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

VOLUME 14 OF 53

Trial Court Cause No. 380-80047-01

THE STATE OF TEXAS * IN THE 380TH DISTRICT COURT

*

V. *

*

IVAN ABNER CANTU * OF COLLIN COUNTY, TEXAS

REPORTER'S RECORD
VOLUME 14 - VOIR DIRE
CAPITAL MURDER JURY TRIAL

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On the 4th day of September, 2001, from 9:05 a.m. to 5:00 p.m. the Voir Dire proceedings came on to be heard outside the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Charles F. Sandoval, Judge Presiding, held in McKinney, Collin County, Texas:

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

LISA M. RENFRO, Texas CSR #4534
Official Court Reporter - 380th Judicial District Court
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FILED
SEP 15 2001
CLERK OF DISTRICT COURT
COLLIN COUNTY TEXAS
Curly

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1 PROCEEDINGS
 2 (Open court, jury not present.)
 3 THE COURT: Cause Number 380-80047; State of
 4 Texas versus Ivan Cantu. Is the State ready?
 5 MR. SCHULTZ: Yes, sir.
 6 THE COURT: Defense ready?
 7 MR. GOELLER: Yes, sir.
 8 THE COURT: All right. I believe the next
 9 witness -- or excuse me -- the next juror is Jung So.
 10 Mr. So apparently isn't here. Let's take Michael
 11 Foster, Number 46.
 12 (Prospective juror enters the courtroom.)
 13 THE COURT: Are you Michael Dean Foster?
 14 PROSPECTIVE JUROR: That's me.
 15 THE COURT: All right. I just want to remind
 16 you, since it's been a couple of weeks, I administered an oath
 17 to all of the jurors. They swore to give truthful answers to
 18 the attorneys on both sides, so you're still under that oath.
 19 PROSPECTIVE JUROR: All right.
 20 THE COURT: Please be seated. All right.
 21 (Juror previously sworn.)
 22 DIRECT QUESTIONS
 23 BY MR. SCHULTZ:
 24 Q. Good morning, Mr. Foster.
 25 A. Morning.

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1 Q. My name is Bill Schultz. I spoke with you basically
 2 two weeks ago now. Assisting me in this capital prosecution
 3 of the Defendant Cantu is Ms. Gail Falco to my immediate left,
 4 and to her left is Ms. Jami Lowry. Most likely we will be the
 5 three lawyers working for the State in this case. It's
 6 possible that someone else might come along for some
 7 specialized purpose, or from time to time one of us might be
 8 out of the courtroom, but we are the people primarily
 9 responsible for this prosecution.
 10 At the Defense table is the Defendant, Ivan Cantu,
 11 and then here earlier this morning, but not here at the moment
 12 is Mr. Don High, one of the Defendant's attorneys, and then at
 13 your far right is Mr. Matt Goeller, who is the other Defense
 14 attorney. Mr. Goeller is a private practitioner of law in
 15 Plano, Texas, a board certified criminal law specialist and an
 16 all-around good man.
 17 And I asked you -- introduced us to you because I
 18 think from Tuesday, two weeks ago, you indicated you don't
 19 know any of us, never had any dealings with any of us. Is
 20 that still correct?
 21 A. That's correct.
 22 Q. Okay. I think probably on Tuesday it was designed
 23 to be an overview of the process, and perhaps at least get you
 24 triggered into thinking about these issues and how they might
 25 relate to your service as a juror. For example, you may

1 recall at the point in time when I talked about what we
2 proposed to do, and I asked the jury to look at the Defendant
3 for a moment, and asked you to realize that what we were
4 proposing to do is convince the jury beyond a reasonable doubt
5 that he's guilty of capital murder, and that the special
6 issues, the punishment phase questions, should be answered in
7 such a way as would ultimately result in his execution.

8 And I hope you understood when I did that, it was
9 not designed to be amusing, or it wasn't a shock value or
10 anything like that that I was attempting to do, but rather, in
11 fairness to the jury, to make sure that they understood that
12 maybe it's a little bit different from our living room concept
13 of how we should have death penalty litigation and how we need
14 to have the death penalty. For many people it's very
15 different when it goes from the almost abstract to the very
16 concrete jury service, and I don't know about you. I can't
17 exactly tell from the questionnaire.

18 Did you feel any different as you actually started
19 thinking more directly about that process and about the fact
20 that there was actually going to be an execution, depending
21 upon whether the questions were answered in a certain way or
22 not?

23 **A. No, I felt no different.**

24 **Q.** Okay. I oftentimes like to analogize the death
25 penalty litigation to military service, and I realize it's a

1 very loose analogy. One of the things that I think is
2 important is that I think it is drastic and extreme, just as
3 military combat is certainly drastic and extreme when we
4 choose to do it. And yet I think most of us believe that from
5 time to time it's necessary in order to maintain freedom.

6 At the same time I don't know that there is
7 anybody -- I know there's nobody in this courtroom, and I
8 don't know if there's anybody on your jury panel that's going
9 to come up here and say to themselves, aren't I lucky because
10 I have an opportunity to participate in causing someone's
11 death. I don't know you personally, but I doubt you woke up
12 this morning with a thrill about this whole process. Am I
13 right about that?

14 **A. That's dead on.**

15 **Q.** The truth is, and I don't have any discomfort with
16 jurors who, if they thought about it, would express the view I
17 hope when I look at all the evidence in this case that if I
18 find the Defendant guilty and have to decide the issues that
19 would mean life or death, I hope my decision will be one
20 resulting in life rather than death, if I had a choice,
21 because a lot of jurors recognize death penalty work as
22 perhaps a necessary process, but not a delightful one, and
23 they would prefer to be consistent with being compassionate,
24 like we all are as a society. And they would prefer that the
25 evidence lead them to a life sentence rather than a death

1 sentence. Does that make sense to you?

2 **A. Uh-huh.**

3 **Q.** And I think that's probably true -- I think that's
4 probably true for prosecutors. The truth is I would
5 probably -- in my case I would probably prefer if the evidence
6 legitimately demonstrated that life was the better sentence
7 than death because when I'm not involved in this prosecution,
8 just like you, I've got kids in sports, and I go to band
9 concerts and all that sort of thing. Same as you or anybody
10 else in society, and I am not such an (inaudible) that I don't
11 want to do all of this just the right way.

12 Nevertheless, you've indicated in your questionnaire
13 that you do believe the death penalty is appropriate some
14 times?

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

16 **Q.** And I would think sometimes really is going to
17 depend on the facts of the case and the nature and the
18 background of the defendant. I think that pretty much hit it?

19 **A. (Nods head.)**

20 **Q.** If someone were to ask you -- do you have children?

21 **A. Yes, I do.**

22 **Q.** How old are your kids?

23 **A. One is eight and one is five.**

24 **Q.** Okay. If your eight-year-old came home from
25 school -- it's a little bit young probably now, but in a

1 couple of years it won't be -- and said, Daddy, we were
2 discussing the death penalty today in school, and I'm
3 interested in whether you're for the death penalty or against
4 it. You say, I'm for it; I'm in favor of it in some cases.
5 And your child said, well, why? Why are you in favor of it?
6 How would you explain it to a child in a simple way that a
7 child would understand?

8 **A. Well, the death penalty is for severe cases. I
9 mean, you gave examples even on Tuesday. You have the serial
10 killers, and you have people that are just habitual, and,
11 just, I don't see any type of changing in a lot of those
12 people.**

13 **To explain things to a five-year-old on the death
14 penalty is -- well, I mean, with their limited understanding
15 of the society, you've just got to explain there's a lot of
16 bad people in the world, and some of them will never become
17 good people.**

18 **Q.** A couple of observations. In Texas we don't have
19 anything called life without parole. All sentences in Texas,
20 except death sentences, are eligible for parole. Now, under
21 our law, at least at the present time, we've got to assume it
22 will always be the law. I don't know, but under our law at
23 the present time that person must serve a minimum of a 40-year
24 sentence on a life sentence if convicted of a capital crime.
25 And so if someone is 27, 28 years old, such as this defendant,

1 in theory you add a minimum of 40 years to that sentence
2 before eligibility for parole.

3 Let me ask you to assume for a moment that we had
4 such a thing as life without parole, and you were confident
5 somehow that would never change. One of the objections to
6 this concept of life without parole that people have is, well,
7 how do we know what the climate is going to be in the year
8 2020, for example, and maybe people will change and be softer
9 on crimes and what used to be life without parole may not be?
10 But let's assume you were absolutely confident that was --
11 that there was such a thing as life without parole and that it
12 would never change, and in particular a capital murderer's
13 situation.

14 If the argument is that the reason we have a death
15 penalty is to protect society, that's the primary argument,
16 not so much retribution, not so much deterrence, but to
17 protect society, would you think that a life sentence or life
18 without parole would protect society compared with a death
19 sentence?

20 A. No.

21 Q. Tell me --

22 A. No.

23 Q. -- about that.

24 A. **Well, let's take, for example, what you said last
25 week. Ted Bundy, I don't believe he should get life without**

1 parole.

2 Q. Is that because of the enormity of his crime?

3 A. **I do -- yes.**

4 Q. Okay. So in addition to merely protecting society,
5 there is the concept that you can do such an enormous --

6 A. **Well, we have a right to protect the other inmates
7 that are in prison that have been incarcerated.**

8 Q. Okay, okay.

9 A. **Someone like that would be very dangerous to put
10 into a prison situation I feel.**

11 Q. Okay. Now, that having been said, nearly as I can
12 tell, and you are probably more familiar with this case maybe
13 than I, but I believe all of his victims were women, the
14 victims of his crime. If we're talking about Bundy?

15 A. **Well, any of the serial killers. That's just a
16 name you threw out.**

17 Q. What about the notion that if you do a serious
18 enough crime, that the crime is just awful, apart from any
19 other consideration, just society's retribution is important.
20 Does that make any sense to you personally?

21 A. **Could you rephrase that?**

22 Q. Do you think that retribution -- kind of -- almost
23 an eye for an eye kind of idea. Do you think that has an
24 important place in death penalty work?

25 A. No.

1 Q. So would I be fair to say that you primarily are
2 concerned about protecting society from the danger of these
3 dangerous people?

4 A. **Well, that's the purpose we have laws.**

5 Q. I think that's exactly right.

6 We're going to move along to this question in a
7 minute, and I think you'll see that you're right on with the
8 primary legislative concern, which is future danger.

9 Now, both sides have been talking, and I anticipate
10 will continue talking with this jury almost assuming for our
11 questions the Defendant has been found guilty of capital
12 murder, and that doesn't mean that the State doesn't have a
13 burden of proving that beyond a reasonable doubt. That
14 doesn't mean the Defense is conceding that he's going to be
15 found guilty, but the purpose of this phase of the trial is to
16 focus on the questions that you're going to have to answer in
17 the second part of the trial if found guilty of capital
18 murder.

19 So the Defendant has been charged, that means
20 accused, of murdering two people in the same criminal
21 transaction, and as an alternate theory to that, he's also
22 been charged with murder in the course of a burglary. That's
23 entering a habitation of another person without that person's
24 effective consent. And he's also been charged with murder of
25 a person in the course of a robbery of that person, which is

1 in the course of taking property from that person, but that
2 murder occurred either in the attempt to commit the robbery,
3 during the robbery itself, or in the immediate flight from the
4 robbery.

5 And why we do that alternatively is -- I'm not
6 talking about this case in particular -- sometimes it is
7 possible that one variety of a crime that's alleged -- same
8 crime but different varieties of allegations. In fact, one
9 might not be proven. There might be some reason, for example,
10 why a burglary was not proved. It might be that there wasn't
11 an entry. Maybe the killing occurred outside of the
12 habitation. It might be that the defendant lived there, and
13 so he had the right to consent to his own going into the
14 house. There could be a lot of technical reasons why that
15 could happen. And so the law authorizes, and the State takes
16 advantage of that authorization and charges many varieties of
17 committing the same crime of capital murder as we think the
18 proof will need. And that avoids the possibility of some
19 technical deficiency in the evidence unrelated to the guilt of
20 the defendant, but maybe unrelated to -- under one of those
21 theories.

22 So we have those three different varieties of
23 capital murder alleged. The jury would only be authorized to
24 return a guilty or not guilty verdict if it found one or more
25 of those three; does that make sense to you?

1 A. I'm following you.

2 Q. Now, if you have found a defendant guilty of capital
3 murder, all of the evidence that you heard at the first part
4 of the trial is carried forth into the second part of the
5 trial. Having heard it, you can consider that evidence at the
6 punishment phase of the trial. You might examine it with a
7 little different focus than you did the first part of the
8 trial, which was is he guilty of this conduct?

9 The second part of the trial, you might be examining
10 it in the sense of what does that conduct mean in terms of
11 answering these special questions or special issues?

12 Probably how you have viewed the evidence is going
13 to be the same. Your reactions to it will probably be the
14 same, and in truth you probably could be given this first
15 special issue here, what we generally call the future danger
16 question, you probably could just as easily have been given
17 that question during the guilt/innocence phase of the trial,
18 and probably would have been able to answer that question one
19 way or the other, depending upon how you saw the crime.

20 If you would, just take a moment to go over that
21 question if you haven't already, and then I'm going to ask you
22 questions about it.

23 In many way it's vague. We didn't write it. It
24 comes out of our State law. It's not something that we
25 designed here. It's the exact same question. Any time you

1 it in weather forecasting sometimes. There's a 20 percent
2 probability of rain today.

3 If you have a math background, certainly probability
4 relates all the way from the remotest possibility, I suppose,
5 way up to a certainty, because we talk about one percent
6 probability, 99 percent probability, those kinds of things.
7 Very few things, I suppose, are either zero percent
8 probability or 100 percent probability, although they might
9 seem like it. The fact that the sun is going to shine
10 somewhere tomorrow is probably pretty close to 100 percent. I
11 guess it's possible that it would not, but it's pretty close.

12 The fact that somebody has been in a coma for ten
13 years is going to wake up tomorrow is probably very, very
14 remote. I mean, it's possible because anything can happen,
15 but that's unlikely. Most people, I think, loosely have a
16 continuum in which the least likely thing is a possibility; a
17 mere possibility, the possibility that, you know, it's going
18 to snow today. It's possible. Maybe we could get some huge,
19 cold front from the North Pole, I guess, and it would snow,
20 but highly unlikely. Theoretically possible, but unlikely.

21 And then probability is something more than a
22 possibility, although it's not defined. But the notion is
23 it's got to be a realistic -- a realistic possibility.
24 Something that, in the real world, could happen. And I guess
25 at the other end is a certainty, and where we define those

1 ever hear a capital murder trial going on, whether it's Dallas
2 or El Paso or Sherman or McKinney, it doesn't matter, that
3 question will always be asked of every trial jury in a capital
4 murder case in a punishment phase of the trial. So, you know,
5 all several hundred of those cases that we do a year, I guess,
6 in Texas the jury is always faced with that exact same
7 question, and they seem to be able to get by it.

8 Like you, that question seems to be the
9 Legislature's interest in protecting society from this person
10 that's been convicted because it talks about -- it talks
11 about, first of all, probability. When you see that term
12 probability that can mean different things to different people
13 and might even mean different things to you, depending on the
14 context of how the word is used, okay? For example, if I were
15 to say, well, are you going to the office party this Friday
16 night, and your answer is probably, most people would say it
17 is more likely than not that I'll see you there, assuming
18 you're answering me correctly and truthfully. Do you agree
19 with that?

20 A. I agree.

21 Q. I'll probably be there.

22 Are you going to be home on time for dinner?
23 Probably. I mean, not guarantying, not certainly, but
24 probably you will be. And other times people use the term
25 probability to mean something less than 50 percent. We hear

1 things, I guess, depends on us.

2 What's important about that question is, although it
3 seems to ask us to predict the future of this defendant's
4 conduct and his activities, it doesn't ask us to do that with
5 certainty, but merely it asks us is there a probability that
6 he would constitute a continuing threat to our society by his
7 criminal acts of violence.

8 So how you define probability in that case, although
9 it's up to you, that's the search. Because we could never
10 prove -- even Ted Bundy, nobody could prove to a certainty
11 that Ted Bundy would kill again. We perhaps think it was
12 probable taking into account past behavior and some of his
13 attitudes and some of the other things he might have done, but
14 certainly not a guarantee or a certainty.

15 So, the first thing that's undefined that's
16 significant in that question is this notion of probability.
17 Do you feel like you could fashion a definition that would be
18 working for you in answering that question? I'm not asking
19 you what it is. I'm just saying if you were sitting on the
20 jury answering that question, you could figure out whether
21 there was or was not a probability?

22 A. Yes.

23 Q. The second thing that's probably vague in that
24 question is talking about criminal acts of violence. And why
25 I say it's vague is some of them, of course, we know are

1 criminal acts of violence; murder, for example. I mean,
2 everybody would agree -- every human being on Earth would
3 agree that murdering somebody else is a criminal act of
4 violence, right?

5 **A. Yes.**

6 **Q.** And it's interesting because I noted in your
7 questionnaire, Mr. Foster, that your best argument in support
8 of the death penalty that you wrote at the time before we
9 talked about it on Tuesday was the defendant would murder
10 again when released. And certainly if you believe there's a
11 probability that the defendant would murder again, certainly
12 that's a criminal act of violence. There's no doubt about it.
13 And yet, the law doesn't require us to even convince you of a
14 probability that a defendant would murder again, but rather to
15 convince you that he would probably commit criminal acts of
16 violence at some point in the future against society.

17 **For example, do you believe domestic violence,
18 beating up your wife, is that a crime of violence or criminal
19 act of violence in your judgment?**

20 **A. Yes, it is.**

21 **Q.** Certainly not murder. Although, I suppose sometimes
22 those things can turn into murder depending on how huge the
23 rage is and what the circumstances are. But that's a criminal
24 act of violence that is not murder. How about robbery, for
25 example, do you believe that to be a criminal act of violence,

1 criminal, but it's not people. Some people say, well, that's
2 different. If you're -- if you're mistreating animals, that's
3 a criminal act of violence, I think. Other people say, no,
4 I'm sticking to what I said, it's still people.

5 **And then you come to a question like drug dealing,
6 delivery of a controlled substance, and the question is, is
7 that a criminal act of violence? And the first reaction for
8 most people is, well, no. I mean, if you give me a hundred
9 bucks, and I give you some kind of narcotic, where is the
10 violence in that? It's illegal and it's bad, but where's the
11 violence in it. And then other people say, well, number one,
12 it's a dangerous business and involving yourself in that kind
13 of business that's so permeated with violence and machine
14 guns, and all that kind of stuff that goes on, number one,
15 being in that business is a criminal act of violence because
16 there's violence all around.**

17 **Number two, the fact that you're transacting
18 narcotics means that you're not buying this stuff to put on a
19 shelf. You're buying either to use yourself or to take and
20 sell to some third party and find its way into other people's
21 bodies, and the kind of harm that that does to other people by
22 taking those things, overdosing, or getting sick or getting
23 the shakes or the chills, or whatever might happen, that's in
24 the nature of act of violence.**

25 **And then finally people say, well, furthermore, when**

1 forcibly taking property from somebody else?

2 **A. The other person is there?**

3 **Q.** Uh-huh.

4 **A. Yes.**

5 **Q.** Now, where it gets a little fuzzier is what about
6 the property crimes that are done with violence? For example,
7 if I do a burglary, and I just walk into your house because
8 you left your door open, that's probably not a crime of
9 violence as long as nobody is there. It's a crime of theft.
10 It's illegal, but it's probably not a crime of violence. But
11 what if I take your patio furniture and smash a window with it
12 in order to gain access; is that a crime of violence in your
13 judgment?

14 **A. Violence?**

15 **Q.** Uh-huh.

16 **A. I don't see that being violence.**

17 **Q.** Okay. Some people say that acts of violence against
18 property qualify as criminal acts of violence. Like, if I go
19 up to your car with a baseball bat, or something like that,
20 even though I'm not after you. I'm just out to destroy your
21 car. Some people say that's a criminal act of violence.
22 Other people say, no, I believe violence relates to force used
23 on human beings, not otherwise.

24 **And then you have other areas, like, for example,
25 cruelty to animals. Is that a criminal act of violence? It's**

1 you take narcotics, especially those that make you very, very
2 aggressive, like some of them do, it's an act of violence
3 because that's creating dangerous people. It's only an
4 indirect form of violence because almost with certainty
5 there's going to be violence resulting from this transaction.

6 **Do you understand how that argument could be made,
7 maybe not by you, but does the argument itself make sense?**

8 **A. Well, I could, but you could apply that same
9 argument to a liquor store owner.**

10 **Q.** Absolutely, absolutely. Many things aren't acts of
11 violence in and of themselves, and, yet, they risk acts of
12 violence, and they contribute to acts of violence, is kind of
13 where I'm coming from. Does that make sense to you?

14 **A. Okay.**

15 **Q.** That's okay?

16 **A. Well, people should take responsibility for
17 themselves.**

18 **Q.** Okay.

19 **A. I mean, when I go in the liquor store and I buy
20 beer, it's my responsibility to be able to drink responsibly.**

21 **Q.** Okay. And then finally on this issue of criminal
22 acts of violence, there are some types of activities that may
23 not even in and of themselves be criminal in nature. They're
24 not criminal in nature, and yet, they could assist you in
25 answering the question about the defendant's propensity for

1 criminal acts of violence by their very nature. For example,
 2 even if you don't believe that dealing drugs is a criminal act
 3 of violence because there's no violence in the act itself, do
 4 you see how that's the kind of evidence that could assist you
 5 in answering that question about the defendant's likelihood of
 6 committing criminal acts of violence, even though it's not
 7 violence itself. It still gives you insight into his
 8 character that would help you understand it? Do you follow my
 9 question?

10 **A. No, I didn't.**

11 Q. Okay. There may be some things -- for example, drug
 12 dealing, do you believe that is a criminal act of violence?

13 **A. Just selling drugs?**

14 Q. Uh-huh.

15 **A. A criminal act of violence?**

16 Q. Uh-huh.

17 **A. I wouldn't classify it that way.**

18 Q. Okay, okay. And some people might; some people
 19 might not, and you're certainly free to do as you wish with
 20 that as a juror. Do you see how the fact that someone does
 21 deal in drugs could assist you in answering the question
 22 whether or not he would probably commit criminal acts of
 23 violence in the future?

24 **A. I'm still not following the question.**

25 Q. Okay. When asked the question, what is the

1 probability that the defendant would commit criminal acts of
 2 violence, what kinds of things would you want to know?

3 **A. Any -- well, his behavior, any previous acts of
 4 violence committed.**

5 Q. Okay. What -- I'm sorry. Go ahead.

6 **A. That's all right.**

7 Q. What about acts that were not violent in and of
 8 themselves, do you believe they could assist you in answering
 9 that question one way or the other?

10 **A. Yes.**

11 Q. Okay. That's kind of my question. Even if you
 12 don't think that drug dealing is a criminal act of violence,
 13 you could certainly see how that could be useful in deciding
 14 what's the probability he'll be in criminal acts of violence
 15 in the future. Maybe some fight that occurs from the culture
 16 of dealing narcotics. Maybe the police will get involved, and
 17 this or that will happen.

18 We talked a couple of weeks ago about the concept of
 19 does it make any difference who the victim of a murder is? Do
 20 you remember when we talked about that, and kind of the
 21 connection of the -- is there a difference, for example,
 22 between killing a drug dealer and killing somebody that
 23 society reveres?

24 **A. You used a nun.**

25 Q. Like maybe a special Olympics coach or somebody

1 like that. And I was not surprised that many of the jurors
 2 expressed the notion that killing the drug dealer didn't seem,
 3 like, as big a tragedy as killing somebody that we thought was
 4 doing better or doing good for our society. Did you kind of
 5 agree with that concept?

6 **A. No. I mean, you're both killing a human being. It
 7 doesn't really matter who it is. If I remember right, there
 8 wasn't that many that raised their hand that disagreed; that
 9 they were both human beings.**

10 Q. There was one lady that thought we ought to hang a
 11 medal --

12 **A. Right.**

13 Q. -- and (inaudible).

14 And in your mind, why doesn't that make a
 15 difference, because the drug dealer is probably somebody that
 16 we'd like to be putting in prison if we could catch them
 17 dealing drugs, for example. In your mind, why does that not
 18 not make a difference?

19 **A. Why should it make a difference?**

20 Q. Well, if you look at value to society, it may be
 21 that the drug dealer is not nearly as valuable to our society
 22 as is the doctor that works down in poor neighborhoods and
 23 treats people who otherwise wouldn't have medical care, for
 24 example.

25 **A. But, I mean, we're not here to stand judgment on**

1 **people's value to our society.**

2 Q. Okay. It's interesting because in answering that
 3 question there's nothing in that question relating to the
 4 victim. There's nothing in there about whether or not the
 5 victim is a dangerous person, or whether the victim was savory
 6 or anything like that. It merely asks you to look at the
 7 defendant and see what his probability for violence would be.

8 You indicated that you believe that alcohol, and I'm
 9 assuming drugs also, is a matter of personal responsibility.
 10 If you drink or if you take drugs, you are personally
 11 responsible for the consequences that flow from that. Is that
 12 your opinion?

13 **A. Yes, it is.**

14 Q. Okay. If a person is addicted to drugs, let's
 15 assume that they are, do you have sympathy for that person?

16 **A. No.**

17 Q. What about this argument -- what about the argument
 18 that I took drugs that made me aggressive. I have known that
 19 they made me aggressive before because I've taken them before,
 20 and they've made me aggressive before. But, I took drugs that
 21 made me aggressive, and they altered my mind and my
 22 perceptions and ultimately ended up committing a double
 23 homicide. And I probably, had I not been on drugs, would not
 24 have committed this double homicide because when I did it, it
 25 made sense to me, and it probably wouldn't have made sense to

1 me if I hadn't had drugs in me. And, therefore, I'm not as
2 responsible as if I had gone out and killed these two people
3 stone-cold sober. What's your response to that kind of a
4 concept?

5 **A. I don't agree with that.**

6 Q. What if the argument is, I'm only dangerous when I'm
7 on drugs, and if I'm in the pen for 40 years, I wouldn't be on
8 drugs and, therefore, I'm not dangerous. What's your response
9 to that kind of an argument?

10 **A. An argument for what?**

11 Q. For a life sentence, that I'm only a dangerous
12 person when I'm on drugs. I'm only going to probably be a
13 danger to society in the future when I'm on drugs, and if I'm
14 in the lock-up, I won't be on drugs.

15 **A. Is this for the same argument for a person who
16 was -- committed a double homicide while on the drugs?**

17 Q. Uh-huh.

18 **A. They're still responsible for that act.**

19 Q. Absolutely responsible. But do you believe that
20 it's the drugs that make them dangerous or their personality
21 that makes them dangerous?

22 **A. No. It's their personality.**

23 Q. Okay. Why I said that we could give you this
24 question in the first part of the trial is because many people
25 would say the most important evidence in deciding how to

1 once again, are you sure he's guilty of capital murder? In
2 other words, the fact that he's been found guilty of capital
3 murder does not require you to answer that question yes. It
4 only authorizes you to answer that question yes. And why
5 that's important is because the law contemplates a fair
6 appraisal of the evidence in answering that question
7 independent of having found him guilty; in other words,
8 there's no need for that question. If that question is always
9 automatically answered by finding him guilty of capital
10 murder, the question wouldn't have any value. Just don't even
11 answer it.

12 Do you recognize that some cases require a yes
13 answer and some require a no answer to that question?

14 **A. (Nods head.)**

15 Q. Okay. Other evidence that you may find offered in
16 assistance in answering that question -- this could be by
17 either side -- is prior acts of the defendant. They could be
18 criminal acts, for example. They could be other acts of
19 violence themselves. They could be criminal acts that are not
20 violence, but may relate to the character that would -- that
21 you're trying to figure out. They could be things that are
22 illegal and criminal, but not in any way violent by anybody's
23 opinion, like, maybe stealing, for example, thefts, forgeries,
24 economic crimes. Those are all things that are certainly not
25 violent, but may or may not give you some indication about the

1 answer that question is the crime itself. Kind of the notion
2 that if someone has the capability of committing such an
3 atrocious, horrible, brutal crime for whatever motives were
4 found by the jury, if you find a motive, that anybody who has
5 the ability to do such a crime would always probably be a
6 continuing threat to our society. And the law lets and allows
7 the jury to answer that question "yes" based solely upon the
8 evidence of the crime itself and nothing else.

9 And here's what that means: I fully anticipate that
10 the State will produce lots of evidence relating to the crime
11 itself at the first part of the trial. I certainly think we
12 ought to. We have to prove that to you beyond a reasonable
13 doubt. It may be that the State would offer no evidence at
14 the second part of the trial. We would simply say consider
15 the evidence of this crime and return the proper verdict, and
16 then we would argue what we think the proper verdict is based
17 upon the evidence of the crime.

18 Do you believe that there are some capital
19 murders -- some crimes that are so atrocious that you could
20 answer that question yes solely based on the facts of the
21 crime itself without any background information on the
22 defendant?

23 **A. Yes.**

24 Q. Okay. And, likewise, it may be -- the flip side is
25 that question is not another -- it's not simply asking you

1 personality of whether or not the person would commit criminal
2 acts of violence.

3 Were you in the military service?

4 **A. No.**

5 Q. I mean, they could be things relating to the
6 military. They could be things, like, being a deserter in the
7 military. Not an act of violence, I guess as long you don't,
8 you know, shoot some sentry or something on your way out of
9 the compound. And yet, at the same time, that's the kind of
10 indication of a person's personality that might help a jury
11 consider the probability of getting involved in acts of
12 violence. Just almost that whole pattern of personality sort
13 of thing.

14 Psychiatric evidence may be offered either to show
15 there is a probability of future danger or to show there is
16 not a probability of future danger. As you sit there now, how
17 important would psychiatric evidence be to you in a trial like
18 this?

19 **A. It would depend on the evidence. It would depend on
20 who was giving it.**

21 Q. When I ask that question is the law -- many people
22 say that's a question that people of common sense can answer
23 without expert help. It's almost the notion that we don't
24 think about it, but every day we make evaluations about
25 people's personality. When we go buy a car, we get feelings

1 about whether the guy is telling us the truth or not that's
2 selling us the car. We may find ourselves walking on the
3 street and we see somebody that -- or a situation that makes
4 us feel uneasy or nervous, and we think we want to move to the
5 other side of the street or do something a little differently.
6 And many people say that question can be answered just by
7 regular human beings with common senses.

8 Show me evidence, I can answer that question yes. If you
9 don't show me enough evidence, I can answer that question no.

10 And it's like the idea that you don't -- many of the
11 things we understand you don't need -- if you've got a fever,
12 you don't need a doctor to tell you you've got a fever. You
13 might need a doctor to explain to you why you have the fever,
14 but you can certainly recognize some of those things yourself.

15 Some people object to the concept of psychiatric
16 evidence because they say the State could go out and hire a
17 psychiatrist to come in and say a person is going to be
18 dangerous in the future. And the defense could go hire
19 some psychiatrist to come in and say, no, that same defendant
20 is not going to be a danger in the future, and the State could
21 hire three and the defense could hire three, and so on. And
22 the thinking is, that it ends up being just a battle of the
23 hired experts, and what's that really prove? It's almost like
24 they cancel each other out.

25 You said that you thought it might be important

1 depending upon the case. How might it be important to have
2 psychiatric evidence?

3 **A. Well, as long as they present why they say yes or**
4 **no. If they just stand up and say yes or no, then, no, it**
5 **doesn't prove anything. If they explain their reasons to the**
6 **jury and to the courtroom, then it would be very helpful to**
7 **even hear both sides.**

8 Q. And you would not be surprised if both sides have
9 experts saying 180-degrees opposite?

10 **A. Oh, you'd expect that.**

11 Q. Okay, okay. Now, that question talks about a
12 continuing threat to society. Of course, we don't define
13 continuing threat. It doesn't -- I mean, it doesn't have to
14 be every day or even 10 times a day or 3 times a week.
15 There's no definition of what continuing threat to society is.
16 A threat may exist even though it's not taking an active form.
17 Even though it seems like the situation is controlled, the
18 threat -- the threat may be there because of the personality
19 of the defendant.

20 Let me give you an example. Suppose you were to
21 hear that a person was behaving well in jail, not doing
22 violent things in jail and not doing violent things in the
23 penitentiary. In your mind would that mean that a person is
24 not dangerous because he's not doing violent acts in the pen?

25 **A. Well, I mean, there has to be other, you know,**

1 **circumstances, other evidence. You just can't say he is not**
2 **doing (sic) violent. Why isn't (sic) he doing violent? What**
3 **did he do to get there?**

4 Q. But I mean, the fact that a person behaves in
5 prison, does that mean to you that he's not violent?

6 **A. Not necessarily.**

7 Q. Could be a lot of reasons, including waiting for the
8 right chance, trying to influence somebody by the behavior.
9 What is it going to advantage him anyway at that particular
10 time? He's in -- lots of guards and bars, and things like
11 that.

12 Now, the term "society" is also undefined, and most
13 people, when they see that, they say that's really asking
14 ourselves whether this person is a threat to our society,
15 whether this person could be -- whether this person moved in
16 next door to us at our house? Would we be uneasy about him
17 being there? When we see this person walking down the street,
18 are we uneasy about his presence on the street? And, of
19 course, that's part of the question. That's a fair appraisal.

20 You can also consider prison society. You already
21 did that earlier when you were answering me. The concept that
22 even prison can be a society, and you can also consider his
23 danger to prison, also?

24 **A. Well, prison is part of our society.**

25 Q. Exactly. It may be a part that we try to separate

1 ourselves from, but you're absolutely right, it is a part of
2 our society. So you can test his personality and test his
3 propensity in all different aspects of our society to try and
4 understand his personality.

5 Now, assume you have -- and by the way, there are
6 some circumstances where a person could do a capital murder
7 and that person would have been very, very dangerous, but
8 something has happened to that person to change that person's
9 ability to be dangerous. In other words, a very dangerous
10 crime, awful situation, but, for example, what if he were
11 severely injured while he was being arrested by the police.
12 Maybe, for example, there was a shoot-out, and maybe he got
13 some type of spinal injury that paralyzed him from the
14 shoulders down. It may be that in that circumstance he's
15 unable to do anything violent to anybody. Does that make
16 sense to you?

17 **A Okay.**

18 Q. Unless he's real persuasive like Hitler or somebody
19 that could just talk people into doing some violent stuff,
20 he's probably never going to be in a position to do anything
21 violent himself. Are you with me?

22 **A. I'm with you.**

23 Q. Maybe he had a stroke. Maybe some massive heart
24 attack before the jury gets a chance to answer that question.
25 So, certainly physical things would be something that would

1 make it impossible for him to be violent, even if he wanted to
2 be. Even if his personality were such, with just physical
3 limitations he could not do that.

4 And there's some other circumstances that people
5 also talk about, and one of the things that I -- that often
6 comes up in these trials is a conversion to some type of
7 religious order or something, frequently Christianity, but not
8 necessarily. And the thinking is that if a person has been
9 converted to some Christian faith, the fact of that conversion
10 means that person would not be a continuing threat to society
11 and would not commit criminal acts of violence.

12 Can you give me some idea of how you react to that
13 concept?

14 **A. If a person can convert once, they can do it again.
15 Convert to something else later. I don't see where that would
16 come into any play in any decision.**

17 **Q.** Okay, all right. Well, there are probably many
18 views on all these questions I'm asking you as there are
19 jurors. Everyone sits on the jury kind of in their own
20 experience, their own history, what their family situation is,
21 where they work, those kinds of things.

22 First of all, would it be surprising to you --
23 would you just be shocked if you were sitting as a capital
24 murder juror and then you heard that the defendant, since the
25 time of his arrest -- I'm not talking about this case. I'm

1 just talking in general -- since the time of his arrest had
2 become religious and was starting to do jailhouse ministries
3 and stuff like that? Would that shock you that such a thing
4 would happen?

5 **A. No.**

6 **Q.** Well, and, of course, it may be true; it may not be.
7 It could be genuine. You'd agree that's possible; it could be
8 a genuine conversion, right?

9 **A. Uh-huh.**

10 **Q.** It could also be very opportunistic. It could be
11 the notion that my daily activity has to be designed with the
12 idea of influencing 12 people to not execute me. And so it
13 could be opportunistic. It could even be insincere, right?

14 **A. (Nods head.)**

15 **Q.** And you recognize that, also?

16 **A. Yes, I do.**

17 **Q.** But whichever way it is, you don't view that as
18 particularly important in answering that first question; is
19 that correct?

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

21 **Q.** Okay. Because I think your term was, the same thing
22 that made you convert could make you unconvert, and next week
23 you'd be thinking something else when the pressure is off. Is
24 that kind of the idea?

25 **A. Right.**

1 **(Discussion off the record.)**

2 **(Brief pause in proceedings.)**

3 **THE COURT:** Go ahead.

4 **MR. SCHULTZ:** Are you going to stand for a
5 while?

6 **THE COURT:** When you get comfortable, go ahead
7 and be seated.

8 **Q. BY MR. SCHULTZ:** If you answer this question no,
9 that's the end of the trial. When I tell you there's nothing
10 automatic in trials, that's mostly true. But a no answer to
11 that question by ten or more of your jurors automatically
12 results in a life sentence. And that probably makes sense,
13 because just like you've said earlier, the idea is that we're
14 trying to protect society by these death penalties. That's
15 kind of our core problem. So, if you find there's not any
16 probability the defendant could commit criminal acts
17 of violence that would constitute a continuing threat to
18 society, then the proper answer is no, and a life sentence
19 results.

