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

VOLUME 18 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 18 - VOIR DIRE

CAPITAL MURDER JURY TRIAL

COPY

380TH JUDICIAL DISTRICT COURT
COLLIN COUNTY, TEXAS

On the 11th 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.

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2003 JUL 15 11:11 AM
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1 PROCEEDINGS
 2 (Open court, jury not present.)
 3 THE COURT: 380-80047; State of Texas versus
 4 Ivan Abner Cantu. We're still on David Hargrove.
 5 MS. FALCO: No, we agreed to excuse him.
 6 THE COURT: Oh, that's right. Then the next
 7 juror is Bambi Hayes.
 8 MS. FALCO: Your Honor, we just want to put on
 9 the record we're agreeing to excuse Ms. Bambi Hayes, Juror
 10 Number 66.
 11 THE COURT: All right. Mr. Goeller, is that
 12 your desire, also?
 13 MR. GOELLER: Yes, Your Honor.
 14 THE COURT: Mr. Cantu, do you concur?
 15 THE DEFENDANT: Yes, Your Honor.
 16 THE COURT: All right. Then Bambi Hayes,
 17 Number 66, is excused. And would you tell her -- would you
 18 ask her to come in and I'll tell her myself, and she can get
 19 on her way without going back there.
 20 (Venireperson enters the courtroom.)
 21 THE COURT: Ms. Hayes, I suppose that I have
 22 some good news. Both sides have agreed, and I've approved
 23 excusing you from service as a juror.
 24 VENIREPERSON: Thank you.
 25 THE COURT: I appreciate your time.

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1 (Venireperson exits the courtroom.)
 2 THE COURT: Number 67, Janice Oliver.
 3 (Venireperson enters the courtroom.)
 4 THE COURT: Ma'am, are you Janice Oliver?
 5 VENIREPERSON: Yes, I am.
 6 THE COURT: I want to thank you for coming to
 7 court this morning and remind you that three weeks ago today I
 8 put everybody in the panel under oath, and the oath was to
 9 tell the truth with regard to the questions that are
 10 propounded by each side. Do you recall taking that oath?
 11 VENIREPERSON: Yes.
 12 THE COURT: All right. Please have a seat, and
 13 we'll let the lawyers ask you questions.
 14 Mr. Schultz.
 15 MR. SCHULTZ: Yes, Judge, thank you.
 16 DIRECT QUESTIONS
 17 BY MR. SCHULTZ:
 18 Q. Good morning, ma'am.
 19 A. Yes.
 20 Q. My name is Bill Schultz. I'm one of the Assistant
 21 District Attorneys representing the State of Texas in its
 22 capital prosecution of Ivan Cantu. To my left is Ms. Gail
 23 Falco, who is the chief felony prosecutor for another district
 24 court on loan to us here for this prosecution. We have a
 25 third prosecutor who has stepped out for the moment, and that

1 is Ms. Jami Lowry.

2 To your further right at the other table is the
3 Defendant, Mr. Ivan Cantu. Next to Mr. Cantu is Mr. Don High
4 in the light suit, and then in the gray houndstooth jacket is
5 Mr. Matt Goeller. Those are both very fine practitioners of
6 law that work in Plano, Texas, and they are board certified
7 criminal law specialists.

8 I believe from discussions had earlier with you as a
9 group, you don't know any of us personally; is that correct?

10 A. No, sir.

11 Q. Have you ever served as a juror before in a case?

12 A. Yes.

13 Q. Can you tell me a little bit about that service?

14 A. A few years ago, I believe it was the same judge, it
15 was a manslaughter case where there was a death -- boating
16 death out on Lake Lavon, and the young man that was driving
17 the boat -- the young lady was killed -- was on trial and it
18 came -- that it was a hung jury.

19 Q. And how it hung up was 10 to 2, if memory serves me?

20 A. I'm sorry.

21 Q. I believe it was, like, a 10 to 2 verdict for not
22 guilty. Does that sound right to you?

23 A. No. It was 11 to 1.

24 Q. It was --

25 A. Eleven to 1 not guilty.

1 Q. Right. Was there a dentist that was involved?
2 Maybe he was the one; is that -- do you remember if there was
3 a doctor that was involved in that --

4 A. No.

5 Q. -- on the jurisprudence? You don't remember that?
6 Okay.

7 Do you remember who the prosecutors were in that
8 case?

9 A. No, sir.

10 Q. Okay. It sounds like, and I'm not particularly
11 interested in what your vote was, but I figure odds are about
12 one -- odds are about 11 out of 12 that you would have been a
13 not guilty vote, and I'm not asking you about that part. Was
14 there anything about the way the State handled the case that
15 made you somehow mad at the State of Texas?

16 A. No, not at all.

17 Q. Understanding that there might have been a number
18 of reasons that it might have occurred, did you think the
19 conduct was serious, and it was the kind of case that should
20 have been prosecuted, did you feel like?

21 A. Yes.

22 Q. And it seems, if memory serves me, that the problem
23 was not one of whether or not it was a crime, but it was one
24 of those questions about identity of who the driver was, or
25 which boat it was that did the hitting; is that right?

1 A. Yes.

2 MR. SCHULTZ: Moment, please, Judge?

3 THE COURT: Yes.

4 Q. BY MR. SCHULTZ: And I believe one time -- looking
5 at your questionnaire, you were asked the question have you
6 every had an unpleasant experience involving law enforcement,
7 and you indicated yes. And you explained that the assistant
8 to the District Attorney strongly intimidated your
9 granddaughter while she was holding your 10-month old -- the
10 great granddaughter, which I guess would be her daughter?

11 A. Yes, sir.

12 Q. You got to understand that attracted my interest
13 just because I'm assuming it was here in this County; is that
14 right?

15 A. Yes, sir.

16 Q. Okay. Would you tell me a little bit about that?
17 Tell me what the circumstances are of how you were involved
18 with the Assistant District Attorney in the first place, and
19 then the whole situation, what you remember?

20 A. Yes, sir. My daughter was on trial for felony
21 charges.

22 Q. Right. Do you remember what kind of felony charges?

23 A. Yes, sir. Aid to a minor -- contributing to a
24 minor, delinquency.

25 Q. Okay.

1 A. I think that -- I don't know the exact -- how they
2 termed it. But the -- but she was accused of giving drugs to
3 a minor.

4 Q. Okay. And who was the minor that she was accused of
5 giving drugs --

6 A. My grandson, her son.

7 Q. Okay. So there was a trial?

8 THE COURT: Was that in here, also?

9 VENIREPERSON: Yes, sir. Debra Bird.

10 THE COURT: All right.

11 MR. SCHULTZ: Judge, we got an agreement to
12 let this juror go by consent.

13 THE COURT: Is that correct?

14 MR. GOELLER: Yes, sir.

15 THE COURT: Mr. Cantu, that your desire, also?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Then --

18 VENIREPERSON: Well, that was fast.

19 THE COURT: -- you are finally excused. Thank
20 you for your service, ma'am.

21 THE DEFENDANT: Thank you.

22 (Discussion off the record.)

23 THE COURT: So, we're looking at Gary Stout.

24 MR. GOELLER: Yes, sir.

25 (Venireperson enters the courtroom.)

1 THE COURT: Are you Gary Stout?
 2 VENIREPERSON: Yes, I am.
 3 THE COURT: Mr. Stout, perhaps you recall about
 4 three weeks ago today, I placed a whole group of people under
 5 oath.
 6 VENIREPERSON: Uh-huh.
 7 THE COURT: And the oath was to give truthful
 8 answers to the questions that were asked, and do you recall
 9 them?
 10 VENIREPERSON: Yes, I do.
 11 THE COURT: And that oath still applies, and
 12 the State would go first with your questioning. Is it --
 13 Mr. Schultz, are you going to question this juror?
 14 MR. SCHULTZ: Yes, sir. Thank you.

DIRECT QUESTIONS

16 BY MR. SCHULTZ:

17 Q. Good morning to you, Mr. Stout.

18 A. **Morning.**

19 Q. My name is Bill Schultz. I'm one of the Assistant
 20 District Attorneys representing the State of Texas in its
 21 capital prosecution of Ivan Cantu. To my left is Ms. Gail
 22 Falco, chief felony prosecutor of the 199th Judicial District
 23 Court, assigned to this court for the duration of this trial.
 24 And further to her left, your right, is Ms. Jami Lowry, who is
 25 an Assistant District Attorney assigned to this particular

1 Mr. Don High, and next to him is Mr. Matt Goeller. Those are
 2 two very fine board certified criminal law specialists that
 3 practice law in Plano, Texas, and I believe you do not know
 4 any of us personally; is that correct, Mr. Stout?
 5 A. **That is correct.**
 6 Q. Let me ask you this: How many people have been back
 7 in the jury room the last few minutes since you've been there?
 8 A. **Including myself, four.**
 9 Q. Four?
 10 A. **Uh-huh.**
 11 Q. What's been the topic of conversation? I've kind of
 12 got an idea of what it would be, but tell me about that.
 13 A. **The length of time the first person was here**
 14 **yesterday, kind of a little bit of background, the trial**
 15 **system and a little bit about the Defendant.**
 16 Q. Has there been any discussions about any of the
 17 things that are happening in New York and Washington right
 18 now?
 19 A. **Yes.**
 20 Q. Tell me about those discussions as y'all been having
 21 back there.
 22 A. **They were just brief discussions about what has**
 23 **happened and what they heard on the radio.**
 24 Q. Let me ask you this: What kind of reaction -- and
 25 the reason I'm asking is really what kind of reaction do you

1 court.
 2 With very limited exceptions, the three of us will
 3 be the participants representing the State of Texas. There
 4 could be a situation where another prosecutor you haven't met
 5 might come in for some portion of the trial. I don't think
 6 this is the kind of trial -- sometimes when we have a highly
 7 technical issue, for example, a vehicular-type issue, and
 8 there might be some mathematical question, or some graphing
 9 issue or something like that, that comes up, in those kinds
 10 of cases we might get someone that had more specialized
 11 practice. Sometimes if it's a very young
 12 child witness that would be testifying about something, we
 13 have attorneys that spend more time specializing in working
 14 with child witnesses, child victims. They might come in and
 15 help. Sometimes there are people who, you know, may be
 16 Spanish speaking people, and we have a largely
 17 fluent-in-Spanish type of witness, and one of those
 18 prosecutors would get along better because it would be an
 19 easier conversation to interpret, those kinds of things. But
 20 I think it would just be the three of us.

21 A. **Uh-huh.**

22 Q. The Defendant is the --

23 THE DEFENDANT: Morning.

24 Q. BY MR. SCHULTZ: -- gentleman to your far right,
 25 Mr. Cantu. He's in the blue shirt. Next to him is

1 have to that because I'm curious what effect it has, number
 2 one, on your concentration, if anything. And, number two,
 3 whether or not that makes you feel more or less important in
 4 being a part -- a potential juror in a society that's still
 5 free?
 6 A. **Well, basically it's a fact of life in our society**
 7 **today. I really don't know all the details at this point in**
 8 **time, but it didn't have that much of an impact, other than I**
 9 **know probably some people have been killed or injured. Other**
 10 **than that, I really don't have a whole lot of thought on it at**
 11 **this point in time without really seeing -- you know, or**
 12 **hearing more about it, about what has happened.**
 13 Q. Okay. Do dramatic events -- are you the kind of man
 14 that dramatic events really shake up a whole lot when they
 15 happen, like the Challenger blows up, or Oklahoma City
 16 Courthouse gets blown up, or there's a huge earthquake in
 17 India, or something like that? Do those kinds of things
 18 affect you greatly or not particularly?
 19 A. **Not particularly.**
 20 Q. How about things like assassinations. I know you
 21 have to recall the Kennedy assassination. How did that affect
 22 you?
 23 A. **That had a lot of impact upon me.**
 24 Q. Do you think it was age that made a difference? Do
 25 you think as you -- as your life has progressed you've just

1 kind of -- stuff happens, and you just go along because we're
 2 most used to hearing stuff like that, or you think --
 3 **A. My age, reaction of my teacher and the other**
 4 **students in the class. And as I've gotten older, I'm a little**
 5 **bit more mellow.**
 6 Q. You have indicated --
 7 **A. Uh-huh.**
 8 Q. -- that you are a supporter of the death penalty
 9 because you're in favor of it?
 10 **A. Yes, I am.**
 11 Q. And you've indicated of the choices that you have --
 12 you circled number two, which I believe the death penalty is
 13 appropriate in some capital murder cases, and you could return
 14 a verdict resulting in death in a proper case; is that right?
 15 **A. Yes.**
 16 Q. And then when asked for best argument in favor of
 17 the death penalty or opposing the death penalty, your answer
 18 was "no opinion." And I guess these are certainly not the
 19 most artfully drafted questionnaires, although they really
 20 help the lawyers because it saves time. You might think by
 21 putting no opinion that wouldn't create any questions in the
 22 lawyer's mind. But actually, if you don't have any opinion
 23 about what the best argument is in favor of the death penalty,
 24 I guess I'd wondered how you can support it if you don't have
 25 an opinion in favor of it. Do you follow what I'm saying?

1 **A. Yes, I do. That was probably the quick answer to**
 2 **get through the questionnaire because it was relatively**
 3 **involved, and I didn't know the magnitude of what it would be**
 4 **used for.**
 5 Q. Could you help me out now and kind of give me an
 6 idea of why you're a supporter?
 7 **A. I, basically, have been a supporter of the death**
 8 **penalty I think most of my life. I think if someone is --**
 9 **commits a crime that warrants the death penalty, that they're**
 10 **deserving of it. And it is the correct judgment call, or**
 11 **sentencing in my opinion through my life experiences and my**
 12 **beliefs.**
 13 Q. Is their room in your philosophy for mercy?
 14 **A. Yes.**
 15 Q. Okay. Suppose you were asked to -- like, maybe it's
 16 a school project or something at your church, or maybe helping
 17 your child with homework, or something like that, suppose you
 18 were asked to take the position in opposition to the death
 19 penalty, and the project was fashion the best argument, the
 20 most persuasive argument you can think of in opposition to the
 21 death penalty. Be like the devil's advocate, take the other
 22 side. What would you see as the most persuasive argument
 23 against it?
 24 **A. Probably the fact that are -- I mean, you are taking**
 25 **a life no matter what the conditions are. You are taking the**

1 **life of that person, and we're not always 100 percent sure**
 2 **that the person was guilty or not guilty.**
 3 Q. Okay.
 4 **A. And there's always room for advanced testing of DNA**
 5 **or other things that might come up as we, you know, go through**
 6 **changing times. And also there's other family members**
 7 **involved with -- that could be -- need to be considered, their**
 8 **lives, impact of that person.**
 9 Q. Okay. When you talk about family members being
 10 considered, for example, like a mother, for example, who's
 11 going to lose her child?
 12 **A. Yes, uh-huh.**
 13 Q. What about victim's families and their desires? Is
 14 that -- do you think that's of equal weight? If you're going
 15 to look at the families and how that affects them, is it fair
 16 to take an equal view of the victim's families and about --
 17 they kind of cancel each other out?
 18 **A. Of course.**
 19 Q. For example, I don't know but I would assume this
 20 Defendant has a mother who would testify probably the way you
 21 would for a child or I would for a child. We'll testify to
 22 positive things, would take lots of the blame herself,
 23 perhaps, for what happened, and if I had only been a better
 24 mother; it's not his fault, it's mine. That kind of thinking.
 25 And further, that I love him, and I don't want to lose him,

1 and please don't kill my son. I'm not talking about this case
 2 in general, but I don't think that would be -- certainly to be
 3 expected. Would you agree with me?
 4 **A. Yes.**
 5 Q. And likewise, I think it would be reasonable -- I'm
 6 not talking about this case. I think it would be reasonable
 7 to have the victim's family testify; we loved this person, a
 8 good person, deservingly, like all of us, there's some good
 9 parts about him and some bad parts about him, but in America
 10 there was a free part about him. And they had the right to
 11 grow old, if their health would allow them to do that, and we
 12 believe to try to make us whole the best thing to do is to
 13 kill the defendant.
 14 Do you understand that different people coming from
 15 different directions would have opposite views and when you
 16 get right down to it, that's not very important in deciding
 17 what to do in a particular case; don't you agree?
 18 **A. Uh-huh.**
 19 Q. Now, from what I understood about you saying you
 20 supported the death penalty, you believe that if a person did
 21 a capital murder, it seems proper they should be subject to
 22 the death penalty?
 23 **A. That is correct.**
 24 Q. And Ms. Falco would have explained to you, and did
 25 explain to you, that regular -- if there is such a thing --

1 regular murder is not capital murder, no matter how gruesome
2 it might be or how -- I mean, how unnecessary it might be.

3 A. Uh-huh.

4 Q. For example, if you're next-door neighbors to a
5 fellow, and y'all have some disagreement over the lawn, or
6 some boundary dispute, or why don't you maintain the fence, or
7 whatever problems neighbors have in our sometimes civilized
8 society. And he gets mad at you, and he comes at you with a
9 chainsaw and cuts you into something about the size of fish
10 chum, all right, with that chainsaw, laughing all the way,
11 bragging about it, and taking out newspaper ads how proud he
12 is to have done all these things to you. Under our law that's
13 plain murder.

14 The kind of person that could do such a thing, you
15 and I may not feel is fit to live in our society. If you had
16 been fortunate enough to have a gun with you at the time, you
17 would have seen to it he wasn't in our society, but you
18 weren't able to. Instead you became bait for the fish, all
19 right?

20 A. Uh-huh.

21 Q. Now, that's merely murder, which has a punishment
22 range of five years to --

23 (Laughter.)

24 MR. GOELLER: I'm sorry.

25 MR. SCHULTZ: I'm glad someone is entertained.

1 is because both of those occupations have very strong unions
2 and professional organizations that can influence the
3 Legislature. But truly, if you stop and think about it, that
4 seems to make sense. It's hard enough to be a fireman going
5 out there and hopping into buildings that are liable to turn
6 you into a cinder without having to worry about somebody
7 calling in a false alarm and then killing you for the impact
8 of doing it because they don't like firemen for some reason.

9 We have some other types of capital murder. For
10 example, murder for hire. Murder, plus something else, is so
11 extreme that a person should potentially forfeit his life for
12 doing such a thing. And that's either the hirer, or the
13 person that hires the man, or the guy that actually does the
14 killing. They're both equally amenable to the death
15 penalty -- or vulnerable to the death penalty, I should say.

16 And then probably the most frequent, in terms of
17 numbers kind of death penalty situations we have, are murders
18 in the course of some other serious offense. Like, for
19 example, a murder in the course of an aggravated sexual
20 assault, an aggravated rape, we used to call it. Murder in
21 the course of an arson, murder in the course of a kidnapping,
22 murders in the course of a burglary or a robbery are all
23 crimes that are subject to the death penalty, and also murder
24 in the course of another murder, and that's where we get this
25 multiple homicide concept. If you think about it, it's murder

1 VENIREPERSON: I see that.

2 MR. SCHULTZ: He's laughing because you're in
3 pieces; do you understand that?

4 VENIREPERSON: I understand that. I'm taking
5 that into account.

6 Q. BY MR. SCHULTZ: Do you understand that to be
7 capital murder in Texas, it has to be an intentional causing
8 the death of another person with some aggravating circumstance
9 or fact that goes along with it. Those facts can be what
10 type -- what class of person is murdered. For example, a very
11 young child has special protections. If one murders a very
12 young child, a child under the age of 6, the law says that's
13 extra bad. Now, I don't know in the grand scheme of things if
14 it is or not. I'm not sure why your life is theoretically
15 less important than a five-year old, but we all kind of
16 understand the thinking behind that, because at least you're
17 able to defend yourself. You have some ability to perceive
18 danger and retreat from it, and a young child has none of
19 those abilities.

20 Police officers, they've got a tough job.
21 Firefighters, they have a tough job, and they get special
22 protection. If they are murdered in the course of discharging
23 their duties, then they -- the person who does that is subject
24 to the death penalty.

25 Now, a cynical person would say the reason for that

1 plus another serious offense. The other serious offense
2 happens to be the second murder. Does that all make sense to
3 you?

4 A. Uh-huh.

5 Q. And we agree or not, or whether we think more crimes
6 should be included as capital, and it seems to expand a little
7 bit every legislative session. We will get an occasional new
8 variety of capital murder that seems to be fitting situations
9 we didn't know about. Like, we've got a fairly new one that
10 provides if you're doing a life sentence in prison for
11 certain, pretty bad types of crimes, like an aggravated
12 kidnapping, aggravated sexual assault, I think murder --
13 those kinds of things -- and you murder anybody else, even if
14 it's another inmate, and even if it's just some brawl in the
15 lunchroom over food or cigarettes, or whatever they fight over
16 down there, that's a capital murder if you're there for that.
17 Kind of the idea being, you've got people committing awful
18 crimes down there, what incentive do they have not to kill?
19 What are you going to do? Get another life sentence. You
20 know, that kind of idea?

21 A. Uh-huh.

22 Q. And so if they kill anybody, they get the death
23 penalty potentially. Do all of those things that I have
24 described seem to you, depending upon the circumstances, to be
25 the kinds of things the death penalty is right for?

1 A. Yes, okay.

2 Q. I'm not sure. I have perhaps just a sense from you
3 that you might think that cutting a fellow up with a chainsaw
4 might be the kind of thing that also ought to be maybe a death
5 penalty case, depending on the circumstances, even though it's
6 not?

7 A. In my mind, yes, that would be.

8 Q. Okay. I sense that from you and, you know, that's
9 how come -- you know, 15 years ago a lot of the death penalty
10 situations I've been talking about didn't exist. They had to
11 add firefighters. They had to add lifers to those series of
12 crimes. They had to add to the child ones. That's pretty
13 new. Used to be murdering an infant was just regular murder.

14 A. Uh-huh.

15 Q. The law contemplates when it defines capital murder
16 that the jury will, if it finds a defendant guilty of capital
17 murder, will set the punishment within the range of punishment
18 prescribed by law just as in any other case where a jury does
19 punishment. The only difference is the range is either very
20 narrow or very broad, depending on how you look at it. I
21 mean, the difference between life and death, one might say
22 they're both pretty bad and not everybody agrees on which one
23 is worse. Some people say a life sentence is worse than being
24 executed. I don't know if you were on death row if you would
25 say that. You might have a different view on that subject.

1 But the idea is that a jury, just like it has to
2 find guilt-innocence based on the evidence and not what it
3 wants to do. Are you with me on that?

4 A. Uh-huh.

5 Q. It has to be able to answer punishment questions
6 based upon the evidence and not what it wants the result to
7 be?

8 A. Uh-huh.

9 Q. Are you with me?

10 A. Uh-huh.

11 Q. Let me give you an example of what I'm talking
12 about. You've heard of Charles Manson, right?

13 A. Yes.

14 Q. Terrible, brutal, blood-thirsty, savage killer from
15 California. Let's say somehow Charles Manson gets paroled or
16 escapes from prison, or however it is, and he ends up in
17 Collin County. And somebody gets murdered, and Manson gets
18 arrested, he gets indicted and comes to trial, and you're a
19 juror. I mean, you're going to -- you're probably going to
20 have plenty against Manson, and you probably figure he should
21 have gotten the death sentence that was imposed on him out
22 there that got -- essentially got commuted because the death
23 penalty law was unconstitutional. And you're probably
24 thinking, this guy has been living a long time in California
25 at California's expense.

1 And probably in your heart you're going to want him
2 to be guilty because you want Manson, you know, to get what
3 he's got coming. Are you with me on that?

4 A. Uh-huh.

5 Q. Nevertheless, if the State couldn't produce enough
6 evidence that Manson was guilty of the crime he was charged
7 with in Collin County, your heart, in wanting to take care of
8 Manson, could not control how you view the evidence. Your
9 brain has to control how you view the evidence. Are you with
10 me on that?

11 A. Yes, I am.

12 Q. Who's the most -- have you got anybody in your life
13 that you just really admire that's almost like a hero to you
14 that you can think of? Either somebody you know or not know.

15 A. Mainly my -- one of my wife's uncles. I just have a
16 high respect for him.

17 Q. Let's assume you're on a jury, and it's a guy like
18 him.

19 A. Uh-huh.

20 Q. And he's the real thing, and he's admirable and
21 honorable, and whatever. But, you find the evidence shows he
22 has committed a crime, even a serious crime. Your heart might
23 want to let him loose because he's a great guy, but your brain
24 has to control. If the evidence is there, you have to convict
25 if it's proven beyond a reasonable doubt. Can you do those

1 things?

2 A. Yes, uh-huh.

3 Q. Were you just thinking when you hesitated, or are
4 you wondering if you could really do such a thing?

5 A. Well, no. You have to take both into consideration,
6 but, yes, I could do that. I mean, I don't want to be plain
7 cold, but, you know, there's both sides that you have -- that
8 influences you.

9 Q. And that can happen sometimes because there are some
10 cases -- you're absolutely right when you say that there's
11 always the possibility of an innocent person being convicted.
12 As careful as I am as a prosecutor, as skilled as defense
13 attorneys are, as careful as judges are, as conscientious as
14 jurors are, sure. I mean, anything can happen statistically.
15 I think it's much more rare than most people believe. It's
16 like being struck by lightning.

17 You and me could play golf through a thunderstorm,
18 you know, every day for years and probably never get hit
19 statistically speaking. But nevertheless, people do get hit
20 and sometimes it happens, right?

21 A. Yes.

22 Q. Okay. The idea, though, is that all a citizen is
23 entitled to is a fair trial. Things are never perfect.
24 They're never perfect for victims. They're not perfect for
25 you, or me, or anybody else. A defendant is entitled to a

1 fair trial with competent counsel and a jury that will hold
2 the State to its burden of proving beyond a reasonable doubt
3 that the defendant is guilty. And he's not entitled to any
4 more than that at the first part of the trial, and he's not
5 entitled to any less than that. That's the rules, and that's
6 our obligation. And I don't get the impression that you would
7 make our job any easier for us than the law requires. That
8 means give us a break because we're the State; you like what
9 we do. I don't get that feeling from you at all. If we don't
10 prove beyond a reasonable doubt he's guilty of capital murder,
11 you're supposed to pour us out of the bucket for it, and
12 that's the end of the case.

