
 16:02 21 meant to you?
 16:02 22 A. By itself?
 16:02 23 Q. In that context.
 16:02 24 A. That he would might -- that he might.
 16:02 25 Q. Might do it?

16:02 1 A. It's not certain. It's might.
 16:02 2 Q. He might do it?
 16:02 3 A. Probable.
 16:02 4 Q. Possible? Do you equate might with possible?
 16:02 5 A. Oh, Lord.
 16:02 6 Q. I know I'm splitting hairs. But do you see how
 16:02 7 important that is to me?
 16:02 8 A. Yeah. Well, probable, and possible, yeah.
 16:02 9 Q. Are they synonymous to you for the purposes in
 16:03 10 the context of that?
 16:03 11 THE COURT: Do you understand the
 16:03 12 question?
 16:03 13 VENIREPERSON: I think.
 16:03 14 THE COURT: All right.
 16:03 15 VENIREPERSON: I think I do. I basically
 16:03 16 think they are one in the same, probable and possible,
 16:03 17 yeah. He might, and it's possible he might.
 16:03 18 Q. (BY MR. GOELLER) Okay. I'm with you. I'm
 16:03 19 with you. I don't disagree with that.
 16:03 20 A. Okay.
 16:03 21 Q. Okay. The State would have to prove to you
 16:03 22 that it's possible that the defendant would be a future
 16:03 23 danger.
 16:03 24 A. Yes.
 16:03 25 Q. Okay. Okay.

16:03 1 A. Yes.
 16:04 2 Q. When we get to that, and of course we don't get
 16:04 3 to that last special issue unless that one's proven by
 16:04 4 the State. Do you understand what the burden of proof
 16:04 5 on the State is, regarding that special issue?
 16:04 6 A. What the -- what the -- they have to prove it.
 16:04 7 Q. How? How do they have to prove it? I mean,
 16:04 8 what is the burden of proof? Do you know what a burden
 16:04 9 of proof is?
 16:04 10 A. Well, they are going to have to prove to me.
 16:04 11 Q. Yeah.
 16:04 12 A. That's what the burden of proof is.
 16:04 13 Q. Right. They've got to prove it to you. Do
 16:04 14 they got to prove it to you with some evidence?
 16:04 15 Mediocre evidence, a lot of evidence, a bucketful of
 16:04 16 evidence, a wheelbarrow?
 16:04 17 A. Whatever evidence they have. And then I have
 16:04 18 to judge on -- I have to take into consideration the
 16:04 19 evidence that's presented to me.
 16:05 20 Q. I'm a -- you've got an engineering background,
 16:05 21 right?
 16:05 22 A. No. I don't have an engineering background.
 16:05 23 Q. You work for Nortel?
 16:05 24 A. Yeah.
 16:05 25 Q. Okay. What is your -- I know I thought you

16:05 1 had --
 16:05 2 A. Software engineer.
 16:05 3 Q. Software engineer.
 16:05 4 A. But I'm not -- I don't have an engineering
 16:05 5 degree or anything like that.
 16:05 6 Q. You work with numbers, I'm sure?
 16:05 7 A. Binary X, stuff like that, yes.
 16:05 8 Q. On a scale of 0 to 100, meaning -- and zero
 16:05 9 means they brought you no proof, zero proof. The State
 16:05 10 brought you zero proof, and in any phase of this trial,
 16:05 11 just zero proof. Guilt-innocence or that first special
 16:05 12 issue, and then I'll use this bar up here. I think it's
 16:05 13 probably 6, 12 feet long. In the middle is 50 percent,
 16:06 14 and the end is 100 percent absolute proof. Where do you
 16:06 15 think their quantum of evidence that they require, that
 16:06 16 they are required to bring you, where do you think that
 16:06 17 fits in on a scale of 0 to 100?
 16:06 18 MS. FALCO: Your Honor, I'm going to
 16:06 19 object to him assigning a numerical value to beyond a
 16:06 20 reasonable doubt. There's no definition, and I would
 16:06 21 object to him assigning some kind of a percentage or
 16:06 22 number to what beyond a reasonable doubt would be.
 16:06 23 THE COURT: Overruled.
 16:06 24 Q. (BY MR. GOELLER) Okay. Go ahead.
 16:06 25 A. I can't give you a percentage. I just don't

16:06 1 know. I mean, it's got to be -- it's in my mind where
16:06 2 that doubt is and how much is there. I mean, they may
16:06 3 bring me 24 pages of evidence or proof. Who's to say
16:06 4 that they won't bring two pages? You don't know
16:06 5 what's --

16:06 6 Q. We're not talking quantity, not necessarily
16:07 7 quantity. A criminal case is not about who puts the
16:07 8 most documents in or calls the most witnesses. We know
16:07 9 for a fact that's not how it goes. Because then if they
16:07 10 subpoenaed 50 witnesses, I'd subpoena 51. And then they
16:07 11 would add a couple more, and then I'd --

16:07 12 A. Okay.

16:07 13 Q. You know, it's not quantity, it's quality. And
16:07 14 along those same lines, a quantum of proof. I'm trying
16:07 15 to figure out or just get some idea. Do you remember
16:07 16 them talking about their burden of proof is beyond a
16:07 17 reasonable doubt?

16:07 18 A. Yes.

16:07 19 Q. I'm trying to get an idea from you what that
16:07 20 means in layman's terms. Let me put it to you this way:
16:07 21 Have you ever sued anybody?

16:07 22 A. No.

16:07 23 Q. You've been -- you've been divorced, right?

16:07 24 A. Yes.

16:07 25 Q. Did that ever get into a contested setting?

16:07 1 A. Yeah.

16:07 2 Q. It did?

16:07 3 A. Yeah.

16:07 4 Q. Over property?

16:08 5 A. Yeah, you could say that.

16:08 6 Q. Who was the plaintiff, or who is the
16:08 7 petitioner? Who sued who first?

16:08 8 A. I did.

16:08 9 Q. And you were wanting some what?

16:08 10 A. I didn't want anything. I just wanted out of
16:08 11 that. She got it all anyway, so what's the difference?

16:08 12 THE COURT: She got 100 percent.

16:08 13 VENIREPERSON: She got a hundred percent.

16:08 14 There you go. Yeah.

16:08 15 Q. (BY MR. GOELLER) Now, I don't -- I had nothing
16:08 16 to do with any of her lawyers, right?

16:08 17 A. I hope not.

16:08 18 Q. (Laughter.)

16:08 19 A. I hope not.

16:08 20 Q. Okay.

16:08 21 A. Reasonable doubt, I guess what you are saying
16:08 22 with reasonable doubt, in my mind, I have to know that
16:08 23 that is right.

16:08 24 Q. Okay. All right.

16:08 25 A. And, like I say, it's hard to put a percentage

16:08 1 on something like that.

16:09 2 Q. Is it hard to put a percentage on it on the low
16:09 3 end?

16:09 4 THE COURT: Say, just a minute. I don't
16:09 5 want to interject myself into this thing, but I believe
16:09 6 you said you weren't talking about quantity but quality,
16:09 7 right? And so --

16:09 8 MR. GOELLER: Quantum, yeah.

16:09 9 THE COURT: -- but just to make sure when
16:09 10 we're talking about quantity, if we're not quantifying
16:09 11 it, then the number doesn't matter, right?

16:09 12 MR. GOELLER: True. But it would give me
16:09 13 some insight into where that is, you know, if I'm
16:09 14 thinking preponderance and clear and convincing.

16:09 15 THE COURT: All right. But even though,
16:09 16 just to get, just to plumb his --

16:09 17 MR. GOELLER: Right. And I am in no way
16:09 18 going to suggest to him what a number ought to be.

16:09 19 THE COURT: All right.

16:09 20 Q. (BY MR. GOELLER) But you kind of glean from
16:09 21 the Judge's comments some of my concern. Where on
16:09 22 this -- we don't even have to assign it a number. If
16:09 23 this is no proof down here, and this is absolute proof,
16:10 24 100 percent up here, where on this bar do you think the
16:10 25 State ought to get the case to as far as --

16:10 1 MS. FALCO: Excuse me. Your Honor,
16:10 2 Mr. Cummings, Mr. Goeller. Again, I'm going to have to
16:10 3 object. There is no definition of beyond a reasonable
16:10 4 doubt.