20 One of the things I haven't talked about, this
21 question here must be answered beyond a reasonable doubt. The
22 same as the facts of the crime, which is interesting because
23 those are the two questions that have to be answered beyond a
24 reasonable doubt. But, again, merely convicting somebody of
25 capital murder is not the same thing as a yes answer to this.

1 The law contemplates a no answer to this could happen,
2 depending upon the evidence, even though it's a capital
3 murder. Does that make sense to you?

4 **A. Uh-huh.**

5 **THE COURT:** Sir, you have to answer in words.

6 **A. Yes.**

7 **THE COURT:** All right.

8 **Q. BY MR. SCHULTZ:** If you answer that question yes,
9 there's one more question that applies, and that's sometimes
10 the mitigation question. It's sometimes called the
11 last-chance question. It's the final-hope question. Perhaps
12 the humanitarian question. And let me know when you're
13 finished reading it. The notion of that question is, yes, a
14 person is a capital murderer; yes, that person is going to be
15 probably a danger to our society in the future by criminal
16 acts of violence. And yet, for some reason, not really
17 expressed in these first two inquiries -- and when I say some
18 reason mostly relating to the Defendant, if you read that,
19 there's something about his background, his character, his
20 offense itself or his moral culpability, whatever that exactly
21 means. It's not defined. There's something about the
22 Defendant that's so sufficiently mitigating -- the facts and
23 circumstances are so sufficiently mitigating --

24 **MR. GOELLER:** I don't mean to interrupt,
25 Mr. Schultz. I've got to object to this use of the word "so

1 sufficiently mitigating." I think it misleads. It speaks for
2 itself. There is a sufficient circumstance or circumstances.
3 Object to his question in that it's a misstatement of the law.

4 THE COURT: All right. Sustain the objection.

5 Q. BY MR. SCHULTZ: The background, character,
6 circumstances of the crime are sufficiently mitigating that a
7 life sentence is appropriate and should be imposed, okay. Do
8 you follow the concept?

9 A. Of that statement?

10 Q. Uh-huh.

11 A. Yes.

12 Q. Now, some people look at that question and they say,
13 what in the world could be sufficient mitigation for a
14 dangerous capital murderer not to get the death penalty? And
15 it's not that they're necessarily opposed to the idea. They
16 just think to themselves, well, what would it be? Because
17 every one of us has mitigating evidence around us. Mitigating
18 means something that lessens or perhaps puts in context some
19 of our behavior that's not -- that's not well-received.

20 And most of the time, in most of our societal
21 dealings, that doesn't do a whole lot of good for a person.
22 That doesn't do a lot of excusing for a person in terms of
23 consequences.

24 For example, tell me what business you're in.

25 A. Telecommunications.

1 Q. Okay. Let's assume there's an employee in your
2 operation who is consistently coming in late, and I don't know
3 how flexible your job hours are. Some places are bottom-line,
4 and as long as you get your work done, however that's measured
5 in terms of quantity, they don't care if you get there at 10
6 or get there at 8, but most jobs still have hours that you're
7 expected to adhere to.

8 What's your situation with your job? Are y'all
9 rigid hours or does it matter?

10 A. No, it doesn't matter. There's no hours.

11 Q. Then let's change it a little bit. I assume you
12 have production quotas in some form or fashion; is that right?

13 A. I work for a start-up. We're not in production yet.

14 Q. Let's assume an employee is not doing well. Boss
15 calls him in and says your work is really bad. What's going
16 on? Well, I'm having trouble at home. My child has been
17 sick, things like that. That probably mitigates to most
18 people the boss's concern about a reduced quality of work
19 that's being done. Would you agree that most people would be
20 understanding of that?

21 A. Uh-huh.

22 Q. Gosh, I've got marital troubles, got a sick child,
23 illness in your family, things -- it could just easily be you
24 or me as that person that's having those same kinds of
25 problems. So, probably most bosses would be tolerant to try

1 to find some way to accommodate that if he could, or find some
2 way to give you a leave of absence or things like that.

3 Ultimately, down the road those explanations can't
4 go on forever, and something has got to give in a company that
5 has to be productive. Do you agree with me there?

6 A. I agree.

7 Q. Now, instead of those situational things the person
8 is just not doing well. A boss calls the person in and says
9 you're not filling your orders. Your programs are wrong.
10 We're getting all kinds of failures on this or that because of
11 how you're doing your programming, whatever the work is
12 important. That person says, well, Boss, I'm really sorry,
13 but I don't know if you know this or not, but I come from a
14 broken home. When I was 10-years old, my mom and dad
15 divorced. Does that seem different to you from I've got
16 sickness in the family or I'm having marital troubles right
17 now?

18 A. Very different.

19 Q. Okay. And yet, even if the employee is being
20 honest, that is the kind of thing that, if you stop and think
21 about it, it's not great for kids. It's sad; don't you agree?

22 A. Yes.

23 Q. It probably does affect kids. I mean, everything we
24 do in life probably affects us and might affect each one of us
25 differently. There's probably something in your life that

1 happened to you that isn't any big deal and to somebody just
2 like you down the street it would have been a huge deal, and
3 vice-versa. We're all that way.

4 And yet, do you think the boss ought to have to make
5 an excuse or have any particularly tolerance if the
6 explanation is I grew up in a broken home?

7 A. Well, the background -- there should still be a
8 reason why he's not coming in on time. I mean, just an excuse
9 of a broken home isn't a reason. There's got to be a reason
10 somewhere else.

11 Q. We all have things in our background, like, maybe
12 some of us are luckier than others. But there are things that
13 happen to people, like poverty, like not having a dad around
14 when you're growing up, like seeing your mom or dad drink or
15 do drugs, like violence, like seeing drug dealing in your
16 neighborhood growing up. Television that shows a lot of
17 violence. You have psychiatrists that sometimes come in and
18 say, yeah, this kid -- nobody was home for him all day long so
19 he watched violent TV all the time. That's how he turned out
20 violent.

21 Everybody has background stuff that if called upon,
22 could be offered, as if not an explanation and not an excuse,
23 at least as some circumstance that might be mitigating to a
24 crime. Mitigating means something that tends to lessen. Do
25 you agree with that? Everybody has got stuff they could talk

1 about if they were charged with capital murder? Everybody has
2 sad stories they could tell?

3 **A. I wouldn't know.**

4 Q. I mean, I don't know. I don't know how Bundy tried
5 his case, but it's almost, like, he grew up rich; that's bad.
6 If he grew up poor; that's bad.

7 Do you remember that case, those two Menendez
8 brothers that killed their parents out in California, pretty
9 famous case a few years ago; do you remember that one?

10 **A. I really don't follow the cases.**

11 Q. Okay. The notion is, first of all, you may hear
12 mitigating evidence, but it may not be sufficient mitigating
13 evidence to block an otherwise valid death sentence.

14 Let me give you an example of what I'm talking
15 about. Who is the most awful human being you probably ever
16 heard of in all of history? Maybe Adolf Hitler, in terms of
17 being absolutely as cruel and immoral as anybody could be?

18 **A. Okay.**

19 Q. If he were being tried for his capital murders, and
20 the jury found him guilty beyond a reasonable doubt for a
21 capital murder, and the jury further found, yeah, we've
22 considered all his background and circumstances, and he's
23 going to probably be a danger to our society in the future.
24 He will be a continuing threat to society, and you get to that
25 mitigation question. I'm sure Hitler had a lot of evidence

1 that many people, perhaps you would even consider, quote,
2 mitigating, but perhaps not at a sufficient level as to not
3 (inaudible).

4 Apparently he was sickly as a child. People teased
5 him and made fun of him when he was growing up as a kid. He
6 was very uncoordinated in school and couldn't play soccer. He
7 ends up going to art school trying to find himself there, and
8 they kick him out of art school and say you don't have any
9 talent. He didn't have much money. His dad was just a poorly
10 compensated civil servant who, apparently, was given to drink
11 a lot and not be so nice to Hitler or Hitler's mom.

12 The story is that his mom contemplated having an
13 abortion when she was pregnant with Hitler and then chose not
14 to, for whatever reason, or wasn't able to have the abortion.
15 And, apparently, he found out about that. That probably hurt
16 a kid's feelings, the fact that your mom didn't want you
17 particularly. She was going to have an abortion. That might
18 have hurt his feelings.

19 And he got involved in his politics and went out
20 making speeches and trying to influence people. The next
21 thing you know, they arrested him and put him in jail for four
22 years and locked him up instead of getting him help.
23 Apparently he was about half nuts. Happy or unhappy about it,
24 nobody ever gave him any mental treatment. They had shrinks
25 over there. They had Dr. Freud. He was still over there

1 working. They didn't give him any help. And if things
2 weren't bad enough, somebody actually gave him syphilis. If
3 you had all this -- and many of that stuff -- many of those
4 things are past mitigating. They are sad circumstances that
5 we might have some compassion for or some understanding for.

6 And, yet, there's probably nobody on this earth that
7 would say, well, adding all that up, I would say it's a
8 sufficient mitigating circumstance when you're taking into
9 consideration all the evidence, including circumstances of his
10 offenses.

11 Does that make sense to you; that there's still a
12 measurement process? Even though in that question the
13 measurement is, is there sufficient mitigating evidence? Not
14 is there mitigating evidence, because I bet there will be
15 something that most everybody would say is mitigating.

16 **A. I agree with that.**

17 Q. But is that stuff sufficient to mitigate against a
18 death sentence? That's the measurement part of the question.

19 How you measure the evidence in looking for
20 sufficiency may be different from your neighbor sitting right
21 next to you in the jury box. It may be that it wouldn't take
22 very much for you. It may be that it would take a lot for you
23 to find sufficient mitigation for a dangerous capital
24 murderer. It may even be that some of the things that some
25 people would think are mitigating, you would not consider are

1 mitigating at all.

2 I didn't ask you this question earlier, Mr. Foster,
3 but I get a sense that you don't think that drug usage is
4 mitigating -- is a mitigating circumstance at all for anybody;
5 am I right about that?

6 **A. I agree.**

7 Q. And maybe even you don't think that being a drug
8 addict is a mitigating circumstance to -- in evaluating a
9 capital murder; am I right about that?

10 **A. If it was by their choice they became a drug addict,
11 then, no.**

12 Q. And there might be someone else that would say -- a
13 person of good conscience, just like you, and a reasonable
14 person, just like you, would say, well, being a drug addict is
15 a sad situation, and I do believe it's mitigating. But they
16 come to the same conclusion you do ultimately when they say
17 "so what?" So, it's mitigating you still have personal
18 responsibility for your actions, and that's not sufficient
19 mitigating evidence to, in a sense, stop your responsibility
20 for your own actions kind of notion, to stop the death
21 penalty.

22 There are other things that one person might think
23 is mitigating and another person wouldn't at all, and it may
24 be that it's only mildly mitigating. A key part of this
25 question is the circumstance -- is including the circumstances

1 of the offense, because it might be that -- it might be that
2 stealing apples from a cart, if that were a person's crime,
3 very little mitigating might be enough to give that defendant
4 some benefit in that kind of a case. Do you follow what I'm
5 saying?

6 A. Yes.

7 Q. I grew up poor, and I can't hold a job because my
8 daddy never held a job. So, I'm stealing apples because I'm
9 hungry kind of thing, that might be -- that stuff might be
10 mitigating in a minor kind of a crime.

11 As the crime itself becomes more enormous and more
12 outrageous, it's certainly reasonable for a jury to say,
13 sufficient means a bunch, a bunch of mitigating evidence. And
14 I don't know what -- I'm not sure what -- I'm not sure what
15 that would be, and I can't give you examples anyway because
16 I'm not on the jury. It might be looking into that person's
17 entire life, even though he's a dangerous capital murderer,
18 he's done tremendous good somewhere in his life and maybe
19 that's important enough to spare his life because it's nothing
20 precise.

21 I'm thinking of a war hero. I'm thinking of
22 somebody that was in Vietnam or Korea and saved a bunch of
23 lives. Maybe in the Navy. Maybe got the Navy Cross for
24 valor, saved a whole bunch of people -- you know, burning
25 ship, and all these things you see on these movies. The water

1 is on fire with the oil seeping out of the ship, and he's
2 going back under there and rescuing people with great peril to
3 himself. It might be the -- it might be these heroes that jump
4 in frozen water to try to rescue people. I don't know.

5 It might be that counts for something. That earlier
6 act of heroism might count for enough to make you think that's
7 sufficient not to turn him loose, or not to do a whole lot for
8 him. It's merely sufficient to spare the person's life.

9 Would that type of an example -- meaning what you
10 think -- does the concept of that mitigating evidence seem to
11 make sense to you that it's available to the jury?

12 A. Yes.

13 Q. And I honestly believe, and I say this with every
14 juror, I think that question is for the benefit of the trial
15 jury to allow the jury to do -- based upon the evidence
16 presented to them what's right and to avoid the, perhaps,
17 automatic consequences of that first special issue being yes.

18 Having said it's for the benefit of the jury, it
19 obviously benefits the defendant, also. But I think that
20 question is also a -- actually designed for the peace of mind
21 and sense of rightness for the jury.

22 Are you open to -- are you open, first of all, to
23 looking for mitigating evidence, where you find it -- if it's
24 presented, to find it and evaluate it, first of all, and say
25 is that mitigating or not?

1 A. Well, yes, all evidence should be put forth.

2 Q. And you're willing to look at the evidence with
3 question in your mind, first of all, is this mitigating
4 evidence at all, because some things may not be mitigating,
5 like drugs? Your personal view is that's never mitigating
6 anyway, but other things might be, like background or growing
7 up circumstances. You might view that as mitigating evidence?

8 A. Yes.

9 Q. And then are you also willing to measure and see if
10 the mitigating evidence that you find is sufficient to warrant
11 a life sentence rather than a death sentence?

12 A. Yes.

13 Q. All right. And you understand that that is an
14 independent inquiry that needs to be engaged in by the jury,
15 just like the guilt/innocence question in that first special
16 issues are independent inquiries?

17 A. Yes.

18 Q. The evidence may be exactly the same, because once
19 again, maybe the most potent -- or maybe the most useful
20 evidence that you could ever hear would be the evidence of the
21 crime itself. That's what you consider, first of all, in
22 deciding is there sufficient mitigating evidence, the
23 circumstance of the crime itself. But you also consider the
24 defendant's character, good or bad, but you also consider
25 background information.

1 Do you think that people can come from terrible
2 backgrounds and still turn out productive and decent and
3 caring?

4 A. Yes, I do.

5 Q. Do you think people can come from what we might call
6 wonderful backgrounds and turn out to be mean and callous and
7 have no regard for human life or property?

8 A. Yes.

9 Q. What's the difference then? How do we end up the
10 way we do; do you think?

11 A. Nobody knows. I have no idea. There's lots of
12 factors, I guess.

13 Q. You don't have this choice. I think I would know
14 your answer, but you don't have the choice. But, if given a
15 choice, would you rather be on this jury or off of it?

16 A. Given a choice? I don't know anybody who would want
17 to be on a jury.

18 Q. Is it more work, or is it just the nature of the
19 proceeding itself? Is it, like, a work situation, or you just
20 don't want to take the time, or you got projects going on, or
21 is it the nature of the case itself?

22 A. No, it's not the nature. I mean, it's just -- I
23 mean, I just can't think of anybody who wants to be on a jury.
24 Nobody wants there to be crime to want there to be trials.

25 Q. Do you view jury service as an important part of

1 your civic responsibility?

2 **A. Yes, I do.**

3 Q. The question was asked, the law in the State of
4 Texas says that a person can be convicted of capital murder
5 based solely on circumstantial evidence with no eyewitnesses
6 if he believed the evidence beyond a reasonable doubt. Do you
7 agree with this law? And you indicated you didn't understand
8 how can you be convicted without direct evidence.

9 There may be times when there is nothing but
10 circumstantial evidence that can connect a defendant to a
11 crime. Let me give you an example. If a person is blind, for
12 example, and is robbed, that person probably couldn't identify
13 the person. Maybe by voice. Perhaps your ears are more
14 sensitive if you're a blind person, but in terms of coming
15 into court and saying that's the person that robbed me.
16 Necessarily by the fact that the person couldn't eyewitness
17 anything would mean there wouldn't be any eyewitnesses. Do
18 you understand how that could happen?

19 **A. A blind person, like you said, could hear, could
20 smell. I mean, there's --**

21 Q. Let's say the person was robbed and there was a gun
22 stuck in the blind person's ribs, and then the gun is disposed
23 of there at the scene and fingerprints are found on the gun.
24 The blind person can't identify him, and maybe he couldn't
25 even say the person smelled distinctively, or I got to hear

1 the person talk. But fingerprints were found on the gun that
2 were connected to the defendant, and the gun was thrown in a
3 certain area. And the blind man, maybe he wrestled the gun
4 from the person. He possessed the gun that was used on him
5 when he was being robbed and they can get fingerprints off
6 that. That's circumstantial evidence. It's not direct
7 evidence. Fingerprints are circumstantial.

8 **A. I didn't know that.**

9 Q. And you could understand how that could be important
10 in identifying the person that did the robbery?

11 **A. Yes.**

12 Q. Sexual assault cases, often they're done in the dark
13 or they're done with masks on or hoods or something like that,
14 and it's very possible that the person who was sexually
15 assaulted would never be able to identify the person, but
16 there still might be DNA evidence, for example. If it was a
17 sexual assault, there could be DNA in the semen, or there
18 might be a bite mark or something like that, that could later
19 scientifically be linked to that person, and it wouldn't be
20 direct evidence because nobody comes in and says that's the
21 man that did it. Instead, it's I'm a dentist, and I've
22 examined the bite mark evidence, and the bite on her body came
23 from this mouth here. It's very particular because the
24 bicuspid (inaudible) at 20 degrees or something like that.

25 **A. Semen analysis is not direct evidence?**

1 Q. Huh-uh. It's circumstantial evidence. It's not
2 direct in the -- direct evidence is eyewitness evidence or --
3 well, essentially, eyewitness evidence.

4 **A. I didn't know that.**

5 Q. And all I'm saying is that circumstantial evidence,
6 like any other evidence, may be very, very strong or very,
7 very suspect. And it's a matter of the jury's evaluation of
8 that circumstantial evidence to see just exactly how strong it
9 is. But sometimes it's so strong that a jury can convict
10 beyond a reasonable doubt, and the law would allow the jury to
11 do that.

12 You're in support of the Fifth Amendment privilege
13 not to testify, and you would follow that instruction and not
14 to consider that as evidence, right?

15 **A. That's right.**

16 Q. Your dad was a physicist?

17 **A. That's correct.**

18 Q. Did you find yourself interested in physics as you
19 were growing up?

20 **A. He was a health physicists, which is more of a
21 chemistry background; radio activity, effects of that.**

22 Q. What kinds of stuff would he -- what would his
23 practical application be?

24 **A. He worked for the Department of Energy. He worked
25 for DuPont before that, but in Department of Energy he was in**

1 **charge of accidents, nuclear accidents, weapons safety,
2 radio-active material.**

3 Q. Do you have any questions of me?

4 **A. You seemed to have studied Hitler a lot. I know
5 that. Is that just World War II buff?**

6 Q. Some, some. Actually, I like it because it
7 illustrates -- I'm one of these people that stays up all night
8 watching TV, and so I watch the History Channel. And about
9 every third show on the History Channel is about Hitler.
10 You're not the first person that's told me I talked a lot
11 about Hitler in this trial. Some of them are in this room
12 right now.

13 **A. I mean, I followed exactly what you said because my
14 wife watches the History Channel a lot, and she's a big World
15 War II buff. I was just kind of curious.**

16 Q. Anything else?

17 **A. No.**

18 MR. SCHULTZ: I sure appreciate your courtesy.
19 Thank you, sir.

20 THE COURT: All right, sir.

21 CROSS-QUESTIONS

22 BY MR. GOELLER:

23 Q. Good morning, Mr. Foster.

24 **A. Good morning.**

25 Q. How are you holding up there?

1 **A. On the little bitty stool here. I'm trying to.**
 2 THE COURT: Something occurred to me. It might
 3 be a good idea to sit in that first chair in the jury box, and
 4 let's see how that suits you, because if you are chosen to sit
 5 on this jury, you're going to be sitting in one of those
 6 chairs. And if that's extremely uncomfortable for you, it
 7 might be something we need to know. So, let me ask you to
 8 step down and sit in that first chair, and Mr. Goeller will
 9 ask you questions from that chair. And if you -- I think
 10 those swivel -- well, I know they swivel, but I think they
 11 also tend to rock a little bit. That might make it more
 12 comfortable for you. Anyway --
 13 VENIREPERSON: It's just that one is so low, my
 14 knees are up higher than my waist.
 15 THE COURT: That might be the case with those,
 16 but I'm not sure.
 17 VENIREPERSON: These are much better.
 18 THE COURT: Is that okay for you, Mr. Goeller?
 19 MR. GOELLER: That's perfect.
 20 THE COURT: All right.
 21 Q. BY MR. GOELLER: Mr. Foster, you're -- is it just
 22 the way the chair is so low, or how are your knees generally,
 23 pretty good? It's just that stool is --
 24 **A. Yeah, exactly.**
 25 Q. Okay. I appreciate you coming back today. I know

1 it's been about two weeks since I think we met in the building
 2 next door in the general panel.
 3 What kind of things have you thought about regarding
 4 this case or prospects of being a juror in the last couple of
 5 weeks, if anything?
 6 **A. Well, I don't know anything about the case, first**
 7 **off.**
 8 Q. Right, right.
 9 **A. So, everything was supposedly presented**
 10 **hypothetically at the last meeting, so there was really not a**
 11 **whole lot to think about.**
 12 Q. Have you thought about the capital punishment in
 13 general the last couple of weeks?
 14 **A. No, nothing more than what I've thought for the rest**
 15 **of my life.**
 16 Q. Okay. We roughly anticipate that the actual trial
 17 in this case would probably get underway in two or three weeks
 18 maybe, something like that. Mid-September I think we're
 19 shooting for, and we think, again roughly speaking because
 20 there's no way to accurately predict it, but we would
 21 certainly anticipate at least two to three weeks, at the
 22 outside maybe four to five weeks -- I think three to four
 23 weeks all total, the length of the trial. How does that fit
 24 into your schedule, your work, your family, if you had to be a
 25 juror, say, up to four weeks?

1 **A. It would be an inconvenience, but it could be**
 2 **managed.**
 3 Q. Okay. You mentioned that you're working for a
 4 telecom start-up?
 5 **A. That's correct.**
 6 Q. Tell me about that. I think you were with Alcatel
 7 for quite a while?
 8 **A. That's right.**
 9 Q. It was DSC, then Alcatel?
 10 **A. Uh-huh.**
 11 Q. Tell me about your move from Alcatel to start-up,
 12 just a different career change?
 13 **A. Same career. Just -- I worked for a small start-up**
 14 **about ten years ago. DSC acquired us then. And it's just,**
 15 **working for a small company and working for a very large**
 16 **company, it's night and day as far as the environment, the**
 17 **responsibilities, how you're treated, and it just -- the time**
 18 **was right to go back to a small company. That's just where I**
 19 **was happy.**
 20 Q. A lot more, I guess, individual freedom and probably
 21 there's --
 22 **A. Well, you're not treated as a number on a spread**
 23 **sheet somewhere. When they decide to have lay-offs, it's not**
 24 **just go down and call them and pick people. You're actually**
 25 **somebody making a contribution.**

1 Q. I guess kind of more in charge of your own destiny,
 2 too, make or break it?
 3 **A. Well, with what you're doing is making or breaking**
 4 **the company as well.**
 5 Q. Right. What kind of things do you do in your work?
 6 You're a double E, right?
 7 **A. That's correct.**
 8 Q. You got a master's in electrical engineering?
 9 **A. That's correct.**
 10 Q. Tell me what you do.
 11 **A. What I do is design fiber optic interfaces for our**
 12 **products. It's designing circuits. It's designing -- I'm**
 13 **doing a lot of -- right now designing a lot of tests for, not**
 14 **only in the circuits that I design, but for the product in**
 15 **whole. Automated testing using a computer to analyze the**
 16 **circuits.**
 17 Q. What's the -- I guess, how does that all fit in in
 18 laymen's terms? What kind of product are you talking about?
 19 **A. I'm sorry.**
 20 Q. How does it have an every-day application, I
 21 suppose?
 22 **A. Okay. Our product is a fiber optic amplifier. Most**
 23 **telecommunications these days are on fiber optic strip. The**
 24 **copper, it's going away.**
 25 Q. Okay.

- 1 A. The product we're doing is an amplifier, which you
2 would put in line with a long-haul telecommunications span
3 between cities, for example. So, it would go in -- because as
4 soon as the light goes down the fiber after so far, it gets
5 too dim, and you'd amplify it again to bring it back up and
6 keep on going. So, it's like a repeater, but it's all done in
7 optics. It's never converted to electrical units. It all
8 stays optically.
- 9 Q. Is it the resistance that causes the light to dim?
- 10 A. It's just a dispersion. It's just the nonperfection
11 in the glass and the fiber.
- 12 Q. That's interesting.
- 13 In your questionnaire you talked about -- you
14 didn't talk about anything. You had five options to circle.
15 You mentioned genetics, circumstances of birth, upbringing,
16 environment should be considered when determining the proper
17 punishment in someone convicted of a crime, and you circle
18 agree. Tell me what your thoughts were prior to circling
19 that.
- 20 A. Well, the upbringing is definitely important. I
21 mean, you can always find -- circumstances is what it's all
22 about. If somebody comes into our society from another
23 society which has different values, I mean, surely that should
24 come into play when deciding a punishment phase for the crime.
- 25 Q. A common theme with many jurors in this trial has

- 1 been -- and I don't know if -- can you see that special issue
2 from where you're sitting? I know it's a little awkward.
- 3 A. No, I can see it.
- 4 Q. I think you understand. Some jurors, I don't think
5 it made the connect early on, but prior to getting to those
6 special issues -- the first one was that future probability
7 and then that mitigation question. In order to get to those
8 questions, what will the jury have already had to have found
9 necessarily?
- 10 A. We'd have to have found him guilty of capital
11 murder.
- 12 Q. You're way ahead of the curve then.
- 13 Some folks, when we talk about things, like
14 Mr. Schultz has talked to you about some mitigation concepts,
15 some people have different opinions on it; drugs, parenting,
16 the parents, maybe the socioeconomic backgrounds, all those
17 kinds of things. Some jurors have said, well, that's no
18 excuse. That's no excuse, and I think some folks maybe when
19 they think of that third special issue, they're thinking in
20 terms of excuse. Of course, when we get to that third special
21 issue, as you've stated correctly, they've already been found
22 guilty of capital murder, we know the two options, if someone
23 is found guilty of capital murder, is it life confinement or
24 death.
- 25 Some jurors have said, well -- in regards to all

- 1 those common or classic mitigation issues or areas, well,
2 that's no excuse. Do you think that question is asking the
3 jury, well, do you find an excuse or something else? How do
4 you read that if you put that in laymen's terms?
- 5 A. I don't know if it would be considered an excuse, as
6 much as he's already been found guilty.
- 7 Q. Right.
- 8 A. And this is the punishment phase in deciding what to
9 do.
- 10 Q. Well, you're way ahead of 99 percent. I don't have
11 to spend much time on that then.
- 12 Do you think -- well, let me ask you. What's your
13 philosophy -- I know you have two kids. You have an 8-year
14 old and 5-year old, I think?
- 15 A. That's correct.
- 16 Q. Boy, girl?
- 17 A. The boy's 8; the girl is 5.
- 18 Q. All right. What's your bottom-line parenting
19 philosophy, I suppose, maybe you and your wife collectively
20 about raising kids? What do you think is important in raising
21 kids?
- 22 A. Is to be a role model.
- 23 Q. Is that important, do you think?
- 24 A. Very.
- 25 Q. Why?

- 1 A. I mean, they're around you the most of anybody
2 else. They look up to you. They copy what you do. You have
3 to be a positive role model for them.
- 4 Q. Without getting too -- you understand in this death
5 penalty mitigation -- litigation we ask some pretty personal
6 questions, and I always kind of preface my voir dire, and I
7 usually start off that way kind of apologizing up front for
8 getting personal. You understand it's not my intent to pry
9 into your personal life, but the nature of this case, I've got
10 to -- with the limited time I have, I've got to learn
11 everything I can about you and your views. Do you have a
12 pretty solid marriage?
- 13 A. Yes, I do.
- 14 Q. Is your wife of the same opinion as you are
15 regarding role modeling and that kind of thing as being
16 parents?
- 17 A. Yes.
- 18 Q. Do you think having two parents in a home is very
19 important?
- 20 A. I think it is.
- 21 Q. Why?
- 22 A. I mean, even though we both agree on the same role
23 model as an important aspect, I mean, we're different people.
24 It allows them to see different sides of different issues; one
25 from the female side and one from the male side.

- 1 Q. And then hopefully as your kids grow up, and they
2 are growing up, and your parallel tracts with your wife on
3 your philosophies, although independent, they really merge and
4 your children kind of draw from both you how to be a good
5 person in this life, I guess.
- 6 A. **That's correct.**
- 7 Q. Is that fair to say?
- 8 A. **Yes.**
- 9 Q. You say that you're around your children the most,
10 and they may mimic -- I don't know if mimic is the good
11 word -- but the whole idea of being a good role model is you
12 know there's a certain amount of monkey see/monkey do; they're
13 going to learn from your actions, right?
- 14 Obviously you're a person that doesn't do drugs, and
15 drugs is probably an extremely foreign concept to you and your
16 life. You would never want your children, if you did do
17 drugs, to see you doing drugs, right, for the obvious?
- 18 A. **Are you talking illegal drugs?**
- 19 Q. Yeah, I'm sorry. I should have stated that. Right.
20 I don't mean penicillin or aspirin. I mean, cocaine,
21 marijuana, heroine, LSD, speed, all the bad stuff you hear
22 about. That's probably overstating the obvious, but I guess
23 the point I'm trying to make is, your philosophies on being a
24 parent would prevent you from ever doing something illegal in
25 front of your children, right?

- 1 A. **Well, doing anything illegal, period.**
- 2 Q. Right, period, not just limited to drugs but
3 violence. I mean, you wouldn't -- you'd try never to get into
4 a physical altercation or maybe even a heated, verbal
5 altercation with your spouse in front of the children. You'd
6 try to insulate and protect your children from witnessing
7 things that you wouldn't want them to see or know about?
- 8 A. **That's correct.**
- 9 Q. Do you think that's important -- does that get back
10 to being the role model, being the good dad, being somebody
11 that resolves their conflicts or problems in ways other than
12 you being physical or self-medicating with illegal drugs and
13 alcohol, that kind of thing? Do you think that's all part of
14 the big package of being a good parent?
- 15 A. **Yes.**
- 16 Q. When you look at that third special issue, what kind
17 of things come into mind? What do you think they're really
18 getting at when they talk about character and background of an
19 offense -- or I mean a defendant's character and background?
20 What kind of things pop into your head?
- 21 A. **At this phase of the trial deciding all this it
22 would be any -- well, his character -- the defendant's
23 character and background. Has he been a criminal in his past
24 in his life? It would be the circumstances of the offense. I
25 mean, I don't know. Depends on what the circumstances are.**

- 1 Q. Right.
- 2 A. **I can't see where any two crimes are the same.
3 They're all going to be different.**
- 4 Q. Right.
- 5 A. **The personal morale culpability of a defendant. I
6 mean, how is the person dealt with in society. How did people
7 see his outlook on society?**
- 8 Q. Okay. When we talk about that mitigation issue, and
9 that's commonly called the mitigation issue, I think you told
10 Mr. Schultz you're open to consider evidence that's brought to
11 you that's mitigating?
- 12 A. **Yes.**
- 13 Q. Can you think of things that might be mitigating in
14 your mind?
- 15 A. **For what?**
- 16 Q. Regarding that third special issue. Just mitigation
17 areas in general.
- 18 A. **Well, it would be for -- I mean for -- well, the
19 person's background, if there is character witnesses on the
20 stand talking about his -- the defendant's behavior prior in
21 the past years or things like that --**
- 22 Q. Okay.
- 23 A. **-- definitely would be important who the person is.**
- 24 Q. Okay. You had mentioned to Mr. Schultz that
25 drugs -- I don't know what your exact words were -- but did

- 1 you say drugs can never be mitigating in your mind; drug use
2 or drug addiction?
- 3 A. **It's a person -- where it's a person's choice. If
4 they're an adult, I'm referring to an adult. It is the
5 person's choice if they're doing drugs. I mean, I drink.
6 It's my choice. I drink responsibly. A person doing drugs
7 has that same obligation.**
- 8 Q. Right. When you say you drink, you drink alcohol?
- 9 A. **Yes.**
- 10 Q. Why do you drink? And that doesn't sound good, but
11 why do you choose to -- obviously you drink responsibly. Why
12 do you choose to drink alcohol?
- 13 A. **I enjoy drinking alcohol. I enjoy the flavor of it,
14 taste of it. It relaxes me, even at night.**
- 15 Q. And when you say it relaxes you, it has a certain
16 effect on your central nervous system?
- 17 A. **Well, of course.**
- 18 Q. Have you ever known any alcoholics?
- 19 A. **Yes.**
- 20 Q. I won't ask you who they are. Did you know them
21 well?
- 22 A. **Yes.**
- 23 Q. Did they know they were alcoholics; do you think?
- 24 A. **I couldn't answer that one. I have no idea if they
25 knew or not.**

1 Q. Why did you think they were alcoholics? If you can
2 think of the people that you knew the best that you thought
3 were alcoholics, why do you think -- why do you think, in
4 looking back on it, they were alcoholics, or it may be present
5 tense, too? You may still know they're alcoholics, but in
6 either event, how do you think they got that way?

7 **A. I don't know any presently. It's in the past, and
8 they're not anymore.**

9 Q. Okay.

10 **A. But it destroyed their life. The -- I mean, it was
11 pretty obvious. The person had opened up a liquor store,
12 lived in the back of it and was constantly drinking. It was
13 pretty obvious he was an alcoholic.**

14 Q. When you knew this person when they were in that
15 state, you say it ruined their life?

16 **A. Family got divorced, family moved away.**

17 Q. Okay. Most -- would most people have known this
18 person attributed that to -- really the substance abuse the
19 alcohol?

20 **A. Yes.**

21 Q. Was this person of average, maybe, intelligence or
22 above average?

23 **A. Average.**

24 Q. Do you think they knew their life was going down,
25 that it was spiraling down?

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

2 Q. Maybe -- was there an effort made to save the
3 marriage?

4 **A. I don't know. That was -- I was a teen-ager. It
5 was a family that lived on the street with us.**

6 Q. Okay. Do you think sometimes the alcoholic, they
7 know -- they know it's hurting them. It's ruining their life;
8 yet, for whatever reason, they don't hit rock bottom either
9 early enough or soon enough or recognize it. Do you recognize
10 the concept that some folks in that substance abuse cycle know
11 full well what it's doing to their lives, but for whatever
12 reason they don't get out of that cycle?

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

14 Q. Okay. You say the person or persons that you were
15 thinking about, have they changed?

16 **A. The last time I saw him, yes.**

17 Q. How have they changed?

18 **A. He's not -- he has a steady job. He's back with his
19 wife. I saw him in June when I went back, and he was -- he
20 appeared to be the same old person that I knew 20 years ago,
21 30 years ago.**

22 Q. Before the alcoholic addiction?

23 **A. Right.**

24 Q. I think that in your questionnaire when you were
25 asked the question, what is the best argument in opposition of

1 the death penalty? You wrote down, the defendant could be
2 reformed, correct?

3 **A. I don't remember what I wrote.**

4 Q. Does that sound familiar?

5 **A. Okay.**

6 Q. That's what you wrote. Just trust me.

7 **A. I'll take your word for it.**

8 Q. In favor of the death penalty, the defendant would
9 murder again when released. Against the death penalty, the
10 defendant could be reformed.

11 What were you thinking? What were your thoughts
12 when you wrote down the defendant could be reformed?

13 **A. Well, the questions are all so vague it seems like
14 on there.**

15 Q. They are.

16 **A. Every trial -- I'm just assuming. I've never been
17 associated. Every trial has got to be different.**

18 **Circumstances are different. People are different. Nature of
19 the crime is going to be different. I can't see where there
20 would be any two alike, and as far as the death penalty, it
21 would all have to be on circumstances. The -- I mean, there
22 would be circumstances where I could kill somebody, and I
23 would hope that the jury could -- I've got cotton mouth.**

24 THE COURT: Do you need a glass of water?

25 VENIREPERSON: That would be great.

1 **A. The circumstances would all have to be looked at to
2 determine whether it would be a death penalty or life
3 imprisonment where a person could be, you know, perhaps
4 reformed and do some good somewhere.**

5 Q. Okay.

6 **A. I know, if I was protecting my children and
7 circumstances were something to where I would have to, you
8 know, foresee to kill somebody, I could see where I could do
9 that. And I would hope that the jury would not just see,
10 well, he killed somebody; that's the death penalty. They
11 would take into account the circumstances of the scene.**

12 Q. That's exactly it. I don't think I've heard

13 anybody put it better than that yet. That's exactly right.