13 **A. Yes.**

14 **Q.** But if we do it, even though there are consequences
15 to finding him guilty, and those consequences are the
16 punishment phase later on, I believe you're the kind of man
17 that would find him guilty, even though the next part of the
18 trial may be difficult?

19 **A. I agree to that.**

20 **Q.** Okay. And you've got nothing personal against the
21 Defendant as he sits there now, right?

22 **A. No, I don't.**

23 **Q.** And you can presume him innocent because you know
24 the law requires you to presume that he is innocent?

25 **A. Yes.**

1 **Q.** And you know -- because I can tell you're an
2 educated man, you know he doesn't have to testify if he
3 chooses not to, right?

4 **A. That's true.**

5 **Q.** And it wouldn't be much of a right if we would then
6 punish him, or attach some significance to that. I mean, what
7 kind of right has he got if we say, well, he must be hiding
8 something if he doesn't testify? That wouldn't be right.
9 That wouldn't be fair. And so the Judge instructs you not to
10 put on the scales of justice the fact that he didn't testify.

11 **A. Right.**

12 **Q.** Okay. Let me explain something to you that you
13 never think of unless you've been in a courtroom here before.
14 Even though you and I are completely communicating when you
15 nod your head because I understand just what you're saying,
16 we're making a record of everything. And so I always wait for
17 you to actually give an answer yes or no, if it calls for
18 that.

19 **A. I understand.**

20 **Q.** Okay, thanks.

21 And the Defendant not only doesn't have to testify
22 if he chooses not to and he has the right to have the jury not
23 consider -- not weigh that as any evidence in the case, but
24 his attorneys don't even have to produce evidence in his
25 behalf if they don't want to. Do you understand that concept?

1 **A. I understand that, yes.**

2 **Q.** Now, you might be sitting up there saying, well, why
3 in the world -- what good are they if they don't produce
4 evidence or do things? Well, first of all, there may be
5 reasons they choose not to produce evidence. That's their
6 business. I don't get to know about it, but they may not.
7 They may, for example, think that our evidence is in --
8 is insufficient, and they're not going to want to do anything
9 to affect that insufficiency. They may think, you know, it's
10 going great for us right now, and the State's case is pretty
11 feeble, and we don't want to do anything. But whatever their
12 reason, that's their personal, professional judgment, and we
13 can't draw any conclusions from it.

14 I can't, for example, get up there and say, well,
15 they must know I'm right because they didn't put on any
16 evidence. I can't argue that way, and you can't think that
17 way. Do you understand me?

18 **A. I understand that, and I --**

19 **Q.** You're the kind of man that's capable of following
20 that instruction?

21 **A. Yes, I am.**

22 **Q.** What are you looking at? Just looking around at
23 Mr. Goeller over there?

24 And really we do these same kinds of things that we
25 do as jurors all the time in our life. I mean, there are

1 times when we just -- we just -- we just make decisions based
2 on evidence. We'll suspect -- we might have a party at our
3 house, and we get to looking for our watch after the party and
4 our watch is gone.

5 **A. Uh-huh.**

6 **Q.** And we're pretty sure somebody swiped it because it
7 was at the party. And we get to thinking who we think might
8 be the most likely thief of our watch, for example. But we
9 can't ever prove it, and so you don't go -- you don't do a
10 whole lot of acting on it. You really don't know. For all
11 you know, you could have lost it. It could have been a
12 burglar that took it, and all those kinds of things, and so we
13 just forget about it and go on. That's sometimes what we ask
14 jurors to do, to forget about things when we ask them to
15 forget about it.

16 If Mr. Goeller -- if I'm saying something to you and
17 Mr. Goeller stands up, and he says I object because he's
18 misstating the law, or he's doing this or that, and the Judge
19 agrees and sustains it. The Judge will probably tell you
20 don't consider what the prosecutor said because I've ruled.
21 You shouldn't have heard it in the first place. You can do
22 that because you don't put it on the scales. That's what that
23 really means, not to consider it.

24 **A. They say it all the time, but it's still hard to not
25 consider it because you've heard it.**

1 Q. Sure.

2 A. **But to weed it out is something I can do.**

3 Q. Yeah. It's like the Defendant not testifying. I
4 mean, you've got eyes. You're going to know whether he
5 testifies or not, and he may not. And that doesn't mean that
6 you're supposed to forget the fact that he didn't testify.
7 You're just not supposed to attach weight to it in measuring
8 the evidence. That's kind of, like, forget what was said.

9 Now, you're absolutely right. Some things could be
10 so awful, I suppose, that you could never forget them. I
11 mean, like -- I can't think of an example, but you can think
12 of one in your own mind. Something could come out in trial
13 and be so outrageous that it would be hard to ever put that
14 out of your measuring stuff, but that's why juries go in and
15 out a lot. It's to deal with those kinds of things that we
16 all know are things that need to be figured out for sure,
17 whether the jury's got a right to hear them before that
18 happens so we're careful with that.

19 Now, let's assume, you know, a defendant has been
20 found guilty of capital murder. You and 11 other people have
21 voted guilty. The State convinced you beyond a reasonable
22 doubt, and it's either a burglary murder, a robbery murder, or
23 a double murder, and I will tell you this. The reason it's
24 charged alternatively like that is for flexibility. It's
25 almost like -- I don't know. It's serious stuff, and if there

1 were some issue about the ownership of the habitation that
2 somehow would make it not a burglary murder for some reason,
3 the State is entitled to flexibility of all other theories of
4 capital murder that they think the proof will show. And these
5 three kinds of -- actually, can really overlap very easily. I
6 mean, you can enter a guy's habitation, planning to rob him,
7 and you do rob him, and that's a burglary because you entered
8 with intent to commit a felony. And then there's a robbery,
9 and if you also kill him, that would make it a burglary murder
10 or a robbery murder. If you kill two people, that would make
11 them burglary murders and double homicides. Many different
12 crimes could be embraced by one fact situation.

13 So, let's assume you found the Defendant guilty of
14 capital murder. Many people say, well, what's left? If he's
15 been found guilty of capital murder, then he must get the
16 death penalty because we think of capital punishment and
17 capital murder. And I've already explained to you, and you
18 probably already knew from TV and the news and everything that
19 there's a second hearing. And you all -- you're all the time
20 hearing this in Texas: The jury is going to decide whether
21 the guy gets life or death. Have you ever seen that on TV, or
22 just heard that on the news or anything?

23 A. **Yes, I have.**

24 Q. And they're right. And if you're a juror in this
25 case and if you find the Defendant guilty of capital murder,

1 you'll be deciding life or death, not directly, but
2 indirectly. Just like finding him guilty of capital murder
3 is not directly finding him worthy of the death sentence, it's
4 an ingredient toward that -- with that wish that a death
5 sentence could never happen.

6 The same thing with answering these questions.
7 Although it's still a measurement process, you've got to be
8 the same kind of man that could acquit Manson if the evidence
9 wasn't there, or convict your uncle or someone like him -- or
10 your wife's uncle -- I'm sorry -- depending on the evidence.
11 You have to be able to answer these questions fairly according
12 to the evidence, and then the results of your answers are
13 going to dictate whether he gets life or death. Do you
14 understand that process?

15 A. **Yes, I do.**

16 Q. First question ought to be straight-forward, but it
17 may not be. You're asked whether there is a probability that
18 the Defendant would commit criminal acts of violence that
19 would constitute a continuing threat to society. Having never
20 been on a jury and wrestling with that and measuring it with
21 the evidence, I don't know that there -- to me it's a little
22 bit vague with some of those terms because we don't get
23 definitions of what they mean. And yet that's just probably
24 my affliction as a lawyer because juries all over Texas deal
25 with that exact question in exactly that wording. That's how

1 it always is, whether it's El Paso or Lufkin. It doesn't
2 matter.

3 The first thing in the question that is a little
4 confusing to make me just -- is the term "probable." Tell me
5 what line of work you're in, sir.

6 A. **I work for a private company as an accountant.**

7 Q. Are you certified?

8 A. **No, I'm not.**

9 Q. I have an impression -- I'm not a figures person at
10 all, but I have an impression that in accountancy business you
11 mostly don't work in the world of probabilities, but maybe you
12 do. Is probability part of your work?

13 A. **Not of that much influence. It's mainly based on
14 fact, numbers, common sense, things like that.**

15 Q. Now, do you do tax work?

16 A. **No, I don't.**

17 Q. What kind of --

18 A. **Mainly just the financial side of the operation.**

19 Q. I know some tax accountants probably deal in
20 probabilities, to some extent, stuff like the probability of
21 being audited and getting sued by the guy that gets tagged by
22 the IRS. I mean, let's face it, some of the tax work that
23 people do is predicated on being a little bit creative, but --
24 a colorful theory, and everybody knows the probability of
25 getting a home for business deduction audited is real high,

1 for example, and maybe somebody would know that some other
2 things nobody ever pays attention, so they can be more
3 creative. So, that's sort of probable.

4 **A. Right. Most people --**

5 Q. I don't mean crooked. I just mean being
6 professionally aggressive.

7 **A. And that's a good term, yes.**

8 Q. Okay, okay. Now, other people use probability to
9 mean more likely than not. An example of that is if I were to
10 say, are you going to go to neighborhood swimming party Friday
11 night, and you tell me probably. To my ear and to my brain
12 that means it's more likely than not that I'm going to see you
13 there if you say I'll probably be there. Does that seem to
14 make sense in that context?

15 **A. Uh-huh.**

16 Q. That assumes you're not the kind of person that
17 never says no. You know you're not going, but you say
18 probably just because that's easier than, no, I'm not going.
19 Well, why not? Come on, you know, that kind of stuff.
20 Probably means more likely than not in that context, right?

21 **A. Yes, uh-huh.**

22 Q. But probability certainly may mean less than 50/50,
23 depending upon the context. For example, weather forecasters
24 might say 20 percent probability of rain, right?

25 **A. Yes.**

1 Q. And that must mean 80 percent probability of no
2 rain, and yet that is a probability. Did you ever have any
3 math, like in school or anything? Did you take any calculus
4 courses, or any of those kinds of things?

5 **A. Not that advanced, but I have taken Algebra,
6 geometry, things like that.**

7 Q. They deal with things like the probabilities of
8 anything happening, and as long as something is a theoretical
9 possibility, then it has some -- it has some probability,
10 however remote.

11 **A. Uh-huh.**

12 Q. Are you with me?

13 **A. Yes.**

14 Q. I mean, the probability of somebody being able to
15 stitch you back together after the chainsaw guy did what he
16 did, probably real remote. You know, there's going to be --
17 it's going to take a lot of thread, and you probably lost a
18 lot of blood being made into bacon. I suppose theoretically
19 the world's greatest doctors would have some remote chance of
20 stitching you back together and live again. Are you with me?

21

22 **A. Uh-huh.**

23 Q. But it's not very probable.

24 **A. That's true.**

25 Q. You'd need a big, old long bunch of digits to

1 establish a probability.

2 We don't know what probability means in the context
3 of that question. What we do know is, because cases have told
4 us this, it has to be more than a mere possibility. In other
5 words, it has to be more than a theoretical,
6 anything-can-happen kind of a notion. I'd like to say it has
7 to be something that truly can happen, not just theoretically
8 could happen. Does it make sense to you in that context
9 probability means more than a theoretical possibility?

10 **A. Yes, it does.**

11 Q. I'll give you an example. Let's take the world's
12 most dangerous person. He's committed a capital murder.
13 Everybody knows he's a guy with the same mentality as the guy
14 that cut you into pieces, that kind of -- thinks it's funny,
15 would do it again if given the chance. But when he gets
16 arrested, he gets into a shoot-out with the police, and the
17 police wound him. They don't kill him, but they wound him in
18 the spine, and he gets paralyzed from the head down. So all
19 he's got is, like, a chin and maybe part of his throat, and
20 the things he can do is he can open his mouth, and he can wink
21 his eyes, and if he's lucky, flap his ears, maybe wiggle his
22 scalp a little bit, those kinds of things. That's all he's
23 got.

24 That person may not be a continuing threat to
25 society, not because his personality isn't a threat to

1 society, but because he doesn't have the ability to make other
2 people do the work that he's physically unable to do. Does
3 that make sense to you?

4 **A. Yes, it does.**

5 Q. Most people would say, well, the probability of that
6 person being a continuing threat to society is only
7 theoretical. It's not a real possibility.

8 Now, other people might say, well, how about a guy
9 like Hitler? Because even though Hitler never did anything
10 violent of his own, he still has a mesmerizing personality,
11 and he might have had the persuasive ability to make other
12 people go do his dirty work for him. Do you follow what I'm
13 saying?

14 **A. Uh-huh.**

15 Q. But you'd have to consider all that.

16 But most likely the answer to that question would
17 have to be no because a fellow paralyzed from the head down
18 and probably is not going to be a threat to society. And even
19 if the State tried to bring you some doctors in, and say,
20 well, we're making progress in spinal cord injuries and no
21 telling what's going to happen. Maybe he'll be up and dancing
22 in a few years. Still all we've got is a very remote
23 possibility, and that's probably -- that doesn't seem to be a
24 probability. Does that make sense to you?

25 **A. I agree, yes.**

1 Q. At the same time, the law doesn't make it impossible
2 for the State. We don't have to prove with certainty how
3 anybody is going to turn out. Your uncle-in-law may turn into
4 a savage next week, for all we know. We don't think so, but
5 the evidence is quite the contrary about him always. But
6 nobody knows what anybody is going to do totally in the
7 future. Anybody can do anything.

8 And so the law only obliges us to prove a
9 probability of the Defendant's future danger, not a certainty.
10 But whatever you define probability as; more than a
11 possibility, less than a certainty, and you fit it in there in
12 that range yourself somehow.

13 And when you get right down to it, that's probably
14 fair. I mean, the reason we even go to this questioning
15 format, rather than the automatic capital murder situation is
16 to have available concepts of mercy and concepts of protecting
17 society. If a person doesn't threaten society, our law says
18 he doesn't need the death penalty. That's just how it is.
19 That makes -- do you believe that's a question you could work
20 with, sir?

21 A. Yes, it is.

22 Q. Because the next question is what are acts of
23 violence? What are criminal acts of violence? We know some,
24 you know, cutting a man up with a chainsaw is one, any other
25 kind of murder. Double homicide, that's one. Drowning,

1 throwing a brick in a fellow's face, setting him on fire,
2 pouring him in a bucket -- or a vat of acid, that would
3 certainly be something that would be acts of violence. But,
4 it can also be things like wife beating, don't you agree?

5 A. Uh-huh.

6 Q. I mean, we all get mad, but we're not supposed to go
7 beating each other, and when we do beat each other, that's a
8 crime; do you agree?

9 A. Yes.

10 Q. And there's some things that are kind of what I call
11 hybrid. Some that are in between. They're the kinds of
12 crimes that, while not violent, in and of themselves are so
13 interwoven with violence that you almost could say they're
14 acts of violence, like drug dealing. I mean, if all I'm doing
15 is taking your money and giving you my drugs, I guess there's
16 no violence in that, per se. But, when you take those drugs,
17 what's that going to do to your body? Is that doing physical
18 harm to you? If you take those drugs and sell them to other
19 people and they sell them to other people, are people being
20 hurt as a result of my act of giving you drugs? Is that an
21 act of violence to people?

22 What about the fact that when you take those drugs,
23 some of them make you very violent and make you aggressive.
24 Does that make giving something an aggression-inducing
25 concoction, does that make somebody do an act of violence,

1 those kinds of ideas?

2 What do you think about that? Do you see how you
3 could argue cogently that dealing drugs is an act of violence?

4 A. Yes, I do.

5 Q. And even if you don't, because there are other
6 people sitting in that chair equally reasonable and equally
7 conscientious, and they say, no, I don't -- I see it as
8 terrible, but I don't see it as an act of violence. You
9 understand that even if it's not an act of violence, it might
10 help you understand the personality of that defendant to see
11 if he is going to be a threat to society later on? Does that
12 make sense?

13 A. Yes. That does make sense.

14 Q. Like stealing. I mean, stealing by all accounts --
15 if somebody steals your lawnmower out of your garage today, by
16 all accounts, that's not an act of violence, as long as he
17 doesn't break stuff to get to it or something like that
18 maybe. And yet, a fellow that would steal a lawnmower, you
19 would say, well, that tells me something about his
20 personality. That tells me about whether or not he has any
21 respect for anybody else, and that's a very important aspect
22 of whether he would be dangerous in the future. Do you agree
23 with me on that?

24 A. Uh-huh.

25 Q. Now, if the answer to that question has satisfied

1 you beyond a reasonable doubt that there is a probability that
2 the Defendant would commit criminal acts of violence that
3 would constitute a continuing threat to society, then the
4 answer that the State is entitled to is "yes" to that question
5 from you and 11 other people, assuming they're equally
6 satisfied beyond a reasonable doubt that we've proved what we
7 have to prove.

8 And by the way, society is undefined, also. Society
9 is multi-faceted. Society might include things you and I
10 never think about. Society obviously includes where we work,
11 where people go to school, where people go to worship, where
12 people work, where people eat, but it also includes other
13 things. Hospitals, where people get sick, campsites. We
14 don't think of campsites usually as being society, but if
15 we're out there camping it is. It's good morning, good
16 afternoon, let go of my stove, those kinds of things are
17 societal interaction. And surely it includes prison, also,
18 because prison is maybe not the greatest part of our society,
19 although it might be great for those of us that obey the law.
20 It might be pretty great that there's that society for other
21 people that don't like to obey the law.

22 But in answering that question, you can test his
23 personality. You can test his -- or any defendant's tendency
24 toward criminal acts of violence in different societal
25 contexts. You can, for example, say, well, I wonder how a

1 person would be in prison? What's going to happen to an
 2 inmate that grabs some of his food? What going to happen to
 3 the guard that makes him subject to discipline that he doesn't
 4 want to be subject to? What going to happen when the guards
 5 want him to go one place, and he says I'd rather not? You can
 6 test it that way, but you can also test it, how would he be in
 7 our churches, how would he be in our schools, in our ice cream
 8 stores? How would he be working at a child-care center? How
 9 would he be working at a battered women's shelter? You know,
 10 those kind -- because that's part of society. Is this person
 11 going to be dangerous around women that have a tendency to get
 12 battered sometimes in their lives? Does that all make sense
 13 to you?

14 **A. Yes, it does.**

15 **Q.** Okay. If we prove the answer to that question is
 16 yes beyond a reasonable doubt, we're entitled to a yes answer
 17 from the jurors. If we fail to prove it beyond a reasonable
 18 doubt, and ten or more people believe we've so failed, then
 19 the proper answer to that question is no.

20 Now, tell me, because I know you know the answer,
 21 what happens if there's a no answer to that question? What
 22 does that mean?

23 **A. Then you have life sentence.**

24 **Q.** Automatic. Thank you very much. That's the end of
 25 it. You go home, I go home, everybody goes home, but the

1 you were going to do that. I can get nailed for murder. It's
 2 called felony murder, but I can't get the death penalty for
 3 it.

4 **A. I understand.**

5 **Q.** That's all. You're not going to see that question,
 6 I don't think, but if you do, it will be self-explanatory and
 7 will be fine.

8 This is the question that will be considered by the
 9 jury if a yes answer has been returned, a yes answer to the
 10 first special issue.

11 **A. Uh-huh, yes.**

12 **Q.** Now, that question gives the jury a way to correct
 13 an injustice that may be resulting from its mechanical answers
 14 to the questions involving the guilt of the Defendant and
 15 involving the danger of the Defendant. Here's the thinking,
 16 and kind of go along with me, and kind of listen to the theory
 17 of it. You and I would, perhaps if we were making the law,
 18 say to ourselves, if somebody is found guilty of these kinds
 19 of crimes -- these awful crimes, you and I might say what's
 20 with this punishment phase? If you've done that crime, it
 21 ought to be an automatic death sentence. If you haven't done
 22 it, you walk out of there, and we say we're sorry for your
 23 trouble. But if you've been convicted of it, you
 24 automatically get a death sentence.

25 And we might not. We might really say, no, nothing

1 Defendant. He goes to prison to begin serving a life
 2 sentence.

3 If the answer to the question is yes, there's one
 4 more question for you. There's a second question that we're
 5 not even talking about. I don't think it's going to apply to
 6 the evidence. If it does it will be simple enough to answer.
 7 It has to do with the law of parties. A person can't get a
 8 death penalty unless he's either the trigger man that --
 9 either the shooter, or he is acting with the equivalent intent
 10 and desire of the shooter. In other words, you and I only
 11 have one gun between us and we go in to kill somebody.

12 **A. Uh-huh.**

13 **Q.** Or break into his house, as long as I'm with you on
 14 it. And it's, like, we've flipped a coin to see which one of
 15 us gets the fun of shooting, we can both get the death penalty
 16 because we have this equivalent intent. We're helping each
 17 other. We're in it together. We both want the result to
 18 happen.

19 On the other hand, if I'm driving a car, and you go
 20 in and you say, I'm going to burgle this place because nobody
 21 is home, and I don't even know you got a gun. You go inside,
 22 you pull out the gun and you kill the homeowner that's in
 23 there, I can't get the death penalty if what I'm saying is
 24 true. If I didn't know you were going to go kill them, I
 25 couldn't have had the equivalent intent if I didn't even know

1 should be automatic because there are situations that are very
 2 understandable. They look bad, they sound bad, they are bad,
 3 but they're understandable and they're not death penalty
 4 cases.

5 **A. I understand.**

6 **Q.** You share my view with that, that even though you
 7 and I are tough on crime, there are probably still some
 8 capital murders that, depending on the circumstances, a person
 9 ought not to -- taking everything into account, looking at
 10 every bit of the whole story, something about that case a
 11 person ought not to die. Do you agree with that?

12 **A. I agree.**

13 **Q.** And, you know, there are all kinds of examples. Do
 14 you know who Dr. Jack Kevorkian is?

15 **A. Yes, I do.**

16 **Q.** Some refer to him as almost a morbid type of fiend.
 17 Other people say he's a visionary that has kindness in his
 18 heart. I don't know which is right, but people have different
 19 views on Dr. Kevorkian. But apparently what Dr. Kevorkian
 20 believes is that a person has the right to die if he's
 21 intelligent and wants to die. And it's interesting, because
 22 that's what our law says. It's not a crime to commit
 23 suicide, or even attempt suicide anymore. Now, they will try
 24 to put you in the nut house if they catch you doing it,
 25 because they still have this view that to try to kill yourself

1 is evidence of insanity. But, truly it's not a crime to
 2 attempt to kill yourself, or to kill yourself. You might
 3 accidentally commit a crime within that, like maybe possession
 4 of a pistol, at the wrong place might be a crime. Or, you
 5 know, jumping on a bridge -- off a bridge might be traffic
 6 impediment or something like that. But, it's not a crime to
 7 kill yourself. And yet, it's a crime if you hire somebody to
 8 do it for you. It's a crime for him because he's a murderer
 9 then.

10 Anyway, Dr. Kevorkian says that's not right, and
 11 when people become so incapacitated that life means nothing to
 12 them anymore, they intentionally wish to be dead but can't do
 13 it themselves, either because they're too physically impaired,
 14 or because they just -- let's face it, that would be kind of a
 15 scary thing to do, put a bullet in your brain. Even if you
 16 thought it was the right thing, it would be hard to do for a
 17 lot of people.

18 So, they call for Dr. Kevorkian. He's got a machine
 19 with some bottles. It's almost like something out of a
 20 Frankenstein movies really. It's pretty crude, and he'll come
 21 and do work for you. That's how he operates.

22 Now, let's assume that Dr. Kevorkian shows up at
 23 the nursing home. You know they're not going to let him in,
 24 the guy with that box. They're not going to want him in there
 25 working on the nurse's patients; do you agree with me on that?

1 **A. Yes.**

2 **Q.** So the only way he can get in there to accomplish
 3 these things is if he burgles the place. He breaks in with
 4 the intent to commit the murder. He goes in upstairs through
 5 a skylight, or however he can get in, and that would be a
 6 burglary, and if he goes in there and a kills the person, even
 7 if the person wants to and the family is there holding hands
 8 and singing, or whatever people do in those circumstances, it
 9 wouldn't matter. That's still capital murder. It's the
 10 murder in the course of a burglary. Are you with me?

11 **A. Uh-huh.**

12 **Q.** Then we come to the trial. We hear all the
 13 evidence -- you know, we decide is he dangerous or not. Maybe
 14 he is. Answer this first question -- you know, Dr. Kevorkian
 15 decides he wants to testify, which is his Constitutional right
 16 to talk to you. Say, we give you a break here and don't give
 17 you the death penalty, and you ever get out of prison are you
 18 going to go do some more of that? Sure, I'll always do that.
 19 That's the right thing to do. Well, you might say the guy is
 20 going to be dangerous --

21 **A. Yes.**

22 **Q.** Right?

23 **A. Yes.**

24 **Q.** You know, another argument might be, well, that's
 25 not really an act of violence if all you're doing is helping

1 people pass into the hereafter. You might say that's not
 2 really violent. That machine is pretty peaceful, and if you
 3 stop and think about it, if somebody wants it to happen, maybe
 4 that's not violence if it's consensual, you know.

5 But whatever, still you could look at that whole
 6 situation, and when you get to this mitigation question, even
 7 if you decide he is a future danger, you might say, look, I've
 8 got to do what this question says. I've got to look at the
 9 circumstances. I've got to consider all the evidence,
 10 including the circumstances of the offense, his character and
 11 background and the personal, moral culpability of
 12 Dr. Kevorkian, the defendant, and I'd take all that into
 13 account. And, you know, I'd look at all that and listen to
 14 all the stories, and got a lot of character witnesses that
 15 said he sure helped grandma. They'd come in and testify and
 16 all that sort of thing. And maybe taking all that into
 17 consideration, you would say that's sufficient mitigating
 18 evidence to spare his life. You don't condone it. You don't
 19 applaud him, but maybe you think, even though it's a technical
 20 capital murder, his life ought to be spared. Do you
 21 understand the concept?

22 **A. Yes, I do.**

23 **Q.** And he's the kind of man that if, for example, those
 24 kinds of things altogether were mitigating, could you vote in
 25 favor of a life sentence because you'd find there was

1 sufficient mitigating evidence?