16:10 5 MR. GOELLER: I'll stipulate.

16:10 6 MS. FALCO: And I'm objecting to him
16:10 7 trying to commit this juror to a particular definition
16:10 8 of beyond a reasonable doubt.

16:10 9 MR. GOELLER: I'm not trying to commit.
16:10 10 I'm asking him where on that bar he might fall.

16:10 11 THE COURT: I'll overrule the objection.

16:10 12 Q. (BY MR. GOELLER) Where -- where up here do you
16:10 13 think the State, as far as the -- the quantum of proof,
16:10 14 you might even think of it loosely as the quality of --

16:10 15 A. Reasonable doubt is going to have to be a
16:10 16 hundred percent. Is that what you are after? Is that
16:10 17 what you are looking for?

16:10 18 Q. Reasonable doubt? Explain to me what you meant
16:10 19 by that.

16:10 20 A. I'm lost at this percentage here, you know.
16:10 21 Mr. Cantu is on trial for his life here.

16:10 22 Q. Right.

16:10 23 A. Somebody is going to have to prove to me that I
16:10 24 need to take his life.

16:11 25 Q. Okay.

16:11 1 A. And it's going to have to be 100 percent, if
16:11 2 that's what you are looking for. I'm not sure.

16:11 3 Q. That actually brings me along. I think I
16:11 4 understand how you are thinking on it now. In both
16:11 5 phases of the trial? I mean, you stated that they are
16:11 6 going to have to prove it to you 100 percent. They've
16:11 7 got to prove to you 100 percent before we even get to
16:11 8 the punishment.

16:11 9 A. Yes.

16:11 10 Q. That he's guilty of capital murder.

16:11 11 A. Yes.

16:11 12 Q. Do they got to prove to you 100 percent that
16:11 13 there's a probability, as you say, possibility that the
16:11 14 defendant would commit criminal acts, blah, blah, blah?

16:11 15 A. Probability, and here we go with probable and
16:11 16 possible. It's pretty hard to put a number on that
16:11 17 because what is a hundred percent he's probably going to
16:11 18 do it, or a hundred percent he might do it? You can't
16:11 19 do that.

16:11 20 Q. Your right. They can't -- they can't -- they
16:11 21 don't have to prove 100 percent. And I have come full
16:11 22 circle. I've come full circle, and you've demonstrated
16:12 23 the problem I'm having in understanding. You are
16:12 24 exactly right. And, boy, that hammers it home. You
16:12 25 testified that they've got to prove to you 100 percent

16:12 1 that he's guilty in the first phase of the trial?

16:12 2 A. Right.

16:12 3 Q. Now, the burden of proof is the same, first
16:12 4 phase and second phase. Okay?

16:12 5 A. Uh-huh.

16:12 6 Q. Beyond a reasonable doubt. And you've told me
16:12 7 that that equates to 100 percent in the first phase of
16:12 8 the trial, whether there is a probability that the
16:12 9 defendant will commit criminal acts of violence that
16:12 10 will constitute a continuing threat to society. Same
16:12 11 burden of proof, it's on them, and it's got to be beyond
16:12 12 a reasonable doubt. First phase you are telling me it's
16:12 13 got to be a hundred percent convincing.

16:12 14 A. Uh-huh.

16:12 15 Q. What percent to you is convincing in that
16:12 16 second phase of the trial?

16:13 17 A. Here again, it's -- I'm going to use the word
16:13 18 probably going to have to be a hundred percent.

16:13 19 Q. Okay, okay. Okay. That's fair enough. In
16:13 20 other words, the State's burden to you has got to be
16:13 21 beyond any doubt?

16:13 22 A. Yes.

16:13 23 Q. Not only is it beyond a reasonable doubt, it
16:13 24 would have to be beyond any doubt whatsoever, 100
16:13 25 percent?

16:13 1 A. Yes.

16:13 2 Q. Getting to this third special issue, the
16:13 3 mitigation issue. In response to your -- and you are no
16:13 4 different than a lot of people I know or probably close
16:13 5 friends of mine. Regarding drugs, upbringing,
16:14 6 character, background, would it be fair to say,
16:14 7 Mr. Cummings, that you don't really consider those types
16:14 8 of things mitigation?

16:14 9 A. As the prosecution said, I consider it a reason
16:14 10 they did it, but I still don't excuse it.

16:14 11 Q. I gotcha. And you got to remember at this
16:14 12 point, we are not talking -- you've used that term a
16:14 13 couple of times. "It doesn't excuse it." If you've
16:14 14 already found somebody guilty of capital murder and you
16:14 15 are in the punishment phase, what do you mean by "it
16:14 16 doesn't excuse it"?

16:14 17 A. Well, that's --

16:14 18 Q. It doesn't excuse a life sentence that it ought
16:15 19 to be death?

16:15 20 A. No. I'm not saying that.

16:15 21 Q. Because this is very very important. You've
16:15 22 already found him guilty of capital murder. We know
16:15 23 it's life, or we know it's death.

16:15 24 A. That is correct.

16:15 25 Q. Why are you saying none of that stuff excuses

16:15 1 it? Excuses his conduct?

16:15 2 A. No. He shouldn't have killed anybody.

16:15 3 Q. I'm sorry?

16:15 4 A. He shouldn't have killed anybody, regardless,
16:15 5 as far as I'm concerned.

16:15 6 Q. I gotcha. I don't disagree with you. I'm not
16:15 7 here to disagree with you.

16:15 8 A. That's right.

16:15 9 Q. But what I'm trying to get at, to be honest, I
16:15 10 think -- I think what you are trying to tell me is,
16:15 11 those type of mitigating things aren't an issue for you.
16:15 12 You are not going to consider them a --

16:15 13 A. No.

16:15 14 Q. A human life is a human life?

16:15 15 A. I won't consider it. If he's doing drugs at
16:15 16 the time and he's bozoed out on it, there's no excuse,
16:15 17 as far as I'm concerned.

16:16 18 Q. Okay. I'm with you. I got you. I think we're
16:16 19 connecting here, and I won't disagree with you. What
16:16 20 you are telling the Judge is you can consider it, you
16:16 21 can consider -- when considering the evidence, including
16:16 22 circumstances of the offense, that's where you draw the
16:16 23 line.

16:16 24 A. I could consider it. It doesn't mean that I'm
16:16 25 going to -- to let it diminish the fact that he killed

16:16 1 somebody.
 16:16 2 Q. Gotcha. I'm with you. But as you sit there
 16:16 3 right now, character, background, those type of
 16:16 4 mitigating things: drugs, youth, if they are
 16:16 5 mitigating --

16:16 6 MS. FALCO: Your Honor.

16:16 7 Q. (BY MR. GOELLER) Well, as a fact, I will
 16:16 8 state, youth, the courts have found, is mitigating. But
 16:16 9 if some people make the argument, and Ms. Falco took
 16:16 10 great lengths to talk to you about drugs and the mama
 16:16 11 coming in, and the fact that the person is a relative,
 16:16 12 maybe, in her hypothetical, instead of the stranger and
 16:16 13 all those kind of things. As you sit there right now,
 16:16 14 your honest personal conviction is, you don't consider
 16:16 15 that type of evidence? They took a life, and that's the
 16:16 16 end of it?

16:17 17 A. That's right.

16:17 18 Q. Okay. All right. And that's okay. That's --
 16:17 19 that's why we go through this process. Okay? Because
 16:17 20 that helps me -- that helps me represent this kid. All
 16:17 21 right?

16:17 22 A. Okay.

16:17 23 Q. Because what this case or this third special
 16:17 24 issue talks about is taking into consideration those
 16:17 25 things. And as you sit there right now under oath, you

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16:17 1 are telling me, as far as you are concerned, mitigation
 16:17 2 issues, you are not going to consider because --

16:18 3 MS. FALCO: Your Honor.

