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

VOLUME 28 OF 53

Trial Court Cause No. 380-80047-01

THE STATE OF TEXAS * IN THE 380TH DISTRICT COURT

*

V.

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IVAN ABNER CANTU * OF COLLIN COUNTY, TEXAS

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VOLUME 28 - VOIR DIRE
CAPITAL MURDER JURY TRIAL

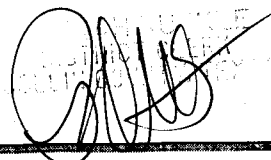
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On the 25th day of September, 2001, from 8:45 a.m. to 6:00 p.m. the Voir Dire proceedings came on to be heard outside the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

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Official Court Reporter - 380th Judicial District Court
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PROCEEDINGS

1 THE COURT: Back on the record in the State of
2 Texas versus Ivan Abner Cantu, Cause Number 380-800-47. The
3 Defendant and his attorneys are present, and the State is
4 present by its three attorneys. Anna Moore who was scheduled
5 to be here for general voir dire has finally showed up this
6 morning.

7 Ms. Moore, come on in, please, and stand right in
8 front of the bench if you would. Ms. Moore, you are Juror
9 Number 159, and you were actually scheduled to be here
10 yesterday morning, September 24th.

11 VENIREPERSON: Not according to the phone call
12 I got.

13 THE COURT: Your understanding is that the
14 phone call said to come in on September 25th; is that right?

15 VENIREPERSON: Yes.

16 THE COURT: I tell you what, we're just going
17 to reschedule you then, and I'm going to ask you to be here
18 Monday, October 1st, which is this coming Monday, at 1:00 p.m.
19 if you would.

20 VENIREPERSON: October 1st at 1.

21 THE COURT: All right. Thank you, Ms. Moore,
22 and I'm sorry you had to make two trips.

23 All right. The next juror is Number 68, Kathryn
24 Cook.

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1 MR. SCHULTZ: I'm guessing there isn't anybody
2 that's got any problems with the order of these jurors, but I
3 want to make sure we're okay on the record with that. Usually
4 our problem is we take them later than in the order.

5 THE COURT: Yeah. And these were jurors that
6 specifically, on the record, were excused to come back for the
7 general voir dire yesterday, which they did, and now they're
8 being taken in the same order that we had them, so --

9 MR. SCHULTZ: I just want to make sure that
10 nobody has got any problems with that, that we consider or
11 address.

12 (Venireperson enters the courtroom.)

13 THE COURT: Well, there being nothing heard
14 from the Defense, I'm sure that's correct. Are you Kathryn
15 Cook?

16 VENIREPERSON: Yes, I am.

17 THE COURT: All right, ma'am. You are Juror
18 Number 68, and I just want to ask you if you recall that you
19 were placed under oath by the Court, and the oath was to tell
20 the truth with regard to any questions asked by the Court or
21 by the attorneys on either side. Do you recall that?

22 VENIREPERSON: Yes, sir.

23 THE COURT: And I ask you then to please have a
24 seat, and the attorneys will try to figure out what makes you
25 tick.

1 VENIREPERSON: Good luck.

2 THE COURT: Mr. Schultz.

3 DIRECT QUESTIONS

4 BY MR. SCHULTZ:

5 Q. Good morning, Ms. Cook.

6 A. **Morning.**

7 Q. My name is Bill Schultz. I'm one of the Assistant
8 District Attorneys representing the State of Texas in its
9 capital prosecution of Ivan Cantu. You would have been
10 present a few days ago when Ms. Gail Falco, seated to my left
11 right now, spoke with you as a group. And then the other --
12 and also at the far end of our table is Ms. Jami Lowry, who we
13 are all felony prosecutors, and we will probably be the three
14 representatives of the State that you will see, if you're
15 seated on this jury.

16 A. **Okay.**

17 Q. Often it's the case that another prosecutor might
18 come in for some specialized purpose, but I doubt that will
19 happen in this case.

20 At the Defense table, the first person to your far
21 left is Ivan Cantu, the Defendant in this case.

22 THE DEFENDANT: Morning.

23 VENIREPERSON: Morning.

24 Q. BY MR. SCHULTZ: Next to him is Mr. Don High and
25 then Mr. Matt Goeller. Mr. High and Mr. Goeller are both

1 board certified criminal law specialists who practice in
2 Plano, Texas, both very capable and very decent individuals.
3 And I believe that you don't know any of us and don't recall
4 ever having had any business or social or personal dealings
5 with us; is that correct?

6 A. **That's correct, sir.**

7 Q. And I guess if -- none of us remember you, either.
8 I guess if we did, it would have been so casual that we don't
9 even remember it, so that shouldn't make any difference.

10 Many jurors tell us that they find themselves
11 thinking a lot about capital punishment in a way they never
12 did before. Once they're brought in and made to fill out the
13 questionnaire and realize that it's no longer just something
14 that's discussed in the living room when we see some terrible
15 crime on television and think there should be severe
16 punishment for the people that do that, and I don't know that
17 many people change their minds. I think that's unusual, but
18 there's a -- there's a reality that comes from it that might
19 not have existed before you actually start thinking about
20 that. Did you feel any change in yourself once you started
21 filling out the questionnaire and started thinking about the
22 possibility you would be on a capital jury?

23 A. **Yes. I think it probably hit home closer than it
24 would have, like you said, in the normal day-to-day thought
25 process. I think it's something -- I think people are fairly**

1 **sure as to how they feel one way or the other, and I think you
2 probably don't think about it as much until you're actually
3 possibly put in the situation that you would have to deal
4 with it directly.**

5 Q. I think that's probably true, and I suspect that's
6 true in other contexts of our lives, also. I imagine we watch
7 things on television that make it absolutely clear that we
8 have to take military action. We have no choice. There's no
9 alternative if we want to survive as a free society, and it's
10 probably lots easier for people who don't have husbands or
11 sons or daughters that are going to be on the firing line to
12 say we need to do that then it might be if you've got some
13 20-year-old son that's a Navy pilot, for example. Would you
14 agree with that?

15 A. **Exactly.**

16 Q. Doesn't mean that your view is any different. It's
17 just -- I guess maybe, to some degree, it really forces you to
18 harden your resolve and know what you really believe in and
19 what matters. Do you find yourself as supportive of the death
20 penalty now as you have ever been, would you say?

21 A. **Yes. I don't believe my views on the death penalty
22 have changed at all.**

23 Q. You know, when we talk about -- when we talk about a
24 death penalty -- when we talk about capital punishment, a
25 couple of things always come to my mind. I guess everybody

1 has a different take on it. We, as Americans, put a
2 tremendous price on human life. I mean, it's a big thing to
3 us. We're watching these, quote, rescue efforts now up in New
4 York City, and the truth of the matter is for many, many days
5 everybody has known the truth about what's happened, and
6 everybody knows there are not going to be any survivors found
7 now. And yet, those people go on trying and believing and
8 hoping, if for no other reason, because it's so respectful of
9 life, and we want to look back and say we did everything we
10 could, and we kept working as much as our bodies would let us
11 work until we can do something about that, and until it's
12 absolutely hopeless, even though it's probably been hopeless
13 for many days now, and they all know it, and you and I know
14 it, and everybody knows it, but we keep on. And nobody minds
15 and nobody begrudges. I bet there's not a human being that's
16 ever expressed the idea that why are we paying all these
17 fireman and police overtime pay to be up there digging right
18 now. That's something we do because we believe in life, and
19 we respect life.

20 And, furthermore, in American society we are awfully
21 compassionate. We don't require much of our citizens when we
22 get down to it. We don't make them work if they don't want to
23 work, and we don't make them earn food or anything else. We
24 almost will take care of everybody in this society in a
25 primitive sort of way. We'll feed them, we'll clothe them,

1 we'll find some shelter for them, we'll give their kids shots,
 2 we will birth their babies, we'll do all of these things
 3 because we're a compassionate society. And then we get to
 4 something like capital punishment, and it almost seems very
 5 different from what motivates us most of the time because,
 6 unlike what we instinctively do as Americans, and that is take
 7 care of people that are less fortunate and go to great lengths
 8 to protect life, all the sudden you're being brought into a
 9 courtroom, and what Ms. Lowry said yesterday is absolutely
 10 true. It is our resolve, it is our position to convince the
 11 jury beyond a reasonable doubt the Defendant committed a
 12 capital murder in one of a number of a varieties, but it's
 13 still a capital murder. And, furthermore, we intend to prove
 14 to you that he will probably be dangerous in the future;
 15 dangerous in the sense of being a continuing threat to society
 16 when given the opportunity to do so. And that there's no
 17 sufficient reason why a death sentence shouldn't result.
 18 That's that mitigation question, there's no sufficient reason.
 19 So, what we're ultimately asking a jury to do is participate
 20 in a process that will result in his death, and I don't say
 21 that because I think it's funny and those are not easy words
 22 to say, but I don't apologize for them because we have a death
 23 penalty. Our State has made it our law. Most people believe
 24 in it, including yourself, and if I do all that I'm supposed
 25 to do as a prosecutor, and I produce sufficient proof to be

1 convincing beyond a reasonable doubt on those issues requiring
 2 that, then I'm entitled to have jurors that will vote that way
 3 that will cause that result.
 4 But it is a hard thing because we're really doing
 5 something we're really not used to, which is probably true of
 6 all punishment in criminal law, but especially this kind.
 7 It's something we're not used to, and I don't know the
 8 Defendant, but I'll bet he doesn't want to be executed.
 9 Wouldn't you think that's probably so, he'd prefer not to get
 10 the death penalty? If we said, what do you want? Most likely
 11 he'd say, I'd rather not get a death penalty.
 12 **A. I would agree with you, yes.**
 13 **Q.** Okay. So, you understand what I'm saying? It's a
 14 little bit -- I don't know if it's unnatural, but it's
 15 certainly a little bit unusual for us to be participating. Do
 16 you follow what I'm saying?
 17 **A. Uh-huh.**
 18 **Q.** All of that being said, what do you think is the
 19 best argument about why we should have a death penalty in our
 20 society?
 21 **A. I think that people need to be responsible for their**
 22 **actions. I think that I am not -- I don't think all people**
 23 **can be rehabilitated to become a productive person in**
 24 **society. I think that I'm not a big believer in**
 25 **rehabilitation for people that have committed crimes that are**

1 **very, very violent. My thought process is, do we really want**
 2 **the potential of that person that has been convicted out in**
 3 **society again? I have a two-and-a-half-year old child. I**
 4 **don't know that I want a person like that walking around that**
 5 **could come across my child in his life. And I feel, for that**
 6 **reason, if that person is not taking his responsibility of**
 7 **being a part of society, then maybe we need to take that**
 8 **responsibility for him.**
 9 **Q.** Okay. You mentioned rehabilitation, and I'll bet
 10 you'd agree that it can happen with some people?
 11 **A. I agree with that, yes.**
 12 **Q.** Do you think sometimes age has a certain
 13 rehabilitative effect for people, depending on what they've
 14 been doing in the first place?
 15 **A. I don't know that I think that age would have a**
 16 **factor.**
 17 **Q.** Okay. Did you ever find yourself, like maybe when
 18 you were a teen-ager -- if you don't mind me getting
 19 personal -- did you ever have a wild streak in you when you
 20 were growing up?
 21 **A. I have.**
 22 **Q.** I sensed that somehow.
 23 **A. Uh-oh. I didn't hide that well; is that what**
 24 **you're saying?**
 25 **(Laughter.)**

1 **Q.** Okay. Let's talk about that a little bit. I also
 2 have a sense that you didn't, for example, go out robbing
 3 stores and shooting people and getting violent with people and
 4 stealing from them and dealing drugs to them, those sorts of
 5 things. I have that sense for a couple of reasons. One, it
 6 just doesn't seem to fit the things on your questionnaire and
 7 what seems to be the pattern of your life now. Number two, if
 8 you had been doing all that, odds are you would have gotten
 9 caught and convicted of something, and then you wouldn't be
 10 qualified as a juror.
 11 Why do you think it is that adolescents tend to be
 12 wild, and they tend to sort of settle down -- I'll bet you
 13 look back on that a little bit fondly, too, don't you in some
 14 respects to be honest about it?
 15 **A. Bits of it. Some I think were rather foolish,**
 16 **but --**
 17 **Q.** Sure.
 18 **A. I think when we're young we have that feeling of,**
 19 **first of all, I'm young and I'm wild and nothing is going to**
 20 **happen to me, anyway. I can get away with it. I think we**
 21 **have a sense of "odds are I'm not going to get caught if I'm**
 22 **doing something wild that I shouldn't be doing," and there's**
 23 **that sense of rebellion of even if I am, this is the choice**
 24 **that I've made. I'm doing it because I'm a teen-ager, or I'm**
 25 **whatever, and I can make my own choices, and I'll show them I**

1 **can make my own choices.**

2 Q. I think truthfully if you look at most teen-agers, I
3 think they probably engaged in a lot of behavior that we as
4 parents would be concerned about, maybe not because we're so
5 hypocritical that we say, well, you know, we did that, but we
6 don't think it's good for you to be able to do that. It might
7 not quite be that, but we're concerned because looking back on
8 it now we understand the risks of some of that behavior --

9 **A. Exactly.**

10 Q. -- that maybe we understood when we were teen-agers,
11 but chose to ignore, or just chose to disregard. I think of
12 things like sex. I think of things like fast driving, drugs,
13 alcohol, staying out all night partying. I think of those
14 kinds of things when I think of that being in the range of
15 normal, teen-age rebellious stuff, don't you think?

16 **A. Exactly.**

17 Q. And you can either get into that yourself as a
18 leader, or it seems like more often you get into that maybe as
19 a follower. You're dating somebody that's a couple of years
20 older and he's doing those things, or you've got a friend
21 that's wild, and you kind of follow along with her, those
22 kinds of things. But don't you think -- although we wouldn't
23 want it for our kids, don't you think all those things are in
24 the fairly normal range?

25 **A. Yeah, I agree. I think everyone has their moments**

1 **comes with that, an awareness of that more than when you're**
2 **young.**

3 Q. Okay. And you know, the truth of the matter is, if
4 you and I were talking about your prospective jury service for
5 some adolescent who had gotten drunk one night and was driving
6 and had a car crash and maybe killed somebody, which happens.
7 That happens. It truly does, and we prosecute people for
8 doing that, and I think we should prosecute people for doing
9 that. Looking at the concept of rehabilitation in that
10 context might be easier for a jury to see because they would
11 say, you know, I did similar things myself, and I'm not
12 excusing what he or she did, but a lot of people do that and
13 they don't have meanness in their heart. Kids aren't thinking
14 about killing somebody and ruining people's lives of those
15 that aren't killed. They're not thinking that way when we
16 they get out there driving fast, like they do on Friday nights
17 in Plano, and that kind of thing. They're not thinking that
18 way. They're just -- basically they're not thinking at all,
19 because they're just wild and unruly. Don't you think for
20 that kind of stuff, the prospects of rehabilitation are a
21 whole lot stronger than for some more anti-social kinds of
22 activity?

23 **A. Oh, I agree. I agree.**

24 Q. Because I guess what I'm thinking is, if I were a
25 prosecutor in one of those cases, I wouldn't be particularly

1 **that they -- I think peer pressure does play a part in it, but**
2 **I think that's just basic adolescence, go out and try and**
3 **spread your wings kind of stuff.**

4 Q. And if you're real lucky, you get through it and
5 don't harm yourself. Fast driving and the drinking and
6 driving are things that everybody knows can kill you, but with
7 some luck people get through that, and most people wonder
8 almost how in the world did I do that and get through it.
9 Sometimes can almost be aghast that they made it through.

10 And that's kind of what I was asking you about when
11 I'm talking about do you think time can do some
12 rehabilitation? And I'm not sure that kind of behavior really
13 needs rehabilitation because I'm not sure -- it's so typical,
14 I'm not sure that's quite the word for that. You need to
15 outgrow it almost in a lot of ways, and hopefully outgrow it
16 without consequences. But do you think it was the passage of
17 time more than anything else that maybe settled you down a
18 little bit that way?

19 **A. I think it was that, and I also think as things come**
20 **into your life. You know, when you're a teen-ager, you don't**
21 **have a lot of responsibility. You don't have -- or at least**
22 **in your mind you don't have things that affect your life in a**
23 **bigger way, and as you get older in your life, more people,**
24 **more things, the more everything comes into your life, it**
25 **becomes a little more interwoven, and I think responsibility**

1 conceding in the notion that kids do dangerous things and
2 don't know it. I mean, they get involved in drugs and
3 everything else, but I probably believe that. I'm a parent.
4 I probably believe that in my heart. But I'd never say that
5 kids go out and beat up on girlfriends and wives, for example,
6 that that's just all part of being a teen-ager. Do you follow
7 what I'm saying?

8 **A. I agree.**

9 Q. That's different. That's not immaturity. That's
10 characterological. That stuff is very, very different. Do
11 you think --

12 **A. I agree.**

13 Q. And I wouldn't say, well, you know, when you're
14 young you're foolish and go out and, say, deal drugs, for
15 example. I wouldn't say that because that's a different kind
16 of thing than using them or driving fast or having fairly
17 indiscriminate sexual relations. That's a different kind of
18 thing, don't you think?

19 **A. Yeah. I mean, my only thought on that is I think**
20 **that -- I don't think that some kids think that if they're**
21 **doing drugs and they occasionally have sold some drugs, I**
22 **mean, I think to the extent makes a big difference. I think**
23 **if there's someone out there that is dealing drugs in a major**
24 **manner, but then I've also heard of college kids that are --**
25 **besides smoking pot, they're also dealing a little bit on the**

1 side to -- you know, I think that's a stupid mistake. I don't
2 think that's that total disregard of -- I mean, I think that's
3 something that would rehabilitate, too. So I think it's a
4 degree of that.

5 Q. Fair enough, and I think you probably raise a point.
6 The nature of it and how long it goes on, and how frequent --

7 A. Exactly.

8 Q. -- it is might be more important than the act
9 itself?

10 A. Exactly.

11 Q. Do you think murdering people because you're mad at
12 them or jealous of them or envious of them, is that an action
13 incidental of adolescence, for example, in your mind?

14 A. No.

15 Q. At what age, by the way, do you think everybody in
16 our society, assuming that they're not insane or significantly
17 retarded, what age does everybody, do you think, know that
18 murdering people is wrong?

19 A. That's an interesting question. I would hope that
20 at a relatively young age.

21 Q. Eight, ten, something like that?

22 A. Yeah. I mean -- and I guess it's a sad commentary
23 in this day and age, it probably is even earlier than that.

24 Q. Okay. And I guess the point I'm -- kind of on the
25 rehabilitation aspect, many people complain that in our

1 society nobody ever takes responsibility for behavior,
2 anyway; that we blame it on something else. Did you have any
3 relatives in Vietnam, by any chance?

4 A. No, I didn't.

5 Q. Nobody could disagree how poorly we treated the
6 returning Vietnam veterans. That is a shame that -- that's
7 the shame probably of the 20th century, and yet the truth is
8 many of those veterans probably used Vietnam service as an
9 excuse for such things as alcoholism and indolence and all
10 kinds of activities when probably they weren't any different
11 than Korean vets or World War II vets or World War I vets who
12 saw the same kinds of things. But it became fashionable to
13 explain misbehavior in terms of Vietnam and blame it on them.
14 Do you follow what I'm saying?

15 A. Uh-huh.

16 Q. And that may have caused some of it, but a lot of
17 it, it may not have and that may have been caused by how these
18 people's personalities were formed, or how they chose to
19 live. And I think sometimes we do that with youth in the
20 criminal justice system. We often explain away people's
21 behaviors; why, this person is just young, or had a sad
22 upbringing, or there was some missing nurturing or something
23 like that. And while that might explain things, like not
24 doing well in school or might explain why people have trouble
25 staying in a relationship and getting close in a relationship,

1 do you think youth, when you get right down to it, is any kind
2 of an explanation for brutal, capital murders?

3 A. I don't see any reason as to why -- I see no reason
4 why. I can't think of anything.

5 Q. I guess that's kind of where I'm coming from when I
6 talk about everybody, even at age eight or ten, knows you
7 don't go killing people. So, while it might be inviting to
8 try to explain or blame these horrific crimes on "it's a young
9 person doing it," when you get right down to it, being young
10 might explain the fast driving or getting drunk or some of
11 those kinds of things that teen-agers do, but teen-agers don't
12 do capital murders because they're teen-agers; don't you agree
13 with that?

14 A. I agree.

15 Q. And, of course, we've been talking hypothetically
16 about teen-agers, but what about a person that's 27 years
17 old? Does that seem like that's plenty old enough to know you
18 don't go out beating up wives and dealing drugs and murdering
19 two people in the course of robberies and burglaries?

20 A. That is plenty old enough.

21 Q. Okay, okay. Every one of us -- every one of y'all
22 that are jurors probably has a slightly different personal
23 philosophy. We tend to think of ourselves as alike, and in
24 many ways we are and in many ways we're not. We're all
25 products of -- we're probably products of the genes within us.

1 We're certainly products of how we were brought up, the types
2 of influences we had as kids, the way we think and the way we
3 approach life and how we live lives is probably influenced by
4 all of that, which means in a jury you might have 12 slightly
5 different views of the evidence and what it all means and how
6 things ought to be. And yet juries can come to agreement when
7 asked the questions. They may get there by different
8 processes all together.

9 A. Uh-huh.

10 Q. There may be some jurors that think the reason for
11 capital punishment is as a deterrent. Let this be a warning
12 to anybody else that would want to do what you've done, and
13 that is to give death penalties. There may be some jurors who
14 would say, you know, it's almost Biblical -- I'm not being
15 Biblical, but it's almost that measured response that if you
16 do a little crime, you get a little punishment; if you do a
17 big crime, you get a big punishment, and if you do such an
18 enormous crime as to be called capital murder, it's only
19 right that you should have the same thing done to you.

20 And then maybe other people would say I'm not
21 interested in retribution, and I don't even care so much about
22 deterrence because I don't know if that really works so well
23 anyway. What I'm interested in is protecting society, and
24 that means -- kind of what you said, you don't want dangerous
25 people being allowed to be around you, because even if they're

1 not doing something dangerous today, if the personality is
 2 such, you've always got to be watching, and why should we have
 3 to do that in this society? Why should we have to spend our
 4 money watching a dangerous person and even -- when that person
 5 has done something so awful, anyway. And you can have all
 6 those different -- and you can even have people on a jury who
 7 say, I'm not really for the death penalty. I think it's
 8 unwise. I think it's ugly of our society to be doing that. I
 9 think the Bible says thou shalt not kill and that means
 10 something to me, and some of those people can still fairly
 11 serve as long as they can answer the questions in a way that
 12 might result in a death sentence, as long as they're able to
 13 measure evidence. Does that make sense to you?

14 **A. Uh-huh.**

15 **Q.** I'd look at your questionnaire, but I'd rather just
 16 ask you. What's your line of work, what do you do now?

17 **A. Currently, I train -- I work at Compass Bank, and I**
 18 **train tellers for 18 branches.**

19 **Q.** We do things, I suppose, that are measuring all the
 20 time and we learn to do it apart from our emotions. We don't
 21 really think about that too much, but we really do. When
 22 you're training tellers, do you ever get some that you can
 23 almost immediately see aren't going to make it? Do you ever
 24 have that happen?

25 **A. Oh, yeah.**

1 **Q.** Do you also do the hiring, or does someone else do
 2 the hiring and you the training?

3 **A. I used to do the hiring, also. Now I have a slight**
 4 **input, but not enough to -- I'm not the final decision-maker.**

5 **Q.** And have you ever had a situation where you really
 6 liked this person, you look at this person, and you say this
 7 is just a neat person, for whatever reason. Maybe they're --
 8 maybe they're a late-in-life worker that has come back to the
 9 workplace and is just likable as can be. Maybe they are
 10 someone struggling with the English language, and that's a big
 11 problem, and you can see that maybe -- it may be a number of
 12 things, and you really like them and you really respect how
 13 hard they're trying because they're giving it more than people
 14 that got more talent ever put into it, and they're not doing
 15 it. They're making mistakes. They're putting the wrong cash
 16 slip in. They're miscounting money. They're just too slow,
 17 because you've probably got speed requirements, don't you?

18 **A. Uh-huh.**

19 **Q.** I would imagine, you know, you couldn't take ten
 20 minutes with a transaction because you'd have a line out the
 21 door.

22 **A. Right.**

23 **Q.** And you come to the conclusion, you know, I've never
 24 had anybody that I liked more than this person here that I've
 25 ever trained, but I can't send this person to a branch. Have

1 you ever had that happen?

2 **A. Oh, yes.**

3 **Q.** How often does that happen to you?

4 **A. Probably -- maybe 1 in 50 tellers, so every couple**
 5 **of months I'll have somebody that I truly wish would make it,**
 6 **but I truly don't think will.**

7 **Q.** What did you do then? What's your responsibility as
 8 a trainer if they're not performing? What do you do with
 9 that?

10 **A. If we've given -- if I've given what I can give and**
 11 **gone through and tried to coach the person to where they need**
 12 **to be and done everything we could possibly do from a**
 13 **technical side of it, then our human resources and myself and**
 14 **a manager get involved and terminate the person and let them**
 15 **go.**

16 **Q.** And that's my point. It's certainly not easy
 17 because what you want to happen probably isn't going to
 18 happen. You want this person to thrive and be able to succeed
 19 and be proud of himself and herself, and you want that, and
 20 you almost find yourself wanting to kind of look the other way
 21 and send them on because you don't want to hurt their
 22 feelings. You probably have some times, they're proud as can
 23 be of the job even. They're thrilled, and it doesn't work
 24 out. But you have to work professionally, and you have to be
 25 able to make a decision, even if your heart wishes the

1 decision would go the other way. Do you follow what I'm
 2 saying?

3 **A. Correct, yeah.**

4 **Q.** And that can happen to jurors in a capital murder
 5 case. I don't think it happens real often because I think --
 6 I think generally the things that make your heart go a certain
 7 way in a capital murder case -- if both lawyers do their job
 8 correctly and pick jurors that are in that kind of middle
 9 group of "it depends on the facts," I think the same thing
 10 that makes a juror's heart go one direction probably would
 11 make them answer questions -- make them see the evidence kind
 12 of the way their heart is seeing it. Does that make sense?

13 **A. Yes, I agree.**

14 **Q.** But I think there are sometimes when I really
 15 believe a juror could say, you know, I wish I could say
 16 something about this person -- I wish I could find in the
 17 evidence something about this person that he or she didn't
 18 have to die from these answers because there's something about
 19 them that makes -- kind of tugs at my heart a little bit, but
 20 I can't. I can't do that.

21 And if you go the other way, there might be jurors
 22 saying I wish I could find a way to vote for a death sentence
 23 because this person needs it, but the evidence really isn't
 24 there and I can't do it. Do you think you can do that? Do
 25 you think you're the kind of person that could -- most likely

1 I don't think you'd have to go against your heart. I think
2 most of the time that works fine, but sometimes it might, and
3 then how you find the evidence has to control, not what your
4 heart wants to have happen either way. Can you do that?

5 **A. Yeah, I believe I could.**

6 **Q.** Well, if you would, then assume with me that the
7 Defendant has been found guilty of capital murder, and I'm
8 not -- I'm not minimizing what our burden is. It's a huge
9 burden. It ought to be a huge burden. We have done the
10 accusing, and we should have to prove beyond a reasonable
11 doubt the Defendant's guilty. He should have all the rights
12 that the Constitution and State law gives him, and if our
13 cause is just we ought to be able to overcome all of that and
14 convince the jury to find him guilty beyond a reasonable
15 doubt.

16 That having been said, once that happens then we
17 move into the punishment phase of a capital murder trial, and
18 the first question you would be dealing with is that one
19 that's right up there in front of you now. So take just a
20 moment if you would and look at it.

21 **A. Okay.**

22 **Q.** Okay. Some critical people say that question
23 requires you to predict the future, and I guess it certainly
24 does because it talks in terms of whether he would commit
25 criminal acts of violence. The wording of that question has

1 always been interesting to me because it's certainly not an A,
2 B, C type of question with definitions of every single word in
3 there. The only thing missing in that question that you would
4 be dealing with is -- and Mr. Goeller I think talked about it
5 yesterday -- is that the question is framed in terms of beyond
6 a reasonable doubt. You've got to find a probability beyond a
7 reasonable doubt, but except for that, that's all you're ever
8 going to get.

9 You will not get a definition of probability,
10 criminal acts of violence, continuing threat or society.
11 There are no definitions, and we could -- we know a little bit
12 about what they mean, but not a whole lot. And it's always
13 been interesting to me, you notice where it says whether
14 there's a probability that the Defendant would commit criminal
15 acts. It's kind of -- I always wonder why did they choose
16 that word? Why didn't they use the term "will?" And what it
17 seems to be saying is that this is an -- this is a
18 personality-of-the-defendant-type assessment. It's asking is
19 this person's personality such that he would commit criminal
20 acts of violence, not that he will because it is possible that
21 there would be a way to prevent him -- to prevent the will
22 from happening.

23 Assuming the courts would allow us, I would imagine
24 if we could put a criminal in an iron suit that didn't move,
25 you know, and just keep him in there and feed him, just open

1 it up like knights in armor, open up their face plate every
2 now and then, throw some food in there. I imagine even the
3 world's most dangerous person, you couldn't say they will
4 commit criminal acts, as long as somebody doesn't unlock that.
5 I mean, woe to the guy that goes in there to fix that suit. I
6 guess they'd have to change it now and then because it would
7 get kind of diseased or something. But woe to those people.

8 But mostly, I bet if we wanted to take the attention
9 we could fix it so that nobody would ever be a danger again.
10 That means Timothy McVeigh or Hitler or Manson or whoever blew
11 up the World Trade Center, all those people. If we wanted to
12 go to the trouble to say will they commit acts of violence, we
13 could figure a way to keep everybody from not doing that if we
14 wanted to take the time and attention; don't you think?

15 **A. Yeah.**

16 **Q.** Assign ten guards to every prisoner. Ten guards
17 stay in a cell with them all day long kind of thing, and maybe
18 that works.

19 **A. Yeah.**

20 **Q.** The question doesn't say that. The question says is
21 there a probability that he would commit criminal acts, which
22 means that his personality would allow that. And I always --
23 does that make sense to you; that the wording is a little
24 different on that one?

25 **A. Uh-huh.**

1 **Q.** It's a personality assessment.

2 When we talk about criminal acts of violence in the
3 context of that question, some of them we instantly know what
4 they are. I mean, one is a capital murder that got into that
5 question in the first place. Murdering two people, whether in
6 hot blood, cold blood or lukewarm blood, however that might
7 be, is clearly a criminal act of violence. And under our law,
8 and I think you indicated on your questionnaire it makes sense
9 to you that if the State didn't put on any evidence at all,
10 other than the facts of the capital murder and convinced you
11 that the capital murder occurred, I think you indicate on your
12 questionnaire that there are some fact situations that are so
13 bad they would probably answer that question yes all by
14 themselves?

15 **A. That's probably true.**

16 **Q.** I mean, look at recent events. I mean, what does
17 it say about a person that could fly a plane into a building
18 with innocent people on board the plane and do all the -- I
19 mean, how could that person possibly have a personality, other
20 than one that would commit criminal acts of violence in the
21 future and be a continuing threat?

22 **A. I agree.**

23 **Q.** Now, that doesn't mean we couldn't find a way to
24 house them safely. I mean, ten guards and chain him to the
25 four corners of his cell, you know, put electronic monitors on

1 him, and like this TV stuff that -- you've got bombs that if
2 you do any moving, you know, the bombs go off. There is no
3 such thing, in my mind, as a defendant who, no matter what we
4 do, will commit criminal acts of violence, but there are
5 plenty of them that would commit criminal acts of violence.

6 But it's also possible that the facts of a capital
7 murder would not convince you that the answer to that question
8 should be yes. There are capital murders that, while not
9 excusable, while not likable, the fact situations are such
10 that the true answer to that question would have to be no.
11 Does that seem like that could also be so?

12 **A. I agree with that, too.**

13 Q. Everybody has heard of Dr. Jack Kevorkian, and there
14 are some that swear by him and some that swear at him, and I
15 guess it might -- being for the death penalty might depend on
16 how directly you're involved in it. I'm not sure that if I
17 were in terrible agony in a nursing home someplace or hospice,
18 I'm not sure that I wouldn't have a different view of what he
19 did than maybe I do right now when I'm not like that. What's
20 your thinking about mercy killing; do you think that should be
21 allowed?

22 **A. I had a father that had three strokes, and at the**
23 **end it was very, very tough. And my father made his own**
24 **choices by having a do not resuscitate order, but, in essence,**
25 **we abided by his choice and did not take necessary methods.**

1 **And I personally believe that someone should have that right**
2 **to say when I get to a certain stage, when I get to a certain**
3 **point, I don't want to be here anymore. And I don't know**
4 **that -- I think that's everyone's right to make their own**
5 **decisions like that and tell their loved ones to have that**
6 **happen for them.**

7 Q. And that's why I say, many people in their hearts
8 find it hard to get too serious about Dr. Kevorkian. And yet,
9 obviously, 12 people in Michigan did because he's in the pen
10 up there now, and I'm sure part of it was his flippancy, the
11 fact that he -- he basically dared them to do that to him. He
12 forced that hand himself, but it's still murder and in Texas
13 that would be murder. It wouldn't make any difference that
14 the family and the patient were in unison on that. That would
15 make no difference. It wouldn't make any difference that all
16 the doctors agreed the patient was going to be dead in a month
17 anyway. None of that matters, but in Texas, if you
18 intentionally cause the death of another human being, that
19 is -- that's murder. And it's murder whether you do it for
20 the fun of it or the humanity of it, it's still murder.

21 **A. Uh-huh.**

22 Q. And if you do that under circumstances that would
23 elevate your action to a capital murder, that means
24 Dr. Kevorkian could be guilty of capital murder in Texas. For
25 example, if someone is in a nursing home. Everybody knows

1 Dr. Kevorkian. He's got a very famous, if not attractive,
2 face, and everybody knows him. They'd never let him in a
3 nursing home or a hospital. Imagine if he showed up. He's
4 got a little briefcase with him or something like that, and
5 they say, get out of here because they don't want the
6 liability, they don't want the law problems. The only way
7 he'd get into a nursing home to help somebody is to sneak in,
8 like go in a window or the skylight or, you know, maybe put on
9 a disguise or something that would be deceptive.

10 **A. Uh-huh.**

11 Q. And if he does that, that may well be a burglary.
12 Even though he's not going in there to steal, he's going in
13 there to commit murder, and that would be a burglar/murder.
14 Do you see how that could be?

15 **A. Uh-huh.**

16 Q. That's capital murder. If it's a husband and wife
17 and they're both in terrible shape, and they both want to die
18 together because they don't want to live apart, that would be
19 a double homicide. That would be capital murder, so you --
20 and the truth is you'd have to find him guilty of capital
21 murder because the evidence would be there, just like they did
22 up in Michigan, whether you wanted to or not. And then you
23 get to that question, whether there's a probability he'd
24 commit criminal acts of violence that would constitute a
25 continuing threat to society. And maybe he would and maybe he

1 wouldn't.

2 Maybe you'd say, well, he's unrepentant. He's going
3 to do it again, so maybe that's a yes answer. Or maybe you'd
4 say, you know, I don't think mercy killing -- it may be
5 murder, but it's not a criminal act of violence because
6 violence to me is doing an act that the person doesn't want
7 done to them, like shooting them, whipping them, setting them
8 on fire, torturing them, poisoning them, something they didn't
9 want to do. And you may define that -- you may define what
10 Dr. Kevorkian has done as not a criminal act of violence. Do
11 you see how that could be?

12 **A. Uh-huh.**

13 Q. In which case the answer to that question is no.
14 And so you'd be able to go either yes or no, depending on the
15 evidence in the case?

16 **A. Exactly.**

17 Q. And the important part is just the simple
18 recognition that not all capital murders should result in the
19 death penalty. They really shouldn't. It depends on facts.

20 **A. I agree with that.**

21 Q. If you answer that question no, the trial is over.
22 Your duty has been done, and the Defendant gets an automatic
23 life sentence and is sent to the non-death row part of the
24 prison. If the Defendant, having been convicted of capital
25 murder, is found guilty, and then you've answered this

1 question unanimously yes beyond a reasonable doubt on the
2 probability issue, then you've got this second question, which
3 is our mitigation question. So take a moment, if you would,
4 and read that.

5 **A. Okay.**

6 **Q.** I think that question is for the benefit of the
7 spirit and conscience of the jury, to tell you the truth. I
8 think that contemplates what I told you -- very rarely would
9 it happen, but I think it contemplates the fact that maybe
10 your heart would be one place -- and you'd vote on those first
11 two issues that's guilty and then future danger. Your heart
12 might be different from those votes in terms of where they
13 believe in this case. And I think that question asks the jury
14 to look at both the aggravating aspects of the Defendant's
15 case and his personality. That's the bad stuff, but also to
16 look at the mitigating portions of the evidence in the case,
17 including his background, and put that on the scales and say,
18 is there enough mitigating evidence or circumstance to warrant
19 a life sentence rather than a death sentence. Does that make
20 sense to you?

21 **A. Uh-huh.**

22 **Q.** Because the apparent effect of those first two
23 answers that you made; that is, guilty of capital murder and
24 then future danger, the effect of that is directed toward a
25 death sentence until you come squarely upon this, because

1 those are the answers that could cause a death sentence guilty
2 and yes. And then even having done that, this question says
3 look at the mitigating evidence, see if there's sufficient
4 mitigating evidence to convince you that a life sentence,
5 rather than a death sentence, is the appropriate thing in this
6 case. Are you with me?

7 **A. Uh-huh.**

8 **Q.** And it probably would depend, because I think you
9 really go back to the facts again, because I suspect many
10 people think the worse the crime the more mitigating evidence
11 I would require to be sufficient before I would cause a life
12 sentence rather than death. Does that make sense to you?

13 **A. I can agree with that.**

14 **Q.** I mean, if we're talking about Adolf Hitler, for
15 example, I doubt there's anything that could ever convince
16 anybody that the mitigating evidence was sufficient to spare
17 his life, if you believed he otherwise deserved a death
18 penalty but for the mitigating evidence.

19 **A. I agree.**

20 **Q.** But there may be other circumstances where, in some
21 cases, that would be the right answer. Can you see how you
22 could go either way on that question, also?

23 **A. Uh-huh.**

24 **Q.** Here's what it asks you to do. It asks you to
25 consider all the evidence, and you've already done it twice.

1 You did it at guilt-innocence, and you probably looked at it
2 again in answering this first question here. You've probably
3 looked at it twice. There won't be any new evidence on that
4 question alone you've already considered, but just take
5 another look at it for another purpose. It's kind of like,
6 look at it with a different goal in mind, and that is taking
7 into consideration all the evidence, including the
8 circumstances of the offense -- that's the crime itself. Look
9 at that one more time, even though you looked at it twice
10 before. Look at the Defendant's character, and that's
11 probably not going to be good, because if the Defendant's
12 character were good, you probably would have answered that
13 question "no." Do you follow me?

14 **A. Right.**

15 **Q.** So that's probably a bad thing for the Defendant
16 because his character is he's dangerous, or probably
17 dangerous. And then look at his background, and that -- it
18 may be good, it may be bad in the good-bad sense, but that's
19 where most of the sympathetic stuff would arise. We've talked
20 about that before. Everybody can point to things in their
21 background that might have had to do with making them how they
22 are. I mean, you can, I can, we all can. And that's where
23 you -- that background stuff is where you might hear about
24 stuff, like, coming from a broken home, coming from a home
25 where there was abuse, coming from a home where your father

1 was never around to take you to baseball games, coming from a
2 home where other people were using drugs, coming from a home
3 where your mom had boyfriends in all the time, coming from a
4 home where there wasn't enough money, coming from a home
5 where -- on and on and on, all those kinds of things.

6 **And I'm going to tell you that I believe, and I'm**
7 **not talking about the facts of this case, but if I were, I**
8 **would say this. I'm sure there are going to be things that**
9 **we'd all agree are mitigating circumstances. Everybody --**
10 **you've got mitigating circumstances in your life. I don't**
11 **know you, but you do. If you ever get charged with a capital**
12 **murder, you'll have some you can talk about.**

13 **A. I think that's true.**

14 **Q.** We all do.

15 **A. Yeah.**

16 **Q.** And so I'm going to tell you, the question is not
17 going to be to look at all the evidence and say are there any
18 mitigating circumstances, because I'm telling you, there will
19 be. The challenge for the jury is to weigh those mitigating
20 circumstances, and say does that -- does that spare his life?
21 Does that -- does that overcome the impact of here is a
22 capital murderer who will probably be dangerous in the future?
23 Does that mitigating evidence balance out what he did and what
24 he is? And to be a fair juror, the juror has to say sometimes
25 yes, sometimes no. I'll know it when I see it, and I'll look

1 for it, and I'll vote yes or no, according to what I'm
2 convinced on. The object is to have an open mind and to
3 realize there are some circumstances where probably a yes
4 answer is the right thing to do.

5 And I don't know what they are. I don't know -- the
6 thing I always think about is the Medal of Honor. I think
7 about somebody that was gallant during military service, saved
8 a bunch of lives and because of that gallantry, a lot
9 of men came back, got married, had children, made this place
10 better directly because of the gallantry of that one sailor,
11 that one soldier. And then the person turned bad and
12 committed a capital murder and no matter how good he used to
13 be, he's now dangerous.

14 Maybe to a jury they'd say, you know, he's the kind
15 of person that because of all of those other people, all he's
16 asking us to do is spare his life. Maybe he deserves it.
17 Maybe we need to hire the ten guards for this guy, if that's
18 what it takes. Maybe that's what we ought to do because of
19 that one event that contributed so much, and maybe he was --
20 and maybe not. Maybe the answer is, well, that's not near
21 enough to overcome being a dangerous capital murderer. Maybe
22 the answer is still, sorry, thanks for the heroism, but, you
23 know, we don't appreciate what you've done since. And it
24 could (inaudible.)

25 There could be -- there could be other circumstances

1 that you would consider on that. It could be, for example,
2 that the defendant's severely retarded. Not so retarded that
3 he wasn't able to intentionally commit capital murder and not
4 so retarded that he isn't dangerous. As a matter of fact,
5 that could even be one of the reasons he is dangerous because
6 he doesn't have the mental capacity to stay out of situations
7 where danger (inaudible), and he doesn't think things through
8 very well because he can't. Maybe he just doesn't have the
9 brain power to think it's probably not good to shoot this guy
10 that burned my supper, because he can't think very well.

11 But maybe to you that would be sufficient mitigating
12 circumstances to spare his life because you'd say, you know,
13 he can't help being retarded. We can help lots of things, but
14 if the brain won't work, it's not exactly his fault. Do you
15 understand how that could be --

16 **A. Right, uh-huh.**

17 **Q.** Do you see yourself as welcoming that question and
18 being perfectly able to answer that yes or no, depending upon
19 what evidence is presented?

20 **A. Uh-huh, sure.**

21 **Q.** Do you think that being on drugs lessens somebody's
22 responsibility for the crimes they commit while they're on
23 them?

24 **A. No, because I think it's your responsibility. If**
25 **you make that choice, you're responsible for the actions.**

1 **Q.** What if, as is sometimes the case, you wouldn't have
2 done it had you not been taking those drugs? I take drugs
3 tonight, and I go out and hurt some people real, real bad, and
4 people say, well, if you knew this guy, he's gentle and he's
5 nonviolent and he's -- behaves himself, and so when he's not
6 taking drugs he's okay. He wouldn't have done that if he
7 hadn't taken those drugs.

8 **A. I still go back to taking responsibility for the**
9 **actions that you take that result in other actions. I think**
10 **you have to be accountable for that.**

11 **Q.** Have you ever known anybody that you thought really
12 grew up in just a terrible, terrible environment with all
13 kinds of abuse going on, maybe physical, maybe emotional,
14 maybe sexual abuse? Have you ever known anybody?

15 **A. Uh-huh.**

16 **Q.** Have you ever known anybody whose background -- in
17 your judgment, was a real bad childhood?

18 **A. I've known people that have had some bad**
19 **backgrounds, some bad childhoods, yeah.**

20 **Q.** Have they been able to overcome it?

21 **A. Uh-huh.**

22 **Q.** Have you ever known anybody that seemed to have had
23 everything growing up? Almost one of those people we say -- I
24 almost think of somebody we call "spoiled" a lot of times when
25 they have that, or they've grown up, you know, with a life of,

1 not necessarily privilege, but they've certainly been
2 indulged, and they've certainly been treated decently, and
3 whatever else you say. For their mom and dad, they loved
4 them. Maybe didn't demand enough of them, but they did love
5 them. Have you known people like that?

6 **A. Uh-huh.**

7 **Q.** Have you seen some of them turn out badly?

8 **A. Yeah.**

9 **Q.** What do you think is the difference? I mean, how is
10 it that people growing up in the inner city can turn out good
11 and be an inspiration to all of us, and people can grow up in
12 Highland Park and just turn out rotten as can be? How does
13 that happen?

14 **A. I think that's the 64,000 dollar question. I think**
15 **people would ask that all along. I was brought up where you**
16 **have choices in your life, and when you make those choices,**
17 **you're defining who you are. You know, you're -- you**
18 **basically know right from wrong, good from bad, all that good**
19 **stuff, and those choices that you make, I think, define who**
20 **you are and what you want in life.**

21 **Q.** Now, I want to talk -- I want to talk about some of
22 the rights that a defendant has, and then I'm just about
23 through, and I'll turn you over to the Defense attorneys.

24 I know you've heard of the presumption of innocence?
25 And what that is --

1 A. (Nods head.)
 2 Q. -- it's a procedural starting point in criminal
 3 trials. It's actually a procedural thing that says the State,
 4 having done the accusing, must do all the proving. And what
 5 it means is the Defense has no obligation to offer any
 6 evidence, to testify if -- the Defendant has no obligation to
 7 testify. He's like any other witness if he chooses to
 8 testify, but unlike any other witness, he can't be compelled
 9 to testify, number one, and, number two, you can't even use
 10 that as a circumstance against the Defendant in the form of,
 11 well, he must be hiding something, or I wonder why he didn't
 12 get up there. We can't even indulge in those kinds of
 13 thoughts, because it wouldn't be much of a Constitutional
 14 right if, when exercising it, the jury puts something extra
 15 on the State's side of the scales. Do you follow what I'm
 16 saying?
 17 A. Uh-huh.
 18 Q. Any problem with that; it's just not evidence. You
 19 don't consider it on the scales of justice.
 20 A. Yes, I do understand that, and to be perfectly
 21 honest, I think if I were a jury member I would have to make a
 22 conscious decision to not -- if the Defendant did not get on
 23 the stand, for whatever reason, and we would never know, I
 24 would have to make a conscious effort to say to myself, you
 25 know what, that does not have any bearing. And that's just --

1 Q. Well, sure, and I think everybody would. I think --
 2 I mean, let's face it. If you're sitting here the whole
 3 trial, and you see all the State's witnesses, and they may
 4 call witnesses, they may not. That's up to them also, by the
 5 way. They don't have to produce any evidence, and that
 6 doesn't go against him, either. But they may choose between
 7 themselves that the Defendant doesn't testify. Well, the
 8 Judge would not tell you to forget it. He wouldn't say,
 9 pretend it didn't happen. That would never be part of the
 10 instructions because you've seen that. The whole reason for
 11 the instruction and the reason for this insight is many things
 12 are probably natural human responses to situations.
 13 I mean, I'll give you an example. Suppose one of
 14 the lawyers was just really obnoxious for this whole trial,
 15 and he kept doing -- just one of those personalities you
 16 couldn't stand being with. It's not a matter of do I like
 17 this person? This person irritates me. I don't like how he
 18 or she talks. I don't like how he or she dresses. I don't
 19 like the way he or she interacts with the judge or the jury.
 20 Just one of those personality things. It happens in life.
 21 A natural thing would sort of be to punish that
 22 person's side of the case. I mean, a natural thing, we would
 23 say why would I -- I don't like the defense attorney, why
 24 would I give the defendant any breaks?
 25 A. Uh-huh.