2 **A. Yes, I could.**

3 **Q.** There's other situations. I mean, perhaps the
 4 defendant was a Medal of Honor winner. Perhaps he saved many
 5 a sailor when a ship went down to a watery grave, but he
 6 managed to save a bunch of people. And perhaps you say, well,
 7 I don't know how he went wrong later in life, and yeah, he's a
 8 dangerous person, but that military gallantry counts for
 9 something. And it counts for enough not to exonerate him or
 10 not to turn him loose on us, but it counts for enough to at
 11 least let him live the rest of his life in the joint. Do you
 12 see how those background things, depending on how you weigh
 13 them, might be important enough for you to say, yeah, I'm
 14 tough on crime okay, but since this question tells me to weigh
 15 the mitigating evidence and see if it's sufficient, I will do
 16 so, and I weigh in favor of a life sentence. Do you see how
 17 you could do that?

18 **A. Yes, sir, I do -- I could.**

19 **Q.** Another one is the killer of children -- you know,
 20 maybe there's two killers that brutally murder a child, and
 21 the daddy is watching the trial, and the next thing you know
 22 the judge makes a ruling -- no disrespect to this Judge --
 23 that turns him loose, and maybe the judge is absolutely right
 24 in making such a decision, or maybe he's not, who knows. But
 25 the killers get to walk out of the court free, and they're

1 laughing as they're going and high-fiving and talking about
 2 their next victims and those kinds of things. The daddy sees
 3 all this and says those people aren't fit to live, and I'm
 4 going to do what's right. He goes and gets his gun, stalks
 5 them, follows them, plans it and kills them both. Capital
 6 murder, right? Two murders. You look at his background,
 7 never been in trouble before. He's a good family man, behaves
 8 himself, and you don't think he'd have ever been in a
 9 courtroom at all, except for what those people did. You can't
 10 exonerate him. You can't excuse it.

11 But you could see how maybe it would be reasonable
 12 to say all that taken and given as sufficient mitigating
 13 evidence just to spare his life. Not to turn him loose, just
 14 to spare his life. Does that idea make sense to you, that's
 15 available to the jury?

16 A. Yes.

17 Q. And you're the kind of juror that could do that if
 18 called upon. And maybe you'll find -- I know you'll find
 19 mitigation evidence. You would in any case, because everybody
 20 has things about them in their life, in their background that
 21 were unfortunate, or didn't go right, or were sad, or kind of
 22 unfair. We all have that about us?

23 A. Yes, sir.

24 Q. For example, Adolf Hitler, as reprehensible as his
 25 conduct was, there were things about him that were

1 know, so what? Nothing is perfect. But the question would
 2 always be is that sufficient mitigating evidence to overcome
 3 what Hitler did. Probably most people would say, no, that's
 4 all real sad, but that's not near sufficient enough to erase
 5 what you've done. And so you -- you know, the right thing to
 6 do is the death sentence because that's what you deserve.

7 And then there's some things that can be
 8 aggravating. One person might think something is mitigating,
 9 and another person is free to think that's aggravating. You
 10 know, might be, for example, that drug usage, you would think
 11 is pitiful and sad and an awful thing for anybody who's been
 12 taking drugs, and the poor killer is really the victim because
 13 somebody gave him drugs. Or you might say, no, the killer
 14 knew all about drugs and chose to take them anyway, and that's
 15 aggravating. That makes it even worse.

16 So what you find is mitigating is your business, and
 17 how you weigh it, how important it is is your business, as
 18 long as you are willing to actually consider all mitigating
 19 evidence presented and see whether or not that mitigating
 20 evidence is sufficient to warrant a life sentence, and you've
 21 told me you can do that?

22 A. Yes, I have.

23 Q. And if it is -- you know, he gets a life sentence,
 24 and you walk out doing the right thing, just like acquitting
 25 Manson or your uncle-in-law. It's the right thing because

1 mitigating. He was, as a child, very lonesome. He was
 2 sickly, probably had a lot of allergies. Even that Alpine air
 3 wasn't good to sleep with, all kinds of discomforts. He was
 4 not a particularly good student, try as he might. Probably
 5 burdened with emotional turmoil that burdened his thinking.
 6 He wasn't good at soccer and the games that they played over
 7 there in Germany. People made fun of him, called him a sissy.
 8 Then they dressed him in those knickers, or whatever those
 9 short things were they would wear. You know the logic.

10 Finally he gets the idea I'm going to try to do
 11 something. And they're calling him sissy, and he does the
 12 worst thing in the world, he goes to art school, not that
 13 that's sissified, but people that are already thinking that
 14 about you would tease you some more. But he found some
 15 happiness there in the art school, that would have been okay
 16 for him. But what did they do? They kick him out of the art
 17 school and say you're no good. You have no talent. The only
 18 thing he ever had talent for -- that's why I was asking you
 19 about the guy paralyzed from the neck down. He could control
 20 people and make them do mean and dangerous things.

21 And so most people would say, yeah, that's
 22 mitigating evidence. If mitigating means evidence that you
 23 can see might have contributed to what the person did, well,
 24 sure, I guess -- you know, I guess so does not getting a steak
 25 dinner last night might be mitigating to some extent. You

1 that's what the evidence leads you to.

2 A. Yes.

3 Q. You work for Rug Doctor?

4 A. Yes.

5 Q. Is that one of those operations where you -- do you
 6 actually go to residences and clean, or is it more, like,
 7 Oriental rugs and Persian rugs and stuff?

8 A. It's more like the home user goes and rents our
 9 machine and product.

10 Q. Okay. Do you have them, like, in grocery stores?
 11 Is that where you have those?

12 A. Grocery stores, hardware stores, drug stores.

13 Q. You have three children; is that right?

14 A. Yes.

15 Q. As your kids were growing up, and actually, given
 16 their age group, you've got to at least be thinking about it
 17 I'm sure, did you ever find yourself being concerned about
 18 them getting exposed to drugs?

19 A. Of course.

20 Q. Would you agree with me everybody probably under
 21 the age of 30, anyway, has been exposed to almost nonstop
 22 counsel against drug usage in one form or another?

23 A. Pretty much so, yes.

24 Q. You turn on Sesame Street, and they have this little
 25 vague message about not doing this or that. We see cartoons

1 where kids don't take drugs. We see this Partnership for a
2 Drug Free America constantly giving us guidance as parents on
3 how to keep our kids from getting on drugs. No telling how
4 many times they get told in the schools. They make them do
5 all these pledge -- do you remember all those pledges they got
6 during school, I will not do drugs and -- you know, I guess
7 unless a person is severely retarded, I don't -- don't you
8 think everybody has been exposed to a bunch of that and knows
9 about it?

10 **A. Yes, I agree to that. It might have been overdone**
11 **to some extent.**

12 Q. Perhaps, you're absolutely right. You know, you
13 think you're doing so much, but you almost make it an entry.
14 If you make it too forbidden, it's almost maybe like it has a
15 certain seductive quality that it wouldn't have had if you had
16 been simpler about it maybe.

17 But anyway, why do you think kids do drugs? Why do
18 you think they get started on them, you think?

19 **A. Boredom, escape, pressure.**

20 THE COURT: Mr. Schultz, I'm going to ask you
21 to pass the witness in about five minutes.

22 MR. SCHULTZ: Yes, sir. Thank you very much
23 for your courtesy.

24 Q. BY MR. SCHULTZ: Okay. Does that mean they got no
25 choice because they're bored and because of peer pressure and

1 Q. Why not? I mean, if you end up getting addicted
2 it's almost like a sickness, isn't it?

3 **A. To a certain extent, yes, but you do have a choice**
4 **and a will.**

5 Q. Okay. You went to Fresno State?

6 **A. Yes.**

7 Q. Is that the Fresno Campus?

8 **A. The Fresno Campus?**

9 Q. That's the only one, isn't it?

10 **A. In California?**

11 Q. Right.

12 **A. Yes.**

13 Q. Okay. You attend Metro --

14 **A. Family Church.**

15 Q. -- Family Church. Where is that?

16 **A. It's on Custer and Parker. It's kind of hidden.**
17 **It's a smaller church.**

18 Q. Is it over in the northeast corner of that
19 intersection?

20 **A. Northwest, across from Super 1.**

21 Q. Okay. I'm with you. And how frequently do you
22 attend?

23 **A. Once a week.**

24 Q. Do you go in the mornings, like a Sunday morning
25 service?

1 things like that, or you think they still have choices?

2 **A. I think they have a choice.**

3 Q. Okay. But let's face it, lots of them choose the
4 other path, right?

5 **A. Yes.**

6 Q. Now, do you think if a person chooses to do drugs
7 at all, or to experiment with drugs, do you think that person
8 is, first of all, responsible for beginning that drug usage?

9 **A. Yes.**

10 Q. Do you think that person should be held accountable
11 for whatever consequences flow from that drug usage?

12 **A. Yes.**

13 Q. Here's what I'm thinking. I don't know, I've only
14 heard, that different people react differently to drugs.
15 Maybe you and I could try cocaine, and we'd say that's
16 interesting, but I don't want to do that anymore. Somebody
17 else might try it, and because of the way their body is made
18 or their chemistry is, they get drawn into it a whole lot more
19 than you and I would. I don't know if that's so or not, but
20 let's say it is so. Does the person that gets drawn into it,
21 for whatever reason, doesn't have the resistance you and I
22 have, is that person any less responsible for becoming an
23 addict that makes the person start committing horrible,
24 vicious anti-social crimes?

25 **A. No.**

1 **A. Yes, uh-huh.**

2 Q. And it is your opinion that most of the people in
3 your church believe in the death penalty?

4 **A. Yes.**

5 Q. But I bet the church doesn't have an official
6 position that there should or should not be a death penalty,
7 does it, or does it?

8 **A. They do not.**

9 Q. There are some faiths that have an opposition
10 officially, but not otherwise.

11 And you like ER as a TV show. I don't know Boston
12 Public. What is that about?

13 **A. It's a classroom type of show, teachers, principal,**
14 **relationships, high school kids.**

15 Q. I can't figure out what this is. Women that you
16 least respect. Who did you write down?

17 **A. I don't really remember. I'm sorry.**

18 Q. There's nobody that you disrespect. You don't seem
19 to respect our former president too much, or at least less
20 than anybody else.

21 You go to St. Louis sometimes; is that right?

22 **A. Yes.**

23 Q. How often do you go up there?

24 **A. Probably once every couple of months.**

25 Q. Do you like it up there?

1 A. **It's -- it's okay.**

2 Q. You have indicated that you would like to not serve
3 on this jury, or at least at the time you did the
4 questionnaire because you are presently involved in a major
5 accounting system software implementation plan that will take
6 extra time between now and the end of the year.

7 A. **Yes, uh-huh.**

8 Q. Understanding that probably a bulk of the jurors
9 have business pressures upon them that are legitimate. I
10 mean, I -- I'm thinking to myself, I got this trial. If I
11 were called for jury duty someplace else, I might be thinking,
12 well, gee, I've got this capital murder trial in the middle of
13 forever. How am I supposed to do that? And I guess Gail
14 would have to go on without me, I suppose, if I got seated on
15 the jury. I guess that's how that would be. The judge down
16 at the other court wouldn't let me out for business reasons.
17 He wouldn't say, well, yeah, you've got a good excuse. I'm
18 going to let you go. I think sometimes our society calls us
19 at the most inopportune times, like the draft, for example.
20 And sometimes we've just got to go. Are you the kind of man
21 that could do that; if told you've got to go, you would go?

22 A. **Yes.**

23 Q. You wouldn't defy us? You wouldn't be, like, a
24 draft dodger or deserter. You wouldn't go -- you wouldn't run
25 off on us, for example, to St. Louis and not tell us? You

1 wouldn't do something like that?

2 A. **No, I would not.**

3 Q. And you do realize that this is really important
4 stuff?

5 A. **Yes, I do.**

6 Q. And both sides -- if you're the right kind of juror
7 for this case, both sides have a right to your talents and
8 certainly request that you find a way to make your work thing
9 work and come on in here and do your country's business when
10 you need to be doing it?

11 A. **Yes.**

12 Q. And you'll find a way to do that if you're put on
13 this jury?

14 A. **Yes.**

15 Q. **Yes?**

16 A. **Sorry.**

17 Q. Obviously, not happy.

18 Do you have any questions of me before I pass you,
19 sir?

20 A. **No, I don't.**

21 Q. Thank you so much for your time.

22 A. **Sure.**

23 THE COURT: All right. Mr. Goeller.

24 MR. GOELLER: Thank you, Your Honor.

25 (No omissions.)

CROSS-QUESTIONS

2 BY MR. GOELLER:

3 Q. Good morning, Mr. Stout.

4 A. **Good morning.**

5 Q. Do you want to stand up with me for just a second.

6 A. **Sure.**

7 Q. I know you've been sitting there for about an hour.

8 Stretch the knees a little bit.

9 You're originally from California?

10 A. **Yes.**

11 Q. What brought you to this part of the country?

12 A. **The company I work for relocated to Plano.**

13 Q. Okay. Is that Rug Doctor?

14 A. **Yes, uh-huh.**

15 Q. Are they headquartered here?

16 A. **Yes, uh-huh.**

17 Q. I didn't know that.

18 A. **In 1998 we moved here.**

19 Q. Where is the headquarters?

20 A. **It's on Park and Preston.**

21 Q. Park and Preston.

22 A. **Yeah.**

23 Q. And you work, obviously, in the corporate office?

24 A. **Yes, uh-huh.**

25 Q. And your job duties there are in accounting?

1 A. **Yes.**

2 Q. What kind of accounting?

3 A. **Financial, general ledger, inventory.**

4 Q. By keeping the, for lack of a better word, the books
5 of the company?

6 A. **Yes, uh-huh. That's a good way to sum it up.**

7 Q. Is that a pretty good company to work for?

8 A. **It's a very good company.**

9 Q. Some jurors have concerns about their employers. We
10 anticipate this trial probably starting in two to three weeks,
11 and then once we're in trial, two to three weeks worth of
12 trial. Normally the courts would run a trial, say, from
13 either 8:30 or 9 in the morning, maybe an hour for lunch, and
14 work until 5, 5:30, maybe even as late as 6:00. That would
15 probably be the routine Monday through Friday for, say, about
16 three weeks, could be four, doubt it's less than two, but
17 somewhere around three weeks we think. How does that fit in
18 with your October?

19 A. **Well, October is a key month for us because --**
20 **business-wise, because it's the turning point of our**
21 **implementation. When people think of software implementation,**
22 **don't you just put the little do-hickey into the do-hickey and**
23 **turn it on? It's not the case with a big company when it's**
24 **their mainframe system, and you're trying to integrate all the**
25 **systems, and testing to go live on a certain day. That may**

1 **make or break the company, to a certain extent.**
 2 Q. Is there a target date that y'all want to have this
 3 system up and running?
 4 A. **January 2nd.**
 5 Q. January 2nd. So October is pretty important?
 6 A. **Yes, it is. From this point on, it's important,**
 7 **but...**
 8 Q. How would that impact you, maybe three weeks out of
 9 the office in probably the first part of -- last part of this
 10 month, and maybe the first part of October? How would it
 11 impact the company? How would it impact you personally, and
 12 then how would it impact you within the company?
 13 A. **There's a large team of us. No one is -- someone**
 14 **could be replaced by someone else, so I could be covered by**
 15 **some other parties. I've been with the company for almost 18**
 16 **years, so I don't have a problem with that part of it. I'm a**
 17 **lifer basically, and I can make it work if so needed to.**
 18 Q. Okay.
 19 A. **Okay. I mean, yes, I am needed there, but it can be**
 20 **done without me.**
 21 Q. So you don't have to worry about the company
 22 re-evaluating subconsciously your position, or your worth in
 23 the company or anything like that?
 24 A. **At my age they do that every day, so it doesn't**
 25 **really matter.**

1 Q. Really?
 2 A. **Yes. There's a lot of youngsters out there a lot**
 3 **smarter than me.**
 4 Q. I don't know about that. I think 18 years, all the
 5 schooling in the world is not going to make up for that kind
 6 of experience.
 7 A. **It's computers, software.**
 8 Q. Yeah. It's a new age out there.
 9 A. **Uh-huh.**
 10 Q. Is it a pretty good company to work for?
 11 A. **Yes, it is. It's a private individual that owns the**
 12 **company.**
 13 Q. Oh, I didn't know that.
 14 A. **Uh-huh.**
 15 Q. Tell me your thoughts on the death penalty as to why
 16 you favor it.
 17 A. **I don't know. Just something I've always felt**
 18 **strongly for most of my life. I mean, I consider most people**
 19 **responsible for their actions, and if they are proven of the**
 20 **fact, then they should actually incur the same type of**
 21 **penalty.**
 22 Q. Okay. When you look at the Texas scheme, and when
 23 you say they should maybe suffer the same penalty, how does
 24 the Texas scheme, where there's no automatic death sentence,
 25 how does that fit into your philosophy?

1 A. **I don't have a problem with that. I think it's**
 2 **stronger here than in California where a different -- it's**
 3 **almost a different society in California.**
 4 Q. How's that?
 5 A. **In the fact that they are much more forgiving, more**
 6 **acceptable to actions of others. It's been kind of a culture**
 7 **shock for us to move here from California. We still haven't**
 8 **gotten used to a lot of the things that happen here.**
 9 Q. Is that -- do you think California, or Californians,
 10 I guess in general, are more, we'll just say, forgiving, or is
 11 that to the detriment --
 12 A. **More open --**
 13 Q. More what?
 14 A. **More open-minded maybe.**
 15 Q. Is that to the detriment of the State of California,
 16 or do you think that's a positive thing for them?
 17 A. **It can be either. It has to be either.**
 18 Q. In the case of capital murder, what would you say?
 19 A. **I think it's a detriment.**
 20 Q. Do you believe they should execute more people in
 21 California?
 22 A. **Yes.**
 23 Q. Okay. When you were -- in the questionnaire, and I
 24 know Mr. Schultz covered a little bit of this with you. What
 25 is the best argument you could give in opposition of the death

1 penalty. I know you had written down "no opinion," and I
 2 think you told Mr. Schultz that there were considerations for
 3 family and for possibly that somebody may be not guilty, or
 4 something like that?
 5 A. **Something like that, yes, uh-huh.**
 6 Q. In the context of a criminal trial where a jury is
 7 impaneled, we really don't get into -- what am I trying to
 8 say? How do I put this? If a person is possibly not guilty
 9 in the confines of a criminal trial, that should never figure
 10 in to the second phase. Although, you know, maybe it -- maybe
 11 it does. I can see cases where it has to be a unanimous
 12 verdict. All 12 people have to vote either not guilty or
 13 guilty. In Texas a not guilty verdict has to be unanimous as
 14 well. Any kind of every verdict, guilty or not guilty, all 12
 15 jurors must unanimously agree. Then, of course, if they can't
 16 agree, you get a hung jury.
 17 But, you know, we -- we as lawyers and the judge, we
 18 never really know what's going on in the jury room because
 19 we're not allowed obviously to be in there, and we don't take
 20 part in that. Jurors could be deliberating for hours or days,
 21 and maybe at some point in time there's a problem. There's a
 22 split. Maybe then there's a unanimous verdict. So, you never
 23 know the dynamics of how that all works. Maybe folks thought
 24 not guilty for a long time, then voted guilty. But I don't
 25 know how all that fits in.

1 But as far as our sentencing scheme and the way our
2 trials work, the fact that somebody may be not guilty should
3 never come into play with those special issues because if that
4 were the case, probably shouldn't be talking about a
5 punishment phase anyhow. Do you see what I'm saying?

6 **A. I understand.**

7 Q. So if we take that out, and I know you mentioned
8 there's concerns about a defendant's family, can you think of
9 any other reasons that you can make an argument? I think
10 Mr. Schultz asked you to pretend you had to give a speech or
11 take a position in a debate. Any other reasons you could
12 think of in opposition to the death penalty?

13 **A. Not off the top of my head, no.**

14 Q. Okay. Have you always felt the same about the
15 death penalty, say college years, as a younger man? Have you
16 been pretty consistent in your thoughts about it?

17 **A. If anything, I've gotten more stronger in support of**
18 **it.**

19 Q. Why is that? Tell me why.

20 **A. Just going through life, seeing how life has**
21 **changed, society has changed.**

22 Q. Do you think society has changed in your lifetime?

23 **A. Oh, yes, several times.**

24 Q. To the -- for the good or the bad, do you think?

25 **A. A little bit of both.**

1 Q. For the bad -- how would you say it's changed for
2 the bad in society -- I guess American society in general?

3 **A. I think people have somewhat become more**
4 **self-centered, more removed from just life in general.**

5 Q. Yeah.

6 **A. A lot -- most kids have been somewhat spoiled, not**
7 **having to earn what they get --**

8 Q. Right.

9 **A. -- things like that.**

10 Q. I think a lot of people would agree with you.

11 How has American society improved in your opinion?

12 **A. Well, of course, our technology has improved. The**
13 **way we live has improved, and always trying to improve the**
14 **world, I think the United States has become much more of a key**
15 **figure in that element.**

16 Q. Right. You were -- you were in high school in what
17 years?

18 **A. '64 to '68.**

19 Q. That was the height of a lot of turmoil in this
20 country, or certainly right in the middle of it?

21 **A. Yes, uh-huh.**

22 Q. Vietnam going, presidential assassination while you
23 were in school and Vietnam?

24 **A. (Nods head.)**

25 Q. So as kind of a person of the '60s, you really grew

1 up in the '60s. I guess about 1960, you were about ten years
2 old, maybe 11 years old?

3 **A. Yes.**

4 Q. So the '60s saw you go from ten to 20 years old. Do
5 you think that society was better in the '60s, or in the late
6 '90s and 2000 do you think, if you had to look back on it all?

7 **A. Well, the past always seems better than it was. We**
8 **always remember things differently than they really were.**

9 Q. Yeah.

10 **A. Well, I grew up in a small town, so we didn't have**
11 **that much influence from the outside.**

12 Q. Is that Mersed?

13 **A. Mersed.**

14 Q. Mersed?

15 **A. Yes.**

16 Q. Where is that in California?

17 **A. It's right in the middle of the San Jaoquin Valley,**
18 **right in the middle of California.**

19 Q. Is it far from Sacramento?

20 **A. It's about two hours. It's south of there.**

21 Q. Lot of agriculture there?

22 **A. Yes. I grew up on a farm.**

23 Q. Oh, you did? What kind of farm?

24 **A. A dairy farm.**

25 Q. Okay, dairy cows?

1 **A. Uh-huh.**

2 Q. Holsteins?

3 **A. Jerseys.**

4 Q. Jerseys?

5 **A. Uh-huh.**

6 Q. They say the Holstein is the dumbest animal to walk
7 the earth. Maybe Jerseys are a little bit smarter?

8 **A. They're still cows.**

9 Q. Yeah. In the questionnaire you wrote -- you circled

10 I believe that life confinement in prison is appropriate in
11 some capital murder cases, and I could return a verdict
12 resulting in life confinement in a proper case. What were
13 your thoughts prior to circling that? What were you thinking
14 about?

15 **A. The situations, the facts. You know, since I --**
16 **most of my life is based on common sense and judgment calls**
17 **based on true numbers, I mean, I have to take each case**
18 **individually. What's the most reasonable answer or solution**
19 **towards any situation.**

20 Q. Okay. This one page in the questionnaire kind of
21 gave you, oh, five or six topics and asked you to kind of
22 complete the sentence or give your thoughts on it. The
23 biggest problem in the criminal justice system is delayed
24 timing of cases being completed in the appeal process. Tell
25 me your thoughts on that.

1 **A. First of all, I didn't like that page at all in the**
 2 **questionnaire. I don't like those types of questions, but**
 3 **that's --**

4 Q. Tell me why. Why don't you like those type of
 5 questions? Every time you say something, I've got five more
 6 questions for you.

7 **A. I know.**

8 **You try to think of what answer are they looking**
 9 **for, and, number two, what is your true thoughts, and it's**
 10 **hard to come up with the right answer.**

11 Q. Why we do some of this individual voir dire is
 12 many, many people have answered this questionnaire based -- I
 13 think based on what they think the judge would want them to
 14 write.

15 THE COURT: I think you've overestimated their
 16 opinion of the court.

17 (Laughter.)

18 MR. GOELLER: When you have a black robe, you
 19 can do no wrong.

20 Q. BY MR. GOELLER: But I would, obviously, sitting in
 21 this chair with Mr. High and Ivan sitting here, it doesn't
 22 matter, anything you've written prior to that if you give me
 23 your true feelings, and don't worry -- the good thing about
 24 this part of the trial is there are no right or wrong answers.
 25 I won't debate you, won't disagree with you, won't try to

1 convince you otherwise. If you give me your true feelings,
 2 I'd buy you a cup of coffee any day of the week.

3 MR. SCHULTZ: Objection.

4 VENIREPERSON: That's okay. I don't drink
 5 coffee, anyhow.

6 Q. BY MR. GOELLER: What do you like to drink? That's
 7 what I'm buying.

8 Do you see what I'm saying?

9 **A. Yes, I do.**

10 Q. To do my job effectively I've got to have your true
 11 feelings and -- you know, I wouldn't take issue with it one
 12 way or another. What do you think is the biggest problem? Is
 13 that your true feelings, the delay of time, appeal process?

14 **A. Yes. I would say that's true.**

15 Q. Delayed timing in what respect, from getting a case
 16 to trial?

17 **A. Just going through the process. I mean, this is my**
 18 **first, you know, experience with this, and it seems like it**
 19 **takes a long time.**

20 Q. It does.

21 **A. Yeah.**

22 Q. In a capital murder case it's a lot different. The
 23 normal case -- I tell folks this. The normal case -- any
 24 other case, other than a capital case, from the time you get
 25 to the courthouse here within probably -- say, if you're here

1 around 9, or whatever it is, I've started many trials at 1:00
 2 in the afternoon. We picked the jury at 9:30, 10:00, and the
 3 jury is home by 5. The case is over and done with. There are
 4 many one-day trials, a lot of two-days trials, a lot of
 5 three-days trials. Five-day trials are kind of rare. But
 6 that's how it normally goes. Capital cases are just a lot
 7 different. We don't do this individual voir dire in any other
 8 kind of case except this one, so it is kind of time-consuming.
 9 Appeal process. Tell me your thoughts on that.