16:18 4 MR. GOELLER: -- murder is murder, and he
 16:18 5 took a life.

16:18 6 MS. FALCO: Your Honor, I'm going to
 16:18 7 object if he's telling him that drugs is mitigation and
 16:18 8 he needs to consider that or anything else that's been
 16:18 9 discussed. He cannot tell this juror what is mitigating
 16:18 10 and ask him: Will you consider that as mitigating
 16:18 11 evidence? It's up to each juror to decide what is
 16:18 12 mitigating.

16:18 13 MR. GOELLER: That's absolutely right, but
 16:18 14 whether they are close to consideration of mitigating
 16:18 15 evidence, that's it. That's the threshold question.

16:18 16 MS. FALCO: And I object to him committing
 16:18 17 him to a specific set of facts by telling him drugs and
 16:18 18 the other things that he listed off. He's committing
 16:18 19 this juror to a particular set of facts and whether or
 16:18 20 not he could consider that as mitigating.

16:18 21 MR. GOELLER: And how can I when
 16:18 22 Mr. Cummings has very truthfully said, there aren't any
 16:18 23 mitigating facts or circumstances?

16:18 24 MS. FALCO: He did not say that, Your
 16:18 25 Honor. When specifically asked about drugs, he said,

16:18 1 I'd consider it, but it wouldn't excuse it.

16:18 2 THE COURT: Well, here is the thing, ask
 16:18 3 the next question. I've heard a lot, and it's fine.
 16:19 4 And I have to agree with what both of you have said, but
 16:19 5 if there's a question and an objection, then I'll be
 16:19 6 glad to hear it. Do you remember the question?

16:19 7 MR. GOELLER: Actually I don't now.

16:19 8 THE COURT: Let's try again, and then if
 16:19 9 there's an objection, then great. I'll hear the
 16:19 10 objection.

16:19 11 Q. (BY MR. GOELLER) What type of things might you
 16:19 12 think are mitigating in the context of that third
 16:19 13 special issue?

16:19 14 MS. FALCO: Again, Your Honor, I'm going
 16:19 15 to object to asking this juror to commit him to a
 16:19 16 particular set of facts of what he would think would be
 16:19 17 mitigating.

16:19 18 THE COURT: Overruled. I'll allow him to
 16:19 19 ask what he thinks might be mitigating.

16:19 20 A. To be honest with you, I had not thought about
 16:19 21 it. I really haven't thought about that.

16:20 22 Q. (BY MR. GOELLER) Okay. That's fine.

16:20 23 A. I would have to take it into consideration what
 16:20 24 was said the last time I was here was if it involved a
 16:20 25 child. Insane, I guess, then I would have to take that

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16:20 1 into consideration if that was -- here again, that falls
 16:20 2 back on the mental psychiatrists or whatever, and I'm
 16:20 3 not so sure about that.

16:20 4 Q. Okay. Okay.

16:20 5 A. Taking someone's life, I don't know that there
 16:20 6 would be any -- drugs is not going to be one of them.
 16:20 7 I'll tell you that right now.

16:21 8 Q. You use the term --

16:21 9 A. If someone went in in a robbery, instead of
 16:21 10 getting caught, decided to shoot that person so he could
 16:21 11 get away, then I have no sympathy for them.

16:21 12 Q. Okay.

16:21 13 A. I think if I got caught in a robbery, instead
 16:21 14 of taking someone's life, I'd get caught.

16:21 15 Q. What about burglary? Somebody breaks into a
 16:21 16 home in the course of committing another theft or
 16:21 17 felony, would your feelings be the same if they
 16:21 18 committed murder in that context, too?

16:21 19 A. I think so, yes.

16:21 20 Q. What about a double homicide, they killed two
 16:21 21 people?

16:21 22 A. Yeah. I don't think there would be any type
 16:21 23 of -- that would sway my judgment on that.

16:21 24 Q. Okay.

16:21 25 A. He had no right being in there to start with,

16:21 1 and then he takes somebody's life while you are in
 16:21 2 there?
 16:21 3 Q. Yeah. To get to those questions, you will
 16:21 4 actually already have resolved all those issues because
 16:21 5 you will have had to have been convinced beyond a
 16:21 6 reasonable doubt.
 16:21 7 A. Yes.
 16:21 8 Q. He entered or broke in with intent to commit a
 16:22 9 felony, and then killed two people, or just killed two
 16:22 10 people, whether it was a burglary or a robbery. Or one
 16:22 11 end, you commit a robbery and killed in the course of
 16:22 12 committing a robbery. You would have already long gone
 16:22 13 resolved all those issues before you got here. Okay?
 16:22 14 And my threshold question for you,
 16:22 15 Mr. Cummings, if I'm reading you right, and I think I
 16:22 16 understand where you are coming from. Based on -- based
 16:22 17 on these two special issues, are you really predisposed
 16:22 18 to the death penalty?
 16:22 19 A. Define your predisposed. Have I made my mind
 16:22 20 up that that's what he's going to get? No. I can't
 16:22 21 tell you that until I've seen or heard all the evidence.
 16:22 22 Q. And you've told us that you would -- you would
 16:22 23 hear evidence on that special issue, right? Because
 16:23 24 they can bring you whatever they want or rely on
 16:23 25 whatever they've already brought you at that point in

16:23 1 time, but they still have to prove that one beyond a
 16:23 2 reasonable doubt.
 16:23 3 A. Yes.
 16:23 4 Q. Now, this one down here, there is no burden of
 16:23 5 proof.
 16:23 6 A. That's correct.
 16:23 7 Q. Okay? Based on everything you've said about
 16:23 8 the no excuses, that's not an excuse. I wouldn't
 16:23 9 consider that. There's no excuses. My -- maybe my last
 16:23 10 question to you today, as my role as representing this
 16:23 11 kid, do we have an honest to God fair shot with you on
 16:23 12 that third special issue, the one that...
 16:23 13 A. I would have to say you do, yes.
 16:23 14 Q. Tell me why.
 16:23 15 A. Well, if it's -- if you get that far?
 16:23 16 Q. Uh-huh.
 16:23 17 A. If we get that far, there's -- if there's
 16:24 18 mitigating evidence, if there is lack of evidence.
 16:24 19 Okay? I can't pull the plug on him.
 16:24 20 Q. What do you mean by that?
 16:24 21 A. But drugs is not going to be one of them.
 16:24 22 Q. Okay.
 16:24 23 A. Alcohol is not going to be one of them.
 16:24 24 Q. Okay.
 16:24 25 A. It's going to have to be something else other

16:24 1 than that.
 16:24 2 Q. Okay. You said something about a lack of
 16:24 3 evidence. What did you mean? If there's a lack of
 16:24 4 evidence.
 16:24 5 A. Not -- not lack of. This one is very -- this
 16:24 6 one is hard to answer. It's not a lack of evidence.
 16:25 7 It's -- it's, I don't know that there would be anything
 16:25 8 to lessen.
 16:25 9 Q. And there are a lot of people that have that
 16:25 10 opinion. I'm not saying it's a wrong opinion. And
 16:25 11 that -- that's why I told you -- that's why I asked that
 16:25 12 question. Do we really have a fair shot because -- is
 16:25 13 there anything in your mind?
 16:25 14 A. Well, I haven't seen the evidence or any of the
 16:25 15 evidence at all. It's hard to answer that. It really
 16:25 16 is.
 16:25 17 Q. I understand.
 16:25 18 A. It's hard to answer that.
 16:25 19 THE COURT: Mr. Goeller, if you don't quit
 16:25 20 doing that, I'm going to ask you to set it down.
 16:25 21 (Counsel throws highlighter.)
 16:25 22 VENIREPERSON: But if it's going to be
 16:25 23 with drugs --
 16:25 24 THE COURT: Excuse me. Will you please
 16:25 25 step down for about five minutes?

