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

VOLUME 17 OF 53

Trial Court Cause No. 380-80047-01

THE STATE OF TEXAS

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IN THE 380TH DISTRICT COURT

V.

IVAN ABNER CANTU

OF COLLIN COUNTY, TEXAS

REPORTER'S RECORD  
VOLUME 17 - VOIR DIRE  
CAPITAL MURDER JURY TRIAL

COPY

On the 10th day of September, 2001, from 8:45 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  
210 S. McDonald Street, McKinney, Texas 75069  
(972) 548-4661

2001 SEP 15 AM 5:17  
COLLIN COUNTY TEXAS

*[Handwritten Signature]*

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PROCEEDINGS

1 (Open court, jury not present.)  
 2 THE COURT: Let's reconvene.  
 3 (Venireperson enters the courtroom.)  
 4 THE COURT: Are you Robin Bardin?  
 5 VENIREPERSON: I am.  
 6 THE COURT: Ma'am, perhaps you'll recall two  
 7 and a half weeks ago I spoke -- administered an oath to the  
 8 whole panel.  
 9 VENIREPERSON: Correct.  
 10 THE COURT: In fact, yeah, you're still in the  
 11 old batch, and so the oath required you to answer truthfully  
 12 to all the questions that are propounded; do you recall?  
 13 VENIREPERSON: Yes.  
 14 THE COURT: All right, ma'am. Please be  
 15 seated.  
 16 Ms. Falco.  
 17 MS. FALCO: Thank you, Your Honor.  
 18 DIRECT QUESTIONS  
 19 BY MS. FALCO:  
 20 Q. Ms. Bardin, my name is Gail Falco, and I'm an  
 21 Assistant District Attorney here in Collin County. And  
 22 probably coming in while I'm talking is Mr. Bill Schultz. He  
 23 spoke to you a couple of weeks ago, and he's my boss. He's  
 24 the first Assistant District Attorney here in Collin County.

1 And seated to my left is Ms. Jami Lowry. She's also an  
 2 Assistant District Attorney here in Collin County.  
 3 And at the other table closest to me is the  
 4 Defendant, Ivan Cantu, and seated next to him is Mr. Matt  
 5 Goeller.  
 6 MR. GOELLER: Good morning.  
 7 Q. BY MS. FALCO: He's a private practitioner here in  
 8 Collin County, and probably also coming in later is  
 9 Mr. Don High, who also represents Mr. Cantu.  
 10 I take it from a couple of weeks when you were here  
 11 that you don't know any of us; is that correct?  
 12 A. That's correct.  
 13 Q. Ms. Bardin, we do this type of process -- this  
 14 individual voir dire on the type of cases where the State's  
 15 seeking the death penalty. So, it's only on the capital  
 16 murder cases, only where the State is seeking the death  
 17 penalty that we do the general voir dire where we have you  
 18 come in, and tell everybody -- the law applicable to everyone  
 19 there. And then we bring you in for individual voir dire, and  
 20 we do that for a couple of reasons.  
 21 One reason, when you came in for general voir dire,  
 22 you really weren't prepared to start talking about the death  
 23 penalty, and this gives you an opportunity for thought and  
 24 reflection and think about if you can be part of this process.  
 25 And also, part of the reason we do this one on one is so --

1 both sides are looking for 12 people who can be fair and  
 2 impartial, and who can fairly consider the evidence, follow  
 3 the law and return a verdict, whether that be life or death,  
 4 as the evidence shows. And so you're only requirement at this  
 5 point is just to be honest with us, and this is a place where  
 6 you don't have to worry about being politically correct.  
 7 We're not going to try to change your opinions or change your  
 8 thoughts. We just want to know what your thoughts are and if  
 9 you could be involved in this process.

10 As far as that goes, when you first realized, when  
 11 you came in a couple of weeks ago and you first realized this  
 12 was a death penalty case --

13 THE COURT: Say, Ms. Falco, let me interrupt  
 14 you for just a moment. Ma'am, may I ask you if you have  
 15 business with the Court this morning?

16 THE WOMAN: Yes, I do. I'm supposed to be here  
 17 at 8:45.

18 (Discussion off the record.)

19 THE COURT: Sorry, Ms. Falco.

20 MS. FALCO: That's okay. Sorry, Ms. Bardin.

21 Q. BY MS. FALCO: When you first came in a couple of  
 22 weeks ago and realized this was capital murder, and the State  
 23 was seeking the death penalty, what were your thoughts at that  
 24 point?

25 A. I didn't have any thoughts at that point. I

1 listened to both sides, your boss and this gentleman, and I  
 2 know what everyone is wanting here, and I'll give them my best  
 3 judgment. You can't make a judgment until you know what's  
 4 happening.

5 Q. As far as when you filled out the questionnaire,  
 6 and I realize that you got the questionnaire before you heard  
 7 either side talk about the law, and you got the questionnaire,  
 8 and it pretty much right off the bat asks your name, and then  
 9 it asks what you think about the death penalty, without a lot  
 10 of time for reflection. But I'm sure you've thought about it  
 11 over the last couple of weeks as far as your thoughts on the  
 12 death penalty, and whether or not you could be involved in  
 13 this process.

14 And on your questionnaire you said you were in favor  
 15 of the death penalty, and that you believe it is appropriate  
 16 in some capital murder cases and could return a verdict  
 17 resulting in death in a proper case; is that still your  
 18 opinion?

19 A. That's correct.

20 Q. And knowing that it's one thing to sit in your  
 21 living room, and if something comes on the news to talk with  
 22 your family about what your position might be or what your  
 23 opinion is. And you -- you know, maybe sitting at lunch  
 24 talking with your friends about how you feel about the death  
 25 penalty, it's a completely different ball game to ask can you

1 participate in a process that could result in somebody's  
 2 death?

3 A. Yes, ma'am.

4 Q. Have you done some thinking about that?

5 A. Yes, I have.

6 Q. And do you feel like you could be involved in this  
 7 process and fairly answer the questions based on the law and  
 8 the evidence?

9 A. Yes.

10 Q. Ms. Bardin, I want to take you through a couple of  
 11 things. I guess we'll start with, in Texas we have a  
 12 bifurcated trial system, which means it is a two-part trial.  
 13 The first part of the trial is the guilt-innocence phase, and  
 14 if a defendant is found guilty, you move on to the punishment  
 15 phase. So, I'm going to start out with the guilt-innocence  
 16 phase. First of all regarding that, I noticed a couple of  
 17 places on your questionnaire, and I realized you answered  
 18 these prior to anybody talking to you about the law. But you  
 19 understand that in Texas the burden of proof is on the State?

20 A. Right.

21 Q. We have to prove to you beyond a reasonable doubt  
 22 that a defendant is guilty, and the reason for that is we're  
 23 the ones doing the accusing. So if we do the accusing, it's  
 24 only fair that we have to do the proving. Kind of like if I  
 25 said, Ms. Bardin, I think you stole my car the last time you

1 were here. Well, it's not really fair for you to get up and  
 2 try to explain that you didn't. It's more fair for me to  
 3 explain why I think that and prove it. Does that make sense  
 4 to you?

5 A. Yes.

6 Q. With regard to that, if the law -- if you were  
 7 instructed on the law, and the Judge gave you a charge saying  
 8 that the burden of proof is on the State, and it's up to the  
 9 State to prove to you beyond a reasonable doubt that a person  
 10 is guilty, would you follow that law?

11 A. Yes.

12 Q. And in that same light, a defendant does not have to  
 13 testify. It is completely up to him whether or not he  
 14 testifies, and he can choose to sit there during the trial and  
 15 not say anything at all, or he can choose to testify, or they  
 16 can choose to put on evidence, or they don't have to choose to  
 17 put on evidence. Their only requirement is to be here. And  
 18 they have to be here, and once they've done that, they've  
 19 satisfied their obligation.

20 So again, if the Court instructed you that whether  
 21 or not a defendant testifies you're not to hold that against  
 22 him if they don't testify, could you do that?

23 A. Yes.

24 Q. And again, that goes back to the burden of proof  
 25 being on the State. They can say, well, we don't think the

1 State proved the case, so we're not going to say anything.  
 2 We're just going to say that's it, and the State didn't prove  
 3 their case and game over, and they have every right to do  
 4 that. Do you understand that?  
 5 **A. Yes, ma'am.**  
 6 **Q.** Does that make sense to you?  
 7 **A. Yeah, I understand that.**  
 8 **Q.** Now, with regard to capital murder, there's three  
 9 different types of capital murder that are applicable to us  
 10 for this trial, and the first one is murder in the course of  
 11 burglary. Do you remember Mr. Schultz talking about that?  
 12 **A. Right.**  
 13 **Q.** With regard to that, with murder in the course of a  
 14 burglary, do you think that's the type of crime where the  
 15 death penalty ought to at least be an option?  
 16 **A. I feel like it should be an option, but there's two**  
 17 **sides to a story here.**  
 18 **Q.** Okay.  
 19 **A. I mean, was it in self-defense that the action took**  
 20 **place, or was it just because they felt it had to be done?**  
 21 **Q.** Okay. And that's for you to decide as a juror  
 22 during the guilt-innocence phase --  
 23 **A. Right.**  
 24 **Q.** -- if there's any defenses, and just to look at all  
 25 the facts.

1 **A. Right.**  
 2 **Q.** And based on the facts and whether or not we met our  
 3 burden of proof, could you find that person guilty?  
 4 **A. Yes.**  
 5 **Q.** And let's assume that there's no self-defense; that  
 6 you found the Defendant guilty of murder in the course of a  
 7 burglary, do you think that's the type of crime that the death  
 8 penalty ought to at least be an option?  
 9 **A. Yes.**  
 10 **Q.** And the same with murder in the course of a robbery,  
 11 assuming you find a defendant -- or a defendant guilty of  
 12 capital murder based on murder in the course of a robbery, is  
 13 that the type of a crime that the death penalty ought to at  
 14 least be an option?  
 15 **A. Yes.**  
 16 **Q.** And the same with what we call the double homicide,  
 17 killing two people in the same course or scheme. Is that the  
 18 type of crime that ought to at least be an option for the  
 19 death penalty?  
 20 **A. Yes.**  
 21 **Q.** Let's assume that you, as a jury, have found a  
 22 defendant guilty of capital murder. You then move on to the  
 23 punishment phase. And the punishment phase, as you realized a  
 24 couple of weeks ago, it's not a matter of going back there and  
 25 just circling life or circling death, just saying that's what

1 you want to happen. You as jurors have to go through the  
 2 questions, and based on the way you answer those questions  
 3 dictates whether it's a death sentence or a life sentence.  
 4 Now, in doing that, it's not automatic death, and  
 5 it's not automatic life. The Legislature set it up for you to  
 6 consider the evidence that you hear, both in the  
 7 guilt-innocence phase and at that point the punishment  
 8 evidence, in looking at the evidence fairly answer each one of  
 9 these questions. The first question that you get to is that  
 10 question that's up there regarding whether there's a  
 11 probability. Can you read that?  
 12 **A. Uh-huh.**  
 13 **Q.** Do you want a minute to re-read that just to refresh  
 14 your memory?  
 15 **A. Whether there is a probability that the Defendant**  
 16 **could commit criminal acts of violence that could constitute a**  
 17 **continuing threat to society.**  
 18 **Q.** That's the first question you would answer as a jury  
 19 if you found a defendant guilty of capital murder. With  
 20 regard to that question, first of all, the burden of proof is  
 21 on the State. We have to prove to you beyond a reasonable  
 22 doubt that there's a probability that a defendant would commit  
 23 criminal acts of violence in the future.  
 24 Now, with regard to this question, obviously the  
 25 Legislature envisioned certain circumstances in which you

1 could find a person guilty of capital murder, but not find  
 2 that there's a probability that he'll commit future acts of  
 3 dangerousness, and we know that because they drafted this  
 4 question. If it was just automatic, if you just found the  
 5 Defendant guilty of capital murder, and he was automatically a  
 6 future danger, there would be no need for this question.  
 7 **A. Right.**  
 8 **Q.** And Mr. Schultz kind of suggested some of those  
 9 situations to you a couple of weeks ago. First of all, the  
 10 instance where a parent whose child was killed by two men, and  
 11 let's assume there's a trial for those two men. And for some  
 12 reason -- for some technicality they get off, and as they're  
 13 walking out of the courtroom, they just go by the parent  
 14 laughing and smiling and walk out of the courtroom. That  
 15 parent tracks them down and kills them both. Well, that's  
 16 capital murder. But that may be a situation where a juror  
 17 looks at that question and says, well, I don't think there's a  
 18 probability that they'd be a future danger.  
 19 Or you may have the situation where there's a  
 20 defendant who goes into a liquor store to rob the liquor  
 21 store, and robs it, shoots the clerk, kills the clerk, and on  
 22 the way out -- that's capital murder. But on the way out, the  
 23 police shows up, and he gets in a stand-off with the police,  
 24 and he ends up getting shot, and he's paralyzed from the neck  
 25 down. That might be a situation where the jurors say, well,

1 physically he can't do anything so he can't be a danger in the  
2 future.

3 So you understand there are situations that the  
4 Legislature envisioned where the person could be found guilty  
5 of capital murder, but not be a future danger?

6 **A. Right.**

7 Q. So with regard to this question, it's asking you to  
8 re-evaluate all the evidence you heard from the  
9 guilt-innocence and punishment and answer this question.

10 Now, when asked whether there is a probability that  
11 the Defendant would commit criminal acts of violence, it's not  
12 asking with a certainty. It's not saying will he commit  
13 criminal acts of violence, but it's not saying is there a  
14 possibility. You'd agree with me that anything is possible?

15 **A. Right.**

16 Q. So, it's got to be something more than a  
17 possibility, but it's not a certainty.

18 **A. Right.**

19 Q. Does that make sense to you?

20 **A. Yes.**

21 Q. Now, there are a lot of words in this sentence that  
22 are not going to be defined for you as a juror, and it's going  
23 to just be up to you as a jury to decide what that means and  
24 did the State prove it. And the first word in that situation  
25 is the word probability. A lot of people that mathematically

1 minded might say, well, probability means to me some  
2 percentage. It's a number. And then other people may say,  
3 well, that to me means more likely than not. What does that  
4 word "probability" mean to you?

5 **A. Could and couldn't.**

6 Q. And as you move through that sentence you get the  
7 next phrase that's, again, frequently undefined, and yet -- it  
8 is undefined and frequently debated is the phrase criminal  
9 acts of violence. I think all of us would agree that a  
10 criminal act of violence toward a person, such as murder, such  
11 as aggravated sexual assault, those types of things would be  
12 criminal acts of violence. How about wife beat -- somebody  
13 who beats their wife, is that a criminal act of violence to  
14 you?

15 **A. In my opinion, yes.**

16 Q. And I think all of us would agree if it involves a  
17 person, that's violence?

18 **A. Correct.**

19 Q. It gets a little fuzzier, people start to  
20 differentiate when you start talking about property. And say  
21 I were to take a baseball bat, I've had a really bad day, and  
22 I decide to go out with a baseball bat and just start smashing  
23 up windshields because I was angry. If I go out there and do  
24 that, in your opinion is that a criminal act of violence?

25 **A. Yes, it's violence.**

1 Q. It gets a little fuzzier still when people start  
2 talking about drugs, and whether you're talking about taking  
3 drugs into your own body or selling them or delivering them.  
4 Some people may say, well, if you're taking drugs into your  
5 body, it's doing damage or violence to your body, and because  
6 when you're on the drugs you may act violent and have violent  
7 ramifications, that's a criminal act of violence to me.

8 Other people may say, well, that person is just  
9 taking drugs, and it's them and they're not harming anyone.  
10 At that point, I don't see how that's a criminal act of  
11 violence. Where do you fall?

12 **A. That's an illegal substance. Any way you look at  
13 it, whether it's you or someone else, it's still a factor of  
14 an issue.**

15 Q. Do you see that as a criminal act of violence?

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

17 Q. There may be some things that we could probably  
18 agree are not a criminal act of violence like stealing, or  
19 maybe just disregarding a police officer or running from the  
20 police officer. There may be things that you say, well,  
21 that's not a criminal act of violence, but it could give me  
22 insight into that person's character. Do you see how  
23 something like theft, even though it may not be -- involve  
24 violence at all, but could give you insight into someone's  
25 character?

1 **A. Yes.**

2 Q. In getting that insight into someone's character, do  
3 you think that could help you answer this question whether or  
4 not there's a probability they'll commit criminal acts of  
5 violence in the future?

6 **A. Yes. You have to look at all phases of something.**

7 Q. Continuing along in that phrase with a word that,  
8 again, will be undefined for you is that word "society." Now,  
9 looking at that question it doesn't limit itself to any  
10 particular society. It's basically asking what is the  
11 propensity for danger for that defendant without limiting  
12 itself to any particular location. And what I mean by that is  
13 that it's not asking, is he going to be a continuing threat  
14 just to the prison society, and it's not asking can that  
15 defendant safely be locked up in prison. It can be  
16 interpreted broader than that. Do you understand that?

17 **A. Yes.**

18 Q. It can be the society that you and I live in. It  
19 can be the person driving a school bus. It could be the  
20 person standing on the street corner. It can involve the same  
21 society that you and I live in?

22 **A. Correct.**

23 Q. When looking at that question, what type of  
24 things -- you kind of mentioned them along the way. But what  
25 kind of things are important to you, or would you be looking

1 at to answer this question?

2 **A. Reasoning, facts. I mean, is this a capability,**  
3 **would it happen, could it happen? There's no -- no one person**  
4 **is the same in life. Something could have triggered this;**  
5 **something couldn't have triggered this. I mean, was it just**  
6 **because, or is there reasoning, or did they not know at all?**  
7 **There's something that made it get to this point, or something**  
8 **that caused it to happen.**

9 Q. And that would be important to you?

10 **A. Right.**

11 Q. Frequently you'll see in these type of cases, in the  
12 punishment phase where one side or the other will call a  
13 psychiatrist to testify. And let's assume it's not to testify  
14 about a brain disorder or a dysfunction. It's not to testify  
15 about some kind of a brain tumor, and its impact on a person's  
16 behavior. But let's assume it's just for the proposal that  
17 they've looked at this fact pattern, this set of  
18 circumstances, and in their opinion that person will not be  
19 dangerous or that person will be dangerous. How important is  
20 that testimony to you?

21 **A. Well, it could say something, but then again it**  
22 **depends on the psychological of the person. Did they go to**  
23 **snowball this person to make them feel that they were**  
24 **incapable of it, or did it actually take place and they wanted**  
25 **to cover themselves.**

1 Q. Okay. Now, with regard to this question, the  
2 burden of proof, like I told you, is on the State, and we have  
3 to prove to you beyond a reasonable doubt. If all 12 jurors  
4 agree that, yes, there's a probability that the Defendant will  
5 commit a future act of violence, then you're still in the  
6 process of assessing a death sentence?

7 **A. Correct.**

8 Q. If ten or more jurors say, no, we don't think  
9 there's a probability he'll commit criminal acts of violence  
10 in the future, then that's the end of the trial. It's an  
11 automatic life sentence, and you stop your deliberations at  
12 that point.

13 **A. Correct.**

14 Q. Let's assume all 12 jurors say, yes, that he  
15 would -- that person -- there would be a probability he would  
16 commit criminal acts of violence in the future, you're going  
17 to move on to the next question, and Mr. Schultz briefly  
18 mentioned the question -- do you remember the question about  
19 the law of parties and the get-away driver, and if you're just  
20 a get-away driver?

21 **A. Right.**

22 Q. Well, that may or may not apply in this case, and  
23 since we don't know whether it will or not, I don't think that  
24 it will. I'm going to move on to a question that you will  
25 definitely answer if you answer this question yes.

1 It's what we call the mitigation question. If you  
2 want to take a second to read to yourself to refresh your  
3 memory with that question.

4 Do you remember that question?

5 **A. Yes.**

6 Q. With regard to this question, first of all,  
7 mitigation is frequently defined as something that lessens or  
8 reduces. So it lessens or reduces the Defendant's  
9 blameworthiness, or his culpability. With regard to this  
10 question there's no burden of proof on either side. The State  
11 doesn't have to bring you any evidence; the Defense does not  
12 have to bring you any evidence. This question is really for  
13 the jury, and it's for the jury to weigh everything. You give  
14 whatever evidence whatever weight you want to give it. The  
15 facts of the case, the crime itself may have a lot of weight,  
16 and something else may have a little bit of weight. It's up  
17 to you as a jury to decide how much weight to give all the  
18 evidence. And in the end of your weighing process, is there  
19 sufficient mitigating circumstances to warrant a life sentence  
20 as opposed to a death sentence, is basically what this  
21 question is asking. Does that make sense to you?

22 **A. Yes.**

23 Q. Now, with regard to this question, again, you're not  
24 going to be told what is mitigating. You're not going to be  
25 given a list of factors saying here are the mitigating factors

1 and you have to consider them. It's up to you to decide if it  
2 is mitigating, and if so, what weight to give it.

3 **A. Right.**

4 Q. And you can probably imagine that if any of us were  
5 on trial for our life, there's probably circumstances in  
6 everybody's background that they could bring up that's  
7 particularly sad or particularly sympathetic to them, or maybe  
8 it involves some kind of a health issue or single parent or  
9 abuse. There's probably something there we could raise to  
10 say, look what happened to me, and that's mitigating because  
11 that makes me sad and sympathetic. So, it's not a matter of  
12 whether or not is there any mitigating evidence. It's  
13 weighing with everything else; with the circumstances of the  
14 offense, the Defendant's character, his background, his  
15 personal moral culpability, weighing it. Is it sufficient to  
16 warrant a life sentence as opposed to a death sentence. Does  
17 that make sense to you?

18 **A. It does. And there's walks of life you can take to**  
19 **help yourself through issues, so I wouldn't say if my mom was**  
20 **a divorced parent I did this or I did that because I didn't**  
21 **have supervision. There's always someone there in life to**  
22 **help someone through things.**

23 Q. And you're exactly right, and some of the questions  
24 on the questionnaire kind of dealt with that. And we can  
25 probably all imagine circumstances where people started out

1 with a bad childhood, whether it was a single parent, whether  
2 it was abuse. They were lacking for material goods, a very  
3 poor family, but were able to overcome those circumstances and  
4 be successful in life. And I'm sure you can probably envision  
5 some people that you know that are like that, right?

6 **A. Right.**

7 Q. And on the flip side, you can probably envision  
8 people that grew up with everything. They had both parents,  
9 they had money, they had, from the outside, everything a child  
10 could want, but yet, still turned out bad. And the Menendez  
11 brothers would be a perfect example of that; rich, wealthy,  
12 two parents, but yet they killed them. You could see how that  
13 could happen, too?

14 **A. Right.**

15 Q. And that's up to you as a juror to decide what  
16 weight, if any, to give background circumstances or family  
17 circumstances, what mitigating affect they might have?

18 **A. Right.**

19 Q. And some things, one juror may say that's mitigating  
20 to me, and another juror may say, well, I think that's  
21 aggravating. A perfect example of that would be drugs. One  
22 juror may say, well, this defendant is not really like that.  
23 The drugs changed his personality, he became addicted, and  
24 it's because of the addiction that he committed this awful  
25 crime, but that's not the way he really is. He's not doing

1 envision yourself getting on the stand saying I love my child  
2 and I support my child, even though he did wrong. Could you  
3 envision that?

4 **A. No.**

5 Q. You wouldn't do that?

6 **A. I love my child, and I would raise -- I raise my  
7 children to the best of my ability, but I could not sit there  
8 and tell my child it was okay.**

9 Q. Okay. What would you think in a situation where a  
10 child or a defendant was on trial for their life and they had  
11 family members to come in to say, I love this person.  
12 Basically don't execute my child because I love them, I need  
13 them, don't do that. How does that argument sit with you?

14 **A. That's something no parent would want for a child.**

15 **I mean, I would have -- I would defend my child to a point,  
16 and I'm not saying that I don't love my kids and that I'm a  
17 God-awful person, but you have to look at circumstances for  
18 things. I don't know what I would do as -- if it were my  
19 child. I mean, I would want punishment for whatever the phase  
20 may be, whether it was right or whether it was wrong. I  
21 raised my child to be the child that it should have been. If  
22 it took a direction in life, I would try to help it stay away  
23 from that direction, but as a parent, you can't control  
24 everything in life.**

25 Q. Right. And you bring up -- and you sound very

1 the drugs anymore, so that's mitigating to me that he took the  
2 drugs.

3 The juror sitting right next to him may say, "I  
4 disagree. To me, in society we're told don't take drugs.  
5 Drugs are bad for you, drugs will make you do bad things, and  
6 that's exactly why you don't take them because it could lead  
7 to these horrific results. So, therefore, you knew what you  
8 were doing. What you were doing was wrong, so not only are  
9 you doing drugs, but it led to this horrific result and that's  
10 aggravating to me." Can you see how that could happen?

11 **A. Right.**

12 Q. It just comes down to you, collectively as a jury,  
13 deciding if there's sufficient mitigating evidence to warrant  
14 a life sentence.

15 With regard to this question, first of all, are  
16 you -- do you have any children?

17 **A. Yes.**

18 Q. Let's assume your children were older and they --  
19 one of them got in trouble with the law. And you can imagine  
20 being a mother who loves her child, you would still love your  
21 child, and you would still support your child even if they got  
22 in trouble with the law; is that fair to say?

23 **A. Yeah, it's fair to say.**

24 Q. And let's assume that there was a situation where  
25 you and your child was in -- on trial and as a mom you could

1 open-minded when it comes to this question as far as you'll  
2 listen because there has to be a reason that this person  
3 committed this crime, and it sounds like you're willing to  
4 listen; is that fair to say?

5 **A. Yeah, that's fair to say.**

6 Q. And with regard to that, I mean, let's assume you  
7 already found a person guilty of capital murder. And let's  
8 assume you've already decided, yes, there's a probability that  
9 the defendant would commit acts of violence in the future,  
10 could you continue to keep that same open mind when  
11 considering this question, the weighing question, and take  
12 into consideration a reason why that person might have done  
13 that and what evidence of that person's character and  
14 background there might be and take all that into consideration  
15 when answering this question?

16 **A. Yes.**

17 Q. And could you -- with regard to this question, if  
18 all 12 jurors say no, that there's not sufficient mitigating  
19 evidence to warrant a life sentence, then a death sentence  
20 results.

21 **A. Right.**

22 Q. If ten or more jurors say yes, there is sufficient  
23 mitigating evidence to warrant a life sentence, then that  
24 person gets a life sentence?

25 **A. Correct.**

- 1 Q. What the law requires from each person as a juror is  
2 to fairly answer each question based on the law and the  
3 facts. So if you were given that instruction to fairly answer  
4 the questions based on the law and the facts, could you do  
5 that?  
6 **A. Yes, I could.**  
7 Q. With regard to this last question, assuming you  
8 found a person guilty of capital murder and assuming you found  
9 there was a probability he'd be a future danger, and you get  
10 to this question, could you keep an open mind when answering  
11 this question, and if the facts warranted a life sentence  
12 could you answer it in a way that resulted in a life sentence?  
13 **A. Yes.**  
14 Q. And if the facts warranted a death sentence, could  
15 you answer it in a way that --  
16 **A. Yes, I could.**  
17 MS. FALCO: Excuse me one moment.  
18 MR. SCHULTZ: If we could just have a couple  
19 of moments to confer, Judge?  
20 THE COURT: Yes.  
21 (Pause in proceedings.)  
22 MS. FALCO: Thank you. We pass this juror.  
23 THE COURT: Mr. Goeller.  
24 MR. GOELLER: Thank you, Your Honor.  
25 (No omissions.)

- 1  
2 **CROSS-QUESTIONS**  
3 **BY MR. GOELLER:**  
4 Q. Good morning, ma'am.  
5 **A. Hi, how are you?**  
6 Q. Good. How are you?  
7 **A. Fine.**  
8 Q. What have you thought about since the first day you  
9 came up for jury service about the death penalty? Any  
10 thoughts been in your mind the last couple of weeks?  
11 **A. No. I'll tell you the same as I tell them: There's**  
12 **two sides to everything in life.**  
13 Q. Okay.  
14 **A. And I can't sit here and tell you "yes," and I can't**  
15 **sit here and tell you "no."**  
16 Q. About what?  
17 **A. Whether someone should get it or they shouldn't get**  
18 **it. You have to -- I mean, you have to hear someone out. You**  
19 **can't just say yes. You can't just say no.**  
20 Q. Right. Regarding the death penalty?  
21 **A. Right.**  
22 Q. You're married. Do you have any children?  
23 **A. I have children.**  
24 Q. How old are your children?  
25 **A. Seventeen, thirteen and three.**

- 1 Q. Okay. Where are you from originally?  
2 **A. From Dallas.**  
3 Q. Dallas. Where did you go to school?  
4 **A. Seagoville High School.**  
5 Q. Okay, okay. You live in Wylie now?  
6 **A. Yes.**  
7 Q. I noticed from your questionnaire you work for  
8 something Direct -- Senior Direct?  
9 **A. Yes.**  
10 Q. Tell me what that is.  
11 **A. It's a marketing company with insurance for the**  
12 **senior market.**  
13 Q. I'm sorry, I didn't hear the last part.  
14 **A. It's a marketing insurance for the senior market in**  
15 **insurance.**  
16 Q. Okay. Senior market meaning senior --  
17 **A. 65 plus in age.**  
18 Q. Oh, okay. Health insurance or --  
19 **A. Long-term care, medicare and (inaudible) final**  
20 **expenses.**  
21 Q. Tell me what you do. Give me a rough sketch of what  
22 you do all day.  
23 **A. I talk to people all day long on the phone.**  
24 Q. Okay.  
25 **A. They call me up, they ask me -- you know, can you do**

- 1 **a mailing for me? Can you provide me with a list in whatever**  
2 **state? I do not mess with the State of Texas. I'm every**  
3 **state except for Texas.**  
4 Q. How's that?  
5 **A. We do mailings for more -- it's -- the insurance**  
6 **companies call us to provide them with a list, or whatever**  
7 **mailing they want us to do.**  
8 Q. Oh, okay.  
9 **A. And then we target their business for them to sell**  
10 **their policies to.**  
11 Q. Oh, okay. So you don't actually handle insurance?  
12 **A. No.**  
13 Q. You're hooking people up that may need it?  
14 **A. Right.**  
15 Q. You're providing the list for, say, like, Prudential  
16 or --  
17 **A. Right.**  
18 Q. -- Blue Cross/Blue Shield?  
19 **A. Correct.**  
20 Q. Okay, okay. So most of the people that use your  
21 services are other insurance companies?  
22 **A. Correct.**  
23 Q. Do you ever direct contact folks out of state or --  
24 **A. No. Everyone calls me.**  
25 Q. Okay. Well, that's pretty good. They always come



1 to you then.

2 **A. That's right. I don't have to do no selling.**

3 **That's why they call me.**

4 Q. Okay. Have you -- Bardin is not a real uncommon  
5 name. Do you recognize Mr. High here?

6 **A. No.**

7 Q. Have you ever had an opportunity -- maybe not an  
8 opportunity, but have you ever found yourself in the Wylie  
9 Municipal Court?

10 **THE COURT:** Say, would you not talk for just a  
11 moment?

12 (Brief pause in proceedings.)

13 **MR. GOELLER:** Yes, sir.

14 **THE COURT:** Thank you, Mr. Goeller.

15 **MR. GOELLER:** Yes, sir.

16 Q. **BY MR. GOELLER:** Have you ever been in the Wylie  
17 Municipal Court?

18 **A. Yes.**

19 Q. When was that?

20 **A. Probably a year, two years ago with my son.**

21 Q. What was that about? The reason I ask is Mr. High  
22 is an attorney for the City of Wylie --

23 **A. Uh-huh.**

24 Q. -- and he may have recognized your name.

25 **A. Well, I mean, my son he had -- I don't even remember**

1 **what he did. He had to write -- oh, he gave the finger to**  
2 **some little boy.**

3 Q. Uh-oh.

4 **A. So he had to write an essay.**

5 Q. He had to write an essay?

6 **A. His friend -- him and his friend were doing**  
7 **something. The friend got in an argument or a fight or**  
8 **something, and they said that my son was involved because he**  
9 **gave the finger, and he had to write an essay.**

10 Q. Was he a juvenile?

11 **A. Yes. He was a juvenile.**

12 Q. How old is he?

13 **A. He's, like, 15.**

14 Q. Okay, okay. Have you ever had a ticket in the City  
15 of Wylie?

16 **A. I don't know. I don't --**

17 Q. I mean, like a speeding ticket or something like  
18 that? Anything that you would have been -- that Mr. High  
19 would have handled in the case?

20 **A. No, no.**

21 Q. Okay. How are things with your son now? Are they  
22 okay?

23 **A. Yeah, he's fine.**

24 Q. No more finger?

25 **A. No.**

1 **(Laughter.)**

2 Q. Do you know Cecil Bardin?

3 **A. It's my brother-in-law, or it could be a**  
4 **father-in-law. They're both Cecil. There's a ju**  
5 **senior.**

6 Q. Okay. Have you ever talked to them about  
7 problems they may have had with the City of Wylie  
8 Court?

9 **A. No.**

10 Q. Okay, all right. In your questionnaire regard  
11 the death penalty, as you stated you were in favor o  
12 when asked to explain, you said I do feel that our St  
13 should proceed with death penalty, comma, why sh  
14 another's life out of anger, drugs or any other brutal  
15 reasoning. Tell me what you meant by that.

16 **A. If I were to come up to you and just becaus**  
17 **anger (sic), would it be fair for me to say, boom, tl**  
18 **No. It wouldn't --**

19 Q. Boy, I hope not.

20 **A. -- be. It's not.**

21 Q. Okay. You're right.

22 I think you have a pretty good handle on capital  
23 murder. Do you know the difference between capital  
24 murder?

25 **A. Murder is one offense solely, killing someone**

1 **capital is more than one offense.**

2 Q. Okay, okay. And when you say "offense," what  
3 mean by that?

4 **A. Robbery, drugs, burglary, rape.**

5 Q. Okay, right. Right.

6 In your questionnaire you were asked to write a  
7 small sentence about what is the best argument in oppos  
8 of the death penalty. I think you wrote self-defense or n  
9 self-defense action. Tell me what you meant by that.

10 **A. If someone were to come in my home and it m**  
11 **this is to my children. I would take ever -- whatever**  
12 **precautions it took for me, as a parent, to protect my**

13 Q. Okay.

14 **A. Now, if someone came in there and just was an**  
15 **with me, that doesn't mean that I have the right to sa**  
16 **whatever the case may be, you know, I don't like you,**

17 **of here, you're not supposed to be here, or they would**  
18 **leave, that doesn't mean I have the right to kill them**

19 Q. Okay. When you say best argument in opposition  
20 the death penalty, did you take that to mean, you know,  
21 an argument against the death penalty? Is that how you  
22 that question?

23 **A. I know there's an argument against it. I mean**  
24 **one wants to set there and accept that of life.**

25 Q. Right. I was just trying to figure out when you sa

1 self-defense as a position of opposition to the death  
 2 penalty, I might not -- maybe I don't understand. I may be  
 3 reading too much into your question, but I'm trying to figure  
 4 out you wrote self-defense down as an opposition to the death  
 5 penalty. Do you know what I'm saying?  
 6 **A. Maybe I didn't write it right.**  
 7 **Q.** Oh, no, there's not -- trust me, Robin. There's no  
 8 right or wrong answers.  
 9 **A. I'm just saying sometimes there's a cause for things**  
 10 **and sometimes there isn't.**  
 11 **Q.** Right. Do you think self-defense is a good argument  
 12 against the death penalty?  
 13 **A. Depending on the case.**  
 14 **Q.** Okay. When do you think self-defense comes up in a  
 15 trial; the first phase or the punishment phase? The  
 16 guilt-innocence phase or the punishment phase?  
 17 **A. I would say the guilt-innocent phase.**  
 18 **Q.** And tell me why you say that.  
 19 **A. Because that's when you're setting forth your**  
 20 **punishment to get to the punishment stage.**  
 21 **Q.** Okay, okay. In your overview of the criminal  
 22 justice system, I think you put guilty -- biggest problem with  
 23 the criminal justice system, I think you wrote guilty persons  
 24 are set free too often on good behavior and as time served two  
 25 for one at center.

1 **A. Well, that's not -- I mean, I can't sit there and**  
 2 **say for prison term (sic), but people go to jail for --**  
 3 **whether it be rape, (inaudible), and they're back out. I**  
 4 **mean, they may be supposed to be there ten years. They may**  
 5 **only serve three years because they were a good person.**  
 6 **Q.** Okay.  
 7 **A. I don't know.**  
 8 **Q.** What do you think about that?  
 9 **A. Everyone deserves a chance in life and I believe**  
 10 **that honestly, but there's also other things in life that are**  
 11 **no good, and I don't feel that no good should be back to do**  
 12 **harm.**  
 13 **Q.** I think most people would agree with you.  
 14 As you know, if somebody is found guilty of capital  
 15 murder, there are really only two options as far as punishment  
 16 goes. Do you know what they are?  
 17 **A. Life in prison or death.**  
 18 **Q.** Okay. Do you know what life in prison means?  
 19 **A. You're there until you die, I'm assuming, 99 years**  
 20 **or however they state it.**  
 21 **Q.** In Texas life confinement in the penitentiary,  
 22 vis-a-vis capital murder is 40 calendar years at least.  
 23 **A. Okay.**  
 24 **Q.** We don't have something called "true life without  
 25 parole."

1 **A. Right.**  
 2 **Q.** Depending on the age of a person, it may be a death  
 3 sentence having served out life, and you'll die in the  
 4 penitentiary. There's no parole or good time on the 40 years.  
 5 Do you see what I'm saying?  
 6 **A. Right.**  
 7 **Q.** So if someone is sentenced to 40 years -- or someone  
 8 is given a life sentence, they have to serve calendar, flat 40  
 9 years minimum?  
 10 **A. Right.**  
 11 **Q.** And they may serve more, who knows? Then, it's up  
 12 to the Governor and his or her Board of Pardons and Paroles.  
 13 What do you think about that?  
 14 **A. Well, if that's the verdict it came to, then that's**  
 15 **the way it's supposed to be.**  
 16 **Q.** What do you think about life, meaning possibly a  
 17 minimum of 40 years? Does that cause you any problem?  
 18 **A. No.**  
 19 **Q.** Do you think 40 years is a good long time?  
 20 **A. I think 40 years is more than 40 years I'd want to**  
 21 **be there.**  
 22 **Q.** I think you are right.  
 23 In your questionnaire regarding the death penalty  
 24 in Texas, and you wrote it's in place and needs to be enforced  
 25 more and put into action sooner. Tell me your thoughts on

1 that.  
 2 **A. That's -- I mean, it needs to be enforced.**  
 3 **Q.** Okay.  
 4 **A. Instead of, okay, you get that verdict. This is**  
 5 **what's going to happen. You come back and say, oh, no. This**  
 6 **happened, mistrial -- you're going to set there and go through**  
 7 **the whole things (sic) all over again. If that's the way it**  
 8 **comes down, that's the way it comes down.**  
 9 **Q.** Okay.  
 10 **A. Instead of coming back with your trial again and**  
 11 **going all over. I mean, taking that chance of facing the**  
 12 **same -- the same deal again. You get the same verdict, and**  
 13 **the State allows that to continue to happen.**  
 14 **Q.** Do you think there's a problem with the appellate  
 15 process? Or how do you think people get to go through it all  
 16 over again?  
 17 **A. Attorneys.**  
 18 **Q.** Okay. Do you think judges -- appellate judges have  
 19 something to do with that, or do you think it's just the  
 20 attorneys?  
 21 **A. Well, I mean, they have to -- attorney has to go to**  
 22 **someone to get that approval for it to happen again, so it's**  
 23 **both.**  
 24 **Q.** Okay, okay. Do you think that's something that's  
 25 wrong with the system, somebody's right to appeal?