10 **A. Of course, it's necessary. Sometimes it may be**
 11 **overdone.**

12 Q. Do you think in Texas or California or both?

13 **A. I don't separate the two in that case.**

14 Q. Okay. When you say "overdone," the number or --

15 **A. The fact that it's almost an automatic when someone**
 16 **is convicted of a crime, seems like in my opinion.**

17 Q. Yeah. Do you think that's a good thing, or a bad
 18 thing if it's kind of an automatic appeal process?

19 **A. Of course, it's a good thing.**

20 Q. Why?

21 **A. Because there's always a possibility of something**
 22 **being done incorrectly.**

23 Q. Okay.

24 **A. Information not presented correctly, or whatever.**

25 Q. Okay. In the one question in the questionnaire it

1 talked about voluntary intoxication, and I suppose that's not
 2 limited to alcohol or drugs. But you agree that it's not a
 3 defense to the commission of a crime and should not be used as
 4 a defense in any case? Do you drink?

5 **A. Every now and then, yes.**

6 Q. Liquor, beer?

7 **A. Beer.**

8 Q. And you're exactly right, and the questionnaire
 9 stated, "The law in Texas, voluntary intoxication is never a
 10 defense." And whether that intoxication is due to some type
 11 of alcoholic beverage or some type of drug -- actually legal
 12 or illegal drug would never constitute a defense. When we --
 13 and those issues usually don't come up in the first phase of a
 14 trial, the guilt-innocence phase because it's not a defense.

15 But oftentimes intoxication or drug use or a
 16 person's altered state of mind may come up in the punishment
 17 phase, and it may be used as something that's mitigating or
 18 put forth as a mitigating circumstance on behalf of the
 19 defendant. What are your thoughts about that?

20 **A. I think they need to be taken into consideration,**
 21 **but there again, are not that much of a factor.**

22 Q. Okay. In both phases of the trial or the punishment
 23 phase?

24 **A. More so in the first part than the second part.**

25 Q. Yeah. It's not really -- those types of issues are

1 probably not really relevant or germane to any issue in the
2 guilt-innocence phase. I think you're right about that.

3 Are you open to considering types of mitigation
4 issues like that, though, in the punishment phase?

5 **A. Yes, uh-huh.**

6 Q. When you drink, why do you drink when you choose to
7 do so?

8 **A. Mainly it's a social function, or something like
9 that, a group setting or someone's home.**

10 Q. Is it relaxing to you?

11 **A. Yes, uh-huh.**

12 Q. Okay. What it does is whatever alcohol, the
13 effects -- the psycho-pharmacological effects of alcohol on
14 the brain, but it's -- either consciously or subconsciously, I
15 guess folks who choose to drink choose to do so because in
16 some respects it alters your brain really. It's either
17 relaxing you. You've heard a lot of people maybe say that
18 they have -- they don't have to be alcoholics, but a lot of
19 people will come home and maybe have one. You hear the term
20 all the time, maybe I like to have a drink or a beer when I
21 get home to kind of take the edge off. Have you ever heard of
22 that?

23 **A. Yes, I have.**

24 Q. And that edge would be, you know, either tension,
25 stresses at work, whatever problems. You know, if I drove the

1 Tollway every day -- if I had to leave Dallas at 5:00 and had
2 to hit Plano, I think I'd be drinking a lot more when I got
3 home. But -- so you recognize that substances, alcohol,
4 drugs, can have a certain affect on the mind?

5 **A. Of course, yes.**

6 Q. Okay. In the questionnaire they gave you another
7 one of those -- a global statement or question and asked you
8 to choose yes or no. It said, do you believe the death
9 penalty is applied fairly in Texas? You circled yes. "In
10 cases of capital murder, I believe the death penalty is in
11 order and the State of Texas uses it fairly." When you say
12 the death penalty is "in order," and you can tell why -- you
13 understand why I'm asking you that. I need jurors, and I'm
14 entitled to jurors that will give me a fair shot in the second
15 phase of the trial. Fair shot in my case may mean a life
16 sentence rather than a death sentence. Do you see what I'm
17 saying?

18 **A. Yes.**

19 **MR. SCHULTZ:** Excuse me just a moment. Judge,
20 I'm going to object to that. It may well be that is a fair
21 shot. It may well be the evidence wouldn't make that a fair
22 result.

23 **THE COURT:** Well, overrule the objection.

24 Q. **BY MR. GOELLER:** And you heard Mr. Schultz's
25 objection. Yeah, it's all going to be maybe evidence driven,

1 but I need jurors that can go in that would look at the
2 evidence in such a way as to make their decision based on the
3 evidence, and whatever they consider to be evidence. Some
4 jurors may have the opinion that if I find somebody guilty of
5 capital murder, and in this case we know it's either -- it
6 would either have to be a murder in the course of a burglary
7 or the murder in the course of a robbery, or a double
8 homicide, you know, two people are killed. Some jurors
9 would -- if they went into the second phase thinking, well,
10 since I found him guilty, the death penalty is really an
11 automatic thing. I'm not going to consider or give full
12 consideration to the special issues. What are your thoughts
13 on that?

14 **A. I would take into consideration the special issues.**

15 Q. Okay. Do you think that's important to do so?

16 **A. Of course, I think it's very important.**

17 Q. Okay. When I see how you wrote this, "In cases of
18 capital murder I believe the death penalty is in order," what
19 were you -- what was the message you were trying to convey, or
20 am I reading too much into that?

21 **A. I think you're thinking deeper than I thought of it.**

22 Q. Okay. You see why I have to ask, though?

23 **A. I understand.**

24 **Being a supporter of the death penalty, and the fact
25 that I was thinking that if the defendant was proven guilty**

1 **that probably it would be in order.**

2 Q. Okay. Well, if we get to those special issues, he's
3 been proven guilty beyond a reasonable doubt of one of those
4 three varieties of capital murder; murder-burglary,
5 murder-robbery, or double homicide. And I guess this is
6 probably the most important question that I have for you. Do
7 we have a fair shot as far as consideration of the evidence in
8 the second phase?

9 **A. For me?**

10 Q. Yeah.

11 **A. Yes, you do.**

12 Q. Okay. You served as a juror in a case --

13 **A. Couple of cases.**

14 Q. Really? A couple of times you served as a juror?

15 **A. Yes.**

16 Q. Criminal cases?

17 **A. Yes.**

18 Q. Where and when was the first one?

19 **A. Gosh, the first one was probably in 1980, '82,
20 between that period of time. All of them have been in Fresno
21 County.**

22 Q. Oh, okay. What kind of case was the first one?

23 **A. Liquor store shoplifting case.**

24 Q. Liquor store shoplifting? Somebody shoplifted
25 liquor?

- 1 A. **Basically, yes.**
- 2 Q. Wow. I guess they just stuck a bottle somewhere and
3 walked out?
- 4 A. **In California liquor is much more available, and
5 there's a liquor store on every corner.**
- 6 Q. Really?
- 7 A. **Uh-huh.**
- 8 Q. So that sounded like it was a misdemeanor?
- 9 A. **Yes.**
- 10 Q. No force was used?
- 11 A. **No. Mainly a homeless person.**
- 12 Q. Really?
- 13 A. **Uh-huh.**
- 14 Q. Was that the not guilty you wrote down?
- 15 A. **No.**
- 16 Q. That was guilty?
- 17 A. **Yes.**
- 18 Q. Usually those shopliftings are either they did or
19 they didn't.
- 20 A. **Pretty straight-forward, yeah.**
- 21 Q. What was the next case? I guess the one you wrote
22 down here.
- 23 A. **Vehicle accident --**
- 24 Q. Okay.
- 25 A. **-- where someone was suing someone else.**

- 1 Q. Oh, civil case?
- 2 A. **Yes.**
- 3 Q. Someone was looking for money --
- 4 A. **Right.**
- 5 Q. -- out of an insurance company, I guess?
- 6 A. **Uh-huh.**
- 7 **I guess there's three of them. I have one more
8 after that. I'm sorry. I'm a prime candidate for the smaller
9 jurors. It was one other one where a family incest-type
10 trial.**
- 11 Q. Criminal case?
- 12 A. **Yes.**
- 13 Q. Criminal case. Was that in Texas?
- 14 A. **No**
- 15 Q. California as well?
- 16 A. **Uh-huh.**
- 17 Q. Was it, like, prohibited sexual conduct or
18 incestuous conduct?
- 19 A. **Stepfather with a 16-year old daughter.**
- 20 Q. Probably more like statutory rape maybe?
- 21 A. **Something along that (sic) lines. My memory is not
22 that good.**
- 23 Q. Was that one a not guilty?
- 24 A. **Yes.**
- 25 Q. What did you take away from that trial?

- 1 A. **I took away that I somewhat already had my mind set
2 on the person being guilty until after I heard his side and
3 her side and all the other facts, and it's not always good to
4 make a first impression judgment call.**
- 5 Q. Yeah, that's great.
- 6 You've got one boy and two girls?
- 7 A. **All at home.**
- 8 Q. Matthew, Megan and Amanda?
- 9 A. **Yes.**
- 10 Q. Matthew, that's a good name.
- 11 A. **Uh-huh. He's a good boy.**
- 12 Q. Really good name. About the best name you could
13 have.
- 14 But he's not at UTD?
- 15 A. **He graduated from UCLA, and he's now going back to
16 college to become a teacher.**
- 17 Q. I saw that, yeah. He's got a degree in psychology
18 from UCLA.
- 19 A. **Uh-huh.**
- 20 Q. And he's back at school at UTD?
- 21 A. **No. He's at home going to UTD.**
- 22 Q. Okay.
- 23 A. **To get his teaching credential.**
- 24 **I paid for his education, but he came back home, so
25 I don't know how that works.**

- 1 Q. They always come back.
- 2 A. **It seems that way, yes.**
- 3 Q. Is he a full-time student?
- 4 A. **Pretty much so. He substitutes in McKinney as a
5 teacher.**
- 6 Q. Oh, really. Good for him. Good for him.
7 Obviously he out pretty good in life?
- 8 A. **Pretty much so. He's just like me, very introvert.**
- 9 Q. Megan is a student at Collin County Community
10 College.
- 11 A. **They're twins.**
- 12 Q. Megan and Amanda?
- 13 A. **Their twins, uh-huh.**
- 14 Q. Does Amanda go to Quad C, too?
- 15 A. **Yes, they go together.**
- 16 Q. Any major problems with your children growing up?
- 17 A. **Unfortunately, no. I mean, they're basically
18 home-body kids.**
- 19 Q. Good kids?
- 20 A. **Very good kids, to excess.**
- 21 Q. It sounds like you're a pretty lucky man when it
22 came to raising children.
- 23 A. **(Shrugs.)**
- 24 Q. Your wife, she lives at home?
- 25 A. **No. She works, also.**

- 1 Q. But I mean, it's -- she's in the home?
 2 A. **No. She works outside the home. Are we still**
 3 **married?**
 4 Q. Yeah. Yes.
 5 A. **We've been married for 31 years.**
 6 Q. Thirty-one years?
 7 A. **Uh-huh. We met in high school.**
 8 Q. When you were growing -- when your kids were growing
 9 up, did your wife and you have common goals as to how you were
 10 going to raise the children, what kind of things that you were
 11 going to teach them?
 12 A. **Pretty much she led, I followed. She's the**
 13 **strong-willed person with the guiding light in our family.**
 14 Q. What was her philosophy on raising kids?
 15 A. **Not to raise them the way she was raised.**
 16 Q. How was she raised?
 17 A. **It has impacted her life a lot. She had a very**
 18 **strong-willed father and did a lot of shouting, a lot of**
 19 **cussing, so she's somewhat the opposite.**
 20 Q. Not so much shout and cuss, but maybe more talk
 21 and --
 22 A. **She's a shouter, just not a cusser.**
 23 **(Laughter.)**
 24 Q. Should children pretty much stay away from drugs,
 25 alcohol, bad things you think, that you know of?

- 1 A. **95 percent away from it.**
 2 Q. Why do you think that was? Why do you think Matt,
 3 Megan and Amanda turned out so well?
 4 A. **I think from somewhat our upbringing. My wife has a**
 5 **strong control over them, or has had. I mean, they're adults**
 6 **now. But she was very caring, very supportive, involved in**
 7 **school a lot, involved in their upbringing. And taking them**
 8 **to church doesn't hurt.**
 9 Q. Yeah, it doesn't hurt. Nobody ever got in trouble
 10 at church.
 11 A. **I wouldn't say that, but, yeah.**
 12 Q. Maybe you know some folks that have.
 13 There's a judge here, Judge McCraw, who always says
 14 that, no one ever got indicted in church.
 15 But having a two-parent home and having a wife, and
 16 even, I guess, you were saying she kind of took the lead. But
 17 you certainly backed her? You certainly were there to be a
 18 united front in your philosophies on how the kids were going
 19 to get raised and how you wanted them to turn out in life?
 20 A. **Of course.**
 21 Q. Was that important to you and your wife when you
 22 had these children, that you were going to raise them the best
 23 you could, and I suppose lead them and show them by example?
 24 And obviously, you weren't the kind of guy that came home
 25 drunk and did drugs and beat up your wife. You know what I'm

- 1 saying?
 2 A. **I haven't yet, no, but...**
 3 **(Laughter.)**
 4 A. **I'm very easy-going. I do get angered, but it takes**
 5 **a lot to push me to that point.**
 6 Q. BY MR. GOELLER: But I mean, your children,
 7 especially Matt, he can look back and say you were a good dad,
 8 I would think?
 9 A. **He has, uh-huh. We have a good relationship.**
 10 Q. And how you were the last 23 years of your life,
 11 would you agree with me that that's had a lot to do with how
 12 Matt turned -- all the kids, but especially the boy looking to
 13 you as the man and the father and following your lead and how
 14 you go through this life?
 15 A. **I would say that's true, and you don't really**
 16 **realize that when you're going through it.**
 17 Q. Right.
 18 A. **But later on in life you realize how much of an**
 19 **impact you had on them and still do.**
 20 Q. Yeah.
 21 A. **It's kind of surprising to a certain extent, and it**
 22 **works the opposite way, too. You look at your parents, and**
 23 **how much you're like them, the good and the bad.**
 24 Q. Do you ever talk to Matt about psychology and things
 25 like that, or do you just pay the tuition?

- 1 A. **He analyzes his sisters a lot.**
 2 Q. Does he really?
 3 A. Yes.
 4 Q. That probably drives them up the wall?
 5 A. **He's trying to help them basically.**
 6 Q. What's Megan and Amanda taking down at the college?
 7 A. **They're trying to -- just basic, general educational**
 8 **classes at this point in time. Something in the medical field**
 9 **probably.**
 10 Q. Okay. Tell me about Metro Family Church. What
 11 kind of church is it?
 12 A. **It's a non-denominational church. There's about 400**
 13 **members. We just bought a piece of land on 121 and Custer.**
 14 Q. Okay.
 15 A. **And they're going to start building a new church**
 16 **there in the next couple of months. The pastor is about my**
 17 **age, two months younger than me. We just happened to attend**
 18 **that when we lived in Plano for the first six months we were**
 19 **here.**
 20 Q. Okay. How long have you lived in Collin County,
 21 Texas?
 22 A. **Since July of '98.**
 23 Q. '98?
 24 A. **Uh-huh.**
 25 Q. Okay. So you -- how did you come to that church?

- 1 **A. It was a couple of blocks from the house we were**
 2 **renting.**
 3 Q. Really. Okay, just kind of --
 4 **A. We had tried other churches, but, yes.**
 5 Q. What sold you on that one?
 6 **A. The friendliness of the people. You know, they**
 7 **follow up after we visited once or twice.**
 8 Q. Really?
 9 **A. Uh-huh.**
 10 Q. That's great. Your church, I guess, does not have a
 11 position on the death penalty?
 12 **A. Not official, no.**
 13 Q. The Metro Family Church, would that be -- there's
 14 no -- that's a church just on to itself. They're not part of
 15 anything else, a big organization, are they?
 16 **A. This is correct, but the pastor was brought up as a**
 17 **Baptist who's went on to other things.**
 18 Q. Okay. Most folks in your church believe in the
 19 death penalty?
 20 **A. From what I've heard, yes.**
 21 Q. Okay. Is that talking with folks --
 22 **A. Yes.**
 23 Q. -- or has it ever come up in conversation or come up
 24 in any studies, or Bible studies, or the sermon at the church?
 25 **A. I wouldn't say at that level. More on a one-to-one**

- 1 **basis.**
 2 Q. What's your impression of the underlying philosophy
 3 of most of the members as to why they are proponents of the
 4 death penalty?
 5 **A. I really don't know have an answer to that, sir.**
 6 **That's too deep for me, sir.**
 7 Q. You're moderate and a Republican?
 8 **A. Doesn't go together, does it?**
 9 Q. Well --
 10 **A. Kind of?**
 11 Q. I wish -- I hope it does --
 12 **A. Oh, okay.**
 13 Q. -- to be honest with you. I hope it does.
 14 Gardening, woodworking. What kind of woodworking?
 15 **A. Mainly just arts and crafts, shelves, things like**
 16 **that.**
 17 Q. KLTY; is that a Christian broadcast?
 18 **A. Uh-huh.**
 19 Q. Do you listen to that radio station a lot?
 20 **A. Every day.**
 21 Q. Why? Why do you listen to KLTY?
 22 **A. It has the music that we care for. I mean, it's**
 23 **Christian-based music. I listen to that and to the oldies.**
 24 Q. The Metro Family Church, did y'all have an
 25 incident -- was there somebody -- was there some type of

- 1 abduction of a church member, a little girl was taken to
 2 Mexico, or something like that?
 3 **A. She's 16 or 17, yes.**
 4 Q. What happened? Tell me about that.
 5 **A. Her mom and dad had moved there to be missionaries,**
 6 **or to go into the missionary field.**
 7 Q. To Mexico?
 8 **A. Uh-huh, Cancun area.**
 9 **And her daughter went -- their daughter went with**
 10 **them, and they befriended a couple of the locals, and somehow**
 11 **they enticed this girl to go with them, and somehow they --**
 12 **well, the story we've heard is they sold her into slavery.**
 13 **But we don't know if that's the whole story or not because**
 14 **there's two sides to every story.**
 15 Q. When did all this take place?
 16 **A. Probably four months ago.**
 17 Q. Okay. Is it still an issue at the church? Are
 18 people still talking about it?
 19 **A. The people are actually back, but we have never**
 20 **heard if the daughter was found or not.**
 21 Q. Do you know these people personally?
 22 **A. No, I don't. I've spoken to them, but I don't know**
 23 **the daughter at all.**
 24 Q. What's kind of the latest at the church about that
 25 incident?

- 1 **A. It's kind of not been talked about.**
 2 **What they had done is they tried to get public**
 3 **support. We went -- we had the TV stations in the church and**
 4 **talked with the pastor and that didn't really turn up**
 5 **anything, so... They tried to get a Christian group that**
 6 **actually does this for a living to recapture children and sent**
 7 **those in, and I don't know what happened to that group.**
 8 Q. Okay. The parents of the girl have returned here,
 9 though?
 10 **A. Yes. They're back in the church now.**
 11 Q. Okay. That word -- getting to that first special
 12 issue, that word "probability," do you recall that, Mr. Stout?
 13 **A. Uh-huh.**
 14 Q. I'll go ahead and put it up there.
 15 THE COURT: Say, Mr. Goeller, my court reporter
 16 is giving me kind of a hi sign, and I think we've been at it
 17 for a couple of hours now.
 18 MR. GOELLER: Oh, I think she's up for another
 19 couple of hours.
 20 (Laughter.)
 21 THE COURT: Let's take about a -- let's take no
 22 more than ten minutes. And, Mr. Stout, I just want to ask you
 23 not to discuss anything that you've either been asked or that
 24 you've responded with the other jurors.
 25 VENIREPERSON: Okay.

1 THE COURT: And we'll be back in ten minutes or
2 less.

3 THE BAILIFF: All rise.
4 (Recess taken.)

5 THE COURT: All right. Welcome back,
6 Mr. Stout. You're still under oath.
7 Where is Mr. Goeller?

8 (Discussion off the record.)

9 THE COURT: Mr. Goeller, let me ask you to go
10 ahead.

11 Let me ask you to put your bag down, if you would,
12 please.

13 MR. GOELLER: Yes, sir.

14 THE COURT: All right.

15 Q. BY MR. GOELLER: I think I left off, Mr. Stout, we
16 were talking about that word "probability." And what is your
17 definition of probability?

18 A. **It is a term that defines the percentages of**
19 **something either happening or not happening are true or not**
20 **true, something along that line.**

21 Q. Do you look at that word in terms of percentage?

22 A. **Yes, I do.**

23 Q. What percentage do you assign that term?

24 A. **Since I'm a middle of the road guy, 50 percent.**

25 Q. 50/50?

1 controlling them so that maybe they don't commit criminal acts
2 of violence?

3 A. **Probably to the best of their ability. I mean, they**
4 **have limited resources.**

5 Q. Right.

6 A. **You can't be with every person 24 hours a day.**

7 Q. That's right.

8 A. **I mean, there's always circumstances or situations**
9 **where things will happen.**

10 Q. Okay. Regarding that last special issue, do you
11 want me to put that up, or do you remember the mitigation
12 issue?

13 A. **It's fine.**

14 Q. That's the one regarding taking into consideration
15 all the evidence, including the facts and circumstances of the
16 offense, background, character of the defendant, personal
17 moral culpability. It's been explained that that's kind of
18 the last look -- the one last look for the jury, and really
19 for what the jury thinks is the right thing to do in that
20 case. That, unlike the first special issue -- and getting
21 back to that first special issue, do you know who has the
22 burden of proof on that?

23 A. **Probably the State.**

24 Q. Yeah, they sure do. And their burden of proof is
25 beyond a reasonable doubt.

1 A. **Yes.**

2 Q. Okay. When you look at that question do you -- in
3 your mind, is it saying -- is it 50/50 the Defendant would
4 commit criminal acts of violence?

5 A. **From the start, yes, but that changes with known**
6 **facts.**

7 Q. Okay, okay. Tell me what your thoughts are.

8 A. **Well, the fact that not knowing any of the**
9 **circumstances or the facts, I mean, I have no opinion until**
10 **that is made known to me.**

11 Q. We know for a fact that society includes prison
12 society, when we use that word "prison society." So we know
13 before you even get to this question if there's a finding of
14 guilt on capital murder, the very least that's automatic, so
15 to speak, is a life sentence because the questions would have
16 to be answered that unanimously yes, and that other special
17 issue unanimously no for a death sentence to come about. So
18 we know they're talking at least about prison society, and
19 Mr. Schultz is right. I cannot tell you the law says that it
20 limits itself strictly to prison society, but I can tell you
21 prison society is definitely part of that.

22 What do you think about probability as it fits into,
23 say, prison society? What are your thoughts there and future
24 acts of violence? Do you think the penitentiary -- state
25 penitentiaries in Texas deal with controlling people and

1 A. **Uh-huh.**

2 Q. Okay. And beyond a reasonable doubt is -- it's a
3 lot, you know. I like to say it's in the high 90s, and
4 Mr. Schultz may say it's -- I don't think Mr. Schultz would
5 say it's less than that. We both could tell you that it's not
6 100 percent. Our burden of proof in Texas is not 100 percent
7 beyond any doubt whatsoever. It's beyond a reasonable doubt.
8 If you had to -- I suppose you could look at it, if there was
9 a doubt based on reason of the evidence, the judge would
10 instruct you to return a verdict of not guilty.

11 Or in the case of capital murder, perhaps you would
12 have other options. Plain murder, we call it, something of
13 that nature. But what's odd about that question is the State
14 has to prove that question beyond a reasonable doubt that
15 there's a probability. I don't know if the Legislature really
16 thought that through, but that is odd. You know, they've got
17 to prove it. You know, let's just use my example. I think
18 it's in the high 90s. So they've got to prove with that
19 quantum of proof a lot. Beyond a reasonable doubt, maybe high
20 90s that something is probable. Do you see the potential
21 problem when you think about that? It's an odd question.

22 But as Mr. Schultz correctly stated, we know
23 probability from the Legislature and the courts have told us
24 it's more than a possibility. Is it more likely than not,
25 50/50? I don't know. You know, what was the intent when they

1 used that word "probability"? It's odd, isn't it?

2 **A. Uh-huh.**

3 **Q.** But that third special issue, the mitigation special
4 issue, there's no burden of proof on -- the State doesn't have
5 a burden, and the Defendant doesn't have a burden. And let's
6 throw that up there real quick. When you're talking about
7 this special issue, all -- to answer this -- to answer it yes,
8 all 12 jurors would essentially have to agree on the same
9 thing; beyond a reasonable doubt, probability, criminal acts
10 of violence, continuing threat. And just like the
11 guilt-innocence phase, all 12 jurors would have to find beyond
12 a reasonable doubt one of those three theories;
13 burglary-murder, robbery-murder or double homicide. So, to
14 get a verdict in the first part of the trial in that first
15 special issue, all 12 jurors, or 10 jurors on this one, would
16 have to be pretty much focused on the same criteria.

17 This last special issue, though, again that one --
18 the reason why this is so different, no burden of proof, and
19 there does not have to be an agreement. For example, let's
20 say the jury were to return a no answer, okay? Ten jurors
21 return a no answer to that. Each juror is entitled to have a
22 different set of reasons that maybe they thought were
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14 seeking the death penalty. Do you recall that?

15 **A. Yes, I do.**

16 **Q.** When you heard that, who do you think the State is,
17 or who do you think makes that decision, whether to seek a
18 death penalty or not?

19 **A. I would say it was probably the powers, you know, in
20 place at that point in time. I think it was brought up that
21 one person makes that decision sometimes.**

22 **Q.** Right. Local district attorney.

23 **A. Right, right.**

24 **Q.** That's the person that makes that call.

25 **A. Right. Yes, uh-huh.**

Pictures
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1 **Q.** What do you think about that? What do you think
2 about one person making that decision whether to seek the
3 death penalty or not?

4 **A. I would assume that person has been well-educated in
5 the law, has a lot of practical experience, has the facts
6 before them, and from their judgment they make the call.**

7 **Q.** Okay.