16:25 1 VENIREPERSON: Yes, sir.
 16:25 2 (Venireperson Cummings not present.)
 16:25 3 THE COURT: Just so the record is clear, I
 16:26 4 think everybody was annoyed by the clicking of the pen.
 16:26 5 And I asked you --
 16:26 6 MR. GOELLER: I didn't know I was doing
 16:26 7 it.
 16:26 8 THE COURT: And I just want to ask you,
 16:26 9 what you did with the pen --
 16:26 10 MR. GOELLER: I'm sorry, Judge.
 16:26 11 THE COURT: What did you do with the pen?
 16:26 12 MR. GOELLER: I suppose you mean this
 16:26 13 highlighter?
 16:26 14 THE COURT: Yeah, if it's a highlighter.
 16:26 15 MR. GOELLER: I threw it over on my desk.
 16:26 16 THE COURT: Okay. What's happening to
 16:26 17 decorum? Okay. I know these things are difficult to
 16:26 18 do, and I don't want to interrupt your -- I don't want
 16:26 19 to interrupt your examination of the witness, but just
 16:26 20 calm down and relax. Let's bring him back in. But if I
 16:26 21 ask you to do something that's annoying to the court
 16:26 22 reporter and other people, just relax and put your
 16:26 23 highlighter down. Okay?
 16:26 24 MR. GOELLER: Yes, sir. I didn't know it
 16:26 25 was annoying anybody.

16:26 1 THE COURT: Yeah. Yeah, it does. And if
16:26 2 somebody else was doing it, you would probably notice
16:26 3 it. So, everybody ready to start up again?

16:27 4 MR. HIGH: Yes, sir.

16:27 5 THE COURT: All right. Let's bring the
16:27 6 witness back. Let's see if we can finish up.

16:27 7 (Venireperson Cummings present.)

16:27 8 THE COURT: All right. Let's be seated.
16:27 9 You are still under oath. Everybody be seated.

16:27 10 Q. (BY MR. GOELLER) Could I have the court
16:27 11 reporter read back my last question or the last answer
16:27 12 by the witness.

16:27 13 THE COURT: Yes, sir. If you will read
16:27 14 back the last few sentences--let's put it that way-- so
16:27 15 we can get a sense for where we are.

16:25 16 THE REPORTER: "QUESTION: And there are a
16:25 17 lot of people that have that opinion. I'm not saying
16:25 18 it's a wrong opinion. And that -- that's why I told
16:25 19 you -- that's why I asked that question. Do we really
16:25 20 have a fair shot because is there anything in your mind?"

16:25 21 "ANSWER: Well, I haven't seen the
16:25 22 evidence or any of the evidence at all. It's hard to
16:25 23 answer that. It really is.

16:25 24 "QUESTION: I understand.

16:25 25 "ANSWER: It's hard to answer that."

16:28 1 Q. (BY MR. GOELLER) Do you see my dilemma?

16:28 2 A. Yes.

16:28 3 Q. And as you sit there right now, you can't think
16:28 4 of anything that would excuse or lessen, and I can't sit
16:28 5 there and force you to think of anything. But if you
16:28 6 got on this jury and it turns out you wouldn't
16:28 7 consider -- wouldn't even consider, I can't force you to
16:28 8 say, would you consider this as mitigating and in favor
16:28 9 of my client? I'm not allowed to do that. But if you
16:28 10 got on the jury, and you said to yourself, you know,
16:28 11 towards the end of the trial, there's really nothing I
16:29 12 would ever consider mitigating.

16:29 13 A. Oh, no, no, no. I think I see what you are
16:29 14 after now. I think you are wrong. Would I consider
16:29 15 whatever is presented to me? Would I consider it? Yes,
16:29 16 I will consider everything that is presented to me.

16:29 17 Q. Okay.

16:29 18 A. I have no problem with that.

16:29 19 Q. Well, you've already told me, you wouldn't
16:29 20 consider several things.

16:29 21 A. Drugs and alcohol, I will not, no.

16:29 22 Q. Anything else that you know you would not
16:29 23 consider?

16:29 24 A. I can't think of any offhand.

16:29 25 Q. I think you said youth. That's one. I think

16:29 1 you told Ms. Falco, you wouldn't consider youth.

16:29 2 A. I think I was a little confused on that.

16:29 3 Q. All right.

16:29 4 A. Turned around.

16:29 5 MS. FALCO: I asked if it mattered.

16:29 6 Q. (BY MR. GOELLER) You are right. You didn't
16:29 7 actually say that to her. But I think I understand
16:29 8 where you are going with that. Again, does that kind of
16:29 9 figure in with drugs and alcohol? Youth is not an
16:29 10 excuse and you are not going to consider that?

16:29 11 A. Right.

16:29 12 Q. Okay. Okay. The fact that, and Ms. Falco
16:30 13 talked to you about the fact of maybe relatives like the
16:30 14 mother testifying or something of that nature. Would
16:30 15 that -- how do you receive that kind of testimony? In
16:30 16 fact, it may have already been asked and answered.

16:30 17 THE COURT: Excuse me, Mr. Goeller, I'm
16:30 18 going to ask that you be seated, unless you need the
16:30 19 boards.

16:30 20 Q. (BY MR. GOELLER) How would you receive that
16:30 21 kind of testimony again?

16:30 22 A. How would I perceive it?

16:30 23 Q. Receive it?

16:30 24 A. Like I told them again, I would feel bad for
16:30 25 her. I really would, but I'd still have a job to do.

16:31 1 Q. On that third special issue, the one on the
16:31 2 bottom there, read down with me. "Whether taking into
16:31 3 consideration all the evidence including the
16:31 4 circumstances of the offense, the defendant's character
16:31 5 and background." See that phrase, the defendant's
16:31 6 character and background?

16:31 7 A. Uh-huh.

16:31 8 Q. Would that figure in at all in your decision
16:31 9 making?

16:31 10 A. Again, I'd have to see it. I don't know
16:31 11 Mr. Cantu. I don't know what he was like 10 years ago,
16:31 12 5 years ago, 4 years ago. I don't know.

16:31 13 Q. Okay. How about in the next phrase, in the
16:31 14 personal moral culpability. What does that mean to you?

16:31 15 A. His moral character.

16:31 16 Q. Okay.

16:31 17 A. There again, I don't know.

16:31 18 Q. In your questionnaire you -- this is the one I
16:31 19 want to talk to you about. You talked about one of the
16:32 20 biggest problems in the criminal justice system is the
16:32 21 lack of interest by the court-appointed attorneys.

16:32 22 A. (Laughing) I was afraid you were going to
16:32 23 bring that up.

16:32 24 Q. Do you see why I am?

16:32 25 A. I see why you are bringing it up. And I don't

16:32 1 know if you are court appointed or not, and that's none
 16:32 2 of my business.
 16:32 3 Q. I am, and so is he. It's not a laughing matter
 16:32 4 to me.
 16:32 5 A. I'm not taking -- I'm not pointing an attorney
 16:32 6 out. I'm just hearing what I hear off the news
 16:32 7 channels, things, attorneys going to sleep. One of them
 16:32 8 come in; I think he was intoxicated.
 16:32 9 MR. SCHULTZ: Oh, no.
 16:32 10 MR. GOELLER: Good Lord.
 16:32 11 A. Things like that. That's not very good.
 16:32 12 Q. No. Let's hope you'd say that. Criminal
 16:32 13 defense attorneys are to prove innocence. What did you
 16:32 14 mean by that?
 16:32 15 A. Well, you're defending him. Okay?
 16:33 16 Q. Uh-huh.
 16:33 17 A. And here, again, it is up to the prosecution to
 16:33 18 present their case, and you are here to defend him. So
 16:33 19 in a way you are having to prove his innocence without
 16:33 20 really saying a whole lot.
 16:33 21 Q. And that's the way you honestly feel?
 16:33 22 A. Yes.
 16:33 23 Q. Because you wouldn't -- you wouldn't state
 16:33 24 anything unless you really felt it, especially since you
 16:33 25 are under oath today?