- 1 A. **Everyone has their own right.**
- 2 Q. Right.
- 3 A. **You can't take that away from anyone.**
- 4 Q. Okay.
- 5 A. **I mean, if your client got this, I mean you as an**
- 6 **attorney, naturally, you're going to say, no, there's**
- 7 **something else. We've got to take care of it. And if the**
- 8 **judge awards you that new appeal, then you get it.**
- 9 Q. What do you think about that; is that a good thing
- 10 or a bad thing?
- 11 A. **Well, I can't say it's good, and I can't say it's**
- 12 **bad.**
- 13 Q. Okay.
- 14 A. **I mean, yeah, it's going to be good for one person**
- 15 **because maybe something was missed. But then again, it's not**
- 16 **good for -- I mean, the whole process all over.**
- 17 Q. Yeah. Okay.
- 18 Regarding the burden of proof in a criminal case
- 19 is, and you wrote try to prove someone to be innocent.
- 20 A. **Well, that's the State's. I wrote that backwards.**
- 21 **The State has to put the proof --**
- 22 Q. Okay.
- 23 A. **-- that it's a guilty person.**
- 24 Q. Do you know what the standard is, what's the burden
- 25 of proof?

- 1 A. **No.**
- 2 Q. Do you recall anybody mentioning that? I'm not
- 3 quite sure if anybody mentioned that or not a couple of weeks,
- 4 probably three weeks ago now, August 20th, 21st.
- 5 How should the State prove the case to you before
- 6 you could find somebody guilty?
- 7 A. **With their evidence.**
- 8 Q. Okay. And what should that evidence tell you? What
- 9 do you think?
- 10 A. **What they have -- I mean, they have to prove what's**
- 11 **been done here, and you have to prove what's not been done**
- 12 **here. It all has to be looked at as a combination and not one**
- 13 **or the other.**
- 14 Q. Okay, okay.
- 15 I think that's consistent with your questionnaire.
- 16 When you -- you were given a series, probably about nine or
- 17 ten statements, and then you had to either strongly agree,
- 18 agree, maybe you were uncertain, disagree or strongly
- 19 disagree. You wrote if someone is accused of capital murder,
- 20 he should have to prove his innocence. And you circled
- 21 strongly agree, and I think that's consistent with your
- 22 statement just now, that the State brings evidence, I guess to
- 23 prove guilt, and you thought the Defense brings evidence to
- 24 show innocence?
- 25 A. **Right.**

- 1 Q. Do you think -- well, when you were given those
- 2 choices, if someone is accused of capital murder he should
- 3 have to prove his innocence, you wrote strongly agree. Then
- 4 you had a choice of agree or uncertain. Why did you pick
- 5 strongly agree?
- 6 A. **Again, I can't -- I mean, you have my paper that**
- 7 **there's a proof here and there's a proof here.**
- 8 Q. Okay.
- 9 A. **I can't say yes and -- I can't say yes for either**
- 10 **side. I don't know.**
- 11 Q. Right, right. But do you -- you circled strongly
- 12 agree. I guess you meant that a defendant should have to
- 13 prove his innocence?
- 14 A. **Well, both people has to prove both sides.**
- 15 Q. Okay.
- 16 A. **Honestly. I mean --**
- 17 Q. Okay. And that's all I'm looking for, Robin, is
- 18 just honest answers and how you feel. Like I said, my job is
- 19 not to convince you otherwise or try to change your mind or
- 20 anything like that. I just want your true, honest feelings,
- 21 and as you sit there now, it's your belief and your honest
- 22 feelings that that a defendant should prove his innocence?
- 23 A. **He has to prove, and they have to prove. I mean,**
- 24 **you have to look at the whole, not a half.**
- 25 Q. Right, okay. Would you expect a defendant to bring

- 1 you evidence in the guilt-innocence phrase to prove his
- 2 innocence?
- 3 A. **That's his choice. I mean, if he doesn't want to**
- 4 **come forward -- I mean, he could sit there and tell you**
- 5 **everything and you tell us. But I mean, if he -- there's a**
- 6 **side for everything.**
- 7 Q. And you're telling us that based on your
- 8 questionnaire and your feelings that he must bring forth
- 9 evidence to prove his innocence to maybe balance out, or
- 10 somehow show you the other side of the case?
- 11 A. **Well, I mean, the State's going to have what they**
- 12 **have. Is he going to sit there and let them say, yes, this is**
- 13 **all of it. So I'm sure he has something here to try to**
- 14 **overpower this side.**
- 15 Q. Okay.
- 16 A. **But I can't tell you that. I mean, it has to be a**
- 17 **whole.**
- 18 Q. Right. So both sides have a burden of proof; the
- 19 State has to prove he's guilty and the Defendant has to prove
- 20 he's not guilty?
- 21 A. **Right. That's the way it goes. I mean, you have**
- 22 **to look at all of it. You can't say, oh, well, they're**
- 23 **automatically right or you're automatically right.**
- 24 Q. Okay. In your questionnaire you wrote -- the phrase
- 25 was if a person is brought to trial on murder charges, that

1 person is probably guilty. I think you circled you were  
 2 uncertain on that one.

3 **A. Right. I am uncertain. Does that mean your**  
 4 **client's guilty just because he's there?**

5 Q. Uh-huh.

6 **A. You can't say that.**

7 Q. Right.

8 **A. If you felt that way, you wouldn't be sitting here.**

9 Q. Okay.

10 **A. There has to be reasoning for everything.**

11 Q. Okay. Tell me what you meant by that, if I felt  
 12 that way, I wouldn't be sitting here.

13 **A. Would you say, okay, we're going to -- I mean,**  
 14 **that's just like me walking in here and telling you, I don't**  
 15 **know what I'm doing here. I came because you told me to. Did**  
 16 **you come because he told you to, or did you come because you**  
 17 **felt you had a case?**

18 Q. And you believe I'm here because I think I have a  
 19 case?

20 **A. Because you feel your client's innocent.**

21 Q. Okay. And that connects back in with, he has a  
 22 burden of proof to prove he's innocent, just like the State  
 23 has a burden to prove he's guilty?

24 **A. Right. You both have something.**

25 Q. Okay. I think you're very consistent. I mean, I

1 understand exactly what you're saying.

2 In the questionnaire it gave you a little sentence  
 3 about circumstantial evidence and burden of proof, I suppose.  
 4 It says the law in the State of Texas says a person can be  
 5 convicted of capital murder based solely on the circumstantial  
 6 evidence with no eyewitnesses if you believe the evidence  
 7 beyond a reasonable doubt. Do you agree with this law? You  
 8 circled no, and then it says where you're asked to explain,  
 9 anyone can lie to protect.

10 **A. That's right. Anyone can sit and say, no, no,**  
 11 **that's not so, that's not so.**

12 Q. Okay.

13 **A. I mean, and then the other person say, yes, it is,**  
 14 **yes, it is. I mean, that's two different people; one saying**  
 15 **yes and one saying no. How do you know? You don't.**

16 Q. Okay. What do you think about eyewitness testimony  
 17 and circumstantial evidence?

18 **A. Again, you have two sides here.**

19 Q. Okay.

20 **A. This one can say, and this one --**

21 Q. Okay.

22 **A. You have to see everything. You know, just because**  
 23 **someone says something, that doesn't necessarily mean it's**  
 24 **true.**

25 Q. Okay, I got you.

1 It's -- in your questionnaire it stated, the law in  
 2 the State of Texas says that a person convicted of capital  
 3 murder can receive the death penalty solely because of the  
 4 facts and circumstances of the crime, even if he has committed  
 5 no other crimes. Do you agree? I think you circle yes, and  
 6 under please explain you wrote we -- we, as all, should face  
 7 our punishments. Tell me what you --

8 **A. I feel that way strongly.**

9 Q. Okay, okay. Tell me how you -- when you wrote, "we  
 10 as all should face our punishments," tell me what your  
 11 thoughts were as you're thinking about the special issues and  
 12 the death penalty.

13 **A. Well, you know, I knew nothing until the end of that**  
 14 **day.**

15 Q. You bet.

16 **A. Me, as a person, if I did something --**

17 Q. Uh-huh.

18 **A. -- and it was not of the law, I expect myself to**  
 19 **have to pay for what I've done.**

20 Q. Okay.

21 **A. No one else should take the punishment. No one else**  
 22 **should take the fault. I did it; I'm the one that pays the**  
 23 **price.**

24 Q. Okay.

25 **A. I mean, if someone knows it, I mean -- and it's**

1 there; it's there. You can't change that.

2 Q. I agree. Along the lines of capital murder, if you  
 3 were convicted of capital murder, do you think you should get  
 4 the death sentence?

5 **A. I don't know what the circumstances are, so I can't**  
 6 **tell you that.**

7 Q. Okay, okay. When you say we should face our  
 8 punishments, what did you mean?

9 **A. Whatever you -- whatever happens, happens. I mean,**  
 10 **if someone were to (sic) told me I have to go out there and**  
 11 **work on that highway 80 hours because I did something, I have**  
 12 **to go do that. There's no change in that. I did it, I caused**  
 13 **it, there you go. I have to do it.**

14 Q. Kind of like the old chain gang, working on --

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

16 Q. Cutting the weeds in the garden, right?

17 **A. Whatever. I'm just saying, that's what I have to**  
 18 **do.**

19 Q. Do you believe the death penalty is applied fairly  
 20 in Texas? Yes. Explain. It is put in action and followed  
 21 through with, but we do allow excess time before process. Was  
 22 that -- does that kind of go back to --

23 **A. Right.**

24 Q. I think you're expressing a general dissatisfaction  
 25 with the appellate process and the length of time for an

1 execution?  
 2 **A. Right.**  
 3 **Q.** If you had your way, if you could change the system,  
 4 do you believe -- how would you change it regarding capital  
 5 punishment?  
 6 **A. That's a field that I've never been in, and I can't**  
 7 **answer you on that.**  
 8 **Q.** Okay.  
 9 **A. That's beyond me.**  
 10 **Q.** But you think it takes too long to execute people?  
 11 **A. Yes.**  
 12 **Q.** How would you change that part?  
 13 **A. I don't how -- that I would change it, because**  
 14 **that's not my line of work. I mean, if I sat there --**  
 15 **Q.** Would you just make it quicker?  
 16 **A. Probably so.**  
 17 **Q.** Okay, okay. I think you wrote down -- it kind of  
 18 asked you to give your impressions of some of the, oh,  
 19 players, for lack of a better word in this criminal justice  
 20 system of ours. Regarding prosecutors you wrote down, have to  
 21 ask questions and reask using other wording to catch criminals  
 22 trying to free themselves from justice. What did you --  
 23 **A. Not just that anyone. I mean, the State would do**  
 24 **it; you would do it. You may ask me one question one way, and**  
 25 **then get back up and let me say -- it would be the same**

1 **question?**  
 2 **Q.** Yeah.  
 3 **A. -- to see if that answer is going to change as far**  
 4 **as a person's input or output or their feelings on things.**  
 5 **Q.** Do prosecutors do that, you think?  
 6 **A. Well, I'm sure everyone does that.**  
 7 **Q.** Okay. What's your feeling about that? What do  
 8 you feel about that?  
 9 **A. Well, that's the way you're going to catch -- I**  
 10 **mean, if it were me, I would think, yeah, well, if you change**  
 11 **it, you're going to get a different answer. If you change it,**  
 12 **you get the same -- that's just the chance you have to take.**  
 13 **Q.** Okay.  
 14 **A. To see if that person still is giving you the same**  
 15 **answer in a different direction the same way you're asking it.**  
 16 **Q.** Okay. Regarding defense attorneys, you wrote down  
 17 lie to everyone to try to free a criminal.  
 18 **A. Right. I mean, they're going to tell whatever --**  
 19 **whatever you're told, that's all you know. Are they going to**  
 20 **sit there -- I mean, you don't know if they're telling you the**  
 21 **bare, fact truth until it gets down to the line of things. So**  
 22 **you only have to go on what you have to go on.**  
 23 **Q.** When you chose the language criminal attorneys lie  
 24 to everyone, tell me about that.  
 25 **A. I'm just saying as far as -- I didn't know what I**

1 **was in. I'm just telling you -- I mean, I could come in here**  
 2 **and tell you, no, I had a blue shoe on and a black shoe, and**  
 3 **all you have to go on is I had a blue shoe and a black shoe.**  
 4 **Q.** Okay.  
 5 **A. I mean, I could have been the one lying and you're**  
 6 **just -- you don't know, so you're carrying on the statement.**  
 7 **Q.** I'm kind of continuing the lie?  
 8 **A. Right.**  
 9 **Q.** Okay.  
 10 **A. Because that's all you had.**  
 11 **Q.** Okay.  
 12 **A. You didn't see my shoes, so you had to go by that.**  
 13 **Q.** Do you think that's -- your feelings apply pretty  
 14 much across the board to the role of a defense lawyer, their  
 15 lying to everyone?  
 16 **A. No. I'm just saying -- the initial things that you**  
 17 **knew -- I mean, no one wants to be in trouble with the --**  
 18 **anybody. I mean, I don't. But until you get to the bottom of**  
 19 **where you're supposed to be, you only have that to go on.**  
 20 **Q.** Okay.  
 21 **A. And once you get your facts, you've got that.**  
 22 **Q.** And those are the facts -- getting back to the  
 23 burden of proof, those are the facts that I should be bringing  
 24 you --  
 25 **A. Right.**

1 **Q.** -- in the guilt-innocence phase in the trial?  
 2 **A. Right.**  
 3 **Q.** What do you think about -- you've made it very clear  
 4 that we have a burden of proof -- a defendant has a burden of  
 5 proof in a guilt-innocence phase. Regarding that burden of  
 6 proof, do you think -- how does that fit in with your  
 7 statement, you know, defense attorneys kind of lie to  
 8 everyone? What --  
 9 **A. Well, at the end you're going to have what you're**  
 10 **supposed to have. It may be coming back and you say, well,**  
 11 **you know, here's this -- you know, someone snapped a shot.**  
 12 **You do have both. I mean, you're going to fix that so that**  
 13 **it's not the lie.**  
 14 **Q.** Okay. I got you. I got you.  
 15 **So, during the guilt-innocence phase, if the proof**  
 16 **that I -- that you would require that I bring you, what**  
 17 **happens if it turns out -- do you think I should re-evaluate**  
 18 **what I've brought to you and then bring you some more if it's**  
 19 **not consistent or something?**  
 20 **A. You wouldn't want to bring inconsistency in. You**  
 21 **would want everything to be consistent.**  
 22 **Q.** Right.  
 23 **A. I mean, you would ask your person, well, you know,**  
 24 **we really see this. We've got to fix it where everything is**  
 25 **correct.**

1 Q. Okay. When you say "ask my person," who's that?  
 2 A. **Well, whoever your -- your client is. I'm not going**  
 3 **to point a finger at him.**  
 4 Q. That's okay, you can. You can, because he's the  
 5 Defendant.  
 6 A. **Well, I'm just saying.**  
 7 Q. I know.  
 8 A. **Everything has to be whole to get where this all**  
 9 **needs to be.**  
 10 Q. Okay. In your questionnaire, I think it asks for  
 11 you to list anybody in law enforcement. Ricky Blackburn,  
 12 Sheriff. Is that Decalb?  
 13 A. **Is that who? Decalb.**  
 14 Q. Decalb?  
 15 A. **Yeah, I don't -- that's my -- I just know it's my**  
 16 **dad's brother. He was adopted out. That's all I know about**  
 17 **him.**  
 18 Q. Are you close with him or anything?  
 19 A. **No. That's why -- I mean, it said list it so I had**  
 20 **to list him. I'm not going to sit there and lie to you.**  
 21 Q. I know. I know. And please understand, I think  
 22 you've been perfectly honest with me. I don't think you're  
 23 lying at all. I sure appreciate your honesty in answering  
 24 these questions.  
 25 In your questionnaire, it says do you consider

1 yourself politically liberal, conservative or moderate, and  
 2 you answered yes. Tell me what your thoughts are.  
 3 A. **Well, there's different people. I mean, I'm**  
 4 **conservative. I'm not -- I'm not one way to anything.**  
 5 Q. You're kind of all three; you're a liberal and a  
 6 conservative and a moderate?  
 7 A. **Right. I mean, I can't say this is this, and I**  
 8 **mean, I'm an open person.**  
 9 Q. Yeah. When it comes to politics, are you all three  
 10 basically?  
 11 A. **I guess I -- I just -- I don't mess with it. I**  
 12 **don't mess --**  
 13 Q. Okay.  
 14 A. **I don't mess with it. I mean, I guess I'm one that**  
 15 **goes with it.**  
 16 Q. Okay. I think a lot of folks are like that. That's  
 17 okay.  
 18 Your hobbies. Dirt car racing. Modifieds?  
 19 A. **Street stock.**  
 20 Q. Street stock. You go out to Royce City, ever go out  
 21 to the track out there?  
 22 A. **No.**  
 23 Q. Where do you race street stock?  
 24 A. **I don't race. My husband does. He races in**  
 25 **Krandall.**

1 Q. I have a buddy that does the modifieds out there at  
 2 Royce City.  
 3 On your questionnaire, I think the last question  
 4 before you signed, Robin, was do you want to serve as a juror  
 5 in this case. You circled yes, and I think you wrote because  
 6 I'm a listener, and others may not listen to me wondering --  
 7 wording of questions asked on both sides or to the -- my  
 8 photocopy is a little bad -- or to the Defendant's answer on  
 9 cross-examination and such.  
 10 A. **Right. I'm going to listen to every -- I'm not**  
 11 **going to take one person's side over the other side. Again,**  
 12 **it takes a whole.**  
 13 Q. Okay.  
 14 A. **If they have all their evidence, then that's it.**  
 15 **But you have to look at both sides. You cannot be right here**  
 16 **in the middle and have your mind made up that this is -- you**  
 17 **have to hear it out.**  
 18 Q. Okay. And that, I think, is consistent, and it  
 19 gets back with your belief that during the guilt-innocence  
 20 phase you want to -- you would require both sides to bring you  
 21 whatever evidence they had; that the State would bring you the  
 22 evidence of why they felt somebody was guilty, and you believe  
 23 the Defendant should bring you the evidence as to why he's  
 24 innocent?  
 25 A. **If that's the -- if he wanted to. That's his choice**

1 **to come forward to defend hisself. But I'm going to listen to**  
 2 **their side. They have something, or we wouldn't all be here,**  
 3 **and you have something. You can't sit there and say yes, and**  
 4 **you can't say no.**  
 5 Q. Okay. When -- getting back to that one question  
 6 about a defendant accused of capital murder is probably  
 7 guilty, what do you think about that?  
 8 A. **I can't tell you he's guilty.**  
 9 Q. Okay.  
 10 A. **I can't tell you he's not guilty.**  
 11 Q. Okay. Do you think he's innocent as he sits there?  
 12 A. **I don't know.**  
 13 Q. Okay.  
 14 A. **I'm honest, I don't know. I mean, they didn't ask**  
 15 **me if I thought he was guilty. They didn't tell me what was**  
 16 **going on, so I don't know.**  
 17 Q. Okay. Tell me what you meant when you said we  
 18 wouldn't be here if they didn't have something. What do you  
 19 think that meant?  
 20 A. **Someone has a -- I mean, there's a case here. I**  
 21 **mean, I can't tell you what I mean. I don't know what they**  
 22 **have, and I don't know what you have.**  
 23 Q. Okay. Regarding those special issues, Robin, that  
 24 first one down on the floor. Can you still read that from  
 25 where you're sitting?

- 1 A. Whether there's a probability that the Defendant  
2 would commit criminal acts of violence that would constitute a  
3 continuing threat to society.
- 4 Q. What does probability mean to you?
- 5 A. Could or couldn't.
- 6 Q. Could or couldn't. Just try to explain that a  
7 little more to me; could or couldn't.
- 8 A. It could happen; it could not happen.
- 9 Q. Okay.
- 10 A. Do you think -- when you say could or couldn't, is  
11 that like possibility?
- 12 A. Yes. It's possible it could happen; it's possible  
13 it couldn't happen.
- 14 Q. Okay. If I gave you sufficient time to think about  
15 the word probability, would your answer usually be the same?
- 16 A. It would be the same.
- 17 Q. And that equates to you as possible, just a  
18 possibility?
- 19 A. Anything is possible.
- 20 Q. Okay.
- 21 A. I mean, it could happen and it couldn't happen.
- 22 Q. Okay. I agree.
- 23 What does society mean to you in that question?
- 24 A. The world we're in. I mean, not just here. It  
25 could be anywhere. It could be in jail, if that's where he's

- 1 at. I don't know where he's at. It could be prison, it could  
2 be home, anywhere is society.
- 3 Q. Okay. Do you think it includes prison?
- 4 A. Well, it could, yeah.
- 5 Q. Okay. If that question is answered no by the jury,  
6 what would happen next; do you have any idea?
- 7 A. If what question?
- 8 Q. That first one down there on the bottom, that future  
9 dangerousness question.
- 10 A. If it was answered no?
- 11 Q. Yeah.
- 12 A. I mean, we're still going to go to a punishment  
13 phase. I mean...
- 14 Q. Okay, okay. I agree with that.
- 15 And then what do you think if that question is  
16 answered no, then do we go to the punishment phase?
- 17 A. I mean, something is going to happen in the end.
- 18 Q. Yeah. And after that question -- let's assume that  
19 question is answered no, what do you think takes place next?
- 20 A. You would all have to look at everything, both  
21 sides.
- 22 Q. Okay. And then along those lines that that  
23 question was answered no and we go to the punishment phase,  
24 what kind of things would you be considering next, do you  
25 think, as a jury?

- 1 A. I don't know. I don't know what's happening. I  
2 can't answer that.
- 3 Q. Okay. Your husband works for North Texas Municipal  
4 Water District?
- 5 A. Correct.
- 6 Q. What's he do out there?
- 7 A. He's a truck driver.
- 8 Q. Okay. What kind of trucks does he drive?
- 9 A. I don't know, a big truck.
- 10 Q. Big truck, okay. Does he drive water around?
- 11 A. No. He works over off of Bookout in Plano where all  
12 the BFI and all -- McKinney and all them -- well, not  
13 McKinney. BFI Richardson and all them dump their trash from  
14 alleys. It's compacted into a trailer, and he brings it out  
15 here to McKinney to the landfill.
- 16 Q. Oh, okay. Okay. Those refuse -- the big collection  
17 stations in Plano?
- 18 A. Right. They all stuff it in trailers and he dumps  
19 it out here.
- 20 Q. Okay. Yeah, those are big trucks. Wow. He must  
21 have his CDL, Commercial Driver's License?
- 22 A. Uh-huh.
- 23 Q. Good for him. Good for him. Okay.
- 24 Ms. Bardin, would you say that everything you've  
25 told me -- everything you've put down in the jury

- 1 questionnaire -- you probably recall the Judge telling you,  
2 and then you probably read it up here, you've answered  
3 everything in here under oath, correct?
- 4 A. Correct.
- 5 Q. And those are your true feelings?
- 6 A. Right.
- 7 Q. And nothing has changed since you answered these?
- 8 A. No.
- 9 Q. All your answers to my questions today are your true  
10 feelings, and that's how you honestly feel, right?
- 11 A. That's how I honestly feel.
- 12 Q. And no matter how anybody else reasks the question,  
13 your answers are always going to be the same because you told  
14 the truth in your questionnaire. You told the truth here  
15 today, and no one's going to change your mind about that?
- 16 A. Right.
- 17 Q. Because your answers to my questions today and your  
18 answers in the questionnaire that you swore to, you put those  
19 answers down because that is exactly how you feel, and it's  
20 not going to change, correct?
- 21 A. Right.
- 22 Q. Okay, all right. I sure appreciate your time, and  
23 thank you for coming up here today. I know it took time out  
24 of your busy schedule to give us some of your time and very  
25 appreciative of that. Thank you, ma'am.

1 THE COURT: All right. Ms. Falco?  
 2 MS. FALCO: Yes.  
 3 REDIRECT QUESTIONS  
 4 BY MS. FALCO:  
 5 Q. Ms. Bardin, I just want to talk to you a little bit  
 6 more about the burden of proof. First of all, let's talk a  
 7 little bit about following laws.  
 8 It's okay, and I think all of us citizens have our  
 9 opinion one way or another whether we agree or disagree with  
 10 certain laws. The speed limit, maybe we think it's too fast,  
 11 or there's probably some people that may think it's too slow  
 12 for a particular street. Same with seat belt law, probably  
 13 some people out there don't really like it, but the majority  
 14 of us, as a whole, as citizens, obey the laws whether we like  
 15 it or not, and for whatever reasons, whether it's financial  
 16 reasons, we don't want to get a ticket, or whether we kind of  
 17 see the wisdom in the law. We follow it regardless because  
 18 we're law-abiding citizens. Would you agree with me?  
 19 A. Yes.  
 20 Q. And you strike me as somebody who is very law  
 21 abiding. I'm sure if you're driving down the road, and you  
 22 come across a speed limit sign, you don't just speed up and go  
 23 faster than the speed limit?  
 24 A. No.  
 25 Q. And that's kind of what we're talking about here,

1 and I'm going to explain the law to you and ask you if you can  
 2 follow it, or are you just going to speed up and go beyond the  
 3 speed limit and follow your own law. And so, with regard to  
 4 that, there will be lots of instructions you'll get from the  
 5 Judge if you're called upon as a juror, and one of those is  
 6 don't deliberate the case until the end of all the evidence.  
 7 A. Right.  
 8 Q. You can do that?  
 9 A. Right.  
 10 Q. And another one would be don't go out and  
 11 investigate the crime scene by yourself, and if you're told  
 12 not to do that, you could do that, right?  
 13 A. I'm not going to go investigate it. I'd follow  
 14 that.  
 15 Q. You're just going to listen to the evidence that  
 16 comes from the witness stand --  
 17 A. Right.  
 18 Q. -- and that's it?  
 19 A. I mean, when I went home -- I mean, Steve's, like,  
 20 oh? And I said, I don't want to hear it. I don't want to  
 21 hear nothing.  
 22 Q. And that's exactly right. If the Judge you not to  
 23 talk to anybody about it, you could do that?  
 24 A. Right, and I haven't.  
 25 Q. And if you were told not to read the newspaper or

1 watch TV if it started talking specifically about this case,  
 2 you could do that as well, right?  
 3 A. Yeah. I don't watch TV, anyway.  
 4 Q. And with the same regard -- with the burden of  
 5 proof, all defendants are presumed innocent. This Defendant  
 6 here is presumed innocent, until we, the State, prove him  
 7 guilty.  
 8 A. Right.  
 9 Q. So when asked, is he innocent, well, he's presumed  
 10 innocent at this point.  
 11 A. Right.  
 12 Q. Okay. So when you answered uncertain, in reality  
 13 because the way our law is set up, he's presumed innocent  
 14 until we rebut that presumption, until he prove him guilty?  
 15 A. Right.  
 16 Q. Does that make sense to you?  
 17 A. Right.  
 18 Q. And if you were instructed on that, could you  
 19 presume him innocent at this point?  
 20 A. I don't know what's happened, so I can't tell you.  
 21 Q. But if you were instructed --  
 22 A. Right.  
 23 Q. -- to presume him innocent, until we proved to you  
 24 he's guilty, could you do that?  
 25 A. Right.

1 Q. Could you do that?  
 2 A. Yes.  
 3 Q. And with regard to the burden of proof, it's only on  
 4 us.  
 5 A. Right.  
 6 Q. It never shifts. The Defense has no burden at all.  
 7 And you may think that, well, they should testify, or I'd like  
 8 to hear from them, but if you're instructed that they have no  
 9 burden of proof at all, the only burden of proof is on the  
 10 State, could you follow that?  
 11 A. Yes.  
 12 Q. What that means is at the end of our case and we  
 13 rest and they don't put any evidence on at all, if the Judge  
 14 instructs you not to take into consideration the Defendant's  
 15 failure to testify, just look at what the State presented to  
 16 you in finding whether or not the Defendant is guilty or not,  
 17 could you do that?  
 18 A. Yes.  
 19 Q. And if the Judge told you not to put any burden at  
 20 all on the Defense, could you do that?  
 21 A. Yes, ma'am.  
 22 Q. And so getting back to your question where it says  
 23 if somebody is accused of capital murder he should have to  
 24 prove his innocence, you understand they don't have to prove  
 25 it?



- 1 **A. Right. They don't have to come forward with**  
 2 **anything. I mean, it's just -- your side is there, and he**  
 3 **chose to have it that way.**  
 4 Q. Right. And if they don't choose to put anything on,  
 5 you can't hold that against him?  
 6 **A. Right.**  
 7 Q. Just look at what we brought you and see if that's  
 8 sufficient?  
 9 **A. Right.**  
 10 Q. Okay. And you could do that if instructed?  
 11 **A. Yes, ma'am.**  
 12 Q. And so in that regard if -- first of all, as we sit  
 13 here right now, getting back to that presumption, is the  
 14 Defendant presumed guilty at this point in your mind, if  
 15 you're instructed that's what he is?  
 16 **A. Right. That's what I have been told. That's the**  
 17 **proof I've gotten and all.**  
 18 Q. And if we put on the case, and at the end of our  
 19 case, are you going to require the Defense to put on any  
 20 evidence?  
 21 **A. No.**  
 22 Q. You can make that decision, and you can follow the  
 23 law and just look at what we present you and see if we proved  
 24 it to you beyond a reasonable doubt?  
 25 **A. Yes, ma'am.**

- 1 Q. Let's talk a little bit -- you brought up on your  
 2 questionnaire about self-defense, and you're right, it's  
 3 something that applies to guilt-innocence as far as it's a  
 4 defense to the State's case. If we put on our case, and they  
 5 decide to present self-defense, it's up to you, as a jury, to  
 6 decide if self-defense is there. You may find that the  
 7 evidence is insufficient --  
 8 THE COURT: Ms. Falco, excuse me just a  
 9 minute. Give me just a second.  
 10 (Pause in proceedings.)  
 11 THE COURT: I'm sorry to interrupt you. Please  
 12 go ahead.  
 13 Q. BY MS. FALCO: Now, you may find that the evidence  
 14 is insufficient for self-defense if the State still proved  
 15 their case and there's not enough evidence to show they did it  
 16 in self-defense.  
 17 **A. Right.**  
 18 Q. Do you understand that?  
 19 **A. Right.**  
 20 Q. And you'd find that person guilty if we proved it to  
 21 you beyond a reasonable doubt?  
 22 **A. Right.**  
 23 Q. Now, even though that evidence might be insufficient  
 24 regarding self-defense, maybe they still raised it, and it  
 25 wasn't sufficient to overcome, you know, what the State proved

- 1 to you, but it might be something you could take into  
 2 consideration in the mitigation phase. They had their reason.  
 3 Maybe, for whatever reason, they thought it might be  
 4 self-defense, even though factually it wasn't sufficient.  
 5 **A. Facts are facts. I mean, if you have the facts,**  
 6 **then I can't sit there and say, oh, oh, oh. I have to see --**  
 7 **you have to hear and know before you can say, yes, it is**  
 8 **actually self-defense. I mean, if you have it, you have it.**  
 9 Q. Okay. And so you can understand -- I mean, it's an  
 10 issue for guilt-innocence, but it's something that even if  
 11 found insufficient at guilt-innocence, it's something you  
 12 might still be able to take into consideration during the  
 13 punishment phase?  
 14 **A. Right.**  
 15 Q. As for reasons why somebody might have done  
 16 something?  
 17 **A. As far as reason --**  
 18 Q. Why they might have committed the murder?  
 19 **A. Right, but there's different reasons. It may be the**  
 20 **reason that they've brought up just to make it covered.**  
 21 Q. Right.  
 22 **A. To make it okay, and that's not actually true**  
 23 **always.**  
 24 Q. Right, okay.  
 25 Now, with regard to the two different phases, and

- 1 you understand, first of all, there's the guilt-innocence  
 2 phase and anything that might include, and that's where the  
 3 burden of proof is solely on us. And if you find a person  
 4 guilty of capital murder, you move to the punishment phase.  
 5 **A. Right.**  
 6 Q. And that's when you would get that first question  
 7 regarding probability of a future danger.  
 8 **A. Right.**  
 9 Q. So you understand if you're answering that question,  
 10 you're in the punishment phase?  
 11 **A. Right.**  
 12 Q. And so I don't know -- I don't know if Mr. Goeller's  
 13 question is unclear, but you understand you're answering that  
 14 question that that is part of the punishment phase?  
 15 **A. Right.**  
 16 Q. And with regard to that word "probability," and  
 17 remember, we talked about anything is possible?  
 18 **A. Right.**  
 19 Q. But you understand that word probability means  
 20 something more than just a possibility?  
 21 **A. Right.**  
 22 Q. Is it more than possible that he's going to commit a  
 23 criminal act of violence?  
 24 **A. You have to say -- I mean, it could happen -- I**  
 25 **mean, you have to hear everything through it --**

1 Q. Okay.  
 2 A. -- to know it.  
 3 Q. And in hearing all the evidence, you understand that  
 4 question asks more than just a possibility, but is there a  
 5 probability, something greater than just a possibility?  
 6 A. Right.  
 7 Q. Do you understand?  
 8 A. More than yes, it could happen again.  
 9 Q. Do you understand that?  
 10 A. Right, I do.  
 11 Q. And do you understand the difference between just a  
 12 possibility --  
 13 A. And probability --  
 14 Q. -- and probability?  
 15 A. Yes.  
 16 Q. Do you see the distinction?  
 17 And I know you think we're splitting hairs, and why  
 18 do these lawyers get so hung up on words --  
 19 A. Oh, no.  
 20 Q. -- but that's kind of the way the law is written,  
 21 and we have to abide by that.  
 22 A. Right.  
 23 Q. And just kind of going back to all the law  
 24 abidingness and just you being the good citizen that you are,  
 25 whatever instruction the Judge gives you to follow, and

1 regardless of your -- what you might think of that law or that  
 2 ruling, could you follow that law?  
 3 A. Yes. That's the law.  
 4 Q. And if you take an oath as a juror to follow the law  
 5 and true verdicts render and answer these questions according  
 6 to the evidence, you're not going to violate that --  
 7 A. No.  
 8 Q. -- are you? And you're going to follow the law as  
 9 the Judge tells you to do it?  
 10 A. Yes, ma'am.  
 11 MS. FALCO: Thank you, Ms. Bardin. Pass this  
 12 juror.  
 13 THE COURT: Do you want another go-round, or  
 14 have you had enough?  
 15 MR. GOELLER: I think I'm ready to address the  
 16 Court sub rosa, Your Honor.  
 17 THE COURT: Let me ask you to step down.  
 18 There are probably other jurors back there, and I  
 19 just want to ask you not to say anything to them about  
 20 anything you've been asked or that you've responded.  
 21 VENIREPERSON: Oh, I won't.  
 22 (Venireperson exits the courtroom.)  
 23 MR. GOELLER: Thank you, Your Honor.  
 24 May it please the Court, Your Honor, the Defense  
 25 would challenge this juror for cause basically in three areas.

1 Number one, Your Honor -- and I'd ask the Court to take notice  
 2 of her questionnaire. I guess my first ground for challenge  
 3 for cause is she's what I'd call the classic vacillating  
 4 juror, Your Honor. I think she's what we call a Parillo  
 5 juror. It was just abundantly clear when I asked her  
 6 questions that she would expect him, and she stated in her own  
 7 words, we have a burden of proof in the guilt-innocence phase.  
 8 And I asked her four or five different times and as I'd go  
 9 back to her questionnaire, she would bring the same thing up  
 10 in related conversations.  
 11 Yet, she can tell Ms. Falco in the same breath,  
 12 yes, I'd take instructions from the Court, yes, yes, yes. I  
 13 locked her in. I said, that's how you feel, that's how you  
 14 believe, that's why you answered all these questions.  
 15 I think -- that's my first ground for cause Your  
 16 Honor, Parillo. She's vacillating. She's going to tell the  
 17 State -- you heard the last exchange with her and Ms. Falco.  
 18 Yeah -- I don't know how many times she said it, at least a  
 19 dozen times. Yeah, right, uh-huh, yeah, right, uh-huh. Yeah,  
 20 right, uh-huh. I don't think she really understood where  
 21 Ms. Falco was going.  
 22 Number one -- and number two, Your Honor, she  
 23 certainly has a bias against a phase of the law we're entitled  
 24 to rely on, and in this case it would be the entire punishment  
 25 phase of this trial. She made it very clear that she does not

1 understand how a trial works, Judge. She said if that first  
 2 special issue was answered no, then we'd go into the  
 3 punishment phase. So she certainly would not be a fair juror  
 4 regarding those two special issues if answering no, which  
 5 would mean an automatic life sentence, she wants to hear more.  
 6 She's not through yet, and maybe she's still on her road to --  
 7 road to giving a death sentence.  
 8 Ms. Falco, now, I don't know if Gail misspoke or  
 9 not. I don't know. She said if the Judge -- if the Judge  
 10 gave you an instruction to presume he was guilty, you could  
 11 follow that law, and she said yes. I don't know if she  
 12 misspoke or not. It's in the reporter's record, I'm sure. I  
 13 don't know if she's trying to do the converse and get her to  
 14 commit. I'm not quite sure.  
 15 The third reason I would challenge her, Your Honor,  
 16 is that she is a juror -- what's called a Patrick juror. She  
 17 can't distinguish between probability and possibility. First  
 18 she says could or couldn't. Could or couldn't. I asked her  
 19 what does that mean in regard to probability, and she came  
 20 back to possibility. And I think that's pretty consistent  
 21 with could or couldn't. She doesn't understand probability,  
 22 and I don't think she understands the difference between  
 23 possibility and probability. But if you take her words, could  
 24 or couldn't, that is certainly a possibility, Judge. It's  
 25 nowhere near probability. So, I think she's challengeable for

1 cause under Patrick versus State.  
 2 If you look at the totality of her questionnaire,  
 3 Your Honor, we don't have a fair shot with this juror.  
 4 Someone is accused of capital murder, he should have to prove  
 5 his innocence? Strongly agree. In fact, that one she circled  
 6 twice, which if you look at her questionnaire, she makes a  
 7 single circular motion with her writing instrument except on  
 8 strongly agree, and she doubles that one.

