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

VOLUME 13 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

---

DISTRICT CLERKS  
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On the 31st 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.

*Charles F. Sandoval*

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1 APPEARANCES 2

2 Mr. Bill Schultz
3 SBOT NO. 17841800
4 Ms. Gail T. Falco
5 SBOT NO. 00787450
6 Ms. Jami Lowry
7 SBOT NO. 24012724
8 Assistant Criminal District Attorneys
9 Collin County Courthouse
10 210 S. McDonald, Suite 324
11 McKinney, Texas 75069
12 Telephone: (972) 548-4323
13 ATTORNEYS FOR THE STATE OF TEXAS

9 Mr. Matthew Goeller
10 SBOT NO. 08059260
11 Mr. Don N. High
12 SBOT NO. 09605050
13 GRUBBS, HIGH, GOELLER & ASSOCIATES
14 400 Chisholm Place, Suite 400
15 Plano, Texas 75075
16 Telephone: (972) 423-4518
17 ATTORNEYS FOR THE DEFENDANT

14 VOLUME 13

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16 AUGUST 31, 2001
17 INDIVIDUAL VOIR DIRE

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22 CHRISTOPHER C. EDGAR 70 122 166
23 Defense Peremptory Strike
24 JESSE L. BEDWELL, IV 167 234 248
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26 LINDA H. HUNNICUTT 249 269 281
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15 LINDA H. HUNNICUTT 249 269 281
16 State's Challenge for Cause granted

1 PROCEEDINGS:

2 (Open court, defendant present.)

3 THE COURT: We're back on the record in
4 the State of Texas versus Ivan Abner Cantu, 380-80047.
5 Both sides ready?

6 MS. FALCO: State's ready, Your Honor.

7 MR. HIGH: Defense is ready, Your Honor.

8 THE COURT: All right. And the defendant
9 is present here. I think the next juror is Mr. Cannon,
10 No. 43.

11 MS. FALCO: And, Your Honor, before we
12 start with Mr. Cannon, based on this questionnaire, he
13 does have, I believe, a DWI from 1987. But I'd run the
14 criminal history. It did not show up on his criminal
15 history. But just so the record is clear, it did not
16 show up on his criminal history, but he did put it on
17 his questionnaire.

18 THE COURT: All right. Let's bring him
19 in.

20 (Venireperson Cannon present.)

21 THE COURT: Sir, are you David Cannon?

22 VENIREPERSON: Yes.

23 THE COURT: I just want to remind you that
24 last week I placed everybody under an oath which
25 required them to give true answers to the questions that

08:52 1 are asked by each side here.  
 08:53 2 VENIREPERSON: Yes.  
 08:53 3 THE COURT: Do you recall that?  
 08:53 4 VENIREPERSON: Yes.  
 08:53 5 THE COURT: And please be seated. All  
 08:53 6 right. Ms. Falco?

08:53 7 MS. FALCO: Thank you, Your Honor.

08:53 8 VOIR DIRE EXAMINATION

08:53 9 BY MS. FALCO:

08:53 10 Q. Mr. Cannon, my name is Gail Falco. And I'm an  
 08:53 11 assistant district attorney in Collin County. And he's  
 08:53 12 going to be coming in in a few minutes. And seated next  
 08:53 13 to me on my right is going to be Mr. Bill Schultz. You  
 08:53 14 probably remember him from last Tuesday, and he is my  
 08:53 15 boss. He is the first assistant district attorney of  
 08:53 16 Collin County. And seated to my left is Ms. Jami Lowry.  
 08:53 17 She's also an assistant district attorney in Collin  
 08:53 18 County.

08:53 19 And at the table next to me, closest to  
 08:53 20 me, is the defendant Ivan Cantu. And next to him are  
 08:53 21 his lawyers, Mr. Don High and Mr. Matt Goeller, and they  
 08:53 22 are both private practitioners here in Collin County.

08:53 23 I take it from last Tuesday that you don't  
 08:53 24 know any of us?

08:53 25 A. No, I don't.

08:53 1 Q. Mr. Cannon, we do this part of -- or this type  
 08:53 2 of voir dire only in capital murder cases where the  
 08:53 3 State seeks the death penalty. And that is when you  
 08:53 4 come in and have a general voir dire, and then you come  
 08:54 5 back and do individual voir dire one-on-one.

08:54 6 And we do that for a couple of reasons.

08:54 7 And one is, when you came in for general voir dire and  
 08:54 8 were just first told this is a death penalty case, it is  
 08:54 9 giving you some time to think from that day until today,  
 08:54 10 and also for the purposes of both sides picking a fair  
 08:54 11 and impartial jury.

08:54 12 We question you one-on-one, and it's your  
 08:54 13 opportunity to be free with us, to just honestly tell us  
 08:54 14 what you feel and what your opinions are without feeling  
 08:54 15 like you have to be politically correct or anything like  
 08:54 16 that.

08:54 17 And understanding that both sides just are  
 08:54 18 looking for someone to be fair and impartial and could  
 08:54 19 fairly consider a life sentence if that were the  
 08:54 20 situation or fairly consider the death sentence, if  
 08:54 21 that's the way the evidence played out.

08:54 22 With regard to the process so far, I think  
 08:54 23 probably almost unanimously on the question -- on the  
 08:54 24 questionnaire where it says the biggest problem with the  
 08:54 25 justice system, that it is too slow, that was probably

08:54 1 the number one answer. But understanding that this is a  
 08:54 2 capital murder case, and we're taking this time  
 08:55 3 one-on-one with each individual juror, what do you think  
 08:55 4 of the process so far?

08:55 5 A. Kind of what I expected. I've never been on a  
 08:55 6 capital case like this, but I kind of give the guy a  
 08:55 7 fair round about what he's going to do and what he's  
 08:55 8 expected of him. And your job, too, is to take your  
 08:55 9 time and do it right.

08:55 10 Q. Okay. When you first came in last week and  
 08:55 11 found out it was a capital murder case, what were your  
 08:55 12 thoughts?

08:55 13 A. This is going to take a while. That was my  
 08:55 14 first impression. Once I saw 200 people, I knew it was  
 08:55 15 not a traffic violation.

08:55 16 Q. Have you ever been called for jury duty?

08:55 17 A. In Dallas County, yes.

08:55 18 Q. What type of case?

08:55 19 A. Those were civil cases. The worst one was a  
 08:55 20 child custody.

08:55 21 Q. You were actually on two juries, I believe?

08:55 22 A. Yeah. The other one was a civil case. A  
 08:55 23 person wasn't paying his rent. And it was him and his  
 08:55 24 partner were in dispute with the people that owned the  
 08:55 25 property, and that was real quick.

08:55 1 Q. In both cases, were the juries able to reach  
 08:56 2 verdicts?

08:56 3 A. Yes.

08:56 4 Q. Were you the foreman in either one of those?

08:56 5 A. No, I wasn't.

08:56 6 Q. Did you want to be the foreman?

08:56 7 A. No, I did not.

08:56 8 Q. When Mr. Schultz was talking to you last  
 08:56 9 Tuesday, he explained to you exactly the reality of what  
 08:56 10 we're doing here. Today, as he told you about, and if  
 08:56 11 the State does prove the case beyond a reasonable doubt  
 08:56 12 and were able to prove to you in the punishment phase  
 08:56 13 the answers to the questions in a way that result in a  
 08:56 14 death sentence, at some time in the future that the  
 08:56 15 defendant would be taken down to Huntsville and taken to  
 08:56 16 the death chamber, strapped to a gurney and injected  
 08:56 17 with a lethal substance that would cause his death.

08:56 18 When he was describing that to you,  
 08:56 19 obviously that was not for dramatic flare or gore but to  
 08:56 20 let you understand what the reality of what we're doing  
 08:56 21 here is. When he was describing that to you, what were  
 08:56 22 your thoughts?

08:56 23 A. Well, first, the only thing I could think of or  
 08:56 24 come to my mind is that is what the legislative people  
 08:56 25 that we elected -- that's what they came up with.

08:57 1 That's their capital punishment is that type of death  
08:57 2 sentence, and we elected them. That's their job. If we  
08:57 3 don't like it, I have to change my vote when I go to the  
08:57 4 November elections. So I just have to live with that.

08:57 5 Q. And what do you think of that form of execution  
08:57 6 as opposed to any other?

08:57 7 A. It's probably the most humane. I mean, if you  
08:57 8 have a choice of what's available, that's what I have  
08:57 9 seen on different -- whose media that's probably the  
08:57 10 least intrusive to a human.

08:57 11 Q. Now, with regard to your questionnaire, and we  
08:57 12 understand that when you got these questionnaires --  
08:57 13 first of all, you filled them out before anyone talked  
08:57 14 to you about what the law was or explained anything to  
08:57 15 you.

08:57 16 And, secondly, it pretty much asked you  
08:57 17 what's your name, and what do you think about the death  
08:57 18 penalty, right off the bat, without a whole lot of time  
08:57 19 for reflection or being able to think about it before  
08:57 20 you started answering right off the bat. But given that  
08:58 21 and given that you had some time to think about it since  
08:58 22 you answered this questionnaire and just to remind you  
08:58 23 on your questionnaire, you said: "Are you in favor of  
08:58 24 the death penalty?" You said, "yes."

08:58 25 And then when asked to pick a statement

10

08:58 1 that best represented your feelings about the death  
08:58 2 penalty, you stated, "I believe that the death penalty  
08:58 3 is appropriate in some capital murder cases, and I could  
08:58 4 return a verdict resulting in death in a proper case?"

08:58 5 A. Uh-huh.

08:58 6 Q. Is that still how you feel today?

08:58 7 A. Yes, it is.

08:58 8 Q. During the week and a half or so that you have  
08:58 9 had time to think about it -- I'm sure you have been  
08:58 10 thinking about it; is that fair to say?

08:58 11 A. Yes.

08:58 12 Q. And it's one thing to sit around at a -- and  
08:58 13 drinking coffee and talking about what you think about  
08:58 14 the death penalty, or if you are sitting in your family  
08:58 15 room with your family and something comes on the news to  
08:58 16 have a family discussion about it.

08:58 17 It's a whole different ball game when you  
08:58 18 are asked, "Can you be involved in a process that  
08:58 19 results in somebody's death?" And with that thought and  
08:58 20 -- have you done any thinking about that?

08:59 21 A. Yes. Quite a bit. I mean, there's -- as  
08:59 22 you've seen on the news, there's been a lot of stuff  
08:59 23 south of us in regards to this. And of course you got  
08:59 24 to keep in my mind that that's totally different,  
08:59 25 different circumstances. I have no idea what's going on

08:59 1 in this case so, you know, you really can't say yea or  
08:59 2 nay if this person, what they've done.

08:59 3 So I just kind of keep my mind clear on  
08:59 4 stuff like that. And I think it's still, what I put  
08:59 5 down on the questionnaire is pretty much the same. Of  
08:59 6 course, I go to church on Sunday. It's really hard to  
08:59 7 sit there and go with what the Catholicism teaches on  
08:59 8 it.

08:59 9 Q. Right.

08:59 10 A. On death. But we're not governed by Rome.  
08:59 11 We're governed by Austin, so I got to go with what they  
08:59 12 give us.

08:59 13 Q. And given that, given that -- were you raised  
08:59 14 Catholic?

08:59 15 A. Yes.

08:59 16 Q. And given that, the Catholic Church, probably  
08:59 17 more than any other church, takes an obvious stance on  
08:59 18 the death penalty. And given that and that's your  
09:00 19 upbringing, are you comfortable with having an opinion  
09:00 20 that differs from your church?

09:00 21 A. A little bit. But there's a few things in the  
09:00 22 Church that I don't agree with, and that is one of them.  
09:00 23 And the way they handle the money is another one, of  
09:00 24 course.

09:00 25 Q. Why do you favor the death penalty?

12

09:00 1 A. Nowadays with our technology, of course, I got  
09:00 2 to tell you, I'm a very technical background. I work  
09:00 3 for TI, and it's -- we're about as high tech as you can  
09:00 4 get. With the way DNA stuff is today, it's really hard,  
09:00 5 I think, for people to do something. And if there's  
09:00 6 evidence of that nature that -- the technology is not  
09:00 7 flawless, but it's as close as we can get.

09:00 8 You know, five, ten years ago, I'm sure  
09:00 9 there's people on death row that are questionable  
09:00 10 because of the technology back then, but it's to the  
09:00 11 point now where I don't think anybody's going to get  
09:01 12 found guilty and then turn around in a couple of years  
09:01 13 and all of a sudden the evidence shows that they  
09:01 14 weren't. It's just -- the evidence is good now and the  
09:01 15 technology to prove that, in my opinion, is up to par.

09:01 16 Q. And given all that and given that -- the fact  
09:01 17 that you had some time for reflection, do you feel like  
09:01 18 you could be involved in a process that potentially  
09:01 19 could lead to somebody's death?

09:01 20 A. I think I could. That's a real hard decision  
09:01 21 to come to without, you know, just without seeing, you  
09:01 22 know, like I've said before and in different juries, you  
09:01 23 got to look at all the evidence that you guys present  
09:01 24 and then make a decision on that. It's hard to just say  
09:01 25 something just off the top of your head. You've got to

09:01 1 know -- I deal in facts at work.  
 09:01 2 I've got to know A to B to Z what's going  
 09:01 3 on, and that's how I base my decisions on my job. And  
 09:01 4 feelings and how I feel and stuff like that have no --  
 09:02 5 hardly any relevance into my job. It's really what's --  
 09:02 6 what's my, you know, what I'm doing at work is really  
 09:02 7 cut and dry.  
 09:02 8 Q. And, actually, that's exactly what we're  
 09:02 9 looking for as far as people that can follow the law.  
 09:02 10 People that, if they are given the law and the Court  
 09:02 11 says, here it is, people that can follow the law,  
 09:02 12 regardless of the way they may feel. So you are right  
 09:02 13 on point with that.  
 09:02 14 And as far as being able to follow the  
 09:02 15 law, just somebody that could say, yes, I could follow  
 09:02 16 the law. Yes, I could look at the evidence. And if the  
 09:02 17 evidence showed it should be a life sentence, I could do  
 09:02 18 that. And, yes, if I follow the law and look at the  
 09:02 19 evidence and it shows it should be a death sentence, I  
 09:02 20 can do that as well. And do you feel like you could do  
 09:02 21 that?  
 09:02 22 A. Yes, I could.  
 09:02 23 Q. Now, I want to talk a little bit -- I guess  
 09:02 24 I'll break it down in kind of the stages of the trial  
 09:02 25 should you be selected as a juror. And, obviously, the

09:02 1 first stage of the trial is the guilt-innocence stage.  
 09:03 2 And in that stage, the burden of proof is on the State,  
 09:03 3 and we have to prove to you beyond a reasonable doubt --  
 09:03 4 A. Uh-huh.  
 09:03 5 Q. -- that a person is guilty of capital murder.  
 09:03 6 And that burden is always upon us during the guilt-  
 09:03 7 innocence phase. It never shifts to the defense. And  
 09:03 8 they have the right to -- the defendant has the right to  
 09:03 9 testify if he wants to, the right to put on a case if  
 09:03 10 they want to. It's completely up to them, and it can't  
 09:03 11 be held against them one way or another. Does that seem  
 09:03 12 fair?  
 09:03 13 A. Yes.  
 09:03 14 Q. And obviously since we're doing the accusing,  
 09:03 15 we should have to be ones that do the proving.  
 09:03 16 A. Right.  
 09:03 17 Q. And if the Court told you to follow the law and  
 09:03 18 that law being, if the defendant does not testify, you  
 09:03 19 cannot hold that against him, could you do that?  
 09:03 20 A. Yes.  
 09:03 21 Q. And with regard to that, just looking at your  
 09:03 22 questionnaire, and there was one page--I don't know if  
 09:03 23 you recall--it has a bunch of statements. And it says  
 09:03 24 anywhere from strongly agree to strongly disagree.  
 09:04 25 A. Yeah. I hate those kind of tests.

09:04 1 Q. And on here it asks you: If a person is  
 09:04 2 brought to trial on murder charges, that person is  
 09:04 3 probably guilty. And to that question you answered,  
 09:04 4 "uncertain." And then right underneath that it says: A  
 09:04 5 defendant is innocent until proven guilty beyond a  
 09:04 6 reasonable doubt? And you said, "strongly agree."  
 09:04 7 A. Yes.  
 09:04 8 Q. So, in looking at those two sentences together,  
 09:04 9 you understand that the defendant is proven -- or is  
 09:04 10 innocent until proven guilty?  
 09:04 11 A. Right.  
 09:04 12 Q. And so, if he's brought to trial on murder  
 09:04 13 charges, he's still innocent until proven guilty?  
 09:04 14 A. Yes.  
 09:04 15 Q. And you have no problem with that concept?  
 09:04 16 A. No, I don't.  
 09:04 17 Q. Now, assuming that we, the State proves to you  
 09:04 18 beyond a reasonable doubt that a defendant is guilty in  
 09:04 19 a capital murder case, we would move onto the punishment  
 09:04 20 phase. And in the punishment phase, like Mr. Schultz  
 09:04 21 explained to you last week, you don't go back and just  
 09:04 22 say, life or death. You don't answer it that way.  
 09:04 23 You answer several questions. And based  
 09:05 24 on how you answer those questions, determines whether or  
 09:05 25 not it's a life sentence or a death sentence. Do you

09:05 1 remember him talking about that?  
 09:05 2 A. Yes.  
 09:05 3 Q. The first question that you would get to if you  
 09:05 4 found a defendant guilty of capital murder would be that  
 09:05 5 question that's up there on the easel, if you want to  
 09:05 6 take a second to look over that. Do you remember that  
 09:05 7 question?  
 09:05 8 A. Yes.  
 09:05 9 Q. That question, again, the burden of proof would  
 09:05 10 be on the State to prove to you beyond a reasonable  
 09:05 11 doubt that there's a probability the defendant will  
 09:05 12 commit criminal acts of violence to constitute a threat  
 09:05 13 to society.  
 09:05 14 It does not ask with a certainty: Will he  
 09:05 15 commit criminal acts of violence? It says whether there  
 09:05 16 is a probability. Now, that word *probability* is a word  
 09:05 17 that's frequently debated, yet it is going to be  
 09:05 18 undefined. When the Court gives you the charge, you  
 09:05 19 will not find a definition for probability.  
 09:06 20 There are people that are very  
 09:06 21 mathematically minded, probably perhaps you being as  
 09:06 22 technical, that when they see the word probability, they  
 09:06 23 think in terms of numbers or a percentage. There are  
 09:06 24 other people that say, well, to me that means more  
 09:06 25 likely than not. What does that word probability mean

09:06 1 to you?

09:06 2 A. Probability, it's more mathematical. That's  
09:06 3 something you have to look at. You have to use history  
09:06 4 of something to base on what the probability of that's  
09:06 5 going to happen in the future. Your probability of  
09:06 6 winning the lottery. Is it good or bad? You know,  
09:06 7 that's a cheap state income tax, in my opinion. But the  
09:06 8 probability of winning it is very low, so why do it?  
09:06 9 You know, it's common-sense generated. I don't know how  
09:06 10 to -- that's -- that's old high school math.  
09:06 11 Probability is where it comes from. That's where I'm  
09:06 12 getting it from.

09:07 13 Q. And you can understand, it's something greater  
09:07 14 than a possibility?

09:07 15 A. Right.

09:07 16 Q. Because anything is possible?

09:07 17 A. Yep.

09:07 18 Q. Probably being from a science background, you  
09:07 19 can understand that. Anything is possible. So it's  
09:07 20 something greater than a possibility?

09:07 21 A. Right.

09:07 22 Q. The next phrase in that sentence that's again  
09:07 23 undefined, but yet frequently debated, is that phrase,  
09:07 24 "criminal acts of violence." Now, all of us would  
09:07 25 probably agree that murder, sexual assault, violence to

09:07 1 a person would constitute criminal acts of violence.

09:07 2 It gets a little fuzzier when we move on  
09:07 3 to property. If I were to go outside and get a baseball  
09:07 4 bat and just start smashing up your car with a baseball  
09:07 5 bat, in your opinion, is that a criminal act of  
09:07 6 violence?

09:07 7 A. Yes, it is.

09:07 8 Q. It gets a little fuzzier still if we move on to  
09:07 9 drugs, whether that's dealing drugs or taking drugs.  
09:07 10 Some people may say, well, that's violence because when  
09:07 11 you take drugs, it does violence to your body. And when  
09:08 12 you take drugs, that could lead to a violent result and,  
09:08 13 therefore, that's a criminal act of violence.

09:08 14 Other people may say, no, it's just that  
09:08 15 person. He's not affecting property or anyone else, so  
09:08 16 it's not. Where do you fall on that?

09:08 17 A. If a person takes drugs, it's going to alter  
09:08 18 their mind, and you can't tell whether they are going to  
09:08 19 be violent or they are just going to be mellow. That's  
09:08 20 one area I don't know how to answer that 'cause it all  
09:08 21 depends on their mood, their surroundings, what's going  
09:08 22 on in their life at the time. You know, was it an  
09:08 23 escape? I mean, it's just something most people know  
09:08 24 not to function in life. You don't -- it's going to  
09:08 25 catch up to you eventually, so why start it? That's my

09:08 1 opinion on that.

09:08 2 Q. What about dealing drugs? Do you think that is  
09:08 3 something that could be a criminal act of violence or  
09:08 4 not?

09:08 5 A. Dealing? No. I don't think it is.

09:09 6 Q. Do you think some things that may not be a  
09:09 7 criminal act of violence, like drugs or let's say theft,  
09:09 8 something that's just stealing, just shows character?  
09:09 9 Or somebody who runs from the cops or disobeys the cops  
09:09 10 or has a general lack of authority for the police, do  
09:09 11 you think those type of things, though not a criminal  
09:09 12 act of violence, would give you insight into their  
09:09 13 character?

09:09 14 A. A little bit, yes.

09:09 15 Q. And giving insight into their character, do you  
09:09 16 think that would help you answer that question to decide  
09:09 17 whether or not there was a probability they would commit  
09:09 18 criminal acts of violence?

09:09 19 A. Yes.

09:09 20 Q. And the last word that we get to in that  
09:09 21 sentence that's again undefined, yet frequently debated,  
09:09 22 is the word society. That question does not limit  
09:09 23 itself to prison society. It doesn't ask, will the  
09:09 24 defendant be safely locked up if we keep him in prison?  
09:09 25 Can he be safely locked up?

09:10 1 So knowing that it doesn't necessarily  
09:10 2 limit itself to prison, that could be the society you  
09:10 3 and I live in. It could be the person who drives the  
09:10 4 school bus. It could be the person sacking the  
09:10 5 groceries in the grocery store. It could be the society  
09:10 6 that you and I live in. Do you see how that could be  
09:10 7 interpreted to mean more than just prison society?

09:10 8 A. Yes.

09:10 9 Q. With regard to that question, I'm sure if  
09:10 10 you've been watching the news at all regarding capital  
09:10 11 murders, you've seen the testimony regarding  
09:10 12 psychiatrists or psychologists where they would testify,  
09:10 13 not to any kind of a brain disease or brain dysfunction  
09:10 14 of a defendant, but just saying, looking at this pattern  
09:10 15 of behavior, I think he's a future danger. Or another  
09:10 16 expert saying, looking at this pattern of behavior, I  
09:10 17 don't think he'll be a future danger. Is that kind of  
09:10 18 testimony important to you?

09:10 19 A. Somewhat. I would think it would be along with  
09:11 20 their past activity. I think the psychologist or  
09:11 21 psychiatrist's opinions would, if it paralleled their  
09:11 22 activity, that -- that's -- that would weigh a little  
09:11 23 bit on what their mind-set is going to be toward  
09:11 24 society.

09:11 25 Q. Do you think if the defense got somebody to get

09:11 1 up there and say, looking at this pattern of behavior, I  
09:11 2 don't think that person is going to be a future danger,  
09:11 3 do you think the State could come right back with  
09:11 4 another expert to say, well, I looked at this pattern of  
09:11 5 behavior and I think he will be a future danger?

09:11 6 A. Yeah, most definitely.

09:11 7 Q. And do you see how that could be a battle of  
09:11 8 the experts?

09:11 9 A. Yes.

09:11 10 Q. With regard to that, do you think you, as an  
09:11 11 intelligent juror, just sitting there listening to the  
09:11 12 facts of the case and at this point listening to the  
09:11 13 facts at the punishment phase, do you think you could  
09:11 14 answer that question and decide whether or not he was a  
09:11 15 continuing threat to society without the help of  
09:11 16 experts?

09:11 17 A. I think I could, yes.

09:12 18 Q. Again, as I said with this question, the burden  
09:12 19 of proof is on the State. And if we prove it to you  
09:12 20 beyond a reasonable doubt and all 12 jurors say, yes,  
09:12 21 there's a probability he will be a future danger, you  
09:12 22 are still in the process of assessing a death sentence.

09:12 23 If 10 or more jurors say, no, we don't  
09:12 24 think the State proved that to us, it's an automatic  
09:12 25 life sentence. That ends your deliberations at that

09:12 1 point. Does that make sense to you?

09:12 2 A. Yes.

09:12 3 Q. Let's assume that all 12 jurors said yes to  
09:12 4 that question. You would then move on, and there may or  
09:12 5 may not be an additional third question. I don't know  
09:12 6 if you remember Mr. Schultz talking about the law of  
09:12 7 parties or the party question where somebody is the  
09:12 8 getaway driver. That may or may not apply in this case.

09:12 9 This question, if you answer this  
09:12 10 probability question yes, you will definitely get to  
09:12 11 this question. So we're going to go ahead and move on  
09:12 12 to this question, if you want to just take a second to  
09:12 13 reread that. Have you had a chance to read it?

09:14 14 A. Yes.

09:14 15 Q. And I'm sorry, this is my boss. And sometimes  
09:14 16 I confer with him because he's more knowledgeable about  
09:14 17 these matters than I am. But with regard to that  
09:14 18 question, that's the question that we frequently call  
09:14 19 the mitigation question.

09:14 20 And when we get to this question, there's  
09:14 21 no burden of proof on either the State or the defense.  
09:14 22 Is that -- nobody has to prove anything to the jury at  
09:14 23 this point. And it's up to the jury to decide, taking  
09:14 24 into consideration all the facts of the case,  
09:14 25 defendant's background, defendant's character, his

09:14 1 personal moral culpability and decide if there are  
09:14 2 sufficient mitigating facts to mitigate all that, to  
09:14 3 mitigate what that person did, to warrant a life  
09:14 4 sentence. With regard to that question, as far as  
09:14 5 mitigating circumstances, what does that word *mitigating*  
09:15 6 mean to you?

09:15 7 A. Mitigating, to weed down to the actual -- not  
09:15 8 actual facts but the heart of the matter. Get to the  
09:15 9 point.

09:15 10 Q. A lot of people think mitigating would mean to  
09:15 11 lessen or to reduce. Does it make it better? Does it  
09:15 12 lessen its severity? With regard to that, probably all  
09:15 13 of us, if we were on trial for our life, could think of  
09:15 14 something mitigating in our background, something that's  
09:15 15 sympathetic, something that's sad, something that says,  
09:15 16 look at this, look what happened to me. That ought to  
09:15 17 make me a little more sympathetic. It ought to make it  
09:15 18 a little less bad what I did.

09:15 19 Even Hitler probably had some mitigating  
09:15 20 circumstances in his background. Apparently his mother  
09:15 21 contemplated an abortion before she had him. He grew up  
09:15 22 without a father and had a poor childhood. And some  
09:15 23 people could look at that and say it's mitigating. The  
09:16 24 question is: Is it sufficient mitigating evidence to  
09:16 25 mitigate what he did? Mitigate all the horrendous

09:16 1 crimes he committed?

09:16 2 So you understand there can be mitigating  
09:16 3 evidence, but it's got to be sufficient to warrant a  
09:16 4 life sentence. Do you understand that?

09:16 5 A. Yes.

09:16 6 MR. GOELLER: Your Honor, I'm sorry. I'd  
09:16 7 like to object. The law is not that it mitigates what  
09:16 8 he did; it's whether there's mitigating circumstances to  
09:16 9 warrant a life sentence rather than a death sentence.  
09:16 10 It's not directly linked to what he did in mitigation.  
09:16 11 In fact, it couldn't be. It's impossible.

09:16 12 MS. FALCO: Well, Your Honor, it's taking  
09:16 13 into consideration the circumstances of the offense,  
09:16 14 which is what he did.

09:16 15 MR. GOELLER: But then the question would  
09:16 16 have to be phrased: background, character, personal  
09:16 17 moral culpability. It's not -- it's not: Could you  
09:16 18 rise to the level, based on what the offense was? I  
09:16 19 mean, you never could. It goes more to whether it's a  
09:16 20 life or a death sentence, not --

09:16 21 THE COURT: So you are saying there are  
09:16 22 other elements to mitigation other than what he did?

09:17 23 MR. GOELLER: That and the question  
09:17 24 doesn't -- the question doesn't ask: Whatever  
09:17 25 mitigating circumstances there are, does that mitigate

09:17 1 the actual offense? That's not the thrust of that  
09:17 2 question. It's whether it's life or death.

09:17 3 And it places an impossible burden on a  
09:17 4 defendant to rise to that level because it starts to  
09:17 5 form the impression, well, is there anything we can  
09:17 6 excuse the conduct or justify it or something like that?  
09:17 7 I mean, it's impossible.

09:17 8 THE COURT: Well, if that's the inference,  
09:17 9 then I'll sustain the objection.

09:17 10 Q. (BY MS. FALCO) And I'll clear that up. What  
09:17 11 I'm saying is, when you take into consideration  
09:17 12 everything you've heard in the trial, the circumstances  
09:17 13 of the case, any evidence that you might have heard on a  
09:17 14 person's background, character, personal moral  
09:17 15 culpability, and you are looking at the mitigating  
09:17 16 evidence, if there is any, is that sufficient, looking  
09:17 17 at all that other stuff, to warrant a life sentence as  
09:17 18 opposed to a death sentence?

09:17 19 A. Yes, I think so.

09:18 20 Q. And understanding that and getting back to  
09:18 21 Hitler's circumstance, there could be a situation where  
09:18 22 there is mitigating evidence. But is it sufficient?  
09:18 23 Would it be sufficient to warrant a life sentence?  
09:18 24 Should he have been on trial for capital murder as  
09:18 25 opposed to a death sentence? Do you understand that?

09:18 1 A. Yes.

09:18 2 Q. With regard to that question, you are not going  
09:18 3 to get a list of things from the Judge saying, here's  
09:18 4 mitigating evidence for you to consider. It's going to  
09:18 5 be up to the jury to decide what they think is  
09:18 6 mitigating. And there are things that one juror may  
09:18 7 look at it and say, well, that's mitigating to me. And  
09:18 8 another juror may look at that and say, well, that's  
09:18 9 aggravating to me. And a perfect example of that would  
09:18 10 be drugs.

09:18 11 Some people may say, well, the defendant,  
09:18 12 he's not normally like that. He just got in a  
09:18 13 situation. He started taking the drugs, and it changed  
09:18 14 his personality. And that person committed the crimes  
09:18 15 because of the drugs; therefore, that's mitigating to  
09:18 16 me.

09:18 17 Another person may look at that situation  
09:18 18 and say, well, no, because as a society, we're told you  
09:18 19 don't do drugs. You say no to drugs. And the reason  
09:18 20 you say no to drugs is because it could lead to this  
09:19 21 horrendous result. So that's aggravating to me because  
09:19 22 they took the drugs knowing what it could do. And so  
09:19 23 they are doing drugs, and they did this horrible crime,  
09:19 24 and that's aggravating.

09:19 25 So, do you see how there is some evidence

09:19 1 that could be mitigating to one and aggravating to  
09:19 2 another?

09:19 3 A. Yes.

09:19 4 Q. With regard to that question, the law requires  
09:19 5 that you be fair in answering this question, and you  
09:19 6 keep an open mind in looking at all of the evidence.  
09:19 7 And after viewing all of the evidence, you answer that  
09:19 8 question in asking if there is sufficient mitigating  
09:19 9 evidence to warrant a life sentence?

09:19 10 Do you feel like you could be fair if  
09:19 11 that's what the law said and that's what the law  
09:19 12 required of you? Do you think you could be fair in  
09:19 13 answering the question, no, there's not enough  
09:19 14 mitigating circumstances that that's the evidence showed  
09:19 15 resulting in a death sentence?

09:19 16 A. Yes.

09:19 17 Q. And on the flip side of that, if you -- could  
09:19 18 you be fair and open-minded throughout the trial  
09:19 19 listening to all the evidence and answer that question  
09:20 20 yes if you thought there was sufficient mitigating  
09:20 21 evidence resulting in a life sentence?

09:20 22 A. Yes, I could.

09:20 23 Q. Now, with regard to that question, getting back  
09:20 24 to that questionnaire, that same page that had the  
09:20 25 strongly agree to strongly disagree, it asks: Persons

09:20 1 determine their destiny or fate by choices they make in  
09:20 2 life. And you wrote "strong agree."

09:20 3 A. Yes.

09:20 4 Q. And tell me what your thoughts are on that?

09:20 5 A. It was explained to me in junior high, you have  
09:20 6 life is a long hallway, many doors along that hallway.  
09:20 7 Every decision you make, a lot of doors shut.  
09:20 8 Education, your family, church, you know, those are all  
09:20 9 the doors that are open. And every decision you make to  
09:20 10 shut one out or to do something else is going to  
09:20 11 continuously shut those doors.

09:20 12 And that's going to be your access to what  
09:20 13 you are going to be able to get into and get out of in  
09:20 14 life. And I've had to learn myself what doors are shut,  
09:21 15 and of course it's a shock when you get to that door and  
09:21 16 you want in and it's not going to let you in because of  
09:21 17 something you did in your past. So you have to make  
09:21 18 amends to get that door back open or you move on. And  
09:21 19 the only way you move on is you got to get smarter.

09:21 20 Q. The very next question asks: A person's  
09:21 21 destiny or fate is determined by the circumstances of  
09:21 22 their birth and their upbringing. And you put strongly  
09:21 23 disagree. Tell me what your thoughts are behind that.

09:21 24 A. I can use myself a little bit. But I have good  
09:21 25 friends who grew up in the mobile home in Arkansas.



09:21 1 barely had an education, and he's a multimillionaire now  
09:21 2 just because he pushed himself to get out of there, for  
09:21 3 one thing, to make a better life for himself. And it's,  
09:21 4 you know, high school diploma.

09:21 5 So that's, I mean, there's -- that's real  
09:21 6 strong in my -- my mind just the way I was brought up.  
09:21 7 You want to do good; you get out and you work. You  
09:21 8 know, strong positive work ethic. Education is going to  
09:22 9 help, and of course you got a family to fall back on.  
09:22 10 If they are not there, you are going to have to do it  
09:22 11 yourself.

09:22 12 Q. Exactly. Along that -- that same light, let's  
09:22 13 talk about drugs again. Let's say you had somebody who  
09:22 14 said, I got just in a bad period, and I started doing  
09:22 15 drugs, and drugs led me to do this crime. But I'm  
09:22 16 better now because I'm not doing the drugs, and I've  
09:22 17 changed, and I'm not ever going to do the drugs again.  
09:22 18 Does that make a difference to you?

09:22 19 A. I've seen a few people with alcohol and drug  
09:22 20 problems in the past, and it's hard to say a percentage,  
09:22 21 but there's always a relapse. Not always, but there can  
09:22 22 be. That possibility is always there. I mean, it's --  
09:22 23 it's hard to say. Whether somebody's clean and dry and  
09:22 24 then they -- all of a sudden something happens in their  
09:22 25 life, and they have to -- they need that escape. It's

09:23 1 hard to say. I base that on my work. If we do drugs at  
09:23 2 work, we're fired. I got kids to feed, a mortgage to  
09:23 3 pay, so it's a pretty clear choice.

09:23 4 Q. And speaking of kids to feed, I notice you  
09:23 5 probably made me laugh more than anybody else when you  
09:23 6 talk about your daughter, Molly. School or occupation:  
09:23 7 You wrote, she's a handful.

09:23 8 A. She is.

09:23 9 Q. And I assume you found the child that's going  
09:23 10 to give you the most challenge?

09:23 11 A. Yep.

09:23 12 Q. I want to talk about on your questionnaire when  
09:23 13 it said: The law in the State of Texas says that a  
09:23 14 person can be convicted of a capital murder based solely  
09:23 15 on circumstantial evidence with no eye witnesses, if you  
09:23 16 believe the evidence beyond a reasonable doubt. Do you  
09:23 17 agree with this law?

09:23 18 And you answered, "No. Circumstances  
09:23 19 could have put someone in the wrong place at the wrong  
09:23 20 time in the wrong mind-set."

09:23 21 We talked a little bit about DNA evidence  
09:23 22 when I first asked you about -- and understanding that  
09:24 23 circumstantial evidence can be DNA evidence. Does that  
09:24 24 change your answer?

09:24 25 A. A little bit, yes.

09:24 1 Q. Circumstantial evidence can include lots of  
09:24 2 things. It can be DNA evidence. It can be fingerprint  
09:24 3 evidence. Anything other than eye witness that can  
09:24 4 directly link that person to a crime. And when you  
09:24 5 talked a little bit about why you favor the death  
09:24 6 penalty, you are talking about DNA because it makes it  
09:24 7 more foolproof.

09:24 8 What about cases like Timothy McVeigh?  
09:24 9 There's probably no DNA evidence in there, but there's  
09:24 10 plenty of evidence that linked him, as far as buying all  
09:24 11 the materials to bomb it. I mean, there's lots of other  
09:24 12 evidence, confessions even. Given that, do you have to  
09:24 13 have DNA evidence to believe in the death penalty?

09:24 14 A. In my mind it would -- it would be a lot more,  
09:24 15 I can't say morally acceptable, but it's more easy on  
09:24 16 the conscience that if the evidence is DNA substantial,  
09:24 17 that it's pretty cut and dry.

09:25 18 Q. What about in situations like Timothy McVeigh  
09:25 19 where there's no DNA or just like a sniper? If there's  
09:25 20 a sniper on the building that starts shooting people on  
09:25 21 the street, there's not going to be any DNA evidence.

09:25 22 Can you imagine situations like that where  
09:25 23 you could find somebody guilty of capital murder and  
09:25 24 ultimately answer the questions in a way that resulted  
09:25 25 in a death sentence if that's what the evidence showed?

09:25 1 A. I'd have a hard time doing that.

09:25 2 Q. So even though there might be fingerprints,  
09:25 3 confessions, eye witnesses, if there was no DNA, you  
09:25 4 would have a hard time with that?

09:25 5 A. No, not so much. If there's eye witnesses and  
09:25 6 fingerprints, more than likely I could -- I could go  
09:25 7 with that. But just a lot of circumstantial stuff, with  
09:25 8 eye witnesses is the big thing.

09:25 9 Q. What about fingerprints?

09:26 10 A. Yeah.

09:26 11 Q. Would that be good scientific evidence for you?

09:26 12 A. Yes.

09:26 13 Q. Looking at your questionnaire, you mentioned  
09:26 14 that you know two people that have gone to jail or been  
09:26 15 in prison.

09:26 16 A. Uh-huh.

09:26 17 Q. What relation are they to you? Are they  
09:26 18 friends or family?

09:26 19 A. One was a coworker, and the other one was a  
09:26 20 coworker's son or stepson.

09:26 21 Q. Are you very familiar at all with the facts of  
09:26 22 the case in either situation?

09:26 23 A. Just from them. So not really, no.

09:26 24 Q. Based on what you heard, do you feel like they  
09:26 25 were treated fairly by the system?

09:26 1 A. No.  
 09:26 2 Q. And why is that?  
 09:26 3 A. The first one was my coworker. He was 17 years  
 09:26 4 old at the time down in Houston. Got into a fight in a  
 09:26 5 parking lot, and put a guy into a coma for about four  
 09:27 6 months.  
 09:27 7 Q. Was that the attempted murder one?  
 09:27 8 A. Yeah. And right before the statute or he said  
 09:27 9 the statute of limitations was going to run out -- it  
 09:27 10 was almost six years. The Judge was up for reelection  
 09:27 11 and called a reporter. Mentioned to him, well, you've  
 09:27 12 let all these people go on whatever basis. And are they  
 09:27 13 guilty or are they innocent? And he called him back in,  
 09:27 14 and it was over the Christmas holiday of '89, I think it  
 09:27 15 was. His dad called him and said, come back down to  
 09:27 16 Houston. We've got a problem. And he never showed back  
 09:27 17 up to work.  
 09:27 18 And like four years later he sent me a  
 09:27 19 letter, and I was like, what's the deal? And he  
 09:27 20 explained the situation where it was -- the Judge was  
 09:27 21 trying to get reelected, and he wanted to have a good  
 09:27 22 conviction rate or a lot of good publicity on that side,  
 09:27 23 and he thought he was wrong.  
 09:27 24 Now, that's all coming from my coworker.  
 09:27 25 So I don't know how much of that was truth, but he did

09:28 1 spend four years in the penitentiary. Most of it was up  
 09:28 2 in minimum security out here west of Fort Worth.  
 09:28 3 Q. Did his version of the facts, did that make  
 09:28 4 sense to you, or did you kind of question some of it?  
 09:28 5 A. I questioned quite a bit of it.  
 09:28 6 Q. Okay. So, in his eyes, he didn't get treated  
 09:28 7 fairly --  
 09:28 8 A. Right.  
 09:28 9 Q. -- by the system? Anything about that  
 09:28 10 situation that would make you have a bad view of the  
 09:28 11 State in any way?  
 09:28 12 A. I don't think so, no.  
 09:28 13 Q. And then the second situation, the assault with  
 09:28 14 a firearm. I believe you said it was a coworker's  
 09:28 15 child?  
 09:28 16 A. Yeah.  
 09:28 17 Q. Are you familiar at all with the facts of that  
 09:28 18 case?  
 09:28 19 A. The only facts I'm real familiar with is that  
 09:28 20 he was a white male, and he had an African-American male  
 09:28 21 with him and a Hispanic male with him. And those two  
 09:28 22 gentlemen got probation; didn't serve any time. And  
 09:28 23 this -- this man did. He served 7 years of a 25-year  
 09:29 24 sentence and his -- of course, I work directly with his  
 09:29 25 dad.

09:29 1 And his dad was just appalled that the  
 09:29 2 system worked that way against his son. And he -- he  
 09:29 3 didn't want to base it solely on race, but that was the  
 09:29 4 only factor that was really involved with it. Although,  
 09:29 5 his son did flash the firearm while commencing the  
 09:29 6 robbery, and the other two guys just stood there and  
 09:29 7 watched, so...  
 09:29 8 Q. And hearing those set of facts, did that seem  
 09:29 9 to make sense to you, or did you think maybe there was  
 09:29 10 more to it?  
 09:29 11 A. I think there's a little bit more to it, and  
 09:29 12 I'm a firearms collector. And it's common sense, you  
 09:29 13 flash a firearm while committing a robbery, that's --  
 09:29 14 you're more at fault than two gentlemen who were  
 09:29 15 standing there watching you do it. So it's like --  
 09:29 16 Q. And do you know whether or not that coworker's  
 09:29 17 son had any kind of criminal history?  
 09:29 18 A. Oh, yeah. Big time juvenile record.  
 09:30 19 Q. Do you think that might have been played a part  
 09:30 20 in him getting the sentence that he did and the others  
 09:30 21 only got probation?  
 09:30 22 A. I think it might have because he was still a  
 09:30 23 minor at the time.  
 09:30 24 Q. Anything about that situation that might keep  
 09:30 25 you from being fair to the State?

09:30 1 A. No.  
 09:30 2 Q. Where did that occur?  
 09:30 3 A. That was over in Balch Springs.  
 09:30 4 Q. Then you had the two juries that you actually  
 09:30 5 served on: the child custody, and the CPS case?  
 09:30 6 A. Uh-huh.  
 09:30 7 Q. And the jury decided to let the child remain  
 09:30 8 with the aunt?  
 09:30 9 A. Yes.  
 09:30 10 Q. And is that who had custody at the time of the  
 09:30 11 trial?  
 09:30 12 A. Yes.  
 09:30 13 Q. And CPS was trying to take the child away from  
 09:30 14 the aunt?  
 09:30 15 A. No, no. The parents were in a bad kind of way.  
 09:30 16 And they had a little girl that died, and this boy was  
 09:30 17 like 5 years old. So to help them get out of their  
 09:30 18 situation, the little boy went to live with his aunt  
 09:30 19 down in Houston. The parents wanted their little boy  
 09:30 20 back. And CPS didn't feel it was -- they were ready  
 09:31 21 yet.  
 09:31 22 They had like four guidelines that they  
 09:31 23 had to meet to get their son back, and they were real  
 09:31 24 questionable. And it was pretty bad the second day of  
 09:31 25 the trial. The mom had to go spend the night in jail

09:31 1 because she had a warrant for her arrest from a previous  
09:31 2 DWI. So it was not hard for the jury to find with the  
09:31 3 CPS people.

09:31 4 Q. You said the other, like, you mentioned was  
09:31 5 somebody not paying their rent. It was a civil jury?

09:31 6 A. Yeah, a civil jury. That was down in Oak  
09:31 7 Cliff, Justice of the Peace trial. And this guy, him  
09:31 8 and his partner rented a building and -- or rented an  
09:31 9 office. They were both attorneys. The one guy backed  
09:31 10 out, moved out of town whatever on this guy, filed  
09:31 11 bankruptcy. And under the federal bankruptcy order he  
09:31 12 was supposed to cease and desist all leased properties,  
09:31 13 yet he still stayed in the office. And it's like --  
09:31 14 that wasn't hard either to figure that one out.

09:32 15 Q. Did it make it easier because he was a lawyer?

09:32 16 A. A little bit.

09:32 17 Q. Okay. And, again, you said both juries were  
09:32 18 able to reach a verdict --

09:32 19 A. Yeah.

09:32 20 Q. -- unanimously? Now, with regard to yourself,  
09:32 21 you have one situation, not to embarrass you in any way,  
09:32 22 but just for me to ask. Anything about your own  
09:32 23 personal situation that would cause you to be unfair to  
09:32 24 the State?

09:32 25 A. No.

09:32 1 Q. Anything about your situation that you thought  
09:32 2 you were not treated fairly?

09:32 3 A. A little bit, but I paid my dues for that.

09:32 4 Q. And who did you not think you were treated  
09:32 5 fairly by?

09:32 6 A. By the Deputy Sheriff.

09:32 7 Q. You have been at TI for 14 years?

09:32 8 A. Yes. At least I was Wednesday.

09:32 9 Q. And probably again, let me flip to the back.  
09:32 10 You probably answered this question like 99 percent of  
09:32 11 our jury when asked: Do you want to serve as a juror in  
09:32 12 this case? You said "no." And why is that?

09:33 13 A. Not so much because it's going to take a lot of  
09:33 14 time out of my life, it's just really hard to come to a  
09:33 15 decision morally, ethically and philosophically to --  
09:33 16 to -- I don't want to say put somebody to death, but to  
09:33 17 make that decision. I always want to shift it to the  
09:33 18 other guy.

09:33 19 But I'll tell you up front, that's part of  
09:33 20 your Constitutional right to live in this country and to  
09:33 21 be free is to serve on a jury. So, if I have to do it,  
09:33 22 that's all right, but -- like everybody else, you want  
09:33 23 to try to get out of it.

09:33 24 Q. You'd rather not.

09:33 25 MS. FALCO: Thank you. I pass this juror.

09:33 1 THE COURT: Say, you've indicated that  
09:33 2 it's your impression that the Catholic Church is opposed  
09:33 3 to the death penalty.

09:34 4 VENIREPERSON: It is.

09:34 5 THE COURT: Where did you get that  
09:34 6 impression?

09:34 7 VENIREPERSON: Where do I get that?

09:34 8 THE COURT: Yes.

09:34 9 VENIREPERSON: Every Sunday at Mass.

09:34 10 THE COURT: The priest says that?

09:34 11 VENIREPERSON: Yes.

09:34 12 THE COURT: All right. Thank you. All  
09:34 13 right. Mr. High?

09:34 14 MR. HIGH: Yes, sir, Judge.

VOIR DIRE EXAMINATION

09:34 15 BY MR. HIGH:

09:34 16 Q. Good morning, Mr. Cannon.

09:34 17 A. Good morning.

09:34 18 Q. My name is Don High. It's up high in the air,  
09:34 19 H-I-G-H. That's exactly how you spell it and how you  
09:34 20 pronounce it. Okay? And I want to introduce myself.  
09:34 21 I'm a lawyer in Plano, and I practice with this  
09:34 22 gentleman here to my left, Matt Goeller. And we have  
09:34 23 another partner by the name of Philip Grubbs. Have you  
09:34 24 ever met or dealt with any of us before?  
09:34 25

09:34 1 A. No.

09:34 2 Q. I notice that you live in Wylie; is that right?

09:34 3 A. That's right.

09:34 4 Q. I happen to be the City prosecutor in Wylie.

09:34 5 A. I thought you looked familiar, but I've had no  
09:34 6 dealings with the City other than paying my water bill,  
09:34 7 so that's it.

09:34 8 Q. Fair enough. Let me be more specific. I  
09:34 9 prosecute traffic tickets, ordinance violations,  
09:35 10 children that have problems out there. You know, minor  
09:35 11 class C misdemeanors. And it's kind of a side job for  
09:35 12 me. I go out there a couple of times a month and  
09:35 13 prosecute the criminal cases.

09:35 14 So I'm like Dion Sanders; I play on both  
09:35 15 sides of the ball. Some days I'm defending, and other  
09:35 16 days I'm prosecuting. And have I ever prosecuted you  
09:35 17 before?

09:35 18 A. No.

09:35 19 Q. Fair enough. I just wanted to explore that  
09:35 20 with you. I don't have a whole lot of questions for  
09:35 21 you, but I do have a few. Ms. Falco covered a lot of my  
09:35 22 stuff, so that's good news.

09:35 23 On page three of your questionnaire, you  
09:35 24 mentioned that criminal defense attorneys do not have  
09:35 25 all the resources available like the prosecutors have.

09:36 1 And let me tell you something, you are right on. How  
09:36 2 did you have that insight? How did you know to make  
09:36 3 that statement?

09:36 4 A. That's just old adage from court-appointed  
09:36 5 attorneys. They are always -- the resources for them  
09:36 6 are usually what little they have in their office  
09:36 7 versus, you know, the power of the State.

09:36 8 Most of that is probably gained from a lot  
09:36 9 of the federal cases that I've read about that are  
09:36 10 firearms related. I just read that stuff just because  
09:36 11 it's what little interest to me. And a lot of it has  
09:36 12 come from the Ruby Ridge case up in Montana and Idaho  
09:36 13 and that area where they just run the guy into the  
09:36 14 ground and tried to, you know, get him to give up the  
09:36 15 case just by continually hounding the gentleman, and,  
09:36 16 you know, my pocket is not big enough to go to court  
09:37 17 every time to do that.

09:37 18 Where the defense lawyer, he can't do that  
09:37 19 over and over. Where the State, I won't say they've got  
09:37 20 unlimited resources, but they've got a lot more to put  
09:37 21 behind them than the defense does.

09:37 22 Q. All right. And I think that's a fair  
09:37 23 observation. It may not be accurate in all instances,  
09:37 24 but it's probably fairly accurate in most instances.  
09:37 25 The question I have for you -- and we are appointed in

09:37 1 this case, myself and Mr. Goeller.

09:37 2 We had a juror yesterday that seemed to  
09:37 3 think that appointed counsel were not as interested in  
09:37 4 defending or representing an individual in a case. And  
09:37 5 I suppose that could work against us if a juror got it  
09:37 6 in their mind that we weren't interested or we weren't  
09:38 7 working hard enough on the case, I suppose.

09:38 8 Knowing that we're appointed on this case,  
09:38 9 is that going to affect you at all? Are you going to  
09:38 10 think, gee, they are not working hard, or I don't  
09:38 11 believe them, or they are not doing their best? I mean,  
09:38 12 do you have any kind of a preconceived notion coming in  
09:38 13 if you were to sit as a juror on a case?

09:38 14 A. I don't think so. I think like you guys  
09:38 15 mentioned, you want to have a win-win record, and you  
09:38 16 want to do what you can to make sure that guy is proven  
09:38 17 innocent. I mean, that's your job, and I think to do  
09:38 18 that job, you probably want to keep a good record. I  
09:38 19 mean that's just competition. That's Dion Sanders. I  
09:38 20 have yet to meet a lawyer that's not competitive.

09:38 21 Q. I understand that. Me either. Me either. So  
09:38 22 our being appointed, that's not going to affect you at  
09:38 23 all?

09:38 24 A. No.

09:38 25 Q. It's not going to bias you at all?

09:38 1 A. No.

09:38 2 Q. You just raised another issue with me. You  
09:39 3 understand that it's not our burden to prove him  
09:39 4 innocent?

09:39 5 A. Right.

09:39 6 Q. Okay. And you also understand that even if he  
09:39 7 was found not guilty or acquitted, he wouldn't be found  
09:39 8 innocent. He would be found not guilty.

09:39 9 A. Right.

09:39 10 Q. All right. Fair enough. Fair enough. You  
09:39 11 talk about page five of the questionnaire. They ask you  
09:39 12 this question: The law in the State of Texas says that  
09:39 13 a person can be convicted of capital murder based solely  
09:39 14 on circumstantial evidence with no eye witnesses. If  
09:39 15 you believe the evidence beyond a reasonable doubt, do  
09:39 16 you agree with this law? "No." "Please explain."  
09:40 17 "Circumstances could have put someone in the wrong place  
09:40 18 at the wrong time in the wrong mind-set."

09:40 19 And I've circled "wrong," and you say it  
09:40 20 three times. Wrong place, wrong time, and wrong  
09:40 21 mind-set. Obviously that's a bad combination, isn't it?

09:40 22 A. (Moving head up and down.)

09:40 23 Q. Tell me what you mean by that.

09:40 24 A. I don't know if it's a joke or not, but someone  
09:40 25 referred to me on road rage, people driving around,

09:40 1 you'll pass so many vehicles in a day. That one person,  
09:40 2 they could have just lost their job. I don't want to  
09:40 3 slam the female anatomy. It could be that time of the  
09:40 4 month for this lady. She's had a bad day. She's had  
09:40 5 enough. He's had enough, and snap, it just happened.

09:40 6 I try not to do that with my kids, but  
09:40 7 they get to the point where, you know, in the real  
09:41 8 world, you know, you see it driving down the road.  
09:41 9 That's the -- the opinion I can use or the example I can  
09:41 10 use right now. Is that they just had their worst day of  
09:41 11 the year and, you know, it's just one of those impulsive  
09:41 12 acts. That could right there, that's -- that's the bad  
09:41 13 situation, wrong mind-set.

09:41 14 Q. Okay. So -- so you talked about impulsivity,  
09:41 15 an impulsive act. And obviously you've lived long  
09:41 16 enough and worked with enough people and been around  
09:41 17 enough people to recognize that. Fatigue could play a  
09:41 18 factor, and physical aspects could play a factor.  
09:41 19 What's going on, what their day's been like, how the  
09:41 20 traffic has been that day, et cetera. I understand what  
09:41 21 you are saying.

09:41 22 My father-in-law -- I never got to know  
09:41 23 him. He passed away before I married. He was a lawyer,  
09:41 24 and I'm told he used to teach a Sunday school lesson on  
09:42 25 murder. And his position was that anybody could murder

09:42 1 at any time given the right set of circumstances. I  
 09:42 2 would have liked to have talked to him about it, but I  
 09:42 3 suppose impulsivity had something to do with it.  
 09:42 4 Exactly what you are talking about. Is that kind of  
 09:42 5 what you are saying? Is that your belief or --

09:42 6 A. That's kind of -- or the other flip side is,  
 09:42 7 someone breaks into your house in the middle of a Sunday  
 09:42 8 night, and you just got your kids to bed. And they are  
 09:42 9 in your house with intent to get something from you.  
 09:42 10 And I'm of the mind-set that they are coming in, but  
 09:42 11 they are not going out.

09:42 12 And my wife and I have had that discussion  
 09:42 13 many times. You know, of course out in Wylie, it's more  
 09:42 14 than likely not going to happen. But it's just like a  
 09:42 15 fire drill; you've got to know what you are going to do  
 09:42 16 in that situation.

09:42 17 You hope that you never have to use that  
 09:42 18 situation, but we've had the discussion that, if it  
 09:42 19 happens, here's what's going to happen. Here's what you  
 09:43 20 need to do because that person's -- if they are not  
 09:43 21 invited, they are in here for something that they are  
 09:43 22 not supposed to be in here for.

09:43 23 Q. Sure.

09:43 24 A. And you don't know what's going through their  
 09:43 25 mind, and I don't know how many classes I've taken on

09:43 1 that. You stop and you neutralize the aggression toward  
 09:43 2 you and your family.

09:43 3 Q. Sure. I totally agree. Let me ask you this:  
 09:43 4 There are allegations in the indictment about burglary.  
 09:43 5 In fact, I think that was talked about last week with  
 09:43 6 you when we were altogether.

09:43 7 A. Uh-huh.

09:43 8 Q. I think it was explained to you. I mean, you  
 09:43 9 got a real good education on burglary and robbery and  
 09:43 10 kind of some of the basics of how our law works. Sounds  
 09:43 11 like you feel pretty strongly about burglary. You --  
 09:43 12 that's one thing you don't tolerate?

09:43 13 A. Yes, I don't.

09:43 14 Q. If you caught someone in the act, they are a  
 09:43 15 dead man?

09:43 16 A. More than likely if they are on my property in  
 09:43 17 my house with my family around. If I'm by myself, it  
 09:44 18 might be a different situation, but I have to protect my  
 09:44 19 family by all means. I'll use whatever I can.

09:44 20 Q. I understand, and I fully understand. Okay.  
 09:44 21 Let me just twist this just a little bit. I want to  
 09:44 22 explore this just a little bit. Let's say that there's  
 09:44 23 a conviction in this case based upon facts of burglary  
 09:44 24 and that a murder took place.

09:44 25 You understand that the next step would be

09:44 1 to decide whether the defendant lives or dies. And I  
 09:44 2 think she just went through the special issues and the  
 09:44 3 procedure.

09:44 4 Would you be more inclined to lean toward  
 09:44 5 a death sentence in that situation or a life sentence,  
 09:44 6 or would you be open to both?

09:44 7 A. I'd probably be open to both. But if burglary  
 09:44 8 is involved, I'll have to lean more toward the death  
 09:45 9 sentence.

09:45 10 Q. Okay. I appreciate your honesty. Fair enough.  
 09:45 11 Now, I want to make something else clear, and I'm sure  
 09:45 12 that you've never sat on a capital case before?

09:45 13 A. Never have.

09:45 14 Q. You probably weren't that familiar with the law  
 09:45 15 of capital murder, I don't expect?

09:45 16 A. No.

09:45 17 Q. You probably find it odd that you and I are  
 09:45 18 talking about punishment before we've even had the  
 09:45 19 trial. I want you to understand that we don't stipulate  
 09:45 20 and we don't agree that this young man is guilty, at  
 09:45 21 least at this point in time.

09:45 22 A. Right.

09:45 23 Q. Okay? But we have to conduct this part of the  
 09:45 24 examination of the jurors before we even try the case.  
 09:45 25 We have to examine you to see if you are -- if you are

09:45 1 right for this kind of case. And that's what the law  
 09:45 2 requires, and that's the way we have to do it.

09:45 3 A. Yep.

09:46 4 Q. Okay? Please don't get the impression that  
 09:46 5 Mr. Goeller and I or Mr. Cantu agree that he's guilty.  
 09:46 6 You haven't gotten that impression, have you?

09:46 7 A. No, I haven't.

09:46 8 Q. Because those issues are going to be tried.  
 09:46 9 All right? But the main thing we're talking to you  
 09:46 10 about is, in the event he is convicted, you know, how  
 09:46 11 you are going to decide. How you are going to look at  
 09:46 12 the evidence. Is that fair enough?

09:46 13 A. Yes.

09:46 14 Q. At the bottom of this page, page five, if you  
 09:46 15 believe in using the death penalty, and you say you do,  
 09:46 16 how strongly on a scale of 1 to 10 do you hold that  
 09:46 17 belief? 1 being the least and 10 being the strongest.  
 09:46 18 And you rated yourself a 5. Do you still feel  
 09:46 19 comfortable with that rating?