16:33 1 A. No.
 16:33 2 Q. And I think you are consistent in your answers
 16:33 3 because you state: If someone is accused of capital
 16:33 4 murder, he should have to prove his innocence. And you
 16:33 5 kind of chose the middle-of-the-road answer there,
 16:33 6 "uncertain." Right?
 16:33 7 A. Right. And here again, some of these things
 16:33 8 that you are asking is, I wasn't even aware that it
 16:33 9 existed. So some of those answers is unsure.
 16:34 10 MR. GOELLER: I'll pass the witness,
 16:34 11 Judge.
 16:34 12 THE COURT: All right.
 16:34 13 VOIR DIRE EXAMINATION
 16:34 14 BY MS. FALCO:
 16:34 15 Q. Mr. Cummings, when you filled out this
 16:34 16 questionnaire, obviously that was one of the first
 16:34 17 things you did, and that was before either lawyer talked
 16:34 18 and explained the law to you. Is that fair to say?
 16:34 19 A. Yes.
 16:34 20 Q. And with regard to that, when you filled out
 16:34 21 the questionnaire and you were asked: A defendant is
 16:35 22 innocent unless proven guilty beyond a reasonable doubt,
 16:35 23 and you put you agree?
 16:35 24 A. Yes.
 16:35 25 Q. Because you agree with that concept?

16:35 1 A. Yes.
 16:35 2 Q. And when asked if a person is brought to trial
 16:35 3 on murder charges, that person is probably guilty. You
 16:35 4 said, "disagree"?
 16:35 5 A. Well, if he's brought -- if he's brought up on
 16:35 6 murder charges, I don't know that yet.
 16:35 7 Q. Well, he is still innocent.
 16:35 8 A. He is still innocent.
 16:35 9 Q. Until proven guilty.
 16:35 10 A. Yes.
 16:35 11 Q. With regard to the burden of proof, I mean, as
 16:35 12 I explained to you what the law is, and the burden is on
 16:35 13 us. And the defense has absolutely no burden?
 16:35 14 A. That's correct. I understand now.
 16:35 15 Q. They don't have to prove to you anything.
 16:35 16 A. Right.
 16:35 17 Q. They can just sit there the entire trial and
 16:35 18 not say a single word, and that's okay.
 16:35 19 A. Right.
 16:35 20 Q. And if you were instructed that the only burden
 16:35 21 of proof is upon the State, the defense never has a
 16:35 22 burden to prove anything including innocence, could you
 16:35 23 follow that law?
 16:35 24 A. Yes.
 16:35 25 Q. Do you have any problem following that law?

16:35 1 A. No.
 16:35 2 Q. Now, when we're talking about the burden of
 16:36 3 proof, that's beyond a reasonable doubt. And we've been
 16:36 4 talking about beyond a reasonable doubt.
 16:36 5 A. Yes.
 16:36 6 Q. And right now in our law there's no definition.
 16:36 7 So we can't give you a definition, but it's not saying
 16:36 8 beyond a shadow of a doubt. It's not saying beyond all
 16:36 9 doubt. It's saying beyond a reasonable doubt. An
 16:36 10 example of that would be, you drove here today; is that
 16:36 11 correct?
 16:36 12 A. Yes.
 16:36 13 Q. Obviously not in a Ford truck, but you drove
 16:36 14 here today?
 16:36 15 A. Yes.
 16:36 16 Q. Are you a hundred percent sure your car is
 16:36 17 still in the parking lot?
 16:36 18 A. No, I'm not.
 16:36 19 Q. But when you leave here today, you are going to
 16:36 20 go right to where you parked that car?
 16:36 21 A. My keys are going to be in my pocket, yes.
 16:36 22 Q. And you are going to go to where you parked
 16:36 23 your car?
 16:36 24 A. Yes, right.
 16:36 25 Q. You might have a doubt that your car is not

16:36 1 there, but it's not a reasonable doubt that your car is
16:36 2 not there?

16:36 3 A. Right.

16:36 4 Q. So you can understand how you could have a
16:36 5 doubt. It's not a reasonable doubt?

16:36 6 A. Yes.

16:36 7 Q. But you still feel confident enough to walk out
16:36 8 to that parking spot where you parked your truck and be
16:36 9 sure your truck's there?

16:36 10 A. Yes.

16:36 11 Q. So you understand when we said beyond a
16:36 12 reasonable doubt, that's our burden, and it's not more
16:37 13 than that. It's not beyond all doubt. It's not beyond
16:37 14 a shadow of a doubt. You understand that?

16:37 15 A. Yes.

16:37 16 Q. Okay. So if the Court instructed you that our
16:37 17 burden is beyond a reasonable doubt, could you follow
16:37 18 that?

16:37 19 A. Yes.

16:37 20 Q. And you are not going to increase our burden by
16:37 21 saying we have to prove to you more; we've got to prove
16:37 22 to you beyond all doubt. You would be okay with
16:37 23 following the law saying, as long as they prove to me
16:37 24 beyond a reasonable doubt?

16:37 25 A. Reasonable doubt, yes.

16:37 1 Q. Uh-huh. Now, when we're talking about that
16:37 2 mitigation question, that one on the bottom there, I
16:37 3 mean, bottom line, and it gets back to what I was
16:37 4 talking to you about earlier. Can you listen to all of
16:37 5 the evidence, all the evidence presented regarding
16:37 6 defendant's background, if any. All the evidence
16:37 7 regarding a defendant's character, if any. All the
16:37 8 evidence regarding the circumstances of the offense.
16:37 9 Listen to all that and decide if there is sufficient
16:37 10 mitigating evidence to warrant a life sentence?

16:37 11 A. Yes. I can listen to it, yes.

16:38 12 Q. And you'd listen to everything presented?

16:38 13 A. Yes.

16:38 14 Q. And as we talked about earlier, there's a whole
16:38 15 lot of scenarios. And I think you even mentioned
16:38 16 something about you were referring back to Tuesday to
16:38 17 the situation about a child. And I assumed, a
16:38 18 hypothetical given by Mr. Schultz, I assume you were
16:38 19 talking about the parent whose child's killer gets off?

16:38 20 A. Yes, yes. That's what I was.

16:38 21 Q. That's what you were referring to?

16:38 22 A. Yes.

16:38 23 Q. There's all kind of situations that someone
16:38 24 could be found guilty of capital murder?

16:38 25 A. Yes.

16:38 1 Q. And are you still telling me that, and when you
16:38 2 get to that last question, you can envision a situation
16:38 3 where you could look at all the evidence and find
16:38 4 sufficient mitigating evidence to warrant a life
16:38 5 sentence answering that question yes?

16:38 6 A. To warrant a life sentence?

16:38 7 Q. Yes.

16:38 8 A. Yes.

16:38 9 Q. And the same regard, you are willing to listen
16:38 10 to all the evidence. You can envision a circumstance in
16:39 11 your head that you could listen to all of the evidence
16:39 12 and find no -- there's not sufficient mitigating
16:39 13 evidence, and that ought to be a death sentence?

16:39 14 A. Yes.

16:39 15 Q. Are you open to the idea of mitigating
16:39 16 evidence? Are you willing to listen to anything that
16:39 17 might be mitigating?

16:39 18 A. I'm willing to listen to it, yes.

16:39 19 Q. And you are open to that idea?

16:39 20 A. Yes.

16:39 21 Q. And your mind is not so made up, one way or
16:39 22 another, that you are not going to try to answer those
16:39 23 questions to achieve a result you want? If you want him
16:39 24 to get life, you are just going to answer them
16:39 25 regardless of what the evidence shows? Or if you want

16:39 1 him to get death, you're just going to answer them in a
16:39 2 way that gets death without regard to what the evidence
16:39 3 shows?

16:39 4 A. I hope not, no.

16:39 5 Q. And if the law instructed you not to do that,
16:39 6 you could follow that?

16:39 7 A. Yes.

16:39 8 MS. FALCO: Thank you, Mr. Cummings. We
16:39 9 pass this juror.

16:39 10 THE COURT: Mr. Goeller?

16:39 11 VOIR DIRE EXAMINATION

16:39 12 BY MR. GOELLER:

16:39 13 Q. What was the scenario that you envisioned in
16:40 14 your head where you would give life?

16:40 15 MS. FALCO: Your Honor, I'm going to
16:40 16 object to him committing the juror to a particular set
16:40 17 of facts.