1 Q. And yet, when you have to do it, I mean, that's the
 2 things we can all do, and just say, no, I'm here to measure
 3 the evidence, and, yeah, I don't like that guy and I hope I
 4 don't see him again, but --
 5 A. Exactly.
 6 Q. But I'm still going to measure the evidence fairly
 7 because that's more important than anything else that I do.
 8 Do you think you could do that, for example?
 9 A. Uh-huh.
 10 Q. All right. Same thing with failure to testify. I
 11 mean, if the Defendant testifies, that's easy. You'll know he
 12 testified. If he doesn't testify, you'll know that, too. And
 13 the Judge's instructions would not be forget that he didn't
 14 testify, because nobody can forget it. The Judge's
 15 instructions would be it's a Constitutional right of the
 16 Defendant not to testify, and you can't indulge that as a
 17 circumstances against him in any form.
 18 And you're right, it may be that's a conscious thing
 19 that you have to do, but you'd be able to do that, wouldn't
 20 you?
 21 A. Uh-huh.
 22 Q. Let's face it, every one of us would want -- we want
 23 to hear two sides to every story. I mean, a couple of
 24 tellers get into an argument. Enlightened managers want to
 25 know both sides in order to know what's going on, and -- not

1 only to solve the problem, but being curious you try to figure
 2 that out because you want to know.
 3 A. I agree. I think that's human nature. I think we
 4 all want to hear both sides of everything. You may -- I just
 5 think that's a human nature thing.
 6 Q. In a criminal trial whether you get to hear both
 7 sides or not is strictly up to the Defendant and the Defense
 8 attorneys. That's their right. It would be your right, too.
 9 You could be on trial some day and you don't want to testify
 10 or you choose not to for a number of reasons, and you're
 11 entitled to the same thing the Defendant is entitled to, and
 12 that is upon the scales of justice, and you can do that just
 13 fine?
 14 A. Uh-huh.
 15 Q. All right. Sometimes we qualify jurors on portions
 16 of the law that sound like something they'd never be able to
 17 do, and yet I'll bet you'd be a person that would agree
 18 that -- probably been a lot of things in your life you --
 19 I'll bet you have a lot of I'd never do this, never do that,
 20 and then you realize, when faced with situations, it's not
 21 exactly that clear. Would you agree with that?
 22 A. I agree with that.
 23 Q. We all have that. I mean, I might say I'd never buy
 24 a Yugo. Do you remember those little cars that put -- I might
 25 say I'd never buy a Yugo no matter what. But if I'm at the

1 base of a volcano and that thing is getting ready to erupt and
2 that's the only car around, well, of course I'd buy the Yugo,
3 and I'd drive off.

4 Do you ever go to the theater or the opera or
5 anything like that? Do you ever do that?

6 A. Theater.

7 Q. I might say to myself, I'd never pay 150 bucks for
8 some musical to get really good seats when you're right down
9 there looking at them close. And yet, I might, if I
10 were -- if I had a date, and I was really trying to impress
11 the date. I thought she really liked it, it might be
12 worthwhile. If I knew somebody in the case, it was just some
13 musical I absolutely adored and grabbed my heart, I might -- I
14 might do it, depending upon the circumstances. I might be up
15 in the cheap seats, way up there, especially depending on the
16 musical.

17 There are other people that might say, I'd never go
18 as low as to be in the 20 dollar seats in the 14th balcony
19 kind of thing. Do you know what I'm saying?

20 A. Uh-huh.

21 Q. And yet, those are the only seats I could get, or
22 maybe if my date really wanted to go there, or maybe I didn't
23 think so much of my date. I mean, there might be a lot of
24 reasons why I'd get the 20 dollar seats. Are you with me on
25 that?

1 A. Uh-huh.

2 Q. Same thing with punishment ranges, and that's where
3 I'm leading to. Sometimes in our law the State can't prove
4 all of what it's alleged, but it can only prove some of what's
5 alleged. Sometimes, for example, we might have a capital
6 murder case where the crime was alleged to have been murdering
7 a police officer in the discharge of the officer's duties --
8 his official duties, because if we do that, if there's an
9 officer trying to arrest you and you point a gun and kill him,
10 that's capital murder.

11 And let's say the facts were, essentially, you're
12 home. You live next door to a policeman. You and another
13 neighbor get into some argument. Policeman comes out and he
14 says, come on, stop this. You know, you're disturbing the
15 neighborhood. He's in his shorts and his T-shirt, and he's
16 been watching the football game because he's not working that
17 day. You pull out a gun and shoot him. Maybe he's in the
18 discharge of his duties and maybe not. It would kind of
19 depend on what the jury saw.

20 A. Uh-huh.

21 Q. You can see how that would be a fuzzy area. Maybe
22 he's just being -- in his capacity as a neighbor trying to
23 make peace, or maybe --

24 THE COURT: Mr. Schultz, I'm going to ask you
25 to pass the witness in about seven minutes.

1 MR. SCHULTZ: Yes, Judge. It wouldn't be less
2 than seven, though?

3 THE COURT: No, it won't be less than seven,
4 but it won't be more.

5 MR. SCHULTZ: I understand.

6 THE COURT: All right.

7 Q. BY MR. SCHULTZ: The jury would probably be given
8 an instruction saying if you find beyond a reasonable doubt
9 that the defendant caused the murder of the individual, but
10 you have a reasonable doubt as to whether or not that
11 individual was in the discharge of his or her official duties
12 as a police officer, the instruction would be something to the
13 effect, you're instructed to find that person guilty of -- the
14 Judge would never use the term "plain murder" or "regular
15 murder," but it would be noncapital murder. The simple crime
16 of murder itself without that aggravating element.

17 That's what juries are expected to do, and they may
18 think it's an awful, awful crime, and yet, we weren't
19 convincing enough, we didn't prove beyond a reasonable doubt
20 the fact that the police officer was in the official discharge
21 of his duties. And it might not be our fault. Maybe he
22 wasn't. Maybe the way you're seeing the evidence isn't clear,
23 and so it's regular murder. Does that make sense to you?

24 A. Yeah.

25 Q. If that were to happen -- and in this case in the

1 sense that maybe it's a murder but not a burglary. Maybe it's
2 a murder, but not a burglary or robbery. Maybe for some
3 reason, not the State's fault, but just the way the evidence
4 is, the jury can't convict of capital murder, but could
5 convict of regular murder, or something like that. Do you
6 understand how that could be?

7 A. Uh-huh.

8 Q. You'd be willing to hold the State to its burden of
9 proving all the elements, and if we can't do one of them for
10 any reason, you're perfectly able to find guilty of a lesser
11 included offense?

12 A. I would have to base it on the evidence presented,
13 yeah. If you can't prove that, then I would certainly
14 consider the other.

15 Q. In case you thought I was just rambling, here's how
16 the cheap, inexpensive seats work into this. You no longer
17 use the capital murder punishment range of life or death.
18 Instead you have a different punishment range in a murder
19 case, and that is five years to 99 years, or life, just as
20 though you'd started out at the very beginning of this trial
21 and it was a regular murder case. Furthermore, under certain
22 circumstances, under our law a person is eligible for
23 consideration of an application for probation, even in a
24 murder case. Assuming the jury assesses punishment of ten
25 years or less, it could be probated.

1 That's kind of like what I said before. We often
 2 have reactions of I'd never do this, I'd never do that, I'd
 3 never pay 150 bucks for seats, or I'd never sit way back in
 4 the balcony. And many jurors -- not many, some jurors come in
 5 and say, well, five years probation for murder sounds nuts to
 6 me. Just the very notion that someone could take another
 7 life, and then essentially be turned loose on probation with
 8 just supervision and monitoring and whatever terms and
 9 conditions were placed on him, sounds nuts to me, and it may.
 10 What they have to realize, and what's required of any juror to
 11 be fair and able to sit in this case is that is the punishment
 12 range that the Legislature has set, and to be fair, jurors
 13 must be open to give consideration to any part of the law that
 14 they're called upon to do.

15 It's what I said about death penalty cases. Even if
 16 you're against the death penalty and think that's nuts for our
 17 society to be doing that, if you can answer those questions in
 18 a way that death could result if the evidence convinced you
 19 that way, you're still qualified even though you might be
 20 appalled at the very notion of such a law. Does that make
 21 sense to you?

22 **A. Yes.**

23 **Q.** When we're talking about as little as five years
 24 probation, what that means is you can take into consideration
 25 all the circumstances of the Defendant's background, whether

1 **I think there's situations in everything that may bring you**
 2 **around to a different response that you wouldn't normally**
 3 **have.**

4 **Q.** In other words, you haven't made up your mind. You
 5 haven't said, if I'm on this jury I'll disregard the law that
 6 says be able to consider that part of punishment, also?

7 **A. I think I would have to hear all the evidence and**
 8 **hear -- I mean, I don't think you can blindly say, I would**
 9 **never consider something. I think that's naive.**

10 **Q.** It's fine to be unlikely --

11 **MR. SCHULTZ:** Judge, I'm almost finished, and
 12 I'm aware of the time.

13 **THE COURT:** All right.

14 **Q. BY MR. SCHULTZ:** It's fine to be able to express the
 15 fact that that would probably not be as likely as going the
 16 other way, like for a life sentence. Just like it's fine for
 17 that capital murder opponent -- for that death penalty
 18 opponent to say, it sure wouldn't be very often I'd ever vote
 19 in a way for a death sentence. It would be a cold day in
 20 July before I could do it, but I could do it depending upon
 21 the facts, and my mind is open to the full range. I may be
 22 more likely to go one way than the other, but my mind is
 23 still open.

24 **A. That's accurate.**

25 **Q.** Is that where you are?

1 he's a Medal of Honor winner, Dr. Kevoorkian, Mother Theresa,
 2 whoever it might be, and take into consideration the
 3 circumstances of the crime itself, the motive for doing it.
 4 Maybe it's the daddy that killed the killer of his children
 5 who got off scot-free from the court, and the daddy is
 6 thinking that guy is going to kill again, and that means your
 7 child or my child and he says I'm not having it, and he's
 8 still a murderer. You and I might think he did society a
 9 favor, kind of, but we can't let people do that. We can't let
 10 them be murderers.

11 **A. Right.**

12 **Q.** He may be somebody that all his life has done good
 13 for others, and he got forced into a situation where he made
 14 the choice we can't accept, but we can understand. You may
 15 absolutely be convinced the best thing in this case is to give
 16 him probation, and let him go out and return to the people
 17 that need him or try to make something else of his life. That
 18 may be how you feel. The question is are you willing to be
 19 open to that full range of punishment, and depending upon the
 20 facts and circumstances assess appropriate punishment?

21 **A. I think honestly, like you said, I think right off**
 22 **the top of your head if someone says to you, there's been a**
 23 **murder committed and this person is going to get five years**
 24 **probation, I think every one of us thinks how can that be**
 25 **without knowing what's happened in that situation. And I**

1 **A. Yeah.**

2 **Q.** Do you have any questions of me before I turn you
 3 over to Mr. Goeller or Mr. High?

4 **A. No, sir.**

5 **MR. SCHULTZ:** Thank you for your courtesy.

6 **THE COURT:** All right. Just so you understand,
 7 you've used about 59 and a half minutes, so I thought you
 8 might be curious about how much time you exactly used.

9 **MR. SCHULTZ:** Does that mean, like, I have an
 10 extra 30 seconds?

11 **THE COURT:** You have 30 seconds for rebuttal.

12 **MR. SCHULTZ:** I've got a minute and a half from
 13 yesterday if my records --

14 **THE COURT:** If you refer to my billing records
 15 when I was in practice, I should have died about 20 years ago.

16 All right. Mr. Goeller, are you ready?

17 **MR. GOELLER:** Yes, Your Honor.

18 **CROSS-QUESTIONS**

19 **BY MR. GOELLER:**

20 **Q.** Good morning, Ms. Cook.

21 **A. Morning.**

22 **Q.** Do you prefer Ms. or Mrs.?

23 **A. Actually, I prefer Kathy, if you don't mind.**

24 **Q.** Judge won't let me call you by your first name. I'd
 25 love to.

1 A. My husband would want you to call me Mrs. Cook. He
 2 doesn't like that "Ms." thing.
 3 THE COURT: Your husband and I have a lot in
 4 common.
 5 VENIREPERSON: See, yeah.
 6 Q. BY MR. GOELLER: Speaking of your husband, he's in
 7 the construction industry?
 8 A. He's a project manager.
 9 Q. For Parrot Construction?
 10 A. Bob Parrot Construction.
 11 Q. Residential, commercial?
 12 A. Commercial.
 13 Q. Okay. What kind of commercial?
 14 A. They do a lot of rebuilds. They don't do ground-up.
 15 They're based out of California, and they have a small
 16 division here in Dallas.
 17 Q. Are times pretty good for them?
 18 A. They've been not bad. I mean, we're kind of having
 19 economic problems right now so we'll see what happens.
 20 Q. You're a Democrat and liberal in the banking
 21 industry in Collin County?
 22 A. It is a contradiction, isn't it? I guess I see
 23 myself as Democrat, but honestly I'm much more of a -- I tend
 24 to lean more Democratic and more liberal, but I tend to vote
 25 for the person more than -- I just happened to have voted for

1 more Democrats than I have Republicans.
 2 Q. It's unusual to see. You know, Collin County
 3 it's -- I don't even know if there's a Democratic party. But
 4 when I see Jimmy Carter and Ann Richards --
 5 A. I know.
 6 Q. No, it makes me feel good. I think Jimmy Carter was
 7 a wonderful man.
 8 Why did you put him down, by the way?
 9 A. A lot of that is his humanitarian things.
 10 Q. It's hard not to like him?
 11 A. Yeah. I think he is a genuinely good person that
 12 has a good heart and really cares about his fellow man, and he
 13 doesn't have any -- I don't think he has ulterior motives,
 14 which I can't say about other politicians.
 15 Q. You're originally a "cheesehead"?
 16 A. Well, just for six months of my life.
 17 Q. Oh, okay. You didn't spend too much time up there
 18 in Wisconsin?
 19 A. My family -- I have members of family still up
 20 there, as far as extended family, and my parents are both from
 21 Wisconsin.
 22 Q. They're all about to start breaking out their
 23 winter coats.
 24 A. Exactly.
 25 Q. Which is one of the reasons why you're down here?

1 A. Exactly.
 2 Q. Okay. What have been your thoughts since August
 3 21st when you appeared in that building right next door, there
 4 was 200 people out there, and it was very hot. Do you
 5 remember that?
 6 A. Yes.
 7 Q. And you get this 18-page, or 17-page questionnaire,
 8 and you basically put your name down and where you live, and
 9 then in big, bold print "death penalty." And after you filled
 10 this out and between then and now, tell me what some of your
 11 thoughts have been, Mrs. Cook.
 12 A. That the first time that I truly get asked for jury
 13 duty where not -- you go in and you get dismissed because they
 14 decided not to do anything, that it would be something with
 15 this much responsibility, and not -- you know, a traffic deal
 16 or something like that. I mean, I was a bit overwhelmed by
 17 that when I left that first day. And probably, you know, we
 18 go on our day-to-day lives thinking, okay, a couple of weeks
 19 from now I'll deal with that, but I think that it's been
 20 something that I've been thinking about. It's been in the
 21 back of my mind because that's a huge -- I mean, this is a
 22 huge thing. I mean, it's -- you don't -- I don't think people
 23 think that they truly -- you know, we all have this view of
 24 what our justice system is, but I don't think that many people
 25 get, or do -- should take responsibility in what they need to

1 do.
 2 Q. In what way?
 3 A. As far as taking responsibility to make sure that we
 4 follow our duties as being jurors. I think we have to think
 5 of it in the sense that every person should have their day in
 6 court, and I think that every person should -- you would hope
 7 that if you ever had to, or a family member ever had to go
 8 through something like this, that they would have responsible
 9 people on their jury and not someone that's just trying to get
 10 through it or get out of it or pass it off. I've had all
 11 kinds of people say to me, well, what do you think you're
 12 going to say? What do you think they want to hear when you
 13 have to go in there, and I'm like, well, you know what, I
 14 think you just need to say what you've got to say and --
 15 Q. Talk from the heart?
 16 A. Yeah. Because everyone is going to want -- the
 17 State may want something from me, and everybody wants
 18 different -- what your views are and which way is going to be
 19 best for their case, and I think you have to be true to
 20 yourself, and answer the way you need to answer.
 21 Q. Right. I mean, you know, if the Judge would give
 22 me three weeks to just solidly, individually voir dire you,
 23 and maybe in three weeks I could have you against the death
 24 penalty, but I wouldn't. I won't, and my job up here is not
 25 to convince -- change your mind about your views of the death

1 penalty because, number one, I have no right to, and, number
2 two, the reality of our law is that all juries in capital
3 cases in Texas are death qualified, and that means every
4 single juror has to be able to vote to return a death
5 penalty -- death sentence.

6 That's the law, so I'm not going to change the law.
7 Judge Sandoval can't change the law. So, if I had all the
8 time in the world, and I brought in the greatest speakers and
9 statistical data and went about it in a way to convince you
10 that this is not a good thing, this death penalty, all I would
11 be doing is cutting my throat because then you couldn't serve
12 anyhow under our law, because you've got -- that jury has got
13 to be "death qualified," as we say. So, the best I can do
14 with jurors that are pro-death penalty is to try to understand
15 your thoughts about it and try to get to know you just a
16 little bit in the short amount of time that I have and go from
17 there, okay? Fair enough?

18 A. Uh-huh.

19 Q. I know you told Mr. Schultz your views on the death
20 penalty have not changed. What things have you thought about
21 though, other than just the responsibility, and I wish more
22 people like -- would have said that. I mean, we've had some
23 people come in here and say, I ain't really thought about it,
24 and those people scare me.

25 A. I can't see how you couldn't think about that.

1 Q. I agree.

2 A. I mean, the questionnaire made you think about it
3 enough right then and there and about your own thought process
4 and your own morality, and your own -- you know, there's some
5 pretty -- to all the sudden walk in the door and sit down and
6 fill out 17 pages over what you think is morally right, what
7 are your strong beliefs? These are real strong thought
8 processes that we have.

9 Q. Yeah.

10 A. So I can't believe how somebody could walk out of
11 there and not give that some more thought.

12 Q. Yeah. And some people said, the only thing I
13 thought about was how this would screw up my vacation.

14 A. Well, I'll give you an honest answer. I thought
15 about that, too, and then I thought that's pretty selfish of
16 me.

17 Q. No, it's not.

18 A. Well, but, you know, you think of --

19 Q. I think of it this way. We got a fax from a juror
20 today. Disney World, has been planned months in advance, the
21 money is down, it's nonrefundable. Fall Break comes for PISD,
22 you know, it's that one week, and if my kids have been talking
23 about going to Disney World for four months, and we're all
24 geared up and we're packed and -- you know, if I had little
25 kids, and they picked out a Mickey Mouse backpack and -- and I

1 just -- I tell them, oh, guess what, I got jury duty. We're
2 not going, kids. I don't care what my civic duty is. I know
3 myself well enough to know I'd be looking for a way to ditch
4 this.

5 A. Well, you got a letter from me for changing this
6 from when I was supposed to go.

7 Q. I mean, that's human nature?

8 A. And --

9 Q. I don't got to look at this Judge or these lawyers.
10 I've got to look at my kids --

11 A. Right.

12 Q. -- you know? Why didn't we go? Daddy is home.
13 He's home at night. Why didn't we go to Disney World, Mommy?
14 I know myself well enough to know that politically correct
15 civic duty "I must go and serve, I wouldn't do it."

16 THE COURT: Courage, Mr. Goeller.

17 MR. GOELLER: Courage. Except for this Judge
18 in this Court, then I'd be right there.

19 Q. BY MR. GOELLER: But anyhow, I want to talk about --
20 we've learned, or I've learned the hard way the last couple of
21 weeks to maybe talk about some things right up front before we
22 get too far into it.

23 A juror that's going to be selected in this case,
24 pretty much the month of October, probably the most of --
25 probably three weeks of the month of October, if not more;

1 Monday through Friday, just roughly guesstimating, 8:30 a.m.
2 to 5, 5:30 p.m. That will be the routine for three or four
3 weeks. Tell me about your personal situation, your family,
4 your job, husband. Do you have children?

5 A. Yeah. I have a two and a half year old.

6 Q. How old?

7 A. Two and a half.

8 Q. Boy or girl?

9 A. Little boy.

10 Q. Little guy. Tell me about all that.

11 A. My job, they're sweating bullets. I'm only one of
12 two trainers, so they would have to make that happen. I
13 warned them yesterday that I'd be back today, so from a -- my
14 son, I have my husband can help with that. Obviously 5:00
15 would be much better than 5:30 in case I have to drive to
16 Plano to pick him up. We have a vacation planned, but it was
17 a build-a-fence-in-the-back yard vacation, so it's not
18 something that needs to happen. I have enough family and
19 support, as far as if I have a sick kid or something like
20 that. So, other than potential job stress that they would
21 have to deal with, I can't -- that would be the primary thing.

22 Q. Okay. If you ended up on the jury, with all that,
23 what kind of juror would you be?

24 A. I think I would probably be a good juror.

25 Q. Okay.

- 1 A. I don't think that --
- 2 Q. The reason I ask that, we had a guy the other day
- 3 that said if I'm on this jury, I leave here and then I'm going
- 4 to go put in 7 or 8 hours. And I said, what kind of juror are
- 5 you going to be? He said, I'll be a tired juror.
- 6 A. And I think as long as my son's fine, and I don't
- 7 have any outside stuff because I think that's naive to think
- 8 that it's not going to enter in if you have, you know, other
- 9 things going on.
- 10 Q. Right.
- 11 A. But I think as long as my son was fine and
- 12 everything was fine at home, and my -- they were fine as far
- 13 as my job, I don't think that I would have anything that would
- 14 cause me to do not do my job --
- 15 Q. Okay.
- 16 A. -- as a juror.
- 17 Q. I was turning to the page about your family, and
- 18 this has absolutely nothing do with anything. But your
- 19 brother James is a chef?
- 20 A. Uh-huh.
- 21 Q. Where does he cook at?
- 22 A. He owns Sevy's. It's down at Preston and Northwest
- 23 Highway. He's Sevy.
- 24 Q. How long has he been in that business?
- 25 A. Oh, he's been in the business forever. He's had the

- 1 restaurant open, I think it's going on four and a half years.
- 2 Q. Wow. I'm a frustrated chef myself, or chef
- 3 want-to-be, I should say.
- 4 You had mentioned something. You used the word
- 5 "morals." Something like, a case like this can start you to
- 6 think about your morals and maybe test them. You attend the
- 7 Custer Road United Methodist Church?
- 8 A. Yes.
- 9 Q. Semi-regularly?
- 10 A. Yeah, not as regularly as we should.
- 11 Q. And I notice in your questionnaire, what's the best
- 12 argument in opposition of the death penalty? You wrote it's
- 13 only God's will when someone should die.
- 14 A. I think it goes back to thou shalt not kill, and I
- 15 believe in those Ten Commandments strongly. You know, you
- 16 can -- I think it's an internal struggle between you can find
- 17 things in the Bible that say it's okay; you can find things in
- 18 the Bible that say it isn't okay. I think everyone struggles
- 19 with that; some more so than others. I'm not a Bible thumper
- 20 or anything, but I think it's a moral dilemma to have to do
- 21 that. I think there's reasons that you would, you know. So,
- 22 I think that morally kind of comes into play that -- you know,
- 23 your logic versus your heart versus what you grew up believing
- 24 and being told and all that kind of stuff because, at one
- 25 point you think, well, if I were to convict a person and

- 1 sentence them to death, am I -- you know, do I become that
- 2 same type of person, you know? Or is there some
- 3 justification, and I think that's something people struggle
- 4 with.
- 5 Q. As you know, we don't have an automatic death
- 6 penalty, and folks have pointed out that when we call these
- 7 "capital murder cases," I'm not quite sure why we call them
- 8 that because that tends to make people think that if you're
- 9 found guilty, you will be put to death, and, of course, we
- 10 don't have that system. And it's truly a choice for the jury
- 11 regarding those special issues if somebody is found guilty.
- 12 Our position is going to be he's never going to be found
- 13 guilty of capital murder, okay?
- 14 But this individual voir dire -- and this is very
- 15 unusual, this individual process we're going through. This
- 16 only happens in these kinds of cases, and we only have this
- 17 individual one-on-one voir dire because of those special
- 18 issues. You've never served as a juror before, have you?
- 19 A. No.
- 20 Q. Probably been called a couple of times?
- 21 A. Uh-huh.
- 22 Q. Any other case, from a speeding ticket to a murder
- 23 case. Generally speaking, from the time you get to the
- 24 courthouse that morning you're usually hearing the evidence
- 25 that same day.

- 1 A. Uh-huh.
- 2 Q. I've seen cases where within two hours, the case is
- 3 in front of you, so this is unusual. And it's always
- 4 difficult, I think, for an attorney to talk about punishment
- 5 issues when we haven't even had the trial yet, and somebody
- 6 will be entering a not guilty plea, but I'm forced to because
- 7 I can't talk about them later, you know? I mean, I'm not so
- 8 naive to think that every case where I enter a not guilty plea
- 9 is going to end up not guilty. That's just the reality of it,
- 10 so we've got to prepare and talk about it now so if that comes
- 11 about, the Judge won't let me take a break and say all right,
- 12 folks, now I want to talk to you about -- now that you've
- 13 found somebody guilty, I want to talk about punishment
- 14 options. I can't do that, so I'm forced to do it now. It's
- 15 awkward, but I have to live with it.
- 16 Your brother's had that restaurant about four and a
- 17 half years?
- 18 A. Uh-huh.
- 19 Q. Do you know a guy named Eduardo Florez?
- 20 A. Huh-uh.
- 21 Q. Ever heard of him? Do you know any of the staff
- 22 down there, or anything like that?
- 23 A. Some of them, and some of them I know by face, but
- 24 not by name.
- 25 Q. Okay. That dilemma that you were talking about when

1 somebody starts -- really starting to think about capital
 2 punishment, have you been able to reconcile that moral
 3 dilemma, or is it still an ongoing --
 4 A. I think it's an ongoing thing. I think it's -- I'm
 5 pretty decisive about a lot of things in my life. I'm a
 6 fairly decisive person, and I think that's just something
 7 that, because it's bigger than just, you know, yes, no,
 8 whatever, so I mean, I probably -- I struggle with it, but I
 9 feel pretty decisive in what I feel that I would do. If it
 10 came down to based on what I hear, what I see, whatever, I
 11 could probably make that decision. Well, I know I could make
 12 that decision, so -- and I may struggle with it later.
 13 If I were a person that -- if I had to say, you
 14 know, would it be my choice to take someone's life in this
 15 situation, I would -- I may struggle with it more afterwards
 16 than I did before.
 17 Q. Okay. That scares me. I hoped you'd say you'd
 18 struggle with more before than you would afterwards.
 19 A. Well, I tend to be a very logical person and a very
 20 what is presented before me, what my thought process is. Now,
 21 I may, after, struggle with the fact that that then goes to my
 22 moral self after that.
 23 Q. Okay.
 24 A. But I guess I need to clarify that.
 25 Q. Yeah, you scared me.

1 A. No. I think that -- like I said, I'm a very logical
 2 person. I'm a very detail person. I tend to think in a
 3 logical manner, which can sometimes affect you emotionally.
 4 Q. Essentially, what you do all day is -- I mean,
 5 numbers is your business, and then training people to make the
 6 numbers accountable in a fast and efficient way in a very --
 7 I've never worked in your industry, but am I right about that?
 8 Banking is all about numbers basically.
 9 A. Well, I think to a certain extent it is. But, the
 10 level that I'm at, I don't care if you have the fastest teller
 11 in the world, but if she or he has a poor attitude or doesn't
 12 look at your customer, is not a people person, I don't care
 13 how fast or how accurate they are. I mean, you have to sell
 14 that person as a whole. They need to do the whole job. They
 15 can't do part of the job. So, it's not just about the
 16 numbers.
 17 Q. Well, I'm glad to hear that. So you do see human
 18 factors in your business?
 19 A. Yeah.
 20 Q. Okay, okay. When you circled that you thought life
 21 confinement in prison is appropriate in some cases and you
 22 could return such a verdict, what were your thoughts along
 23 that line?
 24 A. I think it's circumstances of --
 25 Q. What kind of circumstances --

1 A. -- the crime.
 2 Q. -- were you thinking about?
 3 A. The crime. I think it's circumstances of -- maybe
 4 the circumstances that led up to the crime. I think it's
 5 circumstances of the person in their life as far as where they
 6 are in their life as far as the crime. I don't know that I
 7 could, you know, sentence someone to die that was having
 8 some -- you know, was terminally ill or that was 85 years old,
 9 or something like that. I don't know that I could do that and
 10 from that standpoint. So, I would say that, yeah, there are
 11 instances where I may say that's not the thing to do.
 12 Q. Okay. You circled yes to the death penalty should
 13 be available for punishment upon conviction of other criminal
 14 offenses.
 15 A. Uh-huh.
 16 Q. Are you in favor of the death penalty being an
 17 option for nonhomicide cases?
 18 A. Yes.
 19 Q. Okay. Give me an example.
 20 A. I think violent crimes against children.
 21 Q. Okay.
 22 A. I think certain crimes with just absolute violence
 23 that made someone suffer, maybe more than if you would have
 24 killed that person. I -- horrific crimes like that. Someone
 25 that can't protect themselves, that didn't have the ability to

1 protect themselves, and someone acted violently against them.
 2 Those kind of things.
 3 Q. Have you ever had -- have you been consistent with
 4 your views on the death penalty throughout your life, or have
 5 they changed with age or --
 6 A. It probably was brought more to the forefront when I
 7 moved to Texas. It wasn't -- I grew up in Michigan. I didn't
 8 have -- it wasn't -- you know, it was talked about, but it
 9 wasn't something that was at the forefront of our daily
 10 conversations, but as I got older and more aware of -- I think
 11 the other thing is that maybe have gotten more definitive as,
 12 you know, in a day -- in our day-to-day lives we're confronted
 13 that violence people do against other people, and it's all
 14 over the newspapers, it's all over the TV, everything. I
 15 think there's some sense of outrage on that that maybe defined
 16 it more.
 17 Q. If you were sitting where I am, okay, would you want
 18 you on this jury?
 19 A. I don't know. That's a good question. I don't
 20 know. I don't know that I could answer that. I don't know
 21 what you're looking for in a juror.
 22 Q. What would you be looking for? If you were sitting
 23 over here, what are you looking for in a juror?
 24 A. I guess I would want someone that would be honest,
 25 would take their responsibility seriously, would truly listen,

1 and I guess also be willing to listen to the other jurors.
 2 Q. Okay.
 3 A. I mean, I think that it's -- it's not one person
 4 making a decision here.
 5 Q. What do you think you would bring into a jury room?
 6 What personal attributes do you think you bring to the table
 7 that is a positive thing in a capital murder case, or really
 8 any case, I guess?
 9 A. I deal with all kinds of personalities in my job on
 10 a day-to-day basis. I think I'm fairly easy-going. I think
 11 that I am a decisive person. I'm not a person that -- which,
 12 I guess, could also be seen as a detriment, but I feel very
 13 confident in my thought processes and how I act.
 14 Q. You work a lot with HR people?
 15 A. Uh-huh.
 16 Q. One thing you had mentioned earlier when Mr. Schultz
 17 was talking to you about the teller that was just not cutting
 18 it, and you used the word "terminate." I've been told that
 19 word is not used in HR, anymore. I was --
 20 A. And it may not be to the person that you're doing
 21 it.
 22 Q. Okay.
 23 A. But if I'm calling a manager or someone, we will
 24 use -- I'm sure they don't use it face-to-face with a person.
 25 I have never -- when I have let someone go, whether it be when

1 I'm training or I was a manager, I've never said the term "you
 2 are terminated."
 3 Q. How do you go about doing that, by the way?
 4 A. Letting somebody go?
 5 Q. Yeah.
 6 A. Depends on the person.
 7 Q. Yeah.
 8 A. I mean, it -- some people realize that it's coming.
 9 They know that -- and you have to be as positive -- you
 10 certainly don't want to -- sometimes, depending on why they're
 11 being terminated, there's nothing else you can say, other than
 12 sorry. Others, you want to make sure that they still leave
 13 with their -- I don't know. I don't think dignity is the word
 14 I was going to say there. Their positive -- you want them to
 15 walk out of there thinking, hey, it's not -- you may not be
 16 able to do this, but that's not saying that makes you any --
 17 you've got to do it in a positive way.
 18 Q. Right.
 19 A. You certainly don't want to deflate them, so you
 20 have to be as positive as possible, but without saying, you
 21 know, I'm sorry. It's just not going to happen.
 22 Q. Right. Did you have to undergo any special training
 23 for that, or is that just --
 24 A. A million years of being in a branch managing
 25 tellers.

1 Q. In your questionnaire, there was a sentence,
 2 genetic circumstances of birth, upbringing, environment should
 3 be considered when determining the proper punishment of
 4 someone convicted of a crime. You circled "disagree," and
 5 when Mr. Schultz was talking with you about that special
 6 issue, the one on top, that mitigation special issue --
 7 A. Uh-huh.
 8 Q. -- you and him discussed things like drugs, bad
 9 upbringing, kind of a broken home, abuse, things of that
 10 nature. And based on your questionnaire and your answers to
 11 Mr. Schultz's questions, I take it that those types of
 12 mitigating factors, at least for you, don't have any
 13 significance?
 14 A. I think probably you're pretty much right. I think
 15 there are a lot of people out there that also have a poor
 16 upbringing or have struggled in their earlier years and have
 17 gone through a lot in their lives that make other choices and
 18 pulled themselves up out of it to -- and not made poor choices
 19 based on that. I think sometimes we, as a society, tend to
 20 make excuses.
 21 Q. Like, when you were talking about youth?
 22 A. Uh-huh.
 23 Q. You told Mr. Schultz that would not -- that would
 24 not be a consideration of yours. And that's okay. I'm not
 25 here to debate you or try to get you to change your mind, but

1 those areas of mitigation areas, the things Mr. Schultz talked
 2 with you about; youth, drugs, bad upbringing, abuse in the
 3 home, broken home, people doing drugs in the home. Those
 4 types of topics, from what I'm hearing you say, is you would
 5 not -- you would not give those considerable -- meaningful
 6 consideration in mitigation.
 7 MR. SCHULTZ: Excuse me, Judge. I'm going to
 8 object because he's now trying to commit the juror to what she
 9 would do when faced with that type of issue, not what she
 10 thinks about it or how she characterizes them. But that's
 11 trying to pin her down to what her vote would be, or how she
 12 would go about analyzing these, and that's improper.
 13 THE COURT: Overrule the objection.
 14 Q. BY MR. GOELLER: Fair to say?
 15 A. To a certain extent. I can't say that I can -- I
 16 can't say that I would -- depending on what I heard, I can't
 17 say that I would totally say it without -- there could maybe
 18 be some gray area in there. To be honest with you, I'm not
 19 going to say that I just totally would disregard everything I
 20 heard.
 21 Q. Oh, I know.
 22 A. But I also wouldn't say that, gee, you know what,
 23 then that's -- you know, that's been a tough life and, well,
 24 therefore, gosh darn, there's a reason. I don't believe that.
 25 Q. I understand what you're saying, but in -- what

1 you've put in your questionnaire and all your responses to
2 Mr. Schultz's questions regarding those areas, it seems to me
3 what you're trying to say is you would not give those
4 meaningful consideration.

5 MR. SCHULTZ: Excuse me just a moment, Judge.
6 Again, we would object. He's trying to commit the juror as to
7 how she would evaluate specific things, and what her vote
8 would be, and that's within her province as a juror, not to
9 ask what would you do with a particular type of evidence.

10 MR. GOELLER: Judge, no, I am not. I am
11 absolutely entitled to the -- to get into whether meaningful
12 consideration would be given. I'm not trying to ask her, you
13 know, is this mitigating; yes or no? Would you consider this
14 mitigating? I'm talking about meaningful consideration, which
15 is exactly what Hendrick is talking about.

16 THE COURT: You meaning meaningful
17 consideration of whatever she would consider to be mitigating?

18 MR. GOELLER: Yeah.

19 THE COURT: All right. Overrule the
20 objection.

21 A. I mean, I guess I don't understand what you consider
22 meaningful. I mean, would it enter into my thought process?
23 There's a possibility. I mean, meaningful is a very
24 subjective word.

25 Q. BY MR. GOELLER: Uh-huh.

1 A. Meaningful to me or meaningful to you. I mean, I
2 can't say that I would totally disregard it, but I can't also
3 say that it would sway me one way or the other.

4 Q. And I'm thinking of when you use the term -- when
5 you and Mr. Schultz were having a discussion, you said
6 repeatedly that's no excuse. Youth, no excuse; drugs, no
7 excuse. That's what I'm going back to.

8 A. You know, like I've said, I think you need to take
9 responsibility for your actions. I don't remember -- and,
10 yeah, there are things in people's lives that affect how they
11 may -- may have made choices and things like that, but there's
12 also things in your life -- you still have that choice, I
13 guess is what I'm saying. You have that choice. You still,
14 as a person, have your own choices to make and ultimately
15 that's what it comes down to.

16 Q. Okay. I'm with you. I'm with you. I'm not
17 disagreeing with you.

18 The last book you read was Organized From Within.
19 What was that about?

20 A. About getting my life organized.

21 Q. Okay.

22 A. Didn't work.

23 Q. How come it didn't work?

24 A. I'm --

25 THE COURT: Couldn't get around to reading it.

1 (Laughter.)

2 VENIREPERSON: I was going to say, didn't have
3 enough time to figure it out. No, just too much stuff going
4 on.

5 Q. BY MR. GOELLER: Looks like you took part in a
6 trial one time as a witness in a fraudulent check case?

7 A. Yeah.

8 Q. Where was that?

9 A. It was up here in Collin County. When I was a
10 manager at one of the branches there was a gentleman that
11 tried to pass a fraudulent check, and they actually caught
12 him. So, when I -- and honestly, when I had to go back. The
13 trial didn't come around for about a year and a half, and I
14 had a vague recollection of the whole thing. So, I just had
15 to basically talk about bank policies and how we handle things
16 in a branch.

17 Q. Y'all probably deal with, what, hundreds
18 of thousands of checks and bad checks and NSF, or do not
19 submit for deposit again, and all that kind of stuff.

20 A. Uh-huh.

21 Q. What do y'all charge -- I'm going to put you on the
22 spot here. We've all had professionals in here. Once
23 somebody was asking about mark-up on auto parts and new cars.
24 What do y'all charge for a bounced check?

25 A. 30 bucks.

1 Q. Whoa! What's it really cost you, though?

2 A. 30 bucks. No.

3 Q. No.

4 A. No. But, I mean, considering the number.

5 Q. That's profit for y'all?

6 A. Yeah, we're nonprofit. Yeah, we're going to make
7 some money off of it.

8 Q. I'm not saying there's anything wrong with that.

9 A. It's competitive in the market. It's competitive in
10 the banking field.

11 Q. Don't you think college guys who maybe bounce a
12 couple of checks, you ought to waive them fees once in a
13 while?

14 A. Not teaching them a thing, are you?

15 (Laughter.)

16 Q. My mother used to just shake her head when I was in
17 college, shake her head. Didn't say much, just shook her head
18 a lot.

19 That first special issue down on the floor there,
20 that probability, what does probability mean to you?

21 A. There's a chance.

22 Q. Okay, okay. I'm starting to run out of time.

23 Do you have any questions for me?

24 A. Huh-uh.

25 Q. Okay. If you were to sit as a juror in this case

1 and you did not feel the State proved that special issue
 2 number one beyond a reasonable doubt and that would result in
 3 what? What would be the outcome of this case?
 4 **A. I believe at that point, wouldn't that be a life**
 5 **sentence?**
 6 Q. Yeah. Could you walk away feeling okay about this
 7 case if you were to vote that way?
 8 **A. I feel pretty comfortable in -- like I said, I'm a**
 9 **very decisive person. I, most likely, would feel comfortable**
 10 **when I make my decision, and granted it would be with a bunch**
 11 **of other people, but I would feel pretty comfortable in any**
 12 **decision I make. I'm pretty --**
 13 Q. Okay. What does that mean to you, "beyond a
 14 reasonable doubt"? How do you look at that?
 15 **A. I think it's pretty self-explanatory. If I don't**
 16 **have doubts. If the State has proved to me that, then I don't**
 17 **have any doubts that that crime is committed by that person.**
 18 Q. Okay. And you're exactly right in the first phase
 19 of the trial. In the second phase, when it talks about that
 20 special issue, when they've got to prove to you beyond a
 21 reasonable doubt that question --
 22 **A. Uh-huh.**
 23 Q. -- what do you think about that? What does that say
 24 to you?
 25 **A. I think that that -- I think that weighs in with**

1 **evidence and a gut feeling.**
 2 Q. Okay.
 3 **A. And I think that's something that -- you know,**
 4 **probability is a very vague word.**
 5 Q. Right.
 6 **A. So I think that would -- you would have to weigh**
 7 **evidence, and you would honestly have to go with, you know,**
 8 **your gut feeling. No one can predict what's going to happen.**
 9 Q. Yeah.
 10 **A. You would have to go by what you feel and what**
 11 **you've heard.**
 12 Q. Okay. When you say "gut feeling," tell me how
 13 beyond a reasonable doubt relates to a gut feeling.
 14 **A. I think that, like I said, it's hard to go beyond a**
 15 **reasonable doubt with a probability. You know, it -- I think**
 16 **that's a stretch. You know, I think that's based on what**
 17 **you've had presented in front of you and the history and the**
 18 **person that you've seen and heard about and everything. I**
 19 **think you have to base it on your reasonable doubt, your**
 20 **feeling as to what the probability is of that person doing**
 21 **something.**
 22 Q. Okay, okay.
 23 **A. I don't think anybody can give reasonable doubt on**
 24 **probability. I think that's a very hard thing to do.**
 25 Q. Yeah. It -- it's odd, isn't it, the way that

1 question is phrased?
 2 **A. It's almost a contradiction in terms.**
 3 Q. You know, I never thought of it. I mean, I've
 4 always struggled with it, and I've been talking about that
 5 seemingly odd choice of words, but you're the first person
 6 that said that and you've got a point. Beyond a reasonable
 7 doubt, probability, yeah. I never thought of it that way.
 8 Thank you. We're all struggling. I think everybody struggles
 9 with that question when you start really reading it because
 10 what they're talking about there is it would commit criminal
 11 acts of violence, not might, not maybe, would, and then acts
 12 is plural, and then continuing threat. So they don't speak of
 13 one act because that, obviously, wouldn't mean continuing.
 14 They speak in the plural of acts, continuing threat, and we
 15 know society is -- definitely includes prison society,
 16 penitentiary, 40 years minimum. So it is odd, but that's the
 17 question we have. That's the question the Legislature gave
 18 us, so...
 19 Okay. Any other questions, anything, anything at
 20 all relating to this case, not related to this case?
 21 **A. If I were chose for the jury, when is the -- when**
 22 **would this trial start?**
 23 Q. I think in about a week -- about a week to 10, 12
 24 days.
 25 **A. (Nods heads.)**

1 Q. Yeah, could be as early as sometime later next week
 2 or the week after that, my best guesstimate is.
 3 **A. Okay.**
 4 Q. But I wish I could tell you more because I really
 5 don't know. Nobody in here, I don't think, really knows.
 6 **A. That's fine. I'm just thinking.**
 7 Q. Trying to plan ahead.
 8 Is your baby -- he's two and a half. Day-care or --
 9 **A. Day-care.**
 10 Q. Okay. So that's something that you don't have to
 11 start right up. That's been ongoing and you just tweek it?
 12 **A. Yeah.**
 13 Q. Okay, okay. Have you talked to your husband about
 14 these kinds of issues, not specifically these special issues,
 15 but capital punishment and the fact you might be serving on a
 16 jury?
 17 **A. Uh-huh.**
 18 Q. What are his thoughts?
 19 **A. Last night I said you don't seem to be as freaked**
 20 **out about this as I am. He said, well, yeah, I am. I just**
 21 **don't show it like you do. You know, he's quiet, so he has**
 22 **his opinions and he -- you know, he really -- he's a staunch**
 23 **Republican, so he has his own views on certain things, so we**
 24 **avoid that currently, those conversations.**
 25 Q. I got you. I'm in a similar situation.

1 Okay. All right. Thank you, ma'am.
 2 THE COURT: All right. I'm going to ask you to
 3 step down for a few minutes, and perhaps we'll have you back
 4 in in a few minutes.
 5 VENIREPERSON: Okay.
 6 (Venireperson exits the courtroom.)
 7 THE COURT: All right. The Juror is not --
 8 MR. SCHULTZ: Acceptable to the State, Judge.
 9 THE COURT: Acceptable to the State, all right.
 10 What says the Defendant?
 11 MR. GOELLER: Judge, we need a little bit of
 12 time. I need some time on this one.
 13 THE COURT: All right. I tell you what, I'm
 14 going to step down for about five minutes, and when I get back
 15 we'll talk about these two jurors that I gave you a copy of
 16 their excuses. And also there's another juror, and I'll have
 17 the bailiff make you a copy. And let me just tell you, the
 18 other juror with almost an identical problem and almost
 19 identical dates is Number 170, Kirk Wilson. He's scheduled to
 20 appear on Monday, October 1st, but he wants to be gone from
 21 9-29 through 10-3. He has nonrefundable tickets. And so
 22 we'll talk about that after you figure out what you're going
 23 to do with this juror, although I think I know. We'll see you
 24 in a few minutes.
 25 THE BAILIFF: All rise.

1 (Recess taken.)
 2 THE COURT: Please be seated. And let's see, I
 3 think the State announced already, so I'll ask the Defendant
 4 what you have to say.
 5 MR. GOELLER: Your Honor, in regards to Juror
 6 Number 68, Kathryn Jo Severenson Cook, the Defendant, at this
 7 time, would submit this juror for cause for the following
 8 reasons. Number one, this juror, based on the totality of her
 9 voir dire, and that's what the appellate courts look at, is
 10 the totality of her voir dire, certainly has a bias against
 11 the phase of the law in which the Defendant is entitled to
 12 rely on, and that being Special Issue Number One and Special
 13 Issue Number Three.
 14 I would cite to the Court Trevino versus State,
 15 Penry versus Lynaugh and all its prodiginy. Let me quote
 16 right from that case, Your Honor, Trevino. "Clearly the law
 17 provides that youth is a mitigating factor which must be
 18 considered. Failure of the trier of the fact at least to
 19 consider youth in the determination of punishment constitutes
 20 error."
 21 She -- and I would submit that the State
 22 disqualified this juror. Mr. Schultz went down all the
 23 classic areas of mitigation; specifically youth, specifically
 24 drugs, specifically broken homes, single parent homes, abuse
 25 in the home. And she said no, no, no, that's not an excuse.

1 When I asked her, so, therefore, you wouldn't give meaningful
 2 consideration, which is the touchstone in this area, she
 3 wouldn't even give me meaningful. Oh, what's meaningful
 4 mean? The totality of her answers are no.
 5 Secondly, I would submit this juror for cause
 6 because under Special Issue Number One the juror specifically
 7 stated that to her possibility or -- excuse me -- probability
 8 meant nothing more than chance, and, therefore, she is
 9 disqualified because she has a bias against that phase of the
 10 law in which we're entitled to rely on as stated out -- as
 11 stated in Hughes versus State, 878 S.W. 2d, 142, because to
 12 her chance and possibility equates to probability, and
 13 therefore she's -- for cause -- we submit her for cause for
 14 that reason.
 15 Thirdly, Your Honor, she stated they're a
 16 contradiction in terms between beyond a reasonable doubt and
 17 probability. This juror has the potential to lessen the
 18 burden of proof based (sic) on the State in proving Special
 19 Issue Number One, that is beyond a reasonable doubt. And,
 20 therefore, she's in a position to lower the burden because her
 21 words were exactly, "they're a contradiction in terms." And
 22 she used the term one time beyond a reasonable doubt, and then
 23 she said reasonable doubt and probability, taken as a whole,
 24 she's not going to hold the State to their burden of proof.
 25 So, I would submit to the Court that she has a bias against

1 that phase of the law in which we're entitled to rely on, and
 2 that is putting the State to their burden beyond a reasonable
 3 doubt.
 4 So for those three reasons, Your Honor, I would
 5 submit this juror for cause.
 6 THE COURT: Okay. Challenge is denied.
 7 MR. GOELLER: At this time, Your Honor, the
 8 Defense would ask for additional peremptory challenges.
 9 THE COURT: I'll grant you one here. You
 10 moving to strike her?
 11 MR. SCHULTZ: Judge?
 12 THE COURT: Yeah.
 13 MR. SCHULTZ: My only request -- well, I take
 14 that back. I guess it doesn't matter. I just want to make
 15 sure if you grant him one, that's to use on this juror but it
 16 doesn't matter, because if he doesn't use, she's -- we're
 17 finished anyway, so I've got nothing to say. Sorry.
 18 THE COURT: All right. Are you asking to
 19 strike this juror?
 20 MR. GOELLER: Yes, Your Honor.
 21 THE COURT: All right. Then the Defendant
 22 takes another peremptory strike on Kathryn Cook, and my
 23 bailiff, if you would tell the juror she's finally excused.
 24 THE BAILIFF: Yes, Your Honor.
 25 THE COURT: I think Billy gave you the fax on

1 Kirk Wilson, and so that's kind of three jurors that we have
 2 to consider. And I'm thinking to myself that there probably
 3 isn't anything that would change between now and Friday
 4 afternoon to change the determination of whether you wanted to
 5 keep them or not. On the other hand, you don't ever have to
 6 decide, and if you don't do anything, I will do nothing, and
 7 we'll simply -- but I would assume these guys are kind of on
 8 the edges of their chairs wondering whether they're going to
 9 go, in the case of Ms. Riggio to Seattle, and Mr. Landry to
 10 Disney World and where is Kirk Wilson going?

