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

VOLUME 11 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

---

JURY VOIR DIRE

---

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On the 29th 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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8 VS. ) COLLIN COUNTY, TEXAS
9 IVAN ABNER CANTU ) 380TH JUDICIAL DISTRICT

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21 above-entitled and -numbered cause before the
22 Honorable Charles F. Sandoval, Judge Presiding,
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1 APPEARANCES

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14 VOLUME 11

15 CHRONOLOGICAL INDEX

16 AUGUST 29, 2001
INDIVIDUAL VOIR DIRE

17 VENIREPERSONS:

Name/Examination By: STATE DEFENSE PAGE

18 GREGORY A. JOHNSON - - - - 6
19 Excused by agreement

20 HILDA E. LAURIELLO 7/61 53 98
21 State's Peremptory Challenge

22 BASTION CHALLENGE
23 Defense objections 68 - - 82
24 Defense cross-examination of Prosecutor
25 Defense further objections 90
Court's rulings 97

LYNDA L. DUNCAN 98 148 161
Placed on Jury

2 CHRONOLOGICAL INDEX (CONT'D)

3 Name/Examination By: STATE DEFENSE PAGE

4 SUSAN KOLECHTA 162/230/237 210/233 328
5 State's Challenge for Cause granted

6 DONNA M. PRICE - - 239 265
7 Defense Challenge for Cause granted

8 ROBERTO J. PLACINO 267 273
9 (Mr. Placino continued to August 30, 2001)

10 Court Reporter's Certificate 290

10 ALPHABETICAL INDEX

11 Name/Examination By: STATE DEFENSE PAGE

12 LYNDA L. DUNCAN 98 148 161
13 Placed on Jury

14 GREGORY A. JOHNSON - - - - 6
15 Excused by agreement

16 SUSAN KOLECHTA 162/230/237 210/233 328
17 State's Challenge for Cause granted

18 HILDA E. LAURIELLO 7/61 53 98
19 State's Peremptory Strike

20 ROBERTO J. PLACINO 267 273
21 (Mr. Placino continued to August 30, 2001)

22 DONNA M. PRICE - - 239 265
23 Defense Challenge for Cause granted

22 EXHIBIT INDEX

23 COURT'S

NO. DESCRIPTION OFFERED ADMITTED

24 1 Prosecutor's voir dire notes 74 98

1 PROCEEDINGS:

2 (Open court, defendant present.)

3 THE COURT: On the record in Case

4 No. 380-80047. State of Texas versus Ivan Abner Cantu.
5 And I've indicated that the next juror up is Gregory
6 Johnson, and the prosecutor has indicated that she wants
7 to put something on the record with regard to
8 Mr. Johnson.

9 MS. FALCO: Yes, sir, with regard to
10 Mr. Johnson, he does have a criminal history. And in
11 November of 1985, he was arrested by San Antonio Police
12 Department for a misdemeanor theft, and in December of
13 1985 received deferred adjudication. I don't know for
14 how long, six months actually. I'm sorry, six months.

15 And in September of 1987 he was arrested
16 by the San Antonio Police Department for burglary of a
17 habitation with intent to commit theft, and I do not
18 have a disposition on the rap sheet.

19 THE COURT: All right.

20 MS. FALCO: And then one more, Your Honor.
21 And in January of 1988 he was arrested by San Antonio
22 for criminal trespass, and it was dismissed in April of
23 1988.

24 THE COURT: All right. Do you want me to
25 inquire about any of these with him, or do you want to

09:43 1 do it?  
 09:43 2 MR. SCHULTZ: We can do it, Judge.  
 09:43 3 Thanks.  
 09:43 4 THE COURT: All right. Let's invite  
 09:43 5 Mr. Johnson in.  
 09:43 6 MR. GOELLER: May I ask a question on the  
 09:43 7 dismissal of the criminal trespass? Do you have any  
 09:43 8 indication if that was dismissed because of completion  
 09:43 9 of a probation, or do you have any indication?  
 09:43 10 MS. FALCO: I have no indication. I do  
 09:43 11 note in his questionnaire he talks about being  
 09:43 12 wrongfully accused. So I don't know if that's the  
 09:43 13 situation he's talking about.  
 09:43 14 MR. GOELLER: Okay. Thank you.  
 09:43 15 THE COURT: All right. Let's see what  
 09:43 16 Mr. Johnson has to say.  
 09:44 17 THE BAILIFF: Yes, Your Honor.  
 09:44 18 (Venireperson Johnson present.)  
 09:44 19 THE COURT: Good morning, sir. Are you  
 09:44 20 Gregory Johnson?  
 09:44 21 VENIREPERSON: Yes.  
 09:44 22 THE COURT: Say, I want to ask you some,  
 09:44 23 do you remember last Tuesday you guys were all sworn in?  
 09:44 24 You were sworn to tell the truth to the questions that  
 09:44 25 were propounded, and I just want to remind you that you

09:44 1 are still under oath to tell the truth to the answers.  
 09:44 2 VENIREPERSON: All right.  
 09:44 3 THE COURT: All right, sir. Please be  
 09:44 4 seated.  
 09:44 5 MR. SCHULTZ: Judge, could you give the  
 09:44 6 lawyers a moment to confer before we proceed? Do you  
 09:45 7 mind if we just excuse ourselves outside?  
 09:45 8 THE COURT: Yes, that will be fine.  
 09:47 9 MR. SCHULTZ: That's fine, Matt.  
 09:47 10 THE COURT: Do both sides have an  
 09:47 11 agreement?  
 09:47 12 MR. SCHULTZ: Yes, Judge.  
 09:47 13 THE COURT: Is that with the concurrence  
 09:47 14 of your client, Mr. Goeller?  
 09:47 15 MR. GOELLER: Yes, Your Honor.  
 09:47 16 MR. SCHULTZ: Okay.  
 09:47 17 THE COURT: All right. Mr. Johnson, you  
 09:47 18 are finally excused.  
 09:47 19 (Venireperson Johnson excused.)  
 09:47 20 THE COURT: Let's bring in Hilda  
 09:48 21 Lauriello, No. 16.  
 09:48 22 (Venireperson Lauriello present.)  
 09:48 23 THE COURT: Are you Hilda Lauriello?  
 09:48 24 VENIREPERSON: I am.  
 09:48 25 THE COURT: I remind you that you are

09:48 1 still under the oath that I put you under last Tuesday  
 09:48 2 to tell the truth with regard to questions that were  
 09:48 3 propounded to you by the lawyers.  
 09:48 4 VENIREPERSON: Okay.  
 09:48 5 THE COURT: All right. Please be seated.  
 09:48 6 Mr. Schultz?  
 09:48 7 MR. SCHULTZ: Thank you, Judge.  
 09:48 8 VOIR DIRE EXAMINATION  
 09:48 9 BY MR. SCHULTZ:  
 09:48 10 Q. Good morning, Ms. Lauriello.  
 09:48 11 A. Good morning.  
 09:48 12 Q. You probably remember from Tuesday a week ago,  
 09:49 13 my name is Bill Schultz, and I'm an assistant district  
 09:49 14 attorney representing the State of Texas in its capital  
 09:49 15 prosecution of Ivan Cantu. And to my left is Ms. Gail  
 09:49 16 Falco, and to her left is Ms. Jami Lowry. We are all  
 09:49 17 felony prosecutors, and we'll be here for the duration  
 09:49 18 of this trial.  
 09:49 19 It's possible that other assistant  
 09:49 20 district attorneys might have some small involvement in  
 09:49 21 the case for a variety of reasons. Sometimes large  
 09:49 22 legal issues develop, and somebody would be assigned to  
 09:49 23 handle this part of some technical legal issue that  
 09:49 24 occurred. But mostly, it will be the three of us.  
 09:49 25 You've already been introduced last

09:49 1 Tuesday to the defendant, who is the gentleman to -- in  
 09:49 2 the middle there, in the middle chair at the defense  
 09:49 3 table. And to his immediate left is his lead attorney  
 09:49 4 Mr. Matt Goeller, a very fine practitioner of law in  
 09:49 5 Plano, Texas. Don High is his other attorney, who will  
 09:49 6 probably be here during part of the examination of you.  
 09:50 7 It may not be and, anyway, I believe that  
 09:50 8 you don't know any of us; is that correct?  
 09:50 9 A. That's correct.  
 09:50 10 Q. Tell me, if you will, when you first found out  
 09:50 11 that this was going to be a capital case. And why I ask  
 09:50 12 you that is because some people can figure out by the  
 09:50 13 fact that the summons is different. If you have ever  
 09:50 14 had jury service before, the summons for a special, what  
 09:50 15 we call a special venireperson or a special juror, is a  
 09:50 16 little bit different, and other people don't actually  
 09:50 17 notice.  
 09:50 18 Here is Mr. High now just walking in.  
 09:50 19 Here is Ms. Lauriello, Mr. High.  
 09:50 20 MR. HIGH: Good morning.  
 09:50 21 VENIREPERSON: Good morning.  
 09:50 22 Q. (BY MR. SCHULTZ) Some people just figure it's  
 09:50 23 just jury duty and don't pay a lot of attention to the  
 09:50 24 form. So tell me when you first realized it was a  
 09:50 25 capital case that you would be on.

09:50 1 A. Well, I really didn't figure when it was a  
09:50 2 capital case until I actually reported. Prior to that I  
09:51 3 knew there was something different, because I had an  
09:51 4 issue with a couple dates. And I was unable to do  
09:51 5 anything about it without talking to the Judge.

09:51 6 Q. Okay. And did you talk with the Judge about  
09:51 7 those dates?

09:51 8 A. On Friday.

09:51 9 Q. Okay. And please refresh my memory. It's not  
09:51 10 that it's not important to me, but with 200 jurors I  
09:51 11 can't ever remember what different people's situations  
09:51 12 were. What were the dates and the reasons that you had  
09:51 13 troubles.

09:51 14 A. The 22nd and the 23rd were the dates in  
09:51 15 question. So it wasn't this last Friday. It was the  
09:51 16 Friday before.

09:51 17 Q. So now we've solved the date problem, and we're  
09:51 18 passed that already.

09:51 19 A. Correct.

09:51 20 Q. Now, if memory serves me, Ms. Lauriello, you  
09:51 21 have previously served on at least one jury, maybe two?

09:51 22 A. Two.

09:51 23 Q. And I apologize, if you just -- if you just try  
09:51 24 to understand that we do this nonstop all day long.  
09:51 25 I've got a pretty good memory. It's pretty good to

09:51 1 remember you had two jury services. I just don't  
09:51 2 remember what they were.

09:52 3 A. One was in Los Angeles, California. It was a  
09:52 4 rape theft case. One was in this building, and it was a  
09:52 5 robbery. And I believe they had added special  
09:52 6 consideration of racketeering to that.

09:52 7 Q. Okay. And just so you do know, that I do  
09:52 8 listen and I do pay attention, I remember you making the  
09:52 9 remark with regard to one of those trials. And I think  
09:52 10 it might have been the Los Angeles trial that made you  
09:52 11 very glad that there was a jury system. Do you  
09:52 12 remember?

09:52 13 A. I don't recall that.

09:52 14 Q. Okay. Well, tell me --

09:52 15 A. Yeah. I think I do now, actually.

09:52 16 Q. See, I listened.

09:52 17 A. Yeah. You were paying attention.

09:52 18 Q. Try to -- try to tell me what you meant by  
09:52 19 that, that you were -- that when you went through that  
09:52 20 trial in Los Angeles that made you glad there was a jury  
09:52 21 system.

09:52 22 A. I think maybe the thoroughness of it, that  
09:52 23 there's so many people involved that, it seems like  
09:52 24 every stone is unturned. And that's to the benefit of  
09:53 25 the defendant, the people that, you know, are charged.

09:53 1 Q. Well, when people say that, I mean, it's funny  
09:53 2 because it seems to me -- I've never been a juror, but  
09:53 3 I've talked with lots of them through the years. It  
09:53 4 seems to me that it's very easy for us to sit in our  
09:53 5 living rooms and make kind of bold statements about how  
09:53 6 it ought to be. Or why are we giving these kinds of  
09:53 7 defendants lawyers and access to libraries?

09:53 8 It's easy sometimes to do that, and, yet,  
09:53 9 when we actually get involved in the process, it seems  
09:53 10 oftentimes we recognize that it's actually pretty good,  
09:53 11 what we do. It's hard and slow as it sometimes is, but  
09:53 12 the care that we take on all of this. Like you say,  
09:53 13 leaving all stones turned over so we can look under them  
09:53 14 and see what that might be. Most people come out  
09:53 15 saying, you know, that's really a good thing. It's not  
09:53 16 a bad thing. How do you feel about that?

09:54 17 A. I agree.

09:54 18 Q. And kind of how that relates to what we're  
09:54 19 doing here, it would be possible for somebody to say,  
09:54 20 you know, it sure seems like this is very complicated  
09:54 21 and time consuming. And of course it is. You already  
09:54 22 sense that. I mean, we're going to do with you what  
09:54 23 we're going to do with however many people, hundreds or  
09:54 24 whatever it takes, examine you thoroughly and give you  
09:54 25 the opportunity to speak freely about things that are

09:54 1 important to you.

09:54 2 And we'll do that with you and the person  
09:54 3 before you and the person after you until 12 people are  
09:54 4 selected and then until two alternates are selected.  
09:54 5 And some people might say that's too much, and it might  
09:54 6 take us a month to do this. We don't know. I'll be  
09:54 7 honest with you, it's going slower than any of us even  
09:54 8 thought it would be. It may pick up.

09:54 9 Other people may say, this is important  
09:54 10 stuff. This is a person's life. This isn't deciding  
09:55 11 whether or not, you know, Verizon overcharged me on my  
09:55 12 phone bill and giving damages. This isn't that kind of  
09:55 13 case. This is what we all believe. This is human life,  
09:55 14 and every one of us believes that's important. Every  
09:55 15 single one of us.

09:55 16 So I'm curious, do you feel -- do you  
09:55 17 personally feel that we're taking too much time in this  
09:55 18 kind of a process? Are you annoyed at that in any way?

09:55 19 A. In the jury selection process?

09:55 20 Q. Yes.

09:55 21 A. No.

09:55 22 Q. Okay. Because it's certainly tying up your  
09:55 23 life for a period of time. And even more, if you are  
09:55 24 selected on this jury, it would even tie it up a lot  
09:55 25 longer because you would have to wait around until ten

09:55 1 other people are picked. Are you willing to do it, if  
09:55 2 called upon?

09:55 3 A. Well, I guess I'm a little not clear because I  
09:55 4 was thinking that if a person got selected to this kind  
09:55 5 of jury, they would go back home until you finished all  
09:55 6 of this. So it's not like a person would be sitting  
09:56 7 here.

09:56 8 Q. Yes.

09:56 9 A. A second ago it sounded like maybe that's what  
09:56 10 they would be.

09:56 11 Q. No. When I say your life is tied up. It's  
09:56 12 almost kind of one of those check in with the Judge  
09:56 13 before you go somewhere just -- you can do that  
09:56 14 periodically to find out, and there probably won't be  
09:56 15 any news. And you can check on the progress, but if you  
09:56 16 are selected, you would be juror No. 2. We only have  
09:56 17 one juror selected so far. You would be juror No. 2.  
09:56 18 I'm just telling you straight.

09:56 19 So we're talking -- we're talking probably  
09:56 20 optimistically, several weeks before it's all finished.  
09:56 21 And so until that time, if selected, you will just wait.  
09:56 22 You would go about your business everyday. The only  
09:56 23 thing you don't get to do is talk about the case or  
09:56 24 investigate the case. But I mean, that's not going to  
09:56 25 be hard for you.

09:56 1 I guess what I'm thinking is, I want to be  
09:56 2 sure with every juror, and so would the defendant's  
09:56 3 attorneys, that if somehow you don't think we're not  
09:56 4 doing right in our jobs about why this is taking so  
09:57 5 long, that we are not efficient or something.

09:57 6 A. Oh, not at all.

09:57 7 Q. Are you okay with that?

09:57 8 A. I mean, I understand that. You wouldn't want  
09:57 9 somebody that you don't think could do it.

09:57 10 Q. Neither side does. And I'll be honest with  
09:57 11 you, I don't -- I don't wake up in the morning thrilled  
09:57 12 about this kind of work. I don't say to myself, aren't  
09:57 13 I a lucky man to be able to go to court, and maybe by  
09:57 14 doing my job the way it needs to be done, somebody can  
09:57 15 die from it.

09:57 16 I don't -- I don't look at human life that  
09:57 17 way. I don't -- I respect human life. I respect his  
09:57 18 life, notwithstanding the fact that we -- that we're in  
09:57 19 this process. I don't -- I don't minimize any of that.  
09:57 20 And I know you are the same way. And that's why it  
09:57 21 takes so long. And I want to make sure that with 12  
09:57 22 people on the jury, whatever else they do, they do  
09:57 23 respect human life and do take all of this very  
09:57 24 seriously. That's what I want.

09:57 25 A. Right.

09:57 1 Q. And I'm sure that's what the defense wants too.  
09:57 2 We may have different ideas of what those people are,  
09:58 3 but we'd all agree on that. And I'm sure the Judge  
09:58 4 agrees. Everyone would.

09:58 5 In the Los Angeles trial, was the jury  
09:58 6 able to reach a unanimous verdict? I think you told me  
09:58 7 that you were.

09:58 8 A. Yes.

09:58 9 Q. Did you look -- as you looked back on that, was  
09:58 10 it your opinion that the defendant's conduct was really  
09:58 11 serious, serious misbehavior? Did you view it that way?

09:58 12 A. Yes.

09:58 13 Q. And why I say that is because there are  
09:58 14 sometimes when -- when you hear a charge that might seem  
09:58 15 really serious. And then when you hear the evidence,  
09:58 16 you realize, well, yeah, that's technically the crime,  
09:58 17 but it's not as serious as it sounded when we heard the  
09:58 18 charge. Do you know what I'm saying?

09:58 19 Let me give you an example. Burglary of a  
09:58 20 habitation occurs when you enter somebody's house to  
09:58 21 commit a theft. And when we think of that, we think of  
09:59 22 stuff like coming into your living room and taking your  
09:59 23 VCR or your DVD or your home computer, your silverware,  
09:59 24 your heirlooms. That's what we think of.

09:59 25 A. Uh-huh.

09:59 1 Q. But it could be somebody going into your garage  
09:59 2 and stealing your garden rake. That's still a burglary  
09:59 3 of a habitation. And so, I would think a jury sometimes  
09:59 4 if they came into a burglary of a habitation case and  
09:59 5 the evidence was some -- some neighbor went into your  
09:59 6 garage without permission to take your rake because he  
09:59 7 wanted to rake his leaves, well, that's burglary.

09:59 8 If the State chose to charge it that way,  
09:59 9 it's a serious crime. Yet, that doesn't seem to fit the  
09:59 10 notion of burglary. Do you know what I'm saying?

09:59 11 A. Right.

09:59 12 Q. Was that the -- was that -- the charge that you  
09:59 13 were on in Los Angeles sounds like awful conduct to me.  
09:59 14 It just sounds like almost unspeakable conduct. I guess  
09:59 15 I'm thinking, did the conduct that you saw on the jury  
09:59 16 seem to match the charge? Did it seem to fit? It  
09:59 17 seemed to fit the charge that you seemed to have?

10:00 18 A. The conduct on the jury?

10:00 19 Q. No. The conduct that you found as you were on  
10:00 20 the jury. The conduct of the defendant, did that seem  
10:00 21 to fit the charge from what you --

10:00 22 A. When you say the conduct, you mean, the -- what  
10:00 23 he had perpetrated, not necessarily his behavior in the  
10:00 24 court?

10:00 25 Q. Right. What he perpetrated. That seemed --

10:00 1 A. Oh, yeah.  
 10:00 2 Q. It was a serious charge and serious conduct by  
 10:00 3 the defendant?  
 10:00 4 A. Right.  
 10:00 5 Q. Did he have one or two lawyers at that trial?  
 10:00 6 Do you recall?  
 10:00 7 A. I recall one. If he had two, I don't recall  
 10:00 8 that.  
 10:00 9 Q. And did you have the sense that the lawyer was  
 10:00 10 capable and did a good job with what the lawyer had to  
 10:00 11 work with?  
 10:00 12 A. I was -- I felt in empathy for him, actually.  
 10:00 13 Q. Okay. So that must mean that the lawyer, in  
 10:00 14 your judgment, did a good job then?  
 10:00 15 A. He tried his best.  
 10:00 16 Q. Right. And sometimes, no matter how good,  
 10:00 17 sometimes your best just isn't good enough kind of  
 10:00 18 thing, right?  
 10:00 19 A. You couldn't change what happened.  
 10:00 20 Q. Okay. I'm with you. With the prosecutors, do  
 10:01 21 you have a correct impression of the D.A. or the  
 10:01 22 prosecutes in that case?  
 10:01 23 A. Do I have any what now?  
 10:01 24 Q. Did you have an impression of the prosecutors?  
 10:01 25 What did you think of how they did their work?

10:01 1 A. Fine. I mean, I'm not -- I'm not a specialist  
 10:01 2 on lawyers or anything like that. So I think she was  
 10:01 3 fine.  
 10:01 4 Q. Okay. Okay. And then you had one other  
 10:01 5 criminal trial that came after that, at some point; is  
 10:01 6 that right?  
 10:01 7 A. Correct.  
 10:01 8 Q. And where was that again?  
 10:01 9 A. That was here.  
 10:01 10 Q. Back, about what year would that have been,  
 10:01 11 just ballpark?  
 10:01 12 A. Five years ago.  
 10:01 13 Q. And what was the charge?  
 10:01 14 A. Robbery.  
 10:01 15 Q. Pardon me?  
 10:01 16 A. Robbery. I don't know if it was robbery or  
 10:01 17 theft.  
 10:01 18 Q. Was there a weapon involved from your memory?  
 10:01 19 A. I don't recall. I don't believe.  
 10:01 20 Q. All right.  
 10:01 21 THE COURT: Say, Mr. Schultz, was that in  
 10:02 22 my courtroom?  
 10:02 23 VENIREPERSON: In your courtroom?  
 10:02 24 THE COURT: Yeah.  
 10:02 25 VENIREPERSON: I don't know.

10:02 1 THE COURT: Because you look kind of  
 10:02 2 familiar to me, too.  
 10:02 3 VENIREPERSON: Did you come back and talk  
 10:02 4 to us afterwards?  
 10:02 5 THE COURT: Could have, could well have.  
 10:02 6 VENIREPERSON: Maybe.  
 10:02 7 THE COURT: Okay. All right.  
 10:02 8 VENIREPERSON: Do you remember that?  
 10:02 9 THE COURT: Well, no, not specifically.  
 10:02 10 But your face looks familiar to me, and it looked more  
 10:02 11 familiar than it should have just from seeing you at --  
 10:02 12 at the general voir dire today. So, anyway, just  
 10:02 13 curious. All right. Thanks.  
 10:02 14 Q. (BY MR. SCHULTZ) Was the jury unanimous on  
 10:02 15 that, also?  
 10:02 16 A. It was. I mean, it was unanimous in the guilty  
 10:02 17 verdict. It was split on the level of -- there was a  
 10:02 18 dollar amount that was -- like if it was, these many  
 10:02 19 dollars had been stolen, then it was going to be a  
 10:02 20 greater punishment than it was under -- I forget what  
 10:02 21 the dollar amount was. And there was a division in that  
 10:02 22 instance.  
 10:02 23 Q. Were you all able to eventually come to a  
 10:03 24 unanimous decision on something lesser than?  
 10:03 25 A. Yes.

10:03 1 Q. It sounds like, I don't know for sure, but it  
 10:03 2 sounds like it was probably a theft.  
 10:03 3 A. Okay.  
 10:03 4 Q. Why I say that, is because robbery, it doesn't  
 10:03 5 depend on how much property is attempted to be stolen  
 10:03 6 for robbery. It can be a nickel. It can be a million  
 10:03 7 dollars kind of thing.  
 10:03 8 Did you find that service important? Did  
 10:03 9 you, looking back on it, that was an important thing  
 10:03 10 that you did, also?  
 10:03 11 A. Certainly.  
 10:03 12 Q. If you had a choice, and you know that you  
 10:03 13 don't, but if you had a choice whether to be on or off  
 10:03 14 of this jury, what would be your choice?  
 10:03 15 A. Not to be on.  
 10:03 16 Q. I don't blame you. I'm not -- I'm not sure any  
 10:03 17 of us are necessarily here because we want to be.  
 10:03 18 Sometimes it works that way. What other reasons that  
 10:03 19 you would want to not be on the jury?  
 10:03 20 A. Well, it's kind of like I told my husband this  
 10:03 21 morning. I woke up at -- I don't know, four o'clock. I  
 10:04 22 couldn't sleep. I thought, what if I really do get on  
 10:04 23 this jury? You know, in theory I believe in the death  
 10:04 24 penalty, but I never had to be personally involved with  
 10:04 25 anything like that. So theory and reality are two

10:04 1 different things.

10:04 2 Q. Absolutely, and I agree. It's kind of what I  
10:04 3 said about our living rooms. It's one thing to watch  
10:04 4 some awful crime on TV and say we ought to just execute  
10:04 5 that person, and we mean it. We're not just huffing for  
10:04 6 no reason, but we mean it. But when you get to actually  
10:04 7 having to do it, it's quite different, and that's true  
10:04 8 if you are a juror. That's true if you are a  
10:04 9 prosecutor. That's true if you are anybody with a  
10:04 10 conscience and values. That's just how it is.

10:04 11 A. Right.

10:04 12 Q. And I would not -- I would not expect somebody  
10:04 13 to come up here -- just like I said, I don't get  
10:04 14 thrilled at getting up in the morning and doing this. I  
10:04 15 wouldn't expect at four o'clock in the morning you'd be  
10:04 16 thrilled either. And even having to do it or even  
10:05 17 having to consider it, I guess that brings us to the  
10:05 18 next question, though.

10:05 19 And that next question is: Do you still  
10:05 20 see yourself supporting the death penalty when it's not  
10:05 21 a -- they should be doing something? But now, when all  
10:05 22 of a sudden you might be the they that you've always  
10:05 23 thought about before, does that make any -- does my  
10:05 24 question --

10:05 25 A. I know what you are asking. I don't know what

10:05 1 the answer is.

10:05 2 Q. Okay. Well, we'll think about this. And you  
10:05 3 are absolutely right. No -- nobody knows what they are  
10:05 4 going to do in a situation. We may think we do, but we  
10:05 5 don't know. You know, we can talk about our kids and  
10:05 6 say, if my kid gets arrested for something, I'm going to  
10:05 7 leave them in jail. We can say that, and we're  
10:05 8 thinking, okay, that's the right thing to do, or I'll  
10:05 9 teach him a lesson.

10:05 10 You get that call at 2 o'clock in the  
10:06 11 morning, and it's your baby, you know. Who knows, do  
10:06 12 you know what I mean? Nobody knows the answer to those  
10:06 13 things. We all got ideas. If my wife does this, then  
10:06 14 I'll do that, or you know. If that ever happened, I  
10:06 15 would be out of here. Everybody can say things like  
10:06 16 that. We don't know. Nobody knows any of this.

10:06 17 Why is it that you have favored the death  
10:06 18 penalty when you answered the questionnaire? Why is it  
10:06 19 that you said you did favor it? What's your thinking on  
10:06 20 that?

10:06 21 A. I suppose, you know, in theory, you know, that  
10:06 22 is one of the punishments that is -- is available. That  
10:06 23 is lawful, and, you know, in cases that you hear about,  
10:06 24 you think that seems like the right punishment. Not  
10:06 25 that you sat through the jury. You didn't hear all the

10:06 1 details but, from what I hear, it -- it seems like it  
10:06 2 would be a just thing.

10:07 3 Q. And why I ask you that question is because  
10:07 4 there are several things that people say that makes them  
10:07 5 favor the death penalty, and we hear that up here all  
10:07 6 the time when we are doing one of these selections.  
10:07 7 Some people, for example, say, I favor the death penalty  
10:07 8 because I believe it protects society. I favor the  
10:07 9 death penalty because when you have dangerous people,  
10:07 10 people whose conduct is just so way off of the  
10:07 11 understandable, that they can do things like murder two  
10:07 12 people intentionally and that they have the ability to  
10:07 13 do that, and that makes sense to them when they are  
10:07 14 doing it, that the death penalty protects society and  
10:07 15 nobody should ever -- no mother should ever have to lose  
10:07 16 a child again as a result of these kinds of people that  
10:07 17 do these kinds of cases. Does that seem to be an  
10:08 18 important reason to you for the death penalty, to  
10:08 19 protect society?

10:08 20 A. Well, I'm sure -- I'm sure that's -- I mean,  
10:08 21 that's part of it. Otherwise, why do it?

10:08 22 Q. And maybe the protection of society has two  
10:08 23 forms. It may be, for example, that it protects society  
10:08 24 directly by removing from our society those people who  
10:08 25 really do threaten us, who threaten you and me and our

10:08 1 neighbors. And maybe it somehow protects society  
10:08 2 because it's something of a warning to other people that  
10:08 3 we do have such a thing out there and maybe not  
10:08 4 everybody, certainly, but maybe some people would  
10:08 5 certainly think twice before committing those same types  
10:08 6 of atrocities? Does that make sense to you?

10:08 7 A. It does, but it doesn't seem to work.

10:08 8 Q. I agree. I agree.

10:08 9 A. In theory, you would think it's true, but  
10:08 10 apparently it doesn't.

10:08 11 Q. I agree with you. And there might be a lot of  
10:08 12 reasons for that. It might be that people that are  
10:08 13 willing to do these kinds of things don't do much  
10:09 14 thinking about it anyway. They don't even look at it  
10:09 15 that way. It might be that we're so slow in our death  
10:09 16 penalty work that, I mean, let's face it, from what we  
10:09 17 know, if they catch you and prosecute you for capital  
10:09 18 murder and you get a death sentence, look how long it  
10:09 19 takes to die anyway? It's not like it's an immediate  
10:09 20 threat to anybody out there. Do you agree with that?

10:09 21 A. Correct.

10:09 22 Q. There are probably cases that everybody, almost  
10:09 23 everybody would agree who do death penalty cases, good  
10:09 24 in the sense that this is somebody that ought to be  
10:09 25 executed. Timothy McVeigh has to be the classic. What

10:09 1 he did, blowing up that courthouse with innocent people  
10:09 2 and little babies in there. Does that seem to you like  
10:09 3 a just punishment for what he did, the death penalty?

10:09 4 A. Yes.

10:09 5 Q. It's funny, even people that are strongly  
10:09 6 opposed to the death penalty, they kind of pointed out,  
10:09 7 that's maybe the one case that I would go along with.  
10:09 8 You have indicated both on your questionnaire, and a  
10:10 9 little bit in talking with me today, that you think that  
10:10 10 the death penalty is proper, is a proper punishment for  
10:10 11 some conduct. And that's another notion of it.

10:10 12 It's just the idea that it's society's  
10:10 13 response to extreme conduct. It's the, forget about  
10:10 14 deterrence. Forget about protecting society for a  
10:10 15 moment. It's -- it's only proper that, if you have  
10:10 16 committed an awful murder, that society should take your  
10:10 17 life from you.

10:10 18 Does that seem very involved to you, in  
10:10 19 terms of how you feel, that it's the proper punishment?

10:10 20 A. Yeah. I like the way you put it: the proper  
10:10 21 response to an extreme action.

10:11 22 Q. And it's funny because some people draw that  
10:11 23 kind of biblically. Kind of that Old Testament, "eye  
10:11 24 for an eye, tooth for a tooth" kind of notion.

10:11 25 Other people say, well, this is an orderly

10:11 1 society. If you park too long at a parking meter, you  
10:11 2 get a ticket. You go pay ten bucks or something for  
10:11 3 doing that. If you steal little bits, you get one  
10:11 4 punishment.

10:11 5 Kind of like you on a jury up here. If  
10:11 6 you steal a certain dollar amount, your punishment might  
10:11 7 be one thing. And if you steal more than that dollar  
10:11 8 amount, you go to the next rate. The more you steal,  
10:11 9 the higher your punishment would be. If you rob,  
10:11 10 it's -- your punishment is a certain thing. If you use  
10:11 11 a gun when you rob somebody, that's even worse, so you  
10:11 12 get more punishment if there's a firearm involved.

10:11 13 And you work your way all the way up to  
10:11 14 the top, which is capital murder. And society says, if  
10:11 15 you do these kinds of things, murdering -- murdering a  
10:11 16 little infant, murdering a police officer, trying to  
10:11 17 discharge her duties, murder in the prison setting.  
10:12 18 Kind of the idea, if you murder a guard in prison, you  
10:12 19 murder an inmate trying to escape, those kinds of things  
10:12 20 that those are -- those are capital crimes.

10:12 21 If you are serving sentences for certain  
10:12 22 kinds of crimes and you commit a murder, those are  
10:12 23 capital. And murder for hire. I mean, hiring a hit man  
10:12 24 to kill somebody, you can't get much worse than that.  
10:12 25 That's really, really bad stuff. Murdering multiple

10:12 1 people, two or more people, is considered going just a  
10:12 2 little bit too far.

10:12 3 And our law says that society's response  
10:12 4 to that, the society's reaction to that is a potential  
10:12 5 death sentence. And that's -- I sense from you, and I  
10:12 6 don't know you well, but I sense from you that's the  
10:12 7 theory that seems to make more sense to you. It's that  
10:12 8 it's only proper. If you do this, we'll do that. And  
10:12 9 you are not as -- you are not as focused on deterrence  
10:13 10 as maybe somebody else might be. Am I understanding  
10:13 11 what you are saying?

10:13 12 A. Right, right. It doesn't seem to deter society  
10:13 13 at large, but certainly that individual.

10:13 14 Q. When I spoke with you on Tuesday, a couple  
10:13 15 things kind of looking back on it, and you always -- you  
10:13 16 get ready. You want to do the best you can, and a  
10:13 17 couple of things occurred to me. One, I was extremely  
10:13 18 committed in my mind to the notion, to the things that  
10:13 19 interfere in people's personal lives as jurors almost  
10:13 20 necessarily aren't as important as this defendant's  
10:13 21 situation and the trial that we're in.

10:13 22 And I may have said it in a way that I  
10:13 23 guess that one juror. Do you remember that one juror in  
10:14 24 the back? "I have a little girl having surgery in about  
10:14 25 three weeks. And, yeah, your work is important, but so

10:14 1 is my little girl."

10:14 2 And he had a point, and the point was that  
10:14 3 there are situations in personal lives that are  
10:14 4 enormous. And it's not his fault that this defendant  
10:14 5 finds himself on trial here. He didn't have anything to  
10:14 6 do with it, and he's right.

10:14 7 At the same time did you feel that you  
10:14 8 understood what I was saying about the fact that this is  
10:14 9 going to be hard on every one of us that's involved in  
10:14 10 this? And that this is -- this is the only sacrifice  
10:14 11 our government really makes us make. We don't get  
10:14 12 drafted for military service anymore.

10:14 13 Were we at least communicating on that  
10:14 14 issue? How important it was, and how we had to kind of  
10:14 15 adjust our lives because of how important it is in this  
10:14 16 case? Did I -- did I make you mad when I said it that  
10:14 17 way?

10:14 18 A. I thought --

10:14 19 Q. Because if I did, tell me.

10:14 20 A. Well, you didn't make me mad. I thought you  
10:15 21 were very callous, with all due respect.

10:15 22 Q. Fine. And if you didn't tell me that, I need  
10:15 23 to know that to evaluate because I sense that from you.  
10:15 24 And, you know, I was being real as I was feeling. But  
10:15 25 at the same time I absolutely do believe this is really



10:15 1 important and this is, and I know you do, too. It's  
10:15 2 just a matter of how we express it.

10:15 3 Let me ask you this, if you are on this  
10:15 4 jury, can we get over that, that I was callous? That's  
10:15 5 not going to be a part of your decision in this case, is  
10:15 6 it?

10:15 7 A. I mean, I guess. It's one of those things  
10:15 8 where I don't think so.

10:15 9 Q. Good enough. I would hate to think -- let me  
10:15 10 give you an example, if you got mad at one of  
10:15 11 Mr. Cantu's lawyers because you didn't like something  
10:15 12 that they did, I would hate to think that you would  
10:15 13 somehow take it out on the defendant because of what the  
10:15 14 lawyers did. I know you wouldn't do that.

10:15 15 A. Right.

10:15 16 Q. And we're entitled to the same. I mean, if you  
10:15 17 are mad at me, that's -- maybe I've done it. Maybe it's  
10:15 18 just the way we've reacted. But I'm certainly entitled  
10:16 19 to know if it could affect how you view our evidence  
10:16 20 because you got mad at me for the jury selection.

10:16 21 A. I can't see that.

10:16 22 Q. Okay, fair, but I had to ask. You understand  
10:16 23 why I have to?

10:16 24 A. (Moving head up and down.)

10:16 25 Q. And I'm not callous. And I may be thoughtless,

10:16 1 like anybody else, but callous, I'm not. But nobody  
10:16 2 would think that, if you knew me, but I need to address  
10:16 3 it.

10:16 4 A. Right.

10:16 5 Q. When I ask you to think about the defendant, I  
10:16 6 ask you to look at him and see how you reacted to him,  
10:16 7 then I told you what we propose we do. Did you think I  
10:16 8 was callous in the way I explained that to you.

10:16 9 A. I suppose I just accepted it as part of your  
10:16 10 job.

10:16 11 Q. Whether -- whether I was successful or not, the  
10:16 12 purpose was to kind of get everybody in touch with what  
10:16 13 you now understand. And that is, there's a difference  
10:17 14 between being in favor of the death penalty when it's  
10:17 15 just out there theoretically and being called upon to be  
10:17 16 involved in it. I know this is not because I'm some  
10:17 17 genius, but this is what I do for a living. And I talk  
10:17 18 to so many jurors, and that's how we all react when  
10:17 19 faced with that.

10:17 20 And so I wanted to be very direct and  
10:17 21 actually get everybody thinking about the fact that  
10:17 22 this -- that these folks, what we do up here is going to  
10:17 23 determine, if he's found guilty, is going to determine  
10:17 24 whether he gets a life sentence or death sentence. And  
10:17 25 12 people to be qualified must be capable of fairly

10:17 1 considering answering the questions either way.

10:17 2 A. (Moving head up and down.)

10:17 3 Q. And I don't hear anything from you that  
10:17 4 indicates to me that you are still able, or that you are  
10:17 5 not able to still vote either way depending on the  
10:17 6 evidence. You can still do that, can't you?

10:17 7 A. I believe so.

10:17 8 Q. Okay. You know, when you tell a lawyer that  
10:18 9 you believe so, they always get concerned because they  
10:18 10 want to make sure that you really thought about it  
10:18 11 because if it turns out that you can't, right in the  
10:18 12 middle of a trial, that your mind gets locked. And that  
10:18 13 goes either way, whether it gets locked against a life  
10:18 14 sentence or locked against the death sentence.

10:18 15 It's too late. Once on the jury, you are  
10:18 16 on, and you are on for the duration. As you sit there  
10:18 17 now, do you see yourself being able to look at evidence  
10:18 18 and vote in such a way as would cause a death sentence  
10:18 19 to be imposed?

10:18 20 A. Well, again, going back to -- I mean, my  
10:18 21 four o'clock awakening and thinking about, you know,  
10:18 22 personally being involved in something like that with  
10:18 23 something that, up until four o'clock this morning, you  
10:18 24 know, I thought, oh, I have been on juries before. I'll  
10:19 25 get taken off because certainly there's so many other

10:19 1 people that haven't served once. So I didn't really  
10:19 2 give it a real serious consideration that I was going to  
10:19 3 possibly really be on this case until four o'clock this  
10:19 4 morning.

10:19 5 And it kind of surprised me a little bit  
10:19 6 that I was going through that. And so I can't tell you,  
10:19 7 you know, something like that couldn't hit me again. In  
10:19 8 other words, you know, would I find myself really, you  
10:19 9 know, having a hard time with it? I don't know.

10:19 10 Q. Well, I guess I need to ask you again about  
10:19 11 four o'clock in the morning so I can understand it as  
10:19 12 best I can. Did you wake up at four o'clock in the  
10:19 13 morning thinking: There's no way I could ever do that?  
10:19 14 Is that kind of the thinking or...

10:19 15 A. That -- not necessarily that way. It's more,  
10:19 16 can I do that? I didn't tell myself there's no way I  
10:20 17 can do that. I was asking myself: Can I do that? I  
10:20 18 don't know what the answer is.

10:20 19 Q. Oh, you can understand why that would trouble  
10:20 20 me then. And I'm -- I'm not critical. I'm just trying  
10:20 21 to understand.

10:20 22 A. Right.

10:20 23 Q. Because if you don't know whether you could  
10:20 24 vote for a death sentence, even if the evidence is  
10:20 25 there, and that's what you are telling me, that you

10:20 1 don't know for sure right now?

10:20 2 A. Uh-huh.

10:20 3 MR. GOELLER: I'm sorry, Judge, I got to  
10:20 4 object to this question. I know he's in mid-question,  
10:20 5 but that is not what this juror said. Mr. Schultz  
10:20 6 injects -- he's trying to lead the juror in a direction  
10:20 7 based on evidence in his question where the questioning  
10:20 8 up to that point had nothing to do with the evidence.  
10:20 9 And she did not say that. So I object to that question.

10:20 10 THE COURT: What's your --

10:20 11 MR. GOELLER: It's intended to mislead the  
10:20 12 juror.

10:20 13 THE COURT: What's your impression of what  
10:20 14 she said?

10:20 15 MR. GOELLER: She said, my impression is,  
10:20 16 she stated that she wasn't sure. She didn't say that  
10:20 17 she couldn't. She stated that, you know, she's not sure  
10:21 18 if she could. But nowhere was evidence based in any of  
10:21 19 her questions up to that point. So I just would object  
10:21 20 that Mr. Schultz's questioning is misleading and  
10:21 21 confusing to the juror.

10:21 22 THE COURT: Let me hear the whole  
10:21 23 question.

10:21 24 MR. GOELLER: I shouldn't have interrupted  
10:21 25 Bill in mid-sentence. I apologize. I just --

10:21 1 THE COURT: A cautionary statement. Let  
10:21 2 me hear the question again, please.

10:21 3 Q. (BY MR. SCHULTZ) Kind of going back again, you  
10:21 4 indicated four o'clock in the morning, and you were  
10:21 5 asking yourself: Can I really do this?

10:21 6 A. Right.

10:21 7 Q. And I understand that what is -- what is  
10:21 8 required of jurors is not to come in and give a death  
10:22 9 sentence or a life sentence because you don't exactly  
10:22 10 get asked it that way. You sort of do, but you sort of  
10:22 11 don't. What's really required of a jury and in an  
10:22 12 individual juror is to fairly consider the evidence and  
10:22 13 be able to make a determination of the issues in this  
10:22 14 case, based on the evidence and not a desired outcome  
10:22 15 down the road.

10:22 16 Let me explain to you what I mean by that.  
10:22 17 Let's say you heard the evidence in the case, and you  
10:22 18 were shocked by the conduct of the defendant. Let's  
10:22 19 say. Okay? I mean, you are listening to that and you  
10:22 20 think, my goodness. I never knew people could do such a  
10:22 21 thing. But you were totally opposed to the notion of a  
10:22 22 death penalty, and you were against that.

10:22 23 You might have trouble finding him guilty  
10:22 24 of capital murder, or some people might have difficulty  
10:22 25 in finding him guilty of capital murder or some people

10:23 1 might have trouble finding him guilty of capital murder  
10:23 2 knowing that from that finding, perhaps a death sentence  
10:23 3 would result when you got to the punishment phase? Does  
10:23 4 that make sense to you?

10:23 5 A. I think I know what you are saying.

10:23 6 Q. In other words, at four o'clock in the morning  
10:23 7 you didn't have any problem saying, I can find him  
10:23 8 guilty of capital murder, of that crime, if the evidence  
10:23 9 was there? There's no problem with that?

10:23 10 A. Right.

10:23 11 Q. Any more than it would have been a problem of  
10:23 12 finding the thief guilty of theft when you were on that  
10:23 13 jury?

10:23 14 A. Right.

10:23 15 Q. Because you understand, if you find the  
10:23 16 defendant guilty of capital murder, you go to a  
10:23 17 punishment part of the trial which may or may not result  
10:23 18 in his death, depending on how the jury answers  
10:23 19 questions, right?

10:23 20 A. Well, I don't know that. I've never done it  
10:23 21 before, so.

10:23 22 Q. Well --

10:23 23 A. You're telling me that.

10:23 24 Q. Yeah, I am. When we get to the punishment  
10:23 25 phase of the trial, both sides may put on more evidence

10:23 1 if they choose to. Both sides don't have to put on  
10:23 2 evidence. We don't -- we don't have to put on any  
10:23 3 evidence. And the defense doesn't have to put on any  
10:23 4 evidence.

10:23 5 We can simply both rely upon the evidence  
10:24 6 presented at the first part of the trial and ask the  
10:24 7 jury to -- to set in motion this question and answer  
10:24 8 process. For example, we were first asked the jury,  
10:24 9 based on the evidence, whether there is a probability  
10:24 10 that the defendant would commit criminal acts of  
10:24 11 violence that would constitute a continuing threat to  
10:24 12 society. And the jury is asked to answer that question  
10:24 13 yes or no beyond a reasonable doubt.

10:24 14 I'm sorry, it's asked to answer that  
10:24 15 question yes beyond a reasonable doubt or no, if it's  
10:24 16 not beyond a reasonable doubt. Okay? That's question  
10:24 17 number one.

10:24 18 Does that look like a question that, as  
10:24 19 you look at it, you think is reasonably answerable,  
10:24 20 depending on the evidence presented?

10:24 21 A. So the jury is supposed to determine if, in the  
10:24 22 future, this person -- the probability was that that  
10:25 23 person would commit a criminal act of violence?

10:25 24 Q. Yeah. Uh-huh, and be a continuing threat to  
10:25 25 society, which is kind of the same thing. Does that

10:25 1 seem like something you could do?

10:25 2 A. I guess without facing the actual situation, I

10:25 3 don't know. I mean, it seems kind of problematic in

10:25 4 that, how do I know what a person is going to do in the

10:25 5 future? Not to say that once -- I don't know.

10:25 6 Q. Well, it doesn't require you to know, of

10:25 7 course. It just requires that you recognize the

10:25 8 probability of it. It's kind of like, you know, if --

10:25 9 MR. GOELLER: I'm sorry, Mr. Schultz.

10:25 10 I've got to object to that last statement. He said --

10:25 11 Mr. Schultz's comment was, "You've got to recognize the

10:25 12 probability of it." It may just be the way I --

10:25 13 THE COURT: It's vague, wasn't it?

10:26 14 MR. GOELLER: It's not that it was vague.

10:26 15 I think the question --

10:26 16 THE COURT: Do you have an objection?

10:26 17 MR. GOELLER: -- dictates to the jury.

10:26 18 THE COURT: Tell me the objection.

10:26 19 MR. GOELLER: It's a misstatement of the

10:26 20 law.

10:26 21 THE COURT: All right. Sustained.

10:26 22 MR. GOELLER: Because in all fairness he'd

10:26 23 have to say "or lack of."

10:26 24 THE COURT: All right. Sustained.

10:26 25 Q. (BY MR. SCHULTZ) Well, you don't have to find,

10:26 1 you don't have to know that he commits these acts in the

10:26 2 future. The question doesn't require you to know that.

10:26 3 It only requires you to determine whether there's a

10:26 4 probability that this will occur.

10:26 5 A. Okay.

10:26 6 Q. Are you with me on that?

10:26 7 A. Yeah.

10:26 8 Q. Okay. Because nobody knows the future.

10:26 9 A. Right.

