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24  
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R E P O R T E R ' S R E C O R D

VOLUME 9 OF 53 VOLUMES

TRIAL COURT CAUSE NO. 380-80047-01

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

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JURY VOIR DIRE

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On the 27th day of August, 2001, the following proceedings came on to be heard in the above-entitled and -numbered cause before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

Proceedings reported by Computerized Machine Shorthand.

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2 CHRONOLOGICAL INDEX (CONT'D)

3 VENIREPERSONS:
4 Name/Examination By: STATE DEFENSE PAGE
5 WILLIAM L. FLAHERTY 176 212 257
6 JANN GENTLE 258 296 318
7 State's Peremptory Strike
8 Court Reporter's Certificate 319

9 ALPHABETICAL INDEX

10 Name/Examination By: STATE DEFENSE PAGE
11 VENORA R. ALLEN 88 - - 145
12 Excused by agreement
13 PATRICIA A. BARR 146 163 175
14 State's Challenge for Cause granted
15 WILLIAM L. FLAHERTY 176 212 257
16 Defense Peremptory Strike
17 JANN GENTLE 258 296 318
18 State's Peremptory Strike
19 STANLEY W. JOHNSON - - - - 44
20 Finally excused
21 JAMES G. LITTLEJOHN 5 30 44
22 State's Challenge for Cause granted
23 SUSAN A. RHOADS 45 - - 87
24 State's Peremptory Strike
25

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14 VOLUME 9

15 CHRONOLOGICAL INDEX

16 AUGUST 27, 2001
17 INDIVIDUAL VOIR DIRE

18 VENIREPERSONS:
19 Name/Examination By: STATE DEFENSE PAGE
20 JAMES G. LITTLEJOHN 5 30 44
21 State's Challenge for Cause granted
22 STANLEY W. JOHNSON - - - - 44
23 Finally excused
24 SUSAN A. RHOADS 45 - - 87
25 State's Peremptory Strike
26 VENORA R. ALLEN 88 - - 145
27 Excused by agreement
28 PATRICIA A. BARR 146 163 175
29 State's Challenge for Cause granted

1 PROCEEDINGS: 4

2 (Open court, defendant present.)

3 THE COURT: This is Cause

4 No. 380-00847-01, State of Texas versus Ivan Abner
5 Cantu. Mr. Goeller and Mr. Cantu, his client, is
6 present. The State represented by counsel. Did you
7 have something?

8 MR. GOELLER: I was just going to ask the
9 Court if you knew the batting order this morning?

10 THE COURT: Yeah, I tell you what. We've
11 got -- Billy suggested that we take Mr. Stanley Johnson
12 first.

13 THE BAILIFF: Mr. Littlejohn, Your Honor.

14 MR. GOELLER: What number is he?

15 THE COURT: Littlejohn is No. 17. And
16 tell me who all we've got?

17 THE BAILIFF: He's the only one we've got.

18 THE COURT: Well, that makes it easy.

19 James Littlejohn is No. 17. But I haven't looked at his
20 questionnaire at all myself, so let's look at it. So
21 are both sides ready for Mr. Littlejohn?

22 MR. SCHULTZ: Yes, sir.

23 MR. GOELLER: Yes, sir.

24 THE COURT: All right. Let's bring him
25 in.

08:57 1 (Venireperson Littlejohn present.)  
 08:58 2 THE COURT: Are you Juror 17?  
 08:58 3 VENIREPERSON: Yes.  
 08:58 4 THE COURT: I will just remind you, on  
 08:58 5 Tuesday last week when you folks finished, I  
 08:58 6 administered the oath. I want to remind you that you  
 08:58 7 are still under the oath to answer all the questions  
 08:58 8 truthfully.  
 08:58 9 VENIREPERSON: All right.  
 08:58 10 THE COURT: Okay. Sir, please be seated.  
 08:58 11 All right. Are you ready for the State?  
 08:58 12 MR. SCHULTZ: Yes, sir.  
 08:58 13 VOIR DIRE EXAMINATION

08:58 14 BY MR. SCHULTZ:  
 08:58 15 Q. Good morning, sir.  
 08:58 16 A. Good morning.  
 08:58 17 Q. My name is Bill Schultz, and I am an assistant  
 08:58 18 district attorney representing the State of Texas in  
 08:58 19 this capital prosecution of Ivan Cantu. To my left is  
 08:58 20 Ms. Gail Falco, a chief felony prosecutor from another  
 08:58 21 felony district court, along with this prosecution. And  
 08:58 22 to her left is Ms. Jami Lowry, who is a felony  
 08:58 23 prosecutor assigned here in Judge Sandoval's court.  
 08:58 24 At the defense table is the defendant in  
 08:58 25 the case, Ivan Cantu. Missing at the moment, but

08:58 1 perhaps going to arrive while you are here, is Don High,  
 08:58 2 one of the fine attorneys that's in private practice in  
 08:59 3 Plano, Texas. And then the gentleman to your far right  
 08:59 4 at the defense table is Matt Goeller. And he's also a  
 08:59 5 fine board certified criminal specialist engaged in the  
 08:59 6 practice of law in Plano, Texas.  
 08:59 7 And my recollection is that you don't know  
 08:59 8 any of us; is that correct?  
 08:59 9 A. That's correct.  
 08:59 10 Q. Okay. And you can probably help me a little  
 08:59 11 bit by telling me: Have you ever served on a jury  
 08:59 12 before?  
 08:59 13 A. No, sir.  
 08:59 14 Q. Have you ever been called to a jury but not  
 08:59 15 been selected?  
 08:59 16 A. Yes.  
 08:59 17 Q. On how many occasions, do you figure?  
 08:59 18 A. Once.  
 08:59 19 Q. Okay. Was that here in McKinney?  
 08:59 20 A. No. It was in Dallas.  
 08:59 21 Q. Okay. And how far did you get? Were you just  
 08:59 22 assigned any case, and they said, "Go on home now or --  
 08:59 23 A. I was sent to an off-site court, and they  
 08:59 24 settled right before we went actually in.  
 08:59 25 Q. When we were talking last week, I guess almost

08:59 1 a week ago now, with you as a group, when you heard from  
 08:59 2 Judge Sandoval that it was going to be a capital murder  
 09:00 3 that you were going to be considered for, what was your  
 09:00 4 response? What was your feeling?  
 09:00 5 A. I was a little concerned because of the death  
 09:00 6 penalty issue with capital murder and my beliefs on  
 09:00 7 that.  
 09:00 8 Q. Okay. And I appreciate -- I remember when I  
 09:00 9 gave that invitation to everybody, there was something  
 09:00 10 in your background or circumstances that would make you  
 09:00 11 less than fair to one side or the other. It is always  
 09:00 12 interesting because a few people--I say a few--maybe as  
 09:00 13 many as three came to us and said that, yeah, and what I  
 09:00 14 have been thinking with that question was such things as  
 09:00 15 I -- I had a son that was on death row or is on death  
 09:00 16 row or perhaps my -- my daughter and son were murdered  
 09:00 17 by someone who got the death penalty. I was thinking in  
 09:00 18 those terms.  
 09:00 19 But a few people came up and said, yeah,  
 09:01 20 there is something. And that's my conscientious  
 09:01 21 objection to the death penalty that would prevent the  
 09:01 22 State from getting a fair trial, if what the State is  
 09:01 23 wishing is somebody that could give fair consideration  
 09:01 24 to the death sentence. And I want to talk a little bit  
 09:01 25 with you for a moment, and I want to focus on that

09:01 1 particular aspect of this case.  
 09:01 2 I suspect that probably many jurors would  
 09:01 3 not agree with all kinds of things that we have in our  
 09:01 4 law. I mean, I would suspect, for example, if we were  
 09:01 5 to bring jurors in on a marijuana case that a great  
 09:01 6 number of them might have opinions that the punishment  
 09:01 7 range was perhaps too low for marijuana possession, or  
 09:01 8 others might think it was too high, or some might think  
 09:01 9 that it should be dealt with maybe not as a criminal  
 09:02 10 matter but rather somehow administratively, almost like  
 09:02 11 a mental health issue of some kind.  
 09:02 12 And, yet, it would seem that that would  
 09:02 13 not be something about which they would be so passionate  
 09:02 14 that they couldn't follow whatever the law was. I mean,  
 09:02 15 if you are a juror and you think the punishment is too  
 09:02 16 harsh, you could still probably do that. I mean, even  
 09:02 17 if you don't think six months in jail should be a  
 09:02 18 punishment, most jurors could still do that, because  
 09:02 19 it's not so extreme and so final that it would  
 09:02 20 compromise their core principles. Does that make sense  
 09:02 21 to you?  
 09:02 22 A. Yes.  
 09:02 23 Q. I mean, there are situations in which we ask of  
 09:02 24 jurors all the time to follow some law that perhaps they  
 09:02 25 don't like. I will give you an example. Everybody in

09:02 1 the world knows what parole is. It's the concept of  
 09:02 2 prisoners being released for less time than they are  
 09:02 3 sentenced, either upon good behavior or upon  
 09:03 4 overcrowding or whatever the issue might be. Everybody  
 09:03 5 knows about that, and I'm sure you do, too.

09:03 6 A. Yes.

09:03 7 Q. Notwithstanding the fact that everybody knows  
 09:03 8 about it, jurors receive a standard instruction from the  
 09:03 9 trial court not to consider how parole would work in the  
 09:03 10 case of the defendant they are sentencing because that  
 09:03 11 invites speculation. Okay?

09:03 12 A. Okay.

09:03 13 Q. Most jurors can follow that instruction even  
 09:03 14 though they think it's dumb. To a juror, their issue  
 09:03 15 seems to be: How long do we want this guy locked up?  
 09:03 16 Not how much of a paper sentence do we want to give the  
 09:03 17 individual? But how long do we actually want him locked  
 09:03 18 up? But it would seem, most people are logical, they  
 09:03 19 ought to be able to factor in parole and boost the  
 09:03 20 sentence. If it's going to be a quarter of the time,  
 09:03 21 they ought to be able to quadruple the sentence to get  
 09:03 22 what they want. Does that make sense to you?

09:04 23 A. Yes.

09:04 24 Q. But the law says they can't. Most people would  
 09:04 25 be just fine with that. Now, where it gets very

09:04 1 difficult is on something like the death penalty,  
 09:04 2 because that's bound to do something more than logic and  
 09:04 3 common sense, like maybe the parole issue would be, or  
 09:04 4 some evidentiary rule. Without even asking you, I have  
 09:04 5 a sense that your commitment to the opposition of the  
 09:04 6 death penalty is founded at least within your own  
 09:04 7 personal morality, if not your religion.

09:04 8 I mean, it's at least that strong because  
 09:04 9 when somebody says, I can never under any circumstances  
 09:04 10 return a verdict which assesses the death penalty, it  
 09:04 11 would seem to me that that's not just somebody that  
 09:04 12 thinks the death penalty is a waste of money or a waste  
 09:04 13 of lawyer time or, rather, it's something deeper than  
 09:05 14 that. That's my assumption. Tell me why it is that you  
 09:05 15 find yourself in that situation.

09:05 16 A. The reason I find myself that way is because  
 09:05 17 we're all human, and we all make mistakes. And the  
 09:05 18 death penalty in my mind is very final, and there is no  
 09:05 19 room for that mistake. And the fact that, you know, if  
 09:05 20 I put somebody in that position and then find out four  
 09:05 21 or five years later that maybe they didn't commit that  
 09:05 22 crime, you know, I'd have a problem personally with  
 09:05 23 that.

09:05 24 Q. Okay. Well, let's assume that you were  
 09:05 25 convinced that he committed the crime. So that's not --

09:05 1 that wasn't a problem. And I can't tell you about this  
 09:05 2 case specifically, but there must be some cases where  
 09:05 3 there would never be a doubt in the mind about the guilt  
 09:05 4 of the accused.

09:05 5 Do you remember -- do you remember when  
 09:06 6 the attempted assassination of President Reagan was on  
 09:06 7 national TV? You seem like you would have been old  
 09:06 8 enough to maybe remember seeing film clips.

09:06 9 A. Yes.

09:06 10 Q. Okay. I don't guess there's any way that  
 09:06 11 anybody could have ever sat on that jury and not known  
 09:06 12 who actually did the shooting. Do you know?

09:06 13 A. Yes.

09:06 14 Q. They captured the guy with the gun. They  
 09:06 15 matched the ballistics to the gun. And for all I know  
 09:06 16 he probably confessed to it, also. And so that's not an  
 09:06 17 issue sometimes in cases. What if you were convinced  
 09:06 18 that the person is guilty beyond all doubt? So you  
 09:06 19 don't have to worry about five years later after he's  
 09:06 20 executed. Are you okay with it then?

09:06 21 A. No. I still don't because I don't know that I  
 09:06 22 could ever be 100 percent convinced. Especially given  
 09:06 23 what we've seen in the -- this year, earlier in this  
 09:06 24 year with people that have been put in jail and find out  
 09:06 25 through DNA testing and other technology that they

09:06 1 really didn't commit that crime. I think in the back of  
 09:07 2 my mind there will always be a doubt.

09:07 3 Q. Okay. Well, would you be -- suppose it weren't  
 09:07 4 a death case. Suppose it were like a regular murder  
 09:07 5 case. When I say regular murder, that's one that has a  
 09:07 6 punishment range from 5 years to 99 years or life.

09:07 7 A. Okay.

09:07 8 Q. Would you be able to do that kind of case?

09:07 9 A. Yes, I believe I would.

09:07 10 Q. Okay. Well, tell me what the difference is in  
 09:07 11 your mind then.

09:07 12 A. The difference in my mind is that the person is  
 09:07 13 not dead. They may be in jail. But 30 years from now,  
 09:07 14 something could come up with technology; and if there  
 09:07 15 was a wrong committed either way, it could be righted.

09:07 16 Q. And even though they might have lost 30 years  
 09:07 17 of their life, they would still have some of it left.  
 09:07 18 And at least during that 30 years they would have had  
 09:07 19 some kind of human existence?

09:07 20 A. Yes.

09:07 21 Q. That makes -- all what you are saying makes  
 09:07 22 sense to me. Okay. Is that -- there's some other  
 09:08 23 people. There's some other ways that people express  
 09:08 24 their opposition to the death penalty. I think I've  
 09:08 25 mentioned one there. There are those who express

09:08 1 opposition because of religious reasons. They read  
09:08 2 portions of scripture to provide that we should not be  
09:08 3 killing each other.

09:08 4 A. Okay.

09:08 5 Q. And they take the position that there doesn't  
09:08 6 seem to be an exception in the scripture that allows us  
09:08 7 to kill under certain circumstances, whether that's  
09:08 8 self-defense or time of war or for executions. And  
09:08 9 that's how come, for example, we have conscientious  
09:08 10 objectors to military service if they are genuine in  
09:08 11 their expressions. And that's because they take that  
09:08 12 portion of "thou shalt not kill" to mean, thou shalt not  
09:09 13 kill no matter what the circumstances.

09:09 14 And I'm not inquiring into your religious  
09:09 15 background, but I want to make sure that I fully  
09:09 16 understand the nature of your opposition. Is that a  
09:09 17 consideration for you?

09:09 18 A. Yes, it is.

09:09 19 Q. And is it -- is it from an organized religion  
09:09 20 or almost like a personal individual view of scripture  
09:09 21 because a lot of -- a lot of faiths don't have a --  
09:09 22 there is Mr. Don High here who just came in.

09:09 23 A lot of religions don't have any stated  
09:09 24 opposition to the death penalty, and some do. I mean,  
09:09 25 the Society of Friends, for example, does. The Roman

09:09 1 Catholic Church apparently does. It's a little bit  
09:09 2 fuzzy, but apparently they are opposed to it. And there  
09:09 3 are some other faiths that also take that position. Is  
09:09 4 yours more of an organized religious kind of a thing or  
09:09 5 more of a personal religious opposition?

09:10 6 A. I think it's a little bit of both, actually.

09:10 7 Q. Okay. Another thing that concerns people about  
09:10 8 the death penalty that creates some opposition is a fear  
09:10 9 or a concern that perhaps the death penalty is not  
09:10 10 applied evenhandedly across all segments of our society.

09:10 11 It is the notion that, if you go do a  
09:10 12 study of people on death row, that you'll find certain  
09:10 13 things statistically doesn't. You know how statistics  
09:10 14 are. I mean, they may be something that you don't  
09:10 15 understand. I mean, if you read statistics about  
09:10 16 people's health, you might think it's because they do  
09:10 17 one thing but maybe because they do another and that  
09:10 18 they don't know about it.

09:10 19 But here's what you find: You'll find an  
09:11 20 incredibly high percentage of males on death row. Maybe  
09:11 21 like, you know, 99 point something percent of people on  
09:11 22 death row are males. Now, you could look at those  
09:11 23 statistics and people could say, well, our Texas death  
09:11 24 penalty scheme, either on purpose or accidentally,  
09:11 25 discriminates against males. Do you follow what I'm

09:11 1 saying?

09:11 2 A. Yes.

09:11 3 Q. Same thing when you -- coming to traditionally  
09:11 4 disadvantaged ethnic or racial groups, which could be  
09:11 5 called minorities. And yet, I suppose, at least  
09:11 6 combined in Texas they probably actually are a majority  
09:11 7 of members in our society now. But you will find a  
09:11 8 higher percentage of Hispanics on death row perhaps than  
09:11 9 in our general population. And you'll find a higher  
09:11 10 percentage of black people on death row that are  
09:12 11 representative in our population.

09:12 12 And some people have the concern that what  
09:12 13 if the reason for that higher density on death row is  
09:12 14 because of the bias or prejudice or the lack of your  
09:12 15 understanding on the part of the juries that don't  
09:12 16 understand minority people the same way they might  
09:12 17 understand people of their own color. Do you know what  
09:12 18 I am saying?

09:12 19 A. Yes.

09:12 20 Q. Does that cause you any concern, or does that  
09:12 21 have anything to do with your opposition to the death  
09:12 22 penalty?

09:12 23 A. No, it does not. I've never paid that close of  
09:12 24 attention to it, honestly.

09:12 25 Q. And I can tell that you are the kind of man

09:12 1 that whatever other cases might be involved, you are not  
09:12 2 the kind of person who would involve that in deciding an  
09:12 3 important issue like this; is that correct?

09:12 4 A. That's correct.

09:12 5 Q. And then, kind of related to "thou shalt not  
09:12 6 kill" in a way but a little bit different is the notion  
09:13 7 that it's kind of hypocritical that if we're saying to  
09:13 8 potentially cause the death of another person is such an  
09:13 9 outrageous crime that we're willing to take somebody  
09:13 10 else's life to do it in a certain way. How much better  
09:13 11 are we as a society collectively if we're doing the same  
09:13 12 thing?

09:13 13 It's almost like an inconsistency of ours  
09:13 14 is just a different kind of murder kind of thing. That  
09:13 15 doesn't have to be founded in religion. That can just  
09:13 16 be founded in the logic of how we go about our business.  
09:13 17 Is there anything in that that seems to strike any cord  
09:13 18 with you?

09:13 19 A. It does to a degree, yes. I mean, raising  
09:13 20 children, you know, I tell them not to do this, not to  
09:13 21 do that. And then I turn around and sit on a jury and  
09:13 22 put a gentleman to death. I mean, it kind of goes  
09:13 23 hypocritical to what I'm trying to raise my children to  
09:14 24 believe.

09:14 25 Q. Okay, I understand. You and I are

09:14 1 communicating fine. In many cases it's probably proper  
 09:14 2 to say, all I'm doing is my job. And if the law allows  
 09:14 3 me to do my job, there's nothing wrong with it. I was  
 09:14 4 thinking of the guy that's the mortgage banker. And  
 09:14 5 somebody buys a home and has a mortgage and gets behind  
 09:14 6 on their payments. And finally, in order to get his  
 09:14 7 money, he has no business choice but to foreclose on the  
 09:14 8 mortgage, and he doesn't like doing it. And he knows  
 09:14 9 that there are probably going to be children crying and  
 09:14 10 moving vans and where are they going to live?

09:14 11 If you think about that for a second, the  
 09:14 12 upheaval of that could be enormous from getting kicked  
 09:14 13 out of your house. And yet most people can do that, and  
 09:14 14 they can probably sleep at night and say, well, the law  
 09:15 15 allows it in the contract. And they didn't fulfill the  
 09:15 16 terms of the contract. And I'm sorry for them, but I'm  
 09:15 17 just following the law, and I've been honorable with  
 09:15 18 them in all regards.

09:15 19 But when you get to the death penalty,  
 09:15 20 most people say, you know, you've got to draw the line  
 09:15 21 at that kind of stuff. And if you really believe that  
 09:15 22 it's wrong, you've got to stand up for it. That means  
 09:15 23 stand up in any place you can stand up. When you go  
 09:15 24 vote in the ballot box, you stand up with it with  
 09:15 25 candidates. You stand up with it when you are on a

09:15 1 jury. And so it's kind of like, on that issue, on the  
 09:15 2 issue of putting people to death, just following orders  
 09:15 3 may not be enough. Does that make sense to you?

09:15 4 A. Yes.

09:15 5 Q. I always think of Nazi Germany. I don't want  
 09:15 6 to imply that we're anything like Nazi Germany. But  
 09:15 7 most of those people who were killed there, didn't seem  
 09:16 8 to have done anything wrong other than be born. They  
 09:16 9 didn't get trials. They didn't worry about that sort of  
 09:16 10 thing. So, I don't think we're anything like Germany  
 09:16 11 the way we do the death penalty in Texas. But still, if  
 09:16 12 you serve on this jury, you will be a part of that  
 09:16 13 process. And I could tell you until I'm blue in the  
 09:16 14 face that you really don't answer -- you really don't  
 09:16 15 decide death or life directly. Instead, you answer  
 09:16 16 questions, but you know that answering questions is  
 09:16 17 going to have one effect or the other. How you answer  
 09:16 18 those questions will result either in life or death on  
 09:16 19 the other.

09:16 20 It's kind of like the trainman in Germany.  
 09:16 21 I mean, yeah, they didn't pull the lever, they didn't  
 09:16 22 produce the gas at the end of the train line, but they  
 09:16 23 knew what was going on down there. And they were part  
 09:16 24 of the process, and so they can't very well say, all I  
 09:16 25 was was a trainman. They were part of it.

09:16 1 A. Okay.

09:16 2 Q. So, I don't get a sense that it would on a  
 09:17 3 matter of this magnitude -- I don't get a sense from you  
 09:17 4 that it would do me any good to say: You are just the  
 09:17 5 umpire calling balls and strikes. You shouldn't worry  
 09:17 6 about the final score.

09:17 7 A. That's correct.

09:17 8 Q. And I'm not -- I'm not in any way denigrating  
 09:17 9 this. I hope when I talked directly back last Tuesday,  
 09:17 10 I hope you understood what we proposed to do. That I  
 09:17 11 wasn't trying to be amusing or entertaining or I didn't  
 09:17 12 think this was a delightful thing that we're all about  
 09:17 13 here. But I wanted everybody to realize this is the  
 09:17 14 real thing where 12 people will be called upon to be  
 09:17 15 able to do one or the other if the person is found  
 09:17 16 guilty of capital murder. Okay?

09:17 17 A. Okay.

09:17 18 Q. And I think you are telling me that you are not  
 09:17 19 able to do one or the other. You could do one but not  
 09:18 20 both?

09:18 21 A. That's correct.

09:18 22 Q. Okay. Now, sometimes things that we'd rather  
 09:18 23 not do or don't make sense to us, the Judge can instruct  
 09:18 24 us to do some things, and we do it, and it's okay. As a  
 09:18 25 lawyer we have hearings all the time, and maybe

09:18 1 afterward the Judge will tell me or the prosecution,  
 09:18 2 don't do certain things. Don't introduce this or that  
 09:18 3 kind of evidence. Don't mention this or that event.  
 09:18 4 Don't even refer to this or that document or something  
 09:18 5 like that.

09:18 6 Even if I disagree with the Judge, I think  
 09:18 7 he's mistaken about his ruling, I can still follow those  
 09:18 8 instructions. And you know I've gone through bunches of  
 09:18 9 trials in my life and never breached those directions by  
 09:18 10 the trial judge. All right?

09:18 11 A. Okay.

09:18 12 Q. Same thing can happen to a jury. You can be  
 09:18 13 instructed by the Judge at some point: Don't consider a  
 09:18 14 certain amount of a particular kind of evidence. He  
 09:19 15 would never tell you, forget you heard that evidence,  
 09:19 16 because that's humanly impossible. What he would say  
 09:19 17 is, don't consider this or that, like parole. He  
 09:19 18 couldn't say, put parole out of your mind because it's  
 09:19 19 in your mind. You can't do that. But he could say,  
 09:19 20 don't put that on the scales of justice as you are  
 09:19 21 trying to weigh what's to be done.

09:19 22 A. Okay.

09:19 23 Q. And that works okay with a lot of things. That  
 09:19 24 works okay with failure to testify. You might think  
 09:19 25 that a defendant ought to have to testify in his own

09:19 1 trial. But if the Judge says he doesn't have to on the  
09:19 2 scales of justice. Yeah, you are sitting there and you  
09:19 3 know he can testify because you are sitting there  
09:19 4 watching him, and he wasn't up there. But that's not  
09:19 5 something you are going to have trouble with not putting  
09:19 6 on the scales of justice.

09:19 7 Why would the death penalty be different?  
09:19 8 If the Judge were to instruct you not to answer those  
09:19 9 special issues in accordance with achieving a particular  
09:19 10 result, but rather to only consider the evidence and let  
09:20 11 the chips fall where they might, why would that be  
09:20 12 different than not considering parole to you, for  
09:20 13 example?

09:20 14 A. I'm not sure I'm clear on what you are --

09:20 15 Q. Well, let me spin this around a little bit.  
09:20 16 Can you read that okay from your angle?

09:20 17 A. Yes.

09:20 18 Q. Okay. That's the first special issue that we  
09:20 19 get. Whether there's a probability that -- that the  
09:20 20 defendant would constitute a continuing threat to  
09:20 21 society by a propensity toward acts of violence. Now,  
09:20 22 if you just looked at that question, apart from this  
09:20 23 trial, and I were to ask you: Do you think there are  
09:20 24 some people that are a continuing threat to society  
09:20 25 because of their violence? The answer is, of course,

09:20 1 there are. We all know that.

09:20 2 A. Yes.

09:20 3 Q. I mean, there are people that are as dangerous  
09:20 4 as any tiger in a cage, if given that opportunity.  
09:21 5 That's maybe how they got that way. Maybe we don't  
09:21 6 know. But there are such people; do you agree?

09:21 7 A. Yes.

09:21 8 Q. So, except for the fact of a death penalty  
09:21 9 being related to that question, you'd be able to answer  
09:21 10 that question the same way as anybody else, right?

09:21 11 A. Yes.

09:21 12 Q. Now, if you are told that answering that  
09:21 13 question yes may result in a death sentence being  
09:21 14 assessed against the defendant, in answering that  
09:21 15 question no would automatically give that defendant a  
09:21 16 life sentence. Because of your personal beliefs about  
09:21 17 the death penalty, are you free to do that? Are you  
09:21 18 free to give a completely fair answer to that question  
09:21 19 knowing that that answer might be a death sentence?

09:21 20 A. I don't know that I would. I think I would in  
09:21 21 the back of my mind, still knowing that it was a life or  
09:21 22 death issue, I think I would move the other direction  
09:21 23 and not answer yes to that question.

09:22 24 Q. Okay. We never know what we do until we get  
09:22 25 faced with that, I know.

09:22 1 A. Yes.

09:22 2 Q. So do all of us. But do you think that your  
09:22 3 opposition to the death penalty would, if it wouldn't  
09:22 4 prevent you from being able to return a death sentence,  
09:22 5 would it substantially interfere with your ability to  
09:22 6 look at these questions and judge them fairly?

09:22 7 A. I think it would cloud my judgment a little  
09:22 8 bit, yes.

09:22 9 Q. Well, do you think it would substantially  
09:22 10 impair your judgment?

09:22 11 A. Yes, I do.

09:22 12 Q. Now, it used to be that would probably be the  
09:22 13 end of our discussion because there were other special  
09:22 14 issues, but it was an automatic-type process. If you  
09:22 15 answered them yes, then the death sentence resulted. If  
09:22 16 you answered one or more or them no, a life sentence  
09:22 17 resulted. The issue is a little different now because  
09:22 18 we have this question here. Take a moment, if you  
09:22 19 would, to read that for me.

09:22 20 A. Okay.

09:22 21 Q. Let me know when you are finished.

09:23 22 A. Okay.

09:23 23 Q. That question, first of all, doesn't have a  
09:23 24 burden of proof. We don't have to prove a lack of  
09:23 25 mitigation. The defense doesn't have to prove the

09:23 1 existence of mitigation. You will never get a  
09:23 2 definition of sufficient, whatever that means. Clearly  
09:23 3 what that question doesn't contemplate is that the  
09:23 4 mitigating evidence be opposition to the death penalty  
09:23 5 because it doesn't direct you to take into consideration  
09:23 6 your feelings about the death sentence. It rather  
09:23 7 directs you to take into consideration all the evidence  
09:23 8 including the circumstances of the evidence, the  
09:23 9 defendant's character and background and the personal  
09:23 10 moral culpability of the defendant. And consider all of  
09:23 11 that and anything else that's in the evidence. Then it  
09:23 12 says: Is there sufficient mitigating circumstance or  
09:23 13 circumstances to warrant that a sentence of life  
09:23 14 imprisonment rather than a death sentence be imposed?

09:24 15 Now, from talking with you, I get the  
09:24 16 impression, and it's not critical, we're just  
09:24 17 communicating like a couple guys talking.

09:24 18 A. Sure.

09:24 19 Q. I get the impression that in a sense your view  
09:24 20 of the death penalty would be the mitigating  
09:24 21 circumstance, apart from anything else. Is that a fair  
09:24 22 statement?

09:24 23 A. Yes, it is.

09:24 24 Q. Okay. And if that's the case, I guess I'm  
09:24 25 thinking, no matter how well we present this case, no

09:24 1 matter how clearly we establish the defendant's guilt,  
 09:24 2 no matter how clearly we establish his danger and a  
 09:24 3 propensity toward violent acts, no matter how strongly  
 09:24 4 we resist the notion that something in his background,  
 09:25 5 character or the circumstances of the case operate to  
 09:25 6 lessen the need for the death penalty, I have the  
 09:25 7 impression from your questionnaire answers and your  
 09:25 8 courtesy to me in answering the questions, that none of  
 09:25 9 that is going to matter. Your vote is still going to  
 09:25 10 result in a life sentence, at least your individual  
 09:25 11 vote. Is that fair?

09:25 12 A. Yes, that is fair.

09:25 13 Q. Okay. And I don't take it personally, because  
 09:25 14 I know it's not personal to me or the lawyers. We could  
 09:25 15 get the world's greatest prosecutor in here and charm  
 09:25 16 you for three weeks. It wouldn't matter, right?

09:25 17 A. That's correct.

09:25 18 Q. Well, if Judge Sandoval were to instruct you  
 09:25 19 that that's -- that what has to operate to answer these  
 09:25 20 questions is the evidence and your assessment of it and  
 09:25 21 not your personal moral judgments about the result -- I  
 09:25 22 can tell you are not a disobedient man. It is not that  
 09:25 23 you are just balky and want to do things your own way.  
 09:26 24 Is that an instruction that you would be able to follow,  
 09:26 25 in your opinion?

09:26 1 A. I think I could follow it to a degree but,  
 09:26 2 again, I'm still human. And in the back of my mind, I'm  
 09:26 3 still going to know what the result of that will be.

09:26 4 Q. The bottom line, no matter, we're not going to  
 09:26 5 get a death vote from you in this case; is that correct?

09:26 6 A. That's correct.

09:26 7 Q. Now, sometimes if you go a little further and  
 09:26 8 if I were to take the other side. Let's say I were  
 09:26 9 trying instead to demonstrate the fact that you couldn't  
 09:26 10 be fair to me and the rest of the prosecution team, if I  
 09:26 11 were trying to demonstrate the offense of -- somehow by  
 09:26 12 my questions I wanted to prove, oh, yes, in that rare  
 09:26 13 case you could do it. I might approach it this way. I  
 09:26 14 might say, well, sir, if you heard all the evidence and  
 09:27 15 you believe that voting in a way to cause a death  
 09:27 16 sentence was the right way to do, would you vote for it?  
 09:27 17 And if you phrase the question that way, I guess we'd  
 09:27 18 all do anything, if we believed it to be the right  
 09:27 19 thing, right?

09:27 20 A. Yes, I believe we would.

09:27 21 Q. I mean, if I said, hey, let's me and you go up  
 09:27 22 to the sixth floor and jump off on our heads and see how  
 09:27 23 we feel after we do that. And if you felt that was the  
 09:27 24 right thing to do, then if I were to say, if you felt  
 09:27 25 that were the right thing to do, would you go do that?

09:27 1 Well, yeah, I guess you would, if you thought it was the  
 09:27 2 right thing to do.

09:27 3 We would all do things that we think is  
 09:27 4 the right thing to do. But you could never think that's  
 09:27 5 the right thing to do. Do you follow what I'm saying?

09:27 6 A. Yes.

09:27 7 Q. And the same with the death sentence. Sure, if  
 09:27 8 you believe the death sentence is the right thing to do,  
 09:27 9 you would do it. But that's never going to happen with  
 09:27 10 you; isn't that so?

09:27 11 A. That's correct.

09:27 12 Q. And then, it might be that you would be asked  
 09:28 13 the question, well, if you look at this. I mean, you  
 09:28 14 know, you could take into consideration all the evidence  
 09:28 15 and maybe you'd say, well, you know, the evidence isn't  
 09:28 16 100 percent certain. And I'm taking into consideration  
 09:28 17 the evidence, and I'm thinking, you know, since there's  
 09:28 18 always that possibility that everybody is wrong about it  
 09:28 19 all, I'd still be worried about that. But that's  
 09:28 20 just -- that would just be words trying to justify  
 09:28 21 what's really the core moral belief of saying that you  
 09:28 22 are opposed to the death penalty. Is that what you are  
 09:28 23 saying?

09:28 24 A. Yes.

09:28 25 Q. And then some people might ask you this, they

09:28 1 might say, well, because this is probably how I do it,  
 09:28 2 if I want to be like the other side and I'm debating  
 09:28 3 with you, I might say do you remember Adolf Hitler? Do  
 09:29 4 you remember he killed 6 million people? And he  
 09:29 5 probably never killed anybody himself, but he certainly  
 09:29 6 caused it all to be done.

09:29 7 Or do you remember Timothy McVeigh? He  
 09:29 8 killed 160 something people in Oklahoma City, we figure.  
 09:29 9 I mean, kind of all of what we're saying, we better --  
 09:29 10 it's too late now if he didn't kind of thing because  
 09:29 11 that's over.

09:29 12 A. Correct.

09:29 13 Q. And I might think, well, I'll come up with an  
 09:29 14 outrageous fact situation. Something so extreme that  
 09:29 15 almost I could -- I could get this juror to almost want  
 09:29 16 to feel silly by saying, I wouldn't vote for the death  
 09:29 17 penalty for Hitler or Timothy McVeigh or Abdula the  
 09:29 18 Butcher, or somebody like that maybe. But the truth is,  
 09:29 19 if you got right down to it, if killing -- if executions  
 09:30 20 are wrong, you have to admit it would even be wrong for  
 09:30 21 Hitler or McVeigh, too? Even though it's more enormous  
 09:30 22 still, wouldn't you?

09:30 23 A. Yes.

09:30 24 Q. So, I mean, it's not even a matter of there are  
 09:30 25 some extreme fact situations that would justify the



09:30 1 death sentence. What you are saying is to be morally  
09:30 2 consistent, the facts don't matter. It's our act of  
09:30 3 killing that you could not participate in?

09:30 4 A. That's correct.

09:30 5 Q. And it doesn't do any good for me to say all  
09:30 6 you are doing is voting because you are part of the  
09:30 7 process if you vote in a way that causes that?

09:30 8 A. Yes.

09:30 9 Q. And you are not saying this just to get off the  
09:30 10 jury. That's not your purpose. You are not doing that  
09:30 11 to us?

09:30 12 A. No.

09:30 13 Q. So as you sit there right now in this case with  
09:30 14 this defendant Mr. Cantu, if you are on that jury, he  
09:30 15 doesn't ever have to worry about a death sentence; is  
09:30 16 that right?

09:30 17 A. That's correct.

09:31 18 Q. This is very respectful to you for your  
09:31 19 honesty. Judge, I'd challenge this juror for cause for  
09:31 20 inability to follow one of the laws upon which the State  
09:31 21 of Texas is entitled to rely on, and that's a fair  
09:31 22 consideration of a death sentence and in answer to those  
09:31 23 questions in a fair manner.

09:31 24 THE COURT: All right.

09:31 25 MR. GOELLER: Thank you, Judge,

09:31 1 Mr. Schultz and Ms. Falco, and Ms. Lowry.

09:31 2 VOIR DIRE EXAMINATION

09:31 3 BY MR. GOELLER:

09:31 4 Q. Mr. Littlejohn, my name is Matthew Goeller.  
09:31 5 And I think we met just about a week ago. I guess it  
09:31 6 was Tuesday morning. Tuesday had to be probably one of  
09:31 7 those days that you'll remember for a long time because  
09:31 8 I talked to many jurors. Not many, but jurors who have  
09:31 9 come into contact with the courthouse in these kind of  
09:31 10 cases. And when you come to the courthouse and you --  
09:31 11 last Tuesday morning you had no idea what the case was  
09:31 12 about, correct?

09:31 13 A. That's correct.

09:31 14 Q. When you sat in that room with 200 people, did  
09:32 15 anything start to creep in the back of your head, or  
09:32 16 were you still up until the time that Judge Sandoval  
09:32 17 talked about capital murder and possible death penalty  
09:32 18 and that type of thing, is that the first idea you had  
09:32 19 what was going on?

09:32 20 A. Yes.

09:32 21 Q. And that had to be kind of a shock, I imagine,  
09:32 22 sitting in a room where a representative from the State  
09:32 23 stands up and says we would like to kill this young man  
09:32 24 here if we have our way when it's all said and done.  
09:32 25 And that's essentially what took place that day,

09:32 1 correct?

09:32 2 A. Yes.

09:32 3 Q. What have you thought about in the last week,  
09:32 4 or if you have at all? Has this case kind of been in  
09:32 5 the back of your mind? Have you thought about death  
09:32 6 penalty and criminal trials and judges and prosecutors  
09:32 7 and the defense lawyers and that kind of thing, or was  
09:32 8 it kind of like until you got here again this morning,  
09:32 9 you didn't really ponder it?

09:32 10 A. Well, I mean, my belief on the death penalty  
09:32 11 has been that way for a long time. So I didn't really  
09:32 12 enter into that. I do work for a law firm, so I mean --

09:33 13 Q. You are a comptroller?

09:33 14 A. I am a comptroller. I'm the accountant for a  
09:33 15 law firm, yes.

09:33 16 Q. It must be a big firm.

09:33 17 A. No. There's about 20 attorneys. It's not very  
09:33 18 large.

09:33 19 Q. Billing, and I don't know what a comptroller  
09:33 20 does in a law firm. Tell me about that.

09:33 21 A. Basically, I'm responsible for all the  
09:33 22 financial decisions that are made in the law firm, as  
09:33 23 far as spending, receiving, anything financially  
09:33 24 related. So, I mean, I've talked to, you know,  
09:33 25 attorneys obviously. I deal with them day-to-day. But

09:33 1 not specifically about any kind of criminal case or --  
09:33 2 we're a plaintiff litigation.

09:33 3 Q. You are plaintiffs' firm?

09:33 4 A. Yes.

09:33 5 Q. I understand that you are an opponent of the  
09:33 6 death penalty.

09:33 7 A. Yes.

09:33 8 Q. And that is okay. In fact, under our law,  
09:34 9 Texas law and federal law, you could not be excluded.  
09:34 10 You cannot be stricken as a juror because you are an  
09:34 11 opponent of the death penalty. Depending on how your  
09:34 12 personal views figure into your assessment of the facts  
09:34 13 and the special issues, and you may or may not be  
09:34 14 disqualified.

09:34 15 Now, when Mr. Schultz was asking -- he  
09:34 16 asked you a series of questions. And you were very  
09:34 17 consistent, and you stated several times you are an  
09:34 18 opponent of the death penalty. You don't believe in it.  
09:34 19 When he got to the special issues -- I've got special  
09:34 20 issue No. 1. And the Judge asked you about taking the  
09:35 21 law from the Judge. If the Judge said you would answer  
09:35 22 this question as a juror.

09:35 23 Now, by the time you get to these  
09:35 24 questions, you would -- you probably know this -- you've  
09:35 25 already found that somebody intentionally killed two

09:35 1 people or killed in the course of robbery or killing in  
09:35 2 the course of burglary as the indictment in this case  
09:35 3 states.

09:35 4 When Mr. Schultz asked you, would you  
09:35 5 answer that -- would you take the law and the directions  
09:35 6 from the Judge and answer that question? I can't  
09:35 7 remember exactly how he phrased it, but you stated, it  
09:35 8 would be in the back of my mind, or it would figure in  
09:35 9 my opposition to the death penalty?

09:36 10 A. Actually, it was on the second mitigating  
09:36 11 circumstance. That would be my mitigating factor, yes.

09:36 12 Q. Okay. This first special issue, do you think  
09:36 13 you could answer such a special issue, based on the  
09:36 14 facts presented to you, either in -- and you can  
09:36 15 consider, I suppose, all the evidence in the first phase  
09:36 16 of the trial and any evidence in the punishment phase.  
09:36 17 We refer to that as the future dangerousness question.  
09:36 18 Could you answer such a question?

09:36 19 A. Yes.

09:36 20 Q. Okay. I suppose the root of problems in  
09:36 21 seating a juror is a juror who would intentionally throw  
09:36 22 the questions or answer the questions not based on the  
09:36 23 facts or evidence, but answer the questions going into  
09:37 24 the trial knowing they may answer those questions,  
09:37 25 answer those questions in such a way that it's purely

09:37 1 based on their own personal beliefs and not let the  
09:37 2 evidence figure into it.

09:37 3 And the State has a right not to have  
09:37 4 jurors who would do such a thing from their side. And,  
09:37 5 likewise, I would have the right not to seat a juror on  
09:37 6 this case who would not answer the questions but vote to  
09:37 7 kill every time. And I'm not trying to be flippant but,  
09:37 8 you know, that is the bottom line here.

09:37 9 A. Sure.

09:37 10 Q. Now, even though you stated you could answer  
09:37 11 this question based on the facts and admittedly that, if  
09:37 12 the answer -- and the State has the burden of proof on  
09:37 13 this question, beyond a reasonable doubt, same quantum  
09:38 14 of evidence necessary to find somebody guilty in the  
09:38 15 first place -- in the first phase of the trial, beyond a  
09:38 16 reasonable doubt. This question here, burden of proof  
09:38 17 on the State, beyond a reasonable doubt. Based on the  
09:38 18 evidence, whatever the evidence may be. And the thing  
09:38 19 about being a juror in a criminal case is you are  
09:38 20 absolutely free as a juror to consider what evidence is  
09:38 21 evidence. You probably know this.

09:38 22 You can believe half of what a witness  
09:38 23 says, none of what a witness says, everything a witness  
09:38 24 says, 10 percent, 90 percent, 0 percent. You are free  
09:38 25 to consider -- I don't consider that evidence at all, or

09:38 1 I put a great deal of stock in that kind of evidence.  
09:38 2 But all of those things figured in, you could answer  
09:38 3 that question?

09:38 4 A. Yes.

09:38 5 Q. Based on the evidence?

09:38 6 A. Yes.

09:38 7 Q. Okay. And then we get to -- let me put up the  
09:38 8 third special issue of mitigation. When we get to that  
09:39 9 question, that question, for all the verbiage and  
09:39 10 wordiness in there, I suppose, that question is a final  
09:39 11 look. I suppose when we look at the word *mitigation* and  
09:39 12 all the things that are in -- that make up part of that  
09:39 13 question, the bottom line of that question is, does the  
09:39 14 jury individually and then collectively as a group vote  
09:39 15 life or death? That's really what it is. Because  
09:39 16 anything can be mitigation. Anything can be mitigation,  
09:39 17 I suppose.

09:39 18 There is no burden of proof on this  
09:39 19 question, oddly enough. No burden of proof. The State  
09:39 20 nor the defense have a burden. That's really -- it goes  
09:40 21 back there. Now, to answer that question no, a no  
09:40 22 answer to that question, as you probably figured out, a  
09:40 23 unanimous no, means a death sentence would be -- would  
09:40 24 come about. Again, that -- that question really looks  
09:40 25 at evidence in many many different forms: circumstances

09:40 1 of the offense, character, background, personal moral  
09:40 2 culpability.

09:40 3 I would submit to you that you are,  
09:40 4 somebody such as yourself, versus somebody that takes  
09:40 5 that chair during this individual voir dire and is very,  
09:40 6 very, very pro-death penalty, I mean, they like the  
09:40 7 death penalty, and they like it imposed. Both sets of  
09:41 8 people and those people in the middle, they are going to  
09:41 9 go back to that jury deliberation room, and they are not  
09:41 10 going back there in a vacuum. You're going to be  
09:41 11 bringing all the baggage of your 38 years and your  
09:41 12 philosophies and your look at life, just like the other  
09:41 13 person that's maybe very pro-death penalty versus the  
09:41 14 people that are not really sure where they are. And I  
09:41 15 think it would be absurd to think that your  
09:41 16 philosophical views, like any other juror, would not  
09:41 17 somehow figure into it. Okay?

09:41 18 A. Okay.

09:41 19 Q. Do you see what I'm saying?

09:41 20 A. Yes.

09:41 21 Q. It's crazy to think that we could find a juror  
09:41 22 that wouldn't. So anyhow, even though -- I guess the  
09:41 23 bottom line question here is: If you can answer the  
09:42 24 first special issue based on the facts, could you answer  
09:42 25 the second special issue based on facts?

09:42 1 A. Again, because it specifically states life or  
09:42 2 death in it, in the back of my mind would be that issue.  
09:42 3 And I would vote against the death penalty at that  
09:42 4 point.

09:42 5 Q. When you say in the back of your mind, all  
09:42 6 right, that may not be a problem.

09:42 7 A. Okay.

09:42 8 Q. Would you purposely throw any question? Okay?

09:42 9 A. Well, I mean, I don't know what you mean by  
09:42 10 purposely. I mean, I'm going to answer the question  
09:43 11 based on my belief. Now, whether that's purposely  
09:43 12 throwing a question or not, I don't -- I mean, my stance  
09:43 13 is that I would not bring back the death penalty. If  
09:43 14 that means in your view that I'm throwing the question  
09:43 15 purposely, then I guess so. In my mind, no, I'm not  
09:43 16 throwing the question. I'm answering it honestly and to  
09:43 17 the best of my ability.

09:43 18 Q. And what would you figure into answering a  
09:43 19 question honestly? Because that's where -- that's where  
09:43 20 I'm still -- I want to make sure I understand exactly  
09:43 21 where you are coming from because, based on some of your  
09:43 22 answers to Mr. Schultz's questions, you would take the  
09:43 23 law from the Judge and you would apply the law to the  
09:43 24 facts in the case, and I know we overlay that with your  
09:43 25 beliefs on the death penalty.

09:43 1 But I guess when I say, throw the  
09:43 2 question, I'm saying, would you disregard the evidence?  
09:43 3 Would you disregard the Judge's instructions and the law  
09:44 4 and the facts of the case to ensure, no matter what, you  
09:44 5 would always answer that question yes?

09:44 6 A. Given that circumstance, probably so, yes.

09:44 7 Q. When you say probably so, I know you are  
09:44 8 struggling. I know I am splitting hairs here, but --

09:44 9 A. Well, again, I guess it goes back to what  
09:44 10 Mr. Schultz said earlier, I mean, until I'm put in that  
09:44 11 situation, I can't say, because I've never been in it.  
09:44 12 I can't say, yes, I've done that before or, no, I  
09:44 13 haven't.

09:44 14 My belief is in the way I think I would  
09:44 15 answer that question is, I would answer against the  
09:44 16 death penalty in that question. You know, if it was  
09:44 17 posed to me, that's my belief at this point as I sit  
09:44 18 here. But without having it posed directly to me and  
09:44 19 actually being in that situation, I guess I can't really  
09:45 20 say yes or no that I would do it one way or the other.

09:45 21 Q. Okay. It would have to be one of those where,  
09:45 22 until you hear the facts of the case and all the  
09:45 23 evidence and sit down as an individual juror and  
09:45 24 collectively with 11 other people, you won't know until  
09:45 25 you get to that point?

09:45 1 A. That's probably a very fair assessment. I  
09:45 2 mean, it would take, in my mind right now, I would still  
09:45 3 be voting against the death penalty. I don't know what  
09:45 4 it would take to convince me, let me put it that way. I  
09:45 5 don't know what it would take to make me change my mind  
09:45 6 in that instance. And I don't know if there's anything  
09:45 7 out there that could. And maybe that's why I'm saying  
09:45 8 "probably" more than a definite yes or no.

09:45 9 Q. Yeah. This jury will be made up of -- I really  
09:46 10 think -- two kinds of people. The State has the right  
09:46 11 to have people who can, in the proper case, give death.  
09:46 12 And that boils down to 8 billion pages of case law, but  
09:46 13 that's the bottom line.

09:46 14 A. Okay.

09:46 15 Q. I suppose that really equates to 12 people that  
09:46 16 are -- if not pro-death penalty, certainly don't have  
09:46 17 too big of an objection to it. So, we know all 12  
09:46 18 jurors per our law have to be able to, in the proper  
09:46 19 case, vote in such a way to impose death.

09:46 20 The other kinds of people that we'd like  
09:46 21 to think could make it on a jury are those opposed to  
09:47 22 the death penalty but in the proper case could vote in  
09:47 23 such a way, based on the special issues, future  
09:47 24 dangerousness and then a no vote to that mitigation  
09:47 25 issue. Although they are philosophically opposed to the

09:47 1 death penalty, they would vote based on the evidence and  
09:47 2 the end result could be a death sentence, even though  
09:47 3 they are against the death penalty.

09:47 4 Mr. Schultz gave you a lot of examples  
09:47 5 about Nazi Germany and gas chambers and, I guess, the SS  
09:47 6 loading aboard trains and things like that. That's  
09:47 7 pretty extreme as well. Okay?

09:47 8 A. Okay.

09:47 9 Q. He talked about the extreme ends, McVeigh, and  
09:47 10 Adolf Hitler, and Joseph Stalin, and Polpot. And you  
09:48 11 can think of all sorts of people in your lifetime and my  
09:48 12 lifetime that have killed tens of thousands or hundreds  
09:48 13 of people in the media. We can't help but know about  
09:48 14 those kinds of cases.

09:48 15 As I hear your testimony, you are not  
09:48 16 telling me that you would answer the questions  
09:48 17 disregarding all the facts in evidence and would answer  
09:48 18 them -- we know on special issue No. 1, you are very  
09:48 19 clear that you can answer that question based on the  
09:48 20 evidence.

09:48 21 A. Yes.

09:48 22 Q. Even though you know that question could --  
09:48 23 it's the first step -- well, I shouldn't say -- it's the  
09:48 24 first step to either a life or death sentence. That  
09:49 25 future dangerousness issue, the probability that

09:49 1 somebody would commit violence in the future and be a  
 09:49 2 threat to society and all that. So what I hear you  
 09:49 3 telling me is that it would always be in the back of  
 09:49 4 your mind, your bottom line stance on the death penalty  
 09:49 5 that you are an opponent of the death penalty. But I  
 09:49 6 don't hear you saying you would disregard the Judge's  
 09:49 7 law and instructions to you and disregard the evidence  
 09:49 8 in the case.

09:49 9 I know you are -- I think you are being  
 09:49 10 extremely honest because it would be easy for a juror to  
 09:49 11 say -- let's say a juror came in here, and we get these  
 09:49 12 questionnaires. And you can see some of these  
 09:49 13 questionnaires, some people filled these out to be  
 09:49 14 politically correct. Okay? They are right down the  
 09:49 15 middle of the road on everything. I'm a 5 from a 1 to a  
 09:50 16 10. I could give -- maybe they are people out there  
 09:50 17 that have never given it much thought and don't have  
 09:50 18 much position on something like capital punishment.  
 09:50 19 Maybe because I'm a lawyer I think people are either for  
 09:50 20 it or against it.

09:50 21 But anyhow, your questionnaire cut to the  
 09:50 22 chase, and I think it was honest. But the situation I  
 09:50 23 find myself in right now is, I hear you saying I'm not  
 09:50 24 for the death penalty, and it would always be in the  
 09:50 25 back of my mind in the way I look at things.

09:50 1 A. Yes.