14 And not having been involved in any trials yourself, I think

15 you have a good insight that every case is different. There

16 should be the whys and how did this happen and the whys and

17 all that leading up to it are different in every single case.

18 And in a capital murder case, I guess you recognize that all

19 those things are important; the whys and the how comes. Not,

20 just like you say, you hope the jury would say -- would not

21 say guilty of capital murder. Let's kill him.

22 I guess that third special issue takes into

23 consideration all of those things really. If that were

24 phrased in laymen's terms, you know, what's it all about?

25 What's his life been all about? Maybe the relationship

1 between the deceased and the defendant, instead of just "if?"
 2 **A. Right.**
 3 Q. Did it and if; the whys, the how comes, all that.
 4 **A. Nothing is cut and dry. That's why it's very**
 5 **difficult for Mr. Schultz's questions. These hypothetical**
 6 **questions where you're not presented with everything. You're**
 7 **given a situation where it's like this person did that. Well,**
 8 **there's no whys or anything presented. It's very difficult to**
 9 **answer questions such as those.**
 10 Q. They are hard. We struggle in this business. A
 11 lot of jurors would say -- or have said, you know, they want
 12 to know what the facts of the case are. Give me the facts,
 13 and then I'll answer the question. Of course, the facts can
 14 only come from the witness stand, and we kind of run into that
 15 in jury selection, although the vast majority -- 99 percent of
 16 all cases, the jury selection, from the time you get to the
 17 courthouse to the time you start actually hearing the
 18 evidence, is usually about two, three hours, but these cases
 19 are much different.
 20 But when you talked about the person you knew to be
 21 an alcoholic in your answer in here, you are open to the idea,
 22 it would seem, that people can reform, people can change?
 23 **A. Yes.**
 24 Q. Okay. On that first special issue, and --
 25 **A. I believe some people can change.**

1 Q. -- when we get to that word "society," and in your
 2 questionnaire or in response to one of Mr. Schultz's
 3 questions -- I don't exactly recall what I heard. I made a
 4 little note about, would they kill again in prison, or hurt
 5 other inmates, I think was your comment. We do know that
 6 that's society, and although there is no legal definition of
 7 society, we do know that it at least includes prison society
 8 because we know to get to that question whether that -- if
 9 those questions are not answered, life confinement
 10 automatically, 40 years in the penitentiary minimum. Do you
 11 think that might be important -- and Mr. Schultz is right, I
 12 can't tell you, and the Judge wouldn't let me say that word
 13 "society" means the Institutional Division of the Texas
 14 Department of Corrections, and that's all it means. I can't
 15 say that. I can say it definitely includes that, but I can't
 16 say it's strictly limited to that. Do you think that's
 17 important in answering that question, the threat to prison
 18 society and what kind of threat that might be? Would you want
 19 to hear more about prison society and controls, safeguards,
 20 things like that in the penitentiary, vis-a-vis confinement?
 21 **A. Would I want to hear more about that or --**
 22 Q. Maybe in answering that question. If you know that
 23 the question asks is there a probability would commit a
 24 criminal act of violence that would constitute a continuing
 25 threat to society, and we know society is at least inclusive

1 of prison society, would you be interested, or want to hear
 2 some about prison society, how penitentiaries are set up,
 3 classification of inmates, that kind of thing?
 4 **A. That would be -- yes.**
 5 Q. Okay.
 6 **A. I mean, I would. I don't know anything about the**
 7 **prisons. I don't know anybody who's been in prison. If -- I**
 8 **would hope there's people in there trying to rehabilitate**
 9 **themselves. Putting somebody in there that would be dangerous**
 10 **to that environment, it would definitely be threatening it.**
 11 Q. We have had some jurors that have expressed an
 12 unwillingness to consider a life sentence when they found out
 13 that there's no such thing in Texas as life without parole.
 14 As Mr. Schultz correctly explained, we know right now it's 40
 15 years -- 40 calendar. So, if somebody were about 30, they
 16 would be about 70 before they could ever hope to get out.
 17 And interesting enough, we don't know if somebody
 18 could live 40 years in the penitentiary. The law has only
 19 been on the books about eight years, I think. We don't know
 20 what somebody would be like after 40 years in the joint.
 21 Did you see the Shawshank Redemption? That movie
 22 with -- I can't remember his name now.
 23 **THE COURT: Morgan Freeman, right? Was it**
 24 **Morgan Freeman?**
 25 **MR. GOELLER: Morgan Freeman and --**

1 **MS. FALCO: Tim Robbins.**
 2 **THE COURT: Right, yes.**
 3 Q. **BY MR. GOELLER: Did you see that movie?**
 4 **A. I'm not sure. It sounds familiar.**
 5 Q. It's a guy that went to the penitentiary, and it was
 6 really more of a penitentiary escape movie. He was running a
 7 double set of books for the warden.
 8 **A. I guess I missed that one.**
 9 Q. Okay. Pretty good movie.
 10 There's a character in there that had been in the
 11 penitentiary so long -- Morgan Freeman talked about he was
 12 institutionalized. He had been in there so long, and he
 13 actually didn't want to leave, but they ended up kicking him
 14 out and he hung himself. But, a lot of people think of that
 15 movie when they think about really long lengths of prison
 16 time.
 17 But the fact that there's no technically -- and some
 18 people would argue, based on your age, a 40-year life sentence
 19 may be life without parole. Do you know what I'm saying? The
 20 youngest a kid can go to penitentiary in our state is really,
 21 generally speaking, 17. Maybe a 15, 16-year old could go to
 22 the penitentiary. But, you know, if a 17-year old went to the
 23 penitentiary for the longest life sentence, I suppose that's
 24 what, 57 when he gets out, I guess?
 25 People that are probably 40 -- between 30 and 40, a

1 40-year sentence, they'll probably die in the joint. We just
2 don't know if somebody can live 40 years in there. But that
3 doesn't cause you any big concern that we don't have a, quote,
4 unquote, life without parole?

5 **A. (Shakes head.) No.**

6 **Q.** In your questionnaire you wrote down, "Capital
7 murder should be taken with the utmost scrutiny." What did
8 you mean by that?

9 **A. With the whole trial.**

10 **Q.** Okay. I didn't know if you meant more on the first
11 phase of the trial, beyond a reasonable doubt, the State's
12 burden of proof, or did you mean the whole thing?

13 **A. It should be the whole thing.**

14 **Q.** Okay.

15 **A. I wasn't clear on that. I can't think of a bigger
16 crime in our society.**

17 **Q.** Or bigger punishment?

18 **A. Or bigger punishment.**

19 **Q.** That first special issue that's up there, do you
20 know who has the burden of proof on that?

21 **A. That was a question on there, if I remember right.
22 The burden of proof --**

23 **Q.** Well, the burden of proof in the first part of the
24 trial, whether somebody is guilty or not guilty, who has that
25 burden?

1 **A. That's the prosecutor.**

2 **Q.** And do you know what that burden is? What's the
3 quantum of evidence, I guess, they need to produce?

4 **A. The quantum of evidence?**

5 **Q.** Yes.

6 **A. What evidence they have to produce?**

7 **Q.** Yeah. I mean, when measuring it, like putting a
8 measuring stick on their evidence, do you know where it's got
9 to be? Beyond a reasonable doubt.

10 **A. Beyond a reasonable doubt.**

11 **Q.** Okay.

12 **A. Okay.**

13 **Q.** That second -- or that first special issue in the
14 punishment phase, the State also has the burden of proof on
15 that. And again, their burden of proof on that is beyond a
16 reasonable doubt. To answer that question yes, they would
17 have to prove it unanimously to all 12 jurors. All 12 jurors
18 would have to find beyond a reasonable doubt.

19 That other set -- that last special issue, the
20 mitigation one, you know what it was. I don't want to have to
21 go up there and change it. Oddly enough there's no burden of
22 proof on that question, and no one has a burden. And I think
23 the Legislature set it up, and I think I agree with
24 Mr. Schultz on that, it's -- it's whatever -- it's what the
25 jury wants to do and thinks is right in that case. And

1 that's -- I guess that's the only way we can really explain
2 it, because unlike other phases of the trial, the burden is on
3 the State, and they've got to bring you that sufficient
4 quantity of evidence beyond a reasonable doubt. That's a lot.
5 It's not maybe beyond all doubt, which maybe people would say
6 is 100 percent, but it's got to be darn close. It's got to be
7 beyond a reasonable doubt, because if you had a doubt based on
8 reason, you know, obviously you'd be saying not guilty or "no"
9 to that first special issue.

10 But that last one with no burden of proof, and
11 nobody having a burden and those kinds of loose terms;
12 sufficient, mitigation, look at everything, it's really what
13 the jury thinks is right in that case.

14 Just off your questionnaire, person using attorney,
15 spouse. Reason: Attorney used divorce from ex.

16 I suppose no one -- and the reason I have to ask
17 this question, nobody in the courtroom was involved with that
18 litigation, or that divorce suit, correct?

19 **A. It was all prior to really us getting together.**

20 **Q.** Okay.

21 **A. So she --**

22 **Q.** Could I pry a little and ask, do you know what
23 county your wife was divorced in?

24 **A. It was here.**

25 **Q.** In Collin County?

1 **A. Yes.**

2 **Q.** Could I pry a little bit further and ask, do you
3 know approximately what year?

4 **A. It was -- it was -- I believe it was finalized in
5 '90.**

6 **Q.** 1990?

7 **A. Right.**

8 **Q.** Okay.

9 **A. Yeah, she had -- yeah. She had to go to court for
10 something with it, and he never showed up, and I don't know --
11 there was a house involved and...**

12 **Q.** Was it hotly contested or bitter or anything?

13 **A. She -- well, she was I guess -- I guess you could
14 say she's bitter about it. She was only married three months
15 before she found him in bed with somebody else.**

16 **Q.** Oh, boy.

17 **A. So, she was bitter.**

18 **Q.** Did she ever mention who her lawyers were or his
19 lawyers?

20 **A. I'm sure she did. I don't remember.**

21 **Q.** I guess the reason I ask that question, I don't
22 think in 1990 I wasn't doing a lot of divorces, if I was doing
23 any. I don't think anybody at the State's table was doing
24 divorce work in '90. But, that wouldn't make a difference,
25 would it? Some people it might, and that's why I asked you a

1 few questions about it.
 2 Where did you go to undergrad school?
 3 **A. University of New Mexico.**
 4 Q. Where did you do your graduate work?
 5 **A. Same place.**
 6 Q. Are you originally from New Mexico?
 7 **A. I call it home. I'm not really originally from**
 8 **there. We moved there when I was about nine years old.**
 9 Q. What part of New Mexico?
 10 **A. Albuquerque.**
 11 Q. You attend regularly at Christ Servant Lutheran in
 12 Allen?
 13 **A. That's correct.**
 14 Q. You wrote down regarding if there is a church
 15 position on the death penalty, not sure. I would assume they
 16 oppose it.
 17 **A. I can't say it's ever been directly brought up.**
 18 Q. Has that ever been the topic of a teaching or a talk
 19 or a sermon, anything like that?
 20 **A. Not that I can recall.**
 21 Q. If you were to -- if you were to give a 30-minute --
 22 MR. GOELLER: Sorry, Judge.
 23 Q. BY MR. GOELLER: -- a one-minute speech on the
 24 Lutheran Church, kind of maybe the bottom-line philosophy, or
 25 the core of that church, and if I gave you a minute and said

1 go, could you try and do that for me?
 2 **A. Oh, boy.**
 3 Q. I know. That's why I want to limit it to a minute.
 4 **A. Of what the Lutheran Church is about?**
 5 Q. Yeah.
 6 **A. Why Lutheran instead of some other denomination you**
 7 **mean?**
 8 Q. Yeah, that. Just shoot from your hip. Anything
 9 you'd say.
 10 **A. Well, the Lutheran Church was started by Martin**
 11 **Luther, and from his thesis nailed on the door back in -- and**
 12 **I'm terrible with dates, whatever the date was. But it's**
 13 **basically -- was up against what the church was doing at the**
 14 **time. His feeling was the church was not following the**
 15 **Christian principles. It wasn't following what Christ wanted,**
 16 **and what they were doing was wrong. It was getting too**
 17 **institutionalized. It was getting too -- it was just becoming**
 18 **this entity afar from what Christ wanted. And so it started**
 19 **the whole reformation movement and -- basically with Martin**
 20 **Luther starting a new sect, or new church saying, no, let's**
 21 **move back to fundamentals, back to what Christ wanted, back to**
 22 **what their religion is supposed to be about.**
 23 Q. Excellent. I think it was 1300's, 1400's?
 24 THE COURT: I think it was about 1530,
 25 somewhere around there.

1 VENIREPERSON: I'll ask my wife. She's the
 2 history buff.
 3 Q. BY MR. GOELLER: Have you always been a Lutheran?
 4 **A. My family, we grew up Lutheran, yes.**
 5 Q. Have you stayed pretty involved in the church
 6 throughout life?
 7 **A. Not throughout life. Since we moved here, we've**
 8 **been attending that church. I was more heavily involved -- I**
 9 **was actually on church council for a while.**
 10 Q. At your church in Allen?
 11 **A. Right. But I quit that. I've stopped a lot of**
 12 **stuff with that church. A difference in opinion has come up**
 13 **where -- with the pastor and -- well, a lot of the**
 14 **congregation and the pastor.**
 15 Q. Recently?
 16 **A. No, it's not recently. It's been going on for many**
 17 **years.**
 18 Q. Okay. With this particular church?
 19 **A. (Nods head.)**
 20 Q. What kind of conflict? Is it more a --
 21 **A. It's an administration conflict.**
 22 Q. Okay.
 23 **A. He feels like he should run the whole church instead**
 24 **of concentrating more on the spiritual issues. He feels it's**
 25 **his church, and he runs it the way he wants without getting**

1 **anybody else's opinion or anyone else's okay.**
 2 Q. A little bit of maybe running it too much like an
 3 institution?
 4 **A. There you go.**
 5 Q. It seems that maybe that's very consistent with how
 6 you feel about working for an Alcatel versus a small start-up?
 7 **A. That's true. I never did think about that.**
 8 Q. I don't know why I did. I'm not trying to draw a
 9 direct analogy, but that's consistent with how I think you
 10 view things. If you have a preacher that's running a church
 11 maybe more like a business organization?
 12 **A. Well, if he did that, it actually wouldn't have been**
 13 **too bad. It's just on his own whim. I mean, people in**
 14 **congregations set up committees to decide certain aspects of**
 15 **whatever it is we're doing, and he'd step in and do whatever**
 16 **he wants and just completely ignore the results from the**
 17 **committee.**
 18 Q. A little bit like at Alcatel or Xerox or General
 19 Motors, you may be just a number?
 20 **A. Right, exactly.**
 21 Q. And with this guy, I ain't just a number. Maybe
 22 y'all don't like it, but it's my church and here's how it's
 23 going to be. If you don't like it, go find another Lutheran
 24 Church?
 25 **A. (Nods head.) I never thought of that.**

1 Q. I don't know. I just think that way.

2 You know, you figured out, I got to get in your head
3 in a short amount of time. And some folks resent the heck out
4 of that. They resent me asking questions, but I know you've
5 got the background and the education and the life experience
6 to understand what I've got to do.

7 **A. I don't envy your job.**

8 Q. I don't know many people that do. It is rewarding,
9 though. It's -- we get into these discussions all the time.
10 A very common juror -- not just juror. The perception is, you
11 know, criminal defense lawyers are bad. How can you defend
12 somebody accused of a crime? How can you defend somebody
13 accused of an awful crime? And Mr. Schultz, I know he's of
14 the same opinion, when we talk to people --

15 MR. SCHULTZ: Excuse me, could you clarify
16 that?

17 MR. GOELLER: Yeah, he's of the same opinion I
18 have on everything.

19 (Laughter.)

20 Q. BY MR. GOELLER: People say -- nobody asks the
21 emergency room doctor, you know, how could you operate and
22 take the bullet out of the guy that was the gang-banger and
23 running in a street gang, you know? Why don't you just let
24 him lay on the table and die? Nobody asks -- nobody would
25 think much of a doctor that did that, or the dentist that says

1 I'm not going to pull your impacted tooth, or your bad tooth
2 because you've been to the penitentiary once. But a lot of
3 people out there just want to blame everything on the criminal
4 defense lawyers, and it wears on you after a while. I tell
5 people -- I go to a cocktail party, and I'm not a lawyer
6 anymore. I'm Jake the Plumber. First of all, nobody wants to
7 take you on.

8 And the other thing is, you didn't put it in your
9 questionnaire, a lot of people say, these criminal defendants,
10 they have too many rights, too many rights. I always ask
11 people, can you name a right that an accused has in this
12 country that you think they ought not to have that you would
13 take away if you were president of the Supreme Court or
14 something like that? I call it the magic moment, because just
15 this blank look comes over people's faces, especially after
16 they've had a couple of drinks at a Christmas party, or
17 something like that.

18 Okay. KZPS 92.5. So, this last page I would have
19 wrote the same thing; raising my kids, working around my
20 house. That work is never done, right? You live up in Anna?

21 **A. Actually, I live outside of Westminster.**

22 Q. Westminster?

23 **A. Anna is my mailing address.**

24 Q. Kind of out in the country?

25 **A. Yes, sir.**

1 Q. You got some acreage or --

2 **A. Thirteen acres.**

3 Q. That's why you wrote down working around my home.
4 That work is never done.

5 You're the only juror, I think out of 200, that did
6 not list people. That one, list two men and women you respect
7 most that are publicly known. Now, if I see one more George
8 W. or Collin Powell or Dr. Laura. You wrote down, I can't
9 respect somebody without first knowing them personally. That
10 really stuck out, because you're the only one out of 200 that
11 didn't list -- there are 199 people, I think, that wrote down
12 George Bush, Collin Powell, this person, that person, and down
13 below, Bill Clinton they didn't respect and Hillary, and all
14 that. But that's so unique. I have to ask you about that. I
15 can't respect somebody without first knowing them personally.

16 **A. Well, it's what I came back with before. I mean,
17 there's circumstances. Just because I see somebody on
18 television, they're saying something or the news is saying
19 something about them, there's always two sides to every story
20 or every person. It's just -- I'm involved in them. I can't
21 just give them my respect.**

22 Q. Okay. Are you pro life or pro choice regarding
23 life?

24 **A. Abortions?**

25 Q. Pregnancy.

1 **A. Pro choice.**

2 Q. Tell me why.

3 **A. It's the woman's choice.**

4 **There again, there are so many circumstances that
5 can be from -- you know, that can be given for that.**

6 Q. Right.

7 **A. A rape case, for example.**

8 Q. Right.

9 **A. An abortion, I don't see a problem with that.**

10 Q. Okay. If we just don't include, you know, the rape
11 or incestuous relationships or something like that, but are
12 you of the opinion that there are some different types of
13 women who find themselves in so many different types of
14 situations that having an automatic Government fix is not
15 proper; in other words, I don't care if you're 14, I don't
16 care if you're 28, you know, whatever, you'll bring that child
17 to full term. I mean, you believe there's so many
18 different -- probably an infinite number of scenarios out
19 there that the Government ought not to be in the position, and
20 it ought not to dictate what the outcome ought to be?

21 **A. I agree with that.**

22 Q. And someone is -- one last little thing about how a
23 trial would work as far as logistics? And how are you holding
24 up in that kind of chair?

25 **A. These are fine. These are very comfortable.**

1 Q. I think if you were selected to be a juror in this
2 case, we would probably start somewhere between 8 and 9 in the
3 morning, usually an hour for lunch, probably work to about 5,
4 but there may be some later days. Some folks are concerned
5 about being indoors for -- or maybe that's better. But
6 nothing about that that would cause you a problem being
7 indoors like this?

8 A. I'm indoors. I mean, that's my job, too.

9 Q. Okay.

10 MR. GOELLER: Can I have just a second? Now
11 is the time that I find out if I missed something,
12 Mr. Foster. Give me just a second.

13 (Brief pause in proceedings.)

14 Q. BY MR. GOELLER: On one page of the questionnaire,
15 on the death penalty, how strongly -- on the page that has a
16 scale of 1 to 10; 1 being the least and 10 being the
17 strongest. You wrote down a 9. Tell me why.

18 A. I don't know. It just -- it's just how I feel. And
19 with the right circumstances, yes, I believe in the death
20 penalty.

21 Q. Okay. Are you absolutely sure of that? I mean, 100
22 percent absolutely sure?

23 A. I don't think anybody can be absolutely 100 percent
24 sure.

25 Q. Okay. Mr. Foster, do you have any questions of me

1 about anything?

2 A. No, sir.

3 Q. Okay.

4 A. No Hitler analogies?

5 Q. No, no Hitler analogies.

6 MR. GOELLER: I don't have any more questions
7 for Mr. Foster, Your Honor.

8 THE COURT: Mr. Schultz, do you have any more
9 questions?

10 MR. SCHULTZ: No, sir. He's acceptable to the
11 State.

12 THE COURT: If you want to step down for a
13 moment. I want to ask you not to say anything to any of the
14 other jurors about anything that's been asked of you or
15 anything that you've responded, and we'll have you back in
16 just a minute.

17 PROSPECTIVE JUROR: Thank you for allowing me
18 to sit over here.

19 THE COURT: Yes, sir. Thank you, Mr. Foster.
20 (Venireperson exits the courtroom.)

21 MR. GOELLER: May I address the Court, Your
22 Honor? We accept the juror.

23 THE COURT: All right. Would you ask
24 Mr. Foster to step back in for just a moment?

25 THE BAILIFF: Yes, Your Honor.

1 THE COURT: Mr. Cantu, is this your desire?

2 THE DEFENDANT: Yes, Your Honor.

3 (Venireperson enters the courtroom.)

4 THE COURT: All right. What says the defense?

5 MR. GOELLER: Your Honor, the Defendant accepts
6 Mr. Foster.

7 THE COURT: All right. Mr. Foster, it looks
8 like you're going to serve on this jury. I want to tell you
9 it may be a couple of weeks before we let you know what the
10 timing is with regard to when you come back. And also I want
11 to admonish you not to discuss anything that you might think
12 about the case with anybody, and also not to conduct any sort
13 of private investigations, or anything like that. In other
14 words, just try and keep yourself pure until you come back for
15 trial.

16 VENIREPERSON: All right.

17 THE COURT: Do you have any other questions of
18 me?

19 VENIREPERSON: No.

20 THE COURT: Thank you for your time,
21 Mr. Foster.

22 VENIREPERSON: Thank you.

23 (Venireperson exits the courtroom.)

24 THE COURT: All right. The next juror is a
25 fellow named Jung So. He's number 45.

1 I tell you what we could do. We could do lunch
2 right now. Does that sound good to everybody?

3 MR. SCHULTZ: That's fine, Your Honor.

4 THE COURT: Mr. So, I tell you what we're
5 going to do. We're going to take a recess for lunch.

6 VENIREPERSON: Okay.

7 THE COURT: And I tell you what we're going to
8 do. Y'all want to take an hour. Let's take an hour for
9 lunch, and if you would come back at 12:30. If you go to
10 lunch with the other juror who's back there, I want to ask you
11 guys not to talk about anything about the case, so we'll see
12 you at 12:30.

13 VENIREPERSON: Yes.

14 THE COURT: All right. Both sides are excused
15 at this time.

16 (Lunch recess taken.)

17 THE COURT: Mr. So, I just want to remind you
18 that two weeks ago I placed everybody under oath.

19 VENIREPERSON: Yes, sir.

20 THE COURT: All right. Ms. Falco.

21 MS. FALCO: Thank you, Your Honor.

22 DIRECT QUESTIONS

23 BY MS. FALCO:

24 Q. Good afternoon, Mr. So.

25 A. Hi.

1 Q. My name is Gail Falco, and I'm an Assistant District
2 Attorney here in Collin County. And probably coming in while
3 I'll be talking is Mr. Bill Schultz, who spoke with you two
4 weeks ago, and he's the first Assistant District Attorney.
5 He's my boss. Seated to my left is Jami Lowry. She's also
6 an Assistant District Attorney. Seated at the next table
7 closest to me is the Defendant, Ivan Cantu, and seated next to
8 him are his lawyers, Don High and Matt Goeller, and they're
9 both private practitioners in Collin County. I take it from
10 two weeks ago you do not know any of us; is that correct?

11 A. Yes.

12 Q. Mr. So, we do this part of voir dire where we do a
13 group voir dire and then we start individual voir dire in
14 cases where the State is seeking the death penalty, and we do
15 it for a couple of different reasons. One, you come in during
16 the group voir dire, and the law that is going to apply to
17 everybody is given to you at that point. You fill out the
18 questionnaires, and then you have some time to kind of stop
19 and think about the questions that you've answered and things
20 you've heard, and then when you come back for individual voir
21 dire, we can talk about that one on one, and you don't have to
22 worry about being politically correct, or anything like that.
23 It's just a time for you to be honest with us.

24 Both sides are just looking for 12 jurors who can be
25 fair and impartial, who could issue a death sentence if the

1 facts warranted it, or issue a life sentence if the facts
2 warrant it. So, just understanding that, and we're not here
3 to change your opinion. We're not here to quarrel with you in
4 any way, just ask you questions and have you honestly answer
5 them.

6 Back two weeks ago Tuesday when you came to jury
7 duty and you first realized that you were being called upon as
8 a potential juror for a capital murder case, what were your
9 thoughts?

10 A. **Actually to be honest, I didn't know I was going to**
11 **be called for a capital murder case. I just saw special**
12 **circumstances on the juror.**

13 Q. Right. And when you first realized it -- some point
14 in the day, I'm assuming you realized this was a capital
15 murder --

16 A. Right.

17 Q. -- what did you start thinking at that point?

18 A. **This is a pretty serious case is what I thought.**
19 **Pretty intensive, and probably pretty long case.**

20 Q. When you filled out the questionnaire, and I
21 understand that you filled it out prior to any law being told
22 to you. And when you filled out the questionnaire, it pretty
23 much asks, what's your name and what do you think about the
24 death penalty? And there's really not a whole lot of time for
25 reflection. But since you've had some time since filling out

1 this questionnaire to think about your position and how you
2 feel about the death penalty, I want to ask you if you still
3 feel the same. On your questionnaire you said you were in
4 favor of the death penalty and that you believe a death
5 penalty is appropriate in some capital murder cases and could
6 return a verdict resulting in death in a proper case. Is that
7 still your opinion?

8 A. Yes.

9 Q. Over the past two weeks, have you thought about your
10 potentialness as a juror in this case?

11 A. Yes, I have.

12 Q. And what thoughts have crossed your mind?

13 A. **That pretty much I was going to be open-minded and**
14 **look into the -- if I get chosen as a juror, to listen to both**
15 **sides.**

16 Q. And that's exactly what both sides are looking for,
17 or asking for, is that you be open-minded.

18 When Mr. Schultz was talking to you two weeks ago
19 when he explained specifically what would happen if the State
20 got a guilty verdict, and if the State proved the facts in
21 such a way that resulted in a death sentence, that the
22 Defendant would be taken down to Huntsville at some time in
23 the future, and then taken to the Death Chamber. He'd be
24 strapped to a gurney and injected with a lethal substance
25 until he was dead.

1 When he was describing that to you, obviously it was
2 not for dramatical flare or for gore, but to help you
3 understand the reality of what we're doing here. What were
4 your thoughts while he was describing that?

5 A. **That it's a pretty heavy burden. It kind of struck**
6 **home that that could possibly happen on this trial. It was**
7 **pretty -- because before that time I was pretty much just**
8 **reading the newspapers and looking at the media. We just hear**
9 **about the cases. You don't really become deeply involved**
10 **about it.**

11 Q. Exactly.

12 A. **And it seemed pretty severe there.**

13 Q. And you're exactly right. It's one thing to talk
14 about if something comes on TV in your living room, to talk to
15 your family, or if you're at lunch and the topic comes up to
16 talk about it all in the hypothetical, theoretical sense, it's
17 all over there and here's my opinion.

18 It's completely different when you're being asked,
19 can you participate in a process that could result in
20 someone's death, and you'd agree with me on that?

21 A. Yes.

22 Q. Have you done some self-evaluation with regard to
23 that whether or not you could be involved in that process?

24 A. **Yes. I think I could be involved in that process.**

25 Q. Now, Mr. So, I want to take you, I guess kind of

1 step by step, if you were called upon as a juror as far as the
2 trial goes. And we'll go along the way, and if at any point
3 you have questions, just ask me. If at any time I'm not
4 clear, just let me know, and I'll try to rephrase my question.

5 But let's assume you're selected as a juror in a
6 capital murder case. The first phase of the trial is what we
7 call the guilt/innocence phase. It's where the burden of
8 proof is on the State, and we have to prove the case to you
9 beyond a reasonable doubt that the defendant is guilty of
10 capital murder. Like Mr. Schultz told you, there's several
11 different ways murder can be capital murder, because capital
12 murder is kind of murder plus an aggravating factor. And for
13 our purposes, it was murder in the course of burglary; murder
14 in the course of robbery, or killing two or more people in the
15 common scheme or plan, or what we've been calling a double
16 homicide.

17 With regard to the murder in the course of a
18 burglary, do you remember when Mr. Schultz was explaining
19 that?

20 **A. Right. He was talking about it.**

21 **Q.** In your opinion is that the type of offense that
22 ought to be subject to the death penalty, where the death
23 penalty was at least an option in that kind of a case?

24 **A. Right. I think it depends on the situation.**

25 **Q.** And the same with murder in the course of a robbery,

1 if you kill someone in the course of robbing them, do you
2 think that's the type of crime where the death penalty should
3 be an option?

4 **A. Yes.**

5 **Q.** And again, the same with a double homicide, do you
6 think that's the kind of case where the death penalty ought to
7 at least be an option?

8 **A. Yes.**

9 **Q.** Now, let's assume that the State proved to you
10 beyond a reasonable doubt that a defendant was guilty of
11 capital murder. You would then move on to the punishment
12 phase. Once you get to the punishment phase, again like
13 Mr. Schultz explained, you don't just answer life or death.
14 You look at a series of questions, and based on the way you
15 answer the questions dictates whether or not it's a life
16 sentence or death sentence.

17 The first question that you get to is that question
18 that's up there on the board. Can you read that?

19 **A. Yes.**

20 **Q.** If you want to read over that and refresh your --

21 **A. Whether there is a probability that the defendant
22 would commit criminal acts of violence that would constitute a
23 continuing threat to society.**

24 **Q.** Now, the Legislature drafted this question, and by
25 drafting this question they must envision a situation where

1 you could find someone guilty of capital murder, but they may
2 or may not be a future danger. It's not an automatic thing;
3 therefore, that means there's got to be situations where, even
4 if you found someone guilty of capital murder, they're not a
5 future danger because of certain circumstances, or you've
6 convicted somebody of capital murder and they are. This is
7 what we call the future danger question. They are a future
8 danger.

9 And there may be some instances -- we don't know
10 what the Legislature envisioned. But there might be some
11 circumstances, kind of like Mr. Schultz was talking about last
12 Tuesday or two weeks ago Tuesday, about the parent whose child
13 is killed, and then those killers are on trial and because of
14 some technicality or loophole they get off, and they walk out
15 the courtroom laughing and that parent chases them down and
16 kills them. That might be one situation where the defendant
17 would not be a future danger. There's not a probability he'd
18 be a future danger.

19 Or you might have a situation where you have a
20 person who, let's say he robbed a bank, and was robbing a
21 place several stories up, and he breaks in and robs them and
22 he kills somebody, and in the course of escaping, maybe he
23 jumps out the window, and it's several stories up, and he
24 falls to the ground and he lives, but he's paralyzed from the
25 neck down. There's a probability he's not a future danger

1 because physically there's not a whole lot he can do.

2 So, the Legislature, by enacting this question, has
3 envisioned there are certain scenarios that that individual
4 may not be a danger to society, and it's not an automatic
5 thing. Do you understand that?

6 **A. Yes.**

7 **Q.** So basically what it's asking the jury to do is take
8 a second look at the crime you just found him guilty of. Now
9 look at it and answer this question and determine whether or
10 not he's going to be a future danger. And when you look at
11 this question, there's several words in here that are not
12 going to be defined for you in the Court's charge, but they're
13 definition is frequently debated, and the first word that you
14 get to is probability.

15 And some people that are more mathematically minded
16 might say, well, probability means it's a number or
17 percentage. And other people may say, well, probability to me
18 means more likely than not. What does that word probability
19 mean to you?

20 **A. That there's a good chance.**

21 **Q.** Okay. And you understand it's not asking if there's
22 a certainty. It's not saying that person will -- that the
23 defendant will commit a criminal act of violence, or there is
24 a certainty that he will. It's just asking whether or not
25 there's a probability. Do you understand the difference?

1 A. Yes.

2 Q. And in the same light, it's not saying is there a
3 possibility? I mean, you would agree with me that anything is
4 possible?

5 A. Right.

6 Q. It's not possibility. It's something more than
7 that; it's a probability. Do you understand that -- the
8 difference there?

9 A. Yes.

10 Q. And again with regard to this question before I move
11 on, the burden of proof is on the State on this particular
12 question, and we have to prove to you beyond a reasonable
13 doubt that there's a probability the defendant would commit
14 criminal acts of violence in the future.

15 So, moving along in the question, you'd get to
16 criminal acts of violence. It's another -- it's a phrase
17 that's not going to be defined for you. You're not going to
18 be told what's a criminal act of violence. You, as a jury,
19 collectively have to decide what you think is a criminal act
20 of violence.

21 I think all of us would agree violence to another
22 person, such as murder or aggravated sexual assault, things
23 like that, are criminal acts of violence. Would you agree
24 with me on that?

25 A. Yes.

1 Q. But it starts getting a little fuzzy when you extend
2 that act to property. Let's say I were to leave here this
3 afternoon. I saw what kind of car you were driving, and I
4 took a baseball bat and just started smashing up your car with
5 a baseball bat. Would you see that as a criminal act
6 of violence?

7 A. I think it is violence to the property, but not to
8 the person.

9 Q. Do you see a distinction in that phrase "criminal
10 act of violence" between people and property?

11 A. I think it talks about society, so I would think
12 that would have to apply to people.

13 Q. And you bring up a good point, and we'll get to
14 society.

15 Do you think that, though you might think it's a
16 criminal act of violence just to property, not to people, do
17 you think you can look at that kind of behavior and that would
18 give you some insight into that person's character? Though
19 maybe not a criminal act of violence, it might tell you
20 something about their character?

21 A. Right. I guess -- right. I guess if they're prone
22 to damage property, they may be inclined to hurt people --

23 Q. Would that help --

24 A. -- but not necessarily the other way around.

25 Q. And would that help you in answering that question,

1 to know something about their -- or to see something about
2 their character, or to understand a little bit about their
3 character?

4 A. Right, yes.

5 Q. And I guess your views would probably be the same
6 if we were to say somebody who tortures animals. Again, it's
7 not a person. It's not really property. It's an animal, and
8 let's say they tortured an animal, do you see that as a
9 criminal act of violence?

10 A. I'm not an animal lover so --

11 Q. So you see it more as property?

12 A. I see more as property than I do as people on
13 animals.

14 Q. The line gets fuzzier still if you start talking
15 about drugs. Whether you're talking about dealing drugs to
16 somebody or taking drugs personally, some people may think
17 when you ingest drugs, it's doing damage to your body, doing
18 damage to your system, and that's violence to your body. Some
19 people may think when you take the drugs, it can lead to
20 violent results, and, therefore, it's a criminal act of
21 violence. Some people may say, no, it's just between you and
22 your own body, and you're not harming anybody just by taking
23 them, so I don't see it that way. Where do you fall on that
24 continuum?

25 A. I guess I didn't understand the question there. I

1 understand what you're talking about the drugs there, but I
2 didn't understand what the question was.

3 Q. Where do you fall as seeing drugs as a criminal act
4 of violence? Do you think that they are, or do you not think
5 that they are, either taking drugs or dealing drugs?

6 A. I think certain drugs can lead to violent
7 tendencies, but I don't see -- you know, drugs as being --
8 just because you're taking drugs or medication that you would
9 become violent.

10 Q. In the last word that we get to, that's again
11 frequently debated but undefined to y'all, would be the word
12 "society," and that question does not limit itself to prison
13 society. It doesn't ask can the defendant be safely held in
14 prison? It doesn't limit itself to being a continuing threat
15 to people in prison or to the prison society. It can be
16 interpreted more broadly than that. It can be interpreted to
17 mean the society that you and I live in. It can be the person
18 driving the school bus. It can be the man selling ice cream
19 at Baskin Robbins. It can be all of society. Do you
20 understand how that can be interpreted to mean that?

21 A. Right.

22 Q. With regard to this question, what type of things
23 would you, as a juror, look at to determine whether or not
24 somebody was going to be a danger -- dangerous person in the
25 future?

1 A. I think it depends on their background, how they are
2 raised, and also, you know, what kind of crime they committed,
3 and depends on if they had reason, intent on doing that crime,
4 or if it was just heat of the moment thing where they just
5 occurred, so...

6 Q. Okay.

7 A. And also I would guess it depends on if they could
8 change, if there's any, you know, way of, I guess, retraining
9 them or re-educating them.

