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

VOLUME 15 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 15 - VOIR DIRE
CAPITAL MURDER JURY TRIAL

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On the 5th day of September, 2001, from 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
210 S. McDonald Street, McKinney, Texas 75069
(972) 548-4661

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APPEARANCES

1 ATTORNEYS FOR THE STATE OF TEXAS
 2 MR. BILL SCHULTZ
 3 SBOT NO. 17841800
 4 MS. GAIL T. FALCO
 5 SBOT NO. 00787450
 6 MS. JAMI LOWRY
 7 SBOT NO. 24012724

8 Assistant Criminal District Attorneys
 9 Collin County Courthouse
 10 210 S. McDonald, Suite 324
 11 McKinney, Texas 75069
 12 Telephone: (972) 548-4323

13 ATTORNEYS FOR THE DEFENDANT
 14 MR. MATTHEW GOELLER
 15 SBOT NO. 08059260
 16 MR. DON N. HIGH
 17 SBOT NO. 09605050

18 GRUBBS, HIGH, GOELLER & ASSOCIATES
 19 400 Chisholm Place, Suite 400
 20 Plano, Texas 75075
 21 Telephone: (972) 423-4518

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PROCEEDINGS

1 (Open court, venire present.)
 2 THE COURT: We're on the record in Cause
 3 Number 380-80047-01. The Defendant is here with Counsel. The
 4 State is represented by the District Attorneys, and I want to
 5 welcome you folks back to the Collin County Courthouse. As
 6 you know, we are engaged in some important business this
 7 morning. I want to ask the Bailiff, who's missing?
 8 THE BAILIFF: Your Honor, that would be Charles
 9 Deeb, Number 76; Stacie Lee, Number 46 -- I'm sorry, Number
 10 110; Christopher Chae, Number 111.
 11 THE COURT: All right. Is there any request
 12 from either side?
 13 MR. GOELLER: Yes, Your Honor. At this time
 14 we'd reurge our motion for attachment for jurors.
 15 THE COURT: All right. The Writ of Attachment
 16 will issue. Let's get them out this afternoon. It may be
 17 this afternoon, and it may be tomorrow, but we'll get them and
 18 figure out what we're going to do.
 19 All right. Ladies and Gentlemen, I don't have much
 20 in the way of a speaking role this morning. You'll recall
 21 that I gave you some instructions a little over two weeks ago
 22 with regard to how to view the circumstances in this case, and
 23 all those instructions still apply. I particularly want to
 24 tell you that you'll recall that I placed all of you under

1 oath. And the oath was to give truthful answers and to make
 2 truthful statements with regard to any questions propounded or
 3 any assertions that you have to make to the Court.
 4 Each side will have an hour to tell you what they
 5 want to tell you this morning, and I expect to get you out of
 6 here by 11:30. Is the State ready?
 7 MS. FALCO: The State's ready, Your Honor.
 8 THE COURT: Ms. Falco, go ahead.
 9 MS. FALCO: Thank you, Your Honor.
 10 May it please the Court, Defense Counsel, Ladies and
 11 Gentlemen of the Jury, since y'all are split, I don't mean to
 12 be ignoring y'all. I will be trying to focus on y'all as
 13 well, but since the majority of the people are over here, I
 14 probably will have the side of me facing you most of the time.
 15 My name is Gail Falco. I'm an Assistant District
 16 Attorney here in Collin County. And seated here in front of
 17 me is Mr. Bill Schultz. He's the First Assistant District
 18 Attorney.
 19 MR. SCHULTZ: Morning.
 20 MS. FALCO: He's my boss, and seated over here
 21 is Ms. Jami Lowry. She's also an Assistant District Attorney,
 22 and she'll be working on this case as well.
 23 Seated at the other table closest to Ms. Lowry is
 24 Mr. Don High.
 25 MR. HIGH: Good morning, Ladies and Gentlemen.

1 MS. FALCO: Seated next to him is Mr. Matt
 2 Goeller.
 3 MR. GOELLER: Good morning.
 4 MS. FALCO: And they are the Defendant's
 5 counsel, but they are private practitioners here in Collin
 6 County, and the Defendant's last is name is Ivan Cantu.
 7 THE DEFENDANT: Morning.
 8 MS. FALCO: Do any of y'all know any of us that
 9 I've just introduced? I don't see any hands. And before we
 10 move on, you had a chance to observe each other and maybe two
 11 weeks ago when you were here you had a chance to observe
 12 people in the general panel. There was approximately 200 of
 13 y'all at that time. Do any of y'all know anyone on the panel,
 14 or know anyone that's not here today that you recognized from
 15 two weeks ago?
 16 And, Ms. Bolin, we spoke to your brother-in-law
 17 yesterday; is that correct?
 18 VENIREPERSON: Yes.
 19 MS. FALCO: And aside from your brother-in-law,
 20 do you know anyone else?
 21 VENIREPERSON: No.
 22 MS. FALCO: Is there anyone else that knows
 23 anybody? Yes, sir?
 24 VENIREPERSON: I know Christopher Chea.
 25 MS. FALCO: I'm sorry, I need you to --

1 VENIREPERSON: Christopher Chea.
 2 MS. FALCO: I need you to speak up loudly and
 3 state your name for the record.
 4 VENIREPERSON: Jim Rountree.
 5 MS. FALCO: And you know Mr. Chea?
 6 VENIREPERSON: And I also know a lady,
 7 Charlotte -- she was one of the early panelists. I'm trying
 8 to recall her last name. She used to be a neighbor across the
 9 street. Her first name was Charlotte, and she was probably in
 10 the first 20 people -- in the first 20 numbers -- McCracken, I
 11 believe it is. Last name is McCracken.
 12 MS. FALCO: McCracken?
 13 VENIREPERSON: I know her, also.
 14 MS. FALCO: Is it Christopher Chae that you
 15 know?
 16 VENIREPERSON: Christopher Chae I know. He's
 17 missing today.
 18 MS. FALCO: How do you know Mr. Chae?
 19 VENIREPERSON: Through business.
 20 MS. FALCO: Anything about your relationship
 21 with Mr. Chae and knowing him that if you were both selected
 22 to be on the same jury that would interfere with your
 23 deliberations?
 24 VENIREPERSON: No.
 25 MS. FALCO: Do you feel like you could

1 independently reach a verdict, despite what Mr. Chea may
 2 believe or think?
 3 VENIREPERSON: That's correct.
 4 MS. FALCO: Do you know anyone else on the
 5 panel?
 6 VENIREPERSON: No.
 7 MS. FALCO: Thank you, sir. Mr. Rountree
 8 brings up a good point. Since there are so many of you, if I
 9 could get you, when you're called upon, to state your name and
 10 if you know your number, to state your number as well.
 11 Everything we say is being recorded by the court reporter, so
 12 I need all y'all to speak up and to get your name on the
 13 record so we know who's speaking.
 14 Yes, ma'am?
 15 VENIREPERSON: I know a gentleman named
 16 Charles. I don't even know his last name, but he attended the
 17 same church I did a couple of years ago.
 18 MS. FALCO: And you are Ms.?
 19 VENIREPERSON: Janice Oliver, Number 67.
 20 MS. FALCO: Do you see him here today?
 21 VENIREPERSON: No.
 22 MS. FALCO: Did you know if he was sitting
 23 closer to the front or further to the back of you on last
 24 Tuesday?
 25 VENIREPERSON: I'm sorry. We rearranged so

1 many times. I just happened to see him waiting outside.
 2 MS. FALCO: You just know that his name is
 3 Charles?
 4 VENIREPERSON: Charles.
 5 MS. FALCO: Anything about knowing Charles
 6 that, if you were both selected to be on the same jury, that
 7 would interfere with your deliberations?
 8 VENIREPERSON: No, not at all.
 9 MS. FALCO: Do you feel like you could
 10 independently and fairly reach a verdict despite what Charles
 11 may think?
 12 VENIREPERSON: Oh, yes.
 13 MS. FALCO: Thank you, Ms. Oliver.
 14 Anyone else that recognizes anyone from the panel?
 15 Yes, ma'am?
 16 VENIREPERSON: Shala Jones is my name, 122.
 17 And her name is Jamie. I don't know her last name, but she
 18 was not selected. She was dismissed. So, I guess it's
 19 irrelevant then.
 20 MS. FALCO: Yes. Thank you, Ms. Jones.
 21 Anyone else that knows anyone on the panel? Yes,
 22 ma'am?
 23 VENIREPERSON: Anne Kovacs. There were two in
 24 the jury summons who are in the same church that I'm in, but I
 25 have no -- we're in the same church.