9 THE COURT: Say, what page is that?

10 MR. GOELLER: That's page 4, Your Honor.

11 THE COURT: All right.

12 MR. GOELLER: But I think that's consistent  
 13 with her. I think she's honest with whoever is talking with  
 14 her at the time. I think it's consistent with her placing a  
 15 burden of proof on the Defendant. She said it at least four  
 16 times. She would balance it. She would hear what the State  
 17 has to say, and then she'd hear what the Defense has to say.  
 18 Then she got back into that -- she came in a roundabout way  
 19 that, when I asked her about her comment defense attorneys lie  
 20 to everyone to try to free a criminal, and then she kind of  
 21 came back into it again, we wouldn't be here unless we had a  
 22 case, and she would expect to hear that. So again, that goes  
 23 back to her placing a burden of proof on the Defendant, Your  
 24 Honor.

25 Some of the rest of her answers in this

1 questionnaire taken as a whole, I just -- it's so  
 2 inconsistent. Do you consider yourself politically liberal,  
 3 conservative or moderate? Yes. She never understood what I  
 4 was trying to get at there, I would submit to the Court.

5 THE COURT: So are you telling me she doesn't  
 6 have the mental equipment to be a good juror?

7 MR. GOELLER: Yes, sir. I know that's not --  
 8 yes, I am. And I know that's not, per say, grounds, but it  
 9 certainly goes back to her inability to follow the law. If  
 10 after Ms. Falco and Mr. Schultz's voir dire three weeks ago  
 11 and today, she hasn't figured out those special issues, and  
 12 she's telling me that if I answer that special issue number  
 13 (sic) no, then we go to the punishment phase, she's biased  
 14 against the very essence of a capital murder case in which  
 15 we're entitled to rely and that would be the special issues,  
 16 Your Honor.

17 So for those three reasons; her placing a burden of  
 18 proof on me, her inability and her bias against the punishment  
 19 phase of this trial, her inability to distinguish possible  
 20 from probability, and her just pure vacillation, I could  
 21 have -- I could have probably gone through all my questions  
 22 again, and I submit to the Court I would have got the same  
 23 thing Ms. Falco got; uh-huh, uh-huh, yeah, yeah, uh-huh, sure,  
 24 and that's classic Parillo juror. For those four reasons,  
 25 Your Honor, I would submit this juror for cause.

1 THE COURT: Thank you, Mr. Goeller.

2 MR. SCHULTZ: May I argue for the State?

3 THE COURT: All right.

4 MR. SCHULTZ: Very briefly. I guess in Collin  
 5 County we develop certain biases toward jurors, and I'm  
 6 thinking to myself, we're used to most of these jurors coming  
 7 in from Plano or Richardson or even the high-tech areas that  
 8 are in McKinney, and they're very verbal and very interactive,  
 9 and truthfully they probably speak a whole lot more than we do  
 10 in our common language. When we get a less-than educated  
 11 juror, they tend to stand out unless we really listen to them  
 12 a lot of times. I'm thinking if we were in some rural county,  
 13 like Scurry County, or some place like that, this type of  
 14 juror is probably the norm, and they are not educated. They  
 15 are not verbal. They don't understand exactly how to interact  
 16 on, frankly, what's a very highly intellectual exercise that  
 17 both sides get used to hearing.

18 Mr. Goeller is incorrect. His answers that he  
 19 obtained from her were not different from our answers.  
 20 His answers were the result of you feel this way, you feel  
 21 that way, don't you? And the answers -- how a juror feels,  
 22 just as how a judge feels or anyone else, I suppose, in a  
 23 judgment position isn't the test. It's whether or not they  
 24 can fairly follow the instructions placed upon them by the --  
 25 by the court that's an instrument of our law. I mean, we

1 wouldn't have to say -- but if I were filling out a  
 2 questionnaire and someone asked me do you believe that most  
 3 people charged with murder are guilty, my answer is, yeah, I  
 4 do. And I wouldn't imply to know what the court's thinking,  
 5 but I expect if the Court would look at that question as a  
 6 thought -- as a statistical indicator, I think any reasonable  
 7 person would say most people who are charged with murder are  
 8 probably statistically likely -- very likely, perhaps, to be  
 9 guilty. But that in no way interferes with our ability to  
 10 fairly assess and measure the evidence in the case.

11 You know, I've always wondered what it would be like  
 12 to be a divorce judge and have to follow legal concepts that  
 13 are gender neutral, and what if you believe, just from your  
 14 own experience that in general statistically speaking, females  
 15 or males are better equipped to raise children than the other  
 16 gender. They didn't ask us when they made that law and we  
 17 are capable, and most reasonable people are capable of  
 18 following instructions and not putting that on the scales of  
 19 justice. And I don't know how the Court, when it's sitting as  
 20 the trier of fact, used the failure to testify. I mean, I  
 21 believe the Court would certainly be able to not ever put that  
 22 on the scales of justice and ignore it, even though deep down  
 23 inside the Court, better than the average trier of fact, would  
 24 understand some of the reasons perhaps a person wouldn't  
 25 testify.

1 We're all just people, and even the fact that you're  
2 a judge and attorney and experienced in this area, you still  
3 use the same tools that we expect of other people. And I  
4 think it's -- I think it's fine for us to have these questions  
5 on the questionnaire. They help the State. They help the  
6 Defense. They give some areas that we would want to explore  
7 and inquire into juries, but I think it's unfair to give these  
8 people questionnaires, especially obviously uneducated people,  
9 and get them to try to answer these questions without even any  
10 explanation at the beginning, and then somehow use that as  
11 some -- as some strong evidence of the bias without listening  
12 to the actual testimony of the juror, him or herself.

13 Sure, everybody coming off the street would expect  
14 from television or whatever that the defense would have some  
15 stuff and so would the State. I mean, truthfully speaking,  
16 that's always how it works out. I guarantee I'm right on  
17 this, and this Court has never sat in a trial where the  
18 defense did absolutely nothing and asked no questions and did  
19 nothing to undermine the State's case. Just because they have  
20 a right to it, you would be shocked -- if you were sitting up  
21 there, you would be shocked if the defense never had any  
22 questions, never had any evidence, never cared what the  
23 Court's instructions would be. Whatever you think, Judge,  
24 that's fine with us. We don't care. You would be shocked,  
25 and you might even intervene somewhat just thinking about the

1 record, trying to make sure there's a fair trial going on.  
2 But the fact is, without even thinking about it, we  
3 all know that sort of thing is going to happen. You ask a  
4 question, would you expect the defense would cross-examine  
5 witnesses and would offer witnesses of their own? I'll bet  
6 your truthful answer as a judge would be, yeah, I expect that  
7 because that's how it usually seems to happen. But expecting  
8 or thinking that's the way it would work or maybe even should  
9 work is far different from an ability to fairly do what you've  
10 got to do every day, and that's follow the law, and that's the  
11 same thing for these jurors.

12 If the questionnaire answers to how do you feel  
13 about this or that are going to be used as a basis to  
14 disqualify jurors, then we might as well dispense with even  
15 talking with them because the decisions are made. That's why  
16 we talk with them, and that's why we approach this.

17 If the Court doesn't believe her -- if the Court  
18 simply looks inside and has made the determination she's not  
19 telling the truth, that's one thing because I guess that's  
20 certainly within your province as a partial fact-finder making  
21 the decisions on these challenges. But her answers are not  
22 incompatible with the obligations of a juror, and truthfully  
23 if you look at her, she seems perhaps to be less dogmatic  
24 about these things than the average person.

25 No disrespect to Mr. Goeller. I wouldn't be doing

1 it. If I were on his side, I would not frame my questions in  
2 a way that if the Court instructed you this way, would you  
3 follow it. I would frame my questions in a way that you made  
4 these answers in your questionnaire, didn't you? And I would  
5 stay away from the critical question, could you follow the  
6 Court's instructions? That's in no way disrespectful or  
7 critical of Mr. Goeller. I would do exactly the same thing.  
8 I would be approaching it that way. Then I'd say, well, she  
9 told me that she thought we'd want to put on evidence.

10 If somebody -- there's a question in the  
11 questionnaire, do you think that defense lawyers try to  
12 manipulate facts or somehow are dishonest or something like  
13 that. I wouldn't want to say are you going to take that into  
14 account against my client. I would rather just simply sit  
15 back and allow that to be evidence on that issue.

16 This juror truthfully in some counties would  
17 probably be bright in response to the Court's question. I'm  
18 not at all sure that she is just very practical and nonverbal  
19 and not particularly educated, but she's regular and she's  
20 normal. When you listen to her questions and when you listen  
21 to her answers, she says things like, I would listen and there  
22 are two sides. And when you ask her, well, all right, they've  
23 got a right -- they've got a right not to put on any evidence,  
24 she said that's up to them. If they choose to do that, that's  
25 their business and all of what that is. There's nothing wrong

1 with that.

2 I heard absolutely nothing in her answers that  
3 indicated any less ability to follow the law than anybody  
4 else. She has some views which we look at and perhaps from a  
5 different educational level as being a little bit different,  
6 but she doesn't understand stuff like this. She doesn't watch  
7 TV. She's just not a verbal person, but she indicated she  
8 could do everything required of us, and probably she's  
9 somebody -- half those questions on the questionnaire she  
10 didn't even realize they were any more than how do you think  
11 that would be, and that's the only flaw in these  
12 questionnaires. If they're going to be used somehow as a  
13 talisman to strike people, we better be sure, and we ought to  
14 put a caveat on there if you don't know what the law is do not  
15 answer this question because anything less than that -- it's  
16 really unfair, if that's going to be -- if we open them up to  
17 what do you think, and then break it off inside of them  
18 somehow because they didn't know what we knew, we at least owe  
19 these jurors that decency to say if you don't know the legal  
20 answer to this question, please omit it.

21 THE COURT: Let me tell you something, I think  
22 the -- I think what you hope for in a juror is normal  
23 intelligence and normal common sense, and I'm sure there are  
24 some people with very little schooling who make fantastic  
25 jurors, and some people with a lot of education make terrible

1 jurors. So I don't think that education alone is -- I suppose  
2 it can be a factor in determining who's good or who isn't, but  
3 certainly not even a primary factor.

4 But I tell you what -- and also, I want you to know  
5 that I'm not any kind of an elitists when it comes to this  
6 sort of stuff. I grew up in the real world just like all of  
7 you did, and we had parties and witnesses and even attorneys  
8 who might fit into one world and not another.

9 But be that as it may, I tell you what, I'll grant  
10 the challenge, and if you would tell Ms. Bardin that she's  
11 finally excused. Let's take about a ten-minute recess, and no  
12 more than ten minutes and come back at 10:40 to be exact.

13 (Recess taken.)

14 THE COURT: Are you Maurice Jacob?

15 VENIREPERSON: Yes.

16 THE COURT: I just want to remind you that a  
17 couple of weeks ago I put everybody under oath to answer  
18 truthfully in their responses to questions of both sides, and  
19 you're still under that oath. You may be seated.

20 VENIREPERSON: Thank you.

21 THE COURT: All right. Mr. Schultz.

22 MR. SCHULTZ: Yes, sir.

23 DIRECT QUESTIONS

24 BY MR. SCHULTZ:

25 Q. Good morning, Mr. Jacob.

1 That matters everything, and it's all in a day's work for the  
2 emergency room personnel. They've seen better, they've seen  
3 worse, and truthfully, unless they really focus in on the  
4 human stuff, it's just -- it's not even exactly a human  
5 situation. Do you understand what I'm saying? It's not that  
6 they're not good people, and it's not that they wouldn't love  
7 their children once they get off from their job just like we  
8 do. It's rather, if you're not careful, you get caught up in  
9 what you do, and you lose that people stuff.

10 It's, like, sometimes you go to departments of  
11 government or something, and they're real grouchy or  
12 disinterested in helping you, things like that. What's  
13 important to you may not be important to them.

14 So, both sides try very, very hard because if  
15 selected, we're going to be together for quite a while. We're  
16 going to be together for several weeks, and so both sides try  
17 very hard to try to be interactive, and at the same time to be  
18 very sensitive really to the feelings of jurors. I know  
19 that's true for the defense. It's true for the State, too.

20 And having said that, I -- sometimes I'm pretty  
21 outspoken about my views, and I don't apologize for that. You  
22 might remember when I got into that part of discussions  
23 relating I know this can affect your personal lives greatly  
24 having to do this service, and maybe I was more callous than I  
25 should have been, but I truly believe when you look at the

1 A. Good morning.

2 Q. If memory serves me, you were on that original panel  
3 that probably was working here on August the 20th; is that  
4 right --

5 A. That's right.

6 Q. -- or were you on the second panel? You were on the  
7 first one where I spoke and Mr. Goeller spoke --

8 A. Yes.

9 Q. -- and we were over in that huge cavern where nobody  
10 could hear me because I had about half a cold and screaming as  
11 best I could.

12 You were able to hear Mr. Goeller because he's got a  
13 much louder voice than I.

14 (Laughter.)

15 Q. BY MR. SCHULTZ: But an admirable voice.

16 MR. GOELLER: Why thank you.

17 Q. BY MR. SCHULTZ: It's certainly unusual for you to  
18 find yourself in a situation like this, and I suppose  
19 truthfully it's much more usual for us, and one of the things  
20 that's hard for professionals that work in something every day  
21 is to realize how to interact with people who don't work in  
22 that environment every day.

23 I'm thinking of emergency room doctors. I mean, if  
24 you go there because your child or your loved one has been  
25 injured, that's the most important thing to you on earth.

1 prices that many, many men and women have paid throughout  
2 history for this system. And when I look at the fact we no  
3 longer have a military draft and that this country almost  
4 doesn't ask anything of its citizens other than just don't  
5 hurt other citizens, I really and truly believe that people  
6 have to make those sacrifices in order to do this kind of  
7 public service.

8 And I do. I really do think of military cemeteries,  
9 and I really do think of those sailors that have gone down in  
10 watery graves fighting so that you and I could come in a  
11 courtroom and exchange ideas. So, if my abruptness ever  
12 offended you, I guess I'm not apologizing for that as much.  
13 You wouldn't hold that against the State in any regard, even  
14 if you disagree with me or thought I was silly, would you?  
15 You wouldn't do that, right?

16 A. No.

17 Q. You might also remember when I spent some time  
18 talking with you then and that whole jury panel to take a  
19 moment to look at the Defendant, you might remember that after  
20 that I told you what our focus and what our plan was and that  
21 was to prove to the jury that the evidence supports our  
22 indictment beyond a reasonable doubt, and if we did that, then  
23 the obligation of the jury would be to vote guilty of capital  
24 murder. And then further when we moved into the punishment  
25 phase of the trial, it was my wish and my goal to be able to

1 produce to the jury sufficient evidence, either what we've  
2 given you the first part of the trial, or the first part of  
3 the trial plus anything else we give you at the punishment  
4 phase that would convince the jury that the proper answer to  
5 this future danger question about a probability of being a  
6 continuing threat to society, that the proper answer based on  
7 the evidence of that question is, yes, he is probably going to  
8 be a continuing threat to society because of criminal acts of  
9 violence.

10 And then my third belief was that the Defense would  
11 not have produced sufficient evidence of mitigation as to  
12 justify a yes answer to that question or stated conversely --

13 MR. GOELLER: Maybe the converse will take  
14 care of my objection. Go ahead.

15 Q. BY MR. SCHULTZ: Or if stated conversely, the State  
16 did not produce sufficient evidence to prove that the proper  
17 answer to that question should be no. The point being -- I  
18 was playing with Mr. Goeller just to make him stand up for a  
19 second. The point being, that third question doesn't have the  
20 burden of proof. I mean, he can do the same thing -- I can do  
21 the same thing to him when he gets to explaining it, and he  
22 could think of a way to make me stand up and perhaps he will.  
23 There is no burden of proof on that third question, and we  
24 will talk about that as we go on.

25 But what I asked the jury to do was look at the

1 Defendant, and, in fact, I'm going to ask you to do that for  
2 just a second now. It's okay to do it any time you want to,  
3 but just for my question. If we proved to you he's guilty of  
4 capital murder beyond a reasonable doubt, and we proved to you  
5 that he's probably going to be a danger to our society in the  
6 future with respect to his propensity to violence, with  
7 respect to him being a continuing threat of violence to our  
8 society, and looking at all the circumstances of this case,  
9 and you don't find sufficient mitigating evidence to warrant a  
10 life sentence, what that evidence finding entitles us to is a  
11 jury that would vote in a way that would cause a death  
12 penalty. And I don't -- it's not fun, and I didn't wake up  
13 this morning saying to myself, this is a great thing that  
14 we're doing and aren't I a lucky fellow to be able to do this.  
15 And I know you're the kind of man that didn't do that, either.  
16 You didn't wake up in the morning saying, boy, maybe I'll be  
17 lucky enough to be on that jury, and maybe I'll be lucky  
18 enough the State will prove sufficient evidence to me that a  
19 death sentence ought to result. I know nobody feels that way,  
20 and you don't either; is that fair?

21 A. That's fair.

22 Q. At the same time I can represent the State and do  
23 that vigorously in a capital case, and we're entitled to  
24 jurors who, like it or not, or think it's the world's greatest  
25 thing or not, could vote in a way, based on the evidence, that

1 would result in a death sentence. And I guess my first  
2 question to you is, knowing it's the real thing, can you do  
3 that if the evidence is there?

4 A. I believe if the evidence is there. I've been  
5 thinking about this a lot.

6 Q. Sure.

7 A. And I was probably one of those people that raised  
8 my hand when you talked about who believes in the death  
9 penalty. Since then, I'm thinking -- I haven't changed my  
10 mind, but I'm thinking this is the real thing, and it's very  
11 important, and I think the evidence would definitely have  
12 weighed on my decision one way or the other. Like I said, I  
13 still haven't changed my mind. I still believe in the death  
14 penalty, but again, there's probably a lot of circumstances  
15 and evidence that I obviously haven't heard at this point.

16 Q. Well, for whatever it's worth, that makes me feel  
17 good for a couple of reasons. It makes me feel good, first of  
18 all, because my whole purpose in being pretty raw about these  
19 issues when I talked to the jury as a group back in August was  
20 to really get people in touch with how they feel, and kind  
21 of -- because you're not the first person that told me that.  
22 And that's the whole reason I did it, not because I'm amused  
23 to hear myself talk or because I think I'm so eloquent. It's  
24 none of those things.

25 It's rather, both sides need to, as best as we can,

1 find out how you feel before you get on that jury because then  
2 if you feel differently in many ways, you know, it's too late.  
3 And that goes both ways. I mean, if a juror comes up here and  
4 answers a questionnaire in a really hard-nose kind of way,  
5 it's like, let's line them up and shoot them kind of thing,  
6 that juror may be able to be qualified on a jury even though  
7 the views seem extreme as long as he can follow the  
8 instructions of the Court.

9 And yet, you want to be -- if the Defense ends up  
10 agreeing to seat a juror like that, they certainly want to be  
11 darn sure that he isn't going to change his mind right in the  
12 middle, and say, yeah, I'm not going to listen to any defense  
13 evidence. It's time for him to die. That's why we do this.  
14 Even though -- let's face it. Nobody knows how we're going to  
15 be until that moment comes. I mean, most of us have no idea.  
16 I mean, some of us make it all the way to the altar, and the  
17 priest is asking some questions, and then finally say, now  
18 that you ask me, I don't think I want this sort of thing, so  
19 nobody knows it. But most of the time, people know what they  
20 are getting into before they go walking up there with the  
21 organ music and all that stuff. And I want to know that about  
22 you, and so will Mr. Goeller, the Defense attorney.

23 Were you ever in military service?

24 A. No, I wasn't.

25 Q. I think there are some parallels to the military

1 service and jury service and only loosely, but some of the  
2 same things might apply. I have a sense from you that you  
3 probably believe in having a strong military to protect us  
4 from other philosophies about life that are really  
5 incompatible with ours. I have that sense. Is that true?

6 **A. Yes.**

7 **Q.** Unfortunately when we talk about the military, we  
8 can talk about our smart bombs and mostly it only hits ships  
9 and doesn't his sailors, or mostly it hits bunkers and doesn't  
10 hit people in it. But truly, the purpose of military  
11 ordinance is not just to break things, but to kill people and  
12 that's what it is. I mean, we fly over a country with a load  
13 of bombs, I don't care how strategic you are for bridges.  
14 You've got to figure there's probably some people crossing  
15 those bridges. And there may be ships down below that are  
16 going to get hit by the debris. And there may be ambulances  
17 that can't get across the bridge, and some guy bleeds to death  
18 because he can't get medical care. So, when we go to war and  
19 we do those things, we're killing people either directly or  
20 indirectly.

21 I'm thinking, you know, if I were a pilot, I would  
22 be excited about it. It would be fun. Flying those jets  
23 would be the hoot of a lifetime for a person. But it's easy  
24 to say, yeah, as long as I'm training for this, it's pretty  
25 fun. I'll drop my bombs on an old shack out in the desert

1 somewhere for my training. But when you go to war, and you  
2 actually have to do something, it's a little bit different.

3 **Q.** And I think it's also different when we're sitting  
4 in our living room saying we ought to go bomb this or that  
5 terrorist country for what they're doing, and it might be a  
6 little different if we're the ones that have to do it, or it's  
7 our children that have to be the ones flying those planes,  
8 because we may still believe in it, just like when you're  
9 telling me about the death penalty. But when you get into the  
10 real thing, feelings are a lot closer to us. Do you agree  
11 with that?

12 **A. Yes, I do.**

13 **Q.** Okay. And the other reason it makes me feel good  
14 that you say that because I'm not ghoulish. I'm not  
15 blood-thirsty, and I want decent, caring people to listen to  
16 this evidence and do the right thing based on the evidence  
17 that's presented. This is civilized society, and my object --  
18 the reason we is don't just haul him outside and shoot him is  
19 because that's not how we want to run our country for us. Not  
20 even considering him for a moment, just considering us as a  
21 society, we want our society to be doing the right thing. And  
22 you seem to me to be the kind of man who's independent in your  
23 thinking, but serious in your thinking at the same time.

24 **Q.** Now, it asks why you favor the death penalty. You  
25 put in some cases the death penalty is the appropriate price

1 to be paid. And I don't think you've told me anything that  
2 makes me think you disagree with that statement now. That's  
3 still where you are, right?

4 **A. Exactly.**

5 **Q.** And you indicated, and you circled on your  
6 questionnaire that you believe the death penalty is  
7 appropriate in some capital murder cases, and you could return  
8 a verdict resulting in a death sentence in a proper case. And  
9 that's another way of saying about the same thing?

10 **A. Right.**

11 **Q.** And I assume without stating -- without assuming  
12 perhaps, that you also realize there are times when a life  
13 sentence is the right answer for a capital murder case. And,  
14 in fact, you were asked that question, and you believe that  
15 life in prison is appropriate in some capital murder cases and  
16 you could return a verdict in the confinement -- of life  
17 confinement in a proper case, which as far as it goes makes  
18 you a qualified juror on at least that issue because you  
19 recognize the law allows that punishment range, those options,  
20 and if the law is going to be followed, jurors have to look at  
21 those possibilities.

22 **A. Right.**

23 **Q.** And that hasn't changed any in your mind; you would  
24 look at both possibilities?

25 **A. Exactly.**

1 **Q.** You indicated that the death penalty should not be  
2 available for punishment upon conviction of other criminal  
3 offenses, and you were asked that question. You indicated,  
4 no, it should only be for capital murder only; is that where  
5 we are?

6 **A. I believe so, yeah.**

7 **Q.** It hasn't been tested in a number of years, but  
8 probably there's only one crime that you could still get a  
9 death sentence for that would not involve murder. Would you  
10 happen to know what that other crime is?

11 **A. That would be kind of treason against the  
12 Government.**

13 **Q.** Very good, very good. Why I say it hasn't been  
14 tested, if you kind of look back over the last 30 or 40 years,  
15 we haven't prosecuted death-wise for treason or espionage or  
16 those types of things, I guess since the Rosenberg trials of  
17 the early '50s, I guess. But, the statute is still on the  
18 books, and we wouldn't know what the U.S. Supreme Court would  
19 do about that, but that's still possibly a capital case.

20 It must be realistic enough that that mole in the  
21 FBI, that Assistant Director, Hanson, apparently plea  
22 bargained for a life sentence and offered to tell all he knew  
23 in exchange for it. I mean, you figure if he couldn't get the  
24 death penalty, why didn't he have a trial? Why not take his  
25 chances? It couldn't go any worse than life. So, that's

1 probably (inaudible).

2 What do you think about treason or espionage, do you  
3 think that ought to be a crime that would involve the death  
4 penalty?

5 **A. I think it's on circumstances depending on the  
6 effect that the treason or spying, or whatever, has on the  
7 national defense, or if it's threatening to lives, those types  
8 of things. Yeah, I would agree. Again, it would have to be  
9 fairly serious.**

10 Q. You were asked the question, do you have any moral,  
11 religious or personal beliefs that would prevent you from  
12 sitting in judgment of another human being, which isn't  
13 limited to death penalty cases. I guess that's more limited  
14 in terms of being able to be a juror in a regular case. And  
15 you indicated, no, you don't have anything like that that  
16 would slow you down or impede you. I'm curious, unless I'm  
17 confusing you with another juror and I don't think I am, I  
18 believe your primary faith is Roman Catholic; is that right?

19 **A. Yes.**

20 Q. And I can't find it on the questionnaire. If memory  
21 serves me, you've indicated that you are not in attendance  
22 there, at least every week?

23 **A. Right.**

24 Q. It's more irregular than that, maybe several times a  
25 year. Why I ask that question is because it seems to me that

1 most organized religions do not take an official position on  
2 the death penalty. I say most if you consider all several  
3 hundred of them that we've got, I think most of them probably  
4 leave it up to the individual conscience of the participant.  
5 But there are some that -- there are some that actually do  
6 take an official position on the issue. Maybe even a couple  
7 that take an official religious position in favor of capital  
8 punishment. If what you figure out on TV is true, some of  
9 these Islamic sects seem to believe that a death sentence is a  
10 proper retaliation for certain types of -- what's the word I'm  
11 looking for -- for certain types of, not only actions, but  
12 thoughts. You've probably heard of some of these Ghats that  
13 come out, and apparently they're motivated in a holy sense  
14 somehow, you know, that people have done certain things, and  
15 there's a need to kill people for their actions or their  
16 beliefs or expressions, and that's apparently religious based,  
17 or at least sect based.

18 But with maybe those exceptions, most -- most  
19 churches seem to not take a position. It is my impression,  
20 although there's some debate on the subject, it is my  
21 impression that the Roman Catholic Church opposes capital  
22 punishment. What's your opinion about that? Do you believe  
23 your church officially opposes capital punishment?

24 **A. To tell you the truth, I really don't know. Like I  
25 said, I don't attend church very regularly. I feel religion**

1 **is more of an internal thing, and it doesn't really need a  
2 building or whatever.**

3 Q. And the only reason I ask that is because I -- if  
4 what may be required of a juror is in conflict with what his  
5 or her church is teaching, then that's one of those things  
6 that you'd at least want to know before seating a juror.  
7 Because to ask a person to go directly against their faith may  
8 be something that they can do because they figure, well, this  
9 is the State's work and God's work and they're separate, but  
10 at least I'd want to know about it. And I don't get the  
11 impression from you that even if the church is opposed to  
12 capital punishment that's going to play any part in your  
13 decision. Am I right about that?

14 **A. That's right. There's probably other things that  
15 the church dictates or preaches that I probably do not believe  
16 in and would probably go against.**

17 Q. Tell me how you feel you've -- not changed, because  
18 you've said you haven't changed your basic belief on the death  
19 penalty. Tell me how your thinking has maybe evolved or  
20 matured.

21 **A. Just thinking about it since that first session has  
22 made me realize that, hey, this is real. This is not a --  
23 looking at it in a sense that's not really happening, my  
24 feelings are such, but now we're talking about something that  
25 is very serious and very definite.**

1 Q. And in practical terms -- I understand exactly what  
2 you're saying. In practical terms, do you think how you would  
3 be as a juror has changed any? I mean, do you -- let me make  
4 sure, that's probably not a clear question.

5 Let's say you've been brought in back on October  
6 (sic) 20th and they'd said sit down here. State call your  
7 first witness, and the next thing you know, you're on a  
8 capital murder jury that very day, and you're going to be  
9 asked to answer questions that may or may not result in a  
10 death sentence. Are you a different -- is your work going to  
11 be different -- how you go about your work, is that going to  
12 be any different now than it would have been on October 20th  
13 (sic) just because you thought about it more, or is it just  
14 that you -- just that you thought about it more, and kind of  
15 having a more serious view of it?

16 **A. I think -- thinking about it more definitely gives  
17 you a more serious view of it. I don't think my thought  
18 process would change or I would change. I would still look at  
19 evidence and, you know, making my determination on what's  
20 being presented and that type thing.**

21 Q. Okay. You know, people -- most of the time, I might  
22 be wrong about this, but when people come up and say, you  
23 know, my thinking has changed, or I've had some real soul  
24 searching, it's been my experience that most of time when you  
25 finally pin them down to what's happened, they're not nearly



1 as sure about it as they were before. It looks real good when  
 2 it's -- you know, I'm glad that Dallas jury gave the prison  
 3 escapee the death sentence. That's real good. I'm glad  
 4 McVeigh is dead. We're all like that when we're in our living  
 5 rooms. And yet, my experience is most jurors, if they have a  
 6 change, don't get stronger. They don't come in and say, you  
 7 know, I used to be against -- I used to be really, really weak  
 8 on the death penalty, and I almost never thought I could do  
 9 it, but then I got to thinking about it after I came up here  
 10 on the 20th, I could do that just fine. That's no big deal to  
 11 me anymore. I used to think it would be.

12 Usually, it's the other way around. Usually talk is  
 13 cheap until you have to face the concept of killing somebody,  
 14 and then that's become a harder task rather than easier. Do  
 15 you feel yourself in either of those two categories?

16 **A. I feel like prior to that, yeah, I'd see a new**  
 17 **story, or whatever, and felt it was good to get the death**  
 18 **penalty, or whatever. But I think there's a lot of**  
 19 **circumstances surrounding that, you know, I myself have not**  
 20 **heard, do not know, and I think it needs to be a lot more**  
 21 **serious than reading a news story, and saying, yeah, that's**  
 22 **great or it's not. I think it's a lot more personal, you know**  
 23 **when it's going to come down to it, if it does.**

24 Q. Good for you. I'm sure both sides would not have a  
 25 problem with that concept.

1 Since your thinking has evolved some, then tell me  
 2 why you do favor the death penalty. What's the reason that  
 3 you believe it's a good thing for us to have in our society?

4 **A. I think depending on the crime. If you take**  
 5 **somebody's life, along with so many other circumstances, and**  
 6 **there's a clear history of that, or there's a chance that will**  
 7 **happen again, you know, that type of thing needs to be out of**  
 8 **society. I mean, that's probably why I favor the death**  
 9 **penalty.**

10 Q. Okay. Now, kind of reviewing what the Defendant's  
 11 charged with, he's charged a crime of capital murder, which in  
 12 our society means murder -- the regular form of murder, which  
 13 is intentionally causing the death of another human being  
 14 without justification or demonstrated legal defense of some  
 15 type. And then it means not only that there's a murder, but  
 16 there's a murder-plus aspect to it. There's some additional  
 17 factor that makes it, in the Legislature's view, so extreme  
 18 that anyone who would do that type of act should risk his life  
 19 in doing it. Not just risk his life by somebody killing him  
 20 in self-defense, but almost risk his life by society  
 21 ultimately killing him in self-defense. That's kind of the  
 22 notion.

23 And we talked about a lot of varieties -- or I  
 24 talked about a lot of varieties, like murder of a police  
 25 officer/firefighter, murder in a prison setting, any kind of

1 murder when you're serving a life sentence in the penitentiary  
 2 for certain really serious aggravated crimes. For example, if  
 3 you're in prison for the crime of aggravated kidnapping, and  
 4 you murder another inmate, the fact that you have been in  
 5 prison for that terrible crime and then you take the murder,  
 6 it is a circumstance that might cost you your life. Even  
 7 though the inmate isn't special by his existence, your  
 8 particular life sentence is special so when you do that you  
 9 might lose your life.

10 And there are other kinds. There's murder for hire,  
 11 there's murder of young children, younger than the age of six.  
 12 There's -- statistically speaking, the most common kind of  
 13 capital murder is murder in the course of a robbery. We think  
 14 of the 7-Eleven kind of a robbery, but it can be more of a  
 15 personal thing. It can be you going to your car, and some guy  
 16 comes up and says give me your wallet. You give it to him and  
 17 he kills you. That's capital murder; murder in the course of  
 18 robbery of another person.

19 And then there's double or multiple homicide,  
 20 whenever two or more people are killed in the same criminal  
 21 transactions, and a variety of that is also when two or more  
 22 people are killed in a serial kind of way. Every time  
 23 there's a Friday the 13th you go kill somebody -- it's not a  
 24 common occurrence -- but it's if a common thing, those are all  
 25 capital murders. But the ones we'll be focusing on is murder

1 in the course of a burglary, murder in the course of a  
 2 robbery, and murder of two people, because those are really  
 3 the allegations involving the Defendant.

4 As you hear those types of crimes discussed, do they  
 5 all seem to you they're the types of crimes that may or may  
 6 not be appropriate for a death sentence?

7 **A. Right on the surface, I would say they would.**  
 8 **Again, not knowing all the circumstances.**

9 Q. Absolutely.

10 **A. On the surface, yes.**

11 Q. Absolutely, because I could give you -- I guarantee  
 12 you, I could give you a fact situation involving a burglary  
 13 homicide and you'd say, yeah, that's awful. I mean, what an  
 14 awful person. And I could give you another example, and you'd  
 15 say, well, gosh, how in the world could that ever be a death  
 16 sentence. But I guess my question is, do you understand that  
 17 depending on how it was committed, what the purpose of the  
 18 burglary was, that those could be a death situation? Any  
 19 problem with that?

20 **A. No.**

21 Q. Of those three cases as you just sit there, which  
 22 seems to be -- of the three -- seems to be the more serious  
 23 crime; murder in the course of a burglary, or murder in the  
 24 course of a robbery, or murder of two people? What seems more  
 25 serious to you?

1 A. Right off, I would think burglary would be  
2 worse. Multiple people, probably you would have to see what  
3 caused that for the -- what was the factor that brought that  
4 upon, that situation.

5 Q. Now, the State has the burden of proving the  
6 Defendants's guilty beyond a reasonable doubt, and that's in  
7 our statute. Might even have some Constitutional  
8 underpinnings, but certainly is statutory, and that's another  
9 way of sort of saying there's a presumption of innocence.  
10 It's a different concept in a sense, but that's how the  
11 presumption of innocence has effect. It's requiring the State  
12 to produce all the evidence necessary to convict somebody.  
13 And if you're going to presume somebody innocent, our law says  
14 you can't force him to produce evidence, or somehow hold  
15 against him the fact he doesn't produce evidence. Are you  
16 okay with all that?

17 A. Yeah.

18 Q. Now, I'd be stunned in this trial if the State puts  
19 on all of its evidence, and the defense doesn't have any  
20 questions and just sits there and just is polite to everybody,  
21 and introduces themselves, hi, I'm Mr. So and So. I don't  
22 have any questions of you, ma'am, or sir. I'd be stunned if  
23 that happened. But such an event would not be a circumstance  
24 against the Defense. Do you understand that?

25 A. Right.

1 Q. And still what you'd have to do is you measure all  
2 the evidence that's there. It doesn't even matter who brings  
3 you the evidence or what form the evidence comes in. Really  
4 what you do as a juror is just measure it all. If there's  
5 some defense evidence that's in there with the State's  
6 evidence, so be it.

7 The Defense may put on some evidence that hurts the  
8 Defendant real bad. They might put on some evidence, and  
9 maybe they think it's great for them, and it goes really bad  
10 on them. That's hurts him. That's okay. You can use it.  
11 Thanks. It worked out just fine because that strengthened the  
12 State's case even more, and that's very useful.

13 The State may put on evidence that we think is good  
14 for us or necessary for us. You might say, boy, that didn't  
15 go well for the State. That went really quite poorly. Are  
16 you with me on that?

17 A. Yeah.

18 Q. You can do that, but still when it comes time to  
19 weigh them, the only side of the scale you're worried about is  
20 the State's side. How much have they proved, and you don't  
21 oblige the Defendant to do anything else, okay?

22 A. Right.

23 Q. Okay. And if you find the Defendant guilty of  
24 capital murder, we have a punishment part of the trial, and  
25 that's to decide the life or death issues. And you're asked

1 to answer questions. It's not just a what do you want to do,  
2 Ladies and Gentlemen. It's, rather, you're asked to answer  
3 questions, but as you've already seen and are going to see,  
4 how you answer those questions is going to make a real  
5 difference in terms of the Defendant, because if you answer  
6 one way, he gets a life sentence; if you answer them another  
7 way, he gets a death sentence. And you're obviously an  
8 intelligent enough man that if you wanted to, you just simply  
9 decide what you want to do and mark the answers accordingly,  
10 and there's nothing we can do to stop it. You know, we can't  
11 go back there and say you did a wrong thing just by doing your  
12 wish rather than doing the evidence. But, we trust the  
13 conscience of the jurors and it works beautifully.

14 You're not -- whatever you tell me or whatever you  
15 tell Mr. Goeller or Mr. High on the other side is going to be  
16 the truth, and it works that way and I know it. So all we've  
17 got to now do is find out how you tick, and then we'll be  
18 comfortable with it.

19 Lawyers talk funny, and that's -- you know, some  
20 people when they call us mouthpieces they're probably more  
21 accurate than we like them to be, because a lot of times we  
22 do. And we're very odd in our language sometimes, and we  
23 can -- if we want to just because we do this for a living --  
24 if you did this eight hours a day, you'd be doing it, too.  
25 You'd go home and drink at night just like we've got to,

1 because this is how we live. And we could ask a question and  
2 get one answer, and then we can come up with something else  
3 and the answer will be exactly different because this is what  
4 we do all day long for amusement.

5 For example, do you remember the cars the Yugos? Do  
6 you remember those things?

7 A. Yes.

8 Q. Little boxy things made in Yugoslavia that looked  
9 like a Ford Festiva or something like that. And I could ask  
10 you, sir, no matter what the circumstances, would you ever buy  
11 a Yugo, and the answer for most people would probably be no,  
12 which is why they're out of business now. Where have you ever  
13 heard of a Yugo dealership? Where would you take your Yugo to  
14 get repaired? No, right?

15 Sir, is there anything I could do to convince you to  
16 buy a Yugo, your answer would probably be no. But if we found  
17 ourselves in some country that had a volcano and that thing  
18 started to percolate up, and the only car available was a  
19 Yugo, you know, here you are with your checkbook. You buy the  
20 Yugo.

21 So a lot of times nothing is absolute. And so the  
22 question that you ask might depend, would you steal from the  
23 grocery store? No, I wouldn't. What if you were starving and  
24 there wasn't any soup kitchen? Yeah, you would. We'd all do  
25 surprising things. So don't be surprised when you find one

1 side trying to get you to say one thing, and then a minute  
2 later the other side will try to get you to say something  
3 else. We -- you know, this is our professional life that we  
4 have.

5 This first question here has a lot of undefined  
6 terms, Mr. Jacob, and maybe that's good for jurors. I don't  
7 know. Jurors get by it okay because that's the same question  
8 every single capital trial involves if a jury has found a  
9 defendant guilty of capital murder. Have you read it?