10 Q. And what would you look for? And you say somebody
11 could change, what kind of -- what do you mean by that?

12 A. Like if someone possibly was under the influence of
13 alcohol or drugs and it wasn't elicit drugs, but maybe it was
14 just prescription medication, and they just didn't take it
15 properly or something, and they had an adverse reaction to the
16 drugs so they had violent tendencies so they commit a crime,
17 but it wasn't really intentional. They didn't really mean to
18 do the crime. So, for the future there probably isn't a
19 threat to society. Or, if it's a case where this person has
20 always been committing crimes, stealing cars, hurting other
21 people, you know, doing drugs and robbing people, if they had
22 that tendency for a long time, and if it seems like they won't
23 change, then that's probably a continuing threat to society.

24 Q. You brought up drugs. Does it make a difference to
25 you if it's a prescription drug or, let's say, cocaine,

1 methamphetamine, crank, something like that? Does that make a
2 difference?

3 A. Yes, yes.

4 Q. If somebody had a history of doing illegal drugs,
5 like cocaine, methamphetamine, and said, well, the reason I
6 did this crime is because I had been doing drugs and I got to
7 the point where I was just doing them all the time, and it
8 changed my personality but I'm not doing the drugs anymore, so
9 I won't be dangerous in the future. Does that argument carry
10 much weight with you?

11 A. I think it depends on the track record, how long
12 they've been off the drugs, what kind of rehabilitation they
13 got, what kind of drug treatment they got, and if they maybe
14 took on religion, if they got more faithful in a religion.

15 Q. Let's talk about that a little bit. You mention
16 that -- when asking you what makes a person dangerous, and one
17 thing you mentioned was bad religion or beliefs.

18 A. Right.

19 Q. What do you mean by that?

20 A. Satanism, or devil worship.

21 Q. Okay.

22 A. Where they're known to just kill people just for
23 appeasing their Gods, and those type of things.

24 Q. Have you ever heard -- Mr. So, have you ever heard
25 the phrase there's no atheists in fox holes?

1 A. No.

2 Q. You know what a fox hole is? Kind of the front line
3 of war, kind of where the front lines hunker down shooting at
4 the enemy during wartime.

5 A. Okay.

6 Q. Can you imagine what that means, there's no atheists
7 in fox holes; meaning, when a person is faced with death that
8 closely, they decide to become right with God, or make peace
9 with God?

10 A. Okay. I didn't know that saying.

11 Q. Okay. Do you see how that might be applicable to
12 somebody who is facing a death sentence on a capital murder
13 trial?

14 A. Can you elaborate?

15 Q. Let's assume that somebody is on trial for their
16 life, and when they get arrested, they've always lived a life
17 where they have been an atheist, or at least agnostic, and
18 lived a bad lifestyle. And then they commit a murder, and
19 they get arrested and while they're sitting in the jail they
20 decide to make a conversion, and whether that's -- to Christ
21 or to God. And whether that's real or not is, I guess,
22 ultimately not for us to decide.

23 But let's suppose at that point they're faced --
24 they know that the jury is going to be looking at their life
25 and their history, and they could just be someone who's

1 opportunistic and just taking that opportunity to put a show
2 on for the jury, thinking maybe this is what they'll want to
3 hear, and this will be better for me in the long run. It may
4 not be real. It may be real, but it may not be real.

5 A. I could see that.

6 Q. Do you see how that could happen?

7 A. Yes.

8 Q. Would that make a difference, and could you see how
9 that could result in a capital murder trial? Someone might
10 use that defense, or use that tactic or approach?

11 A. Right.

12 Q. How much of a difference does that make to you, or
13 do you still look to their pattern of behavior prior to going
14 there?

15 A. I think I would look at the whole picture and see if
16 they're authentic with their conversion, if there was a
17 conversion of religion.

18 Q. What type of things would you be looking for to know
19 if it was real, or, okay, this guy is just a con man; he's
20 just playing me because I'm a juror?

21 A. Listen to the whole story and see what they put on
22 and what they say and what the story, and I guess depends on
23 you've got to look at how, what, why, when, where, look at all
24 the things and figure out if they're being really genuine, or
25 if they're just putting on a show.

1 Q. And do you think, regardless of whether or not it's
2 a show or real, do you think in the long run, kind of like the
3 soldier that's on the front line, maybe when things get back
4 to normal and the war is over, and they go back to their
5 regular life, they might lose some of that intensity or that
6 passion for God, and kind of go back to the way they used to
7 be? Can you kind of see how that can happen?

8 **A. I can see how that can happen. I think it can
9 happen to any of us, I think. If you're in an airplane, and
10 the airplane suddenly drops, you know, it's going to really
11 start going down really fast, and you think you're going to
12 crash, I can see people changing their religion pretty fast
13 saying, oh, my God, I can see that coming.**

14 Q. And once the plane lands safely and they've been on
15 their vacation for a couple of weeks, they kind of put that
16 out of their mind?

17 **A. I think it all depends on what you're really made
18 of. Some people do that, and some people won't.**

19 Q. Right, exactly right. Do you think ultimately then
20 since people can change, or if the conversion is not real can
21 go back to way they were before, do you think ultimately a
22 conversion or change in faith would prove whether or not
23 somebody was dangerous?

24 **A. Can you repeat that last part again?**

25 Q. Do you think -- recognizing that people's --

1 **A. Right.**

2 Q. If they made a change faced with one situation one
3 way that -- faced with different situations, or life getting
4 back to normal, they could go back to their old ways, or they
5 could fall away from God. Do you think ultimately in some
6 form or change in their relationship with God, whether real or
7 not, do you think that is really, ultimately indicative of
8 whether or not they're dangerous?

9 **A. Yes. I still think that religion is a key -- one of
10 the parts --**

11 Q. Okay.

12 **A. -- to making a person, you know, dangerous or not.**

13 Q. Okay. When looking at that question let's talk a
14 little bit about psychiatric or psychological-type testimony
15 in a capital murder case. You probably heard about it or read
16 about it. I'm not talking about a psychiatrist who would
17 testify to a brain disease or a brain tumor or some
18 malfunction of the brain. Let's say a psychiatrist was called
19 to testify -- to talk about the pattern of behavior and
20 whether or not they think that person would be a danger in the
21 future. How would that type of -- would that testimony be
22 important to you?

23 **A. I think that would be probably a medium of
24 importance, but I think specialists sometimes have their bias
25 views. I guess I would have to hear your testimony and see**

1 **what the person says, what kind of testing he did on the
2 person, what kind of questions and what kinds of things were
3 done to evaluate to figure out if that person was dangerous or
4 not.**

5 Q. Do you think if the defense called an expert
6 psychiatrist to get up there and say, well, I've looked at
7 this pattern of behavior, and in my opinion I think he's not
8 going to be dangerous, don't you think the State could turn
9 right around and get an expert to say, well, I've looked at
10 this pattern of behavior, and I do think he'll be dangerous?

11 **A. Well, I think one of them would have to be more
12 credible. If there was that case where one specialist
13 disagrees with the other specialist, I would have to kind of
14 weigh the testimony and see which one looks more credible.**

15 Q. See it, just ultimately in a battle of the experts?

16 **A. That's a possibility.**

17 Q. Do you think you as a juror could listen to all the
18 facts of the case, listen to all the evidence in the
19 punishment phase; good, bad, otherwise, and make a decision
20 for yourself whether or not you think there's a probability
21 that that defendant would commit criminal acts of violence?

22 **A. Yes.**

23 Q. Now, let's assume that all 12 jurors believe the
24 State proved that beyond a reasonable doubt the Defendant
25 would be a future danger. And if all 12 jurors say yes,

1 you're still in the process of assessing a death sentence. If
2 10 or more jurors say, no, we do not think he'll be a future
3 danger, then that's the end of your deliberations. It's an
4 automatic life sentence. Does that make sense?

5 **A. Yes.**

6 Q. So let's assume that all 12 jurors said, yes, that
7 there's a probability the Defendant would commit criminal acts
8 of violence in the future. Mr. Schultz actually talked about
9 three questions. The second question that he talked about was
10 the one about the law of parties, and there was the get-away
11 driver and then the person that went in and actually did the
12 shooting. That may or may not be applicable in our case, so
13 we're not going to spend much time on that.

14 We're just going to go straight to this question,
15 which if you answer this one yes, you'll have to answer this
16 question. If you want to take a moment to just read that to
17 yourself.

18 **A. (Complies.)**

19 Q. This question is what we call the mitigation
20 question. With regard to this question, there's no burden of
21 proof on the State or the Defense. This question is actually
22 designed for the jury to actually weigh the evidence, and you
23 can give the whatever evidence whatever weight you want to
24 give it. The balancing effect and the resulting effect is if
25 you find there are sufficient mitigating evidence to warrant a

1 life sentence, then the Defendant gets a life sentence as
2 opposed to the death sentence. But it's up to you to weigh
3 how heavily you want to weigh the circumstances of the
4 offense, what the Defendant actually did. You weigh in the
5 Defendant's character, good and bad. You weigh in the
6 Defendant's background, criminal history, and then any
7 mitigating evidence. And if the mitigating evidence is
8 sufficient to outweigh all the rest, then it's a life
9 sentence. Does that make sense to you?

10 **A. Yes.**

11 **Q.** With regard to mitigating evidence, probably all of
12 us if we're put in the position of having our life on trial,
13 could come up with some circumstance in our background that
14 was particularly sad or sympathetic. Something that we would
15 put on the stand to say, look what happened to me. I've got
16 this health issue, or I was abused or bad background, poor
17 childhood, something that might be mitigating. But, the key
18 to this question is not just is there any mitigating evidence,
19 he gets a life sentence. But is it sufficient to outweigh all
20 the rest of the stuff? Does that make sense to you?

21 **A. Right.**

22 **Q.** Kind of an example we've been using is Adolf Hitler,
23 probably one of the worst men in history as far as what he
24 did. But when you look at his life, there was his mother --
25 he was an unwanted pregnancy. His dad was not around. Mother

1 contemplated abortion; she had him, anyway. Bad childhood.
2 The things he tried to do in school, he failed at, just one
3 thing after another. Just unwanted, unloved, failure, lots of
4 mitigating circumstances. But when you look at that compared
5 to what he did, it doesn't outweigh it.

6 **So, that's the jury's -- I guess that's what the**
7 **jury is to do (sic) regarding this question. Again, if all 12**
8 **jurors decide, no, there is not sufficient mitigating**
9 **evidence, then the result is a death sentence. If 10 or more**
10 **jurors decide, yes, there is sufficient mitigating**
11 **circumstances to warrant a life sentence, then the Defendant**
12 **gets life. Does that make sense?**

13 **A. Yes.**

14 **Q.** Now, with regard to this question, and I just
15 remember Mr. Schultz talking to you two weeks ago, of that
16 phrase circumstances of the offense really nowhere does it
17 talk about the victim; the victim's character or the victim's
18 family. The focus appears to be on the Defendant; the
19 Defendant's character, the Defendant's background, the
20 Defendant's personal, moral culpability. Do you see that?

21 **A. Right. It says circumstances of the offense.**

22 **Q.** Right. And that's the only place you might
23 contemplate the victim.

24 **A. Right.**

25 **MR. GOELLER:** I'm sorry. If that's her

1 opinion, that's one thing. I object that's she -- the way
2 Ms. Falco posed that is giving a definitive statement, that is
3 the only place. That is certainly not in holding with
4 Franklin, Wilkerson, and those cases regarding -- and Cantu,
5 unrelated case, the scope of the mitigation issue. And I
6 guess I object to the way she phrased it. I understand she
7 can pose it as her opinion, but I object. It's a misstatement
8 of the law in Franklin v Lenau, Wilkerson versus State and
9 Cantu versus State.

10 **THE COURT:** Sustained.

11 **Q. BY MS. FALCO:** Mr. So, looking at the question,
12 it's focusing on the Defendant's character, Defendant's
13 background, Defendant's personal, moral culpability. When we
14 talk about circumstances of the offense, that's a place where
15 you can take into consideration the victim, if you do.

16 **A. Right.**

17 **Q.** And with regard to that, when Mr. Schultz was
18 talking about the difference between the nun that gets
19 murdered when she's kneeling down in church versus a drug
20 dealer that gets murdered. In your opinion does it make a
21 difference who the victim is?

22 **A. I think I would probably feel more sympathetic if**
23 **it was the nun.**

24 **Q.** Do you think it makes a person any less dangerous
25 depending on who he killed, or is a killer still a killer?

1 **A. I guess it would have to be, like it says, on the**
2 **circumstances of the offense. It would have to be under what**
3 **conditions the murder was committed. But, of course, if the**
4 **person did kill, you have to say in English terms that he is**
5 **the killer, right?**

6 **Q.** Right.

7 **A. That's the definition of a killer, so...**

8 **Q.** But in your eyes, does it make him any more
9 dangerous or less dangerous based on who he killed?

10 **A. It could make him more or less, depending who he**
11 **killed. I think it does depend on who he killed.**

12 **Q.** Let's extend that out a little bit. Let's suppose
13 that I decided I was going to go rob a liquor store and kill
14 anyone that got in my way because I just wanted money. I
15 didn't want to have to work for it, and that's the way I was
16 going to get it. So, I decide on my way home just to stop at
17 any 7-Eleven. I don't know the people that work there, but I
18 go in with my gun, and I ask for the money. Give me the
19 money, and I kill the clerk. Don't know who he is, don't know
20 anything about his family, don't know how it's going to impact
21 his family. But I do know that I've committed capital murder.

22 **Now, compare that to, let's suppose I'm still in**
23 **the same neighborhood I grew up in, and it's my friend's**
24 **family that owns the liquor store, and I know my friend works**
25 **there, and I know how much money my friend keeps behind the**

1 counter, and I know that's a good time to rob because she
2 probably keeps more money behind there than when anyone else
3 is working. But this is also a family that has fed me and
4 invited me over to spend the night and given me food and
5 shelter and clothing, but that's who I decide I'm going to
6 kill. And I go in there, and I rob them, and I take money,
7 and I kill my friend knowing what it's going to do to her
8 family. Does that make a difference to you?

9 A. Yes.

10 Q. Why?

11 A. **Because it seems like the victims trusted you and**
12 **gave you food and took care of you, and you killed them,**
13 **anyway. So it seems like you're more cold-hearted than if you**
14 **were -- went to a convenience store randomly and killed an**
15 **attendant that you didn't know.**

16 Q. Still along the lines -- while we're still on this
17 question, you have a new little -- is it a girl or boy?

18 A. Girl.

19 Q. And let's assume -- 18 years from now and she gets a
20 little older and suppose she gets in trouble with the law.

21 And you being a very caring parent and having 18 more years to
22 love her, if she got in trouble with the law, you'd still love
23 her and still support her, wouldn't you?

24 A. Yes.

25 Q. And assuming she had a trial, you'd probably testify

1 for her and let the jury know you love her and you support
2 her?

3 A. Yes.

4 Q. Now, could you necessarily see that in a trial for
5 capital murder where someone is on trial for their life that
6 they might have a parent that loves them and supports them and
7 testifies for them in trial?

8 A. Yes.

9 Q. And can you imagine that parent being very upset and
10 basically asking the jury not to execute their child because
11 they love them?

12 A. Yes.

13 Q. What type of impact would that have on you?

14 A. **I don't know, to be perfectly honest. I guess it**
15 **would be emotional, but I don't know how that would come out**
16 **because I never experienced that.**

17 Q. And we've already talked a little about the drugs,
18 if somebody gets to this question, and drugs is a common
19 example people use for what one juror may see as mitigating,
20 another juror sees as aggravating. Because one juror may say,
21 well, he would have never done that. That's not his
22 personality, but he got involved in drugs, started doing
23 drugs. The drugs changed his personality. He committed this
24 horrible crime, but that's not really him, so that's
25 mitigating. Another juror may say, no, as a society we're

1 told don't do drugs, and the reason we're told don't do drugs
2 is because it could lead to these horrific results. And so
3 it's definitely that in my mind because, not only are you
4 doing drugs when you're supposed to know better, but it's
5 leading to this awful result, and so that's aggravating. That
6 makes it worse to me. Do you see how someone could see it as
7 mitigating and someone see it as aggravating?

8 A. Yes.

9 Q. How does that play out with you if somebody says,
10 well, it was the drugs, and I've been doing these drugs, and
11 the reason I did the crime, but you know what, now I'm off the
12 drugs. So now that I'm off the drugs, you know, I won't do it
13 again. We're talking about illegal drugs.

14 A. Right, right.

15 Q. Cocaine, amphetamine.

16 A. Right.

17 **I guess you would also have to go back to the time**
18 **where that person got on drugs later in life how that person**
19 **was before he took drugs, also. And also, I guess if the drug**
20 **use was voluntary or involuntary.**

21 Q. Let's assume it was voluntary, and it was an ongoing
22 situation for years.

23 A. Right.

24 Q. And they had been doing that for years, and it just
25 got progressively worse and had opportunities to stop. Had

1 opportunities to know there was a problem and still continued
2 their drug usage, and it wasn't until after the murder they
3 said, well, I've stopped and I'm not doing them anymore.

4 A. Right. I guess that would be aggravating.

5 Q. Mr. So, let me ask you this: We've talked about
6 whether or not you could personally involve yourself in a
7 situation that resulted in someone's death. And I guess the
8 bottom line is if we prove a defendant guilty of capital
9 murder, and you get to the punishment phase, and you answer
10 that first question, that future dangerousness question yes.
11 And you get to this last question on mitigating evidence, if
12 the evidence is not sufficient to warrant a life sentence --
13 the mitigating evidence is not sufficient to warrant life
14 sentence, could you answer that question no, knowing it would
15 result in the death of the Defendant?

16 A. Yes.

17 Q. While we're still talking about that question, I
18 don't know if you remember on your questionnaire you had a
19 list of statements, and it was asking you whether you --
20 anywhere from strongly agree or strongly disagree with that
21 statement. Do you remember that page?

22 A. Vaguely.

23 Q. And I'll refresh your memory before we start talking
24 about any specific. But if you'll remember back when
25 Mr. Schultz was talking to you two weeks ago about we could

1 probably all imagine a person who had a great upbringing, had
2 all the material wealth and never lacked for anything, but
3 turned out to be bad seeds. And probably the Menendez
4 brothers is a good example of that. Had everything they
5 needed, everything they wanted, yet killed their parents.

6 And you can probably think of somebody on the flip
7 side who had an awful childhood, whether they were abused or
8 just a very poor childhood, only one parent. They had a lot
9 of obstacles to overcome, but yet they made something of their
10 lives and they were successful. Can you think of someone in
11 that situation as well?

12 A. Yes.

13 Q. And with regard to that -- when you were asked on
14 this questionnaire a person's destiny or fate is determined by
15 the circumstances of their birth and their upbringing, you
16 said I disagree. Tell me what your thinking was behind that.

17 A. I think I was thinking about the parents, the mother
18 and father. Even if they're, you know, not very good in
19 raising the child, the child could still change when they go
20 to school because they'll meet other, you know, friends and
21 other teachers and other role models that they could go after
22 and follow their example and become a productive and useful
23 function of society.

24 Q. Okay. And then when you were asked genetics,
25 circumstances at birth, upbringing and environment should be

1 considered when determining the proper punishment of someone
2 convicted of a crime. You said "agree." And tell me what
3 your thinking was behind that.

4 A. Can you repeat that one more time?

5 Q. Actually, you want me to just bring it to you.

6 A. Yes, that would be good.

7 Q. This one right here.

8 A. I was --

9 Q. Go ahead.

10 A. I was thinking that it depends on, like, genetics.
11 If you have something that makes you prone -- susceptible to
12 motives -- you know, having motives to -- you know, you become
13 more violent because of that genetics, then it's kind of
14 something beyond your control. So, you should be judged on
15 that, too. It's part of the evidence, I guess. And also
16 circumstances of birth, how the person was raised, upbringing
17 and environment. I was thinking about the parents, and also,
18 you know, school and teachers and other things, also. In
19 other words, if they have bad friends and if they attended bad
20 schools and if they had things that were all bad, you know,
21 that should also be considered on the punishment because
22 that's what they're exposed to and what the person saw.

23 Q. And do you understand how all that kind of comes
24 together with this question, and you, as a juror, decide what
25 weight to give things, if any weight at all, and put it all on

1 the scales and see whether or not there's sufficient
2 mitigating evidence?

3 A. Right.

4 Q. Now, Mr. So, I think you're probably one of the few
5 people when asked if you had a choice to be on this jury or
6 not, you answered yes. Am I right about that?

7 A. Yes.

8 Q. Tell me why that is.

9 A. This is -- you know, pretty much as a U.S. citizen I
10 feel like it's my obligation if I'm called to serve on the
11 jury.

12 Q. I think probably a lot more selfish people out there
13 for selfish reasons just, no, my job is important, and I don't
14 want my life interrupted. Do you still feel that way if you
15 were called upon, and you'd be willing to serve and wouldn't
16 hold that against either side or be frustrated from what
17 you're missing at work?

18 A. No.

19 MS. FALCO: Excuse me one moment.

20 (Brief pause in proceedings.)

21 MS. FALCO: Thank you, Mr. So. Pass this
22 juror.

23 THE COURT: All right.

24 MR. HIGH: Judge, I'm going to conduct the
25 questioning for our side.

1 THE COURT: All right, good.

2 CROSS-QUESTIONS

3 BY MR. HIGH:

4 Q. Good afternoon, Mr. So. My name is Don High, and
5 it's nice to meet you. It's a pleasure to meet you. I've
6 enjoyed listening to you for the last 45 or so minutes.

7 I represent Ivan Cantu, and -- along with

8 Mr. Goeller. He spoke to you two weeks ago. I didn't get to
9 talk that day. I just sat there and paid attention, okay.

10 But I do have a few questions for you. I don't think as many,
11 but I've got to ask you about some things, too.

12 I notice that you were born in Korea?

13 A. Yes.

14 Q. All right. And was that -- I don't know enough
15 about Korea. Is that North Korea or South Korea?

16 A. South Korea.

17 Q. And you immigrated over here at some point in time?

18 A. Yes. My parents immigrated over in 1973, and as
19 they immigrate, I followed.

20 Q. They brought you with them?

21 A. Right.

22 Q. Good, okay. And tell me why they chose to
23 immigrate. What were the reasons?

24 A. The reasons were for a better living because they
25 were concerned -- in Korea all the males have to serve in the

1 military for a certain amount of time. That was a required
2 obligation to be a citizen there. And also for the
3 schooling -- for my schooling, it was much tougher over there.
4 You have to, of course, get up really early in the morning and
5 then go to school, and then you don't come home until it's
6 really dark. And, of course, the U.S. has a better standard
7 of living, better opportunities.

8 Q. Okay. Excellent. What -- tell me a little bit
9 about the legal process in Korea.

10 A. I don't know that much of it, to be honest.

11 Q. You didn't live there long enough to really get a
12 feel for it or to know what it's like?

13 A. No. I finished 3rd grade and immigrated over here.
14 I think it's like -- from what I can recall now, I think it's
15 from -- from what I see in the news, I think it's like a
16 tribunal of judges decide the guilt or the innocence of the
17 defendant.

18 Q. Okay. So you get a trial?

19 A. Right.

20 Q. Is the proof still the same, proof beyond a
21 reasonable doubt, similar to that?

22 A. My perception is it's -- you're pretty much guilty
23 until proven innocent, is my perception of how they do things
24 over there, but I might be wrong because I'm over here eight
25 thousand miles away, so I don't know how it's really done over

1 there.

2 Q. I understand. I take it you became a naturalized
3 U.S. citizen?

4 A. Yes.

5 Q. When was that?

6 A. 1978.

7 Q. All right. Tell me a little bit about that process
8 that you went through.

9 A. Pretty much at that age I was still young enough, so
10 my parents are the ones that took the citizenship exam, and
11 then they passed that, and then they took the oath of
12 allegiance. And then -- so they became U.S. citizens, and I
13 automatically became U.S. citizen, also. And then later when
14 I turned, I think, 18 or 21 I had to go back to the
15 immigration office and swear my allegiance to the U.S. and
16 defend the Constitution and the laws.

17 Q. Did you have to undergo any classes or learn about
18 citizenship, American citizenship?

19 A. No. My wife had to learn -- she recently took the
20 naturalization test recently, so I kind of helped her a little
21 bit. We kind of studied together, but on my citizenship test
22 I was -- I didn't have to study that much.

23 Q. Okay, fair enough. I'm kind of getting from you
24 that you're glad to be in this country?

25 A. Yes.

1 Q. Very glad about it?

2 A. Yeah. I kind of -- we went vacationing to Korea in
3 June, and I found out how good it is in the U.S. I guess I'm
4 Americanized.

5 Q. Okay. We're glad to have you.

6 Let me ask you this: Do you -- I guess what I'm
7 getting from you is you take your rights as an American
8 citizen very seriously. You cherish those rights; is that
9 fair to say?

10 A. Yes, yes.

11 Q. Okay. And you also understand that there was a
12 revolution fought 300 years ago, and folks have lived and died
13 over freedoms that we have here in America?

14 A. Yes.

15 Q. And I take it -- have you taken any classes, like
16 civics and Government and how our legal system works, that
17 sort of thing?

18 A. Yes. That's the requirements for my degree,
19 undergraduate. I took the required civics classes, the
20 Government classes.

21 Q. Okay. Was that interesting to you?

22 A. Yes, yes.

23 Q. Since you weren't born in the U.S., I'm sure -- I
24 mean, you're learning about your new culture, your new
25 country?

1 A. Right.

2 Q. You have a heightened awareness, as opposed to the
3 rest of us, that just kind of slogged through it, you know?

4 A. Yes. I think I was maybe one of the more attentive
5 students in the class.

6 Q. I'm getting that from you, yeah, sure am.

7 Where did you go to college?

8 A. I went to University of Dallas for my bachelor's
9 degree, and I went to Georgia State University for my
10 master's.

11 Q. Okay, excellent.

12 I'm drawing a blank on the University of Dallas.
13 Where is that located?

14 A. It's in Irving, Texas. It's across from Texas
15 Stadium, across that freeway. It's a small, private
16 university.

17 Q. Kind of up on a hill?

18 A. Yes, yes.

19 Q. All right. I think I've been out there.

20 What did you major in out there?

21 A. I majored in biology.

22 Q. Were you pre-med at the time?

23 A. Yes.

24 Q. Did you graduate in biology?

25 A. I got my bachelor's in biology, but I didn't go to

- 1 medical school, no.
- 2 Q. What changed your mind?
- 3 A. It's all those long hours, I guess. I was kind of
- 4 going pre-med, I guess, because I was under the delusion that
- 5 there's a lot of money to be made as a doctor. But after I
- 6 looked into it, it didn't seem like that would be something I
- 7 could enjoy the rest of my life. It's too much work and too
- 8 much stress.
- 9 Q. Okay. But you enjoyed your biology classes?
- 10 A. Somewhat.
- 11 Q. When you graduated, did you go to work anywhere
- 12 after that?
- 13 A. Yes.
- 14 Q. What was your first job?
- 15 A. I was — my first job, let's see. I was — first
- 16 job was selling cars.
- 17 Q. With a biology degree?
- 18 A. Yes.
- 19 Q. Interesting.
- 20 A. It was hard to get a job with a biology degree, so I
- 21 had to find a job somewhere. So, I found a job selling new
- 22 cars.
- 23 Q. Okay. Got to start somewhere?
- 24 A. Right.
- 25 Q. I'm sure you learned a lot about people selling

- 1 cars?
- 2 A. Yes.
- 3 Q. For both sides; from the sales perspective and also
- 4 from the customer perspective?
- 5 A. Right.
- 6 Q. And probably from the folks that you worked with,
- 7 too? You learned an awful lot; is that right?
- 8 A. Right, about the other salesmen.
- 9 Q. How long did you sell cars?
- 10 A. About year and a half.
- 11 Q. All right. Then what did you do after that?
- 12 A. I went into engineering. My father worked for
- 13 Rockwell in Georgia, so he was able to find a position for me
- 14 there for materials and process Engineering working in the
- 15 laboratory, examining different materials that this company
- 16 buys and testing and laboratory testing different chemicals,
- 17 and those type of things.
- 18 Q. Were you married at the time?
- 19 A. No.
- 20 Q. So you moved over to Georgia, over to where your
- 21 folks were?
- 22 A. Yes. I graduated my undergraduate in 1986.
- 23 Q. Uh-huh.
- 24 A. And then I moved over to Georgia.
- 25 Q. Okay. So you worked as an engineer for how long?

- 1 A. I worked in — over there in Georgia for about seven
- 2 years, and then during my work at night I went to school at
- 3 nights and got my master's at Georgia State, and then I came
- 4 back to Texas in '94 and started work for Texas Instruments.
- 5 Q. I can't recall if your questionnaire says what your
- 6 master's is in. It doesn't.
- 7 A. Chemistry.
- 8 Q. So your undergraduate is in biology and master's is
- 9 in chemistry?
- 10 A. Right.
- 11 Q. You're totally out of my league, okay.
- 12 How did you settle on chemistry as a major?
- 13 A. I enjoyed the analytical part of chemistry, doing
- 14 experiments and finding out firsthand what's going on, how
- 15 things react and actually seeing — doing experimentation in
- 16 the lab. I enjoyed that.
- 17 Q. Sure. I take it you're pretty decent in math, too?
- 18 Your computational skills?
- 19 A. Decent. Not as good as some other people, but
- 20 decent.
- 21 Q. You have to be to make it in chemistry, though?
- 22 A. Yes.
- 23 Q. You have to be able to hold your own?
- 24 A. Right.
- 25 Q. When did you finish your master's?

- 1 A. I finished in 1995.
- 2 Q. And then what job did you get after that, after you
- 3 got out of the master's program?
- 4 A. I got the job at TI before I got my master's in
- 5 engineering at Texas Instruments in '94.
- 6 Q. Is that what brought you back to Dallas, TI?
- 7 A. Yes, yes. TI, and also I had friends here that I
- 8 knew that brought me back.
- 9 Q. Did you say that TI helped you with the master's
- 10 degree?
- 11 A. No, the other company did, actually.
- 12 Q. That's interesting.
- 13 A. The other company did. And then TI didn't help me
- 14 on the master's.
- 15 Q. Okay. Then when did you start the master's program?
- 16 A. It's, like, after work. So, I took, like, one
- 17 course here, skipped and one course there, so maybe 1989.
- 18 Q. So the process took you about six years?
- 19 A. Yes.
- 20 Q. Fair enough.
- 21 You're still with TI?
- 22 A. Yes.
- 23 Q. And you're a process engineer?
- 24 A. Right.
- 25 Q. What exactly do you do? Tell me about a normal

1 workday.
 2 **A. Normal workday, I fight rush hour going to work, and**
 3 **then I check my e-mail, look at the pass-down from my**
 4 **technician from the previous shift. It's a 24-hour operation,**
 5 **seven days a week, 365 days operation. So, I look at what's**
 6 **been going on the night before. See if there's anything I**
 7 **have to address. Give direction to the process engineering**
 8 **technicians on what kind of test to run, if there's any**
 9 **testing that needs to be run in order to troubleshoot**
 10 **machines.**

11 **Also, look at the amount of work that's in our area**
 12 **and see what we can do to make that processing go more**
 13 **smoothly so that we would be able to turn the material over to**
 14 **some other area and move it along the line.**

15 Q. What kind of material?

16 **A. We make semi-conductor chips for, like, hand phones,**
 17 **cell phones, for computer, for automotive anti-lock brakes,**
 18 **for various different things, digital signal processing chips.**
 19 **And I'm responsible for one of the areas there, for the ion**
 20 **implantation step.**

21 Q. Ion --

22 **A. Ion.**

23 Q. -- implantation?

24 **A. Implantation. We implant the wafers, they call it.**
 25 **Looks like a CD. We implant it with arsenic or phosphorus or**

1 **boron. It's a very big machines (sic) that's got, like, high**
 2 **pressure, high energy vacuum systems. And I can't tell you**
 3 **anymore. The other things are proprietary.**

4 Q. Fair enough. It just sounds fascinating to me.

5 Obviously, I don't deal in that area, and it's neat.

6 I guess what I'm trying to understand is the
 7 connection between your education and your current work, and I
 8 see that there is some crossover.

9 **A. Right.**

10 Q. That's interesting. Quite often there's not, but
 11 that's good that there is for you.

12 Any plans on any more post-graduate work, going for
 13 your Ph.D.? Do you have any plans like that?

14 **A. No.**

15 Q. No. You're satisfied --

16 **A. I'm satisfied.**

17 Q. -- being a master?

18 **A. Yes.**

19 Q. Okay, fair enough.

20 I notice that you're a member of the Korean First
 21 Baptist Church of Dallas. Tell me where that meets.

22 **A. That meets in Dallas. It's close to Forest Lane and**
 23 **Marsh, and that church has been -- I've been with that church**
 24 **since 1975 until I moved to Georgia in 1986, and then I**
 25 **rejoined in 1994 when I came back here.**

1 Q. So you were a youngster in 1975?

2 **A. Yes.**

3 Q. Okay. Born in 1964, so when you joined the church
 4 you were 11 years old?

5 **A. Yes.**

6 Q. And were your parents members of that church?

7 **A. Yes.**

8 Q. And did you participate in, like, the youth groups
 9 or programs they had at the church?

10 **A. Yes.**

11 Q. Okay. Enjoyed that?

12 **A. Sometimes; sometimes not.**

13 Q. And continuous membership for 11 years until 1986.
 14 So, that would have been through your college experience at
 15 University of Dallas?

16 **A. Yes. During my college years, I didn't go every**
 17 **week, but went once or twice a month.**

18 Q. Well, I can relate to that. Sure can. I went to
 19 Baylor in Waco, so I kind of understand that.

20 Let me ask you this: Are you -- do you consider
 21 yourself a Baptist?

22 **A. Yes.**

23 Q. What part of the Baptist Church; is that Southern
 24 Baptist, Northern Baptist, Independent Baptist?

25 **A. I think they call it Southern Baptist, but I'm not**

1 **so certain if our church is Southern Baptist or not. We're**
 2 **more into missions than we are, I think, following the strict**
 3 **rules of the Southern Baptist.**

4 Q. Okay.

5 **A. But they're really into mission trips.**

6 Q. All right. So taking trips out of Dallas to other
 7 parts of --

8 **A. Of the world, like Guatemala, or Mexico, China,**
 9 **Russia. They have pretty much -- it's, like, once a year,**
 10 **different groups go different places.**

11 Q. Have you traveled with them?

12 **A. Yes, I have. I went to South Texas one time to**
 13 **McAllen and Laredo.**

14 Q. All right. Are you into evangelism, like spreading
 15 the gospel?

16 **A. Not currently, but our church as a whole is into**
 17 **evangelism, but not personally.**

18 Q. Okay. What I mean by that, evangelism -- I guess
 19 the -- Jesus gave the Apostles the commandment, "Go ye
 20 therefore and teach all nations, baptizing them in the name of
 21 the Father, Son and the Holy Ghost."

22 **A. Right.**

23 Q. The Great Commission.

24 **A. Right.**

25 Q. I'm sure that if your church is into missions then

- 1 they kind of subscribe to that philosophy; is that fair
 2 enough?
 3 **A. Yes.**
 4 **Q.** And some folks call it evangelism; maybe they don't.
 5 Maybe they don't feel comfortable with the word "evangelism."
 6 Some folks have a -- when they hear evangelist, they think of
 7 a TV evangelist.
 8 **A. Right.**
 9 **Q.** I know exactly what you're saying. You've got Jerry
 10 Falwell on your questionnaire. He's one of the people that
 11 you don't like?
 12 **A. No.**
 13 **Q.** Okay. And I think I know why, but let me hear your
 14 answer why you don't like Jerry Falwell?
 15 **A. It's my perception that he's not a true religion**
 16 **leader. He's more into stuffing his pockets with money than**
 17 **he is about The Great Commission.**
 18 **Q.** Okay. Did you follow the breakdown of the Jim and
 19 Tammy Baker scandal and Jessica Hann, and all of that?
 20 **A. Yes.**
 21 **Q.** And you followed Jerry Falwell's efforts, and how he
 22 was a factor in all of that?
 23 **A. Right.**
 24 **Q.** That was very interesting, wasn't it?
 25 **A. Yes.**

- 1 **Q.** And, of course, I don't know if you share my
 2 perception, but Jim and Tammy Baker were that way, too. They
 3 were interested in the dollar.
 4 **A. Right.**
 5 **Q.** And, of course, since then we've had folks like
 6 Jimmy Swaggart and the fellow over here on 35. I forget his
 7 name. He was sued several times in downtown Dallas. What was
 8 his name, nice looking fellow. He's now in Florida, I think.
 9 **A. I don't remember his name. I think I know who**
 10 **you're talking about, but I don't remember his name. He had a**
 11 **nice building over there by 35.**
 12 **THE COURT:** Robert Tilton.
 13 **Q. BY MR. HIGH:** Yeah, Robert Tilton.
 14 **A. Oh, Robert Tilton.**
 15 **Q.** So those kind of people turn you off, I take it?
 16 **A. Yes.**
 17 **Q.** Me, too. Big turn off.
 18 **Of course, now Swaggart came out and publicly**
 19 **professed his sin; do you recall that?**
 20 **A. Yes.**
 21 **Q.** And I suppose some folks were skeptical of that sin,
 22 although you've got to hand it to him, he got up on a public
 23 forum and actually said exactly what he did?
 24 **A. Right.**
 25 **Q.** And he's back preaching again?