8 **A. Life is that way. I mean, you make call --
9 decisions every day.**

10 **Q.** Absolutely. When you were serving on those juries,
11 and you're a very unique person. You've served on two
12 criminal juries and a civil jury. And out of 200 people we
13 called in this case, I don't know if 10 percent have ever
14 served on a jury, maybe less. And for somebody to have served
15 on two criminal juries and a civil jury, the people that can
16 say they've done that is infinitely small. Very, very few
17 people have had that opportunity.

18 What was your experience in the deliberation room on
19 the not guilty verdict?

20 **A. Most of them were not that involved as far as the
21 facts, or whatever. But, of course, you know, you have a
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17 **A. No, I haven't. Sorry.**

15 **Q.** The bottom line, it's a jury deliberation movie, and
16 there's some folks that felt their vote was the right thing to
17 do, and they stuck by their guns for part of the movie. Are
18 you the kind of person that if you feel in your heart and in
19 your mind about any of these issues that you've come to the
20 conclusion that you'll vote a certain way based on the
21 evidence and because you believe it's the right thing to do,
22 if it were not a popular vote with some other jurors, are you
23 the kind of person that can stick to your guns?

24 **A. Might not look it on the outside, but on the inside,
25 yes.**

Pictures

Call Amc

of def. w/ Anita
Call & hire

1. gutters - replace pole
2. I. scape
3. house painter
- * Island (Chad)

W-mart
 all mattresses
 shampoo
 conditioner
 film developed
 faucet
 window handles
~~stubs~~

Paint ^{L Room Office}
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 varnish (cherry)
 desk (large)
 Tile Cabinet large
 Boards for counter top
 Blinds
 curtains
 shutters
 stuff to clean bricks
 mantel & glass casing

Call Louie
 Delmas
 Tuesday
 instead
 finish C/D
 call Danielle

pay bills
 Balance v Book
 Take Bed apart
 closet
 Call or Email Anita
 Wal-mart
 Table & dishes &
 paperwork

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21 return a no answer to that. Each juror is entitled to have a
22 different set of reasons that maybe they thought were
23 mitigating. Each juror is entitled to a different set of
24 reasons, or reason, if they so choose, and each juror is
25 entitled to assign whatever meaning they want to the word

1 "sufficient." In other words, I guess there's no -- there's
2 no percentage on that word. It's whatever a juror thinks it
3 ought to be. Doesn't have to be the beyond a reasonable doubt
4 high 90s. Doesn't have to be 50/50. Doesn't have to be ten.
5 It's whatever each individual juror thinks is sufficient and
6 whatever each individual juror thinks is the circumstance, or
7 circumstances controlling the evidence.

8 So you could have 10 people vote no, all for
9 different reasons, all assigning different weights to whatever
10 they want. Do you see what I'm saying?

11 **A. Yes.**

12 Q. Back two or three weeks ago when we first met in
13 the annex building, I think the judge told you the State was
14 seeking the death penalty. Do you recall that?

15 **A. Yes, I do.**

16 Q. When you heard that, who do you think the State is,
17 or who do you think makes that decision, whether to seek a
18 death penalty or not?

19 **A. I would say it was probably the powers, you know, in
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22 group of people listening to several different people make
23 comments, and you never know what they're going to think until
24 you get into the room. And somewhat surprised at people's
25 interpretations of what they saw and heard. Most of it was**

1 **pretty cut and dry.**

2 Q. Were there people who kind of took the ball and were
3 advocating a position, and other people that pretty much just
4 sat back and didn't have a whole lot of input, or was it
5 really 12 people, really dynamic enterprise back there?

6 **A. I think you're hoping for a little bit of both when
7 you pick a jury.**

8 Q. Yeah.

9 **A. In this case, there was probably two or three
10 dynamic people -- type people that tried to lead the others.**

11 Q. Okay.

12 **A. That's basically what happened.**

13 Q. Have you ever seen the movie 12 Angry Men?

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21 evidence and because you believe it's the right thing to do,
22 if it were not a popular vote with some other jurors, are you
23 the kind of person that can stick to your guns?

24 **A. Might not look it on the outside, but on the inside,
25 yes.**

1 significantly. I guess there's some wisdom in the notion that
2 we ought to keep on with our business just so we can't be
3 controlled as a society, so maybe there's something to that.
4 But we'll see what we can do.

5 Probably -- I don't know -- have you ever followed a
6 capital murder trial, just kind of been interested in it, the
7 facts, kind of read about it each day as it progressed?

8 **A. Sure.**

9 **Q.** Give me some idea of some of those cases that you
10 might have followed or taken an interest.

11 **A. The O. J. case.**

12 **Q.** I don't know how you could help that.

13 **A. The prison escapees of last December. The one was
14 tried. I followed that pretty well in the paper. I enjoy
15 trial -- I enjoy trial shows, movies, whatnot.**

16 **Q.** Do you ever watch Law & Order?

17 **A. Couple of times, yes.**

18 **Q.** Okay. Do you watch any other TV shows that are
19 lawyer oriented?

20 **A. I don't watch too much TV, but I like, like 12
21 Angry Men and To Kill a Mockingbird, and A Few Good Men, those
22 types of movies I like at lot.**

23 **Q.** What do you think the moral of 12 Angry Men was?
24 What do you think is the message of that movie, if it had one?

25 **A. I think the message was that the -- that no matter**

1 **what the circumstances are, it's good to really think about
2 it, and that the jury has the Defendant's life in their hands
3 and to make sure that everyone is in agreement. And if the
4 State can prove it, fine. But if they can't, then the benefit
5 of the doubt should go to the defendant. I think it was an
6 excellent movie.**

7 **I also liked the courage of the lead character who
8 wasn't swayed early on by the rest of the jurors.**

9 **Q.** Now, in many different answers I have developed a
10 sense from you that you are a strong proponent of the death
11 penalty in our society.

12 **A. Yes, sir.**

13 **Q.** I mean, I guess I don't have to be all that sharp.

14 When asked on a ten-point scale how strongly you favor, and
15 you say 10, I guess that would be a pretty good clue to me.

16 But sincerely, as I read through some of your other
17 answers, it shines through that you're committed to that as a
18 fair and just punishment for certain kinds of crimes.

19 **A. Yes.**

20 **Q.** Some examples of what I'm talking about. You've
21 indicated that in an appropriate case you think that you could
22 return a verdict of death, and you also indicated in what I
23 would call an attitudinal kind of question, that you believe
24 life confinement in prison is never appropriate in any capital
25 murder case, and I want to discuss that with you for a moment.

1 Depending on how a person considers this
2 questionnaire, and I've thought about it a lot. It's very
3 imprecise. But I thought, if I came in and reviewed the
4 questionnaire before anybody talked to me, or explained to me
5 how the law worked or how the procedures worked, I would in
6 many ways consider it attitudinal. For example, if someone
7 were to ask me the question do I believe a defendant should
8 have to testify in a criminal case, I would think to myself,
9 well, I'm certainly free to think that. In my mind, yeah, I
10 would think a defendant should, so I would answer that
11 question that way. If I thought, for example, a defendant had
12 some obligation to prove his innocence, that's how I think the
13 system ought to work, because other countries have that. Even
14 civilized democracies have almost a polarity burden of proof.
15 Like France, for example. I mean, it's almost like our
16 Internal Revenue stuff. Once accused, it's up to you to
17 disprove the accusing -- the accusation, and apparently it
18 works okay for them in their society.

19 And yet the question is not, number one, framed in
20 terms of would you follow the law that provides that a life
21 sentence is sometimes appropriate for a capital conviction.
22 And it also doesn't educate the jury to exactly how the system
23 works, and here's what I mean by that. If someone were to say
24 to me, do you believe that a person convicted of capital
25 murder should ever get life? In my mind I might think, well,

1 if you're convicted of capital murder, that means you get
2 death because that's the way the law works. Capital murder
3 conviction, that's the way the law works. And I don't know if
4 that's how you were thinking about it or not.

5 But if you -- I don't get a sense exactly that's
6 what you were thinking. I think you understand it could be
7 life or death. Am I right about that, or did I understand?

8 **A. I think if the State proves its case, and if it is
9 warranted, I think the death penalty is just. I've always
10 thought that.**

11 **Q.** Okay.

12 **A. But I am not a proponent of life terms. I'm not a
13 proponent of penitentiaries as such. I think society needs
14 jails to hold people until the trial and the appeal process is
15 past. But I think if the State cannot prove, or if it's a
16 case, not necessarily a capital charge, but a theft or
17 something that restitution should be charged, and the man
18 should be returned back to his family. I don't see any profit
19 in holding a man in jail for years and years, or for life.**

20 **Q.** What about if he's dangerous?

21 **A. I'm not really sure about that. I'm open to that --
22 open to that thought. I just don't think that holding
23 somebody for their entire life for years and years, especially
24 in a case like this where it's a long-term life. If life
25 expectancy is 70 years, the Defendant has many, many years to**

1 spend in jail. I don't think that's -- I don't think that's a
 2 just way to do it.
 3 Q. What should we do, let him loose, since that's not a
 4 good thing in your mind?
 5 A. I don't know the circumstances yet. I think
 6 everything should be done on an individual basis. Depending
 7 upon the circumstances is how we should judge, I think.
 8 (Discussion off the record.)
 9 MR. SCHULTZ: See ya. We have an agreement.
 10 THE COURT: All right. Sir, looks like
 11 you're -- just a minute. I understand we have an agreement.
 12 Is that your desire, Mr. Cantu --
 13 THE DEFENDANT: Yes.
 14 THE COURT: -- that this juror be released?
 15 THE DEFENDANT: Yes, Your Honor.
 16 THE COURT: All right. Then you are finally
 17 released.
 18 MR. GOELLER: Thanks for your candor,
 19 Mr. Enright. I appreciate it.
 20 (Venireperson exits the courtroom.)
 21 THE COURT: All right. The next juror is Tanya
 22 Burks.
 23 (Venireperson enters the courtroom.)
 24 THE COURT: Ma'am, are you Tanya Burks?
 25 VENIREPERSON: Yes, sir.

1 THE COURT: All right. Perhaps you recall,
 2 it's been three weeks now or has it been two weeks?
 3 VENIREPERSON: I was here last week.
 4 THE COURT: Since you-all first came in. Been
 5 two weeks? I'm losing track of time here.
 6 Three weeks ago when all 200 people showed up, I
 7 placed everyone under oath.
 8 VENIREPERSON: Yes, sir.
 9 THE COURT: And the oath was to answer
 10 truthfully the questions that are asked. Do you recall that?
 11 VENIREPERSON: I just want to tell you you're
 12 still bound by that oath.
 13 VENIREPERSON: Okay.
 14 THE COURT: Please be seated.
 15 Is it Ms. Falco?
 16 MS. FALCO: Yes, sir.
 17 DIRECT QUESTIONS
 18 BY MS. FALCO:
 19 Q. Hi, Ms. Burks. As you'll recall, my name is Gail
 20 Falco. I'm an Assistant District Attorney here in Collin
 21 County and seated to my right is my boss, the First Assistant
 22 District Attorney, Mr. Bill Schultz.
 23 MR. SCHULTZ: Hello.
 24 Q. BY MS. FALCO: And seated to my left is
 25 Ms. Jami Lowry. She's also an Assistant District Attorney

1 here in Collin County.
 2 Seated at the other table, the man in the blue shirt
 3 closest to you is the Defendant, Ivan Cantu. And he's
 4 speaking with his counsel, Mr. Matt Goeller. And seated next
 5 to him also Mr. Don High, and they're both private
 6 practitioners in Collin County.
 7 MR. GOELLER: Good afternoon.
 8 Q. BY MS. FALCO: I take it from last week when you
 9 were in here, you don't know any of us --
 10 A. No, I do not.
 11 Q. -- is that right?
 12 A. That's correct.
 13 Q. Ms. Burks, you understand -- this is probably your
 14 third time to come up to this courthouse, and it's only in
 15 situations like this where the State is seeking the death
 16 penalty that we do individual voir dire and have a one-on-one
 17 process. And it's done for a couple of reasons. One, we do
 18 the general voir dire to give you the law, and that's going to
 19 apply to everybody. But, two, is to get you to start thinking
 20 about what your views are on the death penalty. Because we
 21 understand it's one thing to be sitting in your living room,
 22 especially with what's going on today and what's happening in
 23 the news and things like that, and think in your
 24 mind, yeah, I believe in the death penalty. It's a completely
 25 different ball game when you're being asked can you be part of

1 that process, and you understand that.
 2 And speaking just today, I know it's something
 3 that's impacting us, and we're thinking about it. How is that
 4 impacting you today, what's going on?
 5 A. Emotionally. It's a pretty emotional day.
 6 Q. Have you spent the morning probably watching the
 7 news?
 8 A. We -- I was at work, so we listened on the radio.
 9 Q. And understanding, it's an incredible tragedy, and
 10 it's affecting us as well. But do you think your
 11 concentration is okay today to go through with this?
 12 A. Yeah, I think so.
 13 Q. And if at any time I'm not making sense, or I'm not
 14 concentrating very well or if you want me to repeat a question
 15 because you may not be paying attention that well, just let me
 16 know, and I'll repeat my question.
 17 A. Okay.
 18 Q. And so we understand that can be a totally different
 19 situation when you're asked if you can be part of that
 20 process, so when we bring you back to do this individual voir
 21 dire, we're exploring that with you and to see if that's
 22 something you can really do and that's a process you can
 23 really be part of.
 24 A. Okay.
 25 Q. And the only thing that's required of you at this

1 point is just honesty, just to give us honest answers because
 2 both sides are looking for 12 jurors that can be fair and
 3 impartial and that could give a death sentence, if that's what
 4 the facts warranted or give a life sentence if that's what the
 5 facts warrant. Just somebody who's going to be open-minded
 6 and willing to follow the law.

7 **A. Okay.**

8 **Q.** Also, it's a place -- I mean, just for you to be
 9 able to speak freely and tell us what your thoughts are and
 10 opinions are and not worry about being politically correct.
 11 We're not here to change your mind. We're not here to debate
 12 with you. We just want to know how you feel.

13 **A. Okay.**

14 **Q.** And speaking of that, I'm sure -- let me ask you
 15 this. Back, I guess about three weeks ago now, when you very
 16 first came in for jury duty to fill out that questionnaire,
 17 what thoughts went through your head when you first realized
 18 this is a death penalty case?

19 **A. I guess surprise, maybe. You never think you're**
 20 **going to be called for something like -- this is my first time**
 21 **called, so I had no expectations. I didn't know what would**
 22 **happen or -- and I guess I was a little surprised.**

23 **Q.** I'm sure you've had some time to think about it, and
 24 then last week you got a little bit more detail as far as the
 25 law is concerned and how we handle capital murder cases and

1 **strong enough to make that decision, if I could honestly -- I**
 2 **wonder if it would be something I would regret. I guess it**
 3 **all depends on what the circumstances were, what would lead me**
 4 **to that decision, and I don't think it would be something I**
 5 **would take lightly or would be an easy decision.**

6 **Q.** And you're exactly right. I think probably all
 7 of -- if you were a juror -- in fact, all of the jurors would
 8 say, I really hope deep down in my heart of hearts that the
 9 evidence shows that person is either not guilty or life
 10 sentence, just because that's easier.

11 **A. Correct.**

12 **Q.** It's easier than having to go death row. That's
 13 human. I think in society, I think we absolutely all dread
 14 turning on the TV to hear the things we hear, like what we're
 15 hearing today, or even just to hear about a man who killed his
 16 family, and I think we'd love to turn on the TV and be happy
 17 things and cures for cancer, but we don't. And I think that
 18 saddens all of us, and we -- many of us join you in your
 19 decision that it would be difficult, but we just need to know
 20 that you would be strong enough, if the evidence showed it, to
 21 issue the death penalty.

22 **And with regard to when I talked to y'all about what**
 23 **exactly our intent was as far as providing or proving**
 24 **sufficient evidence to prove beyond a reasonable doubt that**
 25 **the Defendant was guilty in the punishment phase, bringing**

1 what that means. And I'm sure you've done some thinking about
 2 the death penalty in the past three weeks; is that fair to
 3 say?

4 **A. Yes.**

5 **Q.** I know on your questionnaire you said that you were
 6 in favor of the death penalty and that in the appropriate
 7 circumstances you could return a verdict resulting in a death
 8 sentence.

9 **A. Yes.**

10 **Q.** Is that still your position?

11 **A. Yes. All -- I agree when you say it was easier to**
 12 **say it the first time.**

13 **Q. Right.**

14 **A. I have thought about it more and realized it would**
 15 **be a harder decision maybe than when I first thought. When**
 16 **you first answer the question you don't -- you know, you don't**
 17 **really think, well, I'm not going to have to make that**
 18 **decision, but then you think about it more. But I do feel**
 19 **strongly that I could if I felt -- if I honestly felt that it**
 20 **was the right decision.**

21 **Q.** Okay. Tell me kind of what your thinking has been
 22 over the past three weeks. What type of things have been
 23 going through your head and how you've been evaluating
 24 yourself.

25 **A. If -- I guess I've been wondering if I'm -- if I'm**

1 sufficient evidence that you'd be able to answer the questions
 2 in a way that resulted in a death sentence, and at some point
 3 down the road the Defendant would be taken to the death
 4 chamber and strapped to the gurney. Do you remember when I
 5 was talking to you about that?

6 **A. Yes, I do.**

7 **Q.** What thoughts went through your head at that time
 8 when I was describing physically what happens to a defendant?

9 **A. I don't recall my thoughts. I just recall my bodily**
 10 **response, my heart beating a little faster as the realization**
 11 **came over me. I don't really remember my exact thoughts.**

12 **Q.** And you're exact -- the whole point of me talking
 13 about that was for the jury to understand what the reality is.

14 **A. Uh-huh.**

15 **Q.** And that it's different. That we are all here,
 16 seated here, and this is reality. It's not a hypothetical.
 17 It's not in theory, but reality.

18 **A. Uh-huh.**

19 **Q.** I'll talk to you a little -- I'll take you through
 20 the trial process, kind of as I did last week, and talk to you
 21 in depth about that. First of all, with regard to the first
 22 phase of the trial, that's the guilt-innocence phase. And
 23 like I told you, the burden of proof is on the State to prove
 24 to you beyond a reasonable doubt that a defendant committed
 25 the offense of capital murder. That burden never shifts. The

1 burden always remains on the State. And that seems only fair
2 since we're the ones doing the accusing, then we're the ones
3 that should have to do the proving. Now, a defendant has a
4 right to testify, if he wants to, but that's his choice, and
5 if a defendant chooses not to testify, you can't use that
6 against him. And, in fact, you get an instruction from the
7 judge, if a defendant did not testify, that you're not to take
8 that into consideration in deciding whether or not he's guilty
9 or not guilty. So, even though he has the right to speak, he
10 doesn't have to, and it can't be used against him.

11 **A. Uh-huh.**

12 **Q.** And it seems fair, because it's kind of like if I
13 accused you, as far as saying, well, last week I think you
14 stole my car. I mean, obviously you'd want me to prove that.
15 You wouldn't want to be in a position of disproving it. You'd
16 want me to be in a position of proving that. Is that right?

17 **A. Right.**

18 **Q.** Does that make sense to you that the burden is on
19 us, and it never shifts?

20 **A. Yes.**

21 **Q.** And with regard to capital murder, the three types
22 of capital murder that are applicable to us, the first one is
23 murder in the course of a burglary. Now, in your opinion is
24 murder in the course of a burglary the type of case that the
25 death penalty ought to at least be an option? If you break

1 **A. Yes, I believe so.**

2 **Q.** And then when we talk about a double homicide, or
3 killing two people in the same common scheme or plan, is that
4 the type of crime that the death penalty ought to at least be
5 an option?

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

7 **Q.** Let's assume -- well, before we move off that,
8 Ms. Burks, tell me a little bit about your thinking of why you
9 think we ought to have the death penalty, or why that's an
10 appropriate punishment?

11 **A. I just believe that if someone can't live in our
12 society and can't be trusted not to, you know -- I don't know
13 if that's worded properly, but I just -- sorry.**

14 **Q.** It's okay.

15 **A. I think people should be able to live in our
16 society and be a part of our society without having to worry
17 about the person around the corner. And if the person around
18 the corner has proven themselves that they can't live by the
19 standards that we all live by and believe in, then maybe they
20 shouldn't be here with us; that the ultimate punishment, if
21 that's not the way they can function with us, then that's a
22 proper punishment.**

23 **Q.** Okay. Now, let's assume that you as a jury
24 collectively agree that the State's proven the case beyond a
25 reasonable doubt. The Defendant's guilty of capital murder.

1 into somebody's home, and then while you've broken into their
2 home -- or get in there by fraudulent consent, you kill them.
3 Is that something that ought to be at least subject to the
4 death penalty? Do you understand when I say, it should at
5 least be an option?

6 **A. Yes, I understand that --**

7 **Q.** And depending on the facts --

8 **A. Yes. I do believe that anyone taking a life should
9 face consequences of the death penalty.**

10 **Q.** Okay. And you do understand the difference between
11 murder and capital murder, and how I talked about there has to
12 be that aggravating factor to make it capital?

13 **A. Yes.**

14 **Q.** And it's only in those situations that the death
15 penalty is an option?

16 **A. Yes.**

17 **Q.** And is that okay with you?

18 **A. Yes.**

19 **Q.** Okay. The second type of crime that's applicable to
20 what we're doing here today is murder in the course of a
21 robbery, and that's if you -- you know, face-to-face, if
22 you're trying to take possession or control of property using
23 force, and you kill them in the course of doing that. Is that
24 the type of crime that ought to at least be subject to the
25 death penalty?

1 Then, you'd move on to the punishment phase, and as we
2 explained to you earlier it's not a situation where it's an
3 automatic death penalty, and you don't go back there and say
4 life or death, depending on what you want to happen. You're
5 to look at certain questions and evaluate the evidence based
6 on those questions and answer the questions however the facts
7 play out, follow the law and fairly answer the question. The
8 first question that you would get to if you found a defendant
9 guilty of capital murder is going to be the one down at the
10 bottom. Can you read that? That talks about probability.
11 Can you see it?

12 **A. Yes, I can see it.**

13 **Q.** And if you want to read it to yourself for a second
14 just to refresh your memory.

15 **A. Okay.**

16 **Q.** And this is what we call the future dangerousness
17 question, typically. And with regard to this question, again
18 the burden of proof is going to be on the State. We're going
19 to have to prove to you beyond a reasonable doubt there's a
20 probability a defendant would commit criminal acts of violence
21 and be a continuing threat to society.

22 **A. Uh-huh.**

23 **Q.** With regard to that question there's going to be
24 some words in there that are not going to be defined for you,
25 and when you get to the courts's charge, it's up to you, as a

1 burden always remains on the State. And that seems only fair
2 since we're the ones doing the accusing, then we're the ones
3 that should have to do the proving. Now, a defendant has a
4 right to testify, if he wants to, but that's his choice, and
5 if a defendant chooses not to testify, you can't use that
6 against him. And, in fact, you get an instruction from the
7 judge, if a defendant did not testify, that you're not to take
8 that into consideration in deciding whether or not he's guilty
9 or not guilty. So, even though he has the right to speak, he
10 doesn't have to, and it can't be used against him.

11 **A. Uh-huh.**

12 **Q.** And it seems fair, because it's kind of like if I
13 accused you, as far as saying, well, last week I think you
14 stole my car. I mean, obviously you'd want me to prove that.
15 You wouldn't want to be in a position of disproving it. You'd
16 want me to be in a position of proving that. Is that right?

17 **A. Right.**

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19 us, and it never shifts?

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9 guilty of capital murder is going to be the one down at the
10 bottom. Can you read that? That talks about probability.
11 Can you see it?

12 **A. Yes, I can see it.**

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14 just to refresh your memory.

15 **A. Okay.**

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17 question, typically. And with regard to this question, again
18 the burden of proof is going to be on the State. We're going
19 to have to prove to you beyond a reasonable doubt there's a
20 probability a defendant would commit criminal acts of violence
21 and be a continuing threat to society.

22 **A. Uh-huh.**

23 **Q.** With regard to that question there's going to be
24 some words in there that are not going to be defined for you,
25 and when you get to the court's charge, it's up to you, as a

1 jury collectively, to decide, if we've met our burden, if
2 we've proved to you beyond a reasonable doubt this question.

3 And the first word that you get to that won't be
4 defined for you is that word "probability." The question
5 doesn't ask with a certainty is the defendant going to commit
6 criminal acts of violence, and it doesn't ask is there a
7 possibility. And you'd agree with me that anything is
8 possible?

9 **A. Right.**

10 Q. I mean, it could snow tonight in Dallas in
11 September, anything's possible?

12 **A. Right.**

13 Q. It's not probable, but it's possible?

14 **A. Yes.**

15 Q. And you understand that distinction?

16 **A. Yes.**

17 Q. So that word "probability" obviously means something
18 less than a certainty, but something more than a possibility?

19 **A. Right.**

20 Q. With regard to that word, people that are
21 mathematically minded might look at that word and say, well,
22 that's some percentage to me. And other people may look at
23 that word and say, well, that means more likely than not to
24 me. What does that word "probability" mean to you?

25 **A. More likely than not.**

1 Q. Moving on in that question the next phrase you get
2 to that's again going to be undefined for you, that's criminal
3 acts of violence. I think all of us would agree that a
4 violent act toward a person, such as murder or rape is a
5 criminal act of violence. How about someone who beats their
6 wife; is that, to you, a criminal act of violence?

7 **A. Yes.**

8 Q. And I think if it involves a person everyone is
9 unanimous on that. It gets a little fuzzier when we start
10 talking about property. If I went out, and, say, I was just
11 so mad and so upset at somebody, and I just wanted to take it
12 out on something so I go outside with a baseball bat, and I
13 just start smashing up windshields, in the parking lot, of the
14 cars. In your opinion, is that a criminal act of violence?

15 **A. I would consider that a violent act.**

16 Q. Okay.

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

18 Q. And it might be criminal -- it might be criminal
19 mischief, because --

20 **A. Right.**

21 Q. -- I'm intentionally causing damage. But as far as
22 the violent -- carrying my rage out on property, is that
23 considered violence to you?