10:26 10 Q. Who could? I don't know anything's going to

10:26 11 happen tomorrow, even though it's always happened

10:26 12 before. It may be highly probable. I think it's going

10:26 13 to be daylight tomorrow at noon. I'm no astronomer, but

10:26 14 I think it will be. And I think the probability is

10:26 15 super high, but I don't know it. Are you with me?

10:26 16 A. Uh-huh.

10:26 17 Q. What's required is that you consider whether

10:27 18 there's a probability of violence in the future. Do you

10:27 19 think you'd be able to do that?

10:27 20 A. I guess.

10:27 21 Q. Well, I can't -- I can't accept that because I

10:27 22 have to know one way or the other. I'm not fighting

10:27 23 with you, but I don't -- I don't want you in the middle

10:27 24 of trial saying, I guess I was wrong. Are you following

10:27 25 what I'm saying? I've got to know.

10:27 1 A. I'm with you.

10:27 2 Q. So, I've got to ask you again: Can you do

10:27 3 that? Can you determine fairly from the evidence

10:27 4 whether there is a probability of future violence?

10:27 5 A. I mean, without hearing the evidence all I can

10:27 6 think of is, I think I can.

10:27 7 Q. Does that mean you think maybe you can?

10:28 8 A. I don't know, maybe I can't. I don't know.

10:28 9 Q. Okay, okay. So you think you can, but you

10:28 10 think you can't also, maybe? Is that fair?

10:28 11 A. Right.

10:28 12 Q. Okay. That's good. Why would you think --

10:28 13 tell me why you would think perhaps you couldn't do

10:28 14 that? What would be the problem with doing that?

10:28 15 A. Well, I guess without knowing -- I guess my

10:28 16 problem with the whole thing is, I have nothing to go by

10:28 17 other than this theoretical, I might be able to do

10:28 18 something. So I can't tell you for certain that I

10:28 19 could.

10:28 20 Q. Well, how can you tell me for certain that you

10:28 21 could find him guilty then if the evidence proves his

10:28 22 guilt beyond a reasonable doubt?

10:28 23 A. Because, to me, evidence is different than a

10:28 24 probability of something. I mean, evidence is something

10:29 25 in the past. And, you know I'm assuming that it's -- if

10:29 1 the evidence is compelling, then I could look at the

10:29 2 evidence and say, okay, yes or no.

10:29 3 Q. Uh-huh.

10:29 4 A. Probabilities, on the other hand, seem a little

10:29 5 more vague. May not be, at the end of it all, but at

10:29 6 this juncture.

10:29 7 Q. Okay. Okay. If you find unanimously, you, the

10:29 8 jury, find unanimously that the answer to that first

10:29 9 question should be yes, there's an additional question

10:29 10 that would be asked of the jury then. If you find, by a

10:29 11 plurality, or maybe I should say by a majority of ten or

10:29 12 more jurors that the answer to that question should be

10:29 13 no, then the trial, then the trial ends at that point.

10:29 14 We all go home except the defendant, and he receives a

10:30 15 life sentence.

10:30 16 So a yes question -- a yes answer to that

10:30 17 question may, depending on other things, result in a

10:30 18 death sentence. A no answer to that question absolutely

10:30 19 automatically is a life sentence. Okay? That -- that's

10:30 20 how that works.

10:30 21 Do you see yourself as being able to

10:30 22 fairly evaluate that question and answer it either yes

10:30 23 or no, according to the evidence in the case?

10:30 24 A. I think I can.

10:30 25 Q. All right. I understand. Let's assume that

10:30 1 what you think you could do occurs, and we have  
 10:30 2 convinced you beyond a reasonable doubt that the answer  
 10:30 3 to this question should be yes, then you would have a  
 10:30 4 second question. If you would, Ms. Lauriello, take a  
 10:30 5 moment and read that to yourself and let me know.

10:31 6 THE COURT: Mr. Schultz, could I ask you  
 10:31 7 to move that about two inches more to the right.

10:31 8 VENIREPERSON: The card.

10:31 9 THE COURT: No. The board. There were  
 10:31 10 some leftovers from the other one, and it's kind of  
 10:31 11 confusing.

10:31 12 VENIREPERSON: Okay.

10:31 13 Q. (BY MR. SCHULTZ) Okay. Could you kind of  
 10:31 14 explain to me how you take that question in terms of  
 10:31 15 what -- what it means to you? What you think it's  
 10:31 16 trying to get the jury to do?

10:31 17 A. I mean, to me it says that looking at all the  
 10:31 18 evidence and everything that's presented, that we would  
 10:31 19 determine that this person should receive a life  
 10:31 20 sentence.

10:31 21 Q. Okay. That's probably as good as any other  
 10:32 22 interpretation, really, there is a lot of -- would you  
 10:32 23 agree there's a lot of vagueness in that question, too?

10:32 24 A. Yes.

10:32 25 Q. It asks you to consider mitigating evidence is

10:32 1 what it actually focuses on, but we don't have really a  
 10:32 2 definition of what mitigating evidence is. And I  
 10:32 3 suppose what you might think is mitigating evidence,  
 10:32 4 somebody else on the jury might think is not.

10:32 5 For example, let's talk about drugs for a  
 10:32 6 moment. Do you think that if a person commits a crime  
 10:32 7 while on drugs that that's an excuse for having  
 10:32 8 committed the crime?

10:32 9 A. No.

10:32 10 Q. Because I think we would all agree that  
 10:32 11 narcotics can affect our behavior. We all agree with  
 10:32 12 that, don't we?

10:32 13 A. I do.

10:32 14 Q. And so, I guess, if, for example, a person took  
 10:33 15 something like crack cocaine or something that seems to  
 10:33 16 make a lot of people aggressive and violent, I guess  
 10:33 17 that person might say, you know, I probably would not  
 10:33 18 have committed this crime except for the fact that I  
 10:33 19 took crack cocaine. And that could even be true, but do  
 10:33 20 you think that could actually be the truth, if the crack  
 10:33 21 cocaine hadn't been taken, then the person would not  
 10:33 22 have committed that awful crime? Do you think that  
 10:33 23 could be true?

10:33 24 A. I think it could be true.

10:33 25 Q. Then why wouldn't that, in your -- why would

10:33 1 that not be an excuse to you? If the drugs were really  
 10:33 2 the cause of the crime and not the defendant himself?

10:33 3 A. Because the defendant still chose to take the  
 10:33 4 drug, therein lies the crux of the thing.

10:33 5 Q. Okay, okay. Well, what if the defendant says,  
 10:33 6 it's not like I chose to take the drugs. I'm a drug  
 10:34 7 addict. Is that an excuse in your mind?

10:34 8 A. No.

10:34 9 Q. Okay. Because it could be true that maybe -- I  
 10:34 10 don't know anything about being an addict really, but it  
 10:34 11 could be that drug addicts don't really choose to do it.  
 10:34 12 They are just -- they are addicts, and that could be  
 10:34 13 true, couldn't it?

10:34 14 A. Right. I'm with you. I don't know what it's  
 10:34 15 like, but I'm assuming that's true.

10:34 16 Q. Why wouldn't that be an excuse in your mind  
 10:34 17 then?

10:34 18 A. Well, not knowing that much about drugs or  
 10:34 19 addiction, it appears that people can get out of the  
 10:34 20 addiction. Can do something about it.

10:34 21 Q. Okay. Some people, when we talk about  
 10:34 22 mitigation, everybody in this world has got things in  
 10:34 23 their background that are sad and things that hurt them  
 10:35 24 growing up. Wouldn't you agree with me on that?

10:35 25 A. Some more than others.

10:35 1 Q. Absolutely, absolutely. But -- and those of us  
 10:35 2 who don't might consider ourselves real lucky. And  
 10:35 3 then, wham, it might hit us when we are 35. It just  
 10:35 4 didn't happen to hit us when we were 15. Do you agree  
 10:35 5 with me on that?

10:35 6 A. Yes.

10:35 7 Q. And we probably have things that weren't fair  
 10:35 8 or weren't right and people let us down. Every one of  
 10:35 9 us had people in our lives that mattered, that let us  
 10:35 10 down, right?

10:35 11 A. (Moves head up and down.)

10:35 12 Q. And probably those things have a lot to do with  
 10:35 13 how each of us became the people that we are, don't you  
 10:35 14 think?

10:35 15 A. I'm sure.

10:35 16 Q. And so when we talk about mitigation, the fact  
 10:35 17 of the matter is, one would expect that evidence offered  
 10:35 18 in mitigation or evidence deemed mitigating would be  
 10:36 19 stuff that would be unfortunate or sad or unfair or  
 10:36 20 not -- not ideal for people, right?

10:36 21 A. (Moving head up and down.)

10:36 22 Q. I mean, people wouldn't offer the fact that,  
 10:36 23 you know, they made great grades in high school and got  
 10:36 24 a good scholarship to a great college. That would be  
 10:36 25 something they wouldn't normally offer as mitigating

10:36 1 evidence, perhaps, but maybe they would.  
 10:36 2 But you would more expect such things as  
 10:36 3 I'm on drugs, or my father wasn't around when I was  
 10:36 4 growing up or things like that as mitigating evidence.  
 10:36 5 Don't you think those are the kinds of things that you  
 10:36 6 would look at, probably the background and stuff?  
 10:36 7 A. You are asking me if that's what you are  
 10:36 8 talking about when you say mitigating or --  
 10:36 9 Q. Uh-huh. Background of the defendant, those  
 10:36 10 kinds of considerations.  
 10:36 11 A. I guess that's what it means.  
 10:36 12 Q. Have you known people, in your life, that have  
 10:36 13 grown up under circumstances that were pretty sad and  
 10:37 14 maybe as children pretty unfair to them?  
 10:37 15 A. Have I known them personally?  
 10:37 16 Q. Uh-huh.  
 10:37 17 A. I'm sure. I mean, yeah.  
 10:37 18 Q. Have you known people who have had lives, far  
 10:37 19 less than ideal that have turned out okay and become  
 10:37 20 productive law abiding citizens?  
 10:37 21 A. Yes.  
 10:37 22 Q. Have you known people in your life that have  
 10:37 23 had a relatively normal kind of upbringing, whatever  
 10:37 24 that means, and parents that were around and cared for  
 10:37 25 them, and they haven't done so well. They haven't

10:37 1 turned out all that great. Have you known people like  
 10:37 2 that?  
 10:37 3 A. I mean, I'm trying to think of these people,  
 10:37 4 and no one is really coming to my mind, but I'm sure if  
 10:37 5 I thought long enough.  
 10:37 6 Q. I guess -- I guess what I'm thinking is, if  
 10:38 7 somebody had what you and I would agree was a less than  
 10:38 8 ideal upbringing -- and by the way, I don't know whoever  
 10:38 9 does have an ideal upbringing, but if someone had a  
 10:38 10 clearly less than ideal upbringing, how much of an  
 10:38 11 excuse is that for really bad conduct like -- like  
 10:38 12 murdering two people, for example. As you see it, is  
 10:38 13 that a big excuse in the way you see the world?  
 10:38 14 A. No.  
 10:38 15 Q. Well, if the question is, well, Ms. Lauriello,  
 10:38 16 as I was growing up, I didn't have a dad that taught me  
 10:38 17 stuff, and I had some role models that taught me bad  
 10:38 18 stuff. Those are the people that I was watching when I  
 10:38 19 was growing up, and so I naturally gravitated into  
 10:38 20 things like drugs and violence and stuff like that. Why  
 10:39 21 doesn't that help excuse my conduct in your mind?  
 10:39 22 A. Because it's still wrong conduct. Society  
 10:39 23 cannot just excuse, you know, criminal behavior just  
 10:39 24 because someone had unfortunate role models. And there  
 10:39 25 are very sad and unfortunate situations, but they are

10:39 1 still -- it's still a threat. It's still wrong.  
 10:39 2 Q. Okay. Would psychiatric evidence be important  
 10:39 3 to you in a criminal trial when you are trying to decide  
 10:39 4 about a defendant's propensity to violence and also when  
 10:39 5 you are trying to evaluate exactly how extreme his  
 10:39 6 offense was? Would that be helpful to you?  
 10:39 7 A. I don't know.  
 10:39 8 Q. Is it something -- is it something that you  
 10:40 9 would be interested in listening to, if evidence of that  
 10:40 10 were presented by either side?  
 10:40 11 A. If this evidence that we were presented for  
 10:40 12 what reason?  
 10:40 13 Q. Well, perhaps for any reason. But perhaps to  
 10:40 14 explain the defendant's personality or to explain to you  
 10:40 15 what his likelihood is for such things as rehabilitation  
 10:40 16 or change, that sort of thing.  
 10:40 17 A. Well, forgive me, but I'm trying to understand,  
 10:40 18 you know, your question. And it leads me to think that  
 10:40 19 you are asking me something that maybe I would consider  
 10:40 20 in the punishment phase.  
 10:40 21 Q. Right, right. I doubt it would have anything  
 10:40 22 to do with whether or not he's guilty.  
 10:40 23 A. Okay. I was just trying to understand.  
 10:40 24 Q. Yeah. You are right.  
 10:40 25 A. So, if in the punishment case I listen to some

10:40 1 psychiatric or some psychological reasons for behavior,  
 10:40 2 your question then was what?  
 10:41 3 Q. Does that seem like that would be important or  
 10:41 4 helpful to you in answering these questions?  
 10:41 5 A. It might be appropriate. I don't know.  
 10:41 6 Q. Okay. I mean, you are certainly receptive to  
 10:41 7 listen to it. If the defense offered a psychiatrist,  
 10:41 8 you would listen to what they had to say?  
 10:41 9 A. Certainly.  
 10:41 10 Q. And if we offered a psychiatrist, you would  
 10:41 11 listen to what they had to say?  
 10:41 12 A. Sure.  
 10:41 13 Q. The law contemplates that a juror be able to  
 10:41 14 fairly answer this second question, yes or no. In other  
 10:41 15 words, everything in the case, the jury has to have an  
 10:41 16 open mind, even if they may have a leaning one way or  
 10:41 17 the other. They have to have an open mind, everything  
 10:41 18 that the law requires of them. And what that means is,  
 10:41 19 you have to recognize, a juror to be fair has to  
 10:41 20 recognize there may be, when taking into consideration  
 10:41 21 all the evidence, there may be a capital murder case in  
 10:42 22 which the defendant's background and character is a  
 10:42 23 certain way.  
 10:42 24 And the circumstances of the crime are a  
 10:42 25 certain way, that even though you have found him guilty

10:42 1 of capital murder or her, and even though you found that  
 10:42 2 this person is a probable dangerous person in the  
 10:42 3 future, that there's something about all of that that  
 10:42 4 would make this person worthy of a life sentence instead  
 10:42 5 of a death sentence. And it's -- it almost comes the  
 10:42 6 full circle.

10:42 7 And after we've done those questions and  
 10:42 8 all of the burdens of proof, it almost just asks the  
 10:42 9 jury, what's the right thing in this case for this  
 10:42 10 defendant, for society, taking the evidence and doing  
 10:42 11 it? It's almost like a last chance sort of thing. Do  
 10:42 12 you see yourself being able to answer that question yes  
 10:42 13 that a life sentence is the right thing to do, depending  
 10:43 14 on the evidence presented to you? Do you feel like you  
 10:43 15 could do that?

10:43 16 A. Yes.

10:43 17 Q. Do you feel like you could also say, I don't  
 10:43 18 like doing it, but a life sentence is not the correct  
 10:43 19 decision in this case. That's not what he ought to get,  
 10:43 20 taking that stuff into account. Could you go both ways  
 10:43 21 on that question?

10:43 22 A. I think I can.

10:43 23 Q. You still understand that that's -- that's my,  
 10:43 24 that's my concern. You didn't say you think you could  
 10:43 25 give a life sentence. I mean, you know that's no

10:43 1 problem. Are you with me on that?

10:43 2 A. I am.

10:43 3 Q. But even though you've indicated you favor the  
 10:43 4 death penalty, the most you can tell me is you think you  
 10:43 5 could, which tells me you think maybe you couldn't also,  
 10:43 6 right?

10:43 7 A. Right.

10:43 8 Q. As best you can, tell me what's holding you  
 10:44 9 back on saying yes, I could give a death sentence in a  
 10:44 10 capital murder case? I know I could do it based on the  
 10:44 11 evidence. I know I could, but what's holding you back  
 10:44 12 from that?

10:44 13 A. I don't know.

10:44 14 Q. Well -- if you were looking, if you were kind  
 10:44 15 of where I am now, and your object were to find 12  
 10:44 16 people who could fairly consider the full range of  
 10:44 17 punishment in a capital murder case, which is what --  
 10:44 18 that's what this process is now, if you are sitting  
 10:44 19 where I'm sitting now, would you be the kind of juror  
 10:44 20 that you would feel comfortable with knowing that this  
 10:44 21 person could go for a death sentence if you did your job  
 10:44 22 right?

10:45 23 A. I didn't follow you. If I was sitting where  
 10:45 24 you are sitting and --

10:45 25 Q. You are the lawyer for a second. Are you the

10:45 1 kind of a juror that the State could believe would be  
 10:45 2 able to give a death sentence if the evidence is there?

10:45 3 A. I think that's the same question you asked me  
 10:45 4 before. I mean, you are basically asking me again, can  
 10:45 5 I do it?

10:45 6 Q. Yeah, and you still haven't answered me.

10:45 7 A. Well, I'm giving you the best answer I can give  
 10:45 8 you which is, I don't know.

10:45 9 Q. Okay, okay. You understand why I'm concerned  
 10:45 10 that that might mean that you can't? Are we  
 10:45 11 communicating on that?

10:45 12 A. Right.

10:45 13 Q. And you can't -- you can't assure me -- you  
 10:45 14 can't assure me that you can. Is that where we are?  
 10:45 15 You can't say, yes, I assure you I am able to do that  
 10:45 16 based on the evidence?

10:45 17 A. That's correct.

10:46 18 Q. So you can't assure me you could be fair in a  
 10:46 19 death penalty case to the State?

10:46 20 A. I would like to think I was. But for certain,  
 10:46 21 I can't tell you that. I think I can, but you want me  
 10:46 22 to say absolutely positively, you know, and I don't know  
 10:46 23 that I can tell you that.

10:46 24 Q. Here's what I'm getting at, the defense asks  
 10:46 25 you, are you absolutely sure the defendant, if the State

10:46 1 doesn't prove what it has to prove, that you could give  
 10:46 2 a life sentence? And you wouldn't say I think I can,  
 10:46 3 but I'm not sure. You know, that's where we are.

10:46 4 A. I understand that.

10:46 5 Q. Which tells -- well, you know what that makes  
 10:46 6 me wonder?

10:46 7 A. What?

10:46 8 Q. Whether or not you are leaning toward a life  
 10:46 9 sentence without regard to the evidence.

10:46 10 A. I'm not leaning towards anything.

10:47 11 Q. How do you know you could fairly consider a  
 10:47 12 life sentence then?

10:47 13 A. Well, just based on my previous experience. I  
 10:47 14 know that I could look at the evidence and be able to  
 10:47 15 come up with, you know, certainly the guilty or not  
 10:47 16 guilty, based on the evidence.

10:47 17 Q. Okay.

10:47 18 A. Having heard what you've said about the  
 10:47 19 punishment, based on that in this case, for that  
 10:47 20 particular, you know, finding of guilty, I'm sure of  
 10:47 21 one. I'm just not sure of the other.

10:47 22 Q. You are sure of life, but not of --

10:47 23 A. Exactly.

10:47 24 Q. Okay.

10:47 25 MR. SCHULTZ: Judge, we'd respectfully

10:47 1 challenge this juror for cause and inability to assure  
 10:47 2 us that she's able to follow all phases of the law that  
 10:47 3 relate to the punishment phase of the trial.

10:47 4 THE COURT: All right. Mr. Goeller?

10:48 5 MR. GOELLER: Yes, Your Honor. Thank you,  
 10:48 6 sir.

10:48 7 THE COURT: Mr. Goeller, I'm going to ask  
 10:48 8 you, if you would, to put your briefcase on the floor  
 10:48 9 back there, against that.

10:48 10 VOIR DIRE EXAMINATION

10:48 11 BY MR. GOELLER:

10:48 12 Q. Was this blocking you, ma'am? I'm sorry.

10:48 13 A. No, I'm fine.

10:48 14 Q. I want to make sure I'm pronouncing your last  
 10:48 15 name correctly. Lauriello?

10:48 16 A. Correct.

10:48 17 Q. Ms. Lauriello, my name is Matthew Goeller, and  
 10:48 18 I represent Ivan sitting here. This is Don High. He's  
 10:48 19 my co-counsel. You are from New York, New York?

10:48 20 A. (Moves head up and down.)

10:48 21 Q. What borough?

10:48 22 A. Manhattan.

10:48 23 Q. Okay. I was across the river. I am a Brooklyn  
 10:48 24 guy myself, many years ago. I want to follow up with  
 10:49 25 you on a couple of questions that Mr. Schultz was asking

10:49 1 you. You've stated in your jury questionnaire, if the  
 10:49 2 judicial process is accurately and properly executed, I  
 10:49 3 believe this form of punishment is just in regards to  
 10:49 4 the death penalty. Is that your feeling, your feeling  
 10:49 5 today is the same or --

10:49 6 A. Yes.

10:49 7 Q. Okay. I think you understood perfectly clear  
 10:49 8 that the State has the burden of proof in the first  
 10:50 9 phase of the trial, guilty or not guilty, of the charge  
 10:50 10 of capital murder or whatever other charge the Court may  
 10:50 11 give. You understand that, right?

10:50 12 A. Correct.

10:50 13 Q. And then when we get to the special issues and  
 10:50 14 before I even proceed there, Mr. Schultz had spoken with  
 10:50 15 you at the beginning that, you know, neither -- and I  
 10:50 16 think you agreed with him. Neither you nor Mr. Schultz  
 10:50 17 stated that they relish getting up and participating in  
 10:50 18 a death penalty case, correct?

10:50 19 A. Right.

10:50 20 Q. And that makes sense and that -- we hope  
 10:50 21 everybody, either the lawyers or the Judge or all the  
 10:50 22 prospective jurors, we would hope everybody, I think you  
 10:50 23 fit right in with everybody else. Nobody wants to be  
 10:50 24 here. Nobody in that last Tuesday when Judge Sandoval  
 10:50 25 gave his opening remarks, nobody stood up and was

10:50 1 yelling, pick me, you know, pick me. I think that goes  
 10:50 2 without saying. You seem to focus on being reluctant to  
 10:51 3 make any decision until you have all the evidence,  
 10:51 4 right?

10:51 5 A. Correct.

10:51 6 Q. And that's what you need to properly make a  
 10:51 7 decision, not only in a criminal law case, but anything  
 10:51 8 in life, correct?

10:51 9 A. Right.

10:51 10 Q. You drive a car?

10:51 11 A. Yes.

10:51 12 Q. Did you pick out your own car?

10:51 13 A. Yeah. Well, my husband bought it for me.

10:51 14 Q. But was it a car that you wanted?

10:51 15 A. Oh, yeah.

10:51 16 Q. You have a lot of choices out there, right?

10:51 17 A. Uh-huh.

10:51 18 Q. And you didn't know what car you were going to  
 10:51 19 choose until either you researched it or you've talked  
 10:51 20 to people about it, or something about that car fit your  
 10:51 21 style and your needs and your expectations and your  
 10:51 22 pocketbook and all those kind of things, right?

10:51 23 A. (Moving head up and down.)

10:51 24 Q. You kind of gathered evidence before you make a  
 10:52 25 decision?

10:52 1 A. Right.

10:52 2 Q. Okay. If a defendant in a capital murder case  
 10:52 3 is found guilty of capital murder, of course we get to  
 10:52 4 the special issues, whether there is a probability he  
 10:52 5 would commit criminal acts of violence that would  
 10:52 6 constitute a continuing threat to society. I think you  
 10:52 7 stated you could answer that question once you have  
 10:52 8 evidence.

10:52 9 A. Right.

10:52 10 Q. And if either that evidence is from the first  
 10:52 11 phase of the trial or the second phase of the trial,  
 10:52 12 either or just one, knowing the State has the burden of  
 10:52 13 proof in that, they would have to prove to you -- their  
 10:52 14 job is to prove to you and the other 11 jurors, if you  
 10:52 15 are chosen in this case, to prove that beyond a  
 10:52 16 reasonable doubt.

10:52 17 A. Right.

10:52 18 Q. They've got to bring you evidence, you know, in  
 10:53 19 one form or fashion or another and persuade you that the  
 10:53 20 answer to that question unanimously, once on the jury,  
 10:53 21 is yes. You could certainly do that, correct?

10:53 22 A. Yes.

10:53 23 Q. You understand, with the burden of proof that  
 10:53 24 the State has, that burden also necessarily and  
 10:53 25 logically entails the production of evidence to you?

10:53 1 A. Yes.  
 10:53 2 Q. And you can't make that decision until you have  
 10:53 3 the evidence.  
 10:53 4 A. Right.  
 10:53 5 Q. Whatever it may be. There may be no evidence.  
 10:53 6 There may be lots of evidence. There may be a mixed bag  
 10:53 7 of evidence. But what you have, what they are obligated  
 10:53 8 by the burden to bring you, you can make that call?  
 10:53 9 A. Yes.  
 10:53 10 Q. And as you sit there today, you are telling  
 10:53 11 this judge that I can answer that question after I hear  
 10:53 12 the evidence or lack of it, right?  
 10:54 13 A. (Moving head up and down.)  
 10:54 14 Q. Right?  
 10:54 15 A. Right.  
 10:54 16 Q. And I think Mr. Schultz was exactly correct  
 10:54 17 when he talked about this question being kind of a last  
 10:54 18 look. What's the right thing to do in that case? The  
 10:54 19 way our system is set up, a life sentence, if somebody  
 10:54 20 is found guilty of capital murder, a life sentence, we  
 10:54 21 know, is automatic unless the State proves that first  
 10:54 22 special issue beyond a reasonable doubt. And then this  
 10:54 23 last special issue, just what the jury thinks  
 10:54 24 collectively is the right thing to do.  
 10:54 25 Nobody has a burden of proof, and

10:54 1 Mr. Schultz is exactly correct on that last question  
 10:54 2 there. They can bring you evidence. Ivan could bring  
 10:54 3 you evidence or a defendant. But again, since there's  
 10:55 4 no burden of proof, that is a very wide open question  
 10:55 5 because it says, consider everything. The evidence,  
 10:55 6 circumstances of the offense, character, background,  
 10:55 7 personal moral culpability, and individually and  
 10:55 8 collectively as a jury, they answer that question.  
 10:55 9 And of course you don't get to that  
 10:55 10 question until you've heard all of the facts of the case  
 10:55 11 in the first phase of the trial. And whatever evidence  
 10:55 12 the State presents is their burden regarding the first  
 10:55 13 special issue. Okay?  
 10:55 14 So when you get to that question, there  
 10:55 15 may be types of evidence that's designed to hit the jury  
 10:55 16 in all phases of the trial, you know? You can always  
 10:55 17 consider everything in the first phase of the trial.  
 10:55 18 Some evidence may be designed to impact you at the  
 10:56 19 second phase of the trial. But as a juror, you are free  
 10:56 20 to choose whatever you think is evidence. You know,  
 10:56 21 it's like mental health professionals.  
 10:56 22 Mr. Schultz mentioned mental health  
 10:56 23 professionals. Maybe a psychiatrist or psychologist  
 10:56 24 that would offer testimony in a case. And the good  
 10:56 25 thing about our jury system is, once you hear the

10:56 1 evidence, then you individually, then all the law really  
 10:56 2 requires is that you keep an open mind and you not  
 10:56 3 prejudge anything.  
 10:56 4 And once you hear that particular piece of  
 10:56 5 evidence after, only after when you deliberate or I  
 10:56 6 suppose after -- after the witness testifies, you start  
 10:56 7 forming opinions as to that type of evidence. You may  
 10:56 8 think a psychiatrist or a psychologist was very good and  
 10:56 9 brought you very good information, but you wouldn't make  
 10:56 10 that decision until after you heard them, right?  
 10:57 11 A. Correct.  
 10:57 12 Q. And you also have the right after somebody  
 10:57 13 testifies to say, I wouldn't believe anything. I didn't  
 10:57 14 believe anything that person said, or I believe half of  
 10:57 15 what that person said. But you would make all those  
 10:57 16 calls and answer all these questions and look at the  
 10:57 17 evidence and make your personal assessment and judgments  
 10:57 18 about the evidence after you hear it.  
 10:57 19 A. Right.  
 10:57 20 Q. I think you told Mr. Schultz right now, you're  
 10:57 21 not leaning one way or another because you haven't heard  
 10:57 22 any evidence.  
 10:57 23 A. Correct.  
 10:57 24 Q. You are telling us that, once you hear evidence  
 10:57 25 and the State proves to you, beyond a reasonable doubt

10:57 1 if they do that question, you can answer that question.  
 10:57 2 A. Yes.  
 10:57 3 Q. And you are telling us that, once you hear all  
 10:57 4 the evidence and take into consideration all the things  
 10:57 5 on special issue No. 3, then you'd be able to answer  
 10:57 6 that question, correct?  
 10:57 7 A. Right.  
 10:57 8 Q. And if the answers to your questions result in  
 10:58 9 a death penalty, you did it based on the evidence, and  
 10:58 10 you could do that?  
 10:58 11 A. Right.  
 10:58 12 Q. And if the answer to your questions necessarily  
 10:58 13 result in a life sentence, you could do that as well?  
 10:58 14 A. Right.  
 10:58 15 Q. Okay, ma'am. Do you have any questions of me  
 10:58 16 about anything, up to this point?  
 10:58 17 A. No.  
 10:58 18 Q. Okay.  
 10:58 19 MR. GOELLER: Thank you, ma'am. Judge,  
 10:58 20 can I consult with Mr. High for just a moment?  
 10:58 21 Q. (BY MR. GOELLER) When, Ms. Lauriello, I think  
 10:58 22 you said to Mr. Schultz, regarding whether you could  
 10:58 23 give the death sentence, you stated, I don't know for  
 10:58 24 certain right now. Did you say that because you don't  
 10:58 25 have any evidence yet?



10:59 1 A. I'm sure.  
 10:59 2 Q. Okay. All right. Just like you don't know if  
 10:59 3 you could give a life sentence right now.  
 10:59 4 A. Right.  
 10:59 5 Q. Because you have no evidence.  
 10:59 6 A. Right.  
 10:59 7 Q. And you're going to wait until the Judge says,  
 10:59 8 Ms. Lauriello, now deliberate your verdict, either phase  
 10:59 9 of the trial. When the Judge tells you, now it's time  
 10:59 10 to make decisions.  
 10:59 11 A. Uh-huh.  
 10:59 12 Q. You wouldn't do that until -- either way until  
 10:59 13 you've had all the evidence, and the Judge says: The  
 10:59 14 trial is over. Now it's in the hands of the jury.  
 10:59 15 Correct?  
 10:59 16 A. Correct.  
 10:59 17 Q. Okay.  
 10:59 18 MR. GOELLER: All right. Thank you,  
 10:59 19 ma'am. Your Honor, the defendant respectfully requests  
 10:59 20 denial on the State's challenge at this point.  
 10:59 21 VOIR DIRE EXAMINATION  
 10:59 22 BY MR. SCHULTZ:  
 10:59 23 Q. Ms. Lauriello, has Mr. Goeller's explanation  
 10:59 24 changed some of the answers to my questions then? Is  
 11:00 25 that what you are saying?

11:00 1 A. Well, the interesting thing about it is that,  
 11:00 2 when he phrased the question, it seemed more open. When  
 11:00 3 you phrased it, it seemed like it was just absolute, and  
 11:00 4 I couldn't go there.  
 11:00 5 Q. Well, let's talk about that. Let me phrase  
 11:00 6 that -- let me ask my question again. Both sides are  
 11:00 7 entitled to jurors who absolutely can assure them that,  
 11:00 8 depending on the evidence, they can vote in such a way  
 11:00 9 as would, No. 1, result in a conviction or acquittal of  
 11:00 10 the defendant for capital murder.  
 11:00 11 They have a right to have a juror say, if  
 11:00 12 the State doesn't prove its case, I'll find him not  
 11:00 13 guilty. He can go free. We have a right to a juror who  
 11:00 14 will say, if you prove beyond a reasonable doubt he's  
 11:00 15 guilty, I will vote guilty. And you already told us you  
 11:00 16 can do that. That's not a problem?  
 11:00 17 A. Right.  
 11:00 18 Q. At the punishment phase of the trial, we have a  
 11:01 19 right to have jurors who, if we prove beyond a  
 11:01 20 reasonable doubt that the answer to that first special  
 11:01 21 issue should be yes, they will vote yes. And if the  
 11:01 22 evidence demonstrates that a death sentence is  
 11:01 23 appropriate, they will vote no on that mitigation  
 11:01 24 question.  
 11:01 25 MR. GOELLER: Judge, I object to that.

11:01 1 I'm sorry. That's a misstatement of the law  
 11:01 2 regarding -- he's correct on the first special issue,  
 11:01 3 not on the third special issue. There is no burden of  
 11:01 4 proof, and; therefore, there is no quantum of evidence.  
 11:01 5 THE COURT: Sustained.  
 11:01 6 Q. (BY MR. SCHULTZ) We have a right as, on behalf  
 11:01 7 of the State of Texas, to jurors who can base the answer  
 11:01 8 to this mitigation question, the second question here,  
 11:01 9 on the evidence. And when I asked you, could you answer  
 11:01 10 those questions because you know what the result of the  
 11:02 11 answer to the question is. We tell the jury that.  
 11:02 12 And I ask you, could you assure us that,  
 11:02 13 if you were convinced that yes, the answer to that first  
 11:02 14 question should be yes and that the answer to that  
 11:02 15 second question should be no, could you still vote that  
 11:02 16 way knowing a death sentence would result? And your  
 11:02 17 answer to me was, you didn't know. You thought so, but  
 11:02 18 you thought maybe not.  
 11:02 19 Are you sure now that you could do that,  
 11:02 20 and you could answer those questions based on the  
 11:02 21 evidence in a way that would result in the death  
 11:02 22 penalty, if that's what the evidence required you to do?  
 11:02 23 MR. GOELLER: I still lodge an objection  
 11:02 24 to that question regarding special issue No. 3.  
 11:02 25 THE COURT: Tell me the objection.

11:02 1 MR. GOELLER: He's attempt -- (counsel  
 11:02 2 conferring) it's a misstatement of the law. The  
 11:03 3 evidence will not require. Regarding special issue  
 11:03 4 No. 3, the evidence does not require that a juror vote  
 11:03 5 in such a way as to return a death sentence.  
 11:03 6 MR. SCHULTZ: Which is not what I ever  
 11:03 7 said.  
 11:03 8 MR. GOELLER: Well, I think -- I  
 11:03 9 respectfully disagree. I think that's exactly what he  
 11:03 10 said. He's trying to box her in on special issue No. 3,  
 11:03 11 really, regarding the burden of proof.  
 11:03 12 THE COURT: I tell you what, ask the  
 11:03 13 question again. Let me hear the question again.  
 11:03 14 Q. (BY MR. SCHULTZ) I'm not trying to box you in.  
 11:03 15 I'm not sure I'm the one that's even doing that in this  
 11:03 16 case. We have a right, as the State of Texas, to fair  
 11:03 17 answers to those questions from the jury, based on the  
 11:03 18 evidence. And by fair, what I mean is that juries be  
 11:03 19 free to answer those questions based on the evidence  
 11:03 20 without regarding what the results of their answers  
 11:04 21 would be. Does that make sense to you?  
 11:04 22 MR. GOELLER: I'm sorry. I got to object  
 11:04 23 to that statement as well. That violates *Morgan v.*  
 11:04 24 *Illinois* in that that case stands for the proposition  
 11:04 25 that jurors may view the answers to these special issues

11:04 1 with due regard for the feelings on capital punishment.  
 11:04 2 That may figure in, as long as it doesn't substantially  
 11:04 3 impair. So I object to that statement. It's a  
 11:04 4 misstatement of the law.

11:04 5 THE COURT: I sustain the objection.

11:04 6 MR. SCHULTZ: Would you hear argument on  
 11:04 7 that, Judge?

11:04 8 THE COURT: Yes.

11:04 9 MR. SCHULTZ: All I'm doing is asking --  
 11:04 10 he's wrong. That's a flat misstatement of our  
 11:04 11 Constitutional law. The juror does not have the right  
 11:04 12 to disregard the evidence and achieve some special  
 11:04 13 purpose or result. Mr. Goeller well knows that.

11:04 14 The juror has the obligation to view the  
 11:04 15 evidence and render a true verdict to those questions,  
 11:04 16 which is your oath. And as a fair question to the  
 11:05 17 juror, whether or not she could base her answers to  
 11:05 18 those questions on the evidence presented and truly  
 11:05 19 render those questions, irrespective of the outcome that  
 11:05 20 comes from that fair answering of those questions.

11:05 21 And *Morgan v. Illinois* does not deal. It  
 11:05 22 authorizes a juror to maintain his or her objections to  
 11:05 23 the death penalty, but it does not authorize the jury to  
 11:05 24 take those objections and substitute them for evidence.  
 11:05 25 In fact, the Supreme Court is very clear on that point.

11:05 1 MR. GOELLER: I'm not saying -- that  
 11:05 2 wasn't my point exactly. I would say *Morgan-Illinois*  
 11:05 3 and *Adams v. Texas* prohibit striking jurors who frankly  
 11:05 4 concede that the prospects of the death penalty may  
 11:05 5 affect what their honest judgments of the facts will be.  
 11:05 6 That is the United States Supreme Court law. I don't  
 11:05 7 think it's fair to ask a juror. I tell you what, I'm  
 11:06 8 going to withdraw my objection at this point.

11:06 9 THE COURT: You probably don't remember  
 11:06 10 the question. So if you would, please ask it one more  
 11:06 11 time.

11:06 12 Q. (BY MR. SCHULTZ) If we prove to you that the  
 11:06 13 answer to the first question should be yes, and the  
 11:06 14 answer to the second question should be no, and we do  
 11:06 15 that according to the respective burdens of proof on  
 11:06 16 those questions, one of which is equally on the State  
 11:06 17 and to the defense -- that's the third question. And  
 11:06 18 the other is: Beyond a reasonable doubt will you vote  
 11:06 19 that way knowing that a death sentence could result?

11:06 20 A. Again, I say I think I can.

11:06 21 Q. But you think maybe you can?

11:06 22 A. I mean, I can't foresee not being able to do  
 11:06 23 that.

11:06 24 Q. Okay.

11:06 25 A. I'm just being as honest as I can.

11:06 1 Q. Okay. I know you are. I'm not even implying  
 11:06 2 otherwise, but you've indicated -- you don't hesitate at  
 11:06 3 all when we talk about a life sentence. You know you  
 11:07 4 can do that. And you tell me you think you can do that  
 11:07 5 on a death sentence, and that's my concern. So you are  
 11:07 6 saying -- are you saying, can you do that? Can you vote  
 11:07 7 the evidence -- even if the evidence leads you to vote  
 11:07 8 it would result in a death sentence? Can you do that?

11:07 9 A. I think so.

11:07 10 Q. I'm sorry?

11:07 11 A. I think so.

11:07 12 Q. Why is it a different answer than on a life  
 11:07 13 sentence? That's still where we are. Why can't -- you  
 11:07 14 can assure the defense you could give a life sentence  
 11:07 15 based on the evidence. You don't say, I think so. Why  
 11:07 16 is it different?

11:07 17 A. I suppose because it's such a different  
 11:07 18 outcome.

11:07 19 Q. Sure. Of course it is. And you are saying you  
 11:07 20 don't know for sure. You think you can, but you can't  
 11:07 21 assure us?

11:07 22 A. Right.

11:07 23 Q. Is that right?

11:08 24 A. (Moving head up and down.)

11:08 25 Q. I need to get you to say yes or no.

11:08 1 A. Yes.

11:08 2 MR. SCHULTZ: Thank you.

11:08 3 THE COURT: The challenge is on the floor.

11:08 4 MR. SCHULTZ: Yes, sir.

11:08 5 THE COURT: Denied.

11:08 6 MR. SCHULTZ: State would use peremptory  
 11:08 7 challenge No. 3, Judge.

11:08 8 THE COURT: All right. Ms. Lauriello, you  
 11:08 9 are finally excused.

11:08 10 VENIREPERSON: Thank you.

11:08 11 MR. GOELLER: Thank you, ma'am. Judge, I  
 11:08 12 need the juror held.

11:08 13 THE COURT: Okay. All right. Ma'am, let  
 11:08 14 me ask you to step down for a moment, and we might call  
 11:08 15 you back in.

11:08 16 (Venireperson Lauriello not present.)

11:08 17 THE COURT: All right. Mr. Goeller?

11:08 18 MR. GOELLER: Thank you, Your Honor. Your  
 11:08 19 Honor, first of all, I'd offer juror No. 16, Hilda  
 11:08 20 Lauriello's individual juror questionnaire in evidence  
 11:09 21 for the record.

11:09 22 THE COURT: I understand they are all  
 11:09 23 coming in. So it's admitted just like the other 181.

11:09 24 MR. GOELLER: The record should reflect  
 11:09 25 that Ivan Abner Cantu is a Hispanic male. And that

11:09 1 everybody in this courtroom -- the attorneys have  
 11:09 2 conducted the individual voir dire, or the State will  
 11:09 3 refer to him as such with just about every juror.

11:09 4 The record should further reflect that  
 11:09 5 Hilda Lauriello under oath in her questionnaire stated  
 11:09 6 her race was Hispanic.

11:09 7 Let the record further reflect that her  
 11:09 8 answers on the death penalty, page 1, regarding 1  
 11:09 9 through 5, she circled No. 2.

11:09 10 Let the record further reflect that the  
 11:09 11 State has exercised a peremptory strike against a juror  
 11:09 12 of the Hispanic race, Ms. Hilda Lauriello. And under  
 11:09 13 *Bastion v. Kentucky*, Your Honor, and *United States*  
 11:09 14 *Supreme Court in Young v. State of Texas Court of*  
 11:10 15 *Criminal Appeals*, the defendant respectfully avers that  
 11:10 16 the race was -- the strike was racially motivated. We  
 11:10 17 would ask the juror be seated on this panel and under  
 11:10 18 *Young v. State*. I recognize it's a tri-party form of  
 11:10 19 challenge. And I'd ask the Court at this time to shift  
 11:10 20 the burden of proof to the State to articulate race and  
 11:10 21 neutral reasons for the striking of the Hispanic juror,  
 11:10 22 Hilda Lauriello.

11:10 23 THE COURT: All right.

11:10 24 MR. SCHULTZ: Do you want me sworn, Judge?

11:10 25 THE COURT: I don't think it's necessary.

11:10 1 MR. GOELLER: No. He's an officer of the  
 11:10 2 Court.

11:10 3 THE COURT: If you would just put your  
 11:11 4 reasons on the record.

11:11 5 MR. SCHULTZ: Okay. Reason No. 1.

11:11 6 THE COURT: If there are any.

11:11 7 MR. SCHULTZ: There are.

11:11 8 THE COURT: All right.

11:11 9 MR. SCHULTZ: Reason No. 1, I don't know  
 11:11 10 if the Court was in a position -- I suspect everybody  
 11:11 11 was -- whether my own making or just one of those things  
 11:11 12 that happened. Absolutely, this juror seemed to be  
 11:11 13 hostile to me in her answers. There was an oftentimes,  
 11:11 14 in addition to just a perhaps confusion in her answers,  
 11:11 15 there was almost a sarcastic way that she criticized my  
 11:11 16 questions.

11:11 17 I doubt it was -- a whole lot of that  
 11:11 18 stemmed from the jury selection back Tuesday when I  
 11:11 19 talked with that group of jurors. And she indicated she  
 11:11 20 considered my approach to be callous, in being  
 11:11 21 insensitive to the things going on with the -- with the  
 11:11 22 jurors and their personal lives, not being significant  
 11:11 23 in compared to this case.

11:12 24 When I asked her: Would your feelings  
 11:12 25 about me being callous interfere with your ability to be

11:12 1 fair to the State of Texas? Her answer was that, "I  
 11:12 2 don't think so," or "I can't see that happening." I  
 11:12 3 mean, I can't imagine the average person saying that her  
 11:12 4 feelings toward me about my callousness would even be a  
 11:12 5 consideration, but there was that.

11:12 6 Then in discussing with her the special  
 11:12 7 issues, which is really what we were focusing on, she'd  
 11:12 8 indicated that while previously she had had support for  
 11:12 9 the death penalty, that starting at about four o'clock  
 11:12 10 this morning there had been an awakening on her part  
 11:12 11 that made her ask herself the question: Can I really do  
 11:12 12 this? Which I think was fair and genuine on her part.

11:12 13 And then when asked the questions  
 11:12 14 concerning her ability to fairly and freely answer the  
 11:12 15 special issues, irrespective of the outcome, the Court  
 11:12 16 is certainly well aware of that interchange and that --  
 11:13 17 that energy that occurred. And I'm not critical -- I'm  
 11:13 18 not in any way critical of the Court's ruling on the  
 11:13 19 challenge for cause.

11:13 20 Advocates see it one way for their point  
 11:13 21 of view, and the Court, as neutral, sees it in an  
 11:13 22 entirely different way. I never did believe, and I  
 11:13 23 still don't believe that she ever assured the State that  
 11:13 24 they could ever convince her to vote in such a way that  
 11:13 25 a death penalty would result.

11:13 1 And again, only for record purposes and  
 11:13 2 not even -- not even suggesting your ruling was wrong.  
 11:13 3 I'm not being critical of your ruling. I'm not prepared  
 11:13 4 to even say on the record your ruling was incorrect on  
 11:13 5 the challenge for cause. But for goodness sake, why on  
 11:13 6 earth would any prosecutor find acceptable a juror who  
 11:13 7 will tell the defense absolutely: I could vote for a  
 11:13 8 life sentence depending upon the evidence? And the best  
 11:14 9 that can be told to the State is, "I think so. I can't  
 11:14 10 tell you any more than that." And when asked why that  
 11:14 11 was, the answer became because of the result that would  
 11:14 12 occur.

11:14 13 I might be able to overcome the fact that  
 11:14 14 she seemed unfriendly to me because I don't think she  
 11:14 15 seemed like the kind of person that would -- that would  
 11:14 16 harm society because of -- because of how she felt about  
 11:14 17 me. But the thing that I can't get over is that  
 11:14 18 somebody going in can't even assure us the simple  
 11:14 19 proposition that, based on the evidence, I could answer  
 11:14 20 those questions, regardless of the outcome.

11:14 21 And I mean, even after Mr. Goeller's  
 11:14 22 rehabilitation of her, she was still there. She still  
 11:14 23 said the same thing. The best I can give you is, "I  
 11:14 24 think so." I can't imagine. We talk about a race  
 11:15 25 neutral reason, I can't imagine -- I can't imagine more

11:15 1 obvious reasons than that. It's even worse than that  
11:15 2 because she's changed.

11:15 3 We look at the questionnaire, and that's  
11:15 4 been offered into evidence. And her answers on the  
11:15 5 questionnaire look okay. But it's even worse because it  
11:15 6 seems to us that she's abandoned a lot of that  
11:15 7 commitment and that resolve on the death penalty issue.  
11:15 8 And she even told us that, I can't guarantee that  
11:15 9 another four o'clock in the morning won't occur to me.