09:50 2 Q. And I submit to you there's nothing wrong with  
 09:50 3 that. Could you look at things, even with that, with  
 09:50 4 that in the back of your mind, and I submit to you that  
 09:50 5 you are not in a vacuum. That's okay.

09:50 6 A. Okay.

09:50 7 Q. It's if you would disregard the evidence and  
 09:50 8 disregard consciously -- I would say consciously  
 09:50 9 disregard the facts and evidence and the law that Judge  
 09:50 10 Sandoval would give you. That would probably disqualify  
 09:51 11 you as a juror.

09:51 12 A. Well, to me the bottom line has to be that in  
 09:51 13 the back of my mind, can I go home and look my children  
 09:51 14 in the face who I have been telling for 12 and 9 years  
 09:51 15 of their life, it's wrong to commit a murder. It's  
 09:51 16 wrong to kill somebody. And then I stand in here and  
 09:51 17 commit somebody to death.

09:51 18 So in that case, yes, I probably could  
 09:51 19 disregard that instruction because, again, I don't know  
 09:51 20 that there's anything out there that could really  
 09:51 21 override that in my mind. Because my children are  
 09:51 22 obviously the most important thing to me, and my  
 09:51 23 presentation to them in the way I live has to be very  
 09:51 24 important.

09:51 25 Q. And no one could -- no one has the right to sit

09:51 1 here and force you to think of a fact situation where if  
 09:51 2 it all hit you, you may -- you may vote in such a way  
 09:51 3 that the death sentence would be imposed. We don't have  
 09:52 4 the right to sit here, and it's probably wrong. I think  
 09:52 5 the Judge would probably stop us. If I asked you, I  
 09:52 6 want you to think of this situation: Would you vote to  
 09:52 7 impose the death sentence, or vote to impose the life  
 09:52 8 sentence? But I still hear you saying you, once you see  
 09:52 9 it, it may come to you that the appropriate decisions,  
 09:52 10 based on the evidence would be a death sentence. You  
 09:52 11 can't think of one right now.

09:52 12 A. Well, again, like you said, you can't ask me to  
 09:52 13 think of one, and I honestly do not believe there's one  
 09:52 14 you could think of that would make me put myself in that  
 09:52 15 position. But, again, giving the nature of what I do  
 09:52 16 for a living as an accountant, there's always -- I  
 09:52 17 always have to be open to any possibility as remote as  
 09:52 18 it may be. But that doesn't mean that it will change  
 09:52 19 how I believe in it. I mean, that possibility would  
 09:52 20 have to be extremely, extremely powerful. And I just  
 09:52 21 don't see one out there that could do that.

09:53 22 Q. Do you have any questions of me or Mr. Schultz  
 09:53 23 about anything that we've discussed so far?

09:53 24 A. No, I don't believe so.

09:53 25 MR. GOELLER: That's all I have.

09:53 1 THE COURT: Challenge for cause is  
 09:53 2 granted. You are finally excused, Mr. Littlejohn.  
 09:53 3 Thank you very much.

09:53 4 (Venireperson Littlejohn excused.)

09:53 5 THE COURT: All right. We're going to  
 09:53 6 take up Mr. Johnwell next. And I suppose it will be  
 09:53 7 appropriate to tell both sides that we had a lot of  
 09:53 8 contact with Mr. Johnwell on the telephone. I have the  
 09:53 9 distinct impression that he has other fish to fry, but  
 09:53 10 I'm just telling you that because it's true.

09:53 11 MR. GOELLER: Judge, what number would he  
 09:53 12 be?

09:53 13 THE COURT: No. 54. We tried to take him  
 09:53 14 up a time or two, but just didn't get to him. And he's  
 09:54 15 the fellow who had a comment for Mr. Schultz during  
 09:54 16 the -- during the general voir dire that, so any way...

09:54 17 MR. GOELLER: Judge, can you give me just  
 09:54 18 a second?

09:54 19 THE COURT: Yes, sure.

09:58 20 MR. SCHULTZ: We'd like to plow other  
 09:58 21 fields with this.

09:58 22 MR. GOELLER: Yes.

09:58 23 THE COURT: Would you do me a favor, with  
 09:58 24 regard to Mr. Johnwell, would you take him outside the  
 09:58 25 jury and tell him he's finally excused and get the next

09:58 1 one who, I guess, would be Ms. Rhoads, Susan Rhoads  
09:58 2 would be the next one.

09:58 3 (Venireperson Rhoads present.)

09:59 4 THE COURT: The attorney is going to ask  
09:59 5 you some questions. I just want to tell you, if you  
09:59 6 recall last Tuesday, I swore everyone in during at some  
09:59 7 point in the proceeding and ask that you would swear to  
09:59 8 give true answers to any questions they might make. And  
09:59 9 I just want to remind you that you are still under oath.  
09:59 10 She's No. 18. All right. Mr. Schultz?

09:59 11 MR. SCHULTZ: Thank you, Judge.

09:59 12 VOIR DIRE EXAMINATION

09:59 13 BY MR. SCHULTZ:

09:59 14 Q. Ms. Rhoads, my name is Bill Schultz. I'm one  
09:59 15 of the assistant district attorneys representing the  
09:59 16 State of Texas in this capital prosecution of Ivan  
09:59 17 Cantu. To my left is Ms. Gail Falco, the chief felony  
09:59 18 prosecutor of one of our other courts who is on loan to  
09:59 19 this court to work with us here. And to her left is  
09:59 20 Jamie Lowry, who is an assistant district attorney,  
09:59 21 assigned primarily to the 380th Judicial district Court.

09:59 22 Moving further to your right is the  
09:59 23 defendant in this case, Ivan Cantu. One of the other  
10:00 24 attorneys representing Mr. Cantu, is Mr. Don High,  
10:00 25 although he's not here. He's been in and out, and he's

10:00 1 involved in some things that are related to this case.  
10:00 2 And then at the far right of that table is Mr. Matt  
10:00 3 Goeller, a very fine practitioner of law that works in  
10:00 4 Plano, Texas. And I think you don't know any of us; is  
10:00 5 that correct?

10:00 6 A. Correct.

10:00 7 Q. You have to excuse me because I have a cold.  
10:00 8 And I'm -- if you can't hear me or if I get real hard to  
10:00 9 hear, just let me know, I'll try to do better with it.  
10:00 10 When you came to court back on Tuesday and the Judge  
10:00 11 told you that it was a death penalty case, what -- what  
10:00 12 thoughts went through your mind?

10:00 13 A. The seriousness of the case.

10:00 14 Q. And do you remember what -- then when I talked,  
10:00 15 one of the things that I talked about was I asked the  
10:00 16 jury to actually look at the defendant for a moment and  
10:01 17 realize that what we propose to do was -- it was the  
10:01 18 real thing. And I hope you did not interpret that  
10:01 19 somehow as my trying to be amusing or my trying to have  
10:01 20 shock value on the jury, just for the pleasure of  
10:01 21 hearing myself talk. But rather it was designed, at  
10:01 22 least for some people, to -- to actually think about  
10:01 23 this process, and to think about it before we actually  
10:01 24 started talking with you individually. Because what  
10:01 25 happens on a jury is, if the defendant's not found

10:01 1 guilty, then of course he's free because people not  
10:01 2 guilty don't go anywhere, except back into society. But  
10:01 3 if he's found guilty of capital murder beyond a  
10:01 4 reasonable doubt, then we move into the punishment phase  
10:01 5 of the trial, in which case, only one of two things can  
10:02 6 happen. Either a death sentence is imposed, depending  
10:02 7 on how the jury votes or a life sentence. Those are the  
10:02 8 only two possibilities. And once a jury returns a death  
10:02 9 sentence, if it does, that may be the early part of the  
10:02 10 process. But at some point in the future, then that  
10:02 11 piece of paper takes actual effect, and the defendant is  
10:02 12 executed.

10:02 13 When I talk that way, did you actually  
10:02 14 look that way and do you see any change in yourself or  
10:02 15 just -- I sense that in a room that large, but I'm  
10:02 16 curious about yourself.

10:02 17 A. I didn't feel any differently. That it's a  
10:02 18 serious case, and of course capital punishment is the  
10:02 19 most serious sentence there can be.

10:03 20 Q. I suspect that most people, pardon me, most  
10:03 21 people would, if they were called upon to serve on a  
10:03 22 capital jury, I suppose most people of good will would  
10:03 23 hope that the evidence presented would indicate that a  
10:03 24 life sentence were the proper result, rather than a  
10:03 25 death sentence. Let me tell you what I mean by that.

10:03 1 We, in America, are a very caring society. We go to  
10:03 2 tremendous lengths to try to help people. We -- if it  
10:03 3 gets very hot outside and we become, as a very society,  
10:03 4 very concerned about our elderly citizens who might not  
10:03 5 have air conditioning so we go distribute fans, and  
10:03 6 that's just how we are.

10:03 7 Somebody gets lost in the mountains, and  
10:03 8 there will be a search party of 3,000 people looking for  
10:03 9 that lost person. Even to the point that we know that  
10:03 10 person probably can't still be alive, but life is so  
10:04 11 important to us, to the pursuit of that, that we still  
10:04 12 do that. We still worry so much about that. We believe  
10:04 13 in the death penalty as a society. And we care so much  
10:04 14 about this defendant's life and everyone else in such a  
10:04 15 similar situation that we put enormous resources into  
10:04 16 the jury selection -- both sides do. Getting good  
10:04 17 lawyers for him and freely doing that because we think  
10:04 18 that life is precious, not just the life of people that  
10:04 19 have been murdered, but all people's lives. Does that  
10:04 20 make sense to you?

10:04 21 A. Yes.

10:04 22 Q. And so, it seems to me that it's human to say,  
10:04 23 you know, I wish the evidence would come out of this  
10:04 24 case in a way that a death sentence wouldn't be  
10:04 25 necessary. In other words, I wish that either the

10:04 1 person was rehabilitated or there's some kind of  
 10:04 2 mitigation or maybe he wouldn't be a dangerous person in  
 10:05 3 the future. I'd rather come out of this courtroom  
 10:05 4 knowing that the true vote was a life sentence rather  
 10:05 5 than a death sentence. Do you understand -- do you feel  
 10:05 6 that way at all? Does that make any sense to you?

10:05 7 A. I hadn't thought about it previously, but, yes,  
 10:05 8 it makes sense. It all depends on the evidence and the  
 10:05 9 facts.

10:05 10 Q. Sure. I mean, if a country is getting ready to  
 10:05 11 go to war, I imagine most of us in good conscious would  
 10:05 12 wish the other side would surrender or negotiate or, you  
 10:05 13 know -- I mean, I think of the Desert Storm War we had,  
 10:05 14 I imagine most of us would have to prefer that no one  
 10:05 15 had to die, that he would go back to where he came from  
 10:05 16 and leave that other country alone. We'd all prefer not  
 10:05 17 to have to kill if we didn't have to. Wouldn't you  
 10:05 18 agree?

10:05 19 A. Yes.

10:05 20 Q. Okay. Now, all that having been said, tell me,  
 10:05 21 if you would, why you are in favor of the death penalty  
 10:05 22 and are able to vote that way if the evidence points  
 10:06 23 that way.

10:06 24 A. Because of what happens sometimes later when,  
 10:06 25 for instance, the Rivas case, if he had been given the

10:06 1 death penalty and it had been able to be performed  
 10:06 2 before he escaped, that officer would still be alive.  
 10:06 3 So it's the potential of future crime inside and outside  
 10:06 4 prison that makes me in favor of capital punishment.

10:06 5 Q. Let's talk a little bit about that because  
 10:06 6 there are about four reasons that are advanced as  
 10:06 7 legitimate reasons for punishment, whatever that  
 10:06 8 punishment would be. One of those is retribution. It's  
 10:06 9 the idea that, if you do a small crime, you would have  
 10:06 10 small punishment.

10:06 11 As your crime gets larger, your punishment  
 10:06 12 would become larger until, at some point, your crime is  
 10:07 13 so huge and so awful, that you might have to lose your  
 10:07 14 life in retribution or retaliation by society for having  
 10:07 15 done that. Is that important to you? The eye for an  
 10:07 16 eye kind of a concept. You killed somebody for no  
 10:07 17 reason, and so we're going to kill you because of doing  
 10:07 18 that?

10:07 19 A. I would hope that in that case we might be able  
 10:07 20 to do life imprisonment because there is the possibility  
 10:07 21 of rehabilitation.

10:07 22 Q. Okay.

10:07 23 A. It would depend on the past record and the  
 10:07 24 perceived potential.

10:07 25 Q. Okay. Another reason that people use for a

10:07 1 death penalty is this concept of deterrence. Are you  
 10:07 2 familiar with that term deterrence?

10:07 3 A. Yes.

10:08 4 Q. Now, I guess we would all agree that executing  
 10:08 5 somebody would deter that person from future crimes  
 10:08 6 because they would not be in a position to ever do such  
 10:08 7 things again. But really when we're talking about  
 10:08 8 deterrence, it's the idea that what happens to this  
 10:08 9 person be a warning to people who would do such a thing.  
 10:08 10 And that is, if you do the kinds of crimes that he  
 10:08 11 did -- I'm not meaning this defendant, I'm just talking  
 10:08 12 hypothetically, if you do the kinds of crimes that this  
 10:08 13 person did -- you may get the same punishment, which  
 10:08 14 would be death. Does that seem like an important reason  
 10:08 15 to have a death penalty to you?

10:08 16 A. I'm not quite -- can you make that concise?

10:08 17 Q. Sure. Do you think that if people are at  
 10:08 18 their, thinking about doing capital murders and living  
 10:08 19 that kind of life, do you think if they hear on TV or  
 10:09 20 see in the newspapers that other people are getting  
 10:09 21 executed for that sort of thing, as you go into the  
 10:09 22 death ward, do you think that might prevent them from  
 10:09 23 doing such a crime?

10:09 24 A. Possibly some people. And some people in a  
 10:09 25 moment of passion or greed or whatever aren't thinking

10:09 1 about it.

10:09 2 Q. Okay. Another reason advanced for punishment,  
 10:09 3 it doesn't exactly relate to the death penalty except  
 10:09 4 kind of in a backward way, and another reason for that  
 10:09 5 is the concept of rehabilitation. And it's pretty  
 10:09 6 obvious why the death penalty is not consistent with the  
 10:09 7 notion of rehabilitation. Because if you execute  
 10:09 8 somebody, the person can't be rehabilitated anyway.  
 10:09 9 Does that make sense to you?

10:09 10 A. Sure.

10:09 11 Q. If we're talking about a robbery case, and we  
 10:09 12 were talking about a possibility of a life sentence or  
 10:10 13 probation with counseling or those kinds of things  
 10:10 14 maybe, then perhaps this issue of rehabilitation would  
 10:10 15 be significant. But I want to talk about rehabilitation  
 10:10 16 with you because that concept might find its way into  
 10:10 17 how we answer one of the punishment questions. The  
 10:10 18 notion of whether or not there could be rehabilitation?

10:10 19 A. (Moving head up and down.)

10:10 20 Q. Do you think there are, first of all, do you  
 10:10 21 think there are some people, who for whatever reason,  
 10:10 22 can't be rehabilitated?

10:10 23 A. Can't be? Well, it's an internal thing. Some  
 10:10 24 aren't interested.

10:10 25 Q. Okay.

10:10 1 A. And even if they haven't committed a serious  
 10:10 2 crime, they just don't care about other people.  
 10:10 3 Q. Okay.  
 10:10 4 A. And don't care what happens to themselves.  
 10:10 5 Q. Okay. Well, now, understanding you are not  
 10:11 6 a -- certainly not a professional juror, I don't get a  
 10:11 7 sense from you, ma'am, that you even want to be in this  
 10:11 8 trial. If you had a choice, this is not probably what  
 10:11 9 you especially want to do, is it?  
 10:11 10 A. Well, I believe in the system that we have.  
 10:11 11 And if I'm needed to serve, I will serve.  
 10:11 12 Q. If you were a -- if you went to a lot of  
 10:11 13 capital murder trials, either as a juror or even as an  
 10:11 14 observer, you feel like you are -- first of all, do you  
 10:11 15 feel like your view on rehabilitation is like most  
 10:11 16 people in our society, that most of the people would  
 10:11 17 agree with the things that you are saying about  
 10:11 18 rehabilitation, do you feel like?  
 10:11 19 A. Out of 12 people?  
 10:11 20 Q. Uh-huh.  
 10:11 21 A. Probably.  
 10:11 22 Q. Okay. I mean, it's kind of what you say, if a  
 10:11 23 person wants to be rehabilitated --  
 10:12 24 A. Or if they are open to it.  
 10:12 25 Q. Right.

10:12 1 A. Yeah.  
 10:12 2 Q. Of course, on the other hand, if you were -- if  
 10:12 3 you were a person charged with a capital crime, if you  
 10:12 4 would just kind of bear with me for a minute, knowing  
 10:12 5 how people feel about rehabilitation, would you be  
 10:12 6 telling everybody you could think of that you were going  
 10:12 7 to get religion and you had gotten religion, and you  
 10:12 8 were rehabilitated and you were sorry? Would you be  
 10:12 9 doing that and kind of laying the groundwork for when  
 10:12 10 the trial came along?  
 10:12 11 A. Well, that's a possibility.  
 10:12 12 Q. I mean, we don't know this defendant. I don't  
 10:12 13 know him personally. I don't imagine he wants to die.  
 10:12 14 I wouldn't think most of us want to, right?  
 10:12 15 A. Right.  
 10:12 16 Q. Would you expect a capital defendant to claim  
 10:12 17 rehabilitation or conversion or being born again in the  
 10:12 18 jailhouse or new insight? Would you expect that as part  
 10:13 19 of the evidence that you might hear in that case?  
 10:13 20 A. Are you talking about just speaking about it,  
 10:13 21 or are you talking about actually -- the actions that  
 10:13 22 would go along with it?  
 10:13 23 Q. Well, for sure, speaking about it.  
 10:13 24 A. Uh-huh.  
 10:13 25 Q. Would you expect that?

10:13 1 A. Possibly, depending on the defendant.  
 10:13 2 Q. I mean, we all watched Timothy McVeigh. And  
 10:13 3 apparently he's one person to the end was proud of what  
 10:13 4 he did, apparently, from what we can hear. But would  
 10:13 5 you expect most people -- and he seemed to really want  
 10:13 6 to die, frankly. He didn't even want to appeal. So if  
 10:13 7 that's what you want, it's very easy to be kind of  
 10:13 8 bravado about it all. On the other hand, if he had not  
 10:13 9 wanted to die, do you think he would have had a  
 10:13 10 different approach, would you expect?  
 10:13 11 A. And he could very well have been sincere. It  
 10:13 12 could be either way.  
 10:13 13 Q. So how would you know? I mean, if you are  
 10:13 14 sitting here, how would you as a juror -- because  
 10:14 15 rehabilitation is important to you -- how would you know  
 10:14 16 whether it were genuine or whether it were designed for  
 10:14 17 the jury's benefit to get a life sentence?  
 10:14 18 A. Past record, past activities, facts brought out  
 10:14 19 in the case of different attributes of the defendant in  
 10:14 20 the past. That's the only thing you can judge on, I  
 10:14 21 think. And, well, and then there would have to be some  
 10:14 22 time to prove those claims.  
 10:14 23 Q. Okay. Understand that if you are locked up in  
 10:14 24 jail, you really don't have an opportunity to  
 10:14 25 demonstrate. About all you can do about it is talk.

10:14 1 I'm not talking about this defendant, and I'm certainly  
 10:14 2 not -- I'm not on the bandwagon for defendants and how  
 10:14 3 they handle their cases. But if you think about it, if  
 10:14 4 you are in the jailhouse, you can't very well do a whole  
 10:15 5 lot of a positive nature other than just behave in the  
 10:15 6 jail. Do you know what I'm saying? You can't -- you  
 10:15 7 can't fix toys for children for Christmas because you  
 10:15 8 don't have access to any of that sort of thing. Do you  
 10:15 9 know what I mean?  
 10:15 10 A. Well, aren't there different levels of  
 10:15 11 rehabilitation, though?  
 10:15 12 Q. Maybe.  
 10:15 13 A. And aren't there social times, group times?  
 10:15 14 Q. Sure.  
 10:15 15 A. And their visits by clergy, for instance.  
 10:15 16 Q. And you can --  
 10:15 17 A. That.  
 10:15 18 Q. You are absolutely right. When a clergyman  
 10:15 19 comes to see you and asks to pray with you, for example,  
 10:15 20 you, of course, can say, yes, I would like that, Father,  
 10:15 21 or, yes, I would like that, Reverend. I mean, you don't  
 10:15 22 have to -- you can say just the opposite. No, I'm not  
 10:15 23 going to do that, so you are free to.  
 10:16 24 I guess what I'm asking is -- let's just  
 10:16 25 say I'm over in the jail. I'm a capital defendant, and

10:16 1 I'm thinking, I don't want to die. And I've got nothing  
 10:16 2 but time on my hands anyway before my trial. I could do  
 10:16 3 all of that. I could say nice things, and I could  
 10:16 4 organize religious groups. I could say, come pray with  
 10:16 5 me. I could write letters of apology. I could do all  
 10:16 6 of that. And maybe it's sincere, just like you say or  
 10:16 7 maybe it isn't. And you've said one of the things you'd  
 10:16 8 look at is the past record, the past behavior; is that  
 10:16 9 right?

10:16 10 A. Yes.

10:16 11 Q. How would that -- how would that relate to  
 10:16 12 whether it was sincere or not? Is it the idea of the  
 10:16 13 more frequent this kind of behavior, the more likely it  
 10:16 14 is just part of his behavior, more of an impulse kind of  
 10:17 15 thing maybe?

10:17 16 A. Yes. And if he had a religious upbringing or  
 10:17 17 she had a religious upbringing say, well, that influence  
 10:17 18 is there, whether it's being displayed or not. The  
 10:17 19 influence is there. And also when -- let's assume that  
 10:17 20 the defendant is paroled at sometime, then there are  
 10:17 21 precautionary measures that are taken. I understand  
 10:17 22 there are tracking devices and checking in and all this  
 10:17 23 kind of thing that could possibly be used while the  
 10:17 24 defendant is proving that he has sincerely repented and  
 10:17 25 is -- is rehabilitated.

10:17 1 Q. Well, I don't think they are going to give  
 10:17 2 somebody with a life sentence a tracking device. I  
 10:17 3 mean, I think they will give him the cage kind of thing.

10:17 4 A. Okay. So it would be life sentence with no  
 10:17 5 parole; is that correct?

10:17 6 Q. No. We don't have such a thing. There is no  
 10:18 7 such thing as life without parole. We don't have that.  
 10:18 8 We may not know when he gets out, but we can't say he  
 10:18 9 will be there until he dies, either.

10:18 10 A. Right.

10:18 11 Q. And you'll get an instruction that is from the  
 10:18 12 Court that will tell you somehow that works in a general  
 10:18 13 sort of way. But then it's kind of odd because the  
 10:18 14 instruction further reads: Don't consider this law in  
 10:18 15 terms of how long this defendant would actually have to  
 10:18 16 serve on a life sentence.

10:18 17 When you look at the facts of a case, do  
 10:18 18 you think you could look at facts and say anybody who  
 10:18 19 could do such a crime, anybody whose mind would allow  
 10:18 20 him or her to do such an awful crime doesn't have the  
 10:18 21 basic tools to be rehabilitated? Doesn't have the  
 10:18 22 controls that would enable the member to be  
 10:19 23 rehabilitated? Do you think you could do that, if the  
 10:19 24 crime is awful enough?

10:19 25 A. No. I think anyone who has the potential to

10:19 1 change can change. Anyone who wants to change can  
 10:19 2 change.

10:19 3 Q. Let's, for example, one of the things I like to  
 10:19 4 point out a lot of times is Hitler and the things that  
 10:19 5 he caused to happen. And we think of -- we think of the  
 10:19 6 Holocaust when we think of Hitler. And yet, he didn't  
 10:19 7 limit that just to the Jews in Eastern Europe. He would  
 10:19 8 set cities on fire with women and children inside. And  
 10:19 9 that didn't have anything to do with their ethnicity.  
 10:19 10 They were just enemies and that was how he would handle  
 10:19 11 it. Do you think, for example, somebody who could do  
 10:19 12 such crimes as that would have the capacity for  
 10:19 13 rehabilitation, if he wanted to?

10:19 14 A. I wouldn't think so because he was psychotic.  
 10:19 15 He was like mentally diseased.

10:20 16 Q. How about somebody like McVeigh that fought  
 10:20 17 such a gigantic -- he understood how big that bomb was.  
 10:20 18 It's not like -- you or I might not know anything about  
 10:20 19 it. We might think of it as being loud or something  
 10:20 20 because we are not knowledgeable on that. But he was  
 10:20 21 schooled in all that. He knew how to do it. Is that  
 10:20 22 the kind of person that could be rehabilitated maybe, if  
 10:20 23 he wanted to be?

10:20 24 A. If he wanted to be.

10:20 25 MR. SCHULTZ: A moment, Judge.

10:20 1 THE COURT: Yes.

10:20 2 Q. (BY MR. SCHULTZ) If a person behaves well in  
 10:21 3 jail or prison, does that mean that person is not a  
 10:21 4 dangerous person?

10:21 5 A. No, because it depends on their motive.

10:21 6 Q. Explain what you mean.

10:21 7 A. Well, if they sincerely are wanting to be  
 10:21 8 different, then it will carry over. But if they are  
 10:21 9 not, if they are just waiting for an opportunity, just  
 10:21 10 faking it, in other words, then they don't want to be  
 10:21 11 rehabilitated.

10:21 12 Q. And how would you know the difference if you  
 10:21 13 were on -- on a jury? What would you look to see  
 10:21 14 whether they were faking the good behavior or whether  
 10:21 15 they were good?

10:21 16 A. Well, again, some of that would depend on the  
 10:21 17 past record. That's all we would have to go on for  
 10:21 18 facts. And then it would depend, too, on the  
 10:21 19 circumstances of what occurred at the particular time of  
 10:21 20 the murder as to --

10:22 21 Q. I think -- I think I'm understanding, but I  
 10:22 22 want to make sure I'm -- I want to make sure exactly  
 10:22 23 what you mean. Tell me, you are on the jury, and you  
 10:22 24 are trying to figure whether this person is sincere  
 10:22 25 because we understand that most people probably are



10:22 1 going to try to look good for the trial, right?

10:22 2 A. Uh-huh, yes.

10:22 3 Q. And you say that you would look at the  
10:22 4 circumstances of the case to decide whether this was an  
10:22 5 act designed to try to keep from getting the death  
10:22 6 penalty or whether it was sincere. How would that work?  
10:22 7 How would you do that exactly?

10:22 8 A. If it were -- let's say a crime of momentary  
10:22 9 circumstances, that would probably not happen again,  
10:22 10 then that could be a potential for rehabilitation,  
10:23 11 sincerity. That's a really hard question without  
10:23 12 knowing the facts of the case and the defendant, without  
10:23 13 knowing the defendant.

10:23 14 Q. Sure, sure. When you say a momentary, tell me  
10:23 15 kind of what you have in mind with that.

10:23 16 A. If it were preplanned like the McVeigh or the  
10:23 17 Rivas thing, I mean, and that -- then that makes it  
10:23 18 harsher rather than, let's say there was an argument and  
10:23 19 someone became very angry momentarily and committed a  
10:23 20 crime. That makes it a little different.

10:23 21 Q. Well, okay. I don't know a lot of the evidence  
10:24 22 of the Rivas case, but my understanding is, his story is  
10:24 23 they broke out of prison. They needed -- they needed  
10:24 24 stuff, and they were in the process of burglarizing a  
10:24 25 place when an officer shows up. And it gets a little

10:24 1 fuzzy after that because I guess their story is they  
10:24 2 thought the officer was going for the gun, and they shot  
10:24 3 him first, that kind of idea.

10:24 4 But that's kind of a momentary thing. Had  
10:24 5 the officer not shown up, he wouldn't have been killed.  
10:24 6 They didn't set off to find a policeman to kill for the  
10:24 7 fun of killing a policeman. Do you know what I mean?

10:24 8 A. Yes.

10:24 9 Q. So that is a momentary event that just  
10:24 10 occurred. And had they been there 10 minutes earlier or  
10:24 11 the officer 10 minutes later, I guess he would still be  
10:24 12 alive, and they would maybe lose or maybe something else  
10:24 13 would happen.

10:24 14 A. However, the intent was there, first of all, by  
10:24 15 planning the escape. Second of all, by going to the  
10:25 16 sporting goods store and deliberately going for guns.

10:25 17 Q. Right.

10:25 18 A. And it's -- I compare that a little bit. They  
10:25 19 were going to kill anyone who got in their way or at  
10:25 20 least one of the people, Rivas, felt that way. So, in a  
10:25 21 way, that is premeditated. That, if I have to, I will  
10:25 22 use the gun.

10:25 23 Q. I guess what you are saying is that, even  
10:25 24 having the gun before, having the gun with you before  
10:25 25 you get into those circumstances is kind of a form of

10:25 1 premeditation kind of idea?

10:25 2 A. Yes.

10:25 3 Q. In other words, if I'm -- if I'm coming over to  
10:25 4 visit somebody that I'm maybe going to have some trouble  
10:25 5 with, and I know I'm going to have some kind of argument  
10:25 6 or disagreement with, and I take a gun with me to go  
10:25 7 over to this person's residence, let's say, that's some  
10:25 8 pretty good evidence that I planned, if things didn't go  
10:26 9 the way I wanted it, to use that gun. Is that what you  
10:26 10 are saying?

10:26 11 A. I would see it that way.

10:26 12 Q. As opposed to just being over there and getting  
10:26 13 into an argument and picking up a lamp or something and  
10:26 14 hitting him in the head and killing him that way?

10:26 15 A. Yes. That I would consider more momentary.

10:26 16 Q. And the more, the way it was planned out, the  
10:26 17 more you'd think that rehabilitation or apparent  
10:26 18 rehabilitation might not be sincere. Is that kind of  
10:26 19 the way you are thinking?

10:26 20 A. Well, it even goes back farther than that,  
10:26 21 before the premeditation, before even thinking about the  
10:26 22 crime.

10:26 23 Q. Okay. How about after the crime? Is there --  
10:26 24 are there some things about how you handle yourself  
10:26 25 after the crime that would relate to this rehabilitation

10:26 1 issue in your mind?

10:26 2 A. There might be some evidence of sincerity if  
10:26 3 the person who commits the crime turns him or herself  
10:27 4 in, if they go quietly. If they are not resisting  
10:27 5 arrest. If they cooperate, in other words, then I would  
10:27 6 say rehabilitation could be likely.

10:27 7 Q. How about if they escape and deny it all and  
10:27 8 try to blame somebody else for it? Is that -- how does  
10:27 9 that factor in?

10:27 10 A. That depends on the truth. Maybe someone else  
10:27 11 is to blame.

10:27 12 Q. But assume not. Assume you found the person  
10:27 13 guilty. And after the crime, he or she escaped and when  
10:27 14 talked to by the police said, I didn't have anything to  
10:27 15 do with it. It was somebody else or something else?

10:27 16 A. I would consider that normal.

10:27 17 Q. It's not bad to try to lie your way out of a  
10:27 18 serious charge then probably, under those circumstances?

10:27 19 A. I don't think so.

10:28 20 Q. We talked on Tuesday, last, about whether it  
10:28 21 matters in a murder case what kind of a person the  
10:28 22 victim was, if that really matters. Do you remember the  
10:28 23 discussions about that?

10:28 24 A. Yes, very well.

10:28 25 Q. And I know there are a number of ways to look

10:28 1 at it. If you and I are in a restaurant, let's say, and  
 10:28 2 we look at it. And there's a train track and we see  
 10:28 3 somebody walk across the train track and that train  
 10:28 4 comes along and runs over you, we're probably the kind  
 10:28 5 of people that we would go down in there and see if  
 10:28 6 there is anything we can do to help, even though there  
 10:28 7 probably is not going to be, given that happening. Do  
 10:28 8 you know what I mean?

10:28 9 A. Yes.

10:28 10 Q. And I don't know about you, but if somebody  
 10:29 11 told me because you are going to get police there and  
 10:29 12 ambulance people, and who knows what, our railroad  
 10:29 13 inspectors and people like that. I don't know about  
 10:29 14 you, but if somebody told me this guy is a known drug  
 10:29 15 dealer, as a matter of fact, the police have been  
 10:29 16 looking for him for six months to try to arrest him  
 10:29 17 because he's a regular drug dealer, it doesn't mean that  
 10:29 18 his life is less precious to our creator, perhaps. But  
 10:29 19 I'm human enough to say I'm going to be -- I'm not going to  
 10:29 20 be as upset about that. I don't like seeing it because  
 10:29 21 it's still a human life being lost, but I'm not going to  
 10:29 22 be as upset about that perhaps if I found out it was,  
 10:29 23 oh, an inspirational teacher or maybe somebody that  
 10:29 24 coached Special Olympics or something like that. How do  
 10:29 25 you feel about that?

10:29 1 A. I would agree because the potential of the drug  
 10:30 2 dealer to do future harm is ended. However, on the  
 10:30 3 positive side, the potential for future good is lost of  
 10:30 4 the other person, assuming that the drug dealer would  
 10:30 5 continue drug dealing and the other person would  
 10:30 6 continue the doing good if they had lived.

10:30 7 Q. That makes perfect sense to me. And I think if  
 10:30 8 you look at it and say, how bad is society's loss, I  
 10:30 9 think you are right on the money with that. I think  
 10:30 10 that's exactly what we're talking about. The other side  
 10:30 11 of the coin -- and this is very different from an  
 10:30 12 accident happening -- and the other side of the coin is,  
 10:30 13 if the reason, instead of getting run over by a train  
 10:30 14 because he was carelessly crossing the tracks, if the  
 10:30 15 reason that the drug dealer is dead is because somebody  
 10:30 16 else intentionally and calculatingly murdered him, does  
 10:31 17 that make that -- does that make that murder some lesser  
 10:31 18 grade of murder if what we're trying to do is punish  
 10:31 19 murderers for the crimes that occurred? How do you  
 10:31 20 think about that part?

10:31 21 A. It would depend somewhat on the reason for the  
 10:31 22 murder. If -- if it were to prevent more drug dealing  
 10:31 23 or if it was a drug deal gone bad.

10:31 24 Q. Uh-huh.

10:31 25 A. Then, again, that potential is lost for that

10:31 1 drug dealer, but the person that does the murder should  
 10:31 2 not be off scot-free, either.

10:31 3 Q. I understand maybe not scot-free, but does the  
 10:31 4 fact that the reason you murder somebody is because he's  
 10:31 5 the kind of person that society says is not very  
 10:31 6 important? Does that make any difference in your mind  
 10:32 7 in terms of how bad the murder is?

10:32 8 A. Technically no, because there is still the  
 10:32 9 potential for, no matter how bad a person is, they can  
 10:32 10 change if they want to. So, because he's a drug dealer,  
 10:32 11 still does not mean that he could never have done good.  
 10:32 12 So the loss of that person's life is potentially  
 10:32 13 harmful, and the one that commits the murder then is  
 10:32 14 accountable.

10:32 15 Q. And when I ask these questions, and you are  
 10:32 16 absolutely right, because if it is a drug deal that's  
 10:32 17 gone bad, that might be one of those momentary things  
 10:32 18 you are talking about. Even though we don't like drug  
 10:32 19 dealing at all, if this was some kind of a drug deal and  
 10:32 20 there's a shoot-out that results from it, maybe the  
 10:32 21 person is going to be dangerous or maybe not or maybe  
 10:33 22 that's the only time such a thing would ever happen.  
 10:33 23 It's just that bunch of events.

10:33 24 Why I ask the question and spend a lot of  
 10:33 25 time on it, if we take the position that, because a

10:33 1 person is a drug dealer, his life is somehow easier to  
 10:33 2 take, easier or more acceptable to society to allow it  
 10:33 3 to be taken, than do we have to do the same thing for  
 10:33 4 defendants? If you have a defendant who is a drug  
 10:33 5 dealer, do we have to say we are not as concerned about  
 10:33 6 his life since he's a drug dealer as opposed to a robber  
 10:33 7 or a burglar or -- do you follow what I'm saying?

10:33 8 A. Yes. And my answer would be no, because  
 10:34 9 anyone, no matter what they have done, has the potential  
 10:34 10 to turn around and do better.

10:34 11 Q. Okay.

10:34 12 A. If they want to.

10:34 13 Q. Okay. Now, you've indicated that you think  
 10:34 14 that some breaks would justify the death penalty, even  
 10:34 15 though a death didn't result? I guess I'm kind of  
 10:34 16 reading between the lines.

10:34 17 A. No. That specific question and answer was if  
 10:34 18 there were a rape involved in the murder.

10:34 19 Q. I see.

10:34 20 A. At least that's what I thought when I was  
 10:34 21 answering it.

10:34 22 Q. Okay. I see. You've indicated that you  
 10:34 23 believe that the biggest problem in the criminal justice  
 10:35 24 system is releasing the guilty?

10:35 25 A. Well, guilty is probably not the right word.

10:35 1 Releasing the person who is potentially going to commit  
10:35 2 crime again.

10:35 3 Q. Okay. Now, the Judge -- we talked about the  
10:35 4 parole instruction. We talked about that a little bit,  
10:35 5 just a minute ago.

10:35 6 A. Uh-huh.

10:35 7 Q. Are you able to follow that instruction and not  
10:35 8 consider how long somebody would actually have to serve  
10:35 9 in deciding what the punishment should be? Could you  
10:35 10 follow that instruction?

10:35 11 A. Would that be without parole or -- or -- I  
10:36 12 don't -- I'm not real clear on the instruction.

10:36 13 Q. There is nothing -- there's no such thing as  
10:36 14 life without parole in Texas.

10:36 15 A. Okay.

10:36 16 Q. Now, that's not to say that we know when  
10:36 17 somebody exactly gets out. We know a minimum is 40  
10:36 18 years. A person has to do 40 years on a life sentence  
10:36 19 before being eligible for parole.

10:36 20 A. Okay.

10:36 21 Q. Whether that person gets out at 40 years or not  
10:36 22 is probably something none of us can know. Many of us  
10:36 23 probably won't be alive in 40 years to find out kind of  
10:36 24 thing. All right? And because we don't know when after  
10:36 25 that 40-year minimum a particular defendant would get

10:36 1 out, we do sort of a strange thing in this. We tell  
10:36 2 juries that on a life sentence you are eligible for  
10:36 3 parole even on capital murder. But after we tell them  
10:36 4 that and tell them how it works, then we say, now that  
10:37 5 we've educated you on the subject, don't consider that  
10:37 6 in this particular case.

10:37 7 And it doesn't make any sense to me, but I  
10:37 8 didn't write the law and neither did Judge Sandoval.  
10:37 9 But he will give you that instruction because it is  
10:37 10 Texas law. All right?

10:37 11 A. Yes.

10:37 12 Q. Could you follow that instruction?

10:37 13 A. Given the fact that the defendant would be in  
10:37 14 prison for 40 years, I would say there would be quite a  
10:37 15 bit of evidence on how the defendant behaved during that  
10:37 16 time. I would say the potential, if he's still, the  
10:37 17 attitude, that the attitude would be important, I would  
10:37 18 think --

10:37 19 Q. Okay.

10:37 20 A. -- in that.

10:37 21 Q. It's interesting because you are doing exactly  
10:37 22 what you should be doing. You are considering all of  
10:37 23 that. You are considering parole and those kinds of  
10:37 24 considerations in a particular case.

10:38 25 What you have to do, and the Judge will

10:38 1 instruct you, is not to consider how long he actually  
10:38 2 served. In other words, those are the kinds of things  
10:38 3 you probably won't consider. You just do life or death  
10:38 4 according to what it ought to be and entrust it to  
10:38 5 somebody else to determine when he will get out. Do you  
10:38 6 think you can do that okay?

10:38 7 A. Yes, yes.

10:38 8 Q. When you were looking at the defendant on  
10:38 9 Tuesday and you have had a chance to look at him some  
10:38 10 today, have you had a chance to look at him today?

10:38 11 A. A glance or two.

10:38 12 Q. You obviously don't know him or know anything  
10:38 13 about the facts of this case. Do you have any  
10:38 14 impressions -- as you've had a chance to look at him --  
10:38 15 do you have any impressions of him?

10:38 16 A. I would guess from the last name, and I would  
10:38 17 guess he would be Hispanic.

10:38 18 Q. Any other impressions that you might have?

10:39 19 A. Young. I don't know how much. I'm assuming  
10:39 20 from what you said on Tuesday, 18 or 19, perhaps.

10:39 21 Q. Well, without getting real specific, he's not  
10:39 22 that young.

10:39 23 A. Okay.

10:39 24 Q. How does youth, if it does, factor into your  
10:39 25 service as a juror? Are you more compassionate toward a

10:39 1 younger person than toward a middle aged or elderly  
10:39 2 person charged with capital murder?

10:39 3 A. Not really because the ability to commit murder  
10:39 4 doesn't depend on age. I mean, a middle-aged person  
10:39 5 could do that as well as a young person.

10:39 6 Q. Does age have anything to do with your opinion  
10:39 7 about rehabilitation and capability for rehabilitation?

10:39 8 A. Age? Not really because anyone can be  
10:40 9 rehabilitated too, if they want to, at any age.

10:40 10 Q. Do you think drug usage is any type of excuse  
10:40 11 for the crimes that result from using those drugs?

10:40 12 A. I think it's probably part of the reason, but  
10:40 13 not an excuse.

10:40 14 Q. Okay. Let's say, and I'm just like you and --  
10:40 15 do you have children?

10:40 16 A. Yes.

10:40 17 Q. I don't know if you are like me, but I'll bet  
10:40 18 you are. Were you worried about drugs in those kids  
10:40 19 when they were in that window of opportunity?

10:40 20 A. Not very much.

10:40 21 Q. How come?

10:40 22 A. Because it was not as prevalent then as it is  
10:40 23 now.

10:40 24 Q. I think you would agree with what I said on  
10:40 25 Tuesday. There is no way a human being could ever, a

10:41 1 regular intelligent human being, could ever grow up in  
10:41 2 America's society and not have one or two messages a day  
10:41 3 not to do drugs, in one form or another, right?

10:41 4 A. To be offered, probably.

10:41 5 Q. No. I mean, to be told in some form or  
10:41 6 fashion, don't do drugs. It's bad for you. Don't we  
10:41 7 get that message nonstop in America?

10:41 8 A. Yes.

10:41 9 Q. We get it by watching TV and seeing people  
10:41 10 getting arrested for drugs. We get it by seeing people  
10:41 11 overdosing and dying. We see that on TV. Our schools  
10:41 12 have this "Just Say No" program. We hear -- I mean,  
10:41 13 it's nonstop. Drugs are a problem in our society. You  
10:41 14 know it, and I know it.

10:41 15 If I go and choose to take some illegal  
10:41 16 drugs like maybe, I don't know, heroin or cocaine or  
10:41 17 something, crack, crack cocaine, if I do that tonight  
10:42 18 and it affects me so that I'm not even in my regular  
10:42 19 mind because that's what drugs do. And I'm not  
10:42 20 experienced with them, and there's no telling what my  
10:42 21 reaction is, and I go into some sort of a drug induced  
10:42 22 rage, and I go kill some people, and I'm just -- I'm  
10:42 23 almost like a beast because I've got the drugs in me,  
10:42 24 you know? I might be telling you the truth, kind of  
10:42 25 what you said when I say, had I not taken those drugs, I

10:42 1 would never have done those crimes because I never have  
10:42 2 done anything like that in my life before.

10:42 3 Does that in any way lessen my  
10:42 4 responsibility for those crimes, when I wasn't even  
10:42 5 thinking about them? I mean, I just went into a frenzy.  
10:42 6 And I wasn't thinking about them at all because I got  
10:42 7 those drugs in my -- does that in any way in your mind  
10:43 8 lessen my responsibility, because I didn't exactly know  
10:43 9 all of what I was doing because my judgment was so  
10:43 10 messed up?

10:43 11 A. Well, again, that goes back to the reason for  
10:43 12 doing the crime that, but still it's a choice to take  
10:43 13 drugs or not to take drugs in that case. And anyone who  
10:43 14 chooses to take drugs -- well, first of all, they'll  
10:43 15 say, it's not going to happen to me. I'm not going to  
10:43 16 die, especially younger people.

10:43 17 Q. Right.

10:43 18 A. But it does not lessen the responsibility, the  
10:43 19 accountability of having done something under the  
10:43 20 influence of drugs. Same thing with alcohol.

10:43 21 Q. Okay. Well, then, if I get charged with  
10:43 22 capital murder because I killed two or more people and I  
10:43 23 come to trial and my position is, as long as I don't  
10:43 24 have any drugs again, I'm not a danger to society. And  
10:44 25 this was one of those momentary or situational things

10:44 1 that, if I had not taken the drugs, it wouldn't have  
10:44 2 happened. And if you give me a life sentence, I'll be  
10:44 3 someplace where I can't ever take drugs again. Am I  
10:44 4 right about that? And I'm not dangerous as long as  
10:44 5 somebody will lock me up and not let me ever get drugs  
10:44 6 again.

10:44 7 A. You have to know the person's intent. If they  
10:44 8 really mean that or -- if they are saying I will never  
10:44 9 do drugs again, that's one thing. If they are saying, I  
10:44 10 won't because I can't, then that's different.

10:44 11 Q. So I say, I'll never do drugs again, but even  
10:44 12 if I want to, I won't be in a position to do it. Just  
10:44 13 give me a life sentence, and I don't want drugs. I  
10:44 14 never want to do them. But even if I do want them, I  
10:44 15 won't have that opportunity. Does that make sense?

10:45 16 A. But even when I heard, even in prisons, that  
10:45 17 that's not necessarily true. So if drugs are available  
10:45 18 in prison and that defendant does not take them, then  
10:45 19 that's evidence. But of course you wouldn't know that  
10:45 20 before.

10:45 21 Q. Right. Or if I escaped, for example, if I can  
10:45 22 get out of prison --

10:45 23 A. Right.

10:45 24 Q. -- and then I head for the nearest crack house  
10:45 25 kind of thing?

10:45 1 A. And then that would be obvious that the intent  
10:45 2 to go straight was not there.

10:45 3 Q. But unfortunately it's too --

10:45 4 A. That's right. You don't know that beforehand.

10:45 5 Q. Then we have a Rivas situation on our hands,  
10:45 6 and somebody else has to perhaps die because of our  
10:45 7 compassion.

10:45 8 A. Right. And some of that would depend on the  
10:45 9 past record also. If the person had been taking drugs,  
10:45 10 now, you say it's a one-time thing. That would be  
10:45 11 slightly different than if they had been on drugs for  
10:46 12 years and taking many kinds and mixing them.

10:46 13 Q. How about if they had been violent on drugs in  
10:46 14 the past and beat up wives or, you know, that kind of  
10:46 15 thing? Would that be important to you?

10:46 16 A. Yes.

10:46 17 Q. And how would that be important to you?

10:46 18 A. Well, it shows that, well, how can they claim  
10:46 19 then that I've never -- that the drugs made me do it?  
10:46 20 Because they can say, if it's the first time, as your  
10:46 21 first example, it's my first time. I didn't know what  
10:46 22 they were going to do to me. That may be legitimate.  
10:46 23 But if they have done it before, then surely someone has  
10:46 24 told them that they have done these things, whether they  
10:46 25 were aware of it or not. So even after that, they

10:46 1 would -- after the -- each time, they would be aware of  
10:46 2 what drugs do to them.

10:47 3 MR. SCHULTZ: A moment please, Judge?

10:47 4 THE COURT: Yes, sure.

10:47 5 Q. (BY MR. SCHULTZ) You understand, of course,  
10:47 6 that we have to prove him guilty of capital murder, or  
10:47 7 we don't worry about the death penalty issue at all. We  
10:47 8 don't consider it at all?

10:47 9 A. Yes.

10:47 10 Q. And when I say prove that he's guilty of  
10:47 11 capital murder, that means beyond a reasonable doubt.  
10:47 12 We have to prove that either a murder was committed in  
10:47 13 the course of a burglary, in the course of a robbery, or  
10:47 14 that in the same criminal episode two people were  
10:47 15 murdered?

10:47 16 A. Yes.

10:47 17 Q. And any of those three are capital murder. And  
10:47 18 it might well be that one or two or all three of those  
10:47 19 might be submitted to the jury to decide and just  
10:48 20 simply, you know, only have one verdict form. Do you  
10:48 21 find that it was either murder-burglary, murder-robbery,  
10:48 22 or murder of two people. And the answer would be: "We  
10:48 23 do." "We do not." That kind of thing.

10:48 24 A. Yes.

10:48 25 Q. If, for some reason, we were not able to prove

10:48 1 that two people were murdered by the defendant or we're  
10:48 2 not able to prove that a murder occurred in the course  
10:48 3 of a burglary or a robbery, it might be that there would  
10:48 4 be a lesser-included offense provided.

10:48 5 It might, for example, be only murder. It  
10:48 6 might have an option, and that would consider not only  
10:48 7 capital murder, but regular murder. But let's assume  
10:48 8 that from the evidence that you find, the defendant's  
10:48 9 guilty beyond a reasonable doubt, you and 11 other  
10:48 10 people have collectively shared in your wisdom. And  
10:48 11 you, say, find him guilty.

10:48 12 A. Would that be of capital murder or of --

10:48 13 Q. Of capital murder, yes, ma'am.

10:48 14 A. Yes.

10:48 15 Q. And then we move into the penalty phase of the  
10:49 16 trial. That's the punishment phase.

10:49 17 A. Yes.

10:49 18 Q. We give you questions. We talked about that on  
10:49 19 Tuesday. There are questions the jury is asked, the  
10:49 20 answered to which will automatically determine what  
10:49 21 happens to the defendant.

10:49 22 A. I remember.

10:49 23 Q. For example, when you get this first question  
10:49 24 which is what we call the future danger question -- take  
10:49 25 a moment and read that to yourself, and let me know when

10:49 1 you are finished.

10:49 2 A. (Moving head up and down.)

10:49 3 Q. When we get that question, or when the jury  
10:49 4 gets that question -- first of all, it's beyond a  
10:49 5 reasonable doubt. If you think the answer to that  
10:49 6 question, based on the evidence is "no" -- all right?  
10:49 7 That's what the jury comes back with, 10 or more of the  
10:49 8 jurors come back with a no, as a matter of fact, then  
10:50 9 that's -- do you know what the result of a no answer to  
10:50 10 that question is?

10:50 11 A. Then that would be life.

10:50 12 Q. Uh-huh. Automatic. We don't go any further,  
10:50 13 then that's the end of it, and he goes off to  
10:50 14 Huntsville, Texas, to begin serving his sentence. If  
10:50 15 that question is answered "yes" by the jury, 12 members  
10:50 16 of you in a unanimous verdict, then we move to another  
10:50 17 question. There are actually two possible other  
10:50 18 questions. Famous last words -- neither side is going  
10:50 19 to even talk about the second one because it doesn't  
10:50 20 seem to apply from what we know about the evidence. And  
10:50 21 mark my words, it will end up being the pivotal issue of  
10:50 22 the whole case.

10:50 23 But the third question is the mitigation  
10:50 24 question. That's very very open-ended, not critical  
10:51 25 evidence. It's a fact. It's open-ended. Okay? And

10:51 1 that will be a "yes" or "no" question to you. It's a  
10:51 2 little different from that other danger question because  
10:51 3 there's not a burden of proof.

10:51 4 In other words, both sides either have the  
10:51 5 same burden of proof or no burden, depending on how you  
10:51 6 look at it. The defense can say, why didn't they prove  
10:51 7 to you that there is mitigation? I can argue, why  
10:51 8 didn't they prove to you that there is? And we're both  
10:51 9 right. I mean, I guess I could say they didn't  
10:51 10 discharge their burden. And they can say we didn't  
10:51 11 discharge ours. It doesn't matter. It's whatever the  
10:51 12 jury thinks on that question. Okay?

10:51 13 A. (Moving head up and down.)

10:51 14 Q. Some of the things that we know about that  
10:51 15 question are as follows: It focuses your attention on  
10:51 16 the defendant, if you look at it, kind of the way it's  
10:52 17 phrased. It talks about his moral culpability, his  
10:52 18 background, his character, and the evidence in the case,  
10:52 19 which is the evidence of what he's done. Because you  
10:52 20 don't get to that question unless you've already found  
10:52 21 he's the capital murderer, you know?

10:52 22 And it doesn't really say anything about:  
10:52 23 Consider the victim one way or the other. For example,  
10:52 24 despite what I've been saying about drug dealers and if  
10:52 25 you murder a drug dealer, is that good or bad or worse

10:52 1 or better or whatever, the fact is that it's possible  
 10:52 2 that one of the people you murder could be a drug dealer  
 10:52 3 and that wouldn't have anything to do with drug dealing.  
 10:52 4 It could be for some other reason altogether, other than  
 10:52 5 being a drug dealer. And maybe another person that you  
 10:52 6 murdered, if you murdered two or more people, wasn't a  
 10:52 7 drug dealer and didn't behave that way. Do you know,  
 10:52 8 that kind of idea?