1 MS. FALCO: And do you know them by name?
 2 VENIREPERSON: Gregory Johnson, and I can't
 3 think of his first name.
 4 MS. FALCO: And anything about knowing either
 5 of those two gentlemen that would keep you from reaching a
 6 fair and just verdict?
 7 VENIREPERSON: (Shakes head.)
 8 MS. FALCO: I need you to speak up. You have a
 9 very soft voice.
 10 VENIREPERSON: Nothing at all.
 11 MS. FALCO: Thank you, ma'am.
 12 Anyone else that knows anyone else on the panel? I
 13 see no more hands.
 14 As you know, this is a capital murder trial as
 15 you've been summoned for, and I know this is the second time
 16 y'all have shown up so far. And the way it works, when the
 17 State is seeking the death penalty in a capital murder case,
 18 you will be asked -- interviewed individually on an individual
 19 voir dire as well. So not only have you been here two times
 20 already, but you will probably be scheduled, if you haven't
 21 already, for an individual interview -- individual voir dire
 22 where we speak to you one on one, and that's done for several
 23 reasons.
 24 One, you've had an opportunity to kind of think
 25 about your views and how you feel about the death penalty

1 time, we understand you've got lives apart from this
 2 courtroom. You've got busy, personal lives. You've got your
 3 work that you need to do, and we understand that. But, this
 4 case potentially involves the life or death of this man over
 5 here, Ivan Cantu, and it's the one type of case that has
 6 probably the most serious of consequences. And so we just ask
 7 that you do the best that you can to accommodate and be here
 8 when you need to be here.
 9 Having said all that, as I said, we're here on a
 10 capital murder case. Some of you may already know what the
 11 distinction is between murder and capital murder, but it's
 12 not -- has nothing to do with goriness of the crime or the
 13 severity of the crime. I'll give you an example about it and
 14 start with you, Mr. Hargrove, because you're the first one.
 15 Can you name somebody that everybody would know, a famous
 16 celebrity that's well-liked, or famous person that's
 17 well-liked?
 18 VENIREPERSON: Nicholas Cage.
 19 MS. FALCO: Okay. We'll start with Nicholas
 20 Cage. Let's assume I have a vendetta against him. I didn't
 21 like one of his movies, and I just don't think he ought to
 22 make any more movies, and they way I'm going to resolve that
 23 is I'm going to kill Nicholas Cage. Let's say I find out
 24 where he lives, and I wait outside his house one day, and as
 25 he pulls up in the driveway and gets out of his car, I go up

1 since you first came and since you first filled out that
 2 questionnaire. It also allows a little bit more intimate
 3 questioning. You won't feel the need to be politically
 4 correct since it will just be you and the lawyers conversing.
 5 The only thing that's required of you at this point is
 6 honesty, to give us honest answers. Both sides are looking
 7 for 12 people who can be fair and impartial jurors in this
 8 case, and if the evidence shows and the facts warrant a death
 9 sentence, to be able to give a death sentence. And if the
 10 facts show a life sentence, to be able to give a life
 11 sentence. So, that's all that's required of you at this point.
 12 When we ask you questions and when we talk to you,
 13 especially when it's the one-on-one individual voir dire, the
 14 questions we ask aren't meant to offend you. They're not
 15 meant to pry into your personal life, but just to see if
 16 you're the appropriate type of juror to be seated on this type
 17 of a case.
 18 We know that a lot of you may have strong views and
 19 strong personal feelings regarding the death penalty or other
 20 issues we may talk about. We're not here to quarrel with you.
 21 We're not here to change your mind. We're just here to
 22 discuss that with you and to find out if you're the
 23 appropriate type of juror for this case.
 24 Now, understanding that you've already been up here
 25 two times, and you will probably be up here at least one more

1 to him and it's premeditated, and I planned it, and I've got a
 2 big knife, and I attack Nicholas Cage. I stab him 50 times.
 3 I cut off his limbs. It's a gruesome, violent murder. But
 4 that's all that is; is it's just murder. It's not capital
 5 murder.
 6 To be capital murder, you have to have an
 7 aggravating factor, and Legislature has listed certain
 8 aggravating factors that make murder "capital murder." That
 9 would be murder, killing a police officer, like in the George
 10 Rivas trial. If you kill a police officer, that's capital
 11 murder. The fact the victim is a police officer is an
 12 aggravating factor.
 13 Now, this is a recent change in the law, but
 14 killing a child under six is capital murder. The Legislature
 15 has decided that those types of people, children under six,
 16 need special protection, as do police officers, and that's why
 17 those are categorized as capital murder.
 18 Killing somebody in the course of a burglary is
 19 capital murder. If you enter someone's home without their
 20 effective consent, that is burglary, and it's capital murder
 21 because it's murder in the course of burglary.
 22 Killing somebody in the course of robbery -- and
 23 we'll go over all these definitions in just a moment -- that's
 24 capital murder. Killing two or more people in a common scheme
 25 or plan is capital murder, whether you kill them as a serial

1 killer one at a time, or you go in and kill two or more people
2 at one time, that's capital murder as well. Killing someone
3 in the course of aggravated sexual assault, what we call
4 commonly rape, that's capital murder. So, as y'all can see,
5 it's murder plus an aggravating factor that makes it capital.

6 And with regard -- like I said with the victim, it
7 doesn't matter if it's a well-known person. It doesn't matter
8 if it's a gruesome murder, or it's particularly violent.
9 That's not what makes it capital. And on the flip side of
10 that, the character of the victim doesn't make a difference
11 for whether it's capital murder or not.

12 Some of you may think, well, it makes a difference
13 to me if it's a nun sitting in a church, and a man walks in
14 and kills her, versus just some drug dealer on the street who
15 gets killed. That makes a difference to me. Some of you may
16 think, no, that doesn't make a difference to me at all because
17 a killer is a killer and that person still killed, and it
18 doesn't make a difference. Legally on the guilt/innocence
19 phase, when you're talking about capital murder, as long as
20 the State proves to you beyond a reasonable doubt the elements
21 of capital murder, then that's capital murder, and it's
22 regardless of the character of the victim.

23 Is there anyone here who thinks it does make a
24 difference to them who the victim is, whether it's the nun
25 sitting in the church or the drug dealer on the street? Is

1 opportunity, other than when we get into the individual voir
2 dire. Because, the voir dire process, as a whole, this is the
3 only opportunity that we get to interact. You get to ask us
4 questions, and we can answer your questions if the law allows
5 us to. So, as I'm going along, if there's something you don't
6 understand or you have a question about, please raise your
7 hand. If I'm missing somebody over here, if y'all will direct
8 my attention that somebody has their hand up over here.

9 The first definition we get to is murder. "A person
10 commits an offense if he intentionally or knowingly causes the
11 death of an individual." And that's what we described in my
12 killing of Nicholas Cage. I intentionally or knowingly caused
13 his death. That's murder.

14 Capital murder. Like we said, certain aggravating
15 factors, and what will apply for this case, the definitions
16 you need to worry about, is if "A person commits an offense if
17 he commits murder, and the person intentionally commits the
18 murder in the course of committing or attempting to commit
19 kidnapping, burglary, robbery, aggravated sexual assault,
20 arson or obstruction or retaliation; or the person murders
21 more than one person during the same criminal transaction, or
22 pursuant to the same scheme or course of conduct."

23 Burglary. "A person commits an offense if, without
24 the effective consent of the owner, the person enters a
25 habitation and commits or attempts to commit a felony."

1 there anyone who feels that way? Just raise your hand. We'll
2 start with you, Ms. Hayes?

3 VENIREPERSON: Yes.

4 MS. FALCO: Why does that make a difference to
5 you?

6 VENIREPERSON: I'm not really sure why. It
7 just seems like it would make a difference.

8 MS. FALCO: And let's assume it's the drug
9 dealer that gets killed, but let's assume he is killed by a
10 person who is a drug dealer. Do you think that person who did
11 the killing -- the drug dealer who did the killing, do you
12 think that he ought to walk -- that he ought to get away with
13 it and be found not guilty because of the person he killed?