24 **A. Yes.**

25 Q. It gets a little fuzzier still when we start talking

1 about drugs because some people -- I'm talking about ingesting
2 drugs or delivery of drugs. And some people may say, now, if
3 you take drugs it's going to do violence to your body, and if
4 you take drugs it may change your personality, and it might
5 lead to violent consequences so, therefore, I see that as an
6 act of violence. Other people might say, well, it's just
7 between that person, and the drugs -- just the drugs and that
8 person so it's not harming anyone else immediately, and I
9 don't see that as an act of violence.

10 Where do you fall in that continuum?

11 **A. Do I consider taking drugs an act of violence?**

12 Q. Right, right.

13 **A. No, not necessarily.**

14 Q. Okay. And things like that, that you may not
15 consider an act of violence and things that definitely are
16 not, like theft, or just conducting fraudulent business
17 scams --

18 **A. Uh-huh.**

19 Q. -- things that may not be an act of violence, do you
20 think those kind of things would give you an insight into
21 somebody's character?

22 **A. Sure.**

23 Q. And do you think that insight into their character
24 would help you in answering this question -- would help you in
25 answering this question in determining whether there's a

1 probability they'd commit criminal acts of violence, if you
2 understood the character a little bit?

3 **A. I think so. I think if you had an idea of their
4 character that could always give you an idea of the life they
5 lead, the kind of things they might do.**

6 Q. Their general lawlessness or lack of respect for
7 authority or --

8 **A. I believe so.**

9 Q. -- the legal system?

10 Then we move on to the last word undefined, yet
11 frequently debated, is that word "society." That question
12 does not ask can the Defendant safely be held in prison? It
13 doesn't limit itself to prison society.

14 **A. Uh-huh.**

15 Q. It appears to ask basically what is the propensity
16 of a defendant for dangerousness without regard to a specific
17 location. So when it comes to that word "society," can you
18 see how that can be interpreted to mean -- it could include
19 prison, but it can also include the society you and I live in?

20 MR. GOELLER: Judge, I'm sorry. Mr. High is
21 gone. He's going to take the juror.

22 That's a misstatement of the law, and I object to
23 it. California versus Browning does include prison. And
24 Franklin v Lennau, the U.S. Supreme Court questioned the
25 defendant's likelihood of injuring others in prison is

1 precisely the question posed by the Texas -- special issue.
 2 For that reason, I object to that statement.
 3 THE COURT: All right. And forgive me, I don't
 4 remember the statement. What do you understand the statement
 5 to have been?

6 MR. GOELLER: I think Ms. Falco said it could
 7 include prison. My objection is, that's a misstatement of the
 8 law, because it does include prison, not could.

9 THE COURT: Overrule the objection.

10 Q. BY MS. FALCO: And, Ms. Burks, do you see how it
 11 could also include the society you and I live in?

12 A. Yes.

13 Q. Everyday society.

14 Now, with regard to that question, as I stated,
 15 you'd be in the punishment phase. You'll have heard all the
 16 evidence from the punishment phase at that point, as well as
 17 the guilt-innocence phase. The Legislature gave us this
 18 question to reconsider the evidence, and it's not an automatic
 19 death penalty situation. They obviously envision situations
 20 that a jury could find a defendant guilty of capital murder,
 21 yet get to this question and decide we don't think there's a
 22 probability he'll commit criminal acts of violence in the
 23 future.

24 And a couple of examples of that might be the parent
 25 who's child is killed. And let's say there's two killers, and

1 Q. And the Legislature has asked the jury to reconsider
 2 the evidence from the guilt-innocence phase, as well as the
 3 punishment phase in answering this question?

4 A. (Nods head.)

5 Q. Now, it could be that the facts of the crime itself
 6 are so horrendous, such as a Timothy McVeigh-type situation
 7 that you may look at just that fact alone. It doesn't matter
 8 what his criminal history is. You can just look at the facts
 9 of that alone and answer that question, yes, I think there's a
 10 probability he'd be a future danger, but it's just not
 11 automatic. And to be a qualified juror, you just have to be
 12 able to fairly answer that question based on the evidence.

13 A. Okay.

14 Q. Do you understand that?

15 A. Okay.

16 Q. And you can't go into this punishment process
 17 thinking, well, I know I want to issue a death sentence so I
 18 just want to answer these questions in a way that result in
 19 a death sentence. You have to take it from the perspective of
 20 evaluating the evidence in light of that question. Does that
 21 make sense to you?

22 A. Yes, it does.

23 Q. And if you were so instructed, could you do that?

24 A. I believe so.

25 Q. Now, with regard to this question you've probably

1 those killers have a trial and for whatever reason they get
 2 off. And as they're walking out of the courtroom, they laugh
 3 at the parents because they got away with murder, literally,
 4 and walk out the door, and that parent tracks them down and
 5 kills them. That's capital murder. And some juries may look
 6 at that question and decide, I don't think they'll commit
 7 criminal acts of violence in the future or be a continuing
 8 threat. That was an isolated incident. I don't see that
 9 happening again.

10 Or you may have a situation where a person goes in
 11 to rob a 7-Eleven. And they go in, and they rob the clerk and
 12 they take the money and they kill the clerk, but on the way
 13 out the police show up, and he gets in some kind of a
 14 shoot-out with the police and he gets shot. He gets shot in
 15 the neck or the head and he's alive, but he's paralyzed from
 16 the neck down, so physically he can't do harm to anybody.

17 So the jury may look at that question and say we
 18 don't think there's a probability he'll commit criminal acts
 19 of violence in the future.

20 A. Uh-huh.

21 Q. So do you understand that it's not an automatic
 22 thing where if you find a defendant guilty of capital murder,
 23 do you understand it's not automatic that they're going to be
 24 a future danger?

25 A. Yes.

1 heard or read, if you followed any kind of capital murder
 2 trials at all, where one side or the other would call a
 3 psychiatrist in the punishment phase to testify. And let's
 4 assume they're not testifying about a brain disease or a
 5 disorder. They're not talking about any kind of a brain
 6 tumor, but simply to say I've looked at this pattern of
 7 behavior and in my opinion that person is not dangerous. Or,
 8 I looked at this pattern of behavior, and in my opinion this
 9 person is dangerous. How important would that type of
 10 testimony be to you?

11 A. I don't know. I guess I would have to think about
 12 how long they've studied people, if there was anything else
 13 that showed this to be part of their character, you know,
 14 that -- that's hard to say. I -- I think I would probably
 15 believe them, that that was their belief. You know, it's hard
 16 to say. I never really --

17 Q. Do you think if one side got an expert to get up
 18 there and say that I've looked at this pattern of behavior,
 19 and I don't think that person will be a danger in the future,
 20 do you think the other side could turn right around and get
 21 someone to say just the opposite?

22 A. I think that's a possibility.

23 Q. And do you see how that could end up just being a
 24 battle of the experts?

25 A. Yes.

1 Q. And it's kind of like if you were at the circus, and
2 you see the tiger in the cage, and he's doing his tricks, and
3 he gets put back in the cage, but at some point in time the
4 tiger gets loose. You don't need a veterinarian to come in
5 and say get out of here because that tiger is dangerous, do
6 you?

7 A. Right.

8 Q. Do you think in this same regard, with regard to
9 this question, that you, just having your life experiences and
10 your own opinion, could look at that question, look at the
11 evidence and be able to answer that question?

12 A. I believe so.

13 Q. Let's assume that all 12 jurors answer that
14 question, yes, we think there's a probability he'll be a
15 future danger. If all 12 jurors say yes, you're still in the
16 process of assessing a death sentence. If 10 or more jurors
17 answer that no, then that's an automatic life sentence, the
18 trial is over and you end your deliberations. Let's assume
19 that all 12 jurors answer that question yes, you would then
20 maybe or maybe not get that law of parties question that we
21 talked about, the get-away driver. You remember me briefly
22 mentioning that last week?

23 A. Yes.

24 Q. You may or may not get that question, but you would
25 definitely get to the next question, which is the one up on

1 little weight or no weight. And it could be just the
2 opposite. Maybe a crime doesn't have that much weight, but
3 the Defendant's character and background has a lot of weight,
4 or whatever mitigating evidence you hear, that might have a
5 lot of weight.

6 It's up to you as a juror to assess what weight
7 you're going to give the evidence, and at the end if there's
8 sufficient mitigating evidence, in light of all the other
9 things you heard to warrant a life sentence, then that's what
10 the Defendant gets.

11 A. Okay.

12 Q. Does that make sense to you?

13 A. Yes.

14 Q. You can probably assume, or if any of us were on
15 trial that we could probably all come up with something that
16 was mitigating in our background, something that was
17 particularly sad, or sympathetic, maybe an abusive childhood,
18 a single-parent family. If statistics play out like they say,
19 50 percent of families are single-parent families, or there's
20 a divorce rate of 50 percent, so there's a lot of single
21 parents out there, or maybe some kind of health issue.
22 Something that we could bring up to say this is mitigating.

23 But it's not a matter of is there any mitigating
24 evidence. It's putting that on the scales with all the other
25 stuff. Is it sufficient to warrant a life sentence instead of

1 the easel. Can you see that?

2 A. Uh-huh.

3 Q. That's what we call the mitigation question. If you
4 want to take a moment to look over that to refresh your
5 memory.

6 A. (Complies.)

7 Q. Do you remember me talking about this question?

8 A. Yes.

9 Q. And as I said, it's what we call the mitigation
10 question, and mitigation is a word that won't be defined for
11 you in the Court's charge, but typically is defined as
12 something that reduces or lessens. In this situation,
13 something that reduces or lessens the Defendant's
14 blameworthiness, his guiltiness.

15 A. Uh-huh.

16 Q. Now, with regard to this question there's no burden
17 of proof on either side. We don't have a burden of proof to
18 bring you evidence negating -- mitigating evidence. They
19 don't have a burden of proof of bringing you evidence that is
20 mitigating. What this questions asks the jury to do is weigh
21 all the evidence.

22 A. Uh-huh.

23 Q. And it's up to you as a jury to give whatever weight
24 to the evidence that you want to give. And it may be that the
25 crime itself gets a lot of weight, and all the other stuff has

1 a death sentence?

2 A. Uh-huh.

3 Q. Does that make sense?

4 A. Yes.

5 Q. Okay. Now, along the lines of mitigating evidence,
6 you won't get a list of things from the judge that say here's
7 mitigating evidence for you to consider. It's up to you as a
8 jury to decide what is mitigating, if anything. There may be
9 some things that one juror says, well, that's mitigating to
10 me. And another juror may sit there and say, no, that's
11 aggravating to me.

12 And the perfect example of that is drugs. That one
13 person may say, well, that's not the way they normally were,
14 but they just got mixed up with the wrong crowd and started
15 taking drugs and just kind of spiraled, and they weren't
16 themselves. When they committed this crime, that wasn't them.
17 That was them on drugs, and that's mitigating to me.

18 A. Uh-huh.

19 Q. Another juror may say, no, we're taught as a society
20 to stay away from drugs and that drugs are bad for us and just
21 say no. And the reason for all that is because it could lead
22 to devastating results such as this.

23 A. Right.

24 Q. So that's aggravating to me because they know the
25 drugs were wrong, they know what the drugs can do, and they're

1 still doing it anyway, and it lead to this horrific result.
2 So you see how some evidence could be viewed in one way or
3 another, depending on who you are?

4 **A. Yes.**

5 **Q.** While we're on the topic of drugs, what do you think
6 of the argument if somebody does say, you know, I just got in
7 a bad state, and I started taking drugs, and it kind of became
8 a downward spiral for me and that's not really the way I was,
9 but the drugs kind of took over. But I'm off them now, and I
10 don't do drugs anymore, so I've changed. I'm a different
11 person. How does that argument sit with you?

12 **A. Sure. I think you can take responsibility for
13 yourself and pull yourself out of any bad circumstances, if
14 you want to.**

15 **Q.** And as far as being mitigating, is that mitigating,
16 aggravating, what do you think of that?

17 **A. The act of being on drugs?**

18 **Q.** The reason they the committed crime is they were on
19 drugs.

20 **A. I consider it aggravating. I mean, just as it is
21 your choice to get off drugs, your choice to take the drugs.**

22 **Q.** You brought up a good point with your questionnaire
23 when you talk about people make choices. Do you remember in
24 the questionnaire it had a whole page of statements, and you
25 had to list whether you strongly agree anywhere to strongly

1 Menendez brothers. They had everything. They were rich, they
2 had parents that loved them, and yet they killed their
3 parents.

4 **A. Uh-huh.**

5 **Q.** So when you say that you disagree that their fate or
6 destiny is determined by their -- circumstances of their birth
7 and their upbringing, what was your thinking along those
8 lines?

9 **A. Well, your childhood definitely has an impact on the
10 decisions you make in life, but I think once you reach even
11 teenage years, you have an understanding of right and wrong.
12 You have an understanding of what you want to do with your
13 life, or where you want that direction to go. And if you have
14 a bad home life, you have -- hopefully you have the options of
15 seeking out teachers, counsels, someone to help you. I mean,
16 you have those -- in today's society, those options are
17 normally there for you, and if you have the will to reach out,
18 then I think you can guide your own life.**

19 **Q.** Okay.

20 **A. It may not be exactly, you know, the guide you want,
21 the end result, but I think you can guide it away from the
22 place you know you shouldn't be in your life.**

23 **Q.** Okay. And along those lines, while we're still
24 talking about mitigation, you have two children; is that
25 correct?

1 disagree with that statement. Do you remember that page?

2 **A. Vaguely.**

3 **Q.** And one of the statements was a person determines
4 their destiny or fate by choices they make in life, and you
5 put agree.

6 **A. Uh-huh.**

7 **Q.** And that kind of sounds like what you were just
8 saying is you make the decision to get off the drugs, and you
9 made the decision to get on them.

10 **A. Right.**

11 **Q.** Does that kind of play along with your line of
12 thought?

13 **A. Yes.**

14 **Q.** The next question says a person's destiny or fate is
15 determined by the circumstances of their birth and their
16 upbringing, and you put disagree. And we probably all know of
17 people that have come from bad backgrounds as far as a poor
18 childhood, or bad childhood, or sad childhood, abuse, and have
19 been able to survive that and overcome that and become very
20 successful people. Would you agree with me on that?

21 **A. Yes.**

22 **Q.** And on the flip side, we can probably all name
23 somebody that had everything. They never lacked for material
24 goods, had two parents that loved them, and yet still turned
25 out bad and probably a good example of that would be the

1 **A. Yes.**

2 **Q.** And let's assume -- obviously you love those
3 children dearly?

4 **A. (Nods head.)**

5 **Q.** And let's assume that they got a little bit older,
6 they were early 20s, and one of them got in trouble with the
7 law.

8 **A. Uh-huh.**

9 **Q.** And I'm assuming as much as you love your children
10 and support them now, you'd do the same thing even if they got
11 in trouble. You'd still love them, you'd still support them
12 and be there for them --

13 **A. Yes.**

14 **Q.** -- is that right?

15 And can you imagine that would probably be the same
16 situation with a person accused of capital murder; that
17 they've probably got some family member that still loves them,
18 still supports them regardless of what they're accused of?

19 **A. Uh-huh.**

20 **Q.** And you can probably imagine in a capital murder
21 trial a parent getting on the stand very upset, very
22 heartbroken, their child already been convicted of capital
23 murder. Now it's the punishment stage and that parent being
24 upset, crying saying, don't kill my child because I love them?

25 **A. Uh-huh.**

1 Q. How would that argument sit with you?
 2 A. I guess if it got to that point, I would be thinking
 3 of the victim. Probably how the family member loved them, and
 4 who -- who would or not -- what side do you feel -- not that
 5 you should answer to, but that -- I don't know. I think I
 6 would look at both sides and say, well, they had a loved one
 7 as well.

8 Q. Okay. In talking about the victim and looking at
 9 that mitigation question, other than that phrase "the
 10 circumstances of the offense," the rest of the question
 11 appears to focus on the defendant; the defendant's character,
 12 the defendant's background, defendant's moral culpability. It
 13 doesn't ask you to look at the victim's character or
 14 background or moral culpability. And I briefly talked about
 15 it last week. In your opinion, does it make a difference who
 16 that killer kills?

17 A. No.

18 Q. Do you think it would make them any less dangerous
 19 if he killed a nun versus killing a drug dealer on the street?

20 A. No, I do not.

21 Q. And let's extend that out a little further. Let's
 22 assume that a person didn't want to have to work for a living,
 23 but still wanted a lot of money, so they decide to go rob a
 24 7-Eleven, and they just decided to pick one randomly. They
 25 never know (sic) anybody in there and don't know anything

1 A. No, I have not.

2 Q. How about the term "jailhouse conversion"?

3 A. I've never heard it, but I understand -- I think I
 4 have an understanding what that would mean.

5 Q. And what is your understanding of what that would
 6 be?

7 A. Maybe someone in prison has a regret and decides to
 8 find God.

9 Q. Okay. And what if that decision -- and whether or
 10 not that decision is real or not is, ultimately, not for us to
 11 decide.

12 A. Uh-huh.

13 Q. But let's assume that decision comes after they've
 14 already been arrested for a crime and nothing leading up to
 15 that shows that they had any belief in God or any validity.

16 But yet, after they're arrested, all the sudden they become
 17 believers. I'm changed now and I'm Christian now, and so I'm
 18 not going to commit any more crime. I'm different; don't kill
 19 me. How does that argument sit with you?

20 A. Well, my -- can I say something personal?

21 Q. Yes.

22 A. My parents are -- do prison ministry, and I know
 23 through them that can happen that, you know, people do find
 24 God, and they do come out of prison different than when they
 25 went in.

1 about it, other than it's probably going to have money. They
 2 go in there, and they hold up the clerk, and they take the
 3 money and they kill the clerk to leave no witnesses and they
 4 leave.

5 Compare that to the person who decides to rob the
 6 7-Eleven in their neighborhood because it's some friends of
 7 his and he knows that -- you know, how much money that they
 8 keep in the safe, and he knows who works what shifts and who
 9 keeps more money in the safe. And this is a family that has
 10 fed him and clothed him and supported him, and yet that's the
 11 place he still chooses to rob. And he goes in there, and he
 12 robs them and takes the money and kills the clerk, knowing the
 13 clerk and knowing how it's going to affect that clerk's
 14 family. Is there a difference in those two situations to you?

15 A. Well, there's a difference, but I don't think
 16 there's a difference in -- as far as the actual killing
 17 someone.

18 Q. Okay. Let's talk a little bit -- I think on your
 19 questionnaire that when asked about church attendance, you
 20 said you're visiting various churches. Are you just kind of
 21 church-hopping right now, kind of looking for a home?

22 A. Yeah.

23 Q. Let's talk a little bit in relationship to this
 24 question. First of all, have you ever heard that phrase
 25 "there are no atheists in fox holes"?

1 Q. Do you -- have your parents also come across people
 2 that may say it while they're pending trial or waiting to go
 3 in front of the judge? They say they've converted or become a
 4 believer, and it not, in fact, be true, where they've seen
 5 them kind of go back to their old ways?

6 A. No, they've never told me that. Usually the persons
 7 they visit are the life sentence-type prisons (sic) where they
 8 are not getting out.

9 Q. Okay.

10 A. And that has been their experience, that they've
 11 corresponded with them through the years, and actually, I do
 12 know some that have gotten out, and I don't know if they
 13 followed up with them. I know they've kept up some
 14 correspondence with some of them, but they've never told me of
 15 anyone that come out and then changed their beliefs. They've
 16 not told me of that.

17 Q. Would you view somebody who got arrested, and it was
 18 at that point in time after they got arrested and they're
 19 facing trial and they know their whole life is going to be on
 20 trial, and that's when they start talking about a
 21 conversion --

22 A. Uh-huh.

23 Q. -- would you view that with skepticism at all, or
 24 would you just automatically believe it and assume it's true
 25 because they wouldn't say it if they -- if it wasn't true?

1 **A. I guess I would be skeptical, but on the other**
 2 **hand, I think sometimes when you're faced with realities that**
 3 **you look -- you know, you look for some strength, and I can**
 4 **see where you could find God as a strength in -- you know, I**
 5 **may be skeptical, but it wouldn't be that I wouldn't believe**
 6 **them. I don't know how to answer that.**

7 Q. As far as believing whether or not this is actually
 8 a true conversion, would you be looking for things like
 9 remorse, regret, forgiveness, that type thing?

10 **A. Sure, uh-huh.**

11 Q. And let's assume for our hypothetical that it is a
 12 true conversion; that this person becomes a Christian. But as
 13 Christians, obviously, we all acknowledge we're still sinners,
 14 and we try to sin less, but it doesn't make us sinless. Would
 15 you agree with me, even a Christian can sin, and even a
 16 Christian could commit a crime; is that true?

17 **A. Yes.**

18 Q. So getting back to that first question, that future
 19 dangerousness question, if somebody gets up and says they're a
 20 Christian, that's not going to make it impossible for me to
 21 prove to you they can still be a continuing threat to society,
 22 is it?

23 **A. No.**

24 Q. In just looking at your questionnaire, you had a
 25 situation I guess with your phone bill that you needed an

1 reading them one at a time as they came out and kind of forget
 2 some stuff.

3 **A. Oh, yeah.**

4 Q. When asked do you want to serve as a juror in this
 5 case, have you done some thinking about that question?

6 **A. Yes, I have.**

7 Q. And initially you answered, yes, which is
 8 respectable because obviously most people selfishly think, no,
 9 I'd rather live my own life and not have to make the tough
 10 decision, and my work is important to me, and that's pretty
 11 selfless to say, yes, I'd serve because it's my duty to serve.
 12 What have been your thoughts behind that? What have you been
 13 thinking about that?

14 **A. Well, I think the reason I put down is not exactly**
 15 **the reason I would say yes. I think more the reason is, you**
 16 **know, my husband spent 21 years in the Marine Corp. I think**
 17 **when you're asked to serve your country, to serve your county,**
 18 **to serve -- I think that you should do it. I think you**
 19 **should -- that's a hard responsibility, but I think if you**
 20 **want to live in this country that you have an obligation to**
 21 **help it and not just blow off, no, I don't want to do that**
 22 **because it would be hard. No, I don't want to, you know, face**
 23 **that. I think you -- you know, if you're not serving somehow**
 24 **that when you're called that you should be willing, whether**
 25 **it's going to be hard or not.**

1 attorney.

2 **A. Yeah.**

3 Q. What happened there?

4 **A. We switched phone companies, and somehow we never**
 5 **got disconnected from one company so we were being**
 6 **double-billed for both companies. And so we went several**
 7 **months of getting letters to pay the bill, and I'd call, and**
 8 **I'd have both companies on a three-way call talking back and**
 9 **forth. And so finally, my husband works at a company that has**
 10 **an attorney there, and he just wrote them a letter basically.**

11 Q. Your husband was in the Marine Corp?

12 **A. Yes, ma'am.**

13 Q. And actually fought in the Gulf War?

14 **A. Yes.**

15 Q. Did you know him during that time? Were you
 16 married at that time?

17 **A. Yes. We've been married for 16 years.**

18 Q. It was obviously a very scary time for you then?

19 **A. Yes.**

20 Q. And there's the last book you read, Tribulation
 21 Force; Left Behind Series?

22 **A. Yes.**

23 Q. You just got through the second book then?

24 **A. I'm almost through the third one.**

25 Q. Probably better to do it that way than -- I was

1 Q. And just to go through these one more time and make
 2 sure after we've been discussing it that we're still on the
 3 same page, and you've thought about yourself and evaluated
 4 yourself in a situation, assuming you sat on the jury, and you
 5 found the defendant -- a defendant guilty of capital murder,
 6 and you get to the punishment phase, looking at that first
 7 question, that future dangerousness question, could you follow
 8 the law and fairly answer that question yes or no depending on
 9 how the evidence played out?

10 **A. Yes, I believe I could.**

11 Q. And if the evidence showed, no, we didn't prove that
 12 there's a probability a defendant would commit criminal acts
 13 of violence in the future, you could answer that no, knowing
 14 it would result in a life sentence?

15 **A. Yes.**

16 Q. And on the flip side, if we did prove it to you
 17 beyond a reasonable doubt, you could answer that question yes
 18 knowing you're still in the process of assessing a death
 19 sentence?