09:46 20 A. Yes, I do.

09:46 21 Q. And tell me, why you think you are a 5?

09:46 22 A. I put it right down the middle, based on -- it  
 09:46 23 would solely be based on evidence. If the evidence  
 09:47 24 is -- is pointing in that direction, I mean, you have to  
 09:47 25 go that way. And if it's not, if it's a lot of

09:47 1 circumstantial stuff with nothing really concrete, which  
09:47 2 I'm a firm believer in our use of technology to weed out  
09:47 3 the false data, and I would more heavily weigh toward  
09:47 4 the death penalty if the evidence shows that.

09:47 5 Q. Okay. So you see yourself right in the middle?

09:47 6 A. Right.

09:47 7 Q. And it could go either way?

09:47 8 A. Yep.

09:47 9 Q. Excellent. And I want to explore this with  
09:47 10 you. It says rank the following objectives of  
09:47 11 punishment in order of their importance to you. One  
09:47 12 being rehabilitation, two being punishment, three being  
09:47 13 deterrence. I think I understand what you mean. But  
09:47 14 just explain it just so I am sure I know what you mean.  
09:47 15 You say one is rehabilitation?

09:47 16 A. Yes, as the least significant or --

09:47 17 Q. Evidently rehabilitation is most important to  
09:48 18 you; is that right?

09:48 19 A. Yes.

09:48 20 Q. And punishment is in the middle and deterrence  
09:48 21 is not as important?

09:48 22 A. Yes, that's right.

09:48 23 Q. And tell me why. Why in that order?

09:48 24 A. If the person is found guilty and  
09:48 25 rehabilitation is offered, most people are going to jump

09:48 1 at that chance to do what they can to get back into  
09:48 2 society and function as the rest of us do. And  
09:48 3 deterrence -- was that rehabilitation? What was the  
09:48 4 second one?

09:48 5 Q. Rehabilitation is number one, punishment is  
09:48 6 number two, and deterrence, I guess making society take  
09:48 7 notice and stop committing crime, that's number three.  
09:48 8 That's not as important to you?

09:48 9 A. No. I think it's the other way around is what  
09:48 10 I meant. I don't think it's that way. I think it's the  
09:48 11 other way.

09:48 12 Q. Okay. Deterrence is most important?

09:48 13 A. I'm trying to remember back.

09:49 14 Q. Okay. Let me show this to you.

09:49 15 A. I just got off work, so I've been up for 24  
09:49 16 hours.

09:49 17 Q. It's not fair for me to look at it and you not  
09:49 18 be able to. It's right here at the bottom.

09:49 19 A. Rehabilitation is first, then punishment, then  
09:49 20 deterrence. I'm trying to remember what deterrence  
09:49 21 would be.

09:49 22 Q. I don't have a definition for deterrence, but I  
09:49 23 think the idea is to stop other people, you know, stop  
09:49 24 the public?

09:49 25 A. Okay.

09:49 1 Q. Get their attention. Keep them from committing  
09:49 2 crimes like this. You give somebody the death penalty  
09:49 3 then maybe we'd have less work?

09:49 4 A. Okay.

09:49 5 Q. Okay. Do you have anything to add, or do I  
09:49 6 need to move on?

09:49 7 A. No. I think you can move on. I don't think I  
09:49 8 put too much thought into that.

09:50 9 Q. We briefly touched on your DWI experience.  
09:50 10 That happened 14 years ago?

09:50 11 A. Yep.

09:50 12 Q. And you are 35 today, so that would make you 21  
09:50 13 at the time?

09:50 14 A. Yes, I was.

09:50 15 Q. And I suppose you've changed a lot in the past  
09:50 16 14 years?

09:50 17 A. Just a little bit.

09:50 18 Q. In fact, you have been married about 11 years?

09:50 19 A. Yes.

09:50 20 Q. And you've had two children?

09:50 21 A. Yes.

09:50 22 Q. And you've been working at that same job for 14  
09:50 23 years?

09:50 24 A. Yes.

09:50 25 Q. So you've -- I take it you went to work the

09:50 1 same year as your DWI conviction?

09:50 2 A. Within a week.

09:50 3 Q. How about that? So you were on probation when  
09:50 4 you were starting a new job?

09:50 5 A. Yes.

09:50 6 Q. That work out okay for you?

09:50 7 A. Worked just fine.

09:50 8 Q. Your employer saw fit, I guess? Did your  
09:50 9 employer know about the probation?

09:50 10 A. Yes. That was right on the application, if I  
09:50 11 had any pending legal affairs going on at the time.

09:50 12 Q. And you disclosed it?

09:51 13 A. Oh, yeah.

09:51 14 Q. And they saw fit to hire you?

09:51 15 A. Yes.

09:51 16 Q. Excellent. And they saw fit to allow you to go  
09:51 17 to your probation appointments?

09:51 18 A. Didn't have anything like that. This all  
09:51 19 happened in the state of Iowa, the week I was hired at  
09:51 20 TI. It was the week after I had the DWI in Iowa that I  
09:51 21 moved down here. And I think the County and the State  
09:51 22 were just happy to get my money, and they didn't say  
09:51 23 anything else. I had a pretty good attorney up there,  
09:51 24 and I think when they had the cash in their hand, they  
09:51 25 let it all go.

09:51 1 Q. Had you ever heard the phrase, "money talks and  
09:51 2 whiskey walks"?

09:51 3 A. A derivative of it, yes. I shoveled many many  
09:51 4 wagons full of manure. So, yes.

09:51 5 Q. I suppose, I suppose that got your attention,  
09:51 6 though. I mean, to -- to get in trouble, get arrested,  
09:52 7 get a charge like that. I mean, that got your  
09:52 8 attention?

09:52 9 A. Yes, it did.

09:52 10 Q. Did you make a change in your life?

09:52 11 A. Yes, I did.

09:52 12 Q. Tell me about the change that you made.

09:52 13 A. For one, consume as much alcohol as you want,  
09:52 14 but you do it in your own home, responsibly for one  
09:52 15 thing. And that means not getting throwing-up drunk,  
09:52 16 which at the time I wasn't, but I had a few to drink.  
09:52 17 And if you are going to drink and drive, it's not worth  
09:52 18 it. Definitely not worth it. Just hand the keys to  
09:52 19 somebody. You've got more than enough friends, family  
09:52 20 and taxicabs. So that was a really bad decision, but it  
09:52 21 taught me a little bit of a lesson.

09:52 22 Q. Sure. And a good lesson to learn.

09:52 23 A. At that young of age, yes, it was.

09:52 24 Q. And I notice that your lawyer, is it Fran  
09:52 25 Hensels?

09:52 1 A. Fran Hinkel, that was the attorney in Iowa.

09:53 2 Q. And I take it she represented you well?

09:53 3 A. He did.

09:53 4 Q. Okay. And you were pleased with him?

09:53 5 A. Pretty much. Since he's married to my first  
09:53 6 cousin, I didn't have much choice.

09:53 7 Q. Since you have been through that experience,  
09:53 8 you know the necessity or I guess the -- it's important,  
09:53 9 if you are charged with a crime, to have an attorney?

09:53 10 A. Yes.

09:53 11 Q. Okay. And -- fair enough. We talked about  
09:53 12 these other folks that have been in jail or prison,  
09:53 13 Herman Joyner and Jerry Newman. And I think I  
09:53 14 understand everything about their situation. One thing  
09:53 15 I'm curious about, you are able to list their names  
09:54 16 specifically. So were you close with these people? How  
09:54 17 well did you know them?

09:54 18 A. I was a coworker with Mr. Joyner. And Jerry,  
09:54 19 just from working with his dad or his stepdad for the  
09:54 20 last 14 years. Since he's grown-up, Bobby would come  
09:54 21 into work and just talk about his son and what they were  
09:54 22 doing. And so it got to be kind of like: What did  
09:54 23 Jerry do this week? What's going on? So...

09:54 24 Q. Sure. Before you went to work for TI, you  
09:54 25 worked as a roofer, welder and pizza delivery?

09:54 1 A. Yes.

09:54 2 Q. And I guess you were in your late teens, early  
09:54 3 twenties?

09:54 4 A. Yeah. That was while I was going to college.

09:54 5 Q. Where did you go to college?

09:54 6 A. I went to a community college in Iowa, in the  
09:54 7 eastern Iowa district. Clinton Community College is the  
09:55 8 name of it.

09:55 9 Q. Did you graduate?

09:55 10 A. Yes.

09:55 11 Q. And you got an associate's degree?

09:55 12 A. Yes.

09:55 13 Q. And tell me again what that was in.

09:55 14 A. That's in electronics, electrical engineering.

09:55 15 Q. Okay. And that's what allowed you to get the  
09:55 16 job with TI?

09:55 17 A. Yes.

09:55 18 Q. And tell me about your job with TI.

09:55 19 A. At that time it was a production person,  
09:55 20 manufacturing in one of TI's labs in the Expressway  
09:55 21 site. And that was -- they were hiring a lot of people  
09:55 22 at that time. And their minimum requirements of course  
09:55 23 was grade point average, and that was about it.

09:55 24 Q. All right. And you got the job. And where did  
09:55 25 you go -- first go to work?

09:55 1 A. When or where?

09:55 2 Q. Where?

09:55 3 A. At the Expressway site in Dallas.

09:55 4 Q. So have you been in Dallas all of your 11 --  
09:55 5 all of your 14 years?

09:55 6 A. Yes.

09:55 7 Q. My brother-in-law works for TI, but he's worked  
09:55 8 in Austin and Lubbock and other parts of the state.

09:56 9 A. He's done peripheral jobs.

09:56 10 Q. Yeah. That's right. Tell me about the  
09:56 11 day-to-day, your day-to-day work. Tell me what kind of  
09:56 12 work you do.

09:56 13 A. Okay.

09:56 14 Q. If I was to tag along with you, what would we  
09:56 15 be doing?

09:56 16 A. Now I'm a working foreman, which is a base-  
09:56 17 level supervisor. I have three technicians that work  
09:56 18 underneath me. And our job is to keep the equipment  
09:56 19 running, production within specifications that's set  
09:56 20 down by our process people.

09:56 21 And, basically, it's just a fireman. We  
09:56 22 put out the fires when the tools break. If they go  
09:56 23 down, if any preventive or emergency maintenance, that's  
09:56 24 our job. If there's a material coming down the line  
09:56 25 that we need to have priority work done to or we need to

09:56 1 watch after, the manufacturing supervisor or the -- the  
 09:56 2 operators will contact me, and then I'll make sure my  
 09:56 3 guys know what to watch out for.  
 09:57 4 Q. So you have a crew that works for you?  
 09:57 5 A. Yes.  
 09:57 6 Q. You are a foreman?  
 09:57 7 A. Yes.  
 09:57 8 Q. How many are on your crew?  
 09:57 9 A. Right now there's three. And if the economy  
 09:57 10 gets back to where it gets going, it will be ten.  
 09:57 11 Q. All right. Well, let's hope for that. So my  
 09:57 12 face was somewhat blank. I started to come around  
 09:57 13 midway through what you are telling me, and I'm taking  
 09:57 14 it that you work a lot with machines?  
 09:57 15 A. Yes.  
 09:57 16 Q. And equipment?  
 09:57 17 A. We make the computer chips that TI sells or  
 09:57 18 tries to sell right now. And we're the flagship of  
 09:57 19 Texas Instruments right now. It's the first 300  
 09:57 20 millimeter wafer fab in the United States. TI is  
 09:57 21 sinking a lot of money into this thing, and I'm pretty  
 09:57 22 happy to be part of that team which is coming along real  
 09:57 23 good right now.  
 09:57 24 Q. Excellent. Okay. So I take it you wear a  
 09:57 25 pager and a cell phone?

09:57 1 A. Pager, cell phone, yes.  
 09:57 2 Q. And you -- somebody could call you and you've  
 09:57 3 got to go check on some equipment or get your guys, get  
 09:58 4 them working, that sort of thing?  
 09:58 5 A. We monitor the computer screen which monitors  
 09:58 6 all the equipment. It's all tied together. So that if  
 09:58 7 the tool has a fault, anything goes wrong with it, if  
 09:58 8 one of our tolerances goes out of whack, we have to go  
 09:58 9 put it back in whack, so to speak. And it's ten hours  
 09:58 10 of sometimes doing this. And other times you don't --  
 09:58 11 you don't know what time it is because you are just so  
 09:58 12 busy.  
 09:58 13 Q. I see. Okay. So by virtue of the work that  
 09:58 14 you do everyday, the highly technical work, I take it  
 09:58 15 you are thinking about technical things mostly all day  
 09:58 16 long?  
 09:58 17 A. Yes. It drives my wife nuts.  
 09:58 18 Q. And then when you get home, what do you do when  
 09:58 19 you get home? Do you continue doing technical things or  
 09:58 20 do you do a completely different activity?  
 09:58 21 A. Since I work nights, as soon as I get home, I  
 09:59 22 go right to sleep.  
 09:59 23 Q. What is your shift?  
 09:59 24 A. I work Sunday, Monday, Tuesday, and every other  
 09:59 25 Saturday evening.

09:59 1 Q. Starting when?  
 09:59 2 A. Starting like, for instance this week I'm off  
 09:59 3 this Saturday. So I'll start Sunday night at 6:30 and  
 09:59 4 work until 7 a.m. in the morning.  
 09:59 5 Q. Oh, my goodness.  
 09:59 6 A. The only good thing about it is I go the  
 09:59 7 opposite of traffic.  
 09:59 8 Q. Okay. So did you work last night?  
 09:59 9 A. No. Nope, these are my days off.  
 09:59 10 Q. All right. Oh, my goodness. Sorry about that.  
 09:59 11 A. Got to do it.  
 09:59 12 Q. All right. Obviously, how would that impact,  
 09:59 13 let's say you make it on the jury, are you going to have  
 09:59 14 to continue to work nights and be up here during the  
 09:59 15 day?  
 09:59 16 A. No.  
 09:59 17 Q. Or will they let you off?  
 09:59 18 A. I've already been told that we accommodate the  
 09:59 19 juries. That's not a problem at TI.  
 09:59 20 Q. Very good. Oh, that would be a problem. Okay.  
 09:59 21 And along those lines, you indicate that you are an avid  
 10:00 22 hunter and target shooter?  
 10:00 23 A. Yes.  
 10:00 24 Q. And I picked up from you that you are  
 10:00 25 interested in firearms?

10:00 1 A. Yes.  
 10:00 2 Q. And you indicate that you are proficient with  
 10:00 3 the use of firearms?  
 10:00 4 A. Yes.  
 10:00 5 Q. And what kind of firearms do you like and use?  
 10:00 6 A. I usually carry day-to-day -- I'm a CHL holder,  
 10:00 7 so I usually carry a concealed weapon wherever it's  
 10:00 8 legal. That's one thing. I don't want to lose my right  
 10:00 9 to -- is to have access to firearms. I'm a very staunch  
 10:00 10 Second Amendment supporter.  
 10:00 11 I feel that without that one, the other  
 10:00 12 ten in the Bill of Rights don't mean anything. And  
 10:00 13 proficient use, if not once a month, at least three  
 10:00 14 times a quarter, myself and coworkers go to the gun  
 10:00 15 range with friends of ours, and we just shoot it up.  
 10:00 16 Q. All right. Which one do you go to?  
 10:00 17 A. If it's hot outside we go to the Bullet Trap.  
 10:00 18 If it's nice outside, we go over here to the Collin  
 10:00 19 County Gun Range.  
 10:01 20 Q. What kind of a handgun do you own?  
 10:01 21 A. I own three semi-automatics. All of them  
 10:01 22 Glocks, and a Taurus .357 revolver. A long rifle .762  
 10:01 23 by .39, Chinese made SKS. And a family heirloom  
 10:01 24 Browning .16 gauge.  
 10:01 25 Q. Oh, wow. How old is that?



10:01 1 A. My great uncle bought it new. So it had to  
10:01 2 have been back in the '20s, '30s, or '40s. I don't know  
10:01 3 the exact date. I have never really looked it up. But  
10:01 4 my uncle gave it to me to give to my son. Because at  
10:01 5 the time he was the youngest male of the family, so...

10:01 6 Q. Does it have a nice looking stock on it?

10:01 7 A. It does. I have had it for about a year and a  
10:01 8 half now. I plan on going and shooting some dove if I  
10:01 9 ever get a chance to get out there.

10:01 10 Q. I inherited one of those from my dad when he  
10:01 11 passed away a few years ago. I don't think it's that  
10:01 12 old. And I think it was made in Germany or Belgium.

10:02 13 A. Probably Belgium.

10:02 14 Q. Is that valuable?

10:02 15 A. It could be. To me it's valuable just from the  
10:02 16 family standpoint. I'm not -- I don't plan on ever  
10:02 17 selling it or getting rid of it.

10:02 18 Q. Absolutely. Boy, it will sure kick you,  
10:02 19 though.

10:02 20 A. I don't know yet. I haven't shot it.

10:02 21 Q. All right. What's the UTD parking sticker on  
10:02 22 your vehicle for?

10:02 23 A. That's my wife's.

10:02 24 Q. That's your wife's?

10:02 25 A. Yeah.

10:02 1 Q. Okay. You grew up in a family with eight  
10:02 2 children?

10:02 3 A. Yes.

10:02 4 Q. And in Iowa?

10:02 5 A. Yes.

10:02 6 Q. And your father was a meat packer and a farmer?

10:02 7 A. Yes.

10:02 8 Q. Do they still reside back in Iowa?

10:02 9 A. Yes, they do.

10:02 10 Q. Most of your family is still back there?

10:02 11 A. They are within an hour to two hours of  
10:02 12 Dubuque, yes.

10:02 13 Q. Close family?

10:03 14 A. 80 percent of us are pretty close.

10:03 15 THE COURT: And the other 20?

10:03 16 A. Well, I have my oldest brother is 12 years  
10:03 17 older than me. And he lives about an hour from my  
10:03 18 parents, and they hear more from me than they do him,  
10:03 19 so...

10:03 20 Q. Were you all raised in the Catholic Church?

10:03 21 A. Yes.

10:03 22 Q. Did you attend regularly?

10:03 23 A. Yes or else.

10:03 24 Q. Or else. I understand that. I'm almost done,  
10:03 25 Mr. Cannon. I just have a few more questions. We

10:04 1 talked about the capital murder procedure. We talked  
10:04 2 about the evidence and the conviction. And if that  
10:04 3 happens, then we go to this stage which is the  
10:04 4 sentencing phase.

10:04 5 Special issue No. 1, probability that the  
10:04 6 defendant would commit criminal acts of violence that  
10:04 7 would constitute a continuing threat to society. And  
10:04 8 Ms. Falco is usually pretty thorough. I just wasn't --  
10:04 9 didn't happen to be listening when she was going over  
10:04 10 this with you. But you understand that you'll most  
10:04 11 likely hear evidence on this. You may or may not, but  
10:04 12 you probably will. And that the burden of proof is on  
10:04 13 the State, and they have to prove this to you beyond a  
10:04 14 reasonable doubt.

10:04 15 A. Uh-huh.

10:04 16 Q. Do you have any problem with that?

10:04 17 A. No.

10:04 18 Q. Also, do you understand that this is separate,  
10:04 19 or the jury's consideration of this issue is separate  
10:04 20 and apart from the actual conviction?

10:04 21 A. Yes.

10:05 22 Q. Okay. And just because a person is convicted  
10:05 23 of capital murder, are you, David Cannon, going to  
10:05 24 automatically find that this is true, that he's going to  
10:05 25 be a danger in the future, or will you consider this

10:05 1 separately?

10:05 2 A. I would have to consider it separately.

10:05 3 Q. Fair enough. All right. If the answer to this  
10:05 4 is yes, that he's going to be a danger in the future,  
10:05 5 then you get to this. If the answer is no, trial's  
10:05 6 over, and it's an automatic life sentence. Okay. So  
10:05 7 let's assume that the answer is yes. And we go to the  
10:05 8 last question.

10:05 9 Again, I don't recall if this was done, so  
10:05 10 pardon my ignorance, but this is, some people call it  
10:05 11 the last look at the defendant or the look back.

10:05 12 A. Uh-huh.

10:05 13 Q. And you take one last look at the defendant,  
10:05 14 and you try to decide whether or not there is sufficient  
10:06 15 mitigating circumstances to warrant the imposition of  
10:06 16 the life sentence as opposed to a death sentence. And  
10:06 17 you are going to take one last look. All right? Does  
10:06 18 that make sense to you?

10:06 19 A. Yes, it does.

10:06 20 Q. Okay. I know you are not a lawyer, and you  
10:06 21 don't use words like mitigation and, well, culpability  
10:06 22 and things like that. And if I wasn't a lawyer, I  
10:06 23 wouldn't use them either, but I have to. Mitigation,  
10:06 24 would you agree with me that that means to lessen, to  
10:06 25 make less likely or to decrease, to mitigate?

10:06 1 A. Yes.  
 10:06 2 Q. And the legislature gave us this instruction.  
 10:06 3 I didn't write it. The Judge didn't write it. The  
 10:06 4 folks in Austin wrote this for us, and we've got to live  
 10:06 5 with it. The idea here is, and Ms. Falco discussed that  
 10:07 6 with you, you know, what -- all of us have mitigating  
 10:07 7 aspects to us, to our personalities.

10:07 8 And you found that the defendant is going  
 10:07 9 to be a danger in the future. But now you are taking  
 10:07 10 that last look and you are trying to see, looking at the  
 10:07 11 circumstances of the offense and his character and his  
 10:07 12 background and his personal moral culpability, and you  
 10:07 13 are taking that look, and you are saying, gee, is there  
 10:07 14 sufficient mitigating circumstances to warrant that a  
 10:07 15 life sentence should be imposed as opposed to a death  
 10:07 16 sentence? Does that make sense to you?

10:07 17 A. Yes, it does.

10:07 18 Q. Do you have any question about that?

10:07 19 A. No. You guys made that pretty clear.

10:07 20 Q. Okay. Would you be able to consider mitigating  
 10:07 21 circumstances?

10:07 22 A. Yes, I think I can.

10:08 23 Q. Personal moral culpability. Do you have any  
 10:08 24 idea what that means?

10:08 25 A. It must be how they function in society a

10:08 1 little bit.

10:08 2 Q. Okay. I hadn't heard that one yet, but that's  
 10:08 3 fine. We don't have a definition of personal moral  
 10:08 4 culpability. I've looked at it and thought about it a  
 10:08 5 lot. I don't know, maybe could it be that the  
 10:08 6 defendant's going to feel guilty? Could it be that he  
 10:08 7 has remorse about what he's done? Could it be that he  
 10:08 8 wishes he hadn't done it? Do you know what I'm saying?  
 10:08 9 The personal moral culpability.

10:08 10 Usually when we talk about culpability in  
 10:08 11 law, we're talking about responsibility. You know,  
 10:08 12 legal responsibility or criminal responsibility. That's  
 10:08 13 what culpability generally means in law. And so when I  
 10:09 14 thought about it, I thought, well, gee, personal moral  
 10:09 15 culpability. Does he have a personal moral  
 10:09 16 responsibility? You know, does he take responsibility?

10:09 17 And I'm not telling you to use that  
 10:09 18 definition. You use whatever definition or idea that  
 10:09 19 you like. I'm sure if you wind up on the jury, you're  
 10:09 20 going to have 11 other people talking to you about that,  
 10:09 21 too.

10:09 22 Would you be able to consider the  
 10:09 23 defendant's personal moral culpability with respect to  
 10:09 24 or in the context of mitigation?

10:09 25 A. I think I could, yes.

10:09 1 Q. Okay. Do you have any questions of me?

10:09 2 A. I just don't know what kind of tie that is you  
 10:09 3 are wearing.

10:09 4 Q. It's got elephants all over it.

10:09 5 A. It looked like McDonald's symbols from over  
 10:09 6 here.

10:09 7 Q. With palm trees.

10:09 8 A. I just thought I'd ask.

10:09 9 Q. It looks like McDonald's?

10:10 10 A. From over here, little M's.

10:10 11 Q. I can't wait to tell my mother-in-law. She's  
 10:10 12 the one that gave this to me.

10:10 13 THE COURT: I thought you meant Ronald  
 10:10 14 McDonald.

10:10 15 A. Just the big M's. It looks like M's from over  
 10:10 16 here. It still does. Okay.

10:10 17 Q. Actually, that's the side-view, and that's the  
 10:10 18 rear end view?

10:10 19 A. Hey, that's nice from your mother-in-law.

10:10 20 THE COURT: No further comments on that  
 10:10 21 issue. All right.

10:10 22 Q. Fine. Anything else?

10:10 23 A. (Moving head side to side.)

10:10 24 Q. Okay. Well, I sure enjoyed visiting with you.

10:10 25 MR. HIGH: And I'll pass the juror at this

10:10 1 time.

10:10 2 THE COURT: Ms. Falco or, excuse me, was  
 10:10 3 it you, Mr. Schultz?

10:10 4 MS. FALCO: It was me, Your Honor. We  
 10:10 5 have no further questions of the juror at this time.

10:10 6 THE COURT: You may step down at this  
 10:10 7 time.

10:10 8 MR. SCHULTZ: Would you excuse the State  
 10:11 9 real quickly?

10:11 10 THE COURT: Sure. Sir, I just want to  
 10:11 11 remind you before you step out, if you would, don't say  
 10:11 12 anything to the other jurors about anything that's been  
 10:11 13 asked or anything that you have said. And if you would,  
 10:11 14 go ahead and go in the jury room, and we'll get with you  
 10:11 15 as soon as we are ready.

10:11 16 VENIREPERSON: Sure.

10:13 17 (Venireperson Cannon not present.)

10:13 18 MR. SCHULTZ: We got No. 3, Judge.

10:13 19 THE COURT: All right. Is that correct?

10:13 20 MR. HIGH: We agree.

10:13 21 THE COURT: Both sides agree. Then  
 10:13 22 Mr. Cannon is going to be our third juror.

10:13 23 MR. HIGH: Judge, I suppose Mr. Cantu  
 10:13 24 should say whether or not he agrees.

10:13 25 THE COURT: Yes. How do you feel about

10:13 1 that, sir?  
 10:13 2 THE DEFENDANT: I do agree, Judge.  
 10:13 3 THE COURT: Bring him in and tell him he's  
 10:14 4 been chosen to serve on the jury.  
 10:14 5 (Bailiff complies.)  
 10:14 6 THE COURT: I've got Mr. Edgar next. Does  
 10:14 7 everybody agree?  
 10:14 8 MS. FALCO: Yes.  
 10:14 9 MR. GOELLER: What number is he?  
 10:14 10 THE COURT: No. 31. Bring in No. 31,  
 10:15 11 Chris Edgar.  
 10:15 12 (Venireperson Edgar present.)  
 10:15 13 THE COURT: All right, sir. Are you Chris  
 10:15 14 Edgar?  
 10:15 15 VENIREPERSON: Yes.  
 10:15 16 THE COURT: I just want to remind you it's  
 10:16 17 been over a week now that I put everyone under oath to  
 10:16 18 truthfully answer questions that are propounded. That  
 10:16 19 includes not only my questions but the questions of the  
 10:16 20 lawyers. Do you remember that?  
 10:16 21 VENIREPERSON: Yes.  
 10:16 22 THE COURT: I want to remind you that you  
 10:16 23 are still under oath. All right. Please be seated.  
 10:16 24 All right, Mr. Schultz?  
 10:16 25 MR. SCHULTZ: Thank you, Judge.

10:16 1 VOIR DIRE EXAMINATION  
 10:16 2 BY MR. SCHULTZ:  
 10:16 3 Q. Good morning to you, Mr. Edgar.  
 10:16 4 A. Good morning.  
 10:16 5 Q. I appreciate you coming back. I know we  
 10:16 6 probably talked a week ago Tuesday, somewhere. I guess  
 10:16 7 it's about ten days now since the last time we talked.  
 10:16 8 Tell me when you first became aware that you were a  
 10:16 9 prospective juror on a -- on a capital murder case?  
 10:16 10 A. Probably when I got the letter in the mail  
 10:16 11 about, well, actually the day that -- that we were in  
 10:16 12 trial.  
 10:16 13 Q. And why I ask that question is because the  
 10:17 14 summons, the summons is a little bit different.  
 10:17 15 A. Right.  
 10:17 16 Q. It's what we call a special venire. A special  
 10:17 17 venire is Latin for the group of people called or the  
 10:17 18 people that come before it. But unless you -- unless  
 10:17 19 you almost worked in this system or had had experience  
 10:17 20 with it before, there is no reason that you would know.  
 10:17 21 The summons doesn't say, come in for a  
 10:17 22 capital murder case. It talks about a special venire,  
 10:17 23 which, if I were to get it or Mr. Goeller or the defense  
 10:17 24 attorney would get one of those, we would know what that  
 10:17 25 meant instantly because it's a term of art that we use

10:17 1 in our work.  
 10:17 2 I'm suspecting, but I don't know, that you  
 10:17 3 probably had a reaction, perhaps not the reaction of  
 10:17 4 thrill either, when the Judge explained to you that it  
 10:17 5 was a capital case that you were being brought in on.  
 10:17 6 Am I right about that, that that was not a particularly  
 10:17 7 thrilling bit of news that you got when you heard what  
 10:17 8 that was?  
 10:17 9 A. Correct, sir.  
 10:17 10 Q. Okay. And I think that can be for many  
 10:17 11 reasons. I've never been where you are now, but I've  
 10:17 12 talked to enough people who have been through the years.  
 10:18 13 That let's face it, even though perhaps I was a little  
 10:18 14 brusque in my view that the things going on in our  
 10:18 15 personal life can't be as important as what's going on  
 10:18 16 in the defendant's life and what is involved in the  
 10:18 17 State's efforts in this case.  
 10:18 18 Nevertheless, everybody's got things going  
 10:18 19 on and everybody's got plans. You've got a job you'd  
 10:18 20 rather focus on, family situations, hobbies, all those  
 10:18 21 kinds of things that doubtless you are more interested  
 10:18 22 in personally than, than you would be sitting as a juror  
 10:18 23 for certainly a number of weeks, even -- even if  
 10:18 24 selected on this case. Is that a fair statement?  
 10:18 25 A. Yes.

10:18 1 Q. Okay. And sometimes when I get involved in my  
 10:18 2 work, I get so focused on it that I really do -- I never  
 10:18 3 lose sight of what people do. This is -- if you can  
 10:18 4 only imagine the amount of pressure on these kinds of  
 10:19 5 cases on both sides of this courtroom. It can't even be  
 10:19 6 described to you how hard it is for the lawyers.  
 10:19 7 It may seem that we're glib or we talk  
 10:19 8 easily, and it -- I guess maybe we do, but the pressure  
 10:19 9 is huge because the issues are huge. And so I guess --  
 10:19 10 I guess what I'm thinking is, not saying this for both  
 10:19 11 of us. I mean, sometimes you guys have to cut the  
 10:19 12 lawyers a little slack because one side or the other may  
 10:19 13 be asking you questions and just -- it just seems like,  
 10:19 14 why don't they shut up? Or how many times do I have to  
 10:19 15 answer that question? And why is he -- why is he trying  
 10:19 16 to get me to say this rather than that? And absolutely.  
 10:19 17 Everyone here is very similar to you. I tell you how  
 10:19 18 that is.  
 10:19 19 Without asking you, I know you didn't wake  
 10:19 20 up this morning and say, I'm so happy. I'm going up to  
 10:19 21 McKinney, and I have a chance to be part of a process  
 10:19 22 which may kill somebody. I don't even have to ask you  
 10:20 23 that question. I know that that's not an emotion or  
 10:20 24 thought that you could possibly have. Okay? It's true,  
 10:20 25 with the lawyers, too.

10:20 1 I don't wake up in the morning saying what  
10:20 2 a great job I've got. I have an opportunity to come up  
10:20 3 and present evidence. And if I convince 12 people that  
10:20 4 the evidence is sufficiently strong for our point of  
10:20 5 view, that a death will result. Does that make sense to  
10:20 6 you?

10:20 7 A. Yes.

10:20 8 Q. Even the most strident supporters of the death  
10:20 9 penalty would probably in their hearts say they wish we  
10:20 10 didn't have to have such a thing. They wish it wasn't  
10:20 11 necessary. They would say, I hope that if I'm sitting  
10:20 12 on a case, I hope the evidence leads me away from a  
10:20 13 death sentence because, if I do the right job and a life  
10:20 14 sentence results, I feel better about that as long as  
10:20 15 I've done my job and called the evidence fairly because  
10:20 16 we're a society that tries to preserve life. We prize  
10:21 17 life. We spend more money on health care for poor  
10:21 18 people because life is important to us in society. Does  
10:21 19 that all make sense to you?

10:21 20 A. Yes.

10:21 21 Q. And so I guess ultimately, we come into a  
10:21 22 courtroom where we are asked to do something, the result  
10:21 23 of which is something that's unnatural for most all of  
10:21 24 us, and that's the result of death. That, you know what  
10:21 25 I mean? You don't know the defendant. I don't know the

10:21 1 defendant. I think we -- I think we would fairly assume  
10:21 2 he doesn't want to die. If he had his choice, he would  
10:21 3 rather not get a death sentence out of this case. And  
10:21 4 so, not only are we doing something that is unnatural,  
10:21 5 we're probably doing something he doesn't want to have  
10:21 6 happen to him.

10:21 7 And I'm curious, with thinking about that,  
10:21 8 I'm curious what it is about you that makes you say you  
10:21 9 are in favor of the death penalty. Why you think, even  
10:21 10 though it's unnatural and you are a kind and decent man  
10:22 11 and care about the society, why do you say you favor a  
10:22 12 death sentence? Or why do you say you favor having a  
10:22 13 death penalty in Texas?

10:22 14 A. I favor having a death penalty just for the  
10:22 15 reason that if somebody does commit a crime of, you  
10:22 16 know, large proportions, a death to another human being,  
10:22 17 no matter how bad it is, if it, that person is convicted  
10:22 18 of that crime, I feel that instead of -- maybe it's a  
10:22 19 bad thing, but with being our prisons are so overcrowded  
10:22 20 today, take another life in some cases should be an  
10:22 21 option to do.

10:22 22 Q. Okay. And I think you are absolutely right.  
10:22 23 Our legislature has not said, if you do a capital  
10:22 24 murder, you will be executed. That's not how the system  
10:22 25 works. I wish we had a different name for capital

10:22 1 murder. I wish we called it aggravated murder or  
10:23 2 special-circumstance murder or some term because to many  
10:23 3 jurors it is confusing.

10:23 4 If you ask them if a person is convicted  
10:23 5 of capital murder, should he receive the death sentence?  
10:23 6 And their answer to that is, in their mind is yes,  
10:23 7 that's their thinking because that's what automatically  
10:23 8 flows from a capital murder.

10:23 9 Like, say, if a guy gets sentenced to ten  
10:23 10 years, should he have to serve ten years? Everybody  
10:23 11 says, well, sure, and that's what the sentence is;  
10:23 12 therefore, he should get it. But in Texas being  
10:23 13 convicted of capital murder gives society the option of  
10:23 14 imposing a death sentence. And the society is reflected  
10:23 15 in the individual trial by the trial jury.

10:23 16 Some people analyze or some people compare  
10:23 17 the death penalty to society's self-defense. It is kind  
10:23 18 of the idea that many crimes are so enormous that  
10:24 19 certainly we would recognize the -- the victim or the  
10:24 20 potential victim's right to self-defense. And that in  
10:24 21 many ways this -- the death penalty could be society's  
10:24 22 delay right to self-defense.

10:24 23 And here's how that works: If you are  
10:24 24 home tonight and you are in your house -- are you  
10:24 25 married, sir?

10:24 1 A. Yes, sir.

10:24 2 Q. And you have children?

10:24 3 A. Yes, sir.

10:24 4 Q. Great. And you've done all the things that you  
10:24 5 do, getting them ready. Everybody has gone to bed.  
10:24 6 Kids are tucked in; your homework's done. You return  
10:24 7 all the calls off your answering machine, whatever you  
10:24 8 have to do. And everybody is snug in their beds, and  
10:24 9 then an intruder comes in.

10:24 10 And perhaps he has a gun, and he's going  
10:24 11 to try to kill you or a member of your family. I think  
10:24 12 virtually everybody in our society would say, well, you  
10:24 13 certainly have the right to self-defense and somebody  
10:24 14 threatening you with that kind of conduct. You can go  
10:24 15 kill them.

10:24 16 And not only does our law say that you  
10:24 17 have that right, but most people kind of would --  
10:25 18 would -- would just almost common sense feel that way.  
10:25 19 How do you feel about that, as a concept?

10:25 20 A. I feel the concept is very well. If somebody  
10:25 21 is going to harm my family, if they are in my home  
10:25 22 trying to harm my wife or my child, I will definitely  
10:25 23 take actions towards that.

10:25 24 Q. And understand that when you were to do such an  
10:25 25 act, you wouldn't know for sure that that person was

10:25 1 really going to follow through with harm to your family.  
 10:25 2 I mean, nobody knows until something happens for sure  
 10:25 3 what's going to happen. Do you agree with me?

10:25 4 A. Correct.

10:25 5 Q. A guy might come in with a gun and say, "I'm  
 10:25 6 going to kill you." And until he kills you, you don't  
 10:25 7 know for sure that he's going to do it, right? Probably  
 10:25 8 he's going to. You figure if a guy comes in with a gun  
 10:25 9 and says, "I'm going to kill you," you figure probably  
 10:25 10 he's going to. He probably means it, but we don't know  
 10:25 11 for sure. Do you agree with that?

10:25 12 A. Yes.

10:25 13 Q. And yet our law doesn't require us to know for  
 10:25 14 sure. Because, again, the only way you are ever going  
 10:25 15 to know for sure is if you are dead. That's the only  
 10:25 16 way you are ever going to know probably that he's really  
 10:25 17 going to kill you. He's got to take a shot at you at  
 10:25 18 least, right?

10:25 19 A. Right.

10:26 20 Q. And the law let's you look at that situation  
 10:26 21 reasonably. And reasonable, somebody might say, you  
 10:26 22 know, here's a pretty strong likelihood that I'm in  
 10:26 23 danger here, and the law allows you to defend yourself.  
 10:26 24 Does that make sense?

10:26 25 A. Yes.

10:26 1 Q. Okay. And truthfully, in many ways, there's  
 10:26 2 not -- there's not any particular amount of proof you  
 10:26 3 would have to have. You wouldn't have to come into the  
 10:26 4 court and say, well, you know, I was 80 percent sure  
 10:26 5 that he was going to do that, or I was 50 percent sure.  
 10:26 6 I was 20 percent sure.

10:26 7 You'd have to say, my belief was  
 10:26 8 reasonable based on the evidence I had and what I know,  
 10:26 9 what I know about human beings from living on this  
 10:26 10 planet. And I reasonably believe that I was or my  
 10:26 11 family was in danger of serious bodily injury or death  
 10:26 12 from this person. Does that make sense?

10:26 13 A. Yes.

10:26 14 Q. And why I say it's analogous, perhaps, to the  
 10:27 15 right of an individual to use self-defense is because,  
 10:27 16 let's assume, and pardon me my situation, but let's  
 10:27 17 assume that he did kill you. He entered your habitation  
 10:27 18 without effective consent. His purpose in being there  
 10:27 19 was to steal, to rob, to murder, to kidnap, whatever the  
 10:27 20 reason was that he came into your home. Let's assume  
 10:27 21 that he did kill you. Okay?

10:27 22 Well, if he's apprehended and convicted,  
 10:27 23 he may not be that immediate threat that he was in your  
 10:27 24 living room or your bedroom when he came in that night  
 10:27 25 to you. But, nevertheless, the view is that the death

10:27 1 penalty gives society its right to self-defense,  
 10:27 2 although it's somewhat delayed. Does that make any  
 10:27 3 sense to you as a concept?

10:27 4 A. Yes.

10:27 5 Q. And it can be self-defense in a number of ways,  
 10:27 6 really. It can be self-defense in the notion that this  
 10:27 7 person is dangerous, and our society should not have to  
 10:27 8 deal with a dangerous person who has taken his dangerous  
 10:28 9 tendencies and put them into action. Okay? Do you  
 10:28 10 follow what I'm saying?

10:28 11 He's more than a dangerous person. He's a  
 10:28 12 dangerous person who has done a capital murder. So he's  
 10:28 13 got that actual culpability for what he has done. And  
 10:28 14 he's dangerous, and so we want to protect ourselves from  
 10:28 15 him, and so we will execute him. Does that seem to make  
 10:28 16 intellectual sense to you?

10:28 17 A. Uh-huh.

10:28 18 Q. Another way that it might be society's right to  
 10:28 19 self-defense, instead of simply protecting us from that  
 10:28 20 defendant, it might tend to convince other people not to  
 10:28 21 do the same thing because in a sense his death sentence  
 10:28 22 and his execution could be a warning, or there might be  
 10:28 23 some teaching in that to other people to evaluate  
 10:28 24 whether to break into somebody's home and try to kill  
 10:28 25 them or kill them. Do you see any merit in that idea?

10:29 1 A. Yes, sir.

10:29 2 Q. The idea sort of being if -- let's say a  
 10:29 3 defendant had a lot of friends. And let's, I mean, and  
 10:29 4 there's no -- I'm not talking about in this case in  
 10:29 5 particular. I'm just talking in general. The defendant  
 10:29 6 has a lot of friends, and the friends are talking about  
 10:29 7 what happens to Freddy or what happens to Suzy in her  
 10:29 8 capital murder trial.

10:29 9 And they say, you know, Suzy broke into  
 10:29 10 that person's house and killed them, you know, because  
 10:29 11 she was trying to get money or a stereo or drugs or  
 10:29 12 whatever she was trying to do, and they killed her. You  
 10:29 13 know, I don't think I want that to happen to me. I  
 10:29 14 think I'm going to take a lesson from that. Can you see  
 10:29 15 how that could actually work in our society?

10:29 16 A. Yes.

10:29 17 Q. Now, likewise, although we talk about the idea  
 10:30 18 of death penalty as perhaps society's right to  
 10:30 19 self-defense, it's different because you, as the  
 10:30 20 homeowner, have to make a quick decision. I mean, you  
 10:30 21 can't, for example, say, well, before I kill you, let me  
 10:30 22 go get you a lawyer to come in and speak for you.

10:30 23 Now, tell me all the things about your  
 10:30 24 background that might influence whether I kill you or  
 10:30 25 not. Let me -- let me find out if you are on drugs or

10:30 1 not. You got to make snap decisions based on the  
10:30 2 situation. If you are going to protect your family, he  
10:30 3 who hesitates is lost on it. Do you agree with me on  
10:30 4 that?

10:30 5 A. Yes, sir.

10:30 6 Q. And so it's very different. The analogy is  
10:30 7 fine that the death penalty of society is the society's  
10:30 8 right to self-defense. But this isn't a snap judgment  
10:30 9 that we do up here on society's right to self-defense.  
10:30 10 And that's what took a long time before, for you filling  
10:30 11 out the questionnaire, listening to lawyers talk back on  
10:30 12 Tuesday a week, listening to us now. And if selected on  
10:30 13 this jury, it's going to take -- when you finally get to  
10:31 14 hear testimony, it's going to take some of your time  
10:31 15 because we now have the -- unlike a homeowner in  
10:31 16 defending himself, we now have the opportunity to take a  
10:31 17 more thorough look at all of the circumstances.

10:31 18 The result may be the same. And the  
10:31 19 result may be that the evidence indicates that a death  
10:31 20 penalty is the appropriate sentence based on all the  
10:31 21 evidence, but it may not. And that's what this trial is  
10:31 22 really about. The trial is about jurors who will listen  
10:31 23 to all the evidence and decide, number one, is he guilty  
10:31 24 of capital murder? Number two, is he probably going to  
10:31 25 be a danger in the future? And, number three, is there

10:31 1 something in his background, character or the  
10:31 2 circumstances of the case that would make a life  
10:31 3 sentence more appropriate than a death sentence? And  
10:32 4 that's in a nutshell. That's what we do.

10:32 5 Now, in the interest of efficiency, my  
10:32 6 questions are going to assume that you, as a jury, have  
10:32 7 found the defendant guilty of capital murder. And I'll  
10:32 8 simply say that the State has a burden of proof to  
10:32 9 convince the jury beyond a reasonable doubt that the  
10:32 10 defendant is guilty of capital murder. And I'm not  
10:32 11 trying to play hide the ball with you or, you know, it's  
10:32 12 not any slight of hand. Just sort of saying, oh, well,  
10:32 13 that's all done. But if we're not able to do that, we  
10:32 14 don't need to worry about the death penalty issues at  
10:32 15 all.

10:32 16 And so that's why we're here. We're going  
10:32 17 to talk about the death penalty, the punishment phase  
10:32 18 issues. But understand the burden of proof is on us to  
10:32 19 prove the defendant guilty beyond a reasonable doubt.  
10:32 20 Neither he nor his attorneys have any burden to prove  
10:32 21 his innocence. Now, they have the right to try to prove  
10:32 22 that, but they don't have the burden to try to prove  
10:33 23 that. Does that make sense to you?

10:33 24 A. Yes.

10:33 25 Q. The fact that they choose either to put on

10:33 1 evidence or not to put on evidence is just not something  
10:33 2 that we put on the scales of justice. Now, I could look  
10:33 3 at your questionnaire and probably tell, but tell me  
10:33 4 what you do for a living.

10:33 5 A. I'm a service manager for a Honda dealership,  
10:33 6 Lute Riley Honda.

10:33 7 Q. Okay. And I assume that involves itself with  
10:33 8 obviously a lot of warranty work?

10:33 9 A. Yes.

10:33 10 Q. And then probably -- let me ask you, I always  
10:33 11 wondered this. Would you say that more of your hours --  
10:33 12 more of your hours are warranty work or nonwarranty  
10:33 13 work?

10:33 14 A. They are about split up. More time is spent  
10:33 15 with warranty, warranty work.

10:33 16 Q. Is warranty work less profitable than  
10:33 17 nonwarranty work?

10:33 18 A. Yes, sir.

10:33 19 Q. Because I know I've always heard, and your  
10:33 20 profession in many ways is like mine as a lawyer. We  
10:34 21 constantly get criticized for stuff we didn't even do.  
10:34 22 Let's face it, you oftentimes do the best you can in  
10:34 23 that dealership business. And people don't understand  
10:34 24 why an alternator costs 800 bucks or something, and they  
10:34 25 don't understand. And they complain. But I've heard

10:34 1 that some dealerships do what they can to discourage  
10:34 2 warranty work because it's not as profitable. Is there  
10:34 3 any of that in the business?

10:34 4 A. No, sir, not where I work.

10:34 5 Q. I like to think of what a jury has to do in the  
10:34 6 concept of the scales of justice because I think it's a  
10:34 7 real handy way of looking at what all we do. When you  
10:34 8 hear about the scales of justice, what do you think that  
10:34 9 symbolizes? What does that mean, as you just sit there?

10:34 10 A. Scales of justice would be based on a right to  
10:34 11 a fair trial. Being fair, weighing, weighing the pros  
10:35 12 and cons of somebody's -- someone's situation.

10:35 13 Q. Okay. Even though we don't ever talk about it  
10:35 14 anymore, it seems to me what juries do is actually  
10:35 15 measure stuff. I mean, they actually measure the weight  
10:35 16 and volume and quality of evidence.

10:35 17 Let's talk about weight. I mean, let's  
10:35 18 face it, if we're going to talk about number of  
10:35 19 witnesses, I can't speak for your defense, but I would  
10:35 20 bet the State will call lots more witnesses than the  
10:35 21 defense will. It doesn't mean they can't call more.  
10:35 22 They can get in the phone book if they want to and start  
10:35 23 with the A's and end with the Z's.

10:35 24 But the way it usually works, the State  
10:35 25 calls more witnesses, which probably makes more sense

10:35 1 since we have the burden of proof. So when you are  
 10:35 2 putting that on the scales of justice, the number of  
 10:35 3 witnesses, the amount of evidence would probably be way  
 10:35 4 heavy in favor of the State. Okay? Does that make  
 10:36 5 sense to you?

10:36 6 A. Yes.

10:36 7 Q. Now, just because we have more witnesses or  
 10:36 8 more evidence or more reports or more photographs, that  
 10:36 9 doesn't have anything to do with the quality of  
 10:36 10 evidence. I mean, we could call 30 witnesses. And they  
 10:36 11 could be 30 liars. And so we've got lots of weight of  
 10:36 12 evidence, but not very useful evidence. Does that make  
 10:36 13 sense?

10:36 14 A. Yes, sir.

10:36 15 Q. Okay. We could call 30 witnesses that wouldn't  
 10:36 16 be liars, but they wouldn't be very reliable. They  
 10:36 17 could be people who had very poor hearing that are going  
 10:36 18 to testify that they heard somebody's voice. And yet it  
 10:36 19 comes out on cross-examination that they, you know, they  
 10:36 20 probably couldn't hear an atom bomb go off because of  
 10:36 21 their hearing loss. And so it's not that they are  
 10:36 22 liars, but perhaps they are unreliable.

10:36 23 But what you end up doing as a juror, it  
 10:36 24 seems to me is, by considering the quality of evidence,  
 10:36 25 the quantity of evidence and perhaps the type of

10:37 1 evidence, you say to yourself: Are the scales of  
 10:37 2 justice oriented in a way that will cause one result or  
 10:37 3 another? Do you know what I'm saying?

10:37 4 A. Uh-huh.

10:37 5 Q. We have to prove the defendant's guilt beyond a  
 10:37 6 reasonable doubt. They don't have to prove anything  
 10:37 7 about that at all. They may offer evidence that helps  
 10:37 8 disprove it or, but they don't have to. But at the end  
 10:37 9 of the first phase of the trial, those scales ought to  
 10:37 10 be tipped way in favor of guilt. I don't know how far  
 10:37 11 down -- I don't know if the scale has to bottom out, for  
 10:37 12 example.

10:37 13 It probably doesn't, because that would be  
 10:37 14 100 percent proof. But it has to be way in favor of --  
 10:37 15 of the defendant's guilt, or it would seem there would  
 10:37 16 have to be a reasonable doubt, if it's not way in favor  
 10:37 17 of the defendant's guilt. Does that make sense to you?

10:37 18 A. Yes.

10:37 19 Q. It's not a civil case. It's not like if you  
 10:37 20 sue me for not paying you for repairing my car, and you  
 10:37 21 prove more than I do. In a civil case, you win. You  
 10:38 22 get your money. In a criminal case, the State gets a  
 10:38 23 conviction only if it proves beyond a reasonable doubt.  
 10:38 24 Are you with me?

10:38 25 A. Yes, sir.

10:38 1 Q. Now, that same burden of proof finds its way  
 10:38 2 carried into the second part of the trial also, exactly  
 10:38 3 same measurement. And, again, the evidence would have  
 10:38 4 to be very strongly tipped in favor of the State's  
 10:38 5 position, so strongly as to satisfy you as a reasonable  
 10:38 6 person that it's beyond a reasonable doubt. Does it  
 10:38 7 make sense?

10:38 8 A. Yes, sir.

10:38 9 Q. And if we don't do it, not only is it your duty  
 10:38 10 to vote against us on that issue, but that's even the  
 10:38 11 right thing to do. We have -- we have caused this legal  
 10:38 12 proceeding to begin by seeking and obtaining an  
 10:38 13 indictment from the Grand Jury. It's only fair, if we  
 10:38 14 have caused this to begin, that we have the  
 10:38 15 responsibility for making it clear. Okay?

10:38 16 A. Yes.

10:39 17 Q. Is there anything about you or your background  
 10:39 18 or some situation I might not understand that would keep  
 10:39 19 you from being completely fair to the defendant and to  
 10:39 20 the State of Texas in deciding whether or not he is  
 10:39 21 guilty of capital murder as we have charged?

10:39 22 A. No, sir.

10:39 23 Q. All right. If we prove it, you'll vote for it.  
 10:39 24 If we don't prove it, you'll vote to acquit the  
 10:39 25 defendant; is that fair?

10:39 1 A. Yes, sir.

10:39 2 Q. When we get to the second phase of the trial,  
 10:39 3 here's where I wish we didn't call it a capital murder,  
 10:39 4 because I don't get a sense that you are in any way  
 10:39 5 confused, but sometimes jurors do get confused. Because  
 10:39 6 they think, well, if we have a defendant who has been  
 10:39 7 convicted of capital murder, why doesn't he get capital  
 10:39 8 punishment because they think the term somehow  
 10:39 9 automatically means -- capital murder means capital  
 10:39 10 punishment. And I think you already understand that it  
 10:39 11 does not. That -- I think your term was that capital  
 10:39 12 punishment is then an option for the jury; are we right?

10:40 13 A. Yes.

10:40 14 Q. And the only -- when I say an option, the only  
 10:40 15 part about that that's not completely accurate, and I am  
 10:40 16 probably splitting hairs is, the jury doesn't have an  
 10:40 17 option to simply do what it wishes to do, which is what  
 10:40 18 I think of when I think of an option. The jury has its  
 10:40 19 option in how it views the evidence.

10:40 20 But if the evidence falls in such a way,  
 10:40 21 the jury must vote on how they find the evidence is  
 10:40 22 falling, even if the result is something different than  
 10:40 23 what they would option if they had a pure choice. Does  
 10:40 24 that make sense?

10:40 25 A. Yes, sir.

10:40 1 Q. In other words, let's say you heard the  
10:40 2 evidence and you reluctantly found the defendant was  
10:40 3 guilty of capital murder. Reluctantly in the sense  
10:40 4 that, yes, the evidence is there, but I have some  
10:40 5 compassion, some empathy, some understanding for what  
10:41 6 happened to the defendant, how he got there.

10:41 7 And in my heart, I'm feeling some sympathy  
10:41 8 for the defendant, right now, in deciding whether he's  
10:41 9 guilty or not of capital murder. That's perfectly  
10:41 10 appropriate for a jury. Your heart can beat. Your mind  
10:41 11 can think, but you have to weigh the evidence on the  
10:41 12 scales of justice, even if you don't like which side or  
10:41 13 the other is tipping. Do you follow me?

10:41 14 A. Yes, sir.

10:41 15 Q. But still, you listen to that evidence, and you  
10:41 16 say, gee, that's a tragedy. That's a tragedy for the  
10:41 17 victims. It's a tragedy for the defendant. And you  
10:41 18 might say, gosh, I can't imagine how anybody could want  
10:41 19 to assess a death penalty. That's a tragedy. You might  
10:41 20 be thinking that way. The law still contemplates that  
10:41 21 you would look at this first special issue and put it on  
10:41 22 the scales of justice and tell us whether or not there  
10:41 23 is a probability that the defendant would commit  
10:41 24 criminal acts of violence that would constitute a  
10:41 25 continuing threat to society.

10:41 1 And by the way, we use that exact same  
10:41 2 measure of proof on that question as in the first part,  
10:42 3 and that's beyond a reasonable doubt. However far you  
10:42 4 think the scales need to tip. All right? And the law  
10:42 5 contemplates that you be able to do that, and most  
10:42 6 people can do that fine. They don't -- they don't like  
10:42 7 it.

10:42 8 Most people can be -- can umpire a little  
10:42 9 league game and call their own child at it, if it's a  
10:42 10 strike. I mean, they can do that. It may not be  
10:42 11 something that they thrill at. They may wish somebody  
10:42 12 else were doing it instead of them. But when called  
10:42 13 upon to do it, every single day in our lives we're able  
10:42 14 to do the right thing even though, perhaps, we wish we  
10:42 15 didn't have to do the right thing. Are you that kind of  
10:42 16 person also?

10:42 17 A. Yes, sir.

10:42 18 Q. All right. And so, in measuring that first  
10:42 19 question, the first thing you could look at, because  
10:42 20 you've already heard it, is the facts of the crime  
10:43 21 itself, the first offense that you considered. And I  
10:43 22 will tell you that almost always the State will produce  
10:43 23 more evidence at the second part of the trial because  
10:43 24 the Rules of Evidence are a little bit different.  
10:43 25 And some evidence can be presented in

10:43 1 different ways at different parts of the trial. And so,  
10:43 2 normally, both the defense and the State normally would  
10:43 3 offer evidence in one form or another on -- relating to  
10:43 4 that question.

10:43 5 Now, once again, the defense doesn't have  
10:43 6 to, the same as the first part. They don't have to do a  
10:43 7 single thing regarding that question. They can just sit  
10:43 8 back and tell us to prove it. And that's their --  
10:43 9 that's their statutory and Constitutional right.

10:43 10 But if the State, for example, just -- and  
10:43 11 the Judge says, "Call your first witness," when we get  
10:43 12 to the punishment part of the trial. And we tell the  
10:43 13 Judge, what witnesses? We don't have anymore evidence.  
10:43 14 We don't have to put on any evidence, nor does the  
10:44 15 defense. Does that seem sensible to you?

10:44 16 A. Yes.

10:44 17 Q. And then what are you left with? If we don't  
10:44 18 put any evidence on in the second part of the trial,  
10:44 19 what are you left with then, as a jury? What is there?

10:44 20 A. Just the facts that we have.

10:44 21 Q. Exactly. The facts of the crime itself. And  
10:44 22 our law says that the jury is authorized to answer that  
10:44 23 question based upon the facts of the case all by itself.  
10:44 24 The jury has that right. The jury may still make an  
10:44 25 answer to that, even if neither side puts on any

10:44 1 evidence at all.

10:44 2 And then the notion would be this way:  
10:44 3 You look at the crime, look at how it was committed,  
10:44 4 look at the attitude with which it was committed, look  
10:44 5 at all the circumstances that may have been presented to  
10:44 6 you in any form or fashion that you saw in the first  
10:44 7 part of the trial and say, is the person that I  
10:45 8 convicted who committed this crime, is that person and  
10:45 9 is that crime such that anyone who could do it will  
10:45 10 probably always be a continuing threat to society with  
10:45 11 violent acts?

10:45 12 That becomes the question that you are  
10:45 13 asked. And you've got to put it on the scales and use  
10:45 14 that standard of beyond a reasonable doubt. As you sit  
10:45 15 there now, do you see how some crimes could be so  
10:45 16 vicious and so callous and so unnecessary and so lacking  
10:45 17 in understandability that, for a person to commit such a  
10:45 18 thing makes you think anybody that could be that way  
10:45 19 would always probably be a continuing threat to society?

10:45 20 A. Yes. I could see myself, depending on the  
10:45 21 situation, yes.

10:45 22 Q. And the things that come to my mind, when I  
10:45 23 first started prosecuting, we used to like to use Hitler  
10:45 24 because that was an example of the extreme form of a  
10:46 25 capital murder. If capital murder is killing two or



10:46 1 more people, certainly what Hitler did, indirectly  
10:46 2 anyway. I don't guess he ever killed anybody, but he  
10:46 3 caused it to be done. But that was always the example.

10:46 4 Oklahoma City seems now, a generation  
10:46 5 later, to be a more common demonstration of the extreme  
10:46 6 case of capital murder. Do you agree with that? That  
10:46 7 that seems like that's an extreme case?

10:46 8 A. Yes.

10:46 9 Q. And I guess the thinking of it is: If the only  
10:46 10 evidence offered to a jury was that a person thought  
10:46 11 that made sense to do such a thing in that person's  
10:46 12 value system, that kind of a choice seemed to be an  
10:46 13 appropriate choice that his character would allow him to  
10:46 14 go do.

10:46 15 The thinking is: How could a person whose  
10:46 16 mind could ever work that way be anything but an ongoing  
10:46 17 threat to society? Does that make sense to you?

10:47 18 A. Yes, sir.

10:47 19 Q. I'm sorry?

10:47 20 A. Yes, sir.

10:47 21 Q. Now, that having been said, other evidence is  
10:47 22 authorized, not required, but authorized at the second  
10:47 23 part of the trial, that it's been open for both the  
10:47 24 State and the defense.

10:47 25 For example, if you look at that question

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10:47 1 now, sir, does it look to you like you would need to be  
10:47 2 some type of medical doctor to answer that question, or  
10:47 3 does that look to you like the kind of question you  
10:47 4 could understand just from being an ordinary citizen in  
10:47 5 our society?

10:47 6 A. I think you can just look at it and, you know,  
10:47 7 you don't have to be a medical doctor.

10:47 8 Q. Okay. I guess what I'm thinking is, you know,  
10:47 9 at the end of the day you are a cashier there at the  
10:47 10 Honda dealership counting the receipts for the day, and  
10:47 11 there's going to be some cash. It's kind of a cashless  
10:47 12 society, but you get some cash payments, I'm sure. And  
10:47 13 we all have instincts about if there's somebody around.  
10:47 14 You've seen people that you got concerned about, thought  
10:48 15 might be dangerous or thought might somehow be a  
10:48 16 problem. We all do those sorts of things, don't we?