11:15 10 I mean, those are my reasons, and that's  
11:15 11 all there is. There wasn't any -- we don't, you know,  
11:15 12 ethnic, the ethnic issue, that's not there. That's not  
11:15 13 the problem. It's the answer. And only for record,  
11:15 14 please don't understand I'm being critical. The only  
11:15 15 reason we are exercising a peremptory challenge is we  
11:15 16 weren't able to demonstrate with enough sufficiency, the  
11:15 17 fact that she was unable to follow the law. And I mean  
11:16 18 if it's bad -- if it's bad enough to the State that we  
11:16 19 challenge for cause, and the Court gave us a due hearing  
11:16 20 on it and disagreed with us, I don't imagine why anybody  
11:16 21 would think that that's anything other than the answers  
11:16 22 of this juror.

11:16 23 THE COURT: Mr. Goeller? Final word or  
11:16 24 more.

11:16 25 MR. GOELLER: It's my opportunity to

11:16 1 cross-examine Mr. Schultz.

11:16 2 THE COURT: That's right. Forgive me,  
11:16 3 vigorously.

11:16 4 MR. GOELLER: At this time, I would ask  
11:16 5 for production of the State's notes, writings from all  
11:16 6 three attorneys and the questionnaire that either one or  
11:16 7 all of them have and any notes they've made regarding  
11:16 8 Ms. Lauriello.

11:16 9 THE COURT: All right. If you --

11:16 10 MR. SCHULTZ: I have no notes. I made no  
11:16 11 notes myself, and we've got.

11:16 12 THE COURT: I tell you what. If there's  
11:16 13 anything that might have to do with any other juror, if  
11:16 14 you want me to see them in camera, I would be happy to  
11:16 15 look at them in camera.

11:17 16 MR. SCHULTZ: That's a good idea. We've  
11:17 17 got our jury list where we just made our marginal notes.  
11:17 18 What I might ask the Judge to do is take that in camera  
11:17 19 and the portion related to this juror. Give that to the  
11:17 20 defense. It probably has some strategy that might  
11:17 21 appear on.

11:17 22 THE COURT: If you'll give him what you  
11:17 23 don't object to giving him, just show me.

11:17 24 MR. SCHULTZ: Here's our questionnaire,  
11:17 25 Judge.

11:17 1 THE COURT: So you are tendering the  
11:17 2 questionnaire that does have notes with regard to this  
11:17 3 juror on the questionnaire; is that correct?

11:17 4 MR. SCHULTZ: Yes, sir. You want notes of  
11:17 5 attorneys if I haven't talked with them, Judge? Are you  
11:17 6 requesting that also?

11:18 7 MR. GOELLER: I'm requesting notations by  
11:18 8 any of the State's attorneys taken while this --

11:18 9 THE COURT: Let me just start on this end.  
11:18 10 Ms. Lowry, do you have any notes with regard to this  
11:18 11 witness or with regard to the last juror?

11:18 12 MS. LOWRY: I do have two notations from  
11:18 13 just the general voir dire that we did last Tuesday.

11:18 14 THE COURT: Can you point them out to me  
11:18 15 where they are and show them to me?

11:18 16 MS. LOWRY: May I approach?

11:18 17 THE COURT: Yes. All right. Yeah, and I  
11:18 18 tell you what, I'll -- we can, these can be put in the  
11:18 19 record at a later date. Just for now, I will tell you  
11:18 20 that there are -- it's clear that there are prepared  
11:19 21 notes with regard to other jurors who would -- that  
11:19 22 would, that would reflect strategy with regard to the  
11:19 23 other jurors. So I will read to you the portion with  
11:19 24 regard to Hilda Lauriello alone.

11:19 25 In fact, it even has a heading: Juror

11:19 1 comments. No. 16, Hilda Lauriello. Rape and theft --  
11:19 2 jury. Able to reach unanimous verdict. Thinks if ever  
11:19 3 charged with or W/S/thing, which I assume is with such a  
11:19 4 thing. Thinks if ever charged, W/S/thing, want jury.  
11:19 5 And next sentence says, thinks juries are more fair.  
11:20 6 And the next sentence says, served on engaging jury.

11:20 7 In fact, I'll just ask you, Ms. Lowry, if  
11:20 8 you could interpret for us, what does it mean? Thinks  
11:20 9 if ever charged W/S/thing, jury.

11:20 10 MS. LOWRY: When she was talking about  
11:20 11 that she said, if she was ever charged with something.  
11:20 12 She thinks if she was charged with something, she would  
11:20 13 want a jury.

11:20 14 THE COURT: So that's the first page.  
11:20 15 There are also -- there's one line with the little notes  
11:20 16 that I assume we've taken today.

11:20 17 MS. LOWRY: No, sir. All of that was  
11:20 18 taken during on Tuesday, during general voir dire.

11:20 19 THE COURT: Oh, on Tuesday, okay. So  
11:20 20 No. 16, struggle with death in general. Actually,  
11:20 21 struggle W/death in gen. Which I assume means struggle  
11:20 22 with death in general.

11:20 23 MS. LOWRY: Yes, sir.

11:20 24 THE COURT: And those are all the notes  
11:20 25 from Ms. Lowry.

11:21 1 MS. LOWRY: I didn't get a chance to flip  
11:21 2 all the way through here. I think those first couple of  
11:21 3 pages would be the only thing I took last Tuesday, and  
11:21 4 that would be the only thing that would be in that legal  
11:21 5 pad.

11:21 6 THE COURT: And then this begins the notes  
11:21 7 that were taken during the voir dire up through today,  
11:21 8 right?

11:21 9 MS. LOWRY: Well, through the end of that  
11:21 10 pad.

11:21 11 THE COURT: All right.

11:21 12 MS. LOWRY: I didn't take any notes today  
11:21 13 of what she said other than just listening to what she  
11:21 14 said. I'm not even sure what's all in there that --

11:21 15 THE COURT: Mr. Goeller, I have to tell  
11:21 16 you there's a note here that says: "Did Matt break out a  
11:21 17 new briefcase for this trial?"

11:22 18 MS. LOWRY: And I haven't used that new  
11:22 19 note pad since Monday.

11:22 20 THE COURT: I forgot to look at the backs  
11:22 21 of these pages on a few there.

11:22 22 MS. LOWRY: This is the only other note  
11:22 23 that I took during the hearing today, and that is just  
11:23 24 this. That one circled right there.

11:23 25 THE COURT: There's another circled that

11:24 1 husband. Can I just assure the Court that there's no  
11:25 2 further note than that.

11:25 3 MR. HIGH: Did you say Jami and Bill or  
11:25 4 Brett?

11:26 5 THE COURT: All right. Those are all the  
11:26 6 notes that relate to juror No. 16 that I can identify.  
11:26 7 Mr. Goeller, I got this note pad, and we can preserve it  
11:26 8 any way you want.

11:26 9 MS. LOWRY: May we just extract the  
11:26 10 portions that are about this particular juror?

11:27 11 THE COURT: So, but I believe I've given  
11:27 12 you a thorough reading of everything with regard to this  
11:27 13 juror, if you want. Do you want to preserve this pad?  
11:27 14 We can do that or --

11:27 15 MR. GOELLER: Just for the record, yes,  
11:27 16 Judge.

11:27 17 THE COURT: Well, I tell you what I'll  
11:27 18 do --

11:27 19 MR. GOELLER: I suppose at this hearing  
11:27 20 everything is for record purposes.

11:27 21 THE COURT: I tell you what I'll do. I'll  
11:27 22 ask -- Billy, I'm going to give you this and ask you to  
11:27 23 make a copy of it, a copy of everything in there and  
11:27 24 preserve it, and we'll mark this as an exhibit. And  
11:27 25 then you can give the pad back to Ms. Lowry.

11:23 1 says, "she doesn't like him. She doesn't like him,  
11:23 2 question mark."

11:23 3 MS. LOWRY: The rest of that was just  
11:23 4 talking about what suit I was going to wear tomorrow.

11:23 5 MR. GOELLER: Me?

11:23 6 MS. LOWRY: What suit I was going to wear  
11:23 7 tomorrow.

11:23 8 THE COURT: And I'm just about done here.

11:23 9 MR. SCHULTZ: Can we get Jami to interpret  
11:23 10 that note, Judge? Who the "him" is?

11:23 11 MS. LOWRY: May I, for the record?

11:23 12 THE COURT: Yes.

11:23 13 MS. LOWRY: Just when she was responding  
11:23 14 to my note, my note to Bill was that she wasn't  
11:23 15 responding well to him, and she didn't like him. That's  
11:23 16 who I was talking about.

11:23 17 MR. SCHULTZ: Very perceptive.

11:24 18 THE COURT: This one, "Jami and Brett,  
11:24 19 love forever."

11:24 20 MR. GOELLER: At least it didn't occur at  
11:24 21 the table.

11:24 22 THE COURT: That's the last note that I  
11:24 23 read.

11:24 24 MS. FALCO: She's a newlywed.

11:24 25 MS. LOWRY: I've got a nice little

11:27 1 MR. GOELLER: Do you want this also?  
11:27 2 Might as well.

11:27 3 THE COURT: It says, "I want a Subway."  
11:27 4 And, Ms. Falco, did you have notes that I should be  
11:28 5 looking at?

11:28 6 MS. FALCO: I just have one. In my  
11:28 7 original questionnaire I had already stricken through  
11:28 8 Ms. Lauriello's name. On States No. 3, I just wrote  
11:28 9 that. But I burg. V. She was a victim of a burglary on  
11:28 10 the right-hand column.

11:28 11 THE COURT: All right.

11:28 12 MS. FALCO: Do you see that?

11:28 13 THE COURT: It says, State No. 3, and  
11:28 14 burg. V, 16, and Lauriello Hilda.

11:28 15 MS. FALCO: Actually before Lauriello it  
11:28 16 says, struggle with DP.

11:28 17 THE COURT: Right.

11:28 18 MS. FALCO: "Struggle with death penalty."  
11:28 19 And then out to her side, it says "jury's more." And I  
11:28 20 can't read my handwriting. "Jury's more," something, I  
11:28 21 guess it was what Jami was talking about, "jury's more."

11:28 22 THE COURT: It does say, "served two jury,  
11:28 23 rape and theft, guilty, robbery. Criminal trespass,  
11:28 24 both is dismissed."

11:28 25 MS. FALCO: That's a different juror.

11:28 1 THE COURT: On the other juror above that,  
11:28 2 and once more.

11:29 3 MS. FALCO: "Jury's more." And I don't  
11:29 4 know what that last word is.

11:29 5 THE COURT: And that's it. But with  
11:29 6 regard to this list, I can just assure you it says  
11:29 7 nothing from what any inference can be drawn.

11:29 8 MR. GOELLER: Can you show me what you are  
11:29 9 referring to, Judge?

11:29 10 THE COURT: I tell you what, I can. But  
11:29 11 we are going to do it like this. There's Hilda  
11:29 12 Lauriello's name.

11:29 13 MS. FALCO: Burglary victim, struggled  
11:29 14 with death penalty. Struggle with DP.

11:29 15 MR. GOELLER: Okay. That's no problem.  
11:29 16 If I could ask Ms. Falco: Did you make any handwritten  
11:29 17 notes on any other legal pads regarding this juror at  
11:29 18 all?

11:29 19 MS. FALCO: No, I did not. I just did the  
11:29 20 highlighting on the questionnaires.

11:30 21 MR. GOELLER: Okay. The yellow legal pads  
11:30 22 sitting in front of you? You weren't writing on that  
11:30 23 during Ms. Lauriello's --

11:30 24 MS. FALCO: Not for Ms. Lauriello's, I did  
11:30 25 not.

11:30 1 MR. GOELLER: Okay. I believe it.

11:30 2 MS. FALCO: You can look. It's just voir  
11:30 3 dire notes.

11:30 4 MR. GOELLER: Oh, can I look? No. If you  
11:30 5 are telling me, as an officer of the Court, you have no  
11:30 6 other writings regarding Ms. Lauriello, either from  
11:30 7 today, in the past --

11:30 8 MS. FALCO: I did not.

11:30 9 MR. GOELLER: -- when you got the jury  
11:30 10 list, I'll take that as face value.

11:30 11 THE COURT: Would you -- if that appears  
11:30 12 to be all the notes, do you have any questions for  
11:30 13 Mr. Schultz?

11:30 14 MR. GOELLER: Just a few, Judge.

11:30 15 THE COURT: All right.

11:30 16 EXAMINATION

11:30 17 BY MR. GOELLER:

11:30 18 Q. Mr. Schultz, we know each other?

11:30 19 A. Yes.

11:30 20 Q. Mr. Schultz, the reasons you stated for  
11:30 21 exercising the peremptory strike -- I guess I'll go, try  
11:30 22 to go in order -- one was you felt it was a general  
11:30 23 hostility regarding the juror and callousness. Maybe  
11:30 24 she felt that you were callous. Would you agree with me  
11:30 25 that you initiated that exchange?

11:31 1 A. About her feelings about me?

11:31 2 Q. You -- no. You initiated the exchange  
11:31 3 regarding your comments about the juror. We had a  
11:31 4 prospective surgery on this child from last week. And  
11:31 5 you asked, you initiated the dialogue regarding her  
11:31 6 feelings about your comment?

11:31 7 A. Right. I agree with that.

11:31 8 Q. Would you agree with me that she showed no  
11:31 9 hostility toward you until you brought up the  
11:31 10 conversation where you implied that, regarding jury  
11:31 11 service, you weren't -- you weren't really concerned  
11:31 12 with juror's personal affairs?

11:31 13 A. No.

11:31 14 Q. You don't agree with me?

11:31 15 A. No.

11:31 16 Q. You believe -- are you telling -- are you  
11:31 17 stating for the record that you thought Ms. Lauriello  
11:31 18 was hostile to you prior to that exchange?

11:31 19 A. Yes.

11:31 20 Q. How?

11:31 21 A. She wasn't very friendly looking to me when we  
11:31 22 were doing the selection, and I even remember what I  
11:32 23 perceived as the same kind of feeling back on Tuesday.  
11:32 24 And she -- I mean, she wasn't the only one, but she was  
11:32 25 certainly one who didn't. And then last night when we

11:32 1 were excused, as I recall, she was up here last night.  
11:32 2 I started to get on the elevator, and it wouldn't have  
11:32 3 to mean anything, but she chose a different elevator.

11:32 4 And I understand that might just be out of  
11:32 5 the respect for the people down on the other end of the  
11:32 6 hall that might not have understood us riding on the  
11:32 7 elevator together, but I didn't take it that way.

11:32 8 Q. Do you recall telling jurors back on Tuesday  
11:32 9 you wouldn't get in an elevator with them?

11:32 10 A. I do. I understand.

11:32 11 Q. Do you think that might have something to do  
11:32 12 with it?

11:32 13 A. It might, but I didn't take it that way. I  
11:32 14 didn't think it was my comments.

11:32 15 Q. Did you get your feelings hurt?

11:32 16 A. No. I got my defenses up, though.

11:32 17 Q. Okay. Would you agree with me that regarding  
11:32 18 the white male juror seated as Juror No. 1, Mr. Calhoun,  
11:32 19 that his responses to your questions about whether they  
11:33 20 could ultimately give life or death, do you recall his  
11:33 21 answer as being, "I think I could"?

11:33 22 A. No.

11:33 23 Q. What do you recall his answers to be?

11:33 24 A. I don't recall.

11:33 25 Q. Do you think Mr. Calhoun, unequivocally stated

11:33 1 to you he could impose the death penalty, and he could  
11:33 2 impose a life sentence unequivocally?

11:33 3 A. Well, I don't know if he stated. He certainly  
11:33 4 unequivocally must have communicated that to me.

11:33 5 Q. Did you ever ask Mr. Calhoun, Thomas Calhoun,  
11:33 6 Juror No. 1, did you ever ask him: Could you assure me  
11:33 7 that you could give a death sentence?

11:33 8 A. I don't know.

11:34 9 Q. If you did not, assume for a moment you did not  
11:34 10 use that line of questioning with Juror Calhoun, could  
11:34 11 you assure me -- what would be your reason for -- well,  
11:34 12 do you recall -- strike that attempt at a question that  
11:34 13 wasn't going to work.

11:34 14 Do you recall where Mr. Calhoun put  
11:34 15 himself regarding 1 through 5, on which of the following  
11:34 16 statements best represents your feelings about the death  
11:34 17 penalty?

11:34 18 A. No.

11:34 19 Q. Okay. If you did not ask Mr. Calhoun for  
11:34 20 assurances regarding whether he could give the death  
11:34 21 penalty, why would you have asked Ms. Lauriello just  
11:34 22 those line of questions --

11:34 23 A. I don't know.

11:34 24 Q. -- regarding the sure?

11:34 25 A. I don't know. I don't know even know if I

11:34 1 didn't. I can't even speculate. I don't even have that  
11:35 2 much information for you. I guess I could -- I guess I  
11:35 3 could resort to seeing.

11:35 4 Q. Did you state, early on in Ms. Lauriello's  
11:35 5 individual voir dire today that her answers to the  
11:35 6 questionnaires looked okay?

11:35 7 A. I don't recall. I may or may not have.

11:35 8 Q. In your race-neutral explanations to the Court  
11:35 9 when you had that opportunity to make those, did you  
11:35 10 tell the Court that her answers on the questionnaire  
11:36 11 looked fine?

11:36 12 A. I don't recall.

11:36 13 Q. Or did you tell Judge Sandoval they looked  
11:36 14 okay?

11:36 15 A. I told him whatever I told him. I don't recall  
11:36 16 specifically the language.

11:36 17 Q. Did you review, Bill, Ms. Lauriello's  
11:36 18 individual questionnaire prior to questioning her today?

11:37 19 A. No.

11:37 20 Q. You didn't -- you didn't -- are you sure you  
11:37 21 haven't told Judge Sandoval that her answers on her  
11:37 22 questionnaire looked fine? Or I may be -- that's not a  
11:37 23 fair question. You ended up reviewing her  
11:37 24 questionnaire, either during the individual voir dire, I  
11:37 25 guess you wouldn't have had time afterwards. But you

11:37 1 ended up looking at her individual questionnaire?

11:37 2 A. No. That's not exactly how it is.

11:37 3 Q. Tell me exactly how it is.

11:37 4 A. I ask Ms. Falco to review the individual  
11:37 5 questionnaires, and I asked her how they are. And then  
11:37 6 as I'm examining the juror, I'll go through portions of  
11:37 7 it and see what the answers are. But my approach is  
11:38 8 to -- and this is no secret -- my approach is to talk  
11:38 9 with the jurors fresh, without regard to the  
11:38 10 questionnaires. That's just how I do it.

11:38 11 Q. What did Ms. Falco tell you about her  
11:38 12 questionnaire?

11:38 13 A. That the answers looked okay.

11:38 14 Q. Okay. All right. So apparently your reason to  
11:38 15 exercise a preemptory strike against Ms. Lauriello was  
11:38 16 based on her answers from the witness stand during  
11:38 17 individual voir dire today?

11:38 18 A. That would certainly be part of it.

11:38 19 Q. And what other part would it be? If that's  
11:38 20 only part of it, and you told us that Ms. Falco told you  
11:38 21 her questionnaire looked okay. What else would have  
11:38 22 gone into your decision making regarding the exercise of  
11:39 23 that preemptory strike?

11:39 24 A. How she reacted to me on Tuesday a week ago  
11:39 25 when we did the general voir dire. The elevator

11:39 1 incident, her apparent -- apart from her answers today,  
11:39 2 her apparent hostility to me in the way she answered.  
11:39 3 Her apparent --

11:39 4 Q. Let me stop you there. And I'll -- no. It's  
11:39 5 not fair. Go ahead. You finish.

11:39 6 A. And her -- her hesitation on assuring me that  
11:39 7 she could return a death sentence, coupled with the fact  
11:39 8 that she didn't have that hesitation on the life  
11:39 9 sentence, and my same perceptions of how well she and I  
11:39 10 would work together based upon how she was presenting  
11:39 11 herself on the witness stand.

11:39 12 Q. How -- can you?

11:40 13 A. I'm sorry. And one other thing that I think  
11:40 14 was huge was that four o'clock in the morning epiphany  
11:40 15 that she referred to and that that's changed. She  
11:40 16 didn't know whether she would have another one of those  
11:40 17 in the middle of the trial.

11:40 18 Q. Have you accepted, and they've either been  
11:40 19 seated as jurors or preemptorily struck by us, have you  
11:40 20 accepted or told the Court that the jurors are  
11:40 21 acceptable, either you individually or Ms. Falco or  
11:40 22 Ms. Lowry, any jurors who express in a general  
11:40 23 apprehension the possibility of giving the death  
11:40 24 penalty?

11:40 25 A. I don't know.

11:40 1 Q. Can you articulate the hostility you've  
11:41 2 testified to that Ms. Lauriello showed you from the  
11:41 3 witness stand today?

11:41 4 A. That's pretty hard to do that unless -- unless  
11:41 5 it's direct. I wasn't the only one that noticed it.  
11:41 6 Apparently Ms. Lowry noticed it back on Tuesday because  
11:41 7 she made a note of it to Gail. This morning is the  
11:41 8 first I even knew of that note.

11:41 9 Q. What was the hostility? What did Gail Falco or  
11:41 10 Jami Lowry tell you was the specific hostility back  
11:41 11 during the general voir dire panel last Tuesday?

11:41 12 A. I have been corrected. I thought the relating  
11:41 13 to "she doesn't like him" related to Tuesday, but I'm  
11:41 14 told that the note was made today. That's all. I know  
11:41 15 what you know about the note. I just know of a note.

11:41 16 Q. What hostility did she display towards you  
11:41 17 today?

11:41 18 A. I don't know how to describe it. I mean, it's  
11:41 19 a feeling. It's a reaction thing. I mean, when we  
11:42 20 bounced her back and forth on my challenge for cause, I  
11:42 21 remember her saying, you are trying to be real narrow,  
11:42 22 and his questions are real open. And I didn't interpret  
11:42 23 that as just a neutral observation how you and I did our  
11:42 24 work. In my judgment, it was a critical tone to that  
11:42 25 and how she approached that.

11:42 1 I think, in many of the questions that I  
11:42 2 asked her, instead of saying she didn't understand, I  
11:42 3 think there was almost an -- I detected an annoyance in  
11:42 4 there. I mean, gosh, when somebody tells you they don't  
11:42 5 think they are going to hold their strong feelings about  
11:42 6 your callousness in voir dire against you in a capital  
11:42 7 murder case, I don't think it takes any psychologist to  
11:42 8 say there's some hostility there.

11:43 9 MR. GOELLER: That's all I have of  
11:43 10 Mr. Schultz, Your Honor.

11:43 11 THE COURT: Do you have anything of any of  
11:43 12 the other prosecutors?

11:43 13 MR. GOELLER: No, sir.

11:43 14 THE COURT: All right. Do you have  
11:43 15 anything else to put on?

11:43 16 MR. SCHULTZ: No, Judge.

11:43 17 THE COURT: All right. The Court will  
11:43 18 find that the strike was --

11:43 19 MR. GOELLER: Judge, can we confer just a  
11:43 20 moment?

11:43 21 THE COURT: Yeah, sure.

11:43 22 MR. HIGH: Judge, could I address the  
11:43 23 Court on this issue?

11:43 24 THE COURT: Yeah, sure.

11:43 25 MR. HIGH: I had some observations. His

11:43 1 race-neutral explanation is seemingly divided into two  
11:43 2 parts. One is, she seemed to be hostile in her answers.  
11:43 3 There was confusion. She was sarcastic. She was  
11:44 4 callous and insensitive, and she lacked the ability to  
11:44 5 be fair. And I took the notes exactly as he articulated  
11:44 6 that first portion of her answer. I want to break that  
11:44 7 down for the Court. I want to go through each  
11:44 8 particular word that he used.

11:44 9 With respect to hostile, there's no  
11:44 10 indication of hostility demonstrated from the witness  
11:44 11 stand. There's no indication of anger or irritation. I  
11:44 12 didn't pick that up, and I don't think the Court did.

11:44 13 She also admitted that she's previously  
11:44 14 served on two criminal juries, and they received guilty  
11:44 15 verdicts on both. I mean, she's obviously, has been a  
11:44 16 State's oriented juror in the past. There's no reason  
11:44 17 to think she wouldn't be this time.

11:44 18 With respect to confusion, confusion  
11:44 19 maybe. But recall that the questionnaire is in  
11:44 20 evidence. She's worked for Mobil Oil Company for over  
11:44 21 30 years. She's retired. That's not the type of woman  
11:44 22 that allows confusion to rein. She's the type that  
11:45 23 thoroughness is her mode of operation. She's direct in  
11:45 24 her approach and tries to avoid confusion and  
11:45 25 miscommunication. And I think she tried --

11:45 1 MR. SCHULTZ: Excuse me, Mr. High. Is  
11:45 2 this evidence, because there isn't any evidence of it?  
11:45 3 I thought -- is he arguing or is he --

11:45 4 MR. HIGH: I'm arguing.

11:45 5 THE COURT: I understand this to be  
11:45 6 argument.

11:45 7 MR. SCHULTZ: That's outside any record in  
11:45 8 the case of what she does and how she does her work.  
11:45 9 There's nothing to that effect in the record.

11:45 10 THE COURT: Well, I understood that all of  
11:45 11 the --

11:45 12 MR. HIGH: This is a reasonable deduction  
11:45 13 from the evidence that's before the Court.

11:45 14 THE COURT: I understood that all the  
11:45 15 questionnaires were in evidence.

11:45 16 MR. HIGH: I'm just arguing the  
11:45 17 questionnaire and what could happen if you look at the  
11:45 18 questionnaire and figure out what kind of woman she is  
11:45 19 and the way she testified this morning. I don't believe  
11:45 20 she's the type of woman, the type of juror that would  
11:45 21 allow confusion to prevail. She wouldn't allow that in  
11:45 22 her own personal life, and she's not going to allow us  
11:46 23 to be confused. She's going to tell us what she thinks.  
11:46 24 Sarcasm? That's a clearly subjective trait. It's an  
11:46 25 eye-of-the-beholder type trait.



11:46 1 We -- we certainly didn't observe any  
11:46 2 sarcasm on her part. And I don't -- I don't believe the  
11:46 3 Court observed any sarcasm. With respect to being  
11:46 4 callous and insensitive, obviously that's a word that  
11:46 5 Mr. Schultz has used throughout this voir dire process.

11:46 6 I think the Court recalls him using that  
11:46 7 more than once, more than five times, more than ten  
11:46 8 times. He's used it a bunch throughout this process.  
11:46 9 One thing I'm wondering about here, and I'm just  
11:46 10 thinking out loud, Judge. Is a possible seating of this  
11:46 11 juror because he knows if he strikes her, he's going to  
11:46 12 have to have a race-neutral explanation for the Court to  
11:47 13 withstand a Bastion challenge?

11:47 14 And what I'm wondering is, Judge, is if  
11:47 15 you develop a callous aspect, if you develop that early  
11:47 16 with a possible juror, if you make that a part of the  
11:47 17 record, and then you say -- you turn that around at the  
11:47 18 end when you are trying to withstand a Bastion  
11:47 19 challenge, and you say, look, they regarded me as being  
11:47 20 callous and insensitive, it gives you the opportunity  
11:47 21 to --

11:47 22 THE COURT: I don't think she said  
11:47 23 insensitive. I do believe she found Mr. Schultz as  
11:47 24 callous.

11:47 25 MR. HIGH: That's exactly my point.

11:47 1 Because she went on to say, I don't find you that way.

11:47 2 THE COURT: Yes.

11:47 3 MR. HIGH: Okay.

11:47 4 THE COURT: In fact, I think she said  
11:47 5 perhaps callous or maybe callous. I don't know if she  
11:47 6 said that you are clearly callous.

11:47 7 MR. HIGH: All right. But I think the  
11:47 8 Court gets where I'm coming from on that.

11:47 9 THE COURT: Right.

11:48 10 MR. HIGH: She agreed that she had the  
11:48 11 ability to be fair.

11:48 12 THE COURT: Yes.

11:48 13 MR. HIGH: She agreed that she did. And  
11:48 14 then she went on to say and, quote, because I have this  
11:48 15 in my notes. I don't think -- I don't think I would be  
11:48 16 unfair to you. I don't think so. I can't see that  
11:48 17 happening.

11:48 18 Now, she specifically dispelled confusion  
11:48 19 in unfairness. But I think what's significant about  
11:48 20 this is she -- this is the language that she's  
11:48 21 comfortable with using. "I don't think so. I can't see  
11:48 22 that happening." She used that particular language very  
11:48 23 early in the voir dire questioning process. And later  
11:48 24 on when we got down to the ultimate issue, with respect  
11:48 25 to, you know, "Can I vote on this second mitigation

11:48 1 question? I think I can." That's the kind of language  
11:48 2 that she used early on. This is the kind of language  
11:48 3 that she used when we got to the critical issue.

11:49 4 She is not the type that's going to say, I  
11:49 5 can give you assurance. And I don't think that's  
11:49 6 reasonable -- I don't think that's legally required  
11:49 7 because that's, that's really -- that's really taking  
11:49 8 evidence out of the equation. Because after all,  
11:49 9 everything in this courtroom is based upon legally  
11:49 10 sufficient evidence.

11:49 11 When she was confronted with legally  
11:49 12 sufficient evidence, yes, she felt like she could vote  
11:49 13 her conscious and vote the special issues, I think she  
11:49 14 was entirely fair and spoke very consistently during her  
11:49 15 interview on the witness stand.

11:49 16 I want to talk about the second part of  
11:49 17 his race-neutral explanation. And that is with respect  
11:49 18 to -- he says, she didn't answer the special issues  
11:50 19 questions the way I wanted to because she awoke at  
11:50 20 four o'clock in the morning and that she didn't believe  
11:50 21 she could ever assure me that she could vote in such a  
11:50 22 way that the death penalty would result.

11:50 23 Now, again, assurance is not the legal  
11:50 24 standard. She's got to be able to think about the  
11:50 25 evidence, consider all the evidence. She said she

11:50 1 thought she could, and she would. That's all that's  
11:50 2 required. And his -- his requirement that she assure  
11:50 3 him, that's not an accurate requirement on his part.  
11:50 4 And it's certainly not enough to withstand a race-  
11:50 5 neutral challenge.

11:50 6 And also, I think, it's pretty clear from  
11:50 7 the evidence, he admitted to her that her questionnaire,  
11:50 8 that her answers appeared to be okay. So really the  
11:50 9 reason for his strike is the interchange that occurred  
11:50 10 in this courtroom. And I believe that's what the record  
11:51 11 shows, and that's what the Court must consider.

11:51 12 With respect to the interchange that  
11:51 13 occurred, it was open from both sides. There's --  
11:51 14 there's no real reason, based upon the evidence. And  
11:51 15 what's apparent from the record, for them to have  
11:51 16 exercised a peremptory, other than the fact that she is  
11:51 17 the same ethnic race as the defendant on trial, Judge,  
11:51 18 that's not enough to withstand a Bastion challenge.

11:51 19 This young man is entitled to have other  
11:51 20 persons of his same race on his jury unless there is an  
11:51 21 adequate race-neutral explanation. And such has not  
11:51 22 been articulated here. And to deny him the opportunity  
11:51 23 to have this juror on this jury, denies him his 6th  
11:51 24 Amendment and 14th Amendment rights and also his rights  
11:51 25 under the Texas Constitution.

11:51 1 THE COURT: All right. Is there anything  
11:52 2 else -- anybody else? All right. I tell you what. I  
11:52 3 observed the witness myself. And I found her to be  
11:52 4 attractive and articulate and really a person of  
11:52 5 nondescript ethnicity. If she had Hispanic on her  
11:52 6 questionnaire, she -- if I had guessed, I could have  
11:52 7 guessed her to be any number of things, some sort of  
11:52 8 Mediterranean or perhaps ordinarily American lineage.

11:52 9 I note, too, that she appears to have been  
11:52 10 born in New York. And so if I were going to speculate,  
11:52 11 I would speculate that she was more apt to be Puerto  
11:52 12 Rican than Mexican. And so, and I assume that the --  
11:52 13 that the defendant is of Mexican decent, although I  
11:52 14 don't know that, either.

11:52 15 MR. GOELLER: We'll just say Hispanic,  
11:52 16 Your Honor, slash Latino.

11:52 17 THE COURT: But I don't know that her  
11:52 18 ethnicity, if we were going to say that, would be  
11:53 19 identical to his. But be that as it may, if you can  
11:53 20 lump everybody into Hispanic, then he's a Hispanic and,  
11:53 21 I suppose, so is the juror. At any rate, I'll find that  
11:53 22 based upon all the evidence before me that the State's  
11:53 23 strike here was not based on ethnicity or race.

11:53 24 All right. And I tell you what, I've sent  
11:53 25 the jurors to lunch, and we're going to get started at

11:53 1 12:30. So we've got about 35 minutes for lunch.

11:53 2 THE BAILIFF: All rise.  
11:54 3 (Lunch break.)

12:44 4 THE COURT: We'll mark this as Court's  
12:44 5 Exhibit No. 1, and probably we ought to seal it.  
12:44 6 (Court's Exhibit No. 1 admitted.)

12:44 7 THE COURT: Lynda Duncan No. 34.  
12:44 8 (Venireperson Duncan present.)

12:44 9 THE COURT: Ma'am, are you Lynda Duncan?  
12:44 10 VENIREPERSON: Yes.

12:45 11 THE COURT: I administered an oath to you  
12:45 12 Tuesday, a week ago, to truthfully answer the questions  
12:45 13 that are propounded to you.

12:45 14 VENIREPERSON: Uh-huh.

12:45 15 THE COURT: So that oath is still in  
12:45 16 effect. Okay. Thank you. Please be seated.

12:45 17 All right. Mr. Schultz?

12:45 18 MR. SCHULTZ: Ms. Falco will speak for the  
12:45 19 State, Judge.

12:45 20 THE COURT: All right. Ms. Falco?

12:45 21 VOIR DIRE EXAMINATION

12:45 22 BY MS. FALCO:

12:45 23 Q. Good afternoon, Ms. Duncan. My name is Gail  
12:45 24 Falco, and I'm an assistant district attorney here in  
12:45 25 Collin County. Next to me is my boss, the first

12:45 1 assistant district attorney, Bill Schultz. You met him  
12:45 2 last Tuesday, and to my left is Ms. Jami Lowry. She's  
12:45 3 also an assistant district attorney here in Collin  
12:45 4 County.

12:45 5 Over at the other table closest to me is  
12:45 6 the defendant Ivan Cantu. And next to him are his  
12:45 7 lawyers, Don High and Matt Goeller, both private  
12:45 8 practitioners here in Collin County.

12:45 9 I take it from back last Tuesday you don't  
12:45 10 know any of us; is that correct?

12:46 11 A. That is correct.

12:46 12 Q. We do this individual voir dire. It's kind of  
12:46 13 in two parts. We brought you in. We did the general  
12:46 14 voir dire to basically cover some of the law that was  
12:46 15 going to apply to everybody that was better understood  
12:46 16 or told as a group.

12:46 17 But we also do the individual voir dire in  
12:46 18 this particular type of case where the State is seeking  
12:46 19 the death penalty to get a little more intimate, a  
12:46 20 little bit more one-on-one, to allow you to speak freely  
12:46 21 about your opinions or any thoughts or feelings that you  
12:46 22 might have regarding the death penalty.

12:46 23 And as Mr. Schultz told you on Tuesday,  
12:46 24 we're not here to debate your opinions with you or to  
12:46 25 try to change your mind. Both sides are looking for 12

12:46 1 people that could be fair and impartial and could fairly  
12:46 2 consider a life sentence or fairly consider a death  
12:46 3 sentence depending on the evidence.

12:46 4 With that regard, as far as taking the  
12:46 5 time now, you had to be here for general voir dire, and  
12:46 6 now you're back here for individual voir dire. What do  
12:46 7 you think of the process so far? Do you think we're  
12:46 8 being too cautious? It's too tedious? It's too time  
12:47 9 consuming? What are your thoughts?

12:47 10 A. Not knowing what you guys aren't doing when I  
12:47 11 don't see you, I know on my side it seems like there is  
12:47 12 a lot of dead time, but I think that you guys are doing  
12:47 13 things that I'm not aware of. So, inefficiency as far  
12:47 14 as process flow, I think there are some things that  
12:47 15 could be tightened up, but I don't understand the whole  
12:47 16 process, so I'm sure there are things that I'm missing.

12:47 17 As far as what we are doing, I think that  
12:47 18 caution is appropriate in everything you are doing. And  
12:47 19 I'm sure you have been through this process many times,  
12:47 20 so you know how to spend the right amount of time on it.

12:47 21 Q. When you first showed up last Tuesday and you  
12:47 22 first realized that this was a capital murder case where  
12:47 23 the State was seeking the death penalty, what were your  
12:47 24 thoughts?

12:47 25 A. I was surprised. Having not -- I've never

12:47 1 served jury duty before and, well, in Dallas. And you  
 12:47 2 know the common, I think, assumptions people walk in is  
 12:47 3 the common story which is: You walk in. We're going to  
 12:47 4 go. They are going to talk to you. Probably somewhere  
 12:48 5 around midday you'll be dismissed, you know, the normal  
 12:48 6 process. So I think most of us walked in with that  
 12:48 7 mind-set.

12:48 8 And then to not know, I just knew  
 12:48 9 something weird was going on, and I had no idea until I  
 12:48 10 started filling out that survey. And about halfway down  
 12:48 11 the page, you look at it and you go, this is very very  
 12:48 12 serious, what's going on. Not that the rest isn't  
 12:48 13 serious, but there's something you don't run across too  
 12:48 14 much in your life. So I stopped; I paused, and I really  
 12:48 15 thought about it.

12:48 16 Q. And you are exactly right. You are given this  
 12:48 17 questionnaire. When you first got here, you are pretty  
 12:48 18 much given it. It is kind of like getting the test  
 12:48 19 before you are given the lesson. And pretty much right  
 12:48 20 off the bat we ask you, hi. What's your name? And do  
 12:48 21 you believe in the death penalty? It's pretty much that  
 12:48 22 abrupt.

12:48 23 And understanding that and understanding  
 12:48 24 since then you got to listen to both lawyers talk about  
 12:48 25 the law, and you have had some time to think about what

12:48 1 your thoughts are on the law and how you feel about the  
 12:48 2 death penalty, more importantly.

12:48 3 Looking at your questionnaire, you stated  
 12:49 4 that you were in favor of the death penalty. And in the  
 12:49 5 appropriate case, you could assess the death sentence.  
 12:49 6 Do you still feel that way after having a week or so  
 12:49 7 time to reflect?

12:49 8 A. I would say without a doubt that I spent a lot  
 12:49 9 of the last week thinking about it. I'm still there  
 12:49 10 thinking that in certain cases capital punishment is  
 12:49 11 appropriate. I think those cases are rare. So, yes, I  
 12:49 12 still could, but I definitely thought about, you know,  
 12:49 13 what is -- what's the level between black and white?  
 12:49 14 Where is it appropriate?

12:49 15 So, yes, I'm still there. And thinking  
 12:49 16 about it, but I've realized where do I think that bubble  
 12:49 17 should go is probably a little more to the extreme case  
 12:49 18 than I had thought before because I had not really  
 12:49 19 thought about to that extent. I can admit, I thought  
 12:49 20 about it every single day.

12:49 21 Q. And you are exactly right. As far as a makeup  
 12:49 22 of the jury, there may be somebody next to you that is  
 12:49 23 more likely to give the death penalty, assuming that the  
 12:50 24 facts are there. They just have a tendency to be more  
 12:50 25 likely to give it. And there may be someone that is

12:50 1 less likely to give it than you.

12:50 2 All of that is okay. And all of y'all are  
 12:50 3 qualified, as long as there is an instance where you  
 12:50 4 could actually assess the death penalty if the facts  
 12:50 5 were there. And with regard to that, I mean, it's one  
 12:50 6 thing to sit here and talk about it and maybe have a  
 12:50 7 lunch conversation and talk about it if it comes on the  
 12:50 8 news and you are sitting around with your family and  
 12:50 9 talking about the death penalty.

12:50 10 It's something different altogether when  
 12:50 11 we're asking, can you be part of that process? That, if  
 12:50 12 the facts are there, you could participate in assessing  
 12:50 13 a death sentence and where the defendant would receive  
 12:50 14 the death sentence as a result of your verdict.

12:50 15 And only you can know for sure, and only  
 12:50 16 you can tell us if you can be a part of that process.  
 12:50 17 And having had that time to think about it and realizing  
 12:50 18 there may be fewer circumstances than you thought, do  
 12:50 19 you still feel like you can be part of that process?

12:50 20 A. Can I ask a question back?

12:51 21 Q. Yes.

12:51 22 A. One thing in the explanation of the three  
 12:51 23 conditions about the death sentence is, that is the way  
 12:51 24 the State of Texas views how the death sentence should  
 12:51 25 be applied. And so, I, as a juror, have to look at how

12:51 1 the State of Texas would apply it as opposed to more my  
 12:51 2 personal beliefs of how it should be applied. Is that  
 12:51 3 correct?

12:51 4 Q. Yes. Exactly. And we'll talk about this.  
 12:51 5 We'll go more in-depth and talk about that. You are  
 12:51 6 exactly right. The way it works in Texas -- and you'll  
 12:51 7 be given the law at the end, if you are picked as a  
 12:51 8 juror -- you will be given the law, which is the Court's  
 12:51 9 charge, at the end of the case. And you are asked as a  
 12:51 10 juror to follow the law. And that's one thing we need  
 12:51 11 to know now, is if you could or could not follow the  
 12:51 12 law.

12:51 13 But there's two parts to the trial.  
 12:51 14 There's the first phase, which is the guilt-innocence  
 12:51 15 phase. And if you find the defendant guilty beyond a  
 12:51 16 reasonable doubt of capital murder, and then you would  
 12:51 17 then move onto the punishment phase or the penalty  
 12:51 18 phase.

12:51 19 And the way it works in Texas is we have  
 12:51 20 those three questions. The one question regarding  
 12:51 21 party, that you thought they were just a party and not  
 12:51 22 the actual killer. That may or may not apply.

12:52 23 A. Uh-huh.

12:52 24 Q. But you do have to answer those questions based  
 12:52 25 on the evidence. It's not -- you don't go back and

12:52 1 think, this guy deserves the death penalty, and you  
12:52 2 think death or answer the questions in a way that result  
12:52 3 in the death penalty or vice versa regarding life. You  
12:52 4 are -- and to follow the law you have to fairly, be able  
12:52 5 to fairly answer each question based on the law.

12:52 6 A. Uh-huh.

12:52 7 Q. But knowing the results of your answers whether  
12:52 8 that would be a death sentence or a life sentence.

12:52 9 A. (Moving head up and down.)

12:52 10 Q. Does that make sense to you?

12:52 11 A. Yes. So basically be objective on the  
12:52 12 parameters of what the law indicates.

12:52 13 Q. Yes.

12:52 14 A. Okay.

12:52 15 Q. And knowing that, and that's the standard in  
12:52 16 Texas. Could you follow the law and could you  
12:52 17 participate in a case that, if the facts were there,  
12:52 18 answer the questions in such a way that resulted in a  
12:52 19 death sentence?

12:52 20 A. Yes. I believe I could look at the law and  
12:52 21 apply the law as is appropriate. Even if I didn't  
12:52 22 totally agree with what the law was. But, yes, I could  
12:52 23 still apply the law as it is.

12:53 24 Q. Okay. And we'll get there when we start  
12:53 25 talking about the questions, and maybe you can tell me

12:53 1 what it is you agree or don't agree with.

12:53 2 A. Uh-huh.

12:53 3 Q. But before we move on, one thing I noticed in  
12:53 4 your questionnaire and it asked -- first of all, have  
12:53 5 you always felt that way about the death penalty, that  
12:53 6 you are in favor of it, or had you in the past had  
12:53 7 different thoughts or feelings?

12:53 8 A. I've basically always been in favor of it.

12:53 9 Q. Because one thing I did notice on your  
12:53 10 questionnaire is that when you were college, you were  
12:53 11 involved in Amnesty International?

12:53 12 A. Yes.

12:53 13 Q. What was your involvement with them?

12:53 14 A. Actually it was -- I was not heavily involved,  
12:53 15 first of all. But was involved more -- this is  
12:53 16 interesting. I was involved more on an international  
12:53 17 level and international view on what's going on  
12:53 18 internationally. But Amnesty International is also  
12:53 19 involved in things happening in the United States and  
12:53 20 especially in imprisonment cases where, you know, things  
12:53 21 like I believe that they protest the chain gangs that go  
12:54 22 on and things like that.

12:54 23 I wanted to explore and see what they were  
12:54 24 doing. But I didn't stay with that a long time, and  
12:54 25 that wasn't because I didn't think what they were doing

12:54 1 was wrong or right. I was in college and got really  
12:54 2 busy. So that was why I was involved with it for a  
12:54 3 while.

12:54 4 Q. Obviously they are antideath penalty?

12:54 5 A. Uh-huh.

12:54 6 Q. Did you get involved with that, or did that  
12:54 7 influence your views in any way?

12:54 8 A. Well, my religion is also antideath penalty.

12:54 9 Q. Being raised Catholic?

12:54 10 A. Uh-huh. So, you know, it's like with religion,  
12:54 11 I think you can believe in most of the things about  
12:54 12 religion, but I don't have to believe in everything that  
12:54 13 they say. I believed in like 90 percent of what is  
12:54 14 said, but there is 10 percent that I don't totally agree  
12:54 15 with. And I guess that would follow in that area. I  
12:54 16 believe there's a lot of good things they were doing,  
12:54 17 but that was not in my ideology at that time nor now.

12:54 18 Q. And are you comfortable? Do you still practice  
12:54 19 Catholicism?

12:54 20 A. Yes. In a very lazy way.

12:54 21 Q. Are you comfortable with that, with your  
12:55 22 beliefs on the death penalty, even though your church  
12:55 23 takes a stance against that?

12:55 24 A. That's some of the things that I have been  
12:55 25 thinking about this last week is, it has been more than

12:55 1 a religious-type view. That was why I asked the  
12:55 2 question, is my beliefs versus what the law says are two  
12:55 3 different things. And I think it would be difficult to  
12:55 4 do it, but not impossible.

12:55 5 Yeah, because, you know, I don't believe  
12:55 6 in -- the Catholic Church also doesn't believe in  
12:55 7 contraceptives, but I believe in that. So there's  
12:55 8 another disparity in my beliefs versus the Church.

12:55 9 Q. Where are you in favor of the death penalty?

12:55 10 A. I think there are cases that there can be  
12:55 11 crimes that can be so heinous that you forfeit your  
12:55 12 right to life, and I think the State can choose to take  
12:55 13 it. But I think they have to be pretty extreme to do  
12:55 14 that.

12:55 15 Q. Back on Tuesday when Mr. Schultz was talking to  
12:55 16 you, he gave you basically the reality of what we were  
12:56 17 doing here when he described to you what would happen if  
12:56 18 the jury found the defendant guilty, if you answered  
12:56 19 both questions in such a way that resulted in the death  
12:56 20 sentence. Sometime in the future the defendant would be  
12:56 21 taken to the death chamber and strapped to a gurney and  
12:56 22 injected with a lethal substance that would cause his  
12:56 23 death.

12:56 24 That wasn't done for dramatic flare or for  
12:56 25 glory. It was to let you understand the reality of what

12:56 1 it is we're doing here today. And when he gave that  
12:56 2 description to you, what thoughts were going through  
12:56 3 your head?

12:56 4 A. I think that, you know, the moment where, as  
12:56 5 you said, it's very abruptly announced in that survey.  
12:56 6 You know, give me your vital stats. And, oh, by the  
12:56 7 way, capital punishment case. I had already started  
12:56 8 that process. I had already gone from the potential is  
12:56 9 to take it from this point in time all the way to that  
12:56 10 end point. That's how serious it is. So I'd already  
12:56 11 thought about it. But, yeah, definitely, the  
12:56 12 illustration that was drawn made me think.

