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

VOLUME 29 OF 53

Trial Court Cause No. 380-80047-01

THE STATE OF TEXAS * IN THE 380TH DISTRICT COURT

*
*
*

V.

IVAN ABNER CANTU * OF COLLIN COUNTY, TEXAS

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VOLUME 29 - VOIR DIRE
CAPITAL MURDER JURY TRIAL

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On the 26th day of September, 2001, from 9:00 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.

LISA M. RENFRO, Texas CSR #4534
Official Court Reporter - 380th Judicial District Court
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FILED

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1 PROCEEDINGS
 2 THE COURT: All right. Then let's ask Donna
 3 Ammeter, Number 131, to step in.
 4 For the record, the Defendant and his attorneys and
 5 the attorneys for the State are present.
 6 (Venireperson enters the courtroom.)
 7 THE COURT: Good morning. How are you? Are
 8 you Donna Ammeter?
 9 VENIREPERSON: Yes, I am.
 10 THE COURT: I want to welcome you back to the
 11 court. Perhaps you recall a little over a month ago when all
 12 200 jurors were assembled, I swore everybody in, and the oath
 13 was to give truthful answers to the questions propounded by
 14 the attorneys on both sides. Do you recall?
 15 VENIREPERSON: Yes.
 16 THE COURT: And I just want to advise you
 17 you're still subject to that oath.
 18 VENIREPERSON: Okay.
 19 THE COURT: Have a seat right here.
 20 VENIREPERSON: Okay.
 21 THE COURT: Where are you from?
 22 VENIREPERSON: McKinney. Graduated high school
 23 with Kay Wood and Janice.
 24 MR. SCHULTZ: Are we ready, Judge?
 25 THE COURT: Yes.

1 CHRONOLOGICAL INDEX
 2 September 26, 2001
 Voir Dire
 3 Volume 29
 4 VENIREPERSONS
 Name/Examination By: STATE DEFENSE PAGE V.
 5
 6 AMMETER, DONNA 5 7 28
 State's Challenge for Cause granted 10
 7 BIGGS, MONTRA 11 51 28
 Juror Number 12 seated 97
 8
 9 PRESTEMON, MILES 99 121 28
 Defendant's additional peremptory challenge 136
 10 HUNTER, PAMELA 28
 Excused by Agreement 138
 11
 12 REEDER, JANET 140 147 28
 Defendant's Challenge for Cause granted 153
 13 LAMEL, JANICE 154 181 28
 State's Peremptory Challenge granted 181
 14
 15 STARK, CHERYL 28
 Excused by Agreement 183
 16 BUTZ, REGINA 184 214 28
 Defendant's Challenge for Cause granted 225
 17
 18 BECKMAN, DEBORAH 227 28
 Defendant's Challenge for Cause granted 243
 19 MCANALLY, CHARLES 28
 Excused by Agreement 244
 20
 21 PAGE
 22 Reporter's Certificate 246
 23 End of Volume 29.
 24
 25

1 DIRECT QUESTIONS
 2 BY MR. SCHULTZ:
 3 Q. How are you doing?
 4 A. Fine.
 5 Q. My name is Bill Schultz. I'm one of the prosecutors
 6 in this case. Another prosecutor, Ms. Gail Falco, is just
 7 outside getting us some more towels for our water spill, and
 8 you remember Ms. Lowry from a couple of days ago. She spoke
 9 with the jury as a whole.
 10 At the Defense table is the Defendant, Ivan Cantu,
 11 and then there's Don and Matt over there. That would be Don
 12 High and Matt Goeller. Those are the attorneys representing
 13 the Defendant, and they are very fine, board certified
 14 criminal law specialists practicing in Plano, Texas. Do you
 15 know any of us?
 16 A. No.
 17 Q. Now, I know you know some of the people, apparently,
 18 in the District Attorney's Office because of the remarks you
 19 made on your questionnaire.
 20 A. Uh-huh.
 21 Q. And those remarks are your business. You can say
 22 whatever you want to about it. We don't have a problem, and
 23 the issue is not whether I respect them or not. I do respect
 24 the opinions, but even if I didn't respect the assertions, the
 25 idea is whether you could be a fair juror under all the

1 circumstances.
 2 **A. All right.**
 3 Q. For starters, do you think you could be fair to the
 4 State in a criminal case?
 5 **A. Sure.**
 6 Q. The reason I say that is because, first of all, you
 7 have indicated on your questionnaire, it only deters the one
 8 sentenced to death. And your best argument in opposition,
 9 it's unfair to minorities, or people of color, inhumane at its
 10 best, and it's not a deterrent. But then you indicate,
 11 despite those pretty strong beliefs that you have, for
 12 example, that a death penalty is never administered fairly.
 13 Poor minorities receive death too often. Even with all that
 14 criticism, you could still do it under the proper set of
 15 circumstances. How could you do that?
 16 **A. I don't know.**
 17 Q. Well, we're going to find out. I mean, if you don't
 18 know, I don't know how any of us know.
 19 **A. Repeat your question then.**
 20 Q. If you have such a negative view of the death
 21 penalty in terms of how could you ever vote in such a way it
 22 could result?
 23 **A. I couldn't. I probably misunderstood your question**
 24 **the first time. I'm sorry.**
 25 Q. In other words, if you're on this jury, there's

1 nothing we can do that's ever going to get a death sentence
 2 vote from you; is that right?
 3 **A. Absolutely, I would not.**
 4 Q. Okay.
 5 **A. I will not.**
 6 MR. SCHULTZ: As long as I can have my time
 7 back, Judge, I think I can cut this pretty short. We'd
 8 challenge her for cause.
 9 THE COURT: All right. Do you want to ask any
 10 questions?
 11 MR. GOELLER: Maybe just a few.
 12 THE COURT: Okay. I tell you what, I'm going
 13 to ask you to pass her in about 15 minutes.
 14 MR. GOELLER: Yes, sir. I won't take that
 15 long.
 16 CROSS-QUESTIONS
 17 BY MR. GOELLER:
 18 Q. Good morning, ma'am.
 19 **A. Good morning.**
 20 Q. Is your last name pronounced Ammeter?
 21 **A. Ammeter.**
 22 Q. Ammeter. I'm sorry.
 23 **A. Uh-huh.**
 24 Q. Ms. Ammeter. Do you understand the -- you might
 25 recall from the big panel voir dire and the -- what we call

1 the mini-panel, or I guess that's what the court's call it --
 2 when we came in the courtroom here?
 3 **A. Uh-huh.**
 4 Q. The sentencing scheme, how it actually works, that
 5 you don't in effect -- or you don't actually vote life or
 6 death. You answer special issues, those two questions that
 7 are up there on those boards. Are your feelings that you
 8 could answer the special issues based on the evidence, which
 9 may or may not result in a death sentence, or would you --
 10 would you throw your answers to make sure you achieve the life
 11 sentence? Do you know what I'm trying to say?
 12 **A. I think so. I think you're asking me would I trip**
 13 **it up so that they would not get the death penalty --**
 14 Q. Yes.
 15 **A. -- where they would have to get a life sentence?**
 16 Q. Yes. You said it --
 17 **A. No.**
 18 Q. -- a lot better than me.
 19 **A. Well, I don't know. I just can't see myself being**
 20 **responsible for someone else's death, even if it's that way,**
 21 **even if it's death penalty. I don't think I would personally**
 22 **do it. That would be dishonest, but I don't -- I could**
 23 **probably convict someone of a capital crime, but I just don't**
 24 **think I could agree with the punishment of the death penalty,**
 25 **if that makes sense to you. I don't know if that's a**

1 possibility or not.
 2 Q. Sure. And our law allows for jurors who are against
 3 the death penalty to sit on a jury in a capital murder case,
 4 as long as their feelings would not substantially interfere
 5 with their duties as a juror. And essentially your duty as a
 6 juror would be to take an oath and answer all the questions
 7 posed to you on all the issues based on the evidence. Now,
 8 our law certainly recognizes that you may view the evidence
 9 differently because of your views against the death penalty,
 10 and that's okay. Just like the person who's very strongly in
 11 favor of the death penalty, that person will view the evidence
 12 differently as well. As long --
 13 **A. I don't think so. I think you just about view it**
 14 **either way. With me it doesn't matter guilty or not, I**
 15 **wouldn't go for the death penalty. I can see finding someone**
 16 **by that evidence, but the death penalty -- the punishment**
 17 **is -- to me is different than actually finding somebody guilty**
 18 **of the crime. You can look at things abjectly and make a**
 19 **determination of guilty or innocence, but you don't have to go**
 20 **for death penalty. That's a totally separate situation.**
 21 THE COURT: Ma'am, as I understand your
 22 testimony, then what you're saying is you simply wouldn't,
 23 under any circumstances, vote for the death penalty?
 24 VENIREPERSON: Absolutely.
 25 THE COURT: Regardless?

1 VENIREPERSON: I would not do it, no. I
 2 can't -- no. I would not do that.
 3 THE COURT: All right. You are finally
 4 excused.
 5 VENIREPERSON: Pardon?
 6 THE COURT: You are finally excused.
 7 VENIREPERSON: I'm excused?
 8 THE COURT: Yes, ma'am. All right.
 9 (Venireperson exits the courtroom.)
 10 MR. SCHULTZ: Just for record purposes, the
 11 challenge is granted, Judge?
 12 THE COURT: Yes. The challenge is granted.
 13 (Venireperson enters the courtroom.)
 14 THE COURT: Are you Montra Biggs?
 15 VENIREPERSON: Uh-huh.
 16 THE COURT: Perhaps you'll recall about a month
 17 ago when all 200 jurors were assembled, I administered an oath
 18 to everybody, and the oath was to give truthful answers to
 19 anything the Court might ask or anything the attorneys might
 20 ask. Do you recall that?
 21 VENIREPERSON: Uh-huh.
 22 THE COURT: And you took that oath, right?
 23 VENIREPERSON: Uh-huh.
 24 THE COURT: Then I just want to advise you that
 25 you're still subject to that oath.

1 VENIREPERSON: Okay.
 2 THE COURT: All right. Please be seated right
 3 here.
 4 All right, Mr. Schultz.
 5 MR. SCHULTZ: Thank you, Judge.
 6 DIRECT QUESTIONS
 7 BY MR. SCHULTZ:
 8 Q. Good morning, Ms. Biggs.
 9 A. **Good morning.**
 10 Q. My name is Bill Schultz. I'm one of the Assistant
 11 District Attorneys representing the State of Texas in its
 12 capital prosecution of Ivan Cantu. To my immediate left, your
 13 right, is Ms. Gail Falco, a chief felony prosecutor for one of
 14 our other district courts. Further down at the end of the
 15 table is Ms. Jami Grant. She's also a felony prosecutor, and
 16 you will recall that she spoke with you as a group a couple of
 17 days ago here in the courtroom.
 18 The Defendant, at the other table, is Mr. Ivan
 19 Cantu.
 20 THE DEFENDANT: Morning.
 21 Q. BY MR. SCHULTZ: Next to him is Mr. Don High, and
 22 then at your far right is Mr. Matt Goeller.
 23 MR. GOELLER: Morning, ma'am.
 24 Q. BY MR. SCHULTZ: Mr. High and Mr. Goeller are two
 25 very fine attorneys and fine men that are engaged in the

1 private practice of law in Plano, Texas. And I believe,
 2 Ms. Biggs, that you've indicated you don't know any of us that
 3 are at least at these two tables; is that correct?
 4 A. **That's right, I don't know.**
 5 Q. And if you have ever met us, the connection would
 6 probably be so remote that it wouldn't matter to you, because
 7 I don't remember you, and none of us seem to remember you, so
 8 it had to be something small.
 9 A. **No. I don't think I've ever seen or met any of**
 10 **you.**
 11 Q. Are you, by any chance, any relation to -- are you
 12 related to David Biggs?
 13 A. **No. I know a man named David Biggs. He used to**
 14 **have (inaudible). That's all.**
 15 Q. Good enough. Are you related to Trooper Biggs?
 16 A. **No.**
 17 Q. Or Trooper Diggs, are you related to him?
 18 (Laughter.)
 19 THE COURT: Me, neither.
 20 MR. SCHULTZ: Yes, sir.
 21 Q. BY MR. SCHULTZ: Now, when asked are you in favor of
 22 the death penalty, you indicated "yes," and many people say
 23 they wished we used another word, other than being in favor of
 24 the death penalty because they say that doesn't quite fit
 25 their feelings. They say it might be more accurate do you

1 support having a death penalty, or do you believe we should
 2 have a death penalty. They think that might hit a little
 3 closer to how they feel. But you indicated that yes, you do
 4 favor having a death penalty. You indicated that you believe
 5 it's the right thing to do in some capital murder cases. And
 6 then you also indicated, in a little blank that allows you to
 7 explain your answer if you wanted to, that you don't like it,
 8 but if it's called for. I believe I understand exactly what
 9 you're meaning by that, but I'd rather hear it from you.
 10 A. **I don't like it. I think -- I hate that we do that,**
 11 **but I don't know what else to do. Sometimes I think maybe we**
 12 **have to do that. But it's not that I like it. I don't want**
 13 **to -- but I think we have to do it sometimes.**
 14 Q. Okay. Well --
 15 A. **You can't say yes or no. I mean, I can't.**
 16 Q. Well, that's a good point because our law doesn't
 17 really say yes or no directly. I think our law says that some
 18 crimes, if proven beyond a reasonable doubt, will allow the
 19 jury to decide -- the people of the community to decide
 20 whether or not you get a death sentence, but it's not --
 21 there's never anything automatic. No part of this process is
 22 automatic with maybe one -- well, there are two exceptions
 23 where it is automatic. If you find a defendant not guilty,
 24 automatically that trial is over; the defendant walks out
 25 free. I guess that's automatic.

1 But that verdict would not be automatic because the
2 jury would have considered all the evidence, would have
3 weighed what the State presented and what the State didn't
4 present, would weigh any other evidence presented, if there
5 were any other evidence presented, and they decide. So I
6 guess, in a sense, there are some automatics, but those
7 automatics only occur after the jury has found something.

8 Another automatic occurs at the punishment phase
9 when we talk about that first question, that first special
10 issue on dangerousness. That's -- we'll get to it in a
11 minute, but that's the one that's down there on the floor.
12 Can you read it from where you are?

13 **A. (Nods head.)**

14 **Q.** That's the one that asks you to see whether or not a
15 defendant has a personality that would be a danger to society,
16 if allowed to be. And that's kind of the notion of the death
17 penalty. The death penalty doesn't allow that personality to
18 even be a threat out there to anybody, whether they're in
19 prison, whether they're out of prison, who they might be.

20 **A. (Nods head.)**

21 **Q.** But if that question is answered "no," it's
22 automatic, also. That's an automatic life sentence. But
23 other than that, there is an orderly process whereby the jury
24 considers evidence, and then the answers to the questions
25 given to the jury will determine what happens to the

1 defendant. Some people like that. They say it's a lot better
2 than just asking me to make findings about the evidence, feels
3 better to me than saying does this mean life or death.

4 And other people say, well, what's the difference,
5 because I already know how the system works. I already know
6 how the questions work, and I'm just playing games with myself
7 to say that I'm not deciding life or death because I really
8 am. Just different people might see it very differently. Do
9 you see yourself, if you're sitting on a capital murder jury
10 and you vote in a way that a death penalty has occurred, do
11 you see yourself as being as much a part of the ultimate
12 execution of the defendant as, for example, we the Prosecutors
13 that have actually decided to bring capital murder charges and
14 decided to seek a death penalty? Do you see yourself as much
15 involved in it as we are, if you're on the jury?

16 **A. I guess so.**

17 **Q.** And do you see yourself as much involved in the
18 process as the warden that actually takes the prisoner from
19 his cell down to the death chamber at the appointed time and
20 causes his execution? Is it fair to say that if we're all
21 part of the system, we're all in this together, and we've all
22 made that decision that's how we're going to pursue this
23 situation?

24 **A. I think so.**

25 **Q.** I say that, not as an apology, nor as a request for

1 an apology from anybody, but I think we have to -- I think all
2 of us, for our own consciences, have to be aware that we can't
3 just say I wasn't doing anything other than my little bit.
4 That's somebody else down the line that does it.

5 I kind of think of the Nazis, and I think about
6 loading all those poor people on trains and sending them away
7 to be executed. I don't know how the railroad man could say
8 all I was doing was working for the railroad. You know --
9 yeah, he didn't pull the levers, and he didn't fire the
10 machine guns, but he was part of the whole process kind of
11 deal.

12 **A. Uh-huh.**

13 **Q.** Do you agree with that, that you and I and the
14 executioner and everybody else, have responsibility for what
15 we do in this type of case?

16 **A. Yes.**

17 **Q.** Okay. And I take it seriously, and I know by your
18 answers and just by being here with you, you take it
19 seriously, and even though I'm a Prosecutor and an advocate
20 and certainly have one side because that's where I am, I still
21 live in this society. And I still -- I care as much about our
22 society and being right and being just as anybody else. I
23 just happen to do a different kind of work. Does that make
24 sense to you?

25 **A. Yes, it does.**

1 **Q.** Then let's examine it a little bit, and let's talk
2 because, of course, I want somebody that will be fair to the
3 State. I want somebody that will listen to the kind of
4 evidence I think will be presented by us, and I want somebody
5 that I can believe would say that our evidence matters, the
6 things that we think are important about this being a death
7 penalty case are things that the jury would say, yeah, that
8 really is important. I see his point, or I see her point.
9 That's what I want.

10 But I want something else, and it's kind of
11 interesting. I want somebody that's going to see the other
12 side of the coin, too, because I agree with you. I wish we
13 didn't have a death penalty. I wish we lived in a land where
14 we didn't need -- wouldn't it be nice instead of building
15 multimillion dollar prisons, we could build research hospitals
16 for children's diseases? Wouldn't that be a better land? But
17 we don't seem to be able to do that right now, and I don't
18 like it necessarily. I wish we didn't have to have it, but
19 sometimes we do have to have it, but I want to make sure it's
20 done right because this is our society, and that means you've
21 got to be fair to the Defendant, too. You've got to be able
22 to consider not just the things that are the State's side.
23 The things like being dangerous, things like lots of
24 misbehavior, but you've also got to consider any evidence that
25 the Defense offers, if it chooses to. They don't have to, and

1 you've got to listen.

2 When I finish with a witness, and I pass him over to
3 Mr. Goeller, I imagine Mr. Goeller would cross-examine that
4 witness. And you've got to listen to the question Mr. Goeller
5 asks, and you've got to listen to the answers he elicits on
6 cross-examination. Does that make sense?

7 A. Yes.

8 Q. When I get up and I argue my case, or Ms. Falco or
9 Ms. Lowry gets up and makes the final argument, you've got to
10 listen to what we have to say about what we think the evidence
11 shows, but you've also got to not tune the Defense out.
12 You've got to listen to what they have to say because they may
13 have something that's different to say about the same evidence
14 that you've heard.

15 As you sit right there, do you consider yourself to
16 be the kind of juror that would be fair both to the State and
17 the Defense?

18 A. I think so.

19 Q. And that doesn't mean that in ten trials you would
20 come out with five guilty and five not guilty. That
21 doesn't mean in ten punishment trials, you come out with
22 ten -- I'm sorry, with five death sentences and five life
23 sentences. What that means is that you will fairly consider
24 the evidence, in light of the law that the Judge will tell you
25 applies, and render what you believe to be the truest verdict

1 according to the evidence, and that you are the kind of person
2 that could go either way, either guilty or not guilty,
3 depending on the amount of evidence presented. And you could
4 go either way on those special issues; that is, vote in ways
5 that you know would cause a death sentence, or vote in ways
6 that you know would cause a life sentence. Even though you
7 might wish it were a different way, you can still make those
8 hard decisions and vote the evidence however that evidence
9 appears to be.

10 A. Uh-huh.

11 Q. Can you do that?

12 A. I think so.

13 Q. Okay. Well, let's talk about that a little bit. I
14 understand now why you say you don't like the death penalty.
15 I don't think most Americans do. We love life. We protect
16 underdogs. We do all sorts of things that are kind and
17 compassionate. We feed people that are too lazy to work for a
18 living. They can always eat in our society. We will take
19 care of them medically. We will take care of their children
20 medically, even though the reason maybe they don't do that
21 themselves may be because they don't want to work.

22 We give them tremendous liberties. We let them walk
23 around and say almost anything they want to say, even if it's
24 hurtful stuff. If somebody wants to get in downtown Dallas
25 and start talking about what a great thing it was that

1 happened in New York City and it should have been Chicago, and
2 Los Angeles and probably Dallas, too. Probably that person
3 can do that lawfully. It's an awful thing, but we let them do
4 it because it's a free society.

5 You know, no telling how much police time we use
6 when it's real cold weather to go find all the bums living
7 down on the street and get them into a shelter somehow. We do
8 that because we're a kind and caring people. And then
9 suddenly we pull you out of your homes and your churches and
10 your jobs, and say, please come along and let's do something
11 now by your verdict that's not natural for us because I'm
12 going to tell you the purpose of this trial is not to be kind
13 to the Defendant. I mean, that's not the purpose of this,
14 because if we were trying to be kind to him I guess maybe we'd
15 just let him go. Say, well, you know, head on out of here.
16 It's been nice knowing you. I guess that might be kind to the
17 Defendant. We're not going to do that. We're not going to do
18 that unless the jury finds him not guilty. That's not going
19 to happen.

20 And I suppose to be kind to the Defendant, since I'm
21 thinking he probably doesn't want to be executed. I don't
22 know; I've never talked with him about it. But I'll bet he
23 doesn't want to be executed; most people wouldn't. If we want
24 to be kind to the Defendant, we'd say, well, let's give you a
25 life sentence because you don't want to die. Are you with me

1 on that?

2 A. (Nods head.)

3 Q. We're not doing that. Our position is you need --
4 if we proved you're guilty beyond a reasonable doubt and
5 proved answers to those questions, you need to be executed for
6 what you've done. That's the State's position. And do you
7 understand that's what I'm saying that's kind of unnatural for
8 decent, loving, caring people that always worry about the
9 underdog? That's an unnatural thing for us to be doing. Do
10 you feel that way?

11 A. Yes.

12 You asked a question while ago, and I said
13 something -- you asked me if I know David Biggs.

14 Q. Uh-huh.

15 A. And I know David Biggs, the one at the wrecking yard
16 just a little bit. But I had forgot about -- my husband's
17 brother -- my husband is deceased. His brother's name was
18 David Timothy Biggs. I call him Tim B, but he's deceased,
19 too, and he never lived here, and I didn't think about him at
20 first, but I don't want you to think -- I mean, I don't have
21 any idea what Biggs -- David Biggs you're talking about.
22 Anyway, I just didn't want you to think I --

23 Q. I'm talking about the first one you talked about. If
24 you knew about my cars you'd understand why I know the
25 wrecking yard so well, so you'd understand.

1 **A. Okay.**
 2 **Q.** I think he used to have a card -- if I'm not
 3 mistaken, I think he used to have a card that said something
 4 like "junk yard dog," on it, also. I think his business
 5 card --
 6 **A. Yes.**
 7 **Q.** Didn't he call himself -- that was, like, his
 8 nickname, "I'm the junkyard dog."
 9 **A. It probably -- I used to live in Garland before I**
 10 **moved here, so that's how come I know that man.**
 11 **Q.** Okay. Good enough. That's fine, and it doesn't
 12 matter. Like I said, I've just been a customer of his for
 13 drive shafts and stuff like that.
 14 **MR. SCHULTZ:** Mr. High, you've been out there.
 15 **MR. HIGH:** Me, too.
 16 **MR. SCHULTZ:** It's old home week here.
 17 **A. Okay.**
 18 **Q.** BY MR. SCHULTZ: But do you follow what I'm saying?
 19 We really are in a death penalty case. That's not a
 20 natural -- we don't do that ordinarily in our society.
 21 Somebody shows up at a church, the church feeds them. You
 22 know, you're the same way. If somebody showed up at your
 23 doorstep, I can tell by talking with you, you'd find a little
 24 bit of food for somebody that showed up hungry at your door.
 25 That's how we are.

1 **A. Uh-huh.**
 2 **Q.** So why are we doing it? Why do we have capital
 3 punishment in our society, do you think?
 4 **A. One of the questions, I think, was is it a**
 5 **deterrent? To me that's the reason.**
 6 **Q.** Kind of the idea that if we --
 7 **A. Yeah. You're not going to -- maybe somebody won't**
 8 **do something if they think they get -- to me, that's the**
 9 **ultimate punishment.**
 10 **Q.** Okay. I will give ourselves a little bit of credit.
 11 The way we do executions is certainly very humane, don't you
 12 agree, if we're going to be doing executions the way we do it
 13 in Texas?
 14 **A. It's a what?**
 15 **Q.** The method of execution we use is a humane one,
 16 don't you think?
 17 **A. I think it's as good as it gets.**
 18 **Q.** Yeah. I mean, we don't shoot them or hang them or,
 19 you know, throw them out a plane and let them land. We don't
 20 do any of those kinds of gruesome things.
 21 Essentially we just put them to sleep, and I don't
 22 guess anybody knows if it's painful or not because they're not
 23 in a position to tell us, but we think it's not painful.
 24 **A. Uh-huh.**
 25 **Q.** Is that any comfort to you that we do it humanely;

1 stick a needle in the person's arm and --
 2 **A. I don't know a better way of doing it.**
 3 **Q.** Okay. And just so -- it's easy sometimes in our
 4 living rooms to be talking about the concept of killing
 5 somebody when we're not involved in it; do you know what I
 6 mean?
 7 **A. Uh-huh.**
 8 **Q.** It's a lot easier. Now we are involved. So just
 9 take a second, look at the Defendant. It's perfect -- just
 10 look at him for me for a second because he's the one we're
 11 talking about.
 12 **A. Uh-huh.**
 13 **Q.** And we propose to convince you that the only right
 14 answers are answers you know will result in his execution, and
 15 you're telling me if we do that, you can vote that way?
 16 **A. I'd try to do the best job I can. I would try to do**
 17 **like I feel like I should do.**
 18 **Q.** Does that mean that you are convinceable on that
 19 issue, even though it's not a natural thing for us?
 20 **A. (Nods head), I think so.**
 21 **Q.** All right. You've indicated that one of your big
 22 concerns about the death penalty is what if we get the wrong
 23 person?
 24 **A. Yeah. I guess that's the main concern.**
 25 **Q.** Sure.

1 **A. For anybody, I guess it would be.**
 2 **Q.** Sure. I know you've never studied it, and probably
 3 never wanted to even study it, but how often do you feel that
 4 actually happens, or do you feel it actually happens?
 5 **A. Probably very rarely. I guess I don't know if it**
 6 **ever happened, but I mean, you just want to make sure.**
 7 **Q.** Sure, sure. Then that tells me some things about
 8 you. One is that I know you'd be willing to spend however
 9 long this trial takes to make sure we do everything right?
 10 **A. (Nods head.)**
 11 **Q.** And I know you're the kind of person who would
 12 listen to all the defense lawyers. Some people get irritated
 13 at prosecutors. Some people get irritated at defense lawyers,
 14 and they say why are they keeping on with these questions, or
 15 why are they treating this witness this way or that way. This
 16 is an important case for both of us. I don't mean important,
 17 like, newsworthy. There may be some press coverage, but it's
 18 not a big press case. It's not like that.
 19 **But I don't even need to describe why it's important**
 20 **to the State, and why it's important to the Defendant, also.**
 21 **It really is. And I can just tell you're the kind of person**
 22 **that will sit there for hours listening to one of the lawyers,**
 23 **if that's what you've got to do, and just allow yourself to**
 24 **hear all the evidence and hear what everybody has got to say**
 25 **because that's the fairest thing that can occur. Are you that**

1 way?

2 **A. Yes.**

3 **Q.** Now, of course, a good jury would want to make sure
4 the evidence proved a defendant's guilty, at least beyond a
5 reasonable doubt?

6 **A. Uh-huh.**

7 **Q.** And some jurors have a -- they kind of express it
8 differently. They talk about beyond a shadow of a doubt or
9 beyond all doubt, or things like that. I don't quarrel with
10 that. What you call it doesn't matter, anyway. But the truth
11 of beyond a reasonable doubt is that's going to be a standard
12 that you'll have comfort with knowing you've done justice to
13 the Defendant, and I don't ever worry about a jury doing the
14 wrong thing on that in any case, and certainly not a death
15 penalty case. So, I don't care what you call it. You've got
16 to recognize that the true standard is beyond a reasonable
17 doubt, but, you know, what you think -- what you think enough
18 is for a guilty verdict, I just leave that up to you, as long
19 as it's at least beyond a reasonable doubt. Does that make
20 sense to you?

21 **A. Uh-huh.**

22 **Q.** I'm not going to split hairs with you. You'll know
23 it when you see it as a juror.

24 I think the first part of the trial is easier for
25 jurors than the second part, and the reason I think that is

1 because all you really have to decide is whether the State's
2 proven he's guilty beyond a reasonable doubt, and you don't
3 really have to worry, since it's not an automatic death
4 sentence, that verdict doesn't have a whole lot to do with
5 whether he ultimately gets a death sentence or a life sentence
6 because all you're doing is finding him guilty, and then you
7 proceed to consider what the sentence shall be. So, I think
8 it's a very unusual juror that has any real problem with the
9 first part of the trial. Does that seem to make sense to you?

10 **A. Yes.**

11 **Q.** You'll sit here and you'll listen to all of our
12 witnesses that we put on. You'll listen to any witness they
13 put on, if they choose to put witnesses on, and then you'll
14 put all the evidence on the scales of justice and measure and
15 make sure that we've produced sufficient evidence that you're
16 satisfied it's beyond a reasonable doubt, however you define
17 that term. And it's not a matter of who has the most
18 witnesses because I can boldly say right now I'm going to have
19 a lot more witnesses than they do. I just know that's how it
20 will work, but the number of witnesses doesn't make it
21 convincing evidence because I could call 20 liars, and that
22 would be 20 witnesses but they would be liars. That wouldn't
23 be any evidence at all. Do you see what I mean?

24 **A. Yes.**

25 **Q.** But no -- I don't think there's any problem from you

1 if we prove he's guilty of capital murder getting a guilty

2 verdict from you. That's not a problem, is it?

3 **A. No. I think -- they say it's two separate things;**
4 **guilty or not guilty.**

5 **Q.** Absolutely. Then we get to the punishment part of
6 the trial, and what evidence might you hear in the punishment
7 part of trial? Well, for starters, you get to consider all
8 the evidence you heard in the first part of the trial. And
9 most people on a jury say, you know, in many ways the most
10 important evidence I've heard in the whole case is what I
11 heard at the first part of the trial. That's -- when I see
12 what a person did and why that person did it, that probably
13 goes farther to answer those punishment questions than
14 anything else. It doesn't mean you have to think that way.
15 I'm just saying that's how people think. And the law even
16 allows the jury -- even if we didn't put on any more evidence
17 at the second part of the trial at all, the law allows the
18 jury to find someone needful of the death penalty by the
19 answers based solely upon the facts of the case. Do you see
20 how that could be?

21 The thing I always think about is that Oklahoma City
22 bombing case. I think of what that man did, how much he
23 planned it, how callous he was about all those innocent
24 people. I mean, okay, you're mad at the FBI, why do you kill
25 innocent file clerks and little babies in the child-care

1 center?

2 **A. Uh-huh.**

3 **Q.** I mean, he knew they would be there. He knew it
4 would make a big media splash, and that's the typical kind of
5 case where you'd say anybody who could do that has already --
6 when I get to it has already answered those questions in a way
7 that's going to result in a death sentence. In other words,
8 that evidence that is so compelling, anybody that could do it
9 is going to be dangerous, and anybody that could do it would
10 never be able to show me enough mitigating evidence to stop a
11 death sentence?

12 **A. They kind of pick the death sentence.**

13 **Q.** Huh?

14 **A. They kind of pick the death sentence.**

15 **Q.** Yeah. I mean, the conduct is so extreme that
16 probably I'll bet that jury in that case didn't have any
17 trouble.

18 **A. Uh-huh.**

19 **Q.** Why would they? I mean, they'd get same the kind of
20 questions we have here in Texas. The federal questions are
21 very similar, but they wouldn't have any trouble under all the
22 circumstances.

23 But other things of evidence that you might see
24 would be things like psychiatric evidence. Both sides could
25 bring in psychiatrists if we want to. We could hire five

1 psychiatrists to come in and say, I've considered the
2 evidence, I've considered the Defendant's background and
3 character and the crime, and in my opinion he's a dangerous
4 person. And the Defense could go hire five equally qualified
5 psychiatrists, and they'd come in and say just the opposite.
6 I respect the State's psychiatrists, but they're wrong this
7 time, and we're right. Does that seem like important evidence
8 to you, psychiatrist evidence, in a case like this?

9 **A. I guess it's important. I really don't know how it
10 works in the legal --**

11 **Q. Right.**

12 **A. I guess the Judge would have to explain that.**

13 **Q. Well, here's what I'm asking, because if you found
14 the Defendant guilty of capital murder beyond a reasonable
15 doubt, you'd come -- the first thing you'd be asked in the
16 punishment phase is to answer that question. Do you see that
17 one there, whether there's a probability --**

18 **A. Uh-huh.**

19 **Q. -- that the Defendant would commit criminal acts of
20 violence that would constitute a continuing threat to society?**

21 **A. Uh-huh.**

22 **Q. And a lot of times what people really say about that
23 is that it's a -- it's a personality issue. You're looking at
24 the Defendant's personality and looking at his character for
25 that very narrow thing of whether he would constitute a**

1 continuing threat to society. And they say, well,
2 personality, that might have something to do with
3 psychologists or psychiatrists or people that study the mind
4 or something like that. And I think that's how come a lot of
5 times psychiatrists even come into the mix.

6 **A. Uh-huh.**

7 **Q. Other people say, you know, that's the kind of stuff
8 I do every day of my life. I consider evidence about
9 somebody, and then I make judgments about whether I want to
10 interact with that person.**

11 **A. Uh-huh.**

12 **Q. Do you follow what I'm saying?**

13 **A. Yes.**

14 **Q. I mean, I'm thinking if somebody asks you out on a
15 date and maybe what you know about the person and what you've
16 observed about the person influences whether you think that's
17 somebody you want to be going out with or not. I mean, if
18 he's -- you know, he's -- if he's had a couple of wives or
19 girlfriends before, and you know he's beaten them up, you
20 probably don't need a psychologist to tell you that's probably
21 not the kind of person you want to be going out with because
22 it's liable to happen to you. Does that make sense to you?**

23 **A. (Nods head.)**

24 **Q. And so some people say, I don't need a psychiatrist
25 to teach me how to answer an ordinary question because I do**

1 that every day of my life. Every day I make decisions about
2 the future based upon what I know about the past and the
3 present. Do you see how that really is?

4 **A. Yes.**

5 **Q. Do you think you could answer that question yes or
6 no according to what evidence was presented?**

7 **A. After I hear the evidence, or the -- I'm sure you
8 probably -- both sides would probably present evidence, you
9 know --**

10 **Q. It might.**

11 **A. -- to convince us one way or the other on that.**

12 **Q. They might. Neither side has to put on any evidence
13 at all at the punishment phase. The State still has the
14 burden of proof, but if -- that's what I was saying about the
15 crime itself. It could very easily be that we would say,
16 Ladies and Gentlemen, all we want you to consider is the crime
17 itself and decide whether someone who would do such a thing is
18 going to be a probable danger in the future.**

19 **Defense could be the same way. They could say,
20 yeah, consider that evidence because we think it ought to be
21 "no." Does that make sense to you?**

22 **A. Yeah.**

23 **Q. Now, there will be other evidence presented, I'm
24 sure, by both sides. They don't have to; we don't have to,
25 but I bet we will; I'll bet they will.**

1 **A. Yeah.**

2 **Q. Let's talk about what a crime of violence is. Let's
3 think about that for a second. Do you think beating up wives
4 and girlfriends is a crime of violence?**

5 **A. Is a crime of violence?**

6 **Q. Uh-huh.**

7 **A. Yeah.**

8 **Q. And, of course, capital murder is a huge crime of
9 violence, and so we -- when we get to that question we already
10 know that person has committed a terribly heinous crime, a
11 capital murder, right?**

12 **A. That's in the second phase?**

13 **Q. We're at the second phase. You don't ever get
14 there -- if he's not guilty, we all go home. It's only if
15 he's guilty do you get to that question.**

16 **A. Yeah.**

17 **Q. So what you understand is that we know he's
18 committed a terrible crime of violence and that's capital
19 murder.**

20 **A. Uh-huh.**

21 **Q. Do you think it would be important to know about
22 other acts a person had done in answering that question?
23 Would that be something you want to know in deciding what -- I
24 want to know what he'd been like in the past in order to
25 figure out what he'll probably be like in the future? Is that**

1 important?

2 **A. I guess it would be important. I guess, first of**
3 **all, you've got to get the facts on the first case. I don't**
4 **know what it is, so I don't know what that consisted of, but**
5 **if it wasn't -- if you didn't know that many details, I guess**
6 **you'd want the past history more, or need the past history**
7 **more.**

8 Q. Let's talk about this for a second because that
9 question, there are two valid answers to that question and
10 that is yes or no.

11 **A. Uh-huh.**

12 Q. And our law says that to be a juror, a juror has to
13 be able to answer that question either yes or no depending on
14 the evidence. In other words, if you're somebody that says
15 I'll automatically answer that question no -- no matter what
16 the State proves, the answer would be no, you're not a
17 qualified juror because you couldn't answer yes.

18 **A. Uh-huh.**

19 Q. And the same thing is true, if you'd always answer
20 that question yes, then you couldn't be qualified because you
21 couldn't also say no. Do you think you could answer that
22 question no, depending on the evidence presented? No, a
23 person --

24 **A. I could answer it -- yes or no to either one,**
25 **depending on --**

1 Q. On the evidence?

2 **A. -- what I know about the -- what I've heard about**
3 **the case.**

4 Q. Okay, okay. Are you saying that there could be some
5 capital murders that you would look at and you would say, even
6 though I found the person guilty of a capital murder, my
7 answer to that question is still no? Could that happen?

8 **A. I think so. I guess -- I don't know -- I've never**
9 **known a person who did capital murder, so I guess I'd have to**
10 **wait and see, you know, the facts about it.**

11 Q. Well, do you realize --

12 **A. What did you say consists of capital murder? They**
13 **have to have two people or done some other kind of crime at**
14 **the same time?**

15 Q. Very good, very good, uh-huh. So my question to you
16 is if you found somebody did a capital murder --

17 **A. Uh-huh.**

18 Q. -- is your mind still free to answer that question
19 yes or no depending on what evidence you find in the case?

20 **A. I think so.**

21 Q. All right. Because sometimes -- sometimes maybe the
22 person wouldn't even be physically able to be a danger
23 anymore. Maybe the person got injured badly by the police.
24 In the arrest the police shot him pretty bad.

25 **A. Uh-huh.**

1 Q. If you're paralyzed from the nose down, you probably
2 can't -- you can't do anybody any harm; don't you agree?

3 **A. Uh-huh.**

4 Q. Except give them the evil eye, maybe. That's about
5 all you could do.

6 On the other hand, perhaps a person did a capital
7 murder, but they did it for a reason we understand, and their
8 heart was in the right place, it's just they violated the law
9 terribly. Do you see how I could --

10 **A. Yeah, that's what I'm thinking.**

11 Q. And so even though they're a capital murderer, you
12 really can't say that they're dangerous. It was just a
13 special circumstance.

14 **A. Uh-huh.**

15 Q. I'm thinking, suppose you lost -- suppose somebody
16 lost a very dear relative; a child, a husband, a wife up there
17 in New York City, and they catch the people that are
18 responsible. They bring Bin Laden over for a trial, and he's
19 being tried in New York or wherever. Don't you see how some
20 of the survivors of that, if they could get a clear shot at
21 him --

22 MR. HIGH: Excuse me, Judge, may we approach
23 the bench?

24 THE COURT: Yeah, sure.

25 (Discussion had sidebar.)

1 THE COURT: Ma'am, I'm going to ask you to
2 step down for just a few minutes, and we'll have you back in a
3 few moments.

4 Say, I want to tell you, there's, what, I guess a
5 couple of jurors in there. So, don't discuss with them
6 anything that you've been asked or anything that you've
7 answered.

8 VENIREPERSON: Okay.

9 THE COURT: All right.

10 (Venireperson exits the courtroom.)

11 THE COURT: All right.

12 MR. HIGH: Please the Court, now comes the
13 Defendant, Ivan Cantu, and objects to the last question or two
14 with respect to terrorist activity in New York City, and
15 specifically Osama Bin Laden.

16 As the Court knows, America was attacked on
17 September the 11th, 2001. It was a horrendous event, got
18 tremendous news coverage. We are on the brink of war, if
19 we're not already there, and we believe that any reference to
20 the terrorist activity, Osama Bin Laden, is unduly prejudicial
21 to our client, and it should not be mentioned, at least with
22 respect to this juror. We believe that it would possibly tie
23 any feelings -- any inherent feelings that a juror might have,
24 any feeling of retribution or response since they'd have an
25 opportunity to sit on a capital murder jury. It may come to

1 the top to our client's detriment.

2 And so we, therefore, object to any further
3 questioning with respect to the New York terrorist activity,
4 Osama Bin Laden, other terrorists, or what's going on
5 worldwide in that respect.

6 THE COURT: All right. I suppose you believe
7 it would be inflammatory -- potentially inflammatory?

8 MR. HIGH: That is our position.

9 THE COURT: All right. The objection is
10 sustained, and the State is advised not to go there. All
11 right. Let's bring the juror back in.

12 THE BAILIFF: Yes, Your Honor.

13 THE COURT: All right. Ms. Biggs, let's see
14 where we are. Mr. Schultz.

15 Q. BY MR. SCHULTZ: Let's say, for example, after the
16 Oklahoma City bombing and they captured McVeigh, you can
17 certainly understand how somebody would, perhaps, try to break
18 into where he was being held and kill him even and that could
19 be a capital murder? You can see how, like, a mom or sister,
20 someone like that --

21 A. I could see how someone could get -- I personally, I
22 don't think I'd do that, but I could see how someone could it.

23 Q. And, of course, it's always easy to say what we
24 wouldn't do until we're faced with it. We never know. You
25 know, none of us do. But what I'm saying is, we can't let

1 people do that, even McVeigh. You and I might say, you know,
2 the guy did society a service. Maybe we would think that. I
3 mean, we ended up killing him ourselves later on, that sort of
4 thing. But we can't have our citizens going out there and
5 making those judgments; don't you agree?

6 A. No, we can't.

7 Q. We can't do it. And so -- but if that's a capital
8 murder, you'd still perhaps say, look at this fellow. He's
9 always been a good man, he's lost somebody dear to him, and he
10 killed -- if it wasn't for that McVeigh situation, that
11 awful -- he'd just be going to his job and going to his church
12 and taking care of his family, doing all those -- you can see
13 how that would be some way you could answer that question, no,
14 he's not going to be dangerous anymore?

15 A. That's right.

16 Q. Okay, okay. And that's the kind of thinking that we
17 really expect -- expect of, I guess, our jurors.

18 If you answer that question "yes," then we get to
19 another question because if you answer that question "no,"
20 it's a life sentence. Do we have any problem getting you to
21 answer this question "yes" if we prove the answer is yes
22 beyond a reasonable doubt to you? Do we have any problem?

23 A. If it's yes, what did you say after yes?

24 Q. If we prove the answer to that question --

25 A. Is yes.

1 Q. -- should be yes beyond a reasonable doubt, you will
2 vote yes?

3 A. Yeah.

4 Q. Okay. Then we got this question. Take a moment to
5 read it because it's a little more -- it's different. I like
6 to call that question the take-one-more-look-at-the-evidence
7 question. You've considered the crime itself at the first
8 part of the trial, and you decided that the State had proved
9 the crime beyond a reasonable doubt and you voted guilty. You
10 certainly would have considered the crime on that first
11 question about a danger to society in the future. You would
12 have considered that as part of answering that question yes,
13 because only with a yes answer to that question do you have
14 that last question. We don't do that otherwise.

15 But that question really directs the jury to
16 consider all of the evidence one more time, not with a desire
17 to find out whether he's guilty. You've already done that and
18 you know that, not with the desire to find out whether he's
19 dangerous because you've already done that, but rather with a
20 desire to see whether taking all of the mitigating -- that
21 means like lessening circumstances -- taking all of the -- for
22 want of a better word, sympathetic factors in favor of the
23 Defendant into account whether those all together are enough
24 or sufficient to make a life sentence occur rather than a
25 death sentence. And I think that's sort of for the jury so

1 that the jury can leave and know that they didn't just
2 mechanically answer questions that would result in death, and
3 then go out feeling that that wasn't the right thing to do,
4 anyway. Does that make sense to you?

5 A. (Nods head.)

6 Q. It's not a question that just lets the jury avoid
7 what you already said is hard and that you don't like and that
8 is death penalty. It's not a question that says all -- if you
9 don't like the -- if you don't care for capital punishment,
10 you vote life. It doesn't say if you -- if you got some
11 sympathy for the Defendant, vote life. It doesn't say any of
12 those things. It says if you find sufficient mitigating
13 evidence, vote life. Does that make sense to you?

14 A. I think so.

15 Q. Now, everybody, you and me included, has what I
16 would call mitigating evidence; things that didn't go right
17 for us growing up, things that haven't gone right for us as
18 adults. For some of us, it's bigger than others. I mean, I
19 don't know how you grew up. You don't know how I grew up.
20 I'm sure it's a lot better for both of us than it is for a lot
21 of other people; don't you agree?

22 A. (Nods head.)

23 Q. There are some things that almost every one of us
24 would say that's sad and we mean it. Things, like, growing up
25 poor might mean -- might make us have some compassion for

1 somebody. Can you just give me a general idea how you grew up
 2 economically, not dollar-wise, but how would you characterize
 3 your -- kind of your economic situation as you were growing
 4 up?
 5 A. I'm sorry, what did you say? Tell you about it.
 6 Q. I mean, would you -- were you kind of, like -- would
 7 you say you were lower economically, in the middle, high
 8 economically growing --
 9 A. Probably lower to middle.
 10 Q. All right.
 11 A. I guess everybody thinks they're in the middle --
 12 Q. Okay.
 13 A. -- but lower middle. I lived in a small town. My
 14 parents both worked. My parents divorced.
 15 Q. Okay. We'll talk about that in a second.
 16 A. I think some people think they're in the middle, or
 17 they're higher, no matter where they are. I guess I think I'm
 18 in the middle, even though I'm probably really lower.
 19 Q. Always seem like you had enough. Didn't it seem
 20 like you had enough always when you were growing up somehow?
 21 A. Uh-huh. I did fine when I was growing up.
 22 Q. And there certainly were a lot of people worse off
 23 than you were?
 24 A. Yes.
 25 Q. And let's face it, that -- there comes a point where

1 not having any money or not having enough money can be a real
 2 problem. It can be a problem for your self-esteem. It could
 3 be just -- you can't do anything that the other kids were
 4 doing.
 5 A. Yeah. I can relate to that.
 6 Q. And for many of us that would be sad to see somebody
 7 growing up that way. We'd want to try to help them. We do
 8 these Christmas clothing drives for poor people every year,
 9 those kind of things. And I think we all look at that and
 10 say, that's sad, and that really is.
 11 A. Uh-huh.
 12 Q. You mentioned that your parents were divorced. I
 13 don't think I even need to ask you because I'm sure that
 14 created some sadness and challenges for you that other people
 15 might not have had, although it might have been different.
 16 Tell me about that a little bit.
 17 A. Well, I was thinking more on the financial thing.
 18 Q. Was the divorce itself hard on you growing up, do
 19 you think?
 20 A. I guess so, but I don't think I'm devastated by it.
 21 I'm okay with it. Sometimes divorce is better than no
 22 divorce.
 23 Q. Another thing that is sometimes hard growing up is
 24 drugs and alcohol.
 25 A. Uh-huh.

1 Q. Now, have you ever known an alcoholic in your life,
 2 somebody that you think actually drank, not just because they
 3 were thirsty but because --
 4 A. I'm sure I have. I've probably known a lot of them.
 5 Q. Okay.
 6 A. Some people -- there was this thing about being an
 7 alcoholic. You're an alcoholic if it interferes with -- but a
 8 lot of people don't think that -- a lot of people say
 9 alcoholic, they mean a drunk but, you know...
 10 Q. Okay. Do you think that's a sickness, if they
 11 drink, or do you think it's a matter of personal choice?
 12 A. Yeah, I guess it is.
 13 Q. Okay.
 14 A. But I guess I kind of think people are responsible,
 15 too. I kind of have mixed feelings.
 16 Q. Okay. Do you think if a person becomes an alcoholic
 17 and has to drink because they're -- because they're a chronic
 18 drunkard, do you think the -- that that's an excuse for what
 19 they do when they're drinking?
 20 A. No.
 21 Q. I mean, I'm thinking about the guy that has to drink
 22 and goes to the barroom after work every day and comes home
 23 and starts cussing everybody and cusses his wife and cusses
 24 his kids and just is somebody that -- they're waiting for him
 25 to pass out so they can get some peace, kind of thing.

1 A. Uh-huh.
 2 Q. Does that excuse his behavior?
 3 A. No.
 4 Q. But it's the alcohol making him that way. That's
 5 how come he's doing the cussing and the screaming and running
 6 around terrorizing himself (sic).
 7 A. No.
 8 Q. That's not an excuse?
 9 A. No.
 10 Q. Okay, all right. How about, like, drug use?
 11 Everybody knows when you use drugs it's going to make you mean
 12 sometimes. It's going to make you lazy and shiftless and
 13 worthless, and all those kind of things, right? Is that an
 14 excuse for what you do?
 15 A. No.
 16 Q. And I ask that because it's possible in criminal
 17 trials a defendant would offer evidence saying the reason I
 18 did even this terrible, horrible crime is because I was a drug
 19 addict. And I'm curious, do you think that makes any
 20 difference?
 21 A. I guess it makes a difference, but you still can't
 22 do it. You still have to be responsible for what you do.
 23 Q. Would you have any more compassion for Timothy
 24 McVeigh, for example, if you found out he was a drug addict,
 25 and he was doing drugs while he was planning on doing all this

1 crime? Would that make any difference to you in terms of what
 2 needed to be done with him?
 3 **A. I don't know.**
 4 Q. Okay.
 5 **A. I guess I don't know for sure if that's supposed to**
 6 **be -- I don't know if it's legal. Is that considered**
 7 **mitigating circumstance or not. I don't -- morally I guess**
 8 **I'd just have to think about it.**
 9 Q. Okay. See, drug usage is something that may or may
 10 not be mitigating, depending on what the juror thinks. You
 11 may think --
 12 **A. It's not a cut-and-dry thing?**
 13 Q. Huh-uh. It's up to you.
 14 **A. Okay.**
 15 Q. And that's kind of why I'm asking you what you think
 16 about that.
 17 **A. For me, I'd have to think about it.**
 18 Q. How about being from a broken home; do you think
 19 that's a mitigating circumstance?
 20 **A. Not really. I guess because -- no, not really.**
 21 Q. I mean, because somebody could say, my daddy was
 22 never around and when he was around he was mean or drunk or
 23 something and that's sad. I mean, if that's the truth, if
 24 that's true and not something made up for a trial and it was
 25 really true, that is sad, don't you think?

1 **A. Yeah, it's really sad.**
 2 Q. Okay. But you don't think that necessarily lessens
 3 the need for --
 4 **A. I just have to --**
 5 Q. You'd have to see it?
 6 **A. Uh-huh.**
 7 Q. Okay. You don't mind me asking these questions
 8 because I can't talk about this case itself, you see?
 9 **A. I understand.**
 10 Q. I've got to give you --
 11 **A. Examples.**
 12 Q. -- questions that are hypothetical just to see what
 13 you think about it. That's all I'm doing.
 14 **A. Yeah.**
 15 Q. Okay. Let's talk about religion a moment because I
 16 think there may be something involving that in the trial.
 17 **A. Uh-huh.**
 18 Q. As you were growing up as a child, did you grow up
 19 in an organized religion?
 20 **A. Not really. Sometimes we went to church.**
 21 Q. All right. Do you attend a church now?
 22 **A. Occasionally.**
 23 Q. Okay. And, you know, some Americans do, some don't
 24 and, you know, that's a matter of individual choice.
 25 **A. Uh-huh.**

1 Q. Do you think being a person of faith, being a
 2 Christian, do you consider that to be a positive thing for
 3 people to be doing, or not necessarily?
 4 **A. As a general rule, yes, but not necessarily.**
 5 **Sometimes it gets kind of crazy.**
 6 Q. Depends?
 7 **A. You have to weigh it out.**
 8 Q. Here's where I'm coming from. I'm not talking about
 9 this case, but it's not unusual for a defendant charged with a
 10 capital murder, or even some other kind of serious crime, to
 11 claim to have been converted to Christianity while in the
 12 jailhouse awaiting trial. Can you see how that would be?
 13 **A. Uh-huh.**
 14 Q. And sometimes that can be true and sometimes it's
 15 not true. Of course, I mean, I would never say that's always
 16 not true. I'd never take it just because they're saying it,
 17 but let's face it, everybody knows that that would be looked
 18 upon favorably; don't you agree? That's something that the
 19 outside word would --
 20 **A. As opposed to being mean in jail and getting in**
 21 **fights, yeah, that would be favorable.**
 22 Q. And I'm curious, how important -- well, let me ask
 23 you this, do you think it's mitigating if someone says, yes,
 24 I'm a dangerous capital murderer, because that's what you
 25 found that I did, but after I've done all of this I've become

1 a Christian? Do you consider that to be mitigating of the
 2 need for the death penalty?
 3 **A. Probably not.**
 4 Q. Okay. But again, you got to listen to all of it and
 5 just decide what --
 6 **A. You have to (inaudible).**
 7 Q. You're absolute right. You're 100 percent right.
 8 Do you think that if a person behaves well in jail,
 9 that means that they're not dangerous?
 10 **A. Well, not necessarily, I guess. But it means it**
 11 **more than if they weren't behaving well.**
 12 Q. You know, I always think of the example, like at
 13 the circus where -- do you ever go to the circus?
 14 **A. I'm sorry?**
 15 Q. Have you ever been to the circus?
 16 **A. Circus?**
 17 Q. Yeah, like Ringling Brothers. You know how they
 18 have those animals in cages and stuff, those tigers and lions
 19 and leopards and all those things, you know? If you were
 20 there, and you took a little small child down there with,
 21 maybe you had a cousin or a niece or grandkid, or something
 22 like that, and you go walking up to the cage because they let
 23 you get close and there's a keeper there. And that little
 24 child says, I want to pet the leopard. And you ask the guy in
 25 the -- that's monitoring the leopard, the keeper, and you say,

- 1 well, how is that leopard? Is it okay to pet? He says, well,
 2 we've had him for 15 years, and he's never bit anybody yet.
 3 Do you let the child stick her hand in there?
 4 **A. No.**
 5 **Q. Well, 15 years the leopard has been behaving. He**
 6 **goes from one cage to another, and he growls when they say**
 7 **growl, and he jumps through the fire when they say jump**
 8 **through the fire. Why don't you let the kid put her hand in**
 9 **there and try to pet the leopard?**
 10 **A. I wouldn't do it. I always say stay back. I have**
 11 **five grandbabies. I'd say stay back.**
 12 **Q. But the leopard has always been good. He has done**
 13 **real well in the circus. How come? Is it because you know**
 14 **that leopards have a personality that's threatening at any**
 15 **moment --**
 16 **A. I think so.**
 17 **Q. -- is that the reason?**
 18 **A. I just don't take chances like that.**
 19 **Q. Okay, okay. You sure you can vote for a death**
 20 **sentence if it's proven to you that's the right answer?**
 21 **A. I think so. I've thought about it. You know, I try**
 22 **to do the thing I feel like is the right thing at the time**
 23 **after listening to the evidence.**
 24 **Q. And you see that, depending on what's presented,**
 25 **either life or death could be the right thing?**

- 1 **A. Yeah.**
 2 **Q. And you could vote for the right thing, even if it**
 3 **was hard?**
 4 **A. I could do it. I'd take it serious.**
 5 **Q. Okay.**
 6 **MR. SCHULTZ: We'll pass the juror, Judge.**
 7 **THE COURT: All right.**
 8 **MR. HIGH: I'll be talking, Judge.**
 9 **THE COURT: All right.**
 10 **CROSS-QUESTIONS**
 11 **BY MR. HIGH:**
 12 **Q. Good morning, Ms. Biggs.**
 13 **A. Morning.**
 14 **Q. My name is Don High.**
 15 **A. It's nice to meet you.**
 16 **Q. And I've got some questions for you, too.**
 17 **A. Okay.**
 18 **Q. You're about halfway done -- you're probably more**
 19 **than halfway done.**
 20 **A. Okay.**
 21 **Q. Did you need to stand up and stretch or anything?**
 22 **A. No. I'm all right.**
 23 **Q. Drink of water or anything?**
 24 **A. No.**
 25 **Q. Okay. Your first name is Montra?**

- 1 **A. That's my first name, but everybody calls me Marie.**
 2 **Montra is my mother's name, Marie is what everyone calls me.**
 3 **Q. Okay. Montra, has that gone back for several**
 4 **generations?**
 5 **A. Probably, I don't know. Just to my mother, as far**
 6 **as I know.**
 7 **Q. Okay. I've known other women that have similar,**
 8 **different names like that, and it goes back --**
 9 **A. Uh-huh.**
 10 **Q. -- several generations.**
 11 **A. My mother said her uncle gave her that name. He**
 12 **knew someone a long time ago, so I don't know. But the only**
 13 **people I know named Montra are me, my mother, and people who**
 14 **have been named after my mother.**
 15 **Q. Uh-huh. Well, that's great.**
 16 **And you didn't put where you were born. Where were**
 17 **you born?**
 18 **A. When?**
 19 **Q. Where?**
 20 **A. Where? McKinney, Texas.**
 21 **Q. Right here in McKinney?**
 22 **A. Right here in McKinney. I haven't always lived**
 23 **here, but I was born here, left and came back.**
 24 **Q. Okay. Well, that's great. So you've always lived**
 25 **in Texas?**

- 1 **A. Yes.**
 2 **Q. Native Texan?**
 3 **A. Yes.**
 4 **Q. There's not too many native Texans anymore?**
 5 **A. Seven generations.**
 6 **Q. Seven generations.**
 7 **MR. GOELLER: Wow.**
 8 **Q. BY MR. HIGH: And I notice that you do some**
 9 **studying on families?**
 10 **A. Yes.**
 11 **Q. How far back have you traced it?**
 12 **A. Like 1700's, I (inaudible) draw the line, except for**
 13 **one, just a few generations.**
 14 **Q. Wow.**
 15 **A. Collin County is real good for research.**
 16 **Q. Uh-huh. So you're familiar with how to do the**
 17 **research here and do all that?**
 18 **A. Uh-huh.**
 19 **Q. One of our judges here, Judge Nathan White --**
 20 **A. Yeah.**
 21 **Q. -- do you know him?**
 22 **A. Uh-huh. I know who he is because I know he does**
 23 **that.**
 24 **Q. He's very active in that, I think.**
 25 **A. Do you think that has anything to do with the way he**

1 **has everything on the computer. No, I don't know. It's real**
 2 **neat the way you can just go in there and get it off the**
 3 **computer.**

4 **(Laughter.)**

5 MR. GOELLER: I think she's on to something.

6 Q. BY MR. HIGH: Well, that's great.

7 Let me ask you something.

8 **A. Okay.**

9 Q. You understand that this is a death penalty case?

10 **A. Yes.**

11 Q. And that the State is seeking the death penalty.

12 How do you think that we got in this position? How do you

13 think that it became a death penalty case?

14 **A. I don't know.**

15 Q. Any idea on that?

16 **A. I don't know. I don't know that much about the**
 17 **capital murder, but just from what I had heard before, I**
 18 **thought killed two people, or did something else at the same**
 19 **time, so I -- I guess they think (sic) he did something else**
 20 **at the same time.**

21 Q. Okay. Right. That's the statutory scheme. In
 22 other words, if you kill two people --

23 **A. Uh-huh.**

24 Q. -- that could be a death penalty case. If you kill
 25 somebody and you're doing something else to them, like robbing

1 them or burgling them or committing sexual assault, that's a
 2 death penalty case. Yeah, that's what the penal code provides
 3 for, but you've probably also heard on the radio and on TV
 4 that the State has made the decision to seek the death
 5 penalty. Have you ever heard that, like on a broadcast?