10:48 17 A. Yes, sir.

10:48 18 Q. And why I say that is because the law  
10:48 19 authorizes psychiatric or psychological evidence to be  
10:48 20 introduced on that special issue, on that question.  
10:48 21 Both sides can do that. The defendant may offer a  
10:48 22 psychiatrist or a psychiatric evidence to just say,  
10:48 23 well, because of the background or because of the  
10:48 24 personality of -- of a defendant, he or she will  
10:48 25 probably not be dangerous in the future.

10:48 1 And the State can do the same thing. We  
10:48 2 can go find a psychiatrist to come in who said, I've  
10:48 3 studied all of this, and in my opinion, the person is  
10:48 4 probably going to be dangerous. But many times jurors  
10:48 5 say, well, I will listen to all that evidence because I  
10:48 6 will listen -- I mean, I'm here. What am I going to do  
10:48 7 anyway? I might as well listen to everything that's  
10:48 8 here. And I want to hear everything, and I want to make  
10:48 9 sure I'm not missing something.

10:49 10 But I can't see why a psychiatrist is any  
10:49 11 better able to answer that question than I am because I  
10:49 12 live in our -- I live in this society. And I've been  
10:49 13 learning everyday about people and aspects of stuff, and  
10:49 14 I understand. Do you see yourself as kind of being in  
10:49 15 that category? You would listen to psychiatric evidence  
10:49 16 but wouldn't require it?

10:49 17 A. Yes.

10:49 18 Q. And the thing I was -- as an example, if you  
10:49 19 took the kids to the circus, and you were watching the  
10:49 20 tiger act, and one of the tigers hops out of the cage  
10:49 21 and gets loose and is running around Reunion Arena or  
10:49 22 wherever you are looking at a circus, you don't need a  
10:49 23 veterinarian to say, you better get out of here because  
10:49 24 that tiger is dangerous. You understand the concept  
10:49 25 just by living here and learning about tigers as a kid

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10:49 1 or whatever. That's just stuff that we know about as  
10:49 2 people.

10:49 3 A. Yes.

10:49 4 Q. Okay. Now, we use the term probability. And  
10:50 5 sometimes lawyers complain about these questions as not  
10:50 6 being clear. I got to say this, we have hundreds of  
10:50 7 death penalty prosecutions across this state. And  
10:50 8 whether they are clear to lawyers, they ultimately seem  
10:50 9 to be clear to juries because they are finally able to  
10:50 10 work with it, even if it's not perfect.

10:50 11 Probability, first of all, means more than  
10:50 12 a possibility as that term -- as that term is expressed  
10:50 13 in that question. And I'll give you an example of what  
10:50 14 I'm talking about.

10:50 15 Let's say you've got an automobile that  
10:50 16 throws a rod. Okay? And it ain't going to run,  
10:50 17 throwing a rod. I mean, it will rattle. I don't know  
10:50 18 what it eventually does if you keep cranking it. I know  
10:50 19 what it won't do. It won't operate. Fair?

10:50 20 A. Yes.

10:50 21 Q. I suppose there is some possibility through  
10:50 22 heat or meshing of metal or something like that, that  
10:50 23 rod could at least reattach itself decently enough that  
10:51 24 it would hold together for a while and still pump that  
10:51 25 piston. I suppose that's theoretically possible, you

10:51 1 know, in a one in a ten million kind of a chance. Do  
 10:51 2 you know what I mean?  
 10:51 3 A. Yes.  
 10:51 4 Q. But that's not probable; wouldn't you agree?  
 10:51 5 A. I would agree with it, yes.  
 10:51 6 Q. I mean, it's kind of like a spinal cord injury.  
 10:51 7 They say we may someday have a way to repair a damaged  
 10:51 8 or snapped spinal cord, but apparently that might not  
 10:51 9 even be a possibility. It may just be a dream almost  
 10:51 10 right now, that kind of idea. And what I'm trying to  
 10:51 11 illustrate to you is, it's not enough that we would show  
 10:51 12 you that a defendant could theoretically, conceivably,  
 10:51 13 kind of like that rod that wouldn't reattach be  
 10:51 14 dangerous. That's not enough. That possibility, that's  
 10:51 15 not near enough. We have to show that it's fairly  
 10:51 16 possible. That it's probable, in other words. Does  
 10:51 17 that make sense to you?  
 10:51 18 A. Yes.  
 10:51 19 Q. And using that spinal cord illustration that  
 10:52 20 I'm talking about, let's just assume, for example, that  
 10:52 21 the defendant was a violent, horrible capital murderer  
 10:52 22 that viciously callously, without regard for human life,  
 10:52 23 caused the death of two people.  
 10:52 24 And, frankly, not only did that but had a  
 10:52 25 certain amount of bravado about it after the fact and

10:52 1 even bragged about having done it or made some  
 10:52 2 extemporaneous speaking about how it was good and, I  
 10:52 3 don't know, not even the first time that such a thing  
 10:52 4 had happened.  
 10:52 5 And yet when the person was arrested, that  
 10:52 6 person, in some shoot-out with the police or trying to  
 10:52 7 jump off a building and fell down, ends up with a spinal  
 10:52 8 cord injury that paralyzes him. Paralyzes him from  
 10:52 9 the -- I don't know, from the chin down, let's say. He  
 10:52 10 could still talk, but he can't do much. He can still  
 10:52 11 blink his eyes and wiggle his ears and make a frown, but  
 10:52 12 that's about all that he can do.  
 10:52 13 And so then that may need doctor's help  
 10:52 14 because maybe the defense would bring in doctors -- they  
 10:53 15 don't have to -- but they might bring in doctors saying,  
 10:53 16 that's a spinal cord injury. That's never getting any  
 10:53 17 better. He'll never be dangerous.  
 10:53 18 He'll never even be able to do much except  
 10:53 19 drink through a straw. And, you know, if that's true,  
 10:53 20 that fair answer to that question, based on the  
 10:53 21 probability, has to be no. Not that he's so great, not  
 10:53 22 that we -- not that we think he's any better, but he's  
 10:53 23 not going to be a danger to society in the future. Do  
 10:53 24 you see how that would be?  
 10:53 25 A. Yes, uh-huh.

10:53 1 Q. So if that question is never answered  
 10:53 2 automatically, simply based on the facts of the offense  
 10:53 3 because, had he not gotten the spinal cord injury, the  
 10:53 4 answer would probably be no, with those kinds of facts.  
 10:53 5 The answer would probably be yes to that question, he  
 10:53 6 would be a future danger. That question does seem to  
 10:53 7 require you to predict the future, don't you think?  
 10:54 8 A. Yes, definitely.  
 10:54 9 Q. But it doesn't require you to predict it with  
 10:54 10 certainty but only with probability. Are you with me?  
 10:54 11 A. Yes.  
 10:54 12 Q. And going back to that example I used of your  
 10:54 13 individual right to self-defense, you as the homeowner  
 10:54 14 don't have to know, you don't have to wait until he  
 10:54 15 kills you before you are going to know that he's going  
 10:54 16 to kill you. If somebody is coming armed into your home  
 10:54 17 saying those things, giving you that evidence is perhaps  
 10:54 18 a probability in your mind that I better shoot this  
 10:54 19 person before he kills me or my family, right?  
 10:54 20 A. Yes.  
 10:54 21 Q. And that's -- that's what that is. If the  
 10:54 22 burden were on us to prove with certainty, we could  
 10:54 23 never -- we could never do that. I mean, we can't prove  
 10:54 24 anything with certainty. I mean, you couldn't prove  
 10:54 25 with 100 percent certainty that the rod wouldn't

10:54 1 reattach.  
 10:54 2 You have been in this business a long time  
 10:54 3 and talked to a hundred mechanics. And no one has ever  
 10:54 4 heard of it happening, but it could happen, right? One  
 10:54 5 in ten million times that the molecules do what  
 10:54 6 molecules do or something?  
 10:55 7 A. Yes.  
 10:55 8 Q. If and only if the answer to this question is,  
 10:55 9 yes, unanimously by the jury after a beyond a reasonable  
 10:55 10 doubt finding of probability, only in that circumstance  
 10:55 11 do you move to this second question. Can you read that  
 10:55 12 bottom line? We put it up here so there's just a better  
 10:55 13 sight line for the court reporter to the State's table.  
 10:55 14 Can you read that whole question?  
 10:55 15 A. Yes, sir.  
 10:55 16 Q. Take a moment, if you would, Mr. Edgar, and  
 10:55 17 read that. That question has a -- I guess we call it  
 10:55 18 the mitigation question. It has a number of other  
 10:55 19 terms, all of which I think are positive. One term is,  
 10:55 20 it's a last look at it. Another is a humanitarian  
 10:55 21 question. Another is it's -- well, those are certainly  
 10:55 22 some of the terms. I believe that question is actually  
 10:56 23 in existence for the benefit of the jury.  
 10:56 24 It certainly can have a huge benefit for  
 10:56 25 the defendant. And yet, as I explained that to you a

10:56 1 little bit, see if I'm right. See if what that really  
 10:56 2 is is a benefit for the jury that may work to the  
 10:56 3 benefit of the defendant also. And I'll explain to you  
 10:56 4 what that means.

10:56 5 Now, we've got the scales of justice on  
 10:56 6 that question in the sense that it's the same thing.  
 10:56 7 We've got to measure evidence. We've got to -- there  
 10:56 8 may be evidence on one side and evidence on the other  
 10:56 9 side. But no longer do we worry about which way it  
 10:56 10 tips. It's not going to be an instruction to you. In  
 10:56 11 other words, it could tip -- it could tip 80 percent  
 10:56 12 toward the defense view, and he still dies. It could  
 10:57 13 tip 80 percent toward the State's view, and he could get  
 10:57 14 a life sentence.

10:57 15 I suppose it could be 99 percent in favor  
 10:57 16 of the defense, and he gets a death sentence. It would  
 10:57 17 be 99 percent in favor of the State, and he gets a life  
 10:57 18 sentence because there's not anything about beyond a  
 10:57 19 reasonable doubt.

10:57 20 And the only thing that even comes close  
 10:57 21 to a measurement in that question, the only thing that's  
 10:57 22 even close to a standard of proof is this term here,  
 10:57 23 sufficient mitigating circumstance or circumstances.  
 10:57 24 Are you with me?

10:57 25 A. Yes, sir.

10:57 1 Q. So I mean, that could be one, for example, in a  
 10:57 2 hypothetical case. The defendant could put on 500  
 10:57 3 witnesses, all of which say he's always been the  
 10:57 4 greatest human being we've ever known. We're proud to  
 10:57 5 call him our friend. And the State goes, scour up and  
 10:57 6 down the neighborhood, and we can't find a soul to come  
 10:57 7 in and say anything bad about him, so we just sit there.

10:57 8 And you, the jury, could say, well, yeah,  
 10:57 9 500 people, bishops and lawyers and school principals  
 10:58 10 and holy people all come in and speak highly of the  
 10:58 11 defendant, but that's not sufficient. State, they  
 10:58 12 didn't have any evidence. They went looking everywhere,  
 10:58 13 and they couldn't find a soul to say something bad. So  
 10:58 14 what? The crime says something really bad about it.

10:58 15 And we find that that background from  
 10:58 16 these 500 witnesses, while impressive and they are  
 10:58 17 likable people, isn't sufficient to overcome the crime  
 10:58 18 and in its impact and the fact that he's a danger  
 10:58 19 society.

10:58 20 This whole idea of mitigation, they could  
 10:58 21 bring on witnesses or we could bring on witnesses that  
 10:58 22 could put the whole jury in tears. They could say, my  
 10:58 23 gosh, how could any human being ever have had such a  
 10:58 24 terrible life as this defendant? And isn't that a  
 10:59 25 shame? Now it's time for an execution. And that's

10:59 1 perfectly within the jury's province. Are you with me  
 10:59 2 on that concept?

10:59 3 A. Yes.

10:59 4 Q. And here's why that -- here's why that works  
 10:59 5 that way. Everybody, we don't think about that. Every  
 10:59 6 one of us has a bagful of mitigation that we carry  
 10:59 7 around with us. It could have been a disappointment as  
 10:59 8 a child. It could have been upheaval in our family.

10:59 9 It could have been domestic violence that  
 10:59 10 nobody knew about because it was behind closed doors.  
 10:59 11 It could have been health issues. It could have been  
 10:59 12 bad role modeling. It could have been anything you can  
 10:59 13 think of that you think is a sad circumstance of  
 10:59 14 somebody's background. And I'm not -- I'm not being at  
 10:59 15 all critical of any of that. We've all got it.

10:59 16 You've got mechanics working there at your  
 10:59 17 shop who have had really terrible things that have  
 11:00 18 happened in their life. Maybe some of them you know  
 11:00 19 about. Probably most of them you don't know about. Do  
 11:00 20 you follow me?

11:00 21 A. Yes.

11:00 22 Q. And most of us don't really have occasion to  
 11:00 23 make use of that. We just go on with our lives, make  
 11:00 24 our choices, try to better ourselves as we can. But if  
 11:00 25 one of us got charged with capital murder, those things

11:00 1 are still there that we could come and use and point to  
 11:00 2 and say, that's mitigating. That doesn't make my -- my  
 11:00 3 intentional murder so severe as to still require a death  
 11:00 4 sentence. Does that make sense to you?

11:00 5 A. Somewhat.

11:00 6 Q. It may not. Does what I'm saying make sense  
 11:00 7 that we all have that available to us to use at a  
 11:00 8 certain time?

11:00 9 A. Yes.

11:00 10 Q. And I will now use the Hitler example here  
 11:00 11 because the fact is, apparently history teaches us  
 11:00 12 Hitler had a lot of things that he could say were  
 11:00 13 mitigating, had he gotten on trial instead of taking the  
 11:01 14 easy way out.

11:01 15 He could have said, you know, my mom  
 11:01 16 didn't want me. My dad wasn't around. My mom didn't  
 11:01 17 want me even born. She contemplated having an abortion.  
 11:01 18 Actually sought out an abortionist and, for whatever  
 11:01 19 reason, didn't. And I find out about that. How does  
 11:01 20 that make a kid feel?

11:01 21 The fact that you are so unwanted, your  
 11:01 22 dad's not around, and your mom was going to abort you  
 11:01 23 before you were even born. I was kind of sickly. I  
 11:01 24 wasn't a real big guy. I was sort of short and kind of  
 11:01 25 sickly, and I got teased a lot when I was growing up.

11:01 1 That just hurt so much.

11:01 2 I was kind of artistic. I wasn't real  
11:01 3 athletic. I didn't do soccer or German games so much.  
11:01 4 I liked art. I went to the art schools, and they kicked  
11:01 5 me out of art school and said, you are not -- not only  
11:01 6 are you no good for anything else, Hitler. You are not  
11:01 7 even an artist. Get out of here.

11:01 8 I got in the army and did my best in  
11:01 9 there, and I made corporal. But even though I was a lot  
11:01 10 smarter than that, nobody recognized my talents, and I  
11:02 11 ended up being a corporal. About the only thing that I  
11:02 12 seemed to be able to do was influence people. And I  
11:02 13 couldn't find anything else anybody approved of me. And  
11:02 14 I got involved in that.

11:02 15 I had all this anger in me because people  
11:02 16 mistreated me, and nobody loved me. I started drinking.  
11:02 17 Like a lot of Germans, I did some drinking, but didn't  
11:02 18 do any more than average and ended up in jail for my  
11:02 19 political views, and that made me feel even more  
11:02 20 repressed.

11:02 21 All I was doing is trying to express  
11:02 22 myself, and they put me in jail for that. And they  
11:02 23 treated me bad in the jailhouse, and so I ended up just  
11:02 24 getting more and more angry.

11:02 25 Next thing you know I end up running a

11:02 1 country, and I look for some scapegoats and discovered  
11:02 2 the Jews and caused 6 million of them to be executed,  
11:02 3 but I didn't think of all that. I was just upset, and I  
11:02 4 was -- I was sad. A lot of that could, if it wasn't  
11:02 5 Hitler, a lot of that could break your heart, you know,  
11:02 6 hearing that, if that's all true.

11:02 7 That's the kind of thing that I hope  
11:02 8 nobody in this courtroom had to go through, but that's  
11:03 9 real bad. And yet you look at that crime, you look at  
11:03 10 his language, look at his teachings, look at his  
11:03 11 strutting around and goose stepping and all the things  
11:03 12 that he did, and it's pretty hard to say that all of  
11:03 13 that blubbing is sufficient mitigating circumstance or  
11:03 14 circumstances to warrant anything but a death sentence  
11:03 15 in that case. Does that make sense to you?

11:03 16 A. Yes.

11:03 17 Q. All right. Now, that same kind of stuff might  
11:03 18 be enough. It might be sufficient to warrant somebody  
11:03 19 else getting a life sentence, maybe perhaps depending  
11:03 20 upon the crime itself. Does that make sense?

11:03 21 A. Yes.

11:03 22 Q. And, in other words, if it were a different  
11:03 23 kind of a circumstance, if it were a different kind of a  
11:03 24 crime, maybe that is enough, and maybe it isn't. We  
11:03 25 don't know. We can't pin you down on any of that. That

11:03 1 question seems to focus itself really on the defendant.  
11:03 2 And I'll explain to you what I mean. It focuses on the  
11:04 3 defendant's crime because that's the circumstances of  
11:04 4 the offense. You already found him guilty of it.

11:04 5 So it certainly directs your attention to  
11:04 6 what he did, the circumstances of his crime, to his  
11:04 7 background and to his character and asks you to make  
11:04 8 those determinations.

11:04 9 Why I say that helps the jury and maybe  
11:04 10 benefits the defendant at the same time is, if a jury in  
11:04 11 good conscience believes that the death sentence is the  
11:04 12 wrong thing to do in that particular case, not just  
11:04 13 generally wrong, but the wrong thing in that case based  
11:04 14 on the evidence they've seen in that case, it's cruel to  
11:04 15 a jury to make them vote for a death sentence when they  
11:04 16 think it's wrong in that case. Does that make some  
11:04 17 sense to you?

11:04 18 A. Yes.

11:04 19 Q. And I say that that question is for the benefit  
11:04 20 of the jury. But it equally benefits the defendant  
11:04 21 because he may take advantage of the jury's belief that  
11:04 22 a death sentence is wrong in that case. Does that make  
11:05 23 sense to you?

11:05 24 A. Yes, it does.

11:05 25 Q. Okay. And so, how you look at the evidence,

11:05 1 how you look at the evidence and how you view mitigation  
11:05 2 is strictly up to you. For example, you may think that  
11:05 3 drugs are mitigating. And so you put him on this  
11:05 4 mitigation scale that we've got to have, or maybe you  
11:05 5 think they are not mitigating.

11:05 6 Maybe you think that when a person does  
11:05 7 drugs, that's extra worse than you are doing a regular  
11:05 8 crime. Maybe you put them on the other side of the  
11:05 9 scale, and they sit there however much they tip. And  
11:05 10 that may tip a little; it may tip a lot.

11:05 11 But just as with Hitler and all of his --  
11:05 12 all of his evidence that he might offer as mitigating,  
11:05 13 you might say, so what? We believe every word that you  
11:05 14 said. We believe every one of those lessens the need of  
11:05 15 the death penalty, mitigates because anything mitigates;  
11:05 16 but you are not even close to a sufficient mitigating  
11:06 17 circumstance or circumstances to change the results of  
11:06 18 those special issues. Do you follow me on that?

11:06 19 A. Yes.

11:06 20 Q. And that's up to -- that's up to the jury. For  
11:06 21 example, it may be that there are some crimes so serious  
11:06 22 that you find a defendant guilty of capital murder. And  
11:06 23 at that moment your thought process is such that it's  
11:06 24 over for the defendant. You can't analyze it that way.

11:06 25 You can't say, okay, since I have found

11:06 1 him guilty of capital murder, I'm through. But that  
11:06 2 evidence can be so persuasive that it's just a matter of  
11:06 3 time until you get to this question, and that's where  
11:06 4 your reasoned evaluation is going to come back with a  
11:06 5 yes answer. Do you follow what I'm saying?

11:06 6 A. Yes.

11:06 7 Q. And so when asked the question, can you fairly  
11:07 8 look at that question? Well, yes, you can. But when  
11:07 9 the time comes back for you to fairly look at that  
11:07 10 question, the first phase of the trial is going to be  
11:07 11 strong enough to get a yes answer on that question. Do  
11:07 12 you follow what I'm saying?

11:07 13 A. Yes.

11:07 14 Q. It's only delayed. And that doesn't mean --  
11:07 15 that doesn't mean you just go to sleep when everybody  
11:07 16 else is deliberating. You don't go to sleep in the  
11:07 17 punishment phase because you still got to continue to  
11:07 18 look at it.

11:07 19 It may be that the evidence or that the  
11:07 20 crime itself is so powerful that it's just a matter of  
11:07 21 time until you get to the mitigation question and reject  
11:07 22 it. Not because you are not considering that question,  
11:07 23 because you will, but because the crime is so enormous  
11:07 24 that there is no mitigating -- there is no circumstances  
11:07 25 that could ever mitigate against a death sentence

11:07 1 because of the enormity of the crime. Are you with me?

11:07 2 A. Yes.

11:07 3 Q. And so, for example, it is fully possible --  
11:07 4 let's say you were in the Oklahoma City trial -- you  
11:08 5 could say, somebody could say, well, if you find he's  
11:08 6 guilty of killing 168 innocent people by blowing them up  
11:08 7 with the granddaddy of all bombs, are there -- are there  
11:08 8 mitigating circumstances that could cause you to -- to,  
11:08 9 give a life sentence? The answer to that might be,  
11:08 10 well, no, there aren't. I'll consider it, but that's  
11:08 11 never going to happen.

11:08 12 Just like Hitler. Nothing Hitler could  
11:08 13 have ever shown would have been enough to mitigate his  
11:08 14 crimes, and you can still be a fair juror. You don't  
11:08 15 have to be committed to an open mind on all possible  
11:08 16 circumstances.

11:08 17 In other words, it's not in this case that  
11:08 18 you can't be said, will you consider mitigating evidence  
11:08 19 in a certain fact situation? Because even though you --  
11:08 20 you may consider, but it won't be enough. Does that  
11:08 21 make sense?

11:08 22 A. Yes.

11:08 23 Q. All right. The idea is that you recognize that  
11:08 24 there are some capital murders in which there could be  
11:09 25 evidence that would mitigate against the need for the

11:09 1 death penalty. Do you recognize that, sir?

11:09 2 A. Yes.

11:09 3 Q. And whether this is one or whether the  
11:09 4 allegations of this case are such isn't the question  
11:09 5 because it's not fair to you to say, is a burglary-  
11:09 6 homicide one in which you could ever consider  
11:09 7 mitigation? Because that's asking you to answer that  
11:09 8 question based on the facts of this particular case.  
11:09 9 Are you with me?

11:09 10 A. Yes.

11:09 11 Q. Any more than I could -- any more than I could  
11:09 12 ever say to you -- it wouldn't be fair for me to say,  
11:09 13 well, in a burglary homicide, could you ever find that  
11:09 14 special issue yes on future danger? It's in a capital  
11:09 15 murder case, having found a defendant guilty of the  
11:09 16 crime of capital murder, could you hold the State to its  
11:09 17 burden of proof on that first phase? And then on the  
11:09 18 second part, with an open mind, look and see if there is  
11:10 19 any mitigating evidence. And you could do that?

11:10 20 A. Yes.

11:10 21 Q. And by the way, even though you may not think  
11:10 22 mitigating evidence fits you, that doesn't mean you  
11:10 23 couldn't be inspired by it later in the second part of  
11:10 24 the trial. Let me give you an example. You might not  
11:10 25 think that getting picked on as a child would ever

11:10 1 mitigate against the death sentence, for example. All  
11:10 2 right?

11:10 3 And I bet that doesn't seem like that  
11:10 4 would be enough to knock out an otherwise perfectly  
11:10 5 appropriate death sentence. Am I right on that?

11:10 6 A. Yes.

11:10 7 Q. But you never know. If you approach it with an  
11:10 8 open mind, you might change your mind. Who knows? You  
11:10 9 think that doesn't seem to appeal to you, but you seem  
11:10 10 open-minded. And things that you used to think, you  
11:10 11 probably don't think anymore kind of idea, right?

11:10 12 A. True.

11:10 13 Q. The idea is that you be open -- that you be  
11:10 14 open to answering these questions fairly according to  
11:10 15 the evidence. I mean, you may be the kind of guy that  
11:10 16 would say, yeah, I'm open to the idea of answering that  
11:11 17 question yes, but, you know, it would be like a snowy  
11:11 18 day in August kind of thing. It's not going to happen,  
11:11 19 very likely.

11:11 20 That's okay as long as you are telling me  
11:11 21 your mind is not made up automatically to the idea.  
11:11 22 Nothing I can do would ever let me prove that. Are you  
11:11 23 with me so far on all of this?

11:11 24 A. Yes, sir.

11:11 25 Q. When I talk to you about things like drugs and

11:11 1 I say, well, drugs affect how we perceive reality. You  
11:11 2 would agree with that?

11:11 3 A. Yes.

11:11 4 Q. I mean, if we take some kinds of drugs that  
11:11 5 make us aggressive, it may well be that taking those  
11:11 6 drugs, while a voluntary act, then we become aggressive  
11:11 7 and then we commit some horrible crimes. Can you see  
11:11 8 how that would be?

11:11 9 A. Yes.

11:11 10 Q. And maybe if we hadn't taken the drugs --  
11:11 11 nobody knows what would have happened -- but maybe if we  
11:12 12 hadn't taken the drugs, we wouldn't have done those  
11:12 13 aggressive crimes, maybe. I don't know. Does that then  
11:12 14 mean that the fact that we took drugs and the aggressive  
11:12 15 crimes resulted, does that mean that that's not as  
11:12 16 serious in your mind?

11:12 17 A. No.

11:12 18 Q. Well, why not? If it's true that we wouldn't  
11:12 19 have done it but for taking the drugs, why wouldn't  
11:12 20 that -- why wouldn't that be something in our benefit,  
11:12 21 as killers, I mean?

11:12 22 A. Well, taking the drug, meaning they took the  
11:12 23 drugs and went and committed the crime?

11:12 24 Q. Yeah.

11:12 25 A. Well, the person had the option of not taking

11:12 1 drugs or taking the drugs. Meaning that the drugs  
11:12 2 caused the, you know, that effect.

11:12 3 Q. Some people say that's mitigating. Some people  
11:12 4 say, well, on those scales of mitigation, that kind of  
11:12 5 is on the defendant's side because he took drugs. Other  
11:12 6 people say, huh-uh, not only is it not mitigation,  
11:13 7 that's aggravating.

11:13 8 That's on the State's side because that's  
11:13 9 two crimes rolled into one. Taking the drugs and then  
11:13 10 you already know -- it's almost like you chose to be  
11:13 11 dangerous. It's almost like the idea you chose to take  
11:13 12 drugs that you know what they make you do. And so other  
11:13 13 jurors might say that's aggravating. Does that make  
11:13 14 sense to you?

11:13 15 A. Yes.

11:13 16 Q. Good. But even if it's mitigating, it doesn't  
11:13 17 have to be sufficiently mitigating to warrant a life  
11:13 18 sentence. Do you understand?

11:13 19 A. Yeah.

11:13 20 Q. Some people say youth is a mitigating  
11:13 21 circumstance. They say, well, it's awfully sad to  
11:13 22 execute a young person, and I'm not talking about a  
11:13 23 teenager. I don't mean that kind of young. Certainly  
11:13 24 young compared to me, maybe compared to you. How old a  
11:13 25 man are you?

11:13 1 A. 32.

11:13 2 Q. Well, for example, 27 would be younger than  
11:13 3 you. And I suppose some people would say that sure is  
11:13 4 sad to have to execute somebody 27 whose got some years  
11:13 5 left to live. And does that seem mitigating to you to  
11:13 6 be youthful? Does that seem like something that has a  
11:14 7 whole lot to do with whether he ought to get a death  
11:14 8 sentence or not?

11:14 9 A. No.

11:14 10 Q. I mean, somebody else might see just the  
11:14 11 opposite. Do you agree?

11:14 12 A. Yes.

11:14 13 Q. Same thing, it may be mitigating to a juror,  
11:14 14 but it doesn't have to be so strongly mitigating that it  
11:14 15 is sufficient to cause a life sentence to be imposed.  
11:14 16 And it doesn't even have to be mitigating at all if that  
11:14 17 juror doesn't want it to be.

11:14 18 The only thing that I know of that may be  
11:14 19 absolutely mitigating, if it ever gets to that point  
11:14 20 there actually might be such an instruction if it  
11:14 21 applied--I doubt if it does in this case--is  
11:14 22 retardation.

11:14 23 I suppose if anybody ever put it to the  
11:14 24 test, Constitutionally, I suppose, being mentally  
11:14 25 retarded is mitigating per se. That means -- that means

11:14 1 that the jury has to consider retardation on the issue  
11:14 2 as mitigating evidence. Now, the same deal, unless  
11:14 3 we're told otherwise in Washington, how sufficiently  
11:14 4 mitigation retardation is would be up to the jury.

11:15 5 But, nevertheless, that's probably the  
11:15 6 only thing that's automatic, in my opinion. I don't  
11:15 7 have any law on this, but I believe it would be  
11:15 8 automatically mitigating. Okay? But the rest of the  
11:15 9 stuff could go the other way.

11:15 10 You could say, a young person, why are you  
11:15 11 committing crimes? You got your whole life ahead of  
11:15 12 you. It's the old guy whose life is over. You know,  
11:15 13 he's got nothing to lose because his life is over. You  
11:15 14 can look at things in opposite directions if they want  
11:15 15 to.

11:15 16 I don't want to spend a lot of time  
11:15 17 talking to you about matters of faith, but sometimes a  
11:15 18 defendant, after an arrest, will begin to do things  
11:15 19 which appear to be a Christian conversion, right? And  
11:15 20 why I phrase it the way I do is because neither you nor  
11:15 21 I nor anybody else, at least on earth, are probably  
11:15 22 going to really know whether it's true or not. All  
11:16 23 right?

11:16 24 A. Right.

11:16 25 Q. Some people say that's mitigating if a person

11:16 1 truly has had a religious conversion even in the  
 11:16 2 jailhouse, even after being caught and knowing they are  
 11:16 3 facing their impending death, perhaps. Other people  
 11:16 4 say, well, no, it's not because maybe it's not sincere.  
 11:16 5 And even if it is, so what?

11:16 6 There's the State's business, and there's  
 11:16 7 God's business, and they are separate. They are  
 11:16 8 distinct. But it tends to have -- to many people it has  
 11:16 9 a sympathy factor probably. I'm not being critical.  
 11:16 10 I'm just saying, do you see you as the kind of person  
 11:16 11 that it would have a sympathy factor if someone became  
 11:16 12 religious?

11:16 13 A. I would say somewhat. I mean, I'm not -- I  
 11:16 14 haven't been put in that situation where I'd have to  
 11:16 15 feel that way. I'm not --

11:16 16 Q. I know, and a lot of this is probably unfair to  
 11:16 17 you because we're asking you: What would you do if?  
 11:17 18 It's the only way we have to do it. We have to try to  
 11:17 19 explore it the best way we can. Some people might say,  
 11:17 20 yeah, that's mitigating. That's better for the  
 11:17 21 defendant, but it's not sufficiently mitigating. I'm  
 11:17 22 happy for him that he's got this experience.

11:17 23 It may well help him in the afterlife and  
 11:17 24 that's good, but he could have done that beforehand and  
 11:17 25 chose not to. The fact that he did it afterwards may be

11:17 1 mitigating, but not sufficiently mitigating to change  
 11:17 2 the result. Do you see how that could be?

11:17 3 A. Yes.

11:17 4 Q. Other people might say, so what? Other people  
 11:17 5 might say that's not any different than starting to read  
 11:17 6 books. I mean, that's -- that's healthy, but so what?  
 11:17 7 What's that got to do with anything? We don't have --  
 11:17 8 you understand the burden of proof is never on the  
 11:17 9 defense? Never. Even on mitigation there's not a  
 11:17 10 burden of proof on them. It's just nobody has a burden  
 11:17 11 of proof. Do you understand?

11:18 12 A. Yes, sir.

11:18 13 MR. SCHULTZ: A moment please, Judge?

11:18 14 THE COURT: All right.

11:18 15 MR. SCHULTZ: Approach the juror, Your  
 11:18 16 Honor?

11:18 17 THE COURT: All right.

11:18 18 Q. (BY MR. SCHULTZ) We don't do a great service  
 11:18 19 to the juror to give you this questionnaire before we  
 11:18 20 talk to you because it sort of almost ends up being  
 11:18 21 attitudinal. On that thing where you have agree and  
 11:18 22 disagree, we have highlighted that.

11:18 23 And not critically, but the things we  
 11:18 24 think we need to talk with and explain to jurors, we use  
 11:18 25 our yellow highlighter. Would you read that question to

11:18 1 me and the answer that you circled?

11:18 2 A. "If someone is accused of the capital murder,  
 11:18 3 he should have to prove his innocence." I have  
 11:18 4 "strongly agree."

11:18 5 Q. Okay. When asked that question on the survey,  
 11:18 6 like many questions, it's like asking the jurors: If  
 11:18 7 you get convicted of capital murder, should you get a  
 11:18 8 death sentence? And a lot of people would answer that  
 11:18 9 one yes, you know, just because they don't work in this  
 11:19 10 business, and so it's different.

11:19 11 Looking at that question again, if it's --  
 11:19 12 if it's how you think it ought to be, you are completely  
 11:19 13 free to have it any way that you want.

11:19 14 For example, if you right now personally  
 11:19 15 believe that a person on trial for capital murder ought  
 11:19 16 to have to prove his innocence, if that's what you  
 11:19 17 believe now, if that's your view, that doesn't -- that's  
 11:19 18 all right as long as that view doesn't find its way into  
 11:19 19 how you do your business as a juror.

11:19 20 Explaining it, of course, you now  
 11:19 21 understand that burden of proof is never on the defense  
 11:19 22 for anything? Are you with me on that?

11:19 23 A. Yes.

11:19 24 Q. All right. Is that still -- is that still your  
 11:19 25 answer about how you feel it ought to be, as you look at

11:19 1 that question? Look at it again for me. Do you see how  
 11:19 2 what you circled is inconsistent with --

11:20 3 A. Correct.

11:20 4 Q. Now, once again, if you believe they ought to  
 11:20 5 have to prove innocence, we've charged them with a  
 11:20 6 crime. We're here because the State has charged that  
 11:20 7 defendant with this crime of capital murder. Do you  
 11:20 8 think he ought to have to prove he's innocent? Not just  
 11:20 9 sit here and say, prove you are innocent? Do you think  
 11:20 10 that's how it ought to have to be, just because we  
 11:20 11 charged him?

11:20 12 A. Well, how it ought -- well, I look at that  
 11:20 13 question assuming everybody is innocent until proven  
 11:20 14 guilty.

11:20 15 Q. Okay.

11:20 16 A. I mean, that's how I see that question. But I  
 11:20 17 mean, I understand what you are saying now, but --

11:20 18 Q. Okay. Here's what I'm getting at. I mean,  
 11:20 19 let's say you were finished with these questions. And  
 11:20 20 then the Judge said, well, you can't go anywhere because  
 11:20 21 the State just got you indicted for capital murder. You  
 11:20 22 have been charged with killing some people. And the  
 11:20 23 Judge says, "Your trial starts right now. Call your  
 11:20 24 first witness. You better prove you are innocent  
 11:21 25 because they are claiming you are guilty, the State."

11:21 1 And I'm just sitting over here smiling  
 11:21 2 because what's this guy going to do? How is he going to  
 11:21 3 prove he's innocent kind of thing. Do you see that's  
 11:21 4 not right?  
 11:21 5 A. Right.  
 11:21 6 Q. If the State accuses you of a crime, the State  
 11:21 7 must prove you are guilty beyond a reasonable doubt, or  
 11:21 8 you are acquitted. Okay?  
 11:21 9 A. Uh-huh.  
 11:21 10 Q. And are you saying you don't think -- are you  
 11:21 11 saying you didn't ever mean that the burden should be on  
 11:21 12 the defendant and you just -- you just did the question  
 11:21 13 differently?  
 11:21 14 A. Maybe I just did the question differently.  
 11:21 15 Q. However you did the question, you are not --  
 11:21 16 you are not telling us this defendant's got to prove  
 11:21 17 something to you if you are a juror in order to get a  
 11:21 18 fair trial? That defendant doesn't have to prove  
 11:21 19 anything to you. You understand that?  
 11:21 20 A. Yes.  
 11:21 21 Q. If he wants to prove something to you, he,  
 11:21 22 through his lawyers, may do that. That's their right,  
 11:21 23 or they may try to do that, but not their obligation.  
 11:21 24 Are you with me on that?  
 11:21 25 A. Yes.

11:21 1 Q. And he doesn't have to testify. This defendant  
 11:21 2 may sit there. All he has to do is be polite. He has  
 11:22 3 to be here, and he has to -- he has to behave himself.  
 11:22 4 That's all he has to do. And if he doesn't do anything  
 11:22 5 else, you can't hold that against him in any regard.  
 11:22 6 Are you okay with that?  
 11:22 7 A. Yes, sir.  
 11:22 8 MR. SCHULTZ: Pass the juror, Judge.  
 11:23 9 THE COURT: All right. Mr. Goeller?  
 11:23 10 MR. GOELLER: Thank you, Your Honor.  
 11:23 11 VOIR DIRE EXAMINATION  
 11:23 12 BY MR. GOELLER:  
 11:23 13 Q. Good morning, Mr. Edgar.  
 11:23 14 A. Good morning.  
 11:23 15 Q. Again, my name is Matthew Goeller. This is Don  
 11:23 16 High, and that is Ivan sitting next to us.  
 11:23 17 A. Yes.  
 11:23 18 Q. You are a bit unusual, not a bit, you are very  
 11:23 19 unusual as far as your questionnaire goes because I  
 11:23 20 think you are the only juror so far that has circled,  
 11:23 21 yes, you would like to serve as a juror in this case.  
 11:23 22 And you are very unique because you have a degree in  
 11:23 23 criminal justice from the University of North Texas?  
 11:24 24 A. Yes, sir.  
 11:24 25 Q. When did you get that degree, Mr. Edgar?

11:24 1 A. '97.  
 11:24 2 Q. '97. You are also a new dad, aren't you?  
 11:24 3 A. Yes, sir.  
 11:24 4 Q. And I think -- is it a little girl?  
 11:24 5 A. Three months today.  
 11:24 6 Q. Wow, wow, okay. Obviously being in the field  
 11:24 7 and having a similar educational background, in a way,  
 11:24 8 I'm always curious to run across a criminal justice  
 11:24 9 major. How did you get into that field at North Texas?  
 11:24 10 A. I just -- at one time I had an aspiration of  
 11:24 11 becoming a police officer. And I decided to take the  
 11:24 12 course, and I actually got into it, and I really enjoyed  
 11:24 13 the course work.  
 11:24 14 Q. The what?  
 11:24 15 A. I really enjoyed the course work, the topics.  
 11:24 16 Q. Was that a four-year program?  
 11:24 17 A. Four year, yes, sir.  
 11:24 18 Q. And when you -- when you got into it, it was --  
 11:25 19 you had aspirations of going into law enforcement?  
 11:25 20 A. At one time, yes, sir.  
 11:25 21 Q. What changed that?  
 11:25 22 A. I'm not quite sure.  
 11:25 23 Q. Okay.  
 11:25 24 A. I took several police exams and stuff like that  
 11:25 25 and kind of got a little bit discouraged at one time,

11:25 1 but I decided to go ahead and follow my degree through.  
 11:25 2 Q. What discouraged you?  
 11:25 3 A. Well, just the -- I guess number of applicants  
 11:25 4 in taking the test, and just, you know, the process.  
 11:25 5 And I was still in the school at the time, so, money,  
 11:25 6 also, I guess.  
 11:25 7 Q. What it pays or -- what it was costing you?  
 11:25 8 A. Right. What the payment was.  
 11:25 9 Q. What did you do from '97? What was your first  
 11:25 10 job out of college?  
 11:25 11 A. First job out of college, a bartender.  
 11:25 12 Q. Okay.  
 11:25 13 A. And then I got my job that I now --  
 11:26 14 Q. That's a good job.  
 11:26 15 A. It's a great job.  
 11:26 16 Q. I bartended. Good way to make money when you  
 11:26 17 don't have much money. And then you ended up in the  
 11:26 18 automobile business?  
 11:26 19 A. Yes.  
 11:26 20 Q. How did you specifically get into parts or  
 11:26 21 service department?  
 11:26 22 A. Just went and applied, and I was working with  
 11:26 23 people. I like working with people. And at that time,  
 11:26 24 you know, three, four years ago, I thought it was a good  
 11:26 25 opportunity for me.



11:26 1 Q. Yeah. Lute Riley is a big dealer.  
 11:26 2 A. Yes, sir, very large.  
 11:26 3 Q. It's one of the biggest in the Metroplex.  
 11:26 4 Where is it exactly?  
 11:26 5 A. It's off of 75 and Campbell.  
 11:26 6 Q. Campbell. I was going to say, just into Dallas  
 11:26 7 County, right?  
 11:26 8 A. Right.  
 11:26 9 THE COURT: Let me ask a question. How  
 11:26 10 many different prices do you have on just a generic  
 11:26 11 part? How many different prices could there be?  
 11:26 12 VENIREPERSON: Oh, gosh, at least three,  
 11:26 13 at least.  
 11:27 14 THE COURT: Just three?  
 11:27 15 VENIREPERSON: Price matrixes, yeah.  
 11:27 16 THE COURT: Wholesale, retail, and what  
 11:27 17 else?  
 11:27 18 VENIREPERSON: Right, and warranty prices.  
 11:27 19 THE COURT: I used to work in a parts  
 11:27 20 shop. We had six pricing grades. All the way from --  
 11:27 21 VENIREPERSON: It's amazing, scary.  
 11:27 22 THE COURT: Anyway, couldn't resist. I'm  
 11:27 23 sorry. Go ahead.  
 11:27 24 Q. (BY MR. GOELLER) If the Judge or me comes in,  
 11:27 25 can we get the lower one? I'll throw Mr. Schultz in

11:27 1 there.  
 11:27 2 A. Sure, everybody in here.  
 11:27 3 Q. Being a new dad, is this your first child?  
 11:27 4 A. Yes, sir.  
 11:27 5 Q. Tell me about that. How does that -- if it has  
 11:27 6 at all -- kind of change the way you look at life, or  
 11:27 7 maybe it just hasn't? You are so busy with a  
 11:27 8 three-month-old, I'll bet, you are more worried about  
 11:27 9 getting sleep and changing diapers and making sure she  
 11:27 10 gets the right food and the right quantity and all that.  
 11:27 11 Or have you thought, as a new dad, have  
 11:27 12 you kind of stepped back and looked at this beautiful  
 11:28 13 little thing and thought, wow, and maybe your mind went  
 11:28 14 somewhere else after that?  
 11:28 15 A. It's basically the wow aspect right now.  
 11:28 16 Q. What are your hopes and aspirations for that  
 11:28 17 little girl?  
 11:28 18 A. To give her the best life I possibly can, to  
 11:28 19 provide for her, to protect her. Me and my wife and I  
 11:28 20 to make -- to help make her -- to bring her up to make  
 11:28 21 her the right decisions in life.  
 11:28 22 Q. Is that important to you?  
 11:28 23 A. Very important.  
 11:28 24 Q. Tell me why. Just take as much time as you  
 11:28 25 need. Tell me why you would raise -- you would want to

11:28 1 raise that little girl that way.  
 11:28 2 A. Well, just for the reasons that, you know, that  
 11:28 3 she grows up to have all the opportunities that my wife  
 11:28 4 and I did. And to let her choose -- her to be able to  
 11:28 5 choose those things in life that, you know, responsibly.  
 11:29 6 Basically to do the right things in life. To have, you  
 11:29 7 know, common sense about what's right and what's wrong.  
 11:29 8 Q. How long have you been married?  
 11:29 9 A. We've been married three years.  
 11:29 10 Q. Have you all ever talked about your marriage  
 11:29 11 vis-a-vis rearing children and, you know, a two-parent  
 11:29 12 home and that kind of thing? Have you and your wife  
 11:29 13 ever talked about those kinds of things?  
 11:29 14 A. About what she would do or what, basically?  
 11:29 15 I'm not really understanding what you are asking.  
 11:29 16 Q. Do you -- I would bet you'd want to bring up  
 11:29 17 your little girl in a home where there's a mom and a dad  
 11:29 18 there?  
 11:29 19 A. Yes.  
 11:29 20 Q. Have you and your wife ever talked about that,  
 11:29 21 the need to keep the marriage strong and healthy?  
 11:29 22 A. Most definitely.  
 11:29 23 Q. For the sake of the baby?  
 11:30 24 A. Most definitely, yes, we have.  
 11:30 25 Q. Why have you-all talked about that, and why do

11:30 1 you think it's -- it's so important the two of you? I  
 11:30 2 think your wife's name is Scotti?  
 11:30 3 A. Yes.  
 11:30 4 Q. Why is that important to you and Scotti?  
 11:30 5 A. Well, it's important. She's come through --  
 11:30 6 her father has been divorced three times. It's hard for  
 11:30 7 her to, you know, she went through a lot of pain and  
 11:30 8 anguish a couple times through her life because of that.  
 11:30 9 Feeling a strong family background for anybody is a good  
 11:30 10 thing.  
 11:30 11 Q. Yeah.  
 11:30 12 A. I think we both agree on that, also.  
 11:30 13 Q. What advantages do you think you could give  
 11:30 14 your baby girl by staying in a solid marriage of a two-  
 11:30 15 parent marriage and showing her the right way in life  
 11:30 16 and leading by example?  
 11:30 17 A. The love and the caring and understanding that  
 11:30 18 we can provide for her.  
 11:31 19 Q. And that's important to you, right?  
 11:31 20 A. Yes.  
 11:31 21 Q. Do you think those types of aspects of a  
 11:31 22 person's life growing up is important in how they turn  
 11:31 23 out?  
 11:31 24 A. I believe they are, yes.  
 11:31 25 Q. In fact, I think in your questionnaire, I

11:31 1 saw -- I saw a great deal of consistency in your answers  
 11:31 2 here today. I think you talked about: Persons  
 11:31 3 determine their destiny or fate by choices they make in  
 11:31 4 life. And you strongly agree with that?

11:31 5 A. (Moving head up and down.)

11:31 6 Q. And the person's destiny or fate is determined  
 11:31 7 by the circumstances of their birth and their  
 11:31 8 upbringing. And you are very close, maybe not strongly  
 11:31 9 agree, but you agree with that?

11:31 10 A. (Moving head up and down.)

11:31 11 Q. That kinds of gets back to that upbringing.  
 11:31 12 You obviously put a lot of stock in the quality of  
 11:32 13 parenting and how you bring a child up through the ages  
 11:32 14 of development and developmental years and, because  
 11:32 15 that's going to be very important as to what that, in  
 11:32 16 your case, what your little girl turns out to be in this  
 11:32 17 world, right?

11:32 18 A. Yes.

11:32 19 Q. And then when we kind of combine those two in  
 11:32 20 that third question, it says, "A person's destiny or  
 11:32 21 fate is determined by the circumstances of their birth  
 11:32 22 and their upbringing as well as the choices they make in  
 11:32 23 life." And you put "strongly agree."

11:32 24 And you feel that way today, right?

11:32 25 A. Yes, I do.

11:33 1 Q. You kind of put all those things together.

11:33 2 The next question or statement, I suppose,  
 11:33 3 that you were asked to rate. Genetics, I really don't  
 11:33 4 know what that means as far as this survey goes.  
 11:33 5 "Genetics, circumstances of birth, upbringing and  
 11:33 6 environment should be considered when determining the  
 11:33 7 proper punishment of someone convicted of a crime." And  
 11:33 8 you circled "disagree."

11:33 9 Okay. And I'm curious as to all your  
 11:33 10 other answers, and that one is disagreeing when we look  
 11:33 11 at that third special issue.

11:33 12 MR. GOELLER: And may I approach?

11:33 13 THE COURT: Yes.

11:33 14 Q. (BY MR. GOELLER) From where you are seated,  
 11:33 15 Mr. Edgar, if I -- can you read -- can you read that  
 11:33 16 there?

11:33 17 A. Yes, sir.

11:33 18 Q. And if I put that on the floor, can you read  
 11:33 19 that one down there?

11:33 20 A. Yes, sir.

11:33 21 Q. And I won't have to go back over them and cover  
 11:33 22 them. That third special issue, the mitigation issue,  
 11:34 23 as you know now, capital murder is so different than any  
 11:34 24 other case, the way we go about the punishment phase if  
 11:34 25 someone is convicted.

11:34 1 And, you know, you probably wonder, and I  
 11:34 2 think Mr. Schultz touched on it, we spent a lot of  
 11:34 3 time -- Mr. Schultz has spent a lot of time and as will  
 11:34 4 I spend a lot of time with you talking about punishment,  
 11:34 5 you know. And you may think, well, gee, that's kind of  
 11:34 6 odd. We haven't had the trial yet. He hadn't been  
 11:34 7 found guilty yet.

11:34 8 But someone like yourself that has a  
 11:34 9 degree in criminal justice, I think you probably are  
 11:34 10 pretty familiar with basic concepts in a guilt-innocence  
 11:34 11 phase. And Mr. Schultz covered a lot of that with you:  
 11:34 12 Proof beyond a reasonable doubt, levels of offenses, and  
 11:34 13 all that kind of thing.

11:34 14 So I don't need to cover that with you in  
 11:34 15 a death penalty case, a capital murder case. We get to  
 11:35 16 the very very important things, what ultimately might  
 11:35 17 come about, and that is the decision, if one is  
 11:35 18 convicted of being sentenced to death or life  
 11:35 19 confinement in the penitentiary.

11:35 20 When you look at that third special issue,  
 11:35 21 and it talks about defendant's character and background,  
 11:35 22 what kind of things come to your mind? What do you  
 11:35 23 think that's all about?

11:35 24 A. The way they were growing up, what they, you  
 11:35 25 know, what kind of life -- what they did through life

11:35 1 going from childhood to, you know, socioeconomic status  
 11:35 2 of what they had or did not have or --

11:35 3 Q. I don't think anybody would disagree with you.  
 11:35 4 I think that's all part of it. What are your feelings  
 11:36 5 about those kind of things? And I know on the  
 11:36 6 questionnaire you talked about circumstances of birth,  
 11:36 7 upbringing, environment should be considered in  
 11:36 8 returning a proper punishment.

11:36 9 Did you know when you filled out this  
 11:36 10 questionnaire that if one is convicted of a capital  
 11:36 11 murder, their punishment is set really? It's either  
 11:36 12 life or death? Did you know that when you were filling  
 11:36 13 this out?

11:36 14 A. Well, I do now. At the time I was just trying  
 11:36 15 to fill it out. I was kind of -- I didn't really put  
 11:36 16 complete thought into that when I was filling out that  
 11:36 17 question.

11:36 18 Q. That's okay.

11:36 19 A. But at the time, yeah.

11:36 20 Q. When you look at that third special issue and  
 11:36 21 the things that you've talked about, character and  
 11:36 22 background, you know, maybe their upbringing. You know,  
 11:36 23 what kind of parents did they have? What kind of morals  
 11:37 24 were instilled in them by their parents? Did their  
 11:37 25 parent lead by example? Were they loved? You know, a

11:37 1 lot of things that you've told us are important. I  
 11:37 2 mean, that's why -- that's why you are going to do all  
 11:37 3 the best things you can with your little girl because  
 11:37 4 you recognize the importance of that.

11:37 5 Do you think things like that are  
 11:37 6 important in punishment in this kind of case where -- do  
 11:37 7 you understand my question?

11:37 8 A. Whether they had a father or mother or --

11:37 9 Q. Yeah.

11:37 10 A. I basically, I would have to weigh the  
 11:37 11 circumstances. It's hard to -- it's hard -- I do  
 11:37 12 believe in a good family background, and that is very  
 11:37 13 important to me. But depending on the circumstances of  
 11:38 14 what happened or the evidence or -- or whatnot, it's  
 11:38 15 hard to -- it's hard to say.

11:38 16 Q. Right. Some jurors, and many people would say,  
 11:38 17 if they don't really understand the sentencing scheme  
 11:38 18 and most, you know, you understand it. A lot of --  
 11:38 19 because you spent four years studying criminal justice.  
 11:38 20 A lot of people say, well, parents, a broken home,  
 11:38 21 parents who didn't set a good example, drug use, drug  
 11:38 22 addiction, substance abuse, maybe parents who didn't  
 11:38 23 instill by lessons and by example, good work ethics or  
 11:38 24 consequences of your actions, many jurors and many many  
 11:39 25 other things that some people might consider mitigation

11:39 1 and might not. You know, they just -- as Mr. Schultz  
 11:39 2 said, it's unlimited, it's unlimited.

11:39 3 Some jurors say, well, that's not an  
 11:39 4 excuse. And I think those people probably don't  
 11:39 5 understand the purpose of that third special issue.

11:39 6 To get to those special issues, as you  
 11:39 7 know, the jury will have already found unanimously and  
 11:39 8 beyond a reasonable doubt that a person is guilty of  
 11:39 9 capital murder. And maybe you are like me in the field  
 11:39 10 of criminal justice when we say excuse, we tend to think  
 11:39 11 of maybe self-defense, you know. It was an excuse to  
 11:39 12 homicide, justifiable homicide or insanity or  
 11:39 13 incompetence or something like that, something that  
 11:40 14 actually excuses the underlying criminal conduct that's  
 11:40 15 been alleged.

11:40 16 But when you look at that third special  
 11:40 17 issue, and I believe it's been described to you, maybe  
 11:40 18 as the final look back, humanitarian issue, do you look  
 11:40 19 at that as really saying, well, is there an excuse for  
 11:40 20 it? Are we supposed to excuse his conduct?

11:40 21 A. Yes. I mean, the key thing that I -- when I  
 11:40 22 look at that, I see sufficient.

11:40 23 Q. Right.

11:40 24 A. As the word that I key in on that, is  
 11:40 25 sufficient.

11:40 1 Q. And what I'm getting at is: Do you look at  
 11:40 2 that as an excuse? Is there an excuse not to give the  
 11:40 3 death penalty, or do you see that as a question really  
 11:40 4 independent of, or that sits by itself to maybe weigh  
 11:41 5 and consider whether something might be sufficiently  
 11:41 6 mitigated? I know I'm -- I'm probably splitting hairs  
 11:41 7 here, but I'm trying to see what your -- your -- your  
 11:41 8 feelings are about mitigation on that special issue.

11:41 9 A. I kind of see, as we said, as a way, like a way  
 11:41 10 out of the death sentence or the --

11:41 11 Q. Yeah. And that's been described exactly as you  
 11:41 12 just said it by some very fine lawyers, as a matter of  
 11:41 13 fact. It's a final way out. If it is a final way out  
 11:41 14 on that, what we call maybe a humanitarian question, if  
 11:42 15 we know capital murder to get to that question or  
 11:42 16 questions of -- the jury has found beyond a reasonable  
 11:42 17 doubt, something just awful has taken place, murder in  
 11:42 18 the course of a burglary, murder in the course of a  
 11:42 19 robbery, or double homicide, it's alleged. It's  
 11:42 20 probably -- remember from Judge Sandoval reading the  
 11:42 21 indictment last Tuesday, a week ago this past Tuesday,  
 11:42 22 that those are the three allegations in this case:  
 11:42 23 double homicide, murder in the course of burglary,  
 11:42 24 murder in the course of robbery.

11:42 25 So a unanimous verdict of guilty,

11:42 1 obviously the juror has found no legal excuse for the  
 11:42 2 crimes to have been committed. But when you say a way  
 11:42 3 out, a way out, how does that square when you use the  
 11:42 4 word "excuse"? Do you know what I'm trying to say on  
 11:43 5 that third special issue?

11:43 6 Most people -- well, let me say this  
 11:43 7 before you answer that question -- most people would  
 11:43 8 say, if you've gotten to that point, if somebody has  
 11:43 9 been found guilty of capital murder, there's no excuse  
 11:43 10 for it. I mean, I guess that really applies for all  
 11:43 11 cases, just what we call, like Mr. Schultz, I hate  
 11:43 12 calling it just regular murder. Maybe a nonaggravated  
 11:43 13 type of murder or a burglary or a robbery.

11:43 14 It's hard to think of any crime where  
 11:43 15 there would be an excuse for it, you know? I really  
 11:43 16 can't think of one off the top of my head. So we're  
 11:43 17 never really talking, in my opinion, about excuse. So  
 11:43 18 getting back to that third special issue when you say a  
 11:44 19 way out, tell me what you mean by that, vis-a-vis the  
 11:44 20 word excuse?

11:44 21 A. Way out meaning, as I would see it, did these  
 11:44 22 circumstances lead up to this crime?

11:44 23 Q. Uh-huh.

11:44 24 A. Why it did this, why it made this person commit  
 11:44 25 this crime or all these -- all these factors led up to

11:44 1 this -- to do this certain aspect because I was at this  
11:44 2 point in my life at this time. So this is why or this  
11:44 3 is why I did these items or things that I do.

11:44 4 Q. As you sit there and you -- you filled out the  
11:44 5 questionnaire, and you've been asked to read that --  
11:44 6 that third special issue, the one on top there several  
11:44 7 times and you see "mitigating." What kinds of things  
11:44 8 come into your mind?

11:45 9 A. Other circumstances, other -- other values,  
11:45 10 mitigating.

11:45 11 Q. Can you think of any specifics, any things that  
11:45 12 pop into your head?

11:45 13 A. Somebody being under the influence or drug  
11:45 14 abuse or drug addiction.

11:45 15 Q. You probably remember from college when you  
11:45 16 studied all this that in our state -- and I think  
11:45 17 there's a question, I think the first question on one of  
11:45 18 these pages was, we do have a -- a law that voluntary  
11:45 19 intoxication is never a defense. And you agree with  
11:45 20 that. I don't know anybody yet that doesn't agree with  
11:45 21 that. It's pretty standard.

11:45 22 In other words, you can never say, I  
11:45 23 wouldn't have engaged in this criminal conduct but for  
11:46 24 the drugs and because I was on drugs or I was high or  
11:46 25 under the influence or intoxicated or something, and you

11:46 1 can't hold me accountable. Nobody believes that.

11:46 2 We wouldn't want to live in a society like  
11:46 3 that. But from what I'm hearing you say, you might be  
11:46 4 open to listen to that kind of evidence in a second  
11:46 5 phase, a punishment phase of a trial, a capital murder  
11:46 6 trial?

11:46 7 A. Yes.

11:46 8 Q. When you were at North Texas studying criminal  
11:46 9 justice, were there any courses that were specific or  
11:46 10 germane to the psychology of substance abuse, a  
11:46 11 psychopharmacology of controlled substances and how they  
11:46 12 work on the brain?

11:46 13 A. Yes.

11:46 14 Q. Tell me what you recall about all that.

11:46 15 A. (Laughter.)

11:46 16 Q. I guess I should say, don't tell me everything  
11:47 17 you know, you remember, but the highlights that stick  
11:47 18 out from that course of study.

11:47 19 A. Besides the, you know, the up drugs and the  
11:47 20 uppers and the downers and the basic marijuana, the  
11:47 21 alcohol. I don't remember honestly specifics of that.  
11:47 22 Just --

11:47 23 Q. Was there -- did you take that -- do you  
11:47 24 remember who the instructor was? Was it maybe a mental  
11:47 25 health professional or a regular, just full-time faculty

11:47 1 or --

11:47 2 A. I believe it was full-time faculty.

11:47 3 Q. Do you drink?

11:47 4 A. Yes, sir.

11:47 5 Q. Why do you drink?

11:47 6 A. To relax.

11:47 7 Q. How does it help you relax?

11:47 8 A. Because I get to sit down and do it, I guess.

11:47 9 Q. Depending on where you are?

11:47 10 A. Yeah.

11:47 11 Q. But to relax, it maybe helps to relieve stress?

11:48 12 A. Yes, it does.