11 MS. FALCO: Hawaii.

12 THE COURT: Hawaii, yes. So my feeling is
 13 that if you're going to make a decision, you probably ought to
 14 make it now. If -- and if you don't want to make a decision,
 15 just tell me and -- or if you want to put it off, just tell
 16 me. But all I'm saying is now is a good time to do it if
 17 you're going to do it. And I would kind of recommend you do
 18 it because as far as I can tell, they're simply generic
 19 jurors, and one being as good as the next. But I brought up
 20 Riggio and Landry -- I don't know when I brought it up. Let's
 21 see, I think I brought them up -- I brought them up yesterday,
 22 and asked you to think about it.

23 Does the State have any opinion on these, or do you
 24 care, or do you want to put it off?

25 MR. SCHULTZ: Maybe put it off. We don't have

1 any opinion on it now. We're not in a position to take a
 2 position, I guess.

3 THE COURT: All right. I tell you what then, I
 4 don't need to ask you.

5 All right. I tell you what I'm going to do, I'm
 6 not going to bring them up again. As far as I'm concerned,
 7 we'll just -- if you say nothing, they'll be in on the day
 8 they're supposed to be here, and you can do whatever you want
 9 to with them at that time. All right.

10 MR. SCHULTZ: The only reason for the
 11 flexibility is I could be really wrong. I've got a sense we
 12 finish this week before we get to them. I've got that sense.

13 THE COURT: Well, I kind of do, too. And if we
 14 do, then they're gone.

15 MR. SCHULTZ: Right.

16 THE COURT: But if we don't, so what? So are
 17 we -- are we going to give them until the 11th hour and then
 18 say, okay, you can leave, and they've had a week of anxiety,
 19 or are we not going to say anything and just have them come
 20 in? In other words, I can't imagine you guys not excusing
 21 them when the time comes, so my feeling is why fool around?
 22 But if you want to wait, you got it.

23 All right. Let's ask Jonne Eichhorn, who is a
 24 number one, to come in, and, Mr. Goeller, I want to give you
 25 about 20 minutes with Jonne Eichhorn.

1 MR. GOELLER: Yes, Your Honor.

2 THE COURT: And Jonne Eichhorn also -- I can't
 3 remember what her excuse was.

4 (Venireperson enters the courtroom.)

5 THE COURT: Are you Jonne Eichhorn?

6 VENIREPERSON: Yes, I am.

7 THE COURT: Ma'am, perhaps you'll recall when
 8 all 200 jurors were assembled about a month ago. I asked for
 9 an oath, which everybody gave me.

10 VENIREPERSON: Yes, sir.

11 THE COURT: And the oath was to tell the truth
 12 with regard to any questions that were asked by the Court or
 13 by the attorneys; do you recall that?

14 VENIREPERSON: Yes, sir.

15 THE COURT: All right. I just want to remind
 16 you you're still under oath and ask you to be seated right
 17 here.

18 VENIREPERSON: Okay.

19 THE COURT: All right. The time is 11:25.
 20 Mr. Goeller, would you like to go first?

21 MR. GOELLER: Yes, Your Honor.

22 THE COURT: All right.

23 MR. GOELLER: Thank you, Your Honor.

24 THE COURT: All right.

25 (No omissions.)

1 DIRECT QUESTIONS

2 BY MR. GOELLER:

3 Q. Good morning, ma'am.

4 A. Yes, sir.

5 Q. Am I pronouncing it correctly, Eichhorn?

6 A. Eichhorn, yes, sir.

7 Q. Thank you for coming back today.

8 MR. GOELLER: If I could approach the juror,
 9 Your Honor.

10 THE COURT: All right.

11 Q. BY MR. GOELLER: Do you prefer Miss, Mrs. or
 12 Ms. Eichhorn?

13 A. Ms. Eichhorn is fine.

14 Q. Okay, Ms. Eichhorn. This -- that's your jury
 15 questionnaire that you filled out, correct?

16 A. Yes, sir.

17 Q. And let me ask you on the last page here, is that
 18 your signature and did you sign that under oath?

19 A. Yes, sir.

20 Q. Okay. Thank you, ma'am.

21 I'll talk to you just briefly about your jury
 22 questionnaire, and I'll try to make this move along as -- as
 23 quickly as possible, and we'll get right to it. In your
 24 questionnaire you stated that if an individual takes a life in
 25 a capital murder case and they are found guilty, they have to

1 meet the ultimate punishment and be sentenced to death. Tell
2 me why you wrote that.

3 **A. I think I feel that if a person knowingly kills
4 someone --**

5 Q. Okay.

6 **A. -- I think that they should have to take
7 responsibility for it and suffer the consequences.**

8 Q. That being penalty with their life?

9 **A. And I think life is what should -- you know, they
10 took a life, they should have to give their life.**

11 Q. Okay. I won't disagree with you one bit, and you
12 probably remember from one of the times I spoke, my job here
13 is not to talk you out of anything or change your mind.
14 That's not --

15 **A. Right.**

16 Q. That's not why I'm here. The only answers -- the
17 only correct answers from you are the honest answers, and I
18 think you're being very honest with your feelings and your
19 thoughts, so I thank you for that.

20 Along those lines on the next page you were asked
21 the question what is the best argument in favor of the death
22 penalty. You wrote a convicted murderer did not give the
23 person he murdered a chance to live, so why should he be
24 permitted to live. And that's very consistent with your
25 previous statement that in your opinion, as far as capital

1 you had some options. You circled option number one, I
2 believe that life confinement in prison is never appropriate
3 in any capital murder case, correct?

4 **A. Correct.**

5 Q. Okay. And that is consistent with your -- well,
6 everything is consistent up until that point. That would be
7 consistent with you not having an argument against the death
8 penalty. That's consistent with your statement that a person
9 who commits capital murder didn't give their victim a chance
10 to live, so why should they be permitted to live, and your
11 first statement that if an individual takes a life, they have
12 to meet the ultimate punishment, be sentenced to death, and
13 it's further consistent with the death penalty should be
14 imposed in all capital murder cases?

15 **A. Yes, sir.**

16 Q. Okay, super.

17 MR. SCHULTZ: Excuse me. May I have a moment
18 to confer with Mr. Goeller?

19 THE COURT: Yes, sir.

20 Q. BY MR. GOELLER: Ms. Eichhorn, I thank you very,
21 very much for your time and attention today up here today.
22 You're true to your word, and that's what I appreciate most of
23 have all, so my thanks.

24 **A. Thank you.**

25 MR. GOELLER: And, Your Honor, if we could have

1 murder goes --

2 **A. Yes, sir.**

3 Q. -- and, of course, in this case we're talking about
4 the indictment in this case is a burglary/murder.

5 **A. Okay.**

6 Q. Mr. Schultz could make me say it a little bit more
7 correctly, but he understands what I'm getting at. A
8 burglary/murder, robbery/murder, double homicide, okay?

9 **A. Uh-huh.**

10 Q. But anyhow, your answer so why should he be
11 permitted to live, that's consistent with your previous
12 statement that if you take a life in a capital murder
13 situation you should pay for it with your life, correct?

14 **A. Yes, sir.**

15 Q. Okay. And what is the argument -- your best
16 argument in opposition of the death penalty? And you wrote
17 down none, correct?

18 **A. (Nods head.) That's correct. I did write down
19 none.**

20 Q. And you and I are communicating just wonderfully,
21 but the court reporter sitting next to you, she gets mad at me
22 if I let you nod.

23 **A. Okay.**

24 Q. So I've got to always have you respond verbally.
25 Under life confinement section of the questionnaire

1 a sub rosa hearing.

2 THE COURT: All right. Well, I tell you what,
3 I'll just ask you if both sides agree to strike her?

4 MR. SCHULTZ: In connection with Juror Number
5 76, Judge, who will be coming up next, both will be excused by
6 consent?

7 MR. GOELLER: Yes, sir.

8 THE COURT: That's Number 70 and 76.

9 And I just want to ask, is that your desire also,
10 Mr. Cantu?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. Then, Ms. Eichhorn, you
13 are finally excused.

14 VENIREPERSON: Thank you, sir.

15 (Venireperson exits the courtroom.)

16 MR. GOELLER: Thank you, ma'am.

17 VENIREPERSON: Thank you.

18 THE COURT: Okay. Number 70 and Number 76
19 have been stricken by agreement, so I want to ask you to
20 invite in Carol Moore, Number 105.

21 (Discussion off the record.)

22 (Recess taken.)

23 THE COURT: Who have we got up next? Oh, Carol
24 Moore. Let's bring her in.

25 (Venireperson enters the courtroom.)

1 THE COURT: Good afternoon. Are you Carol
2 Moore?

3 VENIREPERSON: Yes, I am.

4 THE COURT: I just want to ask you if you
5 recall a month ago when all 200 jurors were assembled I
6 administered an oath to the panel. Do you remember it?

7 VENIREPERSON: Yes, sir, I do.

8 THE COURT: And that oath was to give truthful
9 answers to any questions propounded by the Court or by the
10 attorneys. Do you recall that?

11 VENIREPERSON: Yes, I do.

12 THE COURT: All right. I just want to remind
13 you that you're still under oath and please be seated right
14 here. Ms. Falco?

15 MS. FALCO: Yes.

16 THE COURT: All right. Go ahead.

17 DIRECT QUESTIONS

18 BY MS. FALCO:

19 Q. Good afternoon, Ms. Moore.

20 A. **Good afternoon.**

21 Q. My name is Gail Falco, and I'm an Assistant District
22 Attorney in Collin County and seated to my right is my boss.
23 He's the first assistant, Mr. Bill Schultz, and to my left is
24 an Assistant District Attorney Ms. Jami Lowry. She spoke to
25 you yesterday.

1 Seated at the other table closest to me is the
2 Defendant, Ivan Cantu. Next to him are his lawyers, Mr. Don
3 High and Mr. Matt Goeller.

4 MR. GOELLER: Good afternoon, Ms. Moore.

5 VENIREPERSON: Thank you. Good
6 afternoon.

7 Q. BY MS. FALCO: Both are private practitioners here
8 in Collin County.

9 I take it from yesterday that you do not know any of
10 us; is that correct?

11 A. **That's correct.**

12 Q. Ms. Moore, we do this -- and I imagine this is
13 probably at least your third time to come up here to Collin
14 County for this case, but we do this type of individual voir
15 dire only in cases where the State is seeking the death
16 penalty. We do it for a couple of reasons. The first time
17 you came in and filled out the questionnaire, and when you
18 did, it was kind of gut reaction, what you thought about the
19 death penalty. You didn't really have a lot of time for
20 reflection when you filled it out, and I'm sure since then
21 you've had some time to think about it and to think about
22 whether or not you could be involved in the process.

23 And then we bring you back to do the general voir
24 dire to talk about the law that's going to apply to everybody.
25 And then when you come in for your individual voir dire, it's

1 meant to be a more relaxed atmosphere. I'm sure you're
2 thinking six people are staring at me. That's not very
3 relaxing, but it's -- the only right answer is an honest
4 answer. Nobody is here to challenge you or to change your
5 mind or to convince you you're wrong on your views. Both
6 sides are looking for 12 people that can be fair and impartial
7 and can answer the questions in the penalty phase, if it gets
8 there, fairly. And so the only thing you can do wrong is be
9 dishonest with us because we've got to get to know you in as
10 little bit of time as we have to determine if you're a
11 qualified juror.

12 Now, I know when you came in that very first time
13 back in August and filled out the questionnaire, you answered
14 that you were in favor of the death penalty and in the
15 appropriate case you could return a verdict resulting in
16 death. And I'm sure you've done some thinking about that.
17 Have you done some thinking about that?

18 A. **Sure.**

19 Q. Have you done some thinking about your personal
20 involvement in this type of a case?

21 A. **Yes, I have.**

22 Q. And we understand it's one thing to be sitting in
23 your living room and something comes on TV about a capital
24 murder case or the death penalty, and you talk among your
25 family and your friends and have opinions. But it's

1 completely different when you're asked, can you personally be
2 involved, and it's kind of like war. I mean, some people may
3 say in theory that's a good thing, and we need it to preserve
4 democracy and freedom. But it's completely different when
5 it's your son, or your brother going into war. You think
6 about it a little bit differently. Would you agree with me on
7 that?

8 A. **I would agree with you on that.**

9 Q. What has been some of your thinking over the past
10 several weeks when you've been thinking about, could you be
11 involved in this type of case? What have you been thinking
12 about?

13 A. **Well, my thoughts on any type of, I guess, a trial,
14 regardless of whether it's a civil trial or a murder case,
15 robbery, et cetera, you know, I would have to base my opinion
16 on the facts as they were presented. And as you said
17 yesterday, the burden of proof is on the prosecutor to, you
18 know, tell -- or make me believe that there's no doubt
19 whatsoever whether or not a person did or did not commit a
20 crime. And that is my opinion on -- and how I would base my
21 opinion on the results of the case and the merit in which the
22 crime was committed.**

23 Q. Okay.

24 A. **And the results of how -- whether you convince me or
25 a jury would depend on the outcome of -- of my -- how I would**

1 weigh the case.

2 Q. And if we convinced you that the death penalty was
3 the appropriate punishment based on the answers to the
4 questions, could you personally be involved and answer the
5 questions in such a way that would result in a death sentence?

6 A. Yes, I could.

7 Q. Now, I notice from your questionnaire you've not
8 always been a proponent of the death penalty; is that fair to
9 say?

10 A. That's fair to say.

11 Q. Kind of tell me about your evolution and thinking.

12 A. When I was in college, and my background was a
13 psychology major in college. And at that point in time a lot
14 of my friends were going off to war, Vietnam, and that really
15 to me, in my sense, was not really an American war. That was
16 not something that was fought on American soil, and I
17 understand we were out fighting a cause to keep Communism from
18 spreading, but it wasn't, in my mind, I felt like that was a
19 just war for us to get involved in. And maybe I was a little
20 naive back in college thinking that -- I guess I thought it
21 was inhumane when I was in college for the death penalty. I
22 thought you could rehabilitate a person, incarcerate them for
23 the remainder of their life and that was, in its sense, just
24 punishment.

25 And you have to weigh that, I guess, based on the

1 circumstances. Like you said yesterday, if a child is
2 murdered or something, how would I feel if it was my child? I
3 might feel differently if I -- if it happened to me
4 personally. It depends on the circumstances of the case, and
5 we have so much murder and violence in this country that to me
6 that has to be part -- or a consideration as a deterrent in
7 some form to -- if we have no deterrence, then it's an open
8 door, anything goes, you know, and that has to be a
9 consideration that someone if they're going to plan
10 something -- I'm saying planned. It's one thing if it's a
11 crime of passion, something that happened, you know, spur of
12 the moment, it wasn't planned. But if it was planned --
13 something that was planned, then I think there has to be some
14 sorts of deterrent in our society to prevent -- you know, to
15 give just consideration for continuing to commit murders.

16 Q. Okay.

17 A. That's my feelings.

18 Q. Okay. And you also wrote in your questionnaire, the
19 best argument in opposition for the death penalty -- and you
20 talk about mercy for the terminally ill, and I don't know if
21 Ms. Lowry mentioned it yesterday, but we often talk about that
22 in regard to these special issues, a mercy killing.

23 A. Right.

24 Q. I mention Dr. Kevorkian as an example. So you
25 pretty much -- when you filled out questionnaire, you were

1 reading our minds of what was to come.

2 You've been on two other juries before; is that
3 correct?

4 A. Yes, that's correct.

5 Q. They were both civil?

6 A. They were both civil.

7 Q. What type of cases were they?

8 A. One of them was a case where an individual had
9 bought a car engine from some car builder and had gone out and
10 run the race. And I guess he blew the engine, and he was
11 suing the car builder of the engine, plus also the racetrack
12 where he ran the car. So, it was a personal suit against the
13 car maker -- I mean, the engine builder and the track. He
14 wrecked his car, and he wanted to sue the engine builder
15 because he didn't feel like they built it correctly, or safely
16 enough. And then he also felt like the racetrack was -- I
17 think it was a wrongful suit.

18 Q. And y'all found in favor of the defendant -- the
19 engine maker?

20 A. Yes, and it was a three-tier suit.

21 Q. Okay. So against the plaintiff?

22 A. Yes.

23 Q. What was the second jury trial you sat on?

24 A. The second one was, to the best of my
25 recollection -- was about a fight that occurred in Plano at --

1 outside of a restaurant between two individuals. They got
2 into an argument, and they took it outside the restaurant. In
3 fact, I think it was -- the restaurant was actually closing
4 about that time. And apparently somebody called the police,
5 and the police forcefully threw these guys down on the
6 concrete and smashed their face into the concrete. It was a
7 little forceful. So I guess the plaintiff -- is that correct?

8 Q. Right.

9 A. -- was, not suing the police department, but it was
10 a suit against the police department.

11 Q. And you found in favor of the police department?

12 A. No.

13 Q. You found for the guy suing the police department?

14 A. Yes. He wasn't suing them. I'm trying to remember.
15 It's been so long ago, I don't remember exactly. But it was
16 for the individual.

17 Q. Did you feel like the police did wrong in that case
18 or --

19 A. I felt like the police could have contained the
20 individual, handcuffed him without actually -- I mean, they
21 had pictures of where they were brutally forced on the
22 concrete, and I didn't feel like -- I felt like they could
23 have taken them into custody without so much brute force.

24 Q. Did both of them sue or just one of them?

25 A. Just one of them, that I remember.

1 Q. What about the other guy?
 2 A. He wasn't part of the case.
 3 Q. How long ago -- you said it was Plano PD?
 4 A. Yes.
 5 Q. How long ago was that?
 6 A. I don't remember. Six years ago maybe, five or six
 7 years ago. It wasn't a criminal. It was a civil case.
 8 MR. SCHULTZ: Good ears.
 9 VENIREPERSON: Sorry.
 10 (Laughter.)
 11 A. I just heard you say criminal, and I just assumed
 12 that it was --
 13 Q. BY MS. FALCO: Yeah, he just asked me. He goes,
 14 are you sure it wasn't criminal?
 15 A. No. It wasn't a criminal case. It was in, I think,
 16 Judge Holland's court. She's civil, isn't she?
 17 Q. She is. That's a multi-jurisdictional court. The
 18 judges, including Judge Sandoval, hear civil and criminal, so
 19 that wouldn't have distinguished it. But six years, I would
 20 have been in it probably. Okay.
 21 If you had your choice to be on this jury -- be on a
 22 jury for a third time and knowing how much time it's already
 23 taken up and how much time in the future it will take up
 24 during the course of the trial, would you choose to be on the
 25 jury or off?

1 A. That's a hard question. If it -- the timing is not
 2 right for us -- for me personally. It's not that I feel like
 3 I couldn't sit on a jury of this nature. I feel like I could,
 4 and I could be impartial. But as you know, the events that's
 5 happened the last two or three weeks, and this is not an
 6 excuse, but we're a very small department where I work, and
 7 there's only four managers that report to my boss. One of
 8 those individuals is a reserve -- is in the reserves, and he's
 9 been called up. So if I were to be out for a month, I think
 10 that would be a heavy burden on that department.
 11 And also, I do have airline tickets to go to a
 12 wedding on October 11th, and I'm not sure what date this trial
 13 starts, but I've had those tickets since June.
 14 Q. Is that just for the weekend?
 15 A. It's just for the weekend, yeah.
 16 Q. Leaving, like, Friday?
 17 A. It's actually leaving Thursday night and then coming
 18 back on Sunday. But if it weren't for those two things, you
 19 know, like I said, I wouldn't have a problem to sit on a case
 20 like this.
 21 Q. And as far as your work goes, would you go to work
 22 after you got done here, or would your co-workers kind of have
 23 to pick up the slack, and then you'd get back to them when you
 24 got done with your --
 25 A. My co-workers would probably have to pick up the

1 slack. Now, I do have a laptop computer that I have taken
 2 home, and I could keep up with my messages in that respect.
 3 Q. Okay.
 4 A. And I do have an individual that reports to me
 5 that --
 6 Q. And if you did get selected to be on the jury, would
 7 you be able to concentrate on the trial knowing you still had
 8 those frustrations going on at work? Do you think you could
 9 still give this trial your full attention?
 10 A. Yes.
 11 Q. With regard to the wedding, if you had to fly out
 12 Friday instead of Thursday and still be able to attend the
 13 wedding with it being on Saturday, would that be okay?
 14 A. It would be. I'd prefer not to if I had a choice.
 15 Q. Right.
 16 A. But I guess there's a little history, if you don't
 17 mind me elaborating a little bit.
 18 Q. Go ahead.
 19 A. The individual that's getting married, my mother's
 20 brother and I were three months apart. And he was married to
 21 her, Susan Wright is her name, and they had a child that was
 22 14 months old when he died of a massive heart attack at 43
 23 years old. And I wasn't able to attend their wedding when
 24 they got married because she got married in Atlanta, and her
 25 son is now -- he will be 13 in December, and she's finally

1 remarrying somebody, and they live in Houston. They don't
 2 live here in Dallas so we don't get to see them very often,
 3 and they really wanted us to be a part of their wedding this
 4 time since I wasn't able to go the last time. And I did tell
 5 them we were coming. Of course, that was before, you know, I
 6 received a jury summons, so I could go later. I would miss
 7 out on some of the activities they wanted us to be a part of,
 8 but, you know...
 9 Q. Okay. Ms. Moore, just getting back to talking
 10 about the trial, and you've been on two juries before, both
 11 civil and criminal. As you learned yesterday, it's a little
 12 bit different as far as the standard for the burden of proof.
 13 In a criminal case it's beyond a reasonable doubt. When
 14 you're on civil trials, it's probably by preponderance of the
 15 evidence.
 16 A. Right.
 17 Q. So in a criminal cases, it's a stronger burden.
 18 It's beyond a reasonable doubt, and that burden is on the
 19 State, and during the guilt-innocence phase that burden never
 20 shifts to the defense, which is only fair. If we're the ones
 21 doing the accusing, we should have to be the ones to do the
 22 proving.
 23 A. Right.
 24 Q. Now, they can call witnesses, if they want to call
 25 witnesses, the Defendant can testify if he wants to testify,

1 but that is his choice. And if he chooses not to testify, you
2 can't hold that against him. That's not to be taken into
3 consideration as evidence of guilt or against him. And if you
4 were instructed that that was his Constitutional right and he
5 had the right to do so, you could follow that right --

6 A. Yes.

7 Q. -- and follow that law?

8 And as far as the burden of proof being beyond a
9 reasonable doubt and on the State, that seems fair to you?

10 A. Yes.

11 Q. Okay. And with regard to the guilt-innocence phase,
12 as Ms. Lowry talked to you yesterday, there's a difference
13 between murder and capital murder, and capital murder is
14 murder plus some aggravating factor. Were you aware of that
15 before yesterday?

16 A. No.

17 Q. The difference between --

18 A. No. I really didn't know what the difference was.
19 In fact, I thought maybe the capital part was -- it had
20 something to do in a federal office or had something to do
21 with the federal part of it.

22 Q. And did you --

23 A. Even though it's a federal offense to commit another
24 felony.

25 Q. Okay. Did you realize the death penalty was only an

1 least be an option?

2 A. Yes.

3 Q. And with regard to murder in the course of robbery,
4 and again robbery is the one-on-one type confrontation where
5 you take property from another and use force, and this would
6 be murder in the course of robbery. Is that the type of crime
7 where the death penalty should at least be an option?

8 A. Yes.

9 Q. And with regard to double homicide, or killing of
10 two or more people in one scheme, is that a type of crime
11 where the death penalty should at least be an option?

12 A. I believe so.

13 Q. With regard to this voir dire, we're going to get
14 into punishment issues and talk about it, and mainly because
15 now is the only time that we can talk about it. Once we
16 select a jury, that jury that determines guilt-innocence, if
17 they find a defendant guilty, will also do punishment, so it
18 will be one jury all the way through, and we can't stop after
19 the guilt-innocence and re-voir dire you, so we have to talk
20 about all those issues now. It doesn't mean we're discounting
21 the Defendant's presumption of innocence. We're not trying to
22 railroad or run over those rights. It's just the law provides
23 to talk about them now. Does that make sense to you?

24 A. Yes.

25 Q. Okay. I know some people have gotten confused and

1 option in a capital murder case as opposed to just a murder
2 case?

3 A. No, I didn't.

4 Q. Okay. Do you understand those distinctions now?

5 A. Yes, I do.

6 Q. Now, with regard to the capital murders that would
7 be pertinent to this trial, or the definition of capital
8 murder that would be pertinent is murder in the course of
9 burglary, murder in the course of robbery, and what we've been
10 calling a double homicide, killing two or more people during
11 one transaction. And as far as that goes, murder in the
12 course of burglary -- and again, burglary is either breaking
13 into somebody's home, like breaking a window or breaking the
14 door down, or it's -- it's just entering a person's home
15 without lawful consent, and that could be fraudulent consent,
16 like Ms. Lowry talked about. I mean, obviously, if someone
17 knocks on your door and says, hey, let me in. I want to kill
18 you, first of all, no one is going to ask that, and secondly,
19 no one is ever going to let somebody into their house that
20 they know is going to do that. So if the consent is obtained
21 fraudulently, some other pretense to get in the house to
22 commit the murder, that's murder in the course of burglary.

23 And as far as that goes, in your opinion, is that
24 the type of crime where the death penalty ought to at least be
25 an option, not necessarily would you give it, but should it at

1 ask why are you talking about punishment now, but just because
2 now is the only time. Pretty much the reason we do individual
3 voir dire in this type of case is mainly so we can talk about
4 the death penalty and understanding it touches on people's --
5 it's very personal to some people. It may touch on religious
6 convictions or other things that are best talked about in a
7 more private setting than having to talk about them in front
8 of 50 or 60 other people, and that's why the law allows for us
9 to talk about the death penalty one on one.

10 With regard to a capital murder case, if you find a
11 defendant guilty of capital murder, you then move to the
12 punishment phase. And as Ms. Lowry explained to you
13 yesterday, it's not automatic life or automatic death. You
14 don't just go back there and decide, well, I think you ought
15 to get life or I think you ought to get death and just fill in
16 the blank and give the verdict form back to the Judge.

17 You have to answer a series of questions, and
18 depending on how you answer the questions dictates whether
19 it's a life sentence or a death sentence. Does that make
20 sense?

21 A. Yes.

22 Q. To be a qualified juror, you have to be able to
23 fairly answer each of the questions without having a
24 preconceived idea -- without answering them in a way that you
25 want the result. If you want the death sentence, you can't

1 just go in there and answer them in a way that achieves a
2 death sentence, and vice-versa for a life. To be qualified,
3 you have to be able to fairly look at the evidence, keep an
4 open mind and fairly answer the questions as the evidence and
5 the law dictate. Does that make sense?

6 **A. Yes.**

7 **Q.** If you found someone guilty of capital murder, the
8 first question that you would get to is what we call the
9 future dangerousness question. And if you want to take a
10 moment, can you see that board on the bottom?

11 **A. Uh-huh.**

12 **Q.** If you want to take a moment and refresh your memory
13 and read over that.

14 **A. Okay.**

15 **Q.** Does that refresh your memory?

16 **A. Yes.**

17 **Q. Okay.** Now, the Legislature created this question
18 with the obvious intent that just because you find someone
19 guilty of capital murder does not necessarily mean that they
20 will be a future danger. They obviously envision certain
21 situations where you could find someone guilty of capital
22 murder, but get to this question and say, no, we don't think
23 they would be a future danger.

24 **And a couple of examples of that would be the parent**
25 **whose child is killed, and there's a trial for those two**

1 killers, assuming there's two killers, and during the course
2 of the trial, due to some technicality or loophole, those
3 killers get off. And as they're walking out of the courtroom
4 scot-free, they kind of laugh at the parent because they got
5 away with murder, and they leave the courthouse and that
6 parent becomes so enraged and the system let him down that he
7 decides to take justice in his own hands and goes out there
8 and kills them.

9 **Some people -- some jurors may get to that question**
10 **and say, well, he's been a stellar person in this community.**
11 **He's been a pillar of the community. He's been a great dad**
12 **and a great family man and a great businessman, and we don't**
13 **think he's a future danger. Another situation would be kind**
14 **of what you put in your questionnaire, the mercy killings,**
15 **Dr. Kevorkian. You may have -- you know, people fall on**
16 **either side of the fence of that, but with regard to**
17 **Dr. Kevorkian, obviously, he doesn't just go in and administer**
18 **those injections to anybody. It's obviously done with that**
19 **person's consent. It's typically done with the family's**
20 **consent, and it's a way to end suffering for somebody who**
21 **would rather just go on -- move on (inaudible) and end the**
22 **suffering. And so some people may look at that and think,**
23 **well, because he doesn't pick out his victims and the victims**
24 **have no say in the matter and they -- in fact, in this case**
25 **they're actually soliciting his help and they're asking for**

1 his help, and the family is asking for his help, therefore, we
2 don't think he's a violent man, and we don't think he's going
3 to commit criminal acts of violence in the future. We don't
4 think he's a continuing threat to society.

5 **Another situation may be the person who decides to**
6 **rob a 7-Eleven for money and that person goes in and commits**
7 **the capital murder. He robs the clerk, and as soon as the**
8 **clerk gives him all the money, he kills the clerk. And on his**
9 **way out, the police show up, and he gets in a shoot-out with**
10 **the police and in trying to get away, he gets shot, and he**
11 **gets shot in the neck, and let's say he's paralyzed from the**
12 **neck down. Well, at that point physically he can't hurt**
13 **anybody. He can't do anything because he's physically unable.**
14 **So, though he committed capital murder and you could find him**
15 **guilty of the capital murder, you get to this question and**
16 **decide, well, I don't think he's going to be a continuing**
17 **threat to society.**

18 **So because of that, because a capital murder can be**
19 **such a wide range of facts, the Legislature enacted this**
20 **question and asks you basically to relook at the evidence and**
21 **look at all the evidence presented during the punishment phase**
22 **and decide whether or not this person is going to be a future**
23 **danger.**

24 **With regard to this question, the burden of proof,**
25 **again, is on the State, and we have to prove to you beyond a**

1 reasonable doubt there's a probability he will be a future
2 danger. Now, the question doesn't ask will this person commit
3 criminal acts of violence. It doesn't ask for a certainty --
4 with a certainty will they commit -- will they be violent. It
5 asks whether there's a probability that they'd commit criminal
6 acts of violence in the future. So, when you get to that word
7 "probability," understanding it's something less than a
8 certainty.

9 **Some people are mathematically minded and may look**
10 **at that word and say, well, that means a percentage to me.**
11 **That's some type of a number to me. Other people may say,**
12 **well, that means more likely than not. That's not going to be**
13 **defined for you by the Court's charge. You're going to have**
14 **to decide what that means as a jury and decide whether or not**
15 **we proved it. Now, it has to mean something more than just a**
16 **possibility, because you would agree with me anything is**
17 **possible?**

18 **A. Right.**

19 **Q.** It could snow tonight. A cold front could come
20 through. It could snow in the middle of September. I mean,
21 anything's a possibility, not probable, but it's possible. So
22 necessarily it's got to be something more than just a
23 possibility, but something less than a certainty?

24 **A. Right.**

25 **Q.** In your mind, what does that word "probability"

1 mean?

2 **A. As you put it, more than a possibility, but not**
3 **necessarily a certainty.**

4 Q. Okay. And in moving on in that sentence, the next
5 phrase you get to that, again, is not going to be defined for
6 you, but is frequently debated what it can mean, is criminal
7 acts of violence. I think we'd all agree that violence to a
8 person, such as murder, such as aggravated assault, rape,
9 those type of things, we'd all agree that's a criminal act of
10 violence?

11 **A. Yes, I would agree.**

12 Q. It gets a little fuzzier when you start talking
13 about property. Let's say I had a really bad day here at
14 work, and I'm mad and angry, and I decide -- I get a baseball
15 bat and I'm just going to smash the cars in the parking lot.
16 So I go out there, and I just start smashing windshields,
17 smashing cars, taking out my anger on the cars. In your mind,
18 is that a criminal act of violence?

19 **A. It's not a criminal act of violence against a**
20 **person.**

21 Q. Right.

22 **A. It is still a crime to commit an act against**
23 **someone's property.**

24 Q. And in your opinion, would that be an act of
25 violence?

1 **A. I'd say that's an act of anger.**

2 Q. Okay.

3 **A. And if you want to define what is anger, is that --**
4 **is anger violence? I guess if you damage something, it's**
5 **violence. Anger is words. I mean, you can say things against**
6 **a person and that's anger. You know, if you're shouting at**
7 **someone, calling them with obscenities, that's anger. It's**
8 **not necessarily an act of violence words (sic). It's actions**
9 **that deem whether or not it's an act of violence.**

10 Q. Okay. It gets a little fuzzier still when you start
11 talking about drugs, and I'm talking about illegal drugs,
12 such as cocaine, heroine, methamphetamine, and whether you're
13 just talking about taking drugs or delivering drugs, or
14 selling drugs. Now, with regard to drugs, some people may
15 look at that and think, well, you know, it's just that person
16 taking drugs, and they're just -- it's just their own body
17 that they're messing with, and any harmful result, it's an
18 indirect consequence. The act of taking drugs, or the act of
19 selling drugs, it's not violent in and of itself.

20 But other people may argue, well, you know, when you
21 take drugs you're doing violence to your body. You're doing
22 harm to your body, and when you take it, it could alter your
23 personality and make you a violent person, and there will be
24 violent results because you act out, and you hurt other people
25 or other things. Therefore, that makes it an act of

1 violence.

2 Where do you fall in that continuum?

3 **A. Taking drugs, as you said, alters the ego. It**
4 **alters the person's actions. There's plenty of publicity**
5 **about the effect of drugs and the effects that it has on your**
6 **mind, the effects it has on your actions. Some people, it**
7 **affects them to commit suicide. Others, it affects them to**
8 **act violently against others, and also taking drugs -- you**
9 **know, in my mind about drugs is that it costs money to keep up**
10 **a drug habit. And people will, in some cases, steal or rob to**
11 **support that habit to get the money to buy drugs.**

12 Q. Right.

13 **A. So your question was, how do I feel about drugs?**

14 Q. Right.

15 **A. To me, I guess you know what the consequences are**
16 **when you take drugs.**

17 Q. Okay.

18 **A. It could be mitigating circumstances, though, if you**
19 **went to a party and say you were -- you drank or something,**
20 **and you were knocked out or something, or you went unconscious**
21 **or something, and you had some friend or something that wanted**
22 **to get you on drugs, and maybe he shoots you up or something**
23 **while you're at the party. This person had no knowledge of**
24 **that, even though he had the knowledge to take the alcohol.**

25 Q. Right.

1 **A. But there are mitigating circumstances that would**
2 **cause a person, I guess, to get on drugs and to continue with**
3 **drugs.**

4 Q. Okay. And actually, there was a question in your
5 questionnaire that talked about the voluntary taking of
6 alcohol, and our law provides for that; voluntary versus
7 involuntary, and the same applies for drugs. If you're
8 arguing that you're intoxicated due to the drugs, there is a
9 difference between voluntary --

10 **A. Right.**

11 Q. -- if someone shoots you up or you shoot yourself
12 up, which is voluntary. So, you're right on point with that.

13 Now, there are other types of crimes that are not
14 criminal acts of violence. I think we'd all agree that
15 they're not, such as theft, maybe going AWOL from the
16 military, things like that, that are not acts of violence in
17 and of themselves, but do you think that gives you some
18 insight into a person's character, if they're a thief, if
19 they'll desert the military, they run from the police when the
20 police tell them to stop, just a general lack of regard for
21 authority or the law?

22 **A. Yes. I would say that's an insinuation (sic) of**
23 **their character. Again, it could be -- there could be**
24 **circumstances that would -- that would make a person act the**
25 **way they do, you know, their childhood, or I guess if they**

1 were -- had to steal to provide food for their family or
 2 something because they couldn't get a job, and they couldn't
 3 get a loan, you know, money or something like that, I guess
 4 there could be mitigating circumstances. Obviously, you'd
 5 hope that a homeless person or if someone that was in that
 6 dire need of providing something for their family, they'd be
 7 able to get the aid that they needed.

8 Q. Okay. And do you think -- and assuming it's not to
 9 feed their family, or it's not for some -- what some people
 10 might say is a good motive for committing a crime. It's just
 11 their character. They just like cheating people, and that's
 12 the way --

13 A. Or for the joy of it, just -- you know, to get that
 14 high. They're really, essentially, not a good person, yeah, I
 15 would say that that's --

16 Q. Do you think though they might not be acts of
 17 violence in and of themselves, it might help you answer this
 18 question of whether or not there's a probability that they
 19 could commit criminal acts of violence in the future?

20 A. I think if they have a history of violence, a
 21 history of criminal acts, then I'd say that in most cases,
 22 without being incarcerated for some period of time, they're
 23 not going to be rehabilitated to be entered back into society.
 24 I'm not saying that they can't be rehabilitated, but chances
 25 are, you know, they wouldn't be.

1 Q. Do you understand with a capital murder case there's
 2 really no place for rehabilitation?

3 A. Right. I understand that.

4 Q. Okay, okay. The last sentence that you get to in
 5 that phrase is -- that's going to be undefined for you is the
 6 word "society," and it's undefined, but yet frequently
 7 debated. Now, that question does not limit itself to prison
 8 society. It doesn't ask if the Defendant is going to be a
 9 continuing threat to prison society. It seems to ask, what is
 10 the Defendant's character or propensity for violence without
 11 regard to a specific location, and that could include prison
 12 society because that could be contemplated as part of our
 13 society, but it also includes do you want this guy dating your
 14 daughter? Do you want this guy moving in next door to you?
 15 Do you want this guy taking your check at the bank? So, it
 16 could include -- it could accomplish that. Does that make
 17 sense to you?

18 A. Yes.

19 Q. Now, with regard to this question, you said your
 20 background was psychology, and I don't know how much you
 21 studied or learned or knew of friends that testified as
 22 psychologists or psychologists (sic), but typically in a
 23 capital murder case one side and/or the other will call a
 24 psychologist or psychiatrist to testify in a capital murder
 25 trial. Were you ever familiar with any of your friends that

1 --

2 A. No. I don't have any professional psychologist
 3 friends.

4 Q. And assuming they're not testifying to a brain
 5 disease or brain defect, assuming they're not talking about
 6 mental retardation and a brain tumor and its effects on the
 7 personality, but just assuming that they're just studying
 8 patterns of behavior. They just come in and say, you know,
 9 I've looked at this pattern of behavior, and in my opinion I
 10 think this person is going to be a future danger. The other
 11 side could do the same thing, get somebody to come in and say,
 12 well, I've studied this pattern of behavior, and I do not
 13 think he will be a future danger. How important is that type
 14 of testimony to you?

15 A. I think that's just one portion of testimony.
 16 Again, I think it's the evidence that's going to sway your
 17 opinion, what evidence you have and the Defense's ability to
 18 make you understand the evidence and there's no reasonable
 19 doubt.

20 Q. Okay.

21 A. But that's not to say that you wouldn't consider
 22 testimony from a psychologist based on behavior patterns and
 23 based on past experience and based on that person's profile
 24 over the course of "X" amount of years that they wouldn't
 25 continue to be a threat.

1 Q. Okay. But as far as their testimony, let's assume
 2 that you were at the -- do you have children?

3 A. Yes, I do.

4 Q. Let's assume when they were younger you took them to
 5 the circus, and you see the tiger there, and he's doing his
 6 tricks and going in and out of his cage, but at one point in
 7 time the tiger gets loose and starts running through the
 8 audience. I mean, you don't need a veterinarian to come in
 9 and say, grab your kids and get out of here; the tiger is
 10 dangerous?

11 A. No.

12 Q. With the same regard do you think that you
 13 personally could take in your own experience, your education,
 14 your background, and look at all the evidence in the case
 15 that's been presented to you and answer that question?

16 A. Yes.

17 Q. With regard to that question, if all 12 jurors
 18 believe beyond a reasonable doubt that the Defendant is a
 19 future danger and answer that question "yes," then you're
 20 still in the process of assessing a death sentence?

21 A. Yes.

22 Q. If ten or more jurors decide "no," the State didn't
 23 prove it to us or we just don't think this person is a future
 24 danger, then that's an automatic life sentence, and the trial
 25 is over. You stop your deliberations at that point. Does

1 that make sense?

2 **A. Yes.**

3 **Q.** Do you think if you got to that point, you've
4 already found the Defendant guilty of capital murder, and
5 you've now got this first question, do you think you could
6 fairly answer this question "yes" if we proved to you beyond a
7 reasonable doubt this person is going to be a future danger?
8 Could you do that?

9 **A. Yes.**

10 **Q.** And if we failed to prove to you beyond a reasonable
11 doubt that they would be a future danger, could you answer
12 that question "no," knowing it would result in a life
13 sentence?

14 **A. Yes, I could.**

15 **Q.** And assuming you answered it "yes," you would then
16 move on to that next question, the question up above it. Can
17 you read that question?

18 **A. Whether taking into consideration --**

19 **Q.** You don't have to read it out loud.

20 **A. Oh, I'm sorry.**

21 **Q.** That's okay. I'm sorry. If you just want to read
22 it to yourself and refresh your memory.

23 **A. (Complies.)**

24 **Q.** That's what we call the mitigation question.

25 **A. Right.**

1 **Q.** With regard to this question, there's no burden of
2 proof on either side. We don't have a duty or a burden to
3 present any evidence, nor does the Defense. This question is
4 really for the jury. It's basically a weighing question. You
5 are entitled to give whatever weight you want to give to the
6 evidence that you hear. You can give the evidence of the
7 crime, circumstances of the offense, you give that whatever
8 weight, and that may be a lot of weight. That may be what
9 that person did is so awful and so gruesome, you'd give that
10 a lot of weight. You'd give -- you look at the Defendant's
11 character and background, and that's good and bad. I mean,
12 you could hear good stuff about his character and background.
13 This person might be a war hero and saved lots of lives in the
14 war. This person might have been a doctor with a cure for
15 cancer and has been healing people his whole life. Or it
16 could be bad. It could be, you know, he's been a criminal his
17 whole life, but good or bad you could keep an open mind and
18 listen to it and give it whatever weight you decide to give
19 it?

20 **A. Yes, I could.**

21 **Q.** Okay. And when it talks about background a little
22 bit, let's talk about that, because you kind of mentioned a
23 person's childhood earlier on. I'm sure you know of people
24 that have been born into bad circumstances, whether it was a
25 single parent, abusive parent, an alcoholic parent, some type

1 of a bad family life. And you probably could think of people
2 that have been born into that situation, but they made a
3 success out of their life. They were able to overcome that
4 and be successful; is that fair to say?

5 **A. That's a fair statement.**

6 **Q.** And with regard to children born into that type of
7 situation, I mean it -- probably a common thing if you were
8 born into an alcoholic, you may have problems with drugs or
9 alcohol as a child growing up. That may be a result of that,
10 or if you had an abusive parent, that may manifest itself in
11 problems with relationships later on, getting close or not.
12 But -- and as kids get older, they might tend to rebel against
13 that bad childhood, and that may be things like drugs or
14 drinking or driving too fast.

15 **But do you think it would manifest itself -- I mean,**
16 **just because somebody had a bad childhood, that all the sudden**
17 **they just go out and start committing capital murders. Does**
18 **that seem like a logical rebellion or logical leap to you?**

19 **A. No.**

20 **Q.** So you understand how it might explain some things,
21 like problems in relationships or drugs or alcohol, but to
22 make that leap that they just turned into a sociopathic
23 capital murderer, that's a big leap.

24 **A. I would say so.**

25 **Q.** Okay. And then the last thing it takes -- asks you

1 to take into consideration is personal moral culpability, and
2 that word "culpability," that's another word, again, not
3 defined for you, but it tends to mean responsibility, that
4 Defendant's personal moral responsibility. This is where you
5 get to the situation, if you're talking about Dr. Kevorkian.
6 You may get to this question, and you think, you know what, he
7 doesn't really have a lot of responsibility because his help
8 was solicited. People asked him to do this, and he didn't
9 seek out people to kill them. He sees it as mercy, and so you
10 don't assess a lot of responsibility there, or maybe the
11 parent that killed the killer of the child. You may look at
12 that and think, well, that's not really so much culpability
13 there. But that's up to you to give whatever weight you want
14 to, given the circumstances.

15 **And it asks if there is sufficient mitigating**
16 **circumstances -- based on everything you've taken into**
17 **consideration, if there's sufficient mitigating circumstances**
18 **to warrant a life sentence, that person gets a life sentence?**
19 **Now, it may be that what that person did, the circumstances of**
20 **the offense, are so horrendous, you'd give it a lot of weight.**
21 **It's going to take a lot of mitigating evidence to be**
22 **sufficient to warrant a life sentence. Does that make sense?**

23 **A. Yes.**

24 **Q.** Because as you've kind of alluded to throughout our
25 conversation, any one of us, if we were called upon and we

1 were on trial for our life or on trial for something, any one
 2 of us could come up with things in our background that are
 3 mitigating. Things that are heartbreaking in our life, things
 4 that have been hard, things that have been difficult for us,
 5 all of us could come up with something and say that's
 6 mitigating. So, the question is not really, is there any
 7 mitigating evidence? It's based on what he did and based on
 8 his background and his character and his culpability, is it
 9 enough to be sufficient to warrant a life sentence. Does that
 10 make sense?

11 A. Yes.

12 Q. Okay. Now, with regard to that question, other than
 13 that phrase "circumstances of the offense," it really doesn't
 14 ask you to reflect upon the victim, the victim's character or
 15 anything about the victim. It seems to focus on the
 16 Defendant, Defendant's character, Defendant's background,
 17 Defendant's moral culpability. How important is that to you
 18 who the victim is? Does it make a difference if the person
 19 killed a nun who's praying in church, as opposed to a person
 20 who is a thug or a drug dealer or -- you know, a gang member?
 21 Does that make a difference, or is the difference that they're
 22 a killer and they choose to kill somebody?

23 A. Obviously, it might affect you whether or not you're
 24 more sensitive to that, but a life is a life, regardless of
 25 whether it's a nun, or it's an innocent bystander, or it's a

1 drug trafficker. A life is a life.

2 Q. Okay. Let's extend that a little bit further.
 3 Let's assume that a defendant just decides they don't want to
 4 have to work for a living anymore, but they want a lot of
 5 money, and they just want to live the good life, and they're
 6 just going to steal it from somebody. They're just going to
 7 rob somebody, and they're going to kill any witnesses that
 8 get in the way because they don't want to get caught. And so
 9 this person just decides to rob a 7-Eleven and take the money.

10 In scenario number one, he just decides to stop at a
 11 7-Eleven on his way home from work, and he doesn't know who
 12 the person is working behind the counter, doesn't know if he's
 13 married or got kids, doesn't know anything about him. Goes
 14 in, asks for the money, gets the money, kills the clerk.

15 Compare that to a situation where a defendant
 16 decides to rob the 7-Eleven in the neighborhood he grew up in,
 17 and he picks this 7-Eleven because he knows the family that
 18 owns it, and he knows who works there and what time they work
 19 there, and he knows how much money they keep behind the
 20 counter because these are his friends, and he's eaten dinner
 21 in their home, and they've cared for him, and they've
 22 sheltered him, and they've loved him and supported him, but he
 23 doesn't really care about all that. He just cares about the
 24 amount of money that they got and he knows he can get from
 25 them. So, he goes into the 7-Eleven, asks his friend for the

1 money, his friend gives him the money, and he kills him,
 2 knowing how it's going to devastate this family that's loved
 3 him. Is there a difference in these two scenarios to you?
 4 A. Well, obviously it's hard to believe you could kill
 5 a friend just for money. Again, he took a life -- in that
 6 scenario, a life was taken. Whether he knew the person or he
 7 didn't know the person, he still took a life, and there were
 8 choices that he made. If it was just for the money, he could
 9 have, you know, masked himself. He could have locked him up
 10 in a room in the back room and taken the money, and hopefully,
 11 he had somebody -- I guess he had somebody watching his back,
 12 maybe he didn't, you know, for anybody that might be coming in
 13 the store. Maybe he chose to do it as they were closing, or
 14 something. He had choices. He didn't have to commit murder
 15 just for the money.

16 Q. Okay.

17 A. And, obviously, it's very hard to think that there's
 18 no regard for a friend, or someone you've spent time in their
 19 home that considered you a friend as well.

20 Q. Okay. Kind of along the same lines of friends and
 21 extending that to family, you've got children. And let's
 22 assume one of your children got in trouble with the law, and
 23 I'm assuming you would still love them and support them even
 24 if they got in trouble?

25 A. Yes, I would.

1 Q. And I'm assuming if they asked, Mom, will you please
 2 come testify and tell this jury that you love me, you'd do
 3 that for them?

4 A. Yes, I would.

5 Q. And in the same sense, you can imagine someone on
 6 trial for their life in a capital murder has probably got some
 7 family member that loves them?

8 A. (Nods head.)

9 Q. And you can imagine there could be a mom that takes
 10 the stand and cries and is upset and says, basically, please
 11 don't kill my child because I love them. How does that
 12 argument sit with you?