10 A. Yes.

11 Q. The first word that we don't define is probability,  
12 and that has meanings in it in our society that may be  
13 different to different people. What's your profession? What  
14 kind of work do you do?

15 A. I work in the computer industry, an IT person.

16 Q. Do you program, or do you troubleshoot, are you a  
17 systems analyst? What do you do?

18 A. Troubleshoot, repair, a little bit of program.

19 Q. Well, probability may mean something different to  
20 you in your work than it might mean in your private life;  
21 would you agree with that?

22 A. Uh-huh.

23 Q. And it might mean something different to you than it  
24 would to somebody that, perhaps, manages a gift shop. It  
25 might just be because of the nature of this person's work, it

1 But probability may mean failure rate in the  
2 manufacturing setting. Are you with me?

3 A. Right.

4 Q. And it can also, when people are doing programming,  
5 it can also have a failure rate of the programming work  
6 itself. We'd like to think that our programmer would think of  
7 every possibility that could ever arise under circumstances  
8 and could eliminate all possibilities of the computer doing an  
9 odd thing or doing an awful thing maybe. But still there is a  
10 probability the program is going to be wrong, or something  
11 didn't get thought of that should have.

12 Look at all that Y-2K stuff that never materialized.  
13 Nobody, when they were making that stuff, ever even thought  
14 about that, and I guess that's a failure in a sense that they  
15 didn't think about it. It turned out that the probability of  
16 it being a problem was overstated, I guess, what everybody  
17 knew.

18 Where it's different than maybe that, because a 2  
19 percent failure rate might be a 98 -- well, it might be a 2  
20 percent probability of failure. Are you with me on that?

21 A. Yeah.

22 Q. A 1 percent -- one-tenth of 1 percent is still a  
23 probability it can happen.

24 A. Uh-huh.

25 Q. So in some contexts, possibility and probability may

1 might be different; is that right?

2 A. I believe so.

3 Q. And why I talk about that, when we talk about  
4 probability, in a technical sense the term probability,  
5 especially in your troubleshooting area, your analysis comes  
6 in, probability might have something to do with failure rate,  
7 for example, in some context. Would you agree with that?

8 A. Yes.

9 Q. I'm not a chip person, but I've got to believe even  
10 sophisticated computer chips have some failure rate. I mean,  
11 as much as they try to make them right, and as much as they  
12 try to slice them exactly the way they need to be sliced, a  
13 percentage of chips will fail; is that right?

14 A. That's right.

15 Q. And they make them someplace -- they make them in  
16 Singapore and typically in a third-world country because labor  
17 is cheaper, but wherever they are, at some point they're  
18 subjected to test. We'll have a final test center before we  
19 put those things into product. And the concept of testing  
20 obviously applies a failure rate?

21 A. Right.

22 Q. And that's a probability. I would hope we're not  
23 making computer chips that have a failure rate of more than 50  
24 percent to be more likely than not. If we do, some work needs  
25 to be done because that's not good manufacturing.

1 be the same thing. In other contexts they may not. If I ask  
2 you, are you going to go to the neighbor block party on Friday  
3 night, and you tell me probably. In that setting I would  
4 think it's more than likely that I'm going to see you there  
5 than not, unless you're one of those people that just doesn't  
6 like to say no, so you say -- you know what I'm saying?

7 A. Right.

8 Q. And that might depend on whether I knew you very  
9 well or not. But most people when they say probably -- I will  
10 probably do something, that means more likely than not.

11 If you're a weather forecaster, and you say there's  
12 a 20 percent probability of showers tomorrow, that's less than  
13 50/50, but at the same time it's a real mathematical  
14 likelihood that 20 percent of the time it's really going to  
15 happen.

16 A. Right.

17 Q. In our legal setting, while we don't have the  
18 definition of probability, we do know that it's more than a  
19 possibility. It's more than just, yes, such a thing could  
20 happen. I like to say it's a realistic likelihood that an  
21 event will occur. Somebody else might say -- they like to say  
22 it's more likely than not, and they're just as good as I am on  
23 it because it's not defined. I mean, we're free to define  
24 it. We're not free to say it's merely a possibility only  
25 because if that were the case -- if all we ever had to prove

1 was a mere possibility that someone would commit criminal acts  
2 of violence that would constitute a continuing threat to  
3 society, then the only way that question could ever be  
4 answered no would be if you were evaluating a dead person.  
5 You with me?

6 **A. I got you.**

7 **Q.** Mother Theresa, maybe the world's greatest --  
8 not-living-any-longer human being -- but maybe the 20th  
9 Century's most admirable and loving human being, I guess  
10 there's a probability she could have taken up a machine gun  
11 and gone after a village. I mean, anything could happen. Do  
12 you follow what I'm saying?

13 **A. Yes.**

14 **Q.** But what we knew about her, it would not be a  
15 realistic possibility. It would not be something one would  
16 expect would ever happen.

17 **A. Yeah.**

18 **Q.** The second thing in that question that's really not  
19 defined for us is criminal acts of violence. It seems simple  
20 enough and straight-forward enough, but different people might  
21 see it differently. We all agree that murder is a criminal  
22 act of violence. I think -- I think we would all agree with  
23 that.

24 It gets thornier in some people's minds because they  
25 may see murder where other people don't see murder. For

1 example, if I drop a bomb on an enemy country because I'm a  
2 pilot, well, we think in time of combat with a righteous or  
3 just kind of a war that we're doing, we think, well, yes,  
4 that's intentionally causing the death of another human being,  
5 but we don't think of that as murder in our society. Are you  
6 with me on that?

7 **A. Yes.**

8 **Q.** Because we think there's a justification; we're at  
9 war. We don't think of that as murder. People on the other  
10 side, the people down on the ground losing their children or  
11 their moms or dads, may see it differently because they may  
12 have a different view of whether or not the combat was  
13 justified. We might not even say that's a criminal act of  
14 violence because we think it's justified. Woe to the pilot  
15 that parachutes down when his plane is shot up because he may  
16 find himself on trial for that very thing according to their  
17 culture.

18 In our society there are people who believe that  
19 doctors who perform pregnancy terminations are murderers.  
20 They do. And whether you or I disagree with that or not,  
21 that's still their view. And they may view that doctor as  
22 performing criminal acts of violence; i.e., murder. They may  
23 believe that, and that's how they see it. And mercy killing.  
24 There may be some people who would say that what Dr. Kevorkian  
25 does, and that is cause the death of people who want to die,

1 they may say that's not a criminal act of violence. That's  
2 loving and facilitative to people who are in extremis and want  
3 that to occur for them. And so even that question isn't real  
4 simple because there's some play at the joints.

5 We mostly know what a criminal act of violence is;  
6 that's shooting somebody, stabbing somebody, throwing a big  
7 old brick at their face, setting them on fire with gasoline,  
8 staking them down to a fire ant hole and letting the ants turn  
9 them into a skeleton. Those kinds of things, we all kind of  
10 recognize as criminal acts of violence.

11 At the same time there are some things that we  
12 recognize could never be criminal acts of violence, like  
13 shoplifting. That's not a criminal act of violence. It may  
14 sometimes result in criminal acts of violence, like if they  
15 try to catch you and you fight back when they're stealing from  
16 you, but shoplifting itself is not a criminal act of violence.  
17 Tax cheating is not a criminal act of violence. Deserting  
18 from the military is not a criminal act of violence unless you  
19 knock the sentry in the head to get out, or over the gate or  
20 something like that.

21 **A. Right.**

22 **Q.** And then there's some things right in the middle  
23 that have violence all around them, but aren't in and of  
24 themselves violent, like drug dealing. Let's talk about drug  
25 dealing. If I said to you, there's a guy out in the parking

1 lot selling cocaine, and that's all he was doing. He's out  
2 there selling cocaine to anybody that would buy. Do you think  
3 he's committing a criminal act of violence out there in the  
4 parking lot?

5 **A. I believe so, just because of the effects of what  
6 he's doing on other people and just the nature of that  
7 livelihood, I guess you could say.**

8 **Q.** Makes sense to me. I've had jurors go both ways on  
9 me when I ask that question. Some say, well, no, buying and  
10 selling is not a criminal act of violence. That doesn't mean  
11 they love drugs, or that they're somehow forgiving of drugs  
12 and all that stuff. They just say that's not violent.

13 Other people say, no, first of all, those drugs are  
14 going to go somewhere; that is, into somebody's body because  
15 that's what happening, and that's doing violence to a person  
16 to sell him something that you know he's going to put in his  
17 body that's going to hurt or kill him. And then they also  
18 say, furthermore, when persons take those kinds of drugs, we  
19 all know what they do, and they have the potential to make you  
20 violent, and these drugs can turn people so vicious and so  
21 dangerous that providing that makes you as guilty of their  
22 violence as selling Timothy McVeigh his ammonium nitrate if  
23 you knew what he was going to use that for. Yeah, you didn't  
24 mix it up in the Ryder truck, but you knew what he was doing,  
25 and you're just as guilty of the violence that results as if

1 you had done it yourself.  
 2 And other people say it's so violent. These people  
 3 are always hopped up and shooting each other and bullets  
 4 flying everywhere. Half these drive-by things, that's  
 5 probably somehow related to drugs in some regard. Little  
 6 babies get their life ended just because one drug dealer  
 7 shooting at another drug dealer and not-a-very-good-shot kind  
 8 of thing. So, you recognize the notion that drug dealing  
 9 could be a criminal act of violence, also?

10 **A. It could in the right circumstances, I would think.**

11 Q. Okay. And then we have that continuing threat to  
 12 society, and continuing threat is really not defined. I mean,  
 13 we -- I mean, I guess that has to happen -- you know, it has  
 14 to be an act of violence once a day in order for that person  
 15 to be a threat. And other people say, no, a person is a  
 16 threat as long as that person is alive. Doesn't mean it won't  
 17 happen today or tomorrow. It might not be the circumstances,  
 18 but one day that's probable that this person is going to do  
 19 violent things again. Are you with me?

20 **A. Yes.**

21 Q. And I go the circus, and I see those tigers there.  
 22 I certainly hope there's not a huge probability they're ever  
 23 going to get out and start coming into the audience kind of  
 24 thing. But at the same time, yes, they are a continuing  
 25 threat to society and simply because they're caged at a

1 question is designed for, but it seems like what it's really  
 2 asking you is to measure the personality -- to evaluate the  
 3 personality of the Defendant, and his personality for being  
 4 violent. And then say is that personality something that  
 5 threatens our society? It could be any -- for example, the  
 6 question could be asked is a capital murder defendant that  
 7 I've just found guilty, is he safe to be working in a school?  
 8 Is he safe to be driving a bus? If I were walking down the  
 9 street, and I saw him coming toward me, would I want to move  
 10 to the other side of the street, or duck into an alley because  
 11 I saw him.

12 And you could say that -- you could say, well, maybe  
 13 that question means prison society because we know if you  
 14 answer that question no, then he's going to go prison. It's  
 15 not like -- let's face it, unless a defendant escapes or the  
 16 Governor pardons him, the likelihood is we're not going to see  
 17 him tonight at the ice cream store. That's a fact.

18 So, if you narrowly look at that question, you can  
 19 say the only society I'm going to have any vision about, any  
 20 future seeing about has got to be prison society, because he's  
 21 going to prison either way. It's just a question does he go  
 22 to death row or go to life sentence row down in Texas  
 23 Department of Criminal Justice? But the question doesn't  
 24 limit itself to society in the prison -- which could very  
 25 easily be because of such things as escape. And I mean it --

1 particular time doesn't mean they will never have the  
 2 opportunity to bite a hand or claw somebody or advantage  
 3 themselves with their own tiger-like personality.

4 **A. Right.**

5 Q. And then finally, society is not defined. And when  
 6 we first see society we have a tendency -- because we behave  
 7 ourselves as citizens, we have a tendency to believe society  
 8 must mean where you work, where your spouse works, where your  
 9 kids go to school, where you go to restaurants at night, the  
 10 Grand Canyon when you go take a vacation out there. We think  
 11 of that as being society, and yet, there are other societies  
 12 that are also part of our society that we don't really think  
 13 about. We don't usually think of the military when we think  
 14 of American society because we somehow think that's  
 15 different. We don't think of prison because we think that's  
 16 not part of our life. We don't think of hospices or hospitals  
 17 or -- you know, emergency rooms as part of society, because  
 18 most of the time that's not really a part of our life. And  
 19 yet, every place there are people, it's part of society.  
 20 Would you agree with that?

21 **A. Yeah, I would. I mean, society is all humankind.**  
 22 **If you're in, as you said, a prison, that's your society. In**  
 23 **a church, in a hospital, wherever you are, that's your**  
 24 **society.**

25 Q. And it seems like -- nobody can tell you what that

1 it could also simply be because they just want you to look at  
 2 the big picture.

3 I mean, after all, it's our society -- our whole  
 4 society. Maybe somebody that doesn't belong where we are  
 5 because he's dangerous is somebody that we bypass, put in  
 6 prison for life. We just say he's too dangerous to live with  
 7 us because of future acts of violence, so let's kill him. It  
 8 could mean that's what that question really means. And you're  
 9 free to consider society and consider all possible aspects of  
 10 society, right?

11 **A. Right. That's the way I would feel. I would feel**  
 12 **society is everybody. I mean, it depends where you are at the**  
 13 **time, I would think.**

14 Q. Nobody could say you're wrong or right, but they  
 15 could certainly say what you're saying is reasonable and it's  
 16 acceptable given that question.

17 Some things clearly are not criminal acts of  
 18 violence, and yet they're very helpful in answering this  
 19 question because if I'm right, and what you're looking at is  
 20 the Defendant's personality and his acts of violence, there  
 21 are things that could be shown you that we consider bad or not  
 22 good behavior, and yet would not be criminal -- would not be  
 23 violent in and of themselves but they give you a clue into the  
 24 Defendant's personality.

25 I mean, for example, shoplifting, while we all agree

1 that's not a criminal act of violence, that might help you  
 2 understand the personality of somebody and say to yourself  
 3 this is a person who doesn't follow any of society's rules or  
 4 even basic moral teachings, and so whatever circumstances he  
 5 finds himself in, he's willing to set himself up to do  
 6 whatever he wants to, to advantage himself at the time,  
 7 whether that's steal or kill or rob, or whatever he wants to  
 8 do. You know, deserting from the military. It may -- I mean,  
 9 it may be, for example, that deserting from the military is  
 10 not violent at all, and yet it might give some indication into  
 11 the character of a person to say, well, here's a fellow that  
 12 instead of following the rules that ironically he got himself  
 13 into, anyway. In modern America we don't have a draft. And  
 14 then when he decided he wanted to do something different, he  
 15 just followed his own rules. It's a crime. It's a crime to  
 16 desert from the military, but it's not a crime of violence.

17 **A. Right.**

18 **Q.** There may be times if you're over in a combat zone  
 19 and you desert, that might get some other guys killed, but --  
 20 you know, you just hop out of whatever installation you are.  
 21 It's not a criminal act of violence.

22 **Do you find yourself being the kind of man who could**  
 23 **work with such a question, and if we convinced you beyond a**  
 24 **reasonable doubt that the answer should be yes, you would vote**  
 25 **yes?**

1 **A. Uh-huh.**

2 **Q.** And if we failed to convince you that the answer  
 3 should be yes beyond a reasonable doubt, you could vote no?

4 **A. Right, right. But I think I probably would like to**  
 5 **hear some more definitions of some of these terms. How far**  
 6 **can you go as far as looking at acts of violence, or criminal**  
 7 **acts being acts of violence? You know, how far can you go on**  
 8 **that? What can you consider as far as that goes?**  
 9 **Probabilities, again that's -- probably need a little**  
 10 **clarification on what probabilities, possibility would be,**  
 11 **that type of thing.**

12 **Q.** I wish I could promise you that. A lot of the  
 13 questions -- a lot of observations you might make, I could  
 14 say, well, the Judge is going to give you good instructions on  
 15 that. For example, like -- things like burden of proof, I can  
 16 promise you the Judge will give you the authoritative  
 17 instruction on what the burden of proof is. And I can promise  
 18 you the Judge will give you a definition of what intentional  
 19 means, and the Judge will give you a definition of what  
 20 causation means, what it means to legally cause somebody  
 21 else's death. And I promise you that in areas of law that the  
 22 Judge will give you all of the instructions that you're  
 23 entitled to.

24 **Unfortunately, something else I can promise you, is**  
 25 **that neither the Judge nor any of us will give you an**

1 authoritative definition of probability, of criminal acts of  
 2 violence or continuing threat to society.

3 **What I told you before about lawyers and being able**  
 4 **to say it different ways, Mr. Goeller will give you a**  
 5 **different, perhaps, interpretation of what he thinks that**  
 6 **question means, or what those words mean, and he's just as**  
 7 **free as I am because, for the most part, there aren't**  
 8 **definitions.**

9 **Probability has a sort of definition. More than a**  
 10 **theoretical, or -- you know, having the stratospheric kind of**  
 11 **possibility. But other than, you know, probably 20 percent,**  
 12 **that's probably probable. 50 percent is probable. It's not**  
 13 **beyond a reasonable doubt. That would not -- no one could**  
 14 **ever prove that. If I had to come in here and try to convince**  
 15 **you somebody is going -- beyond a reasonable doubt going to**  
 16 **commit crimes of violence in the future, I'm not sure how I**  
 17 **could ever do that. I only have to prove to you a probability**  
 18 **that the person will. You won't get any more help than I'm**  
 19 **giving you now, or that Mr. Goeller will give you on that.**  
 20 **It's not that we're not cooperating. The law doesn't allow us**  
 21 **to do that.**

22 **So, you're going to have to decide what probability**  
 23 **means to you, what a criminal act of violence is, and what a**  
 24 **continuing threat to society is, and what society we're**  
 25 **talking about, and that's about as good as it can be. But I**

1 **I bet you won't have trouble with it if you're seated on this**  
 2 **jury. Because that's the same thing all juries get, and they**  
 3 **get the same answers that -- from their judge in that county**  
 4 **or that jurisdiction that you'll get from this Judge if you're**  
 5 **selected.**

6 **The first thing you get to consider on that question**  
 7 **is all the evidence you used in finding the Defendant guilty.**  
 8 **And many people say, you know, that's the most important thing**  
 9 **anyway. If I look at how a person committed a crime, how long**  
 10 **he thought about committing that crime, why he committed that**  
 11 **crime, what he did after he committed that crime, how he**  
 12 **seemed to respond to the shock, if there was a shock of having**  
 13 **done something like that, are all real important because I**  
 14 **could see how somebody could commit an awful crime, and then,**  
 15 **depending on why they did it, and how they were afterward --**  
 16 **immediately afterward and what they did, I can see how they**  
 17 **wouldn't automatically be a continuing threat to society.**  
 18 **People can do things for the -- for reasons, once you get to**  
 19 **looking at them, we can't excuse. But in an overall context,**  
 20 **even a good person could do a crime like that. Do you know**  
 21 **what I'm saying?**

22 **A. Yes.**

23 **Q.** I always think of that one example of the two guys  
 24 murder a fellow's child cruelly and awfully, and they get  
 25 charged. They get brought to trial, and over some legal

1 technicality, they get turned loose. The judge says, oh,  
 2 well, I agree with the defense so you can leave. Good luck to  
 3 you. They go walking out of the courtroom, and daddy is  
 4 sitting in the audience back here, and he watches them go out  
 5 and they  
 6 smirk and wink their eyes. They don't have any remorse.  
 7 They're proud of what they've done. That dad may say, people  
 8 like that are not fit to live. I can't let that happen. The  
 9 system failed me, so I'm going to take the law into my own  
 10 hands. He goes, gets his gun, finds where they are and kills  
 11 them. Capital murder. There's no way to say it isn't  
 12 intentional causing the death of two people.

13 And yet you get to that question, and the guy has  
 14 been a good guy all his life, and you and I understand -- we  
 15 understand how that happened, you know? And we say, gosh,  
 16 he's a broken man. He's never going to be a danger to  
 17 society. Never has been before. You know, except that we  
 18 can't countenance what he did. I mean, truthfully he's  
 19 probably benefitting society, if we be honest about it. We  
 20 just can't let people be doing that themselves. And you can  
 21 see how some people would answer that question no, he's not  
 22 going to be a danger to society because of how he did it,  
 23 right?

24 **A. Right, exactly.**

25 **Q.** There are other circumstances. Maybe he had a

1 stroke after he committed a crime. There's a horrible crime,  
 2 and he's the world's most dangerous person and he had a stroke  
 3 that makes him incapable of being dangerous just because of  
 4 that medical condition. Are you with me on that?

5 **A. I believe the probability drops very low.**

6 **Q.** Absolutely. And the answer would be no, even though  
 7 it's an awful person. I mean, a person we like could be  
 8 dangerous; a person we don't like could be undangerous just  
 9 depending on the circumstances.

10 **A. Uh-huh, right.**

11 **Q.** You could vote either way depending on the evidence?

12 **A. (Shakes head.)**

13 **Q.** The result of that, though, is going to be very  
 14 different, because if you vote no on that question and nine  
 15 others members of the jury vote no, do you know what happens  
 16 to the Defendant if that first question is answered no, he's  
 17 not a continuing threat to society?

18 **A. It would be life in prison.**

19 **Q.** Absolutely, automatically. You go home, I go home,  
 20 the Judge goes home. He goes to prison and begins serving his  
 21 life sentence, and that's the end of all our work in this  
 22 case.

23 **A. Right.**

24 **Q.** There would be a temptation, since jurors know the  
 25 results of the answers will determine the results to the

1 Defendant, there would be a tendency to want to answer a  
 2 question in a way that went along with what you thought ought  
 3 to happen to the Defendant. Do you follow what I'm saying?

4 **A. I see what you're saying. I don't know if I agree,  
 5 but I see what you're saying.**

6 **Q.** I'm not saying you're that kind of person, but let's  
 7 face it, you're hearing some evidence and you want to give a  
 8 guy a life sentence, why mess around with looking at the  
 9 questions? Just vote no, and that's a life sentence; do you  
 10 follow what I'm saying?

11 **A. I see what you're saying.**

12 **Q.** Or if you want to kill a guy because you've heard  
 13 the evidence and you say this guy needs to be killed, why not  
 14 just go ahead and answer yes to make sure we get him killed  
 15 because that's what a yes answer is going to do. That's  
 16 where the juror's conscience comes in. Your willingness to  
 17 look at the evidence and decide whether it's been proven or  
 18 not. And since you've said you're an open-minded person who  
 19 could go either way according to the evidence, all you're  
 20 doing is answering those questions fairly. And you said you  
 21 could do that?

22 **A. Right, absolutely.**

23 **Q.** If you answer no, as I told you, that's the end of  
 24 the trial. It's finished. If you answer the question yes,  
 25 you have another question. That's the so-called mitigation,

1 last chance, humanitarian question, which is a very good thing  
 2 for a jury to have, I think. I'm curious if you'll agree with  
 3 me. Juries are people who make up our society, and in many  
 4 ways juries are the representatives of our society in this  
 5 little narrow area of work we do known as criminal justice.

6 **A. Uh-huh.**

7 **Q.** Society brings 12 people into a courtroom and  
 8 assigns them the task of doing society's business, and that is  
 9 deciding, first of all, is one of our citizens guilty of a  
 10 crime. And if you find that person is guilty of a crime, then  
 11 what punishment happens? But juries aren't robots, and we  
 12 wouldn't want them to be. They're not computers, and they've  
 13 got hearts, and they've got life experience and tenderness  
 14 about them and wisdom beyond description. And the idea of  
 15 that question is, you know, it's possible that a jury would  
 16 listen to evidence and be convinced very clearly the defendant  
 17 is guilty of capital murder and so he's convicted. They get  
 18 to that first special issue and they're convinced beyond a  
 19 reasonable doubt that this person is probably going to be  
 20 threat to our society in the future.

21 And yet, having done that, just like I asked you,  
 22 they may -- they may think it doesn't seem right that this  
 23 fellow dies, even though he's a capital murderer and even  
 24 though he's dangerous and I've answered those questions.  
 25 There's something about him or about his crime or about his

1 background or about the unusual circumstances of this whole  
2 situation that makes that jury feel a life sentence is the  
3 right thing and a death sentence is the wrong thing.

4 That question is really a gift to the trial jury to  
5 let their hearts and their feelings have some expression in  
6 the outcome of this case. Now, it's not just, oh, let's give  
7 the guy a break kind of thing. That's not what the  
8 question says. It still requires the jury to measure  
9 evidence. Because it talks about sufficient mitigating  
10 evidence there. It doesn't just say is there any mitigating  
11 evidence, because everybody has got that. Is it sufficient  
12 mitigating evidence that makes a life sentence appropriate.

13 So much that must be measuring -- wherever on the  
14 scales of justice sufficient must mean, it's got to -- is up  
15 to you. You won't get a definition on it. But, I think the  
16 question seems to say that there's got to be a quantity of  
17 mitigating evidence that that individual voting juror thinks  
18 is sufficient, believes is sufficient. Now, there's no burden  
19 of proof.

20 When I was playing with Matt earlier, that was my  
21 point when I said, you know, you might say he hasn't proved  
22 that there's enough mitigation. And the point of that -- the  
23 point of that was only to illustrate the defense has as much  
24 burden as the State has on that question. We either have  
25 little or none or all. We're all the same. It's just from

1 any source somebody on the jury -- every juror is going to  
2 have to decide what is sufficient or not. You know, they can  
3 put on no evidence, and we can put on all of it and our  
4 evidence ends up being sufficient mitigating. And we could  
5 put on no evidence, and they could put on everything, and  
6 you'd say that's not sufficient. It's not who has the most  
7 witnesses or the most talking.

8 I'm getting near the end, Your Honor.

9 THE COURT: All right. Good.

10 MR. SCHULTZ: I'm sensing the Court's feelings.

11 Q. BY MR. SCHULTZ: The idea is everybody has  
12 mitigating evidence floating around them. I've never met a  
13 human being in this land yet who hasn't had some sadness in  
14 his or her life growing up. We get some good breaks; we get  
15 some bad breaks. You know, the strangest things happen to us.  
16 We're not doing anything wrong. We go swimming out in a lake  
17 and we get that weird amoeba that kills people. I mean, a  
18 perfectly healthy child two days later is dead because of some  
19 once in 50 trillion gallons of water amoeba, you know that  
20 kind of thing. People that lose somebody like that, that's a  
21 mitigating circumstance. It's terribly sad. It changes  
22 people's lives with something like that.

23 Hitler, when you look at Hitler's life -- if he  
24 hadn't been a mass murderer and a vengeful, cruel scapegoater,  
25 had a lot of things that went wrong in his life. I mean, he

1 was teased as a child, he was sickly. His dad was stern and  
2 at least austere, if not downright violent. Poor Hitler tried  
3 to do everything he could to fit in the world, and the more he  
4 tried, the more he just got dissed by everybody that watched  
5 him. He finally couldn't -- they called him sissy, so he goes  
6 to art school, which I guess didn't help any with them calling  
7 him sissy. But nevertheless, he goes and tries to learn how  
8 to paint. They throw him out of there saying, you're not only  
9 no good at anything else, you're not even any good at this.  
10 And they throw him out of there. He had trouble with  
11 relationships, and women didn't like him. He had some kind of  
12 weird neurological thing, he couldn't let people touch him.  
13 Anytime anybody would touch him, he'd pull back and was very  
14 (inaudible), so he could never get close to anybody in a  
15 tectal kind of way.

16 Went in the military. Some people say all they let  
17 him do was peel potatoes. He became a corporal and wanted to  
18 serve his county in World War I and probably wasn't given the  
19 opportunity. Nobody appreciated him then. The only thing he  
20 could do was talk to folks and move them along towards his  
21 heinous goals.

22 And if that wasn't bad enough, somebody gave him a  
23 dose of syphilis somewhere in his life, and that increased his  
24 mental illness to some extent because it apparently  
25 metastasized up in his brain. And all that is real sad if

1 you're not looking at what he did. And yet, I know no  
2 sensible human perhaps would say that's sufficient mitigating  
3 evidence to justify killing six million people. Are you with  
4 me on that?

5 A. Yes.

6 Q. And yet, everybody has things like that. A lot of  
7 people -- 50 percent of us maybe are going to come from broken  
8 homes, if the divorce rate is what we hear it is. That's  
9 going to happen. Bunches of kids are going to get on drugs,  
10 and that's going to maybe make them different. It's going to  
11 wreck their bodies and create havoc with their divine spirit.  
12 But nevertheless, that's not society's problems, what  
13 misfortunes they had. People can overcome their misfortunes,  
14 and do you agree with that?

15 A. Yes, I do.

16 Q. And good people emerge from crummy backgrounds, and  
17 bad people come from what we would say is the "good life."

18 A. Yeah.

19 Q. Do you have any questions of me?

20 A. Not right now, I don't think.

21 MR. SCHULTZ: Thank you so much, Mr. Jacob.  
22 I'll pass the juror.

23 THE COURT: Thank you, Mr. Schultz.

24 Mr. Goeller, or is it --

25 MR. HIGH: I'm going to handle this juror --



- 1 THE COURT: All right, go ahead.  
 2 MR. HIGH: -- Judge.  
 3 THE COURT: All right.  
 4 CROSS-QUESTIONS  
 5 BY MR. HIGH:  
 6 Q. Mr. Jacob, good after -- good morning.  
 7 A. **Good morning.**  
 8 Q. Almost afternoon.  
 9 My name is Don High, and I'm also working on the  
 10 case with Matt Goeller. He's my co-counsel. I'm assisting  
 11 him on the case. And I haven't had a chance to talk at all  
 12 yet, so this is the first time you've heard me.  
 13 A. **Okay.**  
 14 Q. I don't have near the questions that Mr. Schultz  
 15 has, so that should be good news for you. Do you need to  
 16 stretch? Do you need to stand up or anything?  
 17 A. **No, I think I'm fine. Thank you.**  
 18 Q. Great.  
 19 I want to go to your questionnaire. There's been  
 20 some questions about your questionnaire. Do you want to look  
 21 at it? Do you remember pretty much everything you said in  
 22 your questionnaire?  
 23 A. **I think I pretty much remember, or if I don't, I'm**  
 24 **sure that feelings are the same.**  
 25 Q. Let's go, first of all, where you were born.

- 1 Manchester, New Hampshire?  
 2 A. **Yes.**  
 3 Q. How long did you live up there?  
 4 A. **I lived there -- I moved away in 1978, so 27 years.**  
 5 Q. All right. So you spent your youth up there?  
 6 A. **Yes.**  
 7 Q. Got all your education up there?  
 8 A. **Yes.**  
 9 Q. And you still have some family up in that area?  
 10 A. **Yes, I do.**  
 11 Q. Okay. What took you away from Manchester?  
 12 A. **A job transfer.**  
 13 Q. Where did you go?  
 14 A. **I went to Salt Lake City.**  
 15 Q. I bet that was a tremendous adjustment?  
 16 A. **It was a big change.**  
 17 Q. How long did you live in Salt Lake City?  
 18 A. **I think about two years.**  
 19 Q. Did some skiing out there?  
 20 A. **You know, I didn't do any skiing when I lived there.**  
 21 Q. Too bad.  
 22 A. **I go back now and do it.**  
 23 Q. You look back on that and say, why didn't I?  
 24 A. **Exactly.**  
 25 Q. Where did you move from Salt Lake?

- 1 A. **From Salt Lake --**  
 2 Q. Yeah.  
 3 A. **-- I moved to Mobile, Alabama. Again, that was a**  
 4 **job transfer.**  
 5 Q. Okay. And how long were you in Mobile?  
 6 A. **Probably a year and a half.**  
 7 Q. And then moved from there, I take it?  
 8 A. **To Houston.**  
 9 Q. Houston. And how long in Houston?  
 10 A. **Probably a little over a year, two years, year or**  
 11 **two.**  
 12 Q. And then moved from there --  
 13 A. **To here.**  
 14 Q. -- to here? Okay.  
 15 A. **Dallas, uh-huh.**  
 16 Q. And I know you indicated how long you've been here.  
 17 Tell me again how long you've been in this area.  
 18 A. **I'm going to say 14, 15 years probably.**  
 19 Q. So this is becoming home?  
 20 A. **Yes.**  
 21 Q. 6708 Dapper Drive, Dallas, Texas. Where exactly is  
 22 that located?  
 23 A. **It's north of Frankford off of Hillcrest.**  
 24 Q. All right. And most folks would be surprised to  
 25 learn that's Collin County?

- 1 A. **It is.**  
 2 Q. Just barely in Collin County?  
 3 A. **Just barely in Collin County, yeah.**  
 4 Q. And is this the address that you've occupied most of  
 5 the time you've lived in Dallas?  
 6 A. **No. I've only been there a little over a year.**  
 7 **Prior to that I lived 12, 13 years near Whiterock Lake.**  
 8 Q. That's a good place to live.  
 9 A. **Yeah, I loved it. It was nice. I like where I live**  
 10 **now.**  
 11 Q. And I noticed you previously served on a jury. Was  
 12 that here, or was that in Dallas County?  
 13 A. **It was in Dallas County.**  
 14 Q. Approximately when was it that?  
 15 A. **I'm going to say it was about two and a half years**  
 16 **ago probably. Two and a half, three years.**  
 17 Q. That was in a DWI case?  
 18 A. **Yes.**  
 19 Q. And I take it you guys decided guilt-innocence, and  
 20 you found the person guilty, and then you didn't do the  
 21 sentencing. The judge set the punishment?  
 22 A. **Exactly.**  
 23 Q. Now, it asked you -- it says, are you in favor of  
 24 the death penalty? And you say yes. And you say, "In some  
 25 cases the death penalty is the appropriate price to be paid."

1 Is there anything you want to add to that? Is there anything  
 2 you want to say to clarify that?  
 3 I guess I'm wanting to -- I want you to add to that  
 4 a little bit, if you will.  
 5 A. Okay. I think the death penalty is appropriate  
 6 depending on the circumstances surrounding, I guess, the crime  
 7 that was committed, a lot to do with the person who was  
 8 committing the crime, if they committed the crime, what lead  
 9 to that person's background, that type of thing, the violence  
 10 involved in the crime.  
 11 Q. All right.  
 12 A. If there's no -- if it doesn't look like there's any  
 13 hope for rehabilitation, or that type of thing.  
 14 Q. Thank you. That helps a lot.  
 15 And I believe my perspective is the same as yours,  
 16 too. I take it that -- and I picked this up a lot when  
 17 Mr. Schultz was visiting with you. I take it that a death  
 18 penalty is not going to be automatic for you?  
 19 A. No.  
 20 Q. You didn't --  
 21 A. I think it's a very serious thing, and I think it's  
 22 going to be a tough decision one way or the other. I'm not  
 23 saying that I can't, or that I've changed my views on death  
 24 penalty. But I think that with this jury selection going on  
 25 and thinking about it, it's going to require some thought and

1 definitely looking into a lot of issues.  
 2 Q. Absolutely it does.  
 3 And I'll bet when you filled out this  
 4 questionnaire, you've got death penalty right up front, that  
 5 was pretty shocking, I'm sure?  
 6 A. Yes.  
 7 Q. All right. On the second page it asks you what the  
 8 best argument in favor of the death penalty is. And then it  
 9 says, "What is the best argument in opposition to the death  
 10 penalty?" And your response was, "There is always the  
 11 possibility of a person being wrongfully convicted, or a  
 12 guilty person could be rehabilitated." And I want to ask you  
 13 about the last part of that, the "or a guilty person could be  
 14 rehabilitated."  
 15 Is that -- is that your own personal belief, or is  
 16 that -- is that just what you've read and seen other people  
 17 say in terms of --  
 18 A. No. That would be what I believe. You know, just  
 19 looking back or reading some stories about people who have  
 20 been sentenced either to life or are on death row, and  
 21 possibly changing, you know, or looks like they've probably  
 22 changed, do not have violence (sic) tendencies, that type of  
 23 thing. So, I would think that's possible.  
 24 Q. And I take it if you were a sentencing juror that  
 25 that would be something that would be very important to you as

1 to, yes, there is a possibility that they could be  
 2 rehabilitation, or no, in fact, there's just no way?  
 3 A. No. I think it would be something I definitely  
 4 would have to weigh. I would have to weigh the person's  
 5 background, personality, that type of thing.  
 6 Q. But it would be important?  
 7 A. As best as I could. It would be important.  
 8 Q. That leads me to think about one person in  
 9 particular that was executed earlier this year, and that's  
 10 Carla Faye Tucker.  
 11 A. Uh-huh.  
 12 Q. Did you follow that story at all?  
 13 A. No, no. Just what I heard on the news, and usually  
 14 I didn't really delve into it and follow it very closely.  
 15 Q. What did you hear on the news?  
 16 A. It was the first woman executed since, gosh, years  
 17 and years.  
 18 Q. Okay.  
 19 A. And really I'm not familiar --  
 20 Q. Heinous crime.  
 21 A. -- circumstances -- yeah.  
 22 Q. Yeah.  
 23 A. I think it was murdering husbands.  
 24 Q. That's right.  
 25 A. Yeah, coming back a little bit. That's about all I

1 know.  
 2 Q. Okay.  
 3 A. I mean --  
 4 Q. It was many years ago?  
 5 A. Yeah.  
 6 Q. And that since she's been -- she received the death  
 7 penalty, obviously?  
 8 A. Right.  
 9 Q. Since she's been in jail, she's changed her life,  
 10 turned her life around, evidently become a practicing  
 11 Christian, evangelical, if you will, talking with people about  
 12 her faith, sharing the gospel. Some said that she changed.  
 13 Who knows, but that's what the media told us, anyway. And I  
 14 think there was an effort to -- or some push to save her life  
 15 there towards the end. Of course, that didn't happen.  
 16 What about that kind of situation; how does that  
 17 strike you?  
 18 A. Well, again that's hindsight. I think -- you know,  
 19 I would have to weigh that person at that moment and what went  
 20 on in the past. That's all you can do. You can't see into  
 21 the future. Is this person going to all the sudden be turned  
 22 around and not be a threat to society? Looking at the past I  
 23 think you need to make that determination at that point. So,  
 24 I mean, it's very hard to say unless you have hindsight and  
 25 can see into the future.

1 Q. Okay. So, obviously this is a situation that kind  
2 of falls into what you're talking about; the change, the  
3 rehabilitation, that sort of thing?  
4 A. Uh-huh.  
5 Q. Let's assume that she had changed. Let's assume she  
6 was different than when she committed murder 14, 15 years ago.  
7 How does that strike you? You now have a changed person  
8 that's been put to death, does that affect you at all?  
9 A. I think it affects me a little bit, but, again, the  
10 person went through the trial, and if there had been some sign  
11 of some change at that time where the jurors could have made a  
12 decision whether to stay with the death penalty or go with a  
13 life sentence, or whatever other options there were, I think  
14 that would have been fine. I think that's probably the way I  
15 would go.  
16 Q. Okay.  
17 A. But at the time of the trial, you're faced with the  
18 facts that you're given, and I think you need to weigh your  
19 decision on those facts.  
20 Q. Absolutely. And so if you were to sit on the jury,  
21 that would be important to you --  
22 A. Uh-huh.  
23 Q. -- with respect to, you know, is there any  
24 indication that they're trying to change, any indication that  
25 they're -- at least right now when they're being tried?