11:48 13 Q. A lot of people would say, you know, I enjoy  
11:48 14 it, a beverage, a cocktail, a beer, maybe when I come  
11:48 15 home, to kind of take the edge off. Have you ever heard  
11:48 16 that before?

11:48 17 A. Yes.

11:48 18 Q. I guess in a subconscious way or maybe a  
11:48 19 conscious way, you are altering your mood, correct?

11:48 20 A. Correct.

11:48 21 Q. You know the alcohol will eventually get to  
11:48 22 your brain, depending on which food you eat and all that  
11:48 23 kind of stuff. But for thousands of years we've used  
11:48 24 alcohol to create a certain mood in our head and get a  
11:48 25 feeling from it, right?

11:48 1 A. Yes.

11:48 2 Q. So you -- you recognize conceptually the idea  
11:49 3 of a mind being, itself being susceptible to the  
11:49 4 influence and impact of substances we put in our body?

11:49 5 A. Yes.

11:49 6 Q. Have you ever known -- have you ever known any  
11:49 7 alcoholics?

11:49 8 A. No, I have not.

11:49 9 Q. Do you have any -- any employees or coworkers  
11:49 10 you ever suspected of either having a substance abuse or  
11:49 11 alcohol problem?

11:49 12 A. Yes.

11:49 13 Q. What do you think of those folks?

11:49 14 A. I don't really understand. You know, when they  
11:49 15 are coming in work being under the influence -- do you  
11:49 16 feel it's wrong?

11:49 17 Q. Yeah.

11:49 18 A. It doesn't belong in the workplace. It doesn't  
11:49 19 belong close to the workplace, or at all.

11:50 20 Q. Have you ever heard or read that some  
11:50 21 alcoholics are some of the best employees around?

11:50 22 A. I've never heard that.

11:50 23 Q. It's actually true. Some alcoholics have great  
11:50 24 attendance records at their work. They are pretty darn  
11:50 25 good workers. Their home life is awful. From the time

11:50 1 they leave -- they leave the shop until the time they  
11:50 2 get back is an awful thing, but they come in all shapes  
11:50 3 and forms and sizes.

11:50 4 Maybe an alcoholic might show up with  
11:50 5 delirium tremors; I guess they call them delirious  
11:50 6 tremors. Some will come up to work intoxicated or some  
11:50 7 are hung over, and they just come in every form and  
11:50 8 fashion.

11:50 9 Have you ever thought of why people maybe  
11:51 10 drink alcohol or take drugs? You are probably of the  
11:51 11 opinion that they know it's wrong. They know it's bad  
11:51 12 for them. It might be dangerous, all the kind of things  
11:51 13 that go with it. Have you ever given any thought as to:  
11:51 14 If they know it, why do they do it? Why do they keep  
11:51 15 doing it?

11:51 16 A. Well, the answer -- some people may, you know,  
11:51 17 may have the disease that they are addicted to that.

11:51 18 Q. Do you recognize the -- the concept of  
11:51 19 addiction?

11:51 20 A. Do I recognize the concept of addiction?

11:51 21 Q. Yeah.

11:51 22 A. Yes, I do.

11:51 23 Q. Have you ever seen these people that -- there  
11:51 24 was a guy in the courthouse, of course I don't know how  
11:51 25 he got there. People have had their larynx and their

11:51 1 tongue and all this removed, and cigarettes maybe, or  
11:52 2 dip or some kind of tobacco product.

11:52 3 They may have started off with a little  
11:52 4 spot, and the surgeon takes it out and says, you know,  
11:52 5 you are lucky this time. Don't dip. We found a little  
11:52 6 thing on the inside of your gum, and we're just going to  
11:52 7 use a laser. Don't do it. Don't dip. Do you dip or  
11:52 8 smoke or anything?

11:52 9 A. I dip, and the story you are telling me relates  
11:52 10 to me right now.

11:52 11 Q. It does?

11:52 12 A. Yes, it does.

11:52 13 Q. I'm thinking of an actual case. And you are  
11:52 14 right, doc, I'm not going to dip anymore. Thank God I  
11:52 15 made it through this. You caught it early. Actually,  
11:52 16 your dentist caught it first. You are just in for a  
11:52 17 regular cleaning, and the dentist says, "I want you to  
11:52 18 go see somebody. I see something right there." And lo  
11:52 19 and behold a month later, you are dipping. Oh, I'll cut  
11:52 20 back a little. I won't dip quite as much.

11:53 21 Next thing you know they are taking your  
11:53 22 tongue out, and you are speaking through -- have you  
11:53 23 ever seen or heard those people? They almost talk like  
11:53 24 a robot.

11:53 25 That's an awful thing, and you got to

11:53 1 wonder. They knew. The doc told them, "You've got to  
11:53 2 stop dipping. You might die. You'll be lucky if you  
11:53 3 just lose your larynx and your tongue or the roof of  
11:53 4 your mouth."

11:53 5 Or the smoker, you know? We got the spot  
11:53 6 out of your lungs this time, but, have you ever given  
11:53 7 any thought as to what it is about substances that will  
11:53 8 drive us to the point of maybe death?

11:53 9 A. Just that key word, it's addiction. It's  
11:53 10 terrible.

11:53 11 Q. When you were filling out the questionnaire,  
11:53 12 Mr. Edgar, and I know Mr. Schultz cleared it up. It  
11:54 13 said, if someone is accused of capital murder, he should  
11:54 14 have to prove his innocence. What were you thinking  
11:54 15 when you circled "strongly agree"?

11:54 16 A. I was thinking at the time that someone was  
11:54 17 accused of -- he needs to prove his innocence. I didn't  
11:54 18 do this or --

11:54 19 Q. Okay.

11:54 20 A. -- for that matter with that question.

11:54 21 Q. And you know what? There are many people, many  
11:54 22 people believe that. And I used to, oh, I probably  
11:54 23 still do, if I'm trying another kind of case, I may ask  
11:54 24 people, when I first stand up and say, when you folks  
11:54 25 come up in the courtroom -- now, with a typical jury is

11:54 1 you have about 50 people out here. You got a jury in  
11:54 2 the box within about a couple of hours on a regular  
11:54 3 case.

11:54 4 Not on a capital murder case. I may say,  
11:54 5 when you came into the courtroom this morning, ladies  
11:54 6 and gentlemen, and you looked around, obviously you knew  
11:54 7 who the Judge was. And you kind of figured out who the  
11:54 8 prosecutors were, and you figured out I was the lawyer,  
11:55 9 and you figured out this was the defendant, how many of  
11:55 10 you said to yourself, I wonder what he did? And I'll  
11:55 11 get almost every hand to go up. Three quarters of the  
11:55 12 hands out of 50 people, and certainly 40 will probably  
11:55 13 raise their hands.

11:55 14 And the point I was always trying to make  
11:55 15 was, you know, that's the natural human thing to do. I  
11:55 16 wonder what he did? But I try to throw it back, and  
11:55 17 you'd appreciate this being a criminal justice major.  
11:55 18 No hands should go up. Right? Because if we truly  
11:55 19 believe in the presumption of innocence and burden of  
11:55 20 proof, not a hand should go up. But that's not --  
11:55 21 that's not the reality.

11:55 22 And in a case, in just about any other  
11:55 23 kind of criminal case, that's okay. I mean, I can't  
11:55 24 say, well, Judge, 40 hands went up. I want all those  
11:55 25 jurors removed and bring in another panel. I mean,

11:55 1 that's not going to happen.  
 11:55 2 And it's probably intellectually dishonest  
 11:55 3 for me and myself, because I think, even as a defense  
 11:56 4 lawyer, if I got called to jury duty, and I will be able  
 11:56 5 to figure out pretty quick who is what.

11:56 6 I may be thinking, "What did he do?" You  
 11:56 7 know? I think that's just human nature. I need to find  
 11:56 8 out your true feelings on that, and I think you've told  
 11:56 9 me, you believe, if you've been accused of a capital  
 11:56 10 murder, you should prove your innocence? You should be  
 11:56 11 expected to prove your innocence?

11:56 12 And I won't disagree with you or argue  
 11:56 13 with you or anything like that, but I'm trying to get  
 11:56 14 it -- your true feelings on this because you understand  
 11:56 15 the job I got to do.

11:56 16 A. Sure. You know, just, you know, going over  
 11:56 17 that question, I just, I see the word accused. I relate  
 11:57 18 the word accused to innocence or guilty.

11:57 19 Q. Okay.

11:57 20 A. I think that's where I was going with -- with  
 11:57 21 that question.

11:57 22 Q. He's been accused for sure. Can you understand  
 11:57 23 the concept of Grand Jury and all that, indictments and  
 11:57 24 that kind of thing? Just a piece of paper and the  
 11:57 25 Judge -- any judge in any case will give you the

11:57 1 instruction that it's certainly not any evidence of  
 11:57 2 guilt. It's not a trial or anything like that of the  
 11:57 3 Grand Jury.

11:57 4 So if we know he is accused of capital  
 11:57 5 murder, he should have to prove his innocence. What, if  
 11:57 6 he's officially accused, what are your feelings on  
 11:57 7 whether he should have to prove his innocence?

11:58 8 A. Well, stepping back more or less, you know, the  
 11:58 9 whole -- the whole evidence of the case, the whole realm  
 11:58 10 of what happened in that certain situation. Is that  
 11:58 11 what you are asking or --

11:58 12 Q. I'm not sure.

11:58 13 A. -- trying to get at? I guess I'm taking the --  
 11:58 14 I'm just trying to understand basically what happened  
 11:58 15 and why it happened.

11:58 16 Q. Right, right. Where do you think that type of  
 11:58 17 explanation should come from, where the where and the  
 11:58 18 why, and I guess the proof that something did happen?

11:58 19 A. Where the proof should come from?

11:58 20 Q. Yeah.

11:58 21 A. I guess from the State, more or less.

11:58 22 Q. Okay. Okay. I think -- I think I understand  
 11:58 23 now. You understand why I'm asking about that question?

11:59 24 A. Yeah.

11:59 25 Q. Okay. All right. And because I know you know,

11:59 1 but maybe because you have special insight into this  
 11:59 2 whole system because of your degree. Mr. Edgar, on the  
 11:59 3 first page of the questionnaire there was -- obviously  
 11:59 4 you are in favor of the death penalty.

11:59 5 And you stated: If a person is found  
 11:59 6 guilty of capital murder and that person -- oh, capital  
 11:59 7 murder, that person should have the same punishment and  
 12:00 8 then, just as long as they are guilty. Tell me your  
 12:00 9 thoughts about -- about that statement.

12:00 10 A. If someone is going to be -- you know, I am for  
 12:00 11 the death penalty. If someone is, you know, sent to the  
 12:00 12 death penalty, I, as a person, want to make sure that  
 12:00 13 they are definitely guilty.

12:00 14 I don't want -- I don't want to have any  
 12:00 15 doubts, or I don't want to have that on my conscience  
 12:00 16 because I don't want to be in the aspect, I mean, I  
 12:00 17 don't want to live the rest of my life saying, gosh, I  
 12:00 18 was involved with killing somebody basically.

12:00 19 Q. Yeah. Do you think you resolve doubts  
 12:00 20 regarding whether they are guilty or not guilty in the  
 12:00 21 first phase of the trial or the second phase of the  
 12:00 22 trial? The guilt-innocence phase or the punishment  
 12:01 23 phase?

12:01 24 A. I think the doubts would come in the first part  
 12:01 25 of it.

12:01 1 Q. All right. So if you -- if you had a doubt  
 12:01 2 about their guilt of capital murder based on reason, I  
 12:01 3 suppose in all fairness, you don't think the State  
 12:01 4 proved their case. What would be the proper verdict?

12:01 5 A. Proper verdict as in death or life  
 12:01 6 imprisonment, or guilty or not guilty?

12:01 7 Q. Well, yeah, of course we're just talking about  
 12:01 8 the first phase, guilty or not guilty.

12:01 9 A. It depends on -- it depends on the evidence  
 12:01 10 that would have shown.

12:01 11 Q. Right. I'm saying if after you've been shown  
 12:01 12 the evidence and you had a doubt, based on reason or  
 12:01 13 reasonable doubt, what do you think the proper verdict  
 12:01 14 would be?

12:02 15 A. The proper verdict would be not guilty.

12:02 16 Q. Okay. So, all right. And if the State proved  
 12:02 17 the evidence unanimously to all the jurors beyond a  
 12:02 18 reasonable doubt, you'd probably say "guilty," right?

12:02 19 A. Yes, sir.

12:02 20 Q. Of capital murder. And then we move into the  
 12:02 21 second phase of the trial. Where does doubt about  
 12:02 22 whether that person's guilty, because you said you  
 12:02 23 wouldn't want to give the death penalty unless you  
 12:02 24 were -- unless there was no doubt about their guilt.  
 12:02 25 And I'm trying to figure out what you mean by that.

12:02 1 Assume you've already found a person guilty beyond a  
12:02 2 reasonable doubt of capital murder.

12:02 3 And when I -- when I read the answer to  
12:02 4 your question on the first page: "If a person is found  
12:02 5 guilty of capital murder, that person should have the  
12:03 6 same punishment."

12:03 7 A. Basically I meant, I'm relaying to the fact  
12:03 8 that they've killed someone else. Maybe they should  
12:03 9 have the opportunity to, through the court system, lose  
12:03 10 their life also.

12:03 11 Q. Okay. What do you feel about, or how do you  
12:03 12 feel about capital murder in the context that's been  
12:03 13 explained to you as far as the indictment in this case  
12:03 14 goes, murder in the course of burglary. Mr. Schultz did  
12:03 15 a good idea about -- good job of explaining what  
12:03 16 burglary was and robbery and/or robbery and/or double  
12:03 17 homicide.

12:03 18 As you sit there right now, when I read  
12:03 19 your comment, are you of the opinion that if they'd been  
12:04 20 found guilty beyond a reasonable doubt, the death  
12:04 21 penalty should really flow automatically from that?

12:04 22 A. I don't think -- I don't think it should flow  
12:04 23 automatically from that, no.

12:04 24 Q. Why not?

12:04 25 A. Death penalty is a very -- it's a very, just

12:04 1 being involved right now in this right now, it's a very,  
12:04 2 it's a very large, it's a very large thing. I mean,  
12:04 3 it's another human life.

12:04 4 Q. Absolutely.

12:04 5 A. But, again, I keep going back to, you know, the  
12:04 6 circumstances, the evidence, the how something was  
12:04 7 committed or how something was done.

12:04 8 Q. Is the why something was done, could that be  
12:04 9 important to you, too?

12:04 10 A. Yes.

12:05 11 Q. One of your early comments with Mr. Schultz  
12:05 12 was, and you can -- you being in the field or having  
12:05 13 studied extensively in the field, you can understand why  
12:05 14 I have to ask you this question. Your talking about the  
12:05 15 justification, your personal justification for the death  
12:05 16 penalty due to prison overcrowding. And of course I  
12:05 17 wrote that down early because, you know, if that doesn't  
12:05 18 scare me, if I told you that didn't scare me about you,  
12:05 19 you'd think that I was a fool, right?

12:05 20 A. Yes.

12:05 21 Q. Tell me your thoughts on that. Again, you  
12:05 22 understand my job is not -- is not to disagree or debate  
12:05 23 you, but I want to explore that with you because I've  
12:05 24 never -- I haven't heard that from a juror yet, but that  
12:05 25 doesn't mean anything really. You may have a lot of

12:05 1 insight into how the prisons work in this state, and I  
12:05 2 wanted to explore more.

12:06 3 A. Actually I don't. I have the understanding,  
12:06 4 the present systems today and/or in Texas they are very  
12:06 5 very overcrowded. And I'm the belief that, small crime,  
12:06 6 let them out; let them go out and commit another crime.  
12:06 7 Capital murder and/or somebody who has committed a  
12:06 8 heinous crime, murder, multiple murders or something  
12:06 9 like that, again, going on the circumstances, how they  
12:06 10 did it, why they did it, and for what reason?

12:06 11 What should be the possibility of just  
12:06 12 letting them sit in the prison system for years on end?  
12:06 13 Not that it's going to stop the overcrowding because  
12:06 14 it's not. And that's not the reason for the death  
12:06 15 penalty. It's not for overcrowding or anything like  
12:06 16 that. But why have so many, you know, people in the  
12:06 17 prison systems, especially that you know they are  
12:07 18 convicted of a capital murder? Why should we, you know,  
12:07 19 just keep them running through the system?

12:07 20 Q. Okay. Do you -- if someone is convicted of  
12:07 21 capital murder, what are the only two punishments  
12:07 22 available?

12:07 23 A. Life or death.

12:07 24 Q. Did you study at all what life meant in a  
12:07 25 capital murder situation? And I don't know if you got

12:07 1 out in '97. I guess it would have been the same. Did  
12:07 2 you study that, what life means in --

12:07 3 A. Life imprisonment?

12:07 4 Q. Yeah.

12:07 5 A. Life in basically -- life imprisonment there  
12:07 6 was no possibility of parole.

12:07 7 Q. Well, no. That --

12:07 8 A. It's been four years.

12:07 9 Q. That was a real close possibility a couple  
12:07 10 months ago, but our governor decided not to do that.  
12:07 11 Life means, in a capital murder context, life means at  
12:08 12 least 40 calendar years in the penitentiary. So if  
12:08 13 somebody is 27, 28, 30 years old, the earliest they  
12:08 14 could get out would be about 70, if somebody could live  
12:08 15 that long.

12:08 16 Did you ever do any studies or read  
12:08 17 anything about how long people could realistically live  
12:08 18 in a Texas penitentiary?

12:08 19 A. No, sir, I have not.

12:08 20 Q. Do you think someone could live 40 years in a  
12:08 21 penitentiary?

12:08 22 A. It's possible.

12:08 23 Q. Yeah, it's possible. We have possible and  
12:08 24 probable. We don't know yet.

12:08 25 A. I don't know if I'll make it 40 years. I don't

12:08 1 know.  
 12:08 2 Q. Say what?  
 12:08 3 A. I'll be lucky if I make it 40 years. I don't  
 12:08 4 know.  
 12:08 5 Q. Yeah, I know. Me, too. Does it concern you  
 12:08 6 that, regarding the sentencing option, knowing it's  
 12:08 7 either going to be life or death, life means people in  
 12:08 8 the penitentiary for life? Some folks, I suppose,  
 12:08 9 convicted of capital murder will die in the  
 12:08 10 penitentiary. You know, I don't think there's anybody  
 12:09 11 in the penitentiary, any penitentiary that's probably  
 12:09 12 over 80. You know, they are just not going to make it.  
 12:09 13 So, for some folks their age, coupled with  
 12:09 14 the life sentence will kill them, just of old age or the  
 12:09 15 quality of life in the penitentiary. And some will be  
 12:09 16 so old when they get out, I don't know what life there  
 12:09 17 is left, but does that concern you?  
 12:09 18 When I look at your questionnaire and  
 12:09 19 actually it wasn't on your questionnaire. It was in  
 12:09 20 response to Mr. Schultz's question, the prisons are  
 12:09 21 overcrowded. The gist of your comment was that the  
 12:09 22 death penalty should come about.  
 12:09 23 And then your comment a few minutes ago  
 12:09 24 about people who are doing life for capital murder,  
 12:09 25 spending so much time in the penitentiary. I need to

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12:09 1 get at the real, your gut feeling on that because it's  
 12:09 2 really important to me right now.  
 12:10 3 A. Just going through. I mean, it's a really  
 12:10 4 hard, you know, hard question to answer. I mean,  
 12:10 5 basically.  
 12:10 6 Q. I know it is. It's a hard question, and I'm  
 12:10 7 sure the answer is hard, but I need you to do the best  
 12:10 8 you can for me because it's just critical to me.  
 12:10 9 A. I mean, my -- my thoughts again with the --  
 12:10 10 with a, you know, capital -- capital crime or a heinous  
 12:10 11 crime, murder, stuff like that, I do have the feeling  
 12:10 12 that taking -- taking that life is definitely -- is  
 12:10 13 definitely an option. And again, it's with -- it goes  
 12:11 14 back to the circumstances. You know, we are going back  
 12:11 15 to the -- the Oklahoma City thing.  
 12:11 16 Q. Uh-huh.  
 12:11 17 A. That's -- that's a terrible thing and, you  
 12:11 18 know, what happened with that -- with that case, Timothy  
 12:11 19 McVeigh, I thought that was definitely the right  
 12:11 20 decision.  
 12:11 21 Q. Right.  
 12:11 22 A. And it was hard for me to, you know, whether I  
 12:11 23 have the right to say this is right or this is really  
 12:11 24 bad or this is not bad, I guess that's my decision to go  
 12:11 25 through my mind. It's -- I'll never -- never really

12:11 1 know what I'll see once I know the circumstances.  
 12:11 2 Does -- I mean, I'm going by, I guess, you  
 12:11 3 know, whether a drug dealer goes and kills another drug  
 12:12 4 dealer and/or if a drug dealer goes and kills a nun.  
 12:12 5 Sure, I'm going to be on the side of, should that drug  
 12:12 6 dealer who killed a nun be put to death? Whether in the  
 12:12 7 case of the other person, circumstances like that, I'd  
 12:12 8 lean towards the possibility of the death of the nun.  
 12:12 9 Q. Right.  
 12:12 10 A. I guess that's what I mean when I say that the  
 12:12 11 circumstances.  
 12:12 12 Q. Right.  
 12:12 13 A. Am I just running around the question here?  
 12:12 14 Q. No, no. It's difficult -- it's hard for me,  
 12:12 15 and it's hard for you.  
 12:12 16 A. I'm trying to explain it to you, but I don't  
 12:12 17 know if I can put it into words.  
 12:12 18 Q. Focus with me just a little bit on the problems  
 12:12 19 you saw with life confinement for -- as a punishment for  
 12:12 20 capital murder. You kind of spoke in terms of  
 12:12 21 overpopulation and that for heinous crimes.  
 12:12 22 I felt that you were uncomfortable with  
 12:12 23 the fact that these people just -- just languish in  
 12:13 24 prison, really. So kind of you take your overpopulation  
 12:13 25 thoughts, life confinement for heinous crimes, lengthy

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12:13 1 prison sentences. Kind of tell me what your thoughts  
 12:13 2 were there.  
 12:13 3 So far I don't disagree with anything  
 12:13 4 you've said. I think you just put -- you cleared up a  
 12:13 5 lot of things for me when you talked about, you know,  
 12:13 6 killing the nun versus killing just some dope dealer out  
 12:13 7 there. I'm with you there. Focusing with me on -- on  
 12:13 8 overpopulation, life confinement, life in the  
 12:13 9 penitentiary for capital or heinous crimes.  
 12:13 10 A. More or less the heinous crimes, somebody, you  
 12:13 11 know, that person, should receive and/or get the death  
 12:13 12 penalty.  
 12:13 13 Q. Okay.  
 12:14 14 A. If it's -- and again, who am I to judge what --  
 12:14 15 what is heinous or not?  
 12:14 16 Q. Right.  
 12:14 17 A. But for instance the prisons are always going  
 12:14 18 to be overcrowded. Society today is terrible, but I  
 12:14 19 guess it would just be -- and it's sad to say, but it  
 12:14 20 would just be one less person in the system.  
 12:14 21 Q. Okay.  
 12:14 22 A. I guess, to break it down.  
 12:14 23 Q. That's a reality of it. I think that's the  
 12:14 24 reality. I bet you are not alone. I think my wife  
 12:14 25 would agree with you. Okay. With those comments having



12:14 1 been made, and I believe you. I think you are shooting  
12:14 2 straight with me, and I appreciate that.

12:15 3 Well, let me back up. If this were a DWI  
12:15 4 case or a shoplifting case, a speeding ticket case, you  
12:15 5 feel you'd be capable of being a pretty fair juror?

12:15 6 A. Yes.

12:15 7 Q. Okay. With your views on capital punishment,  
12:15 8 you know, and maybe it's because you know too much  
12:15 9 because you went to school for four years on this. But  
12:15 10 with prison overcrowding and your personal beliefs that  
12:15 11 for the certain types of heinous crimes, you know, death  
12:15 12 ought to result. In your heart of hearts, do you think  
12:15 13 we would get a fair shot on the punishment phase with  
12:15 14 you?

12:15 15 A. Yes.

12:15 16 Q. You do? Tell me why you think that. Because  
12:15 17 when you make the comment, one less person in the system  
12:15 18 as kind of a justification for capital punishment, I'm  
12:16 19 wondering -- I guess I'm testing your resolve to be  
12:16 20 fair.

12:16 21 A. That's not just one less person. They did the  
12:16 22 crime. They killed somebody, correct?

12:16 23 Q. Right.

12:16 24 A. And, again, it goes -- I feel that I'm a very  
12:16 25 fair person, and I can hear, you know, I want to know,

12:16 1 you know, why something happened for the reasons being  
12:16 2 and try to sort them through.

12:16 3 Q. Within your criminal justice degree, did you  
12:16 4 have a concentration? Was there a -- were you more  
12:17 5 corrections, law enforcement?

12:17 6 A. Juvenile.

12:17 7 Q. Really? You concentrated on juvenile? Okay.  
12:17 8 Okay. When you put down: Do you consider yourself a  
12:18 9 leader or a follower? And you wrote down, a follower.  
12:18 10 Tell me why.

12:18 11 A. Well, I just go to the workplace. I guess I  
12:18 12 would have to be a follower. I cannot, with the things  
12:18 13 that I do in my daily job, I don't have to be -- I don't  
12:18 14 know. I don't know, it's kind of --

12:18 15 Q. You are really management though, aren't you?

12:18 16 A. Yes, I am.

12:18 17 Q. You are probably more of a leader in your job  
12:18 18 role?

12:18 19 A. In an aspect, yeah. But I have other, unless I  
12:18 20 have to listen to my boss and then I say, "Yes, sir.  
12:18 21 No, sir. Or how high do you want me to jump?"

12:18 22 Q. Is that -- would that be general manager?

12:18 23 A. Yeah.

12:18 24 Q. Probably at Lute Riley there is the owner, the  
12:18 25 general manager. There's not many people over you?

12:18 1 A. General principal. Oh, there's a few. There's  
12:18 2 a few.

12:18 3 Q. Religion, political and other activities. As  
12:18 4 far as organized religious activities, you don't attend  
12:18 5 at this time?

12:18 6 A. Not at this time, no.

12:18 7 Q. Were you -- do you consider yourself a  
12:19 8 Presbyterian?

12:19 9 A. Yes. I grew up as a Presbyterian.

12:19 10 Q. Tell me your thoughts on religion and maybe  
12:19 11 why -- why you don't attend at this time, or tell me  
12:19 12 what kind of decisions go into that.

12:19 13 A. My wife and I don't attend. Actually, we're  
12:19 14 going to a christening this weekend. My daughter is  
12:19 15 going to be christened this weekend.

12:19 16 Q. Is that a Presbyterian church?

12:19 17 A. No. It's actually a Catholic. No, it's not  
12:19 18 Catholic. It's --

12:19 19 Q. It might be Catholic. They christen babies.

12:19 20 A. Not Catholic. What's the other?

12:19 21 Q. Lutheran?

12:19 22 A. No.

12:19 23 Q. Methodist?

12:19 24 A. Methodist, I believe. I don't know.

12:19 25 Q. Do you know the name of the church?

12:19 1 A. Oh, actually it's going to be in Oklahoma.

12:19 2 Q. Oklahoma.

12:19 3 A. But my wife and I -- it's a bad thing. I don't  
12:19 4 have -- I haven't found the time to go look for a church  
12:19 5 together in the area.

12:19 6 Q. It's not a bad thing. Religion is such a  
12:20 7 personal thing. Some of the best Christians I know  
12:20 8 don't go to church. And some of the worst ones I know  
12:20 9 are in that pew every Sunday. Do you know what I'm  
12:20 10 saying? So I have thoughts on that, too. So I wouldn't  
12:20 11 say it's a bad thing. It's so personal. No one has the  
12:20 12 right to judge. Okay.

12:20 13 MR. GOELLER: May I have just a second  
12:20 14 with my partner, Judge?

12:20 15 THE COURT: Yes.

12:20 16 Q. (BY MR. GOELLER) Just one, maybe one or two  
12:21 17 more follow-up questions. You can tell Don and I are  
12:21 18 talking, and we're reviewing your questionnaire. And  
12:21 19 anything that we haven't seen before, we may ask about.  
12:21 20 "Citizens accused of criminal offenses are afforded too  
12:21 21 many rights by the Constitution of the United States."  
12:21 22 Or "Do you think defendants are afforded too many rights  
12:21 23 under the Constitution of this State and Texas?" You  
12:21 24 circled "yes." Please explain your answer. Tell me why  
12:21 25 you circled yes.

12:21 1 A. I think when I was doing that question, if I  
12:21 2 remember correctly, the rights that -- I guess something  
12:21 3 in my mind, the rights of prisoners or attitudes like  
12:21 4 that, I believe.

12:21 5 Q. Okay, okay. You did put in your explanation,  
12:21 6 after a conviction of a crime, I feel they should not  
12:21 7 have any rights at all. Tell me what you mean by that.

12:22 8 A. I feel that the prisoners today, you know, that  
12:22 9 getting, you know, TV and phone use and stuff like that,  
12:22 10 if they are convicted of a crime, they should  
12:22 11 realistically be put in a cell and basically sit there.  
12:22 12 Books, read books or something or try to educate  
12:22 13 themselves or something like that. I guess that's what  
12:22 14 I --

12:22 15 Q. That -- that first special issue. And when it  
12:22 16 talks about that probability that the defendant would  
12:22 17 commit criminal acts of violence that would constitute a  
12:22 18 continuing threat to society. We, you know now that,  
12:22 19 once a person is convicted of capital murder, it's going  
12:22 20 to be life or death. Life is really automatic unless  
12:23 21 those other questions are answered in a certain way.

12:23 22 We know at least 40 calendar years in the  
12:23 23 penitentiary. Do you think that -- and I can tell you  
12:23 24 that it's my belief that society in the context of that  
12:23 25 question, when the legislature drafted that question,

12:23 1 they knew, no matter how that question is answered --  
12:23 2 well, that's not correct. They knew if that question is  
12:23 3 answered no, the trial, I suppose, is over, 40 years  
12:23 4 minimum penitentiary.

12:23 5 So they talk about future threat. Can you  
12:23 6 see the argument that society probably means prison  
12:23 7 society?

12:23 8 A. Uh-huh.

12:23 9 Q. Do you think prisons can rehabilitate people?

12:23 10 A. In some -- well, it's hard to say.

12:24 11 Q. Do you think prisons are good at controlling  
12:24 12 people?

12:24 13 A. Controlling people? Yes.

12:24 14 Q. Do you think overall they do a pretty good job  
12:24 15 of that?

12:24 16 A. Yes.

12:24 17 Q. How many -- did you ever study about how many  
12:24 18 people are in penitentiaries in Texas?

12:24 19 A. Yes.

12:24 20 Q. How many do you think there are?

12:24 21 A. Oh, gosh, I don't know.

12:24 22 Q. There's a lot.

12:24 23 A. Yes.

12:24 24 Q. It's more than 50,000, I know that. Maybe a  
12:24 25 hundred thousand. This is a tough week to be in my job.

12:24 1 Have you been following that George Rivas trial?

12:24 2 A. Somewhat, yes, I have. I have.

12:24 3 Q. Not a good week for me to be starting a trial.  
12:24 4 Of course, that was about a guy in the penitentiary and  
12:24 5 broke out and killed a police officer. But still, what  
12:25 6 are your thoughts? Have you watched it all on TV, any  
12:25 7 of it, any of that trial? Because apparently they got  
12:25 8 cameras in the courtroom down in Dallas.

12:25 9 A. No, I have not.

12:25 10 Q. Have you heard it on the radio or read it in  
12:25 11 the newspapers?

12:25 12 A. Yes, I mean.

12:25 13 Q. What have your thoughts been -- knowing you  
12:25 14 were coming back here -- I guess the trial was underway  
12:25 15 when we met last Tuesday. What have your thoughts been  
12:25 16 about? You know, I'm going up there for a capital  
12:25 17 murder trial prospectively as a juror. And has anything  
12:25 18 crossed your mind, vis-a-vis that Rivas trial and  
12:25 19 knowing you were coming back up here to sit?

12:25 20 A. It does weigh heavy. You know, it does weigh  
12:25 21 heavy on me since last Tuesday. It's been on my mind a  
12:25 22 lot. I think I already stated earlier, you know, the  
12:25 23 opportunity of knowing that you have somebody -- you  
12:26 24 have the possibility of having someone's life in your  
12:26 25 hands. That's awful scary.

12:26 1 It's -- with the beliefs and stuff, it's  
12:26 2 still -- it's a scary issue to really deal with. And  
12:26 3 it -- it's not a very -- I guess not a very fun issue to  
12:26 4 have, I guess, for a possibility.

12:26 5 Q. I agree with you. I think I would worry about  
12:26 6 anybody that said anything other than what you said. We  
12:26 7 may run across a juror yet that got up a half hour early  
12:26 8 just to get up here to be a juror. But I know you are  
12:26 9 not one of those people and, hopefully, we won't run  
12:26 10 into those kind of people, but they may be out there.

12:26 11 MR. GOELLER: Okay. Thank you, sir. I  
12:26 12 appreciate your time and attention and your patience  
12:26 13 with me this morning.

12:26 14 VENIREPERSON: Thank you.

12:26 15 THE COURT: Do you want to step down for a  
12:26 16 few minutes, and we'll call you back.

12:27 17 (Venireperson Edgar not present.)

12:34 18 MR. GOELLER: Yes, sir.

12:34 19 THE COURT: What says the State?

12:34 20 MR. SCHULTZ: I think we have No. 4. He's  
12:34 21 acceptable.

12:34 22 MR. GOELLER: Oh, no, we don't. You  
12:34 23 speaketh too soon.

12:34 24 THE COURT: Does the defendant exercise a  
12:34 25 peremptory strike?

12:34 1 MR. GOELLER: Well, actually, Judge, I'd  
12:34 2 ask the Court to consider striking him for cause based  
12:34 3 on the totality of his comments. I don't know how you  
12:34 4 ever rehabilitate. We could play the game and get him  
12:34 5 back in here. And Mr. Schultz could ask him, well, you  
12:34 6 really don't mean you start executing people because the  
12:34 7 prisons are overcrowded, or that's one less on the rolls  
12:34 8 down at TDC. Mr. Schultz would say, "You really don't  
12:35 9 mean that, do you?" And he would say, "No, I really  
12:35 10 don't mean that."

12:35 11 I think it denies my client his -- his 6th  
12:35 12 Amendment right, his 14th Amendment right under the  
12:35 13 Texas Constitution and Article 3 and Article 3A of the  
12:35 14 Texas Constitution to even have to use a peremptory on a  
12:35 15 guy whose bottom line is: I prefer to kill because we  
12:35 16 got too many people in prisons. And I prefer to kill  
12:35 17 because it's one less person to deal with. And I don't  
12:35 18 know, he's an odd individual.

12:35 19 So I'd ask the Court to consider my  
12:35 20 challenge for cause on those grounds, that this juror is  
12:35 21 just not capable of being a fair and impartial juror.  
12:35 22 And it denies my client his 14th Amendment right under  
12:35 23 due process under the U.S. and Texas Constitution.

12:36 24 THE COURT: I'll deny the challenge for  
12:36 25 cause.

12:36 1 MR. GOELLER: And then, I'm sorry, Judge,  
12:36 2 then I'd have to use a peremptory on him.

12:36 3 THE COURT: All right. Then No. 31,  
12:36 4 Christopher Edgar, is stricken by the defendant for  
12:36 5 cause.

12:36 6 And I tell you what, it's about -- about  
12:36 7 25 till. So, if we take 45 minutes for lunch, that  
12:36 8 means we come back at 1:20. And we'll take up  
12:36 9 Mr. Bedwell at 1:20.

12:36 10 THE BAILIFF: All rise.

12:36 11 MR. SCHULTZ: That was number six.  
12:36 12 Defense number six?

12:36 13 MR. GOELLER: I think it was number two.

12:36 14 THE COURT: I have it as number six. Do  
12:36 15 you all agree?

12:36 16 MS. FALCO: Yes, sir.

12:36 17 MR. GOELLER: I think you are all off by  
12:36 18 about four.

12:36 19 THE COURT: All right. Sounds good.

12:36 20 (Lunch recess.)

13:24 21 THE COURT: All right. The next juror is  
13:24 22 Jesse Bedwell, No. 28. I understand that he has got a  
13:24 23 wedding to go to tonight.

13:24 24 (Venireperson Bedwell present.)

13:24 25 THE COURT: Sir, are you Jesse Bedwell?

13:24 1 VENIREPERSON: Yes, sir.

13:24 2 THE COURT: I just want to remind you,  
13:24 3 it's been about ten days that I placed you under oath on  
13:25 4 Tuesday, the week before Tuesday this week. And the  
13:25 5 oath was to tell the truth with regard to all the  
13:25 6 questions that are propounded to you, and you are still  
13:25 7 under that oath. Please be seated.

13:25 8 VENIREPERSON: Thank you.

13:25 9 THE COURT: Okay, Mr. Schultz?

13:25 10 MR. SCHULTZ: Thank you, Judge.

13:25 11 VOIR DIRE EXAMINATION

13:25 12 BY MR. SCHULTZ:

13:25 13 Q. How are you doing, sir?

13:25 14 A. Doing good, thank you.

13:25 15 Q. You probably thought you heard enough of me  
13:25 16 already, but it's started. In all candor, I hope if  
13:25 17 nothing else came through Tuesday a week ago is the fact  
13:25 18 that both sides take this thing extremely seriously.

13:25 19 We'll have a laugh or two. In many ways  
13:25 20 we probably do that just to -- just because the  
13:25 21 pressures of this kind of thing are just enormous. I'm  
13:25 22 not complaining or whining about it, but they are. And  
13:25 23 it's nonstop day after day with as much concentration as  
13:25 24 both sides can do because both of us want the same  
13:25 25 thing.

13:25 1 We may have different ideas of what that  
13:26 2 same thing is, but both of us want people who will give  
13:26 3 a sincere and fair look at these issues and will return  
13:26 4 a verdict in this case or verdicts in this case based on  
13:26 5 the evidence and not other kinds of situations that we  
13:26 6 don't have any control of.

13:26 7 And both sides, the defense and the State,  
13:26 8 are comfortable with the notion of how to handle  
13:26 9 evidence. And we know how to marshal our evidence in  
13:26 10 ways to advantage our sides. But if we've got  
13:26 11 additional burdens other than what the law requires on  
13:26 12 this.

13:26 13 If we, for example, have to overcome some  
13:26 14 personal position that is so strong that it would  
13:26 15 disregard evidence, that's kind of where we are right  
13:26 16 now. There are probably some other agreements that the  
13:26 17 lawyers would have about what we want.

13:26 18 I'm -- I'm pretty confident that both the  
13:27 19 defense attorneys and the State would say, we'd rather  
13:27 20 not have jurors up here who woke up this morning with  
13:27 21 the idea of: What a thrill to be able to come up and  
13:27 22 participate in -- in deciding whether or not to kill  
13:27 23 somebody. Because I believe a person can support the  
13:27 24 death penalty and believe it is necessary without taking  
13:27 25 pleasure or delight in its existence. Do you know what

13:27 1 I'm saying?

13:27 2 A. Yes.

13:27 3 Q. It's like war. I mean, I guess everybody in  
13:27 4 our society believes it's necessary to have a military,  
13:27 5 to protect American interests and to enable us to  
13:27 6 maintain our way of life. And yet, I don't think very  
13:27 7 many people would take delight in our country going to  
13:27 8 war and our bombers flying and either killing other  
13:27 9 people and even endangering those men and women and  
13:27 10 those bombers.

13:27 11 There are many things that I don't want to  
13:28 12 call them necessary evils, because I don't think war or  
13:28 13 death penalties are evil, but they are certainly  
13:28 14 necessary unfortunate situations. And I'm curious, when  
13:28 15 you woke up this morning, were you excited about the  
13:28 16 possibility you are going to end up on a death penalty  
13:28 17 jury that would give you the opportunity to cause  
13:28 18 somebody's death?

13:28 19 A. Absolutely not.

13:28 20 Q. Okay. Just -- in the military analogy to me  
13:28 21 has more about it because I suspect even people who  
13:28 22 believe in the military enough to serve, voluntarily now  
13:28 23 for that matter, would probably share those same views.

13:28 24 I suspect if they stop and really thought  
13:28 25 through what they were doing, they'd probably be just

13:28 1 happy enough to go through an entire military career and  
13:28 2 not have to actually get involved in combat and get  
13:28 3 killed and be killed, watch their buddy get blown up.  
13:28 4 Those kinds of things, don't you figure?

13:28 5 A. Absolutely.

13:28 6 Q. Were you ever in the military service, sir?

13:29 7 A. No.

13:29 8 Q. Nevertheless, the system itself functions by  
13:29 9 bringing into the courtroom 12 jurors who are willing to  
13:29 10 follow the law about that relates to their duties,  
13:29 11 willing to fairly evaluate the evidence according to  
13:29 12 what that actual evidence is, measure the evidence by --  
13:29 13 by whatever process they establish, and then be capable  
13:29 14 of making votes based on the evidence and not on their  
13:29 15 personal views.

13:29 16 Now, after having said that, that doesn't  
13:29 17 mean that all jurors are identical. I mean, you could  
13:29 18 do a -- you could do a survey of their attitudes, and it  
13:29 19 might almost be of these surveys that we see on the  
13:29 20 television. 52 percent of the population thinks  
13:29 21 congress is doing a good job and 14 percent don't, you  
13:29 22 know, and those kinds of things. I suspect if you did  
13:29 23 an attitudinal study of the trial juries, they would be  
13:30 24 all over the place on different issues.

13:30 25 So it's not that everybody thinks

13:30 1 identically on a jury. That's not required to be fair,  
13:30 2 to think the same way. It's not even that everybody on  
13:30 3 the jury would line up evenly on their view of crime and  
13:30 4 punishment. Because there can be room on a jury for  
13:30 5 people who are extremely hopeful for rehabilitation of  
13:30 6 defendants and people who are very cynical of the  
13:30 7 possibility of rehabilitation of defendants.

13:30 8 And those people can vote, serve on a jury  
13:30 9 lawfully and both people belong on that jury as long as  
13:30 10 they follow the instructions that the trial court gives  
13:30 11 them. And that is, base their verdicts on the evidence.

13:30 12 Of course, part of this process is the  
13:30 13 lawyers thinking -- how I do it. I bet they do it the  
13:30 14 same way. Thinking, I know what my evidence is going to  
13:30 15 be in this case. Now, it could change. And maybe a  
13:31 16 witness doesn't look as good as I think the witness will  
13:31 17 look or maybe the witness looks better than what I think  
13:31 18 the witness is going to look about how he or she  
13:31 19 testifies. But I've got a pretty good notion of what  
13:31 20 our evidence is going to be in this case. And the  
13:31 21 defense has a pretty good notion of what our evidence is  
13:31 22 going to be in this case also.

13:31 23 And I find myself, as I look for jurors,  
13:31 24 thinking, all right, how is this man going to respond to  
13:31 25 the kind of evidence that I expect he will see? It's

13:31 1 not -- my questions are not primarily: Can he follow  
13:31 2 the law and base his verdict upon the evidence?

13:31 3 Although, I'm going to ask you about that,  
13:31 4 and I need to know that. More what I'm really looking  
13:31 5 at is: Does this seem to be a person who would give our  
13:31 6 side a fair hearing and be responsive to our kind of  
13:31 7 evidence?

13:31 8 And if I were on the defense side, I think  
13:31 9 what I'd be thinking -- I might not know whether I was  
13:31 10 going to put on any evidence or not. And I know I don't  
13:32 11 have to if I am a defendant -- a defense attorney.

13:32 12 I have no obligation to do anything other  
13:32 13 than except be here. But I might be thinking, well, I'm  
13:32 14 going to do some cross-examining of the State's  
13:32 15 witnesses. And I'm going to do everything I can to try  
13:32 16 to make the State's evidence look weak or flawed or  
13:32 17 deceptive or foolish or whatever I can do on  
13:32 18 cross-examination.

13:32 19 And I bet I'd find myself thinking, how  
13:32 20 would that man respond to those efforts of mine in  
13:32 21 trying to make the State's evidence look less probative,  
13:32 22 less convincing? Okay?

13:32 23 A. Yes.

13:32 24 Q. And that's the -- that's the core -- that's the  
13:32 25 core question. And you are absolutely free to be the

13:32 1 kind of person who would almost always vote in a way  
13:32 2 that the death penalty would occur, almost never vote in  
13:32 3 a way a death penalty occur or be somewhere in the  
13:32 4 middle of those two areas. And you would still be  
13:32 5 qualified as long as the evidence could convince you  
13:32 6 either way depending on how strong it was in your way of  
13:33 7 thinking. Am I making sense to you so far?

13:33 8 A. Yes.

13:33 9 Q. Okay. I like to think of the process of jury  
13:33 10 work as being a measurement process rather than a --  
13:33 11 rather than just a guessing or an intuitive process.  
13:33 12 It's not really -- you don't find yourself in the jury  
13:33 13 saying, I wonder what happened here, but rather what  
13:33 14 you -- what you actually do is you find yourself  
13:33 15 measuring the evidence and say: Has the State proven it  
13:33 16 to me beyond a reasonable doubt?

13:33 17 I know you've seen the symbol that we  
13:33 18 sometimes use in the lawyer's office. They often have  
13:33 19 actual scale models of the scales of justice.

13:33 20 Tell me how you see that symbol for what  
13:33 21 we do in the law of the scales of justice? What does  
13:33 22 that mean to you?

13:33 23 A. You are speaking of the statue of the woman  
13:34 24 blinded, with the blindfold on?

13:34 25 Q. Uh-huh.

13:35 1 beyond a reasonable doubt, although we don't have a  
13:35 2 definition of it, everybody here would agree that it has  
13:35 3 to be very powerful evidence. It's not just a matter of  
13:35 4 convincing you that probably the defendant's guilty.  
13:35 5 It's not a matter of -- it sure looks like he's guilty  
13:35 6 or the circumstances seem to indicate that he's guilty.  
13:35 7 It has to be such proof that is beyond a reasonable  
13:35 8 doubt.

13:35 9 Now, I don't know where these scales have  
13:35 10 to tip, but they got to tip way way down in favor of the  
13:36 11 State in order for that to be the case. Just how far  
13:36 12 down they have to tip, the lawyers can't tell you. The  
13:36 13 Judge can't tell you, except beyond a reasonable doubt.  
13:36 14 And then you, as a juror, would define what to you means  
13:36 15 beyond a reasonable doubt. But it's got to be a bunch.  
13:36 16 Any problem with that?

13:36 17 A. No.

13:36 18 Q. And what that may mean is that you could have a  
13:36 19 situation where you would think the defendant is guilty  
13:36 20 or you would be pretty sure the defendant is guilty,  
13:36 21 where you were comfortable the defendant's guilty.  
13:36 22 Maybe to the point that if you saw him on the street,  
13:36 23 you'd run away with him. That comfortable, that  
13:36 24 convinced.

13:36 25 And yet the evidence would not be so

13:34 1 A. That just is the symbol of equal -- equal  
13:34 2 justice for all, basically.

13:34 3 Q. It's kind of interesting because I think in a  
13:34 4 civil case, usually you -- you see those scales looking  
13:34 5 about even. You know, in a civil case that's probably  
13:34 6 so. I suppose in theory, the burden of proof is ever so  
13:34 7 slightly on the plaintiff, but so slightly. You know,  
13:34 8 just 51 to 49 percent. They about start even there.

13:34 9 I guess to be conceptual about it, in a  
13:34 10 criminal case, you ought to have one of those scales,  
13:34 11 one of those little trays--I don't know what they call  
13:34 12 them--they ought to say defendant on it. And the other  
13:34 13 one ought to say the State. And in theory the scales  
13:34 14 ought to be tipped all the way to the defendant when we  
13:34 15 begin to represent the presumption of innocence. Are  
13:34 16 you with me on that?

13:34 17 A. Yes.

13:34 18 Q. And that starts without them doing anything.  
13:35 19 The scales are tipped all the way in favor of the  
13:35 20 defendant because the scales are presumed to be tipped  
13:35 21 all the way in the favor of the defendant. And only as  
13:35 22 we start adding evidence to the other side do we begin  
13:35 23 to discharge our burden of proof.

13:35 24 Now, in order to have enough evidence on  
13:35 25 there to tip the scales the other way for the State,

13:36 1 strong as to constitute proof beyond a reasonable doubt.  
13:36 2 And if the State fails to do that, like it or not,  
13:36 3 pleasant or not, it's the obligation of a jury to vote  
13:36 4 not guilty if the State hasn't proved its case. And  
13:36 5 that doesn't have anything to do with who the defendant  
13:36 6 is or what he's supposed to have done. It's a  
13:37 7 measurement process, and the scales aren't tipped that  
13:37 8 much. They just aren't.

13:37 9 Are you the kind of man that could do  
13:37 10 that, and even if you didn't like the result of your  
13:37 11 verdict, could realize that we ask the jury to measure  
13:37 12 evidence? Not to come up with a result or they just  
13:37 13 feel it is a good thing?

13:37 14 A. Yes.

13:37 15 Q. All right. And the same -- and it goes the  
13:37 16 other way also. It may well be that you are sitting on  
13:37 17 a capital murder case, and you take to liking the  
13:37 18 defendant. I mean, you hear all of it. And you hear  
13:37 19 what happened, and you hear why it happened, and you  
13:37 20 find yourself saying, he seems like a great guy. I  
13:37 21 don't mean this case in general. I'm just talking in  
13:37 22 general. I like the guy. I'm sympathetic, and I  
13:37 23 understand how he got in that situation.

13:37 24 He's got a family that seems to love him.  
13:37 25 He's nice looking. He looks like he's got potential. I

13:37 1 like the guy. And you probably wouldn't necessarily be  
13:37 2 real happy about having to vote guilty in a capital  
13:37 3 murder case upon him, and you like him.

13:38 4 And, yet, if the evidence is there, you'd  
13:38 5 have to measure that evidence and not do the result of  
13:38 6 helping the guy that you like, but rather do the result  
13:38 7 of voting according to the evidence. Are you the kind  
13:38 8 of man that could do that also?

13:38 9 A. Yes.

13:38 10 Q. Okay. And, again, not everybody is equally  
13:38 11 easy to convince or to identify doubt. Everybody is a  
13:38 12 little bit different. But that's what makes the jury  
13:38 13 system work because it's a collective process. And the  
13:38 14 very nice thing is that these beyond a reasonable doubt  
13:38 15 verdicts must be unanimously done.

13:38 16 So even, for example, if we had a juror  
13:38 17 that was easy to convince of guilt, 11 other people  
13:38 18 applying different standards, some less than that,  
13:38 19 perhaps, would also have to be convinced. And that's  
13:38 20 why it works. The unanimous verdict is going to give a  
13:38 21 collective beyond a reasonable doubt from 12 people. Is  
13:38 22 that okay?

13:38 23 A. Yes.

13:39 24 Q. Now, I wish we did not call it capital murder  
13:39 25 only because I think it's sometimes confusing to jurors

13:39 1 who are surprised to understand that if you commit  
13:39 2 capital murder and are found guilty of it, you still may  
13:39 3 not get capital punishment for that crime. You either  
13:39 4 get life or capital punishment, that is death, depending  
13:39 5 upon the jury weighing some more evidence or weighing --  
13:39 6 maybe weighing the same evidence, but with a kind of a  
13:39 7 different view in weighing that evidence.

13:39 8 I wish we called it something like  
13:39 9 unaggravated murder or plain murder or -- I'm sorry, I  
13:39 10 wish we called it something like aggravated murder or  
13:39 11 murder plus or something like that, rather than --  
13:39 12 rather than capital murder because I don't think there  
13:39 13 would be that same confusion.

13:40 14 The notion is that there would never be  
13:40 15 any automatic votes in the jury system because for there  
13:40 16 to be an automatic vote means it is not justice. It  
13:40 17 hasn't been that measurement if it is automatic.

13:40 18 So what we're going to be talking with you  
13:40 19 about is the concept that the jury has to -- has to  
13:40 20 answer all questions presented to it by applying it to  
13:40 21 the evidence and that there are some situations in which  
13:40 22 a person could vote one way on a question or another way  
13:40 23 on the question depending on what evidence was  
13:40 24 presented.

13:40 25 And so, assume that you have for a moment

13:40 1 found the defendant guilty of capital murder beyond a  
13:40 2 reasonable doubt. And I'm not -- I'm not dismissing  
13:40 3 that as an important proposition. That's going to take  
13:40 4 us a long time in putting on all of our witnesses to  
13:41 5 convince you of that. But assume that we have done what  
13:41 6 we're required to do on that, and the jury was convinced  
13:41 7 beyond a reasonable doubt that the defendant is guilty  
13:41 8 of capital murder. Then you get two questions that are  
13:41 9 given to you or one question for sure and maybe one.  
13:41 10 Can you see that question okay from where you are?

13:41 11 A. Yes.

13:41 12 Q. It's pretty short; although, it's also in many  
13:41 13 ways vague. I suppose purposefully so to allow the jury  
13:41 14 some flexibility. The first thing that is vague is that  
13:41 15 term probability because, I guess, almost everything has  
13:41 16 a probability of some kind. What is your line of work,  
13:41 17 sir?

13:41 18 A. I work for Bank of America, asset management  
13:41 19 services.

13:41 20 Q. And in more pragmatic terms: What do you do?  
13:41 21 What kinds of -- what's the main part of your job?

13:41 22 A. I process back office operations for trading of  
13:42 23 foreign stocks and bonds and foreign currencies.

13:42 24 Q. Do you have to factor in currency fluctuations  
13:42 25 and keep up with that everyday? Is that part of your

13:42 1 work?

13:42 2 A. It is part of it, yes.

13:42 3 Q. I would think -- are you a sports fan?

13:42 4 A. Yes.

13:42 5 Q. What's your favorite spectator team sport?

13:42 6 A. Football, professional football.

13:42 7 Q. Did you ever look at the lines like before  
13:42 8 Sunday's games and see who's favored and stuff like  
13:42 9 that?

13:42 10 A. I don't gamble on sports, no.

13:42 11 Q. Do you keep up? Do you ever get in football  
13:42 12 pools at work or anything like that?

13:42 13 A. I have in the past, yes.

13:42 14 Q. Obviously, in sports when you put a very very  
13:42 15 dominant team, a very strong team against a very weak  
13:43 16 team, for example, in football, most of us could  
13:43 17 probably -- most of us could likely figure out that --  
13:43 18 that the dominant team ought to win. It -- right now,  
13:43 19 if you are a college football fan, they start out  
13:43 20 playing all the weak teams just to warm up.

13:43 21 You know, we've got teams like Notre Dame  
13:43 22 playing schools that you never heard of before. We have  
13:43 23 A&M getting ready to open against extremely weak  
13:43 24 competition. And we can predict with some confidence,  
13:43 25 maybe not the score, but the outcome. Right?

13:43 1 A. Yes.  
 13:43 2 Q. Once in a while we get surprised. I mean, once  
 13:43 3 in a while you will have somebody like New Mexico State  
 13:43 4 beating Texas, but that's not very likely. Do you agree  
 13:43 5 with me?  
 13:44 6 A. Yes.  
 13:44 7 Q. But it is a possible. It is possible to take  
 13:44 8 a, you know, a team made up of 150-pound linemen and  
 13:44 9 defeat Nebraska. But that possibility starts becoming  
 13:44 10 much more remote than even New Mexico State and Texas,  
 13:44 11 for example. Are you with me?  
 13:44 12 A. Yes.  
 13:44 13 Q. On that question that we are requiring the jury  
 13:44 14 to look into the future and make a prediction about the  
 13:44 15 defendant's behavior. Don't you agree? That's what  
 13:44 16 that question says. Look into the future and predict  
 13:44 17 the defendant's behavior.  
 13:44 18 A. Yes.  
 13:44 19 Q. Do you agree with me about that?  
 13:44 20 A. Yes.  
 13:44 21 Q. And since nobody could predict with certainty  
 13:44 22 what's going to happen -- I mean, I guess nothing, just  
 13:44 23 about, is absolutely certain. The law doesn't oblige us  
 13:45 24 to prove to the jury that with certainty that the  
 13:45 25 defendant will commit criminal acts of violence in the

13:45 1 future that constitute a continuing threat to society,  
 13:45 2 but only -- but only to prove that there is a  
 13:45 3 probability of that fact.  
 13:45 4 And I want to talk to you a little bit  
 13:45 5 about that concept. It is possible that having been on  
 13:45 6 the jury and seeing the defendant is guilty of capital  
 13:45 7 murder in the fashion that's alleged in this indictment,  
 13:45 8 if we prove that beyond a reasonable doubt, that  
 13:45 9 everybody in that jury, if given that question along  
 13:45 10 with the guilty form -- let's just say that question  
 13:45 11 came right in the first part of the trial along with:  
 13:45 12 Do you find him guilty or not guilty? It is very  
 13:45 13 possible that the jury, if given those two questions  
 13:45 14 versus a guilty. And if he's guilty, is he probably  
 13:46 15 going to be a danger in the future, that the jury would  
 13:46 16 answer that question yes, along with finding the  
 13:46 17 defendant guilty of capital murder.  
 13:46 18 And the reason that is possible is because  
 13:46 19 our law allows a jury to make that dangerous  
 13:46 20 determination solely on the basis of the crime for which  
 13:46 21 he convicted him. The notion being, there are some  
 13:46 22 crimes so vicious and wanton, so unnecessary and done  
 13:46 23 with such callous disregard for the lives of not only  
 13:46 24 the people you are killing but the lives of their  
 13:46 25 families that are shattered from all of that, our law

13:46 1 allows juries to base a yes answer to that question.  
 13:46 2 Yes, beyond a reasonable doubt solely on the facts of  
 13:46 3 the crime if those facts are compelling enough to the  
 13:46 4 jury. Does that idea make sense to you?  
 13:46 5 A. Yes.  
 13:46 6 Q. And more importantly, do you see yourself  
 13:46 7 recognizing that that question could be answered yes  
 13:46 8 simply based upon the facts of the crime, if they were  
 13:47 9 convincing enough to you?  
 13:47 10 A. Yes.  
 13:47 11 Q. All right. And if the crime weren't convincing  
 13:47 12 enough to you because there may be capital murders where  
 13:47 13 the fair answer to that question should be no. And  
 13:47 14 there may be fact situations where yes, you have met the  
 13:47 15 statutory elements of capital murder.  
 13:47 16 Yes, you have been found guilty of that  
 13:47 17 beyond a reasonable doubt. But a jury is not convinced  
 13:47 18 beyond a reasonable doubt that a person would be a  
 13:47 19 danger in the future. That's also possible. And that's  
 13:47 20 why we give you the question, and that's why the burden  
 13:47 21 of proof. It's the measurement.  
 13:47 22 Maybe in some cases the State can't tip  
 13:47 23 those scales enough on a future danger question, no  
 13:47 24 matter how hard we try. Is that concept satisfactory to  
 13:47 25 you?

13:47 1 A. Yes.  
 13:47 2 Q. Some examples of how that could happen -- have  
 13:47 3 you ever heard of Dr. Kevorkian?  
 13:47 4 A. Yes.  
 13:47 5 Q. I don't know that he's ever done it, and I  
 13:47 6 guess he's controversial, but let's assume for a moment  
 13:48 7 that someone called Dr. Kevorkian for his medical  
 13:48 8 assistance and said, I've got a husband and wife here  
 13:48 9 that were very elderly, and they got involved in a  
 13:48 10 terrible car crash, and their health is degenerated.  
 13:48 11 And they are both dying, and they are never going to get  
 13:48 12 out of this bed, and they both want to die. Their minds  
 13:48 13 are okay. Their bodies are just -- are so infirmed they  
 13:48 14 will never get any better.  
 13:48 15 We need Dr. Kevorkian. Dr. Kevorkian  
 13:48 16 comes down, talks with them, and makes sure they are in  
 13:48 17 good mental state. And hooks up the videotape to the  
 13:48 18 room where he's working and hooks up that contraption of  
 13:48 19 his, that killing machine of his to both of those  
 13:48 20 people, and he causes their death. Okay? Maybe in some  
 13:48 21 states that would be something less there.  
 13:48 22 I don't know if there are any states that  
 13:48 23 allow that. There may be one or two way on the west  
 13:49 24 coast, but I don't claim to know that. I just think it.  
 13:49 25 But Texas doesn't have any concept called mercy killing.