16:40 18 MR. GOELLER: Wait a minute. Well, I'm
16:40 19 sorry.

16:40 20 THE COURT: Do you want to get any
16:40 21 response?

16:40 22 MR. GOELLER: Are you done? I thought I
16:40 23 may have interrupted you. She asked this juror: Could
16:40 24 he give life? Could he envision a situation in which he
16:40 25 gave life? I'm certainly entitled to test that now.

16:40 1 I'm not locking him in. I'm not committing it to him.
 16:40 2 That's a follow-up question on hers. If it's out there,
 16:40 3 I want to hear what it is. I'm not committing him.

16:40 4 THE COURT: All right. I'll overrule.

16:40 5 A. I don't have a vision. I have to see evidence
 16:40 6 first.

16:40 7 Q. (BY MR. GOELLER) I understand that, sir. You
 16:40 8 just told Ms. Falco that, could you envision a situation
 16:40 9 in your head where you would answer that third special
 16:40 10 issue so as a life sentence would come about? And your
 16:40 11 answer to her under oath was "yes."

16:41 12 My question to you is: What was it? What
 16:41 13 did you think about or see in your head or think up of
 16:41 14 where you would give a life?

16:41 15 A. I think the word envision was not used right.
 16:41 16 I don't have an envision of what I would give him life
 16:41 17 or death with because I don't know.

16:41 18 Q. All right. Well, well, I understand.

16:41 19 A. You're trying to put something in my head
 16:41 20 that's not here.

16:41 21 Q. All right. What did you think she meant when
 16:41 22 she said --

16:41 23 A. Can I take into consideration the evidence
 16:41 24 presented to me that would get -- warrant him a life
 16:41 25 sentence or a death sentence? Yes. I can take in the

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16:41 1 evidence, whichever it might be.

16:41 2 THE COURT: In your opinion. Let me ask
 16:41 3 you a question.

16:41 4 A. Now, from what I'm reading, you are wanting me
 16:42 5 to tell you, yes, I'm going to nail him.

16:42 6 THE COURT: Let me ask you a question.

16:42 7 VENIREPERSON: Yes, sir.

16:42 8 THE COURT: Do you see any lack of
 16:42 9 interest by any attorneys here today?

16:42 10 VENIREPERSON: Lack of interest?

16:42 11 THE COURT: Yes.

16:42 12 VENIREPERSON: No. No, sir, not really.

16:42 13 THE COURT: Everybody seems to be pretty
 16:42 14 interested, right?

16:42 15 VENIREPERSON: I think so, yes, sir.

16:42 16 THE COURT: I think so, too. All right.

16:42 17 Do you have any other questions?

16:42 18 Q. (BY MR. GOELLER) To you what is the
 16:42 19 difference -- Ms. Falco phrased all of her questions in
 16:42 20 the terms of listen. Would you listen? Would you
 16:42 21 listen? Would you listen?

16:42 22 A. Yeah.

16:42 23 Q. And you were yes, yes, yes, yes.

16:42 24 A. Yes.

16:42 25 Q. What's the difference to you between listen and

16:42 1 consider?

16:42 2 A. Listen means that you are going to take in
 16:42 3 whatever is said to you.

16:42 4 Q. Uh-huh.

16:42 5 A. Consider, you are going to consider whatever it
 16:42 6 might be. If it's a question, you are going to consider
 16:42 7 answering that question, yes or no.

16:42 8 Q. What else would you consider in answering those
 16:43 9 questions?

16:43 10 A. I'm not following your -- your line of
 16:43 11 questioning here. I'm really not. I'm sorry.

16:43 12 Q. That's okay. That's okay. You and I may not
 16:43 13 be connecting. Okay? But once again, when Ms. Falco's
 16:43 14 asking you questions about the situation, you could
 16:43 15 envision when you give your life as your answer. To
 16:43 16 this Judge now, you weren't thinking of a situation.
 16:43 17 You hadn't thought of a situation. And to date, and to
 16:43 18 the minute right now, there is no situation that you
 16:43 19 could think of; is that correct?

16:43 20 A. Not without seeing the evidence.

16:43 21 Q. Okay. All right.

16:43 22 MR. GOELLER: That's all I have, Judge.

16:43 23 THE COURT: Anything else?

16:43 24 MS. FALCO: No, Your Honor.

16:43 25 THE COURT: You may step down for a

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16:43 1 moment, and I'll call you back in just a minute.

16:43 2 (Venireperson Cummings not present.)

16:44 3 MR. GOELLER: Judge, may I proceed on a
 16:44 4 challenge for cause?

16:44 5 THE COURT: Yes.

16:44 6 MR. GOELLER: Your Honor, comes now, Ivan
 16:44 7 Abner Cantu, and moves the Court to grant the
 16:44 8 defendant's challenge for cause against Juror Cummings,
 16:44 9 No. 42, Juror Cummings. My first ground, Your Honor,
 16:44 10 very clear from his testimony that the word probability
 16:44 11 means possibility.

16:44 12 I'd cite to the Court, *Patrick v. State*,
 16:44 13 *906 S.W.2d 481, Texas Court of Criminal Appeals*. The
 16:44 14 Court held the prospective juror unable to distinguish
 16:44 15 between probability and possibility is disqualified.

16:44 16 Second case along those same lines, Judge,
 16:44 17 *Hughes v. State, 878 S.W.2d 142, also Texas Court of*
 16:45 18 *Criminal Appeals 93*. Trial court abused its discretion
 16:45 19 in denying defendant's challenge for cause to the
 16:45 20 venireperson who believed probability was the same as
 16:45 21 possibility. That's my -- Your Honor, that's my grounds
 16:45 22 for my first challenge for cause.

16:45 23 My second grounds for my challenge for
 16:45 24 cause is that this juror has a bias or prejudice against
 16:45 25 the phase of the law which we are entitled to rely on.

16:45 1 We were entitled to rely on a juror who can fairly
16:45 2 consider special issue No. 3.

16:45 3 I think when you -- he was obviously going
16:45 4 to tell Ms. Falco, yeah, he could listen. He could
16:45 5 listen, he could listen, consider. But what he spent
16:45 6 most of his time, back -- I would say during Gail's voir
16:45 7 dire on really the guilt or innocence issues, drugs,
16:46 8 he's not going to consider it. He's not going to
16:46 9 consider youth. He's not going to consider bad
16:46 10 upbringing. He's really biased against mitigation
16:46 11 evidence, Judge.

16:46 12 And I think that the key to all of this
16:46 13 challenge on that ground is when Ms. Falco clearly asked
16:46 14 them could you -- can you envision a situation in your
16:46 15 head where you would answer that third special issue,
16:46 16 no, and return a life sentence? He didn't hesitate.
16:46 17 Judge, it was, oh, yes.

16:46 18 But when I asked him, oh, really? What
16:46 19 was it? Then the truth came out. He couldn't, he
16:46 20 wouldn't, and he won't.

16:46 21 So, my third challenge for cause is that
16:46 22 he has placed an unreasonable burden of proof upon the
16:47 23 State of Texas. He would cause them to prove 100
16:47 24 percent beyond any doubt whatsoever, and that's not
16:47 25 right to the State.

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16:47 1 And I'm being a little coy, Judge, but
16:47 2 I'll tell you, the case law says they can object when a
16:47 3 juror is in bias of my favor, as far as the burden of
16:47 4 proof goes. And obviously, I could object to theirs,
16:47 5 too. So, obviously the first two are my main ones. The
16:47 6 third one is though, he's placed an unreasonable burden
16:47 7 of proof upon the State.

16:47 8 THE COURT: Okay. Would you talk about
16:47 9 probability and possibility?

16:47 10 MS. FALCO: Your Honor, actually at this
16:47 11 point, we'd ask for Mr. Cummings to be brought back in
16:47 12 to clear that up. And when we were redirecting him, we
16:47 13 weren't aware that was a challenge that they were going
16:47 14 to make. And we ask for an opportunity to clear that up
16:47 15 with Mr. Cummings.

16:47 16 THE COURT: All right. Let's bring him
16:48 17 back in.