1 A. Right, right.  
2 Q. Have you ever heard the phrase a "jailhouse  
3 conversion?"  
4 A. Uh-huh, yes.  
5 Q. Somebody in jail, and somehow they miraculously find  
6 God --  
7 A. Right.  
8 Q. -- and decide that they're going to turn their life  
9 around?  
10 A. Yeah, uh-huh.  
11 Q. And obviously, a lot of folks look at that with  
12 skepticism because I mean, after all, you're going to be  
13 facing a serious punishment. And people say, well, anybody  
14 would do that.  
15 What is going to be your perspective? I mean, you  
16 just now said that you'd be looking for effects of change.  
17 Would you view a jailhouse conversion with skepticism, or  
18 would you be open to considering since, I mean after all,  
19 you'd be a sentencing juror?  
20 A. I think I would have to view it with skepticism, or  
21 examine it probably more closely than I normally would just  
22 another issue possibly. But, yeah, I think I'd view it with  
23 some skepticism.  
24 Q. Even though we've had an example such as Carla Faye  
25 Tucker that turned her life around. Evidently the sentencing

1 jury didn't have an opportunity to hear that 14 -- we don't  
2 know.  
3 A. Right.  
4 Q. But would you at least consider that kind of  
5 evidence?  
6 A. Probably very slightly.  
7 Q. Very slightly?  
8 A. Very slightly, uh-huh.  
9 Q. When you talk of rehabilitation, what are you  
10 talking about? What do you mean when you say rehabilitation?  
11 A. What I was thinking at that time when I said  
12 rehabilitation is that the person is not -- or is probably  
13 being a contributing member to society. Helping people, not  
14 necessarily learning a new trade or whatever, but no longer a  
15 threat to society, let's say. I think that's the way I was  
16 leaning on that question.  
17 Q. Helping people?  
18 A. Not being a threat to people, let's put it that way.  
19 Being a contributing member to society, whatever society that  
20 would be.  
21 Q. Obviously, if they're in jail awaiting trial, it's  
22 going to be very difficult to prove rehabilitation; that  
23 they're a contributing member to society. I guess, unless  
24 you're talking about jail society?  
25 A. Well, yeah. I mean, like we said earlier, I think

1 society is wherever you are. I mean, there are all kinds of  
2 different societies.  
3 Q. Sure.  
4 A. It's all of humankind, so...  
5 Q. Okay. Now, two and a half to three weeks ago  
6 Mr. Goeller talked about prison society; do you remember that?  
7 You could hear him okay?  
8 A. Oh, yeah.  
9 Q. And we've -- have we explained to you that a life  
10 sentence for capital murder means 40 calendar years?  
11 A. I don't remember, you know, getting that explained.  
12 Q. Okay, fair enough. I just told you.  
13 A. All right.  
14 Q. At least -- a life sentence for capital murder at  
15 the very minimum requires 40 calendar years of time to be done  
16 before even parole is even a consideration?  
17 A. Uh-huh.  
18 Q. Okay. So if I'm put in jail at 30 for capital  
19 murder, I know I'm going to do the next 40 years. I'll be at  
20 least 70 before I'm eligible for parole. And even then I may  
21 not get parole because that's up to the Governor, and the  
22 Parole Board and whoever is living and deciding at the time.  
23 A. Yeah.  
24 Q. I'm sure you've seen movies where somebody makes the  
25 application for parole, and the card comes across and it's

1 stamped denied. You've seen that?

2 **A. Oh, yeah.**

3 Q. And we've also explained to you that a no answer to

4 question one on future dangerousness means a life sentence.

5 **A. Right.**

6 Q. So, a life sentence -- you know, when we all leave

7 and -- everybody leaves and he goes down to Huntsville, or the

8 Defendant goes to Huntsville with his life sentence, you know

9 that that's at least 40 years.

10 **A. Forty years.**

11 Q. Does that make sense?

12 **A. Right, yeah.**

13 Q. So, it's pretty obvious, at least with respect to

14 considering this question, continuing threat to society --

15 and, of course, a no answer to that question means a life

16 sentence, and a life sentence would then be 40 years in

17 prison, okay? So do you understand when we say that means

18 prison society, does that make sense to you?

19 **A. Yes, yes.**

20 Q. For all intents and purposes, a life sentence means

21 prison, 40 years?

22 **A. Right.**

23 Q. We have no idea if somebody is going to live out a

24 40-year sentence. This particular law has only been in effect

25 for about ten years or so.

1 **A. I see.**

2 Q. And actually it was 35 years with Governor Richards,

3 and then with Governor Bush it became 40 years. So, it's only

4 been in effect for ten years. We don't know -- we've got

5 another 30 years to go before we figure out if somebody can

6 outlive a 40-year prison sentence.

7 **A. Okay.**

8 Q. Now, you understand that society in prison may be a

9 lot different than society on the outside?

10 **A. Uh-huh.**

11 Q. And that obviously with the prison setup, they may

12 have some programs in place, how to control individuals. I'm

13 sure they've studied that. Been doing it for hundreds of

14 years.

15 **A. Right.**

16 Q. I also want to ask you about that question there

17 where it says there's a probability that the defendant would

18 commit criminal acts of violence.

19 **A. Uh-huh.**

20 Q. You understand the difference between probability

21 and possibility?

22 **A. Right.**

23 Q. Tell me the difference.

24 **A. I would think probability is you've studied the**

25 **past, and you can come up with some type of chart or line that**

1 **says, okay, this is going to happen X number of times over**

2 **this period of time. Possibility would mean that there -- it**

3 **could or couldn't happen. It's not a definite thing. It's**

4 **kind of an unknown. There's a possibility that something else**

5 **could happen. This person could commit another violent crime.**

6 **Just a possibility. It's kind of -- how do I say -- more**

7 **removed than a probability. A probability has been looked at**

8 **as it's definitely going to happen; if it's once in five**

9 **years, it's once in ten years. There's a line that will show**

10 **that, yeah, probability is like this. Possibility is maybe it**

11 **could, and maybe it won't.**

12 Q. All right.

13 **A. That's kind of --**

14 Q. Is it fair to say, at least in your mind, that a

15 probability is more definite than a possibility?

16 **A. Yeah, I would say that.**

17 Q. For instance, if you're going to go in for surgery

18 tomorrow. Somebody is going to crack your chest and work on

19 your heart, and they say there's a probability that you're

20 going to have brain damage as opposed to a possibility that

21 you're going to have brain damage. I think you would feel

22 more comfortable with the possibility.

23 **A. Possibility, yeah. I would say the probability**

24 **would mean that they -- the studies that they've done on that**

25 **type of surgery has shown that there could be some side**

1 **effects or something could happen this number of times, you**

2 **know, that type thing.**

3 Q. Okay.

4 **A. Possibility means that -- I would think that would**

5 **mean that, yeah, that could happen. We don't know if it will**

6 **or if it won't. We don't know when. We don't have any good,**

7 **solid studies or background to make a definition, or to make a**

8 **decision --**

9 Q. Absolutely.

10 **A. -- to define that.**

11 Q. So with respect to this question here, whether there

12 is probability that the Defendant would commit criminal acts

13 of violence, we're talking about more likelihood, the more

14 definite idea that's going to happen; is that fair to say?

15 **A. Yes, I would -- I think that's fair to say in a**

16 **general term.**

17 THE COURT: Mr. High, I'm going to ask you to

18 mark your notes, and let me ask the attorneys to come on up

19 sidebar, please.

20 And, Mr. Jacob, why don't you take about an hour and

21 five minutes for lunch, and I want to ask you not to converse

22 with the other jurors. When you come back, there will

23 probably be some in the jury room, and if you go back in

24 there, just don't say anything to them about what you've said

25 or what's been asked of you.

1 VENIREPERSON: Okay.  
 2 THE COURT: Then after lunch we'll let the  
 3 Defense continue with their questions.  
 4 Thank you, sir.  
 5 (Lunch recess taken.)  
 6 THE COURT: All right. Back on the record.  
 7 This is the State of Texas versus Ivan Abner Cantu.  
 8 And I understand that we have some jurors here who  
 9 were absent on September the 5th, I believe it was. So,  
 10 they've been brought here on a Writ of Attachment. And I  
 11 would ask the Bailiff, if you would please bring in Charles  
 12 Deeb, Number 76.  
 13 MR. SCHULTZ: Judge?  
 14 THE COURT: Yes.  
 15 MR. SCHULTZ: Excuse me for interrupting.  
 16 Could I put something briefly on the record that won't take  
 17 very long before we do this? This could take a little while  
 18 what we're doing here maybe. I got a witness I'd like sworn  
 19 in.  
 20 THE COURT: Everybody be seated. All right.  
 21 Raise your right hand, please.  
 22 (Witness sworn by the court.)  
 23 THE COURT: All right. Please be seated. Go  
 24 ahead.  
 25 (No omissions.)

1 DIRECT QUESTIONS  
 2 BY MR. SCHULTZ:  
 3 Q. State your name, sir.  
 4 A. Jerry Johnson.  
 5 Q. How are you employed?  
 6 A. I'm a criminal investigator for the District  
 7 Attorney.  
 8 Q. Are you assisting -- are you assigned to the  
 9 investigative end of the State of Texas versus Cantu, which is  
 10 the case before us now?  
 11 A. Yes, I am.  
 12 Q. And did you inform me sometime during the lunch  
 13 break that you had received some communication from one of the  
 14 jurors in this case?  
 15 A. I did, sir.  
 16 Q. In your own words, tell us who it's about and what  
 17 it was and what it was about.  
 18 A. A lady by the name of Shelia Lovelace called and  
 19 left her number on my voice mail. She's scheduled to come in  
 20 here on the 24th. She said that Gail had mentioned two  
 21 issues, and she wanted copies of those issues before she came  
 22 in.  
 23 Q. Is that it? Now, you've already told me that the  
 24 message was erased, or you didn't save the message. Is that  
 25 the substance of what the message was?

1 A. Yes, sir.  
 2 Q. And you never called her back?  
 3 A. No, sir.  
 4 MR. SCHULTZ: That's all we have.  
 5 CROSS-QUESTIONS  
 6 BY MR. GOELLER:  
 7 Q. Sir, how do you spell her last name?  
 8 A. I spelled it L-O-V-E-L-A-C-E, Lovelace.  
 9 THE COURT: That's correct. Number 127,  
 10 apparently.  
 11 A. Her first name was Sheila.  
 12 MR. GOELLER: Judge, you said 127?  
 13 THE COURT: Yes.  
 14 Q. BY MR. GOELLER: Do you know -- Investigator  
 15 Johnson, do you know why she called you?  
 16 A. I don't know why I got the call. It was on my voice  
 17 mail this morning. I assume the fact that someone possibly  
 18 called for Gail, and one of our -- we have a new receptionist.  
 19 She probably put it through to me knowing that I was 380th  
 20 court investigator.  
 21 Q. What time did she call about?  
 22 A. It was about nine this morning.  
 23 Q. Okay. So you haven't actually spoken with her?  
 24 A. No, I did not.  
 25 Q. And your understanding was she wanted copies of the

1 special issues?  
 2 A. The way her message stated is that y'all had  
 3 mentioned, or Gail had mentioned there was two issues that  
 4 were going to come to play or something after, and she wanted  
 5 copies of those issues.  
 6 Q. Okay, okay. Did she identify you by name, or --  
 7 A. She -- I believe she did, Investigator Johnson is  
 8 what she said.  
 9 Q. Okay. Do you know if she spoke with -- did she  
 10 speak with the receptionist in your office?  
 11 A. That, I don't know.  
 12 Q. Did she speak with anybody else in the DA's office?  
 13 A. I have no idea. It was just on my voice mail from  
 14 her, and I did not return her call.  
 15 Q. Have you spoken with the receptionist to try to  
 16 figure out how it got back to you?  
 17 A. I have not at this time.  
 18 Q. Could you maybe do that?  
 19 A. Yes, sir, I could.  
 20 Q. And kind of see if you can figure out how she got to  
 21 you. Can you do that and report back to Mr. Schultz or  
 22 Ms. Falco or the Judge?  
 23 A. Yes.  
 24 Q. I guess Mr. Schultz or Ms. Falco.  
 25 MR. GOELLER: Okay. Thank you, sir.

1 THE COURT: I tell what you I'm going to do.  
 2 I'm going to have Janie return her call.  
 3 If you would just tell her that you're returning a  
 4 call that she made to the DA's office and that we're just  
 5 going to ask her to appear here on the 24th when she's  
 6 supposed to appear, and nothing can be sent to her in the  
 7 interim. Is that agreeable with everybody? All right. If  
 8 you've got anything else to report, by all means, let us know.  
 9 Is there anything else from either side?  
 10 MR. GOELLER: No, sir.  
 11 MR. SCHULTZ: No, sir.  
 12 THE COURT: That's Shelia Lovelace, Number 127.  
 13 And let's see here, let's ask Charles Deeb to step  
 14 in.  
 15 (Venireperson enters the courtroom.)  
 16 THE COURT: Mr. Deeb, I'm going to ask you to  
 17 stand in front of the bench. Are you Charles Deeb?  
 18 VENIREPERSON: Yes, I am.  
 19 THE COURT: You were scheduled to be here on  
 20 September 5th; is that correct?  
 21 VENIREPERSON: Yes.  
 22 THE COURT: Could you tell me why you failed to  
 23 appear?  
 24 VENIREPERSON: A third of the people at my work  
 25 were laid off, and I was -- me and the remaining people were

1 there to catch up. So I got really busy and forgot.  
 2 THE COURT: So you just forgot?  
 3 VENIREPERSON: Yes.  
 4 THE COURT: All right. Are there any questions  
 5 from either side here?  
 6 MR. SCHULTZ: No, sir.  
 7 THE COURT: How about from the Defense?  
 8 MR. GOELLER: No, Your Honor.  
 9 THE COURT: He's here on a Writ of Attachment.  
 10 Is there anything else from either side of any kind? If not,  
 11 I'll just have Mr. Deeb return on the -- let's see, the 24th.  
 12 We're going to do this all over again starting on the 24th, so  
 13 I'm going to ask you to be present at that time. Do you have  
 14 any problem with that, sir?  
 15 THE DEFENDANT: 24th of this month?  
 16 THE COURT: Yes.  
 17 VENIREPERSON: No.  
 18 THE COURT: All right. We will see you at that  
 19 time, and I want to encourage you not to be late.  
 20 VENIREPERSON: Yes, sir.  
 21 THE COURT: You may exit out that door right  
 22 there.  
 23 VENIREPERSON: Thank you.  
 24 (Venireperson exits the courtroom.)  
 25 THE COURT: Let's invite Stacy Lee to come in

1 and have her stand in front of the bench.  
 2 (Bailiff calls and no answer.)  
 3 THE COURT: She hasn't shown up yet. Any  
 4 particular reason that you know of or just relaxing?  
 5 THE BAILIFF: I don't know.  
 6 THE COURT: Have Mr. Christopher Chae come in.  
 7 (Venireperson enters the courtroom.)  
 8 THE COURT: Are you Christopher Chae, sir?  
 9 VENIREPERSON: Yes, sir.  
 10 THE COURT: You appear to be Juror Number 111.  
 11 Let me ask you to step back about two or three feet.  
 12 You were scheduled to be here on September 5th; is  
 13 that correct?  
 14 VENIREPERSON: That is correct.  
 15 THE COURT: Could you tell me why you failed to  
 16 appear?  
 17 VENIREPERSON: I was out of the country with  
 18 family.  
 19 THE COURT: Pardon me?  
 20 VENIREPERSON: I was out of the country with  
 21 family.  
 22 THE COURT: Did you have a conversation with my  
 23 court coordinator?  
 24 VENIREPERSON: Yes, sir.  
 25 THE COURT: What did you have to say to her?

1 VENIREPERSON: I told her that I was not going  
 2 to be able to make it on that date; that I asked her to  
 3 possibly consider reschedule because I was available on the  
 4 1st, the day that I was in the court, or another date, that I  
 5 would be very flexible.  
 6 THE COURT: Janie is out there. Would you ask  
 7 her to step in, please?  
 8 THE BAILIFF: Yes, Your Honor.  
 9 THE COURT: I want to bring my court  
 10 coordinator in.  
 11 (Ms. Wilcox enters the courtroom.)  
 12 THE COURT: Please have a seat right there.  
 13 What did you talk about with my court coordinator?  
 14 VENIREPERSON: First of all, the day that I  
 15 appeared the first time, I believe sometime in August, when I  
 16 found out that I needed to reappear, I talked to the lady  
 17 there, I could make arrangement to appear on a different date  
 18 because when I filled out the paperwork, that's the time frame  
 19 I knew I was going to be out of town, that I asked if I could  
 20 change schedule, either before or after. And I was led to  
 21 believe that I could call the court clerk -- I didn't realize  
 22 her name was Janie -- to see if I could have the flexibility  
 23 in schedule. And basically she told me no.  
 24 THE COURT: And what did you say?  
 25 VENIREPERSON: I said that's going to be next

1 to impossible because I've been planning for this vacation for  
2 a very long time. I know it's not part of the excuses that  
3 you allow. I understand that, but --

4 THE COURT: Did you ask her if she was  
5 threatening you?

6 VENIREPERSON: Yes, I did.

7 THE COURT: What made you think that it might  
8 be a threat?

9 VENIREPERSON: I was upset, sir, because I was  
10 led to believe there was some flexibility built into the  
11 system, but I was told there's no flexibility whatsoever.

12 THE COURT: Let me tell you something, I'm  
13 thinking about holding you in contempt. And so here's what I  
14 need to find out from you: Tell me some reason why I  
15 shouldn't hold you in contempt.

16 VENIREPERSON: I -- at the time I just got  
17 hotheaded, sir. I apologize for that, but I don't have any  
18 good reason or excuse.

19 THE COURT: Well, do you have any problem with  
20 serving on a jury?

21 VENIREPERSON: No, sir.

22 THE COURT: Do you want me to try and  
23 reschedule you?

24 VENIREPERSON: I would appreciate that.

25 THE COURT: Are there any questions from the

1 MR. GOELLER: Your Honor, after hearing the  
2 juror and obviously his just total disregard for the  
3 instructions of the court staff, I wouldn't want him either,  
4 and I've discussed with my client. We would certainly agree  
5 to get him off this panel and make him come back at -- report  
6 to the District Clerk for future jury service on some other  
7 case. We don't have any problem with that, and that's  
8 agreeable with my client. If I could just ask him.

9 Ivan, you've heard me tell the Judge that we're  
10 agreeable to get rid of this juror, so to speak. Is that with  
11 your consent?

12 THE DEFENDANT: Yes.

13 THE COURT: That is with your consent?

14 THE DEFENDANT: Yes Your Honor.

15 THE COURT: All right. I tell you what, this  
16 juror is finally excused, but I want you to ask him to please  
17 return here on the morning of the 24th.

18 THE BAILIFF: Yes, Your Honor.

19 THE COURT: Hey, also, Billy, do we have  
20 Stacey Lee?

21 THE BAILIFF: There is no sign of her yet, Your  
22 Honor.

23 THE COURT: All right, thank you.

24 THE COORDINATOR: Judge, the understanding is  
25 that if they weren't here that the alternative was that --

1 State?

2 VENIREPERSON: No, sir.

3 MR. SCHULTZ: Not in the presence of the juror.

4 THE COURT: All right. And are there any  
5 questions of him from the Defense?

6 MR. GOELLER: No, sir.

7 THE COURT: All right. Let me ask you to go  
8 with the Bailiff one more time, and I'll probably invite you  
9 to come back in in just a moment.

10 (Venireperson exits the courtroom.)

11 THE COURT: Anything from the State?

12 MR. SCHULTZ: I'm not interested -- yes, sir.

13 I don't have any great interest in trying to work  
14 with somebody of his ilk, but nevertheless, that's not my  
15 call. And I want to make sure that we don't, for example,  
16 excuse him, and the Defense wants him kept or wants him in  
17 line just because I think he's a jerk, if I do, doesn't mean  
18 that we ought not to make sure they are in agreement that he  
19 can go. That's my position. I guess I wouldn't want him  
20 rescheduled by the Court if they have some objection. If  
21 you're talking about putting him on another jury. Maybe  
22 that's what I understood you'd be thinking about doing. Just  
23 order him back for some other trial at some other time.

24 THE COURT: All right. Is there anything from  
25 the Defense?

1 THE COURT: Would you tell the Sheriff that I  
2 want a Writ of Attachment, and I want her arrested, and I want  
3 her put in jail until such time I can talk to her.

4 THE COORDINATOR: Judge, will the bond remain  
5 at 100?

6 THE COURT: No. We want to set about a \$5,000  
7 bond here.

8 Oh, have you got Stacey Lee?

9 MS. FALCO: (Inaudible.)

10 THE COURT: Not a problem.

11 Is there anything else from either side before we  
12 call the next witness?

13 MR. GOELLER: No, Your Honor.

14 THE COURT: All right. Not the next witness,  
15 the one we have, that being Mo Jacob.

16 (Venireperson enters the courtroom.)

17 THE COURT: Mr. Jacob, thank you for your  
18 patience. I just want to remind you that you're still under  
19 oath.

20 VENIREPERSON: Okay.

21 THE COURT: Go ahead, Mr. High.

22 MR. GOELLER: Thank you, Your Honor.

23 CROSS-QUESTIONS CONT.

24 BY MR. HIGH:

25 Q. Good afternoon, Mr. Jacob.

- 1 **A. Good afternoon.**  
 2 **Q.** I think when we broke for lunch we were talking  
 3 about the special issue down there on the ground, the  
 4 probability that he would -- that the Defendant would commit  
 5 criminal acts of violence that would constitute a continuing  
 6 threat to society. You and I talked about that some, and  
 7 Mr. Schultz talked about it some with you earlier in the  
 8 morning.  
 9 **A. Uh-huh.**  
 10 **Q.** I want to kind of shift gears now, and I want to  
 11 talk about you -- you know, if you were to serve on the jury,  
 12 you understand that the State would have the burden of proof  
 13 on that special issue?  
 14 **A. Uh-huh.**  
 15 **Q.** In other words, it's an issue that you as a jury  
 16 would have to decide and that if it (sic) was deemed to be a  
 17 threat, continuing threat to society, the State would have to  
 18 prove it to you beyond a reasonable doubt. Do you feel  
 19 comfortable with that?  
 20 **A. Yes.**  
 21 **Q.** And similar to a criminal trial -- you know, the  
 22 State has burden of proof in a criminal trial to prove guilt  
 23 beyond a reasonable doubt.  
 24 **A. Right.**  
 25 **Q.** Same way on this special issue, you know, a danger,

- 1 doubt.  
 2 **A. Reasonable doubt, yes.**  
 3 **Q.** Here we go, being lawyers again.  
 4 The law says that you-all can view criminal acts of  
 5 violence differently, that you don't necessarily have to agree  
 6 on all the evidence. You know, whether or not drug dealing is  
 7 violent and whether or not drug dealing is not violent, wife  
 8 beating is violent or not violent, that sort of thing.  
 9 **A. Yeah.**  
 10 **Q.** Okay. The law also says for you-all to continue to  
 11 get to the next issue, your decision, even though you may not  
 12 agree as to what is an act of violence or what is not, you-all  
 13 still have to all answer it unanimously to continue past this  
 14 issue to the second special issue. Does that make sense to  
 15 you?  
 16 **A. Yes, it does.**  
 17 **Q.** The law also says that you don't have to be  
 18 unanimous to answer no to this special issue. In other words,  
 19 if you're going to say he's not a threat, the law says that  
 20 ten or more of you can agree on that.  
 21 **A. Uh-huh.**  
 22 **Q.** In other words, you'd have a couple, one or two,  
 23 that didn't agree with that.  
 24 **A. Right.**  
 25 **Q.** Does that make sense to you?

- 1 a continuing threat to society, they have to prove that to you  
 2 beyond a reasonable doubt.  
 3 **A. Uh-huh.**  
 4 **Q.** And I'm sure you've seen the scales of justice, and  
 5 we're not talking about a slight tipping of the scales. We're  
 6 talking about an extreme tipping of the scales?  
 7 **A. Right.**  
 8 **Q.** Do you know what I'm talking about?  
 9 **A. Exactly.**  
 10 **Q.** Proof beyond a reasonable doubt?  
 11 **A. Right.**  
 12 **Q.** Do you feel comfortable applying that legal standard  
 13 in answering this issue if you were to sit on the jury?  
 14 **A. Yeah. I believe I could.**  
 15 **Q.** Okay. Do you feel you understand what you'd have to  
 16 do and how you'd have to weigh the evidence?  
 17 **A. Uh-huh.**  
 18 **Q.** And feel comfortable about saying yes to that  
 19 answer?  
 20 **A. Right. If I had any doubt in my mind, then I would**  
 21 **have to -- that would be a reasonable doubt, any doubt at all.**  
 22 **Q.** If you had a reasonable doubt in your mind, you'd  
 23 have to resolve it in the Defendant's favor?  
 24 **A. Right.**  
 25 **Q.** It doesn't mean any doubt. It means a reasonable

- 1 **A. It has to be the majority of the people, ten or more**  
 2 **out of 12.**  
 3 **Q.** Exactly. Ten or more of you could say, look, we've  
 4 looked at all the evidence, we've looked at the continuing  
 5 threat to society, we've looked at the criminal acts of  
 6 violence, the alleged criminal acts of violence.  
 7 **A. Uh-huh.**  
 8 **Q.** No, we don't find him to be a continuing threat, and  
 9 there may be Juror 11 and Juror 12 that say, yes, we do and  
 10 that the ten would rule?  
 11 **A. Right.**  
 12 **Q.** Okay. And that -- you understand that would end the  
 13 trial? That would say, we're done, it's now a life sentence?  
 14 **A. Right.**  
 15 **Q.** Do you feel comfortable in that situation?  
 16 **A. Yeah.**  
 17 **Q.** All right. Let's assume that all 12 of you  
 18 agree -- and I'm not saying that this is going to happen. I'm  
 19 also not agreeing that he's guilty of capital murder at this  
 20 point.  
 21 **A. I understand.**  
 22 **Q.** I'm sure that's probably very strange to you. We  
 23 haven't even had the trial yet, and we're talking about  
 24 sentencing. The law requires us to have to do this.  
 25 **A. Sure.**



1 Q. Okay. Please understand that neither myself, nor  
2 Mr. Goeller, we don't concede guilt at this point. There's  
3 going to be a full-blown trial.

4 **A. I understand.**

5 Q. But let's assume that the jury has weighed all of  
6 the evidence, and they've decided that there's a probability  
7 that the Defendant would commit criminal acts of violence, and  
8 this Defendant would constitute a continuing threat to  
9 society, and you, as a jury, have unanimously said yes. And  
10 now we go to the next issue, the mitigation issue, the  
11 humanitarian question, the one-last-look question.

12 **A. Uh-huh.**

13 Q. In other words, in the last question you're having  
14 to look forward into the future to see if there's a  
15 probability of future dangerousness.

16 **A. Right.**

17 Q. With this question we look back at the evidence, you  
18 take one last look at the Defendant and you say, gee, is there  
19 enough sufficient, mitigating circumstances to give him a life  
20 sentence as opposed to a death sentence?

21 **A. Right.**

22 Q. You've had enough opportunity to read the question?

23 **A. Uh-huh.**

24 Q. Pretty long and drawn out, 52 words.

25 **A. Right, right.**

1 Q. I didn't write it. Nobody in this room wrote that  
2 question. The folks in Austin wrote that question, but we  
3 have to live with it, as juries throughout the State have had  
4 to live with this question, okay?

5 **A. Okay.**

6 Q. And I'm sure you guys can, too, if you end up  
7 sitting on the jury. You'll be okay with it.

8 And Mr. Schultz adequately covered it. By this  
9 time, if you get to this last question, you're going to have  
10 heard, you know, all the facts of the case. Presumably you're  
11 going to know quite a bit about the Defendant's character and  
12 his background, and the personal moral culpability of the  
13 Defendant. Do you see that? It's kind of buried in the  
14 center of the question, personal moral culpability of the  
15 Defendant. Any idea what that means, personal moral  
16 culpability?

17 **A. In my mind I would think that it would mean what  
18 type of person, what type of personality does this person  
19 have, knowing right from wrong, and that sort of thing is the  
20 way I would take it.**

21 Q. I think you're right on. There's no legal  
22 definition --

23 **A. Uh-huh.**

24 Q. -- for personal moral culpability. I think you're  
25 right on. We all have ideas of what that means, and if you

1 sit on the jury, I'm sure you're going to have varying  
2 opinions as to what that means. You're going to have to  
3 discuss it and decide.

4 **A. Right.**

5 Q. Culpability in law means responsibility, kind of a  
6 legal responsibility, and maybe even a criminal type  
7 responsibility. So we know at least that that last word,  
8 culpability, we know it means some type of responsibility,  
9 whether it's a personal moral responsibility, I guess. I  
10 guess remorse, I guess sadness. I guess maybe -- they figure  
11 out they did something wrong --

12 **A. Uh-huh.**

13 Q. -- they wish they hadn't done, I guess maybe. There  
14 may be some other kind of idea you have for personal moral  
15 culpability. There may be some other folks on the jury that  
16 are smarter than all of us, and they have a good idea what  
17 that means. But, in any event, the Legislature wants you to  
18 take it into consideration.

19 Would you be able to consider the personal moral  
20 culpability of the Defendant?

21 **A. I believe so.**

22 Q. At this point you've already found the person to be  
23 a future danger. You've already found them to be guilty of  
24 capital murder, and now you're taking the one last look and  
25 you're looking at everything; the circumstances of the

1 offense, the character, the background, the moral culpability,  
2 and you're trying to decide if there's sufficient mitigating  
3 circumstances to spare his life, basically?

4 **A. Yes.**

5 Q. Does that make sense to you?

6 **A. Yes, it does.**

7 Q. Okay. And Mr. Schultz refers to it kind of as a  
8 tool. It's kind of a gift that the Legislature has given the  
9 jury. It kind of gives you guys the chance, even though maybe  
10 the evidence is really bad, maybe it's a really bad case,  
11 maybe it's really bad facts, maybe it's a really bad  
12 background, it still gives you guys an out, if you will, if  
13 you find sufficient mitigation to spare his life.

14 **A. I see.**

15 Q. Does that make sense?

16 **A. Yes, it does.**

17 Q. I want to take you back. We talked about the fact  
18 that not all of you would have to agree on what was a criminal  
19 act of violence, and the law is consistent and Mr. Schultz  
20 touched on it. You don't all have to agree to what's  
21 mitigating within the context of this question. Does that  
22 make sense to you?

23 **A. That makes sense. Again, we're talking about the  
24 ten -- majority of ten.**

25 Q. No.

1 A. No?

2 Q. That's not the legal standard on that question.

3 A. Oh, okay. What is it?

4 Q. Let me make sure I got this right. It has to be

5 unanimous to answer it yes.

6 A. Oh, it does. Okay.

7 MR. SCHULTZ: Excuse me, Judge. Respectfully,

8 we disagree with that assertion.

9 MR. HIGH: All right. Well, let's get it out

10 there, then.

11 THE COURT: Yeah. If you would, what's your

12 impression.

13 MR. SCHULTZ: I think ten yeses control. I

14 think that's an answer.

15 THE COURT: Mr. Goeller, does that seem like

16 the right answer to you, also?

17 MR. GOELLER: I was writing something else.

18 Which special issue are we --

19 MR. HIGH: Mitigation special issue.

20 MS. FALCO: Unanimous, no; ten or more,

21 yes.

22 MR. GOELLER: Yeah. Ten to answer it yes;

23 unanimous to answer it no.

24 MR. HIGH: I'm sorry.

25 VENIREPERSON: So is that the same -- may I ask

1 a question?

2 THE COURT: Yes, go ahead.

3 VENIREPERSON: Is that the same on the first

4 one; it has to be unanimous, no, ten, yes?

5 MR. HIGH: I think it's the reverse.

6 MR. GOELLER: Unanimous ten -- I mean,

7 unanimous all 12 to answer the first one yes. Ten to answer

8 it no. Just kind of the converse.

9 MR. HIGH: The converse. It's reversed.

10 VENIREPERSON: Okay, thank you.

11 THE COURT: Pretty complex, isn't it?

12 MR. HIGH: That's why I wanted to make sure I

13 got it exactly right. I didn't want to mislead you.

14 VENIREPERSON: Yeah, thank you.

15 MR. SCHULTZ: That's why we drink, by the way.

16 (Laughter.)

17 MR. HIGH: That's fine. I think we got it. I

18 think we're going to get it. We're all going to be working on

19 this together, so we're all going to make sure we got the law

20 straight on this.

21 Q. BY MR. HIGH: And I suppose the idea is if it must

22 be unanimous to answer no, which means no mitigation, no

23 sparing of the life, then you folks, when you take your last,

24 look, you, need to be fairly sure, or 100 percent sure that

25 there's no mitigation issues to consider, or sufficient

1 mitigation to spare the life?

2 A. Right.

3 Q. Does that make sense?

4 A. Yes, it does.

5 Q. Kind of working through it in my mind, too.

6 A. No. That makes sense.

7 Q. Okay. Do you have any more good questions about

8 those two issues? You've got good questions. I think I'm

9 pretty much done talking about them unless you have some

10 questions.

11 A. No. I think that's clear now.

12 Q. Okay.

13 On the questionnaire on page 5 it says, if you

14 believe in using the death penalty, how strongly on a scale of

15 1 to 10 do you hold that belief; 1 being the least and 10

16 being the strongest? And I read you're a 10; is that right?

17 A. What was the question again?

18 Q. Okay. If you believe in using the death penalty,

19 how strongly on a scale of 1 to 10 do you hold that belief.

20 One being the least -- I believe in using it the least, and

21 then I believe in using it the most with the strongest being a

22 10.

23 A. Right.

24 Q. And you said you were a 10.

25 A. Yeah.

1 Q. So is that correct?

2 A. Yes. I don't think that's changed. As far as my

3 belief that being imposed once everything has been decided and

4 that is the decision that the jurors come up with, I do

5 believe that, yeah, it's a fair penalty.

6 Q. But once we follow the process of looking at the

7 questions and the mitigation issue, deciding everything

8 fairly, if you guys look at all the evidence and properly

9 apply the mitigation issues and if it comes down to death,

10 then you're fine with that?

11 A. Yes, I am.

12 Q. But you're not telling me you're going to go for

13 death. You're going to make these questions come out with a

14 death answer, aren't you?

15 A. No. Like I said earlier, this is very serious, and

16 I think it's going to depend a lot on the whole -- everything

17 that comes out, a lot of circumstances, a lot of instances,

18 you know, a lot of evidence. A lot of it needs to be weighed.

19 Q. Okay. All right.

20 A. That's the way I feel on it.

21 Q. Here's a proposition at law. It says, "The

22 Constitution says an accused citizen does not have to testify

23 on his or her own behalf." We all learned that in grade

24 school.

25 A. Uh-huh.

1 Q. How do you feel about this Constitutional privilege?  
2 Your answer is, "I believe that if a person does not want to  
3 testify, that is his or her right." Fair enough.

4 How would that affect you as a juror if an accused  
5 decided not to testify?

6 A. Again, I would have to be looking at all the  
7 evidence that was brought out prior to that point, or even  
8 after that point and, you know, whether the Defendant wanted  
9 to testify or not. I don't think it would really make that  
10 much difference in my mind as far as weighing the evidence  
11 that was presented.

12 Q. Sure.

13 A. So, one way or the other, I don't think it would be  
14 an issue to me.

15 Q. I understand it's natural human tendency to want to  
16 hear both sides, and certainly we want to hear from the  
17 accused.

18 A. Right.

19 Q. If I was on the jury, I'd want the same thing  
20 absolutely.

21 A. Well, I understand that, too. But then again, there  
22 may be circumstances where it would not be prudent for the  
23 defendant to actually testify.

24 Q. And you would recognize that?

25 A. Yeah.

1 A. Yes.

2 Q. Tell me about that experience.

3 A. It was -- I can't remember how many years. It was  
4 probably five or six years ago. I was picked for a federal  
5 grand jury. The first six months I was an alternate, so  
6 I didn't go. The last 12 months, it was every -- three days  
7 every four, five, six weeks, something like that. And this  
8 was listening to evidence of federal cases, DEA, FBI, things  
9 like that, whether to indict or acquit different people,  
10 different investigating.

11 Q. That must have been a fascinating experience.

12 A. It was very interesting, yeah.

13 Q. Okay. I'm sure that opened your eyes as to some  
14 things going on out there you could never imagine.

15 A. Uh-huh. Oh, for sure. It was a lot of different  
16 things.

17 Q. And along those lines, do you feel like you acquired  
18 quite a bit of knowledge with respect to legal procedure and  
19 how things are done with respect to charging somebody and  
20 testifying in front of Grand Jury and whether their lawyer can  
21 be in there with them, that sort of thing?

22 A. There was a lot of things that were learned of  
23 the -- you know, the beginning processes, the indictment  
24 process. As far as the legal proceedings, what happened after  
25 that, of course, we weren't involved, so I never found out

1 Q. Fair enough. And the Court would -- I would  
2 anticipate that he would instruct you at the end of the trial  
3 that his failure to testify is not a circumstance to be held  
4 against him?

5 A. Right.

6 Q. In other words, most folks, gee, if he wasn't  
7 guilty, he'd have climbed up on that witness stand and he'd  
8 have told me all about it.

9 A. (Nods head.)

10 Q. Some folks see it that way. And yet, the law says  
11 that you're not to hold that against him if he exercises his  
12 Fifth Amendment right not to testify.

13 A. Right.

14 Q. Do you have any problem with those concepts?

15 A. No, not at all. Not at all.

16 Q. You wouldn't hold it against him if he chose not to  
17 testify?

18 A. No.

19 Q. Again, I can't tell you what's going to happen in  
20 this case. I don't even know myself, but I have to -- I have  
21 to explore some of these issue with you before you wind up on  
22 the jury.

23 A. Right.

24 Q. It says that you've served on a federal grand jury  
25 before.

1 anything about that.

2 Q. Sure.

3 A. As far as the indictment and what led up to the  
4 indictments, the investigation and all that, that's one thing  
5 that we did learn.

6 Q. And I'm sure you figured out that you didn't hear  
7 much from the defense side, at least at that point?

8 A. There wasn't anything from the defense. There was  
9 the U.S. attorney and the witness and the grand jurors.  
10 That's all that was in the room.

11 Q. And you guys were essentially an accusatory body,  
12 and you decided if there was enough evidence to indict?

13 A. Right.

14 Q. Actually bring an accusation -- a formal accusation  
15 and cause the defendant to stand trial?

16 A. Right.

17 Q. And that legal standard, you understand, is  
18 different than once it gets in a court and then you actually  
19 go to a jury trial, that's a whole different legal standard?

20 A. Exactly, right.

21 Q. Anything about that experience that could affect you  
22 either positively or negatively coming into your jury service  
23 in here?

24 A. No. It is a totally different type of situation,  
25 totally different type of cases; embezzlement, DEA for

1 **breaking firearms rules and things like that, drug dealing and**  
2 **things, so it was totally different.**

3 Q. Uh-huh.

4 I expect there's going to be an instruction at the  
5 end of the trial that says the fact that a person has been  
6 arrested, confined or otherwise indicted for an offense gives  
7 rise to no inference of guilt at the trial.