- 1 **A. I think he's better than the other ones -- the other**
 2 **people, but I don't know how much he's better. I hadn't**
 3 **really followed.**
 4 **Q.** Now, he was very charismatic, Jimmy Swaggart,
 5 likable, nice-looking fellow?
 6 **A. Right.**
 7 **Q.** And so with respect to judging these TV evangelists,
 8 and I think one of the current ones is Benny Hill. Have you
 9 ever watched Benny Hill? Are you familiar with him?
 10 **A. (Shakes head.)**
 11 **Q.** So, do you not watch any of them at all now? That's
 12 not really --
 13 **A. No, that's not my thing. I don't watch those**
 14 **people.**
 15 **Q.** Okay. When you go on these mission trips, do you
 16 share the gospel yourself?
 17 **A. Yes.**
 18 **Q.** Okay. Are you interested in spreading the good news
 19 of Jesus Christ and seeing if someone will accept the good
 20 news?
 21 **A. Yes.**
 22 **Q.** That's the objective of your mission trip, is it
 23 not?
 24 **A. Yes.**
 25 **Q.** And I'm sure that you've heard the teachings of

- 1 Jesus when he says "By your fruits you shall know them"?
 2 **A. Right.**
 3 **Q.** We talk about the legitimacy of someone's
 4 conversion, and whether or not they've, in fact, converted
 5 and -- but Jesus himself says that, you know, we'll know if
 6 others are believers if they bear fruit. Do you agree with
 7 that concept?
 8 **A. Yes.**
 9 **Q.** Okay. And obviously if they bear the wrong kind of
 10 fruit, like Tammy Baker and Jim Baker, then we'll know that,
 11 too; is that right?
 12 **A. Right. I think some of those people that gave to**
 13 **them were actually sincere. Some of them might have been**
 14 **sincere Christians thinking that they're giving to the right**
 15 **cause.**
 16 **Q.** Well, I understand. There's a lot of innocent
 17 givers out there. I understand that. That's a shame. In
 18 fact, it's shameful in my opinion.
 19 **A. Right.**
 20 **Q.** Boy, I share that with you completely. I can't
 21 think of anything worse than that.
 22 **A. Right. But I'm sure there's some bad fruits that**
 23 **was working with them directly to con the money out of people.**
 24 **Q.** Let me ask you this: Are you at all familiar with
 25 the lady on death row that was recently executed this year,

1 Karla Faye Tucker?

2 A. Oh, yes.

3 Q. And many thought that she had changed and she had
4 become a Christian, and she wasn't -- there was a movement to
5 try and save her life there towards the end?

6 A. Right.

7 Q. And yet, she went to the executioner?

8 A. Right.

9 Q. Any thoughts about that situation? Did you follow
10 that situation?

11 A. I read it in the papers. I think she married a
12 preacher, also, a minister. And from the article it talked
13 about she was doing a lot of good things in prison, how she
14 was evangelizing inside the prison system, and how she seemed
15 to have changed, and there was a lot of good stories about her
16 in the paper. But, I guess sometimes -- you know, things
17 worked out the way they were supposed to. I guess it was up
18 to God. I guess God decided that maybe she should die and
19 maybe be at a better place. Maybe she's in Heaven.

20 Q. I understand. Do you think that -- in her case, do
21 you think that her case or her sentence should have been
22 revisited based upon the evidence of the change that had taken
23 place in her life?

24 A. Yes.

25 Q. Do you think that quite possibly, even though she

1 had been sentenced years before to die, that should have been
2 reconsidered with respect to her and her correct situation?

3 A. Yes.

4 Q. Honestly, I don't want to put words in your mouth.
5 I really want to know how you feel.

6 A. Right. I feel like maybe she should have got
7 another hearing about that, because she seemed like --
8 according to stories in the papers, it seemed like she was a
9 changed person, changed woman.

10 Q. Okay. Do you understand folks in my profession, we
11 tend to be very circumspect, or skeptical about that kind of
12 thing? Do you understand that?

13 A. Yes.

14 Q. But in your mind, I mean, you read about it and
15 viewed it and listened to it, and you thought, well, there may
16 be something here -- could be something here. It's worth
17 looking into?

18 A. Yes.

19 Q. You have a brother that's a doctor?

20 A. No, a sister.

21 Q. Sister. Sumi Gi So?

22 A. Right.

23 Q. Okay. So, she's much younger than you?

24 A. Twelve years, much younger.

25 Q. Where does she practice?

1 A. She doesn't practice yet. She finished medical
2 school -- she graduated last -- actually this summer -- this
3 spring, and now she's in residency program.

4 Q. Where?

5 A. At UT Southwestern in Dallas.

6 Q. Okay. What is she specializing in residency?

7 A. Pathology.

8 Q. Okay.

9 A. But she did pass all her board exams, so she is an
10 M.D. now.

11 Q. You must be very proud?

12 A. Yes.

13 Q. That's great.

14 I just want to go over a couple of special issues
15 with you, and I know that you're very intelligent, and you've
16 got this straight the first time around, I'm sure. But you
17 understand that we won't get to these unless and until the
18 Defendant is convicted of capital murder?

19 A. Right.

20 Q. And so you understand that the progression at the
21 trial will involve evidence that's put on by the State, and
22 they would need to convince the jury beyond a reasonable doubt
23 that the Defendant is guilty of capital murder. Do you
24 understand that?

25 A. Yes.

1 Q. And you -- are you also aware we're not there yet,
2 that hadn't happened yet?

3 A. Right.

4 Q. Is it a little bit strange that we're already
5 talking about the punishment with you before we even know that
6 the Defendant is guilty? Does that seem strange to you?

7 A. Right.

8 Q. It does, doesn't it?

9 A. It does seem like we're kind of putting the --

10 Q. The cart before the horse?

11 A. -- cart before the horse, yes.

12 Q. I want you to understand that the Defendant,
13 Mr. Cantu, is not guilty yet. He doesn't stand before you
14 guilty today. He's still going to have a trial, and if you
15 sit on the jury, you're going to have an opportunity to hear
16 all the evidence and make a decision whether or not he's
17 guilty?

18 A. Right.

19 Q. Also, I want you to understand that I'm not
20 admitting to you that he's guilty, and I don't agree that he's
21 guilty, okay? Please don't get that impression from me,
22 because I'm not trying to convey that at all. Is that -- are
23 we together on that?

24 A. Yes.

25 Q. Still the law requires and it anticipates that if

1 you sit as a juror, and you sit in the punishment phase,
 2 you're going to have to be able to fairly answer these
 3 questions and judge these questions fairly.
 4 **A. Right.**
 5 Q. And so we have to talk about them before we even
 6 have the trial. Does that make sense to you?
 7 **A. Yes.**
 8 Q. Okay. That's why we're talking about them now, and
 9 the law provides for this long, drawn-out procedure, too,
 10 where you actually come in and you're interviewed one at a
 11 time. And that's okay with you, I take it?
 12 **A. Yes.**
 13 Q. Because you're handling it extremely well.
 14 With respect to -- let's assume that Mr. Cantu's
 15 found guilty. We don't know that's going to happen, but let's
 16 assume that it does. And we get to the first special issue,
 17 and I take it you understand that this has to do with a look
 18 forward in terms of whether or not Mr. Cantu is going to be a
 19 future danger?
 20 **A. Right.**
 21 Q. Take a look at the question.
 22 **A. The one on the floor?**
 23 Q. Yeah.
 24 So instead of looking backward at the evidence and
 25 everything that happened in the trial, now we're looking

1 forward to try and figure out if the person on trial is going
 2 to -- if there's a probability that he will commit criminal
 3 acts of violence that will constitute a continuing threat to
 4 society. Looking forward, does that make sense to you?
 5 **A. Yes.**
 6 Q. And you mentioned that probability in your mind
 7 means there's a good chance?
 8 **A. Right.**
 9 Q. Still feel comfortable with that?
 10 **A. Yes.**
 11 Q. Okay. As -- now that I know more about you, and I
 12 know that you majored in biology and you have a master's in
 13 chemistry, and I know that there's an awful lot of math
 14 involved in that, do you feel comfortable working with
 15 probabilities and looking at the future with respect to a
 16 defendant whether or not he's going to be violent? Do you
 17 feel comfortable with that?
 18 **A. Yes.**
 19 Q. You do?
 20 **A. Yes.**
 21 Q. Okay. I think Ms. Falco was very thorough with you,
 22 and I think she explained this to you. Do you understand that
 23 if a person is found guilty of capital murder, there's two
 24 things that can happen. They can either get a death sentence,
 25 or they can get life in prison. Was that explained to you?

1 **A. Yes.**
 2 Q. Do you understand that?
 3 **A. Yes.**
 4 Q. So at this point when we get to this question, we
 5 know at the very least they're going to get a life sentence,
 6 and depending on how the questions are answered, they may get
 7 death?
 8 **A. Yes.**
 9 Q. Does that make sense to you?
 10 **A. Yes.**
 11 Q. And has it been explained to you that with respect
 12 to you a life sentence -- let me ask you, what does that mean
 13 to you, a life sentence in prison?
 14 **A. It means a sentence of spending the rest of their**
 15 **life in jail.**
 16 Q. Do you understand it to mean life without parole;
 17 that they'll never get outside again?
 18 **A. I don't understand all the different sentences, I**
 19 **guess.**
 20 Q. I don't expect you to. Let me just tell you that
 21 there is no life without parole in the State of Texas, okay?
 22 But there is the understanding, and the law provides that on a
 23 finding of guilty of capital murder and a life sentence that a
 24 minimum of 40 calendar years has to be done by a convicted
 25 person, day by day --

1 **A. Okay.**
 2 Q. -- year at a time, 40 calendar years. Does that
 3 make sense to you?
 4 **A. Yes.**
 5 Q. And so a person, depending on their age, you know,
 6 whether it's 17, 20, 25, 30 -- you know, a 27-year old person,
 7 for instance, they'll be 67 years old at the minimum before
 8 they're even considered for parole. Does that make sense to
 9 you?
 10 **A. Yes.**
 11 Q. Of course, that's up to the discretion of the parole
 12 board. Nobody can know what the parole board is going to do
 13 40 years from now.
 14 **A. Right.**
 15 Q. You and I probably won't even care because we won't
 16 be around 40 years from now.
 17 **A. I hope to be around.**
 18 Q. Good. I hope you are, because you're a terrific
 19 guy.
 20 But anyway, do you understand it's going to be a
 21 minimum of 40 years before a person is released if they're
 22 given a life sentence and -- for capital murder?
 23 **A. Now I think I understand since you told me.**
 24 Q. Okay. Knowing that a person, if they're given a
 25 life sentence, they're going to spend at least the next 40

1 years in prison, because where else would they go? If they
2 get a life sentence they're going to go to prison. Does that
3 make sense to you why we were talking about prison society two
4 weeks ago?

5 A. Yes.

6 Q. Because I mean, for all intents and purposes, that's
7 the society that will become the Defendant's daily life. Does
8 that make sense to you?

9 A. Yes.

10 Q. Okay. You also understood that the burden of proof
11 on that question is beyond a reasonable doubt?

12 A. Which?

13 Q. The bottom one.

14 A. I didn't know that was the case.

15 Q. Okay. I believe the law is, and you'll be
16 instructed just like in the guilt/innocence portion of the
17 trial, that the burden of proof is on the State on that
18 question, and the proof must be beyond a reasonable doubt.

19 A. Okay.

20 Q. Does that make sense when you're thinking about this
21 question?

22 A. Yeah. I didn't think about it earlier like that,
23 but since you mentioned it, it does make sense.

24 Q. All right. Now, assuming that the State meets their
25 burden and they prove to you and the other Members of the Jury

1 beyond a reasonable doubt that he's a continuing threat, you
2 folks would answer yes. If they do not meet their burden, and
3 you have some reservation about his future dangerousness, then
4 your answer would be no. You would say, no, I'm not convinced
5 beyond a reasonable doubt that he's going to be a continuing
6 threat to society, in which case you would say no. And at
7 that point the trial would be over. It would mean a life
8 sentence, just as we discussed.

9 Assuming, however, that it's proven and they say
10 yes, then you would go to the last question, okay? All right.
11 And you had a chance to look at that earlier, and it was
12 discussed with you portions of that question; mitigation,
13 circumstances of the offense, the Defendant's character and
14 background and his personal, moral culpability, whether there
15 is a sufficient mitigating circumstance or circumstances to
16 warrant that a sentence of life imprisonment rather than a
17 death sentence be imposed.

18 Now, one thing I want to go over with you, that's
19 the last question, most likely, that you'll be faced with as a
20 juror, okay? And now instead of looking forward, you're going
21 to look back at the Defendant. A lot of folks call it the
22 look-back question, or the one-last-look question. We're
23 going to take one last look at the Defendant, or the person on
24 trial and decide if the life should be spared based on
25 mitigation. Does that make sense?

1 A. Yes.

2 Q. Okay. And you've already determined that this
3 person is guilty of capital murder. You've already answered
4 that question, yes, they're going to be a continuing threat to
5 society. But, now you're taking that last look and looking at
6 the circumstances of the offense, his character and background
7 and his personal, moral culpability, and you're saying, hum,
8 I'm not sure if I feel comfortable with putting him to death.
9 I believe there's sufficient mitigating circumstances to
10 warrant a life sentence. Okay. You've got that; you're a
11 smart fellow?

12 A. I got that.

13 Q. Okay. Do you feel comfortable -- if you were to sit
14 on a jury, would you feel comfortable with this procedure, and
15 if the Judge were to instruct you on this procedure and the
16 law, would you feel comfortable following this question and
17 answering it?

18 A. Yes.

19 Q. And I believe Ms. Falco asked you, you know, in the
20 right kind of case, you know, if there was not sufficient
21 mitigating circumstances, you could answer that no and a death
22 sentence could result. You said that?

23 A. Right.

24 Q. Okay. Take a look at it because it's a long
25 question, 52 words. I've been looking at it for two weeks

1 now, and I still have to look at it.

2 Okay. I'm just going to ask you the converse of
3 that. I believe she asked you, but I've got to ask you for my
4 own satisfaction, too. If you were to find -- if you listened
5 to all the evidence, if you considered the circumstances of
6 the offense, everything that you heard in the trial, if you
7 heard about the Defendant's character and background, if you
8 had some evidence before you with respect to his personal,
9 moral culpability -- and, of course, I don't think we've gone
10 into great detail what that means because, heavens, I don't --
11 there's no definition for it. Some would say guilt. Some
12 would say remorse. Some would say taking responsibility for
13 what happened. Some would say how he feels or she feels about
14 what happened, you know?

15 A. Right.

16 Q. A lot of that warm, fuzzy type stuff, personal moral
17 culpability. That's what the Legislature gave us in Austin.

18 But once you consider all of that evidence and, sir,
19 if you found that it was sufficient mitigating circumstance,
20 or circumstances to warrant a sentence of life as opposed to
21 death, would you be able to find that and spare his life or
22 answer yes to that question?

23 A. Yes.

24 Q. You could do that?

25 A. Yes.

1 Q. Okay. And you would -- if you were a juror you
2 would, in fact, consider that? You wouldn't just close your
3 mind or close your ears to mitigating circumstances, would
4 you?
5 A. No.
6 Q. Okay. You would be open-minded and you'd listen to
7 it thoroughly and talk with the other jurors?
8 A. Yes.
9 Q. And consider it very thoroughly?
10 A. Yes.
11 Q. Okay. You know, you sum it up very well almost
12 when you answered your questionnaire. You (sic) said are you
13 in favor of the death penalty? Yes. Please explain your
14 answer. Depending on the situation of how murder was
15 committed, why it was done and motive plus past criminal
16 activities, the death penalty may be appropriate. You almost
17 had the question right there written out in your
18 questionnaire.
19 A. Did I?
20 Q. Just about. I don't think you mentioned personal
21 moral culpability, but you mentioned most everything else, so
22 I applaud you on that. I get the feeling you're real
23 comfortable with this.
24 You say what's the best argument in favor of the
25 death penalty? The premise of an eye for an eye, kind of the

1 Old Testament-type philosophy, and you've read some of the Old
2 Testament I'm sure?
3 A. Yes, sir.
4 Q. Is that your philosophy, an eye for an eye, or is
5 that just what -- as an educated man, you know that's what
6 other folks say?
7 A. I guess I didn't understand the question, exactly
8 what you're saying. Are you saying that, do I believe in this
9 philosophy of eye for an eye?
10 Q. Exactly.
11 A. As a Christian you shouldn't be.
12 Q. Okay.
13 A. But being humans, I think sometimes when someone
14 cuts us off on the freeway, you sometimes kind of want to do
15 that over again to that person.
16 Q. And we have to guard against that?
17 A. Right.
18 Q. That's right. You mentioned earlier when the State
19 was talking to you, was there any possibility that we could
20 change them -- I guess that's the person accused or
21 convicted -- and retrain them? Is that important to you?
22 A. Yes.
23 Q. Okay. In your questionnaire on page 6 at the top,
24 in your opinion what does the death penalty say about American
25 culture? We believe in punishing murderers and freeing

1 society of people we cannot rehabilitate. I notice that you
2 wrote "we," so that's not your opinion. That's what you
3 believe society believes?
4 A. Right.
5 Q. Okay. So I could feel more comfortable with what
6 you told her earlier about it's important to you to try to
7 retrain people, try to change people, rehabilitate them if at
8 all possible?
9 A. Right.
10 Q. Okay. I'm done. Did you have any questions you
11 needed to ask me, anything that I was unclear about?
12 A. No.
13 MR. HIGH: Okay, fair enough. Thanks for the
14 opportunity to visit with you. Judge, we pass the juror.
15 THE COURT: Ms. Falco, do you have anything
16 else?
17 MS. FALCO: I have no further questions, Your
18 Honor.
19 THE COURT: Let me ask you to step down for
20 just a minute, and we'll call you back in a minute.
21 (Venireperson exits the courtroom.)
22 MS. FALCO: Yes.
23 MR. SCHULTZ: Would you excuse the State to the
24 hall, Judge?
25 THE COURT: All right.

1 (Brief recess.)
2 THE COURT: All right. What says the State?
3 MS. FALCO: This juror is acceptable to the
4 State.
5 THE COURT: What says the defense?
6 MR. HIGH: Judge, we accept this juror as well.
7 THE COURT: Is that your desire, Mr. Cantu?
8 THE DEFENDANT: Yes, Your Honor.
9 THE COURT: All right. Then, Mr. So, Number
10 45, would you ask him to step back in, please?
11 THE BAILIFF: Yes, Your Honor.
12 (Venireperson enters the courtroom.)
13 THE COURT: Did you-all want to announce your
14 desires at this time once again? What says the State?
15 MS. FALCO: This juror is acceptable.
16 THE COURT: And the defense.
17 MR. HIGH: Likewise.
18 THE COURT: All right. Mr. So, you're going to
19 be serving on this jury, and so we'll be getting back with
20 regard to the timing, and it may be a couple of weeks, may be
21 two or three weeks, and I can't tell you with certainty when
22 it's going to be. The only thing I want to ask you to do if
23 you would, please don't discuss anything about the case with
24 anybody and don't make any effort to make any kind of a
25 private investigation of any kind with regard to anything

1 having to do with this case because we want people to be
 2 completely open-minded when they come in and hear all the
 3 evidence they're going to hear from the witness stand alone.
 4 So, we'll get back with you in two or three weeks.
 5 VENIREPERSON: Thank you.
 6 THE COURT: Okay. Let's bring in the next one.
 7 (Venireperson enters the courtroom.)
 8 THE COURT: Are you Bobby Bolin?
 9 VENIREPERSON: Yes, sir.
 10 THE COURT: I just want to remind you that two
 11 weeks ago today I put all the jurors under oath and asked them
 12 to truly respond to questions from both sides. Do you recall
 13 that?
 14 VENIREPERSON: Yes, sir.
 15 THE COURT: You're still under that oath.
 16 Please be seated.
 17 Mr. Schultz.
 18 MR. SCHULTZ: Thank you, Judge.
 19 DIRECT QUESTIONS
 20 BY MR. SCHULTZ:
 21 Q. Good afternoon, Mr. Bolin.
 22 A. **Good afternoon.**
 23 Q. Bolin is fairly well-known Collin County name, the
 24 Bolin Oil Company. But in looking at your questionnaire, you
 25 don't seem to be related to those --

1 A. **Cousins.**
 2 Q. Very, very remote?
 3 A. **Cousins.**
 4 Q. So you know Perry and Jerry then?
 5 A. **Yes.**
 6 Q. We talked at fairly great length Tuesday -- two
 7 weeks ago today, actually, about your prospective service as a
 8 juror in a capital case. And I imagine you remember when I
 9 went through the explanation of the actual process, when I
 10 asked everybody to look at the Defendant for a moment and
 11 think about the reality of what we were trying to do and what
 12 the State's position was in this case. And I hope you
 13 understood I wasn't doing that to be amusing or because I
 14 thought it was somehow entertaining or outrageous, but this is
 15 a -- for I think everybody that's going to be involved in
 16 this, a solemn process. It doesn't necessarily generate a lot
 17 of joy. It's not going to war, for example. I don't -- it
 18 may be necessary, but there's probably not a lot of joy in a
 19 lot of the results in what happens, I think, to many people.
 20 And I'm curious, when I did talk about that, when I
 21 asked you to contemplate the fact that this was going to be a
 22 case in which we sought to prove to the jury beyond a
 23 reasonable doubt that the Defendant was guilty of capital
 24 murder and that he was a probable danger to our society and
 25 there was no other good or sufficient reason to avoid a death

1 sentence and that we wanted 12 people that had an open mind to
 2 being convinced that the execution was necessary and proper.
 3 I'm curious what your response was to that when I was talking
 4 that way?
 5 A. **Yes.**
 6 Q. Did you have any particular response, or did it seem
 7 more somber in your mind, or did it seem the same as it's
 8 always seemed with you?
 9 A. **Well, it starts you to thinking about things but**
 10 **nothing specific.**
 11 Q. Just so you understand, I wasn't trying to be
 12 funny.
 13 Here's what I'm guessing. You're Juror Number -- on
 14 our list Juror Number 48, so we've -- this isn't the first
 15 capital murder trial by any means that we've tried, and you're
 16 48. So, we do this every day, and we get a feel for what the
 17 public's views are. I'm guessing, for example, that when you
 18 woke up this morning you didn't say to yourself, it's going to
 19 be a great day because I have a chance to go up to McKinney,
 20 and if I'm selected on a jury, I'll have a chance to be part
 21 of a process that will put a man to death. I suspect you
 22 didn't have those views at all; am I right about that?
 23 A. **Oh, definitely.**
 24 Q. You know, and I didn't, either. And I don't
 25 apologize for what I do and I -- I represent the State of

1 Texas that has an active death penalty process that goes on,
 2 and I put on the evidence the best way I can, as does
 3 Ms. Falco and Ms. Lowry representing the State. But I don't
 4 consider myself a lucky fellow for the rare opportunity to be
 5 involved in something like this. It's part of the criminal
 6 justice system that I work within, but it's not amusing, and I
 7 don't take it lightly. And I would hope that all 14 jurors
 8 that will be selected, 12 regular and 2 alternates, I would
 9 hope that every one would share that view, that the outcome of
 10 a death sentence is not something that ought to be a joy or a
 11 delight to us, and you're telling us you're that way, also?
 12 A. **Yes, sir.**
 13 Q. At the same time, I expect to have 14 persons on
 14 that jury who will all agree that there are cases where the
 15 evidence requires a death sentence. Some of the jurors may be
 16 more in favor of capital punishment in general than others.
 17 For example, there are some -- there may be people on the jury
 18 who believe that capital punishment is not -- is not assessed
 19 often enough; that feel somehow that its scope should be
 20 expanded. There are probably going to be people on that jury
 21 who are opposed to capital punishment in the theoretical
 22 sense, but could, nevertheless, vote in favor of a death
 23 sentence based on the evidence in the case. In other words,
 24 they probably don't have such strong, personal objections to
 25 the death penalty that it would prevent them from being able

1 to serve on a capital jury. There will be a group of people
2 all in between. And I think most people that will be on this
3 jury answer the questions very closely to what you answered
4 the questions, and that is it depends on the case -- on the
5 facts and circumstances of the case whether it's important.

6 And I don't remember exactly how you phrased it, but
7 very similarly to it has to be justified -- the death penalty
8 in Texas is justified in extreme cases. And I expect that's
9 what most people would believe. And what's the best argument
10 in favor of the death penalty? The extent of the crime
11 warrants it. And the best opposition against it is the
12 ability to determine guilty, motive, human failings, et
13 cetera.

14 And so -- you also indicate something interesting,
15 because I don't believe I've seen this on anybody else's
16 questionnaire. Do you think that the death penalty should be
17 available for punishment upon conviction of other criminal
18 offenses? And your answer was yes. And your answer was, if
19 the person is an accessory with a crime involving death. And
20 I guess that might mean something like, some people decide
21 they're going to rob a store, for example. And one person is
22 driving, but he knows they're going in with guns, and he knows
23 that they're prepared to shoot if the clerk offers resistance.
24 Maybe that kind of a fact situation?

25 **A. Someone who is actively involved in the planning and**

1 **carrying out, yes.**

2 Q. So you could either be guilty of capital murder as
3 the trigger man, or kind of being right along with the trigger
4 man in types of thinking and involvement kind of thing?

5 **A. Yes, or sending someone out.**

6 Q. It's interesting.

7 **A. I think it's more a planning type.**

8 Q. It's interesting. We almost never talk about this
9 third question here -- this second question. I'll do it just
10 mostly because you mention it. It's kind of interesting.

11 If raised by the evidence, and that's usually where
12 there are multiple participants in a crime, in cases in which
13 the jury charge or the guilt or innocence stage permitted the
14 jury to find the Defendant guilty as a party. Don't worry
15 about the sections, which essentially means if you're aiding
16 and assisting someone in the commission of the offense, and
17 you have the same sort of general intent, then the jury gets
18 asked whether the defendant actually caused the death of the
19 deceased. That's like the trigger man, or did not actually
20 cause the death of the deceased but intended to kill the
21 deceased or another, or anticipated that a human life would be
22 taken. So it's kind of interesting. We almost never talk
23 about that question, but it's kind of what you're saying.
24 There are times when, even if you're not the killer, you're so
25 involved in setting it up and encouraging and facilitating it

1 that you could, likewise, be subject to the death penalty.
2 I've not seen that on another questionnaire. Just shows some
3 real thinking that you were doing.

4 We all probably can think of cases that we would --
5 probably from reading or hearing about them we'd say, well,
6 sure that's a natural for a death penalty. I'll give you an
7 example. I think probably bombing the Federal Courthouse in
8 Oklahoma City is a situation that I'll bet you could try that
9 case a thousand times, and I'll bet you'd get a thousand death
10 sentences from all people, wherever they are. Take them from
11 Maine to California kind of thing, and you'd probably get
12 unanimous verdict after unanimous verdict answering that was
13 such an extreme case that it was crying out for the death
14 penalty. Would you agree with me on that? I mean, that is
15 probably the -- the recent, really extreme, excessive capital
16 murder, just an outrageous one?

17 **A. Yes. That would have been the one I would have
18 chosen as an example, yes.**

19 Q. And there certainly could be others. A few years
20 earlier and -- the Ted Bundy situation. It's serial, sex
21 homicide thing that went on down in Florida. I mean, here's a
22 guy who had all the advantages. He had a law degree, even.
23 And he's out there raping and murdering women and putting bite
24 marks on them and awful stuff. So, we can think of situations
25 that are probably the most celebrated extreme cases. That guy

1 up in Milwaukee, Jeffrey Dahmer, interesting that Wisconsin
2 did not have a death penalty -- or does not have a death
3 penalty. But he's kidnapping people, usually kind of
4 downtrodden and weak kind of people, and he murders them and
5 then he cuts them up and eats them. Just awful, awful bizarre
6 stuff that he was doing.

7 And so we can all, in our minds, think of extreme
8 cases. We can think of Hitler 60 years ago, for example.
9 Certainly an extreme case, if not in its monstrosity, just
10 because of killing people because of their faith. But even
11 worse than that, just the amount, the sheer numbers that are
12 involved.

13 And while we would all agree with that, our law
14 provides that capital punishment exist as a remedy for
15 society, or remedy for society's needs when certain conduct
16 occurs that may be far less enormous than Dahmer or McVeigh or
17 Hitler or Manson, or somebody like that. It may be far less,
18 and some examples of those are murdering of a police officer
19 when discharged in a police officer's duty. That might be a
20 single individual that's killed, and it may be the reason you
21 do the killing is because you've grown up in a culture that's
22 afraid of police and doesn't like police and had many abuses
23 that occurred at the hands of police.

24 Yet, if you murder a police officer doing his or her
25 duties or a firefighter doing his or her duties, our law

1 provides that act of intentionally murdering that person may
2 cost you your life. Doesn't have to. There is no automatic
3 death sentence. It has to be a reason -- by the jury in the
4 punishment phase, but it may cost you your life.

5 Murdering of a young child. Murder for hire, either
6 by being the one that hired the person that did the killing,
7 which is kind of what you were talking about, being an
8 accessory to it because I'd hire you to go murder my brother
9 that I never got along with, let's say. Or being the person
10 that gets hired, the actual trigger-pulling, hit man, that's
11 also capital murder. Murder in a penal institution, in the
12 course of an escape from a penal institution. Kind of the
13 idea is if you're in prison and you murder somebody in the
14 course of an escape, if there's not a death sentence and -- if
15 you're in there for life, what do you got to lose kind of
16 thing if all you're going to get is another life sentence. It
17 wouldn't make any difference.

18 Then we have some other kind of unusual ones. We've
19 got a new one that's been not dealt with before. That's if
20 you're doing a life sentence, and you commit an intentional
21 murder in the prison. That in and of itself, it's kind of
22 similar to the escape idea. If you're doing a life sentence
23 and you do a murder, if all you're going to get is another
24 life sentence, what's -- kill whenever you want to; what's the
25 difference.

1 It's the idea that these are things that our society
2 says have crossed over the line, and that line being if you
3 only do certain things, the worst that's going to happen to
4 you is you could go to prison for life, or however long that
5 ends up being. But murder, plus some other things that our
6 society thinks are really, really bad, may cost you your life.

7 Do all of those crimes seem to you to be the kinds
8 of crimes that might potentially justify capital punishment?

9 **A. Yes, some of -- I mean, I might disagree with some
10 of the small mechanics or certain choices --**

11 **Q. Okay.**

12 **A. -- in those instances, but as a rule --**

13 **Q. But I mean, there's not one that hops out at you
14 that says, how in the world can anybody be killed for doing
15 something like this? You don't have those feelings?**

16 **A. No.**

17 **Q. For example, if I were to tell you shoplifting can
18 get you a death sentence, you'd say there's never a
19 shoplifting case that would ever justify. Do you follow what
20 I'm saying?**

21 **A. Yes.**

22 **Q. Okay. And then we get to the varieties of capital
23 murder that are really the ones that are the subject of our
24 prosecution here, because the Defendant is charged by
25 indictment with three different ways of committing the same**

1 capital murder. And I'm going to talk to you about why it's
2 done that way in a second, but the three different ways of
3 committing the same capital murder are murder in the course of
4 a burglary, murder in the course of a robbery, and murder of
5 two people in the same criminal transaction. And if I were
6 sitting where you are and not dealing with this, this first
7 question I have is, well, can't they make up their minds?
8 What's the confusion? Why do they have these different
9 theories that are charged?

10 And the answer to the question is, that the same
11 criminal conduct might violate several different laws. If I
12 throw a bomb into your house some night, that might violate a
13 weapons law, possession of an explosive device. It certainly
14 might violate the arson law, especially if it catches your
15 house on fire. Depending exactly on how I threw it in, it
16 could even possibly be a burglary. If I make some entry
17 myself, along with it -- I punch through the window, for
18 example, or I stick a pole or I pry a window open so I can
19 make an opening to throw it in, that might be a burglary.
20 That's the intentional entry into a habitation for purposes of
21 committing a felony.

22 It might -- it might violate a law called
23 retaliation if the reason I'm doing it is because you filed a
24 criminal case against me, for example, and I'm retaliating
25 against you on account of that. That same act might be a

1 retaliation. It might be an attempted murder. It might be an
2 aggravated assault. There are a whole bunch of different
3 things that act of throwing the explosive device through your
4 window could be. And each of those different varieties of a
5 crime has different elements, different parts that have to be
6 proved, and it may be that in order to keep the flexibility so
7 that a person gets fairly adjudged for his conduct, those
8 different options belong to the State to charge, and then the
9 jury is given the option of convicting or not convicting based
10 upon any of those theories.

11 **A. All right.**

12 **Q. And it -- it -- it's probably -- it's probably not
13 fair to say that it's insurance, because that has a tendency
14 to seem like stacking the deck or something. It's not like
15 that. But rather, it's the notion that wouldn't it be a
16 terrible waste for 11 jurors to agree there was a burglary
17 murder, but one juror has some disagreement over whether or
18 not there was a burglary murder because maybe he or she wasn't
19 convinced there was an actual entry, or maybe he or she wasn't
20 sure that it was a nonconsensual entry, something like that,
21 and to avoid that possibility, the jury would have the option
22 to -- but maybe 12 people agree for sure it's a robbery.
23 There's no question about the robbery. It's just that
24 technical issue on that burglary that bothered that one juror.
25 Or maybe everybody has some concerns about the robbery or the**

1 burglary, but everybody agrees that two people were murdered
2 kind of thing. So, that's -- that's what to expect, and the
3 Defendant is not charged with three different murders or three
4 different acts. He's charged with one act, which it is
5 alleged resulted in -- he's charged with two acts, the act of
6 killing two people, but it's the same act as the burglary and
7 the robbery and the double homicide. It's all part of the
8 same big transaction in terms of what we say he did.

9 Do those kinds of crimes, as you sit there now, do
10 they seem to you to be the kinds of crimes that are extreme
11 enough that the death penalty should be a possible punishment
12 for them?

13 **A. I can see it as a possible punishment, yes. It's
14 not a mandatory-type thing.**

15 Q. But neither is Oklahoma City, neither would Hitler
16 be, kind of thing?

17 **A. That's right.**

18 Q. There is no mandatory.

19 But once again, I'm sure you'd agree stealing a car
20 should never cost anybody the death penalty in America, for
21 example?

22 **A. Right.**

23 Q. That's what I'm saying. Does it -- if those sound
24 like we're way out of the ballpark of what you think ought to
25 potentially cost somebody's life, I'd like to know that.

1 Doesn't mean you're not a qualified juror. It just would help
2 me understand so I could figure what to do with you in this
3 case. But you're telling me maybe, maybe not?

4 **A. I think it's within a reasonable range, yes.**

5 Q. For example, if the purpose of the burglary is to go
6 inside and rape and torture a bunch of people, and you do
7 that. And then after you raped and tortured them, you kill
8 them, and then you set the house on fire, well, that may still
9 be a burglary/murder. It may be that kind of capital murder,
10 but the facts of that can be severe enough that everybody
11 maybe would agree this is that extreme case. Are you with me
12 on that?

13 **A. Yes, sir.**

14 Q. And the same thing with murdering two people. There
15 are situations where murdering two people from the evidence
16 might not be as bad as it sounds right now as we're just
17 sitting here talking about it. There might be circumstances
18 where it is more understandable such that reasonable people
19 might not think a death penalty is the appropriate result for
20 that. Are you with me?

21 **A. Yes.**

22 Q. And at the same time, it might be -- I mean,
23 depending on who they were, why they were killed, how they
24 were killed, how the defendant behaved after they were killed,
25 those kinds of things, murdering two people maybe not for the

1 death penalty depending on the evidence.

2 **A. Right.**

3 Q. Are you with me on all that?

4 **A. Yes, sir.**

5 Q. And why I say that, you've heard of Dr. Jack
6 Kavorkian, the so-called suicide assisting doctor?

7 **A. Yes.**

8 Q. In most states, assisted suicide is still murder.

9 There's nothing in the definition -- for example, in Texas,
10 murder is the intentional causing the death of another person.

11 There's nothing in Texas law that says it's okay to murder if
12 the victim consents or requests it or the family is

13 all agreed that quality of life is so gone that the person

14 doesn't need to be living on machines anymore. That's still

15 plain murder if you kill somebody. And if somehow you were to
16 kill two people, and even though you're doing it as a, quote,

17 mercy killing as Dr. Kavorkian, nevertheless it's possible

18 that if the victims agree and the family agree, and you

19 thought it's an archaic law that you can't do anyway, you

20 might say, yeah, that's a capital murder, okay, I know that

21 because two people were murdered, but it's not a death penalty

22 case under all the circumstances. Are you with me on that?

23 **A. Right.**

24 Q. And you might remember that example I used two weeks
25 ago when I talked about the parent with the child that had

1 been murdered by the criminals, and they get acquitted -- or

2 they get turned loose on a technicality, and they're laughing

3 as they go out of the courtroom. If that parent of the dead

4 child decides, I can't let that happen. He gets a gun, and he

5 goes and kills those two people, I think every one of us might

6 understand what his heart was up to, and what he was doing.

7 And yet, it's still capital murder because he murdered two

8 people intentionally. And yet, at the same time that might be

9 something that most people would say there's no reason under

10 all those circumstances that should be a death sentence. Are

11 you with me?

12 **A. Yes, sir.**

13 Q. And you might be just the opposite. You might think

14 Kavorkian and the daddy both need a death sentence, and you're

15 well within your rights as a juror to find that. Or you might

16 think that they do not need it or somewhere in between.

17 The idea is that there not be any automatic answers

18 to these questions; that it be a true look by the jury into

19 seeing whether or not certain proof has been met, and then

20 whether or not the death penalty, under all the circumstances,

21 is appropriate.