10:53 9 A. Yes.

10:53 10 Q. And that question, although you may hear victim  
 10:53 11 evidence in this case -- and what victim evidence is is  
 10:53 12 family members come up and talk about how they have been  
 10:53 13 touched by what has occurred and what the result of  
 10:53 14 these actions has been and how their life will be  
 10:53 15 forever changed. And that doesn't really directly focus  
 10:53 16 you on victim's losses. Do you notice what I'm saying  
 10:53 17 there?

10:53 18 If you look at that question, there's  
 10:53 19 nothing in there about consider the victims or consider  
 10:53 20 what it must be to a brother or a mom or dad to lose a  
 10:53 21 child. Do you know that kind of idea?

10:53 22 A. Yes.

10:53 23 Q. I suppose we could say that that is one of the  
 10:53 24 circumstances of the offense, you know, right here,  
 10:53 25 including the circumstances of the offense. But still,

10:54 1 it seems to focus mostly on the defendant and his  
 10:54 2 background because it's his life or death sentence that  
 10:54 3 we're talking about. Do you agree with me, as near as  
 10:54 4 you can see from that question?

10:54 5 A. Yes.

10:54 6 Q. How important do you think victim evidence  
 10:54 7 would be in evaluating a case? In evaluating the moral  
 10:54 8 culpability of the defendant? Is that something that  
 10:54 9 you think doesn't really matter that much?

10:54 10 A. No. Because that would be normal. If someone  
 10:54 11 has lost a loved one, for whatever reason, there's  
 10:54 12 grief.

10:54 13 Q. Right.

10:54 14 A. And the circumstances of the event would be  
 10:54 15 more important than the victim evidence, I would think.

10:54 16 Q. Would it make a difference to you if the  
 10:54 17 defendant knew the victims and their family and  
 10:54 18 absolutely knew how devastated they would be just  
 10:54 19 because he knew the people involved? Does that make any  
 10:55 20 difference to you at all?

10:55 21 A. I don't think so.

10:55 22 Q. Like, for example, if I go rob a liquor store  
 10:55 23 tonight and killed a clerk. I don't know the clerk. I  
 10:55 24 mean, he's just somebody. But if I go rob my friend for  
 10:55 25 ten years that's working there, and I know his mom and

10:55 1 dad because she's made sandwiches for me after school  
 10:55 2 and those kind of things, does it make any difference  
 10:55 3 that you are killing somebody, knowing the victim's  
 10:55 4 family, knowing how they are going to be hurt, because  
 10:55 5 you know them? Does that make any difference at all to  
 10:55 6 you?

10:55 7 A. Maybe slightly, but not to a great degree.

10:55 8 Q. Okay. Now, when we use the term mitigating in  
 10:55 9 that question, you probably notice that doesn't have a  
 10:55 10 definition either. So, I mean, the jury can do as it  
 10:55 11 wishes. There's not a problem on that, but they talk  
 10:55 12 about sufficient mitigation and almost anything, if it's  
 10:56 13 mitigating to you could be construed as mitigating, I  
 10:56 14 mean, there's no -- there's no -- Judge Sandoval would  
 10:56 15 never say there's anything that's not mitigating. But  
 10:56 16 the only thing we could ever say that might not be  
 10:56 17 mitigating is opposition to the death penalty itself.

10:56 18 In other words, if you were the kind of  
 10:56 19 person that would say, I believe all death sentences are  
 10:56 20 mitigated because I don't believe in the death penalty.  
 10:56 21 That's about the only thing that I could ever think of  
 10:56 22 where that would not be legitimate, you, as a mitigating  
 10:56 23 circumstance. The fact that you just vetoed the death  
 10:56 24 penalty automatically. Do you follow me?

10:56 25 A. Yes.

10:56 1 Q. But, for example, you mentioned the defendant  
 10:56 2 seemed young to you. If you think that's a mitigating  
 10:56 3 circumstance all by itself, that nobody should be  
 10:56 4 executed at age 27, for example. That's just too young.  
 10:56 5 I'm not saying you do, but if you believe that, we can't  
 10:56 6 quarrel with that. You know, I guess on the other hand  
 10:57 7 if you think that being that age it makes it even worse  
 10:57 8 because you are old enough to have known better and you  
 10:57 9 didn't. You are free to look at it that way because  
 10:57 10 nobody could tell you otherwise.

10:57 11 If you think drugs mitigate against the  
 10:57 12 death sentence for a capital murder, you can vote yes to  
 10:57 13 that question. If you think drugs make it even worse,  
 10:57 14 rather than better, you could -- you are free to say  
 10:57 15 that's not mitigating; that's aggravating. That makes  
 10:57 16 it even worse because he did it on drugs, you know, you  
 10:57 17 can -- if you are a gun hater, and you are very strongly  
 10:57 18 involved in gun control, let's say, and you think that  
 10:57 19 using a gun is a worse kind of murder than stabbing  
 10:57 20 somebody or hitting them with a pole or something, you  
 10:57 21 could say that's aggravated. If you think guns are --  
 10:57 22 if you think guns aren't somebody's fault because we  
 10:58 23 have guns in our society. You could say that's  
 10:58 24 mitigating. Nobody can control what you think is  
 10:58 25 mitigating evidence.

10:58 1 A. All right.  
 10:58 2 Q. Do you think that's an important thing for  
 10:58 3 juries to be able to have, the ability to spare a life,  
 10:58 4 notwithstanding the evidence if they think there's  
 10:58 5 something about, about the background of the offender  
 10:58 6 that's important? Do you think that's a good thing for  
 10:58 7 a jury to have, that option?  
 10:58 8 A. I would think that that's just totally  
 10:58 9 dependent on the individual case.  
 10:58 10 Q. All right. Do you like the idea that if you  
 10:58 11 are on the jury that you would have the opportunity to  
 10:58 12 do such a thing and consider that possibility?  
 10:58 13 A. Or any mitigating circumstances.  
 10:58 14 Q. Right.  
 10:58 15 A. Yes.  
 10:58 16 Q. Any that's exactly what I mean, any mitigating  
 10:58 17 circumstances.  
 10:58 18 A. But as you said, so long as it doesn't  
 10:58 19 disqualify a person, right.  
 10:58 20 Q. And I see nothing about you that's  
 10:59 21 disqualifying. You sound fine to me, from what I can  
 10:59 22 tell. Do you -- do you recognize there are cases where  
 10:59 23 a person can be dangerous because you answer that  
 10:59 24 special issue yes, and there are capital murderers?  
 10:59 25 A. Uh-huh.

10:59 1 Q. And yet something about their background would  
 10:59 2 be such that you say that life should be spared?  
 10:59 3 A. Yes. I see what you are saying.  
 10:59 4 Q. Does that make sense to you that you have that  
 10:59 5 option?  
 10:59 6 A. Well --  
 10:59 7 Q. Now, it's funny because the rehabilitation  
 10:59 8 aspect that you talk about could find its way into that  
 10:59 9 question pretty easily. Do you see how that could be?  
 10:59 10 Is it being receptive to rehabilitation, if you look at  
 10:59 11 that question you could plug that into the character of  
 10:59 12 the defendant, you know?  
 10:59 13 THE COURT: Mr. Schultz, I'm going to ask  
 10:59 14 you to mark your notes and remember where you are.  
 10:59 15 We're going to take about a five- or ten-minute recess.  
 10:59 16 And, Ms. Rhoads, I want to ask you not to discuss with  
 10:59 17 any of the jurors about what you have said or what was  
 11:00 18 said to you in here. And I suppose if they ask you, you  
 11:00 19 can tell them the Judge has instructed you not to say  
 11:00 20 anything. And we'll come back in five or ten minutes  
 11:00 21 and continue the voir dire.  
 11:00 22 THE BAILIFF: All rise.  
 11:00 23 (Break.)  
 11:13 24 THE COURT: All right. Ms. Rhoads,  
 11:13 25 naturally, you are still under the oath. Mr. Schultz?

11:13 1 MR. SCHULTZ: Judge, this will be State's  
 11:13 2 peremptory challenge No. 1.  
 11:13 3 THE COURT: So I suppose that takes care  
 11:13 4 of that.  
 11:13 5 MR. GOELLER: Yes.  
 11:13 6 THE COURT: All right. Then, Ms. Rhoads,  
 11:13 7 you are finally excused. Thank you, very much.  
 11:13 8 (Venireperson Rhoads excused.)  
 11:13 9 MR. SCHULTZ: Judge, do we have some  
 11:13 10 jurors from last week maybe?  
 11:13 11 THE COURT: I tell you, we got four people  
 11:13 12 that are on standby, and you probably know their names.  
 11:13 13 They are Ballard, Johnson, Kerr, and Lauriello, No. 13,  
 11:13 14 14, 15, and 16. And we've got to think of some way to  
 11:13 15 try to work them in. And I'm trying to -- I was  
 11:13 16 thinking about talking to both sides about what you've  
 11:13 17 done in other cases to stay on schedule, and too, you  
 11:13 18 know, I could put everybody on standby and simply call  
 11:14 19 in eight people the night before. But right now we've  
 11:14 20 got four leftovers, if I could call them back. And  
 11:14 21 we've got two people waiting to be questioned out here.  
 11:14 22 And we've got four coming in at one o'clock.  
 11:14 23 So at any rate, those four that we're  
 11:14 24 talking about are still on standby, and I suppose we  
 11:14 25 need to work them in or simply put off some other ones

11:14 1 and get them in here. So, but that's our status right  
 11:14 2 now. The next one is Venora Allen. Everybody ready to  
 11:14 3 talk to Venora Allen?  
 11:15 4 (Venireperson Allen present.)  
 11:15 5 THE COURT: Are you Venora Allen?  
 11:15 6 VENIREPERSON: Yes.  
 11:15 7 THE COURT: Perhaps you remember last  
 11:15 8 Tuesday I had put everyone under oath in regard to  
 11:15 9 answering questions truthfully. And you, like everyone  
 11:15 10 else, will continue to be under oath.  
 11:15 11 VENIREPERSON: Okay.  
 11:15 12 THE COURT: Please be seated, ma'am. All  
 11:15 13 right, Mr. Schultz.  
 11:15 14 VOIR DIRE EXAMINATION  
 11:15 15 BY MR. SCHULTZ:  
 11:15 16 Q. Good morning, Ms. Allen.  
 11:15 17 A. Good morning.  
 11:15 18 Q. You didn't hear enough of me last Tuesday. You  
 11:15 19 have to listen some more. I like to tell you that I'll  
 11:16 20 be brief, but you know better than that. So if you'll  
 11:16 21 just bear with me, having been pleasant about it, I hope  
 11:16 22 that you share with me the same view that this is really  
 11:16 23 important stuff.  
 11:16 24 A. Uh-huh.  
 11:16 25 Q. And the things that I said on Tuesday, it's one

11:16 1 of those things that I would hope we would not have  
 11:16 2 anybody on this jury who would find it delightful to  
 11:16 3 have the opportunity to maybe cause somebody's death. I  
 11:16 4 don't think that's good.

11:16 5 A. Right.

11:16 6 Q. I don't have a problem with the concept of the  
 11:16 7 death penalty because it's the law. And if we prove  
 11:16 8 what we have to prove, I don't apologize for our  
 11:16 9 position on it, but it's almost like going to war or  
 11:16 10 something. I would rather our country not have to fight  
 11:16 11 and people have to behave that way if we had a choice,  
 11:16 12 and maybe we really don't. When I -- when I ask you to  
 11:16 13 take a moment back on Tuesday to look at the defendant,  
 11:17 14 I told you that we really planned to do it that way, I  
 11:17 15 hope you understood I wasn't trying to be funny or  
 11:17 16 amusing or that it was like a funny way to talk to me,  
 11:17 17 because it really is serious.

11:17 18 A. Right.

11:17 19 Q. And I think both sides owe it to the  
 11:17 20 prospective jurors to know that this is the real thing,  
 11:17 21 and that we really are actively trying to convince 12  
 11:17 22 people that this should be done. And of course the  
 11:17 23 defense is trying to convince the jury that it should  
 11:17 24 not be done or, furthermore, we can't seem to convict of  
 11:17 25 capital murder. We have to do that first before we move

11:17 1 into the punishment phase.

11:17 2 But I don't know if you are like me, but I  
 11:17 3 know before I started doing this kind of work it was a  
 11:17 4 lot easier for me to watch television at night and see  
 11:17 5 some awful crime and just no reason for it at all other  
 11:18 6 than just meanness and callousness. It was easy for me  
 11:18 7 to say, why don't we just start killing more people, and  
 11:18 8 we won't have these kind of problems?

11:18 9 And although that's perhaps correct  
 11:18 10 still -- that's a correct statement -- when I have to  
 11:18 11 sit here and this becomes a part of my life, you get a  
 11:18 12 more clear view of the circumstances, I think, than  
 11:18 13 maybe when it's just in your living room. Do you know  
 11:18 14 what I mean?

11:18 15 A. Uh-huh.

11:18 16 Q. Do you feel any different now that you know you  
 11:18 17 are actually involved in it rather than when you were  
 11:18 18 answering the questionnaire maybe and you were just  
 11:18 19 talking abstract about it?

11:18 20 A. I feel different due to the fact that in the  
 11:18 21 questionnaire there was no middle answer. As far as  
 11:18 22 some of the questions, do you believe in the death  
 11:18 23 penalty or not? That was a tough one to answer.

11:18 24 Q. Right.

11:19 25 A. Yes, in certain cases. No, in certain cases.

11:19 1 Q. Exactly.

11:19 2 A. I don't know. I'm not sure how I feel as far  
 11:19 3 as the -- as far as with Mr. Cantu, as far as how  
 11:19 4 everything goes because I don't know all of the  
 11:19 5 underlying facts.

11:19 6 Q. Of course not, of course not.

11:19 7 A. Do I want to be fair? Yes.

11:19 8 Q. You know, the truth is, I guess what's fair is  
 11:19 9 to have a juror who is open to all possibilities that  
 11:19 10 would arise in the trial.

11:19 11 A. Uh-huh.

11:19 12 Q. It might be that you are the kind of person who  
 11:19 13 would more often go for a death sentence than maybe  
 11:19 14 another person would.

11:19 15 A. Okay.

11:19 16 Q. I can look at your questionnaire for some  
 11:19 17 guidance on that but, you know, I don't know you. I'll  
 11:19 18 know you better from this talk than I did before. But  
 11:19 19 still, you don't -- you don't ever really know how  
 11:20 20 somebody's going to react until they are faced with that  
 11:20 21 anyway.

11:20 22 A. Right.

11:20 23 Q. You just never know. But the fact that you  
 11:20 24 might be more leaning one way or another than somebody  
 11:20 25 else, doesn't make either of you unfair. The nice thing

11:20 1 about the jury is that 12 people make a collective  
 11:20 2 decision when they get together, and they -- and they do  
 11:20 3 that.

11:20 4 You made the statement that you are in  
 11:20 5 favor of the death penalty, and your explanation was  
 11:20 6 that if a person takes several lives, why should I  
 11:20 7 support life in prison than death?

11:20 8 A. Yes.

11:20 9 Q. The person benefits by life and uses taxpayer  
 11:20 10 dollars doing so.

11:20 11 A. Yes.

11:20 12 Q. Is that still your view?

11:20 13 A. Yes.

11:20 14 Q. When you talk about several lives, obviously we  
 11:20 15 think of such things as maybe Hitler?

11:20 16 A. Uh-huh.

11:20 17 Q. Or Oklahoma City or that sort of thing?

11:20 18 A. Right.

11:20 19 Q. In Texas our law provides that if you  
 11:20 20 intentionally kill two or more people -- it just has to  
 11:21 21 be two --

11:21 22 A. Okay.

11:21 23 Q. -- that that's a capital murder, if it's in the  
 11:21 24 same criminal transaction. Or even if you are a serial  
 11:21 25 killer and it's a different transaction, but it's all



11:21 1 part of a pattern.  
 11:21 2 A. Uh-huh.  
 11:21 3 Q. I know it's not the same numbers as a Hitler or  
 11:21 4 Oklahoma City type situation; does that seem to be the  
 11:21 5 kind of case that should be subject to the death  
 11:21 6 penalty?  
 11:21 7 A. It just depended on the circumstances. If it  
 11:21 8 was something maybe self-defense, then I wouldn't say  
 11:21 9 that it would be subject to the death penalty.  
 11:21 10 Q. Right.  
 11:21 11 A. If it was just something out of pure -- a  
 11:21 12 malicious intent, yes.  
 11:21 13 Q. And you are absolutely right with what you are  
 11:21 14 saying because, if it was self-defense, if you really  
 11:21 15 believed it was self-defense, he would be not guilty  
 11:21 16 anyway because that's a defense. I mean, if I'm coming  
 11:21 17 at you with a view toward you and deadly harm, you don't  
 11:21 18 have to let me do it to avoid killing me; you can kill  
 11:22 19 me. It's like kill or be killed?  
 11:22 20 A. Uh-huh.  
 11:22 21 Q. So you are absolutely right. And if it were an  
 11:22 22 accident, let's say I'm driving my car in a -- and I  
 11:22 23 look away for a second and my car swerves and it kills  
 11:22 24 two people --  
 11:22 25 A. Uh-huh.

11:22 1 Q. -- that's not a murder. That might be  
 11:22 2 something. That might be like a manslaughter. It might  
 11:22 3 be negligent homicide or it might not be any crime. It  
 11:22 4 might just be an accident like it happens.  
 11:22 5 A. Uh-huh.  
 11:22 6 Q. But it couldn't be murder because I have to  
 11:22 7 intentionally run my car into these people to be murder.  
 11:22 8 Does that make sense to you?  
 11:22 9 A. Uh-huh.  
 11:22 10 Q. I guess what you are saying is you don't  
 11:22 11 disagree with our law, that if somebody kills two people  
 11:22 12 intentionally on purpose, without justification, you  
 11:22 13 don't disagree that that could be a death penalty case?  
 11:22 14 A. I don't disagree with it if the facts are true.  
 11:22 15 Again, listening to the evidence itself.  
 11:22 16 Q. Right.  
 11:22 17 A. If I -- like if it was a malicious intent, then  
 11:23 18 I would definitely consider that. If it's something  
 11:23 19 outside of that, then no. I mean, I -- the death  
 11:23 20 penalty is kind of a difficult one to deal with. I know  
 11:23 21 if it was maybe that, if the shoe was on the other foot,  
 11:23 22 that is something I would want everybody to listen to  
 11:23 23 everything first before they would decide something like  
 11:23 24 that.  
 11:23 25 Q. Of course, of course. What about some of the

11:23 1 other kinds of capital murder? Does murder in the  
 11:23 2 course of burglary seem like that is one that could be a  
 11:23 3 death penalty case to you?  
 11:23 4 A. It's still kind of hard to say. I'm not sure.  
 11:23 5 Again, due to the fact of the evidence. Maybe if the  
 11:23 6 person didn't know -- I don't know. I don't know.  
 11:23 7 Q. How about murder in the course of a robbery?  
 11:24 8 A. Again, I'm not sure if that's something because  
 11:24 9 I don't know the facts. If it was a point blank  
 11:24 10 robbery, what the circumstances were. That again,  
 11:24 11 that's tough.  
 11:24 12 Q. Some of the other varieties like murdering  
 11:24 13 police officers, does that seem to you to be a capital  
 11:24 14 kind of case?  
 11:24 15 A. I will say maybe we could try them as capital.  
 11:24 16 And, again, if the jury decides to go to the death  
 11:24 17 penalty, then that's something that the jury would  
 11:24 18 decide on. But I don't know if that's something -- a  
 11:24 19 police officer, yeah, maybe you can go ahead and try  
 11:24 20 them for capital murder. But you never know; you don't  
 11:24 21 know what the circumstances are there.  
 11:24 22 Q. And maybe it's my question that's confusing or  
 11:24 23 just not a good question.  
 11:24 24 A. Okay.  
 11:24 25 Q. We don't have an automatic death sentence in

11:25 1 Texas anyway.  
 11:25 2 A. Right.  
 11:25 3 Q. So I'm more like -- I could probably name a  
 11:25 4 crime that you could say that should never be a death  
 11:25 5 penalty.  
 11:25 6 A. Uh-huh.  
 11:25 7 Q. Shoplifting?  
 11:25 8 A. Right.  
 11:25 9 Q. There may be countries on this earth that would  
 11:25 10 execute you for shoplifting.  
 11:25 11 A. Oh, yes.  
 11:25 12 Q. But we wouldn't do that in America, and we  
 11:25 13 shouldn't. Do you agree with that?  
 11:25 14 A. I agree.  
 11:25 15 Q. Burglary. You are up here today, and I've got  
 11:25 16 somebody that has the jury list. And he goes and breaks  
 11:25 17 in and happens to steal your TV while you are here. You  
 11:25 18 don't want your TV stolen, and you don't want people  
 11:25 19 going in your house and invading your privacy, but you  
 11:25 20 don't think the person should be executed for doing  
 11:25 21 that?  
 11:25 22 A. No.  
 11:25 23 Q. And more what I was asking you actually,  
 11:25 24 Ms. Allen, was whether those kinds of crimes seem like,  
 11:25 25 depending on the circumstances they could or could not

11:25 1 be a death penalty.

11:25 2 A. Okay.

11:25 3 Q. And do you feel that they could depending on  
11:26 4 the circumstances?

11:26 5 A. Depending on the circumstances, yes.

11:26 6 Q. Okay. Okay. If you had a choice between being  
11:26 7 on this jury and off, and it's like right in the middle  
11:26 8 of all this, Judge Sandoval said, Ms. Allen, we got a  
11:26 9 lot of people available to be jurors in this case so I  
11:26 10 can be generous to you. It's up to you. Do you want to  
11:26 11 be on this jury or off this jury, what would your answer  
11:26 12 be?

11:26 13 A. I would tell them I want to go ahead and do my  
11:26 14 duty as a citizen of the United States, especially if  
11:26 15 Collin County, if it was all -- I would want to do my  
11:26 16 duty. If he feels that I need to serve on the jury,  
11:26 17 that's what I would do and make the accommodations to do  
11:26 18 so.

11:26 19 Q. Did I make you mad when I was talking about how  
11:26 20 important it is and even if your personal life is  
11:26 21 disrupted? I probably came on a little strong with you  
11:26 22 than you wish I had?

11:26 23 A. It was strong. No. You didn't bother me  
11:26 24 because I know that if -- if something did come up to  
11:27 25 it, I would think Judge Sandoval would have a listening

11:27 1 ear, but I also know that this is important, too. That  
11:27 2 if my life was on the line, I would want somebody to do  
11:27 3 the same thing for me. So as far as making special  
11:27 4 provisions, that's something I would do.

11:27 5 Q. Right. And that's what I meant. I know  
11:27 6 vacations are important and fall breaks and all those  
11:27 7 things we do with our kids.

11:27 8 A. Right.

11:27 9 Q. And I like it the same as the next person. But  
11:27 10 compared to what we're doing here, I think -- I think  
11:27 11 sometimes there are bigger issues than vacations.

11:27 12 A. Right.

11:27 13 Q. And dinner parties or whatever that we may have  
11:27 14 that -- weddings, those kinds of things sometimes are  
11:27 15 big, but they are not -- they are not maybe as big as  
11:27 16 this anyway. Was there ever a time in your life that  
11:28 17 you were against the death penalty, that you can  
11:28 18 remember?

11:28 19 A. Probably before there was DNA. I wouldn't say  
11:28 20 totally against it. The only time that I'm totally  
11:28 21 against it is like somebody used the example last week  
11:28 22 stating that, if somebody did something terrible to my  
11:28 23 child, with the intent, without my child actually having  
11:28 24 the ability to protect herself, then I would think the  
11:28 25 death penalty is wrong due to the fact that -- me

11:28 1 personally, I don't know how I would handle that  
11:28 2 situation.

11:28 3 But if that's something that I would -- if  
11:28 4 there was something that somebody would do and you are  
11:28 5 putting them there for the death penalty, I would have  
11:28 6 sympathy for that person. As a parent I would  
11:29 7 understand what that person is going through. I would  
11:29 8 say I would be against the death penalty in that  
11:29 9 situation if somebody just goes out and commits an act  
11:29 10 with the intent, due to again, due the facts of the  
11:29 11 crime and what the past or their background's about.  
11:29 12 Then that's something I would have consider. I wouldn't  
11:29 13 say that I'm totally against the death penalty but there  
11:29 14 are certain situations. I don't know if I answered your  
11:29 15 question or not.

11:29 16 Q. I think you did. Are you saying -- are you  
11:29 17 saying that if one of your children got charged with  
11:29 18 capital murder?

11:29 19 A. No. I'm saying if there was a person that did  
11:29 20 harm to my child and my child is no longer here.

11:29 21 Q. Right.

11:29 22 A. Which happens a lot. And as a parent, if I go  
11:29 23 out and do intent to that person, you know, due to rage,  
11:30 24 anger, whatever, capital murder -- charging me with  
11:30 25 capital murder, I think would be difficult. I don't

11:30 1 know if, I don't know if that's even the right thing to  
11:30 2 say, you know.

11:30 3 Q. And there's nothing wrong with saying that  
11:30 4 because we're just talking.

11:30 5 A. Right.

11:30 6 Q. And you are absolutely right. There are ways  
11:30 7 that that could be a capital murder perhaps in theory.  
11:30 8 For example, if you went -- let's say there were two  
11:30 9 people that had harmed your child.

11:30 10 A. Uh-huh.

11:30 11 Q. And your child wasn't around anymore and you  
11:30 12 went and killed both of them. And you found them  
11:30 13 together because they left the courtroom laughing  
11:30 14 together. You know, that kind of idea?

11:30 15 A. Uh-huh.

11:30 16 Q. Well, that's capital murder. You intentionally  
11:30 17 caused the death of two or more people.

11:30 18 A. Right.

11:30 19 Q. So, yes, you have committed the crime of  
11:30 20 capital murder, and if that were charged, and if the  
11:30 21 Grand Jury returned an indictment that way, and if the  
11:30 22 District Attorney's office said, yes, you know,  
11:30 23 Ms. Allen knew what she was doing, and she needs a death  
11:31 24 sentence kind of thing, you would be on trial for that?

11:31 25 A. Correct.

11:31 1 Q. Now, I mean, I think we would all agree that  
 11:31 2 you could try those facts a million times out of a  
 11:31 3 million and you would never get a death sentence because  
 11:31 4 we got this question here that would have to be  
 11:31 5 considered, taking into consideration all the evidence  
 11:31 6 considering the circumstances and your character and  
 11:31 7 your background. And so there's that, there's that  
 11:31 8 protection against those cases where it doesn't fit?

11:31 9 A. Uh-huh.

11:31 10 Q. There's that protection available -- available  
 11:31 11 under our law.

11:31 12 A. Right.

11:31 13 Q. You bring up an interesting point that I would  
 11:31 14 like to talk with you about. Let's say, and I know it  
 11:31 15 wouldn't happen. I'm just using this as an illustration  
 11:31 16 because I don't ever talk about this case in particular.  
 11:31 17 It's not appropriate, nor can Mr. Goeller or Mr. High,  
 11:31 18 they can't do it either.

11:31 19 A. Okay.

11:32 20 Q. I can sense from just how you describe this,  
 11:32 21 that you love your children.

11:32 22 A. Uh-huh.

11:32 23 Q. As most moms -- we'd hope all moms, but most  
 11:32 24 moms for sure do.

11:32 25 A. Right.

11:32 1 Q. And I know it would never happen, but if one of  
 11:32 2 your children got arrested and convicted for capital  
 11:32 3 murder -- how old are your kids, by the way?

11:32 4 A. I just have a 7-year-old daughter.

11:32 5 Q. Okay. Let's say you had a son. It doesn't  
 11:32 6 matter. You would be there for your son, wouldn't you,  
 11:32 7 no matter what he had done?

11:32 8 A. That's correct.

11:32 9 Q. And you would be meeting with your son's  
 11:32 10 lawyers?

11:32 11 A. Uh-huh.

11:32 12 Q. And you would be saying, how can I help?

11:32 13 A. Uh-huh.

11:32 14 Q. You'd be visiting him at the jail whenever  
 11:32 15 possible?

11:32 16 A. Uh-huh.

11:32 17 Q. Writing letters and praying for him, all of  
 11:32 18 those things?

11:32 19 A. Correct.

11:32 20 Q. And truthfully in your heart you'd want to be  
 11:32 21 believing that he has changed or that he hadn't really  
 11:33 22 meant it at all or that sort of thing, right?

11:33 23 A. Uh-huh.

11:33 24 Q. I think that's just what good people -- that's  
 11:33 25 how good people are. That's what it is. And here's

11:33 1 where it can get tough because I'm not talking about  
 11:33 2 this case in particular. I'm talking about in general,  
 11:33 3 it is not unheard of for a mom to come in and beg for a  
 11:33 4 child's life.

11:33 5 A. That's correct.

11:33 6 Q. You would do it. I would do it. You know?

11:33 7 A. Uh-huh.

11:33 8 Q. Anybody with children would do it in a heart  
 11:33 9 beat. What's that mean in the overall scheme? How  
 11:33 10 important is that in deciding what is justice, the fact  
 11:33 11 that somebody's mamma really loves him? Is that  
 11:33 12 important to you?

11:33 13 A. It's important to me because it just shows the  
 11:33 14 care that that parent feels for their child. But still  
 11:33 15 as a parent, I guess you at one point in time you are  
 11:34 16 going to have to separate the two. Right is right and  
 11:34 17 wrong is wrong. And if wrong was done, I think that my  
 11:34 18 child needs to understand that there is going to be a  
 11:34 19 penalty to that punishment or to whatever was done and  
 11:34 20 that I will be there for you as long as I can. And then  
 11:34 21 after that, it's out of my hands.

11:34 22 But I mean, I would do the same thing. I  
 11:34 23 would beg and plead but, you know, it's still up to -- I  
 11:34 24 don't know if that would have a huge impact on me after  
 11:34 25 seeing all the evidence that was there. But I would

11:34 1 feel for her as a parent, yes.

11:34 2 Q. I mean, you seem -- I don't know you well, but  
 11:34 3 I almost have to guess just from us talking. You seem  
 11:34 4 like a kind person and a person that relationships mean  
 11:34 5 everything to you.

11:34 6 A. Yes.

11:34 7 Q. You seem like that kind of person. And I  
 11:34 8 suspect you are the kind of person, if you were watching  
 11:34 9 that evidence and listening to that, that could just put  
 11:35 10 you in tears. Not because you are weak, but maybe  
 11:35 11 because you are strong. Do you know that kind of idea?

11:35 12 A. Uh-huh.

11:35 13 Q. Probably could do that to us here. I mean, we  
 11:35 14 are not -- just because we're prosecutors, doesn't mean  
 11:35 15 we don't have hearts and don't care about stuff. Do you  
 11:35 16 recognize that a way of looking at that is that  
 11:35 17 sometimes when you do these bad acts and you are not  
 11:35 18 even thinking about your own mother and what that's  
 11:35 19 going to do to her kind of thing?

11:35 20 A. Oh, yeah, definitely.

11:35 21 Q. I mean, I mean, in addition to the victim's  
 11:35 22 family, when they will never see that child again. You  
 11:35 23 put your mom in that position too and that's, she may be  
 11:35 24 the unfortunate victim of it all.

11:35 25 A. Yes.

11:35 1 Q. But she's still a victim of some wrong. Does  
 11:35 2 that make sense to you?  
 11:35 3 A. Yes, it does.  
 11:35 4 Q. All right. Now, we don't know the defendant.  
 11:36 5 You don't know him, and I don't know him. But you and I  
 11:36 6 can both agree, he probably doesn't want to die. If he  
 11:36 7 had a choice, it's probably not his wish to die?  
 11:36 8 A. Oh, I'm pretty sure he doesn't.  
 11:36 9 Q. And I bet most of the people that are charged  
 11:36 10 with capital murder probably don't want to die?  
 11:36 11 A. Correct.  
 11:36 12 Q. And that means that juries may be called upon  
 11:36 13 to do something that the defendant doesn't want to do,  
 11:36 14 and that's kind of unnatural for us. We're not used to  
 11:36 15 doing that.  
 11:36 16 A. Uh-huh.  
 11:36 17 Q. If you stop and think about it. I don't know  
 11:36 18 about you, but a lot of us give to charities, for  
 11:36 19 example?  
 11:36 20 A. Uh-huh.  
 11:36 21 Q. Do you work for Ugly Duckling?  
 11:36 22 A. That's correct.  
 11:36 23 Q. You probably don't work in a huge office. Is  
 11:36 24 it like 50 or 60 people in that office?  
 11:36 25 A. I think there's around 120.

11:36 1 Q. Wow. Is it like a corporate --  
 11:36 2 A. The corporate office.  
 11:36 3 Q. Okay. Well, then I'll bet you there isn't a  
 11:36 4 week that goes by that there isn't somebody coming in  
 11:37 5 with Girl Scout cookies or Boy Scouts or light bulbs?  
 11:37 6 A. Yeah.  
 11:37 7 Q. And maybe we don't like it because it seems  
 11:37 8 like we pay more than we get maybe, but we do that  
 11:37 9 because that's important to us.  
 11:37 10 A. Yes.  
 11:37 11 Q. In helping people out, and it just matters.  
 11:37 12 Somebody gets sick, and we take up collections for them,  
 11:37 13 you know. And if we need it, maybe they would do it for  
 11:37 14 us.  
 11:37 15 A. Right.  
 11:37 16 Q. And so a lot of times when we ask a jury to  
 11:37 17 look at a death sentence, it's asking them instead of  
 11:37 18 being their usual caring kind of self or their usual  
 11:37 19 protecting kind of self, it's asking them to do  
 11:37 20 something kind of different. It's asking them to do  
 11:37 21 something pretty harsh. And they've got to stay focused  
 11:37 22 on why they think that way and what -- and what the  
 11:37 23 purpose of it is or else -- or else we'd never have that  
 11:37 24 happen, you know?  
 11:37 25 A. Uh-huh.

11:38 1 Q. If a capital murderer -- if capital murder  
 11:38 2 defendants don't want to die -- and you and I agree  
 11:38 3 probably mostly don't. Once in a blue moon probably  
 11:38 4 maybe, probably most of them don't. Would you expect  
 11:38 5 them to behave well in jail before trial or act up bad  
 11:38 6 in jail? What would you expect them to be doing?  
 11:38 7 A. Oh, that's a tough one.  
 11:38 8 Q. Let's do it this way. Let's say it was you.  
 11:38 9 You got yourself into something. You got yourself  
 11:38 10 charged with capital murder. You are very concerned you  
 11:38 11 are going to get convicted because, you know, I mean you  
 11:38 12 know the evidence, and you know how it's all going to  
 11:38 13 be. How would you behave in the jail? What would you  
 11:38 14 do?  
 11:38 15 A. Me, myself? I would try to make my stay as  
 11:38 16 easy as possible because I know that the officers can  
 11:39 17 make it very hard on me. Not only the officers, as well  
 11:39 18 as the inmates. I would try to follow the rules and  
 11:39 19 regulations that the facility has proposed on me.  
 11:39 20 Because I already know that my stay there is going to be  
 11:39 21 probably the remaining of my life. So I don't want  
 11:39 22 things to be even harder than they already are.  
 11:39 23 Q. What about the fact that that would be things  
 11:39 24 that you wanted to be able to show the jury, to be able  
 11:39 25 to say, well, I'm -- I'm a changed person. I'm -- I'm

11:39 1 acting nice, I'm going to church, and I'm trying to  
 11:39 2 create jail ministries and that sort of thing. Do you  
 11:39 3 see how that could be something that you might think of  
 11:39 4 doing?  
 11:39 5 A. Oh, yeah.  
 11:39 6 Q. And you know, I'm not -- I'm not at all against  
 11:39 7 the notion of change for real reasons. I'm just saying  
 11:39 8 that's always the puzzle because if -- you've never been  
 11:40 9 on a jury before. But if somebody offered evidence that  
 11:40 10 I did it. I'm glad I did it, and I'll do it again if I  
 11:40 11 get the chance. That doesn't happen much. Why would  
 11:40 12 it?  
 11:40 13 A. Right.  
 11:40 14 Q. It's said that here are the reasons. I had a  
 11:40 15 bad upbringing. I used drugs -- I used drugs. My dad  
 11:40 16 wasn't around when I needed him. I grew up poor. I --  
 11:40 17 you know, those kinds of things. And I did this awful  
 11:40 18 thing, and I did it when I was on drugs and wasn't  
 11:40 19 really thinking. And I'm real sorry and my life has  
 11:40 20 changed, so please don't kill me, you know, that kind of  
 11:40 21 deal. Sometimes that could be true.  
 11:41 22 A. Uh-huh.  
 11:41 23 Q. I mean, I'm not saying that everybody has to  
 11:41 24 not mean it. If you were on the jury trying figure out  
 11:41 25 if it's true or not, what would you be looking for?

11:41 1 What would you look at to see if this is a person  
11:41 2 telling you what in our hearts we want to hear anyway?

11:41 3 A. What has -- what has, first of all, you told me  
11:41 4 capital murder is something that you had to kill or you  
11:41 5 are committing a crime because of several people has  
11:41 6 been murdered, correct?

11:41 7 Q. At least two.

11:41 8 A. Okay. I would think what my thing would be was  
11:41 9 what were you doing to rehabilitate yourself in between  
11:41 10 the times? I don't know if the capital murder was --  
11:41 11 all happened at the same time or not. What were you  
11:41 12 doing to remove yourself from the negative environment  
11:41 13 that put you there to begin with?

11:41 14 Q. Okay.

11:41 15 A. Yeah. A lot of us come from bad backgrounds  
11:41 16 but, you know, we can change. Basically, are you still  
11:42 17 hanging around the same people? What caused you to get  
11:42 18 in that position? Did you have a choice to remove  
11:42 19 yourself from that environment if you did. Why didn't  
11:42 20 you?

11:42 21 Q. Okay. Now, you haven't heard any evidence in  
11:42 22 this case, but the indictment alleges that the murders  
11:42 23 happened at the same time. So it's kind of like, you  
11:42 24 know, it's almost like the idea of murdering the husband  
11:42 25 and wife and brother and sister. It happened the same

11:42 1 time, same place kind of thing. So it's not like I  
11:42 2 murdered somebody today, then a year from now I go  
11:42 3 murder a second person. That could be a capital murder.  
11:42 4 That's just not the way this is alleged. So apparently  
11:42 5 that's not what we can expect.

11:43 6 MR. SCHULTZ: In the interest of time,  
11:43 7 could you excuse the State's counsel for a few seconds?

11:43 8 THE COURT: Yes, sure.

11:44 9 (State's counsel conferring.)

11:44 10 Q. (BY MR. SCHULTZ) When I talked before on  
11:44 11 Tuesday, when I said and asked people and just asked for  
11:44 12 a show of hands, and I don't remember if your hand went  
11:44 13 up or not. When I asked the question, if you had known  
11:44 14 people in your life who have come from a really really  
11:44 15 bad environment and a very, if not tragic background,  
11:44 16 certainly much missing in their growing up who have  
11:45 17 turned out really really good. Did you raise your hand  
11:45 18 when I asked that question?

11:45 19 A. Yes, I did.

11:45 20 Q. And kind of the opposite question is always,  
11:45 21 well, have you known people that have grown up pretty  
11:45 22 good, you know. And I don't mean, nothing is perfect.

11:45 23 A. Uh-huh.

11:45 24 Q. Teen-age years are awful no matter where you  
11:45 25 live, and it's a hard time for us all. But people that

11:45 1 have grown up pretty good and turned out bad?

11:45 2 A. Yes.

11:45 3 Q. Then do you think, what is it that makes people  
11:45 4 when they become adults, when they, say, hit 27 years  
11:45 5 old, that kind of age, what is it that makes people do  
11:45 6 right or wrong, do you think?

11:45 7 A. I think it's just the lack -- doing right.  
11:45 8 Just the respect for themselves. I think as far as  
11:46 9 people doing right, just they want to make something of  
11:46 10 themselves, just a respect factor. Doing wrong and  
11:46 11 always being on the bad side, to me it just tells me  
11:46 12 that either -- the respect for yourself is not really  
11:46 13 there.

11:46 14 Q. Now, when I talk about doing right or wrong and  
11:46 15 it's obviously all kinds of -- all kinds of levels?

11:46 16 A. Uh-huh.

11:46 17 Q. You know if you are doing -- let's say you got  
11:46 18 a part-time job.

11:46 19 A. Uh-huh.

11:46 20 Q. Let's say your part-time job is working as a  
11:46 21 night watchman. And let's say the person that wants to  
11:46 22 hire you pays you in cash.

11:46 23 A. Okay.

11:46 24 Q. Now, everybody knows what that means. It means  
11:46 25 that he doesn't have to pay unemployment tax on that

11:46 1 money, and it means that he doesn't have to kick in his  
11:46 2 share of social security. He doesn't have to withhold  
11:47 3 income tax, and the night watchman knows what that means  
11:47 4 too. Same thing, no record of this. So my hundred  
11:47 5 dollars a week is tax-free money.

11:47 6 A. Uh-huh.

11:47 7 Q. Now, that isn't right, and we all know it isn't  
11:47 8 right. And it's not something that we'd want to get  
11:47 9 caught at, but that's stuff that probably a lot of  
11:47 10 people do that could otherwise be okay people. Wouldn't  
11:47 11 you agree with me?

11:47 12 A. Uh-huh.

11:47 13 Q. I'm not saying it's good, and I'm not  
11:47 14 advocating it, but that's the kind of thing that good  
11:47 15 people could say, well, they get enough from me already.

11:47 16 A. Uh-huh.

11:47 17 Q. I already pay 40 cents on every dollar I make  
11:47 18 and then they want more. And I pay 9 percent on sales  
11:47 19 tax or whatever it is now and I don't have anything  
11:47 20 left. And here I'm working instead of staying home at  
11:47 21 night, and they can do that.

11:47 22 And people could do other stuff. They can  
11:48 23 not spend enough time with their kids. And that's  
11:48 24 probably not good. We may regret that some day.

11:48 25 A. Right.

11:48 1 Q. And that's not hard-core evil either. That's  
11:48 2 just being not the greatest of parents or just not  
11:48 3 thinking about what's right sometimes or whatever. But  
11:48 4 do you think there's some people who are so different  
11:48 5 from the rest of us that they could do -- just do an  
11:48 6 awful crime, an unspeakable kind of crime and not really  
11:48 7 even feel bad about doing it, just because of how they  
11:48 8 are made or whatever?

11:48 9 A. Yes. Yes, I do. I feel that there are other  
11:48 10 people out there that can commit an act and have no  
11:48 11 feeling towards that.

11:48 12 Q. I mean, and it's interesting because in Texas  
11:48 13 we don't have to prove motive for why somebody commits a  
11:49 14 murder. And you may have seen on TV when they talk  
11:49 15 about motive. You've got to prove what the purpose was  
11:49 16 or something like that. That's not Texas law.

11:49 17 Oftentimes the motive will be clear, but  
11:49 18 it may not. It may be so bizarre that we can't ever  
11:49 19 figure out how that person thinks, and we can't -- when  
11:49 20 we can't understand why it happened, it may just simply  
11:49 21 be because our values aren't of a way that make it that  
11:49 22 way.

11:49 23 A. Uh-huh.

11:49 24 Q. Oklahoma City, the bombing of the courthouse up  
11:49 25 there in Oklahoma City, apparently the motive was to

11:49 1 retaliate against the government for things that this  
11:49 2 guy thought the government had done badly like Waco and  
11:49 3 Ruby Ridge and things like that.

11:49 4 A. Uh-huh.

11:49 5 Q. That's a motive, but you and I can't understand  
11:49 6 that.

11:49 7 A. Uh-huh.

11:49 8 Q. If we hate -- if we hate the FBI, why do we  
11:50 9 blow up women and children that have nothing to do with  
11:50 10 the FBI? That doesn't make any sense to us.

11:50 11 A. That's correct.

11:50 12 Q. Apparently it made sense to him. Even to the  
11:50 13 end, he claimed it made sense to him. And he claimed it  
11:50 14 was kind of like war and just casualties of war.

11:50 15 A. Uh-huh.

11:50 16 Q. You do recognize that there are people who can  
11:50 17 do stuff like that and they don't -- they don't feel bad  
11:50 18 about it.

11:50 19 A. Uh-huh. Yes, I do.

11:50 20 Q. How dangerous are people who don't have the  
11:50 21 ability to feel bad about that, in your opinion?

11:50 22 A. I feel very dangerous because if they don't  
11:50 23 feel bad about an act that was committed, then that  
11:50 24 tells me they can't understand the difference between  
11:50 25 right and wrong. Even a little thing like we teach our

11:50 1 kids, or we try to teach our kids that even going to  
11:50 2 7-Eleven and taking a piece of bubble gum is wrong. And  
11:51 3 as they get older they realize that. There is certain  
11:51 4 situations that, as a person gets older, they should  
11:51 5 realize that, what's right and what's wrong. And when  
11:51 6 they get to a certain age, our environment teaches us  
11:51 7 that we should know that.

11:51 8 And at a certain age if that person  
11:51 9 doesn't realize what's right and wrong by their  
11:51 10 feelings, then to me, it's just unteachable. And  
11:51 11 maybe -- you can't say society hasn't done their job.  
11:51 12 Maybe they just chose not to.

11:51 13 Q. But when they got charged with capital murder  
11:51 14 and maybe got found guilty of capital murder, that  
11:51 15 person might offer evidence saying, I am real sorry and  
11:51 16 I'm remorseful, and I wish it had not happened.

11:51 17 A. Yes.

11:51 18 Q. And you realize that saying it isn't true, but  
11:52 19 it's not the same thing, but it's saying it. Do you  
11:52 20 know what I'm mean?

11:52 21 A. Saying I'm sorry is one thing and actually  
11:52 22 doing it is another.

11:52 23 Q. Do you ever make your daughter tell somebody  
11:52 24 she's sorry for something she said or did? Did you have  
11:52 25 her do that?

11:52 1 A. Yes.

11:52 2 Q. Did you ever get the feeling that she is not  
11:52 3 really sorry, but she was doing it because she had to,  
11:52 4 kind of thing?

11:52 5 A. I think at the end, I think she really did feel  
11:52 6 sorry. And that also she was to a point that she --  
11:52 7 that I did have to force her to go do that, the  
11:52 8 embarrassment of it all.

11:52 9 Q. Okay. Now, let's talk about some things that  
11:52 10 can contribute to people's situations. Your child is a  
11:52 11 little bit young yet, but not too young for you to start  
11:52 12 worrying about drugs.

11:52 13 A. Right.

11:52 14 Q. That's not an insult to her. That's what I do  
11:52 15 for a living and it's everywhere.

11:53 16 A. Right.

11:53 17 Q. And I got it, and Matt's got it, and everybody  
11:53 18 with kids has that horrible fear.

11:53 19 A. Uh-huh.

11:53 20 Q. You teach them. You try to know their friends.  
11:53 21 You try to do everything you can, but they are in school  
11:53 22 and they are out on dates or their friends' houses more  
11:53 23 than they are around you kind of thing. Okay?

11:53 24 A. Uh-huh.

11:53 25 Q. What do you think about people using drugs and

11:53 1 because of the drugs that they use that makes them  
 11:53 2 violent and they've done violent things before, and they  
 11:53 3 keep doing drugs. And then a capital murder happens  
 11:53 4 while perhaps they are on drugs or perhaps not. We  
 11:53 5 don't, we may not know. Maybe they say they are, maybe  
 11:53 6 they were, maybe they weren't, but that's the claim.

11:53 7 A. Uh-huh.

11:54 8 Q. How does that affect how you view the murder  
 11:54 9 that they did when they were on drugs?

11:54 10 A. That kind of reminds me of a question that was  
 11:54 11 in the questionnaire that we, that you asked about the  
 11:54 12 person on alcohol. Me, with myself having a zero  
 11:54 13 tolerance for drugs, I use that -- that's not an excuse.  
 11:54 14 You can't tell me that something of that -- something  
 11:54 15 with that type of a traumatic event, that even though  
 11:54 16 the person was under the influence of drugs did not  
 11:54 17 realize what was going on.

11:54 18 So I -- I don't know. That doesn't sit  
 11:54 19 too well with me. As far as if somebody is using that  
 11:55 20 as: Well, I was on drugs; so, therefore, this is what  
 11:55 21 happened. But you still did something that you  
 11:55 22 shouldn't have done. I don't use that as a -- I won't  
 11:55 23 say it was not a scapegoat, but it doesn't sit really  
 11:55 24 well with me.

11:55 25 Q. So maybe if I tried to convince you of that,

11:55 1 I'll go get a doctor to come in and say, oh, yeah, when  
 11:55 2 you do drugs, especially with all the other stuff in  
 11:55 3 your background that you've got, it affected your  
 11:55 4 judgment. You wouldn't have done that when you weren't  
 11:55 5 doing drugs.

11:55 6 A. I don't agree. I wouldn't agree with that.

11:55 7 Q. Okay. Okay. On the subject of which, both  
 11:55 8 sides can introduce psychiatric testimony --

11:55 9 A. Uh-huh.

11:55 10 Q. -- in helping the jury to determine punishment.  
 11:55 11 The State can bring in a psychiatrist to say I've  
 11:55 12 examined the evidence in this case and read about what  
 11:55 13 happened and maybe talked to the defendant, maybe not.  
 11:55 14 It depends. And the State's psychiatrist can say, in my  
 11:55 15 opinion, he's a dangerous person. And the defense could  
 11:56 16 have a psychiatrist come in and say we've talked to the  
 11:56 17 defendant, and we don't think he is a dangerous person.

11:56 18 A. Uh-huh.

11:56 19 Q. And they can get more, and we can get more.  
 11:56 20 You know how that would be?

11:56 21 A. Uh-huh.

11:56 22 Q. Is that important to you, is what each side  
 11:56 23 having a psychiatrist to say kind of what their side  
 11:56 24 says? Is that important to you?

11:56 25 A. Yes. It's important to me because I would want

11:56 1 to know what each one of them would have to say. I  
 11:56 2 would sit there and listen to both sides. Because me  
 11:56 3 not being an expert, as far as what drugs could do to a  
 11:56 4 person, then I will want to know the -- the evidence or  
 11:56 5 the facts that could get a person to do some type of act  
 11:56 6 while they are on drugs.

11:56 7 Q. Okay. And why I ask you that, Ms. Allen, is  
 11:56 8 because one of the questions, assuming you found the  
 11:57 9 defendant guilty of capital murder, one of the questions  
 11:57 10 you get asked is whether there is a probability that the  
 11:57 11 defendant would commit criminal acts of violence that  
 11:57 12 would be a continuing threat to our society?

11:57 13 A. Uh-huh.

11:57 14 Q. And many jurors would say, you know, that's not  
 11:57 15 a medical question. I don't need experts to help me  
 11:57 16 figure out when there is danger. I've lived on this  
 11:57 17 planet, and I know -- I know how to tell about that. I  
 11:57 18 know if I'm in a nightclub and it starts getting rough  
 11:57 19 and some people start getting ready for a fight, I can  
 11:57 20 tell about that, and I know when to leave. And I  
 11:57 21 understand that.

11:57 22 And they say, if I go to the circus and  
 11:57 23 the tiger escapes from the cage when I'm there with my  
 11:57 24 children, I don't need a veterinarian to tell me that  
 11:57 25 that tiger is dangerous after he gets out of the cage.

11:58 1 I already know that. I don't need an expert.

11:58 2 In other words, a lot of what I can do I  
 11:58 3 can do just by myself because I'm an intelligent person  
 11:58 4 that makes my way in this world.

11:58 5 Do you see how they could feel that way,  
 11:58 6 that they would listen to anything that either side put  
 11:58 7 up in terms of psychiatric evidence? But deciding  
 11:58 8 whether somebody is dangerous or not you need to find  
 11:58 9 out what they did, or kind of what you said before, what  
 11:58 10 they have been doing besides that crime, right?

11:58 11 A. Right. That's correct.

11:58 12 Q. And you also recognize, and I'm not putting us  
 11:58 13 down or putting the defense down, but you can always get  
 11:58 14 experts. You can always hire an expert to say anything.  
 11:58 15 And the State does the same thing that the defense does  
 11:58 16 sometimes, and that's hire experts that will help put  
 11:58 17 their side in a better light.

11:58 18 A. Uh-huh.

11:58 19 Q. Now, what about -- you would agree with me  
 11:58 20 that, if you have a choice, it's probably better for  
 11:59 21 children to grow up with both parents at home, wouldn't  
 11:59 22 you?

11:59 23 A. Yes.