13:49 1 And in our own law, if you intentionally  
13:49 2 cause the death of another human being, you are a  
13:49 3 murderer, regardless of what your reasons are. If you  
13:49 4 intentionally cause that death or that justification.

13:49 5 And if you intentionally cause the death  
13:49 6 of two people, the crime is capital murder. That's the  
13:49 7 way our law is worded. And so in that fact situation  
13:49 8 Dr. Kevorkian could be charged with capital murder in  
13:49 9 the State of Texas. Are you with me?

13:49 10 A. Yes.

13:49 11 Q. Now, you could look at that evidence, and you  
13:49 12 might, as a juror, say, you know, I sure like  
13:49 13 Dr. Kevorkian because I think he performs a public  
13:49 14 service. And I feel sorry for a great medical marvel  
13:49 15 like Dr. Kevorkian finding himself having to hire  
13:50 16 lawyers or get appointed lawyers to defend him on a case  
13:50 17 when I feel like he's doing a good thing for our  
13:50 18 society.

13:50 19 And yet you already told me you are the  
13:50 20 kind of man who could still find him guilty of capital  
13:50 21 murder because you are weighing the evidence, and you  
13:50 22 are voting the evidence and not voting primarily with  
13:50 23 your heart. And you are still that kind of man, aren't  
13:50 24 you?

13:50 25 A. Yes.

13:50 1 Q. So then you get to that question there. And  
13:50 2 there are a couple ways you could approach that question  
13:50 3 there in the case of Dr. Kevorkian. You could say --  
13:50 4 you could say, he isn't going to stop with that killing  
13:50 5 machine. You could say that, if given the chance -- for  
13:50 6 example, if we let him loose because it doesn't say  
13:50 7 anything about being in prison. It just says: Is he a  
13:50 8 threat to society? You could say, well, he's going  
13:50 9 to -- he's going to kill some more people like this.  
13:50 10 He's going to be a continuing threat to society. All  
13:50 11 right.

13:50 12 But you might look at that question  
13:50 13 further and you might say, well, you know, I don't view  
13:51 14 what he does as a criminal act of violence. It may be  
13:51 15 illegal, but if it's consensual with the victims, I  
13:51 16 don't see that as an act of violence. I see that as a  
13:51 17 criminal act of medical practice or however you might  
13:51 18 define that. And you might answer that question no,  
13:51 19 according to that -- that evidence. Are you with me on  
13:51 20 that?

13:51 21 A. Yes, sir.

13:51 22 Q. Or you might just say, look, Kevorkian's been  
13:51 23 doing this for years, and he writes monographs about --  
13:51 24 about how he likes to do that. I don't know if you  
13:51 25 studied or not, but they have people in medical school

13:51 1 that say he was crazy back then.

13:51 2 They said everybody else was trying to  
13:51 3 learn about blood diseases. He's wondering how long it  
13:51 4 takes a guy to smother to death. And that was always  
13:51 5 Kevorkian. That's how he thought. And you might say,  
13:51 6 the guy's always been that way, and he's never going to  
13:51 7 change. And he'll always be a threat to our society to  
13:51 8 always violate our capital murder law. And you might  
13:52 9 vote yes on that question. Do you follow me on that  
13:52 10 question?

13:52 11 A. Yes.

13:52 12 Q. Any disagreement on what the concept of how a  
13:52 13 jury would vote yes or no according to how they would  
13:52 14 view the evidence?

13:52 15 A. No. They would have to evaluate the evidence  
13:52 16 in order to make their decision.

13:52 17 Q. Okay. And, likewise, you might have a  
13:52 18 situation in which a person committed a capital murder,  
13:52 19 and it would never happen again. It was so circumstance  
13:52 20 related that, although a capital murder, although  
13:52 21 intentionally causing the death of a person with  
13:52 22 something other than -- something aggravated, you  
13:52 23 absolutely knew that that person would never be a threat  
13:52 24 again.

13:52 25 Some examples that come to mind. Suppose

13:52 1 that the defendant commits a real serious, dangerous  
13:52 2 capital murder. And then while the police are trying to  
13:52 3 arrest him, he gets shot in a gun fight with the police.  
13:52 4 And he -- he gets paralyzed from -- from the throat  
13:52 5 down. So all he's got is like his head just above the  
13:53 6 Adam's apple. That's all he's got left. You understand  
13:53 7 that that person would probably not be a physical  
13:53 8 position to be dangerous again?

13:53 9 A. Yes.

13:53 10 Q. Even though he might have been an awful  
13:53 11 creature and demonstrated just a -- just a callous  
13:53 12 rapacity, almost a blood lust. Nevertheless, the fair  
13:53 13 answer to that question would have to be no because he's  
13:53 14 not in a position to ever do anybody any harm. Do you  
13:53 15 agree with me?

13:53 16 A. Yes.

13:53 17 Q. It might be the father whose child was murdered  
13:53 18 by a couple of vicious street toughs. And then as a  
13:53 19 result of some fluke in the criminal justice system,  
13:53 20 they are acquitted or they are let loose on a  
13:53 21 technicality. And they go out of the courtroom  
13:53 22 laughing, smirking because they thought it was funny.  
13:53 23 Maybe that dad gets a gun and goes and kills those  
13:53 24 people. You are a parent, aren't you?

13:53 25 A. Yes, I am.



13:53 1 Q. You understand how much it means to love a  
13:53 2 child. And I hope you don't know what it means to lose  
13:54 3 a child, but you can see how that could be?

13:54 4 A. Yes.

13:54 5 Q. And maybe that parent pulls out a gun and goes  
13:54 6 and kills those people that have killed his child. And  
13:54 7 maybe you say, you know, you are a capital murderer. We  
13:54 8 found you guilty beyond a reasonable doubt because we  
13:54 9 weigh evidence.

13:54 10 We don't vote -- our heart is with you but  
13:54 11 not our vote because the evidence is against you. And  
13:54 12 you might say, that person will never be dangerous  
13:54 13 again. As a matter of fact, he wouldn't have been  
13:54 14 dangerous this time except for what those people did.  
13:54 15 Do you see how that analysis could work?

13:54 16 A. Yes.

13:54 17 Q. And it may simply be that, for whatever reason,  
13:54 18 you don't believe the person is going to be a continuing  
13:54 19 threat to society. Do you recognize that that's not,  
13:54 20 that question is not the same question as: Is the  
13:54 21 defendant a capital murderer? It's a different question  
13:54 22 from that because you've already found that he's a  
13:54 23 capital murderer. That question says: Is the capital  
13:54 24 murderer a probable future danger to our society?

13:55 25 A. I understand what -- that to be what that

13:55 1 question is.

13:55 2 Q. Do you see yourself as a man who could measure  
13:55 3 the evidence on that question the same way you measured  
13:55 4 whether or not a capital defendant is guilty?

13:55 5 A. Yes.

13:55 6 Q. All right. Now, it's a little trickier --  
13:55 7 trickier is not the word. More -- more tougher is a  
13:55 8 better word because you know. Tell me what you know.  
13:55 9 What do you know happens if you vote no on that question  
13:55 10 as a jury?

13:55 11 A. If you vote no based upon that question there,  
13:55 12 then death would probably not be a consideration in  
13:55 13 sentencing.

13:55 14 Q. More than probably not. Death will not be a  
13:55 15 consideration. A no answer to that question, that's not  
13:55 16 an automatic sentence because you have -- you have to  
13:55 17 view evidence and weigh it. But if you don't find the  
13:55 18 State has discharged its proving responsibilities, the  
13:56 19 only answer you can return is no.

13:56 20 You have to because that's your oath as a  
13:56 21 juror. And then everybody else goes home, and the  
13:56 22 defendant goes to the prison with a life sentence. And  
13:56 23 that's automatic. There's no -- there's no "yes, but,"  
13:56 24 which means -- which means sometimes voting the evidence  
13:56 25 could cause a conflict between what you wanted to occur

13:56 1 and what might occur from your vote. Do you see how  
13:56 2 that could be?

13:56 3 A. Yes.

13:56 4 Q. Same story. If you like the defendant a lot  
13:56 5 and thought he was a sympathetic fellow, but the true  
13:56 6 answer to that question by proof is yes, he is a danger  
13:56 7 in the future, then you might be moving along toward a  
13:56 8 result that wasn't consistent with what your heart felt  
13:56 9 because you might be moving along toward a death  
13:56 10 sentence when your heart -- since you like the  
13:56 11 defendant, maybe wanted a life sentence to come out. Do  
13:57 12 you know what I mean?

13:57 13 A. Yes.

13:57 14 Q. But you can do -- you can do the work of  
13:57 15 measurement the same as the next person in our society.  
13:57 16 Don't you think?

13:57 17 A. Yes.

13:57 18 Q. This next question, there are actually three  
13:57 19 possible questions. I have skipped over the second one,  
13:57 20 and both sides have done it, and that's always risky.  
13:57 21 But just watch sometime. That becomes the big issue of  
13:57 22 a trial. But there's one that has to do with being a  
13:57 23 nontrigger man party and whether or not that person  
13:57 24 can -- can be executed.

13:57 25 It goes real simply like this: If you

13:57 1 don't actually do the killing, you have to have  
13:57 2 equivalent intent with the one who did the killing. You  
13:57 3 have to be in -- in on the desire for the killing. Not  
13:57 4 just along for the ride.

13:57 5 You and I go to lunch, and I kill  
13:57 6 somebody. You couldn't get the death penalty for that.  
13:57 7 Probably couldn't even get convicted of that. Since you  
13:57 8 couldn't get the death penalty unless you knew I was  
13:58 9 going to do the killing, and you were okay with that,  
13:58 10 right?

13:58 11 A. I understand.

13:58 12 Q. Like Hitler, he probably never killed anybody,  
13:58 13 but he was with the people mentally who were doing that  
13:58 14 killing. If and only if you have found the defendant  
13:58 15 guilty of capital murder and you found he is probably  
13:58 16 going to be a danger in the future, do you ever get to  
13:58 17 this third question -- can you read all of it from where  
13:58 18 you are sitting, sir?

13:58 19 A. Yes.

13:58 20 Q. All right. Take a moment, if you haven't  
13:58 21 already, and read it before I ask you some questions on  
13:58 22 it.

13:58 23 A. Okay.

13:58 24 Q. Okay?

13:58 25 A. Okay.

13:58 1 Q. That's the last-look question. That's the  
13:58 2 humanitarian question. That's the consider the evidence  
13:58 3 one more time with a slightly different light shown upon  
13:58 4 it. I believe that question is a tremendous gift to a  
13:59 5 trial jury in a capital murder trial.

13:59 6 I think it authorizes a trial jury to  
13:59 7 avoid having to leave this courtroom saying, we answered  
13:59 8 the questions truthfully because that was our oath.  
13:59 9 And, yet, based on all the evidence in this case, a true  
13:59 10 injustice is occurring because, if we only had a way to  
13:59 11 measure all the defendant's background and all the  
13:59 12 circumstances of the case, we might have said, a life  
13:59 13 sentence is the right thing to do. But we didn't have a  
13:59 14 way to measure that evidence to see whether or not a  
13:59 15 life sentence was the right thing to do. But this  
13:59 16 question gives the jury that opportunity. Here is how  
13:59 17 that works.

13:59 18 Mitigation is the concept that lessens the  
13:59 19 effect of an act or a circumstance. I don't know if --  
13:59 20 I know Bank One has a loss prevention department, and  
13:59 21 they also have a loss mitigation department, which are  
14:00 22 similar. The loss mitigation department in many ways  
14:00 23 has to do with, like, collecting loans.

14:00 24 I think it's a euphemism for the bill  
14:00 25 collectors kind of thing. But nevertheless, they call

14:00 1 it loss mitigation, to lessen your loss. Get to the  
14:00 2 dead beat quick and get the asset, that kind of idea.

14:00 3 In our criminal practice, the idea of  
14:00 4 mitigation is that there are some circumstances that  
14:00 5 probably you and I and everybody else have about our  
14:00 6 lives that we could point to in some context. And that  
14:00 7 might tend to lessen the way our behavior is going to be  
14:00 8 judged or the consequences of our behavior.

14:00 9 And in some context it probably makes more  
14:00 10 sense than others. For example, if let's just say you  
14:00 11 weren't doing well in your job. Your boss calls you in  
14:01 12 and said, I tried everything with you and, you know, you  
14:01 13 are paying too much for the yen now.

14:01 14 And look at this bill for the yen you  
14:01 15 bought, and that's real high. Or, you know, the stocks  
14:01 16 you are buying -- I keep telling you you are buying the  
14:01 17 wrong stocks, you know, that kind of thing?

14:01 18 And you say, boss, it's not my fault. I  
14:01 19 grew up in a broken home. My mom and dad divorced when  
14:01 20 I was a teenager. And the boss might say, well, that's  
14:01 21 sad. Same thing happened to me. And my wife, she --  
14:01 22 she -- the same thing happened to her. And I've known  
14:01 23 people like that. And, I'm sorry, but I got a bank to  
14:01 24 run, and I've got a business to run. And I can't --  
14:01 25 everybody's got troubles. You got to get over it. You

14:01 1 know, that kind of idea?

14:01 2 Maybe it's mitigating on the fact that you  
14:01 3 are paying too much for the yen or not buying the right  
14:01 4 stocks, but at the same time it may not be sufficient  
14:01 5 mitigation for the boss to overlook the mistakes that  
14:01 6 you are making on the job. Are you with me on that?

14:01 7 A. I understand.

14:01 8 Q. You know, and it's like -- I mean, it's like a  
14:02 9 person being married or something. And you know, you go  
14:02 10 out of town and you come back a week later, and you find  
14:02 11 out that your spouse has been seeing somebody else. And  
14:02 12 you confront the spouse and you say, "How come you did  
14:02 13 that?" And, "Well, I was lonely," or "I grew up  
14:02 14 lonely," or "I didn't have enough money, and a rich guy  
14:02 15 came along" or something like that.

14:02 16 It might be an explanation. It might even  
14:02 17 somehow lessen it, rather than I was just trying to  
14:02 18 humiliate you or embarrass you, but it may not in any  
14:02 19 way sufficiently mitigate that affront to your situation  
14:02 20 so that -- so that you'd overlook it. Do you know what  
14:02 21 I'm saying?

14:02 22 A. Yes.

14:02 23 Q. Does that make sense to you?

14:02 24 A. Yes, it does.

14:02 25 Q. In the criminal system the truth is, every one

14:02 1 of us probably has things in our life, in our background  
14:02 2 that we carry around with us and maybe don't even talk  
14:02 3 about that everybody would agree is sad. Some more than  
14:02 4 others.

14:02 5 Some of us may have had drinking problems.  
14:03 6 Some of us may have had problems with alcohol. Some of  
14:03 7 us may have been sexually abused as children. Some of  
14:03 8 you us may have grown up poor. Some of us may not have  
14:03 9 had a dad that we ever got to see. Maybe we had a dad  
14:03 10 that beat us. Maybe he beat our mom in front of us.

14:03 11 Maybe our mom was sick. Maybe we had to  
14:03 12 be raised by Aunt Nellie because neither one of our  
14:03 13 parents were around or cared about us. All those kinds  
14:03 14 of things certainly can be real and can affect our  
14:03 15 performance in society. Don't you agree?

14:03 16 A. Yes.

14:03 17 Q. At the same time, most of us, as we go about  
14:03 18 living our lives don't have a particular place to make  
14:03 19 use of those circumstances. Kind of like I say in the  
14:03 20 workplace, for the most part you don't get a chance to  
14:03 21 say, I'm sorry, I'm missing work.

14:03 22 I'm sorry I came in late five times last  
14:03 23 week, boss, but I've got a drinking problem. You know,  
14:03 24 I stay up late drinking, and then I can't get up in the  
14:04 25 morning. Well, that's sad to have a drinking problem.

14:04 1 That's not funny, and it's not a good thing. But the  
14:04 2 boss has got a job that he's got to do. And if his boss  
14:04 3 gets on him, he can't say, well, I did it because this  
14:04 4 fellow is drinking. Are you with me?

14:04 5 A. Yes.

14:04 6 Q. Somehow, though, in the criminal system it  
14:04 7 seems to have more use, and I'm not saying that's good  
14:04 8 or bad. That's just how it all is. So that the jury  
14:04 9 ends up directed on this question to consider all of the  
14:04 10 evidence, that the evidence you already considered at  
14:04 11 the first part of the trial and anything else that  
14:04 12 either side brings you later on, consider all of the  
14:04 13 evidence, including the circumstances of the offense,  
14:04 14 the defendant's character and background, the personal  
14:04 15 moral culpability of the defendant and anything else  
14:04 16 that you might want to consider because all of the  
14:04 17 evidence is pretty broad. Not just the circumstances of  
14:04 18 the offense, but all of the evidence.

14:04 19 Then you got to consider, is there  
14:04 20 sufficient mitigating evidence or circumstances to  
14:05 21 warrant a sentence of life rather than death? And when  
14:05 22 they use that term sufficient, they don't define it.  
14:05 23 And I guess -- I guess it's still a measurement, but  
14:05 24 it's a measurement without any kind of description.

14:05 25 It could be that the scales tip 99 percent

14:05 1 in favor of the State and 1 percent in favor of the  
14:05 2 defendant on that mitigation issue. And a jury could  
14:05 3 say, well, 1 percent is sufficient to us, you know. The  
14:05 4 fact that he -- whatever, whatever, whatever  
14:05 5 circumstance you consider mitigating, and you find  
14:05 6 that's enough.

14:05 7 I mean, this trial could be replete with  
14:05 8 mitigating evidence that could just break your heart.  
14:05 9 Have everyone in tears hearing about some sad  
14:05 10 defendant's life in hell growing up, if that's the case.

14:05 11 And yet we say, well, the State didn't  
14:05 12 have anything to aggravate it all. They just -- they  
14:05 13 just shrugged their shoulders and said, yeah, it's real  
14:05 14 sad, but that's not sufficient. It's -- it's not then  
14:06 15 there's no place that you have to worry about where the  
14:06 16 scales fall. It's just simply what you consider to be  
14:06 17 sufficient mitigation. You know, there are some people  
14:06 18 that say, yes, there could -- I will listen and see if  
14:06 19 there are mitigating circumstances.

14:06 20 That question does not require you to come  
14:06 21 up with what you think would be a mitigating  
14:06 22 circumstance. It doesn't require that. And it doesn't  
14:06 23 even suggest that there is any mitigating circumstance  
14:06 24 in this or any other -- this or any other murder case.  
14:06 25 It doesn't suggest that.

14:06 1 It merely requires a jury to be looking  
14:06 2 for mitigation evidence, if any is presented. And then  
14:06 3 if there is mitigating evidence, weigh that evidence and  
14:06 4 see if it's sufficient to, not excuse the crime, but to  
14:06 5 lessen the punishment down to life.

14:06 6 And that's -- by the way, that's assuming  
14:06 7 that life is life. Some people say life is worse than  
14:06 8 death, at least the way we do death in Texas. But to  
14:07 9 see if it mitigates against the death sentence in favor  
14:07 10 of a life sentence. Does that make sense to you?

14:07 11 A. Yes.

14:07 12 Q. And what you consider to be mitigating,  
14:07 13 somebody else might not think it's mitigating. Or what  
14:07 14 somebody else thinks is, you might not. You know, drug  
14:07 15 addiction to some people could be mitigating. You might  
14:07 16 say, well, if you are on drugs, that's a sickness, and I  
14:07 17 wouldn't -- if a guy had TB that would be mitigating.  
14:07 18 So being a drug addict is mitigating, too.

14:07 19 Other people say, nah, nobody made you be  
14:07 20 a drug addict. You started with all the warnings that  
14:07 21 occur. Other people might say, that's mitigating, but  
14:07 22 so what? But that's kind of like losing your wallet.

14:07 23 I guess losing your wallet on the way to  
14:07 24 the store, theoretically, mitigates against punishment  
14:07 25 for robbing that store since you didn't have any money.

14:07 1 So what? That's not sufficient mitigating. Everybody  
14:07 2 has troubles in life, that idea.

14:08 3 Do you like the opportunity that the jury  
14:08 4 has in that question to be able to actually look at the  
14:08 5 background of the defendant and what the defendant did  
14:08 6 and decide whether or not there's enough mitigating  
14:08 7 evidence that he ought to have his life spared? Do you  
14:08 8 like that opportunity for a jury to have that?

14:08 9 A. I think so, yes.

14:08 10 Q. I mean, do you see that as not only good for  
14:08 11 the defendant because, of course, it's good for the  
14:08 12 defendant to have the possible benefit of that question?  
14:08 13 But do you see what I mean when I say, it's actually for  
14:08 14 the benefit of the jury, too, in their conscience?

14:08 15 A. I can see where it would be important to look  
14:08 16 at the person's background.

14:08 17 Q. Okay, okay. Now, let's talk a little more  
14:08 18 directly about your views on the death penalty. You  
14:08 19 were asked the question: Are you in favor of the death  
14:08 20 penalty, and your answer to that question was no?

14:08 21 A. Yes.

14:09 22 Q. You've stated it on the questionnaire, but I  
14:09 23 kind of like to hear it just as we're talking. Tell me  
14:09 24 why it is that you are not in favor of the death  
14:09 25 penalty.

14:09 1 A. I don't believe in most cases that it's a  
14:09 2 solution. That I don't believe that killing someone is  
14:09 3 the right way to punish them --

14:09 4 Q. Okay.

14:09 5 A. -- for something that they did.

14:09 6 Q. Okay. You don't seem to be a person who is  
14:09 7 excusing a criminality. I don't get that sense from you  
14:09 8 at all.

14:09 9 A. No.

14:09 10 Q. What do we do with people who commit, for  
14:09 11 example, in your system, somebody that commits a double  
14:09 12 homicide, intentionally, and is a dangerous person by  
14:09 13 the evidence. If killing is not the solution, what, in  
14:09 14 your mind, what would be the proper solution?

14:09 15 A. Life in prison without the possibility of  
14:10 16 parole.

14:10 17 Q. Okay. And I guess the thinking would be that  
14:10 18 that protects society from these dangerous capital  
14:10 19 murderers, and it also protects society from doing an  
14:10 20 ugly and probably, if not immoral, certainly an ugly and  
14:10 21 sort of self-demeaning thing by killing people; is that  
14:10 22 fair?

14:10 23 A. I'm not sure if I really agree with the way you  
14:10 24 are describing it. But, I mean, I just don't feel  
14:10 25 personally that it's the right thing to do, to kill

14:10 1 somebody. It's not because it saves money or -- there's  
14:10 2 moral issues with it.

14:10 3 Q. Would you say it's founded more on a religious  
14:11 4 sense or more on a practical sense, or is it moral?  
14:11 5 Tell me kind of -- when you say it's not the right thing  
14:11 6 to do, that could mean you've already excluded that.

14:11 7 That could mean it's too expensive, so  
14:11 8 it's not the right thing to do. That could mean a lot  
14:11 9 of things. Just tell me in your own words, why is it  
14:11 10 not the right thing to do?

14:11 11 A. Well, it doesn't have anything to do with  
14:11 12 expense. I just don't believe that killing someone  
14:11 13 because they killed somebody is the right way to punish  
14:11 14 somebody. And I don't think that -- you know, I'm not  
14:11 15 growing up in Texas where they do kill people and will  
14:11 16 kill people.

14:11 17 I mean, if they think it's heinous enough,  
14:11 18 I just don't -- I'm not so sure how it affects the  
14:11 19 younger people in our society that are growing up and  
14:11 20 how this might condition them, you know, so that 50  
14:11 21 years from now they are more readily able to kill  
14:11 22 someone maybe that didn't deserve to be killed.

14:12 23 Q. Okay. Okay. Is there any notion in your mind  
14:12 24 that it's kind of hypocritical of us on the one hand to  
14:12 25 be saying that intentionally killing somebody is a

14:12 1 terrible thing to be doing, and then we -- we do the  
14:12 2 same thing ourselves? Is that kind of like a  
14:12 3 hypothetical idea, maybe?

14:12 4 A. I guess it could be in a sense, yes.

14:12 5 Q. And you understand, by the way, I don't -- I  
14:12 6 don't, and not only do I not quarrel with anybody's  
14:12 7 answers, I find it -- I find this one of the purest  
14:12 8 forms of democracy because this is one time when an  
14:12 9 individual vote counts volumes on a jury.

14:12 10 I mean, one vote here, until that Florida  
14:12 11 presidential election, I would always say, in a big  
14:12 12 state it wouldn't matter. But one vote on a jury makes  
14:12 13 a huge difference every time, every kind of case ever.

14:12 14 Well, if that's the case, and you don't  
14:12 15 believe it's the right way for us to be going, explain  
14:13 16 how you could answer this one: I believe that the death  
14:13 17 penalty is appropriate in some capital murder cases, and  
14:13 18 I could return a verdict resulting in death in a proper  
14:13 19 case.

14:13 20 I'm not challenging. I'm trying to square  
14:13 21 that because it seemed inconsistent, but I just may be  
14:13 22 missing the subtlety of your position.

14:13 23 A. Well, for example, I don't necessarily disagree  
14:13 24 that Timothy McVeigh deserved to live. I didn't have a  
14:13 25 problem with seeing him die.

14:13 1 Q. Okay.

14:13 2 A. And the guys down in Houston that dragged the  
14:13 3 guy behind the truck until he fell apart, I really  
14:13 4 didn't have a problem with him dying, either.

14:13 5 Q. So you are saying it depends on the type of  
14:13 6 case, whether you are for it or not?

14:13 7 A. I think the circumstances of it definitely have  
14:13 8 something to do with it.

14:13 9 Q. Okay, okay. And I don't know how --

14:13 10 A. But I don't necessarily -- that doesn't mean  
14:13 11 that I agree with it. But I think that in those  
14:14 12 instances that I mentioned I understand it.

14:14 13 Q. Thank you. You are certainly less -- would it  
14:14 14 be fair to say that you are probably less -- you find  
14:14 15 less objection to those kinds of cases than perhaps a  
14:14 16 simple robbery-murder, for example, or something like  
14:14 17 that?

14:14 18 A. Right.

14:14 19 Q. Is that a fair statement to you?

14:14 20 A. Right.

14:14 21 Q. Okay, okay. Well, then let's stop and think  
14:14 22 for a minute. Nobody knows how you are going to react  
14:14 23 until you are there, but we've got to try to -- you are  
14:14 24 the closest hope we've got to tell us how that's going  
14:14 25 to be. You are the only one that knows you.

14:14 1 And so I want to -- I want to think about  
14:14 2 the possibility of you being seated on a capital murder  
14:14 3 jury, whether it's this one or any other one. We're not  
14:14 4 even talking about this one anyway.

14:14 5 I want to think about what that means in  
14:15 6 terms of your -- your abilities to answer -- answer  
14:15 7 these questions according to the evidence. To actually  
14:15 8 fairly -- fairly weigh those things on the scales of  
14:15 9 justice that I talked about.

14:15 10 I don't get a sense from you that your  
14:15 11 opposition to the death penalty is so strong that you  
14:15 12 would find a way to acquit the defendant at the first  
14:15 13 part of the trial in order to guarantee he wouldn't get  
14:15 14 a death sentence. I don't get a sense from you that  
14:15 15 that would even be something that I would need to worry  
14:15 16 about. Am I right?

14:15 17 A. Well, if you -- if the evidence was there that  
14:15 18 the crime was so heinous that the State wanted to put  
14:15 19 the person to death, I wouldn't like it. But, again, I  
14:15 20 would understand, and I wouldn't be opposed to it.

14:16 21 Q. Okay. Let's just talk about the first part of  
14:16 22 the trial, that's whether the defendant is guilty or not  
14:16 23 guilty. Because there's not a soul on this earth that  
14:16 24 would think a defendant who is not guilty should be  
14:16 25 executed. We all agree with that. Right?

14:16 1 A. Say that again.

14:16 2 Q. Nobody thinks that a not guilty defendant, if a  
14:16 3 defendant is found not guilty, he shouldn't be executed  
14:16 4 for that crime. Do you agree with that?

14:16 5 A. Yes.

14:16 6 Q. And we all do. And so what's required is,  
14:16 7 before we even get to those questions, I can talk to you  
14:16 8 about them now. Mr. Goeller can talk with you about  
14:16 9 them now. But before, we, as a jury, would ever start  
14:16 10 using those questions, you would have first had to have  
14:16 11 found him guilty of capital murder. He must be found  
14:16 12 guilty or else we don't worry about punishment. There's  
14:16 13 nothing to punish.

14:16 14 A. Right.

14:16 15 Q. My question to you is: Your opposition to  
14:16 16 capital punishment is not so strong that it would  
14:16 17 interfere with whether or not you were able to find him  
14:17 18 guilty, other than the way the evidence required you to  
14:17 19 vote, would it?

14:17 20 In other words, you are going to find him  
14:17 21 guilty of capital murder if the State proves it beyond a  
14:17 22 reasonable doubt, aren't you?

14:17 23 A. Yes.

14:17 24 Q. Even though -- if you didn't find him guilty of  
14:17 25 capital murder, you wouldn't have to confront the death

14:17 1 penalty issues in the second part of the trial. Are you  
14:17 2 following what I'm saying?

14:17 3 A. Yes.

14:17 4 Q. All that I'm saying is: I don't have any  
14:17 5 additional burden from you on the guilt-innocence phase  
14:17 6 simply because you don't like the idea of capital  
14:17 7 punishment. You'll still weigh the evidence, and you'll  
14:17 8 give me a fair weighing on the evidence?

14:17 9 A. Yes.

14:17 10 Q. And can I sense that from you, that that would  
14:17 11 not be a problem? Now, you understand, because I have  
14:17 12 already told you, that if the answer to this first  
14:17 13 special issue is no, the life sentence results. Do you  
14:18 14 understand that?

14:18 15 A. Yes.

14:18 16 Q. I can see how a person who was opposed to  
14:18 17 capital punishment would look at that question and take  
14:18 18 the position that that's the way out of my dilemma of  
14:18 19 perhaps having to vote for a death sentence based on the  
14:18 20 evidence and that death sentence being something that I  
14:18 21 think is wrong. That gets me out of the dilemma I have  
14:18 22 of maybe having to do something I believe is wrong in my  
14:18 23 jury service.

14:18 24 And the way that -- the answer to that  
14:18 25 question could get you out of that, is all you got to do

14:18 1 is vote no on that question, and that's -- and that's  
14:18 2 the end. Right? Ten or more no votes on that question  
14:18 3 result in a life sentence automatically. Are you with  
14:19 4 me on that?

14:19 5 A. Yes.

14:19 6 Q. I'm not the least bit concerned about a juror  
14:19 7 who says, I don't like the death penalty. There are  
14:19 8 many reasons that the death penalty can be criticized  
14:19 9 and be -- and be made to look improper. And I'm not --  
14:19 10 I'm not intimidated by any of those. That's not my  
14:19 11 concern.

14:19 12 On something that big and that important  
14:19 13 in a juror's mind, I'm concerned how well you could  
14:19 14 weigh the evidence knowing that weighing it a certain  
14:19 15 way would result in a death sentence. Does that make  
14:19 16 sense to you, what my concerns are?

14:19 17 A. Yes.

14:19 18 Q. Do I have any reason to be concerned about how  
14:19 19 you would weigh our evidence in answering that first  
14:19 20 special issue, given your opposition to the death  
14:19 21 penalty?

14:19 22 A. Well, I think what you are asking is: Would I  
14:19 23 use that as an out to free myself of having to make that  
14:20 24 decision?

14:20 25 Q. That's one of my questions, uh-huh.

14:20 1 A. And I can't say that I would do that, not in  
14:20 2 something as important as this.

14:20 3 Q. So you --

14:20 4 A. I wouldn't -- I wouldn't try to, you know, to  
14:20 5 do something like that to somebody's life just to make  
14:20 6 myself feel better or whatever.

14:20 7 Q. So if we prove the answer to that question  
14:20 8 should be, yes, beyond a reasonable doubt, you'll vote  
14:20 9 that way?

14:20 10 A. Yes.

14:20 11 Q. And it is fair to say that you are opposed to  
14:20 12 the death penalty; is that a fair statement?

14:20 13 A. Yes, it is.

14:20 14 Q. Do you feel that your opposition to the death  
14:20 15 penalty is so strong that it would substantially  
14:20 16 interfere with or substantially impair your ability to  
14:21 17 answer that first special issue based on the evidence?

14:21 18 A. If the evidence completely convinced me that,  
14:21 19 you know, the death penalty was definitely something  
14:21 20 that was warranted, then no.

14:21 21 Q. It might not, on that first question, the  
14:21 22 evidence might not convince you of that. It might not,  
14:21 23 by us proving future danger, that might not convince you  
14:21 24 that the death penalty is warranted. That might only  
14:21 25 convince you that he is -- there is a probability that

14:21 1 he will be a danger in the future. Do you understand  
14:21 2 what I'm saying?

14:21 3 We don't really ask the jury directly:  
14:21 4 Does he get a life sentence, or does he get a life  
14:21 5 sentence? We ask you to answer questions, the results  
14:21 6 of which will determine that.

14:21 7 And so my question is: Can you answer  
14:22 8 that question yes or no, depending on the evidence? Are  
14:22 9 you sure that you can do that?

14:22 10 A. Yes.

14:22 11 Q. Now, that question does not allocate much  
14:22 12 responsibility on either side. It seems to allocate the  
14:22 13 only responsibility, I suppose, on the jury to measure  
14:22 14 the evidence. And, again, it defines sufficient  
14:22 15 evidence or not that mitigates against a death sentence  
14:22 16 in favor of a life sentence. Are you absolutely clear  
14:22 17 on what the concept of that question is?

14:22 18 A. Yes, I believe I am.

14:22 19 Q. Okay. Now, a yes answer to that question  
14:22 20 means, yes, I find sufficient mitigating evidence to  
14:23 21 make a life sentence rather than a death sentence be the  
14:23 22 result of this case. Okay? That's what a yes answer to  
14:23 23 that question means. Yes means life. No means death.  
14:23 24 All right?

14:23 25 A. Yes.

14:23 1 Q. Just like I told you before, it's a measurement  
14:23 2 process, not a what-do-you-want-to-do process. It's  
14:23 3 measuring the evidence and determining fairly whether or  
14:23 4 not there is sufficient mitigating evidence.

14:23 5 Now, there are those people who could be  
14:23 6 death penalty opponents who would say, because of my  
14:23 7 sincere opposition to capital punishment, there is no  
14:23 8 way I could ever answer this question no because I know  
14:24 9 that answering that question no will result in the very  
14:24 10 thing that I have opposition to.

14:24 11 And just as certainly as if I were down in  
14:24 12 the death chamber when it occurred, my vote is going to  
14:24 13 put into motion that very process that I'm opposed to  
14:24 14 and that being capital punishment.

14:24 15 I mean, sure we can tell the jury, you are  
14:24 16 not putting the needle into the defendant's arm. We can  
14:24 17 tell the jury that somebody else is doing that. All  
14:24 18 we're asking you to do is answer questions. But that's,  
14:24 19 while technically true, it probably misses the moral  
14:24 20 mark of the whole thing that we do.

14:24 21 Can you answer that question in a capital  
14:24 22 murder case no, even though you are opposed to the death  
14:25 23 penalty, knowing that your answer to that question of  
14:25 24 no, along with 11 other people, will cause capital  
14:25 25 punishment?

14:25 1 MR. GOELLER: Judge, I object to the form  
14:25 2 of the question. It's asking could he answer it no with  
14:25 3 the final results well -- I'd object to the question as  
14:25 4 misleading. He's asking the question: Would the  
14:25 5 results, trying to get the juror to commit to the  
14:25 6 results without taking into effect or incorporating this  
14:26 7 question to the very essence of the evidence,  
14:26 8 background, character, personal moral culpability.

14:26 9 It's forcing the juror to answer, could I  
14:26 10 answer that question -- it's asking the juror to answer  
14:26 11 the question based on the result. And I don't think  
14:26 12 that's a proper question.

14:26 13 THE COURT: Overruled.

14:26 14 MR. GOELLER: Okay.

14:26 15 Q. (BY MR. SCHULTZ) I think I might ask you  
14:26 16 again. It's kind of ironic because and it's not  
14:26 17 critical, but when we have a lengthy objection, and it's  
14:26 18 in these technical areas, by the time the objection is  
14:26 19 made everybody has forgotten -- I don't know about  
14:26 20 Mr. Goeller. I probably forget to what I was objecting  
14:26 21 to before I finish, and so we have to say it all over  
14:26 22 again.

14:26 23 THE COURT: Just as long as you don't  
14:26 24 forget the ruling.

14:26 25 MR. SCHULTZ: Yes, sir.

14:26 1 THE COURT: If you would ask the question,  
14:26 2 again, though.

14:26 3 MR. SCHULTZ: You did overrule the  
14:26 4 objection. I don't want to misunderstand it.

14:27 5 VENIREPERSON: As I understand it.

14:27 6 MR. GOELLER: Could I have some  
14:27 7 clarification.

14:27 8 MR. SCHULTZ: I thought you meant don't  
14:27 9 ask it again.

14:27 10 Q. (BY MR. SCHULTZ) You won't find many laughs,  
14:27 11 but this is one of them, sir.

14:27 12 If a person has conscientious objections  
14:27 13 to the death penalty, and you already told me that you  
14:27 14 are one. And I respect that, no problem. This is  
14:27 15 America. The question is: Can you or any other juror  
14:27 16 with those conscientious objections fairly answer that  
14:27 17 question according to the evidence? That's the core  
14:27 18 question that we're dealing with.

14:27 19 Here's what I mean by that. You've  
14:27 20 already been told that a yes answer to that question  
14:27 21 means life, and a no answer to that question means  
14:27 22 death. That's -- that's the reality. You don't fill in  
14:27 23 a life or death, but you just use code language for  
14:28 24 that, which is yes or no.

14:28 25 It is contemplated and, in fact, it is

14:28 1 required that jurors be able to vote answers to that  
14:28 2 question which are based on their measurement of the  
14:28 3 evidence presented.

14:28 4 That question never asked a jury: Do you  
14:28 5 want to do it because some of them might say, yeah,  
14:28 6 let's kill him. And other people might say, no, let's  
14:28 7 not kill him.

14:28 8 You are not asked: Do you think capital  
14:28 9 punishment is smart? Because some people say it's  
14:28 10 great. Let's do more of it. And other people say, no.  
14:28 11 It's very unwise, and it's ugly. Let's not do it.

14:28 12 Instead, you are asked to in many ways  
14:28 13 revisit the evidence. Again, the same evidence you  
14:28 14 probably used in the guilt-innocence part of the trial,  
14:28 15 the same evidence you probably used in answering that  
14:28 16 first question about future danger.

14:28 17 And it sort of almost asks you take a look  
14:29 18 at the evidence again but in a slightly different -- a  
14:29 19 slightly different context. Consideration, including  
14:29 20 the circumstances of the offense. So it says reconsider  
14:29 21 the crime and what the defendant did, what you found him  
14:29 22 guilty of.

14:29 23 Reconsider the defendant's character  
14:29 24 because you -- you almost necessarily had to consider  
14:29 25 the defendant's character in deciding that he was going

14:29 1 to be a danger in the future. I mean, that's a big  
14:29 2 thing. Don't you figure?

14:29 3 A. Absolutely.

14:29 4 Q. So you've considered his character already.

14:29 5 Maybe not at guilt-innocence, but you had to have  
14:29 6 considered that just about for the future danger  
14:29 7 question. Consider his background, and maybe you  
14:29 8 considered that on future danger and maybe not. But if  
14:29 9 you did, look at it again. If you didn't, look at it  
14:29 10 for the first time and then consider his personal moral  
14:29 11 culpability, whatever that might mean, and nobody knows  
14:29 12 what that means.

14:29 13 I mean, different people give you  
14:29 14 different ideas. Maybe it's Dr. Kevorkian, and you  
14:30 15 think the mercy killing ought to be okay. And maybe you  
14:30 16 say, he's not morally culpable, just legally culpable.

14:30 17 I don't know how you answer that.  
14:30 18 Whatever that means consider it. And then from all of  
14:30 19 that, is there sufficient mitigating circumstance or  
14:30 20 circumstances to warrant that a life sentence, rather  
14:30 21 than death, be imposed? And that is an  
14:30 22 evidence-weighting question. That's what that is.

14:30 23 It's not a do you like capital punishment  
14:30 24 or do you not like it? Because there's nothing in there  
14:30 25 about changing the law in the jury box. Nothing in -- I

14:30 1 mean, I gather if you had to vote, you would vote  
14:30 2 against the death penalty in Texas. I feel that way.  
14:30 3 Right? If you were voting at the polls?

14:30 4 A. Right. If I was voting about the law itself?

14:30 5 Q. Sure, sure.

14:30 6 A. I would vote against it, yeah.

14:30 7 Q. But there's nothing in there that says, go  
14:30 8 ahead and send a message to the legislature about what  
14:30 9 you think the law ought to be. It says measure that  
14:30 10 evidence, and you are the only one that's going to know  
14:31 11 the answer to this question, sir.

14:31 12 Is there any way you could ever vote in  
14:31 13 any capital murder case, no matter what the evidence is  
14:31 14 or isn't, is there any way you could ever vote no on  
14:31 15 that question, thereby finding that there wasn't  
14:31 16 sufficient mitigating evidence?

14:31 17 A. If the situation and the evidence told me that  
14:31 18 that was the right thing to do, then that's what I would  
14:31 19 do.

14:31 20 Q. Okay.

14:31 21 A. Even though I didn't like the law.

14:31 22 Q. I think we're communicating. I got about, on  
14:31 23 that, I'm going to move on. I've got about one more  
14:31 24 question on that. We would all agree that if someone  
14:31 25 said, if you felt it was the right thing to do, would

14:31 1 you -- would you do something? I think we all agree  
14:31 2 with that concept.

14:31 3 If I said, look, let's you and me, you've  
14:31 4 never been on the sixth floor or up on the roof of this  
14:31 5 thing. Let's go up to the roof of this building and  
14:31 6 then it's about 80 feet down probably, something like  
14:32 7 that. Let's you and me jump off on our heads and see  
14:32 8 what happens.

14:32 9 I guess, if somebody said, if you thought  
14:32 10 that was the right thing to do, would you do it? Well,  
14:32 11 yeah, if you thought it was the right thing to do, I  
14:32 12 guess you would do it. But you are never going to think  
14:32 13 that's the right thing to do. Are you with me on that?

14:32 14 A. Yes.

14:32 15 Q. Same thing on that question. I want to make  
14:32 16 sure that we are not like that on here. I know if you  
14:32 17 thought it was the right thing to do, that you would  
14:32 18 vote no on that question. So would everybody.  
14:32 19 Everybody is that way.

14:32 20 The real question is whether your  
14:32 21 opposition to the death penalty would substantially  
14:32 22 impair your ability to answer that question according to  
14:32 23 the evidence.

14:32 24 MR. GOELLER: Now, I'm going to -- at this  
14:32 25 point I'm going to object, Your Honor. He's answered

14:32 1 that question at least twice now. The exact same  
14:32 2 question, and it's been gone over. And I object to the  
14:32 3 further inquisition of this juror on this issue.

14:32 4 MR. SCHULTZ: If he's answered it, I  
14:32 5 haven't heard it, and maybe the record would change it  
14:33 6 up. It's out of Wainwright versus Witt, and that's the  
14:33 7 question.

14:33 8 THE COURT: I'll overrule the objection.

14:33 9 MR. SCHULTZ: Don't tell me I got to  
14:33 10 repeat it.

14:33 11 VENIREPERSON: If I felt that the evidence  
14:33 12 convinced me that the death penalty was what needed to  
14:33 13 happen, then I would vote -- then I would answer no to  
14:33 14 that question, if I felt it was the right thing to do.

14:33 15 Q. And could you ever feel it's the right thing to  
14:33 16 do, I guess, is the question?

14:33 17 A. If the -- if the evidence convinced me of that,  
14:33 18 yes, I would feel that way.

14:33 19 Q. Well, I understand you would jump off the  
14:33 20 building with me if you thought -- if you were convinced  
14:33 21 it was the right thing to do. I want to make sure that  
14:33 22 I'm not -- you could do that, you could vote for a death  
14:33 23 sentence if the evidence led you in that direction?

14:33 24 A. Yes.

14:33 25 Q. Okay. What's your view about probation? Not

14:33 1 in a murder case, not in a capital case because it  
14:34 2 supports no probation. In fact, there's not even a life  
14:34 3 without parole in capital murder. Did you know that, by  
14:34 4 the way, that we don't have any life without parole in  
14:34 5 Texas?

14:34 6 A. You mean, there's not the possibility that  
14:34 7 someone go to prison forever?

14:34 8 Q. No. There's not that possibility.

14:34 9 A. I did not know that, no.

14:34 10 Q. Does that make --

14:34 11 A. Are you saying that there's -- there's always  
14:34 12 parole, regardless of the crime, in Texas?

14:34 13 Q. Uh-huh. Even capital murder. You are eligible  
14:34 14 for parole after 40 years.

14:34 15 A. I wasn't aware of that, no.

14:34 16 Q. Does that make any -- are you going to get an  
14:34 17 instruction from the Judge not to consider how that  
14:34 18 would affect this particular defendant, does that make a  
14:34 19 difference to you in -- in your view of -- of any of the  
14:34 20 issues in this case?

14:34 21 A. I wouldn't think so, no.

14:34 22 Q. In a regular murder case, we have something  
14:34 23 that may be available called probation. Have you ever  
14:35 24 heard of probation before?

14:35 25 A. Yes.

14:35 1 Q. I know you've probably heard of it in the  
14:35 2 workplace. When you start a new job, you are kind of a  
14:35 3 special category employee. And they can apparently get  
14:35 4 rid of you more easily than if you're not working out  
14:35 5 otherwise. But what do you understand probation to mean  
14:35 6 in the criminal justice sense?

14:35 7 A. When I -- or the information that I've seen  
14:35 8 about probation has been like with in reference to  
14:35 9 traffic violations, DWI's, you know, things like that  
14:35 10 where it's a period where they are watching -- the  
14:35 11 Court's watching over the person. Seeing how they are  
14:35 12 living their lives, whether or not they've made efforts  
14:35 13 to change things around.

14:35 14 I wouldn't think that it would ever be  
14:35 15 something that would be involved in any crime that ever  
14:35 16 had anything to do with murder.

14:35 17 Q. Okay. Well, let me break to you the news that  
14:35 18 even a murder case has with it the opportunity for  
14:36 19 probation from a jury. It can be the most benign murder  
14:36 20 that there is. I don't know what a benign murder might  
14:36 21 be. It can be the most heinous murder that you've ever  
14:36 22 heard of.

14:36 23 It could be setting somebody on fire with  
14:36 24 gasoline for example. And if that person is quote,  
14:36 25 eligible for probation, that person has a right to have



14:36 1 jurors on the jury. And the State has a right to have  
14:36 2 jurors also that would consider probation in a murder  
14:36 3 case.

14:36 4 And here's how that works. Under our law,  
14:36 5 if a person has never before been convicted of a felony  
14:36 6 offense in this or any other state and the jury thinks  
14:36 7 that the sentence for his crime, whether it's murder or  
14:36 8 aggravated robbery, and a first degree felony, perhaps,  
14:36 9 where the jury believes that a sentence of 10 years or  
14:37 10 less is appropriate and warranted, the jury may, in its  
14:37 11 discretion, also assess probation for that -- for that  
14:37 12 offense. And it might assess punishment as low as 5  
14:37 13 years' probation for the crime of murder.

14:37 14 Now, let me explain to you why that could  
14:37 15 be important to you as a juror. We have a concept  
14:37 16 called lesser-included offenses in which it's  
14:37 17 conceivable that the State would prove part of the  
14:37 18 crime, but not all of the crime. Perhaps like in our  
14:37 19 indictment here, the State would prove that a murder  
14:37 20 occurred but would fail on its proof of burglary. That  
14:37 21 that murder plus concept? And if the State failed to  
14:37 22 prove burglary-murder, then the defendant might be  
14:37 23 simply guilty of regular murder or unaggravated murder,  
14:37 24 certainly noncapital murder.

14:38 25 If we failed to prove a robbery-murder and

14:38 1 a burglary-murder or we failed to prove that two people  
14:38 2 were killed. Let's say, for example, you found on a  
14:38 3 jury that, yes, he killed one of the two people, but he  
14:38 4 didn't kill the other one, either that person was dead  
14:38 5 before he got there or somebody came in later and killed  
14:38 6 the other person, or the person had a heart attack or  
14:38 7 whatever. The defendant only murdered one person  
14:38 8 instead of two; it's not capital anymore. It's regular  
14:38 9 murder. Are you with me?

14:38 10 A. Yes.

14:38 11 Q. And then the jury becomes still the punishment  
14:38 12 finders, just like before. But we don't worry about  
14:38 13 those questions anymore. We worry about this 5 year to  
14:38 14 99 year or life kind of punishment. And we don't even  
14:38 15 worry about 5 years' probation. And there are a lot of  
14:38 16 jurors that say, that's fine. Whatever the legislature  
14:38 17 says, I'll consider.

14:38 18 And other jurors say, well, there is no  
14:38 19 way, no way, never, never, no way that I would ever  
14:38 20 assess punishment as low as 5 years' probation for the  
14:39 21 intentional cause of death of another human being. It  
14:39 22 doesn't -- and then you can come up with all the  
14:39 23 possible fact situations. You can say, well, kind of  
14:39 24 like the one I used. What if it's your child that's  
14:39 25 been murdered, and you go murder the murderer, and you

14:39 1 say you're real sorry. It doesn't matter. No probation  
14:39 2 for a murder case.

14:39 3 What if you are Dr. Kevorkian and the  
14:39 4 victim wants to die? It doesn't matter. No probation  
14:39 5 for a murder case. I can't do it. That's asking more  
14:39 6 of me than I would ever do. Yeah, I would consider it  
14:39 7 okay. I would consider it. Just like I considered  
14:39 8 jumping off the building out there on my head, but I  
14:39 9 would never do it. And I'm telling you that's something  
14:39 10 that my analysis never works that way.

14:39 11 How do you feel about that? Would you be  
14:39 12 able to consider 5 years' probation for the offense of  
14:39 13 murder if given that opportunity?

14:39 14 A. Well, that would be real difficult to consider  
14:39 15 probation for a murder case, I would think. I mean, I  
14:39 16 guess, answering it the same way I answered the other  
14:40 17 question, I mean, if the evidence was so overwhelming  
14:40 18 that it somehow made sense, then I guess that I  
14:40 19 technically could consider probation.

14:40 20 Q. Okay. That's good. And is it -- is it  
14:40 21 realistically possible, not theoretically possible like,  
14:40 22 me flapping my wings up there when we jump off the  
14:40 23 building or my arms and flying. I guess that's  
14:40 24 possible, but it's not realistically possible. You  
14:40 25 understand that?

14:40 1 A. Yes.

14:40 2 Q. Is it realistically possible that you could  
14:40 3 fairly consider and assess 5 years' probation in a  
14:40 4 murder case?

14:40 5 MR. GOELLER: Objection to the form of the  
14:40 6 question. That's not the standard to qualify a juror,  
14:40 7 whether or not they can consider the punishment as  
14:40 8 realistic.

14:40 9 THE COURT: Sustained.

14:40 10 Q. (BY MR. SCHULTZ) Could you fairly consider and  
14:40 11 in a proper case assess 5 years' probation for the crime  
14:40 12 of murder?

14:40 13 A. That would be tough. I mean, if the evidence  
14:40 14 had shown, yes. But again, it would depend on the  
14:40 15 situation. I just -- the way I see probation, the way I  
14:41 16 view probation --

14:41 17 Q. Yeah.

14:41 18 A. -- I don't see how it could ever be an option  
14:41 19 in murder. It doesn't make sense to me.

14:41 20 Q. I know, but it can. And nobody asks you to  
14:41 21 make sense. I'm not quarreling with you. It's just  
14:41 22 like the death penalty. You don't see how we have that  
14:41 23 exactly. It doesn't make sense to you?

14:41 24 A. It doesn't make sense to me, no. I don't see  
14:41 25 how it could. But if the law -- if the law provided for

14:41 1 it and it seemed appropriate for the case, then I  
 14:41 2 would -- I would -- I would vote for it.  
 14:41 3 Q. Do you ever believe that you could base a yes  
 14:41 4 answer to that first special issue on future danger, no  
 14:42 5 matter what the facts of a capital murder, no matter how  
 14:42 6 extreme it was? Do you believe you could ever answer  
 14:42 7 that question yes, solely on the evidence presented in  
 14:42 8 the first part of the trial, the murder itself?  
 14:42 9 A. Would I answer yes, whether or not?  
 14:42 10 Q. Not would you, but could you answer yes, based  
 14:42 11 solely on the facts of that case in the first part of  
 14:42 12 the trial, based solely on the facts of the murder, that  
 14:42 13 a person who did that was probably a continuing threat  
 14:42 14 to society?  
 14:42 15 A. I guess that I could, yes.  
 14:42 16 Q. You believe that you could do that?  
 14:42 17 A. Yes.  
 14:42 18 Q. Okay. Okay. I know you probably never thought  
 14:42 19 about this before and, lucky you, because it's only  
 14:42 20 people like us that deal in this -- that think these  
 14:43 21 sorts of things. But I told you before that the  
 14:43 22 likelihood is that there will be a broad spectrum of  
 14:43 23 jurors in this trial, some more strongly supportive of  
 14:43 24 capital punishment than others.  
 14:43 25 And there's room on the jury for both.

14:43 1 There's room for people that don't like it, but can do  
 14:43 2 it. People who love it but can give life. And then the  
 14:43 3 vast rest of the people that wish we didn't have it, but  
 14:43 4 would do it when the evidence requires. And probably 12  
 14:43 5 different views of it that might be similar but  
 14:43 6 different.  
 14:43 7 Just kind of consider yourself along with  
 14:43 8 the other people that are on that jury, how -- does your  
 14:43 9 opposition in your mind make you less likely to view the  
 14:43 10 evidence in a way that would result in a death sentence,  
 14:44 11 or does it make any difference to you what your personal  
 14:44 12 view is in terms of how you weigh the evidence? Does my  
 14:44 13 question make sense to you?  
 14:44 14 A. Yes. And I think that the answer would be no.  
 14:44 15 I would, in a situation like this where you are talking  
 14:44 16 about someone's life, you know, I would have to weigh  
 14:44 17 the evidence and look at it and consider all of it  
 14:44 18 before I could really make my decision.  
 14:44 19 Q. Oh, sure, sure. And that's -- so will  
 14:44 20 everybody else, and that's a requirement. My question  
 14:44 21 is this: You are a football fan, right?  
 14:44 22 A. Uh-huh.  
 14:44 23 Q. We talked about that. Let's assume you were  
 14:44 24 refereeing a game. I don't guess you've even done any  
 14:44 25 refereeing. But let's say you were. Have you ever done

14:44 1 any refereeing, by the way?  
 14:44 2 A. No, I haven't.  
 14:44 3 Q. Let's say you did. Let's say it was one of  
 14:44 4 those hobbies that you had, and you were out refereeing  
 14:44 5 a game. And you really liked one team a whole lot and  
 14:45 6 you like the players on the team because you've gotten  
 14:45 7 to know some of them, and you watch them on TV, and they  
 14:45 8 seem like pretty likable guys on TV. And you really  
 14:45 9 don't like the other team much. They've just got a lot  
 14:45 10 of mouths.  
 14:45 11 It doesn't matter what you call. They  
 14:45 12 can -- they can be so off sides that everybody in the  
 14:45 13 stands can see it, and then they will go argue with you  
 14:45 14 about your call. And they are always like that, and you  
 14:45 15 just don't like the other team.  
 14:45 16 Do you think you could still be a referee  
 14:45 17 and rule or call fouls against the team you liked in  
 14:45 18 favor of the team you didn't like and do it absolutely  
 14:45 19 correctly? Do you think you have that ability?  
 14:45 20 A. Yes.  
 14:45 21 Q. And I think, I hope you understand the analogy.  
 14:45 22 MR. GOELLER: I said, "God bless" because  
 14:45 23 she sneezed. No objection yet.  
 14:45 24 MR. SCHULTZ: The record so reflect.  
 14:46 25 Q. (BY MR. SCHULTZ) I'm not trivializing jury

14:46 1 service by comparing it to a sporting event, but I think  
 14:46 2 you understand my analogy.  
 14:46 3 A. I understand your analogy. Could you do  
 14:46 4 something even though you didn't like it, if you had to?  
 14:46 5 Q. Absolutely.  
 14:46 6 A. And yes. My answer is yes.  
 14:46 7 Q. Help me out here because I'm -- I'm really  
 14:46 8 communicating with you. Help me out, and make sure I've  
 14:46 9 got it right still. How could you, if you really  
 14:46 10 believe that executing a defendant is the wrong thing --  
 14:46 11 and you even describe McVeigh as kind of not necessarily  
 14:46 12 it was the right thing, but it wasn't as wrong as some  
 14:46 13 other cases. I think that's how you would kind of  
 14:46 14 describe it. How could you do that?  
 14:46 15 A. I don't know. I mean, it's -- it's a strange  
 14:46 16 thing. I just interpret it. All I can do is interpret  
 14:46 17 it from my own personal point of view. And that's --  
 14:47 18 sometimes it just doesn't seem like it was a bad thing.  
 14:47 19 I mean, what he did was -- it's hard to  
 14:47 20 imagine, aside from the Holocaust, you know, something  
 14:47 21 more heinous than that. And in those case -- in that  
 14:47 22 case, in that particular instance, it just -- I  
 14:47 23 didn't -- I mean, I didn't feel bad about the fact that  
 14:47 24 he was dead.  
 14:47 25 Q. Okay. Okay. Now, I'm not going to talk to you

14:47 1 about the facts of this case. I think we've  
 14:47 2 certainly -- you probably have some inference that it's  
 14:47 3 not going to be of the quantitative magnitude of a  
 14:47 4 Hitler or a McVeigh.

14:47 5 A. Right.

14:47 6 Q. I'll bet nobody is going to object to me as  
 14:47 7 certain that you are not going to hear about 168 people  
 14:47 8 or 6 million people being murdered in this case. We  
 14:47 9 aren't talking about that.

14:47 10 A. Right.

14:47 11 Q. And those, I think you'd agree are really  
 14:47 12 exceptional, once a decade kind of case, and once a  
 14:48 13 century maybe kind of cases.

14:48 14 A. Yes, hopefully.

14:48 15 Q. Obviously the law does not limit the  
 14:48 16 application of capital punishment to enormous quantities  
 14:48 17 of killing of innocent people.

14:48 18 A. Right.

14:48 19 Q. I agree with you. Those are probably worse  
 14:48 20 than maybe a convenience store murder. In the overall  
 14:48 21 sense they are worse. But if those are the only cases  
 14:48 22 that you could ever say it's okay, I need to make sure  
 14:48 23 that that isn't a limitation on you that makes my job  
 14:48 24 impossible, which is to try to convince 12 people that  
 14:48 25 he's guilty of capital murder, number one. That he's

14:48 1 probably a dangerous person and going to be a continuing  
 14:48 2 threat to society, number two. And if there's not  
 14:48 3 enough mitigation to warrant a life sentence rather than  
 14:48 4 death sentence.

14:48 5 I view that as what my job would be as a  
 14:48 6 trial attorney. And that's really the only burden that  
 14:49 7 the law puts on me to do that according to the burdens  
 14:49 8 of proof that have been allocated.

14:49 9 I'm concerned that, if you were on the  
 14:49 10 jury, you would somehow add to my burden of proof in  
 14:49 11 ways other than the evidence that I would be working  
 14:49 12 with. Do I have a concern about that with you? You  
 14:49 13 know yourself.

14:49 14 A. Well, I'm not sure if I know exactly what you  
 14:49 15 are asking. I think what you are saying is, is are  
 14:49 16 you -- whether or not am I ever going to be able to send  
 14:49 17 someone to death row or not, regardless of what I  
 14:49 18 believe personally? Is that what you are asking?

14:49 19 Q. Or -- or because of what you believe  
 14:49 20 personally, yeah.

14:49 21 A. It's -- I don't know how to describe it any  
 14:49 22 other way than I already have. I mean, if someone asks  
 14:49 23 me just a general question: Are you opposed to the  
 14:49 24 death penalty? My answer is going to be "yes." That's  
 14:49 25 not to say that if I were on a jury and I had seen all

14:50 1 this evidence, that I couldn't be convinced that in this  
 14:50 2 particular case, maybe it was the best thing.