16:48 18 THE BAILIFF: Yes, Your Honor.

16:48 19 (Venireperson Cummings present.)

16:48 20 THE COURT: Mr. Cummings, you are back for
16:48 21 another round. I just want to remind you that you are
16:48 22 under oath as you always have been. Ms. Falco?

VOIR DIRE EXAMINATION

16:48 24 BY MS. FALCO:

16:48 25 Q. Thank you, Mr. Cummings. I just have a couple

16:48 1 more questions for you to clear something up, so you
16:48 2 don't feel like a ping-pong ball.

16:48 3 A. All right.

16:48 4 Q. When Mr. Goeller was talking to you, getting
16:48 5 back on that question up at the top, the probability.

16:48 6 A. Yes.

16:48 7 Q. And he was asking you about possibility. In
16:48 8 your mind is that the same? Now, you and I talked about
16:48 9 certainty and probability. And when I kind of explained
16:48 10 to you there might be a difference, you understood that?

16:48 11 A. Yes.

16:48 12 Q. Now, with regard to possibility and probability
16:48 13 and, I guess, would you agree with me that it's possible
16:48 14 that it could snow tonight here in Dallas, Texas, in the
16:49 15 middle of August? If the conditions were right, it's
16:49 16 possible?

16:49 17 A. Yes.

16:49 18 Q. Anything is possible?

16:49 19 A. Yes.

16:49 20 Q. Is it probable? No?

16:49 21 A. Probably not.

16:49 22 Q. Do you understand how something might be
16:49 23 possible, but not probable?

16:49 24 A. Right.

16:49 25 Q. So in your mind, looking at that question, is

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16:49 1 it possible looking at criminal acts of violence? Is
16:49 2 that the same as it's probable that he's going to commit
16:49 3 criminal acts of violence? I mean, you understand the
16:49 4 difference of probable being a higher degree than
16:49 5 possible?

16:49 6 A. In -- yes, as you put it, yes, now. Yes.

16:49 7 Q. You understand that difference?

16:49 8 A. Yes.

16:49 9 Q. And if the question asked is it probable, can
16:49 10 you follow that as opposed to possible?

16:49 11 A. I think so, yes.

16:49 12 Q. And now that it's been explained to you, do you
16:49 13 understand the difference?

16:50 14 A. Yes.

16:50 15 Q. And do they mean different things in the
16:50 16 context of that question?

16:50 17 A. Yes.

16:50 18 MS. FALCO: That's all I have, Your Honor.

16:50 19 MR. GOELLER: Just a few questions.

16:50 20 THE COURT: Yes.

VOIR DIRE EXAMINATION

16:50 22 BY MR. GOELLER:

16:50 23 Q. Mr. Cummings?

16:50 24 A. Yes.

16:50 25 Q. Before, when I was asking you questions --

16:50 1 actually the first time when you were asked to define
16:50 2 probability, you used the word might. Do you recall
16:50 3 that? M-I-G-H-T, might?

16:50 4 A. Yes.

16:50 5 Q. Okay. And then when I asked you what you
16:50 6 thought it meant, you thought it was equivalent to
16:50 7 possible, correct?

16:50 8 A. Uh-huh.

16:50 9 Q. Is that still your testimony? Possible and
16:50 10 might? Is that what you are telling the Judge?

16:50 11 A. Well, in the context that she explained it,
16:50 12 it -- it clarified possible and probable.

16:50 13 Q. So what do you think it means now?

16:51 14 A. Well, it's possible it could, and I don't know
16:51 15 if it's probable or not because I haven't seen his
16:51 16 background.

16:51 17 Q. Well, you are still -- you just used the word
16:51 18 possible again. What it really means to you is
16:51 19 possible?

16:51 20 A. Right.

16:51 21 MR. GOELLER: Okay. Thank you, sir.
16:51 22 That's all I have. I renew my challenge.

16:51 23 VOIR DIRE EXAMINATION

16:51 24 BY MS. FALCO:

16:51 25 Q. Just briefly, Mr. Cummings, if the question

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16:51 1 states probable -- and that's the standard. We have to
16:51 2 prove to you beyond a reasonable doubt that probable.
16:51 3 When I very first asked you about that question, you
16:51 4 said that means might to you?

16:51 5 A. Right.

16:51 6 Q. Is that the standard that you are going to use?
16:51 7 That's the law, probable. And whatever that means to
16:51 8 you, and you told me that means might. Is that the
16:51 9 standard you are going to use, or are you going to use
16:51 10 possible, which is lesser? You understand there's a
16:51 11 difference?

16:51 12 A. I understand there's a difference, but --

16:52 13 Q. And understanding that there is a difference,
16:52 14 if the law states probable, which you first told me in
16:52 15 your mind means might?

16:52 16 A. Yeah. I'm going to stick with the might,
16:52 17 whether that he might or not.

16:52 18 Q. Okay. And you understand the distinction
16:52 19 between possible and probable?

16:52 20 A. Right, right.

16:52 21 Q. And in your mind, now that the distinction has
16:52 22 been made, is probable greater to you than possible, a
16:52 23 greater likelihood than possible?

16:52 24 A. Yes.

16:52 25 MS. FALCO: Pass this juror.

VOIR DIRE EXAMINATION

16:52 1
16:52 2 BY MR. GOELLER:

16:52 3 Q. Mr. Cummings, what distinction was made to you
16:52 4 that is causing you to go back and forth on this issue?

16:52 5 A. Probability in my mind is that he -- is might.

16:53 6 Q. Okay. Okay.

16:53 7 A. In my mind. Probable is might.

16:53 8 Q. All right. All right. I agree with you. I
16:53 9 got to tell you something, Mr. Cummings. It's been a
16:53 10 long day for me. I'm punchy.

16:53 11 A. So am I.

16:53 12 Q. I have a -- I apologize for some of my tone
16:53 13 with you. I just realized that I have been kind of
16:53 14 attacking you a little. It's nothing personal. I'm --
16:53 15 I'm about at the end of my rope right now.

16:53 16 THE COURT: Shows no lack of interest from
16:53 17 the attorneys in this case, is there?

16:53 18 VENIREPERSON: No. I want to go back on
16:53 19 that, Your Honor, because I put that down from what I've
16:53 20 seen and heard so far.

16:53 21 MR. GOELLER: You're right.

16:53 22 VENIREPERSON: I'm not saying that every
16:53 23 attorney is an alcoholic or doesn't pay attention.

16:53 24 MR. SCHULTZ: Not so fast.

16:53 25 MR. GOELLER: I know.

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16:53 1 Q. (BY MR. GOELLER) I think we can -- I mean, I
16:54 2 guess the only question I'd have for you, when you use
16:54 3 the word might, and you are going to think that I'm
16:54 4 just -- what is this guy trying to do? Does might mean
16:54 5 possible to you? Could you --

16:54 6 A. Okay. Here it comes. Anything is possible.

16:54 7 Q. Right.

16:54 8 A. Okay? And there's a possibility that he might.

16:54 9 Q. Okay.

16:54 10 A. But there's also -- it's probable, too. So I
16:54 11 know where you are trying to come from. Is Danny
16:54 12 Cummings going to give Mr. Cantu a fair shake? Yes, I'm
16:54 13 going to listen to everything if I'm selected. But I
16:54 14 can't -- I can't tell you what that fair shake is going
16:54 15 to be without hearing anything.

16:54 16 Q. Gotcha. But your -- how you view the word
16:54 17 probability is the word "might"?

16:54 18 A. Yes.

16:54 19 Q. Okay. Okay. All right, sir. That's fair
16:55 20 enough. Thank you, sir.

16:55 21 MS. FALCO: No further questions, Your
16:55 22 Honor.

16:55 23 THE COURT: All right. Let me ask you to
16:55 24 step down one more time, and we'll probably get right
16:55 25 back to you in the next few minutes.