20 **A. I believe so, yes.**

21 Q. And then assuming you get to that second question,
 22 that mitigation question, could you keep a fair and open mind
 23 in listening to all the evidence, weighing it, giving it
 24 whatever weight you feel is appropriate, and if there's
 25 sufficient mitigating evidence, answer that question "yes"

1 resulting in a life sentence?
 2 **A. Yes, I believe I could.**
 3 **Q.** On the flip side, if you got to that question and
 4 you weighed all the evidence, could you answer that question
 5 "no" if you don't think there's sufficient mitigating evidence
 6 to warrant a life sentence, knowing that a death sentence
 7 would result?
 8 **A. Yes, I believe could.**
 9 **Q.** Ms. Burks, do you have any questions of me before I
 10 pass you over?
 11 **A. I don't believe so.**
 12 **MS. FALCO:** Thank you, Ms. Burks.
 13 **THE COURT:** Mr. High.
 14 **MR. HIGH:** Thank you, Judge.
 15 **CROSS-EXAMINATION**
 16 **BY MR. HIGH:**
 17 **Q.** Good afternoon, Ms. Burks. My name is High -- Don
 18 High, like "up high in the air." Do you pronounce your name
 19 Tanya or Tonya?
 20 **A. Tanya.**
 21 **Q.** Tanya, okay. I thought that might be the way it is
 22 because of Tanya Tucker.
 23 **A. Yeah. My mom used to say "Tanya hide."**
 24 **Q.** Tanya hide. Yeah, that's good.
 25 **Let's see here, I saw that you've lived in the**

1 southeastern U.S. a lot. That's kind of what clued me in on
 2 that, and let me get back here to this page. You listed some
 3 interesting cities, and I want to go through them with you.
 4 **A. Yes, sir.**
 5 **Q.** Can't seem to put my finger on it. Here we go.
 6 Biloxi, Mississippi. Is that where you were born?
 7 **A. No. That was our last duty station. There's an Air**
 8 **Force base -- Keizler Air Force base there.**
 9 **Q.** Okay. Slidell, Louisiana; is that through your
 10 marriage?
 11 **A. Yes. My husband was stationed in New Orleans, the**
 12 **naval base.**
 13 **Q.** And Camp Lejeune, Jacksonville, North
 14 Carolina --
 15 **A. Yes, sir.**
 16 **Q.** -- three years. My partner has been there.
 17 **MR. HIGH:** Did you train there?
 18 **MR. GOELLER:** (Nods head.)
 19 **Q. BY MR. HIGH:** That's right, okay. He's got some
 20 Camp Lejeune stories, and believe you/me, I've heard them all.
 21 I feel I got trained there myself, so I know what -- I kind of
 22 got a feel for the place.
 23 **Yuma, Arizona?**
 24 **A. It's a Marine Corp base, air station.**
 25 **Q. Any rattlesnakes in Yuma, Arizona?**

1 **A. A lot of tarantulas.**
 2 **MR. GOELLER:** It's too hot for snakes.
 3 **VENIREPERSON:** It's pretty hot.
 4 **Q. BY MR. HIGH:** And Tyler, 21 years. Tell me about
 5 Tyler.
 6 **A. I was born in Tyler.**
 7 **Q.** Okay. And went to school there?
 8 **A. I went to school right outside of Tyler, and then we**
 9 **moved, and I went out to -- lived in Gilmer, actually. I say**
 10 **Tyler because it's the largest city in that whole East Texas**
 11 **area. I lived in Gilmer several years and then moved back to**
 12 **Tyler.**
 13 **Q.** Okay. When were you in Gilmer, in high school?
 14 **A. High school. My last three years of high school,**
 15 **and then I moved back and went to Tyler Junior College.**
 16 **Q.** Were you a Rangerette?
 17 **A. That's Kilgore.**
 18 **Q.** Or is that --
 19 **A. That's Kilgore.**
 20 **Q.** Is that Kilgore?
 21 **A. Yeah. The Apache Bells are Tyler.**
 22 **Q.** That's right.
 23 **All right. So how many years did you go to, is it**
 24 **TJC?**
 25 **A. Tyler Junior College. I went two years.**

1 **Q.** Two years. And what did you study there?
 2 **A. Oil and gas leasing. Oil and gas leasing.**
 3 **Q.** Interesting. Okay. Like, legal work, like title
 4 work?
 5 **A. Title work, not necessarily legal. But going out**
 6 **and getting the title opinions and surveying land and taking**
 7 **affidavits, and basically doing all the leg work and turning**
 8 **it in for the oil companies.**
 9 **Q.** And did you learn how to abstract, too?
 10 **A. Did abstract work, uh-huh.**
 11 **Q.** How about that.
 12 **And what, did you get a degree in that?**
 13 **A. Associate's degree.**
 14 **Q.** What, in oil and gas leasing?
 15 **A. Yeah. I think it's called Mineral Lease Technology,**
 16 **or something.**
 17 **Q.** Okay. Fascinating. I don't think I've ever heard
 18 of that.
 19 **And did you work in that area? When you got out,**
 20 **what did you do? Did you work in that area?**
 21 **A. Yes. I worked. I traveled a lot and went to**
 22 **different, you know, counties and worked in the courthouse,**
 23 **and then the abstract offices, mostly in East Texas and then**
 24 **up in, like, the Panhandle.**
 25 **Q.** All right. So you've learned a lot of the history

1 of the East Texas --

2 A. A little bit, yeah.

3 Q. -- oil patch?

4 A. We go back to the sovereignty of the soil and work

5 our way with the title up.

6 Q. And you say you worked some in West Texas, too?

7 A. No, up in the Panhandle.

8 Q. In the Panhandle?

9 A. Uh-huh.

10 Q. Where in the Panhandle?

11 A. Gosh, I can't even remember now.

12 Q. Around Boerger or Pampa?

13 A. No. It would take me about three hours going north.

14 That was so long ago. About -- north of Dallas or Fort Worth.

15 Come to Fort Worth and go north. I can't even recall the

16 names of the -- little bitty towns, usually.

17 Q. Up on 287?

18 A. I think so.

19 Q. Up around Childress, Clarendon, or did you get that

20 far?

21 A. I honestly can't recall the names of the towns.

22 Q. Okay. So you were just traveling, going up there

23 and --

24 A. Right. I'd usually work there maybe a month, two or

25 three days during the week, and then come back and turn in my

1 information and --

2 Q. Okay. That's fascinating.

3 So you've seen some courthouses in this State,

4 haven't you?

5 A. Yes.

6 Q. Did you take pictures of them?

7 A. No, I didn't. I didn't do that.

8 Q. You mentioned that your husband was in the Marine

9 Corp 21 years?

10 A. Uh-huh.

11 Q. What rank did he achieve?

12 A. Master Sergeant.

13 MR. GOELLER: Top.

14 A. Top. He was an E-8.

15 MR. HIGH: Anything else you need to know?

16 MR. GOELLER: That's all I need.

17 Q. BY MR. HIGH: And when did he finish up? When did

18 he get out?

19 A. He retired February 2000. It was a year ago in

20 February.

21 Q. So he was able to fully retire?

22 A. Yes, sir.

23 Q. Okay. And is he working now?

24 A. Uh-huh.

25 Q. What kind of work --

1 A. He's in telecommunications.

2 Q. Who does he work for?

3 A. A company called Engine X Networks.

4 Q. And how are they doing in this recent downturn?

5 A. I think they're doing okay, I hope.

6 Q. Keep your fingers crossed?

7 A. Yeah.

8 Q. All right, sir. And you folks live in Allen?

9 A. Yes.

10 Q. How do you like Allen?

11 A. I like Allen a lot.

12 Q. It's growing a lot, isn't it?

13 A. It's growing, yes.

14 Q. And so you're visiting churches?

15 A. Yes.

16 Q. And tell me the kind of churches you're visiting.

17 A. We've visited most of the Baptist churches in the

18 area, but we're actually -- I think we're deciding on an

19 evangelical church.

20 Q. Okay. I know about the Baptist because I've grown

21 up in that. But tell me more about the evangelical.

22 A. We're learning ourselves. It seems to have a

23 similar Baptist-type service, but I think they maybe reach out

24 into the community a little more.

25 Q. Okay. Like they do more evangelizing --

1 A. I think so.

2 Q. -- like the Baptist talk about, but don't

3 necessarily get done. But these folks actually do it?

4 A. I think so -- I'm not -- like I said, we're

5 learning, too. We were not really sure.

6 Q. How many of them have you visited --

7 A. Churches?

8 Q. -- of these evangelical?

9 A. Just the one.

10 Q. Which one is it?

11 A. Grace Evangelical.

12 Q. Where is that located?

13 A. Off McDermott, going toward Lucas.

14 Q. I don't know if I've passed by that or not. I don't

15 think I have.

16 So is it a large church, small church?

17 A. I would say, for this area, it's probably a

18 medium-sized. We've seen some pretty large churches up here.

19 Q. And you haven't joined there yet, but it sounds like

20 you're kind of interested in it.

21 A. Uh-huh.

22 Q. But what is it about that church that interests you?

23 A. From our very first visit, the youth group just

24 happened to see my son sitting in the -- sitting and caught

25 him at school the next day and invited him to the Wednesday

- 1 night youth meetings, and he's been going to that. Even when
 2 we've -- visiting other churches, he was still going on
 3 Wednesday nights. And I think that's what drawn (sic) us --
 4 has drawn us there is the youth group.
- 5 Q. Sure. That's a huge draw, isn't it?
- 6 A. He'll be 16 next month, so it's very important to
 7 us.
- 8 Q. I take it, did you grow up in a youth group in
 9 Tyler, Gilmer?
- 10 A. Not really, no.
- 11 Q. But you recognize the importance, I guess?
- 12 A. Yes.
- 13 Q. Especially living in an urban area like this?
- 14 A. Yes.
- 15 Q. Is that right?
- 16 A. Yes. It's the way to get to know your child's
 17 friends and their families, and I think that's important now.
- 18 Q. Kind of a tough question, but you're leading me
 19 right into it. Do you know if your children -- and I don't
 20 mean to pry or get real personal -- but do you know if your
 21 children have ever used drugs, illegal drugs of any kind?
- 22 A. I don't believe so.
- 23 Q. Okay.
- 24 A. I do not know that they have.
- 25 Q. I'm sure that must be a mother's worst fear, and I

- 1 suppose you're pretty convinced that if they were, you'd
 2 pretty well know it, wouldn't you?
- 3 A. I would hope so.
- 4 Q. You're pretty sure that you would know it?
- 5 A. I think I would know, yeah.
- 6 Q. Okay. And you hope that you would?
- 7 A. Yeah.
- 8 Q. You'd find out, anyway --
- 9 A. Yeah.
- 10 Q. So that you could do something about it?
- 11 A. Right.
- 12 Q. And your kids are 10 and 15 -- one is 16?
- 13 A. Next month.
- 14 Q. So they're getting to that critical age?
- 15 A. Yeah.
- 16 Q. And I take it that that's why this church and youth
 17 group has taken on added importance?
- 18 A. Uh-huh.
- 19 Q. Tribulation Force, is that the blue book? What
 20 color is that book? I think I just finished --
- 21 A. No. I'm actually in Nicoli, which is the blue book.
- 22 Q. Okay. I just finished Nicoli.
- 23 A. Okay. That's the one I'm in.
- 24 Q. That's the one with Eli and Moshy, the two witnesses
 25 at the wailing wall. They're causing all kind of ruckus over

- 1 there, and Nicoli doesn't like that?
- 2 A. Right. I don't know if it's that book or the one
 3 before that the first -- yeah, I believe it is this book. I'm
 4 almost at the end of the book.
- 5 Q. You've almost finished that book?
- 6 A. Right.
- 7 Q. And is --
- 8 A. I'm at the earthquake, actually.
- 9 Q. You're at the earthquake?
- 10 A. Uh-huh.
- 11 Q. Okay. And you've read about the pastor?
- 12 A. Yes.
- 13 Q. All right. I just finished that book.
- 14 A. Okay.
- 15 Q. So you're enjoying that series?
- 16 A. Yes, I am.
- 17 Q. All right. And is it -- in your mind, is it fairly
 18 realistic?
- 19 A. What do you mean?
- 20 Q. Let me just say this. I've grown up in the church
 21 all my life, and, in fact, I got to go to Israel earlier this
 22 year, which was a tremendous opportunity. But to read that
 23 book, or read that series is really bringing prophecy in the
 24 future, it's really making clear for me. Is it doing the same
 25 for you?

- 1 A. Well, I have -- I can't say I really grew up in the
 2 church, so it's hard for me to say -- I've never read the book
 3 of Revelations. I'm not any type of Biblical scholar.
- 4 Q. Okay.
- 5 A. But I guess I feel like it probably is fairly
 6 realistic because it's such a popular series, and so many
 7 people have recommended that I read it. So in that respect, I
 8 feel like it probably is somewhat realistic.
- 9 Q. Okay. Think it's fairly well-written?
- 10 A. It's -- yeah. It's enjoyable to read.
- 11 Q. It's entertaining?
- 12 A. Right.
- 13 Q. And you were fairly emotional when we started out
 14 earlier today. I'm sure the event -- some of today's
 15 events -- I mean, you've been kind of comparing some of
 16 today's events with some of the writings in these left behind
 17 series.
- 18 A. Actually, you know, it crossed my mind.
- 19 Q. I'm sure you've been thinking, gosh, isn't this odd?
- 20 A. I think I'm so emotional because I have people -- I
 21 have a best friend in the -- a flight attendant for American.
 22 We know people that work in the Pentagon and, you know, my
 23 husband can be recalled to the military service for ten years.
 24 Both my brother-in-laws (sic) are in the Marine Corp; one
 25 active duty, one reserve. And, of course, we have a host of

- 1 friends still in the -- so that's why I'm emotional.
- 2 Q. Absolutely. And that's been your life?
- 3 A. Right.
- 4 Q. I understand that, sure do.
- 5 Do you listen to Hawkeye in the morning?
- 6 A. Yes.
- 7 Q. Funny?
- 8 A. Yes.
- 9 Q. And Katie Couric, why do you most respect Katie
- 10 Couric?
- 11 A. I don't know, you know when I answered those --
- 12 those were almost the hardest questions on the thing. I think
- 13 it was -- I just finally told myself, who would you like to
- 14 meet? Who do you think would be interesting to speak with,
- 15 and she came to my mind. Probably she's met so many people
- 16 and interviewed so many people, and basically it's -- you
- 17 know, it's hard to say you respect people that you don't know,
- 18 but I've just tried to think of who would be interesting --
- 19 who would I enjoy meeting, and that's how I answered that
- 20 question.
- 21 Q. Okay, fair enough.
- 22 And also, I guess you're aware, she lost her husband
- 23 in the last few years?
- 24 A. Uh-huh.
- 25 Q. And that's admirable, how she's just picked up --

- 1 A. I don't know.
- 2 Q. Have you heard about that?
- 3 A. No, I have not.
- 4 Q. So that didn't factor into what -- this answer you
- 5 gave here?
- 6 A. No, huh-uh.
- 7 Q. Okay. It says you've fired a gun as a teenager.
- 8 What kind of gun?
- 9 A. I don't know.
- 10 Q. So you don't remember?
- 11 A. It was, like, a rifle-type gun.
- 12 Q. Okay.
- 13 A. I don't know.
- 14 Q. So that's 20 years ago?
- 15 A. Yeah.
- 16 Q. Did you like it, dislike it?
- 17 A. No. Actually, I dropped it when I shot it.
- 18 Q. Now, I take it your husband has been around guns
- 19 quite a lot?
- 20 A. Yes.
- 21 Q. Does he own guns?
- 22 A. Yes, he does.
- 23 Q. What kind does he own?
- 24 A. He owns both kinds.
- 25 Q. Okay.

- 1 A. Exactly.
- 2 Q. -- and carried forward and done extremely well.
- 3 A. Uh-huh.
- 4 Q. Okay. Let me ask you this: You know Dr. James
- 5 Dobson? Do you listen to any of his programs or any of his
- 6 teachings from Colorado springs?
- 7 A. The name is familiar, but I can't place why.
- 8 Q. You least respect Jesse Jackson. Tell me about
- 9 that.
- 10 A. Oh, I think it's -- I guess so many people came into
- 11 my mind because of the elections, and then with his
- 12 infidelities coming out and things like that, I think that's
- 13 why he came to my mind. It was a really hard question.
- 14 Q. Everybody has had trouble with this?
- 15 A. That was a hard one.
- 16 Q. Yeah. But I think people have ranked themselves
- 17 down. They've really done better at these than they think,
- 18 okay? People say they didn't spend much time, just the first
- 19 person that came to mind. But let me tell you something,
- 20 they've been very insightful, some of these answers that we've
- 21 gotten.
- 22 A. Uh-huh.
- 23 Q. Is it Jesse Jackson that's wanting us to make some
- 24 reparations nowadays for slavery, and what has happened a
- 25 hundred, and 150 years ago?

- 1 A. The long rifle type, and then the --
- 2 Q. The handgun?
- 3 A. -- handgun.
- 4 Q. But I take it you don't share interest in that?
- 5 A. No.
- 6 Q. I take it you're kind of put off by that, kind of --
- 7 A. I am a little scared of them. He's -- you know, he
- 8 knows about guns, and he's a hunter, and he's very responsible
- 9 with them.
- 10 Q. Absolutely. Is there something about guns, though?
- 11 Do you think guns, I mean, should be outlawed, or do you
- 12 think --
- 13 A. No.
- 14 Q. Do you think you have a pretty fair, open-minded
- 15 view of guns?
- 16 A. I believe so. I let my children shoot them with
- 17 supervision with him. My little one has a BB gun. I just
- 18 don't feel comfortable myself with them.
- 19 Q. Sure, okay.
- 20 One of these responses -- obviously, I'm looking at
- 21 your questionnaire, okay, and if you want to look at it I'll
- 22 be glad to let you look at it, and we'll get you a copy, okay?
- 23 Because I know you're at a disadvantage up there. I have this
- 24 thing here right in front of me, and you don't. And also, I
- 25 know you must be extremely nervous up there because we've got

1 all these lawyers and judges, and this is not where you live,
2 okay. So I understand that you're probably not enjoying this
3 too much, but we're getting done, okay?

4 **A. Uh-huh.**

5 Q. There's an answer here that says, "Are you in favor
6 of the death penalty? Yes. Please explain your answer. I
7 believe that taking a life proves a person has no regard or
8 value on life."

9 Once again, it says "I believe that taking a life
10 proves a person has no regard or value on life."

11 **A. Uh-huh.**

12 Q. Now, obviously from my position here I'm defending a
13 young man that's charged with capital murder, and the State is
14 seeking the death penalty, and myself and Mr. Goeller, we
15 literally have his life in our hands. And I'm sure you
16 understand that that's a pretty weighty responsibility for
17 us. I mean, this is not something that's -- that's going to
18 be over with tomorrow or next week. In fact, we've been in
19 this case three weeks already, and that doesn't count the time
20 that we've spent getting ready for this case.

21 **A. Right.**

22 Q. So, do you understand that we take this very
23 seriously, and we're going to do the best job we can to
24 represent this young man?

25 **A. Right.**

1 Q. And that's why we're asking you so many questions,
2 and we're probing the jurors to make sure you guys are fit to
3 do the job?

4 **A. Right.**

5 Q. And so I'm wondering, when you use the term
6 proves -- I believe that taking a life "proves" a person has
7 no regard or value on life, do I need to be overly concerned
8 about you and when you say "prove"? I mean, you find somebody
9 guilty of capital murder, and you've already said it proves
10 that they have no regard or value on life. I guess I'm trying
11 to square that with where we may be at the end of this trial.
12 Tell me more what you meant by that comment.

13 **A. Well, I don't want to say I've changed my answer,**
14 **but I think after we've been through all of this, I might have**
15 **actually reworded it differently. You know, I guess I never**
16 **thought about all the different legalities and different ways**
17 **you can view, you know, killing someone. You know, I guess I**
18 **never thought of burglary and robbery and this and that. I**
19 **never really have thought about it or had been explained to me**
20 **before we filled out the questionnaire, and actually I may**
21 **have answered a lot of things differently had we gone through**
22 **this first --**

23 Q. Sure.

24 **A. -- if that makes any sense?**

25 Q. It makes a whole lot of sense. Absolutely. It's

1 kind of a cheap trick --

2 **A. I mean, when you just --**

3 Q. -- that we play on you guys making you fill out the
4 questionnaire first before we give our talks.

5 **A. I guess when you say kill someone, the first thought**
6 **into your mind is someone just kills someone. You know, the**
7 **mitigating circumstances or aggravating -- you know, you**
8 **never -- I've never really thought of all the different ways**
9 **to look at it.**

10 Q. Sure. And it --

11 **A. Or different circumstances or --**

12 Q. And you're shaking your head yes, and I'm taking it
13 that you're thinking about those other circumstances now, and
14 you've been thinking about it over the last two to three
15 weeks.

16 **A. And it was easier to fill out the questionnaire,**
17 **too -- I don't know before it got to this point. I don't**
18 **know. It's -- I think I may have filled it out a little**
19 **differently now.**

20 Q. Okay, all right. Let's try it again then. If you
21 were to answer it now -- you knew I was going to do this --
22 "Are you in favor of the death penalty? Yes. Please explain
23 your answer." Take another shot at it. Tell me how you would
24 answer it now.

25 **A. Well, basically how I tried to answer it earlier is**

1 **if someone because of their behavior and because of -- can't**
2 **function, I shouldn't have to worry about walking down the**
3 **street. I just believe that if a person has proven themself**
4 **not to be able to work out differences in a different way -- a**
5 **manner than to take a life, and I feel that -- you know, and**
6 **they've proven themselves, or they're not going to change that**
7 **behavior, then why should they be here with us.**

8 Q. Absolutely. That's an absolutely fair answer.

9 Probably the best example -- do you understand we've had the
10 benefit -- we've been in here for about three weeks. We've
11 talked about this every day for the past three weeks, and you
12 haven't been a part of that. But probably the best example
13 that we've discussed in the last three weeks is Timothy
14 McVeigh in terms of an example of somebody that's worthy of
15 the death penalty. I mean, somebody that killed 168 people
16 and little children and planned it and executed it and laughed
17 about it and never showed any remorse.

18 **A. Uh-huh.**

19 Q. Obviously, McVeigh is -- he deserved to fry. I
20 mean, probably even some of the most ardent opponents of the
21 death penalty would say McVeigh deserved it.

22 **A. Yeah.**

23 Q. And maybe some other notorious criminals; people
24 like Jeffrey Dahmer that killed his victims and sometimes had
25 them for lunch. Or some of these people that kill randomly;

1 one or two or six or eight or ten people, you know, one after
2 another, Manson for example. A lot of people thought about
3 him, in the '60s.

4 I mean, those people -- without question, those
5 people, wouldn't you agree, they probably deserved the
6 death penalty; no question about it?

7 **A. I agree.**

8 **Q.** But there are other cases, I'm sure -- I mean, the
9 State pointed it out. I'm not sure if they did this in your
10 panel, but, you know, the father that had a couple of children
11 that were killed, and somehow the killers got off by some
12 legal technicality and upset the father and, of course, he
13 took the law into his hands and went and killed them. A lot
14 of us can understand that, how he could be so angry and upset
15 and do a killing, but that most of us would have done the same
16 thing. And probably now that he's got that off his chest and
17 behind him, he's not going to be a danger in the future.
18 You'd agree with that, right?

19 **A. Yes, I do.**

20 **Q.** Okay. Let me ask you this. We've talked a little
21 bit about drugs, and drugs in society and your fear as a mom.
22 What about a killing between drug dealers? People that mess
23 around in the drug business, people that deal in drugs, people
24 that use drugs, a dispute between them, and they get mad and
25 there's a fight, maybe there's even a killing.

1 **A. It's not something I would just say yes or no. I**
2 **mean, I couldn't say, yeah, do it or no, don't -- I think**
3 **it -- you know, I'm realizing through this process that it**
4 **would be a harder decision than I thought it might be. I**
5 **mean, like -- it's easy to sit back and watch it on TV.**

6 **Q. Sure.**

7 **A. But I'm realizing it would be a harder decision than**
8 **I thought. I personally think I could come to the right**
9 **decision for myself, I mean as far as -- you know, it's hard**
10 **to say.**

11 **Q.** Is there any difference between being part of the
12 process with 11 other jurors, you know, and making a
13 collective decision, along with a judge and lawyers, and being
14 part of the State's sanctioned process of taking a life, as
15 opposed to someone else who committed the murder? I mean,
16 what we're talking about here is, you know, you say only God
17 should judge whether a life should be taken. I'm trying to
18 view it from both vantage points, from the person who did the
19 killing and a State sanctioned killing. Are you with me?

20 **A. Yeah, I see what you're saying. Yeah, I think**
21 **there's definitely a difference.**

22 **Q.** What's the difference in your mind?

23 **A. The difference is that as the State or the jury, the**
24 **judge, they're holding someone accountable for something**
25 **they've done because we have to hold people accountable in our**

1 **A. Uh-huh.**

2 **Q.** How do you view that type of a situation?

3 **A. What do you mean, whether it's right or wrong or --**

4 **Q.** I mean, just tell me how it strikes you.

5 **A. I don't know. It doesn't strike me as being right.**

6 **Q.** Obviously. How could it?

7 **A. Right. I mean --**

8 **Q.** How could it?

9 **A. In other words, would I feel bad that a drug dealer**
10 **was dead? Probably not. But would it make a difference that**
11 **someone killed him? Yeah, that does matter.**

12 **Q.** Uh-huh, and it always does. But obviously, we've
13 got -- and I'm sure that -- if it only happened once, you
14 know, as opposed to multiple killings, a serial killing-type
15 situation, or 168 people that lost their life in Oklahoma
16 City, I, mean I'm sure you can see the difference between that
17 one situation and the other situation?

18 **A. Uh-huh.**

19 **Q.** Okay. That's fair enough.

20 There's a statement here on page 2, it says, "What
21 is the best argument in opposition of the death penalty?" And
22 you write here, "Only God should judge whether a life should
23 be taken." And it makes me think that you -- you'd have a
24 real hard time assessing the death penalty. Is that -- is
25 that what I'm seeing there or what --

1 **society. We can't just run amuck. You have to decide**
2 **where -- you have to find some -- try to find someone**
3 **accountable for taking someone's life, whether it was the**
4 **person on trial or not. You have -- I feel like you have to**
5 **go through that process as a society. But to just decide on**
6 **your own to go out and kill someone, I think that's -- I'm**
7 **sure that's different than the collective judge and jury.**
8 **You're making a decision yes or no. The person who goes out**
9 **and does it isn't making that decision. They're just doing**
10 **things on their own, I guess.**

11 **Q.** Sure, sure. Similar to the gentleman that walks out
12 of the courtroom and kills the two perpetrators, the dad, the
13 disgruntled dad. I mean, he's made the decision to do it, and
14 obviously the State would have a responsibility to prosecute
15 him for capital murder, which is double homicide.

16 **A. Uh-huh.**

17 **Q.** Let me ask you this, and I think you mentioned it
18 earlier. You know there's a period of time between the
19 assessing of the death penalty and the actual carrying out of
20 the sentence?

21 **A. Uh-huh.**

22 **Q.** How would that make you feel if you were on the jury
23 that assessed the death penalty and six, eight, ten years from
24 now the person was executed? I think we touched on this. Did
25 we talk about this earlier?