12:57 13 Q. Other than kind of establishing what situations  
12:57 14 you could give the death penalty in, as far as you found  
12:57 15 yourself thinking fewer situations than you had  
12:57 16 initially thought, any other change in your thoughts  
12:57 17 from last Tuesday when you filled out the questionnaire  
12:57 18 to today?

12:57 19 A. Well, I thought about jury duty in particular.  
12:57 20 I thought about people and what they -- what they do for  
12:57 21 their country. I mean, if jury duty is a service to  
12:57 22 your country, and it's interesting to see all the people  
12:57 23 during the process who were automatically objecting to  
12:57 24 it. Automatically objecting to it, serving on a jury.  
12:57 25 So that was one of the other thoughts that I had a lot

12:57 1 about is, what does it mean to be on jury duty?

12:57 2 Q. And if you had a choice, whether or not to be  
12:57 3 on this jury, what would your choice be?

12:57 4 A. Well, that's a question I've thought about a  
12:57 5 lot. I mean, I thought about a lot. Because in my  
12:57 6 survey I said, no, not really, I think was how I phrased  
12:57 7 it. I don't think anyone actively seeks out an  
12:58 8 opportunity to judge someone, especially judge them in a  
12:58 9 way that can result in a death.

12:58 10 Q. And I think you are exactly right. It  
12:58 11 probably, nine out of ten are going to say, no, I don't  
12:58 12 want to. And you kind of question the person that  
12:58 13 raises --

12:58 14 A. Yep.

12:58 15 Q. Their hand and says, I do.

12:58 16 A. Yes. So, it's like, no, I don't want to. But  
12:58 17 if I was called, yes, I would do it. But, no, I don't  
12:58 18 seek this out.

12:58 19 Q. And as we moved in -- first of all, I guess  
12:58 20 we'll just start in the logical order of the trial. And  
12:58 21 like I told you the first day, this is the guilt-  
12:58 22 innocence phase. And as we told you, with regard to  
12:58 23 accusing the defendant of capital murder, and  
12:58 24 Mr. Schultz explained to you the burden of proof because  
12:58 25 the State is the one doing the accusing. Obviously, the

12:58 1 burden of proof is on us. And we have to prove to you  
12:58 2 beyond a reasonable doubt that the defendant is guilty  
12:58 3 of capital murder.

12:58 4 And he explained to you the different ways  
12:58 5 murder can be capital. It can be capital in the ways  
12:58 6 that are important or appropriate to this case. Murder  
12:58 7 in the course of burglary, murder in the course of  
12:58 8 robbery, or killing two people or more in a common  
12:59 9 scheme or plan.

12:59 10 Do you have any problem with those three  
12:59 11 type of offenses being subject to the death penalty? Do  
12:59 12 you think those are appropriate offenses subject to the  
12:59 13 death penalty?

12:59 14 A. You know that -- that's where the disparity  
12:59 15 would be. As far as my personal opinion about what do I  
12:59 16 feel about things is, you know, cases, and I'm going to  
12:59 17 draw on a comparison here. You know, cases where like  
12:59 18 in Columbine, that to me was a heinous crime to a level  
12:59 19 that was hard to understand.

12:59 20 Someone going into a 7-Eleven and robbing  
12:59 21 it and shooting someone with no intention at all, both  
12:59 22 of those would fall under capital punishment. Yet, I  
12:59 23 don't think one is deserving of it. Not knowing all the  
12:59 24 circumstances, in a real black-and-white situation,  
12:59 25 someone going into a 7-Eleven and murdering someone is

13:00 1 not something I personally feel you need to give capital  
13:00 2 punishment for, just on the surface.

13:00 3 So that would be -- as you can see, my  
13:00 4 level of capital punishment is, you know, maybe, if you  
13:00 5 are judging on a scale of 1 to 10, it has got to be a  
13:00 6 9.5, somewhere on the heinous scale. I mean, someone  
13:00 7 who, you know, is kidnapping children and abusing them  
13:00 8 and killing them. That kind of thing is my personal  
13:00 9 feelings about capital punishment and where it should be  
13:00 10 applied.

13:00 11 Q. What about killing two or more people in a  
13:00 12 common scheme? Is that a crime that is appropriate, in  
13:00 13 your mind, that should be subject to the death penalty?

13:00 14 A. I guess one of the things I think about when I  
13:00 15 think capital punishment is, is a lot of premeditation,  
13:00 16 a lot of something happened and the circumstances went  
13:00 17 wrong, and this was never the intent. We didn't plan to  
13:00 18 do anything like this.

13:00 19 And even though two or three people died,  
13:00 20 as opposed to someone very coldly calculated it and  
13:00 21 committed a crime with the intent of killing people, and  
13:00 22 taking multiple lives, to me is much more applicable to  
13:01 23 capital punishment than the first crime.

13:01 24 Q. So, in your mind, it's more the premeditation  
13:01 25 than the result? Is that fair to say?

13:01 1 A. Yes. I guess to some degree, what went into  
13:01 2 the crime.

13:01 3 Q. Columbine and planning it out, versus if  
13:01 4 someone just went in and things got out of hand and he  
13:01 5 started shooting?

13:01 6 A. Yes. Not that the end result wasn't the same,  
13:01 7 but to me -- for me personally, there's a difference.

13:01 8 Q. So, what, if it's something that's  
13:01 9 premeditated, I mean, someone plans it out, carries out,  
13:01 10 has a plan set up, gets the gun, goes and does it. And  
13:01 11 in the course of committing burglary or robbery kills  
13:01 12 somebody? And that's his intention, that's his plan and  
13:01 13 that's what he does or she?

13:01 14 A. You know, on the surface, not knowing all the  
13:01 15 details, my first knee-jerk reaction is to say, no, I  
13:01 16 don't think so. But, you know, that's a very black-and-  
13:01 17 white statement to make without knowing all the details  
13:02 18 of what went on. That's my first reaction. And I know  
13:02 19 that's not the way the law reads. And that goes back to  
13:02 20 why I asked the question about personal versus what the  
13:02 21 law reads.

13:02 22 Q. That brings up a good point. And if you do get  
13:02 23 an instruction that capital murder is murder in the  
13:02 24 course of burglary or burglary in the course of robbery,  
13:02 25 and if we prove to you beyond a reasonable doubt that

13:02 1 the defendant intentionally caused the death of another  
13:02 2 in the course of a burglary or in the course of a  
13:02 3 robbery -- and like I say, we proved to you beyond a  
13:02 4 reasonable doubt that he did that -- could you find a  
13:02 5 person guilty of capital murder?

13:02 6 A. Yes, according to the law. I mean, you are  
13:02 7 applying the law.

13:02 8 Q. And you could follow the law that the Court,  
13:02 9 that the Judge gave you, in applying that to the facts?  
13:02 10 You could fairly follow the law and answer that  
13:02 11 question?

13:02 12 A. I feel so, yes.

13:02 13 Q. Moving onto the punishment phase, assuming  
13:02 14 you've answered or you found the defendant guilty and  
13:02 15 you move on, let me talk to you a little bit about the  
13:03 16 questions. The first question that you'll get, if you  
13:03 17 get to the penalty phase is that one. If you want to  
13:03 18 take a second to read back through that. Can you read  
13:03 19 it from where you are at?

13:03 20 A. Yeah.

13:03 21 Q. That's kind of what we call the future  
13:03 22 dangerousness question. And that's asked and that would  
13:03 23 be given to you in a question form. Whether you find  
13:03 24 beyond a reasonable doubt there's a probability that the  
13:03 25 defendant will commit acts of violence, criminal acts of

13:03 1 violence in the future.

13:03 2 With regard to that question, a couple of  
13:03 3 things -- first of all, again, the burden of proof is on  
13:03 4 the State. We have to prove to you beyond a reasonable  
13:03 5 doubt that there is a probability the defendant would be  
13:03 6 a future danger.

13:03 7 It doesn't ask with a certainty, will he  
13:03 8 commit acts? It asks whether there's probability, in  
13:03 9 probability. When you get to that first word  
13:03 10 probability, you as a juror, you are not going to get a  
13:04 11 definition of what that word means.

13:04 12 And to some people who are mathematically  
13:04 13 minded they would think that's some type of a  
13:04 14 percentage. Anywhere from zero to a hundred, it's some  
13:04 15 type of a percentage to me.

13:04 16 Other people may say, well, that just  
13:04 17 means more likely than not. And it would just be up to  
13:04 18 you as the jury to decide whether or not there is a  
13:04 19 probability, without been given a definition from the  
13:04 20 Court.

13:04 21 In your mind, what does that word  
13:04 22 "probability" mean?

13:04 23 A. I would say that more likely than not, but on  
13:04 24 the higher end of more likely than not.

13:04 25 Q. When you say on the higher end?

13:04 1 A. So I guess, on the combination of those two  
13:04 2 thoughts, which is not only the mathematician, but the  
13:04 3 more likely or not. The more likely or not, probably  
13:04 4 being up there in that 60, 75 plus. I mean, the chances  
13:04 5 are getting to be statistically really pretty high that  
13:04 6 it would happen.

13:04 7 Q. Okay. And with regard to the -- and the next  
13:04 8 word that we come across, that's not defined that's kind  
13:04 9 of debated is the phrase criminal acts of violence. I  
13:05 10 think all of us would agree, murder is an act of  
13:05 11 violence. I think all of us would agree that sexual  
13:05 12 assault is an act of violence.

13:05 13 It starts to differ. Things may change  
13:05 14 when you get to property. If I were to go out with a  
13:05 15 baseball bat and just start smashing up your car, in  
13:05 16 your mind, is that a criminal act of violence?

13:05 17 A. That's interesting, how do you define criminal  
13:05 18 acts of violence? What exactly does that mean?  
13:05 19 Criminal acts of violence, because when I was reading  
13:05 20 that, I was thinking that my first thought was when I  
13:05 21 thought about acts of violence I thought, acts of  
13:05 22 violence against people, as opposed to objects was my  
13:05 23 first thought. So that's where my definition would be  
13:05 24 leaning.

13:05 25 Q. Could you see how violence could be applied to

13:05 1 property?

13:05 2 A. Yes. I can see how that would be.

13:05 3 Q. It gets a little fuzzier when you start talking  
13:05 4 about drug dealing. Is dealing drugs a criminal act of  
13:05 5 violence? Some people may say, well, when you ingest  
13:05 6 drugs into your body, you are doing damage or violence  
13:06 7 to your body. By taking drugs that could lead to  
13:06 8 violent acts. And therefore, dealing drugs is a  
13:06 9 criminal act of violence. Where some people may just  
13:06 10 say, no, that's not harming anybody, as you know. Where  
13:06 11 do you fall?

13:06 12 A. Oh, I think because of -- because of the  
13:06 13 actions around drug dealing, I think that's violence.  
13:06 14 It's an act of violence, because of what goes on around  
13:06 15 it.

13:06 16 Q. And now there may be some acts that most people  
13:06 17 would agree are not criminal acts of violence, such as  
13:06 18 stealing, theft type things. Or maybe just, you know,  
13:06 19 running from the police. There's kind of a lack of  
13:06 20 respect for authority. That may not necessarily be a  
13:06 21 criminal act of violence, but do you think those kind of  
13:06 22 things, if somebody is a thief or if somebody just has  
13:06 23 no regard for law enforcement, that might give you some  
13:06 24 insight into their character to tell you whether or not  
13:06 25 there's a probability they could commit future acts of

13:06 1 violence?

13:07 2 A. Going back to the probability, if I'm thinking  
13:07 3 in my mind the probability is that there would be  
13:07 4 criminal acts of violence that fall under my definition  
13:07 5 of an act of violence against a person, that's one  
13:07 6 thing. Or, do I think that they'd eventually start  
13:07 7 stealing or something? That, to me, if I thought  
13:07 8 there's a probability they would be stealing. No, I  
13:07 9 wouldn't consider that under this definition to be  
13:07 10 something, a criminal act of violence.

13:07 11 Q. And assuming it's not a criminal act of  
13:07 12 violence, do you think it would help give you some  
13:07 13 insight into their character in deciding whether or not  
13:07 14 there would be a probability?

13:07 15 A. Yes. I think there's some.

13:07 16 Q. Do I understand the --

13:07 17 A. Yeah. I understand what you are saying.

13:07 18 Q. Okay. And kind of, the last word that we get  
13:07 19 to in that phrase or that sentence that's undefined and  
13:07 20 often disputed is the word society. As Mr. Schultz  
13:07 21 explained to you back on Tuesday, that question does not  
13:07 22 limit itself to prison society. It doesn't say: Can  
13:08 23 the defendant be safely locked up? Or, if you give the  
13:08 24 defendant a life sentence, will he no longer be a future  
13:08 25 danger? It just says society.

13:08 1 That could be walking out on the street.

13:08 2 It could be on a street corner. It could be a person  
13:08 3 driving the school bus. It could be the guy in the ice  
13:08 4 cream store giving your child ice cream. Do you  
13:08 5 understand how it can incorporate? Not just inside  
13:08 6 prison society, but outside as well?

13:08 7 A. Oh, so, I think. Let me rephrase this. So  
13:08 8 what you are saying is that when I think of a threat to  
13:08 9 society, even though this person could be in prison,  
13:08 10 don't think just about in terms of the prison world.  
13:08 11 Think about how their actions could affect the outside  
13:08 12 prison.

13:08 13 Q. That question does not limit itself to the  
13:08 14 prison society. It doesn't limit itself to prison  
13:08 15 world. It just gives you the word society, which is not  
13:08 16 defined, which can be interpreted to be outside.

13:08 17 A. Uh-huh. Yeah, I understand.

13:08 18 Q. With regard to that particular question, when  
13:08 19 you said you had -- I guess the problems with the law.  
13:08 20 We're waiting -- I guess areas of the law differs from  
13:09 21 your beliefs, anything about that question that differs  
13:09 22 with your belief, or do you think that's a fair question  
13:09 23 to ask when determining whether somebody should live or  
13:09 24 die?

13:09 25 A. I think that's a fair question.

13:09 1 Q. Okay. Would you have any problem answering  
13:09 2 that question fairly, yes, if the evidence shows beyond  
13:09 3 a reasonable doubt or, no, if the State fails to prove  
13:09 4 that? Do you have a problem answering that question  
13:09 5 fairly?

13:09 6 A. No.

13:09 7 Q. With regard to that particular question,  
13:09 8 oftentimes, I guess you probably heard or read  
13:09 9 psychiatrists or psychologists will be used in these  
13:09 10 criminal cases, not necessarily. And we're not talking  
13:09 11 about guilt or innocence, but just talking about the  
13:09 12 defendant's character and whether or not, you know,  
13:09 13 based on his pattern of behavior, he'll be a future  
13:09 14 danger or, based on the pattern of behavior, they think  
13:09 15 he will not. How helpful or important do you think that  
13:09 16 type of testimony is?

13:10 17 A. I think that some guidance is important, and I  
13:10 18 think those are probably more appropriate parties to  
13:10 19 give you that guidance, as opposed to probably what a  
13:10 20 lawyer could explain. Here's someone who that is their  
13:10 21 field of study and probably could give you a better  
13:10 22 guidance as to what their feelings could be in the  
13:10 23 future.

13:10 24 Q. Do you think if the defense got an expert to  
13:10 25 get up there and say, I don't think the defendant would

13:10 1 be a future danger; the State could probably get an  
 13:10 2 expert to get up there and say, yes, I do think he would  
 13:10 3 be a future danger?

13:10 4 A. Yes. I think you could get conflicting  
 13:10 5 experts.

13:10 6 Q. But basically it would be a battle of the  
 13:10 7 experts?

13:10 8 A. Yes. I think that could happen.

13:10 9 Q. With regard to that, do you think you as a  
 13:10 10 juror, just listening to the evidence objectively,  
 13:10 11 you've already heard all the facts of the case. You've  
 13:10 12 now heard all of the evidence in the punishment phase.  
 13:10 13 Do you think, objectively, you as an intelligent juror  
 13:11 14 could sit there and answer that question without the  
 13:11 15 help of psychiatric testimony?

13:11 16 A. This is germane to this, basically this trial,  
 13:11 17 which is that you guys said that this possibly could  
 13:11 18 take three to four weeks. I think that everybody on  
 13:11 19 that jury is going to know a lot by the end of that time  
 13:11 20 period. So I'm sure that they probably will have a lot  
 13:11 21 of the facts at that point.

13:11 22 Q. Do you think you could make that decision,  
 13:11 23 based on your listening to all the evidence?

13:11 24 A. I think we're going to be asked. I just think  
 13:11 25 that's going to be part of the process. You are going

13:11 1 to be asked that regardless.

13:11 2 Q. Do you think you could answer that without the  
 13:11 3 help of a psychiatrist or psychologist?

13:11 4 A. Yes. Probably.

13:11 5 Q. Now, moving onto the -- let's assume everybody  
 13:11 6 answers and takes 12 people to answer that question yes,  
 13:11 7 and assuming 12 people on the jury answer that question  
 13:11 8 yes, you are still in the process of assessing the death  
 13:11 9 sentence.

13:11 10 If 10 or more jurors answer that question  
 13:12 11 no, that's an automatic life sentence. So let's assume  
 13:12 12 that 12 jurors have answered that question, yes, then  
 13:12 13 you move onto the next question. Well, there's the one  
 13:12 14 question that we've all been kind of skipping over. The  
 13:12 15 party's question that Mr. Schultz talked about on  
 13:12 16 Tuesday, may or may not apply. But we're going to spend  
 13:12 17 more time focusing on this third question. Because if  
 13:12 18 you answer that first question, yes, you will get to  
 13:12 19 this question. And if you want to, take a moment to  
 13:12 20 read over that again.

13:12 21 A. Let me ask the question, going back to the last  
 13:12 22 one. I know you explained this on Tuesday, too. Ten  
 13:12 23 people saying --

13:12 24 Q. No.

13:12 25 A. No automatically gives you a life sentence.

13:12 1 Okay.

13:12 2 Q. Ten or more?

13:12 3 A. Ten or more.

13:12 4 Q. Say no is an automatic.

13:12 5 A. So it needs to be unanimous to say yes, not for  
 13:12 6 no.

13:12 7 Q. Correct. You are correct. Ten or more say no,  
 13:12 8 automatic life. That's it. You don't answer anymore  
 13:12 9 questions. All 12 agree yes; you move on and answer the  
 13:13 10 next question.

13:13 11 A. Okay.

13:13 12 Q. So if you want to go ahead and reread that to  
 13:13 13 refresh your memory.

13:13 14 A. Was this the compassion clause?

13:13 15 Q. Mitigation.

13:13 16 A. Mitigation.

13:13 17 Q. This is called the mitigation question. What  
 13:13 18 does that word mitigation mean to you?

13:13 19 A. It means to lessen something, doesn't it?

13:13 20 Q. That's probably what most people would say, and  
 13:13 21 again that's not really a word you are going to get a  
 13:13 22 definition of.

13:13 23 A. Uh-huh.

13:13 24 Q. There's going to be a whole lot of words.  
 13:13 25 We've already talked about where -- you will not get a

13:13 1 definition.

13:13 2 A. Are you going to leave a dictionary in the jury  
 13:13 3 room?

13:13 4 Q. No. We can't do that because then Webster  
 13:13 5 would be back with you, and that would be a 13th juror.  
 13:13 6 So it will be what you collectively, as a jury, decide  
 13:13 7 that means and decides whether or not the evidence fits  
 13:13 8 that. And that's kind of the only -- this part of the  
 13:13 9 process is the only time you really get to ask  
 13:14 10 questions. Because after that, you do listening, and  
 13:14 11 then you do deliberating. But this is the only time you  
 13:14 12 have a chance to talk to us or ask questions.

13:14 13 Now, with regard to that mitigating  
 13:14 14 question, there is no burden of proof on either side.  
 13:14 15 We don't have the burden of proof of producing any  
 13:14 16 evidence and neither does the defense. Nobody does.

13:14 17 A. Uh-huh.

13:14 18 Q. Basically what that question is asking is, is  
 13:14 19 there sufficient mitigating evidence to warrant a life  
 13:14 20 sentence? Is there evidence that rises to the level of  
 13:14 21 mitigating what the defendant did to warrant a life  
 13:14 22 sentence?

13:14 23 When you get to that, I mean, you could  
 13:14 24 say that all of us have something mitigating in our  
 13:14 25 background. All of us may have something in our



13:14 1 childhood growing up. It may be a bad couple of years  
13:14 2 in our adult life. Something that is sympathetic to us.  
13:14 3 You could say all of us have that.

13:14 4 And going back kind of to Mr. Schultz's  
13:14 5 hypothetical of using Adolf Hitler. You could probably  
13:14 6 say, probably argue, one of the meanest men in history.  
13:15 7 Obviously, he had a very bad childhood, and apparently  
13:15 8 he didn't have a father, and his mother contemplated  
13:15 9 abortion. You could say he's got a lot of mitigating  
13:15 10 facts, and a lot of things that are mitigating in his  
13:15 11 case. But is that sufficient to mitigate what he did?

13:15 12 So it has to be -- there might be  
13:15 13 mitigating evidence, and you could probably find  
13:15 14 mitigating evidence in just about every case because  
13:15 15 everybody has something sad or something pathetic. But  
13:15 16 what you as a juror have to ask yourself is, is it  
13:15 17 sufficient? Does it rise to the level of mitigating  
13:15 18 this capital murder that he committed?

13:15 19 MR. GOELLER: I'm sorry. Excuse me,  
13:15 20 Ms. Falco. Judge, I object to that last comment and her  
13:15 21 previous comment. It doesn't say that it has to rise to  
13:15 22 the level of mitigating the offense. It's just whether  
13:15 23 or not a life or death sentence is imposed. And I want  
13:15 24 to object, if the State is trying to say it has to  
13:15 25 mitigate the actual offense itself because that's a

13:15 1 misstatement of the law, and that's not what that  
13:16 2 special issue says.

13:16 3 THE COURT: Sustained.

13:16 4 Q. (BY MS. FALCO) Is it sufficient to warrant a  
13:16 5 life sentence, based on all the evidence, including the  
13:16 6 facts of the case? Does that make sense to you?

13:16 7 A. Yes. Basically asking is it sufficient to  
13:16 8 mitigate the punishment phase of what's going on, which  
13:16 9 way you go.

13:16 10 Q. Right. And the guilt or innocence. Everything  
13:16 11 he did, which you convicted him of, everything you've  
13:16 12 heard in the punishment phase, is there sufficient  
13:16 13 mitigating evidence to warrant a life sentence?

13:16 14 A. Okay.

13:16 15 Q. Does that make sense to you?

13:16 16 A. Yes, I understand.

13:16 17 Q. With regard to that question, the focus  
13:16 18 obviously is on the defendant and the defendant's  
13:16 19 character, defendant's background. Other than the  
13:16 20 phrase, taking in the circumstances of the offense,  
13:16 21 doesn't really talk about the victim.

13:16 22 A. Uh-huh.

13:16 23 Q. Mr. Schultz talked to you a little bit on  
13:16 24 Tuesday about the victim and whether or not that makes a  
13:16 25 difference. And let's assume the victim is a nun versus

13:16 1 the victim is a drug dealer. That question focuses more  
13:17 2 on the defendant's behavior. Like I say, the only place  
13:17 3 it would really come into play is if you are looking at  
13:17 4 the circumstances of the offense.

13:17 5 In your opinion, does it make a difference  
13:17 6 whether the victim is a nun or the victim is a drug  
13:17 7 dealer? Or in your mind is a killer a killer?

13:17 8 A. Does a victim make a difference in the crime  
13:17 9 that was committed or the punishment you apply?

13:17 10 Q. In the punishment phase. Well, first of all,  
13:17 11 let's talk about in the crime that was committed, does  
13:17 12 it make a difference who he killed?

13:17 13 A. The person themselves? No. I think a murder  
13:17 14 is a murder is a murder. Even if you killed Adolf  
13:17 15 Hitler. You murdered someone.

13:17 16 Q. So when we get to this question, it doesn't  
13:17 17 make a difference to you who the victim is. Does it  
13:17 18 lessen or heighten -- does it make the defendant any  
13:17 19 better or any worse because of who he killed?

13:17 20 A. I think on an objective way, no, it makes no  
13:17 21 difference. Do I think that I will, like anyone else,  
13:18 22 bring an emotional context to it? Yeah, I think I will.  
13:18 23 But -- I think that my thoughts are that, no, the victim  
13:18 24 should not have anything to do with it. The victim is  
13:18 25 the victim. That's what they are.

13:18 1 But I am objective enough about my own  
13:18 2 personality to realize, yes, there's probably going to  
13:18 3 be some small percentage that will play in there. That  
13:18 4 I would hope that I would -- it would be a very small  
13:18 5 percentage. That it would be, that my decision would be  
13:18 6 very objective.

13:18 7 Q. And would it make a difference to you how  
13:18 8 dangerous a person was, depending on who the victim was  
13:18 9 or just the fact that he killed somebody defines whether  
13:18 10 or not he's dangerous? I mean, does it make --

13:18 11 A. The victim?

13:18 12 Q. Yeah.

13:18 13 A. Whether the victim was a dangerous person?

13:18 14 Q. No. Does it make a difference to you regarding  
13:18 15 the defendant, who he killed, regarding his  
13:18 16 dangerousness? Does it make him more dangerous or less  
13:18 17 dangerous depending on who he killed?

13:18 18 A. Oh, the defendant, being dangerous?

13:18 19 Q. Right.

13:18 20 A. Do I grade the dangerousness on their victim?

13:19 21 Q. Right. And we're not talking about  
13:19 22 self-defense or anything like that, so we wouldn't be at  
13:19 23 that point.

13:19 24 A. Yeah. You know, I hadn't thought about that.  
13:19 25 Let me think about it for a minute. No, I really don't

13:19 1 know. I think, no. I don't think that their victim has  
13:19 2 an effect on how much I think they are dangerous as  
13:19 3 opposed to not dangerous. I think it's the crime that  
13:19 4 makes me feel that way.

13:19 5 Q. Let's talk a little bit about some other type  
13:19 6 of evidence you might hear during the punishment phase.  
13:19 7 And I guess I'll stay a little bit on the victim and the  
13:19 8 victim's family. Would it make a difference to you?  
13:19 9 Let's say I go into a convenience store, and it's  
13:19 10 premeditated.

13:19 11 And we'll go along with your beliefs and  
13:19 12 you are a little more comfortable. And I planned it  
13:19 13 out. I needed money. I wanted liquor. I was going to  
13:19 14 go off and live a great lifestyle, and I don't want to  
13:20 15 have to work for it. So I planned it, bought the gun,  
13:20 16 picked out the day, stalked out the store, and I went  
13:20 17 in, and I robbed the store, and the clerk gave me all  
13:20 18 the money, and I killed him. And that was my intent and  
13:20 19 I did it, and that's capital murder.

13:20 20 And let's assume I didn't know that clerk  
13:20 21 from Adam. I didn't know who he was. He was just the  
13:20 22 wrong person at the wrong time. Is that any different  
13:20 23 in your mind than, let's say, that was my friend that I  
13:20 24 grew up with and somebody whose house I used to go to  
13:20 25 after school everyday? And I knew their family, and I

13:20 1 had eaten dinner with the family, and I knew when he  
13:20 2 worked. And I knew that if I walked in there, I knew  
13:20 3 how much money he kept because he told me in the past.  
13:20 4 I planned it. Again, I completely planned it.

13:20 5 And I went in, and I killed him knowing  
13:20 6 how it was going to affect his family and his family I  
13:20 7 had eaten dinner with. On numerous occasions they had  
13:20 8 taken me in and taken care of me. Does that make a  
13:20 9 difference to you?

13:20 10 A. In how I would apply punishment or just in --  
13:20 11 make a difference --

13:20 12 Q. At all in your --

13:20 13 A. Just how I view things?

13:20 14 Q. How you view things. Do you see that?

13:21 15 A. Yeah. I see what you are saying. No. It  
13:21 16 doesn't make a huge difference to me because, although  
13:21 17 they are different, there's a certain -- the case of  
13:21 18 going into the -- going into the, like, 7-Eleven shows  
13:21 19 such an incredible cold-bloodedness lack of respect for  
13:21 20 life that's amazing to me.

13:21 21 But on the other side, look at that other  
13:21 22 case, and go, wow, lack of respect for any friendship,  
13:21 23 any relationships you had. And they are the same to me  
13:21 24 in different ways. But they come to me in such a --  
13:21 25 there's behavior that I just don't understand, and can't

13:21 1 understand how somebody can do that, but in different  
13:21 2 cases.

13:21 3 Q. Let's talk a little bit more about this stage.  
13:21 4 We're in the punishment stage. I guess, going on the  
13:21 5 questionnaire a little bit, you answered when -- we had  
13:21 6 this page where it gave you statements. And then you  
13:22 7 had to say strongly agree to strongly disagree and where  
13:22 8 you fell in that range. And it talks about a  
13:22 9 person's -- a person determines their destiny or fate by  
13:22 10 the choices you make in your life. And you said you  
13:22 11 agree?

13:22 12 A. Uh-huh.

13:22 13 Q. And then it says, a person's destiny or fate is  
13:22 14 determined by the circumstances of their birth and their  
13:22 15 upbringing and you said, disagree. And I'm sure you  
13:22 16 remember Mr. Schultz talking about this on Tuesday, that  
13:22 17 you can probably think of a situation of people, you  
13:22 18 know, whether you know them personally or through the  
13:22 19 media. People that grew up in a great family, never  
13:22 20 lacked for material things. Had love, had support, but  
13:22 21 still turned out bad. Turned into a criminal or just  
13:22 22 turned into just a rotten apple altogether. I'm sure  
13:22 23 you can think of somebody like that?

13:22 24 A. Yes.

13:22 25 Q. On the same flip of the coin, I'm sure you can

13:22 1 imagine somebody born in a bad circumstance. Either  
13:22 2 single family, single parent their whole life, poor,  
13:22 3 always lacked for material things. Yet they were able  
13:22 4 to make something of themselves, and they were able to  
13:23 5 be successful in their life. And I'm sure --

13:23 6 A. I'm familiar with examples of both sides.

13:23 7 Q. Did that kind of factor into your -- to when  
13:23 8 you put disagree, or I guess you tell me what factored  
13:23 9 into when you answered "disagree." Why do you not think  
13:23 10 their circumstances of their birth or their upbringing  
13:23 11 decide their fate?

13:23 12 A. Right there. I think that would be the  
13:23 13 comment, *decided your fate*. I think that they -- they  
13:23 14 have influence without a doubt. It has influence, but  
13:23 15 it doesn't decide your fate. It's not like you are  
13:23 16 predestined because of certain things in your background  
13:23 17 to act certain ways. I think, yes, they affect you. I  
13:23 18 mean, nothing is black or white. There's a lot of gray  
13:23 19 out there, but I still think that, as a person, you have  
13:23 20 decisions you make yourself.

13:23 21 And I definitely think that you decide to  
13:23 22 do certain things. You are not compelled to do certain  
13:23 23 things because of your background. I think some people  
13:23 24 have a harder road to go; that is true, but it's not an  
13:24 25 impossibility.

13:24 1 Q. Okay. You do not have any children; is that  
13:24 2 correct?

13:24 3 A. That is correct.

13:24 4 Q. Do you have any nieces or nephews?

13:24 5 A. Yes, I do.

13:24 6 Q. Let's assume one of your nieces or nephews got  
13:24 7 in trouble with the law. And I'm sure being family  
13:24 8 oriented, just being compassionate, you would want to do  
13:24 9 anything you could to protect that child. No matter  
13:24 10 what they did, you would want to love them. You'd want  
13:24 11 to show them your support. You'd want to be there for  
13:24 12 them. Is that fair in saying that?

13:24 13 A. Yes.

13:24 14 Q. Which necessarily expect in a case like this,  
13:24 15 where somebody is basically looking at death, I mean,  
13:24 16 that's a life or death trial, would you expect in this  
13:24 17 kind of a case to see family members, particularly a  
13:24 18 mother, get on the stand and talk about her son and kind  
13:24 19 of plead for the jury not to execute her son?

13:24 20 A. Yes. I would expect that.

13:25 21 Q. And knowing, you know, maybe you would do the  
13:25 22 same thing in the same situation. How does that  
13:25 23 argument sit with you? You know, basically the argument  
13:25 24 is: Don't execute this person because look what it  
13:25 25 would do to their mamma?

13:25 1 A. Uh-huh.

13:25 2 Q. How does that argument sit with you?

13:25 3 A. I would like to also think about the other side  
13:25 4 which is, someone's died, and they probably have a  
13:25 5 mother who would say, you know, I had a child who died.  
13:25 6 So I think people are affected both ways. You have a  
13:25 7 victim who has been affected, and you have the other  
13:25 8 person who has committed the crime has been affected.  
13:25 9 And I totally understand; a mother should plead. But  
13:25 10 that's not, you know, the law is still going to come  
13:25 11 into play about what, we, as a society, dictate is legal  
13:25 12 or not legal.

13:25 13 Q. Let's talk a little bit, too, about -- let's  
13:25 14 talk about drugs. Now, when we get to that mitigating  
13:25 15 question, and you are not going to be given a definition  
13:25 16 of mitigating. You are not going to be given a  
13:26 17 definition of or list of: Here are some mitigating  
13:26 18 factors for you to consider and a list of aggravating  
13:26 19 factors. It's completely up to the jury to decide. And  
13:26 20 there are some things that one person may be as  
13:26 21 mitigating or another person views as aggravating.

13:26 22 And a perfect example of that is drugs.  
13:26 23 Somebody may say, well, he was addicted to drugs all  
13:26 24 these years, and he kind of lost control of himself. He  
13:26 25 would never have done that. He wasn't like that before.

13:26 1 It completely changed his personality. He would have  
13:26 2 never done it except for the drugs; therefore, it is  
13:26 3 mitigating.

13:26 4 On the flip side, somebody is going to  
13:26 5 say, well, we, as a society, know drugs are bad, and we  
13:26 6 are raised our whole lives knowing that drugs are bad.  
13:26 7 And we're told, "don't do drugs." And for these very  
13:26 8 reasons we're told not to do drugs because this is what  
13:26 9 happens. And that's aggravating to me, because not only  
13:26 10 are they doing drugs and they are violating that law,  
13:26 11 but it led to this horrendous result, which they should  
13:26 12 have known better. So you could see how that could be  
13:26 13 seen as mitigating or aggravating?

13:26 14 A. Yes.

13:26 15 Q. If you have a person who says, you know,  
13:26 16 it's -- it was the drugs. I was doing drugs before  
13:26 17 this. I was doing drugs during it, and it was the  
13:27 18 drugs, but now I don't do drugs. I quit doing the  
13:27 19 drugs, and now I am a completely changed person, and it  
13:27 20 was all because of drugs. But now I am okay because I'm  
13:27 21 not doing the drugs anymore. How does that sit with  
13:27 22 you?

13:27 23 A. I think that if you committed a crime, even if  
13:27 24 there was circumstances such as you mentioned, that you  
13:27 25 still have to face the consequences of your actions. I

13:27 1 mean, an example would be as, you know, if I decide to  
13:27 2 speed -- this is of course a very bad example -- but if  
13:27 3 I decide to speed, that is a choice I make.

13:27 4 So if I get pulled over by an officer,  
13:27 5 it's like, well, yes, I was speeding. Yeah, that's  
13:27 6 wrong, and I know that, and I decided to do that. And  
13:27 7 sometimes the results of my speeding could be a major  
13:27 8 accident, and I could affect someone else's life. I  
13:27 9 didn't plan to do it. I didn't want to do it, but that  
13:27 10 was the result of one of my choices and actions.

13:28 11 I'm going to drive home the speed limit  
13:28 12 today as a result. So I think that's unfortunate if  
13:28 13 that's what happens, but I still think that you, as an  
13:28 14 adult, have to be responsible for your actions.

13:28 15 Q. Let's talk a little bit about, have you ever  
13:28 16 heard the phrase: There are no atheists in foxholes?

13:28 17 A. Yes.

13:28 18 Q. What does that mean to you?

13:28 19 A. When someone is shooting at you, you are in a  
13:28 20 war situation. You believe in God.

13:28 21 Q. Do you see how that might apply to a person who  
13:28 22 maybe, before a murder happened, never believed in God  
13:28 23 and, in fact, took a stance: there was no God. And the  
13:28 24 minute he gets arrested and he's sitting in jail, now he  
13:28 25 believes in God. And that might be true and that might

13:28 1 not be true.

13:28 2 First of all, what would you be looking at  
13:28 3 to decide whether or not that he really meant that or  
13:28 4 she really meant that or not, or if they were just  
13:28 5 putting on a story or a show for the jury?

13:28 6 A. What would I do to disprove or prove that?

13:29 7 Q. What would you be looking for to see if that  
13:29 8 was really valid or not?

13:29 9 A. You know, I don't know if I would want to  
13:29 10 even -- I don't think in terms of why would I have to  
13:29 11 validate that?

13:29 12 Q. I guess that would be my next question. Would  
13:29 13 it make a difference to you?

13:29 14 A. No.

13:29 15 Q. Would it make a difference to you if they  
13:29 16 really did find God or didn't?

13:29 17 A. No. Because, you know, killing someone is not  
13:29 18 a moral choice. It is not -- let me rephrase that. It  
13:29 19 is not just a choice of morality. Whether you believe  
13:29 20 killing someone or not is morally in your world view,  
13:29 21 it's against the law. And you work within the precepts  
13:29 22 of the law. You know, that I morally might think  
13:29 23 killing someone is just a fine thing to do, but I know  
13:29 24 that the legal system, if they catch me, will do  
13:29 25 something that has nothing to do with morality. That

138

13:29 1 has nothing to do with God. That has to do with the  
13:29 2 legal system. Kind of like, can I apply the law even  
13:30 3 though I might not a hundred percent believe in it?  
13:30 4 Well, it is the law that I live under.

13:30 5 Q. And the flip side would apply to that person as  
13:30 6 well?

13:30 7 A. Uh-huh, yes.

13:30 8 Q. Since you have been here today, and I'm sure on  
13:30 9 Tuesday, you had an opportunity to just look at the  
13:30 10 defendant as far as his physical looks. Have you had an  
13:30 11 opportunity to do that?

13:30 12 A. Yes.

13:30 13 Q. And what is your impression, just basically  
13:30 14 looking at him, what are your initial thoughts?

13:30 15 A. Well, when I walked in on Tuesday, I didn't  
13:30 16 know what all these people were on the sides of the  
13:30 17 tables. And once I figured out who you guys were, I  
13:30 18 didn't want to look at you guys. And I'm right now, I'm  
13:30 19 doing that same thing. I don't really want to spend a  
13:30 20 lot of time looking at -- you know, when we walk by some  
13:30 21 of you in the hallway, and we all didn't look at each  
13:30 22 other. What's my opinion?

13:30 23 Q. What are your initial thoughts just based on  
13:30 24 his looks?

13:30 25 A. Young.

13:30 1 Q. That's kind of what I was looking for. With  
13:31 2 regard to that, would it make a difference to you in  
13:31 3 mitigation, somebody's youth, assuming they are of age  
13:31 4 to be prosecuted for this crime. And we're saying they  
13:31 5 are over 20.

13:31 6 A. Uh-huh.

13:31 7 Q. Does that make a difference to you, their age  
13:31 8 or their youth, or do you get back to a killer is a  
13:31 9 killer, and he knew right from wrong?

13:31 10 A. I think that it won't make a big difference to  
13:31 11 me. I think I'll feel -- I think it's -- it's more of a  
13:31 12 you make the decision you need to make. You do what you  
13:31 13 need to do when applying the law. It doesn't mean you  
13:31 14 can't feel a lot of sorrow, if that's an end result.

13:31 15 And I think that's, you know, when someone  
13:31 16 dies in a car accident. You see someone dies at 16 as  
13:31 17 opposed to someone who is 70. You kind of look at it  
13:31 18 and go, the 70-year-old had a chance to live their life,  
13:31 19 and the 16-year-old -- and that's a universal, I think,  
13:32 20 emotion.

13:32 21 Q. I agree with you 100 percent, and I don't think  
13:32 22 there's a single person involved in this process that  
13:32 23 has any joy in what we're doing here or will feel any  
13:32 24 relief or happiness with the result, regardless of what  
13:32 25 it is.

140

13:32 1 I think we all deep down feel sad that we  
13:32 2 even have to go through this. That we have such crime  
13:32 3 in our community that has to be prosecuted where the  
13:32 4 death penalty is an option. I think if it were up to  
13:32 5 us, we'd live in some sort of utopia where it didn't  
13:32 6 occur.

13:32 7 A. It would be great.

13:32 8 Q. I think deep down none of us would want to be  
13:32 9 here. And given that, and all that we've talked about  
13:32 10 regarding this question, let's assume you've already  
13:32 11 found the defendant guilty of capital murder, and you've  
13:32 12 already, all 12 agree there's a probability he is a  
13:32 13 future danger.

13:32 14 And now you get to this question and  
13:32 15 remembering there's no burden on either side, that's  
13:32 16 fine. Let's say you do not find evidence that that is  
13:32 17 sufficient to warrant a life sentence. Could you answer  
13:32 18 that question no, knowing it would result in a death  
13:33 19 sentence?

13:33 20 MR. GOELLER: I'm going to object to the  
13:33 21 form of that question. She personalized it to this  
13:33 22 defendant. She's attempting to get the juror --

13:33 23 MS. FALCO: I'll rephrase it.

13:33 24 MR. GOELLER: -- to commit to a specific  
13:33 25 fact situation.

13:33 1 THE COURT: All right.  
 13:33 2 Q. (BY MS. FALCO) I'll rephrase it. And be fair  
 13:33 3 about this, Ms. Duncan. We're never talking about the  
 13:33 4 defendant specifically. All this, as in your speeding  
 13:33 5 hypothetical, it's all a hypothetical. Assuming in a  
 13:33 6 hypothetical situation that you have found a person  
 13:33 7 guilty of capital murder, you have found this same  
 13:33 8 person, all 12 of you. And you answered, yes, he's a  
 13:33 9 future danger, and you are now at this question. The  
 13:33 10 evidence does not rise. It is not sufficient. It  
 13:33 11 doesn't rise to the level of warranting a life sentence.  
 13:33 12 Could you answer that question no, knowing that a death  
 13:33 13 could result?

13:33 14 A. Yes. If all those conditions were met.

13:33 15 MR. SCHULTZ: May we have a moment, Judge?

13:33 16 THE COURT: Yes.

13:34 17 Q. (BY MS. FALCO) Ms. Duncan, I want to back up  
 13:34 18 back to the guilt-innocence phase. And we've been  
 13:34 19 talking about if you found the defendant guilty of  
 13:34 20 capital murder.

13:34 21 A. Uh-huh.

13:34 22 Q. Now, that won't -- or there could be different  
 13:34 23 options at that point when you get the charge in the  
 13:34 24 trial, and obviously we can't talk about this case  
 13:34 25 specifically. We can only talk hypothetically. There

13:35 1 could be alternatives for you to find the defendant  
 13:35 2 guilty. You could say, well, I don't think that person  
 13:35 3 did the killing, but I think they did the burglary. And  
 13:35 4 you find them guilty of burglary.

13:35 5 Or you could say, I don't think they did  
 13:35 6 the killing, but I think they did the robbery, and you  
 13:35 7 could find them guilty of robbery. Or I don't think he  
 13:35 8 killed both people; I think he only killed one person.  
 13:35 9 So I find him guilty of killing one person. That would  
 13:35 10 be murder, not capital murder, but murder.

13:35 11 And as Mr. Schultz explained the  
 13:35 12 difference to you between capital murder and regular  
 13:35 13 murder, with regular murder, and I hate to call it  
 13:35 14 regular murder, but to make the distinction.

13:35 15 A. Uh-huh.

13:35 16 Q. The punishment range for murder is anywhere  
 13:35 17 from 5 years in the penitentiary to 99 years or life.  
 13:35 18 The legislature gives us that range. And that would  
 13:35 19 include, as well under certain circumstances, if a  
 13:35 20 person that is accused or convicted of that crime proves  
 13:35 21 themselves eligible for probation, meaning they have  
 13:35 22 never been convicted of a felony in this State or any  
 13:36 23 other state, that would include the range of probation,  
 13:36 24 as well.

13:36 25 The legislature has given us this huge,

13:36 1 and you don't get a broader range than probation to life  
 13:36 2 because it's to incorporate all the different type of  
 13:36 3 fact scenarios. You have fact scenarios that  
 13:36 4 Mr. Schultz talked about. The parent who has a child's  
 13:36 5 killer gets off free, and they go hunt them down and  
 13:36 6 kill them.

13:36 7 And you have situations, maybe it's an  
 13:36 8 elderly couple. And one of them gets very sick, and  
 13:36 9 they are in the hospital, and they are on pretty much  
 13:36 10 life support and just begging their spouse, just go  
 13:36 11 ahead pull the plug. Please pull the plug. The spouse  
 13:36 12 pulls the plug. Legally, in Texas, that's murder  
 13:36 13 because he intentionally caused the death.

13:36 14 A. Uh-huh.

13:36 15 Q. There's a huge range of things that could be  
 13:36 16 considered murder in Texas. And that's why the  
 13:36 17 legislature gave us that range. To be a qualified juror  
 13:36 18 and, again, it goes back to you. You may not agree.  
 13:36 19 You may not like it. You may go against what your  
 13:36 20 thoughts are or if you were in the legislature, what  
 13:37 21 you'd vote for. But to be qualified as a juror, the law  
 13:37 22 just says you have to be qualified, and you have to be  
 13:37 23 able to fairly consider the full range of punishment.  
 13:37 24 Not necessarily saying, could you give it in this  
 13:37 25 specific set of facts? Could you give probation here or

13:37 1 could you give life here, but can you give full  
 13:37 2 consideration to the full punishment range, not knowing  
 13:37 3 a certain set of facts?

13:37 4 A. Uh-huh.

13:37 5 Q. But is there, in your mind, a certain situation  
 13:37 6 where you could consider probation up to -- in your  
 13:37 7 mind, is there a certain situation you could consider 99  
 13:37 8 years or life? Just to be qualified you have to be able  
 13:37 9 to consider the full range. Does that make sense to  
 13:37 10 you?

13:37 11 A. Yes.

13:37 12 Q. And, again, getting back to your, I mean,  
 13:37 13 obviously you have that uprightness about you to be law  
 13:37 14 abiding and to be very thoughtful and considerate in  
 13:37 15 following the law. And if -- let's assume you found a  
 13:37 16 person guilty of murder, instead of capital murder, and  
 13:37 17 you are at that situation, could you give, the Judge  
 13:37 18 told you in the Court's Charge that you have to consider  
 13:37 19 the full range of punishment. Could you do that --  
 13:38 20 could you follow the law and consider the full range of  
 13:38 21 punishment, anywhere from probation to 99 or life,  
 13:38 22 depending on the facts?

13:38 23 A. Yes.