11:59 24 Q. I guess that depends on the parents because  
 11:59 25 there can be some situations where, you know, nonstop

11:59 1 fussing and fighting all the time may be worse than a  
 11:59 2 divorce. But most of the time it's better to have both  
 11:59 3 parents around, don't you think?  
 11:59 4 A. Uh-huh, yes, I do.  
 11:59 5 Q. If that's the case, and if somebody grows up in  
 11:59 6 a home where there's not a dad, either in the home  
 11:59 7 regularly or even -- even present at all, in your mind,  
 11:59 8 does that change that person's responsibility to not go  
 11:59 9 out and commit capital murders because -- because the  
 11:59 10 father wasn't there?  
 11:59 11 A. No. It doesn't change my mind. Just because  
 11:59 12 the father was not there, does not mean that that --  
 12:00 13 that gives that person the right to do that. You know,  
 12:00 14 you would think that there would be a better judgment  
 12:00 15 there.  
 12:00 16 Q. You can see how somebody might try to use that  
 12:00 17 as an excuse, especially if charged with a capital  
 12:00 18 crime.  
 12:00 19 A. Yes.  
 12:00 20 Q. And you've listened to -- just because -- just  
 12:00 21 because you may not view that as important, doesn't mean  
 12:00 22 you wouldn't listen to them and fairly evaluate?  
 12:00 23 A. That's correct.  
 12:00 24 Q. Just like the drug stuff. You may say that's  
 12:00 25 not an excuse and you -- you still knew better.

12:00 1 A. Uh-huh.  
 12:00 2 Q. But wouldn't just --  
 12:00 3 A. No. I would still listen to all the evidence  
 12:00 4 and the testimony.  
 12:00 5 Q. Some people -- the idea of jury service in a  
 12:00 6 capital case is to have an open mind to both life and  
 12:01 7 death. And you recognize that some cases call for a  
 12:01 8 life sentence, and you've said that in your  
 12:01 9 questionnaire, and some cases call for a death sentence?  
 12:01 10 A. Uh-huh.  
 12:01 11 Q. And you believe that you would be enough in the  
 12:01 12 middle on those issues that you can consider answering  
 12:01 13 the questions on the evidence and let the chips fall  
 12:01 14 where they may from the answers to those questions?  
 12:01 15 Does that make sense to you, what I'm saying?  
 12:01 16 A. Yes, it does.  
 12:01 17 Q. In other words, we're not going to say to you  
 12:01 18 directly, Ms. Allen, does this defendant get life or  
 12:01 19 death? And I'm assuming he's been convicted of capital  
 12:01 20 murder, because we have to prove that. Instead what we  
 12:01 21 ask you is, Ms. Allen and 11 other people: Do you find  
 12:01 22 beyond a reasonable doubt that there is a probability  
 12:01 23 that the defendant would commit criminal acts of  
 12:01 24 violence that would constitute a continuing threat to  
 12:01 25 society?

12:01 1 A. Uh-huh.  
 12:01 2 Q. If your answer to that question is no, do you  
 12:01 3 know what that means, if you say no to that?  
 12:01 4 A. Is that part of the -- the three questions that  
 12:02 5 we went over when we were in court on Tuesday?  
 12:02 6 Q. This is the first of the questions. And if  
 12:02 7 your answer to that is: No, no, we do not find that  
 12:02 8 probability; do you know what that means for the  
 12:02 9 defendant? No, he's not dangerous?  
 12:02 10 A. Possibly life in the institution, which you  
 12:02 11 still consider the institution a society, correct?  
 12:02 12 Q. Uh-huh.  
 12:02 13 A. Okay.  
 12:02 14 Q. In other words, he gets life and so -- if your  
 12:02 15 answer to that question is no, it's a life sentence.  
 12:02 16 A. Correct.  
 12:02 17 Q. Automatic. And everybody goes home except the  
 12:02 18 defendant, and he goes to prison with his life sentence.  
 12:02 19 A. Okay.  
 12:02 20 Q. If you answer that answer yes, yes, the State  
 12:02 21 has proved a probability acts of violence that would  
 12:02 22 make him a continuing threat to society, that can be  
 12:02 23 prison society. I mean, you can look at it and say: Is  
 12:02 24 he dangerous in prison society? But you don't have to  
 12:02 25 limit it to that. You can say would he be dangerous to

12:03 1 our society? I mean, walking around the corporate  
 12:03 2 offices of Ugly Duckling or in the ice cream store where  
 12:03 3 we go sometimes after work, that kind of thing.  
 12:03 4 A. Uh-huh.  
 12:03 5 Q. Is he probably going to be a danger to society  
 12:03 6 wherever he might be in society? If your answer to that  
 12:03 7 question is yes, then we have one more question for you,  
 12:03 8 actually two more maybe. But I'm not going to -- I'm  
 12:03 9 not going to talk about the other question. Not to hide  
 12:03 10 anything from you, but it's complicated and takes longer  
 12:03 11 than you want or anybody else wants to hear me talk.  
 12:03 12 This is the mitigation question. Whether  
 12:03 13 taking into consideration all of the evidence, that  
 12:03 14 means like the first part of the trial and anything in  
 12:03 15 the second, including circumstances of the offense,  
 12:03 16 defendant's character and background and his personal  
 12:03 17 moral culpability, taking everything into account,  
 12:03 18 everything that you hear, the question becomes: Is  
 12:03 19 there something in this case so powerful that even  
 12:04 20 though he's a capital murderer and even though he has  
 12:04 21 been found probably dangerous in the future, is there  
 12:04 22 something so great that a life sentence --  
 12:04 23 MR. GOELLER: I'm sorry, Mr. Schultz. I  
 12:04 24 hate to interrupt in mid-sentence. Judge, I'd have to  
 12:04 25 object to "so powerful and so great." I think that



12:04 1 tends to confuse the issue as to a sufficient mitigating  
 12:04 2 circumstance. And we object to using the term by the  
 12:04 3 State "so powerful and so great." I think it confuses,  
 12:04 4 could potentially confuse the juror. And it almost  
 12:04 5 raises a bar to a burden or a -- a burden of proof or  
 12:04 6 something of that nature, Judge. So I'd continue, I'd  
 12:04 7 object to Mr. Schultz using that particular phrase.

12:04 8 THE COURT: All right. I'll sustain the  
 12:04 9 objection. If you could answer the question a different  
 12:05 10 way.

12:05 11 MR. SCHULTZ: Yes, sir. I apologize for  
 12:05 12 being a burden shifter on that issue.

12:05 13 MR. GOELLER: No apology necessary.

12:05 14 Q. (BY MR. SCHULTZ) The actual term of the  
 12:05 15 question is sufficient circumstances to warrant a life  
 12:05 16 sentence.

12:05 17 A. Uh-huh.

12:05 18 Q. We don't have any definition of sufficient. I  
 12:05 19 guess it could be a little if you want a little. It  
 12:05 20 could be a lot if you want a lot. It has to be  
 12:05 21 sufficient. It has to be enough to satisfy you. And  
 12:05 22 the idea is that there may be circumstances where a  
 12:05 23 dangerous or a dangerous person still shouldn't get the  
 12:05 24 death penalty for some reason.

12:05 25 Some examples, I think of these things

12:05 1 that kind of illustrate what we're talking about. Maybe  
 12:06 2 the person was a war hero.

12:06 3 A. Uh-huh.

12:06 4 Q. Saved a lot of lives. Loved his country, did  
 12:06 5 good things. And then later on for some reason he got  
 12:06 6 hooked up on drugs or he just turned mean. And maybe a  
 12:06 7 jury would look at all that, and say, well, you know,  
 12:06 8 his military career was so distinguished that we've got  
 12:06 9 to say that's mitigating. That because of how he  
 12:06 10 behaved in the Navy, for example, that that would be  
 12:06 11 sufficient that we'll give him the break of a life  
 12:06 12 sentence.

12:06 13 A. Uh-huh.

12:06 14 Q. Even though under most circumstances somebody  
 12:06 15 would get -- would get a death sentence. Do you see how  
 12:06 16 that could work?

12:06 17 A. Yes.

12:06 18 Q. And it doesn't sound like maybe you are the  
 12:06 19 person, but there might be some people that say drugs  
 12:06 20 are special, and they are mitigating. And I think if  
 12:06 21 somebody did a crime on drugs that would not get the  
 12:06 22 death penalty in my mind, do you know?

12:06 23 A. Uh-huh.

12:06 24 Q. We can say we disagree, but we can't say that's  
 12:07 25 wrong, and that's their choice. Do you follow what I'm

12:07 1 saying?

12:07 2 A. Yes, I do follow what you're saying.

12:07 3 Q. Maybe you or I would say, well, it's tough if  
 12:07 4 your dad wasn't around. But I know a lot of people that  
 12:07 5 didn't have a dad around. And maybe there were people  
 12:07 6 that have dead dads that couldn't be around or I've  
 12:07 7 known people that had dads in the penitentiary, and they  
 12:07 8 turned out okay. And life is not always fair, but I  
 12:07 9 don't find that mitigating. Somebody else might find  
 12:07 10 that mitigating. And my dad was real nice. And if I  
 12:07 11 didn't have a dad, maybe that would be really big. So  
 12:07 12 everybody is free to do what they want on that question.

12:07 13 A. Uh-huh.

12:07 14 Q. There's no -- there's, there's no control.  
 12:07 15 Does that seem to you to be something that you could  
 12:07 16 work with, that question, and listen to all the  
 12:07 17 evidence, either from us or from them if they want to  
 12:07 18 produce evidence and decide: Is a life sentence the  
 12:07 19 right thing to do under all the evidence?

12:08 20 A. That is a decision that I think I could make.  
 12:08 21 I'm pretty sure I could make with all the evidence  
 12:08 22 presented to me.

12:08 23 Q. Okay.

12:08 24 A. If a life sentence would be the way to go or --  
 12:08 25 or the actual death.

12:08 1 Q. Okay. And you feel that you, depending on  
 12:08 2 what's proved to you, you could do either one and go out  
 12:08 3 of the courtroom and know you had done the right thing?

12:08 4 A. Yes.

12:08 5 Q. A couple questions about your questionnaire.  
 12:08 6 And a lot of times on this questionnaire, I mean, we hit  
 12:08 7 people cold, and there may be things that they say or  
 12:08 8 think at the time that, when we talk about it, it's  
 12:08 9 different. You indicated that the best argument in  
 12:08 10 opposition of the death penalty is young and then  
 12:08 11 mentally disabled; is that right? And that was kind of  
 12:09 12 your idea at the time, right?

12:09 13 A. Yeah. And the reason why I said young was due  
 12:09 14 to the fact I'm not sure it was on TV, the trial that  
 12:09 15 was on TV about the student that went in and killed his  
 12:09 16 teacher?

12:09 17 Q. Uh-huh.

12:09 18 A. With a person --

12:09 19 Q. Was he a 13-year-old?

12:09 20 A. I think he was around 13. Due to the fact that  
 12:09 21 he's so young, and he has so much of life to live; yes,  
 12:09 22 he did a wrong act. But I'm not sure if he was, I'm not  
 12:09 23 sure if death was the right way to go. Mentally  
 12:09 24 disabled, the reason why I put that is because not all  
 12:09 25 the time they know the difference between right and

12:09 1 wrong.  
 12:09 2 Q. Right. I'm with you on that. On the young  
 12:09 3 question, first of all, you have had a chance to look at  
 12:09 4 the defendant, and you've had a chance to look at him on  
 12:09 5 Tuesday, and you certainly can do that. There's  
 12:09 6 certainly nothing wrong with looking at anybody here if  
 12:10 7 you want to. I guess young is a relative term.  
 12:10 8 A. It is.  
 12:10 9 Q. And he certainly looks young to me. But on the  
 12:10 10 other hand, maybe to an 18-year-old he wouldn't. You  
 12:10 11 know, that kind of thing?  
 12:10 12 A. That's correct.  
 12:10 13 Q. When you talk about young, at what point -- at  
 12:10 14 what age do you think age doesn't make any real  
 12:10 15 difference then?  
 12:10 16 A. I would say probably 16.  
 12:10 17 Q. I mean, you wouldn't have a problem with a  
 12:10 18 27-year-old, for example, that wouldn't be -- I mean,  
 12:10 19 you don't think that's an argument against the death  
 12:10 20 penalty versus a person who is 27 and charged with a  
 12:10 21 death crime, do you?  
 12:10 22 A. If the evidence is there, no.  
 12:10 23 Q. Right, right. Okay. You indicated one of the  
 12:10 24 problems that concerns you in the criminal justice  
 12:11 25 system is early parole?

12:11 1 A. Yes. Because I think we use it as a way to  
 12:11 2 kind of -- because our prison systems are so crowded as  
 12:11 3 it is, and just because of good behavior we would  
 12:11 4 release a person, due to the fact that maybe they still  
 12:11 5 need to be in there. So sometimes, yes, I do have a  
 12:11 6 problem with early parole, especially if they go out,  
 12:11 7 commit the same crime, and then they are back in there.  
 12:11 8 To me that was a waste of time.  
 12:11 9 Q. Now, you put down the police officers are  
 12:11 10 overworked and underpaid.  
 12:11 11 A. Yes.  
 12:11 12 Q. And there might be some of us that have heard  
 12:11 13 of officers in other states or something that maybe make  
 12:11 14 a lot more money than they do here in Texas. But that  
 12:11 15 was right; they are overworked and underpaid.  
 12:12 16 A. Uh-huh.  
 12:12 17 Q. Now, the burden of proof in a criminal case,  
 12:12 18 you put, is left up to the attorney?  
 12:12 19 A. Right.  
 12:12 20 Q. And I want to talk to you about that. And that  
 12:12 21 in many ways, that's a good answer. And it probably  
 12:12 22 correctly states how we do things in the law. The  
 12:12 23 burden of proof of proving somebody guilty of a crime is  
 12:12 24 on the State.  
 12:12 25 A. Uh-huh.

12:12 1 Q. And it kind of has some other parts to it that  
 12:12 2 say the same thing, like the presumption of innocence.  
 12:12 3 A. Uh-huh.  
 12:12 4 Q. For example, when we start this trial the  
 12:12 5 defendant has to be presumed innocent.  
 12:12 6 A. Right.  
 12:12 7 Q. And that means, if you are going to be a fair  
 12:12 8 juror, you have to start out saying that, until the  
 12:12 9 State proves something to me, my vote would always have  
 12:12 10 to be not guilty.  
 12:12 11 A. Correct.  
 12:12 12 Q. And that makes good sense because if you make  
 12:12 13 the defendants prove their innocence, first of all, that  
 12:12 14 wouldn't be exactly fair. If we do the charge, we ought  
 12:12 15 to be able to prove it. But how could, if you think  
 12:13 16 about it, how could they ever prove that they are  
 12:13 17 innocent? Like if I bring you into court and charge you  
 12:13 18 with stealing my car last week --  
 12:13 19 A. Uh-huh.  
 12:13 20 Q. -- how would you prove you didn't? You know,  
 12:13 21 that would be real hard. I guess you could get an  
 12:13 22 alibi, say, well, maybe an alibi witness would do it?  
 12:13 23 A. Uh-huh.  
 12:13 24 Q. But maybe you don't have an alibi. Maybe I  
 12:13 25 claimed you stole it from in the parking lot when you

12:13 1 were up here last Tuesday. And you have no alibi  
 12:13 2 because you were up here and around. And if I make you  
 12:13 3 prove it -- first of all, I would make you have to come  
 12:13 4 testify and you would have to say, I didn't do it.  
 12:13 5 A. Right.  
 12:13 6 Q. And there's a problem with that because the law  
 12:13 7 says you don't have to testify in your own trial if you  
 12:13 8 don't want to.  
 12:13 9 A. Uh-huh.  
 12:13 10 Q. So what we've done to try to make it simple and  
 12:13 11 try to make it fair to society, is we say that the State  
 12:13 12 charges you with a crime. Then the State has to prove  
 12:13 13 it all by the State's self, and you don't have to help  
 12:14 14 them at all, correct?  
 12:14 15 A. Uh-huh.  
 12:14 16 Q. Does that seem to make sense to you?  
 12:14 17 A. Yes, it does.  
 12:14 18 Q. So that having been said, even though the  
 12:14 19 burden of proof is up to the individual attorney in the  
 12:14 20 sense that they have to decide how much proof they want  
 12:14 21 to offer, I mean, I don't have to offer all my proof. I  
 12:14 22 could, I could only offer some of it, if I want to.  
 12:14 23 That's kind of my burden, to only offer some of it. And  
 12:14 24 same thing with the defense, they can decide how much  
 12:14 25 proof they want to offer. And that's their burden to

12:14 1 make that decision, how much proof they want to offer.

12:14 2 A. Uh-huh.

12:14 3 Q. But when we talk about the proof in a criminal  
12:14 4 case itself, the burden of proving the guilt of the  
12:14 5 defendant is on the State of Texas. It never shifts.

12:14 6 Is that fair to you because it is to me.

12:14 7 A. Yes.

12:14 8 Q. Now, maybe I know what you are thinking. And  
12:14 9 maybe you're thinking, you know, if he's innocent, why  
12:14 10 didn't he offer some evidence of that?

12:14 11 A. Correct.

12:15 12 Q. I mean, that's -- that's human nature to feel  
12:15 13 that way. But sometimes as a juror, you have to do  
12:15 14 something different from human nature. And that could  
12:15 15 be following -- following the instructions of the Judge.  
12:15 16 All right? And the Judge will instruct you the  
12:15 17 defendant doesn't have to offer evidence if he doesn't  
12:15 18 want to.

12:15 19 A. Uh-huh.

12:15 20 Q. That's his right. It's your right too, by the  
12:15 21 way, and mine and our grandkids' right. It's everyone's  
12:15 22 right in America. Are you with me so far?

12:15 23 A. Yes, I am.

12:15 24 Q. And what that means is, you can't put that on  
12:15 25 the scales of justice. In other words, it's not a bonus

12:15 1 for him. It's not a -- he doesn't get extra points for  
12:15 2 saving you time by not testifying. It's not like that.

12:15 3 A. Uh-huh.

12:15 4 Q. But you -- you can't hold it against him, and  
12:15 5 you can't say, well, the State's case is pretty good.  
12:15 6 And since the defendant didn't testify, you must be  
12:16 7 agreeing with it. You can't do that. You can't  
12:16 8 consider him for not testifying for any purpose. Can  
12:16 9 you do that?

12:16 10 A. Yes, I can. If he chooses not to testify, then  
12:16 11 I definitely wouldn't hold that against him.

12:16 12 Q. Okay. Same thing with putting on evidence. If  
12:16 13 he wants to, if he wants to call witnesses and offer  
12:16 14 documents and put on evidence through his attorneys, he  
12:16 15 may do that if he wants to, and that's his right, but he  
12:16 16 doesn't have to.

12:16 17 And the fact that he doesn't call  
12:16 18 witnesses or put on evidence, he can't be held against  
12:16 19 him. He can't say, well, since they didn't give me the  
12:16 20 other evidence, they must be agreeing with the State's  
12:16 21 case. In other words, you can't -- it just doesn't hit  
12:16 22 on it.

12:16 23 A. Right.

12:16 24 Q. Can you follow that instruction?

12:16 25 A. Yes, I can.

12:17 1 Q. Why I ask that question is because on your  
12:17 2 questionnaire, you were asked a question: If someone is  
12:17 3 accused of capital murder, he should have to prove his  
12:17 4 innocence. That's one of these strongly agree, agree,  
12:17 5 you know, that kind of thing?

12:17 6 A. Uh-huh.

12:17 7 Q. Now, that we've talked, what would your answer  
12:17 8 to that question be now?

12:17 9 A. My answer to that question would be, I would  
12:17 10 feel that the State would have to prove his -- would  
12:17 11 have to prove his -- prove that he's guilty. Because  
12:17 12 you are innocent until proven guilty.

12:17 13 Q. Right. And the fact that -- these were almost,  
12:17 14 see, these questions are: What is your personal belief  
12:17 15 regarding the ten statements? And it's okay to have  
12:18 16 personal beliefs that may differ from some part of our  
12:18 17 law.

12:18 18 A. Uh-huh.

12:18 19 Q. That is never the problem. I might be against  
12:18 20 the death penalty as a juror.

12:18 21 A. Uh-huh.

12:18 22 Q. And that's okay as long as I can still vote  
12:18 23 those questions in a certain way. Do you follow what I  
12:18 24 am saying?

12:18 25 A. Yes, I do.

12:18 1 Q. You may feel that the death penalty is used a  
12:18 2 lot more than it is now. And that's okay as long as you  
12:18 3 are able to give a life sentence if your -- if your view  
12:18 4 of the evidence requires it.

12:18 5 A. Uh-huh.

12:18 6 Q. And so, even though you answered that in the  
12:18 7 questionnaire, what was your personal belief, which is  
12:18 8 fine, because you can have any personal belief that you  
12:18 9 want to, you would not ever shift the burden to the  
12:18 10 defendant to prove his innocence? You would never do  
12:18 11 that?

12:18 12 A. No.

12:18 13 Q. And you would never require him to testify if  
12:18 14 he chose not to?

12:18 15 A. No.

12:18 16 Q. And you would not punish him for not doing  
12:19 17 that?

12:19 18 A. No.

12:19 19 Q. And you were asked a question, do persons  
12:19 20 determine their destiny or fate by choices they make in  
12:19 21 life? And you put that you agree with that.

12:19 22 A. Uh-huh.

12:19 23 Q. And you were asked that, kind of following up  
12:19 24 on that, a person's destiny or fate is determined by the  
12:19 25 circumstances of their birth and their upbringing and

12:19 1 you disagreed with that?  
 12:19 2 A. That's correct.  
 12:19 3 Q. So that's kind of what we are saying now. If  
 12:19 4 you don't have a father with you growing up, that might  
 12:19 5 make it harder on you, but that doesn't mean that you  
 12:19 6 need to be killing people that you don't like kind of  
 12:19 7 thing?  
 12:19 8 A. Correct.  
 12:19 9 Q. And you indicated on your questionnaire, if a  
 12:19 10 person is brought to trial on murder charges, that  
 12:19 11 person is probably guilty, and you disagreed with that  
 12:20 12 when you did the questionnaire. You don't believe that  
 12:20 13 he's probably guilty just because he's charged?  
 12:20 14 A. Right.  
 12:20 15 Q. That's the jury's job to decide if he's guilty  
 12:20 16 or not, not the Grand Jury that just cranks out a  
 12:20 17 charge?  
 12:20 18 A. That's correct.  
 12:20 19 Q. And this is interesting because the question, a  
 12:20 20 defendant is innocent unless proven guilty beyond a  
 12:20 21 reasonable doubt, and you strongly agreed with that. So  
 12:20 22 you are right on with that?  
 12:20 23 A. Uh-huh.  
 12:21 24 Q. You indicated that you think the death penalty  
 12:21 25 is applied fairly in Texas.

12:21 1 A. I feel that it is applied fairly because we are  
 12:21 2 one of the bigger states. Therefore, we're going to  
 12:21 3 have more people that we commit to the death penalty.  
 12:21 4 So I guess that's why the eye is kind of on the State of  
 12:21 5 Texas. But, yes, I do feel that it is implemented  
 12:21 6 fairly.  
 12:21 7 Q. It is interesting because your comment was,  
 12:21 8 yes, it's applied fairly only to convicted criminals who  
 12:21 9 seem to be a danger to society.  
 12:21 10 A. Uh-huh.  
 12:21 11 Q. Which is interesting because you did that  
 12:21 12 before we even talked about these questions. That's why  
 12:21 13 I know them because that's that danger-to-society  
 12:21 14 question.  
 12:22 15 You were asked: Do you believe that  
 12:22 16 citizens accused of criminal offenses are given too many  
 12:22 17 rights by the Constitution and State law?  
 12:22 18 A. And I put yes.  
 12:22 19 Q. Uh-huh.  
 12:22 20 A. Yes, I do. Because there are things that are  
 12:22 21 in the prison system that are there for the inmates that  
 12:22 22 are not out there for me. You know, I work everyday to  
 12:22 23 provide for my family. I would love to have an  
 12:22 24 education and do have an education but to move on with  
 12:22 25 that education.

12:22 1 As a taxpayer I have to pay for that. And  
 12:22 2 the system that's provided for them, I'm not sure if  
 12:22 3 it's a cost. Maybe they have to work it off, I'm not  
 12:22 4 sure. But there are things that they get that -- that  
 12:23 5 regular people, that the normal people out in the  
 12:23 6 everyday world do not have the opportunity to get  
 12:23 7 because of maybe they just don't have the finances to do  
 12:23 8 it or whatever.  
 12:23 9 Q. Okay. Have you, your spouse, any family  
 12:23 10 members or close personal friends ever been accused,  
 12:23 11 arrested or convicted, including deferred adjudication,  
 12:23 12 conditional discharge, fine, et cetera, of a crime above  
 12:23 13 the level of a traffic ticket? And you indicated a  
 12:23 14 charge of welfare fraud; is that right?  
 12:23 15 A. That's correct.  
 12:24 16 Q. Could you tell me, and that's over now. Can  
 12:24 17 you tell me just a little bit to see if it even applies?  
 12:24 18 A. Basically what I did is I was -- after having  
 12:24 19 my child, went on government assistance. Started work,  
 12:24 20 didn't get my, didn't let them know about the changes in  
 12:24 21 time. So I went to have a trial date and with regards  
 12:24 22 to that and had to pay restitution with regards to that.  
 12:24 23 Q. And you don't have to report to the probation  
 12:24 24 officer or anything like that?  
 12:24 25 A. Yes, I did.

12:24 1 Q. But you -- you are off of that now? You don't  
 12:24 2 have to do that anymore?  
 12:24 3 A. No. I'm still reporting.  
 12:24 4 Q. When are you -- how long are you on deferred  
 12:24 5 adjudication for it?  
 12:24 6 A. A period of ten years or until it's -- until  
 12:24 7 it's finished.  
 12:24 8 Q. Looking -- looking at that situation as a  
 12:24 9 whole, Ms. Allen, do you think it's fair or unfair that  
 12:25 10 the welfare department prosecuted you?  
 12:25 11 A. No. It was fair.  
 12:25 12 Q. And why I ask you that question is more than  
 12:25 13 anything else, I want to make sure you wouldn't hold it  
 12:25 14 against the State somehow.  
 12:25 15 A. Uh-huh.  
 12:25 16 Q. And in this kind of a case, and you don't seem  
 12:25 17 like the kind of person that would, to me?  
 12:25 18 A. No. I know I did something wrong. At the time  
 12:25 19 I knew I needed the help. And now that the help was  
 12:25 20 given there, I'm going to go ahead and do my duty to pay  
 12:25 21 back so there's assistance for other people.  
 12:25 22 Q. I guess what I'm getting at is, you are not  
 12:25 23 like waiting for a chance to take revenge on a  
 12:25 24 prosecutor?  
 12:25 25 A. No, definitely not.

12:26 1 Q. What county was that in?  
 12:26 2 A. Collin.  
 12:26 3 Q. Now, your husband is a correctional officer?  
 12:26 4 A. Yes, he is.  
 12:26 5 Q. And what unit is that?  
 12:26 6 A. He works at Dawson State Jail in Dallas County.  
 12:26 7 Q. I'm not -- I'm not familiar with that. Where  
 12:26 8 is that located?  
 12:26 9 A. On Commerce, 106 Commerce Street. Right  
 12:26 10 across, it's a two-year State Penitentiary. They only  
 12:26 11 hold them up to two years. Right across the street from  
 12:26 12 Lew Sterrett.  
 12:26 13 Q. How long has he been doing that kind of work?  
 12:26 14 A. About two and a half years.  
 12:26 15 Q. Do you ever talk with him much about his work?  
 12:26 16 A. Sometimes I do. If he's had a rough day, we'll  
 12:27 17 sit down and talk about it. But, you know, I don't  
 12:27 18 really ask too many questions.  
 12:27 19 Q. Has he ever been injured?  
 12:27 20 A. Yes, he has.  
 12:27 21 Q. What happened there?  
 12:27 22 A. He -- I guess they call it a shank and had cut  
 12:27 23 his hand. He had to go and get stitches.  
 12:27 24 Q. Is he -- do you get the impression that he's  
 12:27 25 real cautious of all the inmates all the time and really

12:27 1 watching them all the time?  
 12:27 2 A. Well, it depends on which floor he's on. I  
 12:27 3 notice that he's real cautious. He's a lot more  
 12:27 4 cautious with us or his immediate family because of  
 12:27 5 where he works as far as security level. Certain  
 12:27 6 inmates, yes, he is cautious about. He's cautious of  
 12:27 7 his surroundings.  
 12:28 8 Q. Do you know what his view is on the death  
 12:28 9 penalty? Have you all ever discussed it?  
 12:28 10 A. No, we never have.  
 12:28 11 Q. What do you think his view would be? Just  
 12:28 12 knowing him as you do, as a husband.  
 12:28 13 A. I think it -- I think his view would kind of be  
 12:28 14 like mine, depending on the situation. If the evidence  
 12:28 15 was there to support it, then that would -- then he  
 12:28 16 would definitely go for something like that.  
 12:28 17 Q. Ms. Allen, thank you very much.  
 12:28 18 MR. SCHULTZ: We'll pass the juror.  
 12:28 19 THE COURT: Mr. Goeller?  
 12:28 20 MR. GOELLER: Judge, I think we need a sub  
 12:28 21 rosa hearing.  
 12:28 22 THE COURT: All right. I'm going to ask  
 12:28 23 you to step down for a minute.  
 12:29 24 VENIREPERSON: Okay.  
 12:29 25 THE COURT: I'm going to tell you, if you

12:29 1 happen to see any other jurors, please don't discuss  
 12:29 2 with them anything that you have been asked.  
 12:29 3 (Venireperson Allen not present.)  
 12:29 4 MR. GOELLER: May I address the Court,  
 12:29 5 Your Honor?  
 12:29 6 THE COURT: Yes, sir.  
 12:29 7 MR. GOELLER: It didn't dawn on me until  
 12:29 8 Mr. Schultz was asking her about her prior criminal  
 12:29 9 history that she's currently on deferred felony  
 12:29 10 community supervision in this county. It might be in  
 12:29 11 this court for all I don't know -- for all I know. I'm  
 12:29 12 not sure. But I would say that a person that's on  
 12:29 13 felony probation is not -- although the grounds, 3516 do  
 12:29 14 not state it specifically, she is under indictment for  
 12:29 15 or other legal accusation, for theft or any felony.  
 12:29 16 Welfare fraud is theft. I mean, they are  
 12:30 17 both a crime of moral turpitude. I'm trying to remember  
 12:30 18 the last time I did a welfare fraud case, and hers is  
 12:30 19 the typical case. You don't tell AFDC or those folks  
 12:30 20 and those agencies that you went back to work or  
 12:30 21 something like that. But I don't think she's a  
 12:30 22 qualified juror in this case. She's -- she's under  
 12:30 23 felony community supervision for a crime of moral  
 12:30 24 turpitude in this court -- I mean, in this county.  
 12:30 25 MR. SCHULTZ: He raises a point, and I

12:30 1 don't know the answer. I don't know what your pleasure  
 12:30 2 was lunchwise, but that might be a time for us to try  
 12:30 3 to -- it seems like, I remember this happening in Dallas  
 12:30 4 four or five years ago, and I think it was Judge  
 12:30 5 Chapman's court. I will be honest with you, I'm not so  
 12:30 6 sure that he's not right. I mean, in my mind it seems  
 12:31 7 like there was someone on deferred adjudication for  
 12:31 8 theft. And I think what had actually happened is the  
 12:31 9 juror got seated and nobody snapped on it.  
 12:31 10 Because a lot of times these things,  
 12:31 11 depending on what it is, they don't make their way to  
 12:31 12 the computer. And that's exactly what our trouble was  
 12:31 13 here. And it's not -- it's not on our criminal history  
 12:31 14 that we got. And we snap on this just by me going  
 12:31 15 through the questionnaire, and she upped that herself.  
 12:31 16 And I think there will be a clear answer to that. I'm  
 12:31 17 not at all sure he's not correct.  
 12:31 18 THE COURT: I tell you what. Let's take  
 12:31 19 45 minutes for lunch and come back at 1:15, And we'll  
 12:31 20 bring up this issue. And if he's wrong, we'll continue  
 12:31 21 with her examination. If he's right, then we'll call  
 12:31 22 Patricia Barr next.  
 12:31 23 THE BAILIFF: All rise.  
 12:31 24 THE COURT: See you at 1:15.  
 12:31 25 (Lunch recess.)

13:19 1 THE COURT: We're back on the record in  
 13:19 2 State of Texas versus Ivan Abner Cantu. Did you all  
 13:19 3 confirm that she is not qualified?  
 13:19 4 MS. FALCO: Yes, Your Honor. We do have  
 13:19 5 case law. She is not qualified.  
 13:19 6 MR. GOELLER: Yes.  
 13:19 7 THE COURT: Would you tell Ms. Venora  
 13:20 8 Allen that she is finally excused, and we'll call in  
 13:20 9 Patricia Barr next.  
 13:21 10 (Venireperson Barr present.)  
 13:21 11 THE COURT: All right. Are you Patricia  
 13:21 12 Barr?  
 13:21 13 VENIREPERSON: I am.  
 13:21 14 THE COURT: All right. You recall that on  
 13:21 15 Tuesday I put you under oath?  
 13:21 16 VENIREPERSON: Yes, sir.  
 13:21 17 THE COURT: And I asked you to swear that  
 13:21 18 you would give truthful answers to the questions that  
 13:21 19 have been raised and just to remind you that you are  
 13:21 20 still under oath.  
 13:21 21 VENIREPERSON: All right.  
 13:21 22 THE COURT: All right. Mr. Schultz?  
 13:21 23 VOIR DIRE EXAMINATION  
 13:21 24 BY MR. SCHULTZ:  
 13:21 25 Q. Hi, Ms. Barr.

13:21 1 A. Hello.  
 13:21 2 Q. In case you didn't hear enough of me last week  
 13:21 3 you get to hear some more today.  
 13:21 4 A. (Laughing.)  
 13:21 5 Q. And I will try to get to the same matter that  
 13:21 6 you tried to talk with us about before. And you  
 13:21 7 understand what we were saying last week; this is  
 13:21 8 something that we have to do this way. It is just the  
 13:21 9 way the law is worded.  
 13:21 10 A. Sure.  
 13:21 11 Q. And it is perhaps unreasonable.  
 13:21 12 THE COURT: Say, let me have the attorneys  
 13:21 13 up here. I'm sorry to interrupt you.  
 13:22 14 (At the Bench.)  
 13:22 15 THE COURT: All right. Sorry about the  
 13:22 16 interruption, ma'am.  
 13:22 17 VENIREPERSON: That's okay.  
 13:23 18 Q. (BY MR. SCHULTZ) Are you nervous?  
 13:23 19 A. Yes.  
 13:23 20 Q. Why?  
 13:23 21 A. Well, I guess 'cause all you guys are looking  
 13:23 22 at me. I don't know.  
 13:23 23 Q. It's okay. Just people.  
 13:23 24 A. Yeah.  
 13:23 25 Q. Recalling, first of all, apart from your

13:23 1 questionnaire, recalling that when I asked the question:  
 13:23 2 Is there any reason you couldn't be fair to one side or  
 13:23 3 the other, and you came up and you said it's because of  
 13:23 4 your view on the death penalty. And I know that hasn't  
 13:23 5 changed. And, first of all, I got a sense that it's  
 13:23 6 important to you, and that that's a deeply held belief  
 13:23 7 on your part.  
 13:23 8 And second of all, your questionnaire, it  
 13:23 9 makes the point as many times that we've asked that  
 13:23 10 question, you make it real clear. And, I mean, if you  
 13:24 11 do this for a living like we do, you sometimes can  
 13:24 12 really tell. But still, we have to go through the  
 13:24 13 process because it's a funny thing, you might think that  
 13:24 14 if a person were totally against the death penalty that  
 13:24 15 somehow automatically that person would just be excused  
 13:24 16 from the jury and that would be the end of it. You  
 13:24 17 would think that's how it worked.  
 13:24 18 And it's a little more complicated than  
 13:24 19 that for reasons that wouldn't be interesting to you.  
 13:24 20 But the law says it's okay for a person to have opinions  
 13:24 21 that differ from what the law is, as long as they can  
 13:24 22 put those opinions out of their mind -- or if not out of  
 13:24 23 their mind, as long as they don't use those opinions in  
 13:24 24 how they do their work as a juror.  
 13:24 25 Let me give you an example of what I'm

13:24 1 talking about. Let's suppose you were the kind of  
 13:24 2 person that was against a lot of immigration to the U.S.  
 13:25 3 Let's say you were of the opinion that it's not a good  
 13:25 4 idea for people to be coming from India or Pakistan or  
 13:25 5 something like that and taking American jobs. And I  
 13:25 6 know that's not your view, but let's just say it was.  
 13:25 7 Okay? It would be okay for you to hold such a view and  
 13:25 8 be a juror in a case involving someone who had  
 13:25 9 immigrated from that -- from a nation like that as long  
 13:25 10 as you could assure the Judge, well, yes, I don't  
 13:25 11 necessarily believe this defendant should be over in our  
 13:25 12 country because I think we're too crowded now and too  
 13:25 13 many scarce jobs and stuff. But I would never take my  
 13:25 14 personal opinion on what ought to be -- what ought to be  
 13:25 15 our immigration law. I would never use that in his or  
 13:25 16 her case to do an injustice that way. Do you follow  
 13:25 17 what I'm saying?  
 13:25 18 A. Yes, sir.  
 13:25 19 Q. So you are qualified. It doesn't matter. Now,  
 13:25 20 maybe the lawyer for that defendant would be concerned  
 13:25 21 that you held those beliefs and that might -- there  
 13:26 22 might be some -- some concern on that lawyer's part or  
 13:26 23 maybe not. But you would still be in the qualified  
 13:26 24 pool. Then you'd be like everybody else. One side or  
 13:26 25 the other could strike you using what we call our

13:26 1 discretionary strikes. All right?

13:26 2 A. Uh-huh.

13:26 3 Q. So to say you are against the death penalty has  
13:26 4 nothing to do with whether or not you are qualified to  
13:26 5 be in this jury pool. It might have to do with whether  
13:26 6 the State might think you are good for this kind of case  
13:26 7 or not. But if, on the other hand, Ms. Barr, your views  
13:26 8 are so strong that even trying to do the right thing you  
13:26 9 would be unable to do it, then that is a different  
13:26 10 matter because then you have created for me an  
13:26 11 additional burden that the law doesn't put on me. As a  
13:26 12 matter of fact, you probably made it impossible for me.  
13:26 13 So that's where we're going to be discussing for a few  
13:26 14 minutes.

13:27 15 There are a lot of laws that you probably  
13:27 16 might not agree with but wouldn't be that big a deal to  
13:27 17 you. Do you know? For example, maybe you are of the  
13:27 18 opinion that the drug laws are too easy on drug dealers  
13:27 19 and stuff, let's just say. Maybe you think that. Well,  
13:27 20 that probably would not get in your way even in a drug  
13:27 21 case because you'd take the punishment range that was  
13:27 22 given to you and you would work within that, and you say  
13:27 23 okay. And then you come at it. If you thought it ought  
13:27 24 to be a life sentence but the maximum was 20 years, you  
13:27 25 maybe would just give 20 years because that's all you

13:27 1 can give. Does that make sense to you?

13:27 2 A. Yes.

13:27 3 Q. Okay. And when we talk about the death  
13:27 4 penalty, that's special stuff because that's really big.  
13:27 5 And I hope you understood from my talk on Tuesday that I  
13:27 6 consider it big. I can do this work because I represent  
13:27 7 the State of Texas that has a death penalty. But I  
13:28 8 don't take pleasure in it, and I don't wake up in the  
13:28 9 morning saying, aren't you lucky, Bill, because you got  
13:28 10 a chance to go up and participate, along with some other  
13:28 11 people, in perhaps killing somebody. I don't think that  
13:28 12 way. And I know you don't either. And I don't think  
13:28 13 any of these other people that are up here do. They may  
13:28 14 favor the death penalty and you don't or they may be  
13:28 15 like you, but nobody is going to enjoy any part of this  
13:28 16 process.

13:28 17 When people are against the death penalty,  
13:28 18 and they indicate as you have on your questionnaire, and  
13:28 19 I can tell you are an intelligent person who understood  
13:28 20 the question. I could never under any circumstances  
13:28 21 return a verdict which assessed the death penalty. And  
13:28 22 then you explained your opposition in this way. "I have  
13:28 23 a hard time being that judgmental. I think I would be  
13:29 24 judged by God if I was part of sending someone to death.  
13:29 25 However, I have never had someone taken from me like

13:29 1 that, so I understand how others could want the death  
13:29 2 penalty."

13:29 3 I believe that's pretty clear. And you've  
13:29 4 also said your argument in opposition is, "Taking  
13:29 5 people's lives is not okay no matter what, except in the  
13:29 6 case of self-defense." And you've indicated you have  
13:29 7 moral religious or personal beliefs that would prevent  
13:29 8 you from sitting in judgment of another human being if  
13:29 9 it involved a death sentence.

13:29 10 And you indicated that you strongly agree  
13:29 11 that criminal laws, including sentences and punishment,  
13:29 12 treat criminal defendants too harshly. And it looks  
13:29 13 like you probably agree, only to the extent of the death  
13:29 14 penalty. Maybe not in any other kind of case, you are  
13:30 15 okay with it all, or do you even think we're too harsh  
13:30 16 in general?

13:30 17 A. No. I think that the death penalty is too  
13:30 18 harsh.

13:30 19 Q. Okay. I don't like the death penalty. I don't  
13:30 20 like the death penalty. I don't judge others who do,  
13:30 21 however. It's simply my belief. I think that people  
13:30 22 are people. And no matter how bad someone is, he can be  
13:30 23 forgiven by God and be treated with some respect. If  
13:30 24 the death penalty says the following about American  
13:30 25 culture, then we obviously have people who feel that it

13:30 1 is the only way to deal with someone who has committed  
13:30 2 murder.

13:31 3 In your own words, kind of explain to me  
13:31 4 what -- let's put it this way. There are probably four  
13:31 5 arguments against the death penalty that we hear of  
13:31 6 people who are strongly opposed to the death penalty.  
13:31 7 But probably the big four are as follows: One is  
13:31 8 strictly a religious view. And it doesn't even have to  
13:31 9 necessarily be a Christian religion. Although, we tend  
13:31 10 to think of that in a Christian way, but there are other  
13:31 11 faiths that are probably equally strong on the subject.

13:32 12 The argument goes like this. The Bible  
13:32 13 says, "Thou shalt not kill." And it does say except  
13:32 14 this, that and the other. It doesn't say, except when  
13:32 15 you really want to or except after a trial or except in  
13:32 16 time of war or except -- it doesn't even say except in  
13:32 17 self-defense. It doesn't even say anything about  
13:32 18 self-defense. And you almost wonder what that means  
13:32 19 when it says, turn the other cheek and all that stuff.  
13:32 20 You almost kind of wonder even about self-defense. But  
13:32 21 I think we all have that human part of us that we do  
13:32 22 that. But that's one of the reasons; it's because the  
13:32 23 Bible or Scripture teaches not to kill. And I'm  
13:32 24 curious, is some of that in your position, would you  
13:32 25 say?

13:32 1 A. Yes.  
 13:32 2 Q. Is it -- I mean, do you personally read  
 13:32 3 Scripture and teachings to be what you've said that you  
 13:33 4 think God would treat you harshly for doing that very  
 13:33 5 thing? Do you really feel that way?  
 13:33 6 A. I don't know. My personal belief is, I don't  
 13:33 7 feel like I would be treated harshly by God because I  
 13:33 8 believe that he's a merciful God. But I do believe that  
 13:33 9 I would be judged. And in what way, I don't know, but  
 13:33 10 I --  
 13:33 11 Q. Do you feel like you would at least be a  
 13:33 12 disappointment, you feel like?  
 13:33 13 A. Yes, yes.  
 13:33 14 Q. There are people in this very room that feel  
 13:33 15 exactly like you do.  
 13:33 16 Secondly, another reason for opposition is  
 13:33 17 the belief that it's possible for there to be a mistake.  
 13:33 18 However much confidence you have in the criminal justice  
 13:33 19 system and however strong you hope the juries are in  
 13:33 20 demanding proof by the State and all that, there's  
 13:34 21 always the concern that there's a frame-up. There's  
 13:34 22 some eye witness that's not telling the truth. There's  
 13:34 23 an eye witness that's mistaken -- not lying, just  
 13:34 24 mistaken. That somebody is a victim of circumstances.  
 13:34 25 We all see those TV shows where you come

13:34 1 in. There's a corpse on the floor. And you go over and  
 13:34 2 try to help him. And who comes in but the police when  
 13:34 3 you are leaning over him. Next thing you know, you get  
 13:34 4 blamed. You are trying to help the dead guy. Instead,  
 13:34 5 it looks like you are the killer. Do you know those  
 13:34 6 kind of things?  
 13:34 7 A. Yes.  
 13:34 8 Q. So everyone worries about that. They say,  
 13:34 9 well, a death penalty case, once you find that out, it's  
 13:34 10 kind of late. But imagine Timothy McVeigh; we find out  
 13:34 11 he's innocent, for example, now after he's dead. He's  
 13:34 12 been killed. Are you with me on that?  
 13:34 13 A. Yes.  
 13:34 14 Q. Is that important to you, do you feel like?  
 13:34 15 A. Well, certainly I can see -- I guess that's  
 13:34 16 possible that that could happen. And that would be, in  
 13:34 17 my opinion, awful. But I guess it just comes down to  
 13:35 18 the fact that I just couldn't do it. I couldn't,  
 13:35 19 because of my beliefs, because of how strongly I feel.  
 13:35 20 So I don't think I would even have to worry about that  
 13:35 21 because I don't think I could -- I could do that anyway.  
 13:35 22 Q. When you start dealing with things like death  
 13:35 23 and killing people, does it give you any comfort for me  
 13:35 24 to say you won't be the one that sticks the needle in  
 13:35 25 his arm, so you are really not doing it? Does that give

13:35 1 you any comfort at all?  
 13:35 2 A. No.  
 13:35 3 Q. Why not?  
 13:35 4 A. Because I feel like if I were a part of it, if  
 13:35 5 my vote were indeed a vote towards causing someone to  
 13:35 6 die, it would be the same as if I were holding the  
 13:35 7 needle or shooting a gun. That's just how I feel.  
 13:35 8 Q. When I explain the special issues, those  
 13:35 9 questions at the punishment phase, and I'm going to for  
 13:35 10 my questions assume that he's been found guilty of  
 13:35 11 capital murder. That doesn't mean that we don't have to  
 13:36 12 prove it. And it doesn't mean that I'm trying to  
 13:36 13 shortchange that, because we ought to have to prove that  
 13:36 14 to everybody's satisfaction. But we get to those  
 13:36 15 special questions in the punishment phase. Did you  
 13:36 16 understand kind of how they work? They are kind of like  
 13:36 17 yes or no questions to the jury. When we had that up on  
 13:36 18 the PowerPoint -- would you like me to go over them  
 13:36 19 again for you?  
 13:36 20 A. Please.  
 13:36 21 Q. Real quickly, there will probably be two  
 13:36 22 questions asked of you in this trial. Possibly only  
 13:36 23 one, depends on how it works. The first question is  
 13:36 24 what we call future danger. That question asks the  
 13:36 25 question whether beyond a reasonable doubt there is a

13:36 1 probability that the defendant would commit criminal  
 13:36 2 acts of violence that would constitute a continuing  
 13:36 3 threat to society.  
 13:36 4 In other words, is he probably dangerous?  
 13:36 5 is probably a fair, shorthand way of describing that  
 13:36 6 question. And the truth is you have the ability to  
 13:37 7 figure that out, if given evidence about a person,  
 13:37 8 right? I mean, everybody could figure. You could  
 13:37 9 figure that out. I mean, if a person has led a  
 13:37 10 tremendous life all his life, has one single event that  
 13:37 11 happens, and then you understood that event and made --  
 13:37 12 you can't justify it, but it made sense to you.  
 13:37 13 Kind of like killing the person that  
 13:37 14 killed your child and got away, do you know? Might be a  
 13:37 15 capital murder, depending on how it was done. But that  
 13:37 16 guy's probably not dangerous. He just loved his child  
 13:37 17 and wanted an advantage. And he should never even had  
 13:37 18 to have been in the position of facing such a choice.  
 13:37 19 Does that make sense to you?  
 13:37 20 A. Yes.  
 13:37 21 Q. And in the abstract, if this were not -- if  
 13:37 22 this weren't a capital case, I'm absolutely confident  
 13:37 23 that you would be as good as the next person to answer  
 13:37 24 that question. Like, if this were some kind of a lunacy  
 13:37 25 hearing or something where we were trying to decide what



13:37 1 facility to put the madman into, unrelated to criminal  
 13:38 2 cases?  
 13:38 3 A. Uh-huh.  
 13:38 4 Q. You would be just fine with that case. You  
 13:38 5 would look at it and say, well, this guy is dangerous or  
 13:38 6 he's not, you know?  
 13:38 7 A. Right.  
 13:38 8 Q. You could answer that question. Are you with  
 13:38 9 me on that?  
 13:38 10 A. Yes, sir.  
 13:38 11 Q. The problem in a capital case is that if you  
 13:38 12 answer that question "yes," you are moving along toward  
 13:38 13 it, toward the result being death. Even though you are  
 13:38 14 not saying death, you already know that a yes answer to  
 13:38 15 that question might ultimately result in death. It  
 13:38 16 might not, but it might. And you know that a no answer  
 13:38 17 to that question guarantees a life sentence. Does that  
 13:38 18 make sense to you?  
 13:38 19 A. Yes.  
 13:38 20 Q. Because under our law, we can never execute  
 13:38 21 somebody who is not a future danger. I mean, it could  
 13:38 22 be Hitler. And if Hitler comes in having killed  
 13:38 23 6 million people directly or indirectly, maybe, it  
 13:38 24 wouldn't matter. If you are convinced Hitler is not  
 13:38 25 dangerous anymore, the answer to that question has got

13:38 1 to be no, and he gets a life sentence. And that's Texas  
 13:39 2 law. If the defendant has a stroke while he's over in  
 13:39 3 jail waiting for his trial, and he's paralyzed from the  
 13:39 4 scalp down so he can't hurt anybody, you know?  
 13:39 5 A. Right.  
 13:39 6 Q. He is not dangerous. He may have been an awful  
 13:39 7 killer, but he's not dangerous. So that question would  
 13:39 8 be answered no. I think you'd answer that question to  
 13:39 9 the best of your ability, although I'd be concerned  
 13:39 10 about your strong views of the death penalty that you  
 13:39 11 might be trying extra hard to put a no answer on there  
 13:39 12 in order to make sure there wasn't a death sentence.  
 13:39 13 And only you know yourself enough to know if my  
 13:39 14 wondering about that is correct or not. What do you  
 13:39 15 think?  
 13:39 16 A. I know what I know is that if someone were a  
 13:39 17 threat, that I felt were a threat to society -- is this  
 13:39 18 what you want to know? -- then that's what prison, to  
 13:39 19 me, is for. And I would trust the prison system to keep  
 13:40 20 that person away from the outside society as well as the  
 13:40 21 society in prison being a danger to them.  
 13:40 22 Q. So in a death penalty case, knowing that if you  
 13:40 23 answer this question no, he gets a life sentence, would  
 13:40 24 you be free to go either way on that question, or would  
 13:40 25 you, because you wanted to make sure he got a life

13:40 1 sentence, would you answer that question no to make sure  
 13:40 2 that that happened?  
 13:40 3 A. I would answer it no as long as I knew it meant  
 13:40 4 that it wouldn't be death. Is that what you are saying?  
 13:40 5 Q. If your answer is no, that beats a death  
 13:40 6 sentence.  
 13:40 7 A. No death sentence, right.  
 13:40 8 Q. It can't be done if you answer that question  
 13:40 9 no.  
 13:40 10 A. Right, because I'm so against that.  
 13:40 11 Q. I understand. And I'm not implying that you  
 13:40 12 are a bad person at all.  
 13:41 13 THE COURT: You have about three minutes  
 13:41 14 remaining.  
 13:41 15 MR. SCHULTZ: Yikes. I don't have a  
 13:41 16 watch.  
 13:41 17 THE COURT: I'm wrong. You have eight  
 13:41 18 minutes remaining. I'm way off. I guess I'm just  
 13:41 19 enjoying the questioning so much I lost track of time.  
 13:41 20 But you have until 1:50, so you have eight minutes.  
 13:41 21 MR. GOELLER: Would you like a two-minute  
 13:41 22 warning?  
 13:41 23 THE COURT: When you got scared, you  
 13:41 24 scared me. Go ahead.  
 13:41 25 Q. (BY MR. SCHULTZ) Would you tend to want to

13:41 1 answer that question no in order to make sure he beat  
 13:41 2 the death sentence?  
 13:41 3 A. Yes. I would want to answer it no, yes.  
 13:41 4 Q. Then the next question is, this is the  
 13:41 5 mitigation question. And I got to race through this  
 13:41 6 because my time is going away. What that essentially  
 13:41 7 says is, take all of the evidence into account and see  
 13:41 8 if there is sufficient mitigating circumstances to  
 13:41 9 warrant a life sentence instead of a death sentence.  
 13:41 10 Now, that's a real invitation. I tell you  
 13:41 11 frankly, Ms. Barr, anybody can answer that question yes  
 13:42 12 and there's -- and there's no way that it can be stopped  
 13:42 13 if you are on the jury because there's not a burden of  
 13:42 14 proof. And it doesn't matter -- if your idea of what  
 13:42 15 mitigates against a death sentence is you are opposed to  
 13:42 16 the death penalty, nobody can, nobody can stop you from  
 13:42 17 answering that question how you want to, if you are on  
 13:42 18 the jury.  
 13:42 19 What can stop you from being on the jury  
 13:42 20 is your own willingness to be honest, and I know you  
 13:42 21 are, and I know that's the case. As you sit, as you sit  
 13:42 22 there right now, no matter what the questions are, you  
 13:42 23 know and will know how to answer the questions so that a  
 13:42 24 life sentence results. You already know that, don't  
 13:42 25 you?