- 1 A. **I believe so. I don't -- you know, I don't know.**
- 2 Q. Have you thought about that?
- 3 A. **I have thought about it.**
- 4 Q. Okay. What have your thoughts been?
- 5 A. **That I hope that I would make a decision that I**
- 6 **would be comfortable with; that, you know, I would have to**
- 7 **live with that decision.**
- 8 Q. So come to a decision like that --
- 9 A. **Uh-huh.**
- 10 Q. -- Ms. Burks, how convinced would you have to be
- 11 that he would be a continuing threat to society?
- 12 A. **I would have to be absolutely convinced without, you**
- 13 **know -- without thinking about it, I would have to be**
- 14 **absolutely sure.**
- 15 Q. Okay. Fair enough. Now, let me ask you this
- 16 question: Before you get to this question you're going to
- 17 have to have found a person guilty of capital murder, and you
- 18 already know, by virtue of the indictment in this case, that
- 19 there's allegations that either a murder plus a robbery was
- 20 committed, or a murder plus a burglary was committed, or a
- 21 double homicide was committed. And there would already have
- 22 to be a guilty finding on that before you got to this
- 23 question.
- 24 A. **Uh-huh.**
- 25 Q. Okay. Now, here's the thing. You know, we talked

- 1 about that this issue can't be automatically answered yes;
- 2 that there has to be an independent determination by the jury
- 3 that there's a probability that the defendant would commit
- 4 criminal acts of violence that would constitute a continuing
- 5 threat to society?
- 6 A. **Uh-huh.**
- 7 Q. Could you truly make an independent determination of
- 8 that question, or by virtue of the fact you'd found a person
- 9 guilty of a double homicide, are you going to assume that
- 10 they're going to be a continuing threat to society? Do you
- 11 understand my question?
- 12 A. **Uh-huh.**
- 13 Q. I guess that's a hard question to answer.
- 14 A. **I guess you would -- you would have to know**
- 15 **everything that led up to that -- led up to this moment.**
- 16 Q. Okay, fair enough.
- 17 A. **All the facts and finding.**
- 18 Q. And I understand you're at a severe disadvantage now
- 19 because you're the only one in the courtroom that doesn't know
- 20 any of the facts, and we can't tell them to you right now.
- 21 And you will, okay? By the time you get to this question you
- 22 will have heard, hopefully, everything, and you'll have it
- 23 before you to consider and to work with and decide with.
- 24 A. **Uh-huh.**
- 25 Q. But I'm trying to find out how Tanya Burks, what her

- 1 thinking process is going to be, her decision-making process
- 2 is going to be after she's already found somebody guilty of
- 3 capital murder, a possible double homicide. And as she
- 4 addresses this question, is she going to go ahead and say this
- 5 person's a continuing threat to society, or is she going to
- 6 keep an open mind and consider the evidence and make an
- 7 independent determination?
- 8 A. **Uh-huh.**
- 9 Q. How well do you know yourself, if you do, and try to
- 10 give us a feel for that?
- 11 A. **I, you know -- I would hope that I could keep an**
- 12 **open mind. You know, it's just a hard -- I feel like I'm**
- 13 **pretty open minded and honest with myself, and it's hard to --**
- 14 Q. So you think you could do it?
- 15 A. **I think I could do it.**
- 16 Q. And you're not going to just jump straight from the
- 17 point of conviction of capital murder --
- 18 A. **No.**
- 19 Q. -- saying somebody is a continuing threat, they're
- 20 going to be dangerous. You're not going to do that, are you?
- 21 A. **I know I wouldn't do that.**
- 22 Q. That's fair enough. That's fair enough.
- 23 Let me make something clear. I know you're not a
- 24 lawyer, and I know that you've never really been in a
- 25 courtroom, and I'm sure you're wondering, gee, why are we

- 1 talking about punishment when we haven't even had a trial yet?
- 2 A. **Uh-huh.**
- 3 Q. Okay. We have to. We will have a trial. We will
- 4 engage the issues in the trial. We will do everything we can
- 5 to defend this young man, and he may not even be found guilty,
- 6 you know, once the jury sorts through all the evidence. We
- 7 may not even get to this phase of the trial, okay? It may not
- 8 even happen. But in the event it does, then we have to
- 9 discuss these issues with you in advance because once you're
- 10 on the jury we -- it's too late. We have to have explored
- 11 these issues with you. And actually, that's the way our law
- 12 is set up. There's provisions in our laws that talk about
- 13 individual voir dire and going into all this stuff with you,
- 14 okay?
- 15 A. **Uh-huh.**
- 16 Q. So please don't get the impression that either
- 17 myself or Mr. Goeller are saying our young man is guilty.
- 18 We're not saying that. We've just got to explore these issues
- 19 with you right now.
- 20 A. **Okay.**
- 21 Q. Is that fair enough?
- 22 A. **Yes.**
- 23 Q. Any questions about that?
- 24 A. **No.**
- 25 Q. Okay. You indicated that the death penalty was

1 appropriate or might be for offenses against children.

2 **A. Uh-huh.**

3 **Q. Okay. Let me understand that. I think I**

4 **understand what you're saying, but tell me more.**

5 **A. Well, I guess I just don't view children as I view**
6 **adults. They absolutely have no way to defend themselves at**
7 **all against anything. And, you know, I guess an adult doesn't**
8 **either, depending on the circumstances, but I just think that**
9 **when children are involved, no matter what, I think it should**
10 **always be weighed heavier than if it was with an adult, or**
11 **another adult involved.**

12 **Q. Okay. Now, we've explained to you that an offense**
13 **involving a child under the age of 6 is capital murder?**

14 **A. Uh-huh.**

15 **Q. But are you also talking about sex crimes,**
16 **molestation of children should be the death penalty?**

17 **A. I don't know. I think I thought so when I filled**
18 **that out, but after we've talked so much it just seems -- I**
19 **don't know. It's fuzzy now. It's fuzzier now than it was**
20 **when I filled that out.**

21 **Q. Fair enough. Fair enough.**

22 **You mentioned that the biggest problem in the**
23 **criminal justice system is that convicted criminals have so**
24 **many rights. Okay. Tell me what you mean by that.**

25 **A. I think I was --**

1 **A. Yeah. Well, as a person who's lived in the military**
2 **life, it's a hard life.**

3 **Q. Uh-huh.**

4 **A. It's a very low paying job. You know, there were**
5 **times we couldn't afford cable, we couldn't afford this, we**
6 **couldn't afford that. And, you know, when you look at it that**
7 **way, these are men serving our country just getting by, that**
8 **some of them drive for Domino's at night. Some of them work**
9 **at the grocery store, and so I kind of look at it like that.**
10 **Coming from a military background, I might look at it**
11 **differently than other people.**

12 **Q. Well, that doesn't mean it's wrong, or -- I mean,**
13 **different is fine.**

14 **A. Uh-huh.**

15 **Q. I applaud that. I really do, and actually, it's**
16 **refreshing hearing that from you. It absolutely is.**

17 **Here's my point, and I just want to explore this**
18 **with you, and I don't think this is going to be a problem.**
19 **But I see -- I'm sure you look over here, and you see two**
20 **lawyers that are representing this young man, and eventually**
21 **you'll probably find out that we're appointed to represent**
22 **him, okay, but in the Court to represent him and give him a**
23 **good defense.**

24 **A. Uh-huh.**

25 **Q. Are you having serious problems with that?**

1 **Q. Is it the TV, the air conditioning?**

2 **A. I think it's just what you hear that they do. I**
3 **honestly can't say I know for a fact that they do. I did at**
4 **one time know a Sheriff in a small town -- well, Gilmer --**
5 **that said they had cable in jail. I don't guess jail is the**
6 **same as prison -- I don't know -- but that didn't seem fair to**
7 **me.**

8 **Q. Okay. I take it you've had to work hard for a**
9 **living and for what you've gotten in life?**

10 **A. I feel like I have.**

11 **Q. And you've been a success?**

12 **A. I feel like we are, uh-huh.**

13 **Q. Along those lines, there's a question back here. It**
14 **says, do you think citizens accused of criminal offenses, not**
15 **the person convicted, but the citizen accused. Do you think**
16 **citizens accused of criminal offenses are afforded too many**
17 **rights by the Constitution of the United States and the State**
18 **of Texas and the criminal laws of this State? Yes. Please**
19 **explain your answer. It seems they have more of their basic**
20 **needs taken care of than some people just trying to make a**
21 **living.**

22 **A. Uh-huh.**

23 **Q. So that's consistent with what you just told us?**

24 **A. Uh-huh.**

25 **Q. Like cable TV?**

1 **A. That you are appointed?**

2 **Q. Right.**

3 **A. No, I have no problem with that at all.**

4 **Maybe I don't understand what appointed means.**

5 **Q. Okay. The court has appointed us and designated us**
6 **to defend this young man, and generally the taxpayers of**
7 **Collin County will be fronting the defense of this case?**

8 **A. Uh-huh.**

9 **Q. That's just kind of a blunt explanation. I mean,**
10 **the taxpayers will be paying for his defense.**

11 **A. No. I don't have a problem with that at all.**

12 **Q. Well, if you do, I'd like to know about it, not**
13 **because I'm nosy or pushy or anything, but you understand he**
14 **he has the right to have competent legal representation.**

15 **A. I guess I don't understand why I should feel that**
16 **it's a problem.**

17 **Q. I'm not saying that you should. It's just that your**
18 **question -- it says, do you think citizens accused of criminal**
19 **offenses are afforded too many rights --**

20 **A. Oh.**

21 **Q. -- and that's why I wanted --**

22 **A. I don't consider that a luxury. I think that's an**
23 **absolute --**

24 **Q. Necessity?**

25 **A. -- necessity. Yeah, I guess that's a good word.**

- 1 Q. So that's not problem at all?
- 2 A. No.
- 3 Q. Okay. I'm going to put you on the spot. What
- 4 right -- what right do you think they have -- citizens
- 5 accused -- that they shouldn't have, anything come to mind?
- 6 A. No. **I think it's just basically one of the things**
- 7 **you say and you really don't know what you mean, like cable.**
- 8 **I don't have any real knowledge of our prison system and what**
- 9 **they do and don't have. You know, you hear that they have --**
- 10 **that they sue for everything. You know, honestly I don't have**
- 11 **any direct knowledge of luxuries that they have, just kind of**
- 12 **a generic answer really.**
- 13 Q. Okay. And I'm kind of taking it from you that
- 14 you're backing off from that answer?
- 15 A. Well, you know, I -- was that the end of the
- 16 questionnaire?
- 17 Q. And I promise you, I'll move on to something else.
- 18 Okay. You understand the difference between
- 19 somebody that's been convicted and sent to the penitentiary.
- 20 They've had a trial, and they've entered a plea, and they've
- 21 said they're guilty, and they've gone to the penitentiary, as
- 22 opposed to the citizen accused, the person that has not yet
- 23 been convicted? They're still awaiting trial.
- 24 A. Yes.
- 25 Q. And maybe we weren't clear on that in our question.

- 1 It says do you think citizens accused -- someone that hasn't
- 2 been found guilty yet -- are afforded too many rights by
- 3 constitutions?
- 4 A. **Yeah, I was confused then.**
- 5 Q. Were you confused by that?
- 6 A. **Yes. I was confused by that. I understand why**
- 7 **you're asking me now.**
- 8 Q. Okay.
- 9 MR. GOELLER: Okay.
- 10 Q. BY MR. HIGH: And that gave me a little concern --
- 11 A. Okay.
- 12 Q. -- because this young man hasn't been convicted
- 13 yet --
- 14 A. **Right, I understand.**
- 15 Q. So you don't have any problem at all with that?
- 16 A. No.
- 17 Q. What are your husband's views on the death penalty?
- 18 A. **I actually haven't discussed it with him. I would**
- 19 **assume they're similar to mine.**
- 20 Q. Okay. I just want to go to these questions now, and
- 21 we're going to wrap it up. We've talked some about the first
- 22 question already, and right there in the first sentence is the
- 23 big word "probability." What does probability mean to you?
- 24 THE COURT: Ma'am, are you looking at the right
- 25 one?

- 1 Q. BY MR. HIGH: Yeah, it's on the floor.
- 2 A. **Probability, just what we said before. It's more**
- 3 **likely than not, more than a possibility. A little more than**
- 4 **a possibility, a possibility plus.**
- 5 Q. Okay. So you understand the difference between
- 6 probability and possibility?
- 7 A. Uh-huh.
- 8 Q. Probability is a stronger word, more of a
- 9 likelihood?
- 10 A. Yes.
- 11 Q. Okay. And we said that if the jury unanimously
- 12 answers this question yes, then you go to the next question,
- 13 and we're continuing down that trail leading to a death
- 14 sentence. You're with me?
- 15 A. Uh-huh.
- 16 Q. You found the person guilty of capital murder.
- 17 A. Uh-huh.
- 18 Q. You found that they're going to be a continuing
- 19 threat to society. Now, you're to the last question, which is
- 20 the one up above here.
- 21 A. Uh-huh.
- 22 Q. And that right there is sometimes referred to as the
- 23 "mitigation question." It's sometimes referred to as the
- 24 "humanitarian question." Sometimes it's referred to as the
- 25 "one-last-look question."

- 1 A. Uh-huh.
- 2 Q. In other words, the jury is going to take one last
- 3 look at all the evidence and the defendant and see whether or
- 4 not there's enough mitigating circumstances -- they use the
- 5 word "sufficient" -- sufficient mitigating circumstances where
- 6 a sentence of life imprisonment as opposed to death should be
- 7 imposed. Does that make sense to you?
- 8 A. Yes.
- 9 Q. Okay. And we've talked some about the circumstances
- 10 of the offense. Obviously by this point you're going to have
- 11 heard all about the circumstances of the offense; good, bad,
- 12 horrible, not so bad. You're going to have a pretty good feel
- 13 of the offense.
- 14 A. Uh-huh.
- 15 Q. You're going to have heard some about the
- 16 Defendant's character and his background, I presume, probably
- 17 by both sides.
- 18 A. Uh-huh.
- 19 Q. Okay. Then there's that phrase, and the personal
- 20 moral culpability. Any idea what that means?
- 21 A. **I would say it means his belief system and how**
- 22 **others -- how he views others, how he interacts with other --**
- 23 **how you get along with other people.**
- 24 Q. All of that is right, okay, because it's what you
- 25 think. There's no definition in law for personal moral

1 culpability. Now, there is a definition for culpability,
 2 generally referred to as responsibility, being responsible.
 3 And a lot of times we talk about criminal responsibility,
 4 whether it's reckless or intentionally or deliberate, that
 5 sort of thing?
 6 **A. Uh-huh.**
 7 Q. So I suppose nobody really knows because the court
 8 won't give you a definition of personal moral culpability, but
 9 I suppose it's going to be some of those things that you
 10 mentioned.
 11 **A. Uh-huh.**
 12 Q. It could also mean remorse, guilt, a view from the
 13 backside. You know, now that he's on the other side of the
 14 fence, how does he view it and how is he reacting to it and
 15 what he's doing about it? You know, kind of like Timothy
 16 McVeigh. That guy had no personal moral culpability.
 17 **A. Right.**
 18 Q. There's an example of somebody with zero.
 19 **A. Uh-huh.**
 20 Q. And we call that mitigating circumstance. You know,
 21 something that's mitigating, that would mitigate against the
 22 death penalty. Does that make sense to you?
 23 **A. Would you say that again?**
 24 Q. Us lawyers we've come up with this term
 25 "mitigating circumstance." It lessens the -- you know, the

1 impact of the crime, I guess, and the situation. And the jury
 2 says, yeah, I'm taking my last look. I see that this
 3 mitigates. I see that maybe we should spare his life. It
 4 lessens the impact. There must be a reason here. We feel
 5 like, you know, it's really a bad case, really a bad crime,
 6 but viewing everything objectively, you know, we feel there's
 7 a reason to spare his life.
 8 **A. Uh-huh.**
 9 Q. Maybe we see something about his personal moral
 10 culpability. Maybe we see something about the way he grew up.
 11 Maybe he had a bad childhood. Maybe, you know, the offense,
 12 something provoked him into committing the offense, you know,
 13 like the dad that walks out of the courtroom and kills the two
 14 perpetrators?
 15 **A. Uh-huh.**
 16 Q. That would be a last-look type situation.
 17 **A. Uh-huh.**
 18 Q. Okay. Do you feel comfortable with this concept,
 19 applying mitigation? Do you feel comfortable taking a last
 20 look and considering these types of things and possibly even
 21 sparing a life?
 22 **A. Well, I guess this is about the most serious issue**
 23 **you can decide on, and I think you would have to look at**
 24 **everything. You would have to look at what's shown, what you**
 25 **feel, what other people have said they felt, what -- as far as**

1 **people testifying how they feel. I think you have to look at**
 2 **character, background.**
 3 Q. One thing I want to ask you about, you mentioned a
 4 person taking drugs was aggravating to you.
 5 **A. Uh-huh.**
 6 Q. But I wasn't clear on your answer, and you indicated
 7 that if they make a choice to get off of drugs.
 8 **A. Uh-huh.**
 9 Q. How do you view that; is that aggravating or
 10 mitigating?
 11 **A. I don't understand the question. I don't understand**
 12 **what you're saying.**
 13 Q. In other words, I take it a person can make a
 14 choice --
 15 **A. Uh-huh.**
 16 Q. -- whether they're going to continue in that
 17 lifestyle --
 18 **A. Right.**
 19 Q. -- or whether they're going to say, nope, I'm not
 20 going to do it anymore. Look at the consequences. Look at
 21 what it's caused me to do. Look at the impact it's had on my
 22 life, and they make a choice, no, I'm not going to do that
 23 anymore.
 24 **A. Uh-huh.**
 25 Q. Okay. Is that aggravating, the choice, or is it

1 mitigating? Does it mitigate against the death penalty?
 2 **A. Oh, the choice itself?**
 3 Q. Uh-huh. Have I confused you?
 4 **A. Well, a little bit. I think I understand what**
 5 **you're saying.**
 6 Q. You've been up there a long time.
 7 **A. I think what you're saying is that if they -- if**
 8 **they've made the choice to get off drugs, should that weigh as**
 9 **aggravating or mitigating?**
 10 Q. Correct. It's not a trick question. I understand
 11 when we use these big words --
 12 **A. I think I would say it would be mitigating.**
 13 Q. Okay.
 14 **A. If I'm understanding.**
 15 Q. I understand. And you're going to -- if you sit on
 16 this jury, you're going to have weeks to get all this straight
 17 in your head. And I've already had weeks, okay, and sometimes
 18 I still have to scratch my head to figure it out. We use all
 19 these big -- 52 words in that question, okay?
 20 You mentioned when the State was questioning you
 21 that anybody convicted of capital murder should face the death
 22 penalty. Now that we've talked for two hours, is that what
 23 you -- is that what you really think or we need to fix that,
 24 or --
 25 **A. Well, when I say "face the death penalty," I mean it**

1 **should be an option. It should be -- I don't believe that the**
2 **death penalty shouldn't exist.**

3 Q. Okay. In other words, you're not saying that
4 anybody convicted of capital murder should get the death
5 penalty?

6 A. **Right. I'm saying I do believe in the death**
7 **penalty, and I think it should be --**

8 Q. A consideration?

9 A. -- **a consideration, uh-huh.**

10 Q. I thought that's what you said. I just wanted to
11 clarify that.

12 You said when they were asking you about this
13 mitigation question, the one with 52 words, you -- when they
14 asked you if you could consider mitigation circumstances, you
15 said I believe so.

16 A. **Uh-huh.**

17 Q. And will you consider mitigation, or will you not?
18 I guess in order to be on this jury you're going to have to,
19 to be a qualified juror. You're going to have to consider it.

20 A. **I would think you have to consider it in any case.**

21 Q. Okay.

22 A. **In any --**

23 Q. So are you open to mitigation-type evidence?

24 A. **I believe I am, yes. I've never -- yes. I think**
25 **whatever in your life there's -- I think everything needs to**

1 **in prison for life. But after I said that, I did remember**
2 **that there have -- there have been some that have gotten out**
3 **that have concerned me and they kept up correspondence. And**
4 **now they're out of prison, and they have not been a concern,**
5 **and it's never been an issue. Nothing. My parents are**
6 **perfectly safe and sound.**

7 Q. Okay. And I take it, were there any murderers in
8 that group?

9 A. **I believe that was one of the examples that he told**
10 **me.**

11 Q. And these were people that were convicted of murder,
12 had a conversion experience, and then changed?

13 A. **Yes.**

14 Q. With that perspective, here's my final question.

15 With that in mind, if you were to sit on the jury and hear
16 evidence of a double murder, and you found that the Defendant
17 is a continuing threat to society, and now you're looking at
18 the mitigation evidence and -- whatever it may be, whether
19 it's getting off drugs, whether it's change in attitude,
20 whether it's a conversion experience, whether it's poor
21 childhood, would you be able to consider that and can you
22 envision a situation where you might be able to spare a life?
23 Is that within the realm of possibilities?

24 A. **Oh, definitely. I don't think I could come to a**
25 **decision of the death penalty just because I believe in the**

1 **be considered.**

2 Q. Okay. With respect to the ministry that your
3 parents do in prison, and the way I understood what you said
4 was that they report back to you, and they say those people
5 that have had a conversion experience have changed; is that --
6 did I get that right?

7 A. **Yes. They -- they've talked to me about it.**

8 Q. Okay.

9 A. **And have told me how they believe -- I mean, that**
10 **they've seen. I'm not trying to use an example or -- of the**
11 **defendant, but that they have convicted killers, he said from**
12 **the first day kind of be there for the cookies, because they**
13 **bring cookies and juice, and by the last day of, however many**
14 **days they're there, that they feel that they've truly -- have**
15 **made a conversion, that they're not there for the cookies and**
16 **that they've continued a correspondence with them and truly**
17 **feel they've made a difference in their lives, and they have**
18 **made the change.**

19 Q. And you indicated that, as far as you know, that
20 they've stayed that way, or at least you haven't gotten any
21 evidence to the contrary --

22 A. **Right.**

23 Q. -- from your parents?

24 A. **Right. And there have been -- when I said "they," I**
25 **believe that most of the people they see are people that are**

1 **death penalty.**

2 MR. HIGH: Your Honor, we're going to pass the
3 juror. Thank you so much.

4 THE COURT: All right. I'm going to ask you
5 to step down for a few minutes, and we'll have you back in.

6 VENIREPERSON: I'm sorry?

7 THE COURT: In a minute we'll have you back in.

8 (Venireperson exits the courtroom.)

9 THE COURT: All right. The juror is outside.
10 What says the State?

11 MS. FALCO: This juror is acceptable to the
12 State, Your Honor.

13 THE COURT: What says the Defendant? Oh, need
14 a minute?

15 MR. GOELLER: Can we have a second, Judge?

16 THE COURT: Take your time.

17 (Brief pause in proceedings.)

18 THE COURT: Did I ask the State's position?
19 You found her acceptable; is that correct?

20 MS. FALCO: Yes, sir.

21 MR. HIGH: Judge, Juror Number 75, Tanya Burks,
22 is acceptable to the defense.

23 THE COURT: All right. Would you ask her to
24 step back in for a moment, please, Mr. Powell?

25 THE BAILIFF: Yes, Your Honor.

1 (Venireperson enters the courtroom.)
 2 THE COURT: Ms. Burks, I just want to tell you
 3 that both sides have agreed to accept you in the trial of this
 4 case, and there's just a few things I want to tell you. The
 5 first one is, I think at some point I advised everybody not to
 6 discuss the case with anybody, and that continues to hold
 7 true, not even with your husband, about -- anything about the
 8 case or with anybody else.

9 VENIREPERSON: Okay.

10 THE COURT: Also, if there are any news items
 11 on the news, I'm going to ask you to avoid them. Perhaps
 12 there will be nothing in the newspapers or television, but if
 13 there is I'd ask you to avoid reading those things. And the
 14 primary reason for that is that all the evidence that you're
 15 going to hear you'll hear from the witness stand, and you can
 16 trust me that when I tell you that the evidence from the
 17 witness stand is a lot more reliable than anything you'll see
 18 on the news or in the paper, anyway.

19 And there's one other thing that I do need to tell
 20 you, and that is this: Don't make any effort to make any
 21 investigation on your own for the same reason. All the
 22 evidence you're going to hear from the witness stand, and so
 23 that way when you return in, what I think will be two or three
 24 weeks -- it could be two weeks, could be three weeks, could be
 25 four weeks, could be ten days, I don't know. But I'm just

1 giving you an estimate of somewhere between two and three
 2 weeks, which is the best estimate I have. When you return at
 3 that time we'll be writing on a clean slate, which is the best
 4 way to have jurors. Do you have any questions of me before I
 5 leave?

6 VENIREPERSON: Do you have an idea of when the
 7 trial will start?

8 THE COURT: I think probably about two or three
 9 weeks.

10 VENIREPERSON: Two or three weeks. I'm a
 11 little nervous. I think that's all. Do you have something I
 12 can give my employer or -- I don't know how that works.

13 THE COURT: Billy can write you a letter, and
 14 if you -- we haven't done that, so if you need me to compose
 15 something I can.

16 VENIREPERSON: I don't know what the normal
 17 thing to do is. I guess they don't have --

18 THE COURT: Good idea, but I'll give you
 19 anything you want. I guess we've got your address here, so
 20 if -- Billy, can you give her anything today, or should I
 21 write something down and mail it to her?

22 THE BAILIFF: We probably should mail it to
 23 her because the notes that I have are to excuse for jury
 24 service while they're at court.

25 THE COURT: So let me see if I need to compose

1 something.

2 VENIREPERSON: And will I be notified by mail
 3 when I need to be here?

4 THE COURT: Probably by mail and probably by
 5 telephone, also. And it's likely that we'll start on Monday
 6 of whatever week we start. It's possible that we won't, but I
 7 would assume that we'll start on Monday. And so at any rate,
 8 I appreciate your service so far and the time consumption.
 9 Thank you, ma'am.

10 VENIREPERSON: Thanks.

11 THE COURT: Anything else from anybody?

12 MS. FALCO: No, sir.

13 MR. SCHULTZ: How about 9:00 tomorrow?

14 THE COURT: Well, I tell you what, we've got
 15 the jurors coming in at 8:45. So -- but I was telling Billy,
 16 I've got to go down to Dallas early in the morning tomorrow,
 17 and I expect to be back up here probably by 8:15.

18 MR. GOELLER: Take your time, Judge. Don't
 19 break your neck.

20 MR. SCHULTZ: They need you. You. They really
 21 do.

22 MR. GOELLER: If you need an excuse, you tell
 23 whatever judge down there to call me, okay, and I'll
 24 straighten them up.

25 MR. SCHULTZ: Square it with them.

1 THE COURT: Hey, I appreciate that. I mean it.
 2 Okay. We'll see you guys tomorrow.
 3 (End of Volume 17.)

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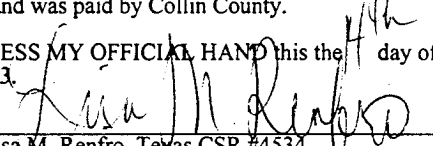
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4

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 the 4th day of
20 January, 2003.

21 
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24 Collin County, Texas
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