13:38 24 Q. And, again, as would apply in a capital murder  
 13:38 25 situation with murder, the burden of proof is always on

13:38 1 us, I mean, and it would stay with us. Even if it was  
 13:38 2 just a murder trial where you just found him guilty of  
 13:38 3 murder, that burden of proof would stay with us, and you  
 13:38 4 understand that. And that seems fair to you, is that?  
 13:38 5 A. Yes.  
 13:38 6 Q. And you seem to indicate in your questionnaire  
 13:38 7 that, I mean, you are innocent until proven guilty.  
 13:38 8 That burden never shifts. You even said, if a person is  
 13:38 9 brought to trial on murder charges, that person is  
 13:38 10 probably guilty. You said "disagree"?  
 13:38 11 A. Yes.  
 13:38 12 Q. I mean, you understand that we do the accusing.  
 13:39 13 We've got to do the proving. They have got no burden,  
 13:39 14 no duty whatsoever, other than just to be here.  
 13:39 15 A. Yes, I understand.  
 13:39 16 Q. You have no problem following the law and never  
 13:39 17 shifting the burden to the defense?  
 13:39 18 A. No. I mean, I understand. Yeah.  
 13:39 19 Q. And you could follow the law in that regard?  
 13:39 20 A. Yes.  
 13:39 21 Q. The only thing that, in your questionnaire, and  
 13:39 22 understanding that, if you got selected to be on this  
 13:39 23 jury, you would have a couple weeks of downtime while we  
 13:39 24 continue to select the jury. You would be able to go  
 13:39 25 back to your normal life and work. And then once we

13:39 1 started the trial, you'd have to come back and be up  
 13:39 2 here everyday while the trial was going on. And I  
 13:39 3 noticed in your questionnaire it just said you had plans  
 13:39 4 to be out of Collin County the first week of October.  
 13:39 5 And what was that for?  
 13:39 6 A. My mother's going to be in town.  
 13:39 7 Q. Okay. Okay. So you weren't planning on being  
 13:39 8 out of town?  
 13:39 9 A. We were going to be -- like go to Waxahachie,  
 13:39 10 that kind of thing, so I was going to be around. But  
 13:39 11 no, I wasn't going to be anywhere out of state.  
 13:40 12 Q. And if this trial were still going, it's hard  
 13:40 13 to predict with these things, how long or short. It's a  
 13:40 14 possibility we'd still be in trial that first week of  
 13:40 15 October. And assuming you could even bring your mom to  
 13:40 16 the trial, and she could come watch as a participant if  
 13:40 17 she wanted to, do you feel like that's something you  
 13:40 18 could work out or work around if that were the  
 13:40 19 situation?  
 13:40 20 A. Yes. I've told her that there's a possibility.  
 13:40 21 Q. Is she interested in coming?  
 13:40 22 A. I had not told her that part, you can come see.  
 13:40 23 I just said, we might have to like be a little bit  
 13:40 24 willing to juggle some things, but I'll have the week  
 13:40 25 end.

13:40 1 Q. And you'll have the evenings, as well?  
 13:40 2 A. Uh-huh.  
 13:40 3 Q. As far as dinner and stuff?  
 13:40 4 A. Yeah. Actually, I would probably need her at  
 13:40 5 that point. Come see me. I need someone to come see  
 13:40 6 me.  
 13:40 7 Q. To talk about something other than the trial?  
 13:40 8 A. Yeah, that's true.  
 13:40 9 MR. SCHULTZ: Thank you, Ms. Duncan. We  
 13:40 10 pass this juror.  
 13:40 11 THE COURT: All right.  
 13:40 12 MR. GOELLER: Hi, Lynda Lynette Duncan.  
 13:41 13 THE COURT: Let me just -- you know if  
 13:41 14 your mom were in town and you were on the jury and she  
 13:41 15 decided to come, it might be a good idea for her not to  
 13:41 16 come simply because you wouldn't be in a position to  
 13:41 17 discuss the case with anyone. So it would be something  
 13:41 18 to think about between now and then. If you are  
 13:41 19 apparently Catholic, I wouldn't want you to fall subject  
 13:41 20 to temptation on such important matters.  
 13:41 21 VENIREPERSON: There's all those antique  
 13:41 22 stores over there. I'll drive her up here. Give her  
 13:41 23 the car and keys and say, go look.  
 13:41 24 VOIR DIRE EXAMINATION  
 13:41 25 BY MR. GOELLER:

13:41 1 Q. Lynda Lynette Duncan?  
 13:41 2 A. Yes.  
 13:41 3 Q. I know a Lynda Lynette, not a Duncan, but  
 13:41 4 that's why I like saying it.  
 13:41 5 A. That's unusual.  
 13:41 6 Q. That's very unusual.  
 13:41 7 A. Yeah.  
 13:41 8 Q. You are originally from D.C.?  
 13:41 9 A. Washington, D.C. I was born there.  
 13:41 10 Q. Did you live inside the Beltway?  
 13:41 11 A. I was born there. Then we moved about six  
 13:41 12 months later. Then I lived there for a year when I was  
 13:41 13 four. I don't remember a lot.  
 13:41 14 Q. I notice you spent a lot of your time in  
 13:41 15 Montana?  
 13:41 16 A. Yeah. I grew up in Montana.  
 13:41 17 Q. How is that? What caused you to go from D.C.  
 13:42 18 to Billings, Montana?  
 13:42 19 A. My dad's education. He was studying at  
 13:42 20 Georgetown University doing his doctorate there.  
 13:42 21 Q. In what?  
 13:42 22 A. Political science.  
 13:42 23 Q. Okay.  
 13:42 24 A. And we moved back to Montana, which is really  
 13:42 25 where -- that area is the basis of my family. So I grew

13:42 1 up there, and it's very beautiful. If you've never seen  
13:42 2 it, Montana is gorgeous.

13:42 3 Q. I know western Montana, it seems, is a lot  
13:42 4 prettier than eastern Montana.

13:42 5 A. Yes. And I grew up in the eastern part. So --

13:42 6 Q. Oh, oh. I just blew it.

13:42 7 A. No. Western is a beautiful part. That's where  
13:42 8 the mountains are.

13:42 9 Q. That's where most people go.

13:42 10 A. Yeah.

13:42 11 Q. It's kind of like Wyoming or Washington state.  
13:42 12 Eastern Washington state, it's like Texas. It's flat  
13:42 13 and almost semi-desert like. Most people they think of  
13:42 14 the Columbia River and the rain forests, but I suppose  
13:43 15 it's all in the eye of the beholder.

13:43 16 A. Uh-huh.

13:43 17 Q. You work for Blockbuster?

13:43 18 A. Yes.

13:43 19 Q. Do you work in McKinney?

13:43 20 A. No. I work downtown in Dallas in the corporate  
13:43 21 offices.

13:43 22 Q. Because right just a couple miles from here is  
13:43 23 the biggest building I've ever seen in my life. I heard  
13:43 24 they have, like inside the building they have golf carts  
13:43 25 or something just to get around.

13:43 1 A. Yeah. I went in and visited, and they said  
13:43 2 it's big enough to probably put the spruce goose in it.  
13:43 3 Yeah. It's huge.

13:43 4 Q. When I think of that building I think all of  
13:43 5 the VCR and the videotapes. Is that what that is?

13:43 6 A. Yeah. That's where we send everything that  
13:43 7 goes out in the country comes from that one area.

13:43 8 Q. Really. I didn't know that.

13:43 9 A. Yeah. Lots of people work in it from McKinney.

13:43 10 Q. What's your educational background? What did  
13:43 11 you really study in college? Or if you had to, I don't  
13:43 12 know if you have majors in high school anymore. I don't  
13:44 13 know anything about high school.

13:44 14 A. Well, we did when I was there. So I studied  
13:44 15 filming degree, a filming and TV degree in college and  
13:44 16 did a little while in political science, so...

13:44 17 Q. I want to talk to you just a little bit about  
13:44 18 some of these special issues. We've heard that phrase.  
13:44 19 It's come up several times since this case started.  
13:44 20 About the religious issue, you know. Obviously, you can  
13:44 21 glean from the State's comments that they -- they made  
13:44 22 questioning a person's maybe conversion to Christianity  
13:45 23 or awareness of Christ after they hit the jailhouse and  
13:45 24 have been arrested and indicted and that kind of thing.  
13:45 25 You've heard the phrase, there are no atheists in

13:45 1 foxholes, right?

13:45 2 A. Uh-huh.

13:45 3 Q. And I guess that means, if somebody is trying  
13:45 4 to kill you or if you are a soldier in a war, and I  
13:45 5 guess there's nothing more horrific than being in  
13:45 6 combat. I wouldn't know. I've never been in combat.  
13:45 7 But I guess our humanity individually is boiled down to  
13:45 8 its essence, and people will pray or recognize a super  
13:45 9 human being in the hopes of -- I don't know, either  
13:45 10 salvation or keep me alive or whatever.

13:45 11 You think it's sincere on the part of a  
13:45 12 soldier? Let's say, somebody that's never really been  
13:45 13 particularly religious. Maybe has always believed in  
13:46 14 some type of supreme being, but never really practiced,  
13:46 15 thought about it, went through an organized church, and  
13:46 16 that certainly doesn't mean you are religious.

13:46 17 I mean, you and I probably know lots of  
13:46 18 people that are in that pew, whether it's Prince of  
13:46 19 Peace or Saint Elizabeth's or it wouldn't matter, Saint  
13:46 20 Mark's. They are in there every Sunday. They are the  
13:46 21 same kind of people that will shoot somebody the finger  
13:46 22 on the way home when somebody cuts them off. I mean, I  
13:46 23 know people like that. I know people like that. Well,  
13:46 24 I do, I'm sorry.

13:46 25 THE COURT: That's all right.

13:46 1 Q. (BY MR. GOELLER) It may be a reflection on  
13:46 2 some of my friends who are good practicing Catholics  
13:46 3 except when they are behind the wheel. But, do you  
13:46 4 think it's sincere? I guess the point I'm trying to  
13:46 5 make is, do you think it can be sincere?

13:47 6 A. Definitely.

13:47 7 Q. I don't -- there's another saying and I  
13:47 8 can't -- you know, I'm not good at religious sayings,  
13:47 9 I'll admit that. But there's another saying that goes  
13:47 10 along the lines of, God is there for -- let me consult  
13:47 11 my religious expert.

13:47 12 Well, he's apparently not as good as I  
13:47 13 thought he was. But you know what I'm saying, if God is  
13:47 14 only there, you are not the kind of person or the type  
13:47 15 of religious background that thinks that God is just  
13:47 16 there for those that are parked in the pew every Sunday  
13:47 17 and put a nice little check in the basket.

13:47 18 A. No. I don't believe that.

13:48 19 Q. I think in this day and age, it is tough being  
13:48 20 a Catholic, you know, contraception. And it gets really  
13:48 21 complicated when you start talking about, you know,  
13:48 22 American Bishops and United States Association of  
13:48 23 Catholic Bishops, and then you got the U.N. contingent  
13:48 24 from Rome. Sometimes it is confusing.

13:48 25 Like, for example, divorce. I really

13:48 1 don't know what the law is either on remarriage after.  
 13:48 2 If you get married as a Catholic and you marry a  
 13:48 3 Catholic and you divorce a Catholic, can you remarry a  
 13:48 4 Catholic? I guess I'd know if I ever had to cross that  
 13:49 5 bridge or something like that, but I don't think people  
 13:49 6 get too wrapped up about that.

13:49 7 But capital punishment is one of those  
 13:49 8 ones that, like many other issues in the Catholic  
 13:49 9 Church, there are -- there's a split view or people  
 13:49 10 that -- I think you said it best. You don't agree with  
 13:49 11 everything, like contraception. You kind of look at it  
 13:49 12 all, and you take it in and judge it and really make  
 13:49 13 your own personal choice about whether to follow certain  
 13:49 14 church doctrine. Is that fair to say?

13:49 15 A. Yes.

13:49 16 Q. Obviously, your parents, you said your father  
 13:49 17 is an educated man. He is a Ph.D.?

13:50 18 A. Uh-huh.

13:50 19 Q. What kind of dad was he?

13:50 20 A. He died when I was 12.

13:50 21 Q. Sorry. Do you remember much about him?

13:50 22 A. No. He had M.S., and it took a long time for  
 13:50 23 him to die. So by the time I was probably really aware,  
 13:50 24 he was already in a wheelchair and became bedridden. So  
 13:50 25 as far as seeing him as a father figure, there wasn't a

13:50 1 lot of time there.

13:50 2 Q. I'm sorry. How about your mom?

13:50 3 A. My mom was very much there.

13:50 4 Q. I think -- did you write down, there's no way I  
 13:50 5 can memorize. You've got -- you've got a sister, Lori?

13:50 6 A. Yes.

13:50 7 Q. She's a social worker?

13:50 8 A. Yes.

13:50 9 Q. Is she college educated as yourself?

13:50 10 A. Yes. She's about to graduate with her graduate  
 13:50 11 degree.

13:50 12 Q. Master of science in social work?

13:50 13 A. Yes.

13:51 14 Q. Oh, good for her. I guess she turned out  
 13:51 15 pretty good, and you did?

13:51 16 A. I would like to think so, yes.

13:51 17 Q. I mean, you've never been in trouble?

13:51 18 A. No.

13:51 19 Q. I kind of think you probably got a speeding  
 13:51 20 ticket before; am I right?

13:51 21 A. I haven't had one for six or seven years.

13:51 22 Q. Good for you. I wish I could say the same.

13:51 23 A. Not saying I shouldn't have gotten it a couple  
 13:51 24 of times, but no.

13:51 25 Q. But did you get the warning?

13:51 1 A. What?

13:51 2 Q. Did you get the warning?

13:51 3 A. No. They actually gave me a speeding ticket.

13:51 4 Q. That's always the -- well, it's like a pitcher  
 13:51 5 in a baseball game. Right before the pitch there's that  
 13:51 6 moment of anxiety and you pause on, when that officer  
 13:51 7 walks up and you don't know whether he's got the warning  
 13:51 8 ticket out or he's got the actual citation, go to the  
 13:51 9 City of Plano out. I always hate that.

13:52 10 Would you say that -- do you think how you  
 13:52 11 turned out and Lori turned out has a lot to do with your  
 13:52 12 mom and the way you were raised?

13:52 13 A. Yes.

13:52 14 Q. Did your mom lead by example?

13:52 15 A. Yes. She also talked to us, though.

13:52 16 Q. I'm sorry.

13:52 17 A. She also talked with us a lot.

13:52 18 Q. Talked with you a lot?

13:52 19 A. Yeah.

13:52 20 Q. And tried to, I would imagine, impart some  
 13:52 21 guidance to you?

13:52 22 A. Yes.

13:52 23 Q. And try to instill some core values in you?

13:52 24 A. Yes.

13:52 25 Q. And your sister?

13:52 1 A. Yes.

13:52 2 Q. And I'm sure your mom -- and I'm getting really  
 13:52 3 personal here -- did your mom ever remarry?

13:52 4 A. Yes.

13:52 5 Q. While you were growing up?

13:52 6 A. When I was 16.

13:52 7 Q. Did you get to know your dad at all?

13:53 8 A. Yes.

13:53 9 Q. Was he a good guy?

13:53 10 A. Yes.

13:53 11 Q. Did he become like a father figure to you?

13:53 12 A. Yes.

13:53 13 Q. I got to believe the way you turned out and  
 13:53 14 your sister turned out that your parents didn't do dope?

13:53 15 A. No.

13:53 16 Q. And I'm sure your stepfather and your  
 13:53 17 biological father, I'm sure never did, and your mother  
 13:53 18 never used drugs?

13:53 19 A. That is true. No one used drugs.

13:53 20 Q. In your questionnaire when it talked about --  
 13:53 21 you are certainly smart enough to know why these  
 13:53 22 questions are in here really in a death penalty case.  
 13:53 23 "A person has determined their destiny or fate by the  
 13:53 24 choices they make in life." And you weren't on the  
 13:53 25 extreme ends of the choices there. You did write agree.



13:53 1 A. Uh-huh.  
 13:53 2 Q. And in the combination of the two, choices in  
 13:54 3 life, upbringing, birth, circumstances of birth, kind of  
 13:54 4 a whole package. You did put down agree, correct?  
 13:54 5 A. Right.  
 13:54 6 Q. You did.  
 13:54 7 A. Right. You have the notes. Yes, I guess I  
 13:54 8 did.  
 13:54 9 Q. But does that make sense to you? It's not fair  
 13:54 10 for me to just -- it says, "A person's destiny or fate  
 13:54 11 is determined by the circumstances of their birth and  
 13:54 12 their upbringing, as well as choices they make in life."  
 13:54 13 And you circled agree?  
 13:54 14 A. Yes.  
 13:54 15 Q. Does that sound right?  
 13:54 16 A. That sounds right.  
 13:54 17 Q. You recognize that -- I think you recognize  
 13:54 18 that how we turn out has probably a lot to do with all  
 13:54 19 of those things.  
 13:54 20 A. We are influenced by all of them, yes.  
 13:54 21 Q. Yeah, okay. And one -- because of the  
 13:55 22 Blockbuster, obviously, you'll understand why I got to  
 13:55 23 ask this question.  
 13:55 24 A. Okay.  
 13:55 25 Q. There was some, I won't say, well, I'll say

158

13:55 1 homicide, killing. I don't think it makes any  
 13:55 2 difference in this context, in Casa Linda Blockbuster in  
 13:55 3 1997. Do you know anything about that?  
 13:55 4 A. No.  
 13:55 5 Q. Okay. I just --  
 13:55 6 A. I mean, yeah, maybe I heard about it. But no,  
 13:55 7 I don't remember.  
 13:55 8 Q. You weren't there?  
 13:55 9 A. No.  
 13:55 10 Q. You weren't a witness?  
 13:55 11 A. Casa Linda, is that in Texas or is that in  
 13:55 12 California?  
 13:55 13 Q. East Dallas, Dallas County.  
 13:55 14 A. I was probably living in California at the  
 13:55 15 time, so that's why I know nothing about it.  
 13:56 16 Q. Just give me a couple seconds. I know you've  
 13:56 17 been up there a long time.  
 13:56 18 I wanted to -- Martin Luther King I know,  
 13:56 19 Mother Teresa, Lech Welensa I know, Margaret Albright.  
 13:56 20 Was that the woman that owned the Washington Post?  
 13:56 21 A. That was the woman that was Secretary of State  
 13:56 22 under Clinton.  
 13:56 23 Q. Or Madeleine Albright?  
 13:56 24 A. Did I write Margaret? Madeleine Albright,  
 13:56 25 sorry.

13:56 1 Q. Oh, you threw me. Madeleine Albright, I've  
 13:56 2 never seen her listed here. Why did you put Madeleine  
 13:56 3 Albright?  
 13:56 4 A. You know, I probably spent ten minutes on that  
 13:56 5 question alone. Because I, you know, immediately was  
 13:56 6 thinking living people. And it took me a minute. Wait,  
 13:56 7 I bet they mean I could pick some people that have been  
 13:56 8 dead. And then I went back and started changing my  
 13:56 9 answers.  
 13:56 10 Q. I'm not smart enough a lawyer to really make  
 13:56 11 much of any of those kind of answers, but I mostly asked  
 13:56 12 just because I'm curious.  
 13:57 13 A. It's -- Secretary of State is an incredible  
 13:57 14 position. To see a woman who had raised a family and  
 13:57 15 done all that; it was pretty neat to see that. And  
 13:57 16 she's a great role model.  
 13:57 17 Q. Now I see why you put her down there.  
 13:57 18 A. Uh-huh.  
 13:57 19 Q. President Clinton after leaving office that you  
 13:57 20 least respect. I found it odd, not odd, but lots of  
 13:57 21 people. I've seen more than three-quarters of the  
 13:57 22 jurors, that we've seen so far put Clinton, Hillary or  
 13:57 23 Bill, in one form or fashion. Some as the most admired,  
 13:57 24 some they least respect. But you are the only one I've  
 13:57 25 seen put in parentheses, after leaving office. What did

160

13:57 1 you mean by that?  
 13:57 2 A. Because those were the actions that finally set  
 13:57 3 me off, was what he did as he was leaving office. I was  
 13:57 4 like, respect the office you are in, and that was just  
 13:57 5 so inappropriate. And when you -- this was the  
 13:57 6 question, because I was telling my mom about the  
 13:57 7 process, about filling out the survey. Why would you  
 13:57 8 put "as least respect." And I said, to me "least  
 13:57 9 respect" implies they are deserving, you should respect  
 13:58 10 that person. It's not someone you hate or despise, it's  
 13:58 11 someone who --  
 13:58 12 Q. Yeah.  
 13:58 13 A. So I thought that was an area where I went,  
 13:58 14 wow, you deserve no respect. And this was just so wrong  
 13:58 15 to do.  
 13:58 16 Q. Okay. I thank you for your time and attention  
 13:58 17 up here today. I know it's been a long day for you, and  
 13:58 18 I pass the witness.  
 13:58 19 THE COURT: All right. I'm going to ask  
 13:58 20 you to step down for just a moment, and I'll have you  
 13:58 21 back in here in a minute perhaps.  
 13:58 22 (Venireperson Duncan not present.)  
 13:58 23 THE COURT: Lynda Duncan No. 34, what says  
 13:58 24 the State?  
 13:58 25 MR. SCHULTZ: Could you give us a couple

13:58 1 minutes to confer outside?  
 13:58 2 THE COURT: Yes.  
 13:58 3 MR. SCHULTZ: The State's lawyers, I mean.  
 13:58 4 Just us.  
 13:58 5 THE COURT: All right. I understand.  
 13:58 6 MR. GOELLER: Are you sure you don't want  
 13:58 7 me out there?  
 13:59 8 (Break.)  
 14:00 9 THE COURT: All right. We're back on the  
 14:00 10 record, I suppose. And what says the State?  
 14:00 11 MS. FALCO: This juror is acceptable to  
 14:00 12 the State, Your Honor.  
 14:00 13 MR. GOELLER: And to the -- well, we need  
 14:00 14 to just -- she's acceptable to the defense, Your Honor.  
 14:00 15 THE COURT: All right. Then Lynda Duncan  
 14:00 16 is Juror No. 2.  
 14:00 17 Billy, would you tell her that we'll be  
 14:01 18 calling her. And make sure and if you would take her  
 14:01 19 outside the room and tell her that.  
 14:01 20 MR. GOELLER: Judge, you wouldn't be in  
 14:01 21 the mood for a little break here, would you?  
 14:01 22 THE COURT: Well, we started at 12:30,  
 14:01 23 right? So I guess we were going for an hour and a half.  
 14:01 24 How does ten minutes work for everybody?  
 14:14 25 (Break.)

14:17 1 THE COURT: Ma'am, are you Susan Kolechta?  
 14:17 2 VENIREPERSON: Yes, I am.  
 14:17 3 THE COURT: I want to ask you if you  
 14:17 4 remember last Tuesday I put everybody under oath. And  
 14:18 5 if you remember the oath was to give truthful answers to  
 14:18 6 the questions that everybody asks, including the  
 14:18 7 attorneys here today.  
 14:18 8 VENIREPERSON: Yes, sir.  
 14:18 9 THE COURT: Please be seated. I'll ask  
 14:19 10 the State if they would like to proceed.  
 14:19 11 VOIR DIRE EXAMINATION  
 14:19 12 BY MS. FALCO:  
 14:19 13 Q. Is it Ms. Kolechta?  
 14:19 14 A. Kolechta.  
 14:19 15 Q. Kolechta. My name is Gail Falco, and I'm an  
 14:19 16 assistant district attorney in Collin County. And the  
 14:19 17 man that spoke to you, he'll be coming in, seated to my  
 14:19 18 right. He spoke to you on Tuesday. He's my boss, the  
 14:19 19 first assistant district attorney, Bill Schultz. And  
 14:19 20 the lady to my left is Jami Lowry. She's also an  
 14:19 21 assistant district attorney here in Collin County.  
 14:19 22 And over at the other table, closest to  
 14:19 23 me, is the defendant Ivan Cantu. And next to him is his  
 14:19 24 attorney, Don High. He's a local private practitioner  
 14:19 25 here in Collin County. And probably coming in during

14:19 1 this hearing is his other attorney, Mr. Matt Goeller,  
 14:19 2 who spoke to you on Tuesday.  
 14:19 3 A. Yes.  
 14:19 4 Q. And he's a private practitioner as well. I  
 14:19 5 take it from Tuesday that you do not know any of us; is  
 14:19 6 that correct?  
 14:19 7 A. That's correct.  
 14:19 8 Q. Ms. Kolechta, as far as this process goes, we  
 14:19 9 actually had you come initially during the general voir  
 14:19 10 dire, and we gave you these questionnaires. And we  
 14:19 11 talked to the big group about the law as it pertained to  
 14:20 12 everybody, and that was the most efficient way to do  
 14:20 13 that at that point. Because the State is seeking the  
 14:20 14 death penalty in this case, we then move into what's  
 14:20 15 called individual voir dire, and that's this process  
 14:20 16 where we talk to you one-on-one.  
 14:20 17 And for a lot of reasons we do it. One of  
 14:20 18 the reasons is so you can talk freely about your  
 14:20 19 position, your opinions, your feelings regarding the  
 14:20 20 death penalty, and you can be open. And the only  
 14:20 21 requirement on your part is you just give us honest  
 14:20 22 answers.  
 14:20 23 And as far as the process goes, doing the  
 14:20 24 individual voir dire, you have to come back on several  
 14:20 25 occasions. I know a lot of people when asked, what was

14:20 1 the biggest problem in the criminal justice system,  
 14:20 2 almost unanimously people said, it's too slow. It takes  
 14:20 3 too long.  
 14:20 4 And understanding that, with regard to  
 14:20 5 this particular process, because the State is seeking  
 14:20 6 the death penalty, what do you think of the process so  
 14:20 7 far? Do you think it's going too slow? It's too  
 14:20 8 inefficient. Are we being too cautious? What are your  
 14:20 9 thoughts regarding this particular process?  
 14:20 10 A. It's much different than the other times I have  
 14:21 11 been called for jury duty. I've never actually been on  
 14:21 12 a trial. It's always been settled before I've gotten  
 14:21 13 there. I guess I knew something different was up from  
 14:21 14 Tuesday where they kept taking us in and out of the room  
 14:21 15 all the time.  
 14:21 16 So I knew there was something a little  
 14:21 17 more than a regular DWI or something along those lines.  
 14:21 18 I guess it's pretty much gone the way I thought it  
 14:21 19 would. I don't see anything different. There are  
 14:21 20 always things that are going to happen that one day you  
 14:21 21 can't do something because someone gets called to court.  
 14:21 22 So, I -- it's not anything much different than what I  
 14:21 23 did expect.  
 14:21 24 Q. And one thing I want to ask you, when you all  
 14:21 25 came in and were asked to fill out this questionnaire

14:21 1 and you pretty much were given, it's like being given  
14:21 2 the test before you were given the lesson and just kind  
14:21 3 of asking what your views are outright. And we pretty  
14:21 4 much hit you right off the bat. We ask you, "What's  
14:21 5 your name?" and then, "What do you think about the death  
14:21 6 penalty?" right off the bat.

14:21 7 So I know I realize it catches people a  
14:22 8 little off guard without a whole lot of time for  
14:22 9 reflection before they fill out the questionnaire. And  
14:22 10 knowing that, since then you've obviously heard both  
14:22 11 lawyers talk about the law. And you've had a little  
14:22 12 over a week's time to think about this, which I'm sure  
14:22 13 you have.

14:22 14 And with regard to that, on your  
14:22 15 questionnaire you indicated, "Although I do not believe  
14:22 16 that the death penalty should ever be imposed, as long  
14:22 17 as the law provides for it, I could assess it under the  
14:22 18 proper set of circumstances." Since you had some time  
14:22 19 for reflection, is that still your position?

14:22 20 A. It is my position. It would depend on the  
14:22 21 facts of the case. I, myself, would have a very, very,  
14:22 22 very hard time, to some extent, sentencing someone to  
14:22 23 death. I truthfully believe I like life imprisonment.  
14:22 24 And I think, to me, that's a worse sentence because then  
14:23 25 you are sitting there for 20, 30, 40 years, whatever it

14:23 1 is, thinking about what you have done.

14:23 2 And to me, my personal feeling, that would  
14:23 3 be much worse. Because if you put someone to death,  
14:23 4 it's over with, and they have no time to think about it.  
14:23 5 But maybe they need that 40 years to think: I really  
14:23 6 did something horrendous.

14:23 7 Q. You indicated by your answer, that under the  
14:23 8 proper set of circumstances, though you don't believe in  
14:23 9 it, you could assess it. Is that still your position?

14:23 10 A. Yes.

14:23 11 Q. Now, you mentioned for the reason that you are  
14:23 12 not in favor of the death penalty, you said, "I believe  
14:23 13 in life in prison with no parole ever."

14:23 14 A. Correct.

14:23 15 Q. And you understand in Texas we don't have life  
14:23 16 without parole?

14:23 17 A. I understand that.

14:23 18 Q. So basically that's not even an option.

14:23 19 A. That's one of the problems with Texas.

14:23 20 Q. And understanding that, that we don't have life  
14:23 21 without parole. If I asked you why your position is  
14:24 22 still you don't believe in the death penalty, you  
14:24 23 already told me a little bit about you feel like it's  
14:24 24 actually more punishment to that person.

14:24 25 A. Uh-huh.

14:24 1 Q. What else are your thoughts regarding that?

14:24 2 A. I mean, that's really my reasoning. I also  
14:24 3 look at the fact there have been proven cases where a  
14:24 4 person is found, after 20 years or so, that they are not  
14:24 5 the guilty party. Granted, we have DNA and all of these  
14:24 6 technical things that you can go through anymore that  
14:24 7 might prove that someone might have been guilty maybe 15  
14:24 8 years ago. And now we have new evidence, and it shows  
14:24 9 that they weren't at that place. And you would hate one  
14:24 10 person was put to death, and they shouldn't have been.

14:24 11 Q. And you bring up a good point. But let's  
14:25 12 suppose now that if the crime is committed in a little  
14:25 13 more modern times regarding science, and let's assume  
14:25 14 you have a case where there's DNA and there's  
14:25 15 fingerprints. There's scientific evidence that proves a  
14:25 16 person committed --

14:25 17 A. Uh-huh.

14:25 18 Q. -- the crime. Does that increase your comfort  
14:25 19 level with the death penalty?

14:25 20 A. I would still be inclined to probably give that  
14:25 21 person the longest sentence that they possibly could get  
14:25 22 without the death penalty. You know, I don't know what  
14:25 23 it is in Texas. Maybe it's 99 years. But if someone's  
14:25 24 in their 20s, what would be the term they would have to  
14:25 25 serve before they could get out of prison? They might

14:25 1 be in their 50s or 60s before they would get out of  
14:25 2 prison.

14:25 3 I also tend to think that a lot of times  
14:25 4 prison does not rehabilitate. That actually it might  
14:25 5 make them better criminals. And you would hate someone  
14:25 6 to be out in five or ten years, and they would just kind  
14:25 7 of sharpen their skills, so to speak.

14:26 8 Q. Okay. A couple things I want to touch on when  
14:26 9 you were asked what your best argument in favor of the  
14:26 10 death penalty, and you've kind of indicated this in just  
14:26 11 our little bit of talking, is that you feel like a life  
14:26 12 sentence would be worse because that person would have  
14:26 13 to sit there and think about what they've done?

14:26 14 A. Uh-huh.

14:26 15 Q. And your answer here indicates, some people  
14:26 16 have no conscience or remorse. Suppose you have  
14:26 17 somebody that has no conscience. They have no remorse.  
14:26 18 Do you really think they are being penalized sitting  
14:26 19 there 40 years, if they didn't think they did anything  
14:26 20 wrong?

14:26 21 A. No. That would probably be my circumstance  
14:26 22 where I probably could say, yes, the death penalty. Can  
14:26 23 I do a case in point?

14:26 24 Q. (Moving head up and down.)

14:26 25 A. You know, Jeffrey Dahmer. The gentleman, I try

14:26 1 and forget his name from Oklahoma City.

14:26 2 Q. Timothy McVeigh.

14:26 3 A. Yes. I mean, that man had no remorse. I don't  
14:26 4 think he cared what he did, and he probably would have  
14:26 5 been happier if he would have killed 500 people. That's  
14:26 6 the type of person I'm talking about, probably deserves  
14:27 7 the death penalty.

14:27 8 Q. When you first got here -- it sounds like you  
14:27 9 have been called for jury duty on a couple occasions --

14:27 10 A. Yes.

14:27 11 Q. -- prior to this one. When you first realized  
14:27 12 on Tuesday that this was a capital murder case and the  
14:27 13 State was seeking the death penalty, what were your  
14:27 14 thoughts?

14:27 15 A. I really didn't want to be here. When I talked  
14:27 16 about jury duty and everything, like I said, every other  
14:27 17 time I have been on jury duty I have been gone by  
14:27 18 10 o'clock in the morning. And when I ended up staying  
14:27 19 here for a longer period of time, I knew there was  
14:27 20 something else going on.

14:27 21 Even being on a trial for a few days or a  
14:27 22 week would have not been a problem. But when I start  
14:27 23 hearing that it might be three or four or five weeks,  
14:27 24 then I start to look at it that, I do have a small child  
14:27 25 at home, and I'm involved in a lot of activities and

170

14:28 1 things, and I do work part-time. So, of course the  
14:28 2 wheels start turning in your head. This has to be done,  
14:28 3 and that has to be done. So that's one of the things  
14:28 4 that I was thinking about.

14:28 5 Q. And let's talk about that a little bit. You  
14:28 6 mentioned a nine-year-old. When you walked in you heard  
14:28 7 the Judge read the end part of my question. Knowing  
14:28 8 that you have a right to an exemption if you don't have  
14:28 9 adequate care for your child, if jury duty would require  
14:28 10 you to leave your child unsupervised, and your child was  
14:28 11 under ten, you have a provision in the law that exempts  
14:28 12 you from jury service.

14:28 13 A. Uh-huh.

14:28 14 Q. Why did you not choose to exercise that?

14:28 15 A. Well, I think jury duty is a civic duty, and  
14:28 16 it's something that I look at it as sort of a privilege.  
14:28 17 And, again, as I said, every other time I have been  
14:28 18 called for jury trial duty it's never been that long.  
14:28 19 And I figured even if I was on a trial for several days,  
14:28 20 that would not be a problem.

14:28 21 Q. What if it was going to be a couple of weeks?

14:28 22 A. Couple of weeks, we could probably live with  
14:29 23 it. I'm, you know, I have a lot of activities that I'm  
14:29 24 involved in, so it would mean trying to get substitutes  
14:29 25 for the things that I do and also making sure that my

14:29 1 daughter could get to her activities.

14:29 2 I can't depend on my husband because he  
14:29 3 works in Dallas. And a lot of times he's not home until  
14:29 4 7 or 7:30 at night. So I would have to be depending on  
14:29 5 friends to do that for me.

14:29 6 Q. So if you were selected and we had a trial that  
14:29 7 went several weeks, do you feel like you could have  
14:29 8 adequate care for your child, enough so that you would  
14:29 9 not be worrying about it while you are sitting here  
14:29 10 during the trial?

14:29 11 A. Oh, I can't say I wouldn't be worried about it.

14:29 12 Q. But would it impair your ability to listen to  
14:29 13 the evidence?

14:29 14 A. I'm sure I would have adequate care. I'm  
14:29 15 sorry, adequate -- I'm getting all tongue tied here --  
14:29 16 adequate care for her.

14:29 17 Q. Let's talk about your work. You used to work  
14:29 18 at the Assistant Center in Collin County?

14:29 19 A. Yes, and I still volunteer there.

14:29 20 Q. What does the Assistant Center do?

14:30 21 A. They are a nonprofit organization. They are  
14:30 22 based in Plano, but they do cover northern Collin  
14:30 23 County. And we provide financial assistance and social  
14:30 24 services. People will call in and ask anywhere from  
14:30 25 questions to, I need counseling for my child. Where do

172

14:30 1 I get my driver's license, or there's a big tree. It  
14:30 2 fell down in the alley, and who can pick it up?

14:30 3 We also have phone calls from people who  
14:30 4 are needing rent assistance, food assistance. We do the  
14:30 5 screening for the Food Pantry in Plano. We have the TU  
14:30 6 money for electric for gas from Project Happen. We also  
14:30 7 get FEMA money that we can pay rent assistance. We can  
14:30 8 do clothing, prescriptions, travel assistance. We work  
14:30 9 with City of Plano with their travel program.

14:30 10 Q. How long have you been doing that?

14:30 11 A. Probably about 15 or 16 years. I started out  
14:30 12 as a volunteer, and then I was on the staff. And after  
14:31 13 my daughter was born, I took off a little time. And now  
14:31 14 I pretty much volunteer once a week. And when staff is  
14:31 15 out of town, then I sit in for them. And I also help  
14:31 16 with special projects.

14:31 17 Q. And with regard to the very last few pages of  
14:31 18 the questionnaire, it had a list, a long list of what we  
14:31 19 call possible State's witnesses. And you circled a  
14:31 20 couple of names on there indicating you know and might  
14:31 21 know.

14:31 22 A. Yes. I checked those, and I do not know those  
14:31 23 people.

14:31 24 Q. So even though you checked them at the time,  
14:31 25 Eric Cantu, Sylvia Cantu --

14:31 1 A. Well, the name Cantu is very common, and we  
14:31 2 have dealt with a lot of people with that last name. I  
14:31 3 did not remember surnames, so I had to go look it up in  
14:31 4 the computer.

14:31 5 Q. And upon looking it up?

14:31 6 A. None of them were there.

14:31 7 Q. And that goes the same for Fernando Longoria?

14:31 8 A. Yes.

14:31 9 Q. And getting back to my question about your  
14:32 10 thoughts with this being a death penalty case, when  
14:32 11 Mr. Schultz was describing to you on Tuesday the actual  
14:32 12 process, if a juror were to find a defendant guilty and  
14:32 13 the questions in the punishment phase were answered in  
14:32 14 such a way to result in a death sentence, what that  
14:32 15 meant is that at some point in the future that the  
14:32 16 defendant would be taken down to Huntsville to a death  
14:32 17 chamber, strapped to a gurney and injected with a lethal  
14:32 18 substance until he died.

14:32 19 And the reason for that was obviously not  
14:32 20 for dramatic flare or gore, but to help you understand  
14:32 21 the reality of what we're doing here and what this trial  
14:32 22 there's a possibility of resulting in. When you heard  
14:32 23 that, what were your thoughts as you were listening to  
14:32 24 that?

14:32 25 A. Well, I basically knew that's what was going to

14:32 1 happen to the defendant if they were found guilty. I've  
14:32 2 read enough newspaper articles on different trials, so  
14:33 3 that was not surprising to me.

14:33 4 Q. And let me ask you this: Let's assume in a  
14:33 5 hypothetical situation you are placed on the jury. You  
14:33 6 were to hear the evidence during the guilt-innocence  
14:33 7 phase. You find the defendant guilty of capital murder.  
14:33 8 You move onto the punishment phase. State proves to you  
14:33 9 beyond a reasonable doubt the defendant is a future  
14:33 10 danger. You answer that question, yes.

14:33 11 You move on to what we call the mitigation  
14:33 12 question and ask you: Is there sufficient evidence to  
14:33 13 warrant a life sentence? Jury says, no. And you, as a  
14:33 14 jury, assess a death sentence for the defendant. A  
14:33 15 couple years down the road, you hear on the TV or you  
14:33 16 read in the newspaper that person had been executed.  
14:33 17 How would you feel about that?

14:33 18 A. I would probably feel very sad that a human  
14:33 19 life was taken.

14:33 20 Q. And I think we'd all probably agree. I think  
14:33 21 all of us would agree, as a society, as a compassionate  
14:34 22 society, we all value life. And if we had our druthers  
14:34 23 would not want this to be a part of this process. We  
14:34 24 wish crimes like capital murder didn't occur. We wish  
14:34 25 we didn't have to seek the death penalty, and I think

14:34 1 we'd all agree with that sentiment.

14:34 2 Part of the reason we do this individual  
14:34 3 voir dire is so we can get to know you, as best we can,  
14:34 4 in a very short period of time, but to also help you  
14:34 5 analyze yourself, to determine whether or not you can  
14:34 6 participate in a process that could result in the death  
14:34 7 of a defendant.

14:34 8 And in that regard, that's where we're  
14:34 9 asking from you is if you feel like you can participate  
14:34 10 in that process and be fair to the State, be fair to the  
14:34 11 defense, in either a life sentence or a death sentence,  
14:34 12 depending on what the evidence shows. And in that  
14:34 13 regard, do you feel like you could be fair to the State?  
14:34 14 And do we have a fair shot at the death penalty, if  
14:34 15 that's what the evidence shows, from you?

14:34 16 A. That's a hard question to answer because I  
14:34 17 would really have to hear the evidence before I could  
14:35 18 decide as to the death penalty or not.

14:35 19 Q. And understanding we can't give you any facts.

14:35 20 A. I understand.

14:35 21 Q. Let's just -- I want to take this step by step  
14:35 22 and go through. We'll start out with the guilt-  
14:35 23 innocence phase. As we explained to you, it's a two-  
14:35 24 part trial, what we call a bifurcated trial. And the  
14:35 25 first phase is the guilt-innocence phase. And at that

14:35 1 particular phase the burden of proof is on the State,  
14:35 2 and it's always on the State. And we are the ones doing  
14:35 3 the accusing. We're the ones that have to do the  
14:35 4 proving. And if we prove to you beyond a reasonable  
14:35 5 doubt the defendant is guilty of capital murder, we are  
14:35 6 entitled to a verdict of guilty.

14:35 7 A couple of things about that. First of  
14:35 8 all, with regard to capital murder, there are several  
14:35 9 different ways murder can become capital. It's kind of  
14:35 10 murder plus an aggravating factor, and Mr. Schultz  
14:35 11 covered that. And what pertains to this particular  
14:35 12 trial is murder in the course of a burglary, murder in  
14:35 13 the course of robbery, or killing two or more people in  
14:36 14 one common scheme or plan.

14:36 15 With regard to murder in the course of  
14:36 16 burglary, does that seem like an appropriate type of  
14:36 17 crime, in your opinion, to be subject to the death  
14:36 18 penalty?

14:36 19 A. I hadn't really thought about that. I guess it  
14:36 20 would depend on how vicious it were.

14:36 21 Q. And how about just as a concept, are you okay  
14:36 22 with somebody killing someone in the course of breaking  
14:36 23 into their home and killing them that that would be the  
14:36 24 type of crime that could be subject to the death penalty  
14:36 25 or is subject? Not necessarily they will get it or not,

14:36 1 but that it is subject to the death penalty?

14:36 2 A. Yes.

14:36 3 Q. And the same with murder in the course of  
14:36 4 robbery, just the concept. If somebody going in,  
14:36 5 holding up a liquor store or whatever it might be,  
14:36 6 killing someone in the course of robbing them, that --  
14:36 7 just that concept being subject to the death penalty, is  
14:37 8 that okay with you?

14:37 9 A. Yes, that would be.

14:37 10 Q. And how about in a double homicide or a  
14:37 11 situation where two people were killed? Is that the  
14:37 12 type of crime, in your opinion, that is appropriate for  
14:37 13 being subject to the death penalty?

14:37 14 A. Yes, that would be.

14:37 15 Q. Now, assuming, actually let me -- in your  
14:37 16 questionnaire, one of the pages it gave you a bunch of  
14:37 17 different sentences. And it said, how do you feel about  
14:37 18 these? And it was anywhere from strongly agree to  
14:37 19 strongly disagree. Do you remember that page?

14:37 20 A. Yes.

14:37 21 Q. And one of the statements was: If someone is  
14:37 22 accused of capital murder, he should have to prove his  
14:37 23 innocence. And on that particular question you put  
14:37 24 "strongly agree." But when you move on down to the  
14:37 25 bottom of the page it said, "The defendant is innocent

14:37 1 until proven guilty beyond a reasonable doubt," and you  
14:37 2 agreed. So obviously you understand the concept in our  
14:37 3 country, the way it is set up, that innocent until  
14:38 4 proven guilty?

14:38 5 A. Uh-huh.

14:38 6 Q. Is there something in your mind that's  
14:38 7 different about capital murder when you were answering  
14:38 8 this question that you tended to shift the burden to the  
14:38 9 defendant to make him prove his innocence?

14:38 10 A. I guess you have to listen to the evidence.  
14:38 11 And sometimes if you hear the defendant speaking or hear  
14:38 12 the people talking in his defense, you might change your  
14:38 13 mind one way or the other. You might feel very strongly  
14:38 14 towards this person that's guilty. And then you'll hear  
14:38 15 some other people speaking, and then you can very easily  
14:38 16 switch your opinion. It really, I think, gets down to  
14:38 17 the testimony and what you hear in the courtroom.

14:38 18 Q. And you understand that capital murder is no  
14:38 19 different than any other kind of case. The burden of  
14:38 20 proof is always on us.

14:38 21 A. Yes.

14:38 22 Q. And it's up to us to prove to you beyond a  
14:38 23 reasonable doubt that the defendant is guilty?

14:38 24 A. Yes.

14:39 25 Q. And whether or not they choose to put any

14:39 1 evidence on, whether it's a defendant or any witnesses,  
14:39 2 is completely up to them, and they don't have to do  
14:39 3 anything?

14:39 4 A. Yes.

14:39 5 Q. And they can sit back, and at the end of our  
14:39 6 case, if they don't feel like we've proved it, they can  
14:39 7 sit back and say, we have nothing, Your Honor, as well.  
14:39 8 And you make your decision based solely on whether or  
14:39 9 not we've proved the case to you.

14:39 10 A. Yes.

14:39 11 Q. Does that seem fair to you?

14:39 12 A. Well, it does because the defendant always has  
14:39 13 the choice of speaking.

14:39 14 Q. Right.

14:39 15 A. And if they decide that they don't want to,  
14:39 16 they are -- I mean, that is purely their decision to  
14:39 17 make. You have stated your case already.

14:39 18 Q. Okay. In talking -- we've been talking about  
14:39 19 proving to you beyond a reasonable doubt. One of the  
14:39 20 answers was talking -- one of the questions asked you  
14:39 21 about a person being convicted of capital murder based  
14:39 22 solely on circumstantial evidence with no eye witnesses.  
14:40 23 Obviously, circumstantial evidence can be DNA. It can  
14:40 24 be fingerprints, things like that. It said, if the  
14:40 25 evidence is overwhelming, I could render a guilty

14:40 1 verdict.

14:40 2 We don't have a definition anymore in our  
14:40 3 state for beyond a reasonable doubt. Whatever the jury  
14:40 4 decides is beyond a reasonable doubt. When you state,  
14:40 5 if the evidence is overwhelming, what does that mean in  
14:40 6 your opinion, in comparison to beyond a reasonable  
14:40 7 doubt? Is it the same as overwhelming more? Is it --

14:40 8 A. I would say it's pretty much the same. I mean,  
14:40 9 if you have DNA and enough other proof that the person  
14:40 10 is guilty, I would say, yes, that that is overwhelming  
14:40 11 evidence.

14:40 12 Q. Now, let's assume you go ahead and you find  
14:40 13 that, as a jury, you find the defendant guilty of  
14:40 14 capital murder, you would then move onto the punishment  
14:41 15 phase.

14:41 16 A. Uh-huh.

14:41 17 Q. When we get to the punishment phase, you get to  
14:41 18 that first question, I believe, that's up there,  
14:41 19 probably the future dangerousness question.

14:41 20 A. Uh-huh.

14:41 21 Q. If you want to take a second just to read back  
14:41 22 over that to refresh your memory.

14:41 23 A. That one I remember.

14:41 24 Q. What about that one in particular stands out in  
14:41 25 your mind?

14:41 1 A. I would look at the person to see if they have  
14:41 2 prior convictions, or are they really a dangerous  
14:41 3 person. And are they -- if they stay out of prison or  
14:41 4 are they going to hurt someone else?

14:41 5 Q. What type of things are you looking for in  
14:41 6 deciding whether or not someone is a future danger? You  
14:41 7 said their past convictions.

14:41 8 A. Past convictions. Probably a lot of what the  
14:41 9 witnesses would say in court of how they felt. They  
14:41 10 would know the defendant obviously much better than I  
14:41 11 do. And you would have to listen to what these people  
14:41 12 have said about him or her.

14:41 13 Q. Okay. Now, with regard to that question --  
14:41 14 first of all, to be given to you in question form. Do  
14:42 15 you find beyond a reasonable doubt whether there's a  
14:42 16 probability the defendant would commit, continue to  
14:42 17 commit criminal acts of violence?