14 VENIREPERSON: No.

15 MS. FALCO: What about, you think he ought to
16 get a lesser sentence, maybe just get life, even though he
17 killed someone who does the same thing he did?

18 VENIREPERSON: I'd have to really think about
19 that one. I don't know. It doesn't seem like it would make
20 any difference, but it does. I can't really explain to you
21 why, but it would make a difference to me.

22 MS. FALCO: Okay. I'll go ahead and start
23 covering the definitions, and if at any point in time I'm not
24 clear to you or you can't hear me or you want to ask a
25 question, just raise your hand because this is the only

1 Now, with regard to the burglary, it may be obvious
2 from the crime that there was a burglary. You may see forced
3 entry, broken window, a busted-in door, or it may appear, from
4 the initial looking at the facts, that there was no forced
5 entry. May appear that maybe the consent was effective, but
6 if you start looking at the facts, consent can be ineffective
7 if it's done by fraud or deception.

8 An example of that would be a Bible salesman. Let's
9 say somebody -- a salesman comes to your door and knocks on
10 the door with the premise I'm going to sell you some Bibles.
11 His intent is to get in your home and kill you. You may let
12 that person in thinking he's going to sell you Bibles. Then
13 once he's invited in, kills you, and there may be evidence of
14 pamphlets from his Bibles, or there may be Bibles there to
15 show there was some kind of fraud or deception in his
16 obtaining consent to get inside the house. And if that's the
17 case, then you have burglary because obviously nobody is going
18 to let somebody in their house to kill them if they know
19 that's what their intent is.

20 Next definition is robbery. "A person commits an
21 offense if, in the course of committing theft and with intent
22 to obtain or maintain control of the property, he
23 intentionally, knowingly or recklessly causes bodily injury to
24 another, or intentionally or knowingly threatens or places
25 another in fear of imminent bodily injury or death."

1 Talking about the difference between burglary and
 2 robbery, a lot of you may have said -- a lot of you may say,
 3 well, when I was on vacation I was robbed. It's pretty
 4 common. Robbery is a person-to-person crime. Somebody
 5 confronts you and uses force, whether it's a gun or any other
 6 type of weapon, and takes the property using that force. It's
 7 a person-to-person crime. Burglary, although it may occur
 8 while you're in your house asleep, there's not that
 9 person-to-person contact. They go inside the house and either
 10 commit theft or something else. But do you understand the
 11 difference between the person-to-person versus
 12 person-to-property crime?

13 Intentionally. "A person acts intentionally or
 14 with intent with respect to the result of his conduct when it
 15 is his conscious objective or desire to cause the result."
 16 Basically it's result-oriented. If you intend to kill
 17 somebody, then that's murder.

18 Before we get to this, when we talk about capital
 19 murder there are two options; either a life sentence or a
 20 death sentence. If you find somebody guilty of capital
 21 murder, and there's two phases to the trial. There's the
 22 first phase, which is the guilt/innocence phase. And during
 23 the guilt/innocence phase, the burden of proof is on the State
 24 of Texas to prove to you beyond a reasonable doubt that the
 25 defendant committed the offense. Assuming the State proves to

1 you beyond a reasonable doubt that person is guilty of capital
 2 murder, you move on to the punishment phase. In the
 3 punishment phase of a capital murder trial, you don't just go
 4 back there and say life or death. You are given some
 5 questions. These questions are called "special issues," and
 6 depending on how you answer these special issues dictates
 7 whether or not that person receives a death sentence or a life
 8 sentence.

9 And with regard to that, as I stated, we do intend
 10 to seek the death penalty in this case. What that means --
 11 what we anticipate is that the evidence will show beyond a
 12 reasonable doubt that the defendant is guilty of capital
 13 murder. We anticipate that the evidence in the punishment
 14 phase will be such that you will answer the special issues in
 15 such a way that will result in a death sentence.

16 What a death sentence means is that at some point in
 17 the future, the Defendant will be taken to Huntsville, taken
 18 to the death chamber, and on a certain, appointed day -- on
 19 his execution date, he will be taken to the death chamber,
 20 strapped to a gurney, injected with a lethal substance until
 21 he is dead. I don't say that for dramatic flare or for gore,
 22 but for you to understand the reality of what we're doing
 23 here, and for you to evaluate yourself as to whether or not
 24 you can be part of this process that could result in the death
 25 of a person. And that's something during individual voir dire

1 we'll explore with you more for you to be thinking about
 2 whether or not you can do that. You can be involved in that
 3 process. And again, when we're talking to you, there's no
 4 right answers; there's no wrong answers, just honest answers.

5 When we get to the special issue, the first special
 6 issue we get to is what we call the future danger question.
 7 Again, with regard to this question, the burden of proof is
 8 going to be on the State, and we're going to have to prove to
 9 you beyond a reasonable doubt whether there's a probability
 10 that the defendant would commit criminal acts of violence that
 11 would constitute a continuing threat to society. Now, with
 12 regard to that question, obviously the Legislature assumed or
 13 envisioned there are situations you could find somebody guilty
 14 of capital murder, but not necessarily they'll be a future
 15 danger. It's not automatic. Just because you find someone
 16 guilty of capital murder does not automatically mean they're a
 17 future danger.

18 It may well be that you look at the facts -- and
 19 what the Legislature is doing by creating this question is
 20 asking the jury to relook at the evidence. Relook at it in
 21 light of this question and decide whether or not the defendant
 22 is a future danger. And it may very well be that you look at
 23 the facts of the case, the crime alone, and say based on that
 24 crime alone, yes, I think there's a probability that he'll
 25 commit criminal acts of violence in the future, and you can

1 answer that question yes. But the Legislature also envisioned
 2 there's got to be some situations where, although you find the
 3 defendant guilty of capital murder, he may not be a future
 4 danger.

5 A couple of examples might be, let's say you have a
 6 person whose child was killed by two men. Those two men go to
 7 trial, and because some of technicality or loophole in the
 8 law, they get off, and as they're walking out of the courtroom
 9 they look at the victim's parents who are in their grief and
 10 just start laughing and walk out of the courtroom. One of the
 11 parents follows those two men out and kills them. It's a
 12 capital murder, killed two people, but that person may not be
 13 a future danger.

14 We have a situation -- let's say you have somebody
 15 that decides to go and rob a liquor store. They go in there
 16 and they rob the liquor store and they kill the clerk, but on
 17 the way out, the police are already there and he gets in some
 18 cross-fire maybe with the police and he gets shot -- gets shot
 19 in the throat. He's paralyzed from the throat down.
 20 Physically, he can't do anything. It's a probability that he
 21 won't be a future danger.

22 Or you may have the situation of Dr. Kavorkian.
 23 Maybe you have an elderly couple who have decided that neither
 24 one wants to live without the other, and they both want to go
 25 at the same time, and as they get up in their years and they

1 become physically incapacitated, they decide that they're
2 going to solicit the help of Dr. Kavorkian because neither one
3 of them can take care of themselves. They can't take care of
4 the other, but they don't want to be around without the other.
5 So, they solicit the help of Dr. Kavorkian to aid in their
6 death, and Dr. Kavorkian does that. It's capital murder if he
7 kills those two people. You may or may not find that there's
8 a probability that he'd be a future danger.

9 So, obviously the Legislature, when they gave us
10 this question, are asking the jury, take a second look. Don't
11 automatically say death penalty or future danger just because
12 you found him guilty of capital murder. Let's take a second
13 look at it.

14 Now, with regard to this question, there are several
15 words in this question that are undefined, and when you get to
16 the end of the trial, if you're selected as a juror, you will
17 get what's called the court's charge, and that will contain
18 all the law and all the facts that you need for the case. So
19 as we discuss them now, don't worry about memorizing it or
20 knowing it because you'll get it at the end of the case. But
21 when you get that court's charge at the end of the case,
22 there are words in this question that are not going to be
23 defined for you. It's going to be up to you as a jury to
24 decide what those words mean.

25 The first word with regard to this question is the

1 violence.