13:42 1 A. Yes, sir.  
 13:42 2 Q. Either answer that one question no or answer  
 13:42 3 that second question there, yes. And nobody can make  
 13:42 4 you change your mind, and nobody could ever do that.  
 13:42 5 And even if the Judge instructs you: Consider all the  
 13:42 6 evidence and answer those questions fairly -- there's no  
 13:43 7 way ever you could allow yourself to vote no matter what  
 13:43 8 the evidence in a way that would cause somebody's death;  
 13:43 9 is that fair?  
 13:43 10 A. That's correct.  
 13:43 11 Q. Would it do me any good to tell you that all  
 13:43 12 you are doing is voting? You are not really saying he  
 13:43 13 gets the death sentence. You are just voting on  
 13:43 14 evidence. Would that do any good?  
 13:43 15 A. Well, if it meant that it would cause this  
 13:43 16 person to get the death sentence, I wouldn't want that.  
 13:43 17 But I guess if that's what you mean, I don't know what  
 13:43 18 the difference is.  
 13:43 19 Q. Well, what I'm saying is, instead of you  
 13:43 20 yourself saying, go down there and be killed now, you  
 13:43 21 could say to yourself, all I'm doing is answering  
 13:43 22 questions, and I don't have anything to do with the  
 13:43 23 outcome. I'm just answering questions.  
 13:43 24 A. But I would know, wouldn't I?  
 13:43 25 Q. Uh-huh.

13:43 1 A. I would know what I was doing and saying.  
 13:43 2 Q. So that we're clear, and I'm just -- like I  
 13:44 3 say, I'm just going to get hammered in just a second  
 13:44 4 here -- or perhaps that's gaveled -- there is absolutely  
 13:44 5 no way, if you are on this jury, that this defendant, no  
 13:44 6 matter what, would ever get a vote for death from you;  
 13:44 7 is that true?  
 13:44 8 A. That's correct.  
 13:44 9 Q. And it's nothing personal to me or for the  
 13:44 10 lawyers at my table, is it? It's not personal to us?  
 13:44 11 A. No, sir, that's just me. May I say?  
 13:44 12 Q. Yeah. We can bring you the world's most  
 13:44 13 charming lawyer, and you would say that's the world's  
 13:44 14 greatest lawyer I've ever seen in my whole life, and he  
 13:44 15 couldn't do it, could he?  
 13:44 16 A. No, sir.  
 13:44 17 Q. He couldn't get you? Your mind is made up that  
 13:44 18 in this case, if you are on that jury, there won't be a  
 13:44 19 death sentence; isn't that true?  
 13:44 20 A. I could not vote for the death sentence in any  
 13:44 21 case.  
 13:44 22 Q. I understand, I understand. And even if  
 13:44 23 somebody tried to explain to you, there's nothing I  
 13:44 24 could say to change your mind about that, is there?  
 13:45 25 A. No, sir.

13:45 1 MR. SCHULTZ: Judge Sandoval, I  
 13:45 2 respectfully challenge this juror for cause.  
 13:45 3 THE COURT: All right. Mr. Goeller?  
 13:45 4 MR. SCHULTZ: How much time do I have  
 13:45 5 left?  
 13:45 6 THE COURT: You have four minutes  
 13:45 7 remaining.  
 13:45 8 MR. SCHULTZ: I give it back to you.  
 13:45 9 VOIR DIRE EXAMINATION  
 13:45 10 BY MR. GOELLER:  
 13:45 11 Q. Is it Patricia?  
 13:45 12 A. Yes, sir.  
 13:45 13 Q. The indictment -- let me start off by saying  
 13:45 14 this -- the indictment in this case, do you recall the  
 13:45 15 Judge or any of the lawyers back on Tuesday telling you  
 13:45 16 what capital murder was, at least as far as an  
 13:45 17 accusation in this case?  
 13:45 18 A. In this particular case?  
 13:45 19 Q. Yes.  
 13:45 20 A. I'm not sure I got what it was in this  
 13:45 21 particular case. But you talked about robbery and that  
 13:45 22 type of thing.  
 13:45 23 Q. Yes. You remember.  
 13:45 24 A. Yes.  
 13:45 25 Q. An intentional killing in the course of, say, a

13:45 1 burglary, you know, breaking into someone's home or a  
 13:45 2 robbery, theft by force, or killing two people. Those  
 13:46 3 are the accusations in this case. Could you find  
 13:46 4 somebody -- if the State proved to you beyond a  
 13:46 5 reasonable doubt that somebody did one of those things,  
 13:46 6 and they proved it to you beyond a reasonable doubt,  
 13:46 7 could you return a verdict of guilty?  
 13:46 8 A. Yes. If it did mean the death penalty.  
 13:46 9 Q. If what?  
 13:46 10 A. If you are not talking about sentencing, yes.  
 13:46 11 Q. Right. We're just talking about the first  
 13:46 12 phase.  
 13:46 13 A. Yes. I'm sorry.  
 13:46 14 Q. Okay. And only then would you answer those  
 13:46 15 questions, those special issues Mr. Schultz was just  
 13:46 16 discussing with you. To get to those questions, you  
 13:46 17 have to have found that -- let's just say somebody  
 13:46 18 intentionally killed two people. Okay? By one of the  
 13:46 19 paragraphs in this indictment. And then we get to those  
 13:46 20 special issues -- I guess how I would ask the ultimate  
 13:46 21 question to you: Could you answer that first question  
 13:46 22 based on the evidence?  
 13:47 23 And before you answer that, let me  
 13:47 24 preface -- let me make one more comment. Under our law  
 13:47 25 and federal law, it is all right and it's perfectly

13:47 1 acceptable that you serve on a jury, a death penalty  
13:47 2 case jury being an opponent of capital punishment. Do  
13:47 3 you understand what I'm saying?

13:47 4 A. Yes.

13:47 5 Q. I mean, obviously we don't want 12 people, I  
13:47 6 certainly wouldn't want 12 people, I don't think the  
13:47 7 State would really want 12 people either that are just  
13:47 8 very much for capital punishment, and kill everybody  
13:47 9 that's convicted. Nobody wants that system, right?

13:47 10 A. Right.

13:47 11 Q. Hopefully our society and our laws kind of  
13:47 12 balance out the pick of the people on the jury panel.  
13:47 13 Okay? I guess the converse of that is somewhat true,  
13:48 14 too. Our legislature makes these laws. And if we  
13:48 15 believe in a true republican form of government, that's  
13:48 16 our voice down in Austin, each of the State reps and the  
13:48 17 State senators.

13:48 18 And apparently, if we believe in a  
13:48 19 democracy or at least a republican form of government,  
13:48 20 the majority of the people believe that capital  
13:48 21 punishment ought to be an option in this State. Okay?

13:48 22 Well, anyhow, when we look at -- when we  
13:48 23 look at these, you've already figured out and  
13:48 24 Mr. Schultz let's you -- has already confirmed what you  
13:48 25 believed in the first place. You know, based on your

13:48 1 answers, what will be the outcome. Okay? Do you  
13:48 2 remember Timothy McVeigh?

13:48 3 A. (Moves head up and down.)

13:48 4 Q. Do you recall who he was?

13:49 5 A. He was the guy that -- well, they found him  
13:49 6 guilty of bombing the --

13:49 7 Q. Oklahoma City --

13:49 8 A. Oklahoma City.

13:49 9 Q. -- Alfred Murrah Federal Courthouse?

13:49 10 A. Yes.

13:49 11 Q. And he went to trial. And I could never really  
13:49 12 tell whether he wanted to be executed or didn't want to  
13:49 13 be, but whatever the event was, he was found guilty. He  
13:49 14 was given a death sentence. Apparently, I think, he  
13:49 15 stopped his appeal, and he's been executed. What do you  
13:49 16 think about that?

13:49 17 A. What do I think about what he did, as far as  
13:49 18 how he did that?

13:49 19 Q. Well, --

13:49 20 A. Or --

13:49 21 Q. What do you think about his execution?

13:49 22 A. I don't think he should have been executed. I  
13:49 23 think that he should have been definitely life sentence  
13:49 24 with very few privileges, absolutely, but not the death  
13:49 25 penalty.

13:49 1 Q. If you were on this jury and the Judge told you  
13:50 2 that you will answer, and let's assume that you and  
13:50 3 maybe more than yourself have views like yourself that  
13:50 4 are against the death penalty, they are opponents of  
13:50 5 capital punishment and you were on this jury and the  
13:50 6 Judge said, Ms. Barr, I want you to answer these  
13:50 7 questions based on the evidence. Could you do that?

13:50 8 A. Well, yes, I could answer that. May I say  
13:50 9 something?

13:50 10 Q. Yes.

13:50 11 A. Okay. As far as if the evidence showed that he  
13:50 12 was a threat to society, that kind of thing?

13:50 13 Q. Uh-huh?

13:50 14 A. Absolutely. But I believe that's what our  
13:50 15 prison system is for, to put him in prison or put her in  
13:50 16 prison and hope that the system keeps the society there  
13:50 17 safe as well.

13:51 18 Q. I often tell jurors this, or I have been  
13:51 19 telling them this week or I won't say often because I  
13:51 20 don't often do these kind of cases, but no matter what  
13:51 21 type of juror ends up on this jury in this case when we  
13:51 22 finally get the 12 people that will hear this case, they  
13:51 23 all have many many years of life experience and  
13:51 24 different backgrounds, religions and philosophies and  
13:51 25 personal codes. And I guess that's a good thing. I

13:51 1 don't guess; that is a good thing. We want juries to be  
13:51 2 very diverse or as diverse as possible, I think.

13:51 3 And we don't expect those jurors to come  
13:51 4 into the courtroom in a vacuum. I mean, the person that  
13:51 5 is very pro-death penalty that's going to be on this  
13:52 6 jury, they will view the evidence with that baggage they  
13:52 7 take in. Just like the person that's against the death  
13:52 8 penalty. I mean, that's just human nature. That's  
13:52 9 logic. Okay?

13:52 10 A. Uh-huh.

13:52 11 Q. There is no such thing as the absolute quote  
13:52 12 unquote unbiased, unfettered, right down the middle of  
13:52 13 the road juror, impossible. There's not a creature out  
13:52 14 there, I would say.

13:52 15 A. Uh-huh.

13:52 16 Q. Anyhow, with that in mind, could you follow the  
13:52 17 law as the Judge gives you, answer the questions, even  
13:52 18 though admittedly and candidly, that -- and I think you  
13:52 19 have conceded that the prospects of the death penalty  
13:52 20 may affect what your honest judgment is of the facts in  
13:52 21 this case, but with that aside, and that -- I think  
13:52 22 that's all right -- could you answer those questions  
13:52 23 based on the law and the evidence as the Judge gives  
13:52 24 you?

13:53 25 A. If I did answer that question -- well --

13:53 1 Q. Let me go about it this way.  
 13:53 2 A. I would have to. I would have to because it's  
 13:53 3 the law, and the Judge is asking me. I would have to  
 13:53 4 say -- I'm sorry -- in other words, is this person a  
 13:53 5 threat to society? I feel that he or she is --  
 13:53 6 Q. Based on the evidence.  
 13:53 7 A. -- based on the evidence. But by saying that,  
 13:53 8 does it mean, well, I've already said --  
 13:53 9 Q. No. No, it doesn't.  
 13:53 10 A. Right. Okay. Well, if that's what you mean,  
 13:53 11 then certainly I could answer it. I would have to.  
 13:53 12 Q. And then there are always, and of course if you  
 13:53 13 say, maybe the evidence in this case would be, yes,  
 13:53 14 there is a probability. What does that word mean to  
 13:53 15 you, probability?  
 13:53 16 A. Likely.  
 13:53 17 Q. Likely?  
 13:53 18 A. Or it could be likely. In other words, is it  
 13:53 19 likely or, you know --  
 13:54 20 Q. I know. It's hard. I wish they would define  
 13:54 21 it.  
 13:54 22 A. Yeah.  
 13:54 23 Q. I don't know whether they want us to use  
 13:54 24 Webster's definition --  
 13:54 25 A. A possibility.

13:54 1 Q. -- to define this. Do you think it's a  
 13:54 2 possibility?  
 13:54 3 A. Do I think it's a possibility that a person  
 13:54 4 could be found as a threat to society?  
 13:54 5 Q. No. I mean, do you think -- do you think the  
 13:54 6 word probability in this context, whether there is a  
 13:54 7 probability that the defendant would commit, what do you  
 13:54 8 think probability means? Do you think that's equivalent  
 13:54 9 with possibility?  
 13:54 10 A. Yes.  
 13:54 11 Q. Is it just possible?  
 13:54 12 A. A probability. Well, probability meaning more  
 13:54 13 towards that he could or she could, I would think.  
 13:54 14 Whether there's a probability. Does that make sense?  
 13:54 15 Q. Yeah, I think so. It's tough. We may come  
 13:54 16 back to that.  
 13:54 17 A. Okay.  
 13:54 18 Q. I have a limited amount of time so I -- but you  
 13:55 19 could look at the evidence, listen to testimony.  
 13:55 20 Because the State's got to prove that to you beyond a  
 13:55 21 reasonable doubt, as well. They've got the burden of  
 13:55 22 proof on that. So, obviously, if they've got a burden  
 13:55 23 of proof, you would hope that they would bring you some  
 13:55 24 evidence.  
 13:55 25 A. Right.

13:55 1 Q. And that evidence could be -- they could just  
 13:55 2 stand up and say, we offer all the evidence you heard in  
 13:55 3 the first part of the trial.  
 13:55 4 A. Right.  
 13:55 5 Q. Or they could bring you more witnesses and  
 13:55 6 whatever they want.  
 13:55 7 A. Right.  
 13:55 8 Q. But you could answer that based on what you  
 13:55 9 hear from the witness stand in this case. Okay? That  
 13:55 10 doesn't mean by answering that question -- if you answer  
 13:55 11 that question yes, all that means so far is there's  
 13:55 12 either going to be a life or a death sentence. Heaven,  
 13:55 13 there is no automatic sentence, yet. Okay? In fact,  
 13:55 14 there is never an automatic sentence.  
 13:55 15 A. Okay.  
 13:55 16 Q. Then we get to this question. And that's --  
 13:56 17 that's a catchall. That's the one last look. That's  
 13:56 18 for the jury, no matter what they've heard or seen can  
 13:56 19 impose a life sentence if they so choose or not. Jury  
 13:56 20 service is odd. You are an individual vote, and you are  
 13:56 21 entitled to stick to your vote, and you are also part of  
 13:56 22 12. You may be part of a unanimous verdict. You may  
 13:56 23 not be. But you have a dual right. It's like being a  
 13:56 24 citizen of the State of Texas and a citizen of the  
 13:56 25 United States. You have certain rights that are

13:56 1 independent of one another.  
 13:56 2 But anyhow, even though you admit you may  
 13:56 3 look at things, I don't want to use the word skewed, but  
 13:56 4 it's the only word coming to my head right now, skewed  
 13:57 5 towards a life sentence, even though you may do that,  
 13:57 6 would you still follow the law from the Judge and say,  
 13:57 7 base it on the evidence, base your decisions on the  
 13:57 8 evidence in both those cases?  
 13:57 9 A. I would have to follow the law in what the  
 13:57 10 Judge tells me to do. And --  
 13:57 11 Q. What Mr. Schultz was getting at, and I'm not  
 13:57 12 trying to be presumptuous --  
 13:57 13 THE COURT: Mr. Goeller, if you would,  
 13:57 14 give her a chance to finish her answer.  
 13:57 15 MR. GOELLER: I'm sorry. I didn't mean to  
 13:57 16 step on her.  
 13:57 17 Q. (BY MR. GOELLER) I obviously talked over you,  
 13:57 18 and I didn't know what you were saying.  
 13:57 19 A. That's okay. Well, I have a soft voice. I  
 13:57 20 guess what I'm saying is I would -- I'm a very honest  
 13:57 21 person. And I would -- I love my country, and I would  
 13:57 22 definitely have to do what the law told me to do or what  
 13:57 23 the Judge told me to do. Of course, I know that it  
 13:57 24 would be up to me as far as, if I wanted to vote yes or  
 13:57 25 no for the death penalty, if that's what you are saying.

13:58 1 That's my answer. So that, yeah.

13:58 2 Q. Now, Mr. Schultz's, and I think he's right,  
13:58 3 if -- he has the right to object to a person who would  
13:58 4 say, look, I don't care what the evidence says, on both  
13:58 5 these special issues. I don't care what the evidence  
13:58 6 says. I know going into this case, I'm going to throw  
13:58 7 this case for life, no matter what I hear.

13:58 8 And he's right, he would be entitled to  
13:58 9 not have a juror seated that would say, I don't care  
13:58 10 what the Judge says. I'm not going to follow the law.  
13:58 11 I'm not going to base my verdict on the evidence. I'm  
13:58 12 going to go further and -- but I would submit to you  
13:58 13 it's okay going in, if you are against the death  
13:58 14 penalty, that's okay if you look at everything in that  
13:58 15 light. But it would probably be improper if you said to  
13:59 16 yourself, despite what the Judge says and his  
13:59 17 instructions and the evidence and my oath as a juror,  
13:59 18 I'm going to throw these questions, knowing right now  
13:59 19 that I'm never ever going to vote to impose the death  
13:59 20 penalty or allow my votes to perhaps lead to a death  
13:59 21 penalty. I'm going to disobey my oath as a juror, the  
13:59 22 Judge's instructions, and I'm going to tell everyone  
13:59 23 right now I'm going to throw this case for life if I get  
13:59 24 the opportunity. Are you that person?

13:59 25 A. I'm a person who is telling you right now that

13:59 1 I would not vote for the death penalty at all because I  
13:59 2 don't believe that's my job.

13:59 3 Q. So, you are saying you would -- you would  
13:59 4 basically violate your oath as a juror?

13:59 5 A. No. I don't think so.

13:59 6 Q. Well --

13:59 7 A. You've just said though, if I understand, I'm  
13:59 8 sorry. I interrupted you.

14:00 9 Q. That's okay.

14:00 10 A. If I understand, if then -- if I did say that,  
14:00 11 yes, I believe this person is guilty, blah, blah, blah,  
14:00 12 that my vote, I wouldn't have to vote for the death  
14:00 13 penalty.

14:00 14 Q. No. You are right. You don't have to vote for  
14:00 15 the death penalty.

14:00 16 A. I mean --

14:00 17 Q. Let me ask you this: Would you wait until you  
14:00 18 heard all the evidence before you made up your mind  
14:00 19 finally on how you would vote?

14:00 20 A. Are you talking about being guilty or the vote  
14:00 21 for the sentencing?

14:00 22 Q. Sentencing.

14:00 23 A. I would not vote for the death penalty no  
14:00 24 matter what.

14:00 25 MR. GOELLER: Okay. Okay. That's all I

14:00 1 have.

14:00 2 THE COURT: All right. There was a  
14:00 3 motion, or you were seeking to strike her or challenge  
14:00 4 her; is that correct?

14:00 5 MR. SCHULTZ: Yes.

14:00 6 THE COURT: Yes. I'll grant the challenge  
14:01 7 for cause. You are finally excused, Ms. Barr.

14:01 8 VENIREPERSON: Thank you. May I ask you a  
14:01 9 question, sir?

14:01 10 THE COURT: Yes, ma'am.

14:01 11 VENIREPERSON: Does that mean I would be  
14:01 12 going against what you told me to do and against my  
14:01 13 oath? I guess I don't under --

14:01 14 THE COURT: Truthfully, it's -- words  
14:01 15 are -- are things that we use in a courtroom to mean at  
14:01 16 the time what we want them to mean. And I can assure  
14:01 17 you that everything that you've done is just fine.

14:01 18 VENIREPERSON: Thank you.

14:01 19 THE COURT: And I appreciate your service.

14:01 20 VENIREPERSON: Thank you, sir. So I don't  
14:01 21 come back?

14:01 22 THE COURT: No, you don't need to.

14:01 23 (Venireperson Barr excused.)

14:01 24 THE COURT: All right. Tell you what, we  
14:01 25 got to figure out whether we are going to go with

14:01 1 Gentle, Jann or William Flaherty. I tell you what, I  
14:01 2 think we'll do William Flaherty. He is No. 7. So we're  
14:02 3 picking up No. 7. The next one is William Flaherty, and  
14:02 4 Mr. Flaherty was No. 7.

14:03 5 MR. SCHULTZ: Ms. Falco will speak for the  
14:03 6 State, Judge.

14:03 7 (Venireperson Flaherty present.)

14:03 8 THE COURT: Sir, are you William Flaherty?

14:03 9 VENIREPERSON: Yes.

14:03 10 THE COURT: I want to remind you that last  
14:03 11 Tuesday I placed everyone under an oath to truthfully  
14:03 12 answer the questions, and I want to remind you you are  
14:03 13 still under that oath.

14:03 14 VENIREPERSON: Okay.

14:03 15 THE COURT: Please be seated. Ms. Falco?  
14:03 16 VOIR DIRE EXAMINATION

14:03 17 BY MS. FALCO:

14:04 18 Q. Good afternoon, Mr. Flaherty.

14:04 19 A. Good afternoon.

14:04 20 Q. Is it Flaherty?

14:04 21 A. Flaherty, yeah. Close enough.

14:04 22 Q. My name is Gail Falco, and I'm an assistant  
14:04 23 district attorney in Collin County. And to my right,  
14:04 24 your left, is Mr. Bill Schultz. He's the first  
14:04 25 assistant, and you met him last Tuesday when he spoke.

14:04 1 And to my left is Ms. Jami Lowry, and she's also an  
 14:04 2 assistant district attorney.  
 14:04 3 Seated at the other table, closest to me,  
 14:04 4 is the defendant Ivan Cantu. And next to him are his  
 14:04 5 lawyers, Don High and Matt Goeller. They are private  
 14:04 6 lawyers here in Collin County.  
 14:04 7 A. Okay.  
 14:04 8 Q. And I take it from last Tuesday you don't know  
 14:04 9 any of us; is that correct?  
 14:04 10 A. I have never, as far as I can remember, I don't  
 14:04 11 know anybody.  
 14:04 12 Q. None of us look familiar?  
 14:04 13 A. Nope.  
 14:04 14 Q. Mr. Flaherty, when you first realized that you  
 14:04 15 were called as a potential juror in a capital murder  
 14:04 16 case, what were your first thoughts?  
 14:04 17 A. Well, I thought it was a pretty, potentially a  
 14:04 18 pretty big responsibility. And I was a little  
 14:04 19 surprised. I guess, I had never been called for jury  
 14:04 20 duty before. So I thought, boy, this is an interesting  
 14:05 21 way to be introduced into the world of jury duty. But  
 14:05 22 other than that, you know, I just tried to keep an open  
 14:05 23 mind.  
 14:05 24 Q. As far as capital murder goes, this is the only  
 14:05 25 type of trial we actually do individual voir dire where

14:05 1 the State is seeking the death penalty. You have the  
 14:05 2 general voir dire, which kind of gives you the general  
 14:05 3 law and something that's common to everybody that we'll  
 14:05 4 be talking to. And we'll have these individual voir  
 14:05 5 dire sessions where we try to get to know you as best we  
 14:05 6 can in a very limited time --  
 14:05 7 A. Right.  
 14:05 8 Q. -- because both sides are looking for a juror  
 14:05 9 that can be fair to both sides.  
 14:05 10 A. Right.  
 14:05 11 Q. And the State is obviously looking for somebody  
 14:05 12 who will have a fair shot at a death penalty if that's  
 14:05 13 what the evidence shows. And the defense is looking for  
 14:05 14 someone who could be fair at a life sentence, if that's  
 14:05 15 what the evidence shows.  
 14:05 16 A. Uh-huh.  
 14:05 17 Q. In looking at your questionnaire, you stated, I  
 14:05 18 believe the death penalty is appropriate in some capital  
 14:05 19 murder cases, and I can return a verdict resulting in  
 14:05 20 death in a proper case.  
 14:06 21 A. Right. Yep.  
 14:06 22 Q. Since you filled out the questionnaire, have  
 14:06 23 you had any change in thought since you filled out the  
 14:06 24 questionnaire?  
 14:06 25 A. I haven't really. I probably thought about it

14:06 1 a little bit more. You know, because if you think about  
 14:06 2 the whole environment you are in, you have a relatively  
 14:06 3 short period of time to respond to, you know, that type  
 14:06 4 of question. There's almost -- not a heck of a lot of  
 14:06 5 time to prepare. Not a lot of time to reflect. And so,  
 14:06 6 you do a little bit of that after the fact. I've  
 14:06 7 actually reflected upon that general question or that  
 14:06 8 set of questions and probably most of the other  
 14:06 9 questions I could remember as well.  
 14:06 10 Q. And what has been the result of your  
 14:06 11 reflection?  
 14:06 12 A. I haven't really changed my point of view.  
 14:06 13 Q. Now, I did notice in your questionnaire that  
 14:06 14 you said that you haven't always felt that way about the  
 14:06 15 death penalty.  
 14:06 16 A. Uh-huh.  
 14:06 17 Q. As you grew into adulthood, your opinion  
 14:06 18 changed.  
 14:06 19 A. Right.  
 14:06 20 Q. Can you explain that to me a little bit?  
 14:06 21 A. Yeah. I'm from Massachusetts, if you couldn't  
 14:07 22 tell. And I grew up in a pretty liberal background and,  
 14:07 23 you know, where, you know, Massachusetts is a pretty  
 14:07 24 heavy Democratic state. And if I just kind of think  
 14:07 25 about my parents and what their background was, you

14:07 1 know, they grew up pretty poor. And my -- my  
 14:07 2 grandfather, one of my grandfathers worked for the City.  
 14:07 3 My grandmother worked for the State. And a lot of them  
 14:07 4 back in the old days were pretty connected. You know,  
 14:07 5 the jobs were connected through relationships and voting  
 14:07 6 registration and all that nonsense that used to take  
 14:07 7 place in the City.  
 14:07 8 And consequently, that whole connection  
 14:07 9 they had, you know, how they grew up, that -- that was  
 14:07 10 really their views. And so, you know, they became my  
 14:07 11 views early on. I would say that, you know, kind of  
 14:08 12 having the save-the-world mentality was something that I  
 14:08 13 had through high school and probably early into college.  
 14:08 14 But I think as I became an adult and I was able to, you  
 14:08 15 know, evaluate things on my own; my views started to  
 14:08 16 change. You know, probably not, you know, not to the  
 14:08 17 radical side, but I think probably a little bit closer  
 14:08 18 to the middle where my original thoughts that, you know,  
 14:08 19 it was totally inappropriate to even consider the death  
 14:08 20 penalty.  
 14:08 21 I think my views on that changed because I  
 14:08 22 became more my own views as I became more aware of what  
 14:08 23 was happening in the world. You know, I was able to  
 14:08 24 just kind of reflect on, you know, how -- you know, just  
 14:08 25 how different I felt about it. You know, as opposed to

14:08 1 it's -- it's -- it's wrong to take somebody's life, you  
 14:09 2 know, through, you know, in any fashion. And that's  
 14:09 3 pretty much what my upbringing was. And also, you know,  
 14:09 4 the Church. I'm Catholic. And the Catholic position  
 14:09 5 is, you know, it's very antideath penalty. So it's kind  
 14:09 6 of a modified version of what my background was and to  
 14:09 7 where I am today, which is a more pragmatic approach.

14:09 8 Q. And are you comfortable, despite your  
 14:09 9 upbringing and maybe what your family's values may be  
 14:09 10 and despite what the Catholic Church may endorse, are  
 14:09 11 you comfortable with your position on it?

14:09 12 A. Yes.

14:09 13 Q. When Mr. Schultz was telling you back on  
 14:09 14 Tuesday, pretty much what the reality of what we were  
 14:09 15 doing here as far as assuming we get a guilty and  
 14:09 16 assuming the questions and the punishment phase are  
 14:09 17 answered in such a way that the defendant gets the death  
 14:09 18 penalty, that sometime in the future he'll be taken down  
 14:10 19 to the death chamber. He'll be strapped to a gurney and  
 14:10 20 injected with a lethal substance.

14:10 21 When he was talking to you about that,  
 14:10 22 obviously it was not for dramatic effect or gore, but  
 14:10 23 let the reality hit home --

14:10 24 A. Right.

14:10 25 Q. -- of what we're doing here. And what we're

14:10 1 looking for is people who can participate in that  
 14:10 2 process and kind of get you to think about that. And  
 14:10 3 can you do that? Can you be involved in that process?

14:10 4 What were your thoughts as he was  
 14:10 5 describing that to you?

14:10 6 A. Well, I thought it was pretty powerful. You  
 14:10 7 know, and really gave you a sense of what the gripping  
 14:10 8 reality of it was. And I think it just also, you know,  
 14:10 9 made me think about how much responsibility you have in  
 14:10 10 that particular situation. And so also to think about,  
 14:10 11 hey, what criteria would you need to make that decision.  
 14:10 12 And, you know, as I thought through that, I also thought  
 14:10 13 about some of the things that were being said which led  
 14:11 14 me to think, you know, it's pretty proscriptive in terms  
 14:11 15 of what your thought process needs to be.

14:11 16 And so I think the law, from the way it  
 14:11 17 was described is, you know, can lead you into the right  
 14:11 18 direction. And I think that that probably makes it a  
 14:11 19 little bit easier. You know, if you can rationalize  
 14:11 20 through that, that there is a logical thought process  
 14:11 21 that you need to follow in order to make this decision.  
 14:11 22 And provided you do that, it should make it easier to  
 14:11 23 follow through and make the decision one way or the  
 14:11 24 other.

14:11 25 Q. And so, understanding that, and understanding

14:11 1 it's not just you go back there and say life or death,  
 14:11 2 you have certain factors you need to consider and  
 14:11 3 certain questions you need to answer.

14:11 4 A. Right.

14:11 5 Q. Do you feel comfortable being involved in a  
 14:11 6 process that could result in a death?

14:11 7 A. I think I could provided there was the proper,  
 14:11 8 you know, the proper direction. You know, if you just  
 14:11 9 kind of threw folks in a room and said, okay, make up  
 14:11 10 your mind, I don't think that's clean enough, or clear  
 14:12 11 enough. I think you need some very specific direction  
 14:12 12 because it is such a difficult decision to make.

14:12 13 Q. Right. What -- when you said you thought about  
 14:12 14 what kind of things you would need to make that  
 14:12 15 decision, what kind of things popped into your head that  
 14:12 16 you would need to make that decision?

14:12 17 A. I think I would need to understand what the law  
 14:12 18 was and what the law says the criteria is.

14:12 19 Q. Okay. And then obviously the facts of the  
 14:12 20 case, as well. And when you are talking about the  
 14:12 21 criteria, are you talking specifically about the  
 14:12 22 punishment phase or the guilt-innocence phase?

14:12 23 A. Well, both, really.

14:12 24 Q. And understanding, and we'll cover that just a  
 14:12 25 little bit right now. I mean, if you have any

14:12 1 questions, just let me know. Obviously, in Texas we  
 14:12 2 have what's called the bifurcated system in the first  
 14:12 3 phase. In the first phase of the trial is the guilt-  
 14:12 4 innocence phase. And in that phase the burden of proof  
 14:12 5 is on the State. Since we're the ones doing the  
 14:12 6 accusing, we have to -- we have to prove that the  
 14:12 7 defendant beyond a reasonable doubt committed the  
 14:12 8 offense of capital murder. And if we do that, and as  
 14:13 9 Mr. Schultz told you, capital murder is -- it's murder  
 14:13 10 plus, plus some aggravating circumstance.

14:13 11 A. Uh-huh.

14:13 12 Q. Let me stop you right there. As far as that  
 14:13 13 goes, with regard to the various types of capital  
 14:13 14 murder, you heard of murder in the course of robbery.

14:13 15 A. Right.

14:13 16 Q. Murder in the course of burglary. Do those  
 14:13 17 seem like appropriate type crimes to you to be subject  
 14:13 18 to the death penalty?

14:13 19 A. I -- I don't think I'm in a position to make  
 14:13 20 that evaluation. I think that's the great thing about  
 14:13 21 the law is that it establishes that for you.

14:13 22 Q. But would you quarrel with that being subject  
 14:13 23 to the death penalty? Not necessarily --

14:13 24 A. I wouldn't.

14:13 25 Q. -- it's not automatic.

14:13 1 A. I wouldn't, no.  
 14:13 2 Q. What about killing two or more people in a  
 14:13 3 common course or scheme, that particular offense being  
 14:13 4 subject to the death penalty? Would you be okay with  
 14:13 5 that?  
 14:13 6 A. I would be fine with that.  
 14:13 7 Q. And assuming we prove to you beyond a  
 14:14 8 reasonable doubt one of those three things, and the  
 14:14 9 defendant is guilty of capital murder, and we move onto  
 14:14 10 the punishment phase.  
 14:14 11 A. Right.  
 14:14 12 Q. And that's when you get the questions that  
 14:14 13 Mr. Schultz went over, and I'll start out with the first  
 14:14 14 one. Do you want to briefly read back over that one  
 14:14 15 again? And as -- we typically call that a future  
 14:14 16 dangerousness question.  
 14:14 17 A. Uh-huh.  
 14:14 18 Q. And given to you in a question form, whether or  
 14:14 19 not you find beyond a reasonable doubt, and with this  
 14:14 20 particular question again, the burden is going to be on  
 14:14 21 the State.  
 14:14 22 A. Right.  
 14:14 23 Q. And do you find beyond a reasonable doubt,  
 14:14 24 basically, that the defendant is a future danger?  
 14:14 25 A. Uh-huh.

14:14 1 Q. And looking at that particular question,  
 14:14 2 there's a lot of words in there that are not defined and  
 14:14 3 the jury won't be given a definition of the words. It  
 14:14 4 will be up to you --  
 14:14 5 A. Right.  
 14:14 6 Q. -- as a jury, to determine what that means with  
 14:14 7 the first word being probability.  
 14:14 8 A. Right.  
 14:14 9 Q. And as Mr. Schultz explained to you,  
 14:14 10 probability can be -- I mean, people that are  
 14:15 11 mathematically minded may say it's a percentage. Some  
 14:15 12 other people may say, well, it means more likely than  
 14:15 13 not to me.  
 14:15 14 A. Uh-huh.  
 14:15 15 Q. What does that word mean to you?  
 14:15 16 A. Both.  
 14:15 17 Q. Okay.  
 14:15 18 A. I mean, *probability* clearly, you know, being  
 14:15 19 somewhat mathematically minded, you know, probability  
 14:15 20 can be anything between zero and a hundred to some  
 14:15 21 degree of probability. But I'd say, but I think in this  
 14:15 22 sense it's probably a high -- a high likelihood.  
 14:15 23 Greater than 50 percent.  
 14:15 24 Q. One thing that question does not ask, it  
 14:15 25 doesn't ask with a certainty. Will the defendant commit

14:15 1 a future act? It says whether or not there's a  
 14:15 2 probability.  
 14:15 3 A. Right.  
 14:15 4 Q. Okay. So that's one word that would be left up  
 14:15 5 to you as a juror --  
 14:15 6 A. Yep.  
 14:15 7 Q. -- to decide what that means and if that's met.  
 14:15 8 A. Uh-huh.  
 14:15 9 Q. And another word is criminal acts of violence.  
 14:15 10 Again, that's a phrase that's not going to be defined  
 14:15 11 for you. It's just what you, as a jury, decides are  
 14:16 12 criminal acts of violence. We all agree that rape,  
 14:16 13 sexual assault, murder, those are criminal acts of  
 14:16 14 violence.  
 14:16 15 But how about, as far as you are  
 14:16 16 concerned, how about destruction to property? If I went  
 14:16 17 out with a baseball bat and started bashing your  
 14:16 18 windshield, would you consider that a criminal act of  
 14:16 19 violence?  
 14:16 20 A. I think that's violent.  
 14:16 21 Q. Okay. So even though it's property, as opposed  
 14:16 22 to a person, could you see how that might be a criminal  
 14:16 23 act of violence?  
 14:16 24 A. Uh-huh, yes.  
 14:16 25 Q. Okay. How about drug dealing? Some people may

14:16 1 say, well, it doesn't effect anybody but the person  
 14:16 2 taking the drugs. But you could argue, well, it is  
 14:16 3 damaging to that person or it may lead to destructive  
 14:16 4 results, so therefore, it is a criminal act of violence.  
 14:16 5 What is your position on that?  
 14:16 6 A. I would probably have to think through that one  
 14:16 7 a little bit more. If you want me to think now, I will  
 14:16 8 have to think for a little while.  
 14:16 9 Q. If you want to think out loud.  
 14:16 10 A. Sure, then I'll think out loud. I guess when I  
 14:16 11 just think about violence, it's physical. It's kind of  
 14:16 12 my first thought. And so, how I would associate the  
 14:17 13 first act, even though it was not on a person  
 14:17 14 necessarily. It's violent because I was violently  
 14:17 15 striking out. The act that you just described was  
 14:17 16 selling drugs. And I would say I'm not really sure  
 14:17 17 that -- that I'm unclear. I would have to think through  
 14:17 18 it a little bit more and don't know that I can resolve  
 14:17 19 it right now.  
 14:17 20 Q. How about this, or if you just heard of  
 14:17 21 evidence such as drug dealing or maybe -- certain  
 14:17 22 patterns of behavior that may indicate to you whether or  
 14:17 23 not someone could be violent. Maybe that particular act  
 14:17 24 is not violent in and of itself, but are there certain  
 14:17 25 types of crimes or behavior patterns that could indicate



14:17 1 whether or not someone might be a future danger?

14:17 2 A. Well, that in conjunction with something else,  
14:17 3 right?

14:17 4 Q. Right.

14:17 5 A. So, for example if -- if there's a probability,  
14:17 6 if we determine there's a probability that somebody  
14:17 7 might be participating in drug dealing in the future,  
14:18 8 for whatever reason that would be.

14:18 9 Q. Right.

14:18 10 A. You know, combined with the fact that we've  
14:18 11 already passed phase one, which is someone has already  
14:18 12 created some, you know, has engaged in some violent  
14:18 13 criminal act, murder, which got us to this phase.

14:18 14 Q. Right.

14:18 15 A. I'd say that would have to be something you  
14:18 16 would consider as well.

14:18 17 Q. Okay. And then the last word that's  
14:18 18 frequently -- it's undefined and kind of frequently  
14:18 19 debated is that word *society*.

14:18 20 A. Okay.

14:18 21 Q. Again, if you look at the question, it doesn't  
14:18 22 ask: Can the defendant safely be held in prison? It  
14:18 23 doesn't ask, you know, prison society. Will he be a  
14:18 24 danger in prison? It doesn't limit itself to just  
14:18 25 prison.

14:18 1 A. Right.

14:18 2 Q. It could be the defendant driving a school bus  
14:18 3 or a person in the ice cream store where your kids buy  
14:18 4 ice cream. Is that person a danger to society?

14:18 5 A. Right.

14:18 6 Q. So you see how that can be interpreted?

14:18 7 A. Yep.

14:18 8 Q. And doesn't limit itself strictly to the jail  
14:18 9 population?

14:18 10 A. Right.

14:18 11 Q. And looking at that question, other than  
14:19 12 obviously the crime itself in which you've already found  
14:19 13 him guilty, what other types of things would you want to  
14:19 14 know before answering that question?

14:19 15 A. I would probably want to know history. You  
14:19 16 know, in addition to or beyond this particular crime.

14:19 17 Q. What type of history?

14:19 18 A. Just any other criminal acts in the background.  
14:19 19 You know, and know as much as you can about the crime in  
14:19 20 question right now, which would indicate whether or not  
14:19 21 it was, you know, something that was isolated or part of  
14:19 22 a pattern.

14:19 23 Q. Okay. With regard to that question, and as I  
14:19 24 told you earlier, the burden of proof is on the State to  
14:19 25 prove that to you beyond a reasonable doubt.

14:19 1 A. Yes.

14:19 2 Q. And if you answer this question "yes," you are  
14:19 3 still on what we call: in the process of assessing a  
14:19 4 death sentence. If 10 or more of you decide, no, he is  
14:19 5 not a future danger, that's an automatic life sentence.  
14:20 6 But if all 12 of you unanimously agree, yes, he is a  
14:20 7 future danger, and you are in the process of assessing a  
14:20 8 death sentence, you move onto the next question. With  
14:20 9 regard to the question and staying on that, I'm sure you  
14:20 10 heard or seen or read in the papers, typically  
14:20 11 psychiatrists might be called in a criminal case.

14:20 12 A. Yes.

14:20 13 Q. And I'm sure you can understand the defense  
14:20 14 could call someone, and assuming they are not talking  
14:20 15 about a brain disease. They are not talking about a  
14:20 16 brain tumor or how something might physically manifest  
14:20 17 inside its body, but just to tell you about a certain  
14:20 18 pattern of behavior and whether or not someone would be  
14:20 19 a future danger or not. Do you think the defense, as  
14:20 20 well as the State, each side could come up with an  
14:20 21 expert to tell you about that?

14:20 22 A. Yes.

14:20 23 Q. Do you think if the defense came up and said,  
14:20 24 well, this pattern of behavior indicates he won't be a  
14:20 25 future danger. And the State could get somebody to come

14:20 1 back and say, well, yes, it does indicate a future  
14:20 2 danger.

14:20 3 A. I believe that, yes.

14:20 4 Q. If you were sitting as a juror, do you feel  
14:21 5 like you could look at all the facts of the case, look  
14:21 6 at whatever criminal history might be presented to you  
14:21 7 and make a determination on your own, whether or not a  
14:21 8 person would be a future danger?

14:21 9 A. I would probably have an opinion.

14:21 10 Q. Okay. Do you feel like you would necessarily  
14:21 11 need the help of a psychiatrist or a psychologist to  
14:21 12 help you with that?

14:21 13 A. I would be interested.

14:21 14 Q. Do you feel like it would be necessary?

14:21 15 A. I think it would be.

14:21 16 Q. Okay. And why is that?

14:21 17 A. Because I don't think I'm personally qualified,  
14:21 18 just on my own, just to evaluate that -- the likelihood  
14:21 19 one way or the other. I'm not trained that way. I  
14:21 20 don't really know what types of questions to ask. And I  
14:21 21 think whenever you have the opportunity to have an  
14:21 22 expert who has the trained thought process and they can  
14:22 23 share that with you, how -- what their criteria, what  
14:22 24 their -- their process is, I think that that's much more  
14:22 25 valuable than your walking into something cold and

14:22 1 trying to establish your own thought process or your own  
14:22 2 criteria.

14:22 3 Q. But you said even, just as a juror, not  
14:22 4 educated in the field of psychiatry or psychology, you  
14:22 5 could look at the facts of the case. You could look at  
14:22 6 criminal history, and you would have an opinion?

14:22 7 A. I would.

14:22 8 Q. And with your opinion, do you think you could  
14:22 9 answer that question, either yes or no, depending on  
14:22 10 what the facts show?

14:22 11 A. Well, I would answer it.

14:22 12 Q. Okay. And assuming you do, all 12 jurors  
14:22 13 answer that question, yes, you move onto the next  
14:22 14 question, this one at the bottom. And we're kind of  
14:22 15 skipping over that party's question, and we've kind of  
14:22 16 been skipping over that, assuming it's not necessarily  
14:22 17 going to be an issue at the end of the trial. But if  
14:22 18 you did answer yes to that first question, you would  
14:23 19 definitely move on to this second or this next question,  
14:23 20 if you want to take a moment just to read over that.

14:23 21 A. Okay.

14:23 22 Q. In this question, we typically refer to it as  
14:23 23 the mitigating question.

14:23 24 A. Okay.

14:23 25 Q. With regard to this question there is no burden

14:23 1 on either the State or the defense. Neither side has  
14:23 2 the responsibility of bringing you any evidence with  
14:23 3 regard to that question. With regard, obviously this  
14:23 4 question asks you to take into consideration all the  
14:23 5 evidence and decide if there's sufficient mitigating  
14:23 6 evidence to warrant a life sentence.

14:23 7 Necessarily what that question is asking  
14:24 8 you is to base it on the evidence alone. This is not a  
14:24 9 time for the jury to come back and go, you know what? I  
14:24 10 just don't want him to get the death penalty.

14:24 11 MR. GOELLER: Objection. Judge, I  
14:24 12 strenuously object to that last comment by the  
14:24 13 prosecutor. That is not the law on that third special  
14:24 14 issue.

14:24 15 THE COURT: Sustained. Would you ask it a  
14:24 16 different way?

14:24 17 Q. (BY MS. FALCO) You answer that based on the  
14:24 18 facts, on what the facts show. The facts are -- if  
14:24 19 there is sufficient evidence to rise to the level to  
14:24 20 warrant a life sentence, then the answer to that  
14:24 21 question would be yes. But it's based purely on the  
14:24 22 facts, not --

14:24 23 MR. GOELLER: Objection. I don't mean to  
14:24 24 interrupt in mid-sentence, but it's important. I object  
14:24 25 to her comment that it must be based purely on the

14:24 1 facts. That is a misstatement of the law. I  
14:24 2 specifically cite *Morgan v. Illinois*.

14:24 3 THE COURT: Sustained.

14:24 4 Q. (BY MS. FALCO) I'll rephrase it. It's based  
14:24 5 on the evidence that you hear in the courtroom, not a  
14:24 6 juror's emotional state.

14:25 7 MR. GOELLER: Same objection, Your Honor.  
14:25 8 It's a personal, it's a reasonable, individual juror  
14:25 9 basis for answering that question. It's clear, there is  
14:25 10 no guidance in fact, law, evidence. It's an individual  
14:25 11 vote on the issue, not solely due to fact. But again,  
14:25 12 I'd cite *Morgan v. Illinois*; *Randall Bell Owens v. State*  
14:25 13 *of Texas* regarding telling the juror he cannot use  
14:25 14 emotions or feelings.

14:25 15 THE COURT: The instruction asks whether,  
14:25 16 taking into consideration all of the evidence, right,  
14:25 17 including other things. And so, I'll tell you what,  
14:25 18 I'll go ahead and ask the prosecutor to -- ask it one  
14:25 19 more time.

14:25 20 Q. (BY MS. FALCO) And you understand that's to be  
14:25 21 based on the evidence that you hear, both at the guilt-  
14:25 22 innocence phase and the punishment phase. Looking at  
14:26 23 the evidence presented in the trial, whether there is  
14:26 24 sufficient evidence that rises to the level of  
14:26 25 warranting a life sentence. Do you understand that?

14:26 1 A. I'm getting a little confused.

14:26 2 Q. What that question is asking -- there's no  
14:26 3 burden of proof on either side. We don't have a  
14:26 4 responsibility of presenting any evidence to you. The  
14:26 5 defense doesn't have any responsibility of presenting  
14:26 6 any evidence to you.

14:26 7 A. Can I play it back to you?

14:26 8 Q. Yes.

14:26 9 A. Are you saying that there is no responsibility  
14:26 10 for the defense or for the prosecution to present  
14:26 11 specific evidence that would address this particular  
14:26 12 question. In that -- in the event that that doesn't  
14:26 13 happen, that both parties ignore this question, then  
14:26 14 it's the obligation of the juror to draw his or her  
14:27 15 conclusion based upon the balance of the evidence that  
14:27 16 was presented during just the normal course of the  
14:27 17 trial.

14:27 18 Q. Yes, yes. And so do you understand that?

14:27 19 A. Yes.

14:27 20 Q. In looking at that question, the focus mostly  
14:27 21 is on the defendant as far as the defendant's moral  
14:27 22 character, the defendant's behavior. The only place a  
14:27 23 victim's background may come into play is when it says  
14:27 24 take into circumstances all the facts of the case.

14:27 25 How important to you is the victim's

14:27 1 character or background when Mr. Schultz was talking  
 14:27 2 back on Tuesday about whether it was a nun that had been  
 14:27 3 killed versus a drug dealer? Does that make a  
 14:27 4 difference to you?

14:27 5 A. I think it does.

14:28 6 Q. In what way?

14:28 7 A. Well, the crime is the crime. I mean, there's  
 14:28 8 no question about that.

14:28 9 Q. Let me ask you, I guess, this way. Does it  
 14:28 10 make a difference how dangerous a person is depending on  
 14:28 11 who he kills?

14:28 12 A. No. I don't think -- I don't think that does,  
 14:28 13 no. I think, you know, I think just by virtue of the  
 14:28 14 fact that you are capable of killing somebody says that  
 14:28 15 you've done that.

14:28 16 Q. Does it make a person any better or worse  
 14:28 17 depending on who he killed?

14:28 18 A. I think -- I think if you are a murderer, you  
 14:28 19 are a murderer, for lack of a better way of putting it.  
 14:29 20 Could you possibly have less sympathy for one person  
 14:29 21 versus another? I think you could.

14:29 22 Q. Right, right. Okay. With regard to that  
 14:29 23 question, that mitigating question, and again the word  
 14:29 24 mitigating is not defined for you, either. What does  
 14:29 25 that mean to you, mitigating?

14:29 1 A. It means to lessen.

14:29 2 Q. And that's probably what most people would say,  
 14:29 3 to lessen or reduce defendant's moral blameworthiness  
 14:29 4 is, I guess, another legal phrase used. With regard to  
 14:29 5 that, what some people may say is mitigating, other  
 14:29 6 people may say aggravating. Some people may say drugs.  
 14:29 7 Some people may say they heard that a person committed a  
 14:29 8 crime when they were high on drugs. Well, that's not  
 14:30 9 normally his personality. He probably wouldn't have  
 14:30 10 done it except for the drugs; therefore, that's  
 14:30 11 mitigating because that's not him. He's not normally  
 14:30 12 like that.

14:30 13 Another person may say, as a society we're  
 14:30 14 told: You don't do drugs. You don't do drugs. And the  
 14:30 15 reason you don't do drugs is because this is what  
 14:30 16 happens. So that's aggravating because he knew better.  
 14:30 17 So not only is he a killer, but he's a dooper, too. So  
 14:30 18 it's aggravating. Do you understand that?

14:30 19 A. Yes.

14:30 20 Q. So you can see it two ways? One piece of  
 14:30 21 evidence can be seen as mitigating to one person and  
 14:30 22 aggravating to another?

14:30 23 A. Yes.

14:30 24 Q. And with regard to this particular question, as  
 14:30 25 I told you, there is no burden of proof on this

14:30 1 question. But if -- if all 12 jurors decide, no, there  
 14:30 2 is not sufficient evidence to warrant a life sentence,  
 14:30 3 that is a death sentence. You've already found the  
 14:30 4 defendant guilty. You've already answered that future  
 14:30 5 dangerous question yes.

14:30 6 You've gotten to this question. The jury  
 14:30 7 finds, no, there is not sufficient evidence. The 12 of  
 14:31 8 you decide, no, that's a death sentence. If 10 or more  
 14:31 9 jurors decide yes, there is sufficient evidence to  
 14:31 10 warrant a life sentence, then that's an automatic life  
 14:31 11 sentence.

14:31 12 Mr. Flaherty, do you feel that you could,  
 14:31 13 if you had already found the defendant guilty, and you'd  
 14:31 14 already answered that first question yes and the jury  
 14:31 15 gets to this next question, do you feel comfortable if  
 14:31 16 the evidence so showed, answering that question no,  
 14:31 17 knowing that a death sentence would result?

14:31 18 A. Yes.

14:31 19 Q. Now, with regard to that last question, I -- I  
 14:31 20 assume most people that are on trial, especially if they  
 14:31 21 are on trial for their life, you understand nobody wants  
 14:31 22 to die. Nobody wants to be subjected to the death  
 14:31 23 penalty. Nobody wants to die. Would you expect a  
 14:31 24 person to show that they are different now? They are  
 14:31 25 changed now. They are no longer the person they were

14:32 1 when they committed the murder. Would you expect to see  
 14:32 2 that kind of behavior or that kind of evidence?