14:42 18 The burden of proof on that particular  
14:42 19 question is on the State. We have to prove that to you  
14:42 20 beyond a reasonable doubt. That question is not saying,  
14:42 21 with a certainty will the defendant commit criminal acts  
14:42 22 of violence?

14:42 23 A. Uh-huh.

14:42 24 Q. It's saying, is there a probability? The word  
14:42 25 probability is one of those words that's not defined.

14:42 1 You are not going to get a definition from the Judge  
14:42 2 when you go back there to deliberate. But it is a word  
14:42 3 probably highly debated. Some people might say, well,  
14:42 4 probability to me -- I'm mathematically minded, that's a  
14:42 5 percentage. That's going to be a number.

14:42 6 Other people may say, well, the  
14:42 7 probability to me means more likely than not. Different  
14:42 8 people are going to have different opinions on what that  
14:42 9 word means. What does that word mean to you?

14:42 10 A. I probably look at it with the percentages and  
14:43 11 tend to think when you put probable in there, you are  
14:43 12 going to give a higher percentage to, yes, they would  
14:43 13 more than likely commit another crime if they were out.

14:43 14 Q. And if you were to assign a number to that  
14:43 15 percentage, what would that be?

14:43 16 A. Maybe about 70, 75 percent.

14:43 17 Q. The next phrase we get to that's undefined and  
14:43 18 commonly debated is *criminal acts of violence*. Now,  
14:43 19 probably all of us would agree murder is a criminal act  
14:43 20 of violence. We'd agree sexual assault is a criminal  
14:43 21 act of violence. Violence against a person we could all  
14:43 22 unanimously agree on. But let's say it's property.  
14:43 23 Let's say I go out to the parking lot with a baseball  
14:43 24 bat and start smashing up your car. In your opinion, is  
14:43 25 that a criminal act of violence?

14:43 1 A. It's criminal, but I don't put it on as high a  
14:43 2 threshold as I would murder or assault because you are  
14:43 3 not doing it to a person, so to speak. You are doing it  
14:44 4 more to something that's material.

14:44 5 Now, again, if they were a person who was  
14:44 6 committing arson and burning down a business or a house  
14:44 7 that was someone's livelihood, I would probably think a  
14:44 8 lot stronger in those terms.

14:44 9 Q. Do you think it could still be indicative of  
14:44 10 violent behavior, just the fact of taking a baseball bat  
14:44 11 and destroying property?

14:44 12 A. It would depend on the circumstances. I mean,  
14:44 13 sometimes I feel like taking a baseball bat and slinging  
14:44 14 it at something, but I don't consider myself a violent  
14:44 15 person.

14:44 16 Q. Is there something that stops you from doing  
14:44 17 that, though?

14:44 18 A. Probably my conscious, and I'd get caught.

14:44 19 Q. Also, along those lines there are -- it gets  
14:44 20 even fuzzier when you start talking about drug dealing.  
14:44 21 Because some people may say, now if you take drugs in  
14:44 22 your body, you are doing violence to your body. And if  
14:45 23 you take drugs, that would be the destructive results.  
14:45 24 People do violent things when they are on drugs;  
14:45 25 therefore, it is a criminal act of violence.

14:45 1 Other people say, no. You are doing harm  
14:45 2 to yourself. It's not violence to another person. It's  
14:45 3 not violence to property; therefore, it's not a criminal  
14:45 4 act of violence. Where do you fall on that?

14:45 5 A. I really don't believe in taking drugs. I  
14:45 6 would never do it myself. I tend to think most people  
14:45 7 when they are under the influence to some extent  
14:45 8 probably don't know what they are doing. It depends on  
14:45 9 how high of a threshold you have.

14:45 10 I mean, some people could probably smoke a  
14:45 11 joint of marijuana, and they are a little high. But  
14:45 12 they can go up -- we may have people in here that are  
14:45 13 doing it right now, and they are going about their  
14:45 14 normal business. But when you start getting into some  
14:45 15 of the other drugs like crack cocaine and that, then I  
14:45 16 think it does do some damage to the way your mind  
14:45 17 functions.

14:45 18 Q. What about -- there's some crimes that we could  
14:45 19 probably all agree are not criminal acts of violence,  
14:46 20 like theft, maybe running from the police, just a lack  
14:46 21 of regard for the police, not stopping when you are  
14:46 22 supposed to stop, not getting out of your car when you  
14:46 23 are supposed to get out of your car. May not be a  
14:46 24 criminal act of violence, but do you think that would  
14:46 25 show some insight into that person's character, that



14:46 1 they are a thief, or that they have a lack of regard for  
14:46 2 authority or lack of respect for authority?

14:46 3 A. Yes, I would think it would.

14:46 4 Q. And that insight into their character, do you  
14:46 5 think that would help you to determine whether or not  
14:46 6 there's a probability they would commit future acts of  
14:46 7 violence?

14:46 8 A. Yes.

14:46 9 Q. The last word we get to is *society*. And that's  
14:46 10 another word that's not defined and commonly debated.  
14:46 11 Now, that question does not limit itself to prison  
14:46 12 society. It doesn't say, can the defendant be safely  
14:46 13 held in jail? It doesn't say, at this point if we just  
14:46 14 give the defendant a life sentence, he's in jail. Will  
14:46 15 he continue to be a threat? It does not limit itself to  
14:46 16 that. Do you see how --

14:47 17 A. Yes.

14:47 18 Q. -- how that goes? And some people may say,  
14:47 19 well, if given a life sentence, he's in jail. It could  
14:47 20 be the prison population. But it could also mean the  
14:47 21 man driving your school bus or the lady selling ice  
14:47 22 cream at the ice cream store. Just out in society is  
14:47 23 that person going to be a continuing threat? Do you  
14:47 24 understand how that could be that way as well?

14:47 25 A. Yes.

14:47 1 Q. How do you view that word *society*?

14:47 2 A. I just take everything as a whole. I mean,  
14:47 3 again, it could be the prison society. It could be your  
14:47 4 church group. It could be people out in the school  
14:47 5 yard. It could be someone in a movie theater. I mean,  
14:47 6 I take it as the whole realm of people together.

14:47 7 Q. Now, while we're still on that question, and  
14:47 8 that will kind of lead a little bit into that next  
14:47 9 question, that mitigation question. I'm sure you  
14:47 10 remember that very long question.

14:47 11 A. Uh-huh.

14:47 12 Q. What about a person who is arrested for capital  
14:47 13 murder? They know they are looking at death. They know  
14:47 14 they are being looked at, and they are going to be the  
14:48 15 ones on trial. If they are behaving themselves, while  
14:48 16 they are being looked at, while they are awaiting trial  
14:48 17 and they are good while they are in jail, does that  
14:48 18 indicate anything to you about their future  
14:48 19 dangerousness?

14:48 20 A. I would think they have probably been told by  
14:48 21 their attorney that they better shape up.

14:48 22 Q. Let's go ahead and move on. Well, while we're  
14:48 23 still on this question, like I told you, the burden of  
14:48 24 proof is on the State. We have to prove that to you  
14:48 25 beyond a reasonable doubt. If all 12 jurors agree, yes,

14:48 1 we think he will be a future danger, you are still in  
14:48 2 the process of assessing a death sentence. If ten or  
14:48 3 more jurors say, no, we do not think he is a future  
14:48 4 threat, that's an automatic life sentence. Does that  
14:48 5 make sense to you?

14:48 6 A. Yes.

14:48 7 Q. Before I move off this question, with regard to  
14:48 8 future dangerousness, you probably heard and probably  
14:48 9 seen on TV, especially if you are watching this Rivas  
14:49 10 trial at all. In a criminal trial you will see experts,  
14:49 11 psychiatrists, psychologists testify. I'm looking at  
14:49 12 this pattern of behavior. And, in my opinion, the  
14:49 13 defendant's going to be dangerous. And the other side  
14:49 14 will get an expert. I looked at this pattern of  
14:49 15 behavior and, in my opinion, he's not going to be  
14:49 16 dangerous. How important is that type of testimony to  
14:49 17 you?

14:49 18 A. I would listen to it, but I don't know how  
14:49 19 important that would be because obviously the defense is  
14:49 20 going to have someone who was going to put the defendant  
14:49 21 in a good spotlight. And obviously the State --

14:49 22 Q. We can do the same?

14:49 23 A. -- is going to do the same thing.

14:49 24 Q. And in that light, could you, as a juror, after  
14:49 25 sitting there and listening to what probably would

14:49 1 amount to a weeks' worth of testimony both in the guilt-  
14:49 2 innocence, just facts of the case, as well as everything  
14:49 3 in the punishment phase, do you feel like you could  
14:49 4 answer that question just based on everything you've  
14:50 5 heard over the past couple of weeks and decide whether  
14:50 6 or not the defendant would be a future danger?

14:50 7 A. Yes.

14:50 8 Q. And if we proved to you, we, being the State,  
14:50 9 beyond a reasonable doubt that there is a probability  
14:50 10 that the defendant would continue to commit acts of  
14:50 11 violence in the future, could you answer that question  
14:50 12 yes?

14:50 13 A. Yes.

14:50 14 Q. And let's assume, and all 12 jurors do, there  
14:50 15 was actually another question that Mr. Schultz briefly  
14:50 16 mentioned last Tuesday about the law of parties,  
14:50 17 assuming you weren't the actual shooter, but maybe the  
14:50 18 getaway driver. We haven't spent a lot of time on that.  
14:50 19 I don't know if that will be applicable at the end or  
14:50 20 not. What we've been focusing on is these two  
14:50 21 questions. Because if you find the defendant guilty,  
14:50 22 you will definitely get these two questions.

14:50 23 So if you answered that question, yes, you  
14:50 24 will definitely at some point to answer this question as  
14:50 25 well. If you want to take a second just to refresh your



14:50 1 memory. Do you remember that question?  
 14:51 2 A. Yes, I do.  
 14:51 3 Q. And this is what we call the mitigation  
 14:51 4 question?  
 14:51 5 A. Uh-huh.  
 14:51 6 Q. What does that word *mitigation* mean to you?  
 14:51 7 A. Extenuating circumstances.  
 14:51 8 Q. Okay. And if something is to mitigate or  
 14:51 9 warrant a life sentence, how does that play to the  
 14:51 10 extenuating circumstances? What does that mean?  
 14:51 11 A. You would take into consideration maybe their  
 14:51 12 background, maybe with what their life was like. Again,  
 14:51 13 say, there was a person. We've done the mercy killing  
 14:51 14 as an example. That -- to me that's a mitigating  
 14:51 15 circumstance. If you have someone who is very ill and  
 14:51 16 they've said, I don't want to live any longer, and you  
 14:51 17 take their life. I mean, I don't think I could -- I  
 14:51 18 definitely couldn't give someone the death penalty for  
 14:51 19 something along those lines.  
 14:51 20 Q. When you are looking at that question, again a  
 14:51 21 lot of words, a lot of phrases that will not be defined  
 14:52 22 for you. You, as a juror, will have to decide what is  
 14:52 23 mitigating and if it rises to the level of warrant in  
 14:52 24 the life sentence. When you look at that question, it  
 14:52 25 appears to focus on the defendant, the defendant's

14:52 1 character, the defendant's background.  
 14:52 2 A. Uh-huh.  
 14:52 3 Q. Other than maybe the phrase, circumstances of  
 14:52 4 the offense, it doesn't really talk about the victim.  
 14:52 5 A. Uh-huh.  
 14:52 6 Q. I mean, like I say, it could be interpreted in  
 14:52 7 that phrase. Other than that, there's no mention of the  
 14:52 8 victim. And you heard Mr. Schultz -- we talked back on  
 14:52 9 Tuesday about whether or not you kill a nun who is  
 14:52 10 praying in a church versus killing a drug dealer, does  
 14:52 11 it matter to you who the defendant kills or, in your  
 14:52 12 mind, is a killer a killer?  
 14:52 13 A. It's probably a killer is a killer. To me it's  
 14:52 14 still a human life.  
 14:52 15 Q. Does it make the defendant any more or less  
 14:52 16 dangerous depending on who he killed?  
 14:53 17 A. No.  
 14:53 18 Q. In that same regard, let's extend that a little  
 14:53 19 bit further to the victim's family. Let's assume that I  
 14:53 20 decide I'm going to rob a liquor store, and I'm going to  
 14:53 21 kill anybody that gets in my way because I want a lot of  
 14:53 22 money, and I want to live the good life, and I don't  
 14:53 23 want to have to work for it.  
 14:53 24 So I plan a murder, and I go in there.  
 14:53 25 And I just happen to pick out a 7-Eleven, just a random

14:53 1 one. And I don't know the person at the counter, and I  
 14:53 2 walk in there and ask for all the money. And I take it,  
 14:53 3 and I shoot and kill the clerk, and I leave not knowing  
 14:53 4 that person at all.  
 14:53 5 And compare that to a situation, let's  
 14:53 6 say, it's a friend of mine that I grew up with. And I  
 14:53 7 know they are working at that 7-Eleven. And growing up  
 14:53 8 I used to go to their house for dinner and spent the  
 14:53 9 night over there and just close to the family. I know  
 14:53 10 the family. And I go in there, and I know when I go in  
 14:53 11 there to rob and I know what time my friend is working.  
 14:53 12 And I know how much money is kept in that store because  
 14:53 13 my friend has told me. And I go in there, and I take  
 14:54 14 all the money and I kill them, and knowing it's going to  
 14:54 15 impact this family that has fed me and gave me shelter  
 14:54 16 during the years. Does that make a difference to you?  
 14:54 17 A. He has still killed another human being. And  
 14:54 18 again, I guess this is where I get to the life  
 14:54 19 imprisonment more than I do the death penalty. Because  
 14:54 20 if it was a good friend, a relative or whatever, then  
 14:54 21 you need to think about what you have done for the rest  
 14:54 22 of your life. And I hope you can picture that person in  
 14:54 23 your mind for the rest of your life and what you have  
 14:54 24 done to them, their family and your family. Because you  
 14:54 25 have impacted not just yourself and the person that you

14:54 1 have killed, you have maybe impacted another hundred,  
 14:54 2 200 people that's part of the family.  
 14:54 3 Q. While we're on that same light, obviously you  
 14:54 4 have a little girl. You talked about her. Let's assume  
 14:54 5 she gets a little bit older. And she can drive and a  
 14:54 6 little bit more independent. And let's say she gets in  
 14:54 7 trouble with the law. And obviously your daughter means  
 14:54 8 the world to you. And I'm assuming, being a mom like  
 14:54 9 you are, you'd do anything in the world to protect her.  
 14:54 10 You'd let her know that you love her. You'd support  
 14:54 11 her. Am I right about that?  
 14:54 12 A. You are correct.  
 14:54 13 Q. Would you expect the same thing from a person  
 14:54 14 charged with capital murder? That they are going to  
 14:54 15 have family members who love them and support them?  
 14:54 16 A. You would hope they would.  
 14:54 17 Q. And let's assume like that person's mother --  
 14:54 18 because everybody has a mother. And if they are not  
 14:54 19 deceased, let's assume that mother testifies, and she is  
 14:54 20 just heartbroken because this is her child. And you  
 14:54 21 just found her child guilty of capital murder, and she's  
 14:54 22 basically pleading, "Don't execute my child."  
 14:54 23 How does that argument sit with you?  
 14:54 24 Basically, don't execute the child, the defendant,  
 14:54 25 because look at what it will do to their mother? How

14:55 1 does that sit with you?

14:55 2 A. Well, I have to agree with her. I would not  
14:55 3 want him executed. Again, you know, life imprisonment  
14:56 4 would be the way I would feel because not only would he  
14:56 5 be thinking about the person he has murdered. He would  
14:56 6 also be thinking about his family, his mother, her  
14:56 7 mother, what he has done to them. I mean, I think a  
14:56 8 mother will always love her child.

14:56 9 Q. Right.

14:56 10 A. I tell my daughter this all the time. There's  
14:56 11 nothing you can't talk to me about. I may not like what  
14:56 12 you've done, and I may absolutely hate what you have  
14:56 13 done, but I will always love you.

14:56 14 Q. And you would expect that and --

14:56 15 A. You would hope.

14:56 16 Q. You would hope. I guess, kind of what I'm  
14:56 17 talking about that, while we're on those lines, getting  
14:56 18 back to that page in your questionnaire where it gives a  
14:56 19 statement. And it has strongly agree to disagree,  
14:56 20 talking about a person's background and the  
14:57 21 circumstances of their birth, their upbringing.

14:57 22 Mr. Schultz talked to you a little bit  
14:57 23 about, you know, we can all think of somebody, whether  
14:57 24 through the media that we know personally that was born  
14:57 25 into a great family, never lacked for material needs,

14:57 1 always was allowed to do whatever they wanted or loved  
14:57 2 or supported, yet turned out just to be a bad apple.  
14:57 3 Just a bad seed, whether it was criminal or morally,  
14:57 4 just not a respectable person at all.

14:57 5 And on the flip side of that, we can all  
14:57 6 think of somebody who was born into a very bad  
14:57 7 situation. Maybe just one parent their whole life and  
14:57 8 very poor and always lacked for something. Maybe  
14:57 9 abusive family, sexually abused, alcohol abuse. Yet,  
14:57 10 they made something of their lives and they became  
14:57 11 successful. Can you envision somebody in either  
14:57 12 scenario?

14:57 13 A. Yes.

14:57 14 Q. With regard to that, when you were asked, a  
14:57 15 person's destiny or fate is determined by the  
14:57 16 circumstances of their birth and their upbringing, you  
14:58 17 answered that question agree. How do you think those  
14:58 18 things factor into a person's destiny or fate?

14:58 19 A. We can't help where we were born. I mean, we  
14:58 20 were born into -- you could be born into a millionaire's  
14:58 21 family. You could be born into someone who is very  
14:58 22 poor. I think most people in the world will try and  
14:58 23 teach their children right from wrong.

14:58 24 I mean, you can be the poorest person on  
14:58 25 this earth, but you still know the difference between

14:58 1 good and bad, right and wrong. And you try and teach  
14:58 2 your children that. They learn that in school all the  
14:58 3 time. So I don't think wealth, power has anything to do  
14:58 4 with the way you can be brought up. I mean, I did not  
14:58 5 come from a rich family by any stretch of the  
14:58 6 imagination, but I definitely knew the difference  
14:59 7 between right and wrong.

14:59 8 Q. Do you think people can overcome circumstances  
14:59 9 of their birth?

14:59 10 A. I think they can, but it has to be a very  
14:59 11 strong individual.

14:59 12 Q. Do you think having a bad childhood or born  
14:59 13 into a bad family, do you think that excuses a capital  
14:59 14 murderer?

14:59 15 A. No, I do not.

14:59 16 Q. Kind of along those same lines, let's talk a  
14:59 17 little bit about drugs. Looking at that question, and  
14:59 18 there can be some evidence that one juror may look at  
14:59 19 that and say that's mitigating to me. And another juror  
14:59 20 may look at that and say, no, that's aggravating to me.  
14:59 21 And the perfect example is drugs because you may have a  
14:59 22 juror that says, well, he had been doing drugs for a  
14:59 23 while, and it completely changed his personality, and  
14:59 24 that just wasn't them. And the person that did all that  
14:59 25 stuff, that wasn't him. That was the drugs; and,

14:59 1 therefore, that's mitigating to me.

14:59 2 And somebody on the flip side could say,  
14:59 3 you know what? We're raised in a society that drugs are  
15:00 4 bad. You don't do drugs because of this very thing  
15:00 5 because this is what happens, and they are bad. And we  
15:00 6 know that's bad, and that's a consequence.

15:00 7 So, not only are you bad because you are  
15:00 8 doing drugs and you knew it, but then, look what you did  
15:00 9 when you were on the drugs? And that's aggravating to  
15:00 10 me. Where do you fall along those lines?

15:00 11 A. Oh, I guess somewhere in the middle. I mean, I  
15:00 12 don't believe in drugs. I think anybody who does drugs  
15:00 13 is crazy because you are ruining your body. You are  
15:00 14 ruining your life and the people around you.

15:00 15 But, again, I could see, if you have more  
15:00 16 drugs in your system than you are used to, say, almost  
15:00 17 to an overdose state, you might be not responsible for  
15:00 18 what you are doing. I mean, it would almost be like  
15:00 19 someone who is overly intoxicated, and they do things  
15:00 20 that they wake up the next morning, and they have no  
15:00 21 knowledge of doing this.

15:01 22 Q. Okay. And in that regard to you, I mean,  
15:01 23 granted some -- there's some things that may explain why  
15:01 24 somebody did something. And you can look at some  
15:01 25 evidence and say, well, that explains it, but it doesn't

15:01 1 excuse it.

15:01 2 In your mind, when you are looking at

15:01 3 somebody in that situation who is doing drugs or maybe

15:01 4 highly intoxicated, is that something that just explains

15:01 5 it or, in your opinion, does that excuse it, as well?

15:01 6 A. It explains it. There is no excuse for it. I

15:01 7 mean, because you obviously -- you put the drugs into

15:01 8 your body. You put the alcohol into your body. You had

15:01 9 that choice to make to begin with.

15:01 10 Q. Do you understand the difference between

15:01 11 explaining something and something excusing something?

15:01 12 A. Yes.

15:01 13 Q. And kind of while we are on this question of

15:01 14 mitigation, I mean, it says, if it rises to the level or

15:01 15 is sufficient to warrant a life sentence, you can

15:01 16 probably assume all of us have something mitigating in

15:01 17 our background. We have something that is sad or

15:01 18 something that is sympathetic in our past that if we

15:02 19 were charged with a crime, we could bring out. And that

15:02 20 would be mitigating because anything could be seen as

15:02 21 mitigating by somebody. But the question is, is it

15:02 22 sufficient? Does it rise to the level, looking at what

15:02 23 the defendant did, the circumstances of the offense and

15:02 24 looking at background and character, does that mitigate

15:02 25 what that person did?

15:02 1 And a perfect example of that would be

15:02 2 Adolf Hitler. If you look at his background, he didn't

15:02 3 have a father. His mother contemplated having an

15:02 4 abortion. He obviously wasn't really a wanted child,

15:02 5 and you can imagine a poor childhood and some

15:02 6 sympathetic factors there. And somebody could say,

15:02 7 well, that's mitigating. That's sad. But is it

15:02 8 sufficient? Does it mitigate what he did?

15:02 9 A. And in his circumstance, no. I mean, we're

15:02 10 talking about thousands and thousands of people that he

15:02 11 virtually exterminated off of this earth.

15:02 12 Q. And so you understand my point that there can

15:02 13 be mitigating evidence. But it's up to you to decide

15:03 14 does that mitigate --

15:03 15 A. Yes.

15:03 16 Q. -- what they've done?

15:03 17 A. Yes.

15:03 18 Q. Have you ever heard the term, there are no

15:03 19 atheists in foxholes?

15:03 20 A. There are no what?

15:03 21 Q. Atheists in foxholes?

15:03 22 A. Yes, I have.

15:03 23 Q. And what does that term mean to you?

15:03 24 A. Typically, I think, if anyone is faced with

15:03 25 their life going to end at some point in time, that they

15:03 1 find God.

15:03 2 Q. And along those same lines -- and that soldier

15:03 3 could be completely sincere at that time or maybe just

15:03 4 grasping at straws. But regardless, assume they survive

15:03 5 the war. They can come back and you probably heard

15:03 6 soldiers that lost their religion once they got back in

15:03 7 their normal life. Okay, God, all bets are off now. I

15:03 8 got my life. You can imagine situations like that?

15:03 9 A. Yeah.

15:03 10 Q. And in that same light, can you see how that

15:03 11 might be applicable to somebody facing the death

15:04 12 penalty? They are looking at losing their life. And

15:04 13 they are in a situation that they are arrested for

15:04 14 capital murder. They are on trial for their life. And

15:04 15 maybe they say, okay, now, God here I am, or I found

15:04 16 God. Can you see how that might be applicable in this

15:04 17 type of situation?

15:04 18 A. Most definitely.

15:04 19 Q. Okay. What would you be looking at -- first of

15:04 20 all, would it make a difference to you whether or not

15:04 21 they found God after the murder or not?

15:04 22 A. No.

15:04 23 Q. Why not?

15:04 24 A. I guess you can't use God as an excuse. I

15:04 25 mean, if you think that's going to make me think

15:04 1 differently because, all of a sudden, I found Jesus

15:04 2 Christ, and he's my savior. Depending on the

15:04 3 circumstances and the testimony, no, I would not agree

15:04 4 with that.

15:04 5 Q. Would you question the timing of it if it's all

15:04 6 after he's been arrested and he's now on trial for his

15:04 7 life? Then, now, all of a sudden, he's become scripture

15:04 8 this and scripture that?

15:04 9 A. Probably.

15:05 10 MR. SCHULTZ: A moment please, Judge.

15:05 11 THE COURT: Yes.

15:06 12 Q. (BY MS. FALCO) Ms. Kolechta, I want to get

15:06 13 back a little bit. And I guess this kind of factors in,

15:06 14 kind of full circle, maybe. When we first started

15:06 15 talking, you were explaining that your views on the

15:06 16 death penalty, the reason you would favor life over

15:06 17 death is because, in your opinion, it's a more severe

15:06 18 punishment.

15:06 19 A. Yes.

15:06 20 Q. Now, with regard to that, I mean, if we prove

15:07 21 to you, well, first of all, you got to assume any

15:07 22 defendant charged with capital murder would think death

15:07 23 is the worse punishment.

15:07 24 A. Yes.

15:07 25 Q. Do you assume that -- and you got to assume

15:07 1 nobody wants to die. And they are going to do what they  
15:07 2 can, and they want to fight for their life?

15:07 3 A. I would hope so.

15:07 4 Q. So you can say that's the backward situation in  
15:07 5 the way the law has set it up or the way the defendant  
15:07 6 might view punishment?

15:07 7 A. Yes.

15:07 8 Q. With regard to that, if we prove to you beyond  
15:07 9 a reasonable doubt the defendant is guilty of capital  
15:07 10 murder, could you find him guilty?

15:07 11 A. Probably.

15:07 12 Q. Okay. Now, why do you say probably?

15:07 13 A. I would really have to listen to all the  
15:07 14 testimony.

15:07 15 Q. And I'm saying, assuming that we proved to you  
15:07 16 beyond a reasonable doubt that he's guilty, could you  
15:07 17 find him guilty?

15:07 18 A. Yes.

15:07 19 Q. Would you have any hesitation if you believed  
15:07 20 beyond a reasonable doubt he did it and in finding him  
15:07 21 guilty?

15:07 22 A. I don't think so, no.

15:08 23 Q. Okay. I don't think so is a little bit more  
15:08 24 equivocating, and you understand what my concern is.  
15:08 25 When you are a little bit of equivocating, what is that

15:08 1 hesitation there?

15:08 2 A. I still, in my heart and in my soul, I would  
15:08 3 really have a hard time sentencing someone to death. I  
15:08 4 mean, I just -- that would just be like me going up and  
15:08 5 shooting him.

15:08 6 Q. Would that opinion or that feeling impede you  
15:08 7 from fairly answering whether or not he was guilty or  
15:08 8 not guilty? Would that come into play?

15:08 9 A. No. Because then you have the three questions  
15:08 10 that you have to answer afterwards. I mean, I could  
15:08 11 find the guilty plea. That would not be a problem.  
15:08 12 Guilty, not guilty.

15:08 13 Q. So when we get to the questions, and let's  
15:08 14 assume you think the guy is a bad guy, and you think he  
15:08 15 really ought to be punished. And looking at the first  
15:09 16 question, we proved to you beyond a reasonable doubt  
15:09 17 he's a future danger.

15:09 18 A. Yes.

15:09 19 Q. Could you answer that question yes?

15:09 20 A. Yes.

15:09 21 Q. And now we get to this last question, this  
15:09 22 mitigation question. And let's assume, you believe he  
15:09 23 did it. You don't have a doubt about that. You believe  
15:09 24 he's a future danger. You don't have a doubt about  
15:09 25 that. You think this guy needs to be punished. And we

15:09 1 get to this mitigation question, and you don't find  
15:09 2 mitigation sufficient to mitigate based on the  
15:09 3 circumstances of the offense, his character. Can you  
15:09 4 answer that question "no," giving him a death sentence?

15:09 5 A. I probably would have a very hard time saying  
15:09 6 that.

15:09 7 Q. Are your views about punishment and the death  
15:09 8 penalty sufficient or strong enough that it would  
15:09 9 substantially impair you in answering that question?

15:10 10 A. I honestly can't answer that.

15:10 11 Q. Would you allow your views or -- let me ask you  
15:10 12 this: Would you allow what you wanted to happen, like  
15:10 13 whether you wanted life or you wanted death, would you  
15:10 14 let that influence how you answered that question?

15:10 15 A. No. I would be truthful.

15:10 16 Q. Okay. So if you thought the guy was a bad guy,  
15:10 17 and you thought he did harm to the victim, he did harm  
15:10 18 to the victim's family. This guy needs to think about  
15:10 19 it. I think he's a future danger, and your whole  
15:10 20 thought process that life is better because they are  
15:10 21 going to have to think about it for 30 or 40 years. And  
15:10 22 you get to that mitigation question and they haven't,  
15:10 23 and there's no evidence one way or another, with regard  
15:10 24 to mitigating evidence that's sufficient, that mitigates  
15:10 25 what he did. And knowing you want to punish this guy,

15:10 1 you want him to get the worst punishment because of what  
15:11 2 he did and the fact that there's no mitigating evidence,  
15:11 3 could you answer that question no?

15:11 4 MR. HIGH: Excuse me, Your Honor. I  
15:11 5 believe that's an improper statement of the law.

15:11 6 THE COURT: Sustained.

15:11 7 Q. (BY MS. FALCO) What -- tell me regarding your  
15:11 8 feelings and about wanting to punish the defendant, do  
15:11 9 you think it's more severe, life is more severe? What  
15:11 10 type of scenario would allow you to answer that question  
15:11 11 no? How would your feelings not interfere with the  
15:11 12 facts?

15:11 13 A. If I heard the testimony and he was, he or she  
15:11 14 was just a bad seed, I mean, just what I thought was one  
15:11 15 of the most horrible people on this earth, then I  
15:12 16 probably could say yes to the death sentence. If I had  
15:12 17 any feelings whatsoever in my mind that he would be  
15:12 18 better off thinking about it for the rest of his life,  
15:12 19 then I could not answer that no.

15:12 20 Q. And what makes the difference between thinking  
15:12 21 someone ought to sit there and think about it the rest  
15:12 22 of their life and somebody that's just a bad seed that  
15:12 23 deserves the death penalty? In your mind, what is the  
15:12 24 difference?

15:12 25 A. Again, I look at the things -- like we said,

15:12 1 the Oklahoma City bombings. When you take many people's  
15:12 2 lives that, and you have no regard for them whatsoever.

15:12 3 MS. FALCO: Okay. One moment, please.

15:13 4 Q. (BY MS. FALCO) Let me ask you this,

15:13 5 Ms. Kolechta. Let's say you found a person guilty of  
15:13 6 capital murder based on the fact that it was murder in  
15:13 7 the course of a burglary, and that's it as far as the  
15:13 8 fact of murder in the course of a burglary. Is there  
15:13 9 any way, regardless of any other evidence, is there any  
15:13 10 amount of evidence, or is there any way you could ever  
15:13 11 answer the questions in such a way that would result in  
15:13 12 a death sentence for the State, if it's just murder in  
15:13 13 the course of a burglary?

15:13 14 A. I would probably say no.

15:13 15 Q. And if it was murder in the course of robbery,  
15:14 16 it was murder of one person in the course of a robbery,  
15:14 17 is there any set of circumstances that you -- is there  
15:14 18 any way you could answer those questions in the  
15:14 19 punishment phase to result in a death sentence?

15:14 20 A. It would probably depend on how violent the  
15:14 21 death was and if there were other things that happened  
15:14 22 during the course of this robbery.

15:15 23 Q. And, Ms. Kolechta, let me talk about the  
15:15 24 situation and back up at the guilt-innocence, and as we  
15:15 25 told you, it's murder in the course or murder plus some

15:15 1 aggravating factor. Now, in a capital murder there's  
15:15 2 always the possibility that you -- that the jury could  
15:15 3 find, I believe he committed the burglary but not the  
15:15 4 murder, so we just find him guilty of burglary?

15:15 5 A. Uh-huh.

15:15 6 Q. And it's a possibility that the jury could say,  
15:15 7 well, we believe he committed the burglary but not the  
15:15 8 murder, so we find him guilty of robbery. It could be  
15:15 9 that. If two people are deceased, you could find the  
15:15 10 defendant just killed one person but not the other. So  
15:15 11 you would say we just find him guilty of murder, not  
15:15 12 capital murder.

15:15 13 In that situation, if it's just murder  
15:15 14 because it's just one person, your penalty range is  
15:15 15 going to be a little bit different. The legislature set  
15:15 16 it up that the penalty range for murder is anywhere from  
15:15 17 5 years in the penitentiary to life imprisonment, 99  
15:16 18 years or life.

15:16 19 Also, in a situation where a person proves  
15:16 20 themselves eligible for probation, probation can be an  
15:16 21 option. So it could be that you find a person guilty of  
15:16 22 murder. And your penalty range is anything from  
15:16 23 probation to life or 99 years. You are sitting on that  
15:16 24 jury, and the Judge instructs you that that is the law.  
15:16 25 And to be qualified, you had to be fairly able to

15:16 1 consider the full range of punishment. Could you do  
15:16 2 that? Could you consider probation through 99 years or  
15:16 3 life for somebody that you just found guilty of murder?

15:16 4 A. Yes, I could.

15:17 5 Q. Go back a little bit, Ms. Kolechta, when we  
15:17 6 talked in the beginning. Even in your mind, if you  
15:17 7 believe -- first of all, you said you like life over  
15:17 8 death because you think it's the more severe punishment.  
15:17 9 You think it's the greater punishment, and in your  
15:17 10 questionnaire you wrote, I believe in life in prison  
15:18 11 with no parole ever?

15:18 12 A. Correct.

15:18 13 Q. And I explained to you we don't have that in  
15:18 14 Texas, life without parole. Even in your mind, if you  
15:18 15 thought the worst punishment for this person would be  
15:18 16 life because then they would have to sit there and think  
15:18 17 about it for however long they might be locked up, even  
15:18 18 if that's what your thought was, could you still answer  
15:18 19 the questions in the punishment phase in such a way that  
15:18 20 would result in the death sentence for the defendant?

15:18 21 A. I don't really think I could. I mean, you  
15:18 22 would have to prove to me that he is the absolute worst  
15:18 23 person on this whole earth and doesn't deserve to be  
15:18 24 here anymore.

15:19 25 Q. One final thing, Ms. Kolechta, you are very

15:19 1 involved with the PTO; is that correct?

15:19 2 A. Yes, ma'am.

15:19 3 Q. Do you know Ms. Schomburger?

15:19 4 A. Yes, I do.

15:19 5 Q. Melanie Schomburger?

15:19 6 A. Very well.

15:19 7 Q. Does your daughter go to school with her?

15:19 8 A. Yes, she does.

15:19 9 Q. And have you met her husband, John Schomburger?

15:19 10 A. Just socially.

15:19 11 Q. And you are aware that Mr. John Schomburger is  
15:19 12 an assistant D.A. In fact, he's the second assistant  
15:19 13 D.A. that works in the office?

15:19 14 A. Actually, I was not.

15:19 15 Q. Knowing that and knowing that you know Melanie  
15:19 16 well and you know her daughter well -- how do you know  
15:19 17 Melanie Schomburger?

15:19 18 A. We've been together on the PTO and done some  
15:20 19 service projects together. And we've gone out to lunch  
15:20 20 several times. I mean, she is not one of my closest  
15:20 21 friends, but she is a friend.

15:20 22 Q. Did you know her husband was a lawyer?

15:20 23 A. Yes, I did.

15:20 24 Q. Did you know he was a criminal lawyer?

15:20 25 A. No, I did not.

15:20 1 Q. Are you all both from -- have you discussed the  
15:20 2 fact that you all are both from Pennsylvania?

15:20 3 A. Yes. We never knew that until about five  
15:20 4 months ago.

15:20 5 MS. FALCO: Respectfully, Ms. Kolechta, at  
15:21 6 this time, we would submit this juror as a challenge.

15:21 7 THE COURT: All right.

15:21 8 MR. HIGH: Judge, we have a right to know  
15:21 9 what reason they are submitting the juror for cause, a  
15:21 10 specified reason.

15:21 11 MS. FALCO: She had said in an instance of  
15:21 12 capital murder, which was murder in a course of a  
15:21 13 burglary, no matter what the evidence, she could never  
15:21 14 answer the question in such a way that would result in a  
15:21 15 death sentence. The State is entitled to rely on  
15:21 16 somebody who can be fair to all parts of the law. And  
15:21 17 we're entitled to rely on somebody who can be fair and  
15:21 18 fairly consider the full range of punishment. And she  
15:21 19 could not consider death -- (counsel conferring.)

15:21 20 She also stated that if in her heart of  
15:21 21 hearts she believed that a life sentence was the better  
15:21 22 punishment and that's what she wanted to happen to the  
15:21 23 defendant, she could not overcome that and answer the  
15:21 24 questions in such a way that result in a death sentence  
15:21 25 for the defendant.

15:21 1 THE COURT: All right.

15:22 2 MR. HIGH: All right. My turn, Judge?

15:22 3 THE COURT: Yes.

15:22 4 MR. HIGH: I'm going to speak for the  
15:22 5 defendant, Your Honor.

15:22 6 VOIR DIRE EXAMINATION

15:22 7 BY MR. HIGH:

15:22 8 Q. Ms. Kolechta, my name is Don High. Just like  
15:22 9 up high in the air, H-I-G-H, just like it sounds. How  
15:22 10 are you today?

15:22 11 A. I'm fine, thanks.

15:22 12 Q. Would you like to stand up and stretch?

15:22 13 A. No, I'm fine.

15:22 14 Q. Are you sure? I got a chance to stand up and  
15:22 15 stretch.

15:22 16 A. That's okay.

15:22 17 Q. Fair enough. I don't have as many questions  
15:22 18 for you, but I do have a few. So if I'm not clear on my  
15:22 19 questions, let me know. Okay?

15:22 20 A. I will.

15:22 21 Q. I'll try to rephrase if I can. I'm familiar  
15:22 22 with the organization, the Assistant Center, Collin  
15:22 23 County. I think I've even been in the building. Is  
15:22 24 that over on 18th Street?

15:22 25 A. Yes, it is. It's a new building. We've been

15:22 1 there for about a year.

15:22 2 Q. Great. That used to be "A Bigger Step  
15:22 3 Flowers," right?

15:22 4 A. Correct. And we used to be called, "The  
15:22 5 Information Referral Center of Collin County."

15:22 6 Q. Yeah.

15:22 7 A. And we changed the name. New building, new  
15:22 8 name.

15:22 9 Q. All right. I served on the board for "Life  
15:23 10 From Plano" this last year, and we worked pretty closely  
15:23 11 with some folks with your agency?

15:23 12 A. Yes, you did. Thank you for the money.

15:23 13 MR. GOELLER: Did we give enough?

15:23 14 VENTIREPERSON: It could have been a little  
15:23 15 more. We have a big debt to pay off.

15:23 16 Q. (BY MR. HIGH) I wish I could. Is it Jackie?

15:23 17 A. Jackie Hall is the administrator, yes.

15:23 18 Q. She's a very impressive lady.

15:23 19 A. Yes, she is.

15:23 20 Q. All right. Well, that's a terrific thing to be  
15:23 21 involved with, and I applaud you for that.

15:23 22 A. Thank you.

15:23 23 Q. And I think you do great work.

15:23 24 A. We do.

15:23 25 Q. With respect to -- this is a civic duty, too, a

15:23 1 different type. And I want to go through your  
15:23 2 questionnaire before I forget. There's just a few  
15:23 3 things I want to cover with you. We talked about the  
15:23 4 burden of proof. And I think you are pretty clear on  
15:24 5 that, right?

15:24 6 A. Yes, I am.

15:24 7 Q. That the defendant, we don't have any burden of  
15:24 8 proof really, other than to be here and act orderly in  
15:24 9 the courtroom. And if we feel like we need to say  
15:24 10 something or do something, we might do it. We might not  
15:24 11 do it, depending on how the case goes. But we certainly  
15:24 12 don't have to prove anything to the jury. Do you  
15:24 13 understand that?

15:24 14 A. Yes, I do.

15:24 15 Q. And that the burden is over there with the  
15:24 16 State, and it never shifts over here. We don't have any  
15:24 17 burden to go forward and prove our innocence or do  
15:24 18 anything at all. Do you understand that?

15:24 19 A. Yes, I do.

15:24 20 Q. You are okay with that?

15:24 21 A. Yes.

15:24 22 Q. There is a question on here, page five. I  
15:25 23 don't know if you recall this question. It says, "If  
15:25 24 you believe in using the death penalty, how strongly on  
15:25 25 a scale of 1 to 10 do you hold that belief?" 1 being

15:25 1 the least and 10 being the strongest. And you left it  
 15:25 2 blank. I guess, did you not have an answer or --  
 15:25 3 A. I guess basically because I really, again, just  
 15:25 4 don't believe in the death penalty, as a matter of  
 15:25 5 course. I mean, you would have to prove that to me so  
 15:25 6 strongly.  
 15:25 7 Q. All right. So you didn't -- you didn't think  
 15:25 8 that applied to you, so you skipped it?  
 15:25 9 A. That's correct.  
 15:25 10 Q. That's fair enough. You indicated, is it your  
 15:25 11 brother-in-law is an attorney in Lubbock?  
 15:25 12 A. Yes, sir.  
 15:25 13 Q. What kind of attorney?  
 15:25 14 A. Bankruptcy.  
 15:26 15 Q. Bankruptcy?  
 15:26 16 A. Yes.  
 15:26 17 Q. Did you know that you can be too broke to go  
 15:26 18 bankrupt?  
 15:26 19 A. Actually, I've known that you can be way too  
 15:26 20 rich to go. You think you are broke, but you are not  
 15:26 21 broke enough. I found that out.  
 15:26 22 Q. On the top of page nine, it says regarding your  
 15:26 23 jury service. And you circled, when I make up my mind,  
 15:26 24 I rarely change it. If you don't mind, could you  
 15:26 25 explain that or elaborate on that just a little bit

15:26 1 further for me?  
 15:26 2 A. Usually, if I have a circumstance, I'll listen  
 15:26 3 to both sides of the story and make my decision, and you  
 15:26 4 would have to show me some real evidence for me to  
 15:26 5 switch from one way to another.  
 15:26 6 Q. Okay. Now, let me just make sure I understand  
 15:27 7 this. You would wait to -- until the end of the case  
 15:27 8 anyway to make up your mind, wouldn't you? You are not  
 15:27 9 going to make up your mind after you hear one side, and  
 15:27 10 make up your mind and then --  
 15:27 11 A. Oh, no, no. I would hear both sides of  
 15:27 12 testimony --  
 15:27 13 Q. Okay.  
 15:27 14 A. -- and then make a decision.  
 15:27 15 Q. Okay. And there may not be both sides of  
 15:27 16 testimony. I can't imagine the circumstances where -- I  
 15:27 17 mean, I expect you are probably going to hear something  
 15:27 18 from us.  
 15:27 19 A. I would think so.  
 15:27 20 Q. I'm not sure about that. But you at least are  
 15:27 21 going to wait until the end of the trial when the Judge  
 15:27 22 gives you the instructions, and then you are going to  
 15:27 23 deliberate and make a decision, right?  
 15:27 24 A. Yes, sir.  
 15:28 25 Q. I noticed you had a liver transplant in 1990?

15:28 1 A. Yes, I did.  
 15:28 2 Q. That's quite a challenging ordeal, I'm sure.  
 15:28 3 A. It certainly was. One day I was fine, and the  
 15:28 4 next day I glowed in the dark. And that's basically  
 15:28 5 what happened, and they have no idea what caused it.  
 15:28 6 Q. All right. And I suppose you take medication?  
 15:28 7 A. Yes, I do.  
 15:28 8 Q. Anti-rejection medication?  
 15:28 9 A. Yes, I do. Twice a day.  
 15:28 10 Q. And that's okay. That works out fine for you?  
 15:28 11 A. Oh, that's no problem.  
 15:28 12 Q. It's not going to affect you? Make it hard for  
 15:28 13 you to sit on the jury?  
 15:28 14 A. No.  
 15:29 15 Q. Now, when you first started out, when we first  
 15:29 16 got into the death penalty, obviously Timothy McVeigh  
 15:29 17 came to mind. And you had no problem with him receiving  
 15:29 18 the death penalty, correct?  
 15:29 19 A. No, sir.  
 15:29 20 Q. And let's just eliminate that a little bit.  
 15:29 21 Timothy McVeigh planned what he was going to do for  
 15:29 22 months, and he got the fertilizer he needed and got the  
 15:29 23 timing devices and mapped out his escape route and  
 15:29 24 rented the Ryder truck. And he -- I mean, he knew what  
 15:29 25 he was going to do for a long time, correct?

15:29 1 A. Yes, he did.  
 15:29 2 Q. And we also have other situations that are on-  
 15:29 3 the-cuff type murders. I'm sure you are familiar with  
 15:29 4 guys getting in a fracas down at the bar. And one guy  
 15:29 5 says something, and the other guy says something, and  
 15:29 6 the next thing you know a knife comes out and somebody  
 15:30 7 is cut, and then they die. That's kind of an  
 15:30 8 in-the-moment type murder?  
 15:30 9 A. Yes.  
 15:30 10 Q. That's a whole lot different situation than  
 15:30 11 what we're talking about with Timothy McVeigh, aren't  
 15:30 12 we?  
 15:30 13 A. It certainly is.  
 15:30 14 Q. I'm not saying that what happens down at the  
 15:30 15 local bar at the pool hall is not bad, especially if one  
 15:30 16 of those players or killer in that fight has been in  
 15:30 17 trouble a bunch before. I mean, that's -- that would  
 15:30 18 certainly aggravate his situation if he was on trial for  
 15:30 19 murder, wouldn't it?  
 15:30 20 A. I would think so, yes.  
 15:30 21 Q. Okay. And maybe even if he had been convicted  
 15:30 22 for murder before, and now he's killed somebody else.  
 15:30 23 That would certainly aggravate his situation, wouldn't  
 15:30 24 it?  
 15:30 25 A. Yes, it would.

15:30 1 Q. Is that the kind of guy that is bordering on  
15:30 2 being a bad seed? You use that term, I know. I've  
15:31 3 heard that term a lot in my life, a bad seed. I know  
15:31 4 that's significant to you. Tell me what kind of guy is  
15:31 5 bordering on being a bad seed?

15:31 6 A. Someone who is habitual, that thinks nothing of  
15:31 7 going up to someone and stabbing them in the back or  
15:31 8 shooting at them. They have no conscience. I kind of  
15:31 9 look -- like a Mafia hit man. I mean, you see them all  
15:31 10 the time. And they are up there and bang, bang, bang.  
15:31 11 And they are told, you go and shoot this person, and  
15:31 12 they do it. And, I mean, and then they go out and they  
15:31 13 buy cannoli and take it home to their wife.

15:31 14 Q. Sure. They may treat a human being like they  
15:31 15 do a set of tires?

15:31 16 A. That's correct.

15:31 17 Q. It means nothing to them, killing or hurting  
15:31 18 someone else?

15:31 19 A. That's correct.

15:32 20 Q. I'm sure that you never thought you would come  
15:32 21 so close to having to face up to how you really feel  
15:32 22 about the death penalty?

15:32 23 A. Not in a million years.

15:32 24 Q. And here you are.

15:32 25 A. Here I am. Don't think I haven't thought about

15:32 1 it a lot the last week.