2 You may take some of that evidence. You may not
3 think it's a criminal act of violence, but you may say, but it
4 does tell me about his character. It does help me decide
5 whether or not there's a probability he'll commit acts of
6 violence. So, there may be some things you hear, or may not
7 in a potential punishment case that -- though you may not find
8 them as criminal acts of violence, it will give you insight
9 into a person's character and help you to answer this
10 question.

11 The last word that is again undefined, but yet
12 frequently debated, is that word "society." This question
13 does not ask, can the defendant safely be locked up in jail?
14 It doesn't say will the defendant be a threat to prison
15 society? It doesn't limit itself to that. It asks will he be
16 a continuing threat to society? That could mean the society
17 you and I live in; the world outside, the man that drives your
18 school bus, the person that sells ice cream at Baskin Robbins.
19 This question is basically asking you what is the propensity
20 of danger of this person, regardless of a particular vocation.

21 With regard to this question, like I said, the
22 burden of proof is going to be on the State, and we have to
23 prove that to you beyond a reasonable doubt. If all 12 jurors
24 agree, yes, we think there's a probability that the Defendant
25 will commit criminal acts of violence in the future, you are

1 word probability. We have to prove beyond a reasonable doubt
2 that there's a probability the defendant will commit criminal
3 acts of violence in the future. Doesn't mean a certainty.
4 It's not saying will he do it, but it's not saying is it just
5 possible, because anything is possible. It's something more
6 than a possibility, less than a certainty. Some people that
7 are mathematically minded may say, well, that's a percentage
8 to me. There's some percentage that he will commit criminal
9 acts of violence. Other people may say that word to me means
10 more likely than not. But again, that's a word that will be
11 undefined for you.

12 The next phrase that you get to that is, again,
13 undefined, but yet frequently debated is the word (sic)
14 criminal acts of violence. Some -- and I think we would all
15 agree that an act of violence toward a person would constitute
16 a criminal act of violence, such as murder, aggravated
17 assault, beating somebody up, aggravated sexual assault, if
18 you rape somebody. Some people may differ when it comes to
19 property. If I took a baseball bat and went out to the
20 parking lot and just started smashing people's windows in a
21 row out of anger, some people may say that's violence. That's
22 a criminal act of violence to me. Other people may say, well,
23 that's just property so I don't really see it that way. It's
24 going to be up to you as a jury to decide whether or not
25 there's going to be a probability of criminal acts of

1 still in the process of assessing the death sentence. If ten
2 or more of you say, no, we don't think the State met it's
3 burden, or, we don't think there's a probability he'll be a
4 future danger, then the trial is over. Your deliberations are
5 over. It's an automatic life sentence at that point so, as
6 stated here, the State has the burden of proof. The Defense
7 does not have the burden to present any evidence. All 12
8 jurors say yes, you're in the process of assessing a death
9 sentence. Ten or more jurors say no, it's an automatic life
10 sentence.

11 The next special issue, which may or may not be
12 relevant to this case, and the reason I say that, we don't
13 know all the evidence that's going to be presented because in
14 the State of Texas we do not have what's called reciprocal
15 discovery. The Defense is entitled to know the State's case
16 as far as knowing what witnesses we're going to call, what
17 evidence we intend to offer in the trial, but that's not
18 reciprocal. We won't know witnesses the Defense is going to
19 call. We won't know evidence that they're going to present
20 until you do. We'll hear it at the same time. So in that
21 light, we can only anticipate what may or may not be
22 introduced into evidence, or what may or may not be a defense.
23 And so when I say it may or may not be relevant, I'm going to
24 cover this question briefly in case it becomes an issue, but I
25 don't anticipate it will be an issue at the end of the trial.

1 Special Issue Number 2. In cases in which the jury
2 charge at the guilt or innocence stage permitted the jury to
3 find the defendant guilty as a party -- and what that means is
4 if you are guilty because you aided or encouraged or abetted
5 somebody in committing the crime, then you are just as guilty
6 as the person who actually committed the crime. So, if you
7 find someone guilty as a party, then you have to decide
8 whether the Defendant actually caused the death of the
9 deceased, or if he didn't actually cause the death of the
10 deceased, but intended to kill the deceased or anticipated
11 that a human life would be taken.

12 And the perfect example would be the get-away driver
13 in a robbery. You've got two people; you've got the shooter
14 and you've got the get-away driver. Let's just say the two of
15 them talked about it, and they said, well, let's go rob the
16 bank, but the get-away driver didn't know he had a gun, and
17 they never talked about killing anybody. It was purely just
18 go in there, get the money and let's go. But when the shooter
19 gets in there, things go wrong. He pulls out the gun and
20 kills someone. The State is going to have a tough time
21 proving the get-away driver anticipated human life would be
22 taken.

23 On the flip side, if you have the get-away driver
24 and the shooter and they're talking about it. The get-away
25 driver knows the shooter has got a gun and knows he's going to

1 of life imprisonment rather than a death sentence be imposed."
2 It's a long, lengthy question. A lot of words, again that are
3 undefined. With regard to mitigation, typically what that
4 means is to reduce or lessen, to reduce the defendant's moral
5 culpability, or his blameworthiness.

6 With regard to this question, there is no burden of
7 proof on this question. It's what we call -- it's a weighing
8 question. It's a time for the jury to take into consideration
9 all of the evidence, give it whatever weight it decides -- the
10 jury decides to give it. Give the circumstances of the
11 offense whatever weight you want, the Defendant's character
12 and background whatever weight you want, personal moral
13 culpability of the Defendant whatever weight you want, and any
14 mitigating evidence, if you hear any, any weight that you
15 want. And if the mitigating evidence is sufficient to warrant
16 a life sentence, then the Defendant gets a life sentence. But
17 it's a time for you to weigh the evidence, to give it whatever
18 weight you want. And again, at the end of the trial you're
19 not going to get a list from the judge saying here's a list of
20 aggravating -- I'm sorry -- mitigating circumstances for you
21 to consider. It's up to you to decide what you find
22 is mitigating. And there may be some things that one juror
23 says, well, I think that's mitigating, but the juror right
24 next to you may say, well, I think that's aggravating.

25 A perfect example of that is drugs. One juror may

1 use that gun to get the money. He says, you know, get the
2 money no matter what. The shooter goes in there, gets the
3 money, kills the clerk. That get-away driver is just as
4 guilty as the shooter. He can be convicted of capital murder
5 just as the shooter could, because he can anticipate --
6 reasonably anticipate that a human life would be taken.

7 Again, with regard to this question if you get it,
8 we have the burden of proof. We have to prove to you beyond a
9 reasonable doubt that he actually took the life, or
10 anticipated that a life would be taken. If all 12 jurors say
11 yes to this question, again you're still in the process of
12 assessing a death sentence. If ten or more jurors at this
13 point decide, no, we don't think he could have anticipated as
14 a party that a human life would be taken, then it's an
15 automatic life sentence.

16 And the last question that we get to is what we call
17 the mitigation question. And if you've answered that first
18 question, that future danger question, if you answered that
19 yes, you will get to this question, what we call the
20 mitigation question. And this question states, "Whether
21 taking into consideration all of the evidence, including the
22 circumstances of the offense, the defendant's character and
23 background, and the personal moral culpability of the
24 defendant there is sufficient mitigating circumstances -- or
25 circumstance to warrant that death sentence -- that a sentence

1 say, well, he's not normally like that. He just got in a
2 situation where he got addicted to drugs and it was kind of a
3 downward spiral, and it changed his personality, and he did
4 this whole horrible crime because he was on his drugs, but
5 that's mitigating because that's not really the way he is.
6 That's mitigating to me. The other juror may say, well, you
7 know what, we're told as a society don't do drugs, and we're
8 told what drugs do to us, and the main reason we're told don't
9 do drugs is because it could lead to horrific, horrendous
10 results like that, so that's aggravating to me. He knew the
11 results of taking drugs, he did it anyway, and this horrific
12 result occurred, and so that's aggravating to me.