8 **A. Right.**

9 Q. In other words, you know, it's kind of -- that's  
10 another one of those legal concepts that's hard to  
11 understand. I mean, somebody -- good grief, somebody has been  
12 indicted. Most folks say, look, that's a presumption of  
13 guilt. But when, in reality, it's an accusation, and they  
14 have every right to be presumed innocent until proven guilty  
15 beyond a reasonable doubt.

16 **A. Right. That's one thing that I did learn on the**  
17 **Grand Jury is that it's an indictment, and it's only looking**  
18 **at the evidence that they have against this person, whether**  
19 **there is enough evidence to bring to trial and get two sides**  
20 **to bring out all the facts.**

21 Q. Fair enough.

22 **A. We only heard facts from one side; the Government,**  
23 **the accusing body or arresting body, or whatever you want to**  
24 **call it.**

25 Q. Sure.

1 **A. So I mean, there was nothing from the other side so**  
2 **there was no defense going on.**

3 Q. Fair enough. Sounds like you've got a real good  
4 handle on that. Sounds like you understand it really well.

5 **A. I believe so.**

6 Q. Where did you go to college?

7 **A. I went to the University of New Hampshire.**

8 Q. Where is that located?

9 **A. It's in Hooksatt, New Hampshire.**

10 THE COURT: Where?

11 VENIREPERSON: Hooksatt.

12 THE COURT: How do you spell it?

13 VENIREPERSON: H-O-O-K-S-A-T-T. It's a suburb  
14 of Manchester.

15 Q. BY MR. HIGH: What did you study up there?

16 **A. Business Administration. I went there for a couple**  
17 **of years. I also attended University of Utah when I was in**  
18 **Salt Lake, took some night classes.**

19 Q. Just about done.

20 It says that you do some hunting, target practice.  
21 Do you still do that?

22 **A. Very little. Every now and then if I get a chance.**  
23 **There just doesn't seem to be enough time these days.**

24 Q. Okay.

25 **A. But I haven't been in several years.**

1 Q. All right. What kind of gun do you have?

2 **A. I have a deer rifle and shotgun.**

3 Q. No handguns?

4 **A. No.**

5 Q. And you mentioned that you were Catholic. Have you  
6 ever attended Elizabeth Ann Seton or Prince of Peace Catholic  
7 Church?

8 **A. No.**

9 Q. All right, fair enough. My co-counsel here has gone  
10 to those churches and just wanted to make sure that you  
11 haven't had any contact with him or knew him from anywhere.

12 **A. No.**

13 Q. Did you have any questions you needed to ask me?  
14 Anything I've been unclear about?

15 **A. No, I don't believe so. I think everything has been**  
16 **pretty clear.**

17 Q. Okay.

18 MR. HIGH: Judge, we're going to pass the  
19 juror.

20 THE COURT: All right. You may step down, sir.

21 VENIREPERSON: Okay. Thank you.

22 THE COURT: And we'll call you back in just a  
23 few minutes.

24 (Venireperson exits the courtroom.)

25 THE COURT: All right. The juror is outside.

1 What says the State?

2 MR. SCHULTZ: Acceptable.

3 MR. GOELLER: May we have a few minutes,  
4 Judge?

5 THE COURT: Yes.

6 MR. HIGH: Your Honor, this juror is acceptable  
7 to the Defense as well.

8 THE COURT: All right. This is Jacob --

9 Maurice Jacob, and he's Juror Number 62, and I suppose he's  
10 Juror Number 7 on our jury.

11 (Brief pause in proceedings.)

12 (Venireperson enters the courtroom.)

13 THE COURT: All right. Mr. Jacob, I want to  
14 advise you that you are going to be serving on this jury, and  
15 it may be two or three weeks, and -- but at any rate, just a  
16 couple of things I want to tell you. The first one is, as you  
17 know, don't discuss this with anybody, not even your wife or  
18 anybody, or make any effort to read about it in newspapers or  
19 on TV, and perhaps it won't even appear.

20 Also, I want to ask you not to make any effort to  
21 make your own investigation of any kind with regard to this  
22 matter, so that way when you come back you'll be writing on a  
23 clean slate. Do you have any other questions for me or for  
24 any of the attorneys?

25 VENIREPERSON: I guess there's some general

1 questions as to when do you think this will start?  
 2 THE COURT: I tell you what I think. I think  
 3 two or three weeks, something like that, and that's the best I  
 4 can do.  
 5 Did you have any kind of vacation plans or anything  
 6 like that?  
 7 VENIREPERSON: No. The reason I was asking is  
 8 my mother is coming to visit, and -- well, she's actually in  
 9 San Antonio now, but she's going to be here through the 30th.  
 10 She's going to be in Dallas that last week of September.  
 11 THE COURT: Right. My guess is that you're  
 12 safe, but I could be wrong.  
 13 VENIREPERSON: Okay.  
 14 THE COURT: And I hope I'm wrong, but my guess  
 15 is that you're safe with her visiting the week of the 24th.  
 16 Then, we'll see you in three weeks.  
 17 VENIREPERSON: So Janie or somebody will  
 18 contact me?  
 19 THE COURT: Yeah. We'll get back with you,  
 20 and you're Juror Number 7. We have to pick 14, so you're  
 21 right in the middle. So, we've got as many to go as we've  
 22 gotten so far.  
 23 VENIREPERSON: Right.  
 24 THE COURT: Thank you, sir. I appreciate it.  
 25 VENIREPERSON: Thank you.

1 MR. SCHULTZ: Before I forget, Investigator  
 2 Johnson checked with -- he said he checked with everybody in  
 3 the office he could find. He doesn't know how he got  
 4 contacted by that juror.  
 5 THE COURT: I tell you, with regard to that  
 6 same matter, Janie wrote me a note here and -- Billy, would  
 7 you give us about 30 seconds?  
 8 Janie wrote me a note here that says, "I spoke to  
 9 Shelia Lovelace. She initially tried to call me, but my  
 10 mailbox was full this morning. She then tried the DA's  
 11 office." So I think that she was, you know, seeking  
 12 information, and I suppose when Janie's mailbox was full, she  
 13 thought where do I go would be my speculation. At any rate, I  
 14 just wanted to tell you Janie had written me a note her  
 15 mailbox was full, so she -- but she did eventually talk to  
 16 her.  
 17 MR. GOELLER: Judge, I'm sorry. I don't mean  
 18 to interrupt you. Are you going to take up the juror that  
 19 failed to report now before Ms. Cole?  
 20 THE COURT: I tell you what, I wanted to take  
 21 her up a little bit later. I think we'll take her up last  
 22 today.  
 23 MR. GOELLER: Okay.  
 24 MR. SCHULTZ: What if we're really tired  
 25 because it's going to be a long day? Can we carry her over?

1 THE COURT: Well, I'm going to buy everybody a  
 2 Coke so that we'll be rejuvenated. Yeah, I tell you what, I  
 3 would rather she have some time to contemplate because she was  
 4 supposed to be here at 1:00, and she drags in at 1:45, right?  
 5 THE BAILIFF: Yes, Your Honor.  
 6 MR. GOELLER: My only concern, Judge, is if  
 7 she's a good odd and if she's sitting back in there with our  
 8 other jurors --  
 9 THE COURT: Oh, she's not. She's separated.  
 10 MR. GOELLER: Oh, super.  
 11 THE COURT: I have her separated.  
 12 MR. GOELLER: Thank you, Judge.  
 13 THE COURT: So let's try Mrs. Cole right now.  
 14 MR. SCHULTZ: Ms. Lowry will speak for the  
 15 State, Judge.  
 16 THE COURT: All right, good.  
 17 (Venireperson enters the courtroom.)  
 18 THE COURT: Ma'am, are you Deborah Cole?  
 19 VENIREPERSON: Yes, I am.  
 20 THE COURT: I've got to apologize to you to  
 21 keep you waiting for that long.  
 22 VENIREPERSON: That's all right.  
 23 THE COURT: I do want to tell you a couple of  
 24 things. Do you remember, it's been almost three weeks now,  
 25 when the group of 200 appeared before the Court, and that I

1 administered an oath, and the oath was basically to tell the  
 2 truth with regard to questions propounded by me and by both  
 3 sides here. I just want to remind you that you're still  
 4 subject to that oath.  
 5 VENIREPERSON: Okay.  
 6 THE COURT: Thank you, Ms. Cole.  
 7 Ms. Lowry.  
 8 (No omissions.)  
 9 DIRECT QUESTIONS  
 10 BY MS. LOWRY:  
 11 Q. Good afternoon, Ms. Cole. I don't know if you  
 12 recall from Tuesday, I guess that's been several weeks ago.  
 13 now. My name is Jami Lowry, and I'm an Assistant District  
 14 Attorney here in Collin County. To my right is Gail Falco.  
 15 She's the chief prosecutor out of the 199th District Court,  
 16 and further to my right is Mr. Bill Schultz, who is the First  
 17 Assistant in our office.  
 18 Seated to my left is Ivan Cantu, the Defendant, and  
 19 next to him are Don High and Matt Goeller, his attorneys.  
 20 MR. GOELLER: Good afternoon.  
 21 MS. LOWRY: They're from Plano where they have  
 22 a private practice there in Plano.  
 23 As I recall from the last time we met, you don't  
 24 know any of us; is that correct?  
 25 A. That's correct.

1 Q. We call this individual voir dire, and basically  
2 this process is so that you can feel more free to express your  
3 feelings, your ideas, anything that you might think about  
4 anything that we're talking about. Some people, I think,  
5 think that one on one is a little more -- it makes you a  
6 little more nervous, but some people it's a little more  
7 relaxing because you don't have to worry about what 72 other  
8 people are thinking about what you want to say. So, that's  
9 what this process is for, is just for you to tell us how you  
10 feel about anything, any views or concerns that you may have  
11 on anything that we're talking about.

12 A. Okay.

13 Q. Okay. If at any point you have a question for me,  
14 or you'd like for me to rephrase something, maybe something  
15 isn't clear, if you'll just ask, I'll be more than happy to do  
16 that.

17 A. Okay.

18 Q. I would assume when you came in -- well, let me  
19 just ask you. What did you think capital murder was whenever  
20 you first came in last Tuesday -- or a couple of Tuesdays ago?

21 A. **I don't know that I had ever had it defined for me,  
22 or really had a thought as to what the capital murder meant.**

23 Q. And by it being called capital murder, it can be a  
24 little confusing in that it's not something that automatically  
25 gets the death penalty. I don't know if you were aware of

1 same course or transaction?

2 A. **Yes, possibly.**

3 Q. And there's certainly other types of offenses that  
4 we classify as capital murder that could have the death  
5 penalty, but those are the main three that we're talking  
6 about, okay?

7 A. Okay.

8 Q. I'm looking over your questionnaire, and I see that  
9 you marked on there that -- well, first of all, they ask you,  
10 basically, what your name is, where you're from, things like  
11 that, and the next question is what do you think about the  
12 death penalty. How did that make you feel when you read that?

13 A. **I don't remember for sure, but I think I was a  
14 little surprised because I don't think up to that point I  
15 really knew what it was all about.**

16 Q. Right.

17 A. **I don't remember for sure, but I think I was a  
18 little surprised by that question.**

19 Q. Probably by the -- I guess the summons you got that  
20 said special venire, maybe the big -- large amount of people  
21 that were there you could tell it was something different, but  
22 up until then you didn't know it was --

23 A. Yeah.

24 Q. -- that serious?

25 A. Yeah.

1 that prior to coming in.

2 But it's actually probably better described as  
3 murder plus something, because it has to have some type of  
4 aggravating factor that makes it worse than just murder. Does  
5 that make sense?

6 A. Yes.

7 Q. What we're specifically concerned with are murder in  
8 the course of burglary, murder in the course of robbery, or  
9 intentional killing of two people. When you think about those  
10 offenses, maybe somebody breaking into somebody's house and  
11 killing the person inside, is that something -- is that a type  
12 of case that you think would be appropriate for the death  
13 penalty?

14 A. **Possibly, yes.**

15 Q. And the same with robbery. Do you understand now  
16 the differences between burglary and robbery?

17 A. **Yes. Yes, I do.**

18 Q. Robbery being the more person-to-person kind of  
19 crime. Robbery coupled with then killing the person that's  
20 robbed, do you think that's the kind of offense that's  
21 appropriate for a capital murder or the --

22 A. **Possibly.**

23 Q. -- death penalty?

24 A. **Possibly, yes.**

25 Q. And what about when someone kills two people in the

1 Q. I want to ask you if you recall the hypothetical  
2 that Mr. Schultz gave you when he asked you to look at the  
3 Defendant and when he explained to you what our purpose was in  
4 being here. Do you recall that?

5 A. **I remember a lot of hypotheticals, but I don't  
6 remember any specifics about them.**

7 Q. The one I'm specifically talking about is when he  
8 asked you to look at the Defendant, explained to you that our  
9 purpose was to present evidence to a jury that made them  
10 believe beyond a reasonable doubt that he was guilty of  
11 capital murder. And then further to ask for the death  
12 penalty, and it was our purpose to get that. And then at some  
13 future date, the Defendant be -- have an execution date and  
14 taken on -- strapped to a gurney and injected with a lethal  
15 substance.

16 That wasn't done for dramatic flare. It wasn't done  
17 for gore. It was basically done to let the panel know what  
18 the reality of the situation was.

19 A. Uh-huh.

20 Q. What was your opinion of that?

21 A. **I'm not sure that I'm going to answer your question  
22 exactly the way you've asked it, but in thinking about the  
23 whole situation since that time I feel like I could analyze --  
24 you know, hear the trial and the evidence and analyze it and  
25 make a decision based on what was given us, the questions that**

1 were asked, and I don't have a problem with the death penalty.  
 2 What I'm not sure about is how I would feel on down the road  
 3 when the gentleman was actually taken in and executed. I'm  
 4 not sure how I would feel after that point, if it came to  
 5 that. But, I feel like I could analyze and make the decision  
 6 that seemed appropriate based on what evidence was given.

7 Q. And that's all we ask of you, you know, is just that  
 8 you come in and have an open mind, that you listen to the  
 9 evidence and you fairly make a determination based on that.

10 A. Uh-huh.

11 Q. Certainly something different to sit in your living  
 12 room or to sit, you know, at the table talking to friends and  
 13 family about what you think about the death penalty.

14 A. Uh-huh.

15 Q. It's quite another thing for you to come in and us  
 16 to ask you if you could really be a part of that process.  
 17 Does that make sense?

18 A. Uh-huh.

19 Q. That process that we're asking you to be a part of,  
 20 is that something that you feel like you could participate in  
 21 and keep an open mind about?

22 A. Yes.

23 Q. Have you done a lot of thinking about the death  
 24 penalty since you were here that Tuesday?

25 A. I wouldn't say a lot, no.

1 Q. Have any of your views as far as being in favor of  
 2 it or when you think it should be appropriate, has anything  
 3 changed since then?

4 A. No.

5 Q. I wanted to tell you a little bit about the trial  
 6 process. The first part of the trial is going to be what we  
 7 call the guilt-innocence phase, and that's where evidence will  
 8 be presented to you regarding the offense that occurred. We're  
 9 going to present you with evidence that we have, and at the  
 10 end of that, you're going to be asked to find whether or not  
 11 the Defendant is guilty of capital murder.

12 A lot of the questions you're going to be asked  
 13 during this individual voir dire are going to be based more on  
 14 the punishment phase. Not because the guilt-innocence phase  
 15 is any less important or anything of that nature, but  
 16 basically we have to get to the ultimate issues, and that is  
 17 whether or not you can actually be part of the process that  
 18 could end up in a death sentence. Does that make sense?

19 A. Uh-huh.

20 Q. What are your thoughts about execution in general,  
 21 or I guess the form of lethal injection as a form of  
 22 execution?

23 A. Well, I hope it's gotten more humane than it was  
 24 back when they were using the electric chair and -- but other  
 25 than that, I don't really have any thoughts on it.

1 Q. Basically the form of lethal injection that is used  
 2 is the same thing as when -- if you'd take your dog to a  
 3 veterinarian --

4 A. Uh-huh.

5 Q. -- something like that. Certainly a more humane way  
 6 of doing it than, like you said, it used to be.

7 A. Uh-huh.

8 Q. What are your reasons for being in favor of the  
 9 death penalty?

10 A. I think if someone does not value a life in a cruel  
 11 way or an inhumane way, then they should experience the  
 12 consequences of their action.

13 Q. And let's say -- you have two children. Let's take  
 14 you back to a time when they were about nine or ten years old.  
 15 If they came in and asked, you know, what your views were on  
 16 the death penalty, and you told them you were in favor of it.  
 17 And they, you know, then explained that they had teachers, or  
 18 maybe people that they went to church with that didn't believe  
 19 in the death penalty, and asked you why is that, what would  
 20 you tell them?

21 A. I don't know the answer to that question. I don't  
 22 know that I could say why someone didn't believe in the death  
 23 penalty. I mean, I have my beliefs, but I'm not sure I could  
 24 explain someone else's, even to a child.

25 Q. Okay. If you had a choice to be on this jury, would

1 you choose to be or would you choose not to be?

2 A. Probably choose not to be.

3 Q. Why is that?

4 A. Simply having your life disrupted for, you know, six  
 5 weeks or however long. I'm certainly willing to fulfill my  
 6 responsibility, but if asked yes or no, then my answer would  
 7 be no.

8 Q. And if you were chosen to be on this jury, is that  
 9 something that you would hold against either party?

10 A. Oh, no.

11 Q. Would you be upset with the State because we, you  
 12 know, wanted you in it or the Defendant?

13 A. No, huh-uh.

14 Q. What your job as a juror is going to be basically to  
 15 listen to the facts, like I said earlier, determine what you  
 16 think happened. Is that -- are you able to listen to the  
 17 facts and convict someone of, say, the proper offense that's  
 18 proven?

19 A. I think so.

20 Q. And just going back to the first part, the  
 21 guilt-innocence phase, there's several different allegations.  
 22 There are also things called lesser included offenses. What  
 23 your job as a juror is going to be is just listen to the facts  
 24 of the case and decide which offense is proven.

25 Do you understand what the burden of proof is in a

1 criminal case?

2 **A. I think so.**

3 Q. And what's your understanding of what that is?

4 **A. I believe someone is innocent until proven guilty,**  
5 **so the burden of proof would be on the District Attorney to**  
6 **prove guilty.**

7 Q. And that's exactly right. Certainly if we're  
8 accusing someone of something, then it should be up to us to  
9 prove that they did it.

10 The Defense in this case, it's their right whether  
11 or not they want to testify or whether or not they want to  
12 bring evidence. Basically all they have to do is show up and  
13 act right. Is that something that you would hold against them  
14 if they choose not to testify or to bring any evidence to you?

15 **A. No.**

16 Q. Let's assume for a minute that you find a defendant  
17 guilty beyond a reasonable doubt. That takes us then into the  
18 punishment phase, and it used to be where they just asked  
19 whether you wanted life or death. Now they have questions  
20 that they pose to the jury, and based on the evidence that's  
21 presented, you answer those questions and that determines what  
22 kind of sentence a person gets.

23 The first question that you come to is what we call  
24 the future danger question. It's actually the one on the  
25 bottom. Can you see that okay?

1 **A. Uh-huh.**

2 Q. If you'll take just a moment and read that to  
3 yourself.

4 **A. Okay.**

5 Q. Now, obviously by the fact that the Legislature has  
6 come up with this question and gives it to you in the  
7 punishment phase, they've obviously envisioned some type of  
8 circumstance or situation where a person who's guilty of  
9 capital murder would not automatically be a future danger.  
10 Does that make sense?

11 **A. I'm sorry. Would you repeat that, please?**

12 Q. Obviously by the Legislature coming up with this  
13 question and that being a question that they ask the jury to  
14 answer, they have envisioned a circumstance or a situation in  
15 which a person is found guilty of capital murder, but are not  
16 necessarily a future danger.

17 **A. Yes.**

18 Q. Does that make sense?

19 One of the examples that was given by Mr. Schultz is  
20 the situation where a father, his child is killed by two  
21 people, and they get off on a technicality and walk out of the  
22 courtroom basically laughing at him. And he just -- that's  
23 something he can't handle. He goes out, and he kills those  
24 two people. Technically, he's guilty of capital murder.

25 When you get to this question you're asked, is there

1 a probability whether or not he would commit criminal acts of  
2 violence in the future? And you can certainly see by the  
3 circumstances -- the situation that this is the only time he's  
4 ever been violent, and you can see why probably he's not going  
5 to be a future danger. Does that make sense?

6 **A. Yes.**

7 Q. If it's in such a way that the evidence shows or  
8 doesn't show that there's a probability that a person would be  
9 a future danger, could you answer that question no?

10 **A. Yes.**

11 Q. With this question the burden of proof is on the  
12 State, and once again, it's beyond a reasonable doubt. We  
13 have to prove to you beyond a reasonable doubt whether or not  
14 a person is a future danger. There are several words in this  
15 special issue that are, I guess, up for interpretation. The  
16 first word you come to is probability. What does probability  
17 mean to you?

18 **A. More likely to than not.**

19 Q. Certainly people who are mathematically minded --  
20 you know, have a mathematical figure of it -- I'm not  
21 mathematically minded, so that's more what my view is, also.  
22 Just it -- do you see a difference between the word  
23 "probability" and the word "possibility?"

24 **A. Yes.**

25 Q. Certainly there's a probability, you know, for

1 instance, that it could snow tonight. Certainly, you know,  
2 that's probable, but it's not likely.

3 And it doesn't ask, also, for a certainty. It  
4 doesn't ask you whether or not it's certain that a person is  
5 going to commit criminal acts of violence. And it doesn't ask  
6 whether it's possible. It asks for something kind of in  
7 between there and whether or not there's a probability. Is  
8 that something you think you could answer?

9 **A. Yes, I think so.**

10 Q. Let's talk about now criminal acts of violence.

11 There are a lot of different things that could constitute a  
12 criminal act of violence, and I guess the main thing that  
13 comes to mind are acts of violence against persons. Certainly  
14 beating up your wife or rape, offenses of that type, are  
15 certainly criminal acts of violence; do you agree?

16 **A. Yes.**

17 Q. What about acts against property? Let's say I --  
18 you answer a question in here, and I didn't really like your  
19 answer, and afterwards I took a baseball bat outside and beat  
20 your car up. Do you think that's a criminal act of violence?  
21 Not that I would actually do that.

22 **A. I think to me, a criminal act of violence would be**  
23 **more to a person rather than to an object.**

24 Q. I guess it gets a little fuzzier still if you talk  
25 about drugs, drug dealing, drug using, things like that. Is



1 that something you would constitute, or you would think would  
2 be a criminal act of violence?

3 **A. No.**

4 Q. Certainly it can lead people to act in a way that  
5 they normally wouldn't act, or do things that they normally  
6 wouldn't do, maybe be a little more aggressive that results in  
7 something that maybe was violent. But you don't think that's  
8 a criminal act of violence in and of itself?

9 **A. No, I don't think so.**

10 Q. And if you read on further, the next word that you  
11 come to that's kind of ambiguous is society. Certainly when  
12 you use society in everyday language, it kind of means  
13 everything around you. But when you talk about a case like  
14 this where the options are life and death, it makes you think  
15 of society maybe in a different way. Does that make sense?

16 **A. Yes.**

17 Q. However, this question doesn't limit itself to  
18 prison society, or actually give you a specific type of  
19 society. It still uses the word "society." It certainly  
20 doesn't ask, can this person be safely held in prison for the  
21 rest of his life? All it's asking you is would he be a  
22 continuing threat to society, which could still mean, you  
23 know, the person walking down the street next to you. Is that  
24 someone that you would cross the street to get away from.

25 We all know from the news, certainly people can

1 escape, things like that. So, by just saying "society" it can  
2 mean basically any society. How do you take that word, or  
3 what do you take that word to mean?

4 **A. Society would be the world at large, I guess, to  
5 include both a prison situation and neighborhood, you know,  
6 out in the city or neighborhood.**

7 Q. This question -- well, your definition of society,  
8 basically as a juror, it's up to you to consider all the  
9 evidence that you need to answer this question. Does that  
10 make sense?

11 **A. Uh-huh.**

12 Q. This question is basically aimed at protecting  
13 society. It's asking whether or not this person is going to  
14 be someone that we need to worry about in the future. Does  
15 that make sense?

16 **A. Yes.**

17 Q. Do you think that if you found someone guilty of  
18 capital murder that you would automatically think that they  
19 would be a future danger?

20 **A. No.**

21 Q. Certainly you're open then to evidence that maybe  
22 they're not a future danger, and you'll answer that question  
23 based on the evidence, not whether or not you found the person  
24 guilty?

25 **A. Yes.**

1 Q. What kinds of things do you think that you would  
2 consider in answering this question?

3 **A. Well, the circumstances of the original murder that  
4 the defendant's being charged with would be the main thing,  
5 just the circumstances. Was it an example, like you gave, of  
6 a father defending his child, or was it someone who walked up  
7 to a stranger in a car and -- to rob them and put a bullet in  
8 their head? You know, just the circumstances of the original  
9 crime, I think, would be a big part in determining.**

10 Q. Because certainly someone could commit an offense  
11 that was so horrible that simply just because of that offense  
12 you would think he would probably be a future danger?

13 **A. Uh-huh.**

14 Q. Is there anything else that you might want to know,  
15 maybe things like background? Would something about the  
16 person's background be important to you?

17 **A. I'm not sure in the legal text what the jurors are  
18 allowed to know. But, yes, I definitely think prior offenses  
19 would -- you know, if known, would be taken into  
20 consideration.**

21 Q. What about a person's childhood?

22 **A. Are you getting into the second question?**

23 Q. Well, I haven't yet, but I will get there in just a  
24 little while. I'm still kind of on the first question of what  
25 might help you to understand whether or not they would be a

1 continuing threat to society.

2 And if background wouldn't be that important to you  
3 in answering that question, like I said, that's up to the  
4 juror to decide what you think is important evidence for that  
5 question.

6 **A. You know, it might be. It might be taken into  
7 consideration. I just don't really know until, given the  
8 situation, to look at all the information I'm given. I don't  
9 know whether it would be important or not.**

10 Q. But certainly if evidence was presented to you about  
11 someone's background, that would be something you would be  
12 open to consider?

13 **A. Yes.**

14 Q. It's also frequent in trials like this for  
15 psychiatrists to be used, usually in punishment. Do you think  
16 that would be important evidence to you, or important  
17 testimony?

18 **A. It could be.**

19 Q. Do you think that the Defense could find a  
20 psychiatrist to come in and say all these good things about  
21 the Defendant and here's why he is good, and this and that,  
22 and he'll never do it again?

23 **A. I would have to take that into consideration, along  
24 with all the other evidence. I would take into consideration  
25 what the psychiatrist said, but it would have to be weighed**

1 against everything else.

2 Q. And I guess with -- my question is more with  
3 psychiatry. Do you think that is a precise science?

4 A. **I would probably have to say no to that.**

5 Q. Do you think on that future danger question, do you  
6 think you would be able to answer that just based on your own  
7 weighing of the evidence and understanding of the evidence  
8 even without psychiatric testimony?

9 A. **Yes.**

10 Q. Now, with Question Number 1, if you answer Question  
11 Number 1 no, your job as a juror is over. It has to be a  
12 unanimous yes in order to get to the next question. If ten  
13 people answer the question no, then it's an automatic life  
14 sentence there. Does that make sense?

15 A. **Yes.**

16 Q. Okay. If you answer that yes, you then go onto --  
17 it's actually the third issue. There was a second issue  
18 presented to you during the general voir dire. I don't know  
19 if you recall it or not. We haven't been addressing it as  
20 much, because it could come up through the evidence, but it  
21 might not, but we know this third question is going to come  
22 up. So, if you'll just take a moment and read that to  
23 yourself.

24 A. **Okay.**

25 Q. This question -- there's, I guess, several

1 different purposes for this question. Some people call it the  
2 one-last-look question, or kind of the humanitarian question.  
3 It gives the jury an opportunity to look at all the evidence  
4 and kind of decide -- or gives them the opportunity to make  
5 sure that the right result occurs. Does that make sense?  
6 Certainly you can answer the first question yes, that someone  
7 is a future danger, but as a juror you're thinking, you know,  
8 there are all these other circumstances that this person  
9 shouldn't be put to death. And that's where this question  
10 comes into play.

11 It allows you to take into consideration, once  
12 again, the circumstances of the offense, the defendant's  
13 character and background, and the defendant's personal moral  
14 culpability.

15 With mitigation, you're not talking about things  
16 like accident or self-defense. Anything of that nature, or  
17 anything about whether it was an accident or self-defense  
18 would come up during the guilt-innocence phase. So, what this  
19 question is asking you to consider are things other than  
20 that. Does that make sense?

21 A. **Yes.**

22 Q. Do you think there's anything in that question that  
23 deals with taking into account the defendant's character?

24 A. **Yes. It says defendant's character and background.**

25 Q. I'm sorry, the victim's character.

1 A. **Oh, victim's? No, no.**

2 Q. It doesn't really ask you, or direct you to take  
3 into account what kind of person the victim was or things the  
4 victim may have done, anything like that. Do you see it that  
5 way, other than where it talks about the circumstances of the  
6 offense?

7 A. **Yes. I see it that way.**

8 Q. And I think y'all were asked back on Tuesday how  
9 important the victim's character was to you. Is that -- how  
10 is that -- how important is that?

11 A. **At this point I don't think it would be a  
12 consideration.**

13 Q. Do you feel like a person who goes in, and I think  
14 the example was, kills the nun who's on her knees praying,  
15 versus the person who kills the drug dealer, is that still the  
16 same type of crime to you?

17 A. **No. It probably isn't the same type of crime.**

18 Q. Do you feel like it would be maybe a lesser crime if  
19 the victim is someone of bad character?

20 A. **Gosh, this is so hard because it's giving  
21 hypotheticals, and a murder is a murder. But, I just -- I  
22 don't know.**

23 Q. Does it change the actions of the defendant any,  
24 depending on who the victim is?

25 A. **No.**

1 Q. Because obviously he's still taking the life of  
2 someone else?

3 A. **Yes.**

4 Q. What about, let's say you have someone who just  
5 decides they need money, and they want to go on a big  
6 vacation, and they're going to go rob the 7-Eleven store to  
7 get it. And they choose to go down, rob the store. They  
8 don't know the clerk. They don't know anybody in there. They  
9 just pick some random store in some random neighborhood, go  
10 in, take all the money, kill the clerk and walk out.

11 Distinguish that from a person who goes in -- let's  
12 say they're going to go rob a local 7-Eleven in their  
13 neighborhood where they know the family that owns it. They've  
14 been raised by this family practically. They know exactly how  
15 much money they have in there, and they even know that their  
16 friend is going to be working that night.

17 So, they go in there that night, and they take all  
18 the money from their friend, and they kill their friend. Does  
19 that make a difference to you?

20 A. **No.**

21 Q. So the fact that one person kills somebody they  
22 don't know and one person kills somebody they do, that doesn't  
23 take away from the actions of the defendant?

24 A. **No.**

25 Q. Why is that?

1 A. Well, they've killed someone that's not doing them  
 2 any harm, either way, whether they knew them or not.  
 3 Q. Okay. Now, in there it talks about the defendant's  
 4 character and background. What kinds of things would you  
 5 think would be important to consider with something like that?  
 6 A. I guess how they were raised, maybe what their  
 7 parents were like.  
 8 Q. Okay. What this question is asking for is, is  
 9 there anything about this person or about this person's life  
 10 or the circumstances that are sufficient to make you think  
 11 that they need a life sentence rather than a death sentence.  
 12 Does that make sense?  
 13 A. Uh-huh.  
 14 Q. One of the common examples is Adolf Hitler.  
 15 Certainly it's very well-known all of the things he's done and  
 16 how horrible those are.  
 17 And one thing that this question looks at is to look  
 18 outside of that. Look outside of all those horrible things  
 19 they've done, and is there anything out there that's  
 20 mitigating. Probably every person in this courtroom has a lot  
 21 of mitigating evidence that they could point to if they needed  
 22 to in a situation like this. Does that make sense?  
 23 A. I think so.  
 24 Q. There's certainly probably something in everyone's  
 25 life that was either bad or that caused them heartache or

1 maybe they didn't have as many chances as other people that  
 2 they could bring in to show this is why I had such a bad life.  
 3 Does that make sense?  
 4 A. Yes.  
 5 Q. Because like with Hitler, he -- obviously his mom  
 6 contemplated abortion and told him about that on several  
 7 occasions. He was apparently teased as a child. He had a  
 8 father who was -- I'm not sure if he was around all the time  
 9 or not, things of that nature. Apparently thought he was kind  
 10 of girly, not really the manly son that he wanted.  
 11 He then obviously tries to go to art school, and  
 12 they even tell him, you know what, you don't have any talent,  
 13 kicked him out of art school. Goes to war, finds out that he  
 14 can direct people. He can talk to people, get them to do kind  
 15 of what he wants them to do, and that's about the only thing  
 16 that he's good at. Certainly, you can look at that and see  
 17 how that was a hard life to live through. Obviously, he  
 18 didn't have anybody that loved him, cared about him or wanted  
 19 to bring him up and support him in the loving manner that  
 20 we're probably all accustomed to.  
 21 But, what this question asks you to look at is to  
 22 take that into account next to what he did. And certainly  
 23 that's mitigating. You think, well, that probably was a bad  
 24 childhood, but certainly not something anybody would find  
 25 sufficient to think it was okay for him to live rather than

1 die. Does that make sense?  
 2 A. Yes.  
 3 Q. And that's kind of what this question is wanting you  
 4 to look at. Is that something, or is this evidence something  
 5 that warrants a life sentence? Is this question something  
 6 that you think that you could listen to all the evidence and  
 7 evaluate it fairly to answer this question?  
 8 A. Yes, I think so.  
 9 Q. Now, another thing with this question -- as you  
 10 said, you have children. Let's say, for instance, that one of  
 11 your children gets into some trouble with the law.  
 12 Certainly, as their mother, you're going to be there to  
 13 support them and love them. May not agree with what they did,  
 14 but you're certainly going to be there to support them and  
 15 love them. And if they needed you to come testify, tell them  
 16 what a good child this child is, things of that nature, that's  
 17 something that you would probably do because you love your  
 18 child?  
 19 A. Yes.  
 20 Q. Can you see in an instance like this where you might  
 21 have a family member who loves their child, who doesn't want  
 22 their child to die, to come in and say that? You know, I love  
 23 this child. He's all I have, or anything of that nature,  
 24 please don't execute him. How would that kind of testimony  
 25 sit with you?

1 A. I think I would understand, you know, where that  
 2 parent was coming from. But you would still have to take all  
 3 the evidence into consideration.  
 4 Q. What about something like drug usage? With a  
 5 question like this there are things that can be mitigating to  
 6 one person and aggravating to another, like drug usage. One  
 7 person might say, you know what, this person was on drugs.  
 8 They don't ever act this way. They would have never done this  
 9 had they not been taking drugs. Now they're not taking them  
 10 anymore and they're a good person.  
 11 Whereas another person might say, but you know what,  
 12 we've been taught since we were very young not to use drugs,  
 13 the bad things they do to us, what can happen, and that's just  
 14 a result of him not listening to anything everybody has told  
 15 him, and that's aggravating to me. Does that make sense? Do  
 16 you see how that can be seen both ways?  
 17 A. Yes.  
 18 Q. That's up to you as a juror to listen to the  
 19 evidence that comes in, and it may be aggravating to someone  
 20 else. It may be mitigating to you or vice-versa. And it's  
 21 up to you to take the evidence, listen to it and decide  
 22 whether or not you think it's mitigating.  
 23 A. Okay.  
 24 Q. Now, where you were asked to look at the Defendant,  
 25 did you make any observations about him?

- 1 A. **No. I mean...**  
 2 Q. One of the common observations is that he looks very  
 3 young.  
 4 A. **Uh-huh.**  
 5 Q. Is that something that you would consider as a  
 6 mitigating factor? Certainly someone is younger -- their  
 7 youth, I guess?  
 8 A. **I don't know.**  
 9 Q. But you can certainly see where this question might  
 10 ask you to take that into consideration. Is that something  
 11 you would have an open mind about taking into consideration?  
 12 A. **Yes.**  
 13 Q. Let's talk a little bit more about just childhoods  
 14 in general. Have you ever known someone who had a bad  
 15 childhood, maybe came from a very poor family, didn't have  
 16 hardly any chances in life, but still made good of themselves?  
 17 A. **Yes, I'm sure I have.**  
 18 Q. And I guess kind of conversely, you've probably also  
 19 known some people who had every opportunity in life and  
 20 didn't take any of them and just were a bad seed?  
 21 A. **Uh-huh.**  
 22 Q. Certainly, regardless of the childhood someone has,  
 23 we still expect just some common simple things from them, like  
 24 to obey the laws, you know, not to go around killing people  
 25 that -- you know, just in general, to go to school for a

- 1 little while, things of that nature. Do you think that's too  
 2 much to ask of people?  
 3 A. **No.**  
 4 MS. LOWRY: May I have a moment, Judge?  
 5 THE COURT: Yes.  
 6 Q. BY MS. LOWRY: I'm going to go through your  
 7 questionnaire with you just a little bit. The questions that  
 8 we ask, we're not trying to pry into your life or get to your  
 9 deepest, darkest secrets or anything like that. So, please  
 10 don't think that I'm trying to pry or anything.  
 11 A. **Okay.**  
 12 Q. There are just some things we need to know just for  
 13 our purposes here.  
 14 The one question where it asked, what the biggest  
 15 problem with the criminal justice system is. And we've seen  
 16 this more times probably than not, too much time. What do you  
 17 think about this process? Do you think we're spending too  
 18 much time here? This is maybe too tedious of a process, or do  
 19 you --  
 20 A. **Well, I guess my answer to that question is for**  
 21 **situations like Timothy McVeigh, you know, the length of time**  
 22 **between the crime and the execution was more what I meant**  
 23 **than, you know, something that's so overtly terrible, and it**  
 24 **takes -- there's so many appeals and it takes so long.**  
 25 Q. You've written down here Mark Cole has been to

- 1 prison. Is he related to you?  
 2 A. **He's my husband's half-brother.**  
 3 Q. And it was approximately 1988 wherever he went to  
 4 prison?  
 5 A. **Yes.**  
 6 Q. Do you know very much about that situation?  
 7 A. **Not very much, no.**  
 8 Q. Is there anything maybe that you've heard about it  
 9 through your husband or anything like that that would cause  
 10 you not to look at the evidence in this case fairly?  
 11 A. **No.**  
 12 Q. Catherine Quintana, how do you know her?  
 13 A. **I worked with her at a bank.**  
 14 Q. Is that, I guess, how you met her?  
 15 A. **Yes.**  
 16 Q. Is that the only interaction you've had with her?  
 17 A. **Yes.**  
 18 Q. Do you know very much about that situation?  
 19 A. **No.**  
 20 Q. Is there anything about that that would cause you  
 21 not to be fair in this case?  
 22 A. **No.**  
 23 Q. You also have that your brother, Stuart, is  
 24 currently in drug rehab?  
 25 A. **Yes.**

- 1 Q. How long has he been there?  
 2 A. **Just a few months.**  
 3 Q. Is that something that was a surprise to your  
 4 family, or has that been an ongoing battle?  
 5 A. **Most of us in the family have known that he was on**  
 6 **drugs for quite some time. It's just it was never -- he never**  
 7 **actually admitted it until just the last few months. And**  
 8 **shortly after he finally admitted it to the family, he went**  
 9 **into drug rehab.**  
 10 Q. I want to talk to you a little bit about -- there  
 11 was a page where it asked you about ten different questions,  
 12 and it asked you to answer anywhere from strongly agree to  
 13 strongly disagree. Do you remember that page?  
 14 A. **Vaguely, yes.**  
 15 Q. One of the questions was, "If someone is accused of  
 16 capital murder, he should have to prove his innocence," and  
 17 you put disagree. Certainly that's asking you about the  
 18 burden of proof in this case?  
 19 A. **Yes.**  
 20 Q. And that's on the State. There may be things you  
 21 want to hear from him or maybe want to hear from their side,  
 22 but you understand that may not happen?  
 23 A. **Yes.**  
 24 Q. And that's not going to be something that you're  
 25 going to hold against them; is that correct?