6 **A. I probably have.**

7 Q. The State must make the decision --

8 **A. Uh-huh.**

9 Q. -- to seek the death penalty.

10 **A. Uh-huh.**

11 Q. And if they don't seek the death penalty, then it's
 12 not going to be a death penalty case?

13 **A. Yes. I've heard them say that, uh-huh.**

14 Q. Okay. So in practicality how it works, it could fit
 15 the statutory scheme and be a capital murder case, but if the
 16 State chooses not to seek the death penalty, then we're
 17 talking life in prison, provided they're convicted. Does that
 18 make sense to you?

19 **A. Yeah, it makes sense, but I don't know why -- what**
 20 **makes them decide one way or the other.**

21 Q. Who do you think decides that?

22 **A. I think they said the District Attorney.**

23 Q. Very good. In fact, the District Attorney the one
 24 elected official, your District Attorney, he's the one that
 25 makes the call --

1 **A. Uh-huh.**

2 Q. -- whether to seek the death penalty. Does that
 3 make sense to you?

4 **A. Well, I guess that's the way it is. I can**
 5 **understand that, but I don't know necessarily -- I guess he**
 6 **has guidelines, I guess. I don't know how he decides.**

7 Q. I don't know, either. But that's the way it is
 8 across the State. You know, the District Attorney in each
 9 region or each district makes a call whether or not they're
 10 going to seek the death penalty. And you understand we, as
 11 the Defense and the Defendant, we don't have anything to do
 12 with that?

13 **A. Yeah.**

14 Q. Neither do these Assistant District Attorneys?

15 **A. Yeah.**

16 Q. Nor the judge. None of us in here have anything to
 17 do with that.

18 **A. I see.**

19 Q. It's your elected District Attorney that makes that
 20 decision.

21 **A. Uh-huh.**

22 Q. Okay. Now, we're faced with that, and we have to
 23 deal with it as the Assistant DA's and the defense attorneys.
 24 And incidentally, are you familiar with court-appointed
 25 counsel?

1 **A. Yeah, I know what it is, or I think I do. I think**
 2 **that somebody, maybe the judge, picks somebody (inaudible).**

3 Q. That's right. That's the way it works, that if a
 4 person is too poor to defend themselves or represent
 5 themselves, especially in a capital case that's going to go on
 6 for a month or two --

7 **A. Uh-huh.**

8 Q. -- quite often the courts appoint counsel, and, in
 9 fact, in almost all capital cases that I know of they
 10 appointed counsel for two lawyers to represent the client.

11 **A. Uh-huh.**

12 Q. And, in fact, we're appointed in this case. We're
 13 appointed by the Court to represent this young man, and the
 14 taxpayers pay for it. Do you have any problem with that?

15 **A. No. I hope they pay for it -- no, we have to pay**
 16 **for it. I don't have a problem with that.**

17 Q. Okay. I want you to know that because if you end up
 18 sitting on the jury, and we're here for two weeks or four
 19 weeks or six weeks, and you're sitting over here looking at
 20 us, the clock's ticking, and you're thinking, oh, the
 21 taxpayers are paying for that, why are we here?

22 **A. I don't have a problem with that.**

23 Q. You don't have a problem with that?

24 **A. No.**

25 Q. And you sure wouldn't hold it against our client?

- 1 **A. I wouldn't hold it against him.**
 2 Q. Because somebody has got to pay --
 3 **A. I understand.**
 4 Q. -- and it's going to be him. He's going to pay
 5 with his life.
 6 **A. I don't blame him for that.**
 7 Q. Okay. That wouldn't be a problem at all?
 8 **A. No.**
 9 Q. Okay. I just want to be real up front about that
 10 with you.
 11 **A. I can understand how somebody -- I realize that**
 12 **some people would. I don't have a problem with that.**
 13 Q. Okay, great. Part of that is a product of the '60s
 14 and the Democrats and the Great Society and some of the laws
 15 and some of the rulings of United States Supreme Court. Of
 16 course, we're getting used to it now. It's been that way
 17 about 20, 25 years, so -- but 20 years ago it was a big deal.
 18 It was a whole new way of approaching criminal defense.
 19 **A. Uh-huh.**
 20 Q. When you came in on August the 20th and there was
 21 about 200 people in that room, I guess you figured out it was
 22 a pretty big case?
 23 **A. Yeah. Well, at first I thought it must be a bunch**
 24 **of cases, you know, with that many people, but I never heard**
 25 **of the case. So I guess then he told us that in any capital**

- 1 **murder case they brought in a bunch of people.**
 2 Q. When you found out it was a capital murder case, how
 3 did that strike you, this case?
 4 **A. (Noise). I don't know, serious.**
 5 Q. Very serious?
 6 **A. Very serious.**
 7 Q. And when the Court explained to you that it was a --
 8 it could be death penalty, how did that strike you?
 9 **A. Well, this is real serious.**
 10 Q. And then you got this questionnaire --
 11 **A. Oh, God.**
 12 Q. -- that went on for pages?
 13 **A. I say I don't want to -- you change your mind. You**
 14 **know, you think do I believe in capital murder or not. It's**
 15 **not exactly black and white all the time.**
 16 Q. Sure. And you got the questionnaire, and right up
 17 front on the very first page it talks about the death penalty,
 18 which I -- and in bold letters, it's capitalized, it's
 19 underlined, it's kind of intimidating, quite frankly, when you
 20 see it. What did you think when it says "death penalty"?
 21 What did that make you think?
 22 **A. It's just real serious. You just have to -- you**
 23 **just have to do the best you can.**
 24 Q. Okay.
 25 **A. And try to do it right.**

- 1 Q. Okay. And you and I have been living on this earth
 2 for a while now, and we've been Americans for a while, and
 3 we've talked about the death penalty probably --
 4 **A. And like you say over the years, you talk about it**
 5 **and --**
 6 Q. You think about it?
 7 **A. -- you get a lot of ideas about it, not just I'm**
 8 **against it or I'm for it. It's just --**
 9 Q. That's right. And now all of the sudden, you're
 10 faced with it right straight up?
 11 **A. Uh-huh.**
 12 Q. And now it's the -- it could very well fall to you
 13 as to whether or not you're going to make the decision. So,
 14 you're having to think about it all over again and that --
 15 you're going to have to really think about it this time, as
 16 opposed to just talking about it --
 17 **A. Yeah.**
 18 Q. -- and put it into action.
 19 So, I'm sure you thought a lot about it that
 20 morning, but you've probably thought a lot more about it since
 21 you filled out the questionnaire.
 22 **A. You can't help but think about it, or I can't. You**
 23 **know, I think you just have to try to do the right thing,**
 24 **whatever that is.**
 25 Q. Okay. And so after all that thinking, I take it

- 1 from you -- I think I'm sharing -- I think you and I have the
 2 same feelings. I think it kind of frightens us. I think it
 3 scares us, the idea of the death penalty and certainly having
 4 to give it. But I think that you've probably come around to
 5 the way that you've always thought, that it's probably
 6 appropriate, it's probably necessary in some cases, and, yeah,
 7 we could probably do it. Is that kind of the way your
 8 thinking has gone?
 9 **A. I think you have to go, you know, the evidence,**
 10 **guilty or not guilty, and then you have to kind of try to**
 11 **stick with the questions.**
 12 Q. Uh-huh.
 13 **A. That's kind of what I think.**
 14 Q. And follow the law?
 15 **A. Uh-huh.**
 16 Q. And if the --
 17 **A. I'm assuming that the judge would tell you, okay, do**
 18 **this or that, you know.**
 19 Q. Uh-huh.
 20 **A. Anyway.**
 21 Q. He's not going to tell you what to do.
 22 **A. No, okay. You know, answer this question with this**
 23 **in mind, or blah, blah, blah, okay. That's what I'd do.**
 24 Q. Okay. All right. And you've told Mr. Schultz
 25 that you -- that if the questions turned out a certain way and

1 rendered a death sentence, you could do it?
 2 **A. I think I could if that's what --**
 3 Q. Okay. That's all we can ask.
 4 **A. -- you know, by the question. What I would try not**
 5 **to do is not sway -- not change the answers to make**
 6 **anything --**
 7 Q. That's right, because that would be kind of like
 8 cheating, wouldn't it?
 9 **A. Yes. If I know the answer in the beginning, don't**
 10 **make the question -- you know?**
 11 Q. Sure.
 12 **A. Don't try to make the answers like the outcome I**
 13 **want it to be.**
 14 Q. That's right. Let's go to life in prison then.
 15 **A. Okay.**
 16 Q. Because that's next up, and they put that in black,
 17 bold letters, and they underline it. And although it's not as
 18 frightening as the death penalty, it's still pretty
 19 frightening. This person would spend their life in prison.
 20 And you indicate on the questionnaire that you believed it was
 21 appropriate in some cases and that you could return a verdict
 22 in a proper case?
 23 **A. Yeah.**
 24 Q. And then, of course, at the time you did the
 25 questionnaire, you didn't know really what life imprisonment

1 meant because we hadn't told you about the 40 years that you
 2 have to spend on a capital case, and that you may have to
 3 spend more if you don't get paroled the first time around, or
 4 you may not ever get parole.
 5 **A. Uh-huh.**
 6 Q. I mean, it may be life in prison, okay?
 7 Now, again, I know you probably don't like that
 8 verdict, either. You probably don't like having to give life
 9 in prison, but, you know, if you review the evidence, if you
 10 review the questions, if it's an appropriate verdict, could
 11 you give a verdict of life in prison?
 12 **A. Yes, I guess so.**
 13 Q. Okay. And I suppose, you know, that's going to
 14 depend -- or in the law, it's going to depend on how you
 15 answer the questions that we've talked about?
 16 **A. Uh-huh.**
 17 Q. And again, you're not going to rig the answers or
 18 figure out why it's appropriate --
 19 **A. No.**
 20 Q. -- and fix your answers so it comes up with a life
 21 result? You're not going to do that?
 22 **A. (Shakes head.)**
 23 Q. Okay. I need you to speak out loud.
 24 **A. Okay. No, I won't do that.**
 25 Q. Okay.

1 **A. I'd try to do the best thing. I'm not trying to get**
 2 **this job. I just -- I mean, you know, I just --**
 3 Q. We understand that.
 4 **A. I just think I can do that.**
 5 Q. We understand that. We've just got to make sure --
 6 both sides have got to make sure because the State has an
 7 important Governmental interest in doing what they're doing,
 8 and we have an important interest in representing this young
 9 man that's accused of a very serious -- the worst crime there
 10 is in the State.
 11 **A. Uh-huh.**
 12 Q. And so I believe you. I believe you'd do the best
 13 you could. I really do.
 14 **A. Okay.**
 15 Q. Let's -- I like your answer about prosecutors and
 16 defense attorneys --
 17 **A. What did I say?**
 18 Q. -- because you gave the same one.
 19 **A. Huh?**
 20 Q. You said prosecutors are humans just like us. I
 21 don't know if I'd agree with that.
 22 (Laughter.)
 23 **A. I don't think everybody is always good or bad, or**
 24 **whatever.**
 25 Q. I used to be a prosecutor.

1 **A. Oh, you did.**
 2 Q. But you said prosecutors are humans just like us,
 3 just doing their jobs, and then you said criminal defense
 4 attorneys are humans, just like us, just doing their jobs.
 5 **A. That's right.**
 6 Q. So, I think that's probably one of the best answers
 7 I've seen on a questionnaire, very equal.
 8 There's a question here on page 5 that you didn't
 9 fully answer. It says, "The law in the State of Texas says
 10 that a person convicted of capital murder can receive death
 11 penalty solely because of the facts and circumstances of the
 12 crime even if he has committed no other crimes. Do you agree
 13 with this law? Yes." And it says, "Please explain," and you
 14 left it blank.
 15 **A. Okay. Start over. It says --**
 16 Q. I'm going to let you look at it because I have the
 17 benefit of looking at it.
 18 **A. We didn't know -- you know, just have to go down the**
 19 **list. Y'all had the list.**
 20 Q. I know. Take a look at this question right here.
 21 **A. (Complies.) Oh, that's -- okay. I guess it meant**
 22 **if a person has never done anything before, they could still**
 23 **do something and it would be a capital --**
 24 Q. Well, they could still be convicted of capital
 25 murder --

- 1 A. **Yes. I mean, it --**
- 2 Q. -- but they haven't -- let's say they were Snow
- 3 White, but then they went and did a capital murder and get
- 4 convicted. They could get the death penalty.
- 5 A. **I guess they could. Like Timothy McVeigh, I don't**
- 6 **guess he ever did anything before. You know what I'm saying?**
- 7 **You don't have to, like --**
- 8 Q. You don't have to have a prior criminal record.
- 9 A. **Yeah, I don't think you do.**
- 10 Q. Okay. Does that make sense to you?
- 11 A. **I guess it depends on the crime or, you know,**
- 12 **whatever. I mean, Timothy McVeigh didn't do anything before.**
- 13 **But most of the time I think if you've never done anything**
- 14 **before, I think they usually give you a lesser sentence, like**
- 15 **murder (sic) or probation or something, but I'm not sure about**
- 16 **exactly how the law goes. I know you can be guilty of capital**
- 17 **murder without having just plain murdered somebody before.**
- 18 Q. Well, that's exactly right. You know, just, for
- 19 instance, I could go out tomorrow --
- 20 A. **Yes.**
- 21 Q. -- and get upset. Let's say I got home from work
- 22 today, had a hard day, long day, and I'm tired. And I go into
- 23 my house, and I find my wife with another man.
- 24 A. **Uh-huh.**
- 25 Q. And I pull out a gun and I kill them both. That's

- 1 capital murder. That's double homicide, you know?
- 2 A. **But sometimes --**
- 3 Q. And I'm charged with capital murder, and the State
- 4 could seek the death penalty on me, and I don't have any prior
- 5 criminal record, at least not that I know of.
- 6 A. **Just in the things I've read before, they usually**
- 7 **don't give capital murder for that, do they, or do they? I**
- 8 **don't know.**
- 9 Q. Well, that's --
- 10 A. **I guess that would be one of those things where they**
- 11 **wouldn't necessarily be, you know, going to do that again or**
- 12 **something because that's not going to happen.**
- 13 Q. Yeah. That's probably -- and most jurors would
- 14 probably understand how I felt, and they may be somewhat
- 15 sympathetic with me, although they didn't agree with me --
- 16 A. **Yeah.**
- 17 Q. Probably wouldn't have done the same thing, but
- 18 depending upon the decision of the DA, the DA could seek the
- 19 death penalty on that type of fact situation?
- 20 A. **But they don't usually.**
- 21 Q. If I got a jury that was particularly mad at me, you
- 22 understand I could receive the death penalty for that?
- 23 A. **I mean, I guess you could, two people.**
- 24 Q. Okay. So theoretically a person could have no prior
- 25 criminal history, go out and do capital murder and get the

- 1 death penalty; do you understand that?
- 2 A. **That you can do that?**
- 3 Q. Uh-huh. Do you have any problem with that?
- 4 A. **I guess it depends on the case. It would have to**
- 5 **depend on the case.**
- 6 Q. Absolutely.
- 7 A. **Like I say, Timothy McVeigh, really bad.**
- 8 Q. Absolutely, that's right.
- 9 A. **You wouldn't give him another chance on that.**
- 10 Q. That's right, that's right. Okay. There's a
- 11 question here on page 6 that says, "In your opinion what does
- 12 the death penalty say about American culture"? And your
- 13 answer is, "We don't know what else to do."
- 14 A. **We don't. I mean, I don't think we all want the**
- 15 **death penalty, but we don't know what else -- what else can**
- 16 **you do? I mean, I don't know. What else could you do to keep**
- 17 **somebody from killing somebody?**
- 18 Q. Maybe we could torture them?
- 19 A. **That's an idea. I don't know. That's bad, too.**
- 20 Q. Boil them in oil or something, or burn them or
- 21 something, brand them?
- 22 A. **Nothing (inaudible) quite get it.**
- 23 Q. Huh?
- 24 A. **Nothing -- you know, would stop it.**
- 25 Q. Okay. So you don't consider yourself a huge

- 1 advocate of the death penalty, do you?
- 2 A. No.
- 3 Q. But you agree with it because you can't really
- 4 think of anything better?
- 5 A. **That's right. I don't know what else. Like I said,**
- 6 **what could we -- I don't want to keep talking on that Timothy**
- 7 **McVeigh, but somebody like that, what can you -- what else**
- 8 **could they do?**
- 9 Q. Boy, that really boggles the mind, doesn't it?
- 10 A. **Yeah, something like that.**
- 11 Q. Fellow like that, you just can't understand that.
- 12 A. **I don't know**
- 13 Q. Yeah, I understand.
- 14 There's another question here. It talks about the
- 15 Constitution, and it says, "The Constitution says an accused
- 16 citizen does not have to testify on his or her own behalf.
- 17 How do you feel about this Constitutional privilege"? And you
- 18 said, "Sounds good to me."
- 19 A. **Yeah, it does. I mean, you know, you don't have to**
- 20 **testify against your husband. Why would you have to**
- 21 **testify --**
- 22 Q. Against yourself?
- 23 A. **-- against yourself?**
- 24 Q. That's fair enough. I just want to make sure I
- 25 understand exactly what you're saying. And I don't know

1 what's going to happen in this trial, and I'm being honest
 2 with you because a lot of time those decisions aren't made
 3 until you're in the heat of battle, and you see how the trial
 4 is going, and either you feel comfortable with the evidence
 5 and you decide not to put your client on, or if the evidence
 6 is going really bad, and maybe you need to put your client on.

7 **A. Uh-huh.**

8 **Q.** A lot of times those are tactical, strategic
 9 decisions that are made in the heat of battle. So, I don't
 10 know what's going to happen in this trial.

11 **But a lot of folks -- and I'm one of them. I'd want**
 12 **to hear -- I'd want to hear from the defendant. I want to**
 13 **hear his side of story. You know, we always want to hear both**
 14 **sides, and we want to have a chance to weigh it. But our**
 15 **forefathers came up with this brilliant idea -- and it is**
 16 **brilliant -- 300 -- 250 years ago that you don't have to**
 17 **testify against yourself. You have a Constitutional right not**
 18 **to testify, and our Fifth Amendment says that. And then the**
 19 **Supreme Court and the Miranda decision said that police**
 20 **officers have to tell that to arrestees. You know, you have**
 21 **the right to remain silent. Anything that you say can and**
 22 **will be used against you in a court of law.**

23 **A. Uh-huh.**

24 **Q.** And obviously if you say something in a court of
 25 law, and it comes out wrong, the jury can use it against you?

1 **A. Yes.**

2 **Q.** Okay. You understand all that?

3 **A. Uh-huh.**

4 **Q.** You don't have a problem with that?

5 **A. No.**

6 **Q.** Okay. In fact, the Judge will instruct the jury at
 7 the end of the trial that if the Defendant fails to testify or
 8 does not testify, that it's not a circumstance that can be
 9 held against him.

10 **A. Yes.**

11 **Q.** And you wouldn't do that, would you?

12 **A. No. I wouldn't try to give the -- what would you**
 13 **go -- I'll just kind of change the subject. What would you do**
 14 **if you were on the jury, and some -- one of the jurors said,**
 15 **but he wouldn't testify? What did you say there?**

16 **Q.** Well, I suppose you go back to the Court's charge --

17 **A. And you say -- uh-huh.**

18 **Q.** And you look at the Court's charge --

19 **A. And you say stop that.**

20 **Q.** -- look here, look what the Judge said. The Judge
 21 said it's not a circumstance to be held against him.

22 **A. Uh-huh.**

23 **Q.** And, you know, the best thing you can rely on is
 24 what the Court tells you.

25 **A. I'm just saying that seems like in a case like that,**

1 **somebody would start saying that.**

2 **Q.** And I'm sure they do. I've never had a chance to
 3 sit on a jury, because we're all human beings and we all want
 4 to hear from the defendant, and we want to hear both sides,
 5 and I'm sure that comes up in jury deliberations. It
 6 shouldn't, but I'm sure it does happen. So, I hope it doesn't
 7 happen to you, but that's probably the best thing to do.

8 **A. Uh-huh.**

9 **Q.** You know, in a -- kind of makes me think of --
 10 you're a mom, right?

11 **A. Uh-huh.**

12 **Q.** And you've -- I'm sure that when your children were
 13 small there were disputes between your children, and somebody
 14 would come in and -- one of your children would come in and
 15 say, hey, you know, Johnny hit me, and the little girl would
 16 say, no, I didn't, or actually Johnny would come in and say,
 17 no, I didn't hit. And so then you had to separate your
 18 children and get Johnny's story and then get Jeannie's story;
 19 is that right?

20 **A. Yeah.**

21 **Q.** And then you had to decide who was telling the
 22 truth, right? But they didn't have a Constitutional right not
 23 to testify. They just had to tell mom what happened, and if
 24 they didn't tell you, then they'd get a spanking, right?

25 **A. Uh-huh.**

1 **Q.** Well, it's different in a courtroom, okay?

2 **A. Uh-huh.**

3 **Q.** Nobody can force this young man to testify, not even
 4 his lawyers. We can't force him to.

5 **A. Yes.**

6 **Q.** Okay. I feel like I've beat a dead horse, but I
 7 think we understand.

8 **Your job with Alcatel, you're in production**
 9 **management. Tell me what you do.**

10 **A. Well, I retired. September the 7th was my last day.**

11 **Q.** All right.

12 **A. So what I did was, like -- oh, they build**
 13 **telecommunication equipment, so I'd be the supervisor. I was**
 14 **our manager, production control, look at all the parts, make**
 15 **sure the work gets out.**

16 **Q.** So was that, like, on the assembly line or
 17 something?

18 **A. Assembly line for a while, and then a test area**
 19 **where they have -- where they test the final product, uh-huh.**

20 **Q.** Okay. And you were there for how long?

21 **A. Thirty-five years.**

22 **Q.** That's quite an accomplishment.

23 **A. Well, I retired, and I'm excited about that. That's**
 24 **one reason I said I would -- you know, I know you don't get to**
 25 **say whether you do or not, but I thought it was okay to do**

- 1 **this since I'm not working.**
 2 Q. Right, because you're having to adjust to not
 3 having anything to do.
 4 A. **No, I've got plenty to do. The only thing is if I**
 5 **would have been called to jury duty when I worked, I would**
 6 **have been paid for it.**
 7 Q. Uh-huh, okay. I understand.
 8 And I'm sure you made some really good friends --
 9 work friends over the 35 years that you worked there for. Do
 10 you miss them? Do you miss getting to see them?
 11 A. **Not yet.**
 12 Q. You haven't missed them yet, but you talk on the
 13 phone I'm sure?
 14 A. **Occasionally, but not that much.**
 15 Q. Okay. You live in Princeton?
 16 A. **Uh-huh, by Princeton.**
 17 Q. Do you live alone?
 18 A. **No. I have one son that lives with me. I live in a**
 19 **compound. That's what we call it. I live at the end of a**
 20 **street, and my daughter is building a house next to me, and my**
 21 **sister lives next to her, and my mother-in-law lives --**
 22 **anyway, my family all lives right there.**
 23 Q. Wow, that's fantastic.
 24 A. **That's okay.**
 25 Q. I'm so jealous.

- 1 A. **Are you really?**
 2 Q. Yeah. That's the way it should be. So are y'all a
 3 close family?
 4 A. **Yeah, I guess so. I mean, seems like it to me,**
 5 **anyway.**
 6 Q. You must be to live on the same street in the
 7 compound.
 8 A. **People ask my kids, how can you live by your mother?**
 9 **I don't bother them. They don't bother me. Occasionally they**
 10 **bother me, my three -- my grandbabies.**
 11 Q. But you wouldn't have it any other way?
 12 A. **No, it's fine.**
 13 Q. And you indicated that your husband passed away?
 14 A. **Hum?**
 15 Q. Your husband passed away?
 16 A. **Yes, he did in '95.**
 17 Q. In '95. So you've made the adjustment. That's been
 18 six years now, somewhat made the adjustment?
 19 A. **Best you can.**
 20 Q. My mother is going through that.
 21 A. **Oh, is that right?**
 22 Q. She's about three years into it.
 23 A. **Uh-huh.**
 24 Q. It's quite an adjustment.
 25 A. **It's just -- it's just one of those things.**

- 1 Q. But your son is a lot of company?
 2 A. **Yeah.**
 3 Q. And what kind of work does he do?
 4 A. **He's a writer.**
 5 Q. He's a writer?
 6 A. **No. He's writing a book right now.**
 7 Q. Okay. What kind of stuff does he write?
 8 A. **Right now, genealogy. He's doing a big book on a**
 9 **family that we're doing research on.**
 10 Q. Okay. So y'all are working together on that
 11 somewhat?
 12 A. **Yeah. He's doing most of it.**
 13 Q. You indicated that you read a lot.
 14 A. **Yeah.**
 15 Q. What kind of stuff do you like to read?
 16 A. **All kinds, just anything.**
 17 Q. What are you working on right now?
 18 A. **Right now, a romance novel, Nora Roberts. I don't**
 19 **really know. Just -- I started this reading business. We got**
 20 **a new, little library in Princeton. So I started reading**
 21 **those -- we try to collect books and put them in there. I**
 22 **read all of Larry McMurtry's books this last year. I don't**
 23 **know. I just always like to read just anything. I have time**
 24 **for it, so...**
 25 Q. Okay. Just for pleasure?

- 1 A. **Yeah, uh-huh.**
 2 And I'm more into history now since I'm involved in
 3 that genealogy. A lot of the books, no matter what kind of
 4 book, if they have a lot of history in them. I mean, other
 5 locations. I don't know. You don't want to hear all that. I
 6 just like to read it.
 7 Q. Actually, I do. Have you always read most of your
 8 life, or is this --
 9 A. **I used to when I was younger, and then when I had my**
 10 **kids, I didn't have that much time. I worked.**
 11 Q. Sure.
 12 A. **I guess now that I'm not working, and it started**
 13 **before I quit work.**
 14 Q. Okay. I notice that Jimmy Carter is one of your
 15 most respected people. Why is that?
 16 A. **Who?**
 17 Q. Jimmy Carter.
 18 A. **Jimmy Carter. I don't know. I guess I was just**
 19 **thinking good about him that day. Oh, I know, Habitat of**
 20 **(sic) Humanity. I like that.**
 21 Q. Great group.
 22 A. **Uh-huh. I think I might like to do that.**
 23 Q. I can see you doing that. Yeah, I could see you
 24 doing that. Do you know how to swing a hammer?
 25 A. **Not very good. Probably they wouldn't let me have**

1 the hammer.

2 Q. But you like the idea?

3 A. Yes, I like that.

4 Q. Okay. And --

5 A. **Don't say who I said was I didn't respect. Please**

6 **don't say that out loud. Do y'all know her?**

7 Q. I share your opinion, but there's one that I don't

8 know, and it's Helen Lawson.

9 A. **She's a local woman who stole a million dollars from**

10 **the school district --**

11 Q. Oh.

12 A. **And got two years.**

13 Q. Okay.

14 THE COURT: Prosecuted in federal court and

15 never prosecuted by the State.

16 Q. BY MR. HIGH: So she got off light, you thought?

17 A. **Yeah, uh-huh.**

18 THE COURT: Fertile soil.

19 A. **I just happen to know her. It's just --**

20 Q. BY MR. HIGH: Okay. She's going to have a nice

21 life after she gets out, isn't she, or did she have to give it

22 all back?

23 A. **She can't give it back.**

24 Q. She spent it?

25 A. **She said she didn't. She has to give it back, 10**

1 percent of her salary, until she gets it paid back. She's not

2 going to make any money. She's in jail. She can't pay it

3 back. I don't know. It was just stupid, two years.

4 THE COURT: (Laughter.) Pretty stupid. All

5 right.

6 A. **One question on there that I didn't -- I think it**

7 **said do I know anybody that's been in jail? I think I said**

8 **I'm sure I do. Then I remembered I had been to prison before**

9 **to visit someone who was in jail, and then I thought I should**

10 **have said that. I don't mean to not say it because -- anyway,**

11 **my cousin was in prison one time.**

12 Q. BY MR. HIGH: Who?

13 A. **My cousin.**

14 Q. What was that for?

15 A. **I'm not sure he told me the truth, but he said it**

16 **was for burglary.**

17 Q. Okay. He actually went to jail?

18 A. **He went to prison.**

19 Q. He went to prison?

20 A. **Uh-huh.**

21 Q. And was that first or second cousin?

22 A. **My first cousin, but it wasn't that I was that close**

23 **to him. I have a lot of -- since I do genealogy, I have a lot**

24 **of cousins.**

25 Q. Sure.

1 A. **But I cared about him, but I wasn't that close to**

2 **him. I didn't know him that well. But me being the do-gooder**

3 **that I was, I just --**

4 Q. Right. That's the kind of thing in the family that

5 people try to keep quiet, you know?

6 A. **Not me.**

7 Q. Okay. I had a cousin -- I think he was a second

8 cousin -- that allegedly went to the federal prison, but

9 nobody ever really knew when it was or where it was, that sort

10 of thing.

11 A. **Yeah, older people do. I mean, not that I broadcast**

12 **it, but I don't try to hide it. You know, I didn't do**

13 **anything.**

14 Q. And it's interesting to those of us who are far

15 enough removed, we're curious about it. But a lot of times

16 you can't really get the details.

17 A. **I didn't ask him for the details.**

18 Q. Okay.

19 A. **Uh-huh.**

20 Q. All right. I want to get to these special issues,

21 and also I want to make something clear to you. This young

22 man has not been convicted of capital murder.

23 A. **Yeah. I want y'all to remember that. I mean, when**

24 **you -- I know y'all have to say that, but y'all kind of, you**

25 **know...**

1 Q. Well, I know this is strange, and it's awkward for

2 me. It really is, because we're going to do what we can to

3 make sure he's not convicted. We're going to defend him. We

4 hope we win where he comes out not guilty where we don't have

5 to talk about all this other stuff. We're going to defend him

6 as best we can, and we may not even have to worry about this

7 sentencing.

8 But the way the law is set up, especially in a

9 capital case, you know, the jury has to be investigated and

10 looked at and talked to and scrutinized before you sit on the

11 jury with respect to these punishment issues, okay? So we're

12 going to talk about them, and we've already talked about them,

13 but please don't get the impression that I'm saying he's

14 guilty, because he's not.

15 A. **I'm trying not to get that impression, you know.**

16 Q. I don't agree with that, and I sure don't want to

17 give you the impression that I think he's guilty, because I

18 don't, okay? That being said, we're going to have a

19 full-blown trial on the issue of murder, capital murder, and

20 then at the end, the Judge is going to give the jury the

21 charge, the instructions; failure to testify and all that

22 other stuff. And the jury is going to go back and decide,

23 after they've heard the evidence, whether or not he's guilty.

24 And I anticipate that the State's going to try to prove up the

25 indictment in the case, and the indictment says that two

1 people were killed, which is double homicide, which makes it
2 capital murder. The State's also going to attempt to prove up
3 that there was a burglary that occurred, and they explained
4 that to you, you know, going into somebody's house with the
5 intent to commit some other felony. Or robbery, the taking
6 with force, theft with force, okay? They're going to attempt
7 to prove those things to you, and the jury is going to have to
8 decide those issues. And if the jury finds beyond a
9 reasonable doubt that those things happened, then the jury
10 will have to return a verdict of guilty on the capital murder.
11 Do you understand that?

12 A. Uh-huh.

13 Q. And if the jury finds guilty, then we go to the
14 punishment phase. That's when these issues come into play; do
15 you understand that?

16 A. Uh-huh.

17 Q. The first issue, as Mr. Schultz explained to you and
18 everybody else has explained to you, is the probability issue.
19 And I'm going to put it on top here. You've seen that many
20 times now, and essentially the jury would have to look into
21 the future to see whether or not there's a probability that
22 the Defendant would commit criminal acts of violence that
23 would constitute a continuing threat to society.

24 Probability. You've used the word probability in
25 your work, have you not?

1 My dad used to say when it was raining, he'd say it
2 looks like there's a 99 percent chance of rain today, after it
3 had already started raining.

4 But the Judge is not going to instruct you on a
5 percentage. He's not going to say must be more than 50
6 percent, must be more than 90 percent or 99 percent. It's
7 going to be up to the jury to decide if there's a probability
8 that the Defendant would -- do you see the word "would," he
9 would commit criminal acts of violence, not that he could
10 commit them, not that he will commit them, but that he would
11 commit them?

12 A. Uh-huh.

13 Q. And you see that acts is plural; in other words, it
14 must be a continuing thing. He must be a continuing threat to
15 society because of these acts of violence; do you see?

16 Okay. Do you feel comfortable with that question?

17 A. I guess so. You have to answer it. It would have
18 to be a guess. You don't know.

19 Q. You don't know, but it's like working with past
20 experience. It's like looking at -- it's like the tiger in
21 the cage, you know. You're concerned about the tiger because
22 you know what it could do. You may not necessarily know what
23 it would do, but if a child sticks a hand in there and you're
24 scared of it --

25 A. It's just kind of stupid to stick your hand in a

1 A. Uh-huh.

2 Q. You probably used it somewhat on the production
3 line, you know, the probability of faulty product?

4 A. Uh-huh.

5 Q. What does that mean to you?

6 A. It means they would probably do something -- most
7 likely.

8 Q. Okay. Most likely, more likely than not?

9 A. Uh-huh.

10 Q. Some people assign a percentage to probability, you
11 know, and percentages can vary.

12 A. I guess some of the --

13 Q. Like if the weather man says there's a 50 percent
14 chance of rain today; in other words, there's a good chance
15 that it's going to rain or a good chance the sun is going to
16 shine.

17 A. Will they put -- does the Judge assign a percentage?

18 Q. Of course, my dad used to say --

19 THE COURT: Excuse me. You probably didn't
20 hear what she just said. She asked does the Judge assign a
21 percentage?

22 A. Like more than 50 percent or 75 or 99?

23 Q. BY MR. HIGH: Okay. No.

24 A. No, we just have to --

25 Q. No.

1 tiger.

2 Q. But you know from past experience what tigers have
3 done to other folks?

4 A. Yeah.

5 Q. And it's the same way on the production line.

6 You-all had a pretty good idea how many of your product would
7 be faulty. The probability was 10 percent, 20 percent, and
8 you could pretty well predict what that day's product would
9 be.

10 A. Uh-huh.

11 Q. You'd probably get 80 percent good product and 20
12 percent bad product. Do you know what I'm saying?

13 A. Uh-huh.

14 Q. Predicting based on past experience.

15 Here's the thing. Would you be able to -- you
16 know, you've already gotten past the point of finding somebody
17 guilty of capital murder. We've said it's going to be -- if
18 they get there, it's going to be a double homicide, killing
19 two people. Would you then be able to consider this question
20 separate and apart, and say, "yes," there's a probability that
21 he'd commit criminal acts of violence that would constitute a
22 continuing threat to society in the future, or, "no," I don't
23 believe that there's a probability that he'd commit criminal
24 acts of violence and would be a continuing threat to society?

25 MR. SCHULTZ: Excuse me a moment, Judge. We're

1 going to object to the question. It implies the juror could
2 not consider the heinous crime committed in the first part of
3 the trial in answering that question, because he says could
4 you consider it separate and apart, and that's a misstatement
5 of the law. The juror certainly would consider the facts of
6 the case itself.

7 THE COURT: Sustained.

8 Q. BY MR. HIGH: Okay. I don't want to mislead you.
9 You will be able to consider --

10 A. The evidence.

11 Q. -- the evidence. You would be able to consider
12 that. Absolutely.

13 A. I guess there's --

14 Q. But what I'm saying is this -- here's my question.

15 Just because -- and I'm not saying this is going to happen,
16 but assume that the jury has found a person guilty of capital
17 murder --

18 A. Uh-huh.

19 Q. -- assume that you've already done that. You found
20 that the evidence was strong enough beyond a reasonable doubt
21 to convict him, and it's double homicide.

22 A. Uh-huh.

23 Q. And then you get this question. Are you, as a
24 juror, going to say well, he did that so I know --

25 A. No, you can't say that.

1 Q. -- he's going to be a danger in the future?

2 A. I understand. Just because he did this, doesn't
3 mean they're going to do that, or do it again. Like you said,
4 come home, caught the wife, or whatever. Most likely, that's
5 not going to happen again to make someone do it again, you
6 know? I can do that.

7 Q. It's just going to be a whole lot of facts and
8 circumstances that you're going to have to consider.

9 A. Uh-huh.

10 Q. Fair enough. So you'd be open to --

11 A. Yeah.

12 Q. -- this question going -- it could go either way?

13 A. (Nods head.)

14 Q. Okay. If you say no, he's not a continuing threat,
15 then we're done, and it means a life sentence, okay? If,
16 however, you say, yes, he is a continuing threat, then you've
17 got to go to the next question, and that's the question right
18 below, and it's pretty long. It's got a bunch of words in it.

19 A. Huh.

20 Q. It's got a bunch of words in it.

21 A. Yeah, it does.

22 Q. Typical lawyer question.

23 A. And the jury just has to decide --

24 Q. Well, this is where the jury has to consider the
25 circumstances of the offense, the facts of the case, the

1 Defendant's character, and his background.

2 A. Uh-huh.

3 Q. And, you know, there may be good character, there
4 may be bad character. There may be good background, there may
5 be horrible, horrific background. You know, he was poor, he
6 was abused, he was mistreated. You know, he didn't have --
7 get an education, he was put out. He was orphaned, all those
8 things that contribute to a bad background. Maybe folks
9 smoked dope in the home. He was around drugs as a youngster.
10 I'm sure that just blows your mind, but that does happen.

11 A. Uh-huh.

12 Q. Okay. You'd have to consider that, or at least
13 you'd have to be open to considering it. Then there's that
14 phrase, the personal moral culpability. Any idea what that
15 means?

16 A. Tell me.

17 Q. Okay, okay. Culpability in law, we equate that to
18 responsibility.

19 A. Uh-huh.

20 Q. Okay. Personal moral -- we could substitute
21 responsibility for that word -- personal moral
22 responsibility. Some would say blameworthiness. How much is
23 he to blame for what happened? Some would say remorse. Some
24 would say personal guilt, the conscience, you know, for what
25 happened. Let's go back to your example, McVeigh.

1 A. Uh-huh.

2 Q. Okay. McVeigh didn't have much personal moral
3 culpability, did he? I mean, he didn't have any remorse for
4 what he did. He didn't have any guilt for what he did. I
5 mean, you agree with that? I mean, right up to the point of
6 death he was contemptuous to his victims and thought he was on
7 a mission, and he thought he accomplished his mission.

8 Anyway, these are the things the jury would have to
9 consider in this mitigation question; personal moral
10 culpability, responsibility, remorse, guilt, blameworthiness.

11 Okay. Would you be able to consider those things?

12 A. Yes.

13 Q. Okay. For instance, like McVeigh --

14 A. If the Judge says to consider it.

15 Q. -- if there's a lack of personal moral
16 responsibility, you would consider that. On the other hand,
17 if there's somebody that felt truly awful about what they did,
18 horrible and wished it hadn't happened, they're sorry for it,
19 would you be able to consider that, too?

20 A. I'd consider it. I don't know that -- I'm not
21 sure -- if you feel bad about what you did, I think you're
22 still guilty, though.

23 Q. Well, yeah. You've already decided guilt. You've
24 already decided guilt. It doesn't take away from the guilt.
25 This impacts the decision that the jury makes with respect to

1 life or death.
 2 **A. Uh-huh.**
 3 Q. Now, I want to give you a different way to look at
 4 this.
 5 **MR. SCHULTZ:** Excuse me, just a moment. Could
 6 we get an answer to his question?
 7 **A. Okay. The question --**
 8 **THE COURT:** What was the question?
 9 Q. **BY MR. HIGH:** This reflects the way the jury looks
 10 at it, whether it's life or death; do you understand that?
 11 **A. Uh-huh.**
 12 Q. Do you understand that?
 13 **A. Yeah, okay.**
 14 Q. Now, some call this question the one-last-look
 15 question. You know, you're going to take one last look at the
 16 Defendant. In other words, you've already found him guilty of
 17 capital murder. You've already said he's going to be a
 18 continuing threat to society --
 19 **A. Uh-huh.**
 20 Q. -- and you're on the path towards a death sentence
 21 because if you find that there's not enough for sufficient
 22 mitigating circumstances, if you say no to that question, then
 23 he dies. It's a death sentence.
 24 **A. Uh-huh.**
 25 Q. But if you --

1 **A. I guess you just have to listen and find out if**
 2 **there was enough sufficient mitigating.**
 3 Q. That's right.
 4 **A. And like you said, he's not going to tell us what**
 5 **percentage -- how much is sufficient. You have to decide.**
 6 Q. As Mr. Schultz said, that's up to each juror. It's
 7 in your mind what you consider is sufficient. If you believe
 8 it's sufficient, if you believe it's mitigating. You know,
 9 what you think is mitigating, the next person may think is
 10 aggravating.
 11 **A. Yes, okay.**
 12 Q. All right?
 13 **A. Yeah.**
 14 Q. So if you feel -- if you take that last look, and
 15 you see some moral culpability, if you see some good
 16 background, some good character, and if you believe it's
 17 sufficient to mitigate against a death sentence and a life
 18 sentence is appropriate, do you believe you could answer the
 19 question yes?
 20 **A. Yes.**
 21 Q. Okay. You could do that?
 22 **A. Yeah, I can do it. I think I could do it either**
 23 **way. I'd just have to listen to all the mitigating evidence,**
 24 **whatever.**
 25 Q. Okay. And if on the other hand, you get to the end

1 and you say, look, I've listened and I've looked and I've
 2 studied this, and I don't see that this is sufficiently
 3 mitigating. I sure don't, and, you know, I've tried my
 4 hardest. I've looked for it and I just don't see it, could
 5 you answer the question "no" meaning the person dies?
 6 **A. I think so.**
 7 Q. Okay. Is all this kind of starting to make more
 8 sense to you in terms of how it works?
 9 **A. It's just a lot of listening and have to make a lot**
 10 **of decisions.**
 11 Q. That's right. That's right. Anything that you and
 12 I have touched on this morning or Mr. Schultz -- I know we've
 13 massaged your brain and asked you a bunch of questions and
 14 kind of put you on the spot, anything that you feel
 15 uncomfortable with that you want to clear up or ask about?
 16 You've asked some very good questions this morning.
 17 **A. I think I understand why you guys keep acting as if**
 18 **he -- I'm going to say he's innocent.**
 19 Q. Absolutely.
 20 **A. But y'all have to talk so much about the punishment,**
 21 **you know, that's kind of bad. But I see how you have to do**
 22 **it, because you're not going to have a chance to talk about it**
 23 **afterwards, but anyway --**
 24 Q. Absolutely.
 25 **A. -- I will just assume he's innocent. I mean, but**

1 **you make me think -- y'all -- I don't know.**
 2 Q. Let me tell you something: I really feel
 3 uncomfortable talking about these issues.
 4 **A. Okay.**
 5 Q. I really do. This is the only trial we do this in,
 6 a capital murder case. Any other case --
 7 **A. You don't do this.**
 8 Q. -- we wouldn't be doing this. But we have to do it
 9 in a capital murder case. And I think you're doing exactly
 10 right. You have to presume him innocent, and you will do
 11 that?
 12 **A. Okay.**
 13 Q. You will do that?
 14 **A. Yeah, I'm going to.**
 15 Q. Okay.
 16 **A. I mean, that's -- I'm trying to think of the things**
 17 **I'm supposed to do; presume innocent and -- you know, listen**
 18 **to all the evidence and --**
 19 Q. Any other questions?
 20 **A. No. I don't guess so.**
 21 Q. All right. Well, I've certainly enjoyed visiting
 22 with you.
 23 **A. (Inaudible) being interrogated.**
 24 **THE COURT:** You may step down and perhaps we'll
 25 have you back in a moment.

1 (Venireperson exits the courtroom.)
 2 THE COURT: All right. What says the State?
 3 MR. SCHULTZ: Acceptable.
 4 THE COURT: What says the Defense?
 5 MR. GOELLER: May I have just a second, Judge?
 6 THE COURT: Yes.
 7 (Brief pause in proceedings.)
 8 MR. GOELLER: May I address the Court, Your
 9 Honor?
 10 THE COURT: Yes, go ahead.
 11 MR. GOELLER: Thank you. We would challenge
 12 this juror for cause, Juror Montra Biggs, because we feel she
 13 may not be able to appreciate the presumption of innocence.
 14 On page 4 of her questionnaire she stated if a person is
 15 brought to trial on murder charges, that person is probably
 16 guilty. Then she wrote not necessarily, and then circled
 17 disagree, and for that reason I think she may not be able to
 18 follow the presumption of innocence, so I would challenge her
 19 for cause.
 20 THE COURT: All right. The challenge is
 21 denied.
 22 MR. GOELLER: Yes, Your Honor.
 23 And at this time the State -- or Defense would ask
 24 for additional peremptory challenges. The record should
 25 reflect we have no peremptory challenges left. The record

1 should reflect we've used challenges for cause on Juror
 2 Cummings, Juror Edgar, Juror Stratton, Juror Peters, amongst
 3 others, and therefore we had to accept objectionable jurors,
 4 that being Juror Cole, Juror Burks, Juror Poplin, Juror Penn,
 5 and we had a strike remaining -- had the challenges for cause
 6 been granted on the afore -- aforementioned jurors we would
 7 have been able to use those strikes against Jurors Cole,
 8 Burks, Poplin and Penn, and if we had those strikes we may
 9 have been able to use it against this juror as well.
 10 THE COURT: Your request is denied. And
 11 Ms. Biggs will be Juror Number 12. Would you ask her to step
 12 back in?
 13 THE BAILIFF: Yes, Your Honor.
 14 (Venireperson enters the courtroom.)
 15 THE COURT: All right. Ms. Biggs, you have
 16 been chosen to serve on this jury.
 17 VENIREPERSON: Is that good or bad?
 18 THE COURT: Well --
 19 VENIREPERSON: Okay.
 20 THE COURT: -- I suppose it's both, but there
 21 are a couple of things I want to tell you.
 22 VENIREPERSON: Okay.
 23 THE COURT: And the first one is I want to tell
 24 you not to discuss the case with anybody.
 25 VENIREPERSON: No.

1 THE COURT: You know, not to talk to your
 2 relatives or friends or anything with regard to what they
 3 might think or what they know or anything else.
 4 VENIREPERSON: No, I won't.
 5 THE COURT: In fact, that's an admonition that
 6 goes with you throughout the trial --
 7 VENIREPERSON: Yes.
 8 THE COURT: -- until you finally deliberate.
 9 You won't be discussing it with the other jurors throughout
 10 the trial. So don't discuss it with anybody, and also there
 11 hasn't been much in the way of publicity at all on this case.
 12 VENIREPERSON: I hadn't heard anything about
 13 it.
 14 THE COURT: Yeah, right. And perhaps there
 15 won't be, which -- and that would be great --
 16 VENIREPERSON: Uh-huh.
 17 THE COURT: -- if there wasn't. But if there
 18 is, I want to ask you to avoid it. If you might see anything
 19 on TV or might hear anything on the radio, or if you see
 20 something that might be written in the newspaper, just avoid
 21 it.
 22 VENIREPERSON: Okay.
 23 THE COURT: That way when you come to court,
 24 and I think it might be a week or so before we start, when you
 25 come to court you'll come in with a clean slate. Everything

1 you'd hear, you'll hear from the witness stand, and that way
 2 you won't be biased or --
 3 VENIREPERSON: That would be more stress.
 4 THE COURT: -- and been told anything about the
 5 case, except what you hear from the witness stand because
 6 that's the way the jurors are supposed to do it. Do you have
 7 any questions for me before you step down?
 8 VENIREPERSON: Can I go on a trip?
 9 THE COURT: Where do you want --
 10 VENIREPERSON: How long are you going to be --
 11 how long before we have to come back?
 12 THE COURT: Well, I think it might be about a
 13 week.
 14 VENIREPERSON: Okay. So I should go right
 15 now.
 16 THE COURT: Where are you going?
 17 VENIREPERSON: I don't know.
 18 THE COURT: Well, you don't have to tell me.
 19 VENIREPERSON: It depends on how long I have
 20 before I have to come back.
 21 THE COURT: I tell you what would be a good
 22 plan is to be back and able to serve on Wednesday of next week.
 23 Might not be Wednesday, might be Thursday.
 24 VENIREPERSON: Okay. How will I get notified?
 25 THE COURT: We'll call you.

1 VENIREPERSON: You'll call me, okay.
 2 THE COURT: And we've got your phone number in
 3 here.
 4 VENIREPERSON: Right.
 5 THE COURT: Of course, work number is no good
 6 anymore, right?
 7 VENIREPERSON: No. Mark out that work number.
 8 THE COURT: Right there. And so...
 9 VENIREPERSON: Well, okay. I'll just -- if I
 10 go, I'll just be back by next Tuesday.
 11 THE COURT: Thank you, ma'am. We'll see you
 12 again.
 13 VENIREPERSON: Hum?
 14 THE COURT: We'll see you again in a week or
 15 so.
 16 VENIREPERSON: Okay.
 17 THE COURT: All right. Thank you.
 18 (Venireperson exits the courtroom.)
 19 THE COURT: Do you want to ask Mr. Prestemon to
 20 step in?
 21 THE BAILIFF: Yes, Your Honor.
 22 (Venireperson enters the courtroom.)
 23 THE COURT: Are you Miles Prestemon?
 24 VENIREPERSON: I am.
 25 THE COURT: I want to welcome you back to court

1 once again, and thank you for coming. Perhaps you'll recall
 2 that a little over a month ago when all 200 jurors were
 3 assembled, I administered an oath to the whole venire, and the
 4 oath was to give truthful answers to any questions that might
 5 be asked by the Court or by the attorneys. Do you recall
 6 that?
 7 VENIREPERSON: I do.
 8 THE COURT: All right, sir. I just want to
 9 advise you that you're still subject to that oath, and ask you
 10 to please be seated right here.
 11 MR. SCHULTZ: We need just a moment, Judge.
 12 THE COURT: Do you? Okay.
 13 (Brief pause in proceedings.)
 14 MR. SCHULTZ: May I proceed, Judge?
 15 THE COURT: Yes, please.
 16 DIRECT QUESTIONS
 17 BY MR. SCHULTZ:
 18 Q. Good morning, sir. My name is Bill Schultz. I'm
 19 one of the Assistant District Attorneys representing the State
 20 of Texas in its capital prosecution of the Defendant, Ivan
 21 Cantu. Next to me is Ms. Gail Falco, one of our chief felony
 22 prosecutors. At the far end of our table is Ms. Jami Lowry,
 23 whom you had some connection with during the earlier portions
 24 of your service here as a group. At the Defense table is the
 25 defendant, Ivan Cantu.

1 VENIREPERSON: Hello.
 2 Q. BY MR. SCHULTZ: Next to him is Mr. Don High and
 3 then Mr. Matt Goeller.
 4 MR. GOELLER: Morning, sir.
 5 Q. BY MR. SCHULTZ: Both Mr. High and Mr. Goeller are
 6 very fine criminal law practitioners and general practitioners
 7 in Plano, Texas. And I believe you don't know any of us
 8 personally; is that correct?
 9 A. That is correct.
 10 Q. Now, I don't know whether to start like I usually do
 11 with all other jurors or just kind of go into one obvious
 12 issue with you. As I understand you have a business trip
 13 planned next week?
 14 A. Actually the -- that has been changed. We were
 15 going to Washington, D.C. In light of the circumstances of
 16 September 11th, that has been changed. It actually was not a
 17 business trip. It was to Washington to -- for -- Plano is on
 18 fall break next week, and it was more to that. We're now not
 19 going to Washington. We're going to some place else that's
 20 driveable and not flyable.
 21 Q. Well, here -- I suppose conscientiousness of needs
 22 for citizenship is higher in our society right now than maybe
 23 it has been before, as you mentioned September 11. We have
 24 many good things in our jury system in Collin County. One of
 25 the things that is probably difficult is we have a lot of

1 extremely busy, hard-driving, full living people, not unlike
 2 yourself who probably work more than they should at their
 3 jobs. You're probably involved in sports and everything else
 4 with your kids. You probably are involved in all sorts of
 5 non-work activities, and then when you have the opportunity to
 6 take a vacation and fall break -- I'm the same way. I've got
 7 a 14-year old, and we traditionally take a fall break trip.
 8 We probably, in Plano, encroach more on juror's
 9 times and lives than we would in some other places that might
 10 be a little more rural, or maybe a little more undereducated,
 11 or something like that, and I guess that's the mix. From our
 12 point of view, it's wonderful to have intelligent, thoughtful
 13 people as jurors. I'm sure that's also true for defense
 14 attorneys, but sometimes we run head on into situations, like
 15 what you're presenting, and we're left sometimes with the
 16 choice of are we willing to allow somebody talented to go in
 17 accommodation of their personal situation, or do we sort of
 18 take the position that we need citizens to come do this work
 19 because it's your society, too, and be as accommodating as
 20 we're allowed to be and leave it up to the Judge exactly how
 21 that all works in terms of your fall break.
 22 And I guess we have opted for the latter position.
 23 I'll just be honest with you. I'll bet those guys that are
 24 getting called up for reserve duty that might throw them into
 25 harm's way any time soon probably have things going on in

1 their situation, too. And I hope you don't think I'm
 2 trivializing. I understand exactly. It's important to your
 3 family, but from our point of view, if you could serve I think
 4 we need you to serve, and that's how that is.

5 The good news may be that I don't think we would
 6 start this trial until Wednesday, from what I've been able to
 7 hear the Judge discuss. We're not committed to that, but that
 8 sounds like that's our target date, so there's still some time
 9 in fall break. There's that time between now, I guess, and
 10 being back Tuesday night or early Wednesday morning, but other
 11 than that if selected in this case, I'm afraid that's just the
 12 news that we can do. And if I'm sounding callous, I'm not.
 13 It's one of those, I can't do anything about it. But if
 14 you're mad at me, just remember it's not really -- I'm not --
 15 it's the State and the Defendant on trial, and it's not --
 16 it's something you shouldn't take out on society's case, or
 17 you shouldn't take out on the Defendant, either. And I know
 18 you're the kind of man that wouldn't do that when it came down
 19 to it, right?

20 **A. That's correct.**

21 **Q.** By the way, just curiously, have you made plans?
 22 You said you're going to drive somewhere. I mean, I'm sure
 23 this is hanging over all of those plans and you probably have
 24 been talking about that with your family. What kinds of
 25 things have you been thinking about?

1 **A. Just really going to Arkansas, driving and staying**
 2 **for four or five days there.**

3 **Q.** Okay. You have indicated that you favor the death
 4 penalty, and that may be the best word we choose in that
 5 questionnaire. Maybe it would be better to say do you support
 6 having a death penalty, because I'm not sure anybody favors
 7 it? It's not such a wonderful thing to favor, perhaps. What
 8 do you think is the best reason, in your mind, that we should
 9 have a death penalty in society for capital murder?

10 **A. It goes, I think, to the value of human life and how**
 11 **an individual sees that, countries see it, states see it, and**
 12 **how we as, I guess the United States, have now gone that**
 13 **direction, and I think I value the human life to a point where**
 14 **there should be an ultimate punishment for the ultimate crime,**
 15 **and that's pretty much.**

16 **Q.** And you understand that under our law if a person is
 17 convicted of capital murder, it's not an automatic death
 18 sentence. It's the second phase of the trial where the jury
 19 answers questions to determine yes or no.

20 **A. Right.**

21 **Q.** As that's been explained to you by both sides when
 22 you were here last, do you think you're the kind of person
 23 that could follow that formula?

24 **A. Yes, yes.**

25 **Q.** You indicated the best argument in opposition to the

1 death penalty is actually kind of -- it's also a very strong
 2 law enforcement statement. The best argument against it might
 3 be that the punishment might be more severe to lock them up
 4 forever.

5 **A. Uh-huh.**

6 **Q.** Not so much that it's immoral to kill them, but
 7 almost the concept that maybe it's -- maybe a little too good
 8 for some of these crimes. Is that a fair phrase for what
 9 you're saying?

10 **A. Yeah, I think it is. I think it is. You know,**
 11 **there's always -- I think a lot of people wrestle with that**
 12 **issue, and it may be more punishment but it still may not be**
 13 **what I think you still should do, and that's -- that's really**
 14 **the -- but it is a strong argument.**

15 **Q.** If you had the opportunity to personally witness an
 16 execution, would you take that opportunity?

17 **A. It would depend on the circumstances and how close I**
 18 **guess it is to home and my family. I think if it was one of**
 19 **my children or wife, certainly I think that may be something**
 20 **that I would do.**

21 **Q.** We do not -- we have a -- we have several classes of
 22 persons that have rights to be present in the execution
 23 chamber. One is the guy they're going to kill. Of course
 24 he's going to be there; there is not much doubt about that.
 25 And then usually clergy are permitted, representatives of the

1 media are, by law, authorized to be there, families of
 2 victims, close families. They've got a certain formula for
 3 how close you've got to be, but a certain number of victims'
 4 families can be there. Family members of the defendant, and
 5 then some of the trial officials because I believe the -- I
 6 believe the -- that the judge can be, perhaps the sheriff,
 7 probably another prosecutor. Jurors do not get to be there,
 8 and I'm not saying they would not want to be.

9 But as a juror if you had the right to be there,
 10 would you want to go see that if you served as a juror, kind
 11 of as a final part of jury service?

12 **A. Probably not.**

13 **Q.** Okay. I guess many people are concerned about the
 14 possibility of wrongfully executing somebody, that being the
 15 wrong guy. He got framed, he had bad lawyers, he -- somebody
 16 comes forward and confesses, you know, a year from now. How
 17 big a concern does that seem to you?

18 **A. I -- that's not a big concern to me. I think the**
 19 **facts of the case would portray. I think the decision in the**
 20 **second phase that would make you -- you know, make the right**
 21 **decision.**

22 **Q.** Okay. I'm only going to talk very briefly about the
 23 guilt-innocence phase, not because it's not important and not
 24 because we don't have the burden of proof, because we know we
 25 do. It's a large burden of proof. I'm glad that it is

1 because when I'm not a prosecutor, I just live in this
2 society, just like you do, and I want the same things for it
3 that I'm sure you do, and that's a society ruled by law and
4 fairness and doing the right thing, even if it might be a hard
5 thing.

6 **A. Uh-huh.**

7 **Q.** But I believe my evidence will be sufficient to
8 convince you and 11 other people -- or you and 13 other
9 people, with alternates, that the defendant is guilty of
10 capital murder as we have alleged. And I will do that the
11 right way, and that is, for example, not by trying to gain an
12 advantage of the basis of the failure of the defendant to
13 testify if he doesn't testify. I would never say somehow that
14 that's evidence in our behalf that he chooses to exercise his
15 Constitutional right and not testify. The Judge would tell
16 you the same thing. That's his right, your right, the Judge's
17 right, my right. Everybody, if charged with a criminal case,
18 may decline to testify and no bad thing can happen to them or
19 bad inference can be drawn from that. Any problem with that?

20 **A. No.**

21 **Q.** And I wouldn't want my case aided by a notion that
22 the Defense somehow hasn't proved his innocence because that
23 distorts the very way we do our business here, and that is the
24 burden of proof always stays on the State of Texas. And the
25 Defendant and his attorneys have no obligation, other than to

1 be here and be orderly. They don't have to be -- they don't
2 have to be winsome. They don't have to be clever. They don't
3 have to be even interested. They only have to be here and be
4 orderly. And what they do and what they choose to do in a
5 tactical way doesn't, in any way, alter how much weight has to
6 be on the State's side of the scales in order to reach that
7 point of beyond a reasonable doubt. Any problem with that?

8 **A. No.**

9 **Q.** And I'm thinking straight-forward. If our case
10 isn't righteous enough that we can prove it straight up, then
11 it's probably not good for our society if it's going that way,
12 anyway. So I want to be held to the standard the law puts on
13 us, but I don't want to have anybody that increased my burden,
14 either. You seem like you would just weigh the evidence and
15 if it's sufficient to convince you beyond a reasonable doubt
16 he's guilty of capital murder, then you'd go that way; is that
17 true?

18 **A. That's true.**

19 **Q.** Okay. And if it isn't, you're the kind of man that
20 could say, sorry, you know, I think he's guilty. He's
21 probably guilty, nice try. Y'all did your best, but you
22 didn't get there. You could do that, too, couldn't you?

23 **A. Yeah.**

24 **Q.** Well, let's assume that I have done that because I'm
25 not discounting how important the presumption of innocence in

1 the first part of the trial is, but I believe I'm going to get
2 there.

3 **A. Uh-huh.**

4 **Q.** And that means if I'm correct, and the jury is
5 convinced that it's a capital murder beyond a reasonable
6 doubt, we go to the punishment phase of the trial. And that
7 first question that you see up there at the top, that
8 four-line question, is the first question the jury would be
9 dealing with.