15:32 2 Q. I bet you have. And you filled out the  
15:32 3 questionnaire, and you did a great job with your  
15:32 4 questionnaire. And since then you've had more time to  
15:32 5 think about it. And then you've had probably almost an  
15:32 6 hour, hour and a half in this courtroom to think some  
15:32 7 more about it. Okay. We've asked you a bunch of  
15:32 8 questions. You understand that, you know, it's not just  
15:32 9 a simple vote to give the death penalty on the jury's  
15:32 10 part. Do you understand that?

15:32 11 A. Yes, I do.

15:32 12 Q. I mean, you figured out that you are going to  
15:32 13 have to go through a litany of questions, and you are  
15:32 14 going to have to apply the evidence to the questions and  
15:32 15 make a decision?

15:32 16 A. Yes. And it should be that way.

15:32 17 Q. Fair enough. The way I understood your  
15:33 18 answers, you could listen to the evidence, you could  
15:33 19 apply the beyond a reasonable doubt standard. And if  
15:33 20 the facts were strong enough to prove guilt of capital  
15:33 21 murder, you could find that way?

15:33 22 A. Yes, I could.

15:33 23 Q. And if I understood the questions in a -- in a  
15:33 24 robbery plus or murder plus robbery situation, you could  
15:33 25 find someone guilty of capital murder?

15:33 1 A. Yes, I could.

15:33 2 Q. And in a murder plus burglary situation, you  
15:33 3 could find someone guilty of capital murder?

15:33 4 A. Yes.

15:33 5 Q. And if a killing of two people, you could find  
15:33 6 someone guilty of capital murder?

15:33 7 A. Yes.

15:33 8 Q. Okay. So you don't have a problem with that?

15:33 9 A. No, I do not.

15:33 10 Q. And then we talked about the future  
15:33 11 dangerousness question. That's the placard there at the  
15:33 12 bottom. And it's the probability question, look into  
15:33 13 the future. Looking at the evidence that you've got  
15:33 14 before you -- and honestly, you are going to hear a  
15:34 15 whole bunch about this case if you sit on the jury.

15:34 16 You are going to hear how it happened.  
15:34 17 And you are going to hear everything from who was  
15:34 18 killed, if they were, and what happened and in the  
15:34 19 course of the killing. And you would hear about the  
15:34 20 background of the defendant, and you would probably hear  
15:34 21 some experts testify with respect to statistical  
15:34 22 analysis, the future dangerousness. You would hear all  
15:34 23 that. It's not like sitting here today where you  
15:34 24 haven't heard a thing.

15:34 25 You know, I understand the problem that

15:34 1 you have. You haven't heard a thing, and we're asking  
15:34 2 you these tough questions. But at the end of the trial  
15:34 3 you would have heard a lot. Would you have any trouble  
15:34 4 after you heard all that evidence and you heard experts  
15:34 5 testify and you had a chance to think about it, would  
15:34 6 you have any trouble answering that based on the  
15:34 7 evidence? Yes, he's a danger or, no, he's not?

15:34 8 A. I would not have trouble answering that  
15:34 9 question.

15:34 10 Q. Okay. Now, I want to illuminate the last issue  
15:35 11 then. I think we figured out there's about 52 words in  
15:35 12 this question. And they didn't make it up. And we  
15:35 13 didn't make it up. Judge didn't make up this question.  
15:35 14 The legislature in Austin, those smart guys down there  
15:35 15 wrote this, and we're going to have to live with it, and  
15:35 16 and that's the question. That's the look-back question.

15:35 17 We call it the look-back question or the  
15:35 18 one last look at the defendant in a capital case where  
15:35 19 the jury's found him guilty or the jury's found that  
15:35 20 they are a future danger. And now they have a chance to  
15:35 21 take one last look and decide if there's sufficient  
15:35 22 mitigating circumstances to warrant a sentence of life  
15:35 23 as opposed to a sentence of death? And that's my  
15:35 24 summation. Does that help?

15:36 25 A. Yes.



15:36 1 Q. Now, to give you some clues, in the first part  
15:36 2 of the question, what you are going to have to take into  
15:36 3 consideration, all of the evidence. We just talked  
15:36 4 about that. You'll have a bunch, including the  
15:36 5 circumstances of the offense, the defendant's character  
15:36 6 and his background and the personal moral culpability of  
15:36 7 the defendant.

15:36 8 Any idea what that means? Personal moral  
15:36 9 culpability. Take a stab at it. There's no wrong  
15:36 10 answers.

15:36 11 A. I would take it to mean their moral, their  
15:36 12 ethics, their feelings about life, about other human  
15:36 13 beings.

15:36 14 Q. Absolutely. Look, I can't say that's right or  
15:36 15 wrong because they didn't give us a definition when they  
15:36 16 wrote it in Austin. And you are not going to have a  
15:37 17 definition at the end of the trial. Okay? So I think  
15:37 18 you made a real good first attempt at it. Okay? And I  
15:37 19 think that's kind of in line with what you've said  
15:37 20 earlier about being a bad seed, isn't it? I mean, a bad  
15:37 21 seed --

15:37 22 A. Oh, I kind of used that just as a term.

15:37 23 Q. Okay. Tell me how a bad seed would look at  
15:37 24 life.

15:37 25 A. I think there's -- unfortunately, there are

15:37 1 some people in this world that just don't care. They  
15:37 2 might know right from wrong --

15:37 3 Q. Sure?

15:37 4 A. -- but they don't care, and they don't have a  
15:37 5 conscience. If they could do something tomorrow, I  
15:37 6 mean, not to say that they don't have a wife and a child  
15:37 7 that they love very much, but then they can go off and  
15:37 8 do horrendous things.

15:37 9 Q. It's that same person we talked about that  
15:37 10 could go and kill a person just like they blow out, cut  
15:37 11 somebody's tires?

15:37 12 A. Exactly.

15:37 13 Q. Take a tire iron and break the front end of a  
15:38 14 car just like they break the front end of somebody's  
15:38 15 head.

15:38 16 A. Right.

15:38 17 Q. And not think a thing about it. Okay. You  
15:38 18 understand that if you get to this question, you are at  
15:38 19 the very end. You are at the last link of the chain.  
15:38 20 You are taking that one last look at the defendant, and  
15:38 21 you are seeing if there's sufficient mitigating  
15:38 22 circumstances to spare his life.

15:38 23 A. Yes.

15:38 24 Q. And you've indicated several times that you  
15:38 25 could answer that, no, there's no mitigating

15:38 1 circumstances. And if you say, no, you understand the  
15:38 2 effect of that is to -- it's a death penalty?

15:38 3 A. Yes, I do.

15:38 4 Q. Okay. Now, you've also answered that with  
15:38 5 respect to a murder in the course of a burglary. You  
15:39 6 would have a problem with that. I mean, do you recall  
15:39 7 saying that earlier, that you are not sure that you  
15:39 8 could give the death penalty if there was a murder in  
15:39 9 the course of a burglary?

15:39 10 A. That's correct.

15:39 11 Q. Okay. Now, I want you to think about that a  
15:39 12 little bit more. And I want you to think in terms of  
15:39 13 that bad seed, that guy that you have in your head. The  
15:39 14 one that goes out and breaks the front of a vehicle and  
15:39 15 goes and kills somebody, that kind of guy. Those guys  
15:39 16 can commit burglary, don't they?

15:39 17 A. Yes, they do, or they can.

15:39 18 Q. Okay. And you also mention the fact that some  
15:39 19 are habitual. Some do it over and over and over again.

15:39 20 A. Yes.

15:39 21 Q. Okay. Do you understand that -- and I can't  
15:39 22 tell you what the evidence is in this case. It's too  
15:39 23 early for me to do that. But there are some allegations  
15:39 24 in the indictment of robbery and burglary and a killing  
15:39 25 of two people. Okay? Are you telling us unequivocally

15:40 1 that, if there is only evidence of murder and burglary,  
15:40 2 that there is no way in this world that you could look  
15:40 3 at that and say, gee, there's no mitigation, and this  
15:40 4 guy's such a bad seed, I got to spare his life? Are you  
15:40 5 saying there's no way in that, in just a murder-burglary  
15:40 6 situation that you couldn't give the death penalty?

15:40 7 A. I would probably not be able to give the death  
15:40 8 penalty, no. Again, it's -- it's my feeling that, if a  
15:40 9 person would get life in prison, whatever, 99 years,  
15:40 10 whatever the terms are in Texas, that they would think  
15:40 11 about this for the rest of their lives. And, I mean, I  
15:40 12 don't know about you, but I certainly wouldn't want to  
15:40 13 have to live the rest of my life in prison. It's not  
15:40 14 the country club.

15:41 15 Q. I understand. And I sure wouldn't want to do  
15:41 16 it either. I understand completely. I want to make  
15:41 17 sure you understand what we're talking about with  
15:41 18 respect to burglary. You understand that burglary could  
15:41 19 be breaking in to kill somebody? That was explained to  
15:41 20 you back in voir dire. I think it was last Tuesday?

15:41 21 A. I --

15:41 22 Q. Or burglary could be breaking in with intent to  
15:41 23 kill somebody.

15:41 24 A. No. I didn't realize that. I always thought  
15:42 25 burglary was just breaking into a residence when there

15:42 1 was no one there and taking whatever you wanted. I  
 15:42 2 thought robbery was when you confronted someone.  
 15:42 3 Q. Okay. Well, I just want to make sure you are  
 15:42 4 clear on the law. That is one situation of burglary.  
 15:42 5 That's the most common and, boy, we have it rampant in  
 15:42 6 Plano with those high fences. That's what everybody  
 15:42 7 thinks about, but there are other burglarious  
 15:42 8 situations. Did you know that you could break in  
 15:42 9 somebody's house to rape them and accomplish the rape  
 15:42 10 and then kill them? And that's murder plus burglary?

15:42 11 MS. FALCO: Your Honor, I'm going to  
 15:42 12 object. But it's also sexual assault with just a  
 15:42 13 weapon. Aggravated sexual assault, that would be an  
 15:42 14 additional reason for capital murder. He's throwing in  
 15:42 15 an additional fact and committing her to a particular  
 15:42 16 set of facts, as opposed to just burglary with intent to  
 15:42 17 commit murder.

15:42 18 MR. HIGH: That's also sexual assault, as  
 15:42 19 well. Just so the explanation is complete.

15:43 20 Q. (BY MR. HIGH) Do you understand that?

15:43 21 A. Yes, I do.

15:43 22 Q. Okay. Burglary is any felony plus theft. And  
 15:43 23 that was explained to you last week. And I know you are  
 15:43 24 not a lawyer, but are you getting a sense that burglary  
 15:43 25 is more serious than just breaking into somebody's house

15:45 1 imprisonment.

15:45 2 Q. I understand that. But you understand that the  
 15:45 3 Judge would give you an oath to follow his instructions  
 15:45 4 and answer the questions and base the questions on the  
 15:45 5 evidence and discuss the questions with the other jurors  
 15:45 6 in deliberations. Do you understand that?

15:45 7 A. Yes, I do.

15:45 8 Q. And with respect to looking at these questions,  
 15:45 9 especially this one. Now, this is going to be based on  
 15:45 10 the evidence, everything that you've heard and then  
 15:45 11 voting your conscience. Do you understand that?

15:45 12 A. Yes, I do.

15:46 13 Q. And the Judge is going to instruct you to  
 15:46 14 consider the evidence and all the circumstances and vote  
 15:46 15 your conscience, and you are not going to -- because you  
 15:46 16 want to -- you would want to see him serve a life  
 15:46 17 sentence, because in your heart of hearts you want to  
 15:46 18 see him serve a life sentence, you're not going to  
 15:46 19 change your answer because the evidence shows something  
 15:46 20 differently? I mean, because the evidence shows no  
 15:46 21 mitigation whatsoever. Okay? Because you've heard the  
 15:46 22 evidence and you've considered the defendant's character  
 15:46 23 and background and his personal moral culpability which  
 15:46 24 is none. He's a bad seed after all, and he deserves to  
 15:46 25 die, you are not going to change or rig your answer so

15:43 1 when they are not there?

15:43 2 A. I am now.

15:43 3 Q. Okay. Does that change your answer with  
 15:43 4 respect to being able to apply the death penalty --  
 15:43 5 blah, blah, blah -- being able to apply the death  
 15:43 6 penalty in a burglary plus murder situation?

15:43 7 A. No, I would say it's not. Does not change my  
 15:43 8 opinion in my mind.

15:43 9 Q. You are telling me that, if somebody breaks in  
 15:43 10 to someone's house with intent to kill and they do kill  
 15:43 11 and they are charged with burglary and murder, which  
 15:44 12 makes it capital, you couldn't give the death penalty,  
 15:44 13 even if they were proven to be the worst seed  
 15:44 14 imaginable?

15:44 15 A. In most circumstances I would say no.

15:44 16 Q. I don't quite understand, if you will, why you  
 15:44 17 could consider the death penalty in a murder plus  
 15:44 18 robbery situation, but you can't consider in a murder  
 15:44 19 plus burglary situation. I'm not sure I understand  
 15:44 20 that. Could you explain that for me?

15:44 21 A. I guess -- I mean, what I'm really trying to  
 15:45 22 say is, I really don't think that in those  
 15:45 23 circumstances, either circumstance, that I probably  
 15:45 24 could sentence someone to death. I really feel that in  
 15:45 25 my heart, they would be much better off with life

15:46 1 that this person gets a life sentence, are you?

15:46 2 A. No, I would not.

15:46 3 Q. Okay. So you would, in fact, follow the  
 15:47 4 Court's instructions and apply the law and the evidence  
 15:47 5 in whatever mitigation is out there and vote the  
 15:47 6 instruction as your conscience and the evidence shows?

15:47 7 A. I would have to.

15:47 8 Q. Okay. And would you do that in the situation  
 15:47 9 where there was a burglary and a murder that occurred?  
 15:47 10 Murder plus burglary?

15:47 11 A. I would have to go according to the Court's  
 15:47 12 instructions, the Judge's instructions.

15:47 13 Q. Absolutely. And according to the evidence, as  
 15:47 14 well?

15:47 15 A. Yes.

15:47 16 Q. And the one thing I want to make sure of, and I  
 15:47 17 know how you feel. Okay? And I can't say, I probably  
 15:47 18 don't feel the same way. I mean, a life sentence is a  
 15:47 19 long time, especially with respect to capital murder.  
 15:47 20 It's 40 years. That's a long time.

15:47 21 A. Good.

15:47 22 Q. And it could be even longer than that because  
 15:48 23 you are not guaranteed parole after 40 years. I mean,  
 15:48 24 you could be denied parole any number of times. But you  
 15:48 25 understand that just because you think that a life

15:48 1 sentence is best and that may be what's most appropriate  
 15:48 2 in most cases, there are going to be those cases where  
 15:48 3 it's not appropriate and a death sentence would be  
 15:48 4 appropriate?

15:48 5 A. Yes, I do understand that.

15:48 6 Q. And we've already cleared up the fact with  
 15:48 7 burglary, murder and burglary. So, in all capital  
 15:48 8 murder scenarios, it's fair to say that you are going to  
 15:48 9 listen to the evidence and the law and the Judge's  
 15:48 10 instructions, vote your conscience and do what's right  
 15:48 11 with respect to the evidence, even if it means a death  
 15:49 12 sentence, especially in those cases where he's a bad  
 15:49 13 seed?

15:49 14 A. Yes, I would.

15:49 15 Q. I know I've asked you some long, drawn-out  
 15:49 16 complicated questions. Is there anything you are not  
 15:49 17 clear about?

15:49 18 A. No. I don't think so.

15:49 19 Q. Okay. Is there any questions you need to ask  
 15:49 20 me?

15:49 21 A. No.

15:49 22 MR. HIGH: All right. Very good. Pass  
 15:49 23 the juror, Judge.

15:49 24 THE COURT: All right.

15:49 25 VOIR DIRE EXAMINATION

15:49 1 BY MS. FALCO:

15:49 2 Q. Just briefly, Ms. Kolechta. I know you've got  
 15:49 3 to be getting tired. And these questions -- we seem to  
 15:49 4 be emphasizing the same thing over and over, but -- but  
 15:49 5 to make it clear in a situation where you have a  
 15:49 6 burglary plus murder, to make it a capital murder, if  
 15:50 7 that's all you got, is an intentionally entered a  
 15:50 8 person's home without effective consent of the homeowner  
 15:50 9 with the intent to kill him and murder, and that's all  
 15:50 10 you have. Is your preference for a life sentence such  
 15:50 11 that it would impair your -- substantially impair your  
 15:50 12 ability to vote for a death sentence when that's what  
 15:50 13 the evidence shows is a death sentence?

15:50 14 A. No. I don't believe so.

15:50 15 MR. HIGH: Judge, I'm going to have to  
 15:50 16 object. That's attempting to qualify this juror on a  
 15:50 17 specific, very narrow fact situation.

15:50 18 MS. FALCO: It's just capital murder. I'm  
 15:50 19 not defining which capital murder.

15:50 20 THE COURT: She's already answered the  
 15:50 21 question. She answered it "no."

15:50 22 Q. (BY MS. FALCO) When you were talking with  
 15:50 23 Mr. High, you said, if it's proven that he's the world's  
 15:51 24 worst person, I could do that. Our burden is just to  
 15:51 25 show you he's a future danger, and there's not

15:51 1 sufficient mitigating evidence. In a capital murder  
 15:51 2 where it's murder and burglary, if we show you not that  
 15:51 3 he's the world's worst person, if we just meet the  
 15:51 4 burden of proving he is a future danger and there is no  
 15:51 5 sufficient mitigating evidence, could you answer the  
 15:51 6 questions in such a way as to result in a death  
 15:51 7 sentence?

15:51 8 A. I really would need to hear all the testimony  
 15:51 9 before I could answer that.

15:51 10 Q. And understanding we can't --

15:51 11 A. I understand.

15:51 12 Q. -- give you more facts than that. Is there any  
 15:51 13 set of circumstances in a burglary plus murder situation  
 15:52 14 where it's capital murder and all we do is just meet our  
 15:52 15 burden as far as proving, yes, he's a future danger?  
 15:52 16 And then in the second question you find there's not  
 15:52 17 sufficient mitigating evidence, could you answer those  
 15:52 18 questions in such a way that result in a death sentence?

15:52 19 MR. HIGH: Judge, I'm going to have to  
 15:52 20 object. Again, it's very narrow, and it's very  
 15:52 21 specific. Secondly, it's already been asked and  
 15:52 22 answered.

15:52 23 THE COURT: Overruled. Do you want to say  
 15:52 24 the question one more time just to -- because it was --  
 15:52 25 it was a lengthy question. I want to make sure she gets

15:52 1 it.

15:52 2 Q. (BY MS. FALCO) Is there a fact situation in  
 15:52 3 your mind, since we can't discuss the facts of this  
 15:52 4 case, but specifically regarding a capital murder in  
 15:52 5 which it's burglary plus murder in that scenario, is  
 15:52 6 there a fact situation you can think of in which we, all  
 15:52 7 we do is just meet our burden, you know, prove to you  
 15:53 8 he's the worst person in the world. We proved to you  
 15:53 9 he's a future danger. And with regard to the mitigation  
 15:53 10 question, there are no sufficient mitigating facts.  
 15:53 11 Could you answer those questions in such a way to result  
 15:53 12 in a death sentence?

15:53 13 MR. HIGH: I'm going to renew my  
 15:53 14 objection, Judge.

15:53 15 THE COURT: Overruled.

15:53 16 VENIREPERSON: I really do not think that  
 15:53 17 I could sentence someone to death on that. I would have  
 15:53 18 to go with the life imprisonment or as many years as he  
 15:53 19 can get.

15:53 20 MS. FALCO: Thank you, Ms. Kolechta. We  
 15:53 21 reurge our challenge, Your Honor.

15:53 22 THE COURT: Is there anything else from  
 15:53 23 either side?

15:53 24 MR. HIGH: I want to go one more time with  
 15:53 25 her, Judge.

15:53 1 THE COURT: All right.

15:53 2 VOIR DIRE EXAMINATION

15:53 3 BY MR. HIGH:

15:53 4 Q. Ms. Kotechta, you understand there can be any  
15:53 5 number of facts associated. I mean, we're talking about  
15:53 6 a horrendous crime with a really bad seed that's  
15:54 7 committed burglary and murder. Do you understand that?

15:54 8 A. Yes, I do.

15:54 9 Q. You know, we could talk about a fellow that's  
15:54 10 been down four or five times in the penitentiary. He's  
15:54 11 just gotten out, goes in and beats up an elderly woman  
15:54 12 and kills her and murders her and rapes her. And, you  
15:54 13 know, he's a bad seed. Now that's a situation, isn't  
15:54 14 it, where you could consider --

15:54 15 MS. FALCO: Your Honor --

15:54 16 MR. HIGH: I'm going to ask if I can  
15:54 17 finish my question, Judge, because I haven't finished my  
15:54 18 question.

15:54 19 Q. (BY MR. HIGH) You could consider those facts,  
15:54 20 couldn't you, and at least consider with respect to  
15:54 21 mitigation that there's no sufficient mitigation? And  
15:54 22 that, yeah, in fact we're going to take that one last  
15:54 23 look and the answer is no. You could consider that,  
15:54 24 couldn't you?

15:54 25 MS. FALCO: Your Honor, again, I'm going

234

15:54 1 to object to committing her to a particular set of  
15:54 2 facts. He also injected, this is not just capital  
15:54 3 murder, but murder plus burglary. But he threw in there  
15:54 4 rape. He's adding facts and making it more specific.  
15:54 5 And I object to it on those grounds.

15:55 6 THE COURT: I'll sustain the objection.

15:55 7 Q. (BY MR. HIGH) Well, now --

15:55 8 THE COURT: If you remember the question,  
15:55 9 go ahead.

15:55 10 Q. (BY MR. HIGH) Now, you understand -- you've  
15:55 11 told this Court several times that you would have to  
15:55 12 hear the evidence, right?

15:55 13 A. That's correct.

15:55 14 Q. And when you answer Ms. Falco's question, you  
15:55 15 have no evidence whatsoever before you, do you, ma'am?

15:55 16 A. No, I do not.

15:55 17 Q. Okay. But, I mean --

15:55 18 A. I would tend to think when you are getting to  
15:55 19 this type of crime that when you get to the last  
15:55 20 question about mitigating circumstances, in this arena  
15:55 21 there probably is going to be some mitigating  
15:55 22 circumstances. I would find it kind of hard to believe  
15:55 23 that there would not be something that would be  
15:55 24 mitigating.

15:55 25 Q. Absolutely, and I don't quarrel with that.

15:55 1 It's got to be sufficient mitigating circumstances to  
15:55 2 warrant that a life sentence be imposed as opposed to a  
15:55 3 death sentence.

15:55 4 A. Yes.

15:56 5 Q. Now, I'm going to ask you again, with respect  
15:56 6 to a burglary situation where a murder has occurred,  
15:56 7 breaking into somebody's house or killing or robbery or  
15:56 8 sexual assault, you know, we're talking about a killing.  
15:56 9 Maybe several people were killed. Is it your testimony  
15:56 10 that there is no set of circumstances whereby you could  
15:56 11 find no mitigating evidence, thereby answering the  
15:56 12 question no, causing a death sentence to be imposed?

15:56 13 A. I've answered before that I, in my heart, I  
15:56 14 really could not sentence someone to death. I just feel  
15:56 15 that that would be like me shooting them. I just -- I  
15:56 16 just couldn't do it.

15:56 17 Q. But you could do it in a robbery situation?

15:57 18 A. Again, it would depend on the circumstances. I  
15:57 19 mean, you are giving me just scenarios here, and --

15:57 20 Q. I know, and they are not giving you any  
15:57 21 scenarios.

15:57 22 A. And me may get into court and there may be  
15:57 23 something that from the get-go.

15:57 24 Q. I understand. And you understand that you are  
15:57 25 going to hear a whole lot of evidence before you are

236

15:57 1 even going to have to answer that question.

15:57 2 A. Yes, I do.

15:57 3 Q. Okay. You are going to have the benefit of the  
15:57 4 evidence and the circumstances, the background, and the  
15:57 5 personal moral culpability and the bad seed type  
15:57 6 evidence. You're not going to be at the disadvantage  
15:57 7 you are now.

15:57 8 A. I understand that.

15:57 9 Q. Okay. And you're still saying that in a  
15:57 10 burglary-murder situation, you can't envision a  
15:57 11 situation where you could -- you could answer no to that  
15:57 12 question?

15:57 13 A. It would be very difficult.

15:58 14 Q. Okay. So now you are saying that you could?  
15:58 15 There is a possibility you could answer no; is that  
15:58 16 right?

15:58 17 A. Now you are starting to twist words.

15:58 18 Q. Well, ma'am, with all due respect, a man's life  
15:58 19 is on trial here.

15:58 20 A. I understand that.

15:58 21 Q. And I don't mean --

15:58 22 A. But I'm the one --

15:58 23 MR. SCHULTZ: Excuse me, Judge. I'm going  
15:58 24 to object to arguing with the juror.

15:58 25 MR. HIGH: If I argued, I take that back.

15:58 1 THE COURT: Just ask questions.  
 15:58 2 Q. (BY MR. HIGH) Certainly, I didn't mean  
 15:58 3 anything by that, ma'am. But, you know, when you say  
 15:58 4 something like that, I have to explore it. You  
 15:58 5 understand I have a responsibility to explore it with  
 15:58 6 you?  
 15:58 7 A. Yes.  
 15:59 8 Q. If I understood your answer to the last  
 15:59 9 question, you seemed to intimate to me that you've  
 15:59 10 reconsidered your position and there is a possibility,  
 15:59 11 however slight, that you could answer that question no  
 15:59 12 in a burglary-murder situation and, thereby, assess a  
 15:59 13 death penalty; is that correct? There is a possibility?  
 15:59 14 A. There is a possibility, but it would be  
 15:59 15 extremely slight.  
 15:59 16 MR. HIGH: Okay. Fair enough. I'll pass  
 15:59 17 the juror.  
 15:59 18 MR. SCHULTZ: A moment please, Judge.  
 15:59 19 THE COURT: All right.  
 15:59 20 VOIR DIRE EXAMINATION  
 16:00 21 BY MS. FALCO:  
 16:00 22 Q. Ms. Kolechta, are we still in the same place as  
 16:00 23 we were before we started going back and forth? If  
 16:00 24 we're in a situation where it's a burglary-murder, and  
 16:00 25 what we proved to you is the minimum that we have to

16:00 1 prove to you to get a death sentence, which is either  
 16:00 2 future danger or -- there's no sufficient mitigating  
 16:00 3 circumstances. Could you vote in such a way that caused  
 16:00 4 the defendant to have a death sentence?  
 16:00 5 MR. HIGH: I'd have to object, Judge.  
 16:00 6 This has been asked and answered.  
 16:00 7 THE COURT: I'll allow her to ask it one  
 16:00 8 more time.  
 16:00 9 Q. (BY MS. FALCO) Is that still your position?  
 16:00 10 A. Yes, it is.  
 16:01 11 MS. FALCO: Your Honor, we renew our  
 16:01 12 challenge.  
 16:01 13 MR. HIGH: Judge, we object to the  
 16:01 14 challenge.  
 16:01 15 THE COURT: All right. I grant the  
 16:01 16 challenge for cause. And that means that you are  
 16:01 17 finally excused. Thank you, Ms. Kolechta.  
 16:01 18 MR. GOELLER: Thanks for coming in. Thank  
 16:01 19 you.  
 16:01 20 VENIREPERSON: Good luck to all of you.  
 16:01 21 (Venireperson Kolechta excused.)  
 16:01 22 THE COURT: And let's see here, we're  
 16:01 23 going to call in Donna Price. Donna Price is a 1.  
 16:01 24 (Venireperson Price present.)  
 16:04 25 THE COURT: Ma'am, are you Donna Price?

16:04 1 VENIREPERSON: Yes.  
 16:04 2 THE COURT: Do you recall that last  
 16:04 3 Tuesday I administered an oath to all the jurors? And  
 16:04 4 if you recall, the oath was to truthfully answer all the  
 16:04 5 questions that are put to you, and that includes the  
 16:05 6 attorneys from both sides. But I just want to remind  
 16:05 7 you of that oath and tell you that you are still under  
 16:05 8 oath to answer truthfully any questions put to you  
 16:05 9 today.  
 16:05 10 VENIREPERSON: All right.  
 16:05 11 THE COURT: All right. Please be seated.  
 16:05 12 All right. Mr. Goeller?  
 16:05 13 MR. GOELLER: Thank you, Your Honor.  
 16:05 14 VOIR DIRE EXAMINATION  
 16:05 15 BY MR. GOELLER:  
 16:05 16 Q. Good afternoon, Ms. Price.  
 16:05 17 A. Good afternoon.  
 16:05 18 Q. My name is Matthew Goeller. I'm an attorney,  
 16:05 19 and I represent Ivan seated down at the table. He's  
 16:05 20 obviously the citizen accused. This is Mr. Don High,  
 16:05 21 and he's my partner, and he represents Ivan with me.  
 16:05 22 And I think you probably recall the  
 16:05 23 State's attorneys from the other day. We have Ms. Lowry  
 16:05 24 and Ms. Falco and Mr. Schultz with the Collin County  
 16:05 25 District Attorney's office. And they represent the DA's

16:05 1 office, obviously, the prosecutors.  
 16:06 2 Since last Tuesday, was that kind of a  
 16:06 3 shock to you when you showed up over at the other little  
 16:06 4 building and you found out what this case was all about?  
 16:06 5 And that it was a very serious -- a very serious  
 16:06 6 criminal case? Have you done any thinking about this  
 16:06 7 whole thing, probably more involving the death penalty  
 16:06 8 since I think that's what grabbed a lot of folks'  
 16:06 9 attention last Tuesday? What are some thoughts you've  
 16:06 10 had this past week?  
 16:06 11 A. Just basically, you know, how I would see this  
 16:06 12 case if -- if I had all the facts. You know, what I  
 16:06 13 would believe in.  
 16:06 14 Q. Yeah.  
 16:06 15 A. Really, that's really about it. You know,  
 16:06 16 those are the thoughts that run through my mind.  
 16:06 17 Q. You are -- without flipping all the way  
 16:06 18 through, what do you do for a living, Donna?  
 16:06 19 A. I am in a management position.  
 16:06 20 Q. With?  
 16:06 21 A. With World Com.  
 16:06 22 Q. I'm sorry?  
 16:06 23 A. World Com.  
 16:07 24 Q. World Com. Wireless phones?  
 16:07 25 A. No. Long distance.

16:07 1 Q. Long distance?  
 16:07 2 A. Company, uh-huh.  
 16:07 3 Q. Land line long distance company?  
 16:07 4 A. Yes.  
 16:07 5 Q. How long have you been in that field?  
 16:07 6 A. For ten years.  
 16:07 7 Q. Do you have -- do you have a technical  
 16:07 8 background or a marketing background or a management  
 16:07 9 background as far as education goes?  
 16:07 10 A. For education I have journalism, and I have  
 16:07 11 Spanish.  
 16:07 12 Q. I guess a journalism background probably equips  
 16:07 13 you for all sorts of employment. It's kind of like an  
 16:07 14 English major. You know, there are many many things  
 16:07 15 that you can do with either journalism or English. They  
 16:07 16 are pretty related. Did you take a lot of English  
 16:07 17 cases?  
 16:07 18 A. No. Just the basic ones.  
 16:07 19 Q. Were you a journalism major?  
 16:07 20 A. Journalism major and advertising.  
 16:07 21 Q. Okay. Okay. On your questionnaire, Donna, you  
 16:07 22 circled, regarding your statements about your feelings  
 16:08 23 about the death penalty, I think you had five options.  
 16:08 24 Ranging from: I think death should be imposed in all  
 16:08 25 capital murder cases. And then the next one was,

16:08 1 appropriate in some. And the next one was, although I  
 16:08 2 don't believe in it, I could give it.  
 16:08 3 The next one is, I don't like the death  
 16:08 4 penalty; and, therefore, I'm not going to give it. And  
 16:08 5 the last one is, I never, ever, ever could be part of  
 16:08 6 something that would end up causing somebody to be put  
 16:08 7 to death.  
 16:08 8 You circled No. 1, "I believe the death  
 16:08 9 penalty should be imposed in all capital murder cases."  
 16:08 10 Tell me about that. Why do you feel that way? And  
 16:08 11 understand my questions to you -- you and I will  
 16:08 12 never -- what am I trying to say? Remember my comments  
 16:08 13 to you last Tuesday. If you shoot straight with me, I  
 16:08 14 would be so thankful to you.  
 16:08 15 A. Uh-huh.  
 16:08 16 Q. Some people get up here and think this  
 16:08 17 courtroom is the place to be politically correct and,  
 16:09 18 you know?  
 16:09 19 A. Uh-huh.  
 16:09 20 Q. Just want to sit on a fence, and I want to tell  
 16:09 21 the lawyers what I think the lawyers want to hear, or I  
 16:09 22 want to say what maybe will make everyone in the  
 16:09 23 courtroom kind of like me. And that's -- that's  
 16:09 24 probably standard in our society these days for many  
 16:09 25 many situations: cocktail parties, job interviews, down

16:09 1 at the school PTA. Who knows what? But I would say in  
 16:09 2 a potential death penalty case like this --  
 16:09 3 A. Uh-huh.  
 16:09 4 Q. -- the last thing I want you to be is  
 16:09 5 politically correct. If you shoot with me from down in  
 16:09 6 here and in here, I'll buy you a cup of coffee any day  
 16:09 7 of the week I see you. Okay? Tell me what you mean  
 16:09 8 when you say, I believe the death penalty should be  
 16:09 9 imposed in all capital murder cases?  
 16:09 10 A. What I believe is that when I made that  
 16:09 11 statement or when I circled that question is, I feel if  
 16:10 12 the individual did commit the crime, that they should be  
 16:10 13 responsible for it, and they should pay the penalty for  
 16:10 14 what they caused.  
 16:10 15 And, of course, there are certain  
 16:10 16 situations where I believe that, if it's a criminal case  
 16:10 17 where it might not be that case such as, you know, I  
 16:10 18 remember we talked about it last Tuesday where it's, you  
 16:10 19 know, maybe for self-defense or the person committed a  
 16:10 20 criminal crime and stuff like that. But I believe that  
 16:10 21 the person should be responsible for the act that they  
 16:10 22 committed.  
 16:10 23 Q. Okay.  
 16:10 24 A. If that person is accused of it.  
 16:10 25 Q. You bet. And I don't think -- I think most

16:10 1 criminal defense attorneys, no matter how left or  
 16:10 2 liberal they are --  
 16:10 3 A. Uh-huh.  
 16:10 4 Q. -- they would not disagree with you. I mean,  
 16:10 5 if it's proven beyond a reasonable doubt that somebody  
 16:10 6 has engaged in criminal conduct, there should be  
 16:10 7 consequences of their actions. What those consequences  
 16:10 8 are, is, you know, we can talk for weeks about that.  
 16:11 9 But in a capital murder case, the State in this case and  
 16:11 10 in the indictment has alleged that there was a murder in  
 16:11 11 the course of a burglary, a burglary of a habitation, I  
 16:11 12 think the indictment says "habitation." And an entry  
 16:11 13 into somebody -- an unlawful entry into somebody's home.  
 16:11 14 And a murder took place or a robbery-murder, as we would  
 16:11 15 call it, in the course of committing theft by use of  
 16:11 16 force. Somebody was killed.  
 16:11 17 A. Uh-huh.  
 16:11 18 Q. And then there's another paragraph of a double  
 16:11 19 homicide. Two allegations that two people were killed  
 16:11 20 in the same criminal episode. That's what capital  
 16:11 21 murder is. And in the first phase of a trial, if you  
 16:11 22 think of phase one as: Did they do it or didn't they?  
 16:11 23 A. Right.  
 16:11 24 Q. Okay. We call it the guilt-innocence phase.  
 16:12 25 You know, it's for lack of -- lack of any other phrase

16:12 1 we can come up with for the first part of the trial.  
 16:12 2 But the State has the burden of proof, and they have to  
 16:12 3 prove that the person is guilty of the capital murder.

16:12 4 A. Uh-huh.

16:12 5 Q. And if they do that beyond a reasonable doubt,  
 16:12 6 the Judge would instruct you, if the State proves their  
 16:12 7 case beyond a reasonable doubt that a person committed  
 16:12 8 capital murder, you should by your verdict say guilty.  
 16:12 9 And the Judge would probably give you another  
 16:12 10 instruction that says, if you have a reasonable doubt or  
 16:12 11 a doubt based on reason or you can't tell whether it was  
 16:12 12 capital or some other, maybe just regular murder. And I  
 16:12 13 don't mean that.

16:12 14 I hate to use that word regular, but  
 16:12 15 noncapital murder, nondeath penalty murder. Murder or  
 16:12 16 burglary or robbery or theft or criminal trespass or  
 16:12 17 something like that. The Judge would say, find him  
 16:12 18 guilty of one of the, or find him not guilty of the more  
 16:13 19 serious offense. And let's consider this offense. And  
 16:13 20 if you have a doubt about that, find him not guilty on  
 16:13 21 that one and go to this. You know, what I'm trying to  
 16:13 22 say?

16:13 23 A. Uh-huh.

16:13 24 Q. And if a person, if the jury unanimously finds,  
 16:13 25 all 12 jurors find beyond a reasonable doubt that a

16:13 1 defendant is guilty of capital murder, we go into the  
 16:13 2 punishment phase. Do you recall what the only two  
 16:13 3 options are, if the jury has found somebody guilty of  
 16:13 4 capital murder?

16:13 5 A. Life imprisonment? Is that the one you are  
 16:13 6 talking about?

16:13 7 Q. Right. Or?

16:13 8 A. Or the death penalty.

16:13 9 Q. Right. The death penalty. Do you recall  
 16:13 10 generally how the jury arrives at that decision, whether  
 16:13 11 it's life or death?

16:13 12 A. I apologize. I don't.

16:13 13 Q. That's okay. Let me go over it real quickly  
 16:13 14 with you here. We get to these questions. These are  
 16:13 15 called the special issue questions. And there's  
 16:13 16 basically two questions that will determine whether  
 16:14 17 somebody gets a life sentence in the penitentiary or  
 16:14 18 they'll be sentenced to death.

16:14 19 A. Uh-huh.

16:14 20 Q. The first, and of course we only get to these  
 16:14 21 if they have been found guilty of capital murder. Okay?  
 16:14 22 Murder, that murder plus. Remember Mr. Schultz talking  
 16:14 23 about murder plus?

16:14 24 A. Uh-huh.

16:14 25 Q. So if it's capital, if you found him guilty of

16:14 1 just, say, murder or burglary or robbery or criminal  
 16:14 2 trespass or discharging a firearm within city limits or  
 16:14 3 something of that nature, then you'd never get to these  
 16:14 4 questions.

16:14 5 A. Right.

16:14 6 Q. And then you just probably talk about  
 16:14 7 penitentiary or probation. But if they are found guilty  
 16:14 8 of capital murder, the first question the jury has to  
 16:14 9 answer is: Is there a -- whether there is a probability  
 16:14 10 they would commit criminal acts of violence that  
 16:14 11 constitute a continuing threat to society. We call it  
 16:14 12 the future dangerousness question.

16:14 13 A. Right.

16:14 14 Q. The State has to prove that beyond a reasonable  
 16:15 15 doubt. They have the burden of proof on that. If they  
 16:15 16 don't prove it or the jury has a doubt about their  
 16:15 17 evidence, I suppose, then the Judge would probably  
 16:15 18 instruct you, answer that no.

16:15 19 But if they prove it beyond a reasonable  
 16:15 20 doubt, the Judge would probably give you an instruction.  
 16:15 21 They met their burden of proof. They bring you  
 16:15 22 sufficient evidence individually and then collectively  
 16:15 23 as a jury, they prove that to you beyond a reasonable  
 16:15 24 doubt, the Judge would probably give you an instruction:  
 16:15 25 Answer the question "yes."

16:15 1 A. Uh-huh.

16:15 2 Q. Okay? Now, if the answer to that question is  
 16:15 3 no, what will happen in that case? Let's say the jury  
 16:15 4 says, no, we don't find beyond a reasonable doubt  
 16:15 5 there's a probability of that future dangerousness, what  
 16:15 6 do you think would happen at that point?

16:15 7 A. I'm not sure. Sorry. I forgot everything I  
 16:16 8 learned last week.

16:16 9 Q. That's okay. You are not a lawyer. Actually  
 16:16 10 the trial would be over.

16:16 11 A. Okay.

16:16 12 Q. The trial would be -- if the jury says no, no,  
 16:16 13 we don't find that, that's the end of it. And the best  
 16:16 14 thing a juror could hear from the Judge would be, thank  
 16:16 15 you. We can all go home now because the trial is over.

16:16 16 A. Okay.

16:16 17 Q. And what would happen is there would be an  
 16:16 18 automatic life sentence. That's the end of the trial.  
 16:16 19 Because once a person has been found guilty of capital  
 16:16 20 murder, only two things are going to happen: life or  
 16:16 21 death. That's it. There are no other options.

16:16 22 So if the answer to that question was no  
 16:16 23 to that first question, trial is over, life sentence.  
 16:16 24 The Judge says, the defendant will rise, and the Court  
 16:16 25 hereby assesses you to life confinement in the

16:16 1 penitentiary.  
 16:16 2 If the jury, though, answers that question  
 16:16 3 yes, unanimously, beyond a reasonable doubt based on the  
 16:16 4 State's burden and evidence, there's one really -- one  
 16:17 5 last question the jury has to consider. And this is  
 16:17 6 what we call the -- the mitigation special issue. It's  
 16:17 7 kind of that last look.  
 16:17 8 It's really a question that collectively,  
 16:17 9 individually and collectively as a jury, what's the jury  
 16:17 10 think the right thing to do in this case is? Do they  
 16:17 11 give a person life, or do they give a person death?  
 16:17 12 A. Uh-huh.  
 16:17 13 Q. Do you remember this question? I think it was  
 16:17 14 up on the PowerPoint up on the wall over there. Do you  
 16:17 15 want to take just a second and maybe review that? What  
 16:17 16 do you think that question is really asking?  
 16:18 17 A. If basically their background and that could  
 16:18 18 have caused the actual act to happen.  
 16:18 19 Q. Yeah. Yeah, that's kind of, that's some --  
 16:18 20 A. Maybe that could play a part of it.  
 16:18 21 Q. Character and background and all those kinds of  
 16:18 22 things probably really don't figure into whether a  
 16:18 23 person's guilty or not guilty. It maybe would do some  
 16:18 24 explaining as to why they did it, but --  
 16:18 25 A. Uh-huh.

16:18 1 Q. -- it's kind of a -- a last look.  
 16:18 2 A. Uh-huh.  
 16:18 3 Q. Look at everything. Just look at everything  
 16:18 4 you've heard in this case.  
 16:18 5 A. Uh-huh.  
 16:18 6 Q. Weigh it, throw it around in your head, talk  
 16:18 7 about it back in the jury deliberation room and have the  
 16:18 8 jury try to do the right thing.  
 16:18 9 A. Uh-huh.  
 16:18 10 Q. Whether it's the death penalty or life  
 16:18 11 confinement. When I -- when I see your questionnaire  
 16:19 12 and you say, "I believe the death penalty should be  
 16:19 13 imposed in all capital cases," I guess what I'm asking  
 16:19 14 is, or my question to you would be: As you -- as Donna  
 16:19 15 sits there, do these questions really matter to you? Or  
 16:19 16 if you've already found, if you've already found -- and  
 16:19 17 trust me, I won't --  
 16:19 18 A. Uh-huh.  
 16:19 19 Q. -- debate, argue with you. I'll respect your  
 16:19 20 opinion, no matter what. If you already found that a  
 16:19 21 person, say, intentionally and knowingly --  
 16:19 22 A. Uh-huh.  
 16:19 23 Q. -- killed two people.  
 16:19 24 A. Uh-huh.  
 16:19 25 Q. Or broke in with intent to commit a felony,

16:19 1 say, murder or something and then killed them or broke  
 16:19 2 in to steal.  
 16:19 3 A. Uh-huh.  
 16:19 4 Q. Take by force, and then kill the people. All  
 16:19 5 three of those are capital.  
 16:19 6 A. Uh-huh.  
 16:19 7 Q. If you have already found that beyond a  
 16:19 8 reasonable doubt and have found the person guilty of  
 16:19 9 capital murder as you sit there, is it an automatic  
 16:20 10 death sentence for you?  
 16:20 11 A. Yes, it is.  
 16:20 12 Q. Okay. Okay. Okay. And there's nothing wrong  
 16:20 13 with that.  
 16:20 14 A. Uh-huh.  
 16:20 15 Q. But just I have to make sure the record is  
 16:20 16 clear and to protect my client. A defendant who has  
 16:20 17 been found guilty of capital murder, in your book, is  
 16:20 18 not going to get a fair shake from you on the special  
 16:20 19 issues because you truly believe, if you found him  
 16:20 20 guilty of capital murder --  
 16:20 21 A. Uh-huh.  
 16:20 22 Q. -- they are going to die? They need to get the  
 16:20 23 death penalty, and that's how you look at it?  
 16:20 24 A. Yes, I do.  
 16:20 25 Q. All right. And nothing -- nothing I say or

16:20 1 Mr. Schultz would say or the Judge would say is going to  
 16:20 2 change your mind about that? That's how Donna Price  
 16:20 3 views homicide, in general?  
 16:20 4 A. Uh-huh.  
 16:20 5 Q. And the penalty that one ought to pay for  
 16:20 6 intentionally killing in the course of burglary, robbery  
 16:21 7 or multiple deaths, multiple homicide, homicide?  
 16:21 8 A. Correct.  
 16:21 9 Q. Do you have any questions for me?  
 16:21 10 A. No.  
 16:21 11 Q. Okay, okay. If -- if the Judge told you, gave  
 16:21 12 you an instruction that these, and you took an oath,  
 16:21 13 let's say you took an oath --  
 16:21 14 A. Uh-huh.  
 16:21 15 Q. -- that you would fairly consider these  
 16:21 16 questions. And what that really means is: Could you  
 16:21 17 fairly consider life confinement, really? Would you be  
 16:21 18 forced to violate your oath because you already know you  
 16:21 19 are going to vote for death, figure out a way to bring  
 16:21 20 about a death sentence based on your own personal  
 16:22 21 convictions?  
 16:22 22 A. Yes, because I strongly believe that.  
 16:22 23 Q. I understand, Donna. And I thank you very much  
 16:22 24 for your honesty. I applaud you. I applaud you,  
 16:22 25 because you speak from the heart, and you speak the



16:22 1 truth. You don't speak it with a forked tongue. And I  
16:22 2 can't tell you how much I appreciate that. Thank you.  
16:22 3 And I would submit for -- I'm sorry. Am I supposed to  
16:22 4 say that right now?

16:22 5 THE COURT: Let's see what the State has.  
16:22 6 Let's see here. You only used about 17 minutes. So let  
16:22 7 me ask Ms. Lowry.

16:22 8 VOIR DIRE EXAMINATION

16:22 9 BY MS. LOWRY:

16:22 10 Q. Ms. Price, I'm Ms. Lowry. And let me just go  
16:22 11 ahead and tell you because everybody in this room knows  
16:22 12 it probably but you. I haven't turned completely red  
16:22 13 yet, but any minute I will be. I'm completely probably  
16:22 14 more nervous than you are. So, I just want to get that  
16:22 15 out on the table. So if my voice shakes, anything like  
16:23 16 that, they are all going to be chuckling, and now you  
16:23 17 know why. Okay?

16:23 18 And feel free, if I'm talking too fast  
16:23 19 because I've forgotten to breathe, it's quite all right  
16:23 20 just to tell me that because sometimes I do forget.

16:23 21 A. Uh-huh.

16:23 22 Q. I notice that you are from Laredo.

16:23 23 A. Uh-huh.

16:23 24 Q. Did you go to high school there and everything  
16:23 25 like that?