- 1 A. Correct.
- 2 Q. And you're going to make sure that we prove our case  
3 to you beyond a reasonable doubt?
- 4 A. Yes.
- 5 Q. On this question, "Persons determine their destiny  
6 or fate by choices they make in life." You put strongly  
7 agree. What were you thinking about whenever you were  
8 answering that question?
- 9 A. I was probably thinking about Mark Cole who had a  
10 wife and two children and made the choice to leave his wife,  
11 have an affair and go into a 7-Eleven and rob a man at  
12 gunpoint and just the choices he made, you know...
- 13 Q. And is that something -- I mean, is there anything  
14 about that, you know, that causes you problems -- or not  
15 necessarily problems -- that would cause you concern in  
16 listening to any type of evidence that may come in in a case  
17 like this?
- 18 A. I -- some of the decisions I see people make me sad,  
19 but I feel like if they break the law or do harm to another  
20 person, they need to suffer the consequences of the decision  
21 they made to do that.
- 22 Q. And certainly you've probably seen firsthand what  
23 drug usage can do? And, you know, like we were talking about,  
24 to you it may be aggravating, which is perfectly fine because  
25 you know he knew better than to do that, and you know he chose

- 1 to do that and that's how it ended up.
- 2 And also "A defendant is innocent unless proven  
3 guilty beyond a reasonable doubt?" And you put strongly  
4 agree, which is just consistent with your understanding that  
5 the burden of proof is on the State.
- 6 A. Yes.
- 7 Q. The Judge is going to give you a charge at the end  
8 of the case that's going to instruct you that unless we've  
9 proven our case to you beyond a reasonable doubt, that you are  
10 to acquit the Defendant, and that's certainly a law that  
11 should be followed?
- 12 A. Yes.
- 13 Q. Going back to these questions for the punishment  
14 phase, certainly it may be a tendency -- it's not for every  
15 jury, but they may think because of the circumstances of the  
16 offense, or maybe some other evidence that they've heard they  
17 want a certain result. They've decided already that they want  
18 a life sentence. And it's certainly tempting to go in and  
19 answer the questions in a way to achieve that result. And  
20 what the Court needs to know is that you'll be able to look at  
21 the facts, look at the evidence that was brought in, and  
22 answer the questions the way the evidence requires you to  
23 answer the questions, rather than what results you want. Does  
24 that make sense?
- 25 A. Yes.

- 1 Q. So if you come in and you decide, you know what,  
2 this person needs to get a life sentence, that you don't just  
3 automatically answer the future danger question no so you can  
4 achieve that. Is that a law that you can follow?
- 5 A. Yes.
- 6 MS. LOWRY: Pass the juror, Judge.
- 7 THE COURT: All right. Mr. Goeller.
- 8 MR. GOELLER: Thank you, Your Honor.
- 9 CROSS-QUESTIONS
- 10 BY MR. GOELLER:
- 11 Q. Good afternoon, Ms. Cole -- do you prefer Ms. or  
12 Mrs. Cole?
- 13 A. Either one is fine. It doesn't matter.
- 14 Q. What do you prefer?
- 15 A. Mrs.
- 16 Q. Mrs., okay.
- 17 Thank you for coming back today. You've been here,  
18 probably since, what, about 8:30, 8:45, and we sure appreciate  
19 your time. I want you to know that -- you're probably back  
20 in this room right in the back here, and you're thinking  
21 what's going on? Why am I back here so long? We've been  
22 pretty much hard at it since about 8:30, 8:45. Sometimes we  
23 get a little ahead of schedule and sometimes we get behind,  
24 but we want you to know -- I hope jurors understand we're  
25 working very hard and going as fast as we can. And I know it

- 1 can test someone's patience sitting back in that little room,  
2 but we sure appreciate you being back there, and thank you for  
3 your service.
- 4 You probably recall my partner, Mr. Don High?
- 5 A. Yes.
- 6 Q. And you remember Ivan?
- 7 A. Yes.
- 8 THE DEFENDANT: Hello.
- 9 Q. BY MR. GOELLER: And the State has introduced  
10 themselves to you.
- 11 A. Yes.
- 12 Q. I wanted to touch on something quickly just to see  
13 if it's a potential problem. I noticed in your questionnaire,  
14 and thank you for filling these out. They save us a lot of  
15 time.
- 16 In October, October 17th through the 21st, you've  
17 got a trip to Arkansas planned. Can you tell us about that?
- 18 A. My mother and I try to take a trip together every  
19 year.
- 20 Q. Hopefully that won't be a problem in this case.  
21 Nobody can make any guarantees. I would hope that this case  
22 would be concluded by then, but there's a possibility that it  
23 might not be. Does that cause any potential problems if we  
24 had -- if you were a juror and we were in trial that week?
- 25 A. I could probably get the reservations moved.

1 Q. Okay. Airlines involved?

2 A. **No, just hotel.**

3 Q. Hotel and stuff. Sometimes if that does become a  
4 problem, a phone call from a judge makes people start to see  
5 the light real quick, or the judge's staff, but hopefully it  
6 won't be a problem.

7 Are you any kin to any of the Coles in Collin  
8 County, Phyllis Cole, anybody like that, just some folks -- I  
9 know it's a very common last name? Quintana, do you know who  
10 her relatives were?

11 A. **No. I know she has a mother and some sisters living  
12 here, but beyond that I don't know.**

13 Q. Okay. I think you made a comment that since it's  
14 been two or three weeks since you learned that your  
15 perspective service might involve a capital case that you've  
16 done some thinking about it. Tell me -- and remember, I guess  
17 the most important thing for me and Mr. High is there are  
18 absolutely no right or wrong answers to us. And I think I've  
19 read your questionnaire and listened to some of your answers  
20 to the questions posed by the State, and I think you're  
21 exactly what we want in a juror, and that is just shoot from  
22 the heart. Sometimes jurors come up here, and they want to  
23 tell us what they think -- I think they tell us what they  
24 think the judge would like them to say. Do you know what I'm  
25 saying? They try to be politically correct, and those kind of

1 knows why. But he killed a lot of children in that day-care  
2 up there and everything, and that's been a very common case  
3 that folks who are proponents of capital punishment have  
4 mentioned, and it's very tough to argue in cases like that. I  
5 think what made him so awful is he had absolutely no remorse.  
6 Right before they executed him, they said, you know, do you  
7 have any remorse about the children that you killed? And I  
8 think he said no, those were just collateral consequences.  
9 That did it for a lot of people.

10 In your questionnaire when asked if you could give  
11 an argument against the death penalty, you wrote down no man  
12 has the right to take another's life. Tell me what your  
13 thoughts were on that.

14 A. **Well, I do believe in the death penalty.**

15 Q. Okay.

16 A. **But if I had to give a reason to support not having  
17 the death penalty, it would be that no man has the right to  
18 take another man's life. No man has the right to murder  
19 someone, but no one has the right to take another human life  
20 for any reason.**

21 Q. Okay. Are those feelings that you have -- do you  
22 see both sides? I guess, do you sometimes think about it, and  
23 we've got the McVeighs on one hand. And I think the State has  
24 mentioned the former leader of the Third Reich, Adolf Hitler.  
25 Those are pretty easy cases to make a good argument for the

1 folks it's hard to deal with them, and that's why we have this  
2 individual voir dire, so you can speak freely. I absolutely  
3 guarantee you, no one is going to try to change your mind, or  
4 try to convince you otherwise.

5 I mean, you know, it would be ridiculous for me to  
6 spend my time with you today trying to turn you over to the  
7 side of being opposed to capital punishment. Number one, I  
8 don't have the right to do that. It's a free country, and it  
9 would be a waste of my time and a waste of your time and a  
10 waste of the Judge's time. So I'm not here to convince you of  
11 anything. If you shoot straight with me and talk to me from  
12 the heart, then that would be great, okay?

13 A. **Okay.**

14 Q. In your questionnaire you were asked the question,  
15 do you believe some crimes warrant the death penalty, and your  
16 views generally about capital punishment and the death  
17 penalty. Tell me what thoughts were in your head when you  
18 thought some crimes warrant the death penalty.

19 A. **Well, I'll say again, the Timothy McVeigh, the  
20 Oklahoma City thing.**

21 Q. You know, I noticed in your questionnaire you  
22 followed a little bit of that trial?

23 A. **Yeah, a little bit, not a lot.**

24 Q. But that was an awful thing. I guess his beef was  
25 with the Federal Government, the FBI or Janet Reno, or who

1 death penalty.

2 A. **Uh-huh.**

3 Q. Do you find yourself sometimes thinking about both  
4 sides of it; being pro capital punishment and recognizing  
5 there are people out there, like Mr. McVeigh and Mr. Hitler,  
6 and, you know, Mr. Dahmer, the guy that killed those people  
7 and eat them -- cooked them and eat them up there. I don't  
8 know where he was from, somewhere up north, Wisconsin. And do  
9 you sometimes feel as you wrote that, should the Government  
10 really

11 be in the business of killing itself? Do you see yourself  
12 looking at the whole thing from both sides sometimes?

13 A. **Probably not.**

14 Q. Tell me why.

15 A. **I think that a law of nature is that we suffer the  
16 consequences of our decisions.**

17 Q. Okay. When you -- later on in your questionnaire,  
18 or I think the next series of questions, you had a choice of  
19 three life confinement options, I should say. Life  
20 confinement is never appropriate in any capital murder case,  
21 life confinement is never appropriate in any murder case, and  
22 then you chose life confinement is appropriate in some capital  
23 murder cases, and I could return a verdict resulting in life  
24 confinement in the proper case. Tell me your thoughts on  
25 that. No right or wrong answer. Tell me everything you could

- 1 tell me about why you chose that one.
- 2 **A. Because all of the evidence and the questions would**
- 3 **need to be answered.**
- 4 Q. Okay.
- 5 **A. And not knowing any of the situation or the**
- 6 **evidence, I can't really, I don't think, give an example. But**
- 7 **I just think that the questions that were given and would be**
- 8 **given to a jury after the guilt -- guilty verdict was (sic)**
- 9 **come in would have to be taken into consideration.**
- 10 Q. Okay. Perfect. I think that's the best answer. So
- 11 what that tells me is as a lawyer representing somebody
- 12 accused of a capital offense is that in the right case you
- 13 could give a life sentence and say no to the death penalty?
- 14 **A. Yes.**
- 15 Q. Okay. When you were told a couple of weeks ago --
- 16 maybe it's been almost three weeks now, two weeks for sure.
- 17 Three weeks tomorrow, I guess -- that the State was seeking
- 18 the death penalty in this case, what did that tell you? Did
- 19 you think about what that meant, the State is seeking a death
- 20 sentence?
- 21 **A. I just thought this was a pretty serious situation.**
- 22 Q. Who do you think makes that decision, whether or not
- 23 to seek the death sentence on a particular case?
- 24 **A. I would think the District Attorney would decide**
- 25 **whether or not to --**

- 1 Q. Yeah.
- 2 **A. -- seek the death penalty.**
- 3 Q. The local District Attorney. Very good. Most
- 4 people don't know that. How did you know that?
- 5 **A. TV, I guess.**
- 6 Q. Okay, okay.
- 7 **A. I guess.**
- 8 Q. Do you watch a lot of TV?
- 9 **A. Yes.**
- 10 Q. Tell me what you like to watch.
- 11 **A. My favorite show is West Wing.**
- 12 Q. Is that the one about the president?
- 13 **A. Yeah.**
- 14 Q. Is that modeled after any particular president, or
- 15 just anybody?
- 16 **A. I don't know.**
- 17 Q. I've never seen it. Is it a goof on the Clintons,
- 18 or is it just --
- 19 **A. No.**
- 20 Q. I know there's one out there. There's a couple of
- 21 those White House shows out there. Some of them I've heard
- 22 are pretty funny, but that one is more of a drama, right?
- 23 **A. Yes, it is.**
- 24 Q. It's not a comedy, right?
- 25 **A. Right.**

- 1 Q. It's pretty serious?
- 2 **A. Uh-huh.**
- 3 Q. Who's the president in that one?
- 4 **A. Martin Sheen.**
- 5 Q. Okay. What other shows do you like?
- 6 **A. Mostly, I guess probably dramas mostly. Providence,**
- 7 **and I like to watch movies and --**
- 8 Q. You're married, right?
- 9 **A. Yes.**
- 10 Q. And what's your husband like to watch?
- 11 **A. Sports and police shows.**
- 12 Q. Does he surf?
- 13 **A. Oh, yes.**
- 14 Q. Got the clicker?
- 15 **A. Yes.**
- 16 Q. Somebody told me that somebody tried to say that
- 17 goes back to caveman days why men click. I never really could
- 18 make the connection, but apparently most men can't watch a
- 19 television show for more than 30 seconds unless they're -- I
- 20 don't know what that's all about.
- 21 THE COURT: Most dangerous thing in the world.
- 22 MR. GOELLER: Yes, sir, Judge.
- 23 Q. BY MR. GOELLER: A lot of -- too much time between
- 24 the death sentence and the execution of the sentence. I want
- 25 to ask you about that, and Mrs. Cole, you know why I ask that

- 1 question. That -- when I see that, that might give me a
- 2 little -- you know, it might make me a little bit nervous.
- 3 **A. Uh-huh.**
- 4 Q. And so that's why I ask you, because if I don't, I'm
- 5 a fool --
- 6 **A. Uh-huh.**
- 7 Q. -- and you know that none of this is personal or
- 8 anything like that. I just have to make sure to do my job
- 9 right.
- 10 I think you had mentioned McVeigh, the McVeigh
- 11 case. A lot of what we get is what the television and what
- 12 the newspapers tell us, okay? And they'll take snippets here
- 13 and there, and then they'll spin that and put it on the
- 14 airways. Did you know the Government took almost two years to
- 15 get ready for that case?
- 16 **A. No, I didn't.**
- 17 Q. Okay. It was a long time between the trial and the
- 18 execution of the sentence. As far as capital case -- probably
- 19 capital murder goes, or federal capital murder, I suppose,
- 20 it's probably about average. But, should that cause me any
- 21 concern, that you wrote down allowing too much time between
- 22 the death sentence and the execution of the sentence?
- 23 **A. No. I had to write something down, so I just --**
- 24 Q. And I agree with Ms. Lowry, that almost every juror
- 25 has wrote that. It's easy to see why because the public

1 perception is -- you know, these things take way too long. Do  
2 you think that regarding capital punishment and capital murder  
3 trials that erring on the side of caution is good, taking  
4 extra time, looking at things in depth?

5 **A. I can see where that would be good.**

6 Q. You know, I think it depends on the case, too. I  
7 mean, if someone were to get a speeding ticket. Oh, I don't  
8 know, you're driving down to Plano, and you're going through  
9 Allen, and you get a speeding ticket. You have a trial, and  
10 one officer, and I put my radar on and she was going 78. No,  
11 Officer, I wasn't -- or no, Judge, I wasn't. I mean, that  
12 trial from the time maybe a jury got to the courthouse to the  
13 time there should be a verdict and a punishment, if there is  
14 one, if it's not guilty. If it's guilty, maybe an hour tops.  
15 I don't think there's real lengthy appeals or anything like  
16 that. But these cases are different, these death penalty  
17 cases.

18 I want to talk to you just a little bit about some  
19 of your answers in here. It said, "Criminal laws treat  
20 criminal defendants too harshly." And you wrote strongly  
21 disagree, or that was your choice. Tell me your thoughts  
22 there.

23 **A. Criminal law -- would you repeat it, please?**

24 Q. Yeah. The sentence was -- this was one of those  
25 sections of the questionnaire, they gave you a sentence, and

1 they gave you five choices; strongly agree, agree, uncertain,  
2 disagree, strongly disagree. And it said, "Criminal laws,  
3 including sentences in the punishment, treat criminal  
4 defendants too harshly," and you circled strongly disagree.  
5 Tell me your thoughts there.

6 **A. Probably the same as that a person must suffer the  
7 consequences of the choices they make and their actions.**

8 Q. Okay. Do you think -- do you think criminal laws  
9 and the criminal justice system in general is too lenient on  
10 people? Not on people, on criminals, people that have been  
11 found guilty. Do you think our system is too lenient, or too  
12 harsh, or just about right?

13 **A. I really don't know that much about it.**

14 Q. Okay. Some of the questions that we ask are awful  
15 personal, and I want you to know -- have you ever served as a  
16 juror in any other kind of case?

17 **A. No, I haven't.**

18 Q. All right. This is very unusual. Individual voir  
19 dire is only in these kind of cases, so you don't even fill  
20 out questionnaires on your average case you come to the  
21 courthouse on.

22 But we ask some of these very personal questions  
23 about people you know that have -- and their situations in  
24 life maybe with drugs and the penitentiary or something like  
25 that, we ask those kind of questions because they -- some

1 people they affect greatly and affect their ability to serve  
2 on a jury. Ms. Lowry asked a little bit about Mark Cole, and  
3 I was writing it down. That's your husband's half-brother?

4 **A. Uh-huh.**

5 Q. How old a man is he, Mr. Mark Cole, approximately?

6 **A. He's probably, I would guess, in his late thirties,  
7 maybe.**

8 Q. Okay. And I think you -- did you know him?

9 **A. Yes, I did.**

10 Q. How often or frequent was your contact with him?

11 **A. I saw him maybe half a dozen times a year.**

12 Q. Okay. I guess you've known him since you married,  
13 right?

14 **A. Yes.**

15 Q. Is that when you met him? You met him through your  
16 husband?

17 **A. Yes.**

18 Q. How long have you been married?

19 **A. Seventeen years.**

20 Q. Okay. What kind of relationship did you have with  
21 him up until -- he went to the penitentiary in what year?

22 **A. I think it was '88 or '89.**

23 Q. And he's still there?

24 **A. No. He just got out this year.**

25 Q. Okay. So what, you knew him a few years before he

1 committed his offense and before he went to the penitentiary?

2 **A. Uh-huh.**

3 Q. What was your relationship like before he went to  
4 the penitentiary?

5 **A. It was a friendly relationship, I guess, not  
6 close.**

7 Q. Was it, like, holidays and family get-togethers --

8 **A. Pretty much.**

9 Q. -- or would you see him -- would you and your  
10 husband see him on -- I guess the best question to ask, did  
11 you live close by prior to him going to the penitentiary?

12 **A. We lived close, but we didn't see each other often.**

13 Q. Okay. Was your husband close with his half-brother?

14 **A. No.**

15 Q. Why was that; do you know?

16 **A. Well, my husband did not grow up with his real  
17 father, who was his half-brother's father. My husband didn't  
18 really meet his father until he was 18 years old, so they were  
19 just not close.**

20 Q. Yeah.

21 **A. So other than just holidays, we did not see them  
22 very much.**

23 Q. Okay. What kind of sentence did he get; do you  
24 know?

25 **A. Well, he just got out, and he did the full time --**



- 1 Q. Wow.
- 2 A. -- so whatever --
- 3 Q. Armed robbery. I guess he used a gun or something.
- 4 A. Uh-huh.
- 5 Q. Okay. Did -- was there any contact with him while
- 6 he was in the penitentiary?
- 7 A. My husband went to visit him one time, not too long
- 8 after he was put in prison, and Mark had a history of blaming
- 9 everyone else for his actions, and he blamed my husband --
- 10 Q. Blaming your husband --
- 11 A. -- for part of it. Uh-huh --
- 12 Q. -- for what happened to him?
- 13 A. -- yes.
- 14 Q. How was that?
- 15 A. Don't ask me. And it was not a good meeting when my
- 16 husband went to visit him that one time, so he never -- and we
- 17 haven't seen him since.
- 18 Q. When did he get out?
- 19 A. I believe in the spring sometime, April or May.
- 20 Q. How -- were y'all notified?
- 21 A. Yeah.
- 22 Q. Did they told (sic), or did he tell you?
- 23 A. My husband's oldest son has kept in contact with him
- 24 and Mark's mother, and so he knew -- he -- my husband's son is
- 25 probably closer to Mark. He's seen him quite a bit and kept a

- 1 relationship going.
- 2 Q. Okay.
- 3 A. So we found out from him.
- 4 Q. Did -- how old are your husband -- your husband
- 5 has -- both you and your husband have children from prior
- 6 marriages?
- 7 A. My husband has two boys from prior marriages.
- 8 Q. And you've got?
- 9 A. I don't have any children.
- 10 Q. Okay.
- 11 A. I don't know that I distinguished that on my
- 12 questionnaire.
- 13 Q. The questionnaire didn't probably ask you -- it's
- 14 probably not that good.
- 15 A. Yeah.
- 16 Q. But one of your -- one of your husband's boys kept
- 17 in contact with him in the penitentiary?
- 18 A. Yes.
- 19 Q. Would that be how -- if that was the case, how
- 20 information would flow back to y'all --
- 21 A. Uh-huh.
- 22 Q. -- about his either progress or life in the
- 23 penitentiary?
- 24 A. Yes.
- 25 Q. What do you recall about that? What were the

- 1 years -- geez, '88, '98, '99, I guess he did 13 years?
- 2 A. (Nods head.)
- 3 Q. What kind of things got back to the family about
- 4 either the penitentiary, or what was he like during those 13
- 5 years?
- 6 A. Yeah. Are you wanting specifics about what we heard
- 7 or just --
- 8 Q. Yeah, anything.
- 9 A. We heard the first few years he was very violent,
- 10 and then we heard that he had settled down, had changed a lot,
- 11 mellowed, I guess, and he was -- they moved him around several
- 12 times while he was in, and that's pretty much it.
- 13 Q. There's been no contact between him and you or your
- 14 husband since he got out?
- 15 A. No.
- 16 Q. Do you find that odd or -- I guess I'm trying to
- 17 figure out if the meeting with your husband went bad early on
- 18 if he -- but he's kept in contact with your stepson, I guess
- 19 you'd call it. I wonder why he hasn't contacted anybody if
- 20 he's changed. That's odd.
- 21 Have you and your husband talked about that, the
- 22 fact that he's been out but --
- 23 A. I'm sure we've mentioned it, but not a great deal.
- 24 Q. Okay.
- 25 A. You know, we're pretty much -- my husband's father

- 1 died in '88, as a matter of fact, and so that was kind of the
- 2 tie with that family.
- 3 Q. I see.
- 4 A. And after he died was when Mark got into all of
- 5 this, and so the -- you know, the close -- the real tie was
- 6 gone, and so we just haven't been in touch with the family.
- 7 Q. I see. So Stuart -- Stuart is your husband's
- 8 youngest -- no, I'm sorry.
- 9 A. No. Stuart's my half-brother.
- 10 Q. That's your half-brother?
- 11 A. Yeah. My father and stepmother's youngest son.
- 12 Q. How long -- what kind of relationship did you have
- 13 with Stuart growing up?
- 14 A. Well, my parents are divorced, and my mother raised
- 15 me so I was never real close to my three half-brothers. I
- 16 would see them maybe half a dozen times a year, also. And it
- 17 was a friendly relationship, but not close.
- 18 Q. How old were you during this period of time that
- 19 you'd maybe see Stuart and Larry and David, from about what
- 20 age to what age?
- 21 A. I was ten when David was born so -- and I'm 48 now
- 22 so...
- 23 Q. Okay. What kind of guy was Stuart growing up?
- 24 A. Well, it's hard for me to say because I wasn't
- 25 around him every day. Of the three boys, he was more open

1 with the family as to what his activities were. He was the  
2 one of the three -- or the four of us who broke away from the  
3 family. He lived in California for a few years, and so I  
4 guess other than open and the one who felt like he could leave  
5 the nest more than the rest of us.

6 Q. Were your -- was your general impression of him  
7 positive or negative --

8 A. Positive.

9 Q. -- before the bout with drugs?

10 A. Positive.

11 Q. And he's in -- I think you mentioned he's in some  
12 type of drug rehab now?

13 A. Uh-huh.

14 Q. Do you know where that drug rehab is?

15 A. It's down in Dallas somewhere.

16 Q. And do you know how long he's been there?

17 A. Two months maybe.

18 Q. Okay. Is it in-patient, he resides there?

19 A. It's a home, yes.

20 Q. It's a home? Okay.

21 A. Uh-huh.

22 Q. All right. Is there any word of his progress or how  
23 he's doing?

24 A. Yeah. He's doing great.

25 Q. Really?

1 A. Uh-huh.

2 Q. His drug problem, was it what we consider, you know,  
3 illegal street drugs, or was it more of a prescription  
4 problem?

5 A. I would assume it was probably street.

6 Q. Okay.

7 A. I don't really know any of the details.

8 Q. Okay. When did you see him last prior to his  
9 enrollment in the drug deal?

10 A. I think I saw him July 4th weekend, around that  
11 time, and that was right before -- like, the next day or so  
12 was when he was going to check in.

13 Q. Was the occasion just a family get-together for 4th  
14 of July?

15 A. Yeah.

16 Q. What impressions did you take away from seeing him  
17 then around the 4th of July?

18 A. He was just like he always is. You know, just -- he  
19 never really displayed any evidence of drugs or -- you know,  
20 anything. He was just part of the family.

21 Q. And then he went into the rehab. Did he come to the  
22 family -- or did word get back to the family that he  
23 recognized it was some type of difficulty?

24 A. Yeah. He had moved back in with my stepmother last  
25 spring, and my stepmother and one of my other brothers and his

1 wife are what -- are who had talked to Stuart and kind of  
2 encouraged him and brought about the -- him checking into the  
3 center.

4 Q. Did they see something that the family -- the rest  
5 of the family did, or did Stuart just come to them and say  
6 I've got a bad problem?

7 A. I think everybody saw it except for my stepmother.

8 She never would recognize it, and my brother and sister-in-law

9 finally got her to recognize it, and I think about generally

10 the same time Stuart was ready to acknowledge it, so...

11 But we all had an idea. Even though we never saw

12 him do it, we could just tell by, you know, the way he

13 dressed, his hair, just his actions.

14 Q. Everybody had kind of -- knew something was up, but

15 couldn't quite put your finger on it?

16 A. Yeah.

17 Q. The report back he's doing great?

18 A. Uh-huh.

19 Q. Who reported back, or what are the folks in the

20 family -- why did they say he's doing great; do you know?

21 A. The rehab home he is in is affiliated with my

22 stepmother's church, and so he has been coming to church

23 where my stepmother does. So, she's seen him at church. She

24 knows the woman who runs the home, so she has contact with her

25 sometimes. She's taken Stuart to lunch after church some so

1 she's had some interaction. I don't know whether my brother  
2 and sister-in-law have had interaction with him or not, but I  
3 know my stepmother has.

4 Q. Okay. Is your stepmother -- do you have a good  
5 relationship with her?

6 A. Uh-huh.

7 Q. I guess so, because there seems to be a free-flow of  
8 communication about Stuart back and forth.

9 A. Uh-huh.

10 Q. What church is affiliated with the drug rehab  
11 center?

12 A. Hillcrest Church in Dallas.

13 Q. What denomination?

14 A. It's non-denominational.

15 Q. Non-denominational.

16 Do you know the name of the drug rehab?

17 A. No, I don't.

18 Q. That's okay. Was Stuart a person of faith prior

19 to --

20 A. No.

21 Q. What happened there, or how did that come about that  
22 he would attend church?

23 A. Prayer, I guess. My stepmother and dad raised the

24 boys in church, and then when Stuart got old enough to be out

25 on his own, he got away from it. I don't know whether he was

1 ever a Christian prior to that, but I think the roots were  
2 there.

3 Q. Yeah. That seems to happen with a lot of young  
4 people. They get to about 17, 18, 19, and their spirituality  
5 seems to go on a downhill slide for a while.

6 You go to the New Life Family Fellowship in Caddo  
7 Mills?

8 A. Yes.

9 Q. Tell me about your involvement with the church. How  
10 long, how involved you are? What do you think about your  
11 church? What kind of experience it's been for you? Take two  
12 or three minutes and let it go.

13 A. We just started to go to Caddo Mills -- or to New  
14 Life the first of the year. Prior to that we had been in a  
15 Baptist church and were really hungry for more in-depth  
16 teaching, and we found that at New Life. The pastor is just  
17 an incredible teacher -- Bible teacher, and we're just soaking  
18 it up.

19 Q. Okay, fantastic. What Baptist church had you been?

20 A. Crosspoint Church in Stonebridge.

21 Q. If you could say -- if you could sum up in one  
22 sentence why New Life Family Fellowship is better than -- I  
23 assume it's better than anything you've been to so far, what  
24 would that sentence be? If you were to convince somebody you  
25 should join New Life Family Fellowship because? How would you

1 A. No.

2 Q. Were you dating or --

3 A. We dated before he went into the Corps, and then he  
4 came home on leave a couple of times. And then when he got  
5 out of the Marine Corps, he went to Arizona where his mother  
6 lives instead of coming to Dallas where his dad lived.

7 Q. Was he an East Coast or West Coast Marine?

8 A. West.

9 Q. Camp Pendleton?

10 A. Yes.

11 Q. Okay. When you say you're politically -- they give  
12 you a choice. You know, the classic, are you a liberal, a  
13 conservative or a moderate. You chose moderate. Tell me why.

14 A. Because I really didn't know what any of them meant,  
15 and I felt like I was kind of middle of the road.

16 Q. To be honest with you, I think most people who pick  
17 one of those and say "I am a this," I don't think they know  
18 what it really means.

19 You kind of -- do you not place a label on yourself  
20 for across-the-board facets of life? Are you more of a  
21 case-by-case? You may be more conservative on certain issues,  
22 you may be more liberal on certain other ones. Do you know  
23 what I'm saying?

24 A. Yes.

25 Q. Like, when you go to the voting booth, you vote,

1 fill that in?

2 A. The pastor has the ability to bring the word of God  
3 to life and help you make it a reality in your life.

4 Q. Okay. Do you think religion is important in  
5 somebody's life, some type of spirituality is important as a  
6 human being?

7 A. I think a relationship with Jesus Christ and God is  
8 important.

9 Q. Tell me why you think that way.

10 A. Because I think that relationship is life, is  
11 eternal life.

12 Q. Why do you think it's important to form that  
13 relationship here on earth?

14 A. Because that's where we are now.

15 Q. Okay.

16 A. And God cared enough about us to let his son die for  
17 us.

18 Q. Okay. I see your husband was in the Marine Corps?

19 A. Yes.

20 Q. Did you know him when he was in?

21 A. Yes.

22 Q. What rank was he?

23 A. I don't know. I don't keep up with that kind of  
24 stuff.

25 Q. Were you married while he was in the Corps?

1 right?

2 A. Yes.

3 Q. I think you said you're a registered voter and you  
4 vote?

5 A. Yes.

6 Q. Do you pull a straight ticket, or do you look at the  
7 race and look at the person?

8 A. Most of the time I go person to person.

9 Q. Okay. Madalyn O'Hair. When you put down two people  
10 you least respect, public personalities, you put Clinton and  
11 Clinton. I assume that means --

12 A. Mr. and Mrs.

13 Q. -- Bill and Hillary, the former president and U.S.  
14 Senator. I believe that. And then you wrote down Madalyn  
15 O'Hair. I haven't seen that yet out of all the questionnaires  
16 we've had. Tell me about that.

17 A. Well, I had a hard time thinking of names. You  
18 know, when you're just talking with friends you can think  
19 about things like that. But when you're put on the spot --

20 Q. Yeah.

21 A. -- and, you know, Madalyn O'Hair came against my  
22 Christian beliefs.

23 Q. What does she stand for? Isn't she like the --

24 A. She's the one that got prayer taken out of schools.

25 Q. Ah, the Atheist?

1 A. **Uh-huh.**  
 2 Q. Or Agnostic, whatever she is.  
 3 A. **Whatever.**  
 4 Q. We're not quite sure what she is.  
 5 THE COURT: She is reaping her reward now.  
 6 VENIREPERSON: Yeah, she is.  
 7 Q. BY MR. GOELLER: What do you think about prayer in  
 8 schools? Do you think that's maybe where we all kind of  
 9 started going wrong?  
 10 A. **It could be.**  
 11 Q. Again, it's that lack of spirituality and  
 12 suppression of anybody that wants to talk about it, I guess.  
 13 A. **Uh-huh.**  
 14 Q. Okay. And -- "In Time of Ends" by Charles Katz.  
 15 That's the last book you read?  
 16 A. **Yeah.**  
 17 Q. And I have to admit, I don't know what that book is  
 18 about. Can you tell me?  
 19 A. **It's about Christ coming again.**  
 20 Q. Am I -- is that how the title is, "In Time of Ends,"  
 21 like the end of --  
 22 A. **Yes.**  
 23 Q. -- the Second Coming, I guess, of Jesus Christ?  
 24 A. **Yes. That's just happened to be the last book I**  
 25 **read.**

1 Q. I always ask this question, this next question. I'm  
 2 not sure why I do. I think maybe it helps me try and  
 3 understand somebody and -- are you pro life or pro choice when  
 4 it comes to -- I guess on abortion?  
 5 A. **I guess I would probably say pro choice.**  
 6 Q. Tell me why.  
 7 A. **Probably because I chose to have an abortion when I**  
 8 **was young.**  
 9 Q. Is that something, if you had to do all over again,  
 10 would you do it the same, or does that ever give you second  
 11 thoughts or is that something you ever think about?  
 12 A. **I can't really say that I have regrets, and I don't**  
 13 **know what I would do today.**  
 14 Q. Okay. Do you think you can be -- well, okay.  
 15 What do you think about people like me, criminal  
 16 defense attorneys?  
 17 A. **I think you're very smart, have to be very**  
 18 **intelligent.**  
 19 Q. Thank you, Mrs. Cole, because I haven't had anybody  
 20 say that in a long time.  
 21 A. **You have to go through a lot of study to get where**  
 22 **you are.**  
 23 MR. HIGH: Can we take judicial notice of that?  
 24 MR. GOELLER: Judge, I want the record to  
 25 reflect this is a very nice, intelligent juror.

1 THE COURT: But that extends to all attorneys,  
 2 I'm sure, but especially defense attorneys.  
 3 (Laughter.)  
 4 Q. BY MR. GOELLER: And the reason I ask that is some  
 5 jurors -- we had a juror today that said criminal defense  
 6 lawyers are basically liars, and we hear all the time how can  
 7 you defend people? And how can you do this, and how can you  
 8 do that? I never used to ask that question of jurors, but I  
 9 think I'm going to now. And don't get me wrong, the juror  
 10 that wrote it down, I'm glad she did. Like I told you back on  
 11 the big panel, I could -- I don't take issue with anything a  
 12 juror says. But she could have taken the politically  
 13 correct route and said, you know, they're kind of like the  
 14 prosecutors except, you know.  
 15 But she had at least the honesty to say, they're a  
 16 bunch of thieving liars is what she said. And she goes with  
 17 my blessing. At least I knew where she stood on that. So  
 18 that's why I ask that question.  
 19 I think the media, television -- some television  
 20 shows paint us bad and we're the scapegoats for all the wrong  
 21 in the world and all the problems with the criminal justice  
 22 system, but apparently you don't feel that way at all.  
 23 A. **No. I mean, I watch a lot of TV, and you see the**  
 24 **criminal defense attorneys who defend the guilty, and you see**  
 25 **them who defend the innocent, so...**

1 Q. Right, right. Have you ever been at a party or some  
 2 kind of function, and you heard somebody say the criminals  
 3 have too many rights? Have you ever heard anybody say that?  
 4 A. **No, I don't think so.**  
 5 Q. You must run with a more educated, more  
 6 sophisticated crowd.  
 7 A. **(Shrugs.)**  
 8 Q. Good for you.  
 9 Okay. I wanted to talk to you a little bit about  
 10 those special issues. Ms. Lowry spent some time on them, and  
 11 I'll try not to cover what she's covered.  
 12 Mrs. Cole, can you see the one on the ground there?  
 13 A. **Yes.**  
 14 Q. It says whether there's a probability the Defendant  
 15 would commit criminal acts of violence constituting a  
 16 continuing threat to society. What does that word  
 17 "probability" mean to you?  
 18 A. **That there's more likely a chance that they would be**  
 19 **a threat than not.**  
 20 Q. Okay. I think that's pretty good. It's a funny  
 21 question because who has the burden of proof on that; do you  
 22 know? Who's got to prove that question to you to answer it?  
 23 A. **The District Attorney, I would assume.**  
 24 Q. There you go. There you go. The DA has got to  
 25 prove that question to you beyond a reasonable doubt. That

1 same standard, or measure, or quantum of proof, if you would,  
2 as the first phase of the trial, you know, whether somebody's  
3 guilty or not guilty. And that's what's odd about that  
4 question, they've got to prove beyond a reasonable doubt that  
5 there's a probability. It's funny when you think about it.  
6 And I'm not quite sure our Legislature thought that through,  
7 but that's the law and we have it.

8 So, the question is -- to answer that question yes;  
9 in other words, we find beyond a reasonable doubt that there's  
10 a probability, it never made a whole lot of sense to me. But  
11 in any event, a continuing -- that somebody would constitute a  
12 continuing threat to society. Ms. Lowry is right. We know  
13 society definitely means the penitentiary, but I -- I'm not  
14 allowed to tell you that that question only means the  
15 penitentiary. My personal view of it, when I think about how  
16 the Legislature drafted it and what they knew a juror has  
17 already found to begin with, I think it means the  
18 penitentiary, and I think it means can somebody be controlled  
19 or would they be a future threat in the penitentiary.

20 The reason why I say that, we know when you get to  
21 that question, there's only two choices -- if you get to those  
22 questions, somebody has already been found guilty of capital  
23 murder. We know it's life or death.

24 A. Uh-huh.

25 Q. So, it wouldn't make much sense to me knowing we

1 have a penitentiary, knowing there's life confinement, it  
2 doesn't make sense to me that means the outside world because  
3 that could never happen. A person is not going to be in the  
4 outside world. I would say this, though; do you know what  
5 life means in Texas?