13 So, it will be up to you as a jury to do that
14 weighing and to do that balance and decide if there is
15 mitigating evidence, if it's sufficient to warrant a life
16 sentence. As you can probably imagine, if we're all called
17 upon -- you know, if we ended up somehow on trial for
18 something that we did, we could probably all come up with
19 something mitigating in our lives, some sort of sad
20 background, or maybe something sympathetic or maybe some kind
21 of a health issue or a family background issue, something that
22 is mitigating. So, it's not a question of is there mitigating
23 evidence, but is it sufficient; taking into consideration what
24 that person did, taking into consideration everything you
25 heard about their background and their criminal history and

1 their moral culpability, motive, responsibility, taking all
 2 that into consideration, is it sufficient to warrant a life
 3 sentence instead of a death sentence.
 4 And a good example, or an example that we've
 5 frequently been using is Adolf Hitler, probably one of the
 6 worst people in the history of the world, and all the deaths
 7 or lives that he caused. But if you look at his background,
 8 apparently he was an unwanted child. His mother contemplated
 9 an abortion and told him that. Dad's not really in the
 10 picture very much, got teased as a kid, tried to go to art
 11 school, make it as an artist, got kicked out because he was
 12 bad, just an all-around bad childhood, unloved. Things just
 13 progress along not going for him, until ultimately he ended up
 14 leading Nazi Germany into that horrific result.
 15 So when you look at it, you say, well, there is some
 16 mitigating evidence there, but is it sufficient to warrant, if
 17 he were on trial for his life, a life sentence, looking at
 18 what he did and his character and his background. So, it's an
 19 opportunity for the jury to weigh all the evidence.
 20 With regard to this question, there is no burden of
 21 proof on either side. The State doesn't have to prove to you
 22 there's not sufficient mitigating evidence. Defense doesn't
 23 have to prove to you there is sufficient mitigating evidence.
 24 There's no burden of proof. And with regard to this question,
 25 if all 12 jurors answer this question no, there's not

1 sufficient mitigating evidence to warrant a life sentence,
 2 then that's a death sentence. That equals a death sentence
 3 for the defendant. If ten or more jurors say, yes, I think
 4 there is sufficient mitigating evidence to warrant a life
 5 sentence, then that defendant gets a life sentence.
 6 And again, what you have to do, what you have to
 7 evaluate for yourselves, and when we start talking to you one
 8 on one, you have to be honest with us and forthright and let
 9 us know are you a juror who will follow the law, follow your
 10 civic duty being a juror, if you're given an oath, can you
 11 take that oath and uphold the law? Or are your feelings so
 12 strong and your opinions so strong that you're going to
 13 disregard the law? You're going to ignore what Judge Sandoval
 14 tells you, follow your own law and do your own thing? We need
 15 you to be honest with us and let us know if you can be that
 16 person who can participate in this process. It may be one
 17 thing to sit home in your living room, and something comes on
 18 TV and talk with your family about the death sentence and
 19 whether or not you believe in it. It's a completely different
 20 ball game when you're sitting here, like all of y'all are
 21 today, and being asked can you participate in a process?
 22 That's what we need y'all to think about, and that's what we
 23 need y'all to let us know when we bring you in for individual
 24 voir dire.
 25 Before I sit down, do y'all have any questions of

1 me?
 2 Yes, sir, could you state your name?
 3 VENIREPERSON: It's Thomas Graham.
 4 MS. FALCO: Yes, sir.
 5 VENIREPERSON: I don't know if this is the
 6 proper time or not. Why would the State of Texas -- do you go
 7 through all this when you decide you're going to go for the
 8 death penalty or not on the Defendant? If you're going to
 9 seek -- or do you have to seek the death penalty because it's
 10 capital murder?
 11 MS. FALCO: We don't have to seek the death
 12 penalty if it's capital murder. It's a choice made by our
 13 office whether or not we seek the death penalty.
 14 MR. GRAHAM: Do you go through (inaudible).
 15 MS. FALCO: We do. We evaluate our case.
 16 THE COURT: Excuse me just a minute. Sir, may
 17 I ask you to come up to the bench, please?
 18 VENIREPERSON: Yes, sir.
 19 THE COURT: What is your name, sir?
 20 MR. KEY: Paul Key, Your Honor. I was an
 21 Assistant DA, and I just wanted to come in and sit second
 22 chair.
 23 THE COURT: All right. Why don't you sit right
 24 over here.
 25 MR. KEY: Yes, sir.

1 THE COURT: Sorry. I didn't recognize him.
 2 Please continue. Sorry.
 3 MS. FALCO: Is there any other questions before
 4 I sit down? Any questions over here?
 5 I thank you for your time and your attention.
 6 THE COURT: Mr. Goeller, are you ready?
 7 MR. GOELLER: Yes, Your Honor.
 8 THE COURT: All right, sir. Please go ahead.
 9 MR. GOELLER: Please the Court, Mr. Schultz,
 10 Ms. Falco, Ms. Lowry.
 11 MR. SCHULTZ: Yes, sir.
 12 MR. GOELLER: Don, Ivan.
 13 Ladies and Gentlemen, my name again is Matthew
 14 Goeller. This is Don High, my partner. This is Ivan Cantu.
 15 I guess we all met -- it's been a couple of weeks,
 16 it seems like, and what I do for living is I watch people. I
 17 try to gauge people on their reactions, and after Judge
 18 Sandoval, back on the 21st of August, told y'all what kind of
 19 case this
 20 was, I took a lot of notes, and I watched people react, and
 21 when they finally figured out who Ivan was, this is the real
 22 deal, Folks. This is a live human being. This is not Adolf
 23 Hitler. This is a kid who's on trial, maybe for his life.
 24 Voir dire in a capital case, in the individual voir
 25 dire when you folks come in one at a time, and it's just the

1 lawyers and you and the judge, we spend a lot of time in
 2 individual voir dire because of the nature of the case. Most
 3 people, 99 out of 100 prospective jurors could sit on a
 4 speeding ticket case. Most jurors could sit on a possession
 5 of marijuana case or a shoplifting case or something like
 6 that. Not a whole lot of problem. Normally from the time you
 7 get to the courthouse, even on a felony case, to the time
 8 you're in the jury box listening to the evidence, two or three
 9 hours really. Certainly no more than half a day in a normal
 10 case. But this case and these types of cases are much, much
 11 different.

12 We spend a lot of time talking about the death
 13 penalty, life confinement in the penitentiary. It's
 14 uncomfortable, and it's always uneasy for me to talk about
 15 those things because, you know, the average juror might say,
 16 boy, you're spending a lot of time on the death penalty and
 17 life confinement, and that's just the nature of the case.
 18 We've got to discuss those issues in individual voir dire. We
 19 in no way concede guilt. There's going to be a full-blown
 20 trial on the merits on guilt/innocence.

21 Most of the issues having to deal with your ability
 22 to be a juror on the first part of the trial, I don't think I
 23 have to spend a lot of time on because I -- in Collin County I
 24 don't think we have a whole lot of people that disregard the
 25 Constitution and disregard burdens of proof. Once in a while

1 we will get a juror that says, look, if he's indicted or he's
 2 accused, he's guilty. I don't believe in that burden of --
 3 presumption of innocence and the burden of proof. And those
 4 kind of folks, you know, we'll talk to you and get your
 5 feelings on that, I suppose, at individual voir dire. But my
 6 time is limited, so I've got to put my time and resources into
 7 the ultimate issues. The most serious issues, that being the
 8 death penalty.

9 If -- and we have your jury questionnaires, and I
 10 thank you--all for filling those out. We've had several jurors
 11 who have changed some of their positions or changed their
 12 answers having thought about this a little bit. And that's
 13 okay. I mean, I think it's natural for folks to maybe change
 14 some of their answers after they reflect on it a little bit.
 15 That's perfectly okay. All right? When you come up for
 16 individual voir dire, we would just ask that you make sure you
 17 let us know.

18 This whole voir dire process, folks, obviously
 19 philosophically I would have differences with many jurors.
 20 Many jurors I won't, but when you talk about topics like this,
 21 you know, death penalty -- you know, think about the topics
 22 out there that you probably don't want to talk about it in an
 23 office party or cocktail party. Most people aren't going to
 24 just say, hey, let's talk about abortion. Are you pro life or
 25 pro choice, or pro death penalty or are you opposed to capital

1 punishment, and all those kind of things? Because there's a
 2 lot of emotion in these topics. There's a lot of strong
 3 feelings one way or the other, and it would probably be the
 4 last time you host a party in your home if that's all you
 5 wanted to talk about with guests. But the courtroom is a
 6 place that we have to talk about it, and as long as you shoot
 7 straight with me, I can't tell you how much I'd appreciate it,
 8 and I would appreciate it.