10 And truthfully -- some people say that question
11 requires you to predict the future. I disagree with that. I
12 think that question -- I think that question requires you to
13 identify the personality of the Defendant, and that
14 personality -- whatever you determine that personality to be
15 will probably answer that question, which might have to do
16 with the future. Do you see what I'm talking about in that
17 question?

18 It doesn't say will the Defendant commit future acts
19 of violence? It doesn't say will the Defendant be a
20 continuing threat to society, which is how you phrase it if
21 you're talking about predicting the future. It talks in terms
22 of would the Defendant, which I guess looking at it another
23 way is if allowed to, would the Defendant, because of his
24 personality, be a continuing threat to our society for violent
25 acts.

1 **A. Uh-huh.**

2 **Q.** One thing the question clearly does not mean is, is
3 there any way, other than the killing the Defendant, that he
4 could be rendered so that he didn't actually harm our society,
5 because there are ways we could do that. I'm not in the
6 business of corrections, but there's never been -- the world's
7 most dangerous person, the world's meanest, most horrible
8 criminal, I believe, if they allow me, I could fix it so he
9 would never allow his threatening personality to actually do
10 any harm.

11 I'd put him in an iron suit, a big, old thick thing,
12 and it would be heavy so he couldn't do any movement. It
13 would have rivets so that the legs wouldn't even move. He's
14 stay there -- he'd stand up all during the day. When it's
15 bedtime, I'd kick him over and let him sleep in the iron suit.
16 I'd feed him through a hole in his mask -- in the helmet,
17 shoot some food in there every now and then. And I guess I'd
18 put some drains down in the feet so he could go to the
19 bathroom, and every now and then I'd squirt some water in
20 there to clean it out and keep it disease-free. And just to
21 make sure that he didn't figure a way to beat my metal suit
22 somehow, I'd get about ten guards hanging around him with
23 machine guns that -- you know, that would be instructed to
24 shoot him if he moved.

25 And in case they were derelict in their duties, or

1 went to sleep like some guards might do, I'd put some kind of
2 a motion-sensing bomb on him so if he did any movement he's
3 going to blow up. And that would mean -- I'm absolutely
4 convinced if I wanted to go to all that trouble, that would
5 mean nobody would be threatened by that man. Would you agree
6 with that, if I did all that?

7 **A. I would say probably be a good chance.**

8 **Q.** Now, maybe he'd get some tough guys to break him
9 out, you know, more than ten, but it could be done. So, that
10 question would never be converted to the idea is there some
11 way to -- short of killing him to keep this threatening
12 personality from endangerment? Do you understand what I'm
13 saying?

14 **A. Yeah.**

15 **Q.** And when you get right down to it, why should we
16 worry so much about that, anyway? I mean, the fact of the
17 matter is, the Defendant has been found to be a capital
18 murderer, not this case, but any case, that's how you get to
19 that question. He's a capital murderer, and all we're doing
20 is just putting an additional hurdle for the State. It's not
21 like in the right and wrong sense he shouldn't die for his
22 crime, anyway. But rather we have limited the application of
23 the death penalty to not just capital murderers, but to
24 dangerous capital murderers; people who have a personal that
25 evidence (sic) is danger.

1 So, we don't have to go to those expensive,
2 elaborate procedures in order to get that question answered.
3 We have got to identify his personality, let you look at what
4 he's done, let you look at the facts of the crime itself, let
5 you look at other background stuff, and just decide is his
6 personality one that would endanger society? That might mean
7 prison society. Would he endanger guards, if that's where he
8 is? Would he endanger other inmates? I mean, would he
9 endanger a librarian if he goes to the library, and they don't
10 have the book he wants? Or, you know, would he endanger a
11 store clerk if there was some question about merchandise?
12 Would he threaten his spouse, or beat up his spouse or his
13 kids if they did something to set him off, that kind of
14 notion? And if the answer is yes, he would be that way, then
15 the proper answer to that question should be yes. Society
16 includes both in the joint and outside the joint because it's
17 all society. It's just different subparts; do you agree?

18 **A. Yeah.**

19 **Q.** Now, some people say that is a question, since it
20 talks about personality, that I believe we need a psychiatrist
21 to help us understand. And the thinking goes like this:
22 Well, formation of personality and how people make choices and
23 why some people don't care anymore about human life than you
24 and I care about an old boot. Maybe we need a psychiatrist to
25 explain that to us, and you often see that in capital cases.

1 The Defense may introduce psychiatric evidence. We may do it;
2 they may do it; we may do it. We may choose to not even mess
3 with it. They may put on three. We'll go get three to say
4 just the opposite thing, and some jurors say, you know, I do
5 that every day of my life. I make assessments of people's
6 personalities, and then I determine, by that personality, how
7 that person is likely to behave. When I'm deciding who I want
8 to ask out for a date, I make assessments of that personality
9 so I may know what the future would hold and -- in a number
10 context.

11 When people make decisions to marry, they make
12 assessments of people's personalities, and what they think
13 will happen in trying to decide how that marriage is going to
14 work out. People choose jobs doing that. They figure out the
15 company culture. They figure out the supervisors. They maybe
16 talk to people who have been there before to understand how
17 employees have been treated there in the past in order to try
18 to make decisions about how it would be for you to work there.
19 That's an ordinary human process.

20 We get a weather report so you and I can figure out
21 whether or not we take an umbrella with us when we go to work.

22 Do you see yourself as being able to answer that
23 question just based upon the facts of the crime and any other
24 evidence about the Defendant's background, good or bad,
25 without a psychiatrist coming to testify?

1 **A. I have no problem without a psychiatrist. At that
2 point in the jury -- or that point in the trial, the guilt and
3 innocence have been determined?**

4 **Q.** Right. You never get there --

5 **A. Do you then get the opportunity to see the
6 background, or the historical, criminal background, if there
7 is one? Is that an option to the jury at that time?**

8 **Q.** Yeah, both good and bad. Now, neither side needs to
9 put on extra evidence at the second part of the trial, and I'm
10 not even talking about this case. Traditionally, the State
11 would introduce some evidence that probably wouldn't fairly
12 fit in the first part of the trial. You know, how a person
13 has been good or bad in the past probably doesn't have too
14 much to do with whether or not they committed capital murder?

15 **A. Right.**

16 **Q.** It goes both ways. Typically they couldn't
17 introduce, you know, a lot of Eagle Scout information to show
18 what a great fellow he is because what's that got to do with
19 whether or not a defendant's a capital murderer.

20 And the same thing with us. I mean, we couldn't
21 introduce the opposite kind of evidence because what's that
22 got to do with whether he committed it or not. But you're
23 absolutely right, the second part of the trial, all kind of
24 character evidence is admissible. Not only other crimes, if
25 there are any, not only other good deeds, but everything that

1 in any way bears upon the personality of the Defendant, good
2 or bad, that might aid the trier of fact.

3 And I'll just tell you, it's wide open. Almost
4 anything comes in, in the second part of the trial. It's very
5 liberal because some of that helps. A guy could be a war
6 hero, a guy could be a deserter. Those things come into
7 evidence if one side or the other wants to introduce them. So
8 you get that. You get the facts of the case, and you may get
9 some history. You may get history that's non-criminal, and
10 you might get background information, what he was like at 5,
11 10, 15, 20, 25, up to 28, whatever age the Defendant might be.
12 So you get all of that admitted.

13 Logic would tell you that the State would tend to
14 introduce the bad stuff, and the Defense would tend to
15 introduce the good stuff, but it's not always that way. What
16 one side might think is good, another side might say is bad.

17 Let's talk about drugs. The State might introduce
18 evidence in a capital case about drug usage of a defendant
19 because we think that's real bad. The Defense might think
20 that's good for them because it shows that maybe the
21 Defendant's an addict and that explains how come he did what
22 he did, and maybe in his right mind -- or his unfortified
23 mind, we would say he wouldn't have done these things. And
24 so -- but usually we bring on the bad; they bring on the good.
25 That's usually how that works, but neither side has to, okay?

1 **A. Okay.**

2 **Q.** That question is omitting a certain part, and I
3 don't know if we talked about that as a group. I'm thinking
4 Mr. Goeller actually explained it. If we went a little higher
5 up on that first question, you'd get the beyond a reasonable
6 doubt instruction. Do you remember when he talked about that?

7 **A. Yeah.**

8 **Q.** And that's true. Nobody is attempting to deceive
9 you. That's actually the way -- that's right out of the Code
10 of Criminal Procedure, is why we reproduced it that way. But
11 when you wrestle with that question as a juror, the Judge
12 would instruct you, do you find beyond a reasonable doubt that
13 there is a probability. That's how the actual question would
14 be worded. And then once again, it's that same high standard
15 of proof that you have to see. But that question isn't
16 saying, do you find beyond a reasonable doubt that the
17 defendant will commit criminal acts of violence in the future
18 because -- and he may not have that opportunity. We don't
19 have iron suits down there in the pen.

20 **A. Uh-huh.**

21 **Q.** But we have other ways that control people fairly
22 well. So the question will never be, will he commit criminal
23 acts of violence, but would he? Does he have the personality
24 that would happen? Probably. And that's why we get into the
25 stuff about the ice cream stores and the schools and the

1 libraries is because the "would he" applies to all parts of
2 society, wherever you might find him, because it's almost --
3 it's a hypothetical situation of his personality. What would
4 his personality do to our society? Make sense?

5 **A. Uh-huh.**

6 **Q.** If you answer that question no, everybody is
7 through, he gets a life sentence, you and I go home. And if
8 you answer that question yes, there's one more question, and
9 that's the mitigating question. That's the second one that's
10 down there. Take a moment, if you would, and read that.

11 **A. Okay.**

12 **Q.** I think that's a question that is for the benefit
13 of the jury, but in benefitting the jury and helping the jury
14 feel good about -- feel at peace with their decision, it may
15 help the Defendant. It could never hurt the Defendant because
16 without that question he's going to die. That's a fact,
17 because he's been convicted of capital murder, and he's been
18 found to be a dangerous personality. He has a threatening
19 personality, in other words.

20 So that question -- without that question, it's
21 automatic death. With that question the jury is given the
22 opportunity to look at all this so-called mitigating evidence
23 and decide, even though the answers to the questions seemed to
24 have indicated a death sentence should occur, do I find that
25 that indicator isn't really right? Do I find he shouldn't get

1 the death sentence because of mitigating evidence?

2 **A. Uh-huh.**

3 **Q.** It's not a license. It's not one of those things,
4 you know -- all -- I don't feel like killing anybody today, so
5 I'll answer that question yes, there's mitigation. It's not
6 a -- one thing the mitigation evidence clearly is, it's not an
7 objection to capital punishment, in general. You can't very
8 well say, I hate capital punishment so much that I believe
9 that's a sufficient mitigating circumstance, because it's not
10 about you, the jury. It's about the Defendant and his
11 personality.

12 Because it asks you, first of all, to look at -- it
13 says whether taking into consideration all the evidence,
14 including that he's a killer, the Defendant's -- the
15 circumstances of the offense, so you've got to take into
16 consideration that he's a killer. We've found he's a killer,
17 and it's an intentional, gruesome crime because capital murder
18 is that very thing. Then it says take into consideration his
19 character, and the truth is that's probably bad for him
20 because when you get to character you've probably done that in
21 this first special issue. You've decided -- I mean, not only
22 do you know he's a capital murderer, but you know he's going
23 to be a continuing threat if given that chance. So his
24 character is probably bad.

25 Now, I don't know how you could have a good

1 character and do capital murders and be likely (sic) to be
2 dangerous again. I don't think that's possible, but I guess,
3 in theory, it would be. Background stuff is probably where
4 the Defendant's mitigation evidence would emerge more than any
5 other place.

6 Now, it can emerge from anywhere. It can emerge,
7 for example, from the facts of the crime itself. You could,
8 for example, say, you know, that crime is so understandable
9 that I can see how somebody would do that. Let's take, for
10 example, the blowing up of the USS Cole. Apparently we think
11 that Osama Bin Laden did that. We think he was responsible.
12 Do you remember that suicide mission that happened over in
13 Yabin, or United Arab Amaritz, or wherever that was, but
14 somewhere over there. Apparently, we figured that Osama Bin
15 Laden is behind that.

16 Let's say at some point we're able to capture Osama
17 Bin Laden and bring him over to the United States, put him in
18 an ox cart and parade him down, you know, Times Square in New
19 York City with the public jeering at him.

20 Let's say you had a relative, like a brother or son
21 that was on that USS Cole, and let's say you made a
22 determination that a trial was too good for Bin Laden. Are
23 you with me so far?

24 A. Uh-huh.

25 Q. Let's say you just take it upon yourself to kill

1 him. That, by itself, would probably not be a capital murder
2 because it's only the murder of somebody, one person only.
3 But there are ways that you could do that that would make it a
4 capital crime. For example, if you broke into the jail where
5 they held him and you took out your, you know, big old gun and
6 blew Bin Laden's head off for blowing up the USS Cole. Are
7 you with me?

8 A. Uh-huh.

9 Q. That might be something you'd find a person guilty
10 of capital murder, and you might, depending on the evidence,
11 say anybody that would do that and go in there and risk FBI
12 agents and federal prison authorities, everybody else where
13 they had this man. Maybe you'd say that person would be a
14 danger in the future. Maybe not, it would just sort of
15 depend. But you might look at all that evidence and you might
16 say, you know, the background of this crime and of this
17 defendant is understandable. You might say somebody that lost
18 a son on the Cole, and there's some creature like that that
19 doesn't deserve to breathe anyway, you might say that's
20 something where a life sentence is appropriate; that what he
21 went through, losing that child, what you went through losing
22 that child, might be enough to be sufficient mitigating. Do
23 you see how that could be?

24 A. Sure.

25 Q. In which case you just vote for it. Doesn't mean he

1 gets off. It's not an excuse. It's just spare a person's
2 life; does that make sense?

3 A. Yeah.

4 Q. Okay. There might be other stuff. Maybe the
5 background has been wonderful. Maybe he's a Medal of Honor
6 winner. Maybe he saved a bunch of sailors early in his
7 life -- the Defendant, I mean. Maybe, for whatever reason, he
8 went bad, and, yes, he's a capital murderer and, yes, he's
9 dangerous, but there are a whole bunch of men that have been
10 rescued and had productive lives in our society directly as a
11 result of his early gallantry. Maybe in your mind that's
12 enough mitigating circumstance.

13 Maybe you think that coming from a broken home or
14 coming from a poor society or coming from a place where his
15 father never spent enough time with him, maybe you think
16 that's sufficient mitigating circumstance. It's up to you.
17 The idea is just weighing.

18 I guess the bottom line is you're open to the notion
19 of finding something that would convince you that it's
20 sufficient mitigating evidence, and you're the kind of man
21 that could go either way on that question, depending on what
22 the evidence shows you; is that right?

23 A. Yeah. I think it -- like I said, in some dimension
24 that's kind of the last gut-check of when you're making a
25 decision, and that's something that will be weighed on those

1 key words on background and the evidence that's before
2 everybody.

3 Q. I mean, as a prosecutor I think it's fine. I like
4 the question because if the case is righteous, the jury is
5 going to answer that question, "no, there's not sufficient
6 mitigating evidence." If it's not righteous, then 12 people,
7 or even one person that's sensible that we take all this care
8 picking. If one single person says that, then there may be a
9 defect in the case, and maybe that's a good thing. And I hope
10 you agree -- I hope you understand that that is important?

11 A. Uh-huh.

12 Q. Do you have any questions of me, sir?

13 A. No, no.

14 MR. SCHULTZ: Judge, we'll pass the juror.

15 THE COURT: All right. Is it Mr. Goeller?

16 MR. GOELLER: Yes, Your Honor.

17 THE COURT: Go ahead.

18 MR. GOELLER: Thank you, sir.

19 CROSS-QUESTIONS

20 BY MR. GOELLER:

21 Q. Good morning, Mr. -- pronounce your last name.

22 A. Prestemon.

23 Q. Prestemon?

24 A. Right.

25 Q. Okay. Thanks for coming back. I know this is

1 probably your third trip back or fourth. I've kind of lost
 2 track myself.
 3 Any thoughts about anything that I had mentioned the
 4 other day?
 5 **A. Not necessarily.**
 6 **Q.** Anything I say offensive or you took issue with, or
 7 just something that maybe has nothing to do with anything, you
 8 feel uncomfortable with me or my position, my cause in this?
 9 **A. No.**
 10 **Q.** The only reason I ask, I've had a couple of jurors
 11 say I don't like you, and I don't like --
 12 **A. No.**
 13 **Q.** People are funny, and I go into that because the
 14 last thing I'd ever want is to have a juror that personally
 15 had some animus towards me that somehow filters over to my
 16 client, Ivan, here. Do you know what I'm saying?
 17 **A. Yes.**
 18 **Q.** And you're a businessman, right?
 19 **A. Yes.**
 20 **Q.** What's the general perception of criminal defense
 21 lawyers out there? You know, at the water cooler or golf
 22 course, whatever? It's negative?
 23 **A. That's it. No, I don't -- I mean, certainly**
 24 **there's, I think, perceived things that I think, you know, one**
 25 **could speculate on that, but I don't -- I don't have any**

1 **perceived negatives on that.**
 2 **Q.** Thank you. Lawyers get a bad wrap to begin with,
 3 and then, you know, criminal defense lawyer, I always tell
 4 people those are two different words; criminal, defense and
 5 lawyer. You know, they're separate words, but I don't think
 6 you're that kind of person, and I appreciate that.
 7 Let me get right to -- I've learned the last few
 8 days to get to the logistics first, and then we'll go back
 9 into it. Any reason you do not want to serve as a juror?
 10 Yes -- if yes, please give details. "My position at my
 11 company would put an unfair burden on my staff if I was on an
 12 extended trial." I'm pretty much telling folks this trial
 13 will last for the better part of the month of October.
 14 Certainly the first, second and third week. I'm very
 15 confident, and I can say that. Beyond that, I would like to
 16 think not more than four or five weeks at the outside. Worst
 17 case scenario, certainly probably not more than three weeks,
 18 two and a half three weeks inside. So let's just say to
 19 October 21st, 24th, something like that the game would
 20 definitely be on.
 21 Tell me a little bit about your thoughts about that,
 22 personal life, professional life --
 23 **A. Uh-huh.**
 24 **Q.** -- business, travel, fall break, kids, wives,
 25 co-workers, the whole nine yards.

1 **A. It -- you know, I already stated on the fall break**
 2 **thing, which is obviously something with my family that I feel**
 3 **is important. Beyond that it goes into the business end of --**
 4 **you know, with the -- I'm in real estate, and run a -- luckily**
 5 **enough to be in a position of responsibility on a very**
 6 **large -- the largest real estate project in Dallas, and I'm**
 7 **responsible for it and --**
 8 **Q.** What are you putting up?
 9 **A. We have a 5,000-acre development, and it's actually**
 10 **here in McKinney that we've been running since 1985.**
 11 **Q.** What is it?
 12 **A. Stonebridge Ranch.**
 13 **Q.** Oh, okay, okay. Got you. I thought there was
 14 something new out there that I don't know.
 15 **A. No, it's -- and I'm responsible for that project.**
 16 **Q.** Wow.
 17 **A. And that's not a -- with the events of September**
 18 **11th that has turned the tide on many economic predictions**
 19 **that we were going into. We went into a business planning**
 20 **mode that we were supposed to end on October 15th. Now we are**
 21 **having to go back and really rethink a lot of those issues**
 22 **that are out there in our business planning cycle. And I'm**
 23 **right in the middle of that right now, which I -- you know,**
 24 **could I get by that? It would be -- it would be a strain**
 25 **on -- personally and on the company, and --**

1 **Q.** Okay.
 2 **MR. GOELLER:** May I have just a moment, Judge?
 3 **THE COURT:** Sure.
 4 (Brief pause in proceedings.)
 5 **Q. BY MR. GOELLER:** When I -- I was going through your
 6 questionnaire, and for kind of a selfish reason, I wanted to
 7 ask, could you help me with a slice? I bet you get that all
 8 the time.
 9 **A. I do.**
 10 **Q.** You're a former golf pro?
 11 **A. Yes.**
 12 **Q.** Wow. I'll bet you can't go to a party, if people
 13 find out what you do, how many times do you hear the word
 14 "slice" or "hook" in the course of an evening?
 15 **A. It's been a few times.**
 16 **Q.** Yeah, I'll bet. You probably don't tell people what
 17 you do or you'll wind up having a good time by having to talk
 18 shop all night?
 19 **A. That's right.**
 20 **Q.** I guess I want to focus on some of the answers that
 21 are really the guts of this questionnaire.
 22 (Brief pause in proceedings.)
 23 **Q. BY MR. GOELLER:** I'm sorry, Mr. Prestemon.
 24 In your questionnaire, you're what we call a "2."
 25 You believe death is appropriate in some capital murder cases,

1 and I could return a verdict resulting in death in a proper
2 case. And your explanation for your feelings about death
3 penalty; ultimate equals ultimate punishment. Those two are
4 consistent.

5 On the next page life confinement. Do you believe
6 it's appropriate in some cases, and you could return a verdict
7 resulting in life? And as a defense lawyer, I would obviously
8 ask you, how do you reconcile ultimate crime equals ultimate
9 punishment with you could give life?

10 **A. The facts of the case.**

11 **Q.** I get right to the chase. I don't want to beat
12 around the bush.

13 **A. I think the facts of the case.**

14 **Q.** Okay. Of course, by the time you get to the
15 punishment issue -- I'm testing you.

16 **A. Uh-huh.**

17 **Q.** I just want to make sure you fully understand, push
18 it a little bit more.

19 **A. Sure.**

20 **Q.** If it is the ultimate crime, by the time you get to
21 the punishment questions you have found somebody guilty, okay?

22 **A. Right.**

23 **Q.** So you have found somebody guilty of the ultimate
24 crime. Now, if that equals the ultimate punishment, does a
25 defendant have a fair shot at those -- with you with those

1 mitigation or punishment questions?

2 **A. I think it would. Again, you know, I think the**
3 **facts of the case that are brought out and when we go back to**
4 **deliberate, I think those -- you know, I could deliver a**
5 **response to both those questions that could involve a death**
6 **penalty, and if the facts of the case point the other way, I**
7 **could do that.**

8 **Q.** Okay.

9 **A. I think it's difficult to state until you hear**
10 **and -- what happens.**

11 **Q.** I got you. I'm with you so far, and I think I'm
12 almost there. Just help me out, though. The ultimate crime
13 equals the ultimate punishment.

14 **A. Okay.**

15 **Q.** Okay. So, in a sense the way -- you know, I've got
16 to be so careful in this process. I read that as if he's
17 found guilty of the ultimate crime, your word was equals the
18 ultimate punishment.

19 **A. Uh-huh.**

20 **Q.** Do you see where my problem --

21 **A. Yeah.**

22 **Q.** -- my dilemma?

23 **A. I do.**

24 **Q.** I'm trying to reconcile that, or have you reconcile
25 that with you could give life.

1 **A. Right, right. And I think you bridged that gap by**
2 **the facts in the case. I could have expounded, I guess, on**
3 **the ultimate crime equals the ultimate punishment and put a**
4 **caveat in there that says given the extraneous circumstances**
5 **or whatever, and there are certainly.**

6 **Q.** You're right. You just bridged it for me.

7 **Q.** Okay. And the next -- the next area -- I mean,
8 obviously, from a defense lawyer's standpoint and probably
9 from most defendant's standpoint, if somebody were convicted
10 of capital murder, obviously we'd be seeking a life sentence.
11 I mean, you'd think I had a -- I was an idiot if I didn't,
12 right?

13 **A. Uh-huh.**

14 **Q.** Although out of the 200 questionnaires, we've seen
15 three answers similar to yours, and I don't take issue with
16 it.

17 **A. Uh-huh.**

18 **Q.** In fact, there are good arguments for it, I guess.
19 Defendant may pay more of a penalty with life behind bars.
20 Tell me your thoughts behind that statement.

21 **A. I mean, that is just a comment that you could -- I**
22 **think you could make an argument for. It's not that you**
23 **cannot do the death penalty, but I think you can make an**
24 **argument for it. I don't know what the context of that**
25 **question was; do I believe in that or are you just trying to**

1 **play the devil's advocate or making a case? I think I was**
2 **making a point that the other side, or a viewpoint could**
3 **certainly be that. And I think everybody can even wrestle**
4 **with that, even the believers of the death penalty that -- are**
5 **you really giving the punishment. And it's a valid point, and**
6 **that's the reason I put it down there. It's not that I would**
7 **go that way or not go that way, but it's -- I think they asked**
8 **me to put down a point there, and I did I guess.**

9 **Q.** You're right. And it wasn't couched in terms of
10 what is your personal opinion?

11 **A. Right.**

12 **Q.** What is the best argument --

13 **A. Right.**

14 **Q.** -- in opposition of the death penalty.

15 If I were to ask you that question, what is -- if
16 you have an argument that you personally could give credence
17 to in opposition of the death penalty, what would it be?

18 **A. My personal view?**

19 **Q.** Yeah.

20 **A. That would probably be one of them.**

21 **Q.** Okay.

22 **A. That fact there.**

23 **Q.** Could you think of anything else, or anything else
24 come to mind? And it might not be. You're a 10 on a 1 to 10
25 for your views in favor of it, so I wouldn't expect a 10 to

1 have too many arguments against it.

2 **A. Yeah. I mean, you could have religious beliefs that**

3 **could come into it.**

4 **Q. Okay, okay. Just another thing I highlighted, and**

5 **again, it may mean nothing, but obviously I've got to ask.**

6 **"Do you believe it's applied fairly in Texas? Yes. Explain.**

7 **There are many checks and balances along the path to the death**

8 **chamber to make sure a mistake has not occurred."**

9 **I, obviously, would be worried about a juror --**

10 **that's an understatement. I'd be worried about a juror who**

11 **would tend to vote death because they figure, well, there's**

12 **appeals and checks and balances and all that kind of stuff, so**

13 **my vote really doesn't matter. Do you know what I'm saying?**

14 **A. Yeah.**

15 **Q. Do you see where I'm coming from? Tell me a little**

16 **bit more about -- and maybe I read too much into that. When I**

17 **see that, a red flag goes up that I need to talk to the juror**

18 **about it, but with my comments in mind tell me more about your**

19 **comments.**

20 **A. I guess I feel that once due process has occurred,**

21 **and I'm the one sitting on the jury and I've heard the facts**

22 **and we've went through that process and went through those two**

23 **questions, and obviously there is an indictment down that**

24 **caused the Defendant to be here in the first place, there's**

25 **been a lot of checks and balances that have come along the way**

1 **that I could feel like I could render a decision of that**

2 **weighted -- a weighted decision like -- which would be before**

3 **the jury and -- but that would be adequate enough to be able**

4 **to do that without feeling like we've sent somebody that's**

5 **innocent to that end.**

6 **Q. Of course, up to this point -- up until a jury gets**

7 **in the jury box, there have been no checks and balances; you**

8 **know that?**

9 **A. Yes.**

10 **Q. Grand Jury indictment, the Judge will tell you that**

11 **thing's meaningless, the significance of it. It just gets the**

12 **trial started because it's all Government. It's all law**

13 **enforcement all the way up.**

14 **A. Yes.**

15 **Q. Okay. I think I'm with you.**

16 **There was one person you know of, a Norma Hughes,**

17 **drugs, five years ago, Gatesville Women's Unit. How do you**

18 **know a Norma --**

19 **A. It's my wife's sister.**

20 **Q. Okay. So, obviously you knew -- is she still in**

21 **serving time?**

22 **A. Yes.**

23 **Q. Really?**

24 **A. Yes.**

25 **Q. What kind of sentence did she get? In fact, I think**

1 you put that in there. 15?

2 **A. Yeah, I think it was something like that. It was**

3 **basically because she's -- it was, like, on a third conviction**

4 **or something, and I think they threw the book at her after**

5 **that.**

6 **Q. How's that -- was your wife close?**

7 **A. No.**

8 **Q. They close?**

9 **A. No.**

10 **Q. They're not close?**

11 **A. No, not at all.**

12 **Q. Any contact while she's been in the women's joint?**

13 **A. We get, you know, letters on a -- four a year,**

14 **something from her, to her sister, which -- my wife, which my**

15 **wife usually doesn't even read.**

16 **Q. Wow. Been tough on a family, at least your wife's**

17 **side?**

18 **A. I think so, yeah.**

19 **Q. Is it more -- I guess if she's -- is it more, you**

20 **know, she made her bed; we've tried to help in the past, she**

21 **don't listen and --**

22 **A. From, I think, my wife's standpoint, yeah. And I**

23 **guess, on our family we have. It's -- I'm sure my wife's**

24 **parents have a little deeper feeling on that, but --**

25 **Q. How old a woman is she, Norma?**

1 **A. She is 45.**

2 **Q. Okay. You've been married quite a long -- you've**

3 **been married what? I can't remember. Tell me how many.**

4 **A. Don't test me. It's --**

5 **Q. I tell you what --**

6 **A. -- 17 years.**

7 **Q. -- I won't ask you --**

8 **A. -- plus or minus.**

9 **Q. -- if you don't ask me, okay. But you've been**

10 **married a good long time?**

11 **A. Yes.**

12 **Q. And obviously, was there ever a time where Norma was**

13 **more in the fold, so to speak, or has she always been --**

14 **A. Pretty much have been on the edge --**

15 **Q. Yeah.**

16 **A. -- I would say of family, society, everything from**

17 **pretty early on.**

18 **Q. Any news or information or indication that she's**

19 **rehabilitating or reforming on the inside?**

20 **A. Since this is, like, her third time back, every time**

21 **she goes back she seems to repent.**

22 **Q. This isn't her first trip?**

23 **A. No, no. This is repeat. She's --**

24 **Q. So the first couple of times --**

25 **A. She repents every time she gets back in prison and**

1 finds God, and then a month after getting out, she's back
2 where she was. And it has not stopped that pattern this time,
3 either.

4 Q. I would bet her choice of men is awful?

5 A. I would say yes, yeah.

6 Q. I don't know a women in the penitentiary that's
7 there truly because of her own doing. There's usually some
8 scumbag out there that's got them there. I really believe
9 that after all the years in this business. Is that kind of
10 her deal, too, gets hooked up with guys --

11 A. Yeah. I'd say there's -- it's probably equally
12 shared.

13 Q. Yeah. Because most women, if they don't have a bad
14 male influence in their life, they'll never end up in the
15 joint. I truly believe that. But anyhow -- okay. Well, I
16 hope that all works out.

17 You served as a juror one time?

18 A. Yes.

19 Q. Dope case?

20 A. Yes.

21 Q. Collin County?

22 A. Actually, it was in Bexar County, San Antonio.

23 Q. You're originally from Minnesota, right?

24 A. Yes.

25 Q. Okay. And then you lived -- what years did you live

1 in San Antonio?

2 A. From 1980 to 1997.

3 Q. I lived there a good hunk of the time, too. You go
4 back a lot?

5 A. Yeah, I do. It's a great city.

6 Q. That 1604, I can't even recognize it.

7 A. A lot going on.

8 Q. Do you know where Church Hill High School was?

9 A. Yeah, lived right next to there.

10 Q. That used to be -- the apartment complex, kind of
11 across the street there --

12 A. Yeah.

13 Q. That was the outer fringe of north San Antonio.
14 You can't even find it now it's so buried in there. Do you
15 know what I'm talking about?

16 A. I know exactly. I developed a lot of the land
17 around there.

18 Q. Really?

19 A. Yeah.

20 Q. Any questions for me, sir?

21 A. No.

22 Q. Okay. Thank you, sir.

23 THE COURT: All right. Let me ask you to step
24 down for just a few minutes, sir. Perhaps we'll have you back
25 in.

1 (Venireperson exits the courtroom.)

2 THE COURT: What says the State?

3 MR. SCHULTZ: Acceptable.

4 THE COURT: What says the Defense?

5 MR. GOELLER: We exercise our peremptory
6 challenge.

7 THE COURT: All right.

8 MR. GOELLER: And then --

9 THE COURT: Yes, go ahead.

10 MR. GOELLER: And then I think we'd like to
11 talk to the Court about how we proceed from this point, or how
12 we'd maybe like to proceed.

13 THE COURT: All right, I understand. In
14 chambers or here or where?

15 MR. SCHULTZ: Why don't we talk first before we
16 talk to the Court, and see if we can come up with something
17 that might expedite it.

18 THE COURT: All right. Would you tell
19 Mr. Prestemon that he is finally excused --

20 THE BAILIFF: Yes, sir.

21 THE COURT: -- from his service.

22 And I'll tell you what, I'm going to step down. Do
23 you want to talk to me sooner or later? We'll come back at 1,
24 and we can talk at 1, or however you-all want to do it.

25 MR. SCHULTZ: Maybe at 1.

1 THE COURT: I'll see you-all at 1:00.

2 THE BAILIFF: All rise.

3 (Lunch recess taken.)

4 THE COURT: All right. We're back from lunch
5 in the Cantu case, and the next juror up is Janet Reeder,
6 Number 134. Do I understand y'all have an agreement with
7 regard to Janet Reeder?

8 MR. SCHULTZ: I'm sorry?

9 THE COURT: Did you hear the question?

10 MR. GOELLER: I did, Judge.

11 THE COURT: All right. Go ahead and give me an
12 answer then.

13 MR. GOELLER: Maybe I need just ten seconds. I
14 don't want to misspeak.

15 THE COURT: All right.

16 (Discussion off the record.)

17 MR. SCHULTZ: One thing of record, Judge.

18 THE COURT: All right.

19 MR. SCHULTZ: We had -- the Court will recall,
20 and I don't recall her name but I'll get it in just a second,
21 while we were doing the voir dire a couple of days ago. She
22 got ill right in the middle and asked permission to leave.
23 That would be Juror Number 133, Pamela Hunter.

24 THE COURT: Right.

25 MR. SCHULTZ: And we had a side-bar conference,

1 and so -- we didn't know how long it was going to be before
 2 she'd get well, if she even got well. I think the lawyers'
 3 understanding of the agreement sidebar was we just excuse her
 4 from voir dire so we could proceed with the voir dire and deal
 5 with her at some point later on. I've heard, only through the
 6 grapevine, that maybe she's been excused. And I don't have a
 7 problem with that, except I want to make sure that they don't
 8 have a problem with it because that's not my recollection of
 9 what actually happened. We just excused her from voir dire so
 10 we could go ahead and not have that delay until she finished
 11 whatever she was doing, and I'll go either way. If they want
 12 to have her brought back in, I'm with them on that. And if
 13 they want to agree to have her go, I'm with them on that,
 14 too. But I need to know what their position is on the record.

15 THE COURT: You're right. 133 is the next
 16 possibility. How do you feel about Number 133, Pamela Hunter?

17 MR. GOELLER: We agree to release that juror,
 18 Judge.

19 THE COURT: Is that your desire, Mr. Cantu?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Number 133 is finally
 22 excused, and we also have next Number 134. And do you have an
 23 agreement on 134, or are you going to call her in?

24 MR. GOELLER: I guess you need to call her in,
 25 Judge.

1 THE COURT: All right. Next one is Janet
 2 Reeder, Number 134, and I believe you go first.

3 MR. GOELLER: Yes, sir, thank you.

4 THE COURT: All right. And I would ask you to
 5 pass her in about 20 or 25 minutes.

6 MR. GOELLER: Yes, sir.

7 THE COURT: Let me have the attorneys sidebar
 8 over here for a second.

9 (Sidebar discussion had.)

10 (Venireperson enters the courtroom.)

11 THE COURT: Good afternoon. Are you Janet
 12 Reeder?

13 VENIREPERSON: Yes, I am.

14 THE COURT: Perhaps you'll recall a little over
 15 a month ago there were over 200 jurors assembled, and I
 16 administered an oath. The oath was to tell the truth with
 17 regard to any questions that were asked by the Court or by the
 18 attorneys; do you recall that?

19 VENIREPERSON: Yes, I do.

20 THE COURT: You're still subject to that oath,
 21 and let me ask you to be seated here, and we'll get the
 22 attorneys to ask you some questions.

23 All right, Mr. Schultz.

24 MR. SCHULTZ: Judge, was --

25 THE COURT: Oh, that's right. You're up. I'm

1 sorry. Mr. Goeller, go ahead.

2 MR. GOELLER: Thank you.

3 DIRECT QUESTIONS

4 BY MR. GOELLER:

5 Q. Good afternoon, Ms. Reeder. Am I pronouncing that
 6 correctly?

7 A. **That's correct.**

8 Q. Okay. If I could just approach Ms. Reeder for a
 9 moment.

10 THE COURT: All right.

11 Q. BY MR. GOELLER: Ms. Reeder, I just wanted to make
 12 sure that you recall. This was the questionnaire that you
 13 filled out a couple of weeks ago -- about a month ago, a
 14 little over a month ago.

15 A. **That's correct.**

16 Q. And on this page here, is that your signature?

17 A. **That is my signature.**

18 Q. Okay. And did you read the oath prior to you
 19 signing that document?

20 A. **I did.**

21 Q. And all the answers in here are truthful answers
 22 sworn to under oath, correct?

23 A. **Correct.**

24 Q. Tell me what some of your thoughts have been since
 25 you first came down to the courthouse a little over a month

1 ago regarding capital punishment.

2 A. **In what respect?**

3 Q. Well, I tell you what. I'll go to more specific
 4 questions. On the first page of your questionnaire, you are
 5 in favor of the death penalty, correct?

6 A. **I am.**

7 Q. Are you still today?

8 A. **Yes.**

9 Q. Okay. More so than you were a month ago, or about
 10 the same?

11 A. **It's the same.**

12 Q. Okay. In explaining your answer for being a
 13 proponent, or in other words being in favor of the death
 14 penalty, you said tax dollars, and you underlined tax dollars,
 15 spent on prisoners who are found guilty who get life, this tax
 16 money could go elsewhere. Crowding of prisons would decrease.
 17 It may send a message to anyone thinking of a crime -- a crime
 18 lifestyle. I guess criminal acts. Are those your words?

19 A. **Pretty much. I'm not sure if that's exactly what I
 20 said, but you had trouble reading it, so I don't know.**

21 Q. But that's -- would certainly be the gist of it.
 22 That's your true feelings, that life confinement is a waste of
 23 taxpayers' money?

24 A. **I feel that there's a problem with it, yes.**

25 Q. Okay. We asked you to make a choice between five

1 positions regarding the death penalty from believing, at one
2 end of the spectrum, that the death penalty should be imposed
3 in all capital murder cases, all the way to the other end of
4 the spectrum that you could never vote to return a death
5 sentence. You chose option number one. You believe that the
6 death penalty should be imposed in all capital murder cases,
7 correct? Do you recall?

8 **A. I do, I do. That's a broad question, and there's a
9 lot of "ifs" that go with that, but for the most part if
10 someone is proven guilty and the death penalty is an option.**

11 Q. Okay. It should be imposed?

12 **A. It should.**

13 Q. Okay, all right. I won't argue with you about that.
14 That's the great thing about these questionnaires and your
15 service as a prospective juror, is the only right answer is an
16 honest answer and just to give us your true feelings and we
17 can all live with that.

18 What is the best argument in favor of the death
19 penalty? You wrote tax money spent, crowding of prisons,
20 appeal after appeal. Does that sound familiar?

21 **A. Yes.**

22 Q. Okay, all right. And what is the best argument in
23 opposition of the death penalty? And you wrote "none,"
24 correct?

25 **A. Correct.**

1 Q. Okay. Regarding life confinement in prison, again
2 we gave you some options from one end of the spectrum to the
3 other. I believe you chose Option Number 2. Well, the first
4 option was I believe that life confinement in prison is never
5 appropriate in any capital murder case. The second option
6 was, I believe that life confinement in prison is never
7 appropriate in any murder case, and then the third option was
8 you thought life confinement was appropriate in capital murder
9 cases, and you could return a verdict of life. And you chose
10 Option Number 2, that you believe life confinement in prison
11 is never appropriate in any murder case, and that was your
12 answer under oath back when you filled this out, and is that
13 your answer here today as well?

14 **A. Yes.**

15 Q. Okay. You also believe that the death penalty
16 should be available for non-homicide type of cases, correct?
17 I think you wrote down rape, child abuse, all aspects,
18 correct?

19 **A. Correct.**

20 Q. Okay. If you were the Governor for the day -- let's
21 say somebody made you the Governor of the State of Texas for
22 the day, would you change the laws to get the death penalty
23 for non-homicide type offenses?

24 **A. Would I change the law?**

25 Q. Yeah.

1 **A. No.**

2 Q. Why?

3 **A. I feel that the law is appropriate for the State of
4 Texas as it is now.**

5 Q. So even though you think the death penalty should be
6 available for rape and child abuse, if you had the opportunity
7 to change it, you wouldn't?

8 **A. No.**

9 Q. Okay, okay. You've -- how long have you lived in
10 McKinney, ma'am?

11 **A. Fourteen years.**

12 Q. Okay. And what do you think about law enforcement
13 here in McKinney? I think you wrote, if I read this correct,
14 "Police officers, you love them. They are great here in
15 McKinney"?

16 **A. Correct.**

17 Q. Okay. They got a pretty good law enforcement
18 department here in this town?

19 **A. They helped me extensively last April.**

20 Q. What did they help you with?

21 **A. I had a family that moved in next door to me and
22 within a week I had my window shot out.**

23 Q. Oh, boy.

24 **A. They were on the spot, they did a good job. I was
25 very pleased with their work. They helped me.**

1 Q. In your questionnaire we gave you a sentence and
2 asked you to either strongly agree all the way down to
3 strongly disagree and a couple of areas in between. If
4 someone is accused of capital murder, he should have to prove
5 his innocence. You wrote -- you circled agree; is that
6 correct?

7 **A. I think so, yes.**

8 Q. And you believe that here today, too?

9 **A. I would think so, yeah.**

10 Q. Okay. I'm just --

11 **A. Well, I don't have that much experience with
12 capital, so it's hard for me to really answer some of those.
13 It's my thoughts only.**

14 Q. And remember, there's no right or wrong answer. I'm
15 not trying to debate you. If a person is brought to trial on
16 murder charges, that person is probably guilty. You circled
17 agree, correct? You may not remember. It's probably not fair
18 for me --

19 **A. There's a lot of play in that, I think.**

20 Q. Yeah. Because you have from strongly agree to
21 strongly disagree. If a person is brought to trial on murder
22 charges, the person is probably guilty. You circled agree,
23 right?

24 **A. I think if they got that far, there's probably a
25 good chance that something is there.**

- 1 Q. You bet, you bet. And the next one, "A defendant is
2 innocent unless proven guilty beyond a reasonable doubt," and
3 you circled -- you circled agree on that one. Tell me why.
4 Or would you change your answer?
5 **A. It happens.**
6 Q. Once in a while somebody might be innocent?
7 **A. Once in a while.**
8 Q. But your views -- your answers under oath and your
9 views on capital punishment and life confinement, the answers
10 you put in your questionnaire are consistent with those
11 feelings that you'll hold here today, correct?
12 **A. Yes.**
13 Q. And I believe you, and I think you're speaking your
14 true feelings from the heart and based on what you believe.
15 If -- if I read your answers -- your answers here today under
16 oath and your answers in your questionnaire, if you find
17 somebody guilty of capital murder, that person would
18 automatically -- you would vote in such a way as to give that
19 person the death penalty?
20 **A. I would.**
21 Q. Okay. All right. And special issues and mitigation
22 and background and character and things like that really don't
23 matter because of your views on if you have found them guilty
24 of capital murder you will vote in such a way as to bring
25 about the death penalty?

- 1 **A. If it was proven to me that the person was that**
2 **guilty and I had no chance of doubting, then I would vote that**
3 **way.**
4 Q. Okay. So if the State proves to you beyond a
5 reasonable doubt that a person is guilty of capital murder --
6 **A. (Nods head.)**
7 Q. -- you will vote in such a way as to bring about the
8 death penalty?
9 **A. It would be hard, but I would do it.**
10 Q. I know you would. I know you would. Thank you very
11 much, ma'am.
12 THE COURT: All right. Go ahead,
13 Mr. Schultz.
14 MR. SCHULTZ: Yes, sir, thank you.
15 CROSS-QUESTIONS
16 BY MR. SCHULTZ:
17 Q. Ma'am, my name is Bill Schultz. I'm one of the
18 prosecutors assigned to this case.
19 **A. Uh-huh.**
20 Q. Is that what -- is what you're saying, does it seem
21 to you that's -- that's within your rights as a juror, is that
22 why you're saying you would do that, or do you see what you're
23 doing as different from the responsibilities of a juror?
24 **A. I'm not sure I understand that.**
25 Q. Okay. Let me kind of back up a little bit. What is

- 1 your opinion as an RN on mercy killing? Tell me kind of a
2 quick overview.
3 **A. On mercy killing?**
4 Q. Uh-huh. Tell me what you think about that.
5 **A. Mercy killing in what way?**
6 Q. Well, let's say you have a patient -- you work in
7 the ICU; is that right?
8 **A. I work in ICU and CCU, correct.**
9 Q. And ICU, I guess, is that the more serious unit?
10 **A. That would be more serious, correct.**
11 Q. And then where does CCU fit into that?
12 **A. That is a step-down unit where there's less**
13 **seriousness.**
14 Q. Now, is it fair to say that from time to time you
15 have patients in ICU that you, as an experienced nurse, know
16 aren't going to make it?
17 **A. I can't hear you. I'm sorry.**
18 Q. I say, is it fair to say that you, as an experienced
19 nurse, sometimes you see people in the ICU that you know are
20 going to die; they're not going to make it?
21 **A. It's evident, yes.**
22 Q. Okay. Any of them ever in pain?
23 **A. Possibly, yes.**
24 Q. So my question to you is, what's your view on the
25 concept, if they're still conscious but just all messed up,

- 1 and they want to die and they find somebody that will come in
2 and kill them, what's your position on that?
3 **A. That's not something I have any jurisdiction over.**
4 **That's not anything I would do --**
5 Q. I know that.
6 **A. -- or a physician that I know.**
7 Q. Well, I understand. I'm curious, what is your view
8 on that?
9 **A. I feel it's wrong.**
10 Q. Because it's still human life?
11 **A. I feel it should be discussed between the family,**
12 **the patient if they're conscious and possibly the physicians**
13 **that are caring for that patient.**
14 Q. Let's say everybody agrees.
15 **A. If everybody agrees, then something would**
16 **appropriately, possibly be done at that level.**
17 Q. Like, they get smothered or something like that?
18 **A. No, no, no, no, no. No. No. I've never seen that**
19 **done and --**
20 Q. I understand. See, I'm puzzled, because under our
21 law to be a fair juror you have to be capable of following all
22 aspects of the law, and you don't seem like an unfair person
23 to me.
24 **A. Hopefully, I'm not.**
25 Q. And yet, the answers you're giving makes it seem to

1 all of us like you're unfair in the sense that this
 2 Defendant's -- his only hope at escaping an execution is to be
 3 found not guilty, because under our law even if a person is
 4 found guilty of capital murder, he or she is still entitled to
 5 a jury that may vote in a way that life would result, that may
 6 vote in a way that death would result according to the
 7 evidence. Does that make sense to you?

8 A. Yes, it does.

9 Q. But you're telling me you're not the kind of person
 10 that could vote in a way that life would result, no matter
 11 what, and that doesn't seem fair to me?

12 A. I haven't been in this circumstance before to have
 13 to vote for that in a jury.

14 Q. Well, I understand.

15 A. So I'm not sure, but I -- my feelings coming into
 16 this today are what I expressed to him.

17 Q. I understand. I'm not quarreling with you, but
 18 there are a lot of things you've never done, but you know how
 19 you'd -- you know how you'd do it.

20 Have you ever rescued a child from a swimming pool,
 21 for example? You probably never did that in your life, have
 22 you?

23 A. No.

24 Q. But you know you would, right? You don't have to
 25 say, I think I would. You know you'd rescue that child

1 because you're a caregiver, right?

2 A. Possibly, yes.

3 Q. What do you mean possibly?

4 A. Yes.

5 Q. Okay. Surely you wouldn't let the child drowned
 6 just because you didn't have a bathing suit or something.

7 THE COURT: Say, could I interrupt you for one
 8 question, Mr. Shultz?

9 Ms. Reeder, on the last page you were asked if you
 10 had any reason why you could not sit as a juror, and you
 11 answered yes. And it says if yes, please give details. I do
 12 not have a desire to sit on a jury with this subject matter
 13 and come to a final decision regarding a guilty or not guilty
 14 answer.

15 VENIREPERSON: It would be very, very hard.

16 THE COURT: Could you tell me why you feel like
 17 you -- or why you desire not to?

18 VENIREPERSON: I have been, in the past, a
 19 victim of rape. I've been, in the past, a victim of abuse. I
 20 bring a lot of baggage with me.

21 THE COURT: Okay.

22 VENIREPERSON: I have a hard time with some
 23 things. I have a family member, my daughter, who has got MS,
 24 and I care for her. I have a job that I work and am paid by
 25 the hour. If I'm not there, I don't get paid. There's -- I

1 don't have anybody that I can necessarily go to for help if I
 2 need help.

3 THE COURT: Do you think these things would
 4 impair your ability to be a fair and impartial juror?

5 VENIREPERSON: I do. I think a lot of that
 6 comes with me, irregardless of all my feelings I've already
 7 expressed. A lot of that does come with me; I can't shed it.

8 THE COURT: Sorry to interrupt. Go ahead,
 9 Mr. Schultz.

10 Q. BY MR. SCHULTZ: So that's what we expect of jurors,
 11 that you would be able to follow the instructions of the
 12 Court.

13 A. I would try very hard if I was a juror. I'm not
 14 sure I could.

15 Q. Okay.

16 A. I would try my best. I am not sure if I could or
 17 not.

18 MR. SCHULTZ: That's all the questions we have,
 19 Judge.

20 THE COURT: All right. You may step down for a
 21 few minutes. Perhaps we'll have you back in a few minutes.

22 (Venireperson exits the courtroom.)

23 MR. SCHULTZ: We believe she's qualified.

24 (Laughter.)

25 THE COURT: For the record, is there a --

1 MR. GOELLER: For the record, the Defense, Ivan
 2 Cantu, would move to strike Nurse Ratchet for cause.
 3 (Laughter.)

4 THE COURT: I will strike Janet Reeder for
 5 cause.

6 MR. GOELLER: I'm sorry, Ms. Reeder.

7 (Venireperson enters the courtroom.)

8 (Discussion off the record.)

9 THE COURT: Ma'am, are you Ms. Lamel?

10 VENIERPERSON: Yes, I am.

11 THE COURT: Am I pronouncing that correctly?

12 VENIREPERSON: Yes, you are, Lamel.

13 THE COURT: Lamel, okay.

14 VENIREPERSON: I'm sorry. I'm a little woozy
 15 here.

16 THE COURT: Oh, are you?

17 VENIREPERSON: I have a bad knee that just kind
 18 of hurts.

19 THE COURT: Just go ahead and sit down, and
 20 I'll tell you --

21 VENIREPERSON: This is kind of as long as I can
 22 hold -- I'm sorry.

23 THE COURT: Go ahead and have a seat, and I'll
 24 tell you what I'm going to tell you. You are Ms. Lamel; is
 25 that correct?

1 VENIREPERSON: Uh-huh.
 2 THE COURT: Do you recall a little over a month
 3 ago when I had all 200 jurors in the building behind us that I
 4 administered an oath to all the jurors?
 5 VENIREPERSON: Basically, I recall.
 6 THE COURT: Do you recall that the oath was to
 7 tell the truth with regard to any questions that were asked by
 8 the Court or by the attorneys? Do you recall that?
 9 VENIREPERSON: Yes.
 10 THE COURT: All right. And you took that oath;
 11 is that correct?
 12 VENIREPERSON: Yes.
 13 THE COURT: All right. I just want to advise
 14 you that you're still under that oath.
 15 VENIREPERSON: Okay.
 16 THE COURT: Let me ask you to turn around then,
 17 and the State will ask you some questions first.
 18 Mr. Schultz.
 19 DIRECT QUESTIONS
 20 BY MR. SCHULTZ:
 21 Q. How do you do, ma'am?
 22 A. Fine. How are you?
 23 Q. I'm fine. Now, my name is Bill Schultz. I'm one of
 24 the prosecutors assigned to this case prosecuting Ivan Cantu,
 25 the Defendant. Next to me is Ms. Gail Falco, and then I

1 believe you remember Ms. Graham -- pardon me -- Ms. Lowry, who
 2 was speaking to you as a group a couple of days ago?
 3 A. Yes.
 4 Q. At the Defense table is the accused, Ivan Cantu, and
 5 next to him is Mr. Don High and then Mr. Matt Goeller.
 6 MR. GOELLER: Good afternoon, ma'am.
 7 VENIREPERSON: Good morning -- afternoon.
 8 Q. BY MR. SCHULTZ: Mr. High and Mr. Goeller are both
 9 private lawyers in Plano, Texas, and they are very good
 10 lawyers and very good men. And I don't think you know any of
 11 us; am I right about that?
 12 A. No, I did not.
 13 Q. You probably have had a chance to talk to some
 14 friends, family members, neighbors, and told them there's a
 15 possibility you'd be on a capital murder jury trial, right?
 16 A. Uh-huh.
 17 Q. When you were telling them, were you telling them
 18 that you'd be real happy about the idea or not particularly
 19 happy about the process?
 20 A. I'm apprehensive.
 21 Q. Tell me a little about that, if you would.
 22 A. Well, to be very honest, I find it very hard to hold
 23 somebody else's life in my hands.
 24 Q. Sure.
 25 A. I -- I just -- it would just -- it bothers me to

1 have to make those kinds of decisions and constantly question
 2 myself, am I right or if I'm wrong.
 3 Q. Right.
 4 A. And, you know, especially when it concerns the death
 5 penalty.
 6 Q. Right.
 7 A. I have to admit, when I was younger I did not
 8 believe in the death penalty. As I've grown older and have
 9 experienced more and known more, I have to say, yes, in some
 10 cases I do believe it is warranted. But for me to make that
 11 decision, I think it would be -- it would be very hard for me,
 12 you know? I would do it, but it's not something I would
 13 necessarily look forward to, you know, at all.
 14 Q. It might surprise you, especially because I noticed
 15 you -- I don't know if you mean all prosecutors, but you
 16 talked in your questionnaire a little bit about overzealous
 17 prosecutors and that sort of thing.
 18 A. Well, you know, I'm only experienced with what I see
 19 on television.
 20 Q. Sure.
 21 A. In the media and over -- which all of us have seen
 22 it -- seen and experienced. I don't know any prosecutors, per
 23 se, personally.
 24 Q. It might surprise the average citizen, and I'll tell
 25 you our position. I would hope that we have 12 people on the

1 jury who would find it difficult. I would hope that we have
 2 12 people on the jury that are decent enough that they don't
 3 thrill at the notion of, if things go just right, I can
 4 participate in killing somebody.
 5 A. Uh-huh.
 6 Q. You know, I live in this society, just like you do.
 7 I work here, but most of my life is not here.
 8 A. Uh-huh.
 9 Q. And I don't want that kind of society any more than
 10 you do where human life is so cheap that it doesn't matter,
 11 because when you get right down to it, that's our problem with
 12 capital murderers.
 13 A. Uh-huh.
 14 Q. Human life is so cheap to people that do that sort
 15 of thing that it doesn't matter to them, and I think we ought
 16 to be better than that. I think even in administering death
 17 penalties, we ought to be a whole lot better than they are
 18 because it's, apparently, easy for them, and it shouldn't be
 19 easy for you and me. Does that make sense to you?
 20 A. Yeah, kind of. I'm feeling, just with everything
 21 that's gone on in the last two weeks it's also --
 22 Q. Tell me about what you mean.
 23 A. Well, with the bombings -- with the events in New
 24 York and everything.
 25 Q. Right, right.

1 **A. And I can't help stop thinking about those poor**
2 **people who lost their lives.**

3 Q. Right, right.

4 **A. And I come from New York originally.**

5 Q. I understand.

6 Tell me how that -- what happened up there might
7 affect your jury service, if at all.

8 **A. It probably wouldn't necessarily. I'm just saying**
9 **I'm kind of more intraspective right now in my life --**

10 Q. Sure.

11 **A. -- and thinking you just never know when it's all**
12 **going to end, you know.**

13 Q. Uh-huh.

14 **A. And it really, probably wouldn't have a bearing on**
15 **how I felt about this case, other -- you know, there's just**
16 **times -- I don't want somebody's life in my hands, but there**
17 **are times I know if whoever was responsible for these horrific**
18 **bombings, I certainly think they -- if they hadn't already**
19 **died they do deserve the death penalty. But I guess I just**
20 **have a hard time understanding people that would do such a**
21 **thing.**

22 Q. Okay, okay. I think probably what both sides are
23 looking for is a juror who would be receptive to the kind of
24 evidence each side is going to produce. I could speak for
25 myself, but I don't think it's so unusual that it wouldn't

1 apply to any other lawyer doing the same thing I'm doing on
2 either side.

3 **A. Uh-huh.**

4 Q. I know what our evidence is going to be. We've
5 talked with the witnesses. We've read reports, we've seen
6 photographs, things that you, as a juror, may see at some
7 point. But right now we've seen it, and we have a notion how
8 the evidence is going to play out. Now, it may not come out
9 exactly the way we think it does. There may be -- somebody
10 may recall something differently when they get on the witness
11 stand than what they thought before, and they're still telling
12 the truth. It's not like they lied, but there may be
13 something different that they testified to that's not in the
14 reports or that's been reported a different way. But I have a
15 pretty good idea of what's going to be proved through our
16 witnesses and so does the Defense.

17 I mean, they know what witnesses we're going to
18 call. They've interviewed some of our witnesses. They've
19 seen photographs. They've seen scientific reports, so both of
20 us have a pretty good idea how this evidence is going to play
21 out. And speaking for me, I'm looking for a jury who will
22 look at the evidence that we've presented and seems to be the
23 kind of person that will weigh our evidence carefully, and if
24 we've put on enough of it, will find the Defendant guilty of
25 capital murder.

1 And by the way, if we haven't put on enough, I'm
2 happy enough with a juror who will say "not guilty." If we
3 don't prove our case, we shouldn't be able to win in any case,
4 certainly not a death penalty case.

5 **A. May I ask a question?**

6 Q. You bet. Sure.

7 **A. Is the judgment capital murder, or nothing?**

8 Q. Maybe. I'll get to that. It's hard to ever get a
9 straight answer from a lawyer. I don't know if you've ever
10 tried. You can't do that.

11 Most likely, yeah. Most likely that's how it works,
12 but there is something called a lesser-included offense that
13 could be just about what it says, there's some lesser offense
14 you're guilty of, but not capital murder.

15 **A. Uh-huh.**

16 Q. Most likely it would be guilty or not guilty of
17 capital murder.

18 **A. Uh-huh.**

19 Q. Okay. Those are your options. And the results are
20 pretty clear; if he's guilty of capital murder, then he goes
21 into the punishment phase to see if he gets the death sentence
22 or not. If he's found not guilty, he leaves. He's a free
23 person.

24 **A. Uh-huh.**

25 Q. Are you the kind of person that could vote guilty if

1 we prove guilt beyond a reasonable doubt?

2 **A. Yes, but it would really have to be beyond a**
3 **reasonable doubt.**

4 Q. That's fine.

5 **A. You know, I just --**

6 Q. No problem.

7 **A. I mean, if I had -- I will admit, if I had the**
8 **slightest feeling that, you know, that he might not have done**
9 **it, I probably would not vote guilty and it would be very hard**
10 **to change my mind no matter if I'm 11 against 1, and the**
11 **reason I say that is my own moral convictions of**
12 **controlling -- I mean, the Defendant and I'm not -- I have no**
13 **prejudgment of the Defendant whatsoever.**

14 Q. Right.

15 **A. But what I see is a very young man.**

16 Q. How young do you see him to be?

17 **A. I think he's in his 20s.**

18 Q. Okay.

19 **A. Okay. No, I don't think he's a teen-ager. I think**
20 **he's in his 20s. I know nothing about this case. It would**
21 **depend upon the circumstances, but it does bother me to have**
22 **to do this. And yet, I know it has to be done, you know. I**
23 **just don't want to be the one who does it.**

24 Q. But it bothers -- it ought to bother everybody. I
25 mean, you're not alone in that regard. We haven't seen people

1 on previous -- begging to get on the jury. Honestly, you're
2 Number 130 --

3 **A. Five.**

4 **Q.** -- 5. And I have yet to see the person saying
5 please put me on here. It sounds like a hoot. Why would
6 anybody think it is? There would be something wrong with
7 them, don't you think?