6 A. No. You mean a life sentence?

7 Q. Yeah.

8 A. I would assume it's until death.

9 Q. You would assume it's life without parole?

10 A. Yes.

11 Q. You'd die in the penitentiary?

12 A. Uh-huh.

13 Q. It's actually -- it may be that in Texas. But by  
14 our Black Letter Law, our statutes say life means at least 40  
15 calendar years. So, depending on the age of a defendant, it  
16 might mean a life without parole. If somebody is, you know,  
17 40, 50, maybe even 35 years, it's probably a life -- probably  
18 a death sentence; you'll die in the penitentiary. We know  
19 that someone has to spend at least 40 calendar years before  
20 they could ever even think about getting out. To get out, our  
21 Board of Pardons and Paroles and the Governor would have to  
22 get somebody to vote in such a way to let somebody doing a  
23 life sentence on capital murder get out.

24 Does that cause you any problem knowing life really  
25 means maybe not natural life, but at least 40 calendar years?

1 A. I don't think so.

2 Q. I mean, somebody -- you know, mid to late 20s, if  
3 they were to get a life sentence, they would be about 70 years  
4 old, late sixties, early seventies before they could get out.

5 The funny thing about that law, we don't know --  
6 it's a relatively recent law. We don't know if somebody can  
7 live 40 years in a Texas prison, never been done yet. We'll  
8 see.

9 But anyhow, do you see how that question necessarily  
10 includes prison society?

11 A. Yes.

12 Q. Now, the State would be able to tell you that part  
13 of the reason why it may include society in general is prison  
14 is a part of our society; do you know what I'm saying? I  
15 mean, in this State we have close to 100,000 people in prison,  
16 so it's -- our prison society is bigger than 98 percent of all  
17 the cities in this State. So, it's a big society, prison  
18 society.

19 A. Uh-huh.

20 Q. Okay. I think you talked about, in regards to that  
21 first special issue, the ones on the floor, you talked  
22 about -- or I wrote down when you were answering some of Jami  
23 Lowry's questions about did the crime involve a stranger or  
24 something like that. That question really asks you to kind of  
25 predict the future, right? Is this person in the future a

1 continuing threat to society. There are some types of people  
2 in our society that are, I guess, almost predatory, you know?

3 A. Uh-huh.

4 Q. I guess McVeigh was one. You read about people that  
5 kill and stalk total strangers, you know, opportunistic types  
6 of folks. You know, the person that goes into the 7-Eleven  
7 and kills a store clerk. Doesn't know the store clerk,  
8 whatever. And you had mentioned that Mr. Cole did something  
9 like that?

10 A. Uh-huh.

11 Q. What -- what happened in his life? I think you said  
12 something had an affair, or he got divorced or something?

13 A. Yeah. His father died, and then he lost his job,  
14 and then he started having an affair, and because of the  
15 affair he lost his wife and two children through the divorce,  
16 and I think he had another job and lost it because the affair  
17 was with a client of -- you know, where he was working. And  
18 then ended up unemployed and robbed a 7-Eleven or some kind of  
19 convenience store.

20 Q. For money?

21 A. Yes.

22 Q. Was he a pretty good guy up until all that?

23 A. Yes. He had -- back in his teen-age years he had  
24 robbed a bank.

25 Q. Oh, boy. Well, that wasn't because of --

1 A. Got probation or parole or something.  
 2 Q. Bank robbery?  
 3 A. I really don't know.  
 4 Q. What was that all about?  
 5 A. I don't know. I just -- that's about all I know.  
 6 Q. Oh, my goodness.  
 7 You had mentioned that -- in answering that third  
 8 special issue, you said you'd sure want to know, or you'd  
 9 certainly be curious as to --  
 10 (Discussion off the record.)  
 11 Q. BY MR. GOELLER: You had mentioned that you would be  
 12 interested in knowing maybe how somebody was raised. Let me  
 13 kind of take a step back, and some jurors have had difficulty  
 14 with this. Many jurors have looked at that third special  
 15 issue, that mitigation special issue really, and I agree with  
 16 Mr. Schultz. I think Ms. Lowry may have said this, too. It's  
 17 what that jury feels right to do in that case. This is going  
 18 to be life or death.  
 19 Some jurors have looked at that and said, well --  
 20 and we've talked about mitigation types of evidence, or things  
 21 we'd like people to consider as mitigating. Many jurors say  
 22 that's no excuse. I wouldn't consider that. I wouldn't  
 23 consider youth or drugs, or anything; upbringing, background,  
 24 that's no excuse. And I think they were missing the point. I  
 25 think those jurors failed to recognize that by the time we get

1 to these questions, it's life or death. Excuse kind of comes  
 2 in the first part of the trial. I killed him, yes, Your  
 3 Honor, but he was coming in my bedroom at night to rape me, or  
 4 something like, yes, I stole the apples from the grocery  
 5 store. I stole some sandwiches because my children were  
 6 hungry.  
 7 Those are kind of the excuses. When we get to  
 8 these, you know, nobody is talking about excuses. Can you --  
 9 are you the kind of person that can sit back and listen to  
 10 what may be brought to you from one side as maybe mitigation  
 11 and consider that kind of thing?  
 12 A. I would hope so.  
 13 Q. Obviously what I -- the thing I fear the most in a  
 14 case where somebody was found guilty of capital murder would  
 15 be a juror that -- and we've had them, and hopefully the ones  
 16 that believe this way have been honest enough to tell me. If  
 17 I find him guilty of capital murder because he's killed two  
 18 people, killed during a robbery or killed during burglary,  
 19 he's dead. And that's -- people feel that way. If they are  
 20 honest with me, again I'd buy them a cup of coffee any day of  
 21 the week.  
 22 I don't see you as that kind of person, though. I  
 23 see you as somebody that's really going to look at the  
 24 evidence that's brought to you and consider those kinds of  
 25 things?

1 A. I would try to, yes.  
 2 MR. GOELLER: May I have just a second, Judge?  
 3 THE COURT: All right. I tell you what, mark  
 4 your notes, and remember where you are. We're going to come  
 5 back in about ten minutes. And let me ask you if you would,  
 6 don't discuss anything with anybody, any of the other jurors  
 7 back there, either that's been asked of you or that you've  
 8 said. Please step down at this time.  
 9 VENIREPERSON: Okay.  
 10 THE COURT: All right. We're going to bring  
 11 Stacey Lee in here, and I tell you why we're going to bring  
 12 her in. I want to get her in and out, and let me tell you  
 13 why. I think that she is my mistake. She's got a note  
 14 indicating for her to come back on September 24th. So, let's  
 15 get her in and get her out. I think -- just real confident  
 16 the note's genuine, and I think she must have been one of  
 17 those we put on the record, we passed, and she got off the  
 18 list and, you know, I got all excited on appearance day the  
 19 other day. So, let me bring her in, and I think apologize to  
 20 her.  
 21 (Discussion off the record.)  
 22 (Venireperson enters the courtroom.)  
 23 THE COURT: Are you Stacey Lee?  
 24 VENIREPERSON: Yes.  
 25 THE COURT: It indicates that -- and it's from

1 the clerk.  
 2 VENIREPERSON: Uh-huh.  
 3 THE COURT: You are on standby.  
 4 I show a note that says please call September 24th  
 5 at 9 a.m., and you did and got the clerk's number. Were you  
 6 one of the people who said that the 5th of September was a bad  
 7 day for you? Is that why you didn't appear that day?  
 8 VENIREPERSON: I was never told to appear the  
 9 5th, but, yeah. They asked me if I was doing anything that  
 10 weekend, and I said yeah, the piece of paper. But no one even  
 11 told me to show up on the 5th because that's all I got.  
 12 THE COURT: This is all you got? You got this  
 13 on August 21st?  
 14 VENIREPERSON: Whenever we went back the last  
 15 time, they handed me that.  
 16 THE COURT: Let me tell you something, I  
 17 dropped the ball, and I want to apologize to you on this. And  
 18 if you would, would you do what this says and check back with  
 19 us on the 24th. And I'm very sorry.  
 20 VENIREPERSON: It's okay.  
 21 THE COURT: It happened this communication to  
 22 you didn't get to me, and so I expected you on the 5th. And  
 23 so that's why we had you back in here, along with two other  
 24 people who didn't appear, although they had no excuse for not  
 25 appearing, and you had the greatest excuse for not appearing.

1 Does either side want to ask anything of Ms. Lee or  
 2 say anything to here?  
 3 MR. SCHULTZ: No, Judge.  
 4 THE COURT: All right. Then, if you would  
 5 please call us on the 24th, and we'll see you again. Ma'am,  
 6 let me give this back to you. And, Billy, would you make a  
 7 copy of that before she leaves?  
 8 THE BAILIFF: Yes, Your Honor.  
 9 THE COURT: And let's be in recess for about  
 10 ten minutes.  
 11 THE BAILIFF: All rise.  
 12 (Recess taken.)  
 13 THE COURT: All right. Let's bring Mrs. Cole  
 14 back in.  
 15 (Venireperson enters the courtroom.)  
 16 THE COURT: Mrs. Cole, I just want to advise  
 17 you that you're still under oath, ma'am.  
 18 VENIREPERSON: Okay.  
 19 THE COURT: Sorry, Mr. Goeller. Please go  
 20 ahead.  
 21 Q. BY MR. GOELLER: Mrs. Cole, I'm almost done. You  
 22 got a little bit of a break there.  
 23 I think I left off, you had mentioned that it would  
 24 be important to you to know how, at least in the sentencing  
 25 phase of a capital case, you'd like to know some things like

1 how were they raised and what was a person's or a defendant's  
 2 parents were like, and that kind of thing. Why is that type  
 3 of thing important to you?  
 4 A. I don't know that it's important to me. I can see  
 5 where it possibly would be taken into consideration.  
 6 Q. In what way? Tell me.  
 7 A. Well, I don't know. It would just depend on the  
 8 whole -- the evidence given, the whole situation, the -- I  
 9 guess I would just want to keep an open mind to the whole  
 10 picture.  
 11 Q. Okay. That's fair enough.  
 12 The question -- I think Ms. Lowry told you -- I  
 13 think she told you, every question up until that last one has  
 14 a burden of proof that's always on the State. And, of course,  
 15 that burden on the guilt-innocence phase is beyond a  
 16 reasonable doubt. That first special issue on the floor there  
 17 is beyond a reasonable doubt, and that last question there is  
 18 no burden of proof. Nobody has a burden of proof. It has to  
 19 be answered no unanimously to that last one. In other words,  
 20 all 12 jurors would have to say no to give a life sentence --  
 21 or excuse me -- to give a death sentence. No, we unanimously  
 22 find that there's nothing out there that would warrant a life  
 23 sentence, and ten jurors would have to vote to answer that  
 24 question yes.  
 25 And what our law calls for is it allows an

1 individual response from each juror. Jurors do not have to  
 2 agree on what's sufficient individually. Jurors do not have  
 3 to agree on what's mitigating, if anything. Every juror is  
 4 entitled to their own interpretation and their own weight they  
 5 give to what is mitigation, or mitigating circumstances, if  
 6 there are any, and they do not have to agree on what is  
 7 sufficient individually. The only thing -- and then  
 8 collectively there's a vote.  
 9 It's a little different than the first phase of the  
 10 trial. In the first phase of the trial, all 12 jurors would  
 11 have to unanimously agree on how it was guilty or not guilty.  
 12 And under Texas law, a not guilty verdict has to be unanimous,  
 13 too. Because a not guilty verdict is a verdict, and that has  
 14 to be unanimous, or a guilty verdict has to be unanimous and  
 15 all 12 jurors have to agree on what they're agreeing on,  
 16 except for that third special mitigation issue, and it's wide  
 17 open. It allows each individual juror to consider weight and  
 18 evidence, how they see it, and doesn't have to agree with the  
 19 other jurors. So, it's kind of unique in that respect.  
 20 There was -- I had just a couple of last questions  
 21 for you. There are -- some of the attorneys in this room  
 22 may -- let me just cut right to the chase. Do you know what  
 23 county Mark was prosecuted in, Mark Cole?  
 24 A. Huh-uh.  
 25 Q. Was it in Texas?

1 A. Yes.  
 2 Q. Was it here in Collin County; do you know?  
 3 A. No, I don't think so.  
 4 Q. Why don't you think so?  
 5 A. The crime was in the Mesquite area.  
 6 Q. Okay. Probably Dallas County?  
 7 A. Probably.  
 8 Q. Okay. And the reason why I ask is just a  
 9 possibility that somebody in this room may -- it could have  
 10 been Mr. High or myself. About that time frame some of us may  
 11 have been working in the Prosecutor's office. That's why I  
 12 asked, just to see if there was any kind of Collin County  
 13 connection.  
 14 A. We did not go to -- I don't even know -- well, I  
 15 guess it did go to trial, but we didn't go to the trial or  
 16 anything. So, I would not have had contact or --  
 17 Q. Yeah.  
 18 A. -- with anyone.  
 19 Q. He did -- I think we talked about it, he did 13  
 20 years, right?  
 21 A. Yes.  
 22 Q. Did he get a life sentence?  
 23 A. No.  
 24 Q. He just got 13 years?  
 25 A. Thirteen years.

- 1 Q. And he did all 13?
- 2 A. Uh-huh.
- 3 Q. Okay. It wasn't in the federal system, was it? Was
- 4 it Federal court, or do you think it was State court?
- 5 A. I think it was State, but I'm not sure.
- 6 Q. It was a long time ago?
- 7 A. Uh-huh. And I wasn't involved in it at all, so I
- 8 don't really remember.
- 9 Q. In your questionnaire you wrote down, "The death
- 10 penalty in Texas is good." Tell me why you chose that word
- 11 and one word only.
- 12 A. Well, just that in some situations I can see where
- 13 the death penalty is warranted and it's a good thing to have
- 14 if that's the penalty that's appropriate.
- 15 Q. Okay. In your opinion, what does the death penalty
- 16 say about American culture? "American culture is -- is, to a
- 17 great extent, without morals and without God." Tell me a
- 18 little bit more about that.
- 19 A. I just think that the American culture has digressed
- 20 from the good old hometown atmosphere to lacking morals and
- 21 having sin and destruction abound.
- 22 Q. Where do you think we started going downhill on
- 23 that as a culture?
- 24 A. Probably from Adam and Eve.
- 25 Q. Do you think American culture has slid down?

- 1 A. Uh-huh, I think so.
- 2 Q. In recent, modern times what do you think has been
- 3 the -- if you were to attribute the top three things Mrs. Cole
- 4 might think have led to the American culture kind of being
- 5 without God, without morals, what do you think is the root
- 6 cause of that?
- 7 A. Well, I am a spiritual person, so I would have to
- 8 say sin and -- I don't know, just the lack of morals. Just, I
- 9 don't know what to say, other than that.
- 10 Q. Some folks have said that, you know, when you took
- 11 God out of schooling and tried to become an unspiritual
- 12 society that may have something to do with it. Do you agree
- 13 or disagree with that?
- 14 A. I would probably agree with that.
- 15 Q. Okay. Finally, I would ask you if you have any
- 16 questions of me about anything, about any of the process so
- 17 far?
- 18 A. No, I don't think so.
- 19 Q. I anticipate the trial would probably get underway
- 20 in maybe about two to three weeks, roughly speaking, ball
- 21 park. I think the Judge would let me say that. And I think
- 22 the trial would last, once we get underway after those two or
- 23 three weeks, I think the trial might last two or three weeks.
- 24 What's in your plans for the month of October? I know we've
- 25 talked a little bit about your planned vacation you want to

- 1 take with your mom. Anything else coming up at work, personal
- 2 life, anybody, a loved one, anything coming up that might
- 3 cause you any concern sitting as long as two, three weeks?
- 4 A. Not in October. The last week of September, the
- 5 other girl that helps me run the office will be on her
- 6 honeymoon, and if both of us are out our office will shut down
- 7 for a week, which would cause a hardship, probably not an
- 8 unsurmountable one, but it would definitely be a hardship on
- 9 our business. But I don't see anything beyond that that would
- 10 cause a hardship or a problem.
- 11 MR. GOELLER: May I have just a second, Judge?
- 12 THE COURT: Yes.
- 13 (Discussion off the record.)
- 14 Q. BY MR. GOELLER: Ms. Lowry asked you if you could
- 15 answer those special issues in such a way that might impose
- 16 the death penalty, and I think your answer was yes, correct,
- 17 if you thought --
- 18 A. Would I be able to do that if the evidence warranted
- 19 it, yes.
- 20 Q. I guess my last question to you is the opposite
- 21 true?
- 22 A. Yes.
- 23 Q. You could give a life sentence?
- 24 A. Yes.
- 25 Q. Okay. You had mentioned a little bit earlier that

- 1 you were wondering how you might live with such a decision.
- 2 Tell me just a little bit more about that, what your thoughts
- 3 have been about that.
- 4 A. Well, the other night I saw the end of The Chamber
- 5 that's about the death penalty, a man being put to death. And
- 6 it just gave me cause to think I don't know how I would feel.
- 7 Q. I'm not familiar with The Chamber, is that a movie?
- 8 A. Uh-huh.
- 9 Q. Made for TV movie or a --
- 10 A. No, it was a --
- 11 Q. -- big screen?
- 12 A. -- big-screen movie.
- 13 Q. Is it an old movie or new movie?
- 14 A. Maybe two or three years ago.
- 15 THE COURT: Is that with Michael Douglas?
- 16 VENIREPERSON: No, it's -- I can't think of who
- 17 the -- Gene Hackman.
- 18 Q. BY MR. GOELLER: What was the bottom line of the
- 19 movie? What was the director and writer of the movie -- the
- 20 screenwriter, if there was a message they were trying to get
- 21 across, what was it, if there was?
- 22 A. Basically it was about a member of the Ku -- I can't
- 23 say this.
- 24 Q. Ku Klux Klan?
- 25 A. Yes. And two men put a bomb in a building and



1 killed two children. One of them built the bomb, and the  
2 other one placed it, and the one who placed it was convicted  
3 and sentenced to death and would not give evidence towards --  
4 that there was another person involved, and he was executed  
5 for the crime.

6 Q. Did the movie -- did the movie kind of center around  
7 his execution?

8 A. Uh-huh.

9 Q. Was it a lethal injection state?

10 A. Gas chamber.

11 Q. Gas chamber.

12 What did you come away from that movie with?

13 A. Just a brief question of, I don't know how I would  
14 feel about it down the road when it actually took place. I  
15 don't know whether I would feel remorse, or whether it would  
16 not bother me, or I just don't know how I would feel about it.

17 Q. If you found somebody guilty of capital murder and  
18 you answered those questions because you thought the right  
19 thing to do was impose a life sentence in that case, could you  
20 live with that? Would your conscience allow you to live with  
21 a life sentence?

22 A. Uh-huh.

23 Q. Okay. Any questions for me? Any questions for the  
24 State or the Judge?

25 A. I don't think so.

1 Q. Okay.

2 A. Well, I do have a question.

3 Q. Yes, ma'am?

4 A. One of the gentleman back there mentioned in a trial  
5 the jury being put in a hotel during the trial. They don't do  
6 that during the trial, do you?

7 Q. I think I'll let the Judge answer that.

8 THE COURT: Well, it may happen during the  
9 deliberations.

10 VENIREPERSON: Yeah, yeah.

11 THE COURT: But it's not likely that it would  
12 happen during the trial, both sides agree.

13 VENIREPERSON: Okay. That's what I thought,  
14 but I just wanted to be sure.

15 THE COURT: Any other questions?

16 MR. GOELLER: No, Your Honor.

17 THE COURT: Please step down, and we'll have  
18 you back in in a few minutes.

19 MR. GOELLER: Thank you, Mrs. Cole.

20 (Venireperson exits the courtroom.)

21 THE COURT: The juror is outside. What says  
22 the State?

23 MS. LOWRY: This juror is acceptable to the  
24 State.

25 MR. GOELLER: A few minutes?

1 THE COURT: All right.

2 (Brief pause in proceedings.)

3 THE COURT: All right. Is there an  
4 announcement from the Defendant?

5 MR. GOELLER: Yes, sir. Juror is acceptable.

6 THE COURT: Is that your agreement, also,  
7 Mr. Cantu?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. Then Number 63,  
10 Mrs. Cole, is, I suppose, our eighth juror, and if you would  
11 ask her to step back in.

12 THE BAILIFF: Yes, Your Honor.

13 (Venireperson enters the courtroom.)

14 THE COURT: Mrs. Cole, I want to tell you that  
15 you've been found acceptable by both sides, and so that means  
16 you'll be serving on this jury. And it may be two or three  
17 weeks before we get started with the actual trial, but we'll  
18 notify you when the time comes. And I want to ask you not to  
19 make any effort to make any kind of investigation or to  
20 discuss this with anybody -- anybody or -- you know, at any  
21 time. And if there happens to be anything in the news, if you  
22 would avoid the newspapers and television and radio and  
23 everything like that.

24 VENIREPERSON: Okay.

25 THE COURT: If you don't have any other

1 questions, then you're excused until we get back with you.

2 VENIREPERSON: Thank you.

3 THE COURT: All right. The next juror is  
4 Number 65, David Hargrove.

5 MS. FALCO: With regard to Mr. Hargrove, he  
6 was arrested and convicted for DWI in Tahoca, which is Lynn  
7 County, in 1982. He also was arrested and convicted for  
8 possession of marijuana under two ounces in Palo Pinto County  
9 and received 90 days probation. I don't know if it's  
10 deferred. It says disposition convicted, but it doesn't have  
11 any period of time under confinement. It just says probation  
12 90 days, so I don't know if it was deferred or regular  
13 probation.

14 THE COURT: All right. And I tell you what,  
15 I'm going to stop promptly at 5 today so let's see how far we  
16 can get with Mr. Hargrove, and let's bring him in.

17 THE BAILIFF: Yes, Your Honor.

18 (Venireperson enters the courtroom.)

19 THE COURT: Sir, are you David Hargrove?

20 VENIREPERSON: Yes, sir.

21 THE COURT: It's been almost three weeks now,  
22 but I think you're the start of the new group. So it's only  
23 been a few days, but actually it was about three weeks ago  
24 that I put everybody under oath. And I just want to remind  
25 you that the oath was to tell the truth with regard to

1 questions that were asked either by the Court or by the  
2 attorneys, and you're still under that oath.  
3 VENIREPERSON: Okay.  
4 THE COURT: Thank you, Mr. Hargrove. Please  
5 be seated.

6 All right. Mr. Schultz?

7 MR. SCHULTZ: Thank you, Judge.

8 DIRECT QUESTIONS

9 BY MR. SCHULTZ:

10 Q. Good afternoon, Mr. Hargrove.

11 A. Good afternoon.

12 Q. My name is Bill Schultz. I'm one of the Assistant  
13 District Attorneys representing the State of Texas. I know  
14 that you probably spent more time with Ms. Falco, who is the  
15 prosecutor to my left, and who talked to you generally  
16 earlier. And further to her left is Ms. Jami Lowry. We're  
17 the three prosecutors who will be putting on the evidence for  
18 the State, and actively arguing in support of a death sentence  
19 to be administered to the Defendant, Mr. Cantu, the gentleman  
20 at the defense table in the white shirt.

21 Moving further to your right is his attorney,  
22 Mr. Don N. High, and then to Mr. High's left, your right, is  
23 Mr. Matt Goeller.

24 MR. GOELLER: Good afternoon, sir.

25 VENIREPERSON: Hi.

1 are now?

2 A. No, sir.

3 Q. And why I say that is because people are funny  
4 sometimes. We can be sitting in our living room and we'll see  
5 something on TV that makes us say, you know, what other  
6 countries are doing is so bad. We need to send our fighters  
7 over and drop some bombs and take care of the situation.  
8 Usually it's something like a hostage situation, or some awful  
9 atrocity being perpetrated on defenseless people, especially  
10 this stuff we've got in Central Europe right now. Some of  
11 these massacres essentially related to religious beliefs and  
12 things like that. I mean, you go wipe out an entire village  
13 or an entire district of a nation because they're Muslim and  
14 you're Christian, or you're Muslim and they're Christian, or  
15 it's the wrong kind of Muslims or the wrong kind of  
16 Christians, and just kind of -- just those kinds of things.

17 And we get sometimes very reactive to what we  
18 consider to be the worst of human behavior, and, we say, well,  
19 let's send in jets; let's do it. And in our living rooms,  
20 that's a lot easier maybe than you or me being the guy that's  
21 going to fly those planes with that kind of ordinance in them.  
22 Because maybe for many people when we're called upon to  
23 actually do it, it can be much more sobering, and that can be  
24 true with the death penalty. You and I can look at the TV.  
25 We'll see some awful crime committed by somebody, and we'll

1 Q. BY MR. SCHULTZ: Both of those gentlemen are  
2 involved in the private practice of law and are both board  
3 certified criminal law specialists in the State of Texas.

4 Are you any relation to Ricky Hargrove?

5 A. No, sir.

6 Q. He's, among other clerical duties, he's the chaplain  
7 for the Plano Police Department. Also does a fair amount of  
8 jail ministry.

9 I note that you have indicated that you are in  
10 favor of the death penalty, and at least at the time that you  
11 did this questionnaire, and that you believe the death penalty  
12 is appropriate in some capital murder cases, and you could  
13 return a verdict resulting in death in a proper case. And  
14 it's interesting because when we gave you that questionnaire  
15 way back when, no one had talked to you about exactly what  
16 capital murder is in Texas or how the law works, or what  
17 questions or what responsibilities you might be faced with.  
18 And sometimes people find that once it's been explained, they  
19 have some views that change, or just a passage of time makes  
20 those views change, and then sometimes people say, well,  
21 nothing's really changed. I feel the same way I did when I  
22 did the questionnaire, and I know myself pretty well.

23 Has there been any significant change or evolution  
24 in your thinking on the death penalty, since August the 21st  
25 when you filled out this questionnaire, up to the moment we

1 say we need to start executing people for doing that and send  
2 a message. It's a bad time. Society belonged to the good  
3 people rather than the bad people, those kinds of thoughts.

4 And yet, I know it's a lot different for me as a  
5 prosecutor because I'm not in my own living room anymore. I'm  
6 actually involved in it. I'm doing it, and it doesn't mean  
7 I've changed any in my views, but it does mean it's not just  
8 theory anymore. And I'm curious when you say you haven't felt  
9 any real change in your views, or you don't see it -- I take  
10 it you always saw it as a serious matter and you still do; is  
11 that right?

12 A. Yes, sir.

13 Q. By the way, odds are you would never have the  
14 opportunity, but if you had an opportunity to witness an  
15 execution in Texas, would you take that opportunity?

16 A. No.

17 Q. And why not?

18 A. I just don't feel like I need to witness one.

19 Q. Fair enough. Some people would answer that question  
20 that if they're willing to vote for it, they ought to be  
21 willing to see it. I kind of agree with you. I may believe  
22 in dropping the bombs on a country we're at war with, but I  
23 don't want to see pictures of what they do; you know that kind  
24 of thing? Why do you think we should have a death penalty?  
25 What is it that convinces you that you're a supporter of it?

1 **A. It's a personal belief. If you knowingly and**  
 2 **willingly take somebody else's life and -- in a fit of rage or**  
 3 **whatever reason, you should pay the crime. And if that means**  
 4 **execution, and you're found guilty, then that's right.**

5 Q. Now, I understand -- kind of understand what you're  
 6 saying. It's clear, and it's very (inaudible) with what  
 7 you're saying. Our law does not provide for an automatic  
 8 death sentence in regard even to whatever kind of murder that  
 9 you can see. In the first place, if there is such a thing as  
 10 regular, or unaggravated murder, and I'm not sure those are  
 11 the right terms, but maybe I should call them noncapital  
 12 murder. Probably the bulk of murders that are committed in  
 13 this State are not done under circumstances that would even  
 14 make the death penalty a possibility by law.

15 **A. Uh-huh.**

16 Q. I mean, the most -- the most vicious, torturous kind  
 17 of murder that you could ever imagine if merely perpetrated on  
 18 an ordinary citizen, not with any special, legal protections,  
 19 that could never be a capital murder just by law in Texas?

20 **A. Right.**

21 Q. And whatever the worst is, setting people on fire,  
 22 you know, torturing them for a while first, draining the blood  
 23 out of them drop by drop, whatever it could possibly be, that  
 24 would not be a capital murder in Texas, unless either you did  
 25 it to more than one person, or you did such a thing in a

1 evidence, not according to what I want to happen as a result.

2 Are you with me on that?

3 **A. Yes, sir.**

4 Q. Do you feel like you're the kind of man that could  
 5 do that, even though perhaps you are stronger in your belief  
 6 that capital murder should result in a death sentence for  
 7 people than maybe somebody else who would be more the other  
 8 way? You may be, you may not; I don't know. Are you still  
 9 the kind of man that could answer those questions in a way  
 10 that a life sentence would result if that's what the evidence  
 11 told you you should do?

12 **A. Yes, sir.**

13 Q. Okay. Now, you've indicated that you think the best  
 14 argument in opposition to the death penalty is insanity or  
 15 mental illness. And I take it what that means is that if a  
 16 person were truly insane at the time he committed a capital  
 17 murder, that maybe those people shouldn't be executed? Is  
 18 that what we're talking about?

19 **A. If they didn't remember. If they were mentally**  
 20 **unstable.**

21 Q. Okay, okay. Let's talk about exactly what that  
 22 might mean because people also talk about things, like, well,  
 23 accident or self-defense. Those are some examples where the  
 24 death penalty shouldn't apply, and I guess we all agree, if  
 25 you or I accidentally kill somebody, or we accidentally kill

1 prison setting because that might be special. Or, you did it  
 2 to a child younger than six years of age, or you did it to a  
 3 police officer or a firefighter trying to discharge his or her  
 4 duties, or you did it to somebody in the course of  
 5 burglarizing them, robbing them, sexually assaulting them,  
 6 armed kidnapping them, or perhaps in the course of an arson.  
 7 Those are, essentially, the exhaustive classes of capital  
 8 murder. And other than that, a so-called regular murder does  
 9 not even bear the possibility of a death penalty.

10 If a kind of murder falls within the definition of  
 11 capital murder; that is, like that murder plus idea that  
 12 there's murder and then add to that murder something else,  
 13 like if you were committing another crime at the same time, or  
 14 it's two people or more, or it's -- you know, a cop, a fireman  
 15 or a young child. All that means is you're eligible for the  
 16 death penalty, and it's for the jury to decide whether that  
 17 eligibility turns into getting the death penalty or not. Does  
 18 that make sense to you?

19 **A. Yes, sir.**

20 Q. And while there's nothing wrong with the view that  
 21 if you take another person's life, you should forfeit your  
 22 own, it's kind of a model, or it's kind of an underpinning for  
 23 being in favor of the death penalty. In order to serve as a  
 24 juror a person must be able to recognize, I'm going to answer  
 25 the questions at the second part of the trial according to the

1 two people with our car, for example, I think we'd probably  
 2 agree we ought not to be executed?

3 **A. Correct. Correct.**

4 Q. I hope you wouldn't think I need to be, anyway.

5 Same thing with situations like self-defense. I  
 6 mean, if a couple of tough guys break into your home and  
 7 they're going to kill you and you kill them first, you  
 8 wouldn't think that you should be executed for doing that  
 9 because you killed two or more people, right?

10 **A. Correct.**

11 Q. And what I'm getting at is that we have, in Texas,  
 12 things that are called justifications or, slash, defenses.  
 13 The law says thou shalt not kill; thou shalt not murder.  
 14 That's essentially our law. If you intentionally cause the  
 15 death of another individual, that's murder in Texas. But, you  
 16 have some things that are called defenses that would interrupt  
 17 the opportunity to be convicted and interrupt the possibility  
 18 of being convicted if were found to be true.

19 Self-defense is one. If a person kills another  
 20 individual, or two people or ten people in self-defense, then  
 21 that's a shorthand way of saying if you reasonably believe you  
 22 have the need for deadly force to protect your life or someone  
 23 that's there with you, or someone that you have a  
 24 responsibility for, if you use deadly force to protect them  
 25 from unlawful deadly force, then that's okay. That's not

1 really murder. You can do it in self-defense to protect  
2 yourself. Does that make sense to you?  
3 **A. Yes, sir.**  
4 **Q.** All right. And so that person -- you don't worry  
5 about what punishment that person gets because if he kills in  
6 self-defense, he's not guilty. Same as if he wasn't even  
7 there. Same as if somebody else confesses and they believe  
8 that other person. Do you know that idea? So, that's okay  
9 with you. You wouldn't think self-defense ought to be  
10 something that you wouldn't get convicted of?

11 **A. Correct.**

12 **Q.** Insanity, now that may or may not be a defense  
13 because insanity is a legal term that means you don't know  
14 right from wrong --

15 **A. Right.**

16 **Q.** -- as a result of a serious mental disease or  
17 defect.

18 Now, if the reason you don't know right from wrong  
19 is because you don't have a conscience, which is what teaches  
20 you and me right from wrong really, if the reason you don't  
21 have a knowledge of right or wrong because of a lack of  
22 conscience, that kind of person is expressly, by the statute  
23 excluded. Those are the so-called sociopaths. If the mental  
24 illness we're talking about is just that you are sociopathic,  
25 that's not the kind of legal insanity that's a defense.

1 **Q.** What other kind of people, other than mentally ill,  
2 might commit capital murders, do you think?

3 **A. People who knowingly and willingly did it. I think  
4 my definition of mental health is that I've dealt with that  
5 the last four years in what I do. So, that's what I meant by  
6 mental health.**

7 **Q.** Just for the record, what have you done the last  
8 four years?

9 **A. I was an account manager for Magellan (phonetic)  
10 Behavioral Health, 72 million covered lives, mental health  
11 only.**

12 **Q.** Okay, okay.

13 **MR. SCHULTZ:** A moment, please, Judge?

14 **THE COURT:** Yes.

15 **MR. SCHULTZ:** May I have a moment to confer  
16 with Mr. Goeller?

17 **THE COURT:** Yes.

18 **MR. SCHULTZ:** Will you excuse us outside?

19 **THE COURT:** Yes.

20 (Brief pause in proceedings.)

21 **MR. SCHULTZ:** Thank you, Judge.

22 **Q. BY MR. SCHULTZ:** When we get to the punishment phase  
23 of the trial, even those things that might not be complete  
24 defenses, you can use them later in the punishment phase. For  
25 example, let's say self-defense were raised as a possible

1 But if you're just a stark-raving madman, just a  
2 lunatic that's, you know, a blathering idiot, so to speak, if  
3 you're that kind of person, probably under that law, if that's  
4 demonstrated in evidence, you would not be even guilty of the  
5 crime of capital murder. Are you with me?

6 **A. Correct.**

7 **Q.** Now, it's also possible, I suppose, to be like -- to  
8 be medically insane, but not legally insane. I mean, you  
9 could think you're the -- you could think you're the -- I  
10 don't know, the Sheik of Arab, for example, and that might be  
11 your delusion, and you think you've got the right to make  
12 decisions for everybody around you. But unless you can show  
13 that you don't know right from wrong, you wouldn't be able to  
14 demonstrate that your particular brand of insanity is a legal  
15 defense. So, that's a -- so not knowing right from wrong as a  
16 result of a serious mental disease or defect is what insanity  
17 is.

18 Now, you put mental illness on there, and I suppose  
19 one could argue that everybody that would intentionally commit  
20 a capital murder might be mentally ill. There's something  
21 screwy about them and how they think and how they tick; don't  
22 you think? What do you think about that? Do you think  
23 everybody that commits a murder has got some kind of mental  
24 illness about them?

25 **A. No, sir.**

1 defense to consider, and the jury decided, no, it didn't fit  
2 self-defense, and so the Defendant was convicted of capital  
3 murder. Some of that same evidence could be used later on in  
4 the punishment phase of the trial. In other words, you could  
5 consider the fact that it was partially in self-defense, or  
6 somewhat in self-defense as some -- as evidence on the two  
7 special issues. Does that make sense to you? It might not be  
8 good enough for an acquittal on self-defense, but it might be  
9 good enough to support answers to those questions in a way  
10 that could result in a life sentence.

11 **A. Okay, yes.**

12 **Q.** How strong do you consider yourself to be on the  
13 death penalty? Like, do you remember how you answered that  
14 question, the 1 to 10 scale?

15 **A. I don't remember. I'm in favor.**

16 **Q.** Pretty strong on it, though, aren't you?

17 **A. Yes, sir.**

18 **Q.** Do you think it's cruel of our society to have a  
19 death penalty? Do you think that's a cruel thing to do, to  
20 put -- strap somebody down on a gurney and poison them,  
21 essentially? Do you think that's cruel of us?

22 **A. Yeah. Yes, sir.**

23 **Q.** If it's cruel, why do you support it then?

24 **A. The fact that it's being cruel that you tie somebody  
25 down doesn't mean that they don't deserve it if the crime**

1 warranted it.

2 Q. So I guess what I'm getting at is you're not the  
3 kind of man that's going to have any sympathy if you start --  
4 if you find the answers to those questions ought to be a  
5 certain way, you're not going to feel bad one day when you  
6 read he's been executed?

7 A. No.

8 Q. That won't be a problem for you at all?

9 A. No.

10 MR. SCHULTZ: We've reached a point where we'd  
11 ask the juror be retired briefly, Judge.

12 THE COURT: All right. Let me ask you to step  
13 down for a few minutes, and we'll have you back in in a few  
14 minutes.

15 (Venireperson exits the courtroom.)

16 THE COURT: I didn't admonish this juror  
17 because the other jurors have been sent home.

18 Anyway, tell me what you have?

19 MR. SCHULTZ: I think we have an agreement to  
20 excuse this juror by consent conditioned upon the Defendant's  
21 approval.

22 THE COURT: Is that in agreement as far as  
23 you're concerned, Mr. Goeller?

24 MR. GOELLER: Yes, sir.

25 And I would tell the Court, based on the information

1 THE COURT: Yeah. But I think that it's an  
2 interesting enough questionnaire that both sides will find it  
3 interesting, and so if you happen to get together, let me  
4 know. And if you don't, if it's so interesting that we have  
5 to hear from her, that's fine with me, too. So anyway, I'll  
6 see everybody at 8:45 in the morning.

7 (End of Volume 17.)

1 the State has given me regarding his criminal history and  
2 looking at his questionnaire and some of his answers, I've  
3 consulted with my client and my co-counsel, and we've agreed  
4 to release him.

5 THE COURT: Mr. Cantu, is that your desire,  
6 also?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Then why don't you just  
9 tell Mr. Hargrove that he's finally excused.

10 THE BAILIFF: Yes, Your Honor.

11 THE COURT: We'll start up again tomorrow  
12 morning.

13 So Mr. Hargrove is finally excused, and I guess  
14 we'll get started at 8:45 in the morning.

15 Say, I tell you what, I wanted to run something by  
16 you guys, and just for whatever it's worth, I truly do not  
17 care. And I've just noticed that Bambi Hayes comes up  
18 tomorrow, and I'll ask both sides, if you would, take a look  
19 at her questionnaire. Maybe you'll do something, or maybe you  
20 won't. I don't know.

21 MR. GOELLER: It's Bambi Hayes?

22 THE COURT: Yeah, Bambi Hayes is going to  
23 be --

24 MS. FALCO: It's Greg Willis' sister.

25 MR. GOELLER: It is?

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

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

19 WITNESS MY OFFICIAL HAND this 14th day of  
20 January, 2003.

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