9 I can tell once in a while when I get what's
 10 called -- I call it the "PC juror," the politically correct
 11 juror that filled out those questionnaires. Some folks filled
 12 out those questionnaires thinking what would the judge want me
 13 to put down there? How could I look middle of the road on
 14 everything, right down the line. There's nothing wrong with
 15 that, but -- you know, it potentially does the system a
 16 disservice, I think. I don't know many people that can -- you
 17 know, when you talk about things like that, death penalty and
 18 abortion and all those hot, hot topics, I don't know many
 19 people that are just right down the middle of the road, sit on
 20 fence, never really thought about it, don't really take a
 21 position. I suppose there are people out there like that.
 22 There's nothing wrong with that, but this courtroom, please
 23 trust me when I tell you, is not the place to be, quote,
 24 unquote, politically correct. If you shoot straight with me
 25 and tell me, speak to me from your heart, that's all I can

1 ask. And you have my utmost thanks and appreciation if you do
 2 that.

3 Being a juror is a funny thing. You take an oath,
 4 the 12 people -- I think we'll have a couple of alternates,
 5 maybe 14 people, but the 12 people that will take an oath, you
 6 take the exact same oath that district judge up there took
 7 when he became a judge because you become judges, okay?
 8 Again, I have to jump to the ultimate issues because my time
 9 is limited. If there are other things, if you have problems
 10 with the Government, or defendants or the presumption of
 11 innocence or innocent until proven guilty beyond a reasonable
 12 doubt as to each and every element of the offense, if you have
 13 those kind of things -- concerns about it, there's nothing
 14 wrong with it. A lot of times I ask jurors when you came into
 15 the courtroom today -- not this case. Just on any case I've
 16 tried, I often say when you sat down and you figured out it
 17 was a criminal case after the judge told you, and you figured
 18 out who the prosecutors were and who the defense lawyers were
 19 and who the defendant was, how many of you said to yourself,
 20 gee, I wonder what he did? Okay. I would probably do the
 21 same thing. I think it's perfectly natural.

22 If you think about it, though, why do you say that?
 23 I think it's human nature. It would be silly to expect people
 24 to sit down and then say, gee, that's the defendant. He's
 25 presumed innocent until proven guilty. I wonder if the State

1 can prove him guilty beyond a reasonable doubt. I mean, I'd
2 love for people to have that attitude and say those things
3 when they come to jury service, but that's not human nature,
4 and I think I'd do the same thing. You know, figure out who
5 the defendant was, wonder what this case is all about, wonder
6 what he did. Of course, that kind of throws the presumption
7 of innocence out the window. But I think most people who
8 take their oaths take them very seriously.

9 There have been problems with jurors who didn't
10 speak the truth, so to speak, in jury selection and ended up
11 on a jury, and by then it's too late. You may tell the
12 Bailiff I need to talk to the judge. There's something I
13 didn't tell, or something's come up, and it's usually too late
14 and very problematic after that. The only time to tell us
15 your true feelings is in this jury selection, okay? It's very
16 important that you do that.

17 I want to talk just a little bit -- Ms. Falco is a
18 prosecutor, as is Mr. Schultz and Ms. Lowry, and words are a
19 lot in our business, and I take issue with some of the things
20 she said, not personally. She's a prosecutor. They were up
21 front with you from the start, unlike some District Attorneys
22 in the state, they're not really up front. They say, well,
23 we're seeking the death penalty because we just want to see
24 what a jury thinks, all right? And I give them credit.
25 They've come out from get-go and said we want to kill him.

1 They don't quite say it like that, we want to seek the death
2 penalty, but that's the net effect. They want to kill him. A
3 lot of people, based on some of the questionnaires I've seen
4 and some of the jurors we've already talked to, they think the
5 death penalty, or capital murder is an automatic thing in
6 Texas. We have murder, and then we have capital murder, so if
7 it's capital murder, you must be put to death if you're found
8 guilty. No such thing. No such thing as an automatic death
9 penalty in Texas.

10 I'd submit to you the way I look at it, a life
11 sentence is the automatic thing because if the jury cannot
12 answer those questions, there's a hung jury, or the jury votes
13 a certain way, it's a life sentence automatically. Ms. Falco
14 said -- she used the phrase "you're still in the process of
15 assessing the death penalty." No, I disagree with that. This
16 is not a process in assessing the death penalty. That's why
17 we're not -- we're not gathered here to assess the death
18 penalty. The State may think that. That's their viewpoint.
19 I've got a different viewpoint, as does Mr. High, all right?
20 Hopefully, I don't want folks jumping on that bandwagon, we're
21 here to be in the process of assessing the death penalty.
22 That's not your role as a juror. It's the role of the
23 prosecutor maybe that seeks the death penalty. That's not
24 your role as a juror. It's not a process to get the death
25 penalty as a juror. All right, everybody clear with me on

1 that?

2 Now, there was a question about how did this
3 decision come about? We've had jurors who have mentioned,
4 well, I think it's the judiciary or the State -- when the
5 State says -- or the prosecutors say, the State is seeking the
6 death penalty, well, you've got to look a little bit more into
7 that. One person makes that call, a local prosecutor, the
8 local District Attorney. That person makes the call whether
9 to seek the death penalty or not. Absolutely nothing to do
10 with the courts, with the judges, with his lawyers, with
11 anybody else. One person makes that decision. So State, I
12 guess with a small "S," all right? There's no committees,
13 there's no pretrials or trials or anything like that. That
14 decision rests with one person, all right.

15 And there are no rules and regulations on how that
16 works, okay. A local prosecutor has the option to not seek
17 the death penalty. They can still try a capital murder case,
18 but not seek the death penalty. If they're successful, it
19 would be an automatic life sentence in such a case, or they
20 can choose to seek the death penalty. They don't have to
21 answer as to why they chose to look at it that way either way,
22 all right, and there's no review -- there's no -- there's no
23 way to second-guess that or ask why or anything like that.
24 Once that decision is made, that's that.

25 Okay. Ms. Falco mentioned that regarding the

1 law -- and she's exactly right. The judge, Judge Sandoval,
2 gives all the law in the case, all right. And you will see a
3 lot of the phrases that I have been put up here. They're
4 right out of our law books, our codes of criminal procedure
5 and our penal code.

6 Let me say this, and I can't stress this importantly
7 enough. It is okay to be against the death penalty and be on
8 a jury in a capital murder case. Let me say it again. It is
9 okay to be against the death penalty and be a juror in a
10 capital murder case. Two kinds of -- I suppose if I boil it
11 down and you saw from those jury questionnaires -- we kind of
12 gave it I through 5. First one if you recall, I would always
13 impose the death sentence in every capital murder case. All
14 the way down to, I would never vote in such a way as to impose
15 the death penalty. Folks at that end of the spectrum will
16 probably not be seated on the jury. The State of Texas, the
17 District Attorney's office, has a right to have every juror in
18 a position where they could give the death penalty, okay?
19 People who could never give the death penalty cannot sit on
20 the jury legally, okay.

21 So, going into this, we know there will be 12 people
22 who, in one form or fashion, could vote in such a way as to
23 result in the death sentence. So, when I say there are two
24 types of people that will be on the jury, I think it's pretty
25 accurate. There are those people who are pro death penalty

1 and could also fairly consider a life sentence. That's kind
2 of the first group of jurors. The second group of jurors are
3 those jurors that are against the death penalty, but could
4 possibly vote in such a way that a death sentence would
5 result. All right? That kind of boils it down.

6 But again, the point I was trying to make, though,
7 and we'll touch -- we'll spend a lot of time on individual
8 voir dire on your actual feelings on the death penalty.
9 Ms. Falco talked about jurors who would disregard the judge's
10 instructions and disregard the law. Well, I agree with her.
11 People that would just outright do that are not qualified to
12 be on the jury. The flip side to that is, you have a right
13 not to be forced to take an oath that would violate your
14 conscience and cause you trouble that way, okay? I see a lot
15 of kind of puzzled faces looking at me. Let me say that
16 again. You have a right not to be forced to take an oath that
17 violates your conscience, okay.