8 **A. Unless they want to get out of work.**

9 **Q.** Working might be better than this, though?

10 **A. Oh, I definitely think so.**

11 **Q.** Okay. And I won't split hairs with you. I mean, we
12 can -- when you say if there's even the slightest doubt,
13 technically speaking, that might be a little bit stronger than
14 beyond a reasonable doubt, but I don't care because you're
15 going to define beyond a reasonable doubt the way it feels
16 comfortable to you, anyway.

17 **A.** A couple of observations. There's some things that
18 I can guarantee will happen that aren't reasonable doubt, and
19 yet I want to talk with you about them. There may be a
20 witness who testifies differently in court than some report he
21 or she made.

22 **A. Uh-huh.**

23 **Q.** And there can be a lot of reasons for that. One,
24 they could have been mistaken the first time; two, they could
25 be mistaken now; three, they could be lying. All those things

1 could happen, and the reason the testimony is different is
2 because they're lying. The fact the testimony is different,
3 or somebody is lying on either side doesn't in and of itself
4 establish reasonable doubt.

5 **MR. GOELLER:** I'm sorry, Bill. I've got to
6 object to that. That's a misstatement of law. That truly
7 invades the province of the jury. That is just a -- I'm
8 trying to think of how to phrase a legal objection. I tell
9 you what, it violates the right of the juror to construe those
10 special issues and look at how the evidence plays out in those
11 special issues in the punishment phase and the first phase of
12 the trial.

13 **A.** To tell a juror that one is lie and one not may not
14 rise to the level -- or is not reasonable doubt. It's just a
15 misstatement of the law.

16 **MR. SCHULTZ:** Certainly the law -- for example,
17 what if a witness says I'm 35, and it turns out they're 33.
18 For some reason they want to be claiming to be 35. Is that
19 reasonable doubt if a witness has nothing to do with any of
20 the core issues of their case?

21 **MR. GOELLER:** I'll tell you another reason,
22 Judge, because now he's telling her -- he's trying to set a
23 scale for credibility of the witness; well, a witness can lie,
24 but that doesn't mean they're not credible. For that reason,
25 too, I object to that kind of statement. He can illustrate --

1 you know, while I saw the bank robber's car, I told the police
2 it was red. It turns out to be -- I know where he's going,
3 but to tell -- and that's fine. I don't have a problem with
4 that. But to tell her that because there's a lie doesn't
5 amount to reasonable doubt as a statement of law is improper.

6 **THE COURT:** Well, I tell you what, I don't
7 know that he said that if a witness lies about an issue in the
8 case. But tell me once again exactly what you said because I
9 certainly -- I was listening, and I didn't find anything
10 offensive myself. If you can say it again, I'll listen more
11 closely for the nuance and see if there's something
12 objectionable.

13 **Q. BY MR. SCHULTZ:** You understand that even the fact
14 that a witness may lie about something in a case doesn't, by
15 itself, establish that's a reasonable doubt of a person's
16 guilt or reasonable doubt of the special issues.

17 **MR. GOELLER:** Renew my objection, Your Honor.
18 It may. It may because we talk about credibility of the
19 witnesses. That cannot -- that is not a statement of law. I
20 mean, if I have to -- I don't want to go too much into my
21 argument with the juror here, but that is not a correct
22 statement of law.

23 **MR. SCHULTZ:** It's not automatically
24 reasonable doubt? Why would it not be? I mean, why would --
25 it's not automatically reasonable doubt because there's some

1 conflict because of the law. Why is that not a question of
2 law? It's not automatic. That's what could means.

3 **MR. GOELLER:** Depending on your perspective,
4 the juror, it may automatically be reasonable doubt, depending
5 on the line. It gets back into that credibility of the
6 witness. That's why we can't -- I can't --

7 **THE COURT:** So you're saying it might or might
8 not be, right? Is that what you're saying, or either thing
9 could be true?

10 **MR. GOELLER:** I tell you what, at this time
11 I'll withdraw my -- actually I need a ruling on my objection.

12 **MR. SCHULTZ:** I'd like that.

13 **THE COURT:** Well, I'll overrule the objection.

14 **MR. GOELLER:** Yes, sir.

15 **THE COURT:** All right. Where we're going with
16 this, now I'm really interested in finding out where we're
17 going with this truth or lie.

18 **Q. BY MR. SCHULTZ:** When we talk about a reasonable
19 doubt, even though you will define it, you've got to
20 understand there would never be the perfect case where there
21 was never any discrepancy in any of the testimony.

22 **A. I understand, but what I'm trying to say is whether
23 a witness lies or doesn't lie, it depends on what he might be
24 lying about.**

25 **Q.** Exactly. That's my whole point.

1 A. You know, and I'm -- what I'm saying beyond a --
 2 well, I may not reach a point where I'm actually beyond a
 3 reasonable doubt of my own mind, but almost certain that -- I
 4 mean, how do I answer this question when I don't even know
 5 what we're talking about, to be really honest with you?
 6 Everything depends upon circumstances.

7 THE COURT: At this point, I don't believe
 8 there is a question. Let's wait for a question, and see if
 9 you can answer it.

10 Q. BY MR. SCHULTZ: Do you think you could determine
 11 for yourself what beyond a reasonable doubt means, and then
 12 whatever that standard is for you apply it in a case?

13 A. It's what's in my heart. I mean --

14 Q. So that's a "yes," you could do that?

15 A. Yeah.

16 Q. Okay. No quarrel with that.

17 And that same state of reasonable -- beyond a
 18 reasonable doubt applies, not only to the question of whether
 19 he is guilty of capital murder or not, but that's the one we
 20 usually think of, the guilty or not guilty. But it applies
 21 to that very first special issue up there. Do you see that
 22 question up there on top about probability?

23 A. Yeah.

24 Q. In other words, we have to prove to you beyond a
 25 reasonable doubt that the answer to that question is "yes," or

1 leads to reasonable doubt, even if one of them is lying
 2 because you have to make the judgment of whether he is lying,
 3 who's lying. Am I making sense?

4 Q. You are. Let's move along a little bit if we could.

5 If we prove to you he's guilty beyond a reasonable
 6 doubt, we are entitled to a vote of guilty from you. You said
 7 you'll do that, if you're convinced beyond a reasonable doubt
 8 that he's guilty of capital murder?

9 A. Yes.

10 Q. Now, you mentioned, and you brought up the notion
 11 that is it guilty or not guilty. Very possibly those will be
 12 your only options, but sometimes there can be a
 13 lesser-included offense of regular murder that could arise
 14 from a capital murder charge. Maybe, for some reason, the
 15 State can't prove that it was a burglary that went along with
 16 the murder.

17 A. Uh-huh.

18 Q. Maybe the State could not prove two homicides, but
 19 only one. I don't know what might happen, in which case you
 20 have a simple murder, and the jury would get that option of
 21 finding you (sic) guilty of regular murder. Does that make
 22 sense to you?

23 A. It does.

24 Q. Okay. If it does, then let me explain more.

25 If that happens, then you don't worry about these

1 else the answer to the question is "no." In other words, we
 2 have the burden of proof on that question, also. Does that
 3 make sense to you?

4 A. Yeah.

5 Q. Okay, all right. And same thing, you understand
 6 that there could be situations where you would answer that
 7 question yes, or you would answer it no, according to the
 8 evidence, right?

9 A. Yes, correct.

10 Q. Okay, okay. And nobody is trying to pin you down to
 11 this case because like you say, you don't know the Defendant.
 12 You don't know the evidence. You don't even know how you
 13 would handle the evidence as a juror, but we have to know
 14 something about how you think and how you view this.

15 A. Well, let me put it this way: If I have reasonable
 16 doubt, I would be able to voice my reasons why I doubt, okay?

17 Q. Got you.

18 A. It wouldn't just be something, well, I just feel
 19 this way.

20 Q. I'm with you.

21 A. But I also want to -- you know, plus I'd want to be
 22 really convinced that he really did do it.

23 Q. Sure.

24 A. That's there's no -- like one witness may say he was
 25 blonde. One witness may say he was dark hair. To me, that

1 death penalty issues anymore, because it's not a death penalty
 2 case. If it's the lesser offense, then it suddenly becomes
 3 just as if it started out to be a regular murder case in the
 4 beginning. Follow me?

5 A. Yeah.

6 Q. In which case, then you go to punishment -- you'd
 7 still have a punishment hearing. You found him guilty, not of
 8 capital murder, but of regular murder, which has a different
 9 punishment range. And that range is five years to 99 years,
 10 or life in the pen, and also, depending upon the
 11 circumstances, it even has an eligibility for probation?

12 A. Uh-huh.

13 Q. Are you the kind of person that could give somebody
 14 as little as five years probation if you found them guilty of
 15 murder?

16 A. It would depend heavily upon the circumstances.

17 Q. So that sounds like a yes --

18 A. Yeah.

19 Q. -- you could?

20 A. I could. I don't -- I think it's unlikely, you
 21 know, but I could.

22 Q. Unlikely is okay; impossible is not okay. You're
 23 not saying it's impossible, are you?

24 A. No. I can't say that.

25 Q. Okay, okay. Then the next thing -- the next thing

1 that applies under our law is if you have found the Defendant
 2 guilty of capital murder, you go to those two questions.
 3 First question up there deals with the future danger of the
 4 Defendant, and then the second question deals with mitigating
 5 evidence. So go ahead and take a moment to read that
 6 question, if you haven't already, that lower question there.
 7 **A. Okay.**
 8 **Q. Okay. In your own words, what do you think that**
 9 **question is asking the jury to do?**
 10 **A. Well, I think you're -- I'm sorry. You're asked to**
 11 **take circumstances of the situation into account, and I think**
 12 **it has to do with motivation of the Defendant and maybe his**
 13 **frame of mind at the time.**
 14 **Q. Okay.**
 15 **A. I mean, that's how I read it.**
 16 **Q. The idea behind that question seems to be that**
 17 **there -- first, you look and see if there's some mitigating,**
 18 **and sympathetic factors in the Defendant's background.**
 19 **A. Uh-huh, right.**
 20 **Q. I can tell you that there always are. You've got**
 21 **them in your background; I've got them in mine. Life has not**
 22 **been perfect for anybody in this courtroom. And I'm sure many**
 23 **of those will be voiced in the form of evidence. If the State**
 24 **doesn't somehow bring some of them out through its case, even**
 25 **though the Defense doesn't have to, you might as -- you know,**

1 why wouldn't they? It's up to them. They've got the same
 2 burden of proof as we do on that question, so I would assume
 3 they have the same kind of approach we would take, which would
 4 be produce evidence like we will, but they don't have to.
 5 **A. Uh-huh.**
 6 **Q. And then once you found some mitigating evidence,**
 7 **then the next question is, is that evidence sufficient to make**
 8 **a life sentence the right thing to do? And it's possible**
 9 **there could be a lot of sad things in a person's background,**
 10 **just like there is in some of our friends or relatives, but**
 11 **that all of those sad things taken together are not sufficient**
 12 **to cause a life sentence. Can you see how that would be?**
 13 **A. Yeah, I guess so.**
 14 **Q. Well, no --**
 15 **A. I -- you say not a life sentence, which means**
 16 **you're calling for a death penalty. It's one or the other.**
 17 **Q. Yeah. But that question asks you to measure the**
 18 **mitigating evidence, weigh it, put it on the scales --**
 19 **A. Uh-huh.**
 20 **Q. -- and decide, is there sufficient -- is there**
 21 **enough mitigating evidence that makes a life sentence the**
 22 **appropriate sentence?**
 23 **A. I do understand that.**
 24 **Q. Now, it may be that there's some mitigating**
 25 **evidence. Maybe there's a lot of mitigating evidence, but**

1 maybe it's not sufficient to make a life sentence appropriate.
 2 Does that make sense to you what I'm saying?
 3 **A. It does -- I think what you're trying to tell me is**
 4 **that even though almost all of us have some mitigating**
 5 **circumstances, does that outweigh what he did --**
 6 **Q. That's a good way of saying it.**
 7 **A. -- you know, basically? And all I can say, it**
 8 **depends what the mitigating circumstances are.**
 9 **Q. Okay. Maybe it does; maybe it doesn't?**
 10 **A. That's right. And I couldn't pass judgment at all**
 11 **until I, you know --**
 12 **Q. What is your feeling about domestic violence? Do**
 13 **you consider that serious?**
 14 **A. I consider it very serious.**
 15 **Q. Tell me why.**
 16 **A. Well, I do not come from an environment of domestic**
 17 **violence. I think it's -- I think it's awful to not feel safe**
 18 **in your own home. I mean, I have a lack of understanding of**
 19 **it because I've never -- honestly, I've never experienced it,**
 20 **thank God. But I think if children are involved, and it's not**
 21 **that I think that people who commit it are necessarily evil.**
 22 **I think they need help, obviously, and to me that's the prime**
 23 **thing. But I think one of the worst things in our society is**
 24 **to feel unsafe in our own homes.**
 25 **Q. Okay. How do you feel about drugs? Do you think**

1 drugs are an excuse for the crimes that are committed on them?
 2 **A. Generally not.**
 3 **Q. Tell me when they'd ever be an excuse.**
 4 **A. Well, if somebody was taking a drug for a particular**
 5 **medical condition that caused him to have extreme emotional --**
 6 **Q. Uh-huh.**
 7 **A. -- reactions to something, which almost was -- you**
 8 **know, it's due to a medical condition, or it depends whether**
 9 **it's an illegal drug or a legal drug. I guess that might**
 10 **be -- you know, whether it's a -- because I have heard stories**
 11 **where people who are taking medication for medical reasons,**
 12 **whether it was prescribed by a doctor or not, have had extreme**
 13 **emotional, you know, ups and downs. And so I think in that**
 14 **case, I would definitely consider that a mitigating**
 15 **circumstance, if that was the case.**
 16 **If you're talking to me about somebody who's paying**
 17 **for his drugs off the street, I think it would depend a lot**
 18 **upon the drug he was using. I think they made the first wrong**
 19 **decision when they decided to take the drug.**
 20 **Q. Oh, yeah.**
 21 **A. Okay. But I also think -- you know, you just hate**
 22 **to think also that they made a mistake -- that they -- that**
 23 **they never could rectify that mistake because so many of these**
 24 **people -- not everybody -- they're young people. Depends upon**
 25 **the environment they come from, and what those circumstances**

1 are.

2 Q. I've got to be doing -- once I get an answer from
3 you, I've kind of got to stop you and go on to the next one
4 because I'm under time constraints from the Court.

5 A. Uh-huh.

6 Q. Okay. Now, look, suppose you came home tonight, and
7 the police cars are out there and ambulances and TV crews, and
8 you go and say what's going on here at my house? And they
9 say, I'm real sorry to tell you this, but the person you love
10 most in this whole world has just been murdered.

11 A. Uh-huh.

12 Q. And they say but, you know, it's not as bad as it
13 first seemed because the person that did the murder made some
14 poor choices and took some drugs. They took some drugs off
15 the street, and it's not exactly his fault because, you know,
16 a lot of people do that, and so we -- you know, we -- it's not
17 as bad to you. Don't get so upset because he did it while he
18 was taking drugs, and you know how drugs are. They make you
19 kind of mean. Is that what you're saying? Does that make
20 sense to you?

21 A. That's not how I mean it. It would depend upon the
22 circumstances -- let me just put it: It would depend upon the
23 circumstances of them taking a drug.

24 Q. Okay. So you might tell the officer, I'm glad you
25 told me that. I was a little upset --

1 A. Personally --

2 Q. -- I was real upset -- let me ask my question. I
3 was real upset, but now that you've told me the guy was on
4 drugs I'm not quite so upset. I feel a little better about
5 all of that. It is possible you'd feel that way?

6 A. At the particular point I just found out, no. I'd
7 feel -- that wouldn't even enter my thought. It was just I
8 lost somebody.

9 Q. Later on you'd feel better about -- you'd feel more
10 comforted with the idea they did it on drugs?

11 A. I probably would not feel more comforted, but that
12 doesn't mean I necessarily would want that person to die,
13 okay?

14 Q. Let me ask you this --

15 A. I mean, I wouldn't like them. I would hate them
16 probably, but --

17 Q. But you wouldn't want him to die?

18 A. I don't know. I don't know.

19 Q. Do you believe you could fairly -- you could give
20 the State a fair trial in a death penalty case, do you feel
21 like?

22 A. I believe so.

23 Q. So you're sure -- I'm sorry. Go ahead.

24 A. I just don't want to serve. I mean, I'm going to be
25 honest. I do not want to serve on a death penalty case. I

1 mean, that's my wish. You asked me can I do it, yes.

2 Q. Well, you're no better than anybody else, and I
3 don't find anybody that wants to serve on one of these.
4 That's a fact. The question is can you fairly do it, if
5 called upon to do it?

6 A. Most likely, yes.

7 Q. Well, I got to know better than that because that
8 tells me possibly -- possibly you could, and then if you're on
9 the jury, what do we do then if you're on there and you say
10 you can't do it?

11 A. In my own mind, I can, okay? I mean, what decisions
12 I make -- I mean, what's in my own mind.

13 Q. Good enough. At what point do you think somebody
14 becomes aware that it's wrong to commit murder, at what age,
15 in general?

16 A. I don't think age has something to do with it. I
17 think it depends upon the person, their background, their
18 environment, their maturity. I don't think it really has
19 any -- I don't think you can tie a particular age to it.

20 Q. So some people --

21 A. I mean, I think there are people -- ten-year-olds
22 that understand that, and then there are 20 -- 28-year-olds
23 that don't understand that.

24 Q. So maybe somebody would have to be 75 before he
25 figures out that committing murder is wrong, you're saying?

1 A. I would think by that time he would know, but I
2 can't give you a specific age of when it happens --

3 Q. So you have no idea --

4 A. -- because I think everybody is different.

5 Q. Okay. So it might be that some people 28 years old
6 haven't even figured out murder is wrong yet?

7 A. I would think they should know, but depends upon
8 their mental capacity. You know, if they're retarded or, you
9 know --

10 Q. Yeah.

11 A. -- or you know...

12 Q. What does MW Zander do?

13 A. They're a commercial construction company. They
14 build things such as clean (phonetic) rooms.

15 Q. You lived in Rochester, New York for how many years?

16 A. Three years.

17 Q. I think that's where Mr. Goeller is from. He lived
18 up there for a lot of years, kind of that area. You don't
19 know him from up there, do you?

20 A. No. If you live up there, they call it
21 "Rottenchester."

22 Q. What do they call it?

23 A. Rottenchester. Depends where you come from
24 originally.

25 (Laughter.)

1 MR. GOELLER: Had nothing to do with me living
2 up there.
3 VENIREPERSON: No, no, no.
4 THE COURT: Didn't improve when you left.
5 (Laughter.)
6 A. **And it really wasn't that bad a town. Kind of small**
7 **townish.**
8 Q. BY MR. SCHULTZ: What do you have against Pete Rose?
9 A. **I just have no respect for him.**
10 **That question was very hard to answer all the**
11 **sudden. I don't think of people in the fact that I respect**
12 **them, or I don't respect them. It depends upon the**
13 **circumstances at the time. I had just heard a story about him**
14 **on the TV when I came in here.**
15 Q. Is it his gambling or his tax cheating that bothers
16 you more?
17 A. **It's him particularly.**
18 Q. You don't like his attitude?
19 A. **I don't like his attitude. I mean, I think -- I**
20 **also think sports figures should set an example, and I don't**
21 **feel he does.**
22 Q. What about Mike Tyson, do you think he sets an
23 example?
24 A. **No, I do not. But I couldn't think of people, to be**
25 **very -- I mean, I couldn't put -- it was hard for me to think**

1 **of names that wouldn't sound petty at the time.**
2 THE COURT: Wouldn't sound petty?
3 VENIREPERSON: You know, such as a sports
4 figure.
5 Q. BY MR. SCHULTZ: Well, you had Tonya Harding, that
6 was kind of a sports --
7 A. **I don't respect her, either.**
8 Q. And then we got Jesse Jackson, and I don't know if
9 he does any sports or not.
10 A. **No. He's a political figure.**
11 Q. As you see yourself sitting there now to be put on
12 this jury -- and I know you don't want to be. You've been
13 very honest about that, but if you're put on this jury, do you
14 see yourself as a middle of the road person on these death
15 penalty issues? Do you see yourself more toward the State's
16 side, more toward the Defense side? Tell me
17 where you see yourself.
18 A. **I'd have to say probably more towards the Defense**
19 **side.**
20 Q. But you could still be -- kind of talking with us
21 about that going in, you could still be fair to the State?
22 A. **Yes. Like I said, I grew up mostly -- I don't**
23 **believe in the death penalty, okay? As I've gotten older and**
24 **become more experienced, I do realize there are certain**
25 **circumstances where you need it, okay? But I don't -- but**

1 **it's not something that I would easily come to.**
2 Q. I understand, I understand. Do you think that the
3 kind of capital murders that we've talked about seem like they
4 would be the appropriate kinds of situations, depending on how
5 they were committed? Things like a double homicide, for
6 example, does that seem like a possible capital punishment
7 crime to you?
8 A. **Possible.**
9 Q. Okay, exactly. And how about a burglary/homicide,
10 does that seem like a possible capital murder punishment to
11 you?
12 A. **Possible.**
13 Q. And I assume then robbery/homicide, also possible?
14 A. **Possible.**
15 Q. I'm getting ready to pass you, but you're telling
16 me that if -- that although you don't want to be here, and you
17 would require lots of proof, you could vote in a way that a
18 death penalty would result in this case, depending upon the
19 evidence?
20 A. **Yes.**
21 MR. SCHULTZ: I'll pass the juror.
22 THE COURT: All right. Mr. Goeller. Oh,
23 sorry.
24 MR. HIGH: Thanks, Judge.
25 MR. GOELLER: My esteemed partner, Mr. High.

1 CROSS-QUESTIONS
2 BY MR. HIGH:
3 Q. Hi there, Ms. Lamel. My name is Don High.
4 A. **Hi.**
5 Q. Excellent:
6 I don't believe you've laid eyes on me yet. I
7 wasn't here on Monday.
8 A. **Right.**
9 Q. But I'm here now, and I don't have very many
10 questions for you, just a few.
11 A. **Uh-huh.**
12 Q. How long did you live in the city, New York City?
13 A. **I was born there, and I lived there until I got**
14 **married at the age of 22 and a half.**
15 MR. SCHULTZ: May we approach the bench at the
16 side, Judge?
17 THE COURT: Yes.
18 (Sidebar discussion had.)
19 MR. SCHULTZ: Judge, we would exercise a
20 peremptory challenge on this juror.
21 THE COURT: All right.
22 VENIREPERSON: I'm sorry, I didn't understand
23 what he said.
24 THE COURT: I tell you what, you are -- you
25 have been finally excused.

1 VENIREPERSON: I don't have to come back
2 again?
3 THE COURT: You don't have to come back, and
4 the bailiff will help you down.
5 VENIREPERSON: Okay, thank you.
6 THE COURT: I want to thank you for your
7 service.
8 VENIREPERSON: Okay, thank you.
9 MR. GOELLER: Bye.
10 MR. SCHULTZ: Good-bye.
11 MR. GOELLER: Take care.
12 VENIREPERSON: So I can go home and not come
13 back? I'm not going to hear from you guys, right?
14 THE BAILIFF: That's right.
15 (Venireperson exits the courtroom.)
16 THE COURT: You were afraid Mr. High might
17 rehabilitate her.
18 MR. SCHULTZ: No. I was afraid he'd take an
19 hour and a half, like he does with everybody else.
20 THE COURT: We're in recess for -- do you want
21 ten minutes? You've got it.
22 THE BAILIFF: All rise.
23 (Recess taken.)
24 THE COURT: Both sides ready?
25 MR. SCHULTZ: The Defense attorney and the

1 State have made agreements; that being with Juror Stark. Did
2 I get that name right? That's contingent upon the Defendant's
3 agreement that she be excused by consent.
4 THE COURT: Is that your agreement, Mr. Cantu?
5 THE DEFENDANT: Yes, Your Honor.
6 THE COURT: All right. Then Mr. High,
7 naturally?
8 MR. HIGH: Yes, sir.
9 THE COURT: All right. Then I tell you what,
10 she's stricken by agreement. And we're waiting for Deborah
11 Beckman, and she's supposed to be here now, but she's late.
12 So if y'all don't mind just -- I'll step down and when she
13 gets here, we'll all assemble again, and we'll start with
14 Beckman. Say, let me tell you -- well, let's get through
15 Beckman, and then we'll figure out what we're going to do
16 tomorrow.
17 (Recess taken.)
18 THE COURT: Both sides ready?
19 MR. GOELLER: Yes, Your Honor.
20 THE COURT: Billy, do you want to bring in
21 Regina Butz?
22 THE BAILIFF: Yes, Your Honor.
23 (Venireperson enters the courtroom.)
24 THE COURT: Are you Regina Butz?
25 VENIREPERSON: Yes, I am.

1 THE COURT: Welcome back to the 380th Court.
2 VENIREPERSON: Thank you.
3 THE COURT: Perhaps you'll recall a month ago
4 when all 200 jurors were assembled I administered an oath to
5 the jurors.
6 VENIREPERSON: Yes, sir.
7 THE COURT: The oath was to tell the truth with
8 regard to any questions propounded by the Court or by the
9 attorneys. Do you recall that?
10 VENIREPERSON: Yes, I do.
11 THE COURT: Ma'am, you're still subject to that
12 oath, and I'll ask you to be seated right here. All right.
13 Is it Mr. Schultz?
14 MR. SCHULTZ: Yes, Judge.
15 THE COURT: Go ahead.
16 DIRECT QUESTIONS
17 BY MR. SCHULTZ:
18 Q. Good afternoon.
19 A. Hi.
20 Q. Are you nervous?
21 A. No, not really.
22 Q. Good. I'm not sure exactly the sequence, but were
23 you expecting to be in here today, or was it going to be
24 tomorrow?
25 A. In the morning.

1 Q. Okay. But you're okay with it, and it's not a
2 problem now that you're here?
3 A. No.
4 Q. Just a quick explanation for what's happened. We
5 moved along a little faster than we thought. We're nearing
6 the end of this process, and we thought rather than delay it,
7 if we could get people in earlier and move along. It's the
8 first time we've been ahead of the game maybe since we've been
9 in trial, so that's why you're here.
10 We are now going to examine your views and opinions
11 with a view toward deciding whether you could be fair to both
12 sides in a capital murder case. And everybody has, I guess, a
13 different -- different definition of what's fair. In my mind
14 a fair juror is one who has an open mind to all the parts of
15 the law that might apply in any particular case. That means
16 if it's an -- oh, I don't know -- if it's an auto crash case,
17 you would have an open mind to all aspects of the tort law
18 that might apply to how people drive, or how you measure
19 damages, like people's injuries, pain and suffering, loss of
20 wages, and those sorts of things.
21 If it's a criminal case, it means that you would
22 follow every bit of the instruction that the Judge would give
23 you, even if you didn't personally believe that that's how the
24 law ought to be. It's the idea that we all follow the law
25 because if we don't follow the law, we end up making our own

1 law, which is sometimes what gets people into criminal courts
2 in the first place. They're doing what they want to, rather
3 than what the law says.

4 There aren't any right or wrong answers. We're not
5 here to try to change your mind or debate with you, and it
6 will be friendly, and it will be respectful. It won't (sic)
7 be those kinds of things. I'm looking for a person, kind of
8 in my idea -- what I'm looking for is a person that I think
9 will view the evidence I'm expecting to be produced in a
10 favorable light. It doesn't mean unfair to the Defendant, but
11 I know what evidence the State's going to produce. I've got a
12 pretty good idea of how we're going to prove it, and what
13 witness is going to say what, what report, what scientific
14 test means this or that. I'm sure the Defense has some ideas
15 about that themselves.

16 And this is the real thing, and what the State of
17 Texas is actually doing is, having indicted the Defendant for
18 capital murder through the process of the Grand Jury, we
19 intend to prove to the jury that the Defendant is guilty of
20 that crime beyond a reasonable doubt, and we will do that
21 through a number of types of evidence, such as some direct
22 evidence by witnesses that will know portions or will have
23 seen things about some parts of the crime, some scientific
24 evidence, such things as fingerprints, DNA, blood, perhaps
25 ballistics, those types of hard, science-type evidence.

1 And then maybe some people who are not eyewitnesses
2 to anything, in general, but are -- will be able to provide
3 background information on such things as the relationship
4 between the Defendant and the victims that may or may not give
5 some insight into the motive for why these things happened,
6 which we believe will prove beyond a reasonable doubt.

7 And if we do our job right in jury selection, all
8 jurors will be the kind of people that would require the State
9 to prove guilt beyond a reasonable doubt. Anything less than
10 the State doing that would result in a not guilty verdict. At
11 the same time they wouldn't put an impossible burden on the
12 State, like, that we have to prove beyond all doubt, or we
13 prove everything to a certainty, or we have a conflict-free
14 case, because that's not our law that requires that there be a
15 perfect case.

16 And why I tell you that, Ms. Butz, is because I've
17 been doing this for a long time and not all witnesses are the
18 greatest, and some witnesses are inaccurate. Some witnesses
19 have conflicting statements sometimes. Some witnesses
20 probably lie. I mean, things like that happen in a trial. I
21 mean, everybody is capable of lying, I suppose, depending on
22 what their interests are in a particular case. And those are
23 things that might affect how credible those witnesses are. If
24 a witness gets up there and lies, you might say, well, that
25 witness has been caught in one or two lies. I don't feel

1 comfortable believing much of anything that witness says. Or
2 you might say, well, some of the lies, I understand why they
3 happened and some of what they're saying seems to be true.
4 Some of it seems to be a lie. You can consider what is true
5 and disregard otherwise.

6 But when you get right down to the final analysis,
7 what you do is you take all the evidence and put it on the
8 scales and see whether or not the evidence taken as a whole
9 proves the State's case beyond a reasonable doubt. And it's
10 like loading up the scales of justice, you know, they go up
11 and down. If it does, it's a guilty verdict; if it doesn't,
12 it's a not guilty verdict. Do you see yourself as being able
13 to do that?

14 A. Yes.

15 Q. And a couple of things that go along with that is
16 the burden of proof of guilt -- of guilt is solely upon the
17 State of Texas. The Defense, at no time, ever has to prove
18 their innocence, at least not in regular -- there's some times
19 when the Defense has to prove their innocence, but that's
20 rare. I'll briefly touch on that.

21 There are a couple of defenses that are what we call
22 affirmative defenses, and if they're going to prove I'm not
23 guilty because of a certain defense, such as insanity, such as
24 entrapment, for example, under those circumstances the Defense
25 would have the burden of proving innocence if that's their

1 theory of innocence, using one of those defenses. But other
2 than that, they can just sit there right -- and never offer
3 any evidence, never participate in the trial, and that's their
4 right. They can't hold that against them; not you, not me,
5 not the Judge. Any problem with that?

6 A. No.

7 Q. That means a defendant doesn't have to testify. It
8 might be -- it might be that we would like to hear a defendant
9 testify. We might just say, well, it sure would be helpful
10 for me understanding all this to hear what a defendant had to
11 say, and maybe it would, but that is his Constitutional right
12 whether he wants to do that or not, and we can't hold that
13 against him if he chooses not to testify. And it couldn't be
14 held against you or me if we were sitting at the Defense
15 table, okay?

16 A. Okay.

17 Q. Now, when I say we want jurors that could fairly
18 apply all the law as the Judge would give that to them,
19 nothing challenges that proposition perhaps more than the
20 issue of capital punishment. I can't think of anything in our
21 society involving criminal law that rises, really, to the
22 level -- the emotional level about capital punishment. There
23 may be -- I can't think of another thing. There may be some,
24 but there are other issues in our society that are very
25 important, but I don't think they'd find their way to the

1 forefront of our criminal system and get the attention like
2 capital punishment.

3 And there are some people who legitimately and for
4 honorable reasons oppose the death penalty, and they say it's
5 not a good law. It's not good morals. It's not good policy.
6 It's not good role modeling; it's none of these things. And I
7 don't get a sense that you're like that, but at the same time,
8 even if you are, that doesn't mean you couldn't be a fair
9 juror. What it means is that you'd still be able to follow a
10 law that you personally didn't think was a very good law, but
11 because it is the law you could give it effect. Just like a
12 lot of laws that we have that you probably don't like, you
13 would still do it just because it is the law. Does that make
14 sense?

15 A. Yes, sir.

16 Q. And then some people say, that's fine. I don't like
17 the motorcycle helmet law. I think that's an invasion of
18 people's privacy, but I could convict somebody for not wearing
19 a helmet if that's the law because that's just a little one.
20 That's just money. That's a small deal. Asking me to
21 disregard my feelings about capital punishment, that's too
22 big, and that's more than I'm willing to do.

23 But I get a sense from you, from your questionnaire,
24 since you circled choice number 2, I believe that the death
25 penalty is appropriate in some capital murder cases, and you

1 could return a verdict resulting in death in a proper case, 4
2 and also you indicated that you were in favor of the death
3 penalty. I assume that means that you don't have strong
4 opposition to the death penalty as a concept; am I right about
5 that?

6 A. Correct.

7 Q. At the same time, you indicated on your
8 questionnaire that when asked the question, do you have any
9 moral, religious or personal beliefs that could prevent you
10 from sitting in judgment of another human being, you indicated
11 "yes." And then when asked do you have any religious, moral
12 or personal beliefs that would prevent you from returning a
13 verdict which would result in the execution of another human
14 being, you circled "yes" on that, also.

15 A. Well, you know, there's some cases that I would feel
16 that way.

17 Q. Okay.

18 A. I mean, I can't say definitely yes or no, that I
19 could do it when I got right down to it. But I had violence
20 in my life, and I -- I think you also see on there that I said
21 if it had anything to do with molestation or death resulting
22 in a child or a woman with rape involved or anything like that
23 or --

24 Q. Right.

25 A. -- violence, I could, yes.

1 Q. Okay. Only because that question seems to relate to
2 it, are you -- are you involved in any type of organized
3 religious denomination at this time?

4 A. No, sir.

5 Q. At any part of your life, have you ever been, like
6 maybe when you were younger, growing up as a kid?

7 A. No, sir.

8 Q. Do you believe we should have a death penalty in
9 Texas?

10 A. Yes, I do.

11 Q. Tell me why -- tell me why you think the death
12 sentence is something we ought to have.

13 A. Well, if somebody -- if somebody does violence,
14 murders, or, like I said, rape, molestation of a child, then
15 why should they go free? They should be put to death. Why
16 should my tax money take care of them the rest of their lives.
17 What if they gave them -- or what if they just went to jail,
18 and then they escaped or they -- the law was changed or
19 something happened, and they were back out on the street?
20 What if it was my child that they did violence against the
21 next time?

22 Q. Right, okay.

23 A. Or anybody else's.

24 Q. And I think that is probably why a lot of people do
25 favor the death penalty because the thinking is that some

1 crimes are so awful, what's -- what are we worried so much
2 about a person being able to live after that? What's the big
3 deal? Why not kill that person for some of these crimes that
4 are so awful? Is that kind of where you are on that?

5 A. Yes.

6 Q. Not only is there no wrong answer, but that seems to
7 make sense to me.

8 At the same time, we don't have any automatic death
9 penalties in Texas, or probably anywhere else, but certainly
10 not in Texas. And I think we should not call it capital
11 murder because somebody -- some people think capital murder
12 means death penalty murder somehow. We ought to call it,
13 like, aggravated murder -- pardon me (yawns) -- murder plus,
14 something like that. But the way the law works, if the State
15 proves a defendant's guilty of capital murder, and we've got
16 to prove that beyond a reasonable doubt, then we have a
17 punishment part of the trial to decide what's going to be the
18 punishment.

19 And we don't ask the jury directly life or death,
20 but we do the next thing to that. We ask them to answer
21 questions, and we instruct the jury and -- like right now,
22 we're instructing you the effect of your answers. So, even
23 though you don't get to say life or death, you know how to do
24 life or death; you answer the first question "yes" and the
25 second question "no" means death. Answer the first question

1 "no" and the second question "yes," either one works, and it's
 2 a life sentence. So you would know how to do it.
 3 But the idea is not that you will rig those
 4 questions in a -- the answers in a way that will cause the
 5 result. The idea is that you'll answer those questions
 6 fairly, according to the evidence, and let the chips fall
 7 where they might. I mean, some cases of capital murder, the
 8 answer to those questions will be such that a life sentence
 9 would result. And in other cases of capital murder, the
 10 answers would be such that a death sentence would follow, and
 11 to be a qualified juror, that each individual juror must have
 12 it within him or herself the ability to answer those questions
 13 either way according to how the evidence leaves them. Does
 14 that make sense to you?

15 A. Yes.

16 Q. Do you see yourself as able to do that as the next
 17 juror in our society?

18 A. Yes.

19 Q. Okay. And you understand what I'm saying about
 20 there could be a temptation. If you want a particular result
 21 to happen to kind of let that want-to substitute for evidence
 22 in order to kind of get it the way you want to. That's a
 23 temptation the jurors would always have to resist. Do you
 24 think you could do that the same as the next person, resist
 25 those temptations?

1 A. I think so, yes.

2 Q. Let's talk about the questions a moment. Now,
 3 understand you don't get to these questions unless the
 4 guilt-innocence question has been answered in the guilty form.
 5 But if it has, that first question there, take a moment and
 6 read that for me, Ms. Butz, if you will.

7 A. Okay.

8 Q. Everybody might have a different take on this. Some
 9 people call that the future danger question, and I guess
 10 that's sort of okay. It seems to me that question is not
 11 asking you to predict the future, but rather to identify the
 12 present to figure out how we are right now because what it
 13 asks you to do is examine the Defendant's personality and ask
 14 yourself, does he have a personality that would commit
 15 criminal acts of violence that would constitute a continuing
 16 threat to society. That's actually the wording of the
 17 question. Doesn't say will. It asks, does he have a
 18 personality that has that threat within his personality; does
 19 that make sense to you?

20 A. Yes, sir.

21 Q. And why I say that is the following: We've already
 22 found a person guilty of capital murder before we get to that
 23 question, and I suppose in a justice sort of way, one could
 24 say, well, he's a capital murderer. Let's go hang him from
 25 the nearest tree because he's been found guilty fairly by a

1 jury, and many people would say that's good enough. Why worry
 2 about his personality? Who cares if he's dangerous? He's
 3 done a capital murder. Let's go out and hang him from an Oak
 4 tree. And you can't fault that logic, because those are
 5 really serious crimes, these capital murders.

6 But our Legislature has gone further, and they say,
 7 no, as bad as capital murder is, not all capital murderers
 8 will be subject to the death penalty in Texas. Only those
 9 capital murderers who have a personality that has a threat
 10 built into it, that has threat within it, are ever eligible
 11 for the death penalty. And that's why that question is there
 12 because it further narrows that scope of people who can get
 13 the death penalty.

14 A. Yes.

15 Q. Does that make sense how I'm explaining it to you?

16 A. Uh-huh.

17 Q. And I mean, the question never hurts -- perhaps
 18 never hurts the Defendant. The answer to that question never
 19 hurts, and it might help because if the answer to that
 20 question is "no," the Defendant gets a life sentence. He
 21 doesn't get a death sentence. And so that question is another
 22 hurdle, in the State's view, to make sure that we're narrowing
 23 and focusing the effect of the death penalty on, not only
 24 capital murderers, but capital murderers who have potential,
 25 if given the chance, to be dangerous. Doesn't say they will

1 be dangerous, because there's ways to keep them from being
 2 dangerous, and that's not what that question is aimed at.

3 I can tell you what to do with a fellow to keep him
 4 from being dangerous. You can get a big old tub full of
 5 cement and stick his feet down in that cement, and he can't
 6 move his feet. And every now and again, I guess you can
 7 figure some way to attend to his bathroom needs independent of
 8 his feet being down in cement; are you with me?

9 A. Uh-huh.

10 Q. You can feed him and wheel him out in his cement --
 11 wheel him out into the sun for health and give him a
 12 basketball while his feet are stuck in the cement, and he's
 13 not going anywhere. And there are ways to see that people
 14 would not be dangerous without killing them. Are you with me
 15 on that?

16 A. Uh-huh.

17 Q. You can drug him. Shoot him up with so much drugs
 18 and make him like Rip Van Winkle. He never wakes, and it's
 19 not killing him, just sedating him. You could -- I guess we
 20 could find some island out in the middle of nowhere that has
 21 sharks all around it, and fly a plane in once a week with
 22 supplies, and he probably can't be dangerous to society
 23 there. The question doesn't say can you think of some way to
 24 make him safe? The question is, does he have a personality
 25 that makes him a threat to society?

1 **A. Uh-huh.**

2 **Q.** If he does, string him up. Of course, figuratively
3 speaking. We don't shoot them or stone them or set them on
4 fire in this society. We poison them to death. That's how we
5 take care of those kind of people, okay?

6 **A. Okay.**

7 **Q.** Now, does that seem sensible looking at that
8 question?

9 **A. Well, it makes sense to me. Now, when it got down
10 to it, I believe I could do it.**

11 **Q.** Okay. Because there are some people that are
12 capital murderers, and it makes us say yes, that's a good
13 step, if they've done a capital murder. There are some
14 situations that, I think you would agree, that the proper
15 answer to that question ought to be no; don't you think?

16 **A. Uh-huh.**

17 **Q.** I mean, the one I always think of is the real
18 dangerous capital murderer that the police are chasing. He
19 hops out a window and drops a bunch of stories from a tall
20 building and breaks his spine in about six places so that it
21 rattles when they cart him around, and he's paralyzed from the
22 eyebrows down. He can't even give somebody the evil eye. He
23 doesn't have that kind of motor coordination.

24 **A. Uh-huh.**

25 **Q.** He can't be dangerous to anybody; do you understand

1 that?

2 **A. Uh-huh.**

3 **Q.** So the answer to that question would have to be no
4 because he would have -- he no longer has a personality that
5 would be dangerous to other human beings. If you answer that
6 question yes unanimously, that means with the requisite rest
7 of jurors, then there's another question for you. That's the
8 mitigation question.

9 I think this is good for the jury. I think you will
10 agree with me that it also happens to benefit the Defendant,
11 but I think that question is for the peace of mind and the
12 spiritual well-being of the jurors. Take a moment and read
13 that for me.

14 **A. Okay.**

15 **Q.** That question first directs you to take another look
16 at the evidence that you've already looked at a couple of
17 times before with a little different purpose in mind. That
18 question says to look at the circumstances of the offense.
19 That means the capital murder, and that's probably going to be
20 a bad thing for the Defendant. Most -- I can't imagine how
21 capital murder would be a plus, because this is a weighing,
22 the mitigation versus the other evidence kind of situation.
23 Probably the facts of the offense aren't good for the
24 Defendant. How could a capital murder ever be good for
25 somebody on their side of the equation; are you with me?

1 **A. Uh-huh.**

2 **Q.** And when you get to the next line there that talks
3 about the character of the Defendant, probably that's not
4 going to be so great for the Defendant because you've already
5 decided that his character is such that he's a danger of being
6 a continuing threat to our society. That sounds like some bad
7 character stuff; don't you think?

8 **A. Yes.**

9 **Q.** We get to the background, though. That might be
10 very different because it might be -- in fact, it's likely
11 that things have happened in the Defendant's background that
12 are sad or sympathetic or unfortunate.

13 I don't know you, but you've got the same thing.
14 You've got things in your background that were sad or
15 sympathetic or unfortunate. I do. Everybody in this
16 courtroom has things that we could point to and say, it didn't
17 go right for us, especially if we were charged with a capital
18 murder.

19 **A. Uh-huh.**

20 **Q.** So I don't ever think it's a question for the jury
21 of whether there is any mitigating evidence because I'll bet
22 even Adolf Hitler had some mitigating evidence about him.
23 I'll bet even Hitler growing up as a youth had a lot of
24 meanness. I'll bet people -- I'll bet he didn't have enough
25 potato stew, or whatever they eat over there, when he was

1 going to bed probably. I'll bet people taunted him. I know
2 people used to call him sissy and make fun of him not being
3 any good in sports.

4 They sent him off to the art school and he thought
5 he found himself (inaudible). It's kind of funny because that
6 made people call him sissy again because he's going to art
7 school. Then they kick him out of there, and say you're not
8 good enough for being there. You know, dad made fun of him,
9 and used to curse his mom in German all the time, and that
10 language is very degrading because it's real sharp
11 (inaudible). You have to do that kind of talk all the time.
12 That's not any good. He probably went to bed at night crying
13 a whole lot, and the only thing he could ever do is influence
14 people with his speech and his political views. That's all he
15 was ever able to do. And even if all that's true, that's very
16 sad. Nobody wants to see a little boy going to bed sad and
17 called names and stuff like that.

18 That's not sufficient mitigating evidence to make
19 Hitler have to get a life sentence; don't you agree, after --
20 given what he'd done?

21 **A. I've done bad things, but I don't go out and kill
22 people because --**

23 **Q.** Of course, you have. Of course, you have.

24 **A. -- of what I did when I was a kid. My grandmother
25 was mean to me or my ex-husband who beat me up --**

1 Q. Right.

2 A. -- I didn't go kill people because of it. I didn't
3 take drugs because of it.

4 Q. Uh-huh. I'm with you on that.

5 And so the idea is not do you find any mitigating
6 evidence and then vote for a life sentence. The idea is, is
7 there sufficient mitigating evidence to make a life sentence
8 the right thing to do? And actually that may depend on how
9 bad the crime is in measure. Doesn't have to, but maybe one
10 way somebody approaches it is how bad is the crime? Kind of
11 the worse the crime, maybe the more mitigating evidence you
12 have to hear to balance out that bad crime. Does that make
13 sense to you?

14 A. Uh-huh.

15 Q. There are some capital murders that are not as bad
16 as other capital murders. They're all terrible.

17 A. If somebody is dead, they're deed.

18 Q. I don't know how to argue with that. That's
19 absolutely so.

20 But let me give you an example what I'm talking
21 about. Suppose -- do you have children?

22 A. Yes, I do.

23 Q. Suppose -- then you'd understand this as a mom.
24 Suppose some dad has some children, has a child and gets
25 abducted by a couple of men. They torture that child, and

1 together. He's real careful when he shoots them to make sure
2 there's nobody else in the line of fire because he doesn't
3 want to hurt anybody. He's not -- the only ones he wants to
4 hurt are those two killers. It might take him a week to find
5 a good, clear line of fire so that he doesn't hurt anybody
6 else, and he kills them. Then he drops the gun and waits for
7 the police to come arrest him, and he tells the police what he
8 did, and that's his story.

9 They get him examined by a psychiatrist, and the
10 psychiatrist said, he's not crazy. He's just grieving. He's
11 not crazy, ma'am. That's still capital murder. You're
12 absolutely right. Even those kinds of people -- society is
13 probably better off with those two people gone. If we can be
14 honest for a minute, it's probably a public service that he
15 did. We still can't have our citizens going out and being
16 executioners themselves. Do you understand that?

17 A. Yes.

18 Q. But it might well be that when you consider all the
19 circumstances of the case, like why he did it, that he's
20 always had a good character in the past, except for that. His
21 background has been good, and in his mind he was even trying,
22 in his sort of mistaken way, to do the right thing, and more
23 real important, he's trying to make sure nobody innocent got
24 shot when he's doing his shooting. You might say, you know,
25 all that together, that's sufficient mitigating circumstance

1 they abuse that child, and they murder that child. Under
2 Texas law, that's capital murder. And suppose further, they
3 get arrested, and they get brought to the bar of justice and
4 they have good lawyers who file a bunch of motions. And the
5 lawyers are so crafty and skilled that they make those motions
6 really, really good, and the judge grants those motions, and
7 those motions are to turn those people loose; so technicality,
8 in other words.

9 A. Uh-huh.

10 Q. So those two killers, they get turned loose, and
11 they're walking out of the courtroom, and the dad is sitting
12 there, and he -- like any parent would do, he'd be there for
13 the trial because his child's been murdered, and he wants to
14 see justice. He sees that happen, and they grin at him as
15 they're going out of the courtroom. They just sneer at him,
16 taunt him. You know how somebody could do such a thing?

17 A. Uh-huh.

18 Q. And then he says, you know, I can't let that happen.
19 I worked within the system, and let the system do right, and
20 the system has let, not only me down and my child down, but
21 it's let society down, because not only do not they get
22 punished for my little Johnny, they're going to go out and do
23 this to somebody else because that's how they are. And the
24 daddy says I'm not going to let that happen. He goes out, he
25 gets a gun, he follows them, he stalks them and gets them

1 to warrant a life sentence. Do you see how you could do that?

2 A. Right

3 Q. Does that make sense to you?

4 A. Yes, it does.

5 Q. I'm not saying he's advocacy doing it, but does
6 that kind of thinking seem consistent with how you think?

7 A. Yes.

8 Q. And there may be some cases so enormous there's not
9 enough that could ever be said mitigation-wise. Timothy
10 McVeigh, could you even begin to think of anything he could
11 have said that was sufficiently mitigating to not execute him?

12 A. Uh-huh.

13 Q. The crimes can be so big there is not enough
14 mitigation in the whole wide world to balance it out. Does
15 that make sense?

16 A. Yes.

17 Q. Now, we can't tell you what mitigation is. Some
18 people say being 28 years old is mitigating because you're
19 kind of young. Other people say, well, you know, when you're
20 ten you know not to go out and murder people, so what's the
21 big deal about being 28. You're free to feel that way as a
22 juror. You're free to say that -- you're free to say, yeah,
23 28 years old isn't young, anyway. It may be to you or me, but
24 it's not young in the sense that we think of teen-agers, or
25 something like that. Certainly old enough to know better, in

1 other words.
 2 Some people say drug usage can be mitigating, and by
 3 that I'm talking about voluntarily taking illegal street
 4 drugs. They say, well, those drugs make you mean and maybe
 5 it's the drugs causing the murder. The Defendant didn't do
 6 the murder; the drugs did the murder. That's kind of their
 7 thinking. Maybe that's mitigating. And other people say,
 8 what's up with that? Drugs are dangerous, and if you choose
 9 to take drugs, you're just going to suffer consequences for
 10 the drugs. So, some people think drugs are mitigating. Some
 11 think they don't count at all. It's just nothing, and other
 12 people say it's aggravating, makes it even -- makes it better?
 13 Heck, it makes it worse that you were doing all this on your
 14 own.

15 Coming from a broken home, we'd all agree that's sad
 16 for kids. I mean, if we all could do it, we'd rather raise
 17 kids with parents staying together, working pretty well
 18 together, right?

19 A. Right.

20 Q. Can't always happen. Seems like half our society
 21 gets divorced now, right?

22 A. (Nods head.)

23 Q. Some people say that's real mitigation. You know,
 24 you didn't have a daddy around because he's living someplace
 25 else from the divorce. Some people say, so what? My life has

1 not been so great, and I did okay. So what you think is
 2 mitigating, somebody else might not think is mitigating, in
 3 other words.

4 The critical question is you would answer that
 5 question yes or no according to whatever evidence you saw, and
 6 you're open to the idea of mitigation, and if you see
 7 sufficient mitigation you'll give it affect in your vote?

8 A. Yes.

9 Q. Okay. Do you have any questions of me?

10 A. No, sir.

11 Q. Are you looking forward to the possibility of being
 12 on this jury?

13 A. No.

14 Q. Are you dreading it, if it happens?

15 A. Yes.

16 Q. Could you tell me -- kind of tell me why.

17 A. I've been in therapy since last March and -- because
 18 of violence in my background.

19 Q. Yes, ma'am.

20 A. And I'd finally gotten to, this summer, a point
 21 where I'm kind of feeling okay with myself.

22 Q. Yeah.

23 A. And this has very much upset me, that I would be put
 24 in this (sic) circumstances.

25 Q. Can you -- I'm not quite following you. Can you

1 help me a little bit?

2 A. Well, because of the violence that I have been
 3 through --

4 Q. Okay.

5 A. -- earlier in my life, and I've been going to
 6 counseling --

7 Q. Right.

8 A. -- the therapy, and finally I have worked through
 9 some things. And like I said, I'm feeling better about myself
 10 this summer. I'm in -- I feel like I'm a real tedious
 11 situation there. I talked with my counselor yesterday about
 12 it because it upset me so much Monday when I was here.

13 Q. Uh-huh.

14 A. And I just -- it's very upsetting to me that I would
 15 have to be put in this circumstances (sic).

16 Q. Okay.

17 A. I don't feel comfortable with it at all.

18 Q. I'll stay as far as away as I can with trying to
 19 make the choices that I've got to make. I'm not -- it's not
 20 going to be fun for anybody listening to this evidence.

21 A. I know. I understand.

22 Q. Everybody -- I'll tell you some things, there's
 23 definitely going to be some gruesome pictures.

24 A. And this touches back on violence that I went
 25 through earlier in my life, and because I'm working and trying

1 to work through that I just feel like this is just a very
 2 uncomfortable situation for me, and I'm trying to be honest
 3 with y'all.

4 Q. I know you are.

5 THE COURT: Say, may I ask, ma'am? Is there
 6 any particular reason you didn't put that on your
 7 questionnaire when you were asked if there was any reason why
 8 you couldn't serve?

9 VENIREPERSON: I think that day in court when
 10 we were writing, it just kind of took me by surprise that so
 11 many questions were asked and everything. And it didn't --
 12 really, I don't know why. It (sic) just didn't think about
 13 putting down, or I didn't put it down because I think I
 14 answered some questions on there that I just wouldn't answer,
 15 that I just felt like that was my business.

16 THE COURT: Okay. Say, let me ask you
 17 something, too, since I've already interrupted the
 18 presentation. You indicated on your questionnaire that you've
 19 hunted --

20 VENIREPERSON: Yes, sir.

21 THE COURT: -- since the age of six. What do
 22 you hunt?

23 VENIREPERSON: I grew up with a grandmother
 24 that we hunted and fished a lot, and we went deer hunting and
 25 squirrel hunting, and things like that. I grew up in Arkansas

1 in the River Bottoms.
 2 THE COURT: Have you killed deer?
 3 VENIREPERSON: Yes.
 4 THE COURT: Have you also cleaned the deer
 5 yourself?
 6 VENIREPERSON: I haven't, but I've been there
 7 when it was going on.
 8 THE COURT: All right. Sorry to interrupt. Go
 9 ahead.
 10 MR. SCHULTZ: That's okay.
 11 Q. BY MR. SCHULTZ: I understand what you're saying.
 12 You still may be on the jury. That's just a fact, and that's
 13 not really -- that's not my call -- nobody is to blame. It's
 14 how the procedure works.
 15 Let's assume that does happen.
 16 A. Okay.
 17 Q. Let's assume you're put on the jury, and the Judge
 18 says come back in about a week and then you start listening to
 19 evidence. Can you listen to the evidence?
 20 A. I don't know. I mean, I don't know whether I could
 21 or not.
 22 Q. Do you work now?
 23 A. No.
 24 Q. Is that a matter of choice?
 25 A. Well, actually I say I don't. I do -- I have a

1 hobby that's turned into a job. It's a matter that I don't
 2 have to work now. My husband works.
 3 Q. For economic reasons you don't need to work?
 4 A. No, sir.
 5 Q. Okay. If you needed to work you'd be able to do
 6 that, wouldn't you? If you actually had the financial
 7 obligations --
 8 A. Yes.
 9 Q. -- you could do it?
 10 A. Yes.
 11 Q. And what kind of work have you done before?
 12 A. I worked for the Post Office for 15 years -- about
 13 15 years.
 14 Q. Were you a mail carrier? What did you do?
 15 A. I was a rural carrier, yes, sir.
 16 Q. And you could do that kind of work, the same as
 17 before? You wouldn't go to wrong houses or anything; that
 18 wouldn't be a problem?
 19 A. No.
 20 Q. And then what you do as a juror is you just listen
 21 to what everybody says and look at the documents that are
 22 admitted, and then at some point when the Judge tells you to
 23 begin deliberations, you'd listen to what the other jurors say
 24 and remember what you've heard in the case.
 25 You could find in the Defendant not guilty if we

1 didn't prove it, couldn't you?
 2 A. Yes, sir.
 3 Q. You could find him guilty if we did prove it?
 4 A. Yes, sir.
 5 Q. And the only way you could know whether we have
 6 proved it or not would be to listen to the evidence --
 7 A. Right.
 8 Q. -- and decide?
 9 A. Yes, sir.
 10 Q. Okay. And you could either give him a life sentence
 11 or death sentence by your answers according to the evidence
 12 and make that determination, couldn't you?
 13 A. Yes, sir.
 14 Q. Did you -- do you feel like you've understood all
 15 the questions that I've asked you here today?
 16 A. Yes.
 17 Q. And when Mr. Goeller and Ms. Lowry talked with you
 18 earlier -- I guess earlier this week, maybe it was last
 19 week -- but we were right here in this courtroom, did you
 20 understand all the things that were said to you there?
 21 A. Yes.
 22 Q. And you understood Judge Sandoval's instructions to
 23 you about not reading anything or watching TV about the case?
 24 A. I have not.
 25 Q. No problem with that?

1 A. No.
 2 MR. SCHULTZ: I appreciate your time and
 3 attention. Judge, we'll pass the juror.
 4 THE COURT: Say, Ms. Butz, I want to ask you a
 5 few more questions. The violence that was committed against
 6 you, when did that occur?
 7 VENIREPERSON: In my first marriage.
 8 THE COURT: How long ago was it?
 9 VENIREPERSON: How long ago?
 10 THE COURT: Yes.
 11 VENIREPERSON: I have to stop and think. About
 12 15 -- 16 years ago.
 13 THE COURT: Okay. And when did you work for
 14 the Post Office for 15 years?
 15 VENIREPERSON: I worked from 19 -- I believe it
 16 was about 1971 or '72, '73.
 17 THE COURT: Okay.
 18 VENIREPERSON: Until we moved to McKinney.
 19 THE COURT: The hobby that you said has turned
 20 into kind of a work, almost a job, what kind of hobby is it?
 21 VENIREPERSON: I have an antique business.
 22 THE COURT: What's the name of it?
 23 VENIREPERSON: It's R & B Collectibles.
 24 THE COURT: Do you have a location that you
 25 operate out of?

1 VENIREPERSON: Yes. I'm at the Antique
 2 Collection in McKinney.
 3 THE COURT: Do you have space there?
 4 VENIREPERSON: Yes.
 5 THE COURT: Okay. And how long have you
 6 operated that business?
 7 VENIREPERSON: For about four years.
 8 THE COURT: Do you file a tax return on the
 9 business every year?
 10 VENIREPERSON: Yes, sir.
 11 THE COURT: All right. And do you have
 12 employees?
 13 VENIREPERSON: No.
 14 THE COURT: Just you?
 15 VENIREPERSON: It's just a business space,
 16 yeah.
 17 THE COURT: All right. Sorry about the
 18 interruption. Is it Mr. Goeller or Mr. High?
 19 MR. HIGH: Judge, I'm going to handle it this
 20 afternoon.
 21 THE COURT: All right.
 22 CROSS-QUESTIONS
 23 BY MR. HIGH:
 24 Q. Ms. Butz, my name is Don High.
 25 A. Hi.

1 Q. And I have an interesting name, too. I've had a lot
 2 of fun with it. I just have a few questions for you this
 3 afternoon. I believe Mr. Goeller spoke with you on Monday,
 4 and Mr. Schultz and Ms. Lowry, so it's my turn finally.
 5 And we're appointed to represent this young man in a
 6 capital murder prosecution, and the State's going to pay our
 7 tab, I guess, to represent him. Do you have any problem with
 8 that, being appointed counsel?
 9 A. It's the way it is.
 10 Q. That's the way it is, that's right.
 11 And it's been that way for about 25 years -- 25, 30
 12 years. And we plan to give him the best representation we can
 13 give him.
 14 Also, I want to make clear that we're talking about
 15 punishment issues here today. We're talking about the death
 16 penalty and life in prison and that sort of thing. And we
 17 don't agree that he's guilty, okay? In fact, we're going to
 18 have a full-blown trial on those issues, and we may not even
 19 get to these punishment issues. That's our hope. That's what
 20 we plan to do. But also the law provides that we have to
 21 discuss these issues with you before we get started in the
 22 trial, okay? And I know it's -- it's awkward for me as a
 23 defense attorney to be sitting here talking with you about
 24 punishment before we've even had the trial. I'm sure you
 25 probably think this is kind of strange, too, right?