14:50 3 Q. Okay. I'm with you. And you may be harder to  
 14:50 4 convince than somebody else that is more favorable to  
 14:50 5 the death penalty, but you are not impossible to  
 14:50 6 convince; is that fair?

14:50 7 A. Right. I mean, I guess you could say yes to  
 14:50 8 that.

14:50 9 Q. Do you think you would be harder to convince?  
 14:50 10 Maybe I'm missing the point.

14:50 11 A. It would be really really hard to convince me  
 14:50 12 that someone deserved to die.

14:50 13 Q. Who's got the burden of proof of guilt or  
 14:50 14 innocence? Do you know who that is?

14:50 15 A. You.

14:50 16 Q. You would never make them do that, prove that  
 14:51 17 they were innocent? You wouldn't put that on them?

14:51 18 A. I don't know if I understand what you are  
 14:51 19 saying.

14:51 20 Q. You wouldn't require the defense to produce any  
 14:51 21 evidence if they didn't want to, would you, or would  
 14:51 22 you?

14:51 23 A. Well, they are -- he's presumed innocent.

14:51 24 Q. Right, right.

14:51 25 A. You -- if you are going to accuse him of

14:51 1 something, you have to prove that he did it.

14:51 2 Q. Right. They don't have to do anything, other  
 14:51 3 than be here. You wouldn't make them do anything, would  
 14:51 4 you, if they didn't want to?

14:51 5 A. I don't know if I understand the question.

14:51 6 Q. You wouldn't, for example -- say, they didn't  
 14:51 7 put on any evidence to show he was innocent, so that's  
 14:51 8 bad for them. You wouldn't analyze the evidence that  
 14:51 9 way?

14:51 10 A. I'm sorry, but I'm kind of confused about what  
 14:51 11 it is you are asking me.

14:52 12 Q. You've indicated that you don't know the  
 14:52 13 defendant; is that correct?

14:52 14 A. That's correct.

14:52 15 Q. Do you know -- do you know whether -- do you  
 14:52 16 know whether you know his mother or not?

14:52 17 A. I'm quite certain that I don't know him or  
 14:52 18 anyone in his family.

14:52 19 Q. The only reason I ask the question is because I  
 14:52 20 believe you go to the Grace Outreach in Plano?

14:52 21 A. I may have gone to that church. If I go,  
 14:52 22 that's where I go.

14:52 23 Q. Have you ever met Sylvia Cantu, to the best of  
 14:52 24 my knowledge, who also attends that church?

14:52 25 A. I know no Sylvia Cantu. And if she goes to

14:52 1 that church, I had no idea.  
 14:52 2 THE COURT: Mr. Schultz, I'll give you  
 14:52 3 about a minute and a half to wrap it up.  
 14:52 4 MR. SCHULTZ: I might give some of that  
 14:52 5 back to you, Judge.  
 14:52 6 THE COURT: All right.  
 14:52 7 MR. SCHULTZ: I'll pass the juror.  
 14:52 8 THE COURT: Are there any questions?  
 14:52 9 MR. GOELLER: Yes. May I have about 30  
 14:53 10 seconds to talk to Mr. Schultz, just for a moment?  
 14:53 11 And, sir, if you want to stand up and just kind of get  
 14:53 12 the blood going or shake it up a second.  
 14:53 13 Thank you very much, Judge. Judge, for  
 14:53 14 the Court's benefit, Mr. High.  
 14:53 15 THE COURT: All right. We're going to  
 14:53 16 take about a ten-minute recess.  
 14:54 17 MR. GOELLER: And sorry --  
 14:54 18 THE COURT: Sir, I just wanted to advise  
 14:54 19 you and to admonish you not to talk to any of the other  
 14:54 20 jurors back there about anything that was said to you or  
 14:54 21 anything that you may have responded.  
 14:54 22 VENIREPERSON: Yes.  
 14:54 23 THE COURT: We'll step down for about ten  
 14:54 24 minutes and give everybody a chance to shake it out.  
 14:55 25 (Break.)

15:13 1 THE COURT: All right. Sir, you are still  
 15:13 2 under oath. Please be seated.  
 15:13 3 MR. HIGH: Judge, I'm going to do the  
 15:13 4 questioning for our side.  
 15:13 5 THE COURT: All right.  
 15:13 6 MR. HIGH: Thank you, Judge.  
 15:13 7 VOIR DIRE EXAMINATION  
 15:13 8 BY MR. HIGH:  
 15:13 9 Q. How are you doing, Mr. Bedwell?  
 15:13 10 A. Doing pretty good.  
 15:13 11 Q. My name is Don High, H-I-G-H.  
 15:13 12 A. Yes.  
 15:13 13 Q. And you spell my name just like up high in the  
 15:13 14 air, H-I-G-H. Okay. I guess I've just spelled it  
 15:13 15 twice. It's a habit I have. I always spell it. People  
 15:14 16 always try to make it harder than it is, and it's not  
 15:14 17 that hard. It's real easy.  
 15:14 18 And incidentally, I may call you Jesse a  
 15:14 19 time or two because I really like that name Jesse. It's  
 15:14 20 always been one of my favorite names. Kind of like the  
 15:14 21 Old West or something like that.  
 15:14 22 A. Uh-huh.  
 15:14 23 Q. You are originally from Big Spring?  
 15:14 24 A. That's where I was born, yes.  
 15:14 25 Q. How far is that from Midland?

15:14 1 A. About 60 miles.  
 15:14 2 Q. I was born in Midland.  
 15:14 3 A. Yeah. It's 60 miles west of Midland and  
 15:14 4 Odessa.  
 15:14 5 Q. Fair enough.  
 15:14 6 A. Oh, no, east -- excuse me.  
 15:14 7 Q. And I remember my mother and her friends, they  
 15:14 8 would always go shopping in Big Spring. Why is that?  
 15:14 9 A. I have -- I wouldn't be able to tell you. I  
 15:14 10 don't know. Maybe -- maybe 30 years ago when the oil  
 15:14 11 was -- was kicking around there, maybe there was  
 15:14 12 somewhere to shop. I can't imagine why someone would go  
 15:14 13 there to shop now.  
 15:14 14 Q. Does that just blow your mind?  
 15:14 15 A. It's a ghost town, yeah.  
 15:15 16 THE COURT: Say, they used to always call  
 15:15 17 it Big Springs.  
 15:15 18 VENIREPERSON: Yes.  
 15:15 19 THE COURT: In fact, even the natives  
 15:15 20 called it Big Springs. It's Big Spring, though, isn't  
 15:15 21 it?  
 15:15 22 VENIREPERSON: Yes. I believe it's  
 15:15 23 singular, yes.  
 15:15 24 THE COURT: I thought that was so funny.  
 15:15 25 Usually when there are a lot of people from someplace,

15:15 1 they would say it right, or say it the way they say it.  
 15:15 2 All right. Sorry. I had to interject that.  
 15:15 3 MR. HIGH: That's fine, Judge.  
 15:15 4 THE COURT: I know I add a lot to this.  
 15:15 5 Q. (BY MR. HIGH) You know, I have a memory of Big  
 15:15 6 Spring because I was, you know, a wee child and, you  
 15:15 7 know, you hear your parents talk and laugh and do  
 15:15 8 things, and I recall that very vividly. Did you spend  
 15:15 9 your childhood there?  
 15:15 10 A. I was born there and lived there until I was 7,  
 15:15 11 and that's when my mother and my brother and I moved to  
 15:15 12 Tyler. And that's consequently where I wound up  
 15:15 13 spending the rest of my life until I left home.  
 15:16 14 Q. So you went to high school in Tyler?  
 15:16 15 A. Yes.  
 15:16 16 Q. Which high school did you go to?  
 15:16 17 A. Whitehouse High School. It's a little town  
 15:16 18 just south of Tyler.  
 15:16 19 Q. So you didn't go to one of the big Tyler  
 15:16 20 schools?  
 15:16 21 A. No, I wasn't. I lived right on the edge of the  
 15:16 22 district and wound up going to -- I knew a lot of people  
 15:16 23 that went to school in Tyler, but I had a lot of friends  
 15:16 24 there. But technically I had to go, because of where I  
 15:16 25 lived, to Whitehouse.

15:16 1 Q. Fair enough. So that's a quite a change from  
15:16 2 far west Texas to far east Texas?  
15:16 3 A. Yeah. It was good though.  
15:16 4 Q. I expect it was. Your father was a police  
15:16 5 officer in Big Spring?  
15:16 6 A. Yes, sir, he was.  
15:16 7 Q. Tell me about that.  
15:16 8 A. Well, it was when I was very young. So I don't  
15:16 9 remember too much about it. It was pretty much  
15:16 10 uneventful, I believe. He had to -- he had to shoot a  
15:16 11 guy one time. That's the only thing I remember. A guy  
15:16 12 came at him with a knife, and he had to shoot a guy, and  
15:17 13 the guy died. And I remember he was -- he was always  
15:17 14 upset about that.  
15:17 15 Q. Sure. Okay. So...  
15:17 16 A. And he died not too long after that.  
15:17 17 Q. Your father did?  
15:17 18 A. Yes.  
15:17 19 Q. Okay. And how old were you when that incident,  
15:17 20 that shooting --  
15:17 21 A. I was very young. I was very young. I  
15:17 22 remember it only from stories, from relatives, so --  
15:17 23 Q. Okay.  
15:17 24 A. Grandma and Grandpa telling me about it, and I  
15:17 25 read a newspaper article about it.

15:17 1 Q. And how old were you when you lost your father?  
15:17 2 A. I was almost 8.  
15:17 3 Q. All right. And then was it after that that you  
15:17 4 guys moved to Tyler?  
15:17 5 A. It was a little bit before that. We moved to  
15:17 6 Tyler and would come back for the summers to Big Spring.  
15:17 7 Q. Did your parents split up?  
15:17 8 A. Yes. They divorced, prior to his death.  
15:18 9 Q. I'm sorry?  
15:18 10 A. Before we, you know, before we moved they were  
15:18 11 divorced.  
15:18 12 Q. Fair enough. And your dad also worked for the  
15:18 13 Howard County Sheriff?  
15:18 14 A. Yeah, he was a deputy.  
15:18 15 Q. Anything about his experience working for the  
15:18 16 police department that would affect your jury service?  
15:18 17 Make you more in favor of the State, more against the  
15:18 18 State? Would it impact you in any way? I mean, there's  
15:18 19 going to be a whole -- you probably saw the witness  
15:18 20 list. There's going to be a whole lot of police  
15:18 21 officers involved in this case.  
15:18 22 A. I can't think of a reason why it would.  
15:18 23 Q. Okay.  
15:18 24 A. That was -- I mean, I have a lot of respect for  
15:18 25 police officers, you know, because of the fact, I mean,

15:18 1 I would anyway. But, I mean, the fact that my father  
15:18 2 was a police officer, I guess there's a certain degree  
15:18 3 of additional, you know, sympathy for --  
15:19 4 Q. Sure.  
15:19 5 A. -- the job that they have.  
15:19 6 Q. Absolutely. And you can identify with it?  
15:19 7 A. Absolutely.  
15:19 8 Q. Fair enough. Incidentally, I have a whole lot  
15:19 9 of respect for them too, because I used to sit over at  
15:19 10 that table and work as a prosecutor and work with police  
15:19 11 officers. And, as a consequence, I know a lot of police  
15:19 12 officers are my friends.  
15:19 13 A. Yeah.  
15:19 14 Q. And I know exactly what you are saying. Okay.  
15:19 15 You play guitar?  
15:19 16 A. Yes.  
15:19 17 Q. You played all your life?  
15:19 18 A. Since I was about 15.  
15:19 19 Q. You ever played in any bands?  
15:19 20 A. Yeah, a few, growing up. You know, that's how  
15:19 21 I had fun in high school and stuff. And I've played in  
15:19 22 and out of bands. I play in one now.  
15:19 23 Q. You do?  
15:20 24 A. Just a fun -- it's a way to, it's kind of like  
15:20 25 a hobby, I guess, of mine.

15:20 1 Q. You play electric guitar?  
15:20 2 A. Yes.  
15:20 3 Q. Cool. What kind do you have?  
15:20 4 A. I have two Cramers, Stratcasters, and a Yamaha  
15:20 5 acoustic.  
15:20 6 Q. That's great. So you play acoustic and  
15:20 7 electric?  
15:20 8 A. Right. Depending -- depending on what it calls  
15:20 9 for.  
15:20 10 Q. What kind of music do you guys play generally?  
15:20 11 A. In this band? '80s rock. What they call these  
15:20 12 days, hair bands.  
15:20 13 Q. Are you guys ever hired to play parties or  
15:20 14 things?  
15:20 15 A. We play at clubs around east Texas. You know,  
15:20 16 we usually get around 400 bucks a night.  
15:20 17 Q. I used to play in a band, too, and we were  
15:20 18 lucky if we got that much. Okay. Fair enough. At your  
15:21 19 church, Grace Outreach, you've indicated that you attend  
15:21 20 one to two times a month there. Is that right, or do  
15:21 21 you attend?  
15:21 22 A. Well, it's very inconsistent because we, you  
15:21 23 know, we have a lot of different things that can happen  
15:21 24 on a weekend. But, you know, if I go to church, that's  
15:21 25 where I go.

15:21 1 Q. Because you may be playing out somewhere or  
 15:21 2 something?  
 15:21 3 A. It doesn't necessarily have anything to do with  
 15:21 4 that. But, you know, if my wife says, hey, you know,  
 15:21 5 let's go to church, or we're going to go to church for  
 15:21 6 this or for that or whatever, that's where we'll go.  
 15:21 7 Q. And you don't play in their music ministry, do  
 15:21 8 you?  
 15:21 9 A. No, no. I haven't had the opportunity to do  
 15:21 10 that.  
 15:22 11 Q. Just a couple, a few more things. You  
 15:22 12 understand that we -- we represent this young man over  
 15:22 13 here, Ivan Cantu. And of course our responsibility is  
 15:22 14 to defend him to the best of our ability. And I'm sure  
 15:22 15 you haven't sat -- you've never sat on a capital murder  
 15:22 16 case before, have you?  
 15:22 17 A. No, I have not.  
 15:22 18 Q. Is it a surprise to you that you are in here,  
 15:22 19 and we are talking to you about guilt and sentencing and  
 15:22 20 verdicts, even before we've had the trial?  
 15:22 21 A. I guess it does seem a little strange, you  
 15:22 22 know, I don't really know much about, you know, the  
 15:22 23 procedures here that, you know. So I guess that's why  
 15:23 24 it seems strange to me, but...  
 15:23 25 Q. Okay. I want you to understand that this is

15:23 1 the way it's done in a capital murder case. The law  
 15:23 2 requires that we interview jurors individually before we  
 15:23 3 can even put them on a jury. And we have to talk about  
 15:23 4 such issues as future dangerousness and mitigation and  
 15:23 5 things like that before you can even make it on a jury.  
 15:23 6 I also want you to also understand that  
 15:23 7 Mr. Goeller and myself, we're not stipulating or  
 15:23 8 admitting this young man is guilty. Okay? You haven't  
 15:23 9 gotten that impression from us, have you?  
 15:23 10 A. That what?  
 15:23 11 Q. That we agree he's guilty. You understand that  
 15:23 12 a jury is still going to have to determine that at some  
 15:23 13 future date?  
 15:23 14 A. Right. I don't know what his plea is, but I  
 15:23 15 mean, I understand that you represent him.  
 15:23 16 Q. Okay.  
 15:23 17 A. And that, you know, that you are going to  
 15:24 18 defend him --  
 15:24 19 Q. Absolutely.  
 15:24 20 A. -- as innocent.  
 15:24 21 Q. Okay. I just don't want you to get the  
 15:24 22 impression that he's already been determined guilty at  
 15:24 23 this point, because he's not. You understand that?  
 15:24 24 A. That part of it I definitely understand.  
 15:24 25 Q. Okay. In that connection, this is a capital

15:24 1 murder case and lawyers, sometimes we refer to it as a  
 15:24 2 death penalty case. And we -- that's just kind of a  
 15:25 3 slang term, you know. It's a case in which the State  
 15:25 4 will seek the death penalty. Fair enough?  
 15:25 5 A. I understand.  
 15:25 6 Q. Now, you probably heard on radio or TV, so and  
 15:25 7 so has been arrested, and the Grand Jury has indicted  
 15:25 8 them, and they've chosen to seek the death penalty.  
 15:25 9 You've probably heard that on the TV or radio.  
 15:25 10 A. Yes.  
 15:25 11 Q. Do you have an idea how that decision comes  
 15:25 12 about, the decision to seek the death penalty?  
 15:25 13 A. Kind of. I guess I'm a little hazy, but I  
 15:25 14 think I have somewhat of an understanding of it, yeah.  
 15:25 15 Q. Tell me about it.  
 15:25 16 A. Based upon the law and what the alleged crime  
 15:25 17 is. The law has set forth that on certain types of  
 15:25 18 murder or certain types of crimes, they are  
 15:25 19 automatically going to go for, you know, death or  
 15:25 20 whatever.  
 15:26 21 Q. That's kind of right. You understand that a  
 15:26 22 crime could qualify and fit the requirements as a  
 15:26 23 capital case where a death penalty could be provided  
 15:26 24 for, but a district attorney for one reason or another  
 15:26 25 could choose not to seek the death penalty?

15:26 1 A. I understand that.  
 15:26 2 Q. Okay. And I just supplied you with the answer.  
 15:26 3 The district attorney, generally, is the man who makes  
 15:26 4 the decision to seek the death penalty. Did you know  
 15:26 5 that?  
 15:26 6 A. No, I didn't know that.  
 15:26 7 Q. All right. Now you do.  
 15:26 8 A. Okay.  
 15:26 9 Q. The folks over here at this table, they are  
 15:26 10 assistant district attorneys. They assist the elected  
 15:26 11 district attorney, Mr. Tom O'Connell. Do you know  
 15:26 12 Mr. O'Connell?  
 15:26 13 A. No.  
 15:26 14 Q. All right. He's the one that's made the  
 15:26 15 decision to seek the death penalty in this case. I  
 15:26 16 didn't have anything to do with it. Mr. Goeller didn't  
 15:26 17 have anything. None of these folks, the Judge hasn't.  
 15:26 18 We were just having to deal with the fact that he has  
 15:27 19 made that decision. Is that clear to you?  
 15:27 20 A. I understand that.  
 15:27 21 Q. Okay. And you understand, that goes on  
 15:27 22 throughout the State. I mean, there are district  
 15:27 23 attorneys all over the State of Texas. There's one in  
 15:27 24 Dallas by the name of Bill Hill, and there's one in  
 15:27 25 Houston by the name of John Holmes. Who is it now?

15:27 1 MR. SCHULTZ: Chuck Rosenthal.  
 15:27 2 Q. (BY MR. HIGH) Chuck Rosenthal. Okay. These  
 15:27 3 are guys that are elected and fill the position of  
 15:27 4 district attorney. Okay. Does that make sense to you?  
 15:27 5 A. I understand.  
 15:27 6 Q. So, in that connection you understand that a  
 15:27 7 district attorney has great discretion whether or not to  
 15:27 8 seek the death penalty. I mean, he may feel it's  
 15:27 9 inappropriate to even seek the death penalty.  
 15:27 10 A. Yes, I understand that.  
 15:28 11 Q. And choose not to go for it.  
 15:28 12 A. Right. Where someone else perhaps might.  
 15:28 13 Q. That's exactly right. Now, you mentioned  
 15:28 14 earlier that you are a football fan. You like to follow  
 15:28 15 football, mostly pro football?  
 15:28 16 A. Yes.  
 15:28 17 Q. Do you follow any college football?  
 15:28 18 A. As far as watching it regularly, no. I don't.  
 15:28 19 It's just for whatever reason. I don't know if it's  
 15:28 20 just because of the level of the play or what, but I've  
 15:28 21 never really paid too much attention to it unless there  
 15:28 22 was something that was really going on or whatever that  
 15:28 23 attracted more attention to it than normal.  
 15:28 24 Q. Did you watch any of the last weekend's games,  
 15:28 25 by any chance?

15:28 1 A. No.  
 15:28 2 Q. You didn't watch Oklahoma and North Carolina?  
 15:28 3 A. No, I did not.  
 15:28 4 Q. Or Nebraska, TCU?  
 15:28 5 A. No.  
 15:28 6 Q. That's fair enough. I really don't have that  
 15:29 7 much more to go over with you, Mr. Bedwell. I just want  
 15:29 8 to make sure we're on the same page.  
 15:29 9 This first question, after you go through  
 15:29 10 the trial and assuming that the defendant's found guilty  
 15:29 11 of capital murder, this of course is going to be the  
 15:29 12 first question that you should be confronted with. And  
 15:29 13 I want to make sure that probability, you understand  
 15:29 14 that that's a probability not possibility, right?  
 15:29 15 There's a probability that the defendant  
 15:29 16 would commit criminal acts of violence that would  
 15:29 17 constitute a continuing threat to society?  
 15:30 18 A. I understand the difference between the two  
 15:30 19 words, if that's what you mean.  
 15:30 20 Q. Okay. You understand that that's a look  
 15:30 21 forward into the future?  
 15:30 22 A. Yes.  
 15:30 23 Q. Look, I wish I had more to ask you, but I just  
 15:30 24 don't. Okay? I feel like I listened closely to you the  
 15:30 25 first go round, and I feel like I understand your

15:30 1 position.  
 15:30 2 Do you have any questions you want to ask  
 15:30 3 me or ask our side, anything not clear to you?  
 15:30 4 A. No. I don't -- I don't any specific questions  
 15:31 5 for either side.  
 15:31 6 MR. HIGH: Okay. Fair enough. Judge, at  
 15:31 7 this time we're going to pass the juror.  
 15:31 8 THE COURT: You may step down, sir.  
 15:31 9 (Venireperson Bedwell not present.)  
 15:31 10 MR. SCHULTZ: Excuse us in the hall for a  
 15:31 11 second.  
 15:31 12 THE COURT: If you want to, sure.  
 15:31 13 MR. SCHULTZ: I have one minute left  
 15:31 14 because we didn't use it all.  
 15:31 15 THE COURT: Oh, that's right. And 18  
 15:31 16 minutes from the other day. All right. What says the  
 15:32 17 State?  
 15:32 18 MR. SCHULTZ: We can't do it, Judge.  
 15:32 19 Number five.  
 15:32 20 THE COURT: All right. You are striking?  
 15:32 21 MR. SCHULTZ: Yes, sir, I'm sorry.  
 15:32 22 THE COURT: So that's quite a shock. Let  
 15:32 23 me pull out.  
 15:32 24 MR. SCHULTZ: Well, we actually thought  
 15:32 25 about that one.

15:32 1 THE COURT: Did you? That's good.  
 15:32 2 MR. GOELLER: Did you consider him or just  
 15:32 3 look at him?  
 15:32 4 MR. SCHULTZ: We considered it to see if  
 15:32 5 it was the right thing to do.  
 15:32 6 THE COURT: This is Mr. Bedwell. So,  
 15:32 7 No. 28, Mr. Bedwell is stricken by the State.  
 15:32 8 Would you tell him he's finally excused?  
 15:32 9 And would you ask Ms. Hunnicutt to step in? We have two  
 15:32 10 left for today, Linda Hunnicutt and Charles Hayden.  
 15:32 11 (Venireperson Hunnicutt present.)  
 15:33 12 THE COURT: Are you Linda Hunnicutt?  
 15:33 13 VENIREPERSON: Yes.  
 15:33 14 THE COURT: You are still under the same  
 15:33 15 oath that I placed you under on the 21st, I think it  
 15:33 16 was. That is to truthfully respond to the questions  
 15:33 17 from both sides.  
 15:33 18 VENIREPERSON: Yes, sir.  
 15:33 19 THE COURT: Please be seated. Oh, say, I  
 15:33 20 think I will ask you something here. There's a little  
 15:33 21 note on here, and I assume that it appears on your  
 15:33 22 questionnaire. In fact, it does on page 13. Your first  
 15:33 23 week of October your plan was to be out of town; is that  
 15:34 24 correct?  
 15:34 25 VENIREPERSON: Yeah.

15:34 1 THE COURT: And I want to ask you what the  
15:34 2 occasion was?

15:34 3 VENIREPERSON: I work for the school  
15:34 4 district, and we're closed that week. It's fall break.

15:34 5 THE COURT: It's just a fall break. It's  
15:34 6 just a pleasure vacation?

15:34 7 VENIREPERSON: Yes.

15:34 8 THE COURT: Thank you, ma'am.

15:34 9 Ms. Schultz? All right. Go ahead.

15:34 10 VOIR DIRE EXAMINATION

15:34 11 BY MR. SCHULTZ:

15:34 12 Q. We're arguing over which one of us is going to  
15:34 13 talk with you, ma'am. I'm Bill Schultz, and I'm one of  
15:34 14 the assistant district attorneys in this case, along  
15:34 15 with Ms. Falco to my left, and Ms. Lowry to my far left.

15:34 16 At the defense table is the defendant  
15:34 17 Mr. Cantu. Next to him is Mr. High and then  
15:34 18 Mr. Goeller, who are his two attorneys in this case.

15:34 19 I believe you don't know any of us; is  
15:34 20 that right?

15:34 21 A. No, I don't.

15:34 22 Q. A couple things: Is there any chance you are a  
15:34 23 little nervous up there?

15:34 24 A. Totally.

15:34 25 Q. I sort of sense that you were. And I guess it

15:36 1 of your values on this subject and kind of -- and in  
15:36 2 kind of how you view all this.

15:36 3 It is absolutely okay and appropriate for  
15:36 4 you to look at the defendant if you want to and just  
15:36 5 kind of be thinking about that. I mean, because I have  
15:36 6 noticed that you are doing it. And relax, that's fine.  
15:36 7 Nothing wrong with that. And you don't have to if you  
15:36 8 don't want to.

15:36 9 And it doesn't seem like it, but you have  
15:36 10 a fair amount of liberty up there, and you don't have to  
15:36 11 say things that aren't what you believe just because  
15:36 12 we're lawyers. And we are not trying to debate. You  
15:37 13 are not a witness. You are just a prospective juror.

15:37 14 I probably already have some notions about  
15:37 15 some of your feelings just because you are like  
15:37 16 everybody else. You are just another person in Collin  
15:37 17 County, Texas, who has many of the same exact feelings  
15:37 18 that you do.

15:37 19 Without you ever telling me, for example,  
15:37 20 I know that when you heard that this was a capital  
15:37 21 murder case back Tuesday, a week ago, you had a real  
15:37 22 sinking feeling. I just know that. You don't have to  
15:37 23 tell me that. Nobody told me that.

15:37 24 I didn't notice it personally because when  
15:37 25 I am looking at a bunch of people all at once, it's hard

15:35 1 never makes a lot of sense to tell people not to be  
15:35 2 nervous. That's kind of like telling people not to be  
15:35 3 hot or something. That's kind of just what we all do.

15:35 4 But there aren't any right or wrong  
15:35 5 answers here, and all -- both of us are trying to do is  
15:35 6 just get a certain understanding of what your feelings  
15:35 7 are on these issues. Just so we'll have an idea looking  
15:35 8 down the future, what -- so I can be thinking, well, how  
15:35 9 do I think this juror would respond to what I believe  
15:35 10 our case is going to be?

15:35 11 You know, I know what evidence I intend to  
15:35 12 present. I kind of have an idea what witnesses will be  
15:35 13 there and how this juror, and not just you, every juror.  
15:35 14 How will the juror react to my evidence and how I put it  
15:35 15 on?

15:35 16 I'm sure the defense is probably thinking  
15:35 17 something like that. Maybe not about their evidence,  
15:35 18 but how will this juror react to my client, the  
15:35 19 defendant? How will this juror react to the evidence I  
15:36 20 want to bring out on cross-examination. Kind of that  
15:36 21 idea. It's not very -- it's not very precise, what we  
15:36 22 do.

15:36 23 But it seems to work because, I think  
15:36 24 we'll all end up knowing each other before this is over.  
15:36 25 And I think both sides will have a decent understanding

15:37 1 for me to see an individual person. I don't remember  
15:37 2 your reaction, but I know you had that reaction. Do you  
15:37 3 understand?

15:37 4 A. Yes.

15:37 5 Q. And I bet -- I don't -- I don't know what  
15:37 6 everybody is thinking, but I bet the feelings kind of  
15:37 7 went something like this. Almost like, why me? I may  
15:37 8 be in favor of the death penalty, just like I'm in favor  
15:38 9 of other things that our society does, but why do I have  
15:38 10 to do this? Why is it me rather than -- just because I  
15:38 11 believe in it. You had to have been concerned about the  
15:38 12 fact that it's going to take some time.

15:38 13 I mean, nobody's got enough free time now  
15:38 14 in our community when we're working and balancing family  
15:38 15 and jobs and church or whatever other things we try to  
15:38 16 do, and so there had to be some of that. And I expect a  
15:38 17 lot of those feelings probably have not changed since  
15:38 18 you left on Tuesday because you still have been kind of  
15:38 19 thinking about it and looking at it. Am I right about  
15:38 20 that?

15:38 21 A. Could I -- could I say something?

15:38 22 Q. Yes.

15:38 23 A. (Weeping) Okay. When I came here that Tuesday  
15:38 24 morning I knew exactly how I felt about just about  
15:38 25 everything.



15:38 1 Q. Right.  
 15:38 2 A. And I answered that questionnaire -- to the  
 15:39 3 best, to the honestly to the best of my ability. And I  
 15:39 4 walked in there, and I saw Ivan Cantu, and I thought he  
 15:39 5 was a junior attorney. Okay? I have two sons that are  
 15:39 6 very close to his age.

15:39 7 Q. Right.

15:39 8 A. I am not -- I cannot tell you that I don't  
 15:39 9 believe in the death penalty for certain things. I can  
 15:39 10 tell you that I can't give him the death penalty. I  
 15:39 11 have saw his face in front of me every night. I have  
 15:39 12 woke up and I saw him. When I left here, I didn't  
 15:39 13 remember any of your names, but I did remember Ivan  
 15:39 14 Cantu. And I have saw him everyday, and I can't do it.

15:39 15 Q. Okay.

15:39 16 A. He's the same age as -- he's close to the same  
 15:39 17 age. I've got two sons. Okay? And I realize that the  
 15:39 18 defense attorney twice called him a kid. I mean, I know  
 15:40 19 that you all are aware that he's young.

15:40 20 Q. Right.

15:40 21 A. I don't think that -- that a death penalty  
 15:40 22 case, I don't think you asked for -- for that without  
 15:40 23 having a lot of evidence and a lot of stuff. As a  
 15:40 24 matter of fact, my aunt was killed by a drunk driver  
 15:40 25 last year.

15:42 1 And I guess, depending on people's points  
 15:42 2 of views, I'm sure to some people he might have looked  
 15:42 3 young. He might have reminded some people. I'll bet  
 15:42 4 there were people in that prosecution that came up and  
 15:42 5 said, I can't -- I can't give him a death penalty  
 15:42 6 because he looks like my son. Don't you bet there were  
 15:42 7 probably some people there that felt that way, on the  
 15:42 8 jury?

15:42 9 A. There may have been. I don't --

15:42 10 Q. I'm with you on that.

15:42 11 A. I do know also that --

15:42 12 Q. Well, let me stop you there. I'm not trying to  
 15:42 13 interrupt you. I want to try to do this kind of in an  
 15:42 14 orderly fashion. I'm not interrupting you. We kind of  
 15:42 15 need to do this in a question-and-answer form.

15:42 16 A. Okay.

15:42 17 Q. I'm not being rude. I'm just trying to be  
 15:42 18 orderly about what we're doing. And I'm sure you'll  
 15:42 19 have a chance to say whatever you need to say at some  
 15:42 20 point. Just not yet.

15:42 21 What we are entitled to, we being the  
 15:42 22 State, and what the defense is entitled to are jurors  
 15:43 23 who can fairly look at the evidence and come back with  
 15:43 24 all possible results depending upon the evidence.

15:43 25 For example, at the first part of the

15:40 1 Q. Okay.

15:40 2 A. And the -- the prosecuting attorney doesn't --  
 15:40 3 has told the family that they don't want to go to court  
 15:40 4 with it because the person has no prior things, you  
 15:40 5 know, or anything.

15:40 6 Q. Uh-huh.

15:40 7 A. So, in my mind -- I say I know. I don't know.  
 15:40 8 But in my mind's view, I know that you've got to have  
 15:41 9 more than just one incident to do this.

15:41 10 Q. Okay. Well, let's -- let's -- approach it this  
 15:41 11 way. And I appreciate -- I knew something was wrong. I  
 15:41 12 could just tell. I could sense it, and that's okay.  
 15:41 13 You know, nobody quarrels with any of that. Certainly  
 15:41 14 not me. So you still don't have to be nervous, that's  
 15:41 15 fine. We'll work through this and see what it all  
 15:41 16 means.

15:41 17 Of course you may assume that we have a  
 15:41 18 lot of evidence, but we would still have to produce it  
 15:41 19 in this case. In other words, it's not enough.

15:41 20 Like I was thinking, Timothy McVeigh.  
 15:41 21 Everybody in the U.S. of A. knew what McVeigh had done.  
 15:41 22 And yet, the government, the United States, had to  
 15:41 23 produce sufficient evidence that he was guilty. And  
 15:41 24 apparently they did because they convinced the trial  
 15:42 25 jury, and that -- and that's done.

15:43 1 trial, both sides are entitled to a juror who can vote  
 15:43 2 guilty if we prove guilty of capital murder or vote not  
 15:43 3 guilty if we don't prove his guilt. Okay? And I need  
 15:43 4 to get you to say yes or no because there's a lady  
 15:43 5 taking down your words, and she can't take down nods.  
 15:43 6 You understand that both sides are entitled to someone  
 15:43 7 who can do that?

15:43 8 A. I understand that.

15:43 9 Q. All right. And then in the event that the  
 15:43 10 defendant has been found guilty of capital murder, but  
 15:43 11 only in that event, both sides are entitled to jurors  
 15:43 12 who can answer these two questions based upon the  
 15:44 13 evidence and not based upon the result they hope will  
 15:44 14 happen. Are you with me on that?

15:44 15 And that doesn't mean that we're all the  
 15:44 16 same in how strongly committed we are to the death  
 15:44 17 penalty because there may be some people that are much  
 15:44 18 more in favor of the death penalty than somebody else  
 15:44 19 that's on the jury also.

15:44 20 In other words, but what -- what both  
 15:44 21 sides are entitled to is a juror who is capable of  
 15:44 22 returning all possible verdicts. Now, I notice that  
 15:44 23 you've accepted my invitation and are looking frequently  
 15:44 24 at the defendant. Is that a fair statement?

15:44 25 A. Yes, it is.

15:44 1 Q. When you look at him, tell me what you are  
 15:44 2 feeling. What's going on kind of in your mind and in  
 15:45 3 your heart?  
 15:45 4 A. I know someone that looks a lot like him. It's  
 15:45 5 a friend of ours that was in trouble as a young man.  
 15:45 6 Q. Uh-huh.  
 15:45 7 A. He was sent to prison, and he -- he is now a  
 15:45 8 very, very good person. He has a family. He's one of  
 15:45 9 the most upstanding people I know. He's received a  
 15:45 10 pardon from the governor. I mean, of course I think  
 15:45 11 about him because he looks like him a little bit.  
 15:45 12 Q. Okay.  
 15:45 13 A. But mainly his age. I can't get past -- I  
 15:45 14 can't get past it.  
 15:45 15 Q. Okay. Okay.  
 15:45 16 A. You know, if I've wasted your time, I'm sorry,  
 15:45 17 but --  
 15:45 18 Q. No. I just want to know what you are thinking.  
 15:45 19 Here's what I'm getting from what you are saying, but  
 15:45 20 correct me if I'm wrong. If I'm getting it wrong, I  
 15:45 21 don't mean to. I think you are telling me, as clearly  
 15:45 22 as you know how, that there is no way you will give the  
 15:46 23 State a fair hearing on being able to put this man to  
 15:46 24 death. Is that what you are telling us?  
 15:46 25 A. If I -- if -- if voting for the death penalty

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15:46 1 is what you mean, I can't. Not -- not -- not in this  
 15:46 2 case, I cannot.  
 15:46 3 Q. Okay. Well, let's hang on for a minute. And  
 15:46 4 let's see what that all means. Have you already decided  
 15:46 5 whether he's guilty or not as you sit there now?  
 15:46 6 A. Not a hundred percent. No. I mean, I have  
 15:46 7 thought this through my mind several times. I mean, I  
 15:46 8 don't know. Y'all didn't tell us enough about the case  
 15:46 9 for me to say that I, 100 percent, think he's innocent  
 15:46 10 or guilty.  
 15:46 11 Q. Right.  
 15:46 12 A. As I said, I think that you have more than --  
 15:47 13 that he broke into someone's house and killed someone.  
 15:47 14 I believe that's what you said that you were charging  
 15:47 15 him with.  
 15:47 16 Q. That's what he's charged with. That's not  
 15:47 17 proof. The fact that he's charged with that, that's not  
 15:47 18 any proof. Let me ask you this, and listen to my  
 15:47 19 question a second. Do you have the belief, have you  
 15:47 20 formed the belief that the defendant is guilty as you  
 15:47 21 sit there now?  
 15:47 22 A. Pretty close.  
 15:47 23 Q. Well, do you believe he's guilty, from any  
 15:47 24 source at all? Not from what anybody's told you or  
 15:47 25 anything else. Do you believe he's guilty of this

15:47 1 crime?  
 15:47 2 A. Not a hundred percent, but I would say that I  
 15:47 3 would feel much closer to that than I would that -- I  
 15:47 4 mean, I think there's a very high possibility.  
 15:48 5 Q. Fair enough. When I told you that we are  
 15:48 6 entitled to have -- both sides are entitled -- I'm just  
 15:48 7 talking about us now. The defense can take care of  
 15:48 8 their needs themselves.  
 15:48 9 We are entitled to have 12 jurors who can  
 15:48 10 give true answers to the questions at the punishment  
 15:48 11 phase of a capital murder trial based upon the evidence  
 15:48 12 presented. Okay?  
 15:48 13 A. Uh-huh.  
 15:48 14 Q. And it's -- I mean, we can have the next juror  
 15:48 15 that came in here could look and say, you know, I've got  
 15:48 16 a child the same age as the victim that -- the alleged  
 15:48 17 victims in this case and -- and if I were sitting in  
 15:48 18 this case I'd -- I'd see my children stretched out dead  
 15:48 19 as a result of this defendant, and I couldn't give him a  
 15:49 20 fair trial because the victims looked like my kids. Do  
 15:49 21 you see how that could go just the opposite direction?  
 15:49 22 A. Yes. I see that.  
 15:49 23 Q. And it would be the same question. It's just a  
 15:49 24 circumstance, but if you -- some people can say, well, I  
 15:49 25 could put all that aside, and I can vote in a way that

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15:49 1 will cause the death penalty if that's what the evidence  
 15:49 2 is. And I might not like it, but I can do that. And  
 15:49 3 other people will say, well, no, I can't do that. And  
 15:49 4 so I got to figure out where you are with all of this.  
 15:49 5 You don't -- you haven't formed the  
 15:49 6 opinion he's guilty yet. You are not there. Or have  
 15:49 7 you? Do you believe he's guilty?  
 15:49 8 A. Yeah, probably so. I'm not going to say a  
 15:49 9 hundred percent. I haven't heard, but --  
 15:49 10 Q. Correct.  
 15:49 11 A. Yeah. I probably do, I guess.  
 15:49 12 MR. SCHULTZ: May I have a moment, Judge?  
 15:50 13 THE COURT: Yes.  
 15:51 14 Q. (BY MR. SCHULTZ) Do you believe that either  
 15:51 15 from just hearsay or otherwise there's established in  
 15:51 16 your mind such a conclusion as to the guilt of the  
 15:51 17 defendant as would influence you in finding on the  
 15:51 18 verdict of guilty?  
 15:51 19 A. I don't really know any evidence.  
 15:51 20 Q. Well, from hearsay or otherwise. Do you have a  
 15:51 21 conclusion about whether he's guilty?  
 15:51 22 A. Well, the same thing I said a while ago. I  
 15:51 23 would say I'm in the -- maybe the 90 something percent  
 15:51 24 bracket.  
 15:51 25 Q. Do you feel that you have a bias in favor of

15:51 1 the defendant because he looks young and looks like your  
 15:51 2 children?  
 15:51 3 A. I think it will prevent. I cannot sit here  
 15:51 4 everyday in a trial and look at him and give him the  
 15:51 5 death penalty. I can't.  
 15:52 6 Q. I understand that. I need to have you answer  
 15:52 7 my questions, and I'm not quarreling with you.  
 15:52 8 A. I thought I was. I'm sorry.  
 15:52 9 Q. No. My question is: Do you have a bias in  
 15:52 10 favor of the defendant?  
 15:52 11 A. In favor? In favor of him being guilty or  
 15:52 12 innocent or in favor of his penalty?  
 15:52 13 Q. Well, either. I'm just asking if you have a  
 15:52 14 bias in favor of him in this trial?  
 15:52 15 A. Then I would say yes. The penalty? Yes, I do.  
 15:52 16 Q. Fair enough. And you think he's guilty, but  
 15:52 17 you are not 100 percent certain? Is that what you are  
 15:52 18 saying?  
 15:52 19 A. Yes.  
 15:52 20 Q. Have you concluded that he's guilty? Have you  
 15:52 21 formed a conclusion of his guilt that would interfere  
 15:52 22 with your ability to deliberate on that issue?  
 15:52 23 A. No. Probably not.  
 15:52 24 Q. Okay. So, in other words, if we proved to you  
 15:52 25 that he's guilty of capital murder, we can -- you can

15:53 1 guarantee us you would vote that way, if we proved it  
 15:53 2 beyond a reasonable doubt?  
 15:53 3 A. Yeah. But it would -- it would have to be a  
 15:53 4 very strong reasonable doubt.  
 15:53 5 Q. I understand. I understand. But that can be  
 15:53 6 done. Let me ask you this also, something else I'm  
 15:53 7 concerned about. Is it -- is it possible that -- that  
 15:53 8 your degree of being upset, and I understand and I  
 15:53 9 respect that you are very upset about all of this. Are  
 15:53 10 you so upset about this that you're going to find it  
 15:53 11 hard to even concentrate on what's going on here?  
 15:53 12 A. That's absolutely correct.  
 15:53 13 Q. And here is why I ask that question. The fact  
 15:53 14 that you don't remember my name or that you don't  
 15:53 15 remember Gail's or Jami's name or Don or Matt's name,  
 15:53 16 that's -- I mean, probably most people don't. That's  
 15:53 17 not the problem. But what I took from what you told me,  
 15:54 18 ma'am, is that, as soon as you got a look at the  
 15:54 19 defendant, you pretty much shut down on everything  
 15:54 20 except just thinking about him and wasn't paying too  
 15:54 21 much attention to what else was going on. Is that kind  
 15:54 22 of so?  
 15:54 23 A. Yeah.  
 15:54 24 Q. And I don't see that -- I feel like that's even  
 15:54 25 maybe still going on now in a lot of ways. That because

15:54 1 I know this is really powerful to you and moving you  
 15:54 2 greatly. I can tell you that. I feel that. And I'm  
 15:54 3 not sure, I don't feel like we're communicating  
 15:54 4 particularly well, and that could be just because my  
 15:54 5 questions aren't good.  
 15:54 6 But I get another feeling it's like that  
 15:54 7 you are still so concerned about this defendant that,  
 15:54 8 that that's even where your concentration is right now.  
 15:54 9 Am I right about that or am I wrong?  
 15:54 10 A. I would think, since he is the accused  
 15:55 11 person --  
 15:55 12 Q. Uh-huh.  
 15:55 13 A. -- that he would probably, I would think  
 15:55 14 everyone would be focused more on him than -- than  
 15:55 15 anyone else.  
 15:55 16 Q. Okay. But you understand right now what we  
 15:55 17 have to do is try to impanel a fair jury.  
 15:55 18 A. I understand.  
 15:55 19 Q. And that's why I'm having to focus on you and  
 15:55 20 you on my questions. Are you focused on what we're  
 15:55 21 doing here now, or are you still focused on the  
 15:55 22 defendant pretty much?  
 15:55 23 A. I'm definitely hearing everything you say, and  
 15:55 24 I feel like I can answer you. But, yeah, my thoughts  
 15:55 25 are -- are over here.

15:55 1 Q. Okay. Fair enough, fair enough. And you've  
 15:55 2 indicated -- you've been pointing at the defendant.  
 15:55 3 That's actually who you were indicating?  
 15:55 4 A. Yes, it is.  
 15:55 5 Q. You know, it's kind of -- and I look at it, and  
 15:55 6 if someone said, well -- if they asked me, well, do you  
 15:55 7 favor the death penalty? And I would say, yeah. And  
 15:55 8 then if they said, could you sit as a juror in a death  
 15:56 9 penalty case, and I wasn't prosecuting it because I  
 15:56 10 would be the juror, I'd say, well, yeah, I could do  
 15:56 11 that. And I could answer all those questions.  
 15:56 12 And then maybe if they said, what if it  
 15:56 13 was your father that was on trial? Could you do that?  
 15:56 14 I would say, well, no. There's no way. I can't just be  
 15:56 15 so mechanical that I forget about my heart. All right?  
 15:56 16 If what you're saying is you don't want to  
 15:56 17 vote for a death sentence for the defendant, you are  
 15:56 18 going to have 11 other people that maybe don't want to  
 15:56 19 do that. Nobody wants to do any death in the world.  
 15:56 20 But if what you are really saying is that  
 15:56 21 your mind is made up in this case, and you'll do  
 15:56 22 whatever is necessary to make a life sentence happen no  
 15:56 23 matter what, then we need to know that.  
 15:56 24 A. That's what I'm telling you. I will not vote  
 15:56 25 for a death sentence for him.

15:56 1 Q. Okay. Now, in a sense, I don't know if you  
15:56 2 remember from Tuesday, a week ago, but in a sense jurors  
15:57 3 don't vote for a death sentence or against the death  
15:57 4 sentence. They vote questions. They vote on questions,  
15:57 5 the answer to which causes the death result.

15:57 6 A. Then I guess I would have to answer those  
15:57 7 questions where it would not result in a death sentence.

15:57 8 Q. Okay.

15:57 9 A. I mean --

15:57 10 Q. That's what you are telling us that -- that --

15:57 11 A. I'm telling you that, as far as the death  
15:57 12 penalty is --

15:57 13 Q. Uh-huh.

15:57 14 A. -- if one of my family was killed, yeah, 100  
15:57 15 percent I believe in it.

15:57 16 Q. Yeah.

15:57 17 A. Okay. I would want that. If it was somebody  
15:57 18 that I loved. If it was one of my family members. So  
15:57 19 yeah, there's no way I could be honest and tell you I  
15:57 20 don't believe in it and say that, if it was my family, I  
15:57 21 would want it to happen.

15:57 22 Q. Okay. Now, let me stop you because I've got --  
15:58 23 I'm not -- I'm not wanting to deprive you of your right  
15:58 24 to talk and vent these feelings, but it's got to be done  
15:58 25 in a certain way because there are rules about this. So

15:58 1 I've got to stop and ask you questions.

15:58 2 Are you telling me that no matter what the  
15:58 3 evidence, you will answer those questions in a way to  
15:58 4 cause a life sentence in this case no matter what  
15:58 5 evidence is presented? Is that what we're saying here?

15:58 6 A. I guess I would, if that's what -- I mean, I  
15:58 7 just -- I cannot -- I cannot be a part of something. I  
15:58 8 mean, on this particular person, and I don't know him.  
15:58 9 I've never met him.

15:58 10 Q. You are pointing to the defendant?

15:58 11 A. Right, Mr. -- I can't. I don't know him  
15:58 12 personally. I've never met him, but -- and I don't know  
15:59 13 exactly what it is. I know that I'm not going to do  
15:59 14 something that is going -- that I'm going to be a part  
15:59 15 of him having the death sentence.

15:59 16 Q. No matter what it takes, you will guarantee you  
15:59 17 would do whatever you have to do to keep him from  
15:59 18 getting the death sentence?

15:59 19 A. I think I would, yes.

15:59 20 Q. Let's talk about the questions. This is the  
15:59 21 first question, whether there's a probability the  
15:59 22 defendant would commit criminal acts of violence that  
15:59 23 would constitute a continuing threat to society.

15:59 24 That's the first question, if he's been  
15:59 25 found guilty of capital murder. If you answer that

15:59 1 question, yes, even though it's based on the evidence --

15:59 2 A. Okay. Can I ask a question?

15:59 3 Q. No, no, no, not now. If you answer that  
15:59 4 question yes based upon the evidence, because that's how  
15:59 5 you have to do it. It will be phrased in terms of  
15:59 6 beyond a reasonable doubt, and you answer this  
15:59 7 mitigation question no, that there's not sufficient  
15:59 8 mitigating evidence to warrant a life sentence, he dies.  
16:00 9 And you know, yes answer, no answer, defendant dies  
16:00 10 because you are told that. That's the result of those  
16:00 11 questions.

16:00 12 Is there any way -- is there any way, no  
16:00 13 matter what the State does, that you would ever answer  
16:00 14 that first question yes and the second question no,  
16:00 15 knowing that a death sentence will come from those two  
16:00 16 answers?

16:00 17 A. No.

16:00 18 Q. So you -- if it came down to it, you would even  
16:00 19 disregard the evidence in order to make sure that the  
16:00 20 defendant is saved?

16:00 21 A. I don't know how else to answer these  
16:00 22 questions.

16:00 23 Q. Okay, okay. So that's a yes, then you would.  
16:00 24 You will do whatever -- and that's not a criticism.

16:00 25 You're not the first person that says that. I mean, we

16:00 1 hear that. You will do whatever you need to do in order  
16:01 2 to make sure he doesn't die?

16:01 3 A. The first question that says something about  
16:01 4 society.

16:01 5 Q. Right.

16:01 6 A. What I understood y'all to say when I was here  
16:01 7 before, that if he is found guilty, the society that  
16:01 8 we're talking about is prison; is that correct?

16:01 9 Q. No.

16:01 10 A. It's not?

16:01 11 Q. It's not limited to prison. It may include  
16:01 12 prison. It's not only prison. You have -- you can't  
16:01 13 volunteer answers. I have to ask you questions, and I'm  
16:01 14 not fussing with you, but it's got to be that way. Are  
16:01 15 you saying you will answer those questions in a way to  
16:01 16 guarantee that the defendant will not get a death  
16:01 17 sentence?

16:01 18 A. Yes.

16:01 19 Q. Even if the evidence is otherwise, you will  
16:01 20 vote -- you'll vote in a way to cause a life sentence no  
16:01 21 matter what?

16:01 22 A. Yes.

16:01 23 MR. SCHULTZ: I appreciate your honesty  
16:01 24 more than you know. And Judge, we'd challenge the juror  
16:01 25 for cause.

16:01 1 MR. GOELLER: Judge, just the opportunity  
 16:02 2 to maybe clear some things up. I may not be long.  
 16:02 3 THE COURT: All right.  
 16:02 4 VOIR DIRE EXAMINATION  
 16:02 5 BY MR. GOELLER:  
 16:02 6 Q. Hi, Ms. Hunnicutt.  
 16:02 7 A. Hi.  
 16:02 8 Q. How are you? When -- when Mr. Schultz was  
 16:02 9 asking you questions, you wanted to say a few things. I  
 16:02 10 think you may have either had something you wanted to  
 16:02 11 say or you were confused about something. Is there  
 16:02 12 anything that you don't understand about this whole  
 16:02 13 process up to this point?  
 16:02 14 A. The question that I had was about society. And  
 16:02 15 I understood the other day for y'all to say that if he  
 16:02 16 is found guilty of -- of what he is accused of that --  
 16:02 17 and he does not get -- one of the questions being:  
 16:02 18 Would he be a danger to society?  
 16:02 19 Q. Right.  
 16:02 20 A. If he's found guilty, then the society is  
 16:02 21 prison. It's not the community.  
 16:03 22 Q. I tell you what. We're going to get to that in  
 16:03 23 a second. Right now would you agree you haven't heard  
 16:03 24 any evidence whatsoever?  
 16:03 25 A. Yeah.

16:03 1 Q. Okay. And I don't think from your  
 16:03 2 questionnaire you've never heard anything about this  
 16:03 3 case. You've never read anything about this case. You  
 16:03 4 haven't seen this case on the television, in the print  
 16:03 5 media, on the air waves, anything like that. You don't  
 16:03 6 know any of the witnesses. You don't know anybody  
 16:03 7 involved in the case.  
 16:03 8 So would it be fair to say, as you sit  
 16:03 9 there right now, you have no idea whether he's guilty or  
 16:03 10 not guilty because you haven't heard evidence?  
 16:03 11 A. True.  
 16:03 12 Q. And you know what? It's perfectly okay and  
 16:03 13 it's very natural for folks to come to jury service and  
 16:03 14 say to themselves -- because I would too, I think,  
 16:04 15 honestly. If I'd look around the room and figure out  
 16:04 16 who is the defendant, say to myself, I wonder what he  
 16:04 17 did? I would say that. I think almost everybody would.  
 16:04 18 I know from my personal experience, when I  
 16:04 19 talk to juries, three quarters of the people are asking  
 16:04 20 that question before they have heard any evidence. I  
 16:04 21 always tell them, don't you think the right answer would  
 16:04 22 have been -- or the right frame of mind, I guess the  
 16:04 23 legal frame of mind would have been to have said, I  
 16:04 24 don't know anything.  
 16:04 25 I shouldn't ask, "I wonder what he did?"

16:04 1 because that kind of assumes he did something. But  
 16:04 2 that's okay to have that, as long as you can tell the  
 16:04 3 Judge that you would force the State of Texas to prove  
 16:04 4 his guilt beyond a reasonable doubt.  
 16:04 5 They have the duty, a sworn duty, to bring  
 16:04 6 you evidence beyond a reasonable doubt to convict him.  
 16:04 7 You could do that, couldn't you? Even if you think he's  
 16:05 8 guilty? That's okay. And it's okay.  
 16:05 9 MR. SCHULTZ: Excuse me. Just a second,  
 16:05 10 Mr. Goeller. Judge, we'd object and ask that she be  
 16:05 11 permitted to answer his questions. She was starting to  
 16:05 12 answer that.  
 16:05 13 MR. GOELLER: I'm sorry.  
 16:05 14 THE COURT: Did he cut her off? I didn't  
 16:05 15 notice. What was the question that was cut off?  
 16:05 16 MR. GOELLER: Did I -- I think I asked  
 16:05 17 her: You could presume him guilty, or you could presume  
 16:05 18 him not guilty? What did I ask, Bill?  
 16:05 19 MR. SCHULTZ: It was relating to, could  
 16:05 20 she force us to produce sufficient proof?  
 16:05 21 Q. (BY MR. GOELLER) Could you force them to do  
 16:05 22 their job, bring you sufficient evidence beyond a  
 16:05 23 reasonable doubt to find him guilty?  
 16:05 24 A. Yes. But I think they would -- I don't think  
 16:05 25 they would be here without being prepared to present

16:05 1 evidence.  
 16:05 2 Q. Well, you know, Ms. Hunnicutt, that's -- I  
 16:05 3 think that's pretty natural. I mean, if we're here on a  
 16:05 4 capital murder case, and it turns out that this was all  
 16:06 5 a lark or it is totally -- you are right. There's  
 16:06 6 got -- there's certainly probable cause.  
 16:06 7 I don't think we need to get into a  
 16:06 8 legal -- a legal speech on burdens of proof and quantum  
 16:06 9 of evidence and all that. They've got something, let's  
 16:06 10 hope, or they wouldn't be sitting here. Let's -- as  
 16:06 11 taxpayers --  
 16:06 12 A. I agree with that.  
 16:06 13 Q. Now, whether that's sufficient to find him  
 16:06 14 guilty beyond a reasonable doubt, that will be up to 12  
 16:06 15 people in that jury box. Okay?  
 16:06 16 A. Yes.  
 16:06 17 Q. Sometimes where there's smoke there's fire.  
 16:06 18 Sometimes when there's smoke there never comes a fire,  
 16:06 19 you know? Something could burst into flames, or it  
 16:06 20 could be just embers, and they eventually just go out.  
 16:06 21 Who knows? Do you know what I'm talking about?  
 16:06 22 There might be some smoke there, but it's  
 16:06 23 up to them, really, to show that a fire is going to come  
 16:07 24 out of it, if I can use that by a very loose analogy.  
 16:07 25 Okay?

16:07 1 A. Okay.  
 16:07 2 Q. Like I said, it's okay if you think he may have  
 16:07 3 done something. I think -- I know three quarters of all  
 16:07 4 the jurors believe that probably, if the truth be known,  
 16:07 5 and that's absolutely okay. That's human nature, as  
 16:07 6 long as you can force -- as long as you can presume him  
 16:07 7 innocent until proven guilty beyond a reasonable doubt  
 16:07 8 with the State bringing forth the evidence to you. And  
 16:07 9 you can do that, right?

16:07 10 A. Yeah.

16:07 11 Q. Okay. Now, I know looking -- (Counsel  
 16:07 12 conferring) I know it was a shock. Some more than  
 16:07 13 others when you first saw this young man. What's  
 16:08 14 your -- what do you do for a living, Ms. Hunnicutt?

16:08 15 A. I'm a finance secretary for Plano Independent  
 16:08 16 School District, and I work at three high schools. I  
 16:08 17 work at Clark, Williams and Vines.

16:08 18 Q. You know, when we read about trials or watch --  
 16:08 19 or we can watch just about all trials on TV now, a lot  
 16:08 20 of them, *Court TV*. Have you seen any of that? You saw  
 16:08 21 a lot of the O. J.?

16:08 22 A. I don't watch a whole lot. Well, O. J., I  
 16:08 23 guess I did, but no. I do watch *NYPD Blue*.

16:08 24 Q. And it's very kind of anesthetic. We sit in  
 16:08 25 our living rooms, and those people, and they are on that

16:08 1 TV. And, you know, whether somebody gets punished  
 16:09 2 severely or found guilty, it probably doesn't affect us  
 16:09 3 too much. We look at our watch or the clock, or I'm  
 16:09 4 going to get another Coke, or it's time for bed or  
 16:09 5 something like that. But I think you've demonstrated  
 16:09 6 that when it comes to actually being called for jury  
 16:09 7 duty in a case it's very emotional, isn't it?

16:09 8 A. Yes, it is.

16:09 9 Q. In a death penalty case. Okay. With your  
 16:09 10 background in education, and as a professional in the  
 16:09 11 PISD, I think, correct me if I'm wrong, are you the kind  
 16:09 12 of person that can get over the shock of maybe looking  
 16:09 13 at somebody and figuring out they are a young man. And  
 16:09 14 he's no teenager.

16:09 15 I don't know if the State would object if  
 16:09 16 I told you he's in his mid-20s. Now, you probably  
 16:10 17 figured that out by looking at him. How old are your  
 16:10 18 sons?

16:10 19 A. 23 and 32.

16:10 20 Q. Okay. He's probably right in the middle of  
 16:10 21 them. Okay? What did you think about Timothy McVeigh?

16:10 22 A. I thought the worst part of that was the  
 16:10 23 children that were -- that were in the nursery.

16:10 24 Q. Absolutely. He knew he would kill kids in that  
 16:10 25 federal day care center on the second floor of that

16:10 1 building.

16:10 2 A. Exactly.

16:10 3 Q. He knew. He's probably -- I don't know if he  
 16:10 4 was much older than Ivan. He might have been younger  
 16:10 5 than Ivan. I don't know. But can you see how  
 16:11 6 appearance and age may or may not really factor into  
 16:11 7 things in a death penalty case?

16:11 8 McVeigh was a young man, yet he was  
 16:11 9 capable of killing little babies. Babies in -- what do  
 16:11 10 you call those things? -- bassinets or little bouncers  
 16:11 11 and things like that in that day care. Little tiny kids  
 16:11 12 in there. And he wasn't probably a bad looking kid from  
 16:11 13 what I recall.

16:11 14 He was, you know, seemed, I don't know, I  
 16:11 15 usually don't gauge how men look. Some people called  
 16:11 16 him nice looking or handsome or -- I don't know if he  
 16:11 17 was cute. But do you see the point I'm trying to make?