14:32 3 A. With more than a 50 percent probability, yes.

14:32 4 Q. And how would you as a juror be able to tell  
 14:32 5 what was sincere and what was just a show for the jury?  
 14:32 6 What kind of things would you be looking at?

14:32 7 A. You know, I think I'd probably just have to  
 14:32 8 evaluate the specific situation. It's really too hard  
 14:32 9 for me to say. I think it's: How sincere can somebody  
 14:32 10 be? Right?

14:32 11 Q. Right.

14:32 12 A. I think that's difficult to tell. You know, if  
 14:32 13 you think about some of the famous cases, I mean, who  
 14:32 14 were -- I mean, there were some pretty sincere folks out  
 14:32 15 there who were just, you know, good liars. Right?

14:32 16 Q. Right. How do you feel about evaluating  
 14:32 17 somebody's credibility or knowing whether they are lying  
 14:32 18 or not?

14:32 19 A. I could give it my best shot.

14:33 20 Q. And with regard, kind of getting back on the  
 14:33 21 victims a little bit, does it make a difference to you?  
 14:33 22 Let's suppose I went in, and I decided to rob a  
 14:33 23 drugstore. And I went in, and I killed the clerk there  
 14:33 24 in the drugstore. Didn't know him, and I've never seen  
 14:33 25 him before, killed him. Didn't know how it impacted the

14:33 1 family or anything like that, and I left.  
 14:33 2 As opposed to, I go in the drugstore where  
 14:33 3 my best friend growing up is working. I used to go over  
 14:33 4 to that house everyday. Mom made me punch and cookies  
 14:33 5 everyday. I go in there and kill the clerk, knowing how  
 14:33 6 it's going to devastate the family. Does that make a  
 14:33 7 difference to you?  
 14:33 8 A. No. I don't think it does.  
 14:33 9 Q. Why not?  
 14:33 10 A. Because it's murder, still the same.  
 14:33 11 Q. As we've been sitting here, have you had a  
 14:33 12 chance and Tuesday as well -- I know you were sitting on  
 14:33 13 the front row, had an opportunity to look at the  
 14:33 14 defendant.  
 14:33 15 A. Yes.  
 14:33 16 Q. And in looking at the defendant, what  
 14:34 17 impression do you get?  
 14:34 18 A. I really don't have one.  
 14:34 19 Q. And just from looks, anything that stands out  
 14:34 20 about looks?  
 14:34 21 A. He looks pretty young, but so do I.  
 14:34 22 Q. And you do, Mr. Flaherty. With regards to  
 14:34 23 looks, does youth factor in at all, into your decision  
 14:34 24 whether or not someone gets the death penalty? Are you  
 14:34 25 more compassionate, less compassionate, or does it not

14:34 1 matter?  
 14:34 2 A. I don't think age -- I think once you become a  
 14:34 3 mature adult -- and how would I define that? I think  
 14:34 4 it's different for everybody. Some people just, they  
 14:34 5 never become a mature adult, and other people are mature  
 14:34 6 when they are very young. You know, mid-teens, early  
 14:34 7 teens even.  
 14:34 8 Q. If someone is a sufficient age, they know right  
 14:34 9 from wrong?  
 14:34 10 A. (Moving head up and down.)  
 14:34 11 Q. And would it make a difference what age they  
 14:34 12 were?  
 14:34 13 A. No.  
 14:34 14 Q. If they knew right from wrong?  
 14:34 15 A. Well, provided it was -- I think, I think the  
 14:34 16 law probability defines, you know, minimally what that  
 14:35 17 is. If there was a definition by the law that says  
 14:35 18 that, you know, this person has not achieved the legal  
 14:35 19 age to be considered, then it is certainly something  
 14:35 20 that you should take into consideration.  
 14:35 21 Q. And assuming that's not a factor, someone in  
 14:35 22 their mid to late 20s, does that make a difference to  
 14:35 23 you?  
 14:35 24 A. No.  
 14:35 25 Q. One thing in looking at your questionnaire, do

14:35 1 you remember that page where it asks you questions, and  
 14:35 2 it strongly agrees to strongly disagrees, and it went  
 14:35 3 through a series.  
 14:35 4 A. That was a tough page.  
 14:35 5 Q. I'm going to talk to you about that tough page.  
 14:35 6 A. Okay.  
 14:35 7 Q. Specifically, I'm going to talk to you about  
 14:35 8 where it says, genetic, circumstances of birth,  
 14:35 9 upbringing, and environment should be considered in  
 14:35 10 determining the proper punishment of someone convicted  
 14:36 11 of a crime. And you said agreed?  
 14:36 12 A. Uh-huh.  
 14:36 13 Q. Tell me what your thoughts are on that as far  
 14:36 14 as what exactly are you thinking about when you hear  
 14:36 15 those things, and what comes into play when you are  
 14:36 16 assessing punishment.  
 14:36 17 A. Well, I think that question is, you know,  
 14:36 18 getting to the point of what was it, you know, what type  
 14:36 19 of opportunities brought somebody to, you know, to this  
 14:36 20 potential decision that they made. Are there mitigating  
 14:36 21 circumstances that led them down this path? But I  
 14:36 22 thought that your colleague or your boss had a pretty  
 14:36 23 interesting -- actually I kind of rethought through this  
 14:36 24 and said, should somebody be -- should someone's --  
 14:37 25 should someone's upbringing, should that be a

14:37 1 consideration for how they've come to turn their life in  
 14:37 2 whatever direction they've turned out?  
 14:37 3 And so if it's a situation where somebody  
 14:37 4 killed another person, I'm not so sure it should be. So  
 14:37 5 I might rethink my answer to that question to become  
 14:37 6 more neutral to disagree.  
 14:37 7 Q. Okay. And what made you change your mind?  
 14:37 8 What about that made you think?  
 14:37 9 A. Well, I just thought about it more logically to  
 14:37 10 say, what really does make sense? I think the two  
 14:37 11 questions that were posed, one was, hey, do you know  
 14:37 12 anybody that, you know, grew up and was born into a  
 14:37 13 great family? And I don't know how you define that, but  
 14:37 14 a well-to-do family, let's say, that had all of the best  
 14:37 15 opportunities presented to them, and they turned out,  
 14:37 16 you know, to not succeed or to become criminals or  
 14:37 17 whatever. And the answer to that question is, yes.  
 14:37 18 Now, do I know of people who grew up with  
 14:38 19 less opportunity? You know, they were born into  
 14:38 20 difficult circumstances. Maybe a single mom, you know,  
 14:38 21 in the tough part of town or whatever in the ghetto or  
 14:38 22 the slums. And do I know anybody with that background  
 14:38 23 who became successful? And the answer to that question  
 14:38 24 was, "Yes, I do." And so, then it's, hey, is it  
 14:38 25 necessarily, you know, your background that creates your

14:38 1 future, or is it the person that creates the future?  
 14:38 2 And I think that that logic made a heck of a lot of  
 14:38 3 sense to me that said that it really is the person, and  
 14:38 4 you make the choices.

14:38 5 Q. So you would shift off that a little bit?

14:38 6 A. I think I would.

14:38 7 Q. And same with a drug user. Let's say you had  
 14:38 8 someone who had been drug dependent, or you heard they  
 14:38 9 had been using drugs for years and years and that kind  
 14:38 10 of led up ultimately to the crime you found him guilty  
 14:39 11 of. But now they are telling you, I don't do drugs  
 14:39 12 anymore, and I'm clean, and I'm not going to do them.  
 14:39 13 And if I get what I want out of this, I'm not going to  
 14:39 14 do it anymore. What do you think about that?

14:39 15 A. I'm not sure I'd give that a lot of  
 14:39 16 credibility. You know, given that, this is the event.  
 14:39 17 If this is the event that changed things, it's really  
 14:39 18 hard to say, hey, the epiphany, I'm at the point now  
 14:39 19 where this most recent event is now going to change my  
 14:39 20 life for the better going forward. It's just hard to  
 14:39 21 believe something like that. It can happen, though.

14:39 22 Q. But the credibility would be a little bit jaded  
 14:39 23 based on its timing?

14:39 24 A. Right. I think so. That's one of those things  
 14:39 25 where I would say the sum probability, but probably less

14:39 1 than 50 percent.

14:40 2 Q. When we were talking a little bit earlier  
 14:40 3 about, obviously most people don't want to die. And  
 14:40 4 they are going to present themselves in the best light  
 14:40 5 as possible. And that would include, I mean, would you  
 14:40 6 expect, necessarily, to see family members of a person  
 14:40 7 accused of a crime getting up and getting emotional  
 14:40 8 about what was going on or whether or not their child  
 14:40 9 was convicted or their brother was convicted? Would you  
 14:40 10 anticipate?

14:40 11 A. I wouldn't be surprised by that. I don't know.  
 14:40 12 I guess I would expect that.

14:40 13 Q. How would that affect you if you heard that  
 14:40 14 type of evidence?

14:40 15 A. Well, if it's just the evidence, if that's the  
 14:40 16 only evidence that, you know, that family members are  
 14:40 17 going to miss them. I don't know that that's going to  
 14:40 18 be compelling enough.

14:41 19 Q. Mr. Flaherty, going through your questionnaire,  
 14:41 20 you indicated you knew of a person in jail or prison,  
 14:41 21 Mr. Joseph DeLuka. Is that a family member or friend?

14:41 22 A. That's my -- that's my brother's -- that's my  
 14:41 23 brother's wife's uncle.

14:41 24 Q. Anything about that situation that you thought  
 14:41 25 was unfair, or he was treated poorly by the system?

14:41 1 A. You know, I really don't know much about it. I  
 14:41 2 know that shortly after he got married, his wife's uncle  
 14:41 3 went to prison for a year or two.

14:41 4 Q. And you don't question it, or you don't have  
 14:41 5 any qualms about what happened or any sense of right or  
 14:41 6 wrong as far as him going to jail or anything about  
 14:42 7 that?

14:42 8 A. Well, it was probably right.

14:42 9 Q. With regard to yourself, you indicated that  
 14:42 10 there was two incidences with yourself?

14:42 11 A. Uh-huh.

14:42 12 Q. Anything about those situations that would,  
 14:42 13 that you thought you were treated unfairly by the system  
 14:42 14 or particularly had a bad experience with either the law  
 14:42 15 enforcement?

14:42 16 A. No.

14:42 17 Q. Anyone involved with the State at all?

14:42 18 A. No.

14:42 19 Q. How recently was your brother's civil case?

14:42 20 A. Let me see, it started when he was a senior in  
 14:42 21 high school. He was a year younger than me. It was  
 14:43 22 1975, 1976, so it was quite some time ago. It dragged  
 14:43 23 through the system for quite some time. I would say  
 14:43 24 probably 10 years after that. So '85, probably 15, 16  
 14:43 25 years.

14:43 1 Q. Anything about that situation that -- I mean,  
 14:43 2 obviously that was civil. It didn't appear to involve  
 14:43 3 the police.

14:43 4 A. It was a fist fight between a couple of kids.  
 14:43 5 One kid got the better of the other, and the kid who  
 14:43 6 was, took a little bit of a beating had some dental work  
 14:43 7 he needed to have taken care of, and they ended up  
 14:43 8 splitting the bill. Only it was tough for my brother  
 14:43 9 because it happened -- I think it was settled ten years  
 14:43 10 after it happened originally. And, you know, he was a  
 14:43 11 kid when it happened. If it got settled right away, my  
 14:43 12 dad would have paid. Ten years later he had to pay with  
 14:43 13 interest, so... I guess that was a kind of something  
 14:43 14 off the system that moved a little bit more slowly than  
 14:44 15 my brother would have liked to.

14:44 16 Q. Financially anyway.

14:44 17 A. Yes.

14:44 18 Q. You had a situation where you were a victim?

14:44 19 A. Uh-huh.

14:44 20 Q. Robbed at knife point in 1982?

14:44 21 A. Right.

14:44 22 Q. Was that in Massachusetts or was that here?

14:44 23 A. Yeah, Massachusetts.

14:44 24 Q. Did they ever catch the person who did it?

14:44 25 A. Never.

14:44 1 Q. Was that a lack of law enforcement looking or  
 14:44 2 just a lack of evidence, or do you know why?  
 14:44 3 A. Couldn't tell you. It was in Boston, in  
 14:44 4 Roxbury. I don't know how familiar you are with Boston.  
 14:44 5 Q. I was born there. I didn't live there long.  
 14:44 6 A. Okay. It's one of the rougher areas of town.  
 14:44 7 One of the more crime-ridden areas. And so my crime  
 14:44 8 was, you know, although it was pretty important to me at  
 14:44 9 the time, I don't think it was at the top of anybody's  
 14:44 10 list. But I don't think it was easy to solve either.  
 14:44 11 Q. Did he just display the knife? Did he cut you  
 14:44 12 with a knife?  
 14:44 13 A. No. He just displayed it, yeah.  
 14:45 14 Q. And you also wrote that more recently your  
 14:45 15 brother's godson was murdered?  
 14:45 16 A. That was about five weeks ago.  
 14:45 17 Q. And where did that occur?  
 14:45 18 A. That occurred in Massachusetts. He was car  
 14:45 19 jacked and -- and -- and he was stabbed to death. Tied  
 14:45 20 to a tree and stabbed to death. Yeah, it would be my  
 14:45 21 brother's -- my sister-in-law's sister's son, 19 years  
 14:45 22 old. You may have heard of it. It was a -- it was a  
 14:45 23 multiple murder case up in New England, so...  
 14:45 24 Q. Okay. Was it the same area that you were in  
 14:45 25 when you were robbed at knifepoint, or a different area?

210

14:45 1 A. Well, I was in the city. This was actually  
 14:45 2 pretty --  
 14:45 3 Q. Separate?  
 14:45 4 A. Probably about 30 or 40 miles out. It was a  
 14:45 5 very suburban area, uh-huh.  
 14:45 6 Q. Anything about either one of those situations  
 14:45 7 where you were the victim or the more recent situation,  
 14:45 8 anything about those situations that would keep you from  
 14:45 9 being fair and impartial in this case?  
 14:46 10 A. I don't think so.  
 14:46 11 Q. Do you feel like you could keep those separate  
 14:46 12 when you are listening to the facts of this case in  
 14:46 13 making a determination of whether or not this  
 14:46 14 defendant's guilty?  
 14:46 15 A. Yes.  
 14:46 16 Q. They haven't caught the person that murdered  
 14:46 17 your --  
 14:46 18 A. They have.  
 14:46 19 Q. They have?  
 14:46 20 A. In fact, he confessed, so. Well, according to  
 14:46 21 the newspapers he confessed.  
 14:46 22 Q. You state on one of the very last pages: Is  
 14:46 23 there any reason that you don't want to serve as a  
 14:47 24 juror? You say the time commitment comes at a crucial  
 14:47 25 juncture this year for my job. Can you explain that to

14:47 1 me a little bit?  
 14:47 2 A. Yes. This is -- this is our annual operating  
 14:47 3 plan. And the time frame runs from just about now until  
 14:47 4 Thanksgiving. And it's, you know, it's usually just a  
 14:47 5 time of year when we establish our strategies and  
 14:47 6 financial plans for the next year. And my title is  
 14:47 7 director of finance, and so I'm usually pretty involved  
 14:47 8 in the process. You know, more from overseeing the  
 14:47 9 process than anything.  
 14:47 10 Q. And if you were, kind of how this works you are  
 14:47 11 here today, obviously, and if you are selected, you  
 14:47 12 actually go back to your job and live your normal life  
 14:47 13 until we are ready to start the jury and until we pick  
 14:47 14 the jurors. It could be up to two, up to three weeks of  
 14:47 15 trial.  
 14:47 16 If you are selected, would that be such an  
 14:47 17 issue weighing so heavily on your mind that you would  
 14:47 18 get frustrated with the trial and you might take it out  
 14:48 19 either on the State or on the defense if you were  
 14:48 20 selected or called to be here?  
 14:48 21 A. No.  
 14:48 22 Q. You feel like you can still listen to the  
 14:48 23 evidence and be fair to both sides?  
 14:48 24 A. Yes.  
 14:48 25 Q. And you probably state what most people

212

14:48 1 obviously don't want to be here, and everyone would  
 14:48 2 probably rather be doing their own job and earning a  
 14:48 3 living and not get behind?  
 14:48 4 A. Right. Well, the good news is there's an end  
 14:48 5 to the process. So whether I'm participating or not,  
 14:48 6 it's going to end at Thanksgiving. That's the annual  
 14:48 7 operating plan.  
 14:48 8 MS. FALCO: Thank you, Mr. Flaherty. I  
 14:48 9 pass this juror.  
 14:48 10 THE COURT: Mr. Goeller?  
 14:48 11 VOIR DIRE EXAMINATION  
 14:48 12 BY MR. GOELLER:  
 14:48 13 Q. Hi, Mr. Flaherty.  
 14:48 14 A. Hello.  
 14:48 15 Q. It's William Logan Flaherty?  
 14:48 16 A. That's right.  
 14:48 17 Q. That's about as Irish as it gets.  
 14:48 18 A. It's pretty Irish.  
 14:49 19 Q. I've got mostly Irish in me, too. Although, my  
 14:49 20 last name doesn't indicate it. Do you know any folks in  
 14:49 21 New York that run a bar called Flaherty's?  
 14:49 22 A. I don't.  
 14:49 23 Q. Did you watch CNN the day Desert Storm started?  
 14:49 24 A. I don't recall.  
 14:49 25 Q. Way back when?

14:49 1 A. I don't remember.  
 14:49 2 Q. There was a famous shot of an A6 going off with  
 14:49 3 a couple 500 pounders. And one of the reservists  
 14:49 4 actually worked at this bar called "Flaherty's." And  
 14:49 5 they put "From Flaherty's to Saddam." It was -- it was a  
 14:49 6 pretty big deal.  
 14:49 7 A. Well, I can tell you that I have a few family  
 14:49 8 members that wish that they had a bar named Flaherty's,  
 14:49 9 but fortunately, we haven't gone that way.  
 14:49 10 Q. Well, if you are ever in New York, I'll tell  
 14:49 11 you where to go.  
 14:49 12 A. Okay.  
 14:49 13 Q. All right. On your juror questionnaire, I  
 14:49 14 think you were given a choice. Rate from 1 to 9 how  
 14:49 15 strongly you feel about the death penalty or capital  
 14:49 16 punishment. Do you recall what you circled?  
 14:50 17 A. I would guess 6 or 7. I might have said 9,  
 14:50 18 though.  
 14:50 19 Q. Yeah, I think you did say 9. Yeah, you are a  
 14:50 20 9. Tell me why, and in all -- this is tough stuff for  
 14:50 21 anybody involved.  
 14:50 22 A. Right.  
 14:50 23 Q. It's -- I try to keep it as light as I possibly  
 14:50 24 can.  
 14:50 25 A. Yep.

14:50 1 Q. But you know how this is.  
 14:50 2 A. Sure.  
 14:50 3 Q. I got to get down to brass tacks and be real  
 14:50 4 serious about it. Tell me -- and I preface all my  
 14:50 5 questions with -- if you recall what I said a week ago,  
 14:50 6 there are no right or wrong answers.  
 14:50 7 A. Uh-huh.  
 14:50 8 Q. I have a very limited amount of time to try to  
 14:50 9 get to know you well enough to try to protect that kid.  
 14:50 10 A. Sure.  
 14:50 11 Q. Or give him a fair shot.  
 14:50 12 A. Yep.  
 14:50 13 Q. And I guess they are really one and the same,  
 14:50 14 protect and give him a fair shot.  
 14:50 15 A. Right.  
 14:50 16 Q. As in any case. Whereas, Mr. Schultz said they  
 14:50 17 want to strap him to a gurney and give him the same  
 14:50 18 chemical a vet puts down a dog with. That's how we do  
 14:51 19 it in Texas. Tell me what went into your thought  
 14:51 20 process when you put 9 down.  
 14:51 21 A. Well, I think it was more a matter of, you  
 14:51 22 know, do I believe that it's -- that it's not  
 14:51 23 inappropriate? That's probably another way of putting  
 14:51 24 it. And how strongly do I believe that, as opposed to,  
 14:51 25 you know, did I think that burglaries, common burglars

14:51 1 should be put to death? It's more, I thought through  
 14:51 2 it, and I don't think it's an appropriate sentence. And  
 14:51 3 I feel strongly that it's not, you know, that punishment  
 14:51 4 that we have, that it's not inappropriate.  
 14:51 5 Q. Capital punishment?  
 14:51 6 A. Right. Because I'm from Massachusetts, and  
 14:51 7 they don't have the death penalty in Massachusetts.  
 14:52 8 Q. Right. Or do they have it, but they just --  
 14:52 9 the governor's vowed never to use it?  
 14:52 10 A. No. I think they have it. And the only reason  
 14:52 11 why I know this is because of the case that I just  
 14:52 12 mentioned where my sister-in-law's nephew was murdered.  
 14:52 13 They said if they tried him on State charges, then they  
 14:52 14 didn't have capital punishment, and so they were  
 14:52 15 actually considering --  
 14:52 16 Q. Federal?  
 14:52 17 A. Under some federal law.  
 14:52 18 Q. Federal type of suit?  
 14:52 19 A. Right, uh-huh.  
 14:52 20 Q. You go to Prince of Peace?  
 14:52 21 A. Yep.  
 14:52 22 Q. Okay. Who is the priest out there?  
 14:52 23 A. Father Jim.  
 14:52 24 Q. Jim Collin, Father Ballint?  
 14:52 25 A. I forget his last name.

14:52 1 Q. Retired Air Force guy?  
 14:52 2 A. Yep.  
 14:52 3 Q. I think you stated, either in response to  
 14:52 4 Ms. Falco's questions or in your questionnaire,  
 14:52 5 there's -- apparently you do not believe in the Church's  
 14:53 6 position on capital punishment?  
 14:53 7 A. Right.  
 14:53 8 Q. Can you tell me why? And then just take as  
 14:53 9 much time as you need. I'd just be curious.  
 14:53 10 A. Yeah. There's a lot of things that the Church  
 14:53 11 preaches that I don't necessarily follow. You know, as  
 14:53 12 an example, I'm divorced. And that's not acceptable in  
 14:53 13 a Catholic Church, yet I'm still a member of the Church.  
 14:53 14 And, you know, provided I can still worship in the way  
 14:53 15 that I choose, then, you know, it doesn't mean,  
 14:53 16 necessarily I have to follow 100 percent of what, you  
 14:53 17 know, what the Church's rules are.  
 14:53 18 Q. Right.  
 14:53 19 A. And I find that to be reasonable and  
 14:53 20 acceptable. I'm not sure I answered your question. Did  
 14:53 21 I?  
 14:53 22 Q. No, you didn't.  
 14:53 23 A. Well, ask it again.  
 14:53 24 Q. Yeah. I've never known really what the  
 14:53 25 Church's position is on divorce and remarriage. If you

14:54 1 divorce a protestant and remarry a Catholic --

14:54 2 A. Well, divorce is acceptable. It's remarriage  
14:54 3 that's not.

14:54 4 Q. Yeah. But I think there's even ways to  
14:54 5 reconcile that. I'm not quite sure how.

14:54 6 A. Well, you can have an annulment, which I don't  
14:54 7 have.

14:54 8 Q. But I think -- I think there are a lot of  
14:54 9 Catholics who have probably divorced, remarried, and  
14:54 10 never missed a beat. I don't think any priest or any  
14:54 11 Bishops care one way or another, as far as that goes.  
14:54 12 But on capital punishment, have you thought about why  
14:54 13 you disagreed with the Church's position?

14:54 14 A. No.

14:54 15 Q. Could you -- could you think a minute for me?

14:54 16 A. Well, I think it's more a matter of I just made  
14:54 17 up my own mind.

14:54 18 Q. Okay. Why do you -- and I guess that's what  
14:54 19 I'm trying to get at.

14:54 20 A. Yeah.

14:54 21 Q. I know I'm asking questions -- I'm answering  
14:55 22 questions and asking questions with more questions.

14:55 23 A. Yeah, yep.

14:55 24 Q. What's the bottom line with Mr. Flaherty as far  
14:55 25 as why he believes capital punishment is appropriate in

14:55 1 certain cases?

14:55 2 A. I think it's a matter of just, you know, being  
14:55 3 aware of some severe heinous crimes in which, you know,  
14:55 4 it would just seem to me as though life in prison, it  
14:55 5 just isn't necessarily the proper and just punishment,  
14:55 6 you know, provided that was an option.

14:55 7 Q. Yeah, yeah. Do you know what -- you probably  
14:55 8 don't. Only you'd have to be a lawyer and be in this  
14:55 9 business to know. In Texas, life confinement for  
14:56 10 capital murder -- I almost said *capital moida* -- capital  
14:56 11 murder is a minimum 40 calendar years in the  
14:56 12 penitentiary. No parole possibility within that period.  
14:56 13 So somebody that's 27, 28, 29, they are going to be 70  
14:56 14 before they could ever hope to get out. Death is --  
14:56 15 death is death. I mean, we know how that works.

14:56 16 A lot of people -- and we've had -- we've  
14:56 17 had people tell us part of the reason I am a proponent  
14:56 18 of capital punishment is because people are paroling out  
14:56 19 and getting an opportunity to kill again, or I never  
14:56 20 want it. We had a woman just talk about this George  
14:56 21 Rivas thing.

14:56 22 A. Uh-huh.

14:56 23 Q. He was in the penitentiary for something other  
14:56 24 than a homicide. I don't know what he's in there for.  
14:57 25 I don't think he's in there for murder. And she was a

14:57 1 proponent for -- she thought he should have been killed  
14:57 2 a long time ago, and then we wouldn't be where we are  
14:57 3 now. So there are people out there that would advocate  
14:57 4 for capital punishment in nonhomicide cases, maybe  
14:57 5 burglary or rape or robbery or who knows.

14:57 6 Have you -- are you -- are you a proponent  
14:57 7 of capital punishment because of parole or only 40  
14:57 8 years? Or is it --

14:57 9 A. You mean as the exclusive reason?

14:57 10 Q. Yeah. What's your bottom line? Is it because  
14:57 11 some crimes are so heinous you think that's society's  
14:57 12 answer, or are there other things that factor into that  
14:57 13 or factored into your decision to be a proponent of it?

14:58 14 A. I think it's -- I think it's a couple of  
14:58 15 things. I think first is you do consider the crime and  
14:58 16 you consider the, you know, the likelihood that this  
14:58 17 could repeat. So it's punishment certainly. Just, I  
14:58 18 guess, protection second. I mean, how often have you  
14:58 19 seen in the news where someone was released from prison  
14:58 20 and they, you know, on bail or whatever and they go out  
14:58 21 and murder somebody?

14:58 22 Q. Yeah. It happens probably more than anybody  
14:58 23 would care to admit.

14:58 24 A. It doesn't happen with everybody. It probably  
14:58 25 happens in a relatively small percentage of the cases,

14:58 1 but it happens from time to time.

14:58 2 Q. Are you comfortable knowing that if somebody  
14:58 3 were given a life sentence for 40 years that at least  
14:58 4 their -- their potential criminal behavior to free  
14:59 5 society is probably going to end?

14:59 6 A. I would say -- for 40 years?

14:59 7 Q. Yeah.

14:59 8 A. I would say the probability is high, but not  
14:59 9 entirely.

14:59 10 Q. Right. You mean, assuming, let's say somebody  
14:59 11 paroles when they are 70.

14:59 12 A. Right.

14:59 13 Q. Let's say a 28-year-old or call it 30 years  
14:59 14 old. If they receive life on capital murder, they could  
14:59 15 not -- they would become parole eligible when they are  
14:59 16 70. No guarantee they would get out.

14:59 17 A. Right.

14:59 18 Q. Either the governor or the Board of Pardons and  
14:59 19 Paroles can make that decision. But do you think 70-  
14:59 20 year-olds are much of a risk to society?

14:59 21 A. I think they are less of a risk than 30-year-  
14:59 22 olds.

14:59 23 Q. Right. Do you think that's generally true?  
14:59 24 That, as we age our chances of committing violent crime  
15:00 25 probably diminishes proportionately with each year we



15:00 1 put on?

15:00 2 A. Well, the only thing I can't really answer

15:00 3 there -- I mean, I can only speak from my own personal

15:00 4 experience. And at this point, you know, I haven't

15:00 5 personally committed any violent crimes. But, you know,

15:00 6 my behavior -- my personal behavior is much more subdued

15:00 7 today than it was 20, 25 years ago.

15:00 8 Q. And when -- you'd probably agree when we read

15:00 9 the newspaper of murders, carjackings, liquor store

15:00 10 holdups, all sorts of bad things that go on out there,

15:00 11 we're generally dealing with people between 14 and 28,

15:00 12 it seems. That's what we're reading in the newspaper

15:00 13 anyhow. We don't hear a whole lot of 65 and 70-year-old

15:00 14 men doing carjackings and -- do you agree? It's pretty

15:00 15 much a younger man's?

15:00 16 A. Well, that's what you see. That's right.

15:01 17 Q. Why do you think that is? For the same reasons

15:01 18 that, just personally you -- you are not a criminal.

15:01 19 But you've mellowed over the years, as we all have.

15:01 20 A. Uh-huh.

15:01 21 Q. That word probability on that first special

15:01 22 issue, Mr. Flaherty?

15:01 23 A. Yeah.

15:01 24 Q. I know you do have a finance and therefore --

15:01 25 you have a finance background?

15:01 1 A. Yeah.

15:01 2 Q. Yeah. Naturally, you are mathematically --

15:01 3 probably the way you look at things a little bit by

15:01 4 numbers because that's what you do for a living. That's

15:01 5 how you make your living.

15:01 6 A. Right.

15:01 7 Q. What do you think that term probability means,

15:01 8 say percentage? Or did you already answer that

15:01 9 question? Did you tell Ms. Falco it was more than 50

15:02 10 percent in that context?

15:02 11 A. Yeah. I would say, yeah. Because I think what

15:02 12 she defined it was, I think she laid it out pretty well

15:02 13 to say that people look at this differently. People who

15:02 14 are mathematically inclined would probably immediately

15:02 15 go the route I went that said that, okay, probability is

15:02 16 somewhere between 0 and 100 or 0 and 1. And other folks

15:02 17 might establish it as. Kind of, you know just the

15:02 18 likelihood that, you know, it will happen or it won't

15:02 19 happen.

15:02 20 Q. Would you agree with me that that question --

15:02 21 A. That's not exactly what she said, but that's as

15:02 22 close as I can remember.

15:02 23 Q. That's good enough. Would you agree with me

15:02 24 that that question really asks you to look to the

15:02 25 future? When we say, would commit? Probability, would

15:02 1 commit, continuing threat? Is that a look into the

15:02 2 future?

15:03 3 A. I think it is, yep.

15:03 4 Q. Okay. When we get to that question, you've

15:03 5 already found that somebody intentionally killed in this

15:03 6 case either a burglary or robbery or a double homicide,

15:03 7 killing two people?

15:03 8 A. Right.

15:03 9 Q. And we know that the options at that point for

15:03 10 a jury -- well, whether they are for a jury or not, the

15:03 11 only two things that could happen to a person convicted

15:03 12 of capital murder is life or death. Right? We know

15:03 13 life means at least 40 calendar years in the

15:03 14 penitentiary. With that in mind, what do you think the

15:03 15 legislature was thinking when they used this word

15:03 16 society? Do you think they are probably more thinking

15:03 17 of prison?

15:03 18 A. Do I think they were thinking more prison?

15:03 19 Q. Yeah.

15:03 20 A. If I was going to guess with my probability, is

15:03 21 I would think it would be external society as a whole.

15:03 22 Q. Knowing --

15:03 23 A. That's what I would guess that they were

15:04 24 thinking.

15:04 25 Q. But we know they've already put a scheme

15:04 1 together where to get to this question, we know it's a

15:04 2 minimum 40 calendar years in the penitentiary.

15:04 3 A. Uh-huh.

15:04 4 Q. By default.

15:04 5 A. Right.

15:04 6 Q. Because if this -- if the jury were not able to

15:04 7 answer that question unanimously or --

15:04 8 A. Right.

15:04 9 Q. -- unanimously answered it, well, at least 10

15:04 10 out of 12 jurors -- by the way, we're talking 40 years

15:04 11 life if that question is not answered yes, unanimously.

15:04 12 All right? So I got to believe, or would you agree with

15:04 13 me that society's really got to be in prison, is another

15:04 14 way to look at it?

15:04 15 A. I would say that that's another way to look at

15:04 16 it.

15:04 17 Q. Okay. Which way do you look at it? Which

15:04 18 makes more sense to you? Society -- I think Ms. Falco

15:04 19 used the example of guy driving a school bus, a guy

15:04 20 driving -- somebody going into an ice cream store, but

15:05 21 if we know before you get to that question that it's 40

15:05 22 calendar years coming, minimum --

15:05 23 A. Uh-huh.

15:05 24 Q. -- what's society really mean? What makes more

15:05 25 sense to you, prison, or running around Park Boulevard

15:05 1 in Plano?

15:05 2 A. I don't know. I guess, let me ask you a  
15:05 3 question: Did -- you know, whoever it is that created  
15:05 4 this particular law -- I don't know who it is.

15:05 5 Q. Legislature in Austin.

15:05 6 A. Legislature in Austin. Okay. Did they have  
15:05 7 the answer to that question first before --

15:05 8 Q. Yes.

15:05 9 A. -- they solved this? Okay. So they knew that  
15:05 10 this meant minimum 40 years?

15:05 11 Q. Yeah.

15:05 12 A. I didn't realize this would be the quiz for  
15:05 13 today, so I hadn't really thought through this that  
15:05 14 much. Let me think about this.

15:05 15 Q. Do you see, there are a couple different  
15:05 16 points. I don't have to --

15:05 17 A. Well, the question would somebody be a lesser  
15:06 18 threat to society outside of prison than inside prison?

15:06 19 Q. Yeah.

15:06 20 A. Is that what you are asking?

15:06 21 Q. That was going to kind of be my next series of  
15:06 22 questions.

15:06 23 A. So I'm getting ahead of you. I'm sorry about  
15:06 24 that. My boss just wants to strangle me when I do that.

15:06 25 Q. Trust me when I tell you the Judge is glad that

15:06 1 you are thinking ahead, too. We have a limited amount  
15:06 2 of time we can spend with you. But in any event, you  
15:06 3 can see where -- you can see my point of view, if I'm  
15:06 4 kind of advocating that society is prison.

15:06 5 Do you think prisons generally do a good  
15:06 6 job of controlling people?

15:06 7 A. You know, I really don't know. And I say that  
15:06 8 because you have prison riots and et cetera. I would  
15:06 9 say generally though, they probably do. I've seen TV  
15:06 10 shows that talk about the prison system and the progress  
15:06 11 that they've made over time, but people do get killed in  
15:07 12 prison.

15:07 13 Q. Yeah, they do. That second special issue that  
15:07 14 we're talking about, there was some discussion back on  
15:07 15 Tuesday, and there was some discussion today about, I  
15:07 16 suppose the quality of the victim of the deceased,  
15:07 17 something of that nature. Do you see a difference?

15:07 18 Let me give you a couple different  
15:07 19 situations. Let's say a deceased is a very significant  
15:07 20 drug dealer and actually ended up getting the person --  
15:07 21 an accused or the defendant, not in this case, but  
15:07 22 consider a hypothetical case, actually got that  
15:07 23 defendant involved in narcotics traffic and got him in  
15:08 24 the business. Got him hooked, so to speak, and then  
15:08 25 things go wrong one day, and the master or the teacher,

15:08 1 and so paying the ultimate price for the lessons he  
15:08 2 passed on to his student, so to speak.

15:08 3 Doesn't make life any -- I guess we don't  
15:08 4 put a price tag on life. I mean, life is sacred.  
15:08 5 Although, the reality of it is every single day all of  
15:08 6 us, in one form or fashion, do place a price tag or the  
15:08 7 value, try to associate value with the human life.  
15:08 8 Somebody like yourself, you have children, right?

15:08 9 A. Uh-huh.

15:08 10 Q. You are a professional. If something God  
15:08 11 forbid were to happen to you and a wrongful death suit  
15:08 12 was brought against somebody, a drunk driver or somebody  
15:08 13 that was negligent in bringing about your early demise,  
15:09 14 a jury probably down the road or an insurance company  
15:09 15 and some lawyers are going to try to figure out how to  
15:09 16 compensate your children. Okay?

15:09 17 A drug dealer, maybe somebody that doesn't  
15:09 18 have children. Somebody that's really been a drain on  
15:09 19 society for the most part, a judge or a jury will  
15:09 20 probably put a different price tag on how to compensate  
15:09 21 his relatives versus you. Do you see what I'm saying?  
15:09 22 Do you know what I'm talking about?

15:09 23 A. I think I follow you, but I don't know if I'm  
15:09 24 really getting the point. I think I'm following your  
15:09 25 thought process, so...

15:09 1 Q. Do you think people, based on what they do in  
15:09 2 this life and what they are all about give off to the  
15:10 3 rest of us a sense of their worth and quality? Let me  
15:10 4 ask it this way: Who is the person -- I think you put  
15:10 5 in your questionnaire some people you admire the most.  
15:10 6 All right?

15:10 7 A. I respect.

15:10 8 Q. I'm sorry?

15:10 9 A. Respect. The word was respect.

15:10 10 Q. Respect. Why do you respect those people?

15:10 11 A. Well, I didn't have a lot of time to pick them  
15:10 12 out, but I think I respect them probably because they --  
15:10 13 they perform extraordinarily, I think, in difficult  
15:10 14 situations and/or they are successful leaders of folks.  
15:10 15 And over time have made very good decisions. I think  
15:10 16 the two men were Bill Gates and Jack Welch. Both very  
15:10 17 successful businessmen, probably of the two most  
15:11 18 successful U.S. corporations. And then I think one of  
15:11 19 the women was Hillary Clinton.

15:11 20 Q. Right.

15:11 21 A. And I think Hillary has performed very  
15:11 22 gracefully under an extreme amount of -- just difficult  
15:11 23 circumstance.

15:11 24 Q. And the other one, was that Kathryn?

15:11 25 A. Kathryn Graham.

15:11 1 Q. Of *The Washington Post*?

15:11 2 A. Yep.

15:11 3 Q. Okay. Mike Wallace. I didn't care for him

15:11 4 much. Is that the *60 Minutes*?

15:11 5 A. Yeah.

15:11 6 Q. Tell me why.

15:11 7 A. Well, I'm not a -- I'm not a big fan of the

15:11 8 media. And, you know, I think generally in the media, I

15:11 9 think the media -- he seems, particularly he seems to be

15:11 10 a media person who focuses on himself as opposed to, you

15:11 11 know, whatever it is that he's following. He's more

15:11 12 interested in being a celebrity. Plus, I didn't have a

15:12 13 lot of time to really think about it.

15:12 14 Q. In your questionnaire in regards to giving an

15:12 15 argument against the death penalty, I believe you wrote:

15:12 16 No one should stand in the position to judge who should

15:12 17 die since there are other sentences that ensure the

15:12 18 protection of the personal physical public -- general

15:12 19 public -- I'm sorry, general public -- than even the

15:12 20 severe -- I couldn't read the rest of your writing.

15:12 21 These have been photocopied so many times.

15:12 22 But do you recall making that statement?

15:12 23 A. Yes.

15:12 24 Q. Tell me what you mean by that.

15:12 25 A. I think I just mean generally that no one

15:12 1 should be standing in a position to judge whether or not

15:12 2 somebody should live or die if there is, you know, equal

15:13 3 protection, just full protection that all of society

15:13 4 will be fully protected from this individual.

15:13 5 So, it would be, you know, as an example,

15:13 6 you know, the argument -- and, you know, granted it's

15:13 7 not my argument, but --

15:13 8 Q. Right.

15:13 9 A. But the argument would be that if -- if the

15:13 10 convicted capital murderer could, you know, be in

15:13 11 solitary confinement for the rest of their natural life

15:13 12 without any access to society.

15:13 13 Q. How do you feel about that? I mean, do you

15:13 14 think that's about the only good option to the death

15:13 15 penalty? Solitary for natural life?

15:13 16 A. I would say if -- if there was no death penalty

15:13 17 and that was the other, and I think that I could live

15:13 18 with that as an alternative, uh-huh.

15:14 19 Q. Okay. And when -- and I thank you in advance

15:14 20 for filling out this questionnaire because it saves us a

15:14 21 lot of time. As a lawyer, when I -- when I go through

15:14 22 this questionnaire, and all your answers are consistent,

15:14 23 they are all -- they are logical. They make sense.

15:14 24 Obviously, you are different than a lot of

15:14 25 people that we see, because you have an education -- you

15:14 1 have an education, and you are a very articulate, so it

15:14 2 makes it easy on us. I keep coming back to that second

15:14 3 page because I -- the way I read that, and I may be

15:14 4 reading between the lines.

15:14 5 A. Uh-huh.

15:14 6 Q. Those two questions are the most important to

15:14 7 me. Your best argument for it and your best argument

15:14 8 against it. Your argument for it is it's the ultimate

15:15 9 punishment for the ultimate crime.

15:15 10 A. Uh-huh.

15:15 11 Q. That's self-explanatory. If murder or capital

15:15 12 murder is the ultimate crime, well, capital punishment

15:15 13 is the ultimate punishment.

15:15 14 A. Yeah.

15:15 15 Q. Almost eye for an eye?

15:15 16 A. Yep.

15:15 17 Q. Your second answer to opposition to the death

15:15 18 penalty, when I read that and that's why I asked you

15:15 19 those questions beforehand, I -- I get the feeling, and

15:15 20 I hope I'm right about this. That to you, if you had

15:15 21 found somebody guilty of capital murder, that you are --

15:16 22 knowing that we don't have natural life solitary?

15:16 23 A. Uh-huh.

15:16 24 Q. That the death penalty is going to be your

15:16 25 vote, if you found somebody that's -- you've already

15:16 1 found that they've intentionally --

15:16 2 A. Right.

15:16 3 Q. Let's say in this case killed two people?

15:16 4 A. Uh-huh.

15:16 5 Q. Or burglary or robbery, in the course of that?

15:16 6 A. Yep.

15:16 7 Q. And nobody is going to play games here. The

15:16 8 State wouldn't have indicted a double homicide if they

15:16 9 didn't have two deceased. I'm not allowed to talk about

15:16 10 the facts, but Ms. Falco's not going to jump up and say

15:16 11 that's not true because it is true. Two people are

15:16 12 deceased.

15:16 13 How they got that way, I guess that's why

15:16 14 we're going to have a trial. But I guess the bottom

15:16 15 line for me is whether you, from our standpoint, are

15:16 16 qualified or should sit on this jury.

15:17 17 A. Right.

15:17 18 Q. I know you are going to appreciate me asking

15:17 19 this.

15:17 20 A. Sure.

15:17 21 Q. Knowing what you know about the law and the

15:17 22 prison system now, would it be fair to say that we're

15:17 23 really not going to get a fair consideration of that

15:17 24 question from my client's point of view?

15:17 25 A. From me?

15:17 1 Q. Right.  
 15:17 2 A. No. I don't think that's fair to say that at  
 15:17 3 all.  
 15:17 4 Q. Tell me why.  
 15:17 5 A. Because I think I'm -- not to -- not to talk  
 15:17 6 about my own moral character, but I think I'm a pretty  
 15:17 7 fair person.  
 15:17 8 Q. And I'll tell you that everybody that comes in  
 15:17 9 this courtroom tells us they want to be fair. I mean,  
 15:17 10 it's not natural. It's like when a judge qualifies a  
 15:17 11 jury panel, you have to be of sound mind and good moral  
 15:17 12 character.  
 15:17 13 A. Yep.  
 15:17 14 Q. I don't know if Judge Sandoval has ever had a  
 15:17 15 group of people that stood up and said, whoa, not me.  
 15:17 16 A. I'm sure, yeah.  
 15:17 17 Q. But jury selection in a capital case, if I --  
 15:18 18 you know, if Ms. Falco would have asked one question in  
 15:18 19 the beginning saying, here's the law on capital  
 15:18 20 punishment and here are the special issues, and could  
 15:18 21 you be fair?  
 15:18 22 And then she passes you to me, and I say,  
 15:18 23 are you sure you could be fair? And we did that with  
 15:18 24 200 people, and we'd get 200 people saying yes, yes. So  
 15:18 25 fair doesn't figure into it for me personally.

15:18 1 A. Uh-huh.  
 15:18 2 Q. Because everyone wants to be fair, can be fair.  
 15:18 3 The bottom line here is I'm trying to reconcile what I  
 15:18 4 see as a conflict for me that, other than, if we're not  
 15:18 5 going to have capital punishment or a death sentence in  
 15:18 6 a case, and we don't have natural life solitary --  
 15:18 7 A. Uh-huh.  
 15:18 8 Q. -- how am I going to get a fair shot out of you  
 15:18 9 on that second special issue, or the first special  
 15:18 10 issue, for that matter?  
 15:18 11 A. What was the first one again?  
 15:18 12 Q. A future dangerousness, probability of.  
 15:19 13 A. Okay, yeah. Well, let me answer this first  
 15:19 14 one, and then if you want me to go back to the second  
 15:19 15 one.  
 15:19 16 Q. You understand where I'm coming from?  
 15:19 17 A. Yeah. I understand completely.  
 15:19 18 Q. I tell people this -- before you answer that.  
 15:19 19 If -- if somebody were sitting in this chair, if it was  
 15:19 20 your son or daughter or loved one, somebody you loved  
 15:19 21 very much, you would want a lawyer wanting to know a  
 15:19 22 bottom line.  
 15:19 23 A. Absolutely. Right. Yeah, I think that, you  
 15:19 24 know, I think defining this, albeit somewhat  
 15:19 25 ambiguously, I think that's one of the points that both

15:19 1 sides have made. This is somewhat of an ambiguous  
 15:19 2 point. Can you take that level of ambiguity and, you  
 15:19 3 know, apply it to this particular rule? And how would  
 15:20 4 you -- how would you come to that conclusion? And how  
 15:20 5 would you come to your decision?  
 15:20 6 And I think I'd probably just take a  
 15:20 7 systemic approach that says, you know, what does this  
 15:20 8 mean and then seeing what the mitigating circumstances  
 15:20 9 are, you know. What are they? Because although, you  
 15:20 10 know, Ms. Falco said earlier that this is not  
 15:20 11 necessarily, you know, up to anybody to present those  
 15:20 12 mitigating circumstances. My sense is that there will  
 15:20 13 be a presentation of those.  
 15:20 14 Q. Yeah.  
 15:20 15 A. And if forced to, I could make a judgment  
 15:20 16 without it. However, I would just, you know, I would do  
 15:20 17 the best in my own capability to evaluate that  
 15:20 18 mitigating set of circumstances that are presented.  
 15:20 19 It's almost -- you know, there are folks in different  
 15:20 20 lines of work. And trust me on this, this -- I answered  
 15:20 21 that question truthfully when you said, did I really  
 15:20 22 want to sit on this? And the answer is "no."  
 15:21 23 Q. Who would?  
 15:21 24 A. Right.  
 15:21 25 Q. I mean, there are people that have actually

15:21 1 circled "yes," and I've got to really wonder about them.  
 15:21 2 But --  
 15:21 3 A. You know, and I deal in ambiguity everyday. So  
 15:21 4 just in terms of how effectively do I do it? Well, you  
 15:21 5 know, usually I think just following a certain  
 15:21 6 framework. We've been pretty successful, but --  
 15:21 7 Q. That -- that second special issue is, you know,  
 15:21 8 if you read it, it's a final look back. It's a way for  
 15:21 9 the jury to make sure a life sentence is carried out if  
 15:21 10 that's what they want.  
 15:21 11 A. Uh-huh.  
 15:21 12 Q. As Ms. Falco told you -- and I will tell you  
 15:21 13 the same -- there's no burden of proof. Anything could  
 15:21 14 be mitigating, everything could be mitigating. A juror  
 15:21 15 could think nothing is mitigating. It's a free for all  
 15:21 16 of a question.  
 15:21 17 A. Right.  
 15:21 18 Q. Some people would say the fact that the  
 15:21 19 deceased was a dope dealer, a deceased in a hypothetical  
 15:22 20 case was a dope dealer, that, you know, says all of the  
 15:22 21 evidence, including circumstances of the offense. A lot  
 15:22 22 of times a jury wants to know, I think, why did this  
 15:22 23 killing take place? You know, the typical liquor store  
 15:22 24 job. A guy goes in, he just wants money or liquor. You  
 15:22 25 know? Kills the clerk. Drug deal gone bad.

15:22 1 So I think the circumstances of the  
 15:22 2 offense, that may take into account what was the  
 15:22 3 deceased all about? Good guy, bad guy? Hard working  
 15:22 4 guy working a second shift at 7-Eleven after his regular  
 15:22 5 40-hour-week job because his wife's going to have a  
 15:22 6 baby, and he gets murdered.

15:22 7 Some jurors may say, that's a really  
 15:22 8 sympathetic victim. Versus a dope dealer who deals dope  
 15:22 9 and gets people hooked on dope. Maybe people wouldn't  
 15:23 10 have so much sympathy. That's one way to look at it:  
 15:23 11 youth, age. Was a person cold and calculating? Timothy  
 15:23 12 McVeigh: Year of planning in advance, renting Ryder  
 15:23 13 trucks, getting 7,000 pounds of fertilizer and ammonia  
 15:23 14 to put in it, and detonation and timing devices, and  
 15:23 15 casing a joint, and knowing there's a day care in that  
 15:23 16 federal building. You know, all that kind of thing.

15:23 17 A. Right.

15:23 18 Q. That long-term premeditation versus maybe a  
 15:23 19 spur of the moment. All those things can maybe figure  
 15:23 20 in.

15:23 21 A. Yep.

15:23 22 Q. And I -- I believe you when you say you could  
 15:23 23 consider all that and you could make a call on that.  
 15:23 24 And I also hear you saying that you would like somebody  
 15:23 25 to bring me some evidence. And I, you know, I think you

15:23 1 will. I can't say what will be said because I don't  
 15:23 2 know what they are going to do, and they don't know what  
 15:23 3 I'm going to do. I haven't seen a capital case yet  
 15:23 4 where everybody just sat down at the punishment phase  
 15:24 5 and said, the jurors are going to figure it out. That's  
 15:24 6 not going to happen. I think you'll get evidence.

15:24 7 But, even though you can answer, and you  
 15:24 8 stated you can answer that question. I'm trying to  
 15:24 9 reconcile how you would answer that with your -- your  
 15:24 10 previous comment that you are really disposed --  
 15:24 11 predisposed to grant the death penalty now that you know  
 15:24 12 there is no natural life solitary confinement. You see  
 15:24 13 the struggle I'm having?

15:24 14 A. Yeah, but I don't know that that's what I said.  
 15:24 15 I think you said, you know, in what circumstance do you  
 15:24 16 think there should be no death penalty? That's how I  
 15:24 17 read that. Your argument against not having one at all.

15:24 18 Q. Okay.

15:24 19 A. Sorry. I probably didn't make myself clear.

15:24 20 Q. No. And I may not have heard you right. It's  
 15:24 21 getting on. So I don't have a worry then?

15:24 22 A. I really don't know.

15:24 23 Q. Let me ask you this: If you were -- if you  
 15:25 24 were sitting where I am, would you want you on this  
 15:25 25 jury?

15:25 1 A. Well, that depends on what you are looking for  
 15:25 2 in a juror.

15:25 3 Q. Explain. Tell me.

15:25 4 A. Well, I think you want somebody who is going to  
 15:25 5 be on the jury that's going to evaluate, you know, what  
 15:25 6 they understand to be the facts.

15:25 7 Q. Okay.

15:25 8 A. But then also, you know, have the opportunity  
 15:25 9 to listen to, during deliberations, to what the other  
 15:25 10 jurors might have picked out of the facts that you  
 15:25 11 haven't yourself. It's part of my experience is, you  
 15:25 12 know, I typically weigh pretty heavily on my own point  
 15:25 13 of view. And I tend to discard more folks who have a  
 15:25 14 similar point of view to me because I've already gone  
 15:25 15 through probably that same thought process. And I tend  
 15:26 16 to focus on people who have a different point of view  
 15:26 17 than me, and really think hard about, you know, why is  
 15:26 18 it that they think the way they think? What is it that  
 15:26 19 I've missed that they see?

15:26 20 What, either what facts or why are they --  
 15:26 21 why are they viewing something differently than me, and  
 15:26 22 take that into consideration. And then I'll weigh that  
 15:26 23 through my own thought process and maybe, you know, if  
 15:26 24 necessary, adjust my conclusion or -- or not adjust it.