13 A. Well, you would have to be pretty callous, you know,
 14 if you have a child unless that person is just so evil that
 15 you would fear for your own life, or fear for your other
 16 children's lives, in that case then I don't know how a mother
 17 could stand up and say, please, spare my son's life. But if
 18 it were my son that had committed a murder, I probably
 19 wouldn't want to see him die, either. But I'd still -- I
 20 would tell them how much I love my son, but I'm not so sure
 21 that that's enough.

22 THE COURT: Ms. Falco, I'm going to ask you to
 23 pass the witness in about seven minutes.

24 MS. FALCO: Yes, sir.

25 Q. BY MS. FALCO: Have you ever heard, Ms. Moore, the

1 phrase "there are no atheists in fox holes"?

2 **A. No.**

3 **Q. Or there's no atheists in wartime?**

4 **A. I understand what you're -- I mean, the meaning of**

5 **it, yes.**

6 **Q. What do you think I mean by that?**

7 **A. I would say that at a point when you fear for your**

8 **life, you would ask to be spared at whatever the cost, and**

9 **even if you didn't believe in God at that point in time,**

10 **you're going to start believing in whoever you think is going**

11 **to spare your life. And all the sudden you get a divine, I**

12 **guess, call. You know, yeah, I do believe, because that's the**

13 **only person that's maybe going to save me in this instance.**

14 **Q. Okay.**

15 **A. Not necessarily that God's listening, but --**

16 **Q. And that soldier may be completely sincere at that**

17 **moment?**

18 **A. Yes.**

19 **Q. But it may be that, assuming they survive the war,**

20 **and they get sent back home and years on down the road they're**

21 **back to normal. Life is back to normal, and they feel safe**

22 **again, and they may lose that intensity, or they may say,**

23 **thanks, God, for getting me through that, but I'm my own now**

24 **and I'm doing just fine. And you could see how that could**

25 **happen?**

1 **A. Yes.**

2 **Q. Do you see how this might be analogous to somebody**

3 **who's on trial for their life?**

4 **A. Possibly.**

5 **Q. And assuming somebody on trial for their life now**

6 **says, don't kill me because I'm a Christian. Now, I've made**

7 **this life change, and I'm different, and I guess whether the**

8 **conversion is real or not is not necessary for us to decide.**

9 **It's for God to decide. But if you heard that kind of**

10 **testimony, would that be important to you, or the timing of**

11 **it? I mean, if they wait until they're arrested, and they're**

12 **now on trial for their life, and it's at that point they**

13 **decide to make this conversion, or at least tell you they made**

14 **a conversion, would you have some skepticism toward that, or**

15 **would you just accept it and believe it? What are your**

16 **thoughts on that?**

17 **A. You're talking about a born-again Christian.**

18 **Q. Right.**

19 **A. And for the sake of ulterior motives possibly?**

20 **Q. Right.**

21 **A. I'm not saying that it couldn't happen; that all the**

22 **sudden they found religion and they've come to be contrived**

23 **into thinking, you know, I did wrong and -- but, ultimately**

24 **they are going to have -- whether they got off, or they don't**

25 **get off, they're going to have to face God at some point, and**

1 **they will be judged in one way or another.**

2 **Q. Does it make a difference to you in answering these**

3 **two questions?**

4 **A. No.**

5 **Q. And as far as -- I'm going to take you step by step.**

6 **As far as the guilt-innocence phase, if we prove the case to**

7 **you beyond a reasonable doubt that the Defendant's guilty of**

8 **capital murder, could you find him guilty?**

9 **A. Yes.**

10 **Q. And on the flip side, if we don't prove it to you,**

11 **could you find him not guilty?**

12 **A. Yes.**

13 **Q. And if you get to the punishment phase, and you get**

14 **to that first question of future dangerousness, if we prove it**

15 **to you beyond a reasonable doubt, could you answer the**

16 **question "yes" knowing it's in the process of a death**

17 **sentence?**

18 **A. Yes.**

19 **Q. And could you answer it "no" if we don't prove it to**

20 **you, knowing it would result in a life sentence?**

21 **A. Yes, I could.**

22 **Q. When you get to the last question, the mitigation**

23 **question, it takes all 12 jurors to say no, there's not**

24 **sufficient mitigating evidence to warrant a death sentence.**

25 **If you get to that question and you don't think there's enough**

1 **sufficient mitigating evidence to balance out everything he**

2 **did, could you answer that question "no," knowing it would**

3 **result in the death of a defendant?**

4 **A. Yes.**

5 **Q. And if you find that there is sufficient mitigating**

6 **evidence, could you answer the question "yes" resulting in a**

7 **life sentence?**

8 **A. Yes.**

9 **Q. And you could keep an open mind as to what evidence**

10 **might be presented and decide whether or not it's mitigating**

11 **or not to you?**

12 **A. Yes, I would.**

13 **Q. Before I pass you, Ms. Moore, do you have any**

14 **questions of me?**

15 **A. No.**

16 **MS. FALCO: Thank you, Ms. Moore. Pass this**

17 **juror.**

18 **THE COURT: All right. Mr. High?**

19 **MR. HIGH: Thank you, Judge. Pardon me,**

20 **Ms. Moore.**

21 **CROSS-QUESTIONS**

22 **BY MR. HIGH:**

23 **Q. My name is Don High. I'm one of the lawyers that's**

24 **working on the case with Mr. Goeller. He probably talked to**

25 **you when we were all together in the big panel. I have a few**

1 questions for you, too. Not a whole lot, but if I'm not clear
2 let me know, and I'll try to rephrase.

3 A. Okay. Thank you.

4 Q. I wanted to explore, again, your work. I notice you
5 work for TI. Do you have a department that you work in?

6 A. Yes. I work in import/export compliance department.

7 Q. And tell me -- kind of give me an idea of what it is
8 you do.

9 A. Okay. My department, I have several different
10 responsibilities. One of them is import compliance, making
11 sure that the shipments that we receive inbound into the US
12 have the correct information on the import documents so that
13 TI is in compliance since we are the importer of record.

14 I also apply for licenses for foreign nationals that
15 are employed either in the US or in our international sites
16 around the world, make sure that we have a license where we
17 can transfer technology to those individuals. And then we
18 also do ITAR (sic) exports, which is military type of
19 products. We ship those to our AT sites so that they can do
20 assembly work and test work, and then they ship them back, and
21 we send them out to our customers.

22 Q. I see.

23 A. So we have to be in Government compliance when we
24 export those and make sure that -- we have to give them a
25 specific dollar amount that's on the purchase order. We can't

1 exceed the dollar amount. We can't exceed the quantity, and
2 we have to make sure that -- we're only sending the part
3 number that we told that we got the license for.

4 Q. I see. Okay. So you deal internationally?

5 A. Yes.

6 Q. Okay. And that sounds like a really interesting,
7 fascinating job, and I'm sure that it's gotten more
8 interesting in the last few weeks; is that right?

9 A. Well, yes, it has been, but I have a good staff.

10 Q. Do you have people that work for you?

11 A. I have one individual that -- actually have one and
12 a half individuals, if you can half a person. She shares her
13 time between the exports on our commercial side, as well as
14 our NAFTA reporting requirements, half of her time.

15 Q. All right. So how many people -- you spoke
16 earlier about the four people that you work together. Explain
17 that for us more if you will.

18 A. Okay. We have -- I report to a manager. He has
19 four exempt managers. One of them does compliance for our
20 licenses to customers, and she also does compliance training
21 to make our employees aware of their compliance
22 responsibilities, making sure that we comply with the
23 Government regulations. The other individual works on
24 classification of our products, making sure that we have them
25 properly classified so that we have the right licenses so that

1 when we make exports we're not -- we don't lose our license
2 because if we lost our license, then we couldn't send our
3 wafers to our AT's to have them tested. And then if we
4 couldn't send our wafers to our AT's to have them tested or
5 assembled, then we couldn't get them back to sell them to
6 customers. So, virtually it would shut Texas Instruments
7 down, so we have to make sure we're in compliance in all
8 aspects, whether it's classification or whether it's licenses.

9 And then the other individual, she does -- she does
10 miscellaneous exports. It's not necessarily wafers. It's,
11 like, samples of -- or it's like any other things that are
12 keeping our manufacturing running, and she also does shipper
13 export declaration to the Census Bureau. It's electronically
14 filed, so she has to make sure that our fee -- up until this
15 year we were doing them manually, so this year it's on a
16 systems basis so she has to go in and check the runs that
17 feeds to the Government to make sure those are being submitted
18 electronically correct.

19 Q. Okay. Are you on call at work?

20 A. I have a cell phone.

21 Q. Okay. So when you go home at night, do you -- are
22 you going to get calls at night or in the evening?

23 A. If they needed to call me. We're pretty much
24 cross-trained, not in every aspect. I don't do the compliance
25 licenses for customers, but I do them for the foreign

1 nationals. But I have done miscellaneous exports, and I'm not
2 that familiar with the electronics side of the shipper's
3 export declarations.

4 Q. Okay.

5 A. And the classification I haven't been involved in.

6 Q. So your being out for a month in this trial, is
7 it -- I mean, I guess you've had some more time to think about
8 it since you've been up here on the witness stand. Is
9 that going to be a real problem at work, or a problem but
10 you can deal with it? Kind of give us an idea of how --
11 the quantum of the problem it is?

12 A. Well, the individual that works for me, she has neck
13 problems, and they've been talking about doing surgery on
14 her neck.

15 Q. Uh-huh.

16 A. If she were to all the sudden have to have
17 surgery --

18 Q. Uh-huh.

19 A. -- I would be the person who's actually doing those
20 transactions. It wouldn't be one of the other
21 individuals, so in that respect I -- you know, it could
22 potentially be a problem because we only have -- back in
23 February, we laid off people --

24 Q. Uh-huh.

25 A. -- at Texas Instruments, and we lost half of our

1 staff of our non-exempts who actually do the day-to-day
2 transactions. So we have two individuals that are now
3 doing exports, and one individual who's doing the
4 military part of it. We have one that's cross-trained to
5 do a backup for her for ITAR. But the other one, she's now
6 being trained to do foreign national -- applying for foreign
7 national licenses, but she's really not up-to-speed at this
8 point.

9 Q. Are you exempt or non-exempt?

10 A. I'm exempt.

11 Q. So you're not at risk for losing your job?

12 A. I could be. I mean, I wouldn't think that they
13 would just because I had to sit on a jury for a month,
14 but I mean, we're all subject to lose our jobs. I mean,
15 based on -- there are people that are being laid off at
16 all the major airlines right now --

17 Q. Right.

18 A. -- because of the economy --

19 Q. Right.

20 A. -- and the threats. So, if TI continues to lose
21 money, that's not to say that I'd lose my job tomorrow, but I
22 could lose my job in three months or two months or whatever.

23 Q. Okay.

24 THE COURT: Ma'am, you've been there for 32
25 years; is that right?

1 anything like that?

2 A. No.

3 Q. No. And you've raised a number of children?

4 A. I have two.

5 Q. And one is 32. He's a terminal manager, Chad.

6 A. Yes.

7 Q. Tell me what kind of work he does.

8 A. He works -- he works for a company called Real
9 Terminal Services, and he is the terminal manager. And what
10 they do is they take, where you have 18-wheelers who have
11 freight on it, they bring it into a rail yard, and they
12 actually have these huge cranes who pick up these trailers,
13 and they set them on the railroad cars, flatbeds.

14 Q. Okay.

15 A. And then they ship it to other -- they work for
16 Union Pacific, actually. They're a contract third party for
17 Union Pacific, and then they ship it to another rail yard
18 where they take it off and then deliver it to the customer.

19 Q. Is he one of those guys that moves the freight --

20 A. Oh, no. He runs the terminal. He has -- they have
21 teamsters who actually do their labor -- I mean, their labor
22 union work.

23 Q. Where does he live?

24 A. My son lives in McKinney.

25 Q. Okay. Is he married?

1 VENIREPERSON: Yes, I have.

2 THE COURT: I suppose that counts for a lot,
3 doesn't it?

4 VENIREPERSON: I hope so. I would like to
5 remain there until I retire.

6 THE COURT: Sorry.

7 Q. MR. HIGH: How far away are you from retirement?

8 A. Probably five years.

9 Q. When is this wedding that you wanted to go to? You
10 mentioned a wedding.

11 A. The wedding is on October the 13th. It's on a
12 Saturday.

13 Q. All right. So you're talking the 12th, 13th and
14 14th?

15 A. I'm talking the 11th -- I have reservations for the
16 11th, a 5:40 flight. And if you have to be there two hours
17 early, that means I'm going to have to be there at 3:40.

18 Q. And that's to go to Houston?

19 A. No. It's to go to Atlanta.

20 Q. Okay. So that would knock you out of Thursday
21 afternoon and Friday?

22 A. Yeah, Thursday afternoon and Friday.

23 Q. Okay. The questionnaire, I'm not sure asks this,
24 but have you ever known anybody that's been murdered or had a
25 family member that's been murdered or a friend or relative or

1 A. Yes, and he has two small boys.

2 Q. Two small boys, okay. So that's good. They're
3 close, aren't they?

4 A. Yes. They're about 18 months apart.

5 Q. They're close for you, grandmother, so you can --

6 A. Yes, they are.

7 Q. -- dote on them some?

8 A. Yes, they are.

9 Q. Your daughter, where does she live?

10 A. Right now she's living at home with us. She's
11 getting married next June, so they've just bought a house
12 about a mile away.

13 Q. All right. And she's a sales rep?

14 A. Yes. She works for a factoring company, loans money
15 to individuals that have a problem with start-up costs, needs
16 or cash flow.

17 Q. It says that you majored in college in psychology?

18 A. That's correct.

19 Q. Okay. Did you get your degree in psychology?

20 A. Yes.

21 Q. All right.

22 A. Not using it, but I did get it.

23 Q. Okay. Where did you go to college?

24 A. I went to East Texas State University.

25 Q. Is that Commerce?

- 1 A. **Yes. It's Texas A&M at Commerce now.**
- 2 Q. And why did you choose to major in psychology?
- 3 A. **Actually, I wanted to work with mentally -- children**
- 4 **who had mental problems.**
- 5 Q. Well, that's a high calling?
- 6 A. **Yes. It is a high calling. The problem was I got**
- 7 **married and then had a child, and it wasn't easy to find a job**
- 8 **without getting a Ph.D., and my husband was -- had just gotten**
- 9 **out of the service, and he was going to school, so just didn't**
- 10 **have the time.**
- 11 Q. Is it still a desire on your part?
- 12 A. **Not at this point. It's a little late to change**
- 13 **careers.**
- 14 Q. Have you found a use for your psychology education
- 15 in your work?
- 16 A. **Oh, in my work?**
- 17 Q. Uh-huh.
- 18 A. **Well, I like to think that I can deal with**
- 19 **individuals at work, you know, in a consistent manner and that**
- 20 **I'm fair.**
- 21 Q. Okay. That psychology education is not a waste?
- 22 A. **No, it's not a waste. I just wasn't able to use it**
- 23 **professionally, I guess.**
- 24 Q. Right. I could use a little more psychology
- 25 training in my profession.

- 1 A. **So could I.**
- 2 Q. And you minored in sociology?
- 3 A. **Yes, I did.**
- 4 Q. And so how many hours in sociology did you take; do
- 5 you recall?
- 6 A. **Actually, it was a double major, so they were about**
- 7 **equal.**
- 8 Q. Okay. So quite a few hours; 15, 16 hours apiece?
- 9 A. **Yes, I would say. I don't remember specifically.**
- 10 Q. And did you get a BA in psychology, a BS, or what?
- 11 A. **I got a BS.**
- 12 Q. Do you still read psychological material? Do you
- 13 subscribe to any --
- 14 A. **No.**
- 15 Q. You don't --
- 16 A. **No, I don't.**
- 17 Q. That's in your past?
- 18 A. **That's in my past.**
- 19 Q. Okay. And you have one year of postgraduate study.
- 20 What was that in?
- 21 A. **Psychology.**
- 22 Q. Were you working towards a master's?
- 23 A. **I was working towards a master's, and like I said,**
- 24 **my husband had just gotten out of college and just gotten out**
- 25 **of the service, and he was going to college. And I was**

- 1 **working ten hours a day at Texas Instruments, had a small**
- 2 **child, and I just never wrote my thesis. That was the only**
- 3 **thing I lacked.**
- 4 Q. Okay.
- 5 A. **Which was bad on my part.**
- 6 Q. Could you still do that?
- 7 A. **I probably could now if I went back to school, but**
- 8 **I've lost all my hours.**
- 9 Q. Uh-oh.
- 10 A. **So I think you only have five years after you**
- 11 **complete your coursework to get a degree -- a master's before**
- 12 **you lose your hours.**
- 13 Q. Is that a regret on your part?
- 14 A. **It's a regret on my part. If circumstances had been**
- 15 **different, I think I would have completed it.**
- 16 Q. Right. They play a big part in that decision -- or
- 17 the indecision, I guess, the not -- the inability to get it
- 18 done?
- 19 A. **Right.**
- 20 Q. Fair enough. All right.
- 21 You go to Custer Methodist where?
- 22 A. **In Plano.**
- 23 Q. In Plano?
- 24 A. **On Custer Parkway.**
- 25 Q. Excuse me?

- 1 A. **It's on Custer.**
- 2 Q. Custer Parkway, yeah.
- 3 You indicate that you go there occasionally, so it's
- 4 not every week?
- 5 A. **It's not every week, no.**
- 6 Q. Why is Bill Cosby one of the people you most
- 7 respect?
- 8 A. **I just think that he's funny. He used to be funny.**
- 9 **He was a comedian. He works with children a lot. I admire**
- 10 **him, and I admire that he was able to overcome his own son's**
- 11 **death.**
- 12 Q. That's huge, isn't it?
- 13 A. **Yeah, it is.**
- 14 Q. He handled it pretty well?
- 15 A. **He did.**
- 16 Q. You're the only one --
- 17 A. **He had -- I guess he had foresight to believe in the**
- 18 **justice system, that justice would prevail.**
- 19 Q. Was his son doing anything -- was he doing drugs or
- 20 anything?
- 21 A. **Not that I recall.**
- 22 Q. Did you follow that at all?
- 23 A. **Not really. I mean, I just -- you know, just the**
- 24 **basic -- in the beginning the coverage where, you know, he was**
- 25 **changing a tire, I think, is how it occurred.**

- 1 Q. Okay.
- 2 A. **But I don't know whether or not he was a drug user**
- 3 **or not.**
- 4 Q. Okay. It was just out on the side of the freeway,
- 5 wasn't it?
- 6 A. **Yes. Yes, in California.**
- 7 Q. Yeah.
- 8 A. **He was actually robbed, I believe.**
- 9 Q. All right. You least respect Paula Jones, and I
- 10 know why but you tell me why.
- 11 A. **Well, I really don't know whether or not that**
- 12 **occurred, and it could have occurred. But whether or not it**
- 13 **occurred or not, I think there's a lot of people that are out**
- 14 **there just for the sake of wanting notoriety, or they just**
- 15 **want to sue so they can get the money out of something that**
- 16 **happened. And I'm not an advocate of suing just to get money**
- 17 **for things --**
- 18 Q. Do you think that was her motivation?
- 19 A. **I think that was part of it. I think she wanted no**
- 20 **the notoriety, and she wanted the money, but that's my**
- 21 **opinion.**
- 22 Q. Okay.
- 23 A. **And then maybe again, she didn't want somebody of**
- 24 **his moral character to be in office, so it could have been a**
- 25 **threefold thing.**

- 1 Q. Yeah. And I haven't really read that much about
- 2 Paula Jones. I've witnessed the same things you did, but I
- 3 kind of saw the byproducts of it. You know, the publicity and
- 4 notoriety then caused other women to come forward, and then
- 5 there was a whole string of them.
- 6 A. **Not that it did any good.**
- 7 Q. What do you mean by that?
- 8 A. **Well, I meant there's a whole slew of women who came**
- 9 **forward so apparently there was some type of a pattern, or**
- 10 **were they all lying?**
- 11 Q. Uh-huh.
- 12 A. **And my opinion is somebody who holds our**
- 13 **presidential office should have a high, moral character.**
- 14 Q. Sure.
- 15 A. **Regardless of whether it happened on business hours**
- 16 **or not on business hours. His private life is his private**
- 17 **life.**
- 18 Q. Absolutely, but --
- 19 A. **But he's still a model for citizens of this country,**
- 20 **and I think that that office means more than that.**
- 21 Q. Absolutely it does.
- 22 A. **So that's my opinion.**
- 23 Q. When you said it didn't do any good, though, I'm not
- 24 following you on that?
- 25 A. **Well, I mean he wasn't impeached.**

- 1 Q. He was impeached. He wasn't removed from office.
- 2 A. **Okay. Maybe that's -- he wasn't removed from**
- 3 **office. To me, it was the same.**
- 4 Q. Okay.
- 5 A. **Regardless of whether it was the -- the**
- 6 **embarrassment of being impeached was one thing, but not to**
- 7 **remove him from office was something else.**
- 8 Q. And you felt like they should --
- 9 A. **That should have been synonymous to me. If he was**
- 10 **impeached, I think it should have been an automatic removal of**
- 11 **office.**
- 12 Q. Okay. In other words, when they tried him on the
- 13 impeachment charges, and he was found guilty, then it should
- 14 have just been an automatic removal?
- 15 A. **Well, I think that -- yeah, I think that would**
- 16 **have -- or I think he should have stepped down, actually.**
- 17 Q. Well, we agree --
- 18 A. **I mean, he used --**
- 19 Q. -- on that. I tell you what, we --
- 20 A. **He used his office for something more than business.**
- 21 Q. He sure did.
- 22 A. **Sorry.**
- 23 Q. Monkey business, maybe?
- 24 A. **Yes.**
- 25 Q. No. You don't have to be sorry. If I were up there

- 1 I'd be saying the same thing. I totally agree with you, and
- 2 I'm also agreeing with the way things are going now. It's
- 3 like a breath of fresh air.
- 4 A. **Yes, it is.**
- 5 Q. On page 3 of your questionnaire, it's got this --
- 6 these lines about the criminal justice system, and it's got a
- 7 line here that starts with criminal defense attorneys, and I
- 8 liked your answer. You filled in the blank, and you said
- 9 criminal defense attorneys are necessary to represent their
- 10 defendant to present their evidence of mitigating
- 11 circumstances, or prove the client's innocence. And I'm
- 12 curious, your word choice is so specific, "evidence of
- 13 mitigating circumstances." It's right in that question.
- 14 A. **Right.**
- 15 Q. How did you get that so accurate?
- 16 A. **Well, I didn't. I mean, I -- that was just --**
- 17 **obviously, I understand now that you don't have to prove**
- 18 **innocence --**
- 19 Q. Uh-huh.
- 20 A. **-- for defense.**
- 21 Q. Sure.
- 22 A. **Maybe I thought, when I wrote this, that you did.**
- 23 Q. I'm not wondering about that right now.
- 24 A. **But the mitigating circumstances, there's been a lot**
- 25 **of cases that have, you know, for one reason or another been**

- 1 **tried and mitigating circumstance has been brought up. So,**
 2 **I'm not saying that there -- there's not mitigating**
 3 **circumstances. There can be in a lot of cases, but again**
 4 **there's choices.**
 5 Q. Okay.
 6 A. **We all make choices in life.**
 7 Q. Sure.
 8 A. **But in some cases there could be a mitigating**
 9 **circumstance that might prove to be a factor.**
 10 Q. What do you think would be mitigating, any idea?
 11 A. **I don't really know. It would have to be based on**
 12 **whatever was brought out. I can't think of anything to mind**
 13 **right now that's specific.**
 14 Q. Put that psychology hat on. You studied psychology?
 15 A. **Yeah, I did.**
 16 Q. Sociology. You studied a lot of about people?
 17 A. **Yes. More a lot about theory.**
 18 **Well, I'll give you an example.**
 19 Q. Okay, that's good.
 20 A. **There was a case many, many years ago in Wylie. I**
 21 **can't even think of her name. I want to say it was Betty or**
 22 **something.**
 23 Q. You're talking about the axe murder?
 24 A. **Yes. I'm talking about the axe murder.**
 25 **And the mitigating circumstance that was brought up**

- 1 **in her case was she heard her mother say something. Something**
 2 **triggered something that happened in her childhood, and so**
 3 **that was what instigated her killing this lady --**
 4 Q. Okay.
 5 A. **-- with a multiple, multiple (sic) axe. I'm not so**
 6 **sure that I believe that.**
 7 Q. Sure.
 8 A. **I mean, I know they said that was -- and that would**
 9 **be considered mitigating circumstances, something in her**
 10 **childhood triggered that. I'm not saying it can't happen, but**
 11 **I don't think -- I think that was stretching it.**
 12 Q. Okay. And, of course, that case is -- will live in
 13 infamy in this part of this country because everybody has
 14 heard about it, and it was so freaky, I guess, so bizarre.
 15 And then there's also been some -- a movie or two, and a book.
 16 And, you know, all the lawyers in this area we've heard about
 17 it and discussed it, and I think the idea was the rage that
 18 she went into, something about this that provoked her to fly
 19 into a rage. I'm sure you've read about those type of
 20 killings. I mean, we see them on TV, right? A rage killing
 21 where you just stab somebody 50 times, or in this instance 47
 22 times with an axe.
 23 A. **Right.**
 24 Q. It goes beyond just the simple act of killing 1, 2,
 25 3 stabs, or with a shooting 1, 2, 3 times with a gun. I mean,

- 1 this person is actually trying to obliterate the other person
 2 and go into a rage, which is a little bit different thing.
 3 It's kind of hard to understand. Did you guys study about any
 4 of that in psychology?
 5 A. **Oh, no, that was after I was out of college that**
 6 **that happened.**
 7 Q. Okay. And what we're talking about is the actual
 8 circumstances of offense, the actual number of times stabbed,
 9 the actual number of times shot with a gun. Maybe if they
 10 burned them after they were done killing them, you know.
 11 What I'm talking about -- what I'm asking you about
 12 is mitigating-type circumstances. You know, the type of thing
 13 that would keep you from imposing the death penalty in a case.
 14 Obviously, if I stabbed them 47 times, that's probably not too
 15 mitigating. Are there anything -- anything that comes to mind
 16 that you think might be mitigating in a certain case,
 17 anything?
 18 A. **Not unless it was physical abuse, or somebody that**
 19 **was brain-washed. Those, I guess, you would have to consider**
 20 **mitigating.**
 21 Q. Okay. Physical abuse, like the wife that's been
 22 beaten by her husband over and over and over again, and she
 23 can't take it anymore?
 24 A. **Right.**
 25 Q. And she gets the knife and --

- 1 A. **Right.**
 2 Q. -- gets him?
 3 A. **That might be considered -- even though that's**
 4 **murder, that might be a mitigating circumstance if that -- you**
 5 **know, they don't have a history of that type of violence.**
 6 **They've never -- they've been a model citizen their whole**
 7 **life, but were driven to that extent to where they feared for**
 8 **their life, obviously they still have a choice, though, to**
 9 **leave that person.**
 10 Q. Uh-huh. Did you ever see the musical "Chicago"?
 11 A. **No, I didn't.**
 12 Q. You need to see it. There's a song in there that's
 13 done by the murderess sentenced on death row, and it's
 14 hilarious. But it talks about the wives that kill their
 15 husbands, not that that's funny, but the way the song is
 16 written, it's hilarious.
 17 But are you talking about you could understand that,
 18 you could understand how that could occur, that they just flip
 19 out and they just say, look, I can't take it and they do it?
 20 A. **I guess it depends on the crime. I mean, you know,**
 21 **if they were physically abused by their father or something,**
 22 **and then, all the sudden, later in life, you know, something**
 23 **happened between them and their father, it would be against**
 24 **the person that created the abuse, not necessarily against**
 25 **another citizen. But that might be a mitigating circumstance.**

- 1 Q. Okay.
- 2 **A. But not towards some innocent person that has**
- 3 **nothing to do with that.**
- 4 Q. So, now you've got two examples here. They both
- 5 have relational aspects; is that right?
- 6 **A. I guess.**
- 7 Q. Okay. They know the person?
- 8 **A. Right. And then you've got the sense of the person**
- 9 **that's married, right.**
- 10 Q. They're provoked; they --
- 11 **A. They're provoked, right.**
- 12 Q. -- knew the person?
- 13 **A. They fear for their life. They fear for their**
- 14 **children's life (sic), you know. But again, as I said, they**
- 15 **still have a choice.**
- 16 Q. Okay.
- 17 **A. And I know that in a lot of these abuse cases, they**
- 18 **don't feel like they have a choice.**
- 19 Q. Sure.
- 20 **A. You know, they can't get away.**
- 21 Q. They feel trapped.
- 22 **A. And that's because they've been pushed so far down**
- 23 **they don't have any self-esteem any longer.**
- 24 Q. Okay. So with respect to the relational aspect of
- 25 the killing as opposed to killing a complete stranger,

- 1 somebody you don't know that you've had no prior history with,
- 2 you don't even know their name, but they've got something that
- 3 you want, and you take it and just kill them. Is there a
- 4 difference between the two, I mean, with respect to viewing
- 5 the mitigation question, in your mind? Does that make any
- 6 sense?
- 7 **A. Yeah. I know what you're asking me. You're asking**
- 8 **me is there — could there be mitigating circumstances where**
- 9 **they could kill someone they don't even know? That's what**
- 10 **you're asking me.**
- 11 Q. No, I'm not asking you that.
- 12 **A. No?**
- 13 Q. I could ask you that, but --
- 14 **A. Okay. What are you asking me then?**
- 15 Q. It sounds like in a relational type setting where
- 16 there's been some prior dealings between the parties, you have
- 17 a much better understanding of why a killing could occur if
- 18 there's reasons for it?
- 19 **A. Right.**
- 20 Q. And that possibly that situation would be easier to
- 21 consider with respect to mitigation in Question Number 2.
- 22 Does that make sense?
- 23 **A. Yes.**
- 24 Q. Okay. What about a situation where the two folks
- 25 have been in business together, and there's been -- the

- 1 business is not successful and there's threats made and
- 2 blackmail maybe and hidden agendas and secrets, and what have
- 3 you. I heard about a situation this morning -- I think I read
- 4 about it in the newspaper -- where a fellow had a lawsuit, and
- 5 I think it was against Frito-Lay. Did you read about this?
- 6 He had a lawsuit, and he felt his co-worker, who was a friend,
- 7 was kind of back-dooring him in giving some information to the
- 8 corporate folks at Frito-Lay because he had a worker's comp
- 9 case. This guy hurt his back and was put out to pasture,
- 10 essentially, by Frito-Lay. And he felt his friend was giving
- 11 inside information to corporate folks and hurting his case.
- 12 Went over to his house one day, and as they were cooking
- 13 steaks, he blew him away, okay?
- 14 **A. Okay.**
- 15 Q. Okay. There we're talking about a relational-type
- 16 killing. These people know each other and, you know,
- 17 obviously he's mad and angry about what his friend's doing,
- 18 although he didn't give him a trial. I mean, he --
- 19 **A. He was the judge/jury, right?**
- 20 Q. Yeah. He was the judge and jury and made the
- 21 decision. But it's not a -- you know, it's not a
- 22 stranger-on-stranger type thing. It's a -- you know, it's
- 23 a -- there's a reason why he did it, and obviously, there's
- 24 some anger there, and the article seemed to imply maybe some
- 25 mental illness, too, okay? We don't know about that.

- 1 **A. Mental illness on whose part?**
- 2 Q. On the defendant's part.
- 3 **A. Okay.**
- 4 Q. Okay. Can you envision, if that case went to
- 5 trial, obviously the State is going to prove the killing, the
- 6 death, et cetera. And the Defense is going to attempt to
- 7 prove the bad motives, the bad blood, maybe the mental
- 8 illness, maybe other reasons why this happened. Would you be
- 9 able to listen to both sides in that type scenario?
- 10 **A. Yes. The guy could have been mentally ill, had**
- 11 **illusions of paranoia, you know, thinking that -- and maybe**
- 12 **the person didn't actually give inside.**
- 13 Q. Uh-huh.
- 14 **A. He just thought he did.**
- 15 Q. Thought he did, absolutely.
- 16 **A. So, yeah.**
- 17 Q. Okay. And, obviously, when you're fired or
- 18 laid-off, you spend a lot more time by yourself on your own at
- 19 home wishing you were back at work, oh, what are they saying
- 20 about me, that sort of thing.
- 21 **A. Right, right.**
- 22 Q. And it just kind of feeds on itself.
- 23 **A. That's correct.**
- 24 Q. And perhaps he saw his friend succeeding, continuing
- 25 to climb the corporate ladder, in his illness, if it is, got

- 1 worse and then he just freaked out, I guess. You can see
2 that?
- 3 **A. That's a possibility, yes.**
- 4 **Q. Okay. And could you see -- you know, approaching**
5 **this question, could you see, you know, his illness, if it**
6 **existed, might be a mitigating circumstance?**
- 7 **A. Yes.**
- 8 **Q. Okay. Let's say this young man wasn't sick, though,**
9 **but he got hyped up on drugs, dope, alcohol, went over and his**
10 **rage took over, and he did the killing. Can you see that as a**
11 **possible mitigating circumstance?**
- 12 **MS. FALCO: Your Honor, I'm going to object to**
13 **he's committing her to a particular set of facts, what she**
14 **would consider mitigating based on certain facts and certain**
15 **information.**
- 16 **THE COURT: Overrule the objection.**
- 17 **Q. BY MR. HIGH: In other words, you said mental**
18 **illness could be a mitigating circumstance, but you're not**
19 **sure about drugs or --**
- 20 **A. Well, I don't consider drugs as part of mental**
21 **illness. You know, drugs are a choice.**
- 22 **Q. Okay.**
- 23 **A. I'm not saying that the actions from drugs couldn't**
24 **alter your mind to think those things.**
- 25 **Q. Sure.**

- 1 **A. But, I don't think that the drugs themselves are**
2 **mitigating circumstances.**
- 3 **Q. Okay. What about the use of them? The actions**
4 **that are derived as a result of the use of them?**
- 5 **A. I wouldn't consider that a mitigating circumstance.**
- 6 **Q. Not at all?**
- 7 **A. I can't see it, unless it was proven to me. I don't**
8 **know where you would get a mitigating circumstance from taking**
9 **drugs. I know the effects of drugs.**
- 10 **Q. Okay.**
- 11 **A. And what can happen when you take drugs. It alters**
12 **the mind, and you're not the same person you normally would be**
13 **if you weren't taking the drugs, in most cases I would say.**
- 14 **Q. Okay.**
- 15 **A. Without knowing the person's background or the**
16 **person himself, it would be hard to say whether or not they**
17 **were that same type of person or not, if they had that same**
18 **type of personality.**
- 19 **Q. Do you drink?**
- 20 **A. Rarely.**
- 21 **Q. Okay. But you'll drink on occasion?**
- 22 **A. Yes. If it's a social --**
- 23 **Q. Why do you drink on a social occasion? Just**
24 **because, be friendly or --**
- 25 **A. Well, you have to understand, I don't drink -- if I**

- 1 **do drink, it's not a strong drink. It's just a little bit in**
2 **there just to get -- I don't know. I just like the taste of**
3 **it, I guess, when I drink. But I don't drink -- I'd say I**
4 **probably have less than two drinks a year.**
- 5 **Q. Okay.**
- 6 **A. So if you want to say that's drinking socially, I**
7 **mean, I'm not saying -- if we go out with people, we don't get**
8 **a drink every time we go out. You know, if it's a New Year's**
9 **Eve party or something like that, a special occasion, or a**
10 **wedding or something, I might have a glass of wine, or I might**
11 **have a glass of champagne or something. That's what I**
12 **consider social, but it's usually an event. It's not a**
13 **happening every week or every month, even.**
- 14 **Q. That's fair enough. So you don't ever drink enough**
15 **to where you feel a slight buzz or sort of relax? You don't**
16 **ever do that, I guess?**
- 17 **A. I'm not saying I've never done that. I was not a**
18 **saint in college.**
- 19 **Q. Okay.**
- 20 **A. And I have had -- you know, if you don't drink a**
21 **lot, it doesn't take a whole lot to get you that buzz.**
- 22 **Q. That's right, absolutely.**
- 23 **A. So if I have more than two margaritas, I'm there.**
- 24 **Q. Okay.**
- 25 **A. I rarely drink more than two margaritas. In most**

- 1 **cases, I drink one, if I have one.**
- 2 **Q. Those really big ones?**
- 3 **A. Well, they're that big (indicating), if I can drink**
4 **that many.**
- 5 **Q. Kind of takes me in another direction. Why did you**
6 **drink more in college than you do now?**
- 7 **A. All college kids -- most college -- I won't say all**
8 **college kids. Most college kids drink because that's the**
9 **thing to do and that's --**
- 10 **Q. Right.**
- 11 **A. -- that's part of their partying nature.**
- 12 **Q. Right.**
- 13 **A. And I guess it depends a lot on the individual,**
14 **whether or not -- I'm not going to say it's their background,**
15 **because my parents didn't drink. But my friends all did, and**
16 **I didn't get drunk to the point I was passed out, or -- you**
17 **know, I knew how to drink within limits, and I didn't drink on**
18 **a weekly basis, either. But I did drink some at parties.**
- 19 **Q. Okay. And we -- although we don't like it all the**
20 **time, we seem to expect that of young people, that they're**
21 **going to do some drinking, they're going to do some partying**
22 **and do some staying up late. They're going to be doing some**
23 **things they probably shouldn't be doing.**
- 24 **A. That's correct.**
- 25 **Q. Because we did it, and we know they're going to do**

1 it?

2 **A. (Nods head.)**

3 **Q.** And part of that is a product of their youth,
4 wouldn't you say, being younger?

5 **A. Yes.**

6 **Q.** And feeling invincible and feeling like they're
7 going to live forever, and that sort of thing?

8 **A. True.**

9 **Q.** Okay. And a lot of times as young people they don't
10 see the future. They don't really exercise wisdom, and
11 sometimes they do some things they wish they hadn't done.
12 We've all done that.

13 **A. Uh-huh.**

14 **Q.** Just like you wish you had gotten the Master's
15 degree, but that's not -- really wasn't a product of dope or
16 drinking or alcohol --

17 **A. No.**

18 **Q.** -- but it's just kind of a thing you wished you had
19 gotten done. And I've got some of those things, too,
20 absolutely.

21 With respect to youth and decisions we make, things
22 we do, can you see youth being possibly something that would
23 be mitigating, that might be a mitigating circumstances, why
24 something happened?

25 **A. Are you asking me the question if I think whether or**

1 drinking, and looking back on it, I shouldn't have been. I
2 shouldn't have been driving.

3 **A. And I did that. I've done that.**

4 **Q.** Okay. And I was young and probably not as informed
5 and probably haven't lived long enough to see the effects of
6 alcohol, drinking/driving. You know, wouldn't no more do that
7 now than the Man in the Moon. I've prosecuted and defended
8 too many people for that.

9 **A. Right, right.**

10 **Q.** Do you know what I mean?

11 **A. Right. I know exactly what you're talking about. I
12 just didn't understand what you were asking me before.**

13 **Q.** Had I had an accident and killed someone, I might
14 have been on trial for involuntary manslaughter, you know, or
15 maybe worse. And you can see, if you were sitting on my jury,
16 I'd certainly want you to consider my youth, my inexperience,
17 in respect of what I did.

18 **A. Right.**

19 **Q.** I mean, can you see that?

20 **A. Yes, I can see that.**

21 **Q.** Okay. Now, let's talk about the opportunities and
22 money and that sort of thing. And that, boy, I'll tell you,
23 there's a whole range, because if you say that, you know, I
24 didn't have the money that other folks did, but you maybe
25 compared yourself with the folks on the East Coast that went

1 **not not having money, not having chances in life to make a
2 better life are mitigating circumstances? Not asking --**

3 **Q.** Where did that come from?

4 **A. -- me that? No, I'm just asking you if you think
5 that youth or a person's background doesn't give them an
6 opportunity, or they don't have opportunities to go out and
7 seek other opportunities.**

8 **Q.** We can get to that later.

9 **A. Okay.**

10 **Q.** I didn't talk about that at all. I'm just talking
11 about being young, being invincible --

12 **A. Being young and invincible and not thinking about
13 the consequences could be a mitigating circumstance? Well,
14 we've all made decisions in our youth that were not good
15 decisions.**

16 **Q.** That's right.

17 **A. But are they the type of decisions that -- where you
18 go out, and you have mischievous behavior. Whether or not
19 it's actually breaking the law, or that, I don't know that I
20 would call that a mitigating circumstance. Everybody thinks
21 they're invincible, that they're not going to die or they're
22 not going to get caught, but I guess I'm not sure where you're
23 leaning on mitigating.**

24 **Q.** Let me give you an example. I remember when I was
25 in high school I drove home many times after having been

1 to Brown or Yale --

2 **A. Right.**

3 **Q.** -- or some of those schools, when we had to go to
4 University of Texas or something. And then you talk about the
5 other range of people that grew up on a dirt floor and were on
6 food stamps and those of us who got to go to Texas Tech or
7 East Texas, you know, we're rich as opposed to them, so...

8 **A. It comes in all ranges.**

9 **Q.** Comes in all ranges, absolutely.

10 And I know you're slightly older than I am, and
11 you've heard a lot of the great society things that LBJ
12 proposed, and you've seen the actions of Jesse Jackson and
13 Martin Luther King trying to advance affirmative action, that
14 sort of thing. We've had to live with it, you and I.

15 **A. Yes.**

16 **Q.** And it's kind of interesting, the events of last
17 week, I think it's going to change that a little bit. We're
18 going to see a different flavor in this country, pretty
19 obvious. And yet, there are those people that are parts of
20 the minorities that often haven't had the chances you and I
21 have had growing up because after all they were part of a
22 minority, and then the people, like Martin Luther King, and
23 those people came along and created opportunities for them and
24 kind of opened up the door. This is a huge subject, isn't it?
25 It's almost too big. We can't get our arms around it.

1 But the -- the idea is -- I guess is that, you know,
2 I didn't have as good a chance starting out in life, and I
3 didn't have the money. I didn't have the opportunities. I
4 was precluded from doing certain things. Maybe I didn't have
5 any opportunities at all, and now I'm in prison, now I'm in
6 jail, and now I've done a horrible thing, and now the people
7 with all the opportunities are sitting in judgment of me. Do
8 you know what I mean?

9 A. Uh-huh.

10 Q. And so, I think the idea here is that we have to
11 consider the background and the circumstances and see if
12 there's a reason why this conduct occurred, and is there a
13 reason why their life should be spared, especially in the
14 capital murder sense. Do you know what I'm saying?

15 A. Yes, I do.

16 Q. Okay. And I probably got there a little bit quicker
17 than I wanted to. I could probably spend an hour leading up
18 to that. But the Legislature drafted this question, I guess,
19 to contemplate that very scenario. It's 52 words, and you
20 started to read it earlier: Whether taking into consideration
21 all of the evidence, including the circumstances of the
22 offense, however hideous, however horrible it is, but the
23 defendant's character and his background, you know, good or
24 bad. And then it says, if there's sufficient mitigating
25 circumstances, and something about his background that would

1 opt for a life sentence as opposed to a death sentence. Does
2 that make sense to you?

3 A. Yes.

4 Q. Why does that make sense to you? Let's go back to
5 your sociology or psychology days. What would your professor
6 want to hear?

7 THE COURT: I tell you what, would you remember
8 that question? Remember exactly where you are, and we'll take
9 a recess now and come back in about ten minutes.

10 Oh, ma'am, I just want to ask you, also, if you
11 would, there are other jurors in there, and don't discuss with
12 them anything that's been asked of you or anything that you
13 you've responded.

14 VENIREPERSON: Okay. Uh-huh.

15 (Recess taken.)

16 THE COURT: Why don't you ask Mrs. Moore to
17 come back in, please.

18 THE BAILIFF: Yes, Your Honor.

19 (Venireperson enters the courtroom.)

20 THE COURT: Please be seated. What are you
21 reading?

22 VENIREPERSON: Beneath the Wind.

23 THE COURT: Cordelia Frances Biddle (phonetic).

24 VENIREPERSON: I just started it.

25 THE COURT: Let me see. Have you ever heard

1 of Andrew Biddle Duke.

2 VENIREPERSON: No.

3 THE COURT: Okay, thanks. All right. Go
4 ahead.

5 MR. HIGH: Thank you, Judge.

6 Q. BY MR. HIGH: Ms. Moore, we're going to go to a new
7 topic. We may come back to that topic here in just a minute.
8 On the questionnaire, it talks about life confinement in
9 prison, and it gave you three alternatives and asked you to
10 circle one. And I've spilled some water over here, by the
11 way, so we're cleaning that up. Second time today.

12 THE COURT: Do you need some napkins?

13 MR. GOELLER: I just went and got some, Judge,
14 as discreetly as I possibly could.

15 THE COURT: Nobody knows now. All right.
16 Sorry. Go ahead.

17 Q. BY MR. HIGH: The alternative that you selected,
18 life confinement in prison, it says, "I believe that life
19 confinement in prison is appropriate in some capital murder
20 cases, and I could return a verdict resulting in life
21 confinement in a proper case." And is that still true? Do
22 you think you could render a verdict which resulted in life
23 confinement in the proper case?

24 A. Yes.

25 Q. Okay. And right off the top of your head, can you

1 think of a case that might be right for life confinement?

2 MS. FALCO: Your Honor, I'm going to object to
3 committing her to a particular set of facts, or what her
4 verdict would be upon a particular set of facts.

5 THE COURT: Sustained.

6 Q. BY MR. HIGH: What about in a double homicide case?
7 The indictment here alleges a double homicide, possibly a
8 robbery or a burglary associated with it. We know that's the
9 charging instrument in this case. It alleges a double
10 homicide, alleges a robbery, and alleges a burglary. Can you
11 imagine a situation, or a set of circumstances where you could
12 render life confinement if those elements were proven to you?

13 A. I doubt it.

14 Q. Okay. In other words, if the State proves up the
15 double homicide, two killings, and which then gets a verdict
16 of capital murder -- the guilty verdict of capital murder,
17 in other words, do you think --

18 A. I guess you would have to prove intentional. I
19 mean, if it --

20 Q. Okay. Of course, a murder is the intentional and
21 knowingly taking of a human life, so by definition you would
22 have -- they would have proven that to you, the intentional
23 knowing and taking of two human lives.

24 A. Yes.

25 Q. So that decision would have already been made by the

1 jury. So, in that situation can you see the possibility of
2 life confinement from you?
3 **A. I guess I'd have to weigh my thoughts on that. It**
4 **would be hard for me, though, to consider life confinement for**
5 **multiple murders.**

6 Q. Sure. Absolutely. I think it would be hard for
7 anybody. No question about it.

8 What we need to know is your true feelings, not what
9 you think we want to hear, not what you -- the Judge thinks
10 you (sic) want to hear or the DA or anything like that. This
11 is all about your true feelings, and whether or not you would
12 be right to sit on this jury because you're going to have to
13 be open to the idea of giving life confinement in a double
14 homicide scenario.

15 **A. Right.**

16 Q. I mean, we should have a fair shot at it from you,
17 just like the State has a fair shot at either life or death.
18 And so I guess what I'm trying to find out from you is if the
19 State proves up a double homicide in multiple murders, as you
20 just mentioned, is life confinement a possibility with you, or
21 is it most likely you're going to give the death penalty?

22 **A. I can't answer that because, in my own opinion, I**
23 **would say probably I would lean toward the death penalty, but**
24 **if I sat on a jury where ten others said, no, they wanted**
25 **life, then I would have to go along with the jury.**

1 Q. So you would need ten others to convince you to give
2 life?

3 **A. Again, I guess it would be based on the outcome of**
4 **the trial results, on the circumstances.**

5 Q. Okay.

6 **A. I could foresee where you could have multiple**
7 **murders that might not -- even though it's intentional -- a**
8 **murder is intentional, it's possible it might not be**
9 **intentional. I guess, if you were trying to get away and you**
10 **shot out the window, you know --**

11 Q. And killed two people?

12 **A. -- not necessarily meaning to kill a person, I guess**
13 **that would be a circumstantial thing. Something you would**
14 **have to consider, but if you intentionally aimed it at**
15 **somebody, and you intentionally meant to kill that person --**
16 **two people, then I would say that more than likely I would be**
17 **leaning more toward the death penalty.**

18 Q. Okay. I want to know how you really feel.

19 **A. I'm telling you how I really feel.**

20 Q. The indictment says intentionally and knowingly
21 killed two people, you know, and the jury would have found,
22 before we even get to these questions, these special issues,
23 the jury would have found that the killing was intentional and
24 knowing.

25 **A. Then I would be leaning towards the death penalty.**

1 Q. Okay. You had -- you have on your questionnaire --
2 down here it says, what makes a person dangerous? And it says
3 "no morals, no conscience or no thought of taking a life for
4 the sheer pleasure of taking a life." Tell me what you mean
5 by that.