16:11 18 A. I see what you are trying to say, but I wasn't  
 16:11 19 asked to sit on that jury.

16:11 20 Q. I know. I know. These special issues that  
 16:12 21 Mr. Schultz was talking about. I'll put the second one  
 16:12 22 you answer and the first one you answer. But before you  
 16:12 23 even answer these special issues, before you even get to  
 16:12 24 this, you -- you -- the Judge would instruct you that  
 16:12 25 the State has the burden of proving that he's guilty of

16:12 1 capital murder beyond a reasonable doubt. Okay? And  
 16:12 2 that you shall deliberate and render a true verdict  
 16:12 3 based on the evidence they bring you because they are  
 16:12 4 the only ones that have the burden of proof. Could you  
 16:12 5 do that?

16:12 6 A. I hope so.

16:12 7 Q. I mean, you wouldn't make Ivan prove his  
 16:12 8 innocence? You wouldn't do that? I don't think you are  
 16:12 9 that kind of person?

16:12 10 A. Well, I don't think that's the way the law is.

16:12 11 Q. You're exactly right. Perfect. You are right.  
 16:13 12 The burden of proof -- the whole burden of proof rests  
 16:13 13 right on that table there. Right with that man there  
 16:13 14 and his coworkers. And they've got to prove to you  
 16:13 15 beyond a reasonable doubt.

16:13 16 If they don't do their job and they don't  
 16:13 17 prove it to you, the Judge will tell you find the  
 16:13 18 defendant not guilty. Okay? And that's not really --  
 16:13 19 it's not really -- I don't want to focus on them not  
 16:13 20 doing their job.

16:13 21 They don't make the evidence. They  
 16:13 22 weren't there. They are not, you know, they present you  
 16:13 23 with what they got. Whatever they have. If it wasn't  
 16:13 24 good enough to convince you that he wasn't guilty beyond  
 16:13 25 a reasonable doubt, you could say not guilty, couldn't

16:13 1 you?  
 16:13 2 A. Yes.  
 16:13 3 Q. Okay. And, likewise, if they proved to you  
 16:13 4 beyond a reasonable doubt, after all the evidence and  
 16:13 5 the Judge -- the Judge would give you an instruction, if  
 16:13 6 the State proved this case beyond a reasonable doubt to  
 16:14 7 you. Okay?  
 16:14 8 A. Uh-huh.  
 16:14 9 Q. I would instruct you to find the defendant  
 16:14 10 guilty. Could you do that?  
 16:14 11 A. I hope I could.  
 16:14 12 Q. Would you?  
 16:14 13 A. I think so.  
 16:14 14 Q. You wouldn't violate your oath, and you'd take  
 16:14 15 your oath very seriously, correct?  
 16:14 16 A. I am taking this very seriously.  
 16:14 17 Q. I know you are. I know you are, ma'am. Now,  
 16:14 18 then we get to the special issues. That first one, can  
 16:14 19 you read that from where you are, Ms. Hunnicutt?  
 16:14 20 A. Yes.  
 16:14 21 Q. Probability of -- we call that the future  
 16:14 22 dangerousness question. You could base your answer to  
 16:14 23 that question on anything you heard in the first part of  
 16:14 24 the trial. Of course, remember we get -- when we get to  
 16:14 25 these questions -- I think you had a question earlier

16:14 1 on. When we get to these questions, there's been a  
 16:14 2 finding of guilt. Do you understand that?  
 16:14 3 A. Yes, I do.  
 16:14 4 Q. If there's no finding of guilt, if somebody is  
 16:15 5 not guilty, then either the trial is over or maybe a  
 16:15 6 juror or the jury would consider whether he's guilty of  
 16:15 7 something other than capital murder. You know, maybe  
 16:15 8 regular murder, robbery, burglary. But then in all  
 16:15 9 those cases, we wouldn't be talking about the death  
 16:15 10 penalty. We wouldn't be even talking about those  
 16:15 11 special issues. Okay? Okay.  
 16:15 12 So assuming -- assume you find for a  
 16:15 13 moment you find somebody guilty of capital murder, and  
 16:15 14 we move into those special issues. And then getting  
 16:15 15 back to that first special issue; that really asks the  
 16:15 16 jury: Do you find beyond a reasonable doubt that this  
 16:15 17 person would continue to commit violent acts in the  
 16:15 18 future? And right before I went off on all of this, we  
 16:15 19 were talking -- you talked about that society question  
 16:15 20 in prison.  
 16:15 21 And I think you are very astute, and I  
 16:15 22 know that you remember a lot from last Tuesday because  
 16:16 23 you remembered that society includes prison society, and  
 16:16 24 may include society in whole. Okay? There's -- there's  
 16:16 25 no legal definition. I can tell you that it does

16:16 1 include prison society. And that's the law.  
 16:16 2 I can tell you that my opinion is, if we  
 16:16 3 know somebody's going to the penitentiary on a life  
 16:16 4 sentence, what else could it mean? But they could tell  
 16:16 5 you it could mean society in general. But, be that as  
 16:16 6 it may, you understand a life sentence means life  
 16:16 7 confinement in the penitentiary, right?  
 16:16 8 A. Yes. But I don't know if that means life or  
 16:16 9 without parole. I don't understand that.  
 16:17 10 Q. I'll tell you. Okay. We do not have life  
 16:17 11 without parole in Texas. Okay? What our law says, is  
 16:17 12 that if someone is sentenced to life confinement in the  
 16:17 13 penitentiary for capital murder, they must serve at  
 16:17 14 least 40 calendar years before they could ever get out,  
 16:17 15 if they could ever get out. Okay?  
 16:17 16 In other words, you got to do the 40  
 16:17 17 actual, no parole. No, you know. And then after 40,  
 16:17 18 who knows? A board of pardons and paroles appointed by  
 16:17 19 the governor, they make the call after that. But we  
 16:17 20 know somebody doing life will have to do 40. Okay?  
 16:17 21 A. Okay.  
 16:17 22 Q. So now you know that if somebody gets life, you  
 16:17 23 know they do at least 40, maybe more, maybe not. I  
 16:17 24 can't -- we can't predict that. All we can know -- all  
 16:17 25 we know right now is 40. So that question asks you to

16:18 1 base your decision and answer that question based on  
 16:18 2 whatever evidence is brought before you.  
 16:18 3 A juror, I suppose, maybe not, has the  
 16:18 4 right. But under Texas sentencing, capital sentencing  
 16:18 5 schemes, a juror could maybe answer that question just  
 16:18 6 on what they heard in the first part of the trial. You  
 16:18 7 know, they might say to themselves, well, I heard about  
 16:18 8 that offense. And anybody that could do that, they are  
 16:18 9 going to continue to be a future danger to society.  
 16:18 10 There may be other evidence presented,  
 16:18 11 too. You may hear experts testify, all sorts of things,  
 16:18 12 that could figure in. But anyhow with that question,  
 16:18 13 again, the State has to prove that question to you.  
 16:19 14 They've got to prove that to you beyond a reasonable  
 16:19 15 doubt. Okay?  
 16:19 16 Now, if they -- if they brought you  
 16:19 17 evidence in either phase of the trial, the  
 16:19 18 guilt-innocence phase or the punishment phase. In the  
 16:19 19 punishment phase you get to think about everything in  
 16:19 20 the first phase, really. If they have proved that to  
 16:19 21 you beyond a reasonable doubt, could you answer the  
 16:19 22 question yes?  
 16:19 23 A. If answering that question yes means that he  
 16:19 24 would get a death sentence, I couldn't do it.  
 16:19 25 Q. Okay, ma'am. All right. All right.

16:19 1 Ms. Hunnicutt, I'm going to stop asking you questions.  
 16:19 2 But I want you to know that I appreciate you coming down  
 16:19 3 here. I'm sure all of the attorneys do. And Ivan does,  
 16:19 4 and you're what we're looking for in this world, at  
 16:20 5 least in the criminal justice world because you are an  
 16:20 6 honest person, and you have my blessing and thanks.  
 16:20 7 Thank you.

16:20 8 THE COURT: Let's see, was there a motion?

16:20 9 MR. SCHULTZ: Yes, yes. Could I get a --  
 16:20 10 could I have a ruling on the challenge?

16:20 11 THE COURT: All right. It's granted.

16:20 12 And, ma'am, you are finally excused. Thank you very  
 16:20 13 much for your service.

16:20 14 VENIREPERSON: Thank you. I'm free to go?

16:20 15 THE COURT: You are just as free as you  
 16:20 16 can be. All right. Thank you very much. I appreciate  
 16:20 17 it.

16:21 18 (Venireperson Hunnicutt excused.)

16:20 19 THE COURT: Let's called in Charles Henry  
 16:20 20 Hayden.

16:20 21 (Venireperson Hayden present.)

16:21 22 THE COURT: Sir, are you Charles Hayden?

16:21 23 VENIREPERSON: Yes.

16:21 24 THE COURT: I just want to remind you that  
 16:21 25 about 10 days ago, I put you under oath, you and 99

16:21 1 other people, with regard to telling the truth or to  
 16:21 2 make truthful answers in response to the questions from  
 16:21 3 both sides.

16:21 4 VENIREPERSON: Uh-huh.

16:21 5 THE COURT: And I want to remind you you  
 16:21 6 are still under oath. All right. Please be seated.  
 16:21 7 All right. Ms. Falco?

16:21 8 MS. FALCO: Thank you, Your Honor.

16:21 9 VOIR DIRE EXAMINATION

16:21 10 BY MS. FALCO:

16:21 11 Q. Mr. Hayden, my name is Gail Falco. I'm an  
 16:21 12 assistant district attorney in Collin County. And the  
 16:21 13 man that spoke to you Tuesday will be coming in and  
 16:21 14 sitting to my right. That's Mr. Bill Schultz. He's my  
 16:21 15 boss. He's the first assistant district attorney here  
 16:21 16 in Collin County. And seated on my left is Ms. Jami  
 16:21 17 Lowry, and she's also an assistant district attorney.

16:21 18 At the far table, closest to me, is the  
 16:21 19 defendant Ivan Cantu. Next to him is Mr. Don High, and  
 16:21 20 probably coming in while we're talking is his other  
 16:21 21 lawyer, Mr. Matt Goeller. They are both local, private  
 16:21 22 practitioners here in Collin County.

16:21 23 I take it from Tuesday that you don't know  
 16:22 24 any of us; is that correct?

16:22 25 A. Correct.

16:22 1 Q. And, Mr. Hayden, we do this type of voir dire  
 16:22 2 in two parts, particularly in these types of cases in  
 16:22 3 which the State is seeking a death penalty in a capital  
 16:22 4 murder case, but we have you come in initially for the  
 16:22 5 general voir dire.

16:22 6 And we explain the law to everybody as  
 16:22 7 it's going to apply for everybody, have you fill out the  
 16:22 8 questionnaires, and then bring you back for a one-on-one  
 16:22 9 interview, I guess, is the best word for it.

16:22 10 We do that for several reasons. One, when  
 16:22 11 you initially come in in general voir dire and you get  
 16:22 12 the law, it gives you a little bit of an opportunity to  
 16:22 13 think about how you feel about the death penalty before  
 16:22 14 you come back for your individual voir dire.

16:22 15 But more importantly, with regard to the  
 16:22 16 individual voir dire, it's an opportunity for us to talk  
 16:22 17 to you. And we've got to get to know you in a very  
 16:22 18 little, short period of time to determine whether or not  
 16:22 19 you could be a fair and impartial juror for this kind of  
 16:22 20 case.

16:22 21 But it's -- it's important for you to know  
 16:22 22 the only thing that's expected of you at this time is an  
 16:22 23 honest answer, and that you don't need to worry about  
 16:23 24 being politically correct or incorrect. None of us are  
 16:23 25 here to quarrel with you about your opinions or your

16:23 1 views. It's just to explore these issues and how you  
 16:23 2 feel about certain things.

16:23 3 Obviously both sides are looking for 12  
 16:23 4 people who can be fair and impartial and could fairly  
 16:23 5 consider a death sentence if that's what the evidence  
 16:23 6 shows and fairly consider a life sentence if that's what  
 16:23 7 the evidence shows.

16:23 8 With regard to the process so far, I got  
 16:23 9 to tell you on the questionnaire where it asks you the  
 16:23 10 biggest problem on the criminal justice system, almost  
 16:23 11 unanimously the answer was: It's too slow. The process  
 16:23 12 is too slow. It takes too long.

16:23 13 With regard to the process so far for this  
 16:23 14 particular case, what do you think about it? As far as  
 16:23 15 us bringing you back for general voir dire, and then we  
 16:23 16 bring you back for individual voir dire? Do you think  
 16:23 17 we're being too cautious or it's going too slow, or what  
 16:23 18 are your thoughts?

16:23 19 A. I guess I don't really have an opinion. Now  
 16:23 20 that you explained it, I think it makes sense in terms  
 16:24 21 of I appreciate that I was explained some stuff a week  
 16:24 22 ago and had some time to think about it because I did do  
 16:24 23 some thinking and -- and a little research on making  
 16:24 24 sure I really have a foundation for what I believe.

16:24 25 Q. And we're going to explore that a little bit as



16:24 1 we go through this. When you first came in last Tuesday  
16:24 2 and found out it was a capital murder trial that you  
16:24 3 were being called as potential juror for, what were your  
16:24 4 thoughts?

16:24 5 A. I was surprised. And I don't know the word,  
16:24 6 but I felt some pressure. I mean, it's an important --  
16:24 7 I mean, it was a bigger deal than I thought I was going  
16:24 8 to be called for.

16:24 9 Q. All right. And I guess you'd understand too  
16:25 10 why we take this time to do the individual voir dire  
16:25 11 because, as far as criminal cases go, there are no more  
16:25 12 serious consequences than the ones here today, where a  
16:25 13 man's life is literally at stake.

16:25 14 A. Right.

16:25 15 Q. And with regard to that, and specifically with  
16:25 16 your questionnaire, and I understand when you get these  
16:25 17 questionnaires, first of all, you all fill them out  
16:25 18 before the law was explained to you.

16:25 19 A. Yes.

16:25 20 Q. And pretty much the questionnaire says, hello,  
16:25 21 what is your name? And what do you feel about the death  
16:25 22 penalty? right off the bat, without any real chance to  
16:25 23 think about it or contemplate before you get a chance to  
16:25 24 fill that out.

16:25 25 But knowing that you had some time to

16:25 1 think about it and do research, as you said, whatever it  
16:25 2 was that prompted you to think and do research, I notice  
16:25 3 on your questionnaire you put that you were in favor of  
16:25 4 the death penalty.

16:25 5 And you said -- the statement that best  
16:25 6 represented your feelings was: I believe that the death  
16:25 7 penalty is appropriate in some capital murder cases, and  
16:25 8 I could return a verdict resulting in death in a proper  
16:25 9 case.

16:26 10 Now knowing that you have had some time to  
16:26 11 think about it, are your feelings still the same or have  
16:26 12 they changed?

16:26 13 A. They are the same.

16:26 14 Q. What type of things did you think about and did  
16:26 15 you research during that week and a half or so that you  
16:26 16 had?

16:26 17 A. Mainly the sort of biblical foundation for  
16:26 18 capital punishment.

16:26 19 Q. And tell me in your own words, and I know it's  
16:26 20 written down here, but tell me in your own words why you  
16:26 21 favor the death penalty.

16:26 22 A. Because of the importance of life. And I think  
16:26 23 our country has the death penalty, and it was founded by  
16:26 24 very smart people who knew that that was an important  
16:26 25 part of our society. And I think a lot of the

16:26 1 foundations that they use to derive those laws came  
16:26 2 from -- from the bible and God. And that's what our  
16:26 3 country is founded on, and I agree with that.

16:27 4 Q. And you're comfortable after having thought  
16:27 5 about it and after doing some biblical research,  
16:27 6 whatever it was. You are comfortable with the death  
16:27 7 penalty at this point?

16:27 8 A. Yes.

16:27 9 Q. And when we're talking about the death penalty,  
16:27 10 it's one thing to be sitting in your living room and  
16:27 11 something comes up on the TV and you are chatting with  
16:27 12 your family, or to be at lunch with a group of friends  
16:27 13 and a topic comes up and everybody kind of shares their  
16:27 14 opinion about the death penalty.

16:27 15 It's a totally different ball game when  
16:27 16 you are asked: Can you be involved in a process that  
16:27 17 could result in someone's death? Would you agree with  
16:27 18 me on that?

16:27 19 A. Yeah. That's why I had to go and think about  
16:27 20 it some.

16:27 21 Q. And thinking about that and specifically  
16:27 22 whether or not you could be involved in that process,  
16:27 23 because only you really know that, and only you could  
16:27 24 tell us whether or not you feel like you could, do you  
16:27 25 feel like you could be involved in a process that, if

16:27 1 the evidence were there, you could answer the questions  
16:27 2 in such a way that resulted in a death sentence?

16:27 3 A. Sure.

16:27 4 Q. I'm going to take you through, I guess, how the  
16:28 5 trial would be if you were called as a juror. We'll  
16:28 6 kind of take it step-by-step and explain it to you. If  
16:28 7 you have any questions or if I'm not clear, just let me  
16:28 8 know, and we'll talk about that.

16:28 9 Do you recall as a juror, the first of the  
16:28 10 trial, since we have a bifurcated trial system, the  
16:28 11 first part of the trial would be the guilt-innocence  
16:28 12 phase in deciding whether or not a defendant is guilty  
16:28 13 of capital murder.

16:28 14 And with regard to that, as you heard on  
16:28 15 Tuesday, there's only -- you understood what the  
16:28 16 definition of capital murder was. It was murder plus  
16:28 17 some aggravating factor.

16:28 18 A. Uh-huh.

16:28 19 Q. And with regard to this particular case, there  
16:28 20 was three definitions that were used that would pertain  
16:28 21 to this case. That being murder in the course of a  
16:28 22 burglary, murder in the course of robbery, or killing  
16:28 23 two or more people at the same time or double homicide,  
16:28 24 if you call it that.

16:28 25 With regard to murder in the course of

16:28 1 burglary, in your opinion, is that the type of offense  
16:28 2 that is appropriate where the death penalty should at  
16:29 3 least be an option?

16:29 4 A. If that's what our laws say, then like I said,  
16:29 5 I think smarter people have made those decisions after  
16:29 6 thinking about it a lot. And my responsibility is to --  
16:29 7 to decide if that's -- I mean, I guess I'm not --

16:29 8 Q. Understanding me?

16:29 9 A. -- willing to go against what we, what the law  
16:29 10 says.

16:29 11 Q. Okay.

16:29 12 A. If that's what it says. If that's what the law  
16:29 13 says is the punishment for -- or if that's what capital  
16:29 14 murder is, then I agree with that.

16:29 15 Q. You don't have any quarrels with that or any  
16:29 16 strong feelings against that?

16:29 17 A. No.

16:29 18 Q. How about murder in the course of robbery?  
16:29 19 Robbery was explained to you, the difference between  
16:29 20 being robbed or being burglarized.

16:29 21 A. Right.

16:29 22 Q. Murder in the course of robbery. How do you  
16:29 23 feel about that being a crime in which the death penalty  
16:30 24 is an option?

16:30 25 A. Yeah. Same answer.

16:30 1 Q. And that again with a double homicide?

16:30 2 A. Yeah. Same answer.

16:30 3 Q. Now, let's assume you find the defendant guilty  
16:30 4 of capital murder. And again, with regard to that phase  
16:30 5 of the trial, the burden of proof is on the State.

16:30 6 A. Right.

16:30 7 Q. Because we are the ones that do the accusing,  
16:30 8 it's only fair that we should be the ones to prove it to  
16:30 9 you. And we have to prove it to you beyond a reasonable  
16:30 10 doubt. You won't be given a definition of beyond a  
16:30 11 reasonable doubt.

16:30 12 That's up to you as a jury collectively to  
16:30 13 decide if it was proven to you beyond a reasonable  
16:30 14 doubt. But it's not beyond all doubt. It's not beyond  
16:30 15 a shadow of a doubt, just beyond a reasonable doubt.

16:30 16 A. Uh-huh.

16:30 17 Q. And you would agree with me that that would  
16:30 18 seem fair? It's like, if I said, I think Mr. Hayden  
16:30 19 stole my car last Tuesday when he was up there. If I  
16:30 20 make that accusation, it's only fair that I should be  
16:30 21 the one to have to prove it. Would you agree with me on  
16:30 22 that?

16:30 23 A. Yes.

16:30 24 Q. And the defense has absolutely no burden of  
16:30 25 proof whatsoever during this stage of the trial.

16:30 1 They -- they have the right to not say anything at all.  
16:31 2 The defendant can testify if he wants to. That's purely  
16:31 3 their right, and it cannot be held against a defendant  
16:31 4 whether or not he testifies. And are you okay following  
16:31 5 that law?

16:31 6 A. Yeah.

16:31 7 Q. Let's assume you went ahead as a juror, as a  
16:31 8 jury collectively, and found a defendant guilty of  
16:31 9 capital murder, you would then move onto the punishment  
16:31 10 phase. And as Mr. Schultz explained it to you last  
16:31 11 Tuesday, when you get to the punishment phase, it's not  
16:31 12 automatic life or death.

16:31 13 A. Right.

16:31 14 Q. And you don't answer life or death in any way.  
16:31 15 It's the way you answer certain questions and that the  
16:31 16 way those questions are answered that dictate whether  
16:31 17 it's a life sentence or a death sentence. Does that  
16:31 18 make sense to you?

16:31 19 A. Yes.

16:31 20 Q. With regard to that, the first question that  
16:31 21 you would get if you got to the punishment phase in a  
16:31 22 capital murder case is going to be this question here  
16:31 23 regarding probability, if you want to read back over  
16:31 24 that for a minute.

16:31 25 A. Uh-huh, I remember that one.

16:31 1 Q. You remember that question. Now, with regard  
16:31 2 to that specific question, and it will be given to you  
16:32 3 in a question form. It will say whether or not beyond a  
16:32 4 reasonable doubt there is a probability that the  
16:32 5 defendant would commit criminal acts of violence in the  
16:32 6 future. And again with this question, the burden of  
16:32 7 proof is on the State.

16:32 8 A. Uh-huh.

16:32 9 Q. We have to prove it to you beyond a reasonable  
16:32 10 doubt that there's a probability that he would commit  
16:32 11 criminal acts of violence that would be a continuing  
16:32 12 threat to society.

16:32 13 Now, that question does not ask with a  
16:32 14 certainty, will he do it? It's not saying, will he  
16:32 15 commit criminal acts? It's asking if there's a  
16:32 16 probability?

16:32 17 A. Right.

16:32 18 Q. With regard to that word probability, it's a  
16:32 19 word you will not get a definition for at the end of the  
16:32 20 trial in the Court's charge, but it's a word that's  
16:32 21 probably frequently debated as to what it means.

16:32 22 Some people that are mathematically minded  
16:32 23 may say, well, that word to me is a percentage. Some  
16:32 24 percentage between zero and a hundred. That's what  
16:32 25 probability means. Other people may say, no, to me it

16:32 1 means more likely than not. And that's okay, too. What  
16:33 2 does that word probability mean to you?

16:33 3 A. Well, I am an engineer and a mathematician, so  
16:33 4 I understand the percentage. But in terms of the danger  
16:33 5 of another crime being committed, I think it means, is  
16:33 6 it -- could it happen? Or is there a maybe a small  
16:33 7 probability or a medium probability that, you know,  
16:33 8 percentage that it could happen. Not, will it likely  
16:33 9 happen? It's more on the lenient side than the strict  
16:33 10 side.

16:33 11 Q. And with respect to that, I'm understanding  
16:33 12 it's not a certainty. And understanding it doesn't say,  
16:33 13 is there a possibility? As an engineer, would you agree  
16:33 14 with me that anything's possible? I mean, there's a  
16:33 15 possibility it could snow tonight in August and in  
16:34 16 Dallas?

16:34 17 A. Yeah.

16:34 18 Q. Not likely, but it's -- it's possible?

16:34 19 A. Yeah, I guess.

16:34 20 Q. Do you see how the word possibility is  
16:34 21 something lesser than probability?

16:34 22 A. Yeah, in that sense.

16:34 23 Q. And given that same context in that first  
16:34 24 question there, asking whether there's a probability,  
16:34 25 could you see how that's something more than just a

16:34 1 possibility?

16:34 2 A. Yeah.

16:34 3 Q. So do you see the distinction or the  
16:34 4 difference?

16:34 5 A. Yeah.

16:34 6 Q. Or the possibility?

16:34 7 A. Yeah. I wouldn't think that probably it will  
16:34 8 snow tonight or the possibility it will snow tonight is  
16:34 9 a probability.

16:34 10 Q. Exactly. Two different things. Yes, it's  
16:34 11 possible. Is it probable? No.

16:34 12 A. Oh, I see what you are saying. I was saying  
16:34 13 something different, but --

16:34 14 Q. Do you understand?

16:34 15 A. It's neither probable that it will snow tonight  
16:35 16 or it's neither really possible. I guess you are right.  
16:35 17 It is possible. Yeah, I see what you are saying.  
16:35 18 Possible is sort of no probability or something or some  
16:35 19 infinite, small probability.

16:35 20 Q. Exactly. Something less than just the word  
16:35 21 probability.

16:35 22 A. Okay.

16:35 23 Q. And you don't have any problem with that  
16:35 24 distinction, do you? Or would that be distinguishable,  
16:35 25 possibility and probability?

16:35 1 A. All this stuff happens so fast, you know, I  
16:35 2 went home last week and had a lot of time to unravel  
16:35 3 this, and it made a lot more sense a day later. So I  
16:35 4 will probably come to a better conclusion tomorrow than  
16:35 5 I can right now in the heat of the moment. But I can  
16:35 6 see where you are going, and I can --

16:35 7 Q. Can you see the difference?

16:35 8 A. Yeah.

16:35 9 Q. And granted, I know being up there is kind of  
16:35 10 like being on the hot seat. I definitely like being on  
16:35 11 this end where I get to do the asking as opposed to the  
16:35 12 answering. So anytime you don't understand or --

16:36 13 A. Well, I want to understand. I need to.

16:36 14 Q. And feel free to ask me questions if I'm not  
16:36 15 being clear on anything.

16:36 16 A. I'm just slow sometimes. This is a different  
16:36 17 domain than I'm used to.

16:36 18 Q. You are exactly right. I was going to say,  
16:36 19 we're talking a language where that's my world everyday.

16:36 20 A. Right.

16:36 21 Q. But we understand and recognize that it's not  
16:36 22 our juror's world everyday. If you put me in your job,  
16:36 23 I would have no clue. I am not scientifically minded,  
16:36 24 so I would be very lost. The next word that we come to  
16:36 25 is undefined, but yet debated as to what it means, is

16:36 1 that phrase criminal acts of violence?

16:36 2 A. Uh-huh.

16:36 3 Q. I think we would all agree that violence to a  
16:36 4 person like a murder or a sexual assault, that's a  
16:36 5 criminal act of violence.

16:36 6 A. Uh-huh.

16:36 7 Q. It gets a little hazier when you get to  
16:36 8 property. If I were to take a baseball bat and go out  
16:36 9 to your car and just smash up your car with my baseball  
16:36 10 bat, some people might say that's violence, a criminal  
16:36 11 act of violence. And other people may say, that's  
16:36 12 property, so that doesn't really count. Where do you  
16:36 13 fall?

16:37 14 A. I would say that's criminal violence. That  
16:37 15 kind of anger and hatred might be directed at my car  
16:37 16 this time. It might be directed at my face next time,  
16:37 17 and that scares me.

16:37 18 Q. It gets a little hazier still if we start  
16:37 19 talking about drugs, whether we're talking about selling  
16:37 20 drugs or just doing drugs. Some people may say, if you  
16:37 21 put drugs in your body, it's doing violence to your  
16:37 22 body. So that's a violent thing. And if you take  
16:37 23 drugs, it can lead to violent consequences. So,  
16:37 24 therefore, selling or doing drugs is a criminal act of  
16:37 25 violence.

16:37 1 Where other people may say, no, it's just  
16:37 2 that person. And as long as they are just sitting there  
16:37 3 with that person not doing harm to property or people,  
16:37 4 it's not violent. Where do you fall along that  
16:37 5 continuum?

16:37 6 A. I think that drugs lead to other criminal acts,  
16:37 7 and it is violent.

16:37 8 Q. And then we get to a group of offenses that  
16:37 9 probably we would agree are not acts of violence such as  
16:37 10 theft or having no regard for authority such as evading  
16:38 11 a police officer, running from a police officer. Things  
16:38 12 that may not necessarily involve violence, but just show  
16:38 13 general character that you are a thief or that you have  
16:38 14 no regard for authority. Would you agree with me that  
16:38 15 those kind of things would indicate somebody's  
16:38 16 character?

16:38 17 A. Yes.

16:38 18 Q. And in looking at that and in understanding  
16:38 19 that that helps you look at their character, would those  
16:38 20 things help you decide whether or not there's a  
16:38 21 probability they would commit criminal acts of violence  
16:38 22 in the future?

16:38 23 A. To a lesser extent than what we've talked about  
16:38 24 before, yes.

16:38 25 Q. Okay. And the last word that we get to that,

16:38 1 again, is going to be undefined for you but yet we all  
16:38 2 have a different definition for is the word society.

16:38 3 And we get to that word. That question  
16:38 4 does not necessarily limit itself to the prison society.  
16:38 5 It doesn't have the word prison there. The question  
16:38 6 does not ask: Can the defendant safely be held in  
16:38 7 prison?

16:38 8 A. Right.

16:38 9 Q. It just says: Will he be a continuing threat  
16:38 10 to society? Period. That could be inside the prison.  
16:39 11 It could be outside. It could be the person driving  
16:39 12 the school bus. It could be the person selling ice  
16:39 13 cream. It could be somebody out in the community where  
16:39 14 you and I live.

16:39 15 A. Uh-huh.

16:39 16 Q. Do you understand how that could be viewed  
16:39 17 differently, that word society?

16:39 18 A. Yes.

16:39 19 Q. What does that word society mean to you?

16:39 20 A. Well, it took me a day for it to sink in. But  
16:39 21 the defense made that point last time, that it was just  
16:39 22 the prison, and I don't agree with that. I don't think  
16:39 23 this law was written to protect the penitentiary against  
16:39 24 other penitentiary people.

16:39 25 Q. With regard to that question, like I told you,

16:39 1 the burden of proof is on the State to prove that to  
16:39 2 you. And if all 12 jurors find beyond a reasonable  
16:39 3 doubt that if there's a probability, he'll be a future  
16:39 4 danger, and they answer that question, yes. And if all  
16:39 5 12 people answer that question yes, you are still in the  
16:39 6 process of assessing a death sentence.

16:39 7 If ten or more jurors decide, no, the  
16:39 8 State did not prove to us beyond a reasonable doubt that  
16:39 9 there's a probability he'll be a future danger, that's  
16:39 10 an automatic life sentence, and you stop your  
16:40 11 deliberations at that point. It's automatic life.

16:40 12 A. Okay.

16:40 13 Q. Do you understand that?

16:40 14 A. I do now.

16:40 15 Q. With regard to this question and, I'm sure,  
16:40 16 with your background and then just based on media  
16:40 17 coverage of capital murder trials, you probably heard of  
16:40 18 either side, the State or the defense, calling expert  
16:40 19 witnesses and, in particular, psychiatrists or  
16:40 20 psychologists.

16:40 21 And let's assume that those psychiatrists  
16:40 22 are called, not to testify to any kind of a brain  
16:40 23 disease or a dysfunction or a disorder, but to talk  
16:40 24 about, you know, looking at a particular pattern or  
16:40 25 criminal behavior that that person will or will not be a

16:40 1 future danger.

16:40 2 If you were to hear that type of testimony  
16:40 3 from a psychiatrist, do you think that would be  
16:40 4 important or helpful to you?

16:40 5 A. Maybe.

16:40 6 Q. Okay. Do you think, with regard to that kind  
16:40 7 of testimony, the defense could get an expert up there  
16:40 8 to say, I looked at this criminal behavior, and I don't  
16:41 9 think that person will be a future danger. The State  
16:41 10 could come right back and get an expert to say just the  
16:41 11 opposite?

16:41 12 A. Oh, yeah.

16:41 13 Q. Do you see how that could just turn out to be a  
16:41 14 battle of the experts?

16:41 15 A. Yes.

16:41 16 Q. Now, with regard to this question, do you feel,  
16:41 17 as a juror, you could evaluate all the evidence you  
16:41 18 heard in the guilt-innocence phase and all the evidence  
16:41 19 you had at that time heard in the penalty phase of the  
16:41 20 trial and make a decision or answer that question as to  
16:41 21 whether or not there would be a probability of future  
16:41 22 danger? Do you feel like you could do that without the  
16:41 23 help of the experts?

16:41 24 A. Yes.

16:41 25 Q. Now, let's assume all 12 jurors do answer that

16:41 1 question yes, you are still in the process of assessing  
16:41 2 a death sentence. You have at least one more question  
16:41 3 you need to answer.

16:41 4 Now, Mr. Schultz talked about -- he  
16:41 5 actually covered three questions. One question was that  
16:41 6 question regarding the law of parties. Such as, if you  
16:41 7 were the getaway driver and not the actual shooter.  
16:41 8 That question may or may not apply. Since we're not --  
16:41 9 we don't know at this point, we're just going to move on  
16:42 10 to a question that we know you will have to answer.

16:42 11 A. Okay.

16:42 12 Q. And that will be this last question, what we  
16:42 13 call the mitigating question. If you want to take a  
16:42 14 moment to look back over that.

16:42 15 A. Okay. I remember that.

16:42 16 Q. Like I said, this is the question we'll call  
16:42 17 the mitigation question. And with regard to this  
16:42 18 particular question, there is no burden of proof on  
16:42 19 either the State or the defense.

16:42 20 This question is asking the juror to  
16:42 21 basically weigh the evidence, to take into consideration  
16:42 22 the crime, all the facts or the circumstances of the  
16:42 23 offense. Take in any evidence they might have heard,  
16:42 24 good or bad, of the defendant's character, good or bad  
16:42 25 of his background, and all the evidence of the

16:42 1 defendant's moral culpability and weigh it.

16:42 2 And upon weighing it, is there sufficient  
16:42 3 mitigating evidence to warrant a life sentence or reduce  
16:42 4 the sentence to a life sentence? Does that make sense  
16:42 5 to you?

16:42 6 A. Uh-huh.

16:43 7 Q. Now, with regard to this question, we probably  
16:43 8 all have -- if any one of us were on trial for our life,  
16:43 9 we probably all have circumstances in our lives,  
16:43 10 something that's particularly sad or sympathetic or  
16:43 11 maybe some kind of a health problem, something that  
16:43 12 might be considered mitigating to somebody.

16:43 13 So it's possible you could find that there  
16:43 14 is mitigating evidence. The question is, with weighing  
16:43 15 it, with everything else regarding the defendant's  
16:43 16 character and background and the crime, weighing it all,  
16:43 17 is it sufficient to reduce the sentence to a life  
16:43 18 sentence? Do you understand that?

16:43 19 A. Uh-huh.

16:43 20 Q. A good example of that would probably be Adolf  
16:43 21 Hitler. I mean, we all know the atrocities he committed  
16:43 22 during World War II. But his background, according to  
16:43 23 history, apparently he had no father that was around,  
16:43 24 and his mom contemplated having an abortion. He was an  
16:43 25 unwanted child, had a poor childhood and, you know,

16:43 1 wasn't successful in school.

16:43 2 There are probably a lot of things there  
16:44 3 that are sympathetic that could be considered  
16:44 4 mitigating. But the question is, weighing it with what  
16:44 5 he did and weighing it with his character and his  
16:44 6 background and his personal moral culpability, if he  
16:44 7 were on trial for capital murder, is it sufficient to  
16:44 8 mitigate what he did?

16:44 9 A. Right.

16:44 10 Q. So do you see what I'm saying?

16:44 11 A. Yes.

16:44 12 Q. Now, with regard to this question, let me talk  
16:44 13 a little bit about your questionnaire. In your  
16:44 14 questionnaire you said: Persons determine their destiny  
16:44 15 or fate by choices they make in life. And you put  
16:44 16 "agree"?

16:44 17 A. Yes.

16:44 18 Q. And tell me what your thinking was behind that.

16:44 19 A. In regard to mitigating circumstances or  
16:44 20 something?

16:44 21 Q. Or just -- let's just talk about the  
16:44 22 questionnaire for a second and what you were thinking  
16:44 23 when you said, agree, that persons determine their  
16:44 24 destiny or fate by choices they make in life.

16:45 25 A. I'm thinking that we all have choices, and we

16:45 1 all have circumstances. And we can, you know, react in  
16:45 2 different ways. And, I guess I'm not doing anything but  
16:45 3 restating the question, and I don't know where to go  
16:45 4 with that. I agree with that statement.

16:45 5 Q. And the next statement talks about the person's  
16:45 6 fate or destiny being determined by the circumstances of  
16:45 7 their birth and their upbringing. And I'm sure, as  
16:45 8 Mr. Schultz said, we can all think of situations where  
16:45 9 somebody was born into a very bad family situation, very  
16:45 10 poor, maybe sexually or physically abused, but were able  
16:45 11 to get past that and really make something of their  
16:45 12 lives and were successful.

16:45 13 And on the flip side, we could probably  
16:45 14 all think of somebody that was born into a very wealthy  
16:45 15 family, that never lacked for material goods --

16:45 16 A. Right.

16:45 17 Q. -- but turned out to be a real bad seed.

16:46 18 A. Right.

16:46 19 Q. And with regard to that particular statement,  
16:46 20 you said: I disagree that a person's fate or destiny is  
16:46 21 determined by the circumstances of their birth or their  
16:46 22 upbringing. What was your thinking behind that?

16:46 23 A. Well, just like you said, we can rise above our  
16:46 24 circumstances, or we can be spoiled and irresponsible in  
16:46 25 our good circumstances. So I think we have a

16:46 1 responsibility to do what's right.  
 16:47 2 Q. I want to get back to that same page on the  
 16:47 3 questionnaire. And it says, "If a person is brought to  
 16:47 4 trial on murder charges, that person is probably  
 16:47 5 guilty." At that point in time, you answered the  
 16:47 6 questionnaire "uncertain."  
 16:47 7 And obviously that was before the law was  
 16:47 8 explained to you. And we've talked a little bit about  
 16:47 9 it today. And the very next statement you agreed that a  
 16:47 10 defendand is innocent unless proven guilty beyond a  
 16:47 11 reasonable doubt. So you understand that to be the  
 16:47 12 standard that a person --  
 16:47 13 A. Oh, yes.  
 16:48 14 Q. -- accused of a crime is innocent until proven  
 16:48 15 guilty?  
 16:48 16 A. Right.  
 16:48 17 Q. And you won't shift that burden? That burden  
 16:48 18 will remain with the State?  
 16:48 19 A. Correct.  
 16:48 20 Q. And if you were told that that is the law, you  
 16:48 21 could follow that law without any problem?  
 16:48 22 A. Right.  
 16:48 23 Q. Let me talk a little bit, while we're still on  
 16:48 24 this question about your background. Some people may  
 16:48 25 say it's a dichotomy. Some people may say it kind of

16:48 1 goes hand in hand. But your background as a police  
 16:48 2 officer.  
 16:48 3 A. Uh-huh.  
 16:48 4 Q. How long were you a police officer?  
 16:48 5 A. A couple years, maybe four, never full-time.  
 16:48 6 It was a volunteer job.  
 16:48 7 Q. And that was in a different state?  
 16:48 8 A. It was in Tennessee.  
 16:48 9 Q. Were you just working as patrol, volunteer  
 16:48 10 patrol?  
 16:48 11 A. Yeah. I was on a volunteer rescue squad,  
 16:48 12 worked on an ambulance and in the vehicle rescue  
 16:48 13 department and met a lot of police officers through  
 16:48 14 that. We had police departments up in the mountains.  
 16:48 15 And the county was really big, but didn't have a lot of  
 16:48 16 support.  
 16:48 17 So police officers used volunteer field  
 16:49 18 deputies to be their partners to increase safety, and I  
 16:49 19 was a field deputy. So I never was paid or worked  
 16:49 20 full-time as a police officer, but I was a bonded police  
 16:49 21 officer.  
 16:49 22 Q. And what were you doing full-time for  
 16:49 23 employment at that time?  
 16:49 24 A. I was a full-time college student at the time.  
 16:49 25 I did that through my college years.

16:49 1 Q. Okay. And that's where your engineering  
 16:49 2 background is?  
 16:49 3 A. Yes.  
 16:49 4 Q. And what was your degree in?  
 16:49 5 A. I have a bachelors and a masters in electrical  
 16:49 6 engineering.  
 16:49 7 Q. Did you go to school in Tennessee?  
 16:49 8 A. Yes.  
 16:49 9 Q. University of Tennessee.  
 16:49 10 MS. FALCO: That's where Mr. Schultz went.  
 16:49 11 VENIREPERSON: Oh, good. Go boss.  
 16:49 12 Q. Mirage Systems? What is that?  
 16:49 13 A. That's a small high-tech company that I helped  
 16:49 14 start two years ago.  
 16:49 15 Q. What do you-all do?  
 16:49 16 A. We do virtual advertising. We have a product  
 16:49 17 we're developing that will be on the air in Ranger's  
 16:49 18 games next week.  
 16:49 19 Q. Oh, really?  
 16:49 20 A. There will be a sign behind the batter that's  
 16:49 21 not really there. We are inserting it electronically.  
 16:50 22 Just like the first-and-ten marker in football. We're  
 16:50 23 putting in advertising.  
 16:50 24 Q. Very unique.  
 16:50 25 THE COURT: That's really cool. You mean,

16:50 1 to say, if you are watching TV, you'll see it, but it's  
 16:50 2 not really there?  
 16:50 3 VENIREPERSON: Right. There is a sign  
 16:50 4 behind the batter that's a rotating Dorna board, and  
 16:50 5 then there's a green wall behind the batter, and there's  
 16:50 6 nothing really there. But if you watch the game, it  
 16:50 7 will actually change, based on innings, probably next  
 16:50 8 Friday, I hope.  
 16:50 9 THE COURT: I hope you don't change the  
 16:50 10 outcome of any games.  
 16:50 11 Is Mr. High going to examine this  
 16:50 12 likelihood?  
 16:50 13 MR. HIGH: I am, Your Honor.  
 16:50 14 THE COURT: Tell you what, I'm going to  
 16:50 15 step down for about ten minutes. I have a phone call to  
 16:50 16 make. I'm going to ask you -- we'll all take a  
 16:50 17 ten-minute recess. And I don't think there's anybody  
 16:50 18 for you to talk to, but if there is anybody to talk to,  
 16:50 19 don't talk to them about anything that you have been  
 16:50 20 asked or that you have answered.  
 16:50 21 VENIREPERSON: Okay.  
 17:04 22 (Break.)  
 17:09 23 THE COURT: Let's bring in Mr. -- I can't  
 17:09 24 remember his name.  
 17:09 25 MS. FALCO: Hayden.

17:09 1 THE COURT: Mr. Hayden. We'll let the  
17:09 2 attorney for the State continue with you. And as you  
17:09 3 know, you are still under oath.

17:09 4 VENIREPERSON: Okay.

17:09 5 THE COURT: Please be seated.

17:09 6 Q. (BY MS. FALCO) Mr. Hayden, just going back. I  
17:09 7 guess we were talking a little bit about your experience  
17:09 8 as a police officer or volunteer police officer in  
17:09 9 Tennessee. And you moved into your job, what you are  
17:10 10 doing today.

17:10 11 A. Uh-huh.

17:10 12 Q. I also noticed on your questionnaire, I  
17:10 13 originally said it was a dichotomy, you working as a  
17:10 14 police officer. You also do prison ministry. The only  
17:10 15 reason I say that is, in my job I would be a little bit  
17:10 16 nervous, and I greatly admire people that do that.

17:10 17 I would be a little bit nervous going in  
17:10 18 there knowing someone might recognize me and not take  
17:10 19 too kindly to me being there at that time. Tell me  
17:10 20 about your experience with the Bill Glass Prison  
17:10 21 Ministries.

17:10 22 A. I went to Huntsville once with a group from my  
17:10 23 church. And we spent two or three days in the holiday  
17:10 24 unit there talking to inmates and sharing the Good News  
17:10 25 of Jesus Christ with them. It was very scary.

17:10 1 I was afraid, you know -- I wasn't afraid  
17:10 2 anybody would recognize me. I was just nervous. But I  
17:10 3 was encouraged to do that, and I wanted to do that. It  
17:11 4 was really neat. Those guys needed to hear about  
17:11 5 eternal life.

17:11 6 Q. I agree. When was that?

17:11 7 A. Probably, I'm thinking four years ago, maybe?  
17:11 8 I'm guessing. It's four plus or minus a year.

17:11 9 Q. And was that the Plano Bible Chapel that --

17:11 10 A. No. It was a church before. Fellowship Bible  
17:11 11 Church in Richardson, but there were churches from all  
17:11 12 over the Metroplex that took people down there. And I  
17:11 13 haven't done anything with them since.

17:11 14 Q. It was a one-time ministry?

17:11 15 A. Yeah.

17:11 16 Q. And I did notice that you are pretty involved  
17:11 17 with your church. And in that regard, assuming we get  
17:11 18 to the point we're at the mitigation question, if you  
17:11 19 were to hear, in a capital murder case -- I guess, let  
17:11 20 me back up a little bit. Have you ever heard the  
17:12 21 phrase, there are no atheists in foxholes?

17:12 22 A. No.

17:12 23 Q. And we all know what a foxhole is. That being  
17:12 24 basically the front line in a line of war?

17:12 25 A. Yes.

17:12 1 Q. And can you just assume, I guess, what that  
17:12 2 means, that there are no atheists in foxholes?

17:12 3 A. Right.

17:12 4 Q. Someone looking at death in the face might at  
17:12 5 that time decide to get right with God?

17:12 6 A. Right.

17:12 7 Q. And you can kind of imagine how that might  
17:12 8 carry over to somebody on trial for their life in a  
17:12 9 capital murder situation. I guess you can imagine  
17:12 10 scenarios where somebody might say, after they have been  
17:12 11 arrested for capital murder, that, you know, I become a  
17:12 12 Christian now. I turned over a new leaf.

17:12 13 And whether it's true or not that's  
17:12 14 ultimately not for us to decide. But assuming somebody  
17:12 15 comes along and says that, starts talking about this new  
17:12 16 life they have in Christ, how does that impact you? If  
17:12 17 you are already at the punishment phase, you've already  
17:12 18 found him guilty of capital murder, you already found  
17:12 19 they are a future danger, how does that figure in with  
17:12 20 the way you believe?

17:12 21 A. Well, that's a good question because I think  
17:13 22 that Jesus Christ can change a person to where maybe  
17:13 23 they wouldn't be a future danger; although, I also think  
17:13 24 that, as a Christian, I don't have to worry about dying  
17:13 25 in this life. I have eternal life. And I think if a

17:13 1 crime warrants the death penalty, maybe I should be  
17:13 2 willing to face that punishment because it's -- it's  
17:13 3 what's right. So that's a hard one.

17:13 4 Q. And you brought up a good point. You said if  
17:13 5 somebody's life is truly changed, they might not be a  
17:13 6 future danger. How would you know? I mean, if  
17:13 7 somebody, all of a sudden, you know, they are an  
17:13 8 atheist. They pretty much walk around and talk around,  
17:13 9 there's no God and argue with people about God.

17:13 10 A. You can't know. Salvation is a free gift.  
17:13 11 It's between you and God. And I think people can see  
17:13 12 that your life is changed eventually. But you can't  
17:14 13 judge someone based on what they say or what they do.  
17:14 14 It's between them and God. So I don't think I could  
17:14 15 judge that.

17:14 16 Q. And when you are looking at that first question  
17:14 17 of future dangerousness, what type of things would you  
17:14 18 be looking at to decide whether or not that person was a  
17:14 19 future danger?

17:14 20 A. I have young children, and I'm afraid for them  
17:14 21 and, you know? So people with anger and hatred and  
17:14 22 commit -- you know, smash up cars, smash up people,  
17:14 23 do -- hand out drugs and do -- I mean, there's a lot of  
17:14 24 things that make this place dangerous for me and my  
17:14 25 children and my neighborhood and those kind of things.

17:14 1 Q. And although we wouldn't like to think it so,  
17:14 2 do you think it's possible for someone in that  
17:15 3 situation, knowing they are on trial for their life,  
17:15 4 knowing they have been arrested for capital murder,  
17:15 5 might say that they are a new person in Christ and  
17:15 6 changed, and it would just be a show for the jury.  
17:15 7 Could you envision that situation?

17:15 8 A. Oh, yeah.

17:15 9 Q. You brought up your children. And obviously  
17:15 10 probably one of the more important events in your life,  
17:15 11 I guess, up in the top three, you have your third child  
17:15 12 that's about to be born; is that correct?

17:15 13 A. Thursday the 6th.

17:15 14 Q. So obviously that's a scheduled --

17:15 15 A. If it doesn't happen before then, we'll be  
17:15 16 induced on the 6th. The baby's getting big.

17:15 17 Q. And I can pretty much guarantee we'll still be  
17:15 18 picking the jury by the 6th. So if you are chosen to  
17:15 19 serve on this jury, you would leave today and you would  
17:15 20 be able to continue in your normal life until we have  
17:15 21 all 12 jurors picked.

17:15 22 At this point we only have three. If you  
17:15 23 were selected, you'd be number four. And so you would  
17:15 24 continue in your normal life until we actually started  
17:15 25 the trial, and then you'd come back.

17:15 1 And while the trial was going on, it would  
17:15 2 be pretty much about 8:30 to 5:30 type of a day. You  
17:15 3 would be able to still be with your family and, I guess,  
17:16 4 work in the evenings if you needed to.

17:16 5 So I know, when asked in the  
17:16 6 questionnaire, if you had a choice being on this jury,  
17:16 7 like a majority of the rest of the jurors, you said  
17:16 8 "no."

17:16 9 A. Right.

17:16 10 Q. Assuming you were called as juror, you  
17:16 11 understand the importance of this trial. And do you  
17:16 12 feel like you could put aside the other distractions you  
17:16 13 might have in your life and focus on this trial?

17:16 14 A. Yes.

17:16 15 Q. You can be assured that if your baby is  
17:16 16 definitely born by the 6th, you will not miss the birth  
17:16 17 of your child. We will still be picking the jury.

17:16 18 A. Good.

17:16 19 Q. Along the lines of family, I guess you could  
17:16 20 also -- well, knowing you already have two children,  
17:16 21 with your third one about to be born, let's say they are  
17:16 22 older, and they do get in trouble with the law. Your  
17:16 23 family being as important as it is to you, you'd love  
17:16 24 that child. You'd support that child no matter what.

17:16 25 A. Uh-huh.

17:16 1 Q. And assuming that child is on trial for their  
17:16 2 life, I am sure you, as a supporting father, would still  
17:16 3 love that child and support that child and would  
17:16 4 probably testify for your child.

17:17 5 A. Uh-huh.

17:17 6 Q. And so you can imagine in a situation where  
17:17 7 somebody is on trial for their life, that they would  
17:17 8 have family members that would testify to say, "I love  
17:17 9 my child. I support my child. Please don't kill my  
17:17 10 child."

17:17 11 How would that argument sit with you if  
17:17 12 there was a mama on the stand crying and saying, "Please  
17:17 13 don't execute my child." How does that argument sit  
17:17 14 with you?

17:17 15 A. I don't know. I mean, it's not a -- it's not  
17:17 16 evidence. It's not one of the decisions I'm making,  
17:17 17 like these -- what do you call them? Special issues.  
17:17 18 But I can understand why a mother probably would want to  
17:17 19 do that. I would certainly sympathize with that.

17:17 20 Q. I also notice on your questionnaire, you did  
17:18 21 mention that you knew somebody that had been in jail or  
17:18 22 prison, and that's Greg Goblen?

17:18 23 A. Goblen.

17:18 24 Q. How do you know that person?

17:18 25 A. When I was at First Baptist Dallas in the

17:18 1 singles group, he was our -- sort of our class host. I  
17:18 2 mean, there was a married couple associated with the  
17:18 3 singles class that would host studies and events. And  
17:18 4 he was in seminary and a really nice guy, football  
17:18 5 player at Louisiana Tech. And his wife was  
17:18 6 Ms. Louisiana Tech, had a couple kids. Turned out to be  
17:18 7 The Village rapist. He was just two different people,  
17:18 8 and it was a total shock to everybody who knew him.

17:18 9 If you would have lined up everybody in  
17:18 10 that class and said, pick the least likely person to do  
17:18 11 something like that, they would have picked him last.

17:18 12 Q. What did you kind of learn from that  
17:18 13 experience, or did you learn anything from that  
17:19 14 situation?

17:19 15 A. That anybody is capable of anything. And I  
17:19 16 mean, not -- not anybody. That I was not surprised by  
17:19 17 any person who is held up to be this perfect person that  
17:19 18 they are not. It doesn't surprise me anymore when  
17:19 19 somebody falls.

17:19 20 Q. That somebody may act like they are a strong  
17:19 21 Christian and walk the walk and talk the talk, but they  
17:19 22 are living a double life kind of thing?

17:19 23 A. It could happen.

17:19 24 Q. And as far as --

17:19 25 A. Oh, and one other thing that -- that I think



17:19 1 it's made me realize the need for friends who -- who  
 17:19 2 hold you accountable. Who know you, who are honest  
 17:19 3 enough that they know what your struggles are. He had  
 17:19 4 some struggles that he didn't apparently share with  
 17:19 5 anybody, pornography and stuff, so...

17:19 6 Q. With regard to Mr. Goben's situation, do you  
 17:19 7 feel like he was treated fairly by the system?

17:19 8 A. Yeah, I guess.

17:19 9 Q. To the best of your knowledge?

17:20 10 A. Yeah. I know he confessed, and he was given a  
 17:20 11 bunch of consecutive sentences, so...

17:20 12 Q. And you don't hold anything against the State  
 17:20 13 or defense attorneys, in general, for anything that  
 17:20 14 happened with Mr. Goben?

17:20 15 A. No.

17:20 16 MS. FALCO: I believe that's all the  
 17:20 17 questions I have for you, Mr. Hayden. Thank you. Pass  
 17:20 18 this juror.

17:20 19 THE COURT: All right.

17:20 20 MR. HIGH: Judge, I'll be doing the  
 17:20 21 questioning.

17:20 22 VOIR DIRE EXAMINATION

17:20 23 BY MR. HIGH:

17:20 24 Q. Mr. Hayden, my name is Don High. And I'll  
 17:20 25 spell it for you because everybody has been giving me a

17:20 1 hard time. I've spelled it all day today. It's  
 17:20 2 H-I-G-H. Okay. Go ahead, guys. Okay. That's how you  
 17:21 3 spell it. Okay?

17:21 4 A. Okay.

17:21 5 Q. And anyway, I'm going to ask you a few  
 17:21 6 questions. I hope I can be done by six o'clock. I  
 17:21 7 hope.

17:21 8 A. Okay.

17:21 9 Q. And I want to start off just kind of with some  
 17:21 10 basic stuff, and we'll kind of work up to some things.  
 17:21 11 Okay? Do you understand that myself and Mr. Goeller  
 17:21 12 here, we're the defense lawyers. We represent this  
 17:21 13 young man, Ivan Cantu.

17:21 14 A. Uh-huh.

17:21 15 Q. Okay. And you were a police officer at one  
 17:21 16 time?

17:21 17 A. Yes.

17:21 18 Q. Did you ever testify in any trials or cases?

17:21 19 A. Once on a speeding ticket case.

17:21 20 Q. Okay. So were you ever cross-examined by a  
 17:21 21 defense lawyer?

17:21 22 A. The person who had the ticket was a lawyer. He  
 17:21 23 cross-examined me.

17:21 24 Q. Okay. He represented himself?

17:22 25 A. Yes.

17:22 1 Q. Fair enough. And so you know that we lawyers,  
 17:22 2 we have a lot of questions, generally. Right?

17:22 3 A. Right.

17:22 4 Q. You would expect that?

17:22 5 A. Yes.

17:22 6 Q. Is it kind of weird to you that we're already  
 17:22 7 talking about punishment in this trial, even though we  
 17:22 8 haven't -- you haven't heard any evidence, and there  
 17:22 9 hasn't been a conviction for capital murder? Is that  
 17:22 10 kind of weird to you?

17:22 11 A. I've never done this before, so I guess it's an  
 17:22 12 important part. So I don't know.

17:22 13 Q. Okay. I just want to make sure. You  
 17:22 14 understand that we don't agree that this young man is  
 17:22 15 guilty just yet because that hadn't happened.

17:22 16 A. Okay.

17:22 17 Q. He's still got a full-blown trial ahead of him.

17:22 18 A. Okay.

17:22 19 Q. And who knows what's going to happen in that  
 17:22 20 trial.

17:22 21 A. Right.

17:22 22 Q. And but the law -- our Texas law provides that  
 17:22 23 when we select a jury in a death penalty case, you know,  
 17:23 24 we have a general voir dire where we talk to the group  
 17:23 25 as a whole. And then we bring in the jurors

17:23 1 individually to talk to them and find out their views on  
 17:23 2 the death penalty, et cetera, et cetera?

17:23 3 A. Right.

17:23 4 Q. Okay. So I want you to understand that it's  
 17:23 5 not a given that this young man is going to be found  
 17:23 6 guilty. Do you understand that?

17:23 7 A. I understand.

17:23 8 Q. And we certainly don't stipulate to that. We  
 17:23 9 certainly don't agree that he's guilty. Do you  
 17:23 10 understand that?

17:23 11 A. Yes.

17:23 12 Q. Okay. Nevertheless, we have to talk to you  
 17:23 13 about punishment issues before the trial even starts.

17:23 14 A. Yeah.

17:23 15 Q. Okay.

17:23 16 A. I understand your predicament.

17:23 17 Q. All right. I just want to make sure there's no  
 17:23 18 confusion on your part. Sometimes there is on mine, but  
 17:23 19 I want to make sure that you are not confused about  
 17:23 20 that. We're going to have a jury of 12 people. It's no  
 17:23 21 different than any other felony case.

17:24 22 We'll probably have a couple of alternates  
 17:24 23 because it will be an especially long trial, probably  
 17:24 24 two to three weeks in length. So there's most likely  
 17:24 25 going to be 14 sitting over in the box.

17:24 1 A. Okay.  
 17:24 2 Q. And it's going to take us several weeks to get  
 17:24 3 a jury. Okay? And obviously those people on the jury  
 17:24 4 have to be able to listen to the evidence and judge the  
 17:24 5 evidence fairly and decide that there's sufficient  
 17:24 6 evidence or enough evidence to convict him. And the  
 17:24 7 burden of proof, of course, in a criminal case is beyond  
 17:24 8 a reasonable doubt.  
 17:24 9 A. Right.  
 17:24 10 Q. As a police officer, you understand that?  
 17:24 11 A. Yes, I do, personally.  
 17:24 12 Q. Or a former police officer.  
 17:24 13 A. It's been a long time ago.  
 17:24 14 Q. A long time ago. Tell me -- were you a  
 17:24 15 certified? Here we have a certified peace officer.  
 17:24 16 That's what you have to do to be a police officer in  
 17:25 17 Texas. What do you have to do in Tennessee?  
 17:25 18 A. Know the sheriff or something. It's not as big  
 17:25 19 a deal.  
 17:25 20 Q. It's not as big a deal.  
 17:25 21 A. I was somebody's partner, and I was bonded,  
 17:25 22 which is like an insurance thing. I was a City -- City  
 17:25 23 of Townsend, which is a small town.  
 17:25 24 Q. Okay.  
 17:25 25 A. In interest to the Smoky Mountains. And

17:25 1 sheriff of Blount County is a big county. And I don't  
 17:25 2 think even the full-time police officers went to the  
 17:25 3 academy until they were officers for six months. So it  
 17:25 4 was --  
 17:25 5 THE COURT: That sounds a little bit like  
 17:25 6 *The Andy Griffith Show*.  
 17:25 7 VENIREPERSON: It was a little. And I was  
 17:25 8 not Barney Fife, but I was -- I was not a trained police  
 17:25 9 officer. Looking back on it, it was sort of dangerous.  
 17:25 10 Q. (BY MR. HIGH) Looking back on it. How old  
 17:25 11 were you then?  
 17:25 12 A. 19 to 22. I was -- that's the years I was in  
 17:25 13 college. I might not have started in the police  
 17:25 14 department until I was 20 or so, so I don't quite  
 17:26 15 remember.  
 17:26 16 Q. So you would have been like a sophomore or  
 17:26 17 junior in college?  
 17:26 18 A. Yes.  
 17:26 19 Q. What kind of -- what kind of family did you  
 17:26 20 grow up in? How big was your family?  
 17:26 21 A. I have one sister.  
 17:26 22 Q. Did you have -- did you have a two-parent --  
 17:26 23 A. Yes.  
 17:26 24 Q. -- home?  
 17:26 25 A. Yes.