15:26 25 Q. And there was one question you didn't answer,

15:26 1 and we've had at least two or three jurors that didn't  
 15:26 2 answer it because it was kind of confusing. But it  
 15:26 3 says: Regarding your jury service, circle one that  
 15:26 4 applies to you. I can tell pretty easily when a person  
 15:26 5 is telling a lie. Or, when I make up my mind, I rarely  
 15:26 6 change it. I can frequently be influenced by the  
 15:27 7 opinions of others. Or, I always follow my own ideas,  
 15:27 8 rather than do what others expect of me.

15:27 9 A. I don't think I answered it because I didn't  
 15:27 10 like any of the choices.

15:27 11 Q. None of the above. Okay. All right. But I  
 15:27 12 think you've -- I think you just answered it for me. If  
 15:27 13 I hear what you are saying, you like to listen to  
 15:27 14 opposing viewpoints and weigh it and hash it out in your  
 15:27 15 mind and maybe give an exchange and --

15:27 16 A. Right.

15:27 17 Q. Okay. Okay. The -- I hate to bring this up.

15:27 18 A. Not everybody says that about me. That's what  
 15:27 19 I say about me, though. I'm just joking.

15:27 20 Q. I know. The -- the distant relative that was  
 15:27 21 murdered recently.

15:27 22 A. Yep.

15:27 23 Q. Did you know the person?

15:27 24 A. I probably last saw him 10 or 11 years ago. So  
 15:28 25 he was -- he was 19 when he was murdered. So he was 9

15:28 1 or 10 when I last saw him.

15:28 2 MR. GOELLER: Can I have second?

15:28 3 THE COURT: Yes.

15:28 4 Q. (BY MR. GOELLER) I think we talked about most  
15:28 5 of the clauses in this paragraph, consideration of all  
15:28 6 the evidence. I think that's a look at everything.

15:28 7 A. Uh-huh.

15:28 8 Q. And I think you can look at, you know, in maybe  
15:28 9 a hypothetical case if the deceased was a dope dealer,  
15:28 10 you know, how did he end up dying? Did he have some  
15:29 11 blameworthiness in it himself, maybe? Circumstances of  
15:29 12 the offense, character and background. And then there's  
15:29 13 this phrase, *personal moral culpability*. Okay? What  
15:29 14 does that mean to you?

15:29 15 A. Well, I haven't given that much thought.

15:29 16 Q. That's a tough one?

15:29 17 A. Yeah, that's very tough.

15:29 18 Q. Some people would think, does it mean, well,  
15:29 19 did he do it? Was he morally culpable of the killing?  
15:29 20 Well, that would make no sense. That would be -- that's  
15:29 21 just illogical because to get here, you've already found  
15:29 22 he intentionally, you know, before we get to any of  
15:29 23 these, you've already had to find beyond a reasonable  
15:29 24 doubt he intentionally did, you know, say a double  
15:29 25 homicide.

15:29 1 A. Right.

15:29 2 Q. A burglary or an agg. robbery type of homicide.  
15:30 3 So, no, it doesn't mean, did he do it?

15:30 4 A. Uh-huh.

15:30 5 Q. It must mean something past or post offense.  
15:30 6 Do you think it might have something to do with  
15:30 7 responsibility or remorse, personal moral culpability if  
15:30 8 convicted, or if it becomes pretty apparent that  
15:30 9 somebody did engage in that conduct? How do they  
15:30 10 morally face it? Do you remember when -- did you follow  
15:30 11 that McVeigh thing at all?

15:30 12 A. A little bit.

15:30 13 Q. Do you remember the thing that -- outside of  
15:30 14 the actual killing itself or the bombing that killed all  
15:30 15 those people, the thing that hacked off the most people,  
15:30 16 and rightly so, do you remember what he said in that  
15:30 17 interview before they executed him?

15:30 18 A. I really don't remember.

15:30 19 Q. Well, there was a day care in that federal  
15:30 20 courthouse.

15:30 21 A. Uh-huh.

15:31 22 Q. A children's day care. They asked him, you  
15:31 23 know, you might have taken out some FBI agents and some  
15:31 24 federal law enforcement types that you had a bone to  
15:31 25 pick with. What about the kids? You knew there was a

15:31 1 day care in that building. Why did you kill the kids?  
15:31 2 Well, to be honest with you, those -- those kids, they  
15:31 3 were just collateral consequences of my -- you know,  
15:31 4 pretty cold. Really an awful thing to say.

15:31 5 A. Uh-huh.

15:31 6 Q. Would you agree with me that he had no personal  
15:31 7 moral culpability, or what he said was: I could care  
15:31 8 less.

15:31 9 A. If that's what -- is that your definition of  
15:31 10 personal moral culpability? I guess I really don't have  
15:31 11 a clear one to myself.

15:31 12 Q. Any thought on what it might mean? We know  
15:31 13 it's the defendant's -- it's personal to the defendant.  
15:31 14 We know it's morals and morality and culpability.

15:32 15 A. Well, you know, I probably would study this a  
15:32 16 little bit, but I guess it would be, you know, even  
15:32 17 though he knew it was wrong, he did it anyway.

15:32 18 Q. Right.

15:32 19 A. And even though he knew it was this serious, he  
15:32 20 did it anyway.

15:32 21 Q. Okay. Of course if we're talking, those are  
15:32 22 two different issues. You will have logically had to  
15:32 23 have found he knew it was wrong.

15:32 24 A. Uh-huh.

15:32 25 Q. Do you believe that phrase may mean he knew how

15:32 1 serious it was, yet he went ahead and did it anyway?

15:32 2 A. You know, I would -- honestly, I have to think.  
15:32 3 I probably -- because it is so important --

15:32 4 Q. Yeah.

15:32 5 A. -- I would make sure that I had -- I would have  
15:32 6 to make sure I had a clear understanding of it.

15:32 7 Q. Well, that's part of the problem. The Judge  
15:33 8 won't let you go do any research on it. You can't call  
15:33 9 up -- I think in your questionnaire you state you know  
15:33 10 some lawyers or you associate with lawyers?

15:33 11 A. Uh-huh.

15:33 12 Q. What kind of lawyers, by the way?

15:33 13 A. Just --

15:33 14 Q. Probably tax guys.

15:33 15 A. Tax and --

15:33 16 Q. HR people?

15:33 17 A. Civil and, yeah, HR folks, right.

15:33 18 Q. Well, they won't -- they won't have a clue.  
15:33 19 Okay, when it comes to that. Because the lawyers who  
15:33 20 specialize in this business disagree, but it's not  
15:33 21 further defined. It's not further defined.

15:33 22 A. Well, I think it's a matter of for me -- well,  
15:33 23 I think I probably do have some other opportunities to,  
15:33 24 on my own, without consulting anyone. I mean, is it  
15:33 25 necessarily -- necessary to consult somebody, do you

15:33 1 think?

15:33 2 Q. I think this Judge will tell you, don't consult  
15:34 3 anybody. He'll probably tell you not to talk to anybody  
15:34 4 about this case or do any independent investigation or  
15:34 5 anything like that.

15:34 6 A. I'm just looking for some direction.

15:34 7 Q. I know. I wish we could give you more. I'd  
15:34 8 love to. But the problem is with that you may consult a  
15:34 9 book that says personal moral culpability is X, Y, Z.  
15:34 10 And another juror may consult another book and say, no,  
15:34 11 it's A, B, C. And the problem is then we get into --  
15:34 12 then you go into the jury box saying, well, I have some  
15:34 13 special knowledge about this because I looked it up.  
15:34 14 And then half of the jurors are going to go, wow. Okay.  
15:34 15 Mr. Flaherty is in the know.

15:34 16 A. Right.

15:34 17 Q. And then problem is, if you have more than one  
15:34 18 person that did that, it would cause all kinds of  
15:34 19 problems --

15:34 20 A. But it might, though, but back to my earlier  
15:34 21 point is, if someone has a different viewpoint than what  
15:34 22 I do, then I value that. I would like to hear how they  
15:34 23 draw that conclusion. As opposed to having nobody  
15:35 24 really have thought through personal moral culpability  
15:35 25 to define it in some way and then have everybody kind of

15:35 1 just sitting around in the room, trying to figure it  
15:35 2 out, gee, what the heck does that mean?

15:35 3 Q. Right. Do you recall that Judge Sandoval  
15:35 4 talked to you a little about lesser included offenses?  
15:35 5 Murder, let's just talk about murder. In any capital  
15:35 6 murder case, there's the potential there that a juror  
15:35 7 may find somebody not guilty of capital murder but  
15:35 8 guilty of murder.

15:35 9 A. Okay.

15:35 10 Q. And murder is still the intentional taking of a  
15:35 11 human life. You know what murder is. Our law provides  
15:35 12 that a person can receive as little as five years in the  
15:35 13 penitentiary and as many as 99 years or life. I don't  
15:35 14 know if there's really much of a difference between life  
15:36 15 and 99. It sounds good down in Austin when the  
15:36 16 legislature meets, I suppose.

15:36 17 What do you think about five years for  
15:36 18 somebody that killed, a potential killing?

15:36 19 A. I think it depends upon the circumstances.

15:36 20 Q. You think it's fact driven?

15:36 21 A. Well, because the option exists, one of the  
15:36 22 things you have, that I'd have to think about, why does  
15:36 23 that option exist?

15:36 24 Q. Right, right. It's -- it's like a first-time  
15:36 25 child rapist. The option exists for probation in this

15:36 1 state. Maybe as little as five years of probation, no  
15:36 2 jail time, if someone were to rape, you know, maybe an  
15:36 3 8-year-old girl.

15:36 4 A. Uh-huh.

15:36 5 Q. The option is there. And we get jurors all the  
15:37 6 time, we get qualified jurors. Say, in that case, you'd  
15:37 7 have to be able to say, I would fairly consider the  
15:37 8 entire range of punishment from probation. No  
15:37 9 penitentiary time, maybe up to life.

15:37 10 A. Right.

15:37 11 Q. Confinement. And it may be a fiction. We ask  
15:37 12 jurors, would you really fairly consider it? And we  
15:37 13 spend a lot of time talking to people about: Would you  
15:37 14 really fairly consider it? Would you consider the  
15:37 15 minimum range of punishment? What do you think about  
15:37 16 that?

15:37 17 A. Well, one of the things you would have to do is  
15:37 18 try to interpret what that would mean. Right. Just  
15:37 19 kind of define what that range could possibly be for.  
15:37 20 And so, you know, if in your situation and in your  
15:37 21 situation you described, it was between 5 and 99 years,  
15:37 22 I mean, this probably, different circumstances around 5  
15:37 23 versus 99. And so then I think, you know the job you  
15:37 24 have is to define, hey, what could that range possibly  
15:37 25 be? And then once you -- once you determine that, then

15:38 1 evaluate the situation and say, hey, where do I think  
15:38 2 this fits in relation to that range?

15:38 3 Q. Okay. All right. That's fair enough.  
15:38 4 Regarding that mitigation issue, mitigation evidence has  
15:38 5 been defined as anything and everything. As you, after  
15:38 6 between Tuesday and today, and I don't think -- I don't  
15:38 7 know how much of an opportunity you've had to think  
15:38 8 about this, probably not in specifics, maybe in general  
15:38 9 terms you knew you were coming back. But as you sat up  
15:38 10 there today, is there anything that you can think of  
15:38 11 that is just per se in your book not mitigating?

15:38 12 A. Can you -- can you rephrase that? I'm not sure  
15:38 13 I understand what you mean.

15:38 14 Q. Remember Ms. Falco was talking to you a little  
15:39 15 bit about youth?

15:39 16 A. Uh-huh.

15:39 17 Q. Background, character, where you grew up. I  
15:39 18 don't know if she mentioned all of these, but some  
15:39 19 typical or I should say some very common things, maybe  
15:39 20 the way you were raised, drugs, your environment, two  
15:39 21 family home, busted family.

15:39 22 A. Right.

15:39 23 Q. All those kind of things may be considered  
15:39 24 mitigating by some folks?

15:39 25 A. Uh-huh.

15:39 1 Q. Other folks wouldn't. Is there a category of  
 15:39 2 or a genre of mitigation, evidence -- I shouldn't use  
 15:39 3 the word evidence, mitigation type factors that you know  
 15:39 4 don't square with you or you put no stock in them? And  
 15:39 5 you may have listened to a trial or read a newspaper  
 15:39 6 article. And maybe you read that during the penalty  
 15:40 7 phase the defendant or his attorneys offered evidence of  
 15:40 8 a broken home or sexual abuse when he was young or  
 15:40 9 something like that, and you just said to yourself, you  
 15:40 10 know, hold on, that's not right. I don't think that's  
 15:40 11 mitigating at all. Any class of factors come to mind  
 15:40 12 that you would -- that you know as you sit there today?

15:40 13 A. That would just discount completely?

15:40 14 Q. Yeah.

15:40 15 A. I can't really point to one because my sense is  
 15:40 16 that the mitigating circumstance or circumstances are  
 15:40 17 considerable. So to just say, hey, there's one thing  
 15:40 18 that I could ignore or doesn't cut it with me, it's --  
 15:40 19 you know, you are limiting yourself by doing that.

15:40 20 Q. Okay. Okay. Mr. Flaherty, do you have any  
 15:40 21 questions of me or any questions of -- of Ms. Falco or  
 15:41 22 of the Judge about anything, whether to do with the  
 15:41 23 actual facts or the circumstances of the law or your  
 15:41 24 service or tentative -- very tentative trial start  
 15:41 25 times, duration, all that kind of thing?

15:41 1 A. Are those appropriate questions?

15:41 2 Q. Oh, yeah?

15:41 3 A. I guess it's unfair for me to ask you to define  
 15:41 4 personal moral culpability.

15:41 5 Q. No, it's not unfair. And I believe it's linked  
 15:41 6 to remorse, and I believe it's linked to -- if it's  
 15:41 7 proven that a person did it, how they take the  
 15:41 8 responsibility, so to speak. And I say it's that way  
 15:41 9 because logically, I don't think -- I can't think of  
 15:41 10 anything else. It has nothing to do with whether the  
 15:41 11 person did it because you've already found that. There  
 15:42 12 is no morality involved in -- if the State has to prove  
 15:42 13 that somebody killed two people, you know, getting back  
 15:42 14 to what Mr. Schultz talked about.

15:42 15 A. Right.

15:42 16 Q. In the first part of the trial, I don't think  
 15:42 17 it makes a difference whether you murdered the nun  
 15:42 18 sitting in the convent praying versus Adolf Hitler. I  
 15:42 19 mean, I agree with them. Murder is murder in the first  
 15:42 20 phase of the trial. Morality doesn't figure into it.  
 15:42 21 Morality of the defendant doesn't figure into it in the  
 15:42 22 first phase of the trial. Did he do it? Yes or no,  
 15:42 23 beyond a reasonable doubt. So then when you get to that  
 15:42 24 second phase, maybe you start looking at the moral  
 15:42 25 culpability.

15:42 1 I think remorse has a lot to do with that.  
 15:42 2 That's my personal opinion. You know? Are you a  
 15:42 3 McVeigh saying, hey, those kids, that was collateral  
 15:42 4 consequences, or are you truly remorseful about your  
 15:42 5 actions? Have you thought about it? Have you thought  
 15:43 6 about the consequences of your actions? That's, to me,  
 15:43 7 logically, that's the only way I can think of that  
 15:43 8 question. I can't think of any other way to do that.

15:43 9 But the Judge, I can tell you, will not  
 15:43 10 give you an instruction. It will not be further  
 15:43 11 defined. I take that back. I can't tell you. I can't  
 15:43 12 box him in. It's not fair because he's the ultimate  
 15:43 13 lawgiver. I don't anticipate the Judge will further  
 15:43 14 define that. Just so you, because we have a general  
 15:43 15 legal -- some general legal rules in Texas.

15:43 16 Unless our codes and the legislature says  
 15:43 17 this is the meaning of this word, the Judge will tell  
 15:43 18 you to give ordinary meaning to its term. And what that  
 15:43 19 really means is what you individually and what you 12  
 15:43 20 people in the jury box give it. Do you see what I'm  
 15:43 21 saying?

15:43 22 Judge can say, I'll tell you what a  
 15:43 23 habitation is. A habitation is a dwelling designed for  
 15:44 24 the overnight accommodation of persons. He'll tell you  
 15:44 25 that all day long because the legislature lets him do

15:44 1 it. But that phrase, I don't think you are going to get  
 15:44 2 anymore help on it. So, I don't think I'm wrong, but I  
 15:44 3 can't tell you I'm the definitive source of that phrase.

15:44 4 A. Right. Well, can I ask Ms. Falco, can you help  
 15:44 5 me with this?

15:44 6 MS. FALCO: I can tell you, the only thing  
 15:44 7 that you will get in a charge regarding any help with  
 15:44 8 that is you'll be told that you can consider mitigating  
 15:44 9 evidence to be evidence that a juror might regard as  
 15:44 10 reducing the defendant's moral blameworthiness. So  
 15:44 11 that -- that would be the only help I could give you  
 15:44 12 regarding that. Is moral blameworthiness, which again,  
 15:44 13 is another legal word with no definition.

15:44 14 VENIREPERSON: So you are not going to  
 15:44 15 take a stab at defining personal moral culpability?

15:44 16 MR. GOELLER: Her or me?

15:44 17 VENIREPERSON: No. You have or already.  
 15:45 18 I understand pretty clearly what your point of view is.

15:45 19 MR. SCHULTZ: Do you want me to respond to  
 15:45 20 it?

15:45 21 THE COURT: All right. Don't see any  
 15:45 22 reason why not.

15:45 23 MR. SCHULTZ: You know, it might mean  
 15:45 24 motive. You might find a situation where the father of  
 15:45 25 a dead child goes and seeks out the killers of his



15:45 1 children, and that might arise to capital murder. And  
 15:45 2 you might get the answers to the special issue that gets  
 15:45 3 you all that way. And yet the moral culpability might  
 15:45 4 get very blurred depending on what the motives are.

15:45 5 If you murder somebody out of mercy  
 15:45 6 killings, there might be all sorts of circumstances that  
 15:45 7 meet the definition of capital murder. You might even  
 15:45 8 be a dangerous person, but maybe the moral culpability  
 15:45 9 would be different.

15:45 10 But it's a hard concept because I agree  
 15:45 11 with Mr. Goeller. How can it mean, if you've  
 15:45 12 intentionally committed a capital murder, how would you  
 15:45 13 not be morally culpable for what you did? It's not like  
 15:46 14 an accident or self-defense or mistake because those  
 15:46 15 would never be capital murder.

15:46 16 It may well be. Motive may be it. It may  
 15:46 17 be remorse. That probably plugs in some other way. But  
 15:46 18 it must mean something because it's asked again. It  
 15:46 19 must mean something other than intentional act. And I  
 15:46 20 don't know how you could ever have a moral capital  
 15:46 21 murder. I don't know how that could be. But I guess it  
 15:46 22 must mean that there could be such a thing. I don't  
 15:46 23 know.

15:46 24 VENIREPERSON: Uh-huh.

15:46 25 MR. SCHULTZ: I don't know what would make

15:46 1 it moral.

15:46 2 THE COURT: Did you go to Catholic school?

15:46 3 VENIREPERSON: I did.

15:46 4 THE COURT: So, before you ever walked in  
 15:46 5 the courtroom you became familiar with the term  
 15:46 6 mitigation. Right?

15:46 7 VENIREPERSON: Yes.

15:46 8 THE COURT: So while the other 199 jurors  
 15:46 9 were floundering around, you knew what mitigating was?

15:46 10 VENIREPERSON: I had a very strong sense  
 15:46 11 for what it was. Yeah. It is not a term that I use  
 15:46 12 everyday.

15:46 13 THE COURT: How about culpability?  
 15:47 14 Anyway, is there any other question from either side?

15:47 15 VOIR DIRE EXAMINATION (Cont'd)

15:47 16 BY MR. GOELLER:

15:47 17 Q. Just very briefly, based on the Court's  
 15:47 18 question. How many years did you spend in Catholic  
 15:47 19 school?

15:47 20 A. Four years high school. Five years in middle  
 15:47 21 school, nine; and then two years of college.

15:47 22 Q. Most of school?

15:47 23 A. Mostly.

15:47 24 Q. What school?

15:47 25 A. Boston College.

15:47 1 THE COURT: Was it still a Catholic school  
 15:47 2 when you went there, or had it become totally  
 15:47 3 secularized?

15:47 4 VENIREPERSON: It was Jesuit, which is  
 15:47 5 Catholic.

15:47 6 THE COURT: All right.

15:47 7 Q. (BY MR. GOELLER) In a death penalty case, in  
 15:48 8 these two special issues, assuming you found somebody  
 15:48 9 guilty of capital murder, do you see yourself as the  
 15:48 10 person that would err on the side of caution? In other  
 15:48 11 words, a life sentence, if you had some problems with  
 15:48 12 all these questions?

15:48 13 A. Yeah. I guess there's no definition on that;  
 15:48 14 is that right?

15:48 15 Q. Right. I'm just thinking. I'm not talking  
 15:48 16 about legal, just gut feeling?

15:48 17 A. Yep. No, I hear you. I think it's -- I think,  
 15:48 18 how do I take on my logical position to everything and  
 15:48 19 apply it to the situation that you just assess. And I  
 15:48 20 would say, logically, I would probably go with the, you  
 15:48 21 know, with the -- with the earlier decision, which is  
 15:48 22 guilty beyond a reasonable doubt. And, you know, if I  
 15:48 23 was really struggling, I would probably resort to that  
 15:49 24 thought process which says, if I'm really on the fence,  
 15:49 25 I would probably err on the side of life versus death.

15:49 1 Q. I think the Judge will give you an instruction  
 15:49 2 that any doubt you would have, you would resolve in  
 15:49 3 favor of the defendant. That may not square well with  
 15:49 4 some people. But to me, it sounds like that makes sense  
 15:49 5 to you, and it ought to be the right thing to do. And  
 15:49 6 the Judge will actually give you that instruction in  
 15:49 7 both phases.

15:49 8 If you have any doubt in the first phase,  
 15:49 9 as to whether somebody is guilty or not, you would  
 15:49 10 resolve that doubt in favor of the defendant and find  
 15:49 11 him either not guilty or consider some lesser type of  
 15:49 12 offense. And I think the Judge would give you the same  
 15:49 13 instruction regarding the first special issue, that  
 15:49 14 probability of future dangerousness. Any doubt on that,  
 15:49 15 you would resolve in the defendant's favor and answer  
 15:50 16 that question no.

15:50 17 Of course that last one that's up there,  
 15:50 18 no burden, we just know it has to be a unanimous no to  
 15:50 19 resolve a death sentence. But that's about all we can  
 15:50 20 tell you. Okay.

15:50 21 MR. GOELLER: Thank you, sir. That's all.

15:50 22 THE COURT: Tell you what, do you want him  
 15:50 23 to step down?

15:50 24 MR. GOELLER: Yes. Could I have a sub  
 15:50 25 rosa hearing?

15:50 1 THE COURT: Okay. Do you want to step  
15:50 2 down just a minute, and we'll call you in in a few  
15:50 3 minutes. Let me ask you: Are there other jurors in  
15:50 4 there? If you would, don't discuss with them anything  
15:50 5 that you have heard or seen.

15:50 6 VENIREPERSON: Okay. Thanks.

15:52 7 (Venireperson Flaherty not present.)

15:52 8 THE COURT: Does anybody have anything to  
15:52 9 say?

15:52 10 MS. FALCO: This juror is acceptable to  
15:52 11 the State, Your Honor.

15:52 12 MR. GOELLER: We'd submit the juror as a  
15:53 13 peremptory strike.

15:53 14 THE COURT: All right. No. 7,  
15:53 15 Mr. Flaherty is stricken for cause by the defendant.  
15:53 16 Anyway, go ahead and would you tell him that he's  
15:53 17 finally excused?

15:53 18 Let's go ahead and take a break for five  
15:53 19 minutes, but not too much more than five minutes, and  
15:53 20 we'll come back at a little bit after four o'clock.

15:53 21 MR. SCHULTZ: Who is going to be next,  
15:53 22 Judge?

15:53 23 THE COURT: Yes. It's going to be Gentle,  
15:53 24 Jann.

16:05 25 (Break.)

16:05 1 THE COURT: Ma'am, are you Jann Gentle?

16:05 2 VENIREPERSON: Yes.

16:05 3 THE COURT: I just want to remind you, you  
16:05 4 were placed under oath last Tuesday to give truthful  
16:05 5 answers to the questions you are asked. Do you remember  
16:05 6 that?

16:05 7 VENIREPERSON: Yes.

16:05 8 THE COURT: And you are still under oath.  
16:05 9 Mr. Schultz, are you going to go first?

16:05 10 MR. SCHULTZ: I will, Judge, thank you.

16:06 11 THE COURT: She's No. 22.

16:06 12 VOIR DIRE EXAMINATION

16:06 13 BY MR. SCHULTZ:

16:06 14 Q. Ms. Gentle, it is good to see you again. I bet  
16:06 15 you are delighted to be back for some more.

16:06 16 A. Delighted. I can barely hear over my heart  
16:06 17 beat, so bear with me.

16:06 18 Q. Are you nervous?

16:06 19 A. Yes.

16:06 20 Q. Well, the good part about doing this  
16:06 21 individually, is that there aren't any right or wrong  
16:06 22 answers, and it's pretty relaxed. There won't be a lot  
16:06 23 of objections, or both sides are kind of looking at the  
16:06 24 same things maybe just from a different perspective. So  
16:06 25 it's not, you know, it's not -- it's not going to be bad

16:06 1 at all, I can assure you.

16:06 2 I think many of the things that we talked  
16:06 3 about on Tuesday certainly apply here today. Hopefully,  
16:06 4 everything we talked about applies, but we want to focus  
16:07 5 more on this whole death penalty issue that we're  
16:07 6 dealing with in this phase, rather than the overall  
16:07 7 talking about the trial itself.

16:07 8 I'm sure you recall when we were doing our  
16:07 9 mass voir dire, most of the 65 of you on Tuesday, when I  
16:07 10 asked everybody to take a moment and look at the  
16:07 11 defendant and to realize that this was the real thing.

16:07 12 And number one, I hope you realize that  
16:07 13 that wasn't entertaining or amusing to me or anything  
16:07 14 about that at all, because that's not the purpose for  
16:07 15 which I did it. But it's been my belief that it's a lot  
16:07 16 easier to give yourself honest answers on what you can  
16:07 17 do in these kinds of cases if you realize this isn't  
16:07 18 just the kind of over-coffee kind of a conversation.

16:07 19 Like, if you are home and you see some  
16:07 20 awful crime that's happened, and you're maybe saying to  
16:07 21 a relative or a husband or somebody, well, we need to  
16:08 22 start using the death penalty for some of these crimes  
16:08 23 because that's easy to say when we're talking about what  
16:08 24 they ought to be doing, what somebody else ought to be  
16:08 25 doing. I think for most people, it's a lot different

16:08 1 when the they becomes you. Does that make sense to you?

16:08 2 A. Oh, absolutely.

16:08 3 Q. If I'm watching television, and I see somebody  
16:08 4 that's pushing us around or taking over our embassy or  
16:08 5 something like something like that, it maybe easier from  
16:08 6 the comfort of my living room to say we ought to send  
16:08 7 some strike bombers over to that area and take care of  
16:08 8 some issues. But I'm not the one flying those planes,  
16:08 9 and it's not my kid that's up in that airplane. It's  
16:08 10 not my brother, and it's a whole lot different when you  
16:08 11 are the one that gets called upon to do it.

16:08 12 That's why I did it. And it was as  
16:08 13 sincere as I know how to be because, I'll be frank, I  
16:08 14 don't wake up in the morning thrilled to be able to come  
16:08 15 to court and be part of a process that may result in the  
16:09 16 death and the execution of anybody. I do it because,  
16:09 17 No. 1, it's my profession. No. 2, I really represent  
16:09 18 the people in the State of Texas who, through their  
16:09 19 legislature, have a death penalty. And we do this  
16:09 20 fairly and honorably and without apology.

16:09 21 That having been said, I can also  
16:09 22 understand how everybody could feel a little bit better  
16:09 23 if trying this case and having a fair reading on the  
16:09 24 evidence resulted in a life sentence, rather than a  
16:09 25 death sentence. Does that make sense to you?

16:09 1 A. Yes.  
 16:09 2 Q. I've never sat where you sit. So I can only  
 16:09 3 kind of guess what I'd think. But I think I would say I  
 16:09 4 will do my duty as a juror the best way I know how. I  
 16:09 5 don't want to be doing this. I don't really want any  
 16:10 6 part of it. I don't guess I'm any better than anybody  
 16:10 7 else that gets this kind of duty. And so I will do it  
 16:10 8 if called upon. But I hope when I look at the evidence  
 16:10 9 real fairly and clearly and look at every bit of it, if  
 16:10 10 in fact he is found guilty of capital murder, I hope  
 16:10 11 there's something in there that leads toward a life  
 16:10 12 sentence because that feels more comfortable to me.  
 16:10 13 Does that make sense to you?

16:10 14 A. Yes.

16:10 15 Q. And, you know, as a prosecutor I'm not -- I'm  
 16:10 16 not afraid of thinking like that. In fact, to be honest  
 16:10 17 with you, if you were somebody that I thought was  
 16:10 18 callous to human life, I don't know that I would feel so  
 16:10 19 thrilled about having you on a jury because I got  
 16:10 20 feelings the same as anybody else about all of this.

16:10 21 All of that having been said, you have  
 16:10 22 indicated that you are not in favor of the death  
 16:10 23 penalty. Am I right about that?

16:10 24 A. I don't like it.

16:10 25 Q. Well, let's do it this way.

16:10 1 A. I wouldn't say I was in favor of it. I think  
 16:10 2 I -- I answered that that I'm not sure that it's a  
 16:11 3 deterrent to the crime.

16:11 4 Q. So when asked are you in favor of the death  
 16:11 5 penalty? The answer that you circled was no.

16:11 6 A. Okay, because it's not yes, so...

16:11 7 Q. I got you, I got you. And that's okay because  
 16:11 8 there are many people who would say the same thing.  
 16:11 9 There ought to be a better way. And yet they don't have  
 16:11 10 such a core passion about the issue that they would be  
 16:11 11 prevented from voting in favor of the death sentence.  
 16:11 12 And because some people don't view it in the moral, in  
 16:11 13 the strictly moral sense, and so they may view it in a  
 16:11 14 wisdom sense or an economic sense or a risky sense.

16:11 15 It's like, well, what if they make a  
 16:11 16 mistake and we've executed somebody? What if Timothy  
 16:11 17 McVeigh ends up -- we find out ten years from now he  
 16:11 18 ends up being innocent? We probably know he isn't  
 16:12 19 because right before the end he was bragging about it.  
 16:12 20 But what if? And so, that's not a moral issue with  
 16:12 21 people. It's more of a practical issue. So people can  
 16:12 22 be opposed to the death penalty and still do it and do  
 16:12 23 it fine.

16:12 24 Just like there's some people that believe  
 16:12 25 that the death sentence should always be imposed in

16:12 1 murder cases. That ought to be automatic. That's their  
 16:12 2 view. And yet, if called upon, they could still vote  
 16:12 3 the way that a life sentence would follow because they  
 16:12 4 follow the law in keeping an open mind. And you circle  
 16:12 5 it on which of these best describes your feelings.

16:12 6 Although, I do not believe that the death  
 16:12 7 penalty should ever be imposed, as long as the law  
 16:12 8 provides for it, I could assess it under the proper set  
 16:12 9 of circumstances. Is that still your answer?

16:12 10 A. If it's the law, yeah.

16:13 11 Q. Why I ask that question, has any member of your  
 16:13 12 family ever been in the military service, to your  
 16:13 13 knowledge?

16:13 14 A. Yes. Me.

16:13 15 Q. And what -- when were you in the service?

16:13 16 A. '81 to '86.

16:13 17 Q. And what did you do?

16:13 18 A. Computer stuff.

16:13 19 Q. I'm assuming that you, with your basic  
 16:13 20 training?

16:13 21 A. Yes.

16:13 22 Q. And I'm assuming you at least had small arms  
 16:13 23 training if not other types; is that right?

16:13 24 A. Yes.

16:13 25 Q. The same time, I would guess with that computer

16:13 1 direction that you were taking, I guess that you didn't  
 16:13 2 deal with a lot of heavy ordnance?

16:13 3 A. No.

16:13 4 Q. But that's only a guess. That's only my guess,  
 16:13 5 and I would not think that in the computer area of the  
 16:13 6 military that you would have ever dealt with  
 16:13 7 conscientious objectors. Because, I mean, what would  
 16:13 8 they object to in the computer area?

16:13 9 A. Uh-huh.

16:13 10 Q. But you do recognize that there are people who  
 16:14 11 for moral or religious reasons profess to be unable to  
 16:14 12 kill, to bear arms and actually kill an enemy. Do you  
 16:14 13 know about that?

16:14 14 A. (Moves head up and down.)

16:14 15 Q. And so the military makes exceptions and allows  
 16:14 16 them to do nonkilling type jobs, including serving very  
 16:14 17 gallantly as medics. And that's been a very common area  
 16:14 18 for them. I bet most of those people, who make that  
 16:14 19 claim, if you were to ask them, okay. We've listened to  
 16:14 20 what you have to say.

16:14 21 Now, the general has ordered you to go,  
 16:14 22 carry this rifle, and go into combat. I don't know, but  
 16:14 23 I'd bet a large percentage of them would refuse. Say,  
 16:14 24 no, I'm not going to do it because this isn't cowardice.  
 16:14 25 I would be more than happy to be unarmed and be a medic

16:14 1 right in the line of fire with everybody else. I don't  
 16:14 2 mind that, but I'm not going to take up arms against  
 16:15 3 another human being, and they would refuse. And they  
 16:15 4 wouldn't refuse it, most any other kind of order. They  
 16:15 5 wouldn't refuse an order to go to New Jersey or  
 16:15 6 someplace they don't want to go. Any kind of order they  
 16:15 7 would obey. But on that big an issue, it means so much  
 16:15 8 to me, I can't do it.

16:15 9 And I wonder how that relates in the death  
 16:15 10 penalty sense that, if you genuinely are -- are you  
 16:15 11 opposed to the death penalty on moral grounds, or is  
 16:15 12 that for religious grounds? Or tell me where you are  
 16:15 13 coming from on that.

16:15 14 A. Not religious grounds per se. I just don't --  
 16:15 15 I don't think it's any more right for the State to kill  
 16:15 16 somebody than it is for an individual to do so.

16:15 17 Q. Okay. Do you see it in many ways as equivalent  
 16:15 18 to the same crime he's being tried for? Do you see it  
 16:15 19 as a maybe dressed-up form of murder ourselves, as a  
 16:15 20 society? Would you go that far?

16:16 21 A. No. I don't see it the same way, but in the  
 16:16 22 end it's the same.

16:16 23 Q. Okay. I was curious. Now, I guess it makes  
 16:16 24 sense to me. How you can say on the one hand that you  
 16:16 25 are opposed to it and wish we didn't have it. You think

16:16 1 it doesn't do us good. It's not very nice for us to be  
 16:16 2 doing such a thing. But if it's the law, you could  
 16:16 3 still vote in a way that it could occur? Am I right on  
 16:16 4 that?

16:16 5 A. I think I could.

16:16 6 Q. Well, we'll talk about it.

16:16 7 A. I think I'm torn between my sense of duty and  
 16:16 8 what I want.

16:16 9 Q. Let me tell you some things about that duty  
 16:16 10 that you have. And ultimately, you'll see your own duty  
 16:16 11 for what you have to do. I don't know that a judge  
 16:16 12 would ever order you to be fair. I mean, I've never --  
 16:16 13 I've been doing this for 20 something years now, and  
 16:16 14 I've never had occasion to see any trial judge ever  
 16:16 15 order somebody to be fair. Because, I mean, how would  
 16:16 16 you do that anyway? That wouldn't make any sense.

16:17 17 So if someone's honest answers to the  
 16:17 18 questions are, I can't do this or I can't do that, not  
 16:17 19 because I'm disobedient or a bad person or trying to put  
 16:17 20 myself above the law. But I can't do it, and there's no  
 16:17 21 way I can say that I can do it when I could. I don't  
 16:17 22 know how that disregards your duty because you -- the  
 16:17 23 biggest duty you've got as a juror in this case is  
 16:17 24 probably to be honest with your answers and let the  
 16:17 25 chips fall wherever they fall.

16:17 1 And people, you are not the first person  
 16:17 2 we've ever talked to about this issue. That's kind of  
 16:17 3 what this whole process is designed for. But I guess  
 16:17 4 what I'm saying is -- only you can answer this for  
 16:17 5 yourself -- but I don't know that telling the Judge or  
 16:18 6 telling us that you could never vote in such a way as to  
 16:18 7 cause the death penalty, if that's where you are with it  
 16:18 8 all. I don't know that that has anything to do with  
 16:18 9 your duty because I don't think you can order someone to  
 16:18 10 do what they can't do anyway, you know? Does that make  
 16:18 11 sense?

16:18 12 A. (Moves head up and down.)

16:18 13 Q. So, if you can do it, if you can do it, it is  
 16:18 14 fine. But when you say, I'm torn between the law that  
 16:18 15 you obviously care about greatly and your personal  
 16:18 16 beliefs about the death penalty, I mean sometimes that  
 16:18 17 happens.

16:18 18 THE COURT: Say, Ms. Gentle, I'm going to  
 16:18 19 ask you to answer these questions audibly because the  
 16:18 20 court reporter is taking down answers. I suppose she  
 16:18 21 could take down "juror nods head." So that's kind of  
 16:18 22 ambiguous. So if you would say in words whatever the  
 16:18 23 answers are in words. All right.

16:18 24 Q. (BY MR. SCHULTZ) Thank you, Judge. Now, so  
 16:19 25 far where we are right now is the defendant is merely

16:19 1 charged with capital murder. And the fact that he's  
 16:19 2 been charged, the Judge will at some point tell you is  
 16:19 3 not evidence of guilt. It would be like if I brought a  
 16:19 4 lawsuit against you claiming you, you know, cut down a  
 16:19 5 big old Christmas tree that had been growing forever,  
 16:19 6 and it was very lovely.

16:19 7 And that would be an accusation, and it  
 16:19 8 would still have to be proved. And until that's proved  
 16:19 9 you would be presumed innocent. And so is the  
 16:19 10 defendant. He's presumed innocent of this charge of  
 16:19 11 capital murder. We have a burden of proof.

16:19 12 He doesn't have to show anything. He  
 16:19 13 doesn't have to offer any evidence. He doesn't have to  
 16:19 14 testify. And none of that may be held against him by  
 16:19 15 anybody by the jury. Are you fine with that?

16:19 16 A. I believe that, yes.

16:19 17 Q. Okay. That's the same right you and I have.  
 16:19 18 The State is going to do the accusing, the State ought  
 16:20 19 to have to do the proving. It's that simple. Let's  
 16:20 20 assume then, after all the evidence that's presented,  
 16:20 21 that you were convinced beyond a reasonable doubt that  
 16:20 22 he is guilty of the crime of capital murder. Would you  
 16:20 23 be able to vote according to the evidence guilty of  
 16:20 24 capital murder, if that's what we showed to you?

16:20 25 A. Yes.

16:20 1 Q. Even though you know that you are going to have  
16:20 2 to start to deal with the death issues at the second  
16:20 3 phase, perhaps one part of you would want to find some  
16:20 4 way to not convict him of capital murder so that you  
16:20 5 wouldn't have to deal with that issue, but you'd still  
16:20 6 do it even though it weren't pleasant to you. If we  
16:20 7 prove it, you would find him guilty of capital murder?

16:20 8 A. Yes.

16:20 9 Q. And then we go to the second phase of the  
16:20 10 trial. He's no longer presumed innocent because he's  
16:20 11 convicted. He's been proved guilty, so we don't have  
16:20 12 that to contend with.

16:20 13 Now, we go to special questions or special  
16:20 14 issues, they are sometimes called, of which there are  
16:20 15 perhaps one, perhaps two, depending on what happens with  
16:21 16 number one. Actually perhaps even three, but we're  
16:21 17 pretty much against him that the second one isn't ever  
16:21 18 going to apply.

16:21 19 The first question you deal with is the  
16:21 20 probability that the defendant would commit criminal  
16:21 21 acts of violence that would constitute a continuing  
16:21 22 threat to society. And you get asked that question, in  
16:21 23 terms of, can you find that beyond a reasonable doubt?  
16:21 24 And if you can, the answer to that question should be  
16:21 25 yes.

16:21 1 If you can't find that beyond a reasonable  
16:21 2 doubt, then the answer to that question would of course  
16:21 3 be no. Now, as you sit there now, you already know what  
16:21 4 the effect of answering that question no is, don't you?  
16:21 5 If that question is answered no, what's that mean?

16:21 6 A. That you want to impose the death penalty.

16:22 7 Q. Go ahead. If that question is answered by the  
16:22 8 jury, no, he is not a continuing threat to society.

16:22 9 A. Oh, no, I'm sorry. I got it backwards. I'm  
16:22 10 really nervous.

16:22 11 Q. Don't be. It's easy. It's not hard.

16:22 12 THE COURT: Could I point something out,  
16:22 13 Ms. Gentle, I've got to commend you on your sense of  
16:22 14 humor, on the bottom of page 12. A man who gets no  
16:22 15 respect is Rodney Dangerfield.

16:22 16 VENIREPERSON: It's the only thing that  
16:22 17 came into my mind. That's the only thing I could think  
16:22 18 was his voice saying, "I don't get no respect."

16:22 19 THE COURT: That was the only answer that  
16:22 20 I want to clarify. I just want to encourage you to  
16:22 21 relax because these -- I think the lawyers told you  
16:22 22 there aren't any right answers, and there aren't any  
16:22 23 wrong answers. Just answer from the heart, and we'll  
16:23 24 move on. Maybe you will be a juror, maybe you won't.  
16:23 25 Okay?

16:23 1 VENIREPERSON: Yes.

16:23 2 THE COURT: Go ahead, Mr. Schultz.

16:23 3 Q. (BY MR. SCHULTZ) So if there's a no answer to  
16:23 4 that question, what does that mean in practical terms  
16:23 5 for a death penalty case?

16:23 6 A. That if he's not a threat then --

16:23 7 Q. Then what would he get?

16:23 8 A. He would get life imprisonment.

16:23 9 Q. Absolutely. We'd talk in terms of no automatic  
16:23 10 sentence, that's true. But a no answer to that question  
16:23 11 is an automatic life sentence. I guess that's makes  
16:23 12 sense if the thing that the society is looking at  
16:23 13 closely is his probability of being a danger in the  
16:23 14 future. Then if he's not, I guess the thinking is the  
16:23 15 need for the death penalty is either nonexistent or way  
16:23 16 down the priority list, and so that's why the life  
16:24 17 sentence occurs.

16:24 18 Would you be able to answer that question  
16:24 19 "yes" if you were convinced beyond a reasonable doubt  
16:24 20 that he was going to be a continuing threat to society?  
16:24 21 Could you do that?

16:24 22 A. Yes.

16:24 23 Q. Even though that is moving along in the  
16:24 24 direction of a death sentence that could result? That  
16:24 25 would not be an automatic death sentence, but that is

16:24 1 certainly moving that way?

16:24 2 A. Yes, I think so.

16:24 3 Q. Okay. If -- if and only if you answer that  
16:24 4 question yes, along with 11 other people, do you get to  
16:24 5 this next issue. Because, again, if 10 or more vote  
16:24 6 "no" on that first question, the trial is over.  
16:24 7 Everybody goes home except the defendant. He goes to  
16:24 8 prison for a life sentence.

16:24 9 This is the second question here: Whether  
16:24 10 taking into consideration all of the evidence including  
16:25 11 the circumstances of the offense, the defendant's  
16:25 12 character and background and the personal moral  
16:25 13 culpability of the defendant, there are sufficient  
16:25 14 mitigating circumstances to warrant a sentence of life,  
16:25 15 rather than death be imposed.

16:25 16 Tell me, if you would, how you understand  
16:25 17 that question? What do you understand it's looking at  
16:25 18 and trying to do?

16:25 19 A. To be clear about which it should be, if  
16:26 20 there's only two choices.

16:26 21 Q. All right. We only get to that question if  
16:26 22 there's a yes answer on the future danger, the  
16:26 23 continuing-threat-to-society question. And then that  
16:26 24 question seems to direct you to look one more time at  
16:26 25 the evidence including the defendant's character and

16:26 1 background that you probably already heard of, you know.  
 16:26 2 Don't you think? Don't you think that's what it seems  
 16:26 3 to be asking you to do? Taking into consideration all  
 16:26 4 the evidence, including defendant's character and  
 16:26 5 background?

16:26 6 A. Uh-huh, yes.

16:26 7 Q. Do you agree that's what it's asking you to do?

16:26 8 A. Yes.

16:26 9 Q. And then it's asking you to, after you consider  
 16:26 10 all of the evidence, including those things, to decide  
 16:26 11 whether a life sentence or a death sentence is  
 16:27 12 appropriate by looking for this mitigating evidence that  
 16:27 13 it talks about. Mitigate means lessening evidence.  
 16:27 14 Stuff that makes, not an excuse, not a defense, maybe  
 16:27 15 not even an explanation, but something that you believe  
 16:27 16 in your conscience lessens the need for a death  
 16:27 17 sentence. Okay? That's what it's asking.

16:27 18 And everybody's different about what that  
 16:27 19 might mean. And nobody's idea is any better than  
 16:27 20 anybody else's. Let's talk about drugs, for example.  
 16:27 21 There might be some people who would say that if you  
 16:27 22 commit a capital murder while you are on drugs, I mean,  
 16:27 23 like hard drugs, illegal drugs, they might see that as  
 16:27 24 mitigating because, if he had not been taking the drugs  
 16:27 25 maybe he wouldn't have done the capital murder. Do you

16:27 1 see how some people could think that way?

16:28 2 A. Yes.

16:28 3 Q. Other people might say, why that's not  
 16:28 4 mitigating because, when you take those drugs, you  
 16:28 5 already know that it affects you and makes you  
 16:28 6 dangerous. And if you choose to take drugs, that's  
 16:28 7 extra bad. It's worse than just doing it on your own  
 16:28 8 because you've engaged in something that makes you very  
 16:28 9 very dangerous. And so they might think that's  
 16:28 10 aggravating. They might think that even makes it worse.  
 16:28 11 Can you understand how their viewpoint would be that  
 16:28 12 way?

16:28 13 A. Yes.

16:28 14 Q. Okay. And it doesn't hardly matter for our  
 16:28 15 purposes which one seems to make more sense. The idea  
 16:28 16 is the same evidence, to one person might be mitigating  
 16:28 17 and to another person might be aggravating. Are you  
 16:28 18 with me?

16:28 19 A. Yes.

16:28 20 Q. Some other examples, growing up in a divorced  
 16:28 21 home. I think most people would agree that it's not  
 16:28 22 ideal for children to grow up in a divorced home. It's  
 16:29 23 not what we would hope our children would have. And yet  
 16:29 24 the reality is that that's frequent in our society,  
 16:29 25 number one. And many functional loving high-achieving

16:29 1 people come from such a background.

16:29 2 And we all probably have known people that  
 16:29 3 grew up in a house where the parents were married for 50  
 16:29 4 years and they turned out not so great. People --  
 16:29 5 people can do what people are going to do. And yet a  
 16:29 6 broken home is not considered ideal for kids. Would you  
 16:29 7 agree with that? It's not ideal?

16:29 8 A. Yes.

16:29 9 Q. And there might be some people who would say  
 16:29 10 that's mitigating, if you come from a broken home. Who  
 16:29 11 knows what scars that might put on you. And so that  
 16:29 12 fact all by itself, I believe, as a juror is sufficient  
 16:30 13 mitigating evidence to knock out a death sentence and  
 16:30 14 make it a life sentence. Do you understand what I'm  
 16:30 15 saying?

16:30 16 A. Yes.

16:30 17 Q. I'm not saying you think that. And maybe you  
 16:30 18 do, maybe you don't. That's not even my question. I'm  
 16:30 19 just saying that people on the jury are free to fashion  
 16:30 20 what they believe is proper mitigating evidence. And we  
 16:30 21 could go on for a period of time.

16:30 22 Some people say youth. Some people say if  
 16:30 23 you are young, that's very mitigating because I guess we  
 16:30 24 all might have more for a young person than an old  
 16:30 25 person maybe. I don't know, maybe not. When we talk

16:30 1 about young, some people might say, at least you got to  
 16:30 2 be a teenager. If you are going to qualify for the  
 16:30 3 young mitigation defense, some people might say, well,  
 16:30 4 when you are 27 years old and you are still doing  
 16:30 5 capital murders, it's not exactly reasonable to claim  
 16:30 6 that you did it because of your youth and that's somehow  
 16:30 7 mitigating.

16:30 8 If you had done this back when you were 16  
 16:30 9 or 17, we might think that was important, but not at age  
 16:30 10 27. Does that make sense?

16:30 11 A. Yes.

16:30 12 Q. And again I'm not -- you might be somebody that  
 16:31 13 says, once you are old enough to know right from wrong,  
 16:31 14 what's the difference in 16 or 50, in terms of your  
 16:31 15 blameworthiness, or you might not? You might see it  
 16:31 16 differently. And some people might say that mitigating  
 16:31 17 evidence could come in the form of some type of  
 16:31 18 religious conversion.

16:31 19 They might say, well, we know he was a  
 16:31 20 dangerous person that committed a capital murder, but  
 16:31 21 since he's been in the jailhouse and waiting his trial,  
 16:31 22 he's become converted to Christianity, and he says he's  
 16:31 23 a new person now. All right?

16:31 24 Some people might say that's mitigating,  
 16:31 25 that if somebody is -- and if they have faith in those

16:31 1 sorts of things, they are very important to you. They  
 16:31 2 might say, you know, that's a mitigating circumstance  
 16:31 3 that makes the life sentence appropriate rather than the  
 16:32 4 death sentence.

16:32 5 And other people might say, well, number  
 16:32 6 one, it doesn't take any genius to realize that that  
 16:32 7 might be something that you could hook a jury with,  
 16:32 8 claiming that you have made this conversion. There you  
 16:32 9 are sitting in the jailhouse waiting for your death  
 16:32 10 penalty trial. What's the problem with claiming to be  
 16:32 11 reborn? Who is going to know anyway?

16:32 12 You might say, even if it's true, how is  
 16:32 13 that mitigating against the death penalty when all this  
 16:32 14 other stuff has occurred that way? Do you follow what  
 16:32 15 I'm saying?

16:32 16 A. Yes.

16:32 17 Q. All I'm saying is, your intuition on that is as  
 16:32 18 good as anybody else in terms of what's mitigating.  
 16:32 19 Many people might say, you know, if I get as far as that  
 16:32 20 question, that capital murder of two people in the  
 16:32 21 course of a burglary or robbery perhaps and I found that  
 16:33 22 that person is probably dangerous to our society, he's  
 16:33 23 walking around the streets loose, he's a danger to us.  
 16:33 24 If I make that finding, it would take an enormous amount  
 16:33 25 of mitigating evidence for me to ever say that's

16:33 1 sufficient to not get the death sentence. They might  
 16:33 2 say, everybody's got troubles. Everybody's had  
 16:33 3 misfortunes in their life. If this is all that the  
 16:33 4 defense is pointing to to mitigate against the death  
 16:33 5 sentence, that's not even close. You know, some people  
 16:33 6 could say that, and that would be right for them.

16:33 7 Other people might say, it doesn't take so  
 16:33 8 much. And that's why there aren't any more definitions  
 16:33 9 on that question than there are.

16:33 10 All we are entitled to, we being the State  
 16:33 11 of Texas, is a juror that honestly tells us that he or  
 16:33 12 she can follow all of the requirements that the law  
 16:33 13 imposes on them as a juror. And that might mean to  
 16:34 14 presume somebody innocent because the law requires you  
 16:34 15 to be able to do that.

16:34 16 That might mean to, if he heard something  
 16:34 17 in trial, and the Judge rules that that shouldn't have  
 16:34 18 been said or shouldn't have been done in trial, and he  
 16:34 19 instructs you to disregard, that is, don't count that  
 16:34 20 evidence on the scales of justice that you be able to do  
 16:34 21 that. He'll never tell you, forget what you heard,  
 16:34 22 because he'll never do that. He'll say, don't consider  
 16:34 23 it as evidence. Don't use that on the scales of  
 16:34 24 justice. You could do that, couldn't you?  
 16:34 25 A. Yes.

16:34 1 Q. And then the question becomes, can you fairly  
 16:34 2 consider all of the evidence and answer those questions  
 16:34 3 either in a way that would cause a death sentence or  
 16:34 4 cause a life sentence to occur by looking at the  
 16:34 5 evidence and giving a fair hearing on the evidence.  
 16:34 6 Could you do that?

16:35 7 A. I think so.