16:23 1 A. Yes.

16:23 2 Q. My husband's children actually live there. And  
16:23 3 their mom is from there and so is their stepdad. So  
16:23 4 we're pretty familiar with that area. You don't happen  
16:23 5 to know Erica Hay, do you?

16:23 6 A. No.

16:23 7 Q. Ward Cox?

16:23 8 A. No.

16:23 9 Q. I know it's a big place.

16:23 10 A. I left a long time ago.

16:23 11 Q. When you filled out your questionnaire, what  
16:23 12 was your idea of what capital murder was?

16:23 13 A. A person who committed murder, has been  
16:23 14 convicted of committing a murder, and that's --

16:23 15 Q. And were you contemplating, I guess, all  
16:23 16 different situations in which someone might commit  
16:23 17 capital murder when you were thinking about how to  
16:23 18 answer this questionnaire?

16:24 19 A. No. When I answered it, I only saw it one way.  
16:24 20 Somebody committed the murder and that was it. I didn't  
16:24 21 look at other situations such as, was it for defense or  
16:24 22 was it for, you know, that person -- could, was sick. I  
16:24 23 didn't look at it that way. I just basically saw it as  
16:24 24 somebody committed a murder, uh-huh.

16:24 25 Q. And in all honesty, when most people think

16:24 1 about capital murder, I know that I used to when I  
16:24 2 thought about capital murder. It was a horrible crime.  
16:24 3 Just somebody really horrible had to do it. And that's  
16:24 4 kind of what capital murder was. They just went out and  
16:24 5 killed people because they don't care about anything.

16:24 6 A. To me a murder is a murder, you know? I didn't  
16:24 7 know there was a difference between capital and just  
16:24 8 another type of murder. I just saw it one way.

16:24 9 Q. And certainly your opinion, your beliefs that  
16:24 10 people who commit crimes like that, people who go out  
16:24 11 and kill people, deserve the death penalty. Just  
16:24 12 because you think someone ought to get the death  
16:25 13 penalty, doesn't necessarily disqualify you from being  
16:25 14 on the jury where the death penalty is a possibility.  
16:25 15 Does that make sense?

16:25 16 A. Yes.

16:25 17 Q. What we have to know is is that something  
16:25 18 that's going to be automatic with you? What my question  
16:25 19 is, because you are going to be asked to answer these  
16:25 20 questions. And certainly at this point you don't know  
16:25 21 anything about the facts of this case. You don't know  
16:25 22 anything about this defendant; is that right?

16:25 23 A. That's correct.

16:25 24 Q. Let's talk just a little bit about what capital  
16:25 25 murder could be. I know that Mr. Schultz brought this

16:25 1 up a little bit on Tuesday. I don't know if you gave it  
16:25 2 any thought. But what about an instance where it's the  
16:25 3 father whose child has been killed by two different  
16:25 4 people or by two people and they get off on that charge,  
16:25 5 on some technicality and walk out of the courtroom  
16:25 6 basically laughing. And he just can't handle that. He  
16:25 7 goes out and kills them.

16:25 8 He's now killed two people in the same  
16:25 9 course, and that's technically capital murder. What  
16:25 10 we're going to ask you, if you found that person guilty  
16:25 11 of capital murder, is to answer this first question  
16:25 12 whether or not he's going to be a future danger.

16:26 13 What kinds of things do you think that you  
16:26 14 would take into account when you are determining whether  
16:26 15 or not someone would be a future danger?

16:26 16 A. They would be able to hurt others or even  
16:26 17 themselves.

16:26 18 Q. Okay. And going along with the hypothetical --  
16:26 19 see, I'm doing it already. The whole stuttering thing.  
16:26 20 My chest is getting more red by the minute. Sorry.  
16:26 21 Along with that hypothetical, do you think someone like  
16:26 22 that would be necessarily a future danger?

16:26 23 A. I think so.

16:26 24 Q. Why is that?

16:26 25 A. Because if that person committed a crime such

16:26 1 as a murder, which that is not going to prevent them  
16:26 2 from doing it again.

16:26 3 Q. As far as your beliefs on the death penalty and  
16:26 4 that someone who is committing a crime like that, are  
16:26 5 you the kind of person that's so committed to the death  
16:26 6 penalty that no matter what the evidence is, you are  
16:26 7 going to basically rig your answers in a way that they  
16:27 8 get the death penalty regardless of what the evidence  
16:27 9 actually shows?

16:27 10 A. No. I would have to look at the whole  
16:27 11 situation as well. I mean, you know, I only have part  
16:27 12 of what, you know, what the situation is. And I can't  
16:27 13 make a decision with just what I have. I have to really  
16:27 14 know the whole scenario in order to make a fair  
16:27 15 decision.

16:27 16 Q. Because the Judge in this case is going to give  
16:27 17 you the law in this case and basically what he's going  
16:27 18 to tell you is that the law says that what you have to  
16:27 19 do, assuming that you found someone guilty of a capital  
16:27 20 murder is: Look at this question and evaluate the  
16:27 21 evidence because the burden of proof in this question is  
16:27 22 on the State.

16:27 23 A. Uh-huh.

16:27 24 Q. We have to bring you evidence that shows that  
16:27 25 there's a probability --

16:27 1 A. Uh-huh.

16:27 2 Q. -- that the defendant is going to commit some  
16:27 3 acts of violence that would constitute a continuing  
16:27 4 threat to society.

16:27 5 A. Okay.

16:27 6 Q. If we don't bring you that evidence --

16:27 7 A. Uh-huh.

16:27 8 Q. -- are you still going to answer that question  
16:27 9 in a way that's going to result in the death penalty, or  
16:27 10 are you going to follow the law? See there, I go. I  
16:28 11 forget to take a breath. Are you going to follow the  
16:28 12 law that the Judge gives you that says, if there's not  
16:28 13 enough evidence, if you don't believe it beyond a  
16:28 14 reasonable doubt, that you must answer that question no.  
16:28 15 Does that make sense?

16:28 16 A. Yes, it does. And if there's not enough  
16:28 17 evidence, then I would have to look at the -- at what  
16:28 18 has been presented to me.

16:28 19 Q. And you would require the State then to bring  
16:28 20 you the evidence --

16:28 21 A. That's correct.

16:28 22 Q. -- necessary to make you believe beyond a  
16:28 23 reasonable doubt that somebody is going to be a future  
16:28 24 danger before you would answer that question yes?  
16:28 25 A. That's correct.

16:28 1 Q. And that's all we're asking of you, is just to  
16:28 2 listen to the evidence that we bring to you and to  
16:28 3 answer those questions based on that evidence, rather  
16:28 4 than imposing basically your own law that says: This is  
16:28 5 what I want, so this is what I'm going to do. Does that  
16:28 6 make sense?

16:28 7 A. Yes.

16:28 8 Q. So after this question comes -- I don't know if  
16:28 9 you recall the mitigation question.

16:28 10 A. The first one, or the one about --

16:28 11 Q. See, and now I'm trying to -- walking and  
16:28 12 talking, and this gets really complicated.

16:28 13 A. -- family and all that stuff?

16:28 14 Q. And it's just going to be the same thing with  
16:29 15 the mitigation question. There's actually no burden of  
16:29 16 proof on the mitigation question.

16:29 17 A. Uh-huh.

16:29 18 Q. Once again, the Judge is just going to instruct  
16:29 19 you that you are to listen to the evidence.

16:29 20 A. Uh-huh.

16:29 21 Q. An base your answer to this question fairly on  
16:29 22 that evidence.

16:29 23 A. Uh-huh.

16:29 24 Q. Certainly one thing that might be mitigating to  
16:29 25 you might be aggravating to another and vice versa,

16:29 1 things like that. So my question is to you: Are you  
16:29 2 going to follow the Judge's instructions and base your  
16:29 3 answer to this question on the evidence rather than what  
16:29 4 you want the outcome to be?

16:29 5 A. Correct, yes.

16:29 6 Q. And I guess that's similar to like obviously  
16:29 7 you drove up here today, right?

16:29 8 A. Uh-huh.

16:29 9 Q. Did you see any speed limit signs along the  
16:29 10 way?

16:29 11 A. Yes, I did.

16:29 12 Q. When you see those signs do you just  
16:29 13 automatically disregard those, or do you think about  
16:29 14 those and think, okay, you know, what? That's the law.

16:29 15 A. Uh-huh.

16:29 16 Q. That's what I'm supposed to be doing. Or do  
16:29 17 you just disregard them and do what you want to do?

16:30 18 A. No. I go by what -- that's the law.

16:30 19 Q. And that's what we're asking.

16:30 20 A. Uh-huh.

16:30 21 Q. If that's what you can do in this case.

16:30 22 A. Uh-huh.

16:30 23 Q. I know certainly you may think: I want this  
16:30 24 outcome; I want that outcome. But for you to be  
16:30 25 qualified as a juror in this case, we need to know that

16:30 1 you can follow the law and answer the questions, based  
16:30 2 on the evidence and just let the chips fall where they  
16:30 3 may.

16:30 4 A. Correct.

16:30 5 Q. And can you do that?

16:30 6 A. Yes, I can.

16:30 7 MS. LOWRY: She says my voice is shaking.  
16:30 8 Judge, may we have a moment?

16:30 9 THE COURT: In fact, you have five of them  
16:30 10 left.

16:30 11 Q. (BY MS. LOWRY) I also want to talk to you  
16:30 12 about -- I lost my questionnaire now, but that's okay --  
16:30 13 about the burden of proof in this case. Do you  
16:30 14 understand burden of proof?

16:30 15 A. Go ahead and start over.

16:30 16 Q. In a criminal case, as the State, we do most --  
16:30 17 we do the accusing. We charge a person with an offense.

16:31 18 A. Uh-huh.

16:31 19 Q. And, really, it's only right that we have to  
16:31 20 prove to you that that person committed that offense.

16:31 21 A. Correct.

16:31 22 Q. Does that make sense? I notice in your  
16:31 23 questionnaire where you have all the questions where you  
16:31 24 strongly agree or strongly disagree with those.

16:31 25 A. Uh-huh.

16:31 1 Q. On the question where it talks about if someone  
16:31 2 is accused of capital murder, he should have to prove  
16:31 3 his innocence. And you put *strongly agree*?

16:31 4 A. Uh-huh.

16:31 5 Q. But down where it says, if a person is brought  
16:31 6 to trial on murder charges -- sorry. And also where it  
16:31 7 says, a defendant is innocent unless proven guilty  
16:31 8 beyond a reasonable doubt, you put *strongly agree*.

16:31 9 A. Uh-huh.

16:31 10 Q. I guess my question is, the burden of proof is  
16:31 11 that the State has to prove to you that he committed  
16:31 12 this offense or that the defendant committed the offense  
16:31 13 beyond a reasonable doubt.

16:31 14 A. Correct.

16:31 15 Q. The only thing that they have to do is show up,  
16:31 16 and which is only right because, you know, if we're  
16:31 17 doing the accusing, we have to bring the evidence to  
16:31 18 show you that he -- he did this. And if we don't, then  
16:32 19 obviously you have to find him not guilty.

16:32 20 A. Correct.

16:32 21 Q. You certainly may want to know what he thinks  
16:32 22 or what his side of the story is, but you understand  
16:32 23 that that may not be something that you get to know.

16:32 24 A. Okay.

16:32 25 Q. As far as him having to prove his innocence, is

16:32 1 that something that you are going to require in this  
16:32 2 case, or are you just going to follow the law, once  
16:32 3 again, and require the State to prove to you beyond a  
16:32 4 reasonable doubt that he's guilty?

16:32 5 A. If you have the evidence and you show that that  
16:32 6 person did commit it, then that's -- that's what I need  
16:32 7 to go by.

16:32 8 Q. Because that's what we want you to do. We want  
16:32 9 you, as a juror, to hold us to our burden. Make sure  
16:32 10 that we do our jobs and bring you the evidence that's  
16:32 11 necessary to prove him guilty beyond a reasonable doubt.

16:32 12 A. I'm sorry. So are you saying that the  
16:32 13 defendant would not be able to state their case?

16:32 14 Q. They can. But I guess what I'm trying to get  
16:32 15 to with you is that he certainly has the right, you  
16:32 16 know, to put on a case. And we don't foresee that they  
16:32 17 won't put on anything.

16:33 18 A. Okay.

16:33 19 Q. But what it comes down to is that they don't  
16:33 20 have to.

16:33 21 A. Okay.

16:33 22 Q. And to be qualified as a juror in this case,  
16:33 23 you have to require the State to prove guilt beyond a  
16:33 24 reasonable doubt and not require anything of the defense  
16:33 25 as far as proof.

16:33 1 A. Because that's their choice.

16:33 2 Q. Right, right.

16:33 3 A. Okay.

16:33 4 Q. And is that something that you are going to  
16:33 5 hold against them, or are you going to hold the State to  
16:33 6 their burden?

16:33 7 A. No.

16:33 8 MR. SCHULTZ: A moment, please, Judge.

16:34 9 Q. (BY MS. LOWRY) I guess what it comes down to  
16:34 10 is, sometimes in a criminal justice system we ask people  
16:34 11 to do things that don't necessarily feel natural to  
16:34 12 them. Does that make sense?

16:34 13 A. Uh-huh.

16:34 14 Q. Like this situation, it's kind of like if you  
16:34 15 are working in a laboratory, something like that, and  
16:34 16 you are looking at, you know, different experiments,  
16:34 17 things like that, you don't look for a certain outcome.  
16:34 18 You just let that experiment kind of run its course.

16:34 19 A. Right.

16:34 20 Q. Do what you are supposed to do there, rather  
16:34 21 than look to a certain outcome. Does that make sense?

16:34 22 A. Uh-huh.

16:34 23 Q. And it may not necessarily feel natural to you  
16:34 24 to not decide whether or not it's life or whether or not  
16:34 25 it's death.

16:34 1 A. Uh-huh.  
 16:34 2 Q. And that's not necessarily unusual, that maybe  
 16:34 3 it doesn't necessary feel it's natural to you, as long  
 16:34 4 as that's something that you can do. And that being,  
 16:34 5 listen to the evidence and answer the questions based  
 16:34 6 solely on that evidence.  
 16:34 7 A. Correct.  
 16:35 8 Q. Do you have any questions thus far about any of  
 16:35 9 the --  
 16:35 10 A. No.  
 16:35 11 Q. Have you understood most of what I said? It  
 16:35 12 hasn't come out jumbled, has it?  
 16:35 13 A. No.  
 16:35 14 MS. LOWRY: Judge, we pass the juror.  
 16:35 15 THE COURT: All right. Same assertion?  
 16:35 16 MR. GOELLER: Yes, sir.  
 16:35 17 THE COURT: All right. The challenge for  
 16:35 18 cause it granted. You are finally excused.  
 16:35 19 VENIREPERSON: Okay.  
 16:35 20 THE COURT: Thank you very much.  
 16:35 21 MR. GOELLER: Thanks, Donna.  
 16:35 22 (Venireperson Price excused.)  
 16:35 23 THE COURT: We're going to skip over  
 16:35 24 Michael White, and the next juror is Roberto Placino.  
 16:35 25 And is there a Bastion challenge from the State on the

16:36 1 last witness? All right then, we'll bring in  
 16:36 2 Mr. Placino.  
 16:36 3 MR. SCHULTZ: I don't know how to do that  
 16:36 4 on a challenge for cause. I mean, I suppose it's  
 16:36 5 illegal to challenge somebody for cause if your purpose  
 16:36 6 is racially motivated. I have enough courtesy to these  
 16:36 7 men to not just recklessly throw things into the record,  
 16:36 8 so I choose not to.  
 16:36 9 MS. FALCO: Your Honor, before we bring  
 16:36 10 Mr. Placino in, can I put on the record his criminal  
 16:36 11 history?  
 16:36 12 THE COURT: Oh, yes, good idea. You told  
 16:36 13 me you were going to.  
 16:36 14 MS. FALCO: I have that Mr. Placino is  
 16:36 15 currently on probation for a DWI. He was arrested by  
 16:36 16 Richardson Police Department in 1999.  
 16:36 17 THE COURT: All right. He most respects  
 16:37 18 Jacques Cousteau and Mother Teresa. All right. Then I  
 16:37 19 suppose Billy's bringing him in.  
 16:37 20 (Venireperson Placino present.)  
 16:37 21 THE COURT: Are you Roberto Placino?  
 16:37 22 VENIREPERSON: Yes, Your Honor.  
 16:37 23 THE COURT: All right. Perhaps you  
 16:37 24 remember last Tuesday I asked all the jurors to raise  
 16:37 25 their right hand and swear to answer truthfully all the

16:38 1 questions that were asked. Do you recall that?  
 16:38 2 VENIREPERSON: Yes, I do.  
 16:38 3 THE COURT: I just want to remind you you  
 16:38 4 are still under oath, and the attorneys here will be  
 16:38 5 asking you questions. Please be seated. All right.  
 16:38 6 Let's see, I believe the State goes first.  
 16:38 7 VOIR DIRE EXAMINATION  
 16:38 8 BY MS. FALCO:  
 16:38 9 Q. Mr. Placino, my name is Gail Falco, and I'm an  
 16:38 10 assistant district attorney here in Collin County. And  
 16:38 11 the man that was just here seated to my right, and you  
 16:38 12 heard him speak on Tuesday, he's my boss, and his name  
 16:38 13 is Bill Schultz. And he's the first assistant district  
 16:38 14 attorney here in Collin County. The lady next to me, to  
 16:38 15 my left, is Ms. Jami Lowry. She's also an assistant  
 16:38 16 district attorney here in Collin County.  
 16:38 17 Seated at the other table, closest to me,  
 16:38 18 is the defendant Ivan Cantu. Seated next to him is  
 16:38 19 Mr. Don High, and he is his attorney. And he's a  
 16:38 20 private practitioner here in Collin County. And the man  
 16:38 21 that just left, the man that spoke to you last Tuesday,  
 16:38 22 is Mr. Matt Goeller, also a private practitioner here in  
 16:38 23 Collin County.  
 16:38 24 And I take it from Tuesday that you do not  
 16:39 25 know any of us; is that correct?

16:39 1 A. Yes, that's correct.  
 16:39 2 Q. Mr. Placino, we do this jury selection in this  
 16:39 3 particular type of case, capital murder, where the State  
 16:39 4 seeks the death penalty. We do it in two phases. We  
 16:39 5 have the earlier phase, what we call general voir dire,  
 16:39 6 which is when all of the panel comes in. And we talk to  
 16:39 7 them as a group about the law and having filled out the  
 16:39 8 questionnaires. And we bring them back to do individual  
 16:39 9 voir dire for several reasons. One of which is more  
 16:39 10 one-on-one, more intimate so you can talk more freely  
 16:39 11 about your opinions, your beliefs, how you feel about  
 16:39 12 the death penalty.  
 16:39 13 A. Okay.  
 16:39 14 Q. Understanding that nobody is here to change  
 16:39 15 your mind, all we ask for at this point is just an  
 16:39 16 honest opinion. Both sides in this case are looking for  
 16:39 17 12 people who can be fair and impartial and give fair  
 16:39 18 consideration to either a death sentence or a life  
 16:39 19 sentence, depending on how the evidence plays out.  
 16:39 20 And with regard to that, when you first  
 16:40 21 came to jury duty last Tuesday, what were your thoughts  
 16:40 22 once you realized that this was a capital murder case?  
 16:40 23 A. Well, what came to my thoughts were that I know  
 16:40 24 that Texas is pro, I think, death penalty. That's my  
 16:40 25 belief. And I do not -- I personally do not believe in

16:40 1 the death penalty because of my religious conviction, my  
16:40 2 beliefs. And for me it's only God who can, you know,  
16:40 3 take away the life of a person.

16:40 4 Q. And when you speak of your religious belief,  
16:40 5 and people oppose the death penalty for several reasons.  
16:40 6 And one of them may be because of their religious  
16:40 7 beliefs. Some people just may think it's just more of a  
16:40 8 moralistic and maybe not necessarily associated with any  
16:40 9 particular religion and just kind of a moral thing.

16:40 10 And other people think it's hypocritical  
16:41 11 of the State to execute someone who committed a murder.  
16:41 12 In their eyes it's the same thing. They don't see the  
16:41 13 distinction. And I'm understanding from you that it's a  
16:41 14 religious basis?

16:41 15 A. Yeah. For me even abortion or taking the life  
16:41 16 of a human being.

16:41 17 Q. And if I can get you to speak up a little bit  
16:41 18 louder. You have a very soft voice, just to make sure  
16:41 19 the court reporter next to you gets everything down and  
16:41 20 everyone can hear what you are saying. When you speak  
16:41 21 of your religious beliefs, you wrote down St. Joseph's,  
16:41 22 and I assume that's a Catholic Church?

16:41 23 A. Yes.

16:41 24 Q. And were you raised Catholic?

16:41 25 A. Yes.

16:41 1 Q. And have you always taken the position that --  
16:41 2 in opposition of the death penalty?

16:41 3 A. When I was in probably in about high school.  
16:41 4 When I -- when I tended to get more, you know, probably  
16:41 5 responsible in my thinking, probably tend to become more  
16:41 6 rational, yes. I tend to adhere to the belief that, you  
16:42 7 know, death is only, you know, the right of a -- of my  
16:42 8 God, you know.

16:42 9 Q. And understanding that's your position, and I  
16:42 10 assume, since you filled out this questionnaire, that  
16:42 11 your position has not changed from that day to today?

16:42 12 A. Yes, that's correct.

16:42 13 Q. And on this questionnaire you indicated: I  
16:42 14 could never under any circumstances return a verdict  
16:42 15 which assesses the death penalty. Is that still your  
16:42 16 position?

16:42 17 A. Yes.

16:42 18 Q. And so let me ask you this: Understanding that  
16:42 19 our system, when capital murder is involved, is a  
16:42 20 bifurcated one, which means there's two parts to the  
16:42 21 trial. The first part being the guilt-innocence phase  
16:42 22 of the trial where the State has to prove to you beyond  
16:42 23 a reasonable doubt that the defendant committed capital  
16:42 24 murder.

16:42 25 And with regard to that particular phase

16:42 1 of the trial, do you feel like, if we prove to you  
16:43 2 beyond a reasonable doubt the defendant committed or a  
16:43 3 defendant committed capital murder, you could find that  
16:43 4 person guilty?

16:43 5 A. Can you please repeat it because I tend to be,  
16:43 6 you know.

16:43 7 Q. If you have any questions or you need me to  
16:43 8 repeat, feel free to ask me. In this part we're talking  
16:43 9 about the guilt-innocence phase. We're not to  
16:43 10 punishment yet. If we prove to you beyond a reasonable  
16:43 11 doubt that the defendant or a defendant committed  
16:43 12 capital murder and proved all the elements to you beyond  
16:43 13 a reasonable doubt, could you follow the law when the  
16:43 14 law is given to you from the Court and find that person  
16:43 15 guilty?

16:43 16 A. Yes. To the point of just saying that the  
16:43 17 person is guilty or not, yes, but not the sentence  
16:43 18 death.

16:43 19 Q. And that's the second part of my question.  
16:43 20 When we get to the penalty phase of a capital murder, as  
16:43 21 you recall Mr. Schultz explaining to you on Tuesday,  
16:43 22 there are several questions that you have to answer.  
16:44 23 And it's the way you answer those questions that  
16:44 24 determines whether it's a death sentence or a life  
16:44 25 sentence. Do you remember that?

16:44 1 A. I don't exactly remember all of that.

16:44 2 Q. And my question, your understanding is not you  
16:44 3 just go back and circle life or death, but you answer  
16:44 4 questions in the way that you answer the questions to  
16:44 5 determine the sentence, not whether or not you remember  
16:44 6 what the question says.

16:44 7 A. Uh-huh, yeah. I remember those, but I don't  
16:44 8 know exactly what they were.

16:44 9 Q. With regard to the questions that you have to  
16:44 10 answer, is your position on the death penalty such that  
16:44 11 you could never answer the questions that would result  
16:44 12 in a death sentence or of that person?

16:44 13 A. Can you repeat it again, please.

16:44 14 Q. Given your position on the death penalty --

16:44 15 A. Yes.

16:44 16 Q. -- is your position such that you could never  
16:45 17 answer the questions, regardless of what the evidence  
16:45 18 is, regardless of what we've proved to you, could you  
16:45 19 ever answer the questions in a way that would result in  
16:45 20 a death penalty?

16:45 21 A. Yes. I don't think I would be able to answer  
16:45 22 it.

16:45 23 Q. Would you be able to answer them in a way that  
16:45 24 resulted in a death penalty?

16:45 25 A. No.

16:45 1 Q. Under any circumstances, no matter what the  
 16:45 2 evidence was?  
 16:45 3 A. Yes. If it will be mean death, no, I won't.  
 16:45 4 Q. You could not do it?  
 16:45 5 A. No.  
 16:46 6 Q. Now, with regard to -- so basically my  
 16:46 7 understanding, what you are telling me is that because  
 16:46 8 of your position, because of your belief or opposition  
 16:46 9 to the death penalty, you would always answer those  
 16:46 10 questions in such a way that a life sentence would  
 16:46 11 result?  
 16:46 12 A. Yes.  
 16:46 13 MS. FALCO: Thank you, Mr. Placino. I  
 16:46 14 pass this juror. First, Your Honor, I respectfully  
 16:46 15 submit this juror for a challenge and pass him, if  
 16:46 16 necessary.  
 16:46 17 THE COURT: All right. Thank you.  
 16:46 18 VOIR DIRE EXAMINATION  
 16:46 19 BY MR. HIGH:  
 16:46 20 Q. Good afternoon, Mr. Placino.  
 16:46 21 A. Good afternoon.  
 16:46 22 Q. Am I pronouncing your name right?  
 16:46 23 A. Placino.  
 16:46 24 Q. My name is Don High, H-I-G-H, like high in the  
 16:46 25 air. I got a few questions for you. I don't expect

16:46 1 this will take too long.  
 16:46 2 A. Okay.  
 16:47 3 Q. Do you understand how these questions work? If  
 16:47 4 you don't, that's fine. I can go over them with you.  
 16:47 5 A. Yeah. I think it would be better for you to go  
 16:47 6 over them.  
 16:47 7 Q. Okay. Good. Obviously, I represent this young  
 16:47 8 man here, and we're not agreeing that he's guilty. I'm  
 16:47 9 sure you are probably sitting there wondering why are  
 16:47 10 they talking about punishment before we've even had the  
 16:47 11 trial. Okay? That's kind of strange.  
 16:47 12 A. That's true.  
 16:47 13 Q. But the way we have to do this, the law  
 16:47 14 requires us to examine the jurors and examine your  
 16:47 15 attitudes with respect to the death penalty because you  
 16:47 16 would be the same sentencing jury as the trial jury, you  
 16:47 17 see. You'd have to hear all the evidence in the case.  
 16:47 18 It may be that we never even get to punishment. It may  
 16:47 19 be that the trial jury decides that he's not guilty. Do  
 16:47 20 you understand that?  
 16:48 21 A. Uh-huh.  
 16:48 22 Q. But we have to anticipate that, in the event  
 16:48 23 the jury convicts or finds him guilty, then we have to  
 16:48 24 have a lawfully qualified jury in the box to decide  
 16:48 25 punishment. So that's why we're talking about it now.

16:48 1 Okay? I don't want you to get the impression that we  
 16:48 2 advocate or we're saying that he's guilty at this point.  
 16:48 3 Is that clear?  
 16:48 4 A. Yes, that's clear.  
 16:48 5 Q. Now, Ms. Falco just discussed with you the  
 16:48 6 issues of capital murder and whether or not you could  
 16:48 7 find the defendant guilty if it was proven to you beyond  
 16:48 8 a reasonable doubt. And you said, yes, provided there's  
 16:48 9 no death penalty, correct?  
 16:48 10 A. Uh-huh.  
 16:48 11 Q. Is that what you said? Did I hear that right?  
 16:48 12 A. Yeah.  
 16:48 13 Q. Okay. Once -- the way our law works, once --  
 16:48 14 once there's a finding of guilt on a capital murder  
 16:48 15 case, then we go into the punishment phase. And then  
 16:48 16 there's a couple of questions that the jury has to  
 16:48 17 answer, and those are them, right there. Right in front  
 16:48 18 of you.  
 16:48 19 The first question is on the bottom there,  
 16:49 20 and I don't know if you can see it. I'm going to read  
 16:49 21 it to you. It says whether there's a probability that  
 16:49 22 the defendant would commit criminal acts of violence  
 16:49 23 that would constitute a continuing threat to society.  
 16:49 24 And of course the answer would be yes or no.  
 16:49 25 Now, obviously at this point when you have

16:49 1 to, as a jury, when you have to answer that question,  
 16:49 2 you've heard all the evidence in this case. You know  
 16:49 3 all about the facts of case. You know what happened.  
 16:49 4 You probably have a pretty good idea of what the State  
 16:49 5 says or what we say, if we've said anything. And you  
 16:49 6 are also going to have heard some evidence with respect  
 16:49 7 to future dangerousness. Okay?  
 16:49 8 In other words, we've heard what happened  
 16:49 9 in the past, and now we're going to look forward in the  
 16:49 10 future and see if there's a probability that he would  
 16:49 11 commit criminal acts of violence. Do you understand  
 16:49 12 what I'm saying?  
 16:49 13 A. Uh-huh, yes.  
 16:49 14 Q. And after you've heard all the evidence in the  
 16:49 15 case and you are enlightened, you would then go out of  
 16:50 16 the jury room. And the Judge would give you his charge,  
 16:50 17 and you guys would deliberate. And you'd either say,  
 16:50 18 yes, there is that probability or, no, we don't believe  
 16:50 19 there is a probability. Do you understand what I'm  
 16:50 20 saying?  
 16:50 21 A. Uh-huh.  
 16:50 22 Q. You think you could fairly do that if you were  
 16:50 23 a juror on the case? You could listen to all the  
 16:50 24 evidence, you could listen to what the State has to say,  
 16:50 25 what we've got to say, talk with the fellow jurors, and

16:50 1 make a decision with a yes or no?  
 16:50 2 A. Yes, I think I can.  
 16:50 3 Q. You could do that?  
 16:50 4 A. I could go through it.  
 16:50 5 Q. Okay. Now, if the answer is no, there's no  
 16:50 6 probability of future dangerousness, guess what? The  
 16:50 7 trial is over.  
 16:50 8 A. Uh-huh.  
 16:50 9 Q. And the defendant gets an automatic life  
 16:50 10 sentence. Okay? If the answer is, yes, that in fact he  
 16:50 11 is a future danger and the jury decides that, yes,  
 16:51 12 there's a probability that he'll commit criminal acts of  
 16:51 13 violence in the future, then the jury has to go to that  
 16:51 14 next issue. And that's the one on top.  
 16:51 15 A. Okay.  
 16:51 16 Q. Okay. I notice that you are reading it. Guess  
 16:51 17 what? That's 52 words. We've counted it, and we've  
 16:51 18 been looking at that issue for days. The legislature  
 16:51 19 gave us that issue. I didn't write it. They didn't  
 16:51 20 write it. The Court didn't write it. The folks in  
 16:51 21 Austin gave that to us, and it's in the law books.  
 16:51 22 Okay?  
 16:51 23 And that's the issue that has to be  
 16:51 24 decided at the end of a capital murder case. Some call  
 16:51 25 it the mitigation issue. Some call it the last look at

16:52 1 the defendant. Some call it the look-back question, you  
 16:52 2 know. In other words, you found that the defendant is  
 16:52 3 guilty of capital murder. You found that there's a  
 16:52 4 probability that he's going to be a danger in the  
 16:52 5 future.  
 16:52 6 Now you're trying to decide if there is  
 16:52 7 sufficient mitigating circumstances to warrant that a  
 16:52 8 sentence of life as opposed to a sentence of death  
 16:52 9 should be imposed. Okay? Mitigating, do you use that  
 16:52 10 in your vocabulary?  
 16:52 11 A. Not, not, not frequently.  
 16:52 12 Q. Okay. Would you agree that mitigating means to  
 16:52 13 lessen or to make less?  
 16:52 14 A. If that is what it means legally, yes.  
 16:52 15 Q. Fair enough. Okay. In this context we see it  
 16:53 16 right here towards the end. There is a sufficient  
 16:53 17 mitigating circumstance or circumstances to warrant that  
 16:53 18 a sentence of life rather than a death sentence be  
 16:53 19 imposed. Because obviously we've found him guilty of  
 16:53 20 capital murder, and we've said that he's a future  
 16:53 21 danger, so we're heading towards death.  
 16:53 22 And the jury has taken their one last  
 16:53 23 look, and they are saying, hey, look, is there enough  
 16:53 24 evidence? Is there sufficient mitigating circumstances  
 16:53 25 to mitigate against death and give life? In other

16:53 1 words, I said it kind of backwards there, didn't I?  
 16:53 2 The legislature has said that, in the  
 16:53 3 first part of that question you are to consider all the  
 16:53 4 evidence in the case, including the circumstances of the  
 16:53 5 offense, the defendant's character and his background  
 16:54 6 and his personal moral culpability. Any idea of what  
 16:54 7 personal moral culpability means?  
 16:54 8 A. I would say probably his character, his  
 16:54 9 personality.  
 16:54 10 Q. Fair enough. There's not a definition for it.  
 16:54 11 I can't give you a definition. I don't expect the Court  
 16:54 12 can give you one. We've looked for it. So, you know,  
 16:54 13 and I suppose the folks on the jury, when you get back,  
 16:54 14 when you get this instruction, you guys are going to  
 16:54 15 have to talk about it, what it means to you, the  
 16:54 16 personal moral culpability.  
 16:54 17 Some folks may think it's remorse, you  
 16:54 18 know. Some may say it's the guilt that he felt or does  
 16:54 19 not feel, you know. Have you ever been around folks  
 16:54 20 that don't have any regard or -- let me take that back.  
 16:55 21 I'm sure you haven't been around folks that don't have  
 16:55 22 any regard for human life, but I'm sure you've heard  
 16:55 23 about people like that, right?  
 16:55 24 A. Right.  
 16:55 25 Q. That would treat a human life much like they'd

16:55 1 treat a set of tires.  
 16:55 2 A. Uh-huh.  
 16:55 3 Q. They could destroy a human life or just like  
 16:55 4 they'd destroy a tire, right?  
 16:55 5 A. Yes.  
 16:55 6 Q. There are people like that. And so, you know,  
 16:55 7 that would be a type of personal moral culpability. You  
 16:55 8 know, how they view the world. How they view human  
 16:55 9 life.  
 16:55 10 A. Okay.  
 16:55 11 Q. Is that fair to say?  
 16:55 12 A. Okay. All right.  
 16:55 13 Q. Now, I certainly don't want to lose you because  
 16:55 14 we've got a big long definition there, 52 words. And  
 16:55 15 we've got a lot of things in that question, a lot of  
 16:55 16 things to think about. But I want to take you back to  
 16:55 17 the point in time where, there's 11 other people on the  
 16:55 18 jury.  
 16:56 19 Let's say you make it on the jury, and  
 16:56 20 there's 11 other folks on there with you, and you've  
 16:56 21 gone all the way through the trial. You've heard all  
 16:56 22 the evidence. And you guys have found that the  
 16:56 23 defendant's guilty of capital murder. You've found  
 16:56 24 that.  
 16:56 25 And you folks have listened to the

16:56 1 evidence, and you've decided that there's a probability  
16:56 2 that he's going to be a danger in the future. So we're  
16:56 3 past that. And now you're taking -- you are taking one  
16:56 4 last look at the defendant and trying to decide, based  
16:56 5 upon these concepts we've talked about, the type of  
16:56 6 offense it was and his character and his background and  
16:56 7 how he feels and how he looks at the world.

16:56 8 You know, is there sufficient mitigating  
16:56 9 circumstances to warrant the sentence of life rather  
16:56 10 than death? All right? Okay. Now, it may be that  
16:57 11 there are a number of folks on the jury that say, hey,  
16:57 12 look, there is no mitigating circumstance. This case is  
16:57 13 so bad and so brutal and so heinous, I can't imagine  
16:57 14 that it's sufficient to mitigate against the death  
16:57 15 sentence, and so I'm going to vote no. Okay?

16:57 16 In other words, they allow the death  
16:57 17 sentence to go forward by voting "no." You see a no  
16:57 18 answer to this question? In other words, there's no  
16:57 19 sufficient mitigating circumstances. "No" would allow  
16:57 20 the imposition of the death sentence. Does that make  
16:57 21 sense to you?

16:57 22 A. Yeah, yes.

16:57 23 Q. Okay.

16:57 24 A. So if I were to, you know, reiterate what you  
16:57 25 tried to explain.

16:57 1 Q. Okay.

16:57 2 A. Is that the only avenue is to take life --  
16:58 3 death, a death sentence.

16:58 4 Q. If the answer is no to that question, if the  
16:58 5 jury answers no, then it's a death sentence. And, look,  
16:58 6 I've done this probably 30 times in the last two weeks,  
16:58 7 and I still have to look and study that question. So  
16:58 8 feel free to look and study that question. It's not the  
16:58 9 easiest question in the world.

16:58 10 If there is no mitigating circumstance,  
16:58 11 you've taken your one last look with the folks on the  
16:58 12 jury. Say there's no sufficient mitigating  
16:58 13 circumstance, then it's a death sentence.

16:58 14 If the jury takes their last look and they  
16:58 15 say, yes, it's a bad case but, you know, I find that  
16:58 16 there's something about this defendant that I like.  
16:58 17 There's something redeeming about him. Maybe he's  
16:59 18 changed his life. Maybe, you know, maybe he has remorse  
16:59 19 about the offense. Maybe he feels badly about it, and  
16:59 20 he recognizes he did a bad thing, you know.

16:59 21 If there's some folks on the jury, maybe  
16:59 22 all of the jury. If they say, yeah, that's sufficient  
16:59 23 mitigating circumstances, then I can say, yes, yes to  
16:59 24 that question. You understand that taking that last  
16:59 25 look, if they say, yes, that he gets a life sentence.

16:59 1 Does that make sense to you?

16:59 2 A. Yes.

16:59 3 Q. Okay. You really have to think through this,  
16:59 4 and I do. I know you said earlier that there was no  
16:59 5 situation in which you could vote for a death sentence.

16:59 6 A. Yes.

16:59 7 Q. I understand that, and I respect that.

16:59 8 A. Uh-huh.

16:59 9 Q. And obviously our law is not really set up like  
17:00 10 that. Okay? You are kind of getting a feel for the way  
17:00 11 the procedure is on a death penalty case. This is the  
17:00 12 procedure. Do you feel comfortable with this procedure?

17:00 13 A. I'm confused. But my personal opinion is that  
17:00 14 because I don't believe in the death sentence, so I  
17:00 15 won't feel comfortable if that is, you know, the answer  
17:00 16 that you would like to get out of me, you know.

17:00 17 Q. Okay. I understand that. And I just need to  
17:00 18 take it a little bit further, if you don't mind. The  
17:00 19 Court's going to instruct you, at the end of the trial,  
17:00 20 to -- again, I'm assuming you are on the jury. Okay?  
17:00 21 And I'm assuming we've gotten past the point of  
17:01 22 conviction when we're talking about these questions.

17:01 23 The Court would instruct you, based upon  
17:01 24 the law and the evidence to answer these questions, view  
17:01 25 all the evidence, view the circumstances, view his

17:01 1 background and vote your conscience.

17:01 2 Here's my question to you: Do you know  
17:01 3 that a no answer to that second question means death and  
17:01 4 a yes answer to that second question means life?

17:01 5 A. Okay.

17:01 6 Q. Are you going to rig your answer to that second  
17:01 7 question which could involve violating your oath as a  
17:01 8 juror? Do you know what I'm saying?

17:01 9 A. Can you connect it? That vote and my answer?  
17:01 10 Can you make the connection there?

17:01 11 Q. I'm trying to.

17:01 12 A. To make it clear for me.

17:01 13 Q. Okay. I'm trying to. And I'll try to go  
17:01 14 slower.

17:02 15 A. Okay.

17:02 16 Q. Okay. Now, I expect at the end of the trial or  
17:02 17 at least in the punishment phase, when we get right at  
17:02 18 the tail end of the trial and you've heard all the  
17:02 19 evidence in the trial, all of it, everything that there  
17:02 20 is.

17:02 21 A. Okay.

17:02 22 Q. All the evidence that they -- the State can  
17:02 23 bring and if we bring it, all the evidence that there  
17:02 24 is. I expect the Court will give you a written charge.  
17:02 25 It will be in writing, and it will have some



17:02 1 instructions to the jury. And it will say that you've  
17:02 2 taken an oath as a juror to follow the law and apply the  
17:02 3 evidence to the law.

17:02 4 And then the Court will give you these  
17:02 5 instructions, and in question one and question two.

17:02 6 A. Okay.

17:02 7 Q. I've done my best to explain to you, and I  
17:02 8 probably haven't done a very good job. I've done my  
17:02 9 best to explain to you the second question. If you vote  
17:03 10 no, there's no mitigation, no sufficient mitigating  
17:03 11 circumstance.

17:03 12 A. Uh-huh.

17:03 13 Q. The no answer to that second question means  
17:03 14 death.

17:03 15 A. Okay.

17:03 16 Q. But if you find there is sufficient mitigating  
17:03 17 circumstances, a yes answer means life.

17:03 18 A. Okay.

17:03 19 Q. Okay. And here's my question to you, you've  
17:03 20 taken an oath as a juror. You've taken an oath to  
17:03 21 follow the law and apply the evidence to it. And you've  
17:03 22 heard the evidence, and you've talked with the other  
17:03 23 jury members in deliberation.

17:03 24 A. Okay.

17:03 25 Q. And you believe that there is no mitigating

17:03 1 circumstance. I mean, really, you know, you've searched  
17:03 2 your heart and your conscience, and there is no  
17:03 3 mitigating circumstance. But you know that a no vote  
17:03 4 means he dies, or the defendant dies. Are you going to  
17:03 5 vote yes instead so that you can follow your personal  
17:04 6 beliefs? Do you understand my question?

17:04 7 Are you going to rig your answer? Are you  
17:04 8 going to follow the Judge's instructions and follow the  
17:04 9 law and try to do what's right based on the evidence?

17:04 10 A. I was lost in the latter part.

17:04 11 Q. Let me give you another example. Have you ever  
17:04 12 heard of guys betting on football games? I'm sure you  
17:04 13 have, right?

17:04 14 A. Yes.

17:04 15 Q. Because it's a big deal in this country.

17:04 16 A. But I don't follow football that much, so.

17:04 17 Q. What sports do you follow? Do you follow  
17:04 18 boxing?

17:04 19 THE COURT: Say, I'm going to be leaving  
17:04 20 at 5:10. If you haven't finished, it's not a problem.  
17:04 21 We'll continue with him in the morning.

17:04 22 MR. HIGH: I'm just about there, Judge.  
17:04 23 Thank you.

17:04 24 A. I'm more a boxing. I follow more boxing.

17:05 25 Q. There's some betting on boxing, right?

17:05 1 A. Okay.

17:05 2 Q. And have you ever heard throwing a match?

17:05 3 A. Yes.

17:05 4 Q. And I'm not -- I don't really know that much  
17:05 5 about it, quite frankly. All I know is the discussions.  
17:05 6 I think that Pete Rose used to be a gambling man, and he  
17:05 7 used to be a gambling man, and he got kicked out of  
17:05 8 baseball because of all the gambling he did.

17:05 9 A. Okay.

17:05 10 Q. Some would say that would be a motive to win or  
17:05 11 lose a boxing match, a motive to win or lose a football  
17:05 12 game because of the betting that's involved. And some  
17:05 13 have argued over the years that if the players or the  
17:05 14 boxer has intentionally lost because there's going to be  
17:05 15 a payoff somewhere --

17:05 16 A. Okay.

17:05 17 Q. -- do you know what I'm saying?

17:05 18 A. Okay.

17:05 19 Q. In other words, it was rigged?

17:05 20 A. Okay.

17:05 21 Q. Does that mean anything to you?

17:05 22 A. Yeah. I know what rigged means, but I was  
17:05 23 trying to, you know, connect what that rigged. How when  
17:05 24 you state that the word rigged, relating it, how  
17:06 25 difficult relating it to, you know, that mitigating

17:06 1 part --

17:06 2 Q. Uh-huh.

17:06 3 A. -- yes or no.

17:06 4 Q. Uh-huh.

17:06 5 A. And I just have difficulty making a connection  
17:06 6 there.

17:06 7 Q. Here's what I'm saying. Let me see if I can  
17:06 8 say it as simply as I can. In other words, you've  
17:06 9 listened to all the testimony, all the evidence,  
17:06 10 everything there is to hearing the case. In your heart  
17:06 11 of hearts you believe there is no mitigation.

17:06 12 Let's say it's a horrendous horrific case,  
17:06 13 and you and your fellow juror members say, look, there  
17:06 14 is no mitigating circumstance that you know would cause  
17:06 15 a life sentence.

17:06 16 A. Okay.

17:06 17 Q. Okay. In your heart of hearts you honestly  
17:06 18 believe that, but you know, you know --

17:06 19 A. Okay. That part.

17:06 20 Q. -- Mr. Placino knows that if you say no to this  
17:06 21 question, that the defendant is going to die. Do you  
17:06 22 understand that?

17:06 23 A. Yes, that part. That part is where, you know,  
17:07 24 I was lost. If there is no mitigating circumstance, the  
17:07 25 only -- the only option is there is death.

17:07 1 Q. That's right.

17:07 2 A. Okay. And I'm trying to correlate your term  
17:07 3 rigged into rigging it into -- into life imprisonment.

17:07 4 Q. Right. Would you, would you -- even though you  
17:07 5 know in your heart of hearts the answer is no, would you  
17:07 6 say yes? Would you rig your answer?

17:07 7 A. No. I think in my belief, I would rather not  
17:07 8 use the word "rig."

17:07 9 Q. Okay.

17:07 10 A. Because I would not, you know, if there is  
17:07 11 evidence that the alleged person or, you know,  
17:07 12 defendant, the defendant is, you know, should be put to  
17:07 13 death, you know, my answer would be, you know, I would  
17:08 14 not vote for the death, the death penalty. I don't know  
17:08 15 if I'm answering you.

17:08 16 MR. HIGH: I think we better wait until  
17:08 17 tomorrow, Judge.

17:08 18 THE COURT: Then, Mr. Placino, we're going  
17:08 19 to have you back. I tell you what, we're going to start  
17:08 20 at 8:30 tomorrow morning. We'll have you come in at  
17:08 21 8:30, and both sides will come in at 8:30. And we will  
17:08 22 start at 8:30 so we can devote as much time to  
17:08 23 Mr. Placino before we start on the other witnesses.

17:08 24 So we'll see you at 8:30 in the morning.  
25 (Court adjourned.)

1 REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS

3 COUNTY OF COLLIN

4 I, Barbara L. Tokuz, CSR, RMR, CRR, Deputy Official  
5 Court Reporter in and for the 380th Judicial District  
6 Court of Collin County, State of Texas, do hereby  
7 certify that the above and foregoing contains a true and  
8 correct transcription of all portions of evidence and  
9 other proceedings requested in writing by counsel for  
10 the parties to be included in this volume of the  
11 Reporter's Record, in the above-styled and -numbered  
12 cause, all of which occurred in open court or in  
13 chambers and were reported by me.

14 I further certify that this Reporter's Record of the  
15 proceedings truly and correctly reflects the exhibits,  
16 if any, offered by the respective parties.

17 WITNESS MY OFFICIAL HAND this the 11th day of  
18 February, 2002.

19 

20 Barbara L. Tokuz, CSR #4615, RMR, CRR  
21 Deputy Official Court Reporter  
22 Expiration Date: 12/31/2002  
23 1855 Wind Hill Road  
24 Rockwall, Texas 75087  
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