1 A. Uh-huh.
 2 Q. I mean, after all, this young man is not even guilty
 3 yet. Nobody has proven him guilty. As he sits here right
 4 now, he's innocent, and he may end up innocent, okay.
 5 Nevertheless, we have to talk to you about punishment, so I'm
 6 trying to get that clear and get that out of the way. Any
 7 questions about that?
 8 A. No, sir.
 9 Q. Okay, all right. With respect to the punishment
 10 phase of the trial, you know, we'll have the trial and you'll
 11 hear about the facts of the case, what happened, if it did.
 12 You'll know all about the facts of the offense. Right now you
 13 don't know any of the facts, and, in fact, Mr. Schultz --
 14 neither myself, none of us can talk about the facts with you
 15 right now. It's inappropriate for us to. All we can do is
 16 talk in hypotheticals right now. I know that kind of makes it
 17 tough on you because you're having to answer all these
 18 questions, and you don't know any of the facts. And I wish we
 19 could tell them to you, but we can't. We're prohibited from
 20 doing that, but we're going to have to try to get your
 21 opinions as best we can. But understand when you get to these
 22 questions, you're going to know all the facts. You're going
 23 to know how the offense happened, if it did, and who the
 24 players are, et cetera, et cetera.
 25 When you get to these questions, like let's go to

1 the first one, the future dangerousness question --
 2 probability of future dangerousness, whether there's a
 3 probability that the Defendant would commit criminal acts of
 4 violence that would constitute a continuing threat to society.
 5 And it sounds to me, with your background -- I mean, that's an
 6 especially hard subject to think about, or discuss -- I mean,
 7 is that fair to say?
 8 A. Yes, sir.
 9 Q. I mean, you'd rather not go there, right?
 10 A. Right.
 11 Q. I understand that completely. I mean -- and I have
 12 some subjects in my background that I'd rather not discuss.
 13 I'd rather just not go there. And it also sounds to me that
 14 that's particularly tender to you at this time because you
 15 felt like you had advanced so far this summer, and now you're
 16 having to go through this all over again. Am I getting that
 17 right?
 18 A. Yes.
 19 Q. And it's kind of causing us to come back to the
 20 surface again, and you don't know what's going to be involved
 21 in this case, but you are concerned that it may touch on some
 22 sensitive areas for you?
 23 A. Uh-huh.
 24 Q. Is that -- am I perceiving that right?
 25 A. Yes, sir.

1 Q. Okay. And violence especially, that's -- that's not
2 something you want to even have to think about right now --
3 A. Right.
4 Q. -- especially with the progress you've made?
5 A. That's right.
6 Q. Okay. When you think about violence, and I
7 apologize. I have to do this. I just have to do this. When
8 you think of the word "violence," when you think of the
9 effects of violence and especially -- you know, you're a
10 product of that. And, of course, you also know that it goes
11 on across the country, and we've seen it played out in the
12 media, especially in the O.J. Simpson trial, and we all have
13 heightened awareness as a result of that trial. I know that.
14 I used to be a prosecutor. I used to sit over there at that
15 table. I prosecuted domestic violence cases in my career, and
16 I've also defended domestic violence cases, and there -- well,
17 I'll tell you it's an animal unto itself because they're so
18 fraught with emotion. And I'll get to my question here in
19 just a second.

20 You know, when you think of violence, I'm sure you
21 probably go right to the situation between a man and woman in
22 a domestic violence situation; the heat, the drama, the pain,
23 the anguish, the words, the slamming of the doors, the frying
24 pans, the -- you know, the things that go along with a
25 domestic violence situation. Punching, hitting, that sort of

1 thing. Is that fair to say?
2 A. Yes, sir.
3 Q. Do you understand that if you were to sit as a
4 juror in this case or any other case, it would be necessary to
5 set aside any of your previous experiences; things that
6 happened to you in your life, things that you've experienced.
7 And I'm not saying set aside your practical judgment, but what
8 I'm saying is you can't take those facts, those experiences in
9 the jury box and factor them into a verdict that you may
10 render. Am I being specific with my question?
11 A. I understand what you're saying, but that's real
12 hard to tell somebody that they can't feel what they're
13 feeling. You try not to, and I feel like that I'm a fair
14 person, and I didn't realize that this was going to bring all
15 this up when this all began, when I was called as a juror, and
16 then when I came back in Monday. In fact, Monday -- it really
17 shocked me how it upset me so bad.
18 Q. I'm hearing you. I'm hearing you.
19 A. Okay. And I understand that I would need to do
20 that.
21 Q. Okay.
22 A. And I would try because I feel like that -- you
23 know, I'm a good citizen, and I want to do the right thing.
24 Q. I'm hearing you. I'm hearing you, and I believe
25 that. I honestly do. I'm going to probe a little bit more,

1 okay?
2 A. Okay.
3 Q. And I don't mean to insult you. Please don't be put
4 off by the things I have to ask you, because I have to. I'm
5 defending this young man. His life is on the line.
6 I know you think you should be able to set it aside.
7 I know you want to be a good citizen. I know you want to do
8 your duty. We all do, especially in these days with the
9 recent turn of events. We all want to think of ourselves as a
10 good citizen. We all want to try to do what's right for our
11 country and our State. At the same time, we have to recognize
12 our limitations, and in this respect, okay, violence is part
13 of this first special issue, you know, criminal acts of
14 violence. When we get right down to it, when we separate out
15 all the words and all the lawyers saying things in a nice way,
16 when we talk about your heart, when you get down to where
17 decisions are made -- you know, way down deep inside when
18 you're having to make a decision, you think it's likely that
19 you're going to be able to set aside your previous experience
20 and just judge criminal acts of violence and the probability
21 of criminal acts of violence just on the evidence that you
22 hear in the courtroom and what's proven to you, either by the
23 prosecution or by the defense beyond a reasonable doubt. Do
24 you think you'll be able to set aside your previous
25 experiences, not factor them in at all, and just judge based

1 on the evidence that you hear?
2 A. I don't know if I could do that now.
3 Q. Okay. It's okay to say exactly how you feel. If
4 you feel like you have a reservation, if you feel like, gee,
5 I'd have a hard time separating this fact from another fact
6 that happened to me previously, and, by goodness, I know that
7 if this is happening when I'm here in the courtroom, I know
8 this other happened, too, because it happened to me. You
9 know, I've been there, you know? In other words, kind of
10 inferring additional facts from the facts that you hear here
11 in the courtroom. I mean, if that would be hard for you to
12 do -- it would be hard for you to keep some additional facts
13 out of this courtroom, it would probably not be right for you
14 to sit on this jury; is that fair to say?
15 A. Probably that's pretty much so, yeah.
16 Q. Do you understand the State is entitled to get a
17 verdict, not on what you think or feel, but what the facts
18 have proven to you. And, likewise, we're entitled to a
19 verdict not based upon what you think or feel or what your
20 past has been --
21 A. I understand.
22 Q. -- but what the facts have proven to you, what the
23 evidence has been.
24 A. I understand, and I think -- I thought that in the
25 beginning I could have done that.

1 Q. Yes, ma'am.

2 A. **But like I said, after today and Monday I'm not real**

3 **sure.**

4 Q. Okay.

5 A. **I would like to think that I could be fair and do**

6 **that, but I'm not real sure that I could do that.**

7 Q. Okay. Now, here's the next question then. Do you

8 believe that your prior experiences, the things you're working

9 through, the issues you're discussing with your counselor, do

10 you think that those issues would substantially impair your

11 ability to listen to the evidence and consider these special

12 issues and render a verdict based just on the evidence?

13 A. **Just -- I just don't know. I don't know what to**

14 **say. I really don't know. It's -- when you get all involved**

15 **in feelings, and we haven't really discussed the violence in**

16 **my counseling in --**

17 Q. Uh-huh.

18 A. **-- since probably the beginning of when I was going**

19 **through it, and like I said, I thought I was just going along**

20 **really well, and then it surprised me how this hit me Monday.**

21 **It surprised me how I'm tearing up now.**

22 Q. I understand. I'm trying to get through this --

23 A. **I understand.**

24 Q. -- as quickly as I can.

25 A. **I understand.**

1 Q. I sure don't want to belabor this with you.

2 You indicated to me a while ago that it would be

3 hard for you to set it aside. It would be hard for you --

4 A. **Totally, yes, I think it would be.**

5 Q. Okay. And the Judge is going to instruct you that

6 you're to base the evidence on only from what you're to hear

7 from the witness stand and nowhere else. But you're telling

8 me that it would be hard for you to do that and would that

9 impair your ability to just judge the evidence based on what

10 you hear from the witness stand?

11 A. **I'm afraid it would be, yes.**

12 Q. And I'm fine with that, okay? Believe me, I'm fine

13 with that. I'm sure everybody in here is fine with that.

14 You're fine with it because you told us now instead of waiting

15 to get on the jury and getting in the middle of a trial, and

16 then it ain't happening, okay? It's not working, and you know

17 that you're bringing other things into the jury box, into the

18 jury room that don't belong there. It's much better to talk

19 that way with us now than to wait until it's too late. Is

20 there any other questions that you have for me --

21 A. **(Shakes head.)**

22 Q. -- today?

23 A. **No, sir.**

24 Q. I certainly do appreciate your fairness and your

25 candor, and I'm delighted to meet you.

1 MR. HIGH: And, Judge, we'll pass the juror.

2 THE COURT: Any other questions from the State?

3 MS. FALCO: No, Your Honor.

4 THE COURT: You may step down, ma'am.

5 (Venireperson exits the courtroom.)

6 THE COURT: All right. What says the State?

7 MS. FALCO: Acceptable to the State, Your

8 Honor.

9 THE COURT: How about the Defense?

10 MR. HIGH: Judge, we'd move this juror be

11 excused for cause in that she's had -- it's readily apparent

12 she's had extensive history of violence to an abusive

13 marriage. She's in counseling. She was noticeably upset, the

14 record should reflect, on the witness stand. She became

15 tearful, and she was concerned about a set-back in her

16 progress. And then when asked about Special Issue Number One,

17 acts of violence, she'd have a hard time setting aside her

18 previous experience, and it would be hard for her not to bring

19 her experience into the jury and into the jury room, which

20 would not be in conformity with our law.

21 And she also answered the -- an ultimate question,

22 that it would substantially impair her ability to answer that

23 special issue, and I believe she felt comfortable with that.

24 She didn't want to come out and admit that -- I guess she felt

25 like she would be a poor citizen if she said that, but I think

1 that's really what was on her mind, and that's honestly the

2 way she believes. So for these reasons we believe that we're

3 entitled to have a fair and unbiased juror, and a juror that

4 would allow us to have a fair shot on those special issues.

5 So, we'd ask the challenge for cause be granted.

6 THE COURT: Did you think there was any chance

7 she was being basically dishonest in her answers?

8 MR. HIGH: I think that's maybe a little bit

9 strong. On the questionnaire --

10 THE COURT: No, I'm just asking you. I know

11 it's a little strong. It's a strong question, and it's asking

12 for a strong answer.

13 MR. HIGH: Well, she certainly didn't disclose

14 some things readily on the questionnaire.

15 THE COURT: Does the State think she was being

16 at all dishonest, or did you believe every word she said?

17 MS. FALCO: Your Honor, her questionnaire

18 doesn't indicate it, but her statement was at the time she

19 filled out the questionnaire she thought she could do it, and

20 it wasn't until Monday, I guess, that she became upset. She

21 was visibly crying, but she appeared to give different answers

22 to Mr. High than she did to us as far as being fair.

23 THE COURT: All right. I will strike Ms. Butz

24 for cause, and if you would tell her that she's released. And

25 ask Ms. Beckman to please step in.

1 THE BAILIFF: Yes, sir.
 2 (Venireperson enters the courtroom.)
 3 THE COURT: Good afternoon. Are you Deborah
 4 Beckam?
 5 VENIREPERSON: Beckman.
 6 THE COURT: Beckman. I'm sorry.
 7 Well, I want to welcome you to the court this
 8 afternoon.
 9 VENIREPERSON: Thank you.
 10 THE COURT: And thank you for coming.
 11 Perhaps you'll remember when the 200 of you were
 12 assembled a little over a month ago --
 13 VENIREPERSON: I remember. It was hard to
 14 forget.
 15 THE COURT: Was it hard to forget?
 16 VENIREPERSON: Yes.
 17 THE COURT: It made an impression?
 18 VENIREPERSON: Oh, yeah. Never been in that
 19 building before. That was the first time considering that was
 20 brand-new.
 21 THE COURT: It was one of my first, too. So
 22 what I want to ask you is if you remember specifically me
 23 administering an oath?
 24 VENIREPERSON: Uh-huh.
 25 THE COURT: Do you recall that the oath

1 required you to give truthful answers --
 2 VENIREPERSON: Right.
 3 THE COURT: -- to any questions asked by the
 4 Court and by the attorneys on both sides?
 5 VENIREPERSON: Yes.
 6 THE COURT: Do you understand you're still
 7 subject to that oath?
 8 VENIREPERSON: Yes.
 9 THE COURT: Please be seated right here, and
 10 the attorneys will ask you questions.
 11 VENIREPERSON: Okay.
 12 THE COURT: Is it Ms. Lowry? All right.
 13 DIRECT QUESTIONS
 14 BY MS. LOWRY:
 15 Q. Good afternoon, Ms. Beckman.
 16 A. Hello.
 17 Q. First, I just want to thank you for coming down. I
 18 know you were scheduled to come down originally in the
 19 morning. We've moved along a little faster today than we had
 20 appreciated, so we really appreciate you coming down.
 21 A. That's fine.
 22 Q. Of course, you know why you're here. It's just
 23 Monday that I visited with you before about this process. You
 24 probably were hoping that you were so far down that we
 25 wouldn't get to you. I want to reintroduce everybody that is

1 in the room today. Seated right here to my right is Gail
 2 Falco. She is the chief prosecutor for one of the district
 3 courts here in our office. Seated to her right is Mr. Bill
 4 Schultz, who is the first assistant in our office.
 5 A. Hello.
 6 MR. SCHULTZ: Hello.
 7 Q. BY MS. LOWRY: Seated directly to my left is Ivan
 8 Cantu, the Defendant.
 9 THE DEFENDANT: Hello.
 10 Q. BY MS. LOWRY: And to seated to his left is Don
 11 High.
 12 MR. HIGH: Hello.
 13 Q. BY MS. LOWRY: And seated to Mr. High's left is
 14 Mr. Goeller, both of his Defense attorneys.
 15 MR. GOELLER: Good afternoon.
 16 Q. BY MS. LOWRY: They're private practitioners in
 17 Plano. And as I recall from Monday, you don't know any of us;
 18 is that correct?
 19 A. Right.
 20 Q. Like I told you on Monday, this is what we call the
 21 individual part. I know there are six of us sitting here
 22 looking at you and asking you a bunch of questions, and it may
 23 not feel as comfortable as you might like it to, but it's
 24 meant to be very comfortable so that you can just tell us
 25 exactly how you feel about things, what your opinions are, and

1 things of that nature, okay?
 2 A. That's fine.
 3 Q. Just to begin with, when you filled out your
 4 questionnaire back in August, did you have an understanding of
 5 what capital murder was?
 6 A. Yes.
 7 Q. And did you understand that to be basically what I
 8 explained it as Monday, the murder plus?
 9 A. Yes.
 10 Q. And as I kind of talked to you about, it's not an
 11 automatic death penalty-type thing. The jury gets to answer
 12 questions, and that's what determines whether or not it's
 13 going to be a death penalty?
 14 A. Right.
 15 Q. How do you feel about that kind of process?
 16 A. Well, to be honest with you, I understand to ask
 17 questions and so forth to render a verdict of guilty or
 18 innocent. But my personal belief has always been, and how I
 19 feel about it, is that anybody who basically commits an act,
 20 especially a murder, I don't think -- I mean, to take a life
 21 that -- in that way, in that form, basically says, well, I
 22 know what I'm doing. And so, therefore, he's going to make
 23 the family of the victims suffer through the whole process,
 24 and I'm sorry, but for -- an eye an eye; tooth for a tooth.
 25 Q. And like I told you on Monday, that's fine. I mean,

- 1 we're not here to quarrel with you about what your opinions
2 are.
- 3 **A. Right.**
- 4 Q. We're not here to change your mind --
- 5 **A. Okay, right.**
- 6 Q. -- or tell you that you're wrong or right or
7 anything like that?
- 8 **A. Right.**
- 9 Q. And kind of like we talked about on Monday, there
10 are so many different circumstances that can be involved in
11 any given case, and that's why the Legislature has come up
12 with a punishment range, rather than just one specific
13 punishment for one specific crime.
- 14 **A. Right, correct.**
- 15 Q. And to be a qualified juror in a case like this,
16 you're certainly free to your opinions. You're entitled to
17 them. That's what makes this country what it is.
- 18 **A. Right.**
- 19 Q. But what we need to know is if you can take the law
20 and follow the law and do what the law says. Does that make
21 sense?
- 22 **A. Yes, it does make sense.**
- 23 Q. And with a capital murder case, the only two options
24 once you get to the punishment phase are life and death.
- 25 **A. Right.**

- 1 Q. And the way that's dictated is the way you answer
2 the questions.
- 3 Let's talk about, first, just your basic views of
4 the death penalty. Why is it that you support the death
5 penalty?
- 6 **A. Because I feel that anybody in their right mind who
7 feels that they need to take a life don't deserve to live
8 after that because basically what they're doing is putting the
9 family through a whole -- whole long turmoil while they're in
10 jail, and it's just taking the taxpayers' money. And I mean,
11 it's just -- you know, it's an ongoing process. It just
12 leaves it going forever. I mean, I wouldn't want my family to
13 go through that.**
- 14 Q. Did you have any concerns when I explained to you
15 that most of our questions were going to be about the
16 punishment phase? Did you feel like we were railroading the
17 Defendant or taking into any less consideration the
18 guilt-innocence phase of the trial?
- 19 **A. No, not to my knowledge.**
- 20 Q. Because it's not that it's any less important.
- 21 **A. Right.**
- 22 Q. Basically we feel either our case is a good and
23 righteous case, and you're going to find him guilty or you're
24 not?
- 25 **A. Right.**

- 1 Q. And that's going to be up to you as a juror, and you
2 know what you feel like beyond a reasonable doubt is, and
3 you're going to apply that standard?
- 4 **A. Right.**
- 5 Q. Just a few of the basic things as far as the failure
6 to testify. If the Defendant decides not to testify, it's
7 completely his right, and that's something that you can't hold
8 against him. Is that a law that you can follow?
- 9 **A. Yes.**
- 10 Q. And they don't have to put on any evidence. They
11 don't have to bring forth anything. They don't have to do
12 anything, like I said, but show up.
- 13 **A. Right.**
- 14 Q. Is there anything about that that you would hold
15 against him?
- 16 **A. No.**
- 17 Q. Okay. And you would hold the State completely to
18 our burden of proving to you beyond a reasonable doubt whether
19 or not he's guilty?
- 20 **A. Yes.**
- 21 Q. Once you get to the punishment phase, and as I
22 talked to you about these questions -- and just briefly, like
23 I said, there's room for people on the jury who think the
24 death penalty ought to be used in almost every case, as well
25 as there's just as much room for people on the jury who think

- 1 the death penalty should hardly ever be used.
- 2 **A. Right.**
- 3 Q. As long as you can listen to the facts, weigh the
4 evidence, and answer the questions based solely on the facts
5 rather than on what you want to happen; does that make sense?
- 6 **A. Right, yes.**
- 7 Q. And I think most people think they're law abiding,
8 think they follow the laws, and that's all that we ask is that
9 you follow the laws.
- 10 **A. Uh-huh.**
- 11 Q. We're not asking you to change your opinion or
12 anything like that. Just take the law that's given to you by
13 the Judge and apply that.
- 14 **A. Right.**
- 15 Q. It's kind of like the speed limit signs when you're
16 coming up here today. I'm sure you saw a couple of those, and
17 I'm sure when you saw them I'm sure you didn't just hit the
18 gas and say, phooey on the law and I'm just going to drive
19 however fast I want to?
- 20 **A. No, I do not feel that way.**
- 21 Q. And it's the same idea. That's what we're asking.
22 This is kind of like the speed limit sign; heed it and follow
23 the law.
- 24 **A. Right.**
- 25 Q. The first question that you come to is the future

1 danger question, and that's the question that's up there if
2 you want to read that to yourself just to refresh your memory.

3 **A. Is that the question you would like for me to**
4 **answer?**

5 Q. That's the first question that you come to, assuming
6 that you've found someone guilty of capital murder.

7 **A. Okay.**

8 Q. And with this question, by the Legislature setting
9 up the punishment phase of a capital murder case in the way
10 that they have, they have obviously envisioned situations in
11 which a person may have committed capital murder, but are not
12 necessarily a future danger. Does that make sense?

13 **A. Actually, how can that be right if the person has**
14 **already committed this crime? I mean -- and doesn't mean they**
15 **can't do it again.**

16 Q. Like I said, there are a lot of different
17 circumstances.

18 **A. Uh-huh.**

19 Q. And what this question is asking you about, it's
20 basically a question -- it's kind of a trait for
21 dangerousness.

22 **A. Okay.**

23 Q. And on Monday we kind of talked a little bit about
24 one variety of capital murder could be -- let's say
25 Dr. Kevorkian, who comes in, maybe he's got an elderly couple

1 Q. Exactly. And that's kind of my point to you. I
2 mean, under Texas law we don't have a defense of consent. You
3 know, I gave you consent to take my life, so it's not a
4 murder. And in that instance, even though they had consent of
5 the two people dying and even their family and everybody was
6 there when it happened, under Texas currently that's still
7 murder. And if he takes both of their lives, that's capital
8 murder.

9 **A. Right.**

10 Q. That's my point to you is there are so many
11 different circumstances, so many things that we may not even
12 be able to envision that could answer this question no. In
13 that instance, you've got Dr. Kevorkian who is doing this for
14 the couple.

15 **A. Right.**

16 Q. He's doing it for the couple, for the family.
17 There's absolutely no anger involved. In fact, it's more out
18 of mercy and compassion, and maybe because he's a lot further
19 along in his views of the world than we are. Do you see what
20 I'm saying?

21 **A. Yes.**

22 Q. And when you look at that question, you may, because
23 you'd follow the law, have to find him guilty of capital
24 murder because technically he took the lives of two people
25 intentionally, and under our law that's what it is, is capital

1 who decided they don't want to live without each other.
2 They've lived 65 years together and can't imagine not being
3 together.

4 **A. Right.**

5 Q. One of them is at the point that they're not going
6 to make it much longer. They call him in and say, hey, we
7 both would like to die together; can you do it for us? He
8 says, sure. Comes in, does it. The family is in agreement.
9 The couple is, obviously, in agreement and takes their life.
10 Well, he's committed two murders in Texas because he's taken
11 their life intentionally, and under Texas law that's
12 considered capital murder. Does that make sense?

13 **A. Not to me, it doesn't, only because he's been given**
14 **the right to have somebody, if they're really sick or they're**
15 **old to not go -- not live anymore, not to go through pain or**
16 **anguish or anything like that, to have their family go through**
17 **that same thing, it's just -- I think that -- you know, it's**
18 **probably not exactly the best thing to do, but what else can**
19 **you do, commit suicide?**

20 Q. Well, that's really the only alternative, unless
21 you want somebody to commit murder in Texas.

22 **A. Well, true. We don't want to happen, but if they've**
23 **been given consent to take the life of somebody who's not**
24 **going to be alive for much longer, is relieving them of the**
25 **pain.**

1 murder. But when you get to this question, you look at
2 everything and you think, I don't think that he's a future
3 danger, because I don't think there's a probability that he's
4 going to commit criminal acts of violence that would
5 constitute a continuing threat to society, because all he is
6 is good to society. Do you see what I'm saying?

7 **A. Yeah, okay.**

8 Q. And that's all the law contemplates, is that you
9 keep your mind open enough --

10 **A. Right.**

11 Q. -- to the idea that just because someone commits
12 capital murder, that doesn't necessarily make them a future
13 danger.

14 **A. Okay.**

15 Q. And you can base the answer to this question on all
16 the evidence that you based the guilty verdict on, or you can
17 base it on other things such as -- you know, with
18 Dr. Kevorkian. You're not going to base the answer to this
19 question necessarily on the idea that he killed two people,
20 but maybe more on the idea of why he did it, that he had
21 consent, and things of that nature. So all the Legislature is
22 asking you to do is make an independent determination, aside
23 from whether or not you found him guilty.

24 **A. Right.**

25 Q. Can you follow that law?

1 **A. I could, but it would be difficult. It depends on**
2 **the circumstances.**

3 Q. There's not going to be anything about this process
4 that's going to be easy, and we understand that asking someone
5 to come down here and be a part of this process, it's not
6 asking them to do something that's going to be easy for
7 anyone?

8 **A. Right.**

9 Q. You may be the person that -- like I said, 99 times
10 out of 100, you're going to find that they're a future danger
11 if they committed capital murder. But as long as there's that
12 one time, and you're going to keep your mind open to the idea
13 that there's a possibility you could find someone that's not a
14 future danger who's committed a capital murder, then you're
15 qualified. Can you do that?

16 **A. I would have a hard time with that only because I**
17 **just feel that if they've already got in their mind that**
18 **they're going to commit this crime, they can also commit it**
19 **again if they're not caught.**

20 Q. So are you -- and like I said, I'm not challenging
21 you on your beliefs or anything like that. I'm just trying to
22 be clear. Are you basically telling me that you're not -- you
23 don't think you can follow the law and answer this question
24 independently of finding a person guilty of capital murder?

25 **A. No, I couldn't.**

1 Q. So even though we talked about the situation with
2 Dr. Kevorkian, where obviously you're very accepting to the
3 idea that mercy killing might be an okay thing because of
4 everything that's involved, even in a situation like that you
5 wouldn't consider it --

6 **A. No.**

7 Q. -- possibly?

8 How about, let's say you have a person who has
9 committed a crime, a horrible crime. Gone in, burglarized
10 someone's home, killed everybody inside, taken everything they
11 own, a horrible crime. Comes out of the house, the police are
12 already there. They have a huge shoot-out, and he gets shot,
13 gets hit in the spine, and let's say he's paralyzed from his
14 eyebrows down, can't bring his eyes to tell anybody anything,
15 can't move his mouth to talk, can't do anything except maybe
16 wiggle his scalp. I mean, certainly you can see there how he
17 can't do any -- I mean, all he can do is sit there.

18 **A. Right.**

19 Q. In an instance like that, there's really no way he
20 can commit any future acts of criminal violence, do you think?

21 **A. Not in that way, no, because if he can't move**
22 **anything, if he can't even move his eyebrows or move his mouth**
23 **or even speak, then that's a different circumstance. But all**
24 **circumstances add up, or lead up to the problem at hand, which**
25 **is somebody who commits a crime and they know they've already**

1 **done it or are going to do it, they've already set in their**
2 **mind what they're going to do, I'm sorry, but they've already**
3 **got in their mind, this is what I'm going to do today. To**
4 **heck with these people, and this is what I have planned.**

5 Q. And I'm not saying that in any way lessens what he
6 did, because it certainly does not. And that's not going to
7 add -- you know, have any weight as far as whether or not he
8 committed the crime. I'll grant you that. That has nothing
9 to do with the offense itself. All this happened after he
10 committed the capital murder. You found him guilty because he
11 committed the capital murder.

12 But as you see him sitting there, you know, he's not
13 doing anything but sitting there because that's all he can do,
14 and certainly when you get to this question and you've been
15 presented evidence that the only thing he can do is wiggle
16 the top of his head, would you still answer that question in a
17 way that would result in a death sentence and just completely
18 disregard the law?

19 **A. I guess I didn't quite look at it that way. I mean,**
20 **if you have somebody who is no longer able to do anything, if**
21 **they can't -- if they are no longer a danger to society, then**
22 **that I would understand because then, I mean, I'm sure that he**
23 **would want to die in the first place after that. So, he would**
24 **no longer be a threat. I mean, if you were to put it that**
25 **way, I understand. If they are fully capable of committing**

1 **another crime, as the same kind, then I would definitely have**
2 **a problem with that.**

3 Q. That's fine. Nobody is asking you not to. That's
4 the distinction I'm trying to make with you. Nobody is asking
5 you to disregard whether or not somebody is capable of
6 committing a crime again. In fact, that's what they're asking
7 you to look at; is there a probability that they're going to.

8 **A. Yes.**

9 Q. But my question is, can you keep an open mind to the
10 fact there may be circumstances out there where the person is
11 not probably going to be a future danger?

12 **A. No, I don't think I could.**

13 Q. You can't keep an open mind to that?

14 **A. No.**

15 Q. So in this instance, you'd just completely disregard
16 the law and answer this question so I can kill this person no
17 matter what?

18 **A. Yes.**

19 Q. If given the opportunity, would you go watch an
20 execution?

21 **A. No.**

22 Q. Did you feel good about getting up today and coming
23 down and thinking that maybe you could be a part of the
24 process that caused the death of somebody?

25 **A. No. I have already seen enough deaths to last**

1 me --

2 THE COURT: You've seen enough what?

3 VENIREPERSON: I've seen some deaths. That was
4 personal to me, and I don't want to see it again.

5 THE COURT: All right.

6 Q. BY MS. LOWRY: But still -- I mean -- and basically
7 sitting there today, you've already made up your mind that if
8 you're on this jury, he's going to the death chamber?

9 A. Uh-huh.

10 MR. GOELLER: I'm sorry, if I could have the
11 Court ask the juror to answer, for the court reporter, that
12 last question.

13 THE COURT: Was the last answer -- you nodded
14 your head. I suppose you meant yes?

15 VENIREPERSON: Yes, sorry.

16 THE COURT: You have to say in words.

17 Say, let me ask you something. I think I knew your
18 father.

19 VENIREPERSON: Harvey Barshader (phonetic).

20 Yes.

21 THE COURT: He did a lot in Plano?

22 VENIREPERSON: He was on the Chamber of
23 Commerce and everything, yeah, very popular man.

24 THE COURT: Yeah. I knew him. How's he doing?

25 VENIREPERSON: He's retired in Arizona.

1 want to call some of the Friday people to come in tomorrow

2 afternoon because Charlene Foster, based on her criminal

3 history, it just says larceny under \$5, but it says convicted.

4 If she's convicted of theft, she's not qualified. That only

5 gives us two people.

6 THE COURT: Good point. I tell you what, I'll

7 see if I can get in -- say, let me tell you something about

8 John Lau, and I hesitate to tell you-all this. He wrote me a

9 real short note here, a fax to me that says, "I will not be

10 able to make the scheduled appoint on Friday because I have a

11 business meeting scheduled with out-of-town investors. If you

12 have any questions or concerns, please contact me. John Lau."

13 And so --

14 MR. GOELLER: I guess he told you.

15 THE COURT: Yes, put me in my place.

16 And I am inclined to let him do his investing, but I

17 could also have Mr. Lau come down, too. I tell you what we

18 can do, just to be on the safe side, we'll see if we can get

19 ahold of everybody who's scheduled tomorrow morning. In fact,

20 I think it would be good exercise for Mr. Lau to come down

21 early because it also comports with his schedule, come to

22 think of it.

23 MS. FALCO: For everybody from Friday morning

24 to come tomorrow?

25 THE COURT: Yeah. We'll have everybody from

1 THE COURT: Oh, is that right. That's fine.

2 VENIREPERSON: He's remarried.

3 THE COURT: Oh, is that right?

4 VENIREPERSON: Yeah.

5 THE COURT: I think I met your mom, too, if I'm
6 not mistaken? Is she still around?

7 VENIREPERSON: No. She died of cancer.

8 THE COURT: Did she die of cancer? I'm sorry
9 to hear that, very sorry. Well, I tell you what, have we just
10 about exhausted this juror, or do we have any more questions?

11 MS. LOWRY: We pass the juror.

12 THE COURT: And I tell you what, is there a
13 challenge?

14 MR. GOELLER: I would submit this juror for
15 cause.

16 THE COURT: All right. The challenge is
17 granted, and, ma'am, you are finally excused. I really
18 appreciate you coming down.

19 VENIREPERSON: Thank you.

20 (Venireperson exits the courtroom.)

21 THE COURT: I mentioned that I'm telling
22 Charles McAnally not to come in at all, and we'll start at
23 1:00 tomorrow, and my prediction is that we'll have a couple
24 of alternates tomorrow, too.

25 MS. FALCO: Your Honor, I don't know if you

1 Friday morning also come tomorrow afternoon at 1:00. Would

2 you see if you can get ahold of all those folks?

3 THE BAILIFF: Yes, Your Honor.

4 THE COURT: And Charles McAnally, let me give

5 you his questionnaire, if you would call him and tell him not

6 to come in, and we'll see you folks at 1:00 tomorrow. Both

7 sides are excused.

8 THE BAILIFF: All rise.

9 (End of Volume 29.)

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1 REPORTER'S CERTIFICATE
2 THE STATE OF TEXAS *

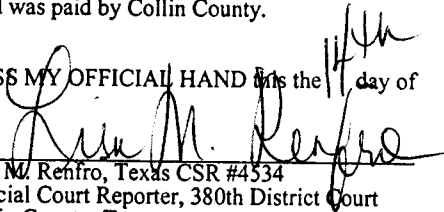
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4
5 I, Lisa M. Renfro, Official Court Reporter in and
6 for the 380th District Court of Collin County, State of Texas,
7 do hereby certify that the above and foregoing contains a true
8 and correct transcription of all portions of evidence and
9 other 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
14 I further certify that this Reporter's Record of the
15 proceedings truly and correctly reflects the exhibits, if any,
16 offered by the respective parties.

17
18 I further certify that the total cost for the
19 preparation of this Reporter's Record is contained in
20 Volume 53 and was paid by Collin County.

21
22 WITNESS MY OFFICIAL HAND this the 14th day of
23 January, 2003.

24
25

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S	226:11	73 213:16	60:16,19,20,22	absolute 49:7	221:10,12
\$5 244:3	2001 1:12 37:17	75 83:22 176:24	63:1,15 64:15	absolutely 7:3	address 94:8
0	2002 246:16,23	75069 1:19 2:8	66:15 68:12	9:24 28:5 68:6,8	adequate 131:3
00787450 2:4	20s 161:17,20	246:21	69:14,17 73:23	86:12 92:19,24	adjust 74:2
08059260 2:12	20th 58:20	75075 2:16	75:22 77:19	110:3 113:23	adjustment 75:17
09605050 2:13	210 1:19 2:8	7th 73:10	80:1,15 81:5,6	202:19 204:12	75:18,24
1	246:20		81:12,12 84:21	236:17	administered
1 129:24 136:23	214 3:14	8	89:17,21 92:15	abuse 143:17	6:12 10:17 99:3
136:24,25	21st 123:19	80 85:11	92:20,22 93:3	144:6 151:19	139:16 154:4
161:10	22 181:14		96:12 97:4,12	203:1	184:4
1:00 137:1 243:23	225 3:15	9	102:13,24,25	abused 88:6	administering
245:1,6	227 3:16	9:00 1:12	104:24 105:13	abusive 224:12	157:16 226:23
10 3:4 78:25 85:7	24012724 2:5	90 84:6	105:22 108:16	accept 95:3	admissible
114:11 129:24	243 3:16	95 75:16,17	108:21 109:22	Acceptable 94:3	113:24
129:24,25	244 3:18	97 3:6	110:16 111:11	136:3 224:7	admit 156:7
100 49:7 238:10	246 3:20	972 1:20 2:9,16	111:20,23,24	accepting 239:2	161:7 224:24
11 3:5 100:23	24th 123:19	972/424-1460	112:18,24	accommodating	admitted 114:12
106:8 161:10	25 58:17 114:11	246:21	113:10 114:17	101:19	211:22
11th 37:17 100:16	139:5 215:11,11	99 3:7 83:22 84:2	114:18 115:3,6	accommodation	admonition 96:5
124:18	250 70:16	84:6 169:9	115:25 116:14	101:17	Adolf 200:22
12 3:6 95:11	26th 1:12	238:9	117:10,10 122:3	accomplished	adults 41:18
121:6 156:25	28 1:1,8 3:4,5,7,8	A	123:21,21 126:2	89:7	advanced 217:15
157:2	3:10,11,13,14	a.m 1:12	130:9,10,16,18	accomplishment	106:12
121 3:7	3:16,17,21	abducted 202:25	130:18 135:15	73:22	advise 4:16 10:24
13 106:8	114:11 177:5	abiding 233:7	136:11 138:16	according 19:1	99:9 154:13
130 162:2	205:18,21,23	ability 152:4	139:5 140:13	32:6 150:6	advised 38:10
131 4:3	245:9	194:12 222:11	141:9 142:13,14	167:7 194:6,13	advocate 16:19
133 137:23	28-year-olds	223:9 224:22	144:12 146:25	207:5 212:11	69:1 129:1
138:15,16,21	176:22	abjectly 9:18	147:7 148:4	account 40:23	advocation 205:5
134 137:6 138:22	3	able 17:17,21	155:11,18,19,21	170:11	affect 158:7
138:23 139:2	30 215:11	29:10 34:13	156:16 157:22	accurate 12:25	187:23 207:7
136 3:7	300 70:16	35:22 85:15,19	158:1,15 160:13	accused 64:9	affirmative
138 3:9	31 246:23	86:9,11 89:11	161:20 162:19	69:15 145:4	188:22
14-year 101:7	324 2:8	89:19 94:13,17	164:7,14,18	155:4	afore 95:6
140 3:10	33 163:17	95:7,9 97:22	165:18,24 166:5	achieve 8:10	aforementioned
147 3:10	35 74:9 163:17,18	102:6 112:22	166:22 167:14	across 56:8	95:6
15 7:13 50:2,5	380-80047-01 1:2	118:16 131:3	168:25 172:12	135:11 218:11	afraid 102:11
114:11 132:1	380th 1:3,19	152:11 160:3	172:25 173:16	act 229:19	182:16,18
211:12,13	184:1 246:5,19	167:16 187:2	175:4,9 178:13	act 229:19	223:11
213:12,14	4	188:12 190:9	178:22 179:13	acting 92:17	after 14:7 32:7
153 3:10	4 94:14	193:2 194:16	179:21 180:3,9	action 60:18	38:15 39:23
154 3:11	40 63:1	201:15 211:5	186:15,23	active 53:24	44:22 48:25
15th 124:20	400 2:15,15	220:6,19,24	189:22 190:21	activities 101:5	50:23 52:14
16 213:12	423-4518 2:16	236:12 240:20	191:4 193:2	activity 37:14,20	60:25 78:21
1604 135:6	45 133:1	244:10	194:19 195:2	38:3	81:23 84:2
17 133:6	4534 1:18 246:18	ABNER 1:5	196:2 198:20	acts 30:19 33:22	132:4 134:1,9
1700's 53:12	246:23	about 5:22 7:13	200:3,22 202:21	82:22 84:9,13	142:20 193:2
17841800 2:3	4661 246:21	9:13 10:16 14:9	205:21 206:3	84:15 85:21,24	201:19 216:2
181 3:11,12	5	15:2 16:5,21	208:9,11 209:12	108:18,25	222:2 231:8
183 3:13	5 3:4 65:8 114:10	17:6 18:10,13	210:18 211:12	115:17,23	240:9,23
184 3:14	162:4	19:13,25 20:22	212:23,23	141:18 195:15	afternoon 139:11
19 213:15	5,000-acre 124:9	21:8,16,19,21	213:11,16 214:7	217:3 220:13,20	140:5 155:6,7
1971 213:16	50 1:1 83:13,22	21:23,23,24	214:17 215:11	220:21 224:17	184:18 214:20
1980 135:2	84:5 246:12	24:4,11,22 25:7	215:14,15,23	237:4 239:20	215:3 226:3,8
1985 124:10	51 3:5	26:8,13 28:21	216:5,7,11,12	actual 115:13	227:15 228:15
1997 135:2	548-4323 2:9	28:23 30:22	216:14 217:6	actually 8:4,5	244:2 245:1
2	548-4661 1:20	31:8,9,15,16	218:2,6 220:16	9:17 15:13,18	afterwards 92:23
2 125:24 143:3,10	6	32:1,2,14 33:2,3	224:9,15,16	25:4,4 44:2	again 49:4 60:14
190:24	6 68:11	33:21 34:8 35:2	227:23 228:25	72:16 77:7	63:7,17 67:11
20 27:21,22 58:17	6:00 1:12	35:2,10 36:4	229:10,15,19	79:17 100:14,16	87:3,5,5 98:12
58:17 85:7,11	60s 58:13	40:11 42:5,15	230:1,9 231:3	104:1 109:4,9	98:14 99:1
114:11 139:5	65 235:2	43:16 44:6,21	231:15 232:14	115:4,9 124:9	115:14 118:2
176:22	7	45:10 46:8,16	232:22 234:19	134:22 138:9	127:2 130:5
200 4:12 10:17	7 3:4	46:17,18 47:8	234:23 238:3	165:11 166:2	143:1 164:8,10
58:21 99:2	72 213:16	47:13,15 48:8	239:1,8 241:22	186:17 195:16	182:2 183:13
128:14 139:15		50:21 51:18	243:10 244:7	202:8 210:25	197:6 201:6
154:3 184:4		54:16 58:9,17	above 246:6	211:6 234:13	217:16,20
		58:21 59:17	above-entitled	add 239:24 240:7	234:15 238:19
		60:3,4,6,7,14,15	1:13	114:21	241:6 242:4
			above-styled	addict 45:19,24	against 9:2,9
			246:8	94:24 110:20	57:25 58:1 60:8

69:20,22,23 70:17,22,25 71:9,21 91:17 95:7,9 104:2 130:1 161:10 178:8 189:4,13 189:14 192:20 213:5 232:8,15	25:23 101:16 109:8,9 225:4 allowed 14:16 101:20 108:23 allows 9:2 13:6 28:16,17 almost 19:23 41:23 57:9 104:7 114:3 116:2 127:12 166:3 172:4 173:7 213:20 232:24 alone 74:17 161:25 along 20:10 130:7 130:25 168:4,15 185:5,7 188:15 218:24 222:19 227:19 236:19 already 15:5,5 29:5,6 33:9 37:19 40:17,19 41:7 81:12 84:3 85:16 86:19 89:23,24 90:16 90:17 124:1 152:6 158:18 170:6 195:21 199:16 200:4 209:17 234:14 238:17 239:12 239:25 240:1,2 241:25 242:7 alter 107:5 alternates 106:9 243:24 alternative 235:20 although 43:15 62:17 67:15 128:14 180:16 always 19:18 21:8 28:21 34:19 38:23 39:9 42:19,20 48:15 49:12 50:10,12 52:22,24 61:5 64:23 70:13 76:23 77:7 104:11 106:24 114:15 123:3 133:13 170:20 194:23 198:17 204:20 206:20 229:18 Amaritz 118:13 ambulances 174:7 Amendment 70:18 America 37:16 American 68:12 Americans 19:15 47:23 60:2 ammeter 3:4 4:3 4:8 7:20,21,22 7:24 amongst 95:2 amount 19:3 164:5	analysis 188:6 Angeles 20:2 anger 236:17 anguish 218:23 235:16 animal 218:17 animals 49:18 animus 122:15 another 5:6 12:23 14:8 39:19 43:23 50:6 66:23 68:9 69:14 105:7 108:22 114:16 130:4 163:21 189:23 191:10 191:13 196:21 199:7,15 221:5 241:1 answer 8:6,8 9:6 13:7 28:13 30:16 31:25 32:5 34:13,15 34:16,17,19,21 34:24 35:7,18 39:13,18,19,21 39:21,24 40:13 41:2 50:20 61:22 62:9 63:15 64:15 65:9 68:13 84:17 90:6 91:18 92:5 108:15 111:14 111:15 112:22 116:6,8 117:5 121:5 137:12 141:12 142:15 142:16 143:12 143:13 145:12 145:14 146:4 151:14 160:9 166:4,9,25 167:1,6,7 174:2 178:10 193:6,20 193:24,25 194:5 194:8,12 196:18 196:19 198:15 199:3,5 207:4 209:14 216:17 224:22 225:12 229:11 231:1 233:4 234:4 236:12 237:15 237:18 238:23 240:16 241:16 242:11,13 answered 14:21 29:6 37:7 111:2 151:11 195:4 209:14 224:21 answering 33:22 40:12 86:3 answers 4:13 8:10 10:18 14:24 16:18 18:5 21:5 24:14 24:14 28:19 34:9 62:5,12 63:17,20 65:6 99:4 103:19	116:23 125:20 128:15 140:21 140:21 146:8,9 146:15,15,16 149:25 186:4 193:22 194:4,10 212:11 225:7,21 227:1 anticipate 81:24 antique 213:21 214:1 Antonio 134:22 135:1,13 anybody 14:18 16:1,22 23:22 25:1 29:5,8,9 36:2 50:2 79:7 95:24 96:10 103:6 107:13 117:4 119:11 152:1 162:6 170:22 176:2,3 192:23 198:25 204:3,5 208:20 229:19 231:6 239:14 anyhow 134:15 anymore 35:23 39:14 53:4 98:6 111:23 169:1 235:15 anyone 141:17 238:7 anything 10:19 10:19 13:21 16:3 19:23 28:14 37:6,6 43:3 51:21,23 53:25 56:11,16 62:6 65:22 66:6 66:12,13 69:4 70:21 74:3 76:16,23 80:13 92:11,14 96:2,3 96:12,18,19 97:4 102:13 114:4 122:3,6,7 129:23,23 149:4 164:9 187:2,9 188:1 189:20 191:21,22 205:10 211:17 212:23 230:7 232:11,12,14 233:12 235:16 238:3,21 239:14 239:15,22 240:13,20 anyway 21:22 26:10 41:4 61:20 74:22 75:5 79:10 89:8 92:23 107:12 110:16,22 119:19 162:16 205:23 anywhere 118:6 193:9 197:13 apart 85:20 86:4 apartment 135:10	apologize 218:7 apology 15:25 16:1 apparent 224:11 apparently 5:17 118:10,14 157:18 appeal 142:20,20 appeals 130:12 appeared 225:21 appears 19:9 application 110:22 applied 130:6 applies 18:25 116:1 166:18,20 170:1 apply 159:1 166:12 185:15 185:18 189:18 232:3 233:13 appoint 57:8 244:10 appointed 15:19 57:10,12,13 215:5,8 appreciate 94:13 123:6 213:2 223:24 227:20 243:18 appreciated 227:20 apprehensive 155:20 approach 36:22 140:8 171:3 181:15 approaches 202:10 approaching 58:18 appropriate 61:6 62:21 63:10,18 91:18 119:20 125:25 126:6 143:5,7,8,11 144:3 171:22 172:1 180:4 190:25 appropriately 149:16 April 144:19 Arab 118:13 area 73:18 128:7 177:18 areas 145:3 217:22 aren't 70:2 148:16 162:18 186:4 199:23 argue 18:8 142:13 202:18 argument 6:8 18:9 103:25 104:2,14 128:22 128:24 129:12 129:16 142:18 142:22 164:21 arguments 128:18 130:1 arise 168:13	Arizona 242:25 Arkansas 103:1 209:25 arm 24:1 around 19:23 45:6 46:22,22 61:4 63:3 88:9 109:22 126:12 135:17 154:16 197:21 198:21 206:24 243:6 arrest 35:24 204:7 arrested 203:3 arrestees 70:20 art 201:4,6 aside 219:5,7 220:6,19,24 223:3 224:17 237:22 asked 12:21 21:12,13 30:15 37:6 83:20 92:13,16 99:5 129:7 137:22 139:17 141:25 145:2 151:9 154:7 170:10 176:1 191:8,11 209:7,11 212:15 224:16 227:3 asking 8:12 15:2 30:13 46:15 47:7 170:9 190:20 195:11 225:10,11 228:22 233:11 233:21 234:19 237:22 238:4,6 241:3,4,6 asks 14:14 18:5 31:14 117:12 171:17 195:13 195:17 aspects 143:17 149:22 185:17 assault 55:1 assemble 183:13 assembled 4:12 10:17 99:3 139:15 184:4 226:12 assembly 73:16 73:18 assertions 5:24 assessments 112:5,8,12 assign 83:10,17 83:20 assigned 147:18 154:24 assistant 2:7 11:10 56:14,23 99:19 228:4 ASSOCIATES 2:15 assume 86:16,19 92:25 107:24 171:2 180:13 191:3 210:15,17 assuming 61:17
--	---	--	--	---	---

234:5 attacked 37:16 attempt 82:2,6 attempting 115:8 attend 47:21 197:7 attention 190:1 213:3 attitude 178:18 178:19 attorney 55:22,23 55:24 56:8,19 182:25 215:23 Attorney's 5:18 attorneys 2:2,7 2:11 4:4,5,14 5:12 10:19 11:11,25 56:14 56:23 64:16 65:4 99:5,19 101:14 106:25 139:7,18,22 154:8 184:9 227:4,10 228:14 August 58:20 229:4 authorities 119:12 authorized 105:1 auto 185:16 automatic 13:21 13:22,23,25 14:1,8,22,22 27:3 103:17 116:21 165:2 193:8 229:11 automatically 13:24 34:15 146:18 164:23 164:25 165:4 automatics 14:6,7 available 143:16 144:6 average 156:24 avoid 41:6 96:18 96:20 awaiting 48:12 aware 16:2 176:14 awareness 218:13 away 16:6 75:13 75:15 89:24 208:18 awful 20:3 39:11 89:17 134:4 172:17 193:1,4 awkward 81:1 215:22	98:10,25 102:10 121:25 122:1 123:8 124:21 127:3 133:20,21 133:25 134:1 135:4,24 136:23 137:4 138:12 143:12 147:25 152:21 165:5 182:1,3,13 184:1 192:19 208:24 210:18 217:19 219:16 229:4 background 30:2 88:1,4,5,8 91:16 111:5 112:24 113:6,6 114:10 118:3 119:16 120:5 121:1 146:22 170:18 170:21 171:9 176:17 187:3 200:9,11,14 204:21 207:18 217:5,12 bad 35:24 64:23 68:7,19 70:6 85:12 88:4,8 89:21 92:21 95:17 105:15 106:18,19 112:24 113:8,13 114:2,14,16,19 114:24 117:19 117:24 120:8 123:2 134:13 153:17 174:12 174:17 178:6 196:7 199:20 200:6 201:21 202:9,10,12,15 219:17 badly 35:23 baggage 151:20 bailliff 38:12 95:13 98:21 136:20 137:2 182:4,14,22 183:22 226:1 245:3,8 balance 202:12 205:14 balances 130:7,12 130:25 131:7 ballistics 186:25 bank 164:1 bar 203:3 barroom 44:22 bars 128:19 Barshader 242:19 base 223:6 237:15 237:17,18 based 8:8 9:7 28:19 32:2 85:14 112:23 146:14 220:25 221:19 222:12 223:9 233:4 237:16 244:2	basic 231:3 232:5 basically 132:3 154:5 172:7 225:7 229:7,19 229:21 231:8,22 234:20 238:22 242:6 basis 106:12 basketball 197:12 bathing 151:6 bathroom 109:19 197:7 battle 70:3,9 bearing 158:14 bears 114:1 beat 73:6 109:21 111:12 126:11 201:25 beaten 31:19 beating 33:3 became 54:13 224:14 225:20 Beckam 226:4 beckman 3:16 183:11,14,15 225:25 226:5,6 227:15 become 48:25 179:24 becomes 44:16 169:2 176:14 bed 132:20 201:1 201:12,16 bedtime 109:15 before 1:13 22:9 31:19 54:17 65:22 66:6,12 66:14,17 67:6 77:13 79:8 81:10 96:24 97:7,11,20 100:23 112:16 121:1 131:2 136:15 138:1 150:12 159:11 176:24 195:22 199:17 211:11 211:17 215:21 215:24 226:19 227:23 began 219:15 begging 162:1 begin 123:2 205:10 211:23 229:3 beginning 62:9 169:4 221:25 222:18 behalf 69:16 106:14 behave 112:7 behaves 49:8 behaving 49:11 50:5 behavior 45:2 behind 118:15 128:19,20 154:3 170:16 being 8:19 12:23 15:11 16:18,22 16:22 17:6,23	36:19 38:18 44:6 46:18 48:1 48:1,20 70:1 80:2 81:18 93:23 95:4 102:10 105:14 112:22 141:12 141:13 183:1 188:12 191:10 191:14 193:2 197:1,4,8 200:5 201:2,8 204:15 205:18,21 207:11 215:8 219:10 225:7,15 225:22 235:2 beings 72:3 199:5 belabor 223:1 belief 229:18 beliefs 6:11 130:2 191:9,12 238:21 believe 12:1 13:1 13:4,8 17:5 18:25 37:19,22 38:6 59:14 64:12,12 85:23 91:7,8,16,18 100:7 105:5,6 106:7 108:1 109:8 111:20 117:8 125:25 126:5 128:25 130:6 134:8,15 139:2 142:5 143:3,4,6,10,15 145:8 146:13,14 152:23 155:1 156:8,10 166:7 175:19,22 179:23 181:6 185:23 187:6 190:24 192:8 198:10 213:15 215:3 219:24 222:8 223:12 224:23 225:2,16 believed 62:20 believers 129:4 believes 225:2 believing 142:1 188:1 belong 223:18 below 87:18 bench 36:23 181:15 benefit 65:17 116:12 199:10 benefitting 116:13 best 6:8,10 24:16 59:23 64:1,12 65:6 71:23 72:7 75:19 81:6 103:4,8,25 104:2 107:21 129:12 142:18 142:22 152:16 215:12 216:21 235:18 bet 20:22 29:16 32:25,25 101:23	125:7,12,16 134:4 146:1,1 160:6 200:21,23 200:24,24 201:1 better 8:18 15:1,3 17:16 24:2 40:22 41:20 43:21 69:4 103:5 123:13 157:16,17 162:9 175:4,9 176:2,7 204:13 205:25 206:12 208:9 223:18 between 72:13 102:9 141:25 145:3 149:11 187:4 218:21 Bexar 134:22 beyond 13:18 21:4 26:4,8,9,11 26:16,19 27:2 27:16 30:14 39:22 40:1,9 82:8 86:20 107:7,15 108:5 115:5,12,16 123:15 124:3 146:2 147:4 161:1,2 162:14 162:15 166:1,2 166:11,17,24 168:5,7 186:20 187:6,9,12 188:9 193:16 220:23 232:2,18 biased 97:2 big 7:25 24:21 25:18 29:4 58:17,22 76:8 105:17,18 109:11 119:5 190:22 193:2 197:4 205:13,21 bigger 41:18 biggs 3:5 10:14 11:8 12:2,12,13 12:15 21:13,15 21:18,21,21 38:13 51:12 94:12 95:11,15 bill 2:3 5:5 11:10 99:18 147:17 154:23 163:5 228:3 Billy 183:20 Bin 36:18 37:15 37:20 38:4 118:11,14,17,22 119:6 bit 16:3 17:1 19:13 21:16 22:24 23:10 43:16 50:2 123:21 126:18 130:16 147:25 156:16 162:13 168:4 185:22 208:1 219:25 225:8 234:23 black 59:15 62:16	blah 61:23,23,23 blame 58:6 88:23 210:13 blameworthiness 88:22 89:10 blank 13:6 65:14 blew 119:6 blonde 167:25 blood 186:24 blow 110:3 blowing 118:10 119:6 blows 88:10 board 5:13 boards 8:7 boggles 69:9 Boil 68:20 bold 59:18 62:17 boldly 27:18 bomb 110:2 bombing 28:22 38:16 bombings 157:23 158:18 book 76:6,8 77:4 111:10 132:4 books 76:21,22 77:3 boot 111:24 born 52:16,17,23 181:13 both 4:14 18:16 25:16 29:24 32:8,24 41:20 42:14 64:6 66:25 70:13 72:4 95:20 100:5 103:21 111:16 113:8,16 127:5 155:8 158:22 159:19 182:24 183:18 185:11 227:4 228:14 235:7 236:7 245:6 bother 75:9,9,10 161:21,24 bothers 155:25 161:24 178:15 bottom 120:18 Bottoms 210:1 box 131:7 219:9 223:17 boy 69:9 144:23 201:16 brain 92:13 brand 68:21 brand-new 226:20 break 38:17 100:18 101:6,7 101:21 102:9 110:8 123:24 124:1 breaks 198:20 breathe 119:19 bridged 128:1,6 Brief 94:7 99:13 125:4,22 briefly 105:22 188:20 232:22
---	--	---	---	---	--

brilliant 70:15,16 bring 15:13 29:25 36:18 38:11 114:24,24 118:17 146:24 147:7 151:20 170:24 183:20 219:14 224:18 232:11 239:14 bringing 223:17 brink 37:18 broad 142:8 broadcast 55:5 80:11 broke 119:4 broken 46:18 120:13 206:15 brother 21:17 118:20 brother's 21:17 Brothers 49:17 brought 59:1 94:15 127:3 138:12 145:15 145:21 168:10 203:3 build 17:15 73:12 177:14 building 17:14 74:20 154:3 198:20 226:19 built 196:10 bums 20:6 bunch 58:23 59:1 87:18,20 92:13 120:6,9 198:19 203:4 228:22 burden 32:14 105:24,25 106:24 107:13 123:11 167:2 171:2 187:11 188:16,25 232:18 burglarized 239:9 burglary 79:16 82:3 168:15 burglary/homicide 180:9 burgling 55:1 buried 135:14 Burks 95:4,8 burn 68:20 bush 126:12 business 5:21 22:4 76:19 100:12,17 106:23 109:6 123:24 124:3,19 124:22 134:9 209:15 213:21 214:6,9,15 244:11 businessman 122:18 busy 101:1 butz 3:14 183:21 183:24 187:16 195:6 213:4 214:24 225:23	Bye 182:9 <hr/> C C 1:1 2:1 4:1 cage 49:22 50:6 84:21 cages 49:18 call 7:25 8:1 21:18 22:7 26:10,15 27:21 40:6 41:16 55:25 56:9 74:19 90:14 97:25 98:1 125:24 138:23 138:24 159:18 177:20,22 188:21 193:10 193:12 195:9 201:2,6 210:13 228:20 235:6 244:1 245:5 called 13:8 74:5 101:24 160:12 176:5 201:17 219:15 calling 171:16 callous 28:23 102:12 calls 52:1,2 came 1:12 8:2 52:23 58:20 70:15 102:18 140:25 174:6 178:14 219:16 cancer 243:7,8 candor 223:25 cantu 1:5 5:10 11:12,19 37:13 99:21,25 137:5 138:19 153:2 154:24 155:4 183:4 228:8 capable 149:21 187:21 240:25 241:5 capacity 177:8 capital 1:8 8:23 9:3 11:12 13:5 15:9,13 23:2 28:1 30:14 33:8 33:11,18 35:5,6 35:9,12,16 36:6 36:11 37:25 38:19 39:7 41:9 48:10,24 54:17 55:15 57:5,9 58:25 59:2,14 63:2 65:10,23 65:24 66:3,16 67:1,3,7,25 80:22 81:9,19 82:2,10 85:17 86:16 90:17 93:6,9 99:20 103:9,17 106:10 107:16 108:5 110:17,19,23,24 111:25 113:14 113:19 114:18 116:17 117:7,8	117:17,22 118:1 119:1,4,10 120:8 125:25 128:10 141:1 142:3,6 143:5,8 145:4,12 146:9 146:17,24 147:5 150:4 155:15 157:12 159:25 160:7,14,17,20 166:19 168:8,14 169:8 170:2 180:3,6,10 185:12 186:18 189:20,22 190:2 190:21,25 193:10,11,15 194:7,9 195:22 195:24 196:3,5 196:7,7,9,24,24 198:12,13,18 199:19,21,24 200:17 202:15 202:16 203:2 204:11 215:6 229:5 230:23 234:6,9,11,24 235:12 236:7,23 236:25 237:12 238:11,14,24 240:10,11 capitalized 59:18 capture 118:16 captured 38:16 car 164:1 card 22:2,3,5 care 16:21 19:19 19:19 26:15 39:12 41:9 111:23,24 121:7 151:24 162:14 182:11 192:16 198:5 cared 80:1 career 218:15 careful 127:16 204:1 carefully 159:23 caregiver 151:1 cares 196:2 caring 20:8 21:8 149:13 carrier 211:14,15 cars 21:24 174:7 cart 118:18 198:21 Carter 77:14,17 77:18 case 5:6 6:4 9:3 16:15 17:7 18:8 22:19 25:16,18 26:14,15 28:10 28:19,22 29:5 29:16 30:8 34:3 35:3,19 47:8 48:9 54:9,13,24 55:2,12,15 57:5 57:12 58:22,25 59:1,2,3 62:22 63:2 68:4,5 71:25 81:9,25	86:6 87:25 93:6 93:6,9 95:24 96:11 97:5 102:11,16 105:19 106:17 106:21 107:9 109:25 110:18 110:18 113:10 114:8,18 119:25 121:4,9 123:17 126:2,10,13 127:3,6 128:2 129:1 134:19 137:5 143:5,7 143:11 147:18 154:24 158:15 160:3,3,4 161:20 163:20 164:8,14 165:20 166:12 167:11 168:19 169:2,3 169:6 170:24 173:14,15 175:20,25 180:18 185:12 185:15,16,21 187:14,15,22 188:9 191:1 204:19 211:24 212:23 216:11 217:21 219:4,4 230:11,15,23 231:22,23 232:24 234:9 cases 13:5 57:9 58:24 61:6 62:21 111:25 125:25 126:6 142:3,6 143:9 143:16 156:10 190:25 191:15 194:7,9 205:8 218:15,16 catch 36:17 caught 87:4 187:25 238:19 cause 1:2,13 3:4 3:10,15,16 7:8 19:5,6 94:12,19 95:1,5 122:8 153:2,5 171:12 194:4 224:11 225:5,24 243:15 246:8 caused 130:24 173:5 241:24 causes 15:20 causing 206:5 217:19 caveat 128:4 CCU 148:8,11 cell 15:19 cement 197:5,5,8 197:10,12 center 29:1 Cert 246:23 certain 61:25 105:2,3 115:2 166:3 179:24 188:23 certainly 9:8	16:20 23:11 26:14 38:17 40:10 42:22 61:3 86:5 93:21 104:19 122:23 123:14,17 128:5 129:3 141:21 158:18 160:4 163:16 164:9 193:9 205:25 223:24 225:13 230:16 239:16 240:6,14 certainty 187:13 certificate 3:20 246:1 certified 5:13 certify 246:6,9,11 cetera 216:24,24 challenge 3:4,7 3:10,12,15,16 7:8 10:11,12 94:11,18,20 136:6 181:20 225:5 243:13,16 challenges 43:14 94:24,25 95:1,5 189:19 challenging 238:20 chamber 15:19 104:23 130:8 242:8,22 chambers 136:14 246:8 chance 12:11 68:9 70:14 72:2 83:14,14,15 84:2 92:22 110:7 117:23 145:25 147:2 155:13 196:25 225:6 chances 50:18 change 59:13 62:5 71:13 143:22,24 144:7 146:4 161:10 186:5 230:4 233:11 changed 100:14 100:16 192:18 character 30:3,24 88:1,3,4 91:16 113:24 117:19 117:20,24 118:1 146:22 200:3,5 200:7 204:20 characterize 42:2 charge 71:16,18 81:21 168:14 charged 48:9 67:3 106:17 200:17 charges 15:13 94:15 145:16,22 Charlene 244:2 charles 1:14 3:17 243:22 245:4 chase 126:11 chasing 198:18	cheap 157:10,14 cheating 62:8 178:15 checks 130:7,12 130:25 131:7 CHERYL 3:13 Chicago 20:1 chief 11:13 99:21 228:2 child 36:16 47:18 49:20,24 50:3 84:23 119:21,22 143:17 144:6 150:20,25 151:5 191:22 192:14 192:20 202:24 202:25 203:1,1 203:20 child's 203:13 child-care 28:25 children 19:19 72:12,13,14,18 104:19 172:20 202:21,24 children's 17:16 chips 194:6 Chisholm 2:15 choice 44:11 47:24 101:16 134:4 141:25 190:24 210:24 choices 111:22 174:14 208:19 choose 27:13 103:4 107:4 112:2,14 206:8 chooses 17:25 55:16 106:14 189:13 chose 142:5 143:3 143:9 chosen 95:16 Christian 48:2 49:1 Christianity 48:11 Christmas 43:8 CHRONIC 44:17 CHRONOLOGI... 3:1 church 22:21,21 39:11 47:20,21 135:8 churches 20:9 circled 94:16 145:5,16,22 146:3,3 190:24 191:14 circumstance 36:13 46:7,19 71:8,21 117:9 120:12,16 150:12 173:15 204:25 239:23 circumstances 6:1,15 9:23 29:22 40:21 65:11 87:8,25 90:22 100:15 104:17 117:15 128:4 161:21
--	---	--	---	--	--