16:35 8 Q. Okay. Well, then that's -- then that's -- if  
 16:35 9 you can do those things, then it sounds like you are in.  
 16:35 10 It sounds like you have the tools that would require it.  
 16:35 11 You don't have to like it or even favor the law as long  
 16:35 12 as you can be fair to both sides. Do you think you  
 16:35 13 would fairly evaluate the evidence that the defense  
 16:35 14 presented in this case and look at it critically and  
 16:35 15 fairly, if they produce evidence?

16:35 16 A. Yeah, yes.

16:35 17 Q. Would you do that for us? If we present  
 16:35 18 evidence, are you sure? I mean, you would give us a  
 16:35 19 fair hearing on our case and fairly consider our proof  
 16:35 20 in favor of a death sentence if he's found guilty of  
 16:35 21 capital murder? Can you do that?

16:35 22 A. Yes.

16:35 23 Q. And now what challenges do you feel you would  
 16:35 24 have in serving as a juror? Do you think your objection  
 16:36 25 to the death penalty would be a challenge that you would

16:36 1 have to work on to overcome?

16:36 2 A. The prospect of being involved in any way.  
 16:36 3 Even sitting here today is very scary.

16:36 4 Q. I know it would have to be, but you could still  
 16:36 5 do it?

16:36 6 A. That's where I fight my battle in my head  
 16:36 7 between duty and want. Do I want to? No.

16:36 8 Q. I know that, I know that. It's where the not  
 16:36 9 wanting to can substantially interfere, big time  
 16:37 10 interfere with a fair hearing on the evidence. I don't  
 16:37 11 get a sense from you that you are going to have any  
 16:37 12 problem listening to the approach that the defense will  
 16:37 13 take in this case.

16:37 14 I don't know you other than just the  
 16:37 15 little bit that we've talked about and also the  
 16:37 16 questionnaire. But I don't have any reservations saying  
 16:37 17 that your problem is not voting for a life sentence.  
 16:37 18 That's not what's going to cause you the trouble. Am I  
 16:37 19 right about that?

16:37 20 A. Yes.

16:37 21 Q. The problem and the challenge for you is going  
 16:37 22 to be voting in a way that will cause a death sentence.  
 16:37 23 That's where you are going to have to constantly refocus  
 16:37 24 yourself looking at the evidence. Is that fair?  
 16:37 25 A. Yes. And also wondering how I'll live with

16:37 1 that after.

16:37 2 Q. All right. Okay. What I meant before when I  
16:37 3 said, I don't know that you can say that it is a  
16:38 4 dereliction of your duty if it's something that you  
16:38 5 don't think you can fairly do. The Judge isn't going to  
16:38 6 order you to get on the jury and find a certain way.  
16:38 7 The Judge couldn't do that. And even if he could, he  
16:38 8 would never -- he wouldn't do that.

16:38 9 No one would ever say, Ms. Gentle, you get  
16:38 10 on that jury, and instruct you how to vote, for example.  
16:38 11 He would never tell you that you have to vote for a  
16:38 12 death sentence or a life sentence.

16:38 13 He would tell you to let the evidence  
16:38 14 direct your answers. If you tell him you can't do that,  
16:38 15 I mean, people say that all the time about some aspect  
16:38 16 of our law. That's not uncommon. People everyday come  
16:38 17 into these courtrooms and say, I could never give  
16:38 18 somebody probation for a sexual assault on a child.

16:38 19 The law requires they be able to consider  
16:38 20 it in certain cases, depending on the eligibility of the  
16:38 21 defendant for probation, which is most of them. But  
16:38 22 they say, no way. I mean, how can I do that? I  
16:38 23 understand how awful that is. I know what that means.  
16:38 24 Either sadly, many times they have had some personal  
16:38 25 experience with it. Even if they haven't had that, they

16:39 1 know what that means. They've known people that it's  
16:39 2 happened to.

16:39 3 They'd say, no disrespect to you, Judge,  
16:39 4 I'd do anything in the world. I'd serve three years on  
16:39 5 a trial if I had to serve three years on a trial if --  
16:39 6 it's not that. There's no way I would ever even  
16:39 7 consider giving somebody probation for such an awful  
16:39 8 crime. And just thanks for your courtesy. And that's  
16:39 9 the end of it. It's not like you get in trouble. It's  
16:39 10 not like you get interpreted as some bad person or  
16:39 11 something. Some people can't do that kind of law.

16:39 12 If you had a child maybe that died from an  
16:39 13 overdose of drugs, maybe there's no way you could give a  
16:39 14 dope dealer a fair trial. I mean, how could you? I  
16:40 15 mean, he's that class of person that cost your child her  
16:40 16 life, let's say. How could you ever be a fair juror to  
16:40 17 that dope dealer? You couldn't. That's just how you  
16:40 18 are wired. That's your experience. That's your  
16:40 19 beliefs.

16:40 20 No one gets mad at you for saying, there's  
16:40 21 no way in the world I could give that guy a fair trial.  
16:40 22 Judge, I'd try, but trying isn't going to do it. Are  
16:40 23 you with me on that?

16:40 24 A. Yes.

16:40 25 Q. He isn't mad. He isn't going to say, what kind

16:40 1 of bad person are you? I'll put you in jail until you  
16:40 2 can do better. It's never anything like that. It's, if  
16:40 3 you can't do it, you can't do it, and that's simple.  
16:40 4 And I guess all I'm saying is, you know you wouldn't --  
16:40 5 if you can do it, and you are the only one that knows  
16:40 6 it. If you can give me, Ms. Falco, and Ms. Lowry, if  
16:40 7 you can assure us that you can fairly consider our  
16:41 8 evidence, you don't have to favor what we're trying to  
16:41 9 do.

16:41 10 In other words, you don't have to say,  
16:41 11 it's a great thing I think you guys are doing. That's  
16:41 12 not required. But you have to say, I may not like doing  
16:41 13 it, and I may not want to talk with you afterwards  
16:41 14 though, and have dinner with you afterwards, and we'll  
16:41 15 talk about this as a big group. You don't have to do  
16:41 16 that. But you understand that we're entitled.

16:41 17 We're decent people just like the defense  
16:41 18 are decent lawyers. We're entitled to a fair trial.  
16:41 19 And the State's entitled to a fair trial. It's your  
16:41 20 state too. You know that. If you are not the person  
16:41 21 who can give that to us, all you got to do is say it.  
16:41 22 And I know what you are saying and I admire -- I admire  
16:41 23 you for what you are saying. But I have a -- I get this  
16:41 24 feeling that you are not sure you could ever vote for a  
16:42 25 death sentence. I might be missing it.

16:42 1 A. If that's the only way to keep that individual  
16:42 2 from killing someone else, I don't like it, but I  
16:42 3 wouldn't want them to kill somebody else.

16:42 4 Q. The law doesn't seem to limit the death penalty  
16:42 5 to actually killing somebody else. You are pretty much  
16:42 6 right on track with what you are saying because it  
16:42 7 doesn't quite go to the point of saying: Do you find  
16:42 8 that he will be a continuing threat to kill another  
16:42 9 person? But what it does say is: There is a  
16:42 10 probability the defendant would commit acts of violence  
16:43 11 that would constitute a continuing threat to society.

16:43 12 So you understand how, if he's going to  
16:43 13 hurt other people, the law contemplates that that might  
16:43 14 be a continuing threat to our society, not kill him  
16:43 15 necessarily, but just hurt them. Does that make sense  
16:43 16 to you?

16:43 17 A. Yes, but that's pretty broad. Hurting can be a  
16:43 18 punch in the arm.

16:43 19 Q. Well, then if that's what he's doing, maybe  
16:43 20 that's not a continuing threat to society of the kind of  
16:43 21 magnitude that maybe that's not the kind of acts of  
16:43 22 violence that we're talking about. I'm just saying, if  
16:43 23 you limit it only to he's going to kill again, what  
16:43 24 about sexual assaults? What about, you know, severe  
16:43 25 beatings that don't rise to that level?



16:43 1 All I'm saying is that it has to be -- it  
16:43 2 has to be of such a magnitude that would convince you  
16:43 3 that he's going to be a continuing threat to our  
16:43 4 society. And if you were convinced that you could do  
16:44 5 it, is that what you are saying? You could vote for a  
16:44 6 death sentence?

16:44 7 A. I believe so, at this moment.

16:44 8 Q. When asked the question: "What makes a person  
16:44 9 dangerous?" you put down, "ignorance or lack of a  
16:44 10 nurtured childhood." Is lack of a nurtured childhood,  
16:45 11 in your mind, an excuse for capital murder?

16:45 12 A. No. I think I spoke to you about that Tuesday  
16:45 13 that I would be sympathetic to that soul. But no, it's  
16:45 14 not an excuse.

16:45 15 Q. Because I bet you know some people who didn't  
16:45 16 have a nurtured childhood, and they did okay. And,  
16:45 17 again, we probably all know people that seemed to have  
16:45 18 had a nurtured childhood, and they haven't done so well.  
16:45 19 Right?

16:45 20 A. Yes.

16:45 21 Q. Police officers are a noble profession, heroes  
16:45 22 in your book. Burden of proof in a criminal case is the  
16:45 23 responsibility of the prosecutors. That's exactly  
16:45 24 right. The duty of prosecutors is to prove guilt.  
16:45 25 Criminal defense attorneys I would think is a difficult

16:45 1 position based on their morals and ethics. What does  
16:46 2 that mean?

16:46 3 A. That I think, I don't know for sure, but I  
16:46 4 think a lot of times they know for sure that they are  
16:46 5 defending someone who is guilty, but they still have to  
16:46 6 defend them as if they were innocent. I think that  
16:46 7 would be difficult.

16:46 8 Q. Do you think it's unfair to come down on  
16:46 9 defense lawyers for -- let's assume you are right.  
16:46 10 Let's assume, not in this case, let's assume that a  
16:46 11 defense lawyer is representing somebody that he believes  
16:46 12 or she believes or even knows to be guilty. Do you  
16:46 13 think it's fair for people to say: How could you do  
16:46 14 that sort of thing? Do you think that's a fair thing  
16:46 15 for the lawyers?

16:46 16 A. You mean accusing them, how could you do that?  
16:46 17 Or --

16:46 18 Q. Uh-huh, or even thinking it. Because, I mean,  
16:46 19 you are not the first person who has ever suggested  
16:46 20 that. How could somebody defend somebody they know is  
16:47 21 guilty?

16:47 22 A. Well, I mean, I do wonder why any of you choose  
16:47 23 the profession that you are in under the kind of stress  
16:47 24 and, you know.

16:47 25 MR. GOELLER: It's a good question.

16:47 1 A. The emotional tear. I'm just a simple  
16:47 2 homemaker and watch the clouds roll by. I'm very happy.  
16:47 3 So this is really heavy stuff for me.

16:47 4 Q. It is for us, too. I mean, we may share a  
16:47 5 laugh or two, or we may get glib about it, but it is  
16:47 6 heavy stuff. And it ought to be, it ought to be for us,  
16:47 7 too. I mean, you don't want people in this office, in  
16:47 8 the DA's office -- you indicated you trust Collin  
16:47 9 County's criminal justice system. You don't want people  
16:47 10 running that, or this wouldn't be important stuff, too.  
16:47 11 I know you wouldn't.

16:47 12 Only thing I say about lawyers -- this  
16:47 13 isn't my day to defend criminal defense lawyers. But  
16:47 14 let me say, I never heard anyone ask a doctor, how could  
16:48 15 you stitch up that guy that you knew was guilty? You  
16:48 16 never ever hear about how the dentist: How could you  
16:48 17 fix that guy's toothache when you know he's guilty? The  
16:48 18 lawyers become the brunt of all the anger on the system.  
16:48 19 We're just doing our profession the same as the doctors.

16:48 20 A. No, I don't feel anger. I just wonder how they  
16:48 21 cope with that.

16:48 22 Q. I bet like a doctor saving someone pretty mean  
16:48 23 and awful. Maybe the same way. It's a profession.  
16:48 24 It's what you believe in. And if you do your profession  
16:48 25 right, then we're all good for it. You know what I

16:48 1 mean?

16:48 2 A. Uh-huh. Yes.

16:48 3 Q. Okay. You trust the system in Collin County.  
16:48 4 Criminal laws treat criminal defendants too harshly.  
16:48 5 You don't agree with that. You think they treat them  
16:48 6 fairly, I guess; is that right?

16:48 7 A. A lot of those questions I couldn't answer  
16:48 8 because I'm not educated enough to really know for sure.

16:49 9 Q. These are just kind of attitudinal things, kind  
16:49 10 of what you think. If someone is accused of capital  
16:49 11 murder, he should have to prove his innocence, and you  
16:49 12 know that's not right because you disagree with that.  
16:49 13 Persons determine their destiny or fate by choices they  
16:49 14 make in life, and you strongly agree with that.

16:49 15 Let's think about it for a second. Let's  
16:49 16 assume a person is guilty of capital murder. It starts  
16:49 17 out presumed innocent. But let's assume he proven to be  
16:49 18 guilty. Do you believe the reason that he's in court  
16:49 19 and been found guilty is because he made choices in his  
16:49 20 life? It's not -- it's not your fault or my fault or  
16:49 21 society's fault. You don't think that, do you?

16:49 22 A. That person might have made the choices, but  
16:49 23 they may have been ill equipped to make the right  
16:50 24 choices.

16:50 25 Q. Do you have anything in mind? You mentioned on

16:50 1 Tuesday a retarded person. That's a very good point.  
 16:50 2 But what if it's not a retarded person? How would they  
 16:50 3 be ill equipped to avoid committing a capital murder?  
 16:50 4 A. Someone addicted who can't make proper choices  
 16:50 5 because they are under the influence of something.  
 16:50 6 Q. Do you think that lessens their responsibility?  
 16:50 7 A. No.  
 16:51 8 Q. You indicated that unless force fed or  
 16:51 9 unknowingly drugged, drinking or drugs is a personal  
 16:51 10 choice. And that's still your position?  
 16:51 11 A. I'll clarify that.  
 16:51 12 Q. Okay.  
 16:51 13 A. Prior to your addiction, it's a choice.  
 16:52 14 Q. So even though you are reluctant to serve, you  
 16:52 15 will serve, and you will be fair to both sides?  
 16:52 16 A. I believe so.  
 16:52 17 MR. SCHULTZ: A moment, please, Judge?  
 16:52 18 THE COURT: Yes.  
 16:53 19 Q. (BY MR. SCHULTZ) Do I understand that you have  
 16:53 20 a trip coming up maybe in October or some type of --  
 16:53 21 A. Yes.  
 16:53 22 Q. Vacation. Is that a fall break kind of a trip,  
 16:53 23 or what is that?  
 16:53 24 A. It's my husband's 40th birthday.  
 16:53 25 Q. And is it going to be an out-of-town trip?

16:53 1 A. Aruba.  
 16:53 2 Q. Have you -- is the date fixed? Like, have you  
 16:53 3 bought the tickets?  
 16:53 4 A. We have tickets. We have passports, yes.  
 16:53 5 Q. And how long is that trip going to be?  
 16:53 6 A. A week.  
 16:53 7 Q. I bet you know my next question and that is,  
 16:53 8 odds are you are going -- I'm guessing, odds are we'll  
 16:53 9 be through with the trial. What time in October is it?  
 16:53 10 A. First week.  
 16:53 11 Q. That's getting close. I mean, I'm just telling  
 16:53 12 you. And you might remember it, I know I read about  
 16:53 13 some feelings when I said that I know everybody's got  
 16:54 14 things going on in their lives that are important. When  
 16:54 15 I said, well, they can't be as important as this kind of  
 16:54 16 a case, no matter almost what it is. I guess, maybe a  
 16:54 17 major medical thing where you've got to have like  
 16:54 18 surgery right then. That can be.  
 16:54 19 And other than that, I don't know how  
 16:54 20 anybody could come up with something as important as a  
 16:54 21 man fighting for his life, which is kind of where we are  
 16:54 22 with this right now, you know? And so in the event that  
 16:54 23 you are selected to serve on this jury, and in the event  
 16:54 24 that we come up in October and it's still going on,  
 16:54 25 what's that going to mean for you as a juror? Tell me

16:54 1 kind of -- just give me some idea, if that were to  
 16:54 2 happen, how that would affect you?  
 16:55 3 A. I would rather be on the beach under a cabana  
 16:55 4 sipping an umbrella drink.  
 16:55 5 Q. But we all probably would.  
 16:55 6 A. Yes.  
 16:55 7 Q. But you know what I'm asking. What -- how is  
 16:55 8 that -- what is that going to do in terms of your jury  
 16:55 9 service?  
 16:55 10 A. It's not as important as some of the other  
 16:55 11 things I'm thinking right now.  
 16:55 12 Q. About this case, you mean?  
 16:55 13 A. Yeah. About how -- I hope I can speak without  
 16:55 14 blubbering. About how to live with those decisions  
 16:55 15 afterwards and how that will affect my life. And I'm  
 16:55 16 thinking selfishly, how it's going to affect me as well.  
 16:55 17 Q. You mean, I understand. Nobody --  
 16:56 18 A. I'm a wimp, as you can see. I'm shaking like  
 16:56 19 it's 20 degrees in here.  
 16:56 20 Q. That's your term. That's not mine. If you do  
 16:56 21 the right thing and you are true to your oath -- and I  
 16:56 22 know you don't like doing it, but why would -- why do  
 16:56 23 you say it would be hard to live with yourself after?  
 16:56 24 A. Because it's still involves a person's life.  
 16:56 25 Q. Right. Do you think that -- don't you think

16:56 1 other people on the jury are going to be like you with  
 16:56 2 those same kind of feelings?  
 16:56 3 A. I hope so.  
 16:56 4 Q. Okay. If that's the case, I mean every time  
 16:56 5 you hear about a death penalty case, 12 people going  
 16:56 6 through that just like you might have to, right? We do  
 16:56 7 hundreds of these a year across the State of Texas and  
 16:57 8 it's not, it's not joyous. There's nothing about it  
 16:57 9 that's, that I can see that would be fun.  
 16:57 10 A. I think some people might be tougher than I am.  
 16:57 11 Q. All right. But that doesn't disqualify you  
 16:57 12 either. I mean, that's just you, and you might be  
 16:57 13 tougher in a different area. And that's the pretty part  
 16:57 14 of the jury system. But even if -- even if you are  
 16:57 15 called upon to vote for a death sentence by the  
 16:57 16 evidence, you can do it, right? You are sure you can do  
 16:57 17 it?  
 16:57 18 A. I believe so, today.  
 16:57 19 Q. You think it's something like -- are you saying  
 16:57 20 that -- I'm taking you at your word. But I got to know  
 16:57 21 what you are going to be like in three weeks not,  
 16:58 22 because right now you don't have to do anything if you  
 16:58 23 are seated.  
 16:58 24 You just go home until the Judge calls you  
 16:58 25 again. But I need some idea from you what you are going

16:58 1 to be like in three weeks when this trial starts because  
16:58 2 then it's too late for me. If I've got somebody that's  
16:58 3 not going to fairly hear my case, we're doomed at the  
16:58 4 outset.

16:58 5 A. What I thought Tuesday was like you were  
16:58 6 saying, talking over coffee and your opinions and  
16:58 7 filling out that questionnaire and being in a hurry to  
16:58 8 do it because I had to get home. It's not that my  
16:58 9 complete beliefs have changed, but I mean, I have had a  
16:58 10 lot of time to think, and his face has been ingrained in  
16:58 11 my brain. And I haven't slept a lot, so I think I could  
16:58 12 do it, but I think I would be scared and maybe pee on  
16:59 13 the floor doing it.

16:59 14 Q. Okay. Well, I mean, I'm the one that invited  
16:59 15 you to look at him. So I'm comfortable with his face  
16:59 16 being ingrained in your mind. That's okay. As long as  
16:59 17 you are telling me that you could do it. If I prove it  
16:59 18 to you, that you could do it.

16:59 19 MR. GOELLER: Judge, I'm sorry. I've got  
16:59 20 to object to the question -- that last question phrased,  
16:59 21 that if he proves it, she can do it. I don't know if  
16:59 22 he's talking about first phase, second phase. I don't  
16:59 23 know if he's talking about first special issue, second  
16:59 24 special issue. That question leads to all sorts of  
16:59 25 problems regarding my anticipated voir dire.

16:59 1 THE COURT: You are objecting to  
16:59 2 vagueness?

16:59 3 MR. GOELLER: Yes. In the form of the  
16:59 4 question.

16:59 5 THE COURT: Sustained.

16:59 6 Q. (BY MR. SCHULTZ) If I prove to you all of the  
16:59 7 things that the law requires me to prove in order for a  
16:59 8 death sentence to result, that includes his guilt for  
17:00 9 starters. That includes his propensity for future  
17:00 10 violence and the lack of mitigating evidence in such an  
17:00 11 amount, in such a quantity that a death sentence is  
17:00 12 inappropriate. If I prove all of that to you, I can get  
17:00 13 the votes that would result in a death sentence from  
17:00 14 you?

17:00 15 MR. GOELLER: I'm sorry, Mr. Schultz. I  
17:00 16 don't mean to interrupt. I object to that question as  
17:00 17 well as the way he phrased the mitigating special issue  
17:00 18 in such a quantity, and it's less than the converse. It  
17:00 19 says, is there a sufficient circumstance or  
17:00 20 circumstances? So I object to the way he phrased the  
17:00 21 question. It's misleading. It places indirectly an  
17:00 22 additional burden on the defendant.

17:00 23 THE COURT: Overruled. I'll let you --  
17:00 24 let you correct whatever you see.

17:00 25 MR. GOELLER: Yes, sir.

17:00 1 Q. (BY MR. SCHULTZ) If I prove all of it, if I  
17:00 2 prove all that the law requires me to prove, I don't  
17:01 3 have to worry about anything with you?

17:01 4 A. I don't think I can say that as black and white  
17:01 5 as you want. No. I don't think I can say that I  
17:01 6 couldn't possibly change my mind because I don't know  
17:01 7 all the gray areas.

17:01 8 Q. I'm not talking about the evidence because you  
17:01 9 recall the evidence like you see it. Do you see  
17:01 10 yourself coming back in three weeks and saying, you  
17:01 11 know, I made a terrible mistake. I don't think I can  
17:01 12 give you a fair trial on a death penalty case? Can you  
17:01 13 see you changing -- can you see yourself changing that  
17:01 14 way?

17:01 15 A. Not being able to be fair?

17:01 16 Q. Yes.

17:01 17 A. No.

17:01 18 Q. So you'll still be able to vote for it, if  
17:01 19 proven to you through? Because you mentioned that maybe  
17:01 20 when you came back that you might be different, you  
17:02 21 know, but you won't be unfair. You'll still be able to  
17:02 22 do all that the law would require you to do; is that  
17:02 23 right?

17:02 24 A. Yes, I believe so.

17:02 25 MR. SCHULTZ: Pass the juror.

17:02 1 THE COURT: All right.

17:02 2 VOIR DIRE EXAMINATION

17:02 3 BY MR. GOELLER:

17:02 4 Q. Good afternoon, ma'am. My name is Matthew  
17:02 5 Goeller. Were you -- were you ever on the Manitowoc?  
17:02 6 USS Manitowoc, or anything like that? Were you ever  
17:02 7 ship deployed?

17:02 8 A. They didn't do that with women then.

17:02 9 Q. Yeah. I guess you are right.

17:02 10 A. No sea duty.

17:02 11 Q. Were you ever in Newport?

17:02 12 A. Connecticut?

17:02 13 Q. Rhode Island.

17:02 14 A. No. I haven't been to Newport.

17:02 15 Q. You live in what city?

17:02 16 A. Sachse.

17:02 17 Q. You look familiar somehow. Do I look familiar  
17:02 18 to you at all?

17:02 19 A. No, but I get that a lot. I guess I have  
17:03 20 common features. A lot of people say that, that I --

17:03 21 Q. No. I didn't mean it that way. Ma'am, if the  
17:03 22 Court would allow, I'm going to let Mr. High talk to  
17:03 23 you. He's actually got your -- I got out of order.  
17:03 24 He's got your questionnaire, and I'm going to turn it  
17:03 25 over to my partner.

17:03 1 THE COURT: All right.  
 17:03 2 VOIR DIRE EXAMINATION (Cont'd)  
 17:03 3 BY MR. HIGH:  
 17:03 4 Q. And I'm Mr. High. I appreciate you coming in  
 17:03 5 today. And I know that you are not enjoying this too  
 17:03 6 much, and I won't take as long as Mr. Schultz. But I've  
 17:03 7 got a few questions for you, if that's okay. Tell me  
 17:03 8 about your -- I take it you are a homemaker?  
 17:03 9 A. Yes.  
 17:03 10 Q. Tell me about a normal day for you. Tell me  
 17:03 11 the kind of activities you are involved in.  
 17:03 12 A. I live the kind of life everybody else wishes  
 17:03 13 they lived. I lay by the pool, I train my dogs, I play  
 17:03 14 with my dogs, I go to the gym. I, you know, look at  
 17:04 15 recipes and magazines and watch *Oprah* maybe.  
 17:04 16 Q. How do I sign up?  
 17:04 17 A. I watch -- I lay on the grass and watch the  
 17:04 18 clouds go by and contemplate why I'm here.  
 17:04 19 Q. Excellent. So this -- this is a far cry from  
 17:04 20 your daily life?  
 17:04 21 A. Yeah.  
 17:04 22 Q. If I flip pages, that's a good thing. Okay?  
 17:04 23 Tell me how you signed up for the Navy. That's kind of  
 17:04 24 a curious thing. What caused you to do that?  
 17:05 25 A. I don't think I want to tell you that whole

17:05 1 story. But just, I was in school and not wanting to do  
 17:05 2 that anymore and sort of lacking direction. And my  
 17:05 3 mother, in all her wisdom, sent the postcard from the *TV*  
 17:05 4 *Guide* in, and I got a call from a recruiter.  
 17:05 5 Well, you are going to hear the whole  
 17:05 6 story. And he sounded really cute, so I went to meet  
 17:05 7 him, and he was a good recruiter. He had me pretty  
 17:05 8 convinced that it would be a good thing. And as it  
 17:05 9 turns out, it was. I got great duty, and I met my  
 17:05 10 husband. So that was all wonderful.  
 17:05 11 Q. So he was a very good salesman?  
 17:05 12 A. Yes. And I'm easy, I guess, for cute salesmen.  
 17:05 13 Well, I was 21, you know. That's different.  
 17:05 14 Q. Were you in school at the time or had you --  
 17:06 15 A. Yes.  
 17:06 16 Q. -- quit school?  
 17:06 17 A. No. I was no school.  
 17:06 18 Q. Where were you in school?  
 17:06 19 A. New York Institute of Technology.  
 17:06 20 Q. So you lived up in New York?  
 17:06 21 A. Queens.  
 17:06 22 Q. Queens. So that's the city?  
 17:06 23 A. Outside Long Island.  
 17:06 24 Q. Yeah. Manhasset, that's on --  
 17:06 25 A. No. I was living in Douglaston at the time.

17:06 1 Manhasset is also on Long Island, yes.  
 17:06 2 Q. So that would have been 1981. And you were 22,  
 17:06 3 23, something like that?  
 17:06 4 A. 21.  
 17:06 5 Q. Okay. And is that how old you were when you  
 17:06 6 went through boot camp?  
 17:06 7 A. 22, yeah.  
 17:06 8 Q. Did you have any people in boot camp quit, just  
 17:06 9 drop out?  
 17:06 10 A. Yes. I think so, in the beginning.  
 17:06 11 Q. Did you go through boot camp with other  
 17:06 12 females?  
 17:06 13 A. Yes. But there were also males in the boot  
 17:07 14 camp, but obviously we weren't in the same places. We  
 17:07 15 saw each other on work duty and that sort of stuff, but  
 17:07 16 we didn't sleep in the same place.  
 17:07 17 Q. Did you go through your training for the most  
 17:07 18 part with other females?  
 17:07 19 A. Yes.  
 17:07 20 Q. And if someone were to drop out, it would be  
 17:07 21 another female?  
 17:07 22 A. Yes.  
 17:07 23 Q. And you would be, you would know about that? I  
 17:07 24 guess, would you know about it or --  
 17:07 25 A. Well, in the beginning you don't really know

17:07 1 too many people, and there are 80 people in the company.  
 17:07 2 So, yeah, a few people dropped out, but you didn't  
 17:07 3 realize who it was or what happened. They just kind of  
 17:07 4 disappeared.  
 17:07 5 Q. And you didn't get an explanation for it from  
 17:07 6 your recruiting officer?  
 17:07 7 A. Not that I recall.  
 17:07 8 Q. That's been so long ago?  
 17:07 9 A. Yeah.  
 17:07 10 Q. And I guess were they using the term AWOL back  
 17:07 11 then?  
 17:07 12 A. Yeah, sure. People that didn't show up for  
 17:07 13 boot camp.  
 17:07 14 Q. And also people that were not -- went away on  
 17:07 15 weekend leave?  
 17:08 16 A. And never came back, yeah.  
 17:08 17 Q. And do you have any particular views about  
 17:08 18 those people. I mean, at that time did you think, gee,  
 17:08 19 they are a deserter, or they are bad people that, or did  
 17:08 20 you view it more maybe they just changed their mind.  
 17:08 21 Maybe it's something that they didn't want to do after  
 17:08 22 all. Maybe they met a cute recruiter, and they didn't  
 17:08 23 belong here in the first place?  
 17:08 24 A. No. I come back to the wimp factor. I would  
 17:08 25 be thinking that I can't believe they didn't obey the

17:08 1 authoritative figure because I'm a very well-trained  
 17:08 2 dog, and I would do everything he told me to do.  
 17:08 3 Q. I can somewhat relate, and I think most of the  
 17:08 4 folks in here can, too. We went through law school, and  
 17:08 5 the first couple of weeks they treated it kind of like a  
 17:08 6 boot camp, and they say somebody on your left or on your  
 17:08 7 right is not going to be here next week, and that's  
 17:08 8 true. And that happened, and maybe I was a wimp, too.  
 17:09 9 I stuck around, you know. So, all right. Let me move  
 17:09 10 onto the next thing.

17:09 11 You mentioned that you've undergone some  
 17:09 12 counseling for depression and coping. That is, being a  
 17:09 13 child of an alcoholic?

17:09 14 A. Yes.

17:09 15 Q. And I don't want to get real, real personal  
 17:09 16 with you, but I got to get somewhat personal. Is that  
 17:09 17 an ongoing problem with you, or have you already dealt  
 17:09 18 with that issue?

17:09 19 A. I've dealt with it, and my father's dead.

17:10 20 Q. There's some unanswered questions about the  
 17:10 21 church, synagogue or place of worship. Does that apply  
 17:10 22 to you at all?

17:10 23 A. No.

17:10 24 Q. So you don't attend a church, synagogue or  
 17:10 25 place of worship?

17:10 1 A. No, I don't.

17:10 2 Q. You were raised in the Presbyterian faith?

17:10 3 A. Yes. But I'm not baptized or confirmed or -- I  
 17:10 4 had to go to Sunday school.

17:10 5 Q. You say you had to go to Sunday school?

17:10 6 A. Yeah, that's it. Can I add to that?

17:11 7 Q. To the -- to the church thing?

17:11 8 A. Yeah. I don't think my belief system, my  
 17:11 9 personal belief system is any less valid than somebody  
 17:11 10 that goes to church five times a week.

17:11 11 Q. Absolutely not. Why don't you tell me about  
 17:11 12 it.

17:11 13 A. That's all. I saw you marking and I thought,  
 17:11 14 well, I hope he's not marking me off as a heathen  
 17:11 15 because I'm not.

17:11 16 Q. I'll be glad to let you look at it. I  
 17:11 17 certainly didn't say that. I don't guess I did  
 17:11 18 anything. But if you'd like to tell me about it, I  
 17:11 19 would be glad to hear about it.

17:11 20 A. Well, no. That's very personal, what you  
 17:11 21 believe and where you are going.

17:11 22 Q. I understand. I wrote down "not baptized or  
 17:11 23 confirmed." Just what you said, right next to  
 17:11 24 "Presbyterian."

17:11 25 A. That's not my fault. That's my parents.

17:11 1 THE COURT: Your parents?

17:11 2 VENIREPERSON: My parents. They got lazy.  
 17:11 3 I was the third child. They just never got around to  
 17:11 4 it, so. I don't think it counts for anything.

17:12 5 THE COURT: It sounds like a rank of sort  
 17:12 6 of discrimination.

17:12 7 Q. (BY MR. HIGH) I've just got a couple more  
 17:12 8 questions. And I want to go over with you the first  
 17:12 9 special issue. Take another look at it, whether there's  
 17:12 10 a probability that the defendant would commit criminal  
 17:12 11 acts of violence that would constitute a continuing  
 17:12 12 threat to society. And I want to ask you what this word  
 17:12 13 here means, probability?

17:12 14 A. Maybe, possibility, probably.

17:12 15 Q. Probably?

17:12 16 A. A more likely than a possibility.

17:12 17 Q. All right. We've heard every kind of answer  
 17:12 18 you can imagine in here. I tend to agree with you.  
 17:12 19 More likely, the likelihood. More likely than not.  
 17:12 20 We've heard 50 percent, 51 percent, you know, 52  
 17:13 21 percent. Three quarters, majority of the time. Do you  
 17:13 22 feel comfortable with that explanation? More likely?

17:13 23 A. More than likely.

17:13 24 Q. Okay. You understand before you get to this  
 17:13 25 question, you would have already found the defendant

17:13 1 guilty of capital murder. There would already be a  
 17:13 2 finding of guilt in capital murder before we got to this  
 17:13 3 question.

17:13 4 A. Yes.

17:13 5 Q. And with respect to the options available, it's  
 17:13 6 going to be either life in prison or death, or at least  
 17:13 7 for someone found guilty of capital murder. You  
 17:13 8 understand that?

17:13 9 A. Yes.

17:13 10 Q. Okay. And obviously if they don't get death,  
 17:13 11 then they are going to get life in prison. Do you  
 17:13 12 understand that?

17:13 13 A. Yes.

17:13 14 Q. So we know for a fact that if they don't get  
 17:14 15 death, they are going to be living somewhere, and that's  
 17:14 16 where they are going to be living, most likely, is  
 17:14 17 prison. And does this have any meaning to you?  
 17:14 18 Society, I think there was some discussion on Tuesday  
 17:14 19 about prison society. Did you have any problem with  
 17:14 20 that?

17:14 21 A. Yeah. To be honest, I didn't really think of  
 17:14 22 society as being within the prison walls. But after he  
 17:14 23 talked about it, I did think about it.

17:14 24 Q. Okay.

17:14 25 A. Including the other prisoners and the people

17:14 1 that work there.  
 17:14 2 Q. Fair enough. And I'm the same with you.  
 17:14 3 Before I started working on this case, I had the same  
 17:14 4 perception until I started studying and learning about  
 17:14 5 the offense of capital murder. Is it outrageous though  
 17:14 6 to you now that you are enlightened with respect to what  
 17:14 7 could happen to a capital murder defendant? Either they  
 17:15 8 go to prison for life or they go to the death chamber.  
 17:15 9 To consider whether they would be violent in a prison  
 17:15 10 society, is that outrageous to consider, or does that  
 17:15 11 make some sense to you?  
 17:15 12 A. It makes sense to me.  
 17:15 13 Q. There's the second question. And it's awfully  
 17:15 14 long in that it's a lawyer's type question, isn't it?  
 17:15 15 A. Yes. And I'm frankly kind of brain-dead  
 17:15 16 because I can't think past my vibrations.  
 17:15 17 Q. I understand. We'll go through it together. I  
 17:15 18 think Mr. Schultz has already gone through it. And he  
 17:15 19 went through it very nicely, very gently. I'm going to  
 17:15 20 do the same. This is the question that you will get at  
 17:16 21 the end of the trial, assuming there's a finding of  
 17:16 22 capital murder, that the defendant's guilty of capital  
 17:16 23 murder. Assuming there's a finding that, yes, he's a --  
 17:16 24 he's a danger, there's a probability that he's going to  
 17:16 25 commit acts of violence, that he would be a continuing

17:16 1 threat to society. You say yes.  
 17:16 2 Mr. Schultz phrased it, this is the  
 17:16 3 look-back question, where you get a chance to take one  
 17:16 4 last look at the defendant and say, there's mitigating  
 17:16 5 circumstances sufficient whereby we think we need to  
 17:16 6 save his life. Okay? It's a look back, it's a chance  
 17:16 7 to look back, get a last look at the defendant and make  
 17:16 8 a decision.  
 17:16 9 Several things it discusses within this  
 17:16 10 question. It talks about considering all the evidence.  
 17:16 11 You are going to hear evidence. You'll hear evidence in  
 17:16 12 the guilt-innocence phase of the trial. You'll hear  
 17:17 13 about the killings. You'll hear about he's charged with  
 17:17 14 a double homicide. You may hear about a robbery. You  
 17:17 15 may hear about a burglary, all those things we discussed  
 17:17 16 last Tuesday.  
 17:17 17 You are going to hear about the facts of  
 17:17 18 the case which you haven't heard anything today because  
 17:17 19 we can't talk about them with you today. Okay? But  
 17:17 20 you'll hear it before you have to answer this question.  
 17:17 21 You'll have a real good feel for what  
 17:17 22 happened, and presumably you would have found him  
 17:17 23 guilty. But you are also going to hear such things as  
 17:17 24 his character and his background. And I'm going to get  
 17:17 25 to that next phrase, and the personal moral culpability

17:17 1 of the defendant. Can you see that?  
 17:17 2 A. Yes.  
 17:17 3 Q. And the personal moral culpability of the  
 17:17 4 defendant.  
 17:17 5 A. I'm not sure I know what culpability is.  
 17:17 6 Q. Okay. Fair enough. I want to ask you about  
 17:18 7 that. You guessed it. There's no definition in the law  
 17:18 8 for personal moral culpability. Now, the culpability is  
 17:18 9 discussed somewhat in the law. And that -- that's with  
 17:18 10 respect to a person's criminal responsibility tied to a  
 17:18 11 particular crime, whether they are culpable or not.  
 17:18 12 Whether they are criminally responsible or not. Okay?  
 17:18 13 It's a type of responsibility.  
 17:18 14 A. Criminally responsible as opposed to what?  
 17:18 15 Q. As opposed to someone who is not criminally  
 17:18 16 responsible.  
 17:18 17 A. I guess I don't have a grip on that.  
 17:18 18 Q. Okay. So does that phrase personal moral  
 17:18 19 culpability mean anything to you when you hear it first  
 17:18 20 go around, or is it just confusing to you?  
 17:18 21 A. Yeah. I'm more confused now than I was a  
 17:18 22 minute ago.  
 17:19 23 Q. That's fair enough.  
 17:19 24 A. I get the personal moral part. I'm still not  
 17:19 25 clear about culpability. Do you have a dictionary?

17:19 1 Q. Yeah, but I don't think it would be really fair  
 17:19 2 to get a dictionary out and read it to you.  
 17:19 3 A. That would help me.  
 17:19 4 Q. Let me ask you this: Have you ever heard of  
 17:19 5 the concept of remorse?  
 17:19 6 A. Yes.  
 17:19 7 Q. Okay. Personal guilt, you are aware of that?  
 17:19 8 A. Yes.  
 17:19 9 Q. Have you ever done something in your life that  
 17:19 10 you felt so badly about it you were just overwhelmed  
 17:19 11 with personal guilt?  
 17:19 12 A. Sure.  
 17:19 13 Q. Maybe even, you didn't respect yourself anymore  
 17:19 14 for having done that. Maybe you said something, did  
 17:19 15 something that you wish you could take back. You've  
 17:19 16 done that, haven't you?  
 17:19 17 A. Didn't lose respect, but I wish I had put my  
 17:19 18 foot in my mouth instead, yeah.  
 17:20 19 Q. Sure. And I assume -- I mean, we're all human  
 17:20 20 beings. You know, there's going to be a whole range of  
 17:20 21 criminal defendants. Some feeling of guilt for what  
 17:20 22 they did, and others feeling no guilt whatsoever. Sort  
 17:20 23 of like the Timothy McVeighs of the world, who felt no  
 17:20 24 personal guilt whatsoever, remorse whatsoever, did he?  
 17:20 25 He's just kind of in your face. He was that kind of

17:20 1 person. Okay?

17:20 2           Whereas other folks who -- who accept  
17:20 3 responsibility, who accept their guilt, who feel  
17:20 4 remorse, who feel bad about what they did. I guess I'm  
17:20 5 not trying to explain, but I'm trying to give you a feel  
17:20 6 of my understanding of what this means. Does that help  
17:20 7 you at all? Personal moral culpability?

17:20 8           A. Yes.

17:20 9           Q. Now, I don't want you to get the impression  
17:21 10 that our side is going to give you a definition of that,  
17:21 11 because I don't think we have one in the law that we can  
17:21 12 supply you with. And I don't want you to think that the  
17:21 13 State's going to give you a definition or that the Judge  
17:21 14 is going to give you a definition at the end of the  
17:21 15 trial. Okay?

17:21 16           I think you are going to have to figure  
17:21 17 that out for yourself as the trial proceeds. Maybe  
17:21 18 we'll have some smart people on the jury that know what  
17:21 19 it means. Maybe more smarter than myself. Okay? But  
17:21 20 the legislature anyway, they gave us -- they gave us  
17:21 21 this definition, the folks in Austin. They gave us this  
17:21 22 whole paragraph question that we're going to have to  
17:21 23 live with it. Okay?

17:21 24           So I guess my best explanation is remorse,  
17:21 25 guilt, the way a criminal defendant would feel. Let's

17:21 1 assume that that's the definition. Would you feel like,  
17:21 2 if you were sitting as a juror on this case, that you  
17:22 3 could consider remorse or the way the defendant feels as  
17:22 4 a mitigating circumstance that would mitigate against a  
17:22 5 death sentence and possibly create a situation where  
17:22 6 you'd vote for life imprisonment? Do you want me to  
17:22 7 restate it?

17:22 8           A. Would I be sympathetic to that?

17:22 9           Q. Would you at least listen to it?

17:22 10          A. Of course.

17:22 11          Q. All right. I do have one more thing I want to  
17:23 12 talk to you about, and that's with respect to defense  
17:23 13 attorneys. I'm sure you understand that someone who is  
17:23 14 charged with a felony offense is at a severe  
17:24 15 disadvantage if they don't have a lawyer to help them.

17:24 16          A. Yes.

17:24 17          Q. I'm sure if you were charged with a felony  
17:24 18 offense, you would want --

17:24 19          A. Yes.

17:24 20          Q. -- a lawyer to at least level the playing  
17:24 21 field, wouldn't you?

17:24 22          A. Yes.

17:24 23          Q. Okay. And let's assume that you were guilty of  
17:24 24 a felony offense, would that change your opinion? I  
17:24 25 mean, even though you were guilty, my goodness, you

17:24 1 would still want a lawyer to help you with your case,  
17:24 2 wouldn't you?

17:24 3          A. Well, I don't know. I've never been guilty of  
17:24 4 such a crime. I don't know.

17:24 5          Q. Let's just assume --

17:24 6          A. I just want to --

17:24 7          Q. I can't imagine that scenario. But let's just  
17:24 8 assume that you were charged with it.

17:24 9          A. Yes. I would probably want everything that the  
17:24 10 law allows.

17:24 11          Q. Okay. And you would certainly want a lawyer to  
17:24 12 at least advise you and talk to you and counsel you and  
17:24 13 explain what could happen to you and what your next step  
17:25 14 should be, and also shed some light. If the district  
17:25 15 attorney made a plea bargain recommendation to you,  
17:25 16 whether it was a reasonable one, one that you should  
17:25 17 accept, et cetera?

17:25 18          A. Sure.

17:25 19          Q. Okay. Obviously, not every case -- not every  
17:25 20 case is going to result in a trial. Are you aware of  
17:25 21 that?

17:25 22          A. I think I'm aware of it, but I don't know the  
17:25 23 specifics of how it works.

17:25 24          Q. Would you be surprised if I told you that 95  
17:25 25 percent of all cases are resolved with a plea bargain,

17:25 1 some sort of an agreement?

17:25 2          A. Yeah, I would be surprised. I didn't know it  
17:25 3 was that large of a percentage.

17:25 4          Q. Okay. And that criminal defense attorneys have  
17:25 5 a lot to do with that because they -- they have to  
17:25 6 negotiate with the D.A. And sometimes they have to  
17:25 7 negotiate with their client and try to -- try to reach  
17:25 8 an acceptable resolution on a case load on the cases.  
17:26 9 Okay? I'm just trying to enlighten you. There are  
17:26 10 those cases that you just cannot reach an agreement on.

17:26 11          A. Is there negotiating in a capital murder?

17:26 12          Q. Well, I'm not sitting here telling you that we  
17:26 13 can negotiate a capital murder.

17:26 14          A. Okay.

17:26 15          Q. That's not -- that's not real common at all.  
17:26 16 Okay. But you can negotiate a capital murder if the  
17:26 17 D.A. is willing to recommend a life sentence.  
17:26 18 Incidentally, do you know who is seeking the death  
17:26 19 penalty on this case?

17:26 20          A. (Indicating.)

17:26 21          Q. That's right, the district attorney. Do you  
17:26 22 know who makes the decision to seek the death penalty?

17:26 23          A. The State.

17:26 24          Q. The District Attorney.

17:26 25          A. And them.

17:26 1 Q. That's right. Well, it's not them actually.  
 17:27 2 They are assistant district attorneys. They work for  
 17:27 3 the District Attorney. Do you know a gentleman by the  
 17:27 4 name of Tom O'Connell?

17:27 5 A. I think I saw his picture downstairs.

17:27 6 Q. All right. That's right. He's the elected  
 17:27 7 District Attorney for Collin County. And he's the  
 17:27 8 one -- you've heard the phrase, the buck stops here.  
 17:27 9 He's the one that has to make the tough decision of  
 17:27 10 whether or not to seek the death penalty. And he's the  
 17:27 11 one that's decided in this case to seek the death  
 17:27 12 penalty. So back to your --

17:27 13 A. He alone?

17:27 14 Q. He alone. That doesn't mean that our client's  
 17:27 15 going to get the death penalty because that's up to the  
 17:27 16 jury. They have to decide that. He's the one that's  
 17:27 17 seeking it. Back to -- back to negotiating, you know,  
 17:28 18 we got off -- as defense attorneys, we can push for a  
 17:28 19 life sentence, but if they choose not to extend it to  
 17:28 20 us, then we wind up in court here. Okay?

17:28 21 Here's my point. Here's my point. If --  
 17:28 22 obviously, you are not going to hold it against us as  
 17:28 23 criminal defense attorneys because we're going to do our  
 17:28 24 job and represent our client to the best of our ability.  
 17:28 25 You are not going to be upset with us if we do that, are

17:28 1 you?

17:28 2 A. Of course not. I'm sympathetic for you.

17:28 3 Q. All right. Did I hit on anything that you need  
 17:28 4 to clarify with me or anything that you want to speak  
 17:28 5 more fully about? Do you have any other questions for  
 17:29 6 me that you would like to ask me or tell me?

17:29 7 A. I have a couple questions that any one of you  
 17:29 8 could answer. Like --

17:29 9 Q. I'll take a shot at it.

17:29 10 A. Like, how are we, as jurors, protected from,  
 17:29 11 say, his family being angry with our decision and coming  
 17:29 12 after us? Are we protected in any way?

17:29 13 MR. GOELLER: Ma'am, those are questions  
 17:29 14 that are probably best answered by the Judge. I can  
 17:29 15 tell you, in my experience and in having been involved  
 17:29 16 on both sides of the bar in several homicide cases, bad  
 17:29 17 cases, I don't think we've ever had a situation.

17:30 18 VENIREPERSON: Well, I saw that movie, *The*  
 17:30 19 *Juror*, which is all Hollywood, I understand. But still,  
 17:30 20 you know, I want -- I'm still back to what he was  
 17:30 21 talking about. Thinking about how this is going to  
 17:30 22 affect. I'm thinking selfishly, how is this going to  
 17:30 23 affect my life?

17:30 24 MR. GOELLER: Like I said, there are  
 17:30 25 certainly no one -- no one could guarantee you anything,

17:30 1 the police. But it's been my experience in this county  
 17:30 2 that that's never been an issue, no matter how bad the  
 17:30 3 case is. And I think the Judge will probably tell you  
 17:30 4 the same.

17:30 5 VENIREPERSON: Are the specifics of our --  
 17:30 6 our names and our addresses and who we are disclosed to  
 17:30 7 anybody except you?

17:30 8 MR. GOELLER: I don't think so. I don't  
 17:30 9 know what's public record. First of all, it's a crime  
 17:30 10 for anybody to contact you in the immediate future.  
 17:30 11 It's an absolute crime. I mean, no one wants to go to  
 17:31 12 the penitentiary over trying to tamper with the jury or  
 17:31 13 doing anything.

17:31 14 It is so nonexistent I can't even tell you  
 17:31 15 or remember a case where somebody did something with a  
 17:31 16 juror. And I'm talking about between Ms. Falco and  
 17:31 17 Ms. Lowry and Mr. High and I, and Mr. Schultz, I don't  
 17:31 18 know if they have any -- can recollect something  
 17:31 19 involving a juror. But I'll bet you that there's in  
 17:31 20 this room, between the Judge and all of us, there's got  
 17:31 21 to be close to 80, 90, a hundred years' worth of legal  
 17:31 22 experience. And I've never heard of it in this county.

17:31 23 I don't know if that makes you feel any  
 17:31 24 better, but it should because there's -- people aren't  
 17:31 25 going to have an issue with you personally, no matter

17:31 1 what happens. I don't think -- I don't think you need  
 17:31 2 to be concerned about that. And that's an honest  
 17:32 3 opinion, and I think an honest answer.

17:32 4 THE COURT: Do you have any other  
 17:32 5 questions?

17:32 6 VENIREPERSON: Yes. Can I ask you? When  
 17:32 7 you talk about: Don't discuss the case, obviously not  
 17:32 8 the specifics, the names or that, but I share my  
 17:32 9 feelings with my spouse. I don't think I could not say  
 17:32 10 what's -- I mean, he would -- I'm going to be a basket  
 17:32 11 case if this were the situation. And I won't be  
 17:32 12 sleeping much. And I don't think I can not tell him how  
 17:32 13 I feel.

17:32 14 THE COURT: Well, ma'am, the fact of the  
 17:32 15 matter is, you must not tell him how you feel because  
 17:32 16 you shouldn't discuss the case with anyone. Because if  
 17:32 17 you tell him how you feel, there would be a natural  
 17:32 18 inclination for him to make some response. Right? And  
 17:33 19 at that point you are discussing the case. So this is  
 17:33 20 something that you alone must decide without his  
 17:33 21 feelings because, see, he can't hear the evidence.

17:33 22 VENIREPERSON: Uh-huh.

17:33 23 THE COURT: Now, in fact, even if he were  
 17:33 24 on the jury, which I suppose would be a possibility, you  
 17:33 25 still couldn't discuss it.



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VENIREPERSON: Maybe I need to rephrase it. Not the specifics or forming an opinion about, but my personal fears.  
THE COURT: Well, I will tell you that there's nothing for you to be afraid of.  
VENIREPERSON: Are you kidding?  
THE COURT: No. No, I'm serious.  
VENIREPERSON: I'm scared to death.  
THE COURT: Well, what are you afraid of?  
VENIREPERSON: Having to be apart of deciding someone's fate.  
THE COURT: Just the idea of deciding someone's fate?  
VENIREPERSON: Yeah.  
THE COURT: Well, it is an awesome responsibility, but it's something that 12 people are ultimately going to have to do. Do you have any other questions?  
VENIREPERSON: No.  
THE COURT: All right. Are there any other questions from either side?  
MR. HIGH: We pass the juror.  
MS. FALCO: No, Your Honor.  
THE COURT: Do you want her to step down?  
MR. GOELLER: If we could, very briefly.

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MR. COURT: Let me ask you to step down for just a minute, then we'll call you back in.  
(Venireperson Gentle not present.)  
MS. FALCO: State's peremptory strike No. 2.  
THE COURT: All right. Would you tell Ms. Gentle that she is finally excused in this case. The State has stricken her.  
THE BAILIFF: Yes, Your Honor.  
(Court adjourned.)

REPORTER'S CERTIFICATE

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THE STATE OF TEXAS  
COUNTY OF COLLIN  
I, Barbara L. Tokuz, CSR, RMR, CRR, Deputy Official Court Reporter in and for the 380th Judicial District Court of Collin County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and -numbered cause, all of which occurred in open court or in chambers and were reported by me.  
I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.  
WITNESS MY OFFICIAL HAND this the 11th day of February, 2002.  
*Barbara L. Tokuz*  
Barbara L. Tokuz, CSR #4615, RMR, CRR  
Deputy Official Court Reporter  
Expiration Date: 12/31/2002  
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