6 **A. I think a person that's dangerous is a person that**
7 **has no regard for life. It's all about me, all about what I**
8 **want, and life means nothing to them. Someone else's life**
9 **means nothing to them.**

10 Q. Okay. And so back to our multiple murder/double
11 homicide situation, would you think that that person has no
12 regard for human life?

13 **A. I would say probably.**

14 Q. And that, therefore, satisfies your definition of
15 dangerous, correct?

16 **A. I can understand -- let me answer this question. I**
17 **can understand how a person might be scared, afraid and maybe**
18 **they didn't really mean to do it. But the moment -- that was**
19 **their only way out, but that still makes that person**
20 **dangerous, because given that situation, what happens the next**
21 **time?**

22 Q. Uh-huh.

23 **A. Or if there is a next time.**

24 Q. Okay. We don't want to allow that to occur, that
25 next time to occur?

1 **A. Right.**

2 Q. And the sheer pleasure of taking a life, what did
3 you mean by that? I'm trying to understand that.

4 **A. Someone who just --**

5 Q. Is that more in the -- like the Charles Manson sense
6 or the Jeffrey Dahmer sense?

7 **A. Somebody who just likes to kill because they just**
8 **like the thrill of it.**

9 Q. Okay. More of a serial killer-type situation?

10 **A. Right.**

11 Q. As opposed to, like, a one-time killing?

12 **A. One-time killing could be a situational thing.**

13 Q. Right.

14 **A. Something that just happened.**

15 Q. Relationship, dealings between the parties?

16 **A. Right. Whereas somebody that's a serial killer has**
17 **some mode of operandi --**

18 Q. Uh-huh.

19 **A. -- they stalk out their victims, you know, that type**
20 **of --**

21 Q. Did you hear about the lady in Florida that gave
22 rides to hitch hikers and she killed about ten guys in the
23 past couple of years? They caught her finally.

24 **A. No, her, but I heard about the flip of that. The**
25 **guy that was in Florida, or I forget his name, that picked up**

1 women that killed them.

2 THE COURT: It's a good thing they never met.

3 (Laughter in the courtroom.)

4 A. They had a deal on TV about -- I'm trying to think
5 even what it was on. Oh, America's Most Wanted, I think it
6 was. About the Thelmas and Louise. They were actually -- I
7 thought that was just a movie, but it was based on two women
8 that were from Houston and that were bored with their
9 every-day housewife lives, and decided they'd go on a killing
10 spree and --

11 THE COURT: Went off on a lark of their own.

12 A. -- and date these guys, get their money and just do
13 away with them.

14 Q. BY MR. HIGH: Okay. So I can see that you can see
15 the serial killing situation, and you can see the situational.
16 I see you understand that. And so, you-all could -- as a
17 juror, you could consider the evidence. You could find that a
18 double homicide occurred, maybe with a burglary, maybe with a
19 robbery, you guys could render a verdict and you could find
20 someone guilty of capital murder. And, of course, the next
21 question then is the future dangerousness.

22 A. (Nods head.)

23 Q. And that's that question on the floor where you have
24 to look forward, project, and look into the future and say,
25 look, is this Defendant, is he going to be -- is there a

1 probability that he would commit criminal acts of violence
2 that would constitute a continuing threat to society? And I
3 don't recall, did you give a definition of probability?

4 A. I don't remember if I did or didn't.

5 Q. Go ahead and give me one.

6 A. Probability is whether or not you think that person
7 would do it again. Based on the circumstances, based on
8 what's happened, do you think that they would do it again.

9 Q. Okay. Like one time, or --

10 A. Not the possibility, but assuredness, certainty, I
11 guess.

12 Q. And if you were to pick a percentage or how -- what
13 do you feel comfortable with; 70 percent, 90 percent, 50
14 percent?

15 A. I would say probably 60 to 70 percent.

16 Q. Okay. Did you understand the way it works with
17 respect to the burden of proof?

18 A. Yes.

19 Q. The burden of proof is on the State to prove beyond
20 a reasonable doubt --

21 A. Right.

22 Q. -- that there's a probability that the Defendant
23 would commit criminal acts of violence?

24 A. Yes.

25 Q. That's kind of a weird way of -- to think about

1 something, isn't it?

2 A. Well, I understand what it's saying.

3 Q. Okay. Tell me what you understand it to mean.

4 A. Okay. I understand that, first of all, they have to
5 prove without a shadow of a doubt -- or reasonable doubt that
6 person committed that act. And then secondly, you have to
7 prove, based on the circumstances of the trial, maybe based on
8 their past experiences, whether or not you think that person,
9 in the future, could create another act of violence -- do
10 another act of violence of that nature, or similar nature.

11 Q. Not could, but would?

12 A. Would. I meant would. I said could.

13 Q. Okay. I know you did.

14 And so what's interesting about the question, and I
15 see something new every time I look at it. I've been looking
16 at it for about six weeks. But it says would commit criminal
17 acts, which is plural, criminal acts of violence, and I guess
18 I take that to mean more than one.

19 A. Multiple.

20 Q. Yeah.

21 A. Yes.

22 Q. That would constitute a continuing threat to
23 society. So, the proof must be beyond a reasonable doubt that
24 it's going to continue to happen. Does that make a little
25 more sense to you?

1 A. Yes.

2 Q. Okay. Now, I want to take you back to the point in
3 time where the jury has heard all the evidence, and the jury
4 has decided -- all 12 of them, they've decided there was an
5 intentional and knowing killing of two human beings,
6 therefore, double homicide; therefore, capital murder.

7 When you approach this question, Ms. Moore, are you
8 going to say, well, I know he's killed two people. He's
9 dangerous. Yeah, he's going to be a continuing threat to
10 society. You know, there's a probability that he would commit
11 criminal acts of violence, and he's going to be a continuing
12 threat to society. I know he's already killed two people, and
13 he's guilty of capital murder. Are you automatically going to
14 say that he's going to be a danger, or are you going to be
15 open to the fact that he may not be a danger?

16 A. I would be open to the fact that he may not be a
17 danger.

18 Q. Tell me why.

19 A. Well, if you've already convicted him on capital
20 murder, capital -- I guess capital murder?

21 Q. Right.

22 A. And regardless of whether he gets the death penalty
23 or he gets life, how can he continue to be a threat to society
24 when he's incarcerated?

25 Q. Okay. You've really been paying attention, because

1 you've learned that it's 40 years for a conviction for capital
2 murder, at the very least, before they're even eligible for
3 parole. And then it may be -- it may be forever after that.
4 Who knows? It could be a year, it could be five years, it
5 could be ten years, it could be never, okay. All that is
6 clear to you; sounds like it is.

7 **A. Yes.**

8 **Q. Okay. There's a thing here on your questionnaire on**
9 **page 4 that says if someone is accused of capital murder, he**
10 **should have to prove his innocence, and you didn't circle any**
11 **of the categories. Let me show it to you because it's not**
12 **fair for me to look at it, and you not to look at it. And**
13 **I've got a question mark next to it.**

14 **A. Let me get my glasses. Okay.**

15 **Q. Okay. What would your answer be, if you had to**
16 **answer it?**

17 **A. If I had to answer it, I would probably say I agree,**
18 **but based on my understanding now of proof of burden (sic),**
19 **they don't have to prove their innocence.**

20 **Q. Okay. Tell me why you would say you agree.**

21 **A. I just felt like if a person was truly innocent that**
22 **they could prove their innocence.**

23 **Q. Have you watched Perry Mason? Of course, you have.**

24 **A. A long time ago.**

25 **Q. Did you like it?**

1 **A. It was okay. It wasn't one of the shows I watched**
2 **every week.**

3 **Q. Okay. What did you watch every week?**

4 **A. Oh, I don't know. Something that was a comedy or**
5 **something that was more light-hearted. Something that's not**
6 **so serious.**

7 **Q. Okay. So you --**

8 **A. I don't watch a lot of lawyer shows or cop shows,**
9 **you know. I watch CSI. I like the forensic part of, but I**
10 **don't watch Law & Order or NYPD Blue. Those are not some of**
11 **the shows that I watch.**

12 **Q. All right. Most of us, I'm sure that we do this**
13 **kind of work, and we've watched those kind of shows all our**
14 **life, and how Perry Mason was, typically it had to get over in**
15 **the 60 minutes. So, within the last two to three minutes the**
16 **person would confess either on the witness stand, or you'd**
17 **have somebody else that would come forward and say, I did it,**
18 **you know, and you'd have this dramatic conclusion. And, of**
19 **course, then the show would end, and everybody was happy and**
20 **then sell lots of product as a result.**

21 **A. But that's probably not true in real life.**

22 **Q. That's exactly right, and it hardly ever happens in**
23 **the courtroom that way in the real world.**

24 **A. And that's probably why the law is that they don't**
25 **have to prove their innocence, because in some cases they may**

1 **not be able to prove it --**

2 **Q. That's absolutely --**

3 **A. -- based on there's no witnesses or...**

4 **Q. That's right. So -- and, in fact, the Constitution**

5 **says the Defendant has a Fifth Amendment right not to testify.**

6 **He has the right to remain silent, and that's a right that**

7 **nobody can take away from him. No court anywhere can take**

8 **that away from him, in our country anyway.**

9 **And they came up with a law -- it's out of a certain**

10 **case -- that protects that right. They called it Miranda**

11 **versus Arizona where they tell you at the point of arrest that**

12 **you have the right to remain silent and anything you say can**

13 **and will be used against you in a court of law. So obviously,**

14 **if you say something bad in a court of law, that's going to be**

15 **used against you, that's for sure.**

16 **A. Obviously.**

17 **Q. And most defendants aren't lawyers. They haven't**

18 **been to law school, and they don't have a real good idea of**

19 **what's going to help them and what's going to hurt them, and**

20 **most of them want to climb in the witness stand because they**

21 **want to tell their side. But fortunately, they have lawyers**

22 **to counsel and advise them and say, look, I don't think it's**

23 **in your best interest to do that, and quite often in a**

24 **criminal case they don't take the witness stand.**

25 **And let me tell you something, if I was on a jury,**

1 **if I was sitting where you were, I'd want to hear from the**

2 **Defendant, absolutely. That's just human nature. You want to**

3 **hear from the other side, but, you know, sometimes you don't.**

4 **Probably a lot of times you don't.**

5 **If we get into this trial, and I don't know what's**

6 **going to happen. I honestly don't know myself. I don't know**

7 **whether he's going to testify or not right now. But let's**

8 **suppose he chooses not to testify, which is his Constitutional**

9 **right, is that going to be a problem for you? Is that**

10 **anything you're going to hold against him, or me, or our side?**

11 **A. No. And if I were in his place, I would want to be**
12 **presumed innocent until proven guilty, if I were in his place.**

13 **Q. Okay. And the Court would also charge you in a**

14 **written charge that he would give the jury at the end of the**

15 **trial, and say failure to testify is not a circumstance to be**

16 **imposed against the Defendant, and that would be okay with**
17 **you?**

18 **A. Yes.**

19 **Q. The reason I'm asking you so hard about this, on**

20 **page 6 of your questionnaire, it says, "The Constitution says**

21 **an accused citizen does not have to testify on his or her own**

22 **behalf. How do you feel about this Constitutional privilege?**

23 **And you say, "It is our Constitutional right not to testify,**

24 **but choosing not to do so forfeits your right to prove**

25 **innocence on your behalf."**

- 1 A. **Right.**
- 2 Q. Tell me what you mean by that. I think I know, but
- 3 I want to make sure I know.
- 4 A. **Well, you have -- if you choose not to take the**
- 5 **stand. Like I said, the proof of burden (sic) is on the**
- 6 **Prosecution, and if you choose not to take, or if you have --**
- 7 **if you have knowledge or you have evidence that can clear you,**
- 8 **obviously you hope that your lawyer will bring that out.**
- 9 Q. Uh-huh.
- 10 A. **But I also think that sometimes it helps if the**
- 11 **defendant takes the stand, you know, tell his side of it, even**
- 12 **though you said your will lawyer may feel like, you know, they**
- 13 **don't know the law and it could hurt their case.**
- 14 Q. Uh-huh.
- 15 A. **But again, if the outcome of the trial is going to**
- 16 **depend on the evidence --**
- 17 Q. Uh-huh.
- 18 A. **-- and whether or not the jury believes the**
- 19 **evidence.**
- 20 Q. Okay. Have you ever been in a situation where you
- 21 didn't feel comfortable about speaking?
- 22 A. **Oh, yes.**
- 23 Q. What comes to mind? Right now?
- 24 A. **I hate to give presentations at work.**
- 25 Q. Okay. You hate it?

- 1 A. **I hate it. I don't mind speaking with my friends.**
- 2 **I don't have a problem with that. And I do get up and give**
- 3 **presentations periodically to recruiters on what the law is,**
- 4 **and what the compliance is for hiring foreign nationals,**
- 5 **and I'm probably getting more comfortable with it. I've just**
- 6 **changed that responsibility since February, so I guess the**
- 7 **more knowledgeable you are about something, the easier it is**
- 8 **to get up and speak about it.**
- 9 Q. Boy, that's the key with anything. Absolutely.
- 10 A. **Yes.**
- 11 Q. And when you get up and give those presentations, do
- 12 you get questions from the floor?
- 13 A. **Sure.**
- 14 Q. Sometimes you can't predict what those questions are
- 15 going to be.
- 16 A. **No. You don't know what they're going to ask.**
- 17 Q. Sometimes they're loaded. Sometimes they're trying
- 18 to -- maybe they've got something that they want to get done,
- 19 and they'd like to see it done, and they want other folks in
- 20 group to hear it, get a mood going, I guess, to accomplish
- 21 that objective.
- 22 A. **Right, right. Or maybe they don't like something**
- 23 **you're asking them to do, so they figure you're just one, and**
- 24 **there's a whole audience and so they can sway what they'd like**
- 25 **to do. They have a hidden agenda.**

- 1 Q. There you go. That's right.
- 2 And I've been in those situations, too, and it's
- 3 awfully uncomfortable. And I'm also going to Toastmaster's
- 4 now, which is helping me control those situations a little bit
- 5 better and learn how to deal with them. You can imagine in my
- 6 business I'm in those situations all the time.
- 7 A. **Yes.**
- 8 Q. But obviously you can imagine that a person on trial
- 9 for their life, and they'd have to get up on that witness
- 10 stand right where you are. I mean, I'm sure you're not the
- 11 most comfortable you've ever been sitting up there answering
- 12 all these questions.
- 13 A. **(Shakes head.)**
- 14 Q. But your life is also not on the line, either.
- 15 You can understand why a person may be scared to
- 16 testify. Maybe they don't speak well. Maybe they don't
- 17 understand --
- 18 A. **Right.**
- 19 Q. -- the language well, and maybe they don't
- 20 understand manipulation or where somebody is going with a
- 21 question. They don't understand hidden agendas. Maybe
- 22 they're not very smart, you know, or maybe that whenever
- 23 they're telling the truth, they smile, which is the way some
- 24 people do when they tell the truth, or when they're lying they
- 25 frown. You know, sometimes people have weird gestures about

- 1 them, and some people don't know it. Their lawyer may know
- 2 it, but the folks on the jury may not know it or understand
- 3 it. So, you understand there may be other reasons why a
- 4 person may not testify?
- 5 A. **Right.**
- 6 Q. Have we beaten a dead horse?
- 7 A. **I think so.**
- 8 Q. Okay. Right above that it says, "In your opinion
- 9 what does the death penalty say about the American culture?
- 10 The punishment should fit the crime, and if you purposefully
- 11 take a life you must face the punishment." And I'm wondering
- 12 what you mean by that. Tell me exactly what you mean by that.
- 13 A. **I'm just saying that if you commit a lethal crime,**
- 14 **such as murder, I think you have to face your punishment**
- 15 **whether it's the death penalty, whether it's life**
- 16 **imprisonment, but not go scot-free.**
- 17 Q. Okay. It doesn't mean you must pay with your life?
- 18 A. **No.**
- 19 Q. Okay. I was just inferring something into your
- 20 answer. You don't mean that at all?
- 21 A. **No.**
- 22 Q. Okay, fair enough.
- 23 I want to finish up with the last question, and I've
- 24 been corrected. It's not 52 words; it's 50 words, exactly 50.
- 25 And the Legislature drafted that question, and it's used all

1 over the State to -- in capital cases, and it's the last look.
 2 It's -- you know, the jury has found somebody guilty of
 3 capital murder, and they found them to be a future danger.
 4 They've answered "yes" to that question, so now they've got
 5 this question, which is the last look at the Defendant. You
 6 know, they know they're on the road to a death sentence -- the
 7 jury is. They're going to look back over at the Defendant,
 8 and they're going to take one last look at all the evidence,
 9 and everything they've heard in the trial, and they're going
 10 to look at his character, his background and his personal
 11 moral culpability, and see if there's sufficient mitigating
 12 circumstances to impose a life sentence as opposed to a death
 13 sentence. Does that make sense?

14 **A. Yes.**

15 **Q.** And we've talked a lot about this in the past six
 16 weeks we've been in here. There's a whole lot of theories and
 17 ideas why you guys will have that question. Maybe it's to
 18 make the jury feel better, you know, give the jury an
 19 opportunity to correct a situation. Maybe they feel like this
 20 person shouldn't die, and so they -- they've gotten this
 21 question which gives them an opportunity to spare a life. On
 22 the other hand, you know, it's clear and convincing that the
 23 person should die, and they take the last look, and they say,
 24 no, there's nothing mitigating here. I don't see any, and he
 25 needs to go to his death, okay. Does that make sense?

1 **A. Yes.**

2 **Q.** Okay. I'm sure that you kept up with the Timothy
 3 McVeigh case, or you could -- how could you help it? I mean,
 4 you heard about it and read about it, I'm sure.

5 **A. I didn't really keep up with the Timothy McVeigh
 6 case, to be quite honest.**

7 **Q.** Okay.

8 **A. I know that he planned the bombing of the Oklahoma
 9 City Federal Building.**

10 **Q.** Right.

11 **A. And I know he was part of a militant group.**

12 **Q.** Right.

13 **A. But that's barely about all I know. I don't know
 14 anything his childhood, his background. I know he was in the
 15 service. I believe he was in the service, but that's really
 16 about all I know about him.**

17 **Q.** Okay. But we know it was planned. You know, he got
 18 the fertilizer together. He got the truck, and he knew what
 19 his escape route was going to be, and he drove the truck up
 20 there --

21 **A. Right.**

22 **Q.** -- blew up all those people. And I mean, that's the
 23 kind of case where even people who adamantly oppose the death
 24 penalty, they would probably say, look, that's -- I probably
 25 go for it on this case, on the McVeigh case, and there's other

1 cases like that. Probably Charles Manson was one of them back
 2 in the '60s, and maybe the kid killing. You know, where
 3 the -- Sandra Smith in North Carolina where she killed her
 4 kids?

5 **A. Put the two in the car --**

6 **Q.** Uh-huh.

7 **A. -- and let them back into the lake and drowned them?**

8 **Q.** Uh-huh.

9 **A. Yes, I remember that.**

10 **Q.** And then this current one that's going on down in
 11 Houston. I mean, most people would say, look, I don't see any
 12 reason for mitigation. There's no reason why we should spare
 13 their life. I mean, it's so bad, it's so hideous, so
 14 premeditated, so well-planned, so thought out. There's so --
 15 there's no remorse, okay. I don't see any reason that would
 16 mitigate against the death penalty. A lot of people would say
 17 that.

18 **Q.** On the other hand, you and I have talked about the
 19 possibility of passion, of a relational killing, of things
 20 that have gone on in the relationship. Maybe it's a one-time
 21 thing. Maybe the other person was provoked. Who knows?
 22 But -- and maybe there's not very much premeditation. Maybe
 23 there's some, but not a lot. Maybe it's a heat-of-the-moment
 24 type killing. Maybe they're in the pool hall, and somebody
 25 wins 8-ball, and they win a bunch of money, and they go

1 outside. The next thing you know, somebody pulls a knife and
 2 they're killed. You know, it's kind of a heat-of-the-moment
 3 thing. It happens within two to three to five minutes. And
 4 it's a different situation in McVeigh, wouldn't you agree?

5 **A. Yes.**

6 **Q.** Okay. And in that scenario, the jury -- let's say
 7 that pool hall/knife killing, in that situation the jury would
 8 have to take one last look. You know, if they found this
 9 person guilty -- and say it's a double homicide -- guilty of
 10 capital murder. They found he's going to be a danger in the
 11 future. Now they're going to take a last look, and they're
 12 going to say, hey, what about this person? Is he worthy of --
 13 are the circumstances, are they mitigating enough that his
 14 life should be spared?

15 **Q.** With respect to personal moral culpability, did we
 16 discuss that with you earlier?

17 **A. Whether or not I think a person has morals?**

18 **Q.** Well --

19 **A. Moral responsibilities?**

20 **Q.** Yeah.

21 **A. Yeah. I think we talked about it with Ms. Falco.**

22 **Q.** Okay. Some would say a guy like Timothy McVeigh
 23 would have no personal moral culpability. I mean, after all,
 24 what he did he felt was right and was the thing to do. You
 25 know, those of us who we know it's not, how could a guy like

1 that have any personal moral culpability? He sure didn't have
 2 any remorse.

3 **A. No.**

4 **Q.** He sure didn't have any guilty conscience about what
 5 he did.

6 And who knows about Sandra Smith or this lady in
 7 Houston, what could have been going through their head to do a
 8 thing like that. You know, and a person could have a response
 9 to the killing. They could feel guilty about it. They could
 10 wish they were in that circumstance -- wish they could take it
 11 back and made a mistake. You know, do you think that may go
 12 along with the personal moral culpability, the responsibility
 13 that they feel?

14 **A. That's possible.**

15 **Q.** Okay. Would you be able --

16 **A. Feeling remorse after the fact.**

17 **Q.** Sure. Even the wife that killed her husband because
 18 he's beaten her for years, she probably wishes she didn't have
 19 to kill him.

20 **A. Yeah.**

21 **Q.** Because now she's on trial for murder?

22 **A. But does she feel remorse for it? Probably not.**

23 **Q.** Probably not. Yeah, she's probably glad he's gone.

24 Okay. Would you be able to consider, like the
 25 conscience, the guilt, the moral responsibility, would you be

1 able to consider that on the part of the Defendant as a
 2 mitigating circumstance, something that may mitigate and maybe
 3 cause you to consider a life sentence as opposed to a death
 4 sentence?

5 **A. Probably.**

6 **Q.** Okay. That makes sense to you, doesn't it? It
 7 does.

8 **A. (Nods head.)**

9 **Q.** And I was asking you about the -- actually, I think
 10 it was discussed with you about the conversion experience, you
 11 know, a person becoming a born-again Christian. Are you a
 12 born-again Christian?

13 **A. No.**

14 **Q.** So -- but you're familiar with the concept?

15 **A. The concept of "don't believe in God, or have
 16 believed in God but lost faith in God and now I've regained my
 17 faith in God." That would be my -- I guess all the sudden I'm
 18 feeling remorse for what I've done in my past, and now I'm
 19 hoping that God is going to redeem me, and I'm going to lead a
 20 better, religious life.**

21 **Q.** You've lost me.

22 **A. I don't know. I guess I don't know what the
 23 interpretation is of a born-again Christian. I'm thinking
 24 somebody that maybe was a Christian, but then they lost --
 25 through their way they've lost their faith in God, lost their**

1 **faith in humanity. And at some point they've redeemed their**
 2 **faith in Christ again and choose to lead a Christian life now.**

3 **Q.** Okay. But you haven't had that experience?

4 **A. No.**

5 **Q.** You haven't had that experience of being born again?

6 **A. No.**

7 **Q.** Okay. Do you have a problem with people that do,
 8 that claim to be a born-again Christian?

9 **A. No. I think Jane Fonda has been proclaimed as a
 10 born -- reborn -- born-again Christian.**

11 **Q.** Uh-huh.

12 **A. And she had some political things back in the 1960s,
 13 but I wouldn't say that -- I guess she did say she was an
 14 atheist back in the '60s.**

15 **Q.** Sure.

16 **A. But maybe she just never went to church or never
 17 knew God.**

18 **Q.** Right. You know, Jane Fonda showed up a lot on our
 19 questionnaire.

20 **A. Did she?**

21 **Q.** And she's shown up probably more on the respect
 22 side. She's shown up a few times on the people that they
 23 least respect, but she's shown up frequently in our
 24 questionnaires.

25 And you know that she and Ted Turner are divorced

1 now?

2 **A. Right.**

3 **Q.** You know he's a confirmed atheist?

4 **A. I didn't know that, but I understood that was --
 5 but it's hearsay. That was part of their problems with their
 6 marriage, was that he didn't believe in God and she did, and
 7 she was now a reborn-again Christian, and this wasn't
 8 something that they had in common with one another, and that
 9 became a problem with their marriage.**

10 **Q.** Yeah, and I can see that would be. There's probably
 11 many discussions that were had between them. Probably pretty
 12 heated discussions, I would think.

13 What do you know about the concept of becoming a
 14 Christian, or being born again? What do you know about it?

15 **A. I guess leading a Christian way of life, doing
 16 others as you would have them do unto you, following God's
 17 path, how he wants you to be a Christian person, a
 18 humanitarian, help people, being just true to his Ten
 19 Commandments.**

20 **Q.** And I notice when you talk about that, your voice
 21 gets real peaceful and smooth. You feel comfortable with
 22 that, and you like that?

23 **A. Uh-huh.**

24 **Q.** Okay. Do you recall hearing about Karla Fay Tucker
 25 last year in the year 2000? When Bush was running for

1 president and Karla Fay Tucker was one of these murderers in
2 Houston, committed a horrific crime, and yet she was a
3 born-again believer. It got a whole lot of press for that.

4 **A. I heard about that.**

5 Q. Nationwide, and the press was kind of slapping him
6 around, George Bush, because he did not stay her execution.

7 She went to her death.

8 **A. Right.**

9 Q. But she got a lot of air time about being a
10 born-again Christian and born-again believer.

11 **A. And there were some people I think that were
12 protesting outside the prison.**

13 Q. That's right. From what -- do you recall having any
14 thoughts about that at the time?

15 **A. No. I just remember seeing it on TV. I didn't -- I
16 really didn't know any facts about the case, what she was
17 convicted of, and just simply that, you know, she was a
18 born-again Christian, and that they were asking for his (sic)
19 stay of execution, and he didn't grant it.**

20 Q. Okay. Now, evidently it made a change in her life.
21 I mean, evidently it did because she sure got a lot of press
22 about it. She sure got a lot of stories, and it went on for a
23 period of years, you know, seven to ten years, from the time
24 she was convicted until the time she was executed, the time
25 she lived in prison.

1 **A. Uh-huh.**

2 Q. Of course, at the time she was convicted, you know,
3 who knows what her personal makeup was, or how dangerous she
4 was. She was probably very dangerous.

5 Obviously, actions speak louder than words. I'm
6 sure you've taught that as a parent. We can talk a lot, but
7 we've got to be able to back it up with the way we act, right?

8 **A. Right.**

9 Q. And I suppose if you were to sit as a juror on this
10 case and you were to hear about a conversion experience or
11 religious experience; maybe more peaceful, maybe more values,
12 maybe the Ten Commandments, the things you alluded to. The
13 talk is cheap, but if it was backed up with actions, would you
14 be open to hearing that and listening to it and maybe
15 considering it as a mitigating circumstance?

16 **A. Yes.**

17 Q. Okay. Especially if there were some actions
18 associated with it?

19 **A. Right.**

20 Q. Well, I've exhausted my brain. Is there any other
21 questions you have for me, anything that I've left untouched
22 that's unclear?

23 **A. I don't know. I think we've pretty much covered
24 about every possible sentence on either one of these words and
25 my feelings.**

1 Q. If you were sitting where I am, would you be okay
2 having you on the jury knowing what you know about you?

3 **A. I guess I -- it's hard for -- how do you know, other
4 than based on what I've said.**

5 Q. Right.

6 **A. You have to go by what I've said, and I would just
7 say it would be a toss-up, a 50/50. Either, you know, I'm
8 telling you how I really feel, or I'm camouflaging it. And
9 why would I have to camouflage anything?**

10 Q. We sure do appreciate it. We sure do appreciate it
11 very much and nice visiting with you.

12 **A. Thank you.**

13 MR. HIGH: And, Judge, I'll pass the juror.

14 THE COURT: All right. If you'd step down for
15 a few minutes, and perhaps we'll have you back in.

16 (Venireperson exits the courtroom.)

17 THE COURT: What says the State?

18 MS. FALCO: This juror is acceptable to the
19 State, Your Honor.

20 MR. HIGH: Could I have just a moment, Your
21 Honor?

22 (Pause in proceedings.)

23 THE COURT: What says the Defendant?

24 MR. GOELLER: Yes, Your Honor. Comes now the
25 Defendant, and would submit this juror for cause for the

1 following reasons. Number one, Your Honor, this juror, based
2 on the totality of the content of her voir dire, which is what
3 the Appellate Courts tell us to look at in these type of
4 challenges, this juror is unwilling to give any meaningful
5 consideration to mitigation-type evidence pursuant to the
6 Special Issue Number 3, and, therefore, we believe that she
7 should be stricken from this jury for cause because she's not
8 willing to at least even consider background, character
9 evidence in answering the third special issue in violation of
10 *Meldanado versus State*.

11 The second reason we would advance for submitting
12 the juror on cause has to do with her failure to adhere to the
13 presumption of innocence, and she has a bias against the phase
14 of the law which we're entitled to rely, and that would be an
15 instruction from the Court that you shall not, in any way,
16 consider a defendant's failure to testify as any circumstance
17 against the defendant. We would read into the record page 6
18 of the juror's questionnaire. It states, "The Constitution
19 says an accused citizen does not have to testify on his or her
20 own behalf. How do you feel about this Constitutional
21 privilege"? The juror wrote, "It is our Constitutional right
22 not to testify, but choosing not to do so forfeits your right
23 to prove innocence on your behalf."

24 That is tantamount to a shift of the burden of
25 proof, and again her failure to follow the law that would be

1 given to a juror in a case where a defendant does not testify
2 should either side desire that instruction, that failure to
3 testify should be in no way held as a circumstance against the
4 juror (sic). So for those two reasons, we would ask the
5 juror -- we would ask the Court to grant our challenge for
6 cause.

7 THE COURT: Do you remember her response with
8 regard to being questioned on that last issue?

9 MR. GOELLER: Actually, I don't, Your Honor.

10 THE COURT: Does the State?

11 MR. SCHULTZ: I remember it.

12 THE COURT: What do you recall it to be?

13 MR. SCHULTZ: I recall her saying that he could
14 help himself perhaps by offering testimony, but that's a
15 choice he'd have to make. If he didn't, then she wouldn't
16 hold it against him, and there could be a lot of reasons for
17 not doing it. And the fact that she's asked before anybody
18 explains law to her, it seems to me that she thinks he might
19 forfeit his chance to prove innocence, taken in context along
20 with what she said, she wouldn't hold that against him in any
21 regard and would -- I mean, she could -- I mean, I don't know
22 why that general statement is incompatible with anything that
23 the Court would require her to do, and she indicated that she
24 wouldn't use that as evidence.

25 She -- and I even remember that she made a remark

1 that the State still had to prove it. I remember that, too.
2 It would probably be hard to find it in the record, but it all
3 happened in a matter of probably a third of a page of
4 testimony. It was pretty quick, but it wasn't anything about
5 it that was --

6 THE COURT: That's my recollection, too.

7 MR. GOELLER: Judge, may I respond to that?

8 THE COURT: Sure.

9 MR. GOELLER: That may very well be.

10 Mr. Schultz, however, stated that was before the law was
11 explained to her, and I disagree. We tell her in bold print,
12 the Constitution says an accused does not have to testify, so
13 she was given the law. She still writes down under oath,
14 "Choosing not to do so forfeits your right to prove
15 innocence." At the very least, she gives -- having known the
16 law, she makes that statement, and she makes a consistent
17 statement here today. I would submit that she's a vacillating
18 juror in violation of the Perillo doctrine.

19 MR. SCHULTZ: We didn't give her all the law
20 in that question because all we say is that he doesn't have to
21 testify, and she doesn't have a problem with that. We didn't
22 couch that question in terms of you can't hold that fact
23 against him, nor do I think her answer is. Mr. Goeller seems
24 to think we give them all the law related to it. We don't,
25 and she doesn't have an opposition to him not testifying. In

1 her answer she just observed that might forfeit a chance to
2 prove his innocence. That's all she did, and she testified
3 fine.

4 THE COURT: Is there anything else on the
5 challenge for cause?

6 MR. GOELLER: May I have just a second, Judge?

7 THE COURT: All right.

8 (Pause in proceedings.)

9 MR. GOELLER: Judge, I would just further
10 along -- to advance my argument along those lines of that
11 shifting of the burden and failure to recognize no
12 circumstance be drawn from the Defendant's failure to testify,
13 I'd also read into the record her response or sworn answers on
14 page 3. "Criminal defense attorneys are necessary to
15 represent their defendants to present their evidence of
16 mitigating circumstances or prove their client's innocence."
17 I think that is, again, consistent with that burden shifting.
18 There's twice she states under oath in her sworn
19 questionnaire.

20 THE COURT: Anything else?

21 MR. GOELLER: I'm sorry?

22 THE COURT: Is there anything else?

23 MR. GOELLER: No, sir.

24 THE COURT: All right. I recall her response
25 to that question from Mr. High, also. The challenge for cause

1 is denied.

2 MR. GOELLER: Yes, sir.

3 At this time, obviously the record would reflect
4 that we have no peremptory strikes left, and we would request
5 additional peremptory strikes in support thereof. Earlier in
6 the proceedings the Defendant used peremptory strikes for
7 Juror Cummings, Juror Edgar, Juror Stratton,
8 Juror Peters and others after challenges for cause for those
9 jurors were denied and overruled. As a result, had we had
10 those challenges for cause been granted, we would not have had
11 to -- we would have been in a position to use those peremptory
12 strikes against Juror Cole, Juror Burks, Juror Poplin and
13 Juror Penn, and these were objectionable jurors that were
14 seated on this jury and, therefore, at this time would request
15 additional peremptory challenges.

16 This juror, Juror Carol Moore, Juror Number 105, the
17 Defendant having made a challenge for cause having been denied
18 that -- the Court overruling and denying our challenge for
19 cause, had we not had to exercise peremptory challenges
20 against Juror Cummings, Juror Edgar, Juror Stratton, and
21 Juror Peters, we would have had a peremptory strike remaining
22 to strike Juror Carol A. Moore. Therefore, we'd respectfully
23 request additional peremptory strikes.

24 THE COURT: All right. I'll grant you one. Do
25 you want to use it at this time?

1 MR. GOELLER: May I have just a moment, Judge?
 2 (Pause in proceedings.)
 3 MR. GOELLER: Yes, Your Honor, we'd use that
 4 peremptory. Thank you.
 5 THE COURT: And the -- Mrs. Moore is stricken
 6 peremptorily on behalf of the Defense. If you would, tell her
 7 that she is finally excused, Mr. Powell, and invite Mary Ann
 8 Weaver to come in.
 9 THE BAILIFF: Yes, Your Honor.
 10 THE COURT: Yes, ma'am. You are Mary Ann
 11 Weaver, and I want to welcome you back to the courtroom.
 12 You've been waiting for a while.
 13 I want to ask you, do you recall a little over a
 14 month ago when all 200 jurors were assembled, I administered
 15 an oath to all 200 jurors. And do you recall the oath was to
 16 make truthful answers to any questions that I might ask or
 17 that the attorneys might ask. Do you recall that?
 18 VENIREPERSON: Yes.
 19 THE COURT: I just want to advise you that
 20 you're still under that oath, and ask you to be seated right
 21 here.
 22 VENIREPERSON: Right here?
 23 THE COURT: Yes, ma'am. Is it Mr. Schultz?
 24 MR. SCHULTZ: Yes.
 25 THE COURT: All right, sir, please go ahead.

1 (No omissions.)
 2 DIRECT QUESTIONS
 3 BY MR. SCHULTZ:
 4 Q. Good afternoon.
 5 A. Hi.
 6 Q. My name is Bill Schultz. I'm one of the Assistant
 7 District Attorneys representing the State of Texas in its
 8 capital prosecution of Ivan Cantu. Next to me is Ms. Gail
 9 Falco, chief felony prosecutor assigned to one of our other
 10 courts, and then at the far end of our table is Ms. Jami
 11 Lowry, who you've previously spoken with.
 12 At the Defense table is first the Defendant, Ivan
 13 Cantu, and next to him is Mr. Don High and then Mr. Matt
 14 Goeller. Mr. High and Mr. Goeller are both fine practitioners
 15 of law in the private setting in Plano, Texas. They're board
 16 certified criminal law specialists and good lawyers and decent
 17 men.
 18 I believe that you do not know any of the lawyers
 19 or the Defendant in this case from your previous answers; is
 20 that correct?
 21 A. That's true.
 22 Q. Sometimes, especially if you've got to make several
 23 trips up here until you get brought into court, people find
 24 that delay annoying at least and sometimes downright
 25 irritating. And, yet, I hope you would agree with me that of

1 all the kind of cases that we do, capital murder cases should
 2 be done with care, and they shouldn't just be so quick that we
 3 deprive either the State or the Defendant of their right to a
 4 fair trial from a trial jury. And I hope that you understand
 5 that this is an important part of citizenship in this country.
 6 It's a way that many of our citizens actually do personal
 7 service for our State and for our country that we mostly don't
 8 ever have to do anymore in our society.
 9 I don't know about how you felt, but I have a hunch
 10 that when you got up this morning and realized this is the day
 11 you come to McKinney to be examined to see whether you're on
 12 the jury, I have a hunch that wasn't a thrill to you, just the
 13 prospect. Am I right?
 14 A. You're right.
 15 Q. And there's nothing wrong with that. I mean,
 16 everybody has lives that need attention. Many of us have
 17 jobs. We have families. We have responsibility. We have
 18 hobbies. We have pets. We have a whole bunch of things that
 19 take a lot of our time, and for most of us, just managing our
 20 lives is a full-time job, and if something large and
 21 unexpected comes along, it can create some major challenges.
 22 Do you agree with that?
 23 A. Yes.
 24 Q. You know, and it's -- we're not the only ones.
 25 Certainly you're not the only one. I mean, there are an awful

1 lot of uniformed military personnel whose lives are just being
 2 ripped right up by the roots being called out and moving along
 3 into a combat ready mode that everybody understands where
 4 we're going with that, but they've got to make those
 5 adjustments and tell their families good-bye on very short
 6 notice, and sometimes I guess duty calls.
 7 But I think more than just being an interruption in
 8 people's lives, I think even for those people who favor the
 9 death penalty, which is still a large majority of our American
 10 public, even for those people, I don't think the prospect of
 11 participating in someone's execution, either indirectly as a
 12 juror or perhaps more directly down in the prison system, I
 13 don't think that's a prospect that any of us find particularly
 14 appealing or wonderful or joyful. Do you agree with me on
 15 that?
 16 A. Yes.
 17 Q. I don't know about you, but I would like to live in
 18 a world in which there wasn't a need for a death penalty.
 19 Would you like that?
 20 A. Yes, probably.
 21 Q. Okay. Kind of like I'd like to live in a world
 22 where we didn't need these gigantic aircraft carriers that
 23 carried all those huge bombs and things like it, missiles and
 24 all this kind of thing. It would be nice if we lived in
 25 Utopia where everybody got along and behaved kind of like you

1 do and I do, and that would be a nice way to behave, I think.
 2 And, yet, it seems that we don't -- haven't found a way yet to
 3 have that kind of a world.

4 So that all having been said, you have indicated on
 5 your questionnaire by circling one of the best statements
 6 here, the most close about your feelings. You believe the
 7 death penalty is appropriate in some capital murder cases, and
 8 you could return a verdict resulting in death in a proper
 9 case?

10 **A. Yes.**

11 **Q.** And that was back in August when you filled it in,
 12 and I don't know if you're like some people who go about your
 13 business after that and just wait until you get called and
 14 that's a part of it, or if you've been thinking about it off
 15 and on all during that time about how you feel about capital
 16 punishment and what that really means to you if you get put on
 17 a jury. Have you done much thinking about it since then?

18 **A. I've thought about it.**

19 **Q.** Just in a nutshell, can you sort of tell me how your
 20 thinking is going and kind of how you visit the issue and
 21 where you are with it?

22 **A. Well, I am a religious person, and I'm Catholic, and**
 23 **I know my religion is against the death penalty, so I've**
 24 **tossed that around in my mind. I still believe, though, that**
 25 **in certain cases it's warranted.**

1 **Q.** Okay.

2 **A. And that's my feeling.**

3 **Q.** Okay. If you were seated on this jury, I will tell
 4 you you would not be the only Roman Catholic on the jury.
 5 There's at least one that comes to mind, and perhaps two. It
 6 was an interesting -- it was interesting because I'm of the
 7 Protestant faith so I don't -- many of the beliefs are the
 8 same scriptures and in many ways are exactly the same. There
 9 is a different hierarchy in the Catholic Church than what we
 10 have in the Protestant faith, so I'm not clear about some --
 11 I'm not clear about some of it.

12 But this one juror expressed it somewhat
 13 interestingly, to me at least. And he said -- same thing
 14 you're saying; that it's pretty clear that the church's
 15 position is opposed to capital punishment, but he said at
 16 least when I'm doing the State's business, which is being a
 17 juror, I would take my direction from Austin rather than Rome.
 18 It was kind of interesting because I thought about that for a
 19 little bit. I thought, well, what does that mean? And I
 20 think what he was saying was that we have duties as citizens
 21 and duties as Christians, and they may sometimes be exactly
 22 the same and sometimes they may not.

23 And he expressed the notion that he could still go
 24 to church and feel that he had not let God down or that he
 25 didn't -- that he didn't, any longer, belong in church because

1 of this issue, and I'm -- I was thinking, well, what if he
 2 didn't? I mean, what if you literally believed that by
 3 engaging in a practice that the church was opposed to, what if
 4 you really believed that was somehow going to affect one's
 5 sour, or some unwelcomeness in the church? I wonder how
 6 people would think about that if it were something like that.

7 What's your thinking? If you go back -- if you're
 8 on a jury, and you vote in such a way based upon evidence that
 9 it would result in a death sentence, how big a dread are you
 10 going to have about going back to church? Is that a problem
 11 for you?

12 **A. No, it wouldn't be.**

13 **Q.** Okay.

14 **A. I guess it depends on how deeply religious you are.**

15 **THE COURT:** Say, ma'am, I want to ask you to
 16 do something. Can you hear her clearly?

17 **MR. GOELLER:** Yes, Your Honor.

18 **THE COURT:** All right. Just want to make sure
 19 that you do speak up loud enough so that --

20 **VENIREPERSON:** Okay.

21 **THE COURT:** Because I can hear you fine, but
 22 you seem to be a little bit on the quiet side.

23 **VENIREPERSON:** That's just me.

24 **THE COURT:** Try and speak up loud enough so
 25 everybody can hear you. Go ahead.

1 **Q.** BY MR. SCHULTZ: I guess my -- I guess the first
 2 thing that comes to mind, I guess I don't -- I don't care
 3 where someone worships. I don't particularly care about what
 4 a person's view is on capital punishment. That's a matter of
 5 personal choice, provided that people can fairly measure the
 6 evidence and return a verdict based upon the evidence. It's
 7 almost like it doesn't matter whether a person likes the law
 8 or not, as long as they can follow it. That's kind of where
 9 I'm coming from.

10 **A. Right.**

11 **Q.** And I'm wondering, and you're the only one that
 12 could tell me. You sort of volunteered this, is the only
 13 reason I'm even asking. I'm wondering is that going to put
 14 any particular pressure on you or make you feel like you're
 15 doing something wicked by participating in a capital
 16 punishment trial, which, depending on the evidence, might make
 17 you return a verdict that would cause death? Is that -- do
 18 you see that as a problem? You know, three weeks into the
 19 trial, for example, suddenly you realize that you can't still
 20 do it because of the Church's position. Do you understand
 21 what I'm saying?

22 **A. I understand.**

23 **Q.** Is that something for me to worry about, do you
 24 think?

25 **A. I don't think so. I'm pretty -- I'm a fair person.**

1 **I can weigh both sides usually and stand back and look at both**
2 **issues.**

3 Q. Fair enough.

4 Why do you favor the death penalty? What use is it
5 in our society, do you believe?

6 **A. It's not so much that I favor it. I think it's**
7 **necessary in some cases.**

8 Q. Okay.

9 **A. I think when all other punishment wouldn't be**
10 **appropriate, or I guess justice wouldn't be served, I think**
11 **that would probably be a fair way to deal with it.**

12 Q. Okay. As you sit there now, what kinds of crimes
13 seem to you to naturally call for a death penalty? What
14 things -- what things seem natural to you to call for a death
15 penalty?

16 **A. Something that's very severe. Someone who is a**
17 **threat to society in general.**

18 Q. Uh-huh.

19 **A. Someone you feel couldn't be reformed by the system**
20 **or get lost in the system, or I don't know. It's hard to --**
21 **that's hard to say.**

22 Q. Okay. It's probably one of those things even if
23 you couldn't describe it, you might know it when you saw it
24 and you'd recognize it, even though you couldn't give the
25 definition of when a case seems to cry for capital punishment.

1 Is that fair?

2 **A. Right.**

3 Q. Okay. When we talk about reform, and I guess
4 another term is rehabilitation. They're probably pretty
5 close. We use that rehabilitation term a lot in our law.
6 Obviously executing somebody may not rehabilitate them. I
7 mean, pretty clearly -- at least not in this life, it's not
8 going to do any good for them and their participation in this
9 particular life that we're dealing with.

10 And on that issue of rehabilitation, there are
11 people who say that sometimes human beings go to the point
12 where they can no longer be rehabilitated for whatever
13 reason. Do you believe there are people like that, that just
14 don't be -- that just can't be rehabilitated?

15 **A. Yes, I think there are.**

16 Q. Do you have any thoughts on how they get that way?

17 **A. I don't know. I guess it would have to be something**
18 **in the upbringing, something -- I don't know. It's hard to**
19 **say whether society makes someone that way, or it's their**
20 **upbringing or that's just how they are. I don't know.**

21 Q. Okay. There are some people who say that you can
22 look at a crime that a person committed, and when you see what
23 that person has done you would say to yourself anybody who
24 could commit such an awful crime can't be rehabilitated
25 because of the crime itself. Kind of the notion that the one

1 thing you probably have to have to be rehabilitated is some
2 kind of conscience or some kind of a break on your actions
3 that most of us exercise. Does that make sense to you, that
4 what you absolutely have to have to be rehabilitated is a
5 conscience because if you don't have a conscience about your
6 actions, why would you had -- how would you be rehabilitated?
7 What do you think about that it?

8 **A. I think that's probably true.**

9 Q. I mean, for example, you and I could get trained in
10 psychology and we could be terrific therapists, and we could
11 go to the prisons and talk to a bunch of killers, and we start
12 explaining you shouldn't be killing people, and they say why
13 not. If I want their money, if I want to kidnap them, if I
14 want to assault them, if I want -- whatever I want, why not?
15 And we're puzzled because we don't understand the concept of
16 how people would not know that they shouldn't be killing. Do
17 you know what I mean? How do you rehabilitate somebody like
18 that?

19 **A. I don't know.**

20 Q. You agree with me that we all make mistakes in our
21 life?

22 **A. Right.**

23 Q. Some of us make bigger mistakes than others, of
24 course. I mean, we make wrong judgments in relationships. We
25 take the wrong job. We buy the wrong car; we all make

1 mistakes like that. And then some of us, growing up perhaps,
2 make mistakes of judgment, like maybe driving too fast, doing
3 drugs, being promiscuous, not studying hard enough, staying
4 out all night partying, things like that, and those are
5 mistakes, but you can do all of those things and still have a
6 conscience, and you can still get rehabilitated. Wouldn't you
7 agree, generally you can do those kind of things?

8 **A. I don't know if I agree with you. I think those are**
9 **choices you make. They're not -- what did you call them? You**
10 **just called them something. You didn't call them choices; you**
11 **called them mistakes?**

12 Q. Uh-huh.

13 **A. It depends on how you look at it whether it's a**
14 **mistake. Your choices aren't always mistakes.**

15 Q. Okay. I understand. I guess I'm contrasting the
16 fact that we can all make even bad choices. I mean, have you
17 ever been in a job where the boss wasn't treating you fair in
18 your mind? Ever been in a job like that?

19 **A. Yes, I think most people do.**

20 Q. Most of us with some wisdom probably don't go and
21 just pick a fight and give the boss a cussing even though we
22 might feel like doing that because there are consequences to
23 us of doing that, right? We hold our tongue unless we get to
24 the point where we can't do any -- we just can't stand it
25 anymore. That's judgment.