166:6 169:11,16 170:11 172:5,8 173:25 174:22 174:23 178:13 179:25 188:24 199:18 204:19 207:24 208:15 230:10 234:17 236:11 238:2 239:24 241:10 circus 49:13,13 49:15,16 50:13 citizen 69:16 156:24 219:23 220:7,10 224:25 citizens 39:4 101:18 204:15 citizenship 100:22 city 20:1 28:21 36:17 37:14 38:16 118:19 135:5 181:12,12 claim 48:11 claiming 163:18 classes 104:21 clean 96:25 109:20 177:14 cleaned 210:4 clear 36:20 80:21 92:15 160:20 204:5 215:14 216:6 238:22 clearly 109:2 117:6 clergy 104:25 clerk 111:11 clerks 28:25 clever 107:2 client 37:21 57:10 57:25 70:5,6 122:16 client's 38:1 clock's 57:20 close 49:23 75:3 79:22 80:1 104:17 105:2,3 132:6,8,10 closely 164:11 closer 13:3 clothing 43:8 co-workers 123:25 code 55:2 115:9 coin 17:12 cold 20:6 Cole 95:4,7 118:10,21 119:6 119:18 collect 76:21 Collectibles 213:23 Collection 214:2 collin 1:5,14 2:7 53:15 100:24 134:21 246:3,5 246:12,19,20 color 6:9 come 18:20,21 20:10 22:10 30:1,5,15 31:4,5	37:25 45:5 50:13 61:4 72:14,14,16 82:14 87:4 96:23,25,25 97:11,20 101:18 114:6,21 129:24 130:3,25 136:16 136:23 149:1 151:13 152:7 158:4 159:8 172:16 173:25 177:23 180:1 182:1,3,12 204:7 210:18 217:19 224:24 227:18 230:11 233:25 234:5 238:5 243:22 244:1,17,20,21 244:24 245:1,6 comes 37:12 42:25 44:22 63:20 70:25 72:5 81:4 105:16 114:4 152:6 234:25 235:8 239:11 comfort 23:25 26:12 comfortable 70:4 84:16 162:16 188:1 208:17 224:23 228:23 228:24 comforted 175:10 175:11 coming 48:8 99:1 112:25 120:13 120:14,14 121:25 130:15 150:15 206:15 226:10 227:17 227:20 233:16 241:22 243:18 comment 128:21 comments 130:18 130:19 Commerce 242:23 commercial 177:13 commit 30:19 82:5,22 84:9,10 84:10,11 85:21 85:23 108:18 115:17,22 172:21 176:14 195:14 217:3 235:19,21 237:4 238:18,18 239:20 commits 229:19 237:11 239:25 committed 33:10 33:18 65:12 86:2 102:7 113:14,22 173:1 180:5 213:5 234:11,14 235:10 238:11	238:14 239:9 240:8,10,11 committing 55:1 176:25 240:25 241:6 community 13:19 company 76:1 112:15 123:11 124:25 177:13 compassion 41:25 45:23 236:18 compassionate 19:17 compelling 29:8 completely 217:11 232:7,17 240:17 241:15 complex 135:10 Complies 65:21 comports 244:21 compound 74:19 75:7 computer 54:1,3 Computer-Assisted 1:16 Computerized 1:15 concept 24:4 104:7 148:25 191:4 concern 24:24 105:17,18 concerned 84:21 105:13 217:21 224:15 concerns 24:22 156:4 231:14 244:12 condition 173:5,8 conduct 29:15 conference 137:25 confesses 105:16 confident 123:15 confinement 126:5 141:22 143:1,4,6,8,10 146:9 conflict 165:1 conflict-free 187:13 conflicting 187:19 conformity 224:20 connection 12:5 99:23 conscience 88:24 consciences 16:2 conscientiousness 100:21 conscious 148:25 149:12 consent 183:3 235:23 236:2,3 236:4 237:21 consequences 206:9 consider 17:22,24 18:15,23 27:7 28:7 31:8 32:16	32:20 40:16 48:2 49:1 68:25 85:19 86:2,4,5,9 86:11 87:8,24 88:12 89:9,11 89:14,16,19,20 91:7 172:13,14 173:14 188:4 204:18 222:11 239:5 consideration 117:13,16,18 231:17 considered 14:2 30:1,2 40:7,10 40:12 46:6 235:12 considering 88:13 226:19 considers 14:24 consisted 34:4 consistent 126:4 146:10 205:6 consists 35:12 constantly 156:1 constitute 30:20 30:25 82:23 85:21 195:15 217:4 237:5 Constitution 69:15,15 Constitutional 69:17 70:17 72:22 106:15 189:11 constraints 174:4 construction 177:13 construe 163:9 contact 132:12 244:12 contained 246:12 contains 246:6 contemplates 237:8 contemptuous 89:6 context 112:10 128:24 contingent 183:2 continuing 30:20 31:1 82:23 84:14,14 85:22 85:24 87:14,16 90:18 108:20,24 117:23 195:15 200:6 217:4 237:5 contribute 88:8 control 73:14 115:21 controlling 161:12 converted 48:11 110:10 convict 8:23 86:21 190:18 convicted 55:17 65:10,24 66:4 80:22 81:3 103:17 116:17	128:9 244:3,4 conviction 132:3 convictions 161:11 convince 24:13 32:11 106:8 107:15 120:19 convinceable 24:18 convincing 108:5 110:4 167:22 168:7 convincing 27:21 cooler 122:21 coordination 198:23 core 163:20 correct 12:3 100:8,9 102:20 108:4 140:7,15 140:22,23 141:5 142:7,24,25 143:16,18,19 144:13,16 145:6 145:17 146:11 148:8,10 153:25 154:11 164:21 167:9 191:6 228:18 230:14 246:6 corrections 109:6 correctly 140:6 153:11 246:10 cost 246:11 couched 129:9 counsel 56:25 57:8,10 215:8 246:7 counseling 208:6 222:16 224:13 counselor 208:11 222:9 count 206:11 countries 103:11 country 218:11 220:11 230:17 county 1:5,14 2:7 53:15 100:24 134:21,22 246:3 246:5,12,19,20 couple 5:8 11:16 31:18 37:5 95:21 122:10 133:24 137:21 140:13 145:3 155:2 162:17 188:15,21 199:16 202:25 233:16 234:25 235:9 236:14,16 243:23 course 17:2 26:3 33:8 38:23 48:15 58:16 62:24 83:18 98:5 104:23 122:22 125:14 126:14 131:6 198:2 201:23,23 218:10 227:22 court 1:2,3,19,19	4:2,7,10,11,16 4:19,21,25 7:9 7:12 9:21,25 10:3,6,8,12,14 10:16,19,22,24 11:2 12:19 36:24 37:1,9,11 37:12,16 38:6,9 38:13 51:7,9 57:13 58:15 59:7 70:19,22 70:24 71:24 78:14,14,18 79:4 83:19 86:7 90:8 93:24 94:2 94:4,6,8,10,20 95:10,15,18,20 95:23 96:1,5,8 96:14,17,23,23 96:25 97:4,9,12 97:16,18,21,25 98:2,5,8,11,14 98:17,19,23,25 98:25 99:5,8,12 99:15 121:15,17 125:3 135:23 136:2,4,7,9,11 136:13,16,18,21 137:1,4,9,11,15 137:18,19,24 138:15,19,21 139:1,4,7,11,14 139:17,20,25 140:10 147:12 151:7,16,21 152:3,8,12,20 152:25 153:4,9 153:11,13,16,19 153:23 154:2,6 154:8,10,13,16 162:20 164:6 165:7,13,15 166:7 174:4 178:4 179:2 180:22 181:17 181:21,24 182:3 182:6,16,20,24 183:4,6,9,18,20 183:24 184:1,1 184:3,7,8,11,15 209:5,9,16,21 210:2,4,8 213:4 213:8,10,13,17 213:19,22,24 214:3,5,8,11,14 214:17,21 224:2 224:4,6,9 225:6 225:10,15,23 226:3,6,7,10,15 226:17,21,25 227:3,4,6,9,12 242:2,5,11,11 242:13,16,21,24 243:1,3,5,8,12 243:16,21 244:6 244:15,25 245:4 246:5,5,8,19,19 court's 8:1 71:16 71:18 court-appointed 56:24
--	--	--	--	--	--

courthouse 2:7 140:25 246:20	122:20 123:3,4 141:18 185:21 186:1 189:21 190:1 195:15 217:3 220:13,20 220:21 237:4 239:20 244:2	116:18 118:2 120:9 196:2,25 197:1,2,4,14,22 198:18,25 199:5 206:8	146:19,25 147:8 150:6 156:4,8 157:16 158:19 160:4,21 169:1 169:1 171:16 175:20,25 179:14,23 180:18 190:4,24 191:1,2,4,21 192:8,11,15,25 193:8,12,19,23 193:24,25 194:10 196:8,11 196:13,21,23 198:4 212:11 215:15 229:11 229:13 230:24 231:4,4 232:24 233:1 240:17 241:24 242:8	defect 121:9 defend 57:4 81:3 81:5 defendant 2:11 4:4 5:10,13 11:18,20 13:23 13:24 14:15 15:1,12 17:21 20:13,17,20,24 24:9 25:20 26:13 30:14,19 37:13 40:23 41:11 45:17 48:9 56:11 70:12 71:7 72:4 82:22 84:8 90:16 99:20,25 102:15,17 105:4 106:9,12,25 108:13,18,19,22 108:23 109:3 110:17 114:1,11 114:18 115:17 116:15,15 117:10 119:17 120:7 126:25 128:19 130:24 138:20 146:1 154:25 159:24 161:12,13 167:11 170:1,4 170:12 183:5 186:10,17,19 187:4 189:7,8 189:10 196:18 196:20 199:10 199:20,24 200:3 200:4 206:5 211:25 217:3 228:8,9 231:17 232:6 defendant's 3:7 3:10,15,16 26:4 30:2,24 88:1 112:24 113:19 114:21 117:14 118:4 128:9 150:2 170:18 183:2 193:15 195:13 200:11 defended 218:16 defending 220:5 defense 3:3 5:10 17:25 18:11,17 25:12,13 30:4 32:19 56:11,23 58:18 64:16 65:3 94:4,23 99:24 101:13 106:22 112:1 114:14,19 122:20 123:3,4 126:7 128:8 136:4 153:1 155:4 159:16 170:25 179:16 179:18 182:25 186:14 188:17 188:19,23,24 189:14 215:23 220:23 224:9	228:14 236:2 defenses 188:21 188:22 189:1 define 27:16 162:15 165:19 definitely 123:20 162:10 173:14 191:18 208:23 241:1 definition 185:13 degrading 201:10 delay 138:10 185:6 deliberate 96:8 127:4 deliberations 72:5 211:23 delighted 223:25 deliver 127:4 Democrats 58:14 denied 94:21 95:10 denomination 192:3 department 144:18 depend 63:14,14 68:5 104:17 119:15 161:21 169:16 173:17 174:21,22 202:8 depending 19:3 34:13,22,25 35:19 46:10 50:24 67:18 119:10 120:21 165:3,4 169:10 180:4,18 187:21 depends 48:6 66:11 68:4 97:19 165:23 166:6 172:8 173:8,24 176:17 177:7,23 178:12 238:1 derelict 109:25 describe 25:19 deserter 114:6 deserve 119:19 158:19 231:7 desire 40:16,18 40:20 138:19 151:12,17 despite 6:11 details 34:5 80:16 80:17 123:10 151:11 determination 9:19 118:22 212:12 237:22 determine 14:25 103:19 108:14 112:6 166:10 determined 113:3 determines 229:12 deterrent 6:10 23:5 deters 6:7 detriment 38:1 devastated 43:20
courthouse 2:7 140:25 246:20	critical 207:4 criticism 6:14 cross-examination 18:6 cross-examine 18:3 CROSS-QUESTI... 7:16 51:10 121:19 147:15 181:1 214:22 crowding 141:16 142:19 crying 201:12 225:21 CSR 1:18 246:18 246:23 culpability 88:14 88:17 89:3,10 91:15 culture 68:12 112:15 Cummings 95:2 curious 45:19 48:22 80:15 149:7 curiously 102:21 currently 236:6 curse 201:9 cusses 44:23,23 cussing 44:23 45:5 customer 22:12 cut 7:7 cut-and-dry 46:12 cycle 124:22	David 12:12,13 21:13,15,18,21 day 1:12 31:8 32:1,1 44:22 66:22,22 73:10 77:19 109:14 112:5 122:4 143:20,22 209:9 246:15 day's 85:8 days 5:8 11:17 103:2 123:8 137:21 155:2 220:8 dead 73:6 202:17 deal 16:11 56:23 58:17 134:10 138:4 190:20 193:3 205:21 dealing 108:9 deals 170:3,4 dear 36:16 39:9 death 6:8,12,13 6:20 7:1 8:6,9 8:13,20,21,24 9:3,9,11,15,16 9:20,23 12:22 12:24 13:1,2,4 13:20 14:16,17 15:3,7,10,14,19 17:6,13 18:22 19:5,14 22:19 24:22 26:14 27:3,5 28:18 29:7,11,12,14 40:25 41:2,8 49:2 50:19,25 54:9,11,13,24 55:2,4,9,11,12 55:16 56:2,10 59:8,17,20 60:3 61:3 62:1,18 65:10 66:4 67:4 67:19,22 68:1 68:12,15 69:1 89:6 90:1,10,20 90:23 91:17 103:3,6,9,17 104:1 110:23 116:21,24 117:1 125:25 126:1,2 127:5 128:23 129:4,14,17 130:7,11 141:5 141:13 142:1,2 142:4,6,10,18 142:23 143:15 143:22 144:5	deaths 241:25 242:3 debate 145:15 186:5 deborah 3:16 183:10 226:3 deceased 21:17 21:18 deceive 115:8 December 246:23 decent 21:8 157:2 decide 13:19,19 14:5 27:1 32:17 49:5 55:20 70:5 72:21 81:22 82:8 84:7 87:23 91:5 111:5 112:13 116:23 171:20 193:17 212:8 decided 15:13,14 40:8 89:23,24 117:21 173:19 200:5 235:1 decides 55:21 56:6 232:6 deciding 15:7 33:23 112:7 185:11 decision 15:22 55:4,7 56:20 60:13 67:18 70:19 89:25 105:19,21 116:14 120:25 131:1,2 151:13 156:11 173:19 220:18 decisions 19:8 32:1 70:2,9 92:10 112:11,18 156:1 176:11 220:17 decline 106:18 decrease 141:16 deed 202:17 deeds 113:25 deep 220:17 deeper 132:24 deer 209:24 210:2 210:4		
courthouse 2:7 140:25 246:20	damages 185:19 danger 14:15 32:18 35:22 40:11 87:1 110:25 119:14 170:3 195:9 200:5 234:1,12 237:3,13 238:10 238:14 240:21 241:11 dangerous 17:23 29:9 30:3 36:12 39:14 40:19 48:24 49:9 109:7 110:24	deed 202:17 deeds 113:25 deep 220:17 deeper 132:24 deer 209:24 210:2 210:4	crimes 13:18 65:12 104:8 113:24 173:1 193:1,3 196:5 205:13 criminal 2:7 5:14 6:4 30:19 45:16 58:18 65:3 66:8 67:5,25 82:22 84:9 85:21,23 100:6 106:17 109:8 113:6 115:10,17,22		
crimes 13:18 65:12 104:8 113:24 173:1 193:1,3 196:5 205:13 criminal 2:7 5:14 6:4 30:19 45:16 58:18 65:3 66:8 67:5,25 82:22 84:9 85:21,23 100:6 106:17 109:8 113:6 115:10,17,22	D D 1:1 4:1 D.C 100:15 DA 67:18,18 DA's 56:23 dad 83:18 84:1 201:8 202:24 203:11 daddy 46:21 203:24 206:24 Dallas 19:24 20:2 124:6 damages 185:19 danger 14:15 32:18 35:22 40:11 87:1 110:25 119:14 170:3 195:9 200:5 234:1,12 237:3,13 238:10 238:14 240:21 241:11 dangerous 17:23 29:9 30:3 36:12 39:14 40:19 48:24 49:9 109:7 110:24	deed 202:17 deeds 113:25 deep 220:17 deeper 132:24 deer 209:24 210:2 210:4	crimes 13:18 65:12 104:8 113:24 173:1 193:1,3 196:5 205:13 criminal 2:7 5:14 6:4 30:19 45:16 58:18 65:3 66:8 67:5,25 82:22 84:9 85:21,23 100:6 106:17 109:8 113:6 115:10,17,22		

developed 135:16 development 124:9 devil's 129:1 dictated 231:1 die 20:25 110:21 116:16 148:20 149:1 175:12,17 235:7 240:23 243:8 died 158:19 243:7 dies 90:23 92:5 difference 15:4 45:20,21 46:1 different 9:17 15:8 16:23 18:13 19:7 40:5 43:15 52:8 73:1 90:3 111:17 123:4 147:23 159:13,14 163:1 163:2 169:8 177:4 185:13,13 195:8 199:17 200:10 225:21 230:10 234:16 236:11 239:23 differently 9:9,12 15:8 26:8 159:10 162:20 difficult 100:25 127:9 157:1 238:1 Diggs 12:17 dilemma 127:22 dimension 120:23 dire 1:8,12 7:25 137:21 138:4,4 138:9 direct 5:1 11:6 99:16 140:3 154:19 184:16 186:21 227:13 direction 103:13 directly 13:17 120:10 193:19 228:7 directs 40:15 199:15 disagree 94:17 108:11 145:3,21 disclose 225:13 discounting 107:25 discrepancy 165:21 discuss 37:5 95:24 96:10 102:7 215:21 217:6,12 discussed 149:11 222:15 discussing 96:9 222:9 discussion 36:25 137:16 139:9 153:8 181:18 disease-free 109:20 diseases 17:16 dishonest 8:22	225:7,16 disputes 72:13 disregard 188:5 190:21 240:18 241:5,15 distinction 241:4 distorts 106:23 district 1:3,19 2:7 5:18 11:11,14 55:22,23,24 56:8,9,14,19 78:10 99:19 228:2 246:5,19 divorce 43:18,21 43:22 206:25 divorced 42:14 43:12 206:21 DNA 186:24 do-gooder 80:2 doctor 173:12 document 140:19 documents 211:21 dog 22:4,8 doing 5:3 16:3,8 21:3,9 23:2,12 24:2 26:13 27:6 39:12 43:4 45:5 45:25,25 47:13 48:3 54:25 64:7 64:7 65:3,4 76:8 76:9,12 77:23 77:24 93:8,9 106:4 110:19 112:14 134:7 137:21 138:11 147:23 159:1,1 174:2 186:2,17 187:10,17 204:24 205:5 206:13 216:20 229:22 231:8 236:13,16 240:13 242:24 dollar 17:15 dollar-wise 42:2 dollars 78:9 141:14,14 domestic 172:12 172:16 218:15 218:16,22,25 don 2:13 5:11,11 11:21 51:14 100:2 155:5 181:3 214:24 228:10 done 17:20 21:6 26:12 33:22 35:13 40:17,19 46:2 48:25 50:12 51:18,19 65:22 66:13 67:17 85:3 86:19 87:15 107:24 110:9 111:4 114:23 117:20 149:16 149:19 150:18 161:8,22 196:3 198:13 201:20 201:21 211:11	221:25 240:1 donna 3:4 4:2,8 door 22:24 144:21 doors 218:23 doorstep 22:23 dope 88:9 134:19 double 67:1 82:1 85:18 86:21 180:5 doubt 13:18 21:4 26:5,8,9,11,17 26:19 27:2,16 30:15 39:22 40:1,9 82:4 86:20 104:24 107:7,15 108:6 115:6,12,16 146:2 147:5 161:1,3 162:12 162:14,15,18 163:4,14,19 164:5,15,16,24 164:25 165:4,19 166:3,11,18,25 167:16,16 168:1 168:6,7 186:20 187:6,9,12 188:9 193:16 220:23 232:2,18 doubting 147:2 down 11:14 14:11 15:19 16:4 20:7 36:1 37:2 49:20 65:18 93:24 97:7 102:18 109:18 110:15 115:19 116:10 118:18 129:6,8 130:23 135:24 136:22 140:25 143:17 145:2 152:20 153:19 157:11 167:10 182:4 183:12 188:6,11 191:19 197:5,8 198:9 198:22 203:20 203:20,21 209:13,13 220:14,16,17 224:4 227:17,18 227:20,24 238:5 239:14 241:23 243:18 244:17 244:20 downs 173:13 downtown 19:24 Dr 234:25 236:13 237:18 239:2 drains 109:18 drama 218:22 drank 44:2 draw 53:12 drawn 106:19 dreading 207:14 drink 44:11,17,21 51:23 drinking 44:19 drive 22:13 102:22 185:18	233:18 driveable 100:20 drives 43:8 driving 103:1 drops 198:19 204:6 drowned 151:5 drug 45:10,18,24 46:9 114:18 173:4,9,9,18,19 174:23 197:17 206:2 drugs 43:24 45:11,25 88:9 114:17 131:17 172:25 173:1,17 174:14,14,18,18 175:4,10 197:17 202:3 206:4,4,5 206:6,8,9,10,10 drunk 44:9 46:22 drunkard 44:18 due 130:20 173:8 during 99:23 109:14 duties 9:5 109:25 duty 9:5 74:5 101:24 220:8 dying 236:5	231:22 elaborate 111:2 elderly 234:25 elected 55:24 56:19 elicits 18:5 eligibility 169:11 eligible 196:10 else's 8:20 155:23 192:23 elsewhere 141:16 emerge 118:4,6,6 emotion 218:18 emotional 173:5 173:13 189:22 employees 112:17 214:12 encroach 101:8 end 3:21 11:14 57:17 71:7 74:19 81:20 91:25 99:22 124:3,20 131:5 134:14 142:2,3 143:2 158:12 185:6,25 216:4 245:9 endanger 111:6,7 111:8,9,10 endangerment 110:12 ended 39:3 enforcement 104:2 131:13 144:12,17 engaged 11:25 enjoyed 93:21 enormous 205:8 enough 12:15 22:11 26:17 29:10 40:23 42:19,20 43:1 69:24 80:15 86:20 87:10 90:21 91:2 107:10 119:22 120:12,15 124:5 131:3 157:2 159:24 160:1,2 171:21 176:13 196:1 200:24 201:8 205:9,13 205:25 237:9 241:25 242:2 enter 175:7 enters 4:6 10:13 95:14 98:22 139:10 153:7 183:23 226:2 entitled 150:4 168:6 221:16,18 225:3 230:16 entrapment 188:24 environment 172:16 173:25 176:18 envision 236:12 envisioned 234:10 equal 65:7	equally 30:4 134:11 equals 126:3,8,24 127:13,17 128:3 equate 88:17 equation 199:25 equipment 73:13 escaped 192:18 escaping 150:2 especially 57:5 81:8 156:4,14 200:17 217:6 218:1,4,9,12 220:8 229:20 essentially 9:5 23:21 82:20 establish 163:4 164:15 estate 124:4,6 esteemed 180:25 et 216:24,24 even 5:24 6:13 8:20,21 14:18 16:19 19:6,20 19:23 24:19 25:3,19 28:15 28:16 31:5 35:5 35:22 36:11 38:18 39:1 42:18 43:13 45:18 48:10 51:2 65:12 73:3 81:6 106:4 107:3 109:13 112:2 113:10 116:23 121:7 129:3,4 132:15 135:6,14 138:2 144:5 150:3 157:16 162:12 164:13 165:19 166:4 167:12 168:1 169:11 170:24 172:4 175:7 177:6 185:23 190:8 193:22 198:22 200:22,23 201:15 204:12 204:21 205:10 206:12 215:18 215:24 216:2 218:2 236:4,5 236:11 239:1,4 239:22,23 evening 125:14 event 37:17 events 124:17 157:23 220:9 ever 6:21 7:1 12:5 12:9 25:6 26:13 33:13 44:1 49:13,15 55:5 63:4 66:6 80:9 122:14 133:12 148:22 150:20 160:8,9 173:3 188:17 192:5 196:10 199:24 200:20 201:13 201:15 205:9
---	---	---	---	--	---

233:1	194:6,13,21	exercise 106:14	110:16 114:2	149:11 151:23	feelings 8:7 9:4
every 31:8 32:1,1	199:16,22	136:5 181:19	116:16 128:18	155:14 229:23	12:25 37:23,23
41:23 43:8	200:21,22	244:20	129:22 131:25	231:9,12 235:8	44:15 61:2
44:22 109:17,19	201:18 202:6,7	exhausted 243:10	163:2 164:13	235:16 236:5,16	126:2 141:22
112:5 133:20,25	202:11 207:5	exhibits 246:10	176:4 178:11	fantastic 74:23	142:16 146:11
185:22 197:6	208:20 210:19	exits 10:9 37:10	200:10 210:12	far 11:22 52:5	146:14 150:15
214:9 225:16	210:19 212:6,11	94:1 98:18	215:17 216:13	53:11 80:14	152:6 190:21
232:24	220:21 221:1,23	136:1 152:22	219:16 221:5,5	99:22 118:23	222:15
everybody 4:12	222:11,12 223:6	182:15 224:5	236:17 241:6,10	127:11 145:24	feels 15:2 162:15
10:18 16:14	223:9 232:10	243:20	244:19	208:18 217:15	231:7
25:24 41:15	233:4 237:16	expect 39:17,17	factor 219:9	225:22 227:24	feet 109:18 197:5
42:11 44:23	240:15 246:6	129:25 152:10	220:25	232:5 240:7	197:6,8,12
45:11 48:17	evident 148:21	expecting 184:23	factors 40:22	farther 28:13	fellow 39:8 69:11
52:1 64:23	evil 36:4 172:21	186:9	170:18	fast 233:19	113:18 197:3
82:18 106:17	198:22	expedite 136:17	facts 28:19 34:3	faster 185:5	felony 11:13,15
116:6 119:12	ex-husband	expensive 111:1	35:10 65:11	227:19	82:5 99:21
121:2 129:3	201:25	experience 84:20	86:5 87:7,25	father 120:15	felt 67:14 89:17
149:14,15	exactly 13:8	85:2,14 145:11	105:19 111:4	242:18	158:15 209:15
161:24 173:24	59:15 66:16,18	220:19 224:18	112:23 114:8	fault 174:15	217:15 224:23
177:4 182:19	69:25 93:9	224:19	118:7 126:10,13	196:4	224:24
185:12 187:21	101:20 102:2	experienced	127:3,6 128:2	faulty 83:3 85:7	Fertile 78:18
195:8 200:15	135:16 141:19	148:15,18 156:9	130:21 199:23	favor 9:11 12:21	few 7:11 37:2,3
208:22 211:21	159:9 164:8	156:18,22	216:11,12,13,14	12:23 13:4	53:13 123:7
223:13 227:25	165:25 174:15	172:19 179:24	216:18,22 219:8	40:22 103:3,7	125:15 135:24
236:5 239:10	180:9 184:22	219:6	221:10,10,12,17	129:25 141:5,13	152:21,21
244:19,23,25	221:3 228:25	experiences 219:5	221:22 233:3,4	142:18 191:2	181:10 213:5
everyone 52:2	235:18 236:1	219:8 220:25	fails 71:7	192:25	215:2 232:5
everything 25:9	examine 17:1	222:8	failure 81:21	favorable 48:21	Fifth 70:18
54:1 96:25	185:10 195:13	Expires 246:23	106:12 232:5	186:10	fight 48:21
101:3 113:25	examined 204:9	explain 13:7	fair 5:25 6:3	favorably 48:18	figuratively
133:16 157:20	example 6:12	30:12 65:13	15:20 17:2,21	favors 103:6	198:2
157:24 166:6	15:12 38:15	111:25 130:6	18:16 69:24	fax 244:9	figure 33:25
187:13 209:11	45:24 49:12	168:24	87:10 104:8	FBI 28:24 119:11	63:18 109:21
237:2 239:4,10	88:25 106:11	explained 59:7	126:25 145:17	federal 29:20	112:14,15,20
242:23	118:7,8,10	82:3,17,18	148:14,18	78:14 80:8	130:11 179:4,10
evidence 8:8 9:7,8	119:4 150:21	103:21 115:4	149:21 150:11	119:12	183:15 195:12
9:11,16 14:2,4,5	163:16 178:20	229:8 231:14	152:4 175:20	feed 19:17 109:16	197:7
14:24 15:2 17:4	178:23 180:6	explaining 141:12	179:21 185:11	197:10	figured 58:21
17:5,24 18:10	188:24 202:20	196:15	185:13,14 190:8	feeds 22:21	118:14 177:6
18:13,24 19:1,3	Examples 47:11	explains 114:21	217:7 219:1,13	feel 13:3 21:10	figures 176:25
19:8,8 25:24	Excellent 181:5	explanation	221:14 222:5	24:17 25:3,4	178:20
26:4 27:14,15	except 36:4 53:12	126:2 185:4	225:3,4,22	50:22 69:17	file 28:25 203:4
27:21,23 28:6,8	97:5 138:7	expounded 128:2	fairest 25:25	70:4 73:6 84:16	214:8
28:10,16 29:8	204:20 239:15	express 26:7	fairly 6:12 18:23	89:21 91:14	filled 60:21
29:10,23,24	exceptions 13:22	expressed 150:16	113:11 115:21	92:14 93:2	140:13 143:12
30:2,7,8 31:8	excited 73:23	152:7	130:6 175:19	94:12 116:14,14	225:19 229:3
32:6,7,8,12,20	excuse 36:22	ext 246:21	176:4 189:17	117:4 122:8	filters 122:15
32:23 34:14,22	44:18 45:2,8,14	extended 123:12	194:6 195:25	124:2 130:20	final 18:9 73:19
35:1,19 40:16	83:19 85:25	extensive 224:12	fairness 106:4	131:1 138:16	105:11 151:13
41:13,16 45:17	90:5 120:1	extensively	223:24	141:24 144:3	188:6
50:23 61:9 63:9	138:3 173:1,3	144:19	faith 48:1	149:9,11 151:16	finally 10:3,6
70:4,5 81:23	excused 3:9,13,18	extra 113:9	falco 2:4 5:6	167:18 172:17	96:8 136:19
86:10,11,20	10:4,6,7 136:19	extraneous 128:4	11:13 18:8	172:24,25 175:4	138:21 181:25
91:23 93:18	138:6,9,22	extreme 29:15	99:21 154:25	175:5,7,9,11	207:20 208:8
106:7,14 107:14	181:25 183:3	173:5,12	224:3,7 225:17	175:20 178:21	215:4 243:17
110:25 112:1,24	224:11 243:17	extremely 101:1	228:2 243:25	187:25 191:15	financial 43:17
113:9,11,21,24	245:7	eye 36:4 198:22	244:23	205:21 208:10	211:6
114:7,18 116:22	execute 205:11	229:24,24	fall 60:12 100:18	208:17 209:1	find 6:17 13:23
117:1,6,13	executed 16:7	eyebrows 198:22	101:6,7,21	212:14 219:12	20:6 22:23
118:4 119:10,15	20:21,23 21:5	239:14,22	102:9 123:24	219:13,22 221:3	28:18 35:19
120:20,22 121:1	executing 105:14	eyes 181:6 239:14	124:1 194:6	221:4,4,17,19	40:17,18 41:12
121:6 150:7	execution 15:12	eyewitnesses	familiar 53:16	228:23,25	66:23 90:21
158:24 159:4,8	15:20 23:15	187:1	56:24 142:20	229:15,19 231:6	91:1 115:12,16
159:20,22,23	24:14 104:16,22		families 53:9	231:16,22 232:2	116:2,24,25
163:10 167:8,12	150:2 191:13		105:1,2,4	233:20 238:17	119:9 125:13
167:13 170:5,23	241:20	F	family 39:12	241:22	135:14 146:16
171:4,6,7,18,21	executioner 16:14	F 1:14	74:22 75:3 76:9	feeling 37:24 41:3	149:1 155:22
171:25,25	executioners	face 42:25 48:17	80:4 102:3,24	131:4 132:24	157:1 159:24
180:19 186:9,11	204:16	60:10	104:18 105:4	157:20 161:8	164:9 176:3
186:21,22,24,25	executions 23:11	fact 55:23 57:9,12	124:2 132:16,23	172:12 207:21	189:25 197:20
188:7,8 189:3	23:12	67:19 71:6 96:5	133:16 144:21	208:9 219:13	202:5 204:4

211:25 212:3 231:23 236:23 238:10,13 finding 9:15,17 27:6 85:16 120:19 165:16 168:21 238:24 findings 15:2 finds 20:18 82:8 82:13 134:1 fine 5:4,13 11:25 11:25 22:11 42:21 75:12 100:6 121:3 154:22,23 161:4 164:3 190:16 223:12,12,13,14 227:21 229:2,25 241:3 243:1 fingerprints 186:24 finish 18:2 finished 138:10 fire 16:9 50:7,8 198:4 204:2,5 first 6:6,24 14:9,9 21:20,23 26:24 27:9 28:8,11 30:15 34:2,3 40:7,10 51:25 52:1 58:23 59:17 63:3 79:21,22 82:17 86:2 95:23 108:1,7,8 113:12 115:5 117:12,21 123:8 123:14 130:24 133:22,24 136:15 139:2 140:25 141:4 143:3 154:17 162:24 163:11 166:21 170:3,17 173:18 174:13 185:8 186:2 193:24,25 195:5 199:15 213:7 217:1 220:13 226:19,21 227:17 228:4 231:3 233:25 234:5 240:23 fished 209:24 fit 12:24 55:14 113:12 148:11 five 18:20,20,22 18:22 29:25 30:4 50:11 103:2 123:16 131:17 141:25 162:3 169:9,14 fix 63:20 109:8 flag 130:17 floor 14:11 fly 197:21 flyable 100:20 focus 125:20 focusing 196:23 fold 133:13 folks 70:11 85:3	88:8 123:12 245:2,6 follow 22:18 31:12 61:14 94:18 103:23 152:11 169:4 185:22,24,25 190:9 194:10 230:20 232:8 233:8,9,22 236:23 237:25 238:23 following 1:13 149:21 195:21 207:25 follows 203:25 food 22:24 109:17 force 73:3,4 82:6 82:6 forefathers 70:15 forefront 190:1 foregoing 246:6 forever 104:4 231:12 forget 226:14,15 forgot 21:16 form 170:23 195:4 229:21 formation 111:22 former 125:10 formula 103:23 105:2 forth 229:17 232:11 forward 105:16 156:13 207:11 Foster 244:2 found 14:7 30:13 35:6,16 45:24 48:25 59:2 86:16,19 90:16 110:17 116:18 117:16 126:21 126:23 127:17 141:15 146:23 150:3,4 160:22 169:7,14 170:1 171:6 175:6 195:22,25 201:5 234:6 237:23 240:10 four 57:18 103:2 123:16 132:13 214:7 four-line 108:8 Fourteen 144:11 fourth 122:1 frame 170:13 framed 105:15 frankly 59:19 fraught 218:18 free 13:25 20:4 35:18 160:22 192:15 205:21 205:22,22 230:16 Friday 244:1,10 244:23 245:1 friendly 186:6 friends 74:8,9 96:2 155:14	171:10 frightening 62:18 62:19 frightens 61:2 fringe 135:13 from 1:12 4:21 5:8 7:2,25 13:9 14:12 15:18 16:1 27:25 28:2 36:1 46:18 48:8 50:6 54:17 61:1 66:21 68:17 70:12 72:4 78:9 85:2 89:24 97:1 97:5 101:11 102:3,6 105:16 106:19 110:12 118:6,7 120:13 120:14,14 128:8 128:9 130:15 132:14,22 133:16 134:23 135:2 136:11,21 137:4 138:4,9 142:1 143:2 145:20 146:14 147:23 148:14 150:20 158:4 160:9 168:6,14 172:16 173:25 174:2,4 177:17 177:19,23 182:13 190:23 190:23 191:10 191:12 195:24 196:3 197:1,4 198:19,21 206:15,25 213:15 216:19 221:5,10 223:6 223:7,10 224:2 228:17 237:23 239:13 244:23 244:25 front 58:9 59:17 frying 218:23 full 101:1 197:4 full-blown 81:19 215:18 fully 65:9 126:17 240:25 fun 201:2,8 208:20 215:2 funny 122:13 201:5 further 11:14 38:2 196:6,12 203:2 236:18 246:9,11 future 32:2,18 33:25 40:11 82:21 85:22 87:1 108:11,16 108:18,21 112:9 115:17 119:14 170:3 195:9,11 217:1,2 233:25 234:12 237:2,12 238:10,14 239:20 241:11	G G 4:1 gail 2:4 5:6 11:13 99:21 154:25 228:1 gain 106:11 gallantry 120:11 gambling 178:15 game 123:19 185:8 games 15:6 gap 128:1 Garland 22:9 gas 233:18 Gatesville 131:17 gave 52:11 64:18 143:2 145:1 192:17 236:3 gee 221:4 genealogy 76:8 77:3 79:23 general 42:1 48:4 100:6 117:7 122:20 176:15 187:2 Generally 173:2 generations 52:4 52:10 53:5,6,13 Gentlemen 32:16 German 201:9 gets 18:9 23:17 27:5 48:5 73:15 78:21 79:1 116:7 120:1 131:6,11 133:25 134:10 160:21 165:5 183:13 186:1 187:24 196:20 202:24 203:25,25 206:21 229:11 239:12,13 getting 5:7 28:1 39:20 48:20 58:16 74:10 101:24 134:1 180:15 217:16 223:15 241:22 girl 72:15 girlfriends 31:19 33:4 gist 141:21 give 4:13 10:18 19:22 20:24 23:10 36:4 42:1 47:10 61:4 63:8 63:11 66:14 67:7 68:9 71:12 78:21,23,25 81:17,20 90:3 99:4 123:10 126:9 127:25 129:16 137:11 142:16 146:18 151:11 169:13 175:19 177:2 185:22 187:4 189:18 190:11 197:11 198:22 202:20 207:7	212:10 215:12 215:13 225:21 227:1 245:4 given 14:25 116:21 117:23 128:4 196:25 201:20 230:11 233:12 235:13 235:23 241:19 gives 244:5 giving 129:5 149:25 glad 105:25 174:24 go 9:15,19 19:2,4 20:6,15 30:4 33:14 38:10 41:3,16 49:13 49:22 54:2 57:5 61:9 62:14 65:18 66:19,22 67:25 71:13,16 81:22 82:13 87:12,17 88:25 94:10 97:8,14 98:10 100:11 101:16 105:10 107:16 108:6 109:18 110:4 111:1 112:3,21 116:7 119:11 120:21 121:17 122:13 123:8 124:21 125:12 127:3 129:7,7 135:3 136:9 137:11 138:10 138:11,13 139:2 140:1 141:3,16 142:9 147:12 152:1,8 153:19 153:23 157:3 164:20 169:6 170:2,5 174:3,8 175:23 182:12 184:15 188:10 188:15 192:15 195:24 196:3 200:17 201:21 202:2 203:22 205:20 210:8 211:17 216:25 217:9,13,16 218:21,24 231:13 235:15 235:15,16 241:19 God 59:11 134:1 172:20 goeller 2:12,15 5:12 7:11,14,17 11:22,23,24 18:3,3,4 53:7 54:5 94:5,8,11 94:22 100:3,4,5 115:4 121:15,16 121:18,20 125:2 125:5,23 136:5 136:8,10 137:10 137:13 138:17 138:24 139:3,6	140:1,2,4,11 153:1,6 155:5,6 155:8 163:5,21 164:17 165:3,10 165:14 177:17 178:1 180:22,25 182:9,11 183:19 212:17 214:18 215:3 228:14,15 242:10 243:14 244:14 goes 28:13 44:22 50:6 52:8 66:16 96:6 103:10 111:9,21 113:16 124:3 130:17 133:21 160:20 203:24 218:10 going 6:17 7:1,12 15:22 17:11 20:12,17,17,18 23:7,12 26:11 26:22 27:18 29:7,9 31:17,21 32:18 37:1 38:4 39:4,11,11,14 45:11,12 55:12 56:10 57:5 58:4 58:4 60:13,15 61:21 63:13,14 63:17,21 65:16 67:11,12 70:1,4 70:6,10 75:20 78:20 79:2 81:2 81:3,5,12,18,20 81:22,24 82:2,4 82:6,7,19 83:15 83:15 84:4,5,7 85:17,18 86:1 86:15,24 87:1,3 87:5,7,8,12 90:15,17 91:4 92:18,22 93:14 97:10,16 100:15 100:19,19 101:25 102:22 103:1 104:23,24 105:22 107:11 108:1 110:3 112:13 116:16 117:22 121:5 124:19 125:5 135:7 136:22 138:1,23 148:16 148:20,20 153:24 158:12 158:24 159:4,8 159:15,17,20 162:15 164:2 165:15,17 174:8 175:24 179:21 182:13 183:15 184:23 185:10 186:11,12,13 188:22 193:17 197:13 199:19 200:4 201:1,6 201:16 203:15 203:22,24 204:15 206:9 208:5,20,23
---	--	--	---	--	--

210:7 214:19 215:6,17 216:20 216:22,22 217:20 219:14 219:25 220:19 222:18,19 223:5 229:13,22 231:12,15,23 232:1,3 233:18 235:5,24 237:4 237:18 238:3,4 238:6,10,12,18 240:1,2,3,6 241:7,11 242:8 golf 122:21 125:10 gone 41:17 52:3 61:8 103:12 157:21 196:6 204:13 239:9 good 4:7 7:18,19 11:8,9 12:15 13:16 22:11 23:17 26:3 35:15,15 39:9 50:12 51:12 53:15 55:23 64:23 69:18 74:8 77:19,25 83:14,15 85:6 85:11 88:3,4 91:15,16 92:16 95:17 97:21 98:5 99:18 100:24 102:5 104:7 107:11 110:7 112:24 113:8,13,25 114:1,15,16,20 114:24 116:14 117:25 118:22 121:9,21 125:17 128:18 133:10 135:3 139:11 140:5 144:17,24 145:25 155:6,7 155:9,10 159:15 159:20 172:6 176:13 184:18 184:22 186:12 190:5,5,5,6,10 196:1 198:12 199:9,23,24 201:3,8,12 203:4,6 204:5 204:20,21 219:23 220:7,10 226:3 227:15 228:15 231:22 237:6 241:22 244:6,20 Good-bye 182:10 goodness 221:6 gotten 85:16 179:23 207:20 Government 131:12 Governmental 64:7 Governor 143:20 143:21	Graduated 4:22 Graham 155:1 Grand 131:10 186:18 grandbabies 50:11 75:10 grandkid 49:21 grandmother 201:24 209:23 grant 11:15 240:8 granted 3:4,10,12 3:15,16 10:11 10:12 95:6 225:5 243:17 grants 203:6 grapevine 138:6 great 19:25 52:15 52:24 54:6 58:13,14 77:21 96:15 113:18 135:5 142:14 144:14 200:4 207:1 greatest 187:18 grew 41:19,19 42:1 179:22 209:23,25 grieving 204:10 grin 203:14 group 11:16 77:21 99:24 115:3 155:2 grow 47:18 growing 41:17,24 42:3,8,20,21 43:7,18,23 47:18 192:6 200:23 growl 50:7 growls 50:6 grown 156:8 GRUBBS 2:15 gruesome 23:20 117:17 208:23 guarantee 162:18 guards 109:22 110:1 111:7 guess 8:1 13:25 14:6 15:16 20:14,16 23:22 24:24 25:1,5 30:9,12 34:2,2,5 35:8,9 37:4 39:17 42:11,17 43:20 44:12,14 45:21 46:5,7,20 49:10 54:19 56:4,5,6 58:21 58:25 63:12 65:21 66:5,6,11 67:10,23 68:4 75:4 77:12,18 83:12 84:17,18 86:13 91:1 93:20 101:11,22 102:9 103:12 104:18 105:13 108:22 109:17 118:2 120:18 125:20 128:2,18 129:8 130:20	132:19,23 138:24 141:18 148:9 158:19 171:13 173:9 185:12 195:9 197:6,19 212:18 215:7 224:24 225:20 240:19 244:14 guidelines 56:6 guilt 88:24 89:4 89:10,23,24,24 113:2 161:1 164:16 187:9 188:16,16 guilt-innocence 105:23 195:4 231:18 guilties 18:20,20 guilty 9:14,17,19 13:23 19:2,2 20:18 21:4 26:4 26:18 27:2,6 28:1,1,4,4 30:14 33:14,15 35:6 40:9,17 61:10 61:10 66:16 81:4,14,17,23 82:10,13 85:17 86:16 89:22 90:16 94:16 106:9 107:16,20 107:21 119:9 126:21,23 127:17 141:15 142:10 145:16 145:22 146:2,17 146:23 147:2,5 150:3,4 151:13 151:13 159:24 160:2,14,16,16 160:20,22,25 161:9 166:19,20 166:20 168:5,6 168:8,11,11,21 169:7,14 170:2 186:19 187:10 188:11,12,23 193:15 195:4,22 195:25 211:25 212:3 215:17 216:2,3 229:17 231:23 232:19 234:6 236:23 237:16,23 238:24 240:10 gun 66:25 119:5 203:25 204:6 guns 16:10 109:23 gut-check 120:24 guts 125:21 guy 39:2 44:21 49:24 104:23 105:15 114:5,6 175:3 guys 92:17 101:23 110:8 134:10 182:13	Habitat 77:19 hair 167:25 hairs 26:22 162:11 half 123:18 181:14 182:19 206:20 halfway 51:18,19 hammer 77:24 78:1 hand 36:6 50:3,8 84:23,25 89:16 91:25 239:24 246:15 handle 167:13 214:19 hands 155:23 158:16 hang 23:18 195:24 196:3 hanging 102:23 109:22 happen 16:23 20:19 31:22 35:7 67:12 70:1 70:10 72:6,7 78:19 86:15 87:5 88:10 106:18 112:13 115:24 162:18 163:1 168:19 187:20 194:21 203:14,18,24 206:20 210:15 233:5 235:22 happened 20:1 25:6 72:23 82:9 88:23,25 89:18 118:12 138:9 158:6 185:4 187:5 188:3 192:19 200:11 216:11,23 219:6 221:6,8,8 236:6 240:9 happening 221:7 223:16 happens 14:25 25:4,4 127:10 146:5 168:25 177:2 199:10 207:14 happy 155:18,19 160:2 hard 19:8 41:7 43:18,23 51:3 66:22 106:4 145:12 147:9 151:15,22 152:13 155:22 156:11 158:20 160:8 161:9 178:10,25 186:25 217:6 219:12 221:5,11 221:12 223:3,3 223:8 224:17,18 226:13,15 238:16 hard-driving 101:1	hardest 92:4 Harding 179:5 hardly 233:1 harm 36:2 109:4 109:10 harm's 101:25 Harvey 242:19 hate 13:10 117:8 173:21 175:15 having 13:1,4 43:1,1 60:14 61:3 63:8 66:17 74:2,3 103:6 124:21 125:17 125:17 186:17 216:17 217:16 220:18 he'll 33:25 head 14:13,20 20:15 21:2 24:20 25:10 31:23 41:5,22 63:22 87:13 101:14 119:6 147:6 206:22 223:21 240:16 242:14 health 197:11 hear 13:9 25:24 25:24 28:6 32:7 70:12,12,13,13 72:4,4 77:5 83:20 96:19 97:1,1,5 102:7 125:13 127:9 137:9 148:17 182:13 189:8,10 202:12 216:11 220:22 221:1,10 223:6,10 243:9 heard 1:12 18:14 28:8,10,11 35:2 54:17 55:3,5,13 58:24 81:23 96:12 130:21 138:5 173:10 178:13 211:24 hearing 169:7 219:18,18,24,24 heart 36:8 146:14 166:13 220:16 heat 70:3,9 218:22 heavily 169:16 heavy 109:12 heck 206:13 240:4 heed 233:22 heightened 218:13 heinous 33:10 86:2 held 1:14 38:18 71:9,21 107:12 119:5 189:14 Helen 78:8 Hello 100:1 227:16 228:5,6 228:9,12 helmet 109:16 190:17,19	help 43:7 60:22 111:21 116:15 125:7 127:12 132:20 144:20 152:1,2 158:1 172:22 182:4 196:19 208:1 helped 144:19,25 helpful 189:9 helping 116:13 helps 114:5 her 7:8,13 17:8 50:3,8 52:11,11 69:16 74:21 78:6,19 79:1 94:14,18 95:11 132:4,14,14,20 133:20,22 134:4 134:7,10 137:20 138:3,5,9,12,13 138:23,24 139:5 151:24 163:22 164:4 179:7 182:17 224:15 224:17,18,19,22 225:1,7,17,18 225:24 228:3 244:2 hero 114:6 herself 194:12 hesitate 244:8 hey 72:15 235:6 Hi 181:3,4 184:19 214:25 hide 80:12 high 2:13,15 4:22 5:12 11:21,24 22:14,15 36:22 37:12 38:8 42:7 51:8,11,14 53:8 54:6 78:16,20 79:12 83:23 86:8 90:9 100:2 100:5 115:14 135:8 155:5,8 180:24,25 181:2 181:3 182:16 183:6,8 214:18 214:19,23,24 224:1,10 225:8 225:13,22 228:11,12 High's 228:13 higher 42:17 100:22 115:4 highlighted 130:4 Hill 135:8 him 11:21 12:17 18:2 20:14,15 20:18,22 21:18 21:19 24:10 27:6 35:24 36:21 38:18 39:3,9 44:24 45:4 46:2 50:2 53:21 58:1,4,6 68:9 71:9,21 73:4 77:19 79:23 80:1,2,2 80:17 81:3,5 86:21 90:16
--	--	---	---	---	---

93:10 100:2 109:11,15,15,16 109:22,24 110:2 110:8,11 111:13 116:2 117:19 118:17,17,18,19 119:1,5 120:15 150:16 155:5 161:16 169:7 173:5 175:17 177:19 178:9,13 178:17 189:13 194:12 195:24 196:3 197:3,10 197:10,11,11,17 197:17,18,19,19 197:24,25 198:2 198:21 200:22 201:1,2,2,4,6,7 201:8 203:14,15 203:16 204:4,7 204:9 205:11 212:3,10 215:7 215:12,13 216:3 231:23 232:8,15 235:6 236:23 237:23 240:10 240:12 242:24 244:16 245:5,5 himself 22:7 45:6 201:5 hire 29:25 30:4 historical 113:6 history 34:6,6 67:25 77:2,4 114:9,9 224:12 244:3 hit 13:2 72:15,17 222:20 233:17 239:13 Hitler 200:22,23 201:19 hitting 218:25 hobby 211:1 213:19,20 hold 57:25 58:1 112:9 146:11 153:22 155:22 189:4,12 232:7 232:14,17 hole 109:16 home 22:16 33:14 44:22 46:18 66:21 87:4 88:9 104:18 116:7 120:13 172:18 174:6 182:12 206:15 239:10 homes 20:9 172:24 homicide 67:1 82:1 85:18 86:21 180:5 homicides 168:18 honest 70:1 101:23 142:16 155:22 166:5 175:25 179:13 204:14 209:2 229:16 honestly 162:1	172:19 219:25 225:1 Honor 38:12 94:9 94:22 95:13 98:21 120:5 121:16 138:20 164:17 183:5,19 183:22 224:3,8 225:17 243:25 245:3 honorable 1:14 190:4 hook 125:14 hooked 134:10 hoot 162:5 hope 57:15 72:6 81:4 102:1 121:9,10 134:16 150:2 156:25 157:1 215:19 Hopefully 149:24 hoping 227:24 hops 198:19 horrendous 37:17 horrible 45:18 88:5 89:18 109:7 239:9,11 horrific 88:5 158:17 horse 73:6 hospitals 17:15 hour 151:25 182:19 hours 25:22 house 66:23 74:20 82:4 174:8 239:11 houses 211:17 How's 132:6 242:24 huge 33:8 68:25 239:12 Hughes 131:16 Huh 29:13 64:19 68:23 87:19 Huh-uh 46:13 Hum 75:14 98:13 human 72:3 103:10,13 111:23 112:19 149:10 157:10 157:14 191:10 191:13 199:5 humane 23:11,15 humanely 23:25 Humanity 77:20 humans 64:20 65:2,4 hungry 22:24 hunk 135:3 hunt 209:22 hunted 209:19,24 hunter 3:8 137:23 138:16 hunting 209:24 209:25 hurdle 110:20 196:22 hurt 116:15 204:3 204:4,5 hurtful 19:24	hurts 153:18 196:17,18,19 husband 21:17 36:16 69:20 75:13,15 211:2 husband's 21:16 hypothetical 47:12 116:3 hypotheticals 216:16 <hr/> I <hr/> ice 115:25 ICU 148:7,8,9,15 148:19 idea 5:25 21:21 23:6 42:1 54:15 61:3 68:19 70:15 78:2 85:6 88:14 110:10 120:17 155:18 159:15,20 170:16 175:10 177:3 185:24 186:8,12 194:3 194:5 202:5,6 207:6 233:21 237:11,19,20 238:12 239:3 ideas 60:7 186:14 identify 108:13 111:3 195:11 idiot 128:11 ifs 142:9 ill 137:22 illegal 173:9 206:3 illustrate 163:25 imagine 18:3 199:20 235:2 immediate 11:12 immoral 104:6 impacts 89:25 impair 152:4 222:10 223:9 224:22 impartial 152:4 implies 86:1 important 17:6,8 25:16,16,19,20 28:10 30:7,9 33:21 34:1,2 48:22 64:7,8 102:2 105:23 107:25 121:10 124:3 189:25 204:23 231:20 imposed 142:2,6 142:11 impossible 169:22,23 187:11 impression 81:13 81:15,17 226:17 imprisonment 62:25 improper 164:5 improve 178:4 inaccurate 187:18 inappropriate	216:15 inaudible 12:14 49:6 53:12 57:2 68:22 93:23 201:5,11 incidentally 56:24 inclined 244:16 included 41:15 246:7 includes 111:16 including 117:14 increased 107:13 independent 197:7 237:22 independently 238:24 INDEX 3:1 indicate 6:10 62:20 225:18 indicated 6:7 12:2,22 13:3,4,6 24:21 75:13 76:13 103:3,25 116:24 191:2,7 191:10 209:18 223:2 indication 133:18 indicator 116:25 indicted 186:17 indictment 81:25 81:25 130:23 131:10 individual 47:24 103:11 194:11 228:21 inference 106:19 inferring 221:10 inflammatory 38:7,7 influence 134:14 201:13 influences 31:16 information 113:17 114:10 133:18 187:3 inherent 37:23 inhumane 6:9 injured 35:23 injuries 185:19 inmates 111:8 innocence 9:19 94:13,18 106:22 107:25 113:3 145:5 188:18,19 188:25 189:1 innocent 28:23,25 92:18,25 93:10 93:17 131:5 146:2,6 204:23 216:4,4 229:18 insanity 188:23 inside 123:18 133:19 220:17 239:10 insight 187:5 instance 66:19 89:13 236:4,13 239:19 241:15 instead 17:14 223:14	instruct 71:6 84:4 115:12 193:21 223:5 instructed 109:23 instructing 193:22 instruction 115:6 185:22 instructions 81:21 152:11 212:22 insult 220:3 intelligent 101:12 intend 186:19 intent 82:5 intentional 117:17 intentionally 235:11 236:25 interact 31:10 interest 64:7,8 interested 107:3 165:16 interesting 17:11 80:14 215:1 interests 187:22 interfere 9:4 interferes 44:7 interrogated 93:23 interrupt 151:7 152:8 210:8 interrupted 209:17 interruption 214:18 interviewed 159:18 intimidating 59:19 intraspective 158:9 introduce 112:1 113:11,17,21 114:7,14,15,17 invades 163:7 invasion 190:17 investigated 81:9 investing 244:16 investors 244:11 involve 127:5 involved 15:15,17 24:5,8 77:2 101:3,4 172:20 191:22 192:2 217:20 222:14 230:10 236:17 239:4 involving 47:16 189:21 iron 109:11,15 115:19 irregardless 152:6 irritated 25:12,13 island 197:20 issue 5:23 14:10 24:19 30:23 81:19 82:17,18 100:12 104:12 117:21 122:6	126:15 128:15 164:7 166:21 189:20 220:13 224:16,23 issues 8:6,8 9:7 19:4 80:20 81:11 82:8,14 93:3 124:21 146:21 163:10 163:11,20 164:16 169:1 179:15 189:24 215:15,18,19,21 222:9,10,12 225:4 ivan 1:5 5:10 11:12,18 37:13 99:20,25 122:16 153:1 154:24 155:4 228:7 <hr/> J <hr/> Jackson 179:8 jail 48:20 49:8 79:2,7,9,17 119:4 192:17 231:10 jailhouse 48:12 jami 2:5 11:15 99:22 janet 3:10 137:5 137:7 139:1,11 153:4 janice 3:11 4:23 jealous 74:25 Jeannie's 72:18 jeering 118:19 Jesse 179:8 Jimmy 77:14,17 77:18 job 24:16 39:11 64:2 73:8 144:24 151:24 187:7 211:1 213:20 jobs 20:10 65:3,4 101:3 112:14 John 244:8,12 Johnny 72:15,16 203:22 Johnny's 72:18 joint 111:16,16 132:12 134:15 judge 1:14 4:24 7:7 10:11 11:5 18:24 30:12 36:22 51:6,8 53:19 56:16 57:2 61:17 71:6 71:20,20 81:20 83:17,20 84:4 85:25 89:14 94:5 99:11,14 101:20 102:7 105:6 106:15 115:11 121:14 125:2 131:10 137:10,17 138:18,25 139:24 152:19 163:22 180:24
---	--	--	--	---	--