22 The first part of the trial is called the

23 guilt/innocence phase, and it begins like every other criminal

24 trial. In fact, if memory serves me, weren't you on a DWI

25 case one time?

1 **A. No, I've never served.**

2 Q. Never served, okay. I'm sorry. I was reading
3 something else then.

4 All criminal cases start the same way, and that's
5 the Defendant is presumed innocent. The State has done the
6 accusing by a charging instrument of some kind, and the State
7 has to prove beyond a reasonable doubt that what's charged is
8 true, that the Defendant is, in fact, guilty of that crime.
9 And if the jury does that, the proper verdict is guilty. And
10 if the State fails to do, that then the proper verdict is not
11 guilty, and it's that simple. It gets some (sic) a little
12 fuzzier because sometimes there are lesser included offenses
13 that you have to consider for some reason. Some of the proof
14 was met, but not all. Maybe a murder was proved, but not a
15 burglary kind of idea, and then you consider the punishment
16 range for regular murder. But the first part of trial is
17 the -- is the defendant guilty of what we say, because if he
18 isn't, we don't worry about punishment. You don't punish
19 somebody who's been acquitted. He's turned loose, and that's
20 the end of it.

21 My questions, and very likely the defense questions,
22 will, I suppose, assume that you have found the Defendant
23 guilty of capital murder so that we can move on and talk about
24 the punishment issues that are involved. But by me saying
25 that, I'm not telling you that we're not going to do our job

1 and produce the proof and undertake to prove beyond a
2 reasonable doubt that he's guilty, nor would the defense, if I
3 can speak for them. The defense would not be conceding that
4 he's going to be found guilty simply because they're talking
5 about the second part of the trial. It's just that -- that's
6 what this individual procedure is really designed to work
7 with, and that's the death penalty issues and the punishment
8 issues in the case.

9 So, if we prove beyond a reasonable doubt that the
10 Defendant's guilty of capital murder there's a second part of
11 the trial. We begin again, and the Judge will say, what says
12 the State? State's ready. What says the defense? And the
13 defense is ready, and then we begin. And we have right to
14 bring you additional evidence if we want to at the second
15 phase of the trial, but we don't have to. And why I say that,
16 under our law all jurors in capital murder cases are asked
17 that first question there, and that's whether there's a
18 probability that the Defendant would -- pardon me -- engage in
19 criminal acts of violence to the extent that he's a continuing
20 threat to society. And that's not unique to our trial here.
21 That's Texas law, and all several hundred cases of death
22 penalty charges that are tried a year across this State all
23 begin with that first question.

24 But why I say we don't have to put on any other
25 evidence is our law provides that proof of the crime itself is

1 sufficient to authorize the jury to answer this question yes,
2 if it chooses to. And that's kind of getting back to what we
3 talked about before. The enormity of the crime sometimes can
4 answer that question all by itself.

5 Do you believe that there's some people who value
6 human life so little that they could take somebody's life with
7 about the same amount of emotion that you or I might throw a
8 tire away that we didn't want anymore? Do you think there are
9 people like that, that have that little regard for human life?

10 **A. I think so.**

11 Q. Okay. And that's not meaning that everybody does,
12 and that's not meaning that individuals are just savages or
13 animals in order to answer that question. But if a person
14 does a capital murder, it can be said that anyone who could do
15 such an act, anybody whose judgment, whose mind, whose
16 intellect, whose heart allows them to do something so cruel
17 and awful is always going to have a probability of being a
18 continuing threat to society. I'm not saying do you agree
19 with that necessarily, but do you understand how that could be
20 a reasonable thing to say? If the crime is bad enough, the
21 crime itself could prove the answer to that question, could
22 you answer yes beyond a reasonable doubt?

23 **A. Yes, I'm following your argument.**

24 Q. Okay. And it doesn't mean it has to, and I guess
25 the converse could also be true. The crime could be such that

1 you say, I know it's a technical, capital murder but that
2 person isn't dangerous.

3 And by the way, this question doesn't say bad. This
4 question doesn't say, do you find by a probability -- that
5 there's a probability that the Defendant is evil or bad or
6 wicked or sinful or satanic. It doesn't say anything like
7 that. And why I tell you that is because the Kavorkian
8 situation. If Dr. Kavorkian, in fact, did murder two people,
9 or he broke into a hospital when he wasn't supposed to in
10 order to go in and kill somebody, that would be
11 burglary/murder. That would be a capital murder, too. And I
12 don't think many hospitals or nursing homes would let
13 Dr. Kavorkian in if they knew who he was. They just wouldn't.
14 So, he'd have to bust a window or climb in a skylight or
15 something.

16 And, you know, if you look at that question, you
17 just found Dr. Kavorkian guilty of capital murder, I'm not all
18 sure that the proper answer to that question might not be yes.
19 Even though we think he might serve something good in society,
20 and lot of people swear by him, he's going to keep on doing
21 it. That was his whole thing. They've got him locked up in
22 prison now, but if mercy killings are murder and they're
23 crimes of violence, and, of course, they are, the true answer
24 to that question would have to be, yeah, Dr. Kavorkian is
25 going to keep on killing. He's going to be a continuing

1 threat to our society. Are you with me on that?
 2 A. Yes, sir.
 3 Q. And it's possible to do that, even if you like the
 4 guy. Even if you say, you know, there's something about the
 5 guy I kind of like, but I've got to do my job as a juror.
 6 He's a dangerous guy because he's going to keep doing this.
 7 People still have the ability to answer the question
 8 truthfully without finding the person is bad or want him to be
 9 bad, or anything like that. Dangerous doesn't always have to
 10 be the same as evil. Sometimes people don't choose to be
 11 dangerous; they just are. Are you with me?

12 A. Yes, sir.

13 Q. And, you know, maybe in another situation, like that
 14 daddy that shot the killers of his kids, maybe you'd look at
 15 his whole life and say, you know, he's not going to do that
 16 again. He wouldn't be here now except for those people doing
 17 what they did to his kids, and I can't excuse, and I can't
 18 condone it, but I can sure understand it. Maybe I'd do the
 19 same if it were my children, or my child. So, maybe the
 20 answer to that question would be no.

21 Now, having told you that we don't have to put on
 22 any other evidence at the second part of the trial -- I expect
 23 that we will. And the defense doesn't have to put on any
 24 evidence at any part of this trial, and they've got a burden,
 25 which is nothing upon them at all. The only burden of proof

1 is to be here while the State is doing the proving, and make
 2 them prove it beyond a reasonable doubt and -- but both sides
 3 often offer evidence, and I can tell you we will offer
 4 evidence that will assist you in answering that second -- or
 5 first question up there.

6 I'll give you an example of things that are
 7 available. Character evidence, both good or bad, is available
 8 at the second phase of the trial. In other words, in a
 9 capital murder, the defendant, if he chooses, may offer
 10 evidence of good things that he's done in his life, of good
 11 patterns of behavior; Eagle Scout, distinguished Naval
 12 service, studies at pharmacy school, all kinds of things like
 13 that, if that's helpful to the jury.

14 The State in a capital case is entitled to offer
 15 evidence of other bad acts, other crimes, both violent and
 16 nonviolent, with a view (sic) to convince you this is
 17 character rather than psychological.

18 Both sides are entitled to offer psychological
 19 evidence, offer studied facts of this case, and whatever
 20 records have been made available to me to show we believe the
 21 Defendant is probably going to be dangerous in the future.
 22 The defense can offer psychiatrists, and that's all very good,
 23 but I'm a psychiatrist, too, and I believe he will not be
 24 dangerous based on the evidence I'm looking at, and we could
 25 get two more and two more and have a battle of psychologists

1 that I think many times cancel each other out in a trial, but
 2 I think that's available.

3 Other stuff that isn't criminal may be available if
 4 it assists you in answering the character of the Defendant and
 5 assists you in answering that question.

6 We are not required to prove that he will kill
 7 again. That's not part of our burden. Whether he may or may
 8 not may be important in answering that question. But when it
 9 talks about criminal acts of violence, do you find there's a
 10 probability the Defendant would commit murder, it doesn't say
 11 that. It just says criminal acts of violence. When you hear
 12 the term "criminal act of violence," what comes to your mind?
 13 What do you think of?

14 A. Typically when you think of violence, it's some sort
 15 of assault or murder or something of that nature.

16 Q. Hitting people, beating on people, shooting them,
 17 stabbing them --

18 A. Right.

19 Q. -- bricking them in the head, maybe something like
 20 that?

21 A. Yes.

22 Q. Okay. Certainly I think we would all agree those
 23 are acts of violence. Because some people limit the concept
 24 of an act of violence to people-on-people crime only. They
 25 say, well, if I come to your house tonight and I'm all mad,

1 and I've got a big, old hunky gas pipe, and I start busting
 2 every window in your house, screaming and cussing and just
 3 generally very unruly, some people say, well, that's not an
 4 act of violence because it's not people on people. It's
 5 people on property.

6 And other people say, well, I think it is an act of
 7 violence, and it may be we may rather a fellow be beating on a
 8 guy's windows than beating on a guy's head, but it's still an
 9 act of violence because it demonstrates taking physical force
 10 and using it where you shouldn't be using it kind of thing.
 11 What do you think about that? Do you think that an act of
 12 violence necessarily needs to be limited to on a person, or do
 13 you think it can also be on property?

14 A. Kind of in between. If it's, you know, property
 15 that is directly tied to that person. If the person is in the
 16 house and someone is beating on the windows, then I think you
 17 can infer that it's directed towards that person. If it's a
 18 house that he owns across town that's rented out, that might
 19 be something good.

20 Q. Okay. Sure, makes sense. I mean, if you've got a
 21 kidney patient and a fellow goes in with a baseball bat and
 22 beats up the dialysis machine, that's getting awful close to
 23 assault of a person. You don't have (inaudible) machine
 24 that's going to make him feel bad kind of thing, and he gets
 25 sick and maybe die.

1 Even if something isn't, in your mind, a criminal
2 act of violence, like doing damage to the house across town
3 like you said, do you see how that's still -- knowing about
4 that would still assist you in figuring out his character and
5 figuring out whether or not he will probably commit criminal
6 acts of violence in the future?

7 **A. Yes.**

8 **Q.** And there could be other situations. Do you think
9 wife beating, for example, spousal abuse, do you consider that
10 to be a criminal act of violence?

11 **A. Definitely.**

12 **Q.** There can be other things that you and I would
13 clearly agree and everybody would agree are not acts of
14 violence; for example, stealing. If you leave your car out on
15 the parking lot tonight or out on the street, and somebody
16 comes by and hot wires it and drives it off, you almost
17 couldn't find any way to argue that's a criminal act of
18 violence. Would you agree with me on that?

19 **A. Yes.**

20 **Q.** But even if it's not a criminal act of violence,
21 that would still be useful in answering that question one way
22 or the other, don't you think? If a person is doing -- if the
23 laws and rules and respect for other people's things means
24 nothing to an individual, that might help you to figure out
25 whether or not there's going to be respect for that person's

1 body or that person's safety, those kinds of things, or do you
2 think so?

3 **A. To an extent. I don't think it would be a big
4 determining factor.**

5 **Q.** It's certainly not the home run?

6 **A. Right.**

7 **Q.** The home runs are the -- the assaultive kinds of
8 offenses for sure?

9 **A. Right.**

10 **Q.** And then there are other things that are part of --
11 and once again, these are part of some of the
12 characterological stuff that in and of themselves may not be a
13 huge thing, but they may assist you in answering that question
14 because it might give you some insight into the background or
15 the options the Defendant might have.

16 And let me give you an example. Let's assume a
17 defendant is able-bodied and is able to work. There's no
18 reason not to, but for whatever reason he or she chooses not
19 to work. I'm just -- why don't you have a job? I never liked
20 working. And you understand that in our society you can
21 really do that. No -- our society is so charitable that we'll
22 give you medical care. Doesn't matter if you've got a job or
23 don't have health insurance, if you show up at Parkland or
24 even the Plano hospitals, if you really need medical care,
25 you'll be taken care of. Your kids will get vaccinations.

1 You and I may pay for those ourselves as working people, but
2 there's free immunization clinics for kids.

3 I don't know how anybody has to go hungry in our
4 society because every church I've ever known of -- I can't
5 imagine showing up at a church and saying, me and my kids are
6 hungry. Can you help? You know you can get something at a
7 church -- a lot of churches, and you can always make the
8 rounds.

9 So, the fact that you don't work is not, number one,
10 not illegal, and I guess it's sort of up to you if you want to
11 live that way. And yet, you might take that question and say,
12 well, that's not a very big piece of the answer, but it's a
13 little piece because maybe somebody who doesn't work is always
14 going to have the pressures to get involved in some type of
15 illegal activity like drugs, like stealing, like something
16 like that, and that might make that person a continuing threat
17 to society, because sometimes out of all this criminality,
18 sometimes there just comes violence. It works this way. So,
19 these are the kinds of things you're going to get at the
20 punishment phase of the trial if you found the Defendant
21 guilty of capital murder.

22 And like I said, the other stuff could be there.

23 The other kinds of things you can expect are sort of what I
24 call the mitigation issues. That's comes on that last
25 question -- the mitigation question I'm going to talk to you

1 about that in a minute. But they may also offer some insight
2 into how to answer that special issue there.

3 Why do you think we ask jurors that question in a
4 capital murder case? And you probably never thought about it
5 before. Why do you think we do that?

6 **A. I would think that it would be to determine if
7 incarceration in and of itself is an adequate punishment, you
8 know, justifying whether the death penalty is a necessary
9 part.**

10 **Q.** I think you're right. I never read the history of
11 the statute, but I think you're right. I think legislatively
12 we have decided that the death penalty should be for people
13 who will probably be dangerous in the future. It's odd
14 because only a lawyer's mind would probably do this, but if
15 Timothy McVeigh had blown up that courthouse, and it had been
16 here in Texas, and then when the time comes -- they solve the
17 crime and they find out who he is and they arrest him, and he
18 fights back and he's shooting at the police. I mean, no more
19 dangerous than that. He's trying to do another capital
20 murder. He's trying to murder police officers. But they hit
21 him first, and they hit him in the spine, and they paralyze
22 him from the eye sockets down, let's say. He's still
23 biologically alive, and he will probably live for some period
24 of time.

25 And yet, truthfully, no matter how horrible that

1 crime was, and we've all said that's the extreme case
2 (inaudible) probably. When you look at that question, is
3 there a probability he's going to commit criminal acts of
4 violence that will constitute a continuing threat to society,
5 what's the answer going to be in that situation?

6 **A. No.**

7 **Q. No, exactly.**

8 And so, the point I'm trying to illustrate is that
9 even if you're convicted of capital murder, that doesn't
10 automatically answer that question. The evidence of the
11 capital murder you committed may be strong enough that that
12 evidence would answer that question, but you have to
13 independently ask yourself not only is he guilty because you
14 already knew that in the first part of the trial, but is he
15 probably going to commit future acts of violence, that's a
16 continuing threat to society.

17 Now, probability is only one of many terms in that
18 question that's not defined, and I'm not sure -- tell me what
19 you do -- I wasn't exactly clear from your questionnaire.
20 What is your actual occupation?

21 **A. Real estate inspections.**

22 **Q. And would that be for -- would that be for, like,
23 buyers?**

24 **A. Right.**

25 **Q. I mean, for example, if I was getting ready to buy a**

1 house, would I maybe hire you to come out and make sure that
2 the ceiling joists were not weak or rotting or something like
3 that?

4 **A. Right. It's a structural and mechanical evaluation,
5 yes.**

6 **Q. Okay. And you probably do some of that at the
7 direction of lending institutions, too, I would think, to make
8 sure that --**

9 **A. Occasionally, but typically we're agents of the
10 buyer.**

11 **Q. Okay. Do you inspect air conditioning units and --**

12 **A. All structural and mechanical.**

13 **Q. -- the roofs and all that sort of thing?**

14 **Foundations?**

15 **A. Right.**

16 **Q. Anything that could be a major problem --**

17 **A. Right.**

18 **Q. -- for the buyer.**

19 It's not the kind of job that maybe you use the
20 probability, and probably applied probability standards
21 (inaudible). I bet you've gone out and looked at air
22 conditioning units, and you might have come back and told the
23 buyer that air conditioner is okay, but it's not going to last
24 real long. Have you ever done that? Have you had that kind
25 of situation?

1 **A. Yes. We're restricted by our standards as to how
2 you can phrase it, but certainly.**

3 **Q. How would you phrase it to a buyer? It's working
4 and cooling. Do you -- I don't know how thoroughly you
5 inspect it. You might take a thermometer and put it up in the
6 vents to see if it's cooling or not?**

7 **A. Right.**

8 **Q. And I know nothing about air conditioning except to
9 call somebody when it's not working right.**

10 **A. Right.**

11 **Q. But does it progressively decline sometimes? I
12 mean, is it supposed to be 72?**

13 **A. No. As a rule, it works or it doesn't work, and --
14 you know, it's sort of like cars. You know, you see some that
15 are 1950s on the road and they work fine. And that's the
16 reason that we don't address. We just address is it working
17 at this time.**

18 **Q. How about roofs? When you go up and you see a roof
19 that's in trouble but not leaking yet, how would you handle
20 that situation?**

21 **A. Typically if there's damage to it, then it's
22 considered defective.**

23 **Q. And I guess it's up to the buyer if he wants to
24 still --**

25 **A. Well, then you go to the next phase, which is the**

1 **specialist. You'd get a roofing contractor to evaluate it.**

2 **Q. We use the term "probability" all the time in our --
3 probable or probability all the time in our language. If I
4 were to ask you, are you going to the office party Friday
5 night and you told me probably, I would interpret that -- I
6 think most people in our society would interpret that as
7 meaning it's more likely to see you there than not?**

8 **A. Right.**

9 **Q. And now that doesn't always mean that people are
10 being truthful. Some people just never will tell you no.
11 They just -- rather than tell you, no, I'm not going to be
12 there, (inaudible) I think it sits better with them. But, if
13 a person tells you probably, then you expect to see them
14 there.**

15 On the other hand, when you talk about something
16 like the weather you might hear the term 20 percent
17 probability of showers, and that's obviously not more likely
18 than not. That's less likely than not because they say it's
19 20 percent, which must mean 80 percent chance of no showers,
20 or probability of no showers. And then sometimes
21 mathematicians talk about probabilities almost to the extent
22 that any possibility has some probability. Do you know what I
23 mean?

24 **A. Uh-huh.**

25 **Q. What's the chance of McVeigh with a spinal cord**

1 injury paralyzing him from the eye sockets down, what's the
2 chance of him recovering? Well, you can get doctors in and
3 they'd say, well, we can't say there is no chance. There's
4 always a possibility. Things have happened. People get cured
5 of cancer spontaneously sometimes. But we say it's about --
6 it's as close to no chance as we can ever say in medicine.
7 And yet, there is a probability that he's going to get better.
8 Are you with me on that? It's just a very, very low
9 probability so much so that it's not even worth thinking about
10 in the real world. It's like -- just like a lot of things
11 that are theoretical, but not going to happen.

12 While we don't have a definition of probability in
13 Texas, it has to be more than a mere theoretical possibility.
14 It has to be a -- something that's realistic, something that
15 could happen, and other than that, all we know it's more than
16 a possibility. We don't know how much more, and it's kind of
17 up to you in how to define it.

18 So, again going back to that McVeigh situation, if
19 he's paralyzed and the State brings you doctors to say, well,
20 I've never heard of it happening, but I've studied this and it
21 is possible that his spine will get better by itself. That
22 might be a possibility, but that probably would never prove a
23 probability to a jury. Does that make sense to you?

24 A. Yes, sir.

25 Q. It's just too remote.

1 Other than that you might wonder, well, why do we
2 use the term "probability" in that question? Well, the answer
3 is nobody can predict the future, anyway.

4 A. Right.

5 Q. I mean, we assume that were Mother Theresa still
6 alive she would keep on doing good. Nobody can guarantee
7 that. She might not be doing good for all anybody knows. We
8 assume that the probability is, based on what she's done in
9 the past and the kind of person we know her to be, we assume
10 she would still do good, but nobody can guarantee it.

11 And so, if you stop and think about that question,
12 it's not unfair to the Defendant to bind him with somebody's
13 probability study because he's already been found guilty of
14 capital murder. That's the crime that he's committed, and the
15 rules at the punishment phase, anything he gets is probably
16 plenty good. Any advantage he gets from those questions is
17 probably plenty good, given what he's already been convicted
18 of at the first part of the trial. So, if the law says, all
19 we have to do is prove a probability, you don't have a problem
20 with that law, do you?

21 A. No.

22 Q. And if we do prove a probability -- we prove to you
23 beyond a reasonable doubt there is a probability, a realistic
24 chance, not that remote possibility of the spinal cord getting
25 better by itself, but a realistic chance that he's going to

1 commit criminal acts of violence in the future that are a
2 continuing threat to our society, then you'd be able to vote
3 yes on that question?

4 A. Yes, I believe so.

5 Q. Okay. Now, when we use the term "society," I mean,
6 the first thing we all think about is Plano, McKinney, Allen,
7 the communities in which we live. The first thing that
8 probably most people think of is what happens if he's walking
9 down McDermott Road, or what happens if he moves in right next
10 to me in Fountain Gate or wherever I'm living. Is he probably
11 going to be dangerous? And that's true, because certainly our
12 society is a society that's talked about with that question.
13 But it doesn't have to be necessarily the society that you and
14 I live in. It can be the narrower part of our society, which
15 is prison because prison is still part of our society. You
16 and I pay taxes that cause prisons to be built. You and I
17 come to court, me every day, you occasionally, dealing with
18 issues that may or may not put somebody in prison.

19 We elect people. We elect district attorneys and
20 district judges and attorney generals and Court of Criminal
21 Appeals justices with a view to creating a prison society.
22 Those are all parts of this criminal justice system that have
23 to do with the prison society. So, prison is also a part of
24 it. It's also a part of society. Do you see how that can be,
25 also?

1 A. Yes.

2 Q. And the context may be different and doesn't -- and
3 you could be dangerous in one society -- one part of society
4 and not in another. You could be dangerous in both parts.
5 You could be perpetually dangerous and that question is not
6 limited to one part of society or another. Does that make
7 sense?

8 A. Yes.

9 Q. Okay. So I think the Legislature is really wanting
10 us to evaluate the personality, the character of the Defendant
11 at the time you're making that decision and say what threats
12 does he pose for society, wherever we find that society?
13 Because that's the only test that you could do. Do you think
14 you could answer that question fairly one way or another?

15 A. Yes.

16 Q. If you failed to answer that question unanimously
17 yes, or stated another way, if 10 or more persons answered
18 that question no, then that's one of the few things in this
19 proceeding that is automatic, and a no answer to that first
20 question is a life sentence and that's it. Everybody else
21 goes home and you -- except the Defendant. He goes down to
22 prison to begin serving a life sentence, which probably --
23 well, by law right now is in excess -- I think it's 40 years
24 minimum; could be more, could be exactly 40 years. Nobody
25 really knows. But the jury would be informed that there's no

1 such thing as life without parole, and the jury is further
2 informed that persons are eligible for parole after 40 years,
3 but still that's a long time for sure. Forty years for many
4 of us might be longer than we got.

5 A. Right.

6 Q. And for others it might not be. But I mean, if
7 you're old enough -- if you're old enough to be in the adult
8 system, you're going to be mighty darn old adding 40 years --
9 even if you're 17, for example, adding 40 years to your 16 or
10 17 years, you'd still be pretty old.

11 But if you answer that question unanimously yes,
12 then the next question that comes to you is what's sometimes
13 called the mitigation question, sometimes called the last-look
14 or the last-view question, sometimes called the humanitarian
15 question, and I believe it's designed for the jury, rather
16 than the Defendant. I believe -- actually, the mercy that's
17 expressed in this particular question is mercy toward the jury
18 to spare the jury the concern that even though this person is
19 probably going to be dangerous in the future and he is a
20 capital murderer, it's designed to give the jury the chance to
21 spare themselves the agony of giving a death sentence where
22 they didn't feel, based on all the evidence in the case, it
23 was the right thing to do. Does that make sense to you what
24 I'm saying?

25 A. Yes.

1 Q. It happens to benefit the Defendant because if the
2 jury feels that way and votes for a life sentence -- we're
3 assuming that's better for the Defendant. Now, you probably
4 hear (sic) in the newspapers sometimes -- or see on TV that
5 sometimes defendants want to die. They say it's better to get
6 the death penalty than stay in prison for life, you know, kind
7 of thing. But I'm assuming, without knowing, that this
8 Defendant, if given the choice, would rather not be executed.
9 I think most people would rather -- putting yourself in a
10 defendant's place, most people would say, I'd rather you send
11 me away for life rather than killing me. I'll find some
12 meaning in my life I can have down in the pen. So, that may
13 benefit the Defendant, but that question, I think, is designed
14 for the comfort and well-being of the trial jury itself. So
15 let's take a moment and look at that question, and we'll do it
16 kind of piece by piece.

17 First of all, there's no burden of proof on that
18 question so both sides have to look at the other and -- I've
19 got the right to look at Mr. Goeller and say, why didn't you
20 produce some evidence of mitigation, and he can say, well, why
21 didn't you produce some evidence that there isn't any
22 mitigation. We're both right because there is not a burden of
23 proof, unlike the other questions. But some things are clear
24 in this question. It first directs the jury to take into
25 consideration all the evidence. Well, I mean, of course,

1 because that's what you've been doing. You've been listening
2 to all the evidence. So, it's telling you consider all the
3 evidence, which the Judge is going to tell you in other parts
4 of his charge, anyway. And then it says including the
5 circumstances of the offense. That's the crime that you heard
6 in the first part of the trial. And you may remember that I
7 told you it's possible to answer that first special issue only
8 from the facts of the crime themselves. If they're so
9 compelling that you believe a person who could do such a thing
10 would probably always be dangerous.

11 Likewise, it is possible to answer that mitigation
12 question solely on the basis of the facts of the offense
13 itself. That doesn't mean you don't consider the Defendant's
14 character or background, but when it talks about the
15 circumstances of the offense, they could be such as to fully
16 answer that question about whether or not there was sufficient
17 mitigating evidence apart from that. Does that make sense to
18 you?

19 MR. GOELLER: Judge, I'm sorry. I've got to
20 object to that last statement by Mr. Schultz. It's a
21 misstatement of the law. It attempts to commit the juror to
22 disregard character, background, personal moral culpability.

23 MR. SCHULTZ: Doesn't direct him to disregard
24 it. It simply says that may all be woefully insufficient.
25 Well, he can't, because how he weighs those factors is up to

1 him, and the point is -- the point is that he may base an
2 answer to that question solely upon the circumstances of the
3 offense.

4 MR. GOELLER: But his comment invites the juror
5 to concentrate on that particular clause and doesn't --
6 because it says including character, background, moral
7 culpability. I think it's confusing at this point.

8 THE COURT: You believe it diminishes the
9 possible mitigating factors?

10 MR. GOELLER: Yes, Your Honor.

11 THE COURT: I'll sustain the objection.

12 And let me ask you to kind of mark where you are,
13 Mr. Schultz. We're going to take about a ten-minute recess,
14 and I want to ask you a question before I step down. I would
15 assume you have some artistic capability; is that correct?

16 VENIREPERSON: That's fine. I don't know how
17 much.

18 THE COURT: I tell you what, I want to ask you
19 if you would don't discuss anything that's been asked of you
20 or anything that you've responded with any of the other
21 jurors.

22 VENIREPERSON: Sure.

23 THE COURT: So let's take a ten-minute recess
24 and come back at 3:35.

25 THE BAILIFF: All rise.

1 (Recess taken.)

2 THE COURT: Mr. Bolin, you're still under
3 oath. Mr. Schultz, please go ahead.

4 Q. BY MR. SCHULTZ: Tell me, as you've had time to
5 reflect on it after the discussions that we've had and just
6 realizing that it's going from kind of being in your living
7 room thinking that we should have a death penalty to realizing
8 it could be you that's going to be involved in that, tell me,
9 if you would, why it is you favor having the death penalty in
10 Texas.

11 A. **For the protection of society. If someone is beyond
12 rehabilitation or so forth, then --**

13 Q. Okay. Do you think there are some -- how would you
14 figure out if somebody was beyond rehabilitation? How would
15 you approach that?

16 A. **I think you would have to weigh the presentations
17 and determine what the likelihood of their action is. It's
18 almost (inaudible), but...**

19 Q. I'm with you there.

20 I guess here's what I'm thinking, Mr. Bolin. Let's
21 say a person commits a capital murder, and I guess we
22 generally have a notion that capital murderers -- well, I
23 don't know. Do you have a notion that capital murderers tend
24 to be a little on the dumb side generally? Do you kind of
25 have that feeling they're not real bright, or do you have such

1 things that look like rehabilitation, that look positive for
2 her situation. Can you see how that could be, even before the
3 trial?

4 A. Yes.

5 Q. I mean, I want to talk to you a little bit about
6 religious experience only in the context of this trial. Do
7 you attend church?

8 A. Yes.

9 Q. What church do you attend?

10 A. **Allen Heights Baptist in Allen.**

11 Q. Certainly for people who have a faith about them,
12 there's something positive sounding about people with like
13 pursuits; do you agree? I mean, if you hear about somebody
14 that you've known for a long time that's joined a church and
15 starting to attend, and they go to Sunday school classes and
16 their kids are involved in the youth programs, in general
17 that's an experience that you can identify with and seems
18 positive to you because you do that. Are you with me on that?

19 A. Yes, sir.

20 Q. It may well be, for example, something that had
21 never interested you or your family, you had never been a
22 church-goer, never went to church growing up, that might have
23 less significance to you personally just because it's not a
24 part of your life, right?

25 A. Right.

1 a feeling about it?

2 A. **I don't think so, no, not necessarily.**

3 Q. So they could be intelligent, like Ted Bundy, for
4 example, or they could probably be illiterate or somewhere in
5 between; do you agree?

6 A. Yes.

7 Q. Well, I guess I'm thinking to myself if a person
8 got -- decided to do a capital murder, thought about it, did
9 whatever planning he or she did, which planning is not
10 required. This premeditation concept is not part of our
11 murder law. And yet certainly the more planning, the more
12 thinking about it a person does, and then goes ahead with it,
13 the more concern that kind of crime would cause, I suppose,
14 for most of us. An impulsive crime might be different.
15 Something you've thinking about for days and weeks kind of
16 thing. But then you try to get away. You make up a story,
17 for example, to try to cover yourself if you do -- if a person
18 does. And then eventually gets arrested, and the evidence all
19 the sudden becomes very, very strong as it gets developed, and
20 the evidence is very, very good because you know these things.
21 You're aware of it as a defendant, for example, even in the
22 jailhouse you would know these things.

23 If I'm right and if you're right and a defendant
24 doesn't want to be executed, doesn't want to die, very
25 possibly in the early stages a defendant will start doing

1 Q. But even in that case, I think it would be very hard
2 for anybody in our society to say that the things that go on
3 in our churches isn't positive, even if we don't do that
4 ourselves. Do you know what I mean?

5 A. Yes, sir.

6 Q. Maybe I choose not to be a member of a church or
7 maybe I do, but I think of things like mission trips where
8 kids are going off and rebuilding homes for poor people and
9 things like that, I think that's real positive, whatever their
10 motivations and whatever their beliefs.

11 A. Okay.

12 Q. And knowing that, let's face it, if you're
13 evaluating a defendant and trying to answer special issues
14 regarding such things as his future danger or his moral
15 culpability or his background and character and things like
16 that, people of faith may respond to that sort of thing. Are
17 you with me on that?

18 A. Okay.

19 Q. And maybe not, because you could also say something
20 else. You could also say, well, that's fine that there's been
21 this experience or this conversion or this acceptance of
22 Christ as a Savior for us all, but that may well not have much
23 to do with how to go about answering these questions. And
24 it's not because you aren't a Christian and not because those
25 things aren't important, but it may, rather, have to do with

1 the fact that there's no place in those questions that really
 2 plugs that in directly; do you know what I mean?
 3 **A. Yes, sir.**
 4 **Q.** For example, do you believe that Christians -- I
 5 mean, true Christians can commit crimes?
 6 **A. Yes.**
 7 **Q.** Do you think they can commit violent crimes?
 8 **A. Yes.**
 9 **Q.** Do you think that true Christians could be dangerous
 10 people?
 11 **A. Yes.**
 12 **Q.** And I think most people would agree with that.
 13 There's not something magical that happens to a person
 14 automatically. I mean, we would hope there would be a change,
 15 and there would be some kind of internal change, but maybe
 16 not. There have been some pretty awful things done throughout
 17 our history in the name of Christianity, for example, that --
 18 you know, looking back on it, how can that be? I've got to
 19 believe there were a bunch of Christians in Nazi, Germany.
 20 That's, essentially, a Protestant country. It's highly
 21 Lutheran, but it's Protestant, and a huge Catholic population.
 22 And so you've got to believe that a lot of the people doing
 23 those atrocities were Christians, and yet some awful dangerous
 24 things were going on there.
 25 **So, I guess what I'm asking you is, if it turns out**

1 that a defendant claims to have been converted to Christianity
 2 and had a rebirth in his soul, is my ability to prove that
 3 question should be answered yes -- that future danger
 4 question, does that make it impossible for me to do that if
 5 you find the Defendant's converted to Christianity after he's
 6 been arrested and before his capital murder trial?
 7 **A. No.**
 8 **Q.** Okay. Now, certainly that's something you can
 9 consider if it's important, and you can consider it several
 10 ways. First of all, to some people it might be important to
 11 see whether or not it was a genuine conversion or something
 12 for the benefit of the jury. Are you with me on that?
 13 **A. (Nods head.)**
 14 **Q.** Other people might say, well, it doesn't really
 15 matter. I hope it's -- for him and his soul, I hope it's the
 16 real thing, but whether it's real or not doesn't have anything
 17 to do with how I'm going to answer those special issues
 18 because they don't -- they relate to his character, not his
 19 faith. Are you with me on that?
 20 **A. Yes, sir.**
 21 **Q.** Okay. Now, if you've answered that question yes, as
 22 I've said before, then you go to this mitigation question, and
 23 only if you answer that yes beyond a reasonable doubt do we do
 24 it. Whether taking into consideration all the evidence,
 25 including the circumstances of the offense -- that's the crime

1 itself, anything that you heard about in the first part or
 2 possibly even in the second part -- the Defendant's character
 3 and background and the personal moral culpability of the
 4 Defendant, whether taking all that into consideration there is
 5 a sufficient mitigating circumstance or circumstances to
 6 warrant a life sentence. Some people might say a religious
 7 conversion is a mitigating circumstance, something that
 8 lessens, something that maybe makes it more understandable,
 9 more acceptable perhaps. I'm searching for a word that fits
 10 right, because it's not a defense. It's not an excuse or a
 11 defense to the crime, but it's a sympathy thing. It's
 12 something that perhaps you'd say this is a sad event that
 13 happened to this person, and I find it's, quote, mitigating or
 14 lessening evidence. And some people might say a religious
 15 conversion is such a thing. That's something about the
 16 Defendant's present character that's mitigating. And I think
 17 probably you and I would agree that it's a genuine, religious
 18 conversion that might be a good thing if it's genuine, right?
 19 **A. Yes.**
 20 **Q.** And yet, it might not be anywhere near the amount
 21 required by that confession; that being a sufficient
 22 mitigating circumstance or circumstances to warrant a life
 23 sentence. Do you understand?
 24 **A. Yes.**
 25 **Q.** And let's talk about mitigation. Everybody in this

1 world, I suppose, carries around with them a bag full of
 2 mitigating evidence that might be available to them if they
 3 went and committed capital murder. And even though the truth
 4 is there are probably millions of people walking in this land
 5 that have far more mitigating things in their life than any
 6 of these capital murderers that we deal with on a regular
 7 basis. They ordinarily don't have a need to use that
 8 mitigating evidence as an excuse, or to try to remove
 9 themselves from a possible death sentence. Let me tell you
 10 what I mean by that.
 11 **Let's assume there's a person in our society that**
 12 **grew up poor, grew up in a broken home with a dad that was**
 13 **never around to do any good role modeling. Maybe the dad was**
 14 **a dope dealer himself, and maybe when he wasn't in prison, he**
 15 **was beating on the kid's mom. Certainly wasn't doing anything**
 16 **positive for the child. Let's assume the child didn't do very**
 17 **well in school, either because he wasn't very bright or**
 18 **perhaps things were in such turmoil in his home, and he wasn't**
 19 **able to concentrate and go to school. Might be kind of hard**
 20 **to go to school if you feel so sad about your life all the**
 21 **time and it might be even more hard to concentrate on it.**
 22 **Might get to school and maybe you don't have lunch money and**
 23 **maybe you don't have a house you'd bring your friends home to**
 24 **like other kids do, and on and on and on. Maybe school is**
 25 **very painful for you, just don't like it, you don't feel you**

1 belong. Maybe you drop out of school, and so on. Dead-end
2 jobs, lots of despair. You end up drinking, you end up
3 smoking dope, you end up taking more serious types of
4 controlled substances. You lose perspective, lose control, no
5 relationships. People don't love you because of how you
6 behave and that makes things even worse.

7 If you look at a life that started out young with
8 such a tragedy, you seem like the kind of guy to me that would
9 say that's awful sad. That's just a sad story to ever have to
10 hear about somebody. Are you with me on that?