18 Judge would give many, many instructions in any kind
19 of case. If it was a speeding ticket case in the City of
20 Plano, almost the same instructions. You're bound by the law
21 as the judge gives it to you. All people are presumed
22 innocent until proven guilty beyond a reasonable doubt by the
23 State of Texas. Many, many standard instructions that most
24 people don't have a problem following. I say most. There are
25 some people out there that would not follow those. I'm not

1 saying anything about those people. In fact, those are the
2 kind of folks, when people come in here and say, Mr. High,
3 Mr. Goeller, I've got to be honest with you, if somebody has
4 been indicted for a felony case and it's gotten this far, he's
5 guilty. I really can't give credence to that presumption of
6 innocence. And you'd think as a lawyer, my reaction would be
7 like, how could you? My God, this Constitution has been in
8 place 227 years, or however long it's been. That's so
9 fundamental to our American democracy. Innocent until proven
10 guilty, trial by your peers, all those kind of things. There
11 are people -- but you know what? I applaud those people
12 because they spoke the truth. They told me how they really
13 feel, and I can spend the rest of the day feeling good about
14 it and they can, too.

15 Now, are there occasional folks that would come into
16 a court of law and say they're all guilty. You know, some
17 folks say that kind of thing because they want to ditch jury
18 service. I don't know what to say about those people. I'd
19 rather know their true feeling up front, I suppose, if they
20 really don't want to serve that bad. Every comedian it seems
21 on television, and you hear it all the time. Has our system
22 really boiled down to 12 people that weren't smart enough to
23 get out of jury service. You hear that all the time, and it
24 gets a chuckle on, I guess, the Comedy Channel or cartoons in
25 the newspaper and all that kind of thing.

1 I think that goes along -- jury service is an
2 inconvenience. You folks have been up here -- you will spend
3 the better part of two days now. It is inconvenient. I
4 recognize that. Jury service, the best way I heard it put, is
5 jury service is when you are forced to come to a job interview
6 to take a job you don't want. That's probably the best way to
7 look at it. But I think -- and we all -- I make jokes. You
8 know, when I receive a jury service (sic) -- summons, you
9 know, I'm not doing cartwheels around the courthouse. I'm
10 like, oh, boy. I got this that week. I got to reschedule
11 this, da-dat-da. I'm the say way. It's inconvenient. But
12 hopefully, and I think Collin County is a little bit
13 different, most people understand it can be an awful
14 inconvenience. It can really disrupt your lives, but if it's
15 the system -- and it's the best system, not a perfect system.
16 I think it's the best one in the world yet, and there's a
17 price to pay for having that system. People are
18 inconvenienced. But ultimately, if we believe in the power of
19 the people and that the Government doesn't hold all the power,
20 whatever form or fashion that would be. You'd like rights
21 against the Internal Revenue Service. You'd like rights
22 against law enforcement, we all have these rights, and they're
23 worthless unless we're willing to pay a price for them, and
24 jury service is one of those prices. And I say
25 that -- I'm not trying to give you a patriotic speech, but I

1 hope everybody believes that.
2 I don't know. If you're selected as a juror in this
3 case, I anticipate maybe a start date in two or three weeks.
4 Maybe a little bit less, hopefully not more than that. I will
5 anticipate trial in this case lasting two, three, four weeks,
6 something in there. Could be a little less, could be a little
7 bit more. I think it's very safe to say the trial in this
8 case would not take less than two and a half, three weeks.
9 Outside, hopefully four or five weeks. So kind of be thinking
10 about that. It would probably be Monday through Friday, and
11 maybe Monday through Thursday, whatever. But certainly count
12 on at least a four, maybe a five-day work week, somewhere 9:00
13 start-up time, 8:30, 9:00, and 5:00 recess each day. So, be
14 thinking about that, be thinking about your schedules in the
15 month -- the latter part of September and October. What's
16 going to be going on in your life in that period of time.
17 I understand, and everybody agrees this is a very
18 important duty, but if you have something going on in your
19 personal life, and we're all human beings, that would cause
20 you so much concern or disruption of your life or your family
21 life or something like that. I mean, let's face it, if in the
22 first week of October you've got something to do with your job
23 or your employment and it's make or break it. I've got to do
24 this function very, very well, or I may be subject to the next
25 round of layoffs. That would weigh heavily on anybody's mind,

1 okay. But that's the kind of thing we need to know about
2 because that's something that the judge can discuss with you,
3 and maybe something can be worked out.

4 And the other side to that coin is you're probably
5 not -- you're probably doing yourself a disservice and the
6 parties. I'm not worried about them. I'm worried about him.
7 If your mind is not in the game during a trial, that's not
8 right, okay? But that's why I say bring it up beforehand,
9 because once you're seated, it's too late, okay?

10 All right. Very briefly, I'm going to give the
11 judge back some of his time. Again, words mean a lot and the
12 interpretation of them mean a lot. You don't have to worry
13 about memorizing this now. In individual voir dire you'll
14 have it memorized by the time you're gone. That future danger
15 question as we call it, probability, criminal acts of violence
16 constitute continuing threat to society. Now, we know -- we
17 know the only two options in a capital murder case, if there's
18 -- if there's a conviction beyond a reasonable doubt is life
19 or death. We know that. We know that if these questions are
20 not answered, this one unanimously yes, a life sentence is
21 automatic.

22 Now, knowing that, I would submit to you that
23 society does not mean the Baskin & Robbins store as
24 Ms. Falco talked to you about. Life confinement in the
25 penitentiary. Does it make more sense that society means the

1 life, it might be truly natural life, life without parole. I
2 mean, if somebody is 30, 40 years old, be 70 or 80. That
3 doesn't mean they get out, okay? It doesn't mean you do 40
4 and you're automatically out. A lot of other things have to
5 come into play after the hard 40 calendar years. A Governor,
6 a Board of Pardon and Paroles would have to vote in such a way
7 as to consider the release, okay? So, we know it's 40 hard
8 calendar years.

9 Now, somebody mid-20s, late 20s, life confinement.
10 Earliest hope anybody could ever get out would be 70 years
11 old, okay? But the funny thing is, we don't know if somebody
12 can live 40 years in the penitentiary, never been done. It's
13 a relatively recent law -- or set of laws. Former Governor
14 Anne Richards bumped it up to 35, and Former Governor, now
15 President Bush, bumped it up to 40 years. So, the law has
16 only been around about 10 years. We don't know if somebody
17 could live 40 years in a Texas joint, okay?

18 So anyhow, that's the law. And the reason I tell
19 you that is some folks find it hard -- have a lot of
20 difficulty
21 with life without parole, the fact that we don't have it. But
22 hopefully after I informed you about what life really means
23 and how it all works, maybe it is life without parole. I'm
24 not really sure, okay?

25 Criminal acts of violence that would constitute a

1 penitentiary? Think about it. If you found somebody guilty
2 of capital murder, and the only two options is to kill him or
3 give him life in the Texas Department of Criminal Justice,
4 comma, Institutional Division, as we call it. Everybody calls
5 it the joint. I call it the joint; penitentiary, prison,
6 whatever. It's all the same. Those are the only two options,
7 I don't think -- my opinion is I don't think the Legislature
8 was really worried about people in the Baskin Robbins on Coit
9 Road in Plano, or wherever it is. I think it means prison.
10 Logically how else could it mean anything else? That's my
11 opinion. Okay.

12 Now, I want to tell you folks something right from
13 the get-go because a lot of folks have brought it up. Does
14 that mean life without parole? No. There is no such sentence
15 in Texas as life without parole. Almost had it at the last
16 Legislative session. The Governor vetoed it; I don't know
17 why. A lot of reasons pro and con on both sides against the
18 life without parole. But what does life confinement in Texas
19 mean? Well, you'll see -- as you'll see in a second, it may
20 mean a death sentence anyhow, or somebody will die in the
21 penitentiary, be buried in the penitentiary in the pauper's
22 cemetery out back there down in Huntsville. Or it may mean if
23 somebody could ever get out, they would be pretty old.