181:16,19 184:14 185:22 189:5,18 203:6 210:17 211:22 212:22 213:3 214:19 220:20 220:25 223:5,9 224:1,10 233:13 Judge's 106:16 judges 53:19 judgment 160:7 168:2 172:10 191:10 219:7 judgments 31:9 39:5 Judicial 1:19 jump 50:7 jumps 50:7 junk 22:4 junkyard 22:8 jurisdiction 149:3 juror 3:6 5:25 9:5 9:6 18:16 26:23 27:8 34:12,12 34:17 37:22,23 38:11 46:10 51:6 86:1,5,24 91:6 94:12,12 95:1,2,2,4,4,4 95:4,9,11 105:9 105:10 115:11 121:14 122:14 123:9 130:9,10 130:17 134:17 137:5,23 138:17 142:15 147:21 147:23 149:21 151:10 152:4,13 158:23 159:6 160:2 163:9,13 164:21 165:4 167:13 180:21 181:20 183:1 185:14 190:9 194:11,11,17 205:22 211:20 213:3 219:4,15 224:1,10 225:3 225:3 230:15 232:1 242:11 243:10,11,14 juror's 101:8 jurors 4:12 9:2 10:17 26:7,25 37:5 39:17 67:13 71:14 95:3,6,7 96:9 97:6 99:2 100:11 101:13 105:7 112:4 122:10 139:15 152:10 154:3,4 184:4,5 187:8 189:17 194:23 199:7,12 211:23 jury 1:8,13 5:9 6:25 9:3 13:19 14:2,7,23,25 15:9,15 17:7 20:18 26:3,13 28:9,16,18	29:16 37:25 40:15,25 41:1,6 57:18 67:21 70:25 71:6,14 72:3,5 74:5 81:9 81:11,20,22 82:7,8,9,13,20 84:7 86:16 87:23,24 89:8 89:25 90:9 95:16 100:24 103:18 105:11 108:4,8 113:2,7 116:13,13,13,21 117:10 121:4 130:21 131:3,6 131:7,10 150:5 150:13 151:12 155:15 157:1,2 158:7 159:21 162:1 163:7 168:20 170:9 176:9 179:12,13 186:18,19 187:7 193:19,21 196:1 199:9 200:20 207:12 210:12 210:17 219:9 221:14 223:15 223:17,18 224:19,19 229:11 232:23 232:25 242:8 just 4:16 5:6 7:11 8:19,23 9:10,13 10:10,24 15:2,6 15:8 16:3,18,22 16:23 17:22 20:15 21:16,22 22:12 23:21 24:3,8,9 25:6,21 25:23 26:18 27:19 28:15 30:5 36:8,12 37:2 39:11 41:1 41:6 42:1 43:3 44:2,24 46:8 47:4,12 48:16 49:5 50:18 52:5 53:13 54:2,17 58:9 59:22,22 59:23 60:7,8,16 60:23 64:2,2,4,5 64:20 65:2,3,4,4 65:18 66:17,18 67:6 69:11,24 71:13,25 72:23 75:25,25 76:16 76:19,23,23,25 77:6,18 78:19 78:19 79:3 80:3 83:20,24 84:25 86:15 87:2,7,23 88:10 90:5 91:1 91:23 92:4,9,25 94:5 96:20 98:9 98:10 99:8,11 100:11 101:23 102:11,14,21 103:1 106:1,2 107:14 109:20	110:20,23 111:5 111:17 112:4,23 114:3 118:25 119:14,25 120:1 120:17 122:7 123:18 125:2 126:17 127:12 128:6,21,25 130:4 131:11 135:24 137:13 137:20 138:3,9 140:8,11 142:16 145:10 148:25 151:6 153:17,19 154:13 155:25 155:25 157:3,6 157:20 158:8,11 158:15,19 160:13 161:5,23 163:7,14 167:18 167:18 169:3 171:10 173:21 174:10,22 175:6 175:7,24 178:9 178:13 181:10 183:12 185:4 189:2,9 190:11 190:13,19,20 192:17 197:19 203:15 204:10 206:9,11 208:14 209:1,1,10,12 209:14,15 210:12 211:20 214:14,15 215:2 217:13 218:7,19 220:20,21,25 222:12,13,13,19 223:9 225:10 227:17,22 228:24 229:3 230:12 231:3,10 231:11,11 232:5 232:22,25 233:12,17,18 234:2 235:17 237:11 238:17 238:21 240:17 241:15 243:9 244:3,18 justice 26:12 27:14 188:10 195:23 203:3,14	K Kay 4:23 keep 68:16 69:6 80:5 92:17 109:20 110:11 197:1,3 221:12 237:9 238:12 241:9,13 keeper 49:23,25 keeping 25:14 Kevorkian 234:25 236:13 237:18 239:2 key 121:1 kick 109:15 201:7 kid 50:8 192:6 201:24	kids 43:3 44:24 75:8 77:10 101:4 111:13 123:24 206:16 206:17 kill 28:24 38:18 54:22,24 66:25 104:6,23 118:25 149:2 193:3 201:21 202:2 241:16 killed 39:10 54:18 82:1 210:2 237:19 239:10 killer 117:14,16 117:16 killers 203:10 204:4 killing 24:4 39:3 68:17 85:18 109:3 110:11 117:4 148:1,3,5 157:4 197:14,19 239:3 kills 204:6 kind 14:16 16:5 16:10,23 17:3 17:10 18:16 19:1,16 20:8,12 20:14,16,20,24 21:7 23:6 25:11 25:21 26:7 29:4 29:12,14,19 31:7,21 35:13 39:16 42:3,6 43:9 44:14,15 44:25 45:13 46:15 48:5,10 59:19 61:2,7,10 61:13 62:7 71:13 72:9 76:3 76:7,15 77:3 80:4,24 84:25 92:7,14,21 100:11 102:18 103:22 104:1 105:10 107:19 110:1 111:13 113:21,23 120:20,24 122:1 123:6 125:6 130:12 131:25 134:9 135:10 147:25 148:1 150:9 153:17,21 157:9,20 158:9 158:23 159:23 160:25 163:25 169:13 171:3 174:3,19 177:18 178:6 179:6,20 180:3 186:7 187:8 193:4 194:21,22 198:5 198:23 199:22 201:5,11 202:10 205:6,19 206:6 207:16,21 209:10 211:11 211:16 213:20 213:20 215:25	216:16 217:19 221:9 229:10,15 230:9 233:15,22 234:20,23 236:1 241:1 kinds 23:20 76:16 102:24 156:1 180:4 186:7 204:12 knee 153:17 knew 21:24 29:3 29:3 52:12 80:9 131:20 242:17 242:24 know 5:15,17,17 6:16,18,18,18 8:11,19,25 12:2 12:4,13 13:11 15:5,5 16:7,8,17 19:5,6 20:5,15 20:22 21:13,15 21:24 22:10,22 23:19 24:2,5,14 25:2,5,8,11 26:17,22 27:19 28:9 30:9 31:7 31:15,18,19 32:2,9 33:10,17 33:21,23,24 34:4,4,5 35:2,8 35:10 38:24,25 39:1 40:18 41:1 41:19,19 44:9 46:3,5,6 47:23 47:24 49:12,17 49:19 50:13,21 52:5,6,12,13 53:21,22,22 54:1,14,16,16 55:19 56:5,6,7,8 57:1,9,17 58:24 59:4,14 60:23 61:9,18,22 62:4 62:9,10,25 63:7 63:9,13 64:2,21 65:18,18,20 66:6,11,16,18 67:1,5,8,11 68:13,15,16,19 68:24 69:5,12 69:19,25 70:10 70:13,20 71:23 72:9,15 73:24 73:24 76:19,23 77:5,18,19,24 78:6,8,19 79:3,7 80:2,5,12,24,25 81:1,9,15 82:4 83:3,11 84:18 84:19,21,22,22 85:2,12,16 86:24 87:6 88:3 88:5,6,24 89:20 90:15 91:8 92:3 92:12,21 93:1 93:17 96:1,3 97:17 100:7,10 102:17 104:10 105:16,20,24 107:20 109:23 110:9 111:10	112:4,9 113:12 113:17 115:3 117:4,22,22,25 118:8,18 119:5 119:16 121:25 122:16,21,24 123:3,5 124:1,4 124:14,23 127:2 127:4,15 128:24 130:13 131:8,16 131:18 132:13 132:20 134:6 135:8,15,16 138:1,14 141:20 147:10,10 148:15,19 149:5 149:6 150:18,19 150:24,25 155:10 156:4,12 156:13,15,18,22 157:6 158:11,12 158:15,17 159:4 159:17 160:9 161:5,8,20,22 161:22 164:1,2 164:7 166:1,4 167:11,12,12,13 167:21 168:19 169:21 170:25 172:7,11 173:8 173:10,13,21 174:12,15,16,18 175:18,18 176:7 177:1,7,8,9,11 177:19 179:3,8 179:12 185:16 186:11,22 188:10 191:15 193:23 194:2 200:13 201:1,8 202:18 203:16 203:18 204:24 205:19,20,25 206:23 208:21 209:4,12 210:20 210:20 212:5 215:22 216:10 216:12,13,16,18 216:22,23 217:20 218:9,10 218:13,20,24 219:23 220:6,7 220:7,13,17 221:2,6,7,9,9 222:13,13,14 223:16 225:10 227:18,22 228:17,21 229:22 230:19 231:11 232:2 235:17 236:3 237:17 239:25 240:7,12 243:25 knowing 20:16 26:12 knowledge 231:19 known 35:9 44:1 44:4 52:7 156:9 knows 23:22 37:16 45:11
---	--	---	--	---	--	---

48:17	236:25 237:8,25 238:23 240:18 241:16	19:13 20:10,24 33:2,2 34:8 38:11,13,15 42:25 47:15 48:17 62:14 64:15 66:2,21 88:25 107:24 114:17 118:9,16 118:20,21,25 123:18 143:20 148:6 149:14 166:8 168:4 183:14 195:2,24 196:3 210:15,17 216:25 231:3 234:24 239:8,13	196:20 201:19 202:6,7 205:1 206:25 208:5,25 212:10 215:16 219:6 220:5 229:20 230:24 231:7 235:9,11 235:23 236:3 lifestyle 141:18 light 18:24 78:16 100:15 186:10 like 9:10 13:7,10 13:12 15:1 17:18,23,23 19:14 22:4,7,12 22:13 24:17,17 25:17,18 26:9 29:24 30:7,8 31:4 33:24,25 38:19,20 40:5 40:21 41:7,9,24 42:6,19,20 45:10 49:12,17 49:22 50:18,22 52:8 53:12 54:25 55:5 60:4 62:7,12 63:7,8 64:15,20 65:2,4 66:5,7,14 68:7 69:5,7,10,11 71:25,25 73:6 73:12,16 75:4 76:15,23 77:6 77:20,22 78:2,3 83:13,22 84:2 84:19,20,20 87:3 89:13 91:4 100:10 101:11 101:14 102:8 106:2 107:14 110:1,21 111:21 114:10 117:4 118:20 119:18 120:23 121:3 122:11,11 123:15,19 131:1 131:2,4 132:2,3 133:20 136:10 136:12 146:22 149:17,17,22 150:1 151:16 157:6 159:12 162:5 165:12 167:11,24 169:17 171:4,10 175:15,21 178:18,19 179:22 180:3,5 180:6,10 182:19 185:19 187:12 187:20 188:10 189:8 190:1,7 190:11,12,16 191:22 192:5,14 193:13,14,21 197:18 200:6 201:17 203:12 204:19 205:25 206:20 208:9,10 209:1,15,25 212:14 216:25	217:15 219:13 219:22 221:4,4 222:2,5,19 224:25 228:20 228:23 229:25 230:7,9,15 231:16 232:2,12 232:22 233:12 233:15,22 234:3 234:16 235:7,16 238:9,20,21 239:4,19 likely 83:7,8,8 87:4 112:7 118:1 160:11,11 160:16 176:6 200:10 220:18 likewise 221:18 limit 233:15,22 limitations 220:12 limited 110:22 line 16:4 53:12 73:16,18 83:3 85:5 120:18 165:5 200:2 204:2,5 220:5 lions 49:18 lisa 1:18 246:5,18 list 65:19,19 listen 17:3 18:1,4 18:5,10,12 25:12 27:11,12 49:4 91:1,23 93:17 132:21 164:10 210:19 211:20,23 212:6 222:11 233:3 listened 92:1 listening 25:22 50:23 92:9 164:9 208:20 210:18 little 4:11 13:2,6 16:3 17:1 19:13 21:16 22:23 23:10 28:25 40:5 43:16 49:20,23 72:15 76:20 99:2 101:10,10 104:7 115:4 123:21 126:18 130:15 132:24 139:14 140:14,25 147:25 153:14 154:2 155:21 156:16 162:13 168:4 169:14 174:25 175:4 185:5 190:19 199:17 201:16 203:22 208:1 219:25 225:8,11 226:12 227:19 234:23 live 16:21 22:9 74:15,17,18,19 75:6,8 106:1 134:25 142:17 157:6 177:20	181:12 193:2 231:7 235:1,15 lived 17:13 21:19 42:13 52:22,24 134:25 135:3,9 144:9 177:15,17 181:13 235:2 lives 74:18,21,21 74:22 101:9 120:10 158:2 192:16 236:7,24 living 19:18 20:6 24:4 60:1 101:1 178:1 206:24 loading 16:6 188:10 local 78:9 location 213:24 locations 77:5 lock 104:3 logic 114:13 196:4 logistics 123:8 long 7:6,15 9:4,12 25:9 26:18 52:12 66:22 73:20 87:18 97:10,11,19 133:2,10 138:1 144:9 153:21 181:12 187:17 213:8,9 214:5 231:9 233:3 238:11 longer 199:4 235:6,24 240:20 240:21,24 look 9:18 24:9,10 35:5 39:8 43:9 65:16,20 71:18 71:20,20 73:14 82:20 90:3,15 91:14 92:1 111:3,4,5 116:22 117:12 119:15 156:13 159:22 163:10 170:17 174:6 199:15,18 211:21 236:22 237:1 240:19 241:7 looked 48:17 81:10 92:1,4 199:16 looking 30:23,24 57:19 65:17 84:20 108:22 158:23 159:21 186:7,8 198:7 207:11 228:22 looks 84:2 90:9 loose 203:7,10 Los 20:2 losing 119:21,21 loss 185:19 lost 36:15,16 39:9 119:17 122:1 158:2 175:8 lot 8:18 15:1 24:8 27:4,19 30:22
-------	--	---	--	---	---

31:4 41:20,20 42:22 44:4,8,8 60:7,19,20 70:2 70:8,11 76:1,13 77:3,4 79:23,23 80:15 87:7 92:9 92:9 100:25 104:11 113:17 124:21 130:25 135:4,7,16 142:9 145:19 150:18 151:20 152:5,7 157:17 162:23 171:9,25 173:17 174:16 177:18 190:12 192:24 200:23 201:13 209:24 215:1 234:16 236:18 242:21 lots 17:23 180:17 loud 63:23 78:6 love 19:15 144:14 174:9 loving 21:8 lower 42:7,9,13 42:18 170:6 lowry 2:5 5:8 18:9 99:22 155:1 212:17 215:4 227:12,14 228:7,10,13,16 242:6 243:11 luckily 124:4 lunch 137:3,4 lying 162:25 163:2,3 165:24 168:1,2,3 187:21	25:6,9 26:3,19 27:9,15,20 29:4 31:9,22 32:1,21 40:24 41:4,13 41:25 45:11,12 46:1 55:7,18 56:3 59:21 60:13 62:5,10 62:12 64:5,6 66:10 69:24 73:14 79:2 80:21 81:3 87:5 92:7,9 93:1 105:20,20 109:21 111:22 112:5,8,11,11 112:18 116:4 119:3 120:2 126:17 128:22 128:23 130:8 138:7 140:11 141:25 148:16 148:20 150:7 156:1,10 157:19 167:3 168:2,21 171:7 172:1,2 174:18,19 176:12 190:13 193:7 194:14 195:19 196:15 196:22 197:18 197:24 201:2,18 202:7,12 203:5 204:1,23 205:3 205:15 206:4 208:19,19 212:12 215:14 220:18 229:22 230:20,22 233:5 234:12 235:6,12 237:12,22 241:4 244:10 makes 8:25 18:9 45:19,21 55:19 55:20,25 56:9 56:19 72:9 82:1 89:25 149:25 171:21 197:25 198:9,12 206:12 206:12,13 216:16 230:17 making 39:5 45:4 120:24 129:1,2 168:3 185:25 male 134:14 man 12:13 16:7 22:10 28:22 39:9 57:13 64:9 66:23 73:3 80:22 83:13 102:18 107:19 110:5 119:13 120:20 161:15 215:5 216:2 218:21 220:5 242:23 management 73:9 manager 73:14 many 12:22 28:9 34:5 43:6 53:4	58:24 82:19 85:6 100:24 105:13 124:18 125:13 130:1,7 133:3 170:22 173:23 177:15 181:9 196:1 209:11 230:10 236:10,11 March 207:17 Marie 52:1,2 Mark 98:7 marriage 112:13 213:7 224:13 married 133:2,3 133:10 181:14 marry 112:11 mask 109:16 massaged 92:13 Matt 5:11,12 11:22 100:3 155:5 matter 9:14 12:6 22:12 26:10 27:17 34:15 42:17 44:11 47:24 77:3 110:17 130:13 146:23 150:10 151:12 157:10 157:15 161:10 210:24 211:1 241:17 matters 17:5 MATTHEW 2:12 maturity 176:18 may 8:9,9 8:8 18:12 19:21 25:17 36:22 37:25 46:9,9,11 47:16 63:2,4,6 67:14 81:6 84:22 88:3,4,4,4 91:9 93:24 94:5 94:8,13,17 95:8 99:14 102:5 103:4 104:12,12 104:19 106:18 112:1,1,2,2,2,3 112:9 114:8,9 115:18 116:14 121:8 125:2 128:19 130:5 141:17 145:17 150:5,5 152:20 159:6,8,9,10,12 160:5 162:19 163:13 164:14 164:18,18 165:4 166:2 167:24,25 171:24 181:15 187:4,4 189:23 189:23 202:8 205:8,23 209:5 210:12 215:18 216:4 217:21 219:9 224:4 228:22 234:11 236:11,22 238:9 241:10 maybe 7:11 13:11	13:22 19:20 20:14 23:7 31:15 35:21,23 36:4 39:2 49:21 57:2 68:18 70:6 88:8 100:22 101:10 103:5 104:7,7 110:8 111:24 112:15 114:20,22 119:13,14 120:4 120:5,6,7,11,13 120:15 121:9 122:7 130:16 136:12,25 137:13 138:6 160:8 168:14,18 170:12 171:25 172:1,9,9 176:24 185:8 187:1 189:11 192:6 202:9,11 206:4,7 212:18 225:8 234:25 236:18 237:20 239:15 241:23 meanally 3:17 243:22 245:4 McDonald 1:19 2:8 246:20 McKinney 1:14 1:19 2:8 4:22 52:20,21,22 124:10 144:10 144:13,15 213:18 214:2 246:21 McMurtry's 76:22 McVeigh 38:16 39:1,10 45:24 66:5,12 68:7 69:7 88:25 89:2 89:13 205:10 mean 6:17 13:15 15:3 18:19,21 20:13 21:20 23:18 24:6,18 25:6,16 27:23 28:14,24 29:3 29:15,19 31:14 31:17 39:3 41:18,24,25 42:6 44:9,21 45:11 46:21,22 46:23 48:15,20 63:6 64:2 66:1 66:12 67:23 68:14,16 69:19 75:4 77:4 79:10 80:11,23 83:5 87:3 89:3,5,5 92:25 93:16 102:22 109:2 110:3,5,16 111:6,8 113:20 117:21 119:25 120:7 121:3 122:23 128:7,11 128:21 130:2,5 151:3 156:15	157:22 159:17 161:7,12,25 162:11 163:24 164:20,24 166:4 166:13 170:15 172:18 174:19 174:21 175:12 175:15,24 176:1 176:11,12,21 178:19,25 186:10 187:20 187:21 190:8 191:18 194:7 196:17 198:17 201:25 206:4,16 210:20 216:2 217:5,6,9,11 220:3 221:11 229:20,25 231:10,12 234:14,14 236:2 239:16,17 240:19,22,24 242:6 meanest 109:7 meaning 13:9 92:5 meaningless 131:11 meanness 200:24 means 17:20 18:23 40:21 49:9,10 83:6 87:15 88:15 108:4 165:2 166:11 171:15 185:15,21 186:14 189:7 190:9 191:3 193:12,25 199:6 199:19 meant 63:1 65:21 228:24 242:14 measure 27:14 171:17 185:18 202:9 mechanically 41:2 Medal 120:5 media 29:4 105:1 156:21 218:12 medical 173:5,8 173:11 medically 19:19 19:20 medication 173:11 meet 51:15 223:25 meeting 244:11 member 151:23 members 105:4 155:14 memory 234:2 men 11:25 120:9 134:4 155:10 202:25 mental 177:8 mentioned 37:21 43:12 100:23 122:3 168:10	243:21 merchandise 111:11 mercy 148:1,3,5 236:18 239:3 mess 112:2 message 141:17 messed 148:25 met 12:5,9 243:5 metal 109:21 method 23:15 middle 42:7,9,11 42:13,16,18 124:23 137:22 179:14 197:20 223:15 might 7:24 10:19 10:19 12:25 13:2 14:19 15:8 19:7 20:16 28:6 29:23 31:2 32:10,12 37:23 39:1 41:25,25 43:15,15 77:22 96:3,18,19,20 96:24 97:12,23 97:23 99:4 101:9,24 104:2 104:3 106:4 108:15 110:1 111:6 114:2,10 114:11,16,16,17 114:19 116:2 119:9,10,15,15 119:17,19,22 120:4 129:24 136:17 146:6 156:14,24 158:6 161:8 162:9,13 165:7,7,23 168:19 170:25 173:9 174:24 177:5 182:16 185:15,18 187:23,24 188:2 189:8,8,9 194:7 195:8 196:19 200:9,10 204:4 204:18,24 207:2 228:23 239:3 Mike 178:22 miles 3:7 98:23 million 78:9 mind 31:3 35:18 47:7 59:13 61:23 69:9 88:10 91:7 103:8 114:22,23 120:11 129:24 130:18 161:10 166:3 170:13 176:11,12 183:12 185:13 185:14,17 186:5 199:11,17 204:21 225:1 230:4 231:6 237:9 238:12,17 240:2,3 241:9 241:13 242:7 mine 170:21
--	---	--	---	--	--

mini-panel 8:1	140:9 170:5	76:12 77:7,15	93:6,9 94:15	181:3 183:2	106:13 109:6,9
Minnesota	195:2,5 199:12	83:6,8 87:4	103:9,17 106:10	213:22 214:24	110:10 113:4
134:23	moments 37:3	109:7,7 128:9	107:16 108:5	215:1	115:22 116:15
minorities 6:9,13	Monday 181:7	134:13 142:9	113:14 116:17	Name/Examinati...	120:15 134:14
minus 133:8	208:12 215:3	157:7 160:11,11	117:17 119:1,2	3:3	142:4 143:4,6
minute 14:11	219:16,16 222:2	160:16 174:10	119:10 125:25	named 12:13	143:11 149:18
204:14	222:20 225:20	176:6 199:20	128:10 142:3,6	52:13,14	150:18,21
minutes 7:13 37:2	227:23 228:17	231:15 233:7	143:5,7,8,11	names 52:8 179:1	158:11 165:20
135:24 139:5	228:20 229:8,25	mostly 179:22	145:4,16,21	201:17	165:21 172:19
152:21,21	230:9 234:23	mother 52:5,11	146:17,24 147:5	narrow 30:25	172:19 173:23
182:21	money 43:1,1	52:13,14 75:8	150:4 155:15	narrowing	189:2,3 196:17
Miranda 70:19	79:2 141:16,23	75:20	159:25 160:7,14	196:22	196:18,18
misbehavior	142:19 190:20	mother's 52:2	160:17,20	narrows 196:12	197:18 226:18
17:24	192:16 231:10	mother-in-law	166:19 168:8,13	Nathan 53:19	Nevertheless
mislead 86:8	monitoring 49:25	74:21	168:14,16,20,21	native 53:2,4	216:5
miss 74:10,10	month 4:11 10:16	motion-sensing	169:3,8,8,15	natural 20:11	new 20:1 36:17
missed 74:12	57:6 99:2	110:2	170:2 174:13	22:20 24:19	36:19 37:14
mission 89:7,7	123:13 134:1	motions 203:4,5,6	176:14,25 177:6	naturally 183:7	38:3 58:18
118:12	139:15 140:13	203:7	180:10 185:12	nature 229:1	76:20 118:18
misspeak 137:14	140:14,25 141:9	motivation	186:18 190:25	237:21	124:14 157:23
misstatement	154:2 184:3	170:12	193:11,11,12,13	Nazis 16:5	158:4 177:15
86:4 163:6,15	226:12	motor 187:5	193:13,15 194:7	nearest 195:25	181:12
mistake 130:8	montra 3:5 10:14	motor 198:23	194:9 195:22	nearing 185:5	news 37:18 102:5
173:22,23	51:25 52:2,3,13	motorcycle	196:3,7 198:13	neat 54:2	102:12 133:18
mistaken 22:3	94:12	190:17	199:19,21,24	necessarily 17:18	newspaper 96:20
162:24,25	moral 88:14,20	mouth 239:15,22	200:18 203:1,2	47:2 48:3,4	newsworthy
204:22 243:6	88:21 89:2,9,15	move 109:13	204:11 205:20	49:10 56:5	25:17
mistreated 88:6	91:15 161:11	153:2 168:4	206:5,6,6 215:6	67:11 84:22	next 11:21 62:16
misunderstood	191:9,11	185:7 197:6	229:5,8,20	94:16 122:5	74:20,21 87:17
6:23	morally 46:7	224:10 239:15	230:23 234:6,9	152:1 156:13	91:9 97:22
mitigate 91:17	morals 190:5	239:21,22,22	234:11,24	158:8 172:21	98:10 99:21
mitigating 29:10	more 5:7 12:25	moved 22:10	235:12,21 236:4	175:12 234:12	100:2,13,18
40:20 41:12,16	27:19 28:16	109:24 144:21	236:7,8,24	237:12,19	126:5 128:7,7
46:7,10,19	34:6,7 40:5,16	185:5 213:18	237:1,12 238:11	necessary 61:6	135:9 137:5
48:23 49:1	43:17 45:23	227:19	238:14,24	219:4	138:15,22 139:1
90:22 91:2,8,9	49:11 51:18	movement 109:12	240:10,11	need 17:14 21:3,5	144:21 146:1
91:23 92:3	60:20 63:3 77:2	110:2	murdered 66:17	25:19 31:20,24	154:25 155:5
116:9,22 117:1	83:8,22 84:5,6	much 15:11,14,17	174:10 203:13	34:6 43:13 47:3	169:25,25 171:7
117:9 119:22	92:7 97:3	16:21 20:5	murderer 36:11	49:2 51:21	174:3 192:21
120:12,16,20	100:18 101:2,8	28:22 54:16	48:24 110:18,19	63:23 70:6	193:20 194:16
121:6 170:4,17	101:10,10 104:3	74:14 77:10	113:19 117:22	99:11 101:18	194:24 200:2
171:6,18,21,24	104:12 110:9	88:22 89:2 91:5	120:8 195:24	102:4 111:20,24	222:7
171:25 172:4,8	116:8 118:4	92:20 96:11	198:18	130:17 137:13	nice 17:14 20:16
173:14 200:21	123:16,17	103:15 104:6,24	murderers	138:14,24 152:2	51:15 78:20
200:22 201:18	126:18 128:19	107:5 110:16	110:23,24	165:11 172:22	107:21 220:15
202:5,7,11	130:16,18	113:14 117:8	157:12 196:7,9	179:25 211:3	nickname 22:8
204:25 205:11	132:19,19	123:12 130:16	196:24,24	219:19 230:19	niece 49:21
205:18 206:2,7	133:13 141:3,9	133:14 141:19	198:12	231:7	nigh 102:10
206:10 207:2,2	148:9,10 156:9	145:11 147:11	murders 35:5	needed 46:2	125:18 201:12
mitigation 89:9	156:9 157:9	164:20 188:1	118:1 180:3	211:5	nine 123:25
117:5,6 118:4	158:9 164:10	193:1 197:17	192:14 196:5	needful 28:18	nobody 73:3 80:9
127:1 146:21	168:24 175:9,11	207:23 208:12	202:15,16	needle 24:1	110:5 115:8
199:8,22 205:14	178:16 179:15	221:15 223:18	235:10	needs 100:21	167:10 201:16
205:17 206:23	179:16,18,24	232:25 235:6,24	must 55:7 58:23	113:8 197:7	204:2,23 210:13
207:6,7	189:19 190:22	multimillion	75:6 84:5,6,14	negative 6:20	216:3 241:3,4
mitigation-wise	202:11 204:22	17:15	84:14 194:11	122:22	nodded 242:13
205:9	213:5 219:25	murder 1:8 9:3	MW 177:12	negatives 123:1	Nods 14:13,20
mix 31:5 101:11	236:17 237:20	13:5 15:9,13	myself 8:19 15:6	neighbors 155:14	21:2 24:20
mixed 44:15	243:10	28:1 30:14 33:8	122:2 156:2	neither 12:19	25:10 31:23
mode 124:20	morning 4:7 7:18	33:11,19 35:6,9	158:25 164:10	32:12 56:14	41:5,22 87:13
modeling 190:6	7:19 11:8,9,20	35:12,16 36:7	207:21 208:9	113:8 114:25	147:6 206:22
molestation	11:23 51:12,13	37:25 38:19	216:14	216:14	Noise 59:4
191:21 192:14	60:20 92:12,16	39:8 48:10		nervous 184:20	non-criminal
mom 38:19 72:10	99:18 100:4	54:17 55:15		never 6:12 13:21	114:9
72:23 201:9	102:10 121:21	59:1,2,14 65:10		20:22 21:19	non-homicide
202:23 243:5	155:7 184:25	65:25 66:3,15		25:2,3 29:10	143:16,23
moment 40:4	227:19 244:19	66:17 67:1,3,7		35:8 38:24	non-work 101:5
47:15 50:15	244:23 245:1	67:25 80:22		46:22 48:15,16	none 12:7 38:25
85:25 90:5	most 19:15 20:23	81:19,19 82:2		50:2 58:24	56:16 142:23
93:25 99:11	27:17 28:9,9	82:10 85:17		65:22 66:13	190:6 216:14
116:10 125:2	66:13 67:13	86:17 90:17		72:2 78:15	Nora 76:18
			N		
			N 2:1,13 4:1		
			name 5:5 7:20		
			11:10 21:17		
			51:14,25 52:1,2		
			52:11 99:18		
			121:21 137:20		
			147:17 154:23		

Norma 131:16,18 132:25 133:12 north 135:13 nose 36:1 note 244:9 nothing 7:1 68:22 68:24 122:7 130:5 160:7 161:20 163:19 178:1 189:19 206:11 240:8 notice 53:8 77:14 noticeably 224:13 noticed 156:14 notified 97:24 notion 14:16 106:21 111:14 120:18 157:3 159:7 168:10 novel 76:18 November 246:16 nowhere 197:20 223:7 nuance 164:11 number 3:6 4:3 27:20 95:11 98:2,5,7 105:3 112:9 137:6,23 138:16,21,22 139:2 142:5 143:3,10 162:2 186:21 190:24 224:16 246:21 numbered 1:13 246:8 nurse 148:15,19 153:2	234:10 235:9 239:2 Occasionally 47:22 74:14 75:9 occur 14:7 25:25 40:24 116:24 213:6 occurred 15:10 82:3 130:8,20 246:8 occurs 14:8 October 123:13 123:19 124:20 off 42:22 54:2 78:16 111:13 119:6 120:1 137:16 153:8 173:17 174:14 201:4 204:13 220:4 offense 87:25 117:15 160:12 160:13 168:13 169:2 199:18,23 216:12,23 240:9 offenses 143:23 offensive 122:6 164:10 offer 45:17 189:2 offered 246:10 offers 17:25 office 5:18 211:12 213:14 228:3,4 officer 174:24 officers 70:20 144:14 official 1:19 55:24 246:5,15 246:19 officials 105:5 often 6:13 25:3 57:8 111:25 oh 57:20 59:11 65:1,21 73:12 75:21 77:19 78:11 124:13 139:25 144:23 153:16 162:10 173:20 180:22 185:16 226:18 243:1,3 oil 68:20 okay 4:18,20 7:4 7:12 9:10 11:1 13:14 16:17 19:13 22:1,11 22:17 23:10 24:3 28:24 35:4 35:4 37:8 39:16 39:16 40:4 42:12,15 43:21 44:5,10,13,16 45:10 46:4,9,14 47:2,7,15,23 49:4 50:1,19,19 51:5,17,20,25 52:3,7,24 54:8 54:21 55:14 56:22 57:17 58:7,9,13 59:24	60:1,25 61:17 61:22,23,24 62:3,15 63:6,13 63:23,24,25 64:14 65:15,21 66:10 67:24 68:10,25 71:2,6 73:1,6,20,25 74:7,15,24 76:7 76:10,25 77:14 78:4,13,20 79:17 80:7,18 81:11,18 82:6 83:8,23 84:16 86:8 87:14,15 88:12,17,17,20 89:2,11,13 90:7 90:13 91:11,21 91:25 92:7 93:4 93:12,15 95:19 95:22 96:22 97:14,24 98:1,9 98:16 99:12 103:3 105:13,22 107:19 114:25 115:1 116:11 120:4 121:25 124:13,13 125:1 126:14,21 127:8 127:14,15 128:7 129:21 130:4,4 131:15,20 133:2 133:9 134:15,25 135:22 140:8,18 141:9,12,25 142:11,13,22 143:1,15,20 144:9,9,12,17 145:10 146:21 147:4,25 148:22 151:5,21 152:15 153:13 154:15 158:22,22 160:19 161:18 161:19 162:11 166:16 167:5,10 167:10,16 168:24 169:22 169:22,25,25 170:7,8,14 172:9,25 173:21 174:6,24 175:13 176:11 177:5 179:23,25 180:9 182:5,8 185:1,1 189:15,16 191:17 192:1,22 194:19 195:7,10 198:5,6,11 199:14 207:1,9 207:21 208:4,16 209:16 210:10 210:16 211:5 212:10 213:13 213:17 214:5 215:17,22 216:4 216:9 218:1,6 219:19,21 220:1 220:2,12 221:3 221:3 222:4,7 223:5,12,16	227:11 229:1 230:5 232:17 234:7,22 237:7 237:14 239:3 Oklahoma 28:21 38:16 old 22:16 101:7 109:11 111:24 119:5 132:25 177:5 197:4 205:18,23,25 235:15 older 80:11 156:8 179:23 omitting 115:2 once 99:1 115:14 130:20 146:6,7 164:8 171:6 174:2 197:21 230:24 232:21 one 5:5 6:7 11:10 11:13 13:22 14:11,14 16:20 21:15,23 23:4 23:15 24:10,21 25:8,22 30:17 32:11 34:24 40:16 41:23 50:6 53:13,19 55:20,23,24 64:18 65:6 67:10 70:11 71:14 72:14 73:24 74:18 75:25 77:14 78:7 79:6,11 90:15 95:23 99:19,21 100:11 100:24 102:13 104:18,23 109:2 111:6 113:7 114:7,16 116:8 116:9 117:3,6 119:2 121:7,8 122:24 129:20 130:21 131:16 134:17 137:17 139:1 142:1,5 143:2 146:1,3 147:17 151:7 154:23 161:23 162:23 163:13 163:13 166:19 167:24,25 168:1 168:19 171:16 172:23 174:3 176:3 185:14 187:25 189:1 190:19 194:1 195:23 198:17 202:9 217:1 224:16 226:21 228:2 230:12,13 234:24 235:5 238:12 one-last-look 90:14 ones 204:3 ongoing 231:11 only 6:7 14:7 24:13 33:14	40:13 52:12 74:4 93:5 105:22 107:3 113:24,25 117:21 119:2,2 122:10 138:5 142:15 145:13 150:2 156:18 166:18 168:12 168:19 192:1 193:6 196:8,23 201:13 203:20 203:21 204:3 212:5 223:6 230:23 235:13 235:20 238:16 240:15 244:4 open 87:10 88:13 114:3 120:18 185:14,17 207:6 237:9 238:12 241:9,13 246:8 operate 213:25 operated 214:6 opinion 30:3 68:11 78:7 129:10 148:1 233:11 opinions 5:24 185:10 216:21 228:25 230:1,16 opportunity 37:25 101:5 104:15,16 113:5 115:18 116:22 144:6 241:19 oppose 190:4 opposed 48:20 60:16 opposite 30:5 112:4 113:21 opposition 6:8 103:25 129:14 129:17 142:23 191:4 opted 101:22 option 113:7 142:5,10 143:3 143:4,5,7,10 168:20 options 143:2 160:19 168:12 230:23 order 33:24 107:6 111:2 112:17 194:22 orderly 14:23 107:1,4 ordinarily 22:20 ordinary 31:25 112:19 organized 47:19 192:2 originally 134:23 158:4 177:24 227:18 orphaned 88:7 Osama 37:15,20 38:4 118:11,14 118:16 other 6:25 11:14	11:18 12:23 14:4,5,23 15:4 16:3 17:11 29:7 29:23 31:7 32:11,23 33:22 34:14 35:13 36:6 38:4 41:21 43:3,14 48:10 52:7 54:22 55:20 65:12 75:11 77:4 81:5 81:22 82:5 83:14 84:13 85:3 89:16 90:16 91:25 93:6,19 96:9 100:11 101:9 102:10 106:8,8 106:25 109:3 111:5,8 112:23 113:24,25 114:7 115:21 116:19 118:5 120:4 122:4 127:6 129:2 141:13 142:3 143:3 158:15 159:1 166:24 167:1 171:16 189:1,24 194:9 199:5,22 202:16 203:8 205:19 206:1,7 206:11 207:3 211:23 219:4 221:8,9 223:17 223:20 224:2 235:1 237:17 246:7 others 41:18 95:3 otherwise 40:14 188:5 ought 32:20 157:15,17 161:24 185:24 192:12 193:12 198:15 232:24 ourselves 23:10 39:3 220:9 out 6:17 13:24 14:18,19 18:11 18:20,21 20:9 20:15 22:14 23:19 31:14,17 31:21 33:25 39:4 40:17,18 41:3 44:25 45:24 48:7 58:21 59:2 60:21 61:25 63:18,23 66:19 66:25 67:25 70:25 73:15 78:6,21 81:4 88:7 91:1 98:7 102:16,17 109:20 110:9 112:8,14,14,15 112:20 115:9 119:5 122:21 124:14,22 125:13 127:3,12
--	--	--	--	--	---

O

O 1:1,1 4:1
O.J 218:12
Oak 196:3
oath 4:12,17 9:6
10:17,18,22,25
99:3,4,9 139:16
139:16,20
140:18,22
143:12 146:8,16
154:4,6,10,14
184:4,7,12
226:23,25 227:7
object 38:2 86:1
163:6,25
objection 38:9
117:7 163:8
164:17 165:11
165:13
objectionable
95:3 164:12
objects 37:13
obligation 106:25
obligations 211:7
observations
162:17
observed 31:16
obvious 100:11
obviously 70:24
124:2 126:7
128:8,10 130:5
130:9,23 131:20
133:12 172:22

128:14 134:1,8 134:16 140:13 143:12 144:22 159:8,8,21 162:8 163:10,17 164:2 165:16 169:3 170:24 174:7 175:6 176:25 177:6 183:15 192:19 195:12 196:3 197:10,11,20 198:19 201:7,21 202:12 203:11 203:15,22,24 204:15 205:14 205:20 213:25 216:6 218:11 220:14 221:13 224:24 225:19 229:3 236:17 238:10 239:11 241:10 out-of-town 244:11 outcome 62:12 outer 135:13 outside 1:13 5:7 48:19 111:16 123:16 outweigh 172:5 over 4:11 5:11 13:24 18:2 36:18 57:19 60:4,14 65:15 74:9 99:2 102:23 109:15 118:12,14,17 122:15 139:8,14 139:15 140:14 140:25 149:3 154:2 156:21 200:25 217:16 218:14 226:12 overview 165:13 overview 148:2 overzealous 156:16 own 16:2 69:16 134:7 161:11 166:3 170:8 172:18,24 176:11,12 185:25 206:14 239:11 ox 118:18	235:15,25 painful 23:22,23 pamela 3:8 137:23 138:16 panel 7:25 pans 218:24 parade 118:18 paralyzed 36:1 198:21 239:13 pardon 10:5 155:1 193:13 parent 203:12 parents 42:14,14 43:12 132:24 206:17 parole 63:4 paroled 63:3 part 13:21 15:11 15:21 16:10 26:24,25 27:9 28:5,7,8,11,17 40:8,12 58:13 86:2 105:11 108:1 113:9,12 113:23 114:4 115:2 123:13 142:9 192:5 193:17 220:12 228:21 238:5 241:23 participate 157:4 189:3 particular 173:4 175:6 176:19 185:15 187:22 194:20 209:6 particularly 67:21 155:18 178:17 217:14 parties 246:7,10 partner 180:25 parts 73:14 116:1 185:14 186:23 party 125:12 pass 7:13 18:2 44:25 51:6 121:14 139:5 172:10 180:15 180:21 213:3 224:1 243:11 passed 75:13,15 past 32:2 33:24 34:6,6 84:19 85:2,14,16 112:17 113:13 132:20 151:18 151:19 204:20 221:20 path 90:20 130:7 patient 148:6 149:12,13 patients 148:15 pattern 134:2 pause 94:7 99:13 125:4,22 pay 57:14,15,15 58:2,4 79:2 128:19 215:6 paying 57:21 173:16 peace 44:25	116:14 199:11 pen 115:19 169:10 penal 55:2 penalties 157:17 193:9 penalty 6:12,21 8:13,21,24 9:3,9 9:11,15,16,20 9:23 12:22,24 13:1,2,4 14:17 14:17 15:10,14 17:7,13 19:14 22:19 24:22 26:15 28:18 41:8 49:2 54:9 54:11,13,24 55:2,5,9,11,12 55:16 56:2,10 59:8,17,20 60:3 61:3 62:18 65:11 66:4 67:4 67:19,22 68:1 68:12,15 69:1 103:4,6,9 104:1 110:23 126:3 127:6 128:19,23 129:4,14,17 141:5,14 142:1 142:2,6,10,19 142:23 143:15 143:22 144:5 146:19,25 147:8 156:5,8 158:19 160:4 169:1,1 171:16 175:20 175:25 179:15 179:23 180:18 190:4,25 191:3 191:4 192:8,25 193:12 196:8,11 196:13,23 215:16 229:13 231:4,5 232:24 233:1 penalty-type 229:11 penitentiary 134:6 Penn 95:4,8 people 5:17 6:9 12:22 13:19 15:1,4,8 16:6 19:17 20:8,23 21:8 25:12,13 28:9,15,24 30:22 31:3,7,24 35:13 36:17 39:1 41:21 42:16,22 43:8 43:14 44:6,8,8 44:14 48:3 52:13,13 54:18 54:22 58:12,21 58:24 59:1 67:23 75:8 77:15 80:5,11 82:1 83:10 85:19 101:1,13 104:11 105:13 106:8,9 108:10	110:24 111:19 111:22,23 112:11,14,16 115:21 121:6 122:13 123:4 125:12,16 148:19 156:25 157:2,14 158:2 158:20 161:25 172:21 173:11 173:24,24 174:16 176:20 176:21 177:5 178:11,24 185:7 185:18 186:1 187:1,8 190:3 190:16 192:24 193:11 195:9 196:1,12 197:13 198:5,11 200:24 201:1,2,6,14,22 202:2 203:7 204:12,13 205:18,19,20 206:2,7,10,12 206:23,25 232:23,25 233:7 236:5,24 237:19 240:4 244:1,5 people's 112:5,12 185:19 190:18 per 156:22 perceived 122:24 123:1 perceiving 217:24 percent 49:7 79:1 83:13,22 84:2,6 84:6,6 85:7,7,11 85:12 percentage 83:10 83:17,21 84:5 91:5 percentages 83:11 perception 122:20 peremptory 3:7 3:12 94:24,25 136:5 181:20 perfect 24:9 165:20 170:22 187:15 perhaps 4:11 10:16 36:6 38:17 39:8 93:24 96:14 99:1 103:7 105:6 135:24 139:14 152:21 184:3 186:24 189:19 196:17 226:11 permission 137:22 permitted 104:25 person 9:10,11 19:1 20:2 24:23 25:11,21 28:12 28:12 30:4 31:10,15,16,21 33:10,22 34:23	35:6,9,22,23 36:6 44:16 48:1 49:8 57:4 62:19 65:10,22 67:24 86:16 91:9 92:5 94:14,15 103:16 103:22 109:7 112:7 113:12 119:2,9,13 121:7,8 123:6 131:16 145:15 145:16,21,22 146:17,19 147:1 147:5 149:22 150:3,9 159:23 160:23,25 162:4 169:13 174:9,13 175:12 176:17 179:14 186:7,8 193:2,3 194:24 195:22 219:14 234:11,13 238:9 238:24 239:8 241:10,16 person's 24:1 120:1 164:15 171:9 personal 44:11 88:14,20,21,24 89:2,9,15 101:17 110:24 123:22 129:10 129:18 191:9,12 229:18 242:4 personalities 112:6,12 personality 14:15 14:17 30:23,24 31:2 50:14 108:13,14,14,24 109:9 110:12 111:3,6,20,22 112:6,8 114:1 115:23 116:3,4 116:18,19 117:11 195:13 195:14,18,18 196:2,9 197:24 199:4 personally 8:21 38:21 100:8 104:15 122:14 124:25 129:16 156:23 175:1 185:23 190:10 persons 104:22 perspective 165:3 pet 49:24 50:1,9 Pete 178:8 Peters 95:2 petty 179:1,2 phase 14:8 30:16 32:13 33:12,13 82:14 103:18 105:20,23 108:6 160:21 163:11 163:11 216:10 230:24 231:16 231:18 232:21 234:9 phone 74:13 98:2	phonetic 177:14 242:19 phooey 233:18 photographs 159:6,19 phrase 88:14 104:8 108:20 163:8 physically 35:22 physician 149:6 physicians 149:12 pick 29:12,14 picking 121:8 picks 57:2 pictures 208:23 pin 167:10 place 2:15 36:8 100:19 118:5 120:14 130:24 186:2 240:23 244:15 places 101:9 198:20 plain 66:17 plan 97:22 215:12 215:20 plane 23:19 197:21 planned 28:23 100:13 240:4 planning 45:25 124:19,22 Plano 2:16 5:14 12:1 100:7,17 101:8 155:9 228:17 242:21 plans 102:21,23 play 82:14 129:1 145:19 159:8,20 played 218:11 players 216:24 playing 15:6 plays 163:10 please 11:2 20:10 37:12 65:13 78:5 81:13 99:10,15 123:10 151:11 162:5 220:3 225:25 227:9 244:12 pleased 144:25 pleasure 76:25 plenty 74:4 plural 84:13 plus 133:8 167:21 193:13 199:21 229:8 point 13:16 17:8 17:8 42:25 85:16 89:5 101:12 102:3 103:13 107:7 113:2,2 118:16 127:6 129:2,5,8 131:6 136:11 138:5 159:7 165:25 166:2,7 175:6 176:13 200:16 207:20 211:22 235:5 236:1,10 244:6
--	---	--	---	--	--

P

P 1:1 2:1,1 4:1
p.m 1:12
page 3:3,19 59:17
65:8 68:11
94:14 126:5
140:16 141:4
151:9
pages 59:12
paid 74:6 79:1
151:24,25
246:12
pain 148:22
185:19 218:22

poison 198:4	presentation	44:4 49:3 51:18	produced 1:16	212:6	88:7 92:14
police 20:5 35:23	209:18	52:5 55:3,6 60:3	27:15 186:9	proven 13:18	109:11,18 110:1
35:24 70:19	presented 14:3,4	60:20 61:4,5,6,7	product 58:13	27:2 50:20	112:3 113:9
144:14 164:1	14:5 17:4 19:3	63:7,8 65:6	73:19 83:3 85:6	142:10 146:2	118:17 123:11
174:7 198:18	32:6,23 34:22	67:13,14,17	85:8,11,12	147:1 216:3	128:3 129:6,8
204:7,7 239:11	50:24 159:22	72:7 77:25 83:2	218:10	220:22 221:18	132:1 146:10
policy 190:5	240:15	83:6,19 85:11	production 73:8	221:22	159:24 160:1
political 179:10	presenting	94:15 100:25	73:14 83:2 85:5	proves 34:16	162:5 167:15
201:14	101:15	101:2,3,4,8,25	productive	147:4 188:9	171:18 174:22
pool 150:20	Presiding 1:14	102:23 105:7,12	120:10	193:15	178:25 179:11
poor 6:13 16:6	press 25:17,18	107:11,21	professional	provide 187:2	179:13 187:11
41:25 43:8 57:4	prestemon 3:7	108:15 110:7	123:22	provided 55:17	188:7 192:15
88:5 120:14	98:19,23 121:22	113:11,13	progress 218:4	provides 55:2	207:23 208:15
158:1 174:14	121:23 125:23	115:24 117:19	224:16	215:20	209:6,13 210:17
224:25	136:19	117:20,24 118:3	prohibited	province 163:7	220:3 232:10
Poplin 95:4,8	presume 93:10,17	119:1 122:1	216:19	proving 188:25	240:24 244:15
popular 242:23	presumption	123:17 125:16	project 124:6,15	232:18	puts 107:12
portions 99:23	94:13,18 107:25	128:8 129:20	pronounce	psychiatric 29:24	putting 110:20
186:22 246:6	pretty 6:11 7:7	134:11 145:16	121:21	112:1	124:8 209:13
portray 105:19	35:24 58:22	145:17,22,24	pronounced 7:20	psychiatrist 30:8	231:8
posed 9:7	62:18 79:4 85:6	150:21 155:13	pronouncing	31:24 111:20,24	puzzled 149:20
position 21:3,6	85:8 87:18	158:8,14,22	140:5 153:11	112:25 113:1	
23:23 38:8	103:15 123:12	161:9 175:11,16	proof 32:14	204:9,10	qualified 30:4
54:12 101:18,22	133:14,17	179:18 187:20	105:24,25	psychiatrists	34:17,20 152:23
122:8 123:10	141:19 144:17	190:12 192:24	106:24 115:15	29:25 30:1,5,6	194:11 230:15
124:5 138:14	159:15,20	193:9 197:22	167:2 171:2	31:3,5	238:15 244:4
149:2 156:25	160:20 186:12	199:19,23 200:3	180:17 188:16	psychologist	quarrel 26:9
positions 142:1	206:17 221:15	201:1,12 204:13	proper 6:14	31:20	166:16 230:1
positive 48:2	prevent 191:9,12	204:14 215:25	62:22 111:15	psychologists	quarreling
possibility 9:1	previous 162:1	218:21 221:13	126:1 191:1	31:3	150:17
105:14 138:16	219:5 220:19,24	221:15 222:18	198:14	public 118:19	question 6:19,23
155:15 207:11	224:18	227:24 235:18	proponent 141:13	204:14	14:9,21 18:4
238:13	previously 221:6	241:11	propose 24:13	publicity 96:11	21:12 30:16
possible 45:16	prime 172:22	probation 66:15	proposition	pull 16:9 20:9	31:25 32:5 33:9
118:2 171:8	Princeton 74:15	169:11,14	189:19	66:25	33:15,22 34:9,9
175:5 180:6,8	74:16 76:20	probe 219:25	propounded 4:13	Punching 218:25	34:13,15,20,22
180:10,12,13,14	prior 66:8 67:4	problem 5:22	184:8	punished 203:22	35:7,15,18
possibly 37:22	67:24 140:18	27:8,25 28:2	prosecuted 78:14	punishment 8:24	37:13 39:13,18
148:23 149:12	222:8	39:20,22 43:2,2	78:15 218:15	9:16 14:8 18:21	39:19,19,21,24
149:16 151:2,3	prison 14:19,19	57:14,16,22,23	prosecuting	23:3,9 28:5,6,13	40:4,6,7,11,12
168:11 176:8,8	55:17 62:14,19	58:7,12 68:3	154:24	30:16 32:13	40:13,14,15
239:7	63:6,9,11 79:8	71:4 106:19	prosecution	41:9 81:11	41:6,8 61:22
Post 211:12	79:11,18,19	107:7 113:1	11:12 99:20	82:14 92:20	62:4,10 65:8,20
213:14	80:8 111:7	127:20 138:7,8	215:6 220:23	103:14 104:3,12	68:11 69:14
potato 200:25	119:12 133:25	141:24 157:11	prosecutor 5:6	108:6 117:7,8	79:6 84:16
potential 196:24	143:1,4,6,10	161:6 164:3	11:13,15 16:19	126:3,9,15,21	85:19 86:1,3,14
potentially 38:7	215:16	185:2 189:5	64:25 105:7	126:24 127:1,13	86:23 87:12,17
practical 219:7	prisoner 15:18	211:18 212:25	106:1 121:3	127:18 128:3	87:17,22 89:9
practicality 55:14	prisoners 141:15	215:7 239:24	128:14 228:2	129:5 141:1	90:6,7,8,14,15
practice 12:1	prisons 17:15	241:2	prosecutors 5:5	146:9 160:21	90:22 91:19
practicing 5:14	141:16 142:19	procedure 115:10	15:12 25:13	163:11 169:6,7	92:5 108:7,8,8
practitioners	privacy 190:18	210:14	64:15,20 65:2	169:9 180:6,10	108:10,12,12,15
100:6,6 228:16	private 12:1	procedures 111:2	99:22 147:18	189:20,22 190:2	108:17 109:2
predict 85:8	155:9 228:16	proceed 27:7	154:24 156:15	190:21 193:17	110:10,19 111:2
108:11 195:11	privilege 69:17	99:14 136:11,12	156:17,22	193:18 215:15	111:11,15,19
predicting 85:14	pro 125:10	138:4	prospective	215:19,24 216:5	112:23 115:2,5
108:21	probability 30:17	proceedings 1:12	142:15	216:9 230:12,13	115:11,13,15,22
prediction 243:23	82:18,21,24,24	1:13,15 94:7	protect 19:15	230:24 231:16	116:6,8,8,9,12
predictions	83:3,10 84:7	99:13 125:4,22	prove 28:1 39:21	232:21 234:9	116:16,20,21
124:18	85:7,20,23	246:7,10	39:24 81:24	purpose 20:12,13	117:5 120:21
prejudgment	115:13 166:22	process 13:21	82:2,7 107:10	199:17	121:4,5 128:25
161:13	217:2,3 220:20	14:23 15:18	145:4 160:3	purposes 10:10	129:15 137:9
prejudicial 37:20	237:3 241:7	16:10 112:19	161:1 166:24	pursue 15:22	142:8 148:24
preparation	probable 32:18	127:16 130:20	168:5,15,18	push 126:17	151:8 156:1
246:12	probably 6:23	130:22 155:19	186:12,19 187:6	put 23:21 27:12	160:5 165:1
prescribed	8:23 12:6 20:2,2	185:6 186:18	187:9,12,13	27:13,13,14	166:4,8,8,18,22
173:12	20:21 22:9 25:2	227:23 229:15	188:17,19,22	28:16 32:12	166:25 167:1,2
presence 1:13	25:5 28:12	229:23 231:11	193:16 212:1,3	50:8 52:16	167:7 170:3,4,6
present 4:5 14:4	29:16 31:20,20	238:3,5 241:24	proved 21:4,5	60:18 62:16	170:6,9,16
32:3,8 104:22	32:8,8 33:25	produce 158:24	26:4 40:8	70:5,6 76:21	171:2,7,17
195:12	36:1 42:9,18	171:4 186:11	106:22 159:15	82:19 83:17	