11 A. Yes.

12 Q. And yet, people like that, people with those kinds
13 of backgrounds are rampant in our society, and you only hear
14 about a few of them. Most of them -- most of them don't go
15 out and commit capital murders. Most of them don't do
16 atrocities. They're maybe always held back by that bad start,
17 or that bad deal of the cards that came to them when they
18 didn't have any control over it, so maybe they don't do as
19 well as they could have if things had been different, but they
20 don't go hurting people and they don't go -- they may end up
21 homeless, but they don't go hurting people. You know, that
22 kind of thing?

23 A. (Nods head.)

24 THE COURT: Say, Mr. Bolin, I just want you to
25 remind you to answer audibly because the court reporter is

1 probably didn't care too much for him. In fact, she told him
2 one time I was going to have an abortion with you. I guess I
3 never got around to it. Nobody knows what that might make a
4 kid feel like. Most kids like -- other parents say I'm sure
5 glad you're here. And Hitler's mom saying, I wish I had an
6 abortion and you weren't around, that kind of idea.

7 He goes off and gets into World War I, and he does
8 the best he can. He tries to be heroic and gallant. Best
9 they'll give him is his corporal stripes. That's the best he
10 was able to obtain as a result of his best efforts in the
11 military. And he finally finds a calling. He can write. He
12 can influence people. Maybe he didn't influence them in the
13 ways that were very acceptable, but early on he wasn't quite
14 as hate-filled as he was. And they ended up putting him in
15 jail for four years because of his unorthodox views, and by
16 putting him in jail he becomes meaner and more upset and more
17 self-pitying.

18 And I say that to you, and I'm really not trying to
19 be amusing, because the truth is all those things are real.
20 And if you ever stop and take the time to wonder how does
21 Hitler become a Hitler? Those things could perhaps have had
22 some influences on it. And yet, he wasn't the only one in
23 Germany growing up like that. There are millions of people
24 over there, and they didn't do those kinds of things like he
25 ultimately ended up doing.

1 taking everything down, and I want to make sure she gets
2 everything.

3 VENIREPERSON: Thank you.

4 THE COURT: All right. Sorry.

5 Q. BY MR. SCHULTZ: So those people never need to fall
6 back on the explanations of I had a background, and that's how
7 come my capital murder is not quite as bad. It's more
8 mitigated perhaps than otherwise. Do you know what I mean?

9 A. Yes, sir, I think.

10 Q. The one example I always like to use is Adolf
11 Hitler. If Adolf Hitler had been on trial in this State, he
12 had a lot of things he could claim were mitigating that, in a
13 different context, would have maybe broken your heart. He
14 grew up sickly. He was small. He couldn't play soccer like
15 all the other lads in Germany. He didn't fit in, and people
16 teased him and made fun of him. He had a dad that was
17 present, although his dad was probably very stern, and he
18 didn't make a lot of money and that seemed to make his dad
19 angrier because he wasn't making a lot of money like some of
20 the more successful Germans, and Hitler never fit in with the
21 other boys.

22 So he decided he wanted to be an artist. He went to
23 art school, and he was proud of his work. They threw it out
24 and said he didn't have any talent and kicked him out of art
25 school. He didn't fit in anywhere. He had a mother that

1 So, when you come to the part of the trial that you
2 found Hitler guilty of capital murder, and you further found
3 that he was a dangerous person and how could he not be, and he
4 starts arguing about the mitigation stuff; I was sad and I was
5 lonely and nobody took the time for me, and I got kicked out
6 of art school, and you look at his character and his
7 background, and he says I've converted. I've come back to my
8 Christian faith, and I'm full of love now instead of -- all
9 the hate is behind me.

10 THE COURT: Actually raised a Catholic, I
11 believe.

12 MR. SCHULTZ: Yeah, he was from southern
13 Germany.

14 Q. BY MR. SCHULTZ: And he says I've returned to my
15 faith. When you look at the enormity of his crime, the
16 circumstances of the offense, it's pretty hard for anybody to
17 get to the point of finding sufficient mitigating evidence to
18 warrant a sentence of life. Are you with me?

19 A. Yes.

20 Q. And that's really what it is. That question looks
21 fuzzy, but it's not. It's a weighing process, because
22 everybody has got mitigating circumstances. I don't know if
23 you -- if you apply to a college you really wanted to get into
24 and you didn't get in, that's mitigation. It may not be very
25 mitigating, but it would explain some sadness. It might

1 explain why you do some of the things that you do. Every
 2 single misfortune that a person has in life could be
 3 mitigating. It's just not sufficient mitigation because we're
 4 dealing with a really serious crime.
 5 Now, I don't know what -- I don't know what would be
 6 sufficient mitigating evidence, and nobody can really ask you
 7 that, anyway. They can maybe ask you how you feel about
 8 certain things, and say does this seem like it's mitigating,
 9 or does it seem like it's not mitigating? The idea is that
 10 whatever you find is mitigating, it's not is there mitigating
 11 evidence because there will be. I guarantee you in every case
 12 there will be something you would call mitigating. Something
 13 that's lessening or sad. It's that balancing thing. You look
 14 at the circumstances, the crime, the Defendant's character on
 15 the one side, and this mitigating evidence on other, and say
 16 is it sufficient to match the other side of the coin?

17 MR. GOELLER: Objection, Judge. Objection.
 18 Mr. Schultz is attempting to link the mitigation to the actual
 19 crime of the first phase of the trial. That's a misstatement
 20 of the law. I'd cite California versus Brown and Cantu versus
 21 State to match the other side of the coin. That is not the
 22 law in this State.

23 THE COURT: I tell you what, I'll overrule the
 24 objection looking at the context of the way it's presented.

25 Q. BY MR. SCHULTZ: You understand that how you weigh

1 that -- several things -- you're being directed to consider
 2 several things in that question. For example, the character
 3 of the Defendant, and you might find the character of the
 4 Defendant is bad. You might find -- you know, the same
 5 evidence that made you believe he's a future danger, going to
 6 be a continuing threat to society, it may well be that truly
 7 anybody who's probably going to be a danger in the future to
 8 our society has bad character. Not a good character, maybe a
 9 bad character, because that's kind of what that is if you
 10 think about it, don't you think?

11 A. Okay.

12 Q. If a person has got a good character, then the
 13 likelihood of them being dangerous to society is much less, so
 14 you would have answered that question yes in the first place.

15 The background of the Defendant is probably the key
 16 stuff. That's where the nobody loved me, my daddy wasn't
 17 around. I got drugs and lost my will to be me. That's
 18 usually where that stuff comes in, on the background of the
 19 Defendant part.

20 When you look at all of those things, and you might
 21 say, you know, yeah, the background is sad and there's
 22 mitigation in there, but the crime is even worse. The crime
 23 is awful. The crime is -- I didn't even know people could do
 24 such things to each other. I didn't understand that until I
 25 got on this trial. And taking that all into account you might

1 say, yeah, there's plenty of mitigation in here, but it's not
 2 sufficient mitigation, in which case the death sentence stays.
 3 The answer to that question is no, and the death sentence
 4 remains on this Defendant. Do you see how that works?

5 A. Yes.

6 Q. You might say it is sufficient. Nobody can tell you
 7 what is or is not sufficient except yourself. You might say
 8 that's a sufficient mitigating circumstance, and this
 9 Defendant ought not to get a death sentence, and that's your
 10 right as a jury, either individually or collectively. Does
 11 the question seem to be one that's -- like I said before, it's
 12 probably for the benefit of the jury really to have that
 13 option.

14 A. I would think it would it apply to both, but I would
 15 agree it's probably primarily for the jury.

16 Q. Okay. When you think of someone committing a crime
 17 on drugs, does that seem to you to make the crime and his
 18 criminality any less serious?

19 A. No.

20 Q. Here's why I ask that. Let's suppose this is the
 21 argument. I'm a drug addict. I started out just taking
 22 drugs, and like all people who become addicts, I thought I
 23 could control it, or I didn't care. My life was in shambles,
 24 and so I kept taking more and more, and my ability to resist
 25 became less and less until the point where I was doing it all

1 the time. And then the kinds of drugs I were taking -- was
 2 taking were the kind that makes me aggressive. Some of those
 3 drugs do that, and I was taking a drug that made me
 4 aggressive, and I knew it, because I had been aggressive while
 5 taking the drugs before and done aggressive things, but
 6 nevertheless, I was an addict. And I took some more of this
 7 and kept taking it, and I went out and did an awful, vicious
 8 capital murder and murdered two people. And if I hadn't been
 9 taking the drugs, I wouldn't have done the murder because when
 10 I'm not on drugs, I'm not that way. As you hear that
 11 argument, what's your response to that argument?

12 A. I think my first impulses is that you took them of
 13 your own free will, then you're still responsible. Again --

14 Q. Even if I --

15 A. -- it's kind of hypothetical.

16 Q. -- though I was operating under the influence of
 17 those drugs when I did my crime?

18 A. Again, I'd think if you take drugs on a regular
 19 basis, you must be aware of the circumstances. So, again...

20 Q. Do you think a religious conversion seems
 21 mitigating to you, if it's genuine?

22 A. Again, it's hard to say because there's no criteria
 23 for judging genuineness. It's something within; not something
 24 that's quantifiable or readily observable.

25 Q. You wouldn't convert that question into just a

1 search for whether or not there was a religious conversion.
 2 You don't view that question as that being the focus of that
 3 question, do you, whether he's been converted or not?
 4 **A. Again, I'm not following your question.**
 5 Q. Well, if the State had to prove that a defendant did
 6 not have a genuine religious conversion -- I mean, a defendant
 7 can offer evidence. I'm not talking about this stuff. Anyone
 8 can --
 9 **A. Sure.**
 10 Q. -- offer evidence. They can call clergy, because
 11 clergy goes to the jail, and they have services in the jail,
 12 and all denominations are available. And a person could go to
 13 the services that are available there and make a profession to
 14 anybody that would listen that I'm a changed person, and I've
 15 now become a Christian, or I've returned to my Christian
 16 roots, whatever the case may be. The State would never have a
 17 way to disprove that. Do you know what I'm saying? There's
 18 no way. Just like you wouldn't know what's in his heart. I
 19 wouldn't know how to go about proving one way or the other.
 20 **A. Exactly.**
 21 Q. I mean, you ask the usual questions, Where was God
 22 when you were killing people? Where (sic) was that? Why did
 23 you wait until you were arrested before you did it? You can
 24 ask all those questions and still who knows. We don't know.
 25 And I guess the only thing I'm asking is the way you

1 see the world. You're not going to put on the State the
 2 burden of proving that this religious conversion is not
 3 genuine in order to get you to answer that question no. You
 4 wouldn't do that to us, would you?
 5 **A. No.**
 6 Q. Now, you indicated that the case, and I can't tell
 7 who this was exactly. Do you know anyone who's been in jail
 8 or prison? And the person was Mike Johnson that, I guess, had
 9 a DWI; is that right?
 10 **A. Yes.**
 11 Q. And I apologize. I just read the question real
 12 quickly. I was thinking you had been a juror on that case,
 13 and you indicated that he got sentenced to prison; is that
 14 right?
 15 **A. Yes.**
 16 Q. And I apologize -- and it's just on the
 17 questionnaire so I apologize. It's very personal, but how do
 18 you know Mr. Johnson?
 19 **A. He was a son of a friend of mine who I knew from**
 20 **church, and then in high school he started working for me and**
 21 **he worked for me for a period of about ten years.**
 22 Q. And I assume since he went to prison, he probably
 23 had more than one DWI?
 24 **A. Yes.**
 25 Q. And I guess that means he -- I think it probably

1 means he had a drinking problem?
 2 **A. Yes.**
 3 Q. I guess you could say he had driving problem, but I
 4 think it's a drinking problem that he really had?
 5 **A. Yes.**
 6 Q. What's his condition now; what's he like?
 7 **A. I don't -- the last I heard he was doing fine, but**
 8 **he's since moved to Oklahoma so I'm not certain.**
 9 Q. Okay, okay.
 10 **A. I don't know if -- one part of the questionnaire has**
 11 **changed since that time.**
 12 Q. Okay, okay.
 13 **A. The Friday after we filled out the questionnaire my**
 14 **son was arrested --**
 15 Q. I'm sorry.
 16 **A. -- on a drug charge.**
 17 Q. Where was that, here?
 18 **A. He was in Allen, yes.**
 19 Q. What kind of drugs were involved?
 20 **A. I'm not certain. I know there was marijuana and**
 21 **ecstasy, or MDMA, something like that.**
 22 Q. I'm sorry to hear that.
 23 **A. (Nods head.)**
 24 Q. A couple of follow-ups, and I'll talk about your
 25 son's situation in a minute.

1 **A. Sure.**
 2 Q. But on the Mike Johnson situation, do you have a
 3 sense that he was treated fairly by the criminal justice
 4 system or not?
 5 **A. To the extent that I was aware of it, yes.**
 6 Q. He's the son of a friend of yours; is that what you
 7 said?
 8 **A. Yes.**
 9 Q. Did you ever discuss that with his dad, whether he
 10 was being treated fairly or not?
 11 **A. Probably on occasion, just sort of casually, nothing**
 12 **in-depth or long-term, no.**
 13 Q. Okay. There's nothing about that that would greatly
 14 influence how you answer the questions in this case or your
 15 decisions in this case or is there?
 16 **A. Nothing that I can -- not a context I can think of.**
 17 Q. It might have given you some understanding of his
 18 substance abuse that you wouldn't have had before that, for
 19 example, and you could make use of that. I guess what I'm
 20 thinking is, you're not holding a grudge against the State for
 21 prosecuting him or maybe holding the notion somehow that his
 22 lawyers got him too good a deal or something like that?
 23 **A. No.**
 24 Q. It's nothing like that that would affect your basic
 25 fairness in this case?

1 A. No.

2 Q. Okay. And the same thing in your son's case, and I

3 don't want to ask you lots about that. But some things I can

4 just absolutely know. I know it had to have hurt you a lot?

5 A. Certainly.

6 Q. Believe me I know. And secondly, I'm guessing

7 you're trying to figure out how it happened when, I can tell

8 you're the kind of man who's talked to him since he was little

9 about drugs. There are probably programs in schools. I'm

10 sure Allen schools are just like Plano schools. There's

11 probably not a week that goes by that there's not a poster or

12 a police officer or somebody coming in to reinforce the idea

13 that this is not good for you. It's not only illegal, but

14 they're harmful.

15 A. (Nods head.)

16 Q. And yet, as is such a frequent case, they do it

17 anyway?

18 A. (Nods head.)

19 Q. And I know it's still probably very fresh, but I

20 know you've already done some thinking about it, or I wouldn't

21 have asked you. How does that happen? If we're doing our job

22 as parents, as educators, religiously, all that kind of stuff,

23 how does that still happen?

24 A. I think it's the individual involved. It's his

25 choice. You know, again, I can't know what he's thinking, but

1 I'm also not making his decisions any longer.

2 Q. And how old is he?

3 A. Right now he's 21.

4 Q. You know, the same sort of thing -- I mean, I'm sure

5 there are probably things as he was growing up that he looked

6 at and said, well, they weren't right or there were things

7 that went wrong with his life. Everybody has that sort of

8 thing. Yet, even as a parent you're able to say there's a

9 personal responsibility for doing that.

10 Are you still there for him, if you can help him?

11 A. Yes, yes.

12 Q. Because there's a follow-up that I want to talk

13 about. I know it would never happen, but if he got arrested

14 for capital murder and he's somewhat in the same situation as

15 this Defendant is, I get a sense from you you'd be there for

16 him for that, too?

17 A. Yes.

18 Q. And I have a sense that you'd spend time talking

19 with his lawyers, offering any kind of insight that you

20 possibly could that might help them either fact-wise, or

21 perhaps even background-wise to try to explain or maybe

22 mitigate some of his conduct, which we'd all fairly agree is

23 awful to even be capital murder in the first place. And I can

24 easily see a circumstance where the lawyers might say would

25 you testify for him and ask the jury to spare his life? And I

1 know you'd do that, wouldn't you?

2 A. Sure.

3 Q. I mean, it wouldn't matter. He's your kid. You

4 love him, and you'd be up there for him?

5 A. Right.

6 Q. And none of us can probably understand exactly what

7 that would feel like, and I will say I think it likely in any

8 capital case that a defendant's mother will come testify. I

9 mean, there is something special about mothers and motherhood

10 and that long-suffering compassion of moms that's -- it's very

11 pretty to us all. So let's think about that for a second.

12 Suppose you've got a mom up on the stand testifying, please

13 don't -- please don't execute my son. Please let him live.

14 And let's suppose she's crying, and it's genuine. I mean,

15 she's not -- it's genuine feelings, just like it would be for

16 you or me --

17 A. Right.

18 Q. -- in the right case if we were in that same

19 situation. It would be real. What -- how does your mind work

20 when faced with that sort of thing? How do you see that kind

21 of evidence?

22 A. Again, to a certain extent it's -- there's a

23 mitigating circumstance, but the irrelevancy might be a

24 question. I don't know.

25 Q. I mean, sure what you do is going to affect her

1 feelings and she's perhaps innocent of anything and that --

2 maybe clearly innocent of any of that crime. And yet, really

3 there's nothing in those questions that deals with the issue

4 of the wishes of the mom; do you understand?

5 A. Right.

6 Q. And let me tell you the flip side of the coin. It's

7 just as likely the victim's surviving family members can come

8 and offer evidence, and they can tell what it's like to go

9 through days and weeks and months and years and know that for

10 the rest of their life they'll never have somebody they love;

11 their daughter, their sister, their spouse, whatever it may

12 be. And they can be equally affected by it, and they can be

13 on the absolute opposite spectrum of what ought to happen to

14 the Defendant for what he's done, and they'll give you a

15 different view.

16 And there's not much in that question -- in that

17 mitigation question relating to that. I suppose that might be

18 something to the circumstances of the offense? That might be

19 something to do with that. But mostly those kinds of things

20 don't relate too much to what a jury has to do; do you

21 understand?

22 A. Yes, sir.

23 Q. Got any questions of me so far? We're pretty near

24 the end.

25 A. None that I can think of, no.

1 Q. This doesn't seem like something you're just
2 thrilled to be doing, but you're willing to do it if you're
3 called upon; is that right?
4 A. **That's right, yes.**
5 Q. Ms. Falco tells me that you have a relative on the
6 panel?
7 A. **Yes, my sister-in-law is.**
8 Q. Would that then be your -- is that your brother's
9 spouse?
10 A. **My brother's wife, yes.**
11 Q. How would you describe your relationship with her?
12 Are you close?
13 A. **Yes. We live next door to each other, see each
14 other several times a week.**
15 Q. I can't imagine how it would happen, but stuff like
16 this has happened before. What if both you and she end up on
17 this same jury? Because she's actually within range, by the
18 way. Do y'all think you could work together in that
19 situation, at least from your point of view?
20 A. **Yes.**
21 Q. And it would be especially important if all but two
22 people (inaudible), the Judge would tell you not to talk
23 about the case with anybody. And if there's ever anybody
24 you'd want to be talking about the case with when you left for
25 the day, it would have to be a co-juror who's also your close

1 relative. Y'all feel that you're mature enough that you
2 wouldn't do that if the Judge instructed you not to?
3 A. **I think so, at least in my case. I can't speak for
4 her.**
5 Q. You'd have to do the other and say don't talk to me?
6 A. **Right.**
7 Q. Since the time you first came here two weeks ago,
8 has your view on the death penalty changed or gotten stronger
9 or weaker at all?
10 A. **No significant change.**
11 Q. Ms. Falco wants to know if Bolin Road is named for
12 you or your family?
13 A. **Family.**
14 MR. SCHULTZ: Just a moment, please, Judge.
15 I'm almost finished.
16 THE COURT: All right.
17 (Brief pause in proceedings.)
18 Q. BY MR. SCHULTZ: When asked the question about what
19 we call the Constitutional privilege against
20 self-incrimination, really meaning not having to testify, your
21 answer was "If someone cannot positively reinforce his case, I
22 believe he should be protected from being forced to negatively
23 influence it."
24 A. **Right.**
25 Q. And I think I understand exactly what you're

1 saying. The Judge would instruct you that a defendant's
2 decision whether or not to testify is a personal one only.
3 A. **Right.**
4 Q. And that no conclusions can be drawn from that, and
5 why I say that, what you've said makes practical sense, no
6 doubt about that. But if what you're thinking is the reason a
7 defendant doesn't testify is because anything he had to say
8 was going to be bad for him. If that's the thinking, then
9 it's almost like you're drawing some circumstance from not
10 testifying, and I know you don't mean it that way, but I want
11 to just talk with you about that a second.
12 A. **I think the operative word there would be
13 "forced." Again, you know, if you don't have anything
14 substantively positive to add, it's best not to say anything.**
15 Q. Right. The really important part of this proceeding
16 is -- and you seem like an analytical fellow. This is a
17 measurement process. We measure the weight and the strength
18 of evidence. That's what this really is, and you've seen the
19 scales of justice before representing what we do here, and tip
20 the two scales and maybe they go this way or that way. The
21 failure of a defendant to testify, or even offer evidence is
22 not something that goes on either side of the scales of
23 justice. It's just actually not a circumstance at all.
24 A. **Right.**
25 Q. In other words, it's not -- you can't say, boy, I

1 wish -- I bet he has some great stuff to say if only his
2 lawyers had put him up there, and that's not helpful to the
3 Defendant. You can't say, I bet he was hiding plenty and
4 that's why he wouldn't testify, and that would be helpful to
5 the State. It just means -- it's kind of one of those things
6 you completely ignore and doesn't find itself on the scales.
7 Can you do that?
8 A. **Oh, I think so.**
9 MR. SCHULTZ: We're done. Thank you very
10 much, Mr. Bolin.
11 THE COURT: All right.
12 MR. GOELLER: Thank you, Your Honor.
13 CROSS-QUESTIONS
14 BY MR. GOELLER:
15 Q. Good afternoon, Mr. Bolin.
16 A. **Hi.**
17 Q. Again, my name is Matthew Goeller, and my partner is
18 Don High and Ivan is sitting here on the end. Do you want to
19 stand up for a second, or are you okay?
20 A. **I think I'm okay.**
21 Q. That chair, apparently, is too short for anybody
22 about -- probably over six foot, but if any time during the
23 questioning process you get uncomfortable, need to use the
24 rest room, just stand up and shake it out, I think the Judge
25 will let you.

1 **A. All right.**
 2 Q. Bobby Bolin living on Bolin Road. I know the Bolin
 3 family, as far as most people know without the Bolins
 4 personally. A founding family of Collin County?
 5 **A. Probably so, since the 1870s.**
 6 Q. Okay. Old enough to have a road named after you?
 7 **A. Yes.**
 8 Q. Is it just Bolins on Bolin Road, or are there other
 9 people?
 10 **A. No. There are others.**
 11 Q. Okay.
 12 **A. Actually, Bolin Road is kind of squeezing in. It's**
 13 **Allen Heights, in the City of Allen, and then part of it is**
 14 **now Woodburn Corners.**
 15 Q. Okay.
 16 **A. Basically it's sort of confined to us right now.**
 17 Q. There's a Woodburn Corners in Plano, too?
 18 **A. Right. Plano --**
 19 Q. By the hospital?
 20 **A. Oh, no, not Woodburn Corners, then. It comes off**
 21 **Parker Road.**
 22 Q. Okay.
 23 **A. Maybe Woodbridge, something like that. You're**
 24 **right. I was confusing it with another street.**
 25 Q. It's funny, you look at that special issue up there

1 and after Mr. Schultz got done talking to you -- and he's an
 2 advocate. He's the advocate for the State. When you were
 3 told early on that the State was seeking the death penalty,
 4 what did that mean to you "the State?"
 5 **A. The judicial -- the process, basically, the**
 6 **enforcement arm, I guess.**
 7 Q. Okay. I'm sure -- some jurors have not been aware
 8 of this. You may or may not be. The local DA makes that
 9 call.
 10 **A. Right.**
 11 Q. You've got to understand the Judge has nothing to do
 12 with that.
 13 **A. Right.**
 14 Q. He has nothing to do with that. The State -- people
 15 think the State as it's some panel or group be or legal
 16 scholars out there all sat around. One man makes that call
 17 whether or not to seek the death penalty or not. In this
 18 case, it's a local DA in Collin County. He or she has
 19 apparently made that call, and that's why we find ourselves
 20 here.
 21 Mr. Schultz is an advocate. I'm not saying he was
 22 baiting me. I can't -- when I look at that Special Issue
 23 Number 3, or that first special issue -- and if it's okay with
 24 the Judge, I'm going to -- Mr. Bolin, if I set this one down
 25 here I don't want to jack rabbit (inaudible). If I set that

1 there, can you read that from where you are?
 2 **A. Sure.**
 3 Q. Okay. I'm not going to be able to defend Adolf
 4 Hitler or Jeffrey Dahmer or Timothy McVeigh. The truth of the
 5 matter is, I think the argument could be made, Mr. Schultz
 6 talks about Hitler or Dahmer or McVeigh, with a shoot-out with
 7 the cops that he's paralyzed from the neck down and wouldn't
 8 be a future danger. I'll bet you 99 out of 100 times he'll
 9 still get the death penalty, okay, whether or not he's a
 10 future danger. If he was paralyzed from his scalp down,
 11 people are going to kill him. What does that really mean?
 12 That probably means they disregard the evidence, disregard the
 13 special issue, and he's going to die.
 14 **A. Right.**
 15 Q. I'm not saying I wouldn't vote that way if I were on
 16 a jury, but you understand I can't respond to that. There's
 17 no way. I can't --
 18 **A. Sure, I understand.**
 19 Q. -- sit here and defend that. I've got to work in
 20 the real world, and it's made -- I'm sure Mr. Schultz makes
 21 those arguments and those scenarios for illustrative purposes.
 22 But as you sit there right now having listened to
 23 the State's examples and all that kind of thing, do you think
 24 you're the juror -- the kind of juror that can give this kid a
 25 fair shot?

1 **A. I believe so.**
 2 Q. Okay. And fair shot means a fair shot in the
 3 guilt/innocence phase of the trial, and Mr. Schultz is right,
 4 we spend a lot of time. It's very uncomfortable as a lawyer,
 5 number one, to have the State go first, and then I go second.
 6 That's just the way the system is, and it's really -- it kind
 7 of spooks me to have to talk about life or death. A lot of
 8 jurors would say, well, gee, that defense lawyer, he spent an
 9 awful lot of time on punishment. He didn't spend too much
 10 time on the guilt/innocence. Why is he talking life/death,
 11 life/death? And I'm aware of that, and it's not comfortable
 12 for me, but this individual voir dire is set up where the
 13 purpose of going one on one is the ultimate issue, really your
 14 feelings on capital punishment, life and death and that kind
 15 of thing. And Mr. Schultz is right, in no way do we concede
 16 guilt/innocence.
 17 That part of the trial, obviously the burden is on
 18 the State of Texas. They've got to prove to you beyond a
 19 reasonable doubt all the things they've alleged as far as the
 20 elements of their offense. And I think -- you know, it's
 21 difficult picking a jury in any homicide case where your
 22 client has been indicted. Now, in this case we're not allowed
 23 to talk about the evidence. The Judge won't let me,
 24 Mr. Schultz knows he can't and won't, and I know I can't and
 25 won't, but I think it's pretty comfortable to say two people

1 are deceased, okay? I guarantee you those three people
2 wouldn't put it in an indictment if it wasn't. It just
3 wouldn't happen, okay. They've alleged double homicide. The
4 facts will show that two people are deceased.

5 How they got that way, whether or not Ivan is the
6 perpetrator of that crime, that's something you have to be
7 seeing. That's what the evidence will do. So with those kind
8 of opening comments, I've got to talk about punishment.
9 That's what the Judge wants me to do during this individual
10 voir dire.

11 My last question kind of on guilt/innocence, I think
12 you've -- I'm not going to cover everything Mr. Schultz
13 covered. He did a good job of covering the law, with some
14 exceptions. I'm going to take exception to some of the things
15 he said. I'm an advocate, too. He has a view of some of
16 that, and I do, too.

17 As you can gather from the special issues, they're
18 subject to a lot of interpretation, and I think they're
19 designed that way. It would be -- I guess the Legislature and
20 the courts, especially the U.S. Supreme Court, and the Texas
21 Legislature, not really working together, but they've got to
22 come up with capital sentencing schemes that individualize an
23 individual -- an individual defendant and in such can be used
24 across the board in an infinite number of fact situations.
25 That's a pretty tough -- if you think about it, it's a pretty

1 tough row to hoe. That's why we get terms like "probability"
2 not really defined.

3 I suppose the Legislature could have used, I don't
4 know, maybe five or six other words. Probability, within a
5 reasonable certainty, is it more likely than not. I guess
6 when it's debated and goes through Committee and ends up on
7 the House and Senate floor, I guess true democracy in action.
8 I'm sure many, many words were tossed around in Committee in
9 the back conference rooms. But I guess all in all, it's --
10 most jurors have a problem with it. They look at those
11 questions and say, well, you know, doesn't give me a whole lot
12 of guidance, and maybe they're designed not to, to keep it
13 individual while jurors make an individual assessment.

14 I thank you for your volunteering that information
15 because that's pretty important. It's unusual that the
16 criminal justice system would perhaps impact the potential
17 juror right in the middle of jury selection in a trial. And
18 please believe me, I pray to God you believe when I tell you,
19 I'm not prying, but obviously I've got to --

20 **A. Sure, I understand.**

21 **Q.** If your son was sitting there and I didn't question
22 you about a juror, you'd either think, a, I'm a fool, or, b,
23 I'm incompetent, or good God, Judge, get the kid another
24 lawyer. The guy's an idiot, so I've got to go into that.

25 **A. I understand.**

1 **Q.** Was he -- this is uncomfortable. I don't like doing
2 this. Was he arrested in Collin County?

3 **A. In the City of Allen, yes.**

4 **Q.** There's a potential felony prosecution of him -- I
5 think you mentioned the word "ecstasy" or something?

6 **A. It is.**

7 **Q.** There's a potential felony prosecution with
8 potential penitentiary punishment being spear-headed
9 potentially by that table, okay? Maybe not those three -- it
10 could very well be.

11 **A. Yes, sir.**

12 **Q.** Those cases usually take 3, 4, 6, 9 months to come
13 about, and I'm assuming many, many things. He may not be --
14 he may not be guilty, okay? It could be an unlawful arrest.
15 It could be an illegal search or seizure. There could be a
16 million reasons why that case never goes to trial or is never
17 formally indicted. I don't know. But it's conceivable some
18 of the very people in this courtroom could end up prosecuting
19 your son, either at the Grand Jury level, probable cause
20 should we indict him, and then depending on what happens
21 there, later on at trial court. So, obviously I got to ask
22 you about that. Tell me your thought on that. You know, I'm
23 not -- the last thing I'm going to do is try to snow you or
24 buffalo you. My concern right now is you've got not just a
25 loved one, but your own child who may be subject to the

1 penitentiary by the very people who are prosecuting this case
2 in which you could be a juror. Do you see the conflict in the
3 back of my head --

4 **A. Yes.**

5 **Q.** -- potentially? Tell me -- no right or wrong
6 answer; just give me your thoughts.

7 **A. Again, at this time I don't see a direct
8 correlation.**

9 **Q.** Okay.

10 **A. It impacts what you're thinking about sometimes and
11 so forth, but I would hope and at this time I think I can
12 separate the two. And we --**

13 **Q.** We have this theory in the law, and it's not --
14 it's just what's popping into my head. It's not a direct
15 correlation. It's a -- it's synonymous with your situation.
16 If a witness were to take the witness stand and they,
17 themselves, were being charged, and are under indictment.
18 Even though they haven't been convicted, it's always fair game
19 to ask them in return for your testimony today against my
20 client, are you expecting favorable treatment from the DA in
21 your own case? Do you see what I'm talking about?

22 **A. Yes.**

23 **Q.** I'm not trying to insult you, but I got to ask,
24 because if I don't ask --

25 **A. No.**

- 1 Q. -- you know what I'm saying?
 2 But realistically, is it something that maybe has
 3 popped in the back of your head --
 4 A. No.
 5 Q. -- even subconsciously?
 6 A. Not that -- no.
 7 Q. I hate to ask -- have you talked to your son at all
 8 about the allegations?
 9 A. No.
 10 Q. Okay. How did you learn of it?
 11 A. A friend of his called.
 12 Q. I'm sorry?
 13 A. A friend of his called me.
 14 Q. Probably looking for bond money or bail bond money?
 15 A. Not at that time. It was just --
 16 Q. Okay. Is he in jail now?
 17 A. Yes.
 18 Q. Okay. Have you visited him in jail?
 19 A. Yes.
 20 Q. Do you know what -- did you make the short walk, or
 21 the real long walk and go see him?
 22 A. Section one. I think that's the short walk.
 23 Q. Pod 1? Yeah, you're lucky. You get the short walk.
 24 When I show up out there, I think they make it all the long
 25 walk. They probably think I need to lose some weight.

- 1 He's in jail. Are you planning on leaving him in
 2 there? Do you think there will be bond made, or he's on his
 3 own?
 4 A. No. We're helping him, but at this point they
 5 haven't really set up -- all of the motions haven't been
 6 processed and so forth.
 7 Q. Okay.
 8 A. I think a lot of it was the holiday weekend --
 9 Q. Yeah.
 10 A. -- and so forth.
 11 Q. Just this past Friday?
 12 A. The Friday after we had the --
 13 Q. Okay.
 14 A. -- initial. So, I guess it's been a week and a
 15 couple of days.
 16 Q. So the 24th, I guess, he was arrested?
 17 A. Yes.
 18 Q. Does he have counsel yet?
 19 A. Yes.
 20 Q. Who is that?
 21 A. John --
 22 Q. Hardin?
 23 A. -- Wood.
 24 Q. I'm sorry?
 25 A. John Wood. He's from Dallas.

- 1 Q. Okay. Has anybody discussed the amount of drugs
 2 that may have been involved? I'm leaving that question
 3 loosey-goosey on purpose. Like I said, we don't know if he's
 4 guilty or not. Has anybody mentioned anything about quantity?
 5 A. The indictments, again, haven't been processed, but
 6 they've been small amounts.
 7 Q. Okay, okay. In your questionnaire you had
 8 mentioned something about in response to the questionnaire
 9 regarding counseling and treatment for emotional and
 10 psychiatric behavior of substance abuse problems. Is that the
 11 same son? You had mentioned some family counseling --
 12 A. Yes.
 13 Q. -- for my son on emotional discipline problems?
 14 A. Yes.
 15 Q. Okay. Can you tell me a little bit about that?
 16 A. He had trouble in school and just general
 17 motivational problems, and he had some involvement with
 18 marijuana at an earlier time.
 19 Q. Okay.
 20 A. Not a conviction, but...
 21 Q. When you filled out this questionnaire and then the
 22 unfortunate events of the 24th of last month, have you -- have
 23 you done any thinking about drugs, kids, maybe even terms of
 24 that mitigation issue? Kind of just give me your general
 25 thoughts. I know as a dad you've got to be -- it's got to be

- 1 difficult for you knowing you're involved as a prospective
 2 juror in this case, and then when you get the bad phone call,
 3 tell me what goes through your head.
 4 A. Well, again, you know, there's always the
 5 conflicting wish this hadn't happened and so forth. But, he
 6 is an adult and makes his own decisions, and it was a choice.
 7 I mean, I don't think it was an instance where it was planted
 8 on him or anything like that.
 9 Q. Oh, right. I understand.
 10 A. Sure.
 11 Q. I guess if we dig deep, I mean, I can't find -- I
 12 don't know if I could find two people who would say that
 13 substance abuse -- and maybe there are issues there when it
 14 stops being voluntary and becomes involuntary, not in the real
 15 legal sense, but addiction. Mr. Schultz is exactly right. I
 16 think he talked to you about in our State, voluntary
 17 intoxication is never going to be an excuse for or justify any
 18 type of criminal conduct.
 19 In an extreme case -- well, not an extreme case, but
 20 in some cases if your mind is so altered to rise to the level
 21 of temporary insanity, that can be taken into consideration.
 22 There's no real definition -- bright-line definition of what
 23 that is. Maybe knowing right from wrong, but it's pretty darn
 24 a rare thing that intoxication ever leads to any, as many
 25 jurors say, getting off. It doesn't happen in Texas. I can

1 assure you that.

2 But -- and many jurors we've talked to have been
3 very touchy about that whole drug issue, and we've heard over
4 and over again, it's no excuse, it's no excuse, I'm not
5 listening to that, it's no excuse. And from my perspective,
6 by the time we get to these special issues, and really in most
7 trials outside of self-defense, the rapist was coming at me as
8 I lay in bed, that's why I killed him. Outside of
9 self-defense, and I just can't think of another one, we kind
10 of call those justifications, justifiable homicides, but those
11 usually don't even get out of Grand Jury. So, as far as
12 excuses go in a Texas courtroom, it doesn't really play a
13 part. Doesn't matter whether you're high. Doesn't matter
14 whether you're under the influence of alcohol. If you are
15 able to know right from wrong -- you know, unless you have an
16 absolutely, severe organic, psychiatric problem, but those
17 cases we don't really have those in court. There are other
18 avenues to take care of those.