17:26 1 Q. And was it a good home?  
 17:26 2 A. Yes.  
 17:26 3 Q. And were you brought up in the Christian faith?  
 17:26 4 A. Yes.  
 17:26 5 Q. And so then when you went to work or doing this  
 17:26 6 police work on the side, I'm sure you saw a whole  
 17:26 7 section of society you couldn't imagine. You'd never  
 17:26 8 seen before?  
 17:26 9 A. It wasn't like Dallas. It was like Townsend,  
 17:26 10 Tennessee, which was running -- making sure people were  
 17:26 11 doing the speed limit through the city. We chased a few  
 17:26 12 people, but it wasn't -- I didn't have to do a lot of  
 17:26 13 scary or bad stuff.  
 17:26 14 Q. Okay. Did you -- did you do it -- make any  
 17:26 15 arrests?  
 17:26 16 A. Oh, yes.  
 17:27 17 Q. What kind of arrests did you make?  
 17:27 18 A. Oh, gosh, I can remember a public drunkenness  
 17:27 19 case where we arrested somebody. I remember somebody  
 17:27 20 fleeing from some other county and coming through our  
 17:27 21 county, and we ended up taking the person to jail. But  
 17:27 22 we didn't actually catch him, so I didn't do a lot of  
 17:27 23 violent, scary stuff as a police officer. I was very  
 17:27 24 thankful for that.  
 17:27 25 Q. So you certainly didn't work any murder cases?

17:27 1 A. No.  
 17:27 2 Q. Didn't work any rape, sexual assault cases?  
 17:27 3 A. No.  
 17:27 4 Q. No robberies, no burglaries?  
 17:27 5 A. I remember going to some houses for burglary  
 17:27 6 before, but we never found anybody or caught anybody.  
 17:27 7 Q. Okay. And you never testified to any cases  
 17:27 8 like that?  
 17:27 9 A. No.  
 17:27 10 Q. Do you understand why I'm asking you this? I  
 17:27 11 sure would, you know, if you've done police work, I need  
 17:27 12 to know the nature and extent of it.  
 17:28 13 A. Okay.  
 17:28 14 Q. So I don't mean to pry, but I am prying.  
 17:28 15 A. Oh, I don't mind.  
 17:28 16 Q. Okay. Fair enough. I'm sure it was a good  
 17:28 17 experience for you. It was very interesting. You don't  
 17:28 18 consider yourself really then to be like a veteran cop  
 17:28 19 or a veteran police officer. It was just kind of an  
 17:28 20 experience you had while you were in college; is that  
 17:28 21 fair to say or?  
 17:28 22 A. Yes.  
 17:28 23 Q. And I suppose having worked a job like that, do  
 17:28 24 you bring any biases with you into the courtroom in  
 17:28 25 terms of like wanting to side with them because they are

17:28 1 law enforcement and we're not? Do you know what I'm  
17:28 2 saying?  
17:28 3 A. I know what you are saying. I think I wrote  
17:28 4 this on my questionnaire that I believe police officers  
17:28 5 do a dangerous job and do a good job. And for the most  
17:29 6 part they are honest. I know there's a philosophical  
17:29 7 issue that maybe there's bad ones out there, but yeah, I  
17:29 8 mean, I tend to trust and believe them. I understand  
17:29 9 the burden of proof issue at the same time.  
17:29 10 Q. Okay. Fair enough. I want to tell you I'm  
17:29 11 right there with you because I've been doing this kind  
17:29 12 of work for a long time. I used to be over on their  
17:29 13 side years ago.  
17:29 14 A. Uh-huh.  
17:29 15 Q. And I know a lot of cops. They are my personal  
17:29 16 friends.  
17:29 17 A. Yeah. I guess that's part of it, too. Same  
17:29 18 here.  
17:29 19 Q. Yeah. I know a bunch of them, and they call me  
17:29 20 and we laugh. And sometimes I've helped them with some  
17:29 21 other legal matters, and they are good friends. And I  
17:29 22 know Mr. Goeller is the same way.  
17:29 23 So still, I guess I asked that just to  
17:29 24 make sure that, you know, you don't fall on their side  
17:29 25 or fall on our side. We're both entitled to have an

17:30 1 unbiased juror, at least when we start out. Is that  
17:30 2 you? I mean, you don't think you'd line up on the  
17:30 3 State's side, do you?  
17:30 4 A. No.  
17:30 5 Q. Okay. Fair enough. You have a statement in  
17:30 6 your questionnaire. It says, "Criminal defense  
17:30 7 attorneys should defend their clients unless they know  
17:30 8 them to be guilty." Okay.  
17:30 9 A. Yeah. I thought about that since then. I  
17:30 10 don't know all the -- I mean, you guys can probably  
17:30 11 explain to me the issues there and change my mind.  
17:30 12 But I think we're after justice in this society. And I  
17:30 13 understand that there are rules that protect people.  
17:30 14 So, yeah, I don't know. I don't know what to tell you  
17:31 15 about that. I still think I agree with that.  
17:31 16 Q. And deep down I'd probably tell you the same  
17:31 17 thing.  
17:31 18 A. Yeah.  
17:31 19 Q. Okay. At the same time since I have been doing  
17:31 20 this for -- let's see, I have been working as a defense  
17:31 21 attorney for about eight years now. I'll have to tell  
17:31 22 you, I've represented a lot of guilty folks over the  
17:31 23 years, and mostly it's just because I had to help them.  
17:31 24 Okay. And they may have been guilty, but they still  
17:31 25 needed help.

17:31 1 A. Okay.  
17:31 2 Q. Is that fair? Can you understand that?  
17:31 3 A. Well, I guess I don't understand. I mean, if  
17:31 4 that would in some way, or not defending someone who you  
17:31 5 knew was guilty would co-opt the justice system, maybe  
17:31 6 you could convince me you shouldn't do that. But we're  
17:31 7 after -- you're trying to decide the truth, right?  
17:31 8 Q. That's right.  
17:31 9 A. We want to know the truth.  
17:32 10 Q. That's right.  
17:32 11 A. So if someone knows the truth, they need to  
17:32 12 tell the truth.  
17:32 13 Q. Okay. I can't disagree with that. I think  
17:32 14 that's absolutely accurate. Did you know that 95  
17:32 15 percent of criminal cases are not resolved with a trial.  
17:32 16 They are worked out somehow with some sort of agreement?  
17:32 17 A. I didn't know that.  
17:32 18 Q. Okay. Even speeding tickets.  
17:32 19 A. Yeah. I can believe that.  
17:32 20 Q. Okay. There are days I work as the municipal  
17:32 21 prosecutor in Wylie. And there are some days I sit over  
17:32 22 on that side, and I prosecute cases.  
17:32 23 A. Okay.  
17:32 24 Q. And I try to work them out. I try to get an  
17:32 25 agreement where I get some sort of a disposition on the

17:32 1 case where we don't have to try the case.  
17:32 2 A. Okay.  
17:32 3 Q. Okay. However, there are some cases you just  
17:32 4 can't work out. You just cannot negotiate an agreement.  
17:32 5 Okay? And I'm not trying to give you a long  
17:32 6 dissertation on what attorneys do, but you understand  
17:33 7 that not every single case involves a trial?  
17:33 8 A. Okay.  
17:33 9 Q. Okay. Certainly if you had a friend or family  
17:33 10 member that was charged with something serious like  
17:33 11 murder or capital murder, you'd certainly want them to  
17:33 12 be represented by a competent skilled trial attorney,  
17:33 13 would you not?  
17:33 14 A. Yes.  
17:33 15 Q. Okay. And someone to protect them and defend  
17:33 16 their interests. And even if they were guilty to -- to  
17:33 17 at least assist them through the process. You'd want  
17:33 18 that, wouldn't you?  
17:33 19 A. I think if they were guilty, they should  
17:33 20 confess. And I would encourage my family member to do  
17:33 21 that.  
17:33 22 Q. Okay. So are you saying that in -- in every  
17:33 23 case where a person's guilty, they should confess?  
17:33 24 A. Yeah. I don't expect that out of everyone, but  
17:34 25 that would certainly clear things up.

17:34 1 Q. All right. Are you going to be -- that kind of  
17:34 2 triggers something in my mind. You understand that  
17:34 3 quite often suspects are interviewed by the police, and  
17:34 4 they have a Constitutional right not to talk to the  
17:34 5 police. You understand that?

17:34 6 A. Yes.

17:34 7 Q. And, in fact, they are advised that anything  
17:34 8 they say can and will be used against them in a court of  
17:34 9 law.

17:34 10 A. Yes.

17:34 11 Q. And quite often when they are -- when they seek  
17:34 12 counsel or assistance of an attorney, an attorney  
17:34 13 advises them not to talk to the police. You are aware  
17:34 14 of that, aren't you?

17:34 15 A. Oh, yeah.

17:34 16 Q. Do you have any problem with that?

17:34 17 A. No.

17:35 18 Q. What about a person that's charged and on  
17:35 19 trial, and it's a contested issue whether they are  
17:35 20 guilty or not.

17:35 21 A. Uh-huh.

17:35 22 Q. And you see that a police officer is asked to  
17:35 23 speak with them, and they've exercised their Fifth  
17:35 24 Amendment right not to talk with a police officer.

17:35 25 A. Uh-huh.

17:35 1 Q. And they've refused to talk. Are you going to  
17:35 2 judge that as a circumstance against them?

17:35 3 A. No.

17:35 4 Q. You are sure about that?

17:35 5 A. Yes.

17:35 6 Q. And I think it was also asked about you, asked  
17:35 7 the questionnaire about the right to testify. And I  
17:35 8 think it was inferred that a suspect, a criminal  
17:35 9 defendant, has the right to remain silent in a criminal  
17:35 10 trial?

17:35 11 A. Yes.

17:35 12 Q. You are knowledgeable about that?

17:35 13 A. Oh, yes.

17:35 14 Q. If a young man or a defendant in a criminal  
17:35 15 trial chose not to take the witness stand and chose not  
17:36 16 to speak on his own behalf, and the Judge instructed you  
17:36 17 at the end of the trial not to consider that as a  
17:36 18 circumstance against him, are you going to hold that  
17:36 19 against him because, after all, you wanted to hear from  
17:36 20 him?

17:36 21 A. No, not at all. I think people react different  
17:36 22 to circumstances. I was shaking a minute ago. It's  
17:36 23 not -- it's not always a good idea to talk, especially  
17:36 24 if you are innocent.

17:36 25 Q. Is that not your favorite chair that you've

17:36 1 ever sat in up there?

17:36 2 A. It's certainly one of the more interesting ones  
17:36 3 I've had lately.

17:36 4 THE COURT: That's a good way to put it.

17:36 5 Q. (BY MR. HIGH) You would rather sit somewhere  
17:36 6 else, I'm sure. I tell you what. I've sat up there  
17:36 7 myself before, and I hate it.

17:36 8 A. It's better than the jury room.

17:37 9 Q. So I could feel comfortable with you if you  
17:37 10 were to sit on the jury that, if the criminal defendant  
17:37 11 chose not to testify, you are not going to harbor some  
17:37 12 ill will against them because you thought he should come  
17:37 13 forward and maybe confess or something like that --

17:37 14 A. No.

17:37 15 Q. -- or speak with police?

17:37 16 A. No.

17:37 17 Q. You said on here, "What makes a person  
17:37 18 dangerous?" And it's an interesting response.  
17:37 19 "Strength, mixed with anger, or hate mixed with alcohol  
17:37 20 or drugs." Tell me what you mean.

17:37 21 A. I think -- I mean, I'm afraid of strong people  
17:37 22 who are mad at me. I mean, I think they could punch my  
17:37 23 teeth out, and that's something I would really not like  
17:37 24 to happen.

17:37 25 Q. Uh-huh.

17:37 1 A. And when you mix alcohol and drugs and that and  
17:38 2 you -- it -- it -- it lowers your inhibitions, makes you  
17:38 3 more bold. In other words, your ability to control  
17:38 4 yourself and your driving and stuff like that. It makes  
17:38 5 you a violent person.

17:38 6 Q. Okay. And then hate mixed with alcohol or  
17:38 7 drugs. Same thing?

17:38 8 A. Yeah. It's all sort of together.

17:38 9 Q. Mr. Hayden, do you drink?

17:38 10 A. Define drink.

17:38 11 Q. Any? Like, do you drink any beer?

17:38 12 A. Yes.

17:38 13 Q. Wine. All right. I don't take it you drink a  
17:38 14 lot. You just drink in moderation?

17:38 15 A. Yeah.

17:38 16 Q. Just a little here and there?

17:38 17 A. Yes.

17:38 18 Q. What is your drink of choice?

17:38 19 A. Depends, beer, wine, margarita, stuff like  
17:38 20 that.

17:38 21 Q. And I do, too. And I don't seem to handle  
17:38 22 margaritas as well as I used to, but would you agree  
17:38 23 that --

17:39 24 THE COURT: We won't ask you to quantify  
17:39 25 it.

17:39 1 Q. (BY MR. HIGH) I can. That's an absolute  
17:39 2 truth. I certainly don't handle them as well as I used  
17:39 3 to. And also, you need to understand that we've been in  
17:39 4 this room together for about 50 hours this week, so  
17:39 5 we're kind of punchy.

17:39 6 A. Yes.

17:39 7 MR. GOELLER: We could all use a margarita  
17:39 8 about now.

17:39 9 VENIREPERSON: I was talking to a juror  
17:39 10 about that a minute ago.

17:39 11 THE COURT: Was she getting ready to?

17:39 12 VENIREPERSON: Yeah. We talked about  
17:39 13 having a margarita.

17:39 14 MR. GOELLER: Maybe you can get a machine  
17:39 15 up here.

17:39 16 MR. HIGH: Can we go ahead and do that  
17:39 17 right now, Judge?

17:39 18 Q. (BY MR. HIGH) I'll try to move through this a  
17:39 19 little bit quicker.

17:39 20 A. I guess, in that sense, what I meant was drink  
17:39 21 to excess. Yeah.

17:39 22 Q. Okay. I understand.

17:39 23 A. I don't think I become a dangerous person when  
17:40 24 I have a margarita.

17:40 25 Q. Quite often at the end of the day or a hard

17:40 1 day, especially after a day like today, you might want  
17:40 2 to have a beer or margarita, kind of take the edge off,  
17:40 3 help you relax. Fair enough?

17:40 4 A. I don't want to go down that road. I don't  
17:40 5 want to start doing that. I don't want to use alcohol  
17:40 6 as a crutch, so I don't do that.

17:40 7 Q. Good. Some folks do.

17:40 8 A. I understand.

17:40 9 Q. And there's not anything wrong with that.

17:40 10 A. No.

17:40 11 Q. Have you ever known people that have had  
17:40 12 addictions to alcohol?

17:40 13 A. Have I known people personally, or do I believe  
17:40 14 that? I guess.

17:40 15 Q. Known people personally.

17:40 16 A. I'm sure I do, but nobody is coming to mind.

17:40 17 Q. Have you ever worked with some folks that do?

17:40 18 A. I can't remember anybody.

17:40 19 Q. You will, I assure you.

17:41 20 A. Well.

17:41 21 Q. You understand there's a difference. Some  
17:41 22 folks are affected by alcohol. They are what we call a  
17:41 23 happy drunk.

17:41 24 A. Uh-huh.

17:41 25 Q. Other folks are affected by alcohol, and they

17:41 1 get fighting mad, belligerent?

17:41 2 A. Yeah. I can believe that.

17:41 3 Q. So would you say it's pretty fair that alcohol  
17:41 4 or drugs is a mood-altering substance?

17:41 5 A. Yes.

17:41 6 Q. And it -- some folks it literally changes their  
17:41 7 personality, does it not?

17:41 8 A. Yes.

17:41 9 Q. Nevertheless, we talked about this. It's in  
17:41 10 your questionnaire. It doesn't excuse your criminal  
17:41 11 conduct. If you do a crime, you are still responsible.

17:41 12 A. Right.

17:41 13 Q. Let me ask you this: If there's the  
17:41 14 possibility of removing the drugs, removing the alcohol,  
17:42 15 would you agree that and if a person is not otherwise  
17:42 16 dangerous, that -- and if you heard expert testimony  
17:42 17 that the problem or the reason for the danger is the  
17:42 18 alcohol or the drugs, much like what you are saying  
17:42 19 here, do you think that you could remove much of the  
17:42 20 danger factor?

17:42 21 A. I don't think you would know that.

17:42 22 Q. I understand that.

17:42 23 A. I think you can say alcohol is contributing,  
17:42 24 but I don't know that you can take it away. You would  
17:42 25 get rid of the behavior. I don't think you can prove

17:42 1 that.

17:42 2 Q. I understand. But you made the observation  
17:42 3 that strength mixed with anger or hate mixed with  
17:42 4 alcohol or drugs.

17:42 5 A. Right.

17:42 6 Q. And that's what makes the danger?

17:42 7 A. Yeah. You may be putting too much weight on  
17:42 8 how I combine those things.

17:42 9 Q. Okay.

17:42 10 A. But strength and hate and anger, alone, can be  
17:43 11 dangerous. And you mix, you can add on other things  
17:43 12 like alcohol or drugs or take them away, and it's still  
17:43 13 dangerous.

17:43 14 Q. They could still be dangerous. But obviously  
17:43 15 you meant something by that. You are going to enhance  
17:43 16 the level of danger, maybe their impulsivity or their  
17:43 17 willingness or their boldness to commit a crime or hurt  
17:43 18 you?

17:43 19 A. Maybe, maybe not.

17:43 20 Q. You say in a questionnaire, if you believe in  
17:43 21 using the death penalty, how strong on a scale of 1 to  
17:43 22 10 do you hold that belief? And you rated yourself a 9,  
17:43 23 and this was last week anyway. Are you still a 9 or  
17:43 24 have you changed?

17:43 25 A. Yeah.

17:43 1 Q. So you have a firm belief about the death  
17:43 2 penalty?  
17:43 3 A. Yes.  
17:43 4 Q. Would you say that in 90 percent of capital  
17:43 5 murder cases, you think you should apply the death  
17:43 6 penalty or it should be applied, nine times out of ten  
17:44 7 or?  
17:44 8 A. I don't know. We'd have to go by these special  
17:44 9 issues, right?  
17:44 10 Q. Yes, we do. We're going to get to that here in  
17:44 11 just a second. Your sister's name is Mary Rebecca  
17:44 12 Hayden?  
17:44 13 A. Yes.  
17:44 14 Q. Does she go by Rebecca?  
17:44 15 A. Becky.  
17:44 16 Q. Becky. And she was charged with stealing in  
17:44 17 the 1980s?  
17:44 18 A. Yes, she has -- actually a much longer list  
17:44 19 than that. But that's the only criminal thing I can  
17:44 20 think of. She ran away when she was 15. Got arrested  
17:44 21 in Kentucky. Dad had to go get her. I think her and  
17:44 22 her boyfriend were breaking into cars, and I think they  
17:44 23 just let her come home. So she wasn't actually charged  
17:45 24 or anything, but she has been in and out of trouble ever  
17:45 25 since then.

17:45 1 Q. Okay. Any idea -- I'm sorry, I don't mean to  
17:45 2 talk over you.  
17:45 3 A. That's all right.  
17:45 4 Q. Any idea why she -- I mean, you turned out all  
17:45 5 right, evidently.  
17:45 6 A. Yeah.  
17:45 7 Q. Any idea why she went that direction?  
17:45 8 A. I've thought some about that, and maybe come to  
17:45 9 conclusions before. But I have a half brother and  
17:45 10 sister, and he came out great; and she didn't either.  
17:45 11 So part of me thinks it was my dad. Maybe he didn't  
17:45 12 love her enough or hug her enough or whatever. I don't  
17:45 13 know.  
17:45 14 He was definitely a provider and a  
17:45 15 disciplinarian, but not necessarily a loving father.  
17:45 16 So, I mean, I've tried to -- if that's part of what it  
17:46 17 is, maybe. It made me change, or it's made me want to  
17:46 18 be different to my kids.  
17:46 19 Q. Absolutely.  
17:46 20 A. But I don't blame him for that or -- I don't  
17:46 21 know that that's true. I think I've learned through  
17:46 22 counseling and stuff and friends that are counselors and  
17:46 23 stuff that I've read that there are things that matter  
17:46 24 like that. So I want to be sensitive to that.  
17:46 25 Q. Absolutely. So you are 38, and she's 34?

17:46 1 A. Uh-huh.  
17:46 2 Q. You are the older brother?  
17:46 3 A. Right.  
17:46 4 Q. And when did she start getting into trouble?  
17:46 5 A. When I was in college as a police officer. It  
17:46 6 was very strange. She was hanging out with the bad guys  
17:46 7 that I knew were bad guys.  
17:46 8 Q. And I'm sure that as the older brother you  
17:46 9 said, now, look, you better stop that, I'm sure. Didn't  
17:46 10 you talk to her and counsel with her?  
17:47 11 A. Yeah. She didn't listen.  
17:47 12 Q. And evidently, I mean, I'm sure she looked at  
17:47 13 you and talked to you, but then went and did her own  
17:47 14 thing.  
17:47 15 A. She wanted out of the house. She couldn't  
17:47 16 understand why I was still there, and I was 18. She  
17:47 17 wanted freedom, which she does not have right now.  
17:47 18 Q. Where is she now?  
17:47 19 A. In Tennessee working a minimum wage job.  
17:47 20 Q. Is she married?  
17:47 21 A. I don't know. She's been married four times.  
17:47 22 Q. Yeah. You are not close with her?  
17:47 23 A. No. I mean, I'll see her when I go home. If  
17:47 24 she decides to come visit me, but she doesn't always  
17:47 25 show up when I go home to visit. But I love her. I

17:47 1 don't distance her, but we don't talk a lot.  
17:47 2 Q. Okay. Has she ever been in jail?  
17:47 3 A. Oh, yeah.  
17:47 4 Q. Has she ever been in prison?  
17:47 5 A. I don't know. I don't think so. Is a prison  
17:47 6 like a bigger jail?  
17:48 7 Q. I guess. I don't know about in Tennessee, but  
17:48 8 here it is.  
17:48 9 A. Are you talking about Huntsville versus the  
17:48 10 county jail?  
17:48 11 Q. That basically.  
17:48 12 A. I don't think she's been in a prison.  
17:48 13 Q. Suppose your sister was charged with murder or  
17:48 14 capital murder and she was on trial.  
17:48 15 A. Uh-huh.  
17:48 16 Q. The State was trying to take her life.  
17:48 17 A. Uh-huh.  
17:48 18 Q. You talked about -- now, you've wondered over  
17:48 19 these years about whether your dad loved her enough.  
17:48 20 You think that's -- and we've talked about mitigation.  
17:48 21 A. Uh-huh.  
17:48 22 Q. Would that -- I'm sure you must be thinking  
17:48 23 about that as we've been talking about that.  
17:48 24 A. Uh-huh.  
17:48 25 Q. Is that -- is that -- does that kind of strike

17:48 1 a cord with you? That might be evidence of mitigation?  
 17:48 2 A. No.  
 17:48 3 Q. Why not?  
 17:48 4 A. The offense of murder hurts people so bad that  
 17:48 5 that's just not a good enough answer. I mean, like you  
 17:49 6 said, I went through the same parents, and I didn't make  
 17:49 7 those choices. I struggle with self-acceptance issues  
 17:49 8 and work through them. And I struggle with other things  
 17:49 9 that were a function of my parents. And I mean, I have  
 17:49 10 anger issues and stuff. And, I'm sorry, it's really --  
 17:49 11 taking someone's life is more important than, you know,  
 17:49 12 not having a hug every now and then.  
 17:49 13 Q. Okay. So -- so you, I mean, even as her  
 17:49 14 brother, you wouldn't consider that lack of love and  
 17:49 15 that lack of a nurturing relationship, you wouldn't even  
 17:49 16 consider that as mitigating in her trial?  
 17:49 17 A. No.  
 17:49 18 Q. So you certainly wouldn't consider that as  
 17:49 19 mitigating in any other trial, would you?  
 17:49 20 A. Probably not.  
 17:50 21 Q. Okay.  
 17:50 22 A. I would have to hear the evidence, but I -- I  
 17:50 23 don't know.  
 17:50 24 Q. It's fair to say, if you wouldn't consider it  
 17:50 25 as mitigating in your sister's own trial?

17:50 1 A. Probably not.  
 17:50 2 Q. Okay.  
 17:50 3 A. But you can't -- I mean, I can't answer for  
 17:50 4 everything.  
 17:50 5 Q. I'm sorry, I couldn't hear that. I just  
 17:50 6 couldn't hear it. Say that again.  
 17:50 7 A. But, I mean, probably not. I'm confused.  
 17:50 8 Q. I know these are tough issues. I'm making you  
 17:50 9 face up to some stuff.  
 17:50 10 A. You are asking me for an absolute, and I'm an  
 17:50 11 engineer.  
 17:50 12 Q. Okay. Y'all don't believe in absolutes, do  
 17:50 13 you?  
 17:50 14 A. No.  
 17:50 15 Q. Let's go back to your sister. This opens up a  
 17:51 16 whole can of worms. I just haven't run across this  
 17:51 17 before.  
 17:51 18 A. Okay.  
 17:51 19 Q. Did she start out stealing?  
 17:51 20 A. You're asking -- I probably don't even know  
 17:51 21 some answers to this. We -- she was the smart, well-  
 17:51 22 behaved kid. We moved to Tennessee when I was 13, so  
 17:51 23 she was nine. And she had, I mean, that's, something  
 17:51 24 changed when she went to junior high.  
 17:51 25 Her friends or something they started

17:51 1 getting in trouble. They broke into the elementary  
 17:51 2 school and just for fun to walk around. She got in  
 17:51 3 trouble for that. That's the first -- actually, that's  
 17:51 4 the first thing I can remember her doing right now off  
 17:52 5 the top of my head.  
 17:52 6 Q. That's a burglary. Breaking into --  
 17:52 7 A. Yeah.  
 17:52 8 Q. -- school.  
 17:52 9 A. Yeah.  
 17:52 10 Q. Okay.  
 17:52 11 A. So she just lost interest in school and wanted  
 17:52 12 out of the house and rebelled. Yeah.  
 17:52 13 Q. She went against her father's teaching?  
 17:52 14 A. Yeah.  
 17:52 15 Q. I don't hear you talking that much about your  
 17:52 16 mom. Where was your mom?  
 17:52 17 A. Mom was there. She was home, and she was a  
 17:52 18 housewife, a homemaker. She didn't work when I was  
 17:52 19 being raised. She passed away nine years ago.  
 17:52 20 Q. Okay.  
 17:52 21 A. I, of course, had been away, you know, for  
 17:52 22 quite a while, but, yeah. She was heartbroken by  
 17:53 23 Becky's rebellion, same as my dad.  
 17:53 24 Q. And you list on your questionnaire small  
 17:53 25 crimes. So she had more than --

17:53 1 A. Well, you just were -- thinking about it, I  
 17:53 2 remembered the school things. There's probably more.  
 17:53 3 Q. Okay. Let's switch over here to Greg Goben.  
 17:53 4 And you say he was at First Baptist in Dallas in a  
 17:53 5 singles group when you were there?  
 17:53 6 A. Uh-huh.  
 17:53 7 Q. When were you there?  
 17:53 8 A. I went there when I moved to Dallas in the  
 17:53 9 summer of '85. And I was probably there through '88 or  
 17:53 10 '89 when I went to it and started going to a different  
 17:53 11 church.  
 17:53 12 Q. Was Criswell the pastor then?  
 17:53 13 A. Yeah.  
 17:53 14 Q. Was that right before -- I can't remember his  
 17:53 15 name.  
 17:53 16 A. It was probably a long time before anybody  
 17:54 17 else.  
 17:54 18 Q. A dark-headed fellow that took over for  
 17:54 19 Criswell. Didn't do very well. I go to First Baptist  
 17:54 20 Dallas.  
 17:54 21 A. Oh, do you?  
 17:54 22 Q. Yeah. We got a dynamite pastor now. They went  
 17:54 23 through a stage where nobody could follow Criswell it  
 17:54 24 seems like.  
 17:54 25 A. Yeah.

17:54 1 Q. You are aware of that? Were you active in the  
 17:54 2 singles group?  
 17:54 3 A. Yes, very active.  
 17:54 4 Q. And back in the mid '80s, The Village was the  
 17:54 5 hot place to live?  
 17:54 6 A. Yeah.  
 17:54 7 Q. Right down there off of Mockingbird?  
 17:54 8 A. Yeah.  
 17:54 9 Q. And when you say, "The Village rapist," we are  
 17:54 10 talking over there?  
 17:54 11 A. Yes. It was a pretty well-publicized case.  
 17:54 12 Q. And that was Mr. Greg Goben?  
 17:54 13 A. Yep.  
 17:54 14 Q. This is a fellow that was living a double life  
 17:54 15 evidently?  
 17:54 16 A. Yeah.  
 17:54 17 Q. You would have never guessed?  
 17:54 18 A. No.  
 17:54 19 Q. I hear what you are saying. You've got to have  
 17:54 20 friends to hold you accountable, don't you?  
 17:55 21 A. I think that's an important part.  
 17:55 22 Q. And it's especially important with men.  
 17:55 23 Wouldn't you say? You know, men that are believers that  
 17:55 24 are trying to live in our world, in the modern-day  
 17:55 25 world?

17:55 1 A. It's probably important for women, too, but  
 17:55 2 yeah.  
 17:55 3 Q. How long have you been a Christian?  
 17:55 4 A. Since I was nine.  
 17:55 5 Q. Beat me by three years. I was 12. So you have  
 17:55 6 been a Christian most of your life?  
 17:55 7 A. Uh-huh.  
 17:55 8 Q. And I take it you are a born-again Christian?  
 17:55 9 A. Uh-huh.  
 17:55 10 Q. And you had a conversion experience?  
 17:55 11 A. Uh-huh.  
 17:55 12 Q. And isn't it amazing? I just sat here and  
 17:55 13 watched you a while ago, and you were talking about  
 17:55 14 Jesus Christ, and the change He can make in your life.  
 17:55 15 And you are talking about that sitting on the witness  
 17:55 16 stand. Isn't that amazing?  
 17:56 17 A. Yes.  
 17:56 18 Q. And I guess I'm sharing this with you because  
 17:56 19 if this weren't America, you probably wouldn't be able  
 17:56 20 to do that. But we live in America, and you are getting  
 17:56 21 to do that right from the witness stand. And I wanted  
 17:56 22 to share that with you, and it's an amazing thing.  
 17:56 23 A. Uh-huh.  
 17:56 24 Q. And so when you left First Baptist Dallas, it  
 17:56 25 sounds like you worked your way north. You went to

17:56 1 Fellowship Bible Church in Richardson?  
 17:56 2 A. Park Cities.  
 17:56 3 Q. Oh, you went to Park Cities. Okay. You went  
 17:56 4 to church there for a while?  
 17:56 5 A. Yes.  
 17:56 6 Q. And then did you go to Fellowship Bible Church  
 17:56 7 North?  
 17:56 8 A. I met my wife at Park Cities. We got married  
 17:56 9 there and, soon after, we went to Park City Richardson.  
 17:56 10 Q. Okay. Was Pleitz the pastor at Park Cities  
 17:56 11 when you were there, James Pleitz?  
 17:56 12 A. Park Cities is Bill Counts, and it's Fellowship  
 17:57 13 Dallas now. But Bill Counts has been there since I was  
 17:57 14 there and is still there. So you must be thinking of  
 17:57 15 somewhere else.  
 17:57 16 Q. Well, I'm thinking Park Cities Baptist Church.  
 17:57 17 A. Fellowship Bible Church of Park Cities.  
 17:57 18 Q. Pardon me. That's the one right there with --  
 17:57 19 A. It used to be on Boedeker, and now it's over at  
 17:57 20 Middle and Central. It used to be called Fellowship  
 17:57 21 Bible Church of Dallas.  
 17:57 22 Q. Okay. Bill Counts, I remember that. And so  
 17:57 23 you continued to navigate north?  
 17:57 24 A. Yes.  
 17:57 25 Q. And you got involved in the Bill Glass Prison

17:57 1 Ministries?  
 17:57 2 A. Uh-huh.  
 17:57 3 Q. Did you ever run across a fellow by the name of  
 17:57 4 John Worley?  
 17:57 5 A. No.  
 17:57 6 Q. Did you ever meet Bill Glass?  
 17:57 7 A. No.  
 17:57 8 Q. I take it this experience with Bill Glass was  
 17:57 9 just a one-time deal through this other church?  
 17:57 10 A. Fellowship Richardson.  
 17:57 11 Q. Fellowship Richardson. What I know about Bill  
 17:58 12 Glass -- have you ever studied Bill Glass?  
 17:58 13 A. No.  
 17:58 14 Q. Do you know he used to play for Cleveland?  
 17:58 15 A. I think I remember he played football.  
 17:58 16 Q. Yeah. And I think he was offensive tackle back  
 17:58 17 in the '60s?  
 17:58 18 A. Before my time.  
 17:58 19 Q. And he played in that Mud Bowl game where they  
 17:58 20 beat Dallas 6 to 3. I think it was 1967, somewhere  
 17:58 21 around in there.  
 17:58 22 A. I'm not that big of a fan.  
 17:58 23 Q. So you don't know anything about Bill Glass and  
 17:58 24 the life he led before he became a Christian?  
 17:58 25 A. I don't recall, huh-uh.



17:58 1 Q. You hadn't heard that he was a party animal and  
17:58 2 a womanizer and carried on with just about everybody and  
17:58 3 everything?

17:58 4 A. I don't remember that.

17:58 5 Q. Okay. You and I, at least as born-again  
17:58 6 believers, we believe that Jesus Christ can make a  
17:58 7 change in your life. And behold, all things become new.  
17:58 8 You are a new creation.

17:59 9 A. Yes.

17:59 10 Q. And, you and I, we believe he has the power to  
17:59 11 do that?

17:59 12 A. Yes.

17:59 13 Q. Evidently, Bill Glass did too because he became  
17:59 14 a Christian and started these prison ministries that you  
17:59 15 were involved in.

17:59 16 A. Yes.

17:59 17 Q. And you are aware that they extend throughout  
17:59 18 the nation, throughout the country?

17:59 19 A. Yes.

17:59 20 Q. And they are taking folks like you into prison  
17:59 21 society and telling the Good News.

17:59 22 A. Uh-huh.

17:59 23 Q. I'm sure that you ran across -- how close did  
17:59 24 you get with these inmates at the holiday unit?

17:59 25 A. I ate with them, watched TV with them, played

17:59 1 chess with them, shared the forcible laws with them.

17:59 2 Q. Okay. Did you talk to them about what they  
17:59 3 were in for?

17:59 4 A. They recommended we not do that.

17:59 5 Q. Okay.

17:59 6 A. But I think some people opened up on their own.

18:00 7 Q. Some of them -- did some of them tell you that  
18:00 8 they had, in fact, accepted the Good News, and they were  
18:00 9 born-again believers?

18:00 10 A. Yes.

18:00 11 Q. You mentioned earlier, when you were talking to  
18:00 12 Ms. Falco, that Jesus Christ can change a person so they  
18:00 13 would not necessarily be a future danger. Do you  
18:00 14 honestly believe that?

18:00 15 A. Yeah.

18:00 16 Q. Okay. I want to talk about this first special  
18:01 17 issue. And that is whether there is a probability that  
18:01 18 the defendant would commit criminal acts of violence  
18:01 19 that would constitute a continuing threat to society.

18:01 20 Do you believe that it's possible that  
18:01 21 what you just said, that Jesus Christ could change a  
18:01 22 person where they would be no longer dangerous?

18:01 23 A. Uh-huh.

18:01 24 Q. Okay. Would you be willing to listen and  
18:01 25 consider evidence like that if you are chosen to sit on

18:01 1 a jury and if you are -- if you are instructed to answer  
18:01 2 that special issue? Would you be willing to consider  
18:01 3 that kind of evidence?

18:01 4 A. Of course I would listen to it and consider it.  
18:02 5 It's one of those things that there is no evidence  
18:02 6 besides a person's word. It's very easy to say. So I  
18:02 7 don't know that it should have that much weight.

18:02 8 Q. I understand what you are saying. But, I mean,  
18:02 9 when I talk to you, I see evidence of your faith because  
18:02 10 I know which churches you've gone to. I know which  
18:02 11 ministers you are acquainted with. I know that you  
18:02 12 teach a Sunday school class, and I know that you have  
18:02 13 been involved in the Bill Glass Ministries.

18:02 14 And you thought your faith was important  
18:02 15 enough to go into a prison society and share the Good  
18:02 16 News. And I've also seen you testify to it personally  
18:02 17 from that witness stand right there.

18:02 18 A. Uh-huh.

18:02 19 Q. Because you have been bold enough to do that.

18:03 20 A. Uh-huh.

18:03 21 Q. Okay. So, I mean, I haven't had to take your  
18:03 22 word for it. I've seen other evidence of all the things  
18:03 23 that you've been involved with.

18:03 24 A. Uh-huh.

18:03 25 Q. That's fair to say, isn't it?

18:03 1 A. Sure.

18:03 2 Q. Okay. So obviously, if you were to hear that  
18:03 3 kind of evidence, you'd be looking at those kinds of  
18:03 4 things from a person too, wouldn't you? I mean, aren't  
18:03 5 there other indications that would substantiate the  
18:03 6 claims that they make. I'm not trying to argue with  
18:03 7 you. I'm just telling you what I've observed about you.

18:03 8 A. Yeah. I mean, but you would have seen the same  
18:03 9 things from Greg Goblen, too, and he deserved to be  
18:03 10 punished for what he did.

18:03 11 Q. I'm not saying that Greg Goblen shouldn't have  
18:03 12 been punished. He absolutely should have.

18:03 13 A. Right.

18:03 14 Q. Okay.

18:03 15 A. And the fact -- and he is probably really a  
18:03 16 believer, and he's going to go to heaven when he dies.  
18:04 17 That's more important than what's going on here.

18:04 18 Q. Now, I want to get to something just a little  
18:04 19 bit different. The only time we would get to that  
18:04 20 question is that there has already been a conviction for  
18:04 21 capital murder.

18:04 22 A. Okay.

18:04 23 Q. You've already found somebody guilty.

18:04 24 A. Okay.

18:04 25 Q. And last week we talked about a double homicide

18:04 1 situation, a burglary plus murder situation, a robbery  
18:04 2 plus murder situation. You heard us talk about that  
18:04 3 last week?

18:04 4 A. Uh-huh.

18:04 5 Q. Now, if you found somebody guilty of a double  
18:04 6 homicide, burglary plus murder, robbery plus murder--  
18:04 7 you've already done that, Mr. Hayden--are you going to  
18:04 8 automatically find in this question that that person is  
18:04 9 most likely a probability they are going to commit  
18:04 10 criminal acts of violence that would constitute a  
18:05 11 continuing threat to society? Are you going to  
18:05 12 automatically answer yes to this question? You've  
18:05 13 already found him guilty of a double homicide.

18:05 14 A. You are asking me to make that decision now?

18:05 15 Q. Well, I'm asking you, if you were to find a  
18:05 16 person guilty beyond a reasonable doubt of capital  
18:05 17 murder, that being a double homicide, knowing you as  
18:05 18 well as you do, are you likely or are you automatically  
18:05 19 going to find him to be a future danger? We need to  
18:05 20 know that now.

18:05 21 I tell you what, before you answer that, I  
18:05 22 want to take you back to Greg Goben because evidently  
18:05 23 that really made an impact on you. Greg Goben was The  
18:06 24 Village rapist. How many ladies did he rape?

18:06 25 A. I think he confessed to 15.

18:06 1 Q. All right. He had a real problem, didn't he?

18:06 2 A. Yeah.

18:06 3 Q. And it started out with his interest in  
18:06 4 pornography. I guess that became an obsession?

18:06 5 A. That's what he said.

18:06 6 Q. And then it drove him to do other things,  
18:06 7 violent acts?

18:06 8 A. That's what he said.

18:06 9 Q. And then he confessed to it, and then he was  
18:06 10 adjudicated and found guilty of aggravated rape, I  
18:06 11 guess.

18:06 12 A. I don't remember.

18:06 13 Q. Because he had done that, because you knew him,  
18:06 14 and knew him to be a nice guy, decent guy, you would  
18:06 15 have never figured Greg Goben to do a thing like that.  
18:06 16 But now that he's -- you know, he's done it and he's  
18:06 17 guilty, you think Greg Goben is a continuing threat to  
18:06 18 society?

18:06 19 A. That's a good question. I don't know.

18:07 20 Q. Kind of sounds to me like you think that?

18:07 21 A. I don't know that -- I don't know.

18:07 22 Q. I guess you'd want to hear some evidence, maybe  
18:07 23 from some doctors, some people that would know about  
18:07 24 that sort of thing. If you had to decide Greg Goben was  
18:07 25 a continuing threat, you'd want some proof, wouldn't

18:07 1 you, beyond a reasonable doubt?

18:07 2 A. Yeah. I don't know how you get that, though.

18:07 3 Q. I understand. I understand. You're going to  
18:07 4 be in that same situation in this trial. You know, and  
18:07 5 you are going to have -- if you get to this question --

18:07 6 A. I understand.

18:07 7 Q. -- you are going to have already decided that  
18:07 8 somebody committed capital murder.

18:07 9 A. Okay.

18:07 10 Q. Now, are you going to wait and hear the  
18:07 11 evidence, evidence sufficient to prove that he's a  
18:07 12 continuing threat to society, prove it beyond a  
18:08 13 reasonable doubt. Or are you going to say, hey, look,  
18:08 14 we've already found him guilty of capital murder. He's  
18:08 15 got to be a continuing threat to society, as far as I'm  
18:08 16 concerned. I guess that's what I'm asking you.

18:08 17 A. Well, it's my job to listen to the evidence,  
18:08 18 but probably I'm going to maybe lean a little towards  
18:08 19 thinking, if somebody did something like that, that they  
18:08 20 are dangerous. But I'm willing to listen. I don't know  
18:08 21 what -- I mean, could be said to convince me otherwise.  
18:08 22 I'm not sure.

18:08 23 Q. You know the law requires you to hear the  
18:08 24 evidence and keep an open mind.

18:08 25 A. Yeah.

18:08 1 Q. And make a decision.

18:08 2 A. And I'll do my best to obey the law.

18:08 3 Q. But you are saying that you are going to  
18:08 4 approach this special issue leaning towards the fact  
18:08 5 that he's -- he's going to be a future danger?

18:09 6 A. I don't know. That's hard.

18:09 7 Q. We've got to know. We've got to know what you  
18:09 8 think and how you feel because if you wind up on the  
18:09 9 jury, it's too late. Are you going to be able to assure  
18:09 10 me that you can keep an open mind and consider this  
18:09 11 issue separate and apart from the punishment -- I mean,  
18:09 12 the guilt-innocence phase and make the State prove to  
18:09 13 you beyond a reasonable doubt that there's a probability  
18:09 14 that he would commit criminal acts of violence, and that  
18:09 15 he would constitute a continuing threat to society? Or  
18:09 16 are you just going to allow the conviction to do it for  
18:09 17 you?

18:09 18 A. Is that allowed to be a part of the decision?

18:10 19 Q. Well, you can consider the -- all the evidence  
18:10 20 that you've heard in the guilt-innocence phase,  
18:10 21 absolutely. But you can't just simply say, look, we've  
18:10 22 convicted him of capital murder, and because of that I  
18:10 23 see him as a continuing threat to society. Can't do  
18:10 24 that.

18:10 25 MS. FALCO: Your Honor, I object to

18:10 1 misstatement of the law because the law does allow a  
18:10 2 juror to find based solely on the facts of the offense  
18:10 3 that that person is a future danger.

18:10 4 And Mr. High's correct, it's not  
18:10 5 automatic, but they can look at just the facts of the  
18:10 6 case and make that determination there's a probability  
18:10 7 the defendant would be a future danger.

18:10 8 THE COURT: Ask the question again.

18:10 9 Q. (BY MR. HIGH) I think you understand what I'm  
18:10 10 saying. Are you going to automatically jump to a yes  
18:10 11 answer on this future dangerousness question because  
18:10 12 you've convicted a defendant of capital murder?

18:11 13 A. I'm not allowed to do that, am I?

18:11 14 Q. I can't tell you. I'm trying to find out what  
18:11 15 you would do.

18:11 16 A. I would -- I'm not supposed to do that. So I  
18:11 17 will do my best not to do that.

18:11 18 Q. So you say you won't?

18:11 19 A. I won't.

18:11 20 Q. And that's -- and that's your honest gut  
18:11 21 answer. I can trust that from you?

18:11 22 A. I think that acts and evidence and things that  
18:11 23 happen are stronger towards that question than families  
18:11 24 and counselors and everything else that can be said. So  
18:11 25 that's sort of where I'm coming from.

18:11 1 Q. Okay. I'm going to take that as your honest  
18:11 2 answer, and I appreciate that. And we'll move onto the  
18:11 3 next question now. Let's go to the mitigation question.  
18:11 4 Let's look at it again. It's 52 words. The legislature  
18:12 5 gave us this question. I didn't write this. Okay?

18:12 6 I explained it to you as the last-look  
18:12 7 question, look back at the defendant or at the end of  
18:12 8 the trial, and you found him guilty of capital murder.

18:12 9 A. Uh-huh.

18:12 10 Q. You found that the defendant's going to be a  
18:12 11 future danger.

18:12 12 A. Uh-huh.

18:12 13 Q. And now it's your opportunity to take one last  
18:12 14 look at the evidence and at him and decide whether or  
18:12 15 not to spare his life.

18:12 16 A. Okay.

18:12 17 Q. You see here sufficient mitigating  
18:12 18 circumstances to warrant that a sentence of life  
18:12 19 imprisonment rather than death sentence be imposed. Do  
18:12 20 you see that?

18:12 21 A. Uh-huh.

18:12 22 Q. And it talks about, in the first portion of the  
18:12 23 question, what the mitigating circumstances -- what the  
18:12 24 legislature wants you to consider.

18:12 25 A. Okay.

18:12 1 Q. Taking into consideration all the evidence,  
18:13 2 putting the circumstances of the offense -- obviously,  
18:13 3 you're going to have heard all about the offense because  
18:13 4 you would have sat in the guilt-innocence phase of the  
18:13 5 trial. You'll know all about that.

18:13 6 A. Uh-huh.

18:13 7 Q. The defendant's character and background. And  
18:13 8 I suspect you'll know an awful lot about that too by  
18:13 9 this point?

18:13 10 A. Uh-huh.

18:13 11 Q. And the personal moral culpability of the  
18:13 12 defendant. What does that mean to you, personal moral  
18:13 13 culpability?

18:13 14 A. I'd have to look up culpability. Can you  
18:13 15 define that for me?

18:13 16 Q. I'll do my best. In the law, it generally  
18:13 17 means responsibility. Something like a criminal  
18:13 18 responsibility.

18:14 19 A. So it's that person's moral responsibility?

18:14 20 Q. I suppose so. I suppose so. Some might say  
18:14 21 remorse. Some might say a guilty feeling.

18:14 22 I've-done-wrong type feeling. Wish-it-hadn't-happened  
18:14 23 type feeling. Who knows what that means. Okay? But  
18:14 24 those are the words that the legislature gave us.

18:14 25 A. Okay.

18:14 1 Q. The personal moral culpability. And in any  
18:14 2 event, if you are sitting as a juror on the case, you  
18:14 3 are supposed to consider that, whatever it is. And if  
18:14 4 that, coupled with those other items, rises to the level  
18:15 5 of being sufficiently mitigating, so much so that you  
18:15 6 could spare his life.

18:15 7 A. Uh-huh.

18:15 8 Q. Okay? That's what happens when you take the  
18:15 9 one last look at the defendant.

18:15 10 A. Okay.

18:15 11 Q. Let me ask you something: Would guilt or  
18:15 12 remorse matter to you?

18:15 13 A. Probably not much.

18:15 14 Q. It wouldn't?

18:15 15 A. I don't know. I don't think so.

18:15 16 Q. Would you consider it at all?

18:15 17 A. Yeah.

18:15 18 Q. You would consider it?

18:15 19 A. (Moving head up and down.)

18:15 20 Q. Defendant's character and background: You  
18:15 21 mentioned that you wouldn't consider the lack of love  
18:15 22 from your father to your sister in her death penalty  
18:15 23 case. And so you wouldn't consider that in any other  
18:15 24 death penalty case, would you?

18:15 25 A. Probably not.

18:16 1 Q. So is it fair to say that you're not likely to  
18:16 2 consider a defendant's character and background with  
18:16 3 respect to mitigating circumstances? Is that fair to  
18:16 4 say?

18:16 5 A. I think I would consider and listen.

18:16 6 Q. But you said you wouldn't earlier, didn't you?  
18:16 7 At least with respect to your sister?

18:16 8 A. I think there's -- I would do my job and  
18:16 9 consider things. They may be not weighted as much as  
18:16 10 danger to society or something like that. I think  
18:16 11 that's what I'm trying to say. Not that I would ignore  
18:16 12 something that I was supposed to listen to. I just  
18:16 13 don't know how much. I think, I don't know how much  
18:16 14 weight I would put on it.

18:16 15 Q. In other words, what is of more value to you is  
18:16 16 the threat to society question number one, because  
18:17 17 that's really important to you?

18:17 18 A. Yes.

18:17 19 Q. And when you get to the second question, the  
18:17 20 look-back question, the mitigating circumstances, that's  
18:17 21 not going to be all that important to you, is it?  
18:17 22 Because you are more concerned about protecting society?

18:17 23 A. That's -- is that the second question or the  
18:17 24 third question?

18:17 25 Q. No, no. I'm just going to say one and two.

18:17 1 Because this is going to be question one, and that's  
18:17 2 going to be question two up there, just to make it  
18:17 3 simple. Question one has to do with future  
18:17 4 dangerousness. What could happen to society. That's  
18:17 5 very important to you, isn't it?

18:17 6 A. Yes.

18:17 7 Q. Question two has to do, the look-back question  
18:17 8 has to do with mitigation. His background, his  
18:17 9 character, his personal moral culpability. That's going  
18:17 10 to -- that's not going to weigh, in your own words,  
18:18 11 that's not going to weigh as strongly as his threat to  
18:18 12 society in your mind; is that correct?

18:18 13 A. Correct.

18:18 14 Q. Am I hearing you that you're likely to factor  
18:18 15 in his being a threat to society in connection with that  
18:18 16 mitigation question?

18:18 17 A. I guess I don't understand what you are saying.

18:18 18 Q. Well, let me see if I can explain it more  
18:18 19 thoroughly. You said that this is what's important to  
18:18 20 you. This question here that he could be a future  
18:18 21 danger, right?

18:18 22 A. Well, it's -- yeah.

18:18 23 Q. That's going to weigh in more than this  
18:18 24 question which is the mitigation question, the look-back  
18:18 25 question?

18:18 1 A. Are they supposed to have equal weights or?

18:18 2 Q. You are supposed to take them one at a time.

18:18 3 A. Okay.

18:18 4 Q. Are you going to be -- here's my question: Are  
18:19 5 you going to be, when you are doing your look back --

18:19 6 A. Uh-huh.

18:19 7 Q. -- at the criminal defendant, are you going to  
18:19 8 factor in his being a continuing threat to society,  
18:19 9 which you've already found?

18:19 10 A. I see what you are saying.

18:19 11 Q. When you are looking back and considering the  
18:19 12 mitigating circumstances?

18:19 13 A. Am I supposed to forget everything beforehand  
18:19 14 to look at mitigating circumstances? So and then, I  
18:19 15 mean, is there some -- what are we -- what kind of  
18:19 16 mitigating circumstances count?

18:19 17 Q. Okay. Let me ask you this. If you are going  
18:19 18 to find that he's a future danger --

18:19 19 A. Yeah.

18:19 20 Q. -- having committed capital murder, you are  
18:19 21 very concerned that he's a threat to society. Can you  
18:20 22 imagine a scenario where you would think about sparing  
18:20 23 his life?

18:20 24 A. Can I think up something right now, or can I  
18:20 25 believe that it's possible? Yeah, I believe it could

18:20 1 happen.

18:20 2 Q. Yeah. But you obviously think that his being a  
18:20 3 continuing threat to society is really what's the  
18:20 4 important issue here, right?

18:20 5 MS. FALCO: Your Honor, I'm going to  
18:20 6 object to this being repetitive that he asks this  
18:20 7 question over and over, and he's explained the law, and  
18:20 8 this juror has already explained his answer.

18:20 9 THE COURT: Yeah. I tell you what, I'll  
18:20 10 allow him to inquire. You are asking whether he  
18:21 11 considers that more important.

18:21 12 MR. HIGH: That's right.

18:21 13 THE COURT: And I'll allow him to answer.

18:21 14 Q. (BY MR. HIGH) Do you consider his being a  
18:21 15 threat to society, in your view, more important than  
18:21 16 giving legal effect to the mitigation question, which  
18:21 17 could, in effect, spare his life?

18:21 18 A. I guess I'm just having a hard time dreaming up  
18:22 19 the mitigating circumstances.

18:22 20 Q. All right. Because really that's a foreign  
18:22 21 concept to you, right? What could be mitigating when  
18:22 22 we're talking about two people are dead?

18:22 23 A. Yeah.

18:22 24 Q. All right. But what could be mitigating when  
18:22 25 you've got a burglary, somebody broke into somebody's

18:22 1 house or garage or building and killed somebody?

18:22 2 A. Well, you guys did a good job last time of  
18:22 3 taking us down a road, and we answered one way, and then  
18:22 4 you came up with a circumstance that was different. It  
18:22 5 was the guy who was -- his family was killed. And the  
18:22 6 guy got off on a technicality, and the father shot him.  
18:22 7 And it's like, we answered, no, we couldn't parole for  
18:22 8 murder. And then we said, oh, of course, we could for  
18:22 9 that case.

18:22 10 So, you know, I hesitate to say something  
18:23 11 because you can -- as soon as I say one thing, you can  
18:23 12 give me a circumstance where I would go, oh, yeah. And  
18:23 13 I haven't heard one. I don't know of one. So I'm  
18:23 14 having a hard time answering that.

18:23 15 Q. What about youth? You know, what about, you  
18:23 16 know, we talked about the love and the nurturing. What  
18:23 17 about a broken home where these are clearly mitigating?

18:23 18 MS. FALCO: Your Honor, I'm going to  
18:23 19 object to him committing this juror to a particular set  
18:23 20 of facts and what this attorney is labeling as  
18:23 21 mitigating. It's up to the juror to decide what is  
18:23 22 mitigating. And this juror has already said that he is  
18:23 23 open to consideration and recognizes there is a  
18:23 24 possibility that he could answer that question yes; and  
18:23 25 that is all that's required by the law.

18:23 1 MR. HIGH: Judge, I haven't finished my  
18:23 2 question yet.

18:23 3 THE COURT: Oh, you were --

18:23 4 MR. HIGH: That's right.

18:23 5 THE COURT: Let's hear the whole question.  
18:23 6 And if there's an objection, I'll hear the objection.

18:23 7 Q. (BY MR. HIGH) I mean, you've -- you've  
18:23 8 heard -- you've heard us talk about mitigating type  
18:24 9 things. You've heard them talk about it. You've heard  
18:24 10 us talk about it. You've heard them talk about drugs  
18:24 11 whether drugs are aggravating or mitigating. You've  
18:24 12 heard them talk about age. You heard them talking about  
18:24 13 a nurturing relationship, a broken home. You and I have  
18:24 14 talked about it, all sorts of things.

18:24 15 We walk around with mitigating things in  
18:24 16 our lives. Okay? But you don't seem to be -- I take it  
18:24 17 from you, you don't seem to be comfortable with  
18:24 18 mitigating evidence? Am I perceiving that wrong?

18:24 19 A. I don't know. I mean, this is all new to me.

18:24 20 Q. I understand. We need to know, at the  
18:24 21 beginning of this trial, you know, assuming, for  
18:24 22 example, that we get past a capital murder conviction.  
18:24 23 We get past the future dangerousness question, and we're  
18:25 24 heading down the road to a verdict of death. And you  
18:25 25 are taking your one last look.

18:25 1 And the law says, consider mitigating  
18:25 2 evidence. And I'm not getting from you that you are  
18:25 3 comfortable considering mitigating evidence.

18:25 4 THE COURT: If I may say, you are talking  
18:25 5 about a mitigating circumstance?

18:25 6 Q. (BY MR. HIGH) All right. Fair enough. I'm  
18:25 7 sorry, it's late. Mitigating circumstance.

18:25 8 A. Well, I mean, the mitigating circumstance in  
18:25 9 the example of the guy who shot somebody who killed his  
18:25 10 family is something I would consider.

18:25 11 Q. Okay.

18:25 12 A. If that's what you mean.

18:25 13 Q. So you would consider it in that scenario?

18:25 14 A. Yeah. If that's what that would be. Is that  
18:25 15 what -- would that be mitigating circumstances in that  
18:25 16 trial?

18:25 17 Q. Yeah. As far as -- depends on who is looking  
18:25 18 at it and how they view it.

18:25 19 A. Yeah. I think.

18:25 20 Q. And I agree with the State completely. It's  
18:25 21 the eye of the beholder. If you think it's mitigating,  
18:26 22 then, by golly, it's mitigating.

18:26 23 A. Yeah. I would think that would be mitigating.

18:26 24 Q. Okay. Let me just take a breath here, and I  
18:26 25 think I'm nearly done. Let me just take a breath. You

18:26 1 need to take one too, I'm sure.

18:27 2 I just want to tell you, boy, I have poked  
18:27 3 and probed you and turned you upside down, inside out,  
18:27 4 and I can't say I'm sorry for that because I had to do  
18:27 5 it. Okay? I hope I didn't offend you?

18:27 6 A. Nope.

18:27 7 Q. Or get too close in. I certainly didn't mean  
18:27 8 to do that. But you understand I'm defending this young  
18:27 9 man for his life, and I'm just trying to do my job.

18:27 10 A. All right. I respect that.

18:27 11 Q. Fair enough?

18:27 12 A. Yeah.

18:27 13 Q. Okay. I certainly do appreciate your candor.  
18:27 14 Thank you so much for your answers. And they are your  
18:28 15 answers, and I appreciate that very much. Thank you so  
18:28 16 much.

18:28 17 MR. HIGH: Judge, we pass the juror.

18:28 18 THE COURT: I'm going to ask you to step  
18:28 19 down for a few minutes, and then we'll call you back in  
18:28 20 in a few minutes.

18:28 21 VENIREPERSON: Okay.

18:28 22 (Venireperson Hayden not present.)

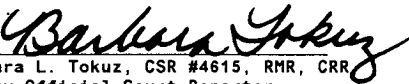
18:28 23 THE COURT: All right. All right. This  
18:28 24 is Charles Hayden, No. 27. And he is at this time  
18:28 25 outside the courtroom and in the jury room.

18:28 1 MR. SCHULTZ: Would you excuse the State a  
 18:28 2 moment to go outside?  
 18:28 3 THE COURT: Yes. What says the State?  
 18:32 4 MS. FALCO: This juror is acceptable to  
 18:32 5 the State, Your Honor.  
 18:32 6 THE COURT: What says the defendant?  
 18:32 7 MR. GOELLER: He's acceptable, Judge.  
 18:32 8 THE COURT: All right. Mr. Cantu, is that  
 18:32 9 your wish also?  
 18:32 10 THE DEFENDANT: Absolutely, Judge.  
 18:32 11 THE COURT: All right. Then juror No. 27,  
 18:32 12 Charles Hayden, is -- let's see what number he is with  
 18:32 13 us. I suppose he's juror No. 4. All right. That's a  
 18:32 14 nice way to end the week. And I suppose we start up  
 18:32 15 again then on Tuesday morning.  
 16 (Court adjourned.)

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REPORTER'S CERTIFICATE

1  
 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, 2001.  
 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  
 25 Telephone: 972-771-2312