- 1 **A. Well, I think you can communicate your feelings.**
 2 Q. Without exploding maybe?
 3 **A. Yeah.**
 4 Q. And then sometimes we do explode. I mean,
 5 sometimes people just have had it, and rightly or wrongly, it
 6 may be how bad they're wired, how bad the treatment is, just
 7 blow up and things go bad for them. You're right, that's a
 8 choice, but maybe when they can't pay next month's rent they
 9 might say, boy, that was sure a mistake. My choice was also a
 10 mistake. I wish I hadn't -- I know I chose it, and I know I
 11 got myself into this. It seemed right at the time, but I can
 12 see now, looking back on it, that it wasn't the right thing to
 13 do. Does that make sense?
 14 **A. Right.**
 15 Q. I guess what I'm saying is there are a whole lot of
 16 things that we -- a whole lot of choices -- you're right,
 17 that's a good term -- a whole lot of choices we make that once
 18 we see the consequences for them, and once we look at it and
 19 see how it affected us, we'd say, you know, I wish that hadn't
 20 been my choice --
 21 **A. Right, and you can --**
 22 Q. -- because it sure didn't work out. I wish I hadn't
 23 married that person. I wish I hadn't quit a perfectly good
 24 job to go off on this fly-by-night thing that turned out to be
 25 too good to be true, and it was -- it wasn't what it was

- 1 supposed to be. I wish I hadn't done this; I wish I hadn't
 2 done that. And human beings are readily capable of all those
 3 kinds of things and still be decent people. They make
 4 mistakes in the choices that they make looking back on it,
 5 right?
 6 **A. Right.**
 7 Q. Do you think those kinds of things, and even things
 8 like, you know, drinking to excess, using drugs, you know, not
 9 working at your job, not staying in school, things like that
 10 that are unwise and down the road you're going to look back
 11 and say, I wish I hadn't done that. That was a mistake in
 12 choice I probably made. Do you think they're different from
 13 the kind of choices that a very, very few of us in society
 14 make to brutally and savagely cause the deaths of other
 15 people? Do you think there's a -- there's obviously a
 16 difference in degree. Anybody knows that. Do you think
 17 they're different in terms of the fact that we could all do
 18 that first group of things; drinking, drugs, quit a job, not
 19 paying our rent, you know, not show up for work, things like
 20 that? Maybe we could all do that, but most of us could never
 21 do just a brutal, wanton capital murder kind of thing. Do you
 22 think there's a difference?
 23 **A. I think ideally you would look back at your**
 24 **mistakes -- your choices and your mistakes, and you would look**
 25 **back at them and you would say, hopefully, in an ideal**

- 1 **society, which we don't have, we would say learn from your**
 2 **mistakes. You would say this was a wrong choice so the next**
 3 **time you wouldn't do that again, or you would learn from that**
 4 **and just build on that. Hopefully, that's what you would do,**
 5 **but it's not always that way. I mean, a lot of people, I**
 6 **guess, don't learn from their mistakes.**
 7 Q. Well, here's what I'm -- I guess what I'm trying to
 8 see what you think about. Maybe I'm at a party, and maybe
 9 I've drunk too much alcohol and that's -- as long as I don't
 10 hit people and have fights and stuff like that, if I'm at
 11 somebody's residence I think I can get as drunk as I want to
 12 get, and I don't think that violates even any law. As long as
 13 I'm not doing something harmful to people while I'm drunk, I'm
 14 fine. I haven't violated the law. Maybe it's unwise. Every
 15 time you get drunk, it's probably a little bit bad for you.
 16 Maybe it's an extra week of your liver that's going to be
 17 gone, or something like that, from getting to drunk. But as
 18 long as I don't drive, I'm probably fine. I haven't violated
 19 any law.
 20 But let's say I say, okay, I've got to be home
 21 because I've got to be at work tomorrow, and I know I'm drunk,
 22 but I'm going home. Now, everybody knows you're supposed to
 23 get cabs or have somebody sober drive you home. Everybody
 24 understands that, but, no, I'm fine. Well, I'm not fine. I'm
 25 drunk; I know it. I'm not trying to hurt anybody. I chose to

- 1 get in my car, even though I'm drunk I'm still making a
 2 choice. I put the key in and turn it on and drive away, and
 3 the police get me. And let's hope I didn't kill anybody.
 4 Let's hope maybe I just got arrested, and they put me in jail
 5 for a while, and I got to pay a fine, get on probation, and do
 6 all that.
 7 I knew better -- I mean, we all know better.
 8 Probably everybody that ever does that knows better, and we
 9 still make that bad choice, anyway, either because we think,
 10 well, I'll be okay or they won't see me. It's late at night,
 11 you know, that kind of thing. But is that different from me
 12 getting mad at a couple of people because they're not doing
 13 what I want, or things aren't going well for me in that
 14 relationship, and I just get a gun, and I go over there and I
 15 just execute them?
 16 Once again, it's a choice but is that just
 17 another -- do you view that as just another form of bad
 18 choice, or do you see that as different from the things that
 19 most people do that are mistakes?
 20 **A. It's much worse, yes, because the degree is -- I**
 21 **don't know if it would be a moral issue or not. I don't know.**
 22 Q. See, my thinking when I'm drunk trying to get home
 23 makes some sense. It's the wrong choice, but it makes sense.
 24 Even in your world and my world it makes sense because I've
 25 got to get to work tomorrow, and it's important. I figure

1 there won't be any cars out on the road. I'll just drive
 2 extra slow. I don't know. Have you ever done a lot of
 3 drinking in your life, ever? Ever done it?
 4 A. I've drunk some, yes.
 5 Q. Have you ever had to close one of your eyes to make
 6 sure you didn't see two lines going -- you know, that kind of
 7 idea?
 8 A. No.
 9 Q. To find the doorknob, you've got to cover one of
 10 your eyes because it looks like there's two doorknobs when you
 11 get -- you know that kind of situation. So, I do all of that.
 12 I close one of my eyes so I only see the one line going down
 13 the road, and I think I'm going to be fine getting home. The
 14 choice makes sense. It's the wrong choice; it's the illegal
 15 choice, but it's not a choice that most people would say
 16 anybody that could do such a thing as that could never be
 17 rehabilitated. Does that make sense to you? I mean, somebody
 18 that makes that kind of choice maybe could be rehabilitated so
 19 they don't ever do that again. Do you agree with that?
 20 A. Yes.
 21 Q. On the other hand, if I go slaughter a couple of
 22 people because I'm mad at them, or I want to borrow some money
 23 and they won't lend me the money, or I'm mad at them over some
 24 business transaction that didn't go my way, do you see that as
 25 a situation that makes the prospects for rehabilitation much,

1 much lower?
 2 A. Right, because I -- the second thing we're talking
 3 about is a crime against society in general.
 4 Q. I mean, I already know that I'm not -- I clearly
 5 know that I'm not supposed to be slaughtering people. I knew
 6 that before I slaughtered them. Yet, to me that decision --
 7 that choice I made made sense to me at the time. For whatever
 8 reason, doing that to those people makes sense in my world, in
 9 my thinking, in my mind, just like driving home when I'm
 10 intoxicated made sense in my world at the time, but they're
 11 different acts. Do you follow what I'm saying?
 12 A. Yes. They're different degrees.
 13 Q. So a lot of people say, you know, there are some
 14 crimes that the very fact that somebody could do them -- there
 15 are some crimes that anybody that could do them, how in the
 16 world could we ever find a likelihood for rehabilitation for
 17 somebody like that. Does that make sense to you?
 18 A. Some people may say that.
 19 Q. What do you think?
 20 A. I think you can't make that judgment call on anyone
 21 until you know all the facts.
 22 Q. Okay. We have an executioner in Texas that actually
 23 administers the lethal substance to a condemned inmate. I
 24 don't think it's just one, but we actually have executions --
 25 we have doctors that assist in the preparation of the

1 solution, but then we have an executioner that actually will
 2 plunge a syringe, and it's a very elaborate process. They've
 3 got basically three syringes. On the other side of the wall
 4 three people push them, and two of them have inert stuff in
 5 them, and one of them have the poison in it --
 6 MR. GOELLER: God bless.
 7 Q. -- and it's kind of like the firing squad, only
 8 you're not supposed to know who has the lethal weapon, because
 9 there's some blanks and some not. But one of those three
 10 people are pushing the substance, and all three of them are
 11 involved in it. I mean, they're all three the executioners.
 12 It just may be that two of them, it's not their night where
 13 they had the substance. Do you see juries that have voted in
 14 a way that will result in an execution, are they involved in
 15 the execution, even though you wouldn't be down there at the
 16 time? Do you consider yourself as much a part of the process
 17 as the executioner?
 18 A. Yes, I do.
 19 Q. Do you think that's true for prosecutors? You know,
 20 I'm not the one that votes. I just put on the evidence. All
 21 I do is try to convince you that the way you should vote would
 22 be in a way that would cause a death sentence. Do you think
 23 I'm involved in the process, along with the jury and the
 24 executioner?
 25 A. Yes.

1 Q. And I think that's fair, and I'm not being
 2 self-critical. I mean, I think most people would say the
 3 judge -- if it's Judge Sandoval that signed the actual death
 4 warrant, that's the instrument directing the executioner to do
 5 his work. Even though we're not directly involved, all of us
 6 who participate in the process have responsibility for all
 7 that.
 8 A. Right.
 9 Q. Does that concept bother you, actually thinking
 10 about the fact that the State is here to produce evidence
 11 which we believe will demonstrate the Defendant is guilty of
 12 capital murder; we believe the special issues should be
 13 answered, based on the evidence, in a way that will ultimately
 14 result in the Defendant's death. And that at some point, the
 15 Defendant will be executed after, you know, whatever period of
 16 time there may be. And that -- you're not overly concerned
 17 about the fact that that could be the result of your jury
 18 service now?
 19 A. No.
 20 MR. SCHULTZ: Just a moment, please, Your
 21 Honor?
 22 THE COURT: Yes, sir.
 23 Q. BY MR. SCHULTZ: If I were a Defendant, and I was
 24 listening to a juror be examined like yourself, for example, I
 25 might say, here's an individual who is very responsive to the

1 notion of rehabilitation, and I don't -- I'm not talking about
 2 this case in general, but it would seem to me that one of the
 3 approaches I might take if I were on the other side would be
 4 to try to put forward the best possible case for
 5 rehabilitation. For example, I might say I now have religion.
 6 I have become or been born again as a Christian, and that's a
 7 good thing. And most of us would agree that's a good thing,
 8 if it's genuine. And I think I might say, I'm real sorry now
 9 that I did this. I have remorse for having committed these
 10 murders. I'm sorry about that, because, let's face it,
 11 apologizing or saying you're sorry is oftentimes, apparently,
 12 a good thing. We make kids apologize when they do something
 13 to a neighbor or something to a friend. We make them -- I
 14 always wonder why we do that. They don't mean it, but we make
 15 them say I'm sorry, even though they probably don't mean it
 16 because that's considered to be a good thing, and it's a good
 17 step toward making reparations towards what you've done, or
 18 what you're supposed to have done.

19 And I'm sure I would promise to be better and not be
 20 any kind of trouble in the future, and I'd probably be
 21 pleading for my life and say -- I might say, I did this crime
 22 when I was on drugs, and I'm not on drugs now and I'm a much
 23 better person. And I might try to hire some psychiatrist to
 24 come in and say, yeah, I'm a psychiatrist and I've examined
 25 this person and he is a good candidate for rehabilitation, or

1 he's likely to do real well. And those are the kinds of
 2 things that, I suppose, you might say are some things that
 3 deal with rehabilitation, that seem to have something to do
 4 with rehabilitation, don't you think?

5 **A. They do, but I think the person, first, has to**
 6 **accept responsibility for their actions before they're open to**
 7 **any kind of rehabilitation. If they don't accept**
 8 **responsibility for their actions, then how can they be**
 9 **rehabilitated?**

10 Q. Well, how do you accept responsible -- I understand
 11 how you accept -- I know how I would accept responsibility for
 12 me being a drunk that night and driving home when I shouldn't
 13 have been driving home. I guess I'd go pay a fine and, you
 14 know, get on probation, or if they were really mad at me, I'd
 15 go to jail for whatever time they sent me. That would be
 16 accepting responsibility. But how do you accept
 17 responsibility for capital murder? How does one do that?

18 **A. I don't know.**

19 Q. I mean, because maybe it's too late. Maybe the time
 20 to have accepted responsibility was before you did such an
 21 awful thing. What do you think about that?

22 **A. I think to accept responsibility for your actions**
 23 **you have to start with the small things first, what you've**
 24 **done wrong in your life, and then if you have, you'll be able**
 25 **to accept responsibility for larger things or to adjust to**

1 **society in general and not have to -- but you always have to**
 2 **accept responsibility for what choices you make. It doesn't**
 3 **have to be a crime.**

4 Q. Right.

5 **A. You know, it's just how honest you are with**
 6 **yourself, I think.**

7 Q. Well, now you understand that in most -- with
 8 many -- only an occasional exception, no jury is ever going to
 9 have a capital murderer come forward, and I realize there may
 10 be an exception or two, but in general. We do hundreds of
 11 these across the State of Texas. Defendants aren't going to
 12 say, yeah -- either themselves testifying or through evidence
 13 or cross-examination, however we do offer evidence, saying I'm
 14 glad I killed those people, I hope I can escape so I can go
 15 kill some more people. I'm proud of what I did, and I don't
 16 apologize for it. I mean, nobody is going to do that unless
 17 they just want to get the death penalty. It's almost like
 18 when you do that you're asking -- you're wanting -- it's
 19 almost like -- that's not how that's going to happen because
 20 the very things you're talking about, that's how -- wouldn't
 21 you expect a capital defendant to say I'm -- I made a mistake.
 22 I'm accepting responsibility. I'm going to do good things.
 23 Give me another chance. Wouldn't you expect that?

24 **A. I don't know.**

25 MR. SCHULTZ: May I have a moment, Judge?

1 THE COURT: Yes.

2 (Pause in proceedings.)

3 THE COURT: All right.

4 Say, Mr. Schultz, this is a 15-minute warning.

5 MR. SCHULTZ: Yes, sir.

6 Q. BY MR. SCHULTZ: What do you think is the best
 7 argument against the death penalty? I mean, religious
 8 argument would certainly be one. What other arguments do you
 9 see?

10 **A. I guess it could -- there could be a moral argument**
 11 **against it, also. But I don't know if you would consider**
 12 **moral to be religious or not.**

13 Q. Okay, okay. You understand that the State has the
 14 burden of proving the guilt of the Defendant beyond a
 15 reasonable doubt?

16 **A. Yeah.**

17 Q. And that's a large burden. One we gladly undertake
 18 because it's only fair that if we do the accusing of somebody,
 19 they should never have to prove their innocence. First of
 20 all, that would be very hard to do. But if I accuse you of
 21 robbing the bank this afternoon, how would you prove you
 22 didn't do that? It would be a very hard thing to do. Other
 23 than just saying you didn't do it, how could you prove such a
 24 thing? So we have to prove beyond a reasonable doubt the
 25 Defendant is guilty of capital murder, and that means murder

1 in the course of a burglary, murder in the course of robbery,
2 or murder in the course of another murder, which is double
3 murder. Do those all seem to you, depending upon the
4 circumstances, to be crimes in which the death penalty should
5 be an option as planned?

6 **A. Yes. For all -- I would say for all of them. If it**
7 **was a double murder, if it was burglary, if it was robbery, if**
8 **they could all be proven beyond a reasonable doubt, yes.**

9 Q. Right. And sometimes -- you know, because what
10 we're talking about is, you know, maybe you're -- you know,
11 you're home tonight at 2:00 in the morning and somebody breaks
12 into your house to steal stuff, and while he's there he
13 murders you, for example. That's murder/burglary. That would
14 be a capital murder situation. Does that seem like, depending
15 upon why it was done and how it was done and what the nature
16 of the person, that that ought to be a possible death penalty
17 case for you?

18 **A. Yes.**

19 Q. Same thing with robbery. If somebody pulls out a
20 gun and robs you on the street, takes your property and then
21 kills you, that's also capital murder under those facts that
22 I'm talking about. Does that seem like that ought to be a
23 death penalty type situation?

24 **A. Yes.**

25 Q. And I think you already answered that if you murder

1 penalty, if the law allowed it?

2 **A. Yes.**

3 Q. And some people say there are other crimes that
4 aren't even murder, but they're so awful, they're so grizzly
5 that you ought to get executed, even though there's not a
6 murder involved. Can you think of things like that where
7 there's not a death, but the crime itself is so awful that it
8 wouldn't bother you in the least to be executing people for
9 doing those crimes?

10 **A. No, I can't think of any.**

11 Q. One that comes to mind is treason, and apparently
12 that still may be a capital crime. It's a federal capital
13 crime, but maybe that could be a death penalty crime. Does
14 that seem like -- somebody selling out our country to our
15 enemies, like in wartime, does that seem like something you
16 ought to lose your life for?

17 **A. No.**

18 Q. Okay. And some people talk about crimes on
19 children, like awful, brutal, but non-killing crimes on
20 children, what about that? Does that seem like brutalizing
21 children maybe sexually, for example, does that seem like
22 that should be a death penalty case?

23 **A. No.**

24 Q. So you would limit the application to actual murders
25 themselves; is that right?

1 two people, that just because numbers start kicking in, that's
2 a -- and that's a -- ought to be a capital murder?

3 **A. Yes.**

4 Q. Now, I know you don't make the law, but if you did,
5 do you think that simple murder should also be a potential
6 death penalty case?

7 **A. I think it would depend on if it could be proved,**
8 **how violent it was. I don't -- I don't think it's right for**
9 **anyone to take anyone else's life.**

10 Q. Right. See, some people are really surprised. Some
11 people are surprised when they learn that I could just take a
12 dislike to somebody, and maybe I've got reasons; maybe I
13 don't. In my mind, I've got reasons, but maybe my reasons are
14 unrealistic, and I can just stalk them, find them out on the
15 street somewhere and take a machine gun and just empty a whole
16 magazine of bullets into that person and mutilate them with a
17 machine gun and that would not be a capital murder situation.
18 And I could be laughing about it, and I could go on TV and
19 give an interview, you know, I killed this person, it was fun,
20 and I'm proud of it, and that would not be a capital murder.
21 I could never forfeit my life for doing that.

22 And a lot of people say, well, you ought to -- we
23 ought to have the death penalty for somebody that could do
24 such a thing, but does it fit our law? Does it seem to you
25 like even a single murder might be appropriate for the death

1 **A. Yes.**

2 Q. If you find a defendant guilty of capital murder,
3 then we move to the punishment part of the trial where you
4 answer those questions that we talked about yesterday. I
5 guess it was yesterday. Did you feel that you understood the
6 questions as they were displayed for you in the courtroom?

7 **A. Uh-huh.**

8 Q. Let's go over them again. There are only two of
9 them that will really apply here, I think. This is the first
10 one. This is what we call the prediction question, the
11 look-to-the-future question. Let me know when you've read
12 that again to yourself.

13 **A. Okay.**

14 Q. Do you see yourself as the kind of juror who could
15 answer that question?

16 **A. Yes, if I felt that I had all the facts and**
17 **evidence.**

18 Q. Okay.

19 **A. And I weighed them, yes, I could answer that**
20 **question.**

21 Q. Okay. That really requires you to -- some people
22 say it requires you to predict the future. I'm not sure
23 that's exactly what it does. It seems to require you to
24 identify the personality of the Defendant, because it doesn't
25 say in that question the probability that the Defendant will

1 commit criminal acts of violence that constitute a continuing
2 threat to society. It says the probability that the Defendant
3 would commit criminal acts of violence, and when you use that
4 term "would" that seems to mean something about the
5 personality, rather than actually predicting the future
6 behavior. Do you see how that works?

7 A. Yes.

8 Q. And here's what significant, in my judgment, about
9 that question. I believe we have the technology in our
10 society and the resources in our society that if that question
11 meant can we find a non -- a nonexecution way to prevent a
12 person from being able to do violence, I think we could do
13 that. I think there's not -- I think the world's most
14 dangerous human being, whoever that would be, if we want to
15 take enough resources and enough precautions, I believe -- and
16 I'm not even in that -- I'm not even in that business, but I
17 believe I could find a way that I could guarantee that the
18 world's most dangerous person would not -- will not commit
19 crimes in the future, crimes of violence in the future.

20 I'd put him in an iron suit, and it would be real
21 heavy. You know, I'd stand him up during the daytime, and I'd
22 lay him down at nighttime so he could sleep. I'd feed him
23 through a hole in his mask, and I guess if he had to go to the
24 bathroom I guess I'd put some taps down on the bottom of his
25 shoes. I don't know how I'd do that, but I'd do that, and

1 every now and then I'd spray a hose down there to get the
2 germs out. I'd have about ten --

3 THE COURT: Mr. Schultz, you have about five
4 minutes remaining.

5 MR. SCHULTZ: Thanks, Judge.

6 Q. BY MR. SCHULTZ: And then I'd have about ten guards
7 guarding him all the time. They'd be on shifts, and they'd
8 have guns, and I'd have monitors on him, and I'd have bombs on
9 him. If he did any movement or did any going this way or that
10 way, the bombs would blow up and he would be dead. And I
11 guarantee you, you or I or anybody else that put our minds to
12 it could find a way to avoid executing a person. So, that
13 question doesn't mean is there some way that, other than
14 killing that defendant, to make him safe. That's not what
15 that question says. It's saying is there a probability that
16 the Defendant would commit criminal acts of violence that
17 would constitute a continuing threat to society.

18 And what that means is, when you use that term
19 "would," is his personality such that if given the opportunity
20 he would be dangerous? Not can we take away his opportunity,
21 but if given the opportunity would he be dangerous? That
22 means if he's walking down the street, or if he's over
23 visiting your next-door neighbor, or if he's in the ice cream
24 store, if he's in the public library, if he's out on a date.
25 It could also mean if he's in prison, because prison is part

1 of our society. What would he do with a guard, what about
2 fellow inmates, something like that?

3 Do you see how that question doesn't ask you to
4 decide is there some way, other than death, we can render this
5 person not a threat?

6 A. Yes.

7 Q. Does that make sense to you?

8 A. Yes.

9 Q. And why it makes sense is because -- the only reason
10 we have that question is for the benefit of the Defendant. If
11 we wanted to say let's kill all capital murderers who have
12 done this kind of crime, maybe we can do that. But instead,
13 we have decided let's only execute those people whose
14 personality is such that that personality endangers society,
15 make sense?

16 A. Yes.

17 Q. Then if you've answered the question "yes, beyond a
18 reasonable doubt," you get this question here. If you answer
19 it no, by the way, it's an automatic life sentence. We go to
20 this mitigation question, which asks you to take into account
21 the evidence of the crime again, but it also asks you to take
22 into account his background, which you already know he's a
23 dangerous personality because you answered that first question
24 yes, taking into account his character.

25 And then you look at the background evidence, and

1 that's stuff like growing up poor, growing up in a broken
2 home, doing drugs, those kinds of things that may be, in your
3 mind, mitigating circumstances, lessening circumstances. And
4 I don't know if they are or not. Do you think growing up poor
5 lessens the need for a death -- for a life -- for a death
6 sentence?

7 A. No.

8 Q. Do you think being -- choosing to do drugs and the
9 drugs making you warped, does that somehow lessen the need for
10 a life sentence?

11 A. No.

12 Q. Do you think being young, like maybe 27 years old,
13 somehow lessens the need for a life sentence?

14 A. No.

15 Q. Do you think becoming a born-again Christian by
16 itself lessens the need for a life sentence?

17 A. No.

18 Q. Do you think saying you're sorry lessens the need
19 for a life sentence -- I'm sorry -- lessens the need for a
20 death sentence? I'm sorry.

21 A. No.

22 Q. Okay. The notion of that question is that you look
23 at all the evidence one more time and say to yourself, I'm not
24 looking at it anymore to see if he's a capital murderer. I've
25 already done that and he is. And I'm not looking at it to see

1 if he's dangerous, if his personality is such that he would be
2 dangerous, if given that opportunity, because I've already
3 answered that question yes.

4 Now I'm going to consider all of this stuff
5 together, all this background material, and I want to see, if
6 there sufficient mitigating circumstances that a life
7 sentence, rather than death, is the right thing to do? That
8 question is really for the jury --

9 MR. SCHULTZ: Judge Sandoval, I know I'm
10 running out of time. Please give me just a little --

11 THE COURT: You've got one minute and 15
12 seconds.

13 MR. SCHULTZ: Yes, sir, that's fine.

14 THE COURT: All right.

15 Q. BY MR. SCHULTZ: Does the idea that the jury would
16 have the option to consider the entire -- the entire history
17 of not only the crime, but of the Defendant, and ask itself
18 can we live with this sentence based upon all of that or
19 should a life sentence occur? Does that seem to be an all
20 right thing to you, for the jury to have that option?

21 A. Yes, it does.

22 Q. Do you see yourself -- maybe the things that I
23 mentioned are not the things that you would consider
24 mitigating, but do you see how there could be some
25 circumstances that would be sufficient for you to answer that

1 question "yes, a life sentence is appropriate"?

2 A. Yes.

3 Q. And it's kind of like anything else, those are
4 things you'd know when you saw them; is that right?

5 A. Right.

6 Q. And do me -- with my last question, do me a favor,
7 if you would, go ahead and look at the Defendant for just a
8 second. If we prove to you beyond a reasonable doubt he's
9 guilty of capital murder, and we further prove to you that he
10 has a personality which would threaten our society with acts
11 of violence and that there's insufficient mitigating evidence
12 to warrant anything other than a death sentence, will you vote
13 in a way that would ultimately cause his death? Will you do
14 that?

15 A. Yes.

16 Q. Okay. This is my only chance to find out. You know
17 yourself well enough to know that you can do that?

18 A. I think so.

19 Q. Doesn't look like you're -- I hope you're not happy
20 about even that prospect --

21 A. No.

22 Q. -- because I wouldn't be.

23 A. I'm not.

24 Q. How could you do it then?

25 A. It would have to be without a reasonable doubt,

1 that's for sure.

2 THE COURT: Ms. Weaver, I'm going to take about
3 a five-minute recess for anybody that needs to arrange for
4 child-care problems, and then we'll come back in about five
5 minutes, and not much more than that, and continue the
6 questions here.

7 THE BAILIFF: All rise.

8 (Recess taken.)

9 THE COURT: Mr. Goeller.

10 MR. GOELLER: Thank you, Your Honor.

11 CROSS-QUESTIONS

12 BY MR. GOELLER:

13 Q. Hi, Ms. Weaver.

14 A. Hello.

15 Q. How are you?

16 A. I'm fine.

17 Q. My turn now.

18 A. Yes.

19 Q. What does Joshua think about his mom's service up
20 here? His head has got to be just full of ideas about the law
21 right now?

22 A. It is. In fact, he was in law major studies at

23 Plano, and he interned up here, and he got to sit in on a lot
24 of these things.

25 Q. Who did he intern with?

1 A. Gee, I don't know. He went around to various
2 courts. I don't know.

3 Q. Kind of working with the judges?

4 A. Yeah.

5 Q. Oh, wow. He must have been a really exceptional
6 student to get to do that, I guess?

7 A. Yeah.

8 Q. Was that an honors program?

9 A. They only take 17 out of the whole school, so, yes,
10 it is an honor.

11 Q. Fantastic.

12 You originally from PA?

13 A. Yes.

14 Q. Pittsburgh area?

15 A. Yes.

16 Q. Okay. I don't know where Wilkersburg (sic) is.

17 A. Wilkensburg. Right outside of Pittsburgh.

18 Q. Okay. Wilkensburg or Wilkersburg?

19 A. Wilkensburg.

20 Q. Wilkensburg.

21 Have you ever heard of this Shinglehouse,
22 Pennsylvania?

23 A. No.

24 Q. Okay, not many people have. It's a very remote
25 area, but there are a lot of deer around there.

1 Bradford, PA --

2 A. Yes.

3 Q. -- you know where that is? It's up --

4 A. Snow country.

5 Q. It's what?

6 A. Snow country.

7 Q. Yes. A lot of gas up there. Really I guess there's

8 oil up there, too, but a lot of gas. It's so rocky, all the

9 gas lines run on top of the ground, and they go up and over

10 the roads. You know what I'm talking about, that area?

11 A. Yes.

12 Q. I think there's some coal up there, too. Beautiful

13 area.

14 I'll go through your questionnaire. I know you've

15 been up here since probably what, 1:00?

16 A. Yes.

17 Q. I know you've had a long afternoon. I'm going to

18 make this -- I'm going to try not to repeat anything

19 Mr. Schultz went over with you. I'll go through this as

20 quickly as I can.

21 In the questionnaire, it had a little -- it had a

22 sentence -- yeah, a sentence, and you were asked to agree with

23 it; either strongly agree, just agree, not have a position, to

24 disagree, to strongly disagree. You know that whole gamut of

25 your thoughts on it. It says, "If someone is accused of

1 capital murder, he should have to prove his innocence," and

2 you circled "agree." I know Joshua would understand why I'm

3 asking you about that?

4 A. (Laughter.)

5 Q. And you probably are now, too.

6 A. Why -- you wanted to know why I circled that? I

7 didn't realize the burden of proof was on the State.

8 Q. Okay, fair enough. That -- I can just move on from

9 there. I understand now.

10 What do you think about the burden of proof being on

11 the State, presumption of innocence, and all that kind of

12 thing?

13 A. If a crime was committed against what the State

14 feels is against the society in general so that -- I'm not

15 real good with the law so you'll have to excuse me. But if

16 they feel that way, and they have to prove that -- well, I'm

17 confused now. But --

18 Q. It's okay. It's all very confusing to me, too, at

19 times.

20 A. They have their job cut out for them. I feel -- put

21 it that way they have to prove that this person is guilty.

22 Q. And you would agree that a defendant, somebody that

23 the Government is accusing of something, does not have any

24 burdens and is truly cloaked in the presumption of innocence,

25 his right to remain silent, all those Constitutional issues.

1 Do you think those are good things in our society, in a free

2 society?

3 A. Yes, I do.

4 Q. "If a person is brought to trial on murder charges,

5 that person is probably guilty," and you circled "uncertain."

6 You're right in the middle of the road. And, you know, there

7 are no right or wrong answers. I'm just trying to get inside

8 your thought process a little bit and just kind of see how you

9 think, knowing -- you and I, I know, have an agreement up

10 front I'm not here to judge you. I'm not here to disagree

11 with you, or try to -- you know, if the Judge gave me three

12 weeks, I'd do my best job I could to change you from a 2 to a

13 5, or maybe a 3 or 4. I'd love to try to convert you from not

14 believing in the death penalty or get you down to not

15 believing in the death penalty, but that's not my job. It's

16 not my right to do that, and that's not why I'm here, because

17 the fact and the truth of matter is if I were to do that, if I

18 were to get all the pro-death penalty people during voir dire

19 and convert them into -- hell, let's just say I had a magic

20 wand, and I could wave it. You were there a month ago in that

21 room with 200 when Mr. Schultz asked how many people here

22 believe in the death penalty? Ninety percent of the hands --

23 well, out of 200 people, at least 180 put their hands up. It

24 kind of takes my breath away. If I had a magic wand, I'd love

25 to wave it over that room and make it so no hands went up.

1 But that's not going to happen, and even if I could, our law

2 says none of those people could serve on the jury because in

3 Texas you have what's called "death qualified juries." If you

4 could never ever give the death penalty, you can't end up in

5 the jury box. So, if my wishes came true (snap), it wouldn't

6 do me any good, anyhow, so...

7 But anyhow, getting back to that, "A person brought

8 to trial on murder charges, that person is probably guilty."

9 You circled "uncertain"?

10 A. You have to hear the facts first. You have to hear

11 the evidence.

12 Q. Okay. But you still recognize that they're innocent

13 until proven guilty, though?

14 A. Yes.

15 Q. Okay. And that's -- you've seen, I'm sure, in books

16 or on television, on a lot of judge's desks that a judge would

17 have in his office, a lot of judges have the scales of

18 justice. You've seen those. You know, the balance beam kind

19 of thing. In a criminal case, all the weight is on our side

20 in the beginning. I mean, those scales are like that

21 (indicating). That presumption of innocence is so strong, so

22 heavy that we are all the way down here. And what the State

23 has to do is load up, not just a little, not just a

24 preponderance, not just clear and convincing, but they've got

25 to throw those scales all the other way beyond a reasonable

1 doubt.

2 **A. Right.**

3 Q. Okay. Is that okay with you?

4 **A. Yes.**

5 Q. Okay, all right. Now, I think you're right. If a
6 person is brought to trial on murder charges, that person is
7 probably guilty. You're right, until you hear all the
8 evidence, I suppose the correct answer, now that I about it,
9 maybe is uncertain. I would like to see people circle
10 strongly disagree with that because they haven't heard any
11 evidence, and the presumption of innocence means they are not
12 guilty, right? But I understand why you circled uncertain.

13 Sometimes I end up thinking too much like a lawyer,
14 I guess because I am a lawyer. You know what I'm saying?

15 **A. Uh-huh.**

16 Q. But I'm all right with that.

17 In your questionnaire you were asked to rank, or
18 rate on a scale of -- from 1 to 10 how strongly you hold the
19 death penalty and you put down five. Does that tell me
20 that -- and I think that's pretty consistent with most of your
21 other answers. You believe -- you don't believe the death
22 penalty is appropriate in every capital murder case?

23 **A. That's true.**

24 Q. Okay. And then again, you do believe it is
25 appropriate in some cases?

1 **A. Yes.**

2 Q. Okay. So I think that's -- a five is consistent
3 with your previous statements. You're not out looking to have
4 everybody executed, but you do recognize that there are some
5 cases, apparently?

6 **A. Yes.**

7 Q. All right. It's an interesting concept. You and
8 Mr. Schultz talked about it a little bit; faith, maybe
9 religious beliefs. Do you get the Texas Catholic?

10 **A. Yes, I do.**

11 Q. Do you remember about a month ago Bishop Grahman had
12 an article in there about the execution of Timothy McVeigh?

13 **A. I didn't read that.**

14 Q. You know how on inside the front cover he's got
15 his -- I guess his letter to the editor. He's the editor.
16 He's owns the paper, so it's kind of a letter to himself.

17 But anyhow --

18 **THE COURT:** The editor is a guy named Branson
19 Havard.

20 **MR. GOELLER:** It says "published by the
21 Bishop," but I guess it's the publisher.

22 **THE COURT:** Does anybody really read it?

23 **MR. GOELLER:** I do.

24 **THE COURT:** All right, all right.
25 Do you read it?

1 **VENIREPERSON:** No, I don't.

2 **THE COURT:** All right.

3 **MR. GOELLER:** I don't read it cover to cover.

4 **VENIREPERSON:** I look on the back to see what
5 lawyers advertise on it.

6 (Laughter.)

7 **VENIREPERSON:** Usually there's only one or two.

8 **MR. GOELLER:** Well, that's like, you know, the
9 Sunday bulletin. You know, most people I see, they're reading
10 the ads, who's taking out ads in it. They're not real
11 interested in the next mass server schedule. But okay. I
12 don't know where I was going.

13 **THE COURT:** You said, did you read Bishop
14 Grahman's letter.

15 **MR. GOELLER:** Oh, yeah.

16 Q. **BY MR. GOELLER;** Well, anyhow, he -- he wrote an
17 article about the execution of Timothy McVeigh, and death
18 penalty in general and those kind of things. But there are a
19 lot of people who, because of faith, their religion, or their
20 personal moral outlook on all these things are against the
21 death penalty, and then when it comes to cases like McVeigh
22 and, you know -- I don't know. What was it 160, 80 killed in
23 that Oklahoma -- the Murray Federal Building up there.

24 Remember this guy named Dahmer, Jeffrey Dahmer?

25 **A. Uh-huh.**

1 Q. I don't know how many, lots and lots of people he
2 tortured and murdered and cut up and cooked and ate, and it's
3 a test -- they say it's a test of faith to look at those
4 people and say, I'm still against the death penalty, you know?
5 And I was talking with somebody recently, and they say, but
6 that's what it's all about. Your faith should be tested, and
7 you should think about these things. And on issues like the
8 death penalty -- well, let me give you another example. Would
9 you consider yourself more aligned with the people out there
10 that are pro choice or pro life?

11 **A. I think that's a personal issue.**

12 Q. Okay.

13 **A. You know, it's up to the individual.**

14 Q. Okay. Like many other very controversial, hot
15 topics out there today --

16 **A. Uh-huh.**

17 Q. -- it boils down to, not so much the rhetoric and
18 the media and the extreme positions, but what you kind of feel
19 inside of your heart and your mind and what works for you, and
20 try to make it all work.

21 Okay. You work at Texas Capital Bank?

22 **A. Yes.**

23 Q. Is that -- tell me what kind of bank that is, or
24 where it is.

25 **A. It's a full-service bank, but mostly we have**

- 1 **commercial customers.**
 2 Q. Commercial customers. Where is that at?
 3 A. **It's at 121 -- it's in Plano at 121 and the Toll**
 4 **Road across from the new Stonebriar Center Mall.**
 5 Q. Oh, yeah. Okay, okay. That's a pretty big bank?
 6 A. **It is.**
 7 Q. It's a big building, isn't it?
 8 A. **It's a tall building.**
 9 Q. Yeah, a tall building.
 10 A. **The main location is on McKinney Avenue next to the**
 11 **Crescent Hotel.**
 12 Q. You've been down there about a year and a half it
 13 looks like?
 14 A. **Yes.**
 15 Q. We had somebody else on the jury panel today that
 16 was in the banking business. She worked for Compass Bank, a
 17 teller trainer.
 18 You've lived a lot in the northeast, PA and Jersey.
 19 Toms River, New Jersey --
 20 A. **Yes.**
 21 Q. Isn't that where Nixon lives now, or did live?
 22 A. **He lived in Saddlebrook.**
 23 Q. I'm thinking of Saddlebrook. What's big in Toms
 24 River? Why does that name just stick out in my mind?
 25 A. **I don't know. It's next to Sea Side Heights, and**

- 1 **that's the boardwalk area. It's very resorty.**
 2 Q. Yeah, very resorty. Okay, got you.
 3 Your son, Jonathan, is a meteorologist?
 4 A. **Yes, he is.**
 5 Q. Who is he with, or who does he work for?
 6 A. **He's with ABC in Evansville, Indiana.**
 7 Q. Really. Is he on air?
 8 A. **Yes.**
 9 Q. Wow, that's neat.
 10 A. **He's the weekend weather anchor.**
 11 Q. Did you see tapes of him?
 12 A. **I watch him on the computer live on the Internet.**
 13 Q. Oh, you get to watch it live.
 14 A. **Yes.**
 15 Q. Does he ever say, "Hi, Mom?"
 16 A. **Well, we went up there last Christmas, and we all**
 17 **got to go on the air with him.**
 18 Q. Really. Oh, how fun.
 19 You got Jonathan, Matthew, Joshua and Rachel?
 20 A. **Right.**
 21 Q. All pretty good kids?
 22 A. **Excellent kids.**
 23 Q. Good for you. You're lucky.
 24 What do you think about the next month, and I should
 25 have started off with this? We anticipate anybody that's

- 1 selected as a juror will probably -- we think the trial will
 2 probably start next week, possibly the week after.
 3 A. **Uh-huh.**
 4 Q. And then we anticipate about a three and a half --
 5 I'll say three-to-four week straight run, maybe as short as, I
 6 don't know, 10, 11, 12 -- probably three weeks, really, at the
 7 minimum, shortest period of time the trial will take, although
 8 we have to say maybe four, could even go longer. I doubt it.
 9 It's so hard to gauge these things. But suffice it to say,
 10 anybody that's seated as a juror in this case, from the first
 11 three weeks and maybe a little bit more of October, Monday
 12 through Friday, say, 9 to 5 or 8 to 5, maybe a little bit late
 13 one day, six, but that's pretty much -- will be the routine
 14 for those three or four weeks. What are your thoughts about
 15 that for the month of October?
 16 A. **It's okay.**
 17 Q. Okay, okay. No major problems, no -- I know your
 18 kids are old enough. You don't have day-care issues or
 19 anything like that?
 20 A. **No.**
 21 Q. And an employer -- employer cannot take action
 22 against you for being on a jury, but we know how the business
 23 world can work. Is your -- would you be in any fear of your
 24 present position in any way if you were away from your
 25 employer for up to -- up to a month?

- 1 A. **The only concern I would have would be with my**
 2 **health insurance because I know I have to work 30 hours a week**
 3 **to qualify for it, but I have -- I guess if I was selected, I**
 4 **would have to speak with them. I would have to make sure that**
 5 **I could still, you know, maintain the coverage.**
 6 Q. Yeah.
 7 THE COURT: Yeah. I will tell you that if --
 8 if you don't mind me jumping in?
 9 MR. GOELLER: No, I'd ask the Court to.
 10 THE COURT: They wouldn't have the guts to have
 11 you uncovered, if it were possible. Basically, we're looking
 12 at State law here. Something that there can't be any effect
 13 on these sorts of things, and so at any rate.
 14 VENIREPERSON: Thank you.
 15 THE COURT: I don't believe that would be a
 16 concern.
 17 VENIREPERSON: Okay.
 18 MR. GOELLER: Plus we could sick the whole SMU
 19 Law School on them if they did that to you. I know Joshua
 20 would know some professors that would take your case.
 21 Q. BY MR. GOELLER: I really don't think so. It would
 22 be such bad PR, and I really don't -- legally, I don't think
 23 they can. I know they can't fire you, but I'm not an expert
 24 in employment law, but I don't think you have too much to
 25 worry about.

1 The Celestine Prophecy, tell me what that book is
 2 about. I've heard of it. I haven't read it. I don't know,
 3 and my resident expert here doesn't know, so I have to ask
 4 you.
 5 **A. Actually, it's a book about why everything that**
 6 **happens to you happens for a reason. Yeah, it's sort of fate**
 7 **or destiny. It's interesting, interesting concept.**
 8 Q. Is it in any way religious-based? Any Revelations
 9 or Genesis? Or, no, just more of a --
 10 **A. No.**
 11 Q. Okay. What was the bottom -- is the bottom line,
 12 everything happens for a reason? Is it like fate's
 13 predetermined, your destiny is predetermined, or do you know
 14 what I'm trying to say?
 15 **A. Yeah, I know what you're trying to say. Basically**
 16 **that's, I guess, what they're trying to say.**
 17 Q. Okay. Why did you read that book, if I could be so
 18 nosy?
 19 **A. Just, I like to read interesting books. It just**
 20 **seemed like an interesting concept.**
 21 THE COURT: That was a best seller, right?
 22 VENIREPERSON: Yes.
 23 THE COURT: Who wrote it?
 24 VENIREPERSON: I can't remember.
 25 THE COURT: I can't remember, either. But it

1 was a well-known author, and it was a best seller about two or
 2 three years ago, right?
 3 VENIREPERSON: Uh-huh.
 4 THE COURT: Does anybody remember? No.
 5 MR. GOELLER: I don't remember.
 6 THE COURT: It was real big, but it was a
 7 real -- it was somebody like Forsythe, or some real
 8 well-known --
 9 VENIREPERSON: It is, but it isn't Forsythe.
 10 THE COURT: -- author --
 11 VENIREPERSON: I can't remember who.
 12 Q. BY MR. GOELLER: Okay. I have to ask you this. I
 13 go to a lot of schools, and everybody has their spin on jury
 14 selection and jury dynamics, and I've always been told stay
 15 away from jurors that are deer hunters. It's kind of one
 16 theory out there. Anybody that can look a little deer in the
 17 eyes and drop them with a high-powered rifle with a scope, you
 18 don't want on a jury. But I don't know if there's anything to
 19 that, but you take shooting lessons?
 20 **A. Yes, I do.**
 21 Q. And these same, quote, unquote, experts say watch
 22 out for people that like guns and like to shoot because they
 23 may not like your client. What do you think about that?
 24 **A. I don't think -- I think that's a, what, a fallacy.**
 25 Q. Okay. Do you competitively shoot, or is it more

1 for self-protection?
 2 **A. No. Actually I'm just taking lessons just for**
 3 **something different to do.**
 4 Q. Where do you take them?
 5 **A. It's called Back Woods. It's up -- I guess it's**
 6 **Little Elm. It's between Prosper and Little Elm. I'm not**
 7 **sure exactly what --**
 8 Q. Shooting range, though?
 9 **A. Uh-huh.**
 10 Q. Have you ever been to the Bullet Trap?
 11 **A. No. I think that's an indoor range. This is**
 12 **outdoor.**
 13 Q. Oh, it's an outdoor?
 14 **A. Uh-huh.**
 15 Q. Okay. I want to talk to you just a little bit about
 16 those concepts that Mr. Schultz had mentioned with you,
 17 rehabilitation versus reform. And I'm not so sure I know the
 18 difference between them, either. I think when we talk about
 19 rehabilitation in the classic sense of probation, we're really
 20 anticipating a return to society maybe out of the penitentiary
 21 or through probation, and the measures and conditions of
 22 probation adjusting someone's behavior. But in either sense,
 23 whether it's rehabilitation because of a penitentiary
 24 sentence, or rehabilitation because of probation, we're
 25 anticipating a return, a successful productive, law-abiding

1 return to society. Does that make sense?
 2 **A. Yes.**
 3 Q. When we talk about capital murder, and if someone is
 4 convicted -- and trust me when I tell you that our position is
 5 he's not guilty. Our position is he will not be convicted of
 6 capital murder, and you probably heard me mention before early
 7 on it's very awkward for an attorney to talk about punishment
 8 with a juror when we haven't even had the trial, but I have to
 9 because I don't get the chance to do it any other time. The
 10 Legislature says this one-on-one individual voir dire is for
 11 capital murder cases only, so that's why we have to talk about
 12 it now.
 13 But when we talk about those special issues, of
 14 course, we have to assume hypothetically that somebody has
 15 been convicted of capital murder beyond a reasonable doubt.
 16 And then in regards to those special issues, we have to
 17 discuss the concepts of, you know, future dangerousness; in
 18 that third special issue, the mitigation special issue. And,
 19 again, knowing -- before we get to those questions, you had to
 20 have to be found somebody guilty beyond a reasonable doubt of
 21 capital murder.
 22 And I told you a little bit earlier that those
 23 questions are answered by the jurors collectively and
 24 individually, okay? The first part of the trial, whether
 25 somebody's guilty or not guilty, the jurors are very, very

1 focused, all 12 are focused on the same issues as a trier of
 2 fact, and that's what a jury does, really, in a jury trial.
 3 They're -- they become judges. In fact, our law says the
 4 jury -- they become judges. They take the same oath the judge
 5 takes, and their job is to judge the facts. And, of course,
 6 the judge controls the law. But in the first part of the
 7 trial, they're all focused -- all 12 jurors focused on the
 8 same issues, and they have to arrive at a verdict unanimously
 9 either way, and a not guilty is a unanimous verdict, too. All
 10 12 jurors have to vote not guilty to have a not guilty
 11 verdict, and all 12 jurors have to vote for a guilty to have a
 12 guilty verdict. But they're all focused on the same thing.

13 Then we get to these special issues. The nature of
 14 the deliberation changes drastically because -- I used to be
 15 able to balance this up here. Let me try it again and see if
 16 it works. Ta-da. What's interesting about these special
 17 issues is that there are so many words that are not defined.
 18 For example, probability. If I -- if I asked you,
 19 Mrs. Weaver, to define probability for me, but don't use the
 20 root word "probable" -- you didn't think you were going to be
 21 tested here today, back in English class, and I was like the
 22 English teacher, and you got one minute to do it. Go.

23 **A. I'd say certainty.**

24 **Q. Okay, okay. Okay. Certainty, okay.**

25 **A. That's probably a stronger word than probability,**

1 **but --**

2 **Q. Yeah, yeah. Society. Probability that the**
 3 **Defendant would commit -- and it's interesting, the**
 4 **Legislature didn't use the word might, maybe. They used**
 5 **"would," would commit criminal acts -- plural, not act,**
 6 **acts -- of violence that would constitute a continuing,**
 7 **continuing threat to society. We know that whether those**
 8 **questions are answered -- well, we know one thing is for sure.**
 9 **If that first question on top there, that probability of**
 10 **future acts, future dangerousness question, if that question**
 11 **is not answered unanimously yes, we know a life sentence is**
 12 **automatic, okay?**

13 **So -- and, therefore, we know -- once -- we know**
 14 **once you get to these questions, somebody has been found**
 15 **guilty of capital murder. We know only two things can happen;**
 16 **life sentence in the Texas joint, or the penitentiary, or the**
 17 **Judge signs a death warrant. One of those two things has to**
 18 **absolutely happen if we get to these questions. So knowing**
 19 **that, criminal acts of violence constitute a continuing threat**
 20 **to society, we also -- I can also tell you that society**
 21 **definitely includes prison society, and logically so because**
 22 **we know for the next 40 years the minimum punishment on a life**
 23 **sentence -- the next 40 years figure into that question.**

24 **Now, I'm not allowed to tell you that society cannot**
 25 **mean anything else other than the penitentiary, okay? I think**

1 if I said that, Mr. Schultz would probably object and the
 2 Judge would probably sustain it because society can mean --
 3 even though logically you think, well, how can it mean
 4 anything other than the penitentiary if we know life or death
 5 are the only other options, but our courts have interpreted
 6 society to at least include something maybe other than the
 7 prison because there are civilians that may go into the
 8 penitentiary, doctors. Guards don't live there generally, so
 9 outside the prison walls are people who factor into the actual
 10 prison society. Do you see what I'm saying?