19 But I guess the point I'm trying to make, excuse
20 doesn't play a part in the trial, okay? And those special
21 issues don't really talk about excuse because most people are
22 of the opinion all the types of mitigation issues, that
23 doesn't excuse them, and I agree with them 100 percent. But,
24 they're there for a reason. They're there for the jury to
25 look and consider and see if something may rise to sparing a

1 life. If that weren't the case, we don't need the special
2 issues -- or we don't need that Special Issue Number 3, you
3 know?

4 Mr. Schultz spent a lot of time on could you answer
5 the question, or the questions just based on the facts of the
6 offense. And he has a right to ask that question, and the
7 State -- well, I'll say the law in our State allows jurors to
8 answer the question based on the facts of the offense. I
9 guess what you'd call the facts from the first phase of the
10 trial. But, if we -- if we look at the forest through the
11 trees, I think it's got to be much more than that because,
12 let's face it, by the time you get to the punishment phase of
13 a capital murder trial, you have found beyond a reasonable
14 doubt a defendant has done something pretty bad.

15 You know, in this case I've got to jump, and again
16 it's uncomfortable for me, but I've got to make the jump to
17 guilty, and we've got to talk about a double homicide, or a
18 homicide in the course of a burglary, of a habitation or a
19 homicide committed in the course of furtherance of a robbery.
20 So -- and all the other things Mr. Schultz talked to you
21 about, you know, the Ted Bundies and the Jeffrey Dahmers and
22 killing and eating your victims, and Adolf Hitler and killing
23 little kids and killing cops and killing firemen putting out
24 their fires, and all that kind of thing. Capital murder in
25 and of itself is bad, okay? And it might be tempting to be

1 persuaded that you need to vote death because of what you've
2 already found in the guilt-innocence phase of the trial. And
3 I'd submit to you that's not what this is all about. I'm not
4 saying Mr. Schultz said that, but obviously his questions were
5 somewhat geared to that. And if that's case, we don't need
6 these. We don't need these questions. If you find him guilty
7 of capital murder, line him up and kill him, and I want to
8 explore some of these special issues from the flip side to
9 that corner, okay?

10 Now, that first special issue down there probably
11 when you see that word "probability," I was listening to you
12 and trying to take notes and reading some other things, and I
13 can't recall where you were at on that definition. Was it
14 more -- was the word you used -- tell me what the word you --
15 I just can't remember.

16 **A. I don't remember the specific word, but I think it
17 would be more likely.**

18 **Q.** More likely than not?

19 **A. (Nods head.)**

20 **Q.** Okay. I think that makes sense. A lot of jurors
21 have looked at that in terms of a scale, you know, more than
22 50 percent. Most people agree it's less than -- most people
23 agree that it's not a possibility, you know?

24 **A. Right.**

25 **Q.** And if you look at it, is there a probability that

1 the Defendant would commit criminal acts of violence. It's
2 just such a funny question because the State has the burden of
3 proving that question, and the only burden of proof is on the
4 State on that first one. They've got to prove it beyond a
5 reasonable doubt that there's a probability. You know, if you
6 think about it, most people think beyond a reasonable doubt,
7 up there in the 80s, 90s, a lot. It's not 100 percent, but
8 it's under our burdens of proof we know by a preponderance if
9 you -- I don't know. Have you ever been involved in a civil
10 lawsuit?

11 **A. Yes.**

12 **Q.** Okay. What kind of suit?

13 **A. Just damages over inspections and --**

14 **Q.** Okay.

15 **A. -- general work-related issues.**

16 **Q.** Were you the plaintiff? Did you file suit?

17 **A. No.**

18 **Q.** They sued you?

19 **A. Right.**

20 **Q.** Okay. If they don't come in with 51 to 49 -- you
21 know, let's say you -- the evidence kind of goes for you.
22 Well, that's not really a good way of looking at it. They've
23 got to prove, very simplistic here, 51 to 49 that you were
24 negligent.

25 **A. Right.**

1 Q. If they (inaudible) that, generally speaking, and I
2 know you probably know a lot more about the civil law having
3 been involved in that, but that's the -- they've got to come
4 in at over 50 percent.

5 Then we have another standard. The State's going to
6 remove somebody's children permanently, a termination of
7 parental rights. We know that's got to be to a moral
8 certainty. It's not 100 percent, but we know it's more than
9 50 and less than 100. So I like to call that, well, split the
10 difference, 75 percent. And then we know beyond a reasonable
11 doubt is more than that, so that's why I like to argue it's
12 got to be in the high 90s, mid-90s. High 90s, I think.
13 Mr. Schultz might disagree. I don't think he would. I think
14 he'll tell you that beyond a reasonable doubt is up there.
15 Not a 100, but it's a lot.

16 So, they've got to prove to you, with a lot of good
17 convincing evidence, a probability, and I've never figured out
18 in my mind, not being a real mathematical wizard myself, I've
19 never understood how we expect jurors to go back in a jury
20 room and not that we deal with these kind of cases every day,
21 but you've got to wonder how a juror is going to think about
22 that. Probability, more likely than not, and they've
23 convinced me of that beyond a reasonable doubt. Doesn't make
24 sense to me, but nobody asked me when they drafted these
25 questions.

1 We know if I -- I think that -- I agree with
2 Mr. Schultz, there is no automatic death sentence in Texas. I
3 think there's an automatic life sentence, and I'll tell you
4 why. Because we know if the answer to that question is no,
5 okay, the trial is over. It's an automatic life sentence,
6 okay? I think that -- I think the way the system is set up
7 that if -- we know there's only one of two possibilities; life
8 or death, and to get to death, the jury has to answer
9 unanimously, "yes" and then another question unanimous, "no."
10 I think the system is really automatic life unless, unless,
11 that's the way I'd look at it.

12 So, when you look at that question, and we know no
13 matter what happens a life sentence will come about unless
14 it's answered unanimous "yes." We know a life sentence in
15 Texas constitutes at least 40 calendar years, and Mr. Schultz
16 was exactly right. You don't have, quote, unquote, life
17 without parole. Our law is somebody convicted of capital
18 murder must serve at least 40 calendar.

19 Now, from a practical standpoint we probably really
20 do have life without parole. Depending on the age of the
21 defendant, you know, a lot of people are going to die in the
22 penitentiary. Somebody late 20s, almost 30, life sentence
23 means, if they could live that long in the joint -- and we
24 don't know if somebody could live 40 years, hasn't been yet in
25 Texas -- be 70 years old when they're parole eligible,

1 doesn't mean they'd get out. A lot of jurors need to
2 understand -- some jurors don't understand. They think, well,
3 when he's 70, he's out. Maybe not. That's -- it takes a
4 Governor and the Governor's Board of Pardons and Paroles to
5 parole anybody by a special parole vote on a capital murder
6 sentence. You know, nobody knows what the political climate
7 will be in four years. Nobody will be paroling out right now.
8 I tell you that.

9 But anyhow, that's -- does that cause you any --
10 some people have a concern. They've sat in that witness chair
11 and told us they've got big problems unless they know there's
12 a life without any possibility of parole. We can't guarantee
13 that. We can guarantee that people are going to be either
14 dead before they get out of the penitentiary, or they'll be
15 old men when they get out, if they get out, but that's all we
16 can guarantee as far as that goes.

17 Does it cause you any problem knowing we don't have
18 a, quote, unquote, life without parole?

19 A. No.

20 Q. Okay. When the Legislature set that question up,
21 obviously they knew that we're talking about the penitentiary
22 in at least 40 years, and in all fairness to the State, when
23 that question was probably set up, it was -- used to be 35. I
24 think George -- Governor Bush -- I can't remember, either Anne
25 Richards -- one of the two -- no, Anne Richards bumped it to

1 35, and George W. bumped it to 40, so obviously they knew 40
2 calendar years on a life sentence.

3 So, society to me -- continuing threat to society,
4 it doesn't seem logical to me that they're talking about the
5 society that you and I live in. We know they're going to the
6 penitentiary for at least 40 unless there's a death sentence,
7 so... Does that make sense to you that the continuing threat
8 to society, does that make sense to you that what we're really
9 talking about is prison society?

10 A. I can follow the argument, but I think there are
11 people who are impacted by that prison society, guards coming
12 in.

13 Q. Absolutely, absolutely, you bet. I don't mean to
14 limit it to just inmates.

15 A. Right.

16 Q. Because there are guards. There are -- it's a world
17 unto itself, all sorts of people down there that work down
18 there. But do you think the thrust of that question is that
19 prison society versus, you know, driving down 380 up here one
20 day?

21 A. Well, yeah. I mean, I think you have to be
22 realistic in your evaluations, but I don't think you can
23 exclude one or the other.

24 Q. Okay. I guess the argument could be made that
25 society may include the society you and I live in in 40 years?

1 A. (Shrugs.)

2 Q. I guess. I don't know, but I suppose -- and I know
3 I agree with you. The Legislature, to limit it to prison
4 society, would have probably had to put in many, many more
5 lines that would have to include inmates, guards, wardens,
6 assistant wardens, prison industries people, ministers,
7 anybody that maybe not -- doesn't work for TDCJ, but actually
8 goes to those types of units.

9 Are you, Mr. Bolin, are you open to -- are you open
10 to considering mitigation evidence?

11 A. Yes.

12 Q. Okay.

13 A. **But again, as long as it's related, I think.**

14 Q. Tell me what you mean by that.

15 A. **Well, I -- I think you -- that broad stroke
16 mitigation, just bad childhood, may be directly related. It
17 may be a side issue.**

18 Q. Right.

19 A. **So, if there's a direct correlation between those
20 circumstances to make it mitigating in this case, then, yes.**

21 Q. In that third special issue, the one up top of the
22 mitigation issues, it says whether to take into consideration
23 all the evidence, and then the specific phrase, including the
24 circumstances of the offense. I think jurors want to know the
25 how and the why -- the how comes to the offense, you know? I

1 relevant and might not be.

2 A. **Well, where there's a direct dealing and -- you
3 know, circumstances that cause the action resulting from that
4 relationship, if there's that direct relationship --**

5 Q. Uh-huh.

6 A. **-- it might be relevant. But if it's just that I
7 knew the guy, but it's -- there's no direct --**

8 Q. Right.

9 A. **-- correlation between the act and that knowledge or
10 knowing the person.**

11 Q. And obviously I'm speaking in terms of that
12 mitigation question there. You might see a difference
13 between -- you know, if a guy just wants to take down a liquor
14 store, and he's driving around until he finds one open because
15 he figures the clerk will be in there, that may be one way, or
16 one situation. You may weigh that differently in the
17 mitigation question differently versus a long, ongoing
18 personal, criminal relationship between a couple of people.
19 You may look at those different and weigh those differently.

20 A. **I think you would have to, yes.**

21 Q. Okay. A touching issue, and I tell you I don't --
22 I'm trying to think. I don't think in any other criminal case
23 when we do -- first of all, we don't do individual voir dire
24 in any other criminal case. Religion is certainly not brought
25 up unless -- some people will tell us, even a burglary case, a

1 suppose that could be many different ways. I'm thinking of a
2 classic, typical capital murder; convenience store, liquor
3 store, lately mom and pop check-cashing types of operations.
4 You know, people go and cash paychecks, and what have you,
5 and somebody goes in there to rob, just take their money, a
6 gun gets pulled out and they kill. And they don't know the
7 people just totally unrelated opportunistic, I suppose, type
8 of robbery homicide. Do you see what I'm saying?

9 A. Yes.

10 Q. In a case like that, I'm sure the jurors want to
11 know why. You know, was it pure -- why would somebody do
12 that? There are people out there, I suppose, that kill for
13 just money. Circumstances of the offense -- is it
14 important -- would it be important for you as a juror, do you
15 think, to know the relationship between the deceased and
16 accused and their background? Maybe a background is -- a
17 background of their relationship is very long, known each
18 other a long, long time, might even be related, one may be
19 older. Maybe they were in a common criminal scheme of
20 narcotic dealings and all that kind of thing. And do you
21 think it's important, though, no matter what the case is that
22 you know the relationship between them?

23 A. **I can see instances where it might be relevant, but
24 also where it might not be.**

25 Q. Give me an example where you think it might be

1 shoplifting case, my religion will prevent me from sitting in
2 judgment on a shoplifting case. I will not, cannot, but it's
3 rare. And in a capital murder case, because we talk about
4 life and death, the religious issue is one that needs to be
5 discussed and, quite frankly, it's insane not to discuss it,
6 because when we talk about the essence of life and death, if
7 we're Christians or non-Christians, Muslims, or any other type
8 religion, it factors in. I mean, how could it not? So, I
9 want to talk a little bit about your connection with the Allen
10 Heights Baptist Church.

11 What type of Baptist organization is Allen Heights
12 Baptist Church?

13 A. **It's a Southern Baptist church.**

14 Q. Are you familiar with the First Baptist Church in
15 Dallas?

16 A. Yes.

17 Q. That big one downtown. What do you think of them?
18 I'm just kidding. The only reason I ask is he goes to that
19 church, and he schooled me a little bit about the difference
20 between -- Don's extremely knowledgeable on the Baptist
21 religion and most religions. He's tried to school me on the
22 differences between Baptists, and if you're not a Baptist it
23 probably just confuses you more.

24 A. **We tend to be a bit more on the moderate branch, not
25 CFC moderate, but BGCT, I guess.**

- 1 Q. Do you ever go to that First Baptist Dallas, their
2 "It's a Wonderful Life" production?
3 A. No.
4 Q. You've got to go. It's down at the Adolphus.
5 That's George Bailey -- not George Bailey. Sam Waynewright,
6 He-Haw, that kind of thing.
7 Okay. You attend regularly weekly?
8 A. Yes.
9 Q. Deacon. I think I know what a Deacon is. Tell me
10 what your experience was as a Deacon in your church.
11 A. **Basically it's a service position, but it's**
12 **considered to be elder, but not a decision-making elder in the**
13 **church.**
14 Q. Are there any counseling -- I don't mean formal
15 counseling, like you go to a LPC or M.D. or MS, Masters of
16 Science, whatever different counselor degrees there are. Was
17 there any type of informal counseling in being a deacon?
18 A. **To an extent, but mostly on religious, you know,**
19 **theological issues.**
20 Q. Teacher, Sunday school?
21 A. Yes.
22 Q. Tell me about your experience, kind of how long you
23 did or if you still do it.
24 A. **Right now I'm teaching the 44-to 49-year old adult**
25 **class.**

- 1 Q. Okay. So you break it down in age group?
2 A. **Well, that's recent. Basically they're going for**
3 **smaller classes, and I was notched into the middle there.**
4 Q. Do you like that, teaching -- I guess you're, what,
5 47?
6 A. Yes.
7 Q. You're teaching folks about your age?
8 A. Yes.
9 Q. Is that easier for you or more challenging?
10 A. **I think it's easier.**
11 Q. Okay.
12 A. **Over -- typically I've taught adult classes. I**
13 **don't relate well to children. You know, I don't know if it's**
14 **a personality thing, or what.**
15 Q. No, but every comment is going to bring two more
16 questions, okay?
17 A. Yeah.
18 Q. You're saying to yourself, good God, Mister, I'll be
19 fed up. I'm going to have you out of here pretty soon, I
20 promise you. I promise you I'll take less time than
21 Mr. Schultz. I'm teasing. He has to go first and has to do a
22 lot more educating.
23 Tell me when you say, you may not relate to children
24 well, or what do you mean by that?
25 A. **When I tend to discuss things or talk about things,**

- 1 **I tend to like to take the adult approach and coming up with**
2 **simplistic examples is not my forte. I mean, I like to hash**
3 **things out on an in-depth or detail level, I guess.**
4 Q. Okay. What age, would you say, is the cut-off where
5 you can make that connect in teaching? I'm a teacher, too,
6 part-time and it's very, very difficult. I gravitate toward
7 the older students.
8 A. **Yeah, high school, late high school generally.**
9 Q. Outreach. Tell me what that is.
10 A. **It's basically visiting people who have visited the**
11 **church or in-going and asking questions and -- or answering**
12 **questions, I mean. Excuse me.**
13 Q. Choir. I think I know what that is.
14 A. Yes.
15 Q. Do you enjoy singing in the choir?
16 A. Yes.
17 Q. He's a choir singer, too. People pay me not to
18 sing. And I don't need to ask you about the softball team. I
19 know what that is.
20 A. (Laughs.)
21 Q. As a deacon and teacher, though, what are your
22 thoughts about the death penalty, vis-a-vis your religion?
23 A. **My religion basically teaches that there are**
24 **cases when it is -- actually, if you read it literally, where**
25 **it is required.**

- 1 Q. Really?
2 A. **I don't -- again, that's Old Testament law.**
3 Q. Yeah.
4 A. **And, you know, there's always areas that you have to**
5 **weigh that, but there were instances in the original law where**
6 **it was required. Again, I think Christianity does away with a**
7 **lot of aspects of that law.**
8 Q. What do you think about that? Is that a good thing
9 or a regretful thing?
10 A. **What is that?**
11 Q. How kind of modern Christianity has gotten a little
12 bit away from the Old Testament? That's what your referring
13 to, right, is Old Testament law?
14 A. Yes, yes.
15 Q. All right.
16 A. **Well, I think Old Testament law didn't really meet**
17 **the criteria that was needed to bring about the redemptive**
18 **purposes, and so it -- you know, it was a direction or a**
19 **teaching towards what the New Testament teaches, I guess.**
20 Q. In maybe an oversimplistic way, the way I look at
21 it, the Old Testament was before Jesus Christ, right?
22 A. **Right.**
23 Q. And if we believe in the teachings of Jesus Christ
24 and what he followed, I guess it's logical that we don't
25 swallow that whole Testament for its literal face value.

1 **A. Right.**
 2 Q. Do you agree with that, my assessments of it --
 3 **A. For the most part, yes.**
 4 Q. -- in a very --
 5 **A. Simplistic way.**
 6 Q. -- very simplistic way.
 7 Okay. Are there -- you mentioned that the church in
 8 certain circumstances -- and when you say "the church," are
 9 you talking about Allen Heights Baptist or Southern Baptist in
 10 general from your understanding?
 11 **A. My personal, when I say church, it's Allen Heights.**
 12 Q. Okay, all right. Has it ever been discussed, or
 13 maybe what is your understanding of when the death penalty is
 14 appropriate within the church?
 15 **A. Within the church, I don't recall a discussion, no.**
 16 Q. Okay. Do you have any ideas about when the death
 17 penalty is appropriate?
 18 **A. Not specific etched in stone, you know, this is**
 19 **required every time, or this is not required at this time or**
 20 **any time.**
 21 Q. Okay.
 22 **A. Again, it's something that's not really dealt with**
 23 **in that vein.**
 24 Q. When you look at those special issues and you think
 25 about the death penalty in general, do you think -- do you

1 agree with me that it -- it ought to be an absolute last
 2 resort for the most -- the imposition of the actual death --
 3 you know, Mr. Schultz was very -- everybody was moved in that
 4 room when he talked about leading them from his predeath cell
 5 down to the death chamber, strapping him to the gurney,
 6 starting the IV, putting in the lethal drug. Same drug, by
 7 the way, they use to put a dog -- if you take a dog to the
 8 vet, same thing, if you've got to put a dog down. I mean,
 9 it's -- when he said that, he wasn't trying to amuse anybody,
 10 but I'm glad he did because it woke some people up, you know.
 11 But when you think about that, of mankind doing
 12 that, engaging in that kind of activity, do you think that
 13 ought to be the last -- really it's the last resort?
 14 **A. I don't know. I mean, it's something that you have**
 15 **to consider seriously. I don't know that "last resort," it's**
 16 **kind of a vague term, but I guess if there are no alternatives**
 17 **then --**
 18 Q. I guess that's what I'm looking at, really no
 19 alternative. The worst of the worst, I've heard it described.
 20 When we exterminate a human being, if we're going to do it, it
 21 ought to be because we have no alternative, and we're dealing
 22 with the worst of the worst. Would you agree with that as a
 23 basic premise?
 24 **A. Yes.**
 25 Q. Okay. Do you think that's consistent with the

1 teachings -- I know this is probably a bad question. I'm
 2 trying to rephrase it. Do you think that premise, "a last
 3 resort," or "no alternatives," "worst of the worst," is
 4 consistent with the teachings or the philosophy of Southern
 5 Baptist Convention, or more specifically Allen Heights Baptist
 6 Church?
 7 **A. Yes.**
 8 Q. Okay.
 9 MR. GOELLER: I'm going to confer, and let me
 10 see. I think there's a couple of other questions I had for
 11 you.
 12 Q. BY MR. GOELLER: I know it was talked to you a
 13 little bit about, you know, the parent -- the parent
 14 testifying to spare the life of their child. And the way it
 15 was phrased by Mr. Schultz, you know you ought to expect it,
 16 and you'd do it, too, and obviously his thrust was you're
 17 going to hear it. You hear it in every case, pay no
 18 attention. I mean, that's his spin, at least I think.
 19 But would you listen to what -- I mean, obviously if
 20 a mother or a parent gets on the witness stand, they're going
 21 to say, hopefully, more than just Ladies and Gentlemen of the
 22 Jury, spare my child. Do you think that a person like that
 23 could give you some insight into many other things in that
 24 special issue; character, background, personal moral
 25 culpability? Could you be open to at least listen and

1 consider all the things such a person might say, other than
 2 just spare my child?
 3 **A. Yes.**
 4 Q. Okay. And I'm not trying to -- I mean, it's -- I
 5 agree with Mr. Schultz. It's obvious that parents would
 6 testify, or at least one parent, a mother, would normally
 7 testify for a child. But, I don't want a juror that's just
 8 going to say, all right, this is the mother, you know, when is
 9 she going to be done? I want a juror to sit and listen to
 10 her, just outside of the fact that she loves her child, and
 11 she wants his life spared. It's like one of those things, you
 12 know a mother wants his life spared if we get that far. Just
 13 like you know there's two people that are dead in this case
 14 somehow, so even though that's kind of evidence.
 15 I needed to ask you, regarding -- it's Jerod. Is
 16 Jerod your son's name?
 17 **A. Yes.**
 18 Q. Who are the professionals that are, may have been
 19 involved in the counseling? Do you remember their names?
 20 **A. The lawyer?**
 21 Q. No. Some family counseling with some --
 22 **A. I don't recall offhand. It's been --**
 23 Q. Long time?
 24 **A. -- almost ten years ago.**
 25 Q. Oh, that long.

1 A. They have an office in Allen, but I don't recall.
 2 It was someone the school recommended. I could look it up,
 3 but I don't --
 4 Q. Were they --
 5 A. It was a psychologist.
 6 Q. Okay. Very unusual that you're -- I think you put
 7 down you're a Republican, moderate Republican kind of. And I
 8 see Anne Richards listed in the same group as Sam Johnson and
 9 Kay Bailey Hutchinson.
 10 A. I think that I don't agree with her politics
 11 necessarily, but I --
 12 Q. But a good woman?
 13 A. Yes.
 14 Q. Okay. You grew up shotguns, rifles, and hunted a
 15 lot, bird?
 16 A. Not a lot, bird hunting.
 17 Q. Bird hunting. Deer hunting?
 18 A. No.
 19 Q. Have you gone dove hunting yet?
 20 A. I haven't been hunting for a while.
 21 Q. Okay. Tell me why.
 22 A. Mostly because of development. When I grew up, we
 23 went out the back door and hunted.
 24 Q. Wow.
 25 A. Now, if I go out the back door, it's a Kroger Store.

1 Q. Did you grow up on Bolin Road in Allen?
 2 A. Yes.
 3 Q. Okay, wow. And now you've got to drive to go bust
 4 a dove?
 5 A. Yes.
 6 MR. GOELLER: Could I have just a second,
 7 Judge?
 8 THE COURT: Yes.
 9 MR. GOELLER: Thank you, Mr. Bolin, for your
 10 time. I'm sorry it took so much time, but I sure appreciate
 11 it.
 12 THE COURT: All right. Is there anything else
 13 from the State?
 14 MR. SCHULTZ: (Shakes head.)
 15 THE COURT: Let me ask you to step down for a
 16 few minutes.
 17 (Venireperson exits the courtroom.)
 18 THE COURT: All right. The juror is outside.
 19 What says the State?
 20 MR. SCHULTZ: He's acceptable to the State.
 21 THE COURT: And what says the Defense?
 22 MR. GOELLER: Can we have a few minutes?
 23 THE COURT: All right, sir.
 24 (Brief pause in proceedings.)
 25 THE COURT: All right. I think we're ready to

1 go back on the record here. The State found the juror
 2 acceptable, and let me ask what says the Defendant?
 3 MR. GOELLER: Yes, Your Honor. Comes now the
 4 Defendant, Ivan Cantu, and would move to strike this juror for
 5 cause in that the juror has a potential bias. He has a son
 6 that is -- as we stand here right now -- subject to a felony
 7 prosecution potentially by the District Attorney's office. I
 8 don't think he can be fair and impartial, Judge. Be very
 9 difficult to sit in a case where the lawyers are going to be
 10 the same potentially in his son's own case. So, therefore,
 11 we'd ask to move to strike the juror for cause so that -- he
 12 has a potential bias in favor of the State.
 13 THE COURT: Okay. Do you have any other
 14 ground, other than that?
 15 MR. GOELLER: Give it some more time, I'd
 16 probably come up with some, Judge, but that's what comes to my
 17 mind right now.
 18 THE COURT: Let me ask, would the State like to
 19 address that issue or say anything else?
 20 MR. SCHULTZ: Just very briefly, Judge.
 21 It's certainly not statutory ground on
 22 disqualification. He's been very clear that wasn't going to
 23 affect his decision. I can't imagine impeding in a -- a bias
 24 in favor of or against the State. He indicated there wasn't
 25 such. We have jurors all the time who have been previously

1 prosecuted, for example, and one can certainly say, well --
 2 what if I were to say he might have a bias against the State.
 3 It's merely speculative. You saw the juror in his -- in
 4 totality of the circumstances, and there's absolutely nothing
 5 in the record that indicates any reason he'd be less than fair
 6 to the Defendant or to the State.
 7 MR. GOELLER: The only thing I -- I can't bring
 8 you a case, Judge. I look at it -- in a capital case, I think
 9 it ought to be different. I think the Court ought to be
 10 liberal in that kind of ruling. We know if it were him under
 11 accusation for a felony, how do we split hairs between his
 12 blood and him? And I'm not talking about a cousin or an aunt
 13 or an uncle or a wife. We're talking about his son, and we
 14 know from what he thinks, it's ecstasy. They've gotten a
 15 lawyer. It's going to be in Collin County, whatever the case
 16 may be.
 17 But I think in a case like this, it's so unusual, I
 18 just would hate to be in the situation to use a peremptory on
 19 a juror that, in the back of his mind, although he says it
 20 doesn't matter, do we really want to risk him being -- his
 21 ability to be fair and impartial when his own son -- and
 22 furthermore, Judge, if we have any kind of a time line, maybe
 23 a month down the road, we'll be in the case, about the same
 24 time as his son's case. It could be a month before the Grand
 25 Jury, and it's in the same building. I think it's so dicey

1 with this kind of juror. I don't think I could envision a
2 situation like this. But I think to err on the side of
3 caution would be better in a death penalty case, and we'd ask
4 you grant our challenge for cause in this.

5 THE COURT: Well, I tell you what -- it's not
6 100 percent clear to me that -- or is it clear, do you
7 believe -- let's put it that way. Do you believe it's clear
8 that he's under accusation for a felony?

9 MR. GOELLER: Yeah. I think it's clear. At
10 the very minimum this case is a State Jail Felony. I don't
11 know what the bond is set at. Obviously, I think what he
12 meant by motions have to be filed, they've filing a motion for
13 a bond reduction. He thinks it's a small amount, but
14 apparently the kid doesn't have a criminal history. But I'm
15 speculating a lot, and I see where that's going. If he's been
16 in jail a week -- let's see, 11 days. They've already got a
17 lawyer and they're filing motions, we know it's a felony. If
18 it's ecstasy, any amount of ecstasy is a felony.

19 THE COURT: Of course, you're not saying that
20 he's legally disqualified, right, because he's not under
21 indictment?

22 MR. GOELLER: No. He's not. I can't say he's
23 not -- I cannot look this Court in the eye and tell the Court
24 he's legally disqualified. I can't do that, Judge.

25 THE COURT: And with regard to what he actually

1 kind of there for them; I hope they're there for me. That's
2 how I'm thinking about it. That's the way I think, Judge.
3 And I know it's very speculative, but I'm thinking in a case
4 like this, why risk it?

5 THE COURT: Okay.

6 MR. SCHULTZ: And I think his problem is like
7 he would with any other juror that may have given him
8 unsatisfactory answers. Whether he wants to burn a peremptory
9 challenge, I suspect it's the other way around. I suspect
10 he's already decided he will burn a peremptory challenge if
11 you overrule this challenge, and he's trying to protect it.

12 If a juror says something unsatisfactory, that's not
13 a statutory disqualification. That's what the strike is for.
14 We do that all the time, and that's what he has to do now.
15 It's, first of all, very speculative to say which way this
16 juror would go. He said otherwise. You've heard the totality
17 of what he had to say, and the fact that Mr. Goeller may have
18 some concerns that it might not work out is no different than
19 he might have some concerns over a never-adjudicated drug
20 problem; that he might be mad at his son for what he did and
21 take it out on the Defendant. Those are the decisions we make
22 of every single juror here, how will this thought of this
23 juror possibly affect our side of the case, and if it's not a
24 statutory disqualification, then let him use a strike. That's
25 what they're for.

1 said, he didn't say that he had any bias for or against the
2 State or Defendant, right?

3 MR. GOELLER: I think that's correct, Judge.
4 He said he's not. But let's say we've had jurors with DWIs in
5 their background, or somebody's kid is prosecuted, a typical
6 question would be, would you hold that against the State? No,
7 no, no. But now we're in a situation where that juror and
8 this son could be in the very same building very soon
9 together. I don't think Legislature could have really thought
10 about a situation like this where a prospective juror's own
11 child is perhaps prosecuted.

12 THE COURT: Well, I think it's somewhat
13 speculative. And I suppose he could be biased against the
14 State.

15 MR. GOELLER: Where I was going with that, and
16 I think I probably went there with the juror. I'm worried
17 defending him, if it's a felony -- and I know it's if, if, if,
18 and you're right, Judge, I'm speculating -- but if it's a
19 felony, and there's a potential for penitentiary time,
20 assuming that his child is indicted, assuming his child is
21 prosecuted, we know the District Attorney will not plea
22 bargain or offer him deferred probation on a drug case. I'm
23 wondering, all right, if I go with the State on this case
24 against him, assuming we get that far, does that look better
25 for my child, or will they treat my child -- you know, I was

1 MR. GOELLER: But the problem, Judge -- were
2 you done?

3 MR. SCHULTZ: Uh-huh.

4 THE COURT: Let me say this before you respond
5 because I guess I kind of have some idea what you might
6 respond. But the problem for the State is if they're not that
7 crazy about this juror, then they are certainly relying on you
8 to take a strike. And if you let them down, then they may be
9 stuck with a juror that they're not that satisfied with
10 either, right?

11 MR. GOELLER: I think I see your point.

12 MR. SCHULTZ: Are you foxing us, Mr. Goeller?

13 MR. GOELLER: Judge, if this had been 9:00 in
14 the morning, I'd like to take pride I could be that foxy,
15 but...

16 THE COURT: Just a second.

17 (Brief pause in proceedings.)

18 MR. GOELLER: Judge, I understand where Bill is
19 coming from. We make these kind of decisions, but I have yet
20 to have to make a decision about wondering if the very same
21 lawyers involved in this case, Ms. Falco -- Jami is in felony
22 now, Gail is in felony, Bill is in felony, I'm wondering if
23 one of these -- if this guy is, in the back of his mind, one
24 of these three will be handling his son's case in the future,
25 and that's certainly a reality on my part.

1 I disagree with Mr. Schultz. It's more than me
2 just, well, I don't want to burn a strike. There are things
3 that have come up since this general voir dire that I don't
4 think the Legislature could have accounted for.

5 THE COURT: In fact, we have prosecutors from
6 two different cases (sic) in this court, and there are six
7 courts, so there's 33 and a third percent chance that the case
8 will end up in one of those two courts, right?

9 MR. SCHULTZ: Yes.

10 THE COURT: I suppose to be speculative.

11 MR. GOELLER: All right.

12 THE COURT: I hope I didn't interrupt your
13 train of thought because you were -- I don't know if you said
14 everything that you were going to say before I said what I
15 said.

16 MR. GOELLER: No. I think I got everything
17 out there, Judge.

18 THE COURT: All right. I'll grant the
19 challenge and strike Number 48 in an abundance of caution.

20 And I tell you what, let me talk to you about
21 tomorrow. I've released them for today, not for all time.
22 But I've released Ms. Holden, Mr. Franco and Ms. Preizler, and
23 I've asked them to come back at 12:30 tomorrow. And we've got
24 three jurors coming in at one, and let me tell you
25 logistically what we've got tomorrow morning. We've got, I

1 think given the way -- if we've got everybody seated before
2 9:30, I'll say a little something. What I'd like to do is
3 limit the State to an hour, and then let the Defense take your
4 time. If you take more than an hour, I'll let you guys have
5 an equal amount of time. In other words, you've got an hour.
6 If you use less than an hour, you don't have any more time.
7 If they use more than an hour, I'll let you come back for
8 however much time so you'll have an equal amount of time, and
9 I'm assuming we'll get out of here about 11:30, take about an
10 hour for lunch, and then start with Margaret Holden and Alden
11 Franco and Rose Preizler at 12:30.

12 My impression -- and I could be wrong because you
13 know I'm speculating now, if you don't mind me speculating.
14 My speculation is that Alden Franco was trying to wiggle out
15 of jury service the other day. Could be wrong.

16 Rose Preizler is also set at 12:30; she's a
17 number 1. And with regard to those that are coming in at
18 1:00, Jack Cassingham is a number 5. I also have the
19 impression that Jeff Vu, for no very good reason, will not
20 take long. What I'd kind of like to do, if we can, is go
21 through Number 55 tomorrow afternoon. I don't know if we're
22 going to have time to do it, and I wouldn't be surprised if we
23 don't.

24 But, if we can, I'd like to because that way we'll
25 start off with Number 56 on Thursday morning, and I suppose

1 believe, and I could be wrong about this, I think we have 63
2 jurors coming in tomorrow morning. And I could be wrong about
3 the numbers, but I think that's what it's going to be.

4 Judge Henderson also has his jurors coming in, I
5 suppose, at about the same time in his capital murder case.
6 So, we're going to have a lot of jurors out there. So, I've
7 asked the bailiff to begin seating our jurors as soon as it
8 looks like they're starting to gather, just to get them out of
9 the hall and get them in here, because I think it would be a
10 good idea to do that. I have already done my duty with these
11 jurors, so I don't think I have a legal duty to say anything
12 to them before you two guys begin.

13 If you want me to, I'll say a little something, but
14 I won't talk for long, and if you-all don't want me to, then
15 that's great. Does the State want me to say anything at all
16 to refresh them, or leave it alone?

17 MR. SCHULTZ: I'm not against the idea, but I
18 don't see a need for it.

19 THE COURT: And do you care, Mr. Goeller?

20 MR. GOELLER: I'm sure you'll make some kind of
21 welcome back, brief thing, that's fine. Anything you want to
22 tell them is fine with me, Judge.

23 THE COURT: And beyond that, you don't care?

24 MR. GOELLER: I don't care.

25 THE COURT: I tell you what I'd like to do, I

1 we'll not have gotten too far behind. Although, we've got a
2 couple of number 1s for Thursday, and maybe this is getting to
3 be mind-boggling. I don't know. So, anyway that's kind of
4 what we've got for tomorrow.

5 And we've got -- I suppose we've got the Defendant
6 coming in -- well, we need to get the Defendant seated before
7 we bring in any of the jurors, so we can't bring in the jurors
8 until he's seated. Can you guys get him here at 8:45?

9 SHERIFF'S OFFICER: Yes, sir.

10 THE COURT: Then as soon as he's seated, we'll
11 start seating our jurors as they trickle in. And it would
12 really be great, as far as I'm concerned, to get started right
13 at 9:00, and if we can, then we get out of here sooner, and I
14 suppose take a little bit longer for lunch.

15 Anyway, does anybody have anything else to put on
16 the record before we stop?

17 (Discussion off the record.)

18 (End of Volume 14.)

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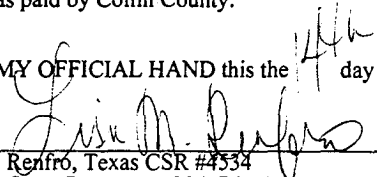
1 REPORTER'S CERTIFICATE
2 THE STATE OF TEXAS *
3 COUNTY OF COLLIN *

4
5 I, Lisa M. Renfro, Official Court Reporter in and
6 for the 380th District Court of Collin County, State of Texas,
7 do hereby certify that the above and foregoing contains a true
8 and correct transcription of all portions of evidence and
9 other proceedings requested in writing by counsel for the
parties to be included in this volume of the Reporter's
Record, in the above-styled and -numbered cause, all of which
occurred in open court or in chambers and were reported by me.

10 I further certify that this Reporter's Record of the
11 proceedings truly and correctly reflects the exhibits, if any,
offered by the respective parties.

12 I further certify that the total cost for the
13 preparation of this Reporter's Record is contained in
14 Volume 53 and was paid by Collin County.

15 WITNESS MY OFFICIAL HAND this the 14th day of
16 January, 2003.



17
18
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