24 Life confinement means at least 40 hard calendar
25 years, okay? So depending on the age of a person sentenced to

1 continuing threat to society. If we know by default one way
2 or another that a life sentence is automatic, again I would
3 submit to you society is really talking about prison. So,
4 could that question be focusing on, could somebody be, maybe,
5 controlled in the penitentiary? Could somebody try to
6 rehabilitate in the penitentiary over 40 years? Okay. That
7 may be an issue we'll talk about in this trial, okay.

8 That last special issue that we were talking about,
9 the mitigation special issue as we call it. Again, Ms. Falco
10 was exactly correct, there's no burden of proof. Don't worry
11 about it if you can't read it. This is the last look, look at
12 everything, look at anything and everything you'd like to look
13 at, okay? Although in Texas our scheme is not -- we don't ask
14 the jury to say life or death on paper. We use these
15 questions but y'all know now that going in how you answer the
16 questions absolutely dictates the outcome. And it used to
17 be -- we used to play this funny game with jurors, not too
18 long ago, maybe more than ten years ago. We wouldn't even
19 tell jurors what the questions really mean, okay, and then
20 everybody figured out that was probably really a dishonest
21 or -- not dishonest. That's not the word I'm looking for,
22 but -- oh, Ladies and Gentlemen, you're not the one putting
23 somebody to death. You're not the one giving somebody life
24 confinement in the penitentiary. The judge does that. That's
25 the way we used to play the game. It was dishonest. Let me

1 use that word.

2 You don't say death, and supposedly that would
3 somehow sanitize the whole process and make you feel good on
4 your way home after trial where the death sentence was
5 imposed. You didn't put him to death; judge did. We all know
6 that was wrong, and so now going in everybody knows how you
7 answer the questions dictates exactly the outcome in the case,
8 okay? Does anybody -- I'm not going to take up any more of
9 your time. I know we're going to spend some time together
10 individually in the individual voir dire.

11 I want to say this, throughout a trial, any kind of
12 trial, especially a felony trial, especially a capital murder
13 trial, I have a job to do and that's to protect that kid. I
14 will be judged by the judge and maybe others on how I do my
15 job. I took an oath, like it or not, as far as a juror goes
16 and that I can't debate with you I have an oath, and that is
17 to zealously represent that kid, okay? All I want you to keep
18 in mind, if it was your son, your daughter, a loved one or you
19 sitting in that chair, would you want a lawyer fighting for
20 them? Would you want effective, competent, zealous
21 representation because if you don't have that, this whole
22 thing is a sham, okay? If you don't have a lawyer in here
23 willing to fight, we might as well forget this whole system.
24 We won't need it anymore. Let the Government decide how
25 everything turns out.

1 As part of that, there will be times in this trial,
2 I absolutely guarantee you, the judge will say, Ladies and
3 Gentlemen, please go with the Bailiff, okay? There are many
4 motions I have to make. Maybe there's objections I have to
5 make. Legal points are -- have to be argued outside of your
6 presence because you'll hear citations to cases and this court
7 and that court, and those aren't facts. That's law. Judge
8 Sandoval calls -- makes the calls on all the law. But it's
9 part of being a defense lawyer. It's part of zealous
10 representations of your client.

11 There will be times when you're thinking that lawyer
12 is wasting my time. What is Goeller doing? Why does he keep
13 object -- it's part -- it's my job. It's my job. I've got to
14 do it the best way that I see fit, okay? And again, I'd just
15 ask you to keep in mind -- I tell you this up front because I
16 haven't been in a trial yet where maybe a couple of days into
17 the trial, the jurors are going, as they get up, they're like
18 (sigh). I've actually had jurors, when I stand up to make an
19 objection, make it with me because they've heard it so many
20 times. It was kind of funny at the time. It's not so funny
21 now, but it was funny at the time.

22 But anyhow, I tell you that up front. Don't hate
23 me. Don't hate me for doing my job, and if you can just go
24 with me with that, that's all I can ask. And during the
25 individual voir dire, you talk to me from your heart. Don't

1 give me the answer that you think the judge wants to hear, or
2 I want to hear, or Mr. Schultz, or Ms. Falco, or Ms. Lowry,
3 or Mr. High want to hear. This is the kind of case where I
4 need that from you, okay? I need that from you.

5 Does anybody have any questions for me at this point
6 about anything? Folks, I thank you very much. I'm sorry,
7 Mr. High. Let me confer with my partner here.

8 (Brief discussion off the record.)

9 MR. GOELLER: Thank you, Folks. Judge.

10 THE COURT: Thank you, Mr. Goeller. Is there
11 anything else from the State?

12 MS. FALCO: No, Your Honor.

13 THE COURT: All right. Ladies and Gentlemen,
14 you've heard the comments of the lawyers from both sides here.
15 These folks have received their -- what do we call them --
16 come-back letters, and these folks have got -- do you want to
17 pass those out? If there's nothing else from anybody else on
18 the panel, you are excused until your come-back date, and that
19 could change because we get a little bit behind and we
20 conceivably could get ahead, but so far we've run a little bit
21 behind. So, the date is not written in stone. But it's a
22 pretty good idea of when you'll be coming back for individual
23 voir dire.

24 If there's nothing else from anybody else here, then
25 you folks are excused until the time to come back.

1 (Venire exits the courtroom at 10:45 a.m.)

2 (Lunch recess taken.)

3 THE COURT: We're back on the record at 1:15
4 p.m. Do I understand there's an announcement from both sides?

5 MR. GOELLER: Yes, Your Honor.

6 MS. FALCO: Yes, sir.

7 THE COURT: Tell me what it is.

8 MR. SCHULTZ: We have agreed by -- to excuse
9 all this afternoon's jurors, which there are how many?

10 MS. FALCO: Six.

11 MR. SCHULTZ: Six. Those being Juror 53, which
12 is Wintrich; Juror 50, which is Franco; Juror 49, Holden;
13 Juror 55, Cassingham; and Juror 32, Vu; and Juror 52,
14 Preizler. In a sense these are negotiated excusals by consent
15 between the attorneys, and they're, of course, contingent upon
16 the approval of the Defendant.

17 THE COURT: Do I understand that to be the
18 case?

19 MR. GOELLER: Yes, Your Honor, it is.

20 THE COURT: Then, Mr. Cantu, let me ask you,
21 you heard the names of the six people who were read; is that
22 correct?

23 THE DEFENDANT: Yes.

24 THE COURT: Is it your agreement that these
25 people be excused, also?

1 THE DEFENDANT: Yes, Your Honor.
 2 THE COURT: Then Number 49, 50, 52, 32, 53 and
 3 55 are finally excused. And, Mr. Powell, if you would go tell
 4 them that we appreciate their service.
 5 THE BAILIFF: Yes, Your Honor.
 6 THE COURT: Then I tell you what, that leaves
 7 us with six for tomorrow, and so I suppose we'll get started
 8 at 8:45 tomorrow morning.
 9 Is that everything from both sides?
 10 MS. FALCO: Yes, sir.
 11 THE COURT: Then both sides are finally excused
 12 for the day. See you in the morning.
 13 (End of Volume 15.)

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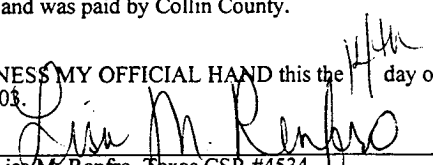
1 REPORTER'S CERTIFICATE
 2 THE STATE OF TEXAS *
 3 COUNTY OF COLLIN *

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
 10 parties to be included in this volume of the Reporter's
 11 Record, in the above-styled and -numbered cause, all of which
 12 occurred in open court or in chambers and were reported by me.

13
 14 I further certify that this Reporter's Record of the
 15 proceedings truly and correctly reflects the exhibits, if any,
 16 offered by the respective parties.

17
 18 I further certify that the total cost for the
 19 preparation of this Reporter's Record is contained in
 20 Volume 53 and was paid by Collin County.

21
 22 WITNESS MY OFFICIAL HAND this the 14th day of
 23 January, 2003.

24
 25 
 Lisa M. Renfro, Texas CSR #4534
 Official Court Reporter, 380th District Court
 Collin County, Texas
 Collin County Courthouse
 210 S. McDonald Street
 McKinney, Texas 75069
 Tel. Number: 972/424-1460, ext. 4661

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