11 **A. Right.**

12 **Q. It's not -- I think you know what I mean, and it can**
 13 **include other things, too. But in any event, what's**
 14 **interesting about that question is the State's got to prove**
 15 **beyond a reasonable doubt that that question is yes, and the**
 16 **Judge would instruct the juror, if you have any doubt based on**
 17 **reason; in other words, if you have a reasonable doubt that a**
 18 **defendant -- that a defendant would commit criminal acts of**
 19 **violence, that continuing threat, the Court would instruct you**
 20 **to answer that question "no," and then a life sentence would**
 21 **come about.**

22 **And again, let's assume for a moment that -- I want**
 23 **to talk about the last special issue, the mitigation question**
 24 **on the bottom. So that, again, to talk about that I have to**
 25 **hypothetically assume the first one is answered unanimously**

1 "yes." And again, our belief is this trial is not going to
 2 get that far. If it does, it wouldn't be answered that way.
 3 But I have to assume that for my hypothetical.

4 **When we get to that bottom question, everything --**
 5 **every single bit of evidence that came before the jury in both**
 6 **phases of the trial is to be considered, okay? Considering**
 7 **all of the evidence, and then it talks about circumstances of**
 8 **the offense, and then maybe you get to learn a little bit**
 9 **about the deceased at that point in time, relationships, good**
 10 **or bad, maybe things that really don't factor into whether**
 11 **somebody was guilty or not guilty, okay?**

12 **Do you remember the example that was given, oh, I**
 13 **can't remember if Ms. Falco or Mrs. (sic) Schultz talked about**
 14 **it. Somebody that's a predatory type of killer, hunts and**
 15 **stalks unknown victims. The guy that goes into a church and,**
 16 **I don't know, finds the nun praying, doesn't know her, kills**
 17 **her -- rapes her, kills her, whatever. Versus, you know,**
 18 **maybe the passion, the relationship. You saw the difference**
 19 **between those two types of people. Do you know what I'm**
 20 **talking about?**

21 **A. No. Explain it again.**

22 **Q. Okay. In the first part of a trial, the character**
 23 **of a victim probably does not figure in to whether a person is**
 24 **guilty or not guilty?**

25 **A. Okay.**

1 Q. Okay. The second part of a trial maybe it does. As
2 far as maybe explaining the whys, the hows, what led up, that
3 kind of thing. Do you see what I'm getting at?

4 A. Okay.

5 Q. But anyhow, those kind of things, character and
6 background, and now I finally get to the point where I want to
7 ask you about a few things when you were talking with
8 Mr. Schultz that cause me concern -- I'll be up front with
9 you -- that caused me to write them down.

10 We talk about these mitigation areas. Mr. Schultz
11 talked about many of them. Drugs, drug addiction, drug abuse,
12 maybe drugs that were used in the home that children growing
13 up observed, broken homes, poverty, youth, maybe religious
14 factors, and in that, I mean religious factors -- I think he
15 was talking to you about people who converted to Christ, or
16 became born-again Christians. I don't exactly recall the
17 precise language Mr. Schultz used, but he talked to you about
18 post-arrest religious involvement.

19 And anyhow, he asked you if those -- if you'd
20 considered those to be things that mitigated against a death
21 sentence in favor of a life sentence? And I kind of checked
22 off and you said no, no, no, no, no, no, and no.

23 A. Uh-huh.

24 Q. So obviously I have some concern. Do you think --
25 do you think you can give meaningful consideration to evidence

1 in that third special issue, that mitigation special issue?

2 A. **I think I could be open-minded enough to do it, but**
3 **I don't know.**

4 Q. Okay. The word "excuses" is used a lot, okay. I
5 would submit to you that the way I look at that question, that
6 question is not -- does not ask, is there an excuse out there,
7 okay? And I guess excuse would mean, well, was the killing
8 excused, or the killings? Is there an excuse for it? That
9 would be an impossible question. If that were the meaning of
10 that question, anybody that's been convicted we should just
11 line them up and kill them because no one will ever get a life
12 sentence, because there are no excuses. Yeah, I'm a lawyer,
13 but I understand if we get to the punishment phase of a
14 capital murder trial, there's no excuse for taking a human
15 life. I mean, if I told you there was, you know, you'd think
16 I needed to be mentally committed probably.

17 We're not talking about excuses. We're talking
18 about things maybe -- our courts and our Legislature have
19 recognized that not every defendant who's been convicted of
20 capital murder and who's a danger should be -- should be
21 executed, okay? So, when they talk about background,
22 character, background, personal moral culpability, I'm looking
23 for somebody, and I'm not allowed to ask you, you know, if I
24 proved this to you, would you spare that kid's life? I could
25 try and I'd love to, but the guy in the beard over there is

1 not going to let me do it because he'll make the Judge stop me
2 because I'm not allowed to commit you to specifics.

3 But what I can ask you, and what I'm entitled to
4 under the law, or he is, is a juror that can keep an open mind
5 and give meaningful consideration to the evidence, and that's
6 maybe one of my last questions to you. I have to know the
7 answer to that question.

8 A. **Can I ask you a question?**

9 Q. Yes, ma'am.

10 A. **So we're not talking black and white; we're talking**
11 **shades of gray?**

12 Q. Absolutely.

13 A. **You know, three of -- my three sons are within four**
14 **years of each other of age. I've always been a fair mom, I**
15 **think. It helped me to understand what fairness is, and --**
16 **you know, I know I'm a fair person. I mean, that's all I can**
17 **say to you about that. I do have an open mind. I think a**
18 **person should know right from wrong, though.**

19 Q. I agree with you.

20 A. **It's not -- it's hard to judge until you know the**
21 **facts, and it's hard to read somebody else's mind.**

22 Q. I know.

23 A. **You don't know how they feel about. You can just**
24 **listen to what is presented to you, and then you just make the**
25 **best decision you can and that's how I feel about that.**

1 Q. Okay, okay. If you were me, you're defending him,
2 and you're sitting right at this chair --

3 A. **I couldn't do it.**

4 Q. Why?

5 A. **I think it's a hard job.**

6 Q. It is, but probably I might not be able to do your
7 job, you know? If you saw how I ran a checkbook and heard
8 what my wife has to say to me at the end of a week, I'd be
9 fired my first day in your job, I think, because you work with
10 a lot of numbers, I assume?

11 A. **I do.**

12 Q. To me that's harder than my job. I mean, I couldn't
13 balance a checkbook if my life depended on it. But --

14 THE COURT: Mr. Goeller, at this point you've
15 used about 45 minutes, and the --

16 MR. GOELLER: Yes, sir. I won't take more --

17 THE COURT: -- next round I'm not going to
18 limit the amount of time that you have, but I will give the
19 State an equal amount of time.

20 MR. GOELLER: How much time did they burn,
21 Judge?

22 THE COURT: They used 55 minutes.

23 MR. GOELLER: Fifty-five. I will not use more
24 than 55, so I've got ten minutes.

25 THE COURT: No. You can take all the time you

1 want.

2 MR. GOELLER: I know, but I won't take more
3 than ten because I'm nearly at the end. Ms. Weaver is very
4 happy about that.

5 Q. BY MR. GOELLER: If you were sitting here, though,
6 would you want somebody like you on the jury?

7 A. Yes.

8 Q. You would?

9 A. Yes.

10 Q. Okay. I want somebody -- and I'll go back to that
11 question. I know you struggled with that third special issue,
12 that mitigating special issue. You really think you could
13 give meaningful consideration to character and background
14 issues?

15 A. Yes.

16 Q. One statement that you had written down, you know
17 just one of those little things that go off, and I have to ask
18 about this. "The biggest problem in the criminal justice
19 system is probably too many loopholes." Loopholes what?
20 Typically people say loopholes, like people getting off?

21 A. Yes, that's what I mean.

22 Q. Really, lately, in Texas have you really heard of
23 any loopholes or people getting off?

24 A. I can't give you a specific example, no.

25 Q. You know the media, love them or hate them. I can

1 tell you this, having been in this business a long time, for
2 every 100 felony indictments, at least 95 of them are either
3 going to plead guilty or they're going to be found guilty.
4 Very, very -- you know, if you look at just the pure numbers.
5 But the people up here who are pleading guilty and are found
6 guilty day-in or day-out, either by judges or juries, that
7 doesn't make the news, okay? What sells newspapers is -- you
8 know, either a judge reducing a bond, or somebody got off.
9 And I said love them or hate them. I guess I hate them more
10 than I love them, but they tend -- they fuel that. The people
11 out there think, oh, my God, all these loopholes. Criminals
12 are jumping out of the courthouse, running free. I tell
13 you -- you can absolutely trust me. Mr. Schultz will agree
14 with me on this: Very, very few -- we don't hear people
15 getting off on loopholes. It's almost nonexistent, but the
16 media wants to sell newspapers and get people to tune in to
17 their particular station so they kind of -- they perpetuate
18 that kind of garbage.

19 In a trial I will do everything I can for my client.
20 I will be making objections. I mean, I've got ten million
21 pages of case law that I've got to try to be aware of and
22 rules of evidence and rules of procedure and federal law,
23 state law, and my job, my sworn duty is zealously represent my
24 client with everything I got, ethically, basically what my
25 duty is. Many times a lawyer is objecting, and if you're a

1 juror on this case, I promise you, by the end of four weeks
2 you'll be so sick of me standing up and objecting, but that's
3 my job. I mean, I always tell people if you had a -- if it
4 was one of your sons, or one of your daughters, or a loved one
5 sitting in that chair you'd want somebody doing everything
6 they could to
7 defend them. Some people say that, though, well, he's
8 objecting. Boy, that Mr. Goeller, he doesn't shut up with
9 those objections. He must be trying to hide something. He
10 must be trying to find a loophole for the Judge, and I can
11 absolutely tell you that's not my intent. If there was a
12 loophole, I would have found it by now for all my clients.

13 But everything is based on the law, and when I see
14 somebody use the word "loophole," I'm not -- you and I aren't
15 jousting. I promise you that, but you wouldn't read anything
16 into me doing my job?

17 A. No.

18 Q. Okay.

19 A. I expect you to do the best job you could do.

20 Q. You bet. Because you know if somebody is found not
21 guilty, who's always to blame? If the media thought somebody
22 got off on a loophole, they blame the defense lawyer, and they
23 blame the defendant, and then they're kind of bastardized.
24 The truth of the matter is a judge or a jury found them not
25 guilty, and that means the State didn't prove their case, or

1 they committed or did something wrong. With the media, that
2 don't sell. That don't sell. The loophole sells, and the
3 criminal defense lawyer becomes the bad guy or the bad girl,
4 but anyhow I'll get off my soap box.

5 Ms. Weaver, do you have any other questions of me?

6 A. No.

7 Q. Okay. I know it's been a long day for you. I
8 appreciate your time and attention, and I thank you.

9 THE COURT: Thank you, Mr. Goeller. Ma'am, if
10 you would step down for a few minutes, perhaps we'll have you
11 back in here.

12 VENIREPERSON: Okay.

13 (Venireperson exits the courtroom.)

14 THE COURT: All right. What says the State?

15 MR. SCHULTZ: I need to speak with Defense
16 counsel a moment.

17 THE COURT: All right.

18 (Brief pause in proceedings.)

19 MR. SCHULTZ: Peremptory Challenge Number 10,
20 Your Honor.

21 THE COURT: All right. Would you tell
22 Ms. Mary Ann Weaver that we thank her for her service, and
23 would you ask Camden Davis to step in?

24 THE BAILIFF: Yes, Your Honor.

25 (Venireperson enters the courtroom.)

1 THE COURT: Are you Camden Davis?
 2 VENIREPERSON: Yes, sir.
 3 THE COURT: I'm sorry to keep you waiting so
 4 long, but these things take time.
 5 VENIREPERSON: I understand.
 6 THE COURT: Takes time for everybody.
 7 I want to ask you if you recall that a little over a
 8 month ago when I had all 200 jurors to speak to, I swore
 9 everybody in; do you recall that?
 10 VENIREPERSON: Yes, I do.
 11 THE COURT: The oath was to tell the truth
 12 with regard to any questions propounded by the Court or asked
 13 by either attorney; do you remember that?
 14 VENIREPERSON: Yes, sir.
 15 THE COURT: All right, sir. I just want to
 16 advise you that you're still under that oath, and ask you to
 17 please be seated right here. Ms. Falco?
 18 MS. FALCO: Yes, sir.
 19 DIRECT QUESTIONS
 20 BY MS. FALCO:
 21 Q. Good evening, Mr. Davis.
 22 A. **Good evening.**
 23 Q. It's after 6, and I know you're tired because you've
 24 been back there for five hours, but you can trust us we've
 25 been working since 8:45 and trying to get a jury. So if I

1 start not making sense it's only because I'm getting tired,
 2 and just ask me to rephrase it. Tell me you didn't
 3 understand, and I'll ask it again.
 4 Mr. Davis, this is probably your third trip up here,
 5 I imagine, at least?
 6 A. **Yeah.**
 7 Q. And we only do this individual voir dire,
 8 one-on-one, when the State is seeking the death penalty.
 9 Typically, you're called for jury duty. You come in, they
 10 pick the jury, usually start the trial that day, and you're
 11 done in less than a week, so obviously this is an unusual
 12 situation, and the Legislature allows us to do this one-on-one
 13 individual voir dire only in these cases.
 14 And they allow that for a couple of different
 15 reasons. One, when you first came in and filled out the jury
 16 questionnaire and right off the bat it asked you about the
 17 death penalty, you don't have a lot of time for reflection and
 18 time to think about it. It's just kind of your initial, gut
 19 reaction at the time. So that's one reason, it allows you
 20 some time to think about it before you come back. But also
 21 because this is supposed to be a more relaxed setting for us
 22 to talk to you and get probably a little more personal than
 23 people like to talk about in front of a group. Though it may
 24 seem intimidating all six of us staring at you, it's meant to
 25 be a more relaxed atmosphere. There's no wrong answer you can

1 give us. All that's required of you is just to be honest with
 2 us because both sides are just looking for 12 people to be
 3 fair and impartial and who can fairly answer the questions,
 4 and answer them in such a way that results in a life sentence,
 5 if that's what the evidence shows, or answer the questions in
 6 such a way that result in a death sentence, if that's what the
 7 evidence shows.
 8 And so with that regard, no one is here to debate,
 9 try to change your mind or question your opinions. We're just
 10 trying to get to know you a little bit to see if you would be
 11 a qualified juror for this case.
 12 Have you ever been called for jury duty before?
 13 A. **Yes, I have.**
 14 Q. Did you actually get seated on the jury?
 15 A. **Once I did, yes.**
 16 Q. What type of case was that?
 17 A. **It was a civil.**
 18 Q. What kind of civil case?
 19 A. **It was actually a lawyer for an insurance company**
 20 **was being sued by the insurance company.**
 21 Q. The lawyer was getting sued?
 22 A. **Yes.**
 23 Q. Did you find against the lawyer in favor of the
 24 insurance company?
 25 A. **Yes, I did.**

1 Q. Probably hard picking a jury of 12 people that could
 2 be fair to a lawyer.
 3 How long ago was that?
 4 A. **It's been over ten years.**
 5 Q. Was that here in Collin County?
 6 A. **No, it was not. It was in Dallas County.**
 7 Q. I see on your questionnaire that you live in
 8 St. Paul, and I am not super-familiar with that town. I
 9 assume it's somewhere near Wylie because I saw you go to
 10 church in Wylie?
 11 A. **It's between Murphy and Wylie.**
 12 Q. Somewhere near the lake, because you live on Lake --
 13 A. **Real close to the lake.**
 14 Q. Not a town that we come across very often.
 15 A. **No. There's only five or 600 people, probably, in**
 16 **the town.**
 17 Q. I guess you figured out when you came about a month
 18 ago and filled out the questionnaire it was going to be
 19 something a little different than your last jury service?
 20 A. **Yes.**
 21 Q. A month ago when you came in and, obviously, I guess
 22 by the time you filled out the questionnaire you realized what
 23 kind of case it was. But what are your thoughts when you
 24 realized this was a capital murder case?
 25 A. **It was going to be a long, drawn-out process.**

1 Q. And I guess we haven't let you down in that regard?

2 A. No.

3 Q. But understanding that the Defendant, obviously his
4 life is at stake, and we're taking the time to interview each
5 juror one on one and spend time with the juror. What do you
6 think of the process so far? Do you think we're spending too
7 much time? It's too inefficient, too cautious, or what are
8 your thoughts on that?

9 A. No. I mean, it's a serious process, and everyone in
10 this country deserves the right to go through due process, and
11 this is part of the process. So, I believe that -- you know,
12 however much time it takes, that's how much time it takes.
13 It's not something that -- you know, I agree that you can't
14 rush through, and -- you know, necessarily in a day or two,
15 you know, interview 128 or 200 people, and, you know, seat,
16 necessarily, a jury. Each -- the Prosecution is looking for
17 certain things, and the Defense is looking for certain things,
18 and, you know, that's our justice system. And in my opinion,
19 it's one of the better ones in the world, so...

20 Q. Have you had some time to do some thinking about
21 the death penalty as far as your opinion on it, your thoughts
22 on it, and whether or not you could personally be involved in
23 a case like this?

24 A. I've thought about it over time, yeah. Not just,
25 you know, when I was called to jury duty, but, you know, in

1 the past, as various major trials have come up, you've seen
2 television on it and stuff. My opinion, I don't know for
3 certain individuals whether it would deter crime or not. I do
4 believe that, however, in certain cases for repeat offenses
5 it's possible that somebody might think about the seriousness
6 of the crime before they commit it. So in that respect, you
7 know, I personally believe that it's a valid option.

8 Q. And have you done some thinking, as far as your
9 personal involvement, because I know it's one thing, like you
10 said, to sit there if something comes on the news or on TV and
11 you talk to your family about it, your friends about it, and
12 in theory it's great, but it's a totally different situation
13 when you're asked, can you return a verdict that results in
14 somebody's death. Have you done some thinking about that?

15 A. I haven't done a lot of thinking about it. It's not
16 something that I sit around at night and think about.
17 Obviously, being called for this case and knowing that, you
18 know, that is an option on this case, I've thought about it
19 some. You know, depending on the circumstances and the
20 evidence that's presented at that -- you know, as it comes
21 down in a trial, if that's what's warranted, then I feel that
22 I could probably participate in that kind of an action.

23 Q. Okay. Yesterday when you heard Ms. Lowry describing
24 exactly what happens if a jury returns a guilty verdict and
25 answers questions in such a way that results in a death

1 sentence, at some point down the road he's taken -- there's a
2 death date set. He's taken to the death chamber and strapped
3 to a gurney. Do you remember her talking about that?

4 A. Uh-huh.

5 Q. And obviously that was not for dramatic flare or
6 gore, but just to help you understand the reality of your
7 decision, and what we intend to show, or what we intend to
8 happen.

9 A. Sure.

10 Q. What were your thoughts when she was describing that
11 process to you?

12 A. The only thing that really comes to mind is that she
13 was trying to get across the seriousness of the action that
14 would possibly be took, you know, should a jury, you know,
15 find the Defendant guilty. You know, I didn't feel that she
16 was trying to, you know -- I don't know what I'm -- you know,
17 make it more than it was or trying to be gross, you know, and
18 frighten people or something like that. I think it's a
19 serious action that would -- you know, could be took, and
20 everyone needs -- you know, needs to be aware of if the
21 Defendant is found guilty exactly what's going to happen.

22 Q. Okay. And let's talk about that a little bit. And
23 you understand from yesterday we have a bifurcated trial
24 system?

25 A. Uh-huh.

1 Q. It's a little bit different from civil, but we have
2 a guilt-innocence phase, and if a person is found guilty you
3 move to the punishment phase.

4 A. Uh-huh.

5 Q. We're going to talk about both phases here today
6 because obviously it's one jury that's going to make both
7 decisions. If you find that person guilty, that same person
8 is going to do punishment. And, obviously, at that point it's
9 too late to re-interview you and get your opinion on the death
10 penalty.

11 A. Right.

12 Q. So by going ahead and talking about the punishment
13 phase right now, we're not meaning to override a defendant's
14 presumption of innocence. We're not railroading it or doing
15 away with it. Simply it's what the law provides for, and now
16 is the time to talk about that.

17 But you with regard to the guilt-innocence phase,
18 and you understand the burden of proof is on the State?

19 A. Yeah.

20 Q. And we have to prove it beyond a reasonable doubt?

21 A. Uh-huh.

22 Q. And that's only fair in our system because we're the
23 ones doing the accusing; we should be the ones that have to do
24 the proving. The Defense -- the Defendant does not have to
25 testify. He never has to take the stand. He doesn't have to

1 call any witnesses if he doesn't want to, but it's his choice,
2 and he can do it if he does want to. If the Defendant chooses
3 not to testify, you'll be instructed that that's not to be
4 used against him, can't use that as evidence of guilt. You
5 could follow that law, correct?

6 A. Yes.

7 Q. And with that regard, the burden never shifts. Even
8 after we're done presenting our evidence, they can rest right
9 behind us and never put anything on, and then you base your
10 decision solely on our case and whether or not we proved it to
11 you.

12 And assuming we proved it to you beyond a reasonable
13 doubt, then you get to the punishment phase.

14 A. Uh-huh.

15 Q. And when you got to the punishment phase, it's not a
16 matter of just saying life or death or filling in the blank of
17 what you wanted to happen, but more it's answering questions,
18 and the way you answer the questions dictates the result. Did
19 you understand that -- before coming in yesterday, did you
20 know that's the way capital murder worked in Texas?

21 A. I knew there was a guilt-innocence phase, and then
22 there was, you know, a second part as far as punishment, and
23 then there's, you know, possibly additional evidence and stuff
24 that's brought out, you know, should a defendant be found
25 guilty.

1 Q. And did you know anything about the special issues,
2 or did you just think it was life or death?

3 A. No, I knew there was issues. I didn't necessarily
4 know the wording, how it was, you know, exactly worded, or
5 anything like that. But I knew there was more to it than just
6 life or death or guilt or innocence. I knew there was more to
7 it than that. But like I said, I've never been involved at
8 that level of detail or had the curiosity to investigate it to
9 that --

10 Q. When you say never really had the curiosity to,
11 probably most -- probably all of us would love to live in a
12 society where we didn't have to use the death penalty, where
13 there was no need for that because those kind of crimes were
14 not committed. And I'm sure you did not wake up this morning
15 excited about coming up here and getting interviewed and
16 possibly being put on this jury.

17 A. No.

18 Q. And we understand that. But if you had a choice,
19 whether to be on this jury, what would your choice be?

20 A. If I had a choice, as I believe most people would
21 say, they would probably not sit on the jury.

22 Q. And you're exactly right.

23 A. That would probably be my choice.

24 Q. You're exactly right. And I assume that's just
25 because you'd rather not make the decisions. You'd rather not

1 give up the time at work?

2 A. Right, for all the same reasons. You know, work,
3 family, you know, just everything, not having to be put
4 through the emotional stress of hearing the testimony, trying
5 to decide the fate of someone else's life, and so on and so
6 forth. But, especially in these times, I believe, you know,
7 it is part of your civic duty and, you know, if so chosen,
8 then you need to perform that duty.

9 Q. With regard to capital murder, Ms. Lowry went over a
10 little bit yesterday about the difference between murder and
11 capital murder, and capital murder is basically murder plus an
12 aggravating factor. Were you aware of the distinctions of
13 that before you came to jury duty?

14 A. No, not necessarily.

15 Q. A lot of people think capital murder has to do with
16 the goriness of the crime, or the scenario of the crime.

17 A. Yes.

18 Q. But you understand, it's some aggravating factor?

19 A. Yes.

20 Q. And with regard to that, as far as our situation is
21 concerned, there's three different types of capital murder
22 that are applicable. One is murder in the course of burglary,
23 and that could be -- when we say burglary, that's entering
24 somebody's home without effective consent, and that could be,
25 like you might think, someone breaking in the window or

1 busting in a door, or it could just be ineffective consent
2 because it was fraudulently given. And Ms. Lowry used the
3 example of the Bible salesman. I mean, obviously, if someone
4 knocks on your door and says, I want to come in and kill you,
5 nobody is going to ask that, in the first place, and nobody is
6 going to let that person in.

7 A. Right.

8 Q. But if you gather from the evidence that their
9 intent was to go over there and kill somebody and they get in
10 the house, you've got to infer from that that the consent was
11 ineffective.

12 A. Right.

13 Q. So murder in the course of a burglary, is that the
14 type of crime where the death penalty ought to at least be an
15 option?

16 A. I think murder -- you know, if one individual takes
17 another individual's life, I think the death penalty is an
18 option.

19 Q. And you understand that it's only in capital murders
20 that we seek the death penalty?

21 A. Yes.

22 Q. It's not in regular murders.

23 And I assume your answer would be the same if I
24 asked murder in the course of robbery or double homicide, the
25 death penalty ought to be, at least, an option?

1 A. Yes.

2 Q. And let me talk a little bit about that. Let's
3 assume -- well, if we proved to you beyond a reasonable doubt
4 that a defendant is guilty of capital murder, you could follow
5 the law and find the defendant guilty of capital murder?

6 A. Yes.

7 Q. And if we didn't meet our burden, we failed to prove
8 one of the elements to you, or all of the elements to you, you
9 could find the defendant not guilty?

10 A. Absolutely.

11 Q. And there may be a situation where we can't prove
12 one of the aggravating elements. Like if you had murder in
13 the course of burglary, let's say we can't prove the burglary
14 to you because the murder happened outside the home instead of
15 inside the home, or a good example is, let's say you lived
16 next door to a police officer, and you and another neighbor
17 got in an argument over the TV, and the police-officer
18 neighbor came out and told y'all to stop fighting, break up
19 the fight, and you get mad at him and you shoot him and you
20 kill him, killing a police officer is capital murder. But
21 then it becomes a fact question, was he acting in his capacity
22 as a police officer, or was he just acting in his capacity as
23 a neighbor? So that might be an instance where a jury might
24 just find you guilty of murder, not the capital murder.

25 But there are situations where you could get a

1 lesser included offense included in the charge, and you could
2 find a person guilty of the lesser included offense of murder.
3 And if that were the situation, the -- to be qualified as a
4 juror, you'd have to be able to consider the full range of
5 punishment, and the full range of punishment on a murder, a
6 noncapital murder, just murder, is anywhere from five years in
7 the penitentiary to 99 years or life. And obviously, the
8 Legislature gives us such a broad range in punishment because
9 you're taking into account, there's a whole lot of fact
10 scenarios out there, that we want to be able to encompass it
11 all.

12 And in certain situations if a defendant proves that
13 he has never been found guilty of a felony, probation is also
14 an option in a murder case. And to be a qualified juror, you
15 have to be able to consider the full range of punishment,
16 which would be five years probation, up to the maximum of 99
17 years or life. And certainly there's situations, like the
18 elderly couple, that they've been married for 60 years, and
19 the wife gets very, very ill and she's lying on her death bed,
20 and she's told her husband all along, I don't want to live on
21 machines. If I get to that point, just pull the plug on me.
22 But there's nothing in writing. It's just kind of between
23 them, and sure enough, she gets in that situation, and he sees
24 her suffering, and he knows she doesn't want to be that way,
25 and he just pulls the plug on his own. In Texas, that would

1 be murder because he intentionally caused her death.

2 You also have the situation Ms. Lowry, you know,
3 maybe the man whose child was killed. The killer had a trial,
4 and because of some loophole, that killer got off and that
5 parent couldn't handle the fact he got off and he might go out
6 there and kill someone else's child, and he kills that person.
7 And you have that all the way up to Timothy McVeigh type. I
8 mean, we could give a broad range of what could be murder,
9 what could be capital murder.

10 But with just regard to murder, and understanding
11 that the Legislature provided that broad range to encompass
12 all different kind of scenarios, could you follow the law if
13 the Court said you had to be able to consider everything from
14 probation to 99 years or life? Could you follow the law and
15 give consideration to the full range of punishment?

16 A. Depending on what the evidence was presented in the
17 case, I believe I could.

18 Q. Okay. Let's assume that you found a person guilty
19 of capital murder, you would then move on to the punishment
20 phase, and that's when you get to the special issues. That
21 first special issue up at the top, can you see that from where
22 you're sitting?

23 A. Yes.

24 Q. That's what we call the future dangerousness
25 question. Do you remember that from yesterday?

1 A. Yes, I do.

2 Q. And when the Legislature drafted that question,
3 they were obviously envisioning a situation that you could
4 find a person guilty of capital murder, but yet still decide
5 they were not dangerous. And some of those situations may be,
6 like, the man whose child's killers go free. Or maybe you
7 have a situation where a man goes into a 7-Eleven and decides
8 to rob it and gets the money from the clerk and kills the
9 clerk, and on his way out the police show up, and he gets in a
10 gunfight with the police, and the police shoot him in the
11 neck, and he's paralyzed from the neck down. Physically, he
12 can't do anything, or -- even say he's paralyzed from the nose
13 down, so he can't even speak. He can't speak, physically
14 can't do anything. A jury might be able to say he's guilty of
15 capital murder, but we don't think he's a future danger.

16 Or you have what we call "mercy killings."
17 Dr. Kevorkian is an example of that. Some people think what
18 he does is great; other people think what he does is awful.
19 You have a situation where he only administers solution to
20 those that solicit his help, and you have somebody that comes
21 and says -- and maybe it's the same elderly couple. They both
22 get in a situation where they're suffering, and they say,
23 Dr. Kevorkian, can you help us out? We want to go at the same
24 time. We want to pass at the same time. We don't want to
25 live one without the other. We wouldn't have a quality of

1 life anymore, and so he helps them doing that. That's capital
2 murder because it's two people.

3 So obviously since -- again, we've got that broad
4 range of fact situations, the Legislature has decided to give
5 us this first question for the jury to relook at the
6 evidence. You already looked at the evidence to find the
7 Defendant guilty of capital murder. Now let's look at the
8 evidence and decide if he's a future danger. With regard to
9 the evidence, the burden of proof is on the State, and we have
10 to prove to you beyond a reasonable doubt that there's a
11 probability that the Defendant would commit criminal acts of
12 violence in the future.

13 Now, this question doesn't ask, is there a
14 certainty? It's not saying, will he commit criminal acts of
15 violence. It's asking if there's a probability, and that word
16 "probability" is not going to be defined for you by the Judge.
17 It will be up to you, as a jury, to decide what that word
18 means, and if we proved it. And people that are
19 mathematically minded may look at that word, and say, well,
20 that's a number to me; that's some percentage. Other people
21 look at that word and say, well, that means more likely than
22 not. What we do know is it's something less than a certainty,
23 but it's got to be something more than just a possibility
24 because you would agree with me anything is possible?
25 Theoretically anything is possible?

1 A. Yes.

2 Q. So that question has to encompass that as something
3 more than a possibility. What do you think of when you think
4 of the word "probability"?

5 A. Statistically it's more than 50 percent.

6 Q. Okay. And that's for -- like, people say more
7 likely than not, that's around -- they're thinking 50 percent,
8 so that's a pretty common response to that.

9 The next phrase that you get to that, again, is
10 going to be undefined for you and might be frequently debated
11 is criminal acts of violence, and I think we'd all agree that
12 an act of violence toward another person, such as murder,
13 rape, aggravated assault, all those are criminal acts of
14 violence. Just like wife beating, do you think that's a
15 criminal act of violence?

16 A. Yes, I do.

17 Q. With regard to wife beating, some people are more
18 tolerant. They may have been raised in a family situation
19 where they saw it and were raised with it and may be a little
20 bit more tolerant. Or they may have seen a family member, a
21 sister or a mom that stayed in that situation longer than they
22 should have, and it's understandable. They can understand why
23 a person can beat up their wife. And other people are like, I
24 don't get that at all. Where do you fall in that continuum?

25 A. I don't believe it's right.

1 Q. It gets a little fuzzier when we start talking about
2 property, violence to property. Let's say I had a real bad
3 day today, and I was tired, and I was mad, and I was angry,
4 and I just get a baseball bat and I go out to the parking lot,
5 and I just start smashing up windows and cars and just take
6 my anger out on the cars. Is that act of violence in your
7 opinion?

8 A. Yes.

9 Q. It's a little fuzzier still when we start talking
10 about drugs. I'm talking about illegal drugs, like cocaine,
11 methamphetamine, both the use and delivery, or the sale of
12 drugs. Some people say, well, if you take drugs, you're only
13 harming -- it's only yourself, and you're not bothering
14 anybody else, and if it does, you know, do something to your
15 personality that makes you do something violent, well, that's
16 all indirect, and that's not a direct result of taking the
17 drugs, so that's not violent to me. Other people say, well,
18 no, because as a society we're taught you don't take these
19 drugs. You don't do these drugs because it can change your
20 personality, and it can lead to violent results, and even when
21 you ingest them it can do harm to your body. I mean, look at
22 heroine overdoses. That's violence to me. Where do you fall
23 on that continuum?

24 A. I don't know that I would consider, you know, an
25 individual taking drugs as an act of violence. However, I

1 could see that someone, you know, selling drugs, you know,
2 could be considered an act of violence against society.

3 Q. Okay. And then you get to things that are probably
4 clearly not acts of violence, but may be to someone's
5 character; things like stealing, theft; somebody engaged in
6 fraudulent business transactions, swindling money; deserters
7 from the military, people that just pick up and leave; things
8 that aren't violent. But do you think that that could give
9 you some insight into their character and help you understand
10 a little bit about what makes that person tick?

11 A. It depends on the situation. It's like saying
12 there's a whole broad range of things that an individual could
13 do, and I'd probably have to evaluate each one on a
14 case-by-case basis to determine -- it probably, depending on
15 what you're talking about could, you know, give you some
16 insight into their character and possible future actions.
17 It's -- you know, I believe it's hard, you know, to really
18 tell what somebody is going to do in the future. You know,
19 like you say, it's -- you could look at possibly some of their
20 past characteristics.

21 You know, if a guy goes home every night and beats
22 his wife, then the odds are, you know, it's possible in the
23 future he's going to go home and beat his wife. If a guy had
24 a bad day at work and went home and chopped down his tree in
25 his front yard, well, that's -- I don't know that would be

1 considered an act of violence, or insight into what he's going
2 to do in the future.

3 Q. You bring up a couple of good points. First of all,
4 it is -- I think it's impossible for anyone to predict, with a
5 certainty, the future. That's why that question only asks a
6 probability because there's no way we could ever prove to you
7 that, yes, will he commit because you just don't know what the
8 future holds. And with regard to past history, I mean, would
9 you agree with me that somebody's past criminal history or
10 past violent history is indicative of future behavior?

11 A. I think it probably shows that they're capable of
12 doing similar acts in the future. I don't know that it --
13 again, like I said, I don't know that it necessarily points to
14 that they will, with any certainty, do it. But it certainly
15 shows that they are capable of doing it.

16 Q. What other type of things would you want to see in a
17 punishment phase that would help you to answer that question?

18 A. Certainly, you know, recent history more so than,
19 you know, a long past history, you know, what their -- what
20 their state of mind is, you know, try to -- and again, it's --
21 when you say probability -- when you get into probabilities
22 and reasonable, then different things, you know, mean
23 different things for different people. I mean, personally,
24 like I said, I -- 25 years ago somebody beating his wife and
25 becoming a minister after that and has had a good marriage for

1 the last 20 years, certainly I'd probably pay less attention
2 to what happened 25 years ago, versus if last week the guy
3 come home and beat his wife and beat his kids, then I'd
4 probably put more weight on something like that.

5 Q. Okay. You bring up some good issues that will apply
6 to that second question, and we'll wait to them when we get
7 there to address them. The last word that's in that first
8 question up there that will be undefined for you that's going
9 to be debated is that word "society." And that question does
10 not limit itself to prison society. It doesn't have that word
11 "prison" in there. The Legislature could have put it in there
12 if that's what they meant, but that question seems to ask what
13 a defendant's propensity or characteristic for violence is,
14 without regard to a specific location. That includes -- it
15 can include the prison society, because that's part of our
16 society. It's a (inaudible), but it can also include, would
17 you want this person dating your daughter? Would you want
18 this person moving in next door to you? Would you want them
19 even moving your furniture into your house? Would you want
20 them taking your check at the bank? So you understand how
21 that word can be broader than just prison society?

22 A. Yes.

23 Q. With regard to that question, I don't know how
24 closely you may follow capital murder trials, but you may or
25 may not have heard that typically either the State or the

1 Defense will call a psychiatrist or psychologist to testify in
2 the punishment phase, and assuming they're not called to
3 testify about a brain disorder or brain disease or mental
4 retardation, but rather to talk about a pattern of behavior,
5 saying, well, I've studied this pattern of behavior, and in my
6 opinion he's going to be a future danger. Or on the flip
7 side, I've studied it and I don't think he will be. How
8 important is that type of testimony to you?

9 A. I think I would consider it, but I don't think I'd
10 base my sole decision upon it.

11 Q. Do you feel like you have enough life experience and
12 education that you could look at the facts of the case and
13 look at everything you've heard in the punishment phase and be
14 able to answer that first question?

15 A. I believe I'd take everything into consideration
16 that was presented during the trial to make that -- including,
17 possibly, that testimony.

18 Q. But you could make it even without it?

19 A. Yes.

20 Q. With regard to that question, again the burden of
21 proof is on the State. We have to prove it to you beyond a
22 reasonable doubt. If all 12 jurors said, yes, we think he's a
23 future danger, you're still in the process of assessing a
24 death sentence.

25 MR. GOELLER: Objection to that statement.

1 It's a misstatement of the law. He's not in the process of
2 assessing a death sentence. That calls -- tries to minimize
3 the special issues, especially the third special issue, Judge.
4 They're not in a process of assessing a death sentence because
5 it takes away from the State's -- Court's instruction
6 regarding unanimous verdict on the third special issue.

7 THE COURT: Okay. Could you ask the question a
8 different way, please?

9 Q. BY MS. FALCO: Do you understand if you answer that
10 question "yes," you still have one more question to answer?

11 A. Yes.

12 Q. If you answer that question "no," that he's not a
13 future danger, it's an automatic life sentence. Your
14 deliberations end. You don't answer any more questions?

15 A. (Nods head.)

16 Q. If you were to answer that question "yes," you then
17 get to that next question, what we call the mitigation
18 question. Do you remember that, or do you need a moment to
19 refresh your memory?

20 A. It's a very long question. I don't necessarily
21 remember it. I can read it again.

22 Q. Do you want to go ahead and read it to yourself?

23 A. Okay.

24 Q. Like I said, it's what we call the mitigation
25 question, and mitigation, again, it's not a word that's going

1 to be defined for you, but typically means to reduce, or
2 lessen a defendant's guiltiness, or blameworthiness. With
3 regard to this question, there's no burden of proof on either
4 side. We don't have a duty or a burden to present you
5 anything, and neither does the Defense.

6 This question is for the jury to weigh the evidence
7 and give it whatever weight they want to give it. So when you
8 were making earlier references about you weigh it, then that's
9 exactly what this question is for. You, as the jury, get to
10 decide how much weight to give circumstances of the offense,
11 and it may be that what that person did was horrendous, it was
12 cold-blooded, and that's got a lot of weight in your mind.
13 And then you look at the Defendant's character, and that could
14 be good character or that could be bad character. As far as
15 bad character, you may hear about criminal history and
16 wrongdoings on the part of the Defendant. It could be good
17 character. You may hear loved ones and family, or it may be
18 this person is a doctor and he came up with a cure for cancer.
19 Or it may be -- you know, just good character. The minister
20 example that you brought up. So, it encompasses good and bad,
21 and you could listen to all that, couldn't you, good and bad,
22 decide what weight to give it?

23 A. Yes.

24 Q. And background, same thing. That could include his
25 childhood, his upbringing, things that have happened to him in

1 had sympathetic situations in our lives that if we were on
2 trial, we could bring those out and say, look at that; that's
3 mitigating. So the question is not, is there any mitigating
4 evidence given a life sentence. It's taking into
5 consideration all that stuff; what he did, his character, his
6 background, his moral culpability, and is that evidence enough
7 to be sufficient to warrant a life sentence? Does that make
8 sense to you?

9 A. Yes.

10 Q. And again, you won't be given a list of factors that
11 you're to consider as mitigating. It's up to you, as a jury,
12 to decide what's mitigating and what's not. And drugs is the
13 perfect example. Like we talked about, one person may see
14 that as mitigating, because that changed their personality.
15 They're not normally like that. They're off the drugs now.
16 That's mitigating. Another person says, no, we're told don't
17 do drugs and why you don't do drugs, and the fact he
18 disregarded it and took the drugs anyway, that's aggravating.
19 So, you understand that can be debated, as well?

20 A. Yes.

21 Q. Now, with regard to that question, other than the
22 phrase "circumstances of the offense," it doesn't seem to
23 focus your attention on the victim, the victim's character or
24 anything about the victim. It tends to focus on the Defendant
25 and his character and his background and his moral

1 life, and both good and bad, and you could keep an open mind
2 and listen to all that?

3 A. I believe I could.

4 Q. And the Defendant's personal, moral culpability.
5 Again, "culpability," another word not defined for you.
6 Typically means responsibility, the Defendant's personal,
7 moral responsibility. And again, you can give that whatever
8 weight you want to give it. It may be the parent whose child
9 is killed, and he killed the killers. And you may think,
10 well, his culpability is not a great as somebody who just, in
11 cold-blood, just decided to kill somebody for no reason.
12 It's kind of a place to take in responsibility, maybe motive,
13 and give it whatever weight you want to give that.

14 And then at the end after you've given everything
15 the weight you want to give, you decide is there sufficient
16 mitigating evidence to warrant a life sentence. And it may be
17 that the circumstances of the offense are so awful, and you've
18 given it so much weight and you may hear some bad character
19 that it's going to take a lot of mitigating evidence to be
20 sufficient to warrant a life sentence. Does that make sense
21 to you?

22 A. Uh-huh.

23 Q. And you could probably assume that all of us in life
24 have had stuff in our background that's mitigating, and we've
25 all had heartbreak. We've all had sad times, and we've all

1 culpability.

2 Does it make a difference to you who a person kills,
3 whether it's a nun praying in a street or a gang member or a
4 drug dealer? Does it make a difference who that person
5 killed, or is it more important to you just the fact that he
6 decided to kill somebody?

7 A. I don't think -- I mean, I don't think it really
8 should matter who a person necessarily killed. I mean, the
9 fact is he took somebody else's life, you know, if that's
10 proven. So I don't necessarily think, you know, you can say,
11 you know, your life is more important than my life, so...

12 Q. Okay. Let's take that out a little -- one step
13 further, and let's decide that a defendant decides he wants to
14 live the good life. He's tired of working, and he doesn't
15 want to work another day in his life, and he's just going to
16 go rob a store, take all their money and kill any witnesses
17 that get in the way because he doesn't want to ever get
18 caught.

19 So he decides on his way home from work one day --
20 are you cold?

21 A. It's cool in here.

22 Q. So he decides one day on his way home from work just
23 to stop at a 7-Eleven. He doesn't know who the clerk is,
24 doesn't know if he's married or has kids, and he goes in
25 there, takes the money and kills the clerk so there's no

1 witnesses. Compare that to the same man who decides, you know
2 what, I'm going to rob the 7-Eleven in neighborhood because I
3 know the family that owns it, and I know who works and what
4 time they work and how much money they keep behind the counter
5 and who keeps the most money behind the counter, and that's
6 why I'm going to pick them because I know how much money I'm
7 going to be getting.

8 And so this is a family that he's grown up with,
9 that have fed him, that have clothed him, that have loved him,
10 supported him, and when he goes into that 7-Eleven, that's his
11 friend there behind the counter, and he asks his friend for
12 the money, and his friend gives it to him and he kills him,
13 knowing how it's going to impact his family -- this
14 victim's family that has loved him and supported him. Do you
15 see any difference in those -- is there a difference to you
16 between those two scenarios?

17 A. It's still murder. I mean, I think it goes back,
18 you know, it would show -- you know, possibly goes back to the
19 first question in my mind, you know, if someone would
20 necessarily walk into a store and kill, you know, a friend,
21 someone they knew, and -- you know, certainly that would weigh
22 on my mind as far as trying to consider whether they would,
23 you know, possibly commit a criminal act of violence in the
24 future. Certainly I think if -- you know, if someone would
25 kill a close friend or someone they knew, then I think they'd

1 probably be even more so inclined to kill someone they didn't
2 know.

3 Q. And let's talk a little bit about a person's
4 upbringing. I don't know if you remember; it's been so long
5 since you filled out the questionnaire. But you had a page in
6 the questionnaire where it gave you sentences, and you were
7 asked to circle what your belief was; anywhere from strongly
8 agree to strongly disagree. Do you remember that page?

9 A. Yes, I do.

10 Q. And there's one sentence in here, "Persons determine
11 their destiny or fate by the choices they make in life." And
12 you put I agree with that.

13 A. Yes, I do.

14 Q. Tell me what your thinking is behind that.

15 A. We all are presented with choices in life. I mean,
16 you know, whether it's to do good, bad, wrong, right, help
17 someone, don't help someone, and I -- you know, I believe a
18 person, as they go through life, there's several different
19 options, and where you end up in life is going to be based
20 upon the decisions that you make.

21 Q. Right. And then the very next sentence says, "A
22 person's destiny or fate is determined by circumstances at
23 their birth and their upbringing." And you put I strongly
24 disagree. Tell me what your thinking is behind that.

25 A. Well, you know, when I think of that question,

1 Michael Jordan comes to mind right away. You know, certainly
2 he was born in a very disadvantaged neighborhood. He had
3 strong support of his mother and so on, but I'm sure that he
4 had a lot of different options, you know, that he had to make
5 decisions for in life, and I believe that where he's at, he
6 made -- you know, what could be considered correct decisions
7 as he went through life, and he's where he's at because of
8 those decisions.

9 So I don't necessarily think just because you're,
10 you know, born in -- either disadvantaged or -- you know,
11 endowed with a lot of money in the family or whatever, that's
12 going to dictate you're going to be a bad person.

13 Q. And probably the flip side, the same thing could be
14 true of a person born into a wealthy family?

15 A. Absolutely, yeah -- I mean, yeah, right. I mean,
16 just because, you know, you're born the Prince of, you know,
17 the World, doesn't mean that you're a great person. You may
18 not have respect for anyone.

19 Q. And kind of along those lines, getting back to that
20 mitigation question, when it says a defendant's character and
21 background, I mean, background could include their upbringing
22 and their childhood, and you can probably assume in a capital
23 murder case you're going to hear evidence, good and bad, about
24 a defendant's background.

25 Background could also include if he was -- what did

1 he contribute to society? What was his life like leading up
2 to the events that he's on trial for? Was he a doctor that
3 was coming up with a cure for cancer? Was he a firefighter
4 who spent his life saving people? Was he a minister who
5 spent his life saving people? Was he -- what did he
6 contribute to society? That could be looked at as his
7 background. But you would be willing to keep an open mind and
8 listen to all the evidence, and then decide to give it
9 whatever weight you wanted to give it?

10 A. Sure.

11 Q. You're not going to close your mind off, and say,
12 no, I'm not going to consider that?

13 A. No.

14 Q. Now, with regard to that question have you ever
15 heard the phrase "There are no atheists in foxholes"?

16 A. No.

17 Q. But you can probably gather what that means?

18 A. Yes.

19 Q. What do you think I mean by that phrase?

20 A. In times of war, everyone looks to a higher power to
21 take care of them.

22 Q. Do you -- and you assume that a person in a foxhole
23 on the front lines and faced with death and may make that
24 decision, or may look to God to get them through it. And you
25 could probably imagine a scenario, assuming that they do get

1 through it, and they get back home, and they're safe again.
 2 And years go by, and now they've got a family and they say,
 3 thanks, God, for getting me through that, but I'm on my own
 4 now, and I'm just fine. They kind of fall away and stop going
 5 to church. You can see how that could happen?

6 **A. Uh-huh.**

7 **Q.** Can you imagine that the same kind of crisis
 8 decision being made in someone that's charged with capital
 9 murder?

10 **A. Sure.**

11 **Q.** You know, faced with life or death, looking at
 12 death, I guess, decide to make a decision, and I guess whether
 13 or not that decision is real or not is not up to us to decide.
 14 But let's assume somebody was arrested for capital murder, and
 15 prior to that they were atheists, or at least agnostic, really
 16 not a believer in God, or not a follower of any type of
 17 religion. Then they get arrested, and they're in jail and
 18 they're awaiting trial. And all the sudden, a religious
 19 conversion; they're a Christian now.

20 How would you view that evidence as far as I'm a
 21 Christian now, so I'm -- as mitigating, and you shouldn't kill
 22 me because I've got this new life and I'm reformed, coming
 23 from somebody who makes that claim after they've been
 24 arrested? Would you --

25 **A. It would certainly be suspect.**

1 **Q.** Okay. And let's even assume that you did believe
 2 it, that they did make some kind of change in their life, and
 3 it's only been a relatively short period of time, not the
 4 20-year minister you were referring to. Would that make a
 5 difference to you in answering these two questions?