Q

175:2 176:4 178:10 191:8 192:1 193:24,25 193:25 194:1 195:4,5,9,10,17 195:23 196:11 196:17,18,20,21 197:2,23,24 198:8,15 199:3 199:6,7,8,11,15 199:18 200:20 207:4,5 217:1 218:18 219:10 222:7 224:21 225:11 233:25 234:1,1,3,5,8,19 234:20 236:12 236:22 237:1,15 237:19 238:23 240:14,16 241:9 241:16 242:12 questioning 38:3 questionnaire 5:19 6:7 59:10 59:16 60:21 62:20,25 65:7 94:14 103:5 125:6,21,24 140:12 141:4 145:1 146:10,16 156:16 190:23 191:8 209:7,18 225:9,14,17,19 229:4 245:5 questionnaires 128:14 142:14 questions 4:13 5:1 7:10 8:6 9:6 11:6 14:24 15:6 21:5 23:4 25:14 28:13 29:6,20 29:20 41:2 47:7 47:12 51:16 61:11,25 63:10 63:15 92:13,16 93:19 97:7 99:4 99:16 103:19 116:23 121:12 126:21 127:1,5 130:23 135:20 139:17,22 140:3 141:4 152:18 154:7,17,19 170:2 181:10 184:8,16 193:21 194:4,5,8,12 195:2,3 207:9 209:11,14 212:15 213:5 215:2 216:7,18 216:22,25 223:20 224:2 227:3,10,13 228:22 229:12 229:17 231:2,15 232:22 233:4 243:10 244:12 quick 148:2 185:4 quickly 222:24 quiet 80:5 quit 77:13	quite 12:24 57:8 59:19 68:22 73:22 75:24 133:2 175:4 207:25 240:19 <hr/> R R 1:1,1,1,1,1 2:1 4:1 213:23 radio 55:3 96:19 railroad 16:7,8 railroading 231:16 rain 83:14,15 84:2 raining 84:1,3 raise 206:16 Ranch 124:12 range 169:9,9 230:12 rape 143:17 144:6 151:19 191:22 192:14 rare 188:20 rarely 25:5 Ratchet 153:2 rather 13:9 40:19 40:24 110:22 185:6 186:2 195:11 206:16 217:9,12,13 230:12 233:5 rattles 198:21 reach 107:6 166:2 reactions 173:7 read 14:12 40:5 67:6 76:13,15 76:22,23 77:6,7 116:10 127:16 130:16 132:15 140:18 144:13 146:15 159:5 170:5,15 195:6 199:12 234:2 readily 224:11 225:14 reading 76:19,20 141:20 212:23 ready 4:24 180:15 182:24 183:18 real 20:6 27:8 43:1 50:13 53:15 54:1 58:9 59:9,22 114:19 124:4,6 155:18 174:9 175:2,3 186:16 198:17 201:10 204:1,2,3 206:23 208:10 219:11 222:2,6 244:9 realize 35:11 58:11 179:24 219:14 really 13:17 15:7 17:8 22:19 25:21 27:1,3 30:9,22 32:3 36:12 39:17 40:15 42:18	43:10 46:20,20 46:25 47:1,20 60:15 62:25 64:13 68:7 69:3 69:9 70:6 74:8 75:1 76:19 80:9 80:16 81:2 93:2 93:5 102:14 103:1 104:13 116:25 124:21 125:21 129:5 130:13 131:23 134:8 135:18 145:12 146:22 158:14 161:2 165:16 166:5 167:22,22 176:18 178:6 184:21 189:21 196:5 203:6,6 209:12 210:13 219:16 222:14 222:15,20 225:1 227:20 235:14 235:20 239:19 243:17 reason 6:6 19:20 23:5 26:25 36:7 45:17 50:17 73:24 94:17 103:8 120:7 122:10 123:9 125:6 129:6 151:10 161:11 163:1,18,21,24 168:14 209:6,7 reasonable 13:18 21:4 26:5,11,16 26:19 27:2,16 30:14 39:22 40:1,9 82:9 86:20 107:7,15 108:5 115:5,12 115:16 146:2 147:5 161:1,3 162:14,15,18 163:4,14,19 164:5,15,16,24 164:25 165:4,18 166:3,11,17,18 166:25 167:15 168:1,5,7 186:20 187:6,9 188:9 193:16 220:23 232:2,18 reasons 162:23 167:16 173:11 190:4 211:3 225:2 recall 4:11,14 7:25 10:16,20 11:16 99:1,5 137:19,20 139:14,18 140:12 142:7 154:2,5,6,8 159:10 184:3,9 226:25 228:17 receive 6:13 65:10 67:22 recent 220:9	receptive 158:23 recess 137:3 182:20,23 183:17 recognize 26:16 135:6 220:11 recognizes 9:8 recollection 138:8 reconcile 126:8 127:24,24 record 1:7,16 4:4 10:10 66:8 67:5 94:24,25 137:16 137:17 138:14 152:25 153:1,8 224:14 246:8,9 246:12 rectify 173:23 red 130:17 164:2 reeder 3:10 137:5 137:7 139:2,12 140:5,8,11 151:9 153:4,6 reference 37:19 reflect 94:25 95:1 224:14 reflects 90:9 246:10 reforming 133:19 refresh 234:2 regard 96:2 137:7 139:17 154:7 161:25 184:8 regarding 141:1 142:1 143:1 151:13 Regardless 9:25 regina 3:14 183:21,24 region 56:9 regular 168:13,21 169:3,8 188:18 rehabilitate 182:17 rehabilitating 133:19 reintroduce 227:25 relate 43:5 192:1 related 12:12,15 12:17 relation 12:11 relationship 187:3 relative 36:16 118:20 relatives 96:2 171:10 release 138:17 released 225:24 relieving 235:24 religion 47:15,19 religious 130:2 191:9,11 192:3 rely 71:23 remain 70:21 remaining 95:5 remarks 5:18,21 remarried 243:2 remember 5:8 12:7,7 80:23	102:14 115:6 118:12 133:3 145:14,17 155:1 211:24 226:11 226:13,22 remembered 79:8 remorse 88:23 89:3,10 remote 12:6 removed 80:15 render 18:25 131:1 219:10 222:12 229:17 rendered 62:1 109:4 Renew 164:17 renfro 1:18 246:5 246:18 repeat 6:19 133:23 repet 133:21 repents 133:25 report 112:20 162:20 186:13 reported 1:15 159:14 246:8 reporter 1:19 242:11 246:5,19 reporter's 1:7,16 3:20 246:1,7,9 246:12 reports 159:5,14 159:19 represent 57:4,10 57:13 215:5,7 representation 215:12 representatives 104:25 representing 5:12 11:11 64:8 99:19 reproduced 115:10 request 15:25 95:10 requested 246:7 require 180:17 187:8 required 227:1 requires 108:11 108:12 187:14 requisite 199:6 rescue 150:25 rescued 120:10 150:20 research 17:15 53:15,17 76:9 reservation 221:4 reserve 101:24 resist 194:23,24 respect 5:23,23 5:24 30:6 37:14 37:22 38:3,5 78:5 81:11 89:25 141:2 178:9,11,12 179:7 216:9 220:12 respected 77:15 respectful 186:6	respective 246:10 response 37:24 127:5 responsibilities 147:23 responsibility 16:14 88:18,21 88:22 89:10,16 124:5 responsible 8:20 36:18 44:14 45:22 118:11 124:7,15 158:17 rest 192:16 199:6 result 6:22 8:9 24:14 29:7 41:2 63:21 120:11 150:5,6,10 180:18 187:10 191:13 194:5,9 194:20 218:13 240:17 resulting 126:1,7 191:1,21 results 160:19 retarded 177:8 rethink 124:21 retired 73:10,23 242:25 retribution 37:24 return 62:21 82:10 126:1,6 142:4 143:9 191:1 214:8 returning 191:12 review 63:9,10 rig 63:17 194:3 right 4:2,19 6:2 7:2,9 10:3,8,22 11:2,2,4,13,22 12:4 13:5 16:22 17:17,20 18:15 24:13,21 25:9 27:18 30:7,11 33:11 35:21 36:8 37:9,11 38:6,9,11,13 39:15 41:3,16 41:17 42:10 45:10,13 47:21 49:7,7 50:20,22 50:25 51:2,7,9 51:22 52:21,22 54:21 57:3 59:16,25 60:9 60:10,23 61:24 62:7,14 65:5,20 66:18 68:8,10 68:10 69:5 70:17,21 72:10 72:19,22,22,24 73:11 74:2,22 75:21 76:6,8,17 76:18 79:5 80:4 80:20 87:17 89:5 91:3,12 92:11,11 93:10 93:21 94:2,20 95:15 96:14 97:14 98:4,6,8 98:17 99:8,10
--	--	--	---	--	--

100:22 102:19 103:20 105:9,20 106:4,11,15,16 106:16,17,17 110:15,21 113:4 113:15,23 114:22 115:9 116:25 120:22 121:15,24 122:18 123:7 124:23,23 125:19 126:11 126:22 128:1,1 128:6,12 129:9 129:11,13 134:23 135:9,23 136:7,13,18 137:4,11,15,18 137:22,24 138:15,21 139:1 139:4,23,25 140:10 142:13 142:15,22 145:14,23 146:21 147:12 148:7 150:24 151:1 152:20 154:10,13 155:11,15 156:2 156:3,6 157:3 157:11,25,25 158:3,3,9 159:7 161:14 163:9 165:8,15 167:5 167:8 170:19 171:8 172:10 180:22 181:8,21 182:13,14 183:2 183:6,9 184:12 184:12 186:4 187:7 188:6 189:2,4,11 191:4,19,24 192:22 193:21 195:12 200:17 202:1,8 203:19 204:12,22 205:2 206:18,19,21 208:7 210:8 212:7,19 214:11 214:17,21 215:10,25 216:3 216:9,12,15,16 217:9,10,17,24 218:2,3,5,21 219:23 220:10 220:14 221:13 224:6 225:23 227:2,9,12 228:1,1,3,19 229:14 230:3,5 230:6,8,14,18 230:25 231:6,21 231:25 232:4,7 232:13 233:2,6 233:14,24 234:13 235:4,14 236:9,15 237:10 237:24 238:8 239:18 242:5 243:1,3,16	righteous 107:10 121:4,6 231:23 rights 104:22 147:21 Ringling 49:17 Rip 197:18 rise 137:2 163:14 182:22 245:8 rises 189:21 risk 119:11 River 210:1 rivets 109:13 RN 148:1 road 179:14 robber's 164:1 robbery 82:5 robbery/homicide 180:13 robbing 54:25 Roberts 76:18 Rochester 177:15 role 190:6 romance 76:18 room 58:21 223:18 224:19 228:1 232:23,25 rooms 24:4 177:14 Rose 178:8 Rottenchester 177:21,23 rule 48:4 ruled 106:3 ruling 165:11 rulings 58:15 run 101:14 124:4 running 45:5 124:10 rural 101:10 211:15 S S 1:1,19 2:1,8 4:1 246:20 sad 41:24 43:6,10 46:23,25 47:1 171:9,11 200:12 200:14 201:16 201:16 206:15 sadness 43:14 safe 172:17 197:24 244:18 sailors 120:6 salary 79:1 same 18:13 22:22 29:19 32:19 34:19 35:14 54:18,20 61:2 64:18 67:17 75:6 85:5 101:6 106:2,16 113:20 115:14 141:10 141:11 159:1 166:17 167:5 171:1,3 187:11 190:7 191:7 193:8 194:24 200:13 211:16 220:11 233:21 235:17 241:1 San 134:22 135:1	135:13 Sandoval 1:14 Sandoval's 212:22 satisfied 27:16 saved 120:6 saw 164:1 207:5 233:16,17 saying 9:22 15:3 21:7 22:18 28:15 31:12 32:14 35:4 38:25 45:17 48:16 66:6 69:25 71:25 72:1 81:13 85:12 86:14,15 104:9 105:8 110:13 115:16 122:16 130:13 147:20,22 158:8 162:4 165:7,8 166:1 169:23 172:2,6 174:19 176:25 188:3 194:19 205:5 210:11 219:7,8 219:11 220:15 236:20 237:6 240:5 says 13:17 34:12 34:14 41:8,12 48:23 49:24 50:1 59:20 65:9 65:9,13,15 68:11 69:15,15 70:18 81:25 83:13 86:3 89:14 94:2,4 117:13,18 121:8 128:4 136:2,4 151:11 160:13 163:17 186:3 188:1 199:18 203:18,24 210:18 211:21 224:6 229:21 230:20 235:8 244:3,3,9 SBOT 2:3,4,5,12 2:13 scale 163:23 scales 27:14 107:6 171:18 188:8,10 scalp 239:16 scared 84:24 scares 61:3 scenario 123:17 schedule 244:21 scheduled 227:18 244:10,11,19 scheme 8:4 54:21 55:15 school 4:22 78:10 135:8 201:4,7 schools 115:25 schultz 2:3 4:24 5:2,5 7:6 10:10 11:4,5,7,10,21 11:24 12:20,21	22:14,16,18 38:14,15 51:6 61:24 82:17 85:25 90:5 91:6 92:12 94:3 99:11,14,17,18 100:2,5 121:14 136:3,15,25 137:8,17,19,25 139:23,24 147:13,14,16,17 152:9,10,18,23 154:18,20,23 155:8 163:16 164:13,23 165:12,18 166:10 178:8 179:5 180:21 181:15,19 182:10,18,25 184:13,14,17 210:10,11 213:2 215:4 216:13 228:4,6 science-type 186:25 scientific 159:19 186:13,23 scope 196:12 Scout 113:17 screaming 45:5 scrutinized 81:10 scumbag 134:8 se 156:23 seat 4:19 153:23 seated 3:6 11:2 99:10 139:21 184:12 227:9 228:1,3,7,10,13 second 24:9,10 26:25 28:17 33:3,12,13 34:8 42:15 79:21 80:7 94:5 103:18 105:20 113:9,23 114:4 116:9 123:14 137:20 139:8 143:5 170:4 193:25 194:1 218:19 seconds 137:13 sedating 197:19 see 8:19 9:15 14:14 15:8,9,11 15:14,17 17:8,8 17:11 26:23 27:23 28:11,19 29:23 30:16 32:3 35:10 36:9 36:19 38:13,19 38:21,22 39:12 40:20 43:6 46:9 47:5,8,12 48:12 50:24 56:18 59:20 70:3 74:10 77:23,23 82:21 84:8,13 84:15 91:15,15 92:2,4,21 96:18 96:19 98:11,14	103:11,11 105:10 108:7,16 111:25 112:22 113:5 115:15 118:9 119:23 127:20 130:15 130:17 136:16 137:1 147:22 148:19 149:20 156:18 159:6 160:21 161:15 161:16 162:4 164:11 166:8,21 170:17 171:12 179:11,14,15,17 188:8,12 191:20 194:16 197:13 201:16 203:14 205:1 207:6 236:19 237:6 239:16 240:12 242:4 244:7,18 245:2,6 seek 15:14 55:4,9 55:11,16 56:2 56:10 67:4,18 seeking 54:11 128:10 seem 12:7 17:17 27:9 30:7 42:19 42:19 105:17 107:14 147:20 149:22,25 150:11 180:3,6 180:10 198:7 205:6 seemed 116:23 174:13 seems 71:25 75:4 133:21 159:22 170:16 188:3,4 192:1 193:6 195:10 206:20 seen 12:9 65:7 82:19 128:14 149:18 156:21 156:22 159:5,7 159:19,19 161:25 186:23 218:11 241:25 242:2,3 sees 103:11 203:14 selected 102:11 selection 187:7 self-esteem 43:2 selfish 125:6 send 141:17 sending 16:6 sense 8:25 14:6 16:24 18:6 26:20 27:9 31:22 32:21 41:4,13 55:18 55:19 56:3 66:10 92:8 110:21 116:4 120:2 127:15 150:1,7 157:19 167:3 168:3,22 172:2 174:20	190:7,14,23 193:7 194:14 195:19 196:15 198:9 202:13 205:3,15,24 230:21,22 233:5 234:12 235:12 sensible 121:7 198:7 sensitive 217:22 sent 131:4 201:4 sentence 7:1 8:9 8:11,15 13:20 14:22 19:5,6 20:25 27:4,5,5,7 29:7,11,12,14 39:20 40:24,25 50:20 62:1 66:14 87:15 90:20,23 91:17 91:18 103:18 116:7,24 117:1 119:20 128:10 131:25 142:5 145:1 160:21 171:8,12,15,21 171:22 172:1 192:12 194:2,8 194:10 196:20 196:21 201:19 202:6,7 205:1 212:10,11 240:17 sentenced 6:8 sentences 18:22 18:23 sentencing 8:4 81:7 separate 9:20 28:3 72:17 85:20 86:4 123:5 220:14 separating 221:5 September 1:12 37:17 73:10 100:16,23 124:17 sequence 184:22 serious 48:10 51:4 59:4,5,6,9 59:22 64:9 148:9,10 172:13 172:14 196:5 seriously 16:17 16:19 seriousness 148:13 serve 95:16 97:22 102:3,4 123:9 175:24,25 176:3 209:8 served 105:10 134:17 service 39:2 99:24 105:11 136:21 142:15 158:7 182:7 204:14 serving 131:21 set 6:14 81:8 111:13 163:22
--	--	---	---	--	--

178:20 198:3 219:5,7 220:6 220:19,24 223:3 240:1 set-back 224:15 sets 178:22 setting 224:17 234:8 Seven 53:5,6 several 52:3,10 104:21 severe 104:3 sexual 55:1 shadow 26:8 shafts 22:13 Shakes 63:22 223:21 share 78:7 shared 134:12 sharing 61:1 sharks 197:21 sharp 201:10 she'd 138:2 224:17 shed 152:7 shelter 20:7 sheriff 105:6 shiftless 45:12 shine 83:16 shocked 219:17 shoot 23:18 109:17,24 197:17 198:3 shoot-out 239:12 shooting 204:24 shoots 204:1 shop 125:18 short 7:7 110:11 244:9 shot 35:24 36:20 126:25 144:22 204:24 225:4 239:12 show 29:10 113:17 232:12 showed 22:22,24 shows 18:11 22:21 114:20 120:22 Shultz 151:8 sic 45:6 54:19 66:15 77:20 110:25 118:1 168:21 186:6 207:24 208:15 209:12 sick 235:14 sickness 44:10 side 16:20 17:12 17:22 32:12 70:13 107:6 113:8 114:7,16 114:16,25 129:2 132:17 158:24 159:2 163:3 179:16,16,19 181:16 199:25 244:18 side-bar 137:25 sidebar 36:25 138:3 139:7,9	181:18 sides 4:14 29:24 32:8,24 64:6 70:14 72:4 103:21 158:22 182:24 183:18 185:12 227:4 245:7 sign 233:22 signature 140:16 140:17 significance 131:11 signing 140:19 signs 233:15 silent 70:21 similar 29:21 52:7 128:15 simple 168:20 simply 9:22 Simpson 218:12 since 20:20 27:3 37:24 60:20 74:1 77:2 79:23 111:19 124:10 133:20 140:24 185:8 190:24 207:17 209:17 209:21 222:18 single 121:8 sir 7:14 12:20 99:8,18 100:4 121:12,18 135:20,22,24 136:20 139:3,6 147:14 165:14 183:8 184:6 190:15 192:4,7 195:20 207:10 209:20 211:4,15 212:2,4,9,13 214:10 216:8 217:8,25 219:2 223:23 226:1 sissy 201:2,6 sister 38:19 74:21 131:19 132:14 sit 9:3 18:15 25:22 27:11 37:25 72:3 81:10 151:10,12 153:19 189:2 218:14 219:3 221:14 239:17 sits 216:3 sitting 15:9 57:18 57:19 130:21 179:11 189:14 191:10 203:11 215:23 228:21 240:12,13 242:7 situation 9:20 15:23 39:10 42:3 67:19 101:17 102:1 116:3 170:11 199:22 208:11 209:2 218:21,22 218:25 239:1,4 situations 101:14 167:6 180:4	198:14 234:10 six 57:19 75:18 198:20 209:21 228:21 skilled 203:5 slamming 218:23 slate 96:25 sleep 23:21 109:15 110:1 slice 125:7,14 slightest 161:8 162:12 small 12:8 42:13 49:20 72:13 178:6 190:20 smoked 88:9 smothered 149:17 sneer 203:15 Snow 66:2 so-called 116:22 society 14:15 16:21,22 17:20 19:18 20:4 22:20 23:3 30:20 31:1 39:2 40:11 58:14 82:23 84:15 85:22,24 90:18 100:22 101:19 103:9 106:2,3 107:11 108:20 108:24 109:4 111:6,7,15,17 116:2,4 120:10 120:14 133:16 157:6,9 172:23 189:21,24 194:17 195:16 197:22,25 198:4 200:6 203:21 204:12 206:20 217:4 237:5,6 240:21 society's 102:16 soil 78:18 solely 28:19 65:11 188:16 233:4 some 5:7,17 13:5 13:17 14:6 15:1 25:7,12,13,17 26:7 31:24 35:4 35:13 36:19 39:13 41:10,18 41:23,25 42:16 43:14 44:6,25 47:23,23 48:10 51:16 53:8 58:12,14,15 61:6 62:21 71:14 74:8 82:5 83:10,12 88:22 88:23,23 90:14 91:15,15,16 92:16 99:23 100:19 101:9 102:8 104:8 105:5 108:10 109:17,18,19 110:1,1,8,10 111:11,19,23	112:4 113:11 114:5,9 118:16 119:18 120:23 122:15 125:20 125:25 126:6 134:7 138:5 139:22 140:24 143:2 145:12 151:22 154:17 155:13 156:9 159:6,18 160:13 162:17,20 163:18 164:25 168:14 170:17 170:24 171:6,10 171:24 172:4 174:13,14,14 176:20 177:5 186:14,21,23,23 187:1,5,18,18 187:19 188:2,3 188:4,18 189:23 190:3,16,25 191:15 192:25 193:3,11 194:7 195:8 197:7,20 197:23 198:11 198:13 200:6,22 202:15,24,24 205:8,17 206:2 206:10,10,23,25 208:9,22,23 209:14 211:22 217:12,21 221:12 225:14 242:3 244:1 somebody 9:17 16:4 17:2,3,4,11 19:24 22:21,22 22:24 23:7 24:5 31:9,14,17 34:14 35:16 36:15 38:17 39:9 42:1 43:6 44:2,24 46:21 54:25 57:2,2 58:2,11 66:17 68:17,17 69:7 72:1,13 85:16 89:17 101:16 105:14,15 118:9 119:2,17 126:21 126:23 128:9 131:4 143:21 146:6,17 149:1 155:23 157:4 159:9 163:3 169:13 173:4,16 175:8 176:13,24 190:18 192:13 192:13 193:11 198:22 199:25 202:10,17 203:16,23 207:2 219:12 235:14 235:21,23 239:25 240:20 241:5,24 somebody's 82:4 158:16 somehow 20:7	42:20 106:13,22 109:22 122:15 170:24 193:12 someone 8:20,23 9:15 28:18 32:17 38:20,21 38:22 48:23 52:12 79:9 87:5 142:10 145:4 234:6 237:11 238:4,13 someone's 239:10 someplace 206:24 something 12:8 14:7 17:10 18:13 20:10 21:13 22:3 23:8 31:2,4 33:23 46:9,23,24 47:16 48:18 49:21 54:5,7,18 54:19,25 65:23 66:15 67:12 68:20,21 69:10 70:24 73:17 80:21 83:6 93:2 96:20 101:11 102:16 104:19 111:13 119:9,20 120:19,25 122:7 123:19 124:2,14 132:2,4,14 136:16 145:25 149:3,15,17 151:6 156:12 159:10,13 160:12 162:6 164:11,14 167:14,18 173:7 176:16 180:1 192:12,19 193:14 205:25 209:17 218:2 232:7 238:6 242:17 244:7 sometimes 13:11 13:13 17:19 24:3 35:21,21 43:21,23 45:12 47:20 48:5,14 48:14 67:2 101:14,15 148:19 168:12 186:1 187:19 somewhat 67:14 75:18 76:11 83:2 somewhere 102:22 118:14 son 74:18 76:1 118:20 119:18 soon 101:25 sooner 136:23 sorry 6:24 7:22 18:22 42:5 49:14 89:18 107:20 125:23 137:8 140:1 148:17 152:8 153:6,14,22 163:5 170:10	174:9 175:23 180:23 181:22 210:8 214:17 226:6 229:24 240:2 242:10,15 243:8,9 sort 39:3 40:25 80:9 101:17 119:14 156:17 157:14 195:10 195:23 204:22 215:16 218:25 sorts 19:16 101:4 185:20 sound 142:20 179:1,2 sounding 102:12 sounds 69:18 102:8 162:5 169:17 200:6 217:5,13 space 214:3,15 spanking 72:24 spare 120:1 speak 63:23 133:13 158:24 239:23 speaking 146:13 155:2 159:21 162:13 198:3 special 8:6,8 14:9 19:4 36:13 80:20 117:21 146:21 163:10 163:11 164:16 166:21 220:13 222:11 224:16 224:23 225:4 specialists 5:14 specific 141:3 177:2 219:10 230:12,13 specifically 37:15 226:22 spectrum 142:2,4 143:2 speculate 122:25 speech 201:14 speed 233:15,22 spend 25:8 62:19 63:2,3 spent 78:24 120:15 141:15 142:19 spill 5:7 spine 198:20 239:13 spiritual 199:12 splash 29:4 split 26:22 162:11 spoke 5:8 11:16 215:3 sports 101:3 178:20 179:3,6 179:9 201:3 spot 92:14 144:24 spouse 111:12,12 Square 118:18 squirrel 209:25 squirt 109:19 staff 123:11
---	--	--	--	---	---

stalks 203:25	206:17	104:1,14 191:3	195:23 202:21	155:4 189:15	60:16 69:6 93:3
stand 51:21 97:1	stays 106:24	225:9,11,11,12	202:23,24 203:2	218:15	102:24 108:16
97:5 109:14	Stenotype 1:15	stronger 162:13	242:14	tables 12:3	108:21 113:10
159:11 223:7,10	step 4:3 37:2	strongly 9:10	supposed 46:5	tactical 70:8	135:15 166:5
224:14	93:24 95:11	145:2,3,20,21	93:17 97:6	107:5	173:16 179:20
standart 26:11	97:7 98:20	studied 197:12	124:20 183:11	take 7:14 9:6	202:20 206:3
26:16 107:12	135:23 136:22	study 25:2 92:2	Supreme 58:15	16:17,18 19:18	215:14,15,23
115:14 166:12	152:20 183:12	studying 53:9	70:19	19:19 24:9 40:4	talks 59:17 69:14
232:3	198:13 224:4	stuff 19:24 22:13	sure 6:5 8:10 9:2	48:16 50:18	108:21 111:20
standpoint 128:8	225:25	31:7 49:18 76:7	17:19 24:25	51:4 60:25	200:2
128:9 132:22	step-down 148:12	76:15 81:5,22	25:2,6,7,7,9	65:20 89:24	tall 198:19
stark 3:13 183:1	stew 200:25	111:5 114:14,15	26:3 27:15 32:7	90:15 91:14	target 102:8
start 19:25 65:15	stick 24:1 50:3	115:25 118:3	32:24 36:24	101:6,7,18	taunt 203:16
72:1 96:24	61:11 84:25	120:4 130:12	41:20 43:13	102:16,17	taunted 201:1
100:10 102:6	197:5	200:7 201:17	44:4 46:5 50:19	104:16 112:21	tax 141:14,14,15
183:13 210:18	sticks 84:23	stupid 79:3,4	57:25 59:16	116:10 117:15	142:19 178:15
243:22	still 4:17 6:14	84:25	60:19 62:11	117:18 118:9,25	192:16 214:8
started 76:19,20	10:25 16:20,21	subject 4:17	64:5,6 66:15	121:7 128:15	taxpayers 57:14
77:12 84:3	19:7 32:13 35:7	10:25 71:13	69:24 72:2,5,6	170:5,11 171:3	57:21 141:23
131:12 169:3	35:18 39:8	99:9 139:20	72:12 73:15	173:19 182:11	231:10
215:21	45:21,22 62:18	151:12 184:11	74:8,13 77:11	182:18 188:7	teach 31:25
starters 6:3 28:7	65:22,24 89:22	196:8 217:6	79:8,15,25 81:3	192:16 195:5,8	tearful 224:15
starting 92:7	99:9 102:8	227:7	81:16 88:10	198:5 199:12,15	tearing 222:21
starts 44:23	104:12,13	subjects 217:12	89:21 92:3	202:3 204:4	technicality 203:7
state 1:3 2:2 3:3	131:20 139:20	submit 243:14	101:13 102:22	206:9 219:8	technically
4:5 6:4 11:11	141:7 148:25	subparts 111:17	103:6 106:3	229:20 230:19	162:13 236:24
14:3,3 17:3	149:10 150:4	substantially 9:4	109:21 119:24	231:7 233:12	tedious 208:10
18:16 25:20	154:14 159:11	222:10 224:22	125:3 126:17,19	235:23 236:3	teen-ager 161:19
32:13 34:16	169:7 179:20,21	substitute 88:20	130:8 132:23	take-one-more-lo...	teen-agers 205:24
38:10 40:8	184:11 190:9,13	194:21	138:7 140:12	40:6	Tel 246:21
54:11 55:4,7,16	204:11,15	sudden 60:9	141:19 147:24	taken 137:3	telecommunication
56:8 64:6,10	210:12 227:6	178:11	150:15 152:14	171:11 182:23	73:13
65:9 67:3 78:15	236:6 240:16	suddenly 20:9	152:16 155:24	183:17 188:8	Telephone 2:9,16
94:2,23 99:19	242:6 243:6	169:2	156:20 158:10	235:10 239:10	television 156:19
102:15 106:24	stole 78:9	suffer 206:9	160:6 167:23	takes 15:18 25:9	tell 7:12 18:24
110:20 113:10	stone 198:3	229:23	170:22 175:23	235:9 236:7	20:12 22:23
114:13,17 127:9	Stonebridge	suffering 185:19	184:22 186:14	taking 39:12	23:23 25:21
136:2 143:21	124:12	sufficient 27:15	189:9 196:22	40:20,21 82:5	31:20 37:4 42:5
144:3 147:4	stop 29:10 68:24	40:24 41:12	204:1,23 215:24	117:13 173:4,11	43:16 61:17,21
154:17 166:17	71:19 158:1	90:21 91:2,5,7,8	218:20 222:3,6	174:18,23 206:3	70:20 72:23,24
168:15,18	174:3 213:11	91:17 106:7	223:1,13 233:16	231:10,17	73:9 88:16 91:4
170:23 175:20	stopped 134:2	107:15 117:9	233:17,17 235:8	talented 101:16	93:2 95:21,23
179:21 183:1	store 111:11	119:22 120:16	240:22	talk 14:9 17:1	97:18,21 106:15
186:16 187:8,10	stores 115:25	120:20 121:5	Surely 151:5	19:13 26:8 33:2	114:3,13 123:3
187:12 188:17	stories 173:10	171:7,11,20	surface 217:20	34:8 42:15 47:8	123:21 125:16
193:14 220:11	198:19	172:1 201:18	surprise 156:14	47:15 60:4	128:20 130:15
221:16 224:2,6	story 70:13 72:18	202:7 204:25	156:24 209:10	74:12 81:5,12	130:18 131:10
224:7 225:15	72:18 178:13	207:7	surprised 222:20	92:20,22 96:1	133:3,5 136:18
232:17 246:2,5	204:8	sufficiently 92:2	222:21	105:22 112:16	136:22 139:16
State's 3:4,12	straight 60:10	205:11	survivors 36:20	114:17 125:17	140:24 141:3
17:22 21:6 27:1	107:10 160:9	suicide 118:12	sustained 38:10	130:17 136:11	146:3 148:1,4
30:6 81:24 82:2	straight-forward	235:19	86:7	136:15,16,23,24	151:16 153:20
107:6 179:15	107:9	suit 109:11,15,21	sway 62:5	155:13 162:19	153:24,24 154:7
186:11 188:9	strain 124:24	151:6	swimming 150:20	164:18 165:18	155:21 156:24
196:22 215:6	strange 81:1	Suite 2:8,15	swing 77:24	195:2 201:11	157:22 158:6
stated 94:14	215:25	suits 115:19	swore 4:12	216:5,14,16	163:8,13,21
124:1	strategic 70:8	summer 207:20	sworn 140:22	220:16 223:18	164:3,4,6,8
statement 104:2	Stratton 95:2	208:10 217:15	sympathetic	231:3 239:15	165:10 170:20
128:20 163:25	street 1:19 20:7	sun 83:15 197:11	40:22 67:15	talked 20:22	172:3,15 173:3
164:5,19,22	74:20 75:6	supervisor 73:13	170:18 200:12	21:23 60:3	174:9,24 179:16
225:18	135:11 173:17	supervisors	200:15	63:15 81:10,12	181:24 183:9,14
statements	174:15 192:19	112:15	sympathy 41:11	115:3,6 156:16	184:7 187:16
187:19	206:3 246:20	supplies 197:22	system 15:5,21	159:5 180:3	192:11,11 197:3
states 58:15	stress 97:3	support 13:1	100:24 190:1	208:11 212:17	205:17 207:16
103:11,12	stretch 51:21	suppose 20:20	203:19,19,20	229:10 230:9	207:16 208:22
118:17	stricken 183:10	36:15,15 38:6	T	232:22 234:23	216:19 218:17
statutory 54:21	strike 59:3,8 95:5	63:13 71:16	T 1:1 2:4	239:1	219:12 225:24
55:15	153:2,4 225:23	95:20 100:21	tab 215:7	talking 19:25	228:24 230:6
stay 50:10,11	strikes 95:7,8	174:6 187:21	table 5:10 11:15	21:21,23 22:23	239:14 243:9,12
109:14 208:18	string 198:2		11:18 99:22,24	24:4,11 48:8	244:6,7,8,17
staying 103:1	strong 6:11 86:20			51:8 55:17	245:5

telling 20:5 24:15 72:21 123:12 150:9 155:17,17 159:11 163:22 180:15 223:7 238:22 243:21 tells 25:7 71:24 176:8 204:7 211:22 temptation 194:20,23 temptations 194:25 ten 18:19,21,22 109:22 110:9 137:13 182:21 205:20 ten-year-olds 176:21 tend 114:13,14 130:11 tender 217:14 term 27:17 terms 6:21 46:1 92:8 101:21 108:21 129:9 terrible 33:18 45:18 202:16 terribly 33:10 36:9 terrorist 37:14,20 38:3 terrorists 38:4 terrorizing 45:6 test 73:18,19 133:4 186:14 testified 159:13 testifies 162:20 testify 69:16,20 69:21 70:17,18 71:7,8,15 72:23 73:3 81:21 106:13,13,15,18 112:25 189:7,9 189:13 232:6,6 testimony 9:22 163:1,2 165:21 testing 126:15 Texan 53:2 Texans 53:4 texas 1:3,5,14,18 1:19 2:2,8,16 5:14 11:11 12:1 23:13 29:20 52:20,25 65:9 99:20 100:7 106:24 130:6 143:21 144:4 155:9 186:17 188:17 192:9 193:9,10 196:8 203:2 235:10,11 235:21 236:2,6 246:2,5,18,19 246:21 thank 11:5 94:11 98:11,17 99:1 121:18 123:2 135:22 139:3 140:2 147:10,14 172:20 182:5,6	182:8 184:2 226:9,10 227:17 243:19 Thanks 121:25 180:24 theft 82:6 244:4 their 9:4,5 12:25 19:19 36:7 62:19 65:3,4 101:2,17 102:1 109:25 116:14 134:14 138:14 144:25 158:2 163:20 176:17 176:17,18 177:8 187:22 188:18 188:19,25 189:3 189:25 192:16 199:25 206:6 231:6 235:9,11 235:16 236:5,7 238:17 240:1,3 themselves 19:21 57:4,5 186:15 204:16 theoretically 67:24 theory 118:3 189:1 therapy 207:17 208:8 they'd 29:19 30:5 37:24 72:24 173:3 189:25 thick 109:11 thing 13:5 19:25 20:3 21:9 24:19 25:25 26:14 28:21 30:15,25 32:17 34:19 39:4 41:3 43:17 43:23 44:6,25 46:12 48:2 50:22,22,25 51:2 60:23 64:1 67:17 71:23 72:7 74:4 80:4 80:10 84:14 85:15 103:7 106:4,5,16,18 109:2,11 112:4 113:20 117:6,18 121:9 122:14 124:2 130:4 137:17 142:14 156:17 157:15 158:21 159:1 165:8 167:5 169:25,25 171:8 172:23 186:16 189:23 193:20 199:20 200:13 201:13 202:8 203:16 204:22 215:16 219:1,23 229:11 235:17 235:18 239:3 240:15 thing's 131:11 things 9:18 17:6,7 17:22,23,23	19:16 23:20 25:7 26:9 28:3 29:23,24 41:12 41:16,17,23,24 43:9 45:13 49:19 67:6,10 75:25 82:7,9 88:8 89:8,11 93:16 95:21 100:24,25 101:25 102:25 106:2 114:6,23 117:3 122:24 146:22 150:18 151:23 152:3 157:3 159:6 162:17,25 171:9 171:11 172:23 177:14 180:5 185:20 186:7,23 186:24 187:3,5 187:20,23 188:15 190:6 200:11,14,16 201:21 208:9,22 209:25 212:20 218:24 219:5,6 220:4,15 222:8 223:17 225:14 228:25 229:1 232:5 236:11 237:17,21 think 6:3 7:7 8:12 8:12,21,24 9:13 9:13 12:9 13:2 13:10,11,13,17 15:24 16:1,1,5,5 17:4,6 18:10,18 19:12,15 21:19 21:20,22 22:2,3 22:4 23:3,4,8,16 23:17,23 24:20 26:17,17,24,25 27:7,25 28:3,14 28:15,21,22 31:4,16 32:5,20 33:3,3,21 34:21 35:8,20 38:22 39:2 40:25 41:14 42:16,16 42:17 43:9,13 43:19,20 44:2,8 44:10,11,14,16 44:18 45:19 46:8,11,15,17 46:18,25 47:2 47:13,16 48:1 48:23 49:8,12 50:16,21 53:24 53:25 54:5,12 54:13 55:21,22 57:1,1 59:14,20 59:21 60:6,14 60:15 22,23 61:1,1,2,2,4,9 61:13 62:2 64:4 64:23 65:6 66:9 66:13,14 68:14 69:4 72:9 73:7 77:22 79:6,7 80:7 81:17	89:21 91:9,9,22 92:6,17 93:1,9 93:16 94:17 96:3,24 97:12 102:1,3,5 103:8 103:10,13,22 104:10,10,11,13 104:18,19 105:18,19 107:20 108:12 108:12 112:12 114:16,19,19 116:12 118:2,10 118:11 120:13 120:15,23 121:3 122:24,24 123:5 123:16 126:13 127:2,2,4,9,11 128:1,11,22,23 129:1,3,7,23 131:15,25 132:2 132:4,18,22 136:10 138:2 143:17 144:5,12 144:13 145:7,9 145:19,24 146:13 148:4 150:25 152:3,5 155:10 156:11 157:15,16 158:18,22,25 159:9 161:17,19 161:19 162:6,7 162:10 163:8 166:10,20 167:14 169:20 170:8,10,11 172:3,17,17,20 172:21,22,23,25 173:13,17,18,21 173:22 176:13 176:16,17,18,19 176:21 177:1,4 177:7,17 178:11 178:19,20,22,24 178:25 180:2 186:8 189:20,23 189:25 190:10 190:17 191:20 192:11,24 193:10,11 194:24 195:1 197:23 198:14 198:15,17 199:9 199:9,11 200:7 200:20 205:6,10 205:24 206:10 206:11 207:1,2 209:9,12,13 213:11 215:25 217:6 218:2,6,8 218:8,20 220:6 220:9,18,24 221:17,19,24 222:5,10 223:4 224:25 225:6,8 225:15 229:20 232:23,25 233:7 233:7,8 235:17 237:2,2,3 238:23 239:20	241:12 242:17 243:5 244:20,22 thinking 20:21 31:14 36:10,15 39:16 43:17 44:21 57:20 60:25 61:8 77:19 102:25 107:9 111:21 115:3 141:17 158:1,11 192:25 205:6 206:7 241:23 thinks 42:11 46:10 third 122:1 123:14 132:3 133:20 143:7 thirsty 44:3 Thirty-five 73:21 though 16:19 19:6,20 24:19 35:6 36:11 42:18 89:22 116:23 127:12 144:5 162:9 165:19 170:25 172:4 193:23 200:9 236:4 239:1 thought 50:21 54:18 58:23 60:19,20 61:5 73:25 78:16 79:9 89:6,7 124:13 143:8 159:11 175:7 185:5,6 201:4 221:24 222:19 225:19 thoughtful 101:12 thoughts 122:3 123:21 128:20 140:24 145:13 threat 14:18 30:20 31:1 82:23 84:14 85:22,24 87:14 87:16 90:18 108:20,24 117:23 195:16 195:18 196:9,10 197:25 200:6 217:4 237:5 240:24 threaten 111:12 threatened 110:5 threatening 50:14 109:9 110:11 116:18 three 75:10,22 112:3,3 123:17 123:18 128:15 162:25 177:16 threw 132:4 thrill 157:3 through 50:7,8 75:20 109:16 116:7 119:21,21 125:5 130:22,22	138:5 159:15 170:24 183:14 186:18,21 208:3 208:8,25 209:1 217:16 222:9,19 222:22 229:23 231:9,13 235:15 235:16 throughout 96:6 96:9 throw 8:10 23:19 101:24 thunk 54:19 Thursday 97:23 ticking 57:20 tide 124:18 tie 37:22 176:19 tiger 84:20,21 85:1 tigers 49:18 85:2 Tim 21:18 time 6:24 7:6 15:19 20:5 30:7 35:14 40:16 50:22 52:12 54:19,20 59:15 60:15 62:24 63:3 66:13 70:2 76:23 77:10 79:11 94:23 101:25 102:8,9 113:7 120:15 125:8,17 126:14 126:20 131:21 133:10,12,20,20 133:25 134:2,17 135:3 148:14,14 151:22 158:20 162:24 165:10 170:13 174:4 177:1 178:13 179:1 185:8 187:11,17 188:17 190:7 191:7 192:3,21 193:8 201:9,11 213:2 217:14 220:11 221:5 224:17 225:18 226:19 238:12 238:16 times 30:22 31:5 70:8 80:15 82:20 101:9 118:18 125:13 125:15 133:24 158:16,17 188:18 199:17 238:9 Timothy 21:18 45:23 66:5,12 68:7 69:6 205:9 tired 66:22 today 66:22 83:14 84:2 117:4 141:7 143:13 145:8 146:11,15 150:16 184:23 212:15 215:15 222:2 223:22 227:19 228:1
---	--	--	---	--	--

233:16 240:3 241:22 242:7 together 15:21 40:23 76:10 171:11 204:1,25 206:17,18 235:2 235:3,7 told 58:25 61:24 63:1 79:15 97:4 155:14 164:1 174:25 175:3 223:14 228:20 229:25 244:14 tomorrow 66:19 183:16 184:24 243:23,24 244:1 244:19,24 245:1 245:6 tonight 174:6 Tonya 179:5 tooth 229:24,24 top 38:1 82:19 108:7 166:22 240:16 tort 185:17 torture 68:18 202:25 total 246:11 totally 9:20 223:4 touch 188:20 217:21 touched 92:12 touches 208:24 tough 110:8 132:16 216:17 toward 179:15,16 185:11 towards 90:20 122:15 179:18 towels 5:7 town 42:13 144:18 178:6 townish 178:7 traced 53:11 track 122:2 traditionally 101:7 113:10 trains 16:6 trait 234:20 transcription 1:16 246:6 travel 123:24 treated 112:17 treating 25:15 tree 195:25 196:4 tremendous 19:22 37:18 trial 1:2,8 13:24 20:12 25:9 26:24 27:9 28:6 28:7,8,11,17 36:18 40:8 46:24 47:16 48:12 70:1,3,10 71:7 81:19 86:3 93:5 94:15 96:6 96:10 102:6,15 103:18 105:5 108:1,6 113:2,9 113:12,23 114:4 118:22 123:12	123:12 131:12 145:15,21 155:15 163:12 175:20 185:9 187:20 189:3 193:17 203:13 215:18,22,24 216:10,10 218:12,13 223:15 231:18 trials 18:19,21 45:17 tried 36:19 92:3 132:20 160:10 trier 114:2 trip 8:12 97:8 100:12,17 101:7 122:1 133:22 trivializing 102:2 Trooper 12:15,17 trouble 29:17,21 110:4 141:20 true 26:16 34:19 46:24,25 48:14 48:15,16 101:13 107:17,18 115:8 141:22 142:16 146:14 165:9 188:3,4 201:15 235:22 246:6 truest 18:25 truly 89:17 134:7 134:15 163:6 246:10 truth 26:10 46:23 72:22 79:15 117:19 139:16 154:7 159:12 165:17 184:7 truthful 4:13 10:18 99:4 140:21 227:1 truthfully 108:10 try 24:16,16 38:17 43:7 50:9 50:21 59:25 60:23 61:10 62:4,12 64:1 71:12 76:21 80:5,12 81:24 107:21 112:17 152:13,16 186:5 216:20 219:13 219:22 220:10 trying 8:11 20:14 64:1 81:15 93:16 106:11 112:13 127:24 128:25 145:15 163:8,22 165:22 167:10 172:3 204:21,23 208:18,25 209:2 216:6 222:22 238:21 241:4 tub 197:4 Tuesday 98:10 102:10 tune 18:11 turmoil 231:9 turn 154:16 203:7	215:4 220:9 turned 61:25 124:18 203:10 211:1 213:19 turns 163:17 164:2 TV 55:3 96:19 174:7 178:14 212:23 two 8:6 11:24 12:3 13:22 28:3 34:9 35:13 37:13 54:18,22 57:6,10,18 67:23 78:12 79:3 81:25 85:19 123:4,18 126:3 130:22 157:21 162:24 168:18 170:2 187:25 203:10 204:4,13 230:23 235:10 236:5,24 237:19 244:5 type 16:15 67:19 143:16,23 192:2 types 186:21,25 typical 29:4 87:22 Typically 113:16 Tyson 178:22	128:13,17 147:19 148:4 154:1 155:16 157:5,8,13 158:13 159:3 160:15,18,24 162:22 168:17 169:12 170:19 171:5,19 173:6 174:5,11 181:11 196:16 197:9,16 198:1,16,24 199:2 200:1,19 202:4,14 203:9 203:17 205:12 208:13 216:1 217:23 222:17 226:24 233:10 234:18 242:9 ultimate 15:11 23:9 103:14,14 126:3,3,8,8,20 126:23,24 127:12,13,17,18 128:3,3 224:21 ultimately 27:5 umbrella 112:21 unanimously 199:6 unbiased 225:3 uncle 52:11 uncomfortable 92:15 93:3 122:8 209:2 under 5:25 6:14 9:23 29:21 103:16 140:22 143:12 146:8,15 149:20 150:3 154:14 170:1 174:4 188:24 203:1 235:11 236:2,6,25 244:3 underdog 21:9 underdogs 19:16 undereducated 101:10 underline 62:17 underlined 59:19 141:14 understand 7:24 9:21 13:8 19:14 21:7,24,25 33:17 36:7 38:17 47:9 54:9 56:5,10 58:3,11 64:3,5 67:14,22 68:1 69:11,13 69:25 71:2 73:7 74:7 82:11,15 87:2 90:10,12 92:17 100:12 102:2 103:16 110:12 111:21 112:16 121:10 126:17 136:13 137:6 147:24 149:7,20 150:14 150:17 158:5 164:13 165:20	165:22 167:5 171:23 176:22 176:23 180:2,2 181:22 188:2 194:19 195:3 198:25 202:23 204:16 208:21 210:11 212:20 216:21 217:11 219:3,11,19 221:16,21,24 222:22,23,25 227:6 229:7,16 238:4 240:22,25 understandable 118:8 119:17 understanding 138:3 158:20 172:18 189:10 229:4 understatement 130:10 understood 212:14,22 unduly 37:20 unfair 6:9 123:11 149:22 150:1 186:10 unfortified 114:22 unfortunate 200:12,15 unit 131:17 148:9 148:12 United 58:15 103:12 118:13 118:17 unless 20:18 146:2 162:8 195:3 235:20 unlike 101:1 unlikely 169:20 169:22 unnatural 21:7,9 unsafe 172:24 until 38:24 70:3 79:1 96:8 102:6 127:9 131:6 138:10 172:11 181:13 213:18 223:19 225:20 unusual 27:8 48:9 158:25 ups 173:13 upset 66:21 174:17,25 175:2 175:3,4 207:23 208:12 219:17 224:13 225:20 upsetting 208:14 usage 46:9 114:18 206:2 use 20:5 23:15 45:10,11 70:25 95:7,9 used 12:13,23 22:2,3,9 58:16 64:25 70:22 77:9 82:24 83:2 83:18 84:1 95:1 135:10 201:2,9	218:14,14 232:24 233:1 using 173:18 189:1 USS 118:10,21 119:6 usually 66:14 67:6,20 100:10 104:25 114:24 114:25 132:15 134:7 166:20
					V
					V 1:4 3:3 vacation 101:6 valid 34:9 129:5 value 103:10,13 Van 197:18 variety 234:24 vary 83:11 VENIERPERSON 153:10 venire 99:3 venireperson 4:6 4:9,15,18,20,22 9:24 10:1,5,7,9 10:13,15,21,23 11:1 37:8,10 94:1 95:14,17 95:19,22,25 96:4,7,12,16,22 97:3,8,10,14,17 97:19,24 98:1,4 98:7,9,13,16,18 98:22,24 99:7 100:1 136:1 139:10,13,19 151:15,18,22 152:5,22 153:7 153:12,14,17,21 154:1,5,9,12,15 155:7 178:3 179:3 181:22 182:1,5,8,12,15 183:23,25 184:2 184:6,10 209:9 209:20,23 210:3 210:6 213:7 213:11,15,18,21 213:23 214:1,4 214:7,10,13,15 224:5 226:2,5,9 226:13,16,18,24 227:2,5,8,11 242:3,15,19,22 242:25 243:2,4 243:7,19,20 VENIREPERSO... 3:2 verdict 14:1 18:25 20:11 26:18 27:4 28:2 62:21 63:8,10 63:11 82:10 126:1,6 143:9 187:10 188:11 188:12 191:1,13 219:9 221:17,19 222:12 229:17 237:16 versus 199:22

<p>very 5:13 9:10 11:25 15:8 23:11 25:5 27:8 29:21 30:25 32:15 35:15,15 36:16 53:24 55:23 59:5,6,17 60:12 64:9 65:7 77:25 92:16 100:6 104:1 105:22 106:23 114:4 117:7,18 123:14 124:5 144:25 147:10 151:15,15 152:13 155:9,10 155:22,22 156:11 161:9,15 166:21 168:11 172:14 178:10 178:25 179:13 181:9 189:24 190:10 200:10 201:10,15 207:23 208:14 209:1 228:24 239:2 242:23 243:9</p> <p>victim 151:19,19 victims 89:6 105:2,3 187:4 229:23</p> <p>view 6:20 9:8,11 9:13 101:12 102:3 129:18 148:24 149:7 167:14 185:11 186:9 196:22</p> <p>viewpoint 129:2 views 9:9 129:25 146:8,9,23 185:10 201:14 231:3 236:19</p> <p>violated 36:8 violates 163:9 violence 30:20 33:2,4,5,9,18 82:22 84:9,15 85:21,24 108:19 115:17,23 172:12,17 191:19,25 192:13,20 195:15 207:18 208:2,24 213:5 217:4 218:1,6,8 218:9,15,16,20 218:22,25 220:12,14,20,21 222:15 224:12 224:17 237:4 239:20</p> <p>violent 108:24 visibly 225:21 visit 79:9 visited 227:23 visiting 93:21 voice 167:16 voiced 170:23 voir 1:8,12 7:25 137:21 138:4,4</p>	<p>138:9 volume 1:1,8 3:21 245:9 246:7,12 voluntarily 206:3 vote 6:21 7:2 8:5 9:23 15:10 19:4 19:5,8 24:15 40:2 41:10,11 41:13 50:19 51:2 119:25 130:11,13 142:4 146:18,24 147:2 147:7 150:5,6 150:10,13 160:25 161:9 168:6 180:17 202:6 207:7 voted 40:9</p> <hr/> <p>W</p> <p>wages 185:20 wait 35:10 166:8 223:19 waiting 44:24 183:10 223:14 waits 204:6 wakes 197:18 walk 19:22 walking 49:22 203:11 walks 13:24 want 4:10,16 5:22 7:9 10:24 13:12 17:2,3,4,9,10,11 17:19 19:21,23 20:21,23,23,25 21:20,22 25:6 26:3 29:25 31:9 31:17,21 32:16 33:23,24 34:6 37:4 40:22 43:7 49:24 57:17 58:9 59:13 62:13 68:14 69:6,24 70:11 70:12,12,13,14 72:3,4 77:5 80:20,21,23 81:16 86:8 90:3 92:15 95:21,23 96:18 97:9 98:19,25 99:8 105:8,10 106:2 106:21 107:12 107:13 112:7 122:14 123:9 125:20 126:11 126:17 136:23 136:24 137:14 138:7,11,13 149:1 154:13 157:9 158:16 161:23 162:8,19 163:18 164:20 167:21,21 175:12,17,24,25 179:12 180:16 182:6,20 183:20 186:2 189:17 194:20,22 204:3 213:4 215:14</p>	<p>218:2 219:23 220:7,7,9,10 223:1 224:24 226:7,22 227:17 227:25 231:12 233:5,19 234:2 235:1,21,22 240:23 242:4 244:1 want-to 194:21 wanted 13:7 25:3 110:4 125:6 140:11 wants 19:24 111:10 114:7 176:3 189:12 201:16 203:13 204:3 war 37:18 114:5 warden 15:18 warrant 205:1 warranted 156:10 Washington 100:15,17,19 wasn't 16:3 34:5 39:10 41:3 79:22 80:1 96:17 129:9 178:6 181:7 225:20 waste 141:22 watch 241:19 watching 212:23 water 5:7 51:23 109:19 122:21 way 6:21 8:20 9:14 15:10 19:2 19:4,7 21:10 22:22 23:11,12 24:2,15 25:15 25:15 26:1 28:14 29:6 32:11,19 39:13 43:7 45:4 53:25 54:2 55:20 56:4 56:7 57:3 58:16 58:18 61:5,7,25 75:2,11 81:8 85:5 87:12 90:3 90:9 91:23 96:11,23 97:1,6 101:6,25 102:21 106:11,23 107:5 107:5,11,16 108:23 109:3,21 110:11 111:14 114:1,15 115:9 115:10 120:21 127:6,15 129:7 129:7 130:25 131:13 138:11 142:3 145:2 146:18,24 147:3 147:7 148:5 150:5,6,10 159:9,14 160:1 162:15 167:15 167:19 172:6 175:5 180:17 189:25 191:16</p>	<p>193:14 194:4,13 194:22 195:23 197:7,23 202:10 204:22 205:21 212:5 215:9,10 215:11 216:6 220:15,17 223:19 225:2 229:21 231:1,1 233:20 234:9 239:19,21 240:5 240:17,19,25 ways 19:4,5 28:9 109:5 113:16 115:21 119:3 197:1,13 we'll 14:10 37:2 42:15 51:6 93:24 97:25 98:11,14 112:3 121:14 123:8 135:24 136:23 139:21 152:21 183:13,13,15 213:3 216:10 224:1 243:22,23 244:18,25 245:6 we're 6:17 15:20 15:21,22 20:8 20:17,17 21:3 23:12 24:5,10 30:7 33:13 37:19 38:24 55:16 56:22 57:12,12,18 58:16 72:3 76:9 80:15 81:2,3,5 81:11,18 85:25 87:15 100:18,19 101:15,20 102:7 110:19 118:16 137:4 159:17 165:15,16 166:5 182:20 183:10 183:15 185:5 186:4,12 193:22 196:22 215:5,14 215:15,17 216:19,20 221:18 225:2 230:1,4 233:11 233:21 we've 15:21 27:15 50:2 60:2,3 63:15 64:5 81:12 85:17 92:12 95:1 98:2 117:16 124:10 128:14 130:22 131:4 132:20 159:4,5,5,7,22 159:24 180:3 185:8,8 193:15 195:21 215:24 218:11 227:19 wearing 190:18 weather 20:6 83:13 112:20 Wednesday 97:22 97:23 102:6,10 week 22:16 96:24</p>	<p>97:13,22 98:14 100:13,18 123:14 144:22 197:21 204:4 210:18 212:18 212:19 weeks 57:18,19 57:19 123:16,17 123:18 140:13 157:21 weigh 14:4 48:7 70:14 107:14 159:23 171:18 233:3 weighed 14:3 120:25 weighing 120:17 199:21 weight 107:5 240:7 weighted 131:2,2 welcome 4:10 98:25 184:1 226:7 well 6:17 8:19 9:12 13:14,16 13:22 15:4 19:13 20:15,24 21:25 28:7 30:13 31:1 35:11 43:17 48:22 49:8,10 49:11 50:1,1,5 50:13 52:15,24 54:6 56:4 58:23 59:9 60:12 65:24 66:18 67:9 71:16 73:1 73:10,23 80:2 81:1 85:8 86:24 87:24 89:23 93:21 95:9,18 97:12,18 98:9 100:21 107:24 111:22 115:22 117:8 130:11 134:15 138:2,2 141:3 143:3,13 145:11 148:6 149:7 150:14 155:22 156:18 157:23 163:23 164:6 165:13 166:2 167:15,18 170:10 171:14 172:16 173:4 176:2,7 179:5 183:14 187:24 188:2 189:9 191:15 192:13 195:24 198:9 204:18 205:19 206:4,17 208:2 210:25 218:16 222:20 225:13 226:7 229:16,21 232:24 235:10 235:20,22 243:9 well-being 199:12 went 47:20 59:12 66:3 79:17,18</p>	<p>79:19 80:8 110:1 115:4 119:21,21 120:8 124:19 130:22 130:22 168:15 192:17 201:12 208:24 209:24 were 1:13 4:12 10:17 14:5 19:7 20:14 42:3,6,7 42:20,22,23 43:3,12 44:3 47:18 49:19 52:16,16 66:2 71:14 72:12,13 73:20 82:1 99:2 100:14 103:22 109:25 124:19 124:20 128:9 129:15 137:21 139:15,17 141:9 143:20 144:24 151:9 154:7 155:17,17 180:5 182:16 184:4,22 189:14 191:2 192:6,19 200:14 200:17 206:13 209:7,10,11 211:14 212:19 212:20 219:3 226:11 227:18 227:24,24 231:15,16 240:24 246:8 weren't 49:11 whatsoever 161:13 wheel 197:10,11 while 21:12 45:25 48:11 60:2,2 73:18 132:12 137:21 146:6,7 164:1 174:17 197:12 223:2 231:9 white 53:19 59:15 66:3 whole 5:9 16:10 27:4 28:10 58:18 87:7 99:3 120:9 123:25 157:17 165:25 174:10 188:8 201:13 205:14 229:23 231:9,9 wide 114:3 205:14 wife 36:16 44:23 66:23 87:4 104:19 132:6,14 132:15 wife's 131:19 132:16,22,23 wiggle 239:16 240:15 willing 25:8 101:16 190:22 win 81:4 160:3 wind 125:17 window 144:22</p>
---	--	--	---	--	--

198:19	210:22 211:2,3	70:25 105:15	63:1 70:16
Winkle 197:18	211:5,11,16	110:21 145:14	73:21 74:9
winner 120:6	213:13,20	149:9 156:2	75:18,22 78:12
winsome 107:2	worked 42:14	162:6 173:18	79:3 131:17
wish 17:12,13,18	74:5,9 77:10	176:14,25 177:6	133:6 134:9,25
19:7 176:1	203:19 208:8	186:4 193:6	144:11 169:9,9
216:18	211:12 213:15	211:17 230:6	169:14 177:5,15
wished 12:23	working 16:8	wrongfully	177:16,18
89:18	74:1 76:10,17	105:14	205:18,23
withdraw 165:11	77:12 84:19	wrote 94:16	211:12,13
witness 18:2,4	162:9 206:17	142:19,23	213:12,14 214:7
25:15 27:12	208:25 222:8	143:17 144:13	215:11,12 235:2
97:1,5 104:15	223:16	145:5 244:8	yesterday 208:11
159:10 162:20	works 8:4 15:5		York 20:1 36:17
163:17,19,23,23	30:10 55:14	Y	36:19 37:14
164:7,14 165:6	57:3 92:8	y'all 65:19 75:2	38:3 118:19
165:23 167:24	101:21 114:25	76:10 78:6	157:24 158:4
167:25 186:13	134:16 160:11	80:23,24,24	177:15 181:12
187:24,25 188:1	193:14 194:1	92:20 93:1	you-all 85:6
223:7,10 224:14	210:14 211:2	107:21 137:6	136:24 137:1
246:15	world 174:10	183:12 209:3	244:8
witnesses 27:12	205:14 236:19	Yabin 118:13	young 57:13 64:8
27:13,18,19,20	world's 109:6,7	yard 21:15,25	73:3 80:21
27:22 159:5,16	worldwide 38:5	22:4	161:15,16
159:17,18	worried 130:9,10	yards 123:25	173:24 205:19
164:19 186:22	193:1	yawns 193:13	205:23,24 215:5
187:17,18,18,19	worry 21:8 26:13	yeah 16:9 17:7	216:2 220:5
187:23	27:3 81:6	23:7,18 24:24	younger 77:9
wives 31:18 33:3	110:16 168:25	29:15 32:20,22	156:7 192:6
123:24	196:1	33:1,7,16 36:10	youngster 88:9
woman 78:9	worse 42:22	36:24 40:3 43:5	youth 200:23
132:25 191:22	202:11 206:13	44:12 47:1,14	
218:21	worst 64:9 123:16	48:21 49:17	Z
women 52:7	172:23	51:1 53:20 55:2	Zander 177:12
134:6,13	worthless 45:13	55:19 56:13,15	
women's 131:17	wouldn't 9:15,22	57:1 58:23	
132:12	12:6 17:14,16	60:17 61:6	
wonderful 101:12	20:23 27:22	62:23 66:9	
103:7 120:5	29:21 35:22	67:13,16 69:10	
Wood 4:23	38:24 50:10	69:13,19 72:20	
woozy 153:14	57:25 58:1,7	75:2,4 76:2,12	
word 12:23 40:22	62:8 67:11,17	76:14 77:1,23	
48:19 82:24	68:9 71:11,12	78:17 80:11,23	
84:8 88:21	71:15 75:11	85:4 87:11,21	
103:4 125:13	77:25 93:8	89:23 90:13	
127:17 218:8	102:18 106:21	91:13,22 93:14	
225:16	109:13 113:11	96:14 104:10	
worded 115:14	114:23 129:25	107:23 110:14	
wording 195:16	144:7 151:5	111:18 113:8	
words 6:25 29:7	158:8,14,25	115:7 120:3,23	
34:14 54:22	167:18 171:1	125:16 127:21	
83:14 84:13	175:7,15,17	129:19 130:2,14	
87:18,20 90:16	179:1,2 187:11	132:2,18,22	
116:19 121:1	209:14 211:6,17	133:15 134:5,11	
123:4,5 141:13	211:18 227:25	134:13 135:5,9	
141:18 166:24	231:12 239:5	135:12,19	
167:1 170:8	Wow 53:7,14	143:25 145:9,20	
203:8 206:1	74:23 124:16	157:20 160:11	
207:3 218:23	125:12 132:16	166:15,23 167:4	
220:15 221:9	wrap 123:2	169:5,18 171:13	
242:16	wrecking 21:15	171:17 173:20	
work 15:6 16:23	21:25	177:10 205:22	
19:17,21 27:20	wrestle 104:11	207:22 214:16	
44:22 66:21	115:11 129:3	221:15 226:18	
73:15 74:9 76:3	write 76:7	237:7 242:23,24	
77:13 82:25	writer 76:4,5	243:4 244:25	
98:5,7 101:2,18	writing 76:6	year 43:8 76:22	
112:14,18,21	209:10 246:7	105:16 132:13	
144:25 148:6,8	written 96:20	214:9	
151:24 157:7	wrong 24:22	years 50:2,5	
162:8 209:1	26:14 30:6	58:17,17 60:4	