16:55 1 MR. GOELLER: Probably, but possibly you
 16:55 2 might be back or you might --
 16:55 3 (Venireperson Cummings not present.)
 16:55 4 THE COURT: I suppose you will renew your
 16:55 5 challenge?
 16:55 6 MR. GOELLER: Absolutely.
 16:55 7 THE COURT: Do you have anything to add
 16:55 8 that you haven't said before?
 16:55 9 MR. GOELLER: Nothing other than I think
 16:55 10 the Court, when we look -- we look at that case law and
 16:55 11 probability versus possibility and we throw in the word
 16:55 12 might, I think might is much more akin. He might be --
 16:55 13 in fact, why wouldn't they have used that word? Might
 16:55 14 he be a future danger? No. The legislature didn't
 16:55 15 choose that. Certainly we've got to try.
 16:55 16 I think the trial court has got to try to
 16:55 17 figure out what he meant by that. And I think I'm on --
 16:56 18 I think I'm right when I tell the Court he is still
 16:56 19 equating *might* with *possibly*. I don't think the State
 16:56 20 rehabilitated him on that, and this is -- this is a man
 16:56 21 that has some education. He's got a degree, Judge. I
 16:56 22 don't know.
 16:56 23 THE COURT: I don't think he does. I
 16:56 24 think he's high school, isn't he?
 16:56 25 MS. FALCO: Yes, sir, he is.

16:56 1 MR. GOELLER: He doesn't have applied in
 16:56 2 AA or something?
 16:56 3 THE COURT: No. He works with computers.
 16:56 4 He's -- yes, he went to 12th grade.
 16:56 5 MR. GOELLER: Well, I'm sorry.
 16:56 6 THE COURT: Yeah.
 16:56 7 MR. GOELLER: But still, I think that
 16:56 8 threshold is so low on probability. I mean, I can't --
 16:56 9 I don't think anybody wants to have a juror in here if
 16:56 10 the State's got to prove he might. He might. That's so
 16:56 11 far from probability, Judge.
 16:56 12 And, therefore, I think those two cases I
 16:56 13 cited to you are correct on it in asking you to grant my
 16:56 14 challenge for cause, in addition to the other reasons I
 16:56 15 have previously stated, Your Honor.
 16:56 16 THE COURT: Any other word from the State?
 16:57 17 MS. FALCO: Your Honor, he did understand
 16:57 18 that there was a difference between possibility and
 16:57 19 probability. And he can't be challenged for cause
 16:57 20 because of the definition that he gives for probability
 16:57 21 which in his mind is might.
 16:57 22 He understands there is a difference, and
 16:57 23 he understands that probability is greater than
 16:57 24 possibility. And I think that's all the case law
 16:57 25 requires for him to be qualified.

16:57 1 And with regard to the mitigation
 16:57 2 evidence, he clearly said he would keep an open mind.
 16:57 3 He's not closed-minded to hearing mitigation or hearing
 16:57 4 mitigating evidence. And, yes, he could render life or
 16:57 5 he could render death based on the evidence, and that's
 16:57 6 what he would base the decision on. He could follow the
 16:57 7 law and listen to the evidence and make his decision.
 16:57 8 And with regard to burden of proof upon
 16:57 9 the State, I clarified what that meant. And once I
 16:57 10 clarified that, he said he could follow the law and say
 16:57 11 beyond a reasonable doubt and not hold us to a higher
 16:57 12 burden of proof. So we oppose their challenge for
 16:57 13 cause, Your Honor.
 16:57 14 MR. GOELLER: My final word on my
 16:57 15 challenge, Judge -- is that proper?
 16:57 16 THE COURT: Yes. I'll let both sides
 16:57 17 continue until they run out.
 16:58 18 MR. GOELLER: I suppose, Judge, if
 16:58 19 Ms. Falco got him back on redirect, or re --
 16:58 20 rehabilitation, she would have got him to say whatever
 16:58 21 she would want of him. And I would have got him back,
 16:58 22 and he would have been might, possible. And he would
 16:58 23 have gone back and forth. I think he is clearly your
 16:58 24 vacillating juror under Young and under Perillo.
 16:58 25 And, again, he's the kind of guy that is

16:58 1 going to tell somebody what they want to hear. And
 16:58 2 it's -- I think in this case -- well, the Court knows my
 16:58 3 case. That's all I have, Judge. Thank you.
 16:58 4 THE COURT: Let me tell you what I think.
 16:58 5 I think the terms possible and probable, you never have
 16:58 6 them defined if they were in a charge because the
 16:58 7 meanings are so self-evident. And I think the average
 16:58 8 10th grader can tell you the difference between
 16:58 9 something that is possible and something that is
 16:58 10 probable. I think the average 6th grader can tell you
 16:59 11 that there is something between possible and probable.
 16:59 12 I tell you what I will do, you said, 906 S.W. 2d 481?
 16:59 13 MS. FALCO: Your Honor, I have that case
 16:59 14 in my hand.
 16:59 15 THE COURT: Let me see it.
 16:59 16 MS. FALCO: The only thing it stands for
 16:59 17 is as to possibility and probability, that a juror never
 16:59 18 indicated she observed a distinction. You don't attach
 16:59 19 any particular definition. Just the juror did not
 16:59 20 observe a distinction. And that's different from our
 16:59 21 case, from Mr. Cummings actually observed a distinction.
 16:59 22 THE COURT: You know something, too, I
 16:59 23 think if a juror genuinely were not able to recognize
 16:59 24 the distinction, they probably would be so numb that
 16:59 25 they probably wouldn't have any business on a jury. Let

16:59 1 me take a look here. Let's see. All right. I tell you
17:00 2 what, I'll deny the challenge for cause.

17:00 3 MR. GOELLER: Judge, you read -- what was
17:01 4 that case?

17:01 5 THE COURT: The one that I read was
17:01 6 Patrick. Yeah, 906 S.W. 2d 481. You had another one.
17:01 7 You can give me 878 and 142.

17:01 8 MR. SCHULTZ: Is that Hughes?

17:01 9 THE COURT: Yeah.

17:01 10 MR. SCHULTZ: We're looking. We don't
17:01 11 exactly see it's on point.

17:01 12 THE COURT: Could I see whatever materials
17:01 13 you've got there? And I'll just --

17:01 14 MR. GOELLER: (Complying.)

17:01 15 THE COURT: I tell you what, Hughes is a
17:01 16 1993 case, and this is from a seminar that was given in
17:01 17 Harris County. And it cites Hughes for the proposition,
17:01 18 and that's 878 S.W.2d 142. It cites Hughes for the
17:01 19 proposition, but it doesn't -- yeah, it does. It does
17:01 20 cite Hughes at 148.

17:01 21 "The Trial Court abuses its discretion
17:02 22 in denying defendant's challenge for cause to a
17:02 23 venireperson who believed that probability meant no
17:02 24 more than possibility."

17:02 25 Okay. Anything else from either side?

17:02 1 MR. SCHULTZ: The juror is acceptable to
17:02 2 the State, Judge.

17:02 3 THE COURT: Yeah. And I'll deny the
17:02 4 challenge for cause. Do you need to think about it?

17:03 5 MR. GOELLER: Judge, we'll exercise
17:03 6 peremptory strike No. 5.

17:03 7 THE COURT: This is as to No. -- Cummings
17:03 8 is No. 42. And defense strikes No. 42 peremptorily.

17:05 9 Would you tell Mr. Cummings that he's
17:05 10 finally excused?

17:05 11 THE BAILIFF: Yes, Your Honor.

17:05 12 (Venireperson Cummings excused.)

17:05 13 (Court adjourned.)

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2 THE STATE OF TEXAS

3 COUNTY OF COLLIN

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I, Barbara L. Tokuz, CSR, RMR, CRR, Deputy Official

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Court Reporter in and for the 380th Judicial District

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Court of Collin County, State of Texas, do hereby

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certify that the above and foregoing contains a true and

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correct transcription of all portions of evidence and

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cause, all of which occurred in open court or in

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chambers and were reported by me.

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proceedings truly and correctly reflects the exhibits,

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if any, offered by the respective parties.

17

WITNESS MY OFFICIAL HAND this the 11th day of

18

February, 2002.

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Barbara Tokuz

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Barbara L. Tokuz, CSR #4615, RMR, CRR

22

Deputy Official Court Reporter

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