6 **A. It probably would weigh less on me, you know, in --**
 7 **like I said, I don't think it's like saying you're in the**
 8 **foxhole, you know, explosions going on all around you and**
 9 **bullets whizzing over your head, it's easy to get religion.**
 10 **So I mean, I don't know that it would have a big influence on**
 11 **my decision when it comes to answering these two questions.**

12 **Q.** Okay.

13 **THE COURT:** Ms. Falco, I'm going to give you a
 14 ten-minute warning.

15 **MS. FALCO:** Thank you, Your Honor.

16 **Q. BY MS. FALCO:** With regard to that last question,
 17 you have children; is that correct?

18 **A. Yes, I do.**

19 **Q.** And let's assume that they get older, and when
 20 they're older they get in trouble with the law. And I'm sure
 21 that, just as you love and support your children now, you'd
 22 still love them and support them even if they got in trouble?

23 **A. Uh-huh.**

24 **Q.** And if they needed you to, you would get on that
 25 witness stand, and you'd testify and you'd tell that jury I

1 love my child and I support my child and I'll be there for my

2 child should you choose to give them probation or whatever.

3 Am I correct in assuming that?

4 **A. Yes.**

5 **Q.** And you can imagine that's probably true for anybody
 6 charged with capital murder. They've probably got some family
 7 member out there that loves them and supports them?

8 **A. Sure.**

9 **Q.** And you can imagine that in a capital murder trial
 10 probably is going to be a mom getting up there on that witness
 11 stand sitting in that chair you're in, and crying saying,
 12 don't kill my son because I love my son or daughter. How
 13 would that argument sit with you?

14 **A. Certainly emotionally, it would be hard, you know,**
 15 **to listen to. I would expect that from anyone who's a parent**
 16 **and has loved a child, you know, knows that should that**
 17 **child's life be threatened, certainly you're going to try to**
 18 **do whatever you can. But again, I believe what you're charged**
 19 **with is not whether the parents love the child, but again**
 20 **getting back to what has happened, what's transpired. So I**
 21 **think in that -- you know, specifically in that case, I don't**
 22 **know that would sway me one way or another. I think I would**
 23 **probably have to go back to what's the evidence and what's**
 24 **been presented, not whether, you know, the parents love the**
 25 **children. I think pretty much that goes, in most cases,**

1 **without saying.**

2 **Q.** All right. And with regard to that last question,
 3 if all 12 jurors agree, no, there's not sufficient mitigating
 4 circumstances, a death sentence results. If ten or more
 5 jurors answer "yes," there is sufficient mitigating evidence,
 6 then that's a life sentence.

7 Assuming you found a defendant guilty of capital
 8 murder, you get to that first question, that future danger
 9 question, if we prove to you beyond a reasonable doubt the
 10 defendant's -- there's a probability he'll commit criminal
 11 acts of violence in the future, could you answer that question
 12 "yes"?

13 **A. Yes, I could.**

14 **Q.** And if we don't prove that to you, or you just don't
 15 think he is going to be a future danger, could you answer the
 16 question "no" resulting in a life sentence?

17 **A. Yes, I could.**

18 **Q.** And if you answered it "yes," and you get to that
 19 mitigation question, could you answer that question "no" if
 20 you don't find sufficient mitigating evidence -- answer the
 21 question "no" resulting in a death sentence for the defendant?

22 **A. Yes, I could.**

23 **Q.** And if -- could you look at that question and keep
 24 an open mind taking into consideration all those things that
 25 question calls for -- first of all, could you do that during

1 the trial?

2 **A. Keep an open mind?**

3 Q. Yes.

4 **A. Yes.**

5 Q. And if you do that, in keeping your open mind, find
6 there is sufficient mitigating circumstances, could you answer
7 that question "yes" resulting in a life sentence?

8 **A. I believe I could.**

9 Q. My time is real limited, Mr. Davis, so I just want
10 to briefly touch on this. In looking at your questionnaire, I
11 notice that you had some step-brothers that had gotten in
12 trouble with the law.

13 **A. Yes, I did.**

14 Q. Was that a long time ago or recently?

15 **A. No. It's been a long time ago.**

16 Q. Anything about that situation that you did not think
17 they were treated fairly?

18 **A. I was actually in the military at that point in
19 time, and I was actually gone so I really, you know, didn't
20 know the details. But to the best of my knowledge, I believe
21 things were handled fair.**

22 Q. And nothing about that situation that causes you to
23 have a bias either against the State or the Defense?

24 **A. No.**

25 Q. And that situation is totally separate from what

1 you're here for now?

2 **A. Yes.**

3 Q. You have a close friend that's a Plano police
4 officer. Do you mind if I ask who that is?

5 **A. Anthony Chesser.**

6 Q. I just wanted to make sure it's no one related to
7 the case. I know you have a list of names, but we've added a
8 couple since you looked at it.

9 **A. Yes.**

10 Q. And it says another was a Dallas traffic enforcement
11 officer. Who was that?

12 **A. He used to be my next-door neighbor when I lived in
13 Mesquite, Jimmy Figaro. He's not a traffic enforcement
14 officer now.**

15 Q. Mr. Davis, before I pass you to the Defense, do you
16 have any questions of me?

17 **A. No, I don't.**

18 MS. FALCO: Thank you, Mr. Davis. Pass this
19 juror.

20 THE COURT: Thank you. Mr. Goeller.

21 MR. GOELLER: Thank you, Your Honor.

22 CROSS-QUESTIONS

23 BY MR. GOELLER:

24 Q. Good evening, Mr. Davis. How are you doing?

25 **A. Just fine.**

1 Q. Long day, huh?

2 **A. Yeah.**

3 Q. Me, too.

4 Your questionnaire stuck out in my mind for a long
5 time because something -- you'd never figure out why. But
6 your brother, Bill Burkette?

7 **A. Yes.**

8 Q. His occupation is fisherman?

9 **A. Yeah.**

10 Q. For weeks I've been thinking, what a lucky guy, what
11 a lucky guy. Is he a pro? Is he a tournament fisherman?

12 **A. No, he's actually not. He used to be a programmer
13 for an insurance company in Kentucky, lived on the Ohio River,
14 and decided that wasn't him -- for him anymore and that he
15 could make a living fishing the Ohio commercially, so
16 that's --**

17 Q. Commercial fisherman --

18 **A. -- what he did.**

19 Q. -- in the Ohio River --

20 **A. Yes.**

21 Q. -- up by Kentucky?

22 **A. Yes.**

23 Q. Wow. Is he making a go of it?

24 **A. The last I heard he was. He's only started doing it
25 the last couple of years, so only time will tell. Personally**

1 **I think that would be a tough go.**

2 Q. I'm trying to think what you could commercially
3 harvest?

4 **A. They net catfish and different stuff out of the
5 river. They set nets, is how they do it.**

6 Q. Ah, okay, got you. I got you. That was just
7 interesting.

8 **A. Yeah. Well, I found that out just last year when I
9 was talking to my stepdad, and he told me that he decided to
10 be a commercial fisherman.**

11 Q. You're originally from Indiana?

12 **A. Yes, I am.**

13 Q. You know the juror -- the lady that was in -- came
14 in right before you came in --

15 **A. Uh-huh.**

16 Q. -- this has probably been hours ago, but I think her
17 son is a meteorologist somewhere in Indiana, I think she said.
18 Did y'all talk about that at all?

19 **A. No, we didn't.**

20 Q. Interesting.

21 When did you come to the big panel; was that just
22 yesterday?

23 **A. Yes, yesterday morning -- or yesterday -- yesterday
24 morning.**

25 Q. What were your thoughts as you left the courthouse

1 yesterday? What were you thinking?
 2 **A. About work actually, some problems -- some serious**
 3 **customers problems I have at work.**
 4 **Q. Okay. I kind of want to start off with my talk with**
 5 **you about, kind of, the logistics of this trial what -- we**
 6 **pretty much figure if a juror in this case is pretty much tied**
 7 **up for the month of October.**
 8 **A. Uh-huh.**
 9 **Q. Talk to me about that. Tell me your thoughts,**
 10 **personal, family, professional.**
 11 **A. Personal, I don't have anything necessarily planned**
 12 **for the month of October, other than on the weekends, my**
 13 **daughter runs cross-country on Saturday.**
 14 **Q. Okay.**
 15 **A. Professional, I suspect it's like everyone else.**
 16 **There is no good time from a professional standpoint. I work**
 17 **for a software storage company by the name of ADIC.**
 18 **Q. I saw that. I was going to ask what that was?**
 19 **A. It's Advanced Digital Information Corporation.**
 20 **Actually, I have about a remote office here. I have about**
 21 **eight people that report to me out of this office. Certainly**
 22 **it would strain things, but it's not going to make or break**
 23 **the company.**
 24 **Q. Okay.**
 25 **A. We'll have to figure out how to handle it, or how I**

1 re-task the tasks that I'm going to be responsible for over
 2 the next month, how I would handle making sure those tasks --
 3 my customers don't go away. I still have the same customers,
 4 and they're going to have to be supported.
 5 **Q. We had a juror, probably a couple of days ago,**
 6 **maybe a couple of weeks ago, I can't remember. But he**
 7 **essentially said if he were picked to serve as a juror in this**
 8 **case, he understood that we anticipated the trial will last**
 9 **somewhere between three and four weeks, Monday through Friday,**
 10 **probably 8 or 9 to 5 or 6 at night, probably a normal business**
 11 **day with probably an hour for lunch. And he essentially told**
 12 **us, when I get off this job at 5 or 6:00 at night, then my day**
 13 **begins because then I've got to work seven or eight hours.**
 14 **And I asked him, quite frankly, what kind of juror would you**
 15 **be in this case? And he says, I'll be a tired juror.**
 16 **Obviously, nobody really wanted that.**
 17 **A. Right.**
 18 **Q. Would you -- how would your job affect your -- is it**
 19 **one -- is it something where you're going to have to go really**
 20 **burn the midnight oil?**
 21 **A. Not necessarily. I would certainly check in at the**
 22 **end of the day to see if there was any crises, or what --**
 23 **what, you know, was going on, whether I needed -- you know, to**
 24 **answer any questions or so on and so forth. You know, there**
 25 **may depending on the situation, I may actually go to work for**

1 **a couple of hours, you know, but I don't know that I would**
 2 **plan on going to work and spending all night at work and then**
 3 **trying to get up and come back in here.**
 4 **Q. Okay.**
 5 **A. Number one, I anticipate after a full day of, you**
 6 **know, court, then I wouldn't be of much use sitting in front**
 7 **of the computer.**
 8 **Q. Yeah, I'll bet.**
 9 **In your questionnaire you wrote down, I believe the**
 10 **death penalty is appropriate in some cases, and I could return**
 11 **a verdict resulting in death in a proper case. And then you**
 12 **wrote above that, if the crime is severe enough, then I would**
 13 **administer it. Tell me what kind of things you were thinking**
 14 **about when you gave those answers.**
 15 **A. Well, certainly in a murder case somebody taking**
 16 **somebody else's life, you know, I -- in that instance, I mean**
 17 **depending, like you say, on the evidence that's presented and**
 18 **so on and so forth, I think the death penalty is an option.**
 19 **Q. Okay.**
 20 **A. You know, certainly for, you know, somebody killing**
 21 **somebody in a car accident, you know, I don't necessarily**
 22 **think the death penalty is an option.**
 23 **Q. Right, right. I wanted to talk to you a little bit**
 24 **about that. You said your best argument in favor of the death**
 25 **penalty is pre-planned, well-thought crime. Your best**

1 argument against it is self-defense. Tell me what you meant
 2 by that.
 3 **A. I think if somebody, you know, decided well, I know**
 4 **next week, you know, you're going to cash a lottery ticket,**
 5 **and you're going to have some money at your house, or**
 6 **whatever, and I think if I show up at midnight, I can, you**
 7 **know, knock you off and steal all the money, certainly I would**
 8 **consider that -- pretty much you're planning it out, you're**
 9 **thinking about it. It wasn't a spur-of-the-movement type**
 10 **deal, and you've thought about this.**
 11 **Q. Got you.**
 12 **A. Obviously in the same turnaround (sic), you break**
 13 **into my house to steal my money from my lottery ticket, and I**
 14 **wake up in the middle of it, pick up a gun and shoot you, I**
 15 **killed you, but that's in self-defense. If you're standing**
 16 **over me with a knife, you know --**
 17 **Q. I agree with you 100 percent, but I'm trying to**
 18 **figure out why -- if I did that -- if I broke into your house**
 19 **and I'm over you with a knife and you kill me in self-defense,**
 20 **why do you think that -- why do you think you would have to**
 21 **advocate that as a position for you not to get the death**
 22 **penalty?**
 23 **A. Well, if I thought you were going to take my life or**
 24 **take my family's life --**
 25 **Q. Right. I understand.**

- 1 **A. -- in my mind that's -- that would be justification**
 2 **for me to defend myself, and if that -- in that defense I took**
 3 **your life, then I don't think, you know, somebody should be,**
 4 **you know, killed for that --**
 5 Q. Absolutely.
 6 **A. -- or given the death penalty for it.**
 7 Q. Absolutely. But why do you think you would be in a
 8 position to even have to defend yourself in a capital murder
 9 trial?
 10 **A. I didn't necessarily know it was a capital murder**
 11 **trial we was talking about.**
 12 Q. Okay. I think I understand you. Because obviously
 13 if you had to defend yourself and your family from somebody,
 14 you know, in your house at night with a knife, you are not a
 15 criminal. You wouldn't be arrested, you wouldn't be
 16 convicted, you wouldn't be indicted; do you know what I'm
 17 saying?
 18 **A. Yeah.**
 19 Q. So outside of self-defense, can you think of an
 20 argument to put down in opposition of the death penalty?
 21 **A. You mean in a capital murder trial or just in**
 22 **general?**
 23 Q. In general, philosophical grounds against the death
 24 penalty.
 25 **A. The only thing that comes to mind is the Bible says**

- 1 **thou shall not kill.**
 2 Q. What do you think about that?
 3 **A. What do I think about that? It's reality. I mean,**
 4 **other people kill other people. In the world we live in**
 5 **today, that is part of reality. As far as sentencing goes,**
 6 **you know, if you break it down in simplest terms it's an eye**
 7 **for an eye. The death penalty is an eye for an eye.**
 8 Q. Kind of an Old Testament thought?
 9 **A. In those terms, yes.**
 10 Q. Have you ever heard the saying if we truly adhere to
 11 an eye for an eye, the world will go blind?
 12 **A. I've never heard that, but I --**
 13 Q. What do you think about that?
 14 **A. I can certainly understand the argument.**
 15 Q. Are you philosophically more in line with eye for an
 16 eye?
 17 **A. Philosophically, I would probably say yes.**
 18 Q. My questions of you may be very short then, and
 19 maybe I'll cut right to the chase because I think I know where
 20 you're coming from. I may be wrong, but I might be able to
 21 speed this up greatly.
 22 **A. Okay.**
 23 Q. In this case, the Defendant stands indicted for
 24 capital murder; murder in the course of a burglary, murder in
 25 the course of a robbery, double homicide.

- 1 **A. Uh-huh.**
 2 Q. Two people having been murdered, okay? For sake of
 3 these special issues, we'll assume that he's been found guilty
 4 of those three things, double -- three varieties of capital
 5 murder.
 6 **A. He's found guilty?**
 7 Q. Say it again.
 8 **A. You're saying you assume he's found guilty?**
 9 Q. Yeah, because, just like when Ms. Falco was asking
 10 you questions about those special issue --
 11 **A. Yes.**
 12 Q. -- to get to those special issues, to even talk
 13 about them, we assume somebody is found guilty?
 14 **A. Okay.**
 15 Q. He's pleading not guilty. We anticipate he'll be
 16 found not guilty of capital murder, but I've got to talk about
 17 these punishment issues --
 18 **A. Okay.**
 19 Q. -- now; do you understand that?
 20 **A. Yes.**
 21 Q. Because the Judge won't give me an opportunity
 22 later.
 23 **A. Right.**
 24 Q. But if you take the three varieties, the double
 25 homicide, burglary/homicide, robbery/homicide, when you look

- 1 at that special issue right there, probability, if you have
 2 found somebody guilty of that kind of crime, is that answer an
 3 automatic yes in your mind?
 4 **A. No.**
 5 Q. Tell me why.
 6 **A. The act of doing something doesn't mean necessarily**
 7 **that you're going to do it again.**
 8 Q. Okay.
 9 **A. I mean, again it's a -- comes back to the word**
 10 **"probability." And, you know, acts of violence, you know, and**
 11 **a continuing threat.**
 12 Q. There you go. And, of course, you probably remember
 13 yesterday, this has got to be -- up here should be beyond a
 14 reasonable doubt?
 15 **A. Yes.**
 16 Q. Okay. Now, it's not "might," it's not "could." It
 17 is "would," defendant would commit. Is that will commit,
 18 would, will, I don't know? Some people say that means will,
 19 but the wording is would. Would commit criminal acts of
 20 violence that would constitute a continuing threat to society.
 21 Before -- we know only one of two things can happen; life or
 22 death, right? So we know society means prison society. A
 23 jury has to be able to recognize that, and anything else they
 24 could or -- may or may not have to. You know, logically I
 25 would argue it can't mean anything but the penitentiary

1 because we're talking about life or death. That's it.
 2 And I disagree with Ms. Falco. She says -- well,
 3 she made the statement, does that question -- I want to ask
 4 you this. We're going to disagree on things from time to
 5 time. She asked you, that question could mean would you let
 6 him date your daughter? Okay. Now, knowing what capital
 7 murder is, knowing that it's an intentional murder in the
 8 course of one of those bad, bad things, do you really think
 9 the Legislature was framing that question in terms of, you
 10 know, do we decide how to set his punishment based on whether
 11 or not you'd let him date your daughter? Do you think that's
 12 really the intent of that question?

13 A. No.

14 Q. Okay, all right. I didn't think so, but I had to
 15 ask. Because that would be absolutely ridiculous, wouldn't
 16 you agree?

17 A. Yeah.

18 Q. You found somebody guilty of murder plus, and the
 19 jury decides, well, would he date our daughter? No, that's
 20 beyond insane.

21 But what that question means, maybe -- well, at
 22 least we know it means this: As far as the society being a
 23 definition of prison -- well, let me go about it this way.
 24 Obviously, the Legislature recognizes that if somebody's been
 25 found guilty of capital murder, and the jury -- let's say the

1 jury does say, yes, we find beyond a reasonable doubt there's
 2 a probability that the Defendant would commit acts, plural, of
 3 violence constituting a continuing threat, there's still no
 4 automatic death sentence because we still have that third
 5 special issue so we logically contemplate people who have been
 6 found guilty and aren't going to be a future danger don't get
 7 the death sentence, so they must be talking about --
 8 obviously, we know they're going to prison, and they've
 9 obviously thought about these people in a prison society.

10 Would it be important to you to understand how a
 11 penitentiary works in answering that question as far as future
 12 dangerousness goes, controls?

13 A. No.

14 Q. Tell me why.

15 A. **Whether a person is dangerous or not, whether you
 16 have them locked in a steel cage, you know, or handcuffed or,
 17 you know, physically controlled doesn't lessen the fact
 18 that -- whether they're a danger or not a danger. They could
 19 be a danger to other inmates, to prison guards, to prison
 20 doctors. I mean, you know, there's --**

21 Q. What makes a person dangerous, do you think?

22 A. **What makes a person dangerous?**

23 Q. Let me ask you this: Have you ever known any
 24 alcoholics?

25 A. Yes.

1 Q. Have you ever known maybe alcoholics who had a
 2 problem with driving while intoxicated, you know, drove drunk
 3 or something like that?

4 A. **I can't say that was a problem, no.**

5 Q. Okay. Have you known alcoholics that didn't drive,
 6 or didn't drive drunk, I guess?

7 A. **My aunt, I found later on, was actually married to
 8 somebody who was an alcoholic. I didn't -- and that was --
 9 they lived back in Indiana, and that's been five years ago.
 10 I've lived in Texas for 20 years. So, I mean, I knew he was
 11 an alcoholic after the fact, but I didn't necessarily know
 12 anything as far as, you know, what the circumstances that
 13 revolved around this problem was.**

14 Q. Sometimes -- I mean, you probably recognize
 15 alcoholism is a disease, an addiction, a sickness of some
 16 sort. And DWI -- you know, drunk drivers are a problem -- big
 17 problem in this State and a lot of other states.

18 A. Sure.

19 Q. Depending on how many times you commit DWI, you can
 20 end up going to the penitentiary for it?

21 A. Uh-huh.

22 Q. Sometimes we have to put alcoholics in the
 23 penitentiary so they don't drive drunk, make sense?

24 A. Okay.

25 Q. What do you think about that concept?

1 A. **I think it would be unfortunate that somebody who
 2 has that kind of a problem, you know, could carry it to that
 3 extent without getting help.**

4 Q. Yeah. Well, that's part of the problem. When
 5 you're sick, sometimes you can't get help because you're
 6 not -- you don't have the insight to get it. A lot of denial,
 7 a lot of --

8 A. **But if it -- I would say if it goes to the point
 9 where you're being put in the pen, it's just like you say,
 10 it's not once, it's not twice, you know, I'm not sure it's
 11 three times.**

12 Q. Oh, yeah, it's three.

13 A. Okay.

14 Q. It's three here in Texas.

15 And I'm not saying we wait -- you know, wait until
 16 it gets to three. I know judges that will put people in --
 17 not the penitentiary, but the county jail on their second
 18 time.

19 A. Right.

20 Q. And sometimes I hear judges every day say, you know,
 21 I'm sorry but if you're in jail I know you're not going to
 22 kill somebody. You're not going to cross the center stripe.
 23 I told you to get help last time, you didn't get it, you
 24 started to go to AA, but stopped.

25 But anyhow, you recognize that the penitentiary can

- 1 be a place where we can at least control behavior?
- 2 **A. Sure.**
- 3 Q. Okay. Some people who are involved in drugs, for
4 whatever reason, lack of what it takes inside to get off them,
5 can't kick the addiction, for all sorts of reasons, sometimes
6 to keep people away from drugs we'll put them in the
7 penitentiary; keep them from doing them, keep them from
8 selling them, keep them from buying them. Do you see where
9 I'm going?
- 10 **A. That's one recourse, yeah.**
- 11 Q. What do you think are any other recourse with drugs?
- 12 **A. Certainly, you know, controlled, medical facility
13 would be one option.**
- 14 Q. Like in-patient rehabilitation?
- 15 **A. That would be -- yeah. There's even stricter
16 facilities than that.**
- 17 Q. Tell me --
- 18 **A. I had a cousin that was actually --**
- 19 Q. Like, Synacor, you're talking about?
- 20 **A. Actually in Indiana there's a state hospital.**
- 21 Q. Okay, yeah, a state hospital.
- 22 **A. They put them in the state hospital, and it's --
23 while it's not a prison, it's very tightly controlled.**
- 24 Q. Yeah. We have such a thing here, but you,
25 generally, have to be seriously, mentally ill, and then the

- 1 drug addiction almost has to be kind of a side issue. But
2 we're not -- in Texas we're not that advanced on that yet.
3 Maybe we will be some day.
- 4 Do you recognize that the penitentiary can be a way
5 to take dangerous risk factors on a person's life out of the
6 equation?
- 7 **A. I would agree that you could take -- you know, you
8 can control, certainly, the outside influences.**
- 9 Q. Okay. For maybe folks of less than strong
10 character, folks out there who are susceptible, either through
11 their own fault or upbringing or lack of education, or for
12 whatever reason, are just susceptible to get into those
13 situations, narcotics, alcohol, personal relationships that
14 are negative, negative peer groups, all that kind of thing,
15 and they end up getting themselves in situations. If those
16 are the things that can attribute to a dangerous person, if we
17 take those factors away and negate that side of the equation,
18 do you see how the penitentiary can maybe be a very effective
19 tool in reducing those risk factors for dangerousness?
- 20 For example, narcotics. You probably know that if
21 anybody in this room maybe were dressed a little bit
22 differently, we could have drugs in our hands within an hour
23 of this building. I'm sure you could.
- 24 **A. Sure.**
- 25 Q. Wouldn't take much.

- 1 **A. Right.**
- 2 Q. But obviously, in the penitentiary the availability
3 of narcotics is not a factor like on the outside. There may
4 be -- you know, you've got the occasional dirty guard that
5 might sneak it in or somebody like that, but --
- 6 **A. I would agree that it's -- the individual would
7 certainly have to make a more concerted effort probably,
8 but --**
- 9 Q. Certainly not on the quantity and frequency that a
10 drug addict could living in Dallas or McKinney or Plano or
11 anybody else could get.
- 12 **A. But I would also agree, like you say, I don't think
13 it -- I mean, I've never been in the penitentiary. I've never
14 known anybody that worked in the penitentiary. But, again,
15 just from what you see on the media, you know that it does
16 exist. And, you know, you also know that -- you know, again,
17 it's a decision that an individual would have to make, because
18 I'm in the penitentiary doesn't mean necessarily that I'm
19 healed.**
- 20 Q. Absolutely.
- 21 **A. I'm not -- while it may be harder, it is an
22 individual's decision he's got to make, you know, I'm not
23 going to do this.**
- 24 Q. Right. You bet, you bet.
- 25 And sometimes people need help making their

- 1 decisions. Some people in the free world, when given the
2 absolute free reign to make choices, make some pretty bad
3 ones, agree?
- 4 **A. Sure.**
- 5 Q. In the penitentiary, you may get some help on how
6 you make decisions. There may be more immediate consequences
7 of your actions or loss of liberties or privileges and all
8 sorts of things like that, and maybe a progressive --
9 progressive sanction of responsibility. Do you know what I'm
10 saying?
- 11 **A. There's -- it's a definite cause and effect.**
- 12 Q. You bet. Overall, do you think the penitentiaries
13 do a pretty good job?
- 14 **A. Pretty good job?**
- 15 Q. What are they there for? They're there to house
16 people, correct? Punish people, house them, keep them out of
17 society. We got about 150 thousand people in the penitentiary
18 in Texas. What are your thoughts of prison? I guess I should
19 have started off with that. In general, what kind of
20 thoughts do you have about the Texas penitentiary system?
- 21 **A. It's overcrowded.**
- 22 Q. Okay.
- 23 **A. Prison in general -- I mean, I spent ten months in
24 Turkey confined to a mountaintop.**
- 25 Q. Who was your MOS?

- 1 A. 33 Sierra.
- 2 Q. I'm sorry?
- 3 A. 33 Sierra. It was electronic warfare subsystems.
- 4 Q. I'm sorry.
- 5 A. It wasn't prison, but it was certainly very
- 6 controlled. I'm sure prison is -- it's certainly, given the
- 7 choice to not be in prison, I can't think of any reason why
- 8 anybody would choose to go to prison.
- 9 Q. Yeah, I don't want to go. You and I don't want to
- 10 go.
- 11 A. I'm sure it's not pleasant. It could be worse.
- 12 Q. Yeah.
- 13 A. I mean, I've been outside the United States, and
- 14 I've seen Turkish prisons.
- 15 Q. I've seen Okanawa prisons.
- 16 A. And I know what the conditions are there.
- 17 Q. Especially when you're presumed guilty until proven
- 18 innocent?
- 19 A. Yes.
- 20 Q. They have a whole different spin on those kinds of
- 21 things.
- 22 A. Yes.
- 23 Q. What do you think that you would bring into the jury
- 24 room? What personal attributes do you have that you think are
- 25 important that you can offer being a juror in this case?

- 1 A. I'm strong-willed. I tend to form my own opinion.
- 2 Q. Okay.
- 3 A. And I will say that part of being an engineer, you
- 4 have to be able to, you know, take a given set of requirements
- 5 or, you know, facts and develop something.
- 6 Q. You got a Bachelor of Science in Computer Science,
- 7 correct?
- 8 A. That's correct.
- 9 Q. BSE.
- 10 A. So once I make up my mind, I'm not going to say that
- 11 I can't be swayed, but I tend to make up my own mind, and once
- 12 I make it up, you know, I tend to stay that way. Not to say
- 13 that if somebody can really argue their case and show me the
- 14 error in my thinking then, you know, I will back down. But
- 15 I'd say, in general, that's not your typical engineer. Most
- 16 engineers tend to argue their viewpoint very strongly.
- 17 Q. So you're saying as a positive attribute, you are
- 18 not a typical engineer?
- 19 A. I would say that -- I wouldn't say I'm a nontypical
- 20 engineer. What I'm saying is, most engineers are able to,
- 21 number one, listen very good.
- 22 Q. Can you do that?
- 23 A. Yes.
- 24 Q. Okay.
- 25 A. Because you have to be able to develop a set of

- 1 requirements; what's a product need to do. You know, from
- 2 that standpoint, I -- you know, I think I listen well. Like I
- 3 said, I think I tend to base my decisions based on, you know,
- 4 I could make a decision based on what is presented, not what
- 5 somebody else thinks. You know, not necessarily on what --
- 6 you know, what one of the other jurors think.
- 7 Q. That's the neat thing about the jury system because
- 8 all 12 jurors pick up on different things, and in talking with
- 9 jurors I have found that there's actually very little of -- it
- 10 doesn't get too fractionalized back there.
- 11 A. It's an interesting process --
- 12 Q. People start realizing that. Now, theoretically
- 13 you've got 12 people from 12 different backgrounds and 12
- 14 different walks of life, and an untold, you know, hundreds of
- 15 years, between the 12, of collective experience.
- 16 A. Sure.
- 17 Q. It really works great. That may not work in a lot
- 18 of business applications, although maybe it does in the
- 19 boardroom, I guess. But I don't think there's -- I don't
- 20 think you have too much to worry about that way because you'd
- 21 be surprised how much jurors want to listen to other jurors,
- 22 and most jurors don't have their minds made up until they've
- 23 really talked about it back there.
- 24 A. I think people form their opinions.
- 25 Q. Oh, yeah.

- 1 A. Certainly I think when -- after we've heard the
- 2 evidence, I think, you know, people will -- are going to be
- 3 swayed one way or another.
- 4 Q. You would hope so.
- 5 A. And then when -- and then when the jury is, you
- 6 know, took out, then certainly it's -- you know, people are
- 7 obviously -- are going to want to hear what everybody else is
- 8 thinking. And the one case that I did sit on, and what I seen
- 9 was different people tend to relate different things about the
- 10 case in their own life experience.
- 11 Q. Right. Is that a good thing, you think?
- 12 A. That's human nature. It's -- you know, if -- if you
- 13 had no sense of taste, you know, I'd have a hard time -- you'd
- 14 have a hard time relating what does sugar taste like versus
- 15 what does a lemon taste like? So I tend to think that humans,
- 16 in general, try to relate things to their own experiences.
- 17 Q. You've got two kids; Elysia and Trevor?
- 18 A. Yes.
- 19 Q. Am I pronouncing her name correctly?
- 20 A. Elysia.
- 21 Q. Elysia, Elysia. E-L-Y-S-I-A. Pretty good kids?
- 22 A. Yes.
- 23 Q. You're married, correct?
- 24 A. Yes.
- 25 Q. Your wife live in the home?

- 1 A. Yes.
- 2 Q. Regular family unit?
- 3 A. Yes.
- 4 Q. What's your philosophy on raising kids?
- 5 A. **Parents should be involved. The more the parents**
- 6 **are involved, the better off the kids are.**
- 7 Q. Okay. Do you think you -- you try to set a good
- 8 example for both of them. Do you think that's important?
- 9 A. Yes.
- 10 Q. Why?
- 11 A. **Certainly teach them the value system; what's right**
- 12 **and what's wrong. Like I say, you try to set a good example.**
- 13 **What is a good example? What is good and what's bad?**
- 14 Q. Why is that important to you?
- 15 A. **Well, certainly you hope -- everybody's idea of what**
- 16 **you believe is right and what I believe is right, it's like**
- 17 **the word "probability," it can differ. I want my kids to have**
- 18 **my value system, rather than possibly your value system**
- 19 **because it may not be the same, not to say that yours is**
- 20 **better or worse than mine but -- you know, as a parent --**
- 21 Q. Let me go about it this way. Why do you want your
- 22 kids to have your value system? Don't compare it, but just
- 23 what about your philosophy and the way you live your life,
- 24 why -- why are you projecting that to them? It may be just so
- 25 obvious. Isn't that the way you want them to turn out? Don't

- 1 you want them to have the tools --
- 2 A. **Sure.**
- 3 Q. Talk to me about those lines.
- 4 A. **Well, I believe -- you know, I try to live my life**
- 5 **in what I believe is good and right.**
- 6 Q. Okay.
- 7 A. **And in that sense, I would like for them, you know,**
- 8 **to believe the same thing that I do and try to act the way**
- 9 **that I act.**
- 10 Q. Got you. That's important to you?
- 11 A. Yes.
- 12 Q. Okay. You wouldn't leave it to chance to not do
- 13 those things and just hope they turned out okay, right?
- 14 A. No.
- 15 Q. You wouldn't do that as a father --
- 16 A. No.
- 17 Q. And your wife wouldn't do that, I imagine?
- 18 A. No.
- 19 Q. Are you and your spouse pretty much in concert in
- 20 your philosophies about raising children?
- 21 A. Yes.
- 22 Q. Setting the example?
- 23 A. **(Nods head.)**
- 24 Q. Obviously, you don't do drugs. You never smoke pot
- 25 around your kids?

- 1 A. **Around my kids, no.**
- 2 Q. Even if you did, you wouldn't do that probably?
- 3 A. **No. (Laughter.)**
- 4 Q. There are people that do. People you wouldn't know,
- 5 because you don't run with those kind of people.
- 6 A. No.
- 7 Q. You're the only person that can answer this -- that
- 8 third special issue, where it talks about character and
- 9 background, and we've talked a little bit about some of these
- 10 mitigating issue areas, you know, youth, drugs, broken homes,
- 11 abuse, things of that nature. Would you give meaningful
- 12 consideration in that third special issue to background
- 13 issues?
- 14 A. **Such as the issues you were describing?**
- 15 Q. Yeah.
- 16 A. **In the case of murder -- I mean, you know, or**
- 17 **capital murder, I don't know that in my mind, I don't know**
- 18 **that, you know, coming from a broken home would weigh heavily**
- 19 **you know, against my decision as far as --**
- 20 Q. I can't ask you -- I'm not allowed to pin you down
- 21 specifically on each one. I'm just asking -- I have to be
- 22 able to -- I need to know the answer as to whether or not you
- 23 would give meaningful consideration to background?
- 24 A. **Depending on what, you know, the issue or item was,**
- 25 **I could give it consideration.**

- 1 Q. Okay. Because there's a difference -- our laws
- 2 recognize there's a difference between a juror who says I'll
- 3 listen, I'll listen to anything. Hopefully we'll weed those
- 4 people out because I guess they wouldn't be true to their
- 5 oaths, and then the law recognizes people that can give
- 6 meaningful consideration to those type of things. And you're
- 7 the only person that can answer that question, so that's why
- 8 I'm asking it.
- 9 A. **I can give meaningful consideration. You know, I**
- 10 **can listen to what's presented, and then try to consider, you**
- 11 **know, how that relates to, you know, the case. And again, it**
- 12 **depends on -- like you say, what it -- you know, what is the**
- 13 **mitigating circumstance? You know, what are we talking about?**
- 14 **Certainly different things are going to affect me, you know,**
- 15 **different ways, but I could certainly listen to and give, I**
- 16 **guess, meaningful consideration to it.**
- 17 Q. What does that term to you mean, "meaningful
- 18 consideration"?
- 19 A. **That you're going to take into account, you know,**
- 20 **how that affects, you know, an -- you know, an individual, and**
- 21 **then try to, you know, in relation to that, sufficient**
- 22 **mitigating circumstances to warrant -- you know, it's --**
- 23 **that's going to mean different things to different people. To**
- 24 **me, you know, in the case of capital murder, certainly the**
- 25 **word "sufficient mitigating circumstances," there's a lot of**

1 word games here. You have sufficient, probability, beyond a
2 reasonable doubt. I mean, you have what is sufficient?
3 Again, they leave this up to the jury. Sufficient for me is
4 maybe something different.

5 Q. Yeah. We know our law -- that question, the term
6 "sufficient," is not directly linked to the gravity of the
7 crime.

8 A. Right.

9 Q. We're what we call a non-weighing state. Because if
10 you think about it, it would be a meaningless question. There
11 would never be any --

12 A. Right.

13 Q. You know, if it was to undue, so to speak --

14 A. Right.

15 Q. -- it would be a big, old waste of time, because
16 there never would be anything.

17 A. Right.

18 Q. Is it sufficient for life, rather than death.

19 Let me ask you a question.

20 A. Uh-huh.

21 Q. If you were sitting where I was, okay, and you got
22 charged with defending somebody's life maybe. My job, one, I
23 don't believe he's going to be found guilty, but that's the
24 purpose of this individual voir dire. I've got to talk to you
25 in terms of he is, which is awkward for me, trust me, but I've

1 decision but to find the Defendant guilty, if the evidence is
2 presented, then I will, you know, find him guilty. But
3 again --

4 Q. Right.

5 A. -- only if the evidence is presented.

6 Q. I got you. And I think I understand what you're
7 saying. But if you were sitting here would I want you on the
8 jury, I think I understand what you're saying for the
9 guilt-innocence phase, and I hope you would answer it that
10 way, you know. The State would agree with me. They would
11 hope you would answer it that way, too; that you hold them to
12 their burden, if they prove it beyond a reasonable doubt,
13 I'll tell you the Judge will instruct you to find them guilty.
14 If they don't, the Judge will instruct you to find them not
15 guilty and acquit them.

16 Okay. We're okay on that part. The second part,
17 punishment, you're sitting here. Do you want you on this
18 jury?

19 A. It's a hard question to answer not knowing any of
20 the facts in the case.

21 Q. Well, you shouldn't have to know the facts of the
22 case to answer that question. I'm not jousting with you, but
23 think about it. Just knowing the kind of person you are,
24 would you want -- you're sitting here. Would you want you on
25 the jury?

1 got to do it.

2 A. Sure.

3 Q. If you were sitting where I am and knowing -- this
4 is probably my last question to you, or one of my last
5 questions. Probably my most important question. If you were
6 sitting here, would you want you on the jury?

7 A. I have a hard time answering that in (sic) the
8 standpoint that I want somebody that's going to -- your job
9 is -- as the Defense counsel is to make sure that your client
10 is found not guilty. From that standpoint, you're going to do
11 everything in your power, you know, to make sure that that's
12 the verdict render? Along those lines, hopefully you want
13 everybody to listen to the evidence presented, you know, and
14 arrive, you know, at a decision based upon the evidence. From
15 that standpoint, yes, I will listen to the evidence presented,
16 and I'm not going to make up my mind one way or another, you
17 know, whether he's guilty or not guilty, you know, or anything
18 else. I want to make up my mind based upon what's presented
19 in the court.

20 Q. Okay.

21 A. So from that standpoint, yes.

22 Q. Okay.

23 A. From the standpoint that your ultimate goal is to
24 get your Defendant a not guilty verdict, no. Because if the
25 evidence is presented such that, you know, I have no other

1 A. From a punishment standpoint, no, because I could --
2 take the worst-case scenario from your standpoint, your
3 Defendant is found guilty. You know, if I was in your shoes,
4 then I would look, you know, to try to find jurors that I
5 thought would probably lean toward a life sentence versus a
6 death penalty. You know --

7 Q. Well, I'm probably never going to get those jurors,
8 number one, because the jury all has to be able to give a
9 death sentence, so...

10 A. But I -- I feel I'm reasonable. I'll say that.
11 From that standpoint, yes. I'll take into consideration
12 everything that I hear, and that's the best I can do.

13 Q. Okay. Right before you said it, you said you felt
14 reasonable or unreasonable?

15 A. No. I'm reasonable.

16 Q. Oh, you're reasonable, okay.

17 A. Yes.

18 Q. I think Ms. Falco talked to you briefly about
19 conversion experiences in jail.

20 A. Uh-huh.

21 Q. And I think you're pretty mainstream in that regard.
22 You'd be skeptical of such a thing. Do you think people often
23 turn to God at the worst -- well, let me ask you this. What's
24 the best professional moment you've ever had, work-wise,
25 career-wise?

- 1 A. **Probably being asked to come back in and save a**
 2 **project.**
 3 Q. And save a project?
 4 A. **Yes.**
 5 Q. Did you do it?
 6 A. **Yes.**
 7 Q. Felt good?
 8 A. **Sure.**
 9 Q. Monetary?
 10 A. **Yeah.**
 11 Q. Probably got paid well for it?
 12 A. **Yeah.**
 13 Q. Rewarded?
 14 A. **Yeah.**
 15 Q. Did you go to church immediately afterwards and
 16 thank God for that?
 17 A. **No.**
 18 Q. Okay. I'm not being nasty with you. I don't,
 19 either, you know. Think about -- I'm not going to ask you to
 20 say what this was. Think about the darkest, gloomiest, worst
 21 day of your life, whatever that may be, some -- child very,
 22 very sick. It could be a million things for a million
 23 different people. I wouldn't dare ask you what it was, but
 24 you got something in mind?
 25 A. **Sure.**

- 1 Q. Did you do some praying?
 2 A. **Sure.**
 3 Q. Okay. See the point I'm trying to get at?
 4 A. **(Nods head.)**
 5 Q. It is skeptical, but it is -- it's maybe not
 6 unChristian-like?
 7 A. **No. It's human nature.**
 8 Q. Human nature. Some people, you know, it's a hotly
 9 debated thing when you throw religion in the mix.
 10 A. **Sure.**
 11 Q. But sometimes that can be a good thing, even if the
 12 jailhouse was the impetus in bringing it about. Would you
 13 agree with me?
 14 A. **Sure.**
 15 **(Brief pause in proceedings.)**
 16 Q. Okay. I was just conferring with my partner.
 17 Do you -- there was one more quick question. You
 18 like fishing, too?
 19 A. **Yes.**
 20 Q. What do you fish; fresh water or salt water?
 21 A. **Bass.**
 22 Q. Bass.
 23 A. **Black Bass.**
 24 Q. Go to Fork?
 25 A. **Yes.**

- 1 Q. Stumpy lake, isn't it?
 2 A. **Tore up a couple of boats there.**
 3 Q. I don't have my own boat, but I used to -- do you
 4 know a guy named Bart Lee?
 5 A. **No.**
 6 Q. Were you ever in -- I forgot to ask you. You were
 7 never in the 49th Armored, were you, or anything like that?
 8 A. **I was in 303rd MI Battalion.**
 9 Q. Buddy of mine, he's a Command Sergeant Major, and
 10 Fork nut. And he had a boat and tends to drive a little fast,
 11 but he doesn't really know the lake, if you know what I mean.
 12 Tend to get hung up and things like that. Can be kind of
 13 embarrassing when you get hung up so bad you have to have
 14 people pulling you off stumps.
 15 Do you hunt, too?
 16 A. **I haven't hunted in probably the last five years,**
 17 **but I did --**
 18 Q. Bird hunt?
 19 A. **Bird hunter, deer hunting, rabbit hunting.**
 20 Q. The hour is late. I need to get you out of here.
 21 You got any questions for me --
 22 A. **No, sir.**
 23 Q. -- Mr. Davis, about anything?
 24 A. **No.**
 25 Q. Okay. I would -- my last comments to you are we

- 1 pry, we get personal. This normally doesn't happen on any
 2 other case. Whether you end up on this jury or not, I don't
 3 want you to go away with -- it's only this kind of case where,
 4 you know, you're a pro, and you know I got a job to do, and
 5 I've got to talk about a lot of things and a lot of
 6 personal -- life and death case potentially is different
 7 stuff. So if I've said or done anything, my apology. I thank
 8 you for your service, sir.
 9 THE COURT: All right. You may step down,
 10 sir, and perhaps we'll have you back in a minute or two.
 11 (Venireperson exits the courtroom.)
 12 THE COURT: What says the State?
 13 MS. FALCO: This juror is acceptable.
 14 MR. GOELLER: Need just a few moments, Judge.
 15 (Discussion off the record.)
 16 MR. GOELLER: Please the Court. Your Honor,
 17 I'd submit this juror for cause. It's our position that his
 18 overall -- when taking his voir dire examination, overall that
 19 this juror cannot give fair consideration to Special Issue
 20 Number 3. I think that was evident from Ms. Falco's
 21 examination when I asked him that question meaningful
 22 consideration, he hesitated, and he said, I guess it depends
 23 on what's meaningful. I know the record really doesn't show
 24 it, but he kind of gave a (snap), kind of, like, you know,
 25 what's meaningful? I don't know what kind of facial

1 expression you call it, but it was -- not mocking, but what is
2 that. His cheeks went up and just kind of shook his head a
3 little bit, which really concerned me. I don't think he's
4 going to give us a fair shot on Special Issue Number 3.
5 Basically he came back, I'll listen, you know, I'll listen.
6 So we'd submit him for cause in that regard, Judge.

7 THE COURT: All right. Challenge is denied.

8 MR. GOELLER: At this time, Judge, I'd ask for
9 an additional -- one additional peremptory strike on this
10 particular juror.

11 THE COURT: What says the State?

12 MS. FALCO: Just based on the grounds alone
13 that he stated, I don't think it's warranted just based on
14 what he stated alone, unless he can show why he should get an
15 additional peremptory at this time.

16 THE COURT: If I understand, what you've
17 articulated is that you didn't like his facial expression when
18 you asked him what a meaningful strike was -- or what
19 meaningful consideration was?

20 MR. GOELLER: Yeah. I took it as very negative
21 when he went meaningful, like he didn't know what that meant.
22 That's the way I took it. That's why I got scared of that
23 guy -- I was scared up to that point, but when he said that, I
24 think he was placating me. I don't think -- he's an engineer,
25 he's smart. You look at his sworn answers overall.

1 I mean, another reason why I want a peremptory
2 strike, I went through that self-defense with him probably
3 three times, and he still didn't get it. His best argument
4 against the death penalty is self-defense. But if I had a
5 strike in all -- I would -- I would use it against this
6 juror. This would have been the last juror I would have put
7 on this jury if I had a strike. I would have taken my worst
8 juror what -- the first 11, I would have never allowed this
9 guy on this panel.

10 He's against my theory of the case. He's against
11 life confinement. He's so opposite of everything, even the --
12 I don't think the State anticipated that -- our theory all
13 along has been that predatory type of killer, stalking the
14 unknown and killing them, that's far worse than the passion.
15 This guy is -- he'll answer Special Issue Number 1 against us,
16 if it's known. If you know the person. I would bet if I had
17 Gail under oath, she would -- that one threw her. She wasn't
18 expecting that answer. And this juror didn't even think of it
19 in terms of guilt-innocence, or I think Gail was just asking
20 him in general terms. And then he -- he point to her out
21 (sic) in fact, that's how I'd answer Special Issue Number 1.
22 He's more dangerous because of the known passion, killing
23 somebody you know, which doubly frightens me.

24 I've gotten every juror -- at least every juror that
25 I've seated that's death qualified has basically told me, I'd

1 see the distinction between the unknown, the stalker, picking
2 an innocent victim, and I can understand how maybe that's
3 different from the passion crime, or the person you know. I
4 don't got a shot with this guy. This guy is against
5 everything I would try to put forth for my client in this case
6 if he's found guilty on punishment.

7 So I'm not -- I'm not asking for this -- and then
8 going on in his questionnaire, didn't fill in a lot of blanks,
9 very short, succinct, very good friends -- two friends that
10 were cops. If I had a strike, Judge, I swear to you I would
11 have burned it so long ago on him, and that's no bull. I
12 don't want this as the 12th juror, and that's why I'm begging
13 the Court for the strike.

14 THE COURT: All right. I'll give it to you.
15 You want to strike Camden Davis?

16 MR. GOELLER: Yes, Your Honor.

17 THE COURT: All right. Then Camden Davis -- I
18 will give the Defendant another strike, and Camden Davis,
19 would you tell him that we thank him for his service and that
20 he is finally excused.

21 THE BAILIFF: Yes, Your Honor.

22 THE COURT: I think we're probably going to
23 start trial of this case October 3rd, but I could be wrong.

24 Both sides are excused.

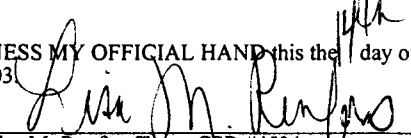
25 (End of Volume 28.)

1 REPORTER'S CERTIFICATE
2 THE STATE OF TEXAS *
3 COUNTY OF COLLIN *
4

5 I, Lisa M. Renfro, Official Court Reporter in and
6 for the 380th District Court of Collin County, State of Texas,
7 do hereby certify that the above and foregoing contains a true
8 and correct transcription of all portions of evidence and
9 other proceedings requested in writing by counsel for the
10 parties to be included in this volume of the Reporter's
11 Record, in the above-styled and -numbered cause, all of which
12 occurred in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits, if any,
15 offered by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is contained in
18 Volume 53, and was paid by Collin County.

19 WITNESS MY OFFICIAL HAND this